

REGULAR MEETING

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. APPROVAL OF AGENDA
- V. PUBLIC COMMENT

Public comment is intended for members of the public wishing to address the Board of Trustees about matters that are not listed for discussion on the agenda. Comments will be taken under advisement by the Board but no decisions will be made. At its discretion, the Board may elect to place a matter raised under public comment on a future agenda for further discussion and possible action.
- VI. PRESENTATIONS
- VII. CONSENT AGENDA
  - a. Approval of minutes for the May 4<sup>th</sup>, 2021 Regular Meeting;
  - b. Approval of minutes for the May 18<sup>th</sup>, 2021 Special Meeting;
- VIII. BOARD INFORMATION ITEMS
  - a. Staff Reports
  - b. Check Detail Report for May 2021;
  - c. Budget to Actual Report for May 2021;
- IX. NEW BUSINESS
  - a. Approval of an independent contractor agreement with Richard E. Samson of the Samson Law Firm, PC for interim Town Attorney services;
  - b. Discussion of timeline for the hiring of a new Town Attorney for the City of Creede and role of the Town Manager in the selection/creation of an RFP;
  - c. Consideration and possible approval of City of Creede Ordinance 428 "AN ORDINANCE OF THE CITY OF CREEDE, A COLORADO TOWN, AMENDING CHAPTER 19 ("BUSINESS AND EVENT PERMITS"), ARTICLE

---

---

**OPEN TO THE PUBLIC**

POSTED 5/28/2021

1 (“SEASONAL OUTDOOR SEATING FOR FOOD SERVICE ESTABLISHMENTS IN THE CENTRAL BUSINESS DISTRICT”) TO ALLOW FOR THE SERVING OF ALCOHOL IN PERMITTED OUTDOOR SEATING AREAS SO LONG AS PROPER LIQUOR LICENSING IS OBTAINED FROM BOTH THE CITY OF CREEDE LIQUOR LICENSING AUTHORITY AND THE STATE OF COLORADO”;

- d. Consideration and possible approval of City of Creede Ordinance 429 “AN ORDINANCE OF THE CITY OF CREEDE, A COLORADO TOWN, AMENDING CHAPTER 9 (“DEVELOPMENT CODE”), ARTICLE 4 (“ZONE DISTRICTS AND OFFICIAL ZONING MAP”) OF THE CITY OF CREEDE CODE OF ORDINANCES TO PROHIBIT THE OPERATION OF MOBILE FOOD VENDORS NOT AFFILIATED WITH A SPECIAL EVENT”;
- e. Discussion and possible approval of amendments to the Group Benefits section of the City of Creede Employee Handbook to include a partial subsidy for the addition of family members to employee health plans;
- f. Discussion regarding the possible regulation of formula retail establishments in the City of Creede;
- g. Discussion regarding affordable housing in the City of Creede;
- h. Preliminary discussion of forthcoming application made by R. Scott Lamb to vacate a portion of Tenth Street;
- i. Consideration and possible approval of AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT IN THE AMOUNT OF \$390,238.51 with RMS utilities for phase 1A and 1B of the sewer collection system replacement project;

X. OLD BUSINESS

XI. BOARD TOPICS FOR FUTURE DISCUSSION

XII. EXECUTIVE SESSION

XIII. ADJOURN

---

---

OPEN TO THE PUBLIC

POSTED 5/28/2021

**BOARD OF TRUSTEES  
CITY OF CREEDE, COLORADO - A TOWN  
May 4, 2021**

REGULAR MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in regular meeting session at the hour of 5:35 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink, Trustee Dooley, Trustee Hannah, Trustee O’Connell, and Trustee Wall were present.

Trustee Kehr was not present.

Mayor Larson, presiding, declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Karen Lintott, Town Attorney  
Sarah Efthim, City Clerk

APPROVAL OF AGENDA

Town Manager Louis Fineberg requested items ‘a’ and ‘b’ under new business be switch.

Trustee Wall motioned to approve the agenda with the modification. Trustee Dooley second. Motion carried unanimously.

PUBLIC COMMENT

Heather Greenwolf made a comment of dates for a public events including clean up, dark skies, and other events in the upcoming summer season.

PRESENTATIONS

- a. Heather Greenwolf, Headwaters Alliance to inform Trustees about upcoming visit from Colorado Attorney General Phil Weiser on Monday, June 7th, tentatively set for 10:30-11:30am;

Heather Greenwolf gave a brief presentation about the Colorado Attorney General Phil Weiser’s visit to Creede and wondering if there were any talking points needing to be brought up at the meeting.

CONSENT AGENDA

- a. Minutes for the April 6<sup>th</sup>, 2021 Regular Meeting;
- b. Minutes for the April 20<sup>th</sup>, 2021 Special Meeting;
- c. Transfer of Ownership Liquor License Application DR 8404 made by Spar City 2 LLC dba The Creede Hotel located at 120 N. Main Street;
- d. Permit Application and Report of Changes DR 8442 made by Spar City 2 LLC to change, alter or modify premises located at 120 N. Main Street;
- e. Transfer of Ownership Liquor License Application DR 8404 made by 10,000 Miners LLC dba Pizzeria 8852' located at 105 North Main Street;

Trustee Dooley motioned. Trustee Hannah second. Motion carried unanimously.

BOARD INFORMATION ITEMS

## NEW BUSINESS

- a. Discussion regarding the possible adoption of regulations for itinerant vendors, including food trucks, with the City of Creede;

Town Manager Fineberg introduced the City's lack of regulations for itinerant vendors. Discussion followed with Mayor Larson, Trustee Dooley, and Trustee Wall voicing their concerns with allowing itinerant vendors. Town Manager Fineberg said he would bring the ordinance to the board for approval at the next meeting stating itinerant vendors were not allowed except for Fourth of July.

- b. Discussion and possible approval of Virginia Christiansen funding recommendations from the Virginia Christiansen Advisory Board;

City Clerk Sarah Efthim-Williamson gave a brief introduction to the Virginia Christensen Board 2021 distribution recommendations. Trustee Dooley and Trustee Wall brought up a past discussion that any nonprofits already receiving funding from the City, they were not eligible to apply for VC funding. The board decided since it was not currently a written policy, they would not let it affect the current distribution. Trustee Wall requested it be added to the bylaws to be approved at the next meeting.

Trustee Dooley motioned to approve the VC Board distribution recommendations. Trustee O'Connell second. Motion carried unanimously.

- c. Discussion and possible retroactive approval of a quote in the amount of \$126,400 for the purchase of 5300 linear feet of 16" HDPE21 pipe for the implementation of a micro-hydroelectric generation project;

Town Manager Fineberg gave a brief introduction. Trustee Wall motioned. Trustee Hannah second. Motion carried unanimously.

- d. Discussion and possible acceptance of a bid for the completion of Phase 1A of the City of Creede Sewer Collection System Rehabilitation project;

Town Manager Fineberg gave a brief introduction followed by Public Works Director Scott Johnson of the bids. Discussion followed, including Trustee Wall stating concerns of the construction interfering with local businesses during peak summertime. Trustee Wall requested to inform the affected businesses within the next two weeks.

Trustee Dooley motioned. Trustee O'Connell second. Motion carried unanimously.

- e. Discussion regarding potential projects for the SLVCOG mini-grant program;

City Clerk Efthim-Williamson gave a brief presentation on the feedback received from the City's Facebook post. Trustee Dooley motioned to move forward with applying for two SLVCOG mini-grants, one for bear-proof trashcans down Main Street and the second for replacing the bridge at the north part of the Up and Over trail, and if there are more opportunities to apply for more funding to look at replacing/adding planters out in front of businesses along Main Street.

- f. Discussion and possible approval of Ordinance No. 427 "AN ORDINANCE OF THE CITY OF CREEDE, COLORADO REPEALING 'CHAPTER 16 – ZONING' OF THE CITY OF CREEDE CODE OF ORDINANCES";

Trustee Wall motioned. Trustee Dooley second. Motion carried unanimously.

## OLD BUSINESS

## BOARD REPORTS

Trustee Dooley would like to approach the Planning & Zoning Board about affordable housing in city. Trustee Wall agreed the City of Creede needs housing year-round. Public Works Director Johnson had idea to discuss with Attorney General in June. City Manager Fineberg would like the city and county to work together on the housing needs. Trustee O'Connell brought requests from the community in reference to the Hydro-Electric Project taking place on the Westside, rather than Eastside, of the flume.

## ADJOURN

There being no further business to come before the Board, Trustee O'Connell motion to adjourn. Trustee Dooley second. Vote was unanimous. Mayor Larson declared adjourned at 6:51PM the motion carried.

Respectfully submitted:

/Sarah Efthim /

Sarah Efthim City Clerk

**BOARD OF TRUSTEES  
CITY OF CREEDE, COLORADO - A TOWN  
May 18, 2021**

WORK SESSION

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in regular meeting session at the hour of 5:32 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink, Trustee Dooley, Trustee Hannah, Trustee O’Connell, and Trustee Wall were present.

Trustee Kehr and Trustee Hannah were not present.

Mayor Larson, presiding, declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Sarah Efthim, City Clerk  
Madeline Westbrook, Deputy Clerk

APPROVAL OF AGENDA

Trustee Dooley would like to have housing discussion on June Agenda. Trustee Wall motioned approval of Agenda. Trustee Dooley second. Vote carried unanimously.

PUBLIC COMMENT

Trustee Brink requested information on City of Creede’s regulations/ zoning regarding franchises within the city. City Manager Fineberg will look into and will bring to future agenda.

PRESENTATIONS

- a. Follow up from Creede Repertory Theatre of the use of Seime Park for their 2021 Summer Season;

John D Antonio gave in-depth follow-up presentation on procedures for CRT Outdoor Summer Season 2021.

NEW BUSINESS

- a. Discussion regarding the possible reactivation of utility late fees;

After discussion amongst Trustees, fees will turn back on July 1<sup>st</sup>, 2021.

- b. Discussion regarding the possible amendment of the City’s outdoor seating ordinance to allow for the serving of alcohol in parklets/sidewalk seating areas;

Trustees will make decision and vote in June.

- c. Discussion regarding itinerant vendors within the City – update from Trustee Wall on student survey project;

Trustee Wall completed survey with Junior and Senior students at the Creede High School, surveying local business owners, employees, and community seeking opinion regarding itinerant vendors within Creede. Trustees to vote in June meeting.

- d. Discussion regarding the possible expansion of health insurance benefits for City’s employees to include a partial subsidy for family members;

City Clerk Efthim gave presentation on current health plan with additional health plan options researched. Will bring back to board for future agenda.

- e. Discussion regarding a timeline for the Town Attorney search;

Received application from Richard E. Samson. Planned to discuss at special meeting for following week with request of Samson attendance.

### BOARD REPORTS

Trustee Wall would like to re-word "BOARD REPORTS" to "BOARD DISCUSSION FOR FUTURE AGENDA ITEMS" for next meeting.

### ADJOURN

There being no further business to come before the Board, Trustee O'Connell motion to adjourn. Trustee Brink second. Vote was unanimous. Mayor Larson declared adjourned at 6:39PM the motion carried.

Respectfully submitted:

/Sarah Efthim /

Sarah Efthim City Clerk

#### Clerk's Office:

#### Financials:

- Payroll: Administration, BOT, Parks and Recreation PT
- Accounts Receivable/ Accounts Payable
- Filed quarterly taxes
- Participated in QuickBooks online training
- Worked with accounting firm and WSB regarding 2020 audit

#### Grants & Loans:

- Prepared and collected documents for grant funding reimbursement
- Submitted EIAF grant quarterly reports to DOLA
- Collected and filed invoices and checks for reporting
- Collected and filed grant reports from SGM to close out Willow Creek Micro-Hydro Power Facility
- Consolidated all SGM invoices and check copies associated with Phase 02 Wastewater for WPCRF Design and Engineering reimbursement
- Created GL report and submitted to CDPHE for WPCRF Design and Engineering Loan reimbursement

#### Other

- Updated Employee Handbook
- Deputy Clerk training
- Prepared minutes drafts
- Uploaded approved minutes to website
- Prepared meeting packets
- Posted agenda for meeting
- Processed and mailed utility bills
  - Did not charge late fees this month due to COVID-19
- Authorized and processed town events
- Aided in liquor license Transfer of Ownership for local businesses
- Processed liquor license applications
- Worked with local businesses interested in adding parklets
- Researched Healthcare benefits for employees and families
- Worked with tech company WSB regarding remote access for staff computers
- Posted to social media and city website regarding various town maintenance.
- Assisted PW Director with creating labels for envelopes to send water/sewer survey to all town residents

#### Virginia Christensen

- Communicated with VC board members and applicants to set up meetings, send follow-up reports, applications and answer questions
- Received and processed follow-up reports and applications
- Uploaded all documents and shared with VC board members



- Printed packets for board members requesting a physical packet
- Set up Town Hall for board members attending in person/virtually
- Held presentations/ Q&A April 26<sup>th</sup> starting at 9AM
- Held funding distribution meeting April 26<sup>th</sup> after presentations were completed
- Processed VC grant checks to applicants

**PUBLIC WORKS DEPARTMENT  
OPERATIONS REPORT  
May 2021**

**Streets:**

- Removed the V-box (anti-skid material spreading device) from the GMC truck
- Checked for fallen tree branches, etc. after high winds, removed as necessary, also straightened street signs and/or posts as needed
- Filled “potholing” holes on La Garita Ave, Cliff St, and Main Street as needed with cold patch asphalt and/or gravel material
- Utilized road grader and dump truck to regrade and apply gravel to the following streets/portions of streets: Bee McClure, Bee McClure Alley, Silver, Aspen, Capital, USFS Rd 502, and Gnome Hill Rd, due to affects from a 2-day rain event
- Utilized sweeper to clean the streets throughout the city whenever temperatures were within operating range
- Installed (9) senior graduate banners along Main Street
- Painted the parking space lines on the parking lot below Kentucky Belle

**Water System:**

- Repaired leaks in the waterlines and irrigation systems at each park, the systems were put online the week of 5/24
- Replaced 2” ball valve at Sieme Park, and 1 ½” ball valve and approximately 80 LF of 1-½” pipe at Hargrave’s Park at the baseball field
- Performed Chlorine sampling at various locations throughout the city to verify proper levels for treatment were continuing to be met
- Received new water meter pits, lids, insulation caps, etc. and put into inventory up at the N. Creede “storage building”
- Completed the Periodic Water Storage Tank Evaluations, replaced the weather seal on the entrance hatch on the Upper Tank
- Turned on the water fountain at Basham Park on 5/20
- Installed the new strainer on the check valve for booster pump #1
- Responded/marked CO 1 Calls when received
- Performed water meter readings at 3 required locations in the City
- PW Dept. turned on/off water valves/service lines upon request at locations throughout the city
- Performed water sampling as required by CDPHE throughout the Water System
- Replaced a 55 gallon drum of Sodium Hypochlorite at the WTP
- Sent out a Homeowners Water Survey to Creede water customers as part of the Lead & Copper evaluation requirements by the State (CDPHE). Over 300 surveys were mailed out, with a response of 123 as of Friday (5/28) morning
- Met with Colorado Rural Water Association (CRWA) to review and begin the new requirements set forth by the state for the Lead & Copper Rule for the year 2021, along with the Backflow Prevention/Cross Connection Control (BFP/CCC) 2021 requirements.

**PUBLIC WORKS DEPARTMENT  
OPERATIONS REPORT  
May 2021**

**Wastewater System:**

- Pressure washed the 2 manholes where flow meters are located prior to flow meter calibration to aid in the efficiency of this process
- The mag (Deep Creek Water and Sewer District) and ultrasonic weir (entire waste water/inlet to Lagoon#1) flow meters were calibrated as per CDPHE requirements, replacement costs are being sought as these units need to be updated
- Evaluated and worked with Weaver's Level Best in regards to a private sewer issue at 590A S. Main Street
- Cleaned the tubes leading to the SCADA system cabinet from the contact chamber and calibrated the SCADA pH sensor
- Replaced the sump pump in the contact chamber (that feeds the wastewater to the SCADA system sensors)
- Briefly ran the Chlorinating/Dechlorinating system due to high E. Coli levels reported at the effluent site
- Pulled and cleaned the water agitator/aerator at Lagoon Cell #3 due to high E. Coli levels, this fixed the problem
- Continued to take both Influent and Effluent Ammonia Readings at the WWTP facility to build historical data for SGM to be able to recommend whether or not that the proposed development under the Deep Creek Water & Sewer District will be handled appropriately by the present WWTP/Lagoon system
- Inspected and repaired the main/tap location at 107 USFS Rd 502
- Responded/marked CO 1 Calls when received
- Continued to meet with ORC (Operator Responsibly in Charge)/ Water Operator Fred Hand to discuss general functions and operations of the Water and Wastewater treatment systems, verifying that all samples are being submitted in a timely and correct manner. Preparations for the documentation needed for the SANITARY SURVEY, that will be taking place on June 16<sup>th</sup>, has continued.
- Continued to manually perform daily flow, temp. and Ph readings, as well as with the SCADA system, as required by the CDPHE
- Continued the application of BioScrubber PBN to the Northern most section of the WW system to aid in reducing any buildup of grease in the system

**Water & Wastewater Projects:**

- 1) Scott met with VEMCO Electric and their cement subcontractor to review each backup generator site. VEMCO is tentatively scheduled to start the installation process portion of the project the first week in June
- 2) The SCADA System has been installed, with the final install expected to be completed after the backup generator project is completed and the new soft start motors at the WTP are online.

**PUBLIC WORKS DEPARTMENT  
OPERATIONS REPORT  
May 2021**

**Storm Water:**

- Cleaned the cement drainage pan on W. 2<sup>nd</sup> St and the culvert grate on Loma at W. 2<sup>nd</sup> Street
- Opened/cleared culvert pipe inlets and outlets where needed as a result of a 2 day Rain/storm event

**Equipment/Assets:**

- Replaced a 4 way bulb on the front of the backhoe

**Parks & Buildings:**

- Mike Kukuk Tree Service removed trees and limbs on the City parcel on S. Main Street (HWY 149), tree limbs overhanging Hargrave's Park restrooms, as well as some ally locations throughout the city.
- Dead Tree limbs, branches hanging on other tree limbs and/or over Main Street, and a large section of a Cottonwood tree at Basham Park were also removed by Kukuk Tree Service as part of a separate project
- SGM & its structural engineer reviewed the North Creede building structure. It is their recommendation that it is not financially feasible to upgrade the building for use. Unfortunately, SGM was not able to present a cost to raze the building
- Finished the construction of the new ADA Gazebo ramp at Basham Park
- Adjusted the timers for the lights at Hargrave's and Basham Park
- Unloaded and moved the new rolled floor material for the Rec Center's weight room
- Dethatched the grass at Sieme and Hargrave's Park, aeration and fertilizing is scheduled to take place in the very near future
- Evaluated the walking trail from Sieme Park to W. 2<sup>nd</sup> Street
- Ordered and received the solar powered walking trail lights for this trail as well
- Cleaned and installed 2 coats of floor wax at the Basham Park Restrooms
- Continued to clean Basham and Hargrave's Park restroom facilities twice daily

**Upcoming Projects:**

1. The Phase 1 Sewer Upgrade Project has been awarded to RMS Utilities. The formal contract has been received and will need to be signed by the authorized person after B.O.T. meeting on Tuesday 6/1. The preconstruction meeting will be scheduled soon thereafter. This project is scheduled to commence in June of 2021.
2. The Micro-Hydro Project has been placed out for bid, a bid installation has been authorized, and the HDPE pipe is scheduled for delivery on Wednesday 6/2

**PUBLIC WORKS DEPARTMENT  
OPERATIONS REPORT  
May 2021**

**Special Events:**

- The Public Works Dept. provided traffic control barricades and bleachers for the “Taste of Creede” event sponsored by the Chamber of Commerce on Saturday 5/29 & the Arts Celebration on Sunday 5/30
- The Public Works Dept. closed Main St. from Kentucky Belle up to Wall St, including the west sidewalk, and a large portion of Basham Park during the Kukuk Tree Service tree trimming project on Wednesday 5/26
- A Part-Time weekend maintenance/cleaning position became available in the Public Works Department. Please help spread the word, and anyone interested can complete an application online or stop in the City Office

**Training/Education:**

- Scott attended a webinar on Sanitary Survey Preparation on 5/19

**TOWN OF CREEDE, COLORADO  
INDEPENDENT CONTRACTOR AGREEMENT**

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of June 2021 (the “Effective Date”) by and between the Town of Creede, Colorado, a Colorado municipal corporation (the “Town”) and Richard E. Samson of the Samson Law Firm, PC (“Contractor”).

**WHEREAS**, The Town desires to engage the services of Contractor to provide the legal services on an as needed basis; and

**WHEREAS**, the Contractor wishes to become associated with the Town as an independent contractor; and

**WHEREAS**, the parties wish to memorialize their contractual relationship.

**NOW, THEREFORE**, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

**SECTION 1: PARTIES**

- 1.1 Town. Town is a municipal corporation located in Creede, Colorado.
- 1.2 Contractor. Contractor is a private, independent business who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means, and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with any and all applicable federal, state, and municipal laws, regulations, and orders.
- 1.3 Intent of the Parties. By this Agreement, Town and Contractor intend for Contractor to be an independent contractor in relationship to the Town and not the Town’s employee or agent. Consequently, Contractor will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.
  - a) Contractor does not have the authority to act for the Town, or to bind the Town in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the Town. Contractor is not an agent of the Town and will not hold itself out to the public as an agent of the Town
  - b) Contractor has and hereby retains control of and supervision over the performance of Contractor’s obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.

- c) Town will not provide training or instruction to Contractor or any of its employees regarding the performance of Services hereunder.
- d) Neither Contractor, nor its employees, will receive benefits of any type from the Town.
- e) Contractor represents that it is engaged in providing similar services to the general public and is not required to work exclusively for the Town.
- f) All Services are to be performed solely at the risk of Contractor, and Contractor shall take all precautions necessary for the proper and sole performance thereof.
- g) Contractor will not combine its business operations in any way with the Town's business operations, and each party shall maintain their operations as separate and distinct.

#### **1.04 CONTRACTOR RESPONSIBILITIES**

In addition to all other obligations contained herein, Contractor agrees:

- a) To furnish all tools, labor, and supplies in such quantities and of the proper quality to professionally and timely perform the Services.
- b) To proceed with diligence and promptness and hereby warrants that such Services shall be performed in accordance with the highest professional workmanship and service standards in the field to the satisfaction of Town.
- c) To comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements, and codes which are applicable to the performance of the Services hereunder or to Contractor as an employer.

#### **SECTION 2. TERM, DUTIES, COMPENSATION**

2.01 Term. This Agreement shall commence on the Effective Date and shall remain in existence until terminated. In the event the Town Board does not approve the agreement retroactively on June 1, 2021 the agreement terminates and the Town will simply pay the Contractor for the work done.

2.02 Non-appropriation. No part of this Agreement shall be construed as creating a "multiple fiscal year obligations" as that term is defined by Article X, Section 20 of the Colorado Constitution. This Agreement may be terminated, without penalty, by the Town affirmatively declaring that it will not appropriate sufficient funds for the upcoming year. Notice of termination due to non-appropriation shall be provided no later than December 1 and shall be effective at the end of the fiscal year in which such notice was provided.

- 2.03 Duties and Compensation. The Contractor's will perform legal services for the Town on an as needed basis and will be compensated at the rate of \$250.00 per hour for those services. Contractor will provide monthly itemized bills for each matter on which work has been performed.
- 2.04 Background Check. The Town may, at its sole discretion, conduct a background check of Contractor, its owners and employees. Contractor agrees to execute any forms necessary to facilitate the background check.

### **SECTION 3. OPERATIONS**

- 3.01 Expenses: The Contractor shall not incur any expense or debt on behalf of the Town without written authorization.
- 3.02 Federal, State, and Municipal Laws and Regulations. Town and Contractor each agree to abide by all applicable federal, state, and municipal laws and regulations and rules.

### **SECTION 4. INSURANCE AND INDEMNITY PROVISIONS**

- 4.01 Insurance. Contractor shall maintain and keep in force during the term hereof one or more policies of liability insurance written by one or more responsible insurance carrier(s), which will include protecting and indemnifying the Town in the following amounts:
- a) Comprehensive General Liability - \$2,000,000 combined aggregate
  - b) Automobile Liability - \$1,000,000
  - c) Workers Compensation
  - d) Professional Liability - \$1,000,000
- 4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities as authorized by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or growing out of loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement. Contractor shall promptly pay to the Town, its successors or assigns, the full amount of any such costs, loss or damage which the Town, its successors or assigns may sustain or incur, or for which the Town, its successors or assigns, may become liable.



## SECTION 5. TERMINATION

- 5.01 Termination. Either party upon fifteen (15) days prior written notice may terminate this Agreement with or without cause.
- a) Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, or any causes beyond the control of such party.
  - b) Upon termination by either party, Contractor shall immediately cease any and all activities related to this Agreement, and shall return any keys, materials, tools, or other items provided by the Town to the contractor in conjunction with this Agreement.

## SECTION 6. MISCELLANEOUS

- 6.01 Nonexclusive Nature. This Agreement does not grant Contractor an exclusive privilege or right to supply Services to the Town. Town makes no representations or warranties as to a minimum or maximum procurement of Services hereunder.
- 6.02 Savings Clause. If any part, term, or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between Contractor and Town is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.
- 6.03 Conflicts of Interest; Non-hire Provision. Contractor is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. During the term of this agreement, the Contractor shall devote as much productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Town. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Town's employment, any employee, consultant, or contractor of the Town or hire any such employee, consultant, or contractor who has left the Town's employment or contractual engagement within one year of such employment or engagement.
- 6.04 Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement

will cause the Town irreparable injury and damage. The Contractor expressly agrees that the Town shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Town may have for damages or otherwise. The various rights and remedies of the Town under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Contractor waives any and all right to injunctive relief in the event of any dispute with the Town, and the Contractor's sole remedy in such a dispute shall be at law.

- 6.05 Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Town for any purpose. The Contractor is and will remain an independent contractor in their relationship to the Town. The Contractor shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**IMPORTANT NOTICE: INDEPENDENT CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME OTHER ENTITY. CONTRACTOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE TOWN.**

- 6.06 Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor certifies that (i) Contractor does not knowingly employ or contract with any illegal aliens; (ii) Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United State; and (iii) Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision, the Town may terminate this contract for cause and the Contractor shall be liable for actual and consequential damages to the State. A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law; and (ii) shall produce proper identification prior to the effective date of this Contract.

- 6.07 Ability to Bind the Other Party. Neither Town nor Contractor is the agent of the other, and neither shall have the right to bind the other by contract or otherwise, except as specifically provided in this Agreement.
- 6.08 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado.
- 6.09 Time. Time is of the essence of this Agreement and of each covenant thereof. In the computation of any period of time, which shall be required or permitted hereunder, for notice, or under any law for any notice or other communication or for the performance of any term, condition, covenant, or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case, the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 6.10 Recitals and Exhibits. The Recitals hereto and any Exhibits which may be attached to this Agreement are hereby incorporated herein and made a part of this Agreement by this reference; however, in the event of a conflict between provisions in this Agreement and any exhibits, the provisions in this Agreement shall control.
- 6.11 Attorney's Fees. If either party employs an attorney to enforce this Agreement, the party in default shall pay the prevailing party the reasonable expenses of the prevailing party, including but not limited to attorney's fees reasonably incurred whether occasioned by litigation or not.
- 6.12 Assignment and Subcontracting. Contractor may not delegate, assign or subcontract all or any part of its duties and obligations hereunder without obtaining the Town's prior written consent.
- 6.13 No Modification or Waiver of Conditions. Contractor may not waive or modify all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.
- 6.14 Merger of Understanding. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations, representations and agreements, whether written or oral, except as where noted. This Agreement may be modified only by a written document signed by both parties and approved by the Town Board at a public meeting.
- 6.15 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto and their respective successors and assigns.
- 6.16 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any

other breach or default in the performance of such party or any other party of the same or any other of its obligations. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any such party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

6.17 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

6.18 Acknowledgment of Review. Contractor hereby expressly acknowledges that he/she has reviewed and understands each and every provision of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date above.

TOWN OF CREEDE, CO

RICHARD E. SAMSON

By \_\_\_\_\_  
Jeffrey Larson, Mayor

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sarah Efthim-Williamson, Town Clerk

**EXHIBIT A**

**SCOPE OF WORK AND  
COMPENSATION**

**SCOPE OF WORK:**

Contractor shall provide the following professional services, (hereinafter “Services”) as outlined

**COMPENSATION:**

**EXHIBIT A**

**SCOPE OF WORK AND COMPENSATION**

**SCOPE OF WORK:**

Contractor shall provide the following professional services, (hereinafter “Services”) as outlined

**COMPENSATION:**

## ORDINANCE NO. 428

AN ORDINANCE OF THE CITY OF CREEDE, A COLORADO TOWN, AMENDING CHAPTER 19 (“BUSINESS AND EVENT PERMITS”), ARTICLE 1 (“SEASONAL OUTDOOR SEATING FOR FOOD SERVICE ESTABLISHMENTS IN THE CENTRAL BUSINESS DISTRICT”) TO ALLOW FOR THE SERVING OF ALCOHOL IN PERMITTED OUTDOOR SEATING AREAS SO LONG AS PROPER LIQUOR LICENSING IS OBTAINED FROM BOTH THE CITY OF CREEDE LIQUOR LICENSING AUTHORITY AND THE STATE OF COLORADO

WHEREAS, the City of Creede, Colorado, a Colorado Town (the "Town"), is a statutory municipality organized and operating under the laws of the State of Colorado;

WHEREAS, the Board of Trustees of the Town (the “Board”) is desirous of exploring ways of stimulating creating economic opportunity and activity within the Town; and

WHEREAS, many towns across the State of Colorado and the Country have increased economic activity in their central business districts by allowing food service establishments to utilized outdoor seating in public places under certain conditions; and

WHEREAS, the Board would like to provide food service establishments in the Town’s central business district with an opportunity to expand operation in a space restricted environment by allowing for outdoor seating within the Town’s rights-of-way under certain conditions; and

WHEREAS, the Board is desirous of promoting planned and orderly outdoor seating in public spaces as a means of encouraging pedestrian activity and enhancing the pedestrian experience in the central business district;

WHEREAS, the Board is desirous of allowing the serving of alcohol in outdoor seating areas so long as proper liquor licensing is obtained from both the City of Creede Liquor Licensing Authority and the State of Colorado;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO THAT:

Section 1. Chapter 19, Article 1, Section 5(3) is hereby repealed in its entirety and replaced with the following:

“3. The service of alcohol in outdoor seating areas is permitted so long as proper liquor license permitting is obtained from both the City of Creede Liquor Licensing Authority and the State of Colorado.”

Section 2. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

INTRODUCED, APPROVED, PASSED ON FIRST AND FINAL READING, ON THIS 1<sup>st</sup> DAY OF JUNE, 2021.

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk



**ORDINANCE NO. 429**

AN ORDINANCE OF THE CITY OF CREEDE, A COLORADO TOWN, AMENDING CHAPTER 9 (“DEVELOPMENT CODE”), ARTICLE 4 (“ZONE DISTRICTS AND OFFICIAL ZONING MAP”) OF THE CITY OF CREEDE CODE OF ORDINANCES TO PROHIBIT THE OPERATION OF MOBILE FOOD VENDORS NOT AFFILIATED WITH A SPECIAL EVENT

WHEREAS, the City of Creede, Colorado, a Colorado Town (the "Town"), is a statutory municipality organized and operating under the laws of the State of Colorado; and

WHEREAS, the Board of Trustees of the Town (the “Board”) is desirous of prohibiting the operation of mobile food vendors not affiliated with a special event;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO THAT:

Section 1. Chapter 9, Article 4, Section 200(C)(7) is hereby repealed in its entirety and replaced with the following:

“(7) Temporary sales not including mobile food vendors (parking lot, vacant lot, roadside);”

Section 2. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

INTRODUCED, APPROVED, PASSED ON FIRST AND FINAL READING, ON THIS 1<sup>st</sup> DAY OF JUNE, 2021.

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

## **SALARY REVIEW**

Compensation of employees of the City is set on an annual basis by the Creede Board of Trustees of the City of Creede, and made a part of the annual budget. The Creede Board of Trustees adopts the City budget each December for the following year. Changes in employee salaries are recommended by the City Manager to the Board of Trustees during the budget process. Any adjustment made in employee's salary either by way of increase, decrease, or no change, are at the complete discretion of the Creede Board of Trustees.

## **GROUP BENEFITS**

~~Full-time employees eligible to participate in a variety of group benefit programs including medical insurance, dental insurance, vision insurance, life insurance, and 401(a) plan retirement contribution matches.~~

~~Employees are encouraged to become familiar with and take advantage of these benefits. For further information describing available plans, please see the City Clerk.~~

~~Employee benefits are subject to changes in providers, value and coverage subject to the approval of the Board of Trustees.~~

Full-time employees are eligible to participate in a variety of group benefit programs including medical insurance, dental insurance, vision insurance, life insurance, and 401(a) plan retirement contribution matches.

The City provides health insurance coverage and medical benefits for full-time employees. Application must be made within the first month of employment. Employee health insurance is mandatory.

Should the employee opt for expanded healthcare coverage that includes spouse or family, employees will then be afforded an additional \$400 per month for spouse, and up to \$650 per month for family by the City. The employee is responsible to cover the remainder.

Employee benefits are subject to changes in providers, value, and coverage following approval of the Board of Trustees.

A copy of the health and dental insurance plans are available for review with the Town Clerk.

## **PAID TIME OFF (PTO)**

The purpose of the City of Creede's Paid Time Off (PTO) policy is to provide employees with a flexible leave system that can be used for vacation, personal or family illness, doctor appointments, school, volunteerism, and other activities of the employee's choice.

### **Eligibility**

All full-time employees are eligible for PTO whether exempt or non-exempt.

### **Current Employees**

Effective January 1, 2020, PTO will replace all existing vacation, sick time, and personal business days that Town employees have been allotted under prior policies. A maximum of ten (10) days, or eighty (80) hours, of vacation time may be carried over from the 2019 calendar year to the 2020 calendar year if an employee has excess vacation time accrued under the Town's prior vacation leave policy.

2008

## Municipal Regulation of Formula Businesses: Creating and Protecting Communities

Patricia E. Salkin

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

---

### Recommended Citation

Patricia E. Salkin, *Municipal Regulation of Formula Businesses: Creating and Protecting Communities*, 58 Case W. Rsrv. L. Rev. 1251 (2008)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol58/iss4/17>

This Symposium is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

# MUNICIPAL REGULATION OF FORMULA BUSINESSES: CREATING AND PROTECTING COMMUNITIES

*Patricia E. Salkin*<sup>†</sup>

## INTRODUCTION

People have been trying to exclude chain stores from their communities for decades.<sup>1</sup> This includes “big-box” chains—the behemoth retailers that prefer an architecture of rectangular, single-story unadorned structures reaching 200,000 square feet or more<sup>2</sup>—as well as national and international businesses including well-recognized fast food restaurants, drug stores and clothing retailers.<sup>3</sup> The reasons for restricting these large corporate

---

<sup>†</sup> Patricia E. Salkin is the Raymond and Ella Smith Distinguished Professor of Law, Associate Dean and Director of the Government Law Center of Albany Law School. She maintains a blog on land use law at <http://lawoftheland.albanylaw.edu>. The author is appreciative of the research assistance of Amy Lavine, Esq., staff attorney at the Government Law Center.

<sup>1</sup> See generally Richard C. Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920–1940*, 90 IOWA L. REV. 1011 (2005).

<sup>2</sup> See Dwight H. Merriam, *Breaking Big Boxes: Learning from the Horse Whisperers*, 6 VT. J. ENVTL. L. 7 (2004–2005). The State of Maryland describes four categories of formats for big box retail: discount department stores (“ranging from 80,000 square feet to 130,000 square feet, offer[ing] a wide variety of merchandise including automotive parts and services, housewares, home furnishings, apparel and beauty aids”); category killers (“ranging from 20,000 square feet to 120,000 square feet, offer[ing] a large selection of merchandise and low prices in a particular type of product category”); outlet stores (“ranging from 20,000 square feet to 80,000 square feet, are typically the discount arms of major department stores”); and warehouse clubs (“ranging from 104,000 square feet to 170,000 square feet, offer[ing] a variety of goods, in bulk, at wholesale prices . . . warehouse clubs provide a limited number of product items (5,000 or less)”). MD. DEP’T OF PLANNING, MANAGING MARYLAND’S GROWTH: MODELS AND GUIDELINES, “BIG-BOX” RETAIL DEVELOPMENT 4 (2001), available at [http://www.mdp.state.md.us/planningact/download/bigbox\\_v3.pdf](http://www.mdp.state.md.us/planningact/download/bigbox_v3.pdf).

<sup>3</sup> The New Rules Project, Retail: Formula Business Restrictions, <http://www.newrules.org/retail/formula.html> (last visited Mar. 27, 2008).

businesses include concerns over community character and aesthetics, local economics and self-reliance, and corporate ideologies. Over time, many municipalities have been forced to accept that “formula retail”<sup>4</sup> and “franchise architecture”<sup>5</sup> are simply part of the American economy.<sup>6</sup> In many communities, the emphasis has shifted from efforts aimed at prohibiting these retailers to strategies aimed at implementing land use controls and other programs designed to regulate these businesses so as to minimize potential negative community impacts.

Part I of this Article focuses on the reasons why communities attempt to regulate formula based businesses, including concerns over community character, economic and environmental impacts, and social equity issues. Part II explores legal strategies to minimize the negative effects that often result from the location of formula based businesses through a host of local land use controls including comprehensive plans, zoning ordinances, special use permits, size caps, historic district regulations, design guidelines and site plan review, formula business restrictions, town-serving zones, and vacant store ordinances. Part III examines locally initiated or implemented economic and social regulations and programs to counter impacts from formula based businesses. These strategies include economic impact review initiated by the local government, as well as nongovernmental, community-based strategies that complement municipal efforts to regulate formula businesses, including the use of community benefits agreements and the impact of independent business associations and the local currency movements. The Article concludes with the thought that careful, strategic, community planning, along with a combination of municipal regulatory programs and grass-roots initiatives, can yield thriving communities both with and without certain formula retail establishments.

---

<sup>4</sup> *Id.* (“Formula businesses include retail stores, restaurants, hotels and other establishments that are required by contract to adopt standardized services, methods of operation, décor, uniforms, architecture or other features virtually identical to businesses located in other communities.”).

<sup>5</sup> See Daniel A. Spitzer & Jill L. Yonkers, *A Guide to Regulating Big Box Stores, Franchise Architecture, and Formula Businesses*, 7 N.Y. ZONING L. & PRAC. REP. 1 (2007) (explaining concerns over franchise architecture including: aesthetic impact of featureless big boxes; garish colors and designs national and regional chains use to brand their products; large logos and/or colors used over large expanses of a building; the difficulty in reusing branded buildings when vacated by the primary business; lack of architectural elements and design consistent with local community character and historical context).

<sup>6</sup> Trends indicate growth in drive-thru pharmacies and coffee shops, value malls and de-value malls as examples of growing formula (and big box) retail. See MD. DEP’T OF PLANNING, *supra* note 2, at 11.

## I. WHY COMMUNITIES AND FORMULA BASED BUSINESSES CONFLICT

### *A. Community Character, Aesthetics, and Historic Interests*

Part of defining a community is identifying what distinguishes it from every other community in the region or in the country. Unique identifiers, referred to as “community character,” may include significant cultural, historic or environmental features not typically found elsewhere. Community walkability, street connectivity, and public spaces are examples of traditional distinguishing characteristics. Geography, physical size, housing style and architecture, and population density also factor into community character.<sup>7</sup>

Many people believe that corporate retail and community character inherently conflict. In the business world, marketing gurus preach corporate “branding” to ensure name recognition and visual association with businesses.<sup>8</sup> This translates into a goal of uniformity in physical appearance of buildings, physical layout of the inside retail floor, color and size of logos, and consistency in services and/or products available. In addition to achieving recognition through branding, corporations benefit from uniformity because it is cheaper to develop one set of blueprints and one set of protocols that can be used for hundreds or thousands of retail or service outlets than it is to customize each individual establishment.<sup>9</sup> Corporate “sameness” poses the threat that chain stores will detract from community character.<sup>10</sup> However, while the cookie-cutter versions of chain stores

---

<sup>7</sup> See Edward T. McMahon, *Good Design Matters*, 82 GREEN TEACHER 5, 5 (2007) (explaining that “community character is what makes your town different from every other town. No two towns are exactly alike. Each has a particular street layout and arrangement of buildings, shaped over time in a particular geography by a particular population.”).

<sup>8</sup> See Lawrence Check, *Coffee with a Twist: Starbucks Puts a Double Shot of Hometown Flavor Into Every Store*, SEATTLE POST-INTELLIGENCER, Apr. 26, 2005, at E1 (discussing Starbucks’ branding design strategies); Janet Moore, *Brand-Building Hits the Spot for Target Corp.*, *Exec Says*, MINNEAPOLIS STAR-TRIB., Jan. 31, 2001, at 1D (explaining that Target has built its brand in part through its physical locations and store layouts); Martin Roll, *Understanding the Purpose of a Corporate Branding Strategy*, BRAND CHANNEL, Apr. 12, 2004, [http://www.brandchannel.com/brand\\_speak.asp?bs\\_id=81](http://www.brandchannel.com/brand_speak.asp?bs_id=81) (discussing corporate branding generally) (last visited Mar. 27, 2008).

<sup>9</sup> See Merriam, *supra* note 2, at 18.

<sup>10</sup> See Ross Atkin, *Conserving American Character, Town by Town*, CHRISTIAN SCI. MONITOR, Oct. 2, 2002, at 11 (noting that “[c]hain stores, with their cookie-cutter visual sameness, are a major contributing factor to the homogenization of towns”); Christina Prochillo, *Chain Drugstores on Main Street: Some Positive Trends*, FORUM NEWS (National Trust for Historic Preservation, Washington, D.C.), Mar. 2002, at 1, available at [http://www.preservationnation.org/issues/chain-drugstores/additional-resources/drugstore\\_forum.pdf](http://www.preservationnation.org/issues/chain-drugstores/additional-resources/drugstore_forum.pdf) (noting that “[c]hains have frequently demolished significant structures, replacing them with freestanding suburban-style stores whose design—seas of parking, drive-

may seem ubiquitous, many chains have been known to customize individual establishments to conform to community design standards.<sup>11</sup>

Proponents of locally grown businesses also claim that local businesses encourage the growth of strong community character by “provid[ing] a foundation for the web of connections and trust that . . . [are] essential to a healthy neighborhood.”<sup>12</sup> These establishments are, by their nature, unique in that they are not found in numerous other locations. Their products (whether retail goods, food or other services) are typically tailored to, and unique to, the host community or region, often contributing to the community’s identity. These considerations are even more important for communities that depend upon tourism as a major economic driver.

### *B. Other Community and Environmental Concerns*

Formula retail, particularly big boxes, also present myriad environmental concerns for host communities by virtue of their size and development patterns.<sup>13</sup> For example, traffic impacts including safety, congestion, noise (from trucks and from quantity of vehicles), and air quality that result from “destination” big boxes are typically experienced by the residents of the host community.<sup>14</sup> Impacts from

---

through windows, blank exteriors, and one-story scale—disrupt the traditional main street”).

<sup>11</sup> See *infra* Part II.A.5 (historic districts).

<sup>12</sup> Stacy Mitchell, Researcher, Institute for Local Self-Reliance, Speech at the Annual Conference of the American Planning Association: The Impact of Chain Stores on Community (April 2000), in *The New Rules Project, Resources: The Impact of Chain Stores on Community*, <http://www.newrules.org/resources/smapaspeech.html> (last visited Sept. 19, 2008).

<sup>13</sup> See MD. DEP’T OF PLANNING, *supra* note 2, at 35. The Maryland Department of Planning points out the following environmental concerns:

Increased traffic due to big-box development can potentially increase pollution in the area or affect nearby, environmentally sensitive zones. Oil run-off from the surface parking lot of a big-box development, or chemicals that are not handled properly in a big-box development that sells garden supplies can potentially contaminate the water supply of a local community. Increased traffic and noise pollution due to big-box development may potentially lower the value of nearby homes purchased by people who reasonably assumed that the area would remain peaceful and attractive.

*Id.*

<sup>14</sup> See, e.g., Andrea M. Hricko, *Ships, Trucks, and Trains: Effects of Goods Movement on Envtl. Health*, 114 ENVTL. HEALTH PERSP. A204, A204 (2006). Hricko notes some of the environmental health effects of big boxes, including:

Residents in communities adjacent to truck-congested freeways, where elevated levels of carbon monoxide, diesel constituents, and ultrafine particles have been documented. Residents living near ports, in whom there are elevated rates of oropharyngeal cancer and certain lung cancers. Residents who breathe ambient air pollution full of traffic-related pollutants, in whom there are higher rates of

stormwater run-off due to large impervious surfaces can be exacerbated by the potential for greater mixing of oil, gas and other products that may leak from large numbers of automobiles and commercial vehicles parked on these surfaces.<sup>15</sup> Lighting from

---

cardiovascular disease and death . . . and reduced lung function. Residents who live near rail yards, ports, and other goods movement facilities, who endure high noise levels, traffic congestion, visual blight, and other community impacts.

*Id.* (citation omitted); see also *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 1023, 1032 (E.D. Cal. 2007) (mentioning that “Wal-Mart does not argue that its Supercenters do not have significant environmental effects, or even that they do not produce the results City fears—to wit, urban/suburban decay, increased traffic, and reduced air quality” (quoting *Wal-Mart Stores, Inc. v. City of Turlock*, 41 Cal. Rptr. 3d 420 (Ct. App. 1006)). However, with calls to reduce carbon footprints that can be accomplished, in part, with reduced car trips, the ability to accomplish one-stop shopping in a big box may assist in moving towards this goal. This argument is limited to the retail strategy of the big box, and not other formula retail outlets. See Hricko, *supra* note 14; see also Daniel Akst, *The Wrong Target: Could Chain Stores Actually Be Good for the Environment?*, GRIST: ENVTL. NEWS & COMMENT., Nov. 3, 2005, <http://www.grist.org/comments/soapbox/2005/11/03/akst/>. The “footprint” of a big-box store can be divided into four categories:

- 1) The building footprint, which reflects the environmental impacts associated with constructing the store and any associated buildings, parking lots and sidewalks as well as the energy required to produce all the materials used in construction.
- 2) The transportation footprint, which reflects the environmental impact of delivery vehicles as well as consumer and employee travel to and from the store.
- 3) The operation footprint, which reflects the environmental impacts of computers, cash registers, and other durable equipment required to run the store, cleaning products needed to maintain the store, and the store’s ongoing use of energy and water.
- 4) The waste footprint, which reflects the environmental impacts of the store’s stream of glass, metal, paper, packaging, wood, and plastic waste.

DAHLIA CHAZAN ET AL., *THE BIG BOX CALCULATOR: A GUIDE TO REDUCING THE ECOLOGICAL FOOTPRINT OF LARGE RETAIL STORES* 3 (Sept. 2005), [http://www.rprogress.org/publications/2005/Big\\_Box\\_Calculator.pdf](http://www.rprogress.org/publications/2005/Big_Box_Calculator.pdf).

<sup>15</sup> See, e.g., U.S. ENVTL. PROT. AGENCY, *ECONOMIC BENEFITS OF RUNOFF CONTROLS* (2005), <http://www.epa.gov/owow/nps/runoff.html#2>. The EPA report explains that

[d]evelopment leads to an increase in the amount of pollutants in an area. Sediment from construction sites can end up in streams and rivers, choking plant and animal life. Oil and gas from vehicles can leak onto roads and parking lots. . . . All of these pollutants can wash away when it rains and end up in streams, rivers, lakes, estuaries, or ground water. Many pollutants also bind to the sediment, so when sediment washes away it takes the pollutants with it. Urbanization also leads to loss of pervious areas (porous surfaces) that allow rainwater to soak into the ground. This can increase the amount and velocity of rainwater flowing to streams and rivers. This increased speed and volume of water can have many impacts, including eroded stream banks, increased turbidity and pollution, increased stream water temperature, and increased water flow. All of these can have an adverse effect on the fish and other organisms living in the stream and the receiving waters. When rainwater cannot soak into the ground, the result can be a loss of drinking water because many areas of the country rely on rainwater soaking into the ground to replenish underground drinking water supplies. Loss of trees due to urbanization can have negative impacts.

*Id.*; see also Press Release, U.S. Env’tl. Prot. Agency, U.S. Announces Major Clean Water Act



parking lots, needed for security reasons, contributes to light pollution.<sup>16</sup> In addition, since it is more cost-effective on a cash basis to build a new store on undeveloped green space, rather than to retrofit an existing building or to redevelop a brownfield, large formula-retail outlets have been blamed for contributing to sprawl, resulting in destruction of aesthetic viewsheds and unnecessary degradation of the natural environment.<sup>17</sup> Big-box retail centers have also been blamed for the rise of a “pavement camping” movement among RV and truck drivers. Rather than renting a pad at a licensed RV park and staying overnight, drivers have taken to spending their nights in the far reaches of large retail parking lots. Many stores permit this practice, and drivers can camp there for free. However, the practice often violates local overnight parking ordinances and may cause problems because parking lots are not equipped to handle waste from commercial and recreational vehicles.<sup>18</sup> Environmental concerns such as these have underlined the decisions in many areas concerning the siting of new formula businesses.<sup>19</sup>

---

Settlement with Retail Giant Wal-Mart (May 12, 2004), available at <http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/5702a09ae47131c085256e920060d460?OpenDocument> (involving complaints against Wal-Mart for failing to obtain pre-construction permits, failing to develop plans to adequately control polluted runoff from construction sites, failing to adequately control erosion and failure to prevent discharge of sediments into sensitive ecosystems).

<sup>16</sup> See New England Light Pollution Advisory Group, Key Light-Pollution Issues, <http://www.cfa.harvard.edu/nelpag/nelpagphilos.html> (last visited Mar. 27, 2008) (explaining that “[f]ar fewer outdoor lights are needed that are now lit every night, particularly over streets, highways, and parking lots”).

<sup>17</sup> See The Sierra Club, Big Box Sprawl: How Big Box Stores like Wal-Mart Effect the Environment and Communities, [http://www.sierraclub.org/sprawl/reports/big\\_box.asp](http://www.sierraclub.org/sprawl/reports/big_box.asp) (last visited Mar. 28, 2008) (noting that “Wal-Mart and other Big Box retailers typically develop stores at the fringes of towns, which are accessible mainly by driving and often result in increased traffic”); Vt. Dep’t of Housing & Cmty. Aff., Facing Sprawl: Proactive Planning and Engagement Along Vermont’s Interstate Corridors, <http://www.dhca.state.vt.us/Planning/EPAGrantDescription.htm> (explaining that “[t]he pattern [of sprawl] is familiar: what begins as a small gas station quickly expands into a convenience store, paving the way for additional service stations and accessory retail stores and in some cases, big box retail power centers. These developments often impact natural resources, scenic viewsheds, local economies, and compact village settlements”).

<sup>18</sup> Venita Jenkins, *Camp Wal-Mart*, FAYETTE OBSERVER (N.C.), Apr. 14, 2007, at 1D; Joanne Kimberlin, *Travelers See America’s Beauty by Day, Parking Lots at Wal-Mart by Night*, VIRGINIAN-PILOT, Sep. 3, 2007, at A1; Marcia Nelesen, *Overnight Parking at Wal-Mart Banned*, JANESVILLE GAZETTE (Wis.), Dec. 18, 2007; Otto Pohl, *R.V. Owners Skip Camp and Park at Wal-Mart*, N.Y. TIMES, Sept. 11, 2005, at A18.

<sup>19</sup> See, e.g., Moscow, Idaho, Ordinance 2006-03 (Feb. 7, 2006) (listing one of the reasons for enacting big box site design standards as the prevention of sprawl); Mike Kalil, *Panel Weighs Size of Stores*, BRATTLEBORO REFORMER (Vt.), Apr. 8, 2005, at 1 (stating that “[c]ommittee members say they want Brattleboro to remain unique and not imitate the sprawl of nearby Keene, N.H.”); Karyn Saemann, *Wall-to-Wall Wal-Mart: 14 Supercenters in Place, in Works in the Region*, CAPITAL TIMES (Madison, Wis.), Nov. 29, 2006, at C1 (noting that a city

More recently, a debate has developed over whether formula businesses or local businesses have a greater impact on climate change.<sup>20</sup> The environmental health effects of national chains and their shipping and supply systems have also been a subject of debate, with critics arguing that the international trade and goods movements has adverse effects on: climate change (through emissions); overseas workers who produce goods and who are subject to lax occupational health and safety regulations; ports workers and truck drivers; and residents in communities near trucking routes and ports.<sup>21</sup>

Some communities have also sought to restrict commercial development due to the problems created by overbuilding. These problems may be serious: “[p]roperty values fall, disinvestment follows, and deterioration results.”<sup>22</sup> Empty big boxes and freestanding chain stores may be particularly troublesome, as they can constitute fire hazards and targets for vandalism.<sup>23</sup> Furthermore, large retail centers could also prove to be a potential target for terrorist activities due to the large number of people congregating at any one time in a contained space.<sup>24</sup>

---

council member opposed a new big box due to concerns about car emissions, light pollution, and sprawl).

<sup>20</sup> Compare Stacy Mitchell, *Keep Your Eyes on the Size: The Impossibility of a Green Wal-Mart*, GRIST: ENVTL. NEWS & COMMENT., Mar. 28, 2007, <http://www.grist.org/comments/soapbox/2007/03/28/mitchell/>, with Akst, *supra* note 14. Recently, big box retailers have taken advantage of the marketing opportunity to “go green.” For example, Wal-Mart and Home Depot have announced plans to improve in-house systems aimed at reducing energy consumption, they are advertising and selling targeted energy efficient products to consumers, and they have advocated for legislative change in support of enacting mandatory greenhouse gas regulations. See Stuart Price, *Implementing Bus. & Finance Recommendation*, Yale School of Forestry & Environmental Studies, <http://environment.yale.edu/climate/2006/10/05/implementing-bus-finance-recommendation>. In addition, some corporations, such as Wal-Mart, have joined forces with conservation organizations like the National Fish and Wildlife Foundation, where in 2005 Wal-Mart committed \$35 million over ten years to permanently conserve at least one acre of priority habitat for every acre developed by the company. Nat’l Fish & Wildlife Found., Wal-Mart Introduction, <http://www.nfwf.org/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=5624>.

<sup>21</sup> See Hricko, *supra* note 14.

<sup>22</sup> Kirk McClure, *Managing Growth of Retail Commercial Space: Retail Market Dynamics in Lawrence, Kansas*, in DOWNTOWNS: REVITALIZING THE CENTERS OF SMALL URBAN COMMUNITIES 230 (Michael A. Burayidi ed., 2001).

<sup>23</sup> See Paul Alongi, *Communities Struggle With Empty ‘Big Box’ Stores*, GREENVILLE NEWS (S.C.), Apr. 5, 2005, at 15B.

<sup>24</sup> Rufus Calhoun Young, Jr. & Dwight H. Merriam, *Homeland Security Begins at Home: Local Planning and Regulatory Review to Improve Security*, in A LEGAL GUIDE TO HOMELAND SECURITY AND EMERGENCY MANAGEMENT FOR STATE AND LOCAL GOVERNMENTS 79–101 (Ernest B. Abbott & Otto J. Hetzel eds., 2005) (discussing prudent threat reducing measures for building owners and the interplay between land use planning and building design with risk reduction).

### C. Economics

In addition to aesthetic concerns, formula based businesses have long been criticized for their negative impacts on local economies. Chain stores began to gain prominence in the 1920s, and as they grew, opposition did too. By 1929, more than 400 organizations had formed to fight chains, and by 1937 twenty-six states had enacted chain store tax laws.<sup>25</sup> Early critics of chain stores focused on the economic effects of centralization and “articulated an account of local economic self-sufficiency in the service of political liberty, economic independence, and local community.”<sup>26</sup> These concerns about local economic self-sufficiency continue to figure into the present controversy over formula businesses.<sup>27</sup>

Perhaps the most commonly cited economic impact of chain stores is their ability to displace existing local businesses through competitive pricing.<sup>28</sup> While consumers may benefit in the short-run from lower priced goods and services that formula based businesses can offer, critics of chain stores claim that the loss of locally grown “mom-and-pop” outlets may have a ripple effect in local economies. This is because independent businesses tend to contribute more to local economies than nationalized chains by recirculating wealth within the community.<sup>29</sup> Further, by some accounts, local businesses

---

<sup>25</sup> Schragger, *supra* note 1, at 1013–14.

<sup>26</sup> *Id.* at 1014.

<sup>27</sup> See Spitzer & Yonkers, *supra* note 5, at 2 (stating that “local economic pressures form the core values of significant opposition to Wal-Mart and other national chains”). According to the Maryland Department of Planning, “Communities often experience a reduction in the number of small-scale, locally-owned retailers that are in direct competition with big-box retailers. A reduction in locally-owned businesses, in some instances, can increase unemployment rates and the number of vacant buildings, which can potentially affect the economy of an area.” MD. DEP’T OF PLANNING, *supra* note 2, at 35–36.

<sup>28</sup> See Stacy Mitchell, Researcher, Inst. for Local Self-Reliance, A Speech Delivered at the Annual Conference of American Planning Association (April 2000), <http://www.newrules.org/resources/smapaspeech.html> (stating that “very little of the sales generated by a new retail store represent new retail spending. Instead these developments simply shift economic activity from one part of town to another. The end result is not economic development, but rather economic displacement.”).

<sup>29</sup> Independent businesses, for example, tend to hire local attorneys, accountants, printers and other service providers. Chain stores, on the other hand, usually have access to these support services through centralized corporate structures located far away from many of their outlets. Studies suggest that this recirculation creates significantly more local economic activity than do their national counterparts. See INST. FOR LOCAL SELF-RELIANCE, BIGBOX TOOLKIT: KEY STUDIES ON BIG-BOX RETAIL 5–6 (2006), <http://www.bigboxtoolkit.com/images/pdf/keystudies.pdf> (describing several studies); see also CIVIL ECONOMICS, THE ANDERSONVILLE STUDY OF RETAIL ECONOMICS 1 (2004), <http://www.civiceconomics.com/Andersonville/AndersonvilleStudy.pdf> (finding that for every \$100 spent in Chicago at a local business, \$68 remains in the local economy, while, for chain businesses, only \$43 remains in the local economy); S.F. LOCALLY OWNED MERCHS. ALLIANCE, THE S.F. RETAIL DIVERSITY STUDY 27 (2007), [http://www.civiceconomics.com/SF/SFRDS\\_May07.pdf](http://www.civiceconomics.com/SF/SFRDS_May07.pdf) (finding that

spend a greater proportion of their revenues on wages and labor than formula businesses.<sup>30</sup>

Chain stores and their deleterious effect on local character are also commonly believed to have negative effects on tourism-based economies. One advocacy group asserts that “in a time when so many cities are ringed by identical sprawling boxes or overrun by ubiquitous chains . . . uniqueness has become a rare and valuable economic asset. Those communities that have protected their distinctive character and maintained many one-of-a-kind businesses are more interesting places to live and visit.”<sup>31</sup> Small resort communities, such as Ogunquit, Maine, a popular seaside destination,<sup>32</sup> and Solvang, California, the “Danish Capital of America,”<sup>33</sup> are among the growing list of municipalities that have enacted regulations addressing formula-based retail in order to enhance their ability to attract tourists.

While attracting formula businesses may appear, at first blush, to be a method of increasing the tax base, creating jobs, and attracting economic growth, some argue that this may not be the case because the cost of providing municipal services may exceed the amount of local taxes generated by formula businesses, especially big boxes.<sup>34</sup> Moreover, studies have found that formula businesses do not always create new economic activity; rather, they may simply attract sales away from existing locally grown businesses. Therefore, new formula businesses may not always “create” new jobs, but rather may create an environment in which jobs are transferred from previously existing businesses that may be forced to down-size or close as a result of the opening of a “new” formula business.<sup>35</sup>

---

“increasing independent market share by 10% would yield nearly \$200 Million in economic activity and nearly 1,300 new jobs”).

<sup>30</sup> INST. FOR LOCAL SELF-RELIANCE, *LOCALLY OWNED VS. CHAIN: THE LOCAL PREMIUM* 1, <http://www.bigboxtoolkit.com/images/pdf/Premium.pdf>.

<sup>31</sup> Stacy Mitchell, *Protecting Locally Owned Retail: Planning Tools for Curbing Chains and Nurturing Homegrown Businesses*, MAIN STREET NEWS (The National Trust), Feb. 2004, at 3.

<sup>32</sup> See [Ogunquit.org](http://www.ogunquit.org), <http://www.ogunquit.org> (last visited Mar. 27, 2008).

<sup>33</sup> Solvang, <http://www.solvangusa.com/static/index.cfm?contentID=5> (last visited Mar. 27, 2008).

<sup>34</sup> See INST. FOR SELF-RELIANCE, *WAL-MART'S IMPACT ON LOCAL POLICE COSTS* (2005), <http://www.newrules.org/retail/policefactsheet.pdf> (last visited Apr. 13, 2008) (explaining that “cities and towns across the country are reporting that big-box retailers are generating large numbers of police calls . . . . Studies have found that big-box stores can also increase other municipal costs, particularly road maintenance, and eliminate tax revenue from small businesses that are forced to close or downsize. Altogether, these costs may even exceed the tax revenue a big-box store generates.”).

<sup>35</sup> Mitchell, *supra* note 28 (reporting that one study determined that a Wal-Mart projected to create 177 jobs would actually result in the loss of 148 jobs at other businesses).

### D. Social Equity Agenda

For some, patronizing formula businesses operated by large corporations may be distasteful due to documented corporate policies. For example, some formula businesses, notably big boxes, are known to pay lower wages, offer fewer benefits, and oppose union organizing.<sup>36</sup> Community activists often advocate that restricting these businesses is an effective method of countering harmful labor policies, as well as preventing the creation of poorly paid, dead-end positions with inadequate benefits.<sup>37</sup> Emblematic of this struggle between labor and big boxes is Inglewood, California (a Los Angeles suburb), where a community coalition won an initiative preventing the building of a Wal-Mart, primarily because of concerns that Wal-Mart would displace unionized grocery stores and/or lead to cuts in benefits to unionized workers in an effort to compete.<sup>38</sup> The situation eventually led to Los Angeles enacting its superstore law.<sup>39</sup> Similarly, in Chicago, the debate over permitting Wal-Marts in two economically depressed and predominantly black neighborhoods led to the enactment of an ordinance requiring big-box stores to pay living wages,<sup>40</sup> although the law was later vetoed by the mayor.<sup>41</sup>

---

<sup>36</sup> See Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CAL. L. REV. 1927, 1935–42 (2007) (describing Wal-Mart's poor labor policies and the legal and cultural factors that have permitted the retailer to continue them).

<sup>37</sup> See, e.g., Nancy Cleeland & Abigail Goldman, *Grocery Unions Battle to Stop Invasion of the Giant Stores*, L.A. TIMES, Nov. 25, 2003, at A1 (detailing the battle between labor unions, local residents and Wal-Mart in Inglewood, California); Cummings, *supra* note 36.

<sup>38</sup> See Cleeland & Goldman, *supra* note 37. Cleeland and Goldman explain that

[f]or decades, the unions have been a major force in the state grocery industry and have negotiated generous labor contracts. Wal-Mart pays its grocery workers an estimated \$10 less per hour in wages and benefits than do the big supermarkets nationwide — \$19 versus \$9. As California grocery chains brace for the competition, their workers face severe cutbacks in compensation. . . . The push for concessions has already started. . . . About 70,000 grocery workers employed by Albertsons Inc., Kroger Co.'s Ralphs and Safeway Inc.'s Vons and Pavilions have been walking the picket lines since Oct. 11, largely to protest proposed reductions in health benefits. The supermarkets say they need these cuts to hold their own against Wal-Mart, already the nation's largest grocer.

*Id.*; see also Cummings, *supra* note 36, at 1951–1970.

<sup>39</sup> See Cummings, *supra* note 36, at 1970–74 (explaining that the Los Angeles ordinance requires “superstores,” defined as retail facilities over 100,000 square feet devoting 10% or more of their space to non-taxable items (i.e., food), to undergo economic impact reviews). Impact review regulations are discussed in further detail, *infra* Part III.A.

<sup>40</sup> Cummings, *supra* note 36; Erik Eckholm, *Chicago Orders 'Big Box' Stores to Raise Wage*, N.Y. TIMES, July 27, 2006, at A1. The living wage requirement was later struck down.

<sup>41</sup> See *Mayor Vetoes Chicago's 'Living Wage' Ordinance Aimed at Big Retailers*, USA TODAY, Sep. 11, 2006, available at [http://www.usatoday.com/money/economy/employment/2006-09-11-chicago-wage\\_x.htm](http://www.usatoday.com/money/economy/employment/2006-09-11-chicago-wage_x.htm).

However, many chains have more progressive (or at least less offensive) labor policies, and supporters of chains argue that formula businesses in fact advance social equity goals by offering lower prices. Chain businesses, in this regard, may be a boon to underserved portions of the population by providing goods and services that they might not otherwise have access to.<sup>42</sup> This benefit, accordingly, should be factored into any public policy analysis dealing with chains and local businesses.

These concerns are admittedly generalized; not all independent businesses pay decent wages and not all chain businesses are built in sprawling developments. In some cases, the opposite may be true. Nevertheless, these issues necessarily enter into the dialogue in land use controversies relating to chain businesses. They are also important to understand, because the underlying purposes of municipal land use decisions and ordinances concerning formula businesses may be subject to scrutiny under the dormant Commerce Clause.<sup>43</sup>

## II. LAND USE STRATEGIES TO MINIMIZE IMPACTS

Some municipalities have chosen to impose strict regulations on formula businesses, and others have simply prohibited formula businesses outright.<sup>44</sup> Land use planning and zoning tools present effective options for municipalities that desire to combat the loss of community character that results from formula based businesses. Zoning and planning techniques are generally authorized by the broad state statutory authority for local governments to regulate the use of land within municipal borders, and local regulations will be valid so long as they are grounded in police power purposes and not used purely for economic protection.<sup>45</sup> From comprehensive land use plans

---

<sup>42</sup> See Robert McNatt, *Who Says Wal-Mart Is Bad for Cities? Underserved Neighborhoods Welcome its Jobs, Low Prices, and Tax Revenue*, BUS. WK., May 10, 2004, at 77.

<sup>43</sup> See Brannon P. Denning, *Dormant Commerce Clause Limits on the Regulation of Big Boxes and Chain Stores: An Update*, 58 CASE W. L. REV. 1233 (2008).

<sup>44</sup> See, e.g., NANTUCKET, MASS., CODE pt. 2, ch. 139, § 139-12(H)(2) (2007) (the zoning ordinance provides that it is intended “to address the adverse impact of nationwide, standardized businesses on Nantucket’s historic downtown area. The proliferation of formula businesses will have a negative impact on the island’s economy, historical relevance, and unique character and economic vitality. These uses are therefore prohibited in order to maintain a unique retail and dining experience. Formula Businesses frustrate this goal by detracting from the overall historic island experience and threatening its tourist economy.”).

<sup>45</sup> See George Lefcoe, *The Regulation of Superstores: The Legality of Zoning Ordinances Emerging From Skirmishes Between Wal-Mart and United Food and Commercial Workers Union*, 58 ARK. L. REV. 833, 859–60 (2006) (stating that “states broadly empower local governments to regulate land use under their general police powers, [but] appellate courts will strike down land use controls as indefensible except to protect local merchants from economic

to zoning ordinances and other types of land use controls, this section outlines some of the municipal land use regulations that can be employed to regulate these uses. Although not the subject of this discussion, a number of municipalities have also adopted moratoria to prevent permits from being issued for formula retail projects pending the outcome of studies, plans, and any new laws or regulations that might flow from those processes.<sup>46</sup> In addition, a number of states require local governments to conduct environmental assessments of proposed land use projects/decisions that may have a significant impact on the environment.<sup>47</sup> Although this local environmental review may be viewed as part of the land use process, this type of environmental impact review is beyond the scope of this section.

### A. Comprehensive Plans

The development and adoption of a comprehensive land use plan is the first step in municipal regulation of formula retail since this document allows a municipality to set forth development goals and policies that may provide justification for land use regulations that restrict formula businesses.<sup>48</sup> This is important because it offers the

competition”); *see also* *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390 (1994) (explaining that “[t]he central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent”). For the leading Supreme Court cases on economic protectionism, *see also Philadelphia v. New Jersey*, 437 U.S. 617 (1978) and *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

<sup>46</sup> A moratorium, when exercised properly, is a constitutionally protected planning tool. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302 (2002); *see also Merriam, supra* note 2, at 25–26.

<sup>47</sup> *See generally* Kathryn C. Plunkett, Comment, *Local Environmental Impact Review: Integrating Land Use and Environmental Planning Through Local Environmental Impact Reviews*, 20 PACE ENVTL. L. REV. 211 (2002); Patricia E. Salkin, *From Euclid to Growing Smart: The Transformation of the American Land Use Ethic Into Local Land Use and Environmental Controls*, 20 PACE ENVTL. L. REV. 109 (2002).

<sup>48</sup> *See generally* Daniel J. Curtin, Jr., *Regulating Big Box Stores: The Proper Use of the City or County’s Police Power and its Comprehensive Plan: California’s Experience*, 6 VT. J. ENVTL. L. 31 (2004); COLUMBIA UNIVERSITY GRADUATE SCHOOL OF ARCHITECTURE, A VISION FOR NEW ROCHELLE: PLAN FOR REVITALIZING THE CITY PARK NEIGHBORHOOD 46 (May 2001), [http://www.columbia.edu/itc/architecture/bass/newrochelle/report/Citypark\\_complete.pdf](http://www.columbia.edu/itc/architecture/bass/newrochelle/report/Citypark_complete.pdf). The Columbia University report states that

[t]he exterior designs of the [big box] buildings are standardized so that every location looks the same and is easily recognizable, and acres of parking surround the entire structure. The above features lend to “big box” retail stores an anti-community feel. They cater to the auto-borne shopper and are usually located just off highway exits or along major traffic corridors. They do not support pedestrian amenities nor do they attempt to make any connections with the neighboring community—they are large, isolated boxes in seas of parking lots.

community an opportunity to initiate dialogue about whether it wants to encourage or restrain the growth of certain formula retail.<sup>49</sup> Often, the comprehensive plan is described as “the adopted official statement of a legislative body of a local government that sets forth . . . goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction.”<sup>50</sup> State enabling statutes provide broad flexibility for local governments to address unique community goals in their comprehensive plans, and typical plan elements address issues including: patterns of growth; performance measures for transportation and community facilities (including supporting development that supports multimodal transportation); the provision of adequate employment opportunities and the economic health of the locality (and region); conserving natural resources (including green space, viewsheds and other significant natural features of the land); promoting good civic design; and the protection of life and property from the effects of natural hazards that may include flooding, wind, wildfires and unstable land.<sup>51</sup> Since zoning and other land use controls generally must be consistent with the comprehensive plan, these policies must be adhered to when reviewing proposals for new formula business developments and when proposing changes to local zoning ordinances.<sup>52</sup>

In a number of cases, comprehensive plan language has served as a basis for the rejection of proposed formula businesses. For example, in Delaware, residents opposed a rezoning that would have allowed the construction of a Wal-Mart on the basis that the rezoning did not conform to the plan’s designation of the area as destined for office and industrial development. The court agreed and held that the

---

<sup>49</sup> See Janet E. Milne, *Forward: The Big Box Challenge*, 6 VT. J. ENVTL. L. 2 (2005). Professor Milne provides an example from Bennington, VT, where the legislative body voted to restrict the size of big boxes to prevent expansion, only to be overturned by voters following a petition—this can be viewed as an example of the need for a community to have an articulated shared vision. *Id.* The New York Times recently reported how one community in Monsey, NY, came together to articulate a vision of their neighborhood that did not include a Wal-Mart. See Fernanda Santos, *A Stand Against Wal-Mart and, for Now, a Victory*, N.Y. TIMES, Mar. 12, 2008, at B3.

<sup>50</sup> See AMERICAN PLANNING ASSOCIATION, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE 7-19 (Stuart Meck ed., 2002), available at [www.planning.org/GrowingSmart](http://www.planning.org/GrowingSmart) [hereinafter GUIDEBOOK].

<sup>51</sup> *Id.* at 7-69 to 7-70.

<sup>52</sup> See Edward J. Sullivan, *Recent Developments in Comprehensive Planning Law*, SN005 ALI-ABA 1571 (2007) (describing the states that require consistency with the comprehensive plan and noting that “the comprehensive plan is gradually gaining more credence, through state legislation and court decisions, as the standard by which land use regulations and actions are judged . . . . The trend is definitely towards the requirements of a planning process that results in discrete, enforceable policies . . .”).



rezoning was invalid.<sup>53</sup> In the early 1990s, proposed plans for a Wal-Mart in Chestertown, Maryland, were rejected based on provisions in the Kent County comprehensive plan. The Maryland Court of Special Appeals later upheld this decision.<sup>54</sup> The county's current comprehensive plan states that one of its strategies is to "[p]romote development of small locally owned businesses."<sup>55</sup> The Corvallis, Oregon, comprehensive plan contains a provision that more specifically favors small, locally owned businesses. It states that it is the city's policy is to "support existing businesses and industries and the establishment of locally-owned, managed, or controlled small businesses."<sup>56</sup> Other comprehensive plans from municipalities across the country include language supportive of small and locally owned businesses.<sup>57</sup>

### B. General Zoning Restrictions

Local governments are granted authority by states to engage in zoning. Zoning is a type of land use regulation that divides the land in a municipality into various districts. The zoning law articulates, among other things, the allowable uses in each designated district, as well as various dimensional requirements (e.g., size and height). Initially developed as a method of separating incompatible land uses

---

<sup>53</sup> O'Neill v. Town of Middletown, No. 1069-N, 2006 Del. Ch. LEXIS 10, at \*185-86 (Jan. 18, 2006), *aff'd*, No. 2197-N, 2006 Del. Ch. LEXIS 131 (Jul. 5, 2006) (In the subsequent litigation, the rezoning was denied a second time on the basis that the council members gave insufficient reasons for the rezoning.).

<sup>54</sup> Elizabeth Leis, *Battling Wal-Mart a Maryland Tradition*, MD. GAZETTE, Jun. 10, 2006, at A6. The decision of the Court of Special Appeals was not reported.

<sup>55</sup> KENT COUNTY, COMPREHENSIVE PLAN 10 (May 2006), <http://www.kentcounty.com/gov/planzone/Draft%20CP/CompPlan.pdf>.

<sup>56</sup> CITY OF CORVALLIS, COMPREHENSIVE PLAN art. 8, § 8.2.3, at 93 (1998), <http://www.ci.corvallis.or.us/downloads/cd/compplan/Article%2008--Economy.pdf>.

<sup>57</sup> See, e.g., CITY OF PIKEVILLE, COMPREHENSIVE PLAN 59, [http://www.egovlink.com/pulic\\_documents300/pikeville/published\\_documents/Comprehensive%20Plan/Chapter%204%20Economy%20Business%20Activity%20and%20Economic%20Development.pdf](http://www.egovlink.com/pulic_documents300/pikeville/published_documents/Comprehensive%20Plan/Chapter%204%20Economy%20Business%20Activity%20and%20Economic%20Development.pdf) ("Support opportunities for expansion and creation of locally owned businesses and industry and give them the same level of attention as recruitment of outside industry."); 1 CITY OF SPOKANE, DRAFT COMPREHENSIVE PLAN & ENVTL. IMPACT STATEMENT 15 (2000), [http://www.spokaneplanning.org/Documents/DRAFT\\_PL/text/c8\\_econ.pdf](http://www.spokaneplanning.org/Documents/DRAFT_PL/text/c8_econ.pdf) ("Support opportunities to increase the number of locally-owned businesses in Spokane."); EAST LANSING PLANNING COMM'N 8, THE EAST VILLAGE MASTER PLAN (2006), <http://www.cityofeastlansing.com/citygov/pcd/pdf/CompPlan/EVMasterPlan.pdf> ("Encourage small, unique and locally owned business growth . . ."); TOWN OF CAROLINE, COMPREHENSIVE PLAN 15 (2006), <http://www.townofcaroline.org/announcements/Comprehensive%20Plan%202006.pdf> (including the goal of "[e]ncouraging locally-owned businesses that integrate with the rural residential and agricultural nature of the town, and discouraging commercial development that would negatively affect local agricultural, business, and residential communities").

and recognized as a valid exercise of the police power,<sup>58</sup> zoning may also be used to regulate aesthetics.<sup>59</sup>

Through zoning, municipalities regulate where commercial uses may be located.<sup>60</sup> Some localities have further limited their commercial zoning designations in order to restrict chain stores and big boxes. For example, large-scale retail may be permitted only in a more intense zoning classification. For example, in Albuquerque, New Mexico, the locations of large retail stores are restricted based on their size. The zoning designations correspond to locations where the existing roads are large enough to support these developments.<sup>61</sup>

In addition to indicating uses that are permitted as of right in individual zoning districts, zoning ordinances typically provide regulations that allow for certain uses subject to special use permits (also known as conditional use permits, or CUPs).<sup>62</sup> This process allows municipalities to consider certain criteria when evaluating the impact of a proposed use for the purpose of ensuring that it is in keeping with the character of the community. However, special use permitting, standing alone, may not be the ideal method of regulating chains. This is because

special uses are allowed uses—their inclusion in a zoning code is equivalent to a legislative determination that they are proper for the zone. Thus, generally speaking, a town cannot deny the application on the ground that it is not in harmony with the purpose and intent of its zoning.<sup>63</sup>

Municipalities may also attach conditions to permits granted for commercial uses.<sup>64</sup> Reasonable conditions will be upheld if they are directly related to the proposed use of the property and are intended to ameliorate its negative effects.<sup>65</sup> Many of the other land use controls

---

<sup>58</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

<sup>59</sup> *See Berman v. Parker*, 348 U.S. 26, 33 (1954) (explaining that “[t]he concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”) (citation omitted).

<sup>60</sup> 2 ROBERT M. ANDERSON, *AMERICAN LAW OF ZONING* § 9:41 (4th ed. 1996).

<sup>61</sup> ALBUQUERQUE, N.M., *CODE* § 14-16-3-2(D)(1)-(2) (2008).

<sup>62</sup> *See* ANDERSON, *supra* note 60, § 21:1 (explaining that “[n]early all zoning ordinances make some use of special-permit procedures [and that [m]ost ordinances impose a broad division of land uses and, in addition, provide that specified uses may be established or maintained in named districts, only pursuant to a special permit issued with the approval of the board of adjustment”).

<sup>63</sup> Spitzer & Yonkers, *supra* note 5, at 7.

<sup>64</sup> ANDERSON, *supra* note 60, at § 21:30.

<sup>65</sup> *Id.* at § 21:31.

described in this Article incorporate special use permit requirements.<sup>66</sup>

### C. Town-Serving Restrictions

Certain districts in the City of Palm Beach, Florida, are subject to a requirement that commercial uses of more than 2,000 square feet be “town-serving.” In effect, the ordinance requires businesses seeking special exceptions from the size cap to “satisfy the council that not less than 50% of the anticipated customers will be ‘town persons.’”<sup>67</sup> When the ordinance was challenged, the court held that it was constitutional, noting that it was rationally related to valid planning interests.<sup>68</sup> Strict local-serving requirements have not become particularly common, but planning policies supportive of town- and resident-serving uses have been promulgated in a number of cities and towns.<sup>69</sup> Town-serving zones may prevent the displacement of local stores when an area becomes a regional shopping draw or a destination for tourists.<sup>70</sup> However, they may not be effective bars to new chain stores that do provide services to local residents, such as pharmacies, hardware stores, and banks, even though such chain outlets may displace similar locally owned businesses.

### D. Size Caps on Retail Space

Size caps on retail developments have also become common with the increasing number of big-box stores.<sup>71</sup> Ordinances limiting the size of large-scale retail facilities generally either prohibit stores over a certain square footage or require the footprint of stores to be within

---

<sup>66</sup> See Economic Impact Review discussion *infra* Part III.A; see also site design discussion *infra* Part II.A.6.

<sup>67</sup> *Handelsman v. Town of Palm Beach*, 585 So. 2d 1047 (Fla. Dist. Ct. App. 1991).

<sup>68</sup> *Id.*

<sup>69</sup> See CALISTOGA, CAL. MUN. CODE §§ 17.04.597 and 17.40.010–17.40.100 (current through June 17, 2008) (encouraging use permits for businesses “which provide products and services which satisfy Calistoga residents’ day-to-day needs”), available at [http://nt5.scbbs.com/cgi-bin/om\\_isapi.dll?clientID=356207276&depth=2&infobase=calistoga.nfo&record={3B58}&softpage=PL\\_frame](http://nt5.scbbs.com/cgi-bin/om_isapi.dll?clientID=356207276&depth=2&infobase=calistoga.nfo&record={3B58}&softpage=PL_frame); Sausalito, Cal., Policy LU-2.10 (Jun. 18, 2007) (To “[e]nhance Caledonia Street’s role as a mixed residential and commercial area by encouraging local resident serving commercial uses . . .”), available at <http://www.ci.sausalito.ca.us/Index.aspx?page=283>; CITY OF DANA POINT, THE LAND USE ELEMENT 8 (Aug. 26, 1997), <http://www.danapoint.org/GP/LAND-USE.pdf> (“[p]rotecting resident-serving land uses”) <http://www.dan.apoint.org/GP/LAND-USE.pdf>; FONTANA, CAL. ZONING & DEV. CODE ch. 30, arts. VI, IX (current through Jan. 8, 2008) (encouraging community-serving development through zoning), available at <http://www.municode.com/Resources/gateway.asp?pid=12998&sid=5>.

<sup>70</sup> The New Rules Project, Neighborhood Serving Zones, <http://www.newrules.org/retail/neighbor.html> (last visited Apr. 6, 2008).

<sup>71</sup> See Merriam, *supra* note 2, at 24–25.

certain limits. Some municipalities may allow larger stores, but only with approval of a special use permit. A number of courts have upheld retail size limits, but still, “planners need to do a ‘reality check’ of such limitations to determine whether they truly are intended to ensure compatibility with the scale of their communities, or whether such limitations are designed to keep out retailers for reasons unrelated to good planning.”<sup>72</sup> Where size caps are motivated by economic protectionism rather than legitimate planning concerns, they may run afoul of the dormant Commerce Clause, which bars regulations that interfere with interstate commerce.<sup>73</sup> Furthermore, depending upon the drafting of the ordinances, size-cap ordinances are not always successful in preventing certain corporations from building in a particular jurisdiction. Corporations have found ways to circumvent size caps by dividing footprints and separating various uses, and some have even sited multiple buildings in the same general geographic area.

### *E. Historic District Regulations*

Properties located in landmark or historic districts may be subject to strict architectural and exterior design regulations.<sup>74</sup> While they do not restrict commercial uses per se, they require the historic architectural details on buildings to be preserved. Chain stores, which often rely on their distinctive appearances to attract customers, may be required to comply with these regulations. In some cases, chain stores have indeed modified their exterior design features to be consistent with the historic character of surrounding areas. For example, McDonald’s operates a restaurant out of a historic house in Freeport, Maine (complete with upholstered chairs, mahogany tables and antique paintings),<sup>75</sup> and in a Tudor-style building located near the historic Biltmore Estate in Asheville, North Carolina.<sup>76</sup> Dunkin Donuts has also been willing to alter the appearance of stores located in historic areas. A store located in the colonial town of Bristol, Rhode Island, abandoned its customary pink and orange motif and opted for gold leaf signs, cherry cabinetry, wainscoting and architectural lighting.<sup>77</sup>

---

<sup>72</sup> *Id.* at 25.

<sup>73</sup> See Denning, *supra* note 43.

<sup>74</sup> See generally ANDERSON, *supra* note 60, § 9:73.

<sup>75</sup> See Tom Bell, *Embracing the Giant from Away*, PORTLAND PRESS HERALD (Me.), May 16, 2001, at 1A.

<sup>76</sup> See Melissa Williams, *Communities Try to Balance Local Business and Big Retail*, ASHEVILLE CITIZEN-TIMES (N.C.), Mar. 16, 2003, at S11.

<sup>77</sup> See Haya El Nasser, *Cities Put Shackles on Chain Stores*, USA TODAY, July 20, 2004,

Individual historic properties not located within designated historic areas are more susceptible to alteration or demolition by corporate owners. Even properties listed on the National Register of Historic Places receive only limited protection. Although inclusion in the list makes these properties eligible for protection from federal actions, it does not prevent owners of historic properties from modifying or demolishing them.<sup>78</sup> For this reason, local historic protection laws may be particularly important in determining whether or not chains may take actions impacting the historic nature of their properties. The National Trust for Historic Preservation has recognized the threat to these historic sites by large national chains, and it has sought to ameliorate the problem by working cooperatively with the major drug store companies. It has succeeded in obtaining agreements from CVS, Eckerd, Rite Aid, and Walgreens not to demolish properties listed on the National Register.<sup>79</sup>

#### *F. Design Regulations and Site Plan Review*

Many municipalities have created “downtown commercial districts” or similarly titled zones in which commercial uses may be subject to increased regulation in order to emphasize traditional downtown features such as mixed uses, compact development, and walkability.<sup>80</sup> These areas may also be subject to historic district regulations, with the result that businesses may be subject to stricter architectural, design and area regulations than they would be in other districts. However, “effective design review can be more difficult to achieve in places that lack a discernible, cohesive architectural character or a distinctive natural setting.”<sup>81</sup>

Some municipalities have also enacted site plan review procedures for large retail facilities to address the particular aesthetic problems associated with big boxes. At their worst, big boxes have been described as “plain vanilla rectangular boxes of industrial quality

---

at 3A, available at [http://www.usatoday.com/news/nation/2004-07-20-chain-stores\\_x.htm](http://www.usatoday.com/news/nation/2004-07-20-chain-stores_x.htm).

<sup>78</sup> See National Historic Preservation Act of 1966, 16 U.S.C. § 470 (2000); National Park Service, National Register of Historic Places, What Are the Results of Listing?, <http://www.nps.gov/nr/results.htm>.

<sup>79</sup> National Trust for Historic Preservation, Chain Drugstores, <http://www.preservationnation.org/issues/chain-drugstores/> (last visited Apr. 6, 2008).

<sup>80</sup> See, e.g., MINNEAPOLIS, MINN., CODE tit. 20, ch. 549 (downtown districts); GUIDEBOOK, *supra* note 50, at 8-54 to 8-55.

<sup>81</sup> TERRY SCHWARZ, URBAN DESIGN CENTER OF NORTHEAST OHIO, DEFENDING REGIONAL IDENTITY: STRATEGIES FOR RESHAPING FRANCHISE ARCHITECTURE 11 (2004), [http://www.uic.edu/cuppa/cityfutures/papers/webpapers/cityfuturespapers/session5\\_1/5\\_1defendingregional.pdf](http://www.uic.edu/cuppa/cityfutures/papers/webpapers/cityfuturespapers/session5_1/5_1defendingregional.pdf).

construction coated with corporate color schemes and surrounded by acres of asphalt with nary a bush or tree in sight.”<sup>82</sup> Site design regulations attempt to ameliorate these problems without necessarily prohibiting big boxes. The primary targets of these regulations are to minimize the massive appearance of big boxes and their seas of parking, to include landscaping and screening to hide machinery and other unsightly equipment, to require quality building materials, and to promote pedestrian and bicycle access and safety.

The City of Fort Collins, Colorado, has been a pioneer in site design restrictions for large scale retail. In early 1995, the city adopted its Design Standards and Guidelines for Large Retail Establishments to supplement its already detailed signage and landscaping requirements.<sup>83</sup> The regulations included a number of provisions that have now become standard in site design requirements for big boxes:

- Uninterrupted facades of more than 100 feet are prohibited. Facades may be broken up by recesses and projections, windows, awnings or other architectural details.
- Facades must include repeating patterns of color, texture or materials to increase architectural interest in buildings.
- Roof lines must include variations such as parapets (to conceal flat roofs and rooftop equipment), overhanging eaves and sloping planes.
- Customer entrances must have features such as canopies or porticos, arcades, arches or planters.
- Exterior building materials must be high quality. Smooth-faced concrete, tilt-up concrete panels and steel panels are not permitted.
- Facade colors must be neutral. Trim may have brighter colors, but neon lighting is not permitted.
- Any facade adjacent to a public street must have a customer entrance. Facades adjacent to residential areas must

---

<sup>82</sup> Chris Duerksen & Robert Blanchard, *Belling the Box: Planning for Large-Scale Retail Stores* (1998 Nat'l Planning Conference), available at <http://design.asu.edu/apa/proceedings98/Duerk/duerk.html>.

<sup>83</sup> Fort Collins, Colo., Design Standards and Guidelines for Large Retail Establishments (Jan. 17, 1995), available at <http://fcgov.com/cityplanning/pdf/large-retail-doc.pdf> [hereinafter Fort Collins, Design Standards]; Duerksen & Blanchard, *supra* note 82.

be setback 35 feet and must be visually concealed by vegetation.

- Loading docks, trash collection areas and outdoor storage must be screened.
- Sidewalks must be included along all sides of a lot that abuts a public street and along the length of any side of the building that has a customer entrance. Sidewalks connecting to the principal customer entrance must feature landscaping or benches.
- No more than 50% of a store's parking may be located between the front facade and the primary abutting street.<sup>84</sup>

Site design regulations for large scale retail have been enacted in cities and towns across the country.<sup>85</sup> The trigger for these regulations is usually based on the size of a proposed store. Thresholds vary, however, ranging from 15,000 square feet in Homer, Alaska, to 75,000 square feet in Albuquerque, New Mexico.<sup>86</sup> Other common aspects of site design ordinances are requirements that big boxes be flanked by small liner stores<sup>87</sup> and that they provide pedestrian and bicycle access from offsite.<sup>88</sup>

---

<sup>84</sup> FORT COLLINS, COLO., LAND USE CODE § 3.5.4 (2007) (current version), available at <http://www.colocode.com/ftcollins/landuse/article3.htm#sec3d5d4>; Fort Collins, Design Standards, *supra* note 83; see also Duerksen & Blanchard, *supra* note 82.

<sup>85</sup> See, e.g., HOMER, ALASKA, CODE § 21.61.105 (2004); GUNNISON, COLO., CODE § 15.190 (2006); ALBUQUERQUE, N.M., CODE § 14-16-3-2(D)(1)-(2) (2008); SANTA FE, N. M. CODE § 14-8.8 (2007); Moscow, Idaho, Ordinance 2006-03 (Feb. 7, 2006); Sequim, Washington, Design Standards & Guidelines for Large Retail Establishments (Oct. 16, 2003).

<sup>86</sup> Several cities have different site design requirements for different sizes of large retail developments. See, e.g., HOMER, ALASKA, CODE § 21.61.105 (15,000 sq. ft.); FORT COLLINS, COLO., LAND USE CODE § 3.5.4(C) (25,000 sq. ft.); GUNNISON, COLO., CODE § 15.40.010 (50,000 sq. ft.); ALBUQUERQUE, N.M., CODE, § 8 (75,000 sq. ft.); SANTA FE, N. M. CODE § 14-8.8 (30,000 sq. ft.); Moscow, Idaho, Ordinance 2006-03 (40,000 sq. ft.); Sequim, Wash., Design Standards & Guidelines for Large Retail Establishments, at 4 (Oct. 16, 2003). (20,000 sq. ft.).

<sup>87</sup> See, e.g., FORT COLLINS, COLO., LAND USE CODE § 3.5.4(C) ("If the large retail establishment does not include a second side entrance that is fully operational and open to the public, then this standard shall be met by attaching smaller retail store(s) ('liner stores') to the side of the large retail establishment which is expected to generate the most pedestrian activity or which faces a public street."); ALBUQUERQUE, N.M., CODE § 14-16-3-2(D)(6)(a)(1) ("Main structures shall be screened from the adjacent street by means of smaller buildings, Retail Suite Liners, or 20' wide landscape buffers with a double row of trees.")

<sup>88</sup> See, e.g., HOMER, ALASKA, CODE § 21.61.105(g) ("Parking facilities shall be designed and landscaped with increased emphasis on pedestrian ways that provide public connectivity to and through the site."); ALBUQUERQUE, N.M., CODE § 14-16-3-2(D)(5)(i) ("Internal Pedestrian Walkways shall be planned and organized to accommodate the inter-related movement of vehicles, bicycles, and pedestrians safely and conveniently, both within the proposed development and to and from the street, transit stops, and the surrounding area."); Sequim, Washington, Design Standards & Guidelines for Large Retail Establishments § B(1) (Oct. 16,

### *G. Regulation of Franchise Architecture*

Another method of focusing on the aesthetic impacts of formula businesses is the prohibition of franchise architecture, which serves to prevent the construction of large, brightly colored logos and branded buildings. Franchise architecture is defined in one ordinance as “building design that is trademarked or identified with a particular franchise, chain or corporation and is generic or standard in nature.”<sup>89</sup> Several municipalities simply prohibit franchise architecture,<sup>90</sup> while another approach has been to ban the use of “stock building plans.”<sup>91</sup> Franchise architecture ordinances, much like site design requirements, do not prevent formula businesses from operating, but merely require them to adjust their appearance to local styles.

Closely related to franchise architecture is the issue of signage. Corporations have their logos protected under federal trademark law (the Lanham Act), and as part of their branding strategy they display that logo as part of the on-site signage for the business. Through municipal design regulation, however, local governments have been successful in requiring formula retail outlets to comply with these standards even where the result is sign appearance that is different from the typically recognizable logo. For example, where a design ordinance required color uniformity in all of the signs for businesses located in a strip mall, the Second Circuit upheld the law even though the business owner alleged that the requirement violated the Lanham Act since its name/logo was multi-colored and it desired that its sign contain the multi-color message.<sup>92</sup>

---

2003) (“Large retail development should ensure that the parking, lighting, circulation and landscaping aspects are well designed with regard to safety, efficiency and convenience for vehicles, bicycles, pedestrians and transit, both within the development and to and from surrounding areas.”).

<sup>89</sup> Hopkins, Minn., Ordinance 2003-900 § 556.12(2) (2003).

<sup>90</sup> See, e.g., COLD SPRING, MINN., ZONING ORDINANCE § 9(8) (2008); ASHEBORO, N.C., ZONING ORDINANCE art. 200A, § 3.4(a) (2008) (defining franchise architecture as “a distinct architectural building style and/or elements commonly employed by a fast food or other retail franchise, that serves to enhance or promote brand identity through visual recognition”).

<sup>91</sup> See Georgetown, Colo., Design Guidelines book 3, § 1, ch. 6, available at <http://www.town.georgetown.co.us/drc/drcbk3ch6.html> (last visited Apr. 9, 2008).

<sup>92</sup> See *Lisa’s Party City, Inc. v. Town of Henrietta*, 185 F.3d 12 (2d Cir. 1999). But see *Blockbuster Videos, Inc. v. City of Tempe*, 141 F.3d 1295, 1300 (9th Cir. 1998) (explaining the court was not as supportive of changing the color of the sign, but could still uphold a restriction that would prohibit the mark altogether). The Ninth Circuit explained that

a zoning ordinance may not require a change in a registered mark. A zoning ordinance may, however, preclude the display of a mark, as Tempe did when it precluded Blockbuster from constructing its awning on the exterior of its leased building in the shopping center. Precluding display of a mark for zoning purposes is permissible; requiring alteration of a mark is not.



### H. Formula Business Restrictions

Municipalities across the country are picking up on the trend of regulating formula-based businesses.<sup>93</sup> “Formula businesses” are those that offer standardized services and methods of operation, including chain stores, chain restaurants, chain hotels, etc. Formula businesses include not just Wal-Marts, Starbucks, and Banana Republics, but also Hiltons, Wholefoods, Wachovias, and Rite-Aids. Under some definitions, professional businesses such as HR Block and Coldwell Banker would also be considered formula businesses.<sup>94</sup> Formula business restrictions do not automatically exclude chains, they simply require them to deviate from their standardized counterparts.<sup>95</sup>

Defining what qualifies as a formula business has proven somewhat troublesome, as overly restrictive definitions may go beyond their goal of restricting large corporate chains and impose burdens on locally owned businesses with regional presences and multiple outlets. Some definitions focus on the number of businesses in the chain,<sup>96</sup> while others emphasize the common or “uniform” attributes of the businesses. The formula business ordinance of Calistoga, California, provides a typical definition:

---

*Id.* at 1300; *see also* Gateway 2000 Country Stores, Inc. v. Norwalk Zoning Bd. of Appeals, 13 F. Supp. 2d 247 (D. Conn. 1998) (holding that the regulation was based not on speech but rather on aesthetic interests, which are valid state interests).

<sup>93</sup> *See* The New Rules Project, Formula Business Restrictions, <http://www.newrules.org/retail/formula.html> (last visited Apr. 12, 2008).

<sup>94</sup> *See, e.g.*, BRISTOL, R.I., CODE ch. 1, art. 1, § 28-1 (2004) (“Formula businesses can include, but are not limited to: restaurants, retail stores, banks, real estate sales offices, spas, hair and nail salons, and hotel/motel/inn/B&B.”); *cf.* PORT TOWNSEND, WASH., MUN. CODE tit. 17, ch. 17.54.030(C) (current through April 21, 2008) (excluding from the formula business definition auto sales; auto tire sales and service; banks; gas stations; grocery stores; health care; professional services such as real estate offices, insurance offices, copy centers, and mail centers; and adult entertainment facilities), *available at* <http://www.codepublishing.com/wa/porttownsend.html>.

<sup>95</sup> *See* Spitzer & Yonkers, *supra* note 5, at 6.

<sup>96</sup> *See* ARCATA, CAL., LAND USE CODE § 9.100.020 (2007) (defining a formula restaurant as “substantially identical” to more than 11 other restaurants); BENECIA, CAL., CODE § 17.12.030 (2007) (defining a formula business as having more than four other establishments in the region); S.F., CAL., PLANNING CODE § 703.3 (2006) (formula retail defined as an establishment which shares features with eleven or more other establishments); SOLVANG, CAL., CODE § 11-3-1 (2006) (defining a formula restaurant as a restaurant with five or more similar locations nationwide, or a full service restaurant with twenty-five or more locations nationwide); BRISTOL, R.I., CODE ch. 1, art. 1, § 28-1 (defining a formula business as being “substantially identical” to more than five other businesses); NANTUCKET, MASS., CODE § 139-2 (2006) (defining formula business as one of fourteen or more other businesses or establishments); PORT TOWNSEND, WASH., CODE § 17.54.030 (2006) (defining a “formula retail” as a business which shares features with fourteen or more other establishments).

“Formula Business” shall mean a business or use, which by contractual or other arrangement, established or recognized business practice, or membership affiliation, maintains any of the following: A. business name common to a similar business located elsewhere; B. standardized services or uniforms common to a similar business located elsewhere; C. interior decor common to a similar business located elsewhere; D. architecture, exterior design, or signs common to a similar business located elsewhere; E. use of a trademark or logo common to a similar business located elsewhere (but not including logos or trademarks used by chambers of commerce, better business bureaus, or indicating a rating organization including, but not limited to AAA, Mobile or Michelin); or F. a name, appearance, business presentation or other similar features, which make the business substantially identical to another business within or outside Calistoga.<sup>97</sup>

Some communities have limited their formula business regulations to certain types of commercial uses. A number of municipalities restrict only formula restaurants,<sup>98</sup> while others focus on formula restaurants and retail stores.<sup>99</sup> A few definitions specifically include formula hotels.<sup>100</sup> Some definitions simply apply to “formula businesses” without making any use distinctions.<sup>101</sup> Others make provisions for specific types of businesses, such as banks, real estate offices, spas, salons, gas stations, auto sales, and grocery stores.<sup>102</sup>

The formula business ordinances of some municipalities prohibit formula businesses from some or all districts,<sup>103</sup> while other

---

<sup>97</sup> CALISTOGA, CAL., MUNICIPAL CODE § 17.04.132 (2000).

<sup>98</sup> See ARCATA, CAL., LAND USE CODE § 9.100.020; BENICIA, CAL., CODE § 17.12.030; CARMEL-BY-THE-SEA, CAL., CODE § 17.70.020 (2003); SOLVANG, CAL., CODE § 11-3-1; OGUNQUIT, ME., ZONING ORDINANCE art. 2 (2006); PORT JEFFERSON, N.Y., CODE § 250-9 (2000); BAINBRIDGE ISLAND, WASH., CODE § 18.06.370 (1998).

<sup>99</sup> See, e.g., CALISTOGA, CAL., CODE § 17.04.132; SANIBEL, FLA., CODE § 126-102 (2007); PORT TOWNSEND, WASH., CODE § 17.54.030.

<sup>100</sup> See, e.g., CALISTOGA, CAL., CODE § 17.04.132; BRISTOL, R.I., CODE ch. 1, art. 1, § 28-1.

<sup>101</sup> See, e.g., CORONADO, CAL., CODE § 86.04.309 (2005), available at <http://www.coronado.ca.us> (navigate to City Government, then Municipal Code); FAIRFIELD, CONN., ZONING REG. §§ 12.2, 12.5 & 31.2 (2004 & as amended July 10, 2007), available at <http://www.fairfieldct.org/zoning.htm>.

<sup>102</sup> See, e.g., BRISTOL, R.I., ORDINANCES ch. 1, art. 1, § 28-1; SANIBEL, FLA., CODE § 126-102; PORT TOWNSEND, WASH., CODE § 17.54.030.

<sup>103</sup> See, e.g., CARMEL-BY-THE-SEA, CAL., CODE § 17.14 (prohibiting drive-thru, fast food, and formula restaurants); S.F., CAL., PLANNING CODE § 703.3 (2006) (prohibiting formula retail in certain districts); SOLVANG, CAL., CODE § 11-7A-2(E) (as amended by Ordinance 07-269 (2006)) (prohibiting formula restaurants in the tourist district); OGUNQUIT, ME., ZONING ORDINANCE table 702.1 (2006) (prohibiting formula restaurants); YORK, ME., ZONING

regulations place caps on the number of formula businesses permitted within the municipality,<sup>104</sup> or subject formula businesses to special permit requirements.<sup>105</sup> In Benicia, California, no more than one establishment of any particular formula business is permitted,<sup>106</sup> and in Calistoga, California, any formula business must be “resident-serving.”<sup>107</sup> Some communities require findings that a proposed formula business will enhance the local economy,<sup>108</sup> preserve the area’s distinctive character,<sup>109</sup> contribute to a diverse

ORDINANCE art. 4 (2007) (prohibiting formula restaurants in various districts); NANTUCKET, MASS., CODE § 139, 8-10 (2006) (prohibiting formula businesses); PORT JEFFERSON, N.Y., CODE § 250-18 (prohibiting formula fast food restaurants in certain districts).

<sup>104</sup> See, e.g., CORONADO, CAL., CODE § 86.55.360 (no more than 10 formula fast food sites allowed in the jurisdiction); SANIBEL, FLA., CODE § 126-102 (limiting the total amount of formula retail floor space in the city to 50,000 square feet); Arcata, Cal., Ordinance 1333 § 2 (Jun. 5, 2002).

<sup>105</sup> See, e.g., CORONADO, CAL., CODE § 86.55.360 (Major or minor special use permits are required for formula uses; formula fast food restaurants may not be located on street corners, unless the site was previously a fast food restaurant; formula businesses—except for grocery stores, banks, savings and loans, full service restaurants and theaters—may not have street level frontage of greater than 50 feet or occupy more than two stories.); BRISTOL, R.I., ORDINANCES ch. 1, art. 1, § 28-150(h)(1)(d) (Formula businesses are limited in the historic district to 2,500 square feet with street frontage limited to 65 feet. No drive throughs are allowed. Screening is required for dumpsters. Anything with a corporate logo on it may be forbidden to be displayed in the windows. No internally illuminated signs are allowed.); SANIBEL, FLA., CODE § 126-102 (limiting formula businesses to 2,000 square feet); BAINBRIDGE ISLAND, WASH., CODE § 18.41.050 (2004) (Formula restaurants may be no larger than 4,000 square feet, and they must be located in a building with at least one other business that is not a formula restaurant.); PORT TOWNSEND, WASH., CODE § 17.54.040 (Formula businesses may not have street frontage greater than 50 feet, occupy more than two stories or exceed 3,000 square feet; drive-throughs are prohibited; formula businesses may not be located on street corners, except when the prior use was a formula business; a formula business must be in a building with at least one other business that is not a formula business; on larger lots, there can be no more than one formula business per 20,000 square feet.).

<sup>106</sup> BENECIA, CAL., CODE § 17.70.350 (2007).

<sup>107</sup> CALISTOGA, CAL., CODE § 17.22.040 (2007) (“‘Resident-serving use’ shall mean those uses or businesses that derive a significant portion of their revenues from Calistoga residents, and which provide products and services which satisfy Calistoga residents’ day-to-day needs. The majority of the customers of these uses or businesses are regular repeat customers from Calistoga.”).

<sup>108</sup> See, e.g., BENECIA, CAL., CODE § 17.70.350; CALISTOGA, CAL., CODE § 17.40.070 (“[T]he proposed development [must] be consistent with and enhance Calistoga’s history of independent, unique, and single location businesses, thus contributing to the uniqueness of the town, which is necessary to maintain a viable visitor industry in Calistoga and to preserve its economy.”); SAUSALITO, CAL., CODE § 10.44.240 (2003) (The formula establishment should “contribute to an appropriate balance of small, medium, and large-sized businesses in the community.”); BRISTOL, R.I., ORDINANCES ch. 1, art. 1, § 28-150(h)(1)(d) (Formula businesses must complement those businesses already in the historic district zone and help promote and foster the local economic base as a whole.).

<sup>109</sup> See, e.g., BENECIA, CAL., CODE § 17.70.350; CALISTOGA, CAL., CODE § 17.40.070(A) (“the proposed development [must] present[] a scale and design which are in harmony with the historical and small-town character of Calistoga . . . [and] the proposed development [must] complement[] and enhance[] the architectural integrity and eclectic combination of architectural styles of Calistoga”); CORONADO, CAL., CODE § 86.55.370 (must be operated in a nonobtrusive

array of businesses,<sup>110</sup> or will not contribute to an overconcentration of formula businesses.<sup>111</sup>

Formula business ordinances seem to be most prevalent in small communities that have a distinctive character and thriving tourism-based economy. For example, Ogunquit, Maine, Fairfield, Connecticut, and Nantucket, Massachusetts, are popular New England coastal destinations. A number of cities and towns along the California coast have also enacted formula business restrictions, including Carmel, Arcata and Sausalito. Solvang, California, relies on its historic Danish character to attract tourists,<sup>112</sup> and the colonial town of Bristol, Rhode Island, is known as “the most patriotic town in America.”<sup>113</sup> San Francisco is the only large city to have enacted a formula business restriction.<sup>114</sup>

Most formula business ordinances include detailed purposes such as promoting a diverse business community, maintaining historic or unique community character, supporting the local economy by enhancing tourism attractions, and improving the general quality of life.<sup>115</sup> These purposes are important because, as in the case of retail

---

manner to preserve the community’s character and ambiance); S.F., CAL., PLANNING CODE art. 10, § 1001 (allowing the planning commission to take existing architectural and aesthetic character into account in granting permits); BRISTOL, R.I., ORDINANCES art. 9, div. 1, § 28-281 (must not alter the identity of the historic district zone in a way which detracts from its uniqueness or contributes to a nationwide trend of standardized downtown offerings).

<sup>110</sup> Some ordinances seek diversity in the size of businesses, while others aim to foster a mix of local and non-local business. *See e.g.*, BENICIA, CAL., CODE § 17.70.350 (must contribute to diversity in sizes and local/regional/national mix of businesses); CORONADO, CAL., CODE § 86.55.370 (must contribute to an appropriate balance of local and non-local businesses and businesses of various sizes); BRISTOL, R.I., ORDINANCES art. 9, div. 1, § 28-281 (must contribute to a diverse and appropriate blend of businesses in the historic district zone).

<sup>111</sup> *See, e.g.*, BENICIA, CAL., CODE § 17.70.350; S.F., CAL., PLANNING CODE art. 1.7, § 186.1 (the planning commission may take the existing concentration of formula businesses into account); SAUSALITO, CAL., ZONING ORDINANCE § 10.10.030 (2008).

<sup>112</sup> *See* Solvang, 10 Most Beautiful Small Towns in the Western United States, <http://www.solvangusa.com/static/index.cfm?contentID=5> (last visited Sept. 17, 2008).

<sup>113</sup> Discover Bristol, <http://www.discoverbristol.com/> (last visited Apr. 9, 2008) (noting Bristol is the home of the oldest continuous Fourth of July parade in the country, with a red, white, and blue center line running down its main street).

<sup>114</sup> However, a recent posting by the Campaign for Community-Based Planning reports that New York City may soon enact zoning regulations to address the challenges posed by formula retail. Campaign for Community-Based Planning, Could Formula Retail Zoning be in NYC’s Future, <http://communitybasedplanning.wordpress.com/2008/01/04/could-formula-retail-zoning-be-in-nycs-future> (last visited Apr. 12, 2008) (reporting that the East Village Community Coalition is seeking “changes to the city’s Zoning Resolution that would prevent so-called formula chain establishments such as Starbucks from displacing local businesses or appearing out of context with the neighborhood”); *see also* Patrick Hedlund, *Trying to Find a New Formula to Tame the Spread of Chains*, THE VILLAGER, Jan. 2, 2008, [http://www.thevillager.com/villager\\_244/tryingtofind.html](http://www.thevillager.com/villager_244/tryingtofind.html) (last visited Apr. 12, 2008).

<sup>115</sup> *See, e.g.*, BENICIA, CAL., MUN. CODE § 17.70.350; CALISTOGA, CAL., CODE § 17.40.070; CARMEL-BY-THE-SEA, CAL., MUN. CODE § 17.02.030 (2008); CORONADO, CAL.,

size caps, formula business restrictions that are enacted to protect local businesses from competition may be susceptible to dormant Commerce Clause challenges.<sup>116</sup> Only two cases have addressed the validity of formula business ordinances, and the courts reached opposite conclusions. In *Coronadians Organized for Retail Enhancement v. City of Coronado*,<sup>117</sup> a California appellate court upheld the city's formula business restriction against claims that it violated the dormant Commerce Clause. The court found that the ordinance did not discriminate against interstate commerce on its face or have discriminatory motives. Rather, the city's finding that a diverse blend of businesses would foster the tourist-based economy illustrated that

the city council's primary purpose was to provide for an economically viable and diverse commercial area that is consistent with the ambiance of the city, and that it believed the best way to achieve these goals was to subject to greater scrutiny those retail stores that are contractually bound to use certain standard processes in displaying and/or marketing their goods or services.<sup>118</sup>

The court further explained that "the fact that many stores falling within the Formula Retail definition are interstate businesses does not mean that the Ordinance will have a 'discriminatory effect.'"<sup>119</sup>

The District Court for the Southern District of Florida reached a different result in *Island Silver & Spice, Inc. v. Islamorada*.<sup>120</sup> Although the court agreed that "preserving a small town community is a legitimate purpose," it found that Islamorada had not shown that its purpose in enacting a formula business ordinance was to maintain its distinctive community character.<sup>121</sup> Rather, "the ordinance appears tailored to serve local business interests by preventing competition from national chains."<sup>122</sup> Finding that the ordinance's true purpose and effect was economic protectionism—"the very sort of protection

---

MUN. CODE § 86.55.370; BRISTOL, R.I., ORDINANCES art. 9, div. 1, § 28-281.

<sup>116</sup> See Denning, *supra* note 43.

<sup>117</sup> No. D040293, 2003 Cal. App. Unpub. LEXIS 5769 (Jun. 13, 2003).

<sup>118</sup> *Id.* at \*13-14.

<sup>119</sup> *Id.* at \*20.

<sup>120</sup> 475 F. Supp. 2d 1281 (S.D. Fla. 2007). The *Islamorada* case and the dormant commerce clause are discussed in more detail in Denning, *supra* note 43.

<sup>121</sup> *Island Silver Spice*, 475 F. Supp. 2d at 1291.

<sup>122</sup> *Id.*

against out of state competition that the Commerce Clause was designed to prohibit”—the court struck the regulation down.<sup>123</sup>

Professor Brannon has suggested that differing outcomes in cases like *Coronadans* and *Island Silver & Spice* may be attributed to two primary reasons: “(1) lower court judges’ confusion about the [dormant Commerce Clause] and its proper application, a confusion aggravated by the [dormant Commerce Clause’s] own confused path in the Supreme Court; and (2) the local nature of the regulations.”<sup>124</sup> What is clear is that to avoid invalidation under the dormant Commerce Clause, communities enacting formula business ordinances should make clear that their purposes are not protectionist in nature, but that they are reasonably related to preserving the *unique* community character that supports tourism, contributes to a higher quality of life for residents, and that would be threatened by the intrusion of inherently non-unique formula businesses.

### *I. Vacant Store Ordinances*

Municipalities have also struggled to find methods of ameliorating the problems of empty big boxes, strip malls, and other commercial developments. These “dark stores” may be fire hazards, or attract vandals, in addition to contributing to problems of blight.<sup>125</sup> Chains, in particular, may tend to “reinvent themselves” rather frequently, leading them to abandon older properties and build newer versions. And big boxes may be difficult to convert to new uses, making them less likely to be rented or sold.<sup>126</sup> It has been estimated, for example, that Wal-Mart had abandoned 246 stores by 2007.<sup>127</sup>

One approach to this problem has been for municipalities to require developers to post demolition bonds before constructing commercial space. In Oakdale, California, for example, the city requires the developers of major retail projects (i.e. those over 40,000 square feet or shopping centers on more than ten acres) to post bonds sufficient to cover the cost of demolition and maintenance of the

---

<sup>123</sup> *Id.* at 1293 (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 352–52 (1977)).

<sup>124</sup> Denning, *supra* note 43, at 1246.

<sup>125</sup> Fact Sheet, Big Box Tool Kit, Big-Box Blight: The Spread of Dark Stores (2007), <http://bigboxtoolkit.com/images/pdf/bigboxblight.pdf>.

<sup>126</sup> *See, e.g.*, Paul Alongi, *Communities Struggle with Empty ‘Big Box’ Stores*, GREENVILLE NEWS (Greenville, S.C.), Apr. 6, 2005, at 15B (explaining that “turning ‘big-box’ space into offices has its hurdles. . . . No one will want the rear corners, . . . and complying with fire codes that require exits at the front and back of buildings can be tricky”).

<sup>127</sup> The New Rules Project, Retail: Preventing Vacant Boxes, <http://www.newrules.org/retail/vacantbox.html> (last visited Apr. 12, 2008).

building site if the building remains vacant for more than twelve months.<sup>128</sup>

Other communities, like Peachtree City, Georgia, have required that empty big-box stores go on the market as soon as they are vacated.<sup>129</sup> This type of ordinance prohibits businesses from holding on to vacant space in order to prevent competitors from moving in. In Moscow, Idaho, owners of large retail facilities that are vacant for more than 90 days must file monthly reports detailing the names of listing agents for the property, the length of the listing, and any events such as open houses, tours, and inquiries about the property.<sup>130</sup>

Another approach to the problem has been to regulate building design to facilitate reuse. Mount Shasta, California, thus requires the developers of large-scale retail properties to “submit a proposal addressing plans for the reuse of the site in the case that the applicant abandons interest of [sic] the large scale building. The plan shall include design features . . . such as partitions and . . . multiple entryways to facilitate reuse by multiple tenants . . . .”<sup>131</sup> Albuquerque has taken a slightly different route, tailoring its site design requirements for large-scale retail developments to “create block sizes . . . that are walkable and support land use changes over time.”<sup>132</sup>

### *J. Coordinated Regional Review*

Big-box stores and large retail complexes have impacts beyond the borders of the municipalities in which they are located. They may have economic, community, traffic, and environmental impacts that extend to neighboring towns.<sup>133</sup> This presents a land use and community development problem for municipalities that have enacted regulations on these types of uses—the developer can simply go to the next town over with fewer restrictions, imposing the same problems on the original municipality without adding to its tax base at all.<sup>134</sup>

Regional land use review has been seen as a solution to this problem. In the areas that have regional review, municipalities have

<sup>128</sup> OAKDALE, CAL., CODE § 36-23.35(R) (2007).

<sup>129</sup> The New Rules Project, Dark Store Ordinance—Peachtree City, Georgia, <http://www.newrules.org/retail/peachtree.html> (last visited Apr. 12, 2008).

<sup>130</sup> MOSCOW, IDAHO, CODE tit. 4, § 3-7(D)(4) (2007).

<sup>131</sup> MOUNT SHASTA, CAL., CODE § 18.70.150 (2005).

<sup>132</sup> ALBUQUERQUE, N.M., CODE § 14-16-3-2(D)(3) (2007).

<sup>133</sup> See Patricia E. Salkin, *Supersizing Small Town America: Using Regionalism to Right-Size Big Box Retail*, 6 VT. J. ENVTL. L. 48, 52–54 (2004).

<sup>134</sup> See The New Rules Project, Retail: Community and Economic Impact Review, <http://www.newrules.org/retail/impact.html> (last visited Apr. 13, 2008) [hereinafter The New Rules Project, Impact Review].

come together to develop shared land use and economic growth goals.<sup>135</sup> Some municipalities have developed voluntary inter-jurisdictional agreements to deal with the problems associated with big boxes.<sup>136</sup> Other have created tax base sharing and intergovernmental revenue sharing agreements that distribute revenues to communities outside the host municipality that are affected by these projects.<sup>137</sup>

Regional or county level economic impact review requirements are another method by which the regional effects of big boxes can be dealt with.<sup>138</sup> Large developments generally need to obtain approval from the host town and from a regional review board that considers the impacts of the development on the region as a whole.<sup>139</sup> The Cape Cod Commission, for example, works with fifteen towns within Massachusetts' Barnstable County to implement a regional land use plan. The commission must approve projects of regional impact, and if it rejects a proposed development, none of the fifteen member municipalities may subsequently approve it. Permits for several big-box retailers, including Wal-Mart, Sam's Club, Costco, and Home Depot, have been denied by the commission.<sup>140</sup>

#### *K. State Required Coordinated Review*

Some states have taken a more active part in influencing the project review process. For example, Vermont's Act 250,<sup>141</sup> which requires regional impacts to be considered during the permit process, has also been cited as a successful regional review procedure for addressing challenges presented with big-box development. Under Act 250, developments of regional impact must obtain a permit from one of the state's District Environmental Commissions, and approval hinges on compliance with statutory criteria relating to air and water pollution, drinking water supplies, soil erosion, traffic and congestion, burdens, the ability of municipalities to provide services, aesthetics, historic sites, natural areas and wildlife, regional and municipal growth, energy conservation, and patterns of sprawl.<sup>142</sup> Act 250 review has resulted in three of Vermont's four Wal-Marts being less

---

<sup>135</sup> *See id.*

<sup>136</sup> *See Salkin, supra* note 133, at 55–57.

<sup>137</sup> *See id.* at 57–60.

<sup>138</sup> *Id.* at 60; *see also* The New Rules Project, Impact Review, *supra* note 134 (providing a wide-ranging overview of various community efforts to regulate “big box” stores).

<sup>139</sup> The New Rules Project, Impact Review, *supra* note 134.

<sup>140</sup> Salkin, *supra* note 133, at 63–64.

<sup>141</sup> Vt. STAT. ANN. tit. 10, §§ 6001–6093 (2007).

<sup>142</sup> *Id.* § 6081.



than half the size of the company's typical facilities,<sup>143</sup> and in 1997, the Supreme Court of Vermont upheld the denial of a Wal-Mart permit application that was based, in part, on the likely effects of the store on existing local businesses.<sup>144</sup>

Act 250 was adopted in 1970, well before Wal-Mart and other big boxes became ubiquitous national presences. Since then, Maine has also enacted statewide legislation attempting to deal with the regional problems of large retail development. The 2007 Informed Growth Act requires communities to prepare comprehensive economic impact studies for all retail developments exceeding 75,000 square feet.<sup>145</sup> The study must:

identify the economic effects of the large-scale retail development on existing retail operations; supply and demand for retail space; number and location of existing retail establishments where there is overlap of goods and services offered; employment, including projected net job creation and loss; retail wages and benefits; captured share of existing retail sales; sales revenue retained and reinvested in the comprehensive economic impact area; municipal revenues generated; municipal capital, service and maintenance costs caused by the development's construction and operation, including costs of roads and police, fire, rescue and sewer services; the amount of public subsidies, including tax increment financing; and public water utility, sewage disposal and solid waste disposal capacity.<sup>146</sup>

After holding a public hearing, the municipality can approve the development "only if it determines that there is likely to be no undue adverse impact."<sup>147</sup>

While Maine and Vermont remain the only states to have enacted impact review requirements, similar regulations have been proposed in California, New Jersey and Oregon.<sup>148</sup>

---

<sup>143</sup> The New Rules Project, Vermont's Act 250, <http://www.newrules.org/retail/vermont.html> (last visited Apr. 13, 2008).

<sup>144</sup> *In re* Wal-Mart Stores, Inc., 702 A.2d 397 (Vt. 1997).

<sup>145</sup> ME. REV. STAT. ANN. Title 30-A, §§ 4365-4371 (2007).

<sup>146</sup> *Id.* § 4367(4)(A).

<sup>147</sup> *Id.* § 4369.

<sup>148</sup> The New Rule Project, Impact Review, *supra* note 134.

### III. ECONOMIC, SOCIAL AND OTHER LOCALLY BASED INITIATIVES

#### *A. Economic Impact Review*

Economic impact review ordinances have emerged over the past several years as useful tools for communities to use to evaluate whether proposed retail developments will support and contribute to local economies.<sup>149</sup> The reviews function as cost-benefit analyses, requiring studies of the likely impacts of development on a community's municipal finances, job availability and quality, housing costs, and the likely effects on existing businesses. Many economic impact review procedures also assess impacts on environmental resources, community character, tourism, and residents' general quality of life. Generally, if the impact review determines that the development will have an undue adverse impact on the community, it will not be permitted.

Economic impact reviews are generally triggered by proposals to build commercial retail facilities over a certain size.<sup>150</sup> Developments that exceed the threshold must then undergo a detailed study of the impacts that they will have on the surrounding community and local economy. Although most impact review thresholds are targeted at big boxes, a few cities have set review thresholds that are low enough to encompass some stand alone chain stores such as pharmacies and

---

<sup>149</sup> See *id.* Grassroots groups have had a large hand in pushing communities to adopt economic impact review procedures. In Carbondale, Colorado, for example, Mountain Folks for Global Justice (MFGJ), urged the Board of Trustees (equivalent to a city council) to reject a Target superstore, and also to adopt ordinances that would not only put a cap on stores of over 60,000 square feet, but also would require impact reviews on stores over 20,000 square feet. The New Rules Project, Retail: Community Impact Assessment—Carbondale, CO, <http://www.newrules.org/retail/carbondale.html> (last visited Apr. 2, 2008). In Westbrook, Maine, the group called Westbrook Our Home, fought the establishment of a Wal-Mart in the community, and also won the passage of a law which limits retail stores to 160,000 square feet. The New Rules Project, Retail: Economic & Community Impact Review—Westbrook, Maine, <http://www.newrules.org/retail/westbrook.html> (last visited Apr. 2, 2008) (discussing WESTBROOK, ME., LAND USE ORDINANCES § 310.3 (2007)).

<sup>150</sup> See, e.g., HOMER, ALASKA, CODE § 21.61.105 (2005) (15,000 square feet); BENICIA, CAL., CODE § 17.70.360 (2007) (20,000 square feet); L.A., CAL., CODE § 12.24(U)(14)(a) (2004) (100,000 square feet with 10% of the floor area being devoted to tax-exempt items); MOUNT SHASTA, CAL., ZONING CODE § 18.70.030 (2005) (20,000 square feet); BENNINGTON, VT., LAND USE & DEV. REGS. § 5.22 (2006) (50,000 square feet); BRATTLEBORO, VT., ZONING ORDINANCE § 2337(A) (2006) (65,000 square feet). In Greenfield, Mass., any development that falls below the size threshold will still be required to go through economic impact review if it is projected to result in a certain number of additional daily vehicle trips. The New Rules Project, Retail: Community Impact Assessment—Greenfield, Mass., (Jun. 17, 1991), available at <http://www.newrules.org/retail/greenfield.html> (last visited Mar. 27, 2008) [hereinafter The New Rules Project, Greenfield, Mass.]. In Middletown, R.I., all new non-residential development is subject to economic impact review. MIDDLETOWN, R.I., CODE ch. 152, § 310 (2006).

clothing stores. The threshold set in Homer, Alaska, for example, is 15,000 square feet, and a 20,000 square foot threshold has been set in the California towns of Benicia and Mount Shasta.<sup>151</sup> A few municipalities have extended their economic impact review requirements beyond retail developments to other commercial and non-commercial projects. For example, the ordinance enacted in Carbondale, Colorado, applies to all major developments and allows waivers to be granted only for medical establishments, educational facilities, and grocery stores.<sup>152</sup> New developments of all types (except some residential projects) are also subject to economic impact review in Middletown, Rhode Island.<sup>153</sup>

The economic elements that may be studied within an impact review study are varied and may be quite in depth. Common study factors include: the projected costs of infrastructure improvements required by the development (i.e. roads and sewerage) as compared to the value of those improvements to the municipality;<sup>154</sup> projected tax revenues from the development, offset by the costs of providing services and/or possible decreases in the values of surrounding properties;<sup>155</sup> projected net job loss and creation;<sup>156</sup> the effect on wages and benefits;<sup>157</sup> impacts on housing;<sup>158</sup> the estimated amount of revenue that will be retained in the local economy;<sup>159</sup> the effects of a project on existing businesses;<sup>160</sup> estimated costs of social services

<sup>151</sup> HOMER, ALASKA, CODE § 21.61.105; BENICIA, CAL., CODE § 17.70.360; MOUNT SHASTA, CAL., ZONING CODE § 18.70.030.

<sup>152</sup> CARBONDALE, COLO., CODE § 18.25.015(1)(3) (2006).

<sup>153</sup> MIDDLETOWN, R.I., CODE ch. 152, § 310.

<sup>154</sup> See CARBONDALE, CO., CODE § 18.55.090; BENNINGTON, VT., LAND USE & DEVELOPMENT REGULATIONS § 5.22 (2006); The New Rules Project, Greenfield, Mass., *supra* note 150.

<sup>155</sup> See HOMER, ALASKA, CODE § 21.61.105(1)(2)(e); L.A., CAL., CODE § 12.24(U)(14)(b)(4); CARBONDALE, COLO., CODE § 18.55.090(3)(d); MIDDLETOWN, R.I., CODE ch. 152, § 310; BENNINGTON, VT., LAND USE & DEVELOPMENT REGS. § 5.22; BRATTLEBORO, VT., ZONING ORDINANCE § 2337(A)(3)(c)(2006); The New Rules Project, Greenfield, Mass., *supra* note 150.

<sup>156</sup> See HOMER, ALASKA, CODE § 21.61.105(1)(2)(a); L.A., CAL., CODE § 12.24(U)(14)(b)(4)(ii); BENNINGTON, VT., LAND USE & DEVELOPMENT REGS. § 5.22; The New Rules Project, Greenfield, Mass., *supra* note 150.

<sup>157</sup> See HOMER, ALASKA, CODE § 21.61.105(1)(2)(a); L.A., CAL., CODE § 12.24(U)(14)(b)(4)(ii); CARBONDALE, COLO., MUN. CODE § 18.55.090(3)(d).

<sup>158</sup> See L.A., CAL., CODE § 12.24(U)(14)(b)(4)(ii); CARBONDALE, COLO., CODE § 18.55.090(3)(d).

<sup>159</sup> See HOMER, ALASKA, CODE § 21.61.10(1)(2)(d); BENNINGTON, VT., LAND USE & DEVELOPMENT REGULATIONS § 5.22; BRATTLEBORO, VT., ZONING ORDINANCE § 2337(A)(3)(e).

<sup>160</sup> See HOMER, ALASKA, CODE § 21.61.105(1)(2)(h); L.A., CAL., MUN. CODE § 12.24(U)(14)(b)(4)(ii); BRATTLEBORO, VT., ZONING ORDINANCE § 2337(A)(3)(d).

necessitated by the development;<sup>161</sup> and the impacts of increased consumer spending and savings.<sup>162</sup>

Many impact reviews go beyond strict economic concerns to encompass elements that bear on communities' quality of life. Traffic and environmental impacts are required to be analyzed under many review regulations.<sup>163</sup> Another common element in economic impact review studies is whether a project will comport with existing neighboring uses and be operated so as not to interfere with the community's unique character.<sup>164</sup> Impacts on important historical, natural, and cultural resources are also generally included in impact reviews.<sup>165</sup> The impact on parks, open space, and/or childcare facilities may also be a factor.<sup>166</sup> And in a few communities, a project's effect on public transportation options, walking, and bicycling will be taken into account.<sup>167</sup> Los Angeles also reviews the impacts of proposed large retail facilities on grocery and retail availability and whether a project may exacerbate problems of blight.<sup>168</sup>

Most economic impact review ordinances require the developer to finance review by independent consultants or pay an impact fee to cover the cost of the assessment.<sup>169</sup> Once the review is completed, the municipality determines whether the project will have an undue

<sup>161</sup> See BRATTLEBORO, VT., ZONING CODE, art. 2, § 2337(A)(2)(b).

<sup>162</sup> See HOMER, ALASKA, CODE § 21.61.105(l)(2)(b); L.A., CAL., CODE § 12.24(U)(14)(d)(2)(v).

<sup>163</sup> See, e.g., HOMER, ALASKA, CODE § 21.61.105(l)(1) (traffic); CARBONDALE, COLO., CODE § 18.55.090(B)(6)(d)(a)(ii), (iv) (v) (traffic and environmental); MIDDLETOWN, R.I., CODE ch. 152, § 310(B)(a)(a) (2006) (traffic and parking); The New Rules Project, Greenfield, Mass., *supra* note 150, at §§ 3.2.1, 3.2.3 (traffic and environmental).

<sup>164</sup> See BENICIA, CAL., CODE § 17.70.360(B) (2007); L.A., CAL., CODE § 12.24(U)(14)(d)(2)(ix); CARBONDALE, COLO., CODE § 18.55.090(B)(6)(a)(iv); BRATTLEBORO, VT., ZONING CODE, art. 2, § 2337(A)(2)(b)(4); The New Rules Project, Greenfield, Mass., *supra* note 150, at §§ 3.2.1, 3.2.3.

<sup>165</sup> See CARBONDALE, COLO., CODE § 18.55.090(B)(6)(a)(i), (iv), (v) (historic districts); MIDDLETOWN, R.I., CODE ch. 152, § 310(B)(1)(d) (scenic, historic and archeological conditions); The New Rules Project, Greenfield, Mass., *supra* note 150, at §§ 3.2.1, 3.2.3 (scenic, historic and archeological conditions).

<sup>166</sup> See L.A., CAL., CODE § 12.24(U)(14)(d)(2)(iv) (parks, open space, playgrounds, child care facilities and community centers); MIDDLETOWN, R.I., CODE ch. 152, § 310(B)(1)(d) (open space).

<sup>167</sup> See CARBONDALE, COLO., CODE § 18.55.090(B)(6)(a)(ii); BRATTLEBORO, VT., ZONING CODE, art. 2, § 2337(A)(2)(b)(2).

<sup>168</sup> L.A., CAL., CODE § 12.24(U)(14)(d)(2)(i), (ii), (ix).

<sup>169</sup> See, e.g., HOMER, ALASKA, CODE § 21.61.105(l)(1) (2005) (paid for by applicant); MOUNT SHASTA, CAL., ZONING CODE § 18.70.140 (2005); CARBONDALE, COLO., CODE § 18.55.090(B)(3)(d) (\$4,500.00 fee); MIDDLETOWN, R.I., CODE ch. 152, § 310(D)(3) (For retail, the applicant pays a review fee of \$100.00 per 1,000 square feet.); BENNINGTON, VT., LAND USE & DEV. REGS. § 5.22 (2006) (paid for by the applicant); BRATTLEBORO, VT., ZONING CODE, art. 2, § 2337(A)(2)(b)(3), (B) (applicant must pay for review conducted by a consultant approved by the development review board).

adverse effect on the community, and if it does, then it must be rejected.<sup>170</sup> In other communities, the impact review criteria are mandatory and must be met before a permit can be issued.<sup>171</sup> Carbondale, Colorado has a unique scheme under which the criteria required by a project are narrowed from a number of study areas at a preliminary meeting between the developer and municipal officials.<sup>172</sup>

### *B. Community Benefits Agreements*

Community benefits agreements (CBAs) are private agreements negotiated between a developer and community groups.<sup>173</sup> In exchange for community support of the development, which may need extensive government approvals or public subsidies, the developer agrees to provide the community with certain benefits. Most CBAs provide a host of different benefits, including requirements that the developer hire local residents and pay living wages, that residential projects include adequate affordable housing, and that money be set aside for community improvements and grants to local organizations. These types of obligations ensure that project developers will be accountable to the communities in which developments are located and that a certain degree of revenues will be retained in local economies.

Since CBAs are negotiated directly between private parties, the benefits can be tailored to each community's needs, and the needs of local businesses have been addressed in a number of CBAs. An agreement reached in relation to the expansion of Los Angeles' LAX airport, for example, requires the developer to set up a revolving loan program to benefit small businesses.<sup>174</sup> In Denver, a CBA involving the redevelopment of environmentally contaminated land provides that the property will not be used for any commercial establishment larger than 75,000 square feet, effectively prohibiting most big-box stores.<sup>175</sup> The Longfellow CBA, which involves a residential and

---

<sup>170</sup>See L.A., CAL., CODE § 12.24(E), (U); BENNINGTON, VT., LAND USE & DEV. REGS. § 5.22.

<sup>171</sup>See, e.g., BENICIA, CAL., CODE § 17.70.360 (2007); BRATTLEBORO, VT., ZONING CODE, art. 2, § 2337(A)(1), (2); The New Rules Project, Greenfield, Mass., *supra* note 150, at § 7.12.5.

<sup>172</sup>See CARBONDALE, COLO., CODE § 18.55.090(B)(1).

<sup>173</sup>See Patricia E. Salkin, *Understanding Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities and Community Organizations* (Oct. 29, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1025724](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1025724).

<sup>174</sup>L.A. WORLD AIRPORTS, LOS ANGELES. INT'L AIRPORT MASTER PLAN PROGRAM, COMMUNITY BENEFITS AGREEMENT 30-31 (2004), [http://www.laxmasterplan.org/commBenefits/pdf/LAX\\_CBA\\_Final.pdf](http://www.laxmasterplan.org/commBenefits/pdf/LAX_CBA_Final.pdf).

<sup>175</sup>COLORADO COMMUNITY BENEFITS AGREEMENT 2 (Jun. 11, 2003), <http://amy.m.lavine.googlepages.com/ColoradoCBAFRESCContract.pdf>.

retail complex in Minneapolis, includes even stronger support for local businesses. It requires that no retail tenant may occupy more than 30,000 square feet, effectively precluding big boxes, and that at least 30% of the retail space must be set aside for local businesses.<sup>176</sup> Several other CBAs have included requirements for space to be set aside for local businesses,<sup>177</sup> and this may become standard for future CBAs involving retail developments.

### *C. Independent Business Alliances*

Independent business alliances (IBAs) are coalitions of locally owned businesses, citizens, and community organizations that work to support local businesses and entrepreneurs in order to enhance community character, build local economic strength, and prevent the displacement of local stores and service providers by chains.<sup>178</sup> According to the American Independent Business Alliance, IBAs accomplish these goals through three primary strategies:

- Informing citizens of the values provided by community-based businesses and their importance to the local economy, culture and social fabric. This helps residents view themselves as citizens, rather than as consumers, first by engaging them in active dialogue and decision-making about where they choose to spend their money.
- Group branding, promotion and advertising to elevate the collective profile of our community-based businesses to help level the playing field and bring to them some of the market advantages chains enjoy.

---

<sup>176</sup> PUINA SITE DEVELOPMENT COMMUNITY BENEFITS AGREEMENT 3 (July 26, 2007), [http://www.longfellow.org/draft\\_CBA%20SummaryJuly2007.pdf](http://www.longfellow.org/draft_CBA%20SummaryJuly2007.pdf) (last visited Apr. 9, 2007).

<sup>177</sup> See, e.g., ATLANTIC YARDS DEV. CO., COMMUNITY BENEFITS AGREEMENT 19 (June 27, 2005), <http://www.atlanticyards.com/downloads/cba.pdf> (setting aside 15% of gross retail leasing space for community-based business, with a preference given to minority- and women-owned businesses); GATEWAY CENTER AT BRONX TERMINAL MARKET COMMUNITY BENEFITS AGREEMENT 29 (Feb. 1, 2006), [http://www.bronxgateway.com/documents/copy\\_of\\_community\\_benefits\\_agreement/Signed\\_CBA\\_2\\_1\\_06.pdf](http://www.bronxgateway.com/documents/copy_of_community_benefits_agreement/Signed_CBA_2_1_06.pdf); Ryan Juskus & Elizabeth Elia, *Long Time Coming*, SHELTERFORCE ONLINE (Nat'l Housing Inst. 2007), <http://www.nhi.org/online/issues/150/longtimecoming.html> (involving the Washington, D.C., Shaw District CBA); Memorandum from Board Members Cindy Chavez, David Cortese, & Lind LeXotte to the Mayor & Redevelopment Board Members, City of San Jose 1-2 (Dec. 10, 2002), <http://www.communitybenefits.org/downloads/CIM%20CBA.pdf> (San Jose CIM project CBA, including goals of 30% San Jose retailers and 30% regional retailers, with a set aside of 10% of the available retail space for existing small business in the downtown).

<sup>178</sup> American Independent Business Alliance (AMIBA), About Independent Business Alliances, [http://amiba.net/about\\_ibas.html](http://amiba.net/about_ibas.html) (last visited Apr. 5, 2008).

- Creating strong relationships with local government and the media to inform local decision-making and give a voice to the locally-owned independent business community and promote policy that supports community-rooted enterprise.<sup>179</sup>

IBAs have been created across the country,<sup>180</sup> and they have been instrumental in encouraging residents to shop locally and in preventing national chains from locating in areas already served by existing businesses.<sup>181</sup> They have also been driving forces in proposing land use regulations of chains and large retail developments and commissioning the studies to support these regulations.<sup>182</sup>

#### *D. Local Currency Movements*

Local currency systems, such as the Ithaca Hours program in Ithaca, New York,<sup>183</sup> and the BerkShare currency of south Berkshire County, Massachusetts,<sup>184</sup> have started to appear in communities interested in keeping local revenues within their local economies.<sup>185</sup> These currency systems are not based on the purpose of excluding

<sup>179</sup> *Id.*

<sup>180</sup> American Independent Business Alliance (AMIBA), Find an Independent Business Alliance Near You, [http://amiba.net/find/international\\_index.html](http://amiba.net/find/international_index.html) (last visited Apr. 6, 2008).

<sup>181</sup> See Stacy Mitchell, The New Rules Project, Homegrown Economics: How Boulder Businesses Are Staying Ahead of the Chains, <http://www.newrules.org/retail/smorionafield.html> (last visited Apr. 6, 2008) (noting that the IBA in Austin, Texas, succeeded in preventing the development of a sprawling shopping center).

<sup>182</sup> See, e.g., The New Rules Project, Corvallis Business Alliance Urges Residents to Hop Locally (Apr. 1, 2004), [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=229](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=229) (noting that the Corvallis, Oregon, IBA “has begun forging a working relationship with elected officials and city government. One of its long-term goals is to advocate for policies that support independent, local businesses.”); The New Rules Project, Missouri Coalition Works to End Big Box Subsidies (Apr. 1, 2003), [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=170](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=170); The New Rules Project, San Francisco Weights Restrictions on ‘Formula’ Businesses (Sept. 1, 2003) [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=245](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=245) (noting that San Francisco small business associations supported the formula business regulations); The New Rules Project, Gaming Diversity: Formula Business Rules Spread (Aug. 1, 2000), [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=16](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=16) (noting that the Boulder, Colorado, IBA proposed a formula business ordinance); The New Rules Project, Local Stores Create Triple the Economic Activity of Chains (Feb. 1, 2003), [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=150](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=150) (stating that the Austin, Texas IBA hired a consulting firm to prepare a report on chain stores’ influence on the local economy); The New Rules Project, Salt Lake City Coalition Creates Voice for Independents (Aug. 1, 2000), [http://www.newrules.org/retail/news\\_archive.php?browseby=slug&slugid=18](http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=18).

<sup>183</sup> Ithaca Hours Online, <http://www.ithacahours.com> (last visited Apr. 9, 2008).

<sup>184</sup> BerkShares, Inc., <http://www.berkshares.org> (last visited Apr. 9, 2008).

<sup>185</sup> See Jeffrey Gangemi, *Buy Local—With Town Currency*, BUS. WK., Jul. 18, 2007, available at [http://www.businessweek.com/smallbiz/content/jul2007/sb20070717\\_097103.htm](http://www.businessweek.com/smallbiz/content/jul2007/sb20070717_097103.htm).

national chain stores and big boxes; rather, they are intended to strengthen local economies by keeping money in local circulation and generally promoting the patronization of local businesses. Formula businesses are unlikely to sign onto such programs because the currencies cannot be used by corporations outside of the host community. This may place chains at a disadvantage in areas like Berkshire County, where BerkShares receive a favorable rate of exchange (vendors are required to value each 90 cent BerkShare as one dollar). Still, chains are not prohibited from opting into local currency systems, and in the Berkshires, at least one chain, Agway, does accept the local currency.<sup>186</sup>

### CONCLUSION

Communities and corporations have a love-hate relationship. Some national retail chain corporations can be economic engines for communities, generating revenue, creating jobs and in some cases, providing consumers with low-cost goods and services. At the same time, these formula retail establishments can overwhelm communities with their size, creating environmental and social challenges, and they often displace existing locally owned and operated businesses, shifting jobs, and offsetting negative economic impacts. Community character can suffer and tourism can be negatively impacted. The siting of certain larger retail outlets can emotionally divide a community. Communities need to use the consensus building mechanisms available through the land use planning process to determine how and where they want to grow with respect to formula retail. Careful, strategic, community planning, along with a combination of municipal regulatory programs and grass-roots initiatives, can yield thriving communities both with and without certain formula retail establishments.

---

<sup>186</sup> Telephone interview with Christopher Lindstrom, Special Projects Coordinator, E.F. Schumacher Society, and a founding member of BerkShares, Inc. (Jan. 2008).





# HOUSING NEEDS ASSESSMENT

MARCH 2021



(this page intentionally blank)

# Table of Contents

- Table of Contents..... 3
- PART I - KEY FINDINGS..... 1**
  - Executive Summary ..... 2
    - Introduction ..... 2
    - Defining What Households Can Afford in the San Luis Valley ..... 3
    - Housing and Economic Challenges Abound..... 4
    - Considerations and Opportunities for Action Planning ..... 6
  - Current and Projected Housing Needs ..... 9
    - Catch Up Needs (Current Conditions)..... 9
    - Keep Up (Future Needs)..... 11
    - Summary of Needs ..... 12
    - Needs by Own/Rent and Income..... 13
- PART II - SUPPORTING DATA AND ANALYSIS..... 16**
  - Population and Households ..... 17
    - Household Distribution and Growth ..... 17
    - Age of Residents ..... 18
    - Diversity of Race, Religion, and Culture..... 19
    - Household Type and Size..... 20
    - Household Income ..... 21
    - Housing Cost Burden ..... 24
  - Employment ..... 26
    - Number of Jobs ..... 26
    - Job Trends and Projections ..... 26
    - Types of Jobs and Wages ..... 29
    - Seasonality of Jobs ..... 32
    - Commuting..... 34
    - Unfilled Jobs and Local Labor Force ..... 37
  - Employers and Housing..... 39
    - Housing Availability ..... 39
    - Ability to Fill Jobs ..... 40
    - Employee Housing Challenges ..... 43
    - Perceived Employee Housing Needs..... 45
  - Housing Inventory and Services ..... 47
    - Housing Units ..... 47
    - Types of Housing ..... 51
    - Cost to Build..... 53
    - Provisional Housing ..... 54
    - Age of Housing ..... 55
    - Subsidized and Income Restricted Housing..... 56
  - Housing Market Conditions ..... 63
    - For Sale Market ..... 63
    - Rental Housing ..... 67
  - Conclusion ..... 72

Acknowledgements .....	73
San Luis Valley Housing Committee .....	73
San Luis Valley Housing Coalition Board of Directors .....	73
Consulting Team .....	74
Area Median Income Charts .....	75
Methodology .....	76
Primary Research .....	76
Subject Matter Expert and Key Stakeholder Interviews .....	76
Secondary and Local Data Sources .....	77
Glossary .....	78

# PART I - KEY FINDINGS

# Executive Summary

## INTRODUCTION

The San Luis Valley Housing Coalition in coordination with numerous local governments and community organizations commissioned a Housing Needs Assessment (Assessment) and Action Plan to understand current housing conditions in the San Luis Valley and work towards solutions to address the housing challenges that people in the region are facing.

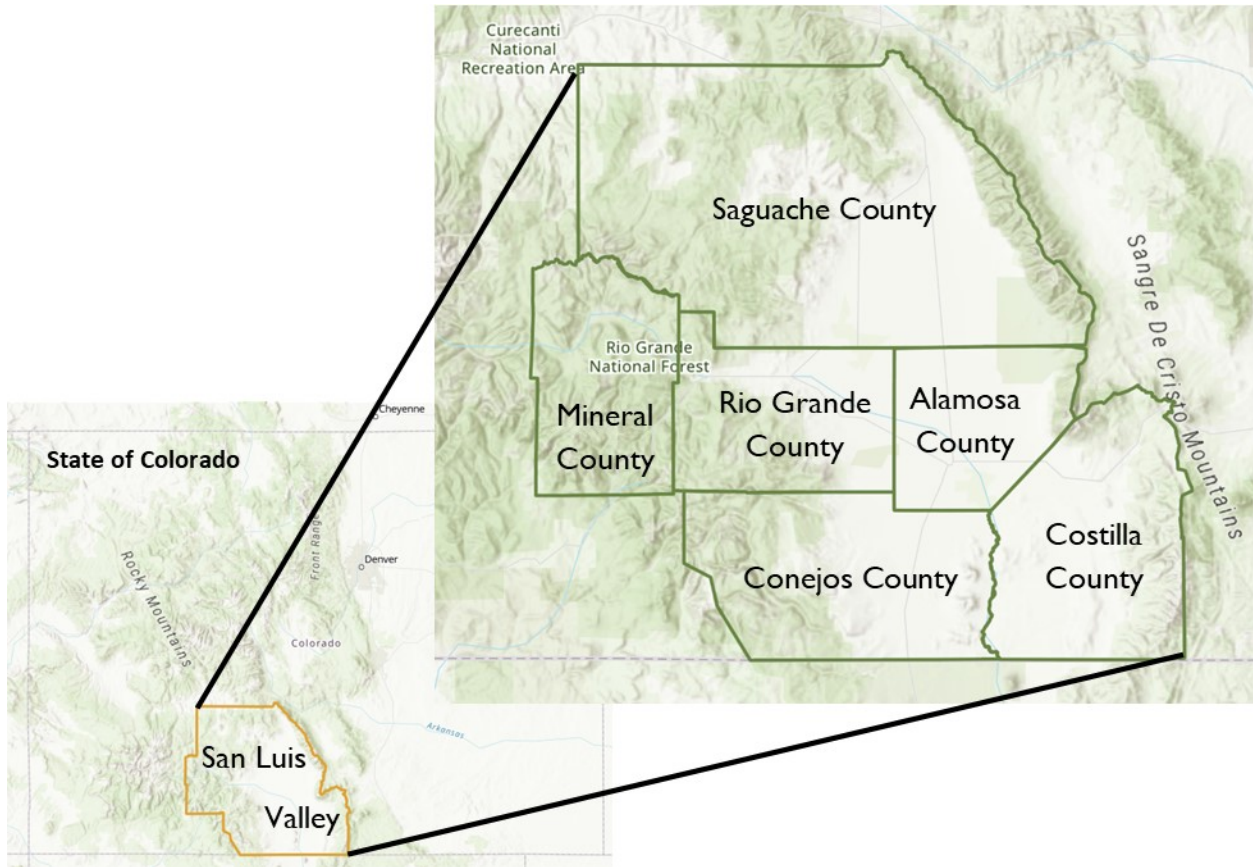
The San Luis Valley (referred to herein as the San Luis Valley or Valley) is defined in this Assessment as the entirety of the following six Colorado counties: Alamosa County, Conejos County, Costilla County, Mineral County, Rio Grande County, and Saguache County. It is an over 8,000 square mile area in south-central Colorado and comprises a large part of the Upper Rio Grande River Basin and the high desert of the San Luis Valley, the highest alpine valley in the world. The Valley's northern boundary is just south of Poncha Pass and its southern boundary is the Colorado-New Mexico border. Its western boundary is in the San Juan Mountains of Mineral County and its eastern boundary is the crest of the Sangre de Cristo mountains. This Assessment evaluates current housing conditions in each county and the region, the factors that are shaping the housing market, and the needs and gaps in the housing market looking forward.

“The valley needs to be one big community where we all thrive, not just some of us. We do not have enough to compete within the valley, we have to work together.”

- Consultant Team Interview

The next phase of the work will be community specific assessments, which are intended to provide a deeper understanding of the housing challenges and opportunities for 14 specific communities within the Valley. The final phase will be the Action Plan, which will focus on solutions at a regional level.

## San Luis Valley, Colorado



Sources: ESRI, Consultant Team

## DEFINING WHAT HOUSEHOLDS CAN AFFORD IN THE SAN LUIS VALLEY

This Assessment centers on the understanding of what households can afford for housing in the Valley, and explores where their needs are being met, and where there are gaps. It uses the definition that housing is affordable when the monthly payment (rent or mortgage) is equal to no more than 30% of a household's gross income (i.e., income before taxes).

The affordable rents and purchase prices for two-person households are as follows.

### Incomes and Housing Affordability

Household Income (2 people)	Percent Area Median Income (AMI)	Max Rent	Max Purchase Price
\$0 to \$28,400	<50%	\$710	\$125,200
\$28,401 to \$45,400	50.1-80%	\$1,278	\$200,400
\$45,401 to \$68,200	80.1-120%	\$1,704	\$300,600
\$68,201 to \$113,600	120.1-200%	\$2,840	\$500,900
>\$113,600	>200%		

Source: HUD, Consultant team

Note: Max purchase price assumes 30-year mortgage at 5.5% with 5% down and 20% of the payment covering taxes, HOA, PMI and insurance. Mineral county has a slightly higher AMI than the rest of the region (see Appendix B – AMI Chart).

## HOUSING AND ECONOMIC CHALLENGES ABOUND

Many factors contribute to the current housing conditions found in the Valley.

- The region is vast and sparsely populated, but housing and job markets are interconnected across the Valley. Over the past twenty years, some areas have been growing while others have declining populations. Alamosa is the regional hub for jobs and services. It currently has the most constrained housing market, and has the most proposed new housing development.
- Major challenges in the region include intergenerational poverty, an aging workforce, and an aging housing inventory. The cost to construct new housing is high in the Valley (as it is across Colorado and the nation currently). Developer interest and construction labor are pulled into other areas in the state or region with higher priced housing.
- More homes are unoccupied in San Luis Valley than statewide (30% compared to 10%), with a significant proportion vacant due to dilapidation and abandonment. Long commutes, harsh winters, and limited services create a high cost of living, even as the region's housing appears affordable compared to other parts of Colorado.
- The Valley has long been home to many low-income households and families. It is also diverse. It has a higher Hispanic population compared to the rest of the state and has a wide mix of cultures and religious views. The diversity provides the Valley with a cultural richness, but, in some areas, can make it hard to create a common vision to address community concerns. Long-standing racial and socioeconomic disparities remain in place to the present day.
- Since the last recession, wages have remained fairly flat, few new homes have been constructed, and housing costs have risen. All of these dynamics make it more difficult for households to make ends meet. Half of renters and a quarter of homeowners are paying an unaffordable proportion of their income on housing. For those experiencing homelessness the pathway to getting housed again is increasingly challenging. And at the same time, second homeownership and homes built for higher income households from outside the Valley are rising in some areas.
- There is considerable commuting within the Valley. People who cannot find suitable housing they can afford in the community where their job is located are forced to compromise on location. This creates a ripple effect, as workers in Alamosa occupy housing in Monte Vista that someone working in Monte Vista may need, for example. This also happens in relationship to communities “over the pass” that are outside the Valley such as Pagosa Springs, Salida, or Pueblo.
- Another challenge is the relatively low participation of households in the workforce and the aging workforce. About 31% of households have zero workers, compared to about 18% in the state. This low workforce participation is a combination of retired households and households subsisting on safety net support programs. Combined with the exodus of young professionals in the 25-44 age group who leave the area for better employment opportunities and pay means that employers often cannot find enough qualified and dedicated employees to fill jobs.

The common themes across the Valley are summarized in the graphic below to provide a common and “quick glance” understanding of the underlying issues, creating a foundation for building regional and community specific solutions moving forward. Page numbers provided reference the start of the applicable section(s).



# Why is there a housing problem?

## High Cost of Construction

\$190/SF to build  
Too expensive for locals

Page 53

## Increasing Prices

Home prices up 66% and rents up  
30% since 2009

Page 63

## Forced Commuting

\$700/month to live in Del Norte  
and work in Alamosa

Page 33

## High Housing Payments

47% of renters and 26% of owners  
pay more than 30% of their gross  
income on housing

Page 20

## Residential Sprawl

73% of new homes are  
not in cities/towns

Page 47

## Limited Housing Choices

90% single-family and manufactured homes  
250 Provisional Homes  
>35% is over 50 years old

Page 51

## Labor Shortage

Workers age 25-44 are leaving  
900 workers to retire by 2026  
Employers struggle to fill jobs

Pages 36 and 40

## Aging Population

18% of people age 65+ and  
increasing; imbalance with workers  
and workforce housing

Page 17

## CONSIDERATIONS AND OPPORTUNITIES FOR ACTION PLANNING

**Economic development and housing must go hand in hand** – There is need for more and better jobs as well as more and better housing in the Valley, and the two dynamics are deeply interconnected. The average wage for households in the Valley is \$38,000 per year, and there is a gap between open jobs and local applicants with the skills to fill them. Investments in housing are needed to make it more attractive for young and middle-aged workers to stay or return to the Valley, just as investments in programs to help residents become more self-sufficient, such as job skills training, access to funding, and small business and entrepreneurial support are needed to grow and sustain the region’s economic engine. Groups like La Puente, Boys and Girls Club, the Workforce Development Center and the Alamosa School District are working to support children and help adults build skills that employers need.

During action planning, stakeholders should also balance the need for more subsidized housing with the lack of moderately priced housing to support the retention and attraction of workers that are needed to sustain and grow the economy. More attractive attainable housing is needed that is affordable to the 60-120% AMI demographic, both to attract qualified workers from outside the Valley, as well as to retain younger households who have been leaving. This dynamic is highlighted by the employers’ survey finding that entry-level for sale housing and rentals for year-round employees are the most needed.

**Start small and build upon promising practices** - Some communities need new housing; many need to increase their investment in repair, renovation, and removal of abandoned or unsafe structures. Over the decades, communities have tried numerous housing programs and solutions. Not all have been successful. Some housing subsidy programs have created a cycle of dependency by disincentivizing participants from working. Others have built housing that was driven by state or federal program requirements that did not meet local needs and desires, resulting in inefficient use of resources and vacancies.

As communities participating in this housing study move into action planning, a cornerstone should be to build upon current work that is successful. Some of the successful and promising practices include:

- Community Resources and Housing Development Corporation and Habitat’s Self Help builds.
- San Luis Valley Housing Coalition and Energy Resource Center’s work to increase safety, habitability, and energy conservation.
- La Puente and SLV Behavioral Health Group’s supportive housing programs.
- City and non-profit support to help a private sector developer compete for Low Income Housing Tax Credits for rental development of Iron Horse in Alamosa.
- Recent market rate rental and for-sale development in Alamosa.
- Del Norte and Monte Vista’s abandoned home redevelopment work.
- Colorado Housing and Finance Authority and San Luis Valley Housing Coalition’s homebuyer readiness classes and down payment assistance programs.

Because current housing needs are broader than what organizations have generally focused on in the past, the Valley will also need to explore expanding existing programs or adding new programs to fill gaps. This will create a robust and productive action planning process focused on the spectrum of housing needs.

When communities outside of Alamosa seek to build new housing, they should start small, ensure there is an adequate market, and be realistic about the gap between what local wage earners can afford and the cost to build. Substantial resources in the form of land, water/sewer connections, streets, utility connections, development skill, labor, materials and funding will be required to fill this gap. There is also a need to work with funders like CHFA and Colorado Division of Housing to create funding solutions that respond to the unique circumstances in the Valley.

While this study estimates that almost two thousand homes and apartments are needed to catch up and keep up with needs over the next five years, smaller goals are advised. On the community and valley-wide scale, consider setting housing goals that land somewhere between historic production and 100% fulfillment of these projections, taking funding, land, and other local resources into consideration.

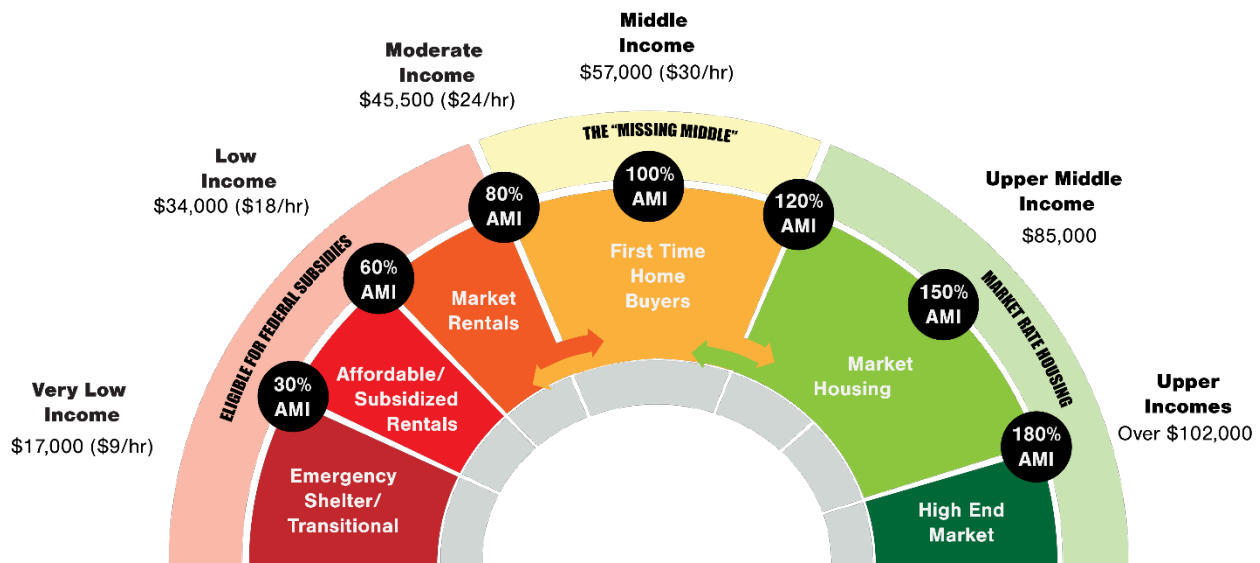
**Local and regional problems and solutions** –Some housing problems and challenges are universal across the Valley, while others are unique to specific communities. The approach to crafting solutions should similarly be a blend of regional and community specific actions, in collaboration with residents and local organizations from the public, private, and non-profit sectors. The problems are complex and will require intense commitment and strong collaborations to resolve.

Provisional housing presents a strong example. Very low-income people, often elderly or disabled, are living in precarious circumstances, often off the grid in remote and harsh settings. Code enforcement is needed for health and safety reasons, but also carries the threat of making a provisional homeowner or renter homeless. Coordination of a consistent, compassionate, realistic approach is needed among those living in provisional housing, service providers, land use regulators, and public health officials. Funders should also be included in the solutions conversation and implementation.

### **More housing is needed across a spectrum of housing types**

There is a lack of diversity in the housing price points and types available. More housing choices are needed ranging for emergency shelter through market rate homeownership. The biggest gaps in the housing market are for units that serve smaller households, seniors, renters who can afford 1,300/month or lower (households below 80% AMI) and owners who can afford homes priced up to \$300,000 (households below 120% AMI).

## San Luis Valley Housing Bridge



**Justice, Equity, Diversity and Inclusion moving forward** – Housing investments, policies, land use regulations, and access to loans and grants all present opportunities to promote diversity and inclusion and to reverse historic racial and economic disparities. People experiencing the housing challenges described in this Assessment need to be included as communities work towards housing solutions. This work has begun with the San Luis Valley Housing Coalition bringing diverse agencies, funders, and community members together and to plan for coordinated, comprehensive outreach for the housing action plan process.

## Current and Projected Housing Needs

This section evaluates how many housing units are needed, and at which price points, to address housing deficiencies in the region to support residents, businesses and the economy. This section builds upon and summarizes the analysis in subsequent sections of the report.

Needs are projected through 2026 and quantified in two categories:

**Catch-Up Needs** – the number of housing units needed to address current deficiencies in housing based on the number of ownership and rental units needed to provide a functional housing market.

**Keep-Up Needs** – the number of units needed to keep-up with future demand for housing based on projected job and related resident growth and jobs that will be vacated by retiring employees. Housing shortages worsen when local job growth and the need for more workers exceeds the growth in available housing units.

### CATCH UP NEEDS (CURRENT CONDITIONS)

#### Unfilled Jobs

Employer survey respondents reported that about 4% of jobs were unfilled. This equates to about 900 unfilled jobs in the region.

About 590 housing units are needed to house employees filling 900 jobs. Due to the recent loss of jobs due to COVID-19, as jobs come back, many will likely be filled by un- or under-employed residents in the area. Employers hiring for skilled and upper-level positions in particular, however, will benefit from having additional housing units available to help recruit new workers to the area. Although the unemployment rate dropped from a high of 9.3% in April 2020 to 6.1% in November 2020, it is still well above the unemployment rate in November 2019 (3.1%) (see Employment section).

As the number of jobs recover, many jobs will be filled by persons living locally who are currently unemployed. If the unemployment rate drops back to 3.1%, then about 728 currently unemployed people living in the Valley are available to fill jobs as employment recovers. These employees already have housing in the Valley.

COVID-19 Employment Recovery	
November 2020 labor force in Valley (LAUS)	23,487
# currently unemployed (LAUS) (6.1% unemployment rate)	1,434
# unemployed at 3.1% unemployment	728
Difference (available Valley labor pool)	706
Housing units occupied by local labor pool (1.4 employees per employed household)	505

Source: Local area unemployment statistics (LAUS), Consultant Team

<b>Homes Needed to Help Fill Vacant Jobs</b>	
Unfilled jobs (4% of jobs)	900
Jobs per worker	1.1
Employees per employed household	1.4
Housing units needed	590
Local unemployment recovery	505
Adjusted housing units needed	80

The 505 households already living in the Valley who are available to return to the labor pool during the economic recovery reduces the number of housing units needed to fill vacant jobs.

### Functional Rental Market (5% Vacancy)

The current rental market is not functional because vacancies average less than 5%. When the vacancy rate is this low, the rental market is near capacity and cannot absorb new residents or employees moving to the area. This results in several issues:

- Renters have difficulty moving from one unit to another as their circumstances change,
- New employees struggle to find housing when hired, impacting businesses and the economy,
- Rents increase at rates much faster than incomes,
- Renters displaced due to owners selling rentals, condemnation, or other reasons have few or no options, and
- Landlords have little incentive to make repairs and capital investments.

The Valley is estimated to average about 2% vacancy throughout the year – ranging between 3% and 1% depending upon the season. A 5% vacancy level, while still low, provides some choice and availability of units for residents and employees. To increase the vacancy rate to 5%, approximately 211 additional rental units are needed.

<b>Rentals Needed for a Functional Market</b>	
Renter-occupied units (2020)	6,269
Average vacancy rate (2%)	25
Total rentals	6,394
Number of rentals if 5% vacancy rate	6,730
Difference	336
New housing needed (Difference minus existing Vacant Units)	211

### Balanced Ownership Supply (6-month supply)

The number of listings varies throughout the year, with more homes for sale in the warmer summer months and fewer being sold in the winter months. For at least the past 18-months, however, it has been a sellers market; averaging between 3- to 4-months of inventory overall and even lower for homes priced under \$300,000. A general industry standard is that when the number of homes available for sale is below a 6-month supply, it is a seller's market – meaning that there are more buyers than homes

available to purchase, resulting in rising prices. This trend is currently evident in the Valley (see Housing Market Conditions).

Providing more housing ownership opportunities at prices that residents can purchase allows renters to move into ownership, new employees to purchase homes, growing families to move up in housing, and empty-nesters and seniors to down-size and free up their larger homes. This movement accommodates the housing needs of residents at various stages of life.

About 120 more homes are needed to generate a 6-month supply of for-sale housing on the MLS. Most will need to be priced under \$300,000 since lower price points are in the shortest supply.

<b>For-sale Homes Needed for a Balanced Supply</b>	
MLS sales (2020)	639
Average sales per month (divide by 12)	53.3
6-month supply	320
Average available listings	200
Difference:	120
Additional MLS listings needed for 6-month supply	

### Pending Development Adjustments

As summarized in the Housing Inventory section, an estimated 100 housing units are pending construction; most of which are in Alamosa County. Projects include rentals and ownership; subsidized and market rate. These projects will address some of the catch-up rental and ownership market needs. Adjustments to housing need estimates from pending development are made in the “Summary of Housing Needs” table shown below.

### KEEP UP (FUTURE NEEDS)

Due to the COVID pandemic, jobs decreased in the Valley by about 5.5% between 2019 and 2020. The Colorado Demography Office estimates that jobs will recover at an average rate of 0.9% per year, not quite reaching 2019 levels by 2026. This is similar to the Valley’s rate of job recovery from the prior Great Recession.

Estimates are also based on maintaining the current percentage of employees living in the Valley (88%).<sup>1</sup> Producing more or less housing than estimated below would be equivalent to either decreasing or increasing the percentage of employees that commute into the Valley, respectively.

As shown below, an estimated 695 housing units will be needed in the Valley to support employees filling jobs through 2026, or about 140 housing units per year.

<sup>1</sup> Respondents to the 2020 employer survey reported that about 4% of employees do not live in the Valley; the Census LEHD reports that about 20% of employees do not live in the Valley – this includes those that commute into the Valley for a job, as well as work-from-home employees. LEHD typically over-estimates out of area workers due to its methodology. For the purpose of this calculation, it was assumed that the percentage of employees living outside the Valley falls between these two figures (about 12%).

<b>Homes needed for Job Growth</b>	<b>1% Growth</b>
New jobs (2020 to 2026)	1,212
Jobs per employee	1.1
Employees filling jobs	1,100
Employees living in the Valley (88%)	970
Employees per employed household	1.4
New housing units needed	695

### Retiring Employees

Employers will need to fill the jobs vacated by retirees in addition to any newly created jobs. Some retirees will likely leave the area upon retirement; however, when they sell their homes, not all will be affordable or in suitable condition for new workers filling their jobs.

Employers in the Valley estimate that about 6% of workers (1,235 total) will be retiring over the next five years. About 880 housing units will be needed to house the employees filling jobs vacated by retirees. This need exceeds the need estimated to accommodate job growth (above) and is illustrative of the aging local workforce.

<b>Retiring Employees</b>	
% to retire by 2026	6.0%
# to retire	1,235
Employees per household	1.4
New housing needed	880

### SUMMARY OF NEEDS

Based on estimated catch-up and keep-up needs, about 1,885 housing units for residents and employees are needed by 2026, or about 380 units per year. Since 2015, about 200 units per year have been added in the Valley. In the Action Planning phase, policy makers and local stakeholders should consider setting a goal that lands somewhere between historic production and 100% fulfillment of these needs projections, taking funding, land, and other local resources into consideration.

The extent to which identified housing needs may be addressed by the market will be influenced by changes in housing prices over time, the availability of land, developers' construction of community housing, and the presence or absence of programs to facilitate more development. These factors will be an extension of housing policy, resources and desired direction with respect to community housing. Setting this policy direction will be a goal of the development of the San Luis Valley Housing Action Plan.

	<b>Units needed through 2026</b>
<b>Catch-Up</b>	
Unfilled Jobs (4% of jobs)	80
Functional rental market (5% vacancy rate plus lost unit replacement)	211
Balanced for-sale market (6-month inventory)	120



	Units needed through 2026
Pending development adjustment	-100
<b>Total Catch-up Housing Units</b>	<b>310</b>

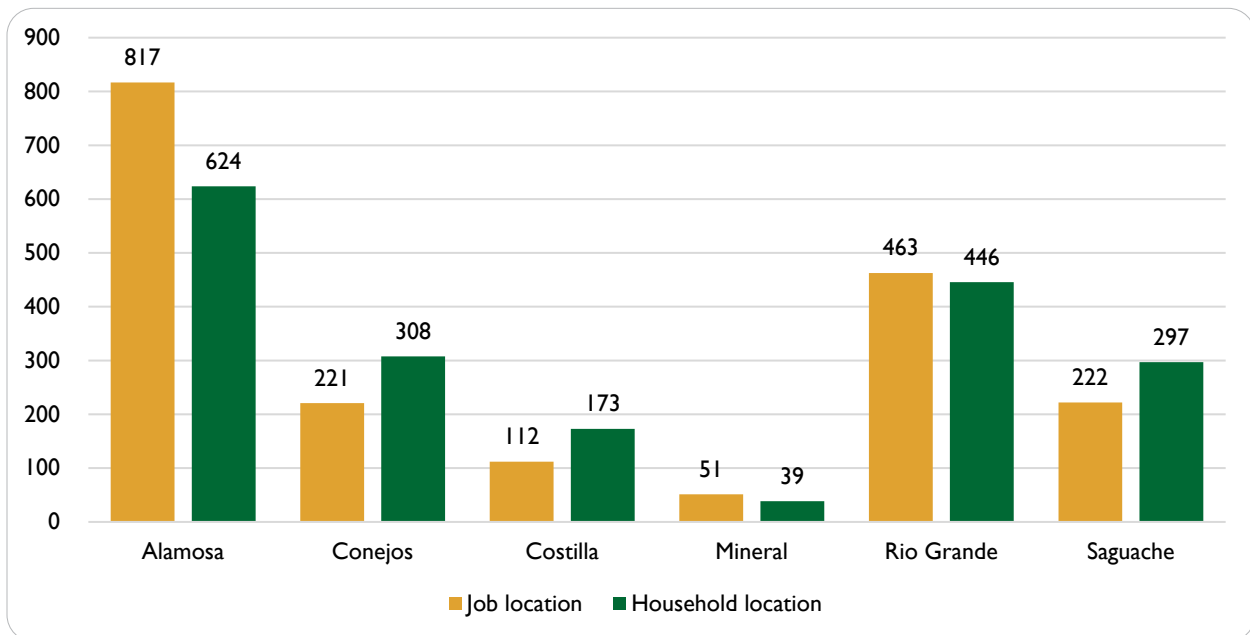
### Keep-Up

New jobs (0.9% avg. growth/year)	755
Retiring employees (6% of jobs)	880
<b>Total Keep-up Housing Units</b>	<b>1,575</b>

<b>Catch-up and Keep-up through 2026</b>	<b>1,885</b>
--	--------------

These housing units should not be evenly distributed throughout the Valley. The job centers in Alamosa County and Rio Grande County will need the largest share of units. The below chart shows how this distribution will vary depending upon whether housing units are constructed based solely on job growth in each county, or if current commuting patterns are retained and units are constructed based on where employees presently live. Again, these decisions will be considered during the Action Planning phase.

### Housing Needed for Employees Filling New Jobs (1,885 total)



### NEEDS BY OWN/RENT AND INCOME

There is a need for both ownership and rental housing in the Valley that is available to residents and the local workforce. The below ratios assumes that the majority of employees filling new and vacated jobs will need rental housing. This results in about 60% of units needing to be rentals and 40% for ownership.

This ratio, however, is somewhat dependent upon desired direction, housing policy, and the economic feasibility of new projects. Rentals can help new workers and residents get established, while ownership helps to retain workers and enable residents to build equity, achieve more stable housing and strengthen community investment.

<b>Summary of Housing Needs by Own/Rent Through 2026</b>	
<b>Units needed through 2026</b>	<b>1,885</b>
Ownership	755
Rental	1,190

Ownership housing should be created based on the income distribution of households in the Valley, as shown below.

- Prices for locals should range as low as about \$160,000 up to about \$275,000. This would provide ownership opportunities for households earning between \$40,000 through \$65,000 per year (between about 70% and 115% AMI). The current for-sale market is not providing a sufficient supply of homes in this price range.
- Homes affordable for households earning under \$40,000 per year are also undersupplied; however, producing homes at this price will not occur without substantial subsidies or programs such as Habitat for Humanity. These households also often have trouble qualifying for loans and meeting down payment purchase requirements. Rentals are more typical options at this income level.
- Homes priced over \$300,000 are oversupplied when compared to the proportion of local households that can afford to purchase these homes.

### Homeowner Income Distribution Compared to Available Homes

<b>AMI</b>	<b>Household Income Range (2-person household)</b>	<b>Maximum Affordable Price</b>	<b>Owner Income Distribution</b>	<b>For-Sale Listings (Jan. 2021)</b>
Under 50%	\$0 to \$28,400	Under \$125,000	28%	9%
50.1 - 80%	\$28,401 to \$45,400	\$200,000	21%	21%
80.1 - 120%	\$45,401 to \$68,200	\$300,000	20%	15%
120.1 - 200%	\$68,201 to \$113,600	\$500,000	19%	21%
Over 200%	>\$113,600	Over \$500,000	11%	35%
<b>Total</b>	—	—	<b>100%</b>	<b>141 listings</b>

NOTE: Shading indicates where there is a shortage of housing supply for residents and employees. Providing ownership priced under 50% AMI is challenging; rentals are more typical. Homes priced below \$300,000 are often in poor repair; better quality and variety of homes in the 80.1-120% AMI range is needed.

There are very few units available to rent at any price point in the Valley. More rentals in general are needed, but in particular:

- Rentals affordable for residents are needed at both the lower income spectrum (<50% AMI), as well as for young professionals (70% to 100% AMI).

- Subsidized properties serving lower incomes (<50% AMI) have waitlists, low turnover, and very few vacancies. When planning for these units, college and university students should be differentiated from special needs households on fixed income (e.g., seniors, persons with disabilities, etc.). Student households are candidates for different rental products and do not qualify for most rent subsidies.
- There is also a shortage of units priced between \$700 up to \$1,400 per month (about 100% AMI or \$56,000 per year) for residents and young professionals in Alamosa County and slightly lower (about \$1,300 per month) in other parts of the Valley. Households at these price points desire rentals with amenities and better quality than currently provided. Improving options and availability at this price point can help attract and retain employees to the community.

### Renter Income Distribution Compared to Available Rentals

AMI	Household income range (2-person household)	Maximum Affordable Rent	Renter Income Distribution	Available Rentals
Under 50%	\$0 to \$28,400	\$710	53%	21%
50.1 - 80%	\$28,401 to \$45,400	\$1,280	21%	56%
80.1 - 120%	\$45,401 to \$68,200	\$1,705	11%	18%
120.1 - 200%	\$68,201 to \$113,600	\$2,840	9%	3%
Over 200%	>\$113,600	Over \$2,840	6%	2%
<b>Total</b>	–	–	<b>100%</b>	<b>66 listings</b>

\*Available rentals from online sources in late 2020 and early 2021; 77% were listed in Alamosa.

NOTE: Shading indicates where there is a shortage of housing supply for residents and employees. Better quality rentals priced between \$700 up to \$1,300 to \$1,400 per month are needed (depending upon Valley location).

## **PART II - SUPPORTING DATA AND ANALYSIS**

# Population and Households

This section evaluates population and household trends for the San Luis Valley and its counties.

Why this is important:

- *Change in population and the number of households.* As the population grows, so does the need and demand for housing. Conversely, a declining resident population may result in decreased housing demand or indicate that there is a lack of housing that residents can afford and occupy. In tourism-driven economies, for example, non-resident homeowners (“second homeowners”) may still drive strong housing demand even if the resident population is shrinking.
- *Age, ethnicity, household characteristics.* The age and household profile of residents helps define what types of housing may be needed and, for households needing assistance, the most beneficial programs. Seniors and aging households need different types and prices of homes than young and growing families, for example.

## HOUSEHOLD DISTRIBUTION AND GROWTH

About 47,000 people reside in 19,000 households in the the San Luis Valley. Over half (57%) of the Valley’s households reside in Alamosa County and Rio Grande County, followed by Conejos County and Saguache County (16% each).

**San Luis Valley Households, 2020 (est.)**

	Households	Percent of Valley Households
San Luis Valley	18,998	100%
Alamosa County	6,285	33%
Conejos County	3,099	16%
Costilla County	1,742	9%
Mineral County	388	2%
Rio Grande County	4,491	24%
Saguache County	2,993	16%

Sources: Colorado Demography Office, County Staff, Consultant Team

Growth in the Valley is far below that of the state and has been since at least 1985. Between 2010 and 2020, just over 500 households were added in the Valley, a growth rate of only 0.3% per year. Some counties in the Valley experienced growth and some declined.

- Saguache County and Costilla County have been growing at the fastest rate in the Valley, at over 1.1% per year. About 66% of new households in the Valley were added in Saguache County (341 total).
- The Valley’s most populous county, Alamosa County, added the second most households.
- The second most populous county, Rio Grande County, along with Conejos County have fewer households than ten years ago. These counties have been losing population and households since at least 2004.

### Change in Households, 2010-2020 (est.)

	Households (#)	Average Annual Change (%)
San Luis Valley	518	0.3%
Alamosa County	277	0.5%
Conejos County	-29	-0.1%
Costilla County	188	1.1%
Mineral County	37	1.0%
Rio Grande County	-296	-0.6%
Saguache County	341	1.2%

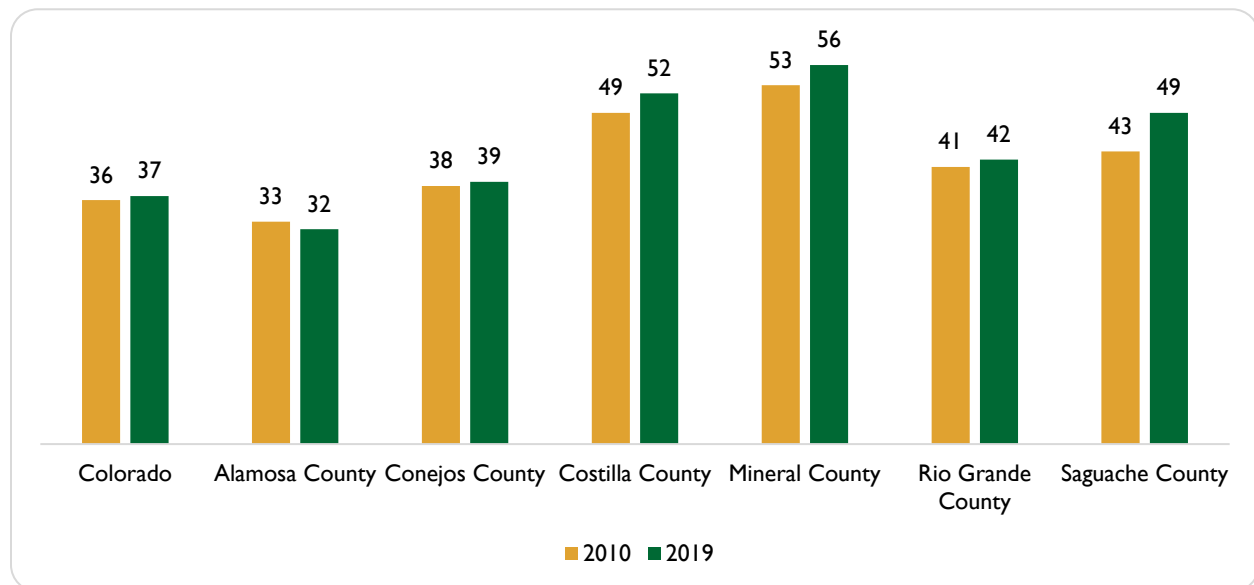
Sources: Colorado Demography Office, County Staff, Consultant Team

### AGE OF RESIDENTS

All Valley counties have a higher median age than Colorado, except Alamosa County, which is about 5-years younger than the state. Over half (55%) of the Valley's 18-24 population lives in the City of Alamosa, which is home to Adams State University and Trinidad State Junior College.

Age trends show that the median age has remained relatively consistent in all but Mineral, Costilla and Saguache counties. These counties have the oldest population and appear to be getting older.

### Median Age, 2010-2019



Source: 2010 Census, 2015-2019 ACS

A closer look at the age distribution of the population within the Valley shows that:

- The Valley has not been retaining its younger workforce (age 25 to 44). The percentage of the population under age 24 is similar in the Valley (33%) and the state (31%), whereas the young workforce cohort (age 25 to 44) is much lower in the Valley (22%) than the state (29%). The out-migration of the young workforce is most apparent in Alamosa County. This supports

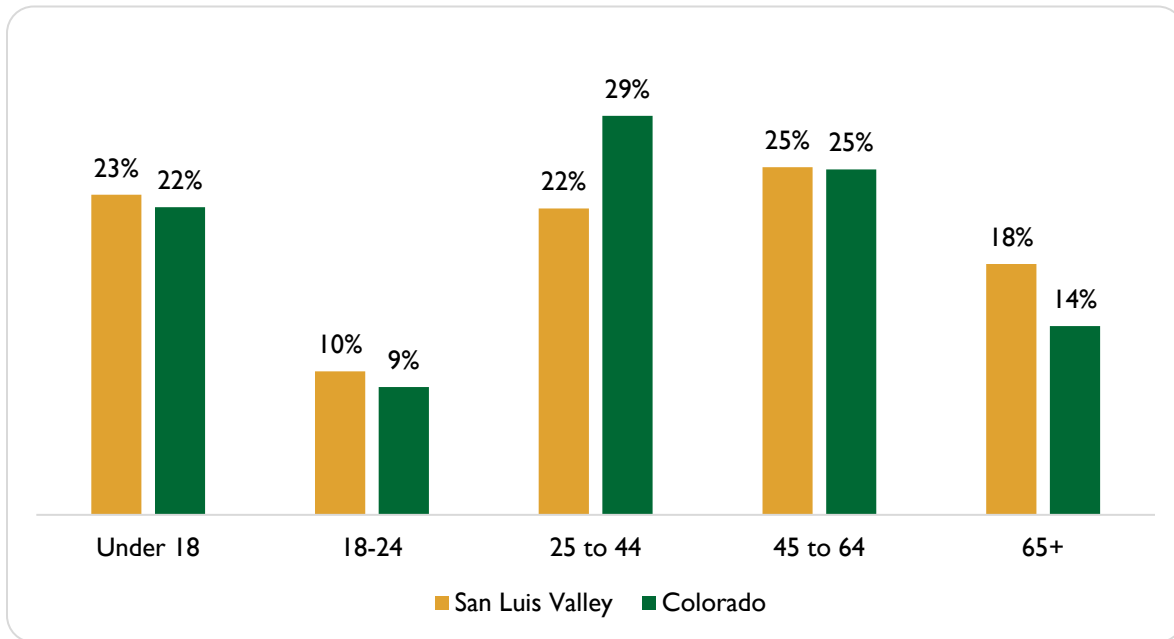
employer observations that young workers leave the area for better employment opportunities and pay, resulting in an aging local workforce and contributing to employers' difficulty filling jobs.

- The percentage of the population that is 65 and older in the Valley (18%) is also higher than the state (14%). This is true for all Valley counties, except Alamosa County (13% age 65 and over). An aging population affects the types of housing and services that are needed and, through their need for medical and support services, generate demand for workforce housing

“We need to keep our millennials in the SLV, but we need to increase the quality of our education, create skilled labor jobs, and build more housing (from apartments to larger family homes).”

- 2020 Employer Survey

### Age Distribution, 2019



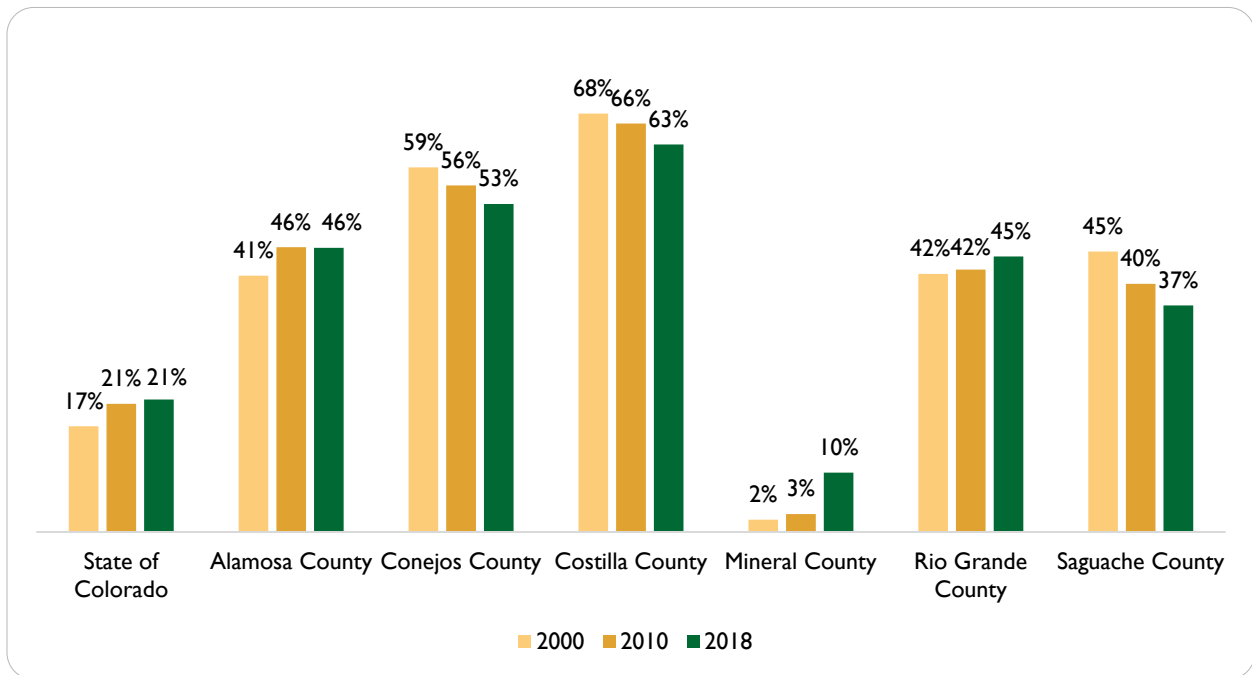
Source: 2015-2019 ACS

### DIVERSITY OF RACE, RELIGION, AND CULTURE

Every county in the San Luis Valley except Mineral County has a significantly higher percentage of the population that identifies as Hispanic or Latino (37% to 63%) than in Colorado. In Colorado, only about one in five people (21%) identify as Hispanic. This is largely attributable to Mexico's establishment of land grants in the Valley in the 1800's intended to populate its northern frontier prior to its incorporation into the United States. Even though the Valley has a large Hispanic population, it is not homogenous but comprised of descendants of early Mexican settlers and more recent arrivals from many other countries. Guatemala (Q'anjob'al Mayans) being just one example. In addition, the Valley is home to people of many other races and ethnicities, including American Indians and people of other

European descent. Religious and cultural diversity is also present, with Amish communities, Mennonites, Mormons, people of the Catholic faith, and Buddhists all coinciding in this isolated region.

### Hispanic Population, 2000-2018



Source: Colorado Demography Office

### HOUSEHOLD TYPE AND SIZE

The type and size of households affects their housing needs. Family households are those with two or more people related by birth, marriage, or adoption. Nonfamily households include people living alone or with non-relatives (e.g., roommates).

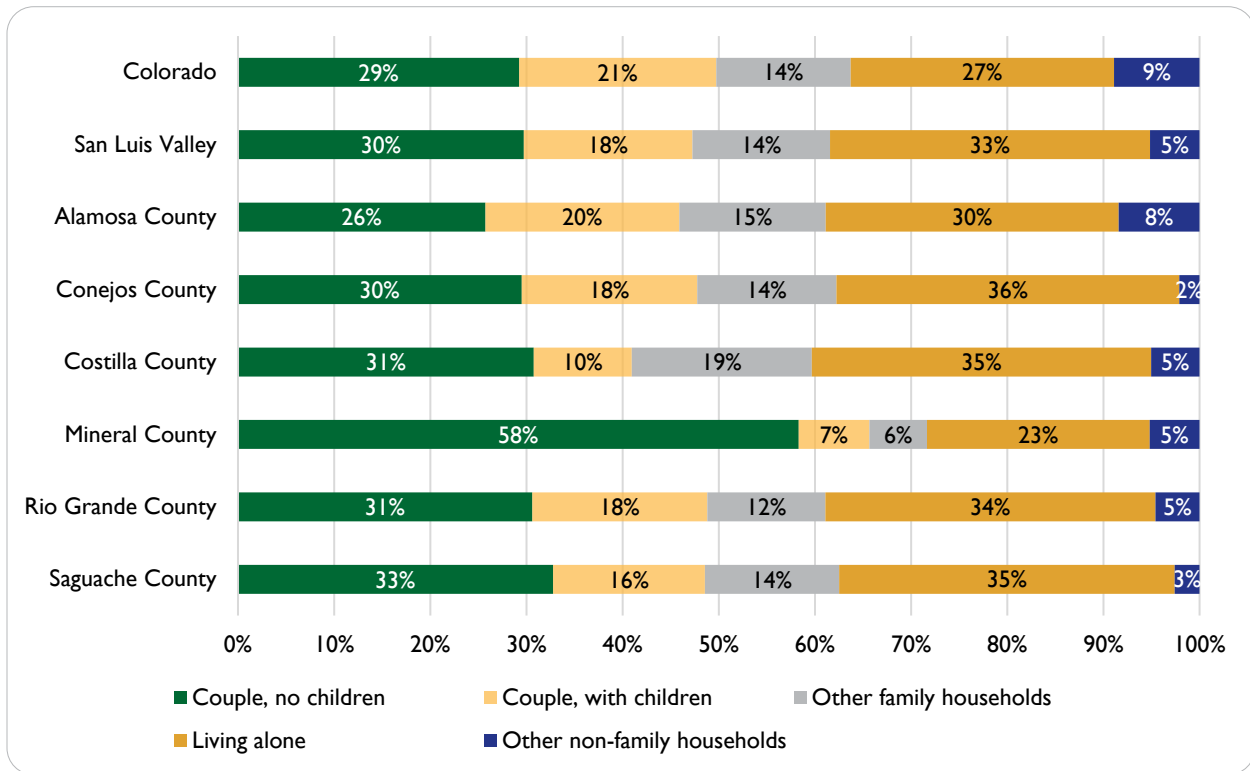
Since 2010 it appears that family households with children have declined in Colorado, the Valley, and each county since 2010, a trend that the 2020 Census might confirm. With a comparatively low young workforce cohort and the population increasingly made up of seniors over 65 (as discussed above), this decline in the Valley is to be expected.

Additional observations include:

- Alamosa, Conejos, and Rio Grande Counties have the largest percentage of families with children in the Valley. This is consistent with Realtor and property manager observations that Rio Grande and Alamosa Counties tend to be most preferred by families.
- Over one third of households in the Valley are people living alone. Smaller studios and one-bedroom units can help provide more affordable housing options for these households.
- The share of other family households is highest in Costilla County (19%). About 45% of these households include a single parent with children in their home. These households are typically at higher risk of housing cost burden and other cost of living problems than other households.



## Household Types, 2019



Source: 2015-2019 ACS

Relative to the state, the Valley has smaller household sizes on average.

## Average Household Size, 2019

	2019
Colorado	2.6
Alamosa County	2.4
Conejos County	2.5
Costilla County	2.1
Mineral County	2.2
Rio Grande County	2.3
Saguache County	2.3

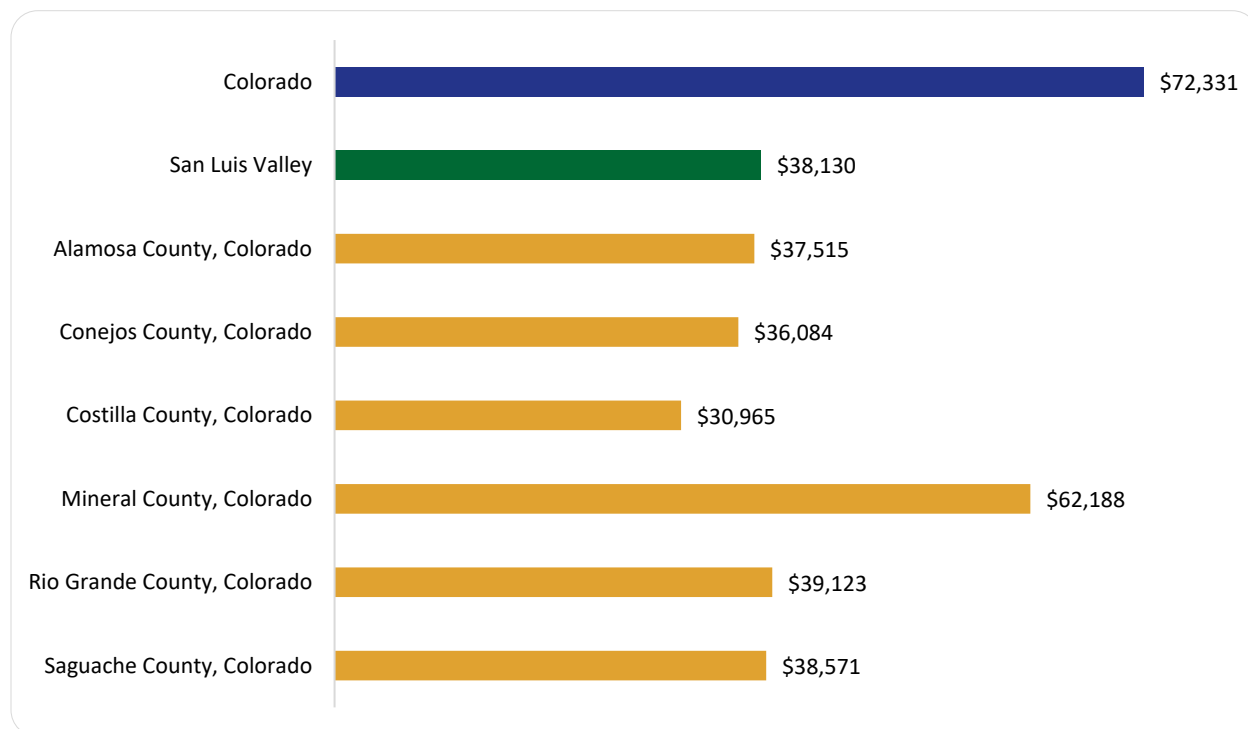
Source: 2010 Census, 2015-2019 ACS

## HOUSEHOLD INCOME

An understanding of how much money households earn through wages or other income sources is important to determining the availability and need for housing at various price points.

The median household income of the Valley (\$38,130) is about half that of the state. Lower Valley wages, a higher percentage of retirees and comparatively high reliance on public assistance payments are key reasons for this difference.

## Median Household Income, 2019



Source: 2015-2019 ACS, ESRI

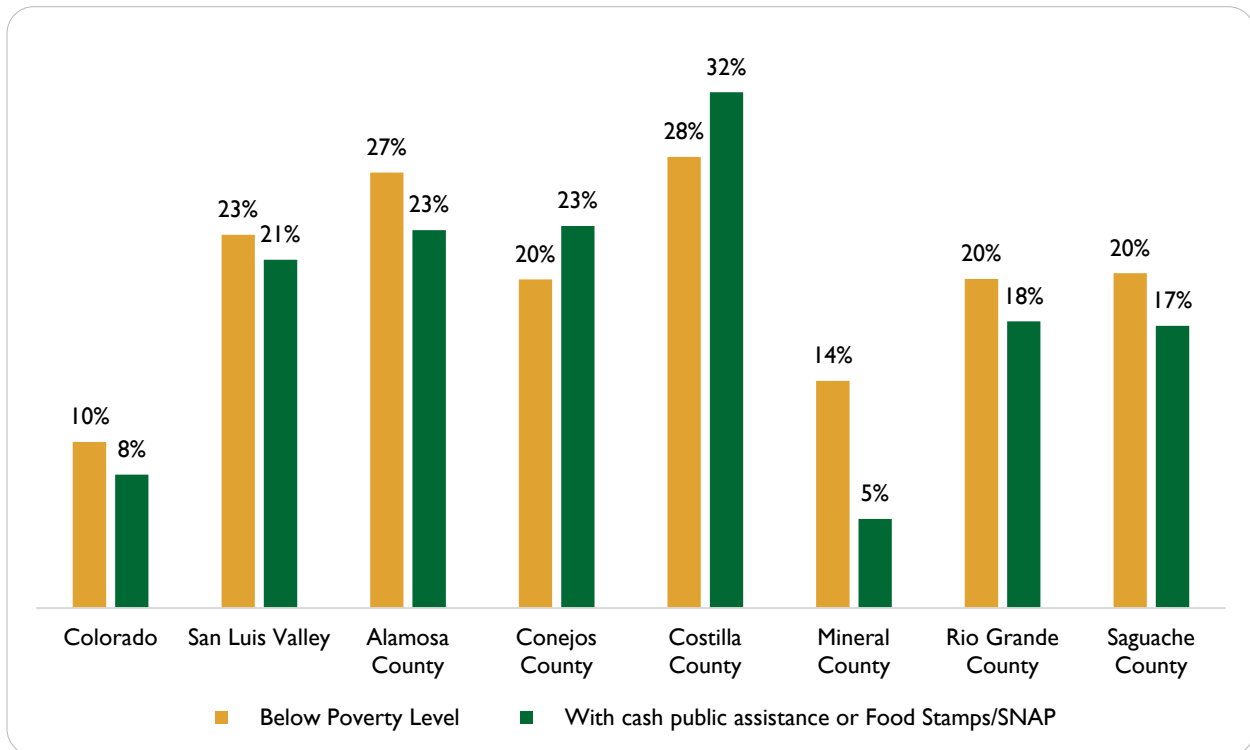
- Nearly one-in-four of the Valley's households live below the poverty line (23%), which is defined as the estimated minimum level of income needed to secure the necessities of life. This is over twice the rate of the state (10%).
- Not surprisingly, a much higher percentage (21%) of households in the Valley also receive cash public assistance and/or food stamp/Supplemental Nutrition Assistance Program (SNAP) benefits to meet basic living expenses. This compares to a much lower 8% of households in the state.

Income inequality is front and center when looking at conditions on the valley floor and the second and third homes being built up the Conejos River. Median income is very low and locals cannot afford anything on the market, so they piece together fixes with limited budgets.

- Consultant Team Interview

The lower incomes and need for subsidies in the Valley is nothing new. Multiple generations have grown up in poverty and on subsidies. Organizations such as the Workforce Development Center have programs to match residents to jobs and help build skills; however, in the low wage environment, wages earned often cannot compensate for the reduction in or loss of subsidy that occurs as household income increases. This has created a cycle where both the need for and expectation of subsidies is hard to break.

## Percentage of Households in Poverty and Receiving Public Assistance, 2019



Source: 2015-2019 ACS

The income distribution of households within the US Department of Housing and Urban Development (HUD) Area Median Income (AMI) categories is shown below. This is important because federal and state programs that help create or subsidize affordable housing utilize AMI to qualify households based on the percentage that their income represents of the AMI. In the Valley:

- Over one-in-three households (36%) earn less than 50% AMI, or about \$30,000 for a 2-person household. This includes over one-half of renters (53%).
- About 26% earn over 120% AMI. Owners comprise 80% of this income group.

### San Luis Valley Household Income Distribution, 2020

AMI	Income range* (2-person household)	Percentage of Renter Households	Percentage of Owner Households	Percentage of Total Households
<50%	\$0 to \$28,400	53%	28%	36%
50.1-80%	\$28,401 to \$45,440	21%	21%	21%
80.1-120%	\$45,441 to \$56,800	11%	20%	17%
120.1-200%	\$56,801 to \$68,160	9%	19%	16%
>200%	\$68,161 to \$113,600	6%	11%	10%
<b>Total # households</b>	<b>&gt;\$113,600</b>	<b>6,269</b>	<b>12,729</b>	<b>18,998</b>

Source: CHFA, Ribbon Demographics, LLC, Consultant Team

\*Represents the AMI income range for all counties in the Valley except Mineral County, which are slightly higher. Reference the appendix for more information.

## HOUSING COST BURDEN

Cost-burden indicates the extent to which housing costs exceed what households can afford. Households are considered to be cost burdened if their housing payment<sup>2</sup> exceeds 30% of their gross income. Cost burdened households often have insufficient income left over for other life necessities including food, clothing, transportation and health care. ACS data shows that rentals are not priced at levels that are affordable for the majority of residents.

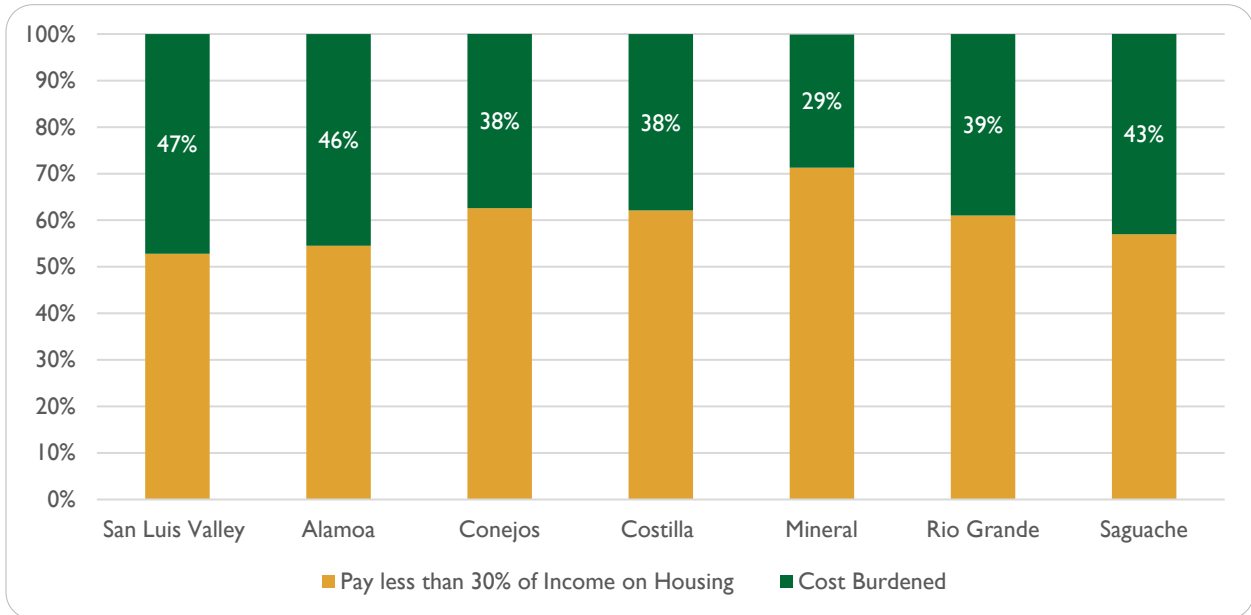
In 2019, 47% of renters in the Valley were cost-burdened. There are greater levels of rent burden in the areas with higher renter populations, such as Alamosa, Rio Grande, and Saguache counties.



---

<sup>2</sup> The US Census defines “housing payment” to include rent and mortgage plus utilities. Taxes, mortgage insurance, and HOA dues are also included.

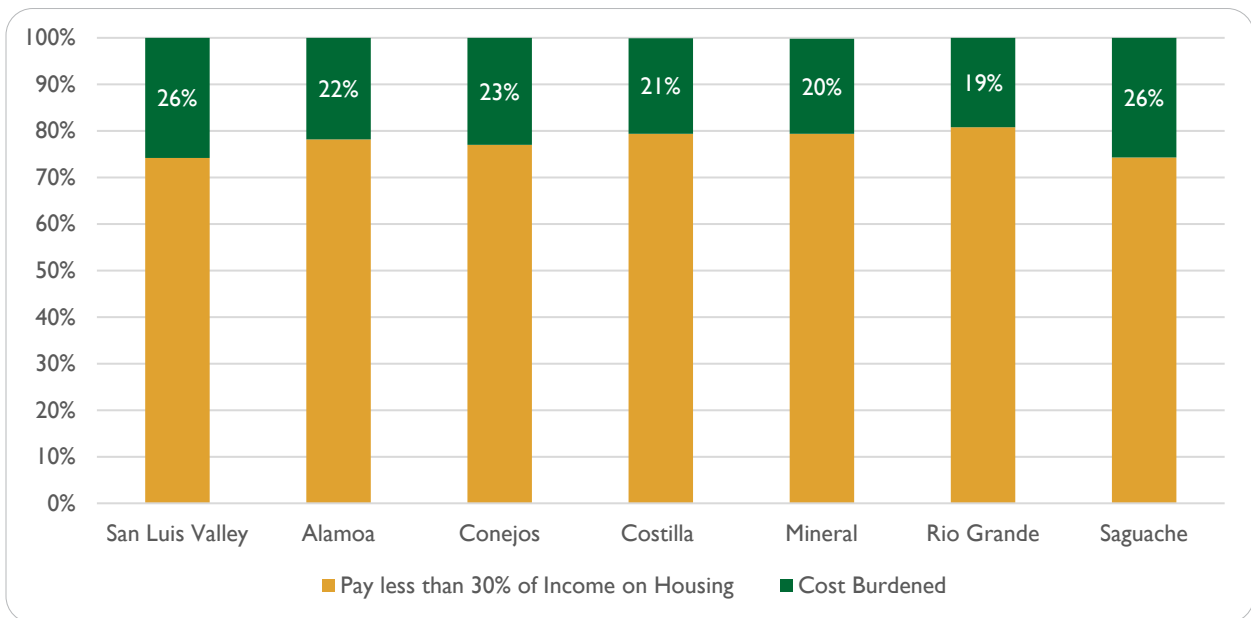
### Renter Cost Burdened Households, 2019



Source: 2015-2019 ACS

For homeowners, about 26% are cost burdened across the Valley.

### Owner Cost Burdened Households, 2019



Source: 2015-2019 ACS

# Employment

This section provides an overview of the jobs, wages and commuting patterns in the Valley. It also provides an overview of the 2020 Employer Survey and employer and stakeholder interviews.

Why this is important:

- Jobs and housing are inter-twined. The economic success and mix of jobs in a region directs the amount, type and price point of housing needed to sustain the economy. Likewise, a sufficiently diverse housing supply is needed to attract and keep quality employees that are invested in the community.

## NUMBER OF JOBS

In 2020, there were an estimated 22,600 jobs in the San Luis Valley. Jobs are not evenly distributed throughout the Valley; Alamosa has 43% of the jobs and only 3% of jobs are in Mineral County.

### San Luis Valley Jobs, 2020 (est.)

	2020 Jobs	Percent of Jobs
San Luis Valley	22,608	100%
Alamosa County	9,795	43%
Conejos County	2,647	12%
Costilla County	1,342	6%
Mineral County	615	3%
Rio Grande County	5,547	25%
Saguache County	2,663	12%

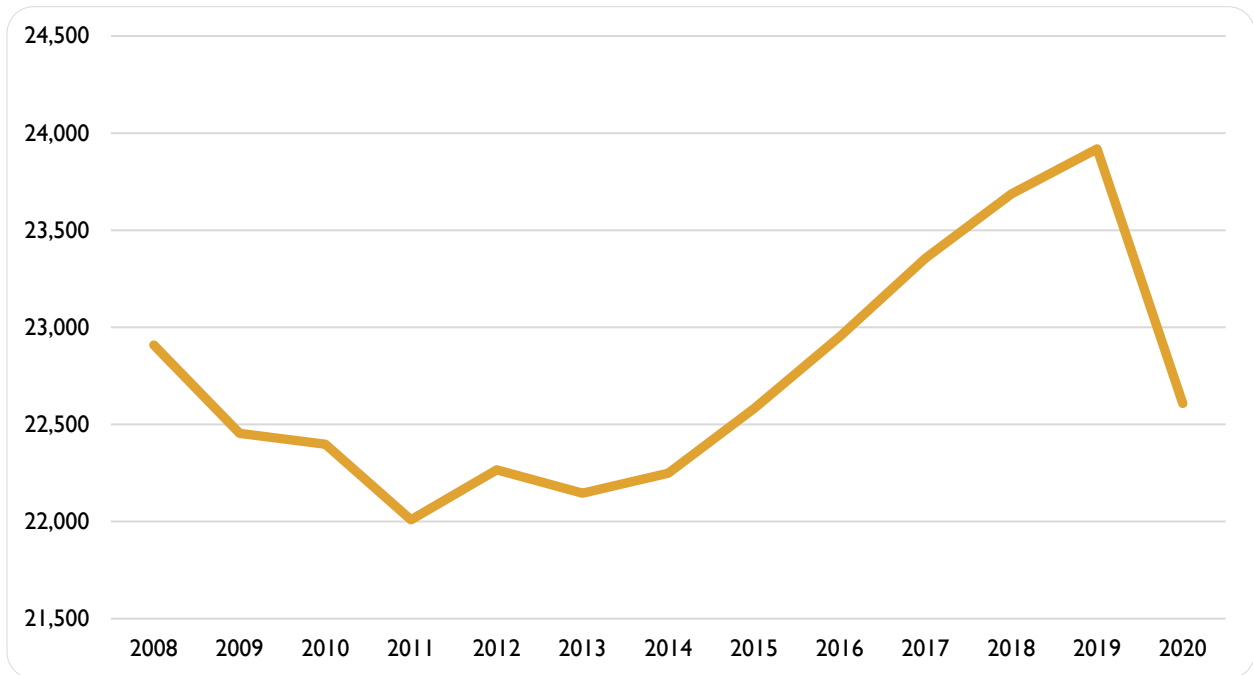
Source: Colorado State Demographer

## JOB TRENDS AND PROJECTIONS

Jobs in the Valley had been growing since 2013, reaching their peak in 2019, then dropping an estimated 5.5% in 2020 due to the COVID-driven recession. Jobs in government, agriculture, private education, and health services were the primary growth sectors prior to the 2020 recession,

The 2020 decline in jobs is sharper than that seen in the 2008 Great Recession, when jobs dropped about 4% over a period of several years.

## San Luis Valley Jobs, 2008-2020

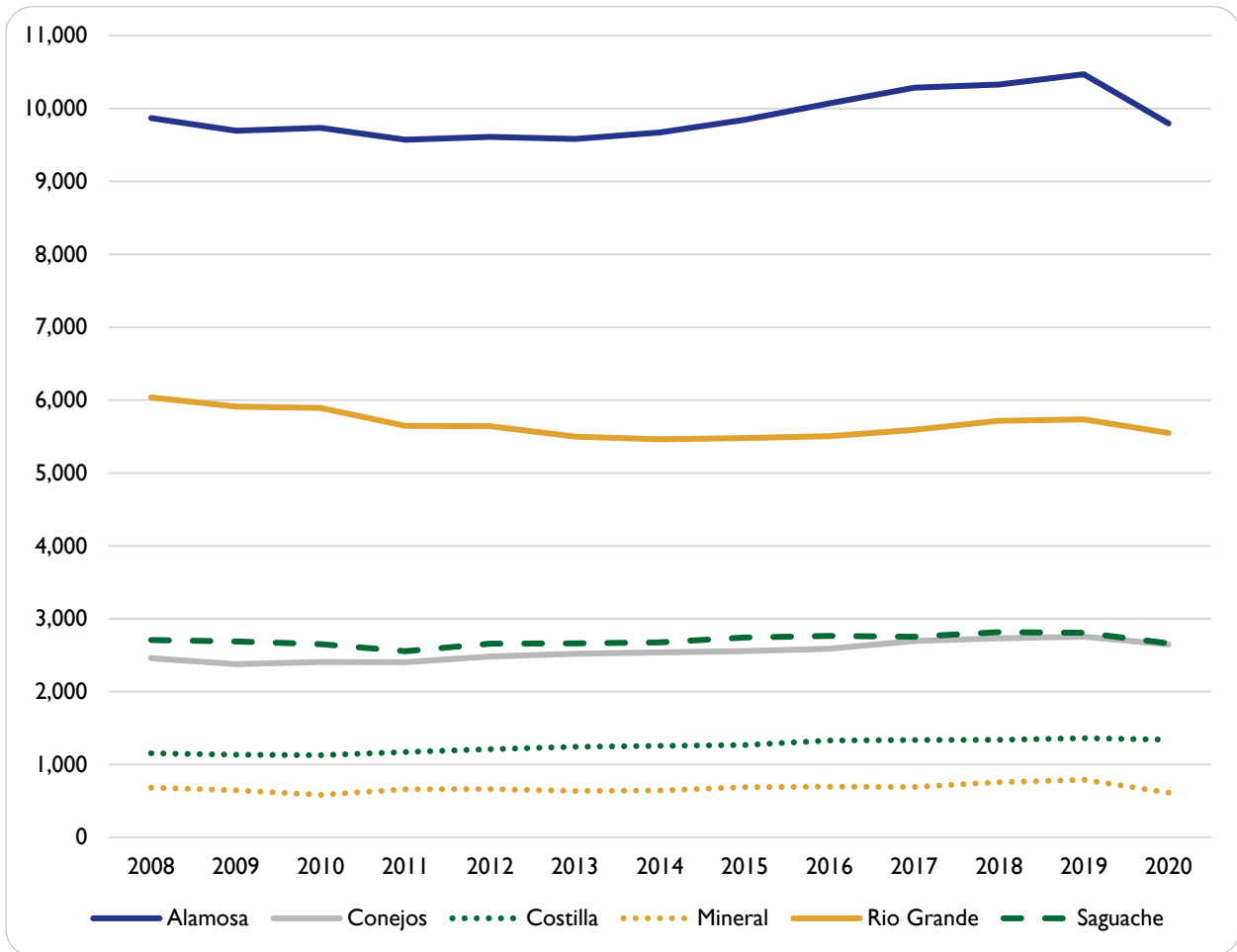


Source: Colorado Demography Office

Some variations in trends are seen at the county level:

- Jobs peaked in most counties in 2019. Exceptions are Saguache County, which peaked in 2018, and Rio Grande County, which peaked in 2006.
- The COVID-driven decline in jobs affected Mineral County the most (-22% decline). Service and tourism jobs were among the hardest hit, which predominate in this county.

## Jobs By County, 2008-2020



Source: Colorado Demography Office

The Colorado Demography Office estimates that jobs will increase by just under one percent (0.9%) per year through 2026 – which is similar to the rate of recovery from the Great Recession.

### San Luis Valley Jobs, 2020-2026 Projections

	2020	2026	# Change
San Luis Valley	22,608	23,820	1,212
Alamosa County	9,795	10,394	599
Conejos County	2,647	2,770	123
Costilla County	1,342	1,415	73
Mineral County	615	701	87
Rio Grande County	5,547	5,754	207
Saguache County	2,663	2,786	123

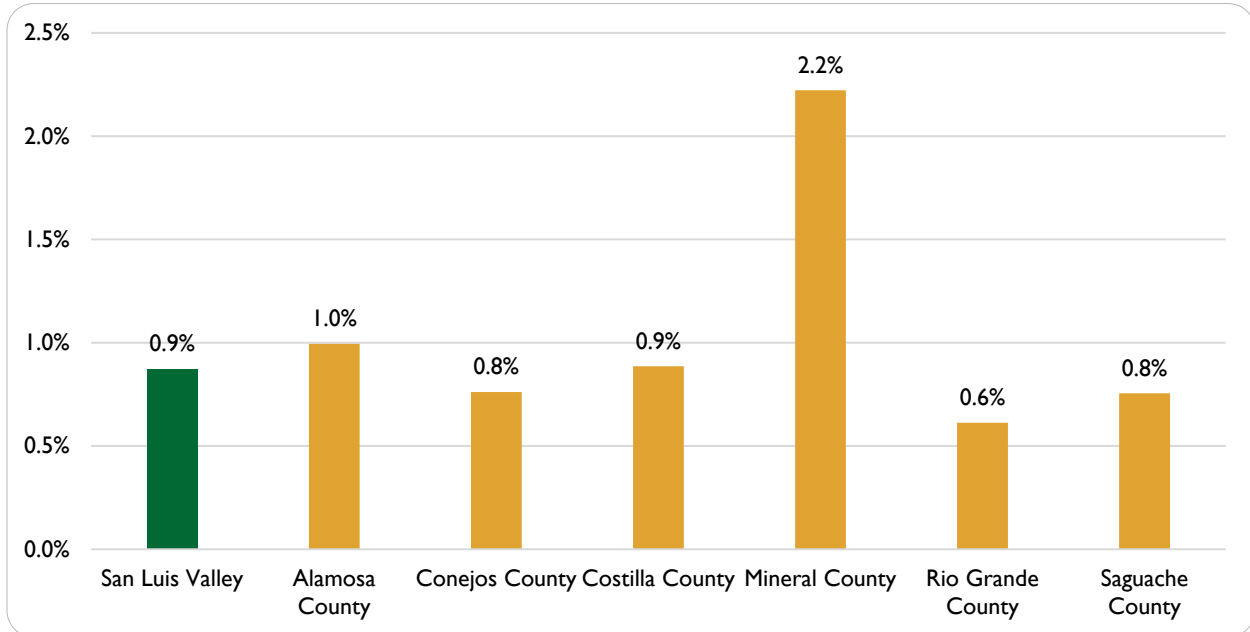
Source: Colorado Demography Office

Anticipated job recovery differs by county:



- Mineral County, which was hit hardest, is projected to recover at the fastest rate; however, full recovery of all of the jobs that were lost is not expected to occur by 2026.
- Only Costilla, Conejos and Rio Grande Counties are expected to fully recover to 2019 job levels by 2026.

### Average Yearly Job Growth, 2020-2026



Source: Colorado Demography Office

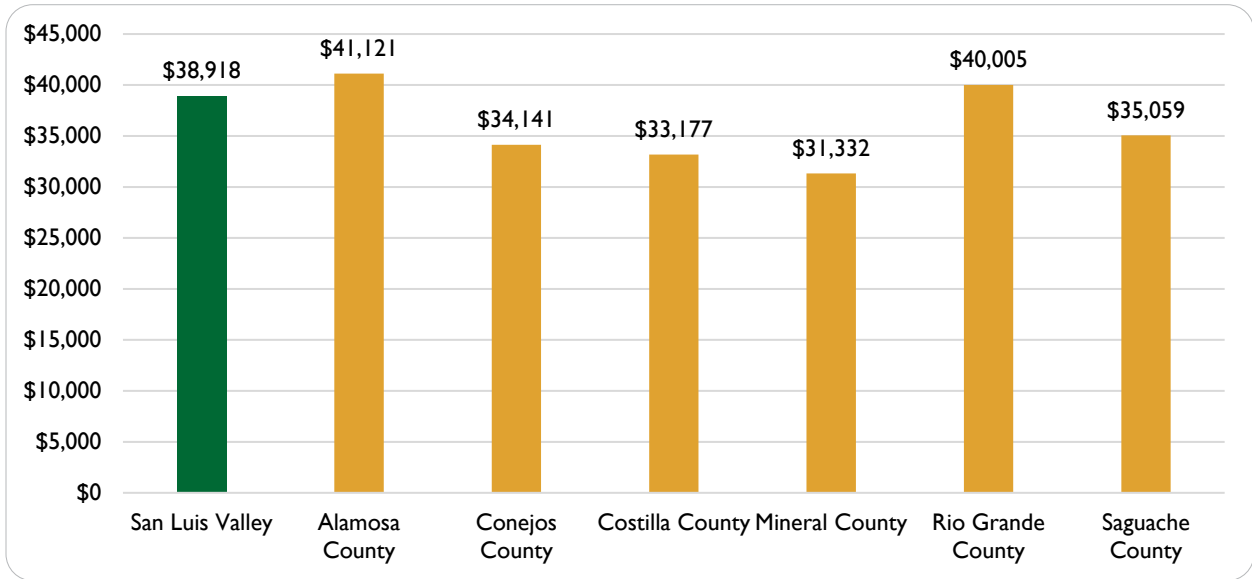
## TYPES OF JOBS AND WAGES

Wages in the San Luis Valley have increased about 2.8% per year on average since 2010, which is similar to the statewide rate. The average wage in the Valley in 2020 was \$38,918, which is 42% lower than the state average (\$66,716). Lower comparative wages make it difficult for many businesses to recruit skilled employees in particular to the area, including positions in education, health care, skilled public service and management. Employers note that they often lose employees after three to five years, when those employees have gained the skills to be attractive to employers in areas with higher wages.

Average wages differ by county:

- Alamosa and Rio Grande County pay the highest average wages (over \$40,000 per year);
- Costilla County (\$33,177) and Mineral County (\$32,332) pay the lowest average wage rates among all Valley counties.

## Average Yearly Wage, 2020



Source: Colorado Demography Office, Colorado Department of Labor and Employment (LMI Gateway)

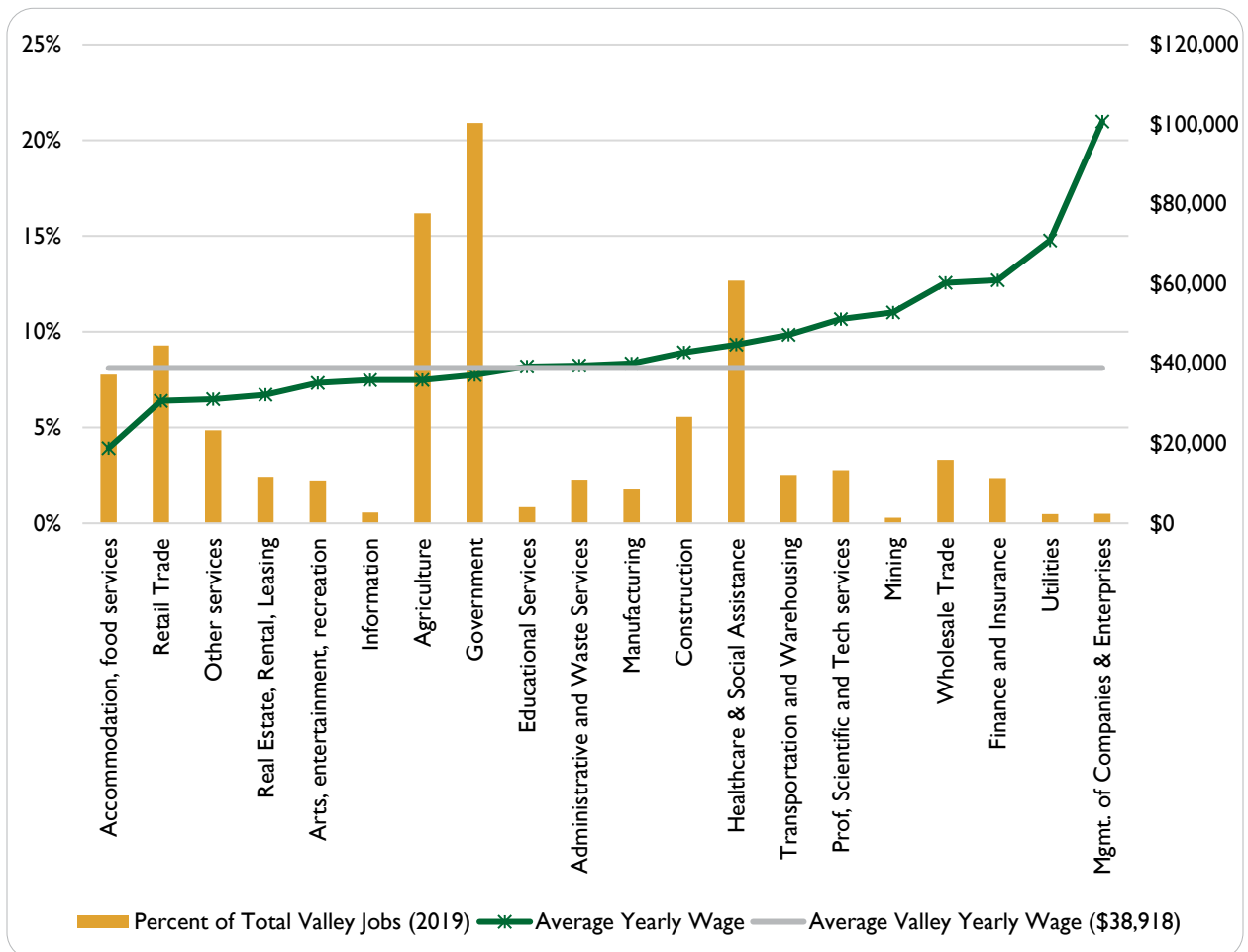
The predominant industries in the Valley are agriculture (16%) and government (21%), both of which pay below-average wages. Health care is the third largest provider of jobs (13%) and pays above-average wages for the Valley (\$45,000). Tourism is also important to the region, and is reflected through retail, accommodation, food service, and recreation jobs.



The jobs mix varies by county throughout the Valley:

- Alamosa County has the most diversified job options relative to the other counties. Government (23%), health care and social assistance (19%) and retail (11%) are the largest sectors,
- Agriculture and government jobs predominate in Conejos, Costilla, and Saguache Counties, making up a respective 44%, 47% and 53% of jobs,
- Rio Grande County’s jobs are also predominantly in agriculture (22%) and government (17%), but it has been working to diversify its economy through tourism development, and outdoor recreation development, including the new Riverwalk Project in Del Norte.
- Mineral County has a very different job profile from the rest of the Valley. Retail, recreation and accommodation, and food services comprise 58% of jobs, which is indicative of a tourism-driven economy. Agriculture makes up only 2% of jobs – the lowest of all counties. And wages are higher than the regional overall.

### San Luis Valley Jobs (2019) and Wages (Second Quarter 2020) by Sector



\*some data suppressed to ensure confidentiality

Source: Colorado Demography Office, Colorado Department of Labor and Employment (LMI Gateway)

## SEASONALITY OF JOBS

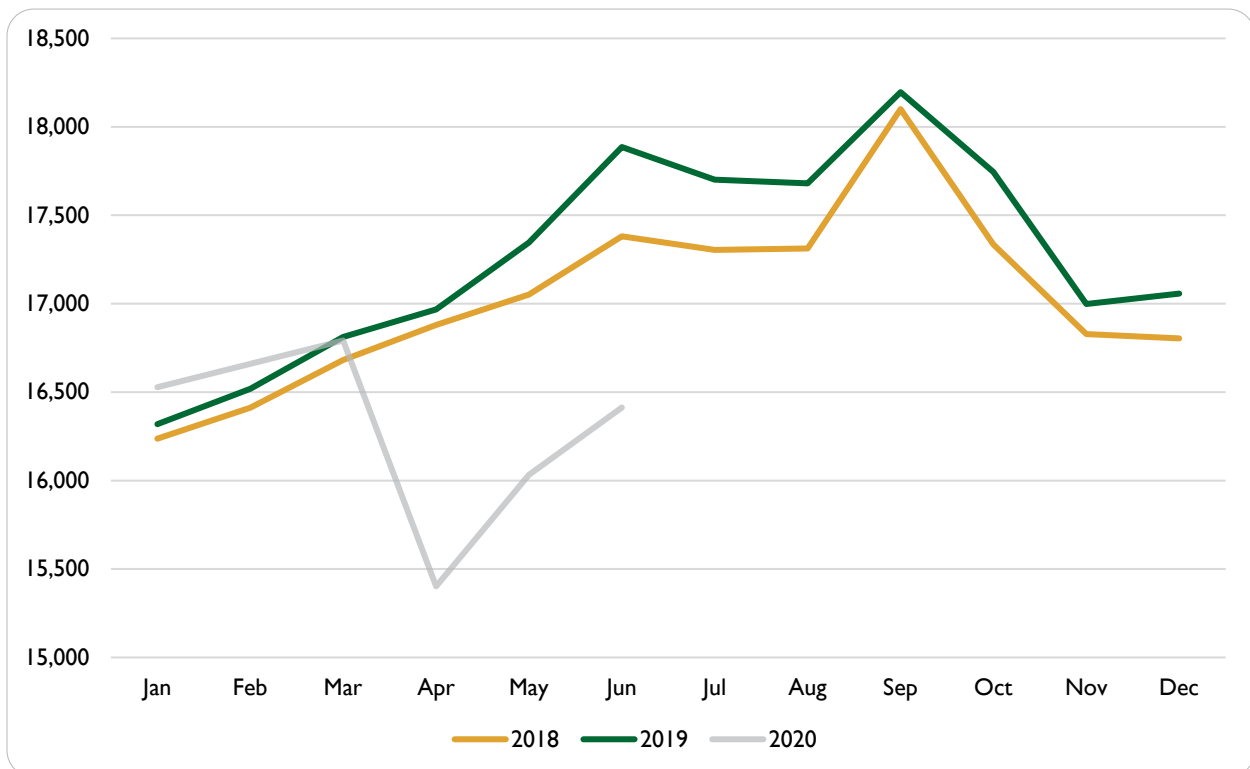
There is a distinct seasonal uptick in jobs in the Valley during the crop growing season from the spring through fall, peaking in September. There are also additional seasonal jobs to support summer tourism, hunting season visitors, and winter ski travel. Jobs then typically decline through January before picking back up into the summer. These trends coincide with the agricultural harvesting and processing needs, which peak in the fall.

In 2019, peak season jobs in September were about 7% higher (1,200 more jobs) than during the winter.

- Alamosa, Conejos, Rio Grande, and Saguache Counties follow a similar job pattern as that shown below for the Valley as a whole.
- Costilla County jobs peak during the summer and slowly decline through the fall.
- Mineral County jobs follow a different pattern given the primarily tourism-driven economy. Jobs peak both in the summer and winter months, with down periods during late spring and fall.

This trend was interrupted by the COVID-19 pandemic in 2020. The number of wage and salary jobs in the Valley (not accounting for proprietors) declined by more than 8% from March to April 2020 when public health orders were put in place. Preliminary figures show a dramatic increase just a few months later, with about 70% of jobs returning by June as businesses reopened.

### San Luis Valley Jobs by Month, 2018-Q2 2020

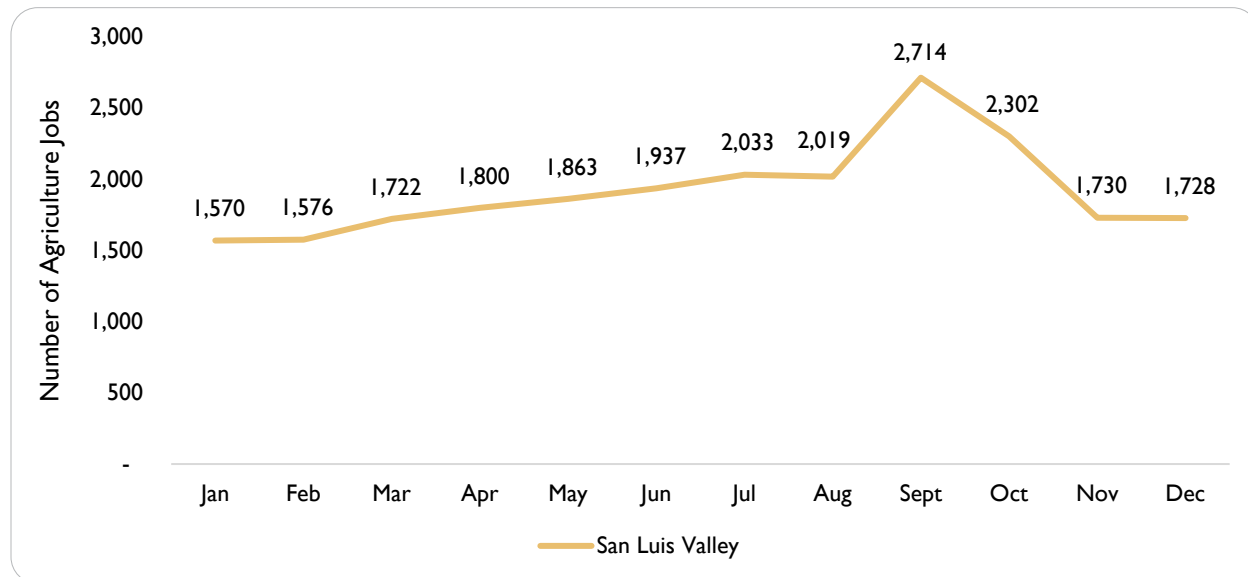


Source: Quarterly Census of Employment and Wages (QCEW)  
\*2020 figures are preliminary.

## Seasonal Agricultural Workforce

One of the largest components of the seasonal workforce in the Valley is driven by agriculture. In 2019, there were an average of 1,916 agricultural jobs in the San Luis Valley, varying from between 1,600 to 1,700 jobs in the winter months to over 2,700 in the peak month of September.

### Agriculture, Forestry, Fishing, Hunting Jobs, San Luis Valley and Alamosa County, 2019



Source: Colorado Demography Office, Labor Market Information

Seasonal and migrant workers have been decreasing in the Valley over the past several years. The area added about 60% more jobs in the peak months in 2019 compared to upwards of 80% in 2010 and 2015. In 2019, over 1,000 seasonal agricultural workers were hired in the San Luis Valley, with about 90% of workers filling jobs in Rio Grande, Saguache and Alamosa counties. Seasonal agricultural jobs may be filled by year-round residents of the San Luis Valley, H-2A Visa workers<sup>3</sup> and seasonal workers migrating to the area. Estimates of workers in each category are provided in the following table.

### Seasonal Agricultural Jobs, San Luis Valley and Alamosa County, 2019

San Luis Valley	
Seasonal Jobs	1,060
Live in San Luis Valley year-round	615 (58%)
H-2A Visa employee	343 (32%)
Other migrant seasonal employee	102

Source: Colorado Demography Office, 2020 Employer Survey, U.S. Department of Labor – H-2A Performance Data, Consultant Team

<sup>3</sup> The H-2A Visa program allows agricultural employers who anticipate a shortage of domestic workers that are able and willing to fill positions to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Any employer using H-2A workers must have initially attempted to find U.S. workers to fill these jobs. H-2A workers must be provided housing and transportation from that housing to the job site, and provided three-meals per day at no more than a DOL-specified cost or access to facilities for workers to prepare their own meals.

## Filling Agricultural Jobs

Forty percent of agricultural employers in the San Luis Valley that responded to the survey reported that filling jobs with qualified employees is a “significant problem.” The primary issues noted relate to the lack of supply of workers (few or no applicants), unskilled applicants, job dedication/reliability, and drug/substance abuse. Specific concerns include:

- Too few workers available.
- Government assistance hurting the motivation or ability to work.
- Reluctance for potential workers to obtain the State certification needed for cannabis jobs.

“We have had such a problem finding planting and harvest help that we have moved to using a 3rd party contract company, which is more expensive, but more reliable.”

- 2020 Employer Survey

The use of H-2A Visa employees in the Valley has been increasing. Although use of such workers adds cost to the employer, it helps provide a reliable and capable workforce. Employers must ensure transportation to the worksite, housing, access to meals, liability insurance and cover the cost of acquiring the Visa. This means that an H-2A employee may cost \$20/hour compared to \$13 to \$14 per hour for non-H-2A employees. Employers are attracted to the reliability of the workforce provided through the program. With an aging domestic farmworker population and immigration reform, South Central Workforce Development Center (Monte Vista) has observed that the domestic pool of workers has also been declining, increasing the need for H-2A employees.

## COMMUTING

The Valley is characterized by significant inter-county commuting. Mineral County, which has resort characteristics and higher housing costs, is the only county in the Valley that does not have a significant portion of residents commuting to other parts of the Valley for work or housing.

Commuting allows residents and employees to have more selection in where they live. When commuting is forced because of a lack of adequate housing options nearer to residents’ place of work, however, then it becomes a detriment to both retaining quality employees and the quality of life of residents.

Employers estimate that about 36% of their commuting workforce is forced to commute; meaning that they would rather live in the same county where they work.

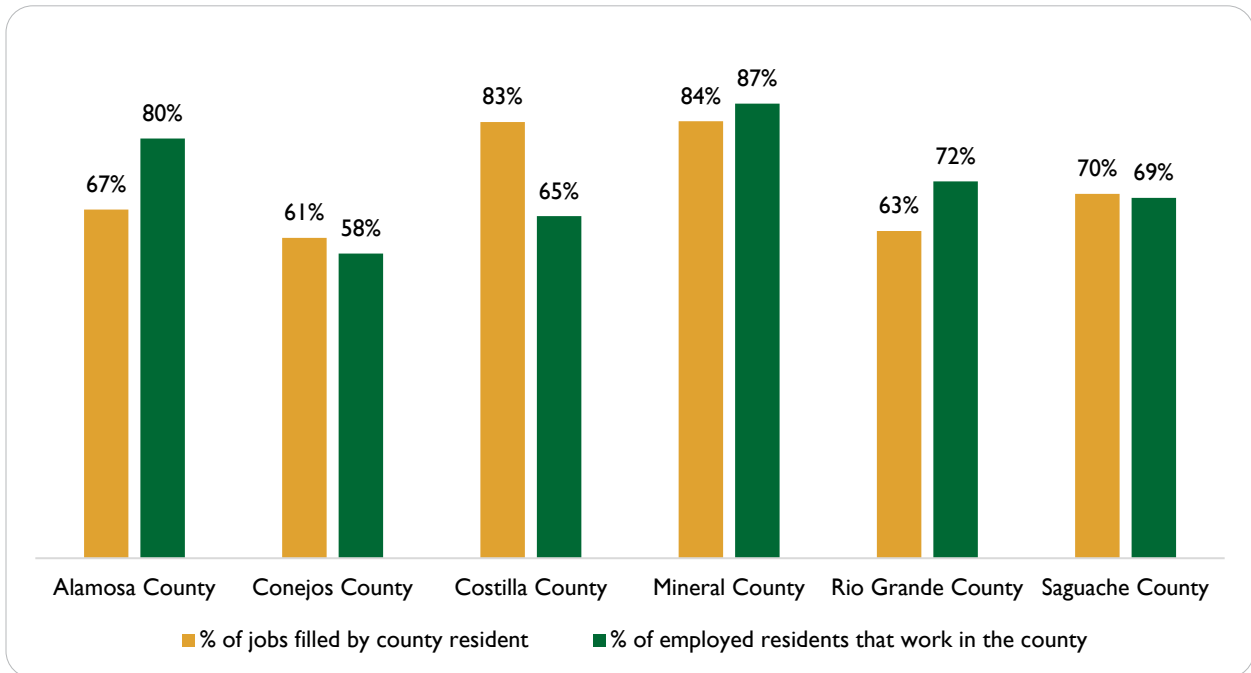
- 2020 Employer Survey Funding

- Between 61% to 84% of jobs in each county in the Valley are filled by a resident of the respective county. The remaining jobs must be filled by people commuting into the county for

work. Conejos, Rio Grande and Alamosa counties have the greatest incidence of people commuting into the respective county for work.

- Employed residents in Conejos and Costilla counties are the most likely to commute out of the county for a job. As shown below, about 58% of employed Conejos County residents work in the county; 42% commute out of the county for a job. Residents in Mineral and Alamosa counties are most likely to be employed locally (87% and 80%, respectively).
- The comparatively high percentage of residents commuting out of Conejos County, combined with the comparatively high percentage of workers commuting into Conejos County illustrates a leap-frog effect that commute patterns can cause. If workers from other counties are occupying homes in the county, then workers in that county must find homes elsewhere.

### Live/Work Relationships



Source: 2020 Employer survey, 2019 5-year ACS

\*Mineral County survey sample size was small; interpret with caution.

The above commute patterns are reinforced when we compare the number of jobs in a county relative to the number of households. The jobs to household ratio indicates whether an area has enough housing for employees to live near employment centers and, conversely, whether it has sufficient jobs to support its residents. An imbalance in jobs and housing has numerous challenges and problems. It increases the number of commuters, decreases job opportunities for workers without vehicles, adds to traffic congestion, reduces air quality, as well as hurts the ability for employers to fill jobs when employees cannot find housing.

“It’s important to break the myth that it’s cheaper to live in rural America.”

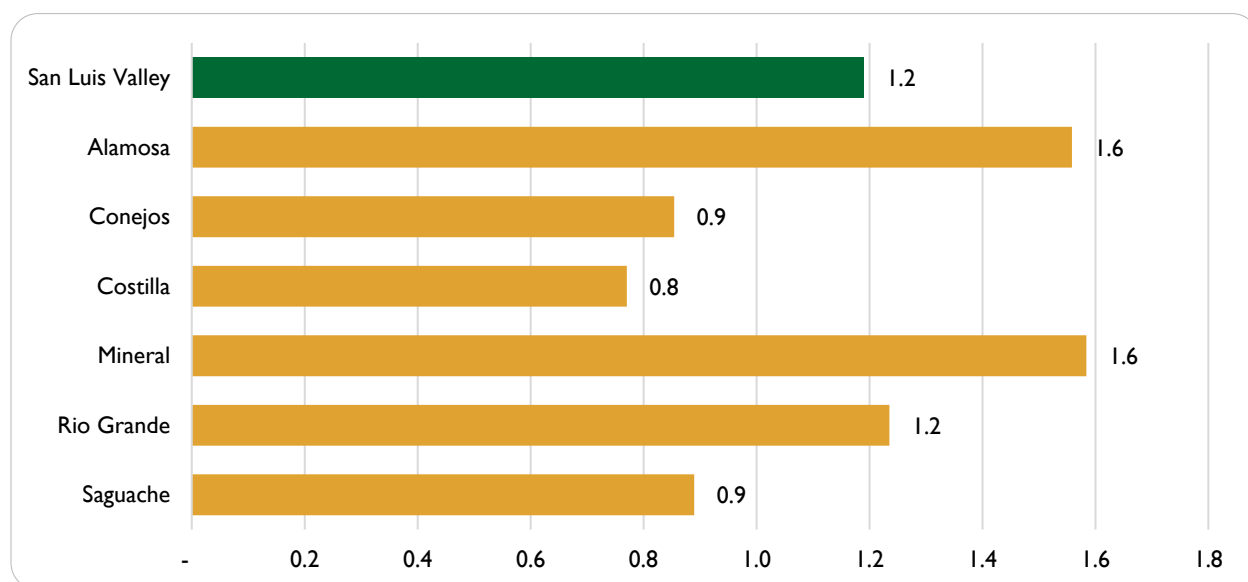
- Consultant Team Interview

The San Luis Valley has an overall ratio of 1.2 jobs for every household in the Valley. Counties that fall below the Valley’s ratio provide comparatively more housing than jobs in the region, meaning they export workers to other areas; counties above this ratio provide comparatively more jobs than housing in the region, meaning they need to import workers from other areas to fill jobs. It is important to note, however, that the overall Valley ratio is relatively low. The high incidence of unemployed households (31%) brings this ratio down.

Comparing the jobs to household ratio throughout the Valley shows that:

- Alamosa and Mineral Counties are comparatively housing deficient relative to the number of jobs they provide. With 1.6 jobs per household, these counties rely on housing provided by other counties to help house employees.
- Saguache, Costilla, and Conejos Counties are comparatively job deficient relative to the number of resident households – they house more of the labor force than they need to fill local jobs. About 60% or more of employed residents commute out of each county to work elsewhere.

### Jobs:Household Ratio



Source: Colorado Demography Office (for jobs and household data), Consultant Team

Communities in the San Luis Valley are far apart, creating long drives, particularly in harsh winter conditions. Commutes can also be expensive. An employee in Alamosa that buys a home for less money in San Luis, for example, can quickly make up that price difference in commute costs, as shown in the below table. The “cost to commute” is one that many households may fail to consider when searching for a place to live.

### Estimated Commute Costs to Alamosa

Community	Miles	Cost/mile	Cost of commute (one way)	Cost of commute (per month)
La Jara	15	\$0.56	\$8	\$336
Monte Vista	17	\$0.56	\$10	\$381
Del Norte	31	\$0.56	\$17	\$694



San Luis	41	\$0.56	\$23	\$918
Saguache	52	\$0.56	\$29	\$1,165

Source: IRS, Google Maps, Consultant team

\*The 2020 IRS mileage rate accounts for fuel, insurance, tires, repairs, and wear and tear on the vehicle.

## UNFILLED JOBS AND LOCAL LABOR FORCE

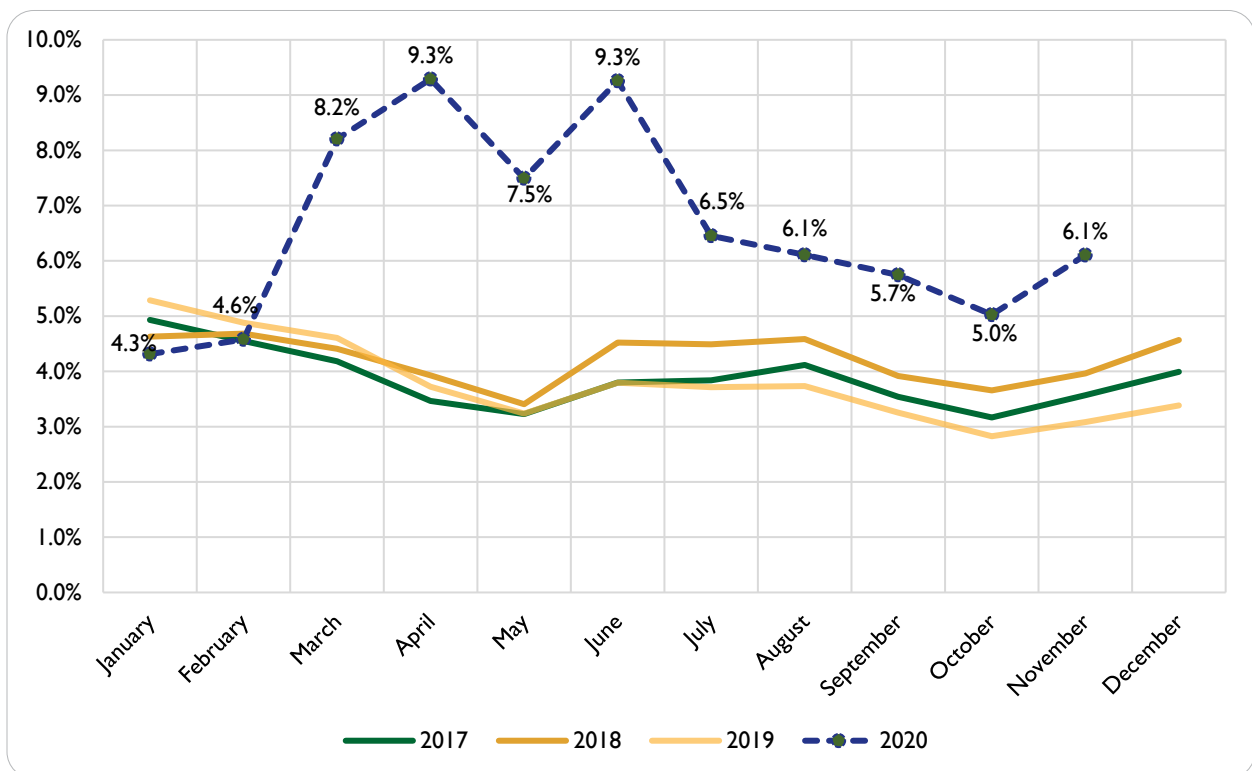
According to the employer survey, just over 4% of jobs were unfilled in 2020 (about 900 total). When asked why positions were unfilled, employers overwhelmingly indicated that this is due to a lack of applicants or a lack of qualified applicants. A few noted budget constraints, jobs recently becoming available, or issues related to COVID-19 (e.g., hiring freeze).

“I have a hard time finding locals that are actually skilled/educated to perform the tasks I need completed.”

- Employer Interview

The unemployment rate in the Valley was 6.1% in November 2020. This was well below the peak reached in April and June (9.3%), but well above the unemployment rate at the same time last year (3.1% in November 2019). The unemployment rate typically fluctuates by a few percentage points each year due to seasonal job changes (rising in the winter months and dropping in the spring and fall). The layoffs and business closures resulting from the COVID-19 public health orders, however, caused the unemployment rate to jump in the spring when the rate is typically falling.

### San Luis Valley Unemployment Rate, November 2019-November 2020



In November 2020, an estimated 1,434 members of the labor force in the Valley were unemployed. If the unemployment rate returns to the 3.1% level seen last year, this means that about 700 employees living in the Valley will be available to fill local jobs as job recovery continues.

#### San Luis Valley Labor Force, November 2020

Labor Force	23,487
Employed	22,053
Unemployed	1,434
Unemployment Rate	6.1%

Source: BLS Local Area Unemployment Statistics (LAUS)

#### Workers per Household and Number of Jobs Held per Employee

Valley workers hold an average 1.1 jobs. There is an average of 1.4 employees per household with earnings in the Valley. About 31% of Valley households have zero workers, compared to about 18% in the state.

#### San Luis Valley, 2020

Total jobs	22,608
Employed with one job	20,573
Employed with more than one full time job	2,035
Jobs per employee	1.1

Source: Colorado Demography Office

#### San Luis Valley, 2019

Employed persons	19,137
Households with earnings	13,227
Employed persons per employed household	1.4

Source: 2015-2019 ACS

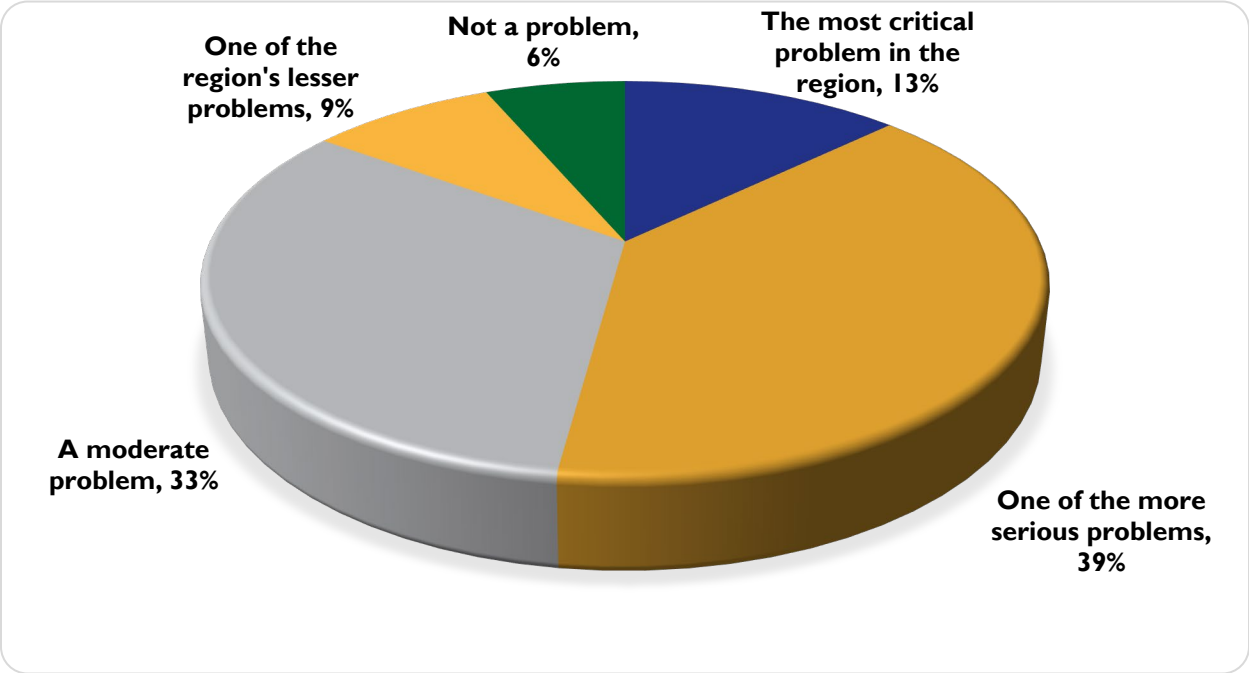
# Employers and Housing

Employers throughout the San Luis Valley were surveyed to understand more specifically about employer challenges regarding unfilled jobs, retaining and recruiting employees, employee challenges, and housing perceptions. The results highlight the struggles of employers in this Valley to find skilled and dedicated employees, as well as recruit talent from outside of the Valley. While housing plays a role, many other limiting factors are involved. This section summarizes the results of the survey.

## HOUSING AVAILABILITY

One-half of valley employers who responded to the survey feel that available and affordable housing for employees is the most critical problem (13%) or one of the more serious problems (39%) in the region. About one-third feel it is a moderate problem. Only 6% do not believe it is a problem.

**“Do you feel that the availability of housing that is affordable for employees is:” (All Responses)**



Source: 2020 Employer Survey

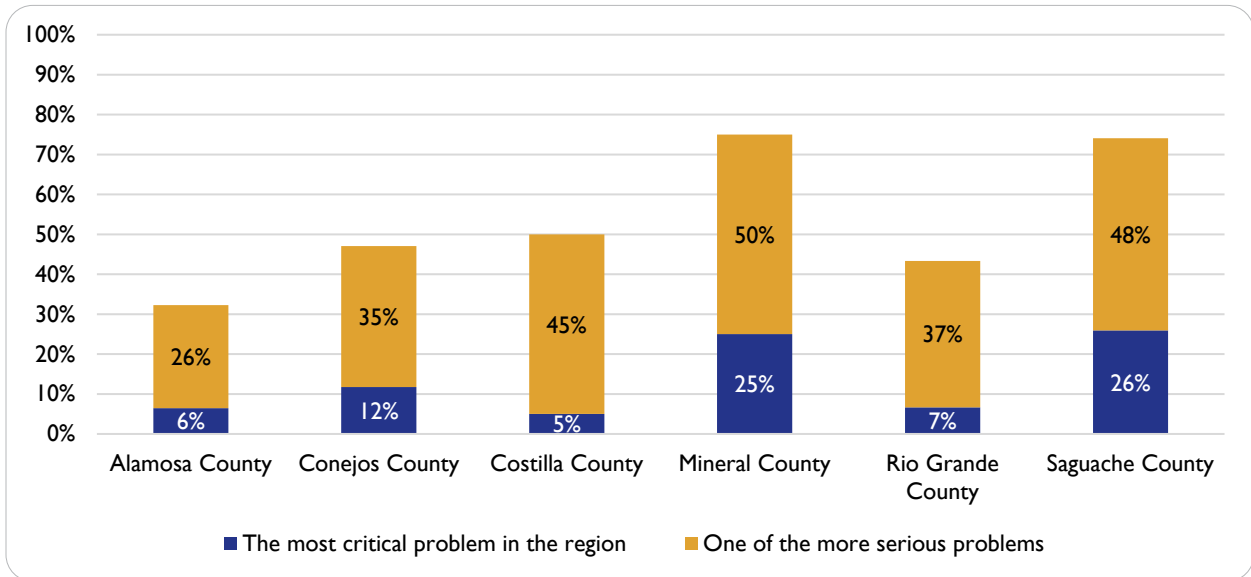
The level of concern differs by county, as shown in the figure below.

- About 75% of employers in Mineral County and Saguache County felt that the availability of housing is the most critical problem they face or one of the more serious problems. Fifty-percent (50%) in Costilla County and 47% in Conejos County felt the same.
- Employers in Alamosa County were the only ones in the Valley to be more likely to perceive housing as a moderate problem (47%) rather than a serious or critical problem (32%).

“We lost two employees due to housing costs. They moved to a different state and became employed... Typically it comes down to the applicant finding housing in the area. Affordable or otherwise.”

- 2020 Employer Survey Comment

**“Do you feel that the availability of housing that is affordable for employees is:”**

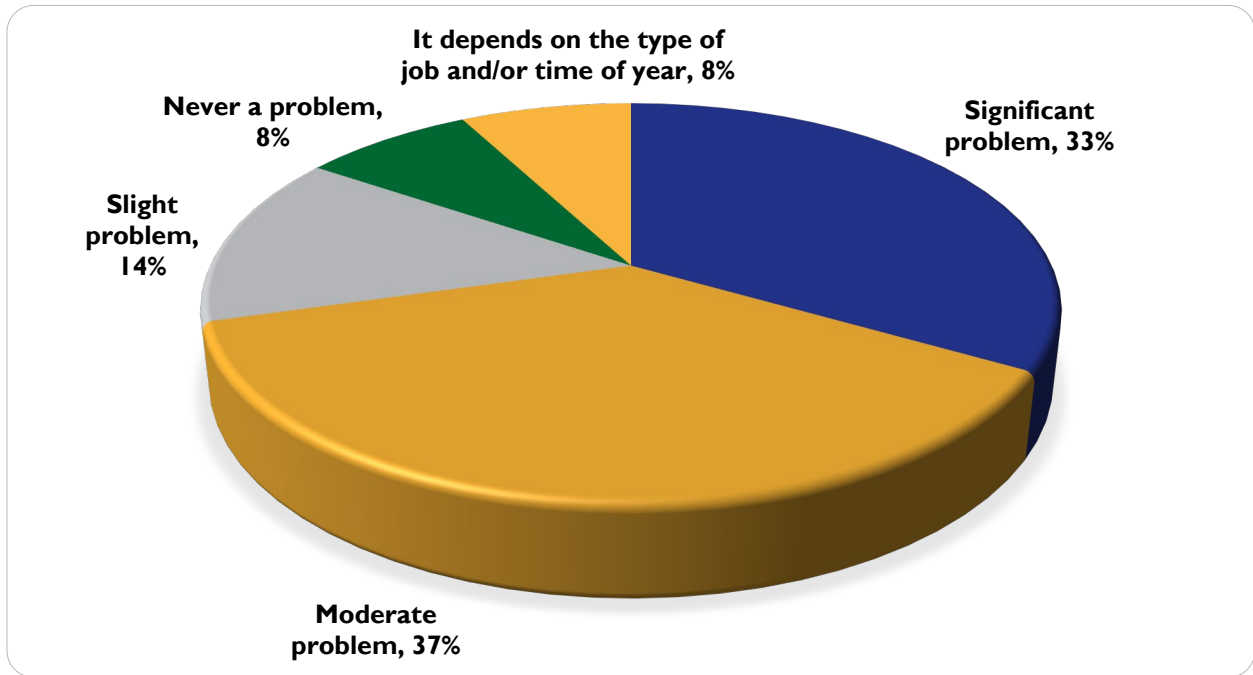


Source: 2020 Employer Survey

**ABILITY TO FILL JOBS**

Almost three out of four employers (71%) in the Valley indicated that finding and attracting qualified employees is a significant or moderate problem. Employers across all industries experienced challenges.

**“How would you rate your ability to find/attract qualified employees for your business or organization?” (All Responses)**

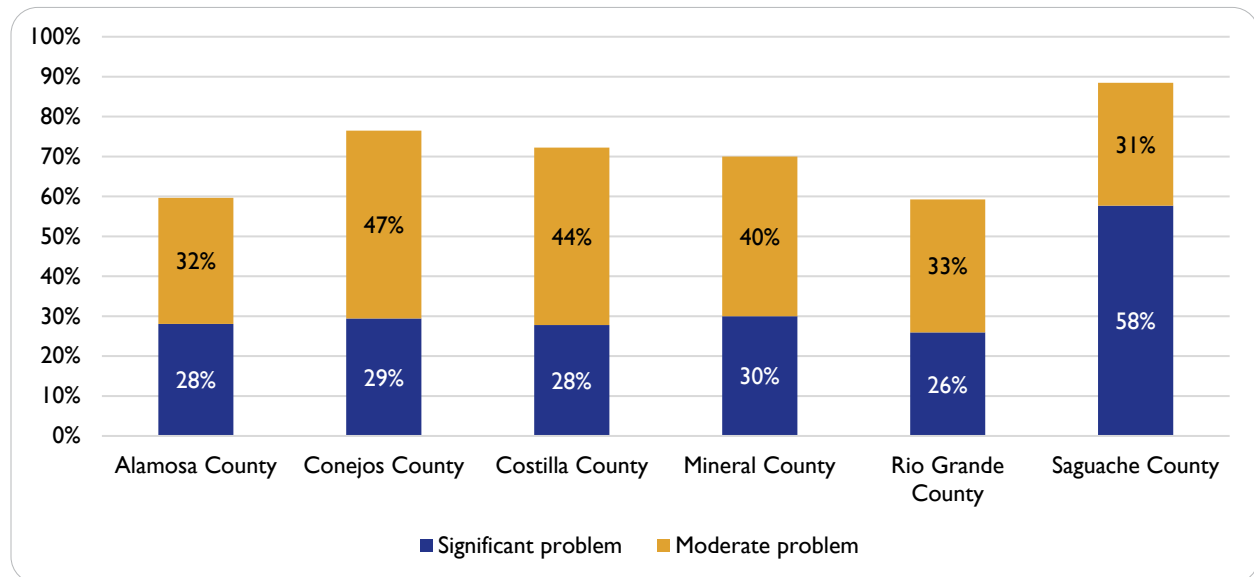


Source: 2020 Employer Survey

A closer look at employer responses by county highlights the following:

- 58% of employers in Saguache County believe that finding and attracting qualified employees is a significant problem, the highest rate of all counties by far.
- The highest percentage of employers who believe finding and attracting qualified employees is a moderate problem were in Conejos County (47%), Costilla County (44%), and Mineral County (40%).

**“How would you rate your ability to find/attract qualified employees for your business or organization?”**



Source: 2020 Employer Survey

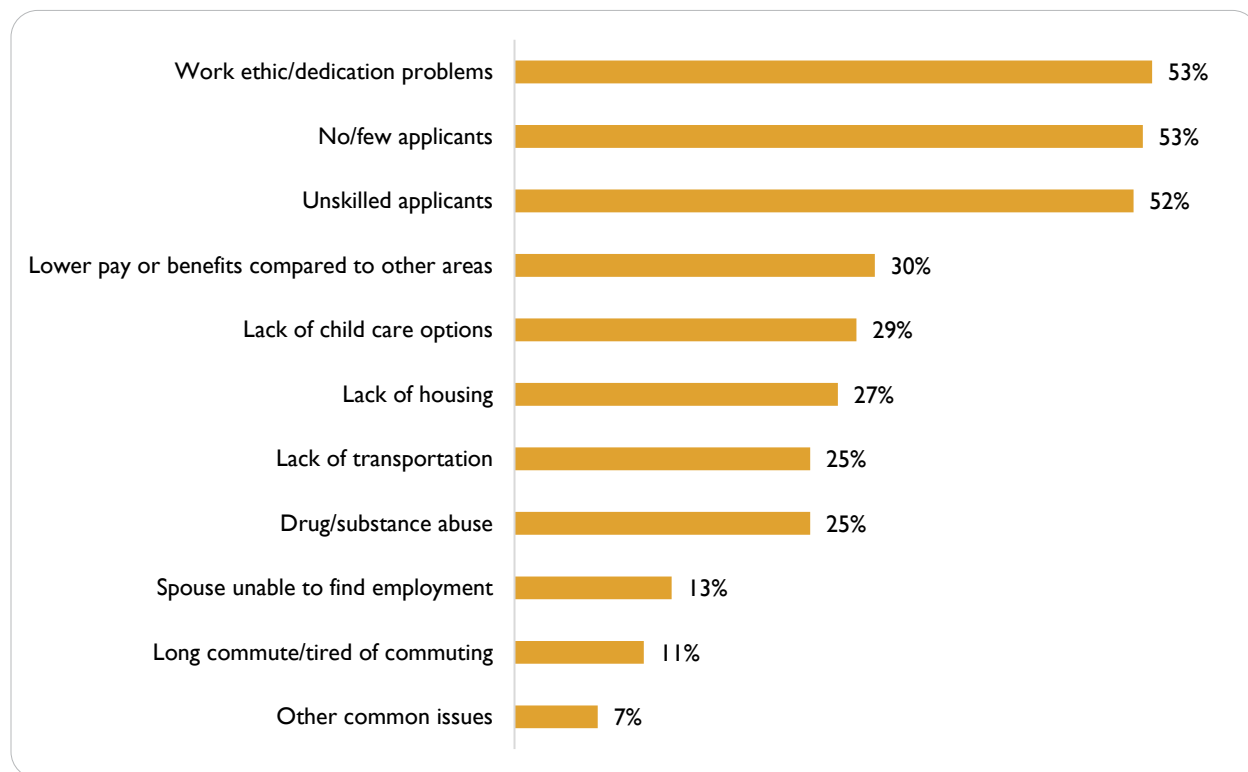
Employers that had difficulty finding or attracting qualified employees were asked what types of problems they have experienced. Responses show that:

- The top three issues identified were work ethic/dedication problems and either too few or unskilled applicants. This was consistent across all counties, with the exception that “unskilled applicants” did not fall into the top three in Mineral or Saguache Counties.
- The lower pay scale compared to other parts of the state has affected about 30% of employers. Competition with the Colorado Springs and front range area for skilled positions makes it difficult to attract workers from outside the San Luis Valley. Many employees gain experience in the Valley, then move on to higher paying positions elsewhere.
- A lack of child care options has affected the ability for 29% of respondents to hire and retain employees.
- A lack of housing was the sixth most cited reason, affecting 27% of respondents. A lack of housing was more of a problem in Mineral and Saguache Counties, affecting a respective 40% and 50% of respondents.

“Childcare was a huge issue during COVID and was a moderate issue prior to COVID for working parents with school age children.”

- 2020 Employer Survey Comment

**“In the past year, have you experienced any of the following issues in finding or keeping qualified employees?” (All Responses)**



Source: 2020 Employer Survey

**EMPLOYEE HOUSING CHALLENGES**

Over half of employers (52%) in the Valley feel that the availability of housing that is affordable for employees is the most critical problem or one of the more serious problems they face. Regardless of the type of position, from migratory/seasonal jobs to upper management, employers feel that their employees have at least a moderate level of difficulty locating housing (average rating of 3.0 or higher).

- Employees in low wage/low skill positions were felt to have the most difficulty, even more so than migratory or seasonal employees.
- Average ratings from employers in Saguache County were the highest of all counties for every category, which points to the intensity of the issue in the northern part of the Valley.

**“To what extent do your employees have difficulty locating satisfactory housing in the area” (All Responses)**

	Average Rating*
Low wage/low skill jobs	3.9
Migratory/seasonal employees	3.6
Skilled labor jobs	3.4
Entry-level professional	3.4
Mid-level/mid-management	3.2
Upper management	3.0

Source: 2020 Employer Survey

\*Rating on a scale from “1 – no problem” to “5 – Major difficulty”

Employers indicated that the primary housing difficulty their employees face is a lack of selection or variety of homes (3.8 average), followed by high prices in the form of rents (3.6 average) or sale prices (3.5 average) and homes in poor condition/needing repairs (3.5). This indicates that increasing the diversity of quality homes at price points that local workers can afford is needed.

**“What are the primary housing difficulties encountered by your employees?” (All Responses)**

	Average Rating*
Selection/variety of homes	3.8
Rents are too expensive	3.6
Home purchase prices are too expensive	3.5
Homes in poor condition/need repairs	3.5
Limited community amenities	3.2
Homes not nice enough	2.9
Lack of family neighborhoods	2.7

Source: 2020 Employer Survey

\*Rating on a scale from “1 – no problem” to “5 – Major difficulty”

“It is challenging to retain young professionals due to the lack of amenities. Plus, the cost of living and housing has increased significantly while salaries (especially in education) have not been able to keep up.

Finding teachers/substitute teachers is difficult and is greatly impacted by the combination of low housing, remote location, and wages.”

- 2020 Employer Survey Comment

Evaluating differences by county shows that:

- A lack of selection or variety of homes was rated the highest in Mineral County and Costilla County, followed by Saguache County.
- The price of housing (rental and ownership) was rated highest in Mineral County, Rio Grande County, and Saguache County.
- Concern about the quality of homes (“homes not nice enough”) was rated highest in Costilla County, followed by Conejos County and Saguache County.





Consultant Team

## PERCEIVED EMPLOYEE HOUSING NEEDS

In alignment with housing choice and price issues above, employers felt that entry-level for sale housing and rentals for year-round employees are most needed. Rental housing for seasonal or part-time employees is also lacking, followed by move-up housing.

**“In your experience, to what extent are the following types of housing for area employees lacking (in short supply)?” (All Responses)**

	% "High Need"	Average Rating*
Entry-level for-sale housing for year-round employees	41%	4.0
Rentals for year-round employees	42%	3.9
Rentals for seasonal/part-year employees	35%	3.8
Move-up for-sale housing for year-round employees	27%	3.6

Source: 2020 Employer Survey

\*Rating on a scale from “1 – no need/sufficient supply” to “5 – high need”

“All the towns struggle for employee housing, not necessarily low income housing, but for folks with jobs that need starter homes.”

- Consultant Team Interview

Housing rated as a significant need (4.0 rating or higher) by county includes:

- Seasonal/part-year rentals in Mineral and Saguache Counties;
- Year round rentals in Costilla and Saguache Counties; and
- Entry-level for-sale housing in Costilla, Mineral, and Saguache Counties.

More specifically, employers noted that the following housing is in short supply for their employees:

- Homes of higher quality either to own or rent.
- Homes priced to be affordable to the local workforce, either to own or rent.
- Homes for entry-level employees, millennials, and families.
- Rentals that allow pets.

# Housing Inventory and Services

This section evaluates the Valley’s housing inventory, including the number, type, and age of homes, tenure, occupancy, state and federal subsidies, and housing related service organizations.

Why this is important:

- The characteristics of the Valley’s housing stock, which includes market rate housing and subsidized housing, provides an understanding of the variety and quality of housing currently provided in the Valley and the rate of new development. The information assists in identifying imbalances in the market and informs the number, type, tenure, and price of housing that is needed.

## HOUSING UNITS

There are about 27,000 housing units in the San Luis Valley. Over the past decade, the number of housing units in the Valley has grown at a rate of 0.7% per year on average, or about 180 units per year. Household growth has been notably slower at about 0.3% per year, or 50 new households per year on average. With the growth in housing units exceeding the growth in households, housing vacancy rates have increased to 30% in the Valley, as shown below in “Housing Occupancy.”

### Housing Units in the San Luis Valley, 2020 est.

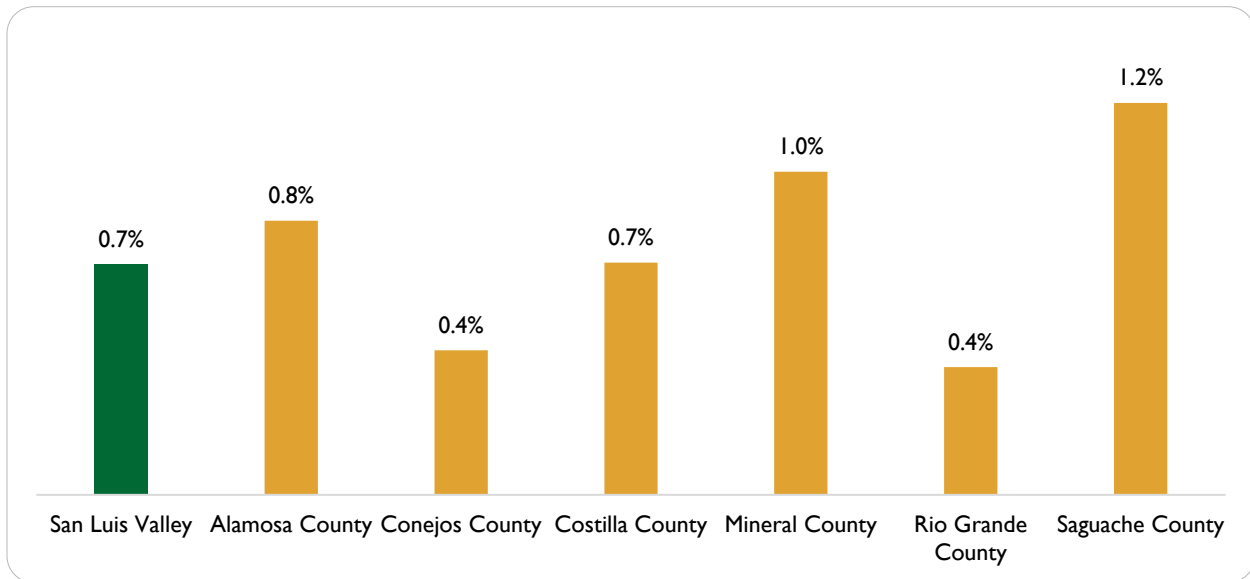
	Housing Units	Percent of Housing Units
San Luis Valley	27,027	100%
Alamosa County	7,131	33%
Conejos County	4,482	16%
Costilla County	2,845	9%
Mineral County	1,327	2%
Rio Grande County	6,896	24%
Saguache County	4,346	16%

Source: Colorado Demography Office, County Staff, Consultant Team

Trends by county show that:

- New housing units were added at the fastest rate in Saguache, Mineral, and Alamosa Counties from 2010 to 2020.
- Conejos and Rio Grande Counties experienced the slowest annual rate of growth, and are also the two counties in the Valley that have lost households during that time.

## Yearly % Change in Total Housing Units, 2010-2020



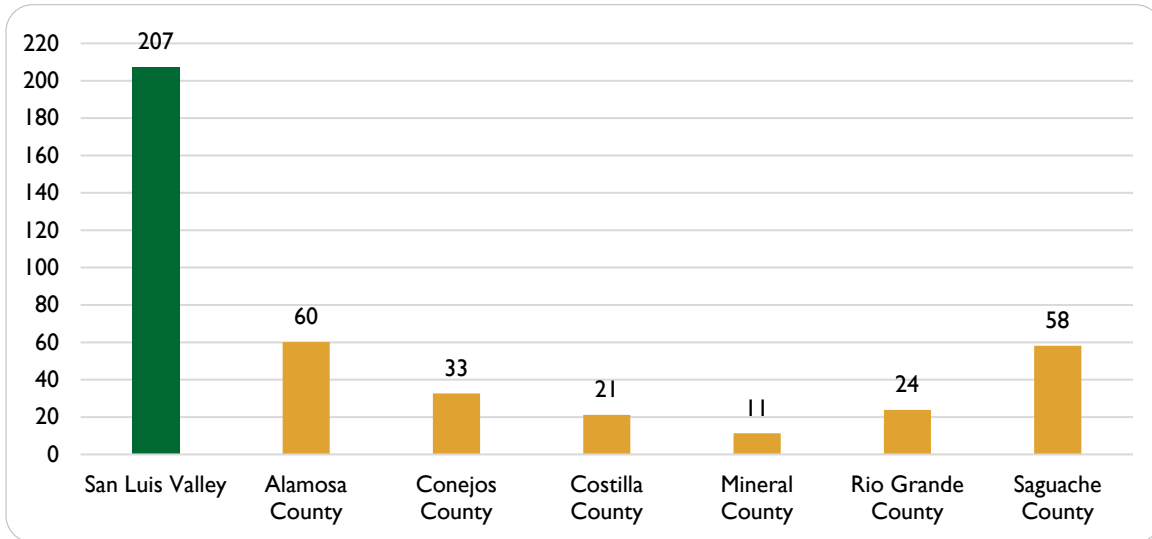
Sources: Colorado Demography Office, Consultant Team

There were almost 210 residential building permits issued on average each year from 2015 through 2020 in the valley. The vast majority (73%) of these homes were permitted in the unincorporated parts of each county. Of the 27% permitted in incorporated towns or cities, about 72% of them were issued by the City of Alamosa.

Permits in unincorporated parts of the county are almost exclusively single family homes or manufactured homes on large lots, and typically far from municipal water and sanitation infrastructure. Hence, they rely on very deep wells for water and septic for sanitation, and residents must drive to work. It is an inefficient development pattern that is unsustainable in the long run - environmental issues, water issues, and straining government budgets and capacity to maintain a lot of infrastructure. For example:

- Costilla County's Multi-Jurisdictional Multi-Hazard Mitigation Plan (2015) states that the county has 51 subdivisions with over 75,000 platted lots on approximately 296,000 acres (38% of county land). Most of these subdivisions were approved decades ago (beginning in the 1970's) and 98% of them still have vacant platted lots that can be built on. This has led to the county having to maintain over 1,800 miles of roads.
- Local governments do not have the funding or capacity to remove abandoned homes, regardless of their tax lien status or whether they are an environmental risk. The presence of abandoned homes exacerbates lack of interest and continued disinvestment.
- The City of Alamosa and Alamosa County are working to coordinate on development notification and review, with the intent to encourage development closer to the city, tie into the municipal services, and reduce the inefficient development patterns. This approach could be expanded upon in other parts of the region.

## Average Annual Residential Building Permits, 2015-2020



Sources: County and Municipal Staff, Colorado Demography Office, Consultant Team

## Housing Occupancy

About 30% of housing units in the Valley are defined as “vacant” by the Colorado Demography Office, which is notably higher than in Colorado (10%). Vacant units include any home that is not occupied by a permanent resident. This includes second homes, abandoned homes, homes recently built but unoccupied, as well as vacant homes for sale and vacant homes for rent.

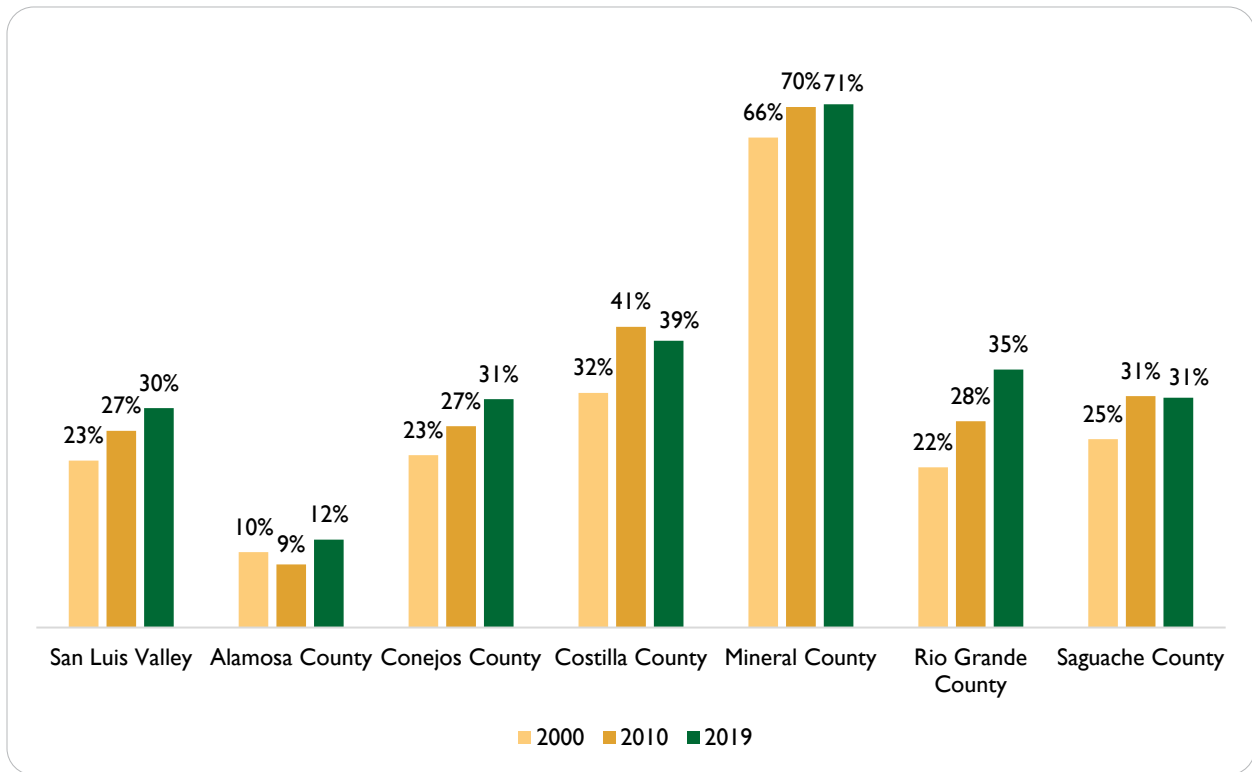


Image: Abandoned Home

Vacancy rates vary significantly in the Valley, from 12% in Alamosa County up to 71% in Mineral County.

- Second homes comprise most of the vacant homes in Mineral, Rio Grande and Conejos Counties. The number of second homes has increased in Rio Grande County over the last ten years, largely driven by the resort economy of South Fork.
- The percentage of units that are vacant due to other reasons, which includes abandonment, comprises a high relative share in Alamosa County, Costilla County, and Conejos and Saguache Counties.

### Unoccupied Housing Rate, 2000-2019



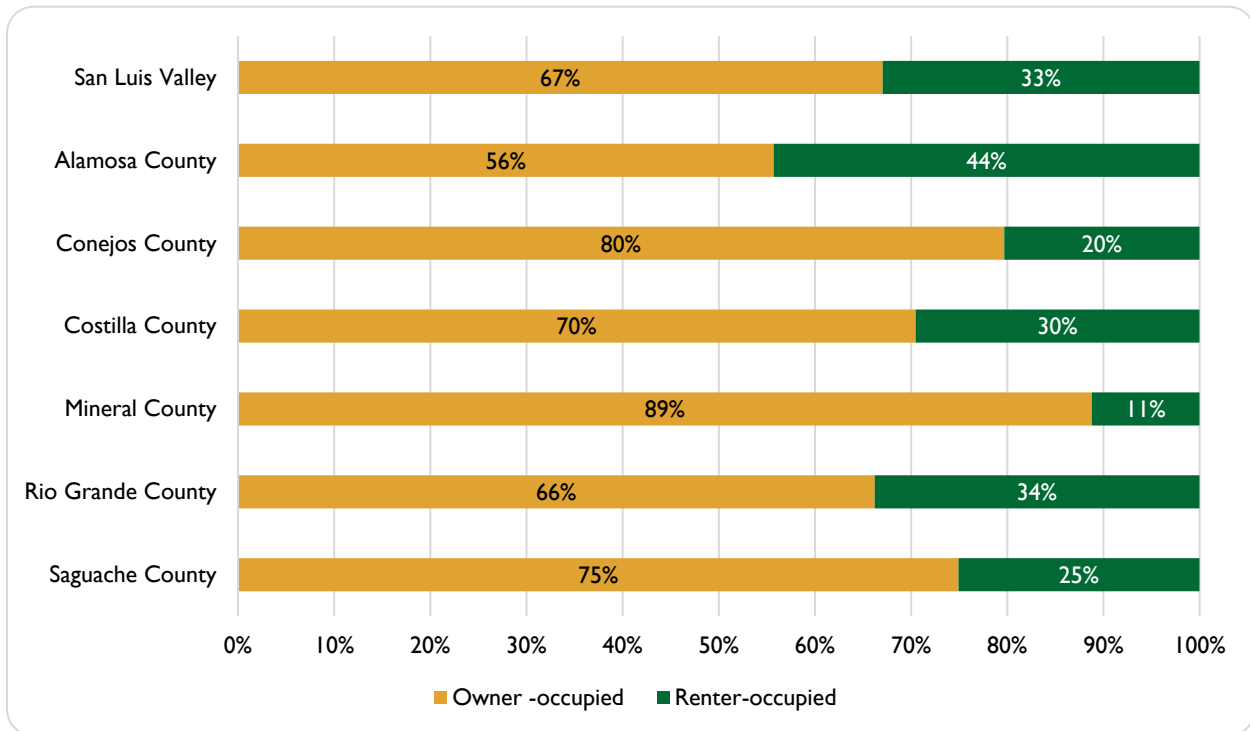
Source: 2000 Census, 2010 Census, Colorado Demography Office 2019

### Housing Tenure

About two thirds (67%) of households in the San Luis Valley own their home and the other third rent, which is in line with the state’s homeownership rate of 65%.

- Alamosa County has the highest renter-occupancy rate (44%), which is a function of both the student population and developed inventory of apartments.
- Mineral County has the lowest renter-occupancy rate (11%); it also has the lowest inventory of attached products – meaning there are few options for renters aside from leasing single family homes.

## Housing Tenure, 2018



Source: 2014-2018 ACS

## TYPES OF HOUSING

The housing stock in the Valley is relatively homogenous, providing households with little choice in housing product options:

- Single family homes comprise the vast majority of homes (>70%) in the Valley and in all counties, except Alamosa where they comprise about 57% of all homes.
- Mobile homes are the next most dominant housing type, making up about 17% of all housing units in the Valley.

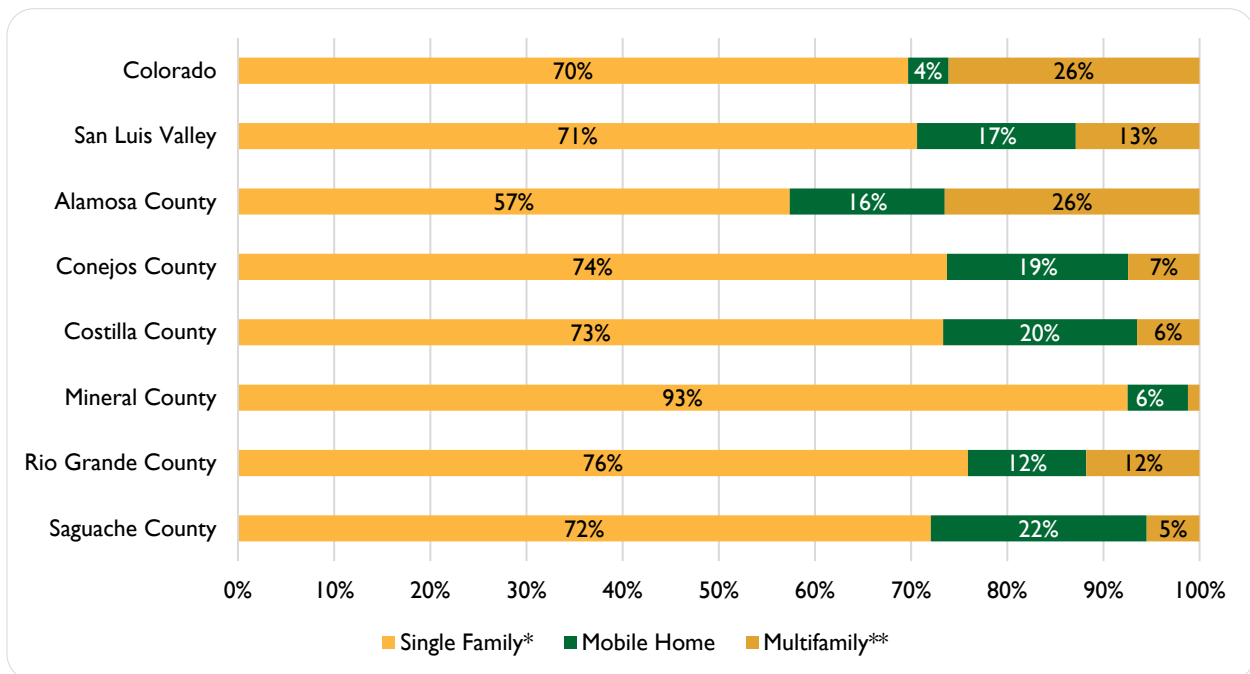


- 41% of mobile homes in the Valley are at least 40 years old, including 51% of mobile homes in Alamosa County.
- The generally old age and poor condition of mobile homes in the Valley means that many are not safe nor viable housing options; abandoned mobile homes can be observed in many communities across the Valley.
- There are approximately six mobile home parks with “bifurcated ownership” meaning that the land has a separate ownership than the homes, and residents of the homes are required to pay lot rent.
- Service providers noted concerns about increases in lot rent forcing mobile home owners to abandon their homes, and lack of consistent understanding and adherence with tenants’ rights, including discrimination and exploitation of residents through “rent to own” schemes in some parks.
- The percentage of multifamily units ranges from 5% to 7% in all counties except Alamosa County and Rio Grande County, which have a higher percentage of multifamily units (26% and 12%, respectively). Most of these units are located in the Valley’s two largest communities, Alamosa and Monte Vista.





### Housing Types in the San Luis Valley, 2018



\*attached and detached single family homes

\*\*2 or more units

Source: 2014-2018 ACS

### COST TO BUILD

Since the great recession, it has been very difficult for the market to supply housing that locals can afford. The cost to develop housing varies by location, target demographic, density, product type and construction method. The primary residential development costs include land acquisition, construction costs, soft costs (including fees), site work, and financing. Labor and material costs have been rising

across Colorado and the United States, but the San Luis Valley has additional unique challenges based on its remote location and constrained labor market. Using the example provided by a local builder of a 1,500 square foot home at \$190 per square foot to build, the home costs \$285,000 before land, tap fees, design costs, or infrastructure are even considered.

“Labor is the number one challenge. You can’t find competent people to do the work. Builders can make more money on job sites 90 miles away.”

- Consultant Team Interview

Developers and realtors described the challenges of making new construction of homes for rent and for sale financially viable. The cost to build exceeds what buyers and renters can afford, as well as median home prices and rents for existing housing. Residential development is time consuming, risky, and currently presents limited or no opportunity for profit. The relatively low number of permits issued outside of Alamosa and the focus of new construction on second homes in some areas both result from this dynamic.



## PROVISIONAL HOUSING

There are estimated to be about 250 “provisional homes” in the Valley. These are typically located in the unincorporated areas, and lack some of the basic requirements of current building codes. These homes are often very remote, on long dirt roads far from infrastructure. County planners and service providers noted the tensions between code enforcement, safety for very low income and vulnerable owners of these homes, and lack of other options if they are displaced. La Puente, San Luis Valley Housing Coalition, and ERC have been working to support occupants of provisional homes with access to heating, improved safety, and well water.



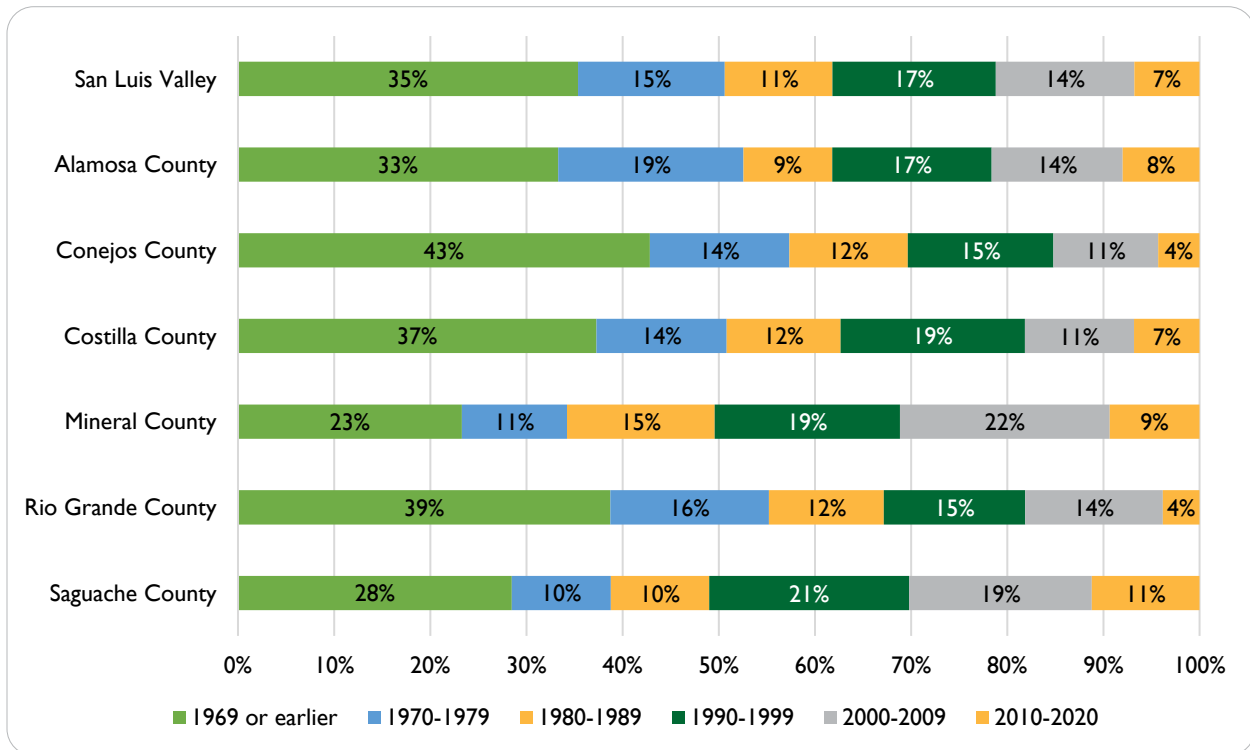
## AGE OF HOUSING

The Valley's housing stock is old. About 35% of the Valley's housing stock is 50 years old or more, which is about nine percentage points higher than that of the state.

A closer look at the age of homes by county highlights a few key points:

- Very little development has occurred in the past decade in the Valley (7% of homes).
- Conejos, Rio Grande, and Costilla Counties have the highest percentage of homes that are at least 50 years old – 43%, 39%, and 37% respectively.
- Saguache and Mineral Counties have the newest housing stock, with 50% of the inventory having been built since 1990.

## Age of Homes in the San Luis Valley



Sources: 2015-2019 ACS, Consultant Team

## SUBSIDIZED AND INCOME RESTRICTED HOUSING

The six-county area currently has an inventory of about 1,374 rental units that receive ongoing rental subsidies (so tenants pay 30% of their income on rent, and other operating costs are covered by a state or federal source) or were built using state or federal resources in exchange for serving households below a designated income level. Subsidized and income restricted housing represents about 16% of the current rental housing inventory.

Flats at Iron Horse is a proposed affordable rental development located in Alamosa. It has received an award of 9% Low Income Housing Tax Credits (LIHTC). The unit mix is 14 one-bedrooms, 21 two-bedrooms, and six three-bedrooms. The project will serve households from 30% to 60% of AMI, and is anticipated to be complete in late 2021. This translates to rents of \$315 to \$775/month, depending on number of bedrooms and household income.

The non-profit organization Colorado Rural Housing Development Corporation (CRHDC) is building twelve to sixteen new homes in each year through their USDA Mutual Self Help Build Program. They have been able to deliver 4-bedroom homes at \$189,000, which have been appraising for around \$220,000, creating equity for the owners who participated in getting them built. Owners must income qualify at or below 80% AMI. They then receive favorable loans and assistance with home construction. CRHDC's focus areas for building new housing are currently Alamosa and Monte Vista.

Service providers and stakeholders in the Valley described long waitlists and need for additional subsidized housing. They also describe prior projects where the program rules for state and federal subsidies did not align with community needs in the Valley. Examples include:

- CRHDC’s partnership with the Town of San Luis to do a Self Help Build to serve households at 80% AMI. The project did not have enough qualified buyers. A second phase was put on hold, and a portion of the first phase had to be re-purposed as rental.
- San Luis Valley Housing Coalition converted 32 units in Monte Vista (High Valley Manor) from senior/disabled housing to family housing in 2011 and renovated the properties in 2017-2018. At the time, there was not sufficient demand for subsidized senior housing in that market.
- Rental housing built for farm workers that ended up with high vacancy rates due to changing labor rules and federal requirements for immigration documentation.
- Several housing authorities and funders noted that vacancy rates in subsidized projects had been a problem a few years ago, but are better now, based on higher need for the housing and stronger coordination between agencies.

Lenders and realtors also describe many aspiring homebuyers in need of housing counseling, credit repair, and down payment assistance.



### Income Restricted and Subsidized Rental Housing Inventory

Name	Address	City	Who is housed?	# of Units	Year Built	Type of Subsidy
<b>Alamosa County</b>						
Casita de la Luna	1410 11th Street	Alamosa	Seniors and disabled	28	2001	LIHTC, USDA 515, HOME
Totten Manor	217 Market St.	Alamosa	Seniors and disabled	26	1994	LIHTC, USDA 515, 521
Mount Blanca View	203 Market St.	Alamosa	Seniors	24	1988	LIHTC
Casita del Sol Apartments	1405 W. 11th St.	Alamosa	Families	24	1998	LIHTC, 515
Tierra Nueva	600 S Craft St	Alamosa	Agricultural workers	37	2005	USDA 514
Sierra Vista	2303 Vigil Way	Alamosa	Families	32	1990	USDA 515

Alamosa HA	2000 Vigil Way	Alamosa	Families, seniors, disabled	148	Var.	PH
<b>Subtotal</b>				<b>369</b>		

<b>Conejos County</b>						
Guadalupe Family Housing	705 Spruce St	Antonito	Families	24	1992	LIHTC 4%
Gomez Manor II	804 W State St	Antonito	Families	16	1996	LIHTC 4%, USDA 515, 538
Housing Authority of Antonito	308 Pine St	Antonito	Families	29		PH
Guadalupe Hacienda	404 W 8th	Antonito	Families	24		USDA 538
Plaza Del Sol Manor	59C Calle Miller	La Jara	Seniors	26		HUD 8, 202
Conejos County HA	510 Richfield Rd	La Jara	Families, seniors, disabled	15		HUD RAD
Conejos County HA	Scattered	Manassa	Families	7		HUD RAD
Conejos County HA	Scattered	Sanford	Families	5		HUD RAD
<b>Subtotal</b>				<b>146</b>		

<b>Costilla County</b>						
Costilla HA	Scattered	Fort Garland	Families	15	1969	PH
Willow Grove	1029 Pedro Street	San Luis	Families	8	1982	USDA 515
Cottonwood	Alfonso Street	San Luis	Families	6	1982	USDA 516
Gilbert Manor	504 Pfeiffer Street	San Luis	Families	6	1982	USDA 517
Aspen Apartments	915 Pedro St	San Luis	Families	32	1969	PH
Sangre de Cristo View	420 Trinchera St	San Luis	Seniors and disabled	24	1974	USDA 515
Costilla HA	Scattered	San Luis	Families	10	1969	PH
<b>Subtotal</b>				<b>101</b>		

<b>Rio Grande County</b>						
Gateway Villa Apartments	929 Spruce St	Del Norte	Families	24	1990	515
Casas de Rio Grande	1305 6th St	Del Norte	Seniors and disabled	28		HUD Property, 8
La Hacienda Del Norte	1025 Spruce St	Del Norte	Seniors and disabled	24		HUD Property, 8
Clearview Apartments	230 Clearview Dr	Monte Vista	Families	24	1989	515

High Valley Manor	504 Batterson Ave	Monte Vista	Families	33		515
Monte Vista Apartments	2169 Sherman Ave	Monte Vista	Families	20		515
Monte Vista Housing Complex	551 Monroe St	Monte Vista	Families	56	1989	515
Valley Grande Apartments	2256 East Dr	Monte Vista	Families	66	2008	LIHTC 4%, 515
Westview Villas	510 Dunham St	Monte Vista	Families	32	2002	515
Mountain View Manor	311 Washington St	Monte Vista	Seniors and disabled	33		HUD Property, 8, FHA
Sierra Vista Apartments	472 Jackson St	Monte Vista	Families	28		HUD Property, 8, 515
West View Villas	445 Dunham St	Monte Vista	Families	24		LIHTC 4%
South Fork Heights	170 Bonneville Drive	South Fork	Families	82	1990	LIHTC
<b>Subtotal</b>				<b>474</b>		

Saguache County						
Tierra Nueva Family Center	980 S Broadway	Center	Agricultural workers	72		515, 514
Buena Ventura Court	51 Buena Ventura Ct	Center	Families	10		HUD Property, 8
Casa de Cortez	751 Mussman Ln	Center	Families	40		LIHTC, 515
Valley Vista	58 Central Ave	Center	Families	20		515, 538
Center Family Housing Valle Vista	50 Buena Ventura Ct	Center	Families	20		LIHTC 4%
Center Senior Housing Cielo Vista	460 1 <sup>st</sup> St	Center	Seniors	24		LIHTC 4%
Center	124 Worth St	Center	Families	30		PH
Cielo Vista	166 S Wills St	Center	Seniors and disabled	24		515, 538
Sangre de Cristo	273 Wills St	Center	Families	16		515, 538
Blue Water Haciendas	630.5 Pitkin Ave	Saguache	Families and seniors	12		HUD Property, 8, 515
Puerto Del Norte Haciendas	705 8th Street	Saguache	Families and seniors	12		Section 8
<b>Subtotal</b>				<b>280</b>		

**Total**

**1,370**

Source: HUD, CHFA, Interviews

## Non-Profits and Housing Authorities Providing Housing Assistance

Alamosa is clearly the hub for most services and housing related programs in the region, but many agencies based in Alamosa also serve the greater region and there are an unusually large number of housing authorities given the population.

“There is so much urgency for housing the most vulnerable in our community right now. Being unsheltered in our climate can mean freezing to death.”

- Consultant Team Interview

“I see the greatest need as a few months of rent assistance, so families have the help they need to get back on their feet.”

- Consultant Team Interview



### Summary of Housing Agencies

Housing Agency	Expertise	Geographic Scope	Rental Units Managed	Other Programs
<b>Not for Profits</b>				
CRHDC	Affordable homeownership; property management	Alamosa, Monte Vista, and San Luis	99	6-8 homes built/year for 80% AMI Lending
Energy Resource Center	Weatherization of homes	Valley-wide	N/A	76 homes/year improved, also support services referrals



Housing Agency	Expertise	Geographic Scope	Rental Units Managed	Other Programs
La Puente	Social safety net of emergency housing and supportive services	Valley-wide	27	Social enterprise, after school, energy bill assistance, emergency shelter, rural outreach
San Luis Valley Behavioral Health Group	Behavioral health support and intervention	Valley-wide	16	44 vouchers to lease in the community
San Luis Valley Habitat for Humanity	Affordable homeownership for under 80% AMI	Alamosa	N/a	1 home/year
San Luis Valley Housing Coalition	Property management, program management, grant writing, regional coordination	Valley-wide	59	Down payment Assistance, Home Rehab and Household Well Water
Volunteers of America	Housing services for veterans	Valley-wide	N/A	Rental assistance Services referrals and coordination
<b>Subtotal</b>			<b>201</b>	

Housing Authorities				
Alamosa Housing Authority	Property management and vouchers	City of Alamosa	198	35 housing choice vouchers
Antonito Housing Authority	Property management	Town of Antonito	29	
Center Housing Authority	Property management and vouchers	Town of Center	40	
Conejos County Housing Authority	Property management and vouchers	Conejos County	44	15 housing choice vouchers
Costilla County Housing Authority	Property management	Costilla County	101	
Monte Vista Housing Authority	Property management	Rio Grande County	84	
Saguache Housing Authority	Property management	Saguache County	28	
<b>Subtotal</b>			<b>524</b>	

Source: Consultant Team Interviews



“It is so great when we can be here for a family in need, and then they move on so others can use the resource. Recently, I leased to a dad with five kids, who then moved his family to a market apartment.”

- Property manager of subsidized housing

# Housing Market Conditions

This section evaluates the valley’s housing market including trends in homes for sale and rental housing.

Why this is important:

- *Housing market conditions* give us key insights into what the housing market is providing, how much is available, and at which price points. The information helps to understand what is missing from the housing market with regard to housing type, diversity and price points, particularly when compared to local demographics.

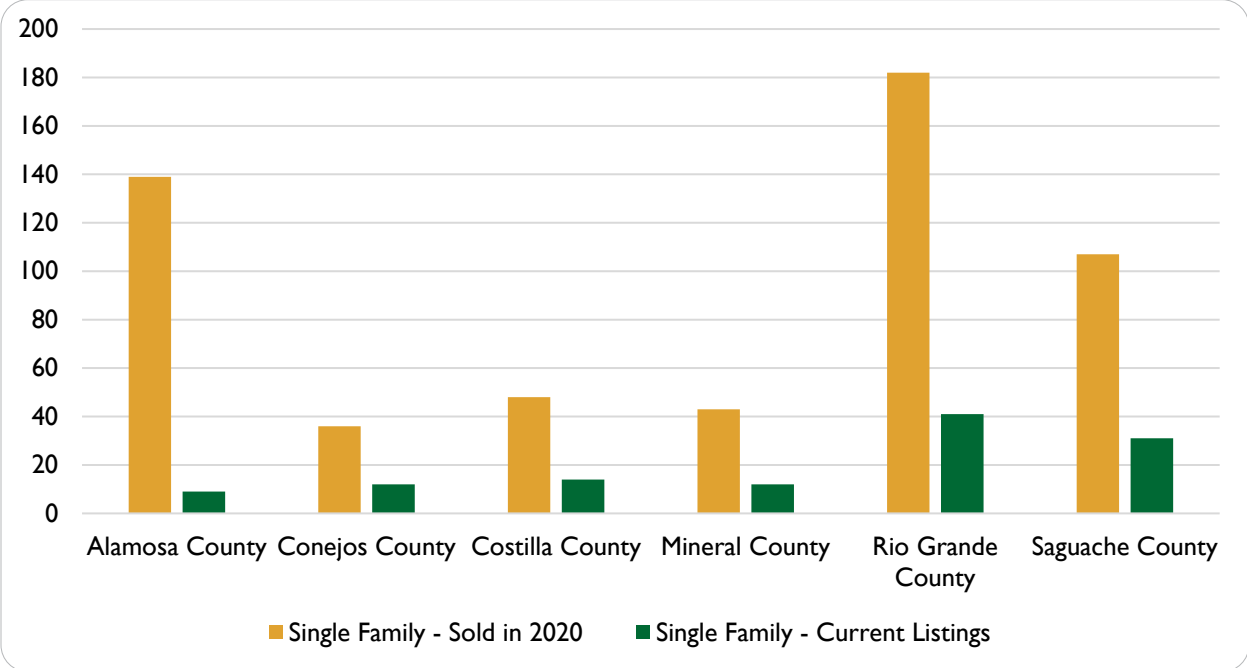
## FOR SALE MARKET

Last year, there were 639 residential sales in the Valley.

- The vast majority (86%) were site built (stick) single family homes.
- Mobile, modular, and manufactured homes were 12% of the sales.
- The remaining 2% were condos and townhouses.

In 2020, Rio Grande County had the highest number of residential sales (212 total). Alamosa County was second highest (156 total). This analysis focuses primarily on single family homes.

### Number of Homes Currently Listed January 2021 Compared to Homes Sold in 2020

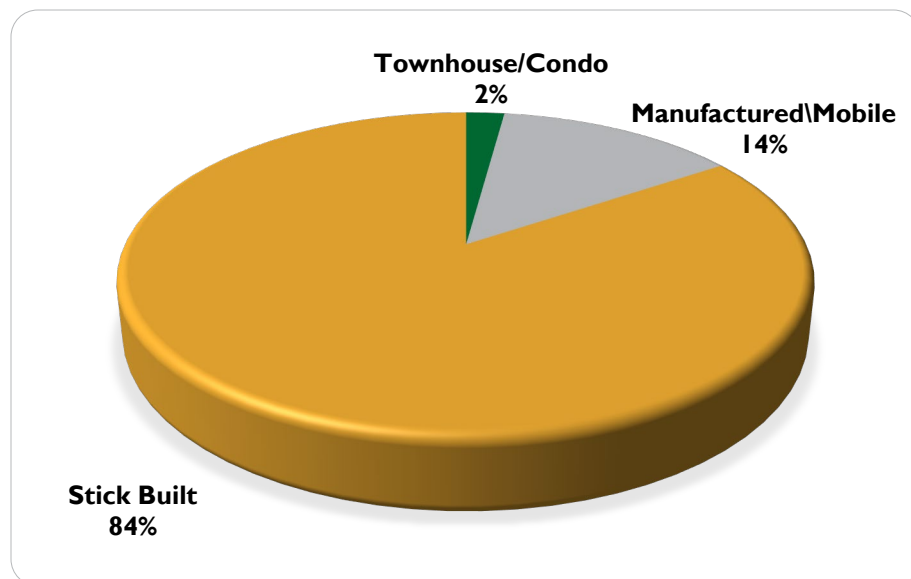


Source: MLS

## For Sale Inventory

There were 141 homes listed for sale in January 2021. Consistent with sales in 2020, 84% of listings are for single family site-built homes.

## Homes for Sale by Type, 2021



Source: MLS

Of homes listed for sale, 68% have three bedrooms or more, which is a mismatch with the large number of households comprised of people living alone or couples with no children.

## Number of Bedrooms in Homes Listed for Sale, 2021

	Alamosa County	Conejos County	Costilla County	Mineral County	Rio Grande County	Saguache County	Total	%
0			1	1		1	3	2%
1		1	1	2	4	3	11	8%
2	3	2	6	4	6	10	31	22%
3	5	2	11	2	17	10	47	33%
4	4	4	3	3	12	7	33	23%
5+	1	4	0	0	9	2	16	11%
Total	13	13	22	12	48	33	141	100%

Source: MLS

The inventory of homes for sale is very low. Residential markets are considered in balance when there is about six months of inventory. More than six months of inventory typically indicates a buyer's market, and less inventory indicates a seller's market. In a seller's market, home prices increase because there is too little inventory to satisfy demand and buyers bid each other up to purchase homes. Realtors noted that inventory has been declining for several years, and that buyers are having a harder time finding housing that meets their budget and household needs.

- It is a seller's market across the Valley - inventory is below 4-months in every county.
- Alamosa County has the most constrained inventory, with one month of supply. This is consistent with realtor observations that Alamosa is the economic hub of the region and the area most desirable to full time residents.

- Relators confirmed that there are typically more listings in the spring and summer months; this analysis was conducted in fall and winter. Inventory may improve this spring, but is anticipated to remain a seller's market.

### Current For Sale Inventory – Single Family Homes

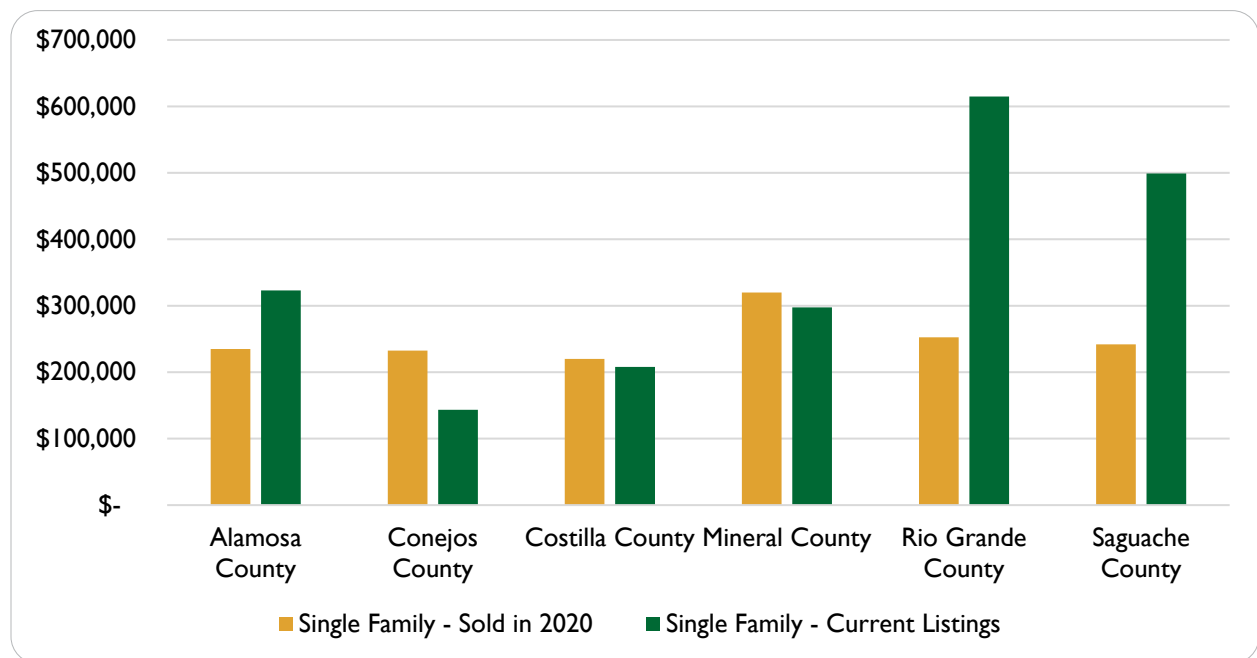
Months of Inventory	
Alamosa County	1
Conejos County	4
Costilla County	4
Mineral County	3
Rio Grande County	3
Saguache County	3

Source: MLS

### Home Prices

Realtors report that housing prices are rising, which is confirmed by comparison of 2020 home sales and 2008 home sales in the last needs assessment: average sale price had increased by 66%. Median single family sale prices in 2020 ranged from \$212,000 in Costilla County to \$320,000 in Mineral County. Current median list prices range from \$279,900 in Costilla to \$614,900 in Rio Grande. Comparing January 2021 listings with 2020 sales is not a truly accurate indicator of price increases, because 34% of current listings are for homes over \$500,000 (see Days on the Market and Housing Attainability, below).

### Price of Homes Listed January 2021 Compared to Homes Sold in 2020



Source: MLS

The last Housing Needs Assessment for the Valley was conducted during the great recession, when many homes were for sale and there were very few buyers. Using listings data from that study compared to the distribution of current listings shows a dramatic decline in inventory and upward shift in home prices.

## Distribution of List Price – 2009 Compared to 2021

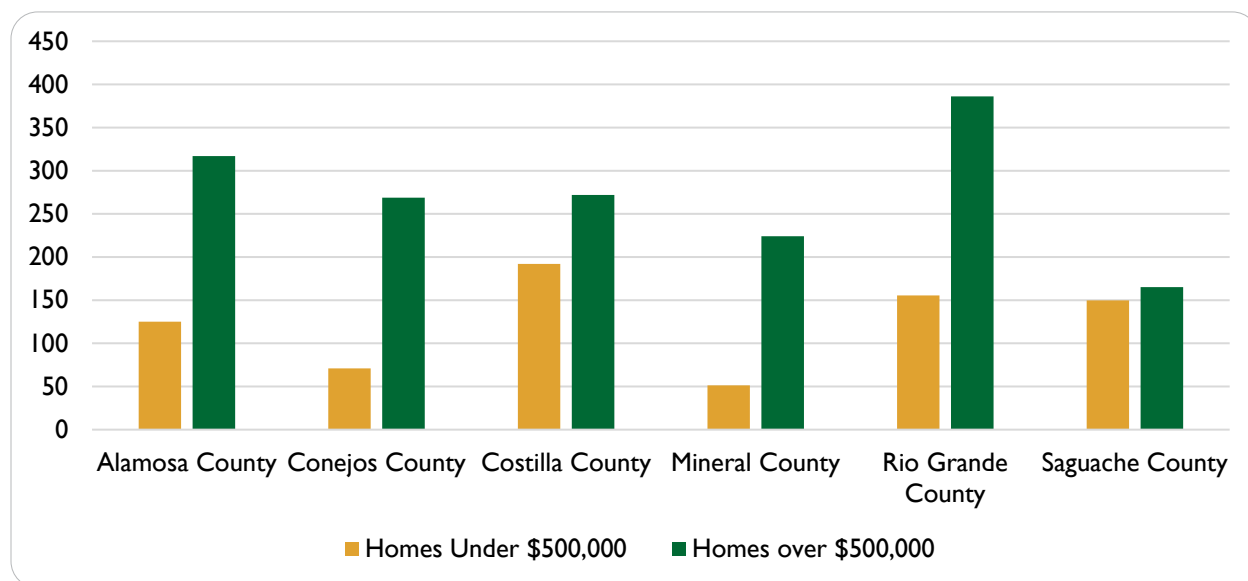
	For Sale Listings 2009		For Sale Listings 2021	
<\$74,999	45	7%	5	4%
\$75,000 - \$100,000	54	9%	6	4%
\$100,001 - \$150,000	102	16%	14	10%
\$150,001 - \$200,000	114	18%	13	9%
\$200,001 - \$250,000	73	12%	12	9%
\$250,001 - \$300,000	56	9%	10	7%
\$300,001 - \$350,000	30	5%	11	8%
\$350,001 - \$400,000	35	6%	9	6%
\$400,001 - \$450,000	19	3%	4	3%
>\$450,000	105	17%	57	40%
Total	633		141	

Source: MLS

## Days on the Market

For most counties, there is an oversupply of homes priced over \$500,000, which are remaining on the market far longer than homes under \$300,000 and those between \$300,000 and \$500,000. Saguache County is an exception to this observation, but the sample size for current listings in Saguache is small.

## Average Days on the Market by Price and Location – Current Listings



Source: MLS

## Housing Attainability

To afford the median priced home last year, households needed incomes anywhere from 95% of area median for Costilla County up to 138% of area median for Mineral County. Realtors report second home buyers being active in certain specific communities, including South Fork, Crestone, Creede, and select parts of unincorporated Conejos County.

## Income Needed to Purchase Median Home (2-person household)

	Alamosa	Conejos	Costilla	Mineral	Rio Grande	Saguache
Median Price 2020	\$235,000	\$232,500	\$220,000	\$320,000	\$252,500	\$242,000
Income Needed	\$57,526	\$56,914	\$53,854	\$78,333	\$61,810	\$59,239
AMI Equivalent	101%	100%	95%	138%	109%	104%

Source: CHFA, Consultant Team, MLS

Note: "Balance of State" AMIs used for all counties.

Home prices are moving out of reach of buyers under 80% AMI, and those in the 80% to 120% AMI range have fewer options than last year.

- Nearly a third (30%) of current listings are only affordable to buyers over 200% AMI, while only 10% of households can afford a home in this price range. These homes are likely to remain unsold, or sell to second homeowners.
- Most homes listed under \$200,000 present serious challenges: they may be extremely small, have serious deferred maintenance, and/or fall in the "provisional" category (meaning they lack water, septic, heating, foundations, or other elements that would make them consistent with current building codes).
- A new trend that was accelerated by the COVID pandemic, Valley residents and employees also compete with work-from-anywhere households for the limited housing stock. These new households will likely bring both positive economic energy, and increased housing and gentrification challenges to the area.

"Local first-time homebuyers are being out-bid by buyers who can pay cash."

-Realtor Interview

## Distribution of Homes for Sale Compared to Income Needed

AMI	Annual income	Max Purchase Price	Homes currently listed						
			Alamosa	Conejos	Costilla	Mineral	Rio Grande	Saguache	Total
<50%	\$28,400	< \$125,000	0	3	3	1	4	1	12
50% - 80%	\$45,400	\$200,000	2	3	8	3	6	7	29
80.1 - 120%	\$68,200	\$300,000	2	0	5	2	7	5	21
120.1% - 200%	\$113,600	\$500,000	6	2	5	0	9	8	30
>200%		>\$500,000	3	5	1	6	22	12	49
<b>Total</b>			<b>9</b>	<b>12</b>	<b>14</b>	<b>12</b>	<b>41</b>	<b>31</b>	<b>141</b>

Source: CHFA, Consultant Team, MLS

Note: Annual income is for a two-person household, corresponding to the AMI for the five-county area listed in the AMI Tables.

## RENTAL HOUSING

Housing to rent is scarce in the San Luis Valley. A search of numerous online sources in late 2020 and early 2021 turned up a total of 66 properties available for rent. Of these, 77% were listed in Alamosa. Listings were evenly split between apartments and single-family homes. Outside of Alamosa, sample sizes are extremely small and should not be the basis for broad market interpretations.

### Rental Listings, October 2020 – January 2021

	Single Family Listings	Average Asking Rate	Apartment Listings	Average Asking Rate
Alamosa	21	\$1,101	30	\$762
Del Norte	8	\$1,178	1	\$800
Monte Vista	1	\$1,550	2	\$650
Sanford	-	-	1	\$625
Fort Garland	1	\$3,000	-	-
La Jara	2	\$900	-	-
Total	32	\$1,181	34	\$753

Source: property manager websites, local newspapers, Craigslist, Zillow, Apartments.com, and Facebook

### Rental Vacancy

A stable rental market tends to have a vacancy rate of around 5-7%. When the vacancy rate is higher than this, landlords are compelled to reduce rents or offer concessions to fill units; when lower, rents are likely to increase because renter demand exceeds supply – more rental units are needed.

The vacancy rate in the Valley is well below 5%, meaning that more rentals are needed. With about 6,300 rentals in the Valley, 66 listings represent 1% vacancy.

### Number of Rental Listings by Type and Size, 2021

	1 Bedroom	2 Bedroom	3 Bedroom	4+ Bedroom	Total
Apartment	13	16	5	0	34
Single family	5	13	9	5	32
Total	18	29	14	5	66

Sources: property manager websites, local newspapers, Craigslist, Zillow, Apartments.com, and Facebook

Property managers and planners indicated that in the tight rental market many rental units do not need to be advertised because they are filled by “word of mouth.” Rentals turnover infrequently and landlords are often able to have a new tenant committed before the unit is even vacated. This adds to the difficulty of finding a unit, particularly for newcomers that are not tapped into the local community. This trend is common in rural and resort communities with tight rental markets throughout Colorado.

There is a paradox between rental vacancy, which is extremely low, and the high vacancy in the housing inventory overall due to abandoned and unoccupied homes. Some abandoned homes may not be suitable for habitation, but if some currently vacant homes could be converted to long term rentals, the region might be able to utilize the existing housing stock more efficiently. Renovating vacant homes could support alleviating the tight rental market without having to rely exclusively on building new housing as well as reversing a cycle of dis-investment in some neighborhoods.



## Rental Rates

Rental rates have increased since the last assessment in 2009, when the average rent for an apartment in the Valley was about \$577. Rents are now 30% higher, averaging \$753 for an apartment (not adjusted for inflation).

### Asking Rent by Type and Size, 2021

	1 Bedroom	2 Bedroom	3 Bedroom	4+ Bedroom	Total
Apartment	\$603	\$795	\$1,020	-	\$753
Single family	\$1,254	\$1,008	\$1,378	\$1,190	\$1,179
Total	\$780	\$890	\$1,250	\$1,190	\$959

Source: property manager websites, local newspapers, Craigslist, Zillow, Apartments.com, and Facebook

## Attainability of Rents

On average, current asking rents are affordable to households with incomes above 62% AMI for one- and two-bedroom units and 77% AMI for three-bedroom units. Households with incomes lower than that would be rent burdened (see Problems and Challenges) if they move into a house or apartment at the current average rental rate.

### Asking Rent by Type and Size, 2021

	1 Bedroom	2 Bedroom	3 Bedroom
Average asking rent	\$780	\$890	\$1,250
Income required - affordable at 30% of income	\$30,888	\$35,244	\$49,500
AMI Level that can afford this rent	62%	62%	77%

Source: rental listing resources cited above, CHFA, Consultant Team

There is a mismatch between rental prices and household incomes in the area. More than half of renters in the Valley have incomes below 50% AMI (\$28,400 for two people), and need a rental rate below \$710 for their home to be affordable. The majority of current rental listings are between \$700 and \$1,650.

### Household Incomes Compared to Asking Rents

AMI	Household Income Range	Max Rent	Renter Household Distribution	Market Rate Units Available for Rent
<50%	\$0 to \$28,400	\$710	54%	14
50.1-80%	\$28,401 to \$45,400	\$1,278	20%	37
80.1-120%	\$45,401 to \$68,200	\$1,704	10%	12
120.1-200%	\$68,201 to \$113,600	\$2,840	9%	2
>200%	>\$113,600		6%	1
	Total		100%	66

Source: rental listing resources cited above, CHFA, Ribbon Demographics, LLC, Consultant Team

## Property Manager Observations

Property managers observed that renters are seeking units in good condition, close to jobs and services. They reported strong interest in both apartments and single-family homes, and noted that condos and

townhouses would likely be desirable if more were available. One and two-bedroom units that are priced to be affordable for one or two working adults are currently very much in demand.

Renters are often doubling up with roommates, and some property managers have concerns about overcrowding. High utility costs, particularly in older homes, creates an additional cost burden on renters. One subject matter expert described utility costs being equal to rent in poorly insulated homes during the coldest months.

Property managers expressed concern regarding the high costs when units were not left in good condition. If a unit is left in bad shape, security deposits are typically not enough to cover the costs.

Property managers report that they have not seen many adverse effects from the COVID-19 pandemic to date with regard to collecting rents or leasing vacant units. Some property managers voiced concern that more impacts from the pandemic will be seen in coming months when State and Federal assistance run out, placing local businesses under further economic strain and increasing the likelihood that households will struggle to pay rent due to reduced work hours, decreased pay, and/or layoffs. They also noted tenants have inconsistent employment, with lots of on again/off again jobs.

“Houses are old and run down. I would love to see more housing that is livable: safe and not falling apart.”

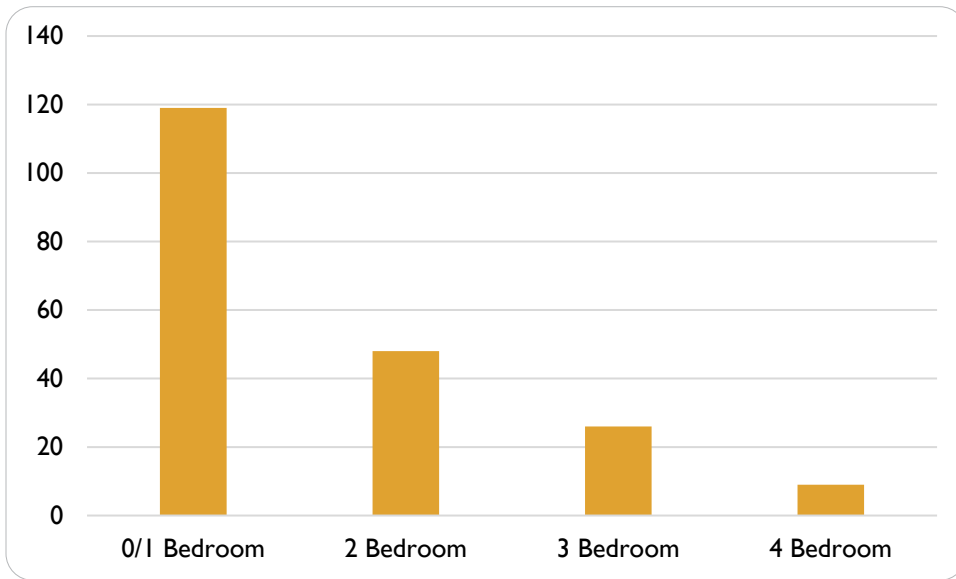
- Property Manager Interview

### Subsidized Rental Vacancy and Waitlists

Most property managers report that subsidized properties are always full. Family sites have more turnover than senior housing sites. There were 14 vacant units at the time of our interviews, for a subsidized vacancy rate of 1%, consistent with the market rate rental inventory.

Almost all sites have waitlists, and property managers report that most units are occupied within one week to one month of becoming available. Agencies and property managers are well coordinated around referrals when vacancies do occur. A summary of subsidized housing waitlists across the Valley shows over 200 households waiting for housing, although there may be some duplication when people apply to multiple sites. Several property managers reported that people typically wait six months to two years for housing, often living in overcrowded or unsafe conditions in the interim.

### Subsidized and Income Restricted Rental Waitlists, 2020



Source: interviews

The longest wait lists are for one-bedroom units, although property managers report strong demand for two-bedroom units, and cases of families creating makeshift rooms within their apartments to accommodate children in large families.

## Conclusion

The San Luis Valley is a unique housing market with extensive challenges and opportunities. The data in this report is intended for local decision makers as they make land use, funding, and policy decisions. It is also intended for use by developers, builders, and non-profit housing providers in the area. And, it sets the stage for the San Luis Valley Housing Coalition Housing Working Group to embark on a Housing Action Plan later this year. It is a busy year for housing initiatives with The City of Alamosa also working on a Housing Action Plan; there are many opportunities to collaborate.

The housing conditions presented here illustrate the many commonalities across the Valley, as well as introducing some of the distinctly local attributes to certain towns and counties. As the next step in understanding housing conditions, the San Luis Valley Housing Coalition is coordinating Community Specific Housing Assessments for 14 communities. These Assessments will summarize the specific local challenges and opportunities, and set the stage for local housing action steps.

Between the Action Plan and Community Specific Housing Assessment, we are confident that both local and region goals, priorities, and strategies will be established. On the community and valley-wide scale, housing goals should be set that balance aspiration to meet the needs with funding, land, and local capacity, and market constraints.

There is no single solution to the housing challenges in the valley – a holistic approach is needed, with actions and strategies at the local and regional levels. Actions that support investment in the current inventory, aligning land use and housing goals, creating new housing, generating more funding, and investing in programs to support success of tenants and owners are all important and will be explored in the Action Plan process.

## Acknowledgements

A special thank you to the employers who completed the employer survey, the San Luis Valley Housing Committee and San Luis Valley Housing Coalition Board of Directors, as well as the subject matter experts, service providers, and valley leaders who participated in interviews, providing their time, insight, and data to make this Assessment possible.

### SAN LUIS VALLEY HOUSING COMMITTEE

Aaron Miltenberger - Boys and Girls Club  
Akia Tanara - Crestone Peak Community Housing and Aventa Foundation  
Andrew Atchley - Division of Housing  
Arturo Alvarado and Robert Villagomez - CRHDC  
Brian Lujan - City of Center  
Callie Adams and Judy McNeilsmith - La Puente  
Charlie Sanchez and Lupita Garcia - ERC  
Dawn Melgares and Jackie Orton - SLV Housing Coalition  
Deacon Aspinwall, Heather Brooks and Kathy Woods - City of Alamosa  
Dee Kessler - Regional Health Connector, LPHA  
Donna Wehe - SLV Health  
Evan Samora - Saguache County Housing Authority  
Janelle Kukuk - Mineral County  
Jeff Owsley - CHFA  
Jeremy Elliott - Costilla County Economic Development  
Jessica Martin - USDA Rural Development  
Jodi Hardin and Alice Pugh - Civic Canopy  
Kairina Danforth - Crestone Oasis  
Karen Hinojos - Conejos County Housing Authority  
Kevin Wilkins - SLVDRG  
Kristina Daniel - VWHS  
Lewis Llukondi - Costilla County Developer  
Lisa Lucero - SLV Area Health Education Center and Realtor  
Mary Cornum and Richard Nagley - Veteran's Coalition SLV  
Randi Snead and Christy Doon - DOLA  
Sarah White - Moffat School District

### SAN LUIS VALLEY HOUSING COALITION BOARD OF DIRECTORS

Jeni Jack-Goodwin, President  
Hoyt Anderson, Vice President  
Andrea Archuleta-Cisneros, Treasurer  
Genessa Heide, Secretary  
Charles Sanchez  
Elizabeth Hensley  
Evan Samora  
Jeremy Elliot  
John Noffske  
Laura Conchelos  
Mitch Jarvis

## CONSULTING TEAM

*All assessment images taken by consultant team.*

Williford, LLC  
WSW Consulting, Inc.  
Rees Consulting, Inc.  
Urban Rural Continuum

## Area Median Income Charts

The Area Median Income (AMI) is included throughout this report because it is a metric used by affordable housing funders. CHFA publishes the AMI annually, and all counties except Mineral are included in a general “Balance of State” category. The “Balance of State” approach obscures the fact that median incomes vary significantly across Valley, but the calculations are included because they are the standard used by many housing funders.

2020 INCOME LIMITS								
All Valley Counties (except Mineral County)								
AMI	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
120%	59,640	68,160	76,680	85,200	92,040	98,880	105,720	112,560
100%	49,700	56,800	63,900	71,000	76,700	82,400	88,100	93,800
80%	39,760	45,440	51,120	56,800	61,360	65,920	70,480	75,040
70%	34,790	39,760	44,730	49,700	53,690	57,680	61,670	65,660
60%	29,820	34,080	38,340	42,600	46,020	49,440	52,860	56,280
55%	27,335	31,240	35,145	39,050	42,185	45,320	48,455	51,590
50%	24,850	28,400	31,950	35,500	38,350	41,200	44,050	46,900
45%	22,365	25,560	28,755	31,950	34,515	37,080	39,645	42,210
40%	19,880	22,720	25,560	28,400	30,680	32,960	35,240	37,520
30%	14,910	17,040	19,170	21,300	23,010	24,720	26,430	28,140

2020 INCOME LIMITS								
Mineral County								
AMI	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
120%	63,480	72,480	81,600	90,600	97,920	105,120	112,440	119,640
100%	52,900	60,400	68,000	75,500	81,600	87,600	93,700	99,700
80%	42,320	48,320	54,400	60,400	65,280	70,080	74,960	79,760
70%	37,030	42,280	47,600	52,850	57,120	61,320	65,590	69,790
60%	31,740	36,240	40,800	45,300	48,960	52,560	56,220	59,820
55%	29,095	33,220	37,400	41,525	44,880	48,180	51,535	54,835
50%	26,450	30,200	34,000	37,750	40,800	43,800	46,850	49,850
45%	23,805	27,180	30,600	33,975	36,720	39,420	42,165	44,865
40%	21,160	24,160	27,200	30,200	32,640	35,040	37,480	39,880
30%	15,870	18,120	20,400	22,650	24,480	26,280	28,110	29,910

# Methodology

Research for this Housing Needs Assessment was done concurrently with the [City of Alamosa Housing Needs Assessment](#), conducted by the same consultant team.

## PRIMARY RESEARCH

### Employer Survey

An on-line survey was distributed to employers to reach large and small businesses across the San Luis Valley. The employer survey probed the number of year-round and seasonal workers (summer and winter), where workers live (commute patterns), employee retention and recruitment issues, to what extent housing for employees is perceived to be an issue, and employers' level of support for housing assistance, among other information.

The survey link was emailed to businesses through generous support from Chambers of Commerce and economic development councils, San Luis Valley Housing Committee, and community stakeholders. The survey link was also made available on several websites and advertised through newspaper publications and other media.

Survey responses represent:

- 141 businesses or about 9% of the 1,613 businesses in the Valley.
- About 17% of the estimated 22,608 total jobs in the Valley.

Responses were received from employers across the spectrum of industries in the Valley; however, outreach targeted the larger employers, meaning that responses reflect a higher proportion of jobs in government, health care and professional positions than the actual job mix in the Valley. Responses from Mineral County were also light, meaning specific data for that county should be interpreted with caution.

## SUBJECT MATTER EXPERT AND KEY STAKEHOLDER INTERVIEWS

### Property Manager and Affordable Rental Manager Interviews

The consultant team interviewed managers of market rate and income- and rent-restricted LIHTC, public housing, and USDA rental properties, including five housing authorities. These interviews informed the rental market including rents, vacancy rates, recent trends, renter profiles and units most in demand. The income- and rent-restricted property managers also provided detailed information on their rental inventory.

### Realtor, Lender, and Developer Interviews

The consultant team interviewed ten real estate subject matter experts to inform the housing market conditions section and help to interpret the residential real estate trends.



## Employer Interviews

In addition to the employer survey, the consultant team followed up with some employers by phone to generate a deeper understanding of issues.

## County and Municipal Government Interviews

The consultant team interviewed county administrators and land use/planning staff from each of the six counties. Additional interviews were conducted with a mayor, town managers/administrators and town clerks from twelve incorporated cities and towns across the Valley.

## SECONDARY AND LOCAL DATA SOURCES

A variety of sources of published information were used in the preparation of this report, including but not limited to:

- U.S. Census Bureau: 2000 Census, 2010 Census, American Community Survey data, LEHD Origin-Destination Employment Statistics
- US Bureau of Labor Statistics
- State Demography Office, Colorado Department of Local Affairs
- Labor Market Information, Colorado Department of Labor and Employment
- Ribbon Demographics, LLC
- 2020 Area Median Income from the Department of Housing and Urban Development and Colorado Housing and Finance Authority
- Current MLS listings, recent home sales and historic sale trends
- Alamosa News, SLV Junction, Zillow, Craigslist, Apartments.com, social media and local property manager websites and interviews for available rental housing listings
- Building permit records from counties and municipalities
- Existing reports, including the 2009 San Luis Valley Housing Needs Assessment and 2019 San Luis Valley Opportunity Zone Prospectus

# Glossary

Affordable Housing	As used in this report, housing is affordable if the monthly rent or mortgage payment is equal to or less than 30% of gross household income (before taxes).
Area Median Income (AMI)	<p>A term that generally refers to the median incomes published annually for counties by the US Department of Housing and Urban Development (HUD). AMI is used to set income and rent limits for affordable housing programs statutorily linked to HUD income limits (e.g., low-income housing tax credit rentals). Common affordability categories used are as follows:</p> <p>Extremely Low Income – At or below 30% AMI</p> <p>Very Low Income –Between 31% and 50% AMI</p> <p>Low Income – From 51% to 80% AMI</p> <p>Moderate Income – From 81% to 100% AMI</p>
American Community Survey (ACS)	The ACS is part of the Decennial Census Program of the U.S. Census. The survey was fully implemented in 2005, replacing the decennial census long form. Because it is based on a sample of responses, its use in smaller areas (under 65,000 persons) is best suited for monitoring general changes over time rather than for precise estimates due to margins of error.
Catch-up Needs	The number of housing units needed to catch up to meet the current shortfall in housing available for residents.
CDBG	Community Development Block Grants – a federal funding source used to develop and renovate affordable housing with income restrictions.
CHFA	Colorado Housing and Finance Authority - administers LIHTC and provides mortgage funding
Cost Burdened	When housing costs exceed 30% of a household’s gross (pretax) income. Housing costs include rent or mortgage and may or may not include utilities, homeowner association fees, transportation or other necessary costs depending upon its application.
COVID-19	Coronavirus disease 2019, causing 2020 global pandemic and extensive local public health precautions.
CRHDC	Community Resources and Housing Development Corporation
Employee (or Workforce) Housing	Housing intended for and affordable to employees and households earning local wages.

ESRI	Environmental Systems Research Institute - supplier of geographic information system software, web GIS and geodatabase management applications.
FHA	Federal Housing Administration, provides secondary market for residential mortgages
HOA	Home Owners Association, typically part of condominium developments
HOME Funds	Grants from HUD to states and units of general local government to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low and very low-income households.
HUD	Housing and Urban Development; federal agency providing funding and regulations for low income housing.
LAUS	Local area unemployment statistics
LEHD	Longitudinal Employer-Household Dynamics
LIHTC	Low Income Housing Tax Credit – a federal program to stimulate capital investment in affordable rental housing, administered in Colorado by the Colorado Housing and Finance Authority.
Keep-up Needs	Keep-up refers to the number of housing units needed to keep up with job growth and retiring employees and the housing units needed to house non-employee residents and employees filling jobs through 2025.
MLS	Multiple Listing Service used for purchase and sale of residential real estate
SLVBHG	San Luis Valley Behavioral Health Group
SLVHC	San Luis Valley Housing Coalition
USDA	United States Department of Agriculture – responsible for numerous affordable housing projects and programs in rural areas.
Workforce (or Employee) Housing	Housing intended for and affordable to employees and households earning local wages.

Street Vacation Descriptions  
Silver Spruce Enterprises, LLC

Description 1

The S½ of the alley bisecting Block 30, adjacent to Lots 12-15 in said Block 30, South Creede, City of Creede, Mineral County, Colorado.

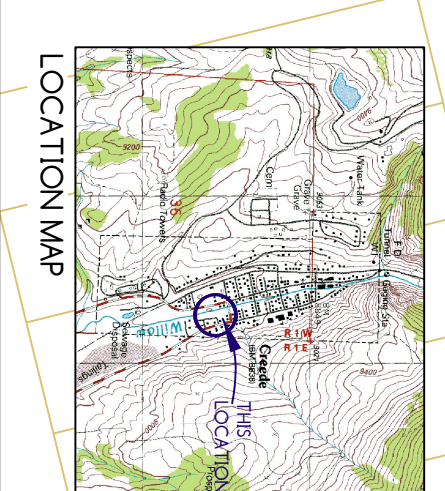
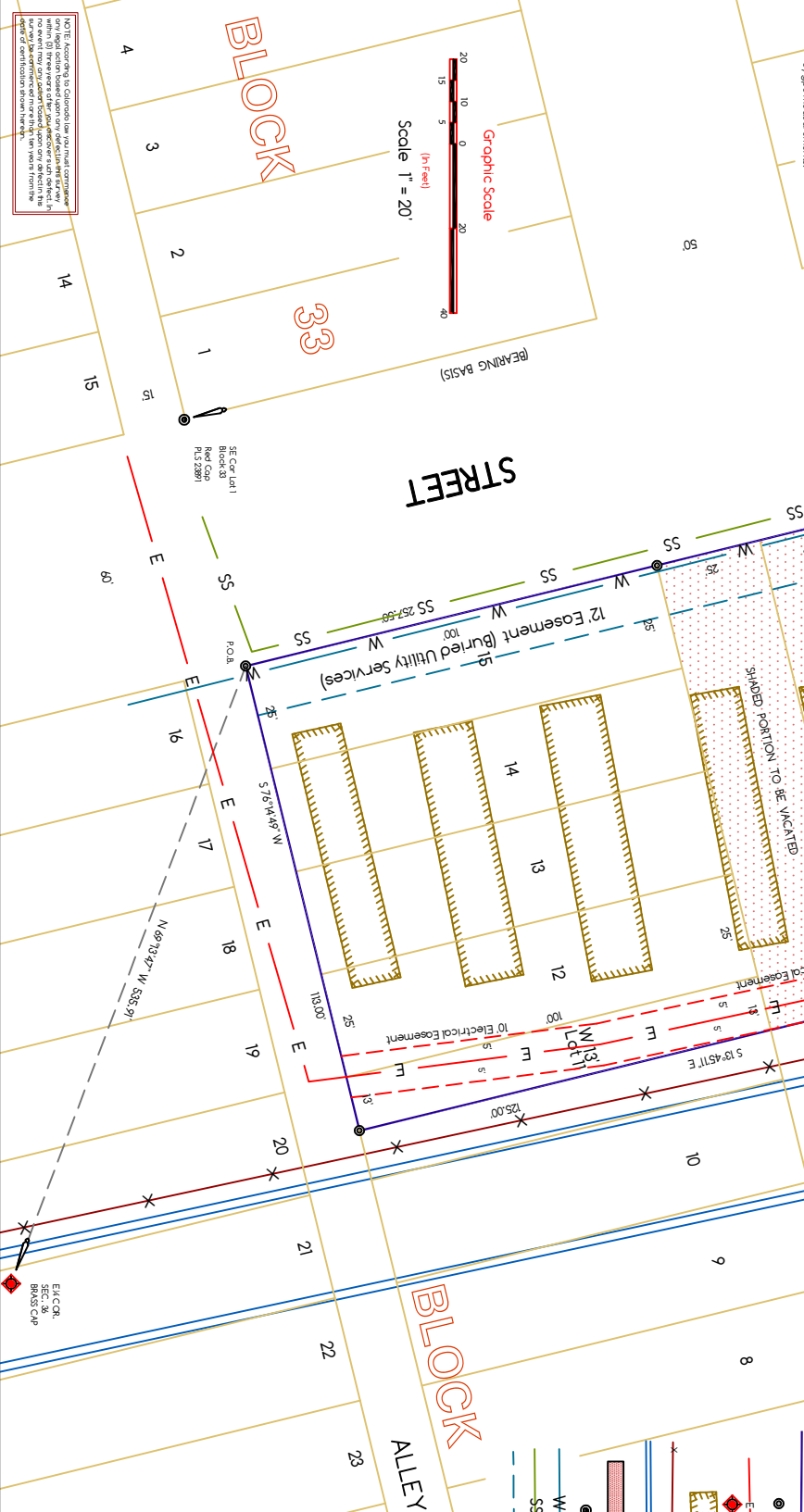
Description 2

The N½ of Tenth Street adjacent to Lots 12-15, Block 30, South Creede, City of Creede, Mineral County, Colorado.

Description 3

The S½ of Tenth Street adjacent to the West 13 Feet of Lot 11 and Lots 12-15, Block 32, South Creede, City of Creede, Mineral County, Colorado.

5E-C-01-1  
Block 34  
R/S 5442



**SILVER SPRUCE REPLAT  
PORTIONS OF BLOCK 30 AND BLOCK 32,  
SOUTH CREEDE,**

LOTS 12, 13, 14, & 15,  
BLOCK 30, SOUTH CREEDE; AND  
LOTS 12, 13, 14, & 15,  
BLOCK 32, SOUTH CREEDE,  
AS DESCRIBED AT RECEPTION NO. 72444, AND  
AND SELECTED RIGHTS OF WAY WITHIN THE CITY OF CREEDE,

LOCATED IN THE NE1/4 SECTION 34,  
TOWNSHIP 42 NORTH, RANGE 11 WEST,  
NEW MEXICO PRINCIPAL MERIDIAN,  
MINERAL COUNTY,  
COLORADO.

**CERTIFICATE OF OWNERSHIP AND DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT Silver Spruce Enterprises, LLC is the owner of that real property known as Lots 12, 13, 14, and 15, Block 30, and the West 13 feet of Lot 11 and all of Lots 12, 13, 14, and 15, Block 32, South Creede, City of Creede, Mineral County, Colorado.

THAT it has caused the property to be replatted and consolidated into one tract known as the Silver Spruce Tract, including the south half of the alley in Block 30 adjacent to Lot 12, 15, in said Block and the North half of Tenth Street adjacent to the abutted lots and the South half of Tenth Street adjacent to the West 13 feet of Lot 11 and all of Lots 12, 13, 14, and 15, Block 32, and hereby dedicates and sets apart all streets, alleys, and other public ways and places, as shown hereon for the use of the public forever does hereby dedicate those portions of said real property which are indicated as easements on the plat as existing and/or implied.

Exterior Boundary 'SILVER SPRUCE TRACT, SOUTH CREEDE'  
A tract of land located in the NE1/4 section 34, T.42N., R.11W., N.M.P.M., Mineral County, Colorado, which tract contains 0.63 acres, more or less, being more particularly described by metes and bounds as follows: beginning at the SW corner of the tract herein described (identified to the SW corner of Lot 15, Block 32, South Creede, whence the E1/4 corner for said Section 34, a 189' brass cap, R/S 5442 bears S89°47' E a distance of 533.91 feet; thence N15°51' W, along the Eastern limit of Main Street, 345' 00\"/>

IN WITNESS WHEREOF this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D. by:  
  
Signed: \_\_\_\_\_  
Managing Member, Silver Spruce Enterprises, LLC

ACKNOWLEDGMENT  
State of Colorado )  
County of Mineral )  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Robert Scott Lamb, Managing Member, Silver Spruce Enterprises, LLC

Notary Public \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

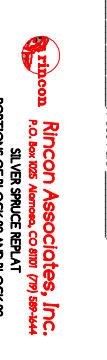
PLANNING COMMISSION CERTIFICATE  
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., Planning Commission for the City of Creede, Mineral County, Colorado.  
Signed: \_\_\_\_\_  
Chairman

BOARD OF TRUSTEES CERTIFICATE  
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., Board of Trustees for the City of Creede, Mineral County, Colorado.  
Signed: \_\_\_\_\_  
Mayor of the City of Creede

Attest: \_\_\_\_\_  
Town Clerk

SURVEYOR'S STATEMENT  
I, Wm. D. Kitterman, a duly registered land surveyor in the State of Colorado, do hereby certify that this plat was prepared by me from the data of a survey made by me or under my direct supervision and is true and accurate to the best of my knowledge and belief.

CLERK AND RECORDERS CERTIFICATE  
State of Colorado )  
County of Mineral )  
I hereby certify that this instrument was filed in my office at \_\_\_\_\_ O'clock \_\_\_\_\_ M., this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., under Reception No. \_\_\_\_\_ in Map Book \_\_\_\_\_ at Map No. \_\_\_\_\_ Fees Paid \_\_\_\_\_



**SILVER SPRUCE REPLAT  
PORTIONS OF BLOCK 30 AND BLOCK 32,  
SOUTH CREEDE,**  
LOTS 12, 13, 14, & 15,  
BLOCK 30, SOUTH CREEDE; AND  
LOTS 12, 13, 14, & 15,  
BLOCK 32, SOUTH CREEDE,  
AS DESCRIBED AT RECEPTION NO. 72444, AND  
AND SELECTED RIGHTS OF WAY WITHIN THE CITY OF CREEDE,  
LOCATED IN THE NE1/4 SECTION 34,  
TOWNSHIP 42 NORTH, RANGE 11 WEST,  
NEW MEXICO PRINCIPAL MERIDIAN,  
MINERAL COUNTY,  
COLORADO.  
Drawn by: WDJ, April 2023  
Job No. 2551 Sheet 1 of 1

## SECTION 00520

### AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Creede (“Owner”) and  
RMS Utilities Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

#### ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project generally consists of improvements to the existing sanitary sewer collection system. Improvements include demolition and replacement of existing sewer main pipe in identified pipe runs, including replacement of bedding material; connection of proposed pipe to existing manholes; reconnection of sewer services to proposed sewer pipe main lines; and capping of sewer mains with no terminal manhole. Contractor shall provide bypass pumping for sewer services during construction period to maintain service in the work vicinity.

#### ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**City of Creede Sanitary Sewer Improvements – Phase 1**

#### ARTICLE 3 – ENGINEER

3.01 The Project has been designed by SGM (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

#### ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within 112 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 126 days after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$ 700 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$ 700 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

- A. Total for all Work of \$ 390,238.51, except as adjusted by application of unit price work or approved change order.

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

### **ARTICLE 6 – PAYMENT PROCEDURES**

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage).
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- C. Per Colorado Revised Statute 24-91-103, the contractor may elect to substitute securities in lieu of retainage. Securities must be in a form acceptable to Owner.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.
- B. Lien waivers shall be submitted by prime Contractors and all second tier Subcontractors prior to issuance of final payment.
- C. Any Liquidated Damages payable by Contractor may, at Owner's election be deducted from any amounts owed to Contractor. In the event no funds are due Contractor at a time when Contractor becomes liable to Owner for Liquidated Damages, then Contractor agrees to pay all accrued Liquidated Damages to Owner on the first (1st) day and on the fifteenth (15th) day of each month when Contractor is liable to Owner for Liquidated Damages, Permitting Contractor to continue and finish the Work or any part thereof after the deadline for completion of the Work shall not act as a waiver of these Liquidated Damages provisions
- D. The aggregate liability of Contractor to pay Liquidated Damages pursuant to this section shall not exceed an amount equal to fifty percent (50%) of the Contract Price. This Section shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Contract
- E. In the event that this section conflicts with any other provisions regarding liquidated damages within the Contract Documents, this section shall control.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 1 percent per annum.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.



- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00520-1 to 00520-7, inclusive).
  - 2. Performance bond (pages 00610-1 to 00610-3, inclusive).
  - 3. Payment bond (pages 00615-1 to 00615-4, inclusive).
  - 4. Other bonds (pages N/A to N/A, inclusive).

5. General Conditions (pages 00700-1 to 00700-68, inclusive).
  6. Supplementary Conditions (pages 00800-1 to 00800-11, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of 27 sheets with each sheet bearing the following general title: City of Creede Sanitary Sewer Improvements – Phase 1.
  9. Addenda (numbers 1 to 2, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 7, inclusive).
    - b. List of other required documents:
      - 1) SRF requirements provided as Appendix A of project manual, with acknowledged amendment statement.
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **10.02 Assignment of Contract**

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to

an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

- A. Intentionally left blank.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

**NOTES TO USER**

See IB-21, *Signing of Agreement*

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

\_\_\_\_\_ *RMS Utilities Inc.*

By: \_\_\_\_\_ *Melb Melb*

Title: \_\_\_\_\_ *VP*

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_ *Shirley Marie*

Title: \_\_\_\_\_ *Office Manager*

Address for giving notices:

\_\_\_\_\_ *6349 C.R. 106.65 South*

\_\_\_\_\_ *Alamosa CO 81101*

\_\_\_\_\_

License No.: \_\_\_\_\_ *N/A*

(Where applicable)

Agent for service of process:

\_\_\_\_\_