



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
3636 N CENTRAL AVENUE, SUITE 900  
PHOENIX, ARIZONA 85012-1939

September 25, 2017

Steve Spangle  
Field Supervisor, Arizona Ecological Services  
U.S. Fish and Wildlife Service  
Phoenix, Arizona 85021

Dear Mr. Spangle:

I am writing in regards to our ongoing consultation pursuant to section 7 of the Endangered Species Act regarding Consultation No. 02EAAZ00-2015-I-0660 and 02EAAZ00-2015-CPA-0021. During our interagency consultation, your office requested clarification as to whether the applicant, El Dorado Holdings Inc., will carry out the no Federal action alternative described in Appendix I of the biological evaluation we submitted to your office on May 26, 2017 in the event the Corps decides to not reinstate the Department of the Army (DA) permit. In response, El Dorado Holdings provided the Corps with the enclosed letter dated September 14, 2017, for your consideration during the consultation. El Dorado Holding's letter indicates they will develop the property whether they have a DA permit or not. The no Federal action alternative described in Appendix I will occur in the event the Corps decides to not reinstate the DA permit. I hope this clarifies the Corps' position regarding the no Federal action alternative.

With this clarification on the certainty of the no Federal action alternative and very limited federal control and responsibility of the Corps' section 404 Clean Water Act permit authority over the proposed development project, we believe the views expressed in your letter dated October 14, 2016, incorrectly characterizes the direct and indirect effects of the proposed federal action. As such, we request that you retract that letter.

Finally, we hereby reiterate our determination that the proposed Federal action within the onsite action area will not affect listed species or designated critical habitat, and the proposed action at the offsite compensatory mitigation area may affect, but is not likely to adversely affect the yellow-billed cuckoo, southwestern willow flycatcher and the northern Mexican gartersnake, is not likely to result in the destruction or adverse modification of proposed critical habitat for cuckoo or gartersnake, and would have no effect on any other listed species.

Sincerely,

A handwritten signature in blue ink that reads "Sallie Diebolt".

Sallie Diebolt  
Chief, Arizona Branch  
Regulatory Division

Enclosure

c: Scott Richardson, USFWS

Mike Reinbold, El Dorado Holdings, Inc.

Dennis Krahn, El Dorado Holdings, Inc.

Norm James, Fennemore Craig



# El Dorado

## Holdings, Inc.

September 14, 2017

*Via Electronic Mail and U.S. Mail*

Ms. Sallie Diebolt  
Chief, Arizona Branch  
Regulatory Division – Los Angeles District  
U.S. Army Corps of Engineers  
3636 North Central Avenue, Suite 900  
Phoenix, AZ 85012-1939

Re: The Villages at Vigneto, Benson, Arizona  
Department of the Army Permit No. SPL-2003-00826

Dear Ms. Diebolt:

I am writing you on behalf of El Dorado Benson, L.L.C. (El Dorado). The purpose of this letter is to respond to questions that have come up concerning El Dorado's development project, the Villages at Vigneto. I want to make certain that there is no misunderstanding concerning our intention to proceed with this project.

The Villages at Vigneto is an 8,200-acre master-planned community in Benson, Arizona (the Development). It is a mixed-use residential project of approximately 20,000 units. In 2006, the U.S. Army Corps of Engineers (Corps) issued an individual Clean Water Act Section 404 permit (the Permit) authorizing the discharge of fill material to 51 acres of waters of the U.S. within the Development.

The site of the Development was originally part of a larger project owned by Whetstone Partners, and was annexed into the City of Benson in 1993. That entity, in conjunction with Pulte Homes, proposed the development of an 8,200-acre master-planned community within the boundaries of the larger project area, i.e., the site of the Development. Whetstone Partners applied for and obtained the Permit from the Corps to discharge fill material into desert washes considered waters of the U.S. in connection with developing this property.

Shortly after the Permit was issued, economic conditions deteriorated, affecting the regional real estate market and delaying development. Ultimately, El Dorado acquired the 8,200-acre development site in 2014, including the Permit and other entitlements. Subsequently, at the request of the City of Benson, El Dorado submitted and obtained the City's approval of a new community master plan (CMP) for the Development, which included residential and commercial land uses and associated stormwater management facilities, roadways, utilities, and

recreational amenities.<sup>1</sup> However, the conceptual land plan for the 8,200-acre Development site has remained virtually unchanged with regard to planned infrastructure and housing density, and the anticipated impacts to waters of the U.S. are the same as those authorized in the Permit. Again, a total of 51 acres of desert washes that cross the property will be impacted for pad fill and road and utility line crossings.

However, in 2015, the Corps decided to reevaluate the environmental circumstances in and around the Development, and in 2016 suspended El Dorado's Permit during this review. To our knowledge, the only environmental changes of any significance since 2006 have been the listing of two species under the Endangered Species Act: the yellow-billed cuckoo and the northern Mexican gartersnake. As you know, field work has confirmed that these species are not found within the 8,200-acre Development site. However, portions of an off-site parcel of land, which El Dorado is restoring as mitigation for the impacts to the waters of the U.S., have been proposed as critical habitat for these species, and yellow-billed cuckoos have been detected within or near that parcel. As a result, the Corps has been engaged in informal consultation with the Fish and Wildlife Service about the effects of reinstating the Permit.

In connection with its environmental review, the Corps evaluated whether the development could take place without the Permit, i.e., the so-called "no action" alternative, which is required by NEPA. The document entitled "No Federal Action Alternative Description" contains a detailed description of how such development would likely occur. This document was included as Appendix I to the Biological Evaluation submitted to the Fish and Wildlife Service on or about May 26, 2017. We understand that, notwithstanding this document, there is some confusion over whether El Dorado would actually develop the property without the Permit. I can assure you that we would.

El Dorado has made a significant investment to acquire and maintain the 8,200-acre Development site and its related entitlements, including the Permit. If the Corps fails to reinstate the Permit, El Dorado will not forego development of this valuable property. The 8,200-acre Development site contains large swaths of upland areas with no washes subject to federal jurisdiction, affording residential, commercial, and recreational development opportunities without the need for a Section 404 permit. This will allow El Dorado, and any future builders to whom parcels are sold, to build the approximate number of residential units allowed under the existing zoning in the CMP.

To achieve the same densities under the No Federal Action Alternative, El Dorado would expand the footprint of development activities in upland areas, while avoiding the major washes that are considered waters of the U.S. The Development will still include residential, mixed use, commercial, and open space. However, we likely will add some agricultural land uses, such as vineyards and nut orchards, as a transitional land use in order to provide an additional source of revenue from the Development during its early stages.

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<sup>1</sup> The new CMP contains additional land, outside the Development, that El Dorado also acquired from the former owner. As we have explained in the past, El Dorado has no current plans to develop this additional land, which is not part of the Development. Our focus is on the Development.

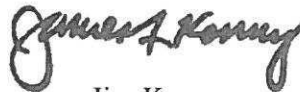
Admittedly, developing our property in this manner would not meet our project purpose and will be less efficient from a land planning standpoint. Our core concept of interconnected villages would be difficult to retain. Instead, commercial and mixed uses would be focused along or near State Highway 90, which runs north and south along the western boundary of the Development site. Subdivision of the site would proceed in a west-to-east direction, between the major washes. Likewise, major streets and backbone infrastructure would be oriented west-to-east between the major washes, and would not be interconnected and integrated. Sewer collection and treatment would be less centralized, and the timing and availability of reclaimed water for non-potable uses and recharge would be affected. As result of these and other changes, the Development may have greater impacts on the environment.

Nevertheless, the No Federal Action Alternative is feasible from an engineering and land planning perspective, as explained in the No Federal Action Alternative Description. El Dorado will develop the site in this fashion rather than sitting on its investment and earning no return.

I hope this adequately responds to your questions about El Dorado's intentions. We did not purchase the Development site as a long-term investment. If the Permit is not reinstated, we will modify our development strategy and proceed with this project.

Please let me know if you have any questions or require any additional information..

Sincerely,

A handwritten signature in black ink that reads "James A. Kenny". The signature is written in a cursive, flowing style.

Jim Kenny  
President

cc: Kathleen Tucker, US Army Corps of Engineers  
Robert D. Anderson, Fennemore Craig

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