November 27, 2023

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

RE: November revised draft of Los Gatos 2023-2031 Housing Element

Dear Mr. Paulson:

The Los Gatos Community Alliance (LGCA) is a group of concerned residents writing to you regarding the revised draft 2023-2031 Housing Element submitted to HCD on November 16, 2023 (the "November draft HE").

Pursuant to AB 215, the Town is required, at least seven days before submitting to HCD any draft revisions, to post any proposed revisions on its internet website and to email a link to such revisions to all individuals and organizations that have previously requested notices relating to the Town's housing element. In a November 13 email and subsequent clarifying email sent on November 14, 2023 to the LGCA, Ms. Whelan, Town Attorney, confirmed that the seven-day public review period did not occur as required by AB 215. Ms. Whelan also stated that the Town staff would contact HCD to request HCD to consider the date of the submittal to be November 27th rather than November 17th. We have not received confirmation that the Town has made this request of HCD; however for the purposes of this public comment letter we have assumed such a request was made.

This is not the first time we have raised concerns regarding the Town's obligations under Govt Code Section 65585(b)(1). One of the purposes of the public review process is to allow the Town to discover public concerns and, when appropriate, to incorporate public comments into its draft revised Housing Elements prior to submission to HCD. In a public comment letter dated September 28, 2023 commenting on the September draft of the revised 2023-2031, LGCA raised specific concerns regarding double-counting of permitted units in both the 5th and 6th cycle. To substantiate this concern, we submitted Table B from the 2022 Annual Element Progress Report along with a comment letter issued by HCD to ABAG dated January 12, 2022 which discussed this very point. Yet the Town ignored the LGCA comment and proceeded to submit the September draft to HCD on Monday October 2, 2023, the very next business day after closing the 7-day public comment period on September 29th without disclosing why it chose to do so.

Then apparently the Town saw the light. In the November draft HE the Town revises the figures to eliminate the inappropriate double-counting of permitted units. Yet instead of crediting the changes to the comment letter provided by LGCA, the Town attributes the changes to, "further clarification from HCD," that permitted units could not be double counted in both 5th and 6th cycle RHNA. We point this out to draw your attention to the Town's legal obligation to consider and act, if appropriate, upon public comments when they are received. The fact that the Town ignored the LCGA comment and submitted the September draft double-counting permitted units in both the 5th and 6th cycle despite the overwhelming information provided to the Town that this was not allowed implies that the Town ignored the comments and filed the Housing Element revision without giving any consideration to the public comments it received.

The fact that the Town submitted the most recent draft HE on November 17, and subsequently asked HCD to consider the submittal date to be November 27 appears to formalize the Town's policy to ignore public comments. If permitted, it would also make it impossible for the Town to comply with HCD's prior admonishment to, "summarize all public comments and describe how they were considered and incorporated into the element." This comment, among others related to Public Comments, was included HCD's comment letter of May 30, 2023.

On November 22 we requested of the Town's attorney that the Town rescind its inappropriate submission of the November draft HE, and resubmit it to HCD only after it receives and gives appropriate consideration to these and any other public comments. As of this writing, the Town has not responded to that request.

We also note that the Town's posting of the revised Housing Element on November 17 did not include a copy of the transmittal letter that accompanied the submittal. As we know, HCD has asked that such transmittal letters include information regarding any public comments that have been received, as well as how the Town has considered and, if appropriate, incorporated such comments into the submittal. Of course it was not possible to include such information in the submittal of November 17 because the public comment period had not yet commenced.

In light of these facts, and by copy of these comments to HCD, we are requesting HCD to reject (or to require the Town of Los Gatos to rescind) the draft revised Housing Element the Town originally submitted to HCD on November 17, and further to direct the Town to give due consideration to these comments and to any other comments it receives in the public comment period and to, "summarize all public comments and describe how they were considered and incorporated into the element," before resubmitting the draft Housing Element to HCD.

With this background, LGCA is submitting this public comment letter regarding the November draft of the revised 2023-2031 Housing Element, even though such draft has previously – and inappropriately – been submitted to HCD in violation of Govt Code section 65585 (b) (1).

<u>1. Table 10-3 incorrectly computes the RHNA "buffer" percentage and overstates % RHNA surplus</u>

Table 10-3 in the November draft shows a "% Surplus" which is meant to show the surplus or deficit as a percentage of units above the 6th cycle RHNA by income category. However, the percentage has been computed using a "Remaining RHNA" figure that reflects "credits" for projected ADU production and pipeline projects netted against the RHNA. By using "Remaining RHNA" the "% Surplus" is materially overstated (24% vs 19%).

While at first glance this might seem like a minor error, it is important to note HCD has discussed the importance of having a sufficient "buffer" in percentage terms to ensure sufficient capacity exists in the Housing Element to accommodate shortfall of sites to accommodate its remaining RHNA especially in very low- and low-income categories. This is discussed in Govt Code Section 65863 – No Net Loss Law.

There is no reason to compute the % surplus using a "Remaining RHNA" figure except to mislead the reader into believing there is a larger surplus buffer percentage than actually exists.

This creates confusion regarding Program AS – Provide Adequate Sites for Housing, RHNA Rezoning, Lower Income Households on Nonvacant and Vacant Sites Previously Identified. This program calls for rezoning sites to accommodate a 25% buffer above RHNA (not "Remaining RHNA") to allow for compliance with the No Net Loss Provisions of SB 166.

The following table shows the buffer percentages as presented in the Town's draft revised November HE submission, as well as the corrected buffer percentages calculated using the appropriate RHNA figures:

	Very Low-Income	Low-Income	Moderate Income	Above-Moderate Income	Total
Single-Family Units & Housing Projects	0	0	0	2	2
ADUs	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADUs	60	60	60	20	200
Total	60	64	71	221	416
RHNA	537	310	320	826	1,993
Remaining RHNA	477	246	249	605	1,577
HEOZ Sites	634	357	340	624	1,955
Owner Interest / Conceptual Development Plans	480	283	264	304	1,331
Additional Sites	154	74	76	320	624
Surplus above Remaining RHNA	157	111	91	19	378
% Surplus [vs "Remaining RHNA" as presented in the Town's November 17 submission]	33%	45%	37%	3%	24%

% Surplus [corrected - vs RHNA]	29%	36%	28%	2%	19%

As noted in this table, based on the proper calculation, the total surplus buffer of 19% is less than the 25% goal outlined in program AS.

The Town should change the calculation of the % Surplus to reflect the excess or deficit over the RHNA units by income category and properly reflect this throughout the Housing Element, including Table 10-3. This will also make Los Gatos consistent with every other ABAG jurisdiction's calculation of a buffer percentage over RHNA.

2. Projected ADU Affordability is inappropriately optimistic

On page D-60 of the November draft Housing Element it is disclosed that the income distribution for projected ADU production is assumed to be 30% very low, 30% low, 30% moderate and 10% above moderate income. This distribution is overly optimistic with reference to the production of very low-income and is not supported by the Town's actual experience of issued building permits for ADUs between the years 2020 to 2022. Over this time a total of 98 building permits were issued and none of them were for very low- or low-income units. This fact is not disclosed in the November draft.

If we include the 23 ADU units permitted from June 30, 2022 to January 31, 2023 there were zero very low-income units and 3 low-income units out of a total of 23 issued building permits. That would bring the total over the 3½ years to 121 ADUs permitted with zero being very low income and 3 low-income units for a total of less than 3%. In light of this history, it does not appear that the Town has adopted a reasonable assumption that over the 6th cycle, 60% of projected ADU production would be very low- or low-income units.

LGCA made this same comment on the September draft HE, which had the same ADU income distribution assumption. The Town's reply was that the ADU income distribution was based on guidance provided in the, "Using ADUs to Satisfy RHNA," Technical memo provided by ABAG.

However, the technical memo cited by the Town was prepared to help jurisdictions justify the use of ADUs to help satisfy their RHNA requirements by income category. It was not a study of affordability levels of ADUs. ABAG, however, did complete a study of ADU affordability levels. It published draft results on September 8, 2021 in a technical assistance memo entitled, "Affordability of Accessory Dwelling Units." We now refer to that study (copy attached). This study is highly relevant to establishing a projection of ADU production by affordability level.

The study included a specific recommendation for income distribution of ADUs for jurisdictions with fair housing concerns, which Los Gatos clearly has. **This distribution is 5% very low, 30% low, 50% moderate and 15% above.** This distribution more accurately reflects open market rentals, excluding units made available to family and friends, and has been adopted by other ABAG jurisdictions. This distribution is further validated by data in the survey showing the following distribution of ADU market rate units on the Peninsula: 6% very low, 31% low, 48% moderate and 15% above.

By overestimating the production of very low-income ADU units, the Town is inappropriately reducing its 6th cycle RHNA requirement for this income category to a level not supported by the evidence. This is unfair to all other jurisdictions in ABAG with similar affordable housing concerns, such as the City of Los Altos, which adopted the more appropriate income distribution assumption. We hypothesize the Town used this more aggressive assumption in order to reduce the amount of land required to be rezoned to achieve the Town's 6th cycle very low income RHNA units. By our calculation the Town would need to rezone approximately 10% more land if the study recommendation had been adopted. This is fundamentally wrong and needs to be corrected.

Adopting the distribution recommended for jurisdictions with affordable housing concerns would result in the number of projected ADU units shown in Table 10-3 being adjusted to 10 units for very low income, 60 units for low income, 100 units for moderate and 30 units for above moderate-income categories. More importantly the surplus above RHNA for very low-income units would be reduced to 107 units from 157, reducing the buffer over RHNA from 29% to 20%.

Combining the corrections from Item 1 above with these adjustments, Table 10-3 should be presented as follows:

	Very Low-Income	Low-Income	Moderate Income	Above-Moderate Income	Total
Single-Family Units & Housing Projects	0	0	0	2	2
ADUs	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADUs	10	60	100	30	200
Total	10	64	111	231	416
RHNA	537	310	320	826	1,993
Remaining RHNA	527	246	209	595	1,577
HEOZ Sites	634	357	340	624	1,955
Owner Interest / Conceptual Development Plans	480	283	264	304	1,331
Additional Sites	154	74	76	320	624
Surplus above RHNA	107	111	131	29	378
% Surplus above RHNA	20%	36%	41%	4%	19%

3. SB 330 impact on development densities should be added to Section D. 4 – Appropriate Density/Default Density

Section D. 4 discusses default density and development trends. The discussion is out of date and fails to fully disclose the number of SB 330 development applications that have been filed and the potential impact on development densities.

Since December 1, 2022 there have been 8 SB 330 pre-applications filed compared to none over the past 3 years. Two of the 8 applications (405 Alberto Way-52 units and 14859 Los Gatos Blvd-437 units) were final applications as of the date the November draft was submitted to HCD and a third (50 Los Gatos-Saratoga Road-158 units) will be finaled by January 4, 2024 before the January 31, 2024, statutory deadline for rezoning of parcels in the HEOZ. None of the remaining 5 SB 330 applications will be finaled by January 31, 2024. All three of the applications noted above are for parcels included in the Housing Element Site Inventory.

SB 330 applications which allow for the development of parcels at densities below those anticipated in the Housing Element act as a constraint to housing development and an impediment to achieving its RHNA. None of the parcels noted above will be developed at the minimum development density of 30 DU/acre established by the HEOZ. Rather the parcels will be developed at densities ranging from 17.9 DU/acre to 28.8 DU/acre.

As a result of the vested lower densities, these three parcels will reduce the projected development units from the HEOZ from 1,955 to 1,842 units and the total net capacity will be reduced to 2,258 units which is RHNA of 1,993 units plus 265 units for a 13.3 percent buffer, not the 24 percent reported in Table 10-3.

As a result, Programs AQ and AS will not accomplish the goal to accommodate the Town's RHNA and a 25 percent buffer by the end of January 31, 2024.

4. No Net Loss Buffer of 33% for Very-Low-income category is wrong and does not comply with Govt Code Section 65863 – No Net Loss Law

Recent changes to state law require jurisdictions to continually maintain adequate capacity in their site inventories to always meet their RHNA by income category throughout the entire planning period. On page 10-32 the Housing Element discusses the need to maintain a HCD recommended buffer of 15 percent above RHNA to provide a "cushion" if a site is developed below the density projected in the Housing Element or at a different income than projected. This cushion provides the Town with additional sites available to accommodate the remaining balance of the RHNA. Table 10-3 reports a % Surplus of 33% for very-low-income units which we believe is incorrectly determined.

In our September 2023 comment letter, we raised concerns regarding the No Net Loss Law. The Town never responded to that letter. In the November draft submitted to HCD, the Town stated "the Town has received direction from HCD that No Net Loss Law is **only applicable** once a project has been **approved.** The preliminary and formal SB 330 applications that the Town has received have not been approved".

The Town's position is based on Govt Code Section 65863 (c) (2) which does address **the approval** of a development project resulting in fewer units by income. However, Govt Code Section 65863 (a) also requires the Town "**shall ensure** that its housing inventory" or "its housing element programs to make sites available" which "**can accommodate at all times throughout the planning period, its remaining unmet share of regional housing need".**

Adopting a site inventory, which is an administrative action, that is known to be unable to accommodate the Town's RHNA units for very low-income category because existing regulatory conditions present a barrier to development violates this requirement. The Town intentionally ignores the impact of SB 330 applications on Program AQ and on sites included in the Housing Element site inventory. The Town fails to determine if SB 330 sites finaled before January 31, 2024, which are subject to vested development rights, are sufficient to provide for the Town's share of RHNA need for all income levels.

We also direct you to the flow chart "No Net Loss Law Decision Flow Chart" in HCD's No Net Loss comment letter dated October 2, 2019. The flow chart's first step is to determine what type of action is being considered. The second step is to determine if the location of the proposed development is included in the Housing Element site inventory. The third step is to determine "**would approval** of the proposed project result in a lower density than was assumed in the housing element or create a shortfall of capacity to accommodate the RHNA by income group".

Using this flowchart as our basis for analysis, it is clear the SB 330 applications for 14859 Los Gatos Blvd (437 units) and 50 Los Gatos-Saratoga Road (158 units) would result in a shortfall of HEOZ capacity to accommodate the very low income RHNA category as explained in Program AS. Based on the SB 330 applications, 14859 Los Gatos Blvd would have 184 less very low income units and 50 Los Gatos-Saratoga Road would have 86 less very low income units than projected in the site inventory for a total "net loss" of 270 very low income units.

In comparing the 270 unit "net loss" for very low-income category and adjusting for the overstatement of ADU projection for very low-income units discussed above, the site inventory does not have a 157-unit surplus or 33% buffer as shown in Table 10-3 but rather has a 163 units shortfall of capacity for very low-income category for a deficit of 30%. The "net loss" impact of SB 330 on the projected development of very low-income units is well known by Staff and was openly acknowledged by the Town's Housing Element consultant at the most recent Planning Commission meeting held November 15, 2023.

The lack of sites to accommodate the Town's RHNA represents a fundamental alteration to the Town's ability to meet Housing Element Law. To ensure that sufficient capacity exists in the Housing Element to accommodate the RHNA throughout the planning period, a much larger buffer than 15% of very low-income sites needs to be created and more importantly the 30% deficit eliminated.

5. Programs I, N, P and AJ create an obligation to provide financial assistance from the Town's Affordable Housing Fund (BMP Programs funds) which has over the past three years realized less than $100,000 "in lieu fees" paid in.

The programs noted above create an obligation for the Town to provide financial assistance, monetary subsidies, funding of home repairs and purchasing affordability covenants for the 6th cycle which the Town has not analyzed as to the financial viability of the programs. The only funding source for these programs is "in lieu fees" that the Town collects only if a developer elects to pay these fees in lieu of building affordable housing under the Town's BMP program. In limited circumstances, the Town can solely determine payment. Over the past 3 years less than $100,000 has been paid into the Towns Affordable Housing Fund (BMP Program funds) and as of June 30, 2023 the Affordable Housing Fund had a balance $3.7m.

Without knowing whether these programs are financially viable, it is inappropriate for the Town to include these programs in the Housing Element. Creating programs where it is unknown whether sufficient financial resources to implement the programs exist is a meaningless paper exercise and does not affirmatively further fair housing in the Town.

This issue was raised in another resident comment letter dated September 29, 2023. The Town's response that "BMP Housing in-lieu fees were allocated as directed by Town Council through the Town's annual strategic priorities" does not address the fundamental lack of income received from "in-lieu fees" to fund the financial obligation created by the above-mentioned programs. The financial viability of these programs must be fully analyzed before a commitment can be made.

Summary

Thank you for allowing us to provide our comments. At the end of the day, we all want the same outcome – a Housing Element that fully complies with State Housing Law and is certified by HCD as quickly as possible.

Los Gatos Community Alliance

DRAFT Affordability of Accessory Dwelling Units

A report and recommendations for RHNA 6

Prepared by the ABAG Housing Technical Assistance Team with Funding from REAP

9/8/2021

1. Overview

Accessory dwelling units (ADUs) are independent homes on a residential property with their own cooking and sanitation facilities and outside access. They can either be part of or attached to the primary dwelling or can be free standing/detached from the primary dwelling. Given their smaller size, typically between 400-1000 square feet (Source: Implementing the Backyard Revolution), they frequently offer a housing option that is more affordable by design. They also offer infill development opportunities in existing neighborhoods and a potential supplemental income source for homeowners. Similar are Junior ADUs (JADUs), which are even smaller living units enclosed within a single-family structure. JADUs have independent cooking facilities and outside access, however they may share sanitation facilities with the primary home. Both have become an increasingly popular housing type in recent years.

Recent California legislation has facilitated policy changes at the local level that encourage ADU development by streamlining the permitting process and shortening approval timelines. State law requires jurisdictions to allow at least one ADU and JADU per residential lot. These legislative and policy changes have increased ADU development across many California communities.

In 2020, the Center for Community Innovation at the University of California at Berkeley (UC Berkeley) undertook a comprehensive, statewide survey of ADUs, resulting in a document entitled "*Implementing the Backyard Revolution: Perspectives of California's ADU Homeowners*", released on April 22, 2021. This memo uses and extends that research, providing a foundation that Bay Area jurisdictions may build upon as they consider ADU affordability levels while developing their Housing Element sites inventory analyses. This report's affordability research has been reviewed by the California Department of Housing and Community Development (HCD). While they have not formally accepted it, in initial conversations they did not raise objections to the conclusions. Give HCD's workload, it is unlikely we will receive additional guidance.

Figure 1: Affordability of ADUs

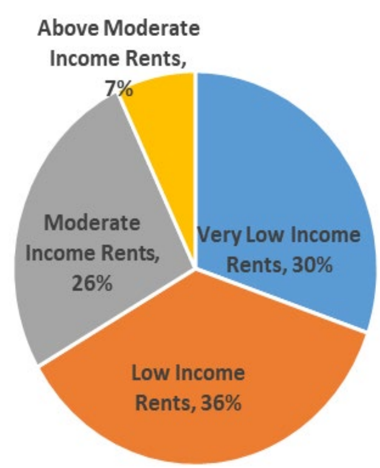


Figure 1 presents a summary of ADU affordability and Table 1 presents a recommendation for assumptions for Housing Elements. See the main body of the report for more information on methodology and assumptions.

We are recommending a conservative interpretation that assumes more moderate and above moderate ADUs than the research found. These assumptions represent a floor for most jurisdictions. If the market conditions in a particular jurisdiction warrant higher assumptions, then additional analysis can be provided to HCD for consideration.

Table 1: Affordability Recommendations for ADUs for Housing Elements

Income	Recommendation
Very Low Income (0-50% AMI)	30%
Low Income (51-80% AMI)	30%
Moderate Income (81-120% AMI)	30%
Above Moderate Income (120+ AMI)	10%

Notes: AMI = Area Median Income. See below for more information on assumptions.

Affirmatively Furthering Fair Housing Concerns

Although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns. Many ADUs are affordable to lower and moderate income households *because* they are rented to family and friends of the homeowners. If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion. Additionally, ADUs often do not serve large families, another important fair housing concern. Conversely, ADUs accomplish an important fair housing goal by adding new homes in parts of the city that are more likely to be areas of opportunity.

Jurisdictions with fair housing concerns may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends, as summarized below:

Table 1: Affordability Recommendations for ADUs for Jurisdictions with Fair Housing Concerns

Income	Recommendation
Very Low Income	5%
Low Income	30%
Moderate Income	50%
Above Moderate Income	15%

Further Outreach and Data

Although HCD has reviewed this memo and believes the conclusions are generally accurate, it is still important for jurisdictions to ensure the information reflects local conditions. As part of ground truthing the conclusions, jurisdictions should provide opportunity for the stakeholders to comment on any assumptions, including affordability assumptions based on this memo.

2. UC Berkeley Survey

In the Fall and Winter of 2020, the University of California at Berkeley's Center for Community Innovation, in collaboration with Baird + Driskell Community Planning, conducted a statewide survey of homeowners who had constructed ADUs in 2018 or 2019[1]. Over 15,000 postcards were mailed to households directing them to an online survey. The overall response rate was approximately 5%, but Bay Area response rates were higher, up to 15% in some counties. In total, 387 ADU owners from the Bay Area completed they survey, with 245 of those units available on the long term rental market.

Key takeaways include:

- Just under 20% of Bay Area ADUs are made available at no cost to the tenant.
- An additional 16% are rented to friends or family, presumably at a discounted rent, though the survey did not ask.
- Market-rate ADUs tend to rent at prices affordable to low and moderate income households in most markets.

3. Methodology

ABAG further analyzed the raw data from the UC Berkeley survey, because the authors of *Implementing the Backyard Revolution* did not present their results according to income categories (e.g. very low income, low income, etc.).

This ABAG summary uses the affordability calculator published by the California Department of Housing and Community Development (link) to define maximum income levels. HCD defines an affordable unit as one where a household pays 30 percent or less of their annual pre-tax income on housing.

The definition of affordable rents shifts with income category (Low, Very Low, etc.), household size/unit size, and geography. The income categories are as follows: Very Low = under 50% of Area Median Income (AMI), Low Income = 50-60% AMI, Moderate = 60-110% AMI.[2]

[1] A summary is available here - http://www.aducalifornia.org/implementing-the-backyard-revolution/
[2] Please note, these assumptions are more conservative than is typically used, but match HCD's recommendations.

Because some counties have different median incomes, the results are adjusted accordingly. 2020 AMIs were used because the survey was completed in 2020.

Additionally, ABAG made the following assumptions regarding persons per unit, which matched HCD's recommendations:

- Studios 1 person
- 1 Bedrooms 2 people
- 2 Bedrooms 3 people
- 3 Bedrooms 4 people

See the following document for information on HCD's assumptions. https://www.hcd.ca.gov/community-development/housing-element/docs/affordability-calculator-2020.xlsx

4. Summary of ADU Use

Table 2, below, shows the usage of ADUs. Because this report concerns affordability of available dwelling units, those not available for rent (short term rentals, home office and other) are excluded from further analysis.

Table 3. Usage of Accessory Dwelling Units

Region	Friend/ Family Rental	Family - No Rent	Long Term Rental (Open Market)	Short Term Rental	Home Office	Other
East Bay	12%	19%	27%	2%	14%	27%
Peninsula	16%	18%	28%	4%	14%	20%
North Bay	13%	16%	33%	2%	8%	28%
Bay Total (9 Counties)	14%	18%	29%	3%	13%	24%
Statewide Total	16%	19%	30%	2%	12%	21%

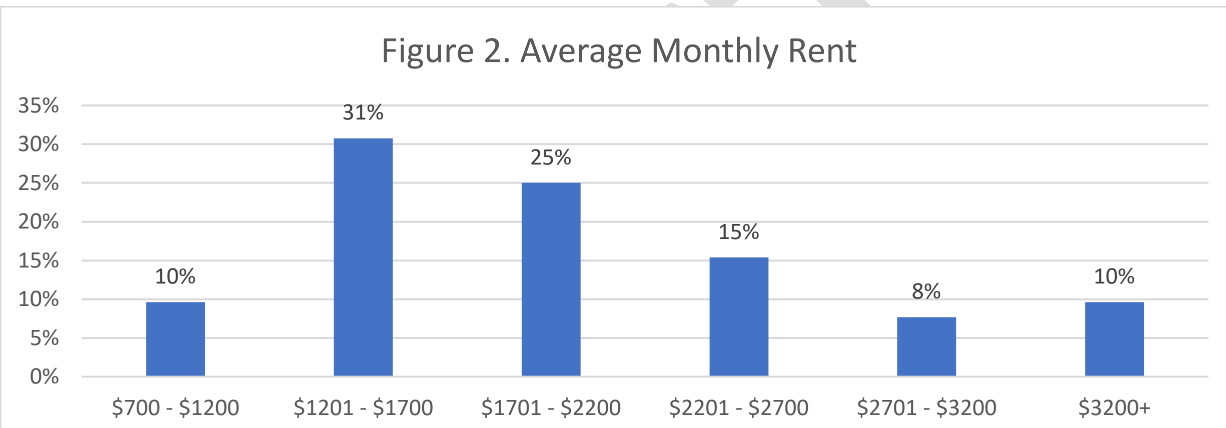
Other includes homeowners who live in the ADU, needs repairs, empty, used as extra bedroom, etc. The response rate in San Francisco was too low for meaningful comparison so it is not presented separately, but is included in the Bay Area total. East Bay includes Alameda and Contra Costa Counties, Peninsula includes San Mateo and Santa Clara Counties, North Bay includes Marin, Sonoma and Napa Counties.

5. Affordability of ADUs

Rental Data

The analysis found that many ADUs are made available to family members, often at no rent. The survey did not query the rent of family/friend rentals, only asking if rent was charged.

Of those ADUs available on the open market (not rented to family or friends), most charged rents between $1,200 and $2,200, as shown in in Figure 2.



Assigning ADUs to Income Categories

This report's affordability analysis has two parts:

1. Market Rate ADUs: Those not rented to friends or family; and
2. Discount Rate ADUs: Those rented to family or friends for discounted or no rent

Market Rate ADUs

Market rate ADUs were usually affordable to low or moderate income households, based on the methodology identified above. Depending on the part of the region, the ABAG analysis found:

- Very Low Income: 0-7% of market rate units were affordable to very low income
- Low Income: 15-44% of market rate units were affordable to low income
- Moderate income: 40-70% of market rate units were affordable to moderate income households.
- Above moderate: 9-15% of market rate units were affordable to above moderate income households.

The data is summarized in the chart below.

Table 4. Affordability of Market Rate Units

	Very Low	Low	Moderate	Above Moderate
East Bay	0%	15%	70%	15%
Peninsula	6%	31%	48%	15%
North Bay	7%	44%	40%	9%

This chart only shows ADUs rented on the open market. The response rate in San Francisco was too low for meaningful comparison so it is excluded from this analysis.

Discount Rate ADUs

Based on previous HCD precedent, this analysis uses actual rents to determine affordability. The occupant's relationship to the owner is secondary, the relevant factor is the rent charged. (Please note the potential fair housing concerns that can arise from this approach). Specifically, this analysis assigns units made available to family or friends available at no rent as very low income. Additionally, this analysis assigns units *rented* to family or friends as low income[3].

Combined Market and Affordable ADUs

Table 5, below, combines the information for discounted and market rate ADUs.

Table 5. Usage of No Rent/Discount Rent ADUs and Affordability - Combined

Region	Friend/ Family Rental	Family - No Rent	Very Low Income Rents	Low Income Rents	Moderate Income Rents	Above Mod. Income Rents
East Bay	20%	33%	0%	7%	33%	7%
Peninsula	24%	28%	3%	15%	23%	7%
North Bay	20%	25%	4%	24%	22%	5%
Bay Total (9 Counties)	22%	28%	2%	14%	26%	7%
State-Wide Total	24%	28%	1%	9%	23%	14%

The response rate in San Francisco was too low for meaningful comparison so it is not presented separately, but is included in the Bay Area total.

[3] The survey did not ask the rent of units that were rented to family members.

Assigning the family/friends ADUs to income categories produces the following results:

Table 6. Affordability Including Family/Friends Rentals

Region	Very Low Income Rents	Low Income Rents	Moderate Income Rents	Above Mod. Income Rents
East Bay	33%	27%	33%	7%
Peninsula	31%	39%	23%	7%
North Bay	29%	44%	22%	5%
Bay Total (9 Counties)	30%	36%	26%	7%
Statewide Total	29%	33%	23%	14%

This chart combines ADUs made available for free with Very Low Income and ADUs available for a discount with the Low Income category. The response rate in San Francisco was too low for meaningful comparison so it is not presented as its own line, but is included in the SF Bay Are Total.

Figure 2 shows affordability levels for the region. It is a graphical representation of the Bay Area as a whole.

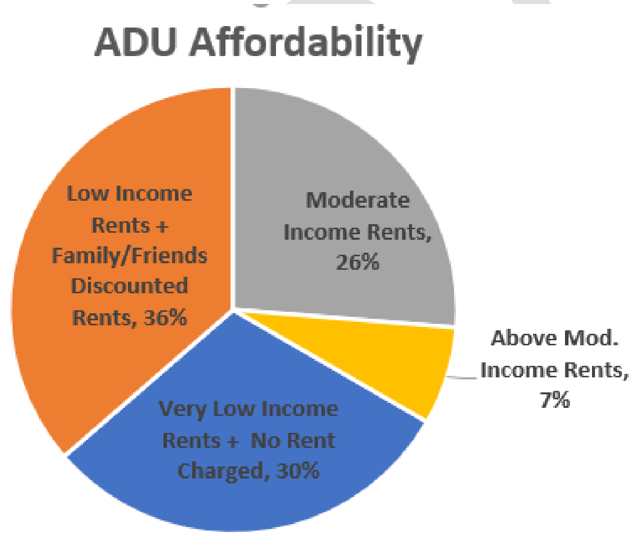


Figure 2: Results shown for 9-county Bay Area. "Very low" rents include units available to family or friends at no cost. "Low" rents include discounted family rentals.

6. Additional Research and Considerations

In general, ADUs are affordable for several reasons:

- Many units are available for no or low cost rent to family members or friends. Additionally, a smaller number of owners intentionally rent their ADUs below market because they believe affordable housing is important. Source: Implementing the Backyard Revolution
- ADUs tend to be fewer square feet than units in apartment buildings after controlling for bedroom size, which results in lower prices. Source: Wegmann & Chapple (2012)
- ADU owners tend to prefer their choice of tenant versus maximizing rent. Additionally, they will often not significantly raise rents once they have a tenant they like. Source: Baird + Driskell homeowner focus groups.
- ADU owners often do not know the value of their unit so they may underprice it unintentionally. Source: Baird + Driskell homeowner focus groups.

A number of other studies have found that many ADUs are used as housing for friends or family for free or very low cost, consistent with the UC Berkeley Report. A selection of these are outlined below:

- A 2012 UC Berkeley publication entitled "Scaling up Secondary Unit Production in the East Bay" indicates that approximately half of all secondary dwelling units are available for no rent.[4]
- A 2018 report entitled "Jumpstarting the market for ADUs" surveyed ADUs in Portland, Seattle, and Vancouver and found that approximately 17% of ADUs were occupied by a friend or family member for free.[5]
- A 2014 analysis entitled "Accessory dwelling units in Portland, Oregon: evaluation and interpretation of a survey of ADU owners" found that "18% of Portland ADUs are occupied for free or extremely low cost."[6]

7. Notes

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[4] https://communityinnovation.berkeley.edu/sites/default/files/scaling_up_secondary_unit_production_in_the_east_bay.pdf?width=1200&height=800&iframe=true
[5] http://ternercenter.berkeley.edu/uploads/ADU_report_4.18.pdf
[6] https://accessorydwellings.files.wordpress.com/2014/06/adusurveyinterpret.pdf