

ATTACHMENT 1

LEGISLATIVE PLAN FOR SETTING OF FIRE SAFETY NON-BUILDING ACCESS STANDARDS WITHIN AN SRA

The question has been raised as to whether the County or the 13 Fire Districts ("Fire") has the responsibility and authority to set road access standards within the unincorporated areas of El Dorado County designated as a State Responsibility Area (SRA). ***This paper concludes the County alone has the power to adopt access road requirements within an SRA subject to minimum Fire Safe Standards*** (Title 14, et seq., California Code of Regulations). This grant of authority to the county is consistent with the state statutory scheme that requires the State Forestry Board under authority of Public Resources Code section 4290 to set minimum access or non-building standards in SRAs and for the Board of Supervisors, rather than local fire districts, to issue and approve building permits and subdivisions as meeting these requirements.

The elected body of the County Board of Supervisors sets road standards as an exercise of the police powers delegated to the County through ARTICLE 11, section 7 of the California Constitution. In addition, the Map Act grants to counties the power to regulate the design and improvement of roads, including "fire roads" (Government Code section 66410 et. seq.).

A recent bill passed by the legislature illustrates the state statutory scheme providing that counties set road standards within an SRA subject to the minimum requirements Title 14. AB 666 would have required the Board of Forestry to consider adopting regulations requiring a minimum of two separate access roads for a subdivision located in an SRA and the county to make specific findings before approving a tentative or parcel map in an SRA. The Governor vetoed this as well as a predecessor bill because "CalFire should not be placed in the position of having to act as a land use agency. Rather that responsibility rests with local governments and local officials." *Although both bills were ultimately vetoed by the governor, it is significant to note that the amendments and proposed regulations were incorporated into the Subdivision Map Act and Public Resource Code §4290 (Title 14), not the California Fire Code.*

Fire Districts do not have a comparable grant of authority to regulate road access. Fire Districts are included in the 3,600 special districts in California. The Fire Protection District Law of 1987 governs all 386 fire districts in the state. There are 13 Fire Districts in El Dorado County. Unlike counties, Fire Districts have not been delegated police powers and the Map Act authority to set "fire road" standards is limited to cities and counties.

The 2007 California Fire Code, a part of the California Building Standards Code, is based on the 2006 International Fire Code as the "model code". The State Fire Marshall reviews the "model code" language and determines whether to adopt, amend and adopt, or not adopt each provision contained in the model code. Only those provisions of the 2006 model code actually adopted, or adopted with amendments in California become the "2007 California Fire Code" which is required to be adopted by each jurisdiction. The 2007 California Fire Code is expressly limited to "building standards":

"California Fire Code Section 101.6 Non-building standards, orders and regulations. Requirements contained in the California Fire Code, or in any other referenced standard, code or document, which are not building standards as defined in Section 18909, Health and Safety Code, shall not be construed as part of the provisions of this code. For non-building standards, orders, and regulations, see other titles of the California Code of Regulations." (i.e. Title 14 for minimum access standards within an SRA and Title 19 for access standards to special occupancies (hospitals, government, selected commercial)).

In other words, the 2007 Fire Code adopted by the State of California does not set access standards. In fact, the 2007 Fire Code specifically states non-building standards (access) are found in other titles such as Title 14 which sets minimum access standards for an SRA.

A Fire District does not have the authority to impose more stringent building standards within a county, much less non-building access standards, unless the Board of Supervisors agrees (Health and Safety Code section 13869.7(c)). There is no comparable grant of authority for a Fire District to even consider setting road standards within a county. Even if the Board of Supervisors agreed, there would be an issue of whether the Board had the right to delegate the authority to set road standards to 13 special districts.

Since El Dorado County has the sole power to set road standards within the State Responsibility Area (SRA) subject to Title 14 (and Title 16 for special occupancies), how did we get in this regulatory thicket where Fire Districts have set road standards by Fire Code Amendment?

The Unique El Dorado County Experience with Fire District "Fire Access Road Amendments"

At a recent Board of Supervisor fire workshop, Supervisor Briggs asked the key question at least four times: "Who sets the fire road access standards? Does the BOS have the authority? Did we ever have the authority? Did we give up the authority?" After a few hours of testimony and no clear answer, the BOS directed the issues to EDAC for review.

Considering the Board has always had the authority to set access standards, we must review the events that led to the fire workshop and the questions.

The California Building Standards Code consists of 12 parts, including the Building Code, Plumbing Code and Fire Code, among others. The 2007 California Fire Code is based on the 2006 International Fire Code as the "model code". Not all of the model code provisions are adopted in California. Those provisions of the 2006 model code that are adopted in California along with California amendments become the "California Fire Code". The California Fire Code, 2007 Edition does not include non-building or access standards found in Chapter 5 and Appendix D of the model code. In fact, the California Fire Code section 101.6 specifically states,

"Requirements contained in the California Fire Code, or in any other referenced standard, code or document, which are not building standards as defined in Section 18909, Health and Safety Code, shall not be construed as part of the provisions of this code. For non-building standards, orders, and regulations, see other titles of the California Code of Regulations. ("Other titles" refers to Title 14 Fire Safe Regulations and Title 19 for special occupancies.)

In short, the California Fire Code, 2007 Edition, does not include fire road or access standards.

The State requires each county to enforce the California Fire Code, 2007 Edition (which does not include access standards). If a county did not take any action to affirmatively adopt the 2007 Fire Code was deemed adopted on January 1, 2008. About 1/3 of California jurisdictions took no action and the Fire Code was automatically operative on January 1, 2008.

The 13 Fire Districts in El Dorado County adopted the 2007 Fire Code and added local amendments regulating access. These Fire Codes with the access road amendments were presented to the Board of Supervisors for approval on February 22, 2008. This item was not accompanied by a staff report. The Board of Supervisors "ratified the 2007 Fire Code as adopted by

the individual fire districts". In addition, the BOS delegated the enforcement to the Fire Districts rather than the County Building Official.

A review of the February 22, 2008 action indicates the Fire Districts and County believed this "ratification" to be consistent pursuant to Health and Safety Code section 13869.7. However, this action requires that any fire protection district that proposes to adopt an ordinance which includes building standards more stringent than those included in the Fire Code must both seek Board of Supervisor approval and the Board must delegate enforcement to the Fire Districts or the County Building Official for single family residential only. H&S section 13869.7 does not authorize the Fire Districts to adopt ordinances relating to non-building standards (access) nor empower the County to grant such authority to the Fire Districts.

Effect of Fire Access Amendments

The Fire District amendments are not consistent with the state statutory scheme for SRAs that access standards (non-building standards) be treated in Title 14 and the County's subdivision ordinances and building standards are addressed in Title 24. The Fire District amendments to the 2007 Fire Code (Title 24) have attempted to incorporate non-building standards access requirements into the building standards code. The result has been confusion and conflict. Examples include the following:

First, the Fire Code amendments place the fire districts in paramount position to the Board of Supervisors, in direct conflict with the statutory scheme regarding setting and enforcement of access standards within an SRA. The Fire Code amendments make the Fire Code the operative document and each of 13 fire officials the arbiter for application and exceptions. Appeals from such decisions go to the 13 fire district boards. This contrasts to the state statutory scheme which empowers the Board of Supervisors to both set standards and to act as the appeals board (Title 14).

Second, Fire Code amendments allow a balkanized road system, set by 13 Fire Districts rather than the Board of Supervisors.

Third, Fire Districts do not approve subdivisions or issue building permits and do not set access standards. Fire Districts review plans to see if they conform to standards set by the Board of Supervisors and may make recommendations related to fire safety. Since the Fire Districts do not have the power to issue or approve subdivisions or building permits, how do they propose to enforce these edicts?

Fourth, after one BOS workshop and 2 EDAC workshops, there is little disagreement the Fire Code amendments, when read literally, would prohibit new construction on many existing legal parcels and prevent the division of land otherwise allowed by Title 14 Fire Safe Standards. Fire Districts respond they will be judicious in their new power. Although well meaning, these interpretations and exceptions to reach a desired result are inappropriate. Where two regulations conflict with one another, the general rule of construction is that the more restrictive regulations should apply. One does not look to the less restrictive regulation in a different Title to make exceptions to an unworkable, poorly drafted non-building standard that has been incorporated into the building standards (Fire) code.

Fifth, Fire Code amendments require a 20 foot Fire Apparatus Access Road from a fire station to every building hereafter constructed - unless the applicable fire official says otherwise. Title 14 Section 1270.02 does not apply to "existing roads", pre 1991 activity and other exceptions. The local amendments pertaining to Fire Apparatus Access Roads do not include these exemptions. Thus the

local amendments are considerably more restrictive than the Title 14 requirements. Any construction of a house accessed by any road(s) that are not at least 20 feet wide all the way from the fire station to the house fails to meet the requirement unless the Fire Department approves an exception. In other words, the law is no construction, even on existing legal parcels, unless the fire department agrees.

The same rule may be used to defeat any parcel splits on property not accessed by a 20 foot road all the way from the fire station. The attached map illustrates public streets less than 20 feet. In addition to these streets, there is a spider web of private roads less than 20 feet. In addition, Fire District local amendments have increased the 20 feet to as much as 40 feet if parking is allowed. A map depicting roads less than 28 feet would greatly expand the list of roads that do not meet the Fire District amendments if on-street parking is required. New construction off these roads is precluded unless the fire district within the road systems agrees to accept the construction.

Sixth, the local Fire District amendments to street widths to accommodate parking result in wider roads than necessary to accommodate other uses. For example, since parking is not allowed on streets less than 30' (and even then on one side) a 28' wide road in a residential neighborhood with parking prohibited is too wide, and will result in excessive speeds though the neighborhood. Additionally, the footprint of development is expanded, increasing environmental effects and costs. Because of the topography in the foothills, the increased grading required to build wider roads is often much greater than just the nominal increase in the paved surface (i.e. 4' of increased paving might extend grading 20' or more as you chase the slopes up and downhill).

Attorney General Opinions Relating to Fire Districts/County Authority

If there remains an issue as to whether or to what extent Fire Districts have the independent authority to enact and enforce non-building access standards within an SRA, then the issue should be presented to the Attorney General for opinion and/or legal action may be initiated seeking a judicial declaration as to the powers of Fire Districts to set road standards.

The Attorney General has already addressed related issues in Attorney General Opinion 88-904 – September 14, 1989 where the question was “May a fire protection district adopt a fire prevention code or regulations setting forth building standards relating to fire and panic safety that are stricter than those contained in the State Building Standards Code”. The opinion found a fire district did not have the power to pass an ordinance setting building standards more stringent than the Fire Code, “Unlike cities and counties, fire protection districts are not granted broad police power authority by the state Constitution. (Cf., Moore v. Municipal Court (1959) 170 Cal.App.2d 548, 555; 68 Ops.Cal.Atty.Gen. 225, 229 fn. 3.) They are creatures of statute, which serves to define their powers and duties. (Cf., 68 Ops.Cal.Atty.Gen. at 228; 25 Ops. Cal.Atty.Gen. 234, 235 (1955); 10 Ops.Cal.Atty.Gen. 47, 48 (1947).) Further, the Attorney General discussed the broad power granted all special districts, including fire districts, and found the power to adopt ordinances is limited by more specific laws.

In reaction to this Opinion, the legislature adopted Health and Safety Code Section 13869.7 which allows fire districts to adopt ordinances increasing building standards, and giving the Board of Supervisors authority to ratify, modify, or deny those more restrictive ordinances.

Attorney General Opinion 94-708 – March 7, 1995 opined, “As a condition of issuing a building permit for construction of a single-family residence, a city or county may require by ordinance the installation of a paved driveway from the property line to the residence for emergency vehicle

access". The Opinion found a City or County could make such a requirement and such a road would be a non-building standard.

What is the Relationship between Fire Districts and County with regard to Road Standards?

1. Subdivision maps within an SRA must meet the minimum Title 14 Fire Safe Regulations. The Fire Safe Regulations allow the County to approve deviations from the standards that would achieve the 'same practical effect'. The County must submit projects in SRAs to CalFire for comments. The County may allow the Fire Districts to sign off on that the standards have been met. However, this does not allow the Fire Districts to set the standards or require Fire District approval of the subdivision.

2. Building permits are issued and approved by the County. The Fire Districts may be assigned responsibilities that relate to enforcement of the Building Standards Codes (Plumbing, Fire). These codes are limited to building standards. Recently, the State amended Title 24 to require increased building standards for new buildings located in any Fire Hazard Severity Zone within State Responsibility Areas. These increased building standards are found in Chapter 7 and Chapter 47 of the Fire Code and are referred to as the "Wildland-Urban Interface" or ("WUI") standards. The County may determine to designate either the Chief Building Official or Fire Code Official as responsible for enforcement of the building standards codes for R-3 occupancies (primarily) single family residential building permit applications. EDC has designated the Fire Districts, which subjects Mom/Pop applicants to a process involving different fire departments. Designation of the Chief Building Official or a County Fire Marshall would result in more uniform and consistent interpretation and would make the building permit process more user friendly. Commercial/industrial and most Multi-Family are still subject to enforcement by the fire official.

3. It is good practice for Fire Districts to review all proposed maps and building permits to ensure that the plans comply with all applicable fire codes and regulations. It may also be a good practice for the Fire Districts to sign off after review. However, this review or checklist against existing regulations is not a bootstrap authorization to enact more stringent regulations.

Liability Concerns do not Support Fire Districts Setting Access Standards

Some have advanced the idea that if Fire Districts set the access standards then the Fire Districts, and not the county, would be responsible for damages caused by allegedly inadequate fire access roads. This is not a valid argument to support Fire Districts setting access standards.

Government Code 850 immunizes public entities from liability for injuries caused in fighting fires: "Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service." Subsequent sections of the same code immunize public entities from liability for "any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities[.]" (Gov. Code, § 850.2), or for "any injury resulting from the condition of fire protection or firefighting equipment or facilities or . . . for any injury caused in fighting fires." (Gov. Code, § 850.4.) The statutes preclude an action against a public entity for "failure to arrive at a fire in a timely manner" "even when that failure is caused by the firefighters' negligence or willful misconduct. (*San Francisco v. Superior Court* (1984) 160 C.A. 3d 837,838-839.) This broad grant of immunity means that public entities owe no duty to persons or property damaged by fire. (See, *People ex rel. Grijalva v. Superior Court* (United Water Conservation Dist. (2008) 159 Cal.App.4th 1072 at 1078).

Government Code section 850 and 850.2 are designed to provide immunity to a public entity from consequences which might otherwise result from its political decision to provide, or not to provide, fire protection to the public generally, and the extent to which such fire protection is in fact provided. (*Cairns v. County of Los Angeles* (1997) 62 C.A. 4th 330 at 335, citing and discussing the Cal. Law Revision Com. com. to §§ 850, 850.2.) In *Cairns*, property owners sued the City of Malibu and the County of Los Angeles for failure to keep a roadway open necessary for fire access. The homeowners alleged damage to houses would have been prevented if the access road was maintained. The city and county were found to be immunized from suit, Section 850.4, and related statutes such as section 850.2, were enacted to protect the discretion of public officials in determining whether fire protection should be provided at all, and, if so, to what extent and with what facilities. The statutes recognize that these are essentially political, local policymaking decisions that should not be second-guessed by judges or juries.

Conclusions

The Fire Safe Regulations found in Title 14 as modified by the County in 1992 have been followed with little confusion for 17 years, consistent with State law. The mix of Title 14 and the Fire District amendments has created a regulatory quagmire that has not been able to be understood after at least three workshops. The reason is the Title 14 Fire Safe Regulations and the Fire District amendments were not meant to be intertwined and it is futile to make sense or reconcile two sets of regulations that were not designed or intended to be reconciled. Each time a new problem is presented, the confusion is answered with a new interpretation.

The Fire Districts simply passed a "wish list" of increased access standards to the Fire Code mandated by the State and forwarded the amendments to the County for ratification. These were "ratified" by the county apparently based on assumptions they were ratifying the Fire Code, 2007 Edition. This action should be reconsidered or rescinded with the direction:

1. Title 14 Fire Safe Regulations as amended in 1992 remain in effect as they have since 1992 and are consistent with the legislative plan. The regulations adopted by County should be enforced by County in the same manner as they have for the last 17 years.

2. The Fire Code adopted by California should be adopted by El Dorado County as part of the Building Standards Code and should be enforced according to the requirements of the Code.

A Fire Ordinance should be processed by El Dorado County that incorporates Title 14 as adopted in El Dorado County and considers the more stringent non-building access requirements adopted by the Fire Districts. As part of this authorized process the County will weigh the competing interests that must be considered by the County, including fire and traffic safety, community character and environmental effects. Amador County has adopted such an ordinance that was reviewed and accepted by the State Forestry Board.

ATTACHMENT 2

Summary of Fire Safety Regulations Applicable to New Construction and Development in El Dorado County

In August, 2009, the Board of Supervisors held the second of two workshops concerning Fire Safe Regulations, the 2007 California Fire Code, the relationship between the two and the effect on land use policy in the County. At that workshop, the Board referred the issue to EDAC to work with staff, CalFire and the Fire Districts to compile one set of comprehensive standards for the County. EDAC has referred the issue to its Regulatory Reform Subcommittee. This analysis is provided to the Subcommittee as the first step in the process to answer the most basic questions: "What are the regulations that have been adopted by the State and must be enforced by El Dorado County?" and "Who has the authority to adopt other, more restrictive, regulations?"

Executive Summary

Our review of state legislation and authorized regulations leads to the following conclusions:

- "State Responsibility Area Fire Safe Regulations" adopted by the Board of Forestry under authority of Public Resource Code Section 4290:
 - Are the minimum "non-building standards" that must be enforced by the County within State Responsibility Areas. These standards address emergency access, signage, water supply and fuel breaks.
 - Include provisions for "same practical effect" alternatives and the opportunity to appeal to the Board of Supervisors for an exception.
 - Require that the construction of new roads (or extension of existing roads) comply with access road standards. The standards do not apply to existing roads.
 - May require applicant for a building permit to construct onsite driveway, but do not require offsite road widening as condition of building permit issuance.
- The County has authority to regulate design and improvement of subdivisions under the Subdivision Map Act, and broad authority to regulate land use under police powers granted to cities and counties under the State Constitution. Accordingly, the County may adopt more stringent regulations for road width, surface grades, curve radius, etc., than those contained in the SRA Fire Safe Regulations.
- The California Fire Code, as adopted by the responsible state agencies:

- Contains the minimum "building standards" applicable to buildings in the state, and must be enforced by the County.
- Does not include "non-building standards" such as road width, surface, grades, curve radius, turnarounds or dead-end road standards. As shown in the Matrix Adoption Tables, the state did not adopt any of the *model code language* pertaining to fire apparatus access roads, found in Appendix D and Chapter 5.
- The County may adopt more stringent building standards than those contained in the California Fire Code, and the County may *ratify, modify or deny* ordinances adopted by local fire protection districts which adopt building standards more restrictive than those contained in the California Building Standards code, including the California Fire Code. In either case, findings are required that the more stringent *building standards* are required due to unique climatic, geological or topographical conditions.

Background and Statement of the Issues

A Board of Supervisors workshop was held on August 18, 2009 to address the relationship between various state regulations dealing with defensible space, fire and panic safety, and the application of those regulations to permits issued by the county, including both building permits and new subdivision approvals. The County is familiar with and has routinely enforced state regulations pertaining to defensible space and fire safety. Recent adoption of the 2007 California Fire Code by the state, and its relationship to other state regulations, seems to be the main source of confusion and misunderstanding. Many important questions were raised during the course of the discussion that day.

An understanding of these issues is critical to many of the decisions routinely facing county staff, and decision-makers, including the Planning Commission and Board of Supervisors. Additionally, the county is in the process of updating both its Zoning Ordinance ("ZO"), and Design and Improvement Standards Manual ("DISM") which must, at a minimum, comply with regulations adopted by the state.

Before the county can undertake revision of major policy plan documents such as the DISM, some fundamental questions must be answered, including:

1. What are the laws and regulations adopted by the state that must be enforced by the County when issuing various permits, such as building permits, special use permits, and approval of subdivisions?
2. If more stringent regulations than those adopted by the state are considered to be appropriate, (a) what is the process for adoption of more stringent regulations, and (b) who has the ultimate authority to adopt those more stringent standards?

3. Who is responsible for enforcement of adopted *building* and *non-building standards* in El Dorado County?

I. Authority for Fire Regulations in California

A. Fire Safe Regulations for State Responsibility Areas

In 1987, the Public Resource Code was amended to add Section 4290 and 4291 to address minimum fire safety standards and the provision of defensible space within lands designated as State Responsibility Areas. State Responsibility Areas ("SRA") are those areas in which the financial responsibility for preventing and suppressing fires is primarily the responsibility of the state. Most of the territory within El Dorado County, except federal lands, land within the City of Placerville, and small portions of the communities of El Dorado Hills and Cameron Park are within SRA. A map of the SRA is attached as Exhibit "A".

Public Resource Code Section 4290 directed the Board of Forestry to adopt minimum fire safety standards related to defensible space within SRA, applicable to the perimeters and access to all residential, commercial and industrial building construction approved after January 1, 1989 (later extended to January 1, 1991). PRC Section 4290 expressly prohibits adoption of "building standards" as defined in Health and Safety Code Section 18909. Instead, the Board of Forestry's authority is limited to the adoption of regulations related to non-building standards, including all of the following:

- Road standards for fire equipment access
- Signage for streets, roads, and buildings
- Private water supply reserves for emergency use
- Fuel breaks and greenbelts

Public Resource Code § 4290 includes the following exemption:

"These regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance."

The regulations adopted by the Board of Forestry to implement PRC § 4290 are found in the California Code of Regulations, Title 14, Sections 1270 through 1276.03. These regulations are commonly referred to as the "SRA Fire Safe Regulations".

During the Board of Supervisors' workshop on August 18, 2009, there was considerable discussion about the scope and application of these regulations to new

construction activity. In particular, some Board members were concerned that a plain reading of the language of the regulations might require the County to impose offsite road improvements as conditions of building permit issuance, or alternatively, deny a building permit application where existing roads did not meet the minimum standards of the SRA Fire Safe Regulations.

The meaning of the PRC 4290 exemption cited above has been addressed by the following:

1. A detailed reading of PRC 4290 and the adopted regulations found in Title 14 provides clarification. PRC 4290 directed the Board of Forestry to adopt "...regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands...". The term "defensible space" is defined in Title 14, Section 1271.00 as "the area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented...The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or development, excluding the physical structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, street names and building identification, and fuel modification measures." In essence, the regulations do not extend to areas "offsite" of the proposed construction or development activity.

PRC § 4290 includes a "grandfather clause" providing that "[t]hese regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance."

Additionally, Title 14, § 1270.02 addresses the scope of PRC § 4290, by providing that the regulations "do not apply to existing structures, roads, streets, private lanes or facilities..." but do apply "as appropriate to all construction...approved after January 1, 1991..." including "...permitting or approval of new parcels...application for a building permit for new construction..." and "...road construction, including construction of a road that does not currently exist, or extension of an existing road." An exemption is provided for "...roads required as a condition of tentative parcel maps..." prior to January 1, 1991.

2. In response to a request from County Counsel of Amador County, the California Attorney General ("AG") issued Opinion 92-807, on March 17, 1993. The AG concluded that the SRA Fire Safe Regulations "apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the

perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps." A copy of the AG Opinion No 92-807 is attached as Exhibit "B".

3. The manner in which the issue is interpreted in other jurisdictions can provide guidance to address this issue as well. Section 1270.03 of the SRA Fire Safe Regulations permits the Board of Forestry to certify ordinances adopted by a local jurisdiction as equaling or exceeding the state regulations if the local ordinances provide the same practical effect.

The BOF has certified local ordinances in about 80% of counties in the state since 1991. The Board of Forestry ("BOF") approved El Dorado County's request for certification of its local ordinance based on the County's Design and Improvement Standards Manual (adopted in 1986 and revised in 1990.) A copy of the El Dorado County version of the SRA Fire Safe Regulations with local ordinance references is available at www.co.el-dorado.ca.us/building/FSRegs.htm.

In 2006, Amador County's local ordinance, attached as Exhibit "C" was certified by the Board of Forestry. Amador's ordinance varies from the language contained in the SRA Fire Safe Regulations, but has been certified because it achieves the "same practical effect" as the regulations adopted by the state.

Notably, the ordinance adopted by Amador County provides language clarifying the extent of improvements required when a building permit or grading permit is the only approval sought for a parcel (See Exhibit "C", Section 15.30.120. A.1.). Under those circumstances, the ordinance provides that "improvements required by this section shall not be imposed on any existing driveway, road, right-of-way, easement, or real property other than on the parcel for which the building permit is sought." In other words, only onsite road or driveway improvements could be imposed as a condition of a building permit or grading permit. However, Amador County may require offsite improvements for subdivisions, parcel maps, use permits, general plan changes and zone changes at the discretion of the decision-making body. **The ordinance containing this language has been certified by the BOF as compliant with the requirements of PRC §4290.** This clarifying language is consistent with the exemption under PRC §4290, and Title 14, Section 1270.02.

4. Two recent unpublished Fifth District Court of Appeal cases¹ involving the same defendant landowner, addressed the fire access road requirements of PRC §4290 as an ancillary matter. Among other issues raised in the litigation was the question of whether or not the paving of a dirt road built before the effective date of the SRA Fire

¹ (James B. Dean, et. al. v. Deerwood Corporation, et. al., Mariposa Superior Court No. F054026, March 5, 2009)

Safe Regulations required compliance with the minimum road width standards. Relative to PRC §4290, the opinion says "When a new road is built, certain width and grade standards are required in order to provide access for firefighting equipment...In ordinary parlance, improvement of an existing road does not make it a new road." "At the very least, the county could reasonably exercise its discretion to determine that the fire safety access road regulations were not applicable to the paving of an existing unpaved road that, neither before nor after paving, was the primary access road to the relevant properties."

B. California Fire Code (Part 9 of the California Building Standards Code)

The adoption of a single comprehensive set of building standards codes is a relatively new development in the State of California. Until the late 1970's, as many as 20 state agencies (from the State Architect to the Barber's Licensing Board) had statutory authority to develop and adopt building standards. These building standards were found in various portions (known as "Titles") of the California Code of Regulations. This process resulted in an uncoordinated proliferation of often conflicting, duplicate and overlapping regulations.

In 1978, to correct the problems and confusion caused by the decentralized code adoption process, SB 331 expanded the authority of the California Building Standards Commission ("Commission") to require that building regulations proposed to be adopted by state agencies must first be reviewed and approved by the Commission. That legislation also required that the building standards contained in the California Code of Regulations be consolidated into a single set of regulations under Title 24. Further, the Commission is charged with responsibility for ensuring that proposed building standards meet the following criteria found in Health & Safety Code Section 18930 (a):

1. The regulation does not conflict, overlap, or duplicate other regulations.
2. The regulation is within parameters of enabling legislation.
3. The public interest requires the adoption of the regulation.
4. The regulation is not unreasonable, arbitrary, unfair, or capricious.
5. The cost to the public is reasonable, based on the overall benefit derived from the regulation.
6. The regulation is not necessarily ambiguous or vague.
7. Applicable national standards, published standards, and model codes have been incorporated.
8. The format of the regulation is consistent with the Commission's format.
9. The regulation, if it promotes fire and panic safety as determined by the State Fire Marshal, has their written approval.

Other legislation adopted since 1978 transfers building standards adoption authority of other state agencies (including the State Fire Marshal) to the Commission, but provides that the Commission's authority to review fire and life safety building standards is limited to a technical review for compliance with the nine-point criteria outlined above. The Commission may not revise or re-write fire or life safety building standards without the express mutual agreement of the State Fire Marshal, and where the State Fire Marshal does not agree with the modification, the Commission's authority is limited to disapproval of the standard pursuant to the nine-point criteria. In essence, the Commission relies substantially on the technical expertise of the State Fire Marshal in adoption of building standards relating to fire and panic safety.

The California Building Standards Code ("CBSC") consists of twelve parts, including the Building Code, Plumbing Code, Electrical Code, Mechanical Code, and Fire Code, among others. Many parts of the CBSC are based on "model codes", proprietary documents developed by private organizations such as the International Conference of Building Officials or the International Code Council. These private entities are generally funded by the sales of the "model codes", reprint royalties and consulting services provided to state or local government entities. The primary advantage of using a "model code" as the basis for state or local government regulations is that it results in greater consistency between jurisdictions and enhanced technical expertise at a cost that is much less than the cost that would be incurred if each jurisdiction were to develop its own regulations.

Generally, the Commission updates the CBSC every three years. The most recent code adoption cycle occurred in 2007, with revised codes becoming effective on or about January 1, 2008. The next triennial code adoption cycle is now underway, with code adoption expected in 2010, to become effective in January, 2011.

The enabling legislation for building standards adoption defines the term building standards to refer generally to materials, performance standards, and methods of construction. The definition of "building standards" does not include items such as road width, turnarounds, length of dead-end roads or similar standards that are not building standards as defined in the Health & Safety Code. The State Fire Marshal ("SFM") has declined to adopt any of the provisions contained in the "model code" that are considered "non-building standards". Moreover, the SFM adopted the following state amendment to the model code to add a provision clarifying that "non-building standards" contained in the model code are not adopted, and are not considered a part of the code:

"California Fire Code Section 101.6 Non-building standards, orders and regulations.

Requirements contained in the California Fire Code, or in any other referenced standard, code or document, which are not building standards as defined in Section 18909, Health and Safety Code, shall not be

construed as part of the provisions of this code. For non-building standards, orders, and regulations, see other titles of the California Code of Regulations."

1. The Significance of "Matrix Adoption Tables" in the California Fire Code

The 2007 California Fire Code ("CFC") is based on the 2006 International Fire Code as the "model code". Under regulations of the Commission, various state agencies review the selected model code to determine whether to adopt, modify, or decline to adopt portions or all of the model code. The CFC includes a "Matrix Adoption Table" listing which state agency has determined to adopt provisions of each chapter of the "model code", and whether each chapter is adopted as written, adopted with modifications to certain sections, whether only specific sections are adopted, or whether the chapter is not adopted at all. *The Matrix Adoption Tables are an integral part of the California Fire Code, and without those tables the reader cannot ascertain which provisions of the model code have been adopted into state law.*

The "Preface" to the CFC (attached as Exhibit "D") explains how to utilize the Matrix Adoption Tables to identify which portions (if any) of various Chapters have been adopted or amended by various state agencies.

A copy of Chapter 5 of the CFC is attached as Exhibit "E". This Chapter is used to demonstrate how the Matrix Adoption Tables are to be applied. The Matrix Adoption Table for Chapter 5 shows that the SFM has adopted only five sections: 503.5.2, 508.3, 508.5, 508.5.3, and 509.1. All of these sections have been modified by state amendments (distinguished from the model code language by the use of italics).

Other portions of Chapter 5, are often mistakenly cited as the basis for so-called "requirements" for minimum fire apparatus access road standards, when these sections have, in fact, not been adopted by any state agency. Sections not adopted by state agencies are not to be interpreted as part of the CFC and therefore are not state-mandated requirements. For example, Section 503.2.1 of the model code reads as follows:

"503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches."

As reflected in the Matrix Adoption Tables, this section has not been adopted by the State Fire Marshal or other state agency, and therefore is not a part of the CFC. This provision is not required to be enforced by any local jurisdiction. The Matrix Adoption Tables also indicate that the entire Appendix D, (attached as Exhibit "F") was not adopted by the State Fire Marshal. Moreover, access road width, (as well as surface, grade, turnarounds and similar criteria) are not a "building standards" within the

meaning of Health & Safety Code Section 18909, and would not be construed to be a part of the Fire Code pursuant to CFC Section 101.6, referenced above. In short, there is no "state law" within the building standards code which mandates that fire apparatus access roads be a minimum of 20' wide.

A comprehensive explanation regarding the use of the Matrix Adoption Tables can be found at http://www.documents.dgs.ca.gov/bsc/Title_24/Title_24_Training_for_CBSC.doc.

2. Adoption and Amendment of California Building Standards Codes by Local Jurisdictions

Cities and counties are required to enforce the provisions of the CBSC as adopted by various state agencies. Local governments may amend the CBSC to adopt *building standards* that are more stringent than the standards contained in the code. The procedure for adoption of local amendments by a city or county are as follows:

- The governing body of the local government must make express findings that amendments to the building standard are necessary because of local climatic, geological or topographical conditions.
- The local government amendments must provide a more restrictive building standard than that contained in the CBSC.
- The amendments are not effective until copies of both the express findings and the amendments, with the amendments expressly marked and identified as to the applicable findings, have been filed with the Commission.

Fire protection districts may adopt amendments to the *building standards* in the California Fire Code adopted by the State Fire Marshal for fire and panic safety under a similar procedure. Amendments adopted by fire protection districts must be presented to the legislative body of the city, county or city and county in which the amendments will apply. The legislative body of the city, county, or city and county may ratify, modify, or deny the fire protection district amendments. The procedure is as follows:

- The fire district board must make an express finding that amendments to *building standards* for fire and panic safety that are contained in the CBSC are necessary because of local climatic, geological or topographical conditions.
- The fire district is required to notify the city, county, or city and county where the amendments will apply of the proposed amendments, and receive their comments.
- Upon adoption by the fire district board, the amendments are required to be presented for consideration to the city, county, or city and county

where the amendments will apply. The city, county, or city and county may ratify, modify or deny the proposed amendments. Any modification or denial of an adopted ordinance shall include a written statement describing the reasons for any modifications or denial.

Where a local fire district amendment to *building standards* is ratified by a city or county, the city or county is required to delegate the enforcement of the ordinance to either (a) the chief of the fire protection district that adopted the ordinance, or (b) the chief building official of the city or county, or their authorized representatives.

C. Fire and Panic Safety Regulations adopted by the State Fire Marshal for Special "Occupancies"

Under authority of various provisions of the Health & Safety Code, the State Fire Marshal adopts fire and panic safety regulations pertaining to certain special uses, referred to as "occupancies". These specialized regulations are found in Title 19 of the California Code of Regulations. The types of occupancies covered by the scope of Title 19 include jails, hospitals, mental hospitals, theaters, auditoriums, schools, skating rinks, night clubs, bars and restaurants. Title 19 covers state institutions, state-owned or state-occupied buildings and high-rise buildings (over 75 feet). (A comprehensive list can be found at 19 CCR §1.03.)

19 CCR §3.05 requires all-weather hard-surface access roads from the building to the public street for fire apparatus access for occupancies included in the scope of these regulations. Title 19 regulations apply to a small number of properties in the County.

D. Constitutional and Statutory Authority of Cities and Counties to Regulate Land Use and Subdivision Design

Counties and cities have broad authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The authority is found in the California Constitution:

"A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws." (Article XI, Section 7)

Government Code §66411 provides that "regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies". "Design" is defined as:

"...(1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) other specific physical requirements in the plan and configuration of the entire subdivision that are necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan." (Government Code §66418.)

E. Failed Legislation – AB 2447 (2008/Jones) and AB 666 (2009/Jones)

During the past two legislative sessions, Assembly Bills were introduced that would have amended state laws to regulate the conditions under which counties could approve new tentative maps and parcel maps.

AB 2447 (Jones, 2008) would have amended the Subdivision Map Act (Government Code §66474) to require the legislative body of a city or county to deny an application for a tentative map (or a parcel map where a tentative map is not required) on lands within a high- or very-high fire hazard areas, except where the city or county made findings, based on substantial evidence in the record, that:

- Sufficient structural fire protection is available for the subdivision, and
- Adequate access is available, including two points of access into and out of the subdivision. An exception (for not more than 30 lots) could be made where access was found to be infeasible due to topographic limitations or land ownership patterns.

AB 666 (Jones, 2009) would have added a section the Subdivision Map Act (Government Code § 66474.02) requiring that a local jurisdiction deny a proposed tentative map or parcel map unless the jurisdiction made three specific findings prior to approval:

1. that the design of the subdivision is in compliance with the SRA Fire Safe Regulations adopted pursuant to Public Resource Code §4290,
2. that structural fire protection is available for the subdivision, and
3. that ingress and egress for the subdivision meets the road standards for fire equipment access in the SRA Fire Safe Regulations adopted pursuant to Public Resource Code §4290.

In addition, the AB 666 would have amended Public Resource Code §4290 requiring the Board of Forestry to initiate a rule-making process prior to January 1, 2011, to consider adopting regulations requiring a minimum of two separate access roads for a subdivision located in a state responsibility area or a very high fire hazard severity zone.

Although both bills were ultimately vetoed by the governor, it is significant to note that the amendments and proposed regulations were incorporated into the Subdivision Map Act and Public Resource Code §4290, not the California Fire Code. The failed legislation illustrates the legislative strategy that separates building standards, which are incorporated into the Building Standards Code (Title 24), from non-building standards, including fire access roads, which are regulated under the land use authority of cities and counties, subject to the Fire Safe Regulations found in Title 14.

F. Enforcement Authority

As a general rule, the agency with primary authority for adoption of a regulation, also has primary responsibility for enforcement. The County is responsible for approval of new subdivision or parcel maps, and accordingly must enforce and interpret the SRA Fire Safe Regulations and other subdivision regulations adopted by the County. The County building department is responsible for the review and approval of building plans and the issuance of building permits for new construction.

Proposed discretionary permit applications, are submitted to both CalFire and the local Fire Districts for review and comment before the permit application is considered by the decision-making authority. Building permit applications are submitted to the local Fire District for review for compliance with the *building standards* included in the California Fire Code.

G. Future Discussions

The purpose of this analysis is intentionally limited to address the issues identified at the beginning of this paper. The Subcommittee concludes that the County has broad authority to regulate design of subdivisions, including standards for fire access roads. The next step should include an analysis of the standards contained in the local fire district amendments to determine which of those standards should be adopted by the County into its design manuals, including the Highway Design Manual. The County's analysis should encompass both public safety considerations, as well as impacts to the environment, the cost of infrastructure and the character of the County's rural communities.

Exhibits

ATTACHMENT 3

Fire Road Issues
 EDAC Regulatory Reform Subcommittee – December 18, 2009

| Parameter | Title 14 Fire Safe Regulations | Local Fire District Amendments | Issues for Discussion; Recommendation |
|-----------------------|--|---|--|
| Scope and Application | <ul style="list-style-type: none"> • Applies to new road construction and new parcel creation. • Applies within the perimeter of parcels proposed for construction or development. • Does not apply to existing roads, or to existing legal parcels. • Does not require construction of new roads or widening or improvement of existing roads as a condition of building permit. • County may require driveway construction or construction of onsite road improvements for new building permits. • Does not require construction of offsite roads, but County may impose such requirements as conditions of approval of new parcels (TM/PM). | <p>Local amendments are incorporated into Building Standards Code (Title 24, Part 9). Adopted language requires fire apparatus access roads "from the fire station to the building" meeting the requirements of the local amendments to be provided for every new building hereafter constructed or moved into in the jurisdiction.</p> | <p>Confirm consensus re: Title 14 Fire Safe Regulations.</p> |
| Road Width | <p>18' Minimum for new roads</p> | <p>20' Minimum, where no fire hydrants. 26' Minimum where community equipped with fire hydrants 30' Minimum if parking to be allowed on one side of road 40' Minimum if parking allowed on both sides of road May be increased where fire code official determines necessary</p> | <p>Local Amendments are "slippery slope" leading to road widths that are excessive and incompatible with traffic calming/traffic safety in residential neighborhoods. Continue to utilize recently adopted Road Standard 101C for local residential roads.</p> |

| Parameter | Title 14 Fire Safe Regulations | Local Fire District Amendments | Issues for Discussion; Recommendation |
|--------------|---|--|--|
| Surface | In conformance with local ordinances, capable of supporting a 40,000 pound load. | All-weather surface capable of supporting a 75,000 pound load. | Utilize Title 14 Standards. |
| Grades | Not to exceed 16%. | Not to exceed 10%, except as approved by the fire chief. | LDM used 10%. This is inconsistent with efforts to minimize impacts to slopes, visual and biological resources. Continue to use 16% maximum pursuant to Title 14; a lower maximum grade might be appropriate in areas at higher elevation (3,000). |
| Radius | Minimum 50' horizontal inside radius; 4' additional surface width for curves from 50' to 100'; 2' additional surface width between 100' and 200'. Vertical curves not less than 100' | To be determined by fire code official. | Standards contained in adopted DISM are probably OK. |
| Turnarounds | Where required, minimum turning radius of 40' from centerline of road. Hammerhead/T to be a minimum of 60' in length. | Dead-end roads in excess of 150' shall be provided with an approved fire apparatus turnaround. Hammerhead to be 120' in length, cul-de-sacs 96' in diameter. | Utilize Title 14 standards. |
| Turnouts | Minimum 10' wide, 30' long with 25' tapers at either end. | | Utilize Title 14 standards. |
| Structures | Must meet maximum load and vertical clearance requirements of Vehicle Code | Must meet requirements of AASHTO-HB17. Must meet imposed loads of fire department apparatus. | AASHTO H-20? |
| One-Way Road | Minimum one 10' traffic lane. Maximum length 2640'. May provide access to area zoned for not more than 10 DUs | | |
| Dead-End | Maximum length based on following | Based on length of road: | Exception in DISM is more restrictive. |

| Parameter | Title 14 Fire Safe Regulations | Local Fire District Amendments | Issues for Discussion; Recommendation |
|------------------|--|--|--|
| Road | <p>parcel size: Less than 1 acre: 800' 1 to 4.99 acres: 1320' 5 to 19.99 acres: 2640' 20 acres or larger: 5280'</p> <p>No limitation on number of parcels. Each dead-end road shall have a turn-around at terminus. Where parcels are zoned 5 acres and larger, turnarounds required at 1320' intervals.</p> | <p>0 to 150': 20' wide; no turnaround required. 151' to 500': 20' wide; 120' Hammerhead</p> | <p>Should utilize Title 14. Would be helpful to know what types of Design Waivers have been approved related to Dead-End Roads. Waivers might assist in determining a reasonable threshold...might also consider incorporating an analysis of Fire Hazard Severity Zones as a component...</p> |
| Secondary Access | <p>Not expressly addressed. Implicitly required where dead-end road would exceed maximum length specified above.</p> | <p>Residential: Required where the number of dwelling units exceeds 25. Local amendments elected to delete an exemption allowing more than 25 DU where units are equipped with automatic sprinkler systems (included in the IFC, but not adopted by the SFM). Commercial: May be required whenever the fire chief determines it is necessary for public safety. Secondary accesses must be located at a distance apart not less than one-half the diagonal dimension of the property to be served.</p> | |
| Driveway | <p>Minimum 10' traffic lane and 15' vertical clearance. Driveway longer than 150' but less than 800' to provide turnout near midpoint. Where driveway exceeds 800', turnouts to be provided 400' apart. Turnaround to be provided within</p> | <p>Driveways included in definition of fire apparatus access road.</p> | <p>Should incorporate an exception where the dwelling is equipped with fire sprinkler system.</p> |

| Parameter | Title 14 Fire Safe Regulations | Local Fire District Amendments | Issues for Discussion; Recommendation |
|-----------------|--|---|--|
| | 50' of building on all driveways over 300' in length. | | |
| Gates | To be 2' wider than width of traffic lanes. | Fire Districts oppose gates; some districts have adopted gate standards and policies requiring approval of plans by Fire District | County should adopt a uniform standard for access gates, based in part on the number of DU's, and whether the gate is on an access road or a driveway. |
| Emergency Water | Required for wildfire protection; may be provided by fire agency mobile water tender, naturally occurring or man-made containment structure. May be combined with structural fire protection water supply. Requirement for emergency water applies to new parcel creation. | Require hydrants or onsite storage. | |
| Fire Hydrant | Not less than 50' nor more than 1/2 mile by road from the building it is to serve. | Local amendment standards for hydrant spacing (300' minimum) are more stringent than CFC (500' minimum). | |

ATTACHMENT 4

ATTACHMENT 1

EDAC Regulatory Reform Subcommittee

SAMPLE Standards and Source Document Matrix

Manual: Land Development Manual (October 2009 Draft)

Topic: Chapter 2: Subdivision Processes and Design
Chapter 4: Transportation
Chapter 6: Surveying and Mapping

Purpose: To identify the underlying source document or implementing State or Federal law, General Plan policy, or County ordinance for each "shall" statement proposed in the County's Manual. Note this matrix contains only excerpts of standards from the cited chapters and therefore it is not a complete representation of the entire Manual, nor is it a complete matrix for any of the topics presented.

Summary: The applicable source document (State/Federal law, General Plan Policy, or County Ordinance) is noted as appropriate that mandates the requirement. "None" indicates that there is no implementing authority.

| | |
|--|---|
| | <p>NOTES:</p> <p>M. The "shall" statement is mandated by a higher authority or source document. Exceptions are allowed if so stated by the higher authority or source document.</p> <p>DW Modifications to the "shall" statement are allowed by a <u>Design Waiver</u> approved by the ZA, PC, or BOS.</p> <p>DA The EDAC Subcommittee recommends changing "shall" to "should" (or similar language). Modifications to the "should" statement are allowed by a <u>Design Alternative</u> approved by the ZA, PC, or BOS.</p> <p>S <u>Standard practice</u></p> |
|--|---|

| Proposed "Shall" Statement | Source Document | Note | Implication or factors to consider as provided by the EDAC Subcommittee |
|----------------------------|-----------------|------|---|
|----------------------------|-----------------|------|---|

| | | | |
|---|--|----------|---|
| CHAPTER 2- SUBDIVISION DESIGN AND PROCESSES | | | |
| 2.5 Development and Subdivision Standards | | | |
| 2.5.2 General Information and Criteria | | | |
| A corner lot shall be wide enough to accommodate all front yard setback requirements. | | M | Mandated by local ordinance <u>unless a variance is granted</u> . Suggest adding this additional clarifying language. Otherwise the "shall" statement is appropriate. |

| Proposed "Shall" Statement | Source Document | Note | Implication or factors to consider as provided by the EDAC Subcommittee |
|---|--|---|--|
| <p>Solar Access Standards: One (or more) of the following standards shall be included in the portions of detached, single family residential subdivisions that create lots that are 20,000 square foot or less in order to benefit from natural solar hearing and cooling, <u>when feasible</u>:</p> <ul style="list-style-type: none"> a. Design lots on street within a certain east-west or north-south axis. b. Establish or dedicate easements to assure that each lot has the right to receive sunlight across adjacent lots. c. Design streets, lots and building setbacks so that habitable buildings are oriented with their long axis running east to west with a possible variation of 30 degrees. d. Establish CC&R provisions that ensure structures are not constructed or new vegetation placed or allowed to grow, so as to obstruct solar access on an adjoining lot. e. Establish CC&Rs that do not prohibit or unnecessarily restrict solar energy facilities that primarily serve on-site use. f. Other options may be considered as proposed by the developer, subject to County approval. <p><u>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</u></p> | <p><u>General Plan Policy 5.6.2.2</u> include design components that take advantage of passive or natural summer cooling and/or winter solar access, or both, <u>when possible.</u>"</p> | <p><u>DA</u></p> | <p>The use of "shall" in the proposed LDM standard is not consistent with the cited General Plan policy or the Subdivision Map Act which requires solar access "when feasible". Suggest changing "shall" to "<u>should</u>" to be consistent with these higher authorities.</p> |
| <p>Area Requirement for Lots: Lots having an average natural slope of 10% or greater shall have the minimum area and frontage indicated in "Hillside Design" or shall comply with zoning requirements for area and frontage, whichever is more restrictive.</p> <p><u>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</u></p> | <p><u>None</u> This standard is a carryover from the Hillside Design Standards set forth in BOS Resolution 322-92.</p> | <p><u>DA</u></p> | <p>The 1992 Resolution for "Hillside Land Use Standards" applied to Class 1 Subdivisions - <u>not</u> Rural Subdivisions. This distinction has been eliminated from the proposed LDM.</p> <p>Suggest returning to the original format addressing Class 1 and Rural subdivisions separately, and change "shall" to "<u>should</u>" to allow design flexibility.</p> <p>Need new Zoning Ordinance for thorough review and comment.</p> |
| <p>Snow Hazards: The following snow storage standards shall apply in projects located at or above <u>3,000</u> feet elevation:</p> <ul style="list-style-type: none"> a. Provide snow storage areas of adequate size. b. Design snow storage areas so they do not block line of sight. c. Snow storage is not permitted in parking lots, sidewalks, driveways, emergency access areas, and other shared use areas unless designated as snow storage areas. | <p><u>None</u> <u>Standard practice</u> <u>Standard practice</u> <u>Standard practice</u></p> | <p><u>DA</u> <u>S</u> <u>S</u> <u>S</u></p> | <p>Note that current ED County Zoning Ordinance Section 17.18.030 (Off-Street Parking Design Standards) requires snow removal storage in parking areas located at the four thousand foot (4,000') elevation or higher. Suggest changing "shall" to "<u>may</u>" for flexibility and changing 3,000' to <u>4,000'</u> to be consistent with the existing Zoning Ordinance.</p> |

| Proposed "Shall" Statement | Source Document | Note | Implication or factors to consider as provided by the EDAC Subcommittee |
|---|-----------------|------|--|
| <p>d. Storage <u>shall</u> be a minimum of 25 feet away from wetlands, streams, creeks, rivers, lakes, ponds and any other water bodies.</p> <p>Adequate stormwater/sediment catchment basins, coarse gravel berms, or sediment traps to reduce impacts from potential run off <u>shall</u> be shown on the Tentative Map.</p> | None | DA | <p>The quality of the water feature or other physical constraints may dictate the achievable setback. Suggest changing "shall" to "<u>should</u>" to allow design flexibility.</p> <p>Tentative maps usually do not delineate this level of detail and this standard will unnecessarily increase the cost of tentative map preparation. As an alternative, these objectives can be described in a Condition of Approval. Suggest changing "shall" be shown on the Tentative Map" to "<u>may be required in Conditions of Approval</u>".</p> |
| <p>e. Snow storage <u>shall</u> not be located in predominantly shady areas.</p> | None | DA | <p>Some projects such as infill sites may be confined from meeting this requirement. Suggest changing "shall" to "<u>should</u>" to maintain flexibility.</p> |
| <p>Areas designated for snow storage <u>shall</u> use suitable plant materials including vigorous ground covers, perennials, willows, and planters with low edges to facilitate plow access.</p> | None | DA | <p>Suggest changing "shall" to "<u>may</u>" to maintain flexibility for a variety of treatments not listed here.</p> |
| <p>f. Snow storage areas <u>shall</u> be inspected after snow melt periods and cleaned of trash as necessary.</p> <p><u>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</u></p> | None | 2 | <p>Reasonable practice, however the placement of this "shall" statement in the "Subdivision Standards" of the LDM suggests that this will become a Condition of Approval ("COA") for all affected discretionary projects. <u>How would an applicant be expected to satisfy this COA at final map stage?</u></p> |
| <p>Model Homes in Subdivisions: Adequate off-street parking <u>shall</u> be provided for the model homes. Model homes may include office space for sales employees, subject to approval under the Temporary Use Permit and subsequent Building Permit.</p> <p><u>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</u></p> <p>The office space <u>shall</u> be converted to living space or garage space prior to the sale of the model home for single family dwelling purposes.</p> | None | DA | <p>This standard creates an automatic and unnecessary throwaway cost for every project (paving, striping, demolition etc.). Off-street parking may be reasonable for model complexes on high volume roadways for public safety, but completely unnecessary for model complexes at the end of a cul-de-sac or otherwise isolated in their own subdivision with little or no through traffic volume. This should be reviewed on a case-by-case basis as part of the Temporary Use application. Suggest changing "shall be provided" to "<u>may be required</u>".</p> <p>Standard practice, however the placement of this "shall" statement in the "Subdivision Standards" of the LDM suggests that this will become a Condition of Approval ("COA") for all affected discretionary projects. <u>How would an applicant be expected to satisfy this COA at final map stage?</u></p> |

| Proposed "Shall" Statement | Source Document | Note | Implication or factors to consider as provided by the EDAC Subcommittee |
|--|--|---|--|
| CHAPTER 4 - TRANSPORTATION | | | |
| 4.3 STANDARDS FOR DISCRETIONARY DEVELOPMENT | | | |
| 4.3.1 Streets | | | |
| <p>On Street Parking:</p> <p>A. Pursuant to the "2007 California Fire Code" and amendments as ratified by the Board on February 26, 2008, and where required by the applicable Fire Protection District having jurisdiction, roads shall be marked with permanent "NO PARKING—FIRE LANE" signs complying with the figures below.</p> <p>B. Signs shall have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background.</p> <p>C. Signs shall be posted on one or both sides of the road as follows:</p> <ol style="list-style-type: none"> 1. Roads from 20 to 29 feet in width shall be posted on both sides as a fire lane, with no parking allowed on either side of the roadway. 2. Roads from 30 to 39 feet in width shall be posted on one side as "No Parking, Fire Lane", with parking allowed only on the opposite side of the roadway. 3. Roads 40 feet and greater width may allow parking on both sides of the roadway. | <p><u>Standard practice</u></p> <p><u>Standard practice</u></p> <p>C1-C3. <u>2007 California Fire Code ratified by the BOS in February 2008.</u></p> | <p><u>S</u></p> <p><u>S</u></p> <p><u>M</u></p> | <p>Standard practice; no change.</p> <p>Standard practice; no change.</p> <p>C1-C3. <u>This item is currently under review and pending resolution.</u></p> |
| <p>Weight:</p> <p>Pursuant to the "2007 California Fire Code" and Code amendments, as ratified by the Board on February 26, 2008, all roads and bridges shall meet a 75,000 pound load.</p> | <p><u>2007 California Fire Code as ratified by the BOS in February 2008.</u></p> | <p><u>M</u></p> | <p><u>This item is currently under review and pending resolution.</u></p> |

Proposed "Shall" Statement

Source Document

Note

Implication or factors to consider as provided by the EDAC Subcommittee

CHAPTER 6 – SURVEYING AND MAPPING

6.2.2 Parcel Maps

| | | | |
|---|---|-------------------------------------|---|
| <p>The Parcel Map <u>shall</u> be prepared by, or under the direction of, a California Professional Land Surveyor or California Registered Civil Engineer who is authorized to perform land surveying; and <u>shall</u> be based upon a field survey or compiled from recorded data; and <u>shall</u> conform to all of the provisions relating to materials, size, survey and math data, exterior boundary, location, map title, map number, easements data, parcel data, streets data, and monuments. The title, notes, legend, basis of bearing, references and amendments <u>shall</u> be placed on each survey sheet, unless found to be superfluous by the County Surveyor.</p> | <ol style="list-style-type: none"> 1. <u>Subdivision Map Act Section 66445 and ED County Ordinance Section 16.52.010</u> 2. <u>Subdivision Map Act Section 66448 and ED County Ordinance Section 16.52.030</u> 3. <u>Subdivision Map Act Section 66445 and substantially the same text as ED County Ordinance Section 16.52.010</u> 4. <u>None, but standard practice</u> | <p>M</p> <p>M</p> <p>M</p> <p>S</p> | <ol style="list-style-type: none"> 1-3. Mandated by State law and local ordinance. The "shall" statement is appropriate. 4. Standard practice; no change. |
| <p>The following certificates <u>shall</u> appear on the Parcel Map: Owner's Certificate, Surveyor's Statement, County Surveyor's Statement, and County Recorder's Statement.</p> | <p><u>Subdivision Map Act Sections 66445, 66449, and 66450 and ED County Ordinance Sections 16.52.075, 16.52.080, 16.52.090, and 16.52.100.</u></p> | <p>M</p> | <p>Mandated by State law and local ordinance. The "shall" statement is appropriate.</p> |

ATTACHMENT 5

MEMORANDUM

MEMO DATE: January 21, 2010

TO: Planning Commissioners

FROM: Economic Development Advisory Committee ("EDAC")
Regulatory Reform Subcommittee ("Subcommittee")

HEARING DATE: January 28, 2010

SUBJECT: Proposed Land Development Manual ("LDM"), Highway Design Manual ("HDM"), and Standard Plans RS-01 through RS-30 ("Standard Plans") (collectively hereinafter "Manuals")

The Subcommittee appreciates this opportunity to provide comment on the County's proposed Design Manuals.

BACKGROUND

The adopted Design and Improvement Standards Manual ("DISM") was originally adopted by the Board of Supervisors in May, 1986, and has been amended from time to time. The last significant amendments were adopted more than 15 years ago.

The 2004 General Plan provides for comprehensive review and update of the DISM, and expressly requires inclusion of street standards, including consideration of reduced road widths.

In May 2008, the Board of Supervisors convened an 11-member Economic Development Advisory Committee tasked with assisting the Chief Administrative Office in the implementation of top economic development priorities. One such priority is:

"Recommend ways to reform and improve regulatory processes relating to business in order to foster the spirit of cooperation, understanding and consensus between government and business, including a specific review of the General Plan and continue with existing County regulations and procedures to eliminate contradictory, unneeded requirements, and to narrow the scope of government to only those regulations that are necessary to the common good and that do not usurp the right of the individual to make responsible and creative choices."

To this end, a Regulatory Reform Subcommittee of EDAC ("Subcommittee") was formed to review the Manuals and identify opportunities to improve and streamline regulatory processes and reduce economic barriers. The Subcommittee was tasked to review the proposed content from two perspectives: (1) the technical aspect of the proposed standards, and (2) their impact on the entitlement process and ability to promote economic development throughout the County.

The Manuals were reviewed by the Subcommittee on a weekly basis for the past six months, with technical support from a range of professionals in the community. Specifically, the Manuals were divided into various topics and technical support has been provided as follows:

Subdivision Design and Processes
(LDM Chapter 2)

Andrea Howard, Parker Development Co.
Kathye Russell, Gene E. Thorne & Assoc.

Sewer and Water
(LDM Chapter 3)

Ron Duncan, Consultant, Former Director,
EDC Environmental Management
Ken Wilkinson, KFRD Development

Grading, Erosion and Sediment Control
(LDM Chapter 5)

John Youngdahl, Youngdahl Consulting Group, Inc.
Brian Allen, Cooper Thorne & Associates

Transportation and Circulation
(Highway Design Manual and Standard Plans)

Olga Sciorelli, Cooper Thorne & Associates
Gene Thorne, Gene E. Thorne & Associates
Don McCormick, REY Engineers

Riparian Issues

Jeff Little, Sycamore Environmental
Chris Bronny, Biological Resources Svcs.

REVIEW PROCESS

The Subcommittee understands from information provided by County staff, that the purpose of the LDM, and related documents such as the HDM, is to (1) update the DISM as required by the General Plan, (2) consolidate existing standards, ordinances, regulations and policies into a set of working documents, and (3) create a reference document to assist applicants and the public in navigating the development process.

The Subcommittee, with considerable technical assistance from the professionals identified above and others including Jeff Lubenko, Larry Patterson, Jim Brunello, Cindy Shaffer, Noah Briel, Ken Wilkinson, Craig Sandberg, Thaleia Georgiades, Tom Howard and Art Marinaccio, reviewed applicable sections of the LDM suited to their field of expertise. Weekly public meetings were held by the Subcommittee and County staff to discuss the technical findings and concerns. A number of revisions were made where Staff and the Subcommittee agreed.

Separate from this memo, Development Services has provided a Staff Report Memo dated January 19, 2010 (hereinafter referred to as the "DSD Staff Report") that describes the LDM process:

"CEQA Review: Staff is recommending that the Planning Commission recommend to the Board adoption of a Negative Declaration. The proposed Design Manual does not create environmental impacts because it is considered to be an "organization tool" that merely consolidates existing design standards, General Plan Policies, and other Ordinances and Resolutions."

[NOTE: Any change in standards that would result in environmental impacts would require further CEQA analysis.]

During the review, we discovered the process of consolidating a large number of rules, regulations and standards into a single document is not a simple task. It is impossible to reproduce each and every rule, policy and regulation in its entirety into a much smaller document than original source documents provide. However, it is significant that these source documents, the 2004 General Plan most notably, are in fact the foundation of the Manuals and often provide context and detail not always included in the Manuals. The authors of the LDM have selected which language to include, and which to exclude from source documents or have paraphrased the source documents. Our review of many of the underlying source documents identified exceptions, exemptions, alternatives and other nuances that could not be faithfully replicated in an abbreviated version of the policy. Although the Subcommittee and EDAC understand the need for brevity in this LDM, it is essential that the underlying foundational policies, laws and regulations, should not be fundamentally altered in the process.

Except where the Manuals acknowledge that a specific standard is being adopted that is more stringent than the foundational policy, we recommend that, in the case of a conflict between the paraphrased language in the Manuals and the source document, the source document should control. In other words, the Manuals do not supersede the source document unless that intent is expressly stated in the Manual.

During the review process, the Subcommittee also learned that only selected standards from the adopted DISM were being carried forward and that a number of new standards were being proposed. Some of these new standards are mandated; such as by General Plan policy, but other standards are simply concepts borrowed from other jurisdictions or are the opinion of County staff. In some cases, standards based on mandatory laws, regulations or policies did not carry forward the exceptions, exemptions or alternatives cited in the source documents.

Additionally some standards were eliminated by staff without any clarification that particular items were being dropped. Although the Subcommittee brought forward some such items during the review process, we are concerned that others may be undiscovered to date, and will be unknowingly reinforced with the BOS' adoption of the Manuals without specific consideration. It is our opinion that policy omissions should be clearly noted and subject to review, discussion and direction from the decision-making bodies of the Planning Commission and/or Board of Supervisors, unless specifically mandated by new federal or state law.

Furthermore, the language in the LDM Purpose statement (Page 1) treats all standards equally, whether they were derived from a federal or state law, General Plan Policy, Goal or Objective, local ordinance, regulation or guideline, or just thought to be a good idea. It appears that this has been prompted by Title 16 (Subdivision Ordinance) of the County Code:

MAJOR SUBDIVISIONS – Section 16.24.020 - Zoning and Design Manual Compliance

"The tentative map of a subdivision will not be approved unless it **complies with all applicable provisions of the county zoning ordinance for the zone district proposed and the county design manual or approved variance or waiver therefrom.**"

MINOR SUBDIVISIONS – Section 16.44.120 – Design Criteria

"All design criteria and improvements made or installed in conjunction with the approval of a tentative parcel map **shall conform to the standards and specifications contained or referred to in the Subdivision Design and Improvement Standards Manual,** which shall be adopted and amended by resolution of the board of supervisors."

The Draft LDM furthers this objective by stating, in part:

"ALL discretionary land development projects *shall* conform to the standards of design and improvements as specified in the County Design Manuals and applicable El Dorado County (County) Ordinances.

Any request to deviate from these standards shall be submitted to the County for a determination if an exception or exemption can be applied. Throughout this manual, exceptions and exemptions are described (where they exist). If neither an exception nor an exemption can be applied, the applicant may apply for a Design Waiver as part of the permit application. "

As previously described in this memo, the Manuals carry forward design criteria found in the current DISM and propose a large degree of new criteria. The implication of this is significant. Historically, design waivers have been granted for engineering-related improvements including, but not limited to, road right-

of-way, roadway width, sidewalk width, road grade, and curve radii. According to the proposals in the LDM as presently drafted, and unless an exemption is specifically identified, a Design Waiver or Planned Development process is needed in the following examples, to name a few:

1. Allow flag-shaped lots in mass-pad graded subdivisions.
2. Grant relief for double-frontage lots on a low-volume, County-maintained roadway from the need to provide deeper setbacks, aesthetic or noise buffers, or the creation of a public entity to maintain the separation between the street and the lot. For high-volume roadways, these mitigation requirements may be reasonable, but for low-volume roadways, use of the land is being limited.
3. Allow a lot less than 10 acres in size to exceed a 3:1 lot to width ratio.
4. Allow an irregularly shaped lot line.
5. Allow snow storage areas to be located in a predominantly shady area even if there are no "sunny" areas to locate one. (For example: an in-fill site with no options regarding storage.)
6. Allow a 70 foot wide lot (regardless of the shape or configuration of the balance of the lot) on an 11% natural slope.

As the LDM is currently written, the list of Design Waivers is expected to dramatically increase. We note that this increase does not honor the BOS' goal of streamlining local development processes, but further burdens a process already known to be time consuming and costly to applicants. Design Waivers create the perception that a project is "non-compliant" with the County's stated design goals and requirements, when in fact the requirements are assumed to work for each project without any regard to the project's unique shape, configuration, natural features, or design intent, or when a design alternative can achieve the same practical effect. In the next section, the Subcommittee offers a streamlined process to alleviate excessive and repetitive Design Waiver requests and "narrow the scope of government to only those regulations that are necessary to the common good and that do not usurp the right of the individual" as directed by the BOS.

EXCEPTIONS AND ALTERNATIVES

Throughout the LDM, exceptions and exemptions are described where they have been identified and the LDM provides that an applicant may request an exception or exemption from a particular policy. In reality, the proposed exceptions and exemptions are few and far between in the LDM, and in the case of the HDM, exceptions shift liability to the design engineer. The question of whether an exception or exemption would apply is decided by County staff, and if denied, the applicant must apply for a Design Waiver again triggering the concerns discussed above.

The Subcommittee identified the following concerns about the use of exceptions and has proposed the concept of "alternatives":

1. The LDM should provide for an appeal of the denial of an exception or exemption to the Planning Commission or Board of Supervisors in lieu of the requirement to process a Design Waiver.
2. As mentioned earlier, the LDM treats every standard equally, whether it is prescribed by law or ordinance, or merely included because it seemed like a "good idea". In essence, the singular set of design criteria will eliminate the design professional's ability to design. We understand the need for a Design Waiver process where a modification to a mandatory standard is requested, but believe that the LDM should provide greater flexibility where deviation from an advisory or "good idea" standard is proposed.
3. We believe it is difficult to identify every possible exception or exemption that may be available, and that the LDM should incorporate a level of flexibility that would allow alternative design solutions that are not specifically identified, or that may be developed after adoption of the Manuals.

4. The Subcommittee notes that processing of Design Waivers can be time consuming and costly to applicants, especially if it requires new mapping, development of exhibits or requires additional meetings. As stated above, the perception exists that Design Waivers are "waiving" good design when in fact design professionals may be introducing a new, creative, and better design solution.
5. Additionally the BOS has expressed a desire to reduce the number of Design Waivers coming before them, and is unlikely to embrace Design Waiver increases in numbers as proposed by the draft LDM.

With strong recommendation, the Subcommittee proposes the following to resolve these concerns:

- A. Adopt modified language in "Section 1.1 Purpose" and "Section 1.6 Design Waivers" (**ATTACHMENT 2 of the DSD Staff Report**) providing added flexibility to allow for alternative design solutions that would achieve the same practical effect as the standards suggested in the LDM. We suggest that this flexibility would necessarily be limited to those situations involving "advisory guidelines" rather than "mandatory standards" such as those derived from Federal or State law, General Plan policies or County ordinances. Generally, we propose that any standard not found in a higher authority and only in the Manual may allow for an alternative treatment.

Staff is opposed to the Subcommittee's proposal because Staff is concerned that the County's subdivision ordinance (Title 16), Sections 16.08 and 16.40, would need to be amended. These sections discuss Administration and Enforcement, including the Design Waiver process that requires satisfaction of four (4) required findings. The Subcommittee agrees that the required findings cannot be amended at this time, but the decision making bodies of the Planning Commission and Board of Supervisors have clear policy-making ability to determine the degree of criteria subject to Design Waivers versus alternatives that meet the "same practical effect". This is where we disagree with Staff. An alternative that meets the same substantial effect as the standard and complies with sound engineering practices should be satisfactory as an option to waiving the standard.

- B. To illustrate objective A above, the Subcommittee developed a sample Standards and Source Document Matrix (**ATTACHMENT 1 of this memo**). The purpose of the Matrix is to identify the underlying source documents, policies, laws or regulations for each of the "mandatory" standards contained in the LDM. "Mandatory standards" are often, but not always, identified by the use of the term "shall". The Matrix contained in Attachment 1 is a sample only and if the Planning Commission and/or Board of Supervisors finds this as a useful tool, the Subcommittee will develop a complete set of matrices for inclusion in the LDM and related Manuals.

The Subcommittee recommends that the Standards and Source Document Matrices be included as an attachment to the final LDM to facilitate the review and application of the standards.

The DSD Staff Report offers another option that may resolve the Subcommittee's concerns. The DSD Staff Report suggests revising the standards for a Design Waiver and perhaps changing the name to a "Design Alternative". We believe that a "Design Alternative" approval process should be included as alternative to a waiver to provide needed flexibility. A Design Alternative request would be submitted by the applicant and the applicant's design professional, and would be considered and approved or denied by the ultimate decision-making authority for a project. The "Design Alternative" would be available where a project does not literally comply with the recommendations contained in the LDM, but where an alternative is proposed that achieves the same practical effect or meets the intent of the LDM. The "Design Alternative" would be available to satisfy a provision of the LDM, whether mandatory or advisory in nature except where express compliance is required. In that case, a deviation would require either a Design Waiver, or in cases where a Design Waiver cannot be approved, strict compliance with the LDM standard.

The "Design Alternative" should be subject to findings similar to those offered in the staff report, that the proposed design alternative:

1. Meets the intent of the LDM;
2. Conforms to sound engineering practice; and
3. Does not conflict with a mandatory regulation (such as a General Plan policy or State/Federal law)

The Subcommittee believes that the option of a "Design Alternative" in addition to the customary "Design Waiver" will encourage innovative land plans and product types, as well as creative solutions to design challenges presented by projects with unique site characteristics (topography, boundary, etc.) common in most areas of El Dorado County. We believe this will reduce the number of Design Waivers needed along with the negative perception that a project involving repetitive or excessive Design Waivers is "non-compliant". Again, a Design Alternative process is another way of complying with the standard versus seeking a waiver of the standard.

DESIGN WAIVERS

The County's Subdivision Ordinance (Title 16) describes the requirements and process for a Design Waiver. Design Waiver requests are submitted by an applicant where deviations from the standards are proposed and are reviewed and approved (or denied) by the decision-making authority concurrent with the project hearing. Historically, most Design Waiver requests involve deviation from the DISM standards related to road improvements and right-of-way. (It should be noted that the proposed LDM and associated HDM would replace the DISM upon adoption.)

The Subcommittee believes that the traditional Design Waiver process should be retained, because it offers an appropriate mechanism for deviations, such as road design standards contained in the HDM (for example road widths and grades). Inclusion of the Standards and Source Document Matrices will simplify and isolate the policies that may be revised by a "Design Alternative" and those which would require a "Design Waiver".

UNRESOLVED POLICY ISSUES

Generally, the Subcommittee concurs with the conclusion in the staff report that the current review of the Draft LDM cannot address a number of EDAC's recommendations for regulatory reform. These issues may require other actions, including policy direction from the Board of Supervisors, modification of adopted County ordinances, General Plan Amendments or CEQA review beyond the scope of the analysis prepared for the LDM. Following is a brief explanation of the policy concerns identified (to date) by the Subcommittee:

Policy Issue 1: Grading without a project.

EDAC believes that this policy and the Staff interpretations should be revised. There are countless "ready to build" sites in other jurisdictions that are graded and need only to process a building permit. These sites are readied in advance because commercial users are usually unwilling to endure the lengthy process of waiting while the owner obtains project approval, processes final maps and grading permits, and undertakes site construction, all of which can easily take two years or more. The unavailability of ready to build sites in El Dorado County creates a competitive disadvantage to attract job-generating uses.

There are other circumstances where it makes sense to allow grading to occur before a specific project is identified. For example, a site that is designated and zoned for commercial use might be used as a "borrow" or a "stockpile" site for grading needed to implement another project that is nearby and has obtained necessary approvals. (See Policy Issue 3 below.) In such situations, the availability of a nearby "borrow/stockpile" site not only reduces grading costs associated with the approved project, but can also

minimize impacts on traffic from hauling large quantities of dirt over long distances, and may reduce negative air quality impacts and noise impacts as well.

Policy Issue 2: 50 cubic yard threshold for Grading Permits.

This issue demonstrates the need to proceed with caution when making seemingly simple changes to adopt more restrictive "advisory standards" where not required by a "mandatory" policy.

Prior to March, 2007, the threshold for a Grading Permit was 250 cubic yards, but was revised downward to 50 cubic yards. The change was not mandated by any General Plan policy, or other rule or regulation. This is an example of a policy adopted because someone thought it would be a "good idea". Although the reduction of the threshold was exempt from CEQA review, we're now told that to reverse what EDAC believes to have been a mistake, we cannot be done because CEQA review is required.

EDAC and the Subcommittee believe the Grading Ordinance should be revised to reinstate the 250 cubic yard threshold. While some jurisdictions may utilize the lower threshold, that limitation is not realistic where larger lots (5 acres and up) predominate, and grading is required to accommodate both a building site and driveway access.

Policy Issue 3: One year limit on "stockpile permits".

This issue is directly related to Policy Issue 1, the inability to obtain a grading permit for a "borrow/stockpile" site without an approved project. A satisfactory solution to allow a grading permit...a place to permanently deposit surplus dirt (or to permanently "borrow") from a nearby site without that site having to obtain approval of a "project" will largely resolve this issue. If a stockpile permit isn't intended to be permanent, there must be a process to do permanent import/export of soil without having to identify a permanent use for the "borrow" or "stockpile" site.

Policy Issue 4: Requirements for sidewalks.

Conditions in which sidewalks are required should be identified within the functional classification of roads in the HDM. Only certain types of roads (urban environments, high density, commercial, etc.) should be required to incorporate sidewalks. A Design Waiver can be considered on a case-by-case basis to eliminate the requirement for sidewalks.

Policy Issue 5: Well Water

The requirement for well tests should be based upon an identified need in certain areas. The policy should not preclude the county from bringing a parcel's zoning into conformity with the General Plan. It is agreed that some areas of the county where parcel size is predominately based upon water availability there should be a strong leaning toward the drilling of water supply wells prior to approval of entitlements. Zoning alone creates no entitlements.

Policy Issue 6: Parcel Map Offsite Improvements.

The County should make more liberal use of Road Reimbursement Agreements...where multiple owners "share" cost of major infrastructure...one owner may advance costs subject to later right to receive reimbursement from subsequent development utilizing the improvements.]

[Note: Refer to Policy Issue 10, regarding deletion of references to the Fire Code. Fire Code should not be treated as the operative standard for subdivision or parcel map improvements.]

Policy Issue 7: Lot Solar Orientation.

As currently written, this language makes certain design elements mandatory where these are not required under the Subdivision Map Act or the General Plan, and are not always feasible in view of topographic constraints in El Dorado County. The Subcommittee recommends that the word "shall" be changed to "should" to reflect that the policy is an advisory guideline, consistent with the higher authorities, rather than a locally mandated standard.

Policy Issue 8: Riparian setbacks.

EDAC concurs with the staff recommendation to modify the LDM language and to address the issue in the Zoning Ordinance, as provided in the text of the General Plan.

Policy Issue 9: 30% slope limitations for septic systems.
(Recommendations pending)

Policy Issue 10: Fire Access Standards.

In August, 2009, the Board of Supervisors held the second of two workshops concerning Fire Safe Regulations, the 2007 California Fire Code, the relationship between the two and the effect on land use policy in the County. At that workshop, the Board referred the issue to EDAC to work with staff, CalFire and the Fire Districts to compile one set of comprehensive standards for the County.

EDAC referred the issue to the Subcommittee for analysis and discussion. That group reviewed relevant codes and code provisions and reached these conclusions:

1. The County is required to enforce fire protection standards adopted by the State, specifically the non-building standards found in Title 14 (Fire Safe Regulations) and the building standards found in Title 24 (2007 California Fire Code).
2. The County has exclusive authority to regulate design of subdivisions including fire roads and access requirements, subject to the compliance with the standards adopted by the State.
3. Local Fire Protection Districts amended the 2007 California Fire Code ("CFC") and adopted portions of the CFC that were not adopted by the State. The County was not required to adopt or ratify these local amendments.
4. The local Fire District amendments have incorporated non-building standards into the building standards code and delegate regulatory authority to Fire Districts in conflict with the County's exclusive authority to regulate subdivision design subject to Title 14.

County staff faces a dilemma in which they feel compelled to incorporate the local fire amendments into the County's LDM because those amendments were "adopted" by the Board of Supervisors. The Subcommittee is preparing a response to the Board of Supervisors based on the direction at the August, 2009 workshop, and believes the local Fire District amendments to the Fire Code should not be imbedded into the LDM until the Board of Supervisors has the opportunity to consider the Subcommittee's report and take action it deems appropriate. To do otherwise would be to "bootstrap" those local amendments into county regulations.

The substitute language related to Fire standards (Attachment 3 of the DSD Staff Report) addresses the Subcommittee's concerns if included in the LDM. If this language were not included, the Subcommittee would recommend that adoption of the LDM be deferred until the Board resolves the substance of the local fire amendments.

Policy Issue 11: 32 foot road width standard in El Dorado Hills vs. 28 foot road width in remainder of the County.

This policy issue also highlights the problem with Policy Issue 10. The 32-foot and 28-foot road width standards described in the DSD Staff Report are actually much narrower than standards adopted by the local Fire Districts. For example, the Fire Districts have adopted a standard requiring a 30-foot wide road where parking is provided on one side and a 40-foot wide road for parking on both sides. The Subcommittee believes these standards are excessive, costly, and probably incompatible with the character of the community in which they would be built.

In reality wide roads are an urban standard designed to accommodate urban fire apparatus. Roads that are wider than they need to be use up more dollars, create more environmental impacts, and contribute significantly to the reduction in "rural atmosphere". General Plan Policy TC-U places a requirement on this process to assess our ability to reduce these significant impacts.

Policy Issue 12: Reduce Design Waiver Requests

The Subcommittee's concerns and recommendations have been addressed in the body of this report.

HDM/STANDARD PLANS

The design of streets and roadways within a jurisdiction greatly impacts the character of a community. For many decades, there has been a nationwide trend toward building new roads with wider and more traffic lanes, fewer curves, reduced grades, and fewer visual or physical obstructions, such as on-street parking. These "improvements" were meant to increase capacity of road systems and to enhance motorist safety. The bigger, straighter, flatter and faster roads had the unintended effect of reducing safety for "non-motorized" users, such as children, the elderly, bicyclists and pedestrians in general and often changed the character of neighborhoods due to increased traffic volumes and speeds.

In an effort to "turn back the clock", jurisdictions all over the country are reversing the trend, and returning to more traditional road design standards, with narrower streets, on-street parking, and a number of creative devices to slow traffic down within communities. These standards must take into consideration and balance a range of competing objectives, including public safety (fire, traffic and pedestrian/bicyclist), improvement cost, traffic circulation, environmental and visual effects, community design and neighborhood character. The most common source of opposition to these narrower road standards in most jurisdictions comes from fire departments and fire districts.

General Plan Implementation Measure TC-U provides that the County shall:

"Revise the County Design and Improvement Standards Manual to allow for narrower streets and roadways. The standards should recognize the need to minimize visual impacts, preserve rural character, and ensure neighborhood quality to the maximum extent possible consistent with the needs of emergency access, on-street parking, and vehicular and pedestrian safety. [Policies TC-1p, TC-1u, and TC-4]"

EDAC and the Subcommittee reviewed the Draft Highway Design Manual and Standard Plans concurrent with our review of the LDM. Subcommittee meetings were held over a period of about four months. These meetings, as with all our Subcommittee meetings, were open to the public.

EDAC and the Subcommittee do not believe that the HDM should be adopted in its current form for at least two important reasons:

1. The HDM is not based on a policy analysis of narrower streets and roadways as required under the General Plan. For example:
 - a. Should we incorporate different design standards for streets within hillside areas?

- b. Should we have a different set of standards for public roads versus private roads?
 - c. How should design standards vary between more urbanized areas and rural areas of the County?
 - d. The Standard Plans are unclear as to whether they include an allowance for on-street parking. We cannot determine, for example, whether the 32' wide local road in El Dorado Hills permits parking on one side, both sides, or not at all. Similarly, the 28' local road standard for Diamond Springs/El Dorado does not identify if parking would be permitted. As we pointed out earlier in this memo, the local amendments adopted by the Fire Districts would allow parking on one side of a 32' wide road, and no parking on a 28' wide road. We believe these street widths with such parking limitations would lead to travel speeds that are incompatible with most residential neighborhoods.
2. The local Fire District amendments to the Fire Code need to be addressed by the Board of Supervisors before standards based on those amendments are imbedded into the HDM.

To be fair, we recognize that County staff is hamstrung by the February, 2008 "ratification" of the local Fire District amendments to the Fire Code. Staff is reluctant to recommend different policy language without specific direction from the Board. This example highlights the reason we urge the Board of Supervisors to address the confusion as soon as their schedule permits, and provide direction as to which of those policies should be incorporated into the HDM.

RECOMMENDATION

EDAC and the Subcommittee respectfully recommend that the Planning Commission forward the following recommendation to the Board of Supervisors:

- 1. Adopt the LDM with the recommended revisions of EDAC Subcommittee, and expressly including the following additions:
 - a. Include the Matrices in the format included as **Attachment 1 of this memo** as part of the LDM.
 - b. Utilize the EDAC alternative LDM Sections "1.1 Purpose" and "1.6 Design Waivers" language [replacing Page 1 of the proposed LDM)]. See **Attachment 2 of the DSD Staff Report**.
 - c. In the event of a conflict between a source document and the LDM, the source document will control, except where the LDM expressly provides that the LDM overrides the source document.
 - d. Incorporate the Subcommittee's "Fire Code" language revisions meant to neutralize problems associated with adoption of local Fire District Amendments. See **Attachment 3 of the DSD Staff Report**.
- 2. Recommend that the Board instruct staff to include EDAC's recommendations concerning the "Unresolved Policy Issues" in the 5-year update of the General Plan, unless those recommendations can be considered and implemented at an earlier opportunity.
- 3. Defer adoption of the HDM until the Board of Supervisors is able to :
 - a. Consider the process and substance of local Fire District Amendments to the Fire Code, and,
 - b. Provide policy direction regarding adoption of narrower street standards, taking into consideration all of the competing factors including fire and traffic safety, environmental effects, cost considerations and effect on community character.

Respectfully submitted,

EDAC REGULATORY REFORM SUBCOMMITTEE

Roberta Long
Thaleia Georgiades
Jim Brunello

ATTACHMENTS TO THIS MEMO:

1 – Sample Standards and Source Document Matrix

**ATTACHMENTS TO DSD STAFF REPORT MEMO DATED JANUARY 19, 2010 INCORPORATED
HEREIN BY REFERENCE:**

2 – EDAC Proposed Sections “1.1 Purpose” and “1.6 Design Waivers”

3 – LDM without Fire Code

ATTACHMENT 6

STREETS & HIGHWAYS DESIGN MANUAL

**TABLE TC-1
GENERAL ROADWAY STANDARDS FOR NEW DEVELOPMENT BY FUNCTIONAL CLASS**

| Functional Class | ACCESS CONTROL | | | CROSS SECTION | |
|---|--|---|------|---------------|---|
| | Public Roads Intersections (Or interchanges) | Abutting Property Driveways and Private Roads | ROW | Roadway Width | |
| Six-Lane Divided Road Four-Lane Divided Road Four-Lane Undivided Road Community Regions Rural Centers and Rural Regions | 1/2 mile minimum spacing | Restricted | 130' | 108' | "Highways" Section of HDM Controls w/support from CALTRANS and AASHTO |
| | 1/2 mile minimum spacing | Limited | 100' | 84' | |
| Major Two-Lane Road Community Regions Rural Centers and Rural Regions | 1/2 mile minimum spacing | Limited | 80' | 64' | "Streets" Section of HDM Controls w/support from "Modified DISM" |
| | 1/2 mile minimum spacing | Limited | 80' | 64' | |
| Local Road | 1/4 mile minimum spacing | Limited Permitted | 60' | 40' | AASHTO Low Volume |
| Private Roads | 1/4 mile minimum spacing | Permitted | 60' | Varies | |

"Highways" Section of HDM Controls w/support from CALTRANS and AASHTO



"Streets" Section of HDM Controls w/support from "Modified DISM"



Key:
 County Owned Roads
 ZOB/HOAP/Private Roads

ATTACHMENT 7

IMPLEMENTATION OF POLICY 2.4.1.2 – Community Design Format

Phase One

While the General Plan land use map and consistent zoning adequately regulates the type and location of land uses within the County, these rules do not address the quality or appearance of development related to such uses. With this in mind, General Plan Policy 2.4.1.2 requires the County to develop community design guidelines for each community identified in General Plan Policy 2.1.1.1 and rural centers to the extent possible, to be used in project site review of all discretionary project permits.

To implement Policy 2.4.1.2, the Board of Supervisors adopts the following format for the development of Community Design Guidelines by each Community:

1. Guidelines for each Community may be developed for discretionary and ministerial projects setting forth standards for landscaping, architecture and other design elements within Commercial and Multi Family land uses and zoning.
2. The Guidelines include, but are not limited to, the following criteria: Historic Preservation; Streetscape elements and improvements; Signage; Maintenance of existing scenic road and riparian corridors; compatible architectural design; Designs for landmark land uses; Outdoor art, Recreation, Open Space.
3. Guidelines shall be consistent with General Plan Policies, Zoning and all ordinances of the County of El Dorado.
4. The Board of Supervisors may appoint, by Resolution, a Community Design Advisory Committee for each community to assist in implementation of area plans
5. The Community Design Implementation Advisory Committee will determine appropriate specific planning areas within each Community Region with the assistance of Planning Staff, local landowners and community input. Criteria will include historical patterns, General Plan policies, community services, neighborhood walkability, transit and general economic stability of the area. The Advisory Committee will also identify a neutral facilitator/moderator of the community workshops or charrettes and request, if necessary, funding and staff assistance. Designation of Planning areas and process require approval by the Board of Supervisors prior to moving forward with community design.
6. The Committee shall facilitate the development of community design guidelines through the following general process:
 - a. Identify the Commercial and Multi-Family designated land areas within each Community Region;
 - b. Outreach for assistance in developing the guidelines to, at minimum, the following groups within each community : Historical Societies; design professionals; landscape professionals; engineers, land owners,

agriculture, recreation advocates, health professionals, transit and other public and business/community planning groups;

- c. Assist in preparation for community workshops that will harness the talents and energies of all interested parties and supports a feasible plan that best represents the community's vision.
- d. When the preparation work has been completed arrange for community meetings including but not limited to the use of charrettes;
- e. Provide direct notice of the meeting to all property owners and businesses within the planning area; and all known social, fraternal, political and business groups within the Community Region. Provide notice, for example by publication, public service announcements and posters;
- f. Participate in the community workshops and charrettes; and
- g. Prepare Design Guidelines in a format best fitting and consistent with the outcome of the workshops, which may include a Form Based Code.
- h. Return to the Board of Supervisors for review of community workshops/charrettes outcome and next steps.

Upon adoption of the Design Guideline, Standards or Form Based Code for each community, the Board of Supervisors, if so requested by the Committee, shall adopt an ordinance requiring compliance with the guidelines. A Design Guideline checklist will be developed that lists specific "yes/no" questions for each design element to determine whether a proposed project conforms to pictures, fixed standards and objectives embodied in the adopted Design Guidelines.

Phase Two

After adoption of the Design Guidelines, the Board of Supervisors may direct the Community Design Committee to consider additional proposals for community action developed during the Design Guideline process, including but not limited to:

1. Zoning amendments;
2. Form based codes;
3. Formation of special districts (LLD, CSD);
4. Parks;
5. Historical preservation;
6. Amendment of GP text and maps;
7. Incorporation;
8. Funding Sources for further community action: Transportation; Façade Improvement Grants; other grants; private contributions; Government; Economic Development funds.