



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: April 4, 2023
Placement: Departmental Agenda
Estimated Time: 1 hour 40 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning & Development, 805-568-2086
Director(s)
Contact Info: Travis Seawards, Deputy Director, Development Review
Division, 805-568-2518

SUBJECT: Hearing to consider the Smigel Appeal and Mackenzie Appeal of the Highway 101
Widening Project, Segment 4D, Case No. 23APL-00001, 23APL-00002, First
Supervisory District

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On April 4, 2023, consider Case No. 23APL-00001 and 23APL-00002, appeals by Scott Smigel and Bruce Mackenzie of the Planning Commission's December 14, 2022, approval of the Highway 101 Widening project, Segment 4D (Case No. 21DVP-00000-00022, 21CDP-00000-00076).

Staff recommends that your Board take the following actions to deny the appeals and uphold the County Planning Commission's approval of the project:

- a) Deny the appeals, Case No. 23APL-00001, 23APL-00002;
- b) Make the required findings for approval of the project, Case Nos. 21DVP-00000-00022 and 21CDP-00000-00076, including the CEQA findings (Attachment 1);
- c) Consider the environmental effects of the project as shown in the EIR dated August 26, 2014, the Revised EIR dated October 27, 2017, the EIR Addendums dated June 1, 2018, May 3, 2020, May 5, 2021, and February 2022 prepared and certified by Caltrans, the lead agency, and determine that as reflected in the CEQA findings, no subsequent Environmental Impact Report or Negative Declaration shall be prepared for this project.

- d) Grant *de novo* approval of the project, Case Nos. 21DVP-00000-00022 and 21CDP-00000-00076, subject to the conditions of approval included as Attachment 2 and Attachment 3.

Refer back to staff if the Board of Supervisors takes other than the recommended action.

Summary Text:

On June 14, 2021, the Santa Barbara County Association of Governments (SBCAG) and California Department of Transportation (Caltrans) submitted an application for a Development Plan (DVP) and Coastal Development Permit (CDP) for the Highway 101 Widening Segment 4D project for the widening of 1.4 miles of Highway 101 in Montecito between Post Mile (PM) 9.2 and PM 10.6. The project was analyzed in an Environmental Impact Report that was prepared and certified by Caltrans, the lead agency for the project. Feedback on design elements for the project was received from the public through extensive public outreach, and refined in coordination with the Montecito Board of Architectural Review. The project was presented to the Montecito Planning Commission, and on August 17, 2022, the Montecito Planning Commission adopted a Resolution (Attachment 10) recommending that the County Planning Commission approve the project subject to additional conditions. The project was approved by the County Planning Commission on December 14, 2022. A timely appeal was filed by Scott Smigel and Bruce Mackenzie on January 3, 2023. Staff recommends that the Board of Supervisors deny the appeals and grant *de novo* approval of the project.

Proposed Project

The project is a proposal by the California Department of Transportation (Caltrans) and Santa Barbara County Association of Government (SBCAG) to improve Highway 101 by adding a part time, continuous access High Occupancy Vehicle (HOV) lane in both the northbound and southbound directions within the highway corridor. The project is located along approximately 1.4 miles of Highway 101, between Post Mile (PM) 9.2 and PM 10.6. Please see Attachment 2, Condition 1 for a complete and detailed project description.

The HOV lanes will operate during peak periods, between the hours of 6 a.m. to 9 a.m. and 3 p.m. and 6 p.m., Monday through Friday. Outside of these hours, the HOV lanes will be open to mixed-flow traffic. The project includes the replacement of existing roadway pavement surface with 40-year long-life concrete pavement on existing lanes and ramps within the project limits, and will include upgrades to drainages, signage, lighting, and barriers. In addition, the use of the Construction Support Site including a concrete batch plant that was approved for use in Segment 4B and 4C is proposed to be used throughout construction of 4D.

Project construction will include the removal of approximately 157 non-native trees, 136 oak trees, 25 specimen trees, and 17 native trees. The project proposes to plant 449 trees, which includes 250 36" box oak trees, and 140 additional native trees as mitigation. The project proposes approximately 86,500 cubic yards (CY) of cut, 1,900 CY of fill, and the total haul volume is approximately 84,600 CY.

Phasing: In order to streamline construction and reduce ramp closures, Segment 4D improvements are divided into two components, San Ysidro to Olive Mill, and Sheffield to San Ysidro.

Phase 1: Segment 4D: San Ysidro to Olive Mill

This segment is located between PM 9.9 to the south and PM 10.6 to the north, from approximately 0.1-mile south of the San Ysidro Road Overcrossing to the County/City of Santa Barbara line at the Olive Mill Road Overcrossing. This segment will include installation of a median barrier, guardrails, vinyl chain-link fencing, and new retaining walls.

Phase 2: Segment 4D: Sheffield to San Ysidro

This segment is located between PM 9.2 to the south and PM 9.9 to the north, from 0.2 mile north of the Sheffield Avenue Undercrossing to 0.1 miles south of the San Ysidro Road Overcrossing. This segment will include new median barriers, guard rails, fencing, and new bridges over Romero Creek, San Ysidro Creek, and Oak Creek.

Appeal Issues and Staff Responses

Two different appeal applications were submitted, 23APL-00001 (Smigel, Attachment 5) and 23APL-00002 (Mackenzie, Attachment 6). The appeal issues and staff responses are provided below.

Case No. 23APL-00001 (Smigel)

Appeal Issue No. 1: The appellant asserts that “the EIR is insufficient to address the removal of the sound walls.”

Staff Response: Adequate environmental review was completed for the project, and the EIR did not find significant impacts as a result of the project due to noise. The Environmental Review Package includes a 2014 EIR, 2017 Revised EIR, 2018 EIR Addendum, 2020 EIR Addendum, 2021 EIR Addendum, and 2022 EIR Addendum (Attachment 4), all of which were adopted and certified/approved by Caltrans, the lead agency.

While the initial project anticipated construction of sound walls, the sound walls were not proposed, or required, in order to mitigate for noise impacts because the Environmental Review Package did not find significant impacts as a result of the project due to noise. Existing noise levels in the project area already exceed 65 dBA, as shown on County Noise Element noise contour maps. The project also incorporates noise-reducing components including noise-attenuating pavement throughout the project limits. The February 2022 EIR Addendum addressed the change in the environmental setting due to the 2018 debris flow and addressed removal of the sound walls from the proposal. The 2022 Addendum did not identify new significant environmental effects associated with noise, or any other environmental issue areas, than what were not previously identified in the previous EIR documents. The 2022 EIR Addendum found that without sound walls included, the Project is expected to cause a maximum three (3) decibel increase from any receptor site by the year 2040, and this is identified in the EIR as a Less than Significant (Class 3) impact. A three (3) decibel noise increase is generally considered imperceptible to the human ear. Since all potential environmental impacts associated with the proposed project were disclosed and discussed in the environmental review package, adequate environmental review was conducted for the proposed project.

Appeal Issue No. 2: The appellant contends that the decision to remove the sound walls because of the County Flood Control District's requirements was an error.

Staff Response: Removal of the sound walls from the Project was appropriate based on existing County Flood Control District policies and regulations. Flood Control is tasked with implementing Board-adopted policies, including the FEMA National Floodplain Insurance Program (NFIP) regulations associated with flood maps. As part of this requirement, Flood Control implements its floodplain management ordinance (County Code Chapter 15A), through which it is tasked with determining that permitted development sites are reasonably safe from flooding. In Montecito where the project is located, the FEMA Effective Flood Insurance Rate Map (FEMA Effective Map) delineates the Special Flood Hazard Areas and base flood elevations. After the 2018 Debris Flow, FEMA developed the FEMA Recovery Map (also known as the FEMA Interim Advisory Flood Map), which includes an updated, interim flood map for use in the Montecito area until adoption of the updated FEMA Effective Map. The Recovery Map was adopted by the Board of Supervisors on June 19, 2018 and will remain in effect until the new FEMA Effective Map is adopted. Both the Effective Map and the Recovery Map are applicable to development in the Montecito area, and both maps show floodplains in lower Montecito from Olive Mill Road to Romero Creek, where the original sound walls were proposed. The District is required to enforce its floodplain management ordinance to remain a participating member of the NFIP.

Violations of the NFIP program or being a FEMA NFIP Non-Participating member can result in the following:

1. Discounted flood insurance being revoked from residents Countywide;
2. No opportunities for FEMA grants or loans for development in the Special Flood Hazard Areas (SFHA); and
3. Limited disaster assistance.

Pursuant to these regulations and maps, the County Flood Control District found that due to the project scope and known historical flooding in the area, the originally proposed sound walls would be significant impediments to the flow of flood waters and should be designed to result in "no-rise" to base flood elevations in order to be reasonably safe from flooding. Caltrans and the County Flood Control District reviewed a number of different designs to see if sound walls could be constructed within the project limits while meeting the no-rise requirement. The analysis found that even with flood gates or staggered flood walls, the sound walls would increase the flood water elevation and flood risk. Furthermore, the analysis showed that the proposed sound walls would increase the base flood elevations by more than 1 foot across 31 parcels. Based on the analysis conducted for the project, no solutions were available that would meet the requirements under existing regulations, and thus sound walls were removed. However, the project is conditioned to require Caltrans to reassess the feasibility of constructing sound walls depending on when the new FEMA Effective Map is adopted.

Appeal Issue No. 3: The appellant contends that the timing of the condition requiring the addition of sound walls is in error.

Staff Response: The timing of the condition requiring the potential addition of sound walls was not applied in error. The County Planning Commission, at their discretion and agreed to by the applicant,

applied a condition of approval (Condition No. 26) that requires Caltrans to coordinate with the County six (6) months after they have received full funding for the project to:

1. Determine if the new FEMA Effective Map has been adopted by the County; and,
2. Determine the feasibility of adding sound walls if the new FEMA Effective Map was adopted.

If the updated FEMA Effective Map is adopted, the condition requires that Caltrans re-analyze the project to identify if the sound walls can be feasibly incorporated into the project while complying with Flood Control requirements. The timing of the condition is designed to extend the length of time wherein the sound walls could be incorporated into the project without causing delays in the Highway 101 construction schedule. The timing of the condition was thoroughly discussed at the Planning Commission hearing on December 14, 2023, and is designed to create a broader window for consideration of adding sound walls, while avoiding costly construction delays and inconvenience to the public.

Appeal Issue No. 4: The appellant asserts that the recovery mapping should not be relied upon for the present project and that the requirements have been applied inconsistently.

Staff Response: The County Flood Control District has appropriately applied the FEMA Recovery Map in their review and requirements for the project. As discussed in Appeal Issue 2, Flood Control is tasked with implementing Board-adopted policies, including those associated with flood maps. The County has adopted floodplain management standards to protect new development in conformance with federal requirements as a participant in the National Flood Insurance Program (NFIP). The FEMA Recovery Map was developed by FEMA and adopted by the County Board of Supervisors on June 19, 2018, and will remain in effect until adoption of the new FEMA Effective Map. As such, Flood Control is required to utilize the adopted flood maps in their review of the Project.

In addition, the proposed project extends through a portion of the County (Montecito) with unique hydrologic and geologic conditions that cause it to be prone to potentially dangerous flood events. The 2018 debris flow, which closed this section of the Highway 101, and the January 9, 2023, storm event, are two recent examples of such an event.

Similar to the current FEMA Effective Map, the future FEMA Effective Map will have a requirement to meet a 100-year flooding event. For perspective, the January 9, 2023 storm was estimated to be a 25-50 year flood event, and various channels in Montecito were at or above capacity. The fact that water courses were at or above capacity during the recent storm event highlights the unique hydrological conditions and flood risk in the project area. The FEMA Recovery Map and Flood Control requirements are appropriately applied to the project to ensure that the project is consistent with the NFIP and County policy, and is based on site-specific conditions associated with the project location.

Case No. 23APL-00002 (Mackenzie)

Appeal Issue No. 5: The appellant questions the applicability of the 2018 Recovery Map to the proposed project and asserts that there should be a balance between daily public health and

safety benefits of the sound walls and the remote possibility of clean up in the event of possible flooding.

Staff Response: Flood Control appropriately applied the 2018 FEMA Recovery Map to the review of the Project. All development projects, including public works projects, which are located within the FEMA Recovery Map Special Flood Hazard Area are subject to review by the County Flood Control District. As demonstrated by the green shaded line on the project plans (Attachment 7), the project is clearly located in the FEMA Recovery Map Special Flood Hazard Area.

The implementation of the project without sound walls supports public health and safety. As described in Appeal Issue 1 (Smigel), the County Flood Control District found that due to the project scope and known historical flooding in the area, the originally proposed sound walls would be significant impediments to the flow of flood waters. Further, the analysis for the project showed that the proposed sound walls would increase the base flood elevations by more than 1 foot across 31 parcels. In addition, potentially dangerous flood events are not a remote possibility. The proposed project extends through a portion of the County (Montecito) with unique hydrologic and geologic conditions that cause it to be prone to potentially dangerous flood events. The 2018 debris flow, which closed this section of the Highway 101, and the January 9, 2023, storm event, are two recent examples of such an event.

Appeal Issue No. 6: The appellant asserts that lack of sound walls as a part of the proposed project will result in noise and air pollution.

Staff Response: The environmental impact report prepared for the project analyzed potential air quality and noise impacts and found that the project would not have a significant adverse impact to air quality or noise. The project is an operational improvement/congestion relief action by Caltrans, and with implementation, the project is expected to improve traffic circulation in the project area. Long-term air emissions from the proposed project stem mainly from the operation of motor vehicles in the project vicinity including in the expanded freeway lanes. By reducing queuing during peak hour periods, the freeway and nearby local roads will function more efficiently and cars will spend less time on the roads generating air emissions and therefore the project will result in a Less than Significant (Class III) impact under CEQA for Air Quality. The appellant contends that sound walls would improve the air quality and cites references pertaining to the potential effect on air quality by sound walls. However, no mitigation for air quality impacts is required (from sound walls or otherwise) because the environmental review package did not find a significant air quality impact as a result of the project.

In addition, as discussed in Appeal Issue 1 (Smigel), the project will not result in significant noise impacts. The February 2022 EIR Addendum analyzed the noise impacts from the project without sound walls included and showed that the project will result in a maximum three (3) decibel increase at any sensitive receptor site over the next 40 years. The three (3) decibel increase is barely noticeable to the human ear and therefore the project will result in a Less than Significant (Class III) impact under CEQA for noise.

Appeal Issue No. 7: The appellant asserts that State and County agencies recognize that it is necessary to seek approval to eliminate sound walls.

Staff Response: The proposed project, which consists of the widening of a segment of the 101 Highway to install an HOV lane, requires a Development Plan and Coastal Development Permit approved by the County of Santa Barbara pursuant to Sections 35-174 and 35-169 of the Article II Coastal Zoning Ordinance. The project as proposed does not include sound walls, and the requirements of the Article II Coastal Zoning Ordinance does not require the inclusion of sound walls in highway projects.

Appeal Issue No. 8: The appellant questions why the segment of highway widening through the Carpinteria area included sound walls while the walls were removed in the Montecito segment.

Staff Response: The Highway 101 Segment 4B/4C project in the Carpinteria area (approved by the Planning Commission on February 5, 2020) included sound walls, but is also located in an area subject to different hydrological conditions than the proposed Highway 101 Segment 4D project in Montecito. First, the FEMA Recovery Map is a Board-adopted map that is used in Montecito to analyze development, and determine which projects are subject to additional restrictions to ensure that the development is reasonably safe from flooding and will not contribute to flood risk in the area. In addition, portions of the project are located within the Floodway, which requires even higher standards for development to occur. Second, the 4D Segment area of Montecito is known to have a history of flooding, and the hydraulic analysis for the project shows that new sound walls will generate a rise in the flood water elevations. Finally, as compared to the Montecito area, many Carpinteria area creeks have concrete lined channels with greater flood capacity and the Carpinteria area is served by the Santa Monica Debris Basin, which is a large debris basin with significant capacity to manage flood events. These two differences together result in a system with more capacity that is much higher than the 25-50 year capacity of the Montecito creek channels.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$10,120 (40 hours of staff time). The costs for processing appeals are partially offset by a General Fund subsidy in Planning and Development's adopted budget. Funding for processing this appeal is budgeted in the Planning and Development Department's Permitted Budget Program, as shown on page D-397 of the County of Santa Barbara Fiscal Year (FY) 2022-2023 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on April 4, 2023. This notice shall appear in the Santa Barbara News Press and Montecito Journal. The Clerk of the Board shall also fulfill mailed noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention Chris Schmuckal.

Attachments:

1. Findings
2. Development Plan Conditions of Approval
3. Coastal Development Permit with Conditions

4. Link to Environmental Documents (EIR, Revised EIR, and Addendums)
5. Smigel Appeal Application
6. Mackenzie Appeal Application
7. Project Plans
8. Planning Commission Action Letter, dated December 16, 2022
9. Planning Commission Staff Report, dated October 25, 2022
10. Montecito Planning Commission Resolution
11. Applicant's Response to Resolution

Authored by:

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cc:

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