

The Agua Dulce Residential Project

Agua Dulce Town Council meeting

Wednesday April 12th, 2023

Agenda

- The Town Council's comment letter to the State Water Control Board regarding the 2022 dredge and fill permit grievance petition
 - The essence of the issue at hand
 - California Environmental Quality Act mitigation measures
 - Can Phase I-III meet LA County's seepage pit requirements
 - The Porter Cologne Water Act
 - Issues raised in the ADTC's March 17th comment letter
- Potential unpermitted grading outside the 50385-01 tract boundary
- Status of the construction performance and grading bonds
- Next steps to consider

The question that underpins the project

- Without a wastewater treatment plant, would the project have been approved at any level in 1994 or 2007?
- In 1993, the Chief of the Planning Unit of the Los Angeles Region of the California Regional Water Quality Control Board commented on the draft Environmental Impact Report
 - The Regional Board has identified this as an area of potentially impaired groundwater. Therefore a hydrogeologic study may be required which addressed cumulative as well as local impacts on the groundwater
 - We disagree with the statement (Table 1-1) that no significant impacts and no degradation in the quality of the groundwater will occur with the use of septic systems serving the project site. Septic systems can and do contribute to groundwater degradation. This entire 12 phase development will likely have a significant local and cumulative negative impact to water quality in the Agua Dulce groundwater basin

EIR response to the Water Board's concerns

- Page 4-3-3 of the 1994 EIR
- The Regional Water Quality Control Board (RWQCB) has approved Waste Discharge Permits for Phases I, II and III (totaling 68 lots) of the proposed development. Because the remaining project area (Phases IV-XII) overlies an area of potentially impaired groundwater, the applicant and the County have agreed to utilize the regional sewage treatment plant proposed for Tentative Tracts 50259 (Rio Dulce) and 48786 (Sierra Colony) for wastewater disposal needs for Phases IV through XII. As such, adverse impacts on groundwater would not result from the project as revised, and the hydrogeologic study would be unnecessary. See also response to Topical Comment 4.

EIR response to the Water Board's concerns

- As stated in Table 1-1 of the DEIR, septic tanks were expected to be approved at the time of the Draft EIR publication (which have since been approved) for the first 68 units as they lie outside the Agua Dulce Groundwater Basin. Wastewater disposal for the remaining project site was unresolved at the time of the Draft EIR publication pending the RWQCB's study of the groundwater basin. The finding of no significant impacts on the groundwater was based on the fact that the project would comply with the RWQCB findings. That is, if the nitrate study deemed the groundwater basin suitable for wastewater disposal through septic tanks, such a system would be implemented with the approval of the RWQCB. If deemed unsuitable, the project would proceed with a local or regional wastewater treatment system. In either case, compliance with the requirements of the RWQCB will preclude significant adverse impacts to the Agua Dulce Groundwater Basin. Since that time however, **the applicant and the County have agreed to utilize the regional sewage treatment plant proposed for Tentative Tracts 50259 and 48786 for wastewater disposal needs for Phases IV through XII thereby precluding significant local and cumulative impacts on groundwater.**

EIR Topical Comment 4

- Page 4.1-4 of the 1994 EIR
- The proposed project is in an area of potentially impaired groundwater. Septic systems on the entire site will contribute to further groundwater degradation, and may result in significant cumulative adverse impacts to water quality in the Agua Dulce Groundwater Basin
- Dry sewers will be installed to connect the individual lots to the treatment plant. Building permits will not be issued for any lots in Phases IV to XII without evidence of adequate sewage treatment capacity.

EIR Topical Comment 4 response

- Page 4.1-5 of the 1994 EIR
- Acknowledges that the construction and operation of the wastewater treatment plant could have significant impacts:
 - Clearing, grading and excavation of natural habitat, impacting biological resources
 - Air pollution, fugitive dust and ambient noise from heavy equipment
 - Risk of spill or explosion from the transport and storage of hazardous materials like chlorine
 - Discharge of tertiary-treated water on the Santa Clara River

EIR Topical Comment 4 response

- Page 4.1-5 of the 1994 EIR
- Prior to the construction of the sewage treatment plant, environmental review will take place in order to:
 - Analyze the impact on the Santa Clara River
 - Analyze the impact on the unarmored threespine stickleback in the Santa Clara River
 - Analyze other environmental resources including air quality, noise, risk of upset etc.
 - Devise appropriate mitigation measures to reduce the impacts, where feasible, to a level of insignificance

1994 EIR Mitigation Measures

- Page 43 of the 1994 EIR Mitigation Measures Section 4.11 Wastewater Disposal and also 1994 CUP Groundwater cond. 3(a)
 - (a) Within 6 months after a community collection system [wastewater treatment plant] becomes available, each residence shall connect to the community sewer system **and properly close the private subsurface disposal system** [septic]
- Since phases IV to XII were never approved to be used with septics, this is a clear reference to the 68 homes in phases I-III being constructed with dry sewers for connection to the wastewater treatment plant after which the septics will be abandoned

1994 EIR Mitigation Measures

- Page 46 of the 1994 EIR Mitigation Measures Section 4.11 Wastewater Disposal and 1994 CUP Groundwater condition 12
 - In the areas of weathered bedrock, the subdivider or seller shall, as part of the sale to a buyer, install and proof test a seepage pit on each lot in the first three phases to the satisfaction of the County
- Page 47 of the 1994 EIR Mitigation Measures Section 4.11 and CUP Groundwater condition 15
 - Building permits shall not be issued for any lot in Phases IV through XII of the proposed project without evidence of adequate sewage treatment capacity

2002 letter from DPW re Wastewater Plant

- September 18th 2002 letter from James Noyes, Director of LA County Public Works, to the developer B&C Land and Water, LLC
 - Your tract was conditioned to upgrade the proposed WTP and outlet sewer lines serving Tract 48786 (Sierra Colony)
 - Since Tract 48786 recorded first, B&C Land has to construct the WTP
 - On 24 October 1991, the Supervisors adopted Community Facility District No 6 for a WTP on Lot 703 of the Rio Dulce Project (Tract 50259)
 - It is still the intent of the County to require a regional WTP as a condition of tract development in the area
 - The Agua Dulce Residential Project is now required to build the first phase of the regional WTP
- This issue appears to be the catalyst for the 2007 Supplemental EIR

Parts of the project changed in the 2007 EIR

- CEQA allows a project to be approved without all the environmental impacts of subsequent stages having been analyzed and mitigated as is the case in the 1994 EIR that acknowledges the need for an EIR for the wastewater treatment plant however CEQA doesn't allow for these subsequent stages not to be analyzed at all
- Prior to 2002 when the first 3 phases were recorded, the wastewater plant was 'someone else's problem' – the developers of Rio Dulce Tract 50259
- When the 2007 Supplemental EIR for the project was approved however, the wastewater treatment plant became the responsibility of the developers of the Agua Dulce Residential Project
- On approval of the 2007 Supplemental EIR, all the project's wastewater treatment became the responsibility of one entity and is not dependent on anyone else to fulfill these obligations as was previously the case in 1994

Parts of the project changed in the 2007 EIR

- Wastewater entitlement 1994- April 2007
 - Build the first 68 homes of Phases I-III with septic systems and dry sewers
 - No building permits for Phases IV-XII without adequate sewage treatment capacity
 - Connect Phases I-III to the proposed off-site sewage treatment plant within 6 months and close the residential septic systems
 - Connect 61 Sierra Colony homes to the offsite wastewater treatment plant
- Wastewater entitlement April 2007 to date
 - Construct a wastewater treatment plant on the project site instead of the previously planned septic systems and off site wastewater treatment plant
 - Construct Phases I-III at the same time as the sewage treatment plant and not use septic systems on the site at all (septic system permit was terminated by the developer in 2012)
 - No building permits for Phases IV-XII without adequate sewage treatment capacity
 - Connect 61 Sierra Colony homes to the wastewater treatment plant

2007 SEIR Findings of Fact

- Section 2.1 Wastewater, Page 1-5 Findings of Fact/Statement of overriding considerations

“In Agua Dulce Groundwater Basin in particular and to some degree the Santa Clara River Basin, both of which underlie the project site, groundwater contamination from past uses and from ongoing septic tank use in the area is a concern. At the time of the final EIR [1994], the 68 unit (now recorded) portion of the site was to operate using septic systems. The revised project, which is evaluated in the Supplemental EIR, provides for all project units, including the 68 recorded units, plus an additional 61 off-site units, to be served by a superior method of waste disposal, reducing impacts to the local groundwater basins.”

- This resulted in wastewater classification of ‘less than significant impact’

So the answer to the question is.....

- A wastewater treatment plant has been a critical and necessary facility for the entire Agua Dulce Residential Project since it was approved in 1994
 - The Regional Water Board, the Town Council and community had expressed concerns over the impact of septics on the local groundwater in 1993
 - The 1994 EIR confirms the future connection to the wastewater treatment plant was to mitigate the need for a hydrogeologic study of the septic systems
 - In the 29 years since the project was first approved, no hydrogeologic studies have been performed for the septics and no EIR has been produced for the wastewater treatment plant (either offsite or onsite) and the unrecorded map expires in Oct '23
- Without a wastewater treatment plant, it is highly unlikely the project would have been approved in 1994 since **a regional wastewater treatment plant was and is an LA County condition for tract development in the area**

The weight of the evidence in the record

- LARWQCB's response to the grievance petition
 - Final Bound SEIR 2007 Section 2.1 Project Location and Overview Page 7
“Los Angeles County certified the previous Final EIR for Agua Dulce Residential project and approved the project in 1994 for 339 single-family residential lots along with open space lots and water tank lots on 908 acres. Subsequently, a 68-unit (approximately 163-acre) portion of the project was recorded. Currently, the project applicant, B&C Land and Water, LLC, is proposing a revision to the remaining 745-acre, unrecorded portion of the project.”

The weight of the evidence in the record

- RTG's response to the grievance petition

- SEIR 2007 CEQA Findings of Fact Page I-4

“The Findings in this document are for the unrecorded portion of the Agua Dulce Residential Project and are supported by information and analysis from the Final Supplemental EIR as defined above.”

- 2007 SEIR 2007 Findings Page I-1 I-2*

“The project consists of 247 single-family residential lots with open space areas, water tanks, wastewater treatment facility and associated uses. The previously recorded Phase I portion of the project includes 68 dwelling units of the eastern 68 acres of the 163 acre Agua Dulce Residential Project. As full approvals have been granted for Phase I, the current discretionary action applies to the remaining 247 units on 745 acres.”

The weight of the evidence in the record

- Petitioner's references to wastewater treatment plant being used instead of previously planned septics and offsite wastewater plant
 - 2006 Supplemental EIR Notice of Preparation – “instead of”
 - February 2007 verbal testimony of Dennis Bushore before the Agua Dulce Town Council – “We're not going to have any septic systems whatsoever in this project”
 - March 2007 Staff Report to the Planning Commission – “in lieu of”
 - 2007 SEIR CEQA Findings of Fact “was to operate using septic systems”
 - April 2007 SEIR – recorded portion will be constructed within the same timeframe as Phase 2 of Tract 50385

Are Phase I-III septic systems even viable?

- Adjacent properties have looked for suitable areas that meet LA County's requirements to dig a 20' deep seepage pit for septic percolation testing
 - Only downslope lower areas close to Valley Sage Rd met this requirement
 - A property adjacent to Sunset Way dug multiple test holes to no avail
- The January 6th 2023 letter from RTG to the State Water Board
 - Page 11 of 23 - Agua Construction LLC titled 2.0 Precompaction Test Site.
 - The notes at the bottom of that page indicate that since the alluvial soil is unstable, a keyway has to be cut across each residential lot to 'flip' the soil to get the lower soil onto the surface for compaction. The notes indicate that they may have to go to depths of up to 14' to get to a solid footing
- The solid footing on this site is mainly bedrock and if it is at a max. depth of 14' then few of the proposed lots will pass LA County's 20' requirement
- Is this also a reason why the developer elected not to use septics in 2007?

The Porter Cologne Water Act

- California's version of the Federal Safe Drinking Water Act
 - The framework within which the State Water Resource Control Board operates
- The policy of the state is that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes”
 - All relevant state agencies shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria
- The state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality

The Porter Cologne Water Act § 13050

- “Water quality control” means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.
- “Nuisance” means anything which meets all of the following requirements:
 - (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - (3) Occurs during, or as a result of, the treatment or disposal of wastes.

The Porter Cologne Water Act

- § 13169 it is the responsibility of the State/Regional Water Quality Control Board to prevent and abate water pollution and nuisance
- § 13300 whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements

The Porter Cologne Water Act

- § 13381 allows that waste discharge requirements or dredged or fill material permits may be terminated or modified for cause, including, but not limited to, all of the following:
 - (a) Violation of any condition contained in the requirements or permits.
 - (b) Obtaining the requirements by misrepresentation, or failure to disclose fully all relevant facts.
 - (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Wastewater treatment plant status

- In January 2015, the LA County Department of Sanitation advised it would take 5 years to review and approve the wastewater treatment plant
 - 8 years later there are still no required environmental documents for this 'conceptual' facility
- In February 2022, the RTG's legal adviser indicated under oath that:
 - They did not know when the wastewater plant plans would be ready for review by the LA RWQCB, but it would be 'a lengthy process that requires more analysis'
 - The developer's legal representative **VOLUNTEERED before the regional board** that could simply let the unrecorded map expire if they so chose
- In September 2022, the RTG's legal counsel was circumspect as to whether any plans for a wastewater treatment plant would be produced by their subcontractor before the unrecorded map finally expires on October 11 '23
- In January 2023, the developers letter to the State Water Board describes the Agua Dulce Residential project as a 68-unit project
 - The Agua Dulce Project is a 315 home development with a wastewater plant

The ADTC comment letter to the SWQCB

- The 2007 Supplemental EIR made the construction of the wastewater plant a condition precedent to all phases of the project and no septic systems will be used
 - Dennis Bushore, VP of B&C Land and Water, LLC said as much to the community in February 2007 at the Agua Dulce Town Council meeting
- There are still no formal plans for the wastewater treatment plant and the unrecorded map and associated Conditional Use Permit expire in October 2023
 - There can be no guarantee that a replacement CUP could be secured due to stricter environmental regulations on subdivision development in rural high fire hazard severity zones
 - No wastewater plant = no project

The ADTC comment letter to the SWQCB

- The 2007 Supplemental EIR does apply to all phases of the project
 - The accompanying March 2007 Staff Recommendation to the Planning Commission states on Page 6 that “The Draft Supplemental EIR addresses the changes proposed by RVTTM 50385, **which affect both the previously recorded and currently unrecorded portions of the project.**”
- There are no hydrogeologic studies for the septic systems or a wastewater treatment plant that the regional water board itself identified as necessary in 1993
- After approval of the 2007 SEIR, there is no longer a wastewater entitlement under which replacement septic permits can be issued

The ADTC comment letter to the SWQCB

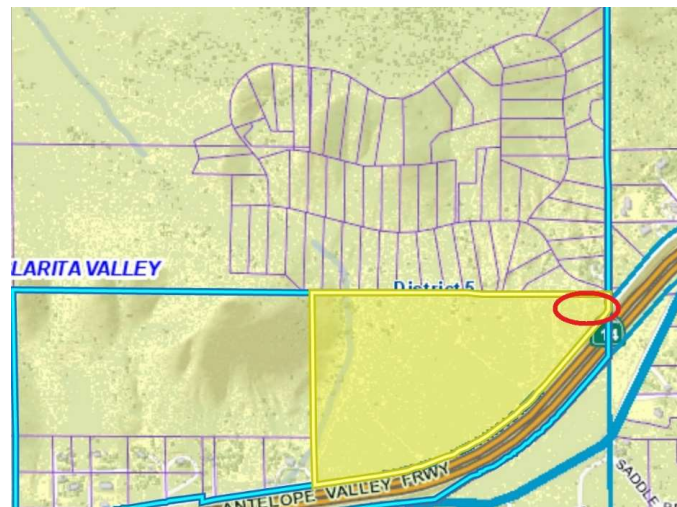
- Approval of the dredge and fill permit by the regional board is inconsistent with various provisions of the Porter Cologne Water Act including sections 13169, 13281(a), 13283, 13300 and 13381(b)
- The water supply for Phases IV to XII of the project has not yet been secured despite being identified as a critical issue by Los Angeles County in the November 2018 WW-172 application for new metered water service
 - Public Works confirmed they have 'no records responsive to this request' in mid March 2023
- The grievance petitions were timely filed and irrespective, the State Water Board has the authority to act 'at any time'

The ADTC comment letter to the SWQCB

- Had these facts been properly known to the Los Angeles Regional Water Quality Control Board, the proper decision would have been to take 'No Action' until these issues were resolved
- Irrespective of whether any grading work has occurred on site under the permit, the developer's stated intent to construct Phases I-III of the project with on-site septic systems is outside the scope of the wastewater entitlement described in the 2007 Supplemental EIR and also within the scope of the Porter Cologne Water Act Section 13300
- The concerns regarding the validity of the financial assurance raised in October 2022 were also reiterated

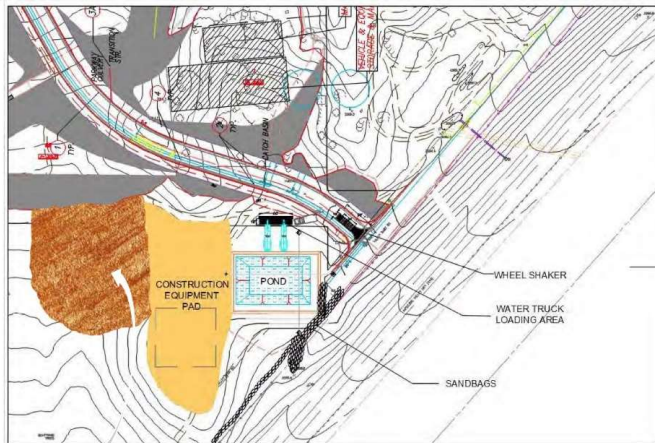
Potential for unpermitted grading

- RTG's responses to the SWCB in January and March 2023 included various attachments
- Information about the project including site photos and plans
- Some work is suggestive that grading and temporary construction is being undertaken outside the recorded and unrecorded project boundary on APN 3216 019 001



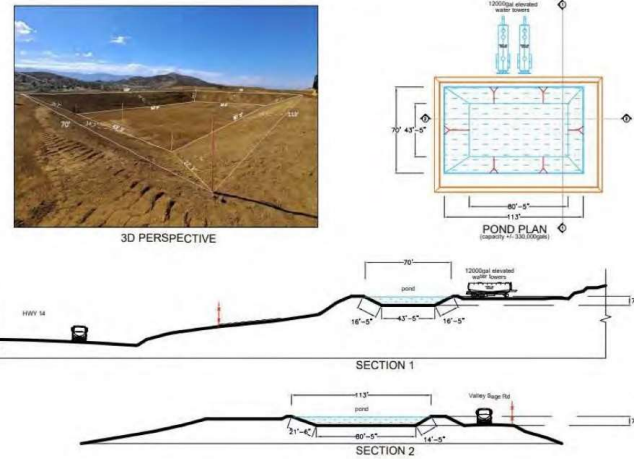
Potential for unpermitted grading

- A large 70' x 113' lined water pond has been constructed on APN 3216 019 001 (~160-200K gals.)
- RTG is also proposing to stockpile 120,000 cubic yards of dirt on this lot (more than 50 cu. yds!)
- APN '001 is not part of Tract 50385-01 for which the grading permit was issued in mid 2022 and LA County Department of Building & Safety has no records of any permits for APN '001



Stockpile (+/-120000CY)

Layout at Valley Sage Entrance to date.



Pictures of graded equipment pad and pond



Valley sage entrance to phase 1



Storage area on the construction equipment pads alongside the dirt stockpile of +/- 120000 CY of dirt. (Installed bmp WM-1)

Source: Letters from Mitchell Chadwick, LLP to SWRCB, January 9th 2023 and March 17th 2023

- None of this was ever addressed in the 1994 EIR or the 2007 SEIR since lot 3216 019 001 has never been included in the Agua Dulce Residential Project environmental documents or CUP

The status of the 2002 performance bonds

- Bonds were originally issued by Gulf Insurance in 2002
- Traveler's Insurance acquired Gulf Insurance in 2005
- Traveler's Insurance responded to the council's February request on April 11th as follows "Given the amount of time that has passed since these bonds were written, I cannot at this time confirm whether these bonds remain in force"
- Traveler's provided copies of the annual bond renewals through May 2016 but not beyond

Status of the 2022 Grading bond

- The July 2022 Grading Permit is dependent on a \$2.27m letter of credit that was issued by Credit Suisse in Switzerland
- Credit Suisse experienced significant customer withdrawals of approximately \$119 Billion and liquidity concerns in late 2022 and early 2023 prior to the takeover by United Bank of Switzerland in mid March.
- Are sufficient funds still in the nominated Credit Suisse account owned by Vinette Trading Company to cover the letter of credit?

Next steps

- Consider the following motions:
 - Write to Supervisor Barger noting concerns over the significant construction on APN 3216 019 001 that is outside the recorded and unrecorded maps approved in 1994 and 2007
 - Proceed with the letter to Supervisor Barger regarding the uncertain status of the performance bonds as previously approved
 - Continue the dialogue with Traveler's Insurance to clarify the bond status
 - Write to Supervisor Barger seeking confirmation via the Department of Public Works from Credit Suisse representatives directly that the underlying funds provided for the July 2022 letter of credit remain available. If the letter of credit is no longer valid for whatever reason, a copy of the replacement financial instrument should be requested from the issuing financial institution via Public Works.