

Mendocino County

Policy

Division of Land Guidelines and Use of Off-site Easements for Sewage Disposal

Purpose

To better clarify the procedure for processing a request for boundary line adjustment, and establish procedures and standards for the use of off-site easements for sewage disposal systems.

General

It is the preferred position of the Division of Environmental Health to have private sewage disposal systems located entirely within the boundary of the lot which is the site of the building or structure served by such private sewage disposal system to the extent practical.

Prior to approval of a sewage disposal easement, applicants should be advised to attempt a boundary line adjustment or parcel merger.

The use of off-site easements for sewage disposal in conjunction with the creation of new parcels through the subdivision process is generally discouraged and will be considered only in appropriate circumstances where the applicant can demonstrate to the satisfaction of the County of Mendocino that the sewage disposal system will not negatively impact natural resources and be properly maintained and monitored to minimize the risk of damage.

Authority

1. California Plumbing Code, Appendix K, incorporated in Mendocino Code, Section 16.08.130
2. California Health and Safety Code, Sections 17922 and 17958
3. Mendocino County General Plan
4. Government Code Section 66412(d)
5. Mendocino County, County Counsel's opinion # 07-199, March 20 & October 10, 2007
6. Mendocino County, County Counsel's opinion # 09-0993, September 10, 2009
7. Mendocino County Code, Chapter 17
8. Mendocino County Code, Chapter 20.532
9. Mendocino County Code, Chapter 20.016

Procedure - Boundary Line Adjustment

1. Property Located in Coastal Zone

A proposed boundary line adjustment (BLA) must be approved by the Coastal Permit Administrator (CPA) pursuant to Mendocino County Code section 20.532.015. A decision of the CPA may be appealed to the Board of Supervisors or the Coastal Commission.



Boundary line adjustments will not be considered to allow development for lots recognized by a Certificate of Compliance, land patent, or other instrument that may establish the lands as legally separate unless currently developed or able to be developed in the lands existing configuration.

2. Property Located Outside Coastal Zone

A proposed BLA in which the parcels are in conformance with the minimum applicable lot size for sewer and water under the standard of the General Plan may be processed by application to the Subdivision Committee (staff level). Reduction of the number of parcels to permit resulting configuration to be self contained for sewer and water may also be considered at the staff level.

Boundary line adjustments will not be considered to allow development for lots recognized by a Certificate of Compliance, land patent, or other instrument that may establish the lands as legally separate unless currently developed or able to be developed in the lands existing configuration.

Procedure - Sewage Disposal Easements for Existing Parcels

Off-site sewage disposal easements will be considered for parcels that are:

1. Already developed with a residential, commercial, industrial, or institutional use type as defined in Mendocino County Code Chapter 20.016.
2. Vacant parcels 6000 square feet or larger that can meet contemporary zoning standards related to building setbacks under the Zoning Ordinance and which will meet DEH standards if an offsite sewage easement is permitted, so long as the parcel is left in its existing configuration.

Procedure - Sewage Disposal Easements for New Subdivisions of Property

1. All septic system designs will comply with state Basin Plan requirements.
2. The Division of Environmental Health will consult with Planning & Building Services at the Subdivision Committee and that recommendation will be considered by the Planning Commission for action.

Procedure - Sewage Disposal Easement Requirements

This section identifies the requirements for establishing a sewage disposal easement.

1. The sewage disposal system or part thereof shall be located on an abutting lot of the site of the building or structure served by such sewage disposal system. Roads shall not be considered as a separation in defining an abutting lot.
2. Easements shall be recorded with the County Clerk Recorder's Office. This shall include:
 - a. A non-exclusive easement grant deed conveying the easement from the record owners of the burden parcel to the owners of the parcel to be developed.
 - b. A full legal description of the easement area prepared by a Licensed Land Surveyor or Registered Civil Engineer licensed to survey.



- c. All appurtenant easements for access, pipelines, drainage, etc., shall be conveyed in the easement grant deed.
- d. The following Conditions and Restrictions shall be recorded on the deed:

The use of the area of the leach field easement by the grantor shall be restricted from uses which are incompatible with proper leach field operation. This shall include structures, grazing livestock, vehicular parking, road ways, drainage courses, wells or other uses which would disrupt the leach field.

- 3. Leach field easements shall be separate and distinct from one another, unless a maintenance entity is established in accordance with County policy regarding the creation of community leachfields.
- 4. A Record of Survey map will be required, and the easement corners and angle points shall be monumented by a Licensed Land Surveyor or Registered Civil Engineer licensed to survey. Additional six foot steel fence posts may be required to clearly identify the location of the septic easement.
- 5. Septic systems that require a sewage disposal easement shall be placed in the county's non-standard septic system program. Standard septic systems with easements in close proximity to the structure served shall not be placed in the non-standard septic system program for monitoring and maintenance.
- 6. Each sewage disposal easement shall provide sufficient area so that all activities necessary for the installation, maintenance and monitoring of the leach fields and transmission line may occur solely within the area of that easement. In some cases, the easement may require additional space to allow access for necessary construction equipment.
- 7. The following setback, sizing and construction requirements shall apply to all sewage disposal easements:
 - a. A minimum 20-foot perimeter shall be required around each leach field area of sewage disposal easement. For the purposes of this requirement, the leach field shall be deemed to include any cover soil that extends beyond infiltrative surfaces.
 - b. Single transmission line corridors that are less than 100 feet in length and which are not used to provide equipment access shall be a minimum of 12 feet in width. A transmission line and an associated return line shall be treated as a single line for the purposes of this and all following requirements.
 - c. Single transmission line corridors that are greater than 100 feet in length, contain multiple transmission lines, or are used to provide equipment access shall be a minimum of 20 feet in width.
 - d. A tracing wire with ends that are protected and easily located shall be required for each transmission line.
 - e. If multiple transmission lines are placed within the same transmission line easement,



transmission lines shall not cross over other transmission lines. Each line shall be situated within the allotted easement area to facilitate the safe installation and future maintenance of individual lines.

- f. A minimum 20-foot wide easement corridor shall be required to ensure equipment access to the disposal area. DEH may require additional width where the access corridor contains corners, bends, large trees, rock outcroppings or any other obstacle.
- g. If equipment access is provided via a transmission line corridor, the transmission line shall be installed in a manner that will protect it from being damaged by the movement of equipment and materials.
- h. The owner whose property is served by a septic easement shall be responsible for maintaining that easement, including the repair of required borders or boundary markers and the removal of vegetation for fire suppression.
- i. The minimum widths of 20 feet referred to in paragraphs 7a, 7c and 7f, above may be modified to widths of no less than 12 feet if the applicant can demonstrate to DEH that this is adequate, based on constraints such as slope of the ground, the vegetative cover, and the type of system proposed.

APPENDIX A

Summary of Boundary Line Adjustment and Septic Easement Approval Processes

I. Boundary Line Adjustments

1. Are the parcels in the Coastal Zone?

If yes, then go to Question 2.

If no, then go to Question 4.

2. Are the parcels recognized by Certificates of Compliance?

If yes, then go to Question 3.

If no, then Coastal Permit Administrator (CPA) must review for approval. A decision of the CPA may be appealed to the Coastal Commission or the Board of Supervisors.

3. Are the parcels, in their existing configurations, either currently developed or able to be developed?

If yes, then Coastal Permit Administrator must review for approval. A decision of the CPA may be appealed to the Coastal Commission or the Board of Supervisors.

If no, then the applicant will be informed that policy does not permit a BLA, however, applicant may request review by the CPA. A decision of the CPA may be appealed to the Coastal Commission or the Board of Supervisors.



4. Do the parcels currently conform with minimum lot size requirements?

If yes, then staff will review for approval. A denial by staff may be appealed to the Planning Commission.
If no, then go to Question 5.
5. Are undersized parcels being merged to create a single parcel that will be self-contained for sewer and water?

If yes, then staff will review for approval. A denial by staff may be appealed to the Planning Commission.
If no, then go to Question 6.
6. Are the parcels, in their existing configurations, either currently developed or able to be developed?

If yes, then Planning Commission must review for approval. A decision of the Planning Commission may be appealed to the Board of Supervisors.

If no, then the applicant will be informed by staff that policy does not permit a BLA. However, applicant may request review by the Planning Commission. A decision of the Planning Commission may be appealed to the Board of Supervisors.

II. Septic Easements

1. Is easement needed to serve existing developed parcel?

If yes, then staff can review for approval.
If no, then go to Question 2.
2. Is easement needed to serve new parcels created by a proposed subdivision?

If yes, then Planning Commission must review for approval.
If no, then go to Question 3.
3. Is easement needed to serve a vacant parcel that meets contemporary zoning standards and building setbacks, and will that parcel meet DEH standards if an offsite septic easement is permitted?

If yes, then staff can review for approval or refer to the Planning Commission.



REGULATORY BACKGROUND: There are numerous statutory and policy considerations when attempting to address this issue. Unfortunately, some of the directives contain ambiguities or appear to conflict with one another. In the following section identifies some of the laws, regulations and policies which should be considered. In some entries, phrases are highlighted in **bold type** to accentuate sections that may be germane to this discussion.

I. The Use of Off-site Septic Easements

- California Plumbing Code, Appendix K, Section G (incorporated in Mendocino County Code at section 16.08.130) states:
 - No private sewage disposal system, or part thereof, shall be located in any lot other than the lot that is the site of the building or structure served by such private sewage disposal system, nor shall any private sewage disposal system or part thereof be located at any point having less than the minimum distances indicated in Table K-1.
 - Nothing contained in this code shall be construed to prohibit the use of all or part of an abutting lot to provide additional space for a private sewage disposal system or part thereof when proper cause, transfer of ownership, or change of boundary not in violation of other requirements has been first established to the satisfaction of the authority having jurisdiction.

NOTE: This section is confusing, to a degree, in that it provides an exception to the stated general prohibition against the use of sewage disposal easements.

II. The Creation of Boundary Line Adjustments.

- Mendocino County Code Section 17-17.5 states, in part:
 - "Boundary line adjustment" means the transfer of property by deed to a respective owner or owners of contiguous property for the purpose of adjusting a boundary line and **not for the purpose of creating an additional lot or parcel.**
- Subdivision Map Act Section 66412(d) regulates boundary line adjustments. It states:
 - A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where **a greater number of parcels than originally existed is not thereby created**, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements.



- The California Environmental Quality Act provides for a categorical exemption to boundary, or lot line, adjustments, but qualifies the exemption as follows:
 - Section 15305. Minor Alterations in Land use Limitations.
 - Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, **which do not result in any changes in land use or density**, including but not limited to:
 - **Minor lot line adjustments**, side yard, and set back variances not resulting in the creation of any new parcel;
 - Issuance of minor encroachment permits;
 - Reversion to acreage in accordance with the Subdivision Map Act.
- NOTE: There is no definition of what a “minor lot line adjustment” is, nor is an alternative “major” lot line adjustment discussed.
- Mendocino County Code Section 20.532.015(D) states:
 - Coastal Development Standard Permit. **A coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use.**
 - The General Plan contains the following Development Element Policies:
 - Policy DE-31: **Legally created parcels (including certificates of compliance) that do not comply with development requirements shall only be developed conditional to the satisfaction of basic requirements for health, safety, access and orderly development.**
 - Policy DE-32: Allow development of legal nonconforming lots, structures and uses that are consistent with General Plan, environmental and community objectives and seek the discontinuance of those which are not consistent. The following standards shall apply:
 - **Legal nonconforming lots may be developed, subject to current development standards**, legal nonconforming structures may be used, and legal nonconforming uses may continue when basic health and safety are provided.
 - Discontinued or destroyed legal nonconforming uses and structures must be reestablished within a reasonable time, as established in the Development Code, or future uses must conform to applicable regulations.
 - LCP Policy 3.8-7 states:
 - Land divisions and subdivisions creating new parcels or building sites or other proposed development, **including lot line adjustments**, mergers and issuance of conditional certificates of compliance **shall be approved only** where a community sewage disposal system with available capacity exists and is obligated to provide



service or **where a satisfactory site for a sewage system exists**. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

- The County's Division of Land Regulations (Chapter 17 of the County Code) states as its purpose:
 - This Chapter is enacted **for the purpose of promoting the public health**, safety, convenience, and general welfare in accordance with the general plan of the County of Mendocino, **including** but not limited to **the elimination of**:
 - (A) The creation of **lots of inadequate size and poor design**;
 - (B) The **creation of building sites in areas where topography, flooding, or other factors will prevent safe, orderly, and beneficial land development**;
 - (C) The creation of roads of improper width, alignment, grade, and improvements;
 - (D) **Hazards to life or property from sewage effluent** or inadequate drainage;
 - (E) The lowering of property values and the loss of opportunity for satisfactory overall development of neighborhoods caused by successive, uncontrolled and haphazard land divisions;
 - (F) The excessive cost to taxpayers of Mendocino County for providing services within the Subdivision.

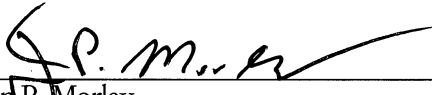
Effective Date: August 10, 2010
Revised:



Ignacio "Nash" Gonzales
Director, Department of Planning & Building Services

10-1-10

date



John P. Morley
Director, Division of Environmental Health

10-8-10

date

