

AGUA DULCE TOWN COUNCIL

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March 14, 2022

Executive Officer Renee Purdy
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Via Email to: renee.purdy@waterboards.ca.gov

**RE: Agua Dulce Town Council response to LA RWQCB
Correspondence dated March 11, 2022: Water Quality Order No.
R4-2022-066 (February 10, 2022) Fie 20-105**

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Dear Executive Officer Purdy:

We are in receipt of your letter dated March 11th in response to the Council's letter regarding the Council's concerns over the circumstances under which the Regional Water Quality Control Board members approved the issuance of Water Quality Order No. R4-2022-066 on February 10th 2022.

To be clear, the Council's position is that, despite being admittedly reviewed by Water Board staff, the public record project documents published by the lead agency, Los Angeles County Department of Regional Planning, unequivocally show that a number of misleading statements were made by Water Board staff during the presentation, in responses to questions from the Board members related to the project and in advocating for the misleading claims made by the Applicant's outside legal counsel.

It is the Council's view that had the true facts about the project been presented by the Water Board Staff and the Applicant's counsel and therefore properly understood by the Board, the vote on the decision to approve the dredge and fill permit may well have been different. In particular Board member Nahai had opined that one option was to take no action. Simply put, had the correct information been presented to the board, the Board may have elected to defer the decision until these issues were fully understood and resolved given the concerns about the project expressed in the meeting by Chair Yee and Board members Munoz and Nahai.

Around 53 minutes into the meeting, Ms. Celine Gallon noted that the choices available to the Board during the meeting were "first adopt the tentative waste discharge requirements for the Agua Dulce Residential Development Project; or adopt the tentative waste discharge requirements for the Agua Dulce Residential Development Project with modifications arising as a logical outgrowth of comments; or no action."

Around 2 hours and 41 minutes into the meeting, Chair Yee states "I must say that I am conflicted with this particular decision before us in much the same way that board member Munoz has been conflicted." Chair Yee then continues "And, you know, I'm also generally disturbed by the silo-ing that goes on with respect to a lot of governmental decisions, policy decisions, and so on. And that also, you know, just bothers me in general."

Board member Nahai then states around the 2 hour 47 minute mark "On the other hand, though, our choices are within our purview to uphold the staff recommendation to, you know, suggest modifications that are logical

outgrows. For instance, the issue of financial assurances would be one, **but the next right that we have is not to take action today.**”

The Council isn't suggesting that the EIR or SEIR for the project were not approved, but instead that the Water Board staff and the Applicant's attorney failed to properly convey material facts about the project to the Water Board correctly, which then became the basis for the vote that approved the dredge and fill permit when a decision of 'no action' may have otherwise been the logical conclusion.

1. Incorrect references to the project record made to the Water Board during the meeting

A. Staff claimed that the project will not deplete the groundwater basin

Around 47 minutes into the presentation, Ms. Celine Gallon stated “All the water to be provided is imported water. So water needs will not deplete the groundwater basin.”

This is not true, the 1994 Final EIR Response to Comments, page 4.3-24 Comment 30 response to a question posed by the Agua Dulce Town Council states that “Due to increased availability of State Water Project Water, ***it is less likely, absent another drought, that the proposed project will use significant amounts of groundwater associated with the water system***”. When considering this statement was made in the light of what was a 'normal water year' in 1993, the project is very likely to rely on the local groundwater, particularly in light of the recent December 2021 announcements from the State Water Project that they will not be providing supplemental allocations to 29 water agencies around the State including Antelope Valley East Kern (AVEK), the municipal water wholesaler for this project.

Around 56 minutes into the meeting in response to a related question from Board member Christiansen, Celine Gallon stated “I think it's imported from the Antelope Valley. I don't remember quite, but it's not from our region.” Chair Yee then states “I believe its state water project water.” And Ms. Gallon confirms this. This again is untrue in light of the above referenced comments in the 1994 EIR as the project will likely use local groundwater that is the Board's responsibility.

B. Staff clearly understood that the Applicant plans to build Phase 1 with septic

Around 48 minutes into the presentation Ms. Gallon states “**Staff has confirmed with RTG Investment LLC and the County of Los Angeles, that they are planning to install individual septic systems to treat domestic wastewater for the 68 proposed homes on phase one of the proposed site**, the applicant will need to seek authorization from the Los Angeles County Department of Public Health before installing the septic systems at a later time.”

As noted in the Council's letter of March 10th, the entitlement to proceed with the development of the first three phases of the project (Phase 1) with individual septic systems no longer exists by virtue of the approval of the 2007 Supplemental Environmental Impact Report that replaced the individual septic systems with an onsite wastewater treatment plant. Despite the fact that, by their own admission during the meeting, staff reviewed the 1994 EIR and the 2007 Supplemental EIR, nobody on staff managed to grasp this fundamental change in entitlements, despite it appearing in unequivocal terms on numerous introductory pages of the Supplemental EIR and supporting documentation.

Around 59 minutes into the meeting, Chair Yee asked ‘What happens if the County of Los Angeles does not give approval for the 68 septic systems that need to be approved?’ to which Ms. Gallon replied “We talked to them and they were basically saying that they would provide the permits for the septic system and whenever they receive an application we'll look at it and the geological setting and make sure they are requiring the proper systems to be installed.” Clearly, in view of the previously referenced public record, since there is no entitlement for the project to install individual septic systems as a result of the approval of the 2007 Supplemental EIR, Los Angeles County has no authority to issue septic permits for any phase of the project and therefore this reply to Chairman Yee's question is completely inaccurate and misleading.

C. Staff claimed that the 2007 Supplemental EIR did not apply to Phase 1 of the project

Around 53 minutes into the meeting, Ms. Gallon stated “**Note that we have reviewed and considered the 2007 Supplemental EIR, but it was developed for phase two of the Agua Dulce Development Project. It does not apply to phase one of the project** and the tentative WDR is related to phase one.”

Again, this is not true. The Agua Dulce Residential Development Project is a single project, not two separate or independent projects. The 1994 EIR and the 2007 Supplemental EIR are both **project-level** reports as they impact all phases of the proposed project. While it is true that the 2007 SEIR did not change the recorded Final Tract Map for Phase 1, it did change the entitlements related to both Phase 1 and Phase 2 of the project. Despite having reviewed the Supplemental EIR, staff did not step in to correct the Applicant’s claims during the meeting that there remains an entitlement to proceed with Phase 1 using residential septic systems (which is otherwise clarified in the Supplemental EIR and multiple documents related to the Supplemental EIR).

In response to a question from Board member Munoz, Ms. Gallon stated around 58 minutes into the meeting that “we have looked pretty closely at the 1994 permit and the project has not changed substantially.” Again this is not true since the 2007 Supplemental EIR made a substantial change to the 1994 EIR by replacing the on-site septic systems and off-site wastewater treatment plant with an on-site wastewater treatment plant for BOTH phases of the project.

D. Staff failed to advise that the unrecorded Tentative Tract Map expires in October 2022

In response to a question from Board member Christiansen, Ms. Gallon states around 56 minutes into the meeting “**Note that the tentative tract map for that [Phase 2] hasn’t been recorded yet.**”

While this is true, it is also a fact that tentative tract maps have a finite life and the tentative tract map for Phase 2 that was approved in the April 2007 Supplemental EIR was set to expire in April 2021 and was extended to October 2022 by virtue of the passage of AB1561 in September 2020. Despite the fact that the tentative tract map that was approved in 2007 was nearly 15 years old when the Board meeting was held, and will expire in a mere 7 months, no-one on staff appears to have done any basic due diligence to be able to point out the imminent expiration date to the Board. As anyone with a basic grasp of planning and land use would appreciate, once the tentative tract map expires, it is customary that the associated Conditional Use Permit expires and this project is no different.

Considering that it can take 3-4 months to get a simple electrical permit from LA County Department of Building Safety, it is unbelievable that nobody on staff pointed out to the Board that there were only 7 months for the Applicant to get plans and permits approved for a wastewater treatment plant upon which the recordation of Phase 2 depends. By their own admission during the meeting, the Applicant has much work to do on this part of the project to be in a position to even submit an application. This is particularly unusual given Mr. Chadwick’s voluntary testimony around 2 hours and 57 minutes into the meeting that the Applicant may just let the tract map expire and abandon Phase 2.

E. The development of Phase 1 with septic systems is a significant change under CEQA

In response to a question from Board member Munoz, Counsel Austin stated that “Because there’s no new information, the circumstances of this particular piece of the project have not changed. There’s no reason to reopen CEQA.”

After having changed the 1994 wastewater entitlement and associated mitigation measures from on-site septic systems to an on-site wastewater treatment plant in 2007, reverting back to on-site septic systems would be a significant change under CEQA and would require a new Supplemental EIR. As an example, after the then developer terminated the septic permit from the Regional Water Quality Board in April 2012, there are a series of mitigation measures that are exclusively tied to this now terminated permit related to onsite wastewater treatment that no longer have a reference permit.

The EIR from 1994 contemplated Phase 1 being constructed with temporary on-site septic systems which would be abandoned within six months of the connection being made to the off-site

wastewater treatment plant.

The Supplemental EIR contemplated building an on-site wastewater treatment plant to serve all properties on the project site instead of any on-site septic systems.

Based on the Applicant's sworn testimony that they plan to build Phase 1 with septic systems and that they may elect to abandon Phase 2 by letting the tract map expire, this would lead to a situation whereby the Phase 1 septic systems become permanent and this has never been contemplated in any approved environmental reports produced for the project.

In light of the facts, Counsel Austin's statement related to CEQA is misleading in view of the Applicant's sworn testimony and the lead agency's documents that staff had reviewed, yet Counsel Austin did nothing to correct the record.

2. Summary

While the Council appreciates that the Water Board's role is not to dispute the finality of the lead agency's supporting documents for a given project, it is the duty of the Water Board staff to correctly report the content and facts of those documents to the Board members such that informed decisions can be made.

It is the view of the Council, and of the Community of Agua Dulce, that this did not happen in this instance and that the absence of correct answers to materially relevant questions about the project may have swayed the decision of at least Board members Munoz, Nahai and Chair Yee to vote in favor of the project.

The Council is not in a position to file a grievance with the Regional Water Quality Control Board over this particular issue, however we understand that several community members plan to do so.

To that end, we would ask that this letter and the Council's prior letter from March 10th be submitted to the record such that the context of the grievances filed by the community can be properly considered.

We look forward to hearing from your office on the above matter in due course.

Respectfully,

Don Henry

Don Henry, President
Agua Dulce Town Council – 2022

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