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de la Guerra, Sheila

Public Comment

**From:** Sue Langley <slangley@somachlaw.com>  
**Sent:** Monday, May 16, 2022 4:48 PM  
**To:** sbcob  
**Cc:** Kelley Taber  
**Subject:** Comment Letter re May 17, 2022 Agenda Items A-7 and Departmental Item 7  
**Attachments:** 05162022 Santa Barbara County BOS SMRLT Study (00129823xD2C75).pdf



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Dear Chair Hartmann and Members of the Board,

Please find attached a comment letter from Kelley Taber regarding the May 17, 2022 Agenda Items A-7 and Departmental Item 7.

Thank you,

**Sue Langley**

*Legal Secretary*

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May 16, 2022

Via Email to [sbcob@countyofsb.org](mailto:sbcob@countyofsb.org)

The Honorable Joan Hartmann, Chair  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101

Re: May 17, 2022 Agenda Items A-7: Capital Improvement Program, and  
Departmental Item 7 (Public Works Department): Santa Maria River Levee  
Trail Study

Dear Chair Hartmann and Members of the Board:

This firm represents the Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, whose members include landowners and agricultural operators along the Santa Maria River Levee in Santa Barbara County (County). The following comments regarding the May 17, 2022 Board of Supervisors' agenda items A-7 (consent agenda), proposed Capital Improvement Program (CIP) FY 2022-23 – 2026-27, and 7 (Public Works), proposed Santa Maria River Levee Trail study (SMRLT Project) are submitted on behalf of the Association and its members, as well as other interested non-member growers and landowners who would be impacted by the CIP and SMRLT Project in both Santa Barbara and San Luis Obispo Counties (collectively, the "Association").

For the reasons set forth herein, and in the Association's prior correspondence regarding the SMRLT Project (included in the agenda packet for Item 7), the Association respectfully requests that the Board of Supervisors (1) remove the CIP from the Administrative Agenda and considered as a separate item, and remove the SMRLT Project from the proposed CIP before taking any action to approve the CIP, and (2) carefully consider the extensive concerns documented in the feasibility study and implications prior to directing staff on the SMRLT Project (Agenda item 7). If the Board determines that the SMRLT Project should proceed over the objections of the neighboring landowners and farmers, it should direct staff to prepare an environmental impact report (EIR) pursuant to the California Environmental Quality Act (CEQA) before any further action is taken, including acting to include the SMRLT Project in any CIP.

**I. The SMRLT Project Should Not be Included in the CIP Because it is Inconsistent with the County General Plan and Will Have Significant Adverse Environmental Impacts**

Association members operate and/or own property along and immediately adjacent to the proposed SMRLT Project that is under active cultivation for high value crops. Association members also hold easements for access across the Santa Maria River Levee to support their ongoing agricultural operations. The Association and its agricultural operators and landowners members have been actively engaged in the stakeholder process to educate County staff and consultants about the SMRLT Project's predictable land use conflicts and implementation constraints. As reflected in the study, and as discussed in the Association's prior comments of January 26, 2022, the SMRLT Project is inconsistent with numerous County General Plan policies and threatens significant adverse environmental impacts.

As recognized by the California Supreme Court, the County's General Plan is the "constitution for all future development." (*Leshner Communications v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) Indeed, the General Plan is the County's single most important planning document. (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 570-71.) The CIP must be consistent with the County General Plan. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.) The County's success as one of the most productive agricultural areas in the world is due in no small part to the protections afforded by the County General Plan. The General Plan Agricultural Element acknowledges that "agriculture is a significant and important resource within Santa Barbara County; therefore, the Element has been created to enhance and protect that resource." (General Plan Agricultural Element, p. 13.) Further "plan and policies recognize the likelihood that conflicts from trails through agricultural lands can have on agricultural viability and lead to the foreseeable conversion of agricultural lands." (See General Plan Agricultural Element, p. 26.)

County General Plan goals and policies are specifically designed to protect agricultural uses from the types of impacts threatened by the SMRLT Project. Association members have invested in their property and operations along the Santa Maria River Levee in reasonable reliance on the County's continued adherence to its General Plan policies. Due to the numerous land use conflicts, the SMRLT Project threatens the viability of continued agricultural operations along the nearly 7-mile-long proposed trail extension. Inducing high-intensity public use would be a major impact on agricultural producers in perpetuity, and that impact is certain to increase as production restrictions on agriculturalists expand. The SMRLT Project will have significant impacts to crops, agricultural operations, food safety, and public safety, including impacts that could lead to the permanent conversion of agricultural lands. Because of these significant impacts, any approvals associated with the Project (including inclusion in the CIP, state or local agency grant funding, and license agreements by the County Flood Control & Water Conservation District) will require preparation of a project-specific EIR under CEQA.

**II. By Including the SMRLT in the Proposed CIP, the County is Approving a Project Subject to CEQA**

The Association objects to the inclusion of the proposed CIP as a consent item, and to the recommendations that the Board “[r]eview and grant preliminary, non-binding conceptual approval of the projects contained in the CIP” and determine that the CIP is exempt from CEQA. Specifically it is proposed that the Board

[d]etermine that the proposed actions do not constitute a “Project” within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) as they consist of organizational or administrative activities of government that will not result in direct or indirect changes in the environment; and that the proposed actions do not constitute “Approval” within the meaning of CEQA Guidelines Section 15352 as they do not commit the County to a definite course of action in regard to any project.

Contrary to the proposed determination that the CIP projects “consist of organizational or administrative activities of government that will not result in direct or indirect changes in the environment” that “do not commit the County to a definite course of action in regard to any project,” the CIP includes a vast number of projects, including “multiple projects and programs that have undergone several years of development and initial stages of construction” (CIP, p. 39.). The CIP identifies the SMRLT project in Table 4.2 (CIP, p. 45) as one of a number of projects that are “in development” within the CIP five-year timeline. The County identifies funding of \$1.4 million to the SMRLT Project through the CIP via “SB1,” but it is unclear to the Association whether County funds will be required or are being committed through inclusion of the project in the adopted CIP. To the extent the CIP reflects a commitment to allocate County funds to the project, the County should condition the project’s inclusion in the CIP on compliance with CEQA, including the preparation of an EIR. The SMRLT Study contains substantial evidence of its significant environmental impacts, sufficient to conduct environmental review. It appears to the Association that by including the SMRLT Project in the CIP, the County is committing itself to a course of action with respect to a project, in violation of CEQA. (CEQA Guidelines, § 15004(b)(1) (CEQA compliance for public projects should be conducted “at the earliest feasible time”).) For all the reasons set forth in the Association’s comments, and those of the California Farm Bureau Federation, which the Association hereby incorporates by reference, the County should not proceed with an incompatible project and should not include it in the CIP. If the County intends to proceed with the SMRLT Project, it must first comply with CEQA by preparing an EIR before adopting any CIP that includes the SMRLT Project.

**III. The Determination that the SMRLT Study is Exempt from CEQA as a Planning and Feasibility Study is Contradicted by the Proposed Prior Approval of the Project in the CIP**

Despite its proposed inclusion in the CIP, the SMRLT Project is separately and subsequently included on the agenda under item 7 for unspecified action (Board to direct “next steps”), as a project that is purportedly exempt from CEQA as a planning and feasibility study. The proposed finding that these actions are exempt from CEQA “under State CEQA Guidelines Section 15262 because it consists of a feasibility study for a future trail that the Board has not approved, adopted, or funded and that will not result in any direct or indirect physical changes in environment” is in apparent conflict with the County’s proposed inclusion of the SMRLT Study in the CIP. The County cannot commit itself to future action within the five year CIP timeline and concurrently find that the SMRLT proposal is exempt from CEQA as a “planning and feasibility study.” Either the SMRLT Project is included in the CIP and subject to review in an EIR prior to adoption of the CIP, or it is excluded, and the Board may only “receive and file” the study at this time.

**Conclusion**

In promoting the development and expansion of recreational trails, the County should focus on achievable projects that are compatible with surrounding land uses and protective of food safety and public safety and that can be readily implemented, without the significant environmental and economic impacts and legal impediments of the SMRLT Project. If the County takes any action with respect to the SMRLT Project other than “receive and file” the SMRLT study, it must first comply with CEQA by preparing an EIR and ensuring that all adverse impacts are avoided or fully mitigated.

Please include the Association and this firm on any notice lists for the SMRLT Project, including all CEQA notices for the SMRLT Project and the CIP pursuant to Public Resources Code section 21092.2(a). Please mail notices to my attention at the address on this letterhead, and also email all notices to [ktaber@somachlaw.com](mailto:ktaber@somachlaw.com) and [claire.wineman@grower-shipper.com](mailto:claire.wineman@grower-shipper.com).

Sincerely,

  
Kelley M. Taber

KMT:sl