

The Agua Dulce Residential Project

Agua Dulce Town Council meeting
Wednesday September 14th, 2022

Agenda

- District 25 Congressman Mike Garcia
- California District 36 Assemblyman Tom Lackey
- Los Angeles County District 5 Supervisor Kathryn Barger
 - Council letter to Anish Saraiya following July 13th meeting
- Grievance petition filed with the State Water Resources Control Board
- Recent applications filed by RTG Investment with Regional Planning
- Next steps to consider

Agency responses to recent correspondence

- Congressman Garcia's office continues to submit correspondence re The Agua Dulce Residential Project to appropriate government agencies
- Assemblyman Lackey's office was able to secure a response from the State water Quality Control Board to the grievances filed in March
- No response received from Los Angeles County to the letter submitted to Anish Saraiya by the Town Council on August 12th 2022

ADTC letter – water system re-sizing

- Increased sizing of water system requires a Supplemental Environmental Impact Report pursuant to CEQA Section 15162
 - 1994 EIR quantifies the water demand for all 339 homes as 806,820 gallons per day which equates to 2,380 gallons/dwelling/day
 - Water system described as 66,000' of water main with 3 million gallons of storage (2 x 1.25 million gallon tanks, 1 x 0.5 million gallons) three booster pumps and two pressure reducing facilities
 - A 12" water pipe has a maximum flow rate of 4,700 gallons/minute = 6.8m gal/day
 - 12% capacity required to support 806,820 gallons/day
 - A 20" water pipe has a maximum flow rate of 12,000 gallons/minute = 17.3m gal/day
 - 5% capacity required to support the daily water need for the entire project
- The 2007 Supplemental EIR states that "the applicant clarified that the water system was intentionally "downsized" in the original project approval in order to reduce its 'growth inducing' potential."

ADTC letter – water system resizing

- In light of the apparent change in size of the water system, the ADTC requests that the County:
 - Requires a Supplemental EIR for the water system per CEQA 15162
 - Ceases all work on the water system until the SEIR is approved
 - Provide the description of the previously approved water system (pipe size, booster pump locations, water tank capacities and locations and pressure reducing locations)
 - Provide the description of the proposed water system (pipe size, booster pump locations, water tank capacities and locations and pressure reducing locations)

ADTC letter – impact on local groundwater

- The water for the project is not coming exclusively from the State Water Project
 - 1994 EIR states that, absent another drought, the Project will not use significant amounts of groundwater associated with the water system
- The County Water Plan has a bearing on the Project
 - Expands the water infrastructure to allow connection of areas of supply and demand
 - Promotes the use of both regional local supply development and distributed local supply development
 - Improve regional distribution flexibility including groundwater access to areas that don't overlie basins
- The CWP appears to mandate that 70-80% of the water used in an area comes from within that area in order to reduce reliance on imported water

ADTC letter – impact on local groundwater

- In light of the content of the 1994 EIR, the ADTC requests that the County:
 - Confirm that all phases of the Agua Dulce Residential Project water system will be supplied exclusively from water sourced from the State Water Project and not water sourced from the local groundwater basin
 - That none of the water stored on the Agua Dulce Residential Project will be used for projects other than the Agua Dulce Residential Project

ADTC letter – wastewater entitlement

- The project wide wastewater treatment entitlement was changed by virtue of the approval of the 2007 SEIR
 - Build an onsite wastewater treatment plant instead of the previously planned on site septic systems and offsite wastewater treatment plant
- 2007 SEIR contains a letter from Public Health acknowledging this:
 - “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.”
- Tract 50385 is the entire Agua Dulce Residential Project including Phase 1 (Phase 1 is 50385-01)

ADTC letter – wastewater entitlement

- The previous owners terminated the septic permit in 2011/12
- There is no longer a valid wastewater entitlement under which LA County Public Health can issue an onsite septic permit
- Septic systems installed at Sierra Colony (Tract 48786) were conditioned on being connected to a wastewater treatment plant
- The EIRs reflect an agreement between Regional Planning and the Los Angeles regional Water Quality Control Board that a detailed environmental study on the septic systems would not be required since they were considered temporary
- RTG's representatives have volunteered that they may allow the Phase 2 map to lapse, thereby making any septic systems on Phase 1 permanent

ADTC letter – wastewater entitlement

- In light of the content of the 1994 EIR, the ADTC requests that the County:
 - Clarify how Phase 1 can be constructed with onsite septic systems in the light of the wording to the contrary contained in the approved 2007 Supplemental EIR, irrespective of the fact that Phase 1 was recorded in 2002
 - Developer should have built Phase 1 in the 12 years before changing the project wide wastewater entitlement in 2006/7 if they wanted to take advantage of the original 1994 wastewater entitlement to build Phase 1 with on site septic systems
 - There was no change to the Phase 1 map in 2007 since it was already required to be constructed with dry sewer pipes in the 1994 EIR. All this revised SEIR did was to eliminate the cost of building Phase 1 with compliant septic systems

ADTC letter – emergency access/exit

- LA County Title 21.24.020 stipulates that “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 (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.”
- The ADTC requests confirmation from Los Angeles County that the addition of 68 homes of Phase 1-3 of the project conforms to 21.24.020(2) in light of the number of pre-existing homes between the project and the nearest highway.

ADTC letter – Phase 2 grading restriction

- The July 2022 grading permit permits 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
- The Conditional Use Permit in the 2007 Supplemental EIR prohibits grading on any part of Phase 2 until the tract map is recorded.
- The ADTC requests confirmation of:
 - Whether the Director of Regional Planning plans to use discretion to authorize any grading or fill dumping on the unrecorded Phase 2 map area
 - Why such a large percentage (50+%) of the previously project grading volume has been authorized for such a small percentage of the overall project (21%)
 - The grading volume breakdown between Phase 1 and Phase 2

ADTC letter – Valley Sage easement

- The disputed 2002 easement with residents along Valley Sage is essential to the construction of Phase 1 infrastructure that will be subsequently adopted by the County
 - Water storage tank
 - Sunset Way road
 - Storm drainage
- The ADTC requests confirmation of:
 - Whether Phase 1 of the project can be constructed as planned if the developer and the residents cannot resolve their easement dispute

ADTC letter – Public Works discrepancies

- Mark Pestrella's letter of May 2nd states that the project is fully bonded and construction has commenced
- PRR responses to requests for copies of the bonds state that they are in draft form only
- The ADTC requests confirmation of:
 - Whether the bonds exist in draft form or not and irrespective of Government Code 6254(a) it IS in the public interest for this information to be disclosed in light of the conflict in responses
 - A copy of the bonds, even in draft format

ADTC letter – Bond validity

- PRR responses state that the bonds dating back to 2002 from the prior owner of the project are still deemed to be valid
- Subsequent to July meeting, representative of the previous owners confirmed that their bonds no longer exist and they did not sign any extension requests as suggested by Public Works PRR response
- The ADTC requests confirmation of:
 - Which entity(ies) executed the purported bond extension request in June '21
 - Under what legal theory a bond continues to exist after the project is sold and one of the bond holders is officially dissolved as an operating company
 - Provide a copy of the alleged June 2021 bond extension application that cannot be found in Public Works' records

ADTC letter – Un-bonded construction

- PRR responses suggest that the agreements and bonds only exist in draft format as of July 2022
- Mark Petrella's May 2022 letter confirms construction work is already underway (of the water main extension from Red Rover Mine Road)
- The ADTC requests confirmation of:
 - Why construction of future public infrastructure has been allowed to commence when the underlying agreements and associated financial assurances/bonds only exist in draft format, particularly in view of the fact that the developer has no prior experience of subdivision development anywhere in the United States
 - Will the value of the new bonds be representative of their 2022 cost or 2002 cost?

ADTC letter – unrecorded map extensions

- The unrecorded tract map for Phase 2 expires in October 2022
 - The developer's legal representative stated under oath that the developer may elect to let the map expire
- The January 2015 Department of Regional Planning and The Los Angeles County Regional Planning Commission meeting confirmed the final extension of the unrecorded map of 5 years to allow sufficient time to plan out the wastewater treatment plant
 - In 7+ years, no work has been done on this due to the expense involved
- The ADTC requests confirmation of:
 - In light of the discretionary extensions permitted under State Title 7, what basis does Regional Planning feel they can offer any further extensions to the unrecorded map as the discretionary extensions appear to have been exhausted

The SWRCB grievance petition

- Following the February 10th 2022 decision to approve the dredge and fill permit, several residents filed grievances with the State Water Quality Control Board in Sacramento before the 30 day March 12th deadline
- The ADTC followed up on the status of the petitions but received no reply
- Assemblyman Lackey's office followed up and received a response on August 3rd
- Response indicated the grievances were incomplete and requested more information prior to September 5th deadline
- SWQCB attempted to deny one petition (from a local lawyer) claiming it had been filed after the 'March 10th' deadline when in fact it was timely

The SWQCB's improper actions

- The action taken by the Los Angeles Regional Water Quality Control Board was in contravention of the California Environmental Quality Act Sections 15378 and 15162
- The permit application was premature given the need to develop a plan for the wastewater treatment plant described in the 2007 SEIR
- Selecting parts of the wastewater entitlement from 1994 that were replaced by the 2007 wastewater entitlement is piecemealing
- The staff incorrectly interpreted and described the project to the board leading to the board approving the application when a 'No Action' decision would have been the appropriate one to take

The SWRCB responsibility in the project

- The wastewater treatment is a key environmental consideration of the project and its potential impact on the local groundwater supply
- The availability of sufficient groundwater to support the project and the unquantified needs of the wastewater treatment plant
- The absence of a wastewater entitlement that allows permits to be issued for the use of on site septic systems
- The absence of any final plans for the wastewater treatment plant which is a key facility for the project located on an unrecorded map that expires in October 2022

The grievances

- The local communities rely on the groundwater table for potable water
- The unapproved onsite septic systems will likely result in high levels of nitrates and total dissolved solids that impair the groundwater
- The project will rely on an already depleted local groundwater basin in drought years and this may result in existing private wells drying up
- As the groundwater basin depletes, the levels of arsenic in the private wells is known to increase, presenting a health risk to residents
- Granting the permit prematurely risks permanent damage to ephemeral streams and unspoiled rural hillsides if the approvals cannot be subsequently obtained for the wastewater treatment plant

The action being requested

- Rescind and cancel the dredge and fill permit issued on February 10th
- Advise the applicant that they need to observe the terms of the 2007 SEIR and complete the plan for the wastewater treatment plant
- Advise the applicant that the need to develop a plan for a wastewater treatment plant has been known since the approval of the 2007 SEIR 15 years ago and it is not therefore, an unreasonable burden on them
- Invite the applicant to reapply for the appropriate waste discharge permit once the wastewater treatment plant has been approved and the Phase 2 map has been recorded

The legal arguments – relevance of CEQA

- The SWQCB acknowledges that the content of the approved EIR and SEIR govern the scope of the project and the decisions they can take
- Under CEQA 15378, the 1994 EIR and the 2007 SEIR form part of a single project description and don't operate independently
- Under CEQA 15378, the wastewater entitlement laid out in the 2007 SEIR applies to the entire project since 15378 defines a project as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment [including grading], or a reasonably foreseeable indirect physical change in the environment.

The legal arguments - piecemealing

- There cannot be two separate environmental documents for a project
- Doing so creates the opportunity for would allow a lead agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact
- Segmenting a project also hinders developing comprehensive mitigation measures
- Constructing Phase 1 with septics requires a Supplemental EIR in light of the approved wastewater entitlement in the 2007 SEIR pursuant to CEQA 15162

The legal arguments - evidence

- The petition references a number of pre-existing sources in support of the arguments
 - The approved 1994 and 2007 planning documents
 - The written and verbal comments made by community members during public hearings prior to the comment deadline
 - The verbal comments made by community members, Los Angeles Regional Water Quality Control Board staff, the applicant's legal representative and the Los Angeles Regional Water Quality Control Board members during the February 10th meeting
- The petition notes that the board elected to take the testimony of staff and the applicant's legal counsel over the public comments

Recent applications to Regional Planning

- August 11th 2022 – Reference RPAP2022009146 T. Stapleton
 - Discretionary time extensions not RL2 - Rural Land 2 applied for via EPIC-LA
 - Request for time extension for Revised Tentative Tract No. 50385 (Agua Dulce) (APN 3213011006)
- September 1st 2022 – Reference RPAP2022009925 J. Huntington
 - Minor Map Amendment for Tentative RL2 - Rural Land 2 Tract No. 50385 - request for approval of phasing exhibit showing unit map boundaries and permission to record "large lot" map (APN 3213008043)
- September 6th 2022 – Reference RPPL2022010011 J. Sackett
 - Minor Map Amendment for Tentative Tract No. 50385 - request for approval of phasing exhibit showing unit map boundaries and permission to record "large lot" map (APN 3213008043)

What is a minor map amendment (MMA)

- A recently introduced (August 2022) streamlined process to allow developers to make minor changes to approved tentative tract maps without needing to go through the Amended Exhibit Map (AEM) or Revised Exhibit A map (REA) process which requires review by multiple agencies in LA County
- The Phasing plan is provided for projects that want to record their tentative map in phases. A phasing plan is included as part of the tentative map
- The Director of LA County Planning has the sole discretion to determine whether an MMA is the appropriate process for proposed tentative map or phasing plan changes prior to final map recordation. If not appropriate, an Amendment Map or Revised Map would be needed instead

What is a minor map amendment (MMA)

- To qualify for an MMA, any proposed changes to an approved tentative map and/or phasing plan may not increase the environmental impacts of a project. Consistent with the project's CEQA determination, only changes that reduce, or do not affect, a project's environmental impact would be eligible. Therefore, to qualify for an MMA the project **MAY NOT**:
 - 1. Create or intensify substantial negative impacts to the surrounding area,
 - 2. Create or intensify substantial negative environmental impacts,
 - 3. Change the approved use or significantly change the project design,
 - 4. Create a detrimental change upon which the environmental determination for the project was made, or
 - 5. Change a project feature upon which the review authority made findings for approval of the project.

Potential implications of recent applications

- August 11th 2022 – Reference RPAP2022009146
 - Extend the unrecorded Phase 2 tract map beyond the ‘final’ extension date of October 11th 2022 that was approved in January 2015
- September 1st 2022 – Reference RPAP2022009925 and September 6th 2022 – Reference RPPL2022010011
 - Subdivide Phase 2 into smaller lots that don’t include the wastewater treatment plant in order to allow LA County to issue building permits for infrastructure improvements (water pipes, grading, water storage tanks etc.)
 - Appears to circumvent the essence of the 1994 EIR and 2007 SEIR CUPs that requires the second access road be recorded and wastewater treatment plant be approved before the Phase 2 map is recorded and as a precursor to any building permits on Phases 4-12

Potential implications of recent applications

- 1994 Conditional Use Permit Condition 17
 - A maximum of 68 lots (Phases I, II and III) may record until a second means of street access is provided to the satisfaction of the Dept. of Public Works and the Department of Regional Planning
 - These 68 lots were recorded in 2002
- 1994 Findings of Fact #15 - Groundwater
 - Building permits shall not be issued for any lot in phases IV through XII without evidence of adequate sewage treatment capacity
 - Also reflected in Mitigation Measure Page 16 Section 4.2 Flood Hazards/Water Quality/Groundwater

Next steps

- Discuss whether the Council should write two letters:
 - Questioning the proposed extension of the unrecorded Tract Map for 50385 since the final extension was granted in January 2015 and the developers have done nothing in the past 7 years to produce the required plans for the wastewater treatment plant due to the expense involved
 - Opposing the subdivision of Phase 2 into large lots if they result in the circumvention of the essence of the 1994 and 2007 conditional use permits that require an approved wastewater treatment plant before the Phase 2 maps can be recorded and before any building permits can be issued for Phases 4-12 of Tract 50385 and noting the apparent piecemealing of the project in contravention of CEQA 15378 to minimize the environmental impacts of a key project facility in contravention of MMA provisions 4 and 5