



CITY OF DEL MAR

October 20, 2020

Megan Kirkeby
Deputy Director
State of California
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

RE: City Response to HCD Written Findings of Violation

Dear Ms. Kirkeby:

On behalf of the City of Del Mar City Council, please consider the City's response with respect to the Department of Housing and Community Development's (HCD) Written Findings of Violation of California's Housing Element Law dated September 30, 2020. For the reasons described herein, the City respectfully requests HCD refrain from further enforcement while the City expeditiously processes its final remaining 5th Cycle housing program, Program 2-G. The City strongly desires to cure its non-compliance and avoid further enforcement actions.

As we near the close of our 5th Housing Cycle, the City had three critical programs to adopt locally – Programs 2-E and 2-F to address the City's 5th Cycle shortfall, and Program 2-G to accommodate an unaccommodated 4th Cycle need. On September 21, 2020, the City Council adopted Program 2-F to allow residential in the City's Professional Commercial zone at 20 du/ac. Shortly after receiving HCD's Written Findings of Violation, the City Council took action on its second program. On October 5, 2020, the City Council introduced an ordinance to implement Program 2-E to allow residential in the City's North Commercial zone at 20 du/ac. Both actions are consistent with the City's 5th Cycle Housing Element, which is a component of the City's Community Plan, and require amendments to the City's certified Local Coastal Program (LCP) before formal implementation can occur. The local adoption of these two 5th Cycle housing programs is a crucial next step in finalizing the City's obligation to provide sufficient zoning for adequate sites under its 5th Cycle commitments.

The final program to implement is Program 2-G. As described in HCD's Written Findings of Violation, City action on Program 2-G is critical as this program was a penalty for the City's failure to accommodate adequate sites for affordable housing production in its 4th Cycle Housing Element. While Programs 2-E and 2-F are critical to the City's compliance with its 5th Cycle Housing Element, the City understands that uncompleted Program 2-G puts the City at most risk of Housing Element decertification and referral to the Attorney General's office.

On October 19, 2020, the City Council formally initiated the expeditious processing of rezone amendments to its LCP and Zoning Code in compliance with Program 2-G. The City's goal is to take local action on these amendments before April 15, 2021 (i.e., the close of the 5th Housing Cycle). Similar to Programs 2-E and 2-F, Program 2-G rezone actions would also require certification by the California Coastal Commission (CCC). The City Council has allocated funding and directed staffing resources to prioritize this item and bring the rezone amendments through

the public hearing process which would include hearings before the City's Planning Commission and City Council. Related to Program 2-E, the City would also take local action on the North Commercial land use designation before April 15, 2021 related to the Community Development section of the Community Plan to ensure internal consistency between all sections of its Community Plan.

Please understand that the City's delay in completing Program 2-G is largely due to the processing of a Specific Plan application for the same two parcels considered under this program for many years. This has been referred to as the "Watermark Specific Plan." In July 2014, the City Council authorized a framework to proceed with a Specific Plan for a multiple dwelling unit residential development on the two "Watermark" parcels identified in Program 2-G. A Development Agreement was later entered into between the City and property owners in January 2015, to extend previously-issued discretionary entitlements for a prior commercial office project on the same sites. Following, a draft Environmental Impact Report was prepared and circulated for public review which necessitated the need for further coordination between the property owners and CCC staff regarding concerns with coastal resources in the area. Since that time, it is the City's understanding that the property owners have been in coordination with CCC staff; however, a revised project has not been presented to the City. Moreover, in April 2020, the Development Agreement expired, including therewith the associated discretionary entitlements.

More recently, the property owners have not proceeded further with their Specific Plan application. On October 16, 2020 the City of Del Mar received the attached letter from the attorney for the Watermark developers advising of their intention to proceed with a "by right" development. Based on discussions with HCD staff it is our understanding, notwithstanding statements in the Watermark letter to the contrary, that Watermark proceeding with a "by right" development does not moot the City's need to implement and comply with Program 2-G. We further understand that implementation of Program 2-G as outlined in this letter will be an important step in assuring Del Mar stays in compliance with its state housing obligations and in avoiding penalties from HCD specific to Program 2-G. If we are incorrect in either understanding, please let us know as soon as possible.

As the intended outcome of the Specific Plan was to produce comparable affordable units of sufficient density as required in the City's 5th Cycle Housing Element, this approach had allowed the City and property owner to conduct ample community participation in the review process and work through the local planning process with considerations for design and potential environmental impacts. The City's intention was always to gain compliance with its unaccommodated 4th Cycle need by completing the Specific Plan process. Unfortunately, time is of the essence and in response to HCD's Written Findings of Violation, the City Council commits to processing the Program 2-G rezone actions in an expeditious manner before the close of its 5th Housing Cycle.

As we anticipate approximately four months to complete the public hearing process, including consideration for the upcoming holidays, the City respectfully requests HCD grant the City a shortened timeframe to cure its non-compliance and refrain from referring this matter to the Attorney General's office.

Related, on October 5, 2020, the City Council approved its draft 6th Cycle Housing Element Update and authorized staff to submit to HCD for its formal review and comment. The overall goal of the City's 6th Cycle production process was to "inspire a more diverse, sustainable, and

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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.” Staff plans to submit the draft and all supporting documents before the end of this week.

Thank you for your consideration of the City’s responses and, as always, we sincerely appreciate all the support and guidance HCD staff has provided to the City with its 6th Cycle Housing Element production. Should you have any questions or require any further information, please contact Joseph Smith, AICP, Director of Planning and Community Development, at jsmith@delmar.ca.us or (858) 704-3642.

Sincerely,



Christa Johnson
City Manager

cc: Mayor and Councilmembers
Paul McDougall, HCD
Jose Ayala, HCD
Joseph Smith, Planning & Community Development Director