



**Agenda Item B.1
PUBLIC WORKSHOPS
Public Workshop Dates:
August 18 and September 15, 2008**

REPORT DATE: September 8, 2008

TO: Planning Commission
Design Review Board

FROM: Steve Chase, Planning and Environmental Services Director

CONTACT: Anne Wells, Manager, Advanced Planning
Patricia W. Saley, Contract Planner

SUBJECT: Building Intensity Standards in the General Plan/Coastal Land Use Plan

APPLICANT

City of Goleta
130 Cremona, Suite B
Goleta, California 93117

REQUEST

The second of two public workshops is scheduled for September 15th with the Planning Commission and Design Review Board (DRB) to discuss and make recommendations to the City Council regarding building intensity standards contained in Tables 2-1 through 2-4 of the General Plan/Coastal Land Use Plan (GP/CLUP). The first workshop was held on August 18th and included a staff presentation and roundtable discussion. Comments and questions raised at the August 18th workshop will be discussed at this workshop at which point a recommendation will be made for the City Council's consideration in the fall. Public input will be taken.

RECOMMENDATION

That the Planning Commission and Design Review Board continue their discussion on building intensity standards at the September 15th public workshop, take public input and make a recommendation to the City Council.

JURISDICTION

The workshops are intended to provide a forum for discussion of the building design standards included in Tables 2-1 through 2-4 of the GP/CLUP. Pursuant to State Planning Law Section 65354, the Planning Commission is required to make a written recommendation to the City Council on the amendment of a General Plan. As building standards relate to building massing and design, input from the Design Review Board is also being solicited. Final action on the amendment is the responsibility of the City Council under Section 65356.

BACKGROUND

Land Use tables and City Council direction: The Goleta General Plan/Coastal Land Use Plan includes four tables that provide information about allowable uses and standards for the following categories of land uses:

- Table 2-1 – Residential Use
- Table 2-2 – Commercial Use
- Table 2-3 – Office and Industrial Use
- Table 2-4 – Other Land Use

These four tables include *Standards for Density and Building Intensity* that provide recommended standards for “Maximum Permitted Density” for residential projects and “Maximum Floor Area Ratios” and “Maximum Structure Height” for non-residential projects. Some of the standards provided in the tables raise issues internally, e.g., a 35 foot maximum building height is allowed in a particular zone, typically associated with a three-story building, whereas the maximum floor area ratio is 0.30 which is typically a one-story building. On June 17, 2008, the City Council directed that staff study the Building Intensity Standards included in the four tables and consider a range of standards in consultation with the Planning Commission and DRB.

The four tables were attached to the August 18th Planning Commission/DRB staff report. Relevant portions of those tables are excerpted later in this report for discussion on September 15th.

Recent case law and General Plan Guidelines changes: As requested, the memo from the City Attorney explaining recent case law and General Plan Guideline changes regarding building intensity standards is attached. In summary, while the standards are recommended and can be modified based on a finding of good cause, they should be included in the General Plan.

RESPONSES TO COMMENTS AND QUESTIONS FROM AUGUST 18TH

Several questions and comments were raised at the August 18th workshop. One DRB member also emailed staff with a couple other requests for information that is provided below. Staff has compiled information and responses to these comments as follows:

General comments/questions:

1. **Find comparable cities to Goleta to see what their General Plan building intensity and zoning standards are like. Also see what tools they have used to implement those standards.**

In doing the research reflected in this report, comparable municipalities were chosen for their similarities to Goleta in terms of population and land area, coastal proximity, their quality development pattern and, if possible, the presence of a university. Staff looked at the list of comparable communities provided in the Management Partners’ process improvement study presented to the City Council this past spring. We then further refined the list to those communities having recently updated General Plans, design guidelines and/or building intensity standards.

Table 1
Comparable Cities to Goleta
(* - Cities that staff researched)

Town	Population
Goleta	30,400
Aliso Viejo*	62,817
Dana Point*	36,765
Encinitas*	62,774
Manhattan Beach*	36,843
Monterey*	30,641
Mountain View	72,242
Poway*	50,675
Redondo Beach*	67,325
San Bruno	45,215
San Clemente*	65,338
San Juan Capistrano*	36,078
Santa Barbara*	94,154
Santa Cruz*	56,451

Source: Management Partners Inc. "City of Goleta Land Use Function Improvements" March 2008

Historically, Zoning Ordinances have been the primary tool to enforce building intensity standards whether or not guidance is provided in the General Plan. Other tools include specific development standards (e.g., City of Camarillo and many others), specific plans (Montecito, Summerland, Los Alamos, etc.) and form-based codes for specific areas within cities (e.g., Petaluma and Ventura).

2. Provide a link to and information about the Downtown Ventura Specific Plan (that illustrates a form-based code).

According to the Form-Based Codes Institute (www.formbasedcodes.org), the definition of a form-based code is:

"A method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city or county regulations. Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks."

Form-based codes usually present regulations and standards using both diagrams and words. The Downtown Ventura Specific Plan is a good example of a "form-based" code although it is technically a specific plan. The plan is available on the following website: http://www.ci.ventura.ca.us/depts/comm_dev/downtownplan/index.asp

Of note, form-based codes are generally applied to a well-defined, urban and thematic component of a community, such as a historic district, old town, downtown or mid-town commercial corridor. Suburban settings are much different and do not readily lend themselves to form-based zoning.

3. Translate density into building types, e.g., single family detached (4-6 dwelling units or du/acre), then 6-10 du/acre, 15-18 du/acre, then 30+ in terms of number of stories, parking, etc.

The information requested will be shown in visual form at the workshop including aerials, site plans, elevations and/or photos.

4. Mixed use standards?

In recent years, many jurisdictions have talked about encouraging “mixed use” development which, at least on the South Coast, generally means a mix of commercial and residential uses. The commercial uses may include retail at the street level, office uses above and residential on the third floor, although the mix of uses and number of stories may vary.

Typically the way in which mixed use is encouraged is either through specific zone districts (Mixed Use Zones) that mandate mixed use or, more commonly, through “pyramid zoning” whereby most non-residential uses allow medium and high density residential uses. Often parking requirements are more flexible for a mixed use project because parking is shared, i.e., the non-residential staff and clients use most of the parking during the day and the residents use it at night. In the research staff did on cities that are similar to Goleta (see response #1), virtually all of them have policies that encourage mixed use, however the specific requirements are contained within the zoning ordinance and not the General Plan.

In the case of Goleta, it seems more appropriate to address mixed use standards in the context of the upcoming zoning ordinance project. Another approach could be addressing the standards as part of a major project in the Community Commercial or C-C Zone District as that is the most likely district to include residential and commercial uses on the same parcel.

5. Info about Mill Valley area and commitment to open space, especially if done as trade off for more density elsewhere.

Mill Valley, located north of the Golden Gate Bridge in Marin County, is one of the most beautiful suburban areas in California. As was noted at the August 18th workshop, this area has made a commitment to open space and natural area preservation. Another example is Poway, located east of La Jolla, where 40 percent of the land inventory in that community is reserved for open space.

Staff researched the planning policies of Mill Valley and found that the city is surrounded by federal park land which explains how so much of the area remains undeveloped. Within the city limits, they are approaching build out and the remaining undeveloped parcels are on hillsides that are very constrained. These areas are designated for single family detached homes on larger lots to lessen impacts and retain the visual backdrop to the city. Mill Valley’s policies emphasize “smart growth” principles including infill development at higher densities near transit corridors.

Land Use Tables:

6. Provide definitions and/or standards for the following:

- a. Good cause finding** – The “good cause” finding was based on the modification findings included in the City’s modification ordinance which states:

“**[City of Goleta] Good cause finding** – A better site or architectural design that will result in better resource protection, will provide a significant community benefit, and/or does not create an adverse impact to the community character, aesthetics, or public views. *(Amended by Reso. 08-30, 6/17/08)*

Staff researched several other jurisdictions to see if there were other similar findings that could be refined for the City of Goleta’s use. The best example we found was the City of Santa Barbara’s finding for modifications of yards, lot area and floor area which is similar to Goleta’s good cause finding and states:

“**[City of Santa Barbara] Yards, Lot Area and Floor Area finding** – A modification of yard, lot and floor area regulations where the modification is consistent with the purposes and intent of this [Zoning Ordinance], and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement or (iv) the modification is necessary to construct a housing development ...” (SBMC Zoning Ordinance Section 28.92.110.A.2):

- b. Net lot area** – Staff found several good definitions of “net lot area” as shown in Attachment 2. Two of the clearer definitions are:

Manhattan Beach definition – “A measure of developable land area, after excluding existing dedicated rights-of-way and flood control and drainage easements.”

Redondo Beach definition – “The total area (measured in a horizontal plane) included within the boundary lines of a lot--minus any area taken up by surface easements over the lot, such as for equestrian trails, streets, bikeways, open channel storm drains, etc.”

When the City’s zoning ordinance is updated and reformatted we may want to modify the existing definition to exclude rights-of-way, dedicated development rights areas and to clearly indicate which utility and other easements are included in net area and which are not.

- c. Gross building square footage or floor area** – Attachment 3 includes several cities’ definitions of gross floor area which generally includes the area measured from the outside of the exterior walls and exclusive of vent shafts and open courtyards. This is another issue to discuss in more detail when the zoning ordinance is updated. Two clear and concise definitions are:

Encinitas definition – “The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area.”

Monterey definition – “The total enclosed area of all floors of a building, measured to the outside face of the structural members and exterior walls, and including halls, stairways, elevator shafts at each floor level, service and mechanical equipment rooms, and habitable basement or attic areas.”

7. Provide other cities’ definition of building height, including how basements are defined and whether they’re included in height calculation.

Attachment 4 includes several cities’ and the County of Santa Barbara’s definitions of basements which seem to hinge mostly on the percentage or amount of the basement “story height” that is above grade.

The City of Goleta’s definition of building height is (for both Inland and Coastal):

Goleta definition – “The vertical distance from the average finished grade of the lot covered by the building to the highest points of the coping of a flat roof or to the mean height of the highest gable of a pitch or hip roof.”

Building height definitions, on the other hand, vary considerably as shown in the examples in Attachment 5. Santa Barbara County recently modified their building height calculation methodology although the approaches are different for Montecito and Summerland than other areas in the County. Examples from Dana Point and Monterey are also given. The major differences between the various definitions are whether the height measurement is from existing or finished grade, is it an absolute maximum height or an average and how are basements counted? Modifying the definition of building height usually requires considerable time and experimentation before the definition is changed.

8. Provide a history of the development of the four tables in the review of the 2006 GP. Provide a list of groups of standards or land use category requirements (in the four land use tables) that cannot be achieved due to internal conflicts.

As background, the four land use tables contained in the General Plan were discussed at several Planning Agency/City Council meetings in summer 2006. This was an iterative process with staff presenting the tables with recommended values. Public input was taken at several hearings that specifically addressed the proposed values, particularly those for residential projects and overlay zones (hotel and hospital). After hearing from staff and the public, the Planning Agency/Council modified some of the values prior to adopting the tables as part of the General Plan.

There are several issues that are raised when the recommended standards in the four land use tables are studied in detail. These include:

- a. **Table 2-1, Residential land uses** – There are several questions raised in this table:

- The major question raised in Table 2-1 is the 0.50 FAR for medium density residential with a lot coverage maximum of 0.30 as compared to 1.10 maximum FAR for high density residential with a lot coverage of 0.40 -- or just 10 percent more than for medium density.
- The maximum densities (20 and 30 units/acre respectively for medium and high density), FARs and lot area coverage (if it is retained in the table) should be proportionate.
- Minimum densities for both the medium and high density designations are the same (15 units/acre) and should probably be different.
- The Planned Residential or R-P designation has a maximum FAR of 0.30, the same as the maximum lot coverage. That implies a one-story building whereas the maximum height of 25 feet in the Coastal Zone and 35 feet elsewhere implies two or three-story buildings.

The relevant values from the table that we would like to discuss with the Planning Commission and DRB are excerpted and highlighted below.

Table 2-1 (excerpt)
Allowable Uses & Standards for Residential Use Categories

Allowed Uses and Standards	Residential Use Categories				
	R-SF	R-P	R-MD	R-HD	R-MHP
Standards for Density and Building Intensity					
Recommended Standards for Permitted Density					
Maximum Permitted Density (units/ac)	5 or less	5.01–13	20	30	15
Minimum Permitted Density (units/ac)	N/A	N/A	15	15	N/A
Recommended Standards for Building Intensity					
Maximum Floor Area Ratios (FAR)	N/A	0.30	0.50	1.10	N/A
Maximum Structure Height (Inland Area)	25 feet	35 feet	35 feet	35 feet	25 feet
Maximum Structure Height (Coastal Zone)	25 feet	25 feet	25 feet	25 feet	25 feet
Maximum Lot Coverage Ratio	N/A	0.30	0.30	0.40	N/A
Minimum Open Space Ratio	N/A	0.40	N/A	N/A	N/A
Minimum Lot Size	7,000 s.f.	4,500 s.f.	N/A	N/A	2,500 s.f.

- b. **Table 2-2, Commercial land uses** – The major issue with this table is the correlation, or lack thereof, between the maximum FARs and maximum structure heights. For example, the C-R or Regional Commercial designation allows a maximum FAR of 0.35 and height of 35 feet. Community Commercial (C-C), on the other hand, has a FAR that is 0.05 higher than for C-R, yet the maximum height is 25 feet or 10 feet shorter. As discussed above under “Mixed Use” (#5), this is the zone district most likely to accommodate mixed use projects and a 25 foot height limit doesn’t readily allow that.

The other issue with this table (and others) is the minimum lot size of “[the same] size in 2005.” This is a very unusual minimum lot size value and, practically

speaking, it is very hard to decipher and enforce. Is it the size on January 1st or the end of the year, assuming a lot line adjustment or lot split occurred in 2005 for that particular parcel?

Table 2-2 (excerpt)
Allowable Uses & Standards for Commercial Use Categories

Allowed Uses and Standards	Commercial Use Categories					
	C-R	C-C	C-OT	C-VS	C-I	C-G
Standards for Density and Building Intensity						
Recommended Standards for Density						
Maximum Residential Density	N/A	12/acre	20/acre	N/A	N/A	20/acre
Recommended Standards for Building Intensity						
Maximum FAR	0.35	0.40	0.60	0.25	0.40	0.40
Maximum Structure Ht	35 ft	25 feet	30 feet	35 ft	25 ft	35 feet
Maximum Lot Coverage Ratio	N/A	N/A	N/A	N/A	N/A	N/A
Minimum Open Space Ratio	N/A	N/A	N/A	0.40	N/A	N/A
Minimum Lot Size	size in 2005	size in 2005	size in 2005	size in 2005	size in 2005	10,000 s.f.

Typically minimum lot sizes are provided in the zoning ordinance rather than General Plan, so staff looked to the corresponding zone districts to see what was already specified for those designations:

- C-R (SC Zone) – None specified
- C-C (C-2 Zone) – None specified
- C-OT (various zones) – Varies per zone
- C-VS (C-V Zone) – None specified
- O-I (C-H Zone) – None specified
- C-G (C-3 Zone) – None specified

Given that most of these designations do not have a minimum lot size provided in the zoning ordinance, staff also believes none should be specified in the General Plan.

- c. **Table 2-3, Office and Industrial land uses** – There are three basic issues that we would like to discuss relating to this table:
- The Business Park designation (MRP Zone District) has a maximum FAR of 0.40 and maximum lot coverage of 0.35, though structures are allowed to be up to 35 feet in height. The FAR and lot coverage being so similar implies one story, yet 35 feet is typically three stories.
 - Similar to Business Park above, the OI designation (PI Zone) has the same FAR and lot coverage of 0.40, also with a 35 foot height maximum.
 - The General Industrial designation (M-1 Zone) allows for a maximum FAR of 0.30, which is low, and up to three stories in height (35 feet).

Table 2-3 (excerpt)
Allowable Uses & Standards for Office & Industrial Use Categories

Allowed Uses and Standards	Office and Industrial Use Categories			
	I-BP	I-OI	I-S	I-G
Standards for Density and Building Intensity				
Recommended Standards for Density				
Maximum Residential Density	N/A	20units/ac	N/A	N/A
Recommended Standards for Building Intensity				
Maximum FAR	0.40	0.40	0.60	0.30
Maximum FAR for Hotels (with Hotel Overlay)	0.50	0.50	N/A	N/A
Maximum Structure Heights	35 feet	35 feet	35 feet	35 feet
Maximum Lot Coverage Ratio	0.35	0.40	N/A	N/A
Minimum Open Space/Landscaping Ratio	0.30	0.10	0.10	0.10
Minimum Lot Size	N/A	N/A	N/A	N/A

- d. **Table 2-4, Other land uses** – This table does not provide any recommended standards except for minimum lot size in agricultural zones which is “same in 2005” as discussed in ‘b’ above. The agricultural zoning designation also provides for minimum lot size (e.g., Ag-40). Given the zoning already provides guidance about lot size and that there are a considerable number of General Plan policies that address agricultural parcels and uses, it seems unnecessary to refer back to 2005 for minimum lot size. In the interest of efficiency, the entire “Standards for Density and Building Intensity” portion of this table could be eliminated without adversely affecting future agricultural uses on a particular parcel.

Table 2-4 (excerpt)
Allowable Uses & Standards for Other Land Use Categories

Allowed Uses and Standards	Other Land Use Categories			
	AG	OS-PR	OS-AR	P-S
Standards for Density and Building Intensity				
Recommended Standards for Density				
Maximum Permitted Density (Units/Acres)	N/A	N/A	N/A	N/A
Recommended Standards for Building Intensity				
Maximum FAR	N/A	N/A	N/A	N/A
Maximum Structure Height	N/A	N/A	N/A	N/A
Maximum Lot Coverage Ratio	N/A	N/A	N/A	N/A
Minimum Open Space Ratio	N/A	N/A	N/A	N/A
Minimum Lot Size	2005 lot size	N/A	N/A	N/A

Floor to Area Ratios:

9. Provide diagrams (similar to 0.25 FAR graphic) of other FAR values.

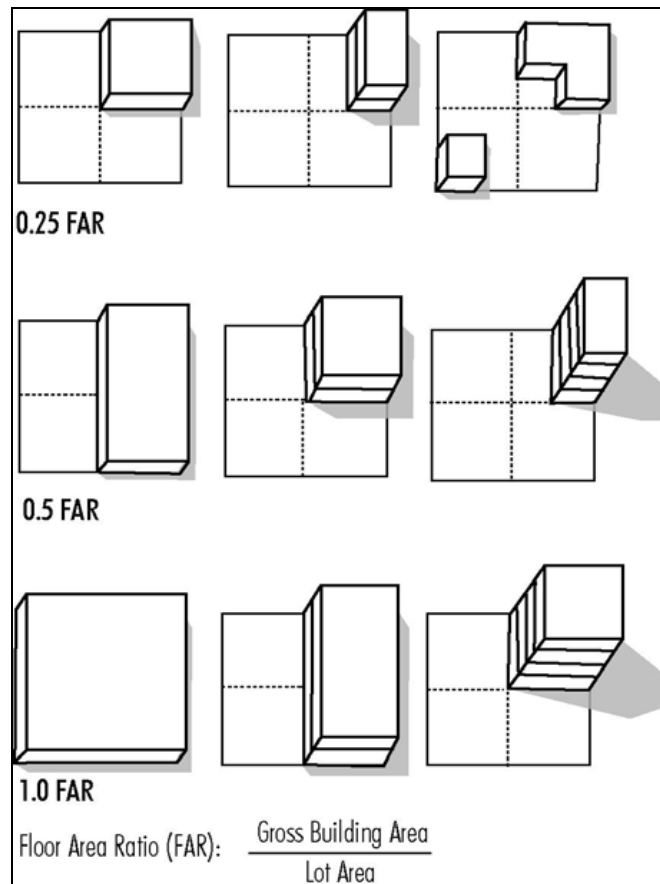


Figure 1
Comparative Floor Area Ratios
(Source: Aliso Viejo General Plan Figure LU-2, April 2004)

10. Provide, to the extent possible, FARs for the buildings surrounding those staff showed in the presentation. Provide FARs for Bacara, Francisco Torres and UCSB's new housing along El Colegio.

On September 15th, Staff will provide graphics that show some of the adjacent FARs for those buildings shown at the first workshop. We will also provide FARs for the projects and buildings requested.

11. Provide Hampton Inn information (FAR, height, etc.). (Commercial –Old Town)

This is a 98-room hotel with about 1,000 sq. ft. of retail for a total of about 54,000 sq. ft. The net lot area is just over two acres in size (88,000 sq. ft.) for a FAR of 0.612. The maximum height of the structure is 35 feet.

12. Assess the pros and cons of using FARs as a control mechanism.

The Planning Commission and DRB briefly discussed the pros and cons of FARs as a growth control mechanism at the August 18th workshop. As noted then, FAR out of context does not tell you how well a building will fit into its surroundings or whether it seems over- or under-built for the site. Several buildings with the same FAR may look very different as shown in Figure 1 on the previous page. Two buildings with the same FAR and same number of stories could look very different depending on where they're placed on a parcel, i.e., close or far from the public street. The amount and type of landscaping also affects how a building is perceived.

From a growth control standpoint, while FARs can be used to control build out, allowed land uses within a particular zone usually play a more important role. Zoning to allow a fast food restaurant may impact a neighborhood considerably more than a self-storage building that is ten times the size of the restaurant. Basically, one individual value, such as Floor Area Ratio, only tells part of the story about that building and how it fits into its immediate neighborhood and the community. General Plan policies and zoning standards taken together help to guide appropriate development in a community.

DISCUSSION AND RECOMMENDATION

Specific items that staff would like comments on include:

1. **Future Zoning Ordinance issues** – There are several issues discussed in this report that staff believes should be deferred to the upcoming reformat of the Zoning Ordinance including:
 - a. Mixed use standards (#4 above)
 - b. Net lot area definition (#6b)
 - c. Gross building square footage or floor area definition (#6c)
 - d. Building height definition (#7)
 - e. Basement definition (#7)
2. **Maximum values versus ranges** – When the Council adopted the Track 2 General Plan changes in June 2008, the word “recommended” was added to modify the maximum development standards included in the four tables, thereby introducing some flexibility for “good cause.” One fundamental issue for discussion is whether maximum values are reasonable or should ranges be provided for FAR and some other values in the four land use tables? Staff recommends that a range of FAR values be provided to the City Council for consideration and adoption.

Most recently adopted General Plans include density ranges for residential land uses and a range of FARs for non-residential uses. Of the three General Plans excerpted and attached to the August 18th staff report (Cities of Petaluma, Santa Cruz and Sonoma), Petaluma and Santa Cruz included density ranges for residential land uses and FARs for commercial uses, but did not include lot coverage, height or other values included in the City's tables. Sonoma included more development standards in their General Plan including height and lot coverage, although ranges were provided in most every instance. Staff would advocate for ranges as they provide for more flexibility than strict maximums. We also believe that the four tables should be simplified with fewer values provided.

3. **Table 2-1, Residential land uses** – As outlined under #8a above, staff would like comments on the following values included in this table:
 - a. The maximum densities (20 and 30 units/acre respectively for medium and high density), FARs and lot area coverage (if it is retained in the table) should be proportionate.
 - b. Minimum densities for both the medium and high density designations are the same (15 units/acre) and should be proportionate.
 - c. The Planned Residential or R-P designation has a maximum FAR of 0.30, the same as the maximum lot coverage. The FAR should be expressed as a range and, to reflect the 25 foot (Coastal Zone) and 35 foot height limit (Inland), should have a FAR range that goes up to 0.40 or 0.50.

4. **Table 2-2, Commercial land uses** – As outlined under #8b above, staff would like comments on the following values included in this table:
 - a. The values for FAR and building height in this table are interesting with a FAR of 0.60 and height of 30 feet (C-OT) down to 0.25 FAR and 35 feet (C-VS). Some proportionality needs to be provided so that FAR ranges are specified and, if height is included, it should generally correspond to the FAR.
 - b. The minimum lot sizes all refer back to 2005 (except for C-G). We suggest this row be eliminated as lot size is typically provided in a zoning ordinance, not a general plan.

5. **Table 2-3, Office and Industrial land uses** – As outlined under #8a above, staff would like comments on the following values included in this table:
 - a. The University Business Center has FARs ranging from 0.32 to 0.47. We suggest that FARs for the Business Park designation (MRP Zone District) should be a range that encompasses that range of buildings up to 0.50 to 0.60 FAR.
 - b. Similar to Business Park above, the OI designation (PI Zone) should have a FAR range that is similar to that proposed for the Business Park designation.
 - c. The General Industrial designation (M-1 Zone) allows for a maximum FAR of 0.30, which is low, and staff suggests that a range should be provided up to 0.50 or 0.60.

6. **Table 2-4, Other land uses** – We suggest that the “Minimum lot size” row be eliminated as it’s redundant given that the zoning designation for agricultural parcels already provides for a minimum lot size.

7. **Standards included in land use tables** – A fundamental question is whether lot coverage, open space percentage and minimum lot size all belong in the General Plan? As noted above, most recently approved General Plans include only density ranges for residential projects and FARs (and sometimes height) for non-residential projects. Staff believes these other values belong in a zoning ordinance and not the General Plan.

Staff will provide suggested ranges of FAR and other values at the workshop on September 15th.

APPEALS PROCEDURES

Any recommendations made at these two workshops, as well as any staff recommendation, will be automatically forwarded to the City Council for consideration in fall 2008.

Submitted By:

Patricia W. Saley
Contract Planner

Patricia S. Miller
Planning Commission Secretary/
Current Planning Manager

ATTACHMENTS:

1. City Attorney's memo re Building Intensity Standards, May 7, 2008
2. "Net Lot Area" definitions from other cities
3. "Gross Floor Area" definitions from other cities
4. "Basement" definitions from other cities
5. Building height definitions and diagrams from other jurisdictions

Attachment 1

**City Attorney's memo re
Building Intensity Standards**

May 7, 2008



MEMORANDUM

TO: STEVE CHASE

FROM: BRIAN A. PIERIK

FILE NO.: 04303-0001

DATE: May 7, 2008

RE: GENERAL PLAN AND BUILDING INTENSITY

We are submitting this Memorandum to address the requirements of the law regarding building intensity standards in the General Plan which was discussed at the Planning Commission meeting on April 21, 2008.

GOVERNMENT CODE SECTION 65302

Government Code Section 65302(a), copy attached, requires that the land use element of the General Plan "include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." However, the term "building intensity" is not defined in the code. There other legal sources on the issue of building intensity which we shall now address.

GENERAL PLAN GUIDELINES -- STATE OF CALIFORNIA -- OFFICE OF PLANNING AND RESEARCH(OPR) - 2003

The issue of building intensity is covered in this 2003 publication by the OPR at pages 50-51, copy attached. The OPR acknowledges that there is no definition of the term "building intensity". The OPR cites the cases of *Camp v. Mendocino County*(1981) and *Twain Hart v. Tuolumne County* (1982), copies of pertinent pages attached, which discuss the subject of building intensity.

The OPR concludes that general plans must contain quantifiable standards of building intensity for each land use designation and that the building intensity will define the concentration of use. OPR recommends that each intensity standard include the variables of (1) permitted land uses or building types and (2) concentration of use.

STEVE CHASE
May 7, 2008
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At the top of page 51, the OPR provides further information on standards for building intensity by when it states:

1. Maximum dwelling units per acre is a good residential standard.
2. Floor area ratio is a useful measure of commercial and industrial intensity.
3. The dual standard of maximum lot coverage and maximum building height is suitable for agricultural, open-space, and recreational designations where development is being limited. According to the OPR, lot size is not an adequate standing for agricultural and open-space designations because it regulates lot area, but does not quantify the allowable concentration of development on each lot.

CONCLUSION

Based upon the foregoing, it is our conclusion that a General Plan must include standards for building intensity.

Government Code Section 65302 refers to "recommended" standards which means that they should be considered in all cases and applied when appropriate, but that they are not mandatory standards that must be applied to every project. An allowance for exceptions can be made upon a finding of good cause that is stated in a Resolution of the decision-making body.

The General Plan could provide for some flexibility with regard to building intensity standards by including a statement such as: The standards for building intensity recommended by this General Plan pursuant to Government Code Section 65302(a) may be revised by a Resolution of the decision-making body of the City for specific projects based upon a finding of good cause.

If you have any questions, please let us know. Thank you.

BAP:lcl.

Enclosures

Addressing California's uncertain water future by coordinating long-term land use and water planning: Is a water element in the general plan the next step? Ryan Waterman, 31 Ecology L.Q. 117 (2004).

Research References

Encyclopedias

CA Jur. 3d Zoning and Other Land Controls § 28, General Plans--Form and Content of General Plans.

Cal. Civ. Prac. Real Property Litigation § 14:11, General Plan.

Treatises and Practice Aids

Miller and Starr California Real Estate § 25:179, Conformity of Zoning With the General Plan and Any

Applicable Specific Plans; Compliance of Subdivision Map With Zoning Ordinance.

Rathkopf's the Law of Zoning and Planning § 14:20, Mandated Consistency With Statewide or Regional Plans -- Interjurisdictional Coordination Through the Planning Process as Regional Planning.

§ 65302. Elements required to be included in plan

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding * * * identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ip, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

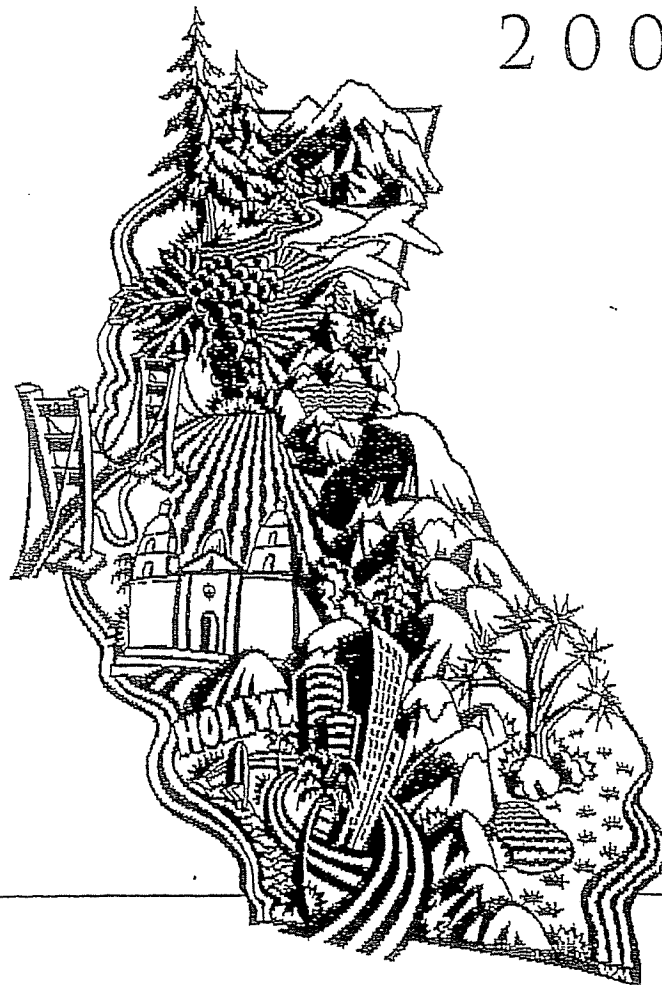
(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

STATE OF CALIFORNIA

General Plan Guidelines

2003



GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

Thus, the preparation of a general plan must be approached on multiple levels and from an interdisciplinary point of view.

A general plan should be written as an integrated statement of policies. A basic understanding of the structural and functional interrelationships between issues and elements can help avoid the problems associated with treating issues in isolation, as well as focus planning efforts on the key issues. The table at right illustrates the relationships among the seven mandatory elements and the required topics of the general plan. Remember that not every general plan will address these issues to the same extent or in the same manner. Cities and counties should design their general plan formats to suit the topographic, geologic, climatologic, political, socioeconomic, cultural, and historical diversities that exist within their communities.

LAND USE ELEMENT

The land use element functions as a guide to planners, the general public, and decision-makers as to the ultimate pattern of development for the city or county at build-out. The land use element has perhaps the broadest scope of the seven mandatory elements. In theory, it plays a central role in correlating all land use issues into a set of coherent development policies. Its objectives, policies, and programs relate directly to the other elements. In practice, it is the most visible and often-used element in the local general plan. Although all general plan elements carry equal weight, the land use element is often perceived as being most representative of "the general plan."

The land use element has a pivotal role in zoning, subdivision, and public works decisions. The element's objectives and policies provide a long-range context for those short-term actions.

Court and Attorney General Interpretations

The following legal interpretations have addressed the land use element with regard to the land use diagram, population density, building intensity, the designation of solid waste disposal sites and its relationship to the circulation and noise elements.

GENERAL PLAN ISSUES AND ELEMENTS

TOPIC/ISSUE AREA	ELEMENT						
	Land Use	Circulation	Housing	Conservation	Open Space	Noise	Safety
Agriculture	X			Z	X		
Air Quality					X		
Airports	Z	Z			Z	X	
Density	X		X				
Education	X						
Fire					X		X
Fisheries				Z	X		
Flooding	X			X	X		X
Forests/Timber	X			X	X		
Housing	Z		X				
Industrial Uses	X					X	
Land Reclamation				X			
Land Use	X	X	Z	X	Z	X	Z
Minerals				X	X		
Noise Contours	Z					X	
Public Buildings	X						
Railways/Yards		Z				X	
Recreation	X				X		
Scenic Resources	X				X		
Seismic Hazards					X		X
Solid Conservation				X	X		
Soil Instability							X
Transportation Routes		X			X	X	X
Transportation Terminals		X					
Utilities/Easements		X			X		
Waste Facilities	X		X ₂				
Water Quality				X	X		
Water Supply	Z		X ₂	X	X		X
Water Needs				X	X		
Waterways/Water Bodies				X	X		
Waste				X	X		

- X Indicates a topic identified in statute
- X₁ Trail systems
- X₂ Factors affecting adequate inventory of sites
- Z Indicates a topic closely related to statutory requirements

The land use diagram

Attorney General Opinion No. 83-804, March 7, 1984 addresses the required level of specificity of the land use diagram. In answer to the question of whether a parcel specific map is required for the land use element of a general plan, the Attorney General reasoned that the detail necessary for a parcel specific map may be developed at a later stage in the land use process (through specific plans, zoning ordinances and subdivision maps); therefore, a parcel specific map is not required, only a diagram of general locations illustrating the policies of the plan.

The California Supreme Court, in *United Outdoor Advertising Co. v. Business, Transportation and Housing Agency* (1988) 44 Cal.3d 242, briefly discussed the degree of precision which can be expected of a general plan. The high court held that when San Bernardino County used a circle to distinguish the community of Baker as a "Desert Special Service Center" the county did not delineate a well-defined geographic area. According to the opinion of the court, "the circle on the general plan no more represents the precise boundaries of a present or future commercial area than the dot or square on a map of California represents the exact size and shape of Baker or any other community."

The concept of the diagram as a general guide to land use distribution rather than a parcel specific map also figured in the case of *Las Virgenes Homeowners Association v. Los Angeles County* (1986) 177 Cal.App.3d 310. There, the court of appeal upheld the adequacy of a county plan which contained a generalized land use map and which delegated specific land use interpretations to community plans. See Chapter 1 for a discussion of consistency between the diagrams and the plan text.

Population density

Camp v. County of Mendocino (1981) 123 Cal.App.3d 334 established that a general plan must contain standards for population density. It did not, however, define such standards. The court in *Twain Harte Homeowners Association v. Tuolumne County* (1982) 138 Cal.App.3d 664 defined population density as the "numbers of people in a given area and not the dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and numbers of people is set forth explicitly in the plan." Quantifiable standards of population density must be provided for each of the land use categories contained in the plan.

Population density standards need not be restricted solely to land use designations with residential devel-

opment potential. As the court stated in *Twain Harte*: "it would not be unreasonable to interpret the term "population density" as relating not only to residential density, but also to uses of nonresidential land categories and as requiring an analysis of use patterns for all categories . . . it appears sensible to allow local governments to determine whether the statement of population standards is to be tied to residency or, more ambitiously, to the daily usage [sic] estimates for each land classification."

Although applied differently from one jurisdiction to another, population density can best be expressed as the relationship between two factors: the number of dwellings per acre and the number of residents per dwelling. Current estimates of the average number of persons per household are available from the Department of Finance's Demographic Research and Census Data Center (www.dof.ca.gov).

Building intensity

The *Camp* decision also held that an adequate general plan must contain standards for building intensity. Again, the *Twain Harte* court has provided the most complete interpretation of building intensity available to date. These are its major points: intensity should be defined for each of the various land use categories in the plan; general use captions such as "neighborhood commercial" and "service industrial" are insufficient measures of intensity by themselves; and, building intensity is not synonymous with population density. Intensity will be dependent upon the local plan's context and may be based upon a combination of variables such as maximum dwelling units per acre, height and size limitations, and use restrictions. Unfortunately, the court stopped short of defining what are proper measures of building intensity.

Local general plans must contain quantifiable standards of building intensity for each land use designation. These standards should define the most intensive use that will be allowed under each designation. While the land use designation identifies the type of allowable uses, the building intensity standard will define the concentration of use. Intensity standards can include provisions for flexibility such as density bonuses, cluster zoning, planned unit developments, and the like.

OPR recommends that each intensity standard include these variables: (1) permitted lands uses or building types; and (2) concentration of use. Permitted uses and building types is a qualitative measure of the uses that will be allowable in each land use designation. The concentration of use can be defined by one or more quantitative measures that relate directly to the amount

of physical development that will be allowed. Maximum dwelling units per acre is a good residential standard. Floor area ratio (the ratio of building floor area to the total site area) is a useful measure of commercial and industrial intensity. The dual standard of maximum lot coverage and maximum building height is suitable for agricultural, open-space, and recreational designations where development is being limited. On the other hand, lot size, which has been widely used for agricultural and open-space designations, is an inadequate standard of building intensity because although it regulates lot area, it does not quantify the allowable concentration of development on each lot.

Solid waste sites

Concerned Citizens of Calaveras County v. Board of Supervisors (1985) 166 Cal.App.3d 90, held that the general plan is not required to identify existing solid waste disposal sites. However, because the purpose of the land use element is to designate “the proposed general distribution and general location and extent” of land uses, the element must identify future sites.

The identification of future solid waste disposal sites is particularly important when preparing or implementing Integrated Waste Management Plans (IWMPs). Public Resources Code §41720 now requires that the IWMP’s countywide siting element, including any areas identified for the location of a new or expanded solid waste transformation or disposal facility, be consistent with the applicable general plan.

Circulation

The *Twain Harte* and *Concerned Citizens* decisions also discussed the close relationship between the land use and circulation elements. Pursuant to the decisions of the *Concerned Citizens*, *Twain Harte*, and *Camp v. Mendocino* courts, the general plan must reflect both the anticipated level of land development (represented in the land use el-

ement) and the road system necessary to serve that level (represented in the circulation element). The road system proposed in the circulation element must be “closely, systematically, and reciprocally related to the land use element of the plan” (*Concerned Citizens, supra*, at p.100).

Noise

According to §65302(f), the noise element is to be used as “a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.” When the noise element is inadequate, the land use element may be invalid, as in the *Camp* case.

Relevant Issues

This discussion offers a general guide to the contents of the land use element. Note that while the focus is on the minimum requirements for an adequate land use element, an effective general plan will focus on those issues of greatest relevance to the community.

The purpose of the land use element is to designate “the proposed general distribution and general location and extent of uses of the land.” The land use element should focus on the future growth and physical development of the community and planning area.

A land use element should contain a sufficient number of land use categories to conveniently classify the various land uses identified by the plan. Land use categories should be descriptive enough to distinguish between levels of intensity and allowable uses. The element should include categories reflecting existing land uses as well as projected development.

There need not be an equal number of land use designations and zoning classifications. In many cases, there may be more than one zone that would be consistent with each land use designation.

The land use element should, consistent with §65302(a), address each of the following issues to the extent that it is relevant:

- ◆ Distribution of housing, business, and industry
- ◆ Distribution of open space, including agricultural land
- ◆ Distribution of mineral resources and provisions for their continued availability
- ◆ Distribution of recreation facilities and opportunities
- ◆ Location of educational facilities
- ◆ Location of public buildings and grounds
- ◆ Location of future solid and liquid waste facilities
- ◆ Identification of areas subject to flooding
- ◆ Identification of existing Timberland Preserve Zone lands
- ◆ Other categories of public and private uses of land.

123 Cal.App.3d 334, 176 Cal.Rptr. 620

View Cal./Cal.App. version

Court of Appeal, First District, Division 4, California.
Walter CAMP et al., Plaintiffs and Appellants,

v.

The MENDOCINO COUNTY BOARD OF SUPERVISORS et al., Defendants and Respondents;
R. O. HURT et al., Real Parties In Interest and Respondents.
PEOPLE ex rel. George DEUKMEJIAN, Attorney General of the State of California, Petitioner and Respondent,

v.

COUNTY OF MENDOCINO, Respondent and Appellant.
Tamara ADAMS et al., Plaintiffs and Respondents,

v.

COUNTY OF MENDOCINO et al., Defendants and Appellants.
Civ. 45922, Civ. 48356 and Civ. 48357.

Sept. 1, 1981.

As Modified on Denial of Rehearing Sept. 29, 1981.
Hearing Denied Nov. 12, 1981.

In each of three separate superior court actions, contention was made that general plan for physical development of county did not meet requirements of governing statute. In first action, the Superior Court, Mendocino County, Arthur B. Broaddus, J., entered judgment that plan was valid, and petitioners who had sought declaration of invalidity appealed. In second and third actions, the Superior Court, Mendocino County, John J. Golden, J., entered judgments that plan was invalid, and county appealed. The Court of Appeal, Rattigan, J., held that: (1) land use, housing and noise elements of plan did not substantially comply with applicable statutes; (2) approval of subdivision map was unlawful without valid general plan; (3) trial court did not exceed its jurisdiction in proceeding without joinder of land developers who had received subdevelopment approval prior to injunction; (4) peremptory writ of mandate was properly sought and granted; (5) injunctive relief was available as remedy in second and third actions, notwithstanding statutory identity of each underlying action as "special proceeding;" (6) injunctive relief did not constitute judicial usurpation of county's legislative prerogatives in areas of subdivision and zoning; (7) trial court could not enjoin board of supervisors from approving final subdivision map found to be in substantial compliance with tentative map approved prior to preliminary injunctions and which had not subsequently been challenged in timely action or proceeding; (8) restriction of county's ability to issue certificates of compliance was necessary feature of broad injunctive relief to maintain status quo; and (9) circulation element of plan did not substantially comply with statute.

Order accordingly.

West Headnotes



[1] KeyCite Notes

- 414 Zoning and Planning
- 414V Construction, Operation and Effect
- 414V(A) In General
- 414k233 k. Meaning of Language. Most Cited Cases

"Shall" is to be construed as mandatory in context of statute requiring that general plan for physical development of county "shall include" nine enumerated elements. West's Ann.Gov.Code, §§ 5, 14, 65302.

1 CIVIL 48356 AND 48357

We consider these appeals first for convenience. The points raised on them are separately captioned below.

The Trial Court's Determination That The Mendocino County General Plan Is Invalid For Lack of Compliance With Section 65302

The trial court found that the land use, housing, and noise elements of the plan were "inadequate" because none comported with the detailed standards prescribed for it in section 65302. The court concluded from these findings that the plan was "therefore invalid as a general plan"

*348 The County takes the initial position that the court's examination of the plan for "adequacy" constituted an impermissible inquiry into its "merits." This argument is based on the following language used by the Supreme Court in Selby Realty Co. v. City of San Buenaventura (1973) 10 Cal.3d 110, 109 Cal.Rptr. 799, 514 P.2d 111: "The adoption of a general plan is a legislative act. Since the wisdom of the plan is within the legislative and not the judicial sphere, a landowner may not maintain an action in declaratory relief to probe the merits of the plan absent allegation of a defect in the proceedings leading to its enactment." (*Id.*, at p. 118, 109 Cal.Rptr. 799, 514 P.2d 111 (italics added).)

The County's argument ignores the language we have emphasized in the foregoing quotation. The petitioners in these two actions (Nos. 40626 and 40633) did not undertake to "probe the merits" of the Mendocino County General Plan. They sought relief in mandamus, and by way of injunction, because of specific defects in elements of the plan which allegedly made it "inadequate" and void for lack of compliance with law. The remedy of mandamus is available "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust or station ..." (Code Civ.Proc., s 1085.)

[1] [2] [3] Section 65302 enumerates the nine elements which a plan "shall include," and describes the contents of each. The word "shall" is to be construed as mandatory in this context. (Gov.Code, ss 5, 14.) The County must accordingly "have a general plan that encompasses all of the requirements of state law." (Save El Toro Assn. v. Days (1974) 74 Cal.App.3d 64, 72, 141 Cal.Rptr. 282.) If the plan adopted for it does not reflect substantial compliance with those requirements, the Board and other responsible agencies of the County have failed in the "performance of an act with the law specially enjoins."

"Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute," as distinguished from "mere technical imperfections of form." (Stasher v. Harger-Haldeman (1962) 58 Cal.2d 23, 29, 22 Cal.Rptr. 657, 372 P.2d 649 (italics in the original); International Longshoremen's & Warehousemen's Union v. Board of Supervisors (1981) 116 Cal.App.3d 265, 273, 171 Cal.Rptr. 875.) The judicial inquiry undertaken here was a necessary examination of the Mendocino County General Plan for substantial compliance with the statutory requirements, not an impermissible study of its "merits." We *349 turn to the three elements of the plan which the trial court found wanting.

****630 The Land Use Element**

[4] Section 65302, subdivision (a), provided in 1978 that a general plan mandated by section 65300 "shall include ... (a) land use element which designates the proposed general distribution and general location and extent of the uses of the land" for specified purposes. It also provided that the

land use element itself "shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan."

The land use element of the Mendocino County General Plan is set out in a separate pamphlet which reproduces a typewritten text published in 1967. ^{FN8} A prefatory summary states that the land in the County is classified into 12 different types of "area," each of which is described and identified by a name associated with the predominant "land use" within it (e. g., "conservation, public lands," "conservation, water development," "agricultural, intensive," "suburban, residential," "urban, city"). This classification is depicted on an accompanying map of the County entitled "Land Use And Recreation Elements (,) General Plan of Mendocino County, California." The map places every location in the County within delineated contours of one of the classified types of area.

^{FN8}. It may be mentioned that the "plan" consists of a sheaf of uncoordinated documents stuffed into an unlabelled carton. The trial court observed in one of its memorandum decisions as follows: "Presented to the court with the representation that it constituted the Mendocino County General Plan was a somewhat crumpled grey cardboard box ... containing an unassembled assortment of papers and pamphlets variously identified ... (by titles and descriptions) (P) The physical composition of this 'general plan' would appear to make resort to it for planning information an awkward exercise and would also seem to generate doubt concerning the integrity of the plan, when so many of its elements are merely deposited loose in a cardboard box." We agree with these comments.

Figures of population density are stated for only two of the types of "area" where the several types are classified and described. A table elsewhere in the pamphlet recites "density standards" of population in terms of "persons per square mile," but these figures are tabulated for each of four "land use categories" respectively entitled "urban centers," "fringe urban and minor urban," "dispersed residential," and "agricultural." There is no perceptible connection between these "density standards" and any of the classified types of "area," nor between the *350 types of "area" (which are described and mapped) and the tabulated "land use categories" (which are not). It is consequently impossible to relate any tabulated "density standard" of population to any location in the County.

The pamphlet states nothing at all of "building intensity" standards in any of the classified types of "area," nor in any of the tabulated but undescribed "land use categories," nor at any location in the County. For these reasons, the land use element is not in substantial compliance with the requirement of section 65302, subdivision (a), that it "include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan."

The Housing Element

Section 65302, subdivision (c), provided in 1978 that a general plan mandated by section 65300 "must include ... (a) housing element, to be developed pursuant to regulations established under Section 41134 of the Health and Safety Code, consisting of standards and plans for the improvement of housing and provision of adequate sites for housing." ^{FN9} It further provided that the **631 housing element "shall make adequate provisions for the housing needs of all economic segments of the community."

^{FN9}. The reference to "regulations established under Section 41134 of the Health and Safety Code" was not current in 1978. Health and Safety Code section 41134, which was enacted in 1975, provided that the Department of Housing and Community Development "shall adopt guidelines for the preparation of housing elements required by Section 65302" of the Planning and Zoning Law. (Stats. 1975, First Ex. Sess. 1975-1976, ch. 1, s 7, pp. 3876-3877.) Section 41134 was repealed in 1977 (stats. 1977, ch. 610, s 1, p. 1998), but the repealing enactment reenacted it as Health and Safety Code section 50459 without changing its language. (Id., s 2, pp. 2015-2016.) A conforming

138 Cal.App.3d 664, 188 Cal.Rptr. 233

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Court of Appeal, Fifth District, California.
TWIN HARTE HOMEOWNERS ASSOCIATION, INC., Petitioner and Appellant,
v.
COUNTY OF TUOLUMNE, et al., Defendants and Respondents.
Civ. 6664.
Dec. 27, 1982.


Homeowners' association sued for a writ of mandate compelling a county to rescind its certification of an environmental impact report for the county general plan. The Superior Court, Tuolumne County, J. Hillary Cook, J., entered judgment issuing the writ of mandate in one limited aspect, but otherwise denying the requested relief. Homeowners' association appealed. The Court of Appeal, Morony, J., assigned, held that: (1) the EIR adequately disclosed the criteria for determining water and sewage availability; (2) the county's responses to comments about the draft EIR were adequate; (3) there was no requirement that mitigation measures described in the EIR be literally included in the general plan; (4) the county board's deletion of provisions relating to refusal to permit heavy industrial development in one area and amendment of a general policy with respect to seismic safety without further analysis in the EIR constituted an abuse of discretion; (5) the land-use element of the general plan was inadequate; and (6) the housing element of the plan complied with the requirements of the Government Code.

Reversed with directions.

West Headnotes

[1] KeyCite Notes 

- ↳ 414 Zoning and Planning
 - ↳ 414II Validity of Zoning Regulations
 - ↳ 414II(A) In General
 - ↳ 414k29 k. Conformity to Enabling Statute. Most Cited Cases

- ↳ 414 Zoning and Planning KeyCite Notes 
 - ↳ 414X Judicial Review or Relief
 - ↳ 414X(E) Further Review
 - ↳ 414k745 Scope and Extent of Review
 - ↳ 414k745.1 k. In General. Most Cited Cases
(Formerly 414k745)

Judicial inquiry into general plan adopted by board of supervisors extends to whether general plan substantially complies with requirements of Government Code and, since such determination is matter of law, Court of Appeal need not give deference to trial court's findings. West's Ann.Cal.Pub.Res.Code § 21168.5.

[2] KeyCite Notes 

- ↳ 414 Zoning and Planning

2. THE GENERAL PLAN.

a. *Land Use Element.*

Appellant contends that the general plan fails to meet statutory requirements in several of its elements. Initially, appellant contends that the land use element of the general plan does not comply with statutory requirements of Government Code section 65302, subdivision (a).

Section 65302, subdivision (a), provided in 1980 that a general plan mandated by section 65300:

****253** "shall include ... [¶] A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. *The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan....*" (Emphasis added.)

The initial task faced by this court in determining the adequacy of the land use element is to determine the meaning of the terms "population density" and ***697** "building intensity". These terms are not defined in the relevant statutes, regulations or guidelines. The parties have cited no authority to assist this court in determining what the statute requires in this regard.

The general plan states "densities" for "urban residential" uses in terms of the maximum number of "dwelling units per gross acre". With respect to non-urban designations of "residential/agricultural", and "resource" lands, densities are stated in terms of minimum lot sizes.^{FN7} No densities are provided for areas designated "commercial", "open space", "industrial", "park and recreation", or "public/institutional/school".

^{FN7}. In appendix B to the general plan (which cross references the location of the contents of the mandated elements) density components of the land use element are stated to be located at chapter I:4-5 and IV:5-6. At chapter I:4-5 it does appear that densities are listed for "urban residential" (ranging from an average density of 6 dwelling units per gross acre maximum to 15 dwelling units per gross acre maximum) and for "nonurban" designations of "residential/agricultural" (ranging from a 2 acre minimum to 37 acre minimum) as well as for "resource" land ranging from 37 acre minimum for agricultural and range land to 67 acre minimum for timber. (These densities are repeated at IV:5-6.)

In Camp v. Board of Supervisors, supra, 123 Cal.App.3d 334, 176 Cal.Rptr. 620 the court held that the land use element of the Mendocino County General Plan was invalid, but did not discuss the meaning of the terms "population density" or "building intensity". In Camp, figures of population density were stated for only two "areas" whereas several areas were classified and described in the general plan. According to the court, a table in the plan recited "density standards" of population in terms of "persons per square mile," but the figures were tabulated for each of four "land use categories" which did not apparently relate to the classified types of "area" which were described and mapped in the general plan. Nor did the descriptions of the "areas" appear to have any connection with the "land use categories" for which density standards were stated. Therefore, the court found that it was impossible to relate any tabulated "density standard" of population to any location in the county. Moreover, the court found that the general plan "states nothing at all of 'building intensity' standards in any of the classified types of 'area,' nor in any of the tabulated but undescribed 'land use categories,' nor at any location in the County." For those reasons, the court held that the land use element was not in substantial compliance with the requirements of section 65302, subdivision (a).

The County contends in the instant case that the measurement of dwelling units per acre meets the requirement for a statement of standards for population density and that the omission of a statement of population density for "commercial", "industrial" and "open space" land use designations reflects the fact that no residential development is permitted on those lands.

*698 In a planning context, statements of population density might reasonably be related to residency rather than to the extent of intensity of use of all classifications.

For census purposes "population density" has been calculated as "the number of persons per square mile of land area ..." and "[e]ach person enumerated was counted as an inhabitant of his usual place of abode" (U.S. Dept. of Commerce, Bureau of **254 the Census, 1970 Census Users' Guide (Oct.1970) at p. 93.)

Cases in the zoning context have referred to measures of population density in terms of numbers of people per dwelling unit. (See Village of Belle Terre v. Boraas (1973) 416 U.S. 1, 19, 94 S.Ct. 1536, 1546, 39 L.Ed.2d 797 (dis.opn. of Marshall, J.).)


The term "population density" has also been used to refer to maximum numbers of people living in a residential development. (See, e.g., Trinity Episcopal School Corporation v. Romney (S.D.N.Y.1974) 387 F.Supp. 1044, 1080.)

Confronted with the requirement of subdivision (b) of Government Code section 65302 that the circulation element must be "correlated" with the land use element, it would not be unreasonable to interpret the term "population density" as relating not only to residential density, but also to uses of nonresidential land categories and as requiring an analysis of use patterns for all categories.

Given the variety of legitimate ways of interpreting the term "population density", it appears sensible to allow local governments to determine whether the statement of population standards is to be tied to residency or, more ambitiously, to the daily usage estimates for each land classification.


It could be argued that in the planning arena standards of population density might most usefully be stated in terms of dwelling units per acre where some relationship between an average number of people per household has been established and where distinctions based upon factors such as the size and type of dwelling (e.g., single family residences, multiple family residential, mobile home) are supported in the plan.

Nevertheless, we cannot believe that the Legislature intended the terms "population density" and "building intensity" to be synonymous. It is a well established principle of statutory construction that "[t]he courts presume that every word, phrase, and provision of a statute was intended to have some meaning and perform some useful function" (58 *699 Cal.Jur.3d, Statutes, § 105, p. 480.) "A construction implying that words were used in vain, or that they are surplusage, should be avoided." (*Id.*, at pp. 480-481, fn. omitted; Morro Hills Community Services Dist. v. Board of Supervisors (1978) 78 Cal.App.3d 765, 773, 144 Cal.Rptr. 778.) In addition, "where different words are used in the same connection in different parts of the statute, it will be presumed that the legislature intended different meanings." (58 Cal.Jur.3d, *supra*, at § 127, p. 521, fn. omitted.)


[13]  It appears that the reasonable interpretation of the term "population density" as used in Government Code section 65302 is one which refers to numbers of *people* in a given area and not to dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and numbers of people is set forth explicitly in the plan. ^{FNB}

FNB. We are aware of Table VIII-23, "Residential Carrying Capacity of the Priority Areas," contained in the MEIR documentation at page VIII-24. No reference is made to this table in the land use element of the general plan. Further, this table does not adequately relate residential dwelling units to numbers of people and it certainly does not constitute a statement of population density standards.

In the instant case, no statement relating dwelling units to numbers of people is presented in the general plan. Thus, we conclude that appellant's land use element is deficient insofar as it lacks an appropriate statement of standards for population density based upon numbers of people.

[14]  With respect to the requirement that the land use element must contain a "statement of the standards of ... building intensity recommended for the various districts and other territory", there is no statement of building intensity for uses designated in the plan as "commercial", "residential/agricultural", "open space", "industrial", "park and recreation" or "public/institutional/school". At most, the "urban residential" designation with its statement of **255 maximum dwelling units per acre is the only land use designation with any building intensity standard. Minimum lot sizes set for "residential/agricultural" and "resource" areas are not sufficient as a statement of a building intensity. Nor are general use captions such as "commercial-neighborhood", "commercial-shopping center", "commercial-visitor serving", "light industrial" and "heavy industrial", which provide only the vaguest picture of the intensity of development to be permitted in those areas and provide no standards at all as to possible restrictions such as height or size limitations, restrictions on types of buildings or uses to be permitted within a designated area. We therefore conclude that the land use element of the Tuolumne County general plan does not comply with the requirements of Government Code section 65302 as it fails to set forth an adequate statement of standards of population density and building intensity recommended for the various districts and other territory covered by the plan.

*700 b. *Circulation Element.*

[15]  Appellant further contends that the general plan is deficient for its failure to comply with the mandates of Government Code section 65302, subdivision (b) which requires in pertinent part that the plan include "[a] circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, *all correlated with the land use element of the plan.*" (Emphasis added.)

The trial court specifically found that the circulation element of the new general plan contained all of the factors required by subdivision (b) of Government Code section 65302. However, appellant asserts that the circulation element is not correlated with the land use element as required by the statute.

County contends that perfect correlation is not required and that in adopting the element it must be presumed to have determined that the correlation was sufficient to accommodate local conditions and circumstances. (Gov. Code, § 65300.7.) County further contends that "appellant has not demonstrated that the correlation in the general plan is not locally relevant." The court in Camp v. Board of Supervisors, supra, 123 Cal.App.3d 334, 176 Cal.Rptr. 620 evaluated the circulation element of the Mendocino County General Plan and found it deficient where the element did not expressly show any relationship between the "facilities" mentioned and the "land use element of the plan". According to the court, the relationship could not be determined by construction because the land use element itself was utterly deficient. The court concluded that the circulation element therefore fell short of compliance with section 65302, subdivision (b), because the facilities shown in it were not "correlated with the land use element of the plan." (123 Cal.App.3d at p. 363, 176 Cal.Rptr. 620.)

Insofar as the Tuolumne County General Plan is concerned, the circulation element is contained in chapter VI: 2-3 and VI: 5 and on the display map which outlines existing and proposed roads designated as "arterial," "major collector," or "minor collector." FN9

FN9. In its entirety, the textual portion of the transportation-circulation element of the general plan provides as follows: "TRANSPORTATION/CIRCULATION [policy]"⁷ The street and highway network in the county will be classified according to the function they are intended to serve. The following four functional classifications will be used in Tuolumne County: "Arterial-serves statewide and interstate travel. Primarily federal and state highways." "Major Collector-serves intraregional travel. Average travel distances are shorter than on arterial routes." "Minor Collector-collects traffic from local roads and

Attachment 2
“Net Lot Area” definitions from other cities

CITY	NET LOT AREA DEFINITION
Goleta	Net Lot Area: The portion of a legal lot or parcel that can actually be built upon. The following are not included in the acreage of a site: public or private road right of ways, public open space, and flood ways.
Encinitas	Net Lot Area: shall mean total area exclusive of street within the boundary lines of a lot and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. (Ord. 97-17).
Manhattan Beach	Acre, Net: A measure of developable land area, after excluding existing dedicated rights-of-way and flood control and drainage easements.
Manteca	Acre, Net: “Net acre” means the area of a lot or site remaining after dedication of all required rights-of-way.
Novato	Lot Area, Net: The portion of a parcel that is: 1. Not subject to any easement or included as a proposed public or private facility, such as an alley, highway, street, or other necessary public site within a proposed development project; or 2. Subject to an easement where the owner of the underlying fee has the right to use the entire surface except the portion where the owner of the easement may place utility poles or minor utility structures. Except as provided above, portions of a parcel dedicated to a highway easement or any other private or public easement shall not be counted as part of the net area.
Poway	Net area: means all land, utility easements and trails within a given area or project including residential lots, and other open space which directly serves the residents of the net acre; but exclusive of all public or private streets and other easements such as a floodway or flood-control channel. (Ord. 113 § 1 (Exh. A 1.7 (A)(109)), 1983)
Redondo Beach	Lot area: The total area (measured in a horizontal plane) included within the boundary lines of a lot--minus any area taken up by surface easements over the lot, such as for equestrian trails, streets, bikeways, open channel storm drains, etc.
San Juan Capistrano	Lot area: The total area (measured in a horizontal plane) included within the boundary lines of a lot--minus any area taken up by surface easements over the lot, such as for equestrian trails, streets, bikeways, open channel storm drains, etc.

Attachment 3
“Gross Floor Area” definitions from other cities

CITY	GROSS FLOOR AREA DEFINITION
Goleta	Gross Floor Area: The sum of the horizontal areas of the several floors of a building measured from the exterior face of the exterior walls, or from the centerline of a wall separating two buildings, but generally not including any space where the floor to ceiling height is less than six feet. Specific types of space (e.g., elevator shafts, parking decks) may be excluded from the calculation of gross floor area.
Carpinteria	Gross floor area: means the total area of all floors of a building as measured to the outside surfaces of exterior walls and including halls, stairways, elevator shafts, attached garages, porches, balconies, basements, and offices. (Ord. 315 § 1 (part), 1981)
Encinitas	Floor Area: shall mean the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area. (Ord. 2003-10.)
Manhattan Beach	Floor Area, Gross: The total area of all floors of a building measured to the outside face of the structural members in exterior walls, and including halls, stairways, vertical shafts (including elevators and vent shafts), and unenclosed usable areas not surrounded by exterior walls which are under a horizontal projection of a solid roof or floor above. In addition, the following shall be included: basements, garages and covered supports.
Manteca	Floor Area, Gross: The total area of all floors of a building measured to the outside face of the structural members in exterior walls, and including halls, stairways, vertical shafts (including elevators and vent shafts), and unenclosed usable areas not surrounded by exterior walls which are under a horizontal projection of a solid roof or floor above. In addition, the following shall be included: basements, garages and covered supports.
Montecito (Unincorporated Santa Barbara County)	Floor Area: is defined as the total area of all floors of a building as measured to the interior surface of walls, excluding attics, basements and unenclosed porches, balconies, decks, garages and attached garages of 800 square feet or less. For attached garages of greater than 800 square feet, the square footage in excess shall be included as part of the floor area of the structure.
Monterey	Floor Area, Gross: : The total enclosed area of all floors of a building, measured to the outside face of the structural members and exterior walls, and including halls, stairways, elevator shafts at each floor level, service and mechanical equipment rooms, and habitable basement or attic areas.
Novato	Floor Area, Gross: The area in square feet of all floors or stories within a building, measured from the outside surfaces of the exterior walls, but not including covered parking areas or garages.
Santa Barbara	Gross Floor Area: The area of a structure measured from the outside line of a building, including the area occupied by the surrounding walls, exclusive of vent shafts and courts.

Attachment 4
“Basement” definitions from other cities

CITY	BASEMENT DEFINITION
Goleta	Basement: A story partly or wholly underground. A basement shall be counted as a story if it has a minimum height of six and one-half (6.5) feet and more than one-half of its height is above the average level of the adjoining ground.
Manhattan Beach	Basement: Any floor level, or portions thereof, below the first story in a building. Any building having only one floor level shall be classified as a basement unless such a floor level qualifies as a first story as defined herein. A floor level may be divided between portions qualifying as a basement and portions qualifying as a story. Any portion qualifying as a story shall be considered to have a minimum dimension of twenty feet (20') measured perpendicular from the outside face(s) of the exterior building wall(s), which disqualifies that area as a basement (see graphic illustration).
Monterey	Basement: For a room primarily located below grade to be considered a basement, not more than 40% of the perimeter of the building under which the room is located may be over four feet above grade, measured to the finished floor level above.
Novato	Basement: A story having at least one half of its height below grade. A basement shall be counted as a story or as part of the floor area if the vertical distance from grade to the ceiling is over five feet of it used for business or dwelling purposes.
Poway	Basement: means a story partly or wholly underground. A basement shall be counted as a story for purposes of height measurement where more than one-half of its height is above grade. (Ord. 113 § 1 (Exh. A 1.7(A)(27)), 1983)
Redondo Beach	Basement: shall mean any floor level below the first story in a building (see definition of “story”).
San Clemente	Basement: means any portion of a building which has at least sixty (60) percent or more of the story height below finished grade.
San Juan Capistrano	Basement: An area of non-residential use partially above ground and having no more than fifty (50) percent of its height, at any point, above finish grade on each and every side, as shown in Figure 1. A basement is not considered a story unless over fifty (50) percent of its height is above finished grade.

Attachment 5
Building Height Definitions & Diagrams

County of Santa Barbara – Outside Montecito & Summerland

County of Santa Barbara – Inland Area & Coastal Zone



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Height Calculation Methodology

Methodology applies to: Structures located outside of the Montecito and Summerland Planning Areas.

Except for structures located within the Coastal Zone on property zoned with the VC View Corridor Overlay, the height of a structure (not including fences and walls) is determined by the vertical distance between the **existing grade** and the uppermost point of the structure directly above that grade. If the structure is located within the Coastal Zone on property zoned with the VC View Corridor Overlay, then the height of the structure (not including fences and walls) is determined by the vertical distance between the **average finished grade** and uppermost point of the structure directly above that grade.

The height of the structure shall not exceed the applicable **height limit** (see Diagram 1 below) except for certain limited **exceptions** discussed below.

In addition to the height limit applicable to a structure as described above, a structure subject to the Ridgeline and Hillside Development Guidelines shall not exceed a maximum height of 32 feet as measured from the highest part of the structure, excluding chimneys, vents and noncommercial antennas, to the lowest point of the structure where an exterior wall intersects the **finished grade** or the **existing grade**, whichever is lower (see Diagram 2 below).

1. In the case where the lowest point of the structure is cantilevered over the ground surface, then the calculated maximum height shall include the vertical distance below the lowest point of the structure to the finished grade or the existing grade, whichever is lower.
2. This 32 foot limit may be increased by no more than three feet where the highest part of the structure is part of a roof element that exhibits a pitch of four in 12 (rise to run) or greater.

EXCEPTIONS

1. Chimneys, church spires, elevator, mechanical and stair housings, flag poles, noncommercial antennas, towers, vents, and similar structures which are not used for human activity may be up to 50 feet in height in all zones subject to compliance with the F Airport Approach Overlay and the VC View Corridor Overlay. **The use of towers or similar structures to provide higher ceiling heights for habitable space shall be deemed a use intended for human activity.**
2. Portions of a structure may exceed the applicable height limit by no more than three feet where the roof exhibits a pitch of four in 12 (rise to run) or greater.

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3. Architectural elements (portions of a building that exceeds the height limit and extends beyond the roof of the building) with an aggregate area less than or equal to 10 percent of the roof area or 400 square feet, whichever is less, may exceed the height limit by no more than eight feet when approved by the BAR.
4. Special exemptions for oil/gas equipment (see Article II, Section 35-127.1.a).

DEFINITIONS

Existing Grade: The existing condition of the ground elevation of the surface of a building site at the time of permit application, including Board of Architectural Review applications, that represents either (1) the natural grade prior to the placement of any fill on the site or the excavation or removal of earth from the site, or (2) the manufactured grade following the completion of an approved grading operation including grading approved in conjunction with the subdivision of the site.

Finished Grade: The height of the manufactured grade of that portion of the lot covered by the structure following the completion of an approved grading operation.

Finished Grade, Average: The average height of the manufactured grade of that portion of the lot covered by the structure following the completion of an approved grading operation.

Height Limit: The maximum allowed height of a structure as established by an imaginary surface located at the allowed number of feet above and parallel to the existing grade.

Diagram 1

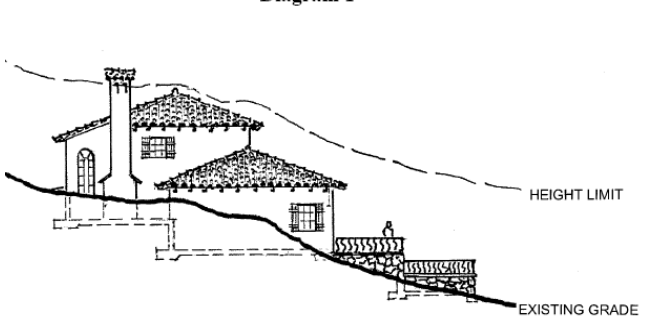
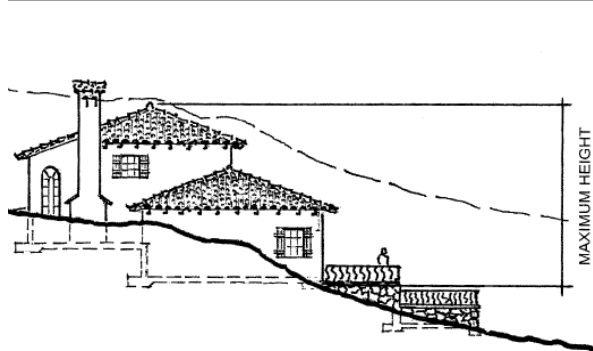
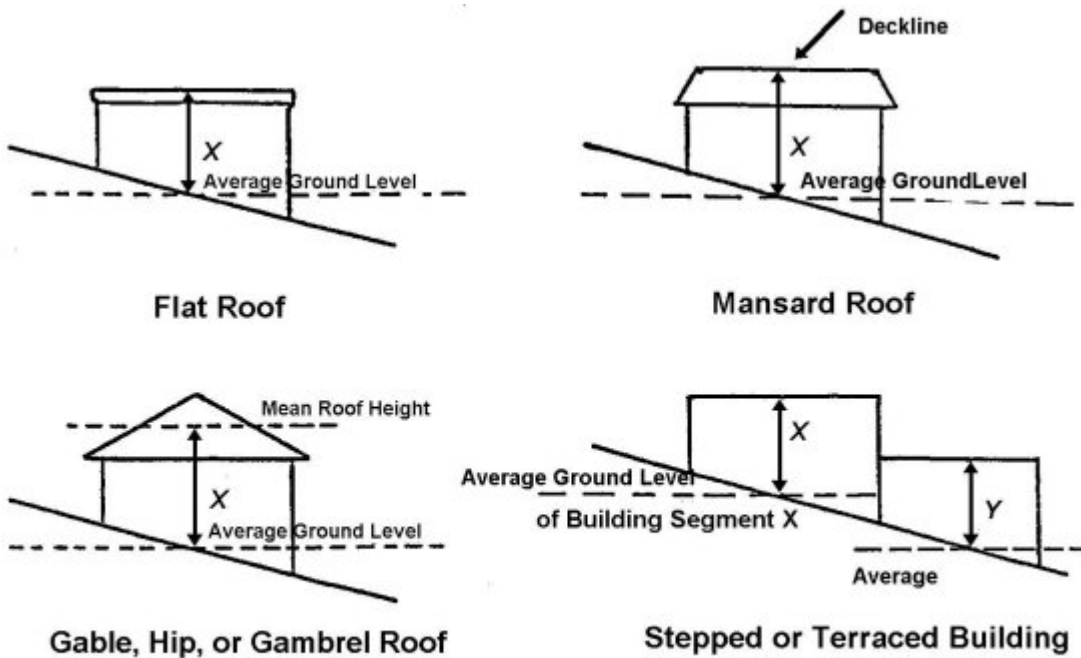


Diagram 2



City of Monterey Building Height

Height, Building : The vertical distance from the average contact grade level of the building, "grade" as defined herein, to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the mean height level between eaves and ridge for gable, hip, or gambrel roofs.



BUILDING HEIGHT
(Diagrams are illustrative.)

Dana Point – Building Height

Title 9 ZONING
Chapter 9.05 GENERAL DEVELOPMENT STANDARDS

9.05.110 Measurement of Building Height.

(a) Residential Building Height.

(1) The maximum building height for residential buildings is described in Chapter 9.09 for each of the individual zoning districts.

(2) For residential structures, building height is defined as the vertical distance, by which the uppermost portion of the roof of a structure extends above the existing grade, finished pad elevation, (excluding the basement finished pad elevation), ceiling of a maximum ten (10) foot, zero (0) inch high basement, or eighteen (18) inches above the flood protection level, whichever is lower, as measured from the lowest portion of the structure. In no case may this vertical distance exceed the maximum height limit specified in Section 9.05.110(a)(6). For residential structures on Beach Road, building heights shall be measured at eighteen (18) inches above the FP-3 elevation, or the elevation of Beach Road, whichever is higher. For residential structures on lots with hillside conditions, in cases where the garage is the lowest floor level, the building height is measured from the garage floor or existing grade, whichever is lower.