WARREN A. SINSHEIMER III
DAVID A. JUHNKE
JUNE R. McIVOR
HERBERT A. STROH
DAVID S. HAMILTON
KEVIN D. ELDER
N. ELLEN DREWS

SJMS

SINSHEIMER JUHNKE McIVOR & STROH, LLP
ATTORNEYS AT LAW

Of Counsel:
ROBERT K. SCHIEBELHUT
K. ROBIN BAGGETT

E-Mail:
KElder@sjmslaw.com

July 9, 2013

Client: 1395.002

City of San Luis Obispo Bicycle Advisory Committee
c/o Bryan Wheeler
990 Palm Street, Room 9
San Luis Obispo, California 93401

VIA ELECTRONIC MAIL
bwheeler@slocity.org

County of San Luis Obispo Parks Commission
c/o Bryan Wheeler
1055 Monterey Street, Room D-170
San Luis Obispo, California 93401

VIA ELECTRONIC MAIL
bwheeler@slocity.org

Re: Ed and Mary Weipert:
Comments to Bob Jones Trail Octagon Barn Connection Study

Dear Committee and Commission Members:

Please accept the attached letter containing comments to the Bob Jones Trail Octagon Barn Study, submitted on behalf of Ed and Mary Weipert. For the reasons noted in the letter, the Weiperts are strongly opposed to citing the trail along the agricultural properties adjoining their property, or along the creek.

The attached letter was originally submitted to Alta Planning + Design on March 1, 2013. The most recent version of the study does address a few of the comments. However, many others were not addressed or were marginalized in the study, in effect giving them little or no weight.

We hope that the City of San Luis Obispo Bicycle Advisory Committee and the County of San Luis Obispo Parks Commission will give serious consideration to the concerns contained in the attached letter.

Thank you for your time and consideration of these comments.

Sincerely,

SINSHEIMER JUHNKE McIVOR & STROH, LLP

KEVIN D. ELDER

KDE:ggf
K:\WeipertE\002 Land Use\CorrFrSJMS\17WheelerB-070913.doc
Enclosure
cc: Ed and Mary Weipert

WARREN A. SINSHEIMER III
DAVID A. JUHNKE
JUNE R. McIVOR
HERBERT A. STROH
DAVID S. HAMILTON
KEVIN D. ELDER

SJMS
SINSHEIMER JUHNKE McIVOR & STROH, LLP
ATTORNEYS AT LAW

Of Counsel:
ROBERT K. SCHIEBELHUT
K. ROBIN BAGGETT

E-Mail:
KElder@sjmslaw.com

March 1, 2013

Client: 1395.002

Kristin Maravilla
Planner/Designer
Alta Planning + Design
2560 9th Street, Suite 212
Berkeley, California 94710

VIA ELECTRONIC MAIL
kristinmaravilla@altaplanning.com

Re: Ed and Mary Weipert:
Comments to Bob Jones Trail Octagon Barn Connection Study

Dear Ms. Maravilla:

Please accept these comments to the Bob Jones Trail Octagon Barn Study, submitted on behalf of Ed and Mary Weipert.

Personal Comments.

The Weiperts are opposed to the placement of the trail over the Ruffino and Hiyashi parcels, whether the path is along the creek or along their property. The Weiperts choose to live in their home in large part due to its privacy, and want to continue to enjoy the privacy they paid for with hard work.

The desire for privacy has increased due to the onset of Mr. Weipert's illness, which makes it difficult for him to get around, and prevents him from driving. Therefore, the property is his refuge, and placing the path along either the creek or their property will be a serious disruption to the peace he finds in this refuge.

The Weipert's don't understand why such an invasion of their privacy is considered, why so much farm land and habitat will be disturbed, at great public expense, all for a trail of approximately 4/5ths of a mile long. They believe the money would be better spent improving existing trails and building trails along Los Osos Valley Road and Higuera Street.

The Weipert's also submit the following General Comments and Specific Comments about the study.

General Comments.

It is important to note as a threshold issue that unless the County of San Luis Obispo (the "County") is willing to essentially waive in total the required 200-foot setback between row

crops and pathways, there is no way to place a path across the Hiyashi parcel, whether the path is along the creek or along the proposed residential course.

The study mentions that the extent to which the 200-foot setback may be encroached is undetermined. Is that because there is no precedent for such encroachment in the County, or because there are no set mechanisms in place to make such a determination? It is counter-productive to choose an option that cannot possibly be used.

It is also important to note that both the City and the County have many policies stating that the preservation of agriculture is very important. The study goes on to state how those policies can be circumvented or compromised. This seems an extreme course to take for a path that will be about three-quarters of a mile long at best.

Unless the County is willing to waive all or nearly all of the 200-foot agricultural setback requirement, and unless both the City and County are willing to place a heavy burden on the agricultural viability of the parcels, it seems that placing the path along the creek or along the residences is not feasible.

The same arguments hold true with respect to the creek setback. Both the City and the County have policies in place aimed to preserve the natural state of creeks by requiring setbacks from the top of the creek bank. The study then uses every opportunity to note that the creek setback requirements can be encroached, if there is no alternative course.

Why would the City or the County consider so many exceptions to their stated policies when there is an alternative: Los Osos Valley Road ("LOVR") to Higuera Street.

It would be better to build Class I paths along LOVR and Higuera, and require the eventual developer of the Hiyashi parcel to include a Class I path when the property is developed. That way there will be Class I paths over the Hiyashi and Ruffino parcels, and over LOVR and Higuera.

The course of the path shouldn't be thought of as a place holder for some future date, rather it should be something that can realistically be sited on the property under current conditions.

In summary, the study seems to promote the path that will do the most damage to the agricultural and natural resources, require the most exceptions to City and County policy, while ignoring a viable alternate – one that will have bike lanes anyway – LOVR to Higuera Street.

This is especially noteworthy with respect to the City. The City's general plan calls for an agricultural gateway to the City, to recognize the City's agricultural heritage and on-going importance to the City. In light of that policy, why is the City even considering a path through agricultural land at the gateway to the City?

The area is of prime importance in protecting and preserving a greenbelt in that it is the last section between 101 and Higuera that is not developed, and in City control. The County may or may not keep that area open, as development along Buckley Road may come with the road extension. Keeping this parcel in agricultural production for as long as possible squares with City's policy of defining an urban boundary – yet the City seems to be willing to abandon that policy at every turn.

Specific Comments.

Why are there no policy guidelines regarding placement of the path on LOVR to Higuera?

Section 1.1.1, City of San Luis Obispo Zoning Regulations, top of page 1-4.

This section states that the City allows discretionary exceptions to the 20-foot setback from the creek, where there is no practicable alternative.

- The study should note that there is an alternative route along LOVR to Higuera.

Section 1.1.2, County of San Luis Obispo, page 1-4.

The County General Plan:

- Discourages conversion of agricultural lands to non-agricultural uses.
- Encourages recreational uses on privately owned lands on a case-by-case basis, where such uses are compatible with agricultural resources.
- Approval on a "case-by-case basis" usually implies a need for extraordinary reasons for approval.

Keeping in mind the County's criteria for converting agricultural land to non-ag:

- Our understanding is that Mr. Hiyashi believes that farming operations are fairly constrained now. A path on either side of his parcel will further constrain the operation, and may mean the parcel won't be viable for commercial agricultural uses.
- Mr. Hiyashi's belief is based on a reduced parcel, but also because it will be more time and cost intensive to plan around spraying, dealing with dust, etc. for path users. Signs and volunteers can only do so much.

Bottom line:

- Complying with a 30-foot creek bank setback and a 200-foot agricultural setback means a path through the agricultural land is not compatible with agricultural uses.
- The non-compatibility issue should receive more discussion as it is clear that without the near abrogation of the County setbacks, the path cannot be sited on the agricultural land.

Section 1.1.2, San Luis Obispo County "Right-to-Farm" Ordinance, page 1-6.

This section briefly discusses what the ordinance states.

- That use of land for agricultural operations "is a high priority and favored use."

- That when non-agricultural uses occur near agricultural uses, the public complains.
- Will posted signs really stop users from complaining about dust and pesticides?

Section 1.1.2, Agricultural Buffer Policy, page 1-6.

- This section states that it is the County's policy to provide a buffer between agricultural lands and land used for non-agricultural uses.
- The buffer between pathways and row crops is 200 feet.
- This means that either the land is no longer used for farming, or a large exception is obtained.

Section 2.1, Land Uses within the Study Area, page 2-1.

- The section states that the project "would potentially require" approvals from multiple agencies, compliance with various policies and programs, and compliance with land use standards.
- "Would potentially require" should be "will require." There is no doubt that where creeks, wetlands and agricultural land are involved, multiple agencies and approvals will be required.
- The section should also reference that multiple studies will be performed to attempt to acquire the approvals, particularly if the path runs along the creek. An environmental impact report ("EIR") is also likely if the path runs along the creek.

Section 2.2.2, Octagon Barn Center, page 2-8.

- This section describes the Octagon Barn Center and Staging Area.
- The study should note that the land and barn itself have been taken out of agricultural use, and is now meant to be used for teaching about the importance of agriculture to SLO County.
- Interesting that the proposed trail head, on land celebrating the agricultural heritage of the City and County, may be across the street from a link to a trail that causes more agricultural land to go out of production.

Section 2.2.3, Buckley Road Extension, page 2-9.

- This section states that the extension is tied to build out of the Avila Ranch Industrial Subdivision and Planned Development.
- The planned development is 121 acres and has 19 industrial lots.
- Preservation of agricultural land in this area is even more important, as the green belt and buffers at the City/County border will be greatly reduced when the industrial park is built out.
- The continued and future need for a buffer, or the effect of a loss of a buffer, should be discussed in the study.

Section 2.3.1, Sidepath Considerations, page 2-11.

- The last bullet point states that attempts to require bicyclists to adhere to certain rules pertaining to driveways is not appropriate and "typically not effective."
- What other rules do cyclists typically ignore?

Are there other areas where cyclists typically ignore warnings or rules? If so, they should be noted, as each of the three proposed alignments will require that cyclists comply with warnings and or rules. In particular, it is proposed that volunteers help close the trail when the farmer is spraying pesticides. What if the volunteers don't show up? Will cyclists (and pedestrians for that matter) honor closed gates and/or posted no entry signs? Will the farmer be forced to postpone spraying if the requisite volunteers are not present?

Has consideration been given to the route most people will travel from the City to access the Octagon Barn?

- Many joggers and cyclists use Higuera now.
- Will they all travel on the path, or take the path of least resistance and come straight down Higuera?
- Shortest route for many will be straight down Higuera, regardless of whether the Bob Jones trail goes along the creek in the study area.
- Especially commuters to the industrial park when it is built out.

Section 2.3.2, Access on Private Property, page 2-11.

Policy is to refrain from placing recreational facilities on private land, unless the owner is a willing seller. What does "willing seller" mean?

- Does it mean an offer is made to purchase, and a yes or no answer is received?
- Does it mean a seller worn down after years of negotiations and promises that mitigation measures will work?
- At what point does a willing seller, such as a farmer, know with certainty what restrictions (e.g., public notice before spraying) must be complied with as part of a sale?
- Other?

Section 2.4.1, Loss of Privacy, page 2-14.

- States there may be some loss of privacy for the residents located along the potential pathways.
- States that careful siting could help mitigate loss of privacy.
- There is little flexibility in where the path may be sited on the ag land (if it can be sited at all without destroying the viability for agricultural production).
- Screening fences or other artificial barriers will take away the open space and natural privacy that each land owner paid for. This should be noted.
- Siting the path along Higuera provides maximum privacy.

2.4.2, Security Considerations, page 2-15.

- The Weiperts are skeptical about any homelessness or crime reduction attributes of a trail.
- If the trail is placed along the creek, will it just push the homeless out, or make it easier to access the encampment? The homeless use that route now without a trail.

- Crime reduction studies and anecdotes provided in the study may or may not be analogous to this situation.
- Will the homeless encampment be "daylighted" as it is some way off of the proposed creek trail?
- If not, crime reduction unlikely.
- The study should be more balanced in its assessment of crime reduction.

2.4.3, Lighting Design and Pathway Access after Dark, page 2-17.

- This section states that it is a possibility that the path could include lighting.
- Lighting will reduce the open space, natural setting, of the area, and reduce the ability of the area to act as part of the greenbelt or buffer.
- It is unlawful to enter open space lands during most night time hours, so lighting should be unnecessary.
- Lighting will also decrease privacy.
- Negative aspects of lighting should be noted in the study, and that it shouldn't be needed as access is prohibited when it's dark.

2.5, Agricultural Resources, page 2-17.

- States that the Study Area includes irrigated vegetables and row crops, and that the City and County encourage conservation of ag lands and important agricultural soils.
- It should be noted that the maximum setbacks are required due to the type of use of the land.

Section 2.5.1, Important Agricultural Soil, page 2-17.

- The last sentence states that County "policy encourages recreational uses on privately owned lands where such uses are compatible with on- and offsite agriculture."
- The note should include that such use is acceptable only if there is no other option, on a case-by-case basis.

Here, we have an option – LOVR to Higuera.

2.6.2, Federal, State, and Local Policies and Regulations, page 2-21.

- This section lists the myriad agencies that will be involved if the path is placed along the creek or affects wetlands.
- As noted above, approvals will be required, not potentially required, from several agencies if the path is placed along the creek or affects wetlands.
- Agencies will be involved with wetlands assessment and mitigation if path placed along the residential neighborhood and Weipert home.

What is the likelihood that an EIR will need to be prepared? If an EIR is required, the cost estimates in Section 3 regarding studies are probably quite low.

- The possibility of an EIR and the time and cost ramifications should be addressed in the study.

Section 3.1.1, Alignment Overview (Creek Path), page 3-1.

- This section states that the creek setback can be encroached upon when the setback will adversely affect the agricultural viability of a site.
- Encroachment on creek setback is meant to benefit agricultural uses, not public uses.
- The County agricultural setback is 200 feet.
- Even if the creek setback is eliminated, the ag setback will still be 200-feet from the path.
- Under what circumstances will the County reduce the setback to basically zero?
- This should be addressed in the study, and accurately reflect the intended uses of encroachment for agricultural purposes.

The combination of any creek setback with any ag setback will likely mean the ag parcel is not viable.

- If placed along the residential parcels, is it realistic that the County will grant an encroachment into the ag set back far enough (e.g., 100 feet) that the course won't mean the end of ag on the parcels?
- Realistic discussions of the sheer size of the encroachment into the ag setback, and whether that is even a possibility, need to be included here, and not glossed over.

As stated in the study, any path through the ag parcels will create challenges for the viability of the parcels to say the least.

- Therefore, if it is not reasonable, under any circumstances, for the path to go through the ag parcels due to the size of the County ag setback, then those options should be shelved.
- It should not be assumed that if the City and County approve one of the ag related paths, that a way will be found to make it work.
- And that is what we seem to be headed towards, because some bike lanes will be provided on LOVR and Higuera regardless of whether a Class I path is sited over the ag land.

There is much discussion in this section about how the setbacks and farmer related burdens can be worked around.

- The same effort should be placed on how the LOVR to Higuera routes can be made feasible.
- If significant fencing will be required along the ag route, why not go along LOVR to Higuera, and use an equally decorative fence and screen system to make that route as pleasurable as it sounds like the ag routes will eventually become if they were to be used.
- Otherwise, the City and County should be honest and state that they don't really care about the viability of the ag parcels.

Section 3.1.1, Agricultural Resources and Operations, page 3-3.

- This section states that a primary concern in relation to the course of the pathway is its potential impact on agriculture.
- The path cannot reasonably be placed through the ag parcels without obliterating either the setbacks or the economic viability of the parcel for ag use.
- One principle or the other must go.
- If impact on agriculture is truly a primary concern, the clear choice for the path is along LOVR to Higuera.

Section 3.1.1, Impact on Farm Operations, page 3-3.

- This section states that there are measures that could reduce the ag setback, but it is "undetermined" how far the buffer could be reduced by such measures.
- Why is it undetermined?
- Is there any history of complete removal (or nearly complete removal) of an ag buffer for a pathway in SLO County?
- Is there any way that such a reduction in the buffer would at all comport with the many stated policies regarding preserving ag viability?
- The study should discuss whether waiver of the ag buffer is feasible, and whether it is responsible to suggest siting the path in ag land.

Pages 3-4 and 3-5 extensively discuss how the public might be accommodated with regard to farming operations. Little is provided about how this will affect the farmer.

- Requiring a spraying schedule or notice to volunteers adds cost (whether in time or money) to a farming operation, and adds to the burden the ag parcels must bear.

Items not addressed in this section:

- Will the City and County indemnify farmers against claims brought by the public?
- The section states notices are sufficient to negate claims based on willful or malicious conduct, but what if the farmer is sued anyway?
- Will the City and County guaranty that no restrictions will be placed on when and how (other than in compliance with law) the farmer may spray and otherwise work the land?
- No restrictions on when the trail will be closed?
- What if volunteers are supposed to monitor compliance with closures, but no volunteers show up? Will the farmer be forced to suspend operations?
- How are the volunteers protected from spraying?

If these questions (and probably others) are not answered, how can a farmer know what farming operations will be allowed?

The study should provide a more balanced picture of how a farmer might be impacted.

Section 3.1.2, Route along Agricultural and Residential Lands, page 3-6.

- This section discussed issues with respect to siting the path along the residential and ag land route.
- All of the same comments apply with respect to the County ag setback as apply with the creek course.
- A 200 foot setback will destroy the viability of the ag parcels.
- The County will need to choose between principles: Does agriculture really matter? Or are the setbacks unnecessary?

Section 3.1.3, Route along LOVR and S. Higuera Street, page 3-10.

- Are there policies that would prevent or inhibit siting the path on LOVR and Higuera?

Section 3.1.4, Preliminary Cost Estimates, page 3-14.

- As noted above, if an EIR is a possibility, a cost estimate should be provided.

Table 3-5: Pathway Alignment Alternative Matrix, page 3-17.

- The cons column for the creek route, third bullet point, should say "will" impact agricultural operations, or "likely to." Using "may" is not accurate.
- It seems clear from the descriptions that the farmer will need to adjust operations in some way if the path is along the creek or the residential properties.

We hope the City and County will thoughtfully consider the impact a trail along the creek or the residential parcels will have on the Weiperts and on the viability of continued agricultural production.

Thank you for your consideration of these comments.

Sincerely,

SINSHEIMER JUHNKE McIVOR & STROH, LLP

KEVIN D. ELDER

KDE:ggf
K:\WeipertE\002 Land Use\CorrFrSJMS\17MaravillaK-030113.doc

cc: Ed and Mary Weipert
Bryan Wheeler (via e-mail)