

# Density Bonus



## Hazards Addressed



## How it Works

**Density bonuses** allow greater density to be built on a site than would otherwise be allowed through underlying zoning. Density bonuses are often granted as an incentive to encourage preferred types of development activity. Some communities grant density bonuses for additional protection of open space, for example, beyond what is required by the underlying zoning, or for higher-quality building design or provision of other amenities. While the exact bonus granted is typically considered on a case-by-case basis, the amount of additional density granted is usually roughly proportional to the amount of benefit provided. Any additional density allowed can be subject to design standards that ensure a high level of site protection and building quality; such standards can help promote community buy-in for the bonus program.

## Implementation

Density bonuses can be somewhat challenging to introduce in a community. Depending on why a density bonus is issued, it is important to have a process by which the local government can ensure that both ends of the bargain are maintained. For example, if a developer is issued a density bonus for conserving land in a geologic hazard area, the local government should require a permanent **conservation easement** to protect that area in perpetuity in exchange for the added density. (Conservation easements are profiled in the “*Protecting Sensitive Areas*” section.)

The community should consider the following basic steps:

- **Define the purpose of the program.** It is important that density bonuses be tied to the goals and policies of a community’s comprehensive plan.

- **Identify where density bonuses are permitted.** Consider whether the incentives should apply to all zoning districts, only areas meeting certain conditions, or on a case-by-case basis.
- **Develop the specifics of the program.** Identify the degree to which incentives are issued, whether they are permitted by right or require a public hearing, and other conditions or agreements that must accompany the program.

## Where It's Been Done

Density bonuses are often used in tandem with conservation subdivisions, which are addressed in a separate profile. **Garfield County** provides density bonuses for conservation subdivisions in Section 7-501 of the Land Development Code. The applicant may propose a density neutral development plan, by which the overall density is not increased, but the lot sizes may be reduced to preserve the remainder of the parcel as open space. The applicant may also propose an increased density development plan, by which the calculation of total bonus lots permitted depends on the total expected yield allowed under the base zoning district and the proposed percentage of open space preserved.

The **Town of Milliken** issues conservation density bonuses for rural subdivisions that conserve areas in the 100-year floodplain, wetlands, valuable habitat areas, and natural geologic hazard areas (as defined by the Colorado Geological Survey). Rural subdivisions are permitted development up to a maximum of one unit per 20 acres by right. A conservation density bonus increases that maximum density to one unit per five acres.

## Advantages and Key Talking Points

Density bonuses can be effective ways to not only protect hazard areas, but also to direct growth toward desirable areas throughout a community as identified in the comprehensive plan. Other benefits include:

- Increased opportunity for developers to boost their bottom line. By purchasing development rights, a developer can increase the number of units and realize a higher profit.
- Increased density where the community wants it. Densifying receiving areas can result in a more diverse housing stock, can help boost surrounding commercial areas, and could potentially result in development of affordable housing units not otherwise feasible without the added density bonus.
- Density bonuses provide a direct incentive to a developer without requiring complex negotiations often associated with Transfer of Development Rights (TDRs).
- Density bonuses can be calibrated to be either by-right or discretionary, depending on community values and political climate.
- Density bonuses provide a community benefit without requiring public funding.

## Challenges

Challenges include the following:

- Requires additional maintenance to determine that the exchange of density is met with the agreed conservation in perpetuity.
- Like TDRs, density bonuses must be calibrated to local market demands, or the program might not be used.
- Requires education to inform the public about appropriate trade-offs for increased density in some areas.

## Key Facts

<b>Administrative capacity</b>	Experienced planner with city or county attorney to write ordinance; skilled planners to administer
<b>Mapping</b>	Not typically, although maps indicating sensitive or hazardous lands may be required as part of the development application process
<b>Regulatory requirements</b>	Land use and subdivision regulations
<b>Maintenance</b>	Some on-going tracking with explicit documentation of density bonuses is required
<b>Adoption required</b>	Yes
<b>Statutory reference</b>	N/A
<b>Associated costs</b>	Ordinance development or amendment costs and staff time to review density bonus applications

## Examples

<b>Garfield County</b> Land Use and Development Code	<a href="https://www.garfield-county.com/community-development/documents/land-use-code/Complete-Land-Use-Code-2017.pdf">https://www.garfield-county.com/community-development/documents/land-use-code/Complete-Land-Use-Code-2017.pdf</a> Section: 7-501
<b>Town of Milliken</b> Land Use Code and Subdivision Regulations, Conservation Density Bonuses	<a href="https://library.municode.com/co/milliken/codes/municipal_code?nodeId=CH16LAUSCO_ARTIVSURE_DIV3RUSU_S16-4-270CODEBO">https://library.municode.com/co/milliken/codes/municipal_code?nodeId=CH16LAUSCO_ARTIVSURE_DIV3RUSU_S16-4-270CODEBO</a> Section: 16-4-270 Conservation Density Bonus

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## Model Code Language and Commentary

A community can implement a density bonus program in several ways. In its simplest form, a density bonus program might authorize the transfer of development density from one part of a site to another, to avoid development in hazard-prone sites or other sensitive areas. Often, however, density bonus programs involve a more rigorous process that includes formal protections, such as dedicated conservation easements, to protect sensitive areas. In all cases, communities should tailor the program to cater to the unique market conditions of the area, staff capabilities and resources, political climate, and the goals and objectives of the comprehensive plan.

Density bonus programs are usually coupled with other planning tools and strategies described in this guide, such as cluster subdivisions, conservation easements, transfer of development rights, development agreements, overlay zones, and stream buffers and setbacks.

Regardless of whether a density bonus program stands alone or is integrated with other planning tools, some basic elements are common in most approaches:

- Purpose
- Applicability
- General Standards
- Determination of Density Bonus
- Incentives and Benefits
- Ownership and Maintenance
- Definitions

The following sections provide model language for each of the common elements. Model language is in blue shading. Commentary is located in italics in the column at the right. The model language used in this document is based on existing ordinances from communities around the state and nation.

## Commentary

*Customizing Your Approach: There are several options for introducing a density bonus program into a community; this guide offers a few of the many implementation tools a community could employ.*

*Some communities have integrated density bonus standards into subdivision provisions or affordable housing standards. A community may also adopt a density bonus overlay zone. Each community should evaluate the most effective and efficient way to implement this tool based on their current policies and practices.*

The language is illustrative only; consult local counsel to tailor language for your jurisdiction.

## Purpose

The purpose of the density bonus program is to help implement the goals and objectives of the community's comprehensive plan and to:

1. Protect public and private property from natural hazards by avoiding development in natural hazard areas including but not limited to floods, geologic hazards, wildfire and avalanche;
2. Preserve and protect environmentally sensitive lands or land with development constraints;
3. Assist in the orderly development of urban and rural lands;
4. Encourage new development in areas with adequate existing infrastructure and services;
5. Preserve areas with productive soils for continued agricultural and forestry use by preserving blocks of land large enough to allow for efficient operations;
6. Provide greater efficiency in the siting of services and infrastructure by reducing road length, utility runs, and the amount of paving for development; and

***Purpose:** The purpose statement is the jurisdiction's opportunity to describe the intent and benefits of the density bonus standards. Typically, the primary purpose of a density bonus is to incentivize developers to increase the maximum allowable development on a property in exchange for avoiding development in hazard areas, and/or preserving natural areas, open space, or farmland. The purpose statement(s) should be tailored depending on the community's top priorities.*

7. Provide an opportunity for landowners to obtain a higher return on investment through increased density in exchange for conserving sensitive lands.

## Applicability

1. The density bonus regulations are applicable when the zone in which a project is located specifically authorizes residential densities exceeding the base density of the zone.
2. Additional density shall be approved as part of the required permit process for the type of development proposed and shall comply with all other applicable requirements of the zone district unless otherwise stated in this Chapter.

***Applicability:** A density bonus system should be developed and used within the context and guidance of a community's comprehensive plan and/or growth management strategies.*

*Density bonus provisions should be integrated into the portions of the code specifically related to density minimums and/or maximums. For example, a table might show a base allowed maximum density for a particular zoning district, along with a higher maximum density that may be achieved through a bonus program.*

## General Standards

**Eligibility:** Developers shall satisfy the following provisions to be eligible for a density bonus.

1. A minimum of [insert minimum acres or percentage of lot area] of the property shall be within a natural hazard area as designated on the “Official Hazards Map.”
  2. A minimum of [insert minimum acres or percentage of lot area] of the property shall be preserved as undeveloped/natural/open space and shall be protected by a permanent conservation easement.
1. **Submittal:** Density bonus requests shall be submitted to [staff person or department] and shall be accompanied by plans, exhibits, a project description, and other information as required by [staff person or department], to sufficiently demonstrate compliance with the provisions of this Chapter.
  2. **Declaration of Restriction of Development and Easement:** The owner shall execute an easement in perpetuity restricting development in accordance with the requirements of this section and in a form acceptable to the Planning Department, approved by the [insert name of local government] Attorney and signed by the owner of record. Such easement shall be recorded in the Clerk’s Office prior to approval of any eligible development application.
  3. **Official Hazards Map:** The areas designated as having potential for natural hazards are depicted on a map designated as the [insert name of hazards map, e.g. “Official Hazards Map”]. The [insert name of map] shall be included as part of this ordinance by reference and shall be kept on

**General Standards:** A density bonus system should be administered with flexibility, as much predictability as possible, and with minimal delays. The approval process for developments with density arrangements should not require more time, effort, and cost than for conventional developments. The process should be more streamlined; there must be real incentives to adopt it.

**Eligibility:** The community’s Official Hazards Map should inform the threshold for determining if a parcel/lot is eligible for the density bonus. If there are several properties with small areas of natural hazard potential, the community will need to determine an appropriate minimum threshold.

**Declaration of Restriction of Development and Easement:** Recording deed restrictions on a property may not always be necessary; this is one approach used by communities to ensure protected land remains undeveloped. For more information about this approach, refer to the [Conservation Easement](#) section of this guide.

**Official Hazards Map:** The official hazards map may be one comprehensive map with various hazard risks identified, or could be a series of maps to address specific risks.



file in the *[insert name of department]* and available for public inspection. The *[insert approval authority-e.g., City Council, Planning Commission, or Planning Director]* may amend these maps from time-to-time to reflect changes in hazard risk.

4. **Comprehensive Plan:** Density bonus requests shall be consistent with the comprehensive plan and with natural hazard areas designated on the *[insert name of map]*.
5. **Other Requirements:** Prior to final approval, the *[insert name of local government]* may require a Development Agreement and/or other binding agreement as necessary to ensure compliance with this Chapter and other *[city/county]* requirements.
6. **Terms:** Except as provided under Subsection F (other requirements), a density bonus approval shall be binding on the subject property and shall run with the land.
7. **Approval Authority:** The *[insert approval authority]* may approve, deny, or approve with conditions, density bonus applications filed in accordance with this Chapter.



## Determination of Density Bonus

Each community should consider the local market demands, staff capacity, and political climate to establish a tailored density bonus program that maximizes the protection of natural hazard areas; there is no right or wrong approach. Local governments may use one or a combination of two fundamental approaches to density bonuses: formula-based and case-by-case negotiation. Both have merits and limitations. Two examples of code language and a brief narrative for each are provided below.

### **Option 1: Formula-Based Approach**

The formula-based approach involves setting forth a clear, consistent methodology in the code for how a developer may obtain a density bonus. The same formula and standards apply to all properties, which offers predictability (but may limit the community's ability to adapt the standards to unique circumstances).

#### **EXAMPLE:**

A developer is requesting to develop a 50-acre parcel, 20 acres of which is not developable (lake, stream, steep slope, open space requirement). This leaves 30 acres of net buildable area. The current zoning allows for three units per acre, which would allow up to 90 lots on this parcel (this is the base density).

***Non-Residential Alternatives:** While “density” is not a common metric for non-residential projects; a community may elect to relax building bulk and site design standards to incentivize developers who elect to preserve natural hazard areas. For example, in exchange for preserving a natural hazard area a commercial project may have relaxed parking standards, greater floor area or lot coverage for less sensitive portions of the lot, or be allowed to increase overall building height.*

*A density bonus application for non-residential projects should be carefully considered to determine local market conditions as well as context-sensitive design. Infrastructure capacity and desired character of development areas should also be considered.*

The developer is preserving 10 acres of natural hazard area (33.33 percent of the net buildable area); therefore he/she is eligible to increase the base density by 40 percent pursuant to the table above. This brings the total unit count to 120, with a total project density of four units per acre. This example increases the project density by one unit per acre above what the underlying zone would allow.

**Summary of Calculation:**

<b>Total Parcel Area:</b>	50 acres total
<b>Undevelopable</b>	(-)
<b>Lake Area:</b>	4 acres
<b>Stream Area:</b>	1 acre
<b>Steep Slope Area:</b>	5 acres
<b>Open Space Requirement:</b>	10 acres
<b>Net Buildable Area:</b>	30 acres
<b>Zoning: Residential-3</b>	3 units/acre
<b>Base Density:</b>	90 units
<b>Natural Hazard Area Protected:</b>	10 acres (33.33 percent)
<b>Density Bonus:</b>	40 percent
<b>Bonus Units:</b>	30 units
<b>Total Units (base + bonus):</b>	120 total units
<b>Final Project Density:</b>	4 units/acre (120 units/30 acres)

**Option 2: Case-by-Case Negotiation**

Some communities may elect to administer a density bonus program on a case-by-case basis to provide more flexibility. This approach allows the developer and local government to negotiate the terms and conditions of the agreement specific to each project. While this approach offers unlimited flexibility and the ability to tailor density bonuses to each site, it also means less upfront certainty and could involve a prolonged development approval process, which can increase costs and potentially inhibit development.

This approach typically requires the execution of a development agreement, a legally binding contract between a property owner or developer and a local government, often including terms not

**Formula-Based Approach:** A formula-based density bonus can be calculated using fixed and known variables (i.e., unit area) or it can be calculated using a point-based system (i.e., increased benefit for incorporating specific design elements).

*The Town of Milliken, Colorado, issues density bonuses for rural subdivisions that preserve floodplains, geologic hazard areas, and other natural areas by adjusting the maximum density from one unit per 20 acres to one unit per five acres. [Milliken Land Use Code](#).*

*The City of Fruita, Colorado, has implemented a point-based approach: [Fruita Land Use Code](#).*

*Variables unique to each community should be considered when determining the appropriate incentives for developers. In the end, it is critical that the incentive is equal to or greater than the value that would otherwise be lost if the natural hazard area were not protected; otherwise the tool may not be used.*

**Example:** The developer could further maximize return on investment by incorporating [Cluster Subdivision](#) design principles into the development.

*Note: This example does not take into account required access, drainage, or other site elements which may impact the final lot count.*

otherwise required through existing regulations. This link will direct you to model language for development agreements: [Development Agreements](#).

The [insert approval authority] is authorized to grant density bonuses in accordance with the following provisions:

1. Units of density are dwelling units per gross lot area.
2. When calculating the number of density bonus units, any calculations resulting in fractional units shall be rounded up to the next larger whole number.

If a developer elects to preserve natural hazard areas as designated on the “Official Hazards Map,” density bonus may be authorized according to the following calculation:

<b>Minimum Natural Hazard Area Protected (% of net buildable area)</b>	<b>Maximum Density Bonus (% increase from base density)</b>
5 – 9.99%	10%
10 – 14.99%	20%
15 – 19.99%	25%
20 – 29.99%	30%
30 – 49.99%	40%
50% or greater	45%

**Case-by-Case Negotiation:** *Strive for transparency and consistency, especially where a density bonus is negotiated by terms of a development agreement, so that a local government can demonstrate it is following due process and diligence, acting in good faith, and without discrimination. This is facilitated when a local government’s actions and intentions are supported by strong policy.*

*The City of Longmont, Colorado, offers density bonuses in exchange for various community benefits such as alleys and dedications of greenways. Such bonuses have maximum caps, but are at the discretion of the decision-making body on a case-by-case basis. [Longmont Land Development Code](#).*

## Incentives and Benefits

**A. Development Standards:** For development projects requesting a density bonus, the [insert approval authority] may grant up to a [10-40 percent] modification of one or more the following standards to further maximize the protection of natural hazard areas:

1. Reduced minimum lot sizes and/or dimensions;
2. Reduced minimum lot setbacks;
3. Increased maximum lot coverage;
4. Increased maximum building height and/or stories;
5. Reduced on-site parking standards, including the number or size of spaces and garage requirements;
6. Reduced minimum building separation requirements; and/or
7. Reduced street standards, e.g., reduced minimum street widths.

### **B. Other Incentives:**

1. Expedited review;
2. Reduced development, impact, and permit fees; and
3. Other incentives or concessions, proposed by the developer or [name of local government], that result in increased protection of natural hazard areas.

***Incentives and Benefits:** Density bonus programs offer advantages over base zoning for developers; however, local governments may provide additional incentives to promote use of the program. For example, in exchange for preserving hazard-prone areas, a community may relax development standards so developers are able to achieve the same or higher density by using smaller, more flexible lot sizes and relaxed setback requirements.*

***Minimize Negotiation:** If a community elects to relax development standards to further incentivize the density bonus program, the development code should clearly state what is acceptable. This will ensure fair treatment and minimize time spent negotiating terms. Modification standards should be context-sensitive and reflect the values of the community.*

***Other Incentives:** Reduced development, impact, or permit fees associated with a density bonus program should be clearly stated in the community's adopted fee schedule.*

## Ownership and Maintenance

**Ownership:** Ownership of protected hazard-prone areas may be handled through one or more of the following:

1. A homeowner's association where specific development restrictions and maintenance requirements are included as part of its bylaws;
2. Fee simple dedication to the County, another unit of local government, the State of Colorado, or a private nonprofit land conservancy; and/or
3. The developer and/or private landowner.

**Maintenance:** Natural features shall be maintained in their natural condition, but may be modified to improve their appearance, functioning, or overall condition, as recommended by professional best practices. Permitted modifications may include:

1. Reforestation;
2. Pasture or cropland management;
3. Buffer area landscaping;
4. Stream bank protection;
5. Wetlands management; and/or
6. Other modifications approved by [insert approval authority].

**Financial Responsibility:** Unless accepted for dedication or otherwise agreed to by the County, another unit of local

***Long-Term Land Management:** The long-term management of protected areas can be a challenge for communities, especially if those areas have an increased risk for natural hazards. Lands placed in a conservation easement can be owned and maintained by a private owner, a homeowners association, a land trust, or conveyed to the local government or other public entity.*

*Where density bonuses are applied to previously subdivided land, development restrictions and maintenance provisions within the bylaws of a homeowners association or other external entity would require amendment by separate mechanism outside the local government's land use regulations.*

government, the State of Colorado or a private non-profit land conservancy, the cost and responsibility of maintaining protected property and any facilities located thereon shall be borne by the property owner and/or homeowners association.

**Conservation Area Management Plan:** A conservation area management plan that defines the roles and responsibilities for managing protected land shall accompany and be approved as part of the final development approval.

## Definitions

**Density Bonus:** The overall number of dwelling units above and beyond the maximum allowable density located on the net buildable area within the development and calculated on a per-acre basis.

**Net Buildable Area:** The area calculated by subtracting the total area of undevelopable land from the total parcel or lot area.

**Undevelopable Land:** Property that cannot be developed with site improvements due to the size, shape, frontage, topography, location, and/or legal use. Undevelopable land includes, but is not limited to:

- Dedicated right-of-way;
- Easements or other deed restrictions prohibiting the construction of improvement on the property;
- Any land dedicated to the City for parks or greenways;
- Areas with slopes of *[insert steep slope percentage – e.g., 25 percent]* or greater;
- Areas within the 100-year floodplain *[or floodway, depending on local policy]*; and
- Any other areas determined by the *[insert approval authority]* to be undevelopable according to the “Official Hazards Map.”

**Official Hazards Map:** The official map that identifies and delineates boundaries of areas that are affected by or vulnerable to a particular natural hazard.

*Undevelopable Land:* Communities may or may not include a definition of “undevelopable land” in their regulations. Density bonus programs should be customized to offer bonuses for protecting hazard-prone areas not already prohibited from development through some other mechanism.

**Conservation Area Management Plan:** A plan developed for a conservation area that has been approved by the [*insert approval authority*] to guide the design, development, and maintenance of the conservation area.