

California Regional Water Quality Control Board
Santa Ana Region

STAFF REPORT

December 9, 2011

ITEM: *7

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – John Ogami, TPM 19276, 9429 Beech Avenue, Fontana, San Bernardino County, APN 0233-181-17

DISCUSSION:

John Ogami contacted Board staff to request approval to subdivide a lot and utilize septic tank subsurface disposal systems at 9429 Beech Avenue, Fontana, San Bernardino County. The property is just over one-half acre in size (24,394 sq. ft. or 0.56-acre). Currently there is a single-family home at the site served by a septic tank subsurface disposal system for the discharge of sanitary wastes. This area of the County is unsewered; however, a dry sewer line has been constructed in anticipation of providing sewer to the area in the near future.

Mr. Ogami is proposing Tentative Parcel Map 19276, which will subdivide the lot into three separate parcels (Parcel 1 - 8,566 sq. ft., Parcel 2 - 7,954 sq. ft., and Parcel 3 - 7,834 sq. ft.). The existing home will remain on Parcel 1 and continue utilizing the existing septic system. Parcels 2 and 3 will be sold for future development of single family homes on the newly created lots. Mr. Ogami indicated the homes will not be constructed until sewer is available to serve the lots. Should sewer not be available at the time construction is proposed, then alternative treatment systems for sewage disposal would be utilized.

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. 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. To satisfy these requirements, Mr. Ogami's proposed dwelling units would each require one half-acre minimum lot size. With a density of approximately 0.19 acres per dwelling unit/lot, Mr. Ogami's proposal does not comply with the MLSR.

The MLSR specify that project proponents may propose an alternative treatment system for sewage disposal as the basis for an exemption from the minimum lot size requirements. Such a proposal must be reviewed on a case-by-case basis and

submitted to the Regional Board for consideration. As stated above, Mr. Ogami proposes to utilize the sewer or alternative treatment systems, should sewer not be available at the time of construction, to serve the new homes on Parcels 2 and 3. The systems being proposed would be required to comply with San Bernardino County requirements. In addition, Mr. Ogami or the new property owners will be required to obtain annual permits for the operation of the alternative systems and the County will inspect the systems annually to determine if they are operating as required.

It should also be noted that should the alternative disposal system not operate as required, the new property owner will be required to eliminate the alternative system and either connect the property to the sanitary sewer or implement an acceptable offset program, as provided by the MLSR.

RECOMMENDATION:

Approve Mr. Ogami's request for an exemption from the minimum lot size requirements based on either the use of sewer or alternative disposal systems to serve Parcels 2 and 3, with the following stipulations if the houses are not connected to the sewer:

- 1) Mr. Ogami shall enter into an agreement with a qualified engineer for the operation and maintenance of the alternative systems. A copy of this agreement shall be submitted to the Regional Board,
- 2) Mr. Ogami shall conduct quarterly sampling for one year to determine the nitrate (as N) concentration in the effluent and submit those analyses to the Regional Board office within 30 days after such sampling and analysis has occurred,
- 3) Mr. Ogami shall operate the alternative treatment systems continuously so as to assure consistent total nitrogen reduction of at least 70%,
- 4) Mr. Ogami shall obtain an annual permit from the San Bernardino County Environmental Health Department for the operation of the alternative system,
- 5) Should Mr. Ogami sell this property, he shall disclose all of the above conditions of approval to the new property owner(s) and he shall advise the Regional Board and San Bernardino County Environmental Health Department in writing of new ownership and confirm that the disclosures identified above have been made.¹

The substantive requirements of conditions 1, 3, 4, 5 and 2 (if one year of monitoring data are not available prior to the sale of the property) shall be fulfilled by the new owners of the property should Mr. Ogami sell it. In the event that the above conditions are not satisfied, Mr. Ogami or the new property owners shall eliminate the discharge by connecting to the sewer or implement a program acceptable to the Executive Officer to offset the waste discharges; the program shall provide for the sewer connection of dwelling units that would not otherwise be required to connect.

¹ It should be noted that San Bernardino County requires the recordation of an alternative system with the property deed, providing additional assurance that disclosure to buyers is provided. Alternative systems are then permitted for the life of the system and the permit must be renewed annually by the property owner.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of the Chief Counsel – David Rice
San Bernardino County Environmental Health Services – Jason Dugas/Hal Houser
San Bernardino County Department of Building and Safety – Terri Williams