

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

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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 written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief