



COUNCIL AGENDA: 8/18/26
FILE: 26-851
ITEM: 10.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: See Below

DATE: July 27, 2026

Approved

Date:

8/5/26

COUNCIL DISTRICT: 6

SUBJECT: H25-021 & ER25-133 - Administrative Hearing on the Appeal of Class 32 In-fill Exemption and Site Development Permit for Certain Real Property Located at 1295 Curtner Avenue

RECOMMENDATION

- (a) Conduct a Public Hearing to consider the appeal of the Director's approval of a Site Development Permit and an environmental appeal of the Planning Director's reliance on the 1295 Curtner Avenue Project In-fill Exemption in accordance with the California Environmental Quality Act (CEQA), to allow the construction of eight residential condominium units on separate lots and four condominium units on two lots, subject to the State Density Bonus Law, with one incentive to allow the two-family dwelling use in the zoning district, and fourteen waivers related to: height, number of stories, floor area ratio, common and private open space, tree canopy coverage, parking standards, building entrances, and lot depth ratio, including the demolition of a single-family home and the removal of 21 trees on an approximately 0.65-gross-acre site, located on the northeast corner at the intersection of Cottle Avenue and Curtner Avenue (1295 Curtner Avenue) (hereafter referred to as "proposed project").
- (b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's reliance on the In-fill Exemption for the 1295 Curtner Avenue Project, in accordance with CEQA, and finding that:
 - (1) The City Council has independently reviewed and analyzed the In-fill Exemption prepared for the 1295 Curtner Avenue Project and related administrative records related to Site Development Permit No. H25-021; and

- (2) The In-fill Exemption for the 1295 Curtner Avenue Project was prepared and completed in full compliance with the CEQA, as amended, together with State and local implementation guidelines; and
 - (3) Reliance on the In-fill Exemption for the 1295 Curtner Avenue Project reflects the independent judgment and analysis of the City of San José, as the lead agency for the Project; and
 - (4) Preparation of an Environmental Impact Report or Mitigated Negative Declaration/Negative Declaration is not required because the appeal does not raise any issues that would disqualify the project from the In-fill Exemption for the 1295 Curtner Avenue Project.
- (c) Adopt a resolution denying the permit appeal and approving, subject to conditions, a Site Development Permit to allow the proposed project at 1295 Curtner Avenue.

SUMMARY AND OUTCOME

The hearing before the City Council is a *de novo* hearing pursuant to Section 20.100.280¹ of the Zoning Code. This means that the City Council considers the request anew, along with the staff report, comments from the appellant and applicant, and other information as part of the administrative record, and must make the required findings to grant the permit or determine whether the required findings cannot be met and deny the permit and/or the In-fill Exemption for the 1295 Curtner Avenue Project.

Denying the appeals and approving the Site Development Permit and the Environmental exemption in accordance with CEQA will allow the project applicant to construct eight residential condominium units on separate lots and four condominium units on two lots, including the demolition of a single-family home and the removal of 21 trees at 1295 Curtner Avenue.

Upholding the appeals and denying the Planning Director's reliance on the environmental exemption would void both the Planning Director's CEQA determination and the Site Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the applicant could choose not to proceed with the Project.

Additionally, as this is a *de novo* hearing, the City Council can also choose to deny the Site Development Permit outright, which would prevent the project applicant from proceeding with the project.

¹https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.100ADPE_PT2COPR_20.100.280APOUPR

BACKGROUND

Reason for Hearing

The appellants have appealed both the project Site Development Permit and the Environmental Determination on the Planning Director's decision to consider the In-fill Exemption and approve the Development Permit, File Nos. H25-021 and ER25-133.

Site Location

The approximately 0.65 gross-acre project site is located on the northeast corner at the intersection of Cottle Avenue and Curtner Avenue (1295 Curtner Avenue). The site currently includes a 2,736-square-foot single-family residence and an accessory building. The site is surrounded by single-family residences to the north, east, south, and west.

Proposed Project

The subject Site Development Permit application was filed on July 10, 2025, by the applicant, City Connect Partners, Inc., on behalf of the property owners, Dombro Stephen N. and Janet F. Trustee. The project consists of a Site Development Permit to allow the construction of twelve residential units consolidated into two three-story buildings. Each building has four attached single-family homes (lot sizes approximately 2,001 to 2,531 square feet) and two residential condominium units (lot sizes approximately 3,525 to 4,173 square feet). The project includes the demolition of the existing approximately 2,736 single-family home and accessory buildings on-site, and the removal of 21 trees (15 ordinance-size and 6 non-ordinance). Vehicle access to the site is provided via a single driveway from Cottle Avenue, which leads to a private street serving the site. Ten of the twelve units include a two-car garage each, and a private driveway accommodates parking for additional two cars for the remaining two units, accessible from the private street.

The project includes an application pursuant to the State Density Bonus Law (Government Code Section 65915) with one unit for very-low-income households (50-80% Area Median Income (AMI) and one unit for moderate-income households (80-120% AMI). Projects eligible for a density bonus are also eligible to pursue incentives and concessions, such as reductions in development standards to facilitate the economically viable construction of affordable housing. The applicant qualifies for four incentives/concessions pursuant to Government Code Section 65915. Projects eligible for a density bonus are also eligible to pursue waivers of development standards if the standard would physically prevent the project from being built with the allowed number of units. The project qualifies for unlimited waivers.

The project is associated with and processed concurrently with Tentative Map Permit file number T25-017, which allows the subdivision of one lot into ten residential lots and one common area for a private street on an approximately 0.65 gross-acre site. The applicant submitted a concurrent application under the State Density Bonus Law (Government Code Section 65915) and requests one incentive to allow two-family dwelling use in the zoning district which would result in a cost reduction of approximately \$500 per square foot, and fourteen waivers related to: height, number of stories, allowed floor area ratio, common and private open space, tree canopy, parking standards, building entrances, and lot depth ratio.

The project, as proposed by the applicant and recommended for approval by staff, complies with all use regulations, development standards, bicycle and two-wheeled motorized vehicle parking requirements, and traffic, noise, and screening requirements, as analyzed in the proposed Site Development Permit Resolution.

Environmental Review

The City of San José, as the lead agency, prepared a Class 32 In-fill Exemption (Attachment A) pursuant to Section 15332 of the CEQA Guidelines. The exemption was included with documents posted for the March 25, 2026, Director's Hearing. The exemption found that the project qualifies for a Class 32 In-fill Exemption because it is consistent with the General Plan and Zoning and it would not result in any significant impacts to sensitive habitats, transportation, air quality, noise, or water quality. Furthermore, none of the exceptions to Categorical Exemptions in Section 15300.2 of the CEQA Guidelines apply to the project, as the project site is not a listed hazardous waste site and does not contain any historic resources. These findings are supported by a construction air quality health risk assessment, phase I and phase II environmental site assessments, and historic evaluation of existing structures.

Based on the information provided in the supporting technical reports, the City, as the lead agency, concluded that the proposed project would not result in any significant and unavoidable impacts, and that a Class 32 In-Fill exemption is the appropriate level of CEQA clearance for the project. The project was approved by the Hearing Officer at the March 25, 2026, Director's Hearing. A summary of the hearing is provided below.

Director's Hearing

On March 25, 2026, a Director's Hearing² was held to consider the Site Development Permit, Tentative Map, and associated environmental In-fill Exemption. The project was placed on the Public Hearing portion of the hearing agenda. The Hearing Officer was Martina Davis, Principal Planner, on behalf of the Director of Planning, Building and Code Enforcement. Jacqueline Guerrero, Planning project manager, provided an oral

² https://sanjose.granicus.com/player/clip/15517?view_id=54&redirect=true

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presentation on the project, highlighting the project's consistency with the General Plan, Zoning Ordinance, Citywide Design Standards and Guidelines, and City Council Policy 6-30 for public outreach. Cort Hitchens, Environmental Planning project manager, summarized the Environmental Planning process in accordance with CEQA.

Approximately 13 members of the public spoke during the public hearing portion of the Director's Hearing. Of the public speakers, 12 opposed the project, and one supported it. Those speaking against the project raised concerns about increased traffic congestion, traffic accidents that have already occurred, pedestrian safety during school drop-off and pick-up times, the proposed height, noise and dust generated by construction, the number of density bonus waivers being granted, incompatibility with surrounding uses, negative impacts on nearby property values, and insufficient traffic impact analysis and mitigation.

The one person in favor of the project is the current owner of the subject site, who noted that the project is a well-thought-out plan for middle-income people who can't afford a three million house, but can afford something half that price.

Staff from the City's Public Works (DPW) Department spoke in response to the public's comments. Under CEQA and the City's Transportation Analysis Policy (City Council Policy 5-1), the metric the City uses to determine transportation impacts for development projects is Vehicles Miles Traveled (VMT). Per City Council Policy 5-1, small infill projects such as this one that propose less than 25 residential units will not result in significant VMT impacts and are therefore exempted from submitting a full transportation analysis.

DPW staff also explained that they reviewed the new trips generated by the project using the Institute of Transportation Engineers trip generation rates (industry wide standards). The project would generate five trips during the AM peak hour, six during the PM peak hour, and a total of 67 daily trips. Based on the City's Transportation Analysis Handbook, only projects that generate 10 or more trips during a peak hour are required to evaluate signal operations analyses and queueing in a Local Transportation Analysis.

DPW stated that they understand the project site's sensitivity given its proximity to schools. For this reason, the Department of Transportation (DOT) reviewed collision data history. In July 2025, the City implemented improvements at the Curtner and Cottle intersection, including speed bumps, additional delineators, striping, and red curbing daylighting. DOT also operates a Safe Routes to School program that schools can participate in to create a safer, more welcoming environment for students and staff. The City cannot require the applicant to provide transportation improvements in the surrounding neighborhood because the project is exempt under CEQA and meets the screening criteria as a Small Infill Project under the City's Transportation Analysis Handbook for projects expected to result in less-than-significant VMT impacts. Because

the project would result in less-than-significant VMT impacts, there is no nexus to require transportation improvements as part of the project. Driveway access was reviewed and determined to meet driveway design requirements per the complete street design guidelines. Staff also reviewed on-site circulation against the complete street design guidelines, and the Fire Department reviewed it for adequate emergency access.

After hearing public comments and staff responses, the Hearing Officer noted the project's consistency with all applicable plans, ordinances, and policies. The Hearing Officer also determined that the In-fill Exemption and associated conditions of approval were adequate and appropriate for the project. Further, the Hearing Officer found that the project itself did not meet Zoning requirements, but with the application of State Density Bonus law, the provision of affordable units allows for concessions and waivers from these standards. The project would not contribute to a dangerous traffic situation in the area, nor would it create any health and safety impacts from density bonus waivers. The Hearing Officer addressed the community concerns, especially related to public safety and traffic. Per the DOT's analysis of the intersection, the street would continue to operate at acceptable levels of service under background conditions during both the AM and PM peak hours, with the addition of the project-generated trips. The addition of projected traffic by the development will not worsen existing conditions or add impacts. The Hearing Officer then approved the project.

Permit Appeals

One timely appeal (Attachment B) of the Site Development Permit was filed. The appeal was received on April 13, 2026, from Jennifer McClenahan, a neighboring resident residing at 1276 Curtner Avenue, an eligible appellant under Section 20.100.230.A.³ The appeal meets the appeal period set forth in Section 20.100.240⁴, as it was received within ten days after the copy of the written decision was mailed to the applicant.

The appellants appealed on the following issues:

- a. The proposed driveway entrance from the intersection is inadequate.
- b. Reduced setbacks affecting visibility at the intersection.
- c. Inadequate pedestrian and traffic access.
- d. Parking Stalls adjacent to Cottle Avenue are not adequately setback.
- e. Inadequacy with the California Fire Code and San Jose Municipal Code Sight Distance requirements.
- f. Safety concerns Cottle Avenue and Curtner Avenue.
- g. Lack of staff analysis for the justification of the 14 waivers granted for the project.
- h. Lack of scrutiny near proximity to school.

³https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.100ADPE_PT2COPR_20.100.230APLI

⁴https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.100ADPE_PT2COPR_20.100.240APPPPE

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- i. Inequitable access to hearing materials and failure to address substantial evidence of public safety hazards.

Responses to these issues are provided below and include a brief summary of each issue raised. To view the full issues raised please refer to Attachment A.

Environmental Appeals

Separately, one timely appeal (Attachment C) of the Environmental Determination was also filed. The appeal was received on March 29, 2026, from Christine Nguyen, a resident residing nearby the project site. The appeal meets the appeal period set forth in Section 21.04.140.E.1.a⁵, which states that an appeal must be received no later than the third business day following an action taken on the environmental determination as part of a public hearing. Monday, March 30, 2026, was the third business day after the public hearing held on Wednesday, March 25, 2026.

The appellant specifically appealed on the following issues:

1. The CEQA In-fill Exemption cannot be made on facts
2. The City's Trip Generation Modeling does not reflect site conditions
3. Construction safety conditions must be imposed
4. The City has the discretion to act – and the legal risk of not acting
5. Public Health and Safety is the City's legal obligation

Summary responses to these issues are provided below. To view the full issues raised and staff analysis please refer to Attachment B.

ANALYSIS

Permit Appeal

Below are the staff's responses to the appellants' permit appeal comments.

Comment #1: The proposed distance for the private road entrance from the intersection is inadequate.

The appeal statement includes the following concerns: The project proposes a driveway entrance from Cottle Avenue, 85 feet from the intersection at Curtner Avenue and Cottle Avenue streets. The 85 feet distance from the signalized intersection on a Vision Zero corridor with documented child injuries is a serious red flag. The proposed access road's proximity to the major arterial intersection appears to deviate from the City of San Jose's 200-foot corner clearance standard for Major Streets. Given the high volume of

⁵https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT21ENCL_CH21.04GEP_RPR_PT2PR_21.04.140APEN

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student pedestrians at nearby schools, the placement creates a significant 'weaving' hazard and restricts vital sight lines, posing an unmitigated risk to public safety.

Staff Response:

The project is permitted to have driveway access to the project site on either or all frontages per the City's Zoning Ordinance provided it meets safety standards. The project was reviewed by the City's Department of Transportation and analyzed in accordance with the Complete Street Design Guidelines. The San José Complete Streets Design Standards and Guidelines state that driveways should be located at least 150 feet from signalized intersections or roundabouts, unless otherwise approved by DOT. These driveway design guidelines apply only to major streets. The project adheres to this standard: there is no driveway on Curtner Avenue (designated as a City Connector Street or major street). Cottle Avenue, where the driveway access is located, is not designated in the General Plan Transportation Network, as it's considered a minor street. During the project implementation phase, DOT will determine whether red curbs are required on both sides of the proposed driveway to ensure adequate sight distance.

Comment #2: Reduced Setbacks affecting the visibility at the intersection.

The appellant raised the issue that the project involves a critical turning intersection at the intersection of Curtner Avenue, a major east-west connector street in San Jose, and Cottle Avenue, a major traffic artery for school traffic. The project reduces current setback rules and thus requires a more formal sight distance study to ensure sufficient visibility to avoid pedestrians, objects, and collisions.

Staff Response:

The project used the State Density Bonus Law to grant the reduction of the proposed setback requirements of the proposed housing units on the subject site from 20 feet to 11 feet on lot 10. The applicant requested waivers for the housing units located on lot 10 on the permit plan set to allow reduced setbacks along Cottle Avenue and Curtner Avenue, as the required setbacks would have resulted in the loss of two units. Under the State Density Bonus Law, staff is required to allow requests for any waivers that would affect the number of affordable units the project would provide that do not result in a public health or safety impact. DOT reviewed the project using industry standard design guidelines and did not flag any sight-distance concerns, as the units are set back 20 feet 11 inches from the curb.

The project site is at a controlled intersection with a traffic signal, not a major thoroughfare. Cottle Avenue is classified as a residential street, and Curtner Avenue is classified as a minor arterial street. Both streets have lower traffic volumes than a large arterial street.

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Comment #3: Inadequate pedestrian and traffic access.

The appellant raised the issue that the City's analysis concludes that 'traffic and pedestrian access are adequate.' However, this finding fails to account for the project's location within 500 feet of a [School]. Under California Education Code 17213 and Public Resources Code 21151.8, the State recognizes areas within 500 feet of a school as high-scrutiny zones where 'busy traffic corridors' and vehicle conflict points pose an actual or potential endangerment to public health and safety. In the past two years, Cottle Avenue between Willow Glen High School and the Curtner intersection has required the addition of human crossing guards at four intersections due to concerns about student traffic safety. Schools of note include First Discovery Christian Preschool, Willow Glen Middle School, and Willow Glen High School.

Staff Response:

The government code sections referenced in the appeal comment were reviewed to assess their applicability to the project proposal. California Education Code 17213 sets the ground rules for approving a project involving a school district's acquisition of a school site, requiring that the outlined criteria be met. This project involves the redevelopment of a site with a single-family home on the lot, not an existing school site. Therefore, this government code section does not apply.

Public Resources Code 21151.8, also quoted in the appeal comment, requires an environmental impact report for a school district's purchase of a school site or the construction of a new elementary or secondary school. This section does not apply to the current scope of work under review for the Site Development Permit, as it pertains to residential units rather than to a proposed school site.

The housing project, as proposed, meets all applicable local and state requirements.

Comment #4: Parking Stalls adjacent to Cottle Avenue are not adequately setback.

The appellant cites waiver 14, which permits parking stalls to be located within 20 feet of Cottle Avenue. They argue that the waiver directly contradicts the safety intent of these statutes by creating a documented 'blind corner' at the intersection of a private street and a school-bound sidewalk. By granting this waiver, the City is allowing obstruction within a 'Clear Visibility Triangle' mandated by SJMC 20.90.120⁶ to protect pedestrians.

Staff Response:

⁶https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.90PALOTRDEMA_PT2PASPRES_20.90.120SE

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San José Municipal Code Section 20.90.120 has no mention of a 'Clear Visibility Triangle'. The cited code states that no off-street vehicle parking space shall be located within the side or front setback area unless the director finds that the location of the off-street vehicle parking space will not adversely affect surrounding development and issues a development permit. Staff consulted with the DPW traffic team and determined there would be no safety or circulation issues with granting the waiver for the two parking spaces that are pull-in/pull-out spots within 20 feet of Cottle Avenue.

The waiver request from the applicant to place two parking stalls closer to the driveway entrance would allow the project to construct all the units as proposed. Lots one and ten, which host units 1, 2, 11, and 12, would need to be removed to provide the requested clearance for the surface parking stalls, resulting in the loss of four units. Staff were unable to find any specific objective criteria or data on potential adverse health and safety impacts related to the parking stall placements for this project to deny this waiver request.

Comment #5: Inadequate compliance with the California Fire Code and San Jose Municipal Code Sight Distance requirements.

The appellant states that the City's analysis of 'adequacy' is a subjective conclusion that fails to account for objective safety standards found in the California Fire Code and SJMC Sight Distance requirements. We contend that the execution of Waivers 3, 13, and 14 creates significant, quantifiable, and direct hazards to the public, particularly given the proximity to three school zones.

Staff Response:

The project received clearance from the Fire Department to proceed to the Building Permit stage. It should be noted that this is not the final review of the project for compliance with the Building and Fire Code requirements. The applicant will still need to demonstrate compliance at the building permit stage.

The Planning Department does not review sight distance requirements, nor does it have development standards for review under Title 20 of the San Jose Municipal Code. The waivers mentioned above relate to the reduction of the 20-foot rear setback (waiver 3); a reduction in the distance required per Citywide Design Standard 2.2.1, standard 3, which require building entrances to be within 15 feet of a public sidewalk or public open space (waiver 13); and Citywide Design Standard 2.3.6, which requires the first parking stall to be at least 20 feet away from the driveway or private street (waiver 14).

A reduction in setbacks and design standards was requested to enable the construction of the intended number of units under the Density Bonus law. Without these waivers, 2 to 6 units might be lost. Two units had their front and rear setbacks reduced from 20 feet to 10 feet 6 inches to facilitate their construction, while the remaining units maintain

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setbacks close to the required 20 feet, at 18 feet 6 inches. Waiving the front door design requirement still ensures that each unit can be accessed properly from the private road. These waivers do not pose public health or safety risks and therefore should be approved.

Comment #6: Safety concerns on Cottle Avenue and Curtner Avenue.

The appellant linked to a webpage from the Department of Transportation projects regarding the Curtner Avenue Safety project. They noted that even with these efforts, accidents continue to happen. Adding the project as currently proposed would only exacerbate these safety issues.

Staff Response:

The linked webpage focuses on the portion of Curtner Avenue bounded by Lincoln Avenue and Monterey Road. The project site is outside this boundary area. Additionally, DOT staff have reviewed reported collision data in conjunction with neighborhood concerns for the intersection. As a result of the collisions at the intersection of Curtner Avenue and Cottle Avenue, the DOT implemented safety improvements in July 2025 along Cottle Avenue, including one low-profile speed bump, additional delineators and striping, and red curbing for daylighting. The City will continue to monitor the intersection and analyze any community feedback received, irrespective of the proposed project.

Comment #7: Lack of staff analysis for the justification of the 14 waivers granted for the project.

The appellant noted that staff provided no analysis for the 14 waivers. The waivers covered height, setbacks, lot sizes, parking standards, and tree canopy coverage, all of which affect the project's density and sightlines at this intersection. No analysis was presented explaining how staff evaluated each waiver against safety criteria. On a Vision Zero corridor with documented child injuries, a blanket conclusion that 14 waivers from design standards pose no safety risk requires more than an assertion.

Staff Response:

The project includes an application pursuant to the State Density Bonus Law (Government Code Section 65915). The project provides one unit for very-low-income households and one unit for moderate-income households. The Residential Neighborhood General Plan land use designation allows residential density at eight dwelling units per acre, equivalent to six base units. Pursuant to Government Code Section 65915(f)(2) and Government Code Section 65915(v)(1)(B), the project is eligible for a 100% density bonus, or six additional units. The project proposes 12 units that fully utilize all the granted density bonus.

Projects that are eligible for a density bonus are also eligible to pursue waivers to development standards if the standard being waived would physically prevent project from being built with the allowed number of units. The project qualifies for unlimited waivers. The project has requested fourteen waivers. A waiver *must* be granted unless the City makes a written finding, supported by substantial evidence, that the waiver would have a "specific, adverse impact" on public health or safety as defined in Government Code Section 65589.5(d)(2). No such finding has been made for any of the 14 waivers requested. Additional information on the analysis for each waiver requested can be found in Attachment D as part of the permit approved at the Planning Director's Hearing and the approved plan is attached as Attachment E. Planning staff coordinated with DPW staff for all relevant waiver requests to ensure that there was no evidence of public health or safety issues.

Comment #8: Lack of scrutiny near proximity to school.

The appellant raised concerns about two large public schools across the street from the project, Willow Glen Middle School and Willow Glen High School. First Discoveries Christian Preschool is also within a few hundred feet of the project. California law requires heightened scrutiny for any project located within ¼ mile (1,320 feet) of a school, and we haven't seen any documentation supporting this additional review.

Staff Response:

Pursuant to the Housing Accountability Act (Government Code Section 65589.5(f)(1)), the City shall only apply objective, quantifiable written development standards to a housing project. Staff reviewed the project against all local and state safety standards and has responded to each of the appellants' comments. Staff has not found that the project would have a specific, adverse impact to public health or safety.

Comment #9: Inequitable access to hearing materials and failure to address substantial evidence of public safety hazards.

The appellant also stated that they would like to formally document a significant irregularity regarding the March 25, 2026, hearing. While materials for concurrent meetings (City Council and Planning Commission) were made available immediately, the files for this specific hearing were not released until March 30, 2026—less than two hours prior to the environmental appeal deadline. This delay, despite multiple written and verbal inquiries, has truncated the community's review period, effectively preventing us from compiling a comprehensive, evidence-based appeal within the required legal timeframe for the environmental appeal. We maintain that this truncated timeline constitutes a failure to provide adequate due process.

While the Housing Accountability Act and State Density Bonus Law limit local discretion, the City retains the authority—and the obligation—to mitigate "specific, adverse

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impacts” on public safety when supported by substantial evidence. In this case, the community has provided documented records of traffic collisions and injuries involving minor children at this exact location. Community members have repeatedly presented evidence of traffic safety concerns, including multiple minor children injured at the project’s exact location due to traffic collisions. Yet the Commission [sic] has failed to reconcile its findings with these specific concerns, instead relying on computer-generated models of idealized conditions. Additionally, during the Hearing Call, ahead of the project’s approval, the hearing director, Martina Davis, stated that, under her “assumption,” the project’s proximity to school might lessen traffic concerns for students in the proposed new development by having them walk rather than drive to school. This finding relies on conjecture rather than evidence and underscores our primary concern: that approval decisions are being based on unsubstantiated assumptions rather than the empirical safety data and collision history. We contend that the Planning Commission [sic] eroded by prioritizing theoretical, computer-generated models over this empirical safety data.

Staff Response:

All materials for the proposed project were uploaded and linked to the agenda on March 19th, for the Director’s Hearing Date of March 25th, 2026, in keeping with the City’s Sunshine Policy. After the Director’s Hearing on March 25th, 2026, community members reached out for additional information on how to appeal the project. Staff provided the process and materials for appealing the project, along with the deadlines for each type of appeal permit. The recording of the Director’s Hearing meeting was uploaded on Monday, March 30, 2026. This information was shared with the neighbors who requested it that same day. Notably, the environmental appeal was sent to staff on Sunday, March 29, 2026, and was received within the allotted timeline.

As noted in the DPW team’s response to the appeal, the project was not required to include additional analysis given the proposed project does not exceed the threshold for such analysis. It was also not required to submit a Transportation Analysis (TA) report. A project is required to submit a TA report only if it meets the requirements set forth in City Council Policy 5-1. Under the CEQA and City Council Policy 5-1, the metric used to determine transportation impacts for development projects is VMT. Staff reviewed the trips the project would generate and, using industry-standard metrics (Institute of Transportation Engineers’ Trip Generation Rates), determined that the project is expected to generate 5 trips during the AM peak hour, 6 during the PM peak hour, and 67 trips daily. Only projects that generate 10 or more trips in either the AM or PM peak hour are required to conduct signal operation and queuing analyses.

Per California VMT analysis guidelines and City Council Policy 5-1, small infill development projects, such as the 1295 Curtner Avenue project, that propose less than 25 attached dwelling units are expected to result in less-than-significant VMT impact

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and therefore are exempted from submitting a formal TA report. This requirement is consistent with all developments across the City of San José.

DOT reviewed reported collision data alongside neighborhood concerns. As mentioned at the community meeting, DOT implemented traffic-calming improvements at the Curtner Avenue/Cottle Avenue intersection in July of 2025. The City will continue to monitor the intersection and determine whether additional improvements, where feasible, can be implemented.

Environmental Appeal

Below are the staff's responses to the appellant's environmental appeal comments.

Comment #1: Unusual Circumstances Disqualify the Exemption (CEQA Section 15300.2(c))

The appellant argues that the project does not qualify for a categorical CEQA exemption because unusual circumstances at and around the project site create a reasonable possibility of significant environmental effects. The appellant cites traffic collisions and injuries, school-related traffic congestion, construction safety concerns, and the addition of a new project access point along a Vision Zero corridor as evidence that the site presents unique safety conditions warranting further environmental review.

Staff Response:

CEQA Guidelines Section 15300.2 includes exceptions that would prevent a project from qualifying for a categorical exemption, including for an In-fill Development Projects exemption under Section 15332 as used for the subject project. Section 15300.2(c) states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The project would develop residential uses in a developed part of the City located adjacent to existing residential uses and near several schools. Residential projects located near schools or within Vision Zero corridors are common characteristics of urban infill development and, by themselves, do not constitute unusual circumstances under CEQA Guidelines Section 15300.2(c). These conditions do not, in and of themselves, demonstrate a reasonable possibility that the project would result in a significant effect on the environment.

Due to the calculated five trips during the AM peak hour and six trips during the PM peak hour, the project screened out of further transportation review under the City's Transportation Analysis Handbook and is therefore considered to have a less-than-significant transportation impact which further demonstrates that the proposed project would not result in any unusual transportation-related effects on the environment.

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The City's Department of Transportation reviews reported collision data in conjunction with neighborhood concerns. As a result of the collisions in and near the Curtner Avenue/Cottle Avenue intersection, DOT implemented improvements in July of 2025, including one low profile speed bump, additional delineators and striping, and red curbing for daylighting. Staff understands the concerns given the collisions in this area but cannot require a development of this size to provide transportation improvements since this project is exempt under CEQA and does not have transportation impacts under CEQA. The project will be providing frontage improvements (10-foot sidewalks along Curtner Avenue and Cottle Avenue, new trees, etc.) and driveway access consistent with the City's Complete Street Design Guidelines. Onsite circulation for project site was reviewed in accordance with Building Codes under the City's Municipal Code and also the Fire Department's requirements for emergency access.

Comment #2: The Section 15332 Exemption Criteria Are Not Met

The appellant argues that the project does not satisfy the Class 32 In-fill Development exemption requirement that it would not result in significant traffic effects. The appellant contends that the City's traffic analysis relies on generalized trip generation rates that do not reflect local conditions, including school-related congestion and the proposed access road. The appellant further asserts that no site-specific traffic observations or Local Transportation Analysis were conducted and that traffic safety concerns raised by nearby residents were not adequately considered.

Staff Response:

CEQA Guidelines Section 15332 requires five criteria that must be met, including that approval of the project would not result in any significant effects relating to traffic. Under CEQA and City Council Policy 5-1, the metric the City uses to determine transportation impacts for development projects is VMT, not traffic congestion. Per City Council Policy 5-1, small infill projects that include proposals of less than 25 residential units are not anticipated to result in significant VMT impacts and are therefore exempted from submitting a TA. Projects requiring a TA also include a Local Transportation Analysis to evaluate traffic operations not covered by CEQA. Parking and operational analyses under a Local Transportation Analysis, including intersection operations, queuing, congestion, and vehicular delay, are not considered environmental impacts under CEQA. For this project, staff reviewed the trips anticipated to be generated by the project and using the ITE trip generation rates, an industry-wide standard, the project would be expected to generate 5 A.M. peak trips and 6 P.M. peak trips, with a total of 67 daily trips. Only projects that generate 10 or more peak trips during the A.M. or P.M. hours are required to look at signal operations analyses and queueing because those projects are not automatically assumed to have less-than-significant transportation impacts and may warrant additional study to determine potential impacts.

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Comment #3: The Review Failed to Analyze Construction-Phase Traffic Impacts

The appellant argues that the City's CEQA review failed to evaluate potential construction-phase traffic and safety impacts, focusing only on operational traffic generated by future residents. The appellant contends that construction activities would create traffic, parking, and access conflicts in an already congested area and asserts that the absence of construction-related analysis precludes reliance on the categorical exemption.

Staff Response:

Under CEQA, the metric for determining significant transportation impacts is VMT, not traffic congestion. Therefore, temporary traffic congestion during construction is not an impact under CEQA. Outside of the CEQA process, the City does review proposed construction projects to ensure that construction traffic and congestion are appropriately managed. In this case, prior to construction, the project is required to apply for a Truck Haul Route Permit and submit Traffic Control Plans for review and approval by DPW ensure construction activities will minimize disturbance to the surrounding neighborhood as much as possible. During construction, there will be an assigned DPW Inspector who will ensure contractors are abiding to their permit conditions.

In regard to parking, the City has the ability to remove parking within the public right-of-way at any time, especially if it's mandated by the State, for example, to comply with daylighting requirements. The development is also required to adhere to the City's Parking/Transportation Demand Management Policy. In 2022, City Council amended Municipal Code Title 20, Chapter 20.90.060 (the City's Parking Ordinance) to remove minimum parking requirements for development projects. Even with no minimum parking requirement, this project provides 20 garage spaces and two guest parking spots on the site.

Comment #4: Public Health and Safety Findings Were Required and Not Made

The appellant argues that state housing laws allow the City to impose conditions where substantial evidence demonstrates a specific adverse public health or safety impact and asserts that the record contains documented incidents supporting such impacts. The appellant contends that the City failed to make required written findings addressing this evidence and argues that this omission is grounds for reversal.

Staff Response:

Under Appendix G of the CEQA Guidelines, evaluation for environmental impacts for Transportation require lead agencies to consider whether the project would "Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)" Though this project is exempt from further review under the CEQA Guidelines, it is clarified that the

project does not substantially increase hazards near the site due to any geometric design features or incompatible uses. The proposed residential project includes driveway layouts and frontage improvements that were reviewed by DPW to ensure the designs meet City standards including for sight distances and widths.

Specific to the concerns raised in the appellants concern, health and safety findings are not a required finding as part of the Class 32 In-fill Development Projects exemption and are not an exception to issuing a CEQA exemption under CEQA Guidelines Section 15300.2. More detailed responses related to this claim are provided above in staff's responses to Comments 4, 5 and 6 under the Analysis for the Permit Appeal.

Staff Conclusion

Based on the analysis above, the project complies with all local and state requirements. Thus, staff recommends denying both the environmental appeal and the site development permit appeal, and upholding the Hearing Officer's approval for the project.

EVALUATION AND FOLLOW-UP

The City Council is the final decision-making body for this Site Development Permit and the Environmental Determination for this project.

If the City Council denies the appeals and upholds the Planning Director's decision, then the applicant may proceed with the acquisition of the necessary permits to implement the required conditions of approval to complete the 1295 Curtner Avenue Project.

If the City Council approves the environmental appeal and reverses the Planning Director's reliance on the Environmental In-fill Exemption for the Site Development Permit, the Planning Director's CEQA determination would be rendered void, and the applicant would be required to prepare a new environmental document, such as an Environmental Impact Report, prior to reconsideration of the project.

If the City Council denies the Site Development Permit outright, the applicant would not be able to proceed with the acquisition of permits to complete the 1295 Curtner Avenue Project.

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COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office, Department of Public Works, and Department of Transportation.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the August 18, 2026 City Council meeting.

Additionally, staff followed City Council Policy 6-30: Public Outreach Policy⁷ to inform the public of the proposed project. On-site signs have been posted on the project frontage since October 3, 2025. A community meeting for the project was held via video conference on February 23, 2026. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website, and staff has been available to respond to questions from the public.

BOARD, COMMISSION, COMMITTEE RECOMMENDATION AND INPUT

No board, commission, or committee recommendation or input is associated with this action. Since the appeal of the director's decision included an appeal of the environmental determination, the project is heard directly by the City Council.

CEQA

Exempt pursuant to CEQA Guidelines Section 15332 for In-fill Development Projects.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON, Director
Planning, Building, and Code Enforcement

⁷ <https://www.sanjoseca.gov/home/showpublisheddocument/12813/636669915135130000>

HONORABLE MAYOR AND CITY COUNCIL

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For questions on the permit appeal, please contact Jacqueline Guerrero, Planner III, Planning, Building, and Code Enforcement at Jacqueline.Guerrero@sanjoseca.gov or (408) 535-8235. For questions on the environmental appeal, please contact Cort Hitchens, Supervising Planner, Planning, Building, and Code Enforcement at Cort.Hitchens@sanjoseca.gov or (408) 794-7386.

ATTACHMENTS

Attachment A – In-Fill Exemption for the 1295 Curtner Avenue Residential Project

Attachment B – Permit Appeal Application

Attachment C – Environmental Appeal Application

Attachment D – Permit Approved at Director's Hearing

Attachment E – Permit Plan Set