



PLANNING DIVISION 05/20/2024 SUBJECT TO CHANGE

# APPEAL OF ENVIRONMENTAL DETERMINATION APPLICATION

Per [Municipal Code 21.07.040](#), the San José City Council will hear appeals to the environmental determination made by City staff at a project's public hearing. This application form must be completed as instructed below to facilitate the appeal.

## WHO MAY APPEAL

Any person may file.

## DEADLINE

File this completed application by **no later than 5:00 p.m. of the third business day** following the day of the public hearing that relied upon the Environmental Determination.

## FEES & PROCESS

View the current fee for an Environmental Determination Appeal on the Table of Applications at [www.sanjoseca.gov/PlanningApplications](http://www.sanjoseca.gov/PlanningApplications). The fees vary depending on whether you are a project applicant or non-applicant.

## HOW TO SUBMIT - 2 OPTIONS

- **In-Person (no appointment required):** Before the filing deadline stated above, come to the Planning Offices, third floor of City Hall (200 E. Santa Clara Street, San José) to submit the application. You may pay the appeal fee in-person or staff may email you an invoice which must be paid within 14 calendar days of the invoice date for the appeal to be valid.

- **Email:** Before the filing deadline stated above, email the completed application and any attachments to [PlanningTechs@sanjoseca.gov](mailto:PlanningTechs@sanjoseca.gov). If the appeal is timely and complete, staff will email you an invoice for the appeal fee, which must be paid within 14 calendar days of the invoice date for the appeal to be valid.

## WHAT TO SUBMIT

- ☐ This application form, completed and signed. You must state with specificity the reasons that the Environmental Determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.

Only appeals that are based on issues that were raised at the public hearing or in writing prior to the public hearing will be considered.

City staff will set a public hearing date before the City Council; the appeal item will be placed on the agenda. Staff will also prepare a recommendation of action to the City Council.

## FOR QUESTIONS

Speak with a City Planner at 408-535-3555; see phone service hours at [www.sanjoseca.gov/Planning](http://www.sanjoseca.gov/Planning).

Para información en español, comuníquese con un Planificador de la ciudad al 408-793-4100.

Để được hỗ trợ, nói chuyện với Người lập kế hoạch thành phố tại 408-793-4174.

*continued >*

Please download and save this computer-fillable form to your computer. Follow instructions for [Digital Forms](#).

The undersigned respectfully requests an appeal for the following environmental determination.

**1. REASON/S FOR APPEAL:** *If more space is needed, attach a separate sheet.*

See Exhibit A — Supporting Statement.

This appeal demonstrates that the Mitigated Negative Declaration (MND) for 2334 Lundy Place is legally insufficient because both procedural due-process failures and substantive CEQA deficiencies occurred.

**1. Procedural Defects – Public Participation and Decision Integrity Were Compromised**

- Affected residents and two identified elementary schools were not meaningfully notified or engaged.
- The administrative folder lacks required records (hearing minutes, staff analysis, correspondence logs, and previously available technical files).
- At the hearing, 8–9 residents raised traffic, safety, air, and noise risks, and questioned the credibility of several “support” speakers, yet no verification or response was provided.
- The project was approved immediately, without deliberation or direction for further study — contrary to CEQA’s informed-decision requirements.

**2. Substantive Deficiencies – Required CEQA Analyses Were Omitted or Unsupported**

- No valid analysis of land-use compatibility, truck routing, school-area pedestrian risk, emergency access, nighttime noise exposure, diesel emissions, PM2.5 health risk, or cumulative effects.
- Mitigation measures are deferred, unproven, and unenforceable, violating CEQA §15126.4.
- County Roads identified peak-hour conflict risks, but the City refused to evaluate them, citing “policy does not require it” — a misapplication of law, because CEQA evaluates impacts, not policy triggers.

Accordingly, the environmental determination is legally insufficient. The City must either (1) vacate the approval and MND, or (2) require preparation of a full EIR with proper notification, disclosure, technical analysis, and meaningful public participation.

In addition, because the City did not make — nor support — required CEQA findings regarding land-use compatibility, public safety, and General Plan consistency, the determination also fails independently under the “substantial evidence” standard. Proceeding without correcting these defects not only undermines the environmental review, but exposes the City to precedent and avoidable litigation risk — reinforcing the necessity of rescission or elevation to a full EIR.

**2. PERSON FILING APPEAL**

PRINT NAME: Parkside at Tarob Court Owners Association

MAILING ADDRESS: [REDACTED]

EMAIL: [REDACTED]

PHONE: [REDACTED]

Andrew Crowley

 Digitally signed by Andrew Crowley  
Date: 2025.12.08 12:16:40 -08'00'

11/08/2025

• **SIGNATURE** OF PERSON FILING THE APPEAL

DATE: [MM/DD/YYYY]

For electronic submittal or virtual appointments, a **Digital ID Signature** is required.

For in-person appointments, an original ink signature is required.

**3. CONTACT PERSON** IF DIFFERENT FROM PERSON FILING APPEAL

PRINT NAME: Qiuyao Zhu

MAILING ADDRESS: [REDACTED]

EMAIL: [REDACTED]

PHONE: [REDACTED]

## **EXHIBIT A — SUPPORTING STATEMENT TO APPEAL OF ENVIRONMENTAL DETERMINATION APPLICATION**

**Project: 2334 Lundy Place Industrial Development**

**File Nos.: H24-057 (Site Development Permit) and ER24-245 (Mitigated Negative Declaration)**

### **I. Purpose of Appeal**

This written appeal is submitted to supplement the City of San José's required "APPEAL OF ENVIRONMENTAL DETERMINATION" form. It provides specific factual and legal grounds to demonstrate that:

The City of San José's adoption of the Mitigated Negative Declaration ("MND")

and related development approvals for the 2334 Lundy Place Project do not comply with the procedural and substantive requirements of the California Environmental Quality Act ("CEQA").

We respectfully request that the City:

- Rescind the existing MND and related project approvals; or
- At a minimum, require preparation of a full Environmental Impact Report ("EIR") and re-initiate public review.

This appeal is not submitted to oppose economic development, but rather to protect the integrity of the City's decision-making process and prevent foreseeable harm to residents, schools, and the City itself. Correcting these CEQA violations now safeguards the City from liability exposure associated with approving deficient environmental documentation.

This appeal relies on, but is not limited to, CEQA §§21080(e), 21082.2, and CEQA Guidelines §§15064, 15065, 15087, 15088, 15125, 15126.2, 15130, 15126.4, 15201, and related provisions establishing the standards of "substantial evidence," "meaningful public participation," "cumulative impacts," and the prohibition on "deferred mitigation."

### **II. Overall Structure of the Appeal**

This appeal is based on two major categories of defects:

#### **1. Procedural Defects**

— The public's participation rights were substantially impaired; notice did not achieve CEQA's required level of "effective public awareness"; the administrative record is not transparent or complete; and the objections raised by directly affected residents at the hearing were not meaningfully considered before an expedited approval.

#### **2. Substantive Defects**

— With respect to traffic safety, child exposure, noise, air quality, land-use compatibility, and cumulative impacts, the environmental analysis is missing or does not meet CEQA's substantive standards; key mitigation measures exhibit "approve now, study later" characteristics and are not enforceable.

**Either category of defects, standing alone, is sufficient to invalidate the MND under CEQA. The fact that both exist concurrently further strengthens the necessity of rescission or conversion to a full EIR.**

## PART ONE — Procedural Defects

(Public Participation and Procedural Fairness Impaired)

These procedural defects directly undermine the legal validity of the environmental determination. In the absence of effective notice, meaningful consultation, and an open, reviewable record, CEQA requires rescission or re-evaluation. See, e.g., CEQA Guidelines §§15003, 15087, 15201.

CEQA case law recognizes that impairment of informed decision-making is itself an environmental harm—meaning that when the process fails, the determination cannot lawfully stand regardless of what conclusions it reaches.

### 1. Serious Failure of Notice — Affected Residents and Schools Were Excluded from the CEQA Process

Regardless of what internal “formal” steps the City may have undertaken for notice, the administrative record and the real-world outcome together show that the most affected residents and schools did not in fact enter the CEQA review and comment process. This constitutes a procedural defect.

#### (1) Sensitive Receptors (Schools) Identified in the MND Were Not Effectively Notified or Meaningfully Engaged

##### Key Point:

Although the MND itself identifies two nearby elementary schools as “sensitive receptors,” nothing in the administrative record demonstrates that these schools were informed in a way that enabled them to understand, review, or participate in the CEQA process.

This represents a procedural defect affecting the most vulnerable population—**children**.

##### Supporting Evidence:

The MND explicitly lists two nearby elementary schools as “sensitive receptors,” indicating the City recognized their exposure.

- Residents report that the posted construction sign and postcard notice **did not disclose** that the project was a 24/7 freight/logistics operation, nor indicate proximity to schools or risk to children—making it **unlikely school administrators understood the relevance** of the notice.
- The administrative record contains **no letters, comments, emails, attendance records, or consultation memoranda** from the schools or school district.
- No traffic or safety mitigation reflects **school input or Safe Routes to School planning**, despite child pedestrian presence being foreseeable.
- There is **no documentation** that City staff conducted outreach or engagement—no meeting logs, phone notes, or email correspondence exist in the record.

##### Conclusion:

Under CEQA, identifying schools as sensitive receptors creates an expectation of **targeted outreach and issue-specific analysis** (consistent with Guidelines §§15126.2(a), 15206).

Here, although the MND names the schools, they are entirely *absent from both the process and*

*the record.*

This means the population most needing protection—children—did not participate, and their risk was not assessed.

The absence of effective school participation constitutes a **serious procedural defect** requiring correction.

## **(2) Directly Affected Households Did Not Receive Effective Notice or Meaningful Opportunity to Participate**

### **Key Point:**

While some minimal forms of notice may have occurred, they did not result in actual public awareness or participation.

CEQA does not require “existence of a notice”—

it requires **notice that achieves real-world awareness and engagement.**

### **Supporting Evidence:**

Multiple residents first became aware of the project **only after its approval**, demonstrating failure of meaningful notice.

Some residents reported receiving postcards, while others did not—

and **the case file contains no proof of service**, mailing list, or return receipts showing who actually received notice.

A sign was reportedly posted at the project site, but residents consistently stated the sign **did not explain**:

- that it was a 24/7 industrial logistics operation
- that it was adjacent to homes and schools
- that it involved truck traffic, noise, and air emissions

Instead, it referred residents to a webpage, without conveying why the project mattered—making it **insufficient to alert residents to impacts or CEQA review rights.**

- The neighborhood has experienced **mail theft and misuse of master keys**, making postcard delivery **unreliable** as a notice mechanism.
- No posted notices or signage were observed in **neighborhood entry points or shared common areas**, where CEQA notice must be visible.
- Crucially, the case file **does not include** mailing records, return receipts, proof of posting, or affidavits establishing proper delivery—  
all of which are typically required to demonstrate compliance.

### **Conclusion:**

Under CEQA, merely mailing a document or posting a sign **does not satisfy the requirement for effective public awareness.**

Where affected residents:

- did not understand what was proposed,
- did not recognize impacts, and
- did not enter the review or comment process,

their right to inspect, comment, and participate was **functionally denied**, constituting a procedural defect requiring re-notice and re-hearing.

### **(3) Extremely Low Comment Volume Reflects Notice Failure, Not Public Support**

**Supporting Evidence:** The City’s own “Response to Written Comments” document proves lack of public participation, scope error, and reliance on an incorrect legal standard.

- The Response to Written Comments shows that:
  - Only three written comment letters were received;
  - All three are from institutions (PG&E, County Roads Department, Valley Water);
  - There are no comments from residents and no comments from schools.

#### **Conclusion:**

- The parties most directly affected (residents and schools) did not participate.
- In practice, the City appears to have interpreted “almost no public comments” as “no substantial evidence of significant impact.”
- This is a classic example—often cited in CEQA appeals—of procedural harm (notice failure) causing a distorted record (no comment ≠ no impact).

Under CEQA’s “fair argument” doctrine, when credible evidence—including testimony from affected residents—suggests a potential significant impact, an EIR is required even if written comments are few. Treating the absence of comments as evidence of low impact directly inverts this legal standard.

The near absence of comments does not mean “impacts are very low and everyone is fine with it.”

It means “the public had no real opportunity to participate, so there is nothing in the record from them.”

Therefore, the Response to Written Comments should not be treated as evidence that “risks are low,” but rather as evidence that:

- the public did not participate,
- key analyses are missing, and
- the City implicitly adopted a flawed legal standard of “no comment = no problem.”

## **2. Incomplete and Non-Transparent Administrative Record — Missing or Potentially Removed Decision Basis**

#### **Key Point:**

The public case file lacks documents that should normally exist for a project of this type, including hearing materials and technical bases, making it impossible for the public and decision-makers to verify whether the approval rests on a robust and lawful analysis. This conflicts with CEQA’s requirement of transparency and record-based decision-making (CEQA Guidelines §15003(f)).

**Supporting Evidence:**

- The case file does not include or make publicly accessible:
  - Hearing minutes or a formal hearing transcript;
  - The hearing agenda and staff report (staff analysis/recommendation);
  - A sign-in sheet or speaker list documenting who spoke;
  - An audio or video recording of the hearing;
  - Correspondence records with schools, residents, or relevant agencies.
- Residents recall that, in an earlier version of the project webpage, there was a noise analysis document (identified as “F” or a similar label), which can no longer be found in the current case file.
- To verify these issues, we reviewed the archived version of the case file webpage: <https://web.archive.org/web/20251205204632/https://www.sanjooseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/2334-lundy-place-project>  
 On December 5, 2025, I accessed and saved this archived City webpage and confirmed that the publicly available case file does not include hearing records, agendas, recordings, correspondence logs, or school notice materials.
- If supporting documents such as noise studies once existed but are no longer accessible, then the administrative record is incomplete, and the public has no ability to verify whether noise, safety, and traffic impacts were ever properly analyzed or considered.

**Conclusion:**

The administrative record is incomplete and lacks essential links in the chain of evidence. This violates CEQA’s requirement that decisions be made on an open, reviewable record, and thus constitutes a procedural defect. It is sufficient, by itself, to justify rescinding the MND and approvals, and to require re-notice and re-evaluation.

### **3. Substantive Public Comments Were Not Considered — Residents’ Objections Ignored, Identity Concerns Unverified, and Approval Rushed**

**Key Point:**

At the public hearing, directly affected residents presented detailed, fact-based, risk-based objections and noted on the record that several supporting speakers were not from the affected community. The City did not verify these identity concerns and did not provide substantive responses to residents’ comments. Instead, the project was approved at the same hearing session while key disputes and questions remained unresolved. This conflicts with CEQA’s requirements for response to comments, record-keeping, and evidence-based decision-making (CEQA Guidelines §15088).

**Supporting Evidence:**

- During the hearing, approximately 8–9 residents spoke on the record, raising specific concerns regarding:
  - traffic hazards and roadway bottlenecks;

- child safety and routes to school;
- nighttime truck noise and light pollution;
- diesel emissions and associated health exposure.
- Residents explicitly stated during the hearing that several supporting speakers were not nearby residents, but individuals with ties to the project or individuals who do not live within the affected area.
- The City and decision-making body did not ask staff to verify these identity concerns or clarify whether the supporting comments were truly representative of the affected community.
- The decision-making body did not direct staff to respond to the specific risk issues raised by residents, did not request additional analysis, and did not propose any project modifications.
- The objections and procedural concerns raised by residents do not appear to have been integrated into any transparent analytical process, nor are they reflected in a written response in the record.
- Despite unresolved disputes and informational gaps, the project was approved at the same hearing, with:
  - no continuance,
  - no directive to conduct supplemental studies, and
  - no documented evidence of substantive deliberation.

### **Conclusion:**

Under CEQA and its Guidelines:

- Substantive public comments must receive responses (Guidelines §15088);
- Decisions must be based on a complete and verifiable record, rather than by ignoring unresolved issues;
- When there is clear controversy and insufficient evidence, the agency should not grant approval in haste;
- The decision-maker has an obligation to distinguish between comments from affected communities and non-affected parties, particularly when weighting evidence.

In this case, residents' safety, health, and procedural concerns were not examined or answered, yet the project was approved while these issues remained outstanding. The hearing process therefore did not satisfy CEQA's requirements for meaningful public participation, response obligations, and informed decision-making, and thus constitutes a procedural defect sufficient to warrant rescission or re-hearing.

## PART TWO — Substantive Defects

(Environmental Impacts Not Evaluated or Adequately Mitigated)

In multiple areas, the MND reaches a conclusion of “less than significant impact” without conducting the analysis required by CEQA. This violates CEQA’s substantive requirements. Whenever there is substantial evidence of a potential significant impact, the law requires preparation of an EIR and does not permit reliance on an MND. See CEQA Guidelines §§15064, 15065.

Further, CEQA requires that approval of an environmental determination be supported by explicit findings grounded in evidence. Because findings regarding land-use compatibility, neighborhood safety, health risk, and consistency with the General Plan were never made—and no evidence exists to support them—the approval lacks a lawful evidentiary basis independent of its analytical omissions.

### 1. Land Use Conflicts Ignored — Major Inconsistency with the General Plan and Area Designation Not Analyzed (A Threshold CEQA Defect Requiring an EIR)

#### Key Point:

CEQA Guidelines §15125(d) requires the City to analyze whether a project is consistent with the General Plan, applicable land-use policies, and the existing community setting. For 2334 Lundy Place, this means asking a fundamental question the MND never addresses:

- Is a 24/7 freight logistics and truck-intensive operation compatible with immediately adjacent high-density residential housing and nearby schools?
- Is such a use consistent with the City’s Transit Employment Center (“TEC”) designation, which emphasizes research, office, and innovation employment—not round-the-clock heavy truck activity, noise, and diesel emissions next to families and children?

Because the MND does not confront these questions at all, it omits a core CEQA inquiry.

#### Supporting Evidence:

- The case file includes **no dedicated land-use compatibility analysis** addressing the specific combination of:
  - 24/7 logistics, freight, and truck operations;
  - immediately adjacent multi-story residential buildings; and
  - identified nearby elementary schools.
- There is **no side-by-side comparison** of the adopted TEC designation’s stated intent (research, office, innovation employment in a transit-oriented setting) with the actual operational profile of this project (night operations, truck circulation, loading, and associated noise/air impacts).
- There is **no systematic evaluation** of whether a 24/7 freight hub directly abutting a high-density neighborhood and schools:
  - conflicts with City policies on protecting sensitive receptors;

- undermines the livability and safety objectives of the surrounding residential area; or
- is appropriate within the TEC framework at all.

In other words, the City approved a project that effectively **changes the functional character of the TEC area and the neighborhood** without ever analyzing that change as a land-use impact under CEQA.

### **Conclusion:**

By omitting any serious land-use compatibility and General Plan consistency analysis, the CEQA review fails at a basic threshold level. CEQA §15125(d) does not allow the City to treat a 24/7 truck-intensive logistics hub next to homes and schools as if it were just another generic “employment” use within the TEC.

This is not a minor technical oversight; it is a **core defect** that:

- leaves decision-makers without the information needed to understand how the project conflicts with the City’s own policy framework;
- exposes residents and schoolchildren to an incompatible industrial-scale operation that was never evaluated in land-use terms; and
- meets the CEQA standard for a “fair argument” that the project **may have significant environmental effects**, thereby **requiring preparation of a full EIR rather than reliance on an MND**.

This is not merely a technical flaw—the absence of this analysis prevents decision-makers from performing their legal duty and renders the approval vulnerable to challenge on both administrative and CEQA grounds.

The City must therefore either:

- rescind the MND and associated approvals; or
- at minimum, prepare an EIR that squarely analyzes land-use compatibility, General Plan/TEC consistency, and neighborhood/school impacts before any further approvals are considered.

## **2. Traffic and Safety Analysis Is Fundamentally Flawed — Roadway Conditions Ignored, Risks Not Evaluated, and Emergency Access Not Analyzed**

### **Key Point:**

The project’s roadway network—Lundy Avenue and Trade Zone Boulevard—forms the only vehicular access to and from the neighborhood. These roads are narrow, already congested, and used by children and residents on a daily basis. Yet the CEQA documents and transportation technical attachments analyze only internal site circulation and virtually ignore risks on the public roads. As a result:

- child and pedestrian safety is not evaluated;
- conflicts between truck traffic and residential traffic are not evaluated;

- emergency access and evacuation constraints associated with a single access point are not evaluated.

This constitutes a failure to perform required CEQA analysis of potential significant impacts.

### **(1) Roadway Conditions and Neighborhood Traffic Characteristics Were Not Incorporated into the Analysis**

- **Lundy Avenue**  
A two-lane, two-way roadway with a narrow cross-section and virtually no shoulder. It serves as the only vehicular access for our neighborhood. Both peak and off-peak hours already experience queuing and slow-moving traffic.
- **Trade Zone Boulevard**  
A two-lane, two-way secondary arterial with substantial existing traffic volumes. Left-turn conflicts and queuing bottlenecks are already common. Truck traffic generated by the project will further increase conflict risks at intersections.

Together, Lundy Avenue and Trade Zone Boulevard form the only external vehicular network for the neighborhood and also accommodate children walking and biking to school.

In addition, the project is immediately adjacent to:

- **Autumnvale Drive**  
A two-lane, two-way residential street with no dedicated bike lanes, heavily used for family commuting, school drop-offs, and slow-moving local traffic, already subject to congestion and limited sight distance.

None of these real-world conditions are reflected in the CEQA transportation analysis.

### **(2) The MND and Traffic Report Completely Avoid External Roadway Risks**

The transportation analysis and figures focus mainly on:

- internal truck turning radii;
- internal circulation layout;
- descriptions of internal “bike lane” features.

By contrast, there is no analysis of:

- external bottlenecks and congestion levels;
- conflicts between trucks and pedestrians/children;
- queuing, spillback, and blockage at the single exit point;
- probability of real-world collisions or sight-distance limitations;
- the ability of emergency vehicles (fire, ambulance) to enter and exit the neighborhood during peak congestion and truck queuing.

All photos provided in the attachments are taken inside the business park and do not show the narrow, constrained conditions on Lundy, Trade Zone, or Autumnvale.

### **(3) CEQA Safety “Triggers” Are Met, but the Required Analysis Was Not Performed**

CEQA and related guidance require agencies to analyze traffic safety impacts when:

- a project introduces new truck movements and changes in roadway usage patterns, particularly with respect to pedestrians and cyclists;
- a community has a single or constrained external access, raising concerns regarding emergency access and evacuation;
- sensitive receptors such as children, schools, and pedestrians are present, triggering a need to evaluate child pedestrian and Safe Routes to School impacts (consistent with CEQA Guidelines §§15126.2(a), 15064, and related principles).

This project clearly satisfies all of these conditions, but the CEQA documents contain no corresponding analysis.

### **(4) County Roads’ Comment Was Improperly Excluded from CEQA Analysis Based on a “Policy Does Not Require It” Rationale**

#### ***In the Response to Written Comments:***

- The County Roads Department raised concerns regarding PM peak-hour traffic and intersection conflict risks, identifying substantive traffic and safety issues.
- The City’s response was essentially that “City policy does not require this kind of evaluation” and therefore such risks were not incorporated into the CEQA analysis.

This reflects an incorrect application of the governing legal standard:

- CEQA requires the evaluation of environmental risks themselves, not a check of whether some separate City policy document requires corresponding traffic studies;
- Once there is substantial evidence of a potential significant impact, CEQA requires appropriate analysis (and, as needed, an EIR). An agency cannot decline to analyze an impact simply because “local policy did not require that particular study.”

#### **Conclusion:**

Under CEQA:

- Traffic safety, child exposure, truck-residential conflicts, and emergency access risks are environmental impacts that must be evaluated;
- When there is substantial evidence that such impacts may be significant, the agency must proceed with an EIR rather than an MND;
- An analysis confined to internal site circulation while completely ignoring the external public road network is a classic scope error and omission of a significant impact.

Accordingly, the project’s impacts on external road conflicts, child traffic safety, freight routing, and emergency access have not been evaluated as CEQA requires. Given observable conditions indicating these impacts may be significant, reliance on an MND instead of an EIR violates

CEQA's substantive requirements and constitutes a substantive defect sufficient to rescind the MND or require an EIR.

### **3. Noise Impacts Are Asserted as Mitigated but Are Not Supported by Any Technical Basis**

— Mitigation Is “Asserted, Not Proven”

#### **Key Point:**

The noise analysis section relies almost entirely on the construction of an 8-foot sound wall to conclude that noise impacts will be reduced to less than significant, yet the record contains no modeling, calculations, or exposure maps supporting that conclusion. This is a textbook example of unsubstantiated mitigation under CEQA.

#### **Supporting Evidence:**

- The case file contains no publicly available noise model, noise contour map, or prediction graphics.
- There is no analysis of nighttime truck movements, loading/unloading impact noise, back-up beepers, or other peak noise scenarios.
- There is no evaluation of noise exposure at second- and third-story bedroom windows, despite the fact that multi-story residences are common in the neighborhood.
- The noise section simply concludes that “a proposed 8-foot wall will mitigate impacts” without presenting any engineering basis, calculations, or empirical support.

Residents also recall that an earlier version of the project webpage included a noise-related document (labeled “F” or similar), which is now absent from the case file. This absence further deepens concerns about whether noise analysis was ever complete and whether portions of the analysis were later removed or disregarded.

#### **Conclusion:**

- CEQA Guidelines §15064.4 requires that noise impacts be determined using analysis, data, modeling, or other verifiable methods.
- In this case, the asserted noise mitigation has never been supported by data or modeling; it remains at the level of assertion rather than proof.
- This not only renders the noise impact analysis inadequate, but also makes the mitigation measures themselves unverifiable and unenforceable.

Therefore, the noise analysis is substantively inadequate, and the mitigation measures lack a technical basis. This constitutes a significant analytical defect. The City should be required to conduct a proper noise analysis and elevate the project to an EIR for full evaluation.

### **4. Air Quality and Health Risk Assessment Is Grossly Inadequate**

— Nighttime Diesel Emissions and Child Exposure Not Studied

#### **Key Point:**

The project will introduce diesel truck movements and nighttime loading operations, leading to potential idling emissions and increased PM<sub>2.5</sub>/DPM exposure for children and residents.

Despite this, the CEQA documents contain no Health Risk Assessment (“HRA”) for these pollutants, even though the project clearly affects sensitive populations.

**Supporting Evidence:**

- There is no diesel particulate matter (DPM) dispersion modeling or exposure assessment.
- There are no predicted PM<sub>2.5</sub> concentration levels or quantitative health risk estimates.
- There is no analysis of cumulative air pollution from nearby truck corridors such as I-680 and I-880 and how those background levels combine with the project’s emissions.
- There is no separate analysis of exposure and health risk for the most sensitive populations, including children and elderly residents.
- There is no evaluation of nighttime idling emissions or long-term exposure scenarios.

**Conclusion:**

- CEQA Guidelines §15126.2(a) requires analysis of significant adverse impacts on human health.
- CEQA Guidelines §15130 requires evaluation of cumulative impacts, including cumulative air pollution.
- In a context with identified sensitive receptors (schools and children), the omission of an HRA is a clear legal deficiency.

Because health risks have not been evaluated, the MND fails to satisfy CEQA requirements for air quality and health risk analysis. A full HRA must be prepared, or the project must proceed under an EIR.

## **5. Cumulative Impacts Not Evaluated — Despite CEQA’s Explicit Requirement**

**Key Point:**

CEQA Guidelines §15130 explicitly requires analysis of cumulative impacts where multiple projects or sources may contribute to overall environmental degradation. Here, the MND treats the project as an isolated facility, without considering the broader context or foreseeable future changes.

**Supporting Evidence:**

- There is no analysis of how future development and population growth along the affected corridors, combined with this project, will increase traffic and safety risks.
- There is no assessment of combined noise, air quality, and traffic impacts if planned residential developments, parks, or other industrial/logistics projects across the street and nearby proceed.
- There is no consideration of existing freight and pollution sources (including nearby highway traffic) and how they combine with this project’s impacts.
- There is no evaluation of long-term cumulative risks to child safety, health, and daily mobility within the broader area.

**Conclusion:**

The failure to analyze cumulative impacts is itself a separate ground to invalidate the MND and require an EIR under CEQA Guidelines §15130.

**6. Mitigation Measures Are Unenforceable and Unverifiable**

— Violating CEQA’s Prohibition on Deferred Mitigation

**Key Point:**

CEQA Guidelines §15126.4(a)(2) prohibits “approve now, study later” approaches and vague, deferred mitigation. Yet, for traffic, noise, and air quality, several of the project’s mitigation measures:

- depend on unspecified future studies or refinement;
- lack measurable performance standards;
- do not clearly identify who is responsible, by when, and by what method;
- provide no monitoring or corrective-action framework to ensure long-term compliance.

**Supporting Evidence:**

- Some mitigation measures are phrased in terms such as “will be evaluated in the future as needed” or “a plan will be developed at a later stage,” rather than being defined with clear, enforceable commitments at the time of approval.
- There are no explicit quantitative thresholds or indicators by which to determine whether the mitigation has actually reduced impacts to “less than significant.”
- Responsibility, timing, and enforcement mechanisms are not clearly identified; it is unclear who will implement, monitor, and adjust the measures if they fail.
- There is no structured monitoring or reporting program by which the public or decision-makers can track the effectiveness of the mitigation over time.

**Conclusion:**

This “we will study it later” style of mitigation is precisely the type of deferred mitigation that CEQA prohibits. Mitigation measures must be defined at the time of approval with verifiable content, implementation steps, and evaluation mechanisms, not deferred until after entitlements are granted. Because the mitigation measures are vague and not demonstrably enforceable, they violate CEQA Guidelines §15126.4(a)(2) and render the MND legally unstable. Concrete, measurable, and enforceable mitigation must be designed and evaluated in an EIR.

### III. Overall Conclusion and Requested Actions

Considering the procedural and substantive defects identified above:

- Directly affected residents and schools were denied meaningful participation;
- The administrative record is incomplete, with key materials missing or not publicly accessible;
- Substantive, fact-based objections by residents at the hearing were not answered, and approval was granted in a rushed manner;
- With respect to traffic safety, child exposure, emergency access, noise, air quality, land-use compatibility, cumulative impacts, and mitigation enforceability, the analysis is incomplete or substantively inadequate.

Each procedural defect identified above independently requires rescission or a new environmental review. Their concurrence—particularly where children and schools are affected—amplifies both administrative risk and liability exposure if the City relies on an incomplete and unsupported determination.

Under CEQA, the project should not continue to rely on an MND as its environmental review document. Instead, the City must prepare a full Environmental Impact Report (EIR) and conduct a new round of review and decision-making with genuine public participation.

We therefore formally request:

- **Option A** — Rescind the existing MND and all related project approvals; or
- **Option B** — At minimum, require preparation of a full EIR, re-issue the environmental documents and hearing notices in compliance with CEQA, and provide affected residents and schools a genuine, substantive opportunity to participate.

Correcting these deficiencies now protects both the public and the City; moving forward on the basis of an incomplete and unsupported record would expand avoidable risk to decision-makers, residents, and vulnerable populations—something CEQA was designed to prevent.

These requests are grounded in CEQA §§21080(e), 21082.2 and CEQA Guidelines §§15064, 15065, 15087, 15088, 15125, 15126.2, 15126.4, 15130, 15201, and related provisions requiring substantial evidence, informed decision-making, transparency, and meaningful public participation before discretionary project approvals may stand.

## **EXHIBIT B — RESIDENT SIGNATURE PAGE**

**This Exhibit documents resident confirmation of:**

- Residency within the affected neighborhood near 2334 Lundy Place;
- Review and support for the submitted CEQA appeal; and
- A request that the City of San José take corrective action consistent with the appeal, including rescinding the existing approval or requiring preparation of a full Environmental Impact Report (EIR).

The attached signature sheets—containing resident addresses, printed names, and signatures—form part of this Exhibit and are incorporated herein by reference.

| Address    | Print Name               | Signature   |
|------------|--------------------------|-------------|
| [REDACTED] | DEVANG SHAH              | [Signature] |
| [REDACTED] | Vinoj Govinthasamy       | [Signature] |
| [REDACTED] | Gleethanali kamalanathan | [Signature] |
| [REDACTED] | Yan Jiang                | [Signature] |
| [REDACTED] | HONGPING JIANG           | [Signature] |
| [REDACTED] | SREEJA ACHARYA           | [Signature] |
| [REDACTED] | ARVIND SREEKUMAR         | [Signature] |
| [REDACTED] | Hanfei Sun               | [Signature] |
| [REDACTED] | Xiaoxi Zhao              | [Signature] |
| [REDACTED] | Tongxin Zhang            | [Signature] |
| [REDACTED] | Suanna Chao              | [Signature] |
| [REDACTED] | Yueying Jiang            | [Signature] |
| [REDACTED] | Xiaoran Yang             | [Signature] |
| [REDACTED] | Qiao Jiao                | [Signature] |
| [REDACTED] | Mingxuan Sun             | [Signature] |
| [REDACTED] | Jiagi Li                 | [Signature] |
| [REDACTED] | Zhichao Le               | [Signature] |
| [REDACTED] | Vishal Chandrasekaran    | [Signature] |
| [REDACTED] | Yingjing Lao             | [Signature] |
| [REDACTED] | Zhong                    | [Signature] |
| [REDACTED] | Jay Gong                 | [Signature] |
| [REDACTED] | XIAORANG LIU             | [Signature] |
| [REDACTED] | Li Zhi Liao              | [Signature] |
| [REDACTED] | Xi Chen                  | [Signature] |
| [REDACTED] | Qi Zhou                  | [Signature] |
| [REDACTED] | Mengxue Zhang            | [Signature] |
| [REDACTED] | Yunging Cao              | [Signature] |
| [REDACTED] | Xuyan Zhang              | [Signature] |
| [REDACTED] | Yan Kun Li               | [Signature] |

| Address    | Print Name                   | Signature   |
|------------|------------------------------|-------------|
| [REDACTED] | Qiuyao Zhu                   | [Signature] |
| [REDACTED] | Yumdas Liu                   | [Signature] |
| [REDACTED] | Kewen Han                    | Kewen Han   |
| [REDACTED] | Jing Li                      | Jing Li     |
| [REDACTED] | J-P LAMONIS                  | [Signature] |
| [REDACTED] | Huijing Zhang                | [Signature] |
| [REDACTED] | Huomeng Cai                  | [Signature] |
| [REDACTED] | Yujia Zheng                  | [Signature] |
| [REDACTED] | Jiayin Wu                    | [Signature] |
| [REDACTED] | Haoxiang Gao                 | [Signature] |
| [REDACTED] | Guoping Sheng                | [Signature] |
| [REDACTED] | Wenjun Zeng                  | [Signature] |
| [REDACTED] | Gene Li                      | [Signature] |
| [REDACTED] | Tian Liang                   | [Signature] |
| [REDACTED] | Hui Et                       | [Signature] |
| [REDACTED] | SHUAL YE                     | [Signature] |
| [REDACTED] | Danson Tang                  | [Signature] |
| [REDACTED] | Clare Mao                    | [Signature] |
| [REDACTED] | Xi Yang                      | [Signature] |
| [REDACTED] | Xuanyi Zhao                  | [Signature] |
| [REDACTED] | SHARAN KESARLA CHANDRASEKHAR | [Signature] |
| [REDACTED] | Jiayi Dong                   | [Signature] |
| [REDACTED] | Tairan Zhu                   | [Signature] |
| [REDACTED] | Pengyu Huang                 | [Signature] |
| [REDACTED] | Xing Li                      | [Signature] |
| [REDACTED] | Chen Zhao                    | [Signature] |
| [REDACTED] | Hechao Li                    | [Signature] |
| [REDACTED] | Minghui Shen                 | [Signature] |
| [REDACTED] | MARCELO MARTINS              | [Signature] |
| [REDACTED] | BHARTI KODWANI               | [Signature] |
| [REDACTED] | Manthan Shah                 | [Signature] |

Address

Print Name

Signature

Andrew Dang  
 RAKESH NANDYALA  
 Derrick Chang  
 Huang Xi  
 Huiyang Yang  
 Tina Kwan  
 Ringo HUNG  
 Yuhyun Kang  
 Austin Mei  
 Tianshu Zhao  
 Arvita Bhogireni  
 SREENIVAS BHOGI  
 JENNIFER DANG  
 MANISHKANT  
 ASHWINTHA PADMANABHAN  
 Chenzi Qian  
 Scott Chung  
 Xuemin Chen  
 PARTH SHAH  
 AVINASH PARASURAMAN  
 VAIBHAV GANDHI  
 ABHISHEK BINDIGANAVILE  
 Meghna Seshadri  
 Arjun Shah  
 Anzha Dalal  
 Xin Tong  
 Da Wang  
 Aaron Xu  
 SHIVASI ARUN VIDHALE  
 Kanchan Ashok Chandnani  
 Xinyuan Huang

Andrew Dang  
 Rakesh  
 Derrick  
 Huang Xi  
 Huiyang Yang  
 Tina Kwan  
 Ringo HUNG  
 Yuhyun Kang  
 Austin Mei  
 Tianshu Zhao  
 Arvita Bhogireni  
 Sreenivas Bhogi  
 Jennifer Dang  
 Manishkant  
 Ashwintha Padmanabhan  
 Chenzi Qian  
 Scott Chung  
 Xuemin Chen  
 Parth Shah  
 P. Avinash  
 Vaibhav  
 Abhishek Bindiganavile  
 Meghna. M. S  
 Arjun Shah  
 Dalal  
 Xin Tong  
 Da Wang  
 Aaron Xu  
 Shivasi Arun Vidhale  
 Kanchan Ashok Chandnani  
 Xinyuan Huang

| Address | Print Name            | Signature    |
|---------|-----------------------|--------------|
|         | Jun Zhao              | Jun Zhao     |
|         | Manlin Wu             | Manlin Wu    |
|         | Bowen Wang            | Bowen Wang   |
|         | Jiacheng Gao          | Jiacheng Gao |
|         | Guandong Zhu          | Guandong Zhu |
|         | Atif Iqbal Ahangar    | Atif         |
|         | Nidhu Narayanan       | Nidhu        |
|         | BHAVNESH GUPTA        | Bhavesh      |
|         | SNEHA SINGH           | Sneha Singh  |
|         | STEFANO CADARIO       | Stefano      |
|         | NATALIE CADARIO       | N. Cadario   |
|         | JANE LEE              | Jane         |
|         | JI WANG               | Ji           |
|         | Swati Rao             | Swati        |
|         | Charles Q.            | Charles      |
|         | Mohan Behera          | Mohan Behera |
|         | Srilanth Velogacherla | Srilanth     |
|         | Sai Marjula Panjam    | Sai Marjula  |
|         | Amy Paul              | Amy          |
|         | Robin James           | Robin        |
|         | Pei Sun               | Pei Sun      |
|         | Xin Sun               | Xin Sun      |
|         | VIKAS MALLAPURA       | Vikas        |
|         | GAHANA KUNDUR         | GAHANA       |
|         | YAO WEI CHU           | Yao Wei      |
|         | Jia Shi               | Jia          |
|         | Lindsey Li            | Lindsey      |
|         | Chien Gui Peter Chu   | Chien Gui    |
|         | Amy Chiu              | Amy          |



*Nehal Gandhi*

NEHAL GANDHI

*Romin Parekh*

ROMIN PAREKH



GANESH IYER



KIRTI BALAGOPAL



Julio Herrera



Nethra Mugala



Anil Surapaneni



Manjula Yatharla



PLANNING DIVISION 05/20/2024 SUBJECT TO CHANGE

# APPEAL OF ENVIRONMENTAL DETERMINATION APPLICATION

Per [Municipal Code 21.07.040](#), the San José City Council will hear appeals to the environmental determination made by City staff at a project's public hearing. This application form must be completed as instructed below to facilitate the appeal.

## WHO MAY APPEAL

Any person may file.

## DEADLINE

File this completed application by **no later than 5:00 p.m. of the third business day** following the day of the public hearing that relied upon the Environmental Determination.

## FEES & PROCESS

View the current fee for an Environmental Determination Appeal on the Table of Applications at [www.sanjoseca.gov/PlanningApplications](http://www.sanjoseca.gov/PlanningApplications). The fees vary depending on whether you are a project applicant or non-applicant.

## HOW TO SUBMIT - 2 OPTIONS

- **In-Person (no appointment required):** Before the filing deadline stated above, come to the Planning Offices, third floor of City Hall (200 E. Santa Clara Street, San José) to submit the application. You may pay the appeal fee in-person or staff may email you an invoice which must be paid within 14 calendar days of the invoice date for the appeal to be valid.

- **Email:** Before the filing deadline stated above, email the completed application and any attachments to [PlanningTechs@sanjoseca.gov](mailto:PlanningTechs@sanjoseca.gov). If the appeal is timely and complete, staff will email you an invoice for the appeal fee, which must be paid within 14 calendar days of the invoice date for the appeal to be valid.

## WHAT TO SUBMIT

- ☐ This application form, completed and signed. You must state with specificity the reasons that the Environmental Determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.

Only appeals that are based on issues that were raised at the public hearing or in writing prior to the public hearing will be considered.

City staff will set a public hearing date before the City Council; the appeal item will be placed on the agenda. Staff will also prepare a recommendation of action to the City Council.

## FOR QUESTIONS

Speak with a City Planner at 408-535-3555; see phone service hours at [www.sanjoseca.gov/Planning](http://www.sanjoseca.gov/Planning).

Para información en español, comuníquese con un Planificador de la ciudad al 408-793-4100.

Để được hỗ trợ, nói chuyện với Người lập kế hoạch thành phố tại 408-793-4174.

*continued >*

Please download and save this computer-fillable form to your computer. Follow instructions for [Digital Forms](#).

The undersigned respectfully requests an appeal for the following environmental determination.

**1. REASON/S FOR APPEAL:** *If more space is needed, attach a separate sheet.*

Hi

Below is my summary of reasons to APPEAL for Site Development Permit H24-057

**I. INTRODUCTION**

This letter appeals for the approval of Site Development Permit H24-057 and its associated Mitigated Negative Declaration (MND) ER24-245 for the proposed 24/7 warehouse/logistics facility at 2334 Lundy Avenue. The approval process contains significant procedural defects, and the MND fails to adequately analyze or mitigate environmental impacts, necessitating a full Environmental Impact Report (EIR) under CEQA.

**II. PROCEDURAL DEFECTS**

**A. Inadequate Public Notice**

- Northwood and Brooktree Elementary Schools, identified as sensitive receptors, were not notified
- The KB Homes community, directly across from the project site, received no notification
- Only three comments were received, all from business-park stakeholders
- Failure to notify the most impacted residents violates CEQA's public participation requirements

**B. Hearing and Administrative Record Deficiencies**

- Critical environmental documents (Appendix A and Transportation Analysis) were inaccessible during review
- Hearing process prioritized non-local supporters over affected residents' concerns
- Administrative record remains incomplete on City's website

**III. MND INADEQUACIES REQUIRING AN EIR**

**A. Significant Environmental Impacts**

**1. Noise**

- Project will exceed Municipal Code's 55 dBA residential limit
- Proposed 8-foot sound wall inadequate for multi-story homes
- 24/7 operations create sustained noise from loading docks, trucks, and equipment
- Health impacts include sleep disruption and cardiovascular effects

**2. Air Quality**

- Continuous diesel operations will emit carcinogenic particulates near schools and homes

**2. PERSON FILING APPEAL**

PRINT NAME: Kimberly Ong

MAILING ADDRESS:

EMAIL:

PHONE:

12/08/2025

●  SIGNATURE OF PERSON FILING THE APPEAL

DATE: [MM/DD/YYYY]

For electronic submittal or virtual appointments, a [Digital ID Signature](#) is required.

For in-person appointments, an original ink signature is required.

**3. CONTACT PERSON** IF DIFFERENT FROM PERSON FILING APPEAL

PRINT NAME:

MAILING ADDRESS:

EMAIL:

PHONE: