



# Appeal Application

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<i>County Use Only</i>	Appeal Case No.:
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COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

### STEP 1: SUBJECT PROPERTY

Not applicable

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ASSESSOR'S PARCEL NUMBER(S)

Not applicable

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PROPERTY ADDRESS (IF APPLICABLE)

Highway 101 Widening Project, Section 4D

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BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

### STEP 2: PROJECT DETAILS

Highway 101 Widening Project, Section 4D

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PROJECT TITLE

Sound Walls, Montecito 101 Highway Corridor

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CASE NO(S)

Montecito Planning Comr December 14, 2022

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DECISION MAKER

DATE OF ACTION

Is the appeal related to cannabis activities?  Yes  No

### STEP 3: APPEAL CONTACTS

#### APPELLANT

Bruce MacKenzie

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NAME (if LLC or other legal entity, must provide documentation)

24 La Vuelta Road

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STREET ADDRESS

Santa Barbara CA 93108

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CITY, STATE ZIP

(805) 452-3535 rbmackzie@gmail.com

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PHONE EMAIL

#### AGENT

Bruce MacKenzie

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NAME (if LLC or other legal entity, must provide documentation)

24 La Vuelta Road

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STREET ADDRESS

Santa Barbara CA 93108

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CITY, STATE ZIP

(805) 452-3535 rbmackzie@gmail.com

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PHONE EMAIL

#### ATTORNEY

Bruce MacKenzie

---

NAME (if LLC or other legal entity, must provide documentation)

24 La Vuelta Road

---

STREET ADDRESS

Santa Barbara CA 93108

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PHONE EMAIL

### STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant?  Yes  No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

We own the home at 24 La Vuelta Road, Montecito, CA. It is on the corner of La Vuelta Road and North Jameson Lane, within a few feet of the 101 Highway. Because CalTrans has eliminated sound walls to separate the freeway from North Jameson, we will suffer noise and air pollution from the expansion of the number of freeway lanes from four to six. See attached letter of even date.

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- Coastal Zone – Accessory Dwelling Unit appeals: Appellant must demonstrate that the project is inconsistent with the applicable provisions and policies of the certified Local Coastal Program or that the development does not conform to the public access policies set forth in the Coastal Act.

See attached letter dated January 3, 2023.

**STEP 5: APPELLANT ACKNOWLEDGEMENTS**

I hereby certify under penalty of perjury that I have read the information below and that:

1. I have carefully reviewed and prepared the appeal application in accordance with the instructions; and
2. I provided information in this appeal application, including all attachments, which are accurate and correct; and
3. I understand that the submittal of inaccurate or incomplete information or plans, or failure to comply with the instructions may result in processing delays and/or denial of my application; and
4. I understand that it is the responsibility of the applicant/appellant to substantiate the request through the requirements of the appeal application; and
5. I understand that upon further evaluation, additional information/documents/reports/entitlements may be required; and
6. I understand that all materials submitted in connection with this appeal application shall become public record subject to inspection by the public. I acknowledge and understand that the public may inspect these materials and that some or all of the materials may be posted on the Department’s website; and
7. I understand that denials will result in no refunds; and
8. I understand that Department staff is not permitted to assist the applicant, appellant, or proponents and opponents of a project in preparing arguments for or against the project; and
9. I understand that there is no guarantee – expressed or implied – that an approval will be granted. I understand that such application must be carefully evaluated and after the evaluation has been conducted, that staff’s recommendation or decision may change during the course of the review based on the information presented; and
10. I understand an aggrieved party is defined as any person who in person, or through a representative, appears at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either; and
11. If the approval of a Land Use Permit required by a previously approved discretionary permit is appealed, the applicant shall identify:
  - How the Land Use Permit is inconsistent with the previously approved discretionary permit;
  - How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed;
  - How the approval is inconsistent with Section 35.106 (Noticing).

**REQUIRED SIGNATURES**

*I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.*

 **Bruce MacKenzie** January 3, 2023

SIGNATURE – APPELLANT PRINT NAME DATE

\_\_\_\_\_  
SIGNATURE – AGENT PRINT NAME DATE

\_\_\_\_\_  
SIGNATURE – ATTORNEY PRINT NAME DATE

**Appeals to the Planning Commission.** Appeals to the Planning Commission must be filed with Planning and Development no later than 10 days following the date of the decision, along with the appropriate fees. Please contact P&D staff below for submittal instructions and to determine the appropriate fee.

South County projects: [front@countyofsb.org](mailto:front@countyofsb.org) or (805) 568-2090

North County projects: [nczoning@countyofsb.org](mailto:nczoning@countyofsb.org) or (805) 934-6251

**Appeals to the Board of Supervisors.** Appeals to the Board of Supervisors must be filed with the Clerk of the Board and must be filed no later than 10 days following the date of the decision, along with the appropriate fees. Appeal instructions are located online at the Clerk of the Board website: <https://www.countyofsb.org/2837/Filing-Land-Use-Appeals-Claims>

**Bruce & Louise MacKenzie**  
24 La Vuelta Road  
Santa Barbara, CA 93108  
(805) 452-35435  
rbmackzie@gmail.com

January 3, 2023

Clerk, Board of Supervisors  
105 E. Anapamu Street, Room 407  
Santa Barbara, CA 93101

Re: Appeal to Santa Barbara Board of Supervisors  
Highway 101 Widening Project, Segment 4D  
(Case No. 21DVP-0000000022), approved December 14, 2022  
by the Santa Barbara County Planning Commission

Members of the Board of Supervisors:

I write to appeal a decision by the Santa Barbara County Planning Commission in the above-referenced case dealing with the Highway 101 Widening Project, Segment 4D, which decision was made on December 14, 2022. Specifically, CalTrans/SBCAG eliminated sound walls from Segment 4D, which is the Montecito corridor of the freeway expansion project, and the Planning Commission members stated that they lacked the authority to order that CalTrans/SBCAG reinstate the sound walls in the plans for the project, because only the Board of Supervisors has such power, having been the body which adopted the Recovery Map following the 2018 Debris Flow.

**FEMA Interim Recovery Map used to Eliminate Sound Walls**

CalTrans/SBCAG informed the public early last year that Santa Barbara County Flood Control had set standards which make it impossible to build sound walls in the Montecito corridor. Flood Control dictated that the interim FEMA Recovery Map must be used in the determination of whether sound walls could be built in the Montecito corridor. CalTrans/SBCAG determined that they could not meet the standards required by Flood Control.

The Recovery Map was only interim and advisory in nature, designed to help **private sector homeowners** decide whether, where and how to rebuild to withstand or avoid future flooding from a 100-year storm -- which is an extreme weather event. (See attached FEMA publication entitled "*Regulating Within a Floodway*" for longer discussion.). It should not have been used to frustrate the building of a **public works project** such as the sound walls, for the benefit of all of us in the public sector.

Flood Control prescribed the following two conditions for the design of the sound walls for Montecito:

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1. CalTrans/SBCAG were required to assume all the culverts and bridge drainage channels in Montecito were blocked; and
2. CalTrans/SBCAB were required to meet a "zero rise" standard for accumulated rainwater behind the sound walls.

Flood Control contends that these preconditions are dictated by the 2018 Recovery Mapping Project, which dealt with that year's debris flow, triggered by a 200-year storm on the heels of a massive wildfire. That map provided Flood Control with the extremely conservative assumptions, set forth above. However, Flood Control failed to consider its own work in expanding the debris basins which will mitigate downhill debris flow. Moreover, as the "zero rise" standard indicates, their concern with sound walls dealt with flooding, not debris flow. It is also likely impossible to meet this standard.

The Recovery Map was **based on a debris flow rather than rain causing a flooding situation**. But FEMA's map assumed a 100-year flood. A Flood Control representative was quoted as saying: it was: "a worst case scenario -- even the powerful floods of January and March 1995 were not 100-year events." (See news article at <https://www.edhat.com/news/fema-recovery-map-enlarges-flood-plain-in-montecito-and-carpinteria>. Copy attached.).

There should be a balance struck between the daily public health and safety benefits of the sound walls against the more remote problems of clean up in the event of possible flooding. This is only an interim map, after all, and Flood Control made assumptions based on the map that are unreasonable in terms of what will be lost to the community in health and safety benefits by not having the sound walls. Only the elected members of the Board of Supervisors possess the power to balance these factors and reinstate the sound walls to the plans previously approved for Segment 4D of the public works project.

FEMA itself recognizes that it is impossible to correctly determine areas of concern for flooding. From an article in the Washington Post, December 6, 2022: FEMA stresses the maps are not meant to be predictive and that residents considering buying flood insurance should take into account other aspects of the overall risk to the property. "Maps do not forecast flooding. Maps only reflect past flooding conditions and are a snapshot in time. They do not represent all hazards and do not predict future conditions," Michael

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Grimm, acting deputy associate administrator of FEMA's Federal Insurance and Mitigation Administration, told The Washington Post. (<https://www.washingtonpost.com/climate-environment/interactive/2022/fema-flood-risk-maps-failures/> )

### **Noise and Air Pollution**

We moved to our home in 1987. Over the years, we have replaced all the windows facing the freeway with double-pane glass. In recent years, however, we have begun to hear the traffic through windows and French doors on the other side of our home facing the mountains, which was not a problem in the past. Being protected from the increased noise of what will be six lanes of traffic is extremely important to the quiet enjoyment of our home. If anything, the noise from trucks is more noticeable in the evening and throughout the night, disturbing our sleep. The noise pollution has been adequately addressed by the simple fact that the sound walls have always been part of the freeway expansion plans -- until now.

In 2016, the *L.A. Times* ran a story entitled "You can't ignore all that road noise: It could shorten your life" which, as do many other sources, documents the harm to health road noise can cause. (See <https://www.latimes.com/health/la-he-road-noise-20160109-story.html>).

Another example from 2018 ran in the *The Guardian* entitled "Sonic doom: how noise pollution kills thousands each year." (See <https://www.theguardian.com/lifeandstyle/2018/jul/03/sonic-doom-noise-pollution-kills-heart-disease-diabetes>).

In addition to noise mitigation, research has shown that sound walls also mitigate "near road air pollution." CalTrans itself has been exploring this concern itself with a study conducted by experts at U.C. Riverside. (See [Air Quality, Atmosphere & Health](#) (2022) 15:363-372; link <https://link.springer.com/article/10.1007/s11869-021-01104-9> )

Here is an excerpt: "Air pollution associated with vehicle emissions from roadways has been linked to a variety of health effects. Wind tunnel and tracer studies show that noise barriers mitigate the impact of this pollution up to distances 30 times the barrier height." Attached is an email exchange I

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had last August with one of the U.C. Riverside professors who wrote the article. He confirmed the study's findings

The sound walls allow the pollution to be dissipated by the wind above the roadway. Without the sound walls, the air and particulate pollution spreads out at ground level to surround and contaminate nearby properties, such as my family's home. The fact is that many homes like ours are situated only a few yards from the edge of the freeway along N. Jameson. These properties' unusually close proximity was the result of losing significant frontage to CalTrans at the time of partial condemnation in the 1960s for the building of the freeway.

Why have CalTrans/SBCAG not bothered to concern themselves with the issue of near road air pollution in making decisions about sound walls along the Montecito corridor, when it is a serious health and safety matter?

The State and County agencies recognize that it necessary to seek approval to eliminate our sound walls, which is why they went to the Planning Commission for approval. There should be a balance struck between the sound walls which day in and day out provide citizens with significant public health and safety benefits of reducing noise and air pollution against the more remote problems of clean up in the event of possible 100-year flood – an event with a one-percent chance of occurring in any given year. As the Planning Commission recognized, only our elected representatives on the Board of Supervisors have the power and discretion to properly weigh those factors and give us back our sound walls, perhaps with flood gates as was done in Carpinteria.

**Carpinteria Got Sound Walls, Even Though Also in Recovery Map**

Carpinteria is also located within the 2018 Recovery Map area. This gives rise to the question: Why did Flood Control not also eliminate the sound walls from Carpinteria?

The Recovery Map includes most of Carpinteria, which also runs the risk of a 100-year storm and, according to Flood Control, should adhere to its rigid standards. To balance matters in favor of the obvious daily health and safety benefits of mitigation of noise and air pollution, someone in a decision-making position for this similarly situated neighboring community must have balanced matters and allowed the sound walls to be built, with six-inch rise floodgates.

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**Conclusion**

We ask you to recognize our identical need as Carpinteria and do the same for Montecito. A different standard was used for Carpinteria, allowing CalTrans to build sound walls with flood gates as part of the widening project on the 101 Highway, even though two-thirds of its area lies within the Recovery Map. We request that you deny the application by CalTrans/SBCAG to eliminate previously approved sound walls along the Montecito corridor, so that the original plans -- including sound walls -- will be required and retained for the freeway widening project.

Cordially,



Bruce MacKenzie

An appeal from the Planning Commission to the Board of Supervisors involves NO appeal fee. This matter is in the Coastal Commission's Appeals Jurisdiction so there is no fee for appealing.



Bruce MacKenzie <rbmackzie@gmail.com>

**Re: Field Study, Impact Noise Barriers, Near Road Air Pollution 1**  
message

Bruce MacKenzie <rbmackzie@gmail.com>  
To: Akula Venkatram <venkatram@sbcglobal.net>

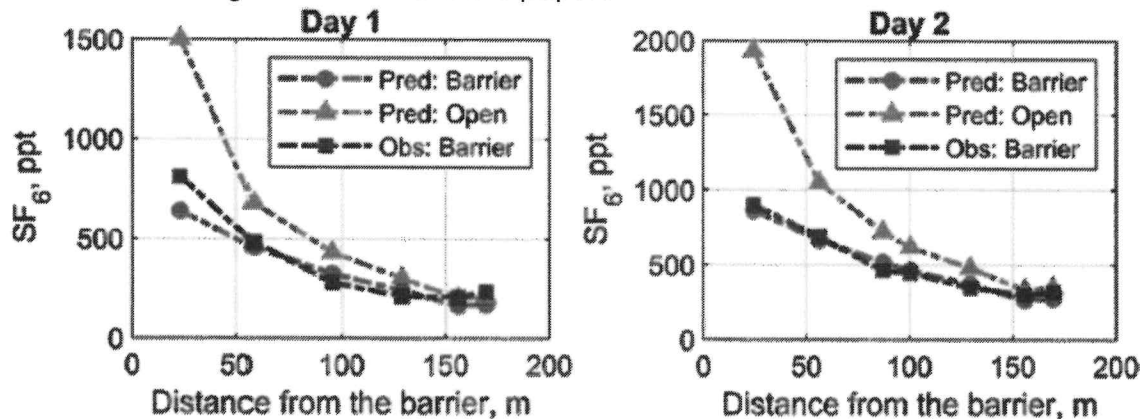
Mon, Aug 15, 2022 at 6:44 PM

Thank you for your help. I am going to suggest the authorities perform the testing you recommend.

--Bruce MacKenzie

On Mon, Aug 15, 2022 at 6:08 PM Akula Venkatram <venkatram@sbcglobal.net> wrote:  
Dear Mr MacKenzie:

Noise barriers do reduce exposure to air pollutants (NO2 for example) from a freeway as indicated in the figure below from the paper:



The green line is the concentration in the absence of the barrier, and the blue/red line shows the concentration with the barrier. So the barrier does have a positive effect, with the magnitude depending on the distance from the barrier. However, this reduction is relative to concentrations that depend on traffic flow rate, barrier height and meteorology. So, if the concentration levels in the absence of the barrier are high, the barrier might not reduce concentrations to levels that are considered "safe".

If you are living close to a highway, the prudent course would be to ask the government to measure (or estimate through modeling) pollutant concentrations close to your home, and check whether the levels are below the standard. If the levels are above the standard, you can use results such as those from our study to see if the presence of a noise barrier will reduce exposure to "safe" levels at your home.



ail - Re: Field Study, Impact Noise Barriers, Near Road Air Pollution  
Akula Venkatram  
Professor, Mechanical Engineering  
University of California, Riverside, CA 92521

<https://mail.google.com/mail/u/0/?ik=f3352ebc35&view=pt&search=>

On Monday, August 15, 2022 at 03:03:56 PM PDT, Bruce MacKenzie <[rbmackzie@gmail.com](mailto:rbmackzie@gmail.com)> wrote:

Dear Sir:

I want to inquire as to the status of the study done by UCR's Department of Mechanical Engineering as to whether noise barriers or sound walls have a positive impact on air pollution for homes and businesses at road level adjacent to freeways.

You were one of the authors of a field study that appeared [Air Quality, Atmosphere & Health](#) (2022) 15:363-372.

My wife and I own a home immediately adjacent to a freeway and want to learn more about this subject because of our investment and our concern for the negative health impact on ourselves and our family.

As I understand the article, there has been a laboratory finding that, indeed, there is such a positive impact on air pollution (varying with wind) generated by vehicle traffic on a freeway which has the protection of noise barriers or sound walls. But the purpose of your field study was to see whether such a positive impact could be shown to occur in an actual setting out in the field.

Do you have any conclusions so far? Even if the results have not been published, I need to know your findings now and will await such publication, so it can help me to favor the construction of sound walls near our home.

The government committees that determine such things are in the process of considering this question. One such meeting will occur the day after next -- Wednesday, August 17th -- but it is only preliminary. There will be other meetings in the coming months. I just want to know the status of things, even if the final report isn't ready yet.

Thank you,

Bruce MacKenzie  
24 La Vuelta Road  
Santa Barbara, CA 94108  
(805) 452-3535