

**SECOND AMENDMENT TO THE DRAFT SUPPLEMENT TO THE FINAL
ENVIRONMENTAL IMPACT REPORT FOR THE EVERGREEN-EAST HILLS
DEVELOPMENT POLICY
CITY FILE #PP08-121,
December 2008**

This is a Second Amendment to the Draft Supplement to the Final Environmental Impact Report (DSEIR), prepared in conformance with the California Environmental Quality Act (CEQA), and CEQA Guidelines Section 15121(a) and 15161. A First Amendment to the Draft SEIR, consisting of comments received by the Lead Agency, the City of San José, on the DSEIR during the 45-day DSEIR circulation period, responses to those comments, and revisions to the text of the DSEIR was made available to the public on November 21, 2008. The Amendment, together with the Draft SEIR, was intended to constitute the Final SEIR for the proposed project.

The reason for preparing this Second Amendment is:

- 1) To modify and add text to the Draft Policy. The City Council will need to consider any additional exempt intersection improvements through an update to the Policy. The Draft Policy already rejects intersection improvements to Capitol Expwy and Nieman Blvd; San Felipe Rd and Yerba Buena Ave (North); San Felipe Rd and Delta Rd; Evergreen Commons and Tully Road.
- 2) To clarify a change in traffic analysis software.
- 3) To clarify that both the Director of Planning and the Director of Public Works will determine if a mitigation is undesirable based on the exemption criteria called out in the Policy.

Revise Text as Shown

Page 28 of the Draft SEIR, Chapter 2.1.34, Evergreen-East Hills Development Policy Impacts

According to the Evergreen Development Policy's threshold of significance, the traffic allocation proposed by the project would result in a significant impact at thirteen study intersections located within Evergreen, shown on Figure 4 and Table 2.1-8.

In many of these cases, the significant impacts would be due to a degradation in LOS letter grade, even though operations would remain at levels deemed acceptable per the City's General Plan (i.e., LOS D or better). Nonetheless, the current Evergreen Development Policy defines these as impacts and requires that mitigation be identified. ~~(although t~~ The proposed policy exempts four intersection impacts from requiring mitigation due to ~~under certain circumstances~~ proposed mitigations' undesirable impacts on biological resources or conflicts with other modes of travel. Should a traffic analysis for a project identify a mitigation that meets the exemption criteria called out in the policy (intersection meets LOS D or better and mitigation has undesirable impact on biological resources or conflict with other modes of travel,) and the intersection has not been previously identified as one of the four exempt intersection mitigations, the City Council would need to consider an update to the Policy to exempt an additional intersection improvement from the identified mitigation.

Page 18 of the 2nd Draft Evergreen-East Hills Development Policy, dated November 2008, Chapter IV, Exemption Section, 11th paragraph down

In the event development is proposed at locations substantially different than the assumed distribution in the traffic analysis performed for the Supplemental Environmental Impact Report to provide environmental clearance of this EEHDP, a supplemental traffic analysis would be required to determine whether additional intersections would be affected and whether improvements could be made to restore traffic LOS to background conditions. Should a traffic analysis for a project identify a mitigation that meets the exemption criteria called out in the policy (intersection meets LOS D or better and mitigation has undesirable impact on biological resources or conflict with other modes of travel,) and the intersection has not been previously identified as one of the four exempt intersection mitigations, the City Council would need to consider an update to the Policy to exempt an additional intersection from the identified mitigation.

~~In the event the improvements would create undesirable conflicts with other modes of travel, the resulting LOS degradation would also be deemed acceptable at those intersections for purposes of facilitating the proposed development consistent with this EEHDP so long as the affected intersection would continue to operate at LOS D or better and, but for the vehicular traffic distribution element, the proposed development would otherwise meet all of the requirements of this EEHDP.~~

Page 18 of the 2nd Draft Evergreen-East Hills Development Policy, dated November 2008, Chapter IV, Level of Service Standards-EEHDP Area Projects

Impact Criteria. A project is said to create a significant adverse impact on traffic conditions at a signalized intersection located in the Development Policy Area if for during peak hours:

1. The level of service at the intersection degrades to a worse letter grade level of service, or
2. a) For non-residential projects, the level of service at the intersection is an unacceptable Level of Service E or F and the addition of project traffic ~~adds more than a one-half percent (0.5%) increase in the critical traffic volume at the intersection~~ creates an increase in critical delay value by 2 seconds or more and an increase in critical V/C ratio of 0.005 or more. (Modified from the EDP to reflect a change in traffic analysis software)
 - b) For residential projects, one or more added trips to an intersection operating at an unacceptable Level of Service E or F.

Unacceptable Levels of Service are intersections functioning at Level of Service E or F under “background” conditions. Background conditions are the traffic conditions that take into account the build out of already approved trips through the Original Evergreen Development Policy, existing buildings, and projects with existing entitlements. A significant impact can be satisfactorily mitigated when measures are implemented that would restore intersection level of service to background conditions or better.

Page 15 of the 2nd Draft Evergreen-East Hills Development Policy, dated November 2008, Chapter IV, Level of Service Standards-EEHDP Area Projects

New City Public Facilities

The purpose of the retail and office square footage pool is to facilitate private investment and development in the Evergreen-East Hills area to minimize vehicle trips out of the area. New City public facilities (i.e., libraries, community centers, fire stations, etc.) would need to complete a traffic analysis using the Traffic Impact Criteria for non-residential uses as described in this Policy. Based on the results of the analysis, the following are courses of action consistent with this Policy:

- If the analysis concludes that the proposed project would have no transportation impact, the City public facility project does not need to utilize any of the square footage in the pool or pay the Traffic Impact Fee.
- If the analysis identifies an impact for which the mitigation is identified in this Policy, then the City public facility project would need to draw down the appropriate square footage from the pool and pay the Traffic Impact Fee.
- If the analysis concludes that the proposed project would result in an impact for which there is mitigation not identified in this Policy and the Director of Planning and Director of Public Works has determined that:
 - The mitigation is desirable, then that mitigation would need to be satisfied as part of the City public facility project; or
 - The mitigation is undesirable due to potential effects on the pedestrian conditions and/or natural resources, then the City Council would need to consider an update to this Policy.

(Less than Significant Cumulative Impact with Mitigation)Section 15088.5 Recirculation of an EIR Prior to Certification

The CEQA Guidelines (Section 15088.5) states that a lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project proponents have declined to implement. “Significant new information” requiring recirculation including, for example, a disclosure showing that:

- 1) A new significant environmental impact would result from the project or from a new mitigation proposed to be implemented.
- 2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- 3) A feasible project alternative or mitigation measures considerably different from other previously analyzed would clearly lessen the significant environmental impact of the project, but the project’s proponents decline to adopt it.
- 4) The draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The clarification of process for determining future intersections exempt from mitigation and the change in phrasing of the level of service criteria to reflect a change in traffic analysis software does not revise the SEIR's impact conclusions, as set forth above and in the CEQA Guidelines, that would require recirculation. For these reasons, a Second Amendment to the Draft SEIR is the appropriate document to enter this clarifying information into the administrative record for the project.