

## **Septic Committee Update**

**As discussed at the last HLE board meeting efforts were underway to re-establish contact with the county and city regarding the status of the draft version of the septic infrastructure engineering study and the response by the city and county to our review of that document.**

**Since early 2005 LAFCO and the city of Morgan Hill have been moving towards the annexation of the unincorporated areas of HLE. The lack of suitable sewer infrastructure, the reliability of current septic systems, the environmental impact to the lake, and the cost of new infrastructure all play a part in this efforts.**

**A meeting was held on July 24, 2008 with the county of Santa Clara. The issues within the purview of county DEH (Department of Environmental Health) were discussed during our meeting.**

**A area of heightened concern of those home owners, that are on a septic system, is the ability to repair or maintain their systems. The response from the county will be posted on the HLE web-site for the review of all homeowners.**

**John Chappell  
Sept Committe Co-Chair**



July 21, 2008

Sylvia Gallegos, Deputy County Executive  
County of Santa Clara  
70 West Hedding Street  
East Wing, 11<sup>th</sup> Floor  
San Jose, CA 95110

Dear Ms. Gallegos:

Please accept this letter as LAFCO staff's response to the following request for further information concerning Holiday Lake Estates.

**Request for Further Information**

"Please provide written confirmation (& cite the applicable code source) that the current governmental policy is unequivocally that "No new connections are allowed to existing sewer lines even in the event of a total septic system failure" The sole exception to this policy is assumed to be for any homes that qualify as having "service" prior to the 1994 LAFCO restrictions (Such as 17084 Shady Lane)."

**LAFCO Staff's Response**

In 2005, LAFCO amended Morgan Hill's Urban Service Area Boundary to include the unincorporated Holiday Lake Estates area in order to allow for the preparation of an area-wide plan for sewer infrastructure and to allow the City of Morgan Hill to annex the area with the intent that sanitation and annexation issues are addressed comprehensively rather than on a parcel by parcel basis. The intent of LAFCO's action was to allow the City of Morgan Hill to pursue annexation of the entire area under the streamlined island annexation provisions in State law for unincorporated islands, and then the City could extend sewer service to the area in order to address public health and dwelling habitability issues.

In the event that LAFCO receives a request for sewer service in the area due to an officially documented failed septic system, the request would be reviewed by LAFCO consistent with State law and LAFCO Policies. Under Government Code Section 56133(b) and LAFCO's Out of Agency Contract for Services Policies, LAFCO when reviewing an Out of Agency request will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency. In the case of the unincorporated Holiday Lake Estates area, annexation is a logical alternative because the area is within Morgan Hill's Urban Service Area boundary and the City can annex the area using the state provision that allows annexation of entire unincorporated islands that are 150 acres or less in size without protest proceedings or election.

Sincerely,

Neelima Palacherla, Executive Officer

# County of Santa Clara

Agriculture and Environmental Management  
Department of Environmental Health

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**DATE:** July 16, 2008

**TO:** Sylvia M. Gallegos  
Deputy County Executive

**FROM:** Ben Gale *BG*  
Director

**SUBJECT:** Holiday Lakes Estates Sewer Project

In response to the Holiday Lake Estates Sanitary Sewer Feasibility Study numerous questions from the community were presented to the Interagency Working Group (IWG) in November of 2007. The following responses are provided to those questions that are under the regulatory authority of the Department of Environmental Health (DEH). Of the 75 questions submitted six were within the purview of DEH.

**Question 2:**

*Please provide written confirmation (& cite the applicable code source) that the current governmental policy is unequivocally "No repairs are allowed to existing systems within the 200' of the high water mark."*

Section B11-67(l) (7) specifies the setback of the septic tank and drainfield from the high water mark of the reservoir. The setback applies to all new construction as well as to major additions. Repairs to failing septic tank systems may be permitted, to the extent possible, pursuant to Section B11-85, provided that the repairs can be made in a safe manner.

Section B11-84(c) allows remodel or repair of existing structures when the septic tank system does not meet the requirements of the sewage ordinance, and cannot be improved to meet those requirements, but is operating safely. The section stipulates that the construction will not constitute any expansion or intensification of use of the property or structure. It also prohibits the conversion of uninhabitable spaces such as garages, decks, or patios, into habitable spaces.

**Question 3:**

*Please provide written confirmation(& cite the applicable code source) that the current governmental policy is that "Any repairs to existing septic systems that do not fall within 200' of the high water mark require that the entire septic system be brought up to current code at the time of repair.*

This is not accurate. Repairs outside the 200' setback from the high water mark are permitted if space to accommodate such repairs is available. It is not necessary to bring the system up to code unless a homeowner proposes to add more than 500 square feet of living space. Adding living space of less than 500 square feet may trigger the requirement to bring the system up to current code if the addition constitutes intensification of use (addition of any rooms that could reasonably be used as bedrooms).

**B-11-84(a)**

"...Where construction associated with an existing structure will result in a major expansion of the structure (greater than 500 cumulative square feet of all additions since March 2, 1982) or where the construction will result in a major intensification of use...the onsite sewage disposal system must meet the minimum prevailing sewage disposal requirements of this Code."

**Question 4:**

*Is the County considering adopting any alternative existing septic technologies that would reduce the legal footprint required of the system? That would likely allow numerous HLE systems to be repaired legally or brought up to code? (Mound systems, aeration, multi-tank systems, etc.)*

There is no intention to adopt wholesale use of alternative systems. This is because a court judgment prevents the county from adopting an ordinance allowing such systems without a county-wide Environmental Impact Study. Use of alternative systems can be considered on a case-by-case basis for repairs. (Sec. B11-10. Power of Director to make additional regulations. The Director is hereby authorized to make all necessary rules, regulations, and guidelines as is necessary to carry out the intent of this division.). It is important to note that some of these systems require a significant amount of space and may not reduce the "footprint" of some of systems that are currently in use.

**Question 7:**

*If an HLE home served by a septic system within 200' of the high water mark is totally destroyed by a fire or other catastrophic event, would the county issue permits allowing the homeowner to rebuild the structure even though the septic system would not be in compliance with current code?*

If the property is an approved building site and the reconstruction meets applicable zoning standards, the home may be rebuilt. If the property is not an approved building site, the County

Ordinance Code provides a limited exemption from site approval requirements for replacement of a structure destroyed by casualty, per Section C12-309.3(a)-(e). ...

In either of the two situations described above, there would be no requirement to bring the system fully up to code. However, the property owner would have to demonstrate that the septic system is operating properly. Under no circumstances shall a replacement residential structure be allowed if the septic system is not operating properly. Where improvement and/or expansion of the system is required, but cannot be accomplished, the permit will not be issued. Additions of living space greater than 500 square feet or addition of bedrooms or potential bedrooms would trigger the requirement to bring the system up to code. [Requirements for rebuilding a house that is destroyed by a natural disaster are the same as for a minor addition.] B11-84(b).

Question 8:

*If an HLE home served by a septic system that is not within 200' feet of the high water mark is totally destroyed in a fire or other catastrophic event, would the county issue permits allowing the homeowner to rebuild the structure even if the septic system couldn't be brought up to current code?*

Answer to question 7 applies to question 8 as well.

Question 9:

*If sewer proposal is voted upon & defeated, what exactly is the governmental policy regarding the chain of events for future septic system failure of a typical home in HLE?*

Such failures are handled on a case-by-case basis, depending on the circumstances of each home. Authority for abatement is provided for by Section B11-85:

To the extent possible, failing sewage disposal systems must be brought into compliance with this Code... The director may also order vacation of the premises if no safe manner of abatement is possible.

- a. *Will they post and record a notice of substandard system? If the situation warrants. This has been done in the past.*
- b. *Will they deem the homes uninhabitable and forcibly remove the occupants from the home? DEH can post the home uninhabitable if the home does not have a properly functioning sewage disposal system and if there is not a safe way of providing one. DEH however will not forcibly remove the occupants. This would be handled by the office of the District Attorney pursuant to a court order. The Building official can also post the home uninhabitable.*
- c. *Will there be any mitigating circumstances or alternatives available for the homeowner to avoid the above steps? Any decision would be based on the extent of the potential hazard that is posed by a specific system failure.*
- d. *What will trigger A or B? An extreme hazard to health and safety. Sewage entering the reservoir can be deemed as such a hazard.*