AFFORDABLE HOUSING TOOLS AND TECHNIQUES

This document summarizes a wide variety of tools and techniques that can be used for affordable housing. It is prefaced by an explanation of why multiple tools used in combination are needed to effectively, comprehensive address the type of housing needs existing in Ouray County.

I. NEED FOR MULTIPLE TOOLS

Before examining individual programs, it is important to keep in mind that a multi-faceted strategy is needed in order to address affordable housing comprehensively and equitably in a manner that is acceptable to the citizens and stakeholders, and legally defensible. Highly effective affordable housing strategies depend upon the involvement and cooperation of the private sector, local and county governments, employers, non-profit agencies, local housing authorities and residents themselves. Affordable housing programs are more successful when a mixture of community sectors and all of the primary beneficiaries of affordable housing are involved in producing such housing.

Multiple tools, including both incentives and mandates, used in combination are needed to create the best overall affordable housing strategy. Several considerations support the need to combine programs into a comprehensive strategy including:

- **Incentives Not Adequate**

  Incentive-only programs will not fully address the community's affordable housing needs, particularly since there appears to be an existing shortfall. With a strong demand for larger, more expensive homes, there is little likelihood that incentives alone will induce the private sector to produce the number of units needed at prices that are affordable. Incentives in combination with mandates have had more success in other communities. For example, an inclusionary zoning requirement may stipulate that a certain percentage of units have to be developed as affordable housing. The regulations may also allow for a density bonus, if the inclusionary zoning requirement threshold is exceeded. Often, developers will use these in combination to produce more affordable housing.

- **Community Acceptance**

  A strategy that consists of a single program would place the burden on a single industry or group. The groups that are mandated to fulfill the requirement often believe that it is not fair, and share this view with the broader community. A program that targets solely new residential development does not have as much acceptance as a program that requires a portion of new housing to be set aside as affordable while opportunities to preserve existing housing or to disperse responsibility for program costs throughout the community are also pursued. A multi-pronged approach is generally well received in communities that are concerned with growth, as it mitigates concerns that new growth is being undertaken solely to address affordable housing needs. Other opportunities may exist by combining requirements and incentives for both residential and non-residential development, thereby decreasing the amount that any one group would have to bear and making the overall strategy more acceptable.

- **Balancing Catch Up with Keep Up**

The strategy must ensure that new development provides housing in proportion to the need it directly creates or the program could be successfully challenged in court. At present, there is an *existing shortfall* in the supply of affordable housing in Ouray County. It is unreasonable to expect development to meet existing affordable housing shortfalls.

As new commercial and residential development occurs, the *need for affordable housing will increase*. Ideally, new development would contribute to meeting new demand for affordable housing or with "keeping up" with the problem.

- **Targeting Different Groups with Different Programs**

Some tools serve certain groups better than others. Programs using Federal or State subsidies are generally restricted to serve very low and low income households while incentive programs tend to produce housing for moderate to middle income residents. Since the free market in resort-impacted communities often does not produce housing for residents at multiple income ranges, a variety of programs are needed to fill the gap.

II. Housing Tools and Techniques

The programs described in this report have been grouped into four broad categories:

- **Incentives** including density bonuses, flexible development standards and accessory units;
- **Production Mandates** including inclusionary zoning, commercial employee generation mitigation and residential employee generation mitigation;
- **Revenue Generation** covering both fees and taxes; and,
- **Public Initiatives and Partnerships** covering the provision of general funds and land, participating in employer-assisted housing, 6320 corporations, housing authorities, community land trusts, and down payment assistance.

There is overlap in some of the categories. For example, employee generation mitigation programs are covered under production mandates, however, these programs could also be considered fees depending upon the way that they are structured.

Incentives

Density Bonuses

Density bonuses are a type of housing production incentive program where projects are granted additional residential density over and above the maximum limit allowed by existing zoning, with the condition that the housing (or a portion thereof) be deed restricted to occupancy by a target group. The density increase results in a decrease in the land cost per unit.

Depending upon the densities allowed by current land use codes and the targeted price levels for the proposed projects, density bonuses could be a strong incentive for the private sector to produce affordable housing. The private sector is less likely to be interested in the program, however, if deed restrictions establish low price targets thereby requiring that subsidies also be offered. An alternative is to apply the program only to middle to upper income population segments.

Density bonuses can be implemented through a zone district designed for the purpose. Such a district typically permits increases in residential density and more flexible development standards for most or all of the bonus density. Alternatively, density bonuses can be offered in association with inclusionary zoning programs, as described later in this report. For instance, a development that provides more than the required percentage of low income housing through an inclusionary requirement may be granted an automatic density bonus for market-rate units.

Flexible Development Standards

The incentives most often requested by developers are flexible development standards. Developers desire ways to reduce their costs in order to subsidize their provision of affordable housing. The standards they usually want waived or reduced include parking requirements, setback requirements and landscaping. They may also request variances in unit sizes and height limitations.

Concerns about providing reductions in development standards usually involve potential problems with project quality and sometimes safety, particularly if road width reductions are involved.

Accessory Units

"Accessory units" refers to optional, smaller second units attached to or within single-family units, also known as "caretaker units" or "mother-in-law units." Such units often provide desirable housing for singles, couples, entry-level and seasonal employees. Resident owners find the units to be desirable sources of extra income. They can also provide housing for senior citizens or adult "boomerang" children who may use such housing while they are in the process of establishing their independence.

Concerns over the impact of such units upon the overall community growth rate and quality of life are usually addressed with size limitations, off-site parking, location requirements and occupancy restrictions. Visual impacts of accessory dwelling units may best be mitigated by requiring the units to be attached to or included within a single-family dwelling or accessory structure like a garage. Thus, the property may continue to visually read as a single-family dwelling. Accessory units may be used as guest accommodations unless owners are required by binding agreements to house local residents.

Production Mandates

Inclusionary Zoning, which is defined by the American Institute of Certified Planners as:

> **"The mandatory inclusion of affordable or local housing units, or financial set-aside, as a quid quo pro for development approval. "**

Jurisdictions utilizing this program often require that such units be of the same type or similar to other units being approved in the development. Thus, affordable housing in a wide variety of types and configurations may be produced with this program. For example, a development consisting of single-family lots might result in the set-aside of a percentage of the single-family lots for affordable housing, although the lots need not be the same size or as well located as other lots in the development. A multi-family development might set-aside a percentage of the multi-family units being built. Although the units need not be as large or as luxurious as other units in the development, the units by bedroom configuration should be proportionate to the overall mix of bedrooms in the development.

A survey of thirteen inclusionary zoning systems from around the country, conducted in 1998 by the City of Boulder Planning Department, has suggested that there are six variables to be considered in an inclusionary system design:

- Threshold of Applicability -- the minimum project size which triggers an inclusionary zoning affordable housing obligation. This often applies to developments of ten or more units;

- Inclusionary Requirement -- the nature and extent of the required set-aside or alternative contribution to affordable housing;

- Income Targets -- a determination of the level of affordability of various elements of the inclusionary obligation;

- In Lieu Allowances -- the manner in which in-lieu contributions are handled within any such system. In-lieu requirements speak to the ability to buy out of a requirement, particularly for smaller projects, or to build or acquire units "off-site";

- Incentives -- The manner in which incentives to developers are handled within the system and used to complement mandates.

The specific percentage amount of affordable housing to be set-aside in all residential developments depends upon the political and economic tolerance of the local community, and whether or not the demonstration of "nexus" between the development activity and the inclusionary housing requirement (further explanation of nexus is contained under Commercial Linkage below) applies. In all cases the level of required set-aside must be “reasonable”. The specific percentage selected or mitigation level should not be so great as to constitute a "taking" -- the size of the set-aside must leave the property owner with "a reasonable, economic return on his investment". Some factors that may mitigate some of the potential legal risks of inclusionary programs include:

- The program is an effort to meet the needs of low, moderate or middle income households; and,
- The program may be coupled with a density bonus or other provision, which can provide a measure of insurance relative to the defensibility of such a program.

A potential advantage of this program is the dispersal of affordable housing throughout the community. Larger projects are able to produce a mix of unit types and sizes, which are generally more appealing and interesting. It may not be desirable, however, to intersperse housing for residents in condominium projects that are used as vacation rentals or to isolate the units in large-lot developments.

Once produced, inclusionary housing units should have resale requirements described in a deed restriction that guarantee that the units provide housing for the target income group over the long term. An alternative for rental projects that are not produced by non-profits committed to affordable housing or under the LIHTC program would be to require that fees be paid in lieu of direct production for rental projects. The administration of deed restrictions could be carried out by City staff or under contract with the housing authority or other non-profit entity. Oversight of the affordable housing programs will have some budgetary implications on local government, although fees could be established to cover administrative costs.

Commercial Job Generation Mitigation or Commercial Linkage

Commercial job generation mitigation refers to regulations that require new commercial development to provide funds or housing units to mitigate some portion of identifiable housing needs created by the new development. The rationale for this program is that these uses are the direct source of most employees and should be required to mitigate the need to provide housing for these employees. In most communities with these standards, the housing that is produced is limited to multi-family housing suitable for low- and moderate- income households, including singles, as well as young families.

Prior to utilizing a mitigation program, a jurisdiction should demonstrate nexus by documenting the affordable housing demand resulting from employment generated by commercial, industrial, office and lodging uses. The next step is to select a mitigation rate that meets local political and economic tolerance, this rate is usually somewhat less than the maximum possible based on the demonstrated nexus. The information provided through the Housing Needs Assessment could be used for this purpose

Potential unintended consequences include mass and scale issues, site suitability issues, and the potential to drive development to other communities. Housing requirements have the potential to influence development decisions (i.e., what gets built) in ways that can produce undesirable results. Developers often find that they need to increase the mass and scale of development on a site to include additional space for affordable housing, and the resulting construction may not be appropriate in a given situation. For these reasons, it may be desirable to consider permitting affordable housing requirements to be met off-site, or to establish standards for this type of mixed-use development.

Residential Job Generation Mitigation or Residential Linkage

Residential linkage is very similar to commercial linkage in that developers are required to mitigate all or a portion of the housing demand directly generated by new employment that is created by the project. Rees Consulting and RRC Associates have established a data base on the number of jobs directly generated by various types and sizes of residential units through studies in Eagle, Pitkin, Gunnison, San Miguel, Summit, Routt and Gunnison counties in Colorado as well as Teton County, WY and Blaine County, ID.

If a linkage program is used along with an inclusionary zoning program, the linkage fee/units must be credited for the units produced through inclusionary zoning. Developers could be required to produce units or pay fees for their production. Since the number of jobs directly created by any single residential unit is so small (often a fraction of an FTE if the unit is less than 8,000 square feet), payments in lieu are usually accepted. A linkage program has some advantages over inclusionary zoning in that it could apply to additions and single structures, which are more complicated to cover under inclusionary zoning. A linkage program would not apply when subdivisions are divided into lots, however, since the permanent jobs are not created until structures are built.

While the residential job generation study documented the number of construction jobs created, requiring that developers provide or pay for housing for construction workers would be complicated. This is because the jobs are temporary in nature and because a certain level of construction workers already reside in the area. Demonstrating that a specific project results in an increase in construction workers would be difficult. An added complication is the fact that construction trades pay relatively high wages making is possible for workers to afford free-market rental housing and lower-priced for sale units. It is recommended instead that alternative types of housing for temporary construction workers be explored.

Fee and Tax Programs

The legal standards for fees and taxes are quite different. A tax is a charge or assessment against income, sale, person, activity, etc., in which there is no relationship between benefit and costs incurred. A vote of the public is required to levy taxes. Fees are collected from a person or organization to fund specific facilities or services directly benefiting those who pay. A nexus for the type and amount of fee must be established but no vote is required. Dedicated funding sources either from taxes or fees may be used to finance acquisition and/or development of units and the operation of affordable housing programs. They can also be used to back the sale of mortgage revenue bonds and thus to leverage the fees into more housing benefits.

Fee Programs

Fee-based programs involve the use of dedicated funding sources to raise funds that can accrue to a local housing trust fund or be held by the governmental entity collecting the fees. These funds are usually used to “buy-down” the cost of acquiring, developing or rehabilitating housing that is to be made affordable to households that meet defined income guidelines. These funds could be used by the private sector, local housing authority, non-profit or a combination of entities as long as they result in the production/acquisition of affordable housing.

Examples of funding sources include housing impact or linkage fees, business license fees, or voluntary real estate transfer fees. Fee based approaches usually require demonstration of a nexus linking the collection of the fee to mitigating some impact created as the result of some action. In addition, consideration must be given to how Amendment One affects the collection of these fees by local government.

Fee-based programs may involve zoning provisions that require new development to provide funds or mitigation to meet some portion of the identifiable impacts of the new development. Developers may elect to pay the fee rather than develop the housing within a specific site. At times, this creates concerns about distribution of affordable housing throughout the community. On the other hand, this allows the local government the ability to more clearly target the types of housing it wishes to see produced and then issue requests for proposals to facilitate the development or acquisition and rehabilitation of this housing. All sectors of the development community can respond and make proposals about how to apply these resources to various housing programs or projects.

Tax Programs

Taxes may be used to fund services that provide either general or special benefit and may be assessed upon transactions or upon specific "class of use," provided they are applied evenly and fairly. Therefore, taxes are the most flexible of all funding mechanisms in that they may be used to fund any public improvements, including affordable housing.

Tax programs involve the use of dedicated tax sources to raise funds to be used to develop, acquire and/or maintain affordable housing. In some instances, taxes may be imposed on more than one source.   Tax-based programs are highly flexible and proceeds from the tax can be made available for use by the private sector, non-profits or local housing authorities. Taxes do not have to meet the strict requirements of a rational nexus/proportionality test. The allocation and use of the funds is based upon community goals. Once funds are available, those funds may be redirected as necessary to respond to changing housing needs in the community.

The types of taxes that could be used to fund housing programs include excise on new development, employee head tax, sales tax, luxury tax, lodging tax or property tax. With tax-based programs, local government usually assumes more direct responsibility for administering the funds and assuring program compliance.

Taxes must be approved by a vote of the general public. This can be expensive and difficult to achieve.

Real Estate Transfer Assessments (RETA's)

Real estate transfer taxes can not longer be adopted in Colorado; however, transfer assessments to generate funds for affordable housing can be voluntarily placed on new homes when built. Opportunities for "voluntary" placement include annexations, in lieu of linkage fees and in lieu of inclusionary zoning requirements.

<u>Public Sector and Partnerships</u>

Public housing authorities and local governments can directly develop, acquire, own and manage housing. Through partnerships with private developers and employers, municipal and county governments can facilitate the development of affordable housing without taking direct development responsibility.   Resources that the public sector can bring to projects include land, direct project funding and financing enhancements. The possible combinations of public and private resources are unlimited. Many successful housing developments have been achieved when the public sector has leveraged its resources with those of the private sector.

General Funds

Allocating general funds for affordable housing purposes are a legitimate expenditure of public funds because such housing provides a general benefit to all citizens of the community.

Land

Publicly-owned land can be provided through long-term leases as was done at the Poplar Project in Boulder, in Vail for Vail Commons and in Breckenridge for the Pinewoods apartment project.

Acquisition of Existing Housing

This option provides for the acquisition of existing housing by the towns or county, local housing authority or non-profit organization for resale or rental to targeted households. This option involves obtaining subsidy from a source, such as the Community Development Block Grant Program, HOME Program, foundations or other sources to acquire a unit and re-sell it at below market rate prices to income eligible households. Another option is to provide a rehabilitation loan or grant so a homeowner can make repairs to bring the unit up to code or enlarge it and enhance livability.   Some form of re-sale restriction would need to be imposed to assure future affordability.

This type of program might work well for the acquisition of condominium units that are now in projects with high homeowners association dues and short-term vacation rentals. As new condominiums are developed that perform better as short-term rentals, opportunities to purchase units in older properties might increase. If efforts are targeted to specific projects, control of the HOA by local residents could result in a reduction of fees thereby increasing affordability.

6320 Corporations

A government entity can form a non-profit corporation with a private developer under 63-20 of the Internal Revenue Service Tax Code. Local government's responsibility in such a corporation is limited to sponsorship of the formation of such a corporation and the issuance of revenue bonds. Revenue bonds do not burden property taxes; instead they depend upon dedicated project revenues for retirement. Because of the costs involved with a bond issue, underwriting and placement, this program is generally not feasible for projects involving less than 100 units. Units developed with the 63-20 Corporation may include any type of rental housing, but they are most often used for multi-family projects. Project occupancy is normally limited to low- to middle-income households and controlled by a board of directors composed of representatives of the residents, local government and the developer. The public subsidizes the resulting projects in that they are tax exempt, so there are implications on school districts and other taxing entities. However, when the bonds are paid off, the local government owns the projects debt free.

Employer Assisted Housing

Employers are increasingly becoming involved in the development of housing for their employees. There are multiple examples in Colorado’s mountain communities. The ski area operators were perhaps the first employers to actively provide housing but a variety of other types of employers have gotten involved in recent years including retailers, hospitals, school districts and municipal governments. The 63-20 program referenced above provides a good opportunity for employers to participate by providing subordinated debt. With this participation, employers are then able to master lease units for employees with the provision that not more than 50% of the total project is master leased.

Since most employers do not have expertise in the development or management of housing, a public or non-profit entity might need to serve as the catalyst or organizer of the effort. Examples where small businesses have been able to work together to provide employee housing are very limited. Concerns include what happens to employees when they leave the employment of a participating employer yet continue to need housing in the community.

Community Land Trusts

Land trusts are a mechanism for assuring that the housing that is developed and/or acquired remains affordable in perpetuity. The land lease requires that the owners/renters of properties meet the stated guidelines of a land trust.

It is often difficult for buyers, builders and mortgage lenders to understand and accept the concept of a land trust. Typically, a non-profit governs the land trust. One must be created and gain the knowledge and experience to manage this model. Land trusts do not meet standard underwriting criteria thereby requiring special efforts to locate mortgage financing.

The trust assures that the intended income group lives in the housing. It can be self-governing and can be self funded (through the collection of land lease fees). The housing that is produced remains affordable for at lease 99-years (common length of time). Trusts can be used for both rental and for-sale properties. Thistle Community Housing, a Boulder-based non-profit, has established a land trust through which it is attempting to serve rural communities in Colorado.

Land Banking

Land banking is where a piece of land is purchased by a government entity or non-profit and designated as a future affordable housing site. The concept here is that land is purchased well in advance of development and with the full knowledge that at some future time it will be developed for affordable housing. Because the land is purchased well in advance of development, its cost relative to other development costs in the future is lower and helps to reduce the amount of subsidy that is needed from other sources. One option is accepting land in lieu or obtaining housing or cash-in-lieu fees from residential or non-residential developers who may be required to provide affordable housing through an inclusionary zoning program or commercial linkage program. This approach is often used when an “opportunity site”, such as a parcel that has unusual value in the community due to its location or size, becomes available for sale. Issues include appropriate zoning, pressures that might arise to preserve the parcel as open space or parks, and NIMBY concerns from adjacent property owners.

Down Payment Assistance and Gap Financing

Down payment assistance is provided to income-qualified households who want to purchase a home. Funds are used to supplement those of the buyer. Two approaches include shared equity or a one-time buy-down. The buy-down requires the buyer to sell the home at a reduced price to an income-qualified purchaser in the future. Targeting down payment assistance to specific properties or unit types could be more effective than scattering the assistance throughout the community.

Funding is a primary constraint, particularly in high cost areas where down payments may need to be higher than $50,000 to cover the gap between low-income buyers and market prices.

Covenants/restrictions must allow for the buyer to make improvements to the property. Most buyers want “credit” for making the improvements, which can be difficult to assess. Thorough education of the buyers so they understand the requirements of the assistance is needed. Buyers also often need homebuyer training courses in order to establish sufficient credit, reduce other fixed debt and save for their portion of the down payment.

Housing Authorities

Under Colorado statutes, housing authorities have the power to incur debt, receive grants, develop, own and manage housing projects. In many mountain communities, like Telluride and Aspen, the public housing authorities supply a significant proportion of the affordable housing. Since rent controls are not legal in Colorado, utilizing the housing authority to develop and own apartment projects is an option for insuring permanent affordability of rentals.

Housing authorities can issue tax-exempt bonds to finance the construction of projects. Planning projects and administering programs, like a down payment assistance program, are more difficult to finance, however. Until an authority has sufficient income from properties that are completed and occupied, financing operations can be difficult.

Housing authorities can take advantage of Low Income Housing Tax Credits, a Federal program that offers a credit against income for investors in a qualified tax credit project. The authority could sell the credits to investors in need of a tax shelter as a way to produce additional project financing. At least 20% of the units must be affordable to households earning 50% of the AMI or 40% affordable to households earning 60% of the AMI for at least 15 years. Tax credits are highly competitive.

Authorities can also be sub-recipients of Community Development Block Grant and HOME Funds. These are federal funds that are used for the production of housing for households earning less than 80% of the Area Median Income. Funds may be used for land, new construction, acquisition and rehabilitation. Some funds are available for low-interest rate construction loans. Funds are administered through the State Division of Housing and are highly competitive.

A problem associated with Federal/State financing is dealing with income limitations. These programs encourage the development of projects where 100% of the units are targeted to low-income households whereas market demand and the general community tend to support mixed income developments.