



August 10, 2004

Mr. John Briscoe  
Stoel Rives LLP  
111 Sutter Street, Suite 700  
San Francisco, CA 94104

**RE: Response to Monterey Co. Staff Report Re: Appeal of Coastal Development Permit and Mitigated Negative Declaration to Board of Supervisors for Julia Pfeiffer-Burns State Park Exotic Species Removal**

Dear John:

I am forwarding the following comments on the Monterey County Planning Department staff report for the appeal of the above-referenced project. I have reviewed the staff report as well as State Parks' submissions. Comments contained in my 4/7/04 letter to you are still pertinent, and I do not believe were addressed adequately by Planning Department staff.

**CEQA/Mitigated Negative Declaration:**

- (1) County: Buckwheat habitat absent or limited under eucalyptus due to shade (p.5).

We agree that buckwheat habitat was limited under eucalyptus and acacia, as we stated on our 4/7/04 letter; however buckwheat habitat was and is present on large areas of open slopes now occupied by extensive amounts of fallen logs and woody debris. The report by Richard Arnold, Entomological Consulting Services, also indicated potential presence of buckwheat in these areas although he conducted only one very limited visual survey of the tree removal area, and did not survey individual plants for evidence of any Smiths' blue butterfly (SBB) live phases (personal communication to J. Gilchrist, 2003). It is not clear from review of State Parks' biotic reports that they conducted any surveys for buckwheat plants or butterflies. County staff completely ignores the impacts of logs and debris to butterflies on slopes where mature buckwheat plants were observed. County staff also does not address the issue that a CEQA responsible agency, the US Fish and Wildlife Service, was not consulted about presence of a federal-listed endangered species. As our letter indicates both SBB and seacliff buckwheat are afforded protection under the Endangered Species Act, creating an obligation for State Parks to initiate a consultation process under Section 10 of that Act, prior to their tree removal in 2002, and certainly prior to any future removal efforts.

- (2) County: Clusters of monarch butterflies were observed in eucalyptus east of project site but these trees were removed, and butterflies not observed in project area trees.

If monarchs have been observed, and trees nearby have historically been used as autumnal or overwintering roosts, it is customary to review trees over the entire area for roosts prior to removal, as butterflies often return to different roost sites within the same vicinity. This should have been indicated in the CEQA document and mitigation requiring an entomologist review of trees made a condition of project approval. State Parks' removal in 1984 and 1999 of a known roost site for a state listed sensitive species also raises questions of this agency's commitment to resource protection.

(3) County: Raptors may nest in eucalyptus trees.

If raptors are nesting a 150' buffer is inadequate. A 250' buffer is normally required for construction of a single family dwelling in vicinity of a raptor nest, or alternatively, project is delayed until birds have fledged. Chain-saw removal of tall trees in vicinity of a raptor nest is far more disturbing to nesting birds than construction of a home. There is no indication in the State Parks' Biological Assessment (May 2003) that any raptor surveys were done prior to tree removal in summer 2002, or if so, what the survey results were.

(4) County: My letter (2/28/03 to John Briscoe) indicates trees are likely to reach the intertidal zone and impact organisms there.

My letter also states that trees *were observed* in the intertidal and near shore zone, and due to the steepness of slopes there is a high likelihood that additional trees will reach this area. A full discussion of impacts to organisms in this sensitive habitat should have been included in the County's Initial Study. The fact that the Coastal Commission did not pursue a violation notice issued to State Parks does not relieve the County of its obligation under CEQA. The reference to "applicant's monitoring program" and "new vegetation planted after completion of Phase 1" is vague and misleading. The monitoring program is merely State Parks' periodic review of beach and lower slope for presence of logs, which they have indicated they will remove if there is evidence of downslope movement. There is no review of damage to plants on the slope, damage to inter-tidal organisms, erosion effects, etc. There is no indication in County staff report of State Parks documents where revegetation has occurred after Phase 1 tree removal. New plants were observed near the Waterfall House site but none have been observed on lower slopes where logs might reach the beach, or where removal of these logs would cause erosion if "new plantings" were impacted.

#### **Fair Argument (p. 8)**

County: "nothing in Gilchrist's letter that indicates impacts from Phase I... or Phase II have/cannot be mitigated."

Impacts to Smiths' blue butterfly and retention of extensive areas of logs and non-native vegetation debris on slopes are impacts where County mitigation is inappropriate or impacts that cannot be mitigated. SBB has been discussed above. The issue of leaving logs and debris piles in areas where they will not break down for decades is a serious one that has not been addressed by the County. These piles will multiply 2-fold with the planned removal of remaining exotics. It is extremely difficult to understand how revegetation (or natural native plant recolonization) could occur in these areas. There are accepted methods to remove logs and debris from sites that are required and routinely used in commercial timber harvest operations. Some of these methods are used in areas with steep slopes without causing erosion or destruction of underlying plants. We also believe if County staff conducted an adequate review of impacts to the intertidal zone and Underwater Park, additional mitigation measures would be forthcoming and/or a finding of significant unmitigatable impact made.

#### **Biological Impacts (p.8)**

County: "...state agency with qualified experts prepared their own reports."

County staff still has not addressed the deficiencies in biological and resource management reports submitted by State Parks that are normally required in private development reports submitted by private consultants. Specifically, names and qualifications of investigators, dates specific surveys were done, background information on species of concern, revegetation map and planting specifications, monitoring and maintenance plan, performance standards, and other essential information is missing from these documents.

### **Smith's Blue Butterfly**

County: "plant is not endangered. Common practice allows removal provided the butterflies are not present..."

Plant itself is not endangered, but the County and State Parks continue to ignore that it is protected under the Endangered Species Act because the insect that is totally dependent on the plant is endangered. Common practice *does not* allow removal of seacliff buckwheat when butterflies are not present. Because all life stages of SBB are dependent on this plant, butterfly larvae or pupae in the flowerheads, or leaf litter below, would be eradicated if the plant was damaged or removed during eucalyptus removal in fall, winter or spring months. This obviously would eliminate the species at this location. If one seacliff buckwheat plant, hosting a Smith's blue butterfly was (or will be) removed/ impacted, it was (or will be) a significant unmitigable impact and a violation of the federal Endangered Species Act. Planting new buckwheat does not mitigate for this loss as it takes several years for a plant to mature into butterfly host plants. If buckwheat losses removed the butterfly species from coastal locations at JP Burns SP, butterfly recolonization may be difficult.

### **Inter-tidal**

County: "Aerial photos from prior to Phase I show that this slope did not have much vegetation prior to the Phase 1 tree removal."

This issue really refers to the 300-400' of slope above the intertidal zone, not only the intertidal area. From our detailed review of historic aerial photos, certainly some slope areas contain unvegetated rock outcrops; however, large portions of the slope, particularly the shallow depressions now occupied by log debris were vegetated by low-growing coastal scrub vegetation. (Seacliff buckwheat is a prominent species in this plant community). Prior to invasion of pampas grass on the west-facing slope, coastal scrub was present with some still remaining. On the north-facing slope to the north of the Waterfall House site, significant low and high growing native scrub vegetation covered the entire slope that was impacted by fallen trees. We believe this was a significant impact that is not addressed by County or State Park documents. It is gratifying to see that lower slope bare areas will be replanted if logs drift downslope, but the County has required no revegetation plan or other submittal that would indicate how these areas would be planted, species types, numbers and spacing, monitoring and maintenance provisions, and performance expectations. Therefore, it is questionable whether County staff can effectively monitor compliance with this condition. In addition, there are also no details on how logs would be removed once they move downslope and approach or land on the beach. We believe all Phase I logs and debris should be removed from slopes, and native species revegetated in all areas where native vegetation was impacted. In Phase II, logs and debris should be removed immediately during the harvest operation and revegetation should occur in all impact areas under a detailed revegetation plan. To do anything less is poor resource management.

I believe this responds to biologic issues raised in the County appeal response staff report. I am sorry I will be unable to attend the Board of Supervisors meeting, but would appreciate if these comments were forwarded to Board members.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Gilchrist".

John Gilchrist