

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS, MITIGATION MEASURES, AND ALTERNATIVES, AND ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS IN CONNECTION WITH THE APPROVAL OF GENERAL PLAN AMENDMENT (APPLICATION FILE NO. GP09-08-04) FOR WHICH AN ADDENDUM TO A PREVIOUSLY CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE EVERGREEN-EAST HILLS VISION STRATEGY PROJECT WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San Jose prepared an Addendum to the Final EIR (defined below) for General Plan Amendment Application File No. GP09-08-04 (the "Project") in accordance with the requirements of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines, all as amended to date (collectively, "CEQA"), which Addendum for Final EIR has been considered by the Planning Commission of the City of San José and recommended for approval (the "Addendum"); and

WHEREAS, the environmental impacts of this General Plan amendment Project were addressed by a Final EIR entitled, "*Evergreen East Hills Vision Strategy Project (EEHVS) EIR*," certified by the City Council on December 12, 2006 (the "Final EIR" or "FEIR"), as amended by the Addendum; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for the proposed Project; and

WHEREAS, the City Council of the City of San Jose intends to approve actions related to the Project; and

WHEREAS, CEQA requires that in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects, the decision-making body of a lead or responsible agency must make certain findings regarding those significant effects on the environment identified in the environmental impact report;

WHEREAS, the City Council desires to take approval actions on the Project and to make the required findings under CEQA in connection with the Project.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

THAT THE CITY COUNCIL does hereby find that it has independently reviewed and analyzed the FEIR and the Addendum, as well as other information in the record, and has considered the information contained therein (including the written and oral comments received at the public hearings on the FEIR and on the Project and in any EIR appeals) prior to acting upon or approving the Project, and has found that the FEIR, together with the Addendum, represents the independent judgment and analysis of the City of San José as Lead Agency for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project as it is described in the FEIR, together with the Addendum:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. TRANSPORTATION AND TRAFFIC

1. Long-Term/Program-Level Traffic Impacts

Environmental Effect: The changes in land use associated with the Project would result in long-term significant traffic impacts.

Mitigation: Future development that could come forward under the subject Project would be required to conform to the Evergreen Development Policy and various transportation policies of the City's General Plan. Compliance with these policies will reduce traffic impacts, but not to a less-than-significant level. For the subject Project, an amendment to the General Plan, there is no feasible mitigation that would reduce this impact to a less-than-significant level.

Finding: Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than

significant level. Although implementation of the policies described above would reduce the impacts of the proposed amendment, the impacts would remain at significant and unavoidable levels. **[Significant and Unavoidable Impact]**

B. NOISE

1. Exposure of Future Residents to Elevated Noise Levels

Environmental Effect: Portions of the Project site are exposed to existing noise levels that exceed the City's residential short-term exterior noise goal of 60 dBA Ldn. Therefore, future residents will be exposed to noise levels that exceed the City's noise/land use compatibility guidelines.

Mitigation: 1) On the Arcadia site described in the FEIR, consideration shall be given to locating the commercial uses closest to Quimby Road and Capitol Expressway. This would allow the commercial uses to shield the more sensitive uses (i.e., residences and parks) from elevated traffic noise levels; 2) All outdoor use areas associated with the proposed residences shall be designed and sited so that noise levels do not exceed a Ldn of 60 dBA. This will be accomplished through site design (e.g., creating sufficient buffers/setbacks between noise sources and these areas, shielding such areas from noise sources by locating them behind buildings, etc.) and/or constructing soundwalls; 3) In the event that residential patios are constructed in locations where the Ldn is not reduced to 60 dBA by the steps described in the previous measure, such patios shall be designed to include acoustically-effective (i.e., without cracks, gaps, openings, etc.) fencing; and 4) All residences, both single- and multi-family, shall be designed to achieve an interior noise level of 45 dBA Ldn. In some cases, this will require residents to keep windows closed, which will mandate the inclusion of forced-air mechanical ventilation systems. Compliance with this measure shall be demonstrated through the preparation of a detailed acoustical analysis, such analysis to be reviewed and approved by the City.

Finding: Changes or alterations will be required in, or incorporated into, future development that comes forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

2. Exposure to Elevated Noise at Residential Interface with Non-Residential Uses

Environmental Effect: Noise from existing/proposed non-residential land uses could exceed the City's standard of 55 dBA Ldn at the property lines of existing/future residences.

Mitigation: Future development that could come forward under the Project (general plan amendment) shall be designed so that noise from the non-residential uses will not exceed a Ldn of 55 dBA at the property lines of existing/future residences. This will be accomplished by proper site design (e.g., setbacks, locating loading docks away from residences, etc.), the shielding of outdoor equipment, and/or the installation of noise barriers.

Finding: Changes or alterations will be required in, or incorporated into, future development that may come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR [**Less-Than-Significant Impact with Mitigation**]

3. Noise from Outdoor Sports Complex on Arcadia Property

Environmental Effect: Noise from activities and a public address system at a proposed outdoor sports complex on the Arcadia property could adversely impact future residents of dwelling units that are also proposed for the Arcadia property.

Mitigation: 1) The final design and orientation of the outdoor playing fields shall locate noise sources (e.g., bleachers) as far as practical from future residents; and 2) The public address system shall be designed to focus announcements toward spectator areas only, so as to minimize the effect on nearby future residents.

Finding: Changes or alterations will be required in, or incorporated into, future development that could come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. [**Less-Than-Significant Impact with Mitigation**]

C. AIR QUALITY

1. Increases in Regional Pollutants

Environmental Effect: Future development that could come forward under the Project (general plan amendment) will result in increases in regional pollutants (e.g., ROG, NO_x, and PM₁₀) that are in excess of BAAQMD thresholds.

Mitigation: 1) New bus stops shall be constructed at convenient locations with pedestrian access to the project sites. Pullouts will be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders; 2) Bicycle amenities shall be provided on each of the EEHVS opportunity sites. Each site will be reviewed and appropriate bicycle amenities shall be included. As appropriate, this shall include secure bicycle parking for office and retail employees, bicycle racks for retail customers and bike lane connections throughout each Project site; 3) All buildings shall include outdoor electrical outlets so as to encourage the use of electrical landscape maintenance equipment; and 4) All fireplaces to be installed in residences shall comply with the San José Wood-Burning Appliance Ordinance (#26133). Implementation of these measures will reduce emissions of regional pollutants but not to a less-than-significant level. There is no feasible mitigation that would reduce this impact to a less-than-significant level.

Findings: Changes or alterations will be required in, or incorporated into, future development that comes forward under the Project (general plan amendment) which will partially lessen the significant environmental effect as identified in the Final EIR. Implementation of applicable General Plan policies and the mitigations identified above would reduce the air quality impacts of the Project (general plan amendment), however, due to its size and potential to generate a substantial increase in air pollutant emissions, the proposed Project would result in regional air quality impacts at a significant and unavoidable level. **[Significant and Unavoidable Impact]**

D. CULTURAL RESOURCES

1. Impacts on the Arcadia Property

Environmental Effect: Development on the Arcadia Property would directly impact two known archaeological sites by disturbing and/or destroying the cultural artifacts contained within them.

Mitigation: Prior to the start of construction, the two areas encompassed by the two archaeological sites, including a sufficient buffer determined by an archaeologist, shall undergo additional testing. Testing shall consist of controlled mechanical stripping, under the direction of a qualified archaeologist, within the two delineated areas. Controlled stripping shall continue until all archaeological material is removed, or to the

maximum depth construction impacts will occur in a given area. Once the controlled stripping has been completed, the archaeologist shall determine whether any monitoring of actual construction is warranted. If suspected human bone or important archaeological features are encountered, work in the immediate area of the discovery shall be halted. The finds shall be exposed, recorded, and removed by an archaeologist. Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

Finding: Changes or alterations will be required in, or incorporated into, future development that comes forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

E. BIOLOGICAL RESOURCES

1. Loss of Burrowing Owl Habitat

Environmental Effect: Development on the 81-acre Arcadia property will result in a significant loss of burrowing owl habitat.

Mitigation: Any future development that comes forward under the Project (general plan amendment) will implement any two of the following three measures: 1) The development under the Project will fully fund a Burrowing Owl Habitat Management Plan at Reid-Hillview Airport; 2) Prior to construction, during the non-nesting season, any owls occupying burrows within the construction zones will be actively relocated as partial compensation for impacts to onsite burrowing owl habitat; and 3) Impacts to burrowing owl habitat will be partially compensated through offsite mitigation outside of the region (i.e., outside of Santa Clara County), either by purchasing sufficient credits at an established mitigation bank or by purchasing and setting aside sufficient acreage of lands outside of the region for burrowing owl habitat management. [If no owls are detected on the site just prior to the initial construction phase, then Mitigation #2 would no longer be a viable mitigation measure, in which case the Project will implement Mitigation #1 and Mitigation #3.

Finding: Changes or alterations will be required in, or incorporated into, future development that comes forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. [**Less-Than-Significant Impact with Mitigation**]

2. Removal of Trees

Environmental Effect: Depending on final site designs, future development that comes forward under the Project (general plan amendment) on the Arcadia site will likely result in a loss of 116 native and non-native trees, 60 of which have diameters in excess of 18 inches.

Mitigation: 1) The site design and Planning Permit approval, as well as any public improvements, shall incorporate preservation of existing trees to the maximum extent practicable, to the satisfaction of the City's Director of Planning, Building, and Code Enforcement (PBCE); 2) In locations where preservation of existing trees is not feasible due to site constraints, trees to be removed by development that comes forward under the Project (general plan amendment) shall be replaced at the ratios shown in Table 48 of the EIR; 3) The species and exact number of trees to be planted on the site during the construction phase shall be determined in consultation with the City Arborist and to the satisfaction of the Director of the Department of PBCE; and 4) In the event that development on the Arcadia site does not have sufficient area to accommodate the required tree mitigation, an alternative site(s) shall be identified for additional tree planting and/or a donation equal to the replacement/installation cost per replacement tree shall be made to *Our City Forest* or other similar organization for in-lieu off-site tree planting in the community.

Finding: Changes or alterations will be required in, or incorporated into, future development that may come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. [**Less-Than-Significant Impact with Mitigation**]

3. Impacts to Trees during Construction

Environmental Effect: Trees to be preserved may be harmed during the construction phase of any future development under the Project (general plan amendment).

Mitigation: 1) The applicant shall retain a consultant arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection; 2) All trees to be retained shall be fenced to completely enclose the tree protection zone prior to demolition, grubbing, or grading. Fences shall be as approved by the consulting arborist and are to remain until all grading and construction is completed; 3) Trees to be preserved shall be pruned to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture; 4) No grading, construction, demolition or other work shall occur within the tree protection zone. Any modifications must be approved and monitored by the consulting arborist; 5) Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist; 6) Supplemental irrigation shall be applied as determined by the consulting arborist; 7) If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied; 8) No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the tree protection zone; 9) Any additional tree pruning needed for clearance during construction must be performed or supervised by an arborist; 10) Foundations, footings and pavements on expansive soils near the trees shall be designed to withstand differential displacement; and 11) A final report on tree protection measures, and the health of the protected trees, shall be submitted to the City's Environmental Principal Planner after grading and construction have been completed.

Finding: Changes or alterations will be required in, or incorporated into, future development that comes forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

4. Impacts to Nesting Raptors

Environmental Effect: Construction activities related to future development could directly or indirectly harm nesting raptors, including loggerhead shrikes.

Mitigation: 1) A qualified ornithologist shall conduct a protocol-level, pre-construction survey for nesting raptors onsite not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (Feb. 1 to Aug. 31); 2) If a nesting raptor is detected, an appropriate construction buffer shall be established. Actual size of buffer will be determined by the ornithologist and will depend on species, topography, and type of construction activity that would occur in the vicinity of the nest but would be a minimum of 250 feet; and 3) A report summarizing the

results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of Planning, Building and Code Enforcement.

Finding: Changes or alterations will be required in, or incorporated into, future development that could come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

5. Impacts to Nesting Burrowing Owls

Environmental Effect: Construction activities related to future development on the Arcadia site could directly or indirectly harm nesting burrowing owls.

Mitigation: 1) Prior to construction, during the non-nesting season, any owls occupying burrows within construction zones shall be passively relocated under the authorization of the CDFG; and 2) Burrows on the site that are occupied by owls shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist verifies that either the owls have not begun laying and incubating eggs, or that juvenile owls have fledged and are able to live independently of their parents. If construction will occur during the nesting season, the project shall establish and maintain a minimum of a 250-foot buffer around any active nest.

Finding: Changes or alterations will be required in, or incorporated into, any future development that comes forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

F. HYDROLOGY AND WATER QUALITY

1. Construction-Related Impacts to Water Quality

Environmental Effect: Construction activities related to future development that could come forward under the Project (general plan amendment) have the potential to degrade the water quality of local streams.

Mitigation: 1) Prior to construction of any phase of development that comes forward under the Project (general plan amendment), the City of San José shall require that the

applicants submit a Stormwater Pollution Prevention Plan (SWPPP) and submit a Notice of Intent to the RWQCB to control the discharge of stormwater pollutants including sediments associated with construction activities. Along with these documents, the applicants may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in the California Stormwater Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities; 2) Prior to issuance of a grading permit, the applicant shall be required to submit copies of the Notice of Intent and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works. The applicant shall also be required to maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand; and 3) Each phase of development shall comply with the City's Grading Ordinance, including erosion- and dust-control during site preparation, and with the City's Zoning Ordinance requirement for keeping adjacent streets free of dirt and mud during construction.

Finding: Changes or alterations will be required in, or incorporated into, future development that may come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

2. Long-Term Impacts to Water Quality

Environmental Effect: Future development allowed by the Project (general plan amendment) on the Arcadia site will increase the volume of stormwater runoff, as well as add pollutants to the stormwater, which will result in a degradation of the water quality in local waterways over the long-term.

Mitigation: 1) Future development on the Arcadia site shall be designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations from 10% of the pre-project 2-year peak flow up to the pre-project 10-year peak flow; 2) The final design of all HMP basins, including but not limited to locations, sizes, depths, infiltration rates, and side slopes, shall require review by the City and approval by the Director of Planning, Building & Code Enforcement. This will ensure that the final design not only meets the requirements of City Council Policies 6-29 and 8-14, but also addresses related issues such as groundwater protection, dual use, safety, visual and aesthetic considerations, vector control, the capacity of receiving pipelines, and provisions for emergency release of water; 3) The Project applicant shall defer and refer to the California Stormwater Quality Association's *Stormwater Best Management Practice Handbook for New Development and Redevelopment* (January

2003) for the design and sizing of extended detention basins; 4) To ensure all stormwater BMPs are maintained for the life of the development, a maintenance and monitoring plan shall be developed at the PD Permit stage, to the satisfaction of the Director of Planning, Building & Code Enforcement. The maintenance and monitoring plan shall be implemented to ensure that all stormwater treatment BMPs will be permanently maintained by the Homeowner' Association(s), or equivalent, for the life of the development, to the satisfaction of the Director of Planning, Building & Code Enforcement; and 5) Maintenance techniques listed in *Landscape Maintenance Techniques for Pest Reduction* (prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program) shall be utilized.

Finding: Changes or alterations will be required in, or incorporated into, future development that could come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Less-Than-Significant Impact with Mitigation]**

G. VISUAL AND AESTHETICS

1. Nighttime Lighting at Adult Sports Complex on Arcadia Property

Environmental Effect: Nighttime lighting of the outdoor playing fields on the Arcadia property could result in adverse light and glare impacts on nearby residents and on aircraft operations associated with nearby Reid-Hillview Airport.

Mitigation: 1) A photometric study shall be prepared as part of the design process for the lighting systems for the outdoor playing fields. The study shall specify the design requirements for the lights, such requirements which shall include measures to minimize light spill into nearby residential areas [both existing and proposed] and to minimize upward light spill so that the lighting does not interfere with landings and takeoffs at nearby Reid-Hillview Airport. The study shall be submitted to the Director of Planning, Building, and Code Enforcement for review and approval, and the approved study shall be complied with; 2) Lighting for the playing fields shall include features such as light hoods and visors for the purpose of directing the light down onto the playing fields; and 3) The lighting fixtures shall be equipped with lamps that are designed to reduce the number of fixtures needed and to increase light beam control and efficiency.

Finding: Changes or alterations will be required in, or incorporated into, future development that could come forward under the Project (general plan amendment)

which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. [**Less-Than-Significant Impact with Mitigation**]

2. Change in Visual Character

Environmental Effect: Future development on the Arcadia Property would result in a significant change in the existing visual character.

Mitigation: There is no feasible mitigation for this impact. For the reasons described below in Section II, the alternatives to the Project that would avoid this impact are not feasible.

Finding: Any future development on the Arcadia site will result in a significant impact upon the existing visual character of the Site. Even with conformance to applicable City policies and guidelines to lessen visual impacts, the development of the Arcadia Property would degrade the existing visual character and quality of the site as compared to existing conditions. [**Significant and Unavoidable Impact**]

H. ENERGY

1. Increased Usage of Energy

Environmental Effect: Given projections regarding future electricity and natural gas supplies, construction of future development under the Project (general plan amendment) will result in a significant energy impact.

Mitigation: 1) Future development that comes forward under the Project shall incorporate principles of passive solar design; 2) future development under the Project shall install reflective, *EnergyStar*[™] cool roofs; 3) future development under the Project shall utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances; 4) future development under the Project shall utilize building products that contain post-consumer recycled materials; 5) Although there is not a formal *EnergyStar* program for non-residential buildings, all buildings to be constructed by future development under the Project could and shall be constructed to meet the same standards as those that apply to the residential program; 6) All new buildings shall include a photovoltaic (i.e., solar electric) system on rooftops; and 7) Geothermal heat pumps shall be installed to provide heating, cooling, and hot water. Implementation of these measures will reduce energy impacts but not to a less-than-significant level. There is no feasible mitigation that would reduce this impact to a less-than-significant level.

Findings: Changes or alterations will be required in, or incorporated into, future development that could come forward under the Project (general plan amendment) which will avoid or substantially lessen the significant environmental effect as identified in the Final EIR. **[Significant and Unavoidable Impact]**

I. CUMULATIVE IMPACTS

1. Cumulative Traffic Impacts

Environmental Effect: Traffic generated by proposed and recently-approved projects will result in significant cumulative transportation and traffic impacts. The contribution of the Project to this significant cumulative impact will be considerable.

Mitigation: Given the magnitude of the cumulative traffic impacts described in the FEIR, there is no feasible mitigation for this impact beyond that already included in the Project.

Finding: Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the Project to a less than significant level. Although implementation of the General Plan policies would reduce the impacts of the proposed general plan amendment, the impacts would remain at significant and unavoidable levels. **[Significant and Unavoidable Impact]**

2. Cumulative Traffic-Related Noise Impacts

Environmental Effect: Traffic associated with cumulative development will increase noise along many roadways in the greater San José area. The noise increase associated with increased traffic trips on the roadways would be significant at locations where 1) new roadways would be constructed; or 2) roadway widening would move traffic closer to adjacent receptors; or 3) traffic volumes would substantially increase in relation to existing volumes. The contribution of the trips related to future development that could come forward under the Project (general plan amendment) to this significant cumulative impact will be considerable.

Mitigation: Given the magnitude of the cumulative traffic-related noise impacts described in the FEIR, there is no feasible mitigation for this impact beyond that already included in the Project.

Finding: Given the magnitude of the cumulative traffic-related noise impacts described in the FEIR, there is no feasible mitigation for this impact beyond that already included in the Project. **[Significant and Unavoidable Impact]**

3. Cumulative Construction-Related Noise Impacts

Environmental Effect: The amount of cumulative construction proposed in areas of San José that are near enough to each other that some construction noise will spill over, will result in cumulatively considerable temporary construction noise impacts. The contribution of construction-related noise associated with future development under the Project to these impacts would be considerable.

Mitigation: There is no feasible mitigation for this impact beyond that already included in the Project.

Finding: There is no feasible mitigation for this impact beyond that already included in the Project, such that this impact would remain significant and unavoidable. **[Significant and Unavoidable Impact]**

4. Cumulative Biology Impacts

Environmental Effect: Implementation of the identified Project mitigation would reduce the Project's contribution to the cumulative impacts to Burrowing Owl habitat, as well as the loss of mature trees, to a less than significant level.

Mitigation: The mitigation measures are set forth in Section I.E above.

Finding: **Less Than Significant Cumulative Impact With Mitigation**

5. Cumulative Visual & Aesthetic Impacts

Environmental Effect: Recently-approved and proposed development would result in cumulatively significant visual and aesthetic impacts. Such impacts would include a significant change in the visual character of thousands of acres of land in San José. The contribution of the Project to this impact would be considerable.

Mitigation: There is no feasible mitigation for this impact.

Finding: Significant and Unavoidable Impact.

6. Cumulative Energy Impacts

Environmental Effect: Recently-approved and proposed development would result in cumulatively significant increase in the use of energy. The contribution of the Project to this impact would be considerable.

Mitigation: There is no feasible mitigation for this impact beyond that already included in the Project.

Finding: Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR. **[Significant and Unavoidable Impact]**

II. FINDINGS CONCERNING ALTERNATIVES

An EIR must describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly obtain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant environmental effects of the project. The decision-maker may reject the alternative if it determines that specific considerations make the alternative infeasible. The findings with respect to alternatives identified in the FEIR are described below.

A. NO PROJECT ALTERNATIVE

The No Project Alternative, is defined as no changes to existing land use designations, zonings, or the EDP. Under this alternative, the Arcadia property could be developed with 217 dwelling units.

Environmental Effects Compared to the Project: This alternative would avoid all of the environmental effects of the Project as they relate to the commercial development proposed on the Arcadia site. Some environmental effects will occur with the

development of 217 dwelling units, but when compared to the Project, the magnitude of the effects would be substantially reduced.

Finding: The No Project Alternative does not support the proposed General Plan Amendment objective of developing up to 350,000 square feet of commercial uses on the Arcadia property. Therefore, the No Project Alternative does not meet the objectives of the General Plan Amendment and is infeasible.

B. REDUCED-SCALE ALTERNATIVE

The Reduced-Scale Alternative would consist of lowering the amount of future development that could occur under the Project to a maximum of 600 dwelling units.

Environmental Effects Compared to the Project: The Reduced-Scale Alternative would avoid most, if not all, of the significant traffic effects of the Project. It would also avoid the significant increases in traffic noise along Evergreen-area roadways. Air Quality impacts would be substantially reduced, though not to a less-than-significant level. Other environmental effects (e.g., energy, visual, hydrology, biology, etc.) would also be reduced.

Finding: This alternative would not meet the Project objective of developing up to 350,000 square feet of commercial uses on the Arcadia property, since this alternative proposes no commercial uses.

For the reasons stated above, the Reduced-Scale Alternative is infeasible.

C. UNIT REALLOCATION ALTERNATIVE

The Unit Reallocation Alternative would not be applicable to the proposed Project in that the proposed Project does not involve any additional residential development.

D. LOCATION ALTERNATIVE

Alternatives that would construct the identified land uses on sites outside of the Evergreen • East Hills area were not evaluated. This is because the EEHVS, by definition, seeks to develop a community-based vision regarding future development and the future character of the Evergreen • East Hills area of San José. Thus, alternative sites located outside the area would not meet any of the objectives for the Evergreen • East Hills area.

For the reasons stated above, there are no feasible location alternatives to the Project.

III. STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to California Public Resources Code § 21081 and CEQA Guidelines § 15093, the City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the Project and the anticipated economic, social, and other benefits of the Project.

A. SIGNIFICANT UNAVOIDABLE IMPACTS

With respect to the foregoing findings and in recognition of those facts that are included in the administrative record, the City has determined that the Project would cause significant and unavoidable impacts, as set forth above, including the following:

1. The changes in land uses associated with the Project would result in long-term significant traffic impacts;
2. Project-specific and cumulative impacts with regard to roadway noise;
3. Project-specific and cumulative impacts with regard to operational air emissions;
4. Project-specific and cumulative impacts with regard to Clean Air Plan and Ozone Strategy consistency;
5. Cumulative impacts relating to the loss of burrowing owl habitat;
6. Cumulative impacts relating to the loss of trees;
7. Project-specific and cumulative impacts relating to the blocking of scenic vistas;
8. Project-specific and cumulative impacts relating to changes to existing visual character;
9. Project-specific and cumulative impacts relating to the consumption of energy.

These impacts cannot be mitigated to a less than significant level by feasible changes or alterations to the Project.

B. OVERRIDING CONSIDERATIONS

Despite the existence of significant adverse impacts that have not been mitigated to below the level of significance, the City Council has balanced the benefits of the Project against these significant and unavoidable environmental effects. Pursuant to this balancing, the City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and

unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations set forth herein because these benefits of the Project outweigh the significant and adverse impacts of the Project.

The City Council hereby finds that each of the economic, legal, social, technological or other benefits listed below constitutes a separate and independent basis of justification for the Statement of Overriding Considerations, and each is able to independently support the Statement of Overriding Considerations and override the significant and unavoidable environmental effects of the Project. In addition, each benefit is independently supported by substantial evidence contained in the administrative record.

C. BENEFITS OF THE PROPOSED PROJECT

The City Council has considered the FEIR, together with the Addendum, the public record of proceedings on the proposed Project and other written materials presented to the City, as well as oral and written testimony at all hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

1. The Project will facilitate new near-term commercial retail development in coordination with the long-term vision of the Evergreen-East Hills Development Policy Area, which will increase the sales tax revenue for the City.
2. The Project facilitates the dedication to the City of San Jose 12 to 14 acres of land to be designated Public Park/Open Space for the development new public park uses.

D. CONCLUSION

The City Council has weighed the above benefits of the proposed Project against its significant and unavoidable environmental effects identified in the FEIR and hereby determines that each of these benefits outweighs those adverse environmental effects and, therefore, further determines that these significant and unavoidable environmental effects of the Project are acceptable.

ADOPTED this day of , 2009, by the following vote:

RD:RG
12/1/09

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

