

The Agua Dulce Residential Project

Agua Dulce Town Council meeting

Wednesday May 10th, 2023

Agenda

- Supplemental brief to the State Water Control Board regarding RTG and the LARWQCB's response to the grievance petition
- Los Angeles Regional Water Quality Control Board response re RWQCB's study of the groundwater basin
- LA County Regional Planning response re lot 3216 019 001
- LA County Department of Public Works response re
 - Development activities being carried out on 3216 019 001
 - The verification of the 2022 grading letter of credit

Brief submitted to the State Water Board

- Submitted to address some mischaracterizations and errors contained in the March 17th briefs of the Regional Board and RTG pursuant to 23 Cal. Code Regs., § 2050.5 - “Additional submissions will be allowed only upon written request and at the discretion of the state board.”
- The brief explains that the 2007 SEIR and 2007 County Findings and conditions of approval in support of the Project approval support the community’s argument that Phase I cannot rely on septic systems and instead, must be connected to a wastewater treatment facility

The Supplemental EIR does apply to Phase 1

- The Regional Board and RTG falsely claim that the 2007 Supplemental EIR did not apply to Phase 1 (phases 1-3 or Tract 50385-01)
 - Louis Pratty secured a General Wastewater Discharge Requirement (GWDR) for the first 3 phases under Order 91-94
 - In 2007 the developer agreed to a major Project revision whereby the recorded and unrecorded phases would be connected to a wastewater plant due to concerns about groundwater quality
 - The GWDR was lapsed in 2012 at the developer's request
- RTG's submission claims that "because full approvals had already been granted for Phase I, and the Phase I Tract Map recorded, when the 2007 SEIR was certified, the 2007 SEIR and the corresponding 2007 Project Approvals only applied to and affected Phase II of the Project."

The Supplemental EIR does apply to Phase 1

- RTG's submission further states that:
 - “the 2007 SEIR thus in no way applied to or affected the existing 1994 Project Approvals, including the septic systems already approved as the wastewater system for Phase I prior to any subsequent construction of and connection to an available community wastewater treatment facility.”
- The LARWQCB's submission claims that:
 - “the EIR clearly states that the 2007 SEIR pertains only to subsequent phases of the development, not the 68 residences on the 163 acres – Phase 1 - that is the subject of the Order”; and
 - “the eventuality of the residences in Phase I being connected to a wastewater treatment system was contemplated, evaluated, and circulated to the public – all in keeping with CEQA.”

The Supplemental EIR does apply to Phase 1

- By claiming that the eventuality of that connection was merely “contemplated” by the County, the LARWQCB implies that this “eventuality” was not actually required as a condition of approval. This contention is demonstrably false.
- RTG further claims that:
 - the 2007 SEIR, rather than the 2007 Project Approvals is somehow the controlling document binding the responsible agencies to the analysis contained therein; and
 - the record does not support Petitioners’ argument that the 2007 SEIR and 2007 Project Approvals modified the 1994 Project approvals by requiring the construction of an on-site wastewater treatment plant would entirely replace the septic systems for the sixty-eight (68) Phase I lots.

The record shows that these claims are wrong

- The 2007 CEQA Findings ‘Project Background’ state:
 - “Revised Vesting Tentative Tract Map to redesign the as-yet unrecorded portion of the Agua Dulce Residential Development project. That map would allow for a total of 247 single-family lots, four open space lots, two park lots, one wastewater reclamation lot and plant, and equestrian trails. **The wastewater reclamation facility will serve the proposed project, including all recorded and as-yet unrecorded project lots, as well as 61 existing units from the nearby Sierra Colony development** (which are currently on septic tanks). By utilizing a wastewater reclamation plant, the project will avoid further impacting area groundwater nitrate levels. Nitrate levels are currently high in the area due to the wide use of septic wastewater disposal systems.”

The record shows that these claims are wrong

- The 2007 CEQA Findings further explains:
 - “both the Agua Dulce Groundwater Basin and to some degree the Santa Clara River Basin, which both underlie the project site, suffer from groundwater contamination from past uses and from ongoing septic tank use in the area is a concern.”
 - “at the time of the Final EIR, 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 unites, **to be served by a superior method of waste disposal, reducing impacts to the local groundwater basins.**”
- These Findings supported the CEQA conclusion that the project would not cause a significant cumulative impact on water quality

The record shows that these claims are wrong

- The 2007 Statement of Overriding Consideration took credit for reducing the project's significant adverse environmental effects in part by:
 - “providing an on-site wastewater treatment facility to avoid water quality impacts from the project, the recorded earlier Phase I of the project and 61 off-site units, ...”.
- The County then concluded that the benefits of the project outweigh the potential unavoidable significant adverse impacts, in part due to:
 - “(2) Septic systems **have been eliminated** since **the previously approved project and a wastewater treatment facility will be included** to eliminate project impacts to currently impacted groundwater table.”

The conclusion re septics from the record

- The 2007 Findings of Fact and Statement of Overriding Considerations demonstrate that RTG and the Regional Board's claim that the 2007 approval did not affect Phase I must be rejected
- The record evidence shows that:
 - the County revised its approval of the whole of the Project, i.e. all phases, by requiring the applicant to construct a regional wastewater facility that would serve both the recorded Phase I and the as yet unrecorded Phase II of the Project, as well as additional proposed development.
 - the County revised the Project, including Phase I, by requiring that all Phases of the Project must connect to an onsite wastewater facility.

The wastewater plant's uncertain future

- The unrecorded Phase II tentative map will expire in October 2023
- The March letter from the ADTC explains that the current developer appears to have no firm plan to undertake the work and studies needed to get the wastewater plant designed and approved
- RTG has no realistic chance of having a wastewater treatment facility approved before the expiration of the map in view of the extensive environmental studies that are required for its approval which are spelled out in the 1994 EIR
- RTG's legal counsel volunteered under oath before the LARWQCB in February 2022 that they may let the unrecorded map expire if they so choose
- Evidence supports the conclusion that the wastewater plant won't be built

The Regional Water Board's CEQA obligations

- If a wastewater treatment plant is not built, it undermines the conclusions of the 2007 SEIR regarding the project's significant adverse environmental effects on groundwater
 - Phase I residences would not utilize septic systems and instead, would be connected to the wastewater treatment facility
- The LARWQCB did not seek any assurances from RTG that the wastewater treatment facility would actually be built
- Based on these facts, the LARWQCB was required to conduct further environmental review to determine:
 - (1) whether it is reasonably foreseeable that the wastewater facility required by the County in 2007 would be constructed within a reasonable time; and
 - (2) if not, assess the potential environmental impacts on groundwater supplies that would result from the reliance of Phase I residences on septic tanks; and
 - (3) whether any Phase of the project would have been or would be permitted to proceed in any form absent a regional wastewater facility.

The Regional Water Board's CEQA obligations

- Even if RTG is correct in their assertion that Phase 1 can be built with septics and no wastewater treatment plant, the LARWQCB is still required under CEQA to conduct adequate review of the environmental impacts associated with septic systems as this was never undertaken in 1994 or 2007 because the GWDR for septic systems had already been issued without any hydrogeologic review
- When a responsible agency such as the LARWQCB is required to take or authorize a discretionary action on the project, it may be required under CEQA to prepare a subsequent EIR or an Addendum if changes in the project itself or the surrounding circumstances are such that the project may cause a more significant or new potentially significant impact on the environment - California Coastkeeper Alliance v. State Lands Commission (2021)

The Regional Water Board's CEQA obligations

- RTG appears to have no intention of undertaking the planning, permitting and construction of a regional wastewater facility
- This constitutes a significant change in the project and the circumstances under which it will be undertaken
- Since the LARWQCB erroneously concluded that the 2007 EIR/Approvals did not apply to Phase I and that Phase I can be built with septic systems alone, the Regional Board was obligated to consider the environmental impacts of moving forward with the Project without the wastewater facility by preparing a subsequent EIR.
- The Regional Board's decision to approve the WDR in February 2022 without any subsequent environmental analysis was abuse of discretion

Agua Dulce Groundwater Basin Study

- 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.**

LA RWQCB response to records request

- A Public Records Request (#2023041006) was submitted to the Los Angeles Regional Water Quality Control Board for a copy of any studies of the Agua Dulce Groundwater Basin published since 1992
- A document entitled “Final Report. Regional Groundwater Assessment and Well Data Survey. August, 1993.” was located
 - Bound document that must be inspected on site at LARWQCB offices
- Response carries a disclaimer “However, the captioned text from the 1994 EIR appears to have misunderstood the Board’s comment on the draft EIR. The Board’s comment on the draft EIR made no statement that the Board would be conducting a groundwater study.”

Regional Planning response to record request

- A Public Records Request was submitted to the Los Angeles County Department of Regional Planning and also to the Department of Public Works for a copy of any correspondence related to APN 3216 019 001
- The only document on file is a 1999 Certificate of Compliance (99-0592) of which a copy is not available
- COCs are typically submitted to combine or subdivide contiguous lots
- No response from Department of Public Works as yet

Public Works response to ADTC letters

- On May 9th, ADTC received a written response from LA County Department of Public Works (DPW) to the letter sent in April 18th and April 24th letters to Supervisor Barger related to the activity on lot 3216 019 001 and the status of the various 2002 and 2022 bonds
- The Council noted that construction of a pond and stockpiling of dirt is occurring outside the approved project boundary
 - The DPW confirmed that there are 5 flood control easements along the southern boundary of the project that were approved in 2006 as part of a grading plan prior to map recordation (*however the Phase 1 map was recorded four years earlier in April 2002 and the Phase 2 map is unrecorded*)
 - Grading is occurring within the area in these easements per the grading plan

Public Works response re stockpiling

- Once the grading operations have reached the appropriate stage, the developer will apply for flood construction permits to construct the actual drainage improvements.
- Some of the grading in the flood control easement is beyond the boundaries of the easement
- A Notice of Correction was issued on April 20th to correct this
- The Notice requires the developer to remove the stockpiled soil outside the easement boundaries and to restore the area to the satisfaction of the County.
- Grading operations are being allowed to continue within the easement and tract boundaries
- A recent follow up inspection confirmed that the developer is in the process of removing the stockpile

Public Works response re stockpiling & pond

- The Project Manager and design professional have indicated that the stockpiled soil will be relocated within the project boundary but it may take some time
- Public Works and Regional Planning will continue to monitor the project to ensure the grading work performed at the site meets the approved grading plans and permit
- The response is moot as to the questions raised about the pond that has been constructed on the site outside of the project boundary including whether any permits or environmental studies were ever obtained
 - A 150-200,000 gallon pond is very different from a drainage improvement

Public Works response re gap in agreement

- The Council noted that there appears to be a 5 year gap in the Multiple Agreement renewals between May 2016 and June 2021 and asked why it did not lapse through non renewal during this period
 - The Multiple Agreement was last extended in June 2021 (*we already know this*)
 - It was not extended in June 2022 since the developer and the County are working on a replacement multiple agreement which is a draft and cannot be disclosed
 - The original Multiple Agreement does not expire and remains in effect until the replacement Multiple Agreement and related bonds have been secured by the new owner. The original Multiple Agreement remains valid even during the claimed 5-year gap (so why are there no records of its renewal during this period?)
 - The Subdivider is also required to maintain the improvement security and payment security in full force and effect during the terms of the Multiple Agreement, including any extensions of time as may be granted
- The 3 way agreement between the County, Insurer and the previous Developers appears to allow a change in terms but not in the parties

Public Works response re financial assurance

- The Council asked how the County will hold the developer financially accountable to either complete the necessary works covered by the Multiple Agreement or undertake the restoration of the site and adjacent locations
 - The County's letter was moot on this question

Public Works response re 2002 bonds

- The Council noted that Travelers Insurance representatives researched the origination of the bonds with Gulf Insurance and their Senior Counsel's April 2023 response indicated that "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."
 - On September 22, 2022, Traveler's Insurance confirmed that the eight relevant bonds remain in effect
- In December 2022, the Council submitted Public Records Request #5374 seeking copies of the correspondence between the County and these third parties (Traveler's Insurance) related to the 2002 bonds. The County was "unable to determine whether there are any disclosable documents that are responsive to this request." yet they were allegedly available as of September.

Public Works response re 2022 bonds

- The Council request to re-validate the Letter of Credit with Credit Suisse directly and to provide the Council with confirmation of the continued valid financial assurance
 - Public Works has verified the validity of the letter of credit (LOC) provided by Credit Suisse AG in the amount of \$2,270,000 for the grading work being conducted at Tract 50385-01 in Agua Dulce, California (*but it doesn't say when this was done*)
 - Due to recent instabilities in the banking industry, we have been checking every 2 weeks for financial institution ratings (*but a bank's rating does not tell you whether there is still sufficient money in the account to cover the letter of credit*)