

Frequently Asked Questions (FAQ)

Revised 10/2/2020

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13. **The City has had success in applications for ADUs. Does the Pilot Program and the ADU program count toward the RHNA numbers in the 5th Cycle? Have these been permitted yet to count? Would the new ADUs count towards the 6th Cycle?**
14. **In the City’s current 5th Cycle Housing Element, was the City’s goal for the eight-year planning period (2013-2021) to allow an accommodation for 55 affordable housing units?**
15. **During the current 5th Cycle Housing Element, what is the exact number of affordable units that were "produced" over the eight-year planning period (2013-2021) that will count towards this goal? Where are they located?**
16. **What date does the 5th Cycle actually end?**
17. **If the units that were to be produced in the 5th Cycle are actually produced at the start of the 6th Cycle, will these units count towards the City’s 163 unit requirement plus carryover units required in the 6th Cycle?**
18. **How many affordable units will carryover from the 5th Cycle into the 6th Cycle?**
19. **Would units built as of June 30, 2020 count toward 5th Cycle fulfillment?**
20. **Would all units built after June 30, 2020 count toward 6th Cycle fulfillment?**
21. **How many RHNA affordable units were to come from the proposed “Watermark” project, which is related to Program 2-G in the 5th Cycle Housing Element? City staff**

- has stated 19 in one of the Citizens' Task Force meetings when discussing the estimated 41 to 46 carryover included in the Draft PEIR. Is this correct? If not, what is the correct number? What exactly is the estimated 41 to 46 unit carryover made up of?
22. I was told that the developer of the proposed "Watermark" development disclosed that the City of Del Mar's representative actually approached the developer for development. I did not realize the City's scope was to source development. Is this standard practice?
 23. What happened to the proposed "Watermark" project? The developer was supposed to come back with a plan and it has been a couple of years and nothing has happened. If and when this project happens, will the number of units built count in the housing cycle when units are built? In other words, if the date completed is after the 5th Cycle is over, which seems likely, will these units count to either lower the carryover for the 6th Cycle or count towards the 6th Cycle number which is 163 plus carryover?
 24. If Program 2-G is one of the programs the City is expecting to complete, what will be the completion date?
 25. The proposed "Watermark" project requires a rezone of two contiguous parcels. How many votes are required by the City Council to approve a rezone – three or four? What happens if the rezone does not pass?
 26. With regard to Programs 2-E (North Commercial) and 2-F (Professional Commercial) from the 5th Cycle Housing Element, what happens if the City does not complete these two programs, specifically the ramifications?
 27. When these amendments were questioned in one of the Citizens' Task Force meetings, it was explained that the previous City Council in 2012 had approved the Housing Element and, therefore, the Community Plan was changed. However, given that these amendments require an EIR in order to be approved by the current City Council, how could a City Council, based on the process City staff has shared with the prior Citizens' Task Force, make such a decision without knowing the EIR impact to the proposal and then expected it will be completed if in fact the EIR does not support the recommendation?
 28. When is the next Housing and Community Development (HCD) meeting? Do the two City Council Housing Liaison's (Gaasterland/Worden) attend these meetings with staff as they do for the Fairgrounds and with other agencies? My thought is that when a case is made on pending issues or negotiations, our elected officials may carry more weight with HCD.
 29. I note after reading an article recently published that in the State of California, only 26 jurisdictions completed their Housing Elements and were certified. Most all did not and it was stated HCD is working with them. So, if we are not certified because we did not complete, say, all programs for the 5th Cycle, what are those ramifications for our City, and are there any for our City's Planning staff performance and careers?
 30. What are the proposed changes to development standards in the North Commercial (NC), Professional Commercial (PC), and Central Commercial (CC) zones for the 6th Cycle Housing Element?
 31. What is the current Floor Area Ratio (FAR), lot coverage limit, and height limit in the North Commercial (NC) Zone?

32. What is the current FAR, lot coverage limit, and height limit in the PC Zone?
33. What are the current FAR, lot coverage, and height limit in the downtown CC zone?
34. If the “Watermark” property is developed under the 2-E/2-F/2-G up-zone, and if they submit a plan for 46 units and thus meet the "by right" conditions, they could ask for and get from the State an increase in FAR and/or coverage and/or density and/or height and/or what else? Formulas in the State code will kick in to specify the "by right" details. Would the development not go through the Design Review Board (DRB), Planning Commission, or Council?
35. Regardless of a “Watermark” development being “by-right” or subject to the City’s discretionary process, would it still be subject to the Coastal Commission’s review?
36. The 5th Cycle Housing Element depended on Programs 2-E and 2-F to create capacity to fulfill the City’s RHNA allocation. If Programs 2-E and 2-F are not accomplished, there may be consequences including losing certification of the 5th Cycle Housing Element, which in turn opens up possible enforcement by the State. Is that correct?
37. Separately from “Watermark”, Del Mar will be penalized for some of all of the 19 (of 22) assigned 5th Cycle affordable housing units that were not built. 22 were assigned. Three received discretionary permits and are underway, leaving 19 unbuilt.
38. The draft 6th Cycle Housing Element Update refers to a NC zone amendment at 20 du/ac. Program 2-G in the current 5th Cycle Housing Element calls for 20-25 du/ac “by right” on the “Watermark” parcels which is also part of the NC zone. How are these two reconciled?
39. Does the State have to abide by the City’s zoning regulations on the State-owned Fairgrounds property?
40. If residential becomes an allowed primary use in a commercial zone, does this mean short-term rentals (STRs) could also be allowed and operated?
41. Why does the draft 6th Cycle Housing Element plan for 113 affordable units when the City’s RHNA allocation was 101 affordable units?
42. Is the penalty for the private Watermark property not being developed during the 5th Cycle 9 affordable units?
43. Is it correct that the City’s 6th Cycle RHNA requirement for moderate and above moderate units can be achieved without rezoning? How many of these units can be achieved by ADUs?
44. How many moderate and above moderate units could be achieved in the 6th Cycle with the preservation of existing duplexes and possible creation of new duplexes in the R1-5B zone?
45. Where and why is it required that the City would have to up-zone for 50% (not 100%) of the City’s 6th Cycle RHNA requirement of 101 affordable units?
46. Is it true that at most 20% of an up-zoned parcel can be affordable units? Is that a cap imposed by the State or by the City of Del Mar?
47. Is there a way for an up-zoned parcel in Del Mar to be given a cap of 30% affordable units or even more (e.g., 40% or 50% has been done elsewhere - Los Gatos has 50% and Corte Madera has 30%)?

- 48. Is there a new density bonus law that was recently signed by the Governor and, if so, does it allow density bonus increases up to 50%?**
- 49. Assuming zoning that allows residential at 20 du/ac under the new AB2345 law (50% density bonus), what would the new maximum number of units be on sites zoned at 20 dwelling unit per acre for the following areas considered in the 6th Cycle Housing Element Update: NC Zone, PC Zone, the North Bluff, and the South Stratford properties?**
- 50. A letter was submitted to the Planning Commission for their September 19, 2020 meeting from the owners of the South Stratford properties. Does this correspondence impact how HCD would view the potential for that property?**
- 51. How long does an affordable unit need to be deed restricted as affordable?**
- 52. Of the potential candidate sites considered, specifically vacant sites, why were the vacant sites on San Dieguito Road not included in the proposed 6th Cycle Housing Element Update?**
- 53. Was sufficient noticing provided to the public for the housing related items on the October 5, 2020 City Council meeting (6th Cycle Housing Element Update and NC Amendments)?**
- 54. Can an amendment to the Community Plan be brought to a public hearing without fully noticing the community? Is an ad in the Del Mar Times sufficient to let people know?**
- 55. Did the ad that the City placed in the Del Mar Times appear last week (September 24), or this week (October 1), or both?**
- 56. Could consideration of the two items on October 5, 2020 be delayed to the next hearing to allow for additional mailed noticing?**

1. What is the Housing Element?

The Housing Element is a State-mandated policy document within the Del Mar Community Plan (General Plan) that provides direction for the implementation of various programs to meet existing and projected future housing needs for all income levels within the Del Mar community. The Housing Element provides policies, programs, and actions that accommodate growth, produce opportunity for the development of new housing units, preserve existing housing stock, and assist the existing population.

The City’s stated housing goal is to: *“Inspire a more diverse, sustainable, and balanced community through implementation of strategies and programs that will result in economically and socially diversified housing choices that preserve and enhance the special character of Del Mar.”*

2. What is the Regional Housing Needs Assessment (RHNA)?

The Regional Housing Needs Assessment (RHNA) is mandated by State law to quantify the need for housing throughout the State and each city in the San Diego region. This will inform Del Mar’s local planning process to address existing and future housing need resulting from the San Diego region’s projected growth in population, employment, and households.

The San Diego Association of Governments (SANDAG) is responsible for overseeing the RHNA process for the San Diego region. SANDAG is currently overseeing the 6th Cycle RHNA, which covers the 2021-2029 planning period.

For the 2021-2029 planning period, the City of Del Mar was allocated 163 units at various income levels that the City must create adequate sites and accommodate capacity for. The Housing Element must identify the City’s ability to accommodate the assigned RHNA through available sites and appropriate zoning. The 6th Cycle RHNA for Del Mar is as follows:

6 th Cycle RHNA Allocation by Income Category			
Income Category	Income Range*		RHNA Allocation
	Min	Max	Housing Units
Very Low (31% to 50%)	\$26,753	\$43,150	37 units
Low (51% to 80%)	\$43,151	\$69,040	64 units
Moderate (81% to 120%)	\$69,041	\$103,560	31 units
Above Moderate (120% or more)	\$103,560	> \$103,560	31 units
TOTAL			163 units

* Income range is based on the 2019 San Diego County Area Median Income of \$86,300

3. Why is the City updating its Housing Element?

The City is required by State Housing law to update its Housing Element every eight years. The Housing Element is part of the City’s Community Plan (General Plan). The current certified 5th Cycle Housing Element is for the 2013-2021 planning period. The City is in the process of preparing its 6th Cycle Housing Element for the 2021-2029 planning period.

4. Does an updated Housing Element require a Community Plan amendment?

The Housing Element is a part of the City’s General Plan (Community Plan). When the City updates its Housing Element every eight years to meet State law, a Community Plan amendment

is required. Per State law, a Community Plan amendment requires that the Planning Commission hold a hearing to provide a recommendation to the City Council. The City's local Ordinance that adopted the Community Plan stipulated that amendments to the Community Plan shall require approval by a supermajority of the Council (4/5 vote for approval). That approval requirement is more restrictive than what is required by the State, which by comparison only requires a simple majority (3/5 vote for approval). If the City's more restrictive local approval process for Community Plan amendments ends up being a governmental constraint to fair housing in violation of State mandates, then the State can impose enforcement penalties per Govt Code section 65585.

5. Where can I find more information about the Housing Element process?

The City has a dedicated webpage for the 6th Cycle Housing Element Update that can be viewed at the following link: www.delmar.ca./HousingElement

6. Is there an Environmental Impact Report (EIR) being prepared?

Pursuant to the California Environmental Quality Act (CEQA), the City of Del Mar is considered the "lead agency" for the proposed 6th Cycle Housing Element Update and, therefore, is subject to environmental review under CEQA. CEQA Guidelines §15063 provides that if a lead agency determines that an EIR will clearly be required for a project, an Initial Study is not required. Pursuant to CEQA, the Housing Element Update is considered a "project" because it is a program characterized by a series of actions. The City has already determined that an EIR will need to be prepared based on the Project's potential to create short-term, long-term, and cumulative impacts associated with other development. Therefore, a draft and final "Program-level" EIR (PEIR) was prepared and can be viewed at the following link: www.delmar.ca.us/HousingElement. The draft PEIR was circulated for public review and comment for 60 days (July 2, 2020 through August 31, 2020). The Final PEIR will be considered by the City Council at their meeting on October 5, 2020. A copy of the agenda and related information for that meeting is available here: www.delmar.ca.us/AgendaCenter

7. Where can I find the data from the online Community Housing Survey?

One of the tools used during development of the Housing Element Update was an online Community Survey that took place from March 16 to April 20, 2020. The Survey was designed to gather feedback and preferences for a variety of topics related to housing production, candidate housing sites, impediments to housing production, and community assistance programs. The data from the Survey is available in excel format via the links below (click underlined titles to access Excel sheets) or at www.delmar.ca.us/HousingElement (scroll to bottom and click on tab "Reports & More"):

[Priority Program Data \(Excel\)](#) In this section of the survey, participants were asked to click through three individual slides and provide various program areas with a 1 to 5-star rating (1 being least appealing, 5 being most appealing). Each slide consisted of five potential programs targeted at a specific goal. The slides covered the topic areas of preservation of existing housing stock, production of housing stock, and community assistance programs. See: www.delmar.ca.us/DocumentCenter/View/6768/1---Priority-Programs

[Potential Housing Location Data \(Excel\)](#) In this section of the survey, eight different areas of the City were listed where future housing could be located. Participants were asked to select at least three areas where they would like to see housing be

developed. Of the three selected, participants were also asked to rank them in order: #1 being most desirable location, #2 being the second most desirable, and #3 being the third most desirable. See: www.delmar.ca.us/DocumentCenter/View/6769/2---Potential-Housing-Locations

Removing Constraints Data (Excel) In this section of the survey, eight different incentives were listed with the goal of addressing potential constraints to developing housing. Participants were given a total of 45 stars or “chips”, and asked to distribute the chips amongst the potential incentives that interested them the most. See: www.delmar.ca.us/DocumentCenter/View/6770/3---Removing-Constraints

Wrap-up Slide Comments and Inputs (Excel) See: www.delmar.ca.us/DocumentCenter/View/6771/Wrap-Up-Slide-Comments-and-Inputs

8. What is the 6th Cycle Housing Element Update Ad-Hoc Citizens Task Force?

A Citizens’ Task Force was appointed by the City Council on January 13, 2020. The mission of the 6th Cycle Housing Element Ad-Hoc Citizens’ Task Force (Task Force) was to:

- Aid the City in preparation of the associated environmental document for the 6th Cycle Housing Element Update in compliance with CEQA;
- Provide a public forum to help inform and encourage Housing Element participation amongst fellow Del Mar citizens; and
- Discuss and provide feedback on potential goals, policies, programs, and objectives to be included within the 6th Cycle Housing Element.

As part of their overall work effort, the Task Force divided themselves into three separate subcommittees: Communications; Community Assistance; and Housing Production and Preservation. Each subcommittee produced a report that can be viewed at: www.delmar.ca.us/HousingElement (scroll to bottom and click on tab “Reports & More”).

The Task Force held nine meetings that were open to the public generally every other week for approximately four months; and held a Community Workshop on Saturday, February 29, 2020. The Citizens’ Task Force completed its scope in May 2020 and presented a final summary of its work to the City Council at their June 15, 2020 meeting. The Citizens’ Task Force is no longer an active committee. You can view past meetings of the Task Force and their meeting minutes here: www.delmar.ca.us/AgendaCenter

9. Are all of the “High Priority” recommendations from the Citizens’ Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final PEIR?

Yes, all nine High Priority recommendations (ten including Accessory Dwelling Units or ADUs) are sufficiently analyzed in the Program EIR (PEIR) at the program-level. The nine priorities consist of five City properties; three Fairgrounds properties; and the Central Commercial (CC) zone, all of which are listed below:

1. Zuni Water Tank / 12th Street and Luneta Drive Vacant Lot – see Public Facilities/City owned land Focus Area
 - a. The Zuni water tank site is sufficiently covered under both the North Commercial (NC)/Professional Commercial (PC) Final PEIR certified by the City Council on September 8, 2020 as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update

- b. However, the 12th Street and Luneta Vacant Parcel that was added by the Subcommittee in the final iteration of their report under #1 is listed as a “Park” in the Recreation Element of the City’s Community Plan. This parcel was purchased/accepted by the City with a deed restriction reserving it as passive use open space; therefore, it cannot be relied upon for future housing
- 2. City Owned 28th Street Property – see Public Facilities/City owned land Focus Area
 - a. The 28th Street site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR prepared for the 6th Cycle Housing Element Update
 - b. Site is located in the Floodplain Overlay Zone
- 3. City Hall Expansion Site – see Public Facilities/City owned land Focus Area
 - a. The City Hall expansion site is sufficiently covered under both the NC/PC PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
- 4. Surf and Turf R.V. Park – see Fairgrounds Focus Area
 - a. The Site is located within the City of San Diego and FEMA floodplain and is sufficiently analyzed in the Final PEIR at a program-level for residential use
 - b. Fairgrounds makes up 78% of total candidate site acreage (266 out of 304 acres)
 - c. Concept for the City to provide all housing at fairgrounds is addressed in the Final PEIR Alternatives
- 5. Residential in CC zone – see Downtown Village Focus Area
 - a. CC Zone is sufficiently covered in the Final PEIR at a program-level for residential development up to 20 dwelling units per acre (DU/AC) (one acre is equivalent to 43,560 square feet)
 - b. The Downtown Village Focus area also includes the Del Mar Hotel Specific Plan (HSP) and Del Mar Plaza Specific Plan (PSP)
 - c. The draft Housing Element Update set for City Council’s review on October 5, 2020 includes a program to explore potential for future partnerships/agreements to locate small affordable units on sites with existing hotels, retail, and multiple-dwelling units
- 6. Pine Needles Water Tank – see Public Facilities/City owned land Focus Area
 - a. The site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
 - b. Is located in the Wildland Urban Interface (WUI) area
- 7. 10th Street / Highland Water Tank – see Public Facilities/City owned land Focus Area
 - a. The site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
- 8. Convert Del Mar Fairgrounds track housing to affordable units – see Fairgrounds Focus Area
 - a. The Site is sufficiently analyzed in the Final PEIR at a program-level for residential use
 - b. Fairgrounds makes up 78% of the City’s total candidate site acreage (266 out of 304 acres)
 - a. Concept for the City to provide all housing obligations at Fairgrounds is considered in the Alternatives Section of the Final PEIR
- 9. Convert an existing Fairgrounds livestock / horse barn to housing – see Fairgrounds Focus Area
 - a. The Site is sufficiently analyzed in the Final PEIR at a program-level for residential use

- b. Fairgrounds makes up 78% of the City's total candidate site acreage (266 out of 304 acres)
 - a. Concept for the City to provide all housing obligations at Fairgrounds is considered in the Alternatives Section of the Final PEIR
10. Accessory Dwelling Units (ADUs) in General – ADUs are a required component of the Housing Element per State Housing law
- a. ADUs are currently required to be allowed via a ministerial process (exempt from CEQA and City discretionary review, such as Design Review) in all zones where residential is allowed
 - b. ADUs are not more detailed in the Final PEIR because they are currently allowed by-right under City ordinance and are considered a “Baseline” condition for the housing analysis per CEQA
 - c. Housing Element Update includes multiple ADU-related programs relating to an amnesty program and to extend/enhance the existing Pilot Incentive Program to produce deed restricted affordable ADUs

The referenced Subcommittee report is available here:

www.delmar.ca.us/DocumentCenter/View/6921/Housing-Production-and-Preservation-Subcommittee-Report

10. Are all of the “Medium Priority” recommendations from the Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final PEIR?

Yes, all of the Medium Priority recommendations from the Subcommittee are sufficiently analyzed in the Final PEIR at a program-level. The Medium Priorities from the Report are listed below:

1. The northeast corner of Shores Park that includes the Del Mar Community Connections (DMCC) and Del Mar Foundation (DMF) offices on 9th Street
2. Jimmy Durante / Via de la Valle Right-of-Way – This option could not happen without the incorporation of State-owned Fairgrounds property which is sufficiently analyzed in the Final PEIR at a program-level
3. Site that includes the water tower on Crest Road

11. Why are some of the “Extremely Low” options from the Task Force Housing Production and Preservation Subcommittee report included in the Final PEIR?

The larger “park” portion of Shores Park and the City Hall's northeast corner on 11th Street were excluded from the PEIR analysis. However, to meet the requirements of State Housing law, the City must show capacity for a minimum of 50% of the City's lower income RHNA (101 units) on vacant land over 0.5 acres and under 10 acres in size. The sites which meet this criteria are the North Bluff and South Stratford Focus Areas described in the Final PEIR. The only way for the City to exclude these sites as a potential rezone program at 20 dwelling units per acre (du/ac) per State Housing law is if there is a clear path for production of all required affordable units that is identified with agreements already secured. To date, the City does not have these types of agreements in place. The City can gain Housing Element certification if it includes this required rezone program, but does not necessarily need to follow through with implementation of the program if the City is able to successfully produce agreements for affordable units on alternative sites such as the Fairgrounds.

12. Why isn't there a greater focus on Accessory Dwelling Units (ADUs) in the Final Program EIR?

ADUs are not addressed in more detail in the Final PEIR because they are considered a Baseline condition (i.e., already incorporated in the City's codes at the time the Notice of Preparation of the Draft EIR was published in February 2020). That said it is important to remember that the Final PEIR (i.e., environmental analysis pursuant to CEQA) and the Housing Element Update (i.e., Community Plan policy document for 6th Cycle planning period) are two different documents. ADUs are a required component of the Housing Element Update and will be a key strategy to accommodate a portion of the City's RHNA. Future actions relating to an amnesty program and extension/enhancement of the Pilot Incentive Program were identified in the Final PEIR together with other potential action programs. The absence of other creative ADU-related program ideas put forth by the Task Force Housing Production and Preservation Subcommittee within the Final PEIR did not mean that they would not be considered or included in the Housing Element Update. It just meant that they did not need further environmental analysis or classification as capacity-related action programs.

13. The City has had success in applications for ADUs. Does the Pilot Program and the ADU program count toward the RHNA numbers in the 5th Cycle? Have these been permitted yet to count? Would the new ADUs count towards the 6th Cycle?

This statement incorrectly assumes that the City has had success with Accessory Dwelling Units (ADUs) overall. The low production of ADUs over a 20+ year period since the applicable second unit and ADU laws have been in effect is not considered to be a success by the State. The City has only produced two ADUs to date. One ADU was produced in 2018 and the other was an existing unpermitted unit that was legalized as a Junior ADU (JrADU) in 2020. The City does not have confirmation from either property owner as to how either of these ADUs are being used, or if they are even being used as housing units.

Any ADUs or JrADUs produced (i.e., been issued building permits) since June 30, 2020 will be reported to HCD for credit towards the 6th Cycle progress reports. The most critical point that HCD cares about is whether or not the units will be deed restricted affordable (i.e., to be counted towards the City's obligation for the 6th Cycle allocation of 101 assigned lower income RHNA units + 12 estimated carryover affordable units). To date, the City has only one permit approval for a deed restricted affordable ADU; and that one affordable ADU unit has not yet been constructed. This unit is credited toward the City's 5th Cycle RHNA and is the only affordable unit (of 22 required) credited to that cycle. The City can try to obtain data via a survey of property owners with ADUs; however the State made it clear that the City cannot require a response to those surveys from the property owners or residents, and there is no guarantee that ADUs or JrADUs without a recorded deed restriction can be counted as affordable units towards the City's RHNA obligation.

14. In the City's current 5th Cycle Housing Element, was the City's goal for the eight-year planning period (2013-2021) to allow an accommodation for 55 affordable housing units?

No, the City's goal and obligation per State Housing law was to create adequate sites to accommodate production of 22 affordable units, which included the 12 lower income units (7 Very Low and 5 Low) assigned to the City through the 5th Cycle Regional Housing Needs Assessment

(RHNA) process and an additional 10 Low income penalty units that were assessed because the City failed to comply with its 4th Cycle housing obligations.

15. During the current 5th Cycle Housing Element, what is the exact number of affordable units that were "produced" over the eight-year planning period (2013-2021) that will count towards this goal? Where are they located?

The City did not meet its obligations for creation of adequate sites or production of RHNA affordable units in its 5th Cycle (production period ended on June 29, 2020). Of the 22 affordable units required, the City produced 0 of 7 Very Low income units and 1 of 15 Low income units. During the 5th Cycle production period, a building permit was approved for the one affordable ADU (that will be deed restricted for rent to a low-income household for 30 years.) The approved low income unit is approved for construction and will be located in the North Hills community plan district. HCD will confirm how approval of the one affordable ADU will be counted towards the City's overall housing obligation, which includes the assigned 6th Cycle RHNA plus carryover obligations and penalties anticipated for the deficit associated with the 5th Cycle.

16. What date does the 5th Cycle actually end?

The production period for the 5th Cycle ended on June 29, 2020, meaning that any unit which obtains building permits from June 30, 2020 forward would be credited toward the City's 6th Cycle housing cycle.

17. If the units that were to be produced in the 5th Cycle are actually produced at the start of the 6th Cycle, will these units count towards the City's 163 unit requirement plus carryover units required in the 6th Cycle?

Units are considered "produced" when building permits are issued. Production toward the 6th Cycle started on June 30, 2020.

18. How many affordable units will carryover from the 5th Cycle into the 6th Cycle?

As noted in prior responses, City staff has been diligently trying to obtain confirmation from HCD staff as to the exact number of carryover units for the 6th Cycle. It is City staff's understanding that 12 carryover affordable units from the City's 5th Cycle RHNA will be required by HCD. As such, the Housing Element Update to be considered by the City Council on October 5, 2020 is referencing a requirement of 113 affordable units (i.e., 101 affordable units from 6th Cycle RHNA + 12 carryover affordable units).

19. Would units built as of June 30, 2020 count toward 5th Cycle fulfillment?

Units produced (i.e., issued building permits) starting June 30, 2020 through April 15, 2021 count towards the 6th Cycle, so units produced June 29, 2020 and earlier count toward the 5th Cycle.

20. Would all units built after June 30, 2020 count toward 6th Cycle fulfillment?

Yes, at the time building permits are issued.

21. How many RHNA affordable units were to come from the proposed “Watermark” project, which is related to Program 2-G in the 5th Cycle Housing Element? City staff has stated 19 in one of the Citizens’ Task Force meetings when discussing the estimated 41 to 46 carryover included in the Draft PEIR. Is this correct? If not, what is the correct number? What exactly is the estimated 41 to 46 unit carryover made up of?

The confusion has to do with the number of required “adequate sites” for affordable units versus the deficit of adequate sites and total units produced that would be required by HCD as a carryover into the 6th Cycle. City staff has been diligently trying to confirm the number of total units required for the carryover of 5th Cycle Housing Program 2-G into the 6th Cycle Housing Element; however, Program 2-G is a program mandated by the State in the City’s 5th Cycle Housing Element to account for 10 affordable units from the City’s 4th Cycle Housing Element that did not get accommodated. Though related, these 10 affordable units are separate from the City’s 5th Cycle RHNA of 12 affordable units. For the sake of the draft environmental analysis in the 6th Cycle Draft PEIR, City staff assumed an estimated carryover of adequate sites for 46 total units, which is based on the calculation of 2.3 acres and 20 du/ac (totals 46 units, which includes affordable units) due to the City’s failure to rezone the two vacant lots owned by Watermark LP for 5th Cycle Housing Element pursuant to Program 2-G. The total affordable units required from the 5th Cycle was 22 units. It is City staff’s understanding that 12 carryover affordable units will be required by HCD for its 5th Cycle RHNA, but that the City is still obligated to implement Program 2-G to account for its 4th Cycle carryover. As such, the Housing Element Update to be considered by the City Council on October 5, 2020 is referencing a requirement of 113 affordable units (i.e., 101 affordable units from 6th Cycle RHNA + 12 5th Cycle carryover affordable units).

22. I was told that the developer of the proposed “Watermark” development disclosed that the City of Del Mar's representative actually approached the developer for development. I did not realize the City's scope was to source development. Is this standard practice?

This question relates to the 5th Cycle Housing Element Update process that occurred prior to the later proposed “Watermark” project that had been submitted via a Specific Plan. It also occurred at a time when the City’s current housing team was not involved. City staff is not sure of the alleged events, but can confirm that the City had failed to meet its obligations for the 4th Cycle Housing Element and was in need of solutions for its 5th Cycle to minimize risk and avoid additional penalties beyond the 10 low income penalty units that were assessed at the time. Also, it is important to note that Program 2-G and the “Watermark” project are not the same project or required action even though they involve the same two parcels. Program 2-G requires a rezoning action to create capacity for adequate sites on two parcels for “by-right” (or “ministerial” meaning no discretionary processing such as Design Review) residential development with an affordable housing component; whereas the “Watermark” project that was submitted later was for approval of a Specific Plan and the development of dwelling units through a discretionary approval process.

23. What happened to the proposed “Watermark” project? The developer was supposed to come back with a plan and it has been a couple of years and nothing has happened. If and when this project happens, will the number of units built count in the housing cycle when units are built? In other words, if the date completed is after the 5th Cycle is over, which seems likely, will these units count to either lower the carryover for the 6th Cycle or count towards the 6th Cycle number which is 163 plus carryover?

The Watermark Del Mar Specific Plan is a private development application intended to implement the rezone required by 5th Cycle Housing Element Program 2-G. This has been an active development application for several years; however, staff is not certain of the applicant’s intentions for continuing to process the application. City staff understands that the project applicant has been working with Coastal Commission staff to address their comments submitted on that project’s earlier Draft EIR that was initially circulated since the project would require an amendment to the City’s certified Local Coastal Program (LCP). If 5th Cycle Housing Element Program 2-G is not completed, it will trigger the “no net loss” provision per State Housing law. This has associated penalties that will be assessed to the City if not completed. See Govt Code Sec. 65585.

24. If Program 2-G is one of the programs the City is expecting to complete, what will be the completion date?

The proposed “Watermark” project is a private development application to implement a required Housing Element rezone program (Program 2-G) that was necessary to meet the City’s obligation for adequate sites with the 5th Cycle Housing Element and to meet the assigned RHNA obligation for affordable housing. The City is still obligated to implement Program 2-G to account for its 4th Cycle carryover. If not completed, that result would have associated penalties for the City. See Govt Code Sec. 65585.

25. The proposed “Watermark” project requires a rezone of two contiguous parcels. How many votes are required by the City Council to approve a rezone – three or four? What happens if the rezone does not pass?

Rezone actions that amend the City’s Zoning Ordinance (Title 30 of the Del Mar Municipal Code) and certified LCP require a simple majority vote (3 of 5) of the City Council to pass, which is consistent with State law. The proposed “Watermark” project involves two contiguous parcels. As explained above, a decision to not implement Program 2-G would result in associated penalties for the City. See Govt Code Sec. 65585. Note that a super-majority vote (4 of 5) is only required for amendments to the City’s Community Plan (General Plan), not amendments to the Zoning Ordinance or LCP.

26. With regard to Programs 2-E (North Commercial) and 2-F (Professional Commercial) from the 5th Cycle Housing Element, what happens if the City does not complete these two programs, specifically the ramifications?

The agenda report for the September 8, 2020 City Council meeting summarizes the ramifications for not completing these programs (view the report at www.delmar.ca.us/AgendaCenter). On September 8, 2020, the City Council approved amendments to the Community Plan, Zoning Code, and LCP for Program 2-F (Professional Commercial), but did not approve the amendments

required for Program 2-E (North Commercial) that would have amended the NC land use designation and zone to allow residential as a primary use up to a maximum density of 20 du/ac. This action resulted in the City not implementing a required program of its current Housing Element, thereby limiting the number of zones that would sufficiently allow for multiple dwelling unit housing in the purview of the State. Without capacity for housing in the NC zone, the City is unable to demonstrate to the State how it will accommodate enough adequate sites to meet its 5th Cycle (and continuing into its 6th Cycle) affordable housing obligation. Further, this means the City is in violation of State Housing law until action is taken to implement the required housing program or replace it with an equivalent program that is acceptable to HCD.

27. When these amendments were questioned in one of the Citizens' Task Force meetings, it was explained that the previous City Council in 2012 had approved the Housing Element and, therefore, the Community Plan was changed. However, given that these amendments require an EIR in order to be approved by the current City Council, how could a City Council, based on the process City staff has shared with the prior Citizens' Task Force, make such a decision without knowing the EIR impact to the proposal and then expected it will be completed if in fact the EIR does not support the recommendation?

It is correct that the 5th Cycle actions amended the City's Community Plan when the 5th Cycle Housing Element was adopted because the Housing Element is a required component of the City's Community Plan. However, formal implementation of Programs 2-E and 2-F did not occur as part of the earlier City Council's adoption of the 5th Cycle Housing Element – that was a later step to follow once the Housing Element had been certified by HCD. This is similar to the process the City is currently in with its 6th Cycle. The City Council will consider various programs and strategies at the “program-level” with timeframes for formal implementation during the next eight-year planning period (2021-2029). As those actions are then proposed for implementation during the next eight-year planning period, as was the recent case now with Programs 2-E and 2-F for our current eight year planning period (2013-2021), evaluation under CEQA is required based on the most recent information known at that time. The outcome of what level of environmental review is required is not always known at the time a Housing Element is first adopted by a local agency. As such, several years following HCD certification of the City's 5th Cycle Housing Element, an EIR was determined to be the appropriate level of environmental review necessary for consideration of Program 2-E and 2-F implementation for reasons described in that NC/PC Final EIR. Note that the City's current housing team was not part of the 5th Cycle process.

28. When is the next HCD meeting? Do the two City Council Housing Liaison's (Gaasterland/Worden) attend these meetings with staff as they do for the Fairgrounds and with other agencies? My thought is that when a case is made on pending issues or negotiations, our elected officials may carry more weight with HCD.

City staff has the opportunity to request a half-hour, staff-level meeting with HCD staff each month following the joint SANDAG-HCD monthly trainings related to the Housing Element Update process. These are not meetings with elected officials of any of the participating state or local agencies. These meetings do not involve negotiations. They are staff coordination meetings to help reach understanding on what the various State mandates mean in the context of the local jurisdiction. Meanwhile, the City Council Housing Liaisons are appropriately investigating options

with elected officials of the State and other local agencies on a separate, but parallel track, to try and meet the housing objectives of the City.

29. I note after reading an article recently published that in the State of California, only 26 jurisdictions completed their Housing Elements and were certified. Most all did not and it was stated HCD is working with them. So, if we are not certified because we did not complete, say, all programs for the 5th Cycle, what are those ramifications for our City, and are there any for our City's Planning staff performance and careers?

The agenda report for the September 8, 2020 City Council meeting summarizes the ramifications for not completing these programs (view the report at www.delmar.ca.us/AgendaCenter). Compliance with Housing Element law is a stated priority of the State to address the State's declaration of a statewide housing crisis. This is best exhibited by the package of Housing-related laws that went into effect January 2020 and again on September 29, 2020. As such, the 6th Cycle process is already shaping out to be more involved and complex than earlier cycles – not to mention that HCD has been further empowered with enforcement capabilities. HCD staff has explained that the ramifications and State enforcement authority is set forth in Govt Code section 65585. To date, City staff has observed that the State initiates enforcement actions on jurisdictions when local actions are taken in conflict with State law. For further research, the State recently made examples of Huntington Beach and the City of Encinitas. As previously mentioned, HCD staff has indicated to City staff that the State is aware that the City did not fulfill its obligations for the 4th Cycle or 5th Cycle Housing Elements.

As part of the Planning Department's current directive from City Council, City staff was tasked with obtaining certification of the 6th Cycle Housing Element Update to meet the State mandate. City staff understands that by the City not approving Program 2-G (a "rezone program" that obligated the City, within 12 months of City Council adoption of the 5th Cycle Housing Element, to rezone the two adjacent/vacant Watermark parcels in the NC zone to allow "by right" residential development of the properties at a density of 20-25 du/ac) or Program 2-E (a program to allow residential as a primary use in the NC zone at a density of 20 du/ac), the City now risks decertification of its Housing Element and/or other penalties that could reduce local control (e.g., fines, requirements for more "by-right" development that could conflict with the existing Community Plan, four-year Housing Element cycles in lieu of eight-year cycles)

30. What are the proposed changes to development standards in the North Commercial (NC), Professional Commercial (PC), and Central Commercial (CC) zones for the 6th Cycle Housing Element?

None as proposed and recommended by City staff and the Planning Commission (September 15, 2020 hearing). There are no proposed changes to development standards (e.g., setbacks, height, lot coverage, etc.) other than the required density of 20 du/ac to meet the State mandate. Consistent with the Community Plan, the ongoing application of the City's development standards would continue to preserve the special residential character and small-town atmosphere of Del Mar. The intent of proposed programs is to maintain local control over all future housing development, including application of the City's Design Review process, to the maximum extent feasible and allowed by State Housing law.

31. What is the current Floor Area Ratio (FAR), lot coverage limit, and height limit in the North Commercial (NC) Zone?

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

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.24NO_COZONC_30.24.070DEST

32. What is the current FAR, lot coverage limit, and height limit in the Professional Commercial (PC) Zone?

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

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.25PR_COZOPC_30.25.070DEST

33. What are the current FAR, lot coverage, and height limit in the downtown Central Commercial (CC) zone?

1. Setbacks: Every lot having a common boundary with property zoned R1, RM, R2 shall have a minimum ten-foot wide landscaped setback from such common boundary
2. Height: No structure shall exceed a height of 26 feet. Except, structures fronting the west side of Camino del Mar shall not exceed a height of 14 feet measured from the elevation of the curb level adjacent to the structure on Camino del Mar
3. Floor Area: No development shall exceed a floor area-to-lot area ratio of 45 percent or 2,000 square feet, whichever is greater
4. Lot Coverage: No development shall exceed a lot coverage of more than 60 percent or 2,500 square feet, whichever is greater

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.22CE_COZO_30.22.080BUDEST

34. If the “Watermark” property is developed under the 2-E/2-F/2-G up-zone, and if they submit a plan for 46 units and thus meet the "by right" conditions, they could ask for and get from the State an increase in FAR and/or coverage and/or density and/or height and/or what else? Formulas in the State code will kick in to specify the "by right" details. Would the development not go through the DRB, Planning Commission, or Council?

The ramifications for the City not completing Program 2-G will be formally determined by HCD. On September 30, 2020, HCD sent an enforcement letter to the City with written findings outlining

the City's failure to implement Program 2-G as well as Program 2-E. This enforcement letter is included as an attachment to the October 5, 2020 City Council report. . At this point, the City is still obligated to complete Program 2-G or else it risks associated penalties by the State. See Govt Code Sec. 65585. As discussed in earlier questions, the City Council approved Program 2-F (PC) on September 8, 2020, but did not approve Program 2-E (NC) to allow residential as a primary use at a density of 20 du/ac in the NC zone, which is the zone that applies to the Watermark parcels. Programs 2-E and 2-F do not change the City's permit process. Assuming Program 2-F is certified by the Coastal Commission (next step after local approval), any future development projects would still be subject to the City's discretionary process including Design Review. Any development that is considered "by-right" in Del Mar, including Accessory Dwelling Units (ADUs), is exempt from the City's discretionary processes as it is classified as "ministerial" development. Discretionary review includes Design Review. By-right or ministerial development is still subject to the City's Zoning requirements (i.e., development standards), except as modified by Density Bonus, and also subject to the City's Building and Fire Codes.

That being said, if a permit application meets the eligibility requirements for a State law density bonus, the City is required to apply the State's density bonus provisions in DMMC Chapter 30.90. As noted in DMMC Section 30.90.110, *"It is the purpose of this Chapter to increase the production of housing for a wide range of residential needs in the community, including housing for very-low, low- and moderate-income households and for seniors. It is also the purpose of this Chapter to accommodate a wide range of housing consistent with the goals, objectives, and policies expressed by the City in the Del Mar Community Plan, including its Housing Element component. Finally, it is also the purpose of this Chapter is to establish procedures for implementing State density bonus requirements, as set forth in California Government Code §§ 65915—65918, as amended."* DMMC Section 30.90.050 provides the concessions/incentives available for applicants to request when processing a density bonus application.

35. Regardless of a "Watermark" development being "by-right" or subject to the City's discretionary process, would it still be subject to the Coastal Commission's review?

Given that 5th Cycle Housing Program 2-E was not approved by the City Council on September 8, 2020, the City will be subject to enforcement penalties for non-compliance with the 5th Cycle Housing Element; and per HCD, the City would still be obligated to implement Program 2-G that requires by-right approval of residential development (20-25 du/ac) for projects with an affordable housing component. If the State ends up imposing this by-right requirement on the City, confirmation from the California Coastal Commission (CCC) and HCD will be needed to understand what if anything needs to be processed and submitted to CCC (relating to housing development projects and/or Housing Element Program 2-G). If the private applicant for the Watermark Specific Plan application continues processing, an approved Specific Plan by the City would require an amendment to the City's Local Coastal Program and certification approval from CCC. Staff understands that a density bonus application, if submitted, would also require CCC review and approval.

36. The 5th Cycle Housing Element depended on Programs 2-E and 2-F to create capacity to fulfill the City's RHNA allocation. If Programs 2-E and 2-F are not accomplished, there may be consequences including losing certification of the 5th Cycle Housing Element, which in turn opens up possible enforcement by the State. Is that correct?

The 5th Cycle Housing Element was adopted by City Council on May 20, 2013 and covers the planning period 2013-2021. As HCD staff has explained to City staff to-date, implementation of Program 2-E (NC) and Program 2-G (two "Watermark" parcels) are still outstanding 5th Cycle commitments that the State expects the City to complete. On September 30, 2020, HCD sent an enforcement letter to the City with this respect. City staff understands that the City's failure to not implement Program 2-G and the City Council's decision on September 8, 2020 to not implement Program 2-E (NC) has rendered the City out of compliance with its 5th Cycle Housing Element and the City now risks decertification of its Housing Element and/or other penalties that could reduce local control (e.g., fines, requirements for more "by-right" development that could conflict with the existing Community Plan, four-year Housing Element cycles in lieu of eight-year cycles).

37. Separately from "Watermark", Del Mar will be penalized for some of all of the 19 (of 22) assigned 5th Cycle affordable housing units that were not built. 22 were assigned. Three received discretionary permits and are underway, leaving 19 unbuilt.

The City did not meet its RHNA affordable units in its 5th Cycle (production period ended on June 29, 2020). Of the 22 affordable units required, the City produced 0 of 7 Very Low income units and 1 of 15 Low income units, for a total of 1 of 22 completed. The three units in question (resulting in 19) is assumed to be credited from the one deed restricted ADU on Luzon Avenue and two units from the 941 CDM project recently approved by the City. However, only the ADU has received building permits so only one is reported in the 5th Cycle, not three.

The City is responsible for meeting the obligations in its Housing Element. The private development application in process for the "Watermark" sites would have helped the City had it been timely implemented, but it will not be completed before the City takes action on the 6th Cycle Housing Element Update. The City did not meet its RHNA units in the 4th Cycle or the 5th Cycle, which will have implications for the 6th Cycle.

38. The draft 6th Cycle Housing Element Update refers to a North Commercial (NC) zone amendment at 20 du/ac. Program 2-G in the current 5th Cycle Housing Element calls for 20-25 du/ac "by right" on the "Watermark" parcels which is also part of the NC zone. How are these two reconciled?

On October 5, 2020, the City Council will be considering an amendment to 20 du/ac to the NC zone to satisfy 5th Cycle Program 2-E. Watermark is located in the NC zone and would be subject to any changes applicable to the NC zone. The City did not implement the required rezone on the Watermark properties per 5th Cycle Program 2-G. Staff's understanding is that because the City has not implemented Program 2-G and per the City Council's action on September 8, 2020 that resulted in a decision to not amend the NC zone to allow 20 du/ac, it triggered "no net loss" provisions under State Housing law and penalties related to the fact that the City did not create or maintain any adequate sites to accommodate affordable housing during the 5th Cycle. City staff understands that Watermark LP as the affected owner of the properties in the Housing Element rezone Program 2-G has a right to develop per that rezone program even though the City did not process the rezone.

39. Does the State have to abide by the City's zoning regulations on the State-owned Fairgrounds property?

No, the State-owned property which makes up the Fairgrounds is State property that is referred to as being "white-holed". This means that the City does not have any zoning development standards that apply to the property; and the City has no land use control over the development of the respective parcels.

40. If residential becomes an allowed primary use in a commercial zone, does this mean short-term rentals (STRs) could also be allowed and operated?

Yes, STR is a commercial use that would be considered an allowed use in commercial zones, which is consistent with the City Council's interpretation for the existing code's allowance for STRs in commercial zones, specifically including the Residential-Commercial (RC) commercial zone. STRs are a visitor accommodations/commercial use type, in most commercial zones where similar uses are allowed. This is also consistent with the previous Short Term Rental Ordinance that, as adopted by the City Council but not in effect, would have allowed STRs in commercial zones with no limitations. Amendments to allow residential as a primary use in a commercial zone would require certification by the Coastal Commission and this change is consistent with the policies in the Coastal Act and certified LCP related to this use type allowed to be operated in commercial zones, regardless of whether or not these amendments occur because of the provisions in the DMMC related to commercial zones (e.g., that the allowed uses in the respective zones include "any similar enterprise or business which conforms to the description and purpose of the Zone, and is not detrimental to the welfare of the community").

41. Why does the draft 6th Cycle Housing Element plan for 113 affordable units when the City's RHNA allocation was 101 affordable units?

113 affordable units is correct. In the 5th Cycle, the City was required to produce a total of 22 affordable units (12 low income assigned by RHNA and 10 low income units as a penalty for failure to produce any affordable units in the 4th Cycle). HCD staff provided explanation to this in a letter to the City dated July 31, 2020. Based on our discussions with HCD staff, City staff estimates that 12 RHNA units from the 5th Cycle are required to "carry over" into the 6th Cycle.

42. Is the penalty for the private Watermark property not being developed during the 5th Cycle 9 affordable units?

See discussion above. The City was responsible for processing a rezone of the Watermark properties to create adequate sites for affordable housing. No penalty has been assessed from HCD to the City at this point; however, the City risks enforcement by the State for not implementing Program 2-G. City staff understands that the uncompleted 5th Cycle programs and 12 RHNA units from the 5th Cycle are required to "carry over" into the 6th Cycle.

43. Is it correct that the City's 6th Cycle RHNA requirement for moderate and above moderate units can be achieved without rezoning? How many of these units can be achieved by Accessory Dwelling Units (ADUs)?

The 6th Cycle RHNA requirement for moderate and above moderate is 62 units (31 units for each category). It is correct that no rezoning is required to accomplish this. The City can accommodate the 31 above moderate units via existing zones and the 31 moderate units via the allowances for

ADUs. The draft 6th Cycle Housing Element Update projects at least 77 ADUs during the 6th Cycle, which is well over the 31 moderate requirement.

44. How many moderate and above moderate units could be achieved in the 6th Cycle with the preservation of existing duplexes and possible creation of new duplexes in the R1-5B zone?

As mentioned above, the City does not need any additional programs or strategies (such as these types of programs in the R1-5 or R1-5B zone) to accommodate the City's 6th Cycle RHNA requirements for above moderate and moderate units. Also note, if the goal is to credit units toward the City's RHNA obligation, the addition of "preservation" strategies to the HEU would provide any RHNA credit. The proposed HEU already includes preservation strategies; however, additional preservation strategies in these zones could be included as a matter of local policy. This is an example of a program that would be an additional special project that the City Council could consider adding to the Housing Element or later as a special project if desired.

45. Where and why is it required that the City would have to up-zone for 50% (not 100%) of the City's 6th Cycle RHNA requirement of 101 affordable units?

This is not an accurate statement. State Housing law requires that all jurisdictions create and maintain a sufficient capacity of "adequate sites" available throughout the Housing Cycle to meet the jurisdiction's assigned RHNA. It is important to note that "adequate sites" is a critical term in understanding how the State's Housing laws impact Del Mar. Currently, the City does not have adequate sites to produce affordable housing in the eyes of the State as implemented by State Housing law because the City does not have any parcels with a minimum of 20 dwelling units/acre (du/ac). As such, the State considers this as an impediment to affordable housing production. "Impediment" is also a critical term in understanding how the State's Housing laws impact Del Mar. It is City staff's understanding from the State that this is the reason why HCD has considered the City to have been out of compliance since March 2015 during the 5th Cycle (March 2015 was the deadline for completing the North Commercial/Program 2-E and Professional Commercial/Program 2-F housing programs so that the City would have adequate sites, thereby removing a key impediment to affordable housing production). In addition, as a result of State Housing law (including those most recently implemented January 2020), the City currently lacks vacant land between 0.5 acre and 10 acres in a zone that allows at least 20 du/ac. As a result, the State requires the City's Housing Element to contain a rezone program that allows for residential at least 20-25 dwelling units per acre for development of housing with an affordable housing component by-right. This is a requirement of a January 2020 State law – Assembly Bill AB1397. The rezone program (or multiple rezone programs) must accommodate at least half (minimum of 50%) of each jurisdiction's assigned RHNA for lower income households. For Del Mar, 50% is 51 units. This is why the City has to have a rezone program or programs on North Bluff and South Stratford (vacant land between 0.5 acre and 10 acre) in the 6th Cycle in order to gain Housing Element certification. In addition, a jurisdiction like Del Mar that does not have a sufficient capacity of adequate sites must also take action to up-zone or rezone as needed to create sites that allow the State's minimum density. In the case of Del Mar, the State requires that the zones allow at least 20 du/ac. This is the minimum, in the eyes of the State, for what may be considered an adequate site(s) for affordable housing production as required by State Housing law. This is why the North Commercial/Program 2-E and Professional Commercial/Program 2-F housing programs were required to be included in the 5th Cycle Housing Element for it to gain State certification, and also why the Central Commercial (CC) zone is an additional program that

must be considered for the 6th Cycle to gain certification. The applicable Government Code Sections are all cited and referenced in the letter that was submitted to the City by HCD on July 31, 2020. A copy of the letter is attached to the October 5, 2020 City Council Agenda Report available at: www.delmar.ca.us/AgendaCenter.

46. Is it true that at most 20% of an up-zoned parcel can be affordable units? Is that a cap imposed by the State or by the City of Del Mar?

Not true. This question refers to a discussion City staff has had in public meetings about what types of assumptions were considered when determining the number of affordable units in the 6th Cycle Housing Element Update. The City's "inclusionary housing" requirement is set forth in DMMC Chapter 24.21 (inclusionary housing), which specifies the City's minimum requirements for how many affordable units must be set aside as part of a multiple dwelling unit project. The number of affordable units required varies depending on how many total units are proposed in a development project. In summary, projects proposing 2-9 units require one affordable unit; projects with 10 or more units require a set aside of 20% of the units for rent as affordable units. There is no maximum number of affordable units that a project can propose. A project could be 100 percent affordable. However, the point is that the City's code only requires either the one affordable unit for small projects of 2-9 units or 20% affordable for projects with 10 or more units. Therefore, City staff's assumptions of affordable units are based on what is required of proposed development. It should not be interpreted as a "cap". As far as assumptions, HCD is not likely to accept any assumptions from Del Mar of a greater affordable unit yield per project unless the City can also provide supporting documentation to show what permit or contract/agreement supports such assumptions. As mentioned above, the City has regulatory impediments in place that do not support the production of affordable housing because the City does not have any zones that allow 20 du/ac and the City does not have sufficient vacant land in a zone that allows at least 20 du/ac. The State is expecting the City to address these impediments as part of its 6th Cycle proposal to the State.

47. Is there a way for an up-zoned parcel in Del Mar to be given a cap of 30% affordable units or even more (e.g., 40% or 50% has been done elsewhere - Los Gatos has 50% and Corte Madera has 30%)?

This would be a question for the City Attorney as to whether or not it is a legal option. From a policy perspective, it would seem that if the City were to add a "cap" on affordable units, this would be considered a new impediment to affordable housing in the eyes of the State. As such, this would be in the opposite direction of where the City needs to go to show the State progress on affordable unit production. City staff is not clear why it would be a benefit to Del Mar to preclude the option of a project developed with 100 percent affordable units. From a practical perspective, the City including an action to further limit affordable housing would not be supported by HCD since the City cannot demonstrate the production of affordable units at this point in Del Mar. City staff is unaware of the referenced cities noted above – Los Gatos or Corte Madera – and how they obtained a higher affordable percentage.

48. Is there a new density bonus law that was recently signed by the Governor and, if so, does it allow density bonus increases up to 50%?

On September 29, 2020, Governor Newsom signed a package of housing-related bills into law, of which AB2345 was included. This new law modifies the State's density bonus law and now allows a 50% density bonus when 24% of a project's total units are reserved as low income

affordable units. Currently, the City's code requires a 20% inclusionary requirement as the minimum set aside, so a project complying with this minimum could still be eligible for a 35% density bonus. However, if an applicant chose to increase their set aside to 24%, that project could be eligible for a 50% density bonus. Note that density bonus law still only applies to projects with 5 or more units (does not apply to projects with 2 to 4 units total).

49. Assuming zoning that allows residential at 20 du/ac under the new AB2345 law (50% density bonus), what would the new maximum number of units be on sites zoned at 20 dwelling unit per acre for the following areas considered in the 6th Cycle Housing Element Update: North Commercial Zone, Professional Commercial Zone, the North Bluff, and the South Stratford properties?

Assuming 20 du/ac, the following is what City staff understands to be a potential breakdown of units in context to AB2345:

North Commercial Zone:

- Lots with an 8 unit maximum due to their lot size could be eligible for a 3 unit density bonus at 35% if the 11 unit project reserves 20% (2 units) as low income affordable units; or could be eligible for a 4 unit density bonus at 50% if the 12 unit project reserves 24% (3 units) as low income affordable units. This would apply to the following sites: 2148 JDB (Matthews) and 2236 JDB (Marten vacant lot) – these sites have been included as adequate sites in the draft Housing Element Update (HEU).
- Lots with a 10 unit maximum due to their lot size could be eligible for a 4 unit density bonus at 35% if the 14 unit project reserves 20% (3 units) as low income affordable units; or could be eligible for a 5 unit density bonus at 50% if the 15 unit project reserves 24% (4 units) as low income affordable units. This would apply to the following site: 2126 JDB (Read Family LLC) – this site has been included as an adequate site in the draft HEU.
- Lots with an 18 unit maximum due to their lot size could be eligible for a 6 unit density bonus at 35% if the 24 unit project reserves 20% (5 units) as low income affordable units; or could be eligible for a 9 unit density bonus at 50% if the 27 unit project reserves 24% (6 units) as low income affordable units. This would apply to the following site: 2120 JDB (Knorr Trust) – if needed, this site is an alternative option available to the Council to identify as an adequate site.
- Lots with a 28 unit maximum due to their lot size could be eligible for a 10 unit density bonus at 35% if the 38 unit project reserves 20% (8 units) as low income affordable units; or could be eligible for a 14 unit density bonus at 50% if the 42 unit project reserves 24% (10 units) as low income affordable units. This would apply to the following site: 2002 JDB (Westech Realty) – this site has been included as an adequate site in the draft HEU.
- Lots with a 42 unit maximum due to their lot size could be eligible for a 15 unit density bonus at 35% if the 57 unit project reserves 20% (11 units) as low income affordable units; or could be eligible for a 21 unit density bonus at 50% if the 63 unit project reserves 24% (15 units) as low income affordable units. This would apply to the following site: 2010 JDB (Bungalows LLC) – if needed, this site is an alternative option available to the Council to identify as an adequate site.

Professional Commercial Zone:

- Lots with a 5 unit maximum due to their lot size could be eligible for a 2 unit density bonus at 35% if the 7 unit project reserves 20% (1 unit) as low income affordable units; or could

be eligible for a 3 unit density bonus at 50% if the 8 unit project reserves 24% (2 units) as low income affordable units. This would apply to the following site: 322 8th Street.

- Lots with a 6 unit maximum due to their lot size could be eligible for a 2 unit density bonus at 35% if the 8 unit project reserves 20% (2 units) as low income affordable units; or could be eligible for a 3 unit density bonus at 50% if the 9 unit project reserves 24% (2 units) as low income affordable units. This would apply to the following site: 807 CDM.
- Lots with an 11 unit maximum due to their lot size could be eligible for a 4 unit density bonus at 35% if the 15 unit project reserves 20% (3 units) as low income affordable units; or could be eligible for a 6 unit density bonus at 50% if the 17 unit project reserves 24% (4 units) as low income affordable units. This would apply to the following site: 853 CDM.

North Bluff sites:

- Total units at 20 du/ac is 248 units for a zone compliant “project” (it’s important to note that this breakdown shows the extreme because, particularly, the lots on North Bluff have or could have different ownerships and may not be submitted as one “project”. If submitted as smaller projects, a project would end up yielding fewer units overall even with a density bonus). As such, 248 units could be eligible for an 87 unit density bonus at 35% if the 335 unit “project” reserves 20% (67 units) as low income affordable; or could be eligible for a 124 unit density bonus at 50% if the 372 unit “project” reserves 24% (89 units) as low income affordable.

South Stratford sites:

- Total units at 20 du/ac is 99 units for a zone compliant project. As such, 99 units could be eligible for a 35 unit density bonus at 35% if the 134 unit project reserves 20% (27 units) as low income affordable units; or could be eligible for a 50 unit density bonus at 50% if the 149 unit project reserves 24% (36 units) as low income affordable units.

50. A letter was submitted to the Planning Commission for their September 19, 2020 meeting from the owners of the South Stratford properties. Does this correspondence impact how HCD would view the potential for that property?

The submitted letter raises an objection to a potential increase in the City’s inclusionary housing requirement from 20% (under current code) to 25% (to be considered by City Council). Note that both North Bluff and the South Bluff properties are needed to cover the number of affordable units to meet the City’s RHNA obligation and carryover units totaling 113 affordable units. The correspondence submitted by the property owners of South Stratford is included as an attachment to the October 5, 2020 City Council report available here: www.delmar.ca.us/AgendaCenter

51. How long does an affordable unit need to be deed restricted as affordable?

DMMC Section 24.21.045 stipulates that each affordable unit set aside for rental at below-market rates pursuant to the requirements of DMMC Chapter 24.21 shall be no less than 55 years, commencing from the date of the City's written authorization for occupancy of the unit.

52. Of the potential candidate sites considered, specifically vacant sites, why were the vacant sites on San Dieguito Road not included in the proposed 6th Cycle Housing Element Update?

These sites were not included as adequate sites in the 6th Cycle Housing Element Update because they are located on a steep slope with biological resources in a low density area without existing direct access.

53. Was sufficient noticing provided to the public for the housing related items on the October 5, 2020 City Council meeting (6th Cycle HEU and NC Amendments)?

The noticing conducted by the City for the two upcoming items for the City Council is consistent with the City's standard practice, and has been done in accordance with what is legally required for noticing these types of Council actions. The public notice provided included additional notification above what is legally required – both in printed form and through electronic communications. To satisfy the legal requirement, the City follows State noticing requirements for amendments to the Community Plan (General Plan), Zoning Code, and Local Coastal Program (Citations: Government Code Sections 65350-65362, specifically 65353; and Government Code Sections 65090-65096, specifically 65090 and 65091).

On the NC item, this item was placed on the City Council's agenda for October 5 by Mayor Haviland and Councilmember Worden under City Council Policy 301; the item was not scheduled by City staff. Noticing was provided through the same procedure provided for the September 8 City Council meeting. Mailed notices were provided (again) to all property owners in the NC zone and vicinity, in addition to interested parties that have requested to be notified, public agencies, and tribal groups. Further, legal ads were published in the Del Mar Times, which has long been considered the City's "newspaper of general circulation" per State law. The Del Mar Times is the same newspaper the public is used to seeing for all City notices, including City Council items, Design Review Board items, Planning Commission items, and CEQA, etc. Specifically, because this NC item includes an amendment to the Local Coastal Program, the City also published a legal ad in the San Diego Union-Tribune in advance of the Del Mar Times published notice. Similar to the September 8 meeting, the City did not provide mailed notice to the entire City for consideration of the NC and Professional Commercial (PC) items. Noticing the entire City has a significant cost implication and the City has not budgeted for this type of voluntary expanded mailed noticing.

On the 6th Cycle Housing Element, the October 5 City Council date has been sufficiently advertised, disclosed, and promoted since the original work program timing was laid out in January 2020 through many means. This has always been one of the significant milestone dates for this important work effort and mentioned repeatedly in various City meetings including City Council, Planning Commission, and prior Task Force meetings. Aside from the required legal noticing in preparation for October 5, additional notification has been provided in print form and electronic through City notifications, articles, Weekly Update, agenda postings, etc., not to mention a dedicated City webpage for this work effort with a schedule on that home page that has laid out the upcoming hearing dates (www.delmar.ca.us/HousingElement) and a mailer sent citywide to all owners with the mailing of utility bills. As for additional mailed noticing to the entire City, this has a significant cost implication and the City's 6th Cycle work effort is running on an already reduced budget resulting City budget reductions on June 1, 2020 which removed \$38,000 from the 6th Cycle Housing Element special project budget.

54. Can an amendment to the Community Plan be brought to a public hearing without fully noticing the community? Is an ad in the Del Mar Times sufficient to let people know?

The noticing conducted for the October 5, 2020 City Council hearing is consistent with the City's standard practice for noticing and meets the legal requirement for these types of actions. See further explanation above. The City has satisfied legal noticing requirements as well as provided additional notification of the proposed Community Plan amendments through various means – printed and electronic.

55. Did the ad that the City placed in the Del Mar Times appear last week (September 24), or this week (October 1), or both?

The legal ad has been published two times in the Del Mar Times prior to the meeting on October 5 (September 24 and October 1). Further, due to the LCP amendment component related to the NC item, a legal ad was also published in the San Diego Union-Tribune on September 21, 2020.

56. Could consideration of the two items on October 5, 2020 be delayed to the next hearing to allow for additional mailed noticing?

These items are time sensitive, and the standard and legal requirements for noticing have been met. The City has also provided further notification through various means – printed and electronic. The item related to the NC Zone has been placed on the Council Agenda for October 5 by Mayor Haviland and Councilmember Worden under City Council Policy 301, not City staff. As such, all noticing requirements were met and notices were mailed to the same individuals that received noticing earlier for the September 8 City Council meeting. City staff does not have the discretion to pull these items from the agenda to undertake additional courtesy noticing. The direction to hold off on considering either of these items would need to be provided by the City Council at the meeting on October 5.