

the property shall pay the then-applicable in-lieu fee described in Section 49450.C, Payment of in-lieu fee.

SECTION 49440. CALCULATION OF AFFORDABLE HOUSING STANDARDS FOR RESIDENTIAL DEVELOPMENT (AMD 07-0019)

- A. **Required Affordable Housing Percentage Twenty-five Percent Requirement.** Unless exempted pursuant to Section 49430, Exemptions, a minimum of twenty-five percent (25%) of all residential development shall consist of affordable housing as determined by the formula in subsection B, below.
- B. **Formula for Calculation.** The total number of proposed residential units (both affordable housing and free market units, and including units on noncontiguous parcels) multiplied by the applicable occupancy contained in Table 49440.B, Number of Persons Housed Per Unit, shall equal the total number of occupants of the development. The number of occupants of the required affordable housing units shall be at least twenty-five percent (25%) of the total number of occupants of the development. In instances where residential subdivisions are proposed without specific dwelling units, the applicant shall project the characteristics of the dwelling units based on the average sizes and numbers of bedrooms of residential units in existing subdivisions of comparably sized and valued lots within Teton County. The Board of County Commissioners shall approve the projected mix of dwelling units based on comparable developments in Teton County as part of its review of a Housing Mitigation Plan pursuant to the procedures and standards of Section 49460, Housing Mitigation Plan.

TABLE 49440.B.	
NUMBER OF PERSONS HOUSED PER UNIT	
Number of Bedrooms in Unit	Minimum Number of Occupants
Studio	1
One	1
Two	2
Three	3
Four	4

SECTION 49450. METHOD FOR PROVIDING AFFORDABLE HOUSING (AMD 08-0001 & AMD 08-0017)

Applicants/Developers shall propose how they will satisfy the affordable housing standards established in Section 49440, Calculation of Affordable Housing Standards for Residential Development, by submitting a Housing Mitigation Plan pursuant to the procedures and standards of Section 49460, Housing Mitigation Plan. Such a plan shall specify how the affordable housing standards of Section 49440, Calculation of Affordable Housing Standards for Residential Development, will be met by one (1), or a combination of the following ways established by this Section. Unless the County requests an alternative approach that it believes will better promote the efficient provision of affordable housing, an applicant/developer will be required to (a) provide affordable housing units on-site; and if that is not practical, then (b) provide affordable housing units off-site, and if no acceptable off-site location can be identified and provided, then (c) convey developable land suitable for construction of affordable housing

to the county, and if that is not practical, then (d) pay an in-lieu fee, all as described below. Conveyance of land and payment of fees are not preferred methods of performing the obligations created by this division, and will not be approved unless on-site and off-site construction of affordable housing units is impractical.

A. Production of New Units

1. **General.** An applicant/developer shall develop or ensure the development of affordable housing units on site as part of the proposed development, unless it is demonstrated that the provision of affordable housing on the site is impractical pursuant to Subsection 49450.A.2, Not Required if Impractical, below, or unless the Board of County Commissioners, or the Planning Director in the case of a minor development, determines that a vital community housing goal or housing need can be better addressed with an alternative method of performance pursuant to Subsection 49450.A.3, Not Required if County Requests Alternative, below.
2. **Not required if impractical.** An applicant/developer shall not be required to develop or ensure the development of on-site affordable housing units as part of the development if it is demonstrated that such development is impractical. The development of affordable housing on-site shall be considered impractical if it can be demonstrated that:
 - a. The number of units required is less than one (1) unit; or
 - b. The development of affordable housing is tied to a federal or state funding source which requires proximity to certain facilities or services which cannot be met on site; or
 - c. Development of affordable housing on site would be inconsistent with one (1) or more of the goals of the Jackson/Teton County Comprehensive Plan.
3. **Not required if County requests alternative.** Where the Board of County Commissioners, or the Planning Director in the case of a minor development, determines that there is a vital community goal or need which can be better addressed by providing units off-site, then alternative methods of performance may be considered. Alternatives include, in the following order of priority: (a) construction of affordable housing units off-site in a location meeting the standards of Subsection 49450.A.4.d.2, Oversize Units, below; (b) conveyance of land pursuant to Subsection 49450.B, Conveyance of Land, below; or (c) payment of an in-lieu fee pursuant to Subsection 49450.C, Payment of In-Lieu Fee, below. The Board of County Commissioners, or the Planning Director in the case of a minor development, may also waive the requirement for on-site performance where there is an opportunity to combine the required affordable housing from more than one (1) proposed development in a location that is consistent with the goals of the Jackson/Teton County Comprehensive Plan, and the combination of affordable housing would better address the affordable housing needs of the County.
4. **Requirements for units developed.** The affordable housing units developed as part of the development shall meet the following requirements.
 - a. **Restriction.** Required affordable housing units shall be restricted to sales or rental terms and occupancy limitations, designed to keep the units affordable in perpetuity.
 - 1) **Initial sale price.** The TCHA shall determine the initial sale price of individual affordable housing units so that based on a thirty (30) year mortgage and prevailing interest rates, the unit will not exceed thirty percent (30%) of the yearly gross income of the minimum number of people that could be housed in the unit based upon the minimum occupancy standards

under the TCHA Guidelines, as amended from time to time. Mortgage costs shall include principal, interest, taxes, insurance, private mortgage insurance, homeowners' association or property owners' association dues, and ground lease or condominium association fees. Sales prices may be adjusted by TCHA at the time of initial sale or rental according to current HUD income limits for the relevant income category established in Section 49450.A.5.B, below.

- 2) **Initial unit rents.** The TCHA shall determine initial unit rents so that the rent and utilities for the unit will not exceed thirty percent (30%) per month of the annual gross income of the minimum number of people that could be housed in the unit based upon the occupancy standards under the TCHA Guidelines, as amended from time to time. Rental rates may be adjusted by TCHA at the time of initial sale or rental according to current HUD income limits for the relevant income category established in section 49450.A.5.B, below.
 - 3) **Deed restriction.** In order to keep the units affordable in perpetuity, the required affordable housing units shall be subject to permanent deed restrictions. All restrictions are subject to the approval of the TCHA. The deed restrictions must be recorded against the land prior to the issuance of a certificate of occupancy by the county for both the affordable component and the market rate component of the development. The form of deed restriction shall be submitted as part of the Housing Mitigation Plan required by Section 49460, Housing Mitigation Plan.
 - 4) **Selection of purchaser(s).** The TCHA shall be responsible for the qualification of the initial and all subsequent purchasers of individual affordable housing units to owner/occupants (but not for sales of deed restricted rental units where the buyer will not be the occupant of the unit). The method of selection shall be in accordance with TCHA Guidelines and adopted policies and procedures.
 - 5) **Selection of renter(s).** The developer shall be responsible for the qualification of initial renters for affordable units, or shall make such agreements with the owner as necessary to ensure that the developer complies with the qualification requirements as set forth by the TCHA. Tenants shall be re-qualified on an annual basis and/or lease renewal periods, by the developer or subsequent landlord, and such entity shall provide re-certification documentation on an annual basis and shall accommodate on-site monitoring of both records and units as required by the TCHA.
 - 6) **Marketing.** The marketing method for the initial and all subsequent sales of individual affordable housing units shall be in accordance with TCHA guidelines and adopted policies and procedures. The TCHA shall receive a 2% facilitation fee upon all sales of individual required owner occupied affordable housing units to owner/occupants (but not for sales of deed restricted rental units where the buyer will not be the occupant of the unit) as an administrative charge to cover costs of administering such sales (*AMD 08-0011*).
- b. **Required affordable income categories.** The annual gross income and the number of persons that will be living in the unit (household) shall be used to classify applicants into "income categories."

- 1) **Income categories.** The income categories will correspond to the “income limits” for Teton County, WY published annually by the U.S. Department of Housing and Urban Development (HUD) in the Federal Register. The HUD income limits in effect at the time the applicant/developer submits its Housing Mitigation Plan will be used for the proposed development’s unit sales price and/or rent calculations. Income categories are summarized in Table 49450.A.4.b.(1), Maximum Household Income Categories.

TABLE 49450.A.4.b.(1)	
MAXIMUM HOUSEHOLD INCOME CATEGORIES	
Income Category	Teton County Area HUD Annual Income Limits
CATEGORY 1 (Formerly Affordable 1)	Up to 80% of median family income
CATEGORY 2 (Formerly Affordable 2)	Up to 100% of median income
CATEGORY 3 (Formerly Affordable 3 Attainable 2)	Up to 120% of median income
CATEGORY 4 (Formerly Attainable 3)	Up to 140% of median income
CATEGORY 5 (Formerly Attainable 4)	Up to 175% of median income

- 2) **Use of income categories.** All affordable housing units required to be provided pursuant to this Division 49400, Residential Affordable Housing Standards, shall be in income categories 1, 2, or 3, as set forth below. Income categories 4 and 5 are used for categorization of affordable housing units provided through the use of Planned Unit Developments pursuant to Section 2540, Planned Unit Development (PUD) District for Affordable Housing, or other procedures that are not required to comply with the requirements of this Division.
- 3) **Required portion per income category.** The required affordable portion of each residential development shall provide housing units for persons in each of category 1, category 2, and category 3 as described below, and in the percentage amounts stated below. The housing units to be provided for persons in each income category shall be determined by the TCHA, in accordance with the housing unit types, minimum sizes and maximum prices described in the TCHA Guidelines. Fractions in each category shall be combined to create a whole person. Payment of an in-lieu fee, in accordance with Subsection 49450.C, Payment of In-Lieu Fee, shall be made when the number of units required is less than one or by decision of the Board of County Commissioners, or the Planning Director in the case of a minor development, of this alternative.

- a) **Category 1.** No less than thirty-three percent (33%) of the required affordable housing units shall be priced for families in category 1. Families in category 1 are those earning eighty percent (80%) or less of the median income for a Teton County family of the same size.
 - b) **Category 2.** No less than thirty-three percent (33%) of the required affordable housing units shall be priced for families in category 2. Families in category 2 are those earning at or below one hundred percent (100%) of the median income for a Teton County family of the same size.
 - c) **Category 3.** No more than thirty-three percent (33%) of the required affordable housing units shall be priced for families in category 3. Category 3 requirements may also be applied to a Planned Unit Development that includes affordable housing units (*See* Section 2170). Families in category 3 are those earning at or below one hundred and twenty percent (120%) of the median income for a Teton County family of the same size.
 - d) **Category 4.** No affordable housing units required by this Division shall be in category 4. Category 4 requirements may be applied to a Planned Unit Development that includes affordable housing units (*See* Section 2170). Families in category 4 are those earning at or below one hundred and forty percent (140%) of the median income for a Teton County family of the same size.
 - e) **Category 5.** No affordable housing units required by this Division shall be in category 5. Category 5 requirements may be applied to a Planned Unit Development that includes affordable housing units (*See* Section 2170). Families in category 5 are those earning at or below one hundred and seventy-five percent (175%) of the median income for a Teton County family of the same size.
- 4) **Units by bedroom size.** TCHA shall approve the number of affordable units by bedroom size to be provided for each income category.
- c. **Location**
- 1) **General.** The affordable housing units shall be located on the same site as the free market portion of the development, unless (a) the construction of all or a portion of the affordable units on-site is shown by the applicant to be impractical pursuant to those standards in Subsection 49450.A.2, Not Required if Impractical, above, or (b) the Board of County Commissioners, or the Planning Director in the case of a minor development, request an alternative site pursuant to Subsection 49450.A.3, Not Required if County Requests Alternative, above.
 - 2) **Off-site location.** Approval for an off-site location within Teton County shall be made by the Board of County Commissioners, or the Planning Director in the case of a minor development, as part of the review of the Housing Mitigation Plan. Approval of an off-site location for the affordable housing units shall be based on the following criteria:
 - a) Proximity of the proposed off-site location to employment centers and infrastructure;

- b) Desirability of the off-site location for residential uses;
 - c) Compliance of the proposed off-site location with the Jackson/Teton County Comprehensive Plan and these Land Development Regulations;
 - d) The ability of the proposed off-site location to accommodate the dwelling units within the permitted maximum gross density;
 - e) Compliance with requirements of federal or state funding source; and,
 - f) Other pertinent concerns to the Board of County Commissioners, or the Planning Director in the case of a minor development.
- d. **Size and materials standards for affordable housing units.**
- 1) **Size limitations.** Affordable housing units shall comply with the minimum size requirements established within the TCHA Guidelines, policies, and procedures.
 - 2) **Oversize units.** Applicants may choose to construct larger units, but the allowable sale prices for such larger units shall not exceed the sale/rental price set by the TCHA for a unit meeting the minimum size requirements.
 - 3) **Materials.** Affordable housing units shall be constructed with building materials having a compatible exterior style to other units in the development. Each affordable housing unit shall include, at a minimum, a fully equipped kitchen and bathroom, areas for living and sleeping and designated areas for storage. Units shall comply with all applicable minimum standards, all building codes and other development codes adopted by Teton County, as well as such standards as defined in policies and procedures adopted by the TCHA.
 - 4) **Design features.** Affordable units shall have design features that are comparable to other market units in the development including, but not limited to: decks, patios, parking, fencing and landscaping.
- e. **Qualified applicants.** The TCHA is hereby authorized to establish standards, policies, and procedures for the qualification of applicants for affordable housing, and for the periodic re-qualification of occupants of rental affordable housing, required to be provided by this Division 49400, Residential Affordable Housing Standards, and for other affordable housing provided through a Planned Unit Development or other process. Such standards, procedures, and policies shall be set forth in the TCHA Guidelines, shall be consistent with this Division, shall be designed to promote the efficient and equitable operation of affordable housing within Teton County, and may be amended from time to time by the TCHA Board of Commissioners without further approval by the Board of County Commissioners.
- f. **Occupancy standards.** Maximum occupancy for affordable housing units shall be in accordance with the building codes adopted by Teton County.
- g. **Timing of occupancy.** The affordable housing units shall be ready for occupancy no later than the date of the initial occupancy of the free market portion of the project, provided that the TCHA and the applicant/developer have identified qualified buyers or renters, whichever is applicable. If the free market portion is to be developed in phases, then the affordable housing units shall be developed in proportion to the phases of the free market portion, in that case, the Board of County Commissioners may also require the applicant/developer to sign a timing agreement covering the

affordable housing units. The developer, with the support of the TCHA, shall make a good faith effort to market the required affordable housing units.

- h. **Compliance.** The TCHA shall be responsible for monitoring compliance with the above Subsections 4a through 4h and shall ensure that the above requirements are met. The TCHA Board of Commissioners is hereby authorized to adopt standards, policies, and procedures for monitoring compliance. Such standards, policies, and procedures shall be set forth in the TCHA Guidelines, shall be consistent with this division, shall be designed to promote the efficient and equitable operation of affordable housing within Teton County, and may be amended from time to time by the TCHA Board of Commissioners without further approval by the Board of County Commissioners. The TCHA shall bring notice of any and all violations to the attention of the Board of County Commissioners and the Planning Director, and shall follow such procedures as established in these Land Development Regulations.
- 1) **Non-compliance by applicants/developers.** The TCHA shall bring issues of non-compliance to the attention of the County Commissioners with recommended actions to be brought against the applicant/developer.
 - 2) **Non-compliance by applicants/buyers desiring to purchase a unit.** Issues of non-compliance by applicants/buyers desiring to purchase an affordable unit shall be the responsibility of the TCHA. Actions by the TCHA may include, but are not limited to: disqualification and prosecution for fraud.
 - 3) **Non-compliance by sellers.** Issues of non-compliance by sellers of affordable units (for initial or subsequent sales) shall be the responsibility of the TCHA. Actions by the TCHA may include, but are not limited to issuance of an affidavit affecting title and prosecution for fraud.
 - 4) **Reimbursement for compliance enforcement.** The TCHA shall be reimbursed by the property owner for any attorney's fees and/or other costs associated with the compliance enforcement.

B. Conveyance of Land.

1. General. If the applicant/developer has demonstrated that provision of affordable housing units is impractical pursuant to Subsection 49450.A.2, Not Required if Impractical, and the County has determined that land within the proposed residential development or other location is appropriate for the development of affordable housing units, the applicant shall convey land in fee simple estate to the Board of County Commissioners. The fair market value of the land conveyed shall be at least equal to the equivalent in-lieu fee, as calculated pursuant to Subsection 49450.C, Payment of In-Lieu Fee, for all required affordable housing units for which units are not provided pursuant to Subsection 49450.A, Production of New Units.
2. **Establishment of fair market value.** Fair market value shall be established by a licensed professional real estate appraiser approved by the Board of County Commissioners and paid for by the applicant/developer.
 - a. **Preliminary value.** Fair market value shall be established on a preliminary basis at the time the Housing Mitigation Plan is reviewed, pursuant to Section 49460, Housing Mitigation Plan.
 - b. **Final value.** Fair market value shall be confirmed at the time of Final Plat approval for the free market portion of the development. For projects that do not require a plat, value shall be confirmed at the time of Final Development Plan approval.

- c. **Value net of commission.** Fair market value shall be net of any customary real estate commission for the sale of land.
3. **Time of dedication.** Land conveyance shall occur concurrently with approval of the Final Development Plan for the project, unless other arrangements are made, with financial assurances, both of which shall be acceptable to the Board of County Commissioners.
4. **Conditions of approval.** Acceptance of the conveyance of any land in satisfaction of all or a part of the obligations imposed by this Division 49400, Residential Affordable Housing Standards, shall be at the sole discretion of the Board of County Commissioners. The Board of County Commissioners shall request a recommendation from TCHA prior to making a decision as to whether to accept any such conveyance. The Board of County Commissioners may require any or all of the following, as a condition of approval and at the cost of the applicant/developer.
 - a. **Proof of ownership.** The applicant shall provide proof of ownership, free of any liens, or proof of legal standing in the title to the property, including a complete title report.
 - b. **Location.** The land must be located within Teton County and in an area determined suitable by the Board of County Commissioners. The TCHA shall provide the Board of County Commissioners with a recommendation regarding the suitability of the location.
 - c. **Density.** The land must be available to support housing at a density acceptable to the Board of County Commissioners and have a base site area that will support the construction of the number of affordable units that the applicant is required to produce for the community.
 - d. **Infrastructure.** The land 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 each lot or to the parcel, as applicable. In-lieu of requiring that the all such improvements be completed prior to conveyance of land, the Board of County Commissions may accept a bond in an amount sufficient to cover 125% of the estimated cost to complete the improvements. In the event the Board of County Commissioners agrees to accept a bond, said bond shall be submitted and administered pursuant to Subsection 5120.O, Performance Bond. In no event shall the bonded improvements be completed more than one (1) year after the date of conveyance of property to Teton County.
 - e. **Suitability.** A soils report and/or other reports may also be required by the Board of County Commissioners. These reports stipulating whether the parcel is suitable for the type of construction contemplated and any special construction techniques necessary for its development, shall be prepared by a qualified engineer or other consultant deemed qualified by the Board of County Commissioners.
 - f. **Assurance of permits.** All necessary permits or preliminary approval from federal, state and local agencies to authorize development on the applicant, or (2) a bond provided to the County by an institution acceptable to the County, and on terms acceptable to the County, or (3) an irrevocable letter of credit provided to the County by an institution acceptable to conveyed land may be required by the Board of County Commissioners.

- g. **Improvements agreement and covenants.** An improvement agreement and protective covenants shall be recorded against the property to be conveyed, prior to the conveyance, incorporating the conditions stated in Subsections 4d and 4f above.
- 5. **Subsequent conveyance permitted.** The Board of County Commissioners may develop, or cause to be developed, conveyed land as affordable housing, but shall also be permitted to sell the land or lot(s) on a non-price-restricted basis, pursuant to the following criteria.
 - a. **Interest bearing account.** All proceeds from the sale of the land shall be placed in an interest bearing trust fund or escrow account.
 - b. **Authorized uses of proceeds.** The proceeds from the sale, and any interest accrued, shall be used only for the purposes of planning, subsidizing or developing affordable housing.
 - c. **Conveyance to TCHA.** In the event Teton County conveys such land to TCHA, the use of such land shall be subject to the same restrictions set forth in Subsections 5a and 5b above, and TCHA is hereby authorized to use or further convey such lands subject to such restrictions.

C. **Payment of In-Lieu Fee. (AMD 08-0001)**

- 1. **General.** If (a) the applicant/developer is required to provide less than one (1) affordable housing unit, or (b) the Board of County Commissioners, or the Planning Director in the case of a minor development, determines that it is impractical for the applicant/developer to construct affordable housing units pursuant to Subsection 49450.A, Production of New Units, and impractical for the applicant/developer to convey land in satisfaction of its obligations pursuant to Subsection 49450.B, Conveyance of Land, then the applicant shall pay an in-lieu fee as required by this Division. The fees set forth below shall be in effect through the April following their adoption. By resolution, during that April, and each subsequent April, the Board of County Commissioners shall update the fees and Subsection 49450C.3, Residential Development Payment, to reflect the updated fee amounts and applicable year of the fees. The updated fees shall be applicable to any application that has not been declared sufficient as of May 1 of the year of approval of the update.
- 2. **Calculation of the in-lieu fee.** The Teton County Housing Authority shall publish a current in-lieu fee schedule, containing the current fees and the calculation of those fees, annually, following the update of the fees. The fee, for each income category of person to be housed, shall be calculated using the equation and data sources specified below. The fee for each income category shall be equal to the average of the “per-person affordability gap” of a one, two, and three bedroom unit in that income category. The “per-person affordability gap” for a unit with one, two, or three bedrooms shall be defined by subtracting the maximum resale price of an affordable unit with that many bedrooms from the average sales price of a condominium in the Town of Jackson with that many bedrooms; and then dividing the difference by the number of occupants of a unit with that many bedrooms.

$$\text{Category X in-lieu fee} = \frac{\frac{A_1 - B_1}{C_1} + \frac{A_2 - B_2}{C_2} + \frac{A_3 - B_3}{C_3}}{3}$$

A_n = the average sales price of a condominium in the Town of Jackson with n bedrooms in the calendar year previous as reported by the “The Hole Report” by Jackson Hole Real Estate and Appraisal, or an approved equal market summary.

B_n = the maximum affordable sales price of a Category X unit with n bedrooms as defined below and further described in Article XIII, Definitions.

$$B_n = 158.22 * (I_{Xn} - 150 - T - Y_n)$$

158.22 = the multiplier to account for mortgage rate, period and down payment.

I_{Xn} = 30% of the maximum monthly income of a category X household of C_n people.

150 = \$150 to account for homeowners association dues.

T = estimated monthly taxes.

Y_n = estimated monthly insurance for an n bedroom unit.

C_n = the number of occupants of an n bedroom unit as established by Table 49440.B, Number of Persons Housed Per Unit.

3. **Residential development payment.** Payment of the in-lieu fee for residential developments shall be made for the number of persons in each category required to be provided with an affordable housing unit, but for whom an affordable housing unit is not provided by the proposed development, pursuant to Subsection 49450.A, Production of New Units, or for which land is not conveyed pursuant to Subsection 49450.B, Conveyance of Land. The in-lieu fee shall be calculated based on the following dollar amounts:

- a. **2008 Category 1.** For each Category 1 person required to be housed, but for whom a housing unit or land is not provided, a fee payment shall be made in the amount of \$143,716.
- b. **2008 Category 2.** For each Category 2 person required to be housed, but for whom a housing unit or land is not provided, a fee payment shall be made in the amount of \$116,877.
- c. **2008 Category 3.** For each Category 3 person required to be housed, but for whom a housing unit or land is not provided, a fee payment shall be made in the amount of \$90,038.

Where an in-lieu fee is due, it shall be calculated based on a rotation (not an average) of the fees for the three (3) income categories, beginning with the fee for a category 1 person, as set forth in Table 49450.C.2, Calculation of In-Lieu Fee

TABLE 49450.C.2	
CALCULATION OF IN-LIEU FEES	
Person (or fraction of a person) For Whom An Affordable Housing Is Not Provided	Amount
1 st Person	Fee For Category 1 Person
2 nd Person	Fee For Category 2 Person
3 rd Person	Fee For Category 3 Person
4 th Person	Fee For Category 1 Person
5 th Person	Fee For Category 2 Person

6 th Person	Fee For Category 3 Person
Etc.	

4. **In-lieu fee due at building permit.** An applicant for a building permit to construct or add on to one (1) single-family dwelling and/or any accessory structures on a lot or parcel for which the affordable housing requirement, pursuant to this Division, has not already been met shall pay an in-lieu fee per habitable square foot of proposed construction.
 - a. **Pre-existing lots and parcels.** On lots and parcels created prior to the effective date of this Division, the in-lieu fee per square foot of proposed habitable construction shall be equal to twenty-five percent (25%) of the average of the category 1, category 2, and category 3 in-lieu fees, divided by 5,500.
 - b. **Lots and parcels created without mitigation.** On lots and parcels created since the effective date of this Division the in-lieu fee per square foot of proposed habitable construction shall be equal to the category 1 in-lieu fee, divided by 5,500.
 - c. **Exempt habitable floor area.** The following habitable floor area shall be exempt from the calculation of the fee required by this subsection.
 - (1) **2,500 habitable square feet.** A total of two thousand five hundred (2,500) square feet of habitable floor area on a lot or parcel are exempt from the required in-lieu fee.
 - (2) **Existing habitable floor area.** Existing habitable floor area in excess of two thousand five hundred (2,500) square feet is also exempt from the required in-lieu fee.

5. **Time of payment and use of funds.** Payment of the in-lieu fee shall be made to the County Treasurer concurrently with the approval of the Final Development Plan for the project, unless other arrangements are made, with financial assurances, both of which shall be acceptable to the Board of County Commissioners, or the Planning Director in the case of a minor development.
 - a. **Interest bearing account.** The County Treasurer shall transfer the funds to an interest bearing trust fund.
 - b. **Authorized uses of fees.** The funds, and any interest accrued, shall be used only for the purposes of planning, subsidizing, or developing affordable housing units.
 - c. **Conveyance to TCHA.** In the event Teton County conveys any such funds to TCHA, or conveys any funds from the affordable housing trust fund to TCHA, the use of such funds shall be subject to the restrictions set forth in Subsections 4(a) and 4(b) above, and TCHA is hereby authorized to use such funds subject to such restrictions.

6. **Refund of fees**
 - a. **Seven-year limit.** Fees collected pursuant to this Section 49450.C, Payment of In-Lieu Fees, may be returned to the then present owner of property for which a fee was paid, including any interest earned, if the fees have not been spent within seven (7) years from the date fees were paid, unless the Board of County Commissioners shall have earmarked the funds for expenditure on a specific project, in which case the Board of County Commissioners may extend the time period by up to three (3) more years.

- b. **Written request.** To obtain the refund, the present owner must submit a written request to the County Planning Director within one (1) year following the end of the seventh (7th) year from the date payment was received.
- c. **Payments determined.** For the purpose of this Section, payments collected shall be deemed spent on the basis that the first payment in shall be the first payment out.
- d. **Refunds for expired permits.** Any payment for a project for which a building permit has expired, due to non-commencement of construction, shall be refunded with interest if a request for refund is submitted to the County Planning Director within three (3) months of the date of the expiration of the building permit. All requests shall be accompanied by proof that the applicant is the current owner of the property and a copy of the dated receipt issued for payment of the fee.

SECTION 49460. HOUSING MITIGATION PLAN (AMD 08-0017)

A. **Housing Mitigation Plan Required.** An applicant shall propose how they will satisfy the affordable housing standards of this Division by submitting a Housing Mitigation Plan specifying how the affordable housing standards of Section 49440, Calculation of Affordable Housing Standards for Residential Development, will be met by compliance with the standards of Section 49450, Methods for Providing Affordable Housing.

- 1. **Content.** The Housing Mitigation Plan shall include the following:
 - a. **Requirement calculations.** Calculations determining the affordable housing standard that indicate each step of the calculation, from projected market value of each unit or lot to the resulting number and type of affordable units required and voluntarily provided.
 - b. **Method.** A description of the method by which housing is to be provided, in compliance with Section 49450, Method for Providing Affordable Housing.
 - c. **Unit descriptions.** A site plan and building floor plan (if applicable) for the required affordable housing units, illustrating the number of units proposed, their location, the number of bedrooms and size (in square feet) of each unit, the rental/sale mix of the development, the income categories for each unit to be developed, and the proposed sales price for each. A tabulation of this information shall also be submitted.
 - d. **Phasing plan.** If the affordable housing units are to be developed in phases, a phasing plan identifying when each unit will be constructed.
 - e. **Agreement and deed restriction.** If affordable housing units are proposed to be developed, a written agreement to execute and record deed restrictions provided by TCHA and as required by the TCHA Guidelines as well as a signed original of the deed restrictions to be recorded.
 - f. **Fee calculations.** If in-lieu fees are proposed, the calculations for determining the required fee amounts, pursuant to Subsection 49450.C, Payment of In-Lieu Fee, shall be submitted.
- 2. **Procedure.** A Housing Mitigation Plan shall be submitted by the applicant/developer to the Planning Director as part of the submittal requirements for a Development Plan application. Review of the Housing Mitigation Plan shall occur concurrently with the initial review of the free market portion of the Development Plan. The Housing Mitigation Plan shall be reviewed by the TCHA and the Planning Director, and the TCHA shall make

a recommendation to the Planning Director regarding the compliance of the Housing Mitigation Plan with this division and TCHA Guidelines. No Development Plan shall be approved by the Board of County Commissioners, or by the Planning Director in the case of a minor development, without complete review and approval of the Housing Mitigation Plan. The Board of County Commissioners, or the Planning Director in the case of a minor development, may require that some or all of the provisions of the Housing Mitigation Plan be incorporated into a housing mitigation agreement to be signed by the chair of the Board of County Commissioners, or the Planning Director in the case of a minor development, and the applicant. If a housing mitigation agreement is required, any Development Plan or plat related to the development shall not be finally approved until an agreement has been signed by both parties.

- B. **Review Standards.** The Board of County Commissioners, or the Planning Director in the case of a minor development, shall approve the Housing Mitigation Plan if it complies with the standards of this Division, addresses the need for affordable housing, and is consistent with the Comprehensive Plan.

SECTION 49470. INDEPENDENT CALCULATION

- A. **General.** An applicant may submit an application for independent calculation requesting modification to the following:
1. **Occupants.** The number of occupants to be housed by a proposed development to be used in place of the occupant generation requirements of Table 49440.B, Number of Persons Housed Per Unit;
 2. **Housing mix.** The mix of affordable housing to be provided by the development pursuant to Subsection 49450.A.3.b.(3); or
 3. **Percent of set aside/in-lieu fee.** The amount of affordable housing required to be provided, and/or the in-lieu fee amount.
- B. **Application Content.** The application for independent calculation shall be supported by local data and analysis, surveys, and/or other supporting materials that provide competent substantial evidence that supports the proposed modification.
- C. **Procedure and Standards.** The application for independent calculation shall be submitted and reviewed as part of the Housing Mitigation Plan pursuant to Subsection 49460.A.2, Procedure. If the materials and information supporting the application demonstrate by competent substantial evidence that there is a reasonable basis to modify the number of occupants to be housed, the housing mix, or the percent set aside for in-lieu fee, whichever is relevant, because of unique circumstances related to the proposed development, the Board of County Commissioners, or Planning Director in the case of a minor development, shall approve the independent calculation and make the relevant modification.

DIVISION 49500. DEVELOPMENT EXACTIONS

A development exaction is a requirement that a developer dedicate land for public use or improvements, or pay a fee in-lieu of dedication, with such fee being used to purchase land for public facilities or to construct public improvements needed to serve a proposed residential development.

- A. **Mandatory Dedication of Land.** The Board of County Commissioners shall require a mandatory dedication of land for parks, playgrounds, schools and other public purposes for all divisions of