

# TEXAS WATER COMMISSION

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July 6, 1989

Mr. David A. Gloier  
Deputy Commissioner  
Veterans Land Board  
General Land Office  
Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701

Re: Request for Exemption of Edwards Aquifer Rules: Eden Ranch  
Development

Dear Mr. Gloier:

This is in response to your request for an exemption from the requirement provided under the Texas Water Commission's ("Commission") Edwards Aquifer Rules to submit a water pollution abatement plan. We have been informed by Mr. Mike Willatt that the Eden Ranch Development consists of approximately 2,971 acres of land in Comal County, Texas, that is being developed by Patten Corporation Southwest into lots of more than five acres. Approximately 100 of these lots have been purchased by the Veterans Land Board ("Land Board") for sale to Texas veterans, and the Veterans Land Board expects to purchase more lots within the development for sale to Texas veterans. In its sale agreement, the Land Board has provided that if the veteran wishes to build a home on the lot before the loan is paid off, the Land Board will deed a one-acre tract out of the lot for that purpose, free and clear of any liens. We have also been informed by Mr. Willatt that the Comal County Commissioner's Court has determined that this subsequent conveyance of the one-acre tract will require the replatting of the lot.

Commission rules contained under 31 TAC §§313.2 and 313.3 require a water pollution abatement plan to be submitted for Commission approval for any residential subdivision located on the Edwards Aquifer Recharge Zone unless every lot in such subdivision is larger than five (5) acres and no more than one single-family residence is allowed on each lot. When the first five-plus-acre lot is resubdivided to reflect the sale of the one-acre tract under the Land Board's plan, the resubdivided acreage becomes subject to the water pollution abatement plan requirement even though the intent of the Land Board's plan is for the veteran to eventually

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own the entire five-plus-acre lot containing only the veteran's single-family dwelling. The Land Board, as the entity providing for the resubdivision of a lot into two parcels containing less than five-plus-acres, would be required to submit the water pollution abatement plan for the subdivision.

Section 313.9 of the Edwards Rules provides that an exception to the rules may be granted by the Executive Director if he finds a situation that is "materially different from those normally encountered or anticipated in the area of regulation" and "which justifies a departure from the rules in order to avoid hardships or the use of regulatory resources which would not provide protection for the Edwards Aquifer." The intent of the rules is to require a water pollution abatement plan when the housing density of a subdivision is greater than one single-family residence per five acres. The conveyance of the one-acre tract under the Land Board's plan is not intended to increase housing density in this respect. Rather, it is to afford a veteran the opportunity to build and own a home and to enjoy the five-plus-acre lot prior to the time the loan is paid off. To require the submission of a water pollution abatement plan when the intent of the Land Board's plan is not to increase the housing density to that greater than one single-family residence per five-plus acres would work an unnecessary hardship, waste regulatory resources, and would not provide any appreciable, added protection of the Edwards Aquifer.

A problem arises, however, should the veteran fail to repay the loan on the remaining four-plus acres. In such event, the Land Board would foreclose on these remaining acres, which may eventually result in a housing density greater than one single-family residence per five acres. This occurrence would then fall under the intent and purpose of the Edwards Aquifer Rules.

An exemption is hereby granted to the Land Board subject to the following conditions: First, the exemption to the requirement of filing a water pollution abatement plan is conditional upon there never occurring a property transaction which may result in a housing density of more than one single-family residence per five acres. Should this event occur, a water pollution abatement plan must be submitted to and approved by the Commission's Executive Director prior to the actual start of any proposed regulated development on any portion of the remaining four-plus acres. Additionally, if there were any further regulated development on the one-acre tract in addition to a single-family residence constructed by the veteran, a water pollution abatement plan would also have to be submitted. The foreclosure on the four-plus-acres would not subject the remaining one-acre tract to this requirement unless at the time of foreclosure, no regulated

development of the one-acre tract had occurred. None of these events, however, would require a water pollution abatement plan to be filed for the entire Eden Ranch development.

Secondly, notice of the conditional exception must be provided by the Land Board for each of the Land Board lots which is resubdivided because of the Land Board's conveyance and financing plan. This notice shall be contained in the deed to the one-acre tract. Additionally, such notice shall be provided in the sale contract for the remaining four-plus-acres if such acreage is foreclosed upon. The notice shall state:

Rules of the Texas Water Commission ("Commission") contained under 31 TEX. ADMIN. CODE §§313.1 et seq. (WEST 1988), commonly known as the Edwards Aquifer Rules, require a water pollution abatement plan to be submitted to and approved by the Commission prior to the construction of any regulated development in a residential subdivision located in the Edwards Aquifer Recharge Zone as officially delineated by the Commission unless every lot in such subdivision is larger than five (5) acres and no more than one single-family residence is allowed on each lot. The Texas Veterans Land Board ("Land Board") has purchased lots in the Eden Ranch Development, Comal County, of between five and six acres for sale to Texas veterans. In its sale agreement, the Land Board has provided that if the veteran wishes to build a single-family residence on the lot before the loan is paid off, the Land Board will deed a one-acre tract out of the lot for that purpose, free and clear of any lien. The Comal County Commissioners Court may determine that this severance of the one-acre tract constitutes a resubdivision of the lot requiring the approval of the Commissioners Court of such subdivision and recordation with the county deed records. In such event, such resubdivision of the lot subjects the property to the Commission's water pollution abatement plan requirement. However, since the Land Board's plan does not intend to increase the density of single-family residences to more than one per five-plus-acres, the Executive Director of the Texas Water Commission has granted a conditional waiver of such requirement effective June 22, 1989, and pursuant to 31 TEX. ADMIN. CODE §313.9 (WEST 1988). Such conditional waiver provides that when the Land Board deeds a one-acre tract from a lot greater than five acres and contained within the Eden Ranch Development, Comal County, to a veteran purchaser for the purpose of building a single-family residence on that one-acre tract, and where the veteran continues to purchase the

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remainder of the lot pursuant to a contract of purchase and sale with the Land Board, the veteran may build such residence without there first having to be submitted and approved a water pollution abatement plan in accordance with the Edwards Aquifer Rules. However, should the veteran purchaser forfeit his right to purchase the remainder of the lot and the Land Board should sell or contract to sell any or all the remainder of the lot to a person(s) different from the person owning the one-acre tract, the purchaser of the forfeited acreage shall be required to submit to, and obtain approval from, the Texas Water Commission, a water pollution abatement plan pursuant to the Edwards Aquifer Rules prior to commencing any regulated development on the forfeited acreage. Additionally, if no single-family residence has been built on the one-acre tract at the time of forfeiture, any subsequent regulated development on the one-acre tract, including the construction of a single-family residence, shall be subject to the Edwards Aquifer Rules. This conditional waiver does not apply to any construction or development on the one-acre tract beyond the building of a single-family residence prior to forfeiture of the remaining portion of the lot.

Thirdly, an affidavit stating that the notice requirements have been fulfilled must be submitted to the Executive Director by a representative of the Land Board prior to conveyance of the one-acre tract. An affidavit form for this purpose has been attached. Copies of such proof of recordation and applicable maps and plats identifying the affected lots shall be submitted to the Commission's District 8 Office in San Antonio within twenty (20) days of conveyance of the one-acre tract.

Finally, the exemption is revocable for failure to comply with its terms or conditions or upon the development of a situation which poses a substantial risk of pollution to the Edwards Aquifer.

If you have any questions, please do not hesitate to contact wither Mark Jordan, of the Commission's Legal Staff, or Rob Conti of the Commission's Edwards Aquifer Protection Unit, at 463-8069 and 463-8497, respectively.

Sincerely,



Allen P. Beinke  
Executive Director