

Factor's in Determining "Reasonable Use"

Staff Authority Threshold: An area of disturbance within staff's authority to determine constitutes a "reasonable use."

- A. Minimization of Grading: An evaluation of whether grading is minimized.
- B. General Requirements: Conformance of the project with various general design requirements and ordinance/code standards.
- C. Consistency with the General Plan: Design of the project to minimize inconsistency with all applicable policies of the General Plan.

Item A of the Guidelines establishes a limit on the area of site disturbance on slopes greater than 30 percent which may be approvable by staff as a reasonable use. There is confusion regarding the meaning of the Staff Authority Threshold value specified on the graph included in item A (see Figure 1 and Tables 1a and 1b). The guidelines have been interpreted to mean that the Staff Authority Threshold for disturbance on slopes over 30 percent can be added to the area of proposed disturbance on slopes under 30 percent without limitation in obtaining a total allowed disturbance area. Such an interpretation, however, could have the effect of development being allowed on slopes with 30 percent plus gradient on every existing parcel in the County which includes such slopes. It also would have the effect of allowing a larger area for reasonable use on parcels with a combination of steeper and flatter slopes compared to parcels made up entirely of 30 percent plus slopes. County Counsel at the June 22, 2006, hearing advised that the exceptions to Policy 7.1.2.1 cannot consume the policy. In addition, County policies and regulations should generally be interpreted in a manner that ensures similar treatment of properties in similar circumstances unless a rational basis exists for differential treatment.

The purpose of the reasonable use provisions in this policy is first and foremost to ensure that parcels that are entirely made up of slopes with a 30 percent plus gradient would be allowed some level of reasonable development; otherwise, under this policy such parcels would not be developable. For parcels with a combination of slopes that are above and below the 30 percent threshold, disturbance of the 30 percent plus slopes is generally not permitted by Policy 7.1.2.1 unless such disturbance is found to be necessary to allow for reasonable use. A wide range of possible scenarios can be envisioned involving combinations of flatter and steeper areas on parcels of various sizes and shapes. In addition, in many situations, other physical constraints also apply to the property (e.g. oak tree canopy, setbacks from bodies of water, and other sensitive environmental resources) to further restrict areas for development. Therefore, under these circumstances, some disturbance of the 30 percent plus slopes may be found necessary to ensure reasonable use, even when some flatter areas exist on a property.

The question before the Commission is whether the threshold for staff review authority in the Guidelines should be the same or different for parcels with a combination of flatter and steeper

slopes versus parcels that are entirely made up of steeper slopes. Staff recommends that the threshold be the same for both situations, to ensure equal treatment. If the Commission concurs, the Commission should find that the values for the Staff Authority Threshold in Item A. constitute the total disturbance area necessary to allow for reasonable use of a parcel. To clarify the Guidelines, the following section (p.11, “Informational Requirements) is recommended to be deleted:

~~Inclusion of slopes with gradients under 30 percent:~~

~~Areas of less than 30 percent slope proposed to be disturbed as part of site development may be added to the allowable development area provided that all other applicable regulations are satisfied.~~

If the Commission believes that the threshold for staff review authority for properties with a combination of slopes over and under 30 percent should differ from the threshold used for properties made up entirely of 30 percent plus slopes, the Commission should direct staff to clarify the Guidelines accordingly and provide an explanation for the differential treatment. In either instance, whether a project is above or below this threshold, the project will be evaluated to confirm that grading is minimized and to ensure conformance with other General Plan policies and County rules and regulations.

Simplification of the “Staff Authority Threshold” values:

The graph of Staff Authority Threshold values adopted by your Commission at the June 22, 2006 hearing (reproduced below), results in a series of odd numbers for disturbance area on various parcel sizes. To facilitate implementation by staff and the understanding of the Guidelines by the public, staff recommends that the Staff Authority Threshold be simplified. Two options for consideration by your Commission are presented below.

Option A:

In this option, the square footage values for the Staff Authority Threshold generated by the graph adopted by the Commission on June 22, 2006, would be rounded up to the nearest 1,000 square feet as shown in the revised tables 1a and 1b below.

Figure 1: Staff Authority Threshold

**Policy 7.1.2.1 Interpretive Guideline
 6-22-06**

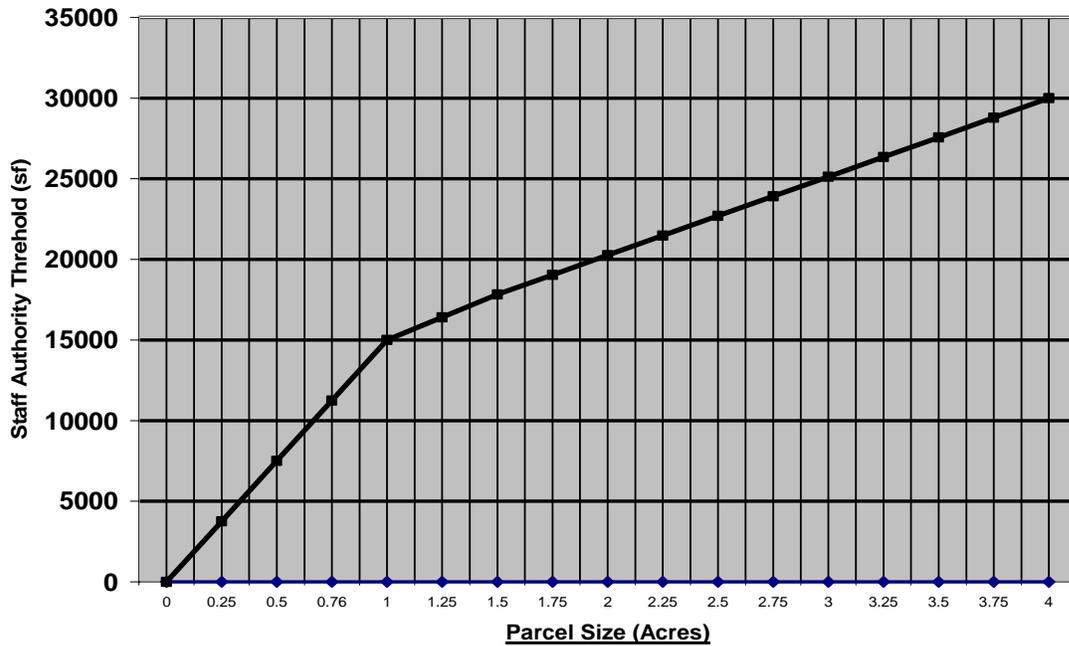


Table 1a: Staff Authority Threshold (Formula representation of Figure 1 graph)

Parcel Size			
Less than 1 acre	1.0 to 1.5 acre	1.5 acre to 4.0 acre	Greater than 4.0 acre
34.4 percent of parcel area	15,000 square feet plus 13 percent of area over 1 acre	17,822 square feet plus 11.18 percent of area over 1.5 acre	30,000 square feet
<i>All resulting values rounded up to the next 1,000 sq. ft.</i>			

Table 1b: Staff Authority Threshold (Table of **example values)**

Parcel Size (Acres)	Current Staff Authority Threshold (Formula) (Square Feet)	Proposed Staff Authority Threshold (Square Feet)
0	0	0
0.25	3,750	4,000
0.50	7,500	8,000
0.75	11,250	12,000
1.0	15,000	15,000
1.25	16,411	17,000
1.5	17,822	18,000
1.75	19,040	20,000
2.0	20,258	21,000
2.25	21,475	22,000
2.5	22,693	23,000
2.75	23,911	24,000
3.0	25,129	26,000
3.25	26,347	27,000
3.50	27,564	28,000
3.75	28,782	29,000
4.0	30,000	30,000
Greater than 4.0	30,000	

This approach would result in a slight increase in the Staff Authority Threshold.

Option B:

In this option, the graph for the Staff Authority Threshold adopted by your Commission on June 22, 2006, would be replaced with the following simplified formula.

Revised Table 1a: Staff Authority Threshold

Parcel Size	
Less than 1 acre	Greater than 1 acre
35 percent of parcel area	15,250 square feet plus 11 percent of parcel area over 1 acre to a maximum of 30,000 square feet.

The above formula yields very similar values to those illustrated in the graph adopted on June 22, 2006, but would be more readily administered by staff and communicated to the public.