

AGUA DULCE TOWN COUNCIL

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August 12, 2022

Anish Saraiya, Planning & Public Works Deputy
Los Angeles County 5th District Supervisor, Kathryn Barger
Los Angeles County Board of Supervisors
500 West Temple Street, Room 869
Los Angeles, CA 90012

Via Email to: ASaraiya@bos.lacounty.gov

RE: Agua Dulce Town Council requests clarification on issues discussed at the July 13, 2022 Agua Dulce Town Council meeting and inconsistencies and unresolved issues in responses from agencies regarding the Agua Dulce Residential Project (Tract 50385)

Dear Mr. Saraiya:

The Agua Dulce Town Council wrote to Supervisor Barger on March 18th 2022 raising a series of concerns related to how the Agua Dulce Residential Project was being approached both by the developer, RTG Investment LLC, and the Department of Public Works and Department of Regional Planning.

On May 5th, the Council received the County's joint response that was addressed to Supervisor Barger from Directors Mark Pestrella and Amy Bodek. This letter addresses some significant issues that have subsequently become apparent that draw some considerable question over the accuracy of written statements made by the Department of Public Works to the Supervisor's office in response to the Council's March 18th letter.

The Agua Dulce Town Council wrote to Supervisor Barger again on May 19th raising a number of concerns related to the Developer's apparent indirect ownership by a Moscow-based property development company, Rutsog Invest as well as the unusual funding path revealed by the now finalized Standby Letter of Credit from Vinette Trading Company Limited, a Nicosia, Cyprus-based company using a bank account in Zurich, Switzerland. The response to the points raised in the May 19th letter was received on the morning of July 13th 2022, shortly before the scheduled meeting of the Agua Dulce Town Council.

On July 13th, 2022, staff from Los Angeles County Public Works and Regional Planning attended the scheduled meeting of the Agua Dulce Town Council where various aspects of the Agua Dulce Residential Project were discussed.

During the meeting of the Town Council, a number of responses were given and statements were made by Los Angeles County staff which has given rise to a number of concerns also outlined in this letter.

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1. The increased capacity of the previously downsized Water System requires a Supplemental Environmental Impact Report pursuant CEQA 15162

During the Agua Dulce Town Council Meeting, Ms. Aracely Jaramillo, the Civil Engineer for Los Angeles County Waterworks who is overseeing the water system indicated that the water supply pipeline for the project had been increased in size from 12" diameter to 20" diameter as a result of a recent review of the hydraulic pressure.

The Findings of Fact and Statement of Overriding Considerations regarding the Final 1994 Environmental Impact Report (Section 1, Potential Environmental Impacts Which Are Not Significant Or Have Been Mitigated To A Level Of Insignificance, Water Supply Page 28) describe the Water System for the project (**all 12 phases totaling 339 homes at the time**) as creating a demand for 806,820 gallons of water per day (33,618 gallons/hour, 560 gallons/minute, 2,380 gallons/home/day). The Water System is described as comprising 66,000 feet of water main, three water tanks (2 x 1.25 million gallon, 1 x 0.5 million gallon), three booster pump facilities and two pressure reducing facilities.

A 12" diameter steel water pipe has an approximate maximum flow rate capacity of approximately 4,700 gallons/minute whereas a 20" diameter pipe has an approximate maximum flow rate capacity of 12,000 gallons per minute. (https://www.engineeringtoolbox.com/steel-pipes-flow-capacities-d_640.html) This is a 155% increase in maximum flow rate capacity.

Using the above estimates, a 12" water main supply pipe would have a theoretical maximum daily capacity of 6,786,000 gallons per day (4,700x60x24). In order to supply the forecast water demand for all phases of the project per the approved 1994 documents, the 12" water main supply pipe would need to be operated at 12% of its maximum capacity (806,820/6,786,000) in order to feed sufficient water into the two storage tanks to meet the project's water system needs.

By contrast, a 20" main water supply pipe would have a theoretical maximum daily capacity of 17,280,000 gallons per day (12,000x60x24). In order to supply the forecast water demand for all phases of the project per the approved 1994 documents, the 20" water main supply pipe would need to be operated at 5% of its maximum daily capacity (806,820/17,280,000) in order to feed sufficient water into the two storage tanks to meet the project's water system needs.

Given the fact that a 12" water main pipe would need to operate at 12% of its maximum daily capacity via three booster pump facilities in order to fill the storage tanks with sufficient water to meet the entire project's daily water needs, it is difficult to reconcile the logic offered by Ms. Jaramillo that the increase in pipe diameter to 20" is for 'hydraulic reasons' and that the previous water system could not meet the projected needs of even the first 68 residences (which represents 161,840 gallons/day based on the 1994 EIR projections or about 2.5% of the maximum daily flow capacity of a 12" water pipe).

Furthermore, in the Findings of the Regional Planning Commission that forms part of the 2007 Supplemental Environmental Impact Report Approval Package the Department of Regional Planning's Finding 27 related to CUP 2005-0171-(5) spelled out in bullet point 5 on page 26 contains the following statement: "Fifth, that the project's water system be expanded to meet the future water needs of nearby offsite residences. After meeting with staff, **the applicant clarified that the water system was intentionally "downsized" in the original project approval in order to reduce its "growth inducing" potential.** However, the water system was adequately sized to accommodate both the overall project (including the 68 recorded units) and an adjacent development known as Sierra Colony (61 units)."

This clearly states that the water system originally approved in 1994 was specifically sized to meet the needs of this project and the nearby Sierra Colony in order to mitigate the growth inducing potential. This is not a reference to the wastewater system since at the time of the original approval in 1994, the developer of the Agua Dulce Residential Project was not responsible for sizing the wastewater treatment

system which was to have been built by a different developer at the Rio Dulce Project (TR 50259), an offsite location approximately 2.5 miles southwest of the Agua Dulce Residential Project.

In light of the fact that, by County staff's own admission, there has apparently been a 155% increase in the capacity of the water system which was previously acknowledged as having been downsized to reduce the 'growth inducing potential' of the project, Section 15162 of the California Environmental Quality Act (CEQA) requires that:

(A) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) **Substantial changes occur with respect to the circumstances under which the project is undertaken** which will require major revisions of the previous EIR or negative declaration **due to** the involvement of new significant environmental effects or **a substantial increase in the severity of previously identified significant effects**; or

(3) **New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete** or the negative declaration was adopted, **shows any of the following**:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) **Significant effects previously examined will be substantially more severe than shown in the previous EIR**;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

In light of the above, the Council respectfully requests the following:

- 1) That the County requires a Supplemental Environmental Impact Report of the new increased capacity Water System as required under CEQA 15162 since the water system was originally downsized to reduce the 'growth inducing potential' of the project as noted in the approved planning documents.
- 2) That all further work on the installation of the project's water system that deviates from the previously approved EIR is suspended until the Supplemental Environmental Impact Report is approved and certified.
- 3) That the County staff provide a description of the previously approved water system as described in the approved planning documents (including water main pipe sizes, booster pump locations/specifications, water tank locations and storage capacity and pressure reducing facility locations/specifications).
- 4) That the County staff provide a description of the currently planned water system that has resulted from the engineering studies referenced by Ms. Jaramillo (including water main pipe sizes, booster pump locations/specifications, water tank locations and storage capacity and pressure reducing facility locations/specifications).

2. The water supply for the project does not exclusively come from the State Water Project and will be further impacted by the County Water Plan/Sustainability Plan

During the Council meeting, Ms. Jaramillo noted that the water supply for the project is imported water (from AVEK/State Water Project via District 37) however this is not what is expressed in the approved

planning documents. As previously noted in the Council's March 18th letter to Supervisor Barger, as written in the 1994 EIR in response to a question about the sufficiency of the water supply posed by the Agua Dulce Town Council, the Final 1994 EIR states "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." (1994 Final EIR, Response to Written Comments P 4.3-24 Response to Comment 30).

Ms. Jaramillo subsequently noted that future phases, Phase 2 (of the project) would require coordination with AVEK to undertake detailed analysis, including drought scenarios for single dry year and multiple dry years to make sure there is sufficient supply available before Phase 2 can move forward.

More recently, the County has initiated the County Water Plan (CWP) which has developed a number of stated objectives over the past several months that include:

- Expanding existing water infrastructure networks in LA County as one interconnected system providing opportunities to connect areas of supply with demand
- Promote the use of both regional local supply development and distributed local supply development
- Facilitate improvements in infrastructure connectivity for improved regional distribution flexibility including providing groundwater access to areas that don't overlie basins

The CWP also appears to be aiming to reduce reliance on imported water with 70%-80% of water being used having to come from the area it serves, likely limiting the state water available for Phase 2 from AVEK to around 20-30% maximum.

The community of Agua Dulce sits within the Integrated Regional Water Management Plan of the Upper Santa Clara River alongside the neighboring communities of Acton and Santa Clarita.

The community of Agua Dulce is served by private water wells and despite the assurances by you during the meeting that water drawn from the Agua Dulce Acton groundwater basin will not be exported outside the community, the community is very concerned that this significantly increased water system infrastructure will potentially draw substantially on, and eventually impair, the local groundwater supply used by residents, particularly when considered within the framework of the emerging County Water Plan/Sustainability Plan.

Please confirm that the water system for all phases of the Agua Dulce Residential Project will be supplied exclusively from water sourced from the State Water Project through District 37/AVEK and that no water for the Agua Dulce Residential Project's water system will be sourced from the local groundwater basin. Please also confirm that none of the water stored on the Agua Dulce Residential Project site will be used for projects other than the Agua Dulce Residential Project.

3. The 2007 Supplemental EIR changed the wastewater entitlement for the entire project

The 1994 approval of the Environmental Impact Report created a wastewater entitlement for the entire Tract 50385 project comprising:

- The entitlement to construct the first three phases of the project with on-site septic systems
- The entitlement to construct phases 4-12 of the project dependent on a connection being made to an offsite wastewater treatment plant to be built by another project (Tract 50259)
- An obligation to construct phases 1-3 with dry sewers and to abandon the on-site septic systems within six months of the connection to the offsite wastewater treatment plant being established
- An obligation to connect the 61 dwellings of the Sierra Colony (Tract 48786) to the sewer system to allow the wastewater from Sierra Colony to be processed at the offsite wastewater treatment plant.

- An obligation to operate and maintain the onsite septic systems according to a series of mitigation measures tied to a septic permit (WDID NO. 4A196500013) that had been issued by the Los Angeles Regional Water Quality Control Board.

The 2007 Supplemental Environmental Impact Report revised the wastewater entitlement for the entire Tract 50385 project to:

- The entitlement to construct an onsite wastewater treatment plant instead of utilizing onsite septic systems and an offsite wastewater treatment plant
- An obligation to finalize the plan for the 'conceptual' onsite wastewater treatment plant to the satisfaction of the Department of Public Works, including the possibility that the finalized design may require the maps for Tract 50385 to be revised and additional environmental reports to be prepared.

The developer's intent to develop the onsite wastewater treatment system instead of both the onsite septic systems and the offsite wastewater treatment plant is clearly expressed throughout the series of documents for the 2007 Supplemental Environmental Impact Report including:

- *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."

The developer's representative, Mr. Dennis Bushore, made verbal representations to this effect during his presentation at the February 14 2007 meeting of the Agua Dulce Town Council which became the basis for the community and the Council's subsequent formal support of the revised project.

Furthermore, the Department of Public Health clearly acknowledged this in their January 9th 2007 letter (2007 SEIR Approval Package page 77) which states: "The County of Los Angeles Department of Public Health has no objection to Revised **Tract Map 50385**. The following conditions still apply and are in force: 1. Potable water will be supplied by a public water system, which guarantees water connection and service to all lots. 2. Sewage disposal will be provided through the public sewer and wastewater treatment facility as proposed."

Notably the Department of Public Health letter references Tract Map 50385 (all 12 phases of the project inclusive) and contains no reference to the continued use of septic systems for any part of Tract 50385 which is consistent with what was expressed in the related 2007 planning documents that the onsite wastewater treatment plant would be used instead of the previously planned onsite septic systems.

Following the approval of the 2007 SEIR, the developer submitted a notice of termination for the septic permit to the Los Angeles Regional Water Quality Control Board in November 2011.

The approval of the 2007 Supplemental Environmental Impact Report did not change the recorded map for Tract 50385-01 since it was already approved in 1994 with the installation of dry sewers for the planned connection to the offsite wastewater treatment plant. The approval of the 2007 Supplemental Environmental Impact Report did change the wastewater treatment entitlement for the entire Tract 50385 project (recorded and unrecorded) whereby the entitlement to construct Phases 1-3 with onsite septic systems was replaced with the connection of Phases 1-3 to the onsite wastewater treatment plant that was to have been built in parallel with the first three phases of the project instead.

Since the original septic permit (WDID NO. 4A196500013) issued by the Los Angeles Regional Water Quality Control Board was terminated at the developer's request, there is currently no valid permit to construct septic systems on any phase of the project.

During the February 10th meeting of the Los Angeles Regional Water Quality Control Board, the developer's legal representative indicated that the developer plans to build the first three recorded phases of the project with onsite septic systems.

The developer will need to secure these onsite septic permits from the Los Angeles County Department of Public Health however since the wastewater entitlement for the entire project was changed in 2007 to the use of an onsite wastewater treatment plant instead of the previously planned onsite septic systems and an offsite wastewater treatment plant, the entitlement under which a septic system permit for any phase of the project could be issued no longer exists.

The community also has a concern that, if permitted, the septic systems may become permanent instead of being temporary as was contemplated in the original 1994 Environmental Impact Report. When Sierra Colony (Tract 48786) was originally approved, it was also conditioned on the eventual connection of the 61 dwellings at Sierra Colony to the offsite wastewater treatment plant that was to have been built by the developers of the Rio Dulce Project (TR 50259). Since the wastewater treatment plant was never built on Tract 50259 and the approved wastewater treatment plant for the Agua Dulce Residential Project (Tract 50385) has not progressed beyond the conceptual level expressed in the past 15 years (after it was included in the 2007 SEIR), the 61 dwellings at Sierra colony continue to operate with onsite septic systems.

The 1994 EIR indicates that the first three phases of the project sit within Significant Ecological Area 23 of the Santa Clara River Watershed.

The approved planning documents also acknowledge that Los Angeles County and the Los Angeles Regional Water Quality Control board agreed that a detailed study on the impact of the planned onsite septic systems on the groundwater supply would not be required for the Agua Dulce Residential Project since the septic systems were only to be used on a temporary basis until the connection to the wastewater treatment plant was established.

During the February 10th meeting of the Los Angeles Regional Water Quality Control Board, the developer's legal representative volunteered under oath that the developer may elect to let the unrecorded map for Phases 4-12 of the project expire. The legal representative further confirmed that no work had commenced on the required detailed design of the onsite wastewater treatment plant since it was an expensive and time consuming process.

The unrecorded tract map for Phases 4-12 is set to expire in approximately 90 days and the developer's representative has publicly opined that they may elect to let the map lapse since the design work for the onsite wastewater treatment plant is an expensive and time consuming process that there evidently hasn't been sufficient time to undertake in the past 15 years.

Consequently, there is a genuine concern that in addition to the 61 septic systems that have become semi-permanent fixtures at the Sierra Colony project, the 68 onsite septic systems that the developer is proposing to use on the first three phases of the Agua Dulce Residential Project will also become semi-permanent on the basis that the tentative vesting tract map for phases 4-12 expires and is not renewed.

As noted in previous correspondence, there has never been any consideration given to the environmental impact on the groundwater supply of these additional 68 septic systems becoming permanent.

The Council requests clarification as to how the unambiguous statements related to the project's wastewater entitlement made in the approved 2007 planning documents together with the written comments made by the Department of Public Health regarding the intent of the onsite water treatment to provide wastewater treatment plant for the entirety of Tract 50385 permit the first three phases of the project to be constructed with on-site septic systems. Irrespective of the recording of the first three phases in 2002, the revised tract map created in 2007 contained a revised wastewater entitlement that applied to the entirety of the project to use an onsite wastewater treatment system and public sewers instead of onsite septic systems and an offsite wastewater treatment system, both recorded and unrecorded.

4. The primary access to the project appears not to conform to Title 21.24.020 - Restricted residential access

As previously noted in the Council's letter on March 18th to Supervisor Barger, the first Phase of the project will result in the construction of 68 residences within the project. The primary access would appear not to comply with Title 21.24.020.

This section states "If a street or street system is restricted to a single route of access to a highway shown on the Highway Plan, except for a limited secondary highway, which is maintained and open to public travel, whether at the point of intersection with the highway or at some point distant from the highway, the street or street system shall serve not more than:

1. 150 dwelling units where the restriction is designed to be permanent and the street or street system does not traverse a wildland area which is subject to hazard from brush or forest fire;
2. 75 dwelling units where the restriction is designed to be permanent and the street or street system traverses a wildland area which is subject to hazard from brush or forest fire;
3. 300 dwelling units, where the restriction is subject to removal through future development."

It would appear that the number of dwellings that already exist along the access route between the project and the nearest highway would result in the project exceeding provision 2 (the existing homes plus the 68 new homes of phases 1-3).

As noted in the Council's letter to Director Bodek on May 19th, the community is concerned over the unnecessary public safety risk created by insufficient access to the project in a designated high fire hazard severity zone for existing and future residents. To date, the County has provided no response to this public safety issue raised in May.

The Council requests clarification as to how the construction of Phases 1-3 complies with Title 21.24.020.

5. Grading on the project is restricted to the recorded area of Phase 1

The Council notes that the developer has now provided the standby Letter of Credit for the grading permit that applies to Phase 1. In the Findings of the Regional Planning Commission that forms part of the 2007 Supplemental Environmental Impact Report Approval Package the Department of Regional Planning's Finding 7 related to CUP 2005-0171-(5) contains the following statement "The project proposes 3.75 million cubic yards of cut and fill to be balanced on site." Previously, Mitigation Measure 4.1 of the 1994 Environmental Impact Report described grading on the entire project as comprising 2.4 million yards of cut and fill across 465 acres, balanced on site with a further 1 million cubic yards of fine grading/site preparation.

The grading permit for Phases 1-3 of the project appears to permit 1,913,878 cubic yards which is approximately 51% of the total grading volume outlined in the 2007 SEIR. Phases 1-3 of the project comprises 68 of the 315 homes on 163 of the 745 acres to be developed. It is unclear why more than 50% of the grading volume is approved for Phase 1 which only represents 21% of the total project.

Condition 17 of the 2007 CUP 2005-0171-(5) states that 'No grading shall be issued [for phases 4-12 which are currently unrecorded] prior to the recordation of a final map except as authorized by the Director of Planning.'

The Council requests confirmation of the following:

- Whether the Director of Planning has authorized, or plans to authorize, any grading or fill dumping on the unrecorded portion of the project site. If authorization has been granted, the Council requests a copy of the authorization under Condition 17 of the CUP. This is particularly relevant given the imminent expiration of the unrecorded tentative vesting tract map in three months' time on October 11th 2022 discussed in Section 11.
- Confirmation from the County that the developer will observe and the County will enforce the grading mitigation measures which prohibit grading on days when winds speeds are in excess of 25 mph, prohibit grading on days when Stage 1 ozone episodes are occurring and that grading only occurs on Monday to Friday 7am to 6pm, Saturdays 8am to 5pm and not on Sundays or holidays.
- Clarification on why such a large percentage of the total site grading volume has been permitted for Phase 1 and whether the grading estimates have changed since what was expressed in the approved 1994 and 2007 reports.
- Please provide a breakdown of the total grading amount for the entire project and a breakdown of project grading volume in cubic yards for Phase 1 and Phase 2.

6. The failure by the developer and the County to observe and enforce the conditions of the grading easement with residents of Valley Sage Road is not merely a 'civil matter'

It is the Council's understanding that it was representatives from Los Angeles County who required the previous developer to secure the grading easement around Sunset Way on the Southeasterly border of Phase 1 for flood mitigation reasons. The easement impacts road improvements on Sunset Way in the Phase 1 map and includes a slope easement and a temporary construction easement.

In the event that Mr. Estes and/or the other residents of Valley Sage Road who are parties to the 2002 easement agreement terminate the agreement for breach on the part of the developer (the developer is understood to be in breach of the agreement at this time due to their failure to pay agreed upon legal fees that have been incurred), the County would not be able to adopt Sunset Way and the grading easement required by LA County for Phase 1 adjacent to Sunset Way would not be available.

Given the issues raised in this letter regarding the validity of the existence and validity of the 2002 Multiple Agreement performance bonds, the community is clearly concerned that extensive work is undertaken on site only to find that the first Phase construction cannot be completed per the recorded map and the County has no subsequent financial recourse from the developer to bring the project up to specification.

The Council requests clarification as to whether the development of Phases 1-3 of the project for the first 68 dwellings can be concluded and the impacted infrastructure be adopted in the absence of the above referenced easement.

7. There appear to be material inconsistencies between facts stated to Supervisor Barger by Mr. Pestrella on May 2nd and responses to public record requests from the Department of Public Works

In the May 2nd letter to Supervisor Barger, Director Pestrella states “Phase I is a fully entitled project **with approved infrastructure improvement plans** (street, storm drain, and water) **that are bonded to ensure construction.**” Director Pestrella then further states that “**The developer has received permits and begun construction to install an extension of a main water distribution line for the project**”. Director Pestrella’s letter further states that “**In addition, the County reviewed the State and Federal sanctions prohibiting doing business with select Russian oligarchs and banks and determined that the current projects owners are not on this list and the bonds are held with non-Russian reputable banks.**” Finally, Director Pestrella’s letter states “**The County follows all Federal and State requirements regarding the payment of application and processing fees as well as ensuring bonds are held with acceptable financial institutions.**”

As explained in the Council’s May 19th letter, the Los Angeles Regional Water Quality Control Board (LA RWQCB) provided a copy of an October 2021 draft Standby Letter of Credit between the Developer, RTG Investment LLC and the Los Angeles County Department of Public Works. The draft letter of credit was provided by the Developer to the LA RWQCB in support of a February 2022 Dredge and Fill Permit application for the Agua Dulce Residential Development Project as evidence that bonds were in place between Los Angeles County and the Developer.

After receiving the draft Standby Letter of Credit, councilmember Chris Yewdall submitted a public records request (PRR) #5140 to the Department of Public Works in mid-April in order to confirm the validity of the document. The PRR requested a copy of the permit referenced in the letter of credit as well as the related financial assurances/bonds and agreements.

A copy of the 2002 multiple agreement (GRAD200218000115) was provided on May 16th however on May 24th, the Department of Public Works indicated that they did not possess any documents that were responsive to the request to provide copies of the related agreements and bonds between the developer, RTG Investment LLC, and the Department of Public Works that are referenced in the draft Standby Letter of Credit. The May 24th response to PRR 5140 states that “*I have confirmed with other my division liaisons that we do not possess documents responsive to Requests 2 [agreement related to work to be performed] and 3 [financial assurance documents].*”

On May 24th, in response to the PRR reply, councilmember Yewdall submitted two further PRRs to the Department of Public Works. The first (#5196) requested a copy of the bond(s) referenced by Director Pestrella in the May 2nd letter to Supervisor Barger and a second PRR (#5199) requested a copy of the extensions that had been granted to the original 2002 Multiple Agreement to the original developer and their successors.

On June 16th, the Department of Public Works responded to PRR #5199 and provided copies of three extensions to the multi agreement that extended the expiration date until May 2016. The DPW declined to provide copies of the agreements with the successors in interest (RTG), citing that they are in draft form only and pursuant to Government Code 6254(a) (that permits draft documents to be withheld), the draft agreements would not be disclosed since the public interest in withholding those records clearly outweighs the public interest in disclosure.

On June 16th, the Department of Public Works also responded to PRR #5196 and provided a copy of the draft Standby Letter of Credit that had been provided in April by the Los Angeles Regional Water Quality Control Board. They similarly declined to provide any copies of the bonds indicating that “*pending negotiation of a final document securing the performance of the obligations set forth in the multiple agreement by the new owner of Tract 50385, any undisclosed and subsequent drafts of the Letter of Credit in draft form are not subject to disclosure*”. The Department of Public Works then stated that pursuant to Government Code 6254(a), the draft bonds would not be disclosed since the public interest in withholding those records clearly outweighs the public interest in disclosure.

On June 17th, councilmember Yewdall submitted a further PRR (#5234) to the Department of Public Works. The PRR reiterated the request for a copy of the bond(s) and related agreements referenced by Director Pestrella in the May 2nd letter to Supervisor Barger.

On July 11th, the Department of Public Works responded to PRR #5234 providing a copy of the 2002 multiple agreement and agreement extensions previously provided under earlier PRRs and asserting privilege under Government Code 6254(a), *“since the County and the new owner of Tract 50385 are in the process of drafting a replacement multiple agreement, related bonds and/or letters of credit. Drafts of such documents are not subject to disclosure.”*

The remarks section of the response from the Department of Public Works to PRR #5234 further states that *“the currently existing Multiple Agreement between the County and the previous owner of Tract 50385-01, amendments to the currently existing Multiple Agreement and currently existing bonds relating to the currently existing Multiple Agreement all of which are still in effect”*. The remarks further state that *“the County does not have a copy of the June 2021 Multiple Agreement Extension letter extending the currently existing Multiple Agreement”*.

Clearly the Council and the community of Agua Dulce is concerned about the direct conflicts in the statements made about the bonds for the project being in effect by Director Pestrella in the May 2nd letter to Supervisor Barger and the responses provided by the Department of Public Works to PRRs related to the bonds for the project only existing in draft form months later. The Council would appreciate clarification on the status and validity of the bonds as well as a copy of them as has been requested by councilmember Yewdall under PRRs 4140, 5196 and 5234. Given the conflict, it is unreasonable to argue that Government Code 6254(a) applies since it is in the public’s interest to know whether there are actually any valid bonds in place, given that the water main line installation commenced in March 2022.

8. How can bonds continue to exist when the principals to the 2002 Multiple Agreement no longer own the project to which the bonds relate?

The Remarks section of the Department of Public Work’s response to PRR #5234 on July 11th imply that the currently existing Multiple Agreement from 2002 between Wood Ridge, LLC, Brandenburg-Agua Dulce, LLC and the County of Los Angeles and Los Angeles County Flood Control District and the currently existing bonds referenced in that agreement are still in effect.

While it is likely that the currently existing Multiple Agreement is still in effect since it inures to the benefit of the successors to the project, the bonds cannot still be in effect for the following reasons:

- Brandenburg-Agua Dulce, LLC, one of the two principals named in the 2002 multiple agreement bonds, ceased to exist as of December 31st 2021 after filing a Form LLC4/7 with the California Secretary of State to terminate the LLC (CA LLC 200001310100).
- Mr. Dennis Bushore, Vice President of Wood Ridge, LLC, the other principal named in the original 2002 multiple agreement bonds, confirmed to the Town Council on Tuesday July 12th 2022 that the bonds expired. Indeed, Mr. Bushore was shocked to learn that the Department of Public Works still considered the bonds to be in effect for a project that they no longer own or control and which they did not renew after selling the project to the current owner in 2019. In a follow up conversation on July 20th Mr. Bushore confirmed that no representative of either Wood Ridge LLC or Brandenburg-Agua Dulce LLC had extended the multiple agreement in June 2021 as implied by the remarks section of PRR 5234.
- As former owners of the project (which was sold to the new owners, RTG Investment, LLC in early 2019), neither of the principals currently named in the Multiple Agreements have any direct control over the performance of and payment for labor and materials related to any aspect of the project. It is unlikely that any surety company would agree to such a liability which is akin to selling your car to a third party and expecting your car insurer to extend coverage to the new owner on your policy when you no longer own/drive the vehicle.

Furthermore, it is difficult to believe that LA County is not in possession of the Multiple Agreement extension that was confirmed as being extended in June 2021 when copies of extensions related to the Multiple Agreement dating back to 2015 have been provided under PRR #5199 and PRR #5234. Given that neither of the original principals to the Multiple Agreement owned the project in 2021, please confirm

which entity(ies) executed the extension in June 2021 and what bonds, if any, related to the project were thereby extended? Please confirm whether the prior bonds still exist and under what legal theory they continue to extend surety to the new owner of the project. Please also provide copies of all extensions to the bonds since the final extension expired in May 2016 as requested under PRRs 5199 and 5234. Again, it is unreasonable to argue that Government Code 6254(a) applies since it is in the public's interest to know whether there are actually any valid bonds in place, given that fact that some of the principals named in the bonds no longer exist as legal California entities.

9. How is the construction proceeding with only draft bonds and draft agreements in place?

Director Pestrella's May 2nd letter acknowledges that the permits to install the main water distribution line were in place and that the project is 'fully bonded' and indeed, installation of the main water distribution line commenced in late March 2022. On June 16th, however, the Department of Public Works, of which Director Pestrella is the head, indicated that none of the agreements and bonds are yet finalized.

How is it possible that the Los Angeles County agencies have allowed this project to proceed without final bonds and agreements in place, particularly bearing in mind that the developer has no previous history of developing any construction project of any description in the United States?

Is Director Pestrella's May 2nd letter intentionally misleading or are the responses to the recent PRRs from his department misleading? The initial response on May 24th was that no such financial assurances or documents existed yet once the staff realized that a draft copy of a \$2.27 million letter of credit had been released by another agency, the documents were suddenly confirmed as existing but are not finalized and cannot be disclosed since disclosure would not be in the public's interest. At the very least, given the funding path that is outlined in the now finalized Standby Letter of Credit, it would appear negligent to allow a subsidiary of a Russian-owned entity with no prior development track record in the United States of any description to commence work on the basis of unfinalized agreements and bonds.

10. Why are such potentially significant bonds being apparently waived for the project?

In 2002, before any work was allowed to commence the prior owners of the project, who were experienced national residential and commercial property developers, were required to finalize 10 separate bonds totaling \$11.9 million related to Water System Improvements, Road Improvements, Storm Drain Improvements and Monumentation for the first three phases (Phase 1) of the project. This is outlined in the 2002 GRAD200218000115 multiple agreement and subsequent extensions through mid-May 2016.

Adjusted for inflation over the past 20 years, these 2002 bonds would amount to approximately \$18-\$19.5 million in 2022 dollars, of which the Water System Improvements represent around \$11.9 to \$12.8 million.

If the prior developer's bonds are still current (as the Department of Public Works has asserted), why would RTG Investment need to provide a copy of the October 2021 Draft Standby Letter of Credit to the Los Angeles Regional Water Quality Control Board? Presumably, a copy of one or more of the existing bonds would have been sufficient evidence of the bonds in place between the County and the developer according to the Department of Public Works' theory that the prior bonds are still in effect.

Again, given the developers complete lack of prior track record in developing any projects of this nature in the United States, how is the work on the water system proceeding with 'draft' bonds that potentially only cover a tiny fraction of the total bond amounts that would be required for the first Phase of the project?

11. The unrecorded vesting tentative tract map approved in April 2007 expires in October 2022

During the Town Council meeting, Mr. Jodie Sackett of Los Angeles County Regional Planning indicated that should the developer apply for an extension to the unrecorded tentative vesting tract map approved

in April 2007, that the Regional Planning Department would consider granting a further 12 month extension to the unrecorded map based on input from legal counsel.

The supplemental agenda for the January 6th 2015 meeting of the Department of Regional Planning and The Los Angeles County Regional Planning Commission (attached) confirms that the **final extension** to item 1(x) Project No.TR50385-(5), Item 1(y) Conditional Use Permit No. 2005-00171-(5) and item 1(z) Oak Tree Permit No. 2005-00062-(5) was approved from April 11, 2016 to April 11, 2021. This represents a period of 14 years following the approval of the Tentative Vesting Tract Map in April 2007.

The unofficial transcript (attached) of the January 6th 2015 meeting reflect that this extension was being requested under Section 66452.6E of the State of California Subdivision Map Act as well as under Section 21.40.180 of the Los Angeles County Code Title 21 in order to provide sufficient time for the plans for the onsite wastewater treatment plant to be prepared and approved by the LA County sanitation district. The extension would ensure that the map would not expire while the wastewater treatment project plans were being prepared and approved during the five year period that this was estimated to take by the LA County sanitation district.

In reality, as was confirmed by the developer's legal counsel under oath at the February 10th LARWQCB meeting, no such wastewater treatment system planning work has been performed by the prior or current developer since the 2015 map extension approval and none is presently planned by the current developer due to the expense involved. The current developer's attorney's response to Regional Water Quality Control Board member David Nahai's question related to this subject was "For Phase 2, the permitting has not been achieved yet as you don't apply for permits that you need too far in advance of when you are going to build the homes. For things like wastewater treatment plants and things of that nature, a substantial permitting effort [is required] along with investment funding." and further "This [the wastewater treatment plant planning] goes far beyond what we are talking about today. I honestly don't know when that permit will be submitted to this board for consideration." and finally "the developer could let the map expire on the second phase. The immediately foreseeable project is what you are seeing before you. So they [the developer] could if they wanted to just abandon the second phase of the project if they presume to."

The passage of AB1561 had the effect of extending any unrecorded tentative vesting tract maps that were to expire prior to December 31st 2021 by 18 months. As such, the expiration date of the unrecorded tentative vesting tract map was extended until October 11th 2022 by virtue of AB1561.

The Council respectfully requests confirmation of the basis under which, in light of the lack of any planning work having been undertaken on the wastewater treatment plant since the final extension was approved over seven years ago, any further extensions to the unrecorded tract map for Phases 4-12 could be granted beyond October 11th 2022 by the Department of Regional Planning to the developer given the provisions of California Title 7 (Planning and Land Use), Division 2 (Subdivisions), Chapter 2 (Maps), Article 2 (Final Maps) since the County appears to have exhausted all discretionary extension authorities.

12. Summary

These issues imply that the staff within the Department of Public Works and other County agencies appears to be making a concerted effort to obfuscate the reality of this project that has become apparent over the past three to four months after community members brought these issues to the Council's attention.

Perhaps the most significant issue is the County's decision to increase the sizing and capacity of the project's water system, which was clearly previously sized in order to mitigate the growth inducing potential of the project under the terms of CEQA. This was a key concern expressed by the community in 1994 and 2007. It is the Council's view that this previously unannounced change requires a Supplemental Environmental Impact Report since it materially changes a key aspect of the project that was a critical

concern for both the community and the Council for which the community has had no opportunity to review or comment.

The County's inconsistent and conflicting responses to these issues simply serves to further convince the community of Agua Dulce that there are some significant improprieties unfolding before them to which the Department of Public Works and other County agencies appear to be willing participants.

We respectfully request that you request the County agencies prioritize a response to this letter as a matter of urgency.

Respectfully,

Don Henry

Don Henry, President
Agua Dulce Town Council – 2022

Attachments: Agua Dulce Residential Project Power Point Presentation from July 13, 2022 Agua Dulce
Town Council Meeting
LA County Regional Planning Hearing Officer Agenda January 6, 2015
LA County Regional Planning Hearing Officer Unofficial Transcript January 6, 2015

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