

Teton County & Town of Jackson *Wyoming*



Alternative Answers to Policy Issues: Affordable Workforce Housing



CLARION

In association with:

BBC **RRC**
RESEARCH & CONSULTING ASSOCIATES

Table of Contents

I. Introduction.....	1
II. Alternative Solutions to Policy Questions.....	6
Policy Question 1: What segments of the workforce should housing mitigation be for?	6
A. Current Requirements	6
B. Key Issues.....	7
C. Alternative Answers.....	8
Policy Question 2: What portion of the workforce should be housed through mitigation? (the rest will be housed through other tools, or they will commute).....	10
A. Current Requirements	10
B. Key Issues.....	11
C. Alternative Answers.....	14
Policy Question 3: When should the requirement to house the construction workforce be imposed?.....	17
Policy Question 4: When should the requirement to house the operations and maintenance workforce be imposed?	17
Policy Question 5: When should the requirement to house the public sector workforce be imposed?.....	17
A. Current Requirements	17
B. Key Issues.....	18
C. Alternative Answers.....	19
Policy Question 6: What type of housing should be provided through housing requirements?	24
A. Current Requirements	24
B. Key Issues.....	25
C. Alternative Answers.....	26
Policy Question 7: What methods for providing housing will be allowed and preferred?	30
A. Current Requirements	30
B. Key Issues.....	31
C. Alternative Answers.....	32
Policy Question 8: What types of development should be exempt and why?	35
A. Current Requirements	35
B. Key Issues.....	35

C. Alternative Answers.....	36
Policy Question 9: What type of relief from the housing requirements should be allowed?	39
A. Current Requirements	39
B. Key Issues.....	39
C. Alternative Answers.....	40
Policy Question 10: How should the updated requirements be applied to approved, but not yet built, development?	42
A. Current Requirements	42
B. Key Issues.....	42
C. Alternative Answers.....	42

I. INTRODUCTION

As stated in *Policy Directions: Affordable Workforce Housing*, there is a serious affordable housing problem for the workforce in Teton County and the Town of Jackson. It began in the mid-1990s, and has incrementally worsened since that time. It is due in large part to significant increases in land and housing prices, in conjunction with static or minor increases in workforce wages. The result is that today, most members of the community's workforce are priced out of the housing market, and the problem is worsening.

The *Jackson/Teton County Comprehensive Plan* recognizes this problem, and sets out a goal to provide housing opportunities so that 65% of the workforce can live locally. How this goal is to be achieved has been discussed at length by members of the community. Based on these discussions, there is general consensus that while the goal is achievable, it will require active and multi-dimensional efforts on the part of the County, the Town, and the community generally, that include:

- Continued use of mandatory requirements in the County and Town LDRs that require certain types of developments to mitigate the need for affordable workforce housing;
- Incentives in the County and Town Land Development Regulations (LDRs) for those that build affordable workforce housing;
- Allowance in the County and Town LDRs that enable the market and non-profits like Habitat for Humanity and the Jackson Hole Community Housing Trust to construct workforce housing;
- Preservation of existing workforce housing stock;
- Development of publicly subsidized housing through public/private partnerships; and
- Establishment of a dedicated source of funding for affordable housing, like a special purpose excise tax or a sales tax.

While each of these tools is important in addressing the housing affordability problem, this particular effort focuses on only one of these strategies –**updating the mandatory mitigation requirements in the County/Town LDRs** to better align them with the policy direction in the *Jackson/Teton County Comprehensive Plan*, other community goals, and current conditions.

The effort to do this began in May, 2017, with public workshops and an online survey for the public to identify issues with the current requirements, and what changes they thought the community should achieve in updating them. This input is synthesized in the *Jackson/Teton County Community Engagement Summary: Housing LDRs*, which is available at www.engage2017.jackontetonplan.com. This was followed by preparation of *Policy Directions: Affordable Workforce Housing*, which summarizes:

- The past, current, and expected trends in the community with respect to housing for the workforce;
- The key elements in the current mandatory requirements;
- The input received about the mandatory requirements at the workshops and online survey; and
- Suggested underlying policy issues on which the Board of County Commissioners and Town Council need to provide direction, for the update effort to proceed.

After review and consideration of *Policy Directions: Affordable Workforce Housing*, and all these other materials, the Board of County Commissioners and Town Council held a joint meeting on July 10, 2017, and reached consensus on 10 Policy Questions on which they need to provide policy direction for this effort to move forward. Those 10 policy questions are:

Policy Question 1: What segments of the workforce should housing mitigation be for?

Policy Question 2: What portion of the workforce generated by development should be housed through mitigation? (the rest will be housed through other tools, or commute)?

Policy Question 3: How should the requirement to house the construction workforce be imposed?

Policy Question 4: How should the requirement to house the operations and maintenance workforce be imposed?

Policy Question 5: How should the requirement to house the public sector workforce be imposed?

Policy Question 6: What type of housing should be provided through housing mitigation requirements?

Policy Question 7: What methods for providing required housing mitigation will be allowed and preferred?

Policy Question 8: What types of development should be exempt from housing mitigation requirements and why?

Policy Question 9: What type of relief from the housing mitigation requirements should be allowed?

Policy Question 10: How should the updated mitigation requirements be applied to approved, but not yet built, development?

To assist the Board of County Commissioners and Town Council in providing direction on these policy questions, Clarion Associates, working in conjunction with County and Town staff prepared this document, *Alternative Solutions to Policy Question: Affordable Workforce Housing*. It provides the following information for each Policy Question:

Current Requirements: A summary of the provisions in the County and Town's current requirements relevant to the Policy Question, for both full-time and seasonal employees;

Key Issues. The key considerations or concerns about the provisions relevant to the Policy Question, along with concerns or issues that might occur if other alternatives are pursued; and

Alternative Answers. An outline of two to four alternative policy approaches for consideration in providing direction on the Policy Question, along with a discussion of the implications of each alternative answer.

A table summarizing the current requirements, key issues, and alternative solutions and their implications is included as Appendix A.

Alternative Solutions to Policy Questions: Affordable Workforce Housing, is being made available for public review in mid-September, 2017. The schedule for the review, analysis, and direction on a preferred alternative will be as follows. All materials are available at the project webpage:

www.engage2017.jacksonetonplan.com/housingrequirements

- Release: September 13
- **Review: September 13 – October 11**
 - Brief description of the alternatives: Alternative Policy Directions
 - Detailed description of the alternatives: Alternative Answers to Policy Questions
 - Presentation of the alternatives on the project webpage

- Email a question from the project webpage
- FAQ sheet maintained on project webpage
- Office hours to talk to a planner about the alternatives
 - September 26, 7:00 – 9:00 am, Housing Department Conference Room
 - September 26, 4:00 – 6:00 pm, Housing Department Conference Room
 - September 27, 11:00 am – 2:00 pm, Housing Department Conference Room
 - October 2, 11:00 am – 2:00 pm, Housing Department Conference Room
 - October 3, 11:00 am – 2:00 pm, Housing Department Conference Room
 - October 3, 4:00 – 6:00 pm, Housing Department Conference Room
 - October 4, 7:00 – 9:00 am, Housing Department Conference Room
 - October 4, 4:00 – 6:00 pm, County Planning Conference Room
 - October 5, 7:00 – 9:00 am, Housing Department Conference Room
- **Alternatives Analysis: September 13 – October 20**
 - Community Discussion Public “Comment” Event
 - (Spanish): October 2, 6:00 – 8:00 pm, Library Auditorium
 - (English): October 9, 6:00 – 8:30 pm, Snow King Grandview Lodge
 - Online Alternatives Analysis Survey: September 13 – October 11
 - Public Comment Published: October 12
 - Staff Recommendation Published: October 12
 - Joint Town/County Planning Commission Meeting: October 16, 6:00 pm, County Chambers
 - Purpose: consider the alternatives and make a recommendation
 - if needed continue to October 17, 6:00 pm, County Chambers
 - if needed continue to October 19, 6:00 pm, County Chambers
- **Policy Direction: October 30 – November 13**
 - Joint Town Council/Board of County Commissions Meeting (JIM): October 30, 5:00 pm, Town Hall
 - Purpose: consider the alternatives a develop draft policy direction
 - if needed continue to November 1, 2:00 pm, Town Hall
 - if needed continue to November 2, 2:00 pm, Town Hall
 - Draft Policy Direction Release: November 3
 - JIM: November 13, 5:00 pm, Town Hall
 - Purpose: finalize policy direction

POLICY QUESTIONS AND ALTERNATIVE ANSWERS	
Policy Questions	Alternative Answers
1. What segments of the workforce should housing mitigation be for?	A. Year-round, fulltime employees, whether they work in one job or many B. Alternative 1.A + seasonal employees (<i>Status Quo</i>)

POLICY QUESTIONS AND ALTERNATIVE ANSWERS	
Policy Questions	Alternative Answers
2. What portion of the workforce generated by development should be housed through mitigation? (the rest will be housed through other tools, or commute)	<p>A. Mitigate for 100% of the workforce that cannot afford housing (households making about 200% or less of median income)</p> <p>B. Mitigate for the lowest earning workforce households (for example, about 75% of workforce households make less than 120% of median income) (<i>Status Quo</i>)</p> <p>C. Calculate the mitigation using Alternative 2.A or 2.B, then reduce the requirement to avoid barriers to development</p>
3. How should the requirement to house the construction workforce be imposed?	<p>A. Inclusionary requirement for year-round employees and employee generation requirement for seasonal employees applied progressively through the approval process (<i>Status Quo</i>)</p>
4. How should the requirement to house the operations and maintenance workforce be imposed?	<p>B. Alternative 3/4/5.A. except that the <i>inclusionary requirement</i> would be applied to lodging development in addition to residential development</p>
5. How should the requirement to house the public sector workforce be imposed?	<p>C. Employee generation requirement for year-round and seasonal employees applied progressively through the approval process</p>
6. What type of housing should be provided through housing mitigation requirements?	<p>A. Residential units with:</p> <ul style="list-style-type: none"> – Occupancy limits (maximum people by number of bedrooms), – Minimum features (bedroom, kitchen, bathroom, storage, etc.), and – Minimum size (minimum square feet by number of bedrooms). <p>B. Alternative 6.A + allow lodging units for seasonal employees with same limits and minimums as 6.A. (<i>closest to Status Quo</i>)</p> <p>C. Alternative 6.A or 6.B + maximum size and feature standards</p>

POLICY QUESTIONS AND ALTERNATIVE ANSWERS	
Policy Questions	Alternative Answers
7. What methods for providing required housing mitigation will be allowed and preferred?	<p>A. Prioritize location through clear preference for:</p> <ol style="list-style-type: none"> 1. any on-site unit, 2. any off-site unit (new, existing, credit), 3. land dedication, 4. payment of a fee <p>B. Prioritize production through clear preference for:</p> <ol style="list-style-type: none"> 1. any new unit, 2. any existing unit or credit, 3. land dedication, 4. payment of a fee <p>C. Clear preference for:</p> <ol style="list-style-type: none"> 1. new on-site unit, 2. new off-site unit, 3. any existing units, 4. use of a banked unit, 5. land dedication, 6. payment of a fee (<i>closest to Status Quo</i>) <p>D. Define allowed methods without preference</p>
8. What types of development should be exempt from housing mitigation requirements and why?	<p>A. Only exempt what legally has to be exempt:</p> <ul style="list-style-type: none"> – existing development, – already mitigated development, – development with no impact <p>B. Alternative 8.A + residential units restricted to be workforce housing, even if they are not restricted to be affordable</p> <p>C. Alternative 8.A + nonresidential development with minimal impact (agriculture, public/semi-public)</p> <p>D. All of the above (<i>Status Quo</i>)</p>
9. What type of relief from the housing mitigation requirements should be allowed?	<p>A. Structured independent calculation relief (<i>County Status Quo</i>)</p> <p>B. Structured independent calculation plus variance relief</p>
10. How should the updated mitigation requirements be applied to approved, but not yet built, development?	<p>A. The requirements applicable at the time of a project's first approval apply until the project is complete or expires (<i>Status Quo</i>)</p> <p>B. A project is subject to updated requirements if the calculation of the requirement is older than 7 years or a substantial amendment is requested.</p>

II. ALTERNATIVE SOLUTIONS TO POLICY QUESTIONS

Policy Question 1:

What segments of the workforce should housing mitigation be for?

A. Current Requirements

The current requirements impose affordable housing mitigation for both year-round, full-time employees, and seasonal, full-time employees. Housing mitigation is not required for part-time employees.

Year-Round Employees

The inclusionary affordable housing requirement for year-round, full-time employees requires that 25 percent (County) or 20 percent (Town) of all new residential units (unless exempted) be affordable for year-round, full-time employees living in households making 120 percent or less of median household income.¹ The estimate of the year-round, full-time workforce in need of housing is based on a 1994 Nexus Study which is based on job growth and commensurate wage growth projections compared to housing cost estimates.

Even though the goal of the 1994 Nexus Study was to base need on all year-round, full-time employees, primarily the employees captured in the study were those employed in year-round, full-time jobs such as an engineer who goes to work every day at one firm and has no other employment. The year-round, full-time employees that were not fully captured in that or the other subsequent studies completed are some of the year-round, full-time employees who have multiple jobs (like the guide who works full-time for one company all winter as a ski guide, then works for another company full-time all summer as a fishing guide -- neither of the jobs are full-time, year-round, but the employee works full-time, year-round in the community).²

Seasonal Employees

The housing requirement for seasonal employees requires all nonresidential development (unless exempted) to provide housing for seasonal employees who cannot afford market rent. The Nexus Study is based on market rent, seasonal wages by industry, and the distribution of seasonal employees by industry. It requires nonresidential development provide 100 percent of need. The requirement is imposed at the time of the initial development of a building or at the time of the use permit if a

¹ The definition of “full-time” and “year-round” are found in the Housing Department Rules. The full-time year-round employee is currently defined as someone who is currently employed a minimum of 30 hours a week and 10 months a year. Note that the Town and County are currently reviewing those definitions. Please see.

www.engage2017.jacksonetonplan.com/housingrulesandregulations.

² Another example is the server who works three part-time jobs as a waiter, retail clerk, and caterer to get to full-time employment.

change of use yields additional seasonal employee generation. The Nexus Study has not been updated in a number of years.

B. Key Issues

There are several key issues relevant to both the inclusionary requirement for year-round, full-time employees and the requirement for seasonal employees. First, in 2013 the Teton County Housing Authority (TCHA) had a 2013 Employee Generation by Land Use Study (2013 Nexus Study) prepared that updates and evaluates the need that both residential and nonresidential development create for affordable workforce housing. It captured all of the housing need created from full-time employees working at a single job, as well as some of those who work full-time at several jobs (but not all of them). It demonstrates a serious housing affordability problem for year-round employees in the community that affects more households than the current housing requirements assume. While the current housing requirements are targeted to households with median household income of up to 120 percent of AMI, in 2015 and 2016, respectively, the median sales price of a single family home was 397 percent and 395 percent of AMI (versus 240-250 percent in the early 2000s). Furthermore, the median sales price of all residences was 291 percent and 274 percent of AMI in 2015 and 2016. This means that the market fails to provide housing that is affordable to households making less than about 200 percent of AMI.

As noted above, there is a strong sense from those in the community that the federal and state data and the local studies on affordable housing have not fully captured the group of employees in the community who are full-time residents and in reality are full-time employees, but instead of working one full-time job, work several jobs during the different seasons on a full-time basis (e.g., a person who works for a rafting company over the summer, and at the village in a ski-related position in the winter). To some degree that is accurate. Most of the state and federal data treat these persons as seasonal employees, and the local affordable housing studies have not completely captured them either, even though for the purposes of the affordable housing programs they could be considered year-round, full-time employees.

Finally, and with respect to seasonal employee housing, the Housing Action Plan (5C) and Comprehensive Plan (5.1.b) suggest abolishing the requirement for seasonal housing and focusing on the requirement for full-time employees. Two reasons are identified for this suggestion. The first is that the market will respond to seasonal employee housing needs because employers will be unable to operate their businesses if it does not. The second is that the success of efforts to provide affordable housing for full-time employees is much more important to maintaining a sense of community in Jackson Hole, so that is what public efforts should focus on.

C. Alternative Answers

ALTERNATIVE 1.A:

Impose requirements to provide affordable housing for full-time, year-round employees (Both those working full-time at one job, and those who work full-time at multiple jobs).

Remove requirements to provide affordable housing for seasonal employees.

Use the 2013 Nexus Study as a basis, with refinements and added analysis to more fully capture the full-time resident who works multiple jobs.

Conform the County and Town provisions to each other.

Examples.

- Generation of a 40-hour a week, year-round job would be mitigated. (e.g. engineer) (status quo).
- Generation of a 40-hour a week, seasonal job would be mitigated only if it was worked by a year-round resident who had a different 40-hour a week in the opposite season (e.g. ski guide, fishing guide) (addition to status quo, as many of these employees are missed by the current requirement)
- Generation of a 40-hour a week job that only exists for the summer peak, worked by an employee only here during the summer would not be mitigated (e.g. guest ranch employee) (subtraction from status quo)

Implications

This would result in updating the current requirement to include the range of year-round, full-time employees that includes both the typical full-time employee, but also the full-time employee who works multiple jobs.

Instead of imposing a regulatory requirement on nonresidential development (businesses) to provide seasonal affordable housing for their employees, the community would rely on subsidies, preservation programs, incentives, and allowances in the market to encourage the individual employer to provide seasonal housing. The rationale for this recommendation is that employers will ensure housing is available for their seasonal employees, or they will not be able to operate their businesses. A counter argument is that some employers might not provide adequate housing; rather, they might put their employees in units or lodging with substandard conditions, or seasonal employees will camp.

The refinements to the 2013 Nexus Study will have a fiscal impact on the Town and County.

Conforming the County and Town provisions to each other would result in a coordinated and seamless set of regulations.

ALTERNATIVE 1.B:

Impose the same requirements to house year-round, full-time employees as in Alternative 1.A, and also update the seasonal affordable housing requirement based on an updated Nexus Study.

This alternative is basically an updated version of the status quo.

Conform the County and Town provisions to each other.

Implications

The seasonal affordable housing requirement would be carried forward, but the requirement would be updated based on an updated Nexus Study. If the Nexus Study is updated, there is a reasonable possibility that the requirements for some of the industries would increase. The updated Nexus Study for seasonal employees would have an even greater fiscal impact than the refinements in Alternative 1.A.

If the seasonal employee requirement is carried forward, all of the remaining questions have to be answered for both year-round and seasonal employees.

Conforming the County and Town provisions to each other would result in a coordinated and seamless set of regulations.

Policy Question 2:

What portion of the workforce generated by development should be housed through mitigation? (the rest will be housed through other tools, or commute)

A. Current Requirements

Year-round Employees

The inclusionary affordable housing requirement for year-round, full-time employees requires that 25 percent (County) or 20 percent (Town) of all new residential units (unless exempted) be affordable for year-round, full-time employees living in households making 120 percent or less of median household income.

The 1994 Nexus Study indicated that the market failed to provide housing for year-round workforce households making twice the median income (200 percent median household income) or less. As noted earlier, the 2013 Nexus Study indicates that the situation with respect to affordability has worsened; by 2015 and 2016, respectively, the median sales price of a single family home was 397 percent and 395 percent of AMI (versus 240 -250 percent in the early 2000s). Furthermore, the median sales price of all residences was 291 percent and 274 percent of median income in 2015 and 2016. (Even though the inclusionary affordable housing requirement for year round, full-time employees only provides affordable housing for those with median household incomes up to 120 of median income.) Given these circumstances, since 1994, there has been an assumption that either other incentives and funding tools or the market will address the housing needs of those full-time employee households making between 120 and 200 percent of median income (although that has not been the case).

In addition, the 1994 Nexus Study identified a need for 25 percent of new residential units to be affordable. From 1994-2008, the requirements were set at only 50 to 60 percent of the mitigation amount recommended by the 1994 Nexus Study (15 percent mitigation in the County, 12.75 percent mitigation in the Town). While the County increased the inclusionary requirement to 100 percent of the 1994 need in 2008 (25 percent mitigation), the Town's requirement is still set at 80 percent of what is recommended by the 1994 Nexus Study (20 percent mitigation). It is again assumed that incentives, funding, and the market will make up the difference between the identified need for affordable housing for households making less than 120 percent of median income and the housing required (although that has not been the case).

Seasonal Employees

The housing requirement for seasonal employees requires all nonresidential development (unless exempted) to provide housing for seasonal employees who cannot afford market rent. The Nexus Study is based on market rent, seasonal wages by industry, and the distribution of seasonal employees by industry. It requires nonresidential development to provide housing for 100 percent of seasonal employees

that cannot afford market rent. The Nexus Study has not been updated to recalculate that need in a number of years.

While the Town and County currently implement the recommendations of the 1994 Nexus Study for seasonal employees, from 1995 to 2008 the required mitigation was only set at about 60 percent of the recommended rate in the 1994 Nexus Study. In that time period in the County, the requirement only applied within Planned Resorts.

B. Key Issues

Even with a mandatory inclusionary affordable housing requirement in place, housing continues to be unaffordable to many full-time, year round employees in the workforce, and the problem appears to be worsening. This is due to multiple factors. The primary reason is that over the past 20 years, housing prices have been heavily influenced by external market forces – purchasers from outside the region (from across the nation) whose incomes and assets are very high. They continue to drive up the cost of land and housing in the local market – way beyond what local wage earners can reasonably afford.

With that said, several issues are relevant to this discussion. First, there are some voices in the community that suggest the housing affordability problem comes from other sources – primarily restrictive LDRs – and that with some changes to the zoning restrictions, along with incentives, the private market would be able to provide housing that year-round, full-time employees could reasonably afford. To achieve this approach, the LDRs would need to be amended to increase the housing supply by allowing for more intense development of certain types of residential units in targeted areas, as well as provide incentives for the development of restricted affordable housing for the workforce in the form of higher densities/intensities. However, based on the dynamics of the market in Jackson Hole, it is highly unlikely that such changes would address the housing affordability problem. The reason is that it would not significantly affect the strong demand from external market forces. Purchasers from outside the region (from across the nation) with incomes and assets much greater than those in the local workforce would continue to purchase homes in the Jackson Hole market – and continue to outbid those in the local workforce – increasing housing prices. In addition, the community's growth management and community character goals limit the amount of density that can be achieved.

Second, the mitigation requirement for full-time, year-round employees can only be imposed on new development that adds new jobs (and employees and their families) to the community. It cannot address the unmet affordable housing needs of the past or the affordable housing needs of workforce households moving to the community to fill existing jobs vacated by retirees. This means the housing needs of those workforce households, as well as the workforce that earns more than those who can qualify for the program (under the current requirement of 120 percent of AMI) but still can't afford market rate housing (Today those up to approximately 200 percent of AMI), must be provided by incentives, funding, or the market. Workforce households that cannot find housing provided by mitigation, incentives, funding, or the market will be forced to commute.

The 2013 Nexus Study demonstrates that both residential and nonresidential development create a need for affordable housing for year-round employees.

Residential development generates three types of year-round employees: (1) employees for the construction of the residence, (2) employees for the operation and maintenance of the residence, post-construction, and (3) employees that are critical service providers that provide public services to these residences.^{3,4} Construction employees construct the homes. Operation and maintenance employees assist in the ongoing upkeep, operation, and maintenance of the home. Critical service providers provide safety services to the homes. The study outlines the number of employees that provide these services to new residential development, the need this creates for affordable housing for the employees, and if affordable housing is not constructed for these employees, the housing assistance (subsidy) needed. There are several important phenomena the study identifies with respect to the need for affordable housing for year-round, full-time employees that service residential development. One is that there is an exponential relationship between the size of the home (square footage) and the need created for affordable workforce housing. In other words, the larger the home in size, the greater the need the housing unit creates for affordable workforce housing. Another is that residences occupied by non-locals (second homeowners) versus locals (full-time residents) create a greater need for affordable housing. A third is that single-family homes create less need for affordable housing than other types of housing (condominiums and apartments). In addition, the analysis demonstrates the wages and salaries earned by a significant portion of these employees that provide services to residential development are insufficient to allow them to reasonably afford market housing in the community. See Table 1: Workforce Housing Created by Non-Local Residential Development, and Table 2: Workforce Housing Created by Local Residential Development.

³ Fire and rescue and law enforcement personnel for the purposes of the 2013 Nexus Study.

⁴ It should be noted that the analysis only includes employees that service residences; consequently, telecommuters and others working out of their home are not included since they do not provide service to the residences.

Table 1: Workforce Housing Created by Non-Local Residential Development

Unit Size (FT2)	Non-Local Tenancy Single-Family Detached							
	Construction		Operations and Maintenance		Critical Service Providers		Total	
	Affordable Housing Units Needed	Housing Assistance Needed	Affordable Housing Units Needed	Housing Assistance Needed	Affordable Housing Units Needed	Housing Assistance Needed	Affordable Housing Units Needed	Housing Assistance Needed
500	0.012	\$ 1,256	0.002	\$ 339	0.000	\$ 37	0.014	\$ 1,632
1,000	0.023	\$ 2,512	0.006	\$ 1,016	0.001	\$ 74	0.030	\$ 3,602
2,000	0.046	\$ 5,025	0.018	\$ 3,048	0.002	\$ 148	0.066	\$ 8,220
3,000	0.070	\$ 7,537	0.034	\$ 5,757	0.002	\$ 222	0.106	\$ 13,516
4,000	0.093	\$ 10,050	0.054	\$ 9,144	0.003	\$ 295	0.150	\$ 19,489
5,000	0.116	\$ 12,562	0.076	\$ 12,869	0.004	\$ 369	0.196	\$ 25,800
6,000	0.139	\$ 15,074	0.076	\$ 12,869	0.005	\$ 443	0.220	\$ 28,386
7,000	0.162	\$ 17,587	0.076	\$ 12,869	0.005	\$ 517	0.244	\$ 30,973

Unit Size (FT2)	Non-Local Tenancy All Other Units							
	Construction		Operations and Maintenance		Critical Service Providers		Total	
	Affordable Housing Units Needed	Housing Assistance Needed						
500	0.012	\$ 1,256	0.007	\$ 1,185	0.000	\$ 37	0.019	\$ 2,478
1,000	0.023	\$ 2,512	0.022	\$ 3,725	0.001	\$ 74	0.046	\$ 6,311
2,000	0.046	\$ 5,025	0.067	\$ 11,345	0.002	\$ 148	0.115	\$ 16,517
3,000	0.070	\$ 7,537	0.067	\$ 11,345	0.002	\$ 222	0.139	\$ 19,104
4,000	0.093	\$ 10,050	0.067	\$ 11,345	0.003	\$ 295	0.163	\$ 21,690
5,000	0.116	\$ 12,562	0.067	\$ 11,345	0.004	\$ 369	0.187	\$ 24,276
6,000	0.139	\$ 15,074	0.067	\$ 11,345	0.005	\$ 443	0.211	\$ 26,863
7,000	0.162	\$ 17,587	0.067	\$ 11,345	0.005	\$ 517	0.235	\$ 29,449

Table 2: Workforce Housing Created by Local Residential Development

Unit Size (FT2)	Local Tenancy Single-Family Detached							
	Construction		Operations and Maintenance		Critical Service Providers		Total	
	Affordable Housing Units Needed	Housing Assistance Needed						
500	0.012	\$ 1,256	0.001	\$ 169	0.000	\$ 37	0.013	\$ 1,462
1,000	0.023	\$ 2,512	0.003	\$ 508	0.001	\$ 74	0.027	\$ 3,094
2,000	0.046	\$ 5,025	0.009	\$ 1,524	0.002	\$ 148	0.057	\$ 6,696
3,000	0.070	\$ 7,537	0.018	\$ 3,048	0.002	\$ 222	0.090	\$ 10,807
4,000	0.093	\$ 10,050	0.028	\$ 4,741	0.003	\$ 295	0.124	\$ 15,086
5,000	0.116	\$ 12,562	0.040	\$ 6,773	0.004	\$ 369	0.160	\$ 19,704
6,000	0.139	\$ 15,074	0.040	\$ 6,773	0.005	\$ 443	0.184	\$ 22,291
7,000	0.162	\$ 17,587	0.040	\$ 6,773	0.005	\$ 517	0.208	\$ 24,877

Unit Size (FT2)	Local Tenancy All Other Units							
	Construction		Operations and Maintenance		Critical Service Providers		Total	
	Affordable Housing Units Needed	Housing Assistance Needed						
500	0.012	\$ 1,256	0.004	\$ 677	0.000	\$ 37	0.016	\$ 1,970
1,000	0.023	\$ 2,512	0.012	\$ 2,032	0.001	\$ 74	0.036	\$ 4,618
2,000	0.046	\$ 5,025	0.035	\$ 5,926	0.002	\$ 148	0.083	\$ 11,099
3,000	0.070	\$ 7,537	0.067	\$ 11,345	0.002	\$ 222	0.139	\$ 19,104
4,000	0.093	\$ 10,050	0.105	\$ 17,779	0.003	\$ 295	0.201	\$ 28,124
5,000	0.116	\$ 12,562	0.105	\$ 17,779	0.004	\$ 369	0.225	\$ 30,711
6,000	0.139	\$ 15,074	0.105	\$ 17,779	0.005	\$ 443	0.249	\$ 33,297
7,000	0.162	\$ 17,587	0.105	\$ 17,779	0.005	\$ 517	0.273	\$ 35,883

The nonresidential development evaluated includes retail, eating and drinking, industrial, institutional, office, and lodging/hotel development. Non-residential development creates a

need for year-round, full-time employees in three ways: (1) employees who construct the building(s), (2) employees who work at the building(s) (post construction employees), and (3) critical service workers.^{5,6} Construction employees construct the nonresidential buildings. All different types of employees work at the buildings after they are complete, depending on the type of business. These businesses also require critical service providers. The results of this analysis demonstrates that because of the wage levels of these employees and existing housing prices, non-residential development creates a need for affordable housing for year-round, full-time employees. See Table 3: Workforce Housing Created by Non-Residential Development.

Table 3: Workforce Housing Created by Non-Residential Development

Land Use	Construction		Post-Construction		Critical Service Providers		Totals		Totals	
	Workforce Housing Units	Housing Assistance Needed	Workforce Housing Units	Housing Assistance Needed	Workforce Housing Units	Housing Assistance Needed	Workforce Housing Units per 1,000 FT ² /Room	Housing Assistance Needed per 1,000 FT ² /Room	Workforce Housing Units per 1 FT ²	Housing Assistance Needed per 1 FT ²
Per 1,000 Square Feet										
Retail	0.023	\$ 2,511.79	0.705	\$127,958	0.002	\$ 212.46	0.730	\$ 130,682.25	0.00073	\$ 130.68
Eating & Drinking	0.023	\$ 2,511.79	1.956	\$286,160	0.002	\$ 212.46	1.981	\$ 288,884.25	0.00198	\$ 288.88
Office	0.023	\$ 2,511.79	0.952	\$102,783	0.002	\$ 212.46	0.977	\$ 105,507.25	0.00098	\$ 105.51
Industrial	0.010	\$ 1,045.84	0.430	\$125,983	0.002	\$ 212.46	0.442	\$ 127,241.30	0.00044	\$ 127.24
Institutional	0.017	\$ 1,887.36	0.952	\$ 125,983.00	0.002	\$ 212.46	0.971	\$ 128,082.82	0.00097	\$ 128.08
Other										
Per Room										
Hotel/Lodging (by room)	0.021	\$ 2,253.53	0.244	\$35,696	0.002	\$ 190.61	0.267	\$ 38,140.14		

A final consideration is that Alta, on the west side of the Tetons, has a lesser need for affordable housing than Jackson Hole. Requirements in Alta should be adjusted to reflect the market in Alta.

C. Alternative Answers

ALTERNATIVE 2.A:

Expand the affordable housing mitigation requirement to include households with incomes of up to 200 percent of median income.

Rely on funding, incentives and the market to provide housing for the workforce households generated by development with incomes greater than 200 percent of median income.

Conform the County and Town provisions to each other, except calculate an Alta-specific requirement using the same methodology but with Alta-specific data.

Implications

This alternative represents the maximum amount of affordable housing mitigation a development could be required to provide. Increasing the applicability of the affordable housing requirement to include those with household incomes up to 180-200 percent of median income could increase the affordable housing requirement (and subsidy) to some degree, but it would provide housing assistance to additional members of the

⁵ Fire and rescue and law enforcement personnel for the purposes of the 2013 Nexus Study.

⁶ As with the analysis of residential development, the analysis of nonresidential development only includes the employees that service the nonresidential development; consequently, telecommuters and others working out of their home are not included since they do not provide services to the nonresidential development.

workforce that need assistance. As discussed in Key Issues, it would still leave a small portion of the full-time, year-round employee workforce in a position where housing was still not reasonably affordable (those households with incomes above 180-200 percent of median income, up to approximately 280 percent of median income). To address this problem, the County and Town will have to include incentives in the LDRs for the development of residences that are affordable to those with household incomes above 180-200 and up to 250 percent of AMI.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

Approval of a dedicated source of funding for the purpose of proving affordable housing for full-time, year-round employees would assist in providing affordable workforce housing to those not covered by the requirement.

ALTERNATIVE 2.B:

Set the income limit based on a policy goal to house a certain portion of the workforce. For example, if the goal were to house the lowest-earning 75% of workforce households, the income limit would be adjusted accordingly.

Rely on funding, incentives, and the market to provide housing for the higher earning portion of the workforce.

Conform the County and Town provisions to each other, except calculate an Alta-specific requirement using the same methodology but with Alta-specific data.

Implications

The policy direction at the Housing Summit and in the Housing Action Plan indicates some desire to limit the applicability of the housing mitigation requirements to only the lowest-earning workforce households who have the greatest need, and then rely on other tools to provide housing for higher-earning households. The issue is that the market fails to provide reasonably affordable housing even for most of the highest-earning portion of workforce households.

This would generally carry forward the current policy and would continue to affect not only the mitigation requirement, but also who can qualify for the homes produced by the mitigation.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

ALTERNATIVE 2.C:

Select Alternative 2.A or 2.B based on who can qualify for the homes produced by mitigation. Then conduct an analysis to test different mitigation amounts on individual hypothetical projects and determine implications on the ability of the market to build different levels of affordable housing. Adjust the mitigation requirement to better optimize and balance the mitigation requirement with the market's ability to provide affordable housing.

Rely on incentives, funding, and the market to provide the remaining workforce housing needed.

Conform the County and Town provisions to each other, except calculate an Alta-specific requirement using the same methodology but with Alta-specific data.

Implications

The purpose of this alternative is to get a better sense that mitigation levels have on the ability of the market to provide affordable housing and to adjust the requirement to optimize or better balance economic realities with the need for affordable housing. The idea is that some level of development and redevelopment that includes restricted housing is better for the housing situation than no development and continued loss of existing workforce housing stock to resale. This alternative represents the approach taken in 1995, when only about 60 percent of the recommended mitigation from the 1994 Nexus Study was implemented.

Such an analysis may have fiscal impacts, or there may be enough interest from the local development community to provide the analysis as part of a working group. Such an analysis may be completed while the updates to the housing mitigation requirements are being drafted. The specifics of how to adjust the mitigation requirement could be discussed through the review of the draft updated requirements, but the general policy direction under this alternative would probably be to include some level of reduction to better optimize and balance the mitigation requirement with the market's ability to provide affordable housing.

Policy Question 3:

How should the requirement to house the construction workforce be imposed?

Policy Question 4:

How should the requirement to house the operations and maintenance workforce be imposed?

Policy Question 5:

How should the requirement to house the public sector workforce be imposed?

A. Current Requirements

Year-Round Employees

Currently the inclusionary affordable housing requirement is the way in which the community imposes affordable housing requirements for year-round, full-time employees. The provision requires that 25 percent (County) or 20 percent (Town) of all new residential units (unless exempted) be affordable for year-round, full-time employees living in households making 120 percent or less of median household income. The estimates of the full-time workforce in need of housing are based on a 1994 Nexus Study which based the need on job growth and commensurate wage growth projections compared to housing cost estimates.

The mitigation requirement is imposed at the time of regulatory entitlement of residential development. Nonresidential development is not required to mitigate for the generation of year-round, full-time employees. Residential entitlement is typically at the development plan stage, but where a development plan is not required or already approved (e.g., a triplex), it is imposed at the building permit stage. The County also requires that single family homes over 2,500 square feet provide housing mitigation.⁷ In the recent past, the County has also deferred the requirement on many subdivisions from regulatory entitlement to the building permit stage.

⁷ In the Town, constructed of a single-family home on a lot of record is exempt.

Seasonal Employees

To the extent nonresidential development needs operation and maintenance employees to assist at their establishments during peak seasons, the housing mitigation provisions require all nonresidential development (unless exempted) to provide housing for seasonal employees. The Nexus Study is based on market rent, seasonal wages by industry, and the distribution of seasonal employees by industry. It requires nonresidential development to provide 100 percent of the identified need. The mitigation requirement is imposed for seasonal employees at the time of regulatory entitlement. This is typically at the development plan stage, but where a development plan is not required or already approved (e.g., a tenant fit-out, or change of use), it is imposed at the use permit stage. Initial requirements imposed at the development plan stage are often less than the requirement for the final use of the space because nonresidential developers do not often know what the final use will be, and so initially apply for a use with a lower seasonal employee mitigation requirement. If the need increases at the use permit stage (because actual size and type of the building is known), the additional mitigation amount is provided at this stage.

The Nexus Study has not been updated in a number of years.

B. Key Issues

There are several considerations relevant to this policy issue. The first involves what mitigation approach the Town and County want to use for year-round employees: the current inclusionary requirement that is imposed only on residential development, or a more expanded approach that requires mitigation from residential, lodging, and/or nonresidential development?

Theoretically, the current inclusionary approach that requires mitigation from residential development addresses the need created for affordable housing throughout the community (addressing needs for all year-round, full-time employees); however, in practice and because of a number of methodological reasons it falls short of doing this. A more broad-based approach that places mitigation requirements on both residential and nonresidential development (including public employees in the nonresidential component) methodologically and in practice does a better job in capturing the need for affordable housing from both construction and operation and maintenance employees (in a more refined way).

There has also been some discussion in the community about the impact tourism has on affordable housing needs; consequently, it might be worth exploring an approach that focuses the mitigation requirement more on tourism (lodging) in addition to residential development; however, whether this could be done in a way that meets reasonable relationship/“rough proportionality” principles required by law is uncertain at this time, as a new methodological approach would have to be thought-out and developed, and then, if such an approach could be developed, the analysis would need to be conducted.

A second consideration is that no matter which mitigation approach is embraced, the time of imposition of the requirement could only occur at the time of entitlement (development plan or subdivision), the building permit, or the use permit. Each stage has pros and cons, so most programs require imposition at the time of entitlement (development plan/subdivision) or building permit, whichever occurs first, and then in many instances require use of both stages to ensure effective implementation of the program. When the requirement is imposed at the

development plan/subdivision stage, it is sometimes difficult to determine the size of the building to be built or how it will be used. This is important because as the 2013 Nexus Study demonstrates, the affordable housing need differs depending on house size and the type of nonresidential use; if this needs to be captured at the entitlement stage, it becomes more challenging. On the other hand, if mitigation is imposed at development plan/subdivision stage, the applicant has greater ability to construct affordable housing units. When imposed at the building permit stage, fee payment is the most realistic option, except in the case of the largest buildings. (See Policy Question 7 for further discussion of the method for providing required housing)

A third consideration is that there are some instances where development or businesses occur that do not use any, or very little amounts of space, but have a number of employees (e.g., rafting companies or other types of outdoor recreation). The best point for a mitigation requirement to be imposed on this type of establishment/development is at the use permit stage. Similarly, another issue identified by the community is employment growth that occurs within a building, but without any expansion of the building or change of use. Expiring use permits are probably the only way to address this issue.

Finally, in considering these issues, it is important to keep in mind that the stage at which the mitigation requirement is imposed sometimes affects who bears the burden of mitigation. Ultimately the mitigation provided runs with the land. The cost of mitigation is worked into a development pro-forma and gets passed down the line eventually, but there is some desire to ensure that it is the landowner who has to account for this since it is the landowner who accrues the “property right” of having provided mitigation.

C. Alternative Answers

ALTERNATIVE 3/4/5.A.

Year-Round Employees

Carry forward and update the inclusionary requirement that year-round, full-time employee generation be mitigated through residential development.

Impose requirement at development plan/subdivision or building permit stage, whichever occurs first, and progressively as the actual requirement increases.

Conform the County and Town provisions with each other.

Implications.

The idea behind an inclusionary approach is that the workforce in need of housing will only be housed through residential development, so the simplest way to provide workforce housing is to just ensure that a portion of all residential development is affordable to the workforce. An inclusionary approach that places the mitigation on residential development is also consistent with the idea that nonresidential development is an indirect impact of residential development – that the nonresidential employee generation would not occur unless demanded by the residents. As discussed in the Key Issues, there has also been community discussion about the visitor population indirectly generating nonresidential development (see Alternative 3/4/5.B or 3/4/5.C).

If the current inclusionary requirement for residential development is carried forward, the 2013 Nexus Study would need to be revised to support an inclusionary approach. Even if that was done, it would probably not fully capture full-time affordable housing needs from both full-time construction, operation and maintenance, and government/public employees (since it would not fully incorporate the construction and operation and maintenance employees from nonresidential development).

Imposition of the mitigation requirements at either development plan/subdivision, whichever occurs first, means imposition occurs earlier in the process, where appropriate. When the requirement is imposed at the development plan/subdivision stage, mitigation can be addressed more comprehensively and it is realistic to require construction of affordable housing, deed restriction of existing units, or land dedication. If imposition at the development plan stage is not possible (development plan/subdivision approval has already occurred or is not required), the requirement is imposed at the building permit stage where the most likely form of mitigation is a fee. While imposition of the requirement at the development plan/subdivision stage does mean that in some instances the size and type of use will be unknown (e.g., for residential single-family homes -- the size of a unit), the issue can be addressed in this regulatory context by requiring mitigation based on a specific size of the unit when it is unknown, then require that a unit built over that size provide additional mitigation at the time of building permit.⁸ Typically, the costs of mitigation under this approach are passed on to the purchaser of the residential unit, but the landowner/developer is responsible for building the cost into the initial development.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

Seasonal Employees.

Impose at the development plan or use permit stage, whichever occurs first, and progressively as the actual requirement increases.

Conform the County and Town provisions with each other.

Implications.

The implications on the time of imposition are the same as discussed above for year-round employees. Imposition at the time of the use permit results in the most precise measurement of need for seasonal housing because the size and type of use is known. However mitigation options are most flexible at the development plan stage. Imposition at use permit places the responsibility of addressing the mitigation on the person pulling the permit – the employer. Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

⁸ Typically, to ensure the development pays an appropriate amount, the size or use that is required to be assumed are those that generate the highest, or a very high affordable housing need.

ALTERNATIVE 3/4/5 B.

Year-round Employees

Carry forward and update the inclusionary requirement for residential development. Add a requirement for lodging and potentially other types of development that are part of the tourist industry.

Impose requirement at development plan/subdivision or building permit stage, whichever occurs first. Also require confirmation of need at the time of the use permit approval, and re-affirmation of the use permit every five years.

Conform the County and Town provisions with each other.

Implications.

As is discussed in the Key Issues, there has been some discussion about the impact tourism has on affordable housing needs, and that it might be appropriate to explore a mitigation approach that focuses the mitigation requirement more on tourism (lodging and possibly other tourist-related uses) in addition to residential development. This is an expansion on the idea that all employee generation (residential, lodging, or nonresidential) is directly or indirectly a result of the demands of the effective population – both residents and visitors.

This might be an option, but whether a mitigation approach could be structured in such a way that meets reasonable relationship/”rough proportionality” principles is uncertain at this time. This is because a new methodological approach would have to be thought out and developed, and then, if such an approach could be developed, the analysis conducted. Given these circumstances the extent to which this alternative could fully capture construction, operation and maintenance, and government/public employees is unknown at this time (the prognostication at this point in the process, however, is that it would not fully incorporate all of these groups).

Developing such an approach and methodology would have greater fiscal impacts than any of the Nexus Study refinements discussed in Alternatives 1.A and 3/4/5.A. It might also effect the timeline of the project because of the uniqueness of the approach.

The implications of imposing the requirement at development plan/subdivision or building permit stage, whichever occurs first, and also requiring confirmation of need at the time of the use permit approval, and re-affirmation of the use permit every five years is discussed in the previous two alternatives (Alternative 3/4/5 A and B).

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

Seasonal Employees

Same as Alternative 3/4/5 A.

Implications.

See Alternative 3/4/5 A.

ALTERNATIVE 3/4/5 C.

Year-Round Employees

Change and expand the mitigation approach to impose requirements on all residential and nonresidential development, based on the employee generation findings of the 2013 Nexus Study.

Impose requirement at development plan/subdivision or building permit stage, whichever occurs first. Also require confirmation of need at the time of the bulding permit and use permit approval, and re-affirmation of the use permit every five years.

Conform the County and Town provisions to each other.

Implications.

This would result in converting the current inclusionary requirement for residential development into a more comprehensive requirement for both residential and nonresidential development (which include lodging, businesses, and government uses). The approach for residential development would base the requirement on the size and type of unit (single family versus other), which more precisely links the development to the actual need it creates for affordable housing (something the current inclusionary requirement does not do). The approach for nonresidential development (lodging, businesses, and government uses) will also link the development to the need it creates for affordable housing (something the inclusionary requirement does not completely do). Both the residential and nonresidential components would include needs created by both construction, operation and maintenance, and government/public employees. The biggest changes from the current requirement is that nonresidential development will be required to mitigate for affordable housing for full-time employees, and the larger homes in the community will be required to provide greater mitigation than the smaller homes (because they create a greater need).

This alternative is supported by the Comprehensive Plan (5.3.a) and explicitly by the Housing Action Plan (5C) which calls for a greater portion of the mitigation to be imposed on nonresidential development, and which calls for mitigation to be based on square footage (as opposed to bedrooms in an inclusionary requirement). Shifting a greater portion of the mitigation to nonresidential development also has the effect in mixed-use zones of making residential and nonresidential development costs more comparable, which might incentivize more housing to be built in such zones.

The implcations of imposition of the requirement at the development plan/subdivision or building permit stage, whichever occurs first, with a progressive review throught he development process is discussed in the previous alternative (Alternative 3/4/5 A).

Requiring affirmation/re-affirmation of the mitigation requirement at the use permit stage will provide the Town and County the ability to impose requirements on those developments that use little or no space like outdoor recreation uses. Requiring re-affirmation of the use permit every five years will also provide the Town and County the ability to impose mitigation requirements as businesses expand (without necessarily adding space). However, requiring re-affirmation of use permits will add a significant

staff impact as use permits are currently valid as long as the use exists and do not require renewal.

Conforming the County and Town provisions to each other would result in a coordinated and seamless set of regulations.

Seasonal Employees

Same as Alternative 3/4/5 A.

Implications.

See Alternative 3/4/5 A.

Policy Question 6:

What type of housing should be provided through housing mitigation requirements?

A. Current Requirements

Year-Round Employees

The type of housing required to be provided under the requirements for year round, fulltime employees is a residential unit. The unit type and number of bedrooms needed to address the requirement is based on occupancy standards established in the requirements. The County occupancy standard is one person per bedroom, as set out below.

County Occupancy Standards for Year-Round Affordable Housing	
Number of Bedrooms in Unit	Number of Occupants
Studio	1
One	1
Two	2
Three	3
Four	4

The Town occupancy standard, which is set out below, assumes a greater number of persons are housed per bedroom in small units.

Town Occupancy Standards for Year-Round Affordable Housing	
Number of Bedrooms in Unit	Number of Occupants
Studio	1.25
One	1.75
Two	2.25
Three	3.00
Four	3.75
Five Bedroom	4.50
Each Additional Bedroom	0.50

The regulations also require that each unit must have a fully equipped kitchen, bathroom, and areas for living, sleeping, and storage. The size of the unit must comply with the requirements in the Jackson/Teton County Housing Department Rules and Regulations (Housing Rules). In the County, exterior materials must match the development where the unit is located, and design features must be comparable to the rest of the development. There is no minimum requirement about the percent of units that must be ownership or rental.

The regulations require that one third of the units must be affordable to households making less than 80% of median income. Another third must be affordable to households making less than 100% of median income. The other third must be affordable to households making less than 120% of median income.

Seasonal Employees

In the County, seasonal employee housing must be of a type appropriate to the applicant's peak season, but can otherwise be any type of residential or lodging unit, or campsite (accessory residential units, apartments, townhomes, detached dwelling units, cabins, boarding houses, hotel/motel rooms, and campground space are identified in the regulations). The person per bedroom standard assumes a greater number of persons per bedroom when there are fewer bedrooms in the unit. See below.

County Occupancy Standards for Seasonal Affordable Housing	
Number of Bedrooms in Unit	Number of Occupants
Studio	1.25
One	1.75
Two	2.25
Three	3.00
Four	3.75
Five Bedroom	4.50
Each Additional Bedroom	0.50
Dormitory	1.0 per 150 sf of net habitable area
Campground	1.25 per tent or RV site

There is no requirement that the unit be a minimum size or include features like a kitchen (or access to a kitchen for cooking), a bathroom, a living area, or a storage area.

In the Town, there is no occupancy standard because the requirement has already been converted from employees required to be housed to restricted floor area required to be provided. The conversion used is 280 square feet of restricted floor area per employee required to be housed. Employee housing units must be at least 400 square feet and must be in Town. They can take the form of any type of residential or lodging units (but not a campsite). They do not require features like a kitchen (or access to a kitchen for cooking), a bathroom, a living area, or a storage area.

The affordability of the units is not categorized. Units must be rented at or below Fair Market Rent, which is set by HUD to be equal to the 40th percentile of rents in the community.

B. Key Issues

Year-round Employees

To ensure a consistent application of mitigation requirements for residential units for fulltime, year round employees, it is important that the requirements (and the Housing Rules) establish the types and sizes of the affordable housing units required and their

core livability features. The components that establish the most basic and important elements of the units should be included in the requirements. They are:

- Basic features required for each unit (e.g., kitchen, bathroom, sleeping area/bedroom, storage area, etc.);
- Occupancy standards (persons per bedroom); and
- Minimum size (square feet) for each type of unit (studio, one bedroom, two bedroom, etc.).

The other components can be included in the requirements or the Housing Rules, but do not need to be. They are:

- Detail about the exterior finish and materials of the unit;
- Prohibited features for each unit (more of an issue related to incentives); and
- Any breakdown of rental versus ownership units (if one is included).

The Housing Rules already contain rules for the resale of restricted units so those standards do not need to be included in the requirements.

Finally, it would be best if the County and Town provisions conform with each other.

Seasonal Employees

To ensure a consistent application of mitigation requirements for seasonal affordable housing, it is important that the requirements have a set of rules establishing the types of housing that can be provided, the basic livability elements that must be available to the occupants of the unit, and the minimum unit size per occupant. Finally, it would be best if the County and Town provisions conform with each other.

C. Alternative Answers

ALTERNATIVE 6.A:

Year-Round Employees

Carry forward the current provisions that:

- Require residential units;
- Define the split of units into income categories;
- Establish occupancy standards;
- Require basic livability requirements for each unit (e.g., kitchen, bathroom, sleeping area/bedroom, storage area, etc.); and
- Add a requirement that places minimum sizes (square feet) on the different types of units (studio, one bedroom, two bedroom, etc.).

Conform the County and Town standards.

Remove any existing requirements addressing exterior or interior finishes or resale pricing. Leave those standards to the Housing Rules.

Implications

This alternative is basically a clean-up of the current requirements described above. The current provisions generally provide a consistent application of the regulations. If anything, a few of the provisions in the Town or County regulations go too far into rules that are better left to the Housing Rules. A provision that requires the different types of units be of a minimum size will also help ensure a basic level of livability and keep physical development requirements in the LDRs. Conformity between the County and Town standards will ensure a needed consistency in the housing units provided in both the Town and County. Consistency between Town and County standards is a goal of the Comprehensive Plan and Housing Action Plan.

When reviewing a housing mitigation plan under this alternative, Planning staff would review the proposed use, the number of bedrooms in each income category to make sure the requirement is met, and the presence of a kitchen, bathroom, and storage area. Housing Department staff would review the proposed units against any rule in the Housing Rules regarding finishes and resale provisions. Whether the unit is to be rented or sold would only determine the type of restriction placed on the unit.

The income categories have to be consistent with the chosen alternative to Question 2, which may require adjustment. Other adjustments to minimums or other details within this Alternative can be considered now or once the updated requirements are drafted, but do not change the general policy direction.

Seasonal Employees

Carry forward the requirement that units provided for seasonal employees be rental units.

Conform the County and Town standards so each includes:

- Occupancy standards; and
- Minimum sizes (square feet) on the different types of units.

Add a provision that establishes basic livability requirements for each unit (e.g., kitchen, bathroom, sleeping area/bedroom, storage area, etc.).

Most notably, remove the allowance to use lodging units (hotel/motel rooms, boarding houses, campsites in the County).

Implications

Establishing basic livability requirements for each unit ensures the livability of each unit. Excluding lodging units from the units allowed to house seasonal employees further improves the livability of the units intended for seasonal employees. Conformity between the County and Town standards will ensure a needed consistency in the housing units provided in both the Town and County. This alternative also creates consistency between the requirements for year-round and seasonal employees which makes the requirements easier to understand and track. Consistency between Town

and County and among the various standards is a goal of the Comprehensive Plan and Housing Action Plan.

When reviewing a housing mitigation plan under this alternative, Planning staff would review the proposed use, the number of bedrooms to make sure the requirement is met, and the presence of a kitchen, bathroom, and storage area. Housing Department staff would review the proposed units against any rule in the Housing Rules regarding finishes and resale provisions. Housing Department staff would ensure a rental restriction is placed on the unit.

Adjustments to minimums or other details within this Alternative can be considered now, or once the updated requirements are drafted, but do not change the general policy direction.

ALTERNATIVE 6.B: (CLOSEST TO CURRENT REQUIREMENTS)

Year-Round Employees

Same as Alternative 6.A.

Implications

See Alternative 6.A.

Seasonal Employees

Alternative 6.A. plus

Allow the use of lodging units other than campsites (hotel/motel rooms, boarding houses). The rental requirement and basic livability standards would apply to the lodging units as well; and occupancy standards and minimum sizes would be established.

This would still remove the provision in the County's requirements that allows the use of campsites.

Implications

Allowing lodging units to be used as seasonal housing utilizes existing development to meet housing needs, which is consistent with the community's energy, growth, and economic goals. Establishing occupancy standards, basic livability features, and minimum unit size requirements, and excluding campground sites from the list of allowed units, will improve the livability of the seasonal units. There are building code considerations that may preclude this as a viable option; many of the existing employers utilizing lodging actually convert it to dormitory style residential use.

Review of a housing mitigation plan would be the same as in Alternative 6.A.

ALTERNATIVE 6.C:

Year-Round and Seasonal Employees

Alternative 6.A or 6.B plus

Establish maximum size (square feet) limit on the different types of units (studio, one bedroom, two bedroom, etc.), as well as maximum livability features.

Implications

In addition to the implications of Alternative 6.A or 6.B, placing a maximum size requirement and maximum livability features on the units will ensure that while the units are nice and livable, they are not luxurious. The intent is to provide incentive for households to move into market housing when able. Maximums are currently addressed in the Housing Rules because they typically apply less to required units and more to incentive units and resale considerations.

In addition to the housing mitigation plan reviews described in Alternatives 6.A and 6.B, Planning staff would also have to review the proposed features against the established maximums.

Policy Question 7:

What methods for providing required housing mitigation will be allowed and preferred?

A. Current Requirements

Year-Round Employees

The requirements identify five potential methods by which housing for year-round employees can be provided:

- Construct housing units on-site;
- Construct housing units off-site;
- Restrict existing housing as affordable, off-site (Town only);
- Dedicate land for affordable housing; or
- Pay an in-lieu fee for affordable housing.

Prefatory language in both the County and Town requirements emphasize, “Conveyance of land and payment of fees are not preferred methods of performing the obligations...., and will not be approved unless on-site construction of affordable housing units is “impractical.” However, other language in the requirements has given decision-makers some latitude in determining which method of providing affordable housing is acceptable and allowing decision-makers room to create new methods – resulting in a mixed bag approach toward the implementation of the requirement.

With that said, and regardless of the language in the requirements, both the County’s and Town’s preferred method for providing affordable housing is on-site construction. If on-site affordable housing cannot be provided, the method next preferred is provision of off-site affordable housing. For the most part, off-site housing must be new housing constructed concurrent with the project, meeting all zoning requirements. (The Town also allows for the restriction of existing housing less than 15 years old if the existing unit meets all current building codes and the Housing Rules and Regulations.) If affordable housing cannot be provided, or if a fraction of a unit is required, a fee-in-lieu is the next preferred option. The fee can be paid in the form of conveyance of land for the construction of housing that is at least as valuable as the fee. The fee must be used to provide affordable housing for year-round employees within seven years of the date the fee is paid. The fee amount is updated annually in the County based on a fixed equation. In the Town, the fee is updated every other year.

Seasonal Employees

In the County, the provision of seasonal employee housing on-site is the preferred method, but provision of the housing off-site is allowed if on-site provision is not possible. A fee option is available only if an onsite or off-site option is not acceptable to the County.

In the Town, on-site provision of seasonal employee housing is the primary and preferred method of provision, if on-site housing is allowed by the LDRs. If on-site provision of housing is not practical, off-site provision is allowed. The third option is the payment of a fee.

B. Key Issues

Even though both the County and Town have a desired order of priority for the provision of affordable housing, it is not clearly established in the regulations through bright-line standards. Instead, there is some general priority-setting, but significant latitude in the regulatory language that results in inconsistent application of the desired set of priorities. Furthermore, in some situations, applicants have been allowed to defer imposition of the requirement to later in the review process (e.g., from the development plan stage to the building permit stage); in other instances where a fee was accepted, some applicants were allowed to pay the fee under a payment plan.

A provision the current requirements do not include, but which has been used in practice, is a procedure by which a developer/applicant could provide affordable housing prior to when it is required and then bank mitigation credits. Even though this will probably continue to occur on a very limited basis, it would be appropriate to establish such a procedure to address this circumstance.

New construction of housing has the benefit of providing new, affordable housing stock. In our community, where residential growth is limited, a new deed-restricted affordable unit also represents one less market housing unit that could potentially be built. However, new construction off-site is often impossible except for in association with the largest projects and would not be possible at all if the housing mitigation requirement is tied to a use permit because the time of construction has passed.

The Comprehensive Plan (Policy 5.3.b) identifies preservation of existing stock as a goal. Deed-restriction of existing workforce housing to ensure it will remain workforce housing stock is a way to ensure the community does not fall further behind its housing goals. Allowing restriction of existing housing stock rewards employers already housing their employees by allowing them to restrict the unit toward the requirement. It also preserves the opportunity for more workforce housing to be built than if the existing workforce housing stock is redeveloped as unaffordable market housing. The issue is that many of the units that will be restricted are already workforce housing by virtue of their rent, so putting a deed-restriction on them does not actually add workforce housing to address the growth in the workforce.

Provision of housing is generally preferred over payment of a fee because fees are rarely enough to get the same amount of housing built. Also fees require administration to turn them into housing. However, fees are the simplest form of mitigation and allow the Town and County more control over the housing built.

The issues pertaining to preference for on-site versus off-site housing are interesting. One of the reasons for the Town's and County's on-site preference is to get the housing built. If it is integrated into the project, the developer is building anyway so housing can get built. Another reason for on-site preference is the integration of the restricted housing with the market housing for social reasons. The purpose of the requirements is

to maintain a sense of community and the on-site preference avoids the housing mitigation LDRs creating segregation within the community. However, integration can also have a downside in a mixed use project where an employee can never really get away from his/her place of work because the housing is on-site and the social effect is one of “servant’s quarters” rather than workforce housing.

C. Alternative Answers

ALTERNATIVE 7.A:

Establish a clear priority for integration of housing mitigation into market development by emphasizing on-site housing through the provision of year-round and seasonal units, in the following prioritization:

1. On-site (provide new, restrict existing, or credit a banked unit);
2. Off-site (provide new, restrict existing, or credit a banked unit);
3. Dedicate land; or
4. Pay an in-lieu fee

While the standard should allow for options to move from one priority to the other, under given circumstances, it should establish a much more specific set of priorities than the current requirement.

Establish a procedure for a developer/applicant to provide affordable housing before it is required and receive credit (the banked unit).

Conform the County and Town requirements with each other.

Implications

This alternative has implications similar to Alternative 7.A, except it provides a little more flexibility by allowing the units provided both on-site and off-site to be either new units or existing units and reducing the number of methods a developer has to step through. The flexibility and streamlining comes with a tradeoff. On-site location is emphasized over new construction, prioritizing integration. As long as the livability standards for the restriction of existing units are strong, there should not be a significant difference in the quality of the units.

ALTERNATIVE 7.B:

Establish a clear priority for the provision of new housing stock to mitigate new demand by emphasizing new units through the provision of year-round and seasonal units, in the following prioritization:

1. New units (on-site or off-site);
2. Existing units (on-site, off-site, or credit for banked unit);
3. Dedicate land; or
4. Pay an in-lieu fee

While the standard should allow for options to move from one priority to the other, under given circumstances, it should establish a much more specific set of priorities than the current requirement.

Establish a procedure for a developer/applicant to provide affordable housing before it is required and receive credit (the banked unit).

Conform the County and Town requirements to each other.

Implications

This alternative has implications similar to Alternative 7.A, except it provides more flexibility by allowing the new units and existing units to be provided on-site or off-site and reducing the number of methods a developer has to step through. The flexibility and streamlining comes with a tradeoff. New units are emphasized over on-site location, prioritizing developer provision of restricted units. This is the inverse of the tradeoff represented by Alternative 7.B. As long as the units are still in the community, the overall goal of integration that retains our sense of community will be retained.

ALTERNATIVE 7.C:

Establish a clear priorities that balance the goals of integration and new construction through the provision of year-round and seasonal units, in the following prioritization:

1. Construct new units on-site;
2. Construct new units off-site;
3. Restrict existing housing as affordable, off-site;
4. Provide a banked unit;
5. Dedicate land for affordable housing; or
6. Pay an in-lieu fee for affordable housing.

While the provision should allow for options to move from one priority to the other, under given circumstances, it should establish a much more specific set of priorities than the current requirement.

Establish a procedure for a developer/applicant to provide affordable housing before it is required and receive credit (the banked unit).

Conform the County and Town requirements with each other.

Implications

Under this alternative, the order of priority for mitigation will be clearly established, consistent with the community's goals for the provision of units, with limited options to move from one priority to the other. The highest priority will be the construction of new units (on-site or off-site) in order to get units on the ground with development.

For the instances where the mitigation requirement is imposed at the time of the building permit (e.g., when development occurs on a lot that was subdivided before the initial requirement was adopted), or use permit (e.g., change of use where only the net increase in workforce generation is required) payment of the fee should be required.

The final details of how the prioritization will work will depend on the answer to questions 3 and 4 regarding when the housing mitigation requirement will be imposed.

Including a procedure that allows for a developer to provide affordable housing before it is required, and to receive credit, at a minimum will place developers on notice that a clear procedure for early provision of affordable housing is available, and might encourage some to provide the housing at an earlier stage.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

Adjustments to priority of restriction of existing units versus use of credits, and discussion of the actual fee provisions can be considered now, or once the updated requirements are drafted, but do not change the general policy direction.

ALTERNATIVE 7.D:

Establish provisions that do not prioritize how the year-round and seasonal units will be provided, but instead gives developers the following options (with no order of priority):

- Provide units on-site (existing or new);
- Provide units off-site (existing or new);
- Provide a banked unit;
- Dedicate land for affordable housing; or
- Pay a fee for affordable housing.

Establish a procedure for a developer/applicant to provide affordable housing before it is required and receive credit.

Conform the County and Town requirements with each other.

Implications

This alternative is clearly the most flexible, as it does not prioritize how the units are to be provided, or where. The benefit of this approach is the flexibility it provides the developer/applicant. The downside is that there are no assurances about where or exactly how the units will be provided, or whether the developer/applicant will just pay a fee.

Including a procedure that allows for a developer/applicant to provide affordable housing before it is required, and to receive credit, at a minimum will place developers on notice that a clear procedure for early provision of housing is available, and might encourage some to provide the housing at an earlier stage.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

Tracking the various agreements without clear priorities will require more staff time and create more opportunities for errors. It will also make it harder for the Housing Director to estimate year-to-year how much in fee revenue to anticipate. As we have seen with the current standards, flexibility also opens the door to the consideration of other methods not defined in the requirements.

Policy Question 8: What types of development should be exempt and why?

A. Current Requirements

Generally, the types of development exempted under the current requirements include:

1. Residential and nonresidential development that existed prior to the adoption of the requirements, or development that has been mitigated under the requirements.
2. New residential development that:
 - Does not create a new dwelling unit⁹ (Town only, the County requires a reduced requirement be paid at building permit);
 - Provides some form of affordable housing
 - Mobile home parks,
 - Accessory residential units,
 - Part of a housing bonus incentive,
 - A deed restricted unit even if it does not quite meet the full requirements,
 - Live-work (Town only) ,
 - One lot split of a residential lot into two lots (Town only) ,
 - Apartment buildings of 20 or more units (Town only) (these types of units are included in concept to encourage market participation); and
 - Where fee-in-lieu is applicable for single-family dwelling, the first 2,500 square feet of the unit.
3. Nonresidential development that:
 - Constitutes agricultural use¹⁰ ; and
 - Does not generally have seasonal employees (e.g., institutional uses, public/semi-public uses, utility facilities, home uses, and temporary uses).¹¹

B. Key Issues

There must be a reasonable relationship/“rough proportionality” between the need for affordable housing and the mitigation imposed. Consequently, development that does not result in a need for affordable housing should be exempt from the requirement. Additionally, new development can only be required to mitigate for the affordable housing need it creates, not the affordable housing needed for existing development. Finally, once development mitigates for the affordable housing it needs, it cannot be asked to provide additional affordable housing.

⁹ Town requirements exempt development of a single-family home on a lot of record, even though there is no assurance that the single-family home will be affordable.

¹⁰ Agriculture is exempt from the seasonal employee requirements to encourage continuation of agriculture and because the incentives and allowances to provide agricultural employee housing are effective because agricultural uses have an abundance of land.

¹¹ Public/semi-public uses are also exempt under this provision because housing for public/semi-public employees can be provided by the public anytime deemed appropriate, instead of having to be required by the public through a development requirement.

To conform to these principles, it is important that the updated requirements not apply to:

- Development that existed prior to adoption of the requirements. (e.g. an existing single family home, commercial building, or conditional use).
- Existing development that has mitigated for affordable housing in accord with the requirements in existence at the time of its approval. (e.g. a residential subdivision platted in 1999 that provided its 15% affordable housing, or a nonresidential building built in 2005 that provided its required seasonal employee housing).
- New development that does not create the need for affordable housing (e.g. a use that does not generate any employees or a residential development that is deed restricted to be affordable).

Conversely, the updated provisions should also be careful about exempting development that creates a need for affordable housing because too many exemptions undermine the overall reasonableness of the program. This may apply to:

- Development of a single-family home on a lot of record created prior to the existence of an affordable housing requirement.
- Additions to existing development (but only to the addition, not the existing development).
- Change of use that increases the need for affordable housing (for example the current condominium conversion requirement, and nonresidential change of use requirement). Beyond the clear impact on affordability from the conversion of rental to ownership, the “no net loss” requirement suggested in Comprehensive Plan Policy 5.3.b would be difficult to implement because of the lack of data showing any difference between types of rental units.

With these principles in mind, the following development that is exempted under the current requirements should be evaluated to determine whether it does or does not create a need for affordable housing. That should then be weighed against the Comprehensive Plan and Housing Action Plan goals of removing barriers and providing incentives for the types of development that represent solutions to the community’s shortage of affordable workforce housing:

- One lot split of a residential lot into two lots;
- A single-family home on a lot of record that is not deed restricted to be affordable;
- Live-work units;
- Apartment buildings that are not deed restricted (rents are currently affordable, and have been historically, but other communities with affordable housing issues have seen rents become unaffordable as well); and
- Residential units under 2,500 sf in area.

C. Alternative Answers

ALTERNATIVE 8.A:

Only exempt development that must be exempted to comply with reasonable relationship/“rough proportionality” requirements. This includes:

- Development that existed prior to adoption of the requirements. (e.g. an existing single family home, commercial building, or conditional use)

- Existing development that has mitigated for affordable housing in accord with the requirements in existence at the time of its approval. (e.g. a residential subdivision platted in 1999 that provided its 15% affordable housing, or a nonresidential building built in 2005 that provided its required seasonal employee housing)
- New development that does not create the need for affordable housing (e.g. a use that does not generate any employees or a residential development that is deed restricted to be affordable).

Conform the County and Town requirements to each other.

Implications

Alternative 8.A outlines the exemptions that have to be provided to comply with reasonableness/rough proportionality principles. It should be noted that a number of the existing exemptions will be removed (e.g., one lot split, live-work units that are not deed restricted, possibly apartment buildings that are not deed restricted, residential units under a certain size, and a single-family home on a lot of record that is not deed restricted for affordable housing). This alternative will implement the policy goals of “no net loss” to the extent practical, but may represent the type of regulatory “barrier” to workforce housing that the Comprehensive Plan and Housing Action Plan state should be avoided.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

The details of the alternative will be defined through the drafting of the updated requirements, but the general policy direction will be that the exemptions be limited to the minimum required to comply with reasonableness/“rough proportionality” principles.

ALTERNATIVE 8.B:

This alternative includes Alternative 8.A, plus exemptions for housing units restricted for purchase or rental by the workforce in some way, even though they are not restricted for affordability. These restrictions could include:

- LDR restrictions (e.g. accessory residential unit standards);
- Units developed as part of a bonus incentive program;
- Use restrictions (e.g. mobile home parks, apartments); and
- Alternative restrictions from housing non-profits that do not meet Housing Department Rules or the income distribution of the requirements.

Implications

In addition to the implications of Alternative 8.A, this would expand the exemptions to include accessory residential units (ARUs), mobile home parks, potentially some apartment units, and potentially units developed as part of a bonus incentive program such as the Town’s “2:1 floor area bonus”. In evaluating the exemptions there will need to be some level of restriction that provides assurance that the unit mitigates the

community's housing issues, to some degree. (If the development type does not create demand for affordable workforce housing it will already be exempt under Alternative 8.A)

The details of the specific exemptions can be discussed now, or once the updated requirements are drafted, but the general policy direction will be that alternative forms of restriction are acceptable if the restriction provides assurance that the units are helping to mitigate the community need for affordable workforce housing.

ALTERNATIVE 8.C:

This alternative includes Alternative 8.A, plus exemptions for certain types of nonresidential uses (e.g., public/semi-public and government uses) and agricultural-related uses.

Implications

In addition to the implications of Alternative 8.A, this would expand the exemptions to include agricultural and other nonresidential uses that have very little impact on the need for affordable housing, either because of low employee generation or ability to provide employee housing through the course of their operation. These uses are often uses that the community needs or desires in order to maintain character, but they must have a limited impact in order to preserve the reasonableness of the overall program.

The details of the specific exemptions can be discussed now, or once the updated requirements are drafted, but the general policy direction will be that the exemptions be limited to nonresidential uses that have a limited impact.

ALTERNATIVE 8.D:

This is the all of the above alternative incorporating Alternatives 8.A, 8.B, and 8.C. It is also the alternative that most closely represents the current standards.

Implications

See implications of above alternatives.

Policy Question 9:

What type of relief from the housing mitigation requirements should be allowed?

A. Current Requirements

There are several relief options available in the current requirements. Both the County and Town year-round and seasonal requirements allow an applicant who believes that due to unusual conditions for a specific project, the need for affordable housing is less than what is required, to submit an independent calculation to demonstrate what the reduced mitigation amount should be. The County requirements require the independent calculation use the same formula as that used in the regulations to measure employee housing need (both seasonal and year-round). The Town provision is less precise and more open-ended. In all instances, the independent calculation is required to be supported by local data and analysis, surveys, and other support materials.

Both the County and Town regulations also include a Beneficial Use Determination procedure that allows an applicant to apply for relief if they believe the application of the affordable housing requirements deny them an economically viable use of their property.

Because of the presence of the independent calculation, both the County and Town regulations do not include a zoning hardship variance as a relief option.

B. Key Issues

The requirements need to ensure there is a reasonable relationship/“rough proportionality” between the need/impact for affordable housing and the mitigation imposed. This applies to typical as well as unique situations. It is also important to ensure the application of the requirements does not deny economically viable use of property. As a result some relief has to be provided for unique projects, or the program does not comply with these principles.

The requirements are based on data that is averaged and then applied equally to all development in a way that is “roughly proportional”. Varying the requirements based on findings other than independent calculation or bright-line stepping through methods of provision can undermine the defensibility of the system as a whole. It would take more than one inappropriate independent calculation or variance to undermine the system, but the relief standards should be set up to provide a mechanism to consider unique situations while protecting the integrity of the program as a whole.

One issue with the current independent calculation equations required for use by the County is that they have not been updated since 1995. As a result some of the constants in the equation still reflect the housing market as it existed in 1993. Updating these equations and building in definitions for constants, instead of using set numbers, will allow the independent calculation equations to remain current into the future.

C. Alternative Answers

ALTERNATIVE 9.A:

Carry forward both the independent calculation and BUD concept in both the County and Town requirements, but conform the Town provisions to the County provisions, modifying the independent calculation to include an updated formula that is required to be used by the applicant, and ensuring it is the same formula used for calculating the mitigation requirements generally. Expressly require the independent calculation be supported by local data and analysis, surveys, and other support materials.

Implications

Conforming, modifying, and updating the formula that is required to be used in the independent calculation, and ensuring it is the same formula required for calculating the mitigation requirements, will ensure reasonable relationship/“rough proportionality” principles are met, and a determination of need is available for any unique circumstance, while at the same time ensuring a consistent application of need is applied.

The BUD procedure provides relief to ensure the application of the affordable housing requirements do not deny economically viable use of property, which is an important to include as part of the regulations.

Implementation of this alternative would mean an applicant with unique circumstances would have to quantify those circumstances with local data using the same equation that was used to calculate the requirement in general. If unique circumstances truly exist, the equation will yield a reduced requirement. There would still be no ability for an application to make a variance argument on the basis of a hardship finding, protecting the overall program from being undermined over time.

The actual equation, whether the approval is made by the Planning Director, and other details can be discussed now or once the draft updated requirements are available, without changing the general policy direction.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.

ALTERNATIVE 9.B:

Apply Alternative 9.A, but add a variance provision that allows an applicant to modify one of the affordable housing formula standards, with a showing of hardship.

Implications

Adding a variance provision is not needed and could potentially result in applicants placing pressure on a review board to apply the mitigation requirements inconsistently. The hardship problem addressed by a variance is already addressed through the BUD and the independent calculation procedures. With the introduction of bright-line standards of the method of calculation required, there is no portion of the affordable housing mitigation requirements that does not already include a specified relief

provision. Requiring application of the same formula to determine affordable housing need ensures consistent application of the requirements.

Implementation of this alternative would mean that an applicant who could not prove hardship through the independent calculation or bright-line standards for the method of housing provision could ask for a variance based on some other definition of hardship.

Policy Question 10:

How should the updated mitigation requirements be applied to approved, but not yet built, development?

A. Current Requirements

Updated requirements cannot be applied to existing development that is already built or in use. Policy Question 8 addresses the existing development that has to be exempt from the regulations and the existing development that could be exempt from the regulations. This question addresses development that has some level of approval – master plan, sketch plan, development plan, but is not yet fully permitted and existing.

Currently, the requirements in effect at the time an application is determined sufficient apply to that development until it expires. Approved projects that agreed to provide affordable housing in accordance with the requirements in effect at the time of the project's approval are not subject to future changes in the requirements. For example if an application for a sketch plan was determined to be sufficient in 2007, the 2007 regulations apply to that application until it is completed or expires. If the approval is ever amended, the requirements in effect at the time of the amendment apply to the net change in the amendment only and do not affect the entire approval.

B. Key Issues

The difficulty in addressing existing approvals is fairly addressing both the existing approvals and future approvals. Existing approvals have a right and expectation that their approval will remain valid based on the review that was completed. At the same time, a phased or master planned development that is locked in time may have a much lower requirement than the same development submitted in the future, which will seem unfair to the future applicant. For example, if the affordable housing mitigation requirement for lodging is increased, a new hotel built on Snow King Avenue will have a very different requirement from the same hotel built under the Snow King Master Plan across the street.

However, there are legal limits to the Town and County's ability to address existing approvals. If the requirements are amended and the affordable housing mitigation amount is increased, unbuilt approved projects that agreed to provide affordable housing in accordance with the requirements are not subject to the increased mitigation. Also, unbuilt parts of approved phased or master planned projects that agreed to provide affordable housing in accordance with the requirements are not subject to the increased mitigation.

C. Alternative Answers

ALTERNATIVE 10.A:

Carry forward the current provisions that the requirements applicable at the time an application is determined sufficient apply until the development is complete, or the approval expires.

Implications

This would carry forward the following policies. First, development constructed prior to the effective date of the seasonal and full-time employee requirements are not subject to those requirements. Second, projects that are subject to and comply with the requirements at the time of approval are not subject to new or changed requirements. It is a fair and predictable alternative that respects prior approvals, which are valued parts of the community in the Comprehensive Plan.

Under this alternative, unbuilt approved projects and unbuilt portions of approved phased and master plan projects will not be required to address any increases to the required affordable housing need when the project is actually built. Any application to amend an approval to increase the amount of development proposed would be subject to the updated requirements, but only for the net increase proposed.

This alternative works regardless of the policy direction in questions 3 and 4, but details of implementation will have to be clarified based on the direction provided to those questions. The existing requirements will likely require clarification with regard to specifics as the regulations are updated, but nothing that changes the general policy direction.

ALTERNATIVE 10.B:

Carry forward the current provisions for development that was constructed prior to the effective date of the requirements

Require any individual project that has not expired, but has not been acted on within 7 years (or a specified period of time), to be subject to the affordable housing requirements in effect at the time the current application is submitted, unless they demonstrate they have a common law vested right to proceed.

Require any individual project that proposes a substantial change to the project (requiring an amendment to a development plan, master plan, or building permit), to be subject to the affordable housing requirements in effect at the time the substantial change is approved.

Conform the County and Town requirements to each other.

Implications

This alternative would continue to respect existing approvals, but would provide an avenue for the updated requirements to apply to approvals that have sat latent for a long period of time, or for projects that are changing substantially.

Under this alternative, unbuilt approved projects and unbuilt portions of approved phased and master plan projects will not be required to address any increases to the required affordable housing need when the project is actually built, unless the actual realization of the project is more than 7 years after the approval. If the building of the project is delayed 7 years, any already built portions of the project would be exempt from recalculation, but any portions of the approval yet to be built would be subject to recalculation of the affordable housing requirement. Any application to amend an approval to increase the amount of development proposed would still be subject to the updated requirements, but only for the net increase proposed.

Similarly, under this alternative, substantial amendments to an existing approval would also be subject to recalculation. Again, this would only affect the unbuilt portions of the approval. Examples of a substantial amendment would be a complete redistribution of the location and type of units in a development (even if the number of units does not increase).

The actual applicability of this provision is probably minimal, because there are not a lot of projects with old, outstanding approvals that cannot demonstrate common-law vested rights, but it will be a step toward implementing the future vision where it does apply. The policy question is whether the contentiousness of applying this alternative is worth the step, given the limited applicability.

The actual period of time, 7 years or another period, and any quantification or definition of “substantial” can be determined now or in the spring once the updated requirements are drafted, without affecting the basic policy direction.

Conforming the County and Town provisions to each other will result in a coordinated and seamless set of regulations.