

# The Agua Dulce Residential Project

Agua Dulce Town Council meeting  
Wednesday September 13<sup>th</sup>, 2023

# Agenda

- LA County Department of Public Works meeting with Town Council and Community members on August 1<sup>st</sup>
  - Expired contractor's license for Agua Construction, LLC
  - Dust mitigation measures
  - Site operating hours
  - Repair of Valley Sage Road
  - Temporary water pipe location at the end of Valley Sage Road
  - Non-payment of third party vendors
  - Periodic stoppages on site and coordination with other agencies
  - Impact of the Estes lawsuit on the 2002 easements
  - Validation of 2022 rough grading letter of credit
  - Recording of Phase 2 open space lots
- Correspondence received re validity of 2002 infrastructure bonds
- Disclosures from CDFW re designated biologist

# Public Works response re contractor license

- The CA State Contractor Licensing Board website indicated that as of July 31<sup>st</sup>, Agua Construction LLC's license had expired due to failure to renew liability insurance and contractor bond since 6/24/23
- LA County issued a correction notice and gave the contractor 2 weeks to cure
- Agua Construction obtained the insurance and reinstated the license

# Public Works response - dust mitigation

- During June and July a reasonable amount of dust was blowing outside the Eastern boundaries of the project site causing neighbors to complain to the EPA/SCAQMD
  - The water pond was empty for days so limited water trucks were operating
- DPW also reported the violations to the SCAQMD
- SCAQMD inspector went to the site and no violations were noted
- The inspector reviewed the requirements for large grading operations with the contractor
  - <https://www.aqmd.gov/home/rules-compliance/compliance/rule-403-dust-control-information>
- DPW confirmed with SCAQMD that there have been no violations to date on this project
- Caveat – if the site inspection is not on a windy day, no dust will be visible

# Public Works response - hours of operation

- There is some discrepancy between LA County policy documents and the approved CUP however the CUP takes precedence
  - Site work should not commence prior to 7am in the morning per the CUP
- Senior DPW staff will meet with the contractor to address this and other violations and explain the consequences of continued violations

# Public Works response – Valley Sage Road

- Following the installation of the water main, the Northerly side of Valley Sage Road is in disrepair with an uneven surface.
  - Residents have to cross the trench to enter/exit their properties
- DPW staff indicated on August 1<sup>st</sup> that repairs to Valley Sage Rd would be made within 3 weeks
- Subsequently, DPW staff have advised that this remediation work is now scheduled for September 18th

# Public Works response – Temporary water

- Following completion of the water main, a temporary water connection was constructed in what appears to be the road easement
  - On the surface, this appeared to be a circumvention of the need for new bonding for any water infrastructure constructed within the project site
- DPW staff indicated that temporary water connections of this nature are commonplace and that since it is temporary, it is not part of the bonded infrastructure that would be adopted by DPW District 37
- DPW staff noted that the purpose of the temporary connection is to allow the pond to be filled for dust mitigation measures

# Public Works response – Vendor non payment

- In recent weeks, mechanics liens have been filed on the parcels that comprise Phase 1 of the project
  - CDFW disclosures indicate that the designated biologist suspended their work on the project in mid May due to non payment
- Elite Earthworks, the contractor who installed the water main and was to have obtained the water meters for Mr. Estes, indicated that due to the changes at RTG, they are no longer providing any further services to RTG or the Project
- DPW staff noted that it is not uncommon for invoices to go unpaid by certain developers for ‘a couple of months’ and that they have not yet drawn down on any bonds related to the water main installation



# Public Works response – site stoppages

- Since mid to late June, grading on the project has ceased for extended periods in contrast to the preceding months
- DPW staff noted that it is not uncommon for work to stop however they do not coordinate with other agencies that have 'stop work' oversight on the project although DPW prefers to act as the lead agency to prevent conflicting requests being made of the developer
- DPW suggested that the ADTC reach out to the California Department of Fish & Wildlife to understand what action they may have taken regarding the suspension of the designated biologist required by the CDFW Streambed Alteration permit

# Public Works response – Estes easement

- There is a second lawsuit between Ken Estes and RTG regarding their failure to deliver the water meters prior to using water from the main
- DPW indicated that during the preparation of the rough grading plans, the area around Sunset Way was revised such that the easement is no longer required
  - It would have been useful if this had been disclosed when ADTC asked in 2022
- LA County views Mr. Estes statements as misrepresentative
  - What LA County seems to fail to appreciate is that Mr. Estes has fulfilled his obligations by granting the easement and whether the developer now needs it or not is moot since they obligated themselves to providing 3 water meters
  - Laches is also an issue if Mr. Estes does not act to enforce his agreement

# Public Works response – 2022 grading LOC

- Given the challenges experienced by Credit Suisse Bank in late 2022 and early 2023, ADTC had suggested that LA County re-validate the July 2022 Letter of Credit during the June 5<sup>th</sup> meeting
- DPW explained at length that there had to be fund/assets available for the LOC to have been issued in 2022
  - ADTC doesn't dispute this, but pointed out that the LOC renews every 12 months and that there should be some documentation confirming its renewal in 2023 that would serve to demonstrate it's ongoing validity
- DPW pushed back on this request citing the need to refer to County Counsel in order to confirm the continued validity of the LOC
  - Since this push back is unusual, ADTC asked what difference it makes to DPW staff whether the County submits this request to Credit Suisse or not

## Public Works response – Phase 2 recording

- On February 2<sup>nd</sup>, a request for final map for Tract 50385-02 (Phase 2 open space) was filed with LA County Regional Planning under reference RPAP2023001076 assigned to Joshua Huntington
- DPW explained that by recording this open space, it would extend the unrecorded map of Phase 2 by a further unspecified period of time
- DPW indicated that there are similar projects around LA County where this approach has been taken by developers to extend unrecorded tract maps
- The revised phasing plan includes the wastewater treatment plant and secondary exit as part of Phase 3

# Traveler's Insurance response – 2002 bonds

- There are two aspects of the California Code of Civil Procedure that determine whether LA County can make a claim under the 2002 bonds, both of which take their timing from the last extension of the Multiple Agreement to which the bonds are attached
- California Code of Civil Procedure Section 338(a) allows a period of 3 years for liability created by statute
- California Code of Civil Procedure Section 337 allows a period of 4 years for breach of contract.
- In Public Records disclosures, LA County DPW could only produce extensions of the 2002 Multiple Agreement until May 2016

# The 2002 bonds – scenario 1

	May 2016	May 2017	May 2018	May 2019	May 2020	May 2021	May 2022	May 2023
Claim for statute	X	X	X	X				
Claim for Breach	X	X	X	X	X			

- May 2016 was the last date to which the 2002 Multiple Agreement was extended
- Claims for statute expired in May 2019
- Claims for breach expired in May 2020

## The 2002 bonds – scenario 2

	May 2019	May 2020	May 2021	May 2022	May 2023
Claim for statute	X	X	X		
Claim for Breach	X	X	X	X	

- LA County can't find their records and the 2002 Multiple Agreement may have been extended for the final time in May 2018 through 2019
- The previous developer sold the project to RTG in December 2018 so it is unlikely that Brandenburg/Coussoulis could have legally extended the 2002 Multiple Agreement beyond May of 2019
- Claims for statute expired in May 2021
- Claims for breach expired in May 2022

## The 2002 bonds – scenario 2

- LA County was able to confirm a \$570 extension payment made by RTG in June 2021 related to a Multiple Agreement for the project
- LA County indicated that this agreement was still in draft as of late 2022/early 2023 and therefore could not be disclosed to the public
- It is reasonable therefore to assume that the June 2021 payment was not related to the 2002 Multiple Agreement, but to the replacement agreement that is still in draft
- The reasonable conclusion is that the bonds related to the 2002 Phase 1 Multiple Agreement are no longer of any value to LA County by virtue of California Code of Civil Procedure Section 338(a) and 337



# Replacement bonds – DPW position

- During the June meeting between ADTC and LA County, LA County stated that they would not issue any infrastructure permits for Phase 1 without replacement bonds being put in place by the developer.
- ADTC sought to confirm this in writing with LA County
- LA County DPW responded on August 24<sup>th</sup> with the following:
- “no new or additional permits will be issued for the project until new securities, in the form of bonds or Letters of Credit that meet the County's minimum standards, and a new Multiple Agreement (MA) to replace the existing bonds and MA for the storm drain improvements, survey monuments, in-tract water system, and street improvements, have been provided by the developer (RTG Investment). The new securities and MA must be in the amounts corresponding to the present-day cost of the improvements. The amounts for these bonds have been reviewed, approved by the County, and provided to the developer.”

# CDFW Streambed Alteration Agreement

- In 2021, RTG Investment secured a Streambed Alteration permit from the CA Department of Fish & Wildlife to grade in areas on the Southeastern portion of Phase 1 where ephemeral blue streams are present on the site
- The permit requires a 'designated biologist' to monitor the site for a variety of issues including wildlife, protected species and water quality/storm water runoff
- At LA County' suggestion, ADTC filed a PRR with the CDFW
  - Designated biologist suspended their work on the project in mid May 2023 due to non-payment and has not yet resumed their services
  - CDFW was preparing to send in a warden for a site visit in late June/early July

## Next steps

- Write a follow up letter to Traveler's Insurance thanking them for taking the time to respond and confirming the extensions to the 2002 MA that the council is aware of