

California Regional Water Quality Control Board
Santa Ana Region

June 29, 2007

STAFF REPORT

ITEM: *5

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Gregg and Nancy Allen, 9795 Hillside Road, Rancho Cucamonga, San Bernardino County, APN 1074-171-01

DISCUSSION:

Gregg Allen contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. & Mrs. Allen own and reside in a house on a 0.5-acre lot at 9795 Hillside Road, Rancho Cucamonga. This area of Rancho Cucamonga is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Mr. & Mrs. Allen propose to construct a second dwelling unit to provide a residence for their parents 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. & Mrs. Allen'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. & Mrs. Allen's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. & Mrs. Allen'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.

The MSLRs 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 on the property. In this case, the purpose of the second dwelling unit is to provide a home for Mr. & Mrs. Allen's parents.

Mr. & Mrs. Allen 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. Allen 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. Allen own the property and their parents 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. Allen 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. Allen 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 are removed and the second septic system has been demolished or removed from service.

Board staff has also advised Mr. & Mrs. Allen 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. Allen 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. Allen has actively been looking for a potential offset candidate; however, as of this date, has not been able to locate one. The Allens have also advised they will connect their property to the sewer once it becomes available to them.

RECOMMENDATION:

Approve Mr. & Mrs. Allen'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 is no longer required for use by the Allen 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; 2) Mr. & Mrs. Allen 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; and 3) If Mr. & Mrs. Allen 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 on their property.

Comments were solicited from the following agencies:

San Bernardino County Environmental Health Services – Corwin Porter
City of Rancho Cucamonga, Building and Safety – Trang Huynh