

Use of Off-site Easements for Sewage Disposal

PURPOSE

To establish procedures and standards for the use of Off-Site Easements for Sewage Disposal Systems.

GENERAL

Development pressures in the County have prompted property owners to pursue development of lots which do not meet minimum standards for installation of an on-site sewage disposal system or which are insufficient in size to accommodate an adequate sewage disposal system. One approach to development of these parcels has been placement of leachfields onto adjacent lots through acquisition of a legal easement. Regulations regarding sewage disposal easements are found in a variety of documents. The intent of this instruction is to incorporate all regulations into one document.

AUTHORITY

1. California Plumbing Code, Appendix K, Section K - I (f) (allows use of abutting lot for septic system)
2. California Plumbing Code, Appendix K, Section K - I (e) (No property shall be improved in excess of its capacity to properly absorb sewage effluent)
3. Sonoma County Code Section 7-13 (e9) (5) (defines abutting lot)
4. County of Sonoma, County Counsel's opinion dated April 11, 1984 (use of easements on parcels under common ownership)

This procedure supersedes Sonoma County Public Health Department Administrative Order No. 88-10 and Division of Environmental Health Instruction No. 5-90.

PROCEDURE

This procedure section will have general policies applicable to all easements and specific policies for specific cases, as follows:

A. General

1. Prior to approval of a septic system on an easement, applicants should be advised to attempt a lot line adjustment or parcel merger to acquire fee title interest to the leachfield

areas.

2. Easements shall be recorded with the County Recorder's office in a form acceptable to County Counsel and the Permit and Resource Management Department. As a minimum this shall include:
 - a. A Grant Deed conveying the easement from the record owners of the burdened parcel to the owners of the parcel to be developed.
 - b. A full legal description of the easement area prepared by a Licensed Land Surveyor or a Registered Civil Engineer whose registration allows surveying.
 - c. All appurtenant easements for access, pipelines, drainage, etc., shall be conveyed in the grant deed.
 - d. Conditions, Covenants, and Restrictions recorded on the deed as follows:
 1. A statement that the easement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the grantor and grantee and that all specifications of the easement shall pertain to and run with the land.
 2. A statement that provision of the easement is a public health condition relative to approval of a sewage disposal permit and that alteration or elimination of the rights and duties without the express written consent of the County of Sonoma may constitute a violation of State and local laws.
 3. The use of the area of the leachfield easement by the grantor shall be restricted from uses which are incompatible with proper leachfield operation. This shall include structures, vehicular parking, roadways, drainage courses, wells or other uses which would disrupt the leachfield.
 4. The easement shall include the right of the grantee to do all things reasonably necessary to inspect, maintain, repair and/or replace the leachfield.
 - e. The requirements of Section A (2a) and A (2b) are to be reviewed by the County Surveyor's office prior to permit issuance.
3. All leachfields or expansion areas within easements shall be designed by a Registered Civil Engineer or Registered Environmental Health Specialist.
4. Leachfield easements shall be separate and distinct from one another. They shall be of sufficient size to accommodate the total leachfield area required by the Permit and Resource Management Department regulations (including reserve expansion). The

easement shall be of sufficient size to accommodate the off-site portion of the leachfield and/or expansion area plus additional area as necessary to allow vehicular movement for repair or expansion purposes.

5. If the Permit and Resource Management Department and design consultant feel monumentation of the easement area is necessary, then a Record of Survey map will be required in conformance with Section 8762 of the Business and Professions Code. Examples of cases where a Record of Survey map may be necessary are as follows:
 - a. Where there is not sufficient existing monumentation for easement to be retraced on parcels involved.
 - b. Easement is of an irregular or unusual shape that needs to be clearly defined by monumentation.
 - c. Leachfield is not immediately adjacent to the common property line.
 - d. Where grantor requires monumentation.

If a Record of Survey map is required, the easement areas shall be monumented as stipulated by County Ordinance. If a map is not required, the easement areas shall be marked by six foot steel fence posts.

6. Pipeline and/or access easements shall be at least 12 feet in width.
7. If interceptor drains are required for the leachfield, a drainage easement may be necessary.
8. No lot shall be improved in excess of its capability to properly absorb sewage effluent. Before a sewage disposal easement is considered on a lot, it must be demonstrated that the proposed easement will not encroach onto area which is necessary for the on-site sewage disposal system or its required expansion area. The area necessary for the septic system and its reserve expansion area shall be based upon codes in effect at the time of application for approval of the sewage disposal easement. The on-site septic system does not need to be modified unless it is in a state of failure.

B. Grant of easement from one property owner to another

1. The easement shall comply with all of the “general” requirements above.
2. The lot to be developed must abut the lot burdened with the easement (i.e., the two lots must touch at one end or side).

3. An unimproved lot will be considered as “abutting” if it is connected to another lot by an easement provided that the lots are in common ownership. (Chapter 7, Sonoma County Code).
4. An “abutting lot” is also an improved lot connected to another lot by an easement. The lots need not be under common ownership so long as the lot owner has an easement over the abutting lot sufficient for private sewage disposal.
5. Lots separated by a public road or highway shall not be considered abutting except as provided in number 4 above. A public road or highway will satisfy the connection between abutting lots. An encroachment permit must be obtained from this department.

C. Grant of easement when lots are in common ownership.

1. The easement shall comply with all of the “general” requirements.
2. The following requirements shall be met:
 - a. A deed of easement from the owner of each parcel burdened by the easement to the owner of the parcel upon which the building will be located,
 1. locating the easement upon that parcel;
 2. stating that the easement is a condition of County approval of the sewage disposal system;
 3. stating that it is the intent of the grantor and grantee that the easement will not merge with the underlying fee interest even if the easement and the fee come into the same ownership, and that the easement is intended to survive severance of the estates and to be included in conveyances to subsequent purchasers;
 4. stating that the easement may not be quitclaimed or otherwise modified or destroyed without the written consent of the Director of the Permit and Resource Management Department, which shall not be unreasonably withheld;
 5. stating that the easement is appurtenant to the lot upon which the building is to be constructed.
 - b. A Declaration of Covenants, Conditions and Restrictions upon each affected parcel which:
 1. states that the benefits and burdens of the covenants and restrictions shall be

binding upon the successive owners of each parcel;

2. states that the burdened parcels (described) shall not be used in any manner which may interfere with or adversely affect the safe operation of the sewage disposal system for the structure of lot (____);
 3. states that the sewage disposal system shall be located in the area described in the easement for sewage disposal executed by _____ on (date) _____ and recorded as Document No. _____ of Official Records of Sonoma County, and which is incorporated by reference (or similar language):
 4. states that the covenants contained in the declaration may be terminated or modified only with the written consent of the Director of the Permit and Resource Management Department, which shall not be unreasonably withheld. This provision would be applicable when and if the Department of Permit and Resource Management approves some other type of sewage disposal, and the easements and restrictive covenants are no longer needed.
- c. The affected lots shall be conveyed to a title company or some other “straw man” by a deed which incorporates the easements and the declaration of covenants, and then reconveyed back to the owner. Another option is the use of a properly constructed “Owner Statement”, see Attachment..
 - d. The property owner shall supply the Permit and Resource Management Department with a letter indicating his intentions to include the easements and covenants in future deeds of the affected parcels.

D. Sewage disposal easements for new subdivisions of property:

1. No approval of an application for a minor subdivision or lot line adjustment which necessitates use of sewage easements shall be granted. Each proposed lot must be demonstrated to have a site suitable for installation and expansion of an on-site sewage disposal system contained entirely within the proposed property lines of the lot.
2. Sewage easements for major subdivisions may be considered under the following circumstances:
 - a. A homeowner’s association or other entity of dischargers empowered to conduct a program of regular sewage system monitoring, maintenance, and repair is created.
 - b. Easements are contained only within common lands of the subdivision.
 - c. Common areas are owned and controlled by the entity.

- d. The easement for each lot is entirely separate and distinct from the easement for any other lot.
- e. Use of easements is not used as a basis to allow lot sizes smaller than those specified in the County Subdivision Ordinance for lots with private sewage disposal systems.

All Well and Septic Section staff shall become familiar with this policy/procedure and shall review new applications for construction or repair of a septic system in accordance with these requirements. The Project Review Specialist - Health shall be responsible for implementing regulations relative to subdivisions and lot line adjustments.

Attachment:

Instruction Sheet - Owner's Statement and Declarations of Restrictions

Approved by:

Date posted 9/27/02

/s/ Richard L. Holmer

Richard L. Holmer, Operations Manager

Intranet Intranet and Internet