

February 26, 2023

Liz Hamilton, Interim CAO
Trinity County
P.O. Box 1613
Weaverville, CA 96093

RE: P-22-19 – Motion for Reconsideration

Ms. Hamilton:

Thank you for expediting your response to the complaint we submitted. We are disappointed in your response, but after giving it considerable thought can see how staff from Environmental Health may interpret Condition of Approval c differently than we do and what was intended. To this end, I am going to review our position, then offer a solution.

The scope of review allowed under Government Code 66412(d) in regard to review and approval of a lot line adjustment is quite narrow. It calls for conformance with the General Plan, Specific Plan, Zoning Ordinance and Building Ordinance, while matters such as the statewide OWTS (septic) Policy fall beyond the scope of allowed review. If they come into play, it is only in relation to one of the identified allowable topics (which in the current case is the Trinity County Building Ordinance). Trinity County Code Title 15, Section 5.04.100 is where this occurs – requiring approval of any sewage disposal system needed to support a Building Permit prior to issuance of the Building Permit. Since there is no Building Permit involving a sewage disposal system in our case, there is no formal engagement with Environmental Health.

Trinity County Code Title 16, Chapter 16.32 sets out procedures for review and approval of lot line adjustments in Trinity County. Section 16.32.020 covers application requirements. With regard to septic, the only information required is for existing sewage disposal systems. There is no mention in the application requirements of anything related to new sewage disposal systems. Item d in the application checklist in use when we submitted our application, however, does require percolation tests despite no authorization in code to do so. In August of last year, we agreed to submit perc tests with our application for Parcel B and then did so. We did not want to get into the issue of whether or not they really can be required, we just wanted to move forward.

During initial review of our application, Environmental Health submitted a comment to Planning requesting a site visit for the parcel becoming smaller, to evaluate whether the change would impact the area available for consideration of sewage disposal. The Planning Department made an error, such that our application was found complete without any of the comments being

included. We voluntarily agreed to bring the issue of site review forward, since it seemed reasonable and we knew that the lot line adjustment had no impact on actual area available for potential septic use (Exhibit "I" that we submitted shows this). We wanted Environmental Health staff to have the opportunity to see this for themselves. To this end, we provided the following Condition of Approval which the Board of Supervisors approved.

c. Environmental Health shall verify that adequate space for wastewater disposal (considering potential setbacks) is available on parcel B prior to recordation of the "Notice of Lot Line Adjustment".

The condition was made specific to consideration of setbacks, since that is the controlling feature for potential septic location on the subject parcel both before and after the lot line adjustment. We expected a smooth site review since we had made sure that adjusted parcel B has all of the space potentially usable for septic (we noted this in the discussion submitted with our application back in September). Since the lot line adjustment had no impact on potential for septic, the issue becomes moot for project review under Government Code Section 66412(d). Findings of Fact 1, 3, and 4 adopted by the Board of Supervisors all confirm that no additional information is needed or could be required of us. We fully expected a simple and quick approval.

We were therefore surprised when we were asked to dig a soil profile hole. The condition is clear to us - setbacks are the only item to be considered in the review. The issue of providing more information is further closed by the Findings of Fact mentioned above. While this is obvious to us, I can now see how Environmental Health might reach a different conclusion based on their role as regulators. Rikki Townzen stated during the site visit that she wasn't sure what needed to be done since their efforts are almost always focused on actual system design and approval.

As discussed, it is our position that we have done everything we are required to do, and are willing to go back to the Board based on how things stand now and prove it. But this has been a very long and drawn-out process for us (for your staff also based on your response letter). We want to be done. For many reasons (from both sides), our relationship with Environmental Health staff is strained. A major purpose of the project reset meeting in August was to reach agreement in how to address the issue of sewage disposal – and we achieved this then. As the project does not change the area of potential for sewage disposal, it is neutral in regard to review and approval under 66412(d). Since we are not seeking a Building Permit and associated septic approval, we suggest the following be done to resolve this matter:

- Pursue the "Motion for Reconsideration" as you suggest.
- Eliminate Condition c.
- Add an additional Finding of Fact, specific to the issue of sewage disposal. This could be worded something like: "6. Based on site features and applicable setbacks, the lot line adjustment has no impact on the area potentially usable for waste-water treatment. As

required by County Code, system design and location will be addressed at such time as a Building Permit for residential or other use requiring a septic system is requested.”

This change will resolve everything:

- The issue of “parcel becoming smaller” and area for septic is addressed, since there is no impact based on actual site-specific conditions.
- Our concerns about further delay and costs by having to do more work than we agreed to.

This compromise changes nothing for Environmental Health or us now or in the future. If we sell the parcel tomorrow, or ten years from now or maybe never, things will be done exactly as required. It is also consistent with the direction set back in August, where we agreed to leave detailed evaluations and decisions to the future where they belong. As an added bonus, it does not force the Board into a decision where one party wins and the other loses – they have a solution where everybody is whole.

I can now see how Environmental Health staff might be concerned about liability if they were required to act on the condition as written. Just as disagreement on meaning has risen here, it is possible someone could interpret some form of approval given the wording of the condition. In no way would I want to possibly put staff in such a difficult position. By changing to a finding of fact, the issue of concern to Environmental Health (possible impact of reduction in parcel size) is addressed while making no commitments regarding anything in the future. Government Code 66412(d) is satisfied, because we document that the lot line adjustment has no impact on potential for sewage disposal.

I hope you will support our suggestion. I stated that we do not want to go back to the Board again nor do we want to continue to be at odds with Environmental Health, and I mean that. If we all approach the Board in support of the proposed change, it will be a rapid and easy fix. I have offered many suggestions during the course of this project – I truly hope that we can all agree that this is one we need to take.

Please respond as quickly as possible so I know how I need to prepare for the March 7 Board meeting. I will either issue agreement with the change if staff supports it, or will request that it be put on the following agenda. I fully support this change that adds clarity while requiring no additional work for us or county staff. I am open to meeting with you and staff this week to reach a decision on this. As frustrated as I have been, I am now encouraged by how simple the solution is.

Sincerely,

Scott White