

AGUA DULCE TOWN COUNCIL

33201 Agua Dulce Canyon Road * Box Number 8 * Agua Dulce, CA 91390

Website: www.adtowncouncil.com

March 10, 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 comments on approval of File 20-105

Dear Executive Officer Purdy:

We are writing to you to raise our significant concerns over the recent approval of the Waste Discharge Requirements to RTG Investments, LLC (the Applicant) for the Agua Dulce Residential Development Project (the Agua Dulce Project) approved by the board at the 650th Regular Board Meeting held on February 10th, 2022.

During the meeting, there was an exchange between Board Member David Nahai and the Applicant's legal counsel, Mr. G. Braiden Chadwick. During the course of this exchange, Mr. Chadwick made statements under oath that, in light of the LA County Dept. of Regional Planning public record and the Council's own record, significantly misrepresent the wastewater entitlement for the Agua Dulce Project as it relates to the existence of an entitlement to develop the first three phases of the Agua Dulce Project with individual septic systems.

Having reviewed the video of the meeting, it was clear that Chairman Yee, Board Member Nahai and other members of the Regional Water Quality Board (the Board) were conflicted with the decision as to whether to approve this application or whether to delay approval in order to seek further clarity from Water Board staff. Indeed board member Christiansen voted against the motion to approve the application.

The Agua Dulce Town Council (the Council) is concerned that the apparently misleading statements made by the Applicant's representative before the Board may have persuaded the Board members to vote in favor of the Applicant.

During the February 9th, 2022 meeting of the Council, a program was created to reach out to the local Agua Dulce community members who have expressed concern about the Agua Dulce Project that is the subject of the approved application. At the subsequent Council meeting on March 9th, the findings of this outreach were presented to the Council and the community for discussion. The Council subsequently approved a motion to write to the Board as a matter of urgency given the likelihood that the Board made their approval decision based on apparently misleading information and assumptions.

1. **Scope of the Applicant's 1994 wastewater entitlements**

Before detailing the Council's concerns, it is important to review the Council's understanding of the wastewater entitlements of the Agua Dulce Project (as reflected in the planning record) since first being proposed in 1993. The Environmental Impact Report for the Agua Dulce Project that was approved in April

- Don Henry, President
(661) 268-1731
BH33605@aol.com
- Mary Johnson, Secretary
(661) 492-5999
maryjohnson767@gmail.com
- Chris Yewdall, Treasurer
(310) 962-4662
cyewdall@msn.com
- Kathryn Segura, Clerk
(310) 650-6337
phdanimals@yahoo.com
- Candy Clemente, Member
cccryder@aol.com
- Scott Keller, Member
(661)317-5355
scottwilliamkeller@gmail.com
- Lou Vince, Member
(310) 597-7154
Lou@LouVince.com

1994 outlined an entitlement that allowed the first three phases (68 homes) of the twelve phase Agua Dulce Project (339 homes) to be constructed with individual septic systems and dry sewers. At the time, a separate development project called the Rio Dulce Project was being planned, to be located approximately 2.5 miles to the Southwest of the Agua Dulce Project. The Rio Dulce Project was to have been built with an on-site wastewater treatment plant. Consequently, the 1994 EIR for the Agua Dulce Project did not consider the impact of the wastewater treatment plant since it was part of the EIR of a completely separate, off-site development project.

The 1994 wastewater entitlement required the developer of the Agua Dulce Project to connect phases 4-12 to the Rio Dulce off-site treatment plant before any building permits for phases 4-12 of the Agua Dulce Project would be approved. Once the connection to the off-site Rio Dulce treatment plant was established, the 1994 EIR required the first 3 phases of the Agua Dulce Project to be connected to the off-site wastewater treatment plant within six months of the connection being made. At this stage, the 68 on-site residential septic systems would be abandoned.

In addition to the connection of the Agua Dulce Project to the Rio Dulce off-site wastewater treatment plant, a nearby 61 home residential development called Sierra Colony had been built which was also conditioned on establishing a wastewater connection to the Rio Dulce off-site wastewater treatment plant. Similarly, once this connection was made to the wastewater treatment system, the existing residential septic systems at the Sierra Colony development would be abandoned.

The requirement to connect both the Agua Dulce Project and the Sierra Colony development to a wastewater treatment plant was a condition of Los Angeles County who were concerned about the impact on the groundwater from the construction of such a high density of homes in a rural area where existing homes are typically on lots of significantly larger size.

2. **Scope of the Applicant's 2007 wastewater entitlements**

At some point, the Rio Dulce project was abandoned, thereby eliminating the option of using the previously mandated offsite wastewater treatment plant. The then developer, B & C Land and Water LLC, revised the plans for the Agua Dulce Project to include an on-site wastewater treatment plant. In doing so, they eliminated 24 homes in order that the wastewater treatment plant could be located on-site.

Since this was a significant change from what had been approved in the 1994 EIR, a Supplemental EIR was produced in 2006 and approved in April 2007. Notably, the documents in the LA County record produced to support this approval (Notice of Preparation, Staff recommendation to the Planning Commission and the Final SEIR) all clearly state that the proposed on-site wastewater would be used **instead of** the previously planned septic systems and the off-site wastewater treatment plant.

The public record is further supported by the Council's own record. On February 14th, 2007, Mr. Dennis Bushore, the representative of B & C Land and Water LLC, made a presentation to the Council at the regular Council meeting to elicit their support for the revised Agua Dulce Project. The Council's video recording of the meeting confirms that the following statement was made by Mr. Bushore *"We could build 68 homes without the wastewater treatment plant. We would rather not go with septic. We think the collection system is the right way to do it and that's the way to deal with it....so we have delayed construction of that 68 lots to get the wastewater treatment plant approved. We'll build it ahead of time and when we start the first 68 lots we'll pump it over that saddle and gravity feed to the treatment plant....so we're not going to have any septic on this project whatsoever even though we are permitted to have 68."*

The construction of the on-site wastewater treatment plant effectively became a pre-condition of building the first three phases of the project as, per the 2007 Supplemental EIR, it would become operational once the first 50 homes were built.

Subsequently, in April 2012, the developer, B&C Land and Water, wrote to the Regional Water Quality Board requesting termination of the RWQCB septic permit (Order No. 91-94, CI No. 7185, Global ID. WDR 10000261) further underscoring that the septic systems were no longer required for the Agua Dulce Project. The 91-94 permit was extensively referenced in the onsite wastewater mitigation measures in the 1994 EIR and these mitigation measures and conditions no longer have an underlying reference permit.

Ultimately, the Agua Dulce Project is a single development project with 12 phases, not two independent and

separate projects, so the entitlements apply to the entire project.

3. The wastewater entitlement represented to the Board by the Applicant

During the meeting at around the 2 hour 24 minute mark from the February 10th meeting, Board member Nahai confirmed that the Applicant's representatives were under oath and proceeded to question Mr. G. Braiden Chadwick, the Applicant's outside legal counsel from the firm Mitchell Chadwick.

Around the 2 hour 31 minute mark, Mr. Chadwick outlines that the first three phases of the Agua Dulce Project (Phase 1) were approved in the 1994 EIR for use with septic systems. Mr. Chadwick also acknowledges that the on-site wastewater treatment plant was approved in the 2007 Supplemental EIR. Mr. Chadwick fails to mention the change to the on-site septic wastewater entitlement that was brought about by the approval of the 2007 Supplemental EIR as noted previously.

At around the 2 hour 36 minute mark, Mr Chadwick confirms that, despite the passage of almost 15 years since approval of the Supplemental EIR, a substantial permitting effort and investment funding is required and this doesn't normally happen too far ahead of when the building would start. Mr. Chadwick subsequently indicated that he didn't know when the permit for the on-site wastewater treatment plant would be submitted since it is a lengthy process and involves more analysis. Indeed these critical approvals are a pre-requisite of recording the revised tract map for the second phase of the project since the documents and plans related to the on-site wastewater treatment plant that were produced by the developer in support of the Supplemental EIR in 2007 were deemed to be incomplete and inadequate by the Department of Regional Planning in their comments to the 2007 Supplemental EIR.

Mr. Chadwick then unequivocally confirmed the Applicant's planned approach to construct with the Agua Dulce project with septic wastewater systems for Phase 1 at the 2 hour 37 minute mark.

At around the 2 hour 57 minute mark, Mr. Chadwick then volunteered that the Applicant could simply let the underlying unrecorded tentative tract map approved in the 2007 Supplemental EIR expire when it expires for the last time in six months' time in October 2022 and abandon the second phase of the project leaving the first phase without the entitlement to connect to on-site septic systems and no approved wastewater treatment plant for Phase 1 or 2 to be connected to.

4. References in the record for RWQCB staff to validate the Council's position

RWQCB staff can independently validate the Council's position by visiting the LA County Regional Planning website for the Agua Dulce Project at the website address <https://planning.lacounty.gov/case/view/tr50385>

In particular, the Council would draw staff's attention to the following:

2006 Supplemental EIR Notice of Preparation – Page 2 'Project Background'

"The revision entails providing an on-site water reclamation facility instead of the previously planned septic systems for the 68 residential lots and the previously-planned off-project water reclamation facility for the remaining residential lots."

March 2007 Staff report to planning commission – Page 1 'Project overview'

"Water Reclamation: Previously, an offsite water reclamation facility was approved for the project. The revised map proposes an onsite water reclamation facility in lieu of the previously planned septic systems for the 68 residential lots and offsite water reclamation facility."

April 2007 Final Bound SEIR – Page 2-2 'Grading and Construction Program'

"The wastewater reclamation facility, which can begin operation with a service area of 50 homes, would begin as soon as Phase 2 of tract 50385 is approved and recorded. Development of the homes will begin in June 2008, with buildout estimated for June 2014. Construction of the recorded portion of the site could occur at any time; however, as connection to the wastewater treatment plant is now proposed, this supplemental EIR assumes that portion will be constructed within the same timeframe as Phase 2 of Tract 50385."

5. Actions requested by the Council

We trust that the Regional Water Quality Board members and staff can understand and appreciate the Council's stated concerns on behalf of the community with respect to the rationale that was presented by the Applicant in support of the approval of the application.

The Council is respectfully requesting the following actions from the Regional Water Quality Board in light of the above:

- Staff be directed to respond promptly to the Council on the above issue outlining a plan of action to remedy the situation
- The Executive Officer should issue an immediate stay of the permit that was approved at the February 10th RWQCB meeting to prevent permanent damage to the waters of the State that will be impacted by the Applicant's planned activities
- Staff should undertake an immediate in-person, on-site inspection to document the extent of any grading or other work performed by the Applicant at the Agua Dulce Project site

We look forward to hearing from your office on the above as a matter of urgency.

Respectfully,

Don Henry

Don Henry, President
Agua Dulce Town Council – 2022

cc: LARWQCB Chair Lawrence Yee Lawrence.Yee@Waterboards.ca.gov
LARWQCB Member David Nahai David.Nahai@Waterboards.ca.gov
Ms. Tamarin Austen, LARWQCB Counsel tamarin.austin@waterboards.ca.gov