

PC 1/28/10
#9

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.

ATTACHMENT 6

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-4i]"

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 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.

Proposed "Shall" Statement	Source Document	Note	Implication or factors to consider as provided by the EDAC Subcommittee
<p>NOTES:</p> <p>M The "shall" statement is <u>mandated</u> 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
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CHAPTER 2- SUBDIVISION DESIGN AND PROCESSES			
2.5 Development and Subdivision Standards			
2.5.2 General Information and Criteria			
A corner lot <u>shall</u> be wide enough to accommodate all front yard setback requirements.	ED County Ordinance, Title 17 Zoning	M	Mandated by local ordinance unless a variance is granted. Suggest adding this additional clarifying language. Otherwise the "shall" statement is appropriate.

Proposed "Shall" Statement	Source Document	Note	Implication of factors to consider as provided by the EDAC Subcommittee
<p>Solar Access Standards: One (or more) of the following standards <u>shall</u> 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>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</p>	<p><u>General Plan Policy 5.6.2.2</u> "All new subdivisions <u>should</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>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</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 - not 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 <u>shall</u> 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 Zoning <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><u>None</u></p>	<p><u>DA</u></p>	<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>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>	<p><u>None</u></p>	<p><u>DA</u></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>	<p><u>None</u></p>	<p><u>DA</u></p>	<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>	<p><u>None</u></p>	<p><u>DA</u></p>	<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>None</u></p>	<p><u>?</u></p>	<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>[Note: Without EDAC's recommended revisions to Section 1.1 "Purpose", modifications require a Design Waiver.]</p>	<p><u>None</u></p>	<p><u>DA</u></p>	<p>This standard creates an automatic and unnecessary throwaway cost for every project (pavement, 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>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>	<p><u>Standard practice</u></p>	<p><u>?</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
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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 <u>shall</u> be marked with permanent "NO PARKING—FIRE LANE" signs complying with the figures below.</p> <p>B. Signs <u>shall</u> 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 <u>shall</u> 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 <u>shall</u> 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 <u>shall</u> 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 align="center"><u>S</u></p>	<p align="center"><u>S</u></p>	<p>Standard practice; no change.</p> <p>Standard practice; no change.</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 <u>shall</u> meet a 75,000 pound load.</p>	<p align="center"><u>M</u></p>	<p align="center"><u>M</u></p>	<p>C1-C3. This item is currently under review and pending resolution.</p> <p>C1-C3. 2007 California Fire Code ratified by the BOS in February 2008.</p> <p>2007 California Fire Code as ratified by the BOS in February 2008.</p> <p>This item is currently under review and pending resolution.</p>

Proposed "Shall" Statement	Source Document	Note	Implication or factors to consider as provided by the EDAC Subcommittee
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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>1-3. Mandated by State law and local ordinance. The "shall" statement is appropriate.</p> <p>4. Standard practice; no change.</p>	<p>M</p> <p>M</p> <p>M</p> <p>S</p> <p>M</p>
<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>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.</p>	<p>Mandated by State law and local ordinance. The "shall" statement is appropriate.</p>	<p>M</p>