



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** October 13, 2023

**COUNCIL DISTRICT:** 8

**SUBJECT: GPT23-006 EVERGREEN-EAST HILLS AREA DEVELOPMENT POLICY  
GENERAL TEXT PLAN AMENDMENT, INCLUDING AN ORDINANCE  
UPDATE TO TITLE 14, EVERGREEN EAST HILLS DEVELOPMENT  
POLICY TRAFFIC IMPACT FEE REQUIREMENT**

## **RECOMMENDATION**

The Planning Commission voted 9-1-0-1 (Garcia opposed and Rosario absent) to recommend that the City Council take the following action:

1. Adopt a resolution adopting the Addendum to the Envision San José 2040 General Plan Final Environmental Impact Report and Supplemental Environmental Impact Report and the Final Supplemental Environmental Impact Report for the Updated Evergreen-East Hills Area Development Policy, and addenda thereto in conformance with the California Environmental Quality Act (CEQA)
2. Accept the September 2023 Evergreen-East Hills Development Policy Nexus Study Update;
3. Adopt a resolution amending the Envision San José 2040 General Plan to amend the Evergreen-East Hills Development Policy (EEHDP) (GPT23-006) to limit the application of the EEHDP to projects that received an approved entitlement (general plan amendment and/or zoning amendment) and/or a land use permit from the effective date of the EEHDP to the effective date of this resolution, making the Evergreen-East Hills Traffic Impact Fee inapplicable to Evergreen-East Hills development projects after the effective date of this resolution;
4. Approve an ordinance amending San José Municipal Code Title 14, Chapter 14.33, entitled "Evergreen-East Hills Development Policy Traffic Impact Fee Requirements," to limit the application of Chapter 14.33 to projects that received an approved entitlement (general plan amendment and/or zoning amendment) and/or a land use permit from the effective date of the EEHDP to the effective date of the related resolution amending the EEHDP, making the Evergreen-East Hills Traffic Impact Fee inapplicable to future Evergreen-East Hills development projects.

## **SUMMARY AND OUTCOME**

If the City Council approves the actions listed above as recommended by the Planning Commission, future development located within the Evergreen-East Hills Development policy area would no longer be subject to the policy and its development caps. Any transportation-related analysis would be subject to City Council Policy 5-1. The policy would remain in effect for projects that have already received their entitlements.

## **BACKGROUND**

The Background of this project can be reviewed on pages 2 – 4 of the attached Planning Commission staff report.

## **ANALYSIS**

Analysis of project impacts pursuant to CEQA, rezoning, and Planned Development Permit, including conformance with the General Plan, Municipal Code, and City Council policies are contained in the attached staff report.

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would facilitate job creation within the City limits by removing barriers to commercial/industrial development in the Evergreen-East Hills Policy area. It also shifts the analysis of transportation improvements in the policy area away from the Level of Service to Vehicle Miles Traveled (VMT).

## **EVALUATION AND FOLLOW-UP**

The City Council is the final decision-making body for this project. Following a decision by the City Council, no additional evaluation would be conducted. The City Council has the option to approve, deny, or defer the project to a later City Council meeting. If denied, the development policy and Traffic Impact Fees would remain in effect, unchanged. If approved, the Evergreen-East Hills Development Policy and associated Traffic Impact fees would be amended to no longer apply to future projects. These updates would become effective 30 days after a second reading of the general plan amendment at a subsequent City Council meeting.

## **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney’s Office

## **PUBLIC OUTREACH**

This memorandum is posted on the City’s Council Agenda website for the October 24, 2023 City Council Meeting. A notice of the public hearing was published in the San José Post Record and on the City’s website. The staff memo is also posted on the City’s website and staff has been available to respond to questions from the public.

City staff hosted a community meeting on this topic following the public Task Force process on the General Plan Four-Year Review:

- Evergreen-East Hills Development Policy Community Meeting – May 27, 2021, at 6 p.m. (English, Spanish, and Vietnamese)
- Also attended District 8 Community Roundtable meeting on April 1, 2021.

## **COMMISSION RECOMMENDATION AND INPUT**

The project was initially listed on the consent calendar. Commissioner Garcia began a discussion to defer the item and in response, Commissioner Cantrell asked staff what the impacts of delaying the decision would be. Staff responded that due to the fact the existing development policy had no capacity left, there were a number of existing projects that could not move forward until the policy was amended/retired.

Commissioner Young asked that the project be pulled from the consent calendar and staff made a verbal presentation on the project. There was no additional public comment following the staff report.

Following the staff report, Commissioner Bickford asked staff if the policy were “retired,” would new projects be subject to no traffic fees? Deputy Director Brilliot explained that they would be subject to analysis under the VMT Policy (Council Policy 5-1) and if they were located in inmitigable areas, they would be subject to VMT fees.

Commissioner Young then asked whether the current action was just to complete a decision that the City Council had already made and staff responded in the affirmative. At this point, Commissioner Young made a motion to approve the staff recommendation, with Commissioner Tordillos seconding.

Commissioner Bickford asked staff about the Nexus study and staff explained that it was included as Exhibit C of the staff report.

Commissioner Garcia made a substitute motion to defer the item until November 15, 2023, to take a closer look at changes proposed to traffic mitigations.

The vote to defer did not pass (5-5-0-0, Ornelas-Wise, Barocio, Bickford, Cantrell, and Garcia in favor, Casey, Oliverio, Tordillos, Young, and Lardinois opposed).

Commissioner Ornelas-Wise then asked staff for more clarity on the Nexus study and what it addressed, including concerns about pedestrian safety. Commissioner Cantrell was also concerned about whether the transportation improvements included in the policy were fully funded. Staff responded that it depends on whether existing approved entitlements move forward with construction or not. In a very general sense, the Nexus study updated transportation improvements based on more complete information as the policy area was built out.

Commissioner Bickford asked whether fees collected from VMT mitigation fees would be similar to the existing traffic impact fees. Staff responded that it was not an apples-to-apples comparison because VMT fees would be directed at different types of transportation improvements.

Commissioner Barocio asked staff whether this was the last area development policy based on the Level of Service analysis. Staff responded that they believed so, but were unsure. Commissioner Barocio also asked what the vote on the Council recommendation was and staff responded that the recommendation was approved unanimously.

At this point, the vote was taken and as discussed in the Recommendation section above, the Planning Commission recommended approval of the project (9-1-0-1, (Garcia opposed and Rosario absent)).

## **CEQA**

The environmental impacts of this project were addressed by the following Final Environmental Impact Reports: Envision San José 2040 General Plan Final EIR, adopted by City Council Resolution No. 76041 on November 1, 2011, and addenda thereto; Evergreen-East Hills Vision Strategy Project Final Environmental Impact Report adopted by City Council Resolution No. 73570 on December 12, 2006; and the Final Supplemental Environmental Impact Report for the Updated Evergreen-East Hills Area Development Policy, adopted by City Council Resolution No. 74742 on December 16, 2008, and addenda thereto. The Initial Study/Addendum is posted to the City’s “Active EIRs” website at: ( <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/general-plan-four-year-review> ). The Envision San José 2040 General Plan EIR and SEIR can be found at [www.sanjoseca.gov/completedeirs](http://www.sanjoseca.gov/completedeirs). No significant changes have occurred since the Addendum was adopted.

HONORABLE MAYOR AND CITY COUNCIL

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**Subject: GPT23-006 Evergreen-East Hills Development Policy “Retirement”**

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**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  
Secretary, Planning Commission

For questions, please contact Michael Brilliot, Deputy Director, at email or (408) 535-7831.

**ATTACHMENT**

Planning Commission Memorandum dated October 11, 2023



# Memorandum

**TO: PLANNING COMMISSION**

**FROM:** Christopher Burton

**SUBJECT: GPT23-006 EVERGREEN-EAST HILLS  
DEVELOPMENT POLICY “RETIREMENT”**

**DATE:** October 11, 2023

**COUNCIL DISTRICT: 8**

## RECOMMENDATION

Staff recommends that the Planning Commission recommends that the City Council take all the following actions:

1. Adopt a resolution adopting the Addendum to the Envision San Jose 2040 General Plan Final Environmental Impact Report and Supplemental Environmental Impact Report and the Final Supplemental Environmental Impact Report for the Updated Evergreen-East Hills Area Development Policy, and addenda thereto in conformance with the California Environmental Quality Act (CEQA)
2. Accept the September 2023 Evergreen-East Hills Development Policy Nexus Study Update;
3. Adopt a resolution amending the Envision San Jose 2040 General Plan to amend the Evergreen-East Hills Development Policy (EEHDP) (GPT23-006) to limit the application of the EEHDP to projects that received an approved entitlement (general plan amendment and/or zoning amendment) and/or a land use permit from the effective date of the EEHDP to the effective date of this resolution, making the Evergreen-East Hills Traffic Impact Fee inapplicable to Evergreen-East Hills development projects after the effective date of this resolution;
4. Approve an ordinance amending San José Municipal Code Title 14, Chapter 14.33, entitled “Evergreen-East Hills Development Policy Traffic Impact Fee Requirements,” to limit the application of Chapter 14.33 to projects that received an approved entitlement (general plan amendment and/or zoning amendment) and/or a land use permit from the effective date of the EEHDP to the effective date of the related resolution amending the EEHDP, making the Evergreen-East Hills Traffic Impact Fee inapplicable to future Evergreen-East Hills development projects.

## SUMMARY AND OUTCOME

Based on an action required from a General Plan Amendment (GPT21-007) approved by the City Council on December 7, 2021, the EEHDP is being modified to “retire” the development policy, similarly to how the North San Jose Area Development Policy was amended in May 2022, to make the Policy inapplicable to projects that apply for a land use permit after the date of the proposed Policy amendment. The existing Development Policy has reached its maximum development capacity and much of the CEQA analysis for the Policy would be outdated if relied upon for future projects because of changes in state law as implemented by local law regarding transportation analysis under CEQA.

Retiring the policy will allow new development to move forward in the Policy area. Development applications would be evaluated under the City’s recently updated Transportation Analysis Policy (City Council Policy 5-1).

## BACKGROUND

On December 7, 2021, the City Council held a hearing on five General Plan amendments resulting from the General Plan Four-Year Review. Among the General Plan Amendments approved by City Council at this hearing was GPT21-007, referred to as the Evergreen-East Hills Development Policy (EEHDP) General Plan Text Amendment.

In Summary, GPT21-007 modified the General Plan to (see adopted Resolution, Exhibit D):

- Transition to the Transportation Analysis Policy (City Council Policy 5-1) for growth control and include language in the General Plan to close out the EEHDP so that it will only apply to projects that have received development approvals prior to the date of this amendment (GPT23-006) and that are required to pay the EEHDP traffic impact fees.
- As part of closing out the EEHDP, maintain the Evergreen-East Hills Visioning Strategy Guiding Principles and Design Guidelines to memorialize the broader goals and policies of the Evergreen-East Hills Vision Strategy.
- Deliver transportation improvements that support development outcomes to-date.

While this Council Four-Year Review action removed the EEHDP from the Envision San Jose 2040 General Plan, no modification was made to the actual policy document or in the Traffic Impact Fee (TIF) ordinance in Chapter 14.33 of the Municipal Code at that time, resulting in the need for this subsequent action to amend the EEHDP and the TIF ordinance to be consistent with the 2021 General Plan amendment.

### *Evergreen-East Hills Development Policy (1976 – present)*

The Evergreen-East Hills policy area is bounded by Story Road to the north, U.S. 101 to the west, the intersection of U.S. 101 and Hellyer Avenue to the south where the northern boundary of the Edenvale Development Policy Area ends, and the foothills of the Diablo Mountain Range and the Urban Growth Boundary to the east. The predominant land uses within the EEHDP area are single-family residential uses, commercial and retail development, and public uses such as parks and schools. The Evergreen area has historically experienced traffic issues due to physical barriers and land use development patterns – resulting in few ways in and out of the area from and across freeways. This has limited the area’s capacity for new growth, particularly residential development.

To address this problem, the City adopted the Evergreen Development Policy (EDP) in 1976. This policy limited additional residential growth in the area so that the area’s traffic circulation system remained at an acceptable level of service. This policy was updated in 1991, 1995 and most recently in 2008. Summaries of the actions taken in these policy updates can viewed in pages 4 – 10 of Exhibit A.

In 2008, the City adopted an update to the Policy which is the current Evergreen-East Hills Development Policy (EEHDP), which added a 500 residential unit development pool, 500,000 square feet of commercial retail, and 75,000 square feet of office development in the Policy area. Additionally, the EEHDP limits residential development to 35 units on any single parcel unless the development incorporates affordable housing, historic preservation, or mixed-use components, in which case a greater number of units could be approved. The EEHDP also establishes a traffic impact fee program for new projects drawing from the development pool to fund 20 transportation improvements identified in the 2008 Final Environmental Impact Report for the EEHDP. The transportation study, Environmental Impact Report (EIR) and Supplemental Environmental Impact Report (SEIR) for the existing EEHDP evaluated the impacts of development under the EEHDP using the Level of Service (LOS) method of transportation analysis which

measures vehicle delay and roadway auto capacity to determine if mitigation was required and the type of mitigation measures that would reduce traffic impacts. The attached 2023 revised transportation study (Exhibit C) and proposed Policy amendment (Exhibit A) specify which transportation improvements have already been completed and those which will be completed in the future as TIF funding is collected from approved, but not yet constructed, development in the Policy area. Some of the transportation improvements are also proposed to be revised to provide the same or better transportation mitigation than those adopted as EEHDP mitigation measures.

*Analysis of Transportation Impacts of New Development in the Policy Area after "retirement" of the EEHDP.* Upon Council approval of the proposed EEHDP amendment, the transportation impacts of applications for new development will be evaluated pursuant to the requirements of Senate Bill 742 and Council Policy 5-1 using a Vehicle Miles Traveled metric, as explained in more detail below.

#### *Senate Bill 743, City of San José Vehicle Miles Traveled Policy, and EEHDP*

In September 2013, the California Legislature passed, and Governor Brown signed, [Senate Bill \(SB\) 743](#) (Steinberg) which mandates that jurisdictions can no longer use automobile delay, commonly measured by LOS when doing transportation analysis under the California Environmental Quality Act (CEQA). SB 743 required that as of December 28, 2018, Vehicle Miles Travelled (VMT) is the metric for transportation analysis under CEQA, or another measure that "promote[s] the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." The intent of this change is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway auto capacity (referred to as Level of Service or LOS) to a reduction in vehicle emissions by reducing the amount and distance people drive, and the creation of robust multimodal networks that support integrated land uses. To comply with SB 743, in February 2018, San José became the fourth city in California to make VMT the City's transportation metric under CEQA for development and transportation projects, which Council Policy 5-1 was updated in December 2022.

The updated State Guidelines took effect on December 28, 2018.

#### *Council Policy 5-1*

In February 2018, Council Policy 5-1 "Transportation Analysis Policy" (the VMT Policy) replaced the City's "Transportation Impact Policy" based upon LOS (former Council Policy 5-3), as the policy for transportation development review in San José. Policy 5-1 aligned the City's CEQA rules and transportation analysis with SB 743 and with the City's Envision San José 2040 General Plan. The change to a VMT-based metric focuses CEQA transportation mitigation on pedestrian, bicycle, and transit facilities, as well as transportation demand management, streamlines CEQA review for projects that improve infrastructure and safety for pedestrians, bicyclists, and transit-riders while reducing the need to travel exclusively by automobile, and facilitates residential, commercial, and mixed-use infill projects that improve air quality by reducing the number of miles driven by automobiles. .

In December 2022, Council approved amendments to Policy 5-1 to further implement the Envision San Jose 2040 General Plan by promoting planned infill growth and completing a multi-modal transportation network. These amendments were largely for the purpose of facilitating housing, particularly affordable housing, with specific authority for the Council to adopt a statement of overriding considerations of significant transportation impacts in certain limited circumstances.

Because of the buildout of the Policy area and the change in state law and local policy from LOS to VMT, the Environmental Impact Report (EIR) prepared for the EEHDP can no longer be used for the evaluation of transportation impacts under CEQA for applications for proposed development projects within the EEHDP boundary. All proposed development project applications must analyze their transportation impacts



consistent with the City's VMT Policy. However, this does not apply to development projects that have already obtained entitlements under the EEHDP but have not yet commenced construction. Those projects will still be required to develop in accordance with the EEHDP and pay the TIF under the related TIF ordinance in order to mitigate the cumulative transportation impacts of those already-entitled projects. The TIF will be collected from existing entitled projects upon issuance of building permits consistent with the amended Policy and amended TIF ordinance. The TIF funds will be used for transportation improvements identified in the revised traffic study, Amended EEHDP, and amended TIF ordinance.

*Four Year Review of the General Plan (GPT21-007) and Council Direction to Retire the EEHDP (2021)*

In December of 2021, the City Council adopted amendments to the Envision San Jose 2040 General Plan to continue to support high and medium density housing development in infill locations along transit, consistent with other policies in the General Plan. This General Plan amendment stemmed from recommendations of the General Plan Four-Year Review Task Force.

As part of the Four-Year Review, the Council approved a General Plan Amendment (GPT21-007) to retire the Evergreen-East Hills Development Policy for new development. The rationale for this decision was first that all applications for proposed development in the Policy area following the termination of the Policy would be evaluated in accordance with state law requiring a VMT analysis, and the City's VMT Policy (Council Policy 5-1) and its VMT metric for its CEQA transportation analysis. The second rationale for retirement of the EEHDP is that the City's VMT Policy supports the intent of the EEHDP by continuing to prevent significant new market rate housing outside of growth areas. Although the VMT Policy does not establish a development cap for the Evergreen-East Hills area, the policy includes requirements that strictly prohibit market rate housing in high-VMT areas outside of the eight urban villages within the EEHDP. High-VMT projects are those whose VMT levels are too high to be mitigated to less than an environmentally significant level (immitigable VMT) and, therefore, would be subject to stringent CEQA requirements and could become infeasible. Closing out the EEHDP does not except existing entitled projects from payment of the Traffic Impact Fee (TIF) under the EEHDP, whereas new development projects are subject to the requirements of the VMT Policy.

While the 2021 Council Four-Year Review action removed reference to the EEHDP from the Envision San Jose 2040 General Plan, no modification was made to the EEHDP itself or to the related Traffic Impact Fee Ordinance in Chapter 14.33 of the Municipal Code. For that reason, staff recommends approval of the resolution making associated amendments to the EEHDP and the ordinance amending Chapter 14.33 of the Municipal Code limiting the application of the Policy and the TIF to already-entitled development projects.

The only changes being proposed to the Policy and the TIF ordinance are to render the Policy and TIF inapplicable to new development projects and to revise some of the traffic improvements associated with the Policy to accomplish the same or better mitigation. The VMT CEQA analysis was not used in the September 2023 Revised Transportation Study that supports the proposed amendments to the Policy and related TIF in order to be consistent with the original nexus study and the mitigation measures identified in the SEIR and incorporated into the EEHDP and the related Traffic Impact Fee ordinance. The original project was based upon a LOS analysis and the purpose of this update is limited to an update and replacement of some of the transportation mitigation measures identified in the SEIR and the EEHDP with mitigation measures that accomplish the same or better transportation mitigation.

## ANALYSIS

### *Commercial Retail and Office Projects under VMT Policy vs. EEHDP*

The EEHDP provided capacity for commercial retail and office development to help correct the jobs/housing imbalance in the Evergreen-East Hills area and address the traffic congestion issues caused by commute traffic leaving the area in the peak morning periods for jobs and amenities outside of the area, and returning in the evening periods. Similarly, the VMT Policy is intended to promote the long-term vitality of the Evergreen-East Hills area, among the other areas of the City, by enabling office and local-serving retail development in the planned growth areas and near transit nodes. The VMT Policy also provides a mechanism to require commensurate VMT mitigation or fees to construct transportation system investments in the area. Unlike the EEHDP's TIF, the VMT fee does not charge similar types of development (residential, commercial, or office) the same per-vehicle-trip TIF rate (residential per dwelling unit, commercial and office per square foot). The EEHDP's TIF used a per-vehicle-trip rate that was based upon the LOS impacts of new development. The VMT analysis, however, evaluates the average daily amount and distance driven by personal vehicle to and from the project against a significance threshold. A VMT fee is only assessed to projects with immitigable VMT as part of the Council's overriding considerations and is calculated based on the amount of VMT that the project cannot mitigate. In other words, the higher that a project's immitigable VMT level is above the significance threshold, the higher the VMT fee is required.

Currently, only 136 units of residential capacity remain in the Policy area and there is no capacity remaining for retail or commercial office development. There are multiple development applications on file for non-residential projects in the EEHDP area that cannot currently move forward until the proposed amendments to the EEHDP are made.

Additionally, there is one transportation mitigation measure tied to a recently approved development permit. This mitigation will be constructed by the developer using a combination of developer and TIF funds pursuant to a City-Developer contract to be executed by the parties. This transportation mitigation cannot commence until the proposed amendments to the EEHDP and TIF are made.

Staff proposes to amend the EEHDP by terminating the application of the Policy with respect to future development while requiring that currently entitled projects fulfill their requirements including all mitigation and payment of TIF under the EEHDP. All new development that has not already been entitled under the EEHDP would be required to be evaluated on a project-by-project basis under CEQA, including transportation impacts. The proposed changes to the EEHDP will allow for the submission of applications for development, including the potential industrial, commercial, and residential development envisioned in the General Plan.

The amended Evergreen-East Hills Development Policy is attached to this memo as Exhibit A. One of the main changes to the Policy is the addition of a section entitled "2023 Amendment and Effective Date," which explains much of the background information discussed earlier as to why the Development Policy is being retired, as well as providing specific language requiring existing projects entitled but not built prior to the EEHDP's retirement to continue to pay their required Traffic Impact Fees subject to San Jose Municipal Code Chapter 14.33. The proposed amendments to the EEHDP and TIF ordinance also revise some of the transportation improvements to provide the same or better transportation mitigation than the original improvements while supporting multi-modal transportation.

### *Status of the EEHDP Traffic Impact Fee Program*

The EEHDP has been largely implemented and, as of May 2023, there is limited development capacity remaining in the EEHDP. Including all pending applications, there is zero capacity remaining for

commercial/office projects and there is only 136 units of residential capacity remaining in the development pool. The EEHDP identified an estimated \$13 million for 20 transportation improvements associated with development capacity of the Policy.

As the City is working toward delivering these transportation mitigation measures with the collected TIF, City staff completed the Evergreen-East Hills Development Policy Nexus Study Update (December 2020, revised in September 2023) (Exhibit C). Originally, the transportation mitigation measures were identified in the EIR of the EEHDP based on projecting where the future development and impacts would be located, and these improvements were incorporated into the transportation network in the General Plan (and General Plan FEIR and SEIR). As part of the analysis, pre-COVID transportation trends were incorporated in the evaluation of each of the outstanding, previously identified mitigation measures. The 2023 revised nexus study updated the scopes of the 15 outstanding improvements, (with 5 already having been completed). In addition, the study identified additional mitigation measures to two of the five locations where their original mitigations had been completed, making a total of 17 outstanding improvements with a rough cost estimate at \$10 million (2022 dollars). Per the FY22 Traffic Impact Fee Status Report<sup>1</sup>, a total of approximately \$6.7 million have been collected through the TIF. Approximately \$3.7 million is pending collection from projects with existing entitlements.

Since the TIF collected to date cannot fund all the outstanding mitigation measures, the EEHDP Nexus Study Update helps prioritize locations demonstrating the highest needs as a result of the entitled and built development in the Evergreen-East Hills Policy area. As the City has more information about recent transportation trends, development outcomes, and community needs, staff recommends an investment plan that prioritizes improvements with the highest needs. Based on the EEHDP Nexus Study Update, funding availability, the community’s level of support, and engineering judgment, staff grouped the outstanding mitigation measures into two categories – high-priority and lower-priority improvements. Of the 17 outstanding transportation improvements in the EEHDP, 12 are considered high-priority improvements and would be delivered in the near term using the TIF collected to date. The remaining five improvements will be delivered when additional TIF are collected from projects that were approved prior to the retirement of the EEHDP.

#### *SJMC Chapter 14.33 Amendments Regarding Application of Traffic Impact Fee*

The proposed amendments to Chapter 14.33 of the San José Municipal Code are attached hereto as Exhibit B. The amendments to the TIF ordinance would mirror the proposed changes to the application of the EEHDP by limiting the application of the TIF to projects that received approved entitlements (general plan amendment and/or zoning amendment) and/or a land use permit from the effective date of the EEHDP to the effective date of the resolution amending the EEHDP, thus making the Evergreen-East Hills Traffic Impact Fee inapplicable to future Evergreen East-Hills development projects. Exhibit C is the Evergreen-East Hills Development Policy Nexus Study Update (December 2020, revised September 2023) with an assessment of the transportation projects needed to support already entitled development that has occurred in the Policy area to date. The proposed changes would mean that the ADP and the TIF only apply to already entitled development. No change to the amount of the TIF is proposed with this amendment. New development in Evergreen-East Hills could only move forward with CEQA clearance and transportation mitigation, among other mitigation measures, on an individual project basis using a VMT analysis as required by state law.

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<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/92204/638046482381370000>

## EVALUATION AND FOLLOW UP

If approved by Council, the EEHDP amendment will be posted on the City’s website and will take effect upon adoption. The amendment to San Jose Municipal Code Chapter 14.33 will also be posted on the City’s website and the traffic impact fee will only apply to projects that have received their entitlements prior to the effective date of the EEHDP amendment. Existing and future development that was previously infeasible due to the limits on EEHDP development capacity will be able to move forward subject to CEQA review including the applicable VMT mitigation requirements of City Council Policy 5-1.

## COORDINATION

This report has been coordinated with the Department of Transportation, Public Works Department, City Attorney’s Office and the City Manager’s Office.

## PUBLIC OUTREACH

A notice of the public hearing was published in the San José Post Record and on the City’s website. The staff memo is also posted on the City’s website and staff has been available to respond to questions from the public.

City staff hosted a community meeting on this topic following the public Task Force process on the General Plan Four-Year Review:

- Evergreen-East Hills Development Policy Community Meeting – May 27, 2021 at 6 p.m. (English, Spanish, and Vietnamese)
  - Also attended District 8 Community Roundtable meeting on April 1, 2021

## PREVIOUS COMMISSION RECOMMENDATION AND INPUT

The recommendation to sunset the Evergreen-East Hills Development Policy was heard by the Planning Commission on November 10, 2021, as one of a number of a General Plan Amendments (GPT21-007) related to the General Plan four-year review. The Planning Commission recommended approval of GPT21-007 (along with four other General Plan Amendments) with a vote of 9-1-1 (Commissioner Oliverio Opposed; Commissioner Garcia Absent).

## CEQA

The environmental impacts of this project were addressed by the following Final Environmental Impact Reports: Envision San José 2040 General Plan Final EIR, adopted by City Council Resolution No. 76041 on November 1, 2011, and addenda thereto; Evergreen-East Hills Vision Strategy Project Final Environmental Impact Report adopted by City Council Resolution No. 73570 on December 12, 2006; and the Final Supplemental Environmental Impact Report for the Updated Evergreen-East Hills Area Development Policy, adopted by City Council Resolution No. 74742 on December 16, 2008, and addenda thereto. The Initial Study/Addendum is posted to the City’s “Active EIRs” website at: ( <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/general-plan-four-year-review> ). The Envision San José 2040 General Plan EIR and SEIR can be found at [www.sanjoseca.gov/completedeirs](http://www.sanjoseca.gov/completedeirs) . No significant changes have occurred since the Addendum was adopted.

For questions, please contact Michael Brilliot, Deputy Director, at michael.brilliot@sanjoseca.gov or (408) 535-7831.

**Project Manager:** Ed Schreiner

**Approved by:** /s/ Robert Manford, Deputy Director for Christopher Burton, Planning Director

<b>ATTACHMENTS</b>
<b>EXHIBIT A:</b> Revised Evergreen-East Hills Development Policy
<b>EXHIBIT B:</b> Draft Ordinance Amendment to Chapter 14.33 of the San José Municipal Code
<b>EXHIBIT C:</b> Evergreen-East Hills Development Policy Nexus Study Update
<b>EXHIBIT D:</b> GPT21-007 Resolution 80322
<b>EXHIBIT E:</b> EEHDP Draft CEQA Addendum Resolution

# GPT23-006

## Links to Attachment A - E

Click on the title to view document.

[Exhibit A: Revised Evergreen-East Hills Development Policy](#)

[Exhibit B: Draft Ordinance Amendment to Chapter 14.33 of the San José Municipal Code](#)

[Exhibit C: Evergreen-East Hills Development Policy Nexus Study Update](#)

[Exhibit D: GPT21-007 Resolution 80322](#)

[Exhibit E: EEHDP Draft CEQA Addendum Resolution](#)