



# STAFF REPORT

## CITY of YORBA LINDA

---

### COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** AUGUST 2, 2022

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

**FROM:** DAVID BRANTLEY, COMMUNITY DEVELOPMENT DIRECTOR  
PREPARED BY: NATE FARNSWORTH, PLANNING MANAGER

**SUBJECT:** FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

---

### **RECOMMENDATION**

It is recommended that the City Council adopt Resolution No. 2022-5817 to certify the Final Program Environmental Impact Report (PEIR) for the 2021-2029 Housing Element Implementation Programs as adequate and complete, approving certain findings and facts in support of findings and Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Program (MMRP).

It is also recommended that the City Council conduct the first reading and introduce the following Ordinances related to the Housing Element Implementation Programs:

- 1) Ordinance No. 2022-1090 amending the text of the Land Use Element of the General Plan (GPA 2022-01) and finding that GPA 2022-01 is not subject to a vote of the electorate of the City of Yorba Linda under the Yorba Linda Right-to-Vote Initiative
- 2) Ordinance No. 2022-1091 amending the text of the Land Use Element and amending the Land Use Diagram of the General Plan (GPA 2022-02) and finding that GPA 2022-02 is subject to a vote of the electorate of the City of Yorba Linda under the Yorba Linda Right-to-Vote Initiative
- 3) Ordinance No. 2022-1092 amending the Zoning Code (ZCA 2022-01) and finding that ZCA 2022-01 is not subject to a vote of the electorate of the City of Yorba Linda under the Yorba Linda Right-to-Vote Initiative
- 4) Ordinance No. 2022-1093 amending the Zoning Code (ZCA 2022-02) and finding that ZCA 2022-02 is subject to a vote of the electorate of the City of Yorba Linda under the Yorba Linda Right-to-Vote Initiative

### **BACKGROUND**

Since October 2018, the City of Yorba Linda has been actively involved in the State-mandated 6th cycle Regional Housing Needs Assessment (RHNA) preparation process with the Southern California Association of Governments (SCAG), and has provided regular updates on the progress of this effort in previous issues of the Yorba Linda eNews. Yorba

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 2

Linda Councilwoman Peggy Huang served as the Chair of SCAG's RHNA Subcommittee, which was the committee responsible for providing detailed analysis and recommendations to SCAG's Regional Council on the RHNA methodology. Unfortunately, the RHNA Subcommittee's recommendation for an equitable housing solution that was unanimously supported by SCAG's Community, Economic and Human Development Committee was overturned through a last-minute decision by its Regional Council to redistribute significantly more housing into Orange County and Los Angeles County. This resulted in Yorba Linda's draft RHNA allocation increasing from 200 to 2,415 units.

Despite numerous letters from City staff, the Mayor, the City Council and numerous individual Yorba Linda residents, the City's efforts to lower its RHNA obligation have been ignored by SCAG and by the California Department of Housing and Community Development (HCD). Furthermore, efforts by the Orange County Council of Governments (OCCOG), of which the City is a member, to sue the State over the RHNA process have been exhausted through the courts.

On October 26, 2020, the City filed a formal appeal for a revision of its RHNA allocation to reduce its housing obligation. The City determined that this number was calculated in a manner that did not follow State housing laws and requested downward adjustment to the City's "fair-share" of the regional housing burden. The City also argued that SCAG did not follow the law by creating a regional housing plan that contradicts its Sustainable Communities Strategy as required by state housing law. The City's appeal hearing was held on January 15, 2021; however, the RHNA Appeals Board unanimously denied the City's appeal. Per state housing law, decisions of the RHNA Appeals Board are final and cannot be further appealed. State law (Assembly Bill 1398) required that all jurisdictions in the SCAG region update their Housing Element no later than February 11, 2022, or else those jurisdictions would face significant repercussions from the State. With that deadline in mind, the City began working to prepare its Housing Element while concurrently working with the Orange County Council of Governments (OCCOG) to challenge the RHNA. On June 21, 2021, OCCOG filed its lawsuit seeking to compel HCD to follow State housing law when determining the RHNA; however, on November 18, 2021, Los Angeles Superior Court dismissed the case claiming that the court did not have jurisdiction over the matter.

On October 20, 2020, the City Council and Planning Commission held a joint Housing Element Update kickoff public workshop. Although the City noticed this meeting as a large display ad in the newspaper and invited members of the public and key stakeholders to attend the meeting, there were no public comments at this meeting. City staff provided the City Council and Planning Commission with a general overview of the Housing Element Update process, and staff from the State Department of Housing and Community Development (HCD) provided an overview of new state housing requirements.

The City also released a Housing Element survey in October 2020 for residents to provide input on what they see as the most important housing needs facing the community and to provide feedback on their preferences in relation to various policy questions. The survey

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 3

was posted on the City's website for approximately four months, with a link advertised in the City's eNews, on the City's website, and on the City's social media accounts (i.e., Facebook, Instagram, Twitter).

In January 2021, the City hosted a meeting with its local religious congregations to discuss the Housing Element update and to present the concept of a congregational housing overlay to allow for housing to be built on religious sites pursuant to AB 1851. All 37 religious congregations were invited to participate in this event and 12 of the 37 religious congregations were represented at this meeting.

On February 24, 2021, the Planning Commission conducted a Housing Element Workshop where staff presented the results of the City's community outreach survey, introduced its draft housing sites inventory, and discussed recommended land use and rezoning strategies to achieve its state-mandated RHNA obligation of 2,415 housing units. The Planning Commission also received comments from the public and requested that staff provide them with an opportunity to provide a detailed review of the draft housing sites inventory. Some of these land use strategies included the promotion of constructing ADUs and an affordable housing overlay opportunity zone for properties used for religious purposes.

Since this Planning Commission workshop, staff has met several times with HCD to discuss various land use strategies. Based on the feedback from HCD, staff has further refined the draft housing sites inventory and released a community survey focused on outreach to senior citizens. The senior survey demonstrated that the majority of the senior citizen sector of the population is interested in learning more about senior housing opportunities in the City. Staff also analyzed a couple lower resource areas on the west side of the City identified by HCD as needing more in-depth review for purposes of complying with state housing law to "affirmatively further fair housing." The purpose of this analysis is to "identify areas in every region of the state whose characteristics have been shown by research to support positive economic, educational, and health outcomes for low-income families—particularly long-term outcomes for children."

The survey targeted towards the City's senior citizens to solicit feedback about their perceived housing needs was distributed in March 2021. This survey was posted on the City's website, published in the eNews, emailed to the Parks & Recreation distribution list of approximately 2,200 people 55 years and older, and hard copies were distributed at the Senior Center in March and April 2021 during the Senior Lunch Program, the drive-thru grocery program, recreational classes and the coffee socials. The City also collected contact information for any residents requesting to be informed about housing information in the future.

On March 24, 2021, staff provided the Planning Commission with a brief update on the Housing Element status. The Planning Commission provided general feedback on the draft housing sites inventory and directed staff to further refine the inventory based on eligibility requirements from HCD and return with more details on the "candidate" housing sites.

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 4

On April 22, 2021, staff presented an update to the City's Traffic Commission on the Housing Element. The Traffic Commission is primarily interested in learning which housing sites will be identified in order to determine the traffic impacts of those housing opportunities.

On April 28, 2021, staff presented an updated draft "candidate" housing sites inventory and solicited additional comments from the Planning Commission and the public on the proposed sites. The Planning Commission provided additional comments and directed staff to begin the process of reaching out to property owners to educate and solicit feedback on their level of interest in potentially being considered as a housing site. Staff also provided updates on the strategy to utilize ADUs and the religious housing overlay zone.

On June 2, 2021, staff conducted a property owner stakeholder meeting to explain the purpose of the Housing Element, RHNA, and the housing sites inventory to property owners of all previously identified "candidate" housing sites. Over 250 invitations were sent out and nearly 100 individuals participated in the meeting. Staff invited all the property owners to reach out individually to staff to share their level of interest in participating as a candidate housing site. To date, staff has held dozens of individual meetings with property owners to discuss their specific situation and gauge their level of interest as a potential "candidate" housing site. Staff also continued to research various constraints and eligibility with HCD's strict standards for each of the properties.

On June 9, 2021, the Planning Commission received an update on the property owner stakeholder meeting and provided the public with another opportunity to comment on the Housing Element Update. The Planning Commission provided general feedback to staff to return with a refined draft "candidate" housing sites inventory with recommended rankings of each site.

On July 14, 2021, staff presented the Planning Commission with a refined draft "candidate" housing sites inventory and presented the highest ranked properties based on site eligibility, known constraints, property owner interest, and other factors. Staff also provided the public with another opportunity to comment on the Housing Element Update and the draft housing sites inventory. The Planning Commission requested that staff provide additional time for the Planning Commission to provide comments and one more opportunity for public comment prior to making a recommendation to the City Council.

On July 28, 2021, staff presented the final draft housing sites inventory to the Planning Commission. The Planning Commission provided staff with refinements to the sites inventory and supported ensuring that property owners are informed and supportive of the rezone efforts. The public was also given another opportunity to comment on the plan. Staff further refined the draft housing sites inventory based on comments from the public, the Planning Commission, and staff's continued property owner outreach efforts.

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 5

On August 3, 2021, staff presented the final draft housing sites inventory to the City Council. After receiving input from the public, the City Council provided comments and directed staff to release the draft Housing Element to HCD for their review.

On August 27, 2021, staff submitted the draft Housing Element to HCD for their formal 60-day review. On October 26, 2021, HCD provided comments on the City's draft Housing Element, which mostly requested that the City provide additional information and details on various components of the Housing Element as required by numerous state housing laws. Additionally, however, they commented that they could not support the City's proposed strategy of relying upon ADU capacity for meeting the RHNA; the City had requested credit for up to 1,100 Accessory Dwelling Units (ADUs) during the 8-year cycle towards our RHNA obligation. This was extremely disconcerting since HCD staff had indicated one-year earlier that the City's proposed ADU strategy was reasonable provided the City included certain incentives for the construction of ADUs, which it already had initiated (i.e., waiver of building plan review and permitting fees for ADUs). Instead, HCD indicated they would support crediting only 10 ADUs per year over the 8-year cycle towards RHNA, or a total of 80 units. The City vehemently objected to HCD's change of position on this issue and was able to regain credit for 400 ADUs towards the RHNA.

On October 27, 2021, the Planning Commission conducted a public workshop to receive an update from staff on the comments received from HCD, to receive additional public input, and to provide recommendations on how to proceed with addressing the comments from HCD, including making up the loss of credit for 700 ADUs.

After multiple meetings with HCD to address questions and concerns raised in their letter, staff received direction from the City Council to release the revised draft Housing Element to HCD for 2<sup>nd</sup> round of review on December 8, 2021.

On January 12, 2022, the Planning Commission conducted a public hearing and recommended that the City Council adopt the Housing Element under review by HCD. On February 4, 2022, the City received a comment letter from HCD, which requested that the City make additional minor revisions to the Housing Element before the City Council acted on the document.

On February 9, 2022, the City Council conducted a public hearing and approved the Housing Element with the revisions required by HCD. On February 10, 2022, the City submitted its adopted Housing Element to HCD for final review in advance of the February 11, 2022, deadline.

On April 8, 2022, the City received approval of its Housing Element from State HCD. The certification from HCD, which was issued prior to the passage of SB 197 (discussed below), included language for the implementation of the rezoning programs included in Programs 8 – 11 for the 27 housing sites inventory from the adopted Housing Element. Although the general law in effect at the time required that rezonings be completed by October 15, 2022,

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 6

the City's approved Housing Element allowed for the City to hold the election for rezonings and General Plan Amendments subject to the City's own local legal requirement called the Yorba Linda Right-to-Vote Amendment (commonly referred to as "Measure B") in November of 2022 and, if the vote were unsuccessful, to conduct another election in November of 2024. Prior to SB 197, jurisdictions that did not implement their rezoning programs by the required deadline of October 15, 2022, were subject to numerous fines and penalties from HCD, including, but not limited to loss of local control of land use decisions, loss of State funding used to pay for local infrastructure and programs, subject to lawsuits from the State and third parties, and fines of up to \$600,000 per month.

On April 29, 2022, the City released a Notice of Preparation (NOP) for a Draft Program Environmental Impact Report (PEIR), which was made available for 30 days, and concluded on May 30, 2022. A public scoping meeting was conducted on May 23, 2022, at which approximately 50 residents attended and provided public comments. Those comments, in addition to all written comments received during this period of time, have been included as Appendix A of the Draft PEIR.

Several comments were made during the PEIR scoping meeting on May 23, 2022, expressing concern on housing opportunity sites S4-053, S4-201, S4-060, S5-008 in regard to density and geotechnical issues, traffic, traffic near elementary school, and pedestrian safety due to the increase in traffic. Two comments related to transportation were received from the Santa Ana Office of California Highway Patrol (CHP) on May 23, 2022, and California Department of Transportation (Caltrans) on May 25, 2022. The CHP expressed concern on the potential impact on departmental operations, with emphasis on increased traffic and changes in traffic congestion patterns during the construction stage and that increased traffic congestion would necessitate the need for additional traffic control measures to mitigate the potential increase in traffic collisions. Caltrans requested that new development from the Project provide a Vehicle Miles Traveled (VMT) study; that the PEIR must include a traffic study to address potential impacts to the State Highway System; to consider a discussion on equity; to provide discussion of multimodal transportation mobility options of the current transit services and regional rail services and look for opportunities and connectivity to safe and convenient access; and to consider discussing the potential impacts to bicycle and pedestrian facilities.

On June 1, 2022, the City released the draft PEIR for a 45-day public review period, which ended on July 15, 2022. Pursuant to Section 18.36.700.E.1 of the City's Municipal Code, staff has provided direct mail notification to property owners at the required expanded radius of 2,000 feet for each of the 27 potential rezoning sites. Since the release of the draft PEIR, the City has continued to receive a large number of public comments related to housing opportunity sites S4-053, S4-201, and S4-060 in regard to traffic, traffic near an elementary school, and pedestrian safety due to the increase in traffic. On June 7, 2022, a large number of public speakers addressed the City Council during public comments and cited these same concerns related to these sites. Since there was no item on the agenda, the City Council could not legally take any action; however, the City Manager explained that this is part of a

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 7

process that will include public hearings with the Planning Commission and City Council and recommended that the residents participate in the public process.

On June 21, 2022, another large group of residents attended the City Council meeting to express their concerns related to the Housing Element implementation although the item was not on the Council agenda. The majority of the public comments focused on housing opportunity sites S4-053, S4-201, and S4-060 in regard to traffic, traffic near an elementary school, and pedestrian safety due to the increase in traffic. Since the Housing Element was not on the agenda, the City Council could not legally take any action; however, at the conclusion of the public comments, City Council members directed staff to ensure that the Traffic Commission and Planning Commission take a close look at the issues raised in these comments.

On June 23, 2022, the Traffic Commission discussed the traffic-related impacts from the proposed General Plan Amendments and Zoning Code Amendments associated with the implementation of the 2021-2029 Housing Element. Based on the staff presentation and public comments, the Traffic Commission provided the following recommendations for the Planning Commission to take into consideration:

1. To further review Sites S4-060 and S4-201 at South Ohio Street/Buena Vista due to the already impacted school traffic and safety concerns;
2. To further review Site S4-053 at Grandview Avenue/Kellogg Drive due to the existing issues with the flow of traffic during the peak hours;
3. To further review Site S7-001, Bryant Ranch Shopping Center (23611-23801 La Palma Ave), due to the ingress and egress points, as well as how it will impact the traffic on La Palma Avenue;
4. To further review Site S7-005, NWC Camino de Bryant/Meadowland due to traffic impacts on La Palma Avenue;
5. To further review Site S5-008 Fairmont Boulevard due to public safety and how the flow of traffic will develop to possible traffic congestions; and
6. To include further review of the Study conducted on La Palma Avenue.

On June 29, 2022, the Planning Commission conducted a public hearing related to the General Plan Amendments and Zoning Code Amendments. Staff provided the Planning Commission with an update on a conversation with HCD to discuss the possibility of revising the Housing Sites Inventory approved by HCD on April 8, 2022. The current Housing Sites Inventory contains a buffer of 309 dwelling units (or approximately 12% of the City's total RHNA). HCD stated that they would be amenable to allowing the City to remove sites from the Housing Sites Inventory under two strict conditions:

- 1) The City's buffer cannot be reduced below 10% of the total RHNA (or 242 dwelling units); and
- 2) The City can only remove dwelling units approved for the above-moderate and moderate income categories.

Based on the staff presentation, public comments, and updated information from HCD, the Planning Commission adopted a Resolution recommending that the City Council approve General Plan Amendments 2022-01 and 2022-02 and Zoning Code Amendments 2022-01

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 8

and 2022-02, but recommended that the City Council remove Sites S4-060, S4-201, S4-053, and S7-005. On July 15, 2022, the public comment period for the draft PEIR closed. On July 22, 2022, the City released its Response to Comments in the Final PEIR for public review.

On July 27, 2022, the Planning Commission conducted a public hearing to review the Final PEIR and Mitigation Monitoring and Reporting Program (MMRP) and to provide a recommendation to the City Council. Approximately 25 individuals spoke during public comment with most of the comments focused on three sites: S3-207, S7-001, and S5-008 with primary concerns related to traffic, wildfire, safety, and geologic issues. The Planning Commission recommended one revision to the MMRP to require the project applicant to prepare and submit the following project-level technical reports for future development applications for housing opportunity sites S7-001 (Bryant Ranch Center), S3-207 (Richfield Christmas Tree Farm), S2-012 (Richfield Community Church), and S5-008 (Fairmont Blvd Site): 1) a traffic study including a safety analysis; 2) a geotechnical report; 3) a Fire Protection Plan; and 4) a Fire Evacuation Analysis. These reports would be subject to review and approval from the City of Yorba Linda.

## **DISCUSSION**

### **Senate Bill 197**

Over the past month, the City has received multiple inquiries from residents about the recent passage of Senate Bill 197. In September 2021, the Governor signed Assembly Bill 1398, which established a penalty for jurisdictions that did not have a State-certified Housing Element by February 11, 2022. The penalty shortened the time jurisdictions would have to implement zoning changes to October 15, 2022, before the jurisdiction would potentially be subject to a wide array of penalties and fines from the State. In order to comply with the law and avoid these penalties the City diligently attempted to obtain a State-certified Housing Element by the February deadline, but the State did not approve the City's Housing Element until April 8, 2022. As a result, the City, along with 190 other jurisdictions in Southern California, would be required to implement its rezoning of properties by October 15, 2022, although as noted above the City's approved Housing Element allowed the City to conduct elections after this deadline due to Measure B.

***The law has recently changed.*** On June 30, 2022, the Governor approved SB 197 which added Government Code § 65583.4 to the Housing Element law. Because SB 197 was a budget trailer bill, the laws therein now currently in effect. Government Code § 65583.4 extended the due date for local governments that met certain conditions to obtain a State-certified Housing Element to October 15, 2022. The new law also granted local governments that met certain conditions with a State-certified Housing Element by this new deadline to have until February 2025 to complete the rezoning of properties outlined in their Housing Element. Jurisdictions that do not meet this new October 15, 2022 deadline are not granted further extensions for rezoning and would be subject to penalties and fines. Fortunately, the City of Yorba Linda has a State-certified Housing Element and, in the opinion of the City Attorney, the City's Housing Element meets the requirements of Government Code § 65583.4 to likely gain



# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 9

the additional time for the rezoning of property allowed therein. However, the City still is potentially obligated to implement its rezoning program in the City's certified Housing Element.

State HCD's approval of the City's Housing Element required that the City include Program 8 in the City's Housing Element which establishes a timeline for the City to implement its rezoning and hold elections pursuant to Measure B. This timeline in the City's Housing Element, which was established ***prior to the adoption of SB 197*** and is premised on the former legal timelines, commits the City to conducting a Measure B vote by November 2022 and again by November 2024 if the 2022 vote is unsuccessful. Although the City's Housing Element contains reference to these election dates, the State's adoption of the new time periods in Government Code § 65583.4 signals the legislative intent to provide all cities that meet the new law's requirements additional time to complete the necessary rezoning of properties. In addition to the fact that the City's Housing Element meets the statutory requirements of Section 65583.4, it would be at a very basic level patently unfair to not allow Yorba Linda the same additional time to complete the rezonings that the new law grants local governments some of which to date do not even have certifications of their Housing Element from State HCD. If the City did not receive the same time extension as other local governments, Yorba Linda would in essence end up being punished for making a good faith effort to comply with the law throughout the entirety of this process. All this being said, it must be acknowledged that there is potentially some level of legal risk if the City does not proceed with the elections as to all sites identified in the City's Housing Element on the election dates indicated therein.

In recognition of the above, there are a number of potential options to the City that contain different risks and benefits. Since the City's State-certified Housing Element contains an election timeline, the option with the least amount of legal risk would be for the City to conduct a Measure B vote on the 27 sites identified in the Housing Element. However, there are several other options that the City Council could take regarding the Housing Element implementation program and associated rezonings and General Plan amendments. Each option has its own risks and benefits. These options are summarized below:

- 1) The City could conduct a Measure B ballot measure on November 8, 2022, on General Plan and Zoning Code amendments on all of the 27 sites identified in the Housing Element. This would include a vote on the sites that the Planning Commission recommended removing from the Housing Element. This option involves no legal risk from State HCD.
- 2) The City Council could proceed with the Planning Commission's recommendation to remove four sites (Sites S4-060, S4-201, S4-053, and S7-005) and conduct a November 8, 2022, Measure B ballot measure for the proposed General Plan and Zoning Code Amendments for the remaining 23 sites in the City's Housing Element. This option assumes that the verbal commitment from HCD that the removal of these sites would be approved by HCD when the City submits its revised Housing Element to the State with these revisions. Given HCD's representations, this option likely involves minimal risk to the City from State HCD. However, this option does not take

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 10

full advantage of the time extension allowed in SB 197 to address public concerns regarding certain additional sites.

- 3) The City Council could proceed with a Measure B ballot measure on General Plan and Zoning Code amendments on November 8, 2022, for **some** housing sites identified in the Housing Element, but **defer action on other sites**. This option would allow the City to comply with the timeline from Program 8 of its certified Housing Element, but would take advantage of the time extension allowed through SB 197 to allow staff time to see if there are any additional sites that could be added to the Housing Sites Inventory to reduce the number of units assigned to the deferred sites. There is some risk that HCD could claim that the City did not move forward with all 27 sites on the November 2022 ballot measure; however, staff believes that the risk is low in that SB 197 does provide local jurisdictions with State-certified Housing Elements until February 2025 to complete their rezoning. Furthermore, this option complies with the intent of Program 8 within the City's Housing Element which includes a ballot measure in November 2022 and then another, if necessary, in 2024.
- 4) The City Council could defer any action on the General Plan Amendments and Zoning Code Amendments for all sites identified in the Housing Element until a future date. Although the City believes the City has the better legal argument under SB 197, City staff is concerned that HCD could claim that this option would not comply with the timeline established under Program 8 of the City's certified Housing Element, resulting in State HCD decertifying the City's Housing Element and triggering litigation with the State which, if the City were to lose, would make the City potentially susceptible to the fines and penalties established in State housing law.

Given the volume of public concerns related to traffic, safety, wildfires, and/or geologic hazards associated with seven of the housing opportunity sites, staff would recommend that the City Council consider Option 3 described above to move forward with the proposed General Plan Amendments and Zoning Code Amendments and move forward with a November 2022 voter initiative for **some** housing sites, but defer action on other sites. Hundreds of comment letters and public comments at various public hearings on the proposed General Plan Amendments and Zoning Code Amendments have focused on seven sites:

- Site S7-001 (Bryant Ranch Shopping Center) and Site S7-005 (Camino de Bryant/Meadowland) had over 100 comments expressing concerns related primarily to wildfires, evacuation, and traffic.
- Sites Site S4-060/Site S4-201 (southern terminus of South Ohio St) and Site S4-053 (Grandview Ave/Kellogg Dr) had over 100 comments expressing concerns related to traffic, safety (particularly due to proximity to two schools), infrastructure, semi-rural environment, and incompatibility with the neighborhood.
- Site S3-207 (Richfield Christmas Tree Farm) has had nearly 100 comments expressing concerns related to traffic, the significant number of proposed units concentrated on one site, infrastructure, and safety.
- Site S5-008 (Vacant 23-acre Fairmont Blvd parcel) has had approximately 50 comments and extensive meetings with the City expressing concerns related to

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 11

wildfires, safety, evacuation, traffic, infrastructure, and realistic development capacity due to topography constraints.

Therefore, staff would recommend that the City Council follow the Planning Commission's recommendation to **remove Sites S4-060, S4-201, S4-053, and S7-005** from the Housing Sites Inventory and, in light of the provisions of SB 197, to additionally **defer any action on Sites S7-001, S3-207, and S5-008** until a future election. HCD has made it clear that these three sites recommended to be deferred **cannot be removed** from the Housing Sites Inventory; therefore, staff recommends **deferring action only** on these sites at this time to allow City staff time to further explore whether there are any other sites that potentially could be added to the Housing Sites Inventory to reduce the number of housing units that would be allowed on these three sites. The three deferred sites would remain on the Housing Sites Inventory and be brought back, along with any additional sites, for reconsideration by the City Council at a future date. Importantly, staff would emphasize the need to discuss any proposed revisions with HCD and would need to revise the Housing Element for submittal to HCD to include any proposed revisions to sites or proposed densities. If the City Council were to select this option, it is anticipated that the effort to identify additional sites and work with HCD would begin in early 2023 after the results are known of the November 8, 2022, Measure B ballot measure.

## Proposed General Plan Amendments

Staff is proposing the following General Plan Amendments as described in greater detail in General Plan Amendment 2022-01 and 2022-02:

- Creation of new land use descriptions in the Land Use Element for the three new proposed overlay zones (Affordable Housing Overlay, Congregational Lands Overlay, and Mixed-Use Overlay)
- Amendment to the Land Use Element to allow for multi-family housing at up to 35 dwelling units per acre on specified sites within Savi Ranch
- Increasing the total residential capacity in the Community Core/Downtown Historical District Area Plan by 181 dwelling units to account for Sites S3-024, S3-074, S3-082, and S4-075
- Increase the total residential capacity in the West Bastanchury Area Plan by 228 dwelling units to account for Site S3-203
- Revisions to the Land Use Map to increase the allowable density on certain sites as summarized in Attachment 5

## Proposed Zoning Code Amendments

Staff is proposing the following Zoning Code Amendments as described in greater detail in Zoning Code Amendment 2022-01 and 2022-02:

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 12

- Creation of the development standards for the three new proposed overlay zones (Affordable Housing Overlay, Congregational Lands Overlay, and Mixed-Use Overlay)
- Amend the text of the West Bastanchury Planned Development (PD) for District II to create Area A, which would adhere to the existing District II development standards, and to create Area B, which would adhere to the RM (Residential Multi-family) zone development standards
- Revisions to Table 18.10-2 Residential Development Standards to allow for a 40-foot height limit (or three stories) in the RM-20 zoning district
- Revisions to the Zoning Code Map to increase the allowable density on certain sites as summarized in Attachment 5

## **CEQA**

A PEIR has been prepared for the Housing Element Implementation Programs in compliance with CEQA. The PEIR is a fact-finding document used to identify, assess, and analyze potential significant adverse environmental impacts resulting from implementation of the plan. Since the Housing Element is a policy-based program as defined in Section 15168 of the CEQA Guidelines, a PEIR was prepared. A PEIR evaluates broad-scale impacts of the Housing Element's policies and programs, and project-level impacts (attributed to the potential rezoning) as they are known at this time. It is acknowledged that subsequent *project-specific* environmental review will be required for particular portions of the program at the time of project implementation. In order to assess the potential broad-scale environmental impacts that may result from implementation of the Element's policies and programs (including the rezonings), certain development assumptions have been made at this time and have been incorporated into the analysis of potential environmental impacts and mitigation measures.

Data for the PEIR, upon which its findings are based, was obtained from on-site field observations, discussions with affected agencies, analyses of adopted plans and policies, and specialized environmental assessments including, air quality (including Greenhouse Gas Assessment), energy, noise, traffic (including Traffic Impact Analysis and Vehicle Miles Traveled Analysis) and correspondence with public service providers. For identified significant impacts, the PEIR must offer mitigation that would lessen the impact(s) to a level of less than significant. If mitigation measures are unable to reduce an impact to below a level of significance, which would result in unavoidable adverse consequences remaining as a result of project implementation, CEQA mandates one of two actions: 1) The project must be denied or, 2) If determined there are overriding benefits to be derived from the project at a level such that negative impacts are deemed "acceptable" in light of benefits of the project, a *Statement of Overriding Considerations* with justification(s) must be made by the City Council as a prerequisite to project approval.

The Notice of Completion for the Draft PEIR was filed with the State Clearinghouse on May 31, 2022, with a 45-day public review period for comments extending through July 15, 2022. During the public review period a number of comments on the Draft PEIR from various

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION

Page | 13

governmental bodies, special districts, utilities, special interest/advocacy groups, and concerned individuals were received. The City's environmental consultant prepared a *Response to Comments* document to address issues raised. This document along with the Draft EIR and various other documents described below constitute the Final EIR that is needed to be certified by the City Council.

Staff has received over 350 public comments on the draft PEIR in addition to the nearly 40 public comments received during the 30-day Notice of Preparation. Any additional public comments received since the close of the public comment period are included in Attachment 4 and any additional comments received after the publication of this staff report will be forwarded to the City Council. As discussed previously, the majority of comments raise issues about safety and traffic concerns and approximately 300 of the comments focus primarily on the following seven sites: Site S3-207, Site S7-001, S4-053, S4-060, S4-201, S5-008, and S7-005. A detailed response to the comments received during the draft PEIR public comment period are included in the Final PEIR.

State law requires the PEIR be certified as complete and adequate before the Housing Element Implementation Programs can be enacted. At their meeting of July 27, 2022, the Planning Commission reviewed the proposed Final PEIR document (including preliminary Responses to Comments) and the proposed MMRP, and forwarded a positive recommendation to the City Council with one recommended revision to the MMRP (as previously described above).

There are two components to the Final PEIR certification process that require City Council action:

- 1) The City Council must certify the PEIR as complete and adequate, and that it satisfies all legal requirements of CEQA; and
- 2) The City Council must certify that it has independently reviewed and considered the Final PEIR in reaching a decision on the project.

CEQA also requires the decision-making agency to make one or more written findings (i.e., Findings of Fact) for each significant environmental effect, and the rationale for each finding. Finally, a MMRP must be adopted by the City Council. Should there remain unmitigated significant impacts, before the project can be approved and/or implemented, the City must adopt a Statement of Overriding Considerations that justifies project approval on grounds that the benefits derived from implementation of the project outweigh, or override, adverse environmental effects that would result; that is, that the net impact of the project is positive.

## Significant Unavoidable Adverse Impacts

A complete list of potentially significant environmental impacts along with the proposed mitigation measures to reduce the potential for significance to a level of insignificance appears in the PEIR. Based on the analysis in the PEIR, the proposed project would have three significant unavoidable adverse impacts occurring within three impact categories including

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 14

Air Quality, Greenhouse Gas Emissions, and Noise, as described in detail in Section 5 of the DEIR. These significant unavoidable adverse impacts would remain, even with the implementation of the Mitigation Measures. These impacts are inherent with the development of the project site and cannot be feasibly mitigated. Although in some instances mitigation measures may substantially lessen these significant impacts, adoption of the measures will not fully avoid the impacts.

Specifically, the DEIR identifies the following project impacts that could not be mitigated to a level of insignificance, and would remain potentially significant and unavoidable:

- 1) Air Quality Impact 1 - The Project would conflict with and/or obstruct implementation of the applicable air quality plan.
- 2) Air Quality Impact 2 - The Project operation would result in a cumulatively considerable net increase of criteria pollutants for which the project region is non-attainment under an applicable federal or state ambient air quality standard.
- 3) Air Quality Impact 3 - The Project construction activities would result in a cumulatively considerable net increase of criteria pollutants for which the project region is non-attainment under an applicable federal or state ambient air quality standard.
- 4) Greenhouse Gas Emissions Impact 1 - The Project would generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.
- 5) Greenhouse Gas Emissions Impact 2 - The Project would not conflict with any of the provisions of the Scoping Plan and in fact supports seven of the action categories. However, since the Project would exceed the efficiency based GHG emissions target, the Project has the potential to conflict with the 2017 Scoping Plan.
- 6) Noise Impact 1 - The Project could generate substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies for construction-related noise impacts.

## **Project Benefits**

A Statement of Overriding Considerations, if adopted, would explain why the City is willing to accept each unavoidable significant impact. The statement must set forth the specific overriding social, economic, legal, and technical or other beneficial project aspects supporting the City's decision to approve the project. As previously noted, the Statement of Overriding Considerations is a part of the Final PEIR which is before the City Council for action and contains the overriding beneficial project aspects.

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 15

## **PLANNING COMMISSION REVIEW**

The Planning Commission held two public hearings on the Housing Element Implementation Programs on June 29, 2022, and July 27, 2022. As mentioned previously, public testimony received at the hearings focused on safety and traffic concerns and approximately 300 of the comments focus primarily on the following seven sites: Site S3-207, Site S7-001, S4-053, S4-060, S4-201, S5-008, and S7-005. The Planning Commission recommended approval of the following Resolutions:

- Resolution recommending to the City Council certification of the PEIR and adoption of the MMRP (with the aforementioned additions to the mitigation measures)
- Resolution recommending to the City Council the approval of General Plan Amendments 2022-01 and 2022-02 and Zoning Code Amendments 2022-01 and 2022-02 with a recommendation to remove S4-053, S4-060, S4-201, and Site S7-005

## **FISCAL IMPACT**

If the City Council decides to move forward with a Measure B ballot measure for this November's election, upon adoption of the Housing Element ordinances for the proposed General Plan Amendments and Zoning Code Amendments at the second reading of such ordinances, the City Council will need to direct staff to schedule the applicable Measure B ballot measure for a future election. As noted above, the certification letter issued by State HCD in April 2022 states that the rezoning ballot measures will be taken to a vote by November 2022. The City is responsible for all costs associated with the ballot measure. These costs have been estimated to range from \$125,000-\$150,000. In addition to direct election costs, additional City costs have been earmarked for a Measure B education program. The City received a total of \$610,000 in grants from HCD to cover the cost of the preparation of the Housing Element and its implementation programs (including CEQA).

## **ALTERNATIVES**

- 1) The City Council could proceed with the General Plan Amendments and Zoning Code Amendments as outlined in the Housing Element for all 27 housing sites.
- 2) The City Council could proceed with the Planning Commission's recommendation to adopt the proposed General Plan Amendments and Zoning Code Amendments and move forward with a November 2022 voter initiative for only 23 sites and remove the four sites (Sites S4-060, S4-201, S4-053, and S7-005).
- 3) The City Council could defer any action on the General Plan Amendments and Zoning Code Amendments for all sites until a future date.

# **FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT AND GENERAL PLAN AMENDMENTS AND ZONING CODE AMENDMENTS ASSOCIATED WITH THE 2021-2029 HOUSING ELEMENT IMPLEMENTATION**

Page | 16

## **ATTACHMENTS**

- 1) Planning Commission Resolution Recommending City Council Certification of the Final PEIR and Adoption of a Mitigation Monitoring and Reporting Plan
  - 2) Planning Commission Resolution Recommending Approval of General Plan Amendments 2022-01 and 2022-02 and Zoning Code Amendments 2022-01 and 2022-02 (with the recommendation to remove Sites S4-060, S4-201, S4-053, and S7-005)
  - 3) Minutes from the June 29, 2022 Planning Commission meeting and Draft Minutes from the July 27, 2022 Planning Commission Meeting
  - 4) Public Comments Received since the close of the PEIR public comment period
  - 5) Summary of Proposed General Plan Amendments and Zoning Code Amendments
  - 6) Resolution No. 2022-5817 Certifying the Final PEIR, Approving Statement of Overriding Considerations and Adopting a MMRP (Final PEIR exhibits are all available at <https://www.yorbalindaca.gov/341/Environmental-Documents>)
  - 7) Ordinance No. 2022-1090 Approving General Plan Amendments 2022-01
  - 8) Ordinance No. 2022-1091 Approving General Plan Amendments 2022-02
  - 9) Ordinance No. 2022-1092 Approving Zoning Code Amendments 2022-01
  - 10) Ordinance No. 2022-1093 Approving Zoning Code Amendments 2022-02
-