

Evergreen Circle Rezoning 2020

File No. PDC20-002

Initial Study / Mitigated Negative Declaration

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## **RESPONSES TO PUBLIC COMMENTS AND TEXT CHANGES**

August 2, 2021

*CEQA Lead Agency:*



**Department of Planning, Building and Code Enforcement**  
**200 East Santa Clara Street**  
**San Jose, California 95113 Phone: (408) 535-3555**

## Contents

SECTION 1	SUMMARY OF COMMENTS .....	3
SECTION 2	AGENCIES AND PERSONS COMMENTING ON THE IS/MND.....	4
SECTION 3	RESPONSE TO COMMENTS.....	5
	RESPONSE TO A - Santa Clara County Parks and Recreation Department’s County Parks Department.....	5
	RESPONSE TO B – Kanyon Consulting, LLC.....	6
	RESPONSE TO C – Santa Clara County Roads and Airports Department .....	7
	RESPONSE TO D – Tamien Nation .....	7
SECTION 4	TEXT CHANGES TO THE IS/MND .....	9
SECTION 5	PUBLIC COMMENTS ATTACHMENTS.....	12

### **Attachments**

Attachment A – All Public Comments to IS/MND During Public Review Period

## **SECTION 1      SUMMARY OF COMMENTS**

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The 2020 Evergreen Circle Rezoning Initial Study /Mitigation Negative Declaration (IS/MND) was circulated for public review for a 20-day review period, from May 20, 2021 to June 9, 2021. During the circulation period, the City of San José received four comment letters from Santa Clara County Parks and Recreation Department, Santa Clara County Roads and Airport Department, Kanyon Konsulting LLC, and Tamien Nation.

In summary, the comments received on the draft IS/MND did not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the lead agency consider the comments received [CEQA Guidelines §15074(b)].

Nevertheless, responses to the comments are included in this document to provide a complete environmental record.

The following pages contain a list of the agencies and persons that submitted comments on the IS/MND and the City's responses to comments received on the IS/MND. The specific comments have been excerpted from the letter and are presented as "Comment" with each response directly following ("Response"). Copies of the actual letters and email submitted to the City of San Jose are attached to this document.

**SECTION 2 AGENCIES AND PERSONS COMMENTING ON THE IS/MND**

	<b>Comment Received From</b>	<b>Date of Letter</b>
A.	Santa Clara County Parks and Recreation Department	June 1, 2021
B.	Kanyon Konsulting LLC	June 2, 2021
C.	County of Santa Clara Roads and Airports Department	June 4, 2021
D.	Tamien Nation	June 1, 2021

## **SECTION 3      RESPONSE TO COMMENTS**

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This memo responds to comments on the IS/MND as they relate to the potential environmental impacts of the project under CEQA. Numbered responses correspond to comments in each comment letter. Copies of the comment letters are attached.

### **RESPONSE TO A - Santa Clara County Parks and Recreation Department's County Parks Department**

**Comment A1:** The Santa Clara County Parks and Recreation Department's (County Parks Department) has received the Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning Project.

The County Parks Department functions to provide a sustainable system of diverse regional parks, trails, and open spaces that connects people with the natural environment and supports healthy lifestyles while balancing recreation opportunities with natural, cultural, historic, and scenic resource protection. The County Parks Department is also charged with the planning and implementation of the Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan), an element of the Parks and Recreation Section of the County General Plan (adopted by the Board of Supervisors on November 14, 1995).

The proposed project does not impact the Countywide Trails Plan and therefore the County Parks Department has no comments at this time. If you have any questions, please email me at [kelly.gibson@prk.sccgov.org](mailto:kelly.gibson@prk.sccgov.org)

**Response A1:** The comment reiterate the County of Santa Clara Parks and Recreation Department's function and mission. This comment does not address the adequacy of the Draft EIR. No further response is required.

## **RESPONSE TO B – Kanyon Consulting, LLC.**

**Comment B1:** To Whom it may concern,

My name is Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter dated : April 26,2021

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a recorded and potentially eligible cultural site, we recommend that a Native American Monitor and an Archaeologist be present on-site at all times. The presence of a monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues. Kanyon Konsulting, LLC has numerous Native Monitors available for projects such as this, if applicable, along with Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Kanyon Konsulting, LLC believes in having a strong proponent of honoring truth in history, when it comes to impacting cultural resources and potential ancestral remains. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after. Doing so has the strong potential to impact cultural resources and disturb ancestral remains. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the indigenous communities whom we acknowledge as the first stewards and land managers of these territories. Potential Approaches to Ingenious Culture Awareness/History:

--Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque or as advantageous as an Educational/Cultural Center with information about the history of the land)

-- Commitment to consultation with the native peoples of the territory in regards to presenting messaging about the natives/Indigenous history of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc)

-- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

**Response B1:** The IS/MND disclosed the area to be archeological sensitive based on previous studies completed for the area. The IS/MND also include mitigation measures and conditions for preliminary testing, treatment plan if finds are discovered, and protocols for involvement of monitors. Furthermore, the mitigation measures have been revised to clarify and include Native American representative in the preliminary investigation stages. Please refer to Response D1 and Section 4 of this document for additional information.

## **RESPONSE TO C – Santa Clara County Roads and Airports Department**

**Comment C1:** The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning (2020) Project (PDC20-002), and is submitting the following comments:

- In addition to the Vehicles Miles Travelled (VMT) analysis, please provide a Local Transportation Analysis (LTA) to address the increase in trips to Capitol Expressway.

**Response C1:** Currently, the project has only submitted a zoning application on file for approval. When a planned development permit is submitted with detailed site plans, the project will be required to submit a Local Transportation Analysis (LTA) consistent with Council Policy 5-1 for review and approval by the Department of Public Works. At such time, the Department of Public Works will provide the County with the LTA workscope for review and comment and include an analysis for increased trips to Capitol Expressway. This comment does not change the analysis of the project's and therefore, does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

**Comment C2:** Potential queue spillbacks at County facilities should be addressed and mitigation should be provided if impacted.

**Response C2:** See response above. A part of the LTA, the City will require the project to submit a queuing analysis for Capitol Expressway and address any adverse affects. This comment does not change the analysis of the project's and therefore, does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

## **RESPONSE TO D – Tamien Nation**

**Comment D1:** Thank you for the notice to adopt a Mitigated Negative Declaration received May 20, 2021 regarding a Planned Development Rezoning (PDC) of the project site from A(PD) Planned Development Zoning District to a new PD Planned Development Zoning District to allow for 150,000 square feet of medical office space. The rezoning would also allow for previously entitled and built commercial square footage with an increase in commercial square footage equivalency, totaling up to 369,560 square feet with only 60,238 of new commercial square footage. We appreciate your effort and wish to respond.

Based on the information provided, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest in the proposed project area and would like to initiate a formal consultation with the lead agency. At your earliest convenience, please send us the most recent cultural resource study for review. At the time of consultation, please provide a project timeline and detailed ground disturbance plan.

**Response D1:** AB 52 requires a tribe that is traditionally and culturally affiliated to the geographic area where a project is located must request notification, in writing, that the tribe be notified projects in the tribe's area of traditional and cultural affiliation (Public Resource Code § 21080.3.1 (b)). The City did not receive such request from Tamien Nation when the City determined that an Initial Study/Mitigated Negative Declaration (IS/MND) was the appropriate level of environmental review under CEQA. In November 2020, only one Tribal Representative requested formal notification under AB 52, and as this project is outside the geographic area of interest to this Representative, no Tribal Representatives were notified pursuant to AB 52 for this project.

The IS/MND has identified the site to be potential significant based on previous literature reviews. The IS/MND also identified mitigation measures for preliminary investigation prior to any full excavation of work.

A virtual consultation meeting was held between City staff and Tamien Nation on Friday July 14, 2021 via Zoom. The meeting included the following participants: Chairwoman Quirina Geary, Tamien Nation; Cassandra Van Der Zweep, Supervising Environmental Planner of the City of San Jose, Thai-Chau Le, Supervising Environmental Planner of City of San José Division; Gerry De Young, representative on behalf of the applicant, and Leianne Humble, Environmental Consultant to the project. The meeting consisted of a project summary and discussion of known archeological sensitivity on the site. At this meeting, based on the information in the reports, Chairwoman Quirina reiterated the known history of this area and request the that a Native American monitor or representative be part of the investigation, including getting the results of the any investigation study from the preliminary investigation. Furthermore, the Nation would request to be part of any treatment plan process of treatment of finds on the site, if applicable.

At the meeting, all parties have agreed to elaborate on the existing cultural resource mitigation measure to include the participation of a Native American representative. Furthermore, the standard permit conditions for accidental discovery has also been updated for all project in the City of San Jose. Staff revised the mitigation measure (refer to text changes in Section 4 of this document) to represent the agreement between parties and revised the standard permit conditions to reflect the existing City's standards. The revision of the mitigation measures and conditions only compliment and clarifies the protocol of the actions and does not result in a change in intent based on disclosed information already in the IS/MND. For these reasons, the changes in mitigation measures are not substantial revisions that would result in a recirculation of the IS/MND, consistent with Section 15073.5 of the CEQA guidelines.



**SECTION 4 TEXT CHANGES TO THE IS/MND**

Section/Page Number	Text Changes
<p>Mitigated Negative Declaration Statement Page and Initial Study pages 50</p>	<p><b>CR-1.1: Preliminary Investigation:</b> Prior to excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology shall complete subsurface exploration at the site <u>and a Native American representative, registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3</u>, shall be present to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic-era resources. If any archaeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director or Director’s designee of the City of San José Department of Planning, Building, and Code Enforcement for review and approval prior to issuance of any grading permit. Based on the findings of the subsurface testing, an archaeological resources treatment plan as described in MM CR-1.2 shall be prepared by a qualified archaeologist if necessary.</p>
<p>Mitigated Negative Declaration Statement Page and Initial Study pages 50</p>	<p><b>CR-1.2: Treatment Plan.</b> If MM CR-1.1 is applicable, a qualified archeologist, with consultation from a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, the project applicant shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director or Director’s designee of the City of San José Department of Planning, Building, and Code Enforcement prior to approval of any grading permit. The treatment plan shall contain, at a minimum:</p> <ul style="list-style-type: none"> <li>• Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.</li> <li>• Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).</li> <li>• Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).</li> </ul>

	<ul style="list-style-type: none"> <li>• Detailed field strategy to record, recover, or avoid the finds and address research goals.</li> <li>• Analytical methods.</li> <li>• Report structure and outline of document contents.</li> <li>• Disposition of the artifacts.</li> <li>• Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.</li> <li>• <u>Proposal for treatment, recordation, data recovery and curation. The data recovery shall involve implementation of surface collection and curation/repatriation of artifacts to prevent looting. To the extent feasible, and in consultation with the Native American representative, all recovered Native American artifacts shall be reburied on-site in an area that is unlikely to be disturbed again.</u></li> </ul>
<p>Standard Permit Condition on page 51 of the Initial Study</p>	<ul style="list-style-type: none"> <li>• If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist <u>in consultation with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3</u> shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.</li> <li>• If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or</li> </ul>

	<p>disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:</p> <ul style="list-style-type: none"> <li>○ The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.</li> <li>○ The MLD identified fails to make a recommendation; or</li> <li>○ The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.</li> </ul>
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## **SECTION 5 PUBLIC COMMENTS ATTACHMENTS**

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Please see copy of the original comment in Attachment A.

**ATTACHMENT A -  
ORIGINAL PUBLIC COMMENTS TO  
THE INITIAL STUDY/MITIGATED  
NEGATIVE DECLARATION**

# County of Santa Clara

## Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX (408) 355-2290  
Reservations (408) 355-2201

[www.parkhere.org](http://www.parkhere.org)



June 1, 2021

City of San Jose  
Planning, Building & Code Enforcement  
Attn: Thai-Chau Le  
200 E Santa Clara St  
San Jose, CA 95113

SUBJECT: Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning Project

Dear Thai-Chau Le,

The Santa Clara County Parks and Recreation Department's (County Parks Department) has received the Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning Project.

The County Parks Department functions to provide a sustainable system of diverse regional parks, trails, and open spaces that connects people with the natural environment and supports healthy lifestyles while balancing recreation opportunities with natural, cultural, historic, and scenic resource protection. The County Parks Department is also charged with the planning and implementation of the Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan), an element of the Parks and Recreation Section of the County General Plan (adopted by the Board of Supervisors on November 14, 1995).

The proposed project does not impact the Countywide Trails Plan and therefore the County Parks Department has no comments at this time. If you have any questions, please email me at [kelly.gibson@prk.sccgov.org](mailto:kelly.gibson@prk.sccgov.org)

Sincerely,

*Kelly Gibson*

Kelly Gibson  
Assistant Planner

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian

County Executive: Jeffrey V. Smith



## Le, Thai-Chau

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**From:** KKLLC Admin <admin@kanyonconsulting.com>  
**Sent:** Wednesday, June 2, 2021 12:42 PM  
**To:** Le, Thai-Chau  
**Subject:** Evergreen Circle Rezoning

[External Email]

To Whom it may concern,

My name is Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter dated : 5/20/2021

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a recorded and potentially eligible cultural site, we recommend that a Native American Monitor and an Archaeologist be present on-site at all times. The presence of a monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

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As previously stated, our goal is to **Honor Truth in History**. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that **#HonorTruthinHistory**. This will make all involved aware of the history of the indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

**Potential Approaches to Ingenious Culture Awareness/History:**

--Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque or as advantageous as an Educational/Cultural Center with information about the history of the land)

-- Commitment to consultation with the native peoples of the territory in regards to presenting messaging about the natives/Indigenous history of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc)

-- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.

Best Regards,  
Kanyon Sayers-Roods  
Creative Director/Tribal Monitor  
Kanyon Konsulting, LLC

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

# County of Santa Clara

Roads and Airports Department  
Planning, Land Development and Survey



101 Skyport Drive  
San Jose, CA 95110-1302  
(408) 573-2460 FAX 441-0276

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**June 3, 2021**

## **Thai-Chau Le**

Supervising Planner|Planning, Building & Code Enforcement

City of San Jose|200 East Santa Clara Street

[Thai-Chau.Le@sanjoseca.gov](mailto:Thai-Chau.Le@sanjoseca.gov) | (408) 535 – 5658

San Jose, CA 95113

## **SUBJECT: Public Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning (2020) Project (PDC20-002)**

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Notice of Intent to Adopt a Mitigated Negative Declaration for the Evergreen Circle Rezoning (2020) Project (PDC20-002), and is submitting the following comments:

- In addition to the Vehicles Miles Travelled (VMT) analysis, please provide a Local Transportation Analysis (LTA) to address the increase in trips to Capitol Expressway.
- Potential queue spillbacks at County facilities should be addressed and mitigation should be provided if impacted.

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or [ben.aghegnehu@rda.sccgov.org](mailto:ben.aghegnehu@rda.sccgov.org)

Thank you.







**TAMIEN NATION**  
**OF THE GREATER SANTA CLARA COUNTY**  
**P.O. BOX 8053, SAN JOSE, CALIFORNIA 95155**  
**(707) 295-4011 TAMIEN@TAMIEN.ORG**

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June 1, 2021

City of San Jose  
Chu Chang, Acting Director  
Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113  
(408) 535-3500

Sent Via Email to: Thai-Chau.Le@sanjoseca.gov

RE: Intent to Adopt a Mitigated Negative Declaration - Evergreen Circle Rezoning, File No. PDC20-002

Dear Mr. Chang:

Thank you for the notice to adopt a Mitigated Negative Declaration received May 20, 2021 regarding a Planned Development Rezoning (PDC) of the project site from A(PD) Planned Development Zoning District to a new PD Planned Development Zoning District to allow for 150,000 square feet of medical office space. The rezoning would also allow for previously entitled and built commercial square footage with an increase in commercial square footage equivalency, totaling up to 369,560 square feet with only 60,238 of new commercial square footage. We appreciate your effort and wish to respond.

Based on the information provided, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest in the proposed project area and would like to initiate a formal consultation with the lead agency. At your earliest convenience, please send us the most recent cultural resource study for review. At the time of consultation, please provide a project timeline and detailed ground disturbance plan.

Please contact the following individual to coordinate a date and time for the consultation meeting:

Quirina Geary, Chairwoman  
Tamien Nation  
Phone: (707) 295-4011  
Email: qgeary@tamien.org

Please refer to identification number TN-20210429-01 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Quirina Geary".

Quirina Geary  
Chairwomen