

ADDENDUM

Responsible Land Use, Draft General Plan Correctives: What & Why

This addendum explains the intention behind Responsible Land Use's proposed draft general plan language changes, expansions and requests. When compared to state laws, and government codes in the 2017 California *General Plan Guidelines* [1], our analysis and observations of the city-proposed draft general plan language, gives cause for great concern for the safety, health and welfare of the City of Diamond Bar, for the following reasons:

This is our guiding principle:

Section (b) of California Government Code § 65041.1

65041.1. The state planning priorities, which are...

“(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state’s most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.”[2]

1. Observation & Concern: City proposed General Plan language lacks a formal provision for the preservation and protection of *natural open space* - especially city-owned natural open space.

Government Code §65561

65561. The Legislature finds and declares as follows:

(a) That the preservation of open-space land, ... is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.
[3]

The local open space plan, together with state and regional plans, must form a comprehensive open space plan (Gov. Code § 65562(b)). Every city and county must prepare, and submit to the Secretary of Natural Resources, an open space plan for comprehensive and long-term preservation of open spaces (Gov. Code § 66563). The plan must include an action program with specific programs to implement the plan (Gov. Code § 65564). [4]

Request: We respectfully call upon the GPAC to pass a motion to initiate a formal provision in General Plan language for the preservation and protection of natural open space and also include policies which will guide the creation of the open space plan required by the Secretary of Natural Resources.

2. Observation & Concern: City-proposed General Plan language omits a detailed land use designation for different types of open space. Various types of open space cannot be tracked, protected and preserved without such designations. The Government Code §65560 [5] requires an open space element to contain detailed information about several categories of undeveloped land. Specifically, the open space element must inventory the following broad categories of open space:

- Open space for natural resources
- Open space for managed production of resources
- Open space for outdoor recreation
- Open space for public health and safety
- Open space for tribal resources

The inventory must include any parcel in one of the listed categories that is: (1) “essentially unimproved” and (2) designated on any local, regional or state open-space plan (Gov. Code § 65560(b)(1)).

Note that a particular parcel need not be completely vacant to be included in the inventory. Also, categories of open space are defined in very broad terms in the statute. Thus, designations in local, regional and state plans need not actually use the words “open space” in order to be included in the inventory. In general, a plan should err on the side of inclusion

Diamond Bar’s proposed general plan language has no dedicated Open Space element. The Resource Conservation Element omits a complete identification of open space areas and does not allow for the city’s open space to be specifically inventoried.

City-owned land, most or all of which meets the definition of open space above, is not specifically inventoried anywhere nor is it specifically identified on any map.

Request: We call upon the GPAC members to pass a motion requiring that a detailed inventory be maintained, of all the listed types of open space, and to create appropriate language for these designations.

Additional designations would also aid in city transparency: HOA owned land set aside for protection, land that has open space deed restrictions, land that is city-owned, land that is not deed restricted but has environmental and terrain constraints. And have the inventory, along with all other language pertaining to open space, placed in a dedicated Open Space Element.

3. Observation & Concern: *Public Facilities and Services Element, pg.1* states:

*The combined acreage of the undeveloped Sycamore Canyon open space area, and the areas within the viewsheds of the Diamond Bar Center and Pantera Park that the City acquired through negotiations with developers, constitute about 450 acres of City-owned open space that **will be preserved in perpetuity.***

This statement above also directly contradicts, the City of Diamond Bar current General Plan Land Use Map and Zoning Map, which depicts the city owned 450 acres as a *Planning Area*,

(PA). Planning Areas are defined in the proposed General Plan language as *natural areas*, which are to be developed.

Proposed *Land Use Classifications Element*, pg. 2, defines a *Planning Area*:

Planning Area. *Designed to conserve open space resources and is to be applied to properties where creative approaches are needed to integrate future development with existing natural resources. All proposed development within these designated areas shall require the formation of a Specific Plan pursuant to the provisions of Government Code Section 65450.*

This language is misleading, because **Government Code: §65450** merely states:

65450 *After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.[6]*

Bottom line: The Planning Area definition, as written, demands no environmental or developmental constraints on the development of city-owned natural open space. Designating city-owned natural open space land as planning areas violates the state’s notion and understanding of conserving open space. **Government Code §65041.1**, as quoted above and **Government Code §65561**, also as quoted above.

Request: We call upon the GPAC to initiate and pass two motions:

A. For the creation of General Plan language to designate all city-owned natural open space to be *saved in perpetuity*, by either deed restrictions or conservation easements, as per *the Public Facilities and Services Element*.

B. Initiate and pass a motion requiring the revision of all the maps referenced above to make them consistently show city-owned natural open space as natural open space protected in perpetuity.

4. Observation & Concern: We are concerned that the proposed language is inconsistent—internally and vertically. For example, *Land Use Element LU-G-5*, mentioned above, states: “*Preserve open space land and hillsides to protect the visual character of the city...*”

Then, further down, *LU-I-47* states: *Encourage the preservation of hillsides as open space but allow residential development at the permitted densities...*” which directly contradicts *LU-G-5*. This type of internally inconsistent language is not legally allowed.

An example of vertical inconsistency is: The contradiction of claiming Diamond Bar’s city owned land will be **preserved in perpetuity** while at the same time depicting it as “*vacant land*” on Figure 3: *Open Space Resources* map of the *Resource Conservation Element* instead of Open Space.

Request: We call upon the GPAC to initiate and pass a motion requiring that all general plan language be internally and vertically consistent. Our proposed language changes attempt to mitigate some of the inconsistencies.

Avoiding Subjective and Passive Language

According to the *California State General Plan Resource Directory*:

It is important to consider the difference between mandatory requirements and encouraged direction. Strong policies with explicit direction use words like “shall” and “require,” while other policies with more flexibility use words like “should,” “encourage,” and “may.”

California State General Plan Resource Directory, quote continued . . .

Using the flexible policy language implies interest in the policy, but no real commitment to it or its enforcement. Flexible policy language does not carry the force of law. According to the General Plan Guidelines developed by the comprehensive state planning agency, the Office of Planning and Research (OPR), “It is better to adopt no policy than to adopt a policy with no backbone.” In addition, for a policy to be counted towards “mitigating of a plan’s impacts,” it must be expressed as mandatory.[7]

Issue 1: GPAC members have commented that the city needs flexibility in its General Plan language. We agree. However, the plan is heavy on admirable vision and light on measurable goals. The implementation section is very generic and does not indicate hard choices or priorities.

Implementation, of the plan, should be guided by desired outcomes that the City can measure. Best practice is: the City discuss key implementation measures at the same time as policy goals, such as land use designations that are specific enough so they can be implemented through the zoning ordinance; priorities for capital improvement projects, etc.

-Many of the policies are vague and unenforceable.

-With vague language, the General Plan leads the public to believe that specific direction is given but in fact no direction is given. It also creates uncertainty and costs for developers.

-Subjective language and “standards” will hamper achievement of certain goals, in particular housing.

-Additionally, uncertainty may lead to litigation on future development projects.

Subjective Words

Issue 2: Words like, “promote,” or “support,” “encourage,” “discourage,” “foster” are *passive*, which legally allows the policy, which follows these words, to be ignored.

For example, *Resource Conservation* policy, RC-I-7, says, “Discourage development on slopes of 50 percent or greater.”

This policy would technically allow development on slopes of 50 percent or greater in any density a developer could get approved. **Question:** Do we really want a policy that broadly stated? A policy that is inconsistent with our neighboring cities, which have detailed stronger hillside protection codes?

Objective Words

Words like *require*, on the other hand are active. Objective. There is no legal confusion about *require*. Any restriction or action following it must be followed. In our proposed language, we replaced passive words with *require* in places where we felt that passive language was too lenient, and did not provide adequate protections in policies which contained it, were attempting to convey.

For example, policy CH-I-6 in the Community Health and Sustainability element reads: “*Foster transparency and participation in local government and decision-making.*”

We believe that the word “foster” is too passive. We believe local government transparency should be required.

Ensure v. Require

There was a question during the August 16 meeting about the difference between the words “ensure” and “require.” We concede that the meanings of these two words are similar. *Ensure* is passive, suggesting the burden to act lies somewhere else, and is therefore weaker. *Require* creates a far stronger *imperative* for direct enforcement by the city than ensure.

In Lieu Fees (ILF)

Issue 3: The 1995 General Plan requirement for 5 park acres per 1000 residents is under 3 because that General Plan’s language allowed developers to pay “in lieu fees” to the city, in order to build more units in a development instead of creating parks. Allowing in lieu fees in the 1995 General Plan is directly responsible for the lack of required park acreage we have today. The *In lieu of fee* language has been brought forward into the new General Plan’s proposed language. This language must be removed.

We understand that the city needs a degree of flexibility when certain parcels are developed. The current general plan proposed language carefully defines the allowed flexibility with respect to parks. It specifically states that for developments over 4 acres, parks are required. That gives the city all the flexibility needed.

Conclusion

We remind the City of Diamond Bar, General Plan Advisory Committee of our community's historic legacy, its distinctive and durable sense of place, which is dominated by its unique open space and natural resources. The existing 1995 General Plan is clear:

Retention of the rural/country living community character. There is a strong, long-held goal among residents to maintain and protect distinctive, physical attributes of Diamond Bar which make it a desirable place in which to live, through a careful balance of housing, businesses and services, public facilities, and preservation of significant natural environmental resources.

"Preservation of open space resources. Significant privately and publicly owned: vacant areas exist within the boundaries of Diamond Bar and within its Sphere of Influence (SOI.) The preservation of these resources contributes to the goal of retaining the City's distinctive character and offers educational and recreational opportunities.

Twenty some odd years later, citizen priorities have not changed. Yet, throughout the years since adoption, the 1995 General Plan visions have been largely ignored. This occurred in good measure because policies which *sounded good* and reasonable in the 1995 general plan language, contained the same types of subjective language, which have been brought forward as part of our currently proposed general plan language.

Responsible Land Use has sought the elimination of subjective language in our concerns listed above and in our proposed language changes. It is our desire to prevent those types of loopholes from weakening the city's new General Plan document.

The 1995 General Plan visions have also suffered because not enough care was taken for the preservation of natural open space. Once again, subjective language allowed development far beyond that envisioned by the plan's framers. **Responsible Land Use** has proposed to close those loopholes as well.

Thank you for your consideration,

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References:

[1] State of California General Plan Guidelines, by Governor's Office of Planning and Research
http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf

[2] CA Government Code 65041.1:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65041.1

[3] CA Government Code 65561:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65561.&lawCode=GOV

[4] CA Government Code 65562:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65562.&lawCode=GOV

CA Government Code 65563:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65563.&lawCode=GOV

CA Government Code 65564:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65564.&lawCode=GOV

[5] CA Government Code 65560:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65564.&lawCode=GOV

[6] CA Government Code 65450:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65450.&lawCode=GOV

City of Diamond Bar Current General Plan Land Use Map and Zoning Map:
<http://nebula.wsimg.com/c08134c04376323236be58703f0d12e5?AccessKeyId=E8E12D0049B4273B7857&disposition=0&alloworigin=1>

[7] General Plan Resource Directory
<http://www.fhbp.org/resources/studies-reports/general-plan-resource-directory/>