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AUSTIN, TEXAS

January 26, 1976

Mr. Ken Karger
River Development Company
352 Landa Street
New Braunfels, Texas 78130

Dear Mr. Karger:

Under date of January 9, 1976, this office responded to your letter of December 9, 1975 in which you applied for approval of subdivision plans as required under Article VIII of Edwards Board Order No. 75-0128-20. Numbered paragraph one of that letter is in error in that it stated that "1. Septic tank systems within the subdivision are prohibited." I have examined the basis for the statement in the January 9 letter and have determined that it was a form of typographical error in that the engineer and attorney reviewing the subdivision plans intended to state that such systems were permitted. As far as can be ascertained, the error occurred in picking up the wrong word from a standard form used in the preparation of these letters for the typist. It is, however, desirable, because of controversy that I understand has taken place around this particular requirement in the January 9 letter, to set forth some additional history of the matter, and especially to set forth the specific application of Order 75-0128-20 to the subdivision.

Your letter of December 9, 1975 states that it had been your intention to divide your tract of land into tracts larger than five acres such that the tract as a whole would not under the Order be classed as a subdivision. It is noted that the Order specifies, with some implied flexibility allowed to the Executive Director, that if any tract of land so divided has one or more tracts five acres or less in size the group of final tracts comprises a subdivision. Had your smallest tract been over five acres in size, your group of tracts would not have comprised a subdivision, and would not have been reviewed as such. In this

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case, each tract of land into which you had divided your larger tract would have been subject to the private sewage facilities provision of the Order as that portion of the Order is assigned to Comal County to carry out. There would have been no requirement incumbent upon the group of lots overall unless some portion of the Order came into play on some specific matter as for example the number of persons residing within a half-mile diameter circle.

Through error, however, no matter how the error arose, this tract of land was divided into tracts, many of which were five acres in size, and this office, as you are aware, has treated your overall transaction as a subdivision. As stated, the Executive Director had the authority to make a ruling that the division into tracts was not a subdivision, using as a basis the information contained in your December 9 letter. However, given the wish of this agency and of the Executive Director to have strict enforcement of the Order, the Executive Director has not taken advantage of the flexibility under the Order and has ruled that the tract of land as divided is a subdivision.

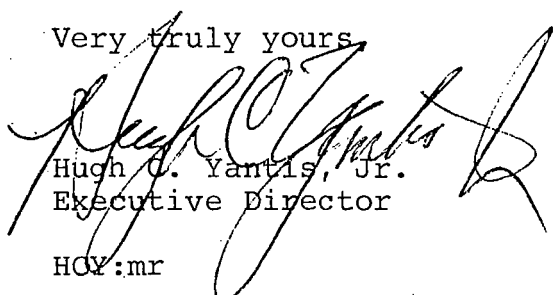
If the tract of land as you have divided it had contained one or more lots of less than an acre in size, there would have been a provision in the letter commenting upon the subdivision that no such lot may have a septic tank thereon unless, of course, the permitting authority grants an exception to the Order through the procedure set forth in the Order. However, since the smallest lot in your subdivision is five acres in size, there is no basis for declaring that the lots in the subdivision may not be served by septic tanks based solely upon a reading of the Order. Of course, the local licensing agency under the powers assigned by the Board under the Order will make the local determination about the issuance of septic tank licenses within your subdivision. I am simply stating here that there is nothing in the Order as circumstances now exist that says septic tanks may not be used in the subdivision. Since all other provisions of the Order still stand, it must be noted that there are numerous requirements that might come into play such as the distance of any particular home from a sewer line in which case there would be a provision against a septic tank in favor of a connection to an appropriately located sewer line. No such lines are presently known to exist.

In summary of all of the foregoing, this agency's letter of January 9, 1976 is amended by deleting in full the present numbered paragraph one and adding in its place the following:

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1. Septic tank systems within the subdivision are permitted within the terms and conditions of Order 75-0128-20 and consistent with the assignment of license responsibilities to Comal County.

Very truly yours,



Hugh C. Yantis, Jr.
Executive Director

HGY:mr

ccs:

All Texas Water Quality Board Members
Edwards Underground Water District
The City of New Braunfels
The County of Comal
Texas Water Quality Board District 8 ✓