

California Regional Water Quality Control Board  
Santa Ana Region

September 5, 2008

STAFF REPORT

ITEM: \*11

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Dorothy and Mark McGargill, 3870 English Drive, Hemet, Riverside County, APN 438-321-002

DISCUSSION:

Dorothy McGargill contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. and Mrs. McGargill own and reside in a house on a 0.5-acre lot at 3870 English Drive, Hemet. This area of Hemet is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Mr. and Mrs. McGargill propose to construct a second dwelling unit (guest house) to provide a residence for their father and disabled son so that they could be nearby to care for them. A second septic system is proposed to serve the second dwelling unit.

On October 13, 1989, the Regional Board adopted Resolution No. 89-157, which requires new developments for which on-site subsurface disposal system use is proposed to have a minimum one-half acre of land per dwelling unit. 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 groundwater of the Region. Mr. and Mrs. McGargill's proposed development is a new development as defined in Resolution No. 89-157 and is therefore subject to the minimum lot size requirements specified therein. With a density of 0.25 acres per dwelling unit, Mr. and Mrs. McGargill's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. & Mrs. McGargill's request for an exemption from the minimum lot size requirements.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, 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. Again, Mr. and Mrs. McGargill's proposed development is a "new development" to which the MLSRs apply.

The MLSRs also exempt additions to existing dwellings. 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 (guest house) on the property. In this case, the purpose of the second dwelling unit is to provide a home with handicap accessibility for Mr. & Mrs. McGargill's parent and son.

Mr. & Mrs. McGargill note that the additional flows that would occur as a result of this project would be no greater than the flows that would be allowed if they were to add on to their existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size requirement. On this basis, Mr. & Mrs. McGargill are appealing to the Regional Board for reversal of staff's denial of an exemption from the minimum lot size requirements.

While it is true that there would be no difference in wastewater flows on an immediate basis, i.e., while Mr. & Mrs. McGargill own the property and their parent and son reside with them, there can be no guarantee that wastewater flows would not increase considerably in the future. As stated above, it was on this basis that the Board determined not to exempt the construction of new freestanding structures from the minimum lot size requirements. Therefore, Mr. & Mrs. McGargill have offered to remove the fixture units in the second residence and to remove the second septic system from service once the second residence is no longer required for their use. Mr. & Mrs. McGargill have also agreed to enter into an Agreement of Restriction to be recorded with the property Chain of Title that stipulates that this property may not be sold until the fixture units in the second dwelling (guest house) are removed and the second septic system has been demolished or removed from service. Mr. and Mrs. McGargill have indicated that they might, in future, request that the Board approve the use of an alternative system to serve the second dwelling unit, in lieu of removal of the fixture units/second septic system. If the Board approves such a request in the future, then appropriate changes would need to be made to the Chain of Title. The McGargills have also advised Board staff that they will connect their property to the sewer should it become available to them.

Board staff has also advised Mr. & Mrs. McGargill of an option identified in the Board's minimum lot size exemption criteria that allows project proponents to implement an acceptable offset project. If Mr. & Mrs. McGargill connect another septic system (that would not otherwise be required to be connected to the sewer) to the sewer, then it would not be necessary to remove the fixture units in the second home and the second septic system from service. Mr. and Mrs. McGargill prefer not to implement an offset at this time.

RECOMMENDATION:

Approve Mr. & Mrs. McGargill's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157, with the following conditions: 1) Once the second home (guest house) is no longer required for use by the McGargill family, the fixture units will be removed from the second home and the second septic system will be demolished or removed from service by filling the tank with sand after proper removal and disposal of septage; and, 2) Mr. & Mrs. McGargill must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, that the fixture units in the second home must be removed and the second septic system must be demolished or properly abandoned prior to sale of the property. If Mr. & Mrs. McGargill locate and implement an acceptable offset or connect the property to the sewer, the Agreement of Restriction shall be removed, allowing the continued use of the second home and septic system on their property. If Mr. and Mrs. McGarill obtain authorization from the Regional Board for the future installation and use of an alternative disposal system to serve the second home (guest house), then the Agreement of Restriction described above can be removed.

Comments were solicited from the following agencies:

Riverside County Environmental Health – Matt Riha/Greg Dellerbach  
Riverside County Building and Safety – Steve Dondalski  
City of Hemet Engineering – Mike Gow  
Inland Foundation Engineering, Inc. – Mark Strahm