



County of Santa Cruz

HEALTH SERVICES AGENCY

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ENVIRONMENTAL HEALTH

April 24, 2000

AGENDA: May 9, 2000

BOARD OF SUPERVISORS

County of Santa Cruz

701 Ocean Street

Santa Cruz, CA 95060

Subject: **SEPTIC SYSTEM DISCLOSURE**

Dear Board Members:

The Board of Supervisors formed an Environmental Health Services Task Force in February 1999 to review the County's sewage disposal program and make recommendations for administrative and procedural changes and improvements. Your Board accepted the final report of the Task Force on May 4, 1999. One of the recommendations of the Task Force involved the County's existing septic system disclosure process. The Task Force recommended amending the County Sewage Disposal Ordinance to require a "Uniform Septic Disclosure Document" in place of the current process of recording notices of Non-Standard Systems on applicable parcels at the time of septic system permit issuance. Your Board directed that Environmental Health convene a Septic Disclosure Advisory Group to review the current process and the recommended alternative, plus identify other possible alternatives for disclosure, and prepare a report for the Board. This report is prepared pursuant to that directive.

The Advisory Group for Septic Disclosure met on November 10, 1999, December 8, 1999, and January 19, 2000. The membership of the Advisory Group is shown in the attached membership roster.

Discussions focused on the current process of recording a "Notice of Onsite Sewage Disposal System Characteristics and Operating Conditions" (Notice) and the alternative suggested by the Environmental Health Task Force of a "Universal Septic Disclosure Document" which title companies would be required by ordinance to include in the documents a purchaser acknowledges at the time of sale of a property with a septic system. A number of additional alternatives were identified and discussed. These alternatives included requiring Realtors to enforce disclosure whenever property is listed, requiring that title companies enforce disclosure

before recording title, and requiring the County Recorder to enforce a disclosure process prior to recording a property transfer. Consensus was reached on a recommended alternative. This report is a summary of the issues as they related to the alternatives for disclosure and the attendant discussions, as well as presentation of the Advisory Group’s recommended alternative.

Limitations of Using the Property Transfer Process for Disclosure

According to the County Assessor, approximately 7200 property transfer were performed last year which required reappraisals, plus another 5000 transfers not subject to reappraisal (trusts, etc.). Realtors were involved in approximately half of those transactions, the others being person-to-person or by some other means in which a Realtor was not used.

Completion of a “Preliminary Change of Ownership Report” (PCOR) is required by State law for all property transfers. However, this is completed after close of escrow and is not a public document. Although PCOR completion does not always occur, there is an enforcement mechanism to assure that it is eventually completed. Several hundred property transfers per year fail to complete the PCOR and the Assessor uses a demand letter, with penalties of \$100 to \$2,500 for non-compliance, to obtain the required transfer information.

Title companies are not used for all property transfers. Some transfers occur without the provision of title insurance, such as in trusts, wills, etc. In addition, title insurance is frequently written by companies that are not located in the County, and may not know of a local disclosure requirement that was not part of the State-required Transfer Disclosure Statement (TDS). If a new disclosure requirement were added to the responsibilities of title companies, title insurers could be expected to increase their rates. Whether the County could enforce a disclosure requirement is not clear and **would** require further legal research to answer with any degree of certainty.

Similarly, lending institutions are not used for all property transfers (such as in cash transactions), and lenders are frequently not local firms, so they may not be aware of possible local disclosure requirements. In addition, lenders do not see the TDS during loan application and approval. They only see the 8 page purchase contract between the buyer and seller.

Finally, not all property transfers are recorded with the County Recorder. Some deeds and quit claims are not recorded due to failure to do so by the parties involved.

Thus, there are practical limitations to reliably depending on the property transfer process to ensure universal disclosure. There are many holes in the “net”: not all transfers involve lenders, not all involve Realtors, not all involve title companies, and not all involve recordation.

Possible Legal Limitations on Local Universal Disclosure Requirements

According to County Counsel, State law is clear that a local agency is not pre-empted from enacting a disclosure requirement that is in addition to the Transfer Disclosure Statement now required. However, Counsel’s opinion is that the County does not have the legal authority to

require title companies to enforce the disclosure process between the buyer and seller during the process of issuing title.

The County could enact a local ordinance that requires sellers to perform a septic disclosure to buyers prior to recording of a deed transferring title or prior to the recording of a contract of sale, similar to what is required by Chapter 7.69 (Installation of Water Conservation Devices). However, there is no enforcement mechanism to insure that disclosure by the seller occurs, nor could one be easily implemented, given the limitations of the property transfer process as discussed in the preceding section.

Another legal limitation is that an ordinance adopted by the Board of Supervisors applies only to the unincorporated areas of the County. A Board-adopted ordinance would not have effect within the cities. Watsonville, Scotts Valley, and Santa Cruz have a number of lots served by septic systems within their boundaries to which universal septic disclosure would not apply unless the cities were to adopt companion ordinances.

Current Process of Recording Notice

The County's current practice is to record a notice of septic system characteristics on the property records of lots where the septic system has been designated as nonstandard through the process of obtaining a permit to install or repair a septic system. This requirement has been in effect since 1993, resulting in about 180 parcels (out of 22,000 with septic systems countywide) that have a notice recorded. 20 to 30 parcels are added a year to those that have a deed recordation. There are many older septic systems in the County that do not meet current standards and which may have significant site constraints that limit the current and future use of the property. These older systems will remain undesignated unless a permit is applied for that reveals the site constraints, invoking the requirement for deed recordation. Within the San Lorenzo Watershed, it is projected that at most 510% of the parcels have constraints that would ultimately require recordation.

Discussions among the Advisory Group indicated that lending institutions are generally not concerned upon finding a Notice recorded on a property for which a loan is being considered. A potentially adverse disclosure is more likely to be a concern for lenders in which the buyer falls in the 5- 10% down payment category. At 20% or more down payment, lenders are less likely to be concerned with "adverse" disclosure because of the better "cost to cure ratio." Additionally, lenders may not be as concerned about correction of an adverse condition when the buyer and seller agree on correction and this agreement is reflected in the sales price. Some lenders don't ask for a septic system report as a condition of lending unless they have a reason to believe there is a problem. The effect of the currently used Notice being found during property transfer is minimal, if not nonexistent, based on local experience. The wording of the Notices has been modified in the last year to eliminate the term "nonstandard" and to minimize raising any unnecessary red flags.

Similarly, in instances where appraisal is being performed by a private appraiser during a property transaction, local experience is that the Notice did not affect the appraised value nor the

selling price.

Recommended Septic Disclosure Process

Given the limitations, both practical and legal, on the requirement of a local universal septic disclosure, the recommendation of the Advisory Group is that adoption of a local ordinance does not appear to be an appropriate course of action. As to the current process of having a Notice of Special Operating Characteristics recorded on lots as needed during time of septic permit application, the members of the Advisory Group found no factual evidence that the Notice itself has affected appraised values, the ability to successfully obtain a loan, or the ability to sell a property at market value. The Advisory Group determined that continuing the process of Notice recordation appears to be acceptable, with refinements of the current process and additional measures (discussed below) to help ensure that buyers are more likely to obtain information about the septic system on a parcel they may be considering purchasing.

Changes in Notice language have already been made as result of discussions during the Task Force process. Additionally, the Disclosure Advisory Group recommended further refinement in the Notice language that has already been incorporated into the Notice. These changes should result in the document being less of a potentially “adverse” element in the property transaction process.

Environmental Health staff met with representatives of the local Board of Realtors, who now concur with findings and recommendations of the Disclosure Advisory Group. Although Realtors had previously expressed significant concerns with the recordation of notices, they now accept that procedure as appropriate, given the limited numbers of properties subject to recordation, the revision of the wording to make the recordation more clear, and the potential problems with a universal disclosure process. The Realtors intend to submit a letter stating their position for your Board’s consideration.

In addition, Environmental Health will increase its programs of education for Realtors and the public on what to look for when selling or buying a home with a septic system. Educational brochures on alternative systems as well as purchasing of property served by septic systems, posting of similar educational material on the Environmental Health website, and presentations at appropriate meetings are recommended means. EHS could also make available for a fee a process for standardized evaluation and disclosure of potential septic limitations based on EHS file records. The possible workload and budgetary impacts of providing this service will be addressed during preparation of the FY 2000-01 EHS budget.

An additional recommendation involves septic pumpers and the service they provide during the property transaction process. Septic pumpers are frequently retained to pump and inspect a septic tank as a condition of a sales contract. However, these inspections are sometimes cursory and provide limited information. EHS will continue to provide direction and oversight of pumpers in order to assure complete information is provided when a septic tank is pumped, whether as part of a property transaction or as routine maintenance. In addition, legislation (AB 885, Jackson) is currently pending in the State Legislature that, if enacted, would create a State registration

program for septic pumpers, contractors, and inspectors who certify the operation of onsite sewage disposal systems. The registration program would establish qualification and professional conduct standards in order to qualify for registration, with the registration program being managed by the State Water Resources Control Board.

Given the findings and considerations of the Advisory Group, it is RECOMMENDED that your Board:

1. Accept and file this report on Septic System Disclosure and thank the members of the Septic Disclosure Advisory Group for their assistance; and
2. Direct Environmental Health Services to continue refining its current process for septic disclosure, including education and outreach, and making available a standardized evaluation of potential septic limitation.

Sincerely,

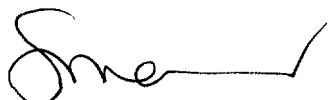
Rama Khalsa

Rama Khalsa, Ph.D. *by DJ*
HSA Administrator

- . -
Diane Evans, REHS
Environmental Health Director

cc: attachments

RECOMMENDED:



Susan A. Mauriello
County Administrative Officer

cc: CAO
County Counsel

County Assessor
County Recorder
HSA Administration
Environmental Health

SEPTIC DISCLOSURE ADVISORY GROUP

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<p><u>REALTOR</u> JOHN CARVER CENTURY 21 3210 HIGHWAY 9 SLOULDER CREEK, CA 95006 138-2125 (FAX) 3354271</p>
<p><u>COUNTY RECORDER</u> RICHARD BEDAL/DEE RODRIGUEZ COUNTY-CLERK-RECORDER 701 OCEAN STREET, ROOM 150 SANTA CRUZ, CA 95060 454-2800 (FAX) 335-427 1</p>
<p><u>COUNTY ASSESSOR</u> ROBERT PETERSEN COUNTY ASSESSOR 701 OCEAN STREET, ROOM 130 SANTA CRUZ, CA 95060 454-2002 (FAX) 454-2495</p>
<p><u>REGIONAL WATER QUALITY CONTROL BOARD</u> HOWARD KOLB REGIONAL WATER QUALITY CONTROL BOARD 81 HIGUERA STREET, SUITE 200 SAN LUIS OBISPO, CA 93401-5427 (805) 549-3332 (FAX) (805) 543-3097</p>
<p><u>ENVIRONMENTAL HEALTH SERVICES</u> JOHN RICKER PRINCIPAL ENV. HEALTH COORDINATOR 701 OCEAN STREET, ROOM 312 SANTA CRUZ, CA 95060 454-2022 (FAX) 454-3 128</p>

<p><u>COUNTY COUNSEL</u> HARRY OBERHELMAN ASSISTANT COUNTY COUNSEL 701 OCEAN STREET, ROOM 505 SANTA CRUZ, CA 95060 454-2040 (FAX) 454-2115</p>
<p><u>REALTOR</u> C. J. PARK DAVID LYNNG ASSOCIATES 5435 SCOTTS VALLEY DRIVE SCOTTS VALLEY, CA 95066 461-1200 (FAX) 461-1211</p>
<p><u>APPRAISER</u> DAVID PLUMLEE PLUMLEE & ASSOCIATES 5 16 CEDAR STREET SANTA CRUZ, CA 95060 426-5115 (FAX) 338-7986</p>
<p><u>TITLE COMPANY</u> VICKI MADDOCKS/GLENN OLIVES SANTA CRUZ TITLE 201 RIVER STREET SANTA CRUZ, CA 95060 426-9090 (FAX) 426-85 11</p>
<p><u>HEALTH SERVICES AGENCY</u> CHARLES MOODY HEALTH SERVICES AGENCY ADMINISTRATOR 1080 EMELINE STREET SANTA CRUZ, CA 95060 454-4000 (FAX) 454-4770</p>
<p><u>ENVIRONMENTAL HEALTH SERVICES</u> DIANE EVANS DIRECTOR OF ENVIRONMENTAL HEALTH 70 1 OCEAN STREET, ROOM 3 12 SANTA CRUZ, CA 95060 454-2022 (FAX) 454-3 128</p>

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PLUMLEE & ASSOCIATES, INC.
Real Estate Appraisers

March 17, 2000

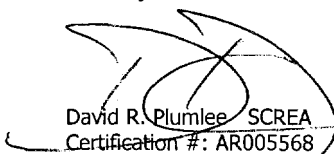
Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, Ca. 95060

Dear Member of the Board:

I served as a member of the Advisory Group on Septic Disclosure. I am in full concurrence with the findings of the Advisor/ Group and fully support the recommendations which resulted from the meetings of the group. To my knowledge and in my experience, the disclosure of septic restrictions under the current process have not effected marketability or value of properties subject to said disclosure. However, it is likely that the current process has caused delays in real estate transactions due to a lack of understanding of the process and the implications of septic restrictions by lenders and buyers. It should be noted that Santa Cruz County is in a particularly robust real estate market, where little will deter today's determined buyers. In a less robust real estate market, the lack of effect on marketability or value of properties subject to septic disclosure may not hold true. Therefore, now is the time for improvements in the current process and method of disclosure. The recommendations of the Advisory Group will enhance the public's perception of the septic disclosure process in general, while providing necessary protection and information to potential buyers and lenders. I support the recommendations of the Advisory Group and urge you to adopt the recommendations of the Advisory Group for future septic disclosure.

If I may be of further service to you in the future, please call on me.

Sincerely,


David R. Plumlee SCREA
Certification #: AR005568
State: California

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March 15, 2000

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Dear Members Of The Board:

I fully concur with the findings and recommendations of the Advisory Group on Septic Disclosure. I was a member of the Group and have found that the present disclosure process has not affected transactions for which I have been the mortgage broker. Likewise, I have not heard from other brokers of problems or concerns they have had about the current process. The recommendations made by the Advisory Group should serve to improve the current process, and I am in support of those recommendations.

If you have any questions, please contact me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Mark Lawsen".

Mark Lawsen
Vice President
Mortgage Consultant

/ks

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SANTA CRUZ, CA 95062
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