California Regional Water Quality Control Board
Santa Ana Region

December 20, 2004

STAFF REPORT

ITEM: 9

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Duane Burk, 31225 Linwood Terrace, Yucaipa, San Bernardino County, APN 300-551-09

DISCUSSION:

Mr. Duane Burk currently resides in a 3-bedroom, 2.5-bath home on a 0.5-acre lot at 31225 Linwood Terrace, Yucaipa. The home is connected to an existing 1,500-gallon septic tank-subsurface disposal system. On August 17, 2004, Mr. Burk contacted staff requesting an exemption from the Board's minimum lot size requirements for the use of a septic tank-subsurface disposal system on his lot. Mr. Burk proposed to install a second home (temporary dependent housing or TDH) on this lot, where he could care for his mother. He also proposed to connect this second home/TDH to his existing septic system. The Board approved Mr. Burk's request for an exemption from the one-half acre minimum lot size requirement on September 17, 2004. The exemption was granted with the following conditions: 1) Once the second home/TDH is no longer required for use of the Burk family, it shall be removed from the property, and 2) Mr. Burk must enter into an Agreement of Restriction with the City of Yucaipa, which shall become a part of the Chain of Title, that the second home must be removed prior to sale of the property or whenever it is no longer required for the use of his mother, whichever occurs first. A copy of the Agreement of Restriction shall be provided to the Regional Board.

On October 12, 2004, Mr. Burk contacted Board staff to advise that the City of Yucaipa has requested he construct the TDH as a permanent structure to match his existing house. Due to this City requirement, Mr. Burk now proposes to construct a garage with a temporary home to be located above the garage (2-story) for his mother's use. Once the temporary dependent housing is no longer required for the use of his family, the City of Yucaipa will require that the kitchen be removed from the home. Mr. Burk has indicated to staff that he will eliminate all fixture units from the TDH/permanent garage and eliminate (cap off) the connection to the septic system. The building (garage) will remain on-site.

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. Burk'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. Burk's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. Burk's request for an exemption from the minimum lot size requirements.

The minimum lot size exemption criteria to be used by Board staff specify that replacement of existing septic tank-subsurface disposal systems to allow additional flows resulting from additions to existing dwelling units is exempt from the one half acre requirement. However, the Board's

exemption criteria specifically state that such an exemption does not apply to the addition of freestanding structures, such as a second home on the Burk property. In establishing the exemption criteria, the Board made this distinction because of the potential that the addition of freestanding structures could result, either immediately or in the future, in substantially greater wastewater flows than would be expected as the result of additions to an existing dwelling.

Mr. Burk notes 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 he were to add on to the existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size criteria. On this basis, Mr. Burk is 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. Burk owns the property and his mother resides with him, there is 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 addition of freestanding structures from the minimum lot size requirements. However, in this case, the proposed additional structure will be used only temporarily for housing, since the City has required that the kitchen/fixture units be removed once the dependent is no longer using the housing, as a condition of permit approval. Furthermore, as part of permit approval, the City of Yucaipa will require Mr. Burk to enter into an Agreement of Restriction with the City of Yucaipa that will be recorded with the property Chain of Title that stipulates that this property may not be sold until the fixture units in the garage dwelling are removed and the connection to the existing septic system from this second home is eliminated (capped off). The City of Yucaipa will issue Mr. Burk a Special Use Permit for temporary dependant housing that Mr. Burk will have to renew every two years. Failure to renew the TDH permit or remove the fixture units from the second house at the end of the approved time period will result in legal action to remove the unit/house entirely.

RECOMMENDATION:

Approve Mr. Burk's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157 with the following stipulations: 1) Once the second home is no longer required for use of the Burk family, the fixture units will be removed from the home and the connection to the septic system will be eliminated (capped off); and, 2) Mr. Burk must enter into an Agreement of Restriction with the City of Yucaipa, which shall become a part of the Chain of Title, that the fixture units in the temporary dependant home must be removed prior to sale of the property or whenever the temporary home is no longer required for the use of his mother, whichever occurs first. A copy of the Agreement of Restriction shall be provided to the Regional Board before a clearance will be granted.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
San Bernardino County Environmental Health Services – Mike Farrell/Ray Britain
San Bernardino County Department of Building and Safety – Barbara Johnston
City of Yucaipa Building and Safety – Nikki Moore
City of Yucaipa Planning

California Regional Water Quality Control Board
Santa Ana Region

Terry Tamminen
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

December 2, 2004

Duane Burk
31225 Linwood Terrace
Yucaipa, CA 92399

APPEAL TO THE REGIONAL BOARD FOR AN EXEMPTION FROM THE MINIMUM LOT SIZE REQUIREMENT FOR THE USE OF AN ONSITE SEPTIC TANK-SUBSURFACE DISPOSAL SYSTEM AT 31225 LINWOOD TERRACE, YUCAIPA, SAN BERNARDINO COUNTY, APN 300-551-09

Dear Mr. Burk:

This is in response to your request to appeal Regional Board staff's denial of an exemption from the minimum lot size requirement for subsurface disposal system use at the above-referenced site. Your appeal has been scheduled for consideration at the Board's December 20, 2004 meeting at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda. The meeting is scheduled to begin at 9:00 a.m. A copy of the staff report that will be presented to the Board regarding this matter and the agenda announcement for the meeting are enclosed.

During the meeting, you will have an opportunity to present your case to the Board. If you have any questions about the proceedings, please contact Jun Martirez at (951) 782-3258 or Susan Beeson at (951) 782-4902.

Sincerely,

for Filomeno T. Martirez
Joanne E. Schneider
Environmental Program Manager

Enclosures: Staff Report and Agenda Announcement

cc w/enc: State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
San Bernardino County Environmental Health Services– Mike Farrell/Ray Britain
San Bernardino County Department of Building and Safety – Barbara Johnston
City of Yucaipa Building and Safety – Nikki Moore
City of Yucaipa Planning

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