

Response to Grand Jury Report Form

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**

Report Title: Affordable Housing: Past, Present and Future
Report Date: June 14, 2022
Response by: Mark Landman Title: Mayor
Agency/Department Name: City of Cotati

FINDINGS: F1, F2, F3, F4, F5, F7, F10, F11, F12, F13, F14, F16, F17, F19, F20, F21, F22

I (we) agree with the findings numbered: F1, F2, F5, F11, F20

I (we) disagree wholly or partially with the findings numbered: F3, F4, F7, F9, F10, F12, F14, F15, F17,

(Attach a statement specifying any portions of the findings that are disputed with an explanation of the reasons.)

RECOMMENDATIONS: R1, R2, R3, R4, R5, R6, R7, R8

- Recommendations numbered: R4, R5, R7, R8 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered: R1, have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered: R2, R3, R6, require(s) further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six months from the date of publication of the Grand Jury report.***)
- Recommendations numbered: _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 9/14/22 Signed: [Signature]

Number of pages attached: 7

(See attached Civil Grand Jury Response Requirements)

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

Response to Grant Jury Report on Affordable Housing: Past, Present and Future – City of Cotati

Response to Findings

General Response: While the City appreciates and supports the Grand Jury's attention to the need for affordable housing in Sonoma County, the Grand Jury's report and findings leave out some of the greatest influences on the current housing crisis, namely economic forces and changes in state law regarding funding of affordable housing. Until 2011, through their redevelopment agencies, local agencies were able to directly access property tax revenue for the purpose of constructing affordable housing. This "tax increment" and the housing bonds it secured provided a secure, local revenue source that was committed to the construction of affordable housing.

In 2011, in response to budget difficulties at the state level, the legislature passed and Governor Brown signed ABx1 26 which dissolved local redevelopment agencies, returned property tax revenue to the state and put an end to an important and locally-controlled revenue source that was dedicated to the construction of affordable housing. Not surprisingly, shortly thereafter the production of affordable housing decreased dramatically. Further, in 2019, last minute changes were made to the Low-Income Housing Tax Credit (LIHTC) program to allow market rate projects access to these funds. These changes were made with little to no involvement from the affordable housing community, and with very little insight into their reasoning or timing.

These changes at the State level forever transformed the process by which affordable housing units are funded and local agencies are still struggling to effectively respond. This is compounded by the massive volume of housing legislation constantly changing the affordable housing mandates and requirements that must be implemented by local agencies. Over the last decade, the State has passed numerous laws focused on local agency requirements to support affordable housing but has not been willing to reinstate a locally controlled funding source for affordable housing. Until this fundamental mismatch between local agencies' mandate to support the construction of housing and a lack of substantial locally controlled funding for this construction is resolved, implementing the various Grand Jury recommendations to meaningfully achieve greater housing development will likely fall short of the need.

- F1. Increased Affordable Housing has been mandated by the State of California and officially accepted by Sonoma County and its nine Cities.

Cotati Response: Agreed.

- F2. Housing jurisdictions must show sufficient progress in meeting 6th cycle Regional Housing Needs Allocation mandates or they risk being fined or losing local authority over their housing programs.

Cotati Response: Agreed.

- F3. Sonoma County and its nine Cities have officially recognized the need for Affordable Housing but not all have fully endorsed the Regional Housing Needs Allocation or met earlier goals.

Cotati Response: Disagree, in part. City of Cotati staff cannot speak for or comment on the endorsement by other jurisdictions, however Cotati has demonstrated full endorsement of its RHNA adopting goals to comply in the 2015 Housing Element and has sought to meet these goals by approving more total housing units during the 5th RHNA cycle than allocated. However, the City is not a developer and does not control the pace of housing construction. Many of these approved units were never built due to changes in the real estate and construction market. Throughout the 5th Cycle, Cotati has consistently provided available

housing sites to enable housing construction, required inclusionary affordable housing units, implemented robust affordable housing programs through Affordable Housing Agreements, streamlined and expedited review of affordable housing projects and provided gap funding for housing projects during this eight-year period.

To date, the City has exceeded its 5th cycle RHNA for total units, and has met or exceeded the RHNA requirements for low-, moderate above moderate-income categories, but has fallen short of its Very Low Income allocation (11 units constructed of 36 allocated). While not all of the units in the very low-income category have been built, a significant number of units in excess of the very low-income allocation were approved by the City.

- F4. Some cities hinder the development of Affordable Housing through designation of new historic districts, increased landscaping requirements, highly restrictive zoning, and exploitation of environmental concerns.

Cotati Response: Partially disagree. While development requirements may be seen as “hinderances” to development of affordable housing, generally, City’s create development standards and requirements with the goal of maintaining the community character and quality of the built environment, while also respecting the historic development pattern. Further, the State has adopted specific environmental regulations to ensure impacts to environmental resources are minimized and reduced where possible. Regardless, Cotati’s historic record of supporting development which provides affordable housing clearly identified that Cotati does not seek to “hinder” development through its implementation of land use policy.

- F5. Public acceptance of the need for Affordable Housing is not universal; NIMBYism and misinformation can negatively impact the planning and development process.

Cotati Response: Agreed. However, it should be noted that in the age of social media and electronic communications, the rapid spreading of misinformation and a lack of factual information can be said to have negatively impacted many aspects of civil society.

- F7. There is great variability in the planning and approval processes and procedures for developing Affordable Housing in the County and its Cities, thus complicating and slowing development.

Cotati Response: Disagree, in part. There are many State regulations governing the development review process (Permit Streamlining Act, Subdivision Map Act, Housing Accountability Act. etc), ensuring a baseline level of consistency across all jurisdictions. Cotati acknowledges that there is some variability between jurisdictions, but this alone does not significantly complicate or slow development. The variability in procedures between jurisdictions is not seen as a significant complicating factor based on the experience of staff. Specific to Cotati, in the last RHNA cycle, the City expedited the development review process for one 100% affordable housing project which ultimately was not built because available financing was not adequate to support the development (even though the City of Cotati committed \$750,000 in Affordable Housing funds and the County CDC also allocated funding to the project). The development of affordable housing is dependent on an extremely complex and at times unpredictable financing system that the County and cities do not control. From the experience of staff, these issues are much more likely than “variability in planning and approval processes” to affect the timing and pace of affordable housing development.

- F10. Design review and project approval are often slow and very complex and hinder the development of Affordable Housing.

Cotati Response: Disagree. As outlined in the response to Finding F7, local agencies are very capable of streamlining processing for affordable housing projects, and it is generally other factors that impede construction.

The Design Review process is necessary to ensure that projects make a positive contribution to the built environment of each individual community, therefore enhancing the overall acceptability of the project (and future development) to the surrounding neighborhood. In Cotati the process does not significantly add to the project timeline as Design Review is typically processed concurrently with other entitlements required for a development project. Generally, requiring Design Review motivates housing developers to present well-designed projects with attractive amenities, designed to meet the expectations of the individual communities in which they are proposed. Efforts of cities to require quality designs can actually support affordable housing construction because funding agencies prioritize well-designed projects with amenities, and neighbors support quality projects that enhance their neighborhood and provide amenities to serve the future residents.

If a project is designed poorly, it may not compete well for financing, and can take longer to move through the permitting process. This is because multiple design revisions may be required to implement community adopted design policies; or neighborhood opposition may result in appeals and legal challenges. Any time saved in the entitlement process by eliminating Design Review could be lost in the building approval process because of these factors. A poorly designed project that does not receive significant preliminary review, can have significant public safety deficiencies with life safety and quality of life implications built into the design. A good Design Review/entitlement process can identify problems early and ensure the functionality and quality of the built project. While there are certainly opportunities to streamline the process, allowing a professional third-party review of the design of projects which construct significant changes into the built environment, provides benefit to the entire community for the life of these buildings (50+ years).

- F11. The permitting regulations, processes, and fees differ by jurisdiction.

Cotati Response: Agree. However, as identified in the City's response to F7 above, there are many State regulations governing the development review process, ensuring a baseline level of consistency across all jurisdictions. Similarly, the development impact fees charged by jurisdictions in the County of Sonoma do vary by individual project and community, however when aggregated are near parity. The design regulations are unique to each community, just as each community within the County has its own identity and priorities.

- F12. Mitigation fees vary by individual projects and jurisdictions, complicating the building of Affordable Housing.

Cotati Response: Disagree, in part. Firstly, it is important to clarify the difference between development impact fees and mitigation fees, which could be required to off-set environmental impacts to protected natural resources or species deemed endangered and threatened by the State and Federal governments. Both development impact fees and mitigation fees do vary by individual location, however local jurisdictions have no influence over environmental mitigation costs (and therefore will not be discussed further in this response). The development impact fees charged by jurisdictions within the County do vary by individual project and community, however when aggregated are near parity. The

infrastructure and service needs funded by these fees vary according to location and community need. At their very core, cities and counties are service providers, responsible for implementing a litany of state and federal mandates, as well as community goals and expectations. Funding of these services is notoriously challenging and complex in California due to a combination of factors including Proposition 13 and numerous other voter initiatives controlling development processes, elimination of re-development funds and the reliance by local government on sales and other cyclical funding sources to fund these services.

Given these challenges, development impact fees are an extremely important tool for extending infrastructure to support development of greenfield properties (which is listed in Finding 17 as another barrier to housing) where adequate infrastructure may not exist, and to enhance existing infrastructure to accommodate in-fill growth. Finding F17 below discusses annexation of new land for development as being challenged by a lack of funding for new infrastructure. Annexation without a means to fund adequate infrastructure to serve the newly annexed land would not allow the equitable sharing of costs, put increased costs on development of that land and push up the overall cost of the units in that project.

- F13. The speed of issuing permits has improved in some jurisdictions, but greater efficiency would help meet the building needs of Sonoma County.

Cotati Response: Agree. Greater efficiency in all aspect of the development process would help to meet the (housing) needs of Sonoma County.

- F14. Payment of in-lieu fees to the housing jurisdiction results in fewer inclusionary affordable housing units and houses being built.

Cotati Response: Disagree, in part. It is correct that the in-lieu fees typically charged of a developer to build inclusionary housing units in a project do not cover the costs to develop those units at an alternative location. In Cotati, construction of on-site "inclusionary" affordable housing for any project over nine units is required at a ratio of 15-percent. However, CD staff regularly hear from developers that the costs to construct these units is cash flow negative that is absorbed by the market rate units, or simply prevents the projects from moving forward. Given this, having an option of in-lieu fee payments is a valuable tool to provide local jurisdictions with funds to support housing projects. Since the dissolution of redevelopment agencies in 2011, in-lieu fees are often the only dedicated, locally controlled funding source available for affordable housing.

In-lieu fees also provide a tool for ensuring that non-residential development contributes to the construction of affordable housing that their employees often need. Cotati has an Affordable Housing Linkage Fee (established by Cotati Municipal Code Chapter 17.31.115) that ensures non-residential development contributes financially to the construction of affordable housing.

Finally, until quite recently, case law (*Palmer/Sixth Street Properties L.P. v. City of Los Angeles*) effectively prohibited local agencies from requiring inclusionary units in rental projects, making affordable housing fees the only option to secure contributions to affordable housing from market-rate apartment projects. While the state has recently passed legislation to reverse this case law, history helps explain why many local jurisdictions have pursued in-lieu fees as a piece of their overall strategy for providing affordable housing.

- F16. Recent legislation encourages construction of transit-oriented infill housing but has yet to

show a large effect.

Cotati Response: Disagree, in part. Over the last two decades, land use designations in Cotati (and throughout Sonoma County) have trended toward more dense and intense mixed-use environments in transit rich areas (ie. Transit Oriented Development (TOD)). Most recently approved projects in Cotati have been on infill sites in transit rich areas of the City. However, it is true that a majority of these approved project have not been constructed. Whether this orientation towards TOD has had a large effect is a subjective judgement, especially given the various non-TOD influences affecting the development of housing.

- F17. Changes to city boundaries by annexation of land within their Spheres of Influence could allow the development of more Affordable Housing but is resisted due to the high costs of additional infrastructure.

Cotati Response: Disagree. Cotati agrees that if developers are generally unwilling to contribute to the cost of the infrastructure that serves their development, this can be a limiting factor. However, infrastructure does not need to be a barrier to annexation, provided that adequate resources are available to fund that infrastructure. Tools like impact fees and reimbursement agreements provide methods to ensure that projects are paying a “fair share” of infrastructure costs while not requiring their funding of 100% of needed infrastructure costs. This balance can help make annexation and infrastructure extensions far more feasible from an economic perspective.

Cotati has significantly more land available for housing within the existing city limits than is required to meet the 2023 RHNA allocation; most of which is already served by city infrastructure. Also, while Cotati has not completed annexation of land outside the current City boundaries in recent history, specific areas served by existing infrastructure (Alder Avenue and Helman Lane) have been pre-zoned for future development efforts as recently as 2019. Further, many areas outside of the current City boundary but within the Sphere of Influence have been granted land use designations by the General Plan to clarify their development potential and future land use designations. Further, Cotati has funded multiple infrastructure improvements in recent years to ensure development capacity is not limited by infrastructure capacity. Specifically, the sewer by-pass project and hub street sewer capacity upgrade project were Capital Improvement Plan (CIP) projects funded through a combination of sewer impact fees and utility rates to ensure adequate capacity is available to meet the needs of specific development projects (Kessing Ranch residential subdivision) and the projected growth identified by the General Plan. Finally, as mentioned previously, the City has extensive amounts of un-developed and under-developed property within the current City boundaries making the additional cost and process of annexation not necessary for the development of residential housing to occur within the City.

- F19. Rehabilitation and the repurposing of existing properties both preserve and increase the supply of Affordable Housing.

Cotati Response: Agree.

- F20. Inclusive Affordable Housing must be equivalent to market rate units and be dispersed throughout a project making it harder to identify and stigmatize them.

Cotati Response: Agree. Cotati has historically and consistently required inclusionary

affordable housing units to be developed as a component of larger market rate development projects, and this philosophy is clearly integrated into the City's adopted Housing Elements, both past and present. Affordable housing should be well-designed and benefit from the location and amenities or market rate homes.

F21. Manufactured and factory-built home construction provide less expensive routes to Affordable Housing without necessarily reducing its quality.

Cotati Response: Agree

F22. Design modifications can help make Affordable Housing projects economically viable.

Cotati Response: Unknown. Finding is vague and needs to provide more insight for an adequate response to be provided. Affordable housing should be of the same quality as the adjacent market rate housing.

Response to Recommendations:

R1. By December 31, 2022, Permit Sonoma and the nine Cities should begin to streamline their procedures, from preliminary review through the permitting process, related to the development of Affordable Housing. (F7, F10, F11, F13)

Cotati Response: Cotati continually seeks to streamline the development review process generally and has proposed a 6th Cycle Housing Element Program to create a streamlined review process for affordable housing projects. The adoption time period for the 6th Cycle Housing Element is currently uncertain, given the new State requirements and unknown Housing and Community Development (HCD) review time frames. However, it should be in place and adopted by mid-2023.

R2. By December 31, 2022, Permit Sonoma and the nine Cities should meet to consider standardizing their procedures related to the development of Affordable Housing. (F7, F10, F11, F13)

Cotati Response: Cotati is willing meet with Permit Sonoma and other cities to discuss opportunities to standardize procedures related to the development of Affordable Housing. Because of the unique requirements of various municipal and county codes and the varied priorities and concerns of the decision makers of each jurisdiction, there may be limited opportunity for standardizing.

R3. By December 31, 2022, Permit Sonoma and the nine Cities should meet to discuss the coordination of fee reduction standards for Affordable Housing throughout the County. (F11, F12, F14)

Cotati Response: Cotati is willing to meet with Permit Sonoma and other cities to discuss coordination of fee reduction standards.

R4. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that could support the construction of infill housing and accessory dwelling units. (F1, F2, F3, F4, F16, F17)

Cotati Response: Cotati has already implemented this recommendation. The existing 2015 Housing Element includes these sites, and updated information will be presented in the City's draft Housing Element, which will be available for review and comment by mid- September.

R5. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within

their jurisdictions and Spheres of Influence that are likely opportunities for rehabilitation or repurposing to increase the availability of Affordable Housing. (F16, F19, F22)

Cotati Response: Cotati has already implemented this recommendation. The existing 2015 Housin Element includes these sites, and updated information will be presented in the City's draft Housing Element which will be available for review and comment by mid- September.

- R6. By June 1, 2023, Permit Sonoma and the nine Cities should develop permit ready accessory dwelling unit and junior accessory dwelling unit plans. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F21, F22)

Cotati Response: Requires further analysis, and involvement by the Napa/Sonoma ADU Center (whose priorities are not under the control or management of the City of Cotati) but is anticipated to be implemented by June 1, 2023. Cotati's draft Housing Element includes a program directing partnership with regional organizations (such as Napa-Sonoma ADU Center) to provide technical assistance to homeowners interested in developing ADUs. Among other things, Napa-Sonoma ADU Center has taken the lead on working with local jurisdictions to develop permit-ready ADU plans.

This implementation schedule of the 6th Cycle Housing Element Programs reflects the City's full range of priorities, including responding to several State mandates, including completing its housing element in early 2023. As such, a commitment to accelerating one program activity that the City has identified in the context of multiple other programs and priorities necessary to meet the specific housing needs of the City of Cotati cannot be made.

- R7. By December 31, 2022, Permit Sonoma and the nine Cities should discuss integration of preliminary design review committees with their planning commissions to help expedite the construction of Affordable Housing. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F19, F20, F21, F22)

Cotati Response: Cotati's design review process and the planning commission are already integrated. Cotati streamlined its Design Review process in 2018 eliminating the Design Review Committee and delegating final approval to be granted by the Planning Commission.

- R8. By December 31, 2022, Permit Sonoma and the nine Cities should review their permitting requirements to allow nontraditional options such as manufactured homes, factory-built homes, and tiny houses to increase housing supply. (F1, F2, F3, F4, F5, F10, F11, F13, F21, F22)

Cotati Response: Implemented. The City has reviewed its requirements and determined that there are no local restrictions that would prohibit the development of these types of units.