

# Staff Report

## Mariposa Planning

### Board of Supervisors Meeting Of September 23, 2014

#### SUMMARY AND RECOMMENDATIONS

- Case:** APPEAL NO. 2014-066
- Case Name:** Appeal of Planning Commission Approval of SilverTip Time Extension 2014-034
- Location:** The project site is located at the intersection of State Highway 41 and Fish Camp Lane in Fish Camp, Assessor Parcel Numbers (APNs): 010-550-066 (42.64 acres±), 010-550-064 (2.56 acres±), and 010-550-063 (0.18 acres±)
- Appellants:** Karen Glendenning, et al.
- Property Owner:** Palm Springs Village-309, LLC  
2922 Daimler St.  
Santa Ana, CA 92705
- Recommendation:** Staff recommends the Board of Supervisors adopt a resolution with findings, denying the appeal, and approving 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 for Conditional Use Permit No. 267 with findings, including findings regarding environmental review.

Based on the amount of time it has taken for appeal processing, staff would also support the originally requested 24-month time extension (from June 14, 2014 to June 14, 2016).

Prepared by,

Steve Engfer  
Associate Planner

## Appeal Description Summary

The appeal is of the Planning Commission's approval of Time Extension Application No. 2014-034 allowing an 18-month time extension (amended development schedule) for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267 for the SilverTip Project from June 14, 2014 to December 14, 2015. The Planning Commission's action was taken on May 23, 2014.

All documents referenced in the Staff Report and Board of Supervisors Draft Resolution are on file with the Planning Department and available for public viewing.

## Location

The project site is located at the intersection of State Highway 41 and Fish Camp Lane in Fish Camp, APNs: 010-550-066 (42.64 acres±), 010-550-064 (2.56 acres±), and 010-550-063 (0.18 acres±). (Attachment A- Vicinity Map)

## Summary, Background Information & Previous Project Actions

In order to understand the Planning Commission's approval and the appeal issues, it is helpful to understand some history about the previous Planning Commission and Board Supervisors' actions about the SilverTip project and the Mariposa County land use governance context for Fish Camp.

### History of Project

The SilverTip Resort project in the community of Fish Camp included applications for a Specific Plan/Zoning Amendment (SP/ZA), a Planned Development (PD), a Conditional Use Permit (CUP), and a Land Division (LDA). The project was processed with an Environmental Impact Report (EIR). The applicant was PacificUS.

The Board of Supervisors certified the EIR (Resolution No. 03-442) and approved the above listed projects by Resolution No. 03-444 (for the CUP), Resolution No. 03-445 (for the PD), Resolution No. 03-446 (for the LDA), and Resolution No. 03-443 and Ordinance No. 1000 (for the SP/ZA). The action date by the Board of Supervisors was December 2, 2003, however the effective dates for the approval of all of the projects in each resolution were tied to the effective date of the Ordinance. The certified publication date for Ordinance No. 1000 was May 12, 2004. May 12, 2004 was the official effective date of the various approvals for the SilverTip Resort project pursuant to these resolutions.

The SilverTip Resort project was subject to litigation at both Superior Court and Appeals Court. A written request for initiation of the tolling provisions included in the project

conditions (No. 3) was submitted on January 19, 2005. The remaining time left on the original approval as of January 19, 2005 was 1 year and 16 weeks. This amount of time was “added” to the project effective date, following the end of the litigation. The appeals court case concluded on February 22, 2006. The Board of Supervisors’ actions were upheld by both courts.

Following review of Time Extension Application No. 2007-28 and Time Extension Application No. 2007-29, the Planning Commission adopted Resolution No. 07-019 on May 18, 2007 approving a five year time extension for the project (to June 14, 2012).

It was determined by the property owners that the land division (to result in 4 parcels within the project perimeter) was not needed for the project. Lot Line Adjustment No. 08-140 was approved on September 29, 2008 to modify the boundaries of the 3 existing parcels within the project perimeter, to the desired configuration for the project. Certificates of Compliance were recorded to complete the Lot Line Adjustment. Following recordation of the Certificates of Compliance, new APNs were assigned to the modified parcel boundaries by the Assessor.

The Board of Supervisors corrected a clerical error on building square footages on November 10, 2008.

The Board of Supervisors adopted Resolution No. 10-518 on November 9, 2010 approving Amended Site Plan Application No. 2009-124 with findings and amended conditions.

There was a foreclosure and property ownership change from PacificUs to CRE LJ CA LLC, c/o OneWest Bank FSB in April 2012.

Time Extension Application No. 2012-048 was approved by the Planning Commission on May 18, 2012 granting a time extension to June 14, 2014.

There was an ownership change in December 2012 and Palm Springs Village-309 LLC (PSV-309 LLC) became the property owner.

A grading permit application was received on February 7, 2014. The application was found incomplete and multiple comments were provided to the applicant. A grading permit application re-submittal that included various technical engineering reports, landscape concept plan, storm water pollution prevention plan etc. was received on May 14, 2014 and comments were sent back to the applicant on July 1, 2014.

Time Extension Application No. 2014-034 (action being appealed) was submitted on April 11, 2014 requesting a two year time extension by the property owner Palm Springs Village-309 LLC (PSV-309 LLC). The Fish Camp Planning Advisory Council recommended approval of an 18 month time extension to the Planning Commission at their meeting of April 19, 2014. The Planning Commission approved an 18 month time extension on May 23, 2014. (Attachment B & C- Planning Commission Time Extension No. 2014-034 Staff Report, Minutes, Resolution & FCPAC Minutes)

Various items have been submitted to Mariposa Planning for condition compliance including the United States Army Corp of Engineers (USACE) Wetland permit (delineation) and mitigation monitoring program, California Regional Water Quality Control Board (CRWQCB) 401 Clean Water Act permit and Waste Discharge Requirements (WDRs), and two California Department of Fish and Wildlife (CDFW), (previously California Department of Fish and Game) Streambed Alteration Agreements.

Appeal No. 2014-066 was submitted on June 11, 2014 and deemed sufficient for processing on June 12, 2014. A supplemental appeal submittal was received August 28, 2014. (Attachment D- Notice of Appeal Submittal & Supplemental Submittal)

### **Land Use Governance - Fish Camp & SilverTip**

There is a hierarchy in land use governance within the County of Mariposa that must be described in order to provide the context for which land use decisions are rendered for project proposals within the Fish Camp Town Planning Area (FCTPA), including the SilverTip project.

The Mariposa County General Plan (MCGP) governs land use and development policies countywide in conformance with state law. The MCGP, in its Land Use Element establishes land use classifications and land use policies. These policies are the top of the hierarchy for locally adopted policies and standards applicable to development throughout the County. The primary implementation and development standards for the MCGP policies are Area Plans, such as the Fish Camp Town Planning Area Specific Plan (FCSP), and the Mariposa County Zoning Ordinance (Title 17). There are other General Plan implementation programs, standards and ordinances as well, such as the Subdivision Ordinance (Title 16). Ultimately all development must be in compliance with the MCGP policies and any applicable area plan.

The Fish Camp area has been identified in the MCGP as a “Town Planning Area” (TPA), since at least 1978. The 1981 MCGP update maintained the TPA classification and MCGP reaffirmed the policy to create specific plans for all of the TPAs. The FCSP was subsequently adopted in 1983, and as amended to date, establishes the land use policies and standards for the FCTPA. The 2006 MCGP classification nomenclature changed a bit from “Town Planning Area” to “Planning Area” land use classification. The 2006 MCGP sets a tiered system for “planning areas”.

The 2006 MCGP 5.3.01 Planning Area Classification, A. Purpose States:

“The General Plan creates the land use classification “planning area.” Planning areas identify “towns,” “communities,” and “special” planning areas (Figure 5-1). Planning areas are implemented by area plans adopted by the Board of Supervisors. Volume II is where adopted area plans are published. “Area plans” are mini-General Plans adopted to meet the needs of each town, community, or uniquely identified special area of the County”.

The MCGP, both past and present, establishes that the FCSP governs the land uses within the boundaries of the Fish Camp Town Planning Area.

According to Curtin's California Land Use and Planning Law 2014 Edition, Chapter 3, Specific Plan, Introduction:

"The Specific Plan is just a step below the general plan in land use approval hierarchy, and is used to systematically implement the general plan in a particular geographical area. Government Code §65450. Zoning Ordinances, subdivisions, public works projects, and development agreements must be consistent with the applicable adopted specific plan. Government Code 65455, 65867.5"

The Mariposa County Zoning Ordinance, Title 17, is another primary implementation tool for the MCGP and also for the area plans such as the FCSP. It is typically referred to as the "countywide" zoning ordinance and applies throughout the county including Town Planning Areas.

There are provisions of Title 17 to insure that the specific plan development standards govern when it comes to land use policies, standards and regulations. This is in accordance with state law (Government Code). While in some instances Title 17 is used for guidance and reference when specific plans are silent on particular issues, deference is given to the specific plan to insure no zoning standard conflict occurs when land use decisions are rendered for uses within a specific plan area. The following are provisions from Title 17 that pertain to the FCTPA and FCSP.

#### §17.04.010 Purpose of the Zoning Ordinance

"The purpose of the Zoning ordinance is to:

A. Implement the Countywide General Plan and All Specific Plans;

...

F. Provide a guide for the growth and development of the County of Mariposa in accordance with the Countywide General Plan and all Specific Plans;"

#### §17.040.030 Establishment of Zoning Districts.

A. TPA Town Planning Area

E. Coulterville and Fish Camp Town Planning Areas. All zoning regulations in the town planning areas of Coulterville and Fish Camp, including but not limited to, the land use classifications, the land use policies and standards, the development standards, regulations and restrictions, and procedural requirements shall be consistent with the Specific Plans adopted for these town planning areas."

#### §17.12.010 A. Development Standards for TPAs States:

“Development standards for the TPAs shall be established in the specific plans. Within areas designated as a TPA where specific land use policies have been developed, or other areas affected by adopted specific plans, approval of all building permits, site plans, development agreements, conditional use permits and subdivisions shall be consistent with those adopted Specific Plans. This Title shall remain in effect in the TPAs until such time as precise zoning regulations and zones are adopted to implements those plans. **In instances where there is a conflict between zoning standards and a specific plan, the specific plan standards shall govern.**” (emphasis added)

The required conditional use permit consistency with the specific plan and the governing authority of the specific plan are described in the above Title 17 provisions.

The FCSP not only provides the opportunity for PDs & CUPs, it dedicates Appendix IV of the plan *expressly for administration of PDs that includes CUPs for a project within a PD*. The PD administrative procedures include allowance for development schedule limit changes (a time extension) and revisions to use permits (such as a time extension), as is evidenced by the following:

Appendix IV §I. Planned Development Applications, A. Purpose, states:

“These provisions are intended to provide the administrative procedures for planned development applications...”

Appendix IV § I Planned Development Applications

O. Development Schedule

“3. If, in the opinion of the planning department, the owner or owners are failing or have failed to meet the approved schedule, the department may recommend the commission initiate proceedings to revoke the approval of the development plan. **Upon the recommendation of the planning commission and for good cause, shown by the property owner, the planning commission may also extend the limits imposed by the development schedule.**” (Emphasis added)

Appendix IV § I Planned Development Applications E. Use Permits

“2. A use permit may be issued by the planning commission at the option of the planning commission without a public hearing if the structure or structures comply with the adopted development plan and conditions thereof.”

Appendix IV § I Planned Development Applications L. Revision of Plan—Use Permit.

“A public hearing by the planning commission and board of supervisors shall be required prior to the issuance of a use permit for revisions of the plan which involve changes in land use, expansion or intensification of development, or a revision to standards of development. **All other revisions may be allowed after a use permit is**

**approved by the planning commission.** (emphasis added) A public hearing may be called regarding such changes if deemed necessary by the planning commission.”

The FCSP integrates use permit procedural requirements within the PD administrative procedures. This is not the case in rural areas of the County where there are no applicable specific plans and Title 17 is the sole procedural reference. A CUP required in rural zoning districts, such as the Mountain General Zone, would be subject to procedural requirements such as Title 17.112 Conditional Use Permits and 17.140.020.

In the case of SilverTip, the project CUP was approved as a part of the PD development plan at public hearings by both the planning commission and the board of supervisors in accordance with FCSP requirements. The project approvals apply the same set of conditions and mitigation measures and tie the PD and CUP to the development schedule timeline.

The SilverTip project is an approved PD and CUP (development plan). The SilverTip project was processed and approved in accordance with the MCGP, Zoning Ordinance, FCSP and CEQA. The past and recent consideration of development schedule & use permit time extension requests are expressly authorized by the FCSP for PD with use permit projects, as is the case for SilverTip. The only requirement is a finding of good cause. The County Planning Commission has reviewed the time extension (development schedule change) request including justification for good cause and determined that good cause exists. The county has applied its own local ordinances and plans consistently for processing SilverTip project time extension requests. There are no provisions in the FCSP that limit time extension requests or that disallow multiple time extensions. The authority to consider and approve or deny time extension requests for a CUP within the PD is primarily established by the FCSP. (Attachment F– FCSP Appendix IV)

## General Discussion

SilverTip is a large project with complex permitting requirements. Some approvals, such as the US Army Corp of Engineers wetland permit, the California Department of Fish and Game Streambed Alteration Agreements and California Regional Water Quality Control Board Clean Water Act Section “401” permit 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.

## Grounds for Appeal and Appeal Procedures

Submittal and processing of appeals is governed by Mariposa County Resolution No.10-92.

The focal point of the appeal is the “Statement of Grounds” (also referred to as “grounds for appeal”), which is the appellant’s statement of the reasons why the decision or determination is being appealed. The statement of grounds is the appellant’s description of why they believe the decision or determination was inappropriately decided. The statement of grounds must include information or documentation which supports their position. Staff analyzes the statement of grounds in the appeal staff report.

Other processing provisions contained within this resolution include:

1. An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed, or to new information which was not and could not have been available at the time the finding or decision was made.
2. Evidence considered at the hearing on the appeal shall be limited to the issues clearly identified in the Notice of Appeal, with amendments or supplements as permitted.

Staff received a supplemental submittal from the appellant in accordance with Mariposa County Appeals Procedure (Resolution Nos. 97-3 and 10-92). The deadline for submitting additional information was 5:00 p.m. Friday, August 29, 2014, being twenty five (25) days before the hearing date scheduled for Tuesday, September 23<sup>th</sup>, 2014.

Staff notes that the property owner (PSV) legal representative Jeff Reid provided responses correspondence. (Attachment E- Property Owner/Applicant Correspondence)

The remainder of this staff report reviews the appellant’s ground for appeal, and provides the basis for staff’s recommended action on the appeal.

## **Discussion of Grounds for Appeal Issues**

Appeal Issues – The appellant provided a statement for grounds for appeal that included five (5) Grounds of Appeal. Each of the five items were further broken down in the appeal. The appellant also provided a supplemental submittal that included four (4) statements and additional information. (Attachment C- Notice of Appeal & Supplemental Submittal)

Both submittals are addressed in the following two subsections: I. The Grounds for Appeal; and II. Supplemental Submittal.

### Section I. Grounds for Appeal.

The following are the five (5) Grounds of Appeal:



- There is no "good cause" in support of the Application because Palm Springs Village 309 has not made the required showing that the extension is necessary and not detrimental to the public health, safety, and welfare.
- The Planning Commission's CEQA Notice of Exemption for the Time Extension did not account for substantial changes in environmental conditions affecting the viability of the project as planned.
- The Developer has failed to demonstrate "good cause" in support of its application by its failure to make any progress on Conditions of Approval ("COA") Nos. 25, 26, 27 and 99.
- Mariposa County Code Section 17.140.020 only permits a conditional use permit be extended once. The Planning Commission previously granted extensions of CUP No. 267 in 2007 and 2012.
- The Planning Commission failed to provide proper notice of hearing for the Time extension and did not otherwise comply with the Fish Camp Specific Plan ("Plan").

*Each of the Grounds are addressed in the discussion and responses below.*

#### Appeal Item 1

##### *Appellant:*

*"Project's Detrimental Effects to the Public Health, Safety, and Welfare Negate Any Finding of "Good Cause" Required to Grant Developer's Application"*

*The mandates of County Code Section 17.140.020 and Resolution No. 2003- 444 compel this Board deny Developer's Application based on an absence of the required showing of "good cause" in support of the requested extension. The Developer failed to demonstrate "good cause" for the extension of the Project because (1) newly designated jurisdictional wetlands have substantially changed the scope of mitigation measures required by the Project, and (2) environmental conditions attributable to the ongoing three-year drought have substantially changed the sustainability of the water supply required by the Project and Fish Camp. (Full text Attachment D- Notice of Appeal and Supplemental Submittal)*

##### Staff Response

Good Cause, County Code §17.040.020 and Board of Supervisors (BOS) Resolution No. 2003-444

The preceding section "Land Use Governance- Fish Camp & SilverTip" provides response regarding the applicability of Title 17 provisions pertaining to time extensions requests when the project is subject to the FCSP.

Public Health, Safety and Welfare findings were made previously within the project approval resolutions and ordinance. As is described in the Planning Commission time extension staff report, the extension request involved no other project changes, did not change the project scope, its impacts or findings made previously. The findings required for a time extension of the PD and CUP are established by the FCSP. A finding of ‘good cause’ is the requirement for the time extension.

The applicant, PSV-309 LLC, submitted documentation to show good cause in support of the time extension request. Based upon the submittal and the consideration of the project progression to that point, the FCPAC recommended approval of an 18-month extension to the Planning Commission on April 19, 2014. The Planning Commission action on May 23, 2014 was approval of an 18-month time extension for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267 (SilverTip Project) from June 14, 2014 to December 14, 2015. (Attachment B & C- Planning Commission Time Extension No. 2014-034 Staff Report, Minutes & Resolution & FCPAC Minutes)

Good cause is not specifically defined in the Fish Camp Specific Plan. Below are some good cause definitions.

The Black’s Law Dictionary (1991) edition definition of Good Cause posted on Wikipedia states:

“Good cause is a legal term denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action prescribed by law. What constitutes a good cause is usually determined on a case by case basis and is thus relative.”<sup>1</sup>

*Merriam-Webster.com*. Good Cause definition states:

“ a cause or reason sufficient in law: one that is based on equity or justice or that would motivate a reasonable person under all the circumstances”<sup>2</sup>

The good cause definitions are relevant to the justification provided by the Developer in his application for the time extension. Good cause evaluation is within the discretionary purview of the Planning Commission pursuant to the FCSP. Good cause relates to whether or not adequate or substantial reasons were provided to justify a decision or an action, in this case to approve a time/development schedule extension. Based upon the project record and justification included in the application, staff, the Fish Camp Planning Advisory Council and the Planning Commission all found that there were adequate reasons to find good cause existed to allow an 18 month extension. (Attachments B & C- Planning Commission Time Extension No. 2014-034 Staff Report, Minutes, Resolution & FCPAC Minutes)

**Appellant:**

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<sup>1</sup> (Henry Campbell Black, Joseph R. Nolan, and Jacqueline M. Nolan-Haley (1991). "good cause". Black's Law Dictionary. West Pub. Co. p. 476. ISBN 0-314-88536-6. [http://en.wikipedia.org/wiki/Good\\_cause#cite\\_ref-1](http://en.wikipedia.org/wiki/Good_cause#cite_ref-1) )

<sup>2</sup> ("Good Cause." Merriam-Webster.com. Merriam-Webster, n.d. Web. 11 Aug. 2014. [http://www.merriam-webster.com/dictionary/good\\_cause](http://www.merriam-webster.com/dictionary/good_cause))

*“(1) newly designated jurisdictional wetlands have substantially changed the scope of mitigation measures required by the Project”*

**Staff response:**

The map referenced by the appellant to support the “newly designated jurisdictional wetland” claim is the USFWS National Wetlands Inventory Map. The map does not constitute a new expanded wetland delineation, or a change in scope of mitigation for the project.

According to the USFWS website the purpose of the National Wetlands Inventory Map is:

“The National Wetlands Inventory (NWI) was established by the US Fish and Wildlife Service (FWS) to conduct a nationwide inventory of U.S. wetlands to provide biologists and others with information on the distribution and type of wetlands to aid in conservation efforts...”

**“Precautions** - Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.”

- According to USFWS Elaine F. Blok, Regional Wetlands Coordinator for the Pacific Southwest Region 8 (where Fish Camp is located), and considering the USFWS Wetland Inventory Map Project Web site, and based on staff review of the project record it can be found that:
  - By definition the Wetland Inventory Map is to help biologists and does not set jurisdictional wetland delineation.
  - The wetland inventory map is not “new”.
  - The field work conducted in 1996 for the project site was used to verify conditions as shown on the 1983 aerial imagery used.
  - Map generation can occur anytime from the website via the “Wetland Mapper”. The date of the generated map does not equal a new wetland delineation or new condition.
  - The project specific review, formal wetland delineation, and monitoring and mitigation program, falls under the jurisdiction of the US Army Corp of Engineers (USACE) and the California Department of Fish and Wildlife. A delineation has been approved for the project site.
  - The Project EIR evaluated the project impacts to wetlands and streams. The EIR evaluation was for the whole of the project. The process included review from agencies with jurisdictional oversight regarding wetlands.

Project impacts were identified and mitigation was required including additional permits from agencies with wetland regulatory jurisdiction over the project site.

- The following permits have been issued by outside agencies with regulatory authority:
  - USACE Wetland Permit (delineation) that requires its own specific mitigation and monitoring program to mitigate impacts to the wetlands on site –the Compensatory Mitigation and Monitoring Plan for the SilverTip Resort Project at Fish Camp CA
  - California Regional Water Quality Control Board Clean Water act Section 401 permit
  - California Department of Fish and Game (Wildlife) Streambed Alteration Agreements

The action, approval of an 18 month extension, does not change the project scope and impacts to jurisdictional waters, rather the allowance for additional time to activate the PD and CUP through grading/building permit issuance.

The USFWS National Wetlands Inventory Map is not a “newly designated jurisdictional wetland” or expanded wetland delineation. USACE Wetland Permit (delineation) has been issued based on site specific inspections and mapping. (Attachment G- USFWS National Wetlands Inventory Map and Documents)

**Appellant:**

*(2) “environmental conditions attributable to the ongoing three-year drought have substantially changed the sustainability of the water supply required by the Project and Fish Camp”*

**Staff Response:**

The certified EIR for the project evaluated water quantity and quality in detail. The potential for and existence of drought conditions was known at the time that the EIR was certified in 2003. The current drought is severe. However, the occurrence of droughts in California is not a new phenomenon and this was known and considered at the time the EIR was prepared and certified. There are specific references regarding drought, low rainfall and historic rainfall averages in relation to water quantity and quality within the content of the DEIR and the Revised DEIR (RDEIR) and its appendices.

Based upon comments, the DEIR Section 3.4 Water Quality and Quantity was revised to address quality and quantity concerns. There were multiple technical documents submitted in relation to water quantity and quality to inform the EIR as follows:

Hydrogeologic Conditions and Wastewater Management Plan Supplemental Report, Ripley Pacific Company and Kenneth D. Schmidt and Associates March 2002.

Boyle Engineering Corporations, Ten Day Pump Test Report on Keller Well No. 2 Well No. 3, Well No 4 for proposed 210-room resort Lodge/Convention Facility In Fish Camp California, December 1988

Kenneth D. Schmidt and Associates, results of 16-Day Pump Test for well No. 5 SilverTip Resort Village, Fish Camp, December 7, 1999

Provost and Pritchard Engineering Group, Inc. SilverTip Resort Village, Fish Camp, California Water Resources Analysis Report, August 1999

Kenneth D. Schmidt and Associates, 25-Day pump test for Wells No. 2, 3, and 4, January 21, 1999.

The RDEIR also included peer review of the studies and reports by Chief Hydrogeologist Christopher S. Johnson, Registered Geologist, with Kleinfelder.

Because water is supplied through groundwater sources for both the Yosemite Alpine Community Services District (YACSD) and the SilverTip project, it was important to determine potential project impacts on the YACSD water supply and other off-site wells in the vicinity. The groundwater studies concluded that there is an impermeable layer between YACSD wells, and the SilverTip project wells. The YACSD wells are closer to the surface than the SilverTip wells. According to the RDEIR Page 3-10 and 3-11 there are two on-site YACSD wells. YACSD 1 was drilled to 320 feet in depth and YACSD 2 was drilled to 230 feet in depth. The YACSD water source is from the near surface weathered zone. The SilverTip project wells are 525 feet and deeper and access a water supply in deeper fractured zones at historic depth of 350 feet and greater according to the EIR. The EIR established that the weathered zone water is not connected to the deeper fractured zone source due to an impermeable layer between the two zones. The EIR concluded, based on substantial evidence, that the YACSD wells would not be impacted by the project because the source of water for YACSD project wells was not interconnected. The source of water for the YACSD and the project wells hydrologically and geologically disconnected.

An excerpt from a BSK Study in 1990 pertaining to water supply that was included as appendix item for the EIR, states in the DEIR, July 2001, Page 3-58, ¶-3.:

**“This measurement was conducted in the spring after several years of drought conditions with less than normal precipitation...”** (emphasis added)

The sustainability of the water supply and possible impacts to off-site ground water supply wells was also evaluated by the EIR. The RDEIR September 2002 states the following regarding the reports as listed above:

**“The tests and reports listed above were conducted and prepared to demonstrate an adequate, sustainable supply of groundwater for the proposed project, and to assess possible impacts on off-site groundwater supply wells.”** (emphasis added)

The RDEIR considered groundwater resources and potential recharge:

It was determined that the **“potential recharge in the watershed greatly exceeds the projected water use”**. (emphasis added) RDEIR Page 3-8 ¶2.

The methodology used for the analysis included “long term records from the precipitation station near the south entry to Yosemite National Park”. This is important as the rainfall averages used to inform recharge (water supply) for the estimated 260 acre watershed, captures both heavy rainfall years and low rainfall years. This includes drought conditions in the period between 1986/87-1992 which is referenced in the EIR. Drought conditions were reflected in the project EIR analysis regarding the recharge (supply) of water for the watershed in which project and community vicinity wells are situated.

A Drought Proclamation, BOS Resolution 2014-210 was adopted on May 13, 2014. The proclamation does not set a moratorium on development and related activities. The primary purpose of the proclamation was to declare an emergency in order to be eligible for potential State and Federal disaster assistance. (Attachment H- BOS Res. No. 2014-0210 Drought Proclamation)

The present drought condition is not a change in the overall circumstances under which the project is to be developed. The present drought condition does not affect or change the results of EIR studies which showed that the source of water for the YACSD and project wells is not interconnected; the wells are hydrologically and geologically disconnected.

Water quality was also addressed in the EIR for the project and multiple studies were conducted regarding water quality and potential project impacts resulting from waste water treatment and discharge, including:

Krazan & Associates, Inc. Installation of three monitoring wells, Proposed SilverTip Resort Village Highway 41, Fish Camp, California December 1999.

Ripley Pacific Company, SilverTip Resort Village Hotel and Conference Center, Fish Camp, Mariposa County, CA, Wastewater Management Plan Concept Report, May 1999.

Krazan & Associates, Revised preliminary On-site Sewage Disposal Investigation, Proposed SilverTip Resort Village, Highway 41, Fish Camp, CA, May 1999.

Ripley Pacific Company, SilverTip Resort Village Hotel and Conference Center, Fish Camp, Mariposa County, CA, Antidegradation Analysis, November 1999

Kenneth D. Schmidt and Associates, Antidegradation Analysis for SilverTip Resort Village Waste Water, October 1999.

The above studies were peer reviewed by Quad Knopf Principal Engineer Terry Schroeper, P.E.

A Final Antidegradation analysis was prepared in September of 2001 by Kenneth D. Schmidt and Associates and appears in Appendix B of the RDEIR.

The RDEIR included a Supplemental Report concerning hydrogeological conditions and the wastewater management plan. The Supplemental Report, beginning at page 30, specifically evaluated the potential of the project's treated effluent impacting the YACSD wells. The EIR analysis (at RDEIR page 3-47), concludes that the quality of water from the YACSD wells should not be affected by effluent percolation for a number of reasons:

- 1) The effluent will have been treated through a tertiary treatment process before it is percolated;
- 2) The YACSD wells benefit from significant horizontal distance from the leachfield site;
- 3) The effluent would have to travel through the vadose zone beneath the leach field;
- 4) The YACSD wells produce water from fractures in the hard rock and annular seals for the wells provide additional protection.

The Certified EIR and the project approval resolutions included numerous conditions and mitigation measures to insure the adequacy of water quantity, and the protection of both on-site and off-site surface water quality and on-site and off-site subsurface water quality (including wells serving the YACSD). (conditions included within Attachment B; water quality related permits included within Attachment I).

The following provides a list of conclusions resulting from project review and approvals:

- Project and community water demand, groundwater supply, groundwater recharge and discharge, historic rainfall amounts, and surface water flows were all extensively studied
- Well and spring production studies included pump tests and draw down tests for on-site and off-site wells including YACSD and Fish Camp Mutual Water Company wells
- The EIR mitigation measures ensure protections for water supply for the project and for other community water system supply. On-site YACSD well access, maintenance and easements are protected through conditions 25, 26 and 27.
- The EIR concluded that the on-site water source for the SilverTip project which insures stability of water quantity and quality.
- 410,000 gallons of water storage is required by the COAs
- Requirements for waste water treatment and water discharge are established by COAs include permits from the California Regional Water Quality Control Board for treatment and compliance with the Clean Water Act
- A stormwater pollution prevention plan and permit for construction is required

Since the project approvals, two water quality and waste water related permits were issued by the California Regional Water Quality Control Board for the project. One permit is a Waste Discharge Requirement permit (WDR) R5-2007-0140 for the project Waste Water Treatment Facility and the owner name change to Palm Springs Village-309, LLC approval Order No. R5-2014-0092. The other is the Clean Water Act Section 401 Certification WDID

5F22CR00010, and an amendment to reflect the current owner Palm Springs Village-309, LLC. (Attachment I- Water Related Permits).

There are other water protection related permits issued to the project including: two (2) California Department of Fish and Wildlife (formerly Fish and Game) Streambed Alteration Agreements and an United States Army Corp of Engineers (USACE) Wetland Permit (delineation).

The time extension scope of review was limited based on the action requested and the project record, including the certified EIR. The staff report states:

“Staff emphasizes that the scope of the public hearing on this application is limited to a determination by the Planning Commission of:

- A. Has there been good cause shown by the property owner?
- B. How much additional time should be granted (is the amended development schedule appropriate)?

The Planning Commission cannot, through this application for a time extension, change conditions for the project. Changing conditions can only be done through an Amended Conditions or an Amended Site Plan application.

The Planning Commission cannot, through this application for a time extension, reconsider the merits of the project. The merits of the project were discussed and debated at the time the project was approved.

Finally, the Planning Commission should not, through this application for a time extension, discuss or focus deliberation on the status of individual conditions for the project. Review and enforcement of conditions is the responsibility of various staff, as indicated in the conditions.”

The Planning Commission action was approval of an 18 month time extension only. There were no other changes to the project.

Based on the above, it can be found that there has been no change in the circumstances affecting water quality and water quantity under which the project is being undertaken that would require major revisions to the EIR. There is no new information of substantial importance concerning water quantity and quality that would relate to any significant effects or potential mitigation measures concerning the project.

While the developer has the responsibility to mitigate any identified potentially significant environmental impacts resulting from project implementation, the developer does not have a responsibility to provide water to the YACSD.

Current State and Federal permits are issued for the express purpose of protecting water quality.



**Appeal Item 2****Appellant:**

*“Mariposa Planning Commission's CEQA Notice of Exemption Does Not Account for Substantial Changes in Environmental Conditions.”*

*“CEQA Guidelines § 15162 provides that “once a public agency has prepared an EIR for a project, no further EIR is required unless either (1) substantial changes are proposed in the project that will require major revisions of the EIR or (2) substantial changes occur with respect to the circumstances under which the project will be undertaken that will require major revisions in the EIR, or (3) new information, which was not known and could not have been known when the EIR was certified, becomes available.”*

**Staff Response**

The project was approved with a Certified EIR in 2003. Amendments to the project were approved with a negative declaration in 2010. A Notice of Exemption for the previous extension, 2012-048 was filed. Contrary to the appellant's assertion, there is language regarding environmental conditions in the Notice of Exemption that was based upon the project record and the requested action. The following is the language from the Notice of Exemption filed for Time Extension 2014-034.

*“Time Extension Application No. 2014-034 is exempt from environmental review pursuant to §15061, CEQA Guidelines, the General Rule Exemption. There is no possibility that the activity in question, approving an amended development schedule, may have a significant effect on the environment.*

*The project in this instance is the granting of additional time to activate the Planned Development and CUP. That grant of additional time to initiate the development processes will not have a significant effect on the environment.*

*The original development project was processed with a full Environmental Impact Report (EIR). The requested approval does not result in any changes to the project other than extending the time for initiating the development activities. There are no new environmental effects or increases in the severity of previously identified significant effects on account of this delay in initiating the development activities.*

*As noted in the staff report, the Fish Camp Town Planning Area Specific Plan has not been modified since the prior EIR was certified. The 2006 update to the County MCGP readopted the Fish Camp Town Planning Area Specific Plan without any amendments. There have been no changes to environmental conditions on site or in the vicinity of the site which would result in new or more significant impacts as a result of an extension of the initiation of the development. In addition, the project plans for the development will be subject to current development standards.”*

The Notice of Exemption relies on the existing record for the project and the action considered being only the allowance for an additional 18 month time extension.

The CEQA section cited by the appellant above is CEQA Guidelines §15162.

The guidelines section reads:

CEQA Guidelines (California Code of Regulations CCR) §15162 - Subsequent EIR and Negative Declaration

“(a) When an EIR has been certified or a Negative Declaration adopted, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR or Negative Declaration due to involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects; or

(3) 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 or the Negative Declaration was adopted, shows the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration.

(B) Significant effects previously examined will be substantially more severe than previously shown in the previous EIR.

(C) 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

(D) 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 proponent decline to adopt the mitigation measure or alternative.”

As was established in the discussion for Appeal Item 1 above, the project's potential environmental impacts were previously evaluated and there is substantial evidence in the project record and certified EIR regarding this. The record shows that drought was considered and directly referenced in the EIR and its technical documents. The on-site wetland delineation has occurred and was also addressed in the EIR and its documents. The current drought and the wetland delineation map does not represent a change in the circumstances under which the Project is being undertaken, that was not previously contemplated by the EIR and that would require major revisions to the EIR. There is no new information of substantial importance concerning drought and wetlands that would relate to any significant effects or potential mitigation measures concerning the Project.

### Appeal Item 3

#### *Appellant:*

*The Developer Has Failed to Demonstrate the Required "Good Cause" In Support of Its Application By Its Failure to Make Any Progress on The Resolution of Condition Nos. 25, 26, 27 and 99.*

#### Staff Response

Good cause was evaluated as is described in the preceding sections "Land Use Governance- Fish Camp & SilverTip" and Appeal Item 1, staff response.

There are many conditions of approval that must be met a prior to grading and/or building permit issuance, including conditions 25, 26, and 27 and 99. Staff finds that reasonable progress has been made by the applicant based on the submittals to date.

The following is the exact text of the Conditions of Approval 25, 26, 27.

- 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.*
- 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 Condition #25 and certifying such to be of adequate width and location to provide suitable access for the intended purpose(s).*
- 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.*

The project conditions do not require the relocation of existing YACSD on-site infrastructure. Rather, they address procedural requirements if the infrastructure needs to be relocated as a result of project design.

Staff, the Fish Camp Planning Advisory Council (FCPAC) and Planning Commission evaluation of “good cause” considered multiple aspects of project processing including progress on conditions of approval, justification set forth in the time extension request including the property ownership change, complications resulting from the prior owner’s bankruptcy, permit ownership issues, and complicated permit requirements. Although a 2 year extension was requested in the application, an 18 month extension was recommended by the FCPAC (and approved by the Planning Commission). Based on the amount of time it has taken for processing of the appeal, staff would support the originally requested 2 year extension.

Correspondence was provided by the YACSD and PSV-309 LLC (PSV), regarding discussions and progress on COA 25, 26, and 27. The property owner attended Fish Camp Community meetings where a presentation was made regarding the proposal by PSV. There was also a site visit consult with the County Public Works Department staff and YACSD representatives regarding the YACSD easements and concerns.

The most recent grading plan submitted requires no relocation of existing YACSD on-site infrastructure; the grading plan includes improved access opportunities for YACSD wells and infrastructure. The project plan submitted was designed to ensure the existing easements and accesses are protected. The final evaluation of the adequacy and compliance with conditions 25, 26, and 27 is the responsibility of the County Engineer. Final review has not been completed.

Staff believes that the negotiations between the YACSD and the property owner are not a stand-alone standard for evaluation of good cause for the time extension. Because finality has not been reached for these conditions, that does not mean there has been failure to make “any progress”.

Staff notes that conditions 25, 26 and 27 do not require the developer to provide a new water source for YACSD and that there is no legal obligation to demonstrate progress on Conditions No. 25, 26, 27, and 99 for finding “good cause”.

**Appellant:**

*Impossibility of Compliance with COA No. 99 Based on Current Site Plan.*

**Staff Response**

The Planning Commission’s time extension approval was based upon a finding of good cause and does not re-establish or evaluate conditions or mitigation measures related to the project scope. There are no project scope changes as a part of the Planning Commission action. (See sections above, Appeal Item 1 & Land Use Governance- Fish Camp & SilverTip)

The concerns regarding the flood plain were addressed in the EIR for the project and the Mitigated Negative Declaration in 2010 for the site plan amendment review. The Board of Supervisors approved the project (Amended Site Plan) subject to “additional language to address verification of flood elevations”. The grading permit review process requires compliance with Conditions of Approval including Condition No. 99. The following is the exact wording of condition no. 99:

*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.*

The SilverTip Resort 100-year Flood Plain analysis dated January 13, 2012 was submitted by Provost and Pritchard pursuant to Condition 99. The analysis was a flood study and mapping of the 100-year floodplain. It relied on the USACE Hydraulic Engineering Center River Analysis System (HEC-RAS) to perform the hydraulic analysis. The analysis also included a review of the 2010 Newfield’s Study and the 2011 Provost and Pritchard Big Creek flood calculation.

The Public Works Department evaluated the flood plain boundary shown on the recently submitted site grading plans and required the final grading plan demonstrate that either there is no grading inside the 100-year floodplain boundaries or that grading inside the 100-year floodplain is mitigated in accordance with Condition No. 99.

Prior to issuance of the grading permit, final verification of condition compliance will be conducted by Planning and Public Works.

The “impossibility of compliance with Condition No. 99 based on the current site plan” has not been demonstrated and county staff will continue to apply the requirement during future reviews. (Attachment J- Grading Plan Submittal Comments, Flood Analysis)

**Appeal Item 4**

**Appellant:**

*Mariposa County Code Section 17.140.020 Only Permits a Conditional Use Permit To Be Extended Once.*

**Staff Response**

The FCSP establishes specific provisions for consideration of time extensions for the SilverTip Project PD. The Use Permit is reviewed as an integral part of the PD (implementing the PD). This is described in section above “Land Use Governance- Fish Camp & SilverTip”.

Title 17 stipulates that when there is a conflict... the Specific Plan prevails. (See Appeal Item 1 above and the section “Land Use Governance- Fish Camp & SilverTip”). The PD / Use Permit is processed under the FCSP requirements which authorize the development schedule time extension requests with a showing of good cause.

Staff processed this and the past time extension applications based on the language of the FCSP, the past Planning Commission and Board of Supervisor actions and pursuant to the procedural requirements of the FCSP; the consideration of additional time for the PD & Use Permit are authorized by the FCSP.

**Appeal Item 5**

**Appellant:**

*Commission Failed to Provide Proper Notice of Hearing and Did Not Otherwise Comply with the Fish Camp Specific Plan.*

**Staff Response**

The recently noticed Planning Commission public hearing was to consider action to approve a time extension for the activation of the PD & Use Permit through building and or grading permit issuance. The action was not for a new PD & Use Permit.

Consideration of the originally proposed Planned Development No. 99-1 and Conditional Use Permit No. 267 occurred through duly noticed hearings that are part of the record for the SilverTip Project approvals.

The Fish Camp Specific Plan, Appendix IV § I Planned Development Applications, R. Public Hearings, states:

“ The planning commission shall hold at least one public hearing on the **proposed** (emphasis added) planned development. Notice of the time and place of such hearing and the area affected by the proposed amendment shall be published at least one time in a newspaper of general countywide circulation at least 14 days prior to the hearing. In addition, property owners with property located within six hundred feet of the proposed planned development shall receive notice by mail of such hearing.”

The above notice was completed at the time the project PD& CUP and EIR were approved in 2003.

Title 17, Chapter 17.132 Public Hearings, §17.132.020 Public Notification, A. 3, states:

“Notice within any town planning areas as described in Chapter 17.12 shall be three hundred (300) feet from a project parcel boundary. (Ord. 912 Sec.II, 1997; Ord. 704 Sec.1, 1988).”

Since the FCSP is silent on the noticing for a time extension and the Title 17 provision above for noticing of a public hearing in a TPA is not in conflict with the FCSP, and the hearing was not for a new PD, the noticing was provided as required. In addition to the mailed notice to property owners within 300 feet of the project site, notice was also published in the newspaper and posted at four community/county locations and on the County web site. Proper notice was provided in accordance with Mariposa County noticing procedures. (Attachment K- Noticing Planning Commission Time Extension 2014-034 May 23, 2014 meeting)

## **II. The Supplemental Submittal.**

The supplemental submittal included (5) five documents including: 1) Notice of Appeal Attachment B- resubmittal-update to correct addresses and add names and information of additional appellants; 2) the Newfield’s Big Creek Flood Analysis dated 6/17/2010; 3) YACSD Resolution Opposing the Time Extension; 4) Planning Commission Hearing Transcript for May 23, 2014 Meeting, SilverTip Time Extension 2014-034; and 5) Cover memo to transcript. (Attachment D – Notice of Appeal & Supplemental Submittal)

Citations included in the Supplemental Submittal text are to page and line numbers in the Planning Commission meeting transcript.

## **Supplemental Appeal Item 6**

### **Appellant:**

*The lack of evidence showing "good cause" to grant an extension. Claims of good cause were only provided through assurances from the developer.*

### **Staff Response**

The FCSP states:

Appendix IV § I Planned Development Applications

“O. Development Schedule

3. If, in the opinion of the planning department, the owner or owners are failing or have failed to meet the approved schedule, the department may recommend the commission initiate proceedings to revoke the approval of the development plan. Upon the recommendation of the planning commission **and for good cause, shown by the property owner**, (emphasis added) the planning commission may also extend the limits imposed by the development schedule.”

Additionally, §17.08.080 Burden of Proof 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.”

It is appropriate and required that the property owner and applicant submit evidence to support their request.

### **Supplemental Appeal Item 7**

#### **Appellant:**

*Appendix IV, I. 0, 1 of the Fish Camp Specific Plan states "An application for a P-D shall be accompanied by a development schedule indicating the approximate date when construction of the project can be expected to begin, which date shall be no later than one year from the effective date of the approval of the P-D." This was ignored by the Board of Supervisors in Resolution 2003-444 which approved the project and Conditional Use Permit 267, giving the developer 24 months to begin the project. 35:3-7 Yet, the Planning Department sites the Specific Plan's use of the word "extend" in Appendix IV,1.0, 3 to mean the granting of time extensions in perpetuity, so that County Code 17.140.020, which limits developers to one extension of 18 months, would not apply.15: 2-5*

#### **Staff Response**

The Board’s action in 2003 is not an issue which can be considered in this Appeal. A plain language interpretation of the text in Appendix IV.O.3 does not establish any specific limitations to extending a development schedule. The hierarchy of the FCSP and zoning consistency issues has been previously addressed.

There have been extensions granted previously. Each has been considered on a case by case basis. Approvals were not ‘in perpetuity’ rather, 2 years or 5 years or 1.5 years as requested.

### **Supplemental Appeal Item 8**

#### **Appellant:**



*There was no discussion by the commissioners regarding the CEQA exemption. The original exemption in the Planning Commissioners' packet was changed at the last minute with all references to changing environmental conditions removed. Current environmental conditions 86: 12-23 and the new wetlands designation 90: 16-24 require a new EIR, regardless of the "activity" in question. The commission also didn't "consider the "substantial" changes which must be made to the site plan to satisfy COA 99. Such changes require the plan to be submitted for public review, as stated in item 1 of Conditional Use Permit #267. 154: 11-25, 155: 1-3*

### **Staff Response**

This was addressed in the preceding sections (Appeal Item 2) above.

### **Supplemental Appeal Item 4**

#### **Appellant:**

*The lack of legal representation by either the planning department's outside counsel or by County Counsel. 32:15-25, 160: 4-8 The Planning Department knew this extension was a highly contentious issue as evidenced by the input from the community in the weeks prior to the public hearing. An attorney should have been present to answer questions from the public as well as questions from the only planning commissioner who appeared willing to consider what was being said. 105: 1-18,106:17-24*

### **Staff Response**

This is a procedural observation and not related to the Notice of Appeal issues. Legal counsel is rarely available at Planning Commission meetings for any issue. No further response is required.

### **Supplemental Item 10**

The Planning Commission transcript included a reference on page 90 and 91 regarding the Sierra Nevada Yellow Legged Frog and the Yosemite Toad.

“The US Fish and Wildlife Service has now listed the Sierra Nevada yellow-legged frog and a subspecies of the mountain yellow-legged frog as endangered, and the Yosemite Toad as threatened.”

The Sierra Yellow Legged Frog (*Rana sierra*) and the Mountain Yellow Legged Frog (*Rana muscas*) were previously known as one, *Rana muscas* and a recent taxonomy split occurred that is based on habitat range with a dividing point as Monarch Divide in Fresno County. This listing is not significant new information affecting the prior EIR's evaluations because that EIR specifically noted that *Rana muscas* was a wildlife species of concern that could occur in the Fish Camp Town Plan area. (Revised Draft EIR at page 3-23). Based on biological surveys, none of the special status animal species were identified in the Fish Camp Town Plan Area. (DEIR at page 2-2 and Impact 3.2-3 at DEIR pages 3-34 and 3-35).

The Yosemite Toad (*Anaxyrus canorus*), was listed as threatened in April 2014. The Yosemite Toad was not included on the DEIR's Table 1 list of specified wildlife species of concern likely to be found in the Fish Camp Town Plan Area. In addition, the Fish Camp Town Plan, which was readopted in 2006, does not list that species as a wildlife species of concern that could occur in Fish Camp (see Table 1 at page 6 of the Fish Camp Town Plan Specific Plan). Fish Camp is not included within the proposed critical habitat designation areas for the species according to the USFWS map.

County staff generated a map to illustrate the proximity of the proposed critical habitat areas to private parcels in the County, including the SilverTip project site. The closest habitat is approximately 5.7 miles from the project site. (Attachment L- Habitat Proximity Map)

The species listing does not represent a change in the circumstances under which the Project is being undertaken, that was not previously contemplated by the EIR and that would require major revisions to the EIR. There is no new information of substantial importance concerning the Sierra Yellow Legged Frog or Yosemite Toad that would relate to any significant effects or potential mitigation measures concerning the Project.

## Alternative Actions

The Board of Supervisors may:

1. Deny the appeal and approve 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; or
2. Deny the appeal and approve a shorter or longer time extension (such as the applicant's originally requested 24 month extension); or
3. Continue the hearing to a date and time certain and request additional information; or
4. Uphold the appeal and deny the requested time extension. This action would mean an entirely new application and CEQA review would have to occur prior to any commercial development of the site.

If the Board of Supervisors upholds the appeal, there should be discussion to support findings for denial; staff will return at a continued public hearing with an amended resolution with findings based upon the Board's discussion.

## Recommended Action:

Staff recommends that the Board of Supervisors adopt a resolution:

- 1) Denying Appeal No. 2014-066 based on findings; and
- 2) Approving 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 with findings including findings regarding environmental review.

Recommended findings are included in the draft Resolution.

Based on the amount of time it has taken for appeal processing, staff would also support the originally requested 24-month time extension.

## Effect of Recommended Action:

The effect of the recommended action to deny the appeal and uphold the Planning Commission action is that:

The project would have until December 14, 2015 for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267 (or June 14, 2016 if a 24-month extension is approved). Activation occurs upon issuance of a grading permit or building permit.

## Attachments:

- A. Vicinity Map
- B. PC TE No. 2014-034 May 23, 2014 Staff Report, Minutes, Resolution
- C. FCPAC Time Extension No. 2014-034 April 19, 2014 Meeting Minutes
- D. Notice of Appeal & Supplemental Submittal
- E. Applicant Correspondence
- F. FCSP Appendix IV
- G. USFWS National Wetland Inventory Map & Documents
- H. BOS Resolution No 2014-210 Drought Proclamation
- I. Water Quality Related Permits
- J. Grading Plan Submittal Comments, Flood Analysis
- K. Public Noticing - Planning Commission Time Extension No. 2014-034 May 23, 2014
- L. Habitat Proximity Map
- M. Draft Board Resolution