

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

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September 9, 2025

Esperanza Colio Warren, County Administrative Officer
San Benito County
481 4th Street, 1st Floor
Hollister, CA 95023-3840

Dear Esperanza Colio Warren:

**RE: County of San Benito Failure to Adopt a Compliant 6th Cycle Housing Element
– Letter of Inquiry**

The purpose of this letter is to inquire about the status of the San Benito County's (County) 6th cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). The 6th cycle planning period for the County is December 15, 2023, through December 15, 2031.¹ The County failed to adopt a compliant housing element by its 6th cycle due date of December 15, 2023. Therefore, the County is out of compliance with Housing Element Law.²

The California Department of Housing and Community Development (HCD) issued a letter to the County on April 1, 2025, finding the County's draft housing element had met the statutory requirements of Housing Element Law.³ However, the housing element cannot be found in substantial compliance until the County has completed its necessary rezones; specifically, the County's commitment to complete Program 3-2 (Residential High Rezone and General Plan Amendment) to rezone sites to accommodate the Regional Housing Needs Allocation (RHNA) pursuant to Government Code section 65583.2, subdivisions (h) and (i).

HCD is requesting the County provide a revised and specific timeline for (1) completing necessary rezones, (2) adopting the housing element and rezones, (3) submitting rezone documentation and a copy of the adopted housing element to HCD for review, and (4) obtaining compliance with Housing Element Law, no later than October 9, 2025.

¹ Gov. Code, § 65588, subd. (e)(3).

² Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code.

³ Findings Letter is available at <https://www.hcd.ca.gov/planning-and-community-development/housing-element-download-tool>.

6th Cycle Housing Element Submission and Review History

HCD records are as follows:

- On June 19, 2024, the County submitted an initial draft housing element to HCD for review.
- On September 17, 2024, HCD issued a findings letter to the County noting multiple revisions necessary for the housing element to substantially comply with Housing Element Law.
- On November 15, 2024, the County submitted a subsequent draft housing element to HCD for review.
- On January 13, 2025, HCD issued a second findings letter to the County noting revisions were still necessary for the housing element to substantially comply with Housing Element Law.
- On February 3, 2025, the County submitted a subsequent draft housing element to HCD for review.
- On April 1, 2025, HCD issued a third findings letter to the County noting that the draft housing element meets the statutory requirements described in HCD's review. However, the housing element cannot be found in substantial compliance until the County completes its required rezones, and both the housing element and rezones are adopted, submitted to, and approved by HCD.
- As of the date of this letter, the County has not submitted rezone documentation or a copy of its adopted housing element to HCD for review since receiving HCD's third findings letter.

AB 1398, Statutes of 2021

Please note, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a jurisdiction fails to adopt a compliant housing element within one year from the statutory deadline, its housing element cannot be found in compliance until any rezones necessary to accommodate the jurisdiction's RHNA are completed. Once the County completes the rezone, a copy of the resolution or ordinance should be transmitted to HCD. HCD will review the documentation and issue correspondence identifying the updated status of the County's housing element compliance.

Consequences of Noncompliance

Consequences apply if the County does not have a housing element in substantial compliance with Housing Element Law. First, noncompliance results in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation Program
- Local Housing Trust Fund Program

- Infill Infrastructure Grant Program
- Senate Bill 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, under the Housing Accountability Act, jurisdictions that do not have a substantially compliant housing element are subject to the Builder's Remedy.⁴

In addition, jurisdictions that do not have a compliant housing element may face additional legal ramifications, including referral of the County to the Attorney General's Office for its violations of state law.⁵ Further, state law provides for court-imposed penalties for persistent noncompliance, including enhanced financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month for jurisdictions that fail to comply with a court order to bring its housing element into compliance. If a jurisdiction remains noncompliant, a court may multiply those penalties by a factor of three and then six, depending on the duration of the continued noncompliance.⁶

Finally, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, jurisdictions are subject to additional fines of between \$10,000 and \$50,000 per month for each violation, accrued from the date of the violation until the date the violation is cured, including investigation costs, expert fees, attorneys' fees, costs, and any other relief the court deems appropriate.⁷ If a jurisdiction fails to comply after six months from the imposition of fees, the court may also appoint a receiver.⁸

Conclusion

HCD recognizes that, ultimately, state housing laws are effective only with the cooperation of local governments and understands staffing and resource constraints that may hinder efforts to gain compliance. However, housing elements, and the timely implementation thereof, are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. Accordingly, state law has established clear disincentives for local jurisdictions that fail to comply with Housing Element Law. To meet the 6th cycle update requirements for a substantially compliant housing element, the County must complete its rezones, adopt the housing element and rezones, submit a copy of the adopted housing element and rezone documentation to HCD for review and certification before it can be considered compliant.⁹

⁴ Gov. Code, § 65589.5, subds. (d)(6), (f)(6), and (h)(11).

⁵ Gov. Code, § 65585, subds. (i)(1)(A) and (j).

⁶ Gov. Code, § 65585, subds. (l)(2) and (3).

⁷ Gov. Code, § 65009.1, subd. (a).

⁸ Gov. Code, § 65585, subd. (l)(3)(B).

⁹ Gov. Code, § 65585, subds. (b)-(h).

If you have any questions or would like to discuss the content of this letter, please contact Mary Milner of our staff at mary.milner@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Fidel Herrera", with a stylized, flowing script.

Fidel Herrera
Section Chief, Housing Element Implementation
Housing Accountability Unit