

AUSTIN W. WAISANEN, Wyo. Bar. No. 8-7023
Email: awaisanen@pacificlegal.org
Pacific Legal Foundation
508 17th Street
Cody, WY 82414
Telephone: (307) 213-0511

DAVID J. DEERSON, Cal. Bar. No. 322947*
Email: ddeerson@pacificlegal.org
BRIAN HODGES, Wash. Bar No. 31976*
Email: bhodges@pacificlegal.org
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Telephone: (916) 419-7111

Attorneys for Plaintiffs
**pro hac vice pending*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

SHELBY AND VERNON
SCHARP,

Civil Action No. _____

Plaintiffs,

vs.

**CIVIL RIGHTS
42 U.S.C. § 1983**

BOARD OF COUNTY COMMISSIONERS
OF TETON COUNTY,

Defendant.

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Shelby and Vernon (Trey) Scharp (the “Sharps”) bring this complaint against the Board of County Commissioners of Teton County (“Teton County”) seeking declaratory,

injunctive, and monetary relief from Teton County’s extortionate “affordable workforce housing” regulations, codified at §§ 6.3.1 *et. seq.* of Teton County’s “Land Use Regulations.”

2. The Scharps were required by Teton County to pay a \$24,325.05 “affordable workforce housing fee” toward the County’s subsidized housing programs as a condition of receiving permission from Teton County to build a new home on their property.

3. When a local government imposes a condition on land use permits that requires the payment of money or the dedication of real property—what the law terms an “exaction”—it must make an individualized determination that the condition is related both in nature and extent to the impact of the proposed land use. *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994); see also *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (holding that monetary exactions are subject to the same constitutional standards as land dedications).

4. Local governments bear the burden of showing that an exaction bears an “essential nexus” and “rough proportionality” to the public impacts of a proposed land use. Together, the nexus and proportionality tests ensure that an exaction is necessary to mitigate a proposed land use’s impact, and that the scale of an exaction is no larger than necessary. An exaction which lacks either an essential nexus or proportionality is unlawful, and nothing more than an “out-and-out plan of extortion.” *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837 (1987); *Dolan*, 512 U.S. at 391.

5. The Scharps’ construction of a new family home on their property does not have any negative impact on housing affordability in Teton County. Basic principles of economics show that building a new home increases the supply of available housing and therefore mitigates—not aggravates—housing affordability in Teton County.

6. Teton County cannot coerce the Scharp family, or other property owners, to give the County money or other property to address perceived or real public problems that their proposed land uses neither create nor aggravate.

7. “The Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

PARTIES

8. Plaintiffs Shelby and Trey Scharp are Wyoming residents who sought permission from Teton County to build a new single-family residence on their property near Hoback Junction in Teton County.

9. Defendant Board of County Commissioners of Teton County is a political subdivision of the state of Wyoming and the party who promulgates and enforces the unconstitutional policies, customs, and practices complained of herein.

JURISDICTION AND VENUE

10. This suit is filed pursuant to 42 U.S.C. § 1331 (federal question) as it arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(4) (civil rights) as it seeks redress of civil rights violations under 42 U.S.C. § 1983.

11. This suit also seeks a remedy under the Declaratory Judgment Act, 28 U.S.C. § 2201.

12. The property that is the subject of this action is located, and the civil rights violations alleged herein took place, in Teton County, Wyoming.

13. Therefore, venue is proper in the District of Wyoming.

FACTUAL ALLEGATIONS

THE SCHARP FAMILY AND THEIR NEW HOME

14. Shelby and Trey Scharp met at the University of Wyoming. After college, the couple got married and returned to Jackson, Wyoming, where Trey grew up.

15. The couple lived in rental housing for many years, working jobs such as dude ranch managers, hunting and fishing guides, and other seasonal employment.

16. In 2021, the Scharps purchased a five-acre property on Horse Creek near Hoback Junction, in an unincorporated part of Teton County (the “Property”). The Scharps own the Property in fee simple absolute.

17. The Scharp family, including their adolescent daughter, moved into the Property’s only existing dwelling, a roughly 1,000 sq. ft. cabin with an unfinished, windowless basement of the same size.

18. Almost immediately, the Scharps began making plans to build a larger home for their small family.

19. But building in Teton County is very expensive, so to afford the construction of a new home, the Scharps would have to rent their existing cabin dwelling to some of the valley’s many workers.

20. At five acres, the Property has plenty of room for additional dwelling units and ample space for tenants to park.

21. But the Property is in a “Rural-2” zoning district, and like most other properties in the County, the Property may only be used for one single-family residence, unless the property owner applies for and receives a permit from Teton County for an “accessory residential unit” or “ARU” (LDR § 3.2.3.C).

22. In 2022, the Scharps applied for a use permit for an ARU, and Teton County officials considered the cabin's suitability as an accessory residential unit under the LDRs.

23. A Teton County official informed the couple that the cabin, with its unfinished and windowless basement, was too large to be an ARU; the cabin with the basement exceeded the maximum floor area (1,000 sq. ft.) for ARUs in the County.

24. Because the Scharps were thus proposing to provide *too much* rental housing, the County official suggested the Scharps fill the basement with gravel, such that its useful storage space would not count against the floor area maximum for ARUs.

25. The Scharps were finally able to receive a use permit to use their cabin as an ARU after the Teton County Historic Preservation Board determined the building was historically significant. (There is an exception to the floor area maximum for ARUs which are found to be historically significant (LDR § 3.2.3.E.4.A)).

26. With permission to use their existing cabin as rental housing, step one of the Scharps' plan to build a larger family home was completed.

27. The Scharps initially planned to build a roughly 2,700 sq. ft. home with a shallow crawlspace, but the size increased as they navigated Teton County's building regulations. Because the house sits on a slope, strict soil and earthquake codes required them to excavate over 10 feet and pour perimeter footings. Rather than backfilling the excavated area and suffering an opportunity cost, the Scharps chose to make use of the space by adding a basement.

28. The Scharps planned to place an exterior door in the basement, add a kitchen, and make other improvements such that the basement could be used as rental housing.

29. But Teton County planning officials informed the Scharps that the basement cannot be used as rental housing because the zoning district, Rural-2, does not allow multi-family dwellings.

30. Once again, the Scharps' home building plans threatened to provide too much affordable rental housing.

31. The Scharps eventually settled on plans for a 3,776 sq. ft. home and applied for a building permit in 2022. *See* Teton County Building Permit BDR-2022-0087.

32. Before Teton County approved the Scharps' building permit, Teton County demanded the Scharps pay a \$24,325.05 affordable workforce housing fee pursuant to its Land Development Regulations. **Exhibit 1.**

33. To try to keep costs down, Trey and Shelby have acted as owner-general contractors on the project—learning the thousands of pages of regulations relevant to building a home in Teton County, scheduling the coordination and arrival of materials and licensed subcontractors, assisting such individuals with construction tasks and clean up, making sure the job proceeds at an orderly pace, and coordinating inspections by County officials.

34. The Scharp residence is still under construction, and the family hopes construction is done and they can move into the new home by Thanksgiving of 2025.

THE REGULATORY SCHEME

35. Teton County, like other Wyoming counties, is granted authority by state law to regulate the use and development of land within its jurisdiction. Wyo. Stat. § 18-5-201.

36. Pursuant to that authority, Teton County has adopted a comprehensive set of rules called its “Land Development Regulations” or “LDRs,” spanning more than 600 pages.

37. The most recent version of the LDRs was updated on May 1, 2025, and is published on the County’s official website. A relevant excerpt is attached as **Exhibit 2**.

38. Under the regulations, “no land shall be physically developed, used, or subdivided without compliance with these LDRs” (LDR § 1.5.2).

39. Before beginning construction of a new single-family residence, a property owner must obtain a building permit from the County (LDR § 8.3.3).

40. As a condition of receiving a building permit, the County requires most applicants to comply with its “affordable workforce housing” regulations (LDR §§ 6.3.2, 3.2.3.C.2).

41. These regulations compel nearly all new residential developments to pay money or dedicate property to the County for use in the County’s subsidized housing programs.

42. The exactions are based on a series of nexus studies prepared by County-hired consultants. The most recent study, *Commercial and Residential Employee Generation and Affordable Housing Nexus Study*, (June 26, 2023), is officially incorporated into the LDRs and forms the basis of the County’s affordable workforce housing regulations (LDR § 6.3.3.A).

43. The County’s study uses a chain of layered assumptions: that people who occupy new homes will spend money in the local economy; that this spending will create new jobs; that some of those jobs will be low-to-above median income; and that the low-to-above median income workers will need housing they cannot afford without a compulsory subsidy paid by some of the County’s property owners.

44. But as one of the consultant-architects of Teton County’s program of exactions acknowledges: “Housing in the City of Jackson/Teton County is expensive. It results in a serious housing affordability problem for the workforce. **This is largely due to influences and factors outside Teton County.**” James Nicholas & Julian Juergensmeyer, *A Rational Nexus Approach to*

Workforce Housing Land Development Conditions, 52 UIC J. Marshall L. Rev. 647, 648, 653 (2019) (emphasis added) (explaining the author’s role in preparing Teton County’s exactions, describing them as a “breakthrough method”).

45. And Teton County’s present consultants, Economic & Planning Systems, Inc., explain that:

[a]s new market-rate households are added to the community, local employment also will grow to provide the goods and services required by the new households. **To the extent that these new jobs do not pay adequate wages for the employees to afford market-rate housing in the community**, the new households’ spending is creating a need for affordable housing.

Economic & Planning Systems, Inc., *Commercial and Residential Employee Generation and Affordable Housing Nexus Study*, 29 (June 26, 2023),

<https://www.tetoncountywy.gov/DocumentCenter/View/26855/2022-Employee-Generation-by-Land-Use-Study-Nexus-Study---Aug-2023-UPDATE> (emphasis added).

46. Although the Scharps do not, and cannot, control the strong demand for homes in Teton County, nor the local economic conditions like the wages employees can demand from employers, Teton County’s study attempts to make the case that construction of new residential units will cause others to be less able to afford housing in Teton County.

47. To begin, the County’s study introduces a concept it calls the “affordability gap.” This is the purported estimated difference between what it costs to build and operate a hypothetical new housing unit and the theoretical value of that unit when rents are capped at 30% of household income. Under the study’s assumptions, for households earning between 0% and 163% of the area median income, the cost to build the hypothetical housing unit always exceeds its price-controlled “value.” The County refers to this as the “affordability gap.”

48. Next, the County’s study claims that each new home will generate a predictable number of households earning between 0 and 163% of median family income—because, the study says, new residents will buy things locally, which creates jobs, and some of those jobs won’t pay enough to live in Teton County. The study then multiplies the number of worker households “generated” by each home by the “affordability gap” across various “income cohorts” to come up with a total affordable housing cost that is supposedly attributable to new home builders like the Scharps.

49. In one example, the County’s study asserts that developing 100 new single-family homes will generate 38.5 new worker households in need of affordable housing. When multiplied by the “affordability gap,” the study concludes that those homes create a need for over \$21 million in new affordable housing. That supposed impact is then used to justify charging individual property owners tens to hundreds of thousands of dollars in affordable workforce housing fees.

50. To convert this supposed impact into a fee for each applicant, the County divides the total dollar amount by the average square footage of a single-family home to create a maximum per-square-foot rate. But instead of applying that rate uniformly, the County uses a complex logarithmic formula to estimate how much affordable housing need is “caused” by each new home, based on its size. *See Exhibit 2 p. 7*; (LDR § 6.3.3.A). The formula doesn’t calculate the fee directly; it produces a fractional number of affordable housing units each home is supposedly responsible for.

51. Where the amount of needed affordable housing units supposedly generated by a new home is less than one, the County’s regulations usually require payment of a fee (LDR § 6.3.5), and the fractional number calculated by the formula is multiplied by some portion of the “affordability gap” to arrive at the fee ultimately imposed on the homeowner.

52. But where the amount of affordable housing units supposedly generated by new residential development is greater than one, the County’s regulations do not necessarily require a fee. Instead, the County may compel property owners to dedicate actual land, construct affordable units, or covenant to use housing for affordable purposes as a condition of approval (LDR § 6.3.5).

53. For example, if a proposed development “generates” the need for 1.5 affordable units, the County may require the applicant to either build those units onsite, transfer land suitable for affordable housing, or provide a combination of constructed units and cash equivalent. Such non-fee exactions come with design, location, and deed restriction requirements (LDR § 6.3.5).

54. These non-fee exactions take other valuable interests in property besides money, such as servitudes like restrictive covenants, the right of free alienation, and the right to sell or rent one’s property at a fair market price.

55. Teton County’s affordable workforce housing standards do not require property owners to mitigate specific, traceable impacts of their projects, but instead conscript them into personally solving an existing shortage of affordable housing, requiring them to pay for or deliver housing assets for unrelated third parties as a condition of building for themselves.

56. The study underpinning Teton County’s affordable workforce housing standards relies on speculative modeling, omits critical counterweights, and falls short of basic standards of scientific and economic theory.

57. Among other problems, the study makes no consideration whatsoever of the mitigating effect new home construction has on pricing in a market of limited supply, nor does it consider “filtering”—the process by which people move out of older units into new supply—thus freeing previously-occupied and often less-expensive units up for other people seeking housing.

58. Instead, the regulations and study present a long chain of assumptions, statistical estimates, and mathematical modeling as a definitive “impact”—and use it to justify extracting tens to hundreds of thousands of dollars of money or other property from people simply seeking to build a home.

CLAIM FOR RELIEF
Unconstitutional Exaction of Property
42 U.S.C. § 1983, 28 U.S.C. § 2201

59. All other allegations of this Complaint are incorporated by reference in this section as though fully set forth herein.

60. Under the Takings Clause of the Fifth Amendment to the United States Constitution, local governments may not take private property for a public use without paying just compensation. U.S. Const. amend. V (Takings Clause), XIV (applying Takings Clause to state and local governments).

61. The Fifth Amendment forbids local governments from using the land use permitting process to coerce property owners into surrendering money or other property for public uses that are unrelated to specific impacts of their proposed land uses.

62. Before Teton County approved the building permit for the Scharp residence, Teton County required the Scharps to comply with the affordable workforce housing standards of its Land Development Regulations (LDR §§ 6.3.1 *et. seq.*).

63. Teton County adopted and enforces its Land Development Regulations, including the affordable workforce housing standards, under apparent color of state law.

64. Teton County estimated that the Scharps’ new family home created the need for approximately 1/10th of an “affordable housing unit,” using the formula $0.000017 * sf + (\text{Exp}(-15.49 + 1.59 * \text{Ln}(sf)))/2.176$.

65. Teton County therefore demanded the Scharps pay a \$24,325.05 affordable workforce housing fee as a condition on issuance of a building permit, as required by the County's affordable workforce housing standards of its LDRs.

66. The Scharps were not permitted to begin construction of their new residence until they paid the fee. *See* Board of County Commissioners Staff Report on AMD-2022-0004, p. 9 (Jan. 3, 2023), <https://tetoncountywy.gov/DocumentCenter/View/24296/AMD2022-0004-Biennial-Update-BCC-Packet> (amending the LDRs to require payment before permit issuance “to ensure that the in-lieu fees are required to be paid at a time when the county has leverage”).

67. The Scharps had no other option but to forgo their right to a lawful and beneficial use of their property—a 3,776 sq. ft. residence—or give the County the money or other property demanded by its affordable workforce housing standards (LDR §§ 6.3.3.A., 6.3.5.B-C, 1.5.2).

68. The Scharps paid \$24,325.05 in “affordable workforce housing fees” on April 21, 2023. **Exhibit 1.**

69. The fee paid by the Scharps is a forced donation to the County's subsidized housing program disguised as a permitting condition.

70. The fee is based on theoretical modeling and not any measurable public impact of the Scharps' new home.

71. Under the Fifth Amendment's unconstitutional conditions doctrine, a local government may demand property or money as a condition of approval of a land use permit only if:

- a. The money or other property is needed to mitigate a public impact that would be directly caused by the development (the “essential nexus” test); and

- b. The amount of money or other property is roughly proportionate in scale to the public impact(s) of the development (the “rough proportionality” test).

72. Both the essential nexus test and the rough proportionality test are a form of heightened judicial scrutiny, so that courts may ensure that a taking without payment of just compensation is not merely disguised as a permitting condition.

73. The County’s demand for a \$24,325.05 affordable workforce housing fee lacks an essential nexus and proportionality to the impact, if any, of the new Scharp residence, and residential development in general, because new residential development, including the Scharp residence:

- a. Does not decrease the supply of affordable housing available in Teton County;
- b. Neither creates nor contributes to the need for affordable housing;
- c. Does not cause anybody else to be unable to afford housing;
- d. Mitigates housing affordability by creating new housing;
- e. Denying Scharps’ building permit would not cause homes in Teton County to become more affordable; and
- f. For such other reasons as discovery may reveal.

74. Although the affordable workforce housing standards are purportedly supported by a nexus study, “*Commercial and Residential Employee Generation and Affordable Housing Nexus Study*, June 26, 2023,” the study and its predecessor studies:

- a. Fail to identify a public impact of the Scharps’ new family home;
- b. Fail to identify a public impact of residential home construction generally;
- c. Fail to account for the downward pressure that new housing supply puts on the pricing of existing housing stock;

- d. Fail to account for intervening or superseding causes of home affordability in Teton County, such as private employee/employer relationships which set wage and income levels;
- e. Fail to establish the negative causal relationship between new residential development and housing affordability on which they rely; and
- f. Fail to establish an “essential nexus” and “rough proportionality” for such other reasons as discovery may reveal.

75. The Scharps are entitled to a refund of the affordable workforce housing fee they paid, and other legal and equitable relief as allowed by 42 U.S.C. § 1983.

76. The Scharps are additionally entitled to declaratory relief that Teton County’s affordable workforce housing standards (LDR §§ 6.3.1–6.3.6), violate the doctrine of unconstitutional conditions on their face and as applied to the Scharps under 28 U.S.C. § 2201.

PRAYER FOR RELIEF

Wherefor, Plaintiffs pray for judgment from this Court as follows:

77. A judgment that the affordable workforce housing standards (LDR §§ 6.3.1 – 6.3.6) violate the doctrine of unconstitutional conditions both facially and as applied to the Scharp residence;

78. A judgment that Trey and Shelby Scharp suffered a violation of civil rights when Teton County conditioned the building permit for their new residence on the Scharps’ forfeiture of their money and property rights;

79. Economic damages in an amount to be proven at trial;

80. Equitable relief in the form of an injunction prohibiting Teton County from enforcing the affordable workforce housing standards against other residential development;

81. An award of reasonable attorney's fees and expert fees for bringing and maintaining this action under 42 U.S.C. § 1988;

82. An award of costs of suit pursuant to Fed. R. Civ. P. 54(d); and

83. Any other relief that the Court deems just and proper under the circumstances.

Dated this 21st day of May, 2025.

DAVID J. DEERSON, Cal. Bar. No. 322947*

Email: ddeerson@pacificlegal.org

BRIAN HODGES, Wash. Bar No. 31976*

Email: bhodges@pacificlegal.org

Pacific Legal Foundation

555 Capitol Mall, Suite 1290

Sacramento, CA 95814

Telephone: (916) 419-7111

/s/ Austin W. Waisanen

AUSTIN W. WAISANEN, WSB # 8-7023

Email: awaisanen@pacificlegal.org

Pacific Legal Foundation

508 17th Street

Cody, WY 82414

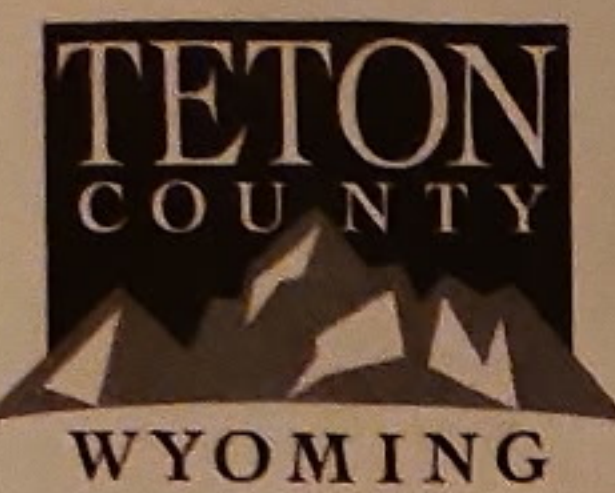
Telephone: (916) 419-7111

Facsimile: (916) 419-7747

**pro hac vice pending*

Attorneys for Plaintiffs

Exhibit 1



Payer: SCHARP, VERNON JAMES III & SHELBY SILVA
PO BOX 2161
JACKSON WY 83001-2161

Cashier: Taylor Payton

Date: 04/27/2023

PLB2022-0092 PLUMBING 2400 E HORSE CREEK ROAD

Fee Description	Fee Amount	Amount Paid	Fee Balance
Plumbing Fees	\$178.00	\$178.00	\$0.00
Plumbing Permit Issue Fee	\$50.00	\$50.00	\$0.00
	\$228.00	\$228.00	\$0.00

MEC2022-0107 MECHANICAL 2400 E HORSE CREEK ROAD

Fee Description	Fee Amount	Amount Paid	Fee Balance
Mechanical Fees	\$146.00	\$146.00	\$0.00
Issuance Fee	\$50.00	\$50.00	\$0.00
	\$196.00	\$196.00	\$0.00

BDR2022-0087 RESIDENTIAL NEW CONSTRUCTION (INCLUDES REMODEL AND ADDITION) 2400 E HORSE CREEK ROAD

Fee Description	Fee Amount	Amount Paid	Fee Balance
Affordable Housing	\$24,325.05	\$24,325.05	\$0.00
Energy Mitigation Fee	\$5,104.00	\$5,104.00	\$0.00
Building Permit Fee	\$3,618.00	\$3,618.00	\$0.00
	\$33,047.05	\$33,047.05	\$0.00
Total Paid:		\$33,471.05	

Payment Method	Reference	Payment Amount
CHECK	No Check #	\$33,471.05
Total Paid:		33471.05

Exhibit 2

Div. 6.3. Affordable Workforce Housing Standards

6.3.1. Purpose and Findings (7/18/18)

A. Purpose

The purpose of these affordable workforce housing standards is to ensure that affordable workforce housing is provided to the local workforce by employee generating development proportionate with the need for affordable workforce housing it creates.

B. Legislative Findings

In adopting this Section, the Board of Teton County Commissioners finds:

1. **A local workforce is a defining feature of community character.** An essential component of the community character and social, economic, and political fabric of Teton County and the Town of Jackson over the years is the presence of those persons and families that work in the community, live in the community, attend schools in the community, worship in the community, and vote in the community. Maintenance of a local workforce is key to a balanced and sustainable local economy and resilient level of critical service provision.
2. **Supply of local workforce housing is limited by affordability.** One of the primary factors that historically allowed this special community character in Teton County and the Town of Jackson is that, until the mid-1990s, the cost of housing was affordable to those persons living and working in the community. Beginning in the mid-1980s, a significant second home market emerged in Jackson Hole. These home buyers came from different parts of the country and had substantially higher incomes than the local workforce. They have contributed to a dramatic increase in land and construction costs in the community, resulting in a substantial increase in the price of housing. This increase in housing prices, when coupled with slightly increasing or static local workforce wages (accounting for inflation), has made market-rate housing unaffordable to most of the local workforce, forcing many to move outside the community. Review of state and national census and other wage and labor data demonstrate this trend.
 - a. In 1986, median sales prices of homes (\$90,000) in Teton County and the Town of Jackson were on target with the affordable housing price for a median income household (\$90,667). From that point in time forward, housing prices have increased so that they no longer align with what is affordable to median income households.
 - b. By 2000, the median sales price (\$565,000) was nearly 3 times the price that was affordable to a median income household (\$196,333).
 - c. In 2007, the median sales price (\$1,075,000) was approximately 4 times the price affordable to a median income household (\$270,000).

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.1. Purpose and Findings (7/18/18)

- d. While the Great Recession had an impact on housing prices, even during the downturn housing was never affordable to most of the workforce. In 2012, the median sales price of housing (\$853,150) was more than 2.6 times the price that is affordable to a median income household (\$320,667).
 - e. By 2016, the affordability gap had returned to pre-Great Recession levels with the median sales price (\$1,130,000) at 3.95 times the price that is affordable to a median income household (\$286,000).
- 3. **Local housing supply has not been added at the same rate as local jobs.** In conjunction with the decrease in affordability, there is a shortage of local workforce housing because job growth has outpaced housing growth. Since 2000, jobs have grown at an annual rate of 2.1% while the number of housing units has only grown at an annual rate of 1.6%.
- 4. **As a result, the percentage of the workforce living locally has declined.** These phenomena have resulted in a number of persons employed in the community and their families being forced to move outside the community, to places like Teton County, Idaho and Lincoln County, Wyoming. Estimates indicate that in 1986 approximately 91% of the workforce lived locally. In 1995 this number had decreased to approximately 80%. By 2005 it was 68%. By 2015, it was estimated only 58% of the workforce resided locally.
- 5. **The decline in the local workforce has resulted in a deterioration of community character.** This decline in the percentage of the workforce living locally has resulted in an impairment of the social, economic, and political fabric of the community, along with the community's character. Estimates indicate this problem will continue to worsen in the future, unless additional housing is provided within price and rental ranges that are affordable to the workforce. More specifically:
 - a. A local workforce household is more likely to reinvest socially, civically, and economically in the community. As a greater percentage of the workforce commutes, their children no longer attend schools in the community, they no longer worship in the community, and they no longer express their ideas at the ballot box.
 - b. A local workforce results in a more balanced and sustainable local economy and resilient provision of critical services. As the community becomes more reliant on commuters it also becomes more susceptible to weather events that adversely impact the local economy and the provision of critical community services.
 - c. A local workforce also results in a healthier ecosystem. A commuter workforce generates more traffic than a local workforce, which results in greater impact to wildlife and the environment in general.
 - d. The lack of local affordable workforce housing opportunities will result in the loss of generational continuity. If there are few housing opportunities available that are affordable to the workforce, there is little chance

children who grow up in the community can raise their own families in the community, and continue to support and participate in the civic and social life of the community which they have been a part of their entire lives.

6. **As a result the community set a workforce housing goal.** To address the impacts from this loss of the local workforce, in 2012 Teton County and the Town of Jackson set a goal In the Jackson/Teton County Comprehensive Plan to ensure a variety of workforce housing opportunities exist in the community so that at least 65% of those employed locally live locally.
7. **To implement this goal, development must provide mitigation for the need for affordable workforce housing it creates.** To assist in the implementation of this goal, these standards require employee generating development to provide affordable workforce housing proportionate to the need it creates.
8. **For these reasons,** these affordable workforce housing standards, are hereby adopted by the Board of County Commissioners.

C. Technical support

The technical support and analysis upon which these affordable workforce housing standards are established is based upon The Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended, which is incorporated herein by reference.

D. Authority

The Board of County Commissioners has the authority to adopt these affordable workforce housing standards in accordance with Section 18-5-202, Wyoming Statutes, and such other authorities and provisions that are established in the statutory and common law of the State of Wyoming.

6.3.2. Applicability (1/23/23)

These affordable workforce housing standards apply to any employee generating development, unless exempted below.

A. Employee Generating Development

Employee generating development is a new building or use not currently in existence, as further defined below.

1. **Existence.** For the purpose of this standard existence shall mean a building or use existing on February 21, 1995, or the building or use legally established since that date with the highest affordable workforce housing requirement. The burden of identifying the existing building or use shall be the responsibility of the landowner. The landowner shall provide the Planning Director photos, permits, licenses, records, or other documentation that establishes the existing building or use.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.2. Applicability (1/23/23)

EXAMPLE: On December 18, 1995 the use of a property was a restaurant/bar. In 2000 the use of the property changed to a retail. In 2010 the use of the property changed to office. The exiting use for the purpose of this standard is restaurant/bar because restaurant/bar use has the highest affordable workforce housing requirement of the legal uses since December 18, 1995.

EXAMPLE: An office space built as permitted in 2004 is considered existing for the purpose of this standard, regardless of the employee mitigation provided in 2004.

- a. This definition of existence shall not apply to an attached single-family unit (6.1.4.C.) or apartment (6.1.4.D.) for which housing mitigation has not been provided. (It shall apply to other residential uses.)

EXAMPLE: An existing apartment building built prior to 1995 is being razed to build a new apartment building. Because the apartment building being razed did not provide any affordable housing mitigation when it was built, the new apartment building would be subject to this Division as though the apartment building being razed did not exist.

2. **Other types of development.** This division only applies to new building and use. A non-building physical development, development option, or subdivision is not employee generating development and not subject to this Division, except that Sec. 4.3.1.F.6 requires a Planned Resort Master Plan to include an estimation of the affordable workforce housing that will be required for the entire resort and a housing mitigation plan for the entire resort.

EXAMPLE: This Division does not apply to an application for a single-family subdivision. This Division will be applied to each lot in the subdivision at the time a building permit is submitted.

B. Approved Unbuilt Development

1. **Approval prior to February 21, 1995.** Employee generating development approved prior to February 21, 1995 which has not yet been developed shall also be subject to this Division upon submittal of any required application to complete the development.

EXAMPLE: There is no "credit" for an existing vacant lot. A subdivision completed in 1992 approved construction of a detached single-family unit on each of the lots in the subdivision. Upon application for a building permit to build a unit on one of the lots in the subdivision, this Division shall apply.

EXAMPLE: A Planned Unit Development approved in 2004 allows commercial and residential development on a site, but does not include a specific housing mitigation plan outlining the required number of affordable and employee housing units. Upon application for a development plan, building permit, or use permit under that PUD this Division shall apply.

2. **Substantial amendment to prior approval.** In addition, this Division shall apply to all employee generating development not completed under an existing approval when that existing approval is substantially amended, regardless of whether the amendment applies to the entire uncompleted portion of the approval, and regardless of the approved Housing Mitigation Plan (or Housing Mitigation Agreement). A substantial amendment is any amendment that would increase the amount of affordable workforce housing required.

EXAMPLE: A Sketch Plan was approved for a 3 building development and included a Housing Mitigation Plan. Only 1 building has been built, and only the required housing associated with the built building has been provided. An amendment to the Sketch Plan is proposed to increase the size of 1 of the unbuilt buildings. The amount of affordable workforce housing required to approve the amendment would be equal to the current requirement for both unbuilt buildings.

C. Exemptions

The following are exempt from the standards of this Division.

1. **Housing Department Unit.** A residential unit subject to a deed restriction administered by the Housing Department.
2. **Other Workforce Housing.** A residential unit subject to a deed restriction administered by the Jackson Hole Community Housing Trust or Habitat for Humanity of the Greater Teton Area.
3. **Historic Building.** Use of a building included on the Teton County Historical Preservation Board (TCHPB) list of historically significant properties, or that is otherwise deemed in writing by the TCHPB to be historically significant. In addition, if a historic building is used in its historic location, floor area elsewhere on the site equal to the amount of historic floor area used on-site is also exempt.

EXAMPLE: A 2,000 square foot historic cabin being converted into a restaurant would be exempt from this Division. If the historic cabin has not been moved and is being used as a restaurant in its historic location, another 2,000 square feet of floor area elsewhere on the site are also exempt from this division. If the historic cabin has been relocated from another location, only the cabin itself is exempt.

4. **Affordable Workforce Housing Unit.** A residential unit subject to a deed restriction administered by the Housing Department, Jackson Hole Community Housing Trust, or Habitat for Humanity of the Greater Teton Area. (This exemption shall not apply to an occupancy restriction as defined in the Housing Department Rules and Regulations.)
5. **Agriculture.** An agriculture use (6.1.3.B.).
6. **2,500 sf Detached Single-Family Unit.** A detached single-family unit (6.1.4.B.) of 2,500 square feet or less. Upon expansion of such a unit beyond 2,500 sf, this Division shall apply to the entire unit.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.3. Amount of Affordable Workforce Housing Required (1/23/23)

7. **Replacement after Damage by Natural Disaster.** Replacement of an attached single-family unit (6.1.4.C.) or apartment (6.1.4.D.) that is demolished or destroyed by a natural disaster or through any manner not willfully accomplished by the owner, regardless of the extent of the demolition or destruction. The replacement shall be complete, or an application to complete shall be sufficient, within 18 months of the date of destruction.
8. **Mobile Home.** A mobile home (6.1.4.E.) or mobile home park (Sec. 7.1.4.).
9. **Dormitory.** A dormitory (6.1.4.F.).
10. **Group Home.** A group home (6.1.4.G.).
11. **Daycare.** A daycare or early childhood education use.
12. **Education.** A private school meeting the definition of Wyo. Stat. §21-4-101.
13. **Accessory Use.** An accessory use (Sec. 6.1.11.) except for Accessory Residential Units over 2,500 sf approved through a Floor Area Option (Sec. 7.1.5.).
14. **Temporary Use.** A temporary use (Sec. 6.1.12.).
15. **Public/Semi-Public Zone.** Employee generating development in the public/semi-public zone.
16. **Alta Reduction.** Employee generating development west of the Tetons shall only be required to provide 25% of the amount of affordable workforce housing calculation pursuant to Sec. 6.3.3.

6.3.3. Amount of Affordable Workforce Housing Required

(1/23/23)

A. Requirement

Any employee generating development to which this Division applies shall provide at least the amount of affordable workforce housing determined by the following calculations. The calculations vary by the use being proposed and are the function of the size of the proposal. The calculations are based on the analysis found in the Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended, and assume an affordable workforce housing unit houses 1.8 local employees.

Required Affordable Workforce Housing	
Use	Affordable Workforce Housing Units Required
Detached Single-Family Unit (6.1.4.B.) (Non-Local Occupancy, A.8.)	$0.000017 * sf + (Exp(-15.49 + 1.59*Ln(sf)))/2.176$
Detached Single-Family Unit (6.1.4.B.) (Local Occupancy, A.8.)	$0.000017 * sf + (Exp(-16.14 + 1.59*Ln(sf)))/2.176$
Attached Single-Family Unit (6.1.4.C.), Apartment (6.1.4.D.) (Non-Local Occupancy, A.8.)	$0.000017 * sf + (Exp(-14.17 + 1.59*Ln(sf)))/2.176$
Attached Single-Family Unit (6.1.4.C.), Apartment (6.1.4.D.) (Local Occupancy, A.8.)	$0.000017 * sf + (Exp(-14.82 + 1.59*Ln(sf)))/2.176$
Conventional Lodging (6.1.5.B.), Short-Term Rental Unit (6.1.5.C.)	$0.102 * room$
Office (6.1.6.B.)	$0.000215 * sf$
Retail (6.1.6.C.), Service (6.1.6.D.), Nursery (6.1.6.H.), Amusement (6.1.7.B.)	$0.000188 * sf$
Restaurant/Bar (6.1.6.E.)	$0.000523 * sf$
Mini-Storage Warehouse (6.1.6.G.)	$0.000006 * sf$
Heavy Retail/Service (6.1.6.F.), Industrial Uses (Sec. 6.1.9.), Transportation/Infrastructure Uses (Sec. 6.1.10.)	$0.000107 * sf$

- Schedule and Calculator Available.** A schedule of the requirement for employee generating development of various sizes and a calculator to use in determining the requirement are both available in the Administrative Manual. The residential requirement is a logarithmic equation because there is an exponential relationship between the size of a unit and the number of operations and maintenance employees generated. In the residential requirement equations, "Exp(x)" describes an exponential function, or e to the power of x. Inversely, "ln(x)" describes the natural logarithm of x.
- Use Not Listed.** For uses not listed, the Planning Director shall either find a use comparable to the proposed employee generating development and utilize the comparable calculation, or require the applicant to conduct an independent calculation pursuant to 6.3.3.B. to determine the requirement.
- Expansion.** In the case of an expansion to an existing building or use (6.3.2.A.1), the amount of affordable workforce housing required shall be calculated based on the difference between the requirement for the proposed and existing employee generating development.

EXAMPLE: A 5,000 sf office building proposing to add 1,500 sf would be required to provide 0.323 affordable workforce housing units ($0.000215 * 6,500 - 0.000215 * 5,000 = 0.323$). A 3,000 sf detached single family home proposing to add 500 sf would be required to provide 0.017 affordable workforce housing units ($(0.000017 * 3,500 + Exp(-15.49 + 1.59*Ln(3,500))/2.176) - (0.000017 * 3,000 + Exp(-15.49 + 1.59*Ln(3,000))/2.176) = 0.017$).

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.3. Amount of Affordable Workforce Housing Required (1/23/23)

4. **Change of Use.** In the case of a change of use, the amount of affordable workforce housing required shall be the difference between the requirement for the proposed use and the requirement for the existing use (6.3.2.A.1).

EXAMPLE: A proposal to use a 2,000 sf retail space as an office would be required to include 0.054 affordable workforce housing units ($0.000215 * 2,000 - 0.000188 * 2,000 = 0.054$).

5. **Unknown Use.** For the development of floor area with an unknown use, the allowed use in the zoning district with the greatest need for affordable workforce housing shall be used, except that Restaurant/Bar use shall only be required in association with a Restaurant/Bar use permit.
6. **Sf.** In the calculations “sf” is equal to the habitable floor area (in square feet), including basement, of each residential, lodging, or nonresidential unit, including incidental structures.
 - a. The calculation for a multi-unit building shall be the sum of the calculation for each unit.
 - b. Common hallways, entryways, stairways, and other circulation areas in buildings with multiple residential or nonresidential units, that are not within any individual unit, shall not be included in the calculation.
7. **Room.** In the calculations “room” is equal to a single lodging room. In the case of a conventional lodging or short-term rental with multiple bedrooms per unit, the number of rooms used in the calculation shall be the number of bedrooms, not the number of units.
8. **Local Occupancy Restriction.** The calculation for non-local occupancy shall be applied to all residential uses. In order to utilize the local occupancy calculation, a restriction shall be placed on the unit that requires compliance with the occupancy qualification requirement of the Housing Department Rules and Regulations. Placement of an affordable restriction or workforce restriction on a unit, as defined in the Housing Department Rules and Regulations, shall exempt the unit from any requirement pursuant to 6.3.2.C.1. However, 6.3.2.C.1 does not apply to an occupancy restriction placed to utilize the local occupancy calculation.

EXAMPLE: An applicant proposing to build 3 – 1,000 square foot attached single-family units would be required to provide 0.108 affordable workforce housing units ($3 * (0.000017 * 1,000 + \text{Exp}(-14.17 + 1.59 * \text{Ln}(1,000)) / 2.176) = 0.108$). If a workforce restriction is placed on the units, they are exempt from the requirements of this Section. If an occupancy restriction is placed on the units, 0.081 affordable workforce housing units would be required ($3 * (0.000017 * 1,000 + \text{Exp}(-14.82 + 1.59 * \text{Ln}(1,000)) / 2.176) = 0.081$).

9. **Removal of a Voluntary Restriction.** An affordable, workforce, or occupancy restriction voluntarily placed on a unit may be removed. In order to remove such a restriction, the affordable workforce housing required on the date of the

removal shall be provided. In the case of removal of an occupancy restriction the affordable workforce housing requirement shall be calculated as a change of use from local to non-local occupancy.

10. **Update Requirement Regularly.** The determination of need for affordable workforce housing shall be evaluated and updated at least every 5 years to account for changes in the economic and demographic trends in the community. Updates shall be based on update to The Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended.

B. Independent Calculation

Where applicable, an independent calculation shall establish the amount of affordable workforce housing required. The intent of the independent calculation is to identify a requirement for an industry that is proportional to the demand for affordable workforce housing that industry generates, where the general circumstances surveyed in the Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended, do not represent unique circumstances of the industry. The independent calculation is not intended to be business specific.

1. Applicability

- a. **Applicant option.** An applicant may elect to prepare an independent calculation of the required affordable workforce housing if the applicant believes the nature, timing, or location of the proposed employee generating development is likely to create less need for affordable workforce housing than otherwise required in this Section.
- b. **Unspecified use.** The Planning Director may require an independent calculation of the need created for required affordable workforce housing if:
 - i. A calculation for the proposed use is not established in Sec. 6.3.3.A.; or
 - ii. A proposed use does not rely on floor area; or
 - iii. The proposal is a Planned Resort estimating housing need pursuant to Sec. 4.3.1.F.6; or
 - iv. The Planning Director finds the employee generating development to be unique from the general circumstances surveyed in The Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended.

2. **Calculation Methodology.** An independent calculation shall use the methodology used in the Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013) to generate the calculations in 6.3.3.A. That methodology is represented by the following equation:

$$\text{Requirement (units per sf/room)} = [A/30/X*Y] + [B/X*Y] + [C/X*Y] + [D/X*Y]$$

- a. A = the number of construction workers needed to construct one sf or room of the use.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.3. Amount of Affordable Workforce Housing Required (1/23/23)

- b. B = the post-construction workers needed to operate one sf/room of the use. In the case of residential development these are the operations and maintenance employees such as landscapers, trash collectors, and property managers. In the case of nonresidential development these are the employees who work at the use.
 - c. C = the number of fire and emergency medical personnel needed to serve one sf/room of the use.
 - d. D = the number of law enforcement personnel needed to serve one sf/room of the use.
 - e. 30 = the 30 year average career of a construction worker.
 - f. X = the average number of workers in the household of an employee in a specific industry.
 - g. Y = the percentage of workers in a specific industry that cannot afford market housing.
3. **Calculation Values.** The values in the Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended, shall be used in the independent calculation except pursuant to the following standards.
- a. **Values that may be altered.** In the equation for independent calculation an alternate value shall only be used for A, B, or the X and Y values associated with an altered A or B.
 - b. **Alternate values.** The alternate value proposed shall be calculated using:
 - i. Generally recognized principles and methods of impact analysis; and
 - ii. Verifiable local information and data; and
 - iii. Data that is industry specific rather than business specific; and
 - iv. In the case of B, the year-round (including dual seasonal), post-construction occupancy of the space.

EXAMPLE: A space that is leased to a raft guiding operation in the summer and snowmobile guiding operation in the winter. For a space that size, a raft guiding operation averages 10 employees and a snowmobile guiding operation averages 7 employees. "B" for that use of that space = 7.

6.3.4. Type of Affordable Workforce Housing Required (7/18/18)

The affordable workforce housing required by this Division shall comply with the following requirements to ensure its affordability and livability.

A. Unit Types Allowed

A required affordable or workforce housing unit shall be a detached single-family unit (6.1.4.B.), attached single-family unit (6.1.4.C.), apartment (6.1.4.D.), or accessory residential unit (6.1.11.B.). No other residential or lodging unit type shall be required affordable workforce housing.

B. Affordability

1. **Restriction.** Each affordable or workforce housing unit shall be subject to one of the following restrictions.
 - a. **Less than 50% of Median Income.** An affordable rental restriction, as defined in the Housing Department Rules and Regulations, ensuring affordability for households making 50% of family median income or less.
 - b. **50%-80% of Median Income.** An affordable rental restriction, as defined in the Housing Department Rules and Regulations, ensuring affordability for households making above 50% up to 80% of family median income.
 - c. **80%-120% of Median Income.** An affordable rental or affordable ownership restriction, as defined in the Housing Department Rules and Regulations, ensuring affordability for households making above 80% up to 120% of family median income.
 - d. **120%-200% of Median Income.** A workforce rental or workforce ownership restriction, as defined in the Housing Department Rules and Regulations, for households making above 120% up to 200% of family median income.
2. **Allocation of restrictions.** The above restrictions shall be allocated to the required units in the following order. For requirements above 7 units, the order of allocation shall repeat. A fractional requirement shall be the last allocated.

Allocation of Affordability Restrictions				
Units Required	< 50%	50% - 80%	80% - 120%	120% - 200%
1	0	0	1	0
2	1	0	1	0
3	1	0	2	0
4	1	1	2	0
5	1	1	3	0
6	2	1	3	0
7	2	1	3	1

- a. The Housing Director may adjust the restriction allocation in accordance with the procedure of Sec. 8.8.1. and the following standards.
 - i. The adjustment shall not reduce the required number of units.
 - ii. The restriction allocation shall meet the following distribution.

Distribution of Affordability Restrictions	
Affordability Restriction	% of Required Units
< 50%	At least 25%
50% - 80%	At least 19%
80% -120%	No more than 43%
120% - 200%	No more than 13%

3. **Allocation of restrictions by unit size.** To the maximum extent practicable, the allocation of restrictions shall be evenly distributed across all unit sizes.

C. Unit Size - Allocation of Bedrooms Per Unit

The size of the required units, in number of bedrooms, shall be determined in the following order. For requirements above 7 units, the order of allocation shall repeat. A fractional requirement shall be the last allocated.

Allocation of Number of Bedrooms			
Units Required	1 Bedroom or Studio	2 Bedroom	3 Bedroom
1	0	1	0
2	1	1	0
3	1	2	0
4	2	2	0
5	2	2	1
6	3	2	1
7	3	3	1
*Assumed Employees per Unit	1.45	2.0	2.1

1. **Administrative Adjustment.** The Housing Director may adjust the bedroom allocation in accordance with the procedure of Sec. 8.8.1. and the following standards.
 - a. The adjustment shall not reduce the required number of units.
 - b. The maximum number of bedrooms in any unit shall be 3.
 - c. The bedroom mix shall serve the needs of the local workforce.
 - d. The bedroom allocation shall provide housing for a total number of workers equal to the required number of units times 1.8 workers per unit. The number of workers housed through the proposed bedroom allocation shall be calculated using the employees per unit assumed in the above table.

D. Required Components of Livability

Each required affordable or workforce housing unit shall include, at a minimum, the components of livability required by the Housing Department Rules and Regulations.

E. Compliance with Rules and Regulations

Each required affordable or workforce housing unit shall comply with the Housing Department Rules and Regulations.

1. The Jackson/Teton County Affordable Housing Department is responsible for administration of any affordable or workforce housing units established in accordance with this Division, as well as other housing units it is directed to administer by the Board of County Commissioners.
2. To assist in the administration of this Division, the Town and County have adopted the Jackson/Teton County Housing Department Rules and Regulations, which authorize the Housing Department to:
 - a. Manage and oversee all affordable and workforce housing units.
 - b. Enforce livability standards.
 - c. Administer the marketing of the units.
 - d. Establish rules for qualifying renters and buyers, and administer selection of renters and buyers.
 - e. Establish rules for and monitor the units to ensure applicants, renters, and sellers comply with the requirements of this Division and the Rules and Regulations. The Rules and Regulations also include rules addressing:
 - i. Renter and buyer non-compliance, which include but are not limited to requirements for disqualification and prosecution for fraud.
 - ii. Seller non-compliance (for initial or subsequent sales), which include but are not limited to issuance of an affidavit affecting title and prosecution for fraud.
 - iii. Housing Department reimbursement by the renter, seller, or applicant, for any attorney's fees and other costs associated with the Department's compliance enforcement.

6.3.5. Method for Providing Required Affordable Workforce Housing (1/23/23)

A. Standards Applicable to All Methods

Regardless of the method used to provide the affordable workforce housing required, each required affordable or workforce housing unit provided shall comply with the following standards.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.5. Method for Providing Required Affordable Workforce Housing (1/23/23)

1. **Type.** Each required affordable or workforce housing unit shall meet the standards of Sec. 6.3.4., as well as all other standards of these LDRs and the Housing Department Rules and Regulations.
2. **Location.** Each required unit shall be located in the Town of Jackson or in Teton County east of the Tetons, and shall be in an area determined suitable for affordable workforce housing.
3. **Phasing.** If the employee generating development is approved for phases, the required affordable workforce housing shall be provided in proportion to the phases of the employee generating development. The phasing plan shall be established in the Housing Mitigation Agreement. The phasing plan shall require a recalculation of the amount of affordable workforce housing required at each phase.
4. **Deed Restriction.** To ensure compliance with the standards of this Division, the property of each affordable workforce housing unit and the property of the employee generating development shall both be subject to a deed restriction and a Housing Mitigation Agreement. More specifically:
 - a. **Deed restriction.** The property of the affordable workforce housing unit and the property of the employee generating development shall be subject to a deed restriction, in perpetuity, in a form established and approved by the Housing Department, and included in the Rules and Regulations.
 - b. **Housing Mitigation Agreement.** The property of the affordable workforce housing unit and the property of the employee generating development shall also be subject to a Housing Mitigation Agreement which shall be recorded against the property of the employee generating development in a form acceptable to the County Attorney.

B. Preferred Methods

Each employee generating development subject to the requirements of this Division shall provide the required affordable workforce housing by one or a combination of the methods identified below, in order of priority. Alternate methods shall not be proposed.

1. Construction of required affordable workforce housing on the site of the employee generating development, or off-site. Below are LDRs intended to facilitate construction of required affordable workforce housing.
 - a. **FAR exemption for affordable or workforce housing units.** Applies in the WC zone, see the applicable zone.
 - b. **FAR increases for more units.** Applies in the AR zone, see the applicable zone.
 - c. **FAR exemption for ARUs accessory to a nonresidential use.** Applies in the AC, WC, OP, BP, R-1, R-2, R-3, NR-1, BC, and R zones, see the applicable zone.

- d. **Shared parking between nonresidential use and affordable workforce housing.** Applies in all zones, see Sec. 6.2.2.B.1.
- 2. Conveyance of land for affordable workforce housing.
- 3. Utilization of a banked affordable or workforce housing unit.
- 4. Restriction of an existing residential unit as an affordable workforce housing.
- 5. Payment of an in-lieu fee.

C. Priority Method Impracticable

A required affordable or workforce housing unit shall be provided through the highest priority method practicable. A lower priority method may be used upon making the following findings for each higher priority method.

- 1. **Less than One Unit.** An in-lieu fee may be paid for an affordable workforce housing requirement of less than one unit.
 - a. **Exception for change to short-term rental.** In buildings approved under the affordable workforce housing standards in place since July 18, 2018, change of use of a unit from attached-single family or apartment to short-term rental shall be mitigated by construction of the required housing regardless of the amount of the requirement.
- 2. **On-Site Provision Impractical.** On-site provision of the required affordable workforce housing:
 - a. Does not comply with other Town, County, State, or Federal laws; or
 - b. Is unreasonable due to lack of infrastructure, inappropriate soils, or other site conditions.
- 3. **Off-site methods not reasonably available.** A good faith effort to provide the required affordable workforce housing off-site, is unsuccessful due to infrastructure, regulatory (either Town, County, State or Federal), or other site constraints of the land, or due to the price at which the land was available for sale. Conditions relevant to these constraints include but are not limited to factors like:
 - a. No off-site options are for sale that would support affordable workforce housing at an economically feasible density to provide the amount of affordable workforce housing required.
 - b. The inability to provide the needed infrastructure (e.g., roads, water supply, sewage disposal, telephone, electricity and gas) for the development of available off-site locations.

D. Standards Applicable to Specific Methods

In addition to the standards applicable to all methods, the following shall also apply to the specific method used for the provision of affordable workforce housing.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.5. Method for Providing Required Affordable Workforce Housing (1/23/23)

1. **Construction.** Construction of required affordable workforce housing shall comply with the following standards.
 - a. **Timing.** Unless an alternate phasing plan is established in the Housing Mitigation Agreement, each required affordable housing unit shall be reviewed and constructed pursuant to the following standards. If an alternate phasing plan is established, the Housing Mitigation Agreement shall include financial assurances that the construction will occur.
 - i. Each required affordable or workforce housing unit constructed shall receive a certificate of occupancy prior to the granting of the applicable certificate of occupancy or use permit for the employee generating development. If the Planning Director approves a performance bond pursuant to Sec. 8.2.11. to meet this requirement, the financial assurance shall be reviewed and updated annually.
 - ii. The application to construct the affordable workforce housing shall be sufficient in order for an application for a building permit or use permit for employee generating development to be determined sufficient.
 - iii. The approval process for the employee generating development shall occur concurrent with the approval process of the required affordable workforce housing development.

EXAMPLE: An employee generating development proposes off-site required affordable workforce housing of a scale that requires a development plan. The development plan for the employee generating development shall not be approved until the development plan for the required affordable workforce housing is approved.

2. **Conveyance of Land.** Conveyance of land for affordable workforce housing shall comply with the following standards.
 - a. **Acceptance.** Land conveyed shall only be approved and accepted at the discretion of the Board of County Commissioners, regardless of the decision maker on the application for the employee generating development.
 - b. **Conveyance.** The conveyance shall utilize the County deed template.
 - c. **Timing.** Land conveyance shall occur concurrently with approval of the development plan, use permit, or building permit, whichever occurs first, unless a different time of conveyance is established in the Housing Mitigation Agreement. If a different time is established, the Housing Mitigation Agreement shall include financial assurances that land conveyance will occur.

- d. **Amount.** Land conveyed shall be in an amount that allows for economically feasible construction of at least the amount of affordable workforce housing required under the zoning applicable to the land, at the time of conveyance. The value of the land conveyed shall also be at least equal to the in-lieu fee that would be required.
- e. **Confirmation of fair market value.** The fair market value of the land conveyed shall be confirmed at the time of conveyance. Fair market value shall be net of any customary real estate commission for the sale of land.
- f. **Clear title.** Land conveyed shall have clear title, physical and legal access, and be free of any liens.
- g. **Onsite Infrastructure.** Land conveyed shall be fully ready for development and ready for construction, with roads, water supply, sewage disposal, telephone, electricity and gas (if available), and other basic services in place to the property line of the land, as applicable. If this cannot be demonstrated, the applicant shall post a bond in accordance with Sec. 8.2.11., to complete the improvements. (In no event shall the bonded improvements be completed more than one year after the date of conveyance of the land to the County.)
- h. **Suitability.** Where there is concern about the suitability of soils or other site conditions to support affordable workforce housing, a soils report and/or other reports shall be prepared by an engineer or other consultant deemed qualified by the Board of County Commissioners, at the applicant's expense, stipulating the land is suitable for the type of construction contemplated, stating any special construction techniques necessary for its development.
- i. **Use of conveyed land**
 - i. Land conveyed shall be used for the development of affordable workforce housing units, and when accepted by the Board of Teton County Commissioners shall be conveyed to the Jackson/Teton County Housing Authority for that purpose.
 - ii. Where it is determined by the Board of County Commissioners and Town Council that the goals of providing affordable workforce housing will be better met through sale of the conveyed land, the conveyed land may be sold by the Jackson/Teton County Housing Authority.
 - iii. Proceeds from the sale of conveyed land shall be placed in the interest-bearing Affordable Housing Fund. Proceeds from the sale of conveyed land, and any interest accrued from the sale, shall be used for development of affordable workforce housing that meets the standards of this Division, within a reasonable period of time after deposit into the fund.

3. Banked Units

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.5. Method for Providing Required Affordable Workforce Housing (1/23/23)

- a. **Banking of a unit.** A voluntarily restricted affordable or workforce housing unit may be banked if it complies with the following standards.
 - i. The voluntarily restricted unit shall not be tied to any requirement in these LDRs.
 - ii. The deed restriction shall be approved by the Housing Department.
 - iii. The deed restriction shall identify the unit as a banked unit and require re-recording of the restriction to associate the unit with the employee generating development that utilizes the banked unit.
 - iv. The unit shall be banked for a maximum of 20 years.
 - b. **Utilization of a banked unit.** Utilization of a banked unit to fulfill an affordable workforce housing requirement shall comply with the following.
 - i. The banked unit shall have a deed restriction that complies with Sec. 6.3.4. (The deed restriction on a banked unit may be amended, if approved by the Housing Department, to meet this requirement.)
 - ii. Prior to granting of the applicable certificate of occupancy, or use permit for the employee generating development, the deed restriction on the banked unit shall be re-recorded to reference the employee generating development it is mitigating. At the same time, the Housing Mitigation Agreement identifying use of the banked unit shall be recorded against the property of the employee generating development.
4. **Restriction of an existing unit.** Restriction of an existing residential unit as an affordable workforce housing unit shall comply with the following standards.
 - a. **Condition.** The unit shall have been maintained to the standards required by the Rules and Regulations.
 - b. **Timing.** A restriction approved by the Housing Department shall be placed on the existing unit prior to the granting of the applicable certificate of occupancy or use permit for the employee generating development.
5. **Payment of an in-lieu fee.** Payment of a fee in-lieu for affordable workforce housing shall comply with the following standards.
 - a. **Amount.** The amount of the in-lieu fee shall be proportionate to the need created by the development as established in Sec. 6.3.3. based on the Teton County and Town of Jackson Employee Generation Land Use Study (August 22, 2013), as amended. The in-lieu fee amounts shall vary by affordability restriction and number of bedrooms. The current in-lieu fee amounts are included in the Administrative Manual.
 - b. **Fractional amount.** If a fraction of an affordable workforce housing unit is required, the same fraction of the in-lieu fee amount shall be required.

- c. **Update.** The Board of County Commissioners shall update the fee in-lieu amount annually, by Resolution, based on the cost of developing the required affordable workforce housing and the resale value of the required affordable workforce housing.
 - i. The cost of development shall be provided by the Housing Director to reflect the full development cost of habitable floor area, including land and non-habitable floor area, based on recent past development.
 - ii. Unit sizes shall be assumed to be
 - a). 1 Bedroom/Studio: 650 sf habitable
 - b). 2 Bedroom: 900 sf habitable
 - c). 3 Bedroom: 1,150 sf habitable
 - iii. The maximum sales and rental prices shall be as established by the Housing Department annually pursuant to the Rules and Regulations.
 - iv. The capitalization rate for rental units shall be assumed to be eight percent (8%).
- d. **Timing.** The in-lieu fee shall be paid prior to the granting of the applicable building permit or use permit for the employee generating development, whichever occurs first.
- e. **Payment.** In-lieu fees collected shall be immediately deposited into the interest-bearing Affordable Housing Fund.
- f. **Use of Fees.** In-lieu fees, and any interest accrued from in-lieu fees, shall be used for the development of affordable workforce housing that meets the standards of this Division.
- g. **Refund of in-lieu fees**
 - i. **Clawback.** In-lieu fees shall be refunded at the below levels if the required affordable workforce housing is provided by a higher priority method within 2 years.
 - a). **Provision within 1 year.** If the required affordable workforce housing is provided by a higher prior method within 1 year of the payment of the in-lieu fee, 97% of the in-lieu fee shall be refunded.
 - b). **Provision within 2 years.** If the required affordable workforce housing is provided by a higher prior method within 2 years of the payment of the in-lieu fee, 95% of the in-lieu fee shall be refunded.
 - ii. **Seven year limit.** In-lieu fees shall be refunded upon written request by the current owner of the employee generating development for which in-lieu fees are paid, if the fees are not expended within 7 years from the date the fees are paid.

Article 6. Use Standards Applicable in All Zones | Div. 6.3. Affordable Workforce Housing Standards

6.3.6. Housing Mitigation Plan and Housing Mitigation Agreement (7/18/18)

- a). Notwithstanding this provision, if the Board of County Commissioners earmarks the fees for expenditure on a specific affordable workforce housing project, then the Board of County Commissioners may extend the time period by up to 3 additional years.
- b). In-lieu fee payments shall be deemed expended on the basis that the first payment in shall be the first payment out.
- c). The written request shall be submitted to the Planning Director within 1 year from the end of the seventh year, or 1 year from the end of the extended refund time period.
- iii. **Expired approval or permit.** An in-lieu fee required for an employee generating development for which approval has expired shall be refunded upon a written request from the current owner of the property for which the fee was paid. Such request shall be submitted to the Planning Director within 3 months of the date of the expiration.
- iv. **Written request.** In all instances where a refund of an in-lieu fee is available, the current owner must submit proof of ownership of the property and proof of payment of the in-lieu fee.

6.3.6. Housing Mitigation Plan and Housing Mitigation Agreement (7/18/18)

A. Housing Mitigation Plan

An application for employee generating development shall demonstrate compliance with, or exemption from, this Division through a Housing Mitigation Plan.

1. **Part of application.** The Housing Mitigation Plan shall be a required component of a sufficient application for the employee generating development.
2. **Review and decision.** The decision maker on the application, for which the Housing Mitigation Plan is a part, shall review and make a decision on the Housing Mitigation Plan as part of the review of the application, except that only the Board of County Commissioners can accept a proposal to convey land.
3. **Contents of Mitigation Plan.** The Housing Mitigation Plan shall be in the form of the Housing Mitigation Plan template provided in the Administrative Manual and include the following.
 - a. **Applicability.** A statement that the requirements of this Division apply, or the proposed employee generating development is exempt from this Division in accordance with Sec. 6.3.2., along with an explanation why.
 - b. **Calculation of Requirement.** Calculation of the amount of required affordable workforce housing created by the employee generating development in accordance with Sec. 6.3.3.
 - c. **Tabulation of unit types.** Demonstration how the unit types required by Sec. 6.3.4. will be provided.

- d. **Proposed method of provision.** The method (or combination of methods) by which affordable workforce housing is to be provided in accordance with Sec. 6.3.5. The method of provision proposed shall include the following, as applicable.
- i. Findings to justify that higher priority methods are impracticable (e.g., construction of affordable workforce housing, on-site or off-site) if they are not used.
 - ii. Location of the proposed units, if applicable.
 - iii. The time by which the units or another method of mitigation will be provided.
 - iv. A completed Housing Department Deed Restriction Worksheet for each unit.
 - v. Demonstration of compliance with the standards of Sec. 6.3.5.D, for the specific method(s) proposed.
 - vi. In the case of construction of units, the application number(s) for the permit(s) to construct the units.
 - vii. In the case of a conveyance of land:
 - a). A topographic and boundary survey of the land to be conveyed.
 - b). An analysis of the residential development allowed on the land by the current zoning.
 - c). Evidence that on-site infrastructure needed for development is on the site, or when it will be provided by the person conveying the land.
 - d). A title report on the land demonstrating clear title, physical and legal access, any liens, easements, and other information necessary to fully describe the legal status of the land to be conveyed.
 - e). An appraisal of the fair market value of the land.
 - f). Any additional information or studies determined by the Planning Director to be necessary to demonstrate compliance with Sec. 6.3.5.D.2.
 - viii. In the case of restriction of an existing unit, the certificate of occupancy for the unit, and an inspection of the maintenance of the unit to the standards of the Rules and Regulations completed by a qualified professional inspector.
 - ix. In the case of payment of an in-lieu fee, calculation of the in-lieu fee amount.

B. Housing Mitigation Agreement

As a condition of approval of the employee generating development, the owner of the property on which the employee generating development is proposed shall enter into a Housing Mitigation Agreement with the County. The Housing Mitigation Agreement shall include: the approved Housing Mitigation Plan; all terms and conditions of the approval of the Housing Mitigation Plan; and all applicable deed restrictions.

1. In signing the agreement, the applicant agrees to comply with the terms and conditions of the approved Housing Mitigation Plan and the Housing Mitigation Agreement.
2. The requirement for a Housing Mitigation Agreement may be waived if the required affordable workforce housing is provided prior to approval of the employee generating development.
3. The Housing Mitigation Agreement shall be recorded against the property of the employee generating development.
4. The Housing Mitigation Agreement shall be in a form acceptable by the County Attorney.
5. The Housing Mitigation Agreement shall be amended only in accordance with its original approval.