November 6, 2013  
Job #08-63240

Cory Caletti, Senior Transportation Planner  
Regional Transportation Commission  
1523 Pacific Avenue  
Santa Cruz, California 95060  
Via email: ccaletti@sccrtc.org

Subject: Response to the Horan Lloyd Comment Letter

Dear Ms. Caletti:

The purpose of this letter is to respond to comments provided by Horan Lloyd on the Monterey Bay Sanctuary Scenic Trail (MBSST) Network Master Plan Environmental Impact Report (EIR) (letter dated October 30, 2013). This letter was submitted after the close of the Draft EIR comment period, which ended on July 22, 2013. Horan Lloyd represents Struve Ranch LLC and LMC Properties LLC, both of which are agricultural operations located adjacent to the proposed MBSST Network. The comment letter is a follow up to the prior letters submitted by the Law Offices of Timothy J. Morgan on July 22, 2013 and December 21, 2012.

**Summary**

The primary argument within the letter is that the EIR fails to fully analyze land use compatibility impacts with adjacent agricultural lands, and, as a result, the Regional Transportation Commission (RTC) should either: (1) refrain from certifying the EIR; or (2) should prepare a supplemental EIR to include a feasible mitigation measure (i.e., buffer) or a project alternative (i.e., realignment). As described in greater detail below, the MBSST EIR adequately analyzes land use compatibility impacts; a spatial buffer mitigation measure would be inappropriate; and the EIR already includes the alternative suggested by the commenter. The commenter does not provide substantial evidence suggesting otherwise. Therefore, in our opinion, certification is appropriate, and a supplemental EIR is not required.

According to CEQA Guidelines §15163, a Lead Agency may prepare a supplemental EIR if (1) any of the conditions described in §15162 would require the preparation of a subsequent EIR,¹ and (2) only minor additions or changes would be necessary to make

¹ Pursuant to §15162, a subsequent EIR is required *when (1) substantial changes are proposed in the project which will require major revisions of the previous EIR...due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR...due to the involvement of new significant environmental
the previous EIR adequately apply to the project in the changed situation. Assuming these requirements are met, a supplemental EIR would be prepared only after certification of an EIR. Given that the commenter is requesting that the EIR not be certified, we have assumed that the commenter meant to suggest that the EIR be revised and recirculated prior to certification, in accordance with CEQA Guidelines §15088.5.

Specific comments provided in the letter are addressed individually below.

**Consistency Analysis**

The commenter suggests that the EIR fails to analyze “any inconsistencies between the proposed project and applicable general plans and regional plans,” as required by CEQA Guidelines §15125(d). Sections 4.1 through 4.12 of the EIR each contain a “Regulatory Setting” section that lists applicable policies from the General Plan and Municipal Code for each of the trail jurisdictions (County of Santa Cruz and the cities of Santa Cruz, Capitola, and Watsonville), and references applicable policies for the County of Monterey, of which segment 20 would be a part. State and federal policies are also listed, where appropriate. Those policies that have a direct consequence on the environmental impacts of the proposed MBSST Network are discussed in the appropriate impact analysis. For example, in Section 4.4, Biological Resources, Subsection 4.4.1(d) (Regulatory Framework) lists policies from the Conservation and Open Space Element of the Santa Cruz County General Plan protecting sensitive habitat, riparian corridors, wetlands, and wildlife movement corridors. Impact B-2 analyzes “impacts to riparian and other habitats considered sensitive by local, state, and/or federal agencies” (Final EIR p. 4.4-67) and Impact B-3 analyzes impacts to wildlife movement, consistent with these policies. Similarly, in Section 4.6, Geology/Soils, Impact GEO-3 includes a discussion of the California Building Code (CBC) and the American Association of State Highway and Transportation Officials (AASHTO) Guide Specifications for the Design of Pedestrian Bridges, both of which would require specific design measures to reduce impacts related to seismic groundshaking. The EIR therefore discusses potential inconsistencies with applicable plans and policies, contrary to the suggestion made by the commenter.

The commenter specifically references Policies 5.13.23 and 5.13.24 of the Santa Cruz County General Plan as requiring consideration. Policy 5.13.23 is listed on page 4.2-10 of the Final EIR and was considered in the analysis of Impact AG-3 (impacts resulting from land use conflicts between trail users and agriculture). Policy 5.13.24 (Agricultural Buffer Findings Required for Setbacks) was appropriately excluded as it does not apply to the proposed project. This policy requires a 200-foot buffer between agriculture and...
“habitable” development, which is listed therein as including "residential development, farm labor housing, commercial or industrial establishments on commercial lands." The project does not qualify as any of these uses. The term “habitable” is further defined in §16.50.095(B) of the Santa Cruz County Code. This definition includes “dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use” (§16.50.095(B)(1), emphasis added). Although the proposed project may be considered a recreational use, it is not an “intensive” recreational use. Rather, recreation trails are typically considered “passive” recreation in that they preclude motorized transportation (scooters, motorcycles, vehicles other than maintenance), and they do not accommodate organized team sports. Further, as noted in the response to comment 12.5 on the Draft EIR from the Law Offices of Timothy J. Morgan (July 22, 2013), the proposed project is a transient/transportation use. Consequently, the Santa Cruz County Agricultural Commissioner’s office and the Santa Cruz County Planning Department both indicated that specific agricultural or pesticide buffers from the proposed trail would not be required (Mary Lou Nicoletti, e-mail communication, September 12, 2013; Samantha Haschert, e-mail communication, September 18, 2013).

While a 200-foot distance buffer was requested in previous letters prepared by Timothy J. Morgan, the buffer is not appropriate or required given the proposed passive and transient use of the project. The Santa Cruz County Agricultural Commissioner's office and the Santa Cruz County Planning Department, agencies with special expertise about and jurisdiction over these policy matters, concur.

Finally, the commenter suggests that impacts of self-imposed formal or informal buffers should be analyzed. The potential for self-imposed buffers is disclosed in Impact AG-3 in Section 4.2, Agricultural Resources. However, estimating the size or extent of potential future self-imposed buffers would be speculative, as each landowner or operator may have distinct operational needs that dictate the buffer need or depth. Section 15145 of the State CEQA Guidelines prohibits the analysis of speculative impacts. As is the standard practice, the EIR impact analysis is limited to the effects of the proposed MBSST Network that could be reasonably expected without engaging in undue speculation.

**Impacts to Human Health**

The commenter suggests that the EIR failed to analyze the human health impacts that could result from placing a transient recreational trail adjacent to agricultural operations. Impacts to trail users are disclosed in Impact AG-3 in Section 4.2, Agricultural Resources. This impact discussion addresses the following threshold question from Appendix G of the State CEQA Guidelines: “Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use?” This threshold is specifically concerned with impacts to farmland; not impacts to project users. Impacts related to health effects from pesticide exposure are further addressed in Section 4.8, Hazards and Hazardous Materials. Specifically, Impact HAZ-3 on pages 4.8-21 through 4.8-25 of the Final EIR analyzes the
potential for exposure of toxic chemicals to trail users from adjacent agricultural operations.

The commenter additionally suggests that mitigation measures requiring posting of notices and allowing for trail closure during certain agricultural activities would be insufficient to mitigate these health impacts. In personal communications with the Santa Cruz County Agricultural Commissioner’s office and the Santa Cruz County Planning Department during preparation of the EIR, both agencies noted that posting adequate signage and complying with pesticide label requirements are critical (Mary Lou Nicoletti, e-mail communication, September 12, 2013; Samantha Haschert, e-mail communication, September 18, 2013). Neither agreed with the commenter that a spatial distance buffer would be required as mitigation.

It should also be clarified that the MBSST Network EIR has been designed as a “Program EIR.” As described in Section 1.3 of the EIR, “the analysis is intended to provide sufficient information to understand the environmental impacts of the proposed MBSST Network project at a planning level. As a program-level EIR, the document focuses on the broad changes to the environment that would be expected to result from implementation of the proposed MBSST Network project.” Quantifying health impacts, even if covered under the CEQA Guidelines, would extend beyond the degree of specificity feasible within a Program EIR (refer to CEQA Guidelines §15146).

The commenter seems to suggest that existing practices on their clients’ properties are potentially hazardous to public health if not safely carried out in accordance with legal requirements. These potential hazards would occur for persons already in contact with the site (e.g., bicyclists or pedestrians using existing adjacent roadways, agricultural workers) regardless of the implementation of the proposed MBSST Network. These conditions, and are not, therefore, unique to the development of an additional circulation facility such as the trail.

The commenter notes that the Santa Cruz County Agricultural Commissioner’s office does not have regulatory duty to interact with a Trail Manager. This requirement is not regulatory, but instead would be required in accordance with mitigation measure AG-3(c), which would become a condition of the project upon EIR Certification and adoption of the proposed Mitigation Monitoring and Reporting Program (MMRP).

In summary, a detailed analysis of human health impacts would be outside the scope of this program-level EIR. Instead, the program-level analysis and mitigation is appropriate at this juncture. An agricultural buffer is not applicable to this type of a project; and the existing mitigation is adequate to mitigate the environmental impacts identified in the EIR. The commenter’s claim that the RTC should not approve the project based on these issues would appear to be unwarranted.
Direct, Indirect and Cumulative Impacts to Agriculture

The commenter suggests that the EIR failed to adequately analyze impacts to food safety. Whereas food safety per sé is not an environmental issue included in Appendix G of the State CEQA Guidelines, the issue of health and safety is addressed throughout the document. As discussed in the response to comment 12.11 on the Draft EIR from the Law Offices of Timothy J. Morgan (July 22, 2013), potential impacts from animal and human waste would be addressed through the provision of dog waste bag dispensers at trailheads, signage in more remote sites or neighborhood access areas requiring pet owners to collect their pet waste, and fencing between the proposed trail and adjacent agricultural land uses. Beyond this, revisions were made to the Master Plan and EIR mitigation measure AG-3(a) to further address these concerns, including the potential prohibition of dogs on trail sections that are adjacent to agricultural lands. These revisions are outlined in Section 8.0, Addenda and Errata/Comments and Responses, of the Final EIR. It may be noted that the use of existing restrooms along the trail corridor and the provision of one additional restroom along the Watsonville reach, as proposed in the MBSST Network Master Plan, would be expected to concentrate deposition of human waste. Further analysis or quantification of health effects would be speculative.

The commenter further suggests that the EIR failed to consider impacts of pests and diseases introduced by trail users. The introduction of invasive species are addressed and mitigated in Impact B-1 in Section 4.4, Biological Resources. Secondary effects of fallowing agricultural land or increasing pesticide use would be considered speculative.

The commenter claims that the EIR failed to quantify the loss of important agricultural lands. However, Impact AG-1 does quantify the potential conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance, consistent with the Appendix G thresholds. Please refer to Section 4.2, Agricultural Resources.

Finally, the commenter claims that the project’s impacts to agriculture should be considered cumulatively considerable. However, the commenter fails to provide substantial evidence suggesting that the impacts of the project are significant, as discussed above.

Alternatives Proposed

The commenter states that the EIR does not include a reasonable range of alternatives, but does not suggest what they would consider “reasonable.” The EIR analyzes the CEQA-required No Project Alternative, as well as an On-Road Alignment and Reduced Project Alternative. In accordance with CEQA Guidelines §15126.6(f), “The range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” The alternatives considered in the EIR were selected because they would avoid or substantially lessen environmental
impacts, including those to agricultural resources, but would still achieve many of the project objectives. Despite receiving 14 comment letters and receiving verbal comments at two public meetings, no other commenters on the Draft EIR opined that the range of alternatives considered were not adequate. Therefore, we continue to believe the range of alternatives provided in the EIR is reasonable.

The commenter erroneously suggests that the EIR did not consider other trail alignments that would avoid impacts to agriculture. Both the On-Road Alignment and Reduced Project Alternative would substantially reduce impacts to agricultural resources by (1) utilizing existing roadway facilities, or (2) eliminating segments in the more rural areas of the county, which happen to be those segments near agricultural operations. The suggestion for a “hybrid” alternative near segment 17 seems to have already been conceptually analyzed in the Reduced Project Alternative and the On-Road Alignment Alternative. In addition, the Final Master Plan notes the possibility for an interim alignment of segment 17 that would divert the trail from the rail line at Gallighan Slough to an on-road alignment at Roundtree Lane, Harkins Slough Road, and Lee Road, and would reconnect at the Lee Road junction (refer to page 4-93 of the Final Master Plan).

The commenter’s underlying suggestion that a supplemental EIR (or recirculated EIR, presumably) be prepared so that a hybrid alternative can be considered, which would eliminate the project’s land use incompatibility impacts, is noted. However, the EIR already considers three alternatives which would reduce these impacts, and two that would eliminate these impacts near segment 17 (No Project and Reduced Project). Thus, additional alternatives are unnecessary.

**Conclusion**

Based on the above responses, it is our opinion that the EIR is legally adequate and recirculation (as opposed to a supplemental EIR, as suggested by the commenter) is not warranted prior to certification by the RTC.

Sincerely,

RINCON CONSULTANTS, INC.

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