

June 1, 2021



Matt Geisel, City Manager  
City of Rio Rancho  
3200 Civic Center Circle, NE  
Rio Rancho, NM 87144  
Submitted via Email to [mgeisel@rrnm.gov](mailto:mgeisel@rrnm.gov)  
Copy to: Councilor/Deputy Mayor Bob Tyler @ [btyler@rrnm.gov](mailto:btyler@rrnm.gov)

Re: Mariposa Neighborhood Association Request for Relief and Independence

Dear Mr. Geisel,

The Mariposa Neighborhood Association (MNA) recently formed a special committee to pursue homeowner representation on their homeowner association board, the Mariposa Community Association (MCA). As of March 2021, 26% of the units/lots in Mariposa East have been conveyed to owners other than a declarant, according to the Sandoval County Assessor's website. And, according to the New Mexico Homeowner Association Act (NMSA Section 47-16-8(E)) and the MCA Bylaws, within 30 days after the time that Owners other than Builders own 25% of the Units permitted by the Master Plan, the MCA Board President shall call for an election to elect one of three board members. The MNA submitted a request to the MCA Board that such an election be held, which was denied.

The MCA's General Counsel responded that its governing documents are tied to the Mariposa Master Plan, which includes both Planning Area I (Mariposa East) and Planning Area II (Mariposa West), both of which total 6,825 units. To reach 25%, 1,706 lots would have to be sold to owners other than the Master Developer, which could take years or decades, since Mariposa West has been on the market for years. The MNA's argument is that both planning areas are functionally separate, as they are now owned by two separate entities, and neither controls the other. The City of Rio Rancho found this to also be true in 2014, when they entered into separate development agreements with Harvard Ventures, Inc. for Mariposa East, and the Albuquerque Academy for Mariposa West and the Mariposa Preserve, as stated in Paragraph H (Page 2) of the development agreements:

*Because the Amended Agreement contemplated the development of the Property [Mariposa Community] by a single developer and because the Property now has two independent and unaffiliated major owners and developers namely, the Academy and the New Developer [Harvard Investments], the Academy, the New Developer and the City now desire to divide the Amended Agreement into two separate and independent development agreements, one which governs the development of Mariposa East and one of which governs the developer of Mariposa West and the Mariposa Preserve.*

For these same reasons, and because the MCA's governing documents also contemplated the development of Mariposa by a single developer, the MNA Board, who represents 148 registered households in Mariposa East, is pursuing a variety of remedies to sever the relationship between Mariposa East and Mariposa West, which would allow the residents of Mariposa East independence and self-determination. It would also compel the MCA Board, which is controlled by the current Master Developer (Harvard Ventures), an employee of the developer, and a builder representative, to amend its

governing documents so that they only apply to the property (Mariposa East) over which they have direct control.

It is true that the MCA's 2004 governing documents do reference the Mariposa Community/Property as including both planning areas; however, due to the events that have occurred since 2012, these documents no longer reflect current conditions. Therefore, as mentioned above, the MNA has formed a special committee to aggressively pursue owner/resident representation on the MCA Board to free the residents of Mariposa East from an outdated construct that continues to put us in flux, so that we can have a voice in all things affecting the governance of our separate community. This special committee has in turn developed a multi-pronged strategy and approach to do this, and our first stop is to seek a meeting with you to explore possible remedies that the City could afford, as strongly encouraged by our City Councilor Bob Tyler.

Below is an outline of the germane facts as we understand them; our arguments pertaining to our request for independence, self-determination, and relief; possible approaches to remedies; a chronology of development and permitting activities in Mariposa East; and a recent letter from the MCA's Board of Directors to the MNA in response to our request to hold an election to elect an owner/resident to its board.

We look forward to meeting with you soon. If you have any questions, please contact Cassandra D'Antonio at [cassandantonio@aol.com](mailto:cassandantonio@aol.com) or 505.274.0680.

Respectfully Submitted By:

Mariposa Neighborhood Association's Board of Directors\*  
and  
Special Committee for Resident Representation on the MCA  
Cassandra D'Antonio, Chair (Sierra Vista Neighborhood)

\*The following Directors of the MNA Board met on May 28<sup>th</sup>, 2021, and approved the positions and requests set forth in this letter.

Eric Gregory, President (Vista de Santa Fe Neighborhood)  
Melissa Pedraza, Vice President (Vista Sandia Neighborhood)  
Kelly Heimgartner, Secretary (Desert View Neighborhood)  
Robin Saunders, Director (Redondo @ Mariposa Neighborhood)  
Pam Troutman, Director (The Peaks Neighborhood)  
Sara Bryan, Director (The Estates)

## **FACTS**

The following are germane facts relating to our arguments below as we understand them.

- In 2002, the City of Rio Rancho adopted the Mariposa Master Plan, which divided the 6,685-acre Mariposa Property into two planning areas: Mariposa East and Mariposa West. The same year, the City of Rio Rancho and the Founder, High Desert Investment Corporation, the investment arm of the Albuquerque Academy, entered into an annexation/development agreement for the development of the Property.
- In 2004, the Founder filed Articles of Incorporation and recorded the Bylaws, Charter, and Sustainability Guidelines, establishing a governance structure for the community via the Mariposa Community Association (MCA). The Mariposa Master Plan and these governing documents *contemplated the development of the Mariposa Property (both East and West) by a single developer.*
- The MCA Bylaws also call for the formation of a Voting Delegation, with voting delegates elected by their respective neighborhoods to represent owners' interest at MCA meetings. The trigger for the election of voting delegates, according to the bylaws, "shall occur no later than 90 days prior to any MCA meeting at which the Voting Delegate will be entitled to vote." To date, the MCA Board has not called for an election of a neighborhood voting delegation.
- In 2012, the Founder pulled out of Mariposa East and granted to Bank of Albuquerque, as Trustee of the Mariposa East Public Improvement District (created in 2006), all the real property designated as Mariposa East. Bank of Albuquerque then transferred all its interest to MEast Holdings, LLC, the bondholders of the PID.
- In 2014, MEast Holdings, LLC sold its interest in Mariposa East to Harvard Ventures Inc. The City of Rio Rancho entered into separate development agreements with Harvard Ventures, Inc. for Mariposa East and the Albuquerque Academy for Mariposa West and the Mariposa Preserve. The development agreements explain the reasons for separate agreements as being that the original development agreement contemplated the development of the Mariposa Property by a single developer and because the Property now has two independent and unaffiliated major owners and developers—the Albuquerque Academy and Harvard Ventures—the parties desired to divide the original development agreement into *two separate and independent development agreements, one which governs the development of Mariposa East and one of which governs the developer of Mariposa West and the Mariposa Preserve.*
- In 2019, the City of Rio Rancho's Governing Body approved the Master Developer's zoning and Mariposa Master Plan amendment requests to rezone approximately 684 acres in Mariposa East from E-1, R-1, and OS to R-4. The City also recognized the Mariposa Neighborhood Association (MNA), which was formed to provide a voice for its residents.
- As of March 2021, according to the Sandoval County Assessor's website, 26% of the units/lots in Mariposa East have been conveyed to owners "other than the declarant." The MNA sent a letter to the MCA Board requesting that an election be held to elect an owner to represent one of three board positions. The MCA Board responded that that its governing documents are tied to the Mariposa Master Plan, which includes both Planning Area I (Mariposa East) and Planning Area II (Mariposa West), both of which total 6,825 units. To reach 25%, 1,706 lots would have to be sold to owners other than the Master Developer.

- The 2,931-acre Mariposa West property has been on the market for years for \$10,258,500,000 or \$3,500/acre.

## **ARGUMENTS FOR INDEPENDENCE & SELF-DETERMINATION**

Under the current governance construct, there is one residential community called Mariposa, which includes Mariposa East and Mariposa West. Under the Mariposa Master Plan and the MCA Charter, Mariposa is approved for approximately 6,825 total homes. According to both state law and the MCA Charter and Bylaws, the trigger to begin elections by the lot owners for a minority one out of three positions on the MCA Board is when at least 25% of the total number of lots (1,706) have been sold to owners other than the Master Developer. This trigger could be attained by the development of Mariposa East alone, after the completion of the proposed Monarch, Overlook and Highlands neighborhoods. However, the trigger to have two owners on an increased five-member board would be the conveyance of 50% of the total number of lots (3,412.5), and the trigger to end the Founder Control Period would be the conveyance of 75% of lots (5,118.75), both of which would require the development of Mariposa West, since Mariposa East is currently zoned for 2,500 residential lots.

Let us not fool ourselves—the MCA is the Master Developer. Its three-member board is currently comprised of two Master Developer representatives and one builder representative. These members currently and will continue to make decisions in their interests, for years if not decades to come, regarding raising HOA fees, budgeting priorities, and selectively enforcing the charter and overseeing compliance with the sustainability guidelines. We understand the need for a master developer to control these decisions when a community is in its infancy so that their development vision is realized. However, Mariposa East was born in 2004, and is now 17 years old, so it is the Master Developer who is the child.

Mariposa West has been on the market for years. When Mariposa West is sold, will the new developer want to be considered co-founders under the 2004 master plan and its governing documents, including its sustainability guidelines, or governed by them, or will they want the flexibility to realize an independent vision and to form their own community association? Or will they want to perhaps apply for increased density adding additional lots and further delaying the residents of Mariposa East their seat on the MCA board. How many years after acquiring Mariposa West will it take the developer to attain all the required approvals and permits and to install infrastructure before a single house can be built? These uncertainties put the residents of Mariposa East in a state of flux with no significant input or control over quality-of-life issues, conservation/preservation of natural open space and trails, and budgetary/fiscal issues that are in their and their community's interests for years or decades to come.

## **POSSIBLE REMEDIES**

- The City could amend the Mariposa Master Plan into two separate and independent areas—Mariposa East and Mariposa West, mirroring its development agreements.
- The City could deny or restrict Mariposa East's future planning and zoning requests unless they amend the Mariposa Community Association's governing documents to only reflect the area of Mariposa they directly control.
- Lobby state legislators, Senator Shendo and Representative Harper, to introduce legislation to amend the New Mexico Homeowners Association Act (New Mexico State Statutes Chapter 47

Property Law, Article 16, Homeowner Associations 47-16-1 through 47-16-18) to include language that would require HOA governing documents to only pertain to those properties under its direct control.

- Other remedies outside of the City's control include a lawsuit, aggressive PR campaign, including, but not limited to, petition and fund drive, social media, letters/editorials to the newspapers, etc.
- Appealing to the Albuquerque Academy student body, staff, and alumni to request a change in Mariposa West's status so that it separates itself from the current Mariposa West's development.

## **Chronology of Mariposa East Development & Permitting Activities**

### **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 enter into an annexation/development agreement for the development of 6,685 acres, the Mariposa Community.

### **2003**

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

### **2004**

**4/13/04**— Bohannon Huston, Incorporated (BHI), an Albuquerque engineering firm, prepares Mariposa Drainage Management Plan (rev. 9/8/04 & amended 9/12/05).

**6/2/04**—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.

**6/22/04**—Articles of Incorporation for the Mariposa Community Association are filed with the New Mexico Public Regulation Commission.

**8/27/04**—The Bylaws of the Mariposa Community Association were signed by the founding officers of the MCA on behalf of the MCA and recorded with the Sandoval County Clerk on 12/23/04.

**12/23/04**—The Founder, High Desert Investment Corporation, establishes the Charter document which provides for governance structure of the Mariposa Community, including the Mariposa Community Association.

### **2006**

The Mariposa East Public Improvement District (PID) is created.

### **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.

### **2013**

**7/1/13**—The Homeowners Association Act (NM State Statutes Chapter 47 Property Law Article 16 Homeowner Associations 47-16-1 through 47-16-18) goes into effect, providing for the formation and management of HOAs, disclosure of records, and requirements of disclosure to purchasers.

### **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.

**10/10/14**—The Albuquerque Academy enters into a Development Agreement for Mariposa West 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). See, Ordinance No. 33, Enactment No. 19-08.

**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.

**6/13/19**—BHI submits permit ownership transfer request to USACE requesting transfer of Mariposa East Permit (Action No. SPA-2004-00109) to ABQ-GP, LLC, General Partner of Mariposa East LP, Mariposa East 2, LP, Mariposa 3, LP, and Mariposa East Overlook, LP (Owners), stating that “A letter requesting an update to the permit based on changes in the land development plans will be submitted at a later date.”

## **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**—MNA 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.

**10/19/20**—USACE responds to MNA's request for all documents pertaining to Mariposa East Permit No. SPA-2004-00109.

**2021**

**5/11/21**—Master Developer requests approval of a bulk plat for Mariposa East, Tracts 1A-12 through 1A-15 (Monarch Subdivision).



# M A R I P O S A

## COMMUNITY ASSOCIATION

To: The Mariposa Neighborhood Association

Re: Question for the Board regarding Turnover

Kelly,

At the February 17, 2021 Executive Session Meeting, you asked a question on behalf of your group regarding the metrics utilized to establish the completion percentage required for election of Mariposa homeowners to the Mariposa Community Association Board of Directors (the "MCA Board"). The MCA Board requested that CCMC procure a legal opinion from the MCA General Counsel as to the process outlined in the MCA Governing Documents, and as it pertains to the Mariposa Master Plan in defining the terms of that process.

Based on the Community Charter for Mariposa Residential Property and the Mariposa Master Plan, there is one residential community called Mariposa, approved for approximately 6,825 total homes. The Homeowner Association Act identifies that the trigger for the election under NMSA § 47-16-8(E) is "sixty days after conveyance of twenty-five percent of the lots that are part of the development, **and any additional lots that may be added to the development**, to lot owners other than a declarant." (emphasis added). Accordingly, the trigger to begin elections by the lot owners for a position on the MCA Board is when at least 25% of the total number of lots that may be added to the development (1,706 homes out of 6,825 homes) have been sold to owners other than the Founder.

Please let me know if you have further questions,

For the Mariposa Board of Directors,

Sincerely,

*Ed Lyons*

*Community Manager, Mariposa*

2501 Parkway Avenue NE • Rio Rancho, NM 87144

[www.CCMCnet.com](http://www.CCMCnet.com) p: 505-219-2986 f: 505-219-2988