California Regional Water Quality Control Board
Santa Ana Region

STAFF REPORT

April 22, 2011

ITEM: *7

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Robert and Kathy Nielsen, 420 West 26th Street, Upland, San Bernardino County, APN 1003-341-25

DISCUSSION:

On March 16, 2011, Brad Robertson, on behalf of Robert and Kathy Nielsen, contacted staff requesting approval to connect a detached pool cabana to an existing septic tank-subsurface disposal system at the above-referenced site. Mr. & Mrs. Nielsen reside in a house located at the site. An existing subsurface disposal system is utilized for the discharge of domestic waste from the house. The property is less than one acre in size (36,800 sq ft or 0.86 acre gross). This area of the County is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of domestic wastes.

Mr. & Mrs. Neilsen are proposing to construct a pool, outdoor kitchen pavilion and pool cabana. The cabana will be a room addition to an existing detached storage building on their property; however, a common wall will divide these 2 structures. The proposed pool cabana will be approximately 90 sq ft in size and will house a toilet, sink, shower and outside shower that will be connected to the existing 2,500-gallon septic tank-subsurface disposal system that serves the home.

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.

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. 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.

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 MLSRs address these circumstances. The MLSRs distinguish between the types of additions to existing dwelling units. Additions to existing dwellings (bedrooms/bathrooms) are exempt from the MLSRs. However, the MLSRs 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. The proposed pool cabana on Mr. and Mrs. Nielsen's property would be a freestanding structure. As such, the project as a whole (the existing house and the pool cabana) must now be considered a "new" development to which the one-half acre minimum lot size requirement applies. The Nielsen's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. and Mrs. Nielsen's request for an exemption from the minimum lot size requirements.

The purpose of the pool cabana is to provide a convenient bathroom near the proposed pool so that guests would not need to walk up to the house to use the facilities. The pool cabana will have a toilet, sink and shower and outside shower. Mr. & Mrs. Nielsen have assured staff that the 90 sq. ft pool cabana will not be used as a second dwelling. Although the pool cabana will be attached to an existing storage building, each structure will have a separate entrance and neither structure can be converted to a dwelling unit.

RECOMMENDATION:

Approve Mr. and Mrs. Nielsen's request for an exemption from the minimum lot size requirements based on the small size and limited possible use of the 90 sq ft pool cabana, which is not intended and cannot be permitted as a second dwelling unit.

Comments were solicited from the following agencies:

San Bernardino County Environmental Health Services – Josh Dugas
San Bernardino County Building and Safety – Henry Roe
Brad Robertson