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September 13, 2004

VIA FACSIMILE AND FEDEX

Clerk, Monterey County Board of Supervisors
240 Church Street
East Wing, Room 226
Salinas, CA 93901

**Re: Renewed Request for Continuance of September 14, 2004 Agenda Item S-15 –
Appeal of Coastal Development Permit (PLN030620/Julia Pfeiffer-Burns State
Park); Comments on Incomplete Materials**

To the Members of the Monterey County Board of Supervisors:

This letter is submitted on behalf of the Friends of the Big Sur Coast and Joseph P. Schoendorf—the “Appellants” in this matter.

This matter is scheduled for hearing on Tuesday, September 14. On Friday, September 10, Appellants still had not received any materials from the County on their appeal. Appellants called the Clerk to the Board asking if there was a report and, if so, could it be faxed or e-mailed. The Clerk agreed to e-mail the report, but the only document sent by e-mail at 4:00 on Friday was a 1½ page summary, with no attachments or accompanying materials. On Monday, September 13, Appellants still did not receive any materials from the County in that day’s mail. With less than 24 hours before the hearing, and still unable to know what the County was proposing on their appeal, Appellants formally requested, by telephone to the clerk and by letter, a two week continuance. At 1:59 p.m., Appellants received an e-mail from staff indicating that they would not recommend a continuance. The e-mail stated:

Board items are sent to the public after the Supervisor’s packets are distributed, which is generally Thursday prior to the hearing...not a week before as you request in your fax dated September 13, 2004. Although you may request another continuance, staff will not recommend that the Board entertain this request because it was not received within the timeframe set forth

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in the adopted Board policy and the information was properly distributed.¹

Ironically, staff regards the continuance as untimely, even though Appellants still haven't received the staff's package. Attached to the September 13 e-mail was a copy of the proposed resolution, but no explanation was provided why it had not been e-mailed on Friday. And Appellants still have not been provided with the conditions/mitigations that, presumably, describe what work must be done.

What little Appellants have received at the last minute appears flawed. According to the summary, the staff "understands that the Board did not want to assess double fees, as is required for code violations, since there was miscommunication between County and State staff regarding the permit requirements and the provision of appropriate information to make an adequate determination." 9/14/04 Summary at p.1 That is not what Appellants understood from the hearing—it is not what the press understood either (see attached Monterey County Herald article titled "County 'fines' State for trees"). In fact, the same article also reported that the Board had called for "double fees." As for the "miscommunication," at the last hearing Appellants learned that the County had asked for information, but Parks had not provided it. Appellants submit that does not constitute a miscommunication.

Several other problems also appear to exist, though it is impossible to tell without all of the materials. First, on August 24 the Board required the preparation of a "restoration plan." Appellants have not been provided, and have not seen, such a plan. Presumably such a plan could not be approved before it is even prepared. Second, Appellants cannot tell whether staff is only proposing the removal of felled trees below the Waterfall House. Appellants have submitted photographs showing that this is not the only location where tree trunks have been dumped. Presumably all trees that have been dumped over the cliffs along the coast will be removed. Third, Appellants still have not had their comments regarding impacts addressed, including potential impacts to Smith's Blue Butterfly habitat. From the materials Appellants have been provided, this project has not had its effects reduced "to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of

¹ The entire handling of this appeal has been odd. The last hearing on the appeal was first set without Appellants ever receiving a notice. Appellants also inquired about obtaining a transcript of the hearing on August 24, and were advised that only the audio would be made available, and that it would be posted on the Board's website within days. Three weeks later, that recording still is not available. The minutes from the August 24 meeting are not available either.



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the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” Tit. 14 Cal. Code Regs. § 15064(f)(2) (emphasis added). Significant effects have already occurred. And they have not been properly studied, remediated, or mitigated.

Appellants request that they be given an opportunity to review and comment on the materials you have seen, but they have not, on their appeal. Appellants have not had such an opportunity, and their appeal cannot be fairly decided—they don’t even know what the Board is deciding. A fair hearing requires more. And, from what Appellants can tell, a more than fair argument remains that this project may have a significant effect on the environment.

Very truly yours,

William M. Sloan

WMS:gsb
Attachment

cc: Monterey County Counsel (via FedEx)
California Coastal Commission (via FedEx)
California Regional Water Quality Control Board – Central Coast Region (via FedEx)
California State Lands Commission (via FedEx)
California Department of Fish and Game (via FedEx)
Friends of the Big Sur Coast
Joseph P. Schoendorf
Monterey County Planning & Building Inspection Department,
Salinas Office (via FedEx)
Carl P. Holm, Project Planner,
Monterey County Planning & Building Inspection Department (via FedEx)
Tim LaFranchi, Chief Counsel to Department of Parks and Recreation (via FedEx)



Posted on Wed, Aug. 25, 2004

County 'fines' state for trees

Supervisors want removal finished at Pfeiffer state park

By **JOE LIVERNOIS**
Herald Salinas Bureau

State parks officials tried to get rid of a big mess in Big Sur a couple of years ago, but the mess took an unexpected turn.

On Tuesday, the Monterey County Board of Supervisors agreed that the state should be treated the same as any other private citizen with plans to remove thousands of trees and shrubs from their property.

Supervisors dinged the state for an as-yet undetermined "fine" and asked parks officials to remove the large logs on a bluff overlooking a cove along Julia Pfeiffer Burns State Park.

The problems started about three years ago, when the state started removing thousands of non-native trees and shrubs from the state park. That vegetation -- including hundreds of the universally despised eucalyptus trees -- had been planted by owners of the Big Sur property who eventually deeded the land to the state.

County planners said they were informed of the plan, but planner Jeff Main told supervisors Tuesday he was not aware of the "scope" of the state's project until he started hearing complaints.

Some of the eucalyptus trees were allowed to fall down a steep slope, where many of them still remain. And part of the removal project is taking place in areas where habitats for a couple of rare plants and insects are found.

All parties involved in the controversy agree that the state's intentions were terrific, but several neighbors complained that the state should have gone through the county permit process like everyone else.

"We're not here to oppose the state project," said John Briscoe, an attorney representing Friends of the Big Sur Coast. "We do take offense at what is perceived to be preferential treatment."

Briscoe described the project and its impacts, criticizing the state for then applying for an "after-the-fact permit."

After the neighbors complained, the county imposed a stop order on the project. As a result, the state could not remove the fallen trees from the slope.

Over a period of time now, the native vegetation has started to grow over the trees and county officials eventually decided that the state wouldn't have to remove them, allowing nature to take its course.

But supervisors insisted Tuesday that the fallen trees should be removed. What's more, supervisors said that the state, which had been given a waiver from paying permit fees for the project, should now pay double fees.

"I do believe there's an issue of fairness," said Supervisor Dave Potter.

Planners will return to supervisors in three weeks with a full set of recommendations the supervisors can formally adopt.

Joe Livernois can be reached at 753-6753 or jlivernois@montereyherald.com.