

## Jennifer Blackman

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**From:** GrandJury <GrandJury@marincounty.org>  
**Sent:** Thursday, June 15, 2023 12:08 PM  
**To:** Jennifer Blackman  
**Subject:** Marin Civil Grand Jury Report Released Today



Marin County Civil Grand Jury  
3501 Civic Center Drive, Room 275  
San Rafael, CA 94903  
Tel. 415-473-6132

June 15, 2023

General Manager Jennifer Blackman  
Bolin Community Public Utility District  
PO Box 390 Bolinas  
Bolin, CA 94924

2022–2023 Marin County Civil Grand Jury Report:

**Build More ADUs - An Rx for Increasing Marin's Housing Supply**

<https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2022-23/build-more-adus--an-rx-for-increasing-marins-housing-supply.pdf?la=en>

Dear General Manager Blackman,

The above *final report* (accessible at the link above) is being released to the public today and your agency is listed as a required respondent to one or more recommendations.

Please have your agency respond in writing to the findings and recommendations sections of the report pursuant to Penal Code Sections 933 and 933.05. The Code requirements for responses may be found here:  
<https://rebrand.ly/MarinGrandJuryPenalCodeSummaryPDF>.

The Penal Code specifies the deadline and the format for responses; the Grand Jury does not have the authority to waive those requirements. Responses that do not comply with the requirements will be returned for revision. Please complete and include a copy of this form with your response:  
<https://rebrand.ly/2022MarinGrandJuryResponseFormPDF>.

The response is due within 90 days (September 15, 2023). Submit your response as *both* a hard copy and a PDF file to these two recipients:

The Honorable Judge James Chou  
Marin County Superior Court  
P.O. Box 4988  
San Rafael, CA 94913-4988  
Send PDF file to: [departmentb@marin.courts.ca.gov](mailto:departmentb@marin.courts.ca.gov)

AND

Pat Shepherd, Foreperson  
Marin County Civil Grand Jury

3501 Civic Center Drive, Room #275  
San Rafael, CA 94903  
Send PDF file to: [grandjury@marincounty.org](mailto:grandjury@marincounty.org)

Comments and responses from any governing body are subject to the notice, agenda, and open meeting requirements of the Brown Act, which requires that any action of a public entity governing board occur only at a noticed meeting for which an agenda has been provided. Responses to Grand Jury reports are public records. All responses, once filed and approved, can be accessed at the Marin County website:  
<https://www.marincounty.org/depts/gj/reports-and-responses>

Should you have any questions or technical difficulties, please contact me at [foreperson@marincivilgrandjury.org](mailto:foreperson@marincivilgrandjury.org). Telephone inquiries can be made to Heather Callan (Aide to the Grand Jury) at (415) 473-6132.

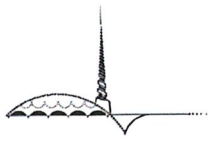
Sincerely,

*Pat Shepherd*

Pat Shepherd, Foreperson  
2022–2023 Marin County Civil Grand Jury

cc: Jack Siedman

Email Disclaimer: <https://www.marincounty.org/main/disclaimers>



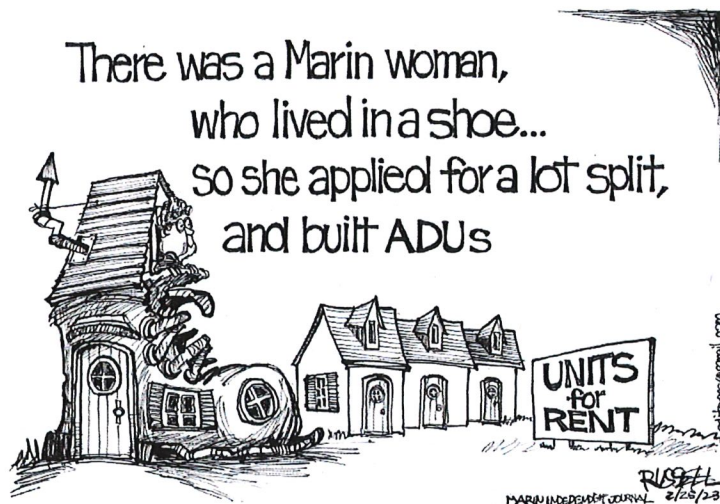
# Build More ADUs - An Rx to Increase Marin's Housing Supply

June 15, 2023

## SUMMARY

As a result of California's new state mandated Housing Element, Marin County and all its municipalities are obligated to build 14,210 new housing units by 2031.<sup>1</sup> Accessory Dwelling Units (ADUs) can help fill that need.

Marin County's housing production is not keeping pace with demand. The lack of housing supply to meet people's needs impacts affordability and causes average housing costs, particularly for renters in Marin, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between homes they can afford and their workplace, or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.



By permission of George Russell/Marin Independent Journal

\* Note: The law does not require a lot split to build an ADU

One approach that could help achieve these housing goals is based upon a recognition that many property owners and residents reside on land on which they could build additional or secondary housing units. These second units, variously called granny flats, in-law units, garage houses, and under state law "Accessory Dwelling Units" (ADUs) and "Junior Accessory Dwelling Units" (JADUs) have become an increasingly popular form of housing. Unfortunately, they have not always been treated as "legal" under local law. Now, California law has effectively legalized

<sup>1</sup> 4,171 (very low income <50 percent AMI (Area Median Income), 2,400 (low income <80 percent AMI), 2,182 5,652 Total: 14,405. [https://abag.ca.gov/sites/default/files/documents/2022-04/Final\\_RHNA\\_Methodology\\_Report\\_2023-2031\\_March2022\\_Update.pdf](https://abag.ca.gov/sites/default/files/documents/2022-04/Final_RHNA_Methodology_Report_2023-2031_March2022_Update.pdf) (accessed March 6, 2023); [www.hcd.ca.gov/policy-and-research/accessory-dwelling-units/](http://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units/) Several Marin jurisdictions' Housing Elements make similar arguments; Ross, Appendix C-15.

their construction and occupancy.<sup>2</sup> Because building these units (a) does not require purchasing additional land, (b) can be added to existing structures and (c) can have fewer construction requirements than traditional single family houses on a square foot basis, they may be built less expensively. California's new law recognizes that ADUs can help fulfill the state's housing mandate, and can do so affordably and with a lesser impact on land use and the environment.<sup>3</sup> Contrary to the sentiment expressed in the introductory cartoon, neither the "Marin woman who lived in a shoe" nor anyone else has to "apply for a lot split" before building an ADU.

Allowing ADUs in single-family and multifamily residential zones provides additional rental housing stock which are an essential component of the housing supply in California.<sup>4</sup> Every Marin jurisdiction has increased ADU production, but there are a number of improvements that can be made to accelerate this process. This report highlights best practices in Marin and other Bay Area communities and suggests ways to facilitate development of ADUs and Junior Accessory Dwelling Units (collectively herein "ADUs").

ADU development has grown throughout the county since 2019.<sup>5</sup> Marin County's local governments' recently enacted Housing Elements assume that 9.5 percent of their required housing units could be fulfilled with ADUs.<sup>6</sup> One planning model shows a potential of 9,500 units, which is 66 percent of the requirement.<sup>7</sup> For example, in Vancouver, Canada, 35 percent of single family houses have ADUs.<sup>8</sup>

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<sup>2</sup> <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units> (accessed March 6, 2023)

<sup>3</sup> Calif. Gov. Code 65852.2 (m). A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

<sup>4</sup> SB 1069 (2016). M. Nolan Gray, "The Housing Revolution is Coming," *The Atlantic*, October 5, 2022

<sup>5</sup> Cities and County Housing Element Submissions 2022. Marin County, 2023-2031 Regional Housing Needs Assessment Appeal Request, July 9, 2021 notes the County's goal of increasing the supply of Accessory Dwelling Units along the City Centered Corridor.

<sup>6</sup> Marin County's share of the region's housing allocation is 3.265 percent while Sonoma County's share is 3.3 percent. <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation> (Accessed March 6, 2023).

<sup>7</sup> <https://ternercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf> (accessed March 6, 2023). This approach uses an algorithm based on mapping the community.

<sup>8</sup> <https://www.sightline.org/2016/02/17/why-vancouver-trounces-the-rest-of-cascadia-in-building-adus/> (Accessed March 6, 2023).



**Table 1**  
**Marin County and Cities**  
**Housing Regional Housing Needs Allocation (RHNA) Requirements and**  
**Projected ADUs by 2031**

Communities	RHNA	ADU History					ADU Goal	% of RHNA	
		2018	2019	2020	2021	2022			'23-'31
Belvedere	160		4				0	0.00	
Corte Madera	725	7	4	20	21		100	13.79	
Fairfax	490	14	16	11	12		86	17.55	
Larkspur	979		6	6	6		48	4.90	
Mill Valley	865	0	16	16	29	1	160	18.50	
Novato	2,090	6	10	16	27		118	5.65	
Ross	111	0	0	1	3	10	80	72.07	
San Anselmo	833	6	9	22	24		160	19.21	
San Rafael	3,220	78						200	6.21
Sausalito	724		10	10	12	15	64	8.84	
Tiburon	639	4	5	5	11		72	11.27	
Unincorporated Marin	3,569		37	32	35		280	7.85	
Total Units	14,405						1,368	9.50	

**Source:** 2022 Housing Elements submitted by County and municipalities;  
 Sausalito: Housing Element HBR-120, Table 56 HBR-95 calculations. Accessed December 2022.

Many community planning professionals have argued these additional second units could benefit property owners as an additional source of income, assistance for older residents who could “retire in place” or a place for caregivers, as well as a home for family members. Community rewards might include housing for the local workforce, integrating energy-efficient housing, and reduced overcrowding.<sup>9</sup>

## BACKGROUND

### What is an ADU?

An ADU is an accessory dwelling of a primary residence and has complete independent living facilities for one or more persons. There are different types of ADUs:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: A space (e.g., primary bedroom, attached garage, storage area or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.

<sup>9</sup> <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units> (Accessed March 9, 2023). Several Marin jurisdictions’ Housing Elements make similar arguments; Ross, Appendix C-15.

- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.<sup>10</sup>

ADUs are not new. In previous eras they were given a variety of names, e.g., in-law units, backyard cottages, or granny units. They are quite common throughout the United States and California. In California, which has passed a series of laws enabling the use of ADUs, permits rose to nearly 20,000 in 2021 from about 1,200 in 2016.<sup>11</sup>

The addition of ADUs to neighborhoods may promote what Jane Jacobs, in her book *The Death and Life of Great American Cities*, called "social capital," "mixed primary uses," and "eyes on the street."<sup>12</sup> This "gentle density" permits a range of casual public interactions which promote safety, contact, and the assimilation of children.

Planning, financing, and building an ADU is straightforward. It requires suitable land, a means to finance the project, and the ability to find a qualified building contractor. Fortunately, there are a number of public and private organizations that can help. For example, the CASITA Coalition provides individual homeowners guides and directions for how to work with public agencies, identify financing options, and even provides examples of building plans.<sup>13</sup>

### **ADUs Can Be Affordable to Build**

Because of their small footprint, ADUs are significantly less expensive to build than new detached single-family homes. They also offer benefits that address common development barriers, such as land use and environmental sustainability. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land or other costly infrastructure often required to build a new single-family home. It's a way to add capacity within the existing footprint, a strategy planners sometimes call "gentle density."<sup>14</sup> ADUs do not require much government investment in infrastructure, and they reduce energy consumption and costs.

JADUs are contained inside existing or proposed single-family homes, and thus require relatively modest renovations and can be more affordable to complete. ADUs are often built with cost-effective one- or two-story wood frames, which are also less expensive than other construction types. Additionally, prefabricated ADUs (e.g., manufactured housing and factory-built housing) can be directly purchased and can further reduce construction time and cost. ADUs can provide as much living space as apartments and condominiums, and work well for couples, small families, friends, young people, and seniors.

### **ADUs Can Be Affordable for Renters**

A regional survey of ADU affordability was conducted by the Association of Bay Area Governments (ABAG) to support the 6th Cycle Housing Elements.<sup>15</sup> This survey examined rental costs by region, including Marin, Napa, and Sonoma Counties in the North Bay Region. The survey concluded that when accounting for ADUs rented at market rates, and ADUs rented at discounted rates to families and friends, 29 percent are affordable to very low income

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<sup>10</sup> <https://adumarin.org/thinking> (Accessed March 6, 2023).

<sup>11</sup> <https://www.nytimes.com/2023/01/29/health/elderly-housing-adu.html> (Accessed Mar. 6, 2023). See Appendix B.

<sup>12</sup> Jane Jacobs, *The Death and Life of Great American Cities* (Random House 1961).

<sup>13</sup> <https://www.casitacoalition.org/adu-blog-info-for-homeowners/> (Accessed March 6, 2023).

<sup>14</sup> <https://www.nytimes.com/2023/01/29/health/elderly-housing-adu.html> (Accessed March 6, 2023).

<sup>15</sup> <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation> (Accessed March 6, 2023).

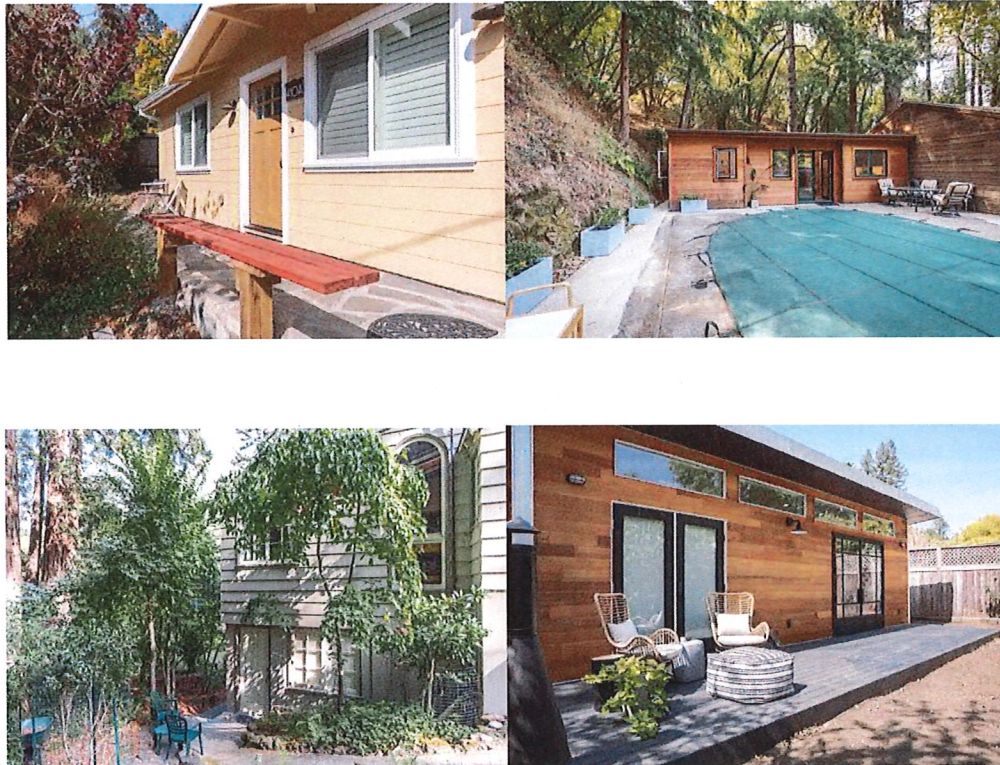


households, 44 percent to low income households, 26 percent to moderate income households, and 7 percent to above moderate income households. Sausalito undertook a similar survey.<sup>16</sup>

Based on the responses from the two surveys, it appears that: 16.2 percent of ADUs are projected to be affordable to very low income households, 32.4 percent to low income households, 32.4 percent to moderate income households, and 18.9 percent to above moderate income households.

## Appearance

ADUs come in a variety of flavors. Here is a small sample from Marin.<sup>17</sup>



## Construction costs

As with any construction, the cost varies considerably based on, among other things, the terrain and the finishes. Construction costs per square foot for ADUs are generally in line with the cost of building any single family dwelling.<sup>18</sup> The four ADUs built in Marin shown above ranged from \$60 to \$521 per square foot (2019 costs). However, because of their size, ADUs may be

<sup>16</sup> <https://housingelements.com/city-of-sausalito> (Accessed March 5, 2023).

<sup>17</sup> Upper left photo, <https://adumarin.org/spotlights/neighbor-spotlight-brenda-and-donal-in-corte-madera> ; Upper Right photo, <https://adumarin.org/spotlights/neighbor-spotlight-cheryl-and-kathy-in-marin>; Lower Left photo, <https://adumarin.org/spotlights/neighbor-spotlight-jane-and-doug-in-mill-valley>, Lower Right photo, <https://adumarin.org/spotlights/neighbor-spotlight-julie-and-tim-in-san-anselmo>, (all Accessed March 31, 2023)

<sup>18</sup> The median cost to build an ADU in California is about \$150,000 according to a 2021 (using 2019 data) survey according to calculations by Terner Center staff, page 3. See more: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf> (Accessed March 6, 2023).



more amenable to prefab construction and thus less expensive. You can even buy kits from such retailers as Home Depot, Amazon or others.<sup>19</sup>

Constructing an ADU will increase the value of the property. Generally, the subsequent improvement will be incorporated in the property's tax bill.<sup>20</sup> The property as a whole is not reassessed, but the county will issue a supplemental tax bill reflecting the increased value of the property from construction of the ADU.<sup>21</sup>

Some jurisdictions outside of California waive property tax increases under certain conditions. For example, in Oregon a special state act granted homeowners in Salem the option of exempting the value of an accessory dwelling unit (ADU) on their property from their property taxes so long as they are renting the ADU, including utilities, for a monthly amount affordable for those at or below 70 percent of the area median income.<sup>22</sup>

## **Financing**

Generally, property owners finance the construction of ADUs using conventional means, e.g., from their savings, equity loans, or by refinancing existing mortgages. Recently, some private lenders have introduced products to meet the growing ADU building demand.

To build upon the early success of ADU legislation, more financial tools are needed to facilitate greater ADU development amongst low to moderate income homeowners who do not have access to cash savings and cannot leverage home equity.<sup>23</sup>

ADU financing may present some challenges for those without conventional means. Lending institutions may offer financing options. One institution that the Grand Jury is aware of is Redwood Credit Union (RCU). Among other things, RCU can take into account the future rental value of the ADU in order to determine the borrower's qualifications. RCU can also take over the fund management of the project, if requested.<sup>24</sup>

In other communities local governments have initiated low-interest loan and grant programs, often with specific conditions designed to keep rents affordable.<sup>25</sup> Marin County has \$5 million available county-wide for various affordable housing projects.<sup>26</sup> However, claimants for these funds are non-profit developers and other government agencies. Unlike many other communities in California, Marin County and its municipalities have not created financing programs to assist individuals in building affordable housing. However, Marin County does have a program

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<sup>19</sup> <https://www.homedepot.com/p/The-Wave-Comfort-ADU-1-Bedroom-410-87-sq-ft-Tiny-Home-Steel-Frame-Building-Kit-Cabin-Guest-House-TWVP1B410/321417498> (Accessed March 6, 2023).

<sup>20</sup> <https://www.boe.ca.gov/proptaxes/newconstructionproperty.htm> (Accessed March 6, 2023).

<sup>21</sup> <https://www.sccoplanning.com/ADU/FAQ.aspx> (Accessed March 6, 2023).

<sup>22</sup> <https://www.salemma.gov/adu> (Accessed March 6, 2023).

<sup>23</sup> <https://ternercenter.berkeley.edu/> (Accessed March 6, 2023).

<sup>24</sup> <https://www.redwoodcu.org/loans/home/mortgage/construction-loans/> (Accessed March 6, 2023).

<sup>25</sup> See <https://www.sccoplanning.com/Portals/2/County/adu/ADU%20Loan%20Program%20Summary%202021.pdf> (Accessed March 6, 2023).

<sup>26</sup> The available funding includes roughly \$2.3 million in County Affordable Housing Funds (including a one-for-one match from the State Permanent Housing Allocation), \$2.4 million in new HOME-ARP funds through the U.S. Department of Housing and Urban Development (HUD), and \$600,000 in Community Development Block Grant funds specific to housing projects, also allocated by HUD.



restricted to residences in unincorporated areas so as to lower or mitigate permitting fees for private property owners desiring to build an ADU.<sup>27</sup>

The California Housing Finance Agency (HFA) has an ADU Grant program for homeowners with low or moderate income.<sup>28</sup> It provides up to \$40,000 towards pre-development and non-recurring closing costs associated with the construction of an ADU. Predevelopment costs include site preparation, architectural designs, permits, soil tests, impact fees, property survey, and energy reports. Few, if any, of Marin County's or cities' websites prominently refer to this program.

The California Department of Housing and Community Development had these comments for Marin County by letter dated October 17, 2022:

- Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)
- Review the production of ADUs once in the planning period. A review of production should also: (1) assess affordability, (2) conduct a review more than once in the plan period (e.g., 3-4 times), and (3) commit to a menu of alternative actions that includes rezoning, if necessary, by a specific date (e.g., within six months of review).

## **APPROACH**

The Grand Jury reviewed a broad range of relevant public information related to the planning, permitting, financing and building of ADUs. It did not obtain fee information from every municipality and special district. Additionally, appropriate information from County staff, and several knowledgeable people in the field of community planning and development of ADUs in other Bay Area counties was secured. The Grand Jury received documentation that was relevant in informing these decision makers and guiding their actions.

Many reports, written materials, and internet resources were studied, including but not limited to:

- Recently submitted housing elements by Marin County, Cities, and Towns
- California State ADU and relevant housing laws
- ADU Affordability Best Practices Guidelines
- California HFA ADU Grant Program.
- California Department of Housing and Community Development
- Marin County Community Development
- Understanding the Market: ADUs in Napa and Sonoma County report
- ADU Marin website
- Napa-Sonoma ADU website.

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<sup>27</sup> <https://www.helloadu.org/marin-adu-services> (Accessed March 6, 2023).

<sup>28</sup> <https://www.calhfa.ca.gov/adu/> (Accessed March 6, 2023).

## DISCUSSION

ADUs will allow for increased housing utilizing existing space from single family homes, which is the bulk of Marin's housing stock. According to the latest US Census, 62% of all Marin residences are considered detached residences, i.e., an equivalency to single family homes. Many of these detached residences could accommodate a second unit. As Table 2 shows, there are many lots that could *theoretically* have capacity for an ADU or JADU.

Table 2:

**Estimating How Many Residences in Marin Are Detached**

	Total Residences	Estimated Number of Detached Residences	Calculated Percentage
Belvedere	1,054	931	88.3%
Corte Madera	4,104	2,782	67.8%
Fairfax	3,676	2,447	66.6%
Larkspur	6,652	2,418	36.4%
Mill Valley	6,375	4,550	71.3%
Novato	21,490	12,413	58.2%
Ross	947	900	95.0%
San Anselmo	5,265	3,978	75.6%
San Rafael	24,678	11,496	46.6%
Sausalito	4,332	1,813	41.9%
Tiburon	3,853	2,535	65.8%
Unincorporated	23,188	18,253	78.7%
<b>Total for County</b>	<b>111,570</b>	<b>69,866</b>	<b>62.6%</b>

Source: United States Census, 2020.

ADUs come in all shapes. However, sizes are limited by local regulation. In general, the minimum size is 150 square feet, and the maximum is 1,200 square feet. There are certain financial incentives for ADUs of less than 750 square feet.<sup>29</sup> By way of comparison, in 1950 the average American single family home size was 983 square feet.<sup>30</sup>

Marin jurisdictions, as shown in Table 1 above, have identified the potential of building at least 1,385 ADUs. The table illustrates the jurisdictions' projections (based upon historical trends and their own plans) vary considerably due to multiple factors: topography, willingness to encourage these developments, and the simple matter of available space. Marin communities could increase the actual number of ADUs which can be built.<sup>31</sup>

Marin County has made some efforts to encourage ADUs. It recently created a new ADU Technical Assistance program for homeowners to help make the process less overwhelming. The program provides free feasibility and project management support for qualified homeowners

<sup>29</sup> Calif. Gov. Code 65852.2 (f) (3)

<sup>30</sup> <https://www.investopedia.com/articles/pf/07/mcmansion.asp> (Accessed March 6, 2023).

<sup>31</sup> Several California governments have adopted various incentive programs which have already increased the number of ADUs beyond projections. For example, the city of San Diego more than doubled the number of ADUs since 2021. <https://ternercenter.berkeley.edu/research-and-policy/san-diego-adu-bonus-program/> (Accessed March 6, 2023).



who live in the unincorporated areas of the County provided by HelloADU and paid for by the County.<sup>32</sup> Marin County's "Make Room for Marin" website provides property owners with a step-by-step overview of the processes associated with ADU development.<sup>33</sup> However, the County and its towns and cities could do a more to encourage and facilitate the building of ADUs. There are often unnecessary delays in issuing building permits. San Jose, for example, offers same day permits in some instances.<sup>34</sup>

As part of a state grant program, a partnership was established between ten cities and towns and the County called "ADUMarin." This partnership aims to promote the development of ADUs. It includes a variety of information sources on the County website, <https://adumarin.org>, providing interactive workbooks and webinars to assist interested property owners through all aspects of the ADU process.

Napa Sonoma ADU, in comparison, has at least one full time employee and is supported by grants from the Napa Valley Community Foundation and Sonoma County Community Foundation. It provides significantly more comprehensive services and support. Among other things, it offers an ADU calculator, local ADU rules, an address lookup tool, an ADU workbook, stories and floor plans, webinars, vendor registry, a newsletter, and social media.<sup>35</sup> Additionally, for a fee, it has an ADU feasibility consult, and permit-ready ADU plans.

On May 25, 2021, the Marin County Board of Supervisors approved an extension to the Accessory Dwelling Unit Fee Waiver Program, which offers property owners in the unincorporated areas of the county (which is approximately 27 percent of the population) fee waivers for the development of ADUs.<sup>36</sup> Under the program, in exchange for a property owner's agreement to rent their unit at affordable rates, county permit fees for ADUs may be waived up to the following:

- \$10,000 for ADUs that are rented at rates at or below 80 percent the Area Median Income
- \$5,000 for ADUs that are rented at rates between 81-120 percent of the Area Median income
- \$2,500 for ADUs that are rented at market-rate

The fees waived may include Community Development Agency fees such as planning, building and safety, environmental health services, and Department of Public Works fees such as traffic mitigation.

## **Impact Fees – Exceptionally Confusing in Spite of State Law**

A significant number of Marin homeowners interested in building ADUs on their property are dissuaded from doing so due to prohibitively high impact and mitigation (a.k.a. connection or capacity) fees. One ADU professional characterized these fees as "piracy."

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<sup>32</sup> <https://www.helloadu.org/free-marin-county-services> (Accessed March 6, 2023).

<sup>33</sup> <https://www.marincounty.org/depts/cd/divisions/housing/make-room-for-marin> (Accessed March 9, 2023).

<sup>34</sup> <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/preapproved-adus> (Accessed April 28, 2023).

<sup>35</sup> <https://napasonomaadu.org/> (Accessed March 6, 2023).

<sup>36</sup> <https://www.marincounty.org/-/media/files/departments/cd/housing/affordable-housing/adu-affordability/adupacketvfinal> (Accessed March 6, 2023).

SB 13 created a tiered fee structure that charges ADUs based on their size. This fee structure takes into consideration the impact of an ADU on a neighborhood's infrastructure and services, which is different from the impact created by single-family homes or multifamily buildings.<sup>37</sup> For example, an ADU of less than 750 square feet is likely to have only one bedroom and unlikely to have school age children living there. This would minimize the impact on schools, water, and sewers, among other services.

Local governments and Special Districts (listed in Appendix A) can charge a variety of fees for a development. These fees, commonly known as impact or mitigation fees, go toward infrastructure development (such as adding lanes or roads or supporting additional traffic) or other public benefits (such as new parks, schools, or affordable housing). In the wake of the passage of Proposition 13 in 1978 and the loss of significant property tax revenue, local governments and school districts have also turned to development fees as a means to generate revenue. Given that California cities have tightly restricted funding sources, fees are one of the few ways cities can pay for the indirect costs of growth.<sup>38</sup>

State law governs the imposition of impact fees on ADUs.<sup>39</sup> Nonetheless, the agencies that might charge impact or mitigation fees have interpreted that state law differently. For example, the new construction of a detached 700 square foot ADU would incur no connection fee from Marin Water (formerly MMWD) but would cost \$8,675 in NMWD.<sup>40</sup> This discrepancy may be a result of different interpretations of how North Marin Water District interprets the applicable code to exempt ADUs from connection charges. North Marin Water District reads the code as exempting only ADUs created within an existing structure. In some instances, school impact fees provide another example. State law states that such fees are waived for ADUs smaller than 750 square feet, but many cities waive fees only for ADUs smaller than 500 square feet.<sup>41</sup>

Different agencies and municipalities throughout the county charge different fees. For example, Tiburon requires new and separate utility connections directly between the ADU and the utility. Consistent with Government Code section 66013, the service may be subject to a connection fee or capacity charge that is proportionate to the burden of the proposed ADU.<sup>42</sup> In Napa and Sonoma counties, capacity charges for ADUs are waived if the unit is under 499 square feet, and then based upon a square footage charge for larger units.<sup>43</sup> In contrast, those fees in Marin have reportedly been as much as \$41,000.<sup>44</sup>

These wide variations aside, it is uniformly challenging for a proponent of an ADU in Marin to get an accurate estimate for impact and connection fees simply by inspecting a town, city, or special district's website or even talking directly with staff of the planning and building

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<sup>37</sup> <https://openstates.org/ca/bills/20192020/SB13/> (Accessed March 6, 2023).

<sup>38</sup> (Chapter 653, Statutes of 2019); <https://openstates.org/ca/bills/20192020/SB13/> (Accessed March 6, 2023).

<sup>39</sup> Calif. Gov. Code 65852.2 (f). See Appendix B for the complete text,

<sup>40</sup> Northern Marin Water District website.

<sup>41</sup> See e.g. <https://www.tamdistrict.org/cms/lib/CA01000875/Centricity/Domain/1547/Nicasio%20-%20Residential.pdf>; <https://www.cityofbelvedere.org/DocumentCenter/View/79/School-Facilities-Fee?bidId=> (Accessed April 28, 2023).

<sup>42</sup> <http://www.townoftiburon.org/DocumentCenter/View/3266/594ADU-21622?bidId=> (Accessed March 6, 2023).

<sup>43</sup> <https://www.napasan.com/151/Capacity-Charges> (Accessed March 6, 2023).

<sup>44</sup> Grand Jury interview.



departments. In Belvedere, fees for a 700 square foot attached ADU total \$19,530.<sup>45</sup> Illustrating the consequence and complexity in understanding permit and fee requirements imposed by *almost every* government agency in Marin, we examined the rules imposed by the City of Novato and connected agencies. We assumed permitting and building two comparable ADUs costing \$350/sq. ft.: one at 700 sq. ft. and the other at 800 sq. ft. Applying the information set forth in Novato's Housing Element Update, reviewing the city and special districts' fee schedules and direct conversation with staff members, it is clear individuals face a daunting task in determining the process and the potential of substantial fees. Here, an ADU larger than 750 sq. feet costs well over \$34,000 in fees. Even when a smaller 700 sq. ft. ADU is proposed, fees exceed \$18,000. If Marin County and municipalities genuinely believe, as they have stated in multiple forums, that their housing needs can be met by encouraging the building of ADUs, they should re-examine the various impact fees that they have imposed.

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<sup>45</sup> [https://www.cityofbelvedere.org/DocumentCenter/View/8495/6th-Cycle-Housing-Element-Update\\_Public-Draft-Reduced-compressed](https://www.cityofbelvedere.org/DocumentCenter/View/8495/6th-Cycle-Housing-Element-Update_Public-Draft-Reduced-compressed) (Accessed May 9, 2023).

**Table 3  
Estimated Novato ADU Permit and Development Fees**

	Fee	700 sq. ft. <i>Estimated \$</i>	800 sq. ft. <i>Estimated \$</i>
<b>City of Novato</b>			
ADU Planning Permit	\$820.00	exempt	\$820.00
Building Permit	sliding scale	\$2,156.60	\$2,558.40
subtotal		\$2,156.60	\$3,378.40
<b>Novato City Public Facilities Fees</b>			
Recreational,Cultural Facilities	\$4,725.23	exempt	\$4,725.23
Civic Facilities	\$847.29	exempt	\$847.29
General Government Systems	\$367.54	exempt	\$367.54
Open Space	\$1,022.02	exempt	\$1,022.02
Drainage	\$580.68	exempt	\$580.68
subtotal		\$0.00	\$7542.76
<b>Novato City Traffic Impact Fees</b>			
Streets & Intersections	\$2,601	exempt	\$2,601.00
Transit Facilities	\$89.84	exempt	\$89.84
Corporation Yard	\$56.07	exempt	\$56.07
subtotal		\$0.00	\$2,746.91
<b>Outside Agency Impact Fees</b>			
Novato Unified School District	\$4.08 /sq. ft.	exempt	\$3,264.00
		\$7,617.50	\$8,700.00
Novato Sanitary District*	\$12,000/dwelling unit		
Novato Fire District	\$.0622/sq. ft.	exempt	exempt
North Marin Water District*	\$7,640/ADU plus	\$8,675.00	\$8,675.00
subtotal		\$16,292.50	\$20,639.00
<b>Subtotal Fees (estimated)</b>			
<b>City</b>		<b>\$2,156.60</b>	<b>\$13,668.07</b>
<b>Outside Agencies</b>		<b>\$16,292.50</b>	<b>\$20,639.00</b>
<b>TOTAL FEES (estimated)</b>		<b>\$18,449.10</b>	<b>\$34,307.07</b>

Source: City of Novato Housing Element Update, November 2022, C34-C36, Novato Sanitary District: Pro-rata of 1,200 sq. ft, North Marin Water District, Facility Reserve Charge Study, Final Report, November 15, 2022, Grand Jury interviews. The estimated amounts were calculated March 17, 2023.

## **Legalizing Marin's Existing Non-Conforming Second Units**

According to a 2016 report by McKinsey and Company entitled "A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025,"<sup>46</sup> one way to encourage homeowners to add ADUs is to create an amnesty path for ADUs that are not properly permitted.<sup>47</sup> Some jurisdictions have been at the forefront of encouraging ADUs. Part of their success has been the legalization of existing non-conforming units through amnesty programs. It is estimated that 40 percent to 70 percent of all construction throughout Marin is done without permits.<sup>48</sup> This number includes all forms of construction, from adding a new water heater to building an in-law unit.

For example, Fairfax has an amnesty program in which all penalties are waived and all ADUs (legalizing illegal existing ones or permitting new ones) housing the elderly get 50 percent off the permit fees normally charged.<sup>49</sup> San Mateo County had a limited-term ADU Amnesty program (beginning in October/November 2018), which allowed property owners to bring an unpermitted unit into compliance. It featured a low-cost initial inspection as well as detailed guidance on any required improvements necessary to meet the current building code. All fines for unpermitted construction were waived, and planning and building permit fees were either waived or significantly reduced during the initial pilot phase. Code enforcement actions were also suspended, allowing potential applicants the opportunity to explore the program without risk of penalty.<sup>50</sup>

## **ADUs can help address housing needs of Marin's aging population**

Marin County's Age Forward Plan (2020) suggests that ADUs could help older adults.<sup>51</sup> The share of older adults in Marin will continue to increase and is projected to reach 35 percent of the county's population by 2025 and 38 percent by 2030.<sup>52</sup> The Age Forward plan offered three action items in this regard:

- **Community:** Explore opportunities to build ADUs on properties; advocate for measures to expand ADU programs throughout the county.
- **County Leadership:** Foster increase of ADUs, encourage greater awareness of and research for ADU programs and opportunities for residents, explore permit fee waivers and fee reductions, including fee adjustments to incentivize affordable rental units

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<sup>46</sup> See

<https://www.mckinsey.com/~/media/mckinsey/featured%20insights/urbanization/closing%20californias%20housing%20gap/closing-californias-housing-gap-full-report.pdf>, (Accessed March 6, 2023).

<sup>47</sup> <https://ternercenter.berkeley.edu/blog/san-diego-adu-bonus-program/> (Accessed March 6, 2023).

<sup>48</sup> Marin Builders Exchange survey. <https://www.marinbuilders.com/permit-simplicity-and-customer-satisfaction> (accessed March 6, 2023).

<sup>49</sup> <https://www.townoffairfax.org/opportunities-for-adu-jadu-permitting-and-construction/> (Accessed March 6, 2023).

<sup>50</sup> <https://www.smcgov.org/planning/accessory-dwelling-unit-amnesty-health-safety-certification-program> (Accessed March 6, 2023).

<sup>51</sup> "Age Forward, a framework for an Age-Friendly County of Marin," January 2020 [https://www.marinhhs.org/sites/default/files/files/servicepages/2022\\_06/cc\\_af\\_com\\_plan\\_final\\_ada.pdf](https://www.marinhhs.org/sites/default/files/files/servicepages/2022_06/cc_af_com_plan_final_ada.pdf) (Accessed March 15, 2023)

<sup>52</sup> California Department of Finance. (2019). Population projections for California. Retrieved from <https://dof.ca.gov/Forecasting/Demographics/Projections/> (Accessed March 6, 2023).



- County Departments: Promote ADU programs and facilitate advocacy for greater flexibility, work together to advocate for solutions (Aging & Adult Services, Community Development Agency).<sup>53</sup>

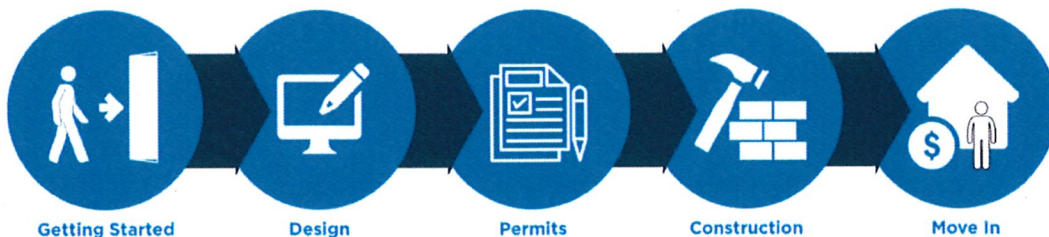
## Confusion Reigns

Much of the public is confused about what the requirements are for an ADU.<sup>54</sup> The Grand Jury's research has found that some jurisdictions in Marin have not updated their planning and building policies to conform with current California ADU laws. Some people do not know whether an ADU requires a lot split, must be rented, what size refrigerator or sink is required, or what the sewer fees would be. Potential ADU owners (not just those with limited incomes) would benefit from a central "one stop shop" for this information. The County and local municipalities would be better served if this "one stop shop" is identified by each municipality to be the authoritative source for all local information. Ideally it would become linked with Napa Sonoma ADU. At the very least, the ADU Marin effort should become more closely aligned with the Napa Sonoma ADU programs. In addition, each municipality should clearly point to such a source of assistance on its website. For example, Fairfax has a model amnesty program, but there is no obvious link to it from the building department website. In addition to the Napa and Sonoma counties efforts, we reviewed the successful San Mateo "Second Unit Resource Center," which has demonstrated that a one stop shop open to all has value:



## Getting Started

Are you interested in building a second unit? Here's information on how to get it one.



Source: <https://secondunitcentersmc.org/how/>

<sup>53</sup> "Age Forward, a framework for an Age-Friendly County of Marin," January 2020 [https://www.marinhhs.org/sites/default/files/files/servicepages/2022\\_06/cc\\_af\\_com\\_plan\\_final\\_ada.pdf](https://www.marinhhs.org/sites/default/files/files/servicepages/2022_06/cc_af_com_plan_final_ada.pdf) (Accessed March 15, 2023)

<sup>54</sup> See e.g. [https://nextdoor.com/p/y-BghLzP7XWt?view=detail&init\\_source=search&query=adu](https://nextdoor.com/p/y-BghLzP7XWt?view=detail&init_source=search&query=adu) (Accessed March 6, 2023).



If Marin is serious about helping individuals build ADUs, our review of current and planned efforts initiated by Marin's cities and municipalities leads us to three obvious conclusions:

- Currently, required information is not easily obtained either from officials or contained on agencies' websites.
- Fee information from Marin's water, fire, sanitary, and school districts is not easy to understand and follow.
- Marin's mandated housing goals can be met when every public agency in the county aligns its policies toward these objectives. Cooperation should be the mantra. It benefits everyone.

## **FINDINGS**

- F1. More housing in Marin is needed and ADUs are one solution.
- F2. Many homeowners lack information and knowledge about ADU development, and Marin's jurisdictions are not always helpful to homeowners seeking information about ADU development.
- F3. It is often difficult, if not impossible, for a Marin homeowner to determine the planning, building, connection, capacity and impact fees associated with developing an ADU in a particular jurisdiction.
- F4. Many Bay Area cities and counties, for example Napa and Sonoma, have implemented comprehensive websites and related support to help homeowners create ADUs.
- F5. ADUs may be rented affordably and provide additional benefits for older adults and their caregivers.
- F6. Most Marin jurisdictions could provide better resources offering or identifying financing incentives for ADU development.
- F7. Impact, connection, and capacity fees vary considerably throughout the County and such fees can be a disincentive to homeowners considering ADU development.
- F8. Not every jurisdiction in Marin has updated its planning and building policies to conform with current California ADU laws.
- F9. Granting amnesty, following safety inspection, to existing non-conforming second units could help Marin meet its housing obligations.
- F10. ADU Marin and HelloADU are a good start. However, compared to several other Bay Area cities and counties, for example Napa and Sonoma, they could be substantially enhanced and expanded.

## **RECOMMENDATIONS**

- R1. On or before December 31, 2023, the Marin County Board of Supervisors should direct the Community Development Agency's Development Priority Setting Committee to:
- 1) Identify available funding/financing information for residents who need help with the cost of building an ADU,
  - 2) Transmit the collected information to all the jurisdictions represented on the Committee.
  - 3) Start a continuous monitoring program to update the information sources as they become available.
- R2. By December 1, 2023, begin investigation to consider an amnesty program to legalize existing unpermitted second units. Add a marketing communications plan so that citizens can be made aware of it.
- R3. By December 1, 2023, begin the process of merging and/or collaborating with Napa/Sonoma ADU, and hiring a full-time Marin ADU Program Coordinator. The program coordinator should work with all jurisdictions on the development of ADUs and identify impact and connection fees within each jurisdiction.
- R4. By December 1, 2023, begin a feasibility assessment of waiving or significantly lowering impact and connection fees for units smaller than 750 square feet.
- R5. By December 1, 2023, begin creating plans to accelerate the permit approval process for ADU applications to within 30 days, or less, of submission. Implement such plans no later than July 1, 2024.
- R6. By December 1, 2023, begin feasibility assessments of new incentives for ADU development, such as pre-approved plans, technical assistance, property tax relief, development fee waivers, and forgivable loans; implement at least one such incentive no later than July 1, 2024.

## **REQUIRED RESPONSES**

Pursuant to Penal Code section 933.05, the Grand Jury requires responses from the following governing bodies:

- School Districts
  - Bolinas-Stinson School District Board of Trustees (F7, R4)
  - Kentfield School District Board of Trustees (F7, R4)
  - Laguna Joint School District Board of Directors (F7, R4)
  - Lagunitas School District Board of Trustees (F7, R4)
  - Larkspur-Corte Madera School District Board of Trustees (F7, R4)
  - Marin County Office of Education (F7, R4)
  - Mill Valley School District Board of Trustees (F7, R4)
  - Miller Creek Elementary School District Board of Trustees (F7, R4)
  - Nicasio School District Board of Trustee (F7, R4)
  - Novato Unified School District Board of Trustees (F7, R4)
  - Reed Union School District Board of Trustees (F7, R4)
  - Ross School District Board of Trustees (F7, R4)
  - Ross Valley School District Board of Trustees (F7, R4)
  - San Rafael City Schools Board of Education (F7, R4)
  - Sausalito/Marin City School District Board of Trustees (F7, R4)
  - Shoreline Unified School District Board of Trustees (F7, R4)
  - Tamalpais Union High School District Board of Trustees (F7, R4)
  
- Municipalities
  - City of Belvedere (F1-F13, R1-R6)
  - City of Larkspur (F1-F13, R1-R6)
  - City of Mill Valley (F1-F13, R1-R6)
  - City of Novato (F1-F13, R1-R6)
  - City of San Rafael (F1-F13, R1-R6)
  - City of Sausalito (F1-F13, R1-R6)
  - Marin County Board of Supervisors (F1-F13, R1-R6)
  - Town of Corte Madera (F1-F13, R1-R6)
  - Town of Fairfax (F1-F13, R1-R6)
  - Town of Ross (F1-F13, R1-R6)
  - Town of San Anselmo (F1-F13, R1-R6)
  - Town of Tiburon (F1-F13, R1-R6)
  
- Water Districts
  - Bolinas Community Public Utility District (F7, R4)
  - Marin Municipal Water District (F7, R4)
  - North Marin Water District (F7, R4)
  - Stinson Beach County Water District (F7, R4)



- Fire Protection Districts
  - Bolinas Fire Protection District (F7, R4)
  - Central Marin Fire Department (F7, R4)
  - Inverness Public Utility District (F7, R4)
  - Kentfield Fire Protection District (F7, R4)
  - Marin County Fire Department (F7, R4)
  - Marinwood Community Services District (F7, R4)
  - Novato Fire Protection District (F7, R4)
  - Ross Valley Fire Department (F7, R4)
  - Southern Marin Fire Protection District (F7, R4)
  - Stinson Beach Fire Protection District (F7, R4)
  - Tiburon Fire Protection District (F7, R4)
  
- Sanitary Districts
  - Almonte Sanitary District (F7, R4)
  - Alto Sanitary District (F7, R4)
  - Central Marin Sanitation Agency (F7, R4)
  - Corte Madera Sanitary District No. 2 (F7, R4)
  - Homestead Valley Sanitary District (F7, R4)
  - Las Gallinas Valley Sanitary District (F7, R4)
  - Novato Sanitary District (F7, R4)
  - Richardson Bay Sanitary District (F7, R4)
  - Ross Valley Sanitary District (F7, R4)
  - San Rafael Sanitation District (F7, R4)
  - Sausalito Marin City Sanitary District (F7, R4)
  - Sewerage Agency of Southern Marin (F7, R4)
  - Tiburon Sanitary District 5 (F7, R4)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

## APPENDIX A

Impact, connection, and capacity fees vary considerably within these districts throughout Marin County.

<u>School Districts</u>	<u>Water Districts</u>	<u>Fire Protection Districts</u>	<u>Sanitary Districts</u>
Bolinas-Stinson	Bolinas Community Public Utility	Bolinas	Almonte
Kentfield	Marin Municipal	Central Marin	Alto
Laguna	North Marin	Inverness Public Utility	Central Marin
Lagunitas	Stinson Beach County	Kentfield	Corte Madera
Larkspur-Corte Madera		Marin County	Homestead Valley
Marin County Office of Education		Marinwood Community Services	Las Gallinas
Mill Valley		Novato	Novato
Miller Creek		Ross Valley	Richardson Bay
Nicasio		Southern Marin	Ross Valley
Novato Unified		Stinson Beach	San Rafael
Reed Union		Tiburon	Sausalito/Marin City
Ross			Southern Marin
Ross Valley			Tiburon
San Rafael City			
Sausalito/Marin City			
Shoreline Unified			
Tamalpais Union			

## **APPENDIX B**

For reference only: These are the primary laws affecting ADU development:

- AB 68/AB 881 - Requires local agencies to approve or deny an ADU project more quickly and prohibits local agencies from adopting ADU ordinances that impose minimum lot size requirements, set certain maximum dimensions, or require replacement off-street parking in certain situations. Also allows for an ADU as well as a “junior” ADUs where certain access, setback and other criteria are met.
- SB 13 - Provides, until January 1, 2025, that cities may not condition approval of ADU building permit applications on the applicant being the “owner-applicant” of either the primary dwelling or the ADU, and prohibits impact fees on ADUs under 750 square feet.
- AB 587 - Provides that local agencies may now allow ADUs to be sold or conveyed separately from a primary residence if certain conditions are met. This law is expected to increase the ability of affordable housing organizations to sell deed-restricted ADUs to eligible low-income homeowners.
- AB 670 - Prevents homeowners' associations from barring ADUs. AB 670 makes unlawful any HOA condition that "prohibits or unreasonably restricts" the construction of ADUs on single-family residential lots.
- AB 671 - Requires local governments to include in their General Plan housing elements plans to incentivize and promote the creation of affordable ADUs. The law also requires HCD (Housing and Community Development) to develop, by December 31, 2020, a list of state grants and financial incentives for ADU development.
- New California legislation went into effect on January 1st, 2023, that allows 2-story ADUs in some instances, provides more flexibility in where ADUs can be located on a property, and makes obtaining an ADU permit a more transparent and streamlined process.

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**ARTICLE 2. Adoption of Regulations [65850 - 65863.13] (*Article 2 added by Stats. 1965, Ch. 1880.*)**

**65852.2. [https://california.public.law/codes/ca\\_gov%27t\\_code\\_section\\_65852.2](https://california.public.law/codes/ca_gov%27t_code_section_65852.2)**  
*(Amended (as amended by Stats. 2021, Ch. 343, Sec. 1) by Stats. 2022, Ch. 664, Sec. 2.5. (SB 897) Effective January 1, 2023.)*