California Regional Water Quality Control Board
Santa Ana Region

May 19, 2006

STAFF REPORT

ITEM: 7B

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Lalaine Paguio, 464 Cindy Circle, Riverside, Riverside County, APN 255-330-027-7

DISCUSSION:

Lalaine Paguio contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Ms. Paguio owns and resides in a house located on a 0.5-acre lot at 464 Cindy Circle, Riverside. This area of Riverside is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Ms. Paguio proposes to construct a second dwelling unit to provide a residence for her parents who are in need of her assistance. A second septic system is proposed to serve this 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. Ms. Paguio'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, Ms. Paguio's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Ms. Paguio'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 Ms. Paguio's parents.

Ms. Paguio 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 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, Ms. Paguio 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 Ms. Paguio owns the property and her parents reside with her, 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, Ms. Paguio has 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 her parents' use. Ms. Paguio has 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 Ms. Paguio of an option identified in the Board's minimum lot size exemption criteria that allows project proponents to implement an acceptable offset project. If Ms. Paguio connects 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. Ms. Paguio has actively been looking for a potential offset candidate; however, as of this date, has not been able to locate one. Ms. Paguio also advised staff that she would connect her property to the sewer once it becomes available.

RECOMMENDATION:

Approve Ms. Paguio'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 Paguio 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; and 2) Ms. Paguio 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; 3) Ms. Paguio shall connect her property to the sewer within one year of availability of sewer, and 4) If Ms. Paguio locates and implements an acceptable offset or connects her property to the sewer, the Agreement of Restriction shall be removed, allowing the continued use of the second home on her property.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
Riverside County Environmental Health – Sam Martinez/Greg Dellenbach
Riverside County Building and Safety – Steve Dondalski
Riverside County Planning – Mark Balys