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Comment Received From: Brian Selby
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Clarification of Definitions Used to Classify Low-Rise and High-Rise Multifamily Buildings

Additional submitted attachment is included below.

August 12, 2026

Re: 2028 Building Energy Efficiency Standards Pre-Rulemaking Docket (25-BSTD-03)
Subject: Clarification of Definitions Used to Classify Low-Rise and High-Rise Multifamily Buildings

Dear California Energy Commission Staff,

I am submitting this comment based on my experience supporting California's Building Energy Efficiency Standards through Energy Code Ace and Board President of CABEC, where I routinely assist designers, energy consultants, software developers, and building departments with interpreting and applying the Energy Code.

A recent question highlighted what I believe is a significant deficiency in the definitions used to classify multifamily residential buildings. More importantly, it demonstrates that the existing definitions no longer communicate the Commission's longstanding intent and should be revised as part of the 2028 Building Energy Efficiency Standards update.

The project in question is a five-story multifamily building consisting of parking, a conditioned lobby, leasing offices, and other residential common-use spaces on the first two stories, with three stories of dwelling units above. A building official interpreted the current language in Section 100.1 to conclude that the building is a low-rise residential building because it contains only three stories with residential *habitable space*. Based on that interpretation, the official required the project to be analyzed as separate low-rise residential and nonresidential buildings rather than as a high-rise residential building.

Although this interpretation is inconsistent with the Commission's longstanding guidance and industry practice, it is understandable when the adopted definitions are read literally.

Section 100.1(b) currently defines these terms as follows:

High-Rise Residential Building: *A building, other than a hotel/motel, of Occupancy Group R-2 or R-4 with four or more habitable stories.*

Habitable Story: *A story that contains habitable space and that has at least 50 percent of its volume above grade.*

Habitable Space: *Space in a building for living, sleeping, eating or cooking, excluding bathrooms, toilets, hallways, storage areas, closets, utility rooms and similar areas. See also "occupiable space."*

Occupiable Space: *Any enclosed space intended for human occupancy, including habitable spaces as well as bathrooms, toilets, closets, halls, storage and utility areas, laundry areas, and similar spaces.*

Common Use Space: *Whoops, no definition...*

When these definitions are read together, they create an unintended conflict. A high-rise residential building is defined by the number of habitable stories, and a habitable story is defined by whether it contains habitable space. However, many of the common-use areas routinely found in multifamily residential buildings, including conditioned lobbies, leasing offices, mail rooms, corridors, fitness centers, community rooms, and similar amenity spaces, are not spaces used for living, sleeping, eating, or cooking. Instead, they fall under the broader definition of occupiable space.

As a result, a literal reading of the adopted definitions can lead to the conclusion that these common-use floors are not habitable stories, even though they are clearly part of the residential occupancy and have historically been treated as part of a high-rise residential building in situations like this. This creates a conflict between the adopted regulatory language and the Commission's longstanding interpretation, leaving designers and enforcement agencies to rely on guidance documents rather than the regulations themselves.

Historically, this has not been how California's Energy Code has been interpreted or enforced.

The Energy Commission has consistently treated these buildings as high-rise residential buildings, with the residential common-use spaces analyzed under the high-rise residential provisions while only nonresidential occupancies are analyzed under the nonresidential standards. This interpretation is reflected in the Residential Compliance Manual, Blueprint newsletters, and other published guidance.

For example, the 2022 Residential Compliance Manual (Section 1.5.7, Example 1-15) describes a four-story apartment building with a garage on the first floor and apartments above. The first floor contains a conditioned elevator lobby with a receptionist station, and the example concludes that the building is a high-rise residential building. However, the explanation reaches that conclusion by stating that the lobby meets the definition of a "habitable story," despite the adopted definitions of "habitable story" and "habitable space" creating uncertainty as to whether that conclusion can be supported by the regulatory language itself.

Similarly, Blueprint Newsletter questions addressing the classification of multifamily buildings consistently reach the Commission's intended outcome but do not resolve the underlying conflict between the adopted definitions and the intended interpretation. As demonstrated by

the recent inquiry, building officials are now relying on the regulatory definitions rather than the guidance documents, resulting in inconsistent enforcement.

The recent inquiry demonstrates that this inconsistency is no longer theoretical. An experienced building official relied on the plain language of the adopted definitions to classify a five-story multifamily building as low-rise residential. Although this conclusion is inconsistent with the Commission's intended application of the Energy Code, it is difficult to dismiss because it follows directly from the current definitions.

When experienced practitioners, building departments, and enforcement agencies can reasonably arrive at conflicting conclusions by reading the adopted regulations, the regulations have failed to communicate the Commission's intent. Guidance documents should reinforce the regulations, not compensate for ambiguous regulatory language.

Accordingly, I recommend that the Commission:

1. Revise the definitions used to distinguish low-rise and high-rise residential buildings so they clearly reflect the Commission's intended classification of multifamily residential buildings containing residential common-use spaces.
2. Clarify that residential common-use areas within an R-2 or R-4 occupancy, including conditioned lobbies, leasing offices, mail rooms, fitness rooms, community rooms, corridors, and similar spaces, do not alter the classification of the building as high-rise residential when the building otherwise meets the Commission's intended criteria.
3. Retire the existing Compliance Manual examples and Blueprint Newsletter Q&As addressing this topic, as they rely on reasoning that is difficult to reconcile with the adopted definitions.
4. Develop new Compliance Manual examples and Blueprint Newsletter Q&As based on the revised definitions so that the adopted regulations and the supporting guidance communicate the same interpretation using consistent reasoning.
5. Include examples illustrating common multifamily building configurations, such as podium construction, parking garages, conditioned lobbies, leasing offices, amenity floors, and mixed-use residential common spaces, to improve consistency among designers, compliance software developers, and enforcement agencies.

These revisions would:

- Align the adopted code language with the Commission's longstanding intent.

- Eliminate conflicting interpretations between the regulations and supporting guidance.
- Improve consistency among designers, energy consultants, software developers, and enforcement agencies.
- Reduce plan review disputes and requests for formal interpretations.
- Improve the clarity, predictability, and enforceability of the Building Energy Efficiency Standards.

The Energy Code should communicate its intent directly through the adopted regulations. Compliance Manual examples and Blueprint newsletters should serve to illustrate those regulations, not provide alternative reasoning to reach the intended outcome. Revising both the definitions and the supporting guidance will provide a clearer and more durable framework for classifying multifamily residential buildings under future editions of the Energy Code.

Thank you for considering this recommendation during development of the 2028 Building Energy Efficiency Standards.

Sincerely,

Brian Selby

Principal, Selby Energy, Inc.
CABEC Board President