

California Regional Water Quality Control Board  
Santa Ana Region

July 14, 2006

**ITEM:** 16

**SUBJECT:** Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Timothy and Dorothy Dunlap, 11585 Ponderosa Drive, Fontana, San Bernardino County, APN 0236-261-01

**DISCUSSION:**

On May 1, 2006, Mr. Dunlap contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. & Mrs. Dunlap reside in a house located at the site. An existing subsurface disposal system is utilized for the discharge of sanitary wastes from the house. The property is just over one-half acre in size (33,977-sq. ft. or 0.78 acre net). This area of the City is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of sanitary wastes.

Mr. & Mrs. Dunlap propose to convert an existing barn to a second dwelling unit for Mr. Dunlap's mother. The barn is located adjacent to the rear property line of the Dunlap's property. Mr. & Mrs. Dunlap propose to install an individual 750-gallon septic tank-subsurface disposal system to serve the second dwelling.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal system use is proposed to have a minimum of 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 groundwaters 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. 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.

In adopting the MLSRs, 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 addressed these circumstances. Additions to existing dwellings (bedrooms/baths) are exempt from the MLSRs, if the existing septic system could accommodate the resultant additional wastewater flows. However, the MLSRs state that any proposal to add any freestanding structures that would result in additional wastewater flows must be considered a "new" development, to which the minimum lot size requirement applies. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the effects of substantially increased wastewater flows that would be associated with the use of freestanding structures as second single-family residences. The Dunlaps' proposed additional dwelling would be a freestanding structure. As such, the project as a whole (the existing house and additional dwelling) must be considered a "new" development, to which the one-half acre minimum lot size requirement applies. To satisfy the MLSRs, the existing house and the proposed new dwelling would each require one half-acre minimum lot size. As the Dunlaps' proposed development does not comply with this requirement, staff was required to deny their request for a clearance for the project.

On May 1, 2006, Mr. Dunlap met with Board staff to discuss the possibility of using a portion of his neighbor's property and/or easements in order to obtain the needed lot size square footage to comply with the minimum lot size requirements. At that time, Mr. Dunlap was instructed to submit a specific written proposal to Regional Board staff for review and consideration.

During a subsequent telephone conversation, Board staff advised Mr. Dunlap of another option identified in the Board's exemption criteria, which allows project proponents to implement an acceptable offset. Mr. Dunlap could proceed with his proposed development if he connected another septic system (that would not otherwise be required to be connected to the sewer) to the sewer. Mr. Dunlap indicates that he has tried to pursue the offset program by locating homeowners who could eliminate their septic systems; however, he has been unable to locate an affordable offset. Mr. Dunlap advised staff that he estimates the cost of sewerage is about \$18,000. In response, Board staff advised Mr. Dunlap that typical sewerage costs range from \$4,000 to \$10,000, except in rocky areas where costs may increase substantially. Conditions adverse to sewerage are not anticipated in the area of the Dunlaps' property. Indeed, the Dunlaps' neighbor's property adjacent to the Dunlaps' rear property line is already sewerage.

On May 19, 2006, without prior discussion with or approval by Board staff, Mr. Dunlap recorded a document (Doc #2006-0345705, Notice of Consent to Use Land, see Attachment "1"), with the San Bernardino County Recorder's office. This document shows that the Dunlaps' neighbors (Eric & Victoria Chase) are dedicating 7,200 square feet, or the total lot size of their property, to Mr. Dunlap's property for the purposes of compliance with the minimum lot size requirements. The Chases' property is located at 11580 Rancherias Drive, indirectly behind the Dunlaps' property. The Chase property is sewered.

The Notice of Consent to Use Land that Mr. Dunlap recorded stipulates that no future septic tank/percolation system can be placed on Mr. & Mrs. Chase's dedicated property. A copy of this document was submitted to Regional Board staff based on the incorrect premise that the Chases' property could be used, at least in part, to satisfy the MLSR. Since this property is already sewered, it is not available for septic system use in any event and cannot be used to satisfy a portion of the acreage required by the Dunlaps to meet the MLSRs. In other words, the Notice of Consent to Use Land is neither relevant nor satisfactory. Mr. Dunlap's lot size requires approximately an additional 10,890 square feet of land to satisfy the required 1 acre-lot size for the project to proceed. Mr. Dunlap is also proposing the use of the street easement fronting his property as well as the bridal pathway easement at the back of his property, or a total of 6815.33 square feet, to satisfy the minimum lot size requirements. The use of such easements would be permissible, but is not sufficient to assure compliance with the MLSRs.

It should be noted that it was not until May 31, 2006 that Mr. Dunlap submitted a written request (Attachment "2") identifying his project and his proposed intent to convert an existing barn on his property into a granny flat. Mr. Dunlap alleges that Board staff encouraged him to record the Notice of Consent to Use Land and that Board staff misled Mr. Dunlap in his endeavors to comply with the minimum lot size requirements. Mr. Dunlap also suggested to Board staff that his proposal to utilize his neighbor's property should be deemed an acceptable offset for his project. Board staff disagrees with Mr. Dunlap's assertions.

On June 12, 2006, Regional Board staff sent Mr. Dunlap a letter denying his project and advising him that his proposal improperly relies on the use of property that is already sewered and would not in any case be available for septic system use or for use as an offset. Therefore, it cannot be used to satisfy a part of the minimum lot size needed for approval of the project. It is important to consider the implications of approving a project on the grounds proposed by Mr. Dunlap. Pursuant to Mr. Dunlap's approval theory, other project proponents seeking septic system approvals in situations where the MLSRs cannot be satisfied could simply request approval to record Notices of Consent to Use Land comparable to Mr. Dunlap's, relying on areas that are already sewered and could not be used for septic systems in any event. Such an approach would be contrary

to the intent and letter of the MLSR offset exemption criterion, which requires the connection to the sewer of properties not already required to connect.

In a telephone conversation with the Supervising Building Inspector of the City of Fontana on June 20, 2006, Regional Board staff was informed that the cost of sewer connections within the City is about \$4,000.00. The City also advised staff of their willingness to assist in locating an acceptable offset for Mr. Dunlap.

**RECOMMENDATION:**

Deny Mr. Dunlap's request for an exemption from the minimum lot size requirements for the use of a second septic system and encourage him to work with Board staff (and/or City of Fontana staff) to locate an acceptable offset so his project may proceed. Alternatively, Mr. Dunlap may proceed with the project under an "Agreement of Restriction", which would become part of the chain of Title, which would allow the temporary use of the barn conversion while it is needed by the family, and which would require removal/abandonment of the second septic system when it is no longer required by the family.

**Comments were solicited from the following agencies:**

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon  
San Bernardino County Environmental Health Services – Corwin Porter/Mike Farrell  
San Bernardino County Building and Safety – Barbara Johnston  
City of Fontana – Richard Brooks/Steve Lopez

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

*Eric M and Victoria J. Chase*

AND WHEN RECORDED MAIL TO:

*11580 Rancherias Dr.  
Fontana, Ca 92337*

Recorded in Official Records, County of San Bernardino



**LARRY WALKER**  
Auditor/Controller - Recorder

P Counter

5/19/2006  
1:35 PM  
MA

Doc#: 2006-0345705



Titles: 1 Pages: 4

Fees	17.00
Taxes	0.00
Other	0.00
PAID	\$17.00

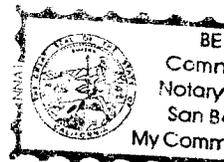
**Dunlap - Appeal  
ATTACHMENT "1"**

SPACE ABOVE FOR RECORDER'S USE ONLY

*Notice of Consent to use Land*  
Title of Document

THIS AREA FOR  
RECORDER'S  
USE ONLY

**THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)**



NOTICE OF CONSENT TO USE LAND

PLEASE TAKE NOTICE THAT the undersigned owner of the real property located in Fontana, California and more specifically described in the legal description attached as Exhibit "A" ("Property") consents to use of the Property as follows: The owners, whose signatures appear at the bottom of this notice of consent, assign their right to place any future pecculating water disposal system on their property to the property owners at 11585 Ponderosa Drive, Fontana, CA, 92337.

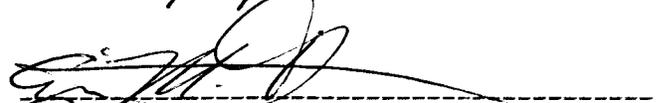
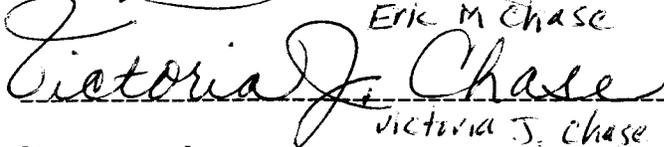
Further, we make this declaration of assignment binding to all future owners of said property in exhibit "A."

The purpose of this assignment is to increase the square footage of the property at 11585 Ponderosa Drive, Fontana, CA 92337 for the sole purpose of qualifying the Ponderosa property for a second septic tank system under the rules of the California Water Quality Board's guidelines of "one septic tank per half acre."

This use of the square footage attributed from the land referenced in exhibit "A," brings the total square footage of the property at 11585 Ponderosa Drive, Fontana, CA 92337 to over one acre, qualifying the Ponderosa property for two septic tanks.

The right of the public or any person to make any use whatsoever of the above described Property, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed, or dedication), is by permission and subject to control of owner as provided in Civil Code section 813.

Dated: 5/18/2006

  
Eric M. Chase  
  
Victoria J. Chase

[Signatures]

MARTINEZ  
on # 1445250  
olic - California  
ardino County  
pires Oct 13, 2007

ACKNOWLEDGMENT

Transmittal letter

CRWOOD - REGION 8
ETM
8/5
2006 MAY 31 PM 4:20

- 1) Grandmother's quarters - Small unit living quarters
  - a) Convert existing Barn -
    - living room
    - Bedroom
    - kitchen etc
    - Bathroom/shower-Tub.
  - b) add 750 gal. septic tank (Coddard + Mazco Services)  
add leach pit 5' by 25' deep
- 2) 1 existing septic tank on property installed in 1982.
  - a) Leach pit installed in Dec. 2005  
Coddard + Mazco Services -
- 3) County percolation report on site w/county  
Please fax over to Mike Farnell necessary doc's.
- 4) Lots were created. Approx. 1982 -
  - assessor's map Book 236 - Pg. 26 Lot 1  
San Bernardino County.
- 5) Rural. Property is on sewer line.
  - Directly behind my property.
- 6) office does not have bathroom for my own personal needs -

2377.44

1 acre = 43,568

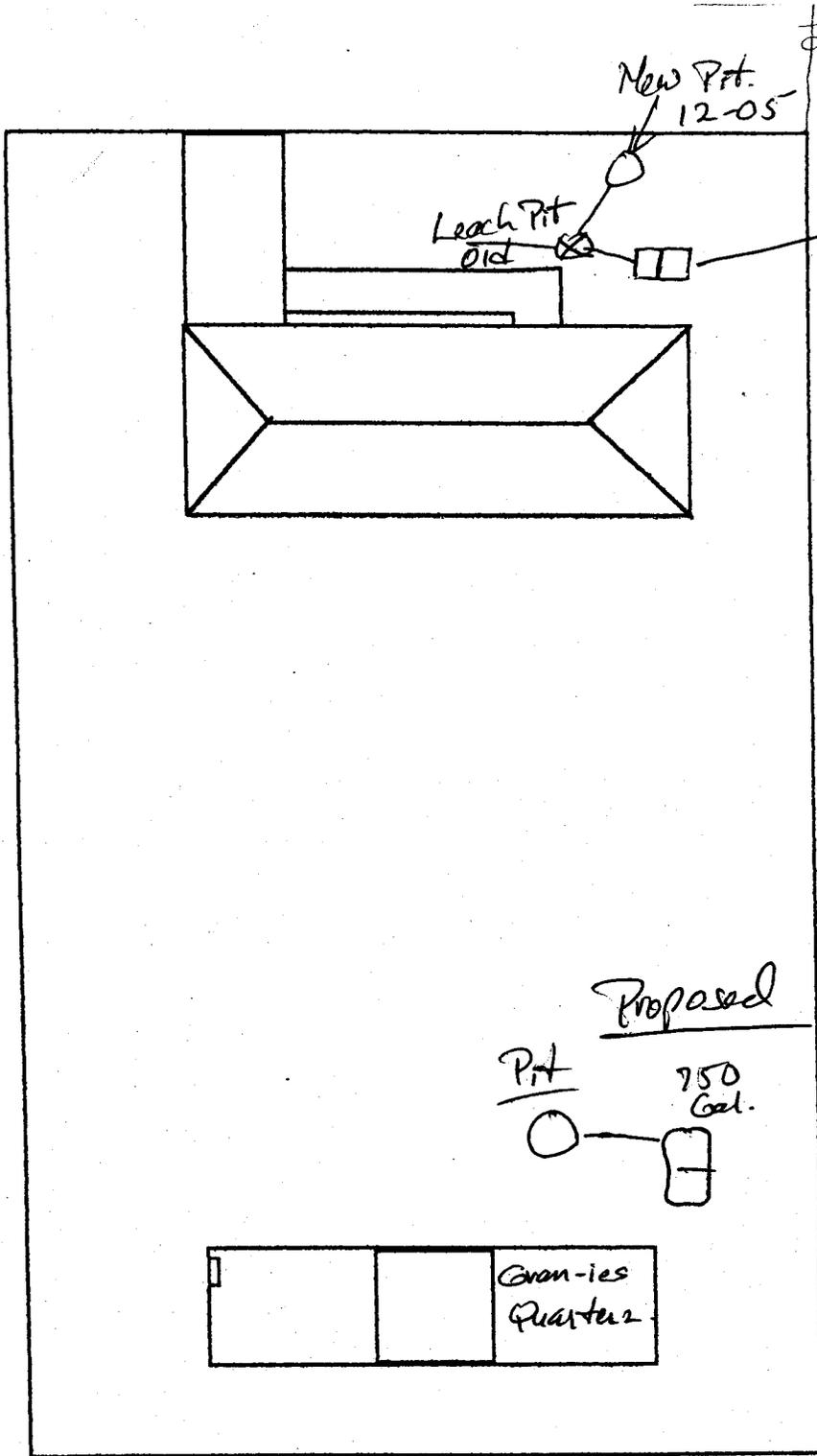
49,128.63

Sgtt-

30,213.30

6815.33  
7100.00

4437.89



12000 Gal. Sept. Tank

822

Proposed

Pit

750 Gal.



Gran-ies Quarters

33 1/2

Dunlap - Appeal ATTACHMENT "2"

132108-

