

# **BRIGGS LAW CORPORATION**

*San Diego Office:  
4891 Pacific Highway, Suite 104  
San Diego, CA 92110*

*Telephone: 619-497-0021  
Facsimile: 909-949-7121*

*Please respond to: Inland Empire Office*

*Inland Empire Office:  
99 East "C" Street, Suite 111  
Upland, CA 91786*

*Telephone: 909-949-7115  
Facsimile: 909-949-7121*

*BLC File(s): 1196.11*

27 June 2016

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

via E-Mail to [shuth@delmar.ca.us](mailto:shuth@delmar.ca.us)

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

Dear Mr. Huth:

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

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

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

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

---

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



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

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

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

See Housing Element, p.69. Absent rezoning, the City’s sites inventory under existing land use policies could accommodate only the moderate and above-moderate income RHNA units, with a remaining RHNA obligation of 22 lower income units. See Housing Element, pp. 71-72.<sup>2</sup>

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

These commitments are reflected in the Housing Element Programs Objectives:

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

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

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

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

---

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



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

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

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

See Housing Element, p. 86.<sup>3</sup>

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

---

<sup>3</sup> See also Eight-Year Objectives:

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

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

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



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

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

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

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

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

## **III. Conclusion**

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

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

