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ATTORNEYS AT LAW

September 15, 2020

Lt. Col. Patrick M. Stevens V
U.S. Army Corps of Engineers
Albuquerque District
4104 Jefferson Plaza, NE
Albuquerque, NM 87109
Email: Patrick.M.Stevens@usace.army.mil

Re: Individual 404 Permit (Action No. SPA-2004-00109)

Dear Col. Stevens,

I am sending you this letter on behalf of the Mariposa Neighborhood Association (MNA). On August 12, 2020, the MNA emailed a letter to Christopher Parrish, Chief of the Regulatory Branch of the U.S. Army Corps of Engineers, South Pacific Division, Albuquerque District (USACE SPA), outlining their concerns, asking questions, and protesting the individual permit that was issued and then extended by USACE SPA in 2004 for the Mariposa East Subdivision (Action No. SPA-2004-00109; hereafter referred to as the Mariposa East Permit). On August 14, 2020, members of the MNA's Infrastructure Committee had a telemeeting with Mr. Parrish and Kelly Allen. Since that time, the MNA has continued their research to support their request for re-evaluation and protest, including obtaining the Chain of Title for two formerly undeveloped tracts of land located in Mariposa East. This information is reflected in the Chronology (Attachment 1), which has been updated since its inclusion in MNA's August 12, 2020 letter. Please consider this letter to you ancillary to the MNA's August letter, which is attached for your reference.

Freedom of Information Act (FOIA) Request

The MNA members who attended the August 14, 2020 telemeeting have described Ms. Kelly, whom moderated the meeting, as obstinate and unwilling to answer any of their questions because, according to Ms. Kelly, any and all information pertaining to the Mariposa East Permit is privileged and protected by the Administrative Record (AR). Mr. Parrish and Ms. Kelly refused to even disclose the name of the individual or entity of the current permit holder of the Mariposa East Permit. Therefore, to ascertain the current permittee of the Mariposa East Permit and other vital information that will assist the MNA in its protest, please consider this letter to you as an official request for the whole and entire AR of the Mariposa East Permit, as defined by 5 U.S.C. §706(2)(A) and all other federal regulations and guidance on the definition and compilation of an AR.

Summary



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On June 2, 2004, USACE SPA issued to High Desert Investment Corporation the Mariposa East Permit, a standard 10-year individual permit for their 1,465-acre master planned community located within jurisdictional unnamed tributaries of the Venada, Baranca, and Montoyas Arroyos and jurisdictional unnamed tributaries of the Jemez River, Rio Rancho, Sandoval County, New Mexico. This permit has grown into a 20-year permit, with its 10-year extension on September 2, 2014. In its 2014 extension letter, USACE SPA writes that according to CFR §325.5 the District Engineer can grant extensions of time limits on permit authorizations if doing so would not be contrary to the public interest. The MNA vehemently disagrees that the granted extension was in the public interest. They argue that prior to granting the 10-year permit extension, USACE SPA should have reevaluated the original 2004 permit conditions and seen them greatly lacking in any meaningful mitigation, seriously questioned whether they should grandfather substandard permit conditions for 20 years, and denied the request.

Prior to its bankruptcy in 2012, High Desert Investment Corporation had designed and installed multiple infrastructure throughout Mariposa East subdivision, including roads, curb and gutter, culverts and drop structures, retaining walls, water supply and treatment facilities, etc., and had sold many improved lots to builders. However, in 2012, when High Desert bailed out of Mariposa East, the development was only about 17% occupied, and final plats of several large tracts of undeveloped land had not yet been approved by the City of Rio Rancho. These parcels were located in ecologically sensitive areas containing jurisdictional arroyos. Moreover, by 2014, the regulatory scheme for evaluating and issuing individual permits had become much more stringent than it was in 2004. But, unfortunately, that opportunity ship has sailed.

However, according to Section 5.c. of the Mariposa East Permit, USACE SPA can reevaluate the permit for suspension, modification, or revocation at any time the circumstances warrant, including if significant new information surfaces that they did not consider in reaching its public interest decision. We believe that the information provided in MNA's August 12, 2020 letter (attached), as well as newly discovered information, warrants a reevaluation and possibly suspension or revocation of the Mariposa East Permit for the reasons discussed below.

Permit Transfers

As the Chronology (Attachment A) illustrates, Mariposa East has had a sordid history with developers, which has unfortunately led to multiple transfers, which have resulted in several separate owner entities conducting activities in jurisdictional waterbodies simultaneously under the Mariposa East Permit. Since its issuance, the Mariposa East Permit has been transferred twice: in December 2012 from High Desert Investment Corporation to MEast Holdings, LLC, the Bondholders of the Public Mariposa East Public Investment Corporation, and sometime in 2019 from MEast Holdings to Harvard Ventures/Investments or its affiliate Mariposa East, LP. (We are not sure of the name of the current permittee, but USACE SPA did disclose that the permit was transferred in 2019. Therefore, we are assuming the current permittee is the current Mariposa East developer, Harvard Ventures/Investments or its affiliate Mariposa East, LP, who bought the subdivision from MEast Holdings in October 2014.)



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Whereas the original developer/permittee of Mariposa East, High Desert Investment Corporation, actually developed the land and sold improved lots to builders, as discussed above, the current developer/permittee, Harvard Investments (or their affiliate Mariposa East, LP), has done zero developing since it acquired the 1,465-acre Mariposa East Subdivision in 2014. Instead they have been **selling** off large tracts of undeveloped and unimproved land in Mariposa East to other developers, whom are improving and developing them into residential neighborhoods. Below are two examples.

1. According to the Chain of Title MNA obtained from Stewart Title, in February 2018 Mariposa East, LP (the current permittee) **sold** Tract 1-A3, a 10-acre parcel of undeveloped land located in Phase 1 of Mariposa East, to Jemez Vista Residential Development, LLC (dba Price Land & Development Group). This tract was re-platted in December 2017 as the Jemez Vista Neighborhood, which will include 41 single-family residential lots. In June 2020, Jemez Vista Residential Development, LLC, **sold** Tract 1A-3 to DRHorton, Inc. That same month, DRHorton broke ground on the new Jemez Vista Neighborhood, clearing and grubbing mature juniper trees with active bird nests and filling in three arroyos, which were identified by USACE SPA in 2004 as jurisdictional waters and were tributaries to an unnamed arroyo situated on the far north section of the tract that is protected by a SSCAFCA easement.

2. According to the Chain of Title MNA obtained from Stewart Title, in March 2018 Mariposa East, LP (the current permittee) **sold** Tract 1A-11 to Pulte Homes of New Mexico, Inc. Tract 1A-11 was a 31.6-acre tract of undeveloped land located in Phase 2 of Mariposa East and platted to include 135 single-family residential lots. Pulte Homes broke ground in late 2018 and the new neighborhood—Redondo a@ Mariposa—is approximately 60% complete. According to the drawings attached to the Mariposa East Permit, jurisdictional waterbodies once traversed this tract.

Neither DRHorton nor Pulte Homes are contractors of the permittee, as Ms. Allen strongly suggested; rather these are **new owners** of large tracts of land that were undeveloped prior to late 2018. Again, both of these neighborhoods are being built within the jurisdictional limits illustrated on the drawings attached to the 2004 Mariposa East Permit.

On June 8, 2020, Cassandra D'Antonio, a resident of Mariposa East and Chair of MNA's Infrastructure Committee, contacted Forrest Luna with USACE SPA to inquire whether a 404 permit had been issued authorizing DRHorton to destroy the jurisdictional arroyos that traversed Jemez Vista (Tract 1A-3). After some research and phone calls, Mr. Luna informed Ms. D'Antonio that the work was authorized by the 2004 Mariposa East Permit. Through a contact at Pulte Homes, Ms. D'Antonio was told that the construction activities on Tract 1-A11 were also authorized under the same 2004 Mariposa East Permit.

We are unaware of any federal regulation, directive, instruction, or guidance that allows an individual permit to be issued, transferred, held, or shared by multiple parties, or that allows a permittee to transfer compliance responsibilities for construction activities authorized by a



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permit to multiple parties upon the sale of multiple tracts while still holding the permit. If one exists, please advise us.

Scope of Work

As previously stated, in September 2014, USACE SPA granted a request by MEast Holdings, LLC for a 10-year extension of the Mariposa East Permit. The extension letter noted that the extension was largely based on the following statement included in their request: *“There are currently no plans to change the amount of fill discharged into jurisdictional waters.”* Furthermore, their extension request letter acknowledged that *any changes to the approved scope of work in the permit authorization will require further consultation with the Corps.*

In January 2019, the City of Rio Rancho approved a zoning and masterplan amendment request by Harvard Investments, Inc. to rezone approximately 684 acres in Mariposa East from E-1 (Estate Residential), R-1 (less dense single family residential), and OS (Open Space) to R-4 (more dense single family residential), which will greatly reduce or eliminate **natural** open space and building envelopes around estate lots. We strongly argue that the preservation of 467 acres of natural open space and building envelopes on E-1 lots, which were platted to avoid fills in jurisdictional waters and conserve native vegetation, landforms and natural drainage patterns, were part of the approved scope of work and mitigation authorized and conditioned in the Mariposa East Permit. Therefore, the 2019 re-zoning and masterplan amendments represent a change to the approved scope of work upon which the 2004 Mariposa East Permit and its extension was authorized upon, requiring further consultation with USACE.

Remedy

The MNA is well aware that as of June 22, 2020, ephemeral arroyos are no longer regulated. However, the construction activities within jurisdictional waters by Pulte Homes and DRHorton occurred prior to June 22, 2020. Moreover, this fact does not deter the MNA from challenging the validity of Mariposa East Permit because the scope of work has significantly changed and multiple non-permitted entities have conducted fill activities within jurisdictional waters under the same permit. Mariposa East is no longer one large development being developed by a single developer; it is now multiple developments by multiple owner developers, as Mariposa East, LP continues to sell off large tracts of land. If and when the regulatory scheme changes and ephemeral streams once again become regulated, it is our contention that it would be in the public interest that the new owners of these tracts have to apply for their own permits. This would ensure the public that alternatives have been properly evaluated, impacts assessed, mitigation considered, and monitoring required.

Conclusion

At the conclusion of the August 14, 2020 meeting, Ms. Kelly put the onus on the MNA to check back with them on whether or not regulatory staff was going to investigate their claims or reevaluate the Mariposa East Permit. We find this unacceptable. Therefore, we are respectfully requesting that USACE SPA acknowledge receipt of this letter and FOIA request and formally provide us with its plan of action.



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If you have any questions or need additional supporting documentation or information, please contact either me or Cassandra D'Antonio (cassandantonio@aol.com).

Regards,

A handwritten signature in black ink, appearing to read "Kyle Harwood".

Kyle Harwood

Cc:

Christopher Parrish, Chief of Regulatory Branch

Christopher.M.Parrish@usace.army.mil

Angela Mobley, Paralegal Specialist

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Trevor Stevens, Counsel for US Army Corp of Engineers

Trevor.S.Stevens@usace.army.mil

Attached:

Attachment 1: Chronology of Mariposa East Permitting and Development

Attachment 2: August 12, 2020 Letter to Mr. Parrish from Ms. D'Antonio

Attachment 1

Chronology of Mariposa East Permitting and Development

This chronology has been revised since it was included in MNA's letter to USACE SPA, dated August 12, 2020. New information includes the Chains of Title the MNA obtained from Stewart Title on Tract 1A-3 (Jemez Vista Neighborhood) and Tract 1A-11 (Redondo @ Mariposa Neighborhood). New and pertinent information have been highlighted.

1994

1/29/94—Sunwest Bank of Albuquerque sells the “Mariposa Property” (6,248.317 acres of real estate in Sandoval County, NM) to the Albuquerque Academy, a NM non-profit corporation.

1996

4/3/96—Santa Fe Pacific Gold Corporation transfers its interest in the “Mariposa Property” to the Albuquerque Academy.

2002

2/13/02--The City of Rio Rancho adopts the Mariposa Master Plan, which divides the property into two planning areas: Mariposa East and Mariposa West. The master plan also identifies the 2,200-acre Mariposa Preserve as protected in perpetuity by the Albuquerque Academy.

2/27/02—The Albuquerque Academy, High Desert Investment Corporation, the for-profit arm of the Albuquerque Academy, and the City of Rio Rancho enters into an annexation/development agreement for the development of the Mariposa Community.

2003

6/5/03—The Albuquerque Academy sells to High Desert Investment Corporation its interest in Mariposa.

2004

6/2/2004—USACE SPA issues High Desert Investment Corporation a 10-year Individual Permit for Mariposa East, a 1,465-acre master planned community located within jurisdictional unnamed tributaries of the Venada, Baranca, and Montoyas Arroyos and jurisdictional unnamed tributaries of the Jemez River, Rio Rancho, Sandoval County, New Mexico (Action No. SPA-2004-00109), with an expiration date of 12/31/14.

2012

6/12/12—High Desert Investment Corporation announces it is pulling out of Mariposa East and putting their interest in the community on the market. News outlets report that only 250 out of 1,500 potential residential home sites had been built and sold.

8/29/12—High Desert Investment Corporation grants to Bank of Albuquerque, as Trustee of the Mariposa East Public Improvement District (PID), all of the real property designated as Mariposa East.

12/13/12—MEast Holdings, LLC registers as a Foreign Limited Liability Company with the NM Secretary of State.

12/19/12—Bank of Albuquerque, as Trustee of the PID, grants, with special warranty covenants, all of its interest in Mariposa East to MEast Holdings, LLC, the Bondholders of the PID. High Desert Investment Corporation, the permittee of the Mariposa East Permit (Action No. SPA-2004-00109), transfers the permit to MEast Holdings, LLC.

2014

8/26/14—Bohannon Huston, Incorporated (BHI), an Albuquerque engineering firm, requests a 10-year extension to the Mariposa East Permit authorization, on behalf of MEast Holdings, LLC.

9/2/14—USACE SPA grants a request by MEast Holdings, LLC for a 10-year extension of the Mariposa East Permit (Action No. SPA-2004-00109), with a new expiration date of 12/31/24. The extension letter noted that the extension was largely based on the following statement: *“There are currently no plans to change the amount of fill discharged into jurisdictional waters.”* Furthermore, BHI’s extension request letter acknowledged that *any changes to the approved scope of work in the permit authorization will require further consultation with the Corps.* The extension letter also notes that CFR Section 325.5 allows for USACE to grant extensions of time limits if doing so would not be contrary to the public interest.

10/10/14—Harvard Ventures, Inc., a Canadian development company, enters into a Development Agreement for Mariposa East with the City of Rio Rancho.

10/29/14—MEast Holdings, LLC sells all of its land and interest in Mariposa East to Mariposa East, LP, an Arizona limited partnership and affiliate of Harvard Ventures, Inc.

2016

12/7/16—MEast Holdings, LLC cancels registration as a Foreign Limited Liability Company with the NM Secretary of State.

2018

2/28/18—Mariposa East, LP **sells** Tract 1-A3 to Jemez Vista Residential Development, LLC (dba Price Land & Development Group). Tract 1-A3 is a 10-acre tract of undeveloped land located in Phase 1 of Mariposa East. It was re-platted in December 2017 as the Jemez Vista Neighborhood, which will include 41 single-family residential lots.

3/29/18—Mariposa East, LP **sells** Tract 1A-11 to Pulte Homes of New Mexico, Inc., a Michigan corporation. Tract 1A-11 is a 31.6-acre tract of undeveloped land located in Phase 2 of Mariposa East and platted to include 135 single-family residential lots. Pulte Homes broke ground in late 2018 and the new neighborhood—Redondo at Mariposa—is approximately 60% complete.

2019

1/2/19—SSCAFCA passes Resolution 2019-05 requesting that the City of Rio Rancho require Harvard Investments, Inc. to update the Mariposa Drainage Management Plan either in total or by tract to reflect their re-zoning request because it has the potential to significantly increase runoff and change current drainage patterns, upon which flood control facilities were planned, built, or are managed.

1/23/19—The City of Rio Rancho approves a zoning and masterplan amendment request by Harvard Investments, Inc. to rezone approximately 684 acres in Mariposa East from E-1 (Estate Residential), R-1 (less dense single family residential), and OS (Open Space) to R-4 (more dense single family residential).

3/21/19—The City of Rio Rancho officially recognizes the Mariposa Neighborhood Association, which was formed because the Mariposa Homeowners Association board of directors is currently in the “Founders Phase” and controlled by the master developer, Harvard Investments, Inc. and its sub-developers and their builders.

2019—On an unknown date in 2019, according to USACE SPA, the Mariposa East Permit (Action No. SPA-2004-00109) was transferred. We haven't been provided the date of the transfer nor to whom it was transferred, but we can assume it was to Harvard Investments, Inc. or its affiliate, Mariposa East, LP.

2020

6/1/20—Jemez Vista Residential Development, LLC, *sells* the 10-acre Tract 1A-3 in Phase 1 of Mariposa East (aka the Jemez Vista Neighborhood) to DRHorton, Inc, a Delaware Corporation.

6/6/20—DRHorton breaks ground on the new Jemez Vista Neighborhood, clearing and grubbing mature juniper trees with active bird nests and filling in three arroyos, which were identified by USACE SPA in 2004 as jurisdictional waters and are tributaries to an unnamed arroyo situated on the far north section of the property that is protected by a SSCAFCA easement.

6/8/20—Cassandra D'Antonio, a resident of Mariposa East and Chair of MNA's Infrastructure Committee, contacts Forrest Luna with USACE SPA Regulatory Branch to inquire whether or not there is a 404 permit associated with Price Land & Development Group's construction activity in the Jemez Vista neighborhood. After phone calls to DRHorton and BHI, and maybe others, and a search of the SPA's data base, Mr. Luna informs Ms. D'Antonio that a permit for the work was issued by USACE SPA in 2004.

6/15/20—Ms. D'Antonio submits a FOIA request to the USACE SPA FOIA office for an electronic copy of Mariposa East Permit No. SPA-2004-00109.

6/22/20—EPA's and USACE's new regulations take effect removing federal protections of ephemeral streams.

7/24/20—Ms. D'Antonio receives an electronic copy of Mariposa East Permit No. SPA-2004-00109 from USACE SPA.

7/27/20—Ms. D'Antonio submits a FOIA request to the USACE SPA FOIA office requesting a copy of the water quality certification that may have been issued by NMED in concert with Mariposa East Permit No. SPA-2004-00109 in 2004 or upon its renewal in 2014.

8/28/20—Rebecca Roose, Director of the Water Protection Division, NMED, notifies John R. D'Antonio, Jr that the Surface Water Quality Bureau has no record that a 401 Water Quality Certification was issued by NMED for the Mariposa East Permit No. SPA-2004-00109, nor were they notified of or certified the permit's renewal in 2014, which is unusual based on common and expected practice.

9/3/20—John D'Antonio receives a copy of NMED's water quality certification from Shelly Lemon, Chief of the NMED SWQB.

Attachment 2

August 12, 2020

Christopher Parrish, Chief
Regulatory Branch
Department of Army, Albuquerque District, Corps of Engineers
4104 Jefferson Plaza, NE
Albuquerque, NM 87109

Dear USACE SPA Regulatory Chief and Staff,

On June 2, 2004, the US Army Corps of Engineers, South Pacific Division, Albuquerque District (USACE SPA) issued what has become a 20-year standard individual Section 404 Permit (Action No. SPA-2004-00109), with its 10-year renewal on September 2, 2014. This permit was issued to High Desert Investment Corporation for a 1,400-acre development named Mariposa East Subdivision, Rio Rancho, Sandoval County, NM. Moreover, this permit has been transferred twice since it was issued to High Desert Investment, and several conditions have changed since 2004, as I will outline below, including that the practiced 404 regulatory scheme that existed in 2004 was much less stringent than that which existed in 2014.

In 2008, the EPA and USACE jointly promulgated regulations revising and clarifying requirements regarding compensatory mitigation—restoration, establishment, enhancement and preservation of aquatic resources—to offset unavoidable adverse impacts. Moreover, though EPA finalized regulations in 1980 to constitute the substantive environmental criteria used in evaluating activities regulated under Section 404, by 2014 USACE was required to analyze alternatives to a proposed project pursuant to the 404(b)(1) Guidelines and the National Environmental Policy Act. According to the Guidelines, a permit cannot be issued if a practicable alternative exists that would have less adverse impacts on the aquatic system (known as the Least Environmentally Damaging Practicable Alternative [LEDPA]).

The 2004 Mariposa East Permit and its 2014 extension neither required a 404(b)(1) alternative analysis and selection of a LEDPA, nor does it appear that they required compensatory or any specific, enumerated mitigation of any kind. This permit has been transferred twice since 2004, and has provided all of three of the developers whom have held this permit permission to inflict irreparable and irresponsible ecological damage upon the fragile, rare, and undisturbed ecosystem that existed in this region of Southern Sandoval County prior to 2004. Moreover, the current assumed holder of the 2004 permit and master developer since 2014, Harvard Investments, Inc. (or their affiliate Mariposa East LP) has not been developing Mariposa East, but rather has been requesting successful zoning and masterplan amendments to replace open space and estate lots (and their building envelopes) with more dense residential development, and selling off large tracts of undeveloped land to other developers, whom are installing infrastructure, such as roads, curb and gutter, drainage culverts, etc. for builders and are in effect piggybacking on the 2004 Mariposa East Permit's 2014 extension and transfers, which I will discuss in detail below.

This letter will outline what we perceive as possible implied mitigation included in the 2004 permit; a chronology of events that may lend some insight on whether the permit should be reevaluated for suspension, modification, or revocation in accordance with paragraph 5(c) of said permit; and questions we are requesting to be answered.

Mitigation, Preservation & Conservation

In reviewing the 2004 permit numerous times, it is difficult to ascertain if there was any specific compensatory mitigation associated with the permit; however, some of the language could be interpreted as being implied rather than specified. The only reference to “mitigation” is found on Sheet 10 of 10, entitled *Mariposa East Mitigation Example: Typical Estate Lot Development: No Arroyo Discharge*. Additionally, there appears to be only approximations, no real commitments because of the use of qualifiers such as “where practicable,” and the use of “will be” rather than “shall be,” and thus is filled with verbal loopholes. And besides Special Condition 11 requiring that the Memorandum of Agreement regarding archaeological compliance be reviewed every five years, there are no other required review mechanisms, monitoring, or adaptive management provisions.

The *Residential Development* section under Project Description mentions that fills should be minimized and that building envelopes will be used in several areas to avoid fills. But is this required mitigation or a commitment by the permittee? It also reads that the approximate quantities for Phase I residential development would be 0.53 acres, which I strongly challenge. Phase I has not been completely built out, and I believe residential development to date has already exceeded that amount.

There is a section under Project Description entitled *Preserve and Open Space*, which states that these areas include the 2,185-acre Mariposa Preserve (which is owned by the Albuquerque Academy and preserved in perpetuity) and 467 acres of planned public natural open space with hiking and biking trails, but no mention that these areas provide for mitigation to offset adverse impacts, nor requirements that the developer shall preserve 467 acres for such use. There is an ambiguous and non-committal sentence which states that “[m]ajor arroyos and natural drainage patterns will be preserved and maintained in their natural state *where practicable*”. This section also again makes reference to building envelopes that will be designated for home construction on estate lots to conserve native vegetation and landforms, but again, no specific quantifiable requirements.

Then there are the 2004 Permit’s General and Special Conditions, which read like BMPs for a SWPPP, and are less specific and stringent than the general compliance conditions associated with Nationwide Permits. In fact, Nationwide Pre-Construction Notifications require more specific information than the 2004 Mariposa East permit contains.

Chronology

The chronology below begins with the annexation of Mariposa by the City of Rio Rancho and the issuance of the 2004 Mariposa East permit, and dates on which the permit was transferred, extended, and then again transferred. The chronology also notes dates upon which Mariposa

East was sold and then sold again, agreements between the City of Rio Rancho and the developers, including the approval of requested zoning and masterplan amendments. It concludes with the purchase of and the grading and filling in of three ephemeral arroyos located on a 10-acre plat for the new Jemez Vista neighborhood by the developer Price Land & Development Group, and the FOIA request and receipt of the 2004 Mariposa East Permit and Extension by the Mariposa Neighborhood Association. This chronology was developed using documents provided to us by the City of Rio Rancho and SCAFCA, as well as news outlet reports.

2002

2/27/02—The Albuquerque Academy, a NM non-profit corporation, High Desert Investment Corporation, a NM for-profit arm of the Albuquerque Academy, and the City of Rio Rancho enters into an Annexation/Development agreement for the development of approximately 6,685 acres of land. The City adopted the Mariposa Master Plan on 2/13/02, which divided the property into two planning areas: Mariposa East and Mariposa West. The Mariposa Master Plan also identified the 2,200-acre Mariposa Preserve, which is owned and protected in perpetuity by the Albuquerque Academy.

2004

6/2/2004—USACE SPA issues High Desert Investment Corporation a 10-year Standard Individual Permit for Mariposa East, 1,400-acre a master planned community located within jurisdictional unnamed tributaries of the Venada, Baranca, and Montoyas Arroyos and jurisdictional unnamed tributaries of the Jemez River, Rio Rancho, Sandoval County, New Mexico (Action No. SPA-2004-00109), with an expiration date of 12/31/14.

2012

6/12/12—High Desert Investment Corporation announces it is pulling out of Mariposa East and putting their interest in the community on the market. News outlets report that only 250 out of 1,500 potential residential home sites had been built and sold.

12/13/12—MEast Holdings, LLC registers as a Foreign Limited Liability Company with the NM Secretary of State.

12/19/12—Mariposa East Permit (Action No. SPA-2004-00109) is transferred to MEast Holdings, LLC.

12/21/12—High Desert Investment Corporation transfers all of its remaining land and interest in Mariposa East to MEast Holdings, LLC, a New Mexico foreign limited liability company.

2014

8/26/14—Bohannon Huston, Incorporated (BHI), an Albuquerque engineering firm, requests a 10-year extension to the Mariposa East Permit authorization (Action No. SPA-2004-00109), on behalf of MEast Holdings, LLC.

9/2/14—USACE SPA grants a request by MEast Holdings, LLC for a 10-year extension of the Mariposa East Permit (Action No. SPA-2004-00109), with a new expiration date of 12/31/24.

The extension letter noted that the extension was largely based on the following statement:

“There are currently no plans to change the amount of fill discharged into jurisdictional waters.”

Furthermore, BHI's extension request letter acknowledged that *any changes to the approved scope of work in the permit authorization will require further consultation with the Corps*. The extension letter also notes that CFR Section 325.5 allows for USACE to grant extensions of time limits if doing so would not be contrary to the public interest.

10/10/14—Upon MEast Holdings, LLC selling their land and interest in Mariposa East to Harvard Ventures, Inc., a Canadian development company, Harvard Ventures enters into a new Development Agreement for Mariposa East with the City of Rio Rancho (see attached).

2016

12/7/16—MEast Holdings, LLC cancels registration as a Foreign Limited Liability Company with the NM Secretary of State.

2018

3/27/18—Harvard Investments, Inc. announces that Price Land & Development Group has acquired a 10-acre tract of undeveloped land in Phase 1 of Mariposa East that will be developed into the *Jemez Vista* Neighborhood, which will include 41 single-family residential lots. Price Land & Development Group is now developing the infrastructure for these lots for DRHorton.

6/19/18—Harvard Investments, Inc. announces they have sold 31.6-acre tract of undeveloped land in Phase 2 of Mariposa East to the PulteGroup to develop into 135 single-family residential home sites, named *Redondo at Mariposa*. Pulte broke ground in late 2018 and Redondo is approximately 50% complete.

2019

1/2/19—SSCAFCA passes Resolution 2019-05 requesting that the City of Rio Rancho require Harvard Investments, Inc. to update the Mariposa Drainage Management Plan either in total or by tract to reflect their re-zoning request because it has the potential to significantly increase runoff and change current drainage patterns, upon which flood control facilities were planned, built, or are managed (see SSCAFCA Resolution attached).

1/23/19—The City of Rio Rancho approves a zoning and masterplan amendment request by Harvard Investments, Inc. to rezone approximately 684 acres in Mariposa East from E-1 (Estate Residential), R-1 (less dense single family residential), and OS (Open Space) to R-4 (more dense single family residential). See, attached RR Ordinance No. 33.

3/21/19—The City of Rio Rancho officially recognizes the Mariposa Neighborhood Association, which was formed because the Mariposa Homeowners Association board of directors is currently in the "Founders Phase" and controlled by the master developer, Harvard Investments, Inc. and its sub-developers and their builders.

2019—According to USACE SPA, sometime in 2019, the Mariposa East Permit (Action No. SPA-2004-00109) was transferred. We haven't been provided the date of the transfer nor to whom it was transferred, but we can assume it was to Harvard Investments, Inc. or its affiliate, Mariposa East, LP.

2020

6/6/20—Price Land & Development broke ground on the new Jemez Vista neighborhood in Phase 1 of Mariposa East, clearing and grubbing mature juniper trees with active bird nests and

filling in three arroyos, which are tributaries to an unnamed arroyo situated on the far north section of the property that is protected by a SSCAFCA easement. (Attached is a drawing obtained from SSCAFCA, which highlights the arroyos within Mariposa East they have protective easements on. We also marked the boundaries of Jemez Vista and Redondo at Mariposa.)

6/8/20—Cassandra D’Antonio, a resident of Mariposa East and Chair of MNA’s Infrastructure Committee, contacts Forrest Luna with USACE SPA Regulatory Branch to inquire whether or not there is a 404 permit associated with Price Land & Development Group’s construction activity in the Jemez Vista neighborhood. After phone calls to DRHorton and BHI, and maybe others and a search of the SPA’s data base, Mr. Luna informs Ms. D’Antonio that a permit for the work was issued by USACE SPA in 2004.

6/15/20—Ms. D’Antonio submits a FOIA request for an electronic copy of Mariposa East Permit No. SPA-2004-00109.

June—Harvard announces plans to develop 440 acres in Mariposa East Phase 2, named Monarch. The City of Rio Rancho has yet to approve the final plat, and we are not sure if this area will be developed by Harvard for builders or if it is to be sold to other developers.

7/24/20—Ms. D’Antonio receives an electronic copy of Mariposa East Permit No. SPA-2004-00109 from USACE SPA.

2/27/20—Ms. D’Antonio submits a FOIA request to USACE SPA requesting a copy of the water quality certification that may have been issued by NMED in concert with Mariposa East Permit No. SPA-2004-00109 in 2004 or upon its renewal in 2014.

Request for Reevaluation of Permit Decision

Ideally, the SPA Regulatory Branch, in granting a 10-year permit extension in 2014, would have reevaluated the original permit conditions and seen them greatly lacking in any meaningful mitigation and questioned whether they should grandfather substandard permit conditions for 20 years. By around 2008, High Desert Investments had designed and installed a lot of infrastructure throughout Mariposa East subdivision and for various planned neighborhoods, including roads, curb and gutter, culverts and drop structures, retaining walls, water supply and treatment facilities, etc., and had sold many improved lots to builders. However, in 2014, when High Desert bailed out of Mariposa East, large plats of land had not yet been improved in ecologically sensitive areas containing jurisdictional arroyos, and the development was only about 17% occupied. But of course, that opportunity ship has sailed.

However, according to the 2004 Mariposa East Permit, Section 5.c., USACE SPA can reevaluate the permit for suspension, modification, or revocation at any time the circumstances warrant, including if significant new information surfaces that SPA did not consider in reaching its public interest decisions. We believe that the information above provides significant new information that would warrant a reevaluation as follows.

I. Scope of Work

The September 2, 2014 extension letter noted that the requested extension was being granted largely based on the following statement: *“There are currently no plans to change the amount of fill discharged into jurisdictional waters.”* Furthermore, BHI’s extension request acknowledged that *any changes to the approved scope of work in the permit authorization will*

require further consultation with the Corps. We would like to pose the following arguments that raise questions whether the approved scope of work has indeed changed.

1. Zoning and Masterplan Amendments: In January 2019, the City of Rio Rancho approved a zoning and masterplan amendment request by Harvard Investments, Inc. to rezone approximately 684 acres in Mariposa East from E-1 (Estate Residential), R-1 (less dense single family residential), and OS (Open Space) to R-4 (more dense single family residential), which will greatly reduce or eliminate natural open space and building envelopes around estate lots. We believe that the preservation of 467 acres of natural open space and the building envelopes designated for home construction on estate lots to avoid fills in jurisdictional waters and conserve native vegetation, landforms, and natural drainage patterns were part of the approved scope of work and implied mitigation, and therefore the 2019 re-zoning and masterplan amendments represent a change to the approved scope of work upon which the 2004 Mariposa East Permit and its extension was authorized upon, requiring further consultation with USACE.

2. Area and Amounts of Fill: The project description included in the 2004 Mariposa East approximates fill areas and quantities in jurisdictional waters for residential development in Phases I and II. The fill area for Phase I residential was approximated at 0.53 acres, which we strongly challenge. Phase I has not been completely built out, and we believe residential development to date has already exceeded that amount, and that future planned residential development will greatly exceed that amount due to the zoning amendments. Because we lack the technology from home to estimate these quantities, does SPA have the resources to do this?

II. Permit Transfers

Whereas the original developer (and permittee) of Mariposa East, High Desert Investment Corporation, actually developed the land and sold improved lots to builders, as discussed above, the current developer and permit holder, Harvard Investments (or their affiliate), has done zero developing since they acquired Mariposa East in 2014. Instead they have been selling off large tracts of undeveloped and unimproved land to other developers, whom are developing and improving these tracts for builders. An example mentioned above in the *Chronology* includes the 10-acre tract in Phase 1 that Harvard sold to Price Land & Development Group that they are currently developing into the *Jemez Vista* Neighborhood, which will include 41 single-family residential lots upon which DRHorton will build homes. Another example is the 31.6-acre tract of undeveloped land in Phase 2 of Mariposa East that Harvard sold to the PulteGroup to develop into 135 single-family residential home sites, named *Redondo at Mariposa*. Pulte broke ground in late 2018 and Redondo is approximately 50% complete. Both of these neighborhoods are being built within the Section 404 jurisdictional limits illustrated in the drawings attached to the 2004 Mariposa East Permit. And more residential development within jurisdictional limits is planned for development in the very near future in both phases, including the 440-acre Monarch Subdivision in Phase II. We are not sure if Harvard will be doing the actual development on this unimproved tract, or if they will be selling it in whole or in sections to other developers.

When I inquired about the arroyos in Jemez Vista being filled in and mature trees with active bird nests being ripped out by Price Land & Development Group, I was told by Mr. Luna that the work was covered under the 2004 Mariposa East Permit, which begs for answers to numerous questions. If a current permittee sells a tract of land to another developer, is that developer covered under the seller's 404 permit? Do USACE regulations allow future owners of parcels of land included in a previously issued permit to piggyback off of that permit? Can a permit be transferred to and held by numerous permittees at the same time and become an asset associated with a parcel? If so, that would make tracts of undeveloped land in Mariposa East extremely attractive and a great selling point to potential developers. They could forgo the time consuming and expensive 404(b)(1) analysis and possibly compensatory mitigation and monitoring requirements their fellow developers have had to endure (e.g., AMREP's Lomas Encantadas development).

Another question is whether or not the 2004 Permit should have been transferred to Harvard in 2014 when they purchased Mariposa East and began plans for zoning and masterplan amendments and selling off tracts of undeveloped land, rather than in 2019.

Conclusion

The Mariposa Neighborhood Association's Infrastructure Committee appreciates your attention and time in helping us sort through our questions. We get very little if any information from Harvard Investments, who manages our Homeowners Community Association. And because Mariposa East is still considered to be in the "Founders Phase," residents do not participate in the decisions that are being made for our community, though we pay an HOA fee and are part of a public improvement district (PID), which helped High Desert finance the existing infrastructure, and its assessments are added to our property taxes.

What has been occurring in our community since Harvard purchased it in 2014 has alarmed many of its residents, forcing us to form a neighborhood association, which was recognized by the City of Rio Rancho. As a neighborhood association, we have been conducting research and asking questions. Also, the current development taking place has not passed my smell test as an experienced environmental professional, and has thus required me to take the time to dig into all of the compliance responsibilities of the developers.

We look forward to our conversation this Friday. It is possible that because your information is now being so closely guarded that we will only be able to get answers through numerous FOIA requests. But any information you can provide on Friday will be appreciate. Also, we have yet to receive a copy of any water quality certifications that were issued; possibly they will shed more light on the current situation.

Regards,
Cassandra D'Antonio
Chair, MNA Infrastructure Committee