

**LUDC  
2013**

GARFIELD COUNTY, COLORADO

# Article 8: Inclusionary Zoning for Housing



# ARTICLE 8

## INCLUSIONARY ZONING FOR HOUSING

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# ARTICLE 8: INCLUSIONARY ZONING FOR HOUSING

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## **DIVISION 1. GENERAL PROVISIONS**

### **8-101. FINDINGS AND PURPOSE.**

#### **A. Findings.**

1. An adequate supply of housing that is affordable and available to the workforce and retired members of the workforce is necessary for the local economy to remain stable and to grow in a healthy manner.
2. New development creates demand for workers in construction, maintenance, services, and retail sales, increasing the demand for housing for the workforce.
3. New development should provide Housing Availability Mitigation Units ("Mitigation Units") to mitigate the impacts to workforce housing availability that are attributable to such development.

#### **B. Purpose.**

To increase available housing for the workforce, this Article requires that new residential development contribute to the workforce housing supply in proportion to the Development's impact on the supply of workforce housing.

### **8-102. APPLICABILITY.**

#### **A. Residential Land Use Change Permits and Subdivisions.**

These requirements apply to all residential Land Use Change permits and Subdivisions proposing 15 or more lots, units, or a combination of lots and units located within unincorporated Garfield County.

#### **B. Accessory Dwelling Units Not Counted to Determine Applicability of Art. 8.**

Construction of deed-restricted Accessory Dwelling Units in compliance with Article 7, Section 7-701, does not count as "lots" or "units" for purposes of determining whether this Article 8 applies to a new Development project.

#### **C. Development Defined.**

The term "Development" as used in this Article 8 shall mean any proposed residential Development or Land Use Change that requires County approval under the Land Use Code.

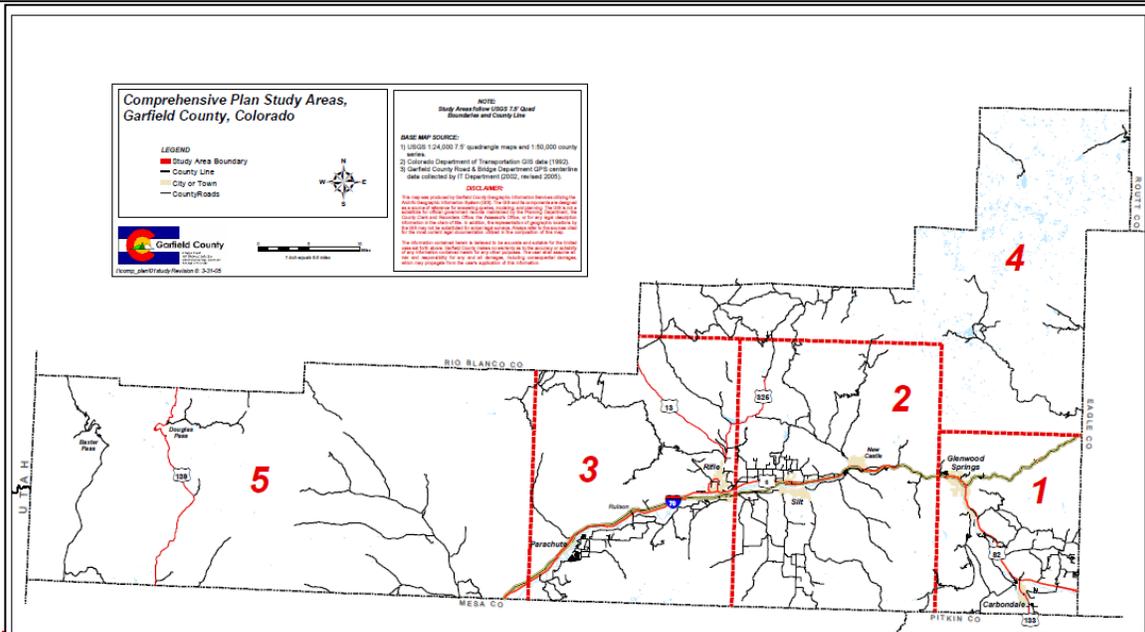


Figure 8-1: Map Showing Area 1

## DIVISION 2. APPLICATION AND REVIEW PROCEDURES

### 8-201. APPLICATION SUBMITTAL REQUIREMENTS.

The Applicant shall submit the following materials for a Subdivision or a Land Use Change Permit that requires Housing Availability Mitigation.

#### A. Affordable Housing Plan and Agreement.

The Applicant shall submit a “Housing Availability Mitigation Plan” that includes the following provisions.

1. The proposed location of the Mitigation Units.
2. The proposed number and unit mix of Mitigation Units based upon the provisions of section 8-301, Number and Unit Mix.
3. The proposed schedule for construction and completion of the Mitigation Units in relation to the proposed construction and completion of the overall development.
4. The proposed breakdown of Mitigation Units by category, based on provisions of section 8-301.B., Unit Mix and Minimum Bedroom Requirement, including the proposed Lot Size and square footage size of each unit.
5. The proposed calculations for HOA dues as set forth in section 8-302.B.5.
6. The proposed form of Deed Restriction and any other documents necessary to comply with the requirements of this Article.
7. Any rental housing proposal will require the Applicant to propose additional guidelines not codified herein. Such guidelines at a minimum must address details for administration and on-going affordability. The proposed guidelines are subject to BOCC approval.
8. The proposed method of financial security to ensure construction of the Mitigation Units, such as:
  - a. A bond or other security acceptable to the BOCC, in an amount acceptable to the BOCC to ensure the required number of Mitigation Units are constructed.

- b. Provisions in the adopted Housing Availability Mitigation Plan that require Building Permits for 10 free-market houses may only be issued after a Building Permit for 1 Mitigation Unit has been issued.
  - c. Another method of securing construction of the Mitigation Units acceptable to the BOCC.
9. If the Applicant proposes to locate some or all of the Mitigation Units off-site, the plan for off-site location and justification therefor.
  10. The proposal for compliance with all provisions of Article 8, Division 4, and Article 8, Attachment A: Housing Administrative Guidelines, in coordination with the Garfield County Housing Authority (GCHA) or other Approved Affordable Housing Entity (AAHE).

**B. Housing Availability Mitigation Plan for Partnership Agreement with Non-Profit that Constructs Housing.**

An Applicant proposing to meeting Mitigation Unit requirements in Section 3-301(A) by developing a Partnership Agreement with Non-Profit that Constructs Housing shall submit a “Housing Availability Mitigation Plan” that includes applicable details from Section 8-201 (A) and the following supplemental provisions:

1. The proposed timing for donation payment. The County may require upfront payment of full donation amount to the Non-Profit prior to County Development approvals to ensure availability of the units to be produced by the Non-Profit and coincide with their construction schedule.
2. Estimates of the Applicant’s on-site construction and land costs to ensure the donation is comparable to the costs and land value to develop the Mitigation Units on-site.
3. Total cost of the housing development to be constructed by the Non-Profit, including costs of any donation including land and materials for development of the Mitigation Units. The number of units constructed by the Non-Profit may exceed the number of Mitigation Units required for the development in Section 3-301 based on cost comparisons.
4. Proposed plan for long-term management of the units by the Non-Profit to ensure the long-term affordability of the units and occupancy qualifications for the units.
5. If the donation to the Non-Profit includes land, an appraisal of the land value to be donated.
6. Signed Partnership Agreement between the Applicant and the Non-Profit that will be providing the Mitigation Units, addressing details of the donation including but not limited to: donation amount, number of units to be constructed, timing for payment, timing for construction of units and other information deemed necessary to determine consistency with the mitigation requirement in Section 3-301.

**8-202. REVIEW AND APPROVAL PROCEDURES.**

The Housing Availability Mitigation Plan shall be reviewed by the Director and the GCHA or other AAHE. The Housing Availability Mitigation Plan approved at Preliminary Plan or as part of the Land Use Change Permit shall become the “Housing Availability Mitigation Agreement” between the County, the Applicant, and the GCHA or other AAHE, which agreement will be adopted and recorded in conjunction with a Final Plat or Land Use Change Permit approval by the BOCC.

**DIVISION 3. CRITERIA FOR DEVELOPMENT OF AFFORDABLE HOUSING UNITS**

**8-301. HOUSING AVAILABILITY MITIGATION UNIT REQUIREMENTS.**

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**A. Housing Availability Mitigation Units (“Mitigation Units”) Required.**

In a Development covered by this Article, Applicant shall provide Mitigation Units in an amount equal to 10% of the lots or units in the Development. Any fraction resulting from this calculation will be rounded up to the nearest whole number.

**B. Methods to Meet Mitigation Unit Requirement in 8-301 (A).**

The County may approve the following methods, or a mix of methods, to satisfy the Mitigation Unit requirements in Section 8-301 (A). The Applicant may propose other methods to meet Mitigation Unit requirements. The County may accept a method not listed below if it determines that the method will mitigate the impacts of the Development to workforce housing availability.

1. **For Sale: Income-Limited Qualified Purchaser.** Construction of for-sale Mitigation Unit(s) deed-restricted to a Qualified Purchaser as defined in Section 8A-102.
2. **Rental: Income-Limited.** In development that will include residential rental units, construction of on-site rental Mitigation Unit(s) deed-restricted to persons employed by a “County-based employment source” and earning equal to or less than the Area Median Income (AMI) for the category of units in Section 8-302 or such income limits that may be imposed by an affordable rental housing program approved by GCHA.
3. **Partnership Agreement with Nonprofit that Constructs Housing.** The donation of land, dollars, or a combination thereof to a not-for-profit that constructs affordable housing may be acceptable if the donation will be comparable to the Developer’s on-site estimates of construction costs and land costs and will result in the construction in Garfield County of no less than the required number of Mitigation Units.
4. **Request for Off-Site Location of Mitigation Units**

At the time of Preliminary Plan application or Land Use Change Permit Application, the BOCC may consider a request by the Applicant for off-site location of Mitigation Units if the Applicant demonstrates circumstances that justify the request. The following considerations and criteria shall apply to Applicant’s request:

- a. The proposed Mitigation Unit(s) will be located within ½ mile of the development, or substantially closer in proximity to the following facilities and amenities when compared to the project parcel: public schools, commercial or retail centers, community or public recreation parks and activities, Hospital and health care facilities, public transportation, professional services, and public services including fire, police, and emergency services;
- b. The Applicant has developed a method or a procedure acceptable to the County to ensure that the proposed off-site Mitigation Affordable Housing Units are for sale pro rata with the sale or rental of lots contained within the project parcel; and
- c. The Applicant has consulted with the GCHA or AAHE prior to submission of an application regarding the proposed location and qualification of the off-site units for financing and sale.
- d. The proposed development meets the requirements and guidelines for inclusionary zoning set forth in this Article;
- e. The proposed units will be located in an area or development acceptable to the BOCC; and

- f. Existing residential units can be used as Mitigation Unit(s), provided it is acceptable to the BOCC.
5. Calculating Number of Mitigation Units: Projects that provide Mitigation Units on-site with the same ownership or rental status as their free-market units shall be credited at 100% in meeting the Mitigation Unit requirements. For Sale Developments that mitigate with rental units shall be credited at 75% in meeting Mitigation Unit Requirements. Off-Site rental Mitigation Units will be credited at 75% in meeting the Mitigation Unit requirements. Projects that utilize a Partnership Agreement with a Non-Profit for mitigation will be credited at 100% provided that the donation amount is comparable to the Developer's on-site construction and land costs. Mixed Use Projects that utilize more than one of the mitigation methods will be pro-rated according to the number of Mitigation Units within each mitigation method category.

**C. Unit Mix and Minimum Bedroom Requirement for Mitigation Units.**

The Applicant shall propose the mix of housing types for Mitigation Units. The mix of Mitigation Units. In addition, the units shall meet the following requirements:

- 1. The approved mix will provide the minimum number of bedrooms required based upon the following formula:
  - a. Multiply the number of Mitigation Units required by 2.6 (the average number of persons in a household) then,
  - b. Divide the result by 1.5 (the U.S. Department of Housing and Development criteria of person per bedroom).
  - c. The resulting number is the minimum required number of bedrooms that must be disbursed across the required Mitigation Units.
- 2. Any proposal for a unit with 4 or more bedrooms may be approved, but only after a special review to determine a need.
- 3. Any fractional Mitigation Units created by the above formulas will be rounded up to the next highest number.
- 4. A Mitigation Unit shall be no less than 500 square feet of finished square footage, excluding garages, carports, and unfinished Basement space. The following minimum sizes shall serve as a guide for finished square footages:

<u>Unit Type</u>	<u>Minimum Size</u>
Studio	500
1 Bedroom	700
2 Bedroom	950
3 Bedroom	1,200
Single-Family, detached	1,400

**D. Timing of Certificates of Occupancy.**

For projects developed in one phase, the County shall not issue a certificate of occupancy for any units in the Development until the Mitigation Units receive certificates of occupancy. If a project is developed in multiple phases, no certificate of occupancy for any units in any phase of Development shall be issued until the certificates of occupancy for the Mitigation Units in that phase have been issued. For Development that proposes a Partnership with a Non-Profit that Constructs Housing, upfront payment of the entire donation amount may be required prior to Development Approvals by the County or prior to the issuance of a certificate of occupancy for any units in the Development to ensure the availability of the mitigation units and consistency with the construction schedule of the Non-Profit.

**8-302. PRICING OF UNITS.**

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**A. Area Median Income Categories Required.**

The average price for all Mitigation Units shall be dispersed over a range of the Area Median Income (AMI) levels for low- and moderate-income families as published annually by HUD for Garfield County. Applicant shall provide Mitigation Units in the following 3 categories, in accordance with the distribution described below:

1. Category I. 20% of required units must be in Category I;
  - a. Units priced to be affordable for a household making 70% AMI and sold up to 80% AMI households;
2. Category II. 30% of required units must be in Category II;
  - a. Units priced to be affordable for a household making 90% AMI and sold up to 100% AMI households;
3. Category III. 50% of required units must be in Category III;
  - a. Units priced to be affordable for a household making 110% AMI and sold up to 180% AMI households according to the following:
    - i. 40% sold up to 120% AMI households
    - ii. 30% sold up to 140% AMI households
    - iii. 30% sold up to 180% AMI households
4. Exceptions:
  - a. If 3 or fewer Affordable Housing Units are required by this Article, then the first unit required will be a Category II unit and the second unit required will be a Category III unit and the third unit will be a Category I unit.
  - b. When the number of required Mitigation Units in a particular category result in a fraction, then round up or down to the nearest whole number, without increasing the total number of Mitigation Units required.

**B. Initial Sales Price.**

The initial sales price for each Mitigation Unit shall be calculated by the GCHA and the BOCC based on the following assumptions:

1. Principle, interest, mortgage insurance, taxes, homeowners' insurance, and Homeowner Association dues not to exceed 33% of gross monthly household income based on family size determined by the chart below. 80% of that amount is estimated for principal and interest and 20% is estimated for mortgage insurance, taxes, homeowners' insurance, and Homeowner Association dues. If actual costs are available, they may be used in lieu of this 80:20 ratio.
2. A 30-year mortgage based on a trailing interest rate calculated on an average of the previous 18 months' interest rates. The GCHA shall calculate the trailing interest rate.
3. The price shall include a landscaped lot.
4. Number of persons by bedroom configuration used to establish sales price:

Number of Bedrooms, Nondetached Structure	AMI Household Size for Initial Sales Price Determination
Studio	1 person household
1	2 person household
2	2.5 person household
3	3 person household
4	3.5 person household

Number of Bedrooms, Single-Family, Detached	AMI Household Size for Initial Sales Price Determination
2	3 person household
3	4 person household
4	5 person household
5	6 person household

5. HOA dues for Mitigation Units shall be prorated as compared to HOA dues owed by market rate unit owners. HOA dues for Mitigation Units shall be prorated by either average Lot Size or average unit size in comparison to market rate lots and/or units, whichever results in the lower cost for the Mitigation Units, or by a formula proposed by the Applicant and approved by the GCHA and the BOCC. If prorated HOA dues are not possible, then the HOA dues for Mitigation Units shall be a maximum of 75% of the HOA dues owed by market rate unit owners.
  - a. As of the effective date of this Article, no HOA shall assess against a Mitigation Unit any fees associated with areas and facilities that require additional membership fees to access.
  - b. Regardless of how the HOA fees are calculated, the fees for Mitigation Units shall not exceed 75% of HOA dues paid by market rate owners, excluding fees associated with areas and facilities that require additional membership fees to access.

**8-303. EXECUTION OF DEED RESTRICTION BY APPLICANT.**

**A. Deed Restrictions.**

All Mitigation Units will be subject to a perpetual Deed Restriction.

1. Deed Restriction. The form of Deed Restriction must be approved by the GCHA.
  - a. The Applicant must execute and record a Deed Restriction prior to release of the Building Permit in a form satisfactory to the GCHA. This ensures that the Deed Restriction will run in perpetuity with the unit. At the time of Certificate of Occupancy, the Deed Restriction shall be amended, if necessary, to reflect changes approved by the GCHA. The original executed and recorded Deed Restriction shall be returned to the GCHA.
  - b. The Deed Restriction must include a limit on annual appreciation of a unit of either the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100), not seasonally adjusted, or 3% simple interest, whichever is greater, plus the cost of Permitted Capital Improvements (see section 8-304). The Maximum Resale Price shall be no more than 5% simple interest, plus the cost of Permitted Capital Improvements. The Maximum Resale Price will be determined by the GCHA in accordance with this Article.

(PP) Purchase Price

(PPCPI) CPI at the date of purchase

(NMO) Number of months owned

(CCPI) Current CPI

3% Formula =  $.03 \times PP / 12 \times NMO + PP = \text{Base Resale Price}$

CPI Formula =  $PP / PPCPI \times CCPI = \text{Base Resale Price}$

5% Formula =  $.05 \times PP / 12 \times NMO + PP = \text{Base Resale Price}$

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- c. The deed restriction shall require that the Mitigation Unit be used exclusively as a primary residence.
      - d. The deed restriction shall prohibit the use of a Mitigation Unit as a Short-Term Rental.
    2. Memorandum of Acceptance. When a qualified buyer purchases the property and there is a transfer of the deed for the property, the buyer must execute a Memorandum of Acceptance of the Deed Restriction. This ensures that the buyer is aware of the Deed Restriction and Inclusionary Zoning Guidelines. The original executed and recorded Memorandum of Acceptance shall be returned to the GCHA.
    3. Promissory Note and Deed of Trust. The buyer must execute and record a Promissory Note between the GCHA and the buyer to enforce the County's interest in the property, and a Deed of Trust signed by the buyer. This Promissory Note shall be in a subordinate position to any other Promissory Note required for purchase of the property. This Promissory Note and Deed of Trust shall not be recorded in first position.

## **DIVISION 4. FEE WAIVERS AND INCENTIVES FOR HOUSING AVAILABILITY MITIGATION**

### **8-401. FEE WAIVER AND INCENTIVES.**

Any Development proposing to create one or more Mitigation Units as part of the Development may be eligible for the following fee waivers and incentives:

#### **A. Traffic Impact Fee Waiver.**

The County shall waive traffic impact fees for a Development that constructs Mitigation Units.

#### **B. Building Permit Fee Waiver.**

The County shall waive the building permit review fees for the construction of Mitigation Units.

#### **C. Density Bonus.**

The County may grant a density bonus for any Development in the Residential Suburban (RS) and Residential Urban (RU) Zones that are also within the Urban Growth Areas that construct deed restricted units in accordance with Table 3-201 Zone District Dimensions and Section 7-701(A) Accessory Dwelling Units.