

From Planning Commissioner Donn Harter

Recusal statement at the Planning Commissioner's meeting, May 23, 2014

Mr. Chairman,

I wish to recuse myself from participating on Item 5, Time Extension Application No. 2014-034 for the following reason:

It is improper, in fact illegal, federal law (42 United States Code §1983) for a public official, such as, a Commissioner or Board member to make any public statement of opinion, whether written or spoken, on any subject scheduled for public hearing prior to the meeting of that governing body.

Therefore, Mr. Chairman, with regret I must recuse myself from any participation in the foregoing proceedings.

Donn Harter, Planning Commissioner, District 5



Please respond to:
Irvine

James C. Bastian, Jr.
Mark Bradshaw
Lynda T. Bui
Franklin J. Contreras, Jr.
Melissa Davis Lowe
Heather B. Dillion
Elyza P. Eshaghi
Kiara W. Gebhart
Ronald S. Hodges
Robert E. Huttenhoff
J. Ronald Ignatuk
John Mark Jennings
Rika M. Kido
Paul S. Ocampo
Ryan O'Dea
Gary A. Pemberton
Michael J. Petersen
Samuel J. Romero
Leonard M. Shulman

Of Counsel to the Firm
A. Lavar Taylor
Donald R. Kurtz
Gregory J. Anderson

May 23, 2014

Ira Glasky
Palm Springs Village-309, LLC
c/o Far West Industries
2922 Daimler St.
Santa Ana, CA 92705

Via E-mail Only
iglasky@farwestindustries.com

Re: Fish Camp Project

Dear Ira:

As you know, I have been serving as counsel to Paul Giuntini in connection with his pending bankruptcy case. In the course of my representation, I have had extensive discussions and communications with the bankruptcy trustee, Jason Rund, and his counsel, Thomas Casey, regarding the Fish Camp property and a transaction which would result in a payment to the bankruptcy estate in exchange for a release of the estate's interests in various property and rights, including whatever rights are necessary to the ongoing development of the Fish Camp property. Through my negotiations with the trustee, the trustee and his counsel advised me in November 2013 of very specific terms that would be agreeable to them in order to proceed with the transaction. Based on my understanding of the terms that Palm Springs Village-309, LLC ("PSV") is agreeable to in connection with this property, I believe that the trustee's terms have been met. The final agreement will need to be approved by the United States Bankruptcy Court.

Please let me know if you need any additional information.

Very truly yours,

SHULMAN HODGES & BASTIAN LLP

A handwritten signature in black ink, appearing to be "JCB", written over the printed name of James C. Bastian, Jr.

James C. Bastian, Jr.

JCB/pab

Z:\G-H\Giuntini, Paul\Ltr\Glasky 002.docx
4473-002

Mariposa Planning Commission, Silvertip hearing, May 23, 2014 (submitted at hearing)

- located @
PC hearing

Members of the Planning Commission:

As business people, we believe business begets business which has the ability to infuse life and vitality into a community. But, let there be no doubt, we have always written objections on the SilverTip project based on our Block D subdivision water rights. We have never heard one word from this company nor the former one in resolving these issues. We also understand that Yosemite Alpine Village Subdivision has no clear conclusion with the company as how their water rights will be resolved either. The planning report provides some vague alternatives but nothing "we can take to the bank," as they say. This is not showing GOOD CAUSE in advancing a project forward, especially on these water right issues.

We understand the Mariposa Board of Supervisors on May 13 voted to adopt a Drought Emergency Proclamation. Just last week Governor Brown declared the drought in California as "a state of emergency," calling for all California to conserve water and prepare for prolonged water shortages. (attach #1) Many counties are turning to Building Moratoriums in considering large projects. Just turn on the news. Lakes are down, springs are drying up, water tanks take longer to fill, wells are running out of water. Just read the Mariposa Gazette (May 15, 2014), "Drought Watch." Experts say that contrary to popular opinion, it takes multiple years of normal precipitation to recharge this acre's fractured rock ground system..."Most people assume that if we get 10 inches of good rain, we'll be in good shape water-wise. In a hard-rock region like our own, a good snowpack in the mountains above us is much more important than rain for keeping our fissures charged....(But) Long-term climate models suggest that drier years and higher snow levels may become the region's norm." (attach # 2)

Drought and tinder dry forests are extreme fire risks. Based on what you know is happening today, would any one of you on this Board want to take the risk of voting to extend a proposed project that will place increased demands on our fragile and diminishing water supply? (At this point in time, two domestic water systems depend on part of the developer's plan.) Will there be enough for domestic use and fire suppression? Would you want to put our community at risk of life, limb and property? Once fire starts, it can destroy life, a little community and the environment very quickly.

This Board can be benevolent in approving the extension, or based within the context of drought emergency proclamations (consequential to PUBLIC HEALTH, SAFETY AND FIRE PROTECTION) it can exercise the tougher choice of denying the project extension. I cannot believe that this board would put potential profit over the safety and well being of an entire community. In the event of a catastrophic fire the county would very likely be held legally responsible for the loss of life in approving this project.

Tough decisions are hard to make; the "Right Decisions" are even harder, that is, until Governor Brown declared the drought as a "state of emergency" in California.

Please vote "NO" for the extension.

Respectfully,
Barbara Taylor
39135 Road 600, Raymond, CA. 93653

Attch: 2
c/c: Mariposa Board of Supervisors



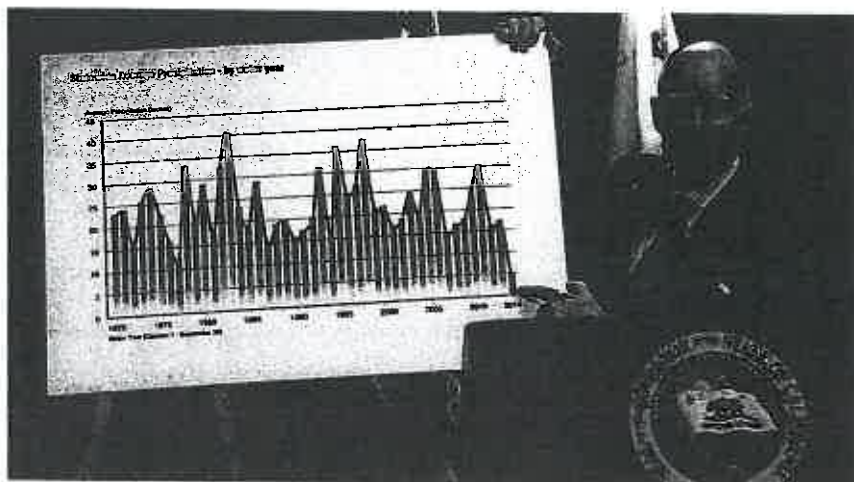
the two-way

america

California's Governor Declares Drought State Of Emergency

by BILL CHAPPELL

January 17, 2014 8:27 PM ET



Justin Sullivan/Getty Images

Saying that his state must take steps to plan for prolonged water shortages, Gov. Jerry Brown declared a state of emergency over an extended drought Friday. California faces "water shortfalls in the driest year in recorded state history," according to the governor's office.

"We can't make it rain, but we can be much better prepared for the terrible consequences that California's drought now threatens, including dramatically less water for our farms and communities and increased fires in both urban and rural areas," Brown said. "I've declared this emergency and I'm calling all Californians to conserve water in every way possible."

Brown is urging residents to cut their water use by 20 percent, and he's telling state agencies to conserve water – and to hire more firefighters.

The drought emergency is being declared as some 1,100 firefighters contend with a wildfire near Glendora, Calif., where the Colby Fire

has burned more than 1,800 acres since it was started early Thursday.

Some evacuation orders triggered by that blaze were lifted Friday, reports NPR member station KPCC, but it remains only 30 percent contained. You can get live updates about the fire from the station's firetracker app.

Describing California's plight, the governor's office cited state officials who say rivers and reservoirs are below record lows — and the state's snowpack is at only 20 percent of its normal average for January.

Water reserves in Southern California are better off than in the north, officials tell KPCC, due to years of efforts to build supply.

The station says Los Angeles residents might see only small changes at first:

"A spokesman for the Los Angeles Department of Water and Power said the agency has no plans to ration water or increase rates. But DWP does plan to begin enforcing policies that restrict outdoor watering to certain days and times."

"If we run across people who are essentially water wasting and don't want to make the change, they will end up being cited eventually," L.A.'s director of water resources David Pettijohn tells KPCC.

As NPR member station KQED reports, Brown has been under pressure to declare a drought emergency "for weeks."

The broadcaster also says Brown acknowledged today that California may need a new strategy to cope with a smaller water supply.

From KQED:

"I think the drought emphasizes that we do live in an era of limits and that we need solutions that are elegant," the governor said. He added there's 'a huge gap' between the measures that may be technologically and economically feasible — steps like wider use of recycled water — and the measures now employed in the state."

As waters recede, wells slow and firefighters begin to worry

By Erik Skindrud
GAZETTE EDITOR

Two groups of professionals who keep an eye on water supplies are expressing concern as the precipitation year transitions to the county's long, hot, dry season.

The groups are firefighters and water-well engineers. Both are watching local water tables sink to new lows—limiting access to one of the county's most critical resources.

While no one's ringing alarm bells yet, a key line could be crossed soon, experts say.

"Water levels have been declining for several seasons now," Steve Franco of Raymond-based Wellco Drilling Inc. said. "If this keeps on for a few more years, we're going to be in deep, deep trouble."

More than a third of



ERIK SKINDRUD | THE GAZETTE

A plastic water line that connects Lushmeadows' Mallard Lake to a fire hydrant sat exposed on the lake's bottom last week. If the water level drops another foot or two, firefighters will no longer have access to water via this connection.

Franco's current work is now devoted to deepening poor-performing wells or drilling new

ones to replace slow wells, he said last week.

In the drilling business since 1967, Franco

has never seen water so

**SEE WATER ON
BACK PAGE**

WATER: Concerns About Access

CONTINUED FROM FRONT PAGE

low and slow in the fractured bedrock geology that characterizes the Sierra foothills.

Another experienced well driller agreed that consecutive drought years are now hitting marginal wells.

Chris Duncanson of Oakhurst-based Walt Bannon Drilling Inc. said he's worked to deepen about 20 wells over the past year—about twice the normal number.

"In 15 years, I've never seen it this bad," Duncanson said. "The good news is we are getting water when we go down deeper, but the wells are having a lot of issues."

Most well-deepening jobs end up requiring new pumps and can add up to between \$10,000 and \$12,000 each, he said.

The other water-watching group expressing concern this month is firefighters.

CAL FIRE battalion chiefs are conducting a survey this month "to find out what water sources are available," area Division Chief Rich Drozen said.

State firefighters count on a number of familiar water sources each year—both to fill truck-mounted tanks and to

"dip" helicopter buckets.

This month, two commonly-relied-upon sources at the Lushmeadows residential community off Triangle Road had fallen to disappointing levels—with fire season just getting underway.

"Mallard Lake is down as far as anybody's ever seen it, and it's now just the beginning of the dry season," said Ed Dreschler, president of the Lushmeadows community association.

To ensure that firefighters can effectively protect the community's close to 300 homes, the Lushmeadows Association installed two "dry hydrants" that let firefighters vacuum up water from the community's Mallard Lake and Dawn Lake, Dreschler said.

Last week, however, a check of the Mallard Lake connection showed its water pipe within about two feet of the surface. Even a modest amount of evaporation may take the lake off firefighters' water-supply list.

Depending on their size, firefighting helicopters can carry between 300 and 2,000 gallons of water per load, Drozen

said.

If some familiar water sources dry up—as seemed likely this week—helicopters may have to fly farther to top up—reducing the amount of water they can put on a fire in a given time.

"We may be going twice the distance to fill up," Drozen said. "In that situation, it can take up to three times as long to deliver the same amount of water."

Last week, the Mariposa Public Utility District was continuing to pump Merced River Water into its Stockton Creek Reservoir north of Mariposa, district General Manager Mark Rowney said.

The district also continues to monitor the performance of its three main wells. Last week, all were flowing at normal levels, Rowney said.

The district has agreements in place with local firefighting agencies to provide water during the "initial attack phases" of local wildfires, Rowney said.

According to long-range weather forecasts, El Nino conditions could bring higher-than-average rain and snow to the region next winter.

Contrary to common

opinion, however, it takes multiple years of normal or above-normal precipitation to recharge the area's fractured-rock groundwater system.

In areas like the Sierra foothills, experts say, it can take years for water to percolate through cracks and fissures even modest distances. That's why it takes years of consistent precipitation to keep the county's groundwater system charged and flowing, longtime well-driller Franco said last week.

"Most people assume that if we get a good 10 inches of rain we'll be in good shape waterwise," Franco said. "In a hard-rock region like our own, a good snowpack in the mountains above us is much more important than rain for keeping our fissures charged."

Long-term climate models, of course, suggest that drier years and higher snow levels may become the region's norm.

"With population growing, we're going to be dipping more straws in the ground," Franco said. "If we don't get these back-to-back rain and snow years, we're going to be in big trouble—no doubt about it."

I am asking you the Planning Commission to **DENY** the Time Extension applications that have been brought to you by the developer of the Silvertip Resort Village in Fish Camp. You are being asked to find that the developer has shown **Good Cause**, to grant a time extension. I am saying there is a **FAILURE TO SHOW GOOD CAUSE**.

Last week the Mariposa County Board of Supervisors declared a **Drought Emergency** in the County of Mariposa. This project **WILL NEGATIVELY IMPACT** the water supply of Fish Camp. This project will be **DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND WELFARE** of Fish Camp. If this project was on the originally zoned 9 acre parcel it would have been built more than 5 years ago. There is **no GOOD CAUSE** for a project of this size in Fish Camp.

Mr. Marsden stated at the May 18, 2012, Planning Commission Time Extension hearing **“that if it is not done in two years, and that another extension is applied for, it will a hard act to sell.”** No grading has been performed. **An example of the FAILURE TO SHOW GOOD CAUSE.**

David Giuntini in a letter dated March 15, 2012, lists nine (9) approvals as proof of steadily advancing the project. Three of these approvals were invalid in that they indicated the YACSD issues were resolved, they weren't and they aren't today. The Silvertip Compliance Chart on May 21, 2014 at 1:30 pm, **shows 9 APPROVALS** have been granted as per the MPA Planning website charting the Silvertip project. **Where is the progress in two years? Another example of FAILURE TO SHOW GOOD CAUSE.**

The developer bought the property knowing it was coming out of bankruptcy. The developer has mentioned that the bankruptcy trustee has been slow to work with. Buying property out of bankruptcy is rarely an easy project but the developer has chosen to do so. These are the risks of doing business in California. **A Failure to SHOW GOOD JUDGMENT.**

The 2012 application for time extension cites the extra time needed to modifications to the approved project..... a 4-5 story parking structure, fewer parking spaces on the project site, larger cabins. These were items that the developer brought forward. Greed brought these modifications, not a need. **And yet another FAILURE TO SHOW GOOD CAUSE.**

Resolving water issues with the Block D property owners has not been accomplished. A prime example of the FAILURE TO SHOW GOOD CAUSE.

Resolving water and easement issues with the Yosemite Alpine Community Services District has not been accomplished. Continued FAILURE TO SHOW GOOD CAUSE.

Judges in the state of California give instructions to juries as to how they are to proceed. I am charging YOU, the Mariposa County Planning Commission, to find that the PREPONDERANCE OF THE EVIDENCE has shown a FAILURE TO SHOW GOOD CAUSE on the part of Palm Springs Village, 309, LLC. There is no doubt in my mind that there has been NO GOOD CAUSE shown in this application.

Thank you,

Karen Glendenning

Private Citizen of Fish Camp

May 22, 2014

Mariposa Planning / Mariposa Planning Commission
County of Mariposa
5100 Bullion St.
Mariposa, CA 95338-2039

Re: Time Extension Application No. 2014-034
(PD99-1 CUP267-Silvertip Resort)

Planning Commissioners / Planning Department:

I am a resident of Fish Camp, CA and will be directly impacted by this project. This information is being submitted in accordance with Mariposa Planning Notice of Public Hearing dated May 2, 2014.

First, this request for extension should not be granted as it is in violation of:

Mariposa Code 17.140.020 Conditional use permits and variances--Extension of time.

'The approval authority may approve one extension of time on a conditional use permit or variance permit approved pursuant to this Title, for up to eighteen (18) additional months, after notice is given in the same manner as the original approval, if it finds that such extension is necessary and not detrimental to the public health, safety, and welfare. (Ord. 912 Sec.II, 1997; Ord. 704 Sec.1, 1988).'

This project has already received more than this 'one extension'.

Second, the new developer, Palm Springs Village #309, LLC (PSV) did not 'inherit' a lawsuit between the previous developer, PacificUS, and Yosemite Alpine Community Services District (YACSD). PSV actively chose to re-file this lawsuit against YACSD and pursued it for over a year before it was ultimately dismissed against them with prejudice. PSV knew of the project history and time limits when they purchased the property. Now they are requesting an extension of time.

Third, the California Environmental Quality Act (CEQA) allows counties to call for a new or updated Environmental Impact Report (EIR). This project was started in 1999, with the EIR being certified in 2003. It is now 2014. This is the opportunity for Mariposa County to have the new developer take a 15 year old project and update it to today's environmental, CEQA, regulatory, climate (drought), and economic changes that have occurred since the inception of the project.

Specific items that should be considered by the Planning Commission as reasons not to grant the time extension and require a new or updated EIR include but are not limited to:

1. An undeniable drought has affected the entire West for the last 3-4 years. The YACSD water availability and pumping rates are down 75% and 60% respectively. The pumping rates are expected to drop throughout the summer. The Governor and the Mariposa Board of Supervisors have declared drought emergencies. Current EIRs definitely consider water availability more so, today, than 15 years ago.
2. No meaningful progress has been made to provide YACSD with alternative watershed and a sustainable drinking water supply. The Keller's, in their 1968 sales agreement that established Yosemite Alpine Village (YAV) and served by YACSD established a watershed and sustainable water supply. The Keller's were then allowed to sell the same parcel to PacificUS and now PSV has ownership of this proposed project. Where are the protections for YACSD and the homeowners of YAV? Now with an ongoing drought and

- diminished water supply, this becomes a situation that needs to be addressed in a new or updated EIR.
3. After the current EIR was certified, The California Regional Water Quality Control Board staff report in 2007 stated that the YACSD water supply would become degraded (contaminated). Now, with an ongoing drought and diminished water supply this becomes an even greater threat. This needs to be addressed in a new or revised EIR.
 4. Economic changes. a) The nation's economy has significantly changed since 1999. The economic analysis of the EIR is no longer valid as well as its stated impacts on existing businesses in Fish Camp. Existing businesses have been showing a decrease in room occupancy. A new or revised EIR needs to reflect these changes. b) Since 1999, a greater marketing effort has evolved around the Highway 140 corridor for increased tourism. This proposed project directly competes with those efforts. The negative effects on this project need to be assessed, not only in Fish Camp, but for Mariposa County as a whole. This assessment needs to be included in the new or revised EIR. c) Linked to a) and b), above, the 'Alternative Site' section of the EIR needs to be updated to reflect these changes in a new or revised EIR.
 5. The current EIR does not include the 'Gas Station' property or the 'Store' property in any way. The environmental effects of these being part of the now engineered entrance and exit plans for the project needs to be addressed in a new or updated EIR.
 6. Cumulative effects. CEQA requires 'cumulative effects' to be addressed. PacificUS obtained a purchase option on the adjacent, 'pond' property, and has since (and continues to) offer this property for development on their website. This additional adjacent development needs to be included as a cumulative effect in a new or revised EIR.
 7. The U.S. Fish and Wildlife Service released this month (May 2014) a National Wetlands Inventory. A map of Fish Camp shows nearly the entire meadow a wetland, not just the 0.5 acres in current project documents. (See attached map) This new assessment needs to be included in the new or revised EIR.
 8. The U.S. Fish and Wildlife Service have now listed the Sierra Nevada yellow-legged frog and a sub-species of the mountain yellow-legged frog as 'endangered' and the Yosemite toad as threatened. For the record, there were frogs in the meadow, along Big Creek and around the 'pond' until about the year before the EIR was started. The frog potential and/or favorable habitat must be addressed in a new or updated EIR.

Thank you for considering these important items while considering this requested proposal. Please give equal consideration to the protection of the residents of Fish Camp in your review and in your actions.

Yours truly,



Eugene Glendenning



U.S. Fish and Wildlife Service National Wetlands Inventory

FC FWS Wetlands Map

May 8, 2014



- ### Wetlands
- Freshwater Emergent
 - Freshwater Forested/Shrub
 - Estuarine and Marine Deepwater
 - Estuarine and Marine
 - Freshwater Pond
 - Lake
 - Riverine
 - Other

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or completeness of the base data shown on this map. All requests related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

User Remarks:
05.01.2014 USWFS Wetlands Demarkations

Richard Ryon, Chairman
Yosemite Alpine Community Services District
P.O. Box 31
Fish Camp, CA 93623
May 23, 2014

Regarding: *SilverTip Resort 3rd time extension*

Mariposa County Planning Commission:

I hope you have read my May 9, 2014 letter opposing the Silvertip extension. Briefly summarized, the applicant's "good cause" for the extension is greatly over-stated. Conditional Use Permits expire for good reason: If a developer cannot begin construction in the time allotted, he probably never will succeed with the proposed plan. Now more than a decade since approval, it is time to allow another proposal to come forward that can be built. Furthermore, there is a paramount "good cause" to deny the application: to protect the *health, safety, and welfare* of the people of served my Yosemite Alpine Community Services District (YACSD) in Fish Camp with impacts on all the people of the town, and implications for all in Mariposa County.

At the May 18, 2012 Planning Commission meeting when the second time extension was approved, Commissioner Marsden said, "—that if another time extension is applied for, it would be a hard act to sell." There seemed to be general concurrence with that sentiment. Besides the obvious problem of bringing this ill-conceived project to fruition, your own County Code Section 17.140.020 says:

The approval authority *may approve one extension of time (emphasis added)* on a conditional use permit or variance permit approved pursuant to this Title, for up to eighteen (18) additional months, after notice is given in the same manner as the original approval, *if it finds that such extension is necessary and not detrimental to the public health, safety, and welfare (emphasis added)*.

The developer is now asking for a *third* extension, and an extension *is detrimental to public health, safety, and welfare*.

Staff report says, "The granting of additional time to meet previously established conditions and activate the Planned Development will not have a significant effect on the environment." That assertion is made without any query or consultation with the people closest to the project (the District or anyone else known to me) in Fish Camp. The assertion is not valid.

My May 9th letter points out that we have new information. The current drought highlights the precariousness of the District's water supply. It takes twice as long to fill our storage tanks as in previous years. The resort will use in a week what the District uses in a year, from the same source of water. There isn't enough water on the site for the Silvertip as proposed and for the District's homeowners, and the District was there first, since 1969. The additional huge use by the Silvertip would deplete the water source for domestic use and fire-fighting, *causing harm to the "health, safety, and welfare"* of Fish Camp residents.

During the present drought, we also observe that when it rains, we immediately experience an increase in pumping rates. This means that surface water enters our wells almost immediately. Treated effluent from the resort, disposed of on-site, will enter our wells and degrade water quality, *to the detriment of the "health, safety, and welfare"* of our community members.

In its application for an extension, Far West / Palm Springs Village-309 (PSV) emphasizes that it became the property owner in relatively recently, in December 2012. Further, it is stated that the "SilverTip is a large project with complex permitting requirements." However, Far West / PSV knew

DATE: May 23, 2014

TO: Mariposa County Planning Commission

FROM: Pamela Salisbury, business owner and Fish Camp resident

SUBJ: 2014 SilverTip Extension Request.

We know that Condition 99 was added to this Project at the 2010 public hearing. Condition 99 requires that there be no fills in the 100 year floodway. We know that the approved project has retaining walls founded in the floodway, holding back fill that supports a private sewage treatment facility. The approved site plan has never been changed to remove those fills. A new site plan *must* be submitted in order to comply with Condition 99.

In the spirit of transparency, as Mr. Glasky suggests in his extension request letter, and because of the sheer importance *of the success* of this Project to everyone here today, I request that if the Planning Commission follows Planning Staff's recommendation to approve the SilverTip extension request, that it do so with a "protection."

I request that prior to issuing a grading permit, the Planning Commission will require that the corrected site plan be brought here for your public review and comment . . . a site plan that is reconciled to the 100-year floodway. The new grading plan *must* differ from the approved plan to comply with Condition 99. The developer indicates grading activities will commence in the Spring of 2015, less than one year from now. The developer has not submitted flood elevations in a post-project condition because it simply cannot be done with the approved plan. The County would surely not issue a grading permit without a new site plan, would they?

Please, if an extension is granted, require a new, *transparent* site plan that acknowledges the importance of the floodway and conforms to Condition 99. You may recall that it was the public that brought the prior developer's floodway error to the attention of the County BOS, and Condition 99 was wisely added.

In the end, Mr. Glasky says it best, "There is no benefit to rushing the design and review process."

Thank you.