



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Joseph D. Smith, AICP, Director of Planning and Community Development
Amanda Lee, Principal Planner
Shaun McMahon, Management Analyst
Via CJ Johnson, City Manager

DATE: September 8, 2020

SUBJECT: Amendment of the City of Del Mar Community Plan (General Plan), Zoning Code, and Local Coastal Program Related to the North Commercial and Professional Commercial Land Use Designations and Zones

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council take the following actions relating to the North Commercial (NC) and Professional Commercial (PC) land use designations and zones to allow residential development at a density of twenty (20) dwelling units per acre (du/ac) for development with an affordable housing component as required by the City's existing certified 5th Cycle Housing Element:

- 1) Adopt the Resolution to certify the NC/PC Amendments Program Environmental Impact Report (PEIR), including adoption of the Mitigation, Monitoring, and Reporting Program (MMRP) (Attachment A);
- 2) Adopt the Resolution to amend the City of Del Mar Community Plan (General Plan) NC land use designation (Attachment B);
- 3) Adopt the Resolution to amend the City of Del Mar Community Plan (General Plan) PC land use designation (Attachment C);
- 4) Introduce an Ordinance amending the Del Mar Municipal Code (DMMC) Chapter 30.24 (NC Zone) and the Local Coastal Program (LCP) (Attachment D); and
- 5) Introduce an Ordinance amending the Del Mar Municipal Code (DMMC) Chapter 30.25 (PC Zone) and the Local Coastal Program (LCP) (Attachment E).

The requested actions are necessary to comply with State Housing law.

City Council Action:

BACKGROUND:

The proposed package of NC and PC land use plan and zoning code amendments is required to be implemented for local compliance with State Housing law. The Housing Element is a State-mandated policy document within the Del Mar Community Plan. The City's existing (5th Cycle) Housing Element (GPA12-002) was adopted in May 2013 and covers the planning period of 2013-2021. Consistent with the Del Mar Community Plan, the City's existing certified Housing Element includes Housing Programs to accommodate housing for all segments of the community, including lower-income households. The potential effect on the environment of these program-level actions that will apply to future permit applications for housing in the NC and PC zones was analyzed for the purpose of the California Environmental Quality Act (CEQA). See Attachment I for a map of the NC and PC zones; and Attachment J for the environmental summary.

Programs 2-E (NC Zone) and 2-F (PC Zone) of the existing certified Housing Element require the City to amend the NC and PC zones to add residential as an allowed primary use up to a density of 20 du/ac¹ for projects with an "affordable" housing component as defined below. This density requirement does not mean 20 dwelling units per lot. Instead, it would likely result in a smaller number of units (i.e., 4-8 units on vacant lots less than half an acre in size) and even fewer on lots with existing development, since all new development would be required to comply with existing development standards required by the zone (i.e., height, floor area, lot coverage, and setbacks). Although residential would be an allowable use in these zones as a result of the amendments, it would not be required.

DMMC Chapter 24.21 sets forth the City's inclusionary (affordable) housing requirements that require applicants proposing a residential subdivision or new development with more than one unit per lot (apartments or condominiums) to pay an in-lieu fee or set-aside a portion of the total units to be restricted as rental units for lower income households for at least 55 years. An "affordable" unit is considered a unit that is made available to "extremely low," "very-low," and "low" income households who earn an annual household income no greater than 80 percent of the area median income for the San Diego County region. "Extremely low" income units are restricted for rent to households with a maximum annual income of \$24,300 for one-person and \$27,750 for two-person households; "very-low" income units are restricted for rent to households with a maximum annual income of \$40,450 for one person and \$46,200 for a two-person household; and "low" income units are restricted to households with a maximum annual income of \$64,700 for one person and \$73,950 for a two-person household. Additional criteria applies to households with more than two-persons as published annually by the County of San Diego for the region².

The intent of Programs 2-E and 2-F is to increase sufficient housing capacity to accommodate at least 22 affordable units to meet the City's obligation per State Housing law. California Government Code section 65863 requires that the City create and maintain

¹ One acre is equal to 43,560 square feet

² Source: <https://www.sandiegocounty.gov/sdhcd/rental-assistance/income-limits-ami/>

a capacity of adequate sites that can accommodate its assigned 5th Cycle housing obligation, which is 22 units for lower income households. This action is required to be completed during the City's 5th Cycle planning period (2013-2021) and creates some additional dwelling unit capacity that could be relied upon to assist in meeting the City's 6th Cycle planning period (2021-2029) obligations. The 20 du/ac density is required by the certified 5th Cycle Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a jurisdiction the size of Del Mar.

The proposed amendments are anticipated to realistically accommodate 14-19 affordable units in the NC zone and 2-3 affordable units in the PC zone, which would count towards the City's 5th Cycle obligation to create and maintain adequate sites for 22 affordable units.

The entire certified 5th Cycle Housing Element (PDF) is available for review here: <http://www.delmar.ca.us/DocumentCenter/View/257>

DISCUSSION/ANALYSIS:

The proposed amendments to implement the City's certified Housing Element include General Plan Amendments (GPA19-002 (NC) and GPA20-002 (PC)), Zoning Code Amendments (ZA18-002 (NC) and ZA20-002 (PC)), and Local Coastal Program Amendments (LCPA19-001 (NC) and LCPA20-002 (PC)) that are collectively referred to as the proposed "Program", "Programs", or "Project".

1. **General Plan Amendments:** The City's Community Plan is the City's General Plan. The Housing Element is a required component of the City's Community Plan per State law. The Housing Element Programs 2-E and 2-F require an increase in residential capacity in the NC and PC zones that is not reflected in the current descriptions for the NC and PC land use categories in the Community Plan Land Use Element. Therefore, the Community Plan (General Plan) would be amended by the Programs to update the existing commercial land use designations in the Community Plan, consistent with the Housing Element, to add multiple-dwelling unit residential as an allowed primary use in the existing NC and PC land use categories.
2. **Zoning Code Amendments:** The Programs would amend the NC and PC zones to add residential as an allowed primary use within the NC and PC zones up to a density of 20 du/ac for projects with an affordable housing component. The City's current development standards pertaining to building setbacks, floor area ratio (FAR), lot coverage, and height limits that currently apply to the NC and PC zones would remain unchanged and would continue to apply to any future proposed housing projects.

The existing non-residential uses allowed per the NC and PC zones would continue to be allowed, but would be amended to clarify that short term rental

(STR) is an allowed use in existing commercial zones consistent with the existing zoning code provisions for allowed uses (DMMC Sections 30.24.030(e) and 30.25.030(e)) and consistent with the Short Term Rental Ordinance adopted by the City Council in November 2017. This is also consistent with what was approved by the City Council in July 2018 and certified by the Coastal Commission in May 2019 for the 941 Camino del Mar Specific Plan (nine market rate units that allow STR use and two deed restricted affordable units that cannot be used for STR use due to their respective deed restrictions). Furthermore, this is a necessary clarification for consistency with the certified LCP because residential use is not a priority use per the Coastal Act, which means the allowance for STR operations in market rate dwelling units will appropriately balance the multiple State Housing law provisions that the City must demonstrate compliance with in order to gain final approval. STRs would not be allowed in units that are deed restricted affordable for rent to lower income households for residential use as a dwelling. Per City staff's ongoing dialogue with staff from the State Department of Housing and Community Development (HCD), the City's allowance for STR use in commercial zones does not jeopardize the total count of dwelling units towards the City's housing obligation.

3. **Local Coastal Program Amendments:** The Local Coastal Program (LCP) Amendments are necessary to reflect the aforementioned changes relating to land use designations and base zones in the City's certified LCP Land Use Plan and LCP Implementing Ordinances (as adopted in the DMMC Title 30 Zoning Code).

Risk Exposure

The certified Housing Element Programs 2-E and 2-F were required to be completed within 24 months of adoption of the 5th Cycle Housing Element (adopted May of 2013). Based on these unmet commitments, HCD indicated that the City is at risk of having its 5th Cycle Housing Element decertified along with other enforcement penalties and limits on local land use authority by the State set forth in California Government Code Sections 65583(g) and 65585 that could extend to the City's 6th Cycle Housing Element currently in production. HCD understands that the City is actively working to complete these programs and will be monitoring the process to confirm successful completion before the close of its 5th Cycle planning period (see letter from HCD dated 7-31-2020, Attachment G). If the City adds further delay to the process or renders a decision to deny the amendments, the State indicated that enforcement actions are likely to be imposed.

The range of enforcement penalties set forth per State Housing law could negatively impact the City in the following ways:

1. **Lawsuits and Court Orders** - Developers and advocates have the right to sue jurisdictions if their Housing Element is not compliant with State Law. In addition, Assembly Bill (AB) 72 provides additional methods for the State and local jurisdictions to be held accountable for Housing Element compliance. There are several avenues of legal exposure, including:

- a. *Court Order for Mandatory Compliance* – The court can order the City to bring the Housing Element into compliance within 120 days. This was the case with the City of Encinitas.
 - b. *Fair Housing Risk* – If the Housing Element is decertified, the City is at risk of lawsuits based on fair housing claims under State and Federal law.
 - c. *Private Parties may Sue the City* – As evidenced by the three lawsuits brought against the City of Encinitas for their Housing Element, private parties or interest groups can sue local jurisdictions and the record of evidence can further support plaintiff claims if the City does not have a certified Housing Element. Because of this, it would leave the City with constant exposure to legal challenge if the Housing Element were to be decertified. In fact, the City has already received (June 2016) a “Notice of Intent to Sue the City of Del Mar” if the housing programs related to the NC and PC zone amendments in the certified Housing Element are not implemented by the City (Attachment H).
 - d. *Fiscal Impacts to the General Fund* – If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it will be subject to substantial attorney fees to the plaintiff’s attorneys in addition to the fees paid to its own attorneys. These fees would be substantial and can easily exceed \$100,000. See discussion below related to the additional risk of general fund impacts by the State’s ability to levy fines.
 - e. *Potential Loss of Local Control over Housing Development* – The Housing Element Programs 2-E, 2-F, and 2-G (2-G is not a part of these subject amendments but is related to the City allowing by-right residential development up to 20-25 du/ac on the two vacant parcels at the corner of Jimmy Durante Boulevard and San Dieguito Drive) were required to create adequate sites for 22 affordable units in order to address the “unaccommodated need” from the 4th Cycle (2005-2013) and 5th Cycle (2013-2021) Housing Elements. Pursuant to Government Code Section 65583(g), failure to complete the programs can trigger limits on the City’s ability to deny a multiple-dwelling unit development project with an affordable housing component if that project otherwise would have been allowed had the programs been completed.
2. **Levy of Fines** - The State has authority to fine a jurisdiction anywhere from \$10,000 to \$100,000 per month for non-compliance with their respective Housing Element. Per AB 72, jurisdictions with non-compliant and de-certified Housing Elements can be referred to the Attorney General who can impose penalty fees that can potentially exceed thousands of dollars on a daily basis until compliance is reached.

3. **Future Housing Element Updates Follow a 4-Year Cycle instead of 8-Year -**
The proposed NC and PC zone amendments are required by the City's existing certified Housing Element. Failure to complete the amendments puts the City at risk of the above penalties related to the existing Housing Element (5th Cycle). However, there are also implications if the amendments are not successfully implemented because the capacity of adequate sites that would be created is needed for the City to gain certification of the 6th Cycle Housing Element Update (currently in process). If the City is unsuccessful in obtaining Housing Element certification from the State within 120 days of the statutory deadline, the City will be placed on a more frequent 4-year Housing Element Cycle. Once this occurs, the City will need to successfully process three consecutive 4-Year Cycle Housing Element updates before being placed back on the regular 8-Year cycle. HCD often uses the phrase: "If you're late, you don't get eight". If this were to occur, it would result in significant fiscal and operational impacts to the City that would reduce available workload capacity that otherwise could be made available for other special projects. For example, the approximate cost to complete the 6th Cycle Housing Element currently in progress is \$415,000, plus hundreds of hours of staff time.
4. **Limited Access to State Funding Including Grants -** Due to the State's priorities related to housing, most of the grant funding sources, like the recently awarded Senate Bill (SB) SB 2 grant of \$160,000 and Local Early Action Planning (LEAP) grant of \$65,000, are formula-based and offer free funds that are available only to jurisdictions with certified Housing Elements. The City currently is relying on SB 2 and anticipated LEAP grant funds to cover tasks related to its required housing programs. If the City's Housing Element were to be decertified, new State funding will not be available, and the City may be required to pay back the grants in progress if the City is determined to be ineligible and in breach of the contract. This would be a significant fiscal impact to the City in consideration of the City's current budget and projections for the budget constraints to continue in light of the COVID pandemic and associated economic impacts.

A City Council decision to approve amendments for only one of the areas (i.e., only the PC land use designation and zone) would still put the City in jeopardy of these risks since this would yield less than 15% of the City's required affordable units for the 5th Cycle.

Program Location

The Program area consists of 20 individual parcels separated as 16 parcels within the NC Zone and 4 parcels within the PC Zone. The list of parcels and ownership is included below (map included as Attachment I):

	APN	Owner	Address
NC Zone			
1	299-071-02-00	NCTD	N/A

City Council Agenda Report
 Amendments Relating to NC and PC Zones
 September 8, 2020
 Page 7 of 14

2	299-100-50-00	City of Del Mar	N/A
3	299-100-49-00	Marten, RT	2236 Jimmy Durante Blvd.
4	299-100-30-00	Matthews, Erin	2148 Jimmy Durante Blvd.
5	299-100-28-00	Read Family LLC	2126 Jimmy Durante Blvd.
6	299-100-29-00	Stonebreaker Trust	2132 Jimmy Durante Blvd.
7	299-100-27-00	Knorr, Donna Trust	2120 Jimmy Durante Blvd.
8	299-071-06-00	Bungalows LLC	2010 Jimmy Durante Blvd.
9	299-071-07-00	Westech Realty	2002 Jimmy Durante Blvd.
10	299-100-48-00	Watermark LP	N/A
11	299-100-47-00	Watermark LP	N/A
12	299-100-32-00	City of Del Mar	N/A
13	299-100-33-00	NCTD	N/A
14	299-100-34-00	2201 Del Mar LLC	2201 San Dieguito Drive
15	299-100-35-00	Scarab Group	2195 San Dieguito Drive
16	299-100-36-00	S.C. Edison	N/A
PC Zone			
1	300-200-24-00	Newberry, Douglas	832 Camino del Mar
2	300-222-31-00	D.M. Building Group LLC	853 Camino del Mar
3	300-222-32-00	Ocean 8 View LLC	322 8th Street
4	300-222-33-00	Wuotan LLC	807 Camino del Mar

Description of Program:

The proposed Program includes two General Plan Amendments, two Zoning Code Amendments, and two Local Coastal Program Amendments (one set of actions for the NC and zone and one set for the PC zone) to implement the City's certified Housing Element (Programs 2-E and 2-F) by adding multiple-dwelling unit residential as an allowed primary use in the existing NC and PC zones up to a maximum density of 20 du/ac. The addition of multiple-dwelling unit residential to the existing mix of allowed uses within the NC and PC zones would allow for properties to develop, or redevelop, with a mix of commercial and residential uses; or solely as multiple-dwelling unit residential, commercial development, or light-industrial development where allowed per the zoning code. The proposed Program does not include any physical development or construction component. Any proposals for future housing development would be subject to the City's permit review processes (discretionary and ministerial), including review by the Design Review Board. The Program, if adopted, would meet four key objectives identified below:

1. Implement Housing Element Programs 2-E and 2-F to create sufficient "adequate sites" that provide the opportunity for future development of multiple-dwelling unit residential up to a maximum of 20 du/ac in the NC and PC zones, and to specifically accommodate 22 affordable units (19 affordable units in the NC zone and 3 affordable units in the PC zone) for rent to lower income households per the City's

5th Cycle housing obligation. If the City does not complete this action, it would trigger the “no net loss” law requirements per California Government Code Section 65863³.

2. Ensure the community’s land use designations for NC and PC can accommodate the potential need for future housing units (i.e., 6th Cycle Housing Element).
3. Minimize potential land use compatibility conflicts associated with the proposed change to existing land use designations and zoning by allowing for residential projects to be developed as part of mixed-use projects or as residential projects.
4. Increase the City’s overall housing capacity and capability to accommodate affordable housing as required per the certified 5th Cycle Housing Element for the 2013-2021 housing cycle; and to gain certification of the 6th Cycle Housing Element currently in progress.

Relationship to the City’s Overall Housing Strategy for 6th Cycle Housing Element

The NC Zone in particular is being relied upon for a significant number of affordable units to meet the City’s 5th Cycle obligation. The City will need to show HCD that it has implemented this Program as part of its current housing cycle to avoid penalties as previously described. If the NC Program is not implemented, the City will not have adequate sites of a sufficient density to accommodate its required number of affordable units, which most likely would cause the City to be unable to gain timely certification of its 6th Cycle Housing Element currently in preparation.

While the City has been actively processing the NC and PC amendments during its 5th Cycle planning period, these amendments were not completed in time to count towards its 5th Cycle. However, the City is obligated to complete the programs at the local level prior to its submission of its 6th Cycle Housing Element Update for consideration by HCD. It is staff’s understanding that HCD would then consider the locally-adopted amendments as “Carryover Programs” that must continue to be processed through the certification process by the California Coastal Commission and fully completed/implemented in the City’s Zoning

³ State law requires the City to assign its affordable housing obligation to specific parcels in its Housing Element sites inventory. The 5th Cycle Housing Element committed the City to change the density of the NC zone to allow 20 du/ac and assigned 22 lower income units to be addressed via a rezone of two vacant parcels in the NC zone to 20-25 du/ac: APNs 299-100-47 and 299-100-48 (currently owned by Watermark LP). If the City Council does not move forward to increase density in the NC zone, that decision will trigger a “no net loss” provision per Government Code Section 65863. Technically, State law provides for the City to make findings and have 180 days to identify and make available additional adequate sites to accommodate the 22 lower income units. However, it is understood that the City does not have “sufficient additional, adequate, and available sites” that could serve as an alternative to the NC zone to provide capacity in a zone at a density of 20 du/ac to address the 5th Cycle Housing Element unaccommodated need of 22 lower income units. This must be taken care of as part of the 5th Cycle (not the upcoming 6th Cycle for the planning period 2021-2029). Therefore, a decision to deny the NC amendments would likely be subject to enforcement and penalties pursuant to Government Code Section 65585 and decertification of the Housing Element. Further, it would place the 6th Cycle Housing Element Update at risk of failure due to the associated delay caused by removal of a key housing strategy.

Code and LCP within one year of adoption of the 6th Cycle Housing Element. Any new units produced within these zones will be able to count towards the housing obligation for the 6th Cycle.

See Attachment K for a further description of the relationship between the proposed NC and PC amendments and the City's proposed overall housing strategy for the 6th Cycle Housing Element Update that is currently in preparation. The information presented is provided for context only to demonstrate the limited choices available to the City in terms of existing vacant and developable sites that can meet the State's criteria to be deemed "adequate" to meet the City's unaccommodated need. No action on the City's 6th Cycle Housing Element Update is before the City Council at this time. More information on the City's 6th Cycle Housing Element will be provided as part of the upcoming formal hearing process with tentative dates set for a Planning Commission recommendation on September 15, 2020 and the City Council on October 5 and 19, 2020.

It is noted that the two vacant parcels (2.3 acres) located at the intersection of Jimmy Durante Boulevard and San Dieguito Drive, referred to as "Watermark" and under current private ownership by Watermark LP, are located in the NC zone. These two parcels are also a key part of the City's housing strategy and will also be considered as a "Carryover Program" with the 6th Cycle Housing Element Update. The City understands that this carryover requirement is necessary in order for the City to avoid triggering the "no net loss" provision per Government Code Section 65863 as described above in Footnote 3. Though related to the final, uncompleted program (Program 2-G) in the current housing cycle, these parcels are currently being processed under a separate, private development application that involves a Specific Plan zoning action. The City estimates that 35-40 total units, including 7-10 affordable units, could be realized at this prospective housing site location that is currently vacant and undeveloped. These affordable units, if developed, would count towards the City's total obligation for the 6th Cycle, which includes 12 low income units from the unmet need in the 5th Cycle. If the proposed "Watermark Specific Plan" is not ultimately approved by the City Council at a future date, these two parcels would continue to be subject to the land use plan policies and zoning regulations applicable to the NC zone, including applicability of the NC amendments described in this report if approved by the City Council.

REQUIRED ACTIONS:

Certification of Final Program EIR (PEIR):

The environmental analysis for the Program (implementation of Programs 2-E (NC) and 2-F (PC)) was done in accordance with the California Environmental Quality Act (CEQA) at a program level, which is different from a project-level analysis. There are no proposed development applications, project level details, or development plans associated with this Program. A program level analysis is appropriate for a plan or program that will apply to future development where those future individual activities will occur under the same regulatory process (CEQA Guidelines Section 15168). Therefore, a Program Environmental Impact Report (PEIR) was prepared, circulated for public review and comment, and finalized for consideration by the City Council as part of the requested action on the NC and PC amendments. Attachment J provides a summary of the

environmental analysis that was completed. Note that the NC/PC PEIR is separate from the PEIR the City prepared and circulated for its 6th Cycle Housing Element Update that is currently in process.

The PEIR identified that the following five issue areas have potentially significant impacts; and identified mitigation, monitoring, and reporting program (MMRP) measures that will be required of future development to reduce the potential impacts to Less than Significant: Aesthetics (PEIR §4.2), Biological Resources (PEIR §4.9), Cultural Resources (PEIR §4.3), Geology and Soils and Paleontological Resources (PEIR §4.10), and Noise (PEIR §4.7).

The PEIR analyzes information that was known and available at the time of preparation, discloses potential impacts of the amendments, and identifies a mitigation framework that will apply to future housing development. Future development will require additional environmental analysis at the project level, unless the proposed project is sufficiently covered within the scope of the PEIR. Most development proposals are anticipated to require some level of additional analysis and will be subject to the PEIR MMRP measures as applicable to reduce the potential impacts to “Less than Significant” as summarized in Attachment J. The City Council is asked to adopt the Resolution (Attachment A) to certify the PEIR and adopt the MMRP.

General Plan Amendments (GPA19-002 (NC) and GPA20-002 (PC)):

Two General Plan Amendments (amending the Del Mar Community Plan) are required to amend the City's existing land use policies to carry out Housing Element Programs 2-E and 2-F. The amendments are a minor update to the existing commercial land use categories for the NC and PC zones in the Community Development section of the Community Plan to clarify that residential is being added as an allowed primary use in the NC and PC zones consistent with the Housing Element section of the Community Plan. The draft General Plan Amendments are provided in Attachments B and C. It should be noted that the proposed Resolutions for amending the Del Mar Community Plan (General Plan Amendments) will each require a super-majority vote (4 of 5) of the City Council for adoption. In the event the City Council does not reach a super-majority vote on one or both General Plan amendments, the related Zoning Code and LCP amendments for that land use designation cannot be acted upon because they would not be considered consistent with City's General Plan (as recently amended). The Del Mar Community Plan was adopted in 1976 and has since been amended to add the Recreation Element (1985), amend the Housing Element (2012), and amend the Safety Element (2019). Other Elements that are a part of the Community Plan include Land Use, Circulation, Conservation, Open Space, Noise, Seismic Safety, and Scenic Highways. The Community Plan has also been amended via a private development application (i.e., 941 Camino del Mar Specific Plan GPA18-001 adopted by the City Council July 2018 and approved by public vote in November 2018).

Zoning Code Amendments (ZA18-002 (NC) and ZA20-002 (PC)):

Two Zone Code Amendments are required to amend the City's zoning regulations as needed to carry out Programs 2-E and 2-F of the City's certified 5th Cycle Housing Element. Per the programs referenced above, the City must amend the provisions of the NC Zone (DMMC Chapter 30.24) and the PC Zone (DMMC Chapter 30.25) to allow residential development up to a density of 20 du/ac as an allowed primary use. Minor edits are also included to ensure consistency and compatibility with the Community Plan and various sections of the DMMC, including clarification that the short term rental of a unit for less than 30 days is an allowed commercial use in the NC and PC commercial zones. This determination is consistent with the City Council's previous actions and Coastal Act consistency as previously-described in this report under "Background: 2. Zoning Code Amendments." As shown below, all development standards in the NC and PC zones will remain unchanged with the exception of density (20 du/ac).

North Commercial Zoning Amendment (Program 2-E)*		
	Existing	Proposed
Floor Area Ratio	30%	30%
Setbacks	None ⁴	None
Height	26 ft.	26 ft.
Lot Coverage	40%	40%
Density ⁵	1 accessory unit ⁶ per lot	20 du/ac⁷

*All changes from existing to proposed are provided in ***bold italics***.

Professional Commercial Zoning Amendment (Program 2-F)*		
	Existing	Proposed
Floor Area Ratio	60%	60%
Setbacks	None ⁸	None
Height	26 ft.	26 ft. ⁹
Lot Coverage	75%	75%

⁴ No development shall be located closer than 25 feet from a Floodway Zone, and that a minimum ten-foot wide landscaped setback shall be required on any NC zoned property along any common boundary or residentially zoned property.

⁵ Density is measured as dwelling units per acre (du/ac) in zones where residential is an allowed primary use.

⁶ While one "accessory unit" is allowed on each lot in the City's NC zone, note that this type of "accessory unit" is not the same as an "Accessory Dwelling Unit" or ADU as defined by Government Code Section 65852.2 and DMMC Sections 30.04.010 and 30.91.040.

⁷ Accessory Dwelling Units (ADUs) would be permitted as an accessory use pursuant to California Government Code Section 65852.2(e)(1).

⁸ A minimum ten-foot wide landscape setback shall be required on PC zoned property along any common boundary of residentially zoned property.

⁹ Maximum height is 14ft. on the west side of Camino del Mar

Density ¹⁰	1 accessory unit ¹¹ per lot	20 du/ac¹²
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*All changes from existing to proposed are provided in ***bold italics***.

DMMC Chapter 24.21 sets forth the City's requirements for proposed residential development to address affordable housing. The City's inclusionary housing ordinance requires a payment of an in-lieu fee or a "set-aside of affordable units" (a portion of the total units built on-site where the affordable units must be rented to lower income households for at least 55 years) as specified below:

Projects proposing a subdivision to create multiple new residential lots must pay one "in-lieu housing mitigation fee" for each lot created. (DMMC Section 24.21.035)

Projects proposing 2-5 multiple dwelling units on one lot typically have the option to pay an in-lieu housing mitigation fee or set-aside one affordable unit. (DMMC Section 24.21.030)

Projects proposing 6-9 multiple dwelling units on one lot are required to set-aside one affordable unit with no in-lieu fee option available. (DMMC Section 24.21.030)

Projects proposing 10 or more multiple dwelling units on one lot must set aside 20% of the total number of units as affordable units with specified limits on rental rates as follows (DMMC Section 24.21.030):

- 10-19 units – 20% affordable units set-aside including one unit reserved for very-low income households
- 20-29 units – 20% affordable units set-aside including one unit reserved for very-low income households and one unit reserved for extremely low income households
- 30 or more units – 20% affordable units set-aside including two units reserved for very-low income households and two units reserved for extremely low income households

Per direction received from the City Council on July 1, 2019, staff incorporated a provision to preclude applicants from having the option to pay the in-lieu fee. This provision will ensure that at least one affordable unit is built on-site for any future housing development in the NC and PC zones. Otherwise, pursuant to DMMC Chapter 24.21, development less than five units would be eligible to pay the in-lieu fee. See Attachments D and E for the proposed amendment language. A simple majority vote (3 of 5) of the City Council is required for adoption of the zoning code amendments.

¹⁰ Density is measured as dwelling units per acre (du/ac) in zones where residential is an allowed primary use.

¹¹ See Footnote 7 above in NC Zoning Amendment table.

¹² Accessory Dwelling Units (ADUs) would be permitted as an accessory use pursuant to California Government Code Section 65852.2(e)(1).

Local Coastal Program Amendments (LCPA19-001 (NC) and LCPA 20-002 (PC)):

Two amendments to the City's Local Coastal Program are required to carry out Programs 2-E and 2-F of the City's certified Housing Element. Per the programs referenced above, the City must amend Sections B and C of Chapter II (Land Use Development) of the LCP Land Use Plan. Minor edits are also included to ensure consistency and compatibility with the Community Plan and various sections of the DMMC. In addition to the LCP Land Use Plan amendments, the Zoning Code amendments to DMMC Chapters 30.24 and 30.35 (as described above) constitute an amendment to the City's LCP implementing ordinances and are therefore, part of the overall LCPA. See Attachments D and E for the proposed amendments. A simple majority vote (3 of 5) of the City Council is required for adoption of the LCPA amendments.

Following adoption by the City Council, certification of the LCPAs will be required by the Coastal Commission for the amendments to become effective. Staff anticipates the LCPAs will be timely processed within one year as necessary to meet the 12-month deadline required by HCD for these types of Housing Element Programs that carryover into subsequent Housing Element Cycles. Note that amendments to the City's Community Plan do not require Coastal Commission certification.

ENVIRONMENTAL IMPACT:

A Program Environmental Impact Report (PEIR), identified as State Clearinghouse (SCH)No. 2019029058, has been prepared for certification by the City Council prior to adoption of the proposed amendments. The PEIR includes a MMRP. The City Council is asked to adopt the Resolution (Attachment A) to certify the PEIR and adopt the MMRP. The Final PEIR is available at the following links:

Final PEIR - <https://www.delmar.ca.us/Archive.aspx?ADID=1428>.

Final PEIR Appendices - <https://www.delmar.ca.us/Archive.aspx?ADID=1429>

Final PEIR Findings - <https://www.delmar.ca.us/Archive.aspx?ADID=1430>

Final PEIR MMRP – <http://www.delmar.ca.us/ArchiveCenter/ViewFile/Item/1442>

Note that this NC/PC PEIR is separate from a second PEIR the City currently has in process for its 6th Cycle Housing Element Update identified as SCH No. 2020029064.

PRIOR CITY COUNCIL REVIEW:

On May 20, 2013, the City Council adopted the 2013-2021 5th Cycle Housing Element as part of the Del Mar Community Plan, which included a commitment to implement Programs 2-E (NC) and 2-F (PC). On June 4, 2018, the City Council accepted the "22 in 5 Affordable Housing Plan" and directed staff to pursue completion of Housing Programs 2-E (NC) and 2-F (PC) as high priority actions prior to the end of the 5th Cycle Housing Element planning period. On July 2, 2018, the City Council adopted the work program for the NC and PC Amendments and allocated \$150,000 for CEQA compliance. On July 1, 2019, the City Council provided direction to staff on the processing of the amendment

to the NC and PC zones. Additionally, as a part of the CEQA process, the City Council received an informational summary on the findings of the Draft PEIR on December 2, 2019.

FISCAL IMPACT:

Adoption of the proposed amendments will avoid potential fiscal impacts to the City's General Fund. If a decision is made to not proceed with the amendments, the City risks being subject to immediate enforcement by the State with associated risk of significant fiscal impacts and legal exposure as described earlier in this report.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This special project is a City Council Priority through Fiscal Year 2020-2021.

RECOMMENDATION:

Staff recommends the City Council adopt the three Resolutions and introduce the two Ordinances related to the PEIR and NC and PC land use designations and zones.

ATTACHMENTS:

Attachment A – Resolution certifying the PEIR and adopting the MMRP
Attachment B – Resolution adopting the Community Plan Amendment (NC)
Attachment C – Resolution adopting the Community Plan Amendment (PC)
Attachment D – Ordinance for NC Zone/LCP Amendments
Attachment E – Ordinance for PC Zone/LCP Amendments
Attachment F – Strikeout-Underline Exhibits for Proposed NC and PC Amendments
Attachment G – Technical Assistance Letter from HCD dated 7-31-2020
Attachment H – Notice of Intent to Sue the City of Del Mar (Briggs) dated 6-27-2016
Attachment I – Location Maps of NC Zone (16 parcels) and PC Zone (4 parcels)
Attachment J – Environmental Analysis Summary
Attachment K – Relationship to City's Proposed Overall Strategy for Draft 6th Cycle HEU

RESOLUTION NO. 2020-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA CERTIFYING THE PROGRAM ENVIRONMENTAL IMPACT REPORT AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR A PROPOSED PACKAGE OF AMENDMENTS TO LAND USE PLANS AND ZONING REGULATIONS THAT WOULD AMEND THE CITY OF DEL MAR COMMUNITY PLAN, DEL MAR MUNICIPAL CODE CHAPTERS 30.24 AND 30.25, AND THE CITY'S CERTIFIED LOCAL COASTAL PROGRAM CONSISTENT WITH PROGRAMS 2-E AND 2-F REQUIRED BY THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT; ALL RELATING TO A TOTAL OF TWENTY EXISTING PARCELS LOCATED IN THE NORTH COMMERCIAL AND PROFESSIONAL COMMERCIAL ZONES IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS, the Program Environmental Impact Report (PEIR SCH No. 2019029058), including a Mitigation, Monitoring and Reporting Program was prepared by RECON Environmental Inc. on behalf of the City as lead agency in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the environmental document was prepared in accordance with CEQA at a program level, which is different than a project-level analysis, because there are no proposed development applications, project level details, or development plans associated with the proposed program-level action; and

WHEREAS, a program-level analysis is appropriate for a plan or program that will apply to future development where those future individual activities will occur under the same regulatory process (CEQA Guidelines Section 15168); and

WHEREAS, the proposed "Program" is a package of amendments that would amend the City of Del Mar Community Plan (General Plan), Del Mar Municipal Code Chapters 30.24 and 30.25, and the City's Local Coastal Program; and

WHEREAS, the Program includes land use policies and development regulations that will apply to future housing development proposals in the City; and

WHEREAS, the intention of the PEIR is to satisfy CEQA based on the information known about the potential impacts of the Program that would not be too speculative; and

WHEREAS, the PEIR analyzes information that was known and available at the time of preparation, discloses potential impacts of the Program, and identifies a mitigation framework that will apply to future housing development; and

WHEREAS, future housing development will require additional environmental analysis at the project level, unless the proposed project is sufficiently covered within the scope of the PEIR; and

WHEREAS, most development proposals will require additional project-level analysis and will be subject to the PEIR mitigation, monitoring, and reporting program (MMRP) measures as applicable to reduce the potential impacts to "Less than Significant"; and

WHEREAS, on August 11, 2020, the Planning Commission recommended certification of the PEIR and adoption of the Mitigation, Monitoring and Reporting Program; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that the City Council does hereby certify the PEIR (SCH No. 2019029058) and adopt the associated Mitigation, Monitoring and Reporting Program as lead agency in accordance with the California Environmental Quality Act (CEQA) based on its findings:

1. That upon a review of the whole record before the Council there is no substantial evidence that the project will have a significant effect on the environment.
2. The PEIR (SCH No. 2019029058) reflects the Council's independent judgment and analysis.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California, at a Regular Meeting held this 8th day of September, 2020.

Ellie Haviland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2020-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 8th day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

RESOLUTION NO. 2020-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA AMENDING THE CITY OF DEL MAR COMMUNITY PLAN CONSISTENT WITH PROGRAM 2-E IN THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT THAT IS A PART OF THE EXISTING COMMUNITY PLAN (GENERAL PLAN) TO AMEND THE LAND USE DESIGNATION RELATING TO A TOTAL OF SIXTEEN EXISTING PARCELS LOCATED IN THE NORTH COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS, the City of Del Mar Community Plan is the City's General Plan; and

WHEREAS the Housing Element is a required component of the City's Community Plan per State law; and

WHEREAS, the City's existing certified Housing Element requires implementation of Program 2-E relating to the North Commercial Zone that requires the City amend its Community Plan, Del Mar Municipal Code (Zoning) Chapter 30.24, and Local Coastal Program to add residential as an allowed primary use up to a density of 20 dwelling units per acre; and

WHEREAS, 20 dwelling units per acre is the density required by the Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a small jurisdiction the size of Del Mar; and

WHEREAS, "affordable housing" refers to units that are restricted for rent to households with an annual household income no greater than 80 percent of the area median income for the San Diego County region; and

WHEREAS, the City of Del Mar does not currently have any affordable housing units within the City and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing; and

WHEREAS, the City's certified Housing Element for the 5th Cycle planning period (2013-2021) obligated the City to provide capacity for 22 affordable units for rent to low income households that factored in 12 affordable units from the regional housing needs allocation (RHNA) for the 5th Cycle and the shortfall of 10 affordable units that was a required carry over from the 4th Cycle; and

WHEREAS, the intent of Housing Element Program 2-E is to increase the City's planned housing capacity sufficiently to accommodate its RHNA and more specifically to accommodate development of affordable housing; and

WHEREAS, the State Department of Housing and Community Development (HCD) emphasized in a July 31, 2020 letter to the City that the State law requirement to create adequate sites to accommodate the City's RHNA is a fundamental component of Housing Element law and that HCD may revoke the certification status of the City's Housing Element and trigger further enforcement if the City fails timely implementation of the Program; and

WHEREAS, the State expected Housing Element Program 2-E to have been completed within 24 months of adoption of the 5th Cycle Housing Element; and

WHEREAS, if the City does not complete implementation of Program 2-E, the City will be subject to a range of enforcement penalties set forth per State housing law that could negatively impact the City by court orders, lawsuits and fines by the State, legal action by the State Attorney General, fiscal impacts to the General Fund, potential loss of local control over new housing development and risk to State grants in process and ineligibility for future State grant funding; and

WHEREAS, in June 2016 the City received a "Notice of Intent to Sue the City of Del Mar" if the Housing Element programs related to North Commercial and Professional Commercial are not implemented by the City; and

WHEREAS, if the City does not implement Program 2-E it also puts the City at risk of not being able to gain certification of the 6th Cycle Housing Element Update in process because the program is needed to create a sufficient number of housing sites to accommodate affordable housing as required per State law; and

WHEREAS, on August 11, 2020, the Planning Commission recommended approval of the proposed amendments to the Del Mar Community Plan, Del Mar Municipal Code, and Local Coastal Program for implementation of Housing Element Program 2-E; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that the City Council does hereby adopt the amendment to the City of Del Mar Community Plan (General Plan) relating to Program 2-E as set forth in Resolution "Exhibit A" attached.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar,
California, at a Regular Meeting held this 8th day of September, 2020.

Ellie Haviland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2020-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 8th day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

Resolution Amending the Community Plan Relating to North Commercial
EXHIBIT A

That the existing North Commercial land use category in the Del Mar Community Plan Community Development Section be amended for consistency with existing certified Housing Element Program 2-E to read as follows:

North Commercial

This land use classification is intended to allow activities that provide a service to the community, including a range of commercial and light industrial uses, and residential (0-20 dwelling units per net acre). Development should be of low intensity and profile, offering substantial open space.

RESOLUTION NO. 2020-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA AMENDING THE CITY OF DEL MAR COMMUNITY PLAN CONSISTENT WITH PROGRAM 2-F IN THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT THAT IS A PART OF THE EXISTING COMMUNITY PLAN (GENERAL PLAN) TO AMEND LAND USE DESIGNATIONS RELATING TO A TOTAL OF FOUR EXISTING PARCELS LOCATED IN THE PROFESSIONAL COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS, the City of Del Mar Community Plan is the City's General Plan; and

WHEREAS, the Housing Element is a required component of the City's Community Plan per State law; and

WHEREAS, the City's existing certified Housing Element requires implementation of Program 2-F relating to the Professional Commercial Zone that requires the City amend its Community Plan, Del Mar Municipal Code (Zoning) Chapter 30.25, and Local Coastal Program to add residential as an allowed primary use up to a density of 20 dwelling units per acre; and

WHEREAS, 20 dwelling units per acre is the density required by the Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a small jurisdiction the size of Del Mar; and

WHEREAS, "affordable housing" refers to units that are restricted for rent to households with an annual household income no greater than 80 percent of the area median income for the San Diego County region; and

WHEREAS, the City of Del Mar does not currently have any affordable housing units within the City and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing; and

WHEREAS, the City's certified Housing Element for the 5th Cycle planning period (2013-2021) obligated the City to provide capacity for 22 affordable units for rent to low income households that factored in 12 affordable units from the regional housing needs allocation (RHNA) for the 5th Cycle and the shortfall of 10 affordable units that was a required carry over from the 4th Cycle; and

WHEREAS, the intent of Housing Element Program 2-F is to increase the City's planned housing capacity sufficiently to accommodate its RHNA and more specifically to accommodate development of affordable housing; and

WHEREAS, the State Department of Housing and Community Development (HCD) emphasized in a July 31, 2020 letter to the City that the State law requirement to create adequate sites to accommodate the City's RHNA is a fundamental component of Housing Element law and that HCD may revoke the certification status of the City's Housing Element and trigger further enforcement if the City fails timely implementation of the Program; and

WHEREAS, the State expected Housing Element Program 2-F to have been completed within 24 months of adoption of the 5th Cycle Housing Element; and

WHEREAS, if the City does not complete implementation of Program 2-F, the City will be subject to a range of enforcement penalties set forth per State housing law that could negatively impact the City by court orders, lawsuits and fines by the State, legal action by the State Attorney General, fiscal impacts to the General Fund, potential loss of local control over new housing development and risk to State grants in process and ineligibility for future State grant funding; and

WHEREAS, in June 2016 the City received a "Notice of Intent to Sue the City of Del Mar" if the Housing Element programs related to North Commercial and Professional Commercial are not implemented by the City; and

WHEREAS, if the City does not implement Program 2-F it also puts the City at risk of not being able to gain certification of the 6th Cycle Housing Element Update in process because the program is needed to create a sufficient number of housing sites to accommodate affordable housing as required per State law; and

WHEREAS, on August 11, 2020, the Planning Commission recommended approval of the proposed amendments to the Del Mar Community Plan, Del Mar Municipal Code, and Local Coastal Program for implementation of Housing Element Program 2-F; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that the City Council does hereby adopt the amendment to the City of Del Mar Community Plan (General Plan) relating to Program 2-F as set forth in Resolution "Exhibit A" attached.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar,
California, at a Regular Meeting held this 8th day of September, 2020.

Ellie Haviland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2020-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 8th day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

Resolution Amending the Community Plan Relating to Professional Commercial
EXHIBIT A

1. That the existing Professional Commercial land use category in the Del Mar Community Plan Community Development Section be amended for consistency with existing certified Housing Element Program 2-F to read as follows:

Professional Commercial

This land use category is intended to allow offices and residential (0-20 dwelling units per net acre) to be located in the southern end of the commercial district, as an orderly transition between the retail and commercial service uses in the village center and the medium and low density residential land use areas located to the south.

2. That the existing Central Commercial land use category in the Del Mar Community Plan Community Development Section be amended to delete the existing reference relating to the Professional Commercial Zone that currently state's "The area along Camino del Mar south of 9th Street should be devoted to office/professional usage." By deleting this statement, it will ensure consistency with the Professional Commercial land use category, as amended with this action to allow housing as an allowed use along Camino del Mar south of 9th Street per the existing certified Housing Element Program 2-F, and that the amended category read as follows:

Central Commercial

This land use category is intended to allow activities that preserve and enhance the Village Center District of Del Mar. Permitted uses would include pedestrian oriented retail activities, commercial services and a limited number of offices.

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE DEL MAR MUNICIPAL CODE CHAPTERS 30.24 AND THE CITY'S CERTIFIED LOCAL COASTAL PROGRAM CONSISTENT WITH PROGRAM 2-E REQUIRED BY THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT RELATING TO A TOTAL OF 16 EXISTING PARCELS LOCATED IN THE NORTH COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS the Housing Element is a required component of the City's Community Plan per State law; and

WHEREAS, the City's existing certified Housing Element requires implementation of Program 2-E relating to the North Commercial Zone that requires the City amend its Community Plan, Del Mar Municipal Code (Zoning) Chapter 30.24, and Local Coastal Program to add residential as an allowed primary use up to a density of 20 dwelling units per acre; and

WHEREAS, 20 dwelling units per acre is the density required by the Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a small jurisdiction the size of Del Mar; and

WHEREAS, "affordable housing" refers to units that are restricted for rent to households with an annual household income no greater than 80 percent of the area median income for the San Diego County region; and

WHEREAS, the City of Del Mar does not currently have any affordable housing units within the City and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing; and

WHEREAS, the City's certified Housing Element for the 5th Cycle planning period (2013-2021) obligated the City to provide capacity for 22 affordable units for rent to low income households that factored in 12 affordable units from the regional housing needs allocation (RHNA) for the 5th Cycle and the shortfall of 10 affordable units that was a required carry over from the 4th Cycle; and

WHEREAS, the intent of Housing Element Program 2-E is to increase the City's planned housing capacity sufficiently to accommodate its RHNA and more specifically to accommodate development of affordable housing; and

WHEREAS, the State Department of Housing and Community Development (HCD) emphasized in a July 31, 2020 letter to the City that the State law requirement to create adequate sites to accommodate the City's RHNA is a fundamental component of Housing Element law and that HCD may revoke the certification status of the City's Housing Element and trigger further enforcement if the City fails timely implementation of the Program; and

WHEREAS, the State expected Housing Element Program 2-E to have been completed within 24 months of adoption of the 5th Cycle Housing Element; and

WHEREAS, if the City does not complete implementation of Program 2-E, the City will be subject to a range of enforcement penalties set forth per State housing law that could negatively impact the City by court orders, lawsuits and fines by the State, legal action by the State Attorney General, fiscal impacts to the General Fund, potential loss of local control over new housing development and risk to State grants in process and ineligibility for future State grant funding; and

WHEREAS, in June 2016 the City received a "Notice of Intent to Sue the City of Del Mar" if the Housing Element programs related to North Commercial and Professional Commercial are not implemented by the City; and

WHEREAS, if the City does not implement Program 2-E it also puts the City at risk of not being able to gain certification of the 6th Cycle Housing Element Update in process because the program is needed to create a sufficient number of housing sites to accommodate affordable housing as required per State law; and

WHEREAS, on August 11, 2020, the Planning Commission recommended certification of the PEIR and adoption of the Mitigation, Monitoring and Reporting Program, and adoption of amendments to the Del Mar Community Plan, DMMC Chapters 30.24 and 30.25, and Local Coastal Program; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020; and

WHEREAS, on September 8, 2020, the City Council adopted a Resolution certifying a Program Environmental Impact Report (PEIR SCH No. 2019029058) and adopting a Mitigation, Monitoring and Reporting Program in accordance with the California Environmental Quality Act (CEQA) that analyzes and discloses the known potential impacts associated with the land use plan and code amendments covered by this Ordinance and identifies a mitigation framework that will apply to future housing development; and

WHEREAS, on September 8, 2020, the City Council adopted Resolution 2020-xx amending the City of Del Mar Community Plan consistent with Program 2-E in the City's existing certified Housing Element that is a part of the existing Community Plan (General Plan) to amend the land use designation relating to a total of sixteen existing parcels located in the North Commercial Zone; and

WHEREAS, on September 8, 2020, the City Council introduced the Ordinance; and

WHEREAS, the proposed amendments constitute a Zone Code Amendment and Local Coastal Program Amendment and following City Council action will be subject to review and unconditional certification by the Coastal Commission.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Del Mar, California, does hereby ordain as follows:

SECTION ONE: That Del Mar Municipal Code (DMMC) Section 30.24.010 (NC Zone) be amended as follows:

30.24.010 Purpose

The NC Zone serves as a northerly gateway to the community south of the San Dieguito River and Lagoon. The NC Zone is designed to allow activities that provide a service to the community, including a range of commercial and light industrial uses, and residential where compatible with adjacent land uses. Development in the NC Zone shall be of low intensity profile, offering a lively open air environment with substantial open space.

SECTION TWO: That DMMC Section 30.24.030 (NC Zone) be amended to read as follows:

30.24.030 Allowable Uses

The following uses are allowable in the NC Zone:

A. Commercial uses provided that:

1. The use does not involve the sale of alcohol for on-site consumption between the hours of 11:00 p.m. and 6:00 a.m. and further provided that the use does not involve the provision of goods, food or beverages, or services in a drive-in or drive-thru manner.
2. The retailing of goods, foods and beverages, the dispensing of services and light manufacturing from the following:

[No change to the listed uses]

3. Outdoor display areas located on the exterior of a structure housing a retail sales operation, where goods or commodities otherwise available for sale in the associated retail sales operation are displayed but not sold; provided all of the following requirements are met:
 - a. The outdoor display area is located entirely on the same lot as the associated retail sales operation;
 - b. The area devoted to outdoor display does not encroach upon required parking or access areas;

- c. The outdoor display area is contiguous and not more than four feet in width measured from a point perpendicular to the exterior wall of the adjacent structure housing the associated retail sale operation and not more than ten feet in length measured along the exterior wall of the adjacent structure housing the associated retail sale operation; and
 - d. The display of goods or commodities and placement of display structures is limited to the hours of operation of the associated retail sales operation.
- B. Any principal use permitted in the CC Zone (excludes those uses which, under CC Zone provisions, would require a conditional use permit).
 - C. Multiple dwelling unit residential up to a density of 20 dwelling units per acre.
 - D. Emergency shelters pursuant to Section 30.24.035.
 - E. One dwelling unit as accessory to and on the same site as that of a permitted use, and conforming to the parking requirements of the R2 Zone.
 - F. Short term rental of a dwelling unit.
 - G. Any similar enterprise or business which conforms to the description and purpose of the NC Zone, and is not detrimental to the welfare of the community.

SECTION THREE: That DMMC Section 30.24.070 (NC Zone) be amended to read as follows:

30.24.070 Development Standards

In the NC Zone, the following development standards apply:

- A. Density: Up to a maximum of 20 dwelling units per acre
 - 1. All residential development or conversions shall provide affordable housing pursuant to Chapter 24.21.
 - 2. Notwithstanding Section 24.21.030, residential development or conversions of two, three, four or five units on one lot shall set-aside one unit for rental at below market rate to a low income household or donate one off-site unit, within the City's jurisdiction, of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The option for payment of the In-Lieu Housing Mitigation Fee shall not be allowed.

[No change to subsections B. (Lot Dimensions) through C. (Construction Standards)]

SECTION FOUR: That the Chapter II Land Use Development “section B” policies in the Del Mar certified Local Coastal Program be amended to add a new Policy II-4 and amend existing Policy II-8 to read as follows:

Policy II-4: Increase the City’s overall housing capacity and capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal related development.

Policy II-8: Retain a pedestrian-oriented downtown which groups housing, retail services, and commercial services with facilities for civic and community activities.

SECTION FIVE: That the Chapter II Land Use Development “section C” policies in the Del Mar certified Local Coastal Program be amended to amend the Valley District, North Hills District, and Village District policies to read as follows:

2. Valley District

This district is located in the northern section of the City and includes the San Dieguito River and Lagoon area, the majority of which is designated as Floodway (FW). It also contains an area designated as North Commercial (NC). Any future use of this district shall be consistent with this Land Use Plan. When reviewing future development proposals, special attention shall be given to the preservation of sensitive wetland habitat and its immediate uplands, and protection against and avoidance of seismic and flooding hazards.

Most of the property which comprises the 22nd District Agricultural Association lies within the overall boundaries of the Valley District. However, it is given its own separate designation on the Land Use Map and is assigned the corresponding land use policies in Section #3 below.

8. North Hills District

The majority of this district is designated for single-family residential development. The District also contains a small area designated as R2 with the same restrictions for such use as described in the South Beach District. The central portion of this district, as shown on Figure II-A, is designated for R1-10 (Low Density) with a maximum allowable density of 4.3 du/ac. Any future development within this area shall be compatible and harmonious with the existing character of this single family-residential neighborhood.

A large portion within this district is located on steep hillside areas above the San Dieguito Lagoon and its watershed. This area is designated for larger lot single family development at R1-40 (Very Low 1 du/ac). Much of the area is also within the Bluff, Slope, and Canyon Overlay Zone. Accordingly, development within this area shall be designed to minimize the disruption of topography and to preserve the open space character of these highly visible and sensitive areas. All development shall be consistent with the Bluff, Slope and Canyon and Open Space Policies of this Land Use Plan, where

applicable. Some of the area now assigned the designation of R1-40 has been acquired by public interests. The public acquisition of these areas, as shown on Figure V-A, may warrant the future reassignment of a corresponding land use designation.

That area within the district immediately adjacent to the Village Center District is designated as RM-Central (Medium Density Mixed-Central) where residential uses are allowed at a maximum density of 6.3 du/ac. This designation also allows for duplex development on parcels greater than 5,000 square feet with the receipt of a Conditional Use Permit.

The district also contains two commercially designated areas that allow for multiple-dwelling unit residential development at a maximum density of 20 du/ac, one located near Camino del Mar, south of 9th Street (Professional Commercial-PC) and one in the northern portion of the district adjacent to Jimmy Durante Boulevard (North Commercial-NC). Because of its proximity to the adjacent wetlands and flood-prone areas of the San Dieguito River/Lagoon, development in the North Commercial area shall be carefully reviewed for its consistency with the provisions of Chapters III and VI of this Land Use Plan regarding the minimizing of hazards and the preservation of sensitive lands. Much of the northern section of this district also lies within the plan area of the San Dieguito River Valley Regional Open Space Park. All development proposals shall be reviewed for their consistency with the provisions of the San Dieguito River Valley Regional Open Space Park Plan.

SECTION SIX: The City Council finds that approval of this ordinance is covered by the Program Environmental Impact Report (PEIR) document (SCH No. 2019029058) that was prepared and certified pursuant to the California Environmental Quality Act. The City Council bases this finding upon the record prepared by the City and the City's analysis of the potential environmental effects of this ordinance.

SECTION SEVEN: This Ordinance was introduced by the City Council on September 8, 2020.

SECTION EIGHT: The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION NINE: Upon adoption, the Ordinance will be submitted to the California Coastal Commission for certification as a Local Coastal Program Amendment. The Ordinance will take effect and be in force on the date that the Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

SECTION TEN: The City shall file a copy of the adopted Ordinance with the State Department of Housing and Community Development.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 21st day of September, 2020.

Ellie Haviland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. XXX, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 21st day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE DEL MAR MUNICIPAL CODE CHAPTER 30.25 AND THE CITY'S CERTIFIED LOCAL COASTAL PROGRAM CONSISTENT WITH PROGRAM 2-F REQUIRED BY THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT RELATING TO A TOTAL OF 4 EXISTING PARCELS LOCATED IN THE PROFESSIONAL COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS the Housing Element is a required component of the City's Community Plan per State law; and

WHEREAS, the City's existing certified Housing Element requires implementation of Program 2-F relating to the Professional Commercial Zone that requires the City amend its Community Plan, Del Mar Municipal Code (Zoning) Chapter 30.24, and Local Coastal Program to add residential as an allowed primary use up to a density of 20 dwelling units per acre; and

WHEREAS, 20 dwelling units per acre is the density required by the Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a small jurisdiction the size of Del Mar; and

WHEREAS, "affordable housing" refers to units that are restricted for rent to households with an annual household income no greater than 80 percent of the area median income for the San Diego County region; and

WHEREAS, the City of Del Mar does not currently have any affordable housing units within the City and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing; and

WHEREAS, the City's certified Housing Element for the 5th Cycle planning period (2013-2021) obligated the City to provide capacity for 22 affordable units for rent to low income households that factored in 12 affordable units from the regional housing needs allocation (RHNA) for the 5th Cycle and the shortfall of 10 affordable units that was a required carry over from the 4th Cycle; and

WHEREAS, the intent of Housing Element Program 2-F is to increase the City's planned housing capacity sufficiently to accommodate its RHNA and more specifically to accommodate development of affordable housing; and

WHEREAS, the State Department of Housing and Community Development (HCD) emphasized in a July 31, 2020 letter to the City that the State law requirement to create adequate sites to accommodate the City's RHNA is a fundamental component of Housing Element law and that HCD may revoke the certification status of the City's Housing Element and trigger further enforcement if the City fails timely implementation of the Program; and

WHEREAS, the State expected Housing Element Program 2-F to have been completed within 24 months of adoption of the 5th Cycle Housing Element; and

WHEREAS, if the City does not complete implementation of Program 2-F, the City will be subject to a range of enforcement penalties set forth per State housing law that could negatively impact the City by court orders, lawsuits and fines by the State, legal action by the State Attorney General, fiscal impacts to the General Fund, potential loss of local control over new housing development and risk to State grants in process and ineligibility for future State grant funding; and

WHEREAS, in June 2016 the City received a "Notice of Intent to Sue the City of Del Mar" if the Housing Element programs related to North Commercial and Professional Commercial are not implemented by the City; and

WHEREAS, if the City does not implement Program 2-F it also puts the City at risk of not being able to gain certification of the 6th Cycle Housing Element Update in process because the program is needed to create a sufficient number of housing sites to accommodate affordable housing as required per State law; and

WHEREAS, on August 11, 2020, the Planning Commission recommended certification of the PEIR and adoption of the Mitigation, Monitoring and Reporting Program, and adoption of amendments to the Del Mar Community Plan, DMMC Chapters 30.24 and 30.25, and Local Coastal Program; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020; and

WHEREAS, on September 8, 2020, the City Council adopted a Resolution certifying a Program Environmental Impact Report (PEIR SCH No. 2019029058) and adopting a Mitigation, Monitoring and Reporting Program in accordance with the California Environmental Quality Act (CEQA) that analyzes and discloses the known potential impacts associated with the land use plan and code amendments covered by this Ordinance and identifies a mitigation framework that will apply to future housing development; and

WHEREAS, on September 8, 2020, the City Council adopted Resolution 2020-xx amending the City of Del Mar Community Plan consistent with Program 2-F in the City's existing certified Housing Element that is a part of the existing Community Plan (General Plan) to amend the land use designation relating to a total of four existing parcels located in the Professional Commercial Zone; and

WHEREAS, on September 8, 2020, the City Council introduced the Ordinance; and

WHEREAS, the proposed amendments constitute a Zone Code Amendment and Local Coastal Program Amendment and following City Council action will be subject to review and unconditional certification by the Coastal Commission.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Del Mar, California, does hereby ordain as follows:

SECTION ONE: That DMMC Section 30.25.010 (PC Zone) be amended to read as follows:

30.25.010 Purpose

The PC Zone is designed to allow office and residential use within the village center in a manner that will not detract from the area's predominantly retail character. Office and professional uses should be geographically concentrated so as to minimize retail parking problems, disruption of pedestrian-oriented shops, and to soften the transition from retail to medium and low density residential at the south end of the village center.

SECTION TWO: That DMMC Section 30.25.030 (PC Zone) be amended to read as follows:

30.25.030 Allowable Uses

The following uses are allowable in the PC Zone:

- A. Offices, professional, medical, and dental.
- B. Banks and financial institutions, exclusive of drive-thru facilities.
- C. Parking lots and parking garages.
- D. Multiple dwelling unit residential up to a density of 20 dwelling units per acre.
- E. One dwelling unit as accessory to and on the same site as that of a permitted use, and conforming to the parking requirements of the R2 Zone.
- F. Short term rental of a dwelling unit.
- G. Any similar enterprise or business which conforms to the description and purpose of the PC Zone, and is not detrimental to the welfare of the community.

SECTION THREE: That DMMC Section 30.25.070 (PC Zone) be amended to read as follows:

30.25.070 Development Standards

- A. Density: Up to a maximum of 20 dwelling units per acre.
1. All residential development or conversions shall provide affordable housing pursuant to Chapter 24.21.
 2. Notwithstanding Section 24.21.030, residential development or conversions of two, three, four or five units on one lot shall set-aside one unit for rental at below market rate to a low income household or donate one off-site unit, within the City's jurisdiction, of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The option for payment of the In-Lieu Housing Mitigation Fee shall not be allowed.

[No change to subsections B. (Lot Dimensions) through C. (Construction Standards)]

SECTION FOUR: That the Chapter II Land Use Development "section B" policies in the Del Mar certified Local Coastal Program be amended to add a new Policy II-4 and amend existing Policy II-8 to read as follows:

Policy II-4: Increase the City's overall housing capacity and capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal related development.

Policy II-8: Retain a pedestrian-oriented downtown which groups housing, retail services, and commercial services with facilities for civic and community activities.

SECTION FIVE: That the Chapter II Land Use Development "section C" policies in the Del Mar certified Local Coastal Program be amended to amend the Village District policies to read as follows:

9. Village Center District

This area is designated primarily as Central Commercial (CC) and is Del Mar's principal commercial, visitor serving and professional area. It extends along both sides of Camino del Mar, beginning at 9th Street and reaching north to 15th Street. The District contains the site of the U.S. Post Office, City Hall, and City of Del Mar's branch of the County of San Diego Library designated as PF (Public Facilities) on the Land Use Map.

Multiple specific plan areas are also included in the Village District. The Specific Plan for the Del Mar Hotel, (HSP west side of Camino del Mar at 15th Street) generally limits the uses on the site to a hotel, timeshare and short term rental units and associated retail uses. The Specific Plan for the Del Mar Plaza, (PSP east side of Camino del Mar at 15th Street) generally limits the uses on site to restaurant and retail uses with a small percentage allowed for office use. The 941 Camino del Mar Specific Plan (941SP east side of Camino del Mar at 10th Street) generally limits the uses to a combination of restaurant, retail, short term rental, and residential uses. Each of the Specific Plan areas

devotes a portion of the property to public and quasi-public use. Each of these specific plans was voter approved and requires a recorded Development Agreement between the City and the developer/property owner. Where a particular conflict arises between the provisions of a valid and recorded Development Agreement and any policies of this Land Use Plan subsequently adopted, the former shall continue to be binding and shall supersede the subsequently adopted policies of this Land Use Plan. Subsequent development agreements or amendments to existing Development Agreements shall be consistent with the Land Use Plan in effect at the time.

The CC (Central Commercial) designation encompasses the majority of land within the Village District. The CC designation allows for a variety of commercial uses aimed at serving the needs of both residents and visitors to the area. Due to the City's popularity as a visitor-destination point, the majority of the property in the CC Zone has been developed with uses that serve both residents and visitors.

In order to facilitate the demand for more goods and services, the following policies have been developed to better utilize the commercially designated land in the Village Center District.

SECTION SIX: The City Council finds that approval of this ordinance is covered by the Program Environmental Impact Report (PEIR) document (SCH No. 2019029058) that was prepared and certified pursuant to the California Environmental Quality Act. The City Council bases this finding upon the record prepared by the City and the City's analysis of the potential environmental effects of this ordinance.

SECTION SEVEN: This Ordinance was introduced by the City Council on September 8, 2020.

SECTION EIGHT: The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION NINE: Upon adoption, the Ordinance will be submitted to the California Coastal Commission for certification as a Local Coastal Program Amendment. The Ordinance will take effect and be in force on the date that the Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

SECTION TEN: The City shall file a copy of the adopted Ordinance with the State Department of Housing and Community Development.

Ordinance No. XXX

Page 6 of 7

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 21st day of September, 2020.

Ellie Haviland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. XXX, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 21st day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

NC/PC - Draft General Plan Amendment

COMMUNITY DEVELOPMENT SECTION: DESCRIPTION OF LAND USE CATEGORIES**COMMERCIAL**Central Commercial

This land use category is intended to allow activities that preserve and enhance the Village Center District of Del Mar. Permitted uses would include pedestrian oriented retail activities, commercial services and a limited number of offices. The area along Camino del Mar south of 9th Street should be devoted to office/professional usage.

Residential Commercial

This land use category is intended to be used as a transition between commercial and residential activities. Permitted uses include a mixture of residential and retail office activities conforming to adjacent residential floor area standards, and with the percentage of commercial floor area not to exceed 30% to 50% of the total floor area. Floor area to lot ratios for such development shall be 30% along Stratford Court.

Visitor Commercial

This land use classification is intended to allow activities such as hotels and motels which enable visitors to enjoy the coastal environment. Development should be of a low intensity in keeping with the village character of the community while preserving coastal vistas. Development criteria shall include controls to preserve low to medium density, and informal predominately low rise type of development with a two story limit. The floor area ratio for each lot shall not exceed that allowed in the medium density residential category.

Beach Commercial

This land use classification is limited to areas having high scenic value and/or fragile environmental characteristics, and is intended to allow commercial activities that are in harmony with, rather than in domination of, the character of the coastal environment. Development should result in maximum open space, public access and usage (consistent with commercial uses), extremely low building coverage (approximately 10 to 20%), preferably be limited to single story structures, preserve scenic vistas from adjacent public rights-of-way, and not encroach on beach bluffs. All uses of the Central Commercial category would be conditionally allowed. Uses such as beach oriented commercial activities, bicycle rentals, tennis courts, and a limited number of restaurants should be encouraged. Housing such as condominiums, apartments and hotels and motels are not to be permitted.

Professional Commercial

This land use category is intended to allow offices and professional buildings residential (0-20 dwelling units per net acre) to be located in the southern end of the commercial district, as an orderly transition between the retail and commercial service uses in the village center and the medium and low density residential land use areas located to the south.

North Commercial

This land use classification is intended to allow commercial and professional activities that provide a service to the community, including a range of commercial and light industrial uses, and residential (0-20 dwelling units per net acre). Development should be of low intensity and profile, offering substantial open space.

Chapter 30.24 - NORTH COMMERCIAL ZONE (NC)

30.24.010 - Purpose.

The NC Zone serves as a northerly gateway to the community south of the San Dieguito River and Lagoon. The NC Zone is designed to allow commercial activities that provide a service to the community, including a range of commercial and light industrial uses, and residential where compatible with adjacent land uses. Development in the NC Zone shall be of low intensity and profile, offering a lively open air commercial environment with substantial open space.

30.24.020 - Boundaries. [No change]

30.24.030 - Allowable Uses.

The following uses are allowable in the NC Zone:

A. Commercial uses provided that:

1. the The use does not involve the sale of alcohol for on-site consumption between the hours of 11:00 p.m. and 6:00 a.m. and further provided that the use does not involve the provision of goods, food or beverages, or services in a drive-in or drive-thru manner.

A. 2. The retailing of goods, foods and beverages, the dispensing of services and light manufacturing from the following:

[No change to listed uses]

B. 3. Outdoor display areas located on the exterior of a structure housing a retail sales operation, where goods or commodities otherwise available for sale in the associated retail sales operation are displayed but not sold; provided all of the following requirements are met:

4. a. The outdoor display area is located entirely on the same lot as the associated retail sales operation;

2. b. The area devoted to outdoor display does not encroach upon required parking or access areas;

3. c. The outdoor display area is contiguous and not more than four feet in width measured from a point perpendicular to the exterior wall of the adjacent structure housing the associated retail sale operation and not more than ten feet in length measured along the exterior wall of the adjacent structure housing the associated retail sale operation; and

4. d. The display of goods or commodities and placement of display structures is limited to the hours of operation of the associated retail sales operation.

C. B. Any principal use permitted in the CC Zone (excludes those uses which, under CC Zone provisions, would require a conditional use permit).

C. Multiple dwelling unit residential up to a density of 20 dwelling units per acre.

D. Emergency shelters pursuant to Section 30.24.035.

D. E. One dwelling unit as accessory to and on the same site as that of a permitted use, and conforming to the parking requirements of the R2 Zone.

F. Short term rental of a dwelling unit.

E. G. Any similar enterprise or business which conforms to the description and purpose of the NC Zone, and is not detrimental to the welfare of the community.

30.24.035 - Standards for Emergency Shelters. [No change]

30.24.040 - Accessory Uses. [No change]

30.24.045 - Conditionally Allowed Uses: Conditional Use Permit. [No change]

30.24.050 - Parking Requirement. [No change]

30.24.070 - Development Standards.

In the NC Zone, the following development standards shall apply:

A. *Reserved.* Density: Up to a maximum of 20 dwelling units per acre

1. All residential development or conversions shall provide affordable housing pursuant to Chapter 24.21
2. Notwithstanding Section 24.21.030, residential development or conversions of two, three, four or five units on one lot shall set-aside one unit for rental at below market rate to a low income household or donate one off-site unit, within the City's jurisdiction, of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The option for payment of the In-Lieu Housing Mitigation Fee shall not be allowed.

B. *Lot Dimensions.*

1. Minimum lot size: 6,000 square feet.
2. Minimum street frontage: 35 feet.
3. Minimum lot width: 50 feet.
4. Minimum lot depth: 90 feet.

C. *Construction Standards.*

1. Setbacks: None, except that no development shall be located closer than 25 feet from a floodway zone, and that a minimum ten-foot wide landscaped setback shall be required on any NC zoned property along any common boundary or residentially zoned property.
2. Height: 26 feet.
3. Floor area ratio: 30 percent.
4. Maximum lot coverage: 40 percent.

Chapter 30.25 - PROFESSIONAL COMMERCIAL ZONE (PC)

30.25.010 - Purpose.

The PC Zone is designed to allow office and residential use within the village center in a manner that will not detract from the area's predominantly retail character. Office and professional uses should be geographically concentrated so as to minimize retail parking problems, disruption of pedestrian-oriented shops, and to soften the transition from retail to medium and low density residential at the south end of the village center.

30.25.020 - Boundaries. [No change]

30.25.030 - Allowable Uses.

The following uses are allowable in the PC Zone:

- A. Offices, professional, medical, and dental.
- B. Banks and financial institutions, exclusive of drive-thru facilities.
- C. Parking lots and parking garages.
- D. Multiple dwelling unit residential up to a density of 20 dwelling units per acre.
- D. E. One dwelling unit as accessory to and on the same site as that of a permitted use, and conforming to the parking requirements of the R2 Zone.
- F. Short term rental of a dwelling unit.
- E. G. Any similar enterprise or business which conforms to the description and purpose of the PC Zone, and is not detrimental to the welfare of the community.

30.25.040 - Accessory Uses. [No change]

30.25.050 - Parking Requirements. [No change]

30.25.070 - Development Standards.

- A. *Reserved.* Density: Up to a maximum of 20 dwelling units per acre

- 1 All residential development or conversions shall provide affordable housing pursuant to Chapter 24.21
 - 2 Notwithstanding Section 24.21.030, residential development or conversions of two, three, four or five units on one lot shall set-aside one unit for rental at below market rate to a low income household or donate one off-site unit, within the City's jurisdiction, of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The option for payment of the In-Lieu Housing Mitigation Fee shall not be allowed.

- B. *Lot Dimensions.*

- 1 Minimum lot size: 6,000 square feet.
 - 2 Minimum street frontage: 35 feet.
 - 3 Minimum lot width: 50 feet.
 - 4 Minimum lot depth: 90 feet.

- C. *Construction Standards.*

Draft Zoning Code Amendment/Local Coastal Program Amendment

1. Setbacks: None, except that a minimum ten-foot wide landscape setback shall be required on PC zoned property along any common boundary of residentially zoned property.
2. Height: 26 feet, except all structures fronting on the west side of Camino del Mar shall not exceed fourteen feet in height above the curb level adjacent to the site on Camino del Mar.
3. Floor area ratio: 60 percent.
4. Maximum lot coverage: 75 percent.

Local Coastal Program Amendment

Amendments to certified LCP Land Use Plan (LUP)

The existing LUP land use development goals include the following:

Goal II-A: Preserve and enhance Del Mar's small town atmosphere with its harmonious blending of architecture, landscape and natural landforms in proximity to a beautiful shoreline.

Goal II-B: Focus major retail and office activity into an economically viable, pedestrian-oriented area that serves the needs of both residents and visitors.

Goal II-C: Preserve the economic integrity of the community.

Amends Chapter II Land Use Development “section B” policies as follows:

Adds a new Policy II-4: Increase the City’s overall housing capacity and capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal related development.

Amends Policy II-8: Retain a pedestrian-oriented downtown which groups housing, retail services, and commercial services with facilities for civic and community activities.

Amends Chapter II Land Use Development “section C” policies as follows:

Amends Valley District as follows:

2. Valley District.

This district is also located in the northern section of the City and includes the San Dieguito River and Lagoon area, the majority of which is designated as Floodway (FW). It also contains an area designated as North Commercial (NC). Any future use of this district shall be consistent with this Land Use Plan. When reviewing future development proposals, special attention shall be given to the preservation of sensitive wetland habitat and its immediate uplands, and protection against and avoidance of seismic and flooding hazards.

Most of the property which comprises the 22nd District Agricultural Association lies within the overall boundaries of the Valley District. However, it is given its own separate designation on the Land Use Map and is assigned the corresponding land use policies in Section #3 below.

Amends North Hills District as follows:

8. North Hills District.

The majority of this district is designated for single-family residential development. The District also contains a small area designated as R2 with the same restrictions for such use as described in the South Beach District. The central portion of this district, as shown on Figure II-A, is designated for R1-10 (Low Density) with a maximum allowable density of 4.3 du/ac. Any future development within this area shall be compatible and harmonious with the existing character of this single family-residential neighborhood.

A large portion within this district is located on steep hillside areas above the San Dieguito Lagoon and its watershed. This area is designated for larger lot single family development at R1-40 (Very Low 1 du/ac). Much of the area is also within the Bluff, Slope, and Canyon Overlay Zone. Accordingly, development within this area shall be designed to minimize the disruption of topography and to preserve the open space character of these highly visible and sensitive areas. All development shall be consistent with the Bluff, Slope and Canyon and Open Space Policies of this Land Use Plan, where applicable. Some of the area now assigned the designation of R1-40 has been acquired by public interests. The public acquisition of these areas, as shown on Figure V-A, may warrant the future reassignment of a corresponding land use designation.

That area within the district immediately adjacent to the Village Center District is designated as RM-Central (Medium Density Mixed-Central) where residential uses are allowed at a maximum density of 6.3 du/ac. This designation also allows for duplex development on parcels greater than 5,000 square feet with the receipt of a Conditional Use Permit.

The district also contains two commercially designated areas that allow for multiple-dwelling unit residential development at a maximum density of 20 du/ac, one located near Camino del Mar, south of 9th Street (Professional Commercial-PC) and one in the northern portion of the district adjacent to Jimmy Durante Boulevard (North Commercial-NC). Because of its proximity to the adjacent wetlands and flood-prone areas of the San Dieguito River/Lagoon, development in the North Commercial area shall be carefully reviewed for its consistency with the provisions of Chapters III and VI of this Land Use Plan regarding the minimizing of hazards and the preservation of sensitive lands. Much of the northern section of this district also lies within the plan area of the San Dieguito River Valley Regional Open Space Park. All development proposals shall be reviewed for their consistency with the provisions of the San Dieguito River Valley Regional Open Space Park Plan.

Amends Village Center District as follows:

9. Village Center District.

This area is designated primarily as Central Commercial (CC) and is Del Mar's principal commercial, visitor serving and professional area. It extends along both sides of Camino del Mar, beginning at 9th Street and reaching north to 15th Street. The District contains the site of the U.S. Post Office, City Hall, and City of Del Mar's

branch of the County of San Diego Library designated as PF (Public Facilities) on the Land Use Map.

Two Multiple specific plan areas are also included in the Village District, ~~and are located on the west and east sides of Camino del Mar in the vicinity of 15th Street. The Specific Plan for the Del Mar Hotel, (HSP west side of Camino del Mar at 15th Street) generally limits the uses on the site to a hotel, timeshare and short term rental units and associated retail uses. The Specific Plan for the Del Mar Plaza, (PSP east side of Camino del Mar at 15th Street) generally limits the uses on site to restaurant and retail uses with a small percentage allowed for office use. The 941 Camino del Mar Specific Plan (941SP east side of Camino del Mar at 10th Street) generally limits the uses to a combination of restaurant, retail, short term rental, and residential uses.~~ Each of the Specific Plan areas devotes a portion of the property to public and quasi-public use. Each of these specific plans was voter approved and ~~is accompanied by requires~~ a recorded Development Agreement between the City and the developer/property owner. Where a particular conflict arises between the provisions of a valid and recorded Development Agreement and ~~the any~~ policies of this Land Use Plan subsequently adopted, the former shall continue to be binding and shall supersede the subsequently adopted policies of this Land Use Plan. Subsequent development agreements or amendments to existing Development Agreements shall be consistent with ~~this~~ the Land Use Plan in effect at the time.

The CC (Central Commercial) designation encompasses the majority of land within the Village District. The CC designation allows for a variety of commercial uses aimed at serving the needs of both residents and visitors to the area. Due to the City's popularity as a visitor-destination point, the majority of the property in the CC Zone has been developed with uses that serve both residents and visitors.

~~The remaining areas of the district are designated as R2 (High Density) with a maximum allowable density of 12.5 du/ae. The site of the existing City Hall offices, the City of Del Mar's branch of the County of San Diego Library and the Del Mar Communications Center is designated as Public Facilities (PF).~~

In order to facilitate the demand for more goods and services, the following policies have been developed to better utilize the commercially designated land in the Village Center District.

Amendments to certified LCP Implementation Program

See zoning code amendments to the North Commercial and Professional Commercial zones.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500

Sacramento, CA 95833

(916) 263-2911 / FAX (916) 263-7453

www.hcd.ca.gov

July 31, 2020

Amanda Lee, Principal Planner
 City of Del Mar
 1050 Camino del Mar
 Del Mar, CA 92014-2698

Dear Amanda Lee:

**RE: The City of Del Mar's 6th Cycle Housing Element Update
 Letter of Technical Assistance**

Thank you for the opportunity to respond to questions raised by the City of Del Mar (City) relating to the preparation of the 6th cycle housing element. The purpose of this letter is to clarify state requirements related to the housing element update to assist the City in its decision-making.¹

Housing Element Law (Article 10.6 of Gov. Code) requires the demonstration of adequate sites to accommodate the regional housing need allocation (RHNA). In addition, the related No Net Loss Law (Gov. Code, § 65863) requires the maintenance of adequate sites at all times throughout the planning period. When sufficient suitable sites with appropriate densities are not identified to accommodate the RHNA, the housing element must include a program to make adequate sites available early in the planning period, generally three years for most localities. Adequate sites to accommodate the RHNA are a fundamental component of Housing Element Law and other housing laws noted below.

Unaccommodated Need: Government Code section 65584.09 (AB 1233, statutes of 2005) requires a locality that failed to identify or make adequate sites available in the prior planning period to zone or rezone adequate sites to address the unaccommodated housing need within the first year (12 months) of the new planning period. The requirement to address the unaccommodated housing need for the previous planning period is in addition to the requirement to identify sites to accommodate the RHNA for the new planning period. A locality may not count capacity on the same sites for both planning periods for the purposes of Government Code section 65584.09.

In its 5th cycle housing element, Del Mar identified a shortfall of 12 units to accommodate

¹ This letter is not intended as comments on environmental documents as part of the California Environmental Quality Act or HCD findings pursuant to Government Code section 65585.

the need of lower-income households in the 5th cycle and an unaccommodated need of 10 units from the 4th cycle for a total of 22 units. To address this shortfall, the City's 5th cycle housing element includes a program to rezone 2.3 acres at minimum densities of 20 units per acre. As required by statute, the program identifies two sites that can permit the development of at least 16 units per site to address the total need of 22 units. Failure to implement this program will carryover the shortfall of adequate sites in addition to the 6th cycle RHNA, and accordingly, the City must rezone sites within the first year of the planning period. This analysis may utilize units constructed by income group in the 5th cycle. If the City fails timely implementation of the program, the California Department of Housing and Community Development (HCD) may find the City's housing element out of compliance with Housing Element Law until this rezoning is complete. If the rezone program is implemented on time, HCD may find the initial housing element in compliance; however, HCD may revoke compliance if program timeframes are not met, potentially triggering further enforcement pursuant to Government Code section 65585.

The City was required to accommodate the unaccommodated 4th cycle need within the first year of the planning period and was required to rezone for the 5th cycle shortfall, generally, within 3 years. The planning period began in 2013. Since these dates have lapsed, HCD may revoke housing element compliance. In addition, requirements pursuant to Government Code section 65583, subdivision (g), are triggered limiting the City's discretion to disapprove a housing development project. However, given the City's progress in implementation and schedule for upzoning in September 2020, HCD will continue to monitor the City's timely implementation.

NC and PC Zoned Sites: The housing element contains Program #4 (2-E, 2-F, and 2-G) to demonstrate adequate sites, specifically upzoning in the NC and PC zones. This action to increase allowable densities in the NC and PC zones was not necessarily required to accommodate the shortfall and unaccommodated need of 22 units for lower-income households. However, the program was added to facilitate a variety of housing types for all income levels which is essential in Del Mar given the lack of zoning allowing higher density. The 6th cycle housing element must evaluate the City's progress in implementation, and the City will be required to take requisite action. These programs were important to maintaining adequate sites (see No Net Loss Law discussion below) throughout the planning period. Further, with an allowable density of 20 units per acre (default density), sites within these zones could potentially be utilized to accommodate housing needs of lower-income households in the 6th cycle. To date, the City has not taken appropriate actions to implement these programs, severely impacting the availability of sites and variety of housing types to accommodate the housing needs of lower-income households. HCD encourages the City to implement these programs in the 5th cycle planning period, prior to 6th Cycle planning period.

No Net Loss Law: Government Code section 65863 requires adequate sites to be maintained at all times throughout the planning period for all income groups. Any action effecting the number of units identified on a site or the assumed affordability of a site triggers these statutory requirements. Unless specified findings are made, a locality may

be required to rezone comparable sites within 180 days. HCD may also enforce these requirements pursuant to Government Code section 65585, including referral to the Attorney General. If a locality rezones a site for lower-income households and subsequent action effects the number of units or affordability, the provisions of No Net Loss Law would be triggered requiring the identification of new adequate sites. To manage this, a locality may institute various approaches such as not assuming 100 percent of a site to accommodate lower-income households and/or identifying sites in excess of the regional housing need, particularly for lower-income households.

HCD appreciates the opportunity to provide information and assist the City in its decision-making. HCD wishes the City success in the upcoming 6th cycle update of the housing element and welcomes the opportunity to assist the City in meeting statutory requirements. Please feel free to contact Jose Ayala at Jose.Ayala@hcd.ca.gov for any additional information and assistance.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is fluid and cursive, with "Shannan" on the top line and "West" on the bottom line.

Shannan West
Land Use & Planning Unit Chief

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BLC File(s): 1196.11

27 June 2016

Scott Huth, City Manager
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014

via E-Mail to shuth@delmar.ca.us

Re: Notice of Intent to Sue for Failure to Implement Certified Housing Element

Dear Mr. Huth:

This firm represents the interests of the Affordable Housing Coalition of San Diego County (AHC), a non-profit organization that advocates for an increased supply of affordable housing and related matters. Please accept this correspondence as AHC's formal notification to the City of Del Mar of its non-compliance with its certified Community Plan Housing Element 2013-2021 ("Housing Element"), and formal demand that Del Mar immediately initiate steps to rezone its existing North Commercial Zone to facilitate construction of new housing as identified in the Final 2011 Regional Housing Needs Assessment ("RHNA," SANDAG 2011). Absent immediate action by Del Mar in furtherance of its housing obligations, AHC intends to file suit pursuant to California Government Code Section 65587(d)(1), among others.

I. Del Mar's Commitment to Rezone of Commercial Property to Accommodate Affordable Housing

Del Mar has among the highest median home prices and highest residential rental rates in the entire County of San Diego. Significant constraints exist to make production of new housing difficult, particularly land costs and land availability. "The primary constraint to the subdivision of land into ten or more lots is the built-out nature of the community's single-family neighborhoods. As a result, there is virtually no land remaining for large subdivisions." See Housing Element, p. 47. The hurdles to construction of new housing exacerbate Del Mar's inability and unwillingness to meet its affordable housing obligations.

Del Mar's share of regional future housing needs is 61 new units for the period of January 1, 2010, to December 31, 2020,¹ and must meet the following affordability requirements: 4 extremely low, 3 very low, 15 moderate, and 34 above moderate. The Housing Element's "Housing Programs" serve to "define the specific actions the City will take to achieve the housing goals identified." See

¹ Del Mar's current Housing Element obligations include a penalty of 15 lower- and moderate-income units for failure to meet the goals of its uncertified 2005-2012 Housing Element.



Housing Element, p. 78. Objectives of the Housing Programs include the provision of adequate sites to achieve a variety and diversity of housing types, development of new affordable housing opportunities, and removal of governmental constraints to the maintenance, improvement, and development of affordable housing. The Housing Programs include a schedule for completion of review of their elements, “including dates by which ***the City is committed to adopt and implement the programs.***” See Housing Element, p. 79 (emphasis added).

In response to the lack of land suitable for new low- and very-low-income units, the Housing Element commits to rezone land in Del Mar’s North Commercial (NC) Zone. Regarding assessor’s parcel nos. 299-100-47 and -48, the Housing Element promises:

To accommodate the City’s RHNA for lower income units..., within 12 months of adoption of the 2012-2021 Cycle Housing Element, the City will pursue a zone code amendment and associated actions to assign a new land use designation for these two properties allowing residential development at a density of 20 du/ac or greater.

See Housing Element, p.69. Absent rezoning, the City’s sites inventory under existing land use policies could accommodate only the moderate and above-moderate income RHNA units, with a remaining RHNA obligation of 22 lower income units. See Housing Element, pp. 71-72.²

However, rezoning the two parcels noted above within one year will not be enough. As to an additional 13 parcels totaling 12.94 acres in the North Commercial Zone, “[w]ithin 24 months of adoption of the 2012-2021 Cycle Housing Element, the City will pursue a zone code amendment to the NC Zone’s development standards to increase the allowable residential density to 20 du/ac.” See Housing Element, p.70. Further, “[a]dditional housing opportunities will also be provided via modification of the development standards of the Professional Commercial and North Commercial Zones to allow residential development at a density of 20 du/ac development and via consideration of modifying the provisions of the Public Facilities (PF) Zone to allow residential uses.” See Housing Element, p. 71.

These commitments are reflected in the Housing Element Programs Objectives:

Objective #2 – Provide adequate sites to achieve a variety of housing types:

Programs to Implement Object #2, 4(A):

A. Land Use Re-designations and Modification of Zoning Standards to Accommodate Higher Density Residential Development.

1. Within 12 months of adoption of the Housing Element, the City will apply a new land use designation to two vacant parcels roughly 2.3 acres in

² See also GOV’T CODE § 65931.1 (“Least Cost Zoning” law requiring communities to at all times zone sufficient vacant site to meet their entire RHNA for each income category).



size and currently zoned as North Commercial Zone (APNs 299-100-47, 48) to allow residential development by right, at a density of 20-25 du/ac.

2. In addition to the land use re-designation noted immediately above, the City will also, within 24 months of adoption of the Housing Element, pursue amendments to the City's North Commercial (NC) and Professional Commercial (PC) Zones expanding the list of uses allowed by right in those zones to include residential uses at a density of 20 du/ac for projects that include an affordable housing component.

3. Within two years of the Housing Element adoption, the City will establish appropriate development standards to facilitate high-density residential development in the NC and PC zones, allowing potential development to reach 20 units per acre as outlined above.

See Housing Element, p. 86.³

Despite the City's promises, and its commitments to discreet timelines for rezoning, the City has failed to take necessary steps to facilitate the construction of even one affordable housing unit.

³ See also Eight-Year Objectives:

2-D. The City will hold workshops and prepare materials to apprise the public and both for-profit and non-profit developers of the opportunities for residential and mixed-use development throughout the City's various zoning districts.

2-E. Within 24 months of City Council adoption of the Housing Element, the City will amend the provisions of the North Commercial (NC) zone to allow residential development at a density of 20 du/ac for projects that include an affordable housing component.

2-G. Pursuant to Government Code Sections 65583.2(h) and (i), within 12 month of City Council adoption of the 2013-2021 Housing Element, the City will assign a new land use designation to two adjacent vacant parcels, roughly 2.3 acres in size in the NC Zone, to allow, by right, residential development of the properties at a density of 20-25 du/ac with such density allowance to include a requirement for a percentage of the residential units to be available, long-term, at affordable rates, either through dedication to a non-profit housing advocacy organization or through deed restrictions for no less than the minimum duration required under state housing law applicable to affordable dwelling units.



II. Del Mar is Liable for Failing to Implement its Certified Housing Element

AHC intends to bring suit to require the City to rezone properties as mandated in the Housing Element. Government Code section 65587(d)(1) states (with emphasis): “If a court finds that a city,... failed to complete the rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583, as that deadline may be modified by the extension provided for in subdivision (f) of that section, the court shall issue an order or judgment, after considering the equities of the circumstances presented by all parties, ***compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. . .”***

Section 65583(c)(1)(A) referenced above mandates required rezoning to occur within three years of certification of the Housing Element. Section 65583(f) provides for a one-year deadline extension to complete the Housing Element required rezoning if the local government has completed some rezoning at densities sufficient to accommodate at least 75 percent of the units for low- and very low income households. Section 65587(d)(2) allows any interested person to sue Del Mar for failure to meet its proscribed rezone deadlines, and Del Mar shall bear the burden of proof in such action.

Put simply, the City has failed to implement, within 12 months of the Housing Element’s certification, the rezones for the two parcels corresponding to APNs 299-100-47 and -48; and has not, within 24 months, amended the City’s North Commercial (NC) and Professional Commercial (PC) Zones to expand the list of uses allowed by right in those zones to include residential uses at a density of 20 du/ac for projects that include an affordable-housing component.

Finally, Del Mar has failed to timely file multiple years of Annual Reports to the state’s Department of Housing and Community Development (HCD), as required by Government Code section 65400, and has failed to consider such reports at annual public hearings before the city council. Del Mar has not substantially complied with HCD’s 2010 annual report rules and requirements, and AHC intends to bring suit to compel future compliance.

III. Conclusion

The truth is, Del Mar has done very little, if anything, to comply with its Housing Element. It certainly has not done enough to obviate the need for injunctive relief afforded by Government Code section 65587(d)(1). Again, please consider this AHC’s formal demand that Del Mar immediately initiate steps to implement the provisions of its Community Plan Housing Element detailed above, and notice of AHC’s intent to file suit for failure to do so within the timeframes required by law.

Sincerely,

BRIGGS LAW CORPORATION

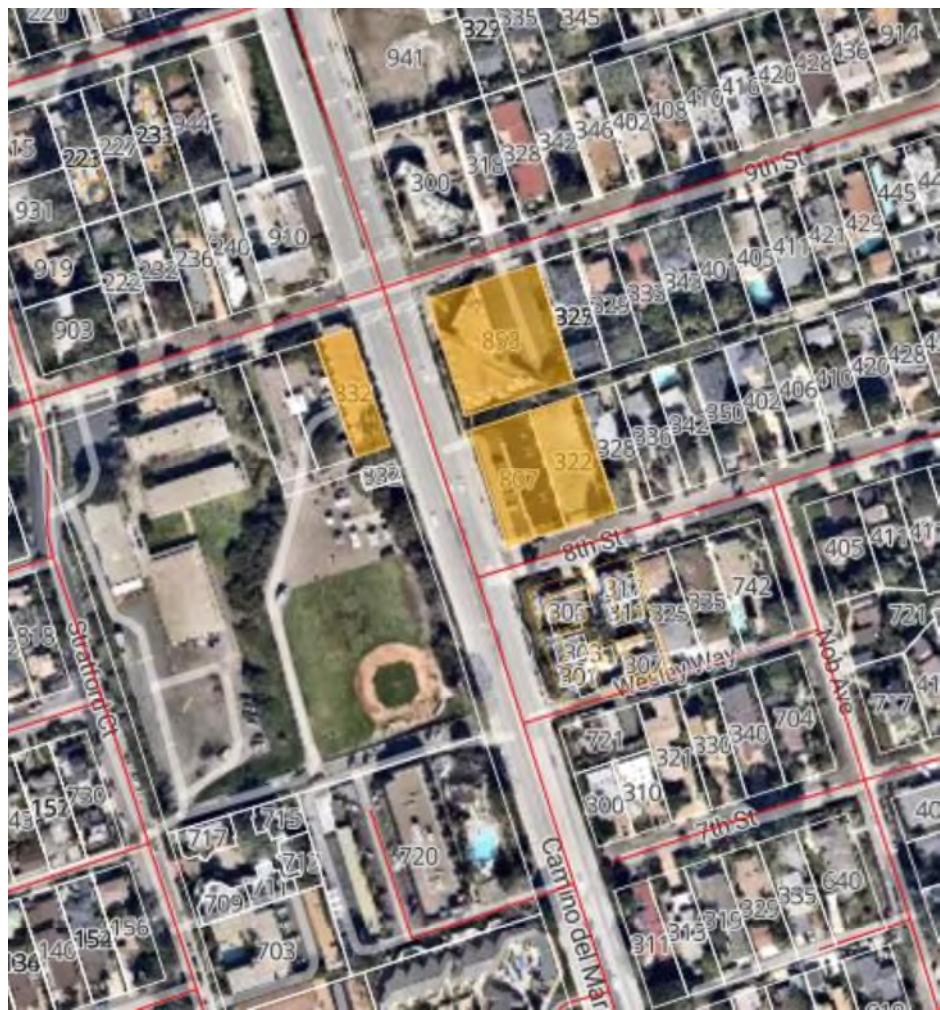

Cory J. Briggs



North Commercial Zone (NC)



Professional Commercial Zone (PC)



Environmental Analysis Summary:

The environmental analysis was done in accordance with the California Environmental Quality Act (CEQA) at a program level, which is different than a project-level analysis. There are no proposed development applications, project level details, or development plans associated with this program. A program level analysis is appropriate for a plan or program that will apply to future development where those future individual activities will occur under the same regulatory process (CEQA Guidelines Section 15168). Therefore, a Program Environmental Impact Report (PEIR) was prepared.

The PEIR analyzes information that was known and available at the time of preparation, discloses potential impacts of the proposed amendments, and identifies a mitigation framework that will apply to future housing development. Future housing development will require additional environmental analysis at the project level, unless the proposed project is sufficiently covered within the scope of the PEIR. Most development proposals will require additional project-level analysis and will be subject to the PEIR mitigation, monitoring, and reporting program (MMRP) measures as applicable to reduce the potential impacts to "Less than Significant". The City Council is asked to certify the PEIR and adopt the MMRP.

The PEIR identified that the following five issue areas have potentially significant impacts; and identified mitigation, monitoring, and reporting program (MMRP) measures that will be required of future development to reduce the potential impacts to Less than Significant as summarized below:

Aesthetics (PEIR §4.2) – The City's existing discretionary permit processes and regulations require that any proposed new housing development obtain a Discretionary Design Review Permit in accordance with DMMC Chapter 23.08, which requires compliance with quantifiable standards and criteria to protect scenic views, protect visual character and scenic quality, and minimize and control light and glare will apply to applications for proposed new development. The required permit process and regulations will ensure consistency with the policies in the Community Plan and development regulations required by the applicable zone.

Biological Resources (PEIR §4.9) – The Professional Commercial zone is built-out and surrounded by existing development. There are no biological resources in the area. The PEIR identifies and discloses known information relating to biological resources within the North Commercial Zone. Any proposed new development on sites with biological resources will be subject to discretionary review and will be required to conduct site specific general biological resource surveys to identify the presence of any sensitive biological resources including sensitive plant or wildlife species or potential jurisdictional waters, including wetland delineation reports and required State/Federal mitigation for wetland impacts where applicable. All development will be required to comply with timing limits to avoid bird breeding season or conduct pre-construction nesting surveys by a qualified biologist. The two NCTD parcels were explicitly identified as having biological resources present.

Cultural Resources (PEIR §4.3) – Any future development on a site with the potential for cultural resources will be required to have a qualified archaeological monitor and a Native American monitor present during ground-disturbing activities to evaluate the presence of potential archaeological resources and human remains; and must comply with data recovery program protocol for discovery during ground-disturbing activities. NCTD parcel 299-071-02 was identified as having potential to contain archaeological resources.

Geology and Soils and Paleontological Resources (PEIR §4.10) – Any future development would be required to retain a qualified paleontologist and provide on-site monitoring during any ground disturbing activities to evaluate the presence of fossil remains; and must comply with data recovery program protocol.

Noise (PEIR §4.7) – *MMRP for Future Development Projects:* Any future development will be required to comply with the City's Noise Regulations. More specifically, prior to the issuance of building permits, a noise analysis would be required for any proposed housing development on either of two properties (2002 Jimmy Durante Blvd, and 2010 Jimmy Durante Blvd.) to identify what measures will be incorporated to keep noise within the 65 CNEL limit.

Concerns about other issue categories were also received. However, they related to project-level details that are currently not known and that would be too speculative to address. See the response to comments and Errata sheet in the Final PEIR; and the additional clarifying information below in support of the PEIR findings and conclusions.

Transportation/Traffic (PEIR §4.4) – The majority of concerns are questioning changes in the environment related to potential traffic impacts due to a perceived increase in the number of trips on local roads. However, the proposed programs represent an overall decrease in trips. The City disclosed data supporting this analysis and conclusion in the Final PEIR in various formats that included: 1) a like-to-like comparison of average daily trips (ADT) data for the existing zoning, proposed zoning, and existing on-the-ground development; 2) actual traffic counts taken by the City's traffic engineer in 2018-2019 for existing street segment volumes for comparison; 3) actual traffic counts from other traffic studies in the area in 2017 for summer weekend ADT volumes for roadways in the immediate vicinity for comparison; and 4) a Vehicle Miles of Travel analysis consistent with the change in CEQA law (December 2018), State guidance (Governor's Office of Planning and Research), and local CEQA Guidelines adopted June 1, 2020 with guidance specific to VMT analysis, screening criteria, and significance thresholds. The approach taken by the City is consistent with what CEQA requires, is more conservative than what the opposition requested, and provides greater environmental protection as further described below.

Traffic measures focusing on level of service and intersection delay (i.e., increased traffic) are no longer considered in determining whether a project would have an environmental impact. State CEQA Guidelines Section 15064.3 (Determining the Significance of Transportation Impacts) updated the metric for measuring transportation impacts.

Instead, CEQA review must focus on the environmental impacts of traffic (including noise, air pollution, and safety concerns) by considering how far vehicles will travel in a defined geographic area compared to the average for that project type.

A traffic analysis was initially prepared for the PEIR prior to City Council adoption of new local CEQA Guidelines on June 1, 2020. Regardless, the conclusion of less than significant is still applicable to Transportation/Traffic. Based on State guidance and the City's local CEQA Guidelines, the proposed Project is still presumed to cause a less than significant transportation-related impact because it involves "amendments to a Land Use Plan or Zoning Ordinance that provide for mixed use zoning that allows up to 20 dwelling units per acre" and there is no evidence that indicates the Project would generate a potentially significant increase in vehicle miles traveled.

Furthermore, the traffic study and PEIR analysis show that any proportional reduction of allowable commercial/retail uses to accommodate residential development would result in less traffic than the buildout of commercial uses under the existing zoning. As mentioned above, the PEIR disclosed data on a comparison of ADT as well as actual traffic counts on roadways in the area. Therefore, the PEIR conclusion that Project impacts to "Transportation/Traffic" would be less than significant and that no mitigation is required is still applicable as reflected on the PEIR Errata sheet.

Hazards and Emergency Response Times (PEIR (PEIR §4.8 and §6.4) - Associated emergency response times was also a concern expressed. However, emergency responses are expected to be the same as existing buildout conditions or to improve due to fewer average daily trips under the proposed amendments. The Final PEIR Section 6.4 concludes the following:

The program would not result in changes in circulation or access that would interfere with or impair emergency response associated with potential hazards such as coastal storm/erosion, wildfire, landslide, earthquake, and tsunami and planned emergency responses to such hazards, as no development is proposed as part of the program. Future development would be required to comply with local regulations associated with adequate ingress/egress, fire protection, and emergency response. Therefore, through regulatory compliance, impacts associated with impairment or interference with an emergency response or evacuation plan would be less than significant.

Hazards and Hydrology and Water Quality (PEIR §4.8 and §6.5) – The relationship between the proposed amendments and the City's Sea Level Rise Adaptation Plan was an issue that was raised in public comments to the Planning Commission on August 11, 2020 during the recommendation hearing. The Adaptation Plan was incorporated by reference into the Del Mar Community Plan Safety Element in March 2019. The areas that would be effected by projected sea level rise are coterminous with the floodprone areas mapped by the Federal Emergency Management Agency (FEMA). The City's Community Plan and LCP contain policies related to the mapped floodplain areas. The applicable policies, including the Sea Level Rise Adaptation Plan, are implemented via the City's Floodway Zone (DMMC Chapter 30.50) and Floodplain Overlay Zone (DMMC Chapter 30.56). Some of the properties within the North Commercial Zone are located

within the mapped floodplain. Any future development would be subject to the applicable regulations in the Floodway Zone and Floodplain Overlay Zone. There is no conflict between the City's adopted Sea Level Rise Adaptation Plan and the proposed housing-related amendments to the Community Plan, Zoning Code, and Local Coastal Program. Any future site-specific development would be subject to the City's existing requirements for discretionary permit approval and would be required to comply with the allowable uses and applicable development standards of the zone.

Land Use (PEIR §4.1 and §6.6) – One comment letter submitted to the Planning Commission on August 11, 2020 during the recommendation hearing, incorrectly suggested that the proposed amendments would change the existing land use designations in the Community Plan from “low density” to high density”. The proposed amendments would maintain the existing land use designations of “North Commercial” and “Professional Commercial” and existing development standards of the respective zones. This includes maintaining the existing development standards in the NC zone for “low intensity” per the existing Community Plan. No land use conflict would occur as a result of the proposed amendments. Any future site-specific development would be subject to the City’s existing requirements for discretionary permit approval and would be required to comply with the allowable uses and applicable development standards of the zone.

Relationship to the Proposed 6th Cycle Housing Element – Currently in Process

Note: The following information is provided as context only. No action on the 6th Cycle Housing Element Update is before the City Council at this time.

In preparation for upcoming public hearings with the Planning Commission and City Council this September-October to consider and finalize the City's draft 6th Cycle Housing Element Update, staff developed an initial housing strategy for the 6th Cycle Housing Element Update. This proposed strategy is based on an understanding of what is required to meet State Housing law, input from the community housing survey, and recommendations from the Citizens' Task Force and Planning Commission. At this point, the proposed strategy is simply a recommendation that is intended as a starting point to show how the City's housing obligations and ultimate objective for certification of the 6th Cycle Housing Element can be achieved through a combination of strategies that can spread the required affordable units throughout neighborhoods across the City to the extent possible.

Staff understands the 6th Cycle Housing Element must identify how the City will be able to produce a total of 175 housing units over the next eight years (2021-2029) in locations throughout the community. See footnote 1 for a breakdown of this 175 unit requirement. Most notably, the City must demonstrate sufficient, available, adequate sites capacity to satisfy the obligation for 113 affordable units. "Affordable units" are those considered to be very-low- and low-income units per State Housing law.

Initial Approach	Location	Potential Affordable Units
<u>Affordable Housing Opportunities in Commercial Zones</u>	Camino del Mar and Jimmy Durante Boulevard	Up to 26 affordable units 19 units NC Zone 3 units PC Zone 2 units CC Zone 2 units 941 Specific Plan
<u>Accessory Dwelling Units</u>	Residential neighborhoods throughout Del Mar	At least 8 affordable units
<u>City-owned Property</u> <u>nd DAA Partnership (or rezone vacant parcels)</u>	th th th and Court Streets Del Mar Fairgrounds; or North Bluff and/or South Stratford	Up to 28 affordable units At least 51 affordable units
		113 affordable units

¹ The 175 total units is comprised of the following: 163 total units for the City's 6th Cycle RHNA obligation, of which includes 101 affordable units + an estimated 12 affordable units "carryover" from the City's unfulfilled 5th Cycle RHNA obligations. Combined, the City will need to accommodate 113 affordable units. The 12 affordable units carryover is the most recent estimate from HCD and may still be subject to change. It assumes implementation of Programs 2-E (NC) and 2-F (PC) before the end of the 5th Cycle planning period. As such, in preparation for the 6th Cycle planning period, the City will be developing programs to the satisfaction of HCD that accommodates 175 total units, which includes a subset of 113 affordable units (very-low and low).

As shown in the Summary Table, staff's recommended initial approach and strategy for future consideration by the Planning Commission and City Council will involve four main components:

Create housing opportunities along the main commercial corridor between the Fairgrounds and the south end of the commercial corridor on Camino del Mar

This strategy can accommodate 26 affordable units through implementation of the existing 941 Camino del Mar Specific Plan; and the processing of amendments to the NC, PC, and Central Commercial (CC) Zones to allow a density of 20 dwelling units per acre (20 du/ac), which is the minimum density for a zone that the State will recognize for adequate sites.

Up to 19 of the 26 total affordable units that are anticipated to occur in commercial zones are expected to be located in the NC Zone. This assumption is based on existing development standards for height, floor area ratio, lot coverage, and setbacks and a change to allow a density of 20 du/ac in the zone. If the NC amendments are completed, the City will create adequate sites for affordable units on the two, contiguous vacant parcels (owned by Watermark LP) at the intersection of Jimmy Durante Boulevard and San Dieguito Drive, and on four additional parcels with development potential along Jimmy Durante Boulevard, including one vacant lot and three existing parcels that are currently developed with office uses. This means that the proposed NC/PC amendments, and in particular the NC Zone amendments, are a critical piece of the City's overall housing strategy

Incorporate Accessory Dwelling Units (ADUs) throughout the City

This strategy is estimated to accommodate at least 77 moderate income units; and at least eight deed restricted low income units in neighborhoods throughout the City. Through incentive programs the City is hoping to achieve more affordable units, but is unable to gain credit for a greater number at this time due to low past performance.

Utilize City-owned land to provide small affordable units as needed

This strategy can be included as a contingency to make up the difference in affordable units as needed. It is estimated that 14-28 small affordable units could potentially be accommodated on City-owned lots in the North Beach, Village Center, and South Beach neighborhoods. If a greater number of affordable units are ultimately achieved on other sites, then City properties may not need to be utilized.

Partner with the State to build affordable units on the State Fairgrounds

The City Council identified the Fairgrounds as a high priority strategy that will be pursued. However, the City must also include a program to rezone vacant parcels (North Bluff and/or South Stratford) as required by State Housing law to provide at least 51 affordable units (half of the City's assigned 101-lower income units for the 6th Cycle) in case an agreement with the Fairgrounds is not reached. The City ideally will build a greater number of affordable units at the Fairgrounds as a strategy; however, within the Housing Element itself it is prudent to assign the minimum number of affordable units to the Fairgrounds property in order to protect the City's interest in the future in case these programs are not implemented.