STAFF REPORT

CITY OF YORBA LINDA AND THE SUCCESSOR AGENCY TO THE YORBA LINDA REDEVELOPMENT AGENCY

Administration Department

DATE: **DECEMBER 3, 2013**

TO: **HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

FROM: **MARK PULONE, CITY MANAGER**

SUBJECT: **ADDITIONAL RESPONSES TO CITY COUNCIL QUESTIONS RELATED TO THE CITY'S HOUSING ELEMENT**

RECOMMENDATION

It is recommended that the City Council review the attached Q&A and provide staff with further direction as deemed necessary.

BACKGROUND

City Council, at its meeting on November 5, 2013, raised several questions related to the City's Housing Element, including specific questions associated with Measures H & I, the Regional Housing Needs Assessment (RHNA), affordable housing, and densities.

Staff reported on the majority of the questions at the November 19, 2013 City Council meeting. However, some questions required additional research and were intended to be incorporated into the Q&A document as responses were drafted. The updated Q&A provides an added response to the following questions:

- History – Questions 3 and 4
- Measures H & I – Questions 1 and 2
- Housing Monies – Question 1

Only a few questions remain, for which responses are being drafted and will be presented to the Council upon completion.

ATTACHMENTS

Attachment A – Updated Q&A sheet from November 5, 2013 City Council Meeting

Approved by:

Mark A. Pulone
City Manager

QUESTIONS & ANSWERS

Housing Element, Densities and Measures H & I
City Council Meeting of 11/5/13

HISTORY

1. Provide a summary of affordable housing law:

Response: Several federal, state, and local laws touch and concern affordable housing. An "affordable housing law" is one intended to assist in providing rental or ownership housing to individuals and households who earn a certain percentage of an area's median income, or "AMI." Under most affordable housing laws, including those that affect Yorba Linda, median income is tied to a county average as determined annually by federal and state regulations. Individual/household categories generally fall into the following categories: those earning less than 30% AMI are "extremely low-income households," 30-50% AMI are "very low-income households," 50-80% AMI are "low income households," and 80-120% AMI are "moderate income households." When the term "lower (or low) income households" is used, it also can refer to any individual or household earning 80% or less of AMI.

Most federal laws involve funding (and attached requirements for receiving such funding) for projects that provide affordable housing, such as the Low Income Housing Tax Credit program, Community Development Block Grant (CDBG) program, and HUD "Section 8" voucher program. While some state and local laws also concern funding (and attached requirements) for affordable housing, the more familiar state and local laws relating to affordable housing have to do with land use and planning. Included among these state laws are the Housing Element Law (Gov. Code § 65580 et seq.), Density Bonus Law (Gov. Code § 65915 et seq.), and No Net Loss Housing Law (Gov. Code § 65863), among others. Generally, these state laws mandate that a local jurisdiction have land use controls (such as zoning) that accommodate and keep higher density residential uses to encourage and allow economic feasibility for the development of affordable housing. In furtherance of the state laws, the most common local laws that concern affordable housing are Subdivision Map Act ordinances and Density Bonus ordinances (which are required by state law to implement their requirements locally) and local "Inclusionary Housing Ordinances." The latter encourages or mandates the development of affordable housing in connection with the approval of a proposed residential development.

2. Provide a brief history of 2014-2021 RHNA numbers, including how were derived. Also include the history of *previous* RHNA allocations in Yorba Linda:

Response: Housing Element Cycle #3 (2000-2005) – 1,585 units
Housing Element Cycle #4 (2008-2014) – 2,039 units
Housing Element Cycle #5 (2014-2021) – 669 units

The RHNA is a number assigned to jurisdictions in a regional planning area – Yorba Linda is part of the SCAG region – and is intended to provide a "distribution of housing development capacity" that each city and county must account for in its State mandated Housing Element . The intent of the RHNA is for cities to plan for its "fair share" of housing market demands for all economic income levels.

The RHNA methodology is a formula for disaggregating numbers to jurisdictions in the planning area. The formula takes into consideration the City's population projections, employment growth, land use capacity, jobs-housing balance, and transportation efficiency. The RHNA number is not a direct result of a jurisdictions past performance in providing or planning for affordable housing.

Over the years, Yorba Linda's RHNA number has likely been influenced by large land areas planned for future residential development (ie. Eastlake Village, Vista del Verde, etc.), which affect the population projections. Given the fact that Yorba Linda is nearing build-out with less land capacity, and not anticipating major strides in employment growth, it is likely that the City's future RHNA numbers will reflect a downward trend. However, changes in Housing Element law and revisions to the RHNA methodology are always possible.

3. **What have been the RHNA carryover numbers from prior Housing Element cycles? Would there have been any carryover from the 2008-2014 Housing Element into 2014-2021 Housing Element if Measures H & I had not passed?**

The RHNA for the 4th cycle (2008-2014) required that the City provide the opportunity for 2,039 units in its Housing Element during the entire five year period. Had the sites identified in the HE not been re-zoned to the higher densities to meet the RHNA number, the unmet need would have been carried over into the 5th cycle and added to the 2014-2021 RHNA of 669 units.

Therefore, the properties identified in Measures H & I helped the City obtain its RHNA obligation of 2,039 units. If, for example, both Measure H & I had not passed, the City would not have been able to demonstrate sufficient opportunity for 950 units during the 2008-2014 period. This unmet number would have been carried over and added to the 669 RHNA for the 2014-2021 Housing Element – which would have resulted in a current need to provide for 1,619 units.

If Measure I had not passed, 180 units would have been carried over.
If Measure H had not passed, 770 units would have been carried over.

4. **How much of a "cushion" or surplus is necessary in the RHNA process?**

There is no requirement for a surplus of units or sites to be identified in the Housing Element process. The "cushion" is only a means by which the City has some discretion over the distribution of affordable housing and/or density on each of the sites. If there is no "cushion" then it is presumed that each of the sites will either 1) develop at the maximum density or 2) remain open and available as an "opportunity site" during the entire cycle.

The City's 2008-2014 Housing Element did not have a surplus of units. However, this was deemed acceptable by the City Council at that time because there were not any immediate plans for development on most of the properties identified in the sites inventory. In addition, due to the lateness in the City's final approval, the Housing Element only had approximately 18 months before the next cycle was to be considered and it was presumed that the 2,039 RHNA could be retained through December 31, 2013.

Providing a surplus of sites to meet any given RHNA, allows the City some flexibility. The excess units provide the City with the ability to make a "No Net Loss" finding if a site does not develop with the intended residential use (ie. possible library site on strawberry field) or if only a percentage of proposed units in a development will be attributed to affordable housing. It also allows the distribution of affordability to be scattered through the community and not overly concentrated on one site (ie. 10-25% affordability on several sites vs. a few projects with 100% affordability).

5. **Provide a matrix of the percentage of affordability and total number of units which would have to be zoned for?**

   Response: To be provided

6. **Provide information on the Shapell Industries, Eastlake Community developer, offer to set aside units for affordable housing purposes:**

   Response: Shapell Industries offered 40 condominium units to the City for the purpose of affordable housing per Condition #7 of Conditional Use Permit 2006-16. The units were offered to the City in three separate phases at the Solana at Villagio project in Eastlake between November 2007 and September 2008. The offers ranged from $443,800 to $538,900 per condominium unit. The amount was deemed unreasonable and inconsistent with market values for an affordable housing unit. The City declined each of Shapell's offers.

LEGAL CONSIDERATIONS

1. **Can we stop or prevent high density housing in this city from this day forward?**

   Response: The City is required to comply with various state laws, including the Housing Element Law (Gov. Code § 65580 et seq.), the Density Bonus Law (Gov. Code § 65915 et seq.), and the No Net Loss Housing Law (Gov. Code § 65863). Generally, under the Housing Element Law, for urban/suburban areas throughout the state like Yorba Linda, zoning at 30 dwelling units/acre is thought of as "high density" because this is the "default" density under state Housing Element Law that the California Department of Housing and Community Development (HCD) deems to be sufficient to accommodate very low- and low-income housing units as part of the Regional Housing Needs Assessment (RHNA). Because state law - for good or for ill - ties density to compliance with accommodating affordable housing units, the city must be cognizant when it disallows, through land use controls such as "down zoning," the ability to develop high density housing projects. For instance, state Housing Element Law provides that, if HCD determines a Housing Element fails to substantially comply with the state's Housing Element Law, there are potentially serious consequences that extend beyond the realm of residential land use planning. When a jurisdiction's Housing Element is found to be out of compliance, its General Plan is at risk of being deemed inadequate, and therefore invalid. If a jurisdiction is sued over an inadequate General Plan, the court may impose requirements for land use decisions until the jurisdiction brings its General Plan - including its Housing Element - into compliance with State law. Over the years, California has steadily increased the penalties for not having a legally compliant Housing Element, and this trend is expected to continue. Repercussions include:

(1) Limited Access to State Funding. The California Infrastructure and Economic Development Bank (CIEDB) award funds based on applications that take into consideration the approval status of a community's Housing Element.

(2) Lawsuits. Developers and advocates may sue jurisdictions if their Housing Element is not compliant with state Law. There are several potential consequences of being sued, including:

(a) Mandatory compliance – The court may order the community to bring the Housing Element into compliance within 120 days;

(b) Suspension of local control on building matters – The court may suspend the locality's authority to issue building permits or grant zoning changes, variances or subdivision map approvals. (Gov. Code § 65755.) Furthermore, a defective housing element may prevent approval of tentative subdivision maps or other land use approvals because case law has established that a finding of consistency with a general plan is not valid when a general plan is incomplete or inadequate. (Resource Defense Fund v. County of Santa Cruz (1982) 133 Cal.App.3d 800, 806; Camp v. Board of Supervisors (1981) 123Cal.App.3d 334, 358.) Accordingly, a city without a valid housing element would not be able to approve most development projects.

(c) Court approval of housing developments – The court may step in and approve housing projects, including large projects that may not be wanted by the local community.

(d) Fees – If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid to its own attorneys. These fees can easily exceed $100,000.

There is no specific requirement that "affordable units" be constructed on sites designated in the Housing Element. All that is required is that the sites be zoned at the required density. However, the No Net Loss Housing Law (Gov. Code § 65863) states that a city cannot allow development of one of the sites designated by the City's Housing Element as adequate to accommodate the city's regional housing needs allocation (i.e., a site available for affordable housing) at a lower residential density than authorized by the Zoning Code unless the city can demonstrate that (1) the reduction in density is consistent with the General Plan, including the Housing Element, and (2) the remaining sites identified in the Housing Element are adequate to accommodate the city's share of regional housing needs. (Gov. Code, sec. 65863.) Therefore, when a project is developed on one of these sites at a reduced residential density, the City can only approve the project if the remaining sites available for affordable housing can accommodate the City's regional housing needs allocation.

City staff is further researching options for the City regarding high density housing within the City.

2. What is an affordable housing covenant and how must they be used?

Response: An affordable housing covenant is an agreement between a federal, state, and/or local governmental agency (like the city) and a private landowner to provide low- and moderate-income residential units, either rental or owner-occupied or both, as part of a residential development. Typically, the agreement is recorded against fee title or a ground lease estate for one or multiple residential units, and the affordability covenants run for a number of years that is usually tied to a funding

source obtained for the acquisition or property or development thereof for a residential project. When the term "restricted unit" is used, it typically means a unit that has an affordable housing covenant (i.e., agreement) recorded against it. While these types of agreements may be used just as any other negotiated agreement and/or recordable instrument may be used in connection with a real property acquisition or development, they must be used in connection with certain funding sources that are received to acquire property and/or develop it for residential uses.

3. What is the likelihood of winning or losing an affordable housing lawsuit?

Response: The likelihood of the City prevailing on an "affordable housing lawsuit" is dependent on the nature of any future actions by the City. Certain actions by the City are more likely to trigger a legal action than other potential City actions. However, housing advocacy groups actively review options for suing cities for failure to comply with Housing Element Law and the law books are replete with cases involving land owners suing cities for land use decisions.

MEASURES H &I

1. Provide an explanation and history of Measure B:

The Yorba Linda Right-To-Vote Amendment (aka Measure B), is a citizen-sponsored, voter-approved initiative, incorporated within the City's Municipal Code. The Right-To-Vote Amendment (RTVA) was passed by the electorate of Yorba Linda in 2006. It requires citywide elections for the approval of certain "Major Amendments" to the City's Planning Policy Documents (defined within the RTVA). RTVA also imposed new noticing and public hearing requirements for "Regular Amendments" to City Planning Policy Documents, and established height restrictions for structures.

In making determinations as to the applicability of RTVA to development projects, the essential ingredient is whether or not the project preserves the integrity of the existing General Plan. The Yorba Linda Municipal Code identifies the following as "Planning Policy Documents" that are subject to the provisions of RTVA:

1) *The text of the Yorba Linda General Plan's Land Use Element,*
2) *The Land Use Policy Map of the Yorba Linda General Plan,*
3) *The text of the Yorba Linda Zoning Code,*
4) *The Zoning Map of the City of Yorba Linda,*
5) *Any Specific Plan for a geographic area within the City, or*
6) *Any Development Agreement granting rights to develop private or public land.*

The Code further defines "Major and Regular Amendments" to the identified Planning Policy Documents. A "Major Amendment" of any of the Planning Policy Documents means an amendment which results in any of the following changes to the development standards for any parcel of land affected by the proposed amendment:

1) *Increases the number of residential units which may be constructed on a parcel designated for residential uses.*

2) *Increases the number of separate parcels which may be created from an existing parcel.*
3) *Changes any residential land use to allow any other land use.*
4) *Changes any non-residential land use to allow any residential land use greater than 10 net dwelling units per acre or allows a mix of commercial and residential uses.*
5) *Increases the allowed maximum height of development.*
6) *Provides for the private development of land owned by a government entity within five years of the date of the approval to develop the land.*
7) *Repeals any of the Planning Policy Documents.*

A "Regular Amendment" of any of the Planning Policy Documents includes any amendment which is not a Major Amendment.

2. Provide an explanation and history of Measures H & I:

Following City Council approval of the 2008-2014 Housing Element and residential rezonings on October 4, 2011, staff was directed to return to Council with further information pertaining to options available for an upcoming Measure B election for the qualifying rezonings. Staff returned to Council on January 17, 2014 with an agenda report that presented various options for conducting a Measure B election. Information provided to the City Council consisted of the following:

- *Registrar of Voters deadlines for a June 2012 or a November 2102 election,*
- *estimated election costs,*
- *ballot measure format alternatives,*
- *authorization of necessary funds for election expenses and public education activities,*
- *preparation of an urgency development moratorium ordinance for Measure B rezoning properties, and*
- *other related issues.*

Upon the conclusion of Council discussion, staff was directed to ***"place a Measure B vote on the June 5, 2012 Primary Election and separate it into two measures, the Savi Ranch Planned Development and nine rezoning sites."*** *A professional services agreement with Lilley Planning Group was entered into on February 15, 2012 to prepare and undertake the 2008-2014 Housing Element Implementation Measure B Election Community Outreach Program. Outreach Program activities consisted two community meetings (April 25 and 28, 2012); information booths at the farmers market, Lobsterfest, seniors lunch days at community center and at the public library; social media tools; and an article in the City's Summer Activity Guide. Staff and the consultant team appeared before the City Council on April 17, 2012 with an Outreach Program update, and again on June 5, 2012 with an Outreach Program wrap up.*

The 2008-2014 Housing Element Implementation Measure B Election Community Outreach Program was recognized by the California Chapter of the American Planning Association with an Award of Merit at the 2013 Statewide Conference. The Orange Section of the California Chapter also recognized the Outreach Program as the 2013 Outstanding Planning Award – Education Project.

Both Measures H and I, appearing on the June 5, 2012 Primary Election received a majority vote of the Yorba Linda electorate. Measure H (consisting of the Savi Ranch properties) was passed by the voters with a vote of 61% to 39%; while the Measure I ballot question was approved with a 53% to 47% vote of the electorate.

3. What is the process for amending Measure I?

Response: Under State law, an ordinance adopted by the voters (such as Measure I) cannot be repealed or amended without a vote of the people, except where the ordinance expressly authorizes the City Council to do so. (Elec. Code § 9217; MHC Financing Limited Partnership Two v. City of Santee (2005) 125 Cal. App. 4th 1372, 1388.) Because no such provision is contained within Measure I, any amendment to Measure I must be submitted to the voters.

The process for amending Measure I can be accomplished in one of two ways: the City can either sponsor the ballot measure or a petition brought by the voters may be circulated and filed with the City Clerk. Depending on the timing of the petition, the measure may be submitted to the voters at the next regular municipal election, or if that will not occur in a timely manner, at a special election called by the City Council. (See Elec. Code § 9200 et seq.)

The submittal of proposals to a vote of people is not considered a "project" under the California Environmental Quality Act ("CEQA"), so long as the ballot measure is not sponsored by the City (Pub. Res. Code § 21000 et seq.). (14 Cal. Code Regs. § 15378(b)(3); Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.45h 165.) In other words, environmental review of the ballot measure would not be required under CEQA before putting a voter-initiated measure on the ballot, but would be required if the measure is generated by the City Council.

4. What was cost of June 5, 2012 Special Election?

Response: $84,347.01was the County of Orange Registrar of Voters costs; this amount does not include costs related to the City Attorney or related services.

5. Was Site 7, "Strawberry Fields", specifically included in Measure I?

Response: The Strawberry Fields Site was included in Measure I. The Strawberry Fields Site (also referred to as Site 7) was rezoned, through a successful Measure I vote, to accommodate residential development at 20 dwelling units per acre in connection with the adoption of the Town Center Specific Plan (that is, Ordinance No. 2011-962). Specifically, the Measure I ballot materials referenced the Strawberry Fields Site in three different places. First, the full text of Measure I included Ordinance No. 2011-962, which specifically identified the Strawberry Fields Site as one of the sites being rezoned to 20 dwelling units per acre. Second, the ballot statement also indentified the Strawberry Fields Site as one of the sites being rezoned. Third, the impartial analysis that was provided to voters specified that voter approval will allow "[a] maximum residential density of twenty du/ac and a maximum building height of thirty five feet or two stories plus a half story for underground parking for Site Nos. 7 and 8" (i.e., the Altrudy Lane" and "Lakeview Strawberry Fields" Sites). In so doing, the City complied with all requirements of the voter initiative law.

Although Ordinance No. 2011-962 approved the Town Center Specific Plan, the Specific Plan document did not need to be provided with the ballot materials in order to satisfy the City's obligations under the voter initiative law. (We Care Santa Paula v. Herrera (2006) 139 Cal.App.4th 387, 389-391 ["[S]ection 9201 does not require that a petition include the text of every plan, law or ordinance the measure might affect .... Indeed, voters may want to know all that and more. But section 9201 does not require an initiative petition to contain all the information an informed voter would want. It requires only the text of the measure proposed to be enacted."].)

CONSIDERATION FOR REVERSING MEASURES H & I

1. **In light of unintended consequences of Measure I, could the City Council consider an inclusionary housing requirement? Also, provide relevant case law on this topic:**

   Response: To the extent the city would like to mandate a minimum number of affordable units, or allow an alternative thereto in the form of an in lieu payment or other option, the City Council should consider an inclusionary housing requirement. However, local inclusionary housing law is in flux right now due to recent court decisions, vetoed legislation, and pending cases. Generally, the power to impose inclusionary requirements extends from the police power granted to cities under Article XI, Section 9 of the California Constitution, which allows cities to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. Recent cases have determined and/or narrowed the scope of the exercise of that police power by deciding: (1) a city cannot impose, based on police power alone, restrictions on the amount a landlord may charge for rent; and (2) approval of a residential project conditioned on (A) the inclusion of a specified number of on-site units and (B) a payment of a fee totaling approximately 5% of the sales value of market rate units were both exactions, thereby subjecting these types of conditions to state laws governing how such exactions may be calculated and imposed. Another case pending for review in the California Supreme Court will decide whether a facial challenge to a city's inclusionary ordinance should be treated as a land use regulation or an "exaction." Finally, AB 1229 from the 2011-12 Legislative Session would have superseded the court case that decided a city cannot impose, based on police power alone, restrictions on the amount a landlord wants to charge for rent. While AB 1229 passed the Legislature, the Governor vetoed it. In summary, the trend appears to be leaning towards the treatment of inclusionary requirements as "exactions" and not "land use regulations," meaning that the state Mitigation Fee Act and Costa-Hawkins ("Right to Market Rent") Act will apply. To the extent other state laws may be implicated, the City Attorney's Office continues to research this issue and will provide an update.

2. **What would a future election cost be?**

   Response: OC Registrar of Voters cost estimates for the June 2014 election is $70,919 - $88,753 and for November 2014 election is $57,544 - $70,919.

3. **Can the City Council change the zoning before entitlement? Provide a definitive answer on whether this would constitute a "taking". If considered a taking, then how would the property owner be made "whole"? Is there the potential for a lawsuit? Have other cities down-zoned and what were the results?:**

   Response: Generally, both the United States Supreme Court and California Supreme Court have held that, absent a deprivation of all economically viable use, the loss in value attributable to a change in zoning – alone - generally does not implicate the takings clauses of the United States and California Constitutions. (Agins v. City of Tiburon (1979) 24 Cal.3d 266, 277 ["An ordinance which on its face results in a mere diminution in value of property is not per se improper."] [affirmed by United States Supreme Court in Agins v. City of Tiburon (1980) 447 U.S. 255, 262]; see also HFH, Ltd. v. Superior Court (1975) 15 Cal.3d 508, 515 [holding that zoning ordinance having the effect of decreasing market value of property from $400,000 to $75,000 did not constitute a taking, recognizing that "the courts of this state and the United States Supreme Court firmly rejected the notion that the diminution of the value of previously unrestricted land by imposition of zoning could constitute a taking impermissible in the absence of compensation."] and Euclid v. Ambler Realty Co. (1926) 272 U.S. 365, 384 [imposition of zoning ordinance having affect of decreasing fair market value of property from $10,000 per acre (as unrestricted) to $2,500 per acre (as restricted by newly-enacted zoning) upheld in face of taking and substantive due process challenges].)

   However, there is case law under various legal theories and factual scenarios pursuant to which property owners have prevailed against cities in land use cases when property is downzoned. It is likely that owners (particularly new owners) of the impacted properties would pursue such challenges in court. Given the factually-intensive nature of such lawsuits, these cases are not typically resolved without significant litigation expenses. In regards to potential remedies, prior to seeking "just compensation", a landowner is required to comply with various administrative and procedural requirements. The City Attorney is currently drafting a more detailed memorandum on this matter for the City Council.

4. **If research showed that down-zoning may constitute a "taking", how would a revised measure provide voters an opportunity to tax themselves to generate enough money to pay those parcels which recognized a de-valuation in their property?**

   Response: If the City desired to raise funds via a tax measure to pay for any potential monetary claim based upon the downzoning of properties, such measure would need to be submitted to a vote of the people. In general, an initiative measure embracing more than one subject may not be submitted to the electors or have any effect. (Cal Const. art. 11, section 8(d).) This is known as the "single-subject rule." However a measure will not violate the single-subject rule if, despite its varied collateral effects, all of its parts are "reasonably germane" to each other. (Amador Valley Joint Union High School Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 206.) Therefore, potentially, a tax measure could be joined with an amendment to Measure I. However, whereas a general land use initiative requires a majority vote, whenever a revenue measure designates funds for a specific purpose, it is deemed a "special tax" and requires a two-thirds vote. (Cal. Const. art. XIIIA, section 4; Cal. Const. art. XIIIC, section 2(d); Gov. Code 53722.)

Therefore, a proponent of an initiative may wish to split such items into separate measures due to the different threshold for approval.

AVAILABLE HOUSING MONIES

1. **Provide a current accounting of affordable housing funds and a projection for the fund balance:**

   The new Housing Asset Fund (which is the replacement account for the former RDA's Low-Moderate Income Housing Fund), has a current fund balance of approximately $1.1 million cash on-hand. These monies were approved by the Department of Finance to remain with the City during the Housing Due Diligence Report (Housing DDR) because of the City's acceptable obligations. Therefore, the $1.1 million is committed to former housing-related agreements with National CORE for their project(s) in Savi Ranch and Orange Housing Development Corporation for the Committed Assistance – Condo Acquisition program.

   It is anticipated, however, that the City's Housing Asset Fund will recognize an additional $5.7 million as a result of the SERAF loan repayment. The loan will be repaid incrementally as part of the Recognized Obligation Payment Schedule (ROPS) over the next several years as approved by the Department of Finance. The loan repayment funds are not committed at this time and may be used only for affordable housing related activities upon receipt.

   Additionally, the Housing Asset Fund has several land holdings, including sites along the east side of Lakeview Avenue and the Trueblood House. These properties represent cash available to be deposited in the Housing Asset Fund should the sites ever be sold.

OTHER CONSIDERATIONS

1. **Should Planning Commission's role change such that they consider the provision for affordable housing at the time they review proposed developments? Or should that remain the major responsibility of the Council?**

   Response: The duties of the City's Planning Commission are outlined in Yorba Linda Municipal Code Section 2.28.120:

   A. To recommend to the proper officers of the City plans for the regulation of future growth and development and beautification of the City in respect to its public buildings, works, streets, grounds and vacant lots;
   B. To recommend to the proper officers of the City plans consistent with the future growth and development of the City in order to secure to the City and its inhabitants, sanitation, proper service of all public utilities, shipping and transportation facilities;
   C. To make recommendations to any public authorities or any corporation or individuals of the City with reference to the location of any proposed buildings, structure or works;
   D. To recommend to the City Council the approval or disapproval of maps or plats of all subdivisions of land or lot splits. Every map or plat, prior to its final approval or disapproval by the proper officer of the City, shall be submitted to the Planning Commission for its recommendation thereon;

E. To do such other things as shall be necessary to carry out the provisions of the City's zoning and subdivision regulations, and to undertake the study for, preparation and recommendation of a matter or general plan or amendment thereto covering a comprehensive long-term general plan for the physical development to the City and any abutting land outside its boundaries, which, in the judgment of the Planning Commission, bears a relation to the development of the City;
F. To hear and determine all applications for use permits, conditional permits and variances and adjustments not considered by the Community Development Director;
G. The Planning Commission shall have any and all other powers and duties provided by ordinance and by state law.

Under state law, Government Code section 65103 provides, among other functions of the Planning Commission, the preparation and periodic review of the City's General Plan (including the Housing Element and other elements), and the implementation of the general plan through specified actions, including but not limited to administration of specific plans, zoning, and subdivision ordinances. Therefore, it is consistent with the Municipal Code and state law to allow the Planning Commission to consider affordable housing requirements that are related to or a part of any of matters within the jurisdiction of the Planning Commission such as Conditional Use Permits or Tentative Tract Maps. Additionally, land use entitlements for Measure I sites should initially be reviewed by the Planning Commission consistent with the Municipal Code rather than proceeding directly to the City Council. However, in order for the Planning Commission to exercise specific duties or functions connected to affordable housing issues, the City Council needs to provide clear direction to the Planning Commission and staff and, depending upon the type of affordable housing issue to be addressed, may need to adopt an ordinance. With respect to agreements between the City and any other party concerning an affordable housing issue, however, the City Council ultimately will need to review and approve such an agreement for it to be binding by the City.

2. **Could a temporary moratorium be placed on the Measure I sites for those that have not yet received entitlement approval?**

Response: Yes, the City Council may suspend future developments by adopting an ordinance imposing a moratorium. The Council may enact a moratorium ordinance to delay construction of a project that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering, studying, or intending to study within a reasonable time. (Gov. Code § 65858(a).) The moratorium may be adopted as an urgency measure. The urgency ordinance requires a four-fifths vote of the City Council and may remain in effect for an initial period of 45 days, which can be extended to a total period of two years. To obtain these extensions, the Council must provide notice and a public hearing, then again approve the continuance of the moratorium by a four-fifths vote. Alternatively, if the original moratorium ordinance is enacted (still by a four-fifths vote) after notice and a public hearing, a subsequent extension of 22 months and 15 days can be enacted, effectively avoiding the need for processing two extensions. (Gov. Code § 65858(c).)

Before enacting the ordinance, the City must make findings that there is an immediate threat to the public health, safety, or welfare, or that the approval of additional subdivisions, use permits, variances, building permits, or the like would

result in such a threat. In addition, there are special rules that apply to the extension of a moratorium ordinance that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing. In that case, the extension is permissible where the City council adopts written findings, supported by substantial evidence, that the continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety and that the moratorium ordinance is necessary to mitigate such impacts as no feasible alternative to mitigate or avoid the adverse impact is available. (Gov. Code § 65858(c).) The impacts of how such a moratorium impacts currently pending projects is still being researched.

3. **Provide an opinion on the concept of "graduated zoning", for which projects on a Housing Element site that are proposed without an affordability component would be developed at a lower density than the zoning permits:**

   Response: To be provided

4. **Provide an opinion on securing affordable housing covenants on existing properties and relieving the need for the new construction of affordable units:**

   Response: Government Code section 65583.1(c) provides that a City may be able to satisfy up to 25% of its very-low and low RHNA requirement if it provides "committed assistance" to convert existing multifamily units (rental or ownership) to affordable units. In order to take advantage of this option in the 2014-2021 Housing Element, the City must have accomplished all of its 'committed assistance' projection in the prior HE cycle. Because the City was not able to secure the projected 84 units in the Villa Pacifica complex due to the loss of redevelopment and housing monies, the committed assistance program is not an option during this HE cycle. The City may be able to utilize the program to meet its future RHNA needs in the 6th HE cycle beginning in 2021.

5. **Upon review of applications by the Planning Commission, can all of the proposed projects on a Measure I sites automatically be appealed come before Council without the formal appeal process?**

   Response: The project may only go directly to the Council if the Council first undertakes a Municipal Code amendment(s) revising the powers of the Planning Commission. As noted above, under the Municipal Code, the Planning Commission is expressly tasked with approving subdivision maps, conditional use permits, and similar entitlements. (YLMC §§ 17.08.100, 18.36.230, 18.36.240.) As these proposed projects on Measure I sites will likely seek such entitlements, the Planning Commission is required to review these applications.

6. **Is there more land available in Savi Ranch for affordable housing?**

   Response: Below are the acreage figures for Savi Ranch. There are only two identified vacant sites in the project area, for which both are owned by National CORE. These two sites are zoned to allow up to 30 du/ac per Measure H and are planned for residential development in the Office Commercial subarea (6.2 total acres).

Land use acres:

Subarea	Vacant	Not Vacant	Total
Industrial/R&D	0	87.6	87.6
Office and Commercial	6.2	15.6	21.8
Retail Commercial	0	37.7	37.7
Support Commercial	0	13.4	13.4

7. **Could staff post the You Tube video regarding Measures H&I on the City's website?**

   Response: The link to the You Tube video has been posted on the City's website under City Departments – Housing & Redevelopment.