



AGENCY ADMIN. & FINANCE  
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October 22, 2008

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: STAFF REPORT on activities since September 29, 2008 related to Dr. Donn Lobdell, 822 Kilcare Road, Sunol, California**

This letter serves as to update the Board letter dated August 21, 2008 (attachment A) for the subject property.

On September 29<sup>th</sup>, Supervisor Steele convened a meeting with staff of the Department of Environmental Health (DEH) and Dr. Lobdell (Lobdell) to determine if all options related to septic system issues at 822 Kilcare Road were adequately investigated. The meeting was requested by Lobdell as an alternative to the issue going before the Board as a variance request to the county's septic system ordinance. As of the meeting, the appeal process articulated in County septic system ordinance had been followed and DEH was prepared to submit a recommendation to the Board to deny appeal by Lobdell.

The meeting was productive. This case presented a unique situation, as it appears that approval in 1976 included a reserve area that was approved, however never placed in use. It was agreed that if this area could be evaluated for placing in use, consistent with the approval given in 1976, that it is possible the system given approval for the two bedroom house could be enlarged and given approval for a 3 bedroom. This opportunity was unique due to a documented and unused approved area for this property.

As a result, Lobdell and DEH staff agreed that further investigation was justified, and the issue of variance request should be continued and not placed on the September 30<sup>th</sup> Board Agenda.

In e-mail and letter correspondence including those dated September 30<sup>th</sup> (attachment B) and October 6<sup>th</sup> (attachment C), Lobdell agreed to the following:

1. DEH would work with Lobdell and a consultant of his choice on a priority basis.
2. Lobdell would not need to "abandon" the current system and could enhance the system by adding leach line capacity using the "pre-approved area" and meet regulations and code in effect in 1976.
3. Lobdell with his consultant would set as their objective the design of a septic system that meets code standard as were in effect in 1976 for a three bedroom house and in doing so provide a system compatible with the house that was constructed (the system in existence was approved of and sized for a two bedroom house).

Subsequent to the meeting and initial correspondence that indicated agreement, Lobdell restated his position per his memo dated October 8<sup>th</sup> (attachment D) and no longer appeared to support the agreements reached. As a result, according to DEH, there has been no noticeable movement by Lobdell, or a consultant acting in his behalf, to further investigate solutions DEH agreed to consider and was prepared to evaluate.

Additionally, as further update to the Board regarding DEH response to other submittals made by Lobdell, such as his September 19<sup>th</sup> letter (attachment E) to the Board requesting variance approval and other letters dated October 17<sup>th</sup> (attachment F) and 18<sup>th</sup> (attachment G) DEH reviewed these but did not find compelling evidence to change its current position. Responding to the number of allegations and complaints made by Lobdell in his attachments to the September 19<sup>th</sup> letter, DEH considers the attention provided by staff to have been a good faith effort to fairly apply relevant standards to this case.

Last, and in a broader context, the Lobdell case is significant for its impact on the intent of the County's septic system management program overall. Again, the core problem is that a three bedroom house was built with a septic system sized for a two bedroom house which makes it an undersized system. The issue that brought this core problem to light is the current request to increase the living space of the house by 27%. The overall concern is that inadequately sized septic systems are at greater risk of failure and breakout of sewage onto the ground or rapid percolation and impact to groundwater. Thus, the greater problem is that approving the request to increase the size of the house only makes a potentially bad problem worse. The County program as the local program works in this endeavor with its partner, the Regional Water Quality Control Board. Both are

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mandated to protect human health and the environment through implementing sound regulations that affect septic systems. In order to be consistent with the mandates and County ordinance, the Lobdell request, as it stands, should not be approved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dave Kears", written in a cursive style.

Dave Kears, Director  
Health Care Services Agency

Attachments:

- A. August 21, 2008 DEH Board letter
- B. September 30, 2008 letter (Lobdell to Dave Kears)
- C. October 6, 2008 e-mail (Lobdell to Dave Kears)
- D. October 8, 2008 e-mail (Lobdell to Dave Kears)
- E. September 19, 2008 letter (Lobdell to Board of Supervisors)
- F. October 17, 2008 letter (Lobdell to Ariu Levi (DEH))
- G. October 18, 2008 letter (Lobdell to Ariu Levi (DEH))





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August 21, 2008

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: Recommendation to Uphold Departmental Decision to Deny Appeal of Dr. Donn Lobdell  
822 Kilcare Road, Sunol, California**

**RECOMMENDATION:**

It is recommended that your Board uphold the decision of the Director of the Department of Environmental Health in denying the appeal of Dr. Donn Lobdell to build an addition to his house at 822 Kilcare Road, Sunol. This recommendation is based on the fact that the septic system is inadequate for the number of bedrooms in the house. Dr Lobdell is appealing this decision under Section 15.18.040F3 of the Alameda County Septic Code. Please see Attachment 1: Excerpts of relevant Alameda County Septic Code Sections

**SUMMARY:**

This 1.17 acre parcel has an existing 2,522 ft<sup>2</sup> house and a septic system. The septic system was approved by this Department for a 2 bedroom house and was installed in 1976. The Building Permit was issued in 1977 for a 2 bedroom house.

The purpose of a septic system is to treat and dispose of wastewater from household plumbing fixtures such as toilets, showers and sinks. Wastewater flows first into a septic tank where, over time, solids settle to the bottom and the clearer water exits the tank and flows to the leachfield. Typically, a leachfield treats this wastewater by passing the wastewater through several feet of good soil wherein bacteria metabolize harmful organisms and other substances. Some of the wastewater is also absorbed from the soil by plants or evaporated by the sun. If not properly filtered by the soil, absorbed by plants or evaporated, the wastewater has the potential to pass deeper into the ground where it eventually enters groundwater aquifers. Wells used for drinking water tap into groundwater aquifers. The aquifer, and thus water wells, can become contaminated if the wastewater is not properly filtered or otherwise treated. Such inadequate treatment can also occur if a leachfield is not adequately sized to handle the expected wastewater load.

Recently the Applicant applied for a Building Permit to expand the house. The plan submitted to this Department shows an existing 3 bedroom house with a proposed 27% addition. The septic system approved in 1976 was for a 2 bedroom house, not a 3 bedroom house. The proposed house addition would put the already inadequately sized septic system at further risk of failure.

**DISCUSSION/FINDINGS:**

1. Staff Report  
In September 2007, Dr Lobdell provided a plan to the Department of Environmental Health (herein 'the Department') showing a proposed 27% non-bedroom addition to his house. In September 2007 this Department made an evaluation visit to the property. After studying the proposal, site conditions, Building & Health Department permits and relevant County Septic Code Sections, a letter denying the project was sent to Dr Lobdell. Dr Lobdell appealed the denial and the Department wrote a Staff Report listing the reasons for the denial. This Staff Report essentially states that a two bedroom septic system and two bedroom house was approved in the 1970's by the Health & Building Departments respectively. A three bedroom house was built. The existing septic system is undersized for a three bedroom house and there is a risk of negative environmental impact. Approving an additional 27% increase in the livable area of the house would increase the potential health & environmental risks. Please see Attachment 2: December 2007 Staff Report.
2. Appeal Hearing at the Department  
Dr Lobdell requested an Appeal Hearing before the Director of the Department of Environmental Health, Ariu Levi. In the January 2008 Hearing, the Director carefully considered the documents, testimony, arguments and applicable Codes. After due deliberation, the Director rendered a decision denying the appeal of Dr Lobdell for the proposed house addition. Please see Attachment 3: February 2008 Director's decision following the Appeal.
3. Land Use Review Panel  
Dr Lobdell requested a Hearing before the Land Use Review Panel which is composed of impartial septic system designers and contractors with no connection to the Department nor the client. In the May 2008 Hearing, the Panel reviewed documents, considered testimony and deliberated over the matter. The Panel found that a three bedroom house was being served by a two bedroom septic system without the approval of the Department. Please see Attachment 4: May 2008 Land Use Review Panel's Findings and Recommendations.
4. Final Decision of the Department  
In June of 2008, after receiving the Land Use Review Panel's findings and recommendations, the Department Director wrote the Notice of Final Departmental Decision denying Dr Lobdell's house addition proposal. The Director concurred with the Land Use Review Panel's findings and pointed out how the proposal would violate County Ordinance. The Director wrote further that it would not qualify for a Variance because there are no special circumstances warranting a Variance, and that a Variance would constitute a grant of special privileges. Additionally, the Director pointed out how the house addition could be a potential detriment to public health and safety. Please see Attachment 5: June 2008 Notice of Final Departmental Decision.
5. Appeal to the Board of Supervisors  
In June 2008 Dr Lobdell wrote a letter of appeal to the Alameda County Board of Supervisors. Please see Attachment 6: June 2008 Appeal to Board of Supervisors from Dr Lobdell.

August 21, 2008

### **RESPONSE TO DR. LOBDELL'S COMMENTS**

Following are the Department's responses to statements made by Dr Lobdell in his June 19, 2008 letter of appeal to the Alameda County Board of Supervisors.

1. **Lobdell Statement** "Denial is partially based on reciting elements that, in fact, qualify the proposal as Class 3; namely that the existing system is undersized by current standards. Since being undersized by current standards is one of the elements contemplated in the definition of Class 3, this is, at best, confused reasoning."

**Department Response** An undersized septic system is a condition allowable for a Class 3 septic system under Section 7A3 of the Alameda County Septic Code. However, Section 7B2c states that a Class 3 system is acceptable for a non-bedroom addition of less than 30% of the area of the house. Proposals for additional bedrooms above what the septic system was approved for must meet Class 1 standards per Section 7A1. In Dr Lobdell's case, Septic System approval was given in 1976 for a 2 bedroom septic system and the Building Permit was issued in 1977 for a 2 bedroom house. A three bedroom house was built. There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure.

2. **Lobdell Statement** "Denial is partially based on an assertion concocted apparently for the purpose of creating an ersatz basis to justify denying the requested approval. This concocted assertion is contrary to the published codes, past practices, current practices and even the teachings of the DEH."

#### **Department Response**

The Department's denial is based upon Section 7 of the Alameda County Septic System Code and the facts stated in item number 1 above. The denial is consistent with published codes and practices of the Department.

3. **Lobdell Statement** "Appellant is being denied the due process of reliance on past decisions and actions of Alameda County Officials. In fact, during the 1977 construction of the subject dwelling a written assertion was made to the Alameda County Planning Department and the Alameda County Board of Supervisors that the building permit had been improperly issued for, among other reasons, an inadequate space for a private wastewater treatment system for the dwelling being constructed. An investigation by Alameda County Officials including the Department of Environmental Health resulted in the determination and statement that the septic system fully met the requirements of the Code and the Alameda County Health Department. Thus the denial, being appealed, overturned, without reason, the actions and decisions of Alameda County Officials who in 1977 investigated and resolved the assertion regarding the building permit issuance. It seems perverse that, some 30 years later without the discovery of a single new fact, the present Director of DEH would adopt a position contrary to that of the Alameda County Officials who were on the scene and had access to the investigating and decision making personnel."

#### **Department Response**

The Department believes that Dr Lobdell is referring to a 9/16/77 letter from Hans Peeters and the 11/3/77 response letter from H. A. Flertzheim, then Director of Alameda County Public Works. The essence of Mr. Peeters letter is that the septic system leachfield was possibly being constructed in an area

too small for a leachfield, partially under a house and too close to a creek. The operative section of the response letter from Mr. Flertzheim is "The septic tank and leachfield have been installed in conformance with the plumbing code and requirements of the County Health Department and they have not been constructed under the dwelling." Mr. Flertzheim letter was in direct response to Mr. Peeters concerns over the cramped location of the leachfield, its possible location partially under the house and its proximity to a creek. Neither Mr. Peeters letter nor Mr. Flertzheim's response addresses whether the size of the leachfield complies with Code requirements for a 3 bedroom house.

- 4a. **Lobdell Statement** "Certain actions by the DEH have been inequitable to appellant. For instance: Documents favorable to appellant's position were delivered subsequent to hearings, in this year, where the documents would have been of value in supporting appellant, despite having been in the possession of the DEH since 1977 and having been earlier requested by appellant."

**Department Response**

A good faith effort was made by the Department to respond to all requests in a timely manner. Documents from the file were copied and mailed to Dr Lobdell as expeditiously as possible given the resources of the Department. Dr Lobdell stated in an April 16, 2008 email to the Department: "What you have provided will be adequate for my needs." and another April 16, 2008 email to the Department: "Thanks for the information that you sent by mail (on two occasions.) It is helpful." and a May 18, 2008 email to the Department: "I appreciate that you have been helpful and cooperative in accommodating my requests."

- 4b. **Lobdell Statement** "Certain actions by the DEH have been inequitable to appellant. For instance: Since mid 2004, DEH has asserted to appellant that a certain set of codes were applicable to the 1977 construction at 822 Kilkare Road. Only recently, in March 2008, DEH asserted that a different set of codes were applicable to that 1977 construction. Regardless of which codes are believed by the present DEH to have been applicable in 1977, appellant and the Board of Supervisors should be able to rely that the decisions made in 1977 by the responsible Alameda County Officials were correctly made in accordance with the then actually applicable codes. Again, the present DEH Director's denial ignores or effectively sets aside the decisions at the time of the dwelling construction made by the authorized Alameda County Officials. It is unlikely that those officials were as confused regarding the codes applicable in 1977 as the present DEH has proven to be."

**Department Response**

The two relevant Codes are the 1973 Uniform Plumbing Code and Alameda County Ordinance 74-66 which amended & adopted this Plumbing Code. The required leachfield size for a three bedroom house would have been 400 ft<sup>2</sup> and 495 ft<sup>2</sup> respectively under each Code versus the installed leachfield size of 210 ft<sup>2</sup>. Staff of the Department did not have a copy of Ordinance 74-66 until March 2008, whereupon a copy was immediately forwarded to Dr Lobdell. The late introduction of this Ordinance was an accidental act of the Department without intent to cause prejudice against his case. The result did not significantly improve nor damage his situation. Regarding decisions of County officials in the 1970's versus current decisions, there is nothing in the records that indicates that County officials in the 1970's acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure. For further details, please see item number 3 in this letter.

August 21, 2008

- 4c. **Lobdell Statement** "Certain actions by the DEH have been inequitable to appellant. For instance: Documents delivered to the Land Use Review Panel members several weeks in advance of the scheduled hearing included DEH position papers; but appellant's position papers were not delivered to the panel members in a coherent form until the evening before the hearing, despite having been in the possession of DEH for several months. Reviews, hearings and decisions scheduled by DEH have been postponed and/or delayed for literally months by DEH."

**Department Response**

Regarding the Land Use Review Panel Hearing in May 2008, the Department believes that it was conducted in a fair and comprehensive manner. Documents from the Department's files were copied and mailed to Panel members several weeks before the Hearing. There was one document that was incompletely copied. When the error was realized, complete copies of this document were sent to and received by the Panel members the day before the Hearing. The Panel had all relevant facts and arguments in ample time before the Hearing for their review. The Panel gave Dr Lobdell abundant time during the Hearing to present any and all information helpful to his case. The Panel gave a thorough appraisal of all testimony in public session, then conferred in private session before rendering a decision. The findings of the Panel upheld the Department's previous decision to not approve the house expansion.

**FINANCING:**

There is no financial impact to the County by your Board's upholding of the Department Director's decision.

Very truly yours,

David J. Kears, Director  
Health Care Services Agency

**attachments:**

1. Excerpts of relevant Alameda County Septic Code Sections
2. December 2007 Staff Report
3. February 2008 Director's decision following the Appeal.
4. May 2008 Land Use Review Panel Findings & Recommendations
5. June 2008 Notice of Final Departmental Decision.
6. June 2008 Appeal to Board of Supervisors from Dr Lobdell

cc: Auditor-Controller  
County Counsel  
Dr Donn Lobdell  
Zone 7  
Regional Water Quality Control Board





Ordinance Section 15.18.040F3

Appeal to the Board of Supervisors

If the appellant is still not satisfied with the final Departmental decision, the appellant may file a third appeal with the Alameda County Board of Supervisors. That appeal to the Board must be in writing and must specify the grounds for appeal. That written appeal must be actually received by the Clerk of the Board no later than 10 working days after the date of mailing by the Director of the final Departmental decision. Thereafter, following receipt by the Clerk of the Board of a timely appeal, the Board shall promptly schedule a hearing on the third appeal. After that hearing, the Board shall render its decision, noticed in writing to appellant, which shall be final.

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Regulations Section 7 Additions and Remodels

A. Classes

As used in these Regulations, the following Classes shall be defined to include the following:

1. Class 1 Fully Compliant System
  - a. Onsite Wastewater Treatment System complies with current requirements of these Regulations.
  - b. Valid Construction Permits, Plans (and Variances if applicable) are on file with the Department.
  - c. A written report from a licensed Septic System Contractor indicating that the System has been inspected within the past year and is functioning properly. (See Definitions: 'functioning properly')
2. Class 2 Partially Compliant System
  - a. System sizing and current setback requirements of these Regulations are or can be met.
  - b. Replacement area meets the requirements of these Regulations as evidenced by Soil Profiles and Percolation Tests.
  - c. A written report from a licensed Septic System Contractor indicates that the System has been inspected within the past year and is functioning properly. (see Definitions: 'functioning properly')
  - d. Valid Construction Permits, Plans (and Variances if applicable) are on file with the Department. If Permits and Plans are not available, then a clear, legible, reasonably accurate site plan must be submitted to the Department. The site plan must be drawn to a scale of approximately 1" = 20 feet in the area of the septic system and nearby structures. It must show the following elements, sizes and distances in feet: all existing and proposed structures, the location and approximate size of the leachfield and septic tank, retaining walls, large trees, slopes, nearby embankments, streams, paved areas, property lines, wells, surface and subsurface drainage systems, swimming pools, and other elements which may affect the septic system. A map of the entire property drawn to a smaller scale showing how the above area is located in relation to the parcel boundaries must also be submitted.
  - e. The System is in compliance with design specifications as originally permitted or as subsequently approved by the Department.
3. Class 3 Minimally Compliant System
  - a. System sizing and setback requirements of this Chapter may not be met.
  - b. Replacement area may not meet the requirements of these Regulations.
  - c, d & e requirements are the same as for 'Class 2 Partially Compliant System'.
4. Class 4 Non-Compliant System

Dwellings with cesspools will not be approved for any additions or remodels until an approved Onsite Wastewater Treatment System is provided. Cesspool must be abandoned in such cases and the installation of new cesspools shall not be permitted.

## B. Requirements for Additions and Remodels

### 1. Bedroom Additions

Class 1 System required. A site plan must be submitted to this Department showing that the addition does not conflict with the septic System or the replacement area.

### 2. Non-Bedroom Additions

Non-bedroom additions include any increase in square footage of living area including detached structures. The following percentages deal with the cumulative total square footage of additions since the installation of the System.

- a. Over 60% increase in square footage requires a Class 1 System.
- b. 31 - 60% increase in square footage requires a Class 1 or 2 System.
- c. 1 - 30% increase in square footage requires a Class 1, 2 or 3 System.

A site plan must be submitted to this Department showing that the addition does not conflict with the septic System or the replacement area. This site plan must contain the details listed in Section 7A2d.

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## Section 16 Sizing of the Leachfield

The design basis for sizing a System is the average Percolation Rate in conjunction with the Sewage Application Rate Table (Table 2). Table 2 gives the required maximum rate at which wastewater can be applied to the soil in gallons per square foot per day. Leachfields using technology not described in these Regulations (e.g.: gravelless chambers) shall be sized in the same manner as leachfields for Standard Systems. Examples of how the Sewage Application Rate is used to determine the size of the leachfield are given in the Sections dealing with the various types of Systems. For example:

### A. Standard System (Section 22D)

### B. Advanced Systems

1. At-Grade (Section 25)
2. Shallow Trench Pressure Distribution (Section 26)

Table 2 (Section 16)  
SEWAGE APPLICATION RATES  
Percolation Rates (Minutes per Inch) and  
Associated Soil Loading Rates (Gallons per Square Foot per Day)

|                               |                                  |
|-------------------------------|----------------------------------|
| 1-3 MPI = 1.200 gal/sq ft/day | 47 MPI = 0.437 gal/sq ft/day     |
| 4 MPI = 1.143 gal/sq ft/day   | 48 MPI = 0.430 gal/sq ft/day     |
| 5 MPI = 1.086 gal/sq ft/day   | 49 MPI = 0.423 gal/sq ft/day     |
| 6 MPI = 1.029 gal/sq ft/day   | 50 MPI = 0.417 gal/sq ft/day     |
| 7 MPI = 0.971 gal/sq ft/day   | 51 MPI = 0.410 gal/sq ft/day     |
| 8 MPI = 0.914 gal/sq ft/day   | 52 MPI = 0.403 gal/sq ft/day     |
| 9 MPI = 0.857 gal/sq ft/day   | 53 MPI = 0.397 gal/sq ft/day     |
| 10 MPI = 0.800 gal/sq ft/day  | 54 MPI = 0.390 gal/sq ft/day     |
| 11 MPI = 0.786 gal/sq ft/day  | 55 MPI = 0.383 gal/sq ft/day     |
| 12 MPI = 0.771 gal/sq ft/day  | 56 MPI = 0.377 gal/sq ft/day     |
| 13 MPI = 0.757 gal/sq ft/day  | 57 MPI = 0.370 gal/sq ft/day     |
| 14 MPI = 0.743 gal/sq ft/day  | 58 MPI = 0.363 gal/sq ft/day     |
| 15 MPI = 0.729 gal/sq ft/day  | 59 MPI = 0.357 gal/sq ft/day     |
| 16 MPI = 0.714 gal/sq ft/day  | 60 MPI = 0.350 gal/sq ft/day     |
| 17 MPI = 0.700 gal/sq ft/day  | 61 MPI = 0.345 gal/sq ft/day     |
| 18 MPI = 0.686 gal/sq ft/day  | 62 MPI = 0.340 gal/sq ft/day     |
| 19 MPI = 0.671 gal/sq ft/day  | 63 MPI = 0.335 gal/sq ft/day     |
| 20 MPI = 0.657 gal/sq ft/day  | 64 MPI = 0.330 gal/sq ft/day     |
| 21 MPI = 0.643 gal/sq ft/day  | 65 MPI = 0.325 gal/sq ft/day     |
| 22 MPI = 0.629 gal/sq ft/day  | 66 MPI = 0.320 gal/sq ft/day     |
| 23 MPI = 0.614 gal/sq ft/day  | 67 MPI = 0.315 gal/sq ft/day     |
| 24 MPI = 0.600 gal/sq ft/day  | 68 MPI = 0.310 gal/sq ft/day     |
| 25 MPI = 0.593 gal/sq ft/day  | 69 MPI = 0.305 gal/sq ft/day     |
| 26 MPI = 0.587 gal/sq ft/day  | 70 MPI = 0.300 gal/sq ft/day     |
| 27 MPI = 0.580 gal/sq ft/day  | 71 MPI = 0.295 gal/sq ft/day     |
| 28 MPI = 0.573 gal/sq ft/day  | 72 MPI = 0.290 gal/sq ft/day     |
| 29 MPI = 0.567 gal/sq ft/day  | 73 MPI = 0.285 gal/sq ft/day     |
| 30 MPI = 0.560 gal/sq ft/day  | 74 MPI = 0.280 gal/sq ft/day     |
| 31 MPI = 0.553 gal/sq ft/day  | 75 MPI = 0.275 gal/sq ft/day     |
| 32 MPI = 0.545 gal/sq ft/day  | 76 MPI = 0.270 gal/sq ft/day     |
| 33 MPI = 0.538 gal/sq ft/day  | 77 MPI = 0.265 gal/sq ft/day     |
| 34 MPI = 0.531 gal/sq ft/day  | 78 MPI = 0.260 gal/sq ft/day     |
| 35 MPI = 0.523 gal/sq ft/day  | 79 MPI = 0.255 gal/sq ft/day     |
| 36 MPI = 0.516 gal/sq ft/day  | 80 MPI = 0.250 gal/sq ft/day     |
| 37 MPI = 0.509 gal/sq ft/day  | 81 MPI = 0.245 gal/sq ft/day     |
| 38 MPI = 0.501 gal/sq ft/day  | 82 MPI = 0.240 gal/sq ft/day     |
| 39 MPI = 0.494 gal/sq ft/day  | 83 MPI = 0.235 gal/sq ft/day     |
| 40 MPI = 0.487 gal/sq ft/day  | 84 MPI = 0.230 gal/sq ft/day     |
| 41 MPI = 0.479 gal/sq ft/day  | 85 MPI = 0.225 gal/sq ft/day     |
| 42 MPI = 0.472 gal/sq ft/day  | 86 MPI = 0.220 gal/sq ft/day     |
| 43 MPI = 0.465 gal/sq ft/day  | 87 MPI = 0.215 gal/sq ft/day     |
| 44 MPI = 0.457 gal/sq ft/day  | 88 MPI = 0.210 gal/sq ft/day     |
| 45 MPI = 0.450 gal/sq ft/day  | 89 MPI = 0.205 gal/sq ft/day     |
| 46 MPI = 0.443 gal/sq ft/day  | 90-120 MPI = 0.200 gal/sq ft/day |

## Regulations Section 17 Sewage Flows

All Systems must be sized for peak daily flows.

### A. Minimum Sewage Flows

Minimum sewage flows from residential buildings are calculated based on 150 gallons per day per bedroom.

## Section 22 Standard Leachfield Requirements

C There must be a primary leachfield and a secondary leachfield installed. Each field must be sized to handle 100% of the effluent. One field must be operated for 6 to 12 months and then the flow must be rotated using a diversion valve to the other field.

## Excerpts from 1973 Uniform Plumbing Code

### Sec. 1112 — Capacity of Septic Tanks

The liquid capacity of all septic tanks shall conform to Tables 11-2 and 11-3 as determined by the number of bedrooms or apartment units in dwelling occupancies and the occupant load or the number of plumbing fixture units as determined from Table 4-1, whichever is greater in other building occupancies. The capacity of any one septic tank and its drainage system shall be limited by the soil structure classification as specified in Table 11-5.

TABLE 11-5

| Required Sq. ft. of<br>Leaching Area/100 gals.<br>Septic Tank Capacity | Maximum Septic Tank<br>Size<br>Allowable |
|------------------------------------------------------------------------|------------------------------------------|
| 20-25                                                                  | 7500                                     |
| 40                                                                     | 5000                                     |
| 60                                                                     | 3500                                     |
| 90                                                                     | 3000                                     |

TABLE 11-2

| Capacity of Septic Tanks*                        |                                                               |                                                                 |                                                  |
|--------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------|
| Single family<br>dwellings—number<br>of bedrooms | Multiple dwelling units<br>or apartments—<br>one bedroom each | Other Uses:<br>Maximum Fixture<br>Units Served<br>Per Table 4-1 | Minimum<br>septic tank<br>capacity in<br>gallons |
| 1 or 2                                           |                                                               | 15                                                              | 750                                              |
| 3                                                |                                                               | 20                                                              | 1000                                             |
| 4                                                |                                                               | 25                                                              | 1200                                             |
| 5 or 6                                           | 2 units                                                       | 33                                                              | 1500                                             |
|                                                  | 3                                                             | 45                                                              | 2000                                             |
|                                                  | 4                                                             | 55                                                              | 2250                                             |
|                                                  | 5                                                             | 60                                                              | 2500                                             |
|                                                  | 6                                                             | 70                                                              | 2750                                             |
|                                                  | 7                                                             | 80                                                              | 3000                                             |
|                                                  | 8                                                             | 90                                                              | 3250                                             |
|                                                  | 9                                                             | 100                                                             | 3500                                             |
|                                                  | 10                                                            |                                                                 |                                                  |

3. Soils, other than those appearing in Table 11-4, shall be tested for porosity as required by Section 1114.

**TABLE 11-4**  
**RATED ABSORPTION CAPACITIES**  
**OF 5 TYPICAL SOILS**

| Type of Soil                                         | Required sq.<br>ft. of leaching<br>area/100 gals. | Maximum absorption<br>capacity gals./sq.<br>ft. of leaching area<br>for a 24-hour period. |
|------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------|
| 1. Coarse sand or gravel .....                       | 20                                                | 5                                                                                         |
| 2. Fine sand .....                                   | 25                                                | 4                                                                                         |
| 3. Sandy loam or sandy clay .....                    | 40                                                | 2.5                                                                                       |
| 4. Clay with considerable sand<br>or gravel .....    | 60                                                | 1.66                                                                                      |
| 5. Clay with small amount of<br>sand or gravel ..... | 90                                                | 1.11                                                                                      |



On every lot or premises hereafter connected to a public sewer, all plumbing and drainage systems or parts thereof on such lot or premises shall be connected to such public sewer.

Section 7-42.5 Section 1110, Chapter 10: Location. Section 1110 on pages 86 and 87 is amended by adding a new subsection (c).

Section 1110(c). It shall be unlawful to sell, transfer, divide, or set off any portion of any lot which will in any way reduce the minimum areas set forth in Section 1101 or reduce the minimum distances set forth in Table 11-1.

Section 7-42.6 Section 1111, Chapter 11, Private Sewage Disposal (General). Section 1111(c) on page 87 is amended to read:

(c) Disposal systems shall be designed to utilize the most porous or absorptive portions of the soil formation. Where the ground water level extends to within eight (8) feet or less of the ground surface or where the upper soil is porous and the underlying stratum is rock or impervious soil, a septic tank and disposal field system shall not be installed. Disposal systems shall only be permitted in undisturbed ground areas or where the depth of any cut or fill does not exceed 18". Disposal systems shall not be permitted where the slope exceeds 25% or in areas with unusual or unstable geologic conditions.

Section 7-42.7 Section 1112, Chapter 11, Capacity of Septic Tanks. Section 1112 on page 88 is deleted.

Section 7-42.8 Table 11-5, Chapter 11. Table 11-5 on page 88 is amended to read:

TABLE 11-5

ALLOWABLE RATE OF SEWAGE APPLICATION TO A SOIL ABSORPTION SYSTEM

| Minutes per<br>Inch | Percolation Rate     | Maximum Rate of Sewage<br>Application Gallons Per<br>Square Foot Per Day |
|---------------------|----------------------|--------------------------------------------------------------------------|
|                     | Inches per *<br>Hour |                                                                          |
| 5                   | 12                   | 2.2                                                                      |
| 10                  | 6                    | 1.6                                                                      |
| 15                  | 4                    | 1.3                                                                      |
| 30                  | 2                    | 0.9                                                                      |
| 45                  | 1 1/2                | 0.8                                                                      |
| 60                  | 1                    | 0.6                                                                      |

\*Unsuitable for leaching system if more than 12 inches per hour or less than 1 inch per hour.

SEPTIC TANK CAPACITY

| <u>Number of<br/>Bedrooms</u> | <u>Capacity in<br/>Gallons</u> |
|-------------------------------|--------------------------------|
| 1 to 4                        | 1,015                          |
| 5 to 6                        | 1,440                          |
| 7                             | 1,810                          |
| 8                             | 2,250                          |
| 9 to 12                       | 2,812                          |

Section 7-42.9 Section 1113, Chapter 11: Area of Disposal Fields and Seepage Pits. Section 1113 on pages 88 and 89 is amended to read:

The minimum effective absorption area for disposal fields in square feet of trench bottom shall be predicated on either:

ALAMEDA COUNTY  
ORDINANCE 74-66

62 965  
1. The required septic tank capacity, in gallons and shall conform to the requirements of Table 11-5; or

2. In the case of a residence, the number of bedrooms to be connected to the system and shall conform to the requirements of Table 11-4.

A minimum of two hundred (200) square feet of trench bottom shall be provided for each system exclusive of any hard pan, rock, clay or other impervious formations.

This page in Ordinance 74-66, received from the County Clerk in 2/08, has text that is blurred. It is the page between Section 7-42.9 & Section 7-42.10. It seems to say:

" 62 IMAGE 965

1. The required septic tank capacity in gallons and shall conform to the requirements of Table 11-5; or

2. In the case of a residence, the number of bedrooms to be connected to the system and shall conform to the requirements of Table 11-4.

A minimum of two hundred (200) square feet of trench bottom shall be provided for each system exclusive of any hard pan, rock, clay or other impervious formations."

[- Russ Handzus 3/19/08]

Section 7-42.10 Table 11-4, Chapter 11. Table 11-4 on page 89 is amended to read:

TABLE 11-4

ABSORPTION AREA REQUIREMENTS FOR PRIVATE RESIDENCES  
(Provides for Garbage-Grinder and Automatic-Sequence Washing Machines)

| Percolation Rate<br>Minutes Per<br>Inch | Inches Per *<br>Hour | Required Absorption Area In<br>Square Feet Per Bedroom |
|-----------------------------------------|----------------------|--------------------------------------------------------|
| 5                                       | 12                   | 125                                                    |
| 10                                      | 6                    | 165                                                    |
| 15                                      | 4                    | 190                                                    |
| 30                                      | 2                    | 250                                                    |
| 45                                      | 1 1/2                | 300                                                    |
| 60                                      | 1                    | 330                                                    |

\*Unsuitable for leaching system if more than 12 inches per hour or less than 1 inch per hour.

Section 7-42.11 Section 1114, Chapter 11, Percolation Tests. Section 1114, subsections (a) and (b) on page 89 are amended to read:

(a) Percolation tests shall be made at each disposal field site. Not less than three (3) tests shall be made at points distributed within the disposal field site. The tests shall be conducted as prescribed or approved by the Health Officer.

(b) Each test shall be made with clear water in an excavation which has been continuously soaked during at least 24 hours prior to the test.

Section 7-42.12 Section 1116(c), Chapter 11, Disposal Fields. Section 1116(c) on page 92 is deleted.

Section 7-42.13 Section 1117(a), Chapter 11, Seepage Pits. Section 1117(a) on page 93 is amended to read:

The installation of seepage pits shall not be permitted unless the particular lot is approved for such seepage pit installation by the Regional Water Quality Control Board of the State of California.

The capacity of seepage pits shall be based on the quantity of liquid wastes discharged therein and the character and porosity of the surrounding soil and shall conform to Section 1113 of this Chapter.

Section 7-42.14 Section 1118, Chapter 11, Cesspools. Section 1118 on page 94 is amended to read:

The installation of cesspools shall not be permitted.

Section 7-42.15 Table 11-1, Chapter 11, Location of Sewage Disposal Systems. Table 11-1 on page 96 is amended to read:



## STAFF REPORT

Attachment 2

Date: December 6, 2007

To: Ariu Levi, Director  
Department of Environmental Health

From: Russ Handzus  
Registered Environmental Health Specialist

Subject: **Appeal from Applicant Don Lobdell, Real Property located at 822 Kilkare, Sunol, CA;  
Proposed expansion of existing house utilizing existing septic system**

### **I. Summary of Applicant's Proposal**

This 1.17 acre parcel has an existing 2,522 ft<sup>2</sup> house and a septic system. The septic system was approved by this Department for a 2 bedroom house and was installed in 1976. The Building Permit issued in 1977 was for a 2 bedroom house.

The purpose of a septic system is to treat and dispose of wastewater from household plumbing fixtures such as toilets, showers and sinks. Wastewater flows first into a septic tank where, over time, solids settle to the bottom and the clearer water exits the tank and flows to the leachfield. Typically, a leachfield treats this wastewater by passing the wastewater through several feet of good soil wherein bacteria metabolize harmful organisms and other substances. Some of the wastewater is also absorbed from the soil by plants or evaporated by the sun. If not properly filtered by the soil, absorbed by plants or evaporated, the wastewater has the potential to pass deeper into the ground where it eventually enters groundwater aquifers. Wells used for drinking water tap into groundwater aquifers. The aquifer, and thus water wells, can become contaminated if the wastewater is not properly filtered or otherwise treated. Such inadequate treatment can also occur if a leachfield is not adequately sized to handle the expected wastewater load.

Recently the Applicant applied for a Building Permit to expand the house. The plan submitted to this Department shows an existing 3 bedroom house with a proposed 27% addition. The septic system approved in 1976 was for a 2 bedroom house, not a 3 bedroom house. The proposed house addition would put the already inadequately sized septic system at further risk of failure.

### **II. Procedural Background**

On October 9, 2007, following review of Applicant's plans and papers related to the proposed house expansion, this Department sent a letter (attached as Appendix 1) responding to Applicant's Proposal. Staff recommended denial of the Application because the Proposal does not meet the following requirements of the Alameda County Ordinance and/or related Regulations:

1. Section 7B. Requirements for Additions and Remodels: 1: "Bedroom Additions: Class 1 System required. . ." (copy of section 7B1 enclosed) A review of the subject site reveals that there is a 3 bedroom house on a site where a 2 bedroom septic system was approved. This constitutes a de facto addition of a bedroom beyond what was originally approved in connection with the septic system.
2. Section 7A1a: "Class 1 Fully Compliant System: Onsite Wastewater Treatment System [septic system]"

complies with the current requirements of this section.” (copy of section 7A1a enclosed) The current requirements of this section would require 1,124 ft<sup>2</sup> of leachfield, determined in the following manner:

- A. A percolation test was performed on this property in 1973. Percolation tests measure how fast water absorb into the soil. The results are useful in designing septic systems. This percolation test revealed a 10 MPI (minutes per inch) percolation rate. Table 2 of Section 16 of the current septic system regulations indicates that 0.8 gallons per square foot per day is the Sewage Application Rate for this percolation rate. This means that no more than 0.8 gallons of sewage may go into a square foot of leachfield trench per day based on a 10 MPI percolation rate. (copy of Table 2 of Section 16 enclosed)
- B. Section 17A of the current septic system regulations indicates that the amount of sewage upon which to base a Standard septic system design is 150 gallons per bedroom. A house with 3 bedrooms would therefore nominally generate 450 gallons of sewage per day. (copy of Section 17A enclosed)
- C. Section 16 of the current septic regulations indicates that the required size of a leachfield is based on the percolation rate and the application rate. In this case, 450 gallons per day divided by the application rate of 0.8 gallons per square foot per day = 562 ft<sup>2</sup> required per leachfield. (copy of Section 16 enclosed)
- D. Section 22C of the current regulations require that leachfields be installed in duplicate with a diversion valve. This means that two full sized leachfields must be installed with a valve between them which can be turned periodically so that one field may operate while the other field recovers. Two 562 ft<sup>2</sup> leachfields equals 1,124 ft<sup>2</sup> total leachfield area required. (A copy of Table 2 of Section 22C is enclosed.)

Clearly, the existing 210 ft<sup>2</sup> leachfield does not meet these requirements.

3. The septic system code in effect in when the septic system was installed in 1976 was the 1973 UPC (Uniform Plumbing Code. The size of leachfield for a 3 bedroom house utilizing this code would be determined as follows:
  - A. Section 1112 of the 1973 UPC indicates that a minimum 1,000 gallon septic tank be specified for a 3 bedroom house. (copy of Section 1112 enclosed)
  - B. Section 1113 indicates that the required area of leachfield is based upon soil types. Soil in this area is generally similar to the designation ‘sandy clay loam’ in Section 1113. Also, this soil classification is consistent with the know percolation rate of 10 MPI. The required minimum leachfield area per 100 gallons of septic tank capacity for sandy clay loam, according to Table 11-4 of Section 1113 is 40 ft<sup>2</sup>. (copy of Section 1113 enclosed)
  - C. The 1,000 gallon septic tank divided by 100 gallons multiplied by 40 ft<sup>2</sup> = minimum 400 ft<sup>2</sup> of leachfield required.

Clearly, the existing 210 ft<sup>2</sup> leachfield does not meet these requirements.

On October 22, 2007, this Department received a letter of appeal from the applicant (attached as Appendix 2).

Following is staff’s response to statements made by the Appellant related to the appeal:

1. **Lobdell:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing was investigated at the time of construction and no corrective action was specified.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure.

2. **Lobdell:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing is not exacerbated by the proposed work.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield. A 27% addition to the existing 2,522 ft<sup>2</sup> three house would certainly raise the potential for increasing the wastewater load now or in the future, unduly straining the capacity of the currently undersized septic system.

3. **Lobdell:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing is not affecting the current satisfactory performance of this thirty year septic system.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

4. **Lobdell:** The existing building was built in 1977 and 1978 and utilized a septic system that had earlier been permitted and installed but not used. During the construction phase, an investigation focused on septic system and flood control matters for this dwelling was undertaken by the Department of Public Works. This investigation was the result of a strongly expressed concern by a resident to the Alameda County Planning Department and Board of Supervisors as well as several water quality and flood control agencies. During this investigation, two Health Department agents observed that the dwelling under construction was three bedrooms whereas the leach field was sized for two bedrooms. A month later the Director of Public Works reported to the 1<sup>st</sup> District Supervisor that the septic system was in compliance but that corrective action for the flood control measures was being mandated and must be completed prior to final approval. Following a detailed field evaluation by an agent of the Assessor, the dwelling entered the Alameda County Tax Rolls in April 1978 as a three bedroom dwelling. It has been sold twice and taxed as such since.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure.

5. **Lobdell:** The current and immediately preceding owners assert that there has not been a septic system malfunction or need for pumping during their tenures (1987 to present). A professional engineer specializing in septic systems evaluated the system and found a septic tank sized for four bedrooms and satisfactory leach field performance.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

6. **Lobdell:** The proposed additions do not create any additional non-conformities and do not add load to the existing system.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield. A 27% addition to the existing 2,522 ft<sup>2</sup> three house would certainly raise the potential for increasing the wastewater load now or in the future, unduly straining the capacity of the currently undersized septic system.

- **Lobdell:** The homeowners' position is that the current regulations allow permitting the proposed additions within the Class C designation.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

8. **Lobdell:** The observation shared by Mr. Howell and Mr. Som [inspectors with the Department of Environmental Health] regarding the number of bedrooms being built does not seem to have resulted in notices of correction, corrective action or any other change in the building process.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure. Further, it appears that the house is not in conformance with the codes applicable to the septic system at the time of construction and is very much out of conformance with current codes. To approve a house expansion now which may put further wastewater load onto an inadequately sized septic system would not be protective of public health and would in fact be irresponsible.

### **III. Staff Recommendation**

For the reasons stated herein, staff recommends denial of this appeal.

Alameda County Septic Regulations can be viewed on the internet at [www.acgov.org/aceh/septic/ordinance.htm](http://www.acgov.org/aceh/septic/ordinance.htm) or you may contact Russ Handzus for a copy.

attachments:

- Appendix 1: 10/907 rejection letter from Department to owner
- Appendix 2: 10/22/07 appeal letter from owner to Department
- Alameda County Septic Regulations Sections 7A1, 7B1, 16, 17A, 22C & Table 2
- 1973 Uniform Plumbing Code Sections 1112, 1113 & Table 11-2

cc: Don Lobdell, Owner of Subject Property

February 8, 2008

Dr. Donn Lobdell  
822 Kilcare Road  
Sunol, CA 94586

RE: Decision following January 18, 2008 Hearing on Appeal pursuant to Alameda County Ordinance 15.18.040 (F); Proposed Expanded Use of Property with Existing Private Septic System located at 822 Kilcare Road in Unincorporated Sunol.

Dr. Lobdell:

This letter will confirm that I have reviewed and considered the material and public testimony, including your and your consultant's testimony, provided in connection with the January 18, 2008 hearing on your Appeal of Staff's decision to deny approval of the proposed construction project adjacent to an existing septic system.

I have also reviewed applicable Regulations from the Alameda County Septic Code cited in these documents.

Based on that review, I provide the following:

**I. Factual and Procedural Summary**

This is a 1.17 acre parcel with an existing 2,522 sq. ft residential structure served by a standard septic system which is about 32 years old.

An Application for Building Permit taken out for the property sometime in approx. 1976 indicates that the proposed structure to be built on the property was a "new home, single family, **2 bdrm** - 3 Bath; Kitchen w/ Bkfst Nook, Dining Rm-Living Rm-Family Rm-Laundry-Den; Dbl Garage." (Emphasis added.)

In a Memorandum dated September 30, 1977, County staff (Ed Howell) confirmed that he had inspected and approved the septic system on May 7, 1976. Mr. Howell noted that the approval was based on plans for installation of a septic tank and leachfield **for a 2-bedroom dwelling** he had earlier approved on March 11, 1976. Mr. Howell notes in his memorandum, however, that subsequent to his May 7, 1977 approval, he subsequently observed or learned that a 3 bedroom dwelling is being built on site.

Dr. Lobdell (herein also "Applicant") has now applied for a Building Permit to expand the size of the existing 3 bedroom structure or dwelling. The plan submitted to this Department shows a proposed 27% addition to the existing dwelling. Applicant proposes to do so without any capacity change to the existing 32 year old septic system and seeks this Department's approval of that proposal.

Staff denied that approval and Applicant has appealed that denial to the Director of this Department. On January 18, 2008, the undersigned conducted a public hearing on that appeal.

## **II. Applicable Ordinance/Regulation Provisions**

Following review of Applicant's plans and papers related to the proposed structure expansion, DEH (Department of Environmental Health) staff denied approval because, per staff's review, the proposal does not meet the following requirements of the Alameda County Ordinance and/or related Regulations:

### **1. Section 7B. Requirements for Additions and Remodels: 1: "Bedroom Additions: Class 1 System required. . ."**

Consistent with the September 30, 1977 Memorandum from Mr. Howell, mentioned above, staff observed that the current as-built structure is larger or contains an additional bedroom room or space beyond the 2 bedroom structure that was originally contemplated in 1976 when the existing septic system was originally installed and approved by the County health inspector.

### **2. Section 7A1a: "Class 1 Fully Compliant System: Onsite Wastewater Treatment System [septic system] complies with the current requirements of this section."**

The existing system has a leachfield area of 210 sq. ft.

Staff concluded that the above section requires a minimum leachfield area of 1,124 sq. ft.. Staff determined that minimum area as follows:

A. A percolation test conducted in 1973 revealed a percolation rate in the area of the existing septic system of 10 MPI (minutes per inch). Table 2 of Section 16 of the current septic Regulations indicates that 0.8 gallons per square foot per day is the "Sewage Application Rate" for this percolation rate. This means that no more than 0.8 gallons of sewage may go into a square foot of leachfield trench per day based on a 10 MPI percolation rate.

B. Section 17A of the current septic system regulations indicates that the amount of sewage upon which to base a Standard septic system design is 150 gallons per bedroom. Therefore, for purposes of calculating acceptable system capacity, a 3 bedroom structure is presumed to generate 450 gallons of sewage per day.

C. Section 16 of the current septic regulations indicates that the required size of a leachfield is based on the percolation rate and the Application Rate. In this case, 450 gallons per day divided by the Application Rate of 0.8 gallons per square foot per day yields a minimum leachfield square footage area figure of 562 ft<sup>2</sup>.

D. In addition, to insure property owner and public health and safety, Section 22C of the Regulations require leachfields to be installed in duplicate with a diversion valve. This means that two full sized leachfields must be installed with a valve in between them which can be turned periodically so that one field may operate while the other field recovers. Two 562 ft<sup>2</sup> leachfields equals 1,124 ft<sup>2</sup> total leachfield area required.

Staff concluded that the existing 210 ft<sup>2</sup> leachfield does not meet the above requirements.

3. **The 1973 Uniform Plumbing Code ("UPC").** The 1973 UPC applied to the construction and installation of the existing septic system when it was installed in 1976. Calculating the minimum required size of a leachfield for a 3 bedroom structure utilizing the 1973 Code is as follows:

A. Section 1112 of the 1973 UPC indicates that a minimum 1,000 gallon septic tank be specified for a 3 bedroom structure.

B. Section 1113 indicates that the required area of leachfield is based upon soil types. Soil in this area is generally similar to the designation 'sandy clay loam' in Section 1113. Also, this soil classification is consistent with the known percolation rate of 10 MPI. The required minimum leachfield area per 100 gallons of septic tank capacity for sandy clay loam, according to Table 11-4 of Section 1113 is 40 ft<sup>2</sup>.

C. The 1,000 gallon septic tank divided by 100 gallons multiplied by 40 ft<sup>2</sup> = minimum 400 sq. ft of leachfield area required.

Therefore, using the 1973 UPC, staff concluded that a minimum of 400 sq. feet was required for a 3 bedroom structure. The existing 210 ft<sup>2</sup> leachfield does not meet these requirements.

Applicant has raised several arguments to support his position that the proposed expansion of the existing structure should be permitted without regard to the size and capacity of the existing septic system.

**Argument #1:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing was investigated at the time of construction and no corrective action was specified.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure.

**Argument #2:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing is not exacerbated by the proposed work.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

A 27% addition to the existing 2,522 ft<sup>2</sup> three structure clearly raises the potential for increased wastewater load now and in the future. This addition would further strain capacity of the current 32 year old septic system.

**Argument #3:** The non-conformity between the number of current bedrooms and the septic system leachfield sizing is not affecting the current satisfactory performance of this thirty year septic system.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

**Argument #4:** The existing building was built in 1977 and 1978 and utilized a septic system that had earlier been permitted and installed but not used. During the construction phase, an investigation focused on septic system and flood control matters for this dwelling was undertaken by the Department of Public Works. This investigation was the result of a strongly expressed concern by a resident to the Alameda County Planning Department and Board of Supervisors as well as several water quality and flood control agencies. During this investigation, two Health Department agents observed that the dwelling under construction was three bedrooms whereas the leach field was sized for two bedrooms. A month later the Director of Public Works reported to the 1<sup>st</sup> District Supervisor that the septic system was in compliance but that corrective action for the flood control measures was being mandated and must be completed prior to final approval. Following a detailed field evaluation

by an agent of the Assessor, the dwelling entered the Alameda County Tax Rolls in April 1978 as a three bedroom dwelling. It has been sold twice and taxed as such since.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the system for a three bedroom structure.

**Argument #5:** The current and immediately preceding owners assert that there has not been a septic system malfunction or need for pumping during their tenures (1987 to present). A professional engineer specializing in septic systems evaluated the system and found a septic tank sized for four bedrooms and satisfactory leach field performance.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

**Argument #6:** The proposed additions do not create any additional non-conformities and do not add load to the existing system.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield. A 27% addition to the existing 2,522 ft<sup>2</sup> three structure would certainly raise the potential for increasing the wastewater load now or in the future, unduly straining the capacity of the currently undersized septic system.

**Argument #7:** The current Regulations allow permitting the proposed additions within the Class C designation.

**Staff Response:** The existing 210 ft<sup>2</sup> leachfield does not meet the 3 bedroom leachfield sizing requirement in the current septic system code of a 1,124 ft<sup>2</sup> of leachfield nor in the 1973 UPC of a 400 ft<sup>2</sup> of leachfield.

**Argument #8:** The observation shared by Mr. Howell and Mr. Som [inspectors with the Department of Environmental Health] regarding the number of bedrooms being built does not seem to have resulted in notices of correction, corrective action or any other change in the building process.

**Staff Response:** There is nothing in the records that indicates that County officials acknowledged that the septic system was adequate for three bedrooms and no evidence that the County approved the proposed system for a three bedroom structure. Further, it appears that the structure is not in conformance with the codes applicable to the septic system at the time of construction and is very much out of conformance with current codes. To approve a structure expansion now which may put further wastewater load onto an inadequately-sized septic system, would not be protective of public health, and would be irresponsible.

### **III. Discussion and Conclusion**

The materials and testimony submitted in connection with the hearing substantially support staff's findings and conclusions which are expressly adopted in this decision and incorporated herein by reference.

As discussed herein and in staff's report, serious health and safety concerns are raised by applicant's proposal to expand the existing dwelling on the property without regard to the current size and capacity of the existing septic system, which is about 32 years old.

Applicant has argued that the County "accepted" or "approved" the 32 year old septic system back in 1977 or so when the dwelling structure was build. Therefore, according to the Applicant, the County should approve a 27% increase of that structure without regard to the sizing or capacity of the existing system.

For the reasons explained in staff's report and in this letter, I believe that staff has correctly denied approval of the proposed expansion given the size and capacity of the existing 32 year old septic system.

Based on the material and testimony presented, I conclude that the applicant has failed to provide sufficient evidence to establish that an authorized representative of the County DEH or any other County department approved the existing septic system for a 3 bedroom structure. In fact, the evidence indicates otherwise including Mr. Howell's September 30, 1977 Memorandum stating he approved plans and inspected the existing septic system sized for a 2 bedroom structure.

Even assuming, arguendo, that there were sufficient evidence to establish that an authorized County representative somehow knowingly approved the existing system for a 3 bedroom structure back in the 1970's, such a finding would not support allowing the proposed expansion (27% of the existing dwelling) without requiring corresponding sufficient septic system capacity per current County Ordinance and Regulations.

That is because to approve the proposed expansion without requiring sufficient system capacity implicates serious health and safety issues. The proposed dwelling expansion at the property threatens to overburden the 32 year old system which, arguably, is undersized even based on standards existing in the 1970's.

The proper operation of a septic system leachfield is crucial to the safe and effective operation of the system. In this existing standard system, waste from plumbing fixtures such as toilets, showers, sinks, etc. within the structure flow directly into the septic tank. Over time, in this standard system, waste solids settle to the bottom and the clearer liquids exit the tank and flows directly to the leachfield.

In such a standard system, a properly functioning leachfield passively "treats" this wastewater by allowing the wastewater to pass through pipe perforations or holes directly into the surrounding soil. Once in the soil, bacteria can metabolize harmful organisms and other substances. Some of the wastewater is also absorbed from the soil by plants or evaporated by the sun.

When the wastewater is not sufficiently filtered or cleansed by the soil (for example, where too much wastewater flows too fast from an undersized system), the potential for that wastewater to enter groundwater basins or aquifers is increased. The groundwater basins or aquifers and public and private water wells which draw water from those areas potentially will become contaminated if the wastewater is not properly filtered or otherwise treated. The risk of inadequate treatment and potential contamination from an undersized leachfield is substantial and unacceptable. Even if the improperly treated contamination were to remain fully on site and not to reach an aquifer or groundwater, it still presents a substantial health and safety risk and is unacceptable.

In addition to the arguments above, Applicant raised certain additional arguments at the hearing in support of his project including that staff failed to properly calculate the existing capacity of the 32 year old system by (1) failing to consider leachfield "side wall" depth in calculating square footage; and (2) failing to consider "water saving devices" implemented currently in his home. For the reasons explained below, I conclude that this additional information does not warrant granting of the appeal.

1. Leachfield Sidewall Argument: it appears that the 1973 UPC provided for inclusion of side wall, in certain circumstances, in calculating leachfield square footage. See section 1113 of the 1973 UPC. However, by its own terms, Section 1113 allowance for inclusion of sidewall depth in leachfield square footage calculation was limited to "large, specially designed and approved" systems. There was no evidence presented at the hearing that in 1976 (or at any other time) the existing septic system was considered either "large" or "specially designed" by the County or anyone else.

On the contrary, the evidence is that the existing system was (and is) a typical, standard system. It was designed, and approved, to serve a 2 bedroom structure. In addition, even if there had been evidence that arguably showed the system was or should be considered "large" and "specially designed," there was no evidence presented at the hearing that the system was approved by the County as "large" or "specially designed" system.

Finally, even using sidewall depth to boost the leachfield size calculations, Applicant's own calculations at the hearing appeared to fall short of the 1973 UPC requirement of 400 sq. foot.

For the above reasons, it appears Applicant's reliance on section 1113 of the 1973 Code is misplaced.

2. Water Saving Devices Argument: Applicant's also relies on the fact that certain "water saving devices" are currently being implemented at the dwelling to support his argument that the proposed expansion should be permitted with the existing septic system. That reliance also appears misplaced. The ability to boost leachfield square footage capacity by incorporating "water saving devices" is not a provision of the 1973 UPC.

Under these circumstances, it would be inconsistent with the need to protect health and safety to allow a significant increase (by 27% or so) of a residential structure while, simultaneously, not providing for a corresponding capacity changes or modifications to the 32 year old system serving that structure. The use of such devices does not alter the fact that the existing system was approved for a 2-bedroom structure only and appears undersized for a 3 bedroom structure even under the old standards from the 1970's.

Based on the above, I have determined that this Appeal should be denied.

Please be advised that should you wish to appeal this denial, you must pursue the administrative remedies set forth in Alameda County Ordinance Section 15.18.040 F2. See enclosed copy of those provisions (Attachment "A").

Please also be advised that DEH remains willing to work with you and your consultant to consider alternative options. Please contact us or have your consultant contact us should you wish to pursue alternative options.

With Regard,

Ariu Levi  
Director of Environmental Health

attachment

**Attachment A - Excerpt of the Alameda County General Ordinance Code, Chapter 15.18, Section 15.18.040 (The complete Ordinance and Regulations documents are available on our website: <http://www.acgov.org/aceh/septic/ordinance.htm>)**

**F. Appeals****1. Appeal to Director**

Any property owner or other person aggrieved by any decision made pursuant to this Chapter or any Regulations promulgated hereunder may appeal to the Director of the Department of Environmental Health. All such appeals shall be heard by the Director or his or her designee. The appeal must be in writing and must specify the grounds for appeal. The written appeal must be actually received by the Department no later than 10 working days after actual receipt by the property owner or other person of the decision or 10 working days after the date notice of the decision is mailed by the Department, whichever is sooner. A hearing on that appeal shall be held within fifteen days after receipt by the Department of a timely appeal or as otherwise scheduled by the Director.

**2. Appeal to Land Use Review Panel**

- a. If the appellant is not satisfied with the Director's decision, the appellant may file a second appeal to be heard by a Land Use Review Panel. Such an appeal shall be filed with the Director no later than 10 working days after actual receipt by the appellant of the Director's decision or 10 working days after the date notice of the decision is mailed by the Department, whichever is sooner.
- b. The Panel shall consist of three individuals appointed by the Director. Each appointee shall serve a term of one year and may be re-appointed to successive one-year terms. Individuals eligible to be appointed to the Panel must be experienced in System design or installation and have one or more of the following credentials:
  1. A Registered Civil Engineer, Registered Geologist, USDA Soil Scientist, Registered Environmental Health Specialist or Natural Resources Conservation Service Specialist;
  2. A septic system consultant who is a 'Registered Professional' as defined in Section 36 of this document)
  3. A licensed septic system contractor.

In the event that a Panel appointee has conflict of interest in hearing any particular appeal, the Director shall appoint a temporary alternative appointee meeting the above requirements to hear the appeal.

- c. The Panel shall schedule a hearing on the second appeal within 30 days of receipt by the Department of a timely appeal to be heard by the Panel. After that hearing, the Panel shall promptly forward its findings and recommendations to the Director who shall make a final Departmental decision. Thereafter, the Director shall promptly mail by regular U.S. mail, notice of the final Departmental decision to the appellant.

3. Appeal to the Board of Supervisors

If the appellant is still not satisfied with the final Departmental decision, the appellant may file a third appeal with the Alameda County Board of Supervisors. That appeal to the Board must be in writing and must specify the grounds for appeal. That written appeal must be actually received by the Clerk of the Board no later than 10 working days after the date of mailing by the Director of the final Departmental decision. Thereafter, following receipt by the Clerk of the Board of a timely appeal, the Board shall promptly schedule a hearing on the third appeal. After that hearing, the Board shall render its decision, noticed in writing to appellant, which shall be final.

Date: May 22, 2008

To: Ariu Levi, Director  
Alameda County Department of Environmental Health

From:  James Campi, P.E., Chairman  
Alameda County Land Use Committee

Re: Findings and Recommendations of the Alameda County Land Use Review Panel on 21 May 2008 for Donn and Carole Lobdell

Findings:

1. Alameda County Environmental Health originally approved the sewage disposal system for two bedrooms;
2. The number of bedrooms in the structure changed from two to three after approval of the sewage disposal system;
3. Alameda County Environmental Health acknowledged, but did not approve use of the third bedroom in a memorandum dated September 30, 1977 from Ed Howell to Jason Som;
4. Based on a statement from the appellant, the property was purchased as a three-bedroom dwelling.

Recommendations:

The Land Use Review Panel recommends approval of the addition with demonstration of a reserve leachfield area that meets the current requirements for a three-bedroom dwelling and modification of the existing sewage disposal system, pursuant to today's standards, to utilize secondary treatment.



ALAMEDA COUNTY  
**HEALTH CARE SERVICES**  
AGENCY

DAVID J. KEARS, Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH  
OFFICE OF THE DIRECTOR  
1131 HARBOR BAY PARKWAY  
ALAMEDA, CA 94502  
(510) 567-6777  
FAX (510) 337-9135

June 12, 2008

Attachment 5

Dr. Donn Lobdell  
Owner of Subject Property  
822 Kilcare Road  
Sunol, CA 94586

**RE: Notice of Final Departmental Decision pursuant to Alameda County Ordinance 15.18.040, Section F; Proposed Expanded Use of Property with Existing Private Septic System located at 822 Kilcare Road in Unincorporated Sunol.**

Dear Dr. Lobdell:

Pursuant to the Alameda County Ordinance 15.18.040, Section F 2 (c), I am providing this Notice of Final Departmental Decision regarding your proposal to expand the existing dwelling on your property without any capacity change to the existing 32 year-old septic system that serves the dwelling.

Please be advised that I have reviewed the May 22, 2008 Findings and Recommendations of the Land Use Review Panel (herein: the Panel) following the May 21, 2008 hearing before that Panel as well as all the additional material and testimony provided in connection with that hearing and the material and testimony provided in connection with the earlier January 18, 2008 hearing held before the undersigned.

Based on that review and the complete record in this case, I have determined that it is appropriate to confirm my initial denial of your appeal for the reasons set forth in my February 8, 2008 letter incorporated herein by reference in its entirety. Please see attached copy. By this letter, I am reconfirming the findings and conclusions in my February 8, 2008 letter.

In addition, I provide the following supplemental findings, conclusions and comments in support of this Final Determination:

Based on the complete record of this matter, I concur with the Panel that the evidence supports the following findings: the Department of Environmental Health originally approved the sewage disposal system on this property for a 2 bedroom structure, that the number of bedrooms in the structure changed from 2 to 3 after DEH approval of the system, and that the DEH did not approve use of the third bedroom.

A. Non-Compliance with County Ordinance:

Based on the above findings and the findings in my earlier letter, I have determined that the Department is unable to approve your proposal because you do not meet the requirements of Section 7 of the County Septic Regulations regarding required systems for remodeling and additions. Specifically, you do not possess a valid Construction Permit for the existing system to serve a 3 bedroom house per Section 7 for either a Class 1, 2 or 3 system. See County Septic Regulations, Section 7, paragraph 1b, paragraph 2d and paragraph 3d.

Because you do not meet the requirements set forth in the County Regulations, and, per County Counsel, absent evidence supporting entitlement to a variance, this determination also confirms that the Department is unable to accept the Panel's recommendation to approve your proposed addition if you demonstrate that the reserve leachfield area meets the current requirements for a 3 bedroom dwelling and if you modify your existing undersized system to comply with current standards utilizing secondary treatment.

In addition, even with secondary treatment, the existing system, which is 60 feet from the creek, would not meet the 100 foot setback requirement of Section 12 of the County Septic Regulations which is an additional ground supporting the determination to deny your appeal.

B. Variance Considerations:

The evidence submitted in this matter does not establish that you qualify for a variance as set forth in County Ordinance Section 15.18.040 subpart D.

1. Absence of Special Circumstances

I have determined that there is no evidence presented of special circumstances or conditions that exist on the property which deprive you of privileges enjoyed by other property subject to the Onsite Wastewater Treatment Systems Ordinance. See Section 15.18.040 subpart D 1.

You have argued that it was your predecessor in interest (not you personally) who was responsible for the non-permitted enlargement of the dwelling from a 2-bedroom to a 3-bedroom, and, therefore, you should be given special dispensation in this case. However, this argument does not amount to special circumstances per the Code and, as the current property owner, you are responsible for existing Code violations or defects on the property. Also, no other property owner to this Department's knowledge has been permitted to expand a dwelling where the existing septic system serving that dwelling was undersized without a corresponding capacity modification.

2. Grant of Special Privileges

Based on the above, it also appears that granting a variance under the present circumstances would constitute a grant of special privileges inconsistent with limitations on other property subject to the Ordinance. Please see Section 15.18.040 subpart D 2.

3. Potential Detriment to Public Health and Safety

In addition, notwithstanding the foregoing, and for the reasons stated above and in my earlier enclosed letter, I have determined that you have failed to provide sufficient evidence supporting a finding that granting of a variance under the present circumstances will not be detrimental to other persons or property and to the public health and safety. Please see Section 15.18.040 subpart D 3.

On the contrary, there is substantial evidence that granting a variance under the present circumstances likely would be detrimental to other persons or property and to the public health and safety. The bases for that determination include the following:

Your proposal to expand the existing structure without requiring sufficient septic system capacity implicates serious health and safety issues. The proposed dwelling expansion at the property threatens to overburden the existing system which is 32 year-old system and which, arguably, is undersized even based on standards existing in the 1970's.

The proper operation of a septic system is crucial to the safe and effective operation of the system. While the comments in my earlier letter focused on the leachfield, this statement is true for the entire system not just the leachfield. In standard systems, waste from plumbing fixtures such as toilets, showers, sinks, etc. within the structure flow directly into the septic tank. Here, your system was approved for a 2-bedroom system only and, subsequent to that approval, the dwelling was increased in size to a 3 bedroom structure.

Where the system is undersized, as it is here, for dwelling or dwellings it serves, the system is at risk of failures such as, by way of example only, wastewater not being sufficiently filtered or cleansed or too much wastewater flowing too fast from the undersized system.

Also, as noted in my earlier letter, this Department is responsible for protecting the public health and safety and protecting against potential environmental contamination that may occur if the currently undersized system were to fail. Granting you special dispensation under the circumstances would be inconsistent with that responsibility and would defeat the important public policy of protecting public health and safety and the environment.

Finally, secondary treatment implemented on your existing system would not adequately address the public health and safety risks. One reason for that is because your existing system is only approximately 60 feet from a County creek. The County Ordinance requires a minimum set back of 100 feet onsite from such creeks and waterways.

This minimum 100 foot set back standard is recommended by the State Regional Water Quality Control Board ("RWQCB") which is responsible for providing statewide monitoring and guidelines for protection of the State's groundwater resources.

The RWQCB oversees local regulation of on-site wastewater treatment facilities and systems. As part of the major revisions to the County's septic system Ordinance in 2007, the County officially incorporated the RWQCB's recommendations related to Creek setbacks and had been using that standard for some time before its official adoption.

This purpose of this setback and other requirements in the County Regulations is also stated in Section 15.18.020 of the Alameda County Septic Code: "The purpose of this Ordinance is to provide for the safe and sanitary treatment and disposal of private sewage. The Systems that this Ordinance authorizes shall safely treat and dispose of sewage in order to prevent environmental degradation including pollution of surface water and groundwater and to protect public health, safety and welfare to the greatest extent possible. The Department shall strive to allow property owners to accomplish this purpose at a reasonable financial cost while still protecting public health and the environment and complying with California State Water Quality Control Board mandates. Another purpose of this Ordinance is to provide for the safety of individual and small water systems."

C. Conclusion:

For the reasons stated, I have determined that it is appropriate to confirm my initial denial of your appeal. Please be advised that you may appeal this final determination pursuant to the County's Onsite Wastewater Treatment Systems Ordinance, section 15.18.040 F, paragraph 3.

Very truly yours,

Ariu Levi, Director  
Department of Environmental Health

AL/RH:bon

Enclosure

C: Ronald Browder

6

**DONN D. LOBDELL, PH.D.**  
**PO BOX 569**  
**SUNOL, CALIFORNIA 94586**  
**JUNE 19, 2008**

Board of Supervisors  
County of Alameda  
Administration Building  
1221 Oak Street, #536  
Oakland, CA 94612

06 JUN 20 PM 1:10  
COUNTY OF ALAMEDA

Dear Supervisors,

The purpose of the letter is notification that I am appealing the decision of the Director of the Department of Environmental Health (DEH) in the matter of my request for approval of a proposed addition to the existing dwelling at 822 Kilcare Road, Sunol. This dwelling is served by a private wastewater treatment system. This request has been improperly denied by the Director of DEH. Since the administrative appeals within the Department of Environmental Health have been made, this appeal, following the published guidelines, is addressed to the Alameda County Board of Supervisors.

Appellants request is based on the published guidelines for a remodel with a non-bedroom addition of habitable space less than 30% of the present habitable space and is for an addition of such specifications. According to the published guidelines such an addition for a dwelling served by a private wastewater treatment system requires a Class 3 system. Appellant's situation meets the requirements for a Class 3 system.

The denial by the Director of DEH is improper for the following reasons:

1. Denial is partially based on reciting elements that, in fact, qualify the proposal as Class 3; namely that the existing system is undersized by current standards. Since being undersized by current standards is one of the elements contemplated in the definition of Class 3, this is, at best, confused reasoning.
2. Denial is partially based on an assertion concocted apparently for the purpose of creating an ersatz basis to justify denying the requested approval. This concocted assertion is contrary to the published codes, past practices, current practices and even the teachings of the DEH.

6/25/08

Alameda County Board of Supervisors  
Appeal Hearing Request

3. Appellant is being denied the due process of reliance on past decisions and actions of Alameda County Officials. In fact, during the 1977 construction of the subject dwelling a written assertion was made to the Alameda County Planning Department and the Alameda County Board of Supervisors that the building permit had been improperly issued for, among other reasons, an inadequate space for a private wastewater treatment system for the dwelling being constructed. An investigation by Alameda County Officials including the Department of Environmental Health resulted in the determination and statement that the septic system fully met the requirements of the Code and the Alameda County Health Department. Thus the denial, being appealed, overturned, without reason, the actions and decisions of Alameda County Officials who in 1977 investigated and resolved the assertion regarding the building permit issuance. It seems perverse that, some 30 years later without the discovery of a single new fact, the present Director of DEH would adopt a position contrary to that of the Alameda County Officials who were on the scene and had access to the investigating and decision making personnel.
4. Certain actions by the DEH have been inequitable to appellant. For instance:
  - a. Documents favorable to appellant's position were delivered subsequent to hearings, in this year, where the documents would have been of value in supporting appellant, despite having been in the possession of the DEH since 1977 and having been earlier requested by appellant.
  - b. Since mid 2004, DEH has asserted to appellant that a certain set of codes were applicable to the 1977 construction at 822 Kilcare Road. Only recently, in March 2008, DEH asserted that a different set of codes were applicable to that 1977 construction. Regardless of which codes are believed by the present DEH to have been applicable in 1977, appellant and the Board of Supervisors should be able to rely that the decisions made in 1977 by the responsible Alameda County Officials were correctly made in accordance with the then actually applicable codes. Again, the present DEH Director's denial ignores or effectively sets aside the decisions at the time of the dwelling construction made by the authorized Alameda County Officials. It is unlikely that those officials were as confused regarding the codes applicable in 1977 as the present DEH has proven to be.

Alameda County Board of Supervisors  
Appeal Hearing Request

- c. Documents delivered to the Land Use Review Panel members several weeks in advance of the scheduled hearing included DEH position papers; but appellant's position papers were not delivered to the panel members in a coherent form until the evening before the hearing, despite having been in the possession of DEH for several months. Reviews, hearings and decisions scheduled by DEH have been postponed and/or delayed for literally months by DEH

Since some long planned business and personal travel will take me away from Alameda County between June 23<sup>rd</sup> and July 8<sup>th</sup> and again between July 21<sup>st</sup> and July 28<sup>th</sup>, it would be very helpful if the requested hearing could be scheduled to avoid those periods. Other than these time blocks, I request as early a hearing as possible.

Since the guidelines for the hearing being requested are not detailed regarding the submission of documents and timing of formal hearings, I would appreciate any additional information regarding these matters. Particularly relative to the submission of position papers for review by the Board of Supervisors prior to a hearing

Please include Mr. Turk Kauffman, whose contact information is given below, on any correspondence regarding this request.

Sincerely,



Donn D. Lobdell, Ph.D.

Tel: 925-862-2293

Mobile: 925-708-6269

Email: [d.lobdell@comcast.net](mailto:d.lobdell@comcast.net)

Cc: Turk Kauffman Architecture  
1101 8th Street #180  
Berkeley, CA 94710

t 510-847-0897

f 510-528-0206

[turk@trka.net](mailto:turk@trka.net)



**DONN D. LOBDELL, PH.D.**  
**PO BOX 569**  
**SUNOL, CALIFORNIA 94586**  
**SEPTEMBER 30, 2008**

Mr. David J. Kears  
Agency Director,  
Alameda County Health Care Services Agency  
1000 San Leandro Boulevard, Suite 300  
San Leandro, CA 94577

Dear Mr. Kears,

I thank you for your attention and comments during our meeting yesterday at the Alameda County Administration Building. You made a suggestion that, in the interest of aiding your organization in attempting to deal with some overall watershed issue, I review the possibility of adding some additional leachfield area in the designated reserve space that was part of the septic system construction permit of 1976. You also stated that any potential construction resulting from any such review would be according to the setbacks, codes and regulations in effect at the time of the original septic system construction and could be investigated on that basis. You also stated that if I undertook such a review that it would be without prejudice – meaning that if review indicated that such possibilities appeared to me to be too time consuming or too expensive or otherwise not reasonably practicable that there would be no negative connotation raised relative to my undertaking or involvement in such investigation. My understanding is that the goal of this review will be to consider possibilities for reducing potential exposure of groundwater to septic system effluent.

After additional consideration of this suggestion on your part, I state the following: Any involvement by “my” septic system consultant will not be open-ended. By this I mean that I am not paying a consultant to take work assignment from anyone other than me. Some aspect of the discussion yesterday was to have “your” (meaning my) septic system person work with the Department of Environmental Health to look into the possibility you raised. I intend to be involved in any such discussions and am not appointing anyone to make decisions on my behalf.

While the method for reducing exposure of groundwater to septic system effluent discussed in the meeting yesterday was addition of leachfield area, there are at least two other methods that have been discussed in conjunction with my application for building permit approval. First is a method that is part of the current (2007 – 2008) Alameda County Code. This is using certain water-sparing plumbing fixtures to reduce the wastewater flow to the septic system. This suggestion made by me in January 2008 was rejected out of hand by the current Department of Environmental Health. The second was a suggestion made by the septic system professionals on the Land Use Review Panel. This is a technique of using UV sterilization on the effluent line from the septic tank.

Mr. David J. Kears

This was also rejected out of hand by the current Department of Environmental Health. I would like your statement that such possibilities might be considered as possible sources of the benefit you seek. Or if you wish to rule out certain approaches to this goal, I request your statement identifying these ruled-out approaches, so that neither time nor effort is spent on them. This will not reduce opportunity to use either as a possible mitigation of septic system loading in conjunction with my appeal (in contuance.)

I believe that the septic system presently installed and functioning properly at the dwelling at 822 Kilcare Road is a Class 3 system by the current standards and that this fact has been demonstrated by the documents that have already been provided. In agreeing to investigate the possibilities outlined above at your suggestion, I am not abandoning in any way the work that has gone into the previous hearings and appeals. It was my understanding that you agreed to review the documents that I provided for the now continued Board of Supervisor hearing originally scheduled for today. These documents will be sent by email today or if that is not possible they will be sent by CD ROM to your office by U.S. Postal delivery.

It is my explicit understanding that this investigation will terminate with the meeting of November 4<sup>th</sup> to which the appeal originally scheduled to be heard today was continued.

Thank you for your attention to this letter and please get back to me with any comments that you may have on it.

Sincerely,



Donn D. Lobdell, Ph.D.

Tel: 925-862-2293

Mobile: 925-708-6269

Email: [d.lobdell@comcast.net](mailto:d.lobdell@comcast.net)

**From:** Kears, Dave, HCSA  
**Sent:** Monday, October 06, 2008 10:39 AM  
Levi, Ariu, Env. Health  
**Subject:** FW: Meeting of September 29, 2008

Ariu, please review and advise, especially specific to item 3. Dave

---

**From:** d.lobdell@comcast.net [mailto:d.lobdell@comcast.net]  
**Sent:** Monday, October 06, 2008 9:44 AM  
**To:** Kears, Dave, HCSA  
**Cc:** Steele, Gail, Supv. BOS Dist 2  
**Subject:** Meeting of September 29, 2008

Dear Director Kears,

This is a follow up to my messages to you of September 30, 2008. The first of these is copied below. I apparently was not explicit enough in requesting that you confirm certain of the understandings that I took from our meeting as I have not yet received a response to the message regarding the outcome of the meeting with you and Director Levi and others of your organization arranged by Supervisor Steele. Here are the items for which I desire your confirmation.

1. You suggested that I agree to investigate the possibility of adding leach field area to the current system.
  - 1.1. This putative additional area was to be located in the reserve area defined in the 1976 septic system construction permit.
  - 1.2. Any such leach field addition would be per the setbacks and area calculations of the codes applicable at the time the construction permit was issued for the present septic system and would be consistent with that original permit as issued, completed and approved.
2. This investigation was to be based upon the concept of adding to the present septic system and that in no way suggested or meant to suggest use of this present system be abandoned.
  - 2.1 Consideration of this investigation was without prejudice. If the investigation proved the concept to be untenable either from simple capability or expense then my original application would be submitted to and considered by the Board of Supervisors.
  - 2.2. My willingness to undertake this investigation is not to be construed that there is either suggestion or evidence that this septic system serving the present dwelling is operating other than as "functioning properly" as defined in the current county code as excerpted in Appendix IV contained in my filing with the Board of Supervisors for the September 30, 2008 meeting, a copy of which was furnished to you as an email attachment on September 30, 2008.
3. If the investigation proved that additional leachline to achieve increased or full compliance with the 1976 codes (despite the fact that the existing system had been approved with the present dwelling in 1977) could be added, then the stipulation and permitting of this addition leachline would qualify the system with the existing three bedroom dwelling as Class 3 and my original application would be approved by your Division. That is to say that the entire project: added leachfield and the proposed addition would be combined into one project that would be designated as a Class 3 septic system with a complying non-bedroom addition of less than 30%.

Item 3 was certainly strongly implied in the discussion, but I think it is important to make it explicit - otherwise it is the purpose of the investigation you proposed?

I would appreciate your reply to the above, so that I may start the planning with some confidence that it is likely to lead to more than additional delay.

Regards,

Donn Lobdell

---

----- Forwarded Message: -----

From: [d.lobdell@comcast.net](mailto:d.lobdell@comcast.net)

To: David Kears ([dave.kears@asgov.org](mailto:dave.kears@asgov.org))

Subject: Letter regarding meeting of September 29 2008

Date: Tue, 30 Sep 2008 20:56:49 +0000

Mr. Kears,

Attached is a letter regarding my understanding of the meeting yesterday along with some thoughts on it.

In addition as we discussed, I am also attaching the first several sections of the package of information that I put together for the Board of Supervisors (BOS). Because of the vagaries of the particular email system, there will be four more such emails to transfer this BOS package. They are arranged in order by the prefix number so that if you put them in the same folder - perhaps labeled appellant's BOS documents - they will sort themselves into the correct order. Let me suggest that you place all but the first attachment into this folder. The first attachment is as stated above the letter covering our meeting of yesterday.

Overall there are five emails counting this one with attachments. Except for the first attachment to this email all of the attachments comprise the complete document that was delivered to the Assistant clerk of the BOS

It was a pleasure to meet you.

Regards,

Donn Lobdell

**Levi, Ariu, Env. Health**

---

**From:** Kears, Dave, HCSA  
**Sent:** Wednesday, October 08, 2008 10:01 AM  
**To:** d.lobdell@comcast.net  
**Cc:** Levi, Ariu, Env. Health  
**Subject:** RE: Meeting of September 29, 2008

Mr. Lobdell:

Again, EH and my office made the suggestion to reach agreement on a solution that works for both parties. Ariu Levi and I discussed this earlier today and he has re-affirm his commitment to work with and support the below referenced alternative as a means of addressing EH concerns while not unfairly burdening you. We have advised our County Counsel of our intent to resolve the matter in this manner, subject to the assessment of costs and without prejudice to your initial complaint and appeal, and are awaiting their response. I hope to get back to you by the end of the day or early tomorrow.

Dave Kears

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**From:** d.lobdell@comcast.net [mailto:d.lobdell@comcast.net]  
**Sent:** Wednesday, October 08, 2008 9:25 AM  
**To:** Kears, Dave, HCSA  
**Cc:** Steele, Gail, Supv. BOS Dist 2; Levi, Ariu, Env. Health  
**Subject:** Re: Meeting of September 29, 2008

Mr. Kears:

I appreciate your response and you have stated what is to me the crux of the matter namely: that it has not been articulated what is meant by "working for both parties." Other than frustrating my proposed non-bedroom addition of habitable space that meets the requirements of the current county code, it is not clear what the goals of the Department of Environmental Health (DEH) are in this matter. After all, you did state in the September 29th meeting that if it was to be done all over, your organization would not allow any building in this entire canyon.

What I understood from the proposal you made was that your organization was desirous of having additional leachfield area at the 822 Kilcare Road site. You suggested that I investigate the feasibility of adding such additional leachfield in the area designated as reserve in the 1976 septic system construction permit and the 1977 building permit for the dwelling. The DEH have stated numerous times that the present system, notwithstanding having been approved and affirmed in 1977 to serve the dwelling of building permit #3456, was appropriate for a two bedroom dwelling. If this remains their position, then additional leachfield of 50% of the original (and present) leachfield should be sufficient to meet the putative DEH requirements for a Class 3 permit. Is this then, the amount that should be added? Then feasibility considerations would be directed to that end. Would the DEH demand more? Clearly more than doubling the present would exceed the amount designated as reserve (and probably the limits of the slope conditions bordering the reserve area). What I am looking for is a statement of the minimum additional amount of leachline that will satisfy your organization. It seems to me that this is not an unreasonable expectation in view of the goal of "working for both parties."

I look forward to having this information soon.

Regards,



**DONN D. LOBDELL, PH.D.**  
**PO BOX 569**  
**SUNOL, CALIFORNIA 94586**  
**SEPTEMBER 19, 2008**

Re: September 30, 2008 Hearing of Appeal of Decision by the Director of the  
Department of Environmental Health on Requested Approval of addition to Existing  
Dwelling at 822 Kilkare Road, Sunol, unincorporated Alameda County

**The Honorable Board of Supervisors of Alameda County**  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Honorable Supervisors,

The appeal regards a complicated situation involving a thirty plus year old dwelling on a site that includes a private wastewater treatment system. The complications involved make it necessary to request that you carefully review these materials as they tell a compelling story; but they do require some dedication of time and attention.

Informally it began about four years ago when we began planning with our architect on how to increase the amount of habitable space within our newly purchased home so that it would better accommodate our needs and hobbies. Because of the nature of the site on which the existing dwelling and septic system are placed and the changes in codes and regulations governing setbacks from lot lines, streams and other features this took considerable effort. We collected information on this site and its improvements from various Alameda County Departments.

Appellant has requested a building permit approval from the Department of Environmental Health (DEH) to add non-bedroom habitable space to this dwelling served by a septic system. County codes contemplate the addition of up to 30% of the current space for a Class 3 system. This request has been denied by the DEH. The two reasons given are that appellants' are adding a bedroom and that addition of non-bedroom habitable space to this dwelling will cause additional septic system loading.

There were two aspects alleged by appellants in the appeal sent to the Board of Supervisors. First was wrongful denial by the DEH of the most recent appeal and thus also of the underlying application. Second was inequitable conduct on the part of the DEH. The inequitable conduct is addressed in Section VII of this Appeal.

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Key to this appeal is the wrongful denial aspect. This depends upon showing two factors.

**First** that the present dwelling, served as it is by a septic system, was built and approved in conjunction with that septic system as a three bedroom entity.

The Alameda County records in several departments show:

1. The septic system for this site was built and approved in spring 1976 as a stand-alone construction as there was no building permit for a dwelling on the site at the time. It is arguable as to the number of bedrooms contemplated for it at this time. There is no explicit number stated but there is a plot view that shows a two bedroom outline with a detached garage in outline. No information on habitable space, if any, in the garage.
2. The building permit (BP3456) issued in spring 1977 for this site was for a dwelling of two bedrooms and a den. By the Guidelines of the Department of Health Care Services (DOEH) at the time this was to be regarded for septic system purposes as a three bedroom dwelling. BP3456 specified that this building was to be served by the (now) existing septic system. This specific use of this septic system to serve the dwelling of BP3456 was approved by the same DOEH agent who had approved the construction of the septic system a year earlier. The owner of record had changed between the septic system permit and BP3456 as is noted in the DOEH records for the two permits.
3. A concern was expressed regarding the issuance of BP3456 by a local resident. The Alameda County DOEH and Public Works Division thoroughly investigated this matter. During the investigation it was observed by one of the DOEH investigators that the dwelling contained three bedrooms. The investigator shared that information with his supervisor, who in turn shared it with the DOEH Director.
4. In the response addressed to the District 1 Supervisor and the local resident, the Alameda County Director of Public Works stated that in relation to the dwelling being constructed the septic system has been installed in conformance with the requirements of the County Health Department.
5. The dwelling went on to occupancy, assessment and final inspection. The assessor entered the dwelling on the Alameda County Tax rolls in spring 1978 as a three bedroom dwelling and it has been so since.

Section I in the included materials is a comprehensive guide to all of the documents covering the construction of improvements on this site from the Alameda County Building and Environmental Health Departments covering this period (initial permit to final inspection) that has been discovered to date. Appellant is confident that this material will convince the reader that the present dwelling and septic system were in fact built, assessed and approved thirty years ago by the appropriately designated officials. That this dwelling in 1977 did have and in 2008 still has three bedrooms is incontrovertible.

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**Second:** DEH argument that the addition of non-bedroom habitable space to the existing dwelling will cause additional septic system loading is contrary to their own statements regarding the applicable codes. This several times repeated DEH statement from the staff report is:

A 27% addition to the existing 2,522 ft<sup>2</sup> three house would certainly raise the potential for increasing the wastewater load now or in the future, unduly straining the capacity of the currently undersized septic system.

The "existing 2,522 ft<sup>2</sup> three house" probably should read "existing 2,522 ft<sup>2</sup> three bedroom house". In any case, it is clearly meant to state that an addition to the existing house will cause additional wastewater loading. Now the addition is definitely a non-bedroom addition. This is addressed more fully in the accompanying Section VI. The DEH's own statements on wastewater loading teach that the loading is based on the number of bedrooms and not on habitable space. Thus this matter raised several times by DEH is a "red herring" as it is not an element of the Class 3 designation.

**Additional:** The current septic system has served this dwelling for some thirty years and on inspection by a licensed contractor selected from the list maintained by DEH was found to be functioning properly.

The matter under appeal is the question of Class 3 designation. The elements of this are in Appendix IV of the attached material. DEH and appellant agree that elements a and b are met. Element c. The report by appropriate professional was the first item done by appellant (as recommended by the DEH) in planning this addition. Due to the planning and review times it is now out of date. Appellant mentioned that to a DEH staff member and was told not to be concerned while the other matters were in process. If this is the only issue found by the Supervisors to remain, then appellant will have it repeated should they so desire. However, element d demands a valid permit for the septic system. This DEH is holding that the 1976 permit is not valid because the dwelling is now three bedrooms and that proper authorities did not authorize this alleged change. It is appellant's contention that:

1. When the septic system was installed it had a valid permit (no explicit statement on the permit or other DEH records of this septic system approval gives an explicit number of "approved" bedrooms) thus formally satisfying element d,
2. When the septic system was approved as the septic system for the dwelling of the building permit as shown in the accompanying Exhibits 13 and 14 this constituted at the very least subsequent approval of this use of the system according to element e, and this use of the septic system with the dwelling was reaffirmed by County officials as shown in accompanying Exhibit 5

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This alleged discrepancy between the number of bedrooms for the septic system and in the dwelling was not raised to the then owner of the property at the time of inspections and approvals of the dwelling construction. There was no action by any County Agency that did other than to leave the owner with the assurance that the dwelling, at the times that the occupancy and building permit were approved, was other than fully compliant. Thus there was not an opportunity to address the alleged discrepancy at or near the time of its alleged occurrence some thirty years ago.

Appellant requests that the Honorable Board of Supervisors grant this appeal to reverse the Departmental Final Decision and to grant The Class 3 septic system designation to the building permit application process.

Thank you for your attention to this appeal,



Donn D. Lobdell, Ph.D.

Attachments:

| Title                                                  | Location    |
|--------------------------------------------------------|-------------|
| Timeline of Improvement Events.....                    | Section I   |
| 1977 Actions of Alameda County.....                    | Section II  |
| Septic System Construction.....                        | Section III |
| Dwelling Construction History .....                    | Section V   |
| Addition will not Impact Septic System Loading .....   | Section VI  |
| Inequitable Conduct by DEH .....                       | Section VII |
| Exhibits .....                                         | Exhibits    |
| Remedies under 1974 AC Code .....                      | Appendix I  |
| Den – Bedroom Equivalence .....                        | Appendix II |
| Class 3 Definition .....                               | Appendix IV |
| Appellant's Response to DEH Ltr of Feb 8, 2008.....    | Ltr 080208  |
| Appellant's Response to DEH Ltr of June 12, 2008 ..... | Ltr 080612  |
| Appellant's Response to DOH Ltr of Aug 21, 2008.....   | Ltr 080821  |

**DONN D. LOBDELL, PH.D.**  
**PO BOX 569**  
**SUNOL, CALIFORNIA 94586**  
**OCTOBER 17, 2008**

Mr. Ariu Levi  
Director, Department of Environmental Health  
Alameda County Health Agency  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577

Dear Mr. Levi,

In your letter of June 12, 2008, you incorporate some previous decisions into that, your most recent decision. This brings me to your letter of February 8, 2008 in which, on page 6, you make the following statements regarding our application:

.... Applicant raised certain additional arguments at the hearing in support of his project including that staff failed to properly calculate the existing capacity of the 32 year old system by (1) .....; and (2) failing to consider "water saving devices" implemented currently in his home.

2. Water Saving Devices Argument: Applicant's also relies on the fact that certain "water saving devices" are currently being implemented at the dwelling to support his argument that the proposed expansion should be permitted with the existing septic system.

Respecting the "argument" related to "water saving devices" attributed to me in these two places, I do not find any place in the documents provided to support our appeals where I have claimed to be currently implementing or to have implemented "water saving devices" in our home or dwelling. I also do not find any such statement in the recordings that I have of the hearings. Thus, what is stated in the second paragraph quoted from your decision letter as "the fact" is not something I claimed. I respectfully request that you provide me with source and detail showing statements by me upon which you based the above allegations regarding "water saving devices." If you cannot provide such source and detail, then I expect that you will forthwith and publically correct your decision letter to reflect my actual statements which were considerably different from those given as my "arguments" in your letter. Since your letter was furnished to the Board of Supervisors, I explicitly expect that you will correct it by individual copies addressed to the Board members.

Thank you for your attention to this request.



Donn D. Lobdell, Ph.D.



**DONN D. LOBDELL, PH.D.**  
**PO BOX 569**  
**SUNOL, CALIFORNIA 94586**  
**OCTOBER 18, 2008**

Mr. Ariu Levi  
Director, Department of Environmental Health  
Alameda County Health Agency  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577

Dear Mr. Levi,

In Section B.1 on page 2 of your letter of June 12, 2008 you make the following statement regarding our application:

You have argued that it was your predecessor in interest (not you personally) who was responsible for the non-permitted enlargement of the dwelling from a 2-bedroom to a 3-bedroom,

I have searched the documents that were provided in the appeals process and have been unable to locate any statement on my part that would justify your foregoing allegation. I certainly do not recall making any such "argument." I have not been able to locate any such "argument" in the recordings that I have. The "argument" as stated above in your decision letter does not represent my position on the matter.

I respectfully request that you provide me with source and detail showing statements by me upon which you based the above allegation. If such source and detail do not exist, then I expect that you will forthwith and publically correct your decision letter to reflect my actual assertions. Since your letter was furnished to the Board of Supervisors, I explicitly expect that you will correct it by individual copies addressed to the Board members.

Thank you for your attention to this request.



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