



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: See Below

DATE: October 8, 2026

Approved

Date:

10/9/26

COUNCIL DISTRICT: 6

SUBJECT: H25-039 & ER25-225 - Administrative Hearing on the Environmental Appeal of a Statutorily Exempt Project Pursuant to Public Resources Code Section 21080.66 (Assembly Bill 130) and Site Development Permit Appeal for Certain Real Property Located at 470 West San Carlos Street

RECOMMENDATION

- (a) Conduct a public hearing to consider the environmental appeal of the Planning Director's reliance on the 470 West San Carlos Street Project Statutory Exemption Pursuant to Public Resources Code Section 21080.66 (Assembly Bill 130) in accordance with the California Environmental Quality Act (CEQA), and the appeal of the Planning Director's approval of a Site Development Permit to allow the construction of an eight-story residential building with 276 dwelling units and underground parking, with five percent affordable units restricted to very low-income, subject to the state Density Bonus Law, and extended construction hours from 8:00 a.m. to 5:00 p.m. on Saturdays on an approximately 0.89-gross-acre vacant site, located on the southwest corner of West San Carlos Street and Gifford Avenue (1462-470 West San Carlos Street and 321-329 Gifford Avenue, APN: 264-20- 133) (hereafter referred to as "proposed project").
- (b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's reliance on the Statutory Exemption for the 470 West San Carlos Street Project, in accordance with CEQA, and finding that:
 - (1) The City Council has independently reviewed and analyzed the Assembly Bill 130 Statutory Exemption prepared for the 470 West San Carlos Street

Project and related administrative records for Site Development Permit No. H25-039;

- (2) The Assembly Bill 130 Statutory Exemption for the 470 West San Carlos Street Project was prepared and completed in full compliance with the CEQA, as amended, together with state and local implementation guidelines;
 - (3) Reliance on the Assembly Bill 130 Statutory Exemption for the 470 West San Carlos Street 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 Assembly Bill 130 Statutory Exemption for the 470 West San Carlos Street Project.
- (c) Adopt a resolution denying the permit appeal and approving, subject to conditions, a Site Development Permit to allow the proposed project at 470 West San Carlos Street Project.

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 for the Statutory Exemption permit and/or determine whether the required findings cannot be met and deny the permit for the 470 West San Carlos Street Project.

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.

Denying the appeals and approving the Site Development Permit and the Environmental exemption in accordance with CEQA will allow the project applicant to construct 276 dwelling units and underground parking at 470 West San Carlos Street.

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

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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.

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 Statutory Exemption and approve the Development Permit, File Nos. H25-039 and ER25-225.

Site Location

The approximately 0.089 gross-acre project site is located on the southwest intersection of West San Carlos Street and Gifford Avenue (470 West San Carlos Street). The site is currently vacant. The site is surrounded by commercial uses to the north, east, and south, and residential uses along the north and west property lines.

Proposed Project

The subject Site Development Permit application was filed on October 20, 2025, by the applicant, Urban Catalyst, on behalf of the property owners, Delmas Senior PropCo LLC. The project consists of a Site Development Permit to allow the construction of an eight-story residential building with 276 dwelling units, with five percent affordable units restricted to very-low-income, subject to the state Density Bonus Law, and underground parking with 217 vehicle spaces, on an approximately 0.89-gross-acre vacant site. Vehicle access to the site is provided along West San Carlos Street and Gifford Avenue. There is a bus stop near the other corner of the block that the 23-bus line serves.

The applicant submitted a concurrent application under the State Density Bonus Law (Government Code Section 65915). The project provides 14 units for very-low-income households (50-80% Area Median Income (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. They can also pursue unlimited waivers of development standards if the standard would physically prevent the project from being built with the allowed number

of units. The proposed project requests five waivers related to the stepback plane, skyline-level massing, balconies, ground-floor residential space, and podium-level massing. The project, as proposed by the applicant and recommended for approval by staff, complies with all other 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 an AB 130 Statutory Exemption (Attachment A) pursuant to Section 21080.66 (Added by AB 130 and amended by SB 158) of the CEQA Guidelines. The exemption found that the project is Statutorily Exemption because the project is a qualifying Housing Development Project that meets project site size and unit density requirements, is in an urban area and consistent with the General Plan and Zoning, and is not located on natural or protected lands, a hazardous waste site that is listed pursuant to Section 65962.5, nor is it within fire, earthquake, or flood hazard areas. The project was approved by the Hearing Officer at the July 22, 2026, Planning Director's Hearing. A summary of the hearing is provided below.

Planning Director's Hearing

On July 22, 2026, a Planning Director's Hearing² was held to consider the Site Development Permit and associated Statutory Exemption under AB 130. The project was placed on the Public Hearing portion of the hearing agenda. The Hearing Officer was Sylvia Do, Division Manager, on behalf of the Director of Planning, Building and Code Enforcement. Jacqueline Guerrero, Planning project manager, provided an oral 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. Bethelhem Telahun, Environmental Planning project manager, summarized the Environmental Planning process in accordance with CEQA. During the public comments portion of the meeting, nine speakers spoke in opposition. The concerns raised in the hearing related to construction impacts, noise, traffic, the environmental determination, conditions of approval, the application of the density bonus provisions, and the overall design not aligning with the Diridon Specific Area Plan.

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

Permit Appeals

Two timely appeals (Attachment B) of the Site Development Permit were filed. The appeal was received on July 31, 2026, and August 3, 2026, from Bert Weaver, a neighboring resident, and Trustee of Santa Rita Trust, the owner of an adjacent property, who are eligible appellants under Section 20.100.230.A³. 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 Administrative record was not complete or internally consistent prior to approval.
- b. The Density Bonus Findings misstate the Base Density and Bonus Calculation.
- c. The Permit fails to identify the statutory basis for each requested deviation.
- d. The record lacks substantial evidence supporting the required Density Bonus waiver findings.
- e. Stepback and massing findings are unsupported by substantial evidence.
- f. Permit findings improperly rely upon future revisions rather than present compliance.
- g. Design conformance findings are unsupported and premature.
- h. The record contains materially inconsistent building Height Determinations.
- i. Public Works findings rely upon unresolved and deferral-based issues.
- j. The permit relies upon a defective and separately appealed environmental determination.
- k. Reference to the nearby Aquino project.
- l. Saturday work.
- m. The record does not support the Director's Fire Safety Findings.
- n. The Density Bonus waiver findings do not satisfy Government Code 65915.
- o. The Director's Findings regarding Public Health and Safety are premature.
- p. The Director's Traffic Safety Findings are not supported by substantial evidence.

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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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 C.

Environmental Appeals

Separately, one timely appeal (Attachment D) of the Environmental Determination was also filed. The appeal was received on July 24, 2026, from Bert Weaver, a resident residing near 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.

The appellant specifically appealed on the following issues:

1. The Administrative Record Does Not Demonstrate That the Project Satisfied the Requirements of Public Resources Code Section 21080.66.
2. The City's Environmental Basis for Approval Changed Throughout Project Review Without Being Reconciled.
3. To the Extent the City Continues to Rely Upon Earlier Environmental Documents, Those Documents Do Not Analyze the Approved Project.
4. The Administrative Record Contains Materially Different Building Height Determinations.
5. The Administrative Record Does Not Explain the Removal of the Local Transportation Analysis.
6. The Administrative Record Should Clearly Demonstrate Compliance With Every Applicable Requirement of Assembly Bill 130.

Summary responses to these issues are provided below. To view the full staff analysis, please refer to Attachment A.

ANALYSIS

Permit Appeal

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

Appeal Comment #1: The Administrative Record Was Not Complete or Internally Consistent Prior to Approval.

⁵https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT21ENCL_CH21.04GE_PRPR_PT2PR_21.04.140APEN

The appellant raises concerns in relation to the Site Development Permit being approved while there are numerous unresolved inconsistencies in the development permit.

Staff Response: Staff verified and resolved all project inconsistencies before the hearing date. Any unresolved items were conditioned appropriately. It is not unusual for a project to evolve during the permit review process. For details on each specific issue raised, see Attachment C.

Appeal Comment #2: The Density Bonus Findings Mis-State the Base Density and Bonus Calculation.

The project proposes 276 units, including 14 very-low-income units. The findings, however, improperly analyze a theoretical maximum density of 714 units and a 143-unit density bonus, even though the applicant does not propose any bonus units. The findings must accurately identify the project actually proposed and the statutory relief actually requested.

Staff Response: Staff has revised the record to reflect the accurate density bonus awarded to the proposed project. As the project includes an application pursuant to the State Density Bonus Law (Government Code Section 65915), a city may not apply any development standards that physically preclude development of the project as proposed by the developer at the density allowed. The California Department of Housing and Community Development (HCD) has notified various local agencies that they cannot require a qualified project to be redesigned in order to avoid the need for a waiver. For details on each specific issue raised, see Attachment C.

Appeal Comment #3: The Permit Fails to Identify the Statutory Basis for Each Requested Deviation.

The appellant raises concerns regarding the inconsistencies with the administrative record regarding the Density Bonus concessions and waivers requested. They note that the Hearing Officer approved the project without identifying the legal basis for each requested deviation or making specific reference to each statutory mechanism required under Government Code Section 65915.

Staff Response: The errors raised during the Planning Director's Hearing were addressed and corrected prior to the signing of the permit. The waivers include staff's analysis explaining the reasons for granting the waivers. For details on each specific issue raised, see Attachment C.

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Appeal Comment #4: The Record Lacks Substantial Evidence Supporting the Required Density Bonus Waiver Findings.

The appellant raises concerns that the applicants incorrectly justify physical preclusion under Government Code Section 65915, which grants the waiver of development standards. The applicant justified the waiver requests by noting the loss of units instead of providing technical analysis. Reference Attachment C, for further specifics.

Staff Response: The applicant requested five waivers and provided written justification demonstrating that the application of the development standard would preclude the development of the Project as proposed. The applicant also submitted site and architectural plans showing the project's dimensions in detail. The justification and site plan, together, constitute substantial evidence to support the requested waivers. The state law places the burden on the City to deny a waiver request, it must make findings for a “specific, adverse impact” on health or safety, or a historical resource, or be in conflict with state or federal law.

A specific, adverse impact upon health or safety is defined as “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete, as noted in Section 65589.5. Per the courts in *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549 and *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755 clarified that the Density Bonus Law waivers apply to the project as designed. Staff did not identify any public health safety impact from the granting of the requested waivers.

Appeal Comment #5: Stepback and Massing Findings are Unsupported by Substantial Evidence.

The record contains no substantial evidence demonstrating that neighborhood transition standards, skyline-level massing requirements, or stepback plan requirements physically preclude construction of the project. Reference Attachment C for further specifics.

Staff Response: As mentioned above, under the State Density Bonus Law, a city is precluded from applying any development standard to a project if it will physically preclude development at the density and with the concessions permitted by the Density Bonus Law. This preclusion applies whether the applicant requests a waiver for that standard or not.

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With regard to the stepback plane requirement, per the courts in *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549 and *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755 clarified that the Density Bonus Law waivers apply to the project as designed. In other words, when a project qualifies under the Density Bonus Law, a city may not apply any development standards that physically preclude development of the project as proposed by the developer at the density allowed. The California Department of Housing and Community Development (HCD) has notified various local agencies that they cannot require a qualified project to be redesigned to avoid the need for a waiver. The City must consider the project as proposed, inclusive of any requested concessions or waivers.

Appeal Comment #6: Permit Findings Improperly Rely Upon Future Revisions Rather Than Present Compliance.

The permit repeatedly relies upon future revisions to project documents and conditions of approval to demonstrate compliance with applicable requirements. These include unresolved design revisions, Public Work revisions, service-location changes, environmental documentation, and other project details that remained subject to future modifications after permit approval. Required findings must be supported by substantial evidence demonstrating present compliance at the time of decision, not anticipated future revisions.

Staff Response: The City properly imposed conditions of approval on the Site Development Permit that the Applicant must satisfy prior to receipt of building permits for the Project. It is a legally acceptable and highly common practice to subject a discretionary entitlement to conditions of approval, particularly with regard to a project's compliance with detailed engineering or safety standards (e.g., building, electrical, plumbing codes), utility requirements, or public improvements. That the Director imposed these common conditions of approval on the Project does not constitute evidence that material issues were unresolved at the time of approval.

Appeal Comment #7: Design Conformance Findings are Unsupported and Premature.

The permit concludes that the project complies with the Downtown Design Guidelines while simultaneously requiring future revision to architectural materials, balcony treatments, columns, and other design elements. Similarly, loading, waste management, parking, sidewalk, street-tree, sewer, and service-location issues remained unresolved at the time of approval. The Director therefore approved a project before present compliance with applicable design findings was demonstrated.

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Staff Response: The project conditionally complies with the Downtown Design Guidelines, with the applicant committed to revising the project to include the additional architectural changes noted above. Before the City issues the building permit for this project, the changes will be reflected on the plan set to demonstrate compliance.

As previously mentioned in comment #6, it is a legally permissible and widely practiced approach to subject a discretionary entitlement to conditions of approval. These conditions would be applied at appropriate phases of the project, such as prior to building permit issuance or construction, thus ensuring compliance with City standards and requirements.

Appeal Comment #8: The Record Contains Materially Inconsistent Building Height Determinations.

The administrative record contains multiple building-height determinations that changed throughout project review. Staff reports identify one height, while subsequent submissions and testimony describe a different measurement methodology and resulting height.

Staff Response: Under the provisions of AB130, labor standards apply to projects that have a building height of 85 feet or greater. AB130 provides the criteria of buildings over 85 feet in height but does not establish a definition for the measurement methodology of a building. The City's zoning code has one definition of height, while state law has another. Because building height directly impacts the City's statutory analysis under AB 130 and local development standards, the City was required to reconcile these differing measurements, identify the governing methodology, and correct the written findings prior to permit approval.

Ultimately, the appropriate technical measurement is the California Building Code section 202 definition of building height: the vertical distance from grade plane to the average height of the highest roof surface. In order to align with state law, the City defaulted to the California Building Code, also state law, for how the height of the building was determined. In this case, the height measured from the grade to the flat roof, which is the top surface of the building, is 84 feet 10 inches, below the 85-foot height trigger for labor standards under AB 130.

Appeal Comment #9: Public Works Findings Rely Upon Unresolved and Deferral-Based Issues.

The appellant notes that the permit contains unresolved inconsistencies concerning loading facilities, parking dimensions, trash staging, sidewalk configuration, street trees, sanitary sewer capacity, and transportation analysis. Rather than resolving these issues

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prior to approval, the City deferred them to post-approval review or future permit conditions. These unresolved issues further demonstrate that material aspects of project compliance remained under review at the time the required findings were made.

Staff Response: As noted above, the City can impose conditions of approval to demonstrate compliance with requirements. The public works team has issued a final memorandum for the project on July 9, 2026, that covers these topics. Staff has imposed appropriate conditions of approval on the Site Development Permit that the Applicant must satisfy prior to receipt of building permits for the Project to ensure compliance with all requirements.

Appeal Comment #10: The Permit Relies Upon a Defective and Separately Appealed Environmental Determination.

The appellant notes that the permit incorporates the City's AB 130 environmental determination, which is separately appealed and incorporated herein by reference. The permit further relies upon environmental documentation that evolved continuously during review, including reliance on an outdated soil management plan prepared for a prior project, deferred environmental oversight, and conditional measures to address site contamination. Approval of the SDP prior to securing a legally sufficient, final environmental determination constitutes procedural error.

Staff Response: In order for a project to be recommended for approval, it must meet condition 20.100.630.A.3 under the findings section for a Site Development Permit. The project demonstrated conformance with the requirements of the permit as analyzed under the environmental review team's resolution, which is attached to this memorandum as Attachment A.

Appeal Comment #11: Reference to the Nearby Aquino Project.

The project in question is on a much narrower street with different characteristics. Taking this project and copying it here does not conform to the design guidelines or best practices. It is entirely inconsistent, incompatible, and lacks any aesthetic harmony with historic homes along Gifford.

Staff Response: The project is not near historic homes as noted in the Historic Resources Inventory map located on the City's website – the closest historic property is located 525 feet away on Park Avenue. The Historic Preservation Officer was also consulted during the initial review of the project and confirmed that no historic properties were adjacent to the project site. Thus, the project was not required to consider

incorporating elements from the historic homes into the design under the Downtown Design Standards and Guidelines.

Under state law, this Housing project is only subject to objective design standards, some of which were waived under the State Density Bonus Law. The proposal was reviewed in accordance with the San Jose General Plan, San Jose Municipal Code, City Council policies, Downtown Design Guidelines and California Environmental Quality Act. More detail is provided under Attachment E and Attachment F for the findings for the categories mentioned above.

Appeal Comment #12: Saturday Work.

The project excludes concrete pours on Saturday. Please also include ground excavation and any other soil work in the list of excluded items to be performed on Saturdays.

Staff Response: The applicant has stated they requested the extended construction hours to reduce the overall construction time for this site and would like to maintain the extended constructions hours. The project is subject to standard environmental permit conditions related to air quality, biological resources, cultural resources, geology and soils, paleontological resources, hazards and hazardous materials, hydrology and water quality, and noise to reduce and mitigate the temporary impacts of construction on surrounding properties.

Appeal Comment #13: The Record Does Not Support the Director's Fire Safety Findings.

The appellant raises concerns that the Site Development Permit does not meet the Fire Safety requirements for the City. The project is asking for a fire variance, which demonstrates deficiencies with the current proposed project design. Thus, the project at this time does not align with Section 20.100.630 of the San José Municipal Code, which requires the Director to find that a project would not be detrimental to the public health, safety, or welfare or adversely affect surrounding properties.

Staff Response: The Fire Department's review of the proposed project was limited to high-level site review during the planning phase to determine building feasibility. The final design of the building will need to conform to all of the applicable Fire codes. The proposed building, through the Building Permit process, will need to provide the specifics of this variance that would need approval by the Fire Department and will be addressed during the Building Plan Check review stage. Any mitigation will need to be reviewed and engineered to the satisfaction of the Fire Chief. An approved variance will

be required prior to the issuance of a Building Permit. For details on each specific issues raised, see Attachment C.

Appeal Comment #14: The Density Bonus Waiver Findings Do Not Satisfy Government Code 65915.

The appellant raises the concern that Government Code 65915 authorizes a waiver only where application of a development standard would physically preclude construction of the development at the permitted density.

The record contains no evaluation of alternative building layouts, redistribution of floor area revised unit configurations, or other feasible design alternatives that would allow compliance while maintaining the project's residential density. Instead, the findings address only project efficiency and preferred design. Government Code 65915 requires more.

Staff Response: As mentioned above under Comment # 2, the State Density Bonus Law precludes a City from applying a development standard to a project if it will physically preclude development at the density and with the concessions permitted by the Density Bonus Law. This preclusion applies whether the applicant requests a waiver for that standard or not.

The applicant's request for five waivers is supported by a written justification demonstrating that application of the development standard would preclude development of the project as proposed. The applicant also submitted 45 pages of site plans showing the dimensions of the project in minute detail. The justifications and site plan, together, constitute more than enough substantial evidence to support the waivers. They are based on the geometry of the project with respect to each development standards. The City may only deny a waiver request on the basis that it will result in a "specific, adverse impact" on health or safety, or a historical resource, or is contrary to state law. No such evidence exists in the record to support such findings. For details on each specific issue raised, see Attachment C.

Appeal Comment # 15: The Director's Findings Regarding Public Health and Safety are Premature.

The appellant raises concerns that the Government Code Section 65915 permits limitation of waivers where there is substantial evidence of a specific adverse impact on public health or safety that cannot be satisfactorily mitigated. The administrative record identifies several issues requiring additional engineering review before construction may proceed. Raising the issue of whether the Director possessed sufficient evidence to

conclude that the project would avoid unacceptable impacts to neighboring properties when the Site Development Permit was approved.

Staff Response: The appeal comments appear to misunderstand the City's burden for granting a waiver request with its burden for denying one. Under the State Density Bonus Law, a city is not required to affirmatively find that a waiver will not result in a specific, adverse impact upon health or safety. Rather, if it chooses to deny a waiver request, it must find that the waiver would result in a specific, adverse impact upon public health or safety or is contrary to state or federal law. For details on each specific issue raised, see Attachment C.

Appeal Comment #16: The Director's Traffic Safety Findings Are Not Supported by Substantial Evidence.

Santa Rita Trust submitted written comments and public testimony identifying concerns regarding driveway conflicts, sight distance, construction traffic, access, and traffic flow adjacent to its commercial operations before the Director acted. The record does not contain substantial evidence supporting the Director's finding that the project provides adequate and safe access as required by San José Municipal Code 20.100.630.

Staff Response: Due to the project's eligibility for a state statutory exemption under state law, AB 130, the project is exempt from environmental review with regard to transportation impacts based on Vehicle Miles Traveled. The City of San Jose City Council Policy 5-1 established a framework requirement of a CEQA Transportation Analysis for VMT impacts and a supplemental requirement of a Local Transportation Analysis (LTA) for effects on multimodal transportation, access, circulation, and related safety elements for consistency with the General Plan. Under state law AB 130, the project is ministerial and exempt from CEQA, which overrides the City's requirements under City Council Policy 5-1. Therefore, there is no LTA requirement for the project.

There are numerous conditions of approval for the Site Development Permit that address access and pedestrian safety, including among others, development of a Transportation Demand Management plan to the satisfaction of the San José Department of Transportation; monetary contributions to pedestrian, vehicle, and bicycle safety projects along West San Carlos Street and Gifford Avenue; and installation of audible and visual warning signs at the West San Carlos Street entrance /exit to warn pedestrians of approaching vehicles. The project is held to objective standards and policies that apply to other similar land use developments within the same zone. In this instance, since the project is within the Diridon Specific Area Plan, it is subject to the Diridon Station Area Infrastructure Impact and other standard conditions. For details on each specific issue raised, see Attachment C.

Environmental Appeal

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

Environmental Appeal Comment #1: The Administrative Record Does Not Demonstrate that the Project Satisfied the Requirements of Public Resources Code Section 21080.66.

Before invoking the AB 130 exemption, the City was required to determine that the project satisfied all statutory requirements applicable to the exemption.

Rather than identifying the evidence supporting each required finding, the administrative record reflects changing project documentation, differing environmental analyses, unresolved environmental documentation of dirt stored on-site from a nearby housing project, and permit conditions without clearly distinguishing which statutory requirements had already been satisfied and which obligations remained to be completed.

Appellant claims the City, therefore, failed to establish a complete and internally consistent record supporting its determination that the Project qualified for the exemption.

Staff Response: Staff initially reviewed the project for eligibility for a statutory exemption under AB 130 pursuant to Public Resources Code Section 21080.66 of the Government Code in December 2025. At that time, staff initially determined the project would not be eligible for an AB 130 exemption due to the project site being listed as a Cleanup Program Site on the State Water Resources Control Board. However, after further review of AB 130 requirements under Section 65941.1(a)(8)(C), staff understood that the site eligibility criteria are only applicable for sites listed on the "Cortese List," a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control. The project site is not on a list of sites on the Cortese List, nor is it designated by the Department of Toxic Substances Control, and therefore meets this eligibility requirement for a statutory exemption under AB 130.

Pursuant to CEQA Guidelines Section 21080.66, a residential project must meet the following criteria in order to qualify for a statutory exemption from CEQA under AB 130. The project meets all these standards.

- The project is a residential development consisting of 276 residential units.
- The project is within the Downtown Commercial Zoning District and Downtown General Plan Land Use Designation. These designations allow for multi-family

residential uses. The project would result in a proposed density of 310 dwelling units/acre (DU/AC), consistent with the General Plan designation's maximum density of 800 DU/AC. The project would also be consistent with the required development standards for the Zoning district, including setbacks and height limits. Therefore, the project is consistent with the General Plan and Zoning.

- The project site is approximately 0.89 acres and does not exceed 20 acres.
- The project is located within an urban area and surrounded by urban uses (commercial uses to the west and south, single-family residences to the east, and multi-family residences and commercial uses to the north).
- The project would construct 276 dwelling units on a 0.89-acre site, resulting in a density of 310 DU/AC. Therefore, the density of the project is above the minimum requirement of 15 dwelling units/acre.
- The project site is currently vacant land and does not have any historic structures.
- The project site is a vacant lot, surrounded by urban uses. The site does not contain any sensitive habitats. The project site is not located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. The site is not within an earthquake fault zone, flood hazard area, nor is it on natural or protected lands.

Staff prepared a memorandum outlining the project's eligibility for a statutory exemption under AB 130, including site eligibility, general plan, and zoning consistency. The memorandum also summarizes the tribal consultation process completed for this project. This memorandum has been added to the administrative record. See Attachment A. Based on the evidence, staff concluded that the administrative record contains substantial evidence supporting the City's determination that the project qualifies for Statutory Exemption under Public Resources Code Section 21080.66.

Regarding the dirt stored on-site, the site is currently enrolled in the site cleanup program under the oversight of the Santa Clara County Department of Environmental Health. The applicant is required to complete soil remediation prior to the start of construction and introduction of residential uses. The project site is not on a list of sites on the Cortese List, nor is it designated as a hazardous waste site by the Department of Toxic Substances Control.

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Environmental Appeal Comment #2: The City's Environmental Basis for Approval Changed Throughout Project Review Without Being Reconciled.

The City's environmental rationale evolved repeatedly during project review, and, at various times, the administrative record relied upon:

- The December 2020 Addendum;
- The December 23, 2025, environmental memorandum;
- The Downtown Strategy 2040 Environmental Impact Report;
- A proposed Local Transportation Analysis;
- Future revisions to environmental documentation; and
- Ultimately, the Assembly Bill 130 statutory exemption.

The final approval does not explain how these differing environmental analyses relate to one another or identify the evidence supporting the City's final determination. Instead, the administrative record reflects a continuously evolving environmental basis for approval rather than one coherent environmental determination supported by substantial evidence.

Staff Response: The appellant is referring to two different projects. The December 2020 Addendum to the Downtown Strategy 2040 Environmental Impact Report was prepared for a proposal to build the Delmas Senior Living Facility at this site. The City of San José City Council approved that project and the Addendum in January 2021. Structures on the project site were demolished, but project construction did not start.

In October 2025, the City received an application for the proposed residential project for the same parcel. Staff reviewed the current project independently of the December 2020 Addendum. The environmental documents prepared for the previous project were not applicable to this project. The appellant is correct to note that City's initial review, documented in the December 23, 2025 environmental memorandum, stated the project's inconsistency with AB 130 requirements due to the presence of hazardous materials on site. However, as described in the response above, subsequent reviews determined the project site is eligible for AB 130, since the site is not listed on the Cortese List. While the documents prepared for the Delmas Senior Living Facility project are part of the City's administrative record for the project site, the City did not rely on the 2040 Addendum environmental analysis for approval of the proposed project.

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Refer to Staff Response to Appeal Comment #16 above for why an LTA is not required for the project. The appellant's assertion that the administrative record relied on an LTA is inaccurate.

The City does not rely on future revisions of environmental documents as a basis for project approval. Rather, the City evaluates each application on a project-by-project basis.

Environmental Appeal Comment #3: To the Extent the City Continues to Rely Upon Earlier Environmental Documents, Those Documents Do Not Analyze the Approved Project.

The December 2020 Addendum evaluated a six-story commercial senior living facility. The Project approved by the Director is an eight-story, 276-unit apartment building.

The approved project differs materially with respect to:

- Land use;
- Occupancy;
- Building height;
- Unit count;
- Floor area;
- Parking configuration;
- Excavation;
- Transportation characteristics; and
- Construction activities.

To the extent the City continues to rely upon the earlier environmental documentation, the record does not explain why those analyses remain applicable to the project ultimately approved.

Staff Response: The December 2020 Addendum for a previously approved Delmas Senior Living Facility project was not cited on the Site Development Permit, nor is it relied upon as the environmental basis for approval of the Gifford project.

Environmental Appeal Comment #4: The Administrative Record Contains Materially Different Building Height Determinations.

Appellant states the administrative record contains multiple building-height calculations developed through differing measurement methodologies during project review.

Those differing calculations were never reconciled before approval. The City should identify the governing methodology, explain the differing calculations contained in the record, and clearly identify the factual basis supporting its final determination.

Staff Response: Refer to Staff Response to Appeal Comment #8 above regarding building height determination.

Environmental Appeal Comment #5: The Administrative Record Does Not Explain the Removal of the Local Transportation Analysis.

Appellant states that earlier City review documents identified a Local Transportation Analysis for the Project. The final approval removed that requirement.

- The administrative record does not explain:
- Why the analysis was no longer required;
- Whether the removal resulted from AB 130;
- Whether it resulted from another legal determination; or
- Whether any transportation review remained independently required.

Without that explanation, the administrative record does not provide a coherent basis for the City's final environmental determination.

Staff Response: Refer to Staff Response to Appeal Comment #16 above for why an LTA is not required for this project. Through the formal plan review process, staff evaluated safety considerations with regard to the driveways. The project was conditioned to provide adequate vehicle stacking space on-site to ensure that entering vehicles do not queue excessively in the public roadways. At the project implementation phase, the Department of Transportation will determine if red curbs are required on either side of the proposed driveways to provide adequate sight distance. A trash route plan will be reviewed and determined at the time of building permit approval.

Environmental Appeal Comment #6: The Administrative Record Should Clearly Demonstrate Compliance With Every Applicable Requirement of Assembly Bill 130.

Appellant requests that if the City continues to rely upon Public Resources Code section 21080.66, the administrative record should clearly identify the evidence supporting each applicable statutory requirement, including project eligibility, site eligibility, general plan and zoning consistency, tribal consultation requirements, environmental assessment requirements, hazardous-materials requirements, applicable labor provisions, and any other statutory prerequisite upon which the exemption depends.

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Staff Response: Staff has prepared a memorandum (Attachment A) outlining the project's eligibility for a statutory exemption under AB 130, including site eligibility, general plan, and zoning consistency. The memorandum also summarizes the tribal consultation process completed for this project and has been added to the administrative record.

Staff has applied Standard Permit Conditions as listed in the City's Environmental Review Handbook. A permit condition for the continuation of site cleanup was also applied to the project, as is permissible under Section 21080.66(c)(1)(A) to ensure the site would be remediated of residual soil contamination under the oversight of the Santa Clara County Department of Environmental Health prior to the start of construction and introduction of residential uses. Additionally, a voluntary permit condition for vibration monitoring surveys was applied to the project based on agreements made between the applicant and community members. No additional environmental assessments or labor provisions are required for this project.

Staff Conclusion

Based on the analysis above, the project meets the eligibility criteria under AB130 and qualifies for the statutory exemption from CEQA. The City did not rely on the environmental analysis prepared for the previously approved Delmas Senior Living Facility as the basis for approval of the proposed project. The issues raised in the appeal do not alter the City's final determination or the basis of project approval. 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.

COORDINATION

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

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the October 20, 2026, City Council meeting.

Additionally, staff followed City Council Policy 6-30: Public Outreach Policy⁶ to inform the public of the proposed project. On-site signs have been posted on the project frontage since February 6, 2026. A community meeting for the project was held via video conference on May 4, 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. (See Attachment G for all Public comments as of the date of preparation of this report.)

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, CEQA Guidelines Section Pursuant to Public Resources Code Section 21090.66 (Assembly Bill 130), File No. ER25-225 for the 470 West San Carlos Street Project.

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

⁶ <https://www.sanjoseca.gov/home/showpublisheddocument/12813/636669915135130000>

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For questions on the permit appeal, please contact Jacqueline Guerrero, Planner III, Environmental Services Department at Jacqueline.Guerrero@sanjoseca.gov or (408) 535-8235. For questions on the environmental appeal, please contact Bethelhem Telahun, Environmental Planner, Environmental Services Department at Bethelhem.Telahun@sanjoseca.gov or (408) 931-4383

ATTACHMENTS:

Attachment A – AB 130 Exemption Memo
Attachment B – Permit Appeal Application
Attachment C – Permit Appeal Responses
Attachment D – Environmental Appeal Application
Attachment E – Permit Approved at Director's Hearing
Attachment F – Permit Plan Set
Attachment G – Public Comments