

Joel Ellinwood

From: Veronica Lezama <veronica@sanbenitocog.org>
Sent: Wednesday, March 16, 2022 1:52 PM
To: Joel Ellinwood
Cc: Shirley Murphy; Barbara Thompson
Subject: Fwd: Letter from the COG Board

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please see below

Veronica

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Macedo, Tawny@HCD <Tawny.Macedo@hcd.ca.gov>
Sent: Thursday, February 17, 2022, 3:16 PM
To: Veronica Lezama <veronica@sanbenitocog.org>; Brinkhuis, Tom@HCD <Tom.Brinkhuis@hcd.ca.gov>
Cc: Osterberg, Annelise@HCD <Annelise.Osterberg@hcd.ca.gov>; Rolfness, Kevan@HCD <Kevan.Rolfness@hcd.ca.gov>; Beth Jarosz <bjarosz@prb.org>; Heather Adamson <hadamson@ambag.org>; Mary Gilbert <mary@sanbenitocog.org>; Buckley, Tyrone@HCD <Tyrone.Buckley@hcd.ca.gov>
Subject: RE: Letter from the COG Board

Good Afternoon Veronica,

Please see the technical assistance below.

HCD hopes San Benito COG finds this information useful. Should you have any additional questions, please feel free to contact HCD staff.

Regards,
Tawny

This technical assistance provides responses to questions posed by San Benito COG regarding consequences for not adopting a methodology to distribute the regional housing need (RHNA) or adopting a final RHNA plan which issues San Benito COG local governments their share of the regional housing need. This is not legal advice and should not be relied upon as such. In fact, given HCD's potential role in enforcing RHNA and Housing Element law, HCD advises San Benito COG to consult with its own legal counsel on this matter. The technical assistance below is focused on a jurisdiction not being able to adopt a compliant housing element without a housing need allocation provided by San Benito COG. Consequences for local governments not adopting a compliance housing element include the following:

Immediate consequence:

- Local governments cannot use inconsistency with zoning and general plan standards as reasons for denial of a housing project for very low-, low-, or moderate-income households.

Consequence for jurisdictions that do not have a compliant element by 120 days past their due date:

- Local governments must complete all necessary rezones within one year of that statutory deadline and after a year cannot be found in substantial compliance with Housing Element Law until the local government has completed any required rezoning.
- Please note: these provisions replace previous requirements for mid-cycle housing element updates (4-year updates) for jurisdictions that had not adopted within 120 days of the statutory requirements.

Mid-term consequences:

Due to funding cycles these consequences do not always affect a jurisdiction immediately after they lose compliance; however, once a jurisdiction loses compliance they lose access to these funding sources:

- Local Housing Trust Fund Program (SB 2)
- SB 1 Caltrans Sustainable Communities Grants
- Infill Infrastructure Grant Program (QIA only)
- Permanent Local Housing Allocation (SB 2) Competitive
- Permanent Local Housing Allocation (SB 2) Over the Counter
- Affordable Housing and Sustainable Communities Program
- HOME program (only non-entitlement jurisdictions)
- CDBG program (only non-entitlement jurisdictions)

Most serious and long-term consequences:

- HCD may notify the California Office of the Attorney General, which may bring suit for violations of Housing Element Law.
- Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (I), establishes a minimum fine of \$10,000 per month and up to \$100,000 per month. If a jurisdiction continues to remain noncompliant, a court can multiply the penalties up to a factor of six.
- Courts have broad discretion to impose other remedies. Potential ramifications could include the loss of local land use authority to a court-appointed agent.
- Private parties can sue for housing element compliance as well.

Additional messaging for jurisdictions to address penalties for not planning or building housing:

Will my jurisdiction be penalized if we don't plan for enough housing?

State [Housing Element Law \[leginfo.legislature.ca.gov\]](https://leginfo.ca.gov/) requires that jurisdictions plan for all types of housing based on the allocations they receive from the RHNA process. Consequences for having a non-compliant or late housing element can include shorter timeframes for completing housing element related rezoning, loss of eligibility for certain funding, and potential legal consequences and judicial remedies.

Local governments must also implement their commitments from the housing element, and the statute has several consequences for the lack of implementation. For example, failure to rezone in a timely manner may impact a local government's land use authority and result in a carryover of RHNA to the next cycle. Failure to implement programs can also influence future housing element updates and requirements, such as program timing. HCD may investigate any action or lack of action in the housing element.

Will my jurisdiction be penalized if we don't build enough housing?

For jurisdictions that did not issue permits for enough housing to keep pace consistent with the RHNA, a developer can elect to use a ministerial process to get project approval for residential projects that meet certain conditions.

From: Veronica Lezama <veronica@sanbenitocog.org>

Sent: Friday, February 4, 2022 4:25 PM

To: Macedo, Tawny@HCD <Tawny.Macedo@hcd.ca.gov>; Brinkhuis, Tom@HCD <Tom.Brinkhuis@hcd.ca.gov>

Cc: Osterberg, Annelise@HCD <Annelise.Osterberg@hcd.ca.gov>; Rolfness, Kevan@HCD <Kevan.Rolfness@hcd.ca.gov>;

Beth Jarosz <bjarosz@prb.org>; Heather Adamson <hadamson@ambag.org>; Mary Gilbert <mary@sanbenitocog.org>;

Buckley, Tyrone@HCD <Tyrone.Buckley@hcd.ca.gov>

Subject: RE: Letter from the COG Board

Hi Tawny,

Any information before 2/14 would be greatly appreciated! If not possible, we will present what we have collected thus far.

Thank you for your assistance and efforts.

Warmest regards,



[sanbenitocog.org]

Veronica Lezama

TRANSPORTATION PLANNER

Council of San Benito County Governments (COG)

Airport Land Use Commission [\[sanbenitocog.org\]](https://sanbenitocog.org)

(ALUC)



330 Tres Pinos Rd., C7, Hollister, CA

95023

veronica@sanbenitocog.org



831 637 7665, Ext 206

sanbenitocog.org

From: Macedo, Tawny@HCD <Tawny.Macedo@hcd.ca.gov>

Sent: Friday, February 4, 2022 4:06 PM

To: Veronica Lezama <veronica@sanbenitocog.org>; Brinkhuis, Tom@HCD <Tom.Brinkhuis@hcd.ca.gov>

Cc: Osterberg, Annelise@HCD <Annelise.Osterberg@hcd.ca.gov>; Rolfness, Kevan@HCD <Kevan.Rolfness@hcd.ca.gov>;

Beth Jarosz <bjarosz@prb.org>; Heather Adamson <hadamson@ambag.org>; Mary Gilbert <mary@sanbenitocog.org>;

Buckley, Tyrone@HCD <Tyrone.Buckley@hcd.ca.gov>

Subject: RE: Letter from the COG Board

Hi Veronica,

We are in the process of working on your request below. Unfortunately, we won't have additional information to share with you on those items by your February 7 deadline. We'll get back to you as soon as possible.

Warmly,
Tawny

From: Veronica Lezama <veronica@sanbenitocog.org>
Sent: Monday, January 31, 2022 3:50 PM
To: Brinkhuis, Tom@HCD <Tom.Brinkhuis@hcd.ca.gov>
Cc: Macedo, Tawny@HCD <Tawny.Macedo@hcd.ca.gov>; Osterberg, Annelise@HCD <Annelise.Osterberg@hcd.ca.gov>; Rolfness, Kevan@HCD <Kevan.Rolfness@hcd.ca.gov>; Beth Jarosz <bjarosz@prb.org>; Heather Adamson <hadamson@ambag.org>; Mary Gilbert <mary@sanbenitocog.org>; Buckley, Tyrone@HCD <Tyrone.Buckley@hcd.ca.gov>
Subject: RE: Letter from the COG Board

Good afternoon Tom,

We wanted to thank you, your team, and Mr. Buckley for taking the time to meet with us this morning. You may find a copy of the special COG meeting (1/11/22) recording at the following [Dropbox link. \[dropbox.com\]](#) As noted at our meeting, we look forward to receiving the following information by February 7th so that we can prepare the staff memo and materials for the February COG agenda.

1. Implications to COG for not adopting a RHNA
2. Implications to the Cities & County for not having a compliant Housing Element
3. List of possible funding disqualification or impacts

Warmest regards,



[sanbenitocog.org]

Veronica Lezama

TRANSPORTATION PLANNER

Council of San Benito County Governments (COG)

Airport Land Use Commission [\[sanbenitocog.org\]](http://sanbenitocog.org)

(ALUC)



330 Tres Pinos Rd., C7, Hollister, CA

95023

veronica@sanbenitocog.org



831 637 7665, Ext 206

sanbenitocog.org
