

January 13, 2013

VIA FACSIMILE

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, CA 95812-0100
Fax: (916) 341-5199

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

1. **NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF PETITIONER**

Sara Friedman
1546 Glenwood Way
Upland, California 91786
Email: Sarafriedman44@yahoo.com
Home: 909-982-0197
Cell: 909-919-0730

2. **THE ACTION OR INACTION OF THE REGIONAL WATER BOARD BEING PETITIONED**

I have engaged with the Regional Water Board because I am in the process of remodeling a dilapidated existing detached garage which was built in 1964 and had been connected to the existing septic tank for over four decades. In order to obtain a final permit, I am required to obtain approval from the Regional Water Board for connection to the existing septic tank by the County of San Bernardino.

The Regional Water Board, however, has failed to appropriately approve my request for waste water usage, in the existing detached garage, which I remodeled as a garage and work shop due to its dilapidated state. Additionally, the Regional Water Board has attempted to place *oppressive restrictive covenants* upon the property to force me to personally bear the financial cost to connect *the entire property* to the City of Upland sewer system upon sale of my property which could cost upwards of \$50,000. Finally, the Regional Water Board has improperly and conditionally limited the garage and work shop connection to the septic tank to only a toilet and sink, denying me connection to *any* other plumbing fixtures including a washer/dryer or shower. The current septic tank is in good working condition. The garage and work shop is an existing

structure approximately 100 feet from a bathroom in the main house and therefore only operates as a limited ancillary means of waste water usage on the property. There are no legal grounds for the Regional Water Board to deny my request for waste water usage in the garage and work shop area that has had septic tank connection for over four decades. Therefore, my request to affirm the present connection to the existing remodeled garage and work shop to the current septic tank should be granted with no restrictions whatsoever.

3. **THE DATE THE REGIONAL WATER BOARD ACTED, REFUSED TO ACT, OR WAS REQUESTED TO ACT.**

On December 26, 2012 I received a letter from the Regional Water Board wherein they approved my request with following **oppressive restrictive covenants and conditions** (Exhibit "A"):

- This agreement of restriction shall be recorded with the San Bernardino County Recorder's office and shall become a part of the Chain of Title for the property.
- The construction and use of the detached garage/workshop shall include only 2 fixtures intended for a toilet and sink which will be connected to the existing septic system. No other plumbing fixtures shall be added to the structure.
- The restriction will be removed once proof of sewer connection to the property and a septic tank abandonment permit has been submitted to the California Regional Water Quality Control Board, Santa Ana Region (Regional Board).
- This property may not be sold until the septic tank has been abandoned and sewer connection has been done.
- The Regional Board, San Bernardino County Environmental Health Services and San Bernardino County Building and Safety shall be notified in writing of the new ownership.

4. **A STATEMENT OF THE REASONS THE ACTION OR INACTION WAS INAPPROPRIATE OR IMPROPER.**

- A. Property History

I purchased this property in May 2011. It is a house with a detached garage that sits on 0.43 acres close to the mountains. One part of the house was built in 1929, the other part in 1964. Upon purchase, the seller presented a letter from San Bernardino County written on February 19, 2011 which states in the event the property is destroyed it can be rebuilt and refers to the house as a legal non-conforming building which is in accordance with Development Code chapter 84.17 (non-conforming uses and structures). There is no mention in the letter, however, of the detached garage. The seller, real estate professionals and myself included, all assumed that because it is the only garage on the property, it was built according to code, pursuant to Development Code chapter 84.17.

After I started improvements to the garage, which was extremely dilapidated, I was informed that San Bernardino County did not have in its records any plans for the garage and they considered it an un-permitted structure. The county's policy to correct this kind of situation is to grant permits after the structure is inspected and deemed up to code.

B. August 14, 2012 Letter From Santa Ana Regional Office

Upon learning this new information, I hired an architect who submitted plans to San Bernardino County for converting the garage to a guest house and the plans were approved on June 14, 2012. San Bernardino County requested we speak to Mrs. Beeson from the Santa Ana Regional Office and gave me her phone number.

On August 14, 2012 I received a letter from the Santa Ana Regional Office (Exhibit "B"). The letter stated: "The project does not comply with the boards minimum lot size requirements since you are proposing a second single family dwelling on a lot that is less than 1 acre size." In the letter, the Santa Ana Regional Office provided three options to obtain water usage if we were to proceed with a guest house: "(1) an acceptable offset program; (2) if the septic tanks are not identical in offset program an engineering report shall be submitted clarifying that the nitrogen loading rate from the proposed development is equivalent to or less than the nitrogen loading rate from the septic system in the offset program; (3) the proposed use of septic tank sub-surface disposal systems complies with the regional boards 'guidelines for sewage disposal from land developments.'"

I considered the above response and realized that remodeling the garage into a guest house is not financially feasible due to the onerous water usage requirements.¹ Despite the San Bernardino County's approval of the plans for the guest house, on October 19, 2012, I cancelled my application for the guest house and received a refund of the fees involved.

C. Remodel Back To Original Use -- Garage And Work Shop

¹ In the initial remodel one wall was moved approximately 6 feet. The foundation, roof and other structures were not touched. At that time, the inside of the detached garage was given a face-lift with new paint, liling and flooring.

I am currently working with the San Bernardino County to revise the project to a garage and a work shop. I am also actively working with the county on accomplishing this project in accordance with all rules, regulations and codes. The San Bernardino County allows for a garage to have a washer/dryer. The San Bernardino County also allows for a work shop to have a bathroom and sink. These fixtures already existed in the garage since it was built over four decades ago as the previous owner used the work shop part of the garage as a place to make his own sausages and wine. In addition, the garage currently has a shower. The detached garage is about 100 feet from the main house.

As part of the new process to convert the structure back to its original use - a garage and work shop I, again, needed approval from the Santa Ana Regional Water Control Office. I spoke with Mrs. Beeson again, in late October 2012, faxed her the initial, new plans, for the garage and work shop and provided her over the phone with all of the above information and answered all her questions.

After sometime Mrs. Beeson informed me, on the phone, that the decision not to allow any water in the garage did not change despite our withdrawal of the plans for a guest house. She informed me that I can appeal to the board and scheduled me to appear before the board on December 14, 2012.

D. Improper Denial For Connection Of Garage and Work Shop To Septic Tank

On December 3, 2012, the Santa Ana Regional office sent me a letter informing me that I was on the agenda for the December 14, 2012 board meeting as well as, a letter containing a discussion of their reasons for denying my request (Exhibit "C").

The reasoning in this letter is flawed on a number of levels and there are multiple items set forth in the letter that I would like to address:

1. "The county is currently pursuing an enforcement action for this code violation."

This is a blatant misrepresentation. The county was not pursuing an enforcement action for any code violation or anything else for that matter. The property was cited for moving one wall approximately 6 feet without a permit and since that point in time I have been diligently working with the San Bernardino County to comply with all of the building codes and regulations. As a matter of fact, on January 18, 2013, the county inspector is coming out to remove the violation. Furthermore, at the board meeting, Mr. Stewart from the Santa Ana office also reported that the San Bernardino County executed a "stop work order" which is simply not true. The county never put a stop order on my project. I stopped all construction to make sure I was complying with all the building codes.

2. "Staff denied Mrs. Friedman's request for approval of the guest house connection to the septic tank.....because connection of the guest house....docs not meet the regional Board's minimum lot size requirements."

This statement is totally inconsistent with the reasoning set forth in the August 14, 2012 letter from the Regional Water Board. In the August 14, 2012 letter the Regional Water Board clearly stated:

"However, the board had adopted certain criteria for exemptions from this requirement 1/2 size acre that if implemented could allow your project to proceed."

The Regional Water Board then listed the 3 different conditions that could be met as set forth in section B above. With this new information and considering the costs involved to comply with anyone of the Regional Water Board's conditions I withdrew the request for a guest house and submitted a request to revert back to a garage and work shop, which had been on the property for 46 years but needed to be rehabilitated due to its poor upkeep and unsafe condition.

3. "In adopting the MLSR, the Board recognizes that it was appropriate to distinguish between 'existing' developments.....and 'new' development. The board specifically exempted from the one half acre requirements where septic tank subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval e.g. conditional use permit or conditional approval of tentative parcel or tract map had been obtained by that date. The one half acre requirement applies only to 'new' developments."²

[¶] "The MLSR distinguishes between the type of additions to existing dwelling units. Additions to existing dwelling (bedrooms/bathrooms) are exempt from MLSR. However, the MLSR state that any *proposal to add a freestanding structure* that would result in additional water flows must be considered a 'new' development." (emphasis added)

² Had permits for the garage been obtained by the previous owners (although all parties involved in the sale assumed they had) my request would be a non-issue because the MLSR would clearly not apply and the garage would continue to carry all of the water privileges it has had for the last 46 years. However, even assuming the garage was not properly permitted by the previous owners and/or the permit records were not lost or misplaced in the last 46 years, the garage itself has nonetheless been on the assessors books since 1946 (or at the latest 1949 because there seems to be some ambiguity about the date from the assessor's office) and taxes had been paid by many owners all these years. This garage has clearly been recognized by the San Bernardino County's assessor's office and for the Regional Water Board to take the position that it is somehow "new" in order to apply MLSR and limit water usage defies logic. What is inherently unfair about this situation is that I have only owned this property for 1 ½ half years and have been punished by the Regional Water Board in their attempt to limit my water usage in the garage, which also results in diminishing my property value. The Regional Water Board is unfairly holding me responsible for not permitting the structure prior to 1989 even though I am now apparently the only owner in the last 46 years who is trying to do the right thing and work with San Bernardino County to obtain a proper permit.

[¶] “The proposed garage/workshop, with bathroom, would be a freestanding structure. The freestanding structure was not approved by the county prior to September 7, 1989. As such, the project as a whole (the existing house and detached garage/workshop) must now be considered a ‘new’ development to which the one half acre MLSR applies.”

The first flaw in the paragraphs cited above is that the structure at issue is an existing structure, not a new development. The Regional Water Board attempts to mischaracterize my remodel of an existing 46 year old detached garage and work shop into a proposal to add a “free standing structure” in order to characterize it as a “new” development so that the 1989 MLSR can be applied. If the MLSR can be applied the Regional Water Board can deny a connection to water because the property is less than ½ an acre, albeit that this property is 7/100 short of ½ an acre.

Let’s simplify what is going on here. The existing garage and work shop is a very old structure. I am not *proposing* a garage and work shop. It already exists. I am only in the process of remodeling it, bringing it up to code, and giving it a facelift. With all due respect the garage and work shop does not fit into the categories presented by the Regional Water Board. As stated above, there is no rational way to pigeon-hole this old structure into having to comply with the MLSR as the garage existed and owners paid assessor’s taxes for it for 23 years before the MLSR was ever adopted. The MLSR does not apply under these circumstances as this is not a “new development.” But, even assuming it did, this garage and work shop would not fall into an MLSR exemption either because it is not an addition to a dwelling. In other words, I am not requesting to add a new bathroom or add anything new at all. All the plumbing fixtures already existed for 46 years. I am not asking for any new plumbing or fixtures. I am only asking to keep what I paid for and not to diminish further the value of the property.

This request seems rational especially in light of the fact that I am working with San Bernardino County to obtain permits. The garage will meet all the county requirements in the next few months. I am not a corporation trying to get away with something. I am an elderly wife and mother of part of an American family whose life savings is tied up in this project. Furthermore, the Regional Water Board conceded this is not a water issue. They recognize that we will use less water than the previous owner. The septic tank will actually have less water waste to handle.

Finally, the oldest part of the property is 84 years old and the addition made to the property including the detached garage is 46 year old. As previously noted, in 2011, San Bernardino County issued a letter declaring the property a legal non-conforming building that in case of damages or destruction it can be rebuilt again, based on which insurance for the building was purchased. As a legal non-conforming building it is permitted so the Regional Water Board’s assertion that “[as] such, the project as a whole (the existing house and detached garage/workshop) must now be considered a ‘new’ development to which the one half acre

MLSR applies" is completely misguided. The MLSR certainly does not apply to the *existing house* which has a clear permit from San Bernardino and by the same token should not apply to the garage and work shop which although in the process of being permitted, cannot be deemed a new structure pursuant to both common sense and the guidelines as set forth in the MLSR.

E. Oppressive Restrictive Covenants Placed On Transfer Or Sale Of Property

Approximately one week before the board meeting Mrs. Beeson called and requested to come out with Mr. Stewart, from the Chief Compliance, Regulations and Permits section, to see the property, which I was happy to oblige. On Thursday December 13, 2012, after 2:00 pm, a day before the Regional Water Board's meeting at 9:00 am Mrs. Beeson called me at home. She proposed the following:

The Regional Water Board will agree to the existing plumbing in the garage and connection to the present septic tank if I agree to the following: (A) I will amend the property's title in escrow, so that in the event there is a transfer of title or a sale of the property it will be contingent on connecting the entire property to the City of Upland sewer system. (B) I will agree that if the septic tank breaks down or I have problems with the septic tank, the San Bernardino County will no longer issue a permit to fix or replace the septic tank, but rather I will be forced to personally pay for connection to the City of Upland sewer system.

That same afternoon and before the 9:00 am appearance in public before the Regional Water Board, I verbally agreed to connect to the City of Upland sewer system when the house is sold. However, after some consideration I called the City of Upland to obtain an estimate of how much it would cost to connect to the city sewer system. I spoke to the department of engineering and was shocked to hear the cost to connect my particular property to the City of Upland's sewer system would be \$25,000-\$50,000. Because I live with my husband on social security and I used all of my 30 year pension retirement money as a down payment for this property (which already lost 30,000 dollars off its value since I bought it,) this extraordinary amount of money was unfathomable to me and would be financially devastating.

Upon finding out this information, I called Mrs. Beeson back immediately. It was already after hours and I left her a message asking her if the Regional Water Board understood the financial implications of what they were asking me to agree to?

On December 14, 2012 I attended the Regional Water Board meeting and Mr. Stewart addressed the Regional Water Board. He stated that the main reason the Regional Water Board denied my request was because of the concern that I had considered converting the detached garage to a guest house, but since I had agreed upon sale of property to connect to the property to the City of Upland sewer system, the Regional Water Board would approve my request. I was not given an opportunity to be heard at the Regional Water Board meeting.

On December 26, 2012, I received the letter from the Regional Water Board stating they would only approve a bathroom and a sink (See Exhibit "A"). The washer/dryer and shower were excluded. It was made clear that if I do not change the title, they will not allow me to have any water in the garage.

5. HOW THE PETITIONER IS AGGRIEVED.

First, I am 68 year old woman and without access to water in the garage I will be forced to have to use a portable potty for emergencies because of the distance of the garage from the house. Putting me in this situation is humiliating and uncalled for. It is an assault on my freedoms as a United States citizen. Denying my request will limit my ability to use this property in all conventional and ordinary ways in the normal course of everyday life.

Second, the Regional Water Board's insistence to place so many unreasonable water usage restrictions on a garden variety garage and work shop because they are "worried" that in the *future*, I might commit the "crime" of using the structure as a guest house can only lead me to the conclusion that I am being treated as a "potential criminal." The tenor behind the decision issued by the Regional Water Board essentially punishes me now, in the present, because of a *future*, unsubstantiated and irrational concern that I will convert the space to a guest house, despite the fact that I am presently working with the San Bernardino County on completing the plans and obtaining permits for a garage and work shop and these plans were submitted to the Santa Ana Regional Board. Besides the fact that I have been both a law abiding resident of the City of Upland and highly respected medical social worker in the local community hospital for more than 30 years, I am not only insulted, but feel as if my character has been defamed by the Regional Water Board for their insinuation that I will do something other than what I am in the process of doing – obtaining permits for a remodeled garage and work shop and ultimately using the space for that purpose.

Third, despite the fact that I do not have any intentions to sell this property one never really knows how things will develop.³ I am an older woman with health issues and in remission with cancer. If I were for some unforeseen reason forced to sell this property prematurely and bear the excessive costs of connecting the property to the City of Upland sewer system because of the restrictive covenant placed on the property in an effort to obtain approval for normal water use in a garage, I would be forced possibly into severe financial hardship. Does the Regional Water Board really have the right to put people in my situation through such an agonizing ordeal, just to have water access in a garage and work shop that is otherwise wholly permitted by the San Bernardino County code?

³ In my discussion with two separate real estate agents it became apparent that in an unfavorable real estate market I will likely lose money on my initial investment.

Fourth, Mrs. Beeson and Mr. Stewart both recognized and agreed that I will be using less water than the previous owner did in this garage and work shop, something which I imagine could be easily monitored by the San Bernardino County or Regional Water Board. There has been no discussion about excess use of water or the adverse impact on the environment because of excess use of water.

Fifth, as previously stated above, the Regional Water Board has attempted to manipulate the MLSR law in an absurd way, to consider a 46 year old structure a new development. This garage and work shop stood for 23 years, (while the owners continue to pay taxes since the garage was on the assessors' office records since it was built) before the MLSR laws were even passed. Then, another 23 years, of paying taxes, went by before this law is now retroactively applied without any consideration given to alternatives such as grandfathering.

Finally, I have been severely aggrieved by Mr. Stewart's behavior at the administrative level. From the time I requested to appear before the board and the board meeting on December 14, 2012, more than 6 weeks have passed. However Mr. Stewart's office called me with his first proposal so late in the afternoon that I had very little time to consider and research anything prior to the board meeting. Before proposing that I agree to take on the financial burden of connecting the property to the City of Upland sewer system in the event of sale, does Mr. Stewart not have an ethical obligation to at least draw my attention the enormity of the cost and give me a reasonable amount of time to research the issue? Mr. Stewart claimed he had no idea regarding the cost. If so, is it then appropriate for a man in his position whose job, day in and day out, is to deal with all that is water not to know? Mrs. Beeson in his office knew about the excessive cost because when I asked her about it she stated she had heard of a case costing \$100,000. But, neither Ms. Beeson nor Mr. Stewart mentioned anything to me about the cost when they presented the "offer."

This is not some property that I am going to flip. The last time I dealt with real estate was over 25 years ago when I bought the house I am living in today. My entire life savings was put into the down payment of the property. This property is for my children's livelihood upon my passing. Was the kind of pressure placed on me by Mr. Stewart and Ms. Beeson to "take their deal" appropriate under these circumstances? This type of callous manipulation and greed is unacceptable on the part of a government entity, or individuals who are invoking the power of a government entity. We are not rich people, but we are not stupid either.

The last letter I received from the Regional Water Board was from Mr. Kurt V. Berchtold, Executive Officer. The letter was issued on December 26, 2012. That letter was not what I understood the initial agreement offered. In this letter, only a sink and a toilet were authorized and any other plumbing fixtures are specifically excluded. Additionally, I was not provided with any information regarding my right to appeal the decision or any deadline for the appeal. By the time I talked to Mrs. Beeson and then to Mr. Stewart and by the time I received

the information about my options and my right to appeal it was late in the afternoon on Friday January 12, 2012 and I was informed the appeal deadline is Monday January 14, 2012. I have worked tirelessly through the weekend to compile this letter. The stress of meeting the deadline itself has taken a toll on me and is actually making me sick. The information regarding my right to appeal and the deadlines to do so should have been attached to Mr. Berchtold's letter.

6. **THE ACTION THE PETITIONER REQUESTS THE STATE WATER BOARD TO TAKE.**

My request to affirm the present connection of the existing remodeled garage and work shop to the current septic tank should be granted with no restrictions whatsoever.

7. **A STATEMENT OF POINTS AND AUTHORITIES FOR ANY LEGAL ISSUES RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS OR HEARING TRANSCRIPTS THAT ARE REFERRED TO.**

See sections 2-5 above regarding legal issues raised.

8. **A STATEMENT OF TRANSMITTAL OF PETITION TO REGIONAL WATER BOARD.**

A true and correct copy of this petition for review was transmitted to the Santa Ana Regional Water Quality Control Board on January 13, 2013.

9. **A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.**

I was not afforded the opportunity to be heard at the Regional Water Board meeting and was denied my due process rights.

DATE: January 13, 2013



SARA FRIEDMAN

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Exhibit "A"

EDMUND G. BRUNN JR.
GOVERNORMATTHEW FLOORQUEZ
SECRETARY FOR ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 26, 2012

Sara Friedman
1546 Glenwood Way
Upland, CA 91786

CONDITIONAL APPROVAL OF AN EXEMPTION FROM THE MINIMUM LOT SIZE REQUIREMENT FOR ONSITE SUBSURFACE DISPOSAL SYSTEM USE AT 125 EAST 24TH STREET, UPLAND, SAN BERNARDINO COUNTY, APN 1003-161-04

Dear Mrs. Friedman:

This is to confirm the action taken by the Regional Board on December 14, 2012, with regard to your appeal for an exemption from the Board's minimum lot size requirements for the proposed use of an existing septic tank-subsurface disposal system to serve a detached structure on your lot. You are proposing to convert an unpermitted guest house, which had originally been a workshop/garage, back into a workshop/garage.

The Board approved your request for an exemption from the one-half acre minimum lot size requirement with the following conditions:

1. The final plans to convert the guest house back to a garage/workshop provide sufficient design features to minimize the potential for the structure to be used as a residence, and
2. You must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, which states that the septic system must be abandoned and the property connected to sewer upon sale of the property.

Once your final plans are ready to submit to the appropriate San Bernardino County agencies for their approval, we recommend that a copy of those plans be forwarded to our office, as well. Also, enclosed is a draft example of an Agreement of Restriction. I recommend that you contact Susan Beeson of my staff for help in finalizing an appropriate Agreement of Restriction which will need to be recorded with the title of the property.

If you have any questions please contact Gary Stewart at (951) 782-4379 or Susan Beeson at (951) 782-4902 or at sbeeson@waterboards.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Kurt V. Berchtold".

Kurt V. Berchtold
Executive Officer

cc: San Bernardino County Environmental Health Services – Josh Dugas / Joy Chakma
San Bernardino County Building and Safety – William Fenn
City of Upland – Saul Martinez / Harrison Nguyen

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

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Exhibit "A"

AGREEMENT OF RESTRICTION

Agreement between the California Regional Water Quality Control Board,
Santa Ana Region, and
Sara Friedman, Revocable Trust

RE: 125 East 24th Street, Upland, San Bernardino County, APN 1003-161-04-0000,
San Antonio Heights W 1/2 Lot 7 BLK 11

IT IS AGREED THAT:

1. This agreement of restriction shall be recorded with the San Bernardino County Recorder's office and shall become a part of the Chain of Title for the property.
2. The construction and use of the detached garage/workshop shall include only 2 fixtures intended for a toilet and sink which will be connected to the existing septic system. No other plumbing fixtures shall be added to the structure.
3. The restriction will be removed once proof of sewer connection to the property and a septic tank abandonment permit has been submitted to the California Regional Water Quality Control Board, Santa Ana Region (Regional Board).
4. This property may not be sold until the septic tank has been abandoned and sewer connection to the property has been done.
5. The Regional Board, San Bernardino County Environmental Health Services and San Bernardino County Building and Safety shall be notified in writing of the new ownership.

Sara Friedman

Date: _____

Kurt V. Berchtold
Executive Officer
California Regional Water Quality
Control Board

Date: _____



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EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 14, 2012

Sara Friedman
1546 Glenwood Way
Upland, CA 91786

PROPOSED USE OF ONSITE SEPTIC TANK-SUBSURFACE DISPOSAL SYSTEM TO SERVE A DETACHED GUEST HOUSE AT 125 E. 24TH STREET, UPLAND, APN 1003-161-04

Dear Ms. Friedman:

This is in response to your August 7, 2012, submittal regarding the above-referenced property. You own a 0.43-acre property at 125 E. 24th Street, Upland. Currently there is a single-family home on the lot that is served by an existing septic system and a detached garage. There is no sewer available to serve the lot.

On March 21, 2012 you applied for a permit from San Bernardino County for the conversion of the detached garage to a guest house. Your letter indicates the garage conversion has been in existence since 1969 and is attached to the existing septic system which serves the home. However, San Bernardino County does not recognize it as a permitted dwelling.

The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) specifies a minimum lot size requirement (MLSR) of one-half acre (gross) per dwelling unit for new developments using on-site septic tank-subsurface leaching/percolation systems region-wide. The use of a septic system for the permitted single family home on the lot is exempt from the MLSR, since this development had received approval prior to the September 7, 1989, effective date of the minimum lot size requirements. However, since additional home (garage converted to guest house) was not approved prior to the adoption of the MLSR, it cannot be deemed exempt and must be considered a "new development", subject to the one-half acre minimum lot size requirement. The proposed project does not comply with the Board's minimum lot size requirement, since you are proposing a second single-family dwelling on a lot that is less than 1-acre in size. However, the Board has adopted certain criteria for exemptions from this requirement that if implemented, could allow your project to proceed. Subsection J. of the MLSR states the following:

"Exemptions from the minimum lot size requirements for the use of septic tank-subsurface disposal systems on lots smaller than one-half acre may be granted if the following conditions are met:

1. The project proponent implements an acceptable offset program. Under an offset program, the project proponent can proceed with development using septic systems on lots smaller than one-half acre if the proponent connects an equivalent number of septic systems to the sewer. The unsewered developments must be those which would not otherwise be required to connect to sewer.

CAROLE H. BESWICK, CHAIR KJILL V. BERHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

Sara Friedman
APN 1003-061-04

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Exhibit # 4

August 14, 2012

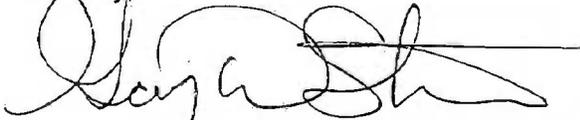
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2. If the septic systems (developments) proposed are not identical to the ones connected to the sewer (the offset), an engineering report shall be submitted certifying that the nitrogen loading rate from the proposed development(s) is equivalent to or less than the nitrogen loading rate from the septic systems in the offset program.
3. The proposed use of septic tank-subsurface disposal systems complies with the Regional Board's "Guidelines for Sewage Disposal from Land Developments."

Should you decide to offset the impacts to the underlying groundwater resulting from discharges into the septic system from your proposed project, you would be required to eliminate 1 residential septic system under the offset program. The septic system you connect to the sewer must be in the same general area as your proposed project, and must not be required to be connected to the sewer for other reasons (e.g., the system is failing, condition of escrow, etc.). Enclosed is a copy of a map showing the Groundwater Management Zone in which the offset must be conducted. Once you have identified a proposed offset, you must submit for our approval, the name(s) and address of the individual(s) who are interested in entering into the offset program with you before any connection to the sewer occurs.

If you have any questions, please contact Susan Beeson at (951) 782-4902.

Sincerely,



Gary D. Stewart, Chief
Compliance, Regulations and Permits Section

Enclosures: Minimum Lot Size Requirements and Frequently Asked Questions
Groundwater Management Zone Map

cc: San Bernardino County Environmental Health Services – Jon Reid
San Bernardino County Building and Safety – Bill Fenn

Exhibit E

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EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 3, 2012

Sara Friedman
1546 Glenwood Way
Upland, CA 91786

APPEAL OF STAFF'S DENIAL OF AN EXEMPTION FROM THE MINIMUM LOT SIZE REQUIREMENT FOR SUBSURFACE DISPOSAL SYSTEM USE AT 125 EAST 24TH STREET, UPLAND, SAN BERNARDINO COUNTY, APN 1003-161-04

Dear Mrs. Friedman:

This is in response to your request to appeal the Regional Board staff's denial of an exemption from the minimum lot size requirement for subsurface disposal system use at the above-referenced site. Your appeal has been scheduled for consideration at the Board's December 14, 2012 meeting at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda. The meeting is scheduled to begin at 9:00 a.m. A copy of the staff report that will be presented to the Board regarding this matter and the agenda announcement for the meeting are enclosed.

If you have any questions about the proceedings, please contact me at (951) 782-4379 or Susan Beeson at (951) 782-4902.

Sincerely,

Gary D. Stewart, Chief
Compliance, Regulations, and Permits Section

Enclosures: Staff Report and Agenda Announcement

cc w/enc: State Water Resources Control Board, Office of Chief Counsel – David Rice
San Bernardino County Environmental Health Services – Josh Dugas / Jon Reid
San Bernardino County Building and Safety – Marc Conway / James Werner

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Exhibit 16

California Regional Water Quality Control Board
Santa Ana Region

December 14, 2012

ITEM: 11

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Sara Friedman, 125 East 24th Street, Upland, San Bernardino County, APN 1003-161-04

DISCUSSION:

On August 7, 2012, Sara Friedman contacted staff requesting approval for the use of an existing septic tank subsurface disposal system to serve a detached guest house at the above-referenced site. The guest house was the result of a garage conversion without obtaining the proper building permits from San Bernardino County. The County is currently pursuing an enforcement action for this code violation. Mrs. Friedman applied for an after-the-fact permit from San Bernardino County for the garage conversion in March 2012; however, the County would not consider issuing a permit without clearance from the Regional Board.

The main house and guest house are located on a 0.43-acre lot and are currently served by a 1,000-gallon septic tank-subsurface disposal system for the discharge of sanitary wastes. This area of the County is unsewered. Staff denied Mrs. Friedman's request for approval of the guest house connection to the septic tank-subsurface disposal system because connection of the guest house to the septic tank-subsurface disposal system does not meet the Regional Board's minimum lot size requirements.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment to incorporate minimum lot size requirements (MLSR) for septic tank-subsurface disposal system use. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region.

In adopting the MLSR, the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems (i.e., those already approved at the time the MLSR were adopted), and "new" developments. The Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one half acre requirement applies only to "new" developments.

Exhibit 2

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The Board also recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's MLSR address these circumstances. The MLSR distinguish between the types of additions to existing dwelling units. Additions to existing dwellings (bedrooms/bathrooms) are exempt from the MLSR. However, the MLSR state that any proposal to add a freestanding structure that would result in additional wastewater flows must be considered a "new" development. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property, which would result in substantial additional wastewater flows.

On October 9 and November 14, 2012, Mrs. Friedman revised her initial August 7, 2012 request, and is now proposing to convert the guest house back to a garage/workshop with a storage room. Mrs. Friedman is now requesting approval for the existing connection of a detached garage/workshop to the septic tank-subsurface disposal system. Mrs. Friedman also wants to retain the full bathroom (1 toilet, sink and shower) in the garage. The proposed garage/workshop, with bathroom, would be a freestanding structure. The freestanding structure was not approved by the County prior to September 7, 1989. As such, the project as a whole (the existing house and detached garage/workshop) must now be considered a "new" development to which the one-half acre MLSR applies.

Mrs. Friedman's existing house is exempt from the one-half acre rule, as it had received approval prior to the adoption of the MLSR. However, the MLSR stipulate that new developments for which on-site subsurface disposal system use is proposed must have a minimum of one-half acre of land per dwelling unit. Mrs. Friedman's proposed garage/workshop with bathroom is a new development for which the MLSR apply. To satisfy these requirements, Mrs. Friedman's house and garage/workshop would each require a one half-acre minimum lot size. With a density of 0.215 acres per dwelling unit, Mrs. Friedman's proposal to use the existing septic tank for the free-standing structure does not comply with the MLSR. Accordingly, Board staff denied Mrs. Friedman's request for an exemption from the minimum lot size requirements.

Board staff has advised Mrs. Friedman that staff has no objections to her converting the guest house to a garage/workshop provided that she remove the bathroom fixtures from the structure and eliminate the connection to the septic tank-subsurface disposal system. Staff has also advised Mrs. Friedman of options identified in the Board's exemption criteria. Mrs. Friedman could proceed with her development if she connected another septic tank-subsurface disposal system (that would not otherwise be required to be connected to the sewer) to the sewer to offset the impacts of her "new" discharge. Mrs. Friedman could also propose the use of an alternative disposal system to serve her house and guest house or garage/workshop in place of a conventional septic tank-subsurface disposal system. Mrs. Friedman has declined both offers due to monetary reasons.

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Exhibit 8

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RECOMMENDATION:

Deny Mrs. Friedman's request for an exemption from the minimum lot size requirements for the proposed use of a full bathroom in the detached garage.

Comments were solicited from the following agencies:

- San Bernardino County Environmental Health Services – Josh Dugas / Jon Reid
- San Bernardino County Building and Safety – Marc Conway / James Werner