

**STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS**

**Resolution No. 2014-XXX**            **A resolution denying Appeal No. 2014-066 and approving Time Extension Application No. 2014-034 for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267 for the SilverTip Resort Project; Assessor Parcel Numbers 010-550-066, 010-550-063, 010-550-064.**

**WHEREAS**, the Mariposa County Board of Supervisors adopted Resolution Nos. 03-442, 03-444 and 03-445 on the 2<sup>nd</sup> day of December 2003 certifying the EIR, conditionally approving the Planned Development and Conditional Use Permit for the SilverTip Resort project, and adopting findings, a Mitigation Monitoring and Reporting Program, and Statements of Overriding Consideration; and

**WHEREAS**, the effective date of the approvals was May 12, 2004; and

**WHEREAS**, the Mariposa County Planning Commission adopted Resolution No. 07-019 with findings on the 18<sup>th</sup> day of May 18, 2007 for a five year time extension for activation of Planned Development No. 99-1 and for Conditional Use Permit No. 267; the Planning Commission's action included approval of an amended development schedule; and

**WHEREAS**, the Board of Supervisors adopted Resolution No. 2010-518 on the 9<sup>th</sup> day of November, 2010 approving Amended Site Plan Application No. 2009-124 with findings and amended conditions for the SilverTip Resort project; and

**WHEREAS**, the Planning Commission adopted Resolution No. 12-008 with findings on the 18<sup>th</sup> day of May, 2012 for a 2 year time extension for activation of Planned Development No. 99-1 and for Conditional Use Permit No. 267; the Planning Commission's action included approval of an amended development schedule; and

**WHEREAS**, as a result of Planning Commission Resolution No. 12-008, the expiration date for Planned Development No. 99-1 and Conditional Use Permit No. 267 was June 14, 2014; and

**WHEREAS**, an application for Time Extension No. 2014-034 was received on the 11<sup>th</sup> day of April 11, 2014 from Palm Springs Village 309, LLC for property located at 7733 and 7739 Fish Camp Lane; and

**WHEREAS**, Time Extension Application No. 2014-034 proposed an amended development schedule and a two (2) year time extension for activation of Planned Development No. 99-1 and for Conditional Use Permit No. 267; and

**WHEREAS**, the application was submitted pursuant to the Fish Camp Specific Plan, Appendix IV, Section I.O and Appendix IV, Section I. L; and

**WHEREAS**, the Planning Department circulated Time Extension Application No. 2014-034 among County Departments; and

**WHEREAS**, Time Extension Application No. 2014-034 was considered at a duly noticed public meeting of the Fish Camp Town Planning Advisory Council that was as held on the 19<sup>th</sup> day of April, 2014; and

**WHEREAS**, the Fish Camp Planning Advisory Council recommended the Planning Commission approve an 18-month time extension; and

**WHEREAS**, a duly noticed Planning Commission public hearing for Time Extension Application No. 2014-034 was scheduled for the 23<sup>rd</sup> day of May 2014; and

**WHEREAS**, a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

**WHEREAS**, a Notice of Exemption was prepared for Time Extension Application No. 2014-034 pursuant to the California Environmental Quality Act (CEQA); and

**WHEREAS**, the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, the Notice of Exemption, testimony presented by the public concerning the application, testimony presented by the applicant, correspondence received from the public, and correspondence received from the applicant and applicant's legal representative; and

**WHEREAS**, on the 23<sup>rd</sup> day of May, 2014 the Planning Commission adopted Resolution No 14-004 with findings, approving Time Extension Application No. 2014-034, and granting an 18-month time extension for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267 from June 14, 2014 to December 14, 2015; and

**WHEREAS**, the Planning Commission's action was only on the application for the time extension; the Planning Commission's action did not change the status of or verify compliance with any conditions of the project; and

**WHEREAS**, an appeal of the Planning Commission's action approving Time Extension Application No. 2014-034 was submitted by appellant Karen Glendenning et. al, on the 11<sup>th</sup> day of June, 2014; that appeal is known as Appeal No. 2014-066; and

**WHEREAS**, Appeal No. 2014-066 was deemed sufficient for processing on the 12<sup>th</sup> day of June, 2014; and

**WHEREAS**, on the 28<sup>th</sup> day of August, 2014, a supplemental submittal to the appeal was submitted by the appellants; and

**WHEREAS**, the processing of Appeal No. 2014-066 was conducted pursuant to Mariposa County Resolution No.10-92, entitled the Mariposa County Appeals Procedure; and

**WHEREAS**, a duly noticed Board of Supervisors public hearing on Appeal No. 2014-066 was scheduled for the 23<sup>rd</sup> day of September, 2014; and

**WHEREAS**, a Staff Report packet was prepared for the Board of Supervisors' public hearing pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

**WHEREAS**, the Board of Supervisors did hold a public hearing on the noticed date and considered all of the information in the public record, including the Notice of Appeal, the Supplemental Submittal to the Notice of Appeal, the Staff Report, the environmental review determination, testimony presented at the public hearing and correspondence submitted for the public hearing.

**NOW, THEREFORE BE RESOLVED THAT**, the Board of Supervisors hereby clarifies and formalizes its interpretation of procedures for processing Time Extension Applications for projects which were processed with a Planned Development and Use Permit pursuant to the Fish Camp Specific Plan. Pursuant to the Fish Camp Specific Plan Appendix IV.I PLANNED DEVELOPMENT APPLICATIONS, Section A. Purpose, "these provisions are intended to provide the administrative procedures for planned development applications.... A planned development is intended to provide a process which can permit and encourage logical or desirable development and carry out the objectives of the Fish Camp Specific Plan..." The Board of Supervisors' interpretation is that:

- a) the procedures and requirements established by the Fish Camp Specific Plan, Appendix IV, Section O., when applied to a Use Permit processed pursuant to a Planned Development, govern and take precedence over the procedures established by the Mariposa County Code, Section 17.140.020; and
- b) Appendix IV, Section O. authorizes extension of development schedule time limits.

**BE IT FURTHER RESOLVED THAT**, the Board of Supervisors has exercised its independent judgment and has determined that processing of Time Extension Application No. 2014-034 does not require any further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15162. An EIR has been certified for the SilverTip Village Resort Project in 2003 and a negative declaration was adopted for an Amended Site Plan for the SilverTip Village Resort Project in 2010. The Board of Supervisors determines that the Time Extension Application is not a substantial change in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Board of Supervisors determines that substantial changes have not occurred with respect to the circumstances under which the SilverTip Village Resort project is undertaken which will require major revisions of the previous EIR or Negative

Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Board of Supervisors determines that there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, which shows any of the following: (i) The project will have one or more significant effects not discussed in the previous EIR or negative declaration; (ii) Significant effects previously examined will be substantially more severe than shown in the previous EIR; (iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or (iv) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. The Board of Supervisors determinations are based on substantial evidence in the light of the whole record, including the Staff Report packet prepared for the Board of Supervisors noticed public hearing on September 23, 2014. Based on this determination, there is no requirement for any EIR Addendum or Supplement pursuant to CEQA Guidelines Sections 15163 of 15164.

**BE IT FURTHER RESOLVED THAT**, the Board of Supervisors hereby:

- 1) denies Appeal No. 2014-066; and
- 2) approves Time Extension Application No. 2014-034 for an 18-month time extension from June 14, 2014 to December 14, 2015 for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267.

**BE IT FURTHER RESOLVED THAT**, the Board of Supervisors' actions, interpretations and determinations are based on the following findings:

1. Pursuant to the Fish Camp Town Planning Area Specific Plan, Appendix IV, Section O, an application for a Planned Development must be accompanied by a development schedule. The planning commission may extend the limits imposed by the development schedule (extension of time) "for good cause shown by the property owner."
2. Pursuant to the Fish Camp Town Planning Area Specific Plan, Appendix IV, Section I.E, a use permit is required for all uses in a Planned Development.

3. The SilverTip Village Resort Project was approved as a Planned Development and a Use Permit. The approved development schedule applied to both.
4. Good cause is not defined by the Fish Camp Town Planning Area Specific Plan.
5. Dictionary definitions specify that good cause is a legal term denoting adequate or substantial grounds or reason to take a certain action. What constitutes a good cause is usually determined on a case by case basis and is thus relative.
6. The Mariposa County Zoning Ordinance, Section 17.08.080 states, “It shall be the burden of an applicant to provide all necessary information in support of any matter heard and decided by the planning commission or board of supervisors. Failure to provide such necessary information in support of a matter as described above shall be deemed grounds for denial of application.”
7. It is appropriate from a policy perspective and required by County Code for the property owner and developer to submit justification for an amendment to the development schedule (time extension) for the Silvertip Village Resort Project. This is pursuant to the Fish Camp Town Planning Area Specific Plan, Appendix IV, Section O.3 and the Mariposa County Zoning Ordinance, Section 17.08.080.
8. The Planning Commission approved Time Extension Application No. 2014-034 finding that good cause exists for amending the development schedule, based on consideration of the property owner and developer’s submittal dated April 10, 2014 which summarized project progress, economic considerations and County, Regional, State and Federal agency approvals:
  - The previous project owner, PacificUS, had advanced the Silvertip Project prior to bankruptcy and foreclosure sale in 2012. The new owner continued to advance the Project and is in the process of securing additional approvals and developing grading and construction plans. The list of secured approvals represents a major investment of time and resources.
  - The current property owner and Time Extension Applicant became the property owner in December 2012. Foreclosure and bankruptcy sale processes resulted in time delays:
    - In January 2013, the Applicant contacted Non-County agencies regarding the status and ownership of the wetland, wastewater, and Caltrans permits – all of which are necessary to develop the Project. The Applicant learned that control of two of the critical wetland permits along with an adjoining property that was necessary to

construct the Caltrans improvements were under the effective control of a trustee (the “Trustee”) appointed by the United States Bankruptcy Court for the Central District of California (the “Court”) due to the pending bankruptcy petition by the owner of PacificUS and other entities related to SilverTip.

- In October 2013, the Applicant reached conceptual agreement to acquire the permits and land controlled by the Bankruptcy Trustee. This effectively provided assurance to the property owner to dedicate resources to move forward with the Project.
- The Applicant moved forward based upon Bankruptcy Trustee conceptual agreement:
  - In October and November, 2013 the Applicant contacted the County to notify staff of their intent to move forward with the project.
  - In December 2013, a pre-grading permit condition compliance coordination meeting was held with County Departments and various outside agencies.
- In February 2014, the Applicant submitted preliminary grading permit application materials:
  - The grading permit application plan check process was completed and resulted in multiple comments.
  - The Applicant continued worked on conditions of approval for current verification of pre-grading permit conditions and mitigation compliance.
  - A second grading permit application submittal was submitted for plan check on May 14, 2014 and was completed on July 1, 2014. Many comments were resolved through the second submittal.
- The SilverTip Village Resort is a large project with complex permitting requirements. Some approvals, such as the wetland permits, went through multi-year approval processes. Moreover, some permits are contingent on other permits. For example, the Caltrans encroachment permit, which is nearing completion, could not be advanced until the wetland permits were secured. Permitting delays and extended timelines are inherent in responsible development at this scale.

- Despite delays and challenging external economic forces, the Applicant has advanced the Project on all fronts and is close to vesting the Project. Granting an extension will ensure there is adequate time to satisfy the remaining conditions, meet current applicable building and development requirements, obtain a grading permit, and begin construction.

The Board of Supervisors independently finds that good cause exists for the time extension approval, based upon the foregoing facts and conclusions.

9. Pursuant to the Mariposa County General Plan, “To ensure area plans reflect local values, planning advisory committees are formed of local residents, property owners, and business owners, to advise the Planning Commission and Board of Supervisors on local issues.”

The Planning Commission and Board of Supervisors considered the Fish Camp Town Planning Advisory Committee’s recommendation to grant an 18-month extension for the project.

10. Based on the discussion of the hierarchy of land use policies and regulations as contained in the appeal staff report packet, based on precedence, and based on the Board’s action to find that the procedures and requirements established by the Fish Camp Specific Plan, Appendix IV, Section O. Development Schedule, when applied to a Use Permit processed pursuant to a Planned Development, govern and take precedence over the procedures established by the Mariposa County Code, Section 17.140.020, there is no requirement that the County find that a time extension is “not detrimental to the public health and safety”.

The finding required by the Fish Camp Specific Plan, Appendix IV, Section O, for an amendment to the development schedule and approval of an extension is that there is “good cause shown by the property owner”.

11. There is no new information about the extent of, or project impacts to, wetlands on the project site. There is no information which modifies or amends the wetland delineation provided to and reviewed by the US Army Corps of Engineers. There is no information which modifies or amends the authorization for activity in 0.146 acres of waters of the United States as authorized on November 9, 2012 pursuant to Nationwide Permit Number 39.
12. There is no new information about the extent of, or project impacts to, surface water quality on or downstream of the project site. There is no information which modifies or amends the Clean Water Act Section 401 Water Quality Certification for

Discharge of Dredged and/or fill materials Associated with the SilverTip Resort Village Project, WDID 5F22CR00010, Mariposa County, dated May 12, 2014.

13. The current drought conditions experienced in California and Mariposa County are not new conditions and do not constitute evidence of changes in the EIR's determinations concerning water supply and anti-degradation. There was significant and detailed study of water quantity and water quality in the certified EIR for the project. The EIR considered long-term records of precipitation in the area, including both heavy and low rainfall years and including the drought years between 1986/87 and 1992. The EIR considered rainfall averages and recharge for the 260 acre watershed in which the project is located. The EIR concluded that there was a sustainable supply of water for the project. The EIR also considered the project's potential impacts on other wells, and concluded that on-site YACSD wells would not be impacted by the project because the source of water for the YACSD wells and the project wells were both hydrologically and geologically disconnected. The current drought conditions do not change this conclusion. Finally, the California Regional Water Quality Control Board has issued a Waste Discharge Requirement (WDR) Permit No. R5-2007-0140 for the project waste water treatment plant. The express purpose of this permit is to ensure the project will not have surface or subsurface water impacts.
14. The County's drought proclamation, Board of Supervisors Resolution No. 2014-210, does not establish a moratorium on development and related activities. The purpose of the proclamation to declare an emergency was in preparation for potential State and Federal disaster assistance.
15. There were conditions applied to the project to address the project's potential impacts on the Yosemite Alpine Community Services District (YACSD) on-site infrastructure (well and water lines) and easements. These conditions require:
  - Condition No. 25 - Prior to the issuance of any building or grading permits, the permit holder shall provide Planning Director with recorded copies of access agreements or easements granted in favor of the Yosemite Alpine Community Services District and all other utility owners with facilities crossing the project site providing for access for maintenance and operation of wells, pipelines and electric lines.
  - Condition No. 26 - Prior to the issuance of any building or grading permits, the Planning Director shall receive a letter from the Public Works Department indicating approval of easements or contractual agreements executed in conformance with #25 and certifying such to be of adequate width and location to provide suitable access for the intended purpose(s).

Condition No. 27 - Prior to the issuance of any building or grading permits, the permit holder shall notify the Planning Director of any utility facilities which are required to be relocated as a result of the project design or construction. If any facilities are to be relocated, prior to the use or occupancy of any structure affected by the relocation of the utility facility, the Planning Director shall receive a letter from the affected agency or utility indicating the permit holder has completed or posted adequate improvement security to assure the completion of the relocation.

Since these conditions were established, and following unsuccessful negotiations to relocate the YACSD infrastructure to accommodate the project as originally designed, the SilverTip project site plans were amended so that relocation of the YACSD utilities and infrastructure on the project site is not necessary. The current site plan provides YACSD with increased access opportunities to their facilities.

The final evaluation of the adequacy and compliance of the project with these conditions is the responsibility of the County Engineer. Final review has not been completed. There is no objective evidence that compliance with these conditions is unattainable.

These conditions do not require the SilverTip project to provide the YACSD with water.

16. There was a condition applied to the project to ensure that there would be no off-site flooding impacts resulting from project implementation. This condition requires:

Condition No. 99 - The applicant shall establish the base elevations of average seasonal flows for Big Creek along the entire project frontage using accepted benchmark data as approved by the Mariposa County Engineer. The applicant shall project the probable 100 year flood elevations along the entire project frontage of Big Creek. These probable flood elevations shall be plotted on all construction site plans in a pre- and post- project condition. In this regard, all construction including roads, retaining walls, fill areas and buildings shall be designed in such a manner as to not change the characteristics of the flow of Big Creek in a 100 year flood water condition, either on or off-site. All work shall be done by an appropriately qualified and licensed professional.

Sheet 2, Sheet 4, and Sheet 5 of the Engineered Grading Plan received by Mariposa Planning on 14<sup>th</sup> day of May, 2014, date stamped by Registered Professional Engineer Craig Young (State of California License No. 32363) on the 8<sup>th</sup> day of May, 2014, submitted for Grading Permit No. 30760 show the Flood Plain Boundary for all portions of Big Creek fronting the project site. These plans show that no grading or structures for the project will be located within the floodplain.

There is no objective evidence that compliance with this condition is unattainable.

17. Pursuant to the Fish Camp Specific Plan Appendix IV, Section O, a development schedule is required for a Planned Development. The development schedule attaches to the Planned Development; the Planned Development approval focuses on regulating the physical characteristics of the project. Considering this focus, a time element is important in the event of changes in development standards or surrounding lands uses.

There has been no change in applicable development standards or surrounding land uses to the project site. Consequently, the Board finds, at this time, that there is no basis to revoke the Planned Development approval or alter the development standards.

18. Pursuant to the Fish Camp Specific Plan Appendix IV, Section R, the notice of the time and place of a public hearing on the proposed development shall be sent to property owners within six hundred feet of the proposed planned development. This notice occurred when the project was originally approved.

The Planning Commission's public hearing was to consider an amendment to the development schedule of an existing, approved planned development.

Because there are no procedural requirements in the Fish Camp Specific Plan Appendix IV for noticing of a public hearing for a time extension, the notice requirements for the hearing are established by County Code Chapter 17.132. Staff followed these noticing requirements for both the Planning Commission and Board of Supervisors hearings.

19. The Board of Supervisors is obligated and has the responsibility to review and interpret County documents, including the Fish Camp Town Planning Area Specific Plan and the County Code, Zoning Ordinance, relative to consistency and procedural requirements.
20. Pursuant to the Fish Camp Specific Plan Appendix IV, Section O.3, "...the planning commission may also extend the limits imposed by the development schedule."

The Board of Supervisors hereby finds that this authority to "extend the limits" applies to the length of the development schedule (originally established by the Board of Supervisors for 2 years, and extended by Planning Commission actions in 2007, 2012 and 2014). The Board of Supervisors finds that this authority to "extend the limits" also applies to the one year project commencement limit (requirement) specified in the Specific Plan.

21. The US Fish and Wildlife Service's recent listing of Sierra Nevada yellow-legged frog and the Yosemite toad as threatened does not represent any change in the circumstances affecting biological and wildlife resources under which the project is being undertaken, which would require major revisions to the EIR. The listing is not new information of substantial importance that relates to any significant effects or potential mitigation measures concerning the project. This finding is based on information in the record, including the SilverTip EIR, correspondence to the Planning Director dated September 9, 2014 from McCormick Barstow LLP Attorneys at Law, and the habitat proximity map supplied by the Planning Department.
22. The Board of Supervisors finds that the project condition for tolling is applicable to this appeal action, even though the condition references the original "24 month clock":

Condition No. 3 - Should activation of the permit(s) be delayed by any moratorium or excessive delays by a permitting agency over which the County of Mariposa does not exercise control, or should a lawsuit involving the approval of the CUP or related entitlements be pending in a court of competent jurisdiction, the 24 month clock shall be tolled until such time the court action or other delay has concluded. However, if the remaining time is less than 120 days, the permit shall be valid for 120 days following the termination of the moratorium or other event triggering the tolling of the period. The tolling period shall be initiated upon written notice by the applicant to the Planning Department setting forth the facts and circumstances justifying the tolling, and shall be immediately effective unless a written notice of rejection is issued by the Planning Director within 14 days of receipt of applicant's notice.

**BE IT FURTHER RESOLVED THAT**, this action on Appeal No. 2014-066 is based upon the discussion of Appeal Issues as contained in the Staff Report to the Board of Supervisors which is hereby incorporated into this resolution by reference.

**BE IT FURTHER RESOLVED THAT**, the custodian of the record of the proceedings is the Clerk of the Board of Supervisors.

**BE IT FINALLY RESOLVED THAT**, if any section, subsection, sentence, clause, word, phrase or finding of this resolution is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this resolution. The Board of Supervisors hereby declares each section, subsection, sentence, clause, word, phrase or finding is severable.

**ON MOTION BY** Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, this resolution is duly passed and adopted this 23<sup>th</sup> day of September, 2014 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAIN:

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Kevin Cann, Chair  
Mariposa County Board of Supervisors

ATTEST:

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René LaRoche  
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

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Steven W. Dahlem  
County Counsel