



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: SEE BELOW

FROM: Planning Commission

DATE: May 11, 2021

COUNCIL DISTRICT: 7

SUBJECT: FILE NO. C20-014: CONFORMING REZONING ZONING FROM THE A AGRICULTURE ZONING DISTRICT (A) TO THE PQP PUBLIC/QUASI-PUBLIC ZONING DISTRICT (PQP) ON AN APPROXIMATELY 3.49-GROSS ACRE SITE ON THE EAST SIDE OF SENTER ROAD APPROXIMATELY 415 FEET SOUTHERLY OF EAST CAPITAL EXPRESSWAY (3195 SENTER ROAD).

FILE NO. CP20-012: CONDITIONAL USE PERMIT TO ALLOW THE RE-PERMITTING OF AN EXPIRED PERMIT FOR AN EXISTING 63-FOOT HIGH MONOPOLE WITH NINE (9) PANEL ANTENNAS, (9) RADIOS, AN EQUIPMENT ENCLOSURE, ASSOCIATED EQUIPMENT, AND THE CONTINUATION OF THE ASSEMBLY (CHURCH) USE ON A PORTION OF AN APPROXIMATELY 3.49-GROSS ACRE SITE.

RECOMMENDATION

The Planning Commission voted 5-1-1 (Commissioner Garcia abstain and Commissioner Bonilla absent) to recommend that the City Council:

- a. Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15301 for existing facilities; and
- b. Adopt an ordinance of the City of San José rezoning certain real property of approximately 3.49 acres on the east side of Senter Road approximately 415 feet southerly of East Capital Expressway (3195 Senter Road) from the A Agriculture Zoning District (A) to the PQP Public/Quasi-Public Zoning District (PQP).
- c. Adopt a resolution approving a Conditional Use Permit to allow the re-permitting of an expired permit for an existing 63-foot high monopole with nine (9) panel antennas, (9) radios, an equipment enclosure, associated equipment, and the continuation of the assembly (church) use on a portion of an approximately 3.49-gross acre site.

OUTCOME

Should the City Council approve the project, the site would be rezoned to PQP Public/Quasi-Public Zoning District and uses allowed in this designation such as the wireless facility and assembly uses (church) would be allowed to continue on the subject site.

BACKGROUND

On April 28, 2021, the Planning Commission held a public hearing to consider the proposed Conforming Rezoning and Conditional Use Permit applications which appeared on the Consent Calendar of the Agenda. No members of the public spoke on the proposed project and there was no discussion by the Commission.

The Planning Commission voted 5-0-1-1 (Commissioner Garcia abstain; Commissioner Bonilla absent) to recommend approval, as was recommended by staff, to the City Council as part of the consent calendar with no separate discussion.

ANALYSIS

A complete analysis of the issues regarding the proposed Conforming Rezoning and Conditional Use Permit, including General Plan conformance, is contained in the attached Planning Commission Staff Report.

CONCLUSION

Should the City Council approve the project, the uses allowed in the PQP Public/Quasi-Public Zoning District would be allowed and the wireless facility and assembly uses (church) would be allowed to continue on the subject site.

EVALUATION AND FOLLOW-UP

As noted above, if the project is approved by the City Council the site would be rezoned to the PQP Public/Quasi-Public Zoning District and the wireless facility and assembly uses (church) would be permitted

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

Should the City Council approve the project, the existing wireless facility and assembly uses would be permitted, and the site would be rezoned to PQP Public/Quasi-Public Zoning District.

Should the City Council deny the project, the uses allowed in the A Agriculture Zoning District would be allowed, and the site would not meet the minimum 20-acre lot development standard of the applicable zoning district. Additionally, the project for the existing wireless facility would not meet the site's 300-foot setback from residential property standard and would be an unpermitted non-conforming use. The assembly use (church) would be allowed to continue on the subject site.

PUBLIC OUTREACH/INTEREST

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500-feet of the project site and posted on the City's website. The rezoning and conditional use permit was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

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

CEQA

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Conditional Use Permit, Special Use Permit, and Rezoning are found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301, Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. A complete analysis is contained in the attached staff report.

/s/
CHU CHANG, Secretary
Planning Commission

For questions please contact Robert Manford, Planning Official, at (408) 535-7900.

Attachment: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

SUBJECT: C20-014 and CP20-012

FROM: Chu Chang

DATE: April 28, 2021

COUNCIL DISTRICT: 7

Type of Permit	Conforming Rezoning (File No. C20-014) Conditional Use Permit (File No. CP20-012)
Demolition	N/A
Existing Land Use	Wireless Communications Antenna and Assembly
New Residential Units	0
New Square Footage	0
City Council Policy Review Items	City Council Policy 6-20: Wireless Communication Facilities
Tree Removals	None
Project Planner	Rhonda Buss
CEQA Clearance	Exempt per CEQA Guidelines 15301 Existing Facilities

RECOMMENDATION

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

1. Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15301 for existing facilities; and
2. Adopt an ordinance of the City of San José rezoning certain real property of approximately 3.49 acres on the east side of Senter Road approximately 415 feet southerly of East Capital Expressway (3195 Senter Road) from the A Agriculture Zoning District (A) to the PQP Public/Quasi-Public Zoning District (PQP).
3. Adopt a resolution approving a Conditional Use Permit to allow the re-permitting of an expired permit for an existing 63-foot high monopole with nine (9) panel antennas, (9) radios, an equipment enclosure, and associated equipment on a portion of an approximately 3.49-gross acre site.

PROPERTY INFORMATION

Location	East side of Senter Road approximately 415 feet southerly of East Capital Expressway (3195 Senter Road)
Assessor Parcel No.	494-01-017
General Plan	Public/Quasi-Public
Growth Area	N/A
Zoning District	A Agriculture
Historic Resource	N/A
Annexation Date	October 20, 1970 (Tully No. 9-A)
Council District	7
Acreage	Approximately 3.49 acres

PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map ([Exhibit A](#)), the proposed project is located on an approximately 3.49-gross acre site located on the east side of Senter Road approximately 415 feet southerly of East Capital Expressway.

Access to the site is from two (2) driveways off of Senter Road. The site is developed with an existing religious building and accessory buildings, and an existing 63-foot high monopole with nine (9) panel antennas, nine (9) radios, an equipment enclosure, and associated equipment.

The project site is surrounded by schools to the north and east, and residential uses to the south and commercial uses to the west.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Public/Quasi-Public	PQP Public/Quasi-Public	School (Rocketship Rising Stars Academy)
South	Mixed-Use Neighborhood	A(PD) Planned Development	Multi-Family Residential
East	Residential Neighborhood	R-1-8	School (Andrew P. Hill High School)
West	Public/Quasi-Public	R-1-8 (PD) Planned Development	Capitol Expressway Commercial

On April 01, 2020, the applicant's representative, Jacob Hamilton, on behalf of Crown Castle GT Company LLC, submitted a Conditional Use Permit application, File No. CP20-012 to allow the re-permitting of an expired permit for an existing 63-foot high monopole with nine (9) panel antennas, (9) radios, an equipment enclosure, and associated equipment on the approximately 3.49-gross acre site.

On Sep 21, 2020, the applicant's representative, Jacob Hamilton, on behalf of Seven Trees Baptist Church LLC, submitted a rezoning application, File No. C20-014 to allow a conforming rezoning from the A Agricultural Zoning District to the to PQP Public/Quasi Public Zoning District on the approximately 3.49-gross acre site.

The rezoning is requested so that the minimum lot size, monopole height, and setbacks will be consistent with the zoning district. With this rezoning to the PQP Public/Quasi Public Zoning District, the project also requires a special use permit for the Assembly use (i.e., church) on the site.

The existing monopole was originally approved under File Nos. CP96-052 and V96-032 on May 7, 1997 and expired on May 7, 2000. Subsequent File Nos. CP01-025 and V02-012 allowed for colocation and a reduced setback, which were approved on June 12, 2002 and expired on June 12, 2007. File Nos. CPA01-025-01 and V02-012 were approved to allow for the continued use of the wireless facility on June 11, 2007 and expired on June 11, 2017. Subsequently, Permit Adjustments AD09-444, AD09-1015, AD12-1049, AD12-1083, and AD15-871 were approved between 2009 and 2015 to allow for equipment upgrades. Due to the expiration of the original permits, a new Conditional Use Permit is required.

ANALYSIS

The proposed Rezoning and Conditional Use Permit are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. City Council Policy 6-20: Land Use Policy for Wireless Communications
4. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

Land Use Designation

As shown in the attached General Plan Map ([Exhibit B](#)), the subject site is designated **Public-Quasi/Public** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan.

Density: FAR N/A

This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, supportive housing for the homeless, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. Joint development projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. Private community gathering facilities, including those used for religious assembly or other comparable assembly activity, are also appropriate on lands with this designation. The appropriate intensity of development can vary considerably depending on potential impacts on surrounding uses and the particular Public/Quasi-Public use developed on the site.

Analysis: The proposed conditional use permit for the wireless communication facility is consistent with the General Plan Designation of Public-Quasi/Public. The project is for a rezoning to P/QP and a conditional use permit. There is no FAR requirement in the P/QP General Plan designation, so FAR is not applicable to the monopole and also does not apply to the existing assembly use. The assembly building and wireless facility are both existing and there is no change to the square footage, building footprint, or height of the building. Since no FAR standard applies, the project is consistent with the General Plan Designation.

The proposed project may be found to be consistent with the following goals and policies of the Envision San Jose 2040 General Plan:

- a. Goal IN-6 - Support the provision of state-of-the-art telecommunication services for households, businesses, institutions, and public agencies throughout the city to foster fiscal sustainability, an innovative economy, support environmental leadership, meet the needs of quality neighborhoods and advance other Envision General Plan goals.

Analysis: While there are no new antennas with this application, as noted above, there have been upgrades to the facility. Permit Adjustments AD09-444, AD09-1015, AD12-1049, AD12-1083, and AD15-871 were approved between 2009 and 2015 to allow for equipment upgrades.

- b. Goal IN-6.1 - Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.
- c. Policy CD-4.9 – Ensure the design of new structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to the prevalent scale and materials).
- d. Policy CD-4.12 - Visual amenities should be incorporated when structures such as wireless communication antennae are constructed. This includes landscaping measures to offset potential adverse visual impacts.

Analysis: The wireless facility already exists on the site. The wireless facility allows for wireless communications coverage for residents, businesses, and commuters. A new tree is proposed for screening. Additionally, there is a radome on the slimline for screening. Both the pole and radome are required to be painted light grey.

- e. Policy IP-8.2 Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use / Transportation Diagram.

Analysis: Rezoning of the site from Agriculture zoning district PQP Public/Quasi-Public zoning district would allow the site to consistent with the minimum lot size, and the existing monopole to be consistent with the height and setbacks of the development standards of the zoning district.

Wireless communication facilities requires a Conditional Use Permit, and Assembly uses require a Special Use Permit in the PQP Zoning District pursuant to [Section 20.40.100](#). Conformance with the development standards for the issuance of the CUP and SUP are discussed below.

Zoning Ordinance Conformance

Land Use

The subject site is zoned A Agriculture Zoning District and the project includes a rezoning to the PQP Public/Quasi-Public Zoning District.

The site was originally zoned A Agriculture for which Assembly was a permitted use. The site includes an Assembly use (church).

The wireless communications facility was a conditionally permitted use under A Agriculture. The site is to be rezoned to PQP to accommodate the existing monopole and bring into conformance with the new permit. Wireless facility use requires a conditional use permit in the PQP.

Assembly use requires a special use permit in the PQP zoning district.

Development Standards**PQP Public Quasi-Public Zoning District– Minimum Setbacks and Height**

	A Required	PQP Required	Existing/Proposed Monopole	Existing/Proposed Enclosure	Assembly Building	Accessory Buildings
Minimum lot size	20 acres minimum	6,000 SF minimum	---	---	---	---
Maximum Height	35 or established in Chapter 20.85	65 feet minimum	63 feet	6 feet	30 feet	12 feet
PQP Setbacks						
Front (E. Capitol Expressway)	---	10 feet minimum	68.46 feet	71.5 feet	420.23 feet	Varies 104.33 feet- 302.45 feet
Front (Senter Road)			637.5 feet	604.28 feet	163.58 feet	Varies 338.80 feet - 522.40 feet
Left, side interior (South)	---	None	145.42 feet	123.68 feet	89.21 feet	Varies 119 feet- 183.86 feet
Right, side interior (North)	---	None	61.26 feet	51.22 feet	35.11 feet	Varies 1.05 feet - 15.33 feet

Analysis: As discussed above, the use, minimum lot size setbacks, and height are consistent with the PQP zoning development standards of both the assembly use and the wireless facility. By rezoning to PQP, the need for a variance for the wireless facility would be eliminated and the site would be consistent with the required minimum lot size providing for consistency with the zoning district.

- a. Parking: Pursuant to San José Municipal Code [Section 20.90.060](#), one vehicle parking space and one bicycle parking space are required for the wireless facility, and assembly requires 1 vehicle parking space per 4 fixed seats, or 1 per 6 linear feet of seating, or 1 per 30 sq. ft. of area designed for assembly, used together or separately for worship. One bicycle parking space is required for the wireless facility.

Analysis: All vehicle parking is existing, and no change is proposed for either the church or the wireless facility. There is one existing vehicle parking space provided for the wireless facility. Additionally, one bicycle parking space is shown within the equipment enclosure. Therefore, the project meets the required parking requirements.

- b. Performance Standards: The performance standards for PQP are identified in Municipal Code [Section 20.40.600](#).
- i. Air Pollution. Total emissions from any use or combination of uses on a site shall not exceed the emissions and health risk thresholds as established by the director of planning.
 - ii. Noise. The sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in Table 20-105 at any property line, except upon issuance and in compliance with a special use permit as provided in [Chapter 20.100](#).

	Maximum Noise Level in Decibels at Property Line
Commercial or PQP use adjacent to a property used or zoned for residential purposes	55
Commercial or PQP use adjacent to a property used or zoned for commercial or other non-residential purposes	60

Analysis: The acoustical report for the wireless facility dated August 14, 2020 prepared by Aspectus, Inc. (see attached Exhibit I) indicates that the noise level at the nearest residential property line would be 34 dBA, and the noise levels would be reduced to 37 dBA or lower at the commercial property line. The noise levels are below the allowed decibel levels and the project is consistent with the performance standards of the PQP district.

Additionally, the project will be compliant with the FCC Rules and Regulations, as described in OET Bulletin 65, upon implementation of the proposed remediation as stated in the Radio Frequency (RF) Site Compliance Report dated March 6, 2020, submitted by the applicant, on file with the Planning Division. A project condition of the wireless communication facility is to comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation.

Council Policies

Wireless Communications Facilities Policy

As stated in the [City Council's Land Use Policy for Wireless Communication Facilities](#) (Council Policy 6-20), San José has a strong interest in achieving and maintaining a high level of wireless communication service availability for businesses and residents. However, visual impacts and residential interface concerns can result from the development of wireless communication facilities. The purpose of the policy is to identify criteria to minimize and appropriately locate wireless communications antenna facilities.

1. Criteria for Siting Wireless Communication Antennas

a. Visual Impacts.

Alternatives Analysis: Prior to the construction of a new wireless communication facility, an alternative analysis should be prepared to identify alternatives that reduce visual impacts.



Figure 1 –
The existing monopole and radome.



Figure 2 – Existing monopole and radome with a proposed live oak tree for screening.

Analysis: The monopole already exists and is shrouded by a radome. A tree is conditioned to be planted and maintained to screen the wireless facility from public views. Therefore, the project is consistent with the policy.

Collocation of Facilities on a Single Monopole and Utility Structure Mounted Antennas: Sharing of a single monopole by two or more communication companies or placement of new antenna on existing utility structures within or outside of the public right-of-way or on a Joint Pole Authority (JPA) structure (including 60kV power line poles) can reduce the overall visual impact of the development of wireless antenna networks.

Analysis: Pursuant to a letter dated 3/17/20 from the applicant to the City, there are three carriers who are co-located on the same monopole. Consistent with the policy, the co-location improves site aesthetics as less monopoles are needed.

Equipment Enclosures: Equipment areas should be screened as appropriate based upon site conditions by new or existing landscape materials or built structures.

Analysis: The existing equipment area is enclosed and is located at an area behind the assembly building and is not be visible from Senter Road. Additionally, the enclosure is screened from public views by existing landscaping along Capitol Expressway.

Lighting: No lighting of antennas is allowed except during maintenance activities or as required for safety by the FAA or other regulatory agency.

Analysis: No lighting would be installed; therefore, the project is consistent with the policy.

Landscaping: New landscaping or other visual amenities should be considered to offset the overall visual impact of new freestanding monopole and collocation projects.

Analysis: As identified above, the already existing monopole has a radome for shrouding. Additionally, a tree is to be planted on the southwest side of the monopole and maintained for screening, showing consistency with the policy.

- b. **Height.** Antenna installations should conform to the San José 2020 General Plan and Zoning Ordinance height restrictions.

Analysis: As referenced above, the maximum height is 65 feet within the PQP district. The monopole is a maximum of 63 feet and the height is consistent with the policy.

- c. **Setbacks from Residential Uses.** Freestanding monopoles should be located no closer to a parcel developed for use as a single-family or multi-family residence than 35 feet or a distance equal to 1 foot for every 1 foot of structure height, whichever is greater.

Analysis: The monopole is located approximately 145.2 feet north of the nearest residential use. Because the monopole is a maximum of 63 feet tall, the monopole is consistent with the distance from the adjacent residential use.

- d. **Performance Standards.** Antenna installations should conform to the performance standards of the underlying zoning district. In particular, associated equipment, including power-generating equipment, will need to meet the pertaining noise and air-quality standards and permitting requirements established within the City's Zoning Ordinance.

Analysis: The acoustical report dated August 14, 2020 (see attached Exhibit I) indicates that the noise level at the nearest residential property line would be 34 dBA, and the noise levels would be reduced to 37 dBA or lower at the commercial property line. The noise levels are below the allowed decibel levels and the project is consistent with the performance standards of the district. Additionally, there are no generators on site. Given that there will only be one maintenance vehicle there are minimal emissions for the wireless facility.

- e. **Parking.** Wireless communication facilities should not reduce existing parking on the site unless the zoning district parking requirements can still be met.

Analysis: There is one existing vehicle and one existing bicycle parking space. There is no change to the existing on-site parking; the project is consistent with the policy.

- f. **Vacant Sites.** Monopoles developed on vacant sites should be removed and where possible should be replaced with building-mounted antennas when the site is developed provided that the new development would allow relocation of the existing antennas at a similar height and disposition.

Analysis: This is not applicable because the site is not vacant. The site is developed with an already existing assembly, accessory buildings, and a wireless facility.

- g. **Environmental Review an Application for Environmental Clearance**

An Application for Environmental Clearance is required for wireless communication antennas that are determined not to be exempt from environmental review.

Analysis: As stated above, the monopole already exists and is not new. The project has been found to be exempt from CEQA pursuant to the state CEQA Guidelines Section 15301 for Existing Facilities since the project involves negligible or no expansion of the existing use.

- h. **Permit Expirations:** The City may include a time limit condition in use Permits to provide for the future review of the subject antenna installation. The typical time limit duration is for a five-year period. An extended permit duration of up to ten years can be considered appropriate for smooth taper monopoles placed in light or heavy industrial areas.

Analysis: If approved, the subject site would be rezoned to PQP. Consistent with the policy, the project condition of approval includes a five-year time limit to allow for future review.

Based on the above analysis, the existing wireless facility conforms to the Council Policy 6-20 requirements.

Public Outreach Policy

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered a standard development proposal. Following City Council Policy 6-30, the applicant has posted the on-site sign to inform the neighborhood of the proposed project. No public comments have been received. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Required Findings for Conditional Use Permit

In order for this request to be approved, the Planning Commission must be able to make all required findings for a Conditional Use Permit. [Section 20.100.720](#) of the Zoning Ordinance specifies the required findings for approval of a Conditional Use Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit:

1. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As described above in the General Plan Conformance section, the wireless facility use project is consistent with the site's PQP Land Use designation, as well as Telecommunication Goal IN-6 and Policy IN-6.1, and the subject site is not located within an Urban Village. Additionally, the existing Assembly use is also consistent the with Public/Quasi-Public Designation as private community gathering facilities are appropriate for this designation.

2. The Conditional Use Permit, as approved, conforms with the Zoning Code and all other Provisions of the San José Municipal Code applicable to the project; and

Analysis: As described above in the Zoning section, both the wireless facility and the Assembly uses are consistent with the setback, height, and parking development standards of the Public/Quasi-Public zoning district.

3. The Conditional Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As identified above, the project includes a re-permitting of an existing wireless facility and assembly use. There is no new equipment or construction with the project, and the project is consistent with the City Council's Land Use Policy for Wireless Communication Facilities (Council Policy 6-20).

4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

Analysis: As noted above, File No. CP01-025 and File No. V02-012 for the already existing wireless facility expired on June 12, 2017. The monopole is located approximately 145.42 feet north of the nearest residential use, and a tree is to be planted and maintained for screening of the facility from public views. The tree is a project condition of approval.

The project would operate within the allowed maximum RF limits per the FCC standards as stated in the Radio Frequency (RF) Site Compliance Report (see attached Exhibit K), dated March 6, 2020, submitted by the applicant, on file with the Planning Division. The wireless communication facility would be required to comply with all applicable Federal Communication Commission (FCC) standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation, and the project is consistent with the health and safety finding.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The wireless facility and assembly uses already exists. The wireless facility, including the enclosure, monopole, parking, are towards the northwest portion of the property and the church building is located towards the eastern portion of the approximately 3.49-gross acre site. Therefore, the site is adequate in size and shape to accommodate the facilities.

6. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis: The site is accessible from two driveways off Senter Road. The monopole, equipment enclosure, and assembly buildings already exist on the site, which is currently served by all necessary private and public facilities.

7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: Both the wireless facility and the assembly use are existing and there are no physical changes proposed. The antennas would not have an unacceptable negative effect from vibration, dust, drainage, erosion, stormwater runoff and odor on adjacent property or properties.

The Telecommunications Act of 1996 contains provisions concerning the placement of antenna structures and other facilities for use in providing personal wireless services. As required by this law, the Federal Communications Commission (FCC) adopted guidelines for environmental RF emissions. These guidelines apply to all transmitters licensed or authorized by the FCC, including antennas licensed to wireless service providers and the cellular telephones used by subscribers to the service. The guidelines are based upon recommendations of federal agencies with expertise in health and safety issues. The FCC has created guidelines for human exposure to RF fields. Specifically, the Act states, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

In summary, the wireless communication facility would comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation.

Required Findings for Special Use Permit

Special Use Permit Findings. Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. Pursuant to the City's Municipal Code [Section 20.40.100](#) a Special Use Permit is required for Assembly use in the Public/Quasi-Public Zoning District.

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and
- b. The Special Use Permit, as approved, conforms with the Zoning code and all other provisions of the San José Municipal Code applicable to the project; and
- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed above, the project rezoned the subject site from A to PQP in order to re-permit the existing wireless facility. The rezoning of the site to PQP eliminated the need for a setback variance and the required minimum lot size standard was met. Additionally, assembly is a specially allowed use in PQP, and PQP is a conforming district to the Public/Quasi-Public General Plan Designation. Therefore, the project is consistent with the General Plan designations and conforms to the Zoning

d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety, or general welfare; and

As noted above, the proposed project would not have a detrimental effect on the surrounding community as both uses are already existing, and no physical changes are proposed.

e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As discussed above, the wireless facility and assembly buildings exist on the site, and the subject site is adequate in size to accommodate the project.

f. The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- ii. By other public or private service facilities as are required.

Analysis: As discussed above, the wireless facility and assembly buildings exist on the site, and the subject site is adequate in size to accommodate the project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Conditional Use Permit, Special Use Permit, and Rezoning are found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301, Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination..

The project is only to re-permit an existing wireless communication antenna without new construction. The operation of the use is consistent with the existing use and therefore would not result in new impacts. Furthermore, there will be no new construction on the site as part of this project and would not result in a detrimental to public health, safety or general welfare. Additionally, the project also includes a conforming rezoning. The project site is currently zoned A Agriculture. The project would bring the site into conformance with regard to lot size and eliminate the need for a setback variance to the existing monopole.

PUBLIC OUTREACH

To inform the public of the project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public. Additionally, an on-site sign was posted

There were no public comments received on this project.

Project Manager: Rhonda Buss

Approved by: /s/ , Deputy Director for Chu Chang, Acting Director

ATTACHMENTS:	
Exhibit A:	Aerial Map
Exhibit B:	General Plan Map
Exhibit C:	Existing Zoning District Map
Exhibit D:	Proposed Zoning District Map
Exhibit E:	CEQA Exemption
Exhibit F:	Alternative Site Analysis dated 3/15/20
Exhibit G:	Ordinance and Resolution (Rezoning and Conditional and Special Use Permit)
Exhibit H:	Conditional Use Permit Plan Set
Exhibit I:	Plat Map and Legal Description
Exhibit J:	Acoustical Report dated 8/14/20
Exhibit K:	Radio Frequency (RF) Site Compliance Report dated 3/6/20

Owner/Tenant:	Applicant's Representative:
Jerry Harris Seven Trees Baptist Church 3195 Senter Road, San Jose, CA 95111 Jim Lee Crown Castle GT CO. LLC 200 Spectrum, Suite 1700 Irvine, CA 92618	Jacob Hamilton 1533 SE 33rd Avenue Portland, Oregon 97214

C20-014 & CP20-0012 List of Attachments

Exhibit A:	<u>Aerial Map</u>
Exhibit B:	<u>General Plan Map</u>
Exhibit C:	<u>Existing Zoning District Map</u>
Exhibit D:	<u>Proposed Zoning District Map</u>
Exhibit E:	<u>CEQA Exemption</u>
Exhibit F:	<u>Alternative Site Analysis dated 3/15/20</u>
Exhibit G:	<u>Ordinance and Resolution (Rezoning and Conditional and Special Use Permit)</u>
Exhibit H:	<u>Conditional Use Permit Plan Set</u>
Exhibit I:	<u>Plat Map and Legal Description</u>
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Exhibit K:	<u>Radio Frequency (RF) Site Compliance Report dated 3/6/20</u>

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 13, 2021

COUNCIL DISTRICT: 3 & 6

SUBJECT: GP20-007 AND C20-002: GENERAL PLAN AMENDMENT ASSOCIATED WITH AMENDING THE DIRIDON STATION AREA PLAN (DSAP), AND CONFORMING REZONING

RECOMMENDATION

The Planning Commission voted 5-0-2 (Vice Chair Bonilla was absent and Commissioner Lardinois abstained) to recommend that the City Council take all of the following actions:

1. Adopt a resolution adopting an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942) and Addenda thereto, in accordance with CEQA; and
2. Adopt a resolution by two-thirds majority making certain findings required by California Public Utilities Code Section 21676 that the proposed City-initiated General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) is consistent with the purposes set forth in California Public Utilities Code Section 21670 and overruling the Santa Clara County Airport Land Use Commission's (ALUC) determination that the proposed City-initiated General Plan Amendment and Conforming Rezoning are inconsistent with the ALUC noise and height policies as defined by the Comprehensive Land Use Plan for the San José International Airport (CLUP); and
3. Adopt a resolution approving the General Plan Amendment (File No. GP20-007) amending the Envision San José 2040 General Plan pursuant to Title 18 of the San José Municipal Code to amend the "Planned Job Capacity and Housing Growth Areas by Horizon" Table 5 in Appendix 5, and amending the Diridon Station Area Plan, a component of the Envision San José 2040 General Plan, to modify the Envision San José 2040 General Plan Land Use/Transportation Diagram for properties within the boundaries of Diridon Station Area Plan and transportation street typology designations, expand the Diridon Station Area Plan boundary, and implement other text amendments and amendments to diagrams for the Diridon Station Area Plan.
4. Approve an ordinance rezoning certain real property (totaling 97 acres) within approximately 262 gross acres located within the boundaries of the Diridon Station Area Plan generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the

north; the Guadalupe River and State Route 87 to the east; Interstate 280 to the south; and Sunol Street and the Diridon Station Commuter Rail to the west from Zoning Districts that include Combined Industrial/Commercial, Commercial General, Commercial Neighborhood, Commercial Pedestrian, Heavy Industrial, Industrial Park, Light industrial, Two-Family Residential, and Transit Employment Center to Zoning Districts that include Downtown Primary Commercial, Open Space, and R-M Residence District (Multiple Unit/Lot).

OUTCOME

Should the City Council adopt a resolution approving the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the resolution approving the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect various land use designation changes from Transit Employment Center, Urban Village, Urban Village and Mixed-Use Commercial, Combined Industrial/Commercial, Neighborhood Residential, Urban Residential and Mixed-Use Commercial to Downtown, Commercial Downtown, Transit Residential, Urban Residential, and Open Space, Parklands and Habitats, with an Outer Safety Zone Overlay.

If the General Plan Text Amendment resolution is approved, the Diridon Station Area Plan would be amended to modify the Envision San José 2040 General Plan Land Use/Transportation Diagram for properties within the boundaries of Diridon Station Area Plan and transportation street typology designations, expand the Diridon Station Area Plan boundary, and implement other text amendments and amendments to diagrams for the Diridon Station Area Plan.

If the conforming rezoning ordinance is approved, certain real property (totaling 97 acres) would be rezoned from Zoning Districts that include Combined Industrial/Commercial, Commercial General, Commercial Neighborhood, Commercial Pedestrian, Heavy Industrial, Industrial Park, Light industrial, Two-Family Residential, and Transit Employment Center to Zoning Districts that include Downtown Primary Commercial, Open Space, and R-M Residence District (Multiple Unit/Lot).

If the City Council denies all the actions listed above, the 2014 Diridon Station Area Plan and current General Plan designations and Zoning Districts will remain in effect.

EXECUTIVE SUMMARY

On April 28, 2021, the Planning Commission considered an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942) and Addenda thereto, and the General Plan Amendment and Conforming Rezoning described above.

During the Planning Commission public hearing for the recommended actions, staff provided an overview of the environmental analysis, Plan amendments and conforming rezoning. Nine members of the public provided testimony. The Planning Commissioners discussed the merits of the Plan and its relationship to the Downtown West Mixed-Use Plan and asked clarifying questions of staff. The Planning Commission voted 5-0-2 (Vice Chair Bonilla absent and Commissioner Lardinois abstained) to recommend that the City Council adopt the environmental resolution, resolution overruling ALUC determination, resolution approving the General Plan amendment associated with amending the DSAP and approve the ordinance for conforming rezoning.

BACKGROUND

Prior to the April 28, 2020 Planning Commission hearing, the project was taken before other commission bodies for formal recommendations.

Airport Land Use Commission (ALUC)

As portions of the project fall within the Airport Land Use Commission (ALUC) Airport Influence Area surrounding Mineta San José International Airport (SJC), the General Plan Amendment (land use designations) and Conforming Rezoning were referred to the ALUC. On December 16, 2020 and February 24, 2021, the proposed City-initiated General Plan Amendment (GP20-007) and Conforming Rezoning (C20-002) were taken to the ALUC for consideration. In both referral determinations, the ALUC found the proposed General Plan Amendment and Conforming Rezoning to be inconsistent with certain ALUC noise and height policies as defined in the “Comprehensive Land Use Plan for San José International Airport” (CLUP). The ALUC found the proposed rezoning and general plan amendment to be inconsistent with the CLUP Noise Policy N-4 and Table 4-1, because a portion of the plan area would permit residential outdoor patios or outdoor activity areas within the CLUP’s 65 A-weighted decibels (dBA) Community Noise Equivalent Level (CNEL) noise contour. The ALUC found the proposed rezoning and general plan amendment were also inconsistent with the CLUP H-1 height policy, as the project may propose building heights that exceed FAR Part 77 Surfaces. The CLUP height policy references FAR Part 77 Surfaces to determine compatible land uses in the Airport Influence Area.

On March 16, 2021, staff notified the ALUC County planner and the Caltrans Division of Aeronautics of the City’s intention to overrule the determination by the ALUC with a two-thirds vote of the City Council, providing a draft City resolution (see Planning Commission Staff Report Attachment B.6.) making specific findings that the proposed action is consistent with the purposes set forth in Section 21670 of the California Public Utilities Code (Section 21670). The City received Caltrans comments on April 15, 2021 and ALUC comments on April 22, 2021. The Planning Commission Staff Report and Draft Resolution include the required findings for overruling of the Determination of Inconsistency by the ALUC. City Council overruling the ALUC inconsistent determination requires a two-thirds majority vote of the present Councilmembers.

Planning Commission

On April 28, 2020, the Planning Commission conducted a Public Hearing to consider the proposed General Plan Amendment, General Plan Text Amendment, and Conforming Rezoning and the adequacy of the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report.

Staff Presentation

Staff provided two verbal updates to the staff report (see updated Planning Commission Staff Report Attachments J and L). First, staff referenced the Airport Land Use Commission overrule draft resolution, which was updated to include ALUC's comment letter on the City's proposed overrule and to address the ALUC comments; the updated draft overrule resolution was posted on Friday, April 23. Staff also referenced Appendix A of the Plan, which provides more information about the methodology used in the Plan's build-out estimate; staff noted that Appendix A was inadvertently omitted from the posted document.

Staff described the goals and objectives for the Diridon Station area and Downtown, the changes that have occurred since the original Diridon Station Area Plan was adopted in 2014, the planned transit investments, and a summary of the significant amount of effort that went into reaching out and incorporating the feedback from the various community members and stakeholders.

Staff provided an outline of the Plan, including its focus on equity, expanded boundary, land use concept, allowable building heights, potential maximum development capacity, urban design and height transition standards, and strategies for open space, mobility, parking, and sustainability. Staff provided a summary of the Plan's General Plan and Zoning District changes.

Staff summarized the purpose of the Initial Study/Addendum, and most importantly, its public circulation and the response to comments, which were included as part of the community outreach and engagement for the Plan. Staff presented the criteria for preparation of an Addendum instead of a Supplemental Environmental Impact Report (EIR) and the subsequent project-level environmental analysis that individual development projects will undergo as part of the amended DSAP implementation process.

Following the presentation, Commissioner Oliverio inquired about the Plan's achievable housing density and capacity. Staff responded by showing the table with the Plan's overall build-out capacity, which includes up to 5,900 units within the Downtown West Mixed-Use Plan and up to 7,619 units in the remainder of the Plan area. Commissioner Oliverio then asked if the Plan could accommodate even more housing. Staff responded that the Plan's environmental clearance included the upper limit of both potential commercial and residential development possible under the Plan's flexible land use designations and maximum allowable heights.

Chair Caballero asked about the Plan's Green Building requirements for new construction. Staff responded that the Plan does not change the City's Green Building requirements for new construction, which require all private sector and municipal building projects constructing or

adding more than 10,000 square feet of occupied space (as defined in the adopted building code) to be designed and constructed to achieve at a minimum the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED™) Rating System Silver level of certification with a goal of reaching LEED Gold or Platinum.

The PowerPoint presentation to the Planning Commission is attached to this staff memo for reference (Attachment B).

Public Hearing

There were a total of nine members of the public who provided comments during the hearing. Four members spoke in support of the Plan, and five members expressed concerns or opposition.

Roland Lebrun mentioned that the presentation had not been posted in advance on the City website. He noted that the 2014 DSAP's concepts for High-Speed Rail at Diridon Station had included underground tracks to minimize the impact on adjacent development and hoped that conversation with the High-Speed Rail Authority to place two tracks underground could be restarted to provide hundreds of millions of dollars in additional community benefits for the proposed Downtown West project. He stated his belief that a station with two underground tracks could be built for less than \$300 million instead of \$7 billion and that Google's technical team could design the project in three months.

Kathy Sutherland, a Delmas Park resident and member of the Diridon Area Neighborhood Group (DANG), mentioned concerns about blocks on the south side of San Carlos Avenue where the Plan would allow high-rise buildings on the same block as areas zoned R-2. She also shared concerns about a site at Park Avenue and Gifford Street near Los Gatos Creek, where midrise buildings (65 or 90 feet high) would be permitted adjacent to the Lakehouse City Landmark District. She expressed a desire that the City apply the Downtown West Design Standards and Guidelines to all development in the Diridon Station Area.

David Meyer of Silicon Valley at Home (SV@Home) expressed support for the Plan and the associated Affordable Housing Implementation Plan, including support for the proposed land uses and building heights in order to reach the area's potential housing capacity. He noted that the Downtown West project and the Diridon Station Area Plan rely on greater building heights than the 2014 Plan and that reducing the allowed heights would undermine the area's housing capacity.

Meredith Muller asked about the location of a proposed park near Stockton Avenue and West Julian Street and pedestrian access under the future elevated rail tracks to connect from Cinnabar Street to the park within the Downtown West project. Staff responded that both Lenzen and Cinnabar Avenues are under consideration as future pedestrian and bicycle connections.

Tessa Woodmansee expressed a concern about the survival of the human species on a planet without fossil fuel, loss of natural habitat and biodiversity, and the need for open land to grow

food in urban areas. She urged the City to acquire the property at 615 Stockton Avenue for open space and food production.

Mike Sodergren of Preservation Action Council – San Jose (PAC*SJ) expressed concern that the Plan included significant changes from the 2014 Plan and did not address the potential effects of DISC on the historic station building. He encouraged the City to produce a definitive statement on the preservation of the historic station.

Alex Shoor of CatalyzeSV thanked staff for their outreach to the community and expressed support for higher buildings to provide the City with more tax revenue and allow more housing to give more people the opportunity to live in the transit-rich area. He stated that the concerns of single-family residents are not invalid, but that providing housing for the community is a greater priority than any individual's desires and that dense housing is most appropriate near transit and in the Downtown.

Oscar Morales Vivo spoke in support of the Plan to make San José a “real city.” He requested clarification that the potential future pedestrian and bicycle crossings of the future elevated rail tracks will need to be planned as part of the future DISC station design process.

Kathryn Hedges expressed support for Alex Shoor's comments, noting that density should be allowed where needed and that San José is a big city that needs to grow upward to accommodate more people and to encourage transit use to reduce global warming. She stated that the Plan has a good balance of density and green space and other amenities.

Staff clarified that the Plan designates the planned Cinnabar and Lenzen Avenue connectors as Active Greenways, which are streets that are closed to motor vehicles and open to pedestrians, bicyclists, shared micro mobility and emergency vehicles. They serve as open spaces that connect people and places. Staff confirmed that the DSAP lays out the long-range vision to establish these connections when the tracks are elevated in the future as part of DISC. An option that includes a motor vehicle connection is also under consideration for Lenzen Avenue.

Planning Commission Discussion

Commissioner Oliverio inquired about the pending bill in the state legislature to extend AB 900 and asked whether the Downtown West Mixed-Use Plan could proceed independently of the DSAP. Staff clarified that the Downtown West project's entitlements included project-specific DSAP amendments and that the project could proceed independently of the City-initiated DSAP amendments. He inquired whether the Plan's environmental document could be challenged outside of AB 900. Staff confirmed that any CEQA challenge to the DSAP document would not benefit from the litigation streamlining of AB 900.

Commissioner Oliverio expressed support for placing density in this area where it makes the most sense, rather than disrupting other areas that are not as proximate to Downtown and transit. He shared that he understands the concerns of blocks that border commercial areas but supports placing significant density in the City's Downtown and transit core.

Commissioner Oliverio moved to recommend approval per staff's recommendation and the motion was seconded by Commissioner Torrens.

The Planning Commission voted 5-0-2 (Vice Chair Bonilla absent and Commissioner Lardinois abstained) to recommend that the City Council approve and adopt all the above listed actions.

ANALYSIS

Analysis of the proposed project, including conformance with the General Plan and City Council policies, is contained in the attached Planning Commission staff report (Attachment A).

Letters Received

Staff has received a several letters/emails from organizations and individuals supporting the project, including correspondence from the following organizations:

- California High-Speed Rail Authority
- Caltrain
- Catalyze SV
- San Jose Downtown Association (SJDA)
- Santa Clara County Transportation Authority (VTA)
- Sierra Club Loma Prieta Chapter
- Silicon Valley at Home (SV@Home)
- SPUR

Additionally, staff has received several letters/emails from organizations expressing concerns about the project and/or opposition to the project:

- San Jose Park advocates regarding the City's commitment to park land for the area
- Shasta/Hanchett Park Neighborhood Association (S/HPNA) regarding the amendment process
- Preservation Action Council of San Jose (PAC*sj) regarding historic preservation and mitigation alternatives analysis
- Affordable Housing Network of Santa Clara County regarding displacement
- Guadalupe River Park Conservancy regarding the inclusion of the Guadalupe River Park and Trail in the DSAP boundary
- Five letters from the Diridon Area Neighborhood Group (DANG) regarding single family adjacency and building height limits
- Silicon Valley Law Group, representing Sharks Sports & Entertainment LLC, regarding the Initial Study/Addendum to the Downtown Strategy 2040 Environmental Impact Report for the Diridon Station Area Plan Amendment.

Staff addressed concerns raised by organizations and individuals through revisions to the Amended DSAP, meetings, and formal responses to comments on the Addendum to the Downtown Strategy EIR. All formal letters are linked in the Planning Commission staff report, and letters/emails received after the Planning Commission hearing are linked below in Attachment C.

CONCLUSION

The Planning Commission voted 5-0-2 (Vice Chair Bonilla absent and Commissioner Lardinois abstained) to recommend that the City Council adopt the environmental resolution, resolution overruling ALUC determination, resolution approving the General Plan amendment associated with amending the DSAP and approve the ordinance for conforming rezoning.

See attachment D for changes made to the amended DSAP after the Planning Commission hearing and refer to the updated amended DSAP posted online.

EVALUATION AND FOLLOW UP

If the CEQA resolution and General Plan Amendment and Conforming Rezoning are approved as recommended by the Planning Commission, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect various land use designation changes described in the Outcome section above, the Diridon Station Area Plan would be amended to modify the Envision San José 2040 General Plan Land Use/Transportation Diagram for properties within the boundaries of Diridon Station Area Plan and transportation street typology designations, expand the Diridon Station Area Plan boundary, and implement other text amendments and amendments to diagrams for the Diridon Station Area Plan, and certain real property (totaling 97 acres) would be rezoned as described in the Outcome section above.

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the intensity (jobs/acre) of the Plan area and would implement design features for a high-performing, energy-efficient development. The project, which entails transit-oriented development (TOD) planning, facilitates job creation within City limits and due to its accessible location facilitates mobility choices other than single-occupancy, gas-powered vehicles.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed Plan amendments. Staff distributed a notice of the public hearing to the owners and tenants of all properties located within 1,000 feet of the Plan boundary and posted on the City website. The staff report is also posted on the City's website.

Given the size of the Diridon Station area and the many related projects, the outreach has been extensive and involved both City and applicant-sponsored outreach and coordination, as summarized in the attached Planning Commission staff report (Attachment A). A list of engagement events and supporting documents can also be found at <https://www.diridonsj.org/fall2020>.

Based on community input, the Plan emphasizes equity as a primary objective, significantly adds development capacity, includes design standards for providing transition between new mid- and high-rise buildings and existing low-rise residences, proposes a wider mix of uses across the area, identifies new ways to improve the pedestrian environment, revises the open space plan to ensure better access to recreational, nature-based, and community amenities, and updates the mobility network to prioritize walking, public transit, and bicycling within the core Diridon Station Area, while locating automobile circulation and parking facilities at the perimeter of the Diridon Station Area. These changes and others balance the range of aspirations and concerns expressed by community members throughout the engagement process.

Staff's contact information has also been available on the community meeting notices and on the project webpage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

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

CEQA

In compliance with the California Environmental Quality Act (CEQA), the City prepared an Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution no. 78942) to address the environmental impacts of the project. The Downtown Strategy 2040 Final Environmental Impact Report (FEIR) evaluated development within Downtown to the year 2040, including development within the DSAP, at a program-level with project-level evaluation of regional criteria air pollutants, greenhouse gas emissions, and transportation. The FEIR superseded the 2014 DSAP EIR by including updated analysis consistent with State greenhouse gas emissions targets and vehicle-miles traveled analysis consistent with the City's updated Transportation Analysis Policy (Council Policy 5-1).

The Diridon Station Area Plan Amendment (DSAP Amendment), as described in the Initial Study/Addendum, does not create any of the conditions described in Section 15162 of the CEQA Guidelines that call for the preparation of a subsequent EIR. No new significant impacts would occur, and no previously examined significant effects would be substantially more severe than those identified in the Downtown Strategy 2040 FEIR. Thus, an Addendum to the adopted FEIR is the appropriate environmental documentation to analyze the potential environmental impacts of the DSAP Amendment at a program-level (and project-level for the air quality, greenhouse gas emissions, and transportation). The Downtown West Mixed-Use Plan project, located within the boundaries of the amended DSAP, prepared a project-level EIR which analyzes buildout of the entire DSAP Amendment in its analysis of cumulative impacts.

As an Addendum to a previously adopted EIR, public circulation is not required under CEQA. However, as part of the public outreach and engagement process for the DSAP Amendment, the City posted the Initial Study/Addendum on the City's website for a period of 30 days and solicited public comments from March 1, 2021 through April 1, 2021. The City received 17 comment letters on the Initial Study/Addendum during this period. The City has prepared responses to all the comments, including an errata summarizing revisions to the Initial Study/Addendum made in response to comments. The Initial Study/Addendum, public comment letters, the City's responses to those comments, and the errata are posted to the City's website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/diridon-station-area-plan-amendment>. The Downtown Strategy 2040 Final Environmental Impact Report can be found at: <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/downtown-strategy-2040>.

/s/
CHU CHANG, Secretary
Planning Commission

For questions, please contact Deputy Director, Robert Manford, at (408) 535-7900.

Attachments:

- Attachment A: Updated Planning Commission Staff Report and associated attachments to resolutions, ordinances, and exhibits.
- Attachment B: City Presentation at Planning Commission
- Attachment C: Public Correspondence
- Attachment D: Changes to the amended DSAP after the Planning Commission hearing



Memorandum

TO: PLANNING COMMISSION

FROM: Chu Chang

SUBJECT: File No. GP20-007 and C20-002

DATE: 04-21-21

COUNCIL DISTRICT: 3 and 6

Type of Permit	General Plan Amendment associated with amending the Diridon Station Area Plan (DSAP), and Conforming Rezoning
Project Planner	Jose Ruano
CEQA Clearance	Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942), and Addenda thereto
CEQA Planner	Shannon Hill

RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council all of the following actions:

1. Adopt a Resolution adopting an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942) and Addenda thereto, in accordance with CEQA; and
2. Adopt a Resolution by 2/3 majority making certain findings required by California Public Utilities Code Section 21676 that the proposed City-initiated General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) is consistent with the purposes set forth in California Public Utilities Code Section 21670 and overruling the Santa Clara County Airport Land Use Commission's (ALUC) determination that the proposed City-initiated General Plan Amendment and Conforming Rezoning are inconsistent with the ALUC noise and height policies as defined by the Comprehensive Land Use Plan for the San José International Airport (CLUP); and
3. Adopt a Resolution approving the General Plan Amendment (File No. GP20-007) amending the Envision San José 2040 General Plan pursuant to Title 18 of the San José Municipal Code to amend the "Planned Job Capacity and Housing Growth Areas by Horizon" table 5 in Appendix 5, and amending the Diridon Station Area Plan, a component of the Envision San José 2040 General Plan, to modify the Envision San José 2040 General Plan Land Use/Transportation Diagram for properties within the boundaries of

Diridon Station Area Plan and transportation street typology designations, expand the Diridon Station Area Plan boundary, and implement other text amendments and amendments to diagrams for the Diridon Station Area Plan.

4. Approve an Ordinance rezoning certain real property (totaling 97 acres) within approximately 262 gross acres located within the boundaries of the Diridon Station Area Plan generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; the Guadalupe River and State Route 87 to the east; Interstate 280 to the south; and Sunol Street and the Diridon Station Commuter Rail to the west from Zoning Districts that include Combined Industrial/Commercial, Commercial General, Commercial Neighborhood, Commercial Pedestrian, Heavy Industrial, Industrial Park, Light industrial, Two-Family Residential, and Transit Employment Center to Zoning Districts that include Downtown Primary Commercial, Open Space, and R-M Residence District (Multiple Unit/Lot).

PROPERTY INFORMATION

Location	Generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; the Guadalupe River and State Route 87 to the east; Interstate 280 to the south; and Sunol Street and the Diridon Station Commuter Rail to the west
Growth Area	Downtown
Council District	3 and 6
Acreage	Approximately 262 gross acres

PROJECT BACKGROUND

Diridon Station Area Context

5. As shown on the attached vicinity map (Attachment A), the proposed General Plan amendment would expand the 2014 Diridon Station Area Plan boundary by approximately 12 acres, increasing the total Diridon Station Area from approximately 250 acres to 262 acres. The Diridon Station Plan Area is a sub-area of Downtown San José, with the exception of the area between Stockton Avenue and The Alameda, and the area west of the Union Pacific Railroad tracks between Park Avenue and Interstate 280. More specifically, the approximately 262-acre area is generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; the Guadalupe River and State Route 87 to the east; Interstate 280 to the south; and Sunol Street and the Diridon Station Commuter Rail to the west. Surrounding uses include:

Surrounding Land Uses

- North: Parks and Open Space land associated with the Guadalupe River Park is located directly north of the Diridon Station Area across Coleman Avenue. Other uses surrounding this park area include areas designated as Residential Neighborhood, Neighborhood/Community Commercial located east of the Guadalupe River, and Light Industrial Areas located west of Coleman Avenue. The Airport is located approximately one mile further to the north across Interstate 880.

- South: The Gardner and Willow Glen neighborhoods, located directly south of the Diridon Station Area and Interstate 280, generally comprise Residential Neighborhood uses with pockets of neighborhood/community Commercial and Mixed Use interspersed throughout.
- East: Directly east of the Diridon Station Area is the Guadalupe River Park and trail. Downtown, east of State Route 87, is currently developed with a mix of office, commercial, hotel, residential and public service uses. Notable development in this area includes the Fairmont Hotel, the De Anza Hotel, San José Convention Center, Children’s Discovery Museum, and various high-rise office and residential buildings. Land uses in this area are generally defined as Downtown or Public/Quasi Public.
- West: Development to the west of the Diridon Station Area is characterized by residential neighborhoods, including Garden Alameda to the west of Stockton Avenue, Cahill Park east of Bush Street, the Shasta Hanchett Park neighborhood east of Sunol Street, Saint Leo’s north of the intersection of Park Avenue and Sunol Street; Theodore Lenzen Park on the corner of Lenzen Avenue and Stockton Avenue; older industrial uses that are part of the College Park north of the crossing of Lenzen Avenue and the Union Pacific Rail Road tracks; and the Midtown and Buena Vista neighborhoods. Land uses are generally designated Residential Neighborhood or Neighborhood/Community Commercial, though there are pockets of Transit Residential, Urban Residential, and Industrial Park within the Buena Vista Neighborhood.

Diridon Station Area Plan

The proposed amended Diridon Station Area Plan (“the Plan”) was prepared by the City with community input to adapt the existing 2014 Diridon Station Area Plan (“2014 Plan”) to current conditions and reflect the City’s goals of advancing equity as development and investment occurs in the area. To align the Plan with the City’s Downtown Strategy 2040, major changes include expanding the 2014 Plan boundary, adding development capacity, increasing building height limits, and updating sections on land use, urban design, open space, and mobility. In addition, the City initiated separate, detailed areawide studies and implementation plans on affordable housing and parking, which contributed greatly to the development of the Plan.

The Plan presents an overview, a direction, and critical aspects for the successful future of an equitable Diridon Station Area. The Plan integrates land uses, urban design, open spaces, and mobility to enhance Downtown San José, while respecting existing surroundings. The Plan weaves new ideas and new development possibilities within existing city fabric and strong neighborhoods. Large proposals, such as the Diridon Integrated Station Concept Plan and Google’s Downtown West Mixed-Use Plan, are reflected in the Plan. In addition, proposals are made to strengthen existing features of the area, such as Los Gatos Creek, and enhance connectivity to surrounding neighborhoods.

Beginning with the project vision, the Plan describes the many guiding principles of the area, as well as the planning process and schedule. Diridon Station Area Development follows, which is a tool to guide the future implementation of the Plan by public and private development. The Plan then describes the areas open space and public life, and mobility. Finally, the Plan discusses the next steps in the planning implementation process, including environmental analysis and actions for implementation.

The Plan has several companion documents, Some of which are incorporated by reference or included as Appendices. Notable among these documents are:

- Diridon Station Area Plan Amendment Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report
- Diridon Affordable Housing Implementation Plan

The Diridon Affordable Housing Implementation Plan (AHIP) executive summary is incorporated into the Plan (Section 2.5 of the Plan). The CQA clearance documentation for the Plan is included in Chapter 5 – Implementation of the Plan.

San José is poised to create a model urban transportation hub within an exciting and livable downtown environment. The Plan is a vital step on the way toward the creation of an equitable and innovative urban place, a place which has the potential to serve as a model for the United States and the world.

SANTA CLARA COUNTY AIRPORT LAND USE COMMISSION

The Santa Clara County Airport Land Use Commission (ALUC), under State regulations, maintains a Comprehensive Land Use Plan (CLUP) for Areas Surrounding Santa Clara County Airports, including the Norman Y. Mineta International Airport. The CLUP establishes land use policies for the regulation of height, air safety, and noise compatibility within the defined Airport Influence Area (AIA). As a large portion of the Diridon Station Area (primarily the eastern half) falls within the CLUP's AIA, certain proposed land use projects within the AIA, including General Plan, specific plan, zoning, or building regulation changes must be submitted to the ALUC for a CLUP consistency determination.

On December 16, 2020 and February 24, 2021, the proposed City-initiated General Plan Amendment (GP20-007) and Conforming Rezoning (C20-002) were taken to the ALUC for consideration. In both referral determinations, the ALUC found the General Plan Amendment and Conforming Rezoning would be inconsistent with the CLUP Noise Policy N-4 and Table 4-1 and H-1 height policy.

On March 16, 2021, staff notified the ALUC County planner and the Caltrans Division of Aeronautics of the City's intention to overrule the determination by the ALUC with a two-thirds vote of the City Council making certain findings required by California Public Utilities Code Section 21676 that the proposed City-initiated General Plan Amendment and Conforming Rezoning is consistent with the purposes set forth in California Public Utilities Code Section 21670 and overruling the ALUC's determination that the proposed City-initiated General Plan Amendment and Conforming Rezoning are inconsistent with the ALUC noise and height policies as defined by the CLUP. A copy of the City's draft override resolution and findings are attached (Attachment J).

On April 15, 2021, the Caltrans Division of Aeronautics sent a letter to staff regarding the Intent to overrule the ALUC finding of Inconsistency. In the letter Caltrans concurs with the ALUC inconsistency determination regarding aircraft noise and building heights (Attachment Q). The City's ALUC Override Draft Resolution (Attachment J) includes this comment letter as an exhibit and has been updated to respond to the comment letter.

As of April 20, 2021, staff has not received comments from the ALUC regarding the City's Intent to overrule the ALUC finding of Inconsistency pursuant to California Public Utilities Code 21676.

Indoor Residential/Hotel Noise Is Addressed by Implementation of 2040 General Plan Policies EC-1.1, EC-1.9, and EC-1.11

Caltrans asserts that acoustical analysis should be required prior to building permit issuance to ensure the Building Code's interior noise standard is met. Individual projects proposed under the DSAP will undergo project-level design and environmental review. Implementation of 2040 General Plan Policies EC-1.1, EC-1.9, and EC-1.11 would guide new development under Downtown Strategy 2040 proposed for areas susceptible to noise associated with the airport. Furthermore, future development within the 65 dBA CNEL noise contour would need to prepare a detailed noise analysis and incorporate noise insulation features into project design to reduce interior noise levels.

Outdoor Residential/Hotel Noise Does Not Create New Noise Problems

Caltrans and the ALUC do not acknowledge all of the requirements described in the proposed resolution supporting the conclusion that allowing outdoor use areas at residential and hotel buildings would not create new noise problems. As to noise, the City's difference with the CLUP pertains only to the ability to provide outdoor use areas such as balconies at residential and hotel uses within the 65 dBA CNEL noise contour; the City concludes, based on evidence described in the proposed resolution, that providing such areas is consistent with the purposes of the Aeronautics Act to avoid creating new noise problems.

Building Heights Are Subject to FAA Review

Caltrans and the ALUC take issue with the City's reliance on the FAA's regulatory process to ensure that building heights have been studied by the FAA as required by federal regulation and receive a determination of no hazard. The FAA is the only authoritative source on airspace utilization. FAR Part 77 and its imaginary airspace surfaces are used by the FAA to identify structures requiring aeronautical studies and airspace determinations. If a proposed building exceeds Part 77 surfaces, then the FAA is required to determine the potential aeronautical effect. The FAA's studies account for all known and proposed structures in the airport environment and consider both project-specific and cumulative effect. Caltrans expresses concern that the building heights permitted by the DSAP would constrain future Airport development, but the City's Airport Department has examined the project and considers it consistent with Airport planning, safety and economic interests.

GENERAL PLAN AMENDMENT

The General Plan Amendment associated with amending the 2014 Plan includes modifying the Envision San José 2040 General Plan Land Use/Transportation Diagram for properties within the boundaries the Plan, expanding the 2014 Plan boundary, and implementing other text amendments and amendments to diagrams for the Plan.

The City began the process of amending the 2014 Plan in November 2019, informed by an extensive outreach process for the Diridon Station Area that began in early 2018. This process was also influenced by the adoption of the Downtown Strategy 2040 and the Downtown Strategy 2040 EIR in late 2018, which analyzed a reallocation of City-wide development capacity to Downtown.

Additionally, the Plan addresses other changes in circumstances since the adoption of the 2014 DSAP.

- The City is no longer planning for a ballpark
- City Council adopted comprehensive Downtown Design Guidelines and Standards in 2019
- City Council approved a policy to allow for greater height limits
- City Council directed City staff to implement a 25 percent affordable housing goal for the Diridon Station Area and the City initiated an Affordable Housing Implementation Study
- City staff initiated updates to park and trail planning in the area
- The City initiated a Diridon Parking Study to identify parking supply and management strategies
- The Diridon Integrated Station Concept Plan (DISC) was initiated by the City and partner agencies
- A Downtown Transportation Study was initiated
- Google submitted the Downtown West Mixed-Use Plan development proposal at the core of the Diridon Station Area.

The goal is to develop a sustainable and equitable plan around Diridon Station that capitalizes on an anticipated possible build-out of new transit-oriented development to allow for more urban vitality and economic activity to act as a catalyst for similar development in surrounding neighborhoods, and to obtain environmental clearance under the California Environmental Quality Act (CEQA).

Changes to the 2014 Diridon Station Area Plan

The Plan includes the following changes:

1. **Advancing Equity in the Diridon Station Area:** The Plan integrates land uses, urban design, open spaces, and mobility to enhance Downtown San José, while respecting existing surroundings. Some of the features that make the area supportive of improved health and economic outcomes include improved transit access, proximity to jobs and cultural amenities in Downtown, trails and open space along the Guadalupe River and Los Gatos Creek, and a mix of housing types that support a range of income levels – including several affordable housing buildings.

The goal is to retain and leverage these features, increase opportunities for low-income residents to live and work in this highly connected area, and increase access to the new and existing resources for all San José residents, especially those with the greatest needs. With these goals and community input in mind, the City used an equity lens when developing the Plan. The City will center these goals in the review of development proposals, negotiation of development agreements, and design of public infrastructure projects. The Guiding Principles in Section 1.2 of the Plan (Attachment L) incorporate equity. The chapters in this Plan further highlight equity as a key consideration in the planning process.

2. **Changes to the 2014 Plan's Boundary:** As shown on the attached vicinity map (Attachment A), the 2014 DSAP boundary would be expanded by approximately 12 acres, increasing the total Diridon Station Area from approximately 250 acres to 262 acres, all within the boundaries of Downtown. Areas of proposed boundary changes include:
 - Incorporation of the area bounded by Autumn Street, St John Street, the Guadalupe River, and West Julian Street
 - Incorporation of the Old San José Water Company site bounded by West Santa Clara Street, Los Gatos Creek, West San Fernando Street, and the Guadalupe River, which would place all of Google's Downtown West Mixed-Use Plan within the Plan's boundary
 - Incorporation of undeveloped areas along Los Gatos Creek between West Santa Clara Street and Park Avenue to allow for potential park and trail development
3. **Increase in Maximum Development Capacity:** The City evaluated two development capacity scenarios based on a capacity study conducted by Skidmore, Owings & Merrill LLP in January 2020: one with a residential focus and one with a commercial focus. For the purpose of the CEQA analysis, a maximum envelope including the greatest possible residential and commercial capacities from each scenario was assumed. Table 1 shows the theoretical Maximum Build-out used in the Environmental Analysis.

Table 1. Theoretical Maximum Build-out used in Environmental Analysis						
	Google's Downtown West Mixed-Use Plan (DW)		Diridon Station Area Outside DW*		Complete Diridon Station Area*	
Land Use	Total	Units	Total	Units	Total	Units
Residential	Up to 5,900	Units	Up to 7,619	Units	Up to 13,519	Units
Office	Up to 7,300,000	SF	Up to 7,144,154	SF	Up to 14,444,154	SF
Active Use/Retail	Up to 500,000	SF	Up to 536,000	SF	Up to 1,036,000	SF
Hotel	Up to 1,100**	Rooms	-	Rooms	Up to 1,100**	Rooms

* The estimated theoretical maximum build-out outside of Google's Downtown West Mixed-Use Plan used in the environmental analysis is based on identified potential development sites.

**This includes 800 Limited Term Corporate Accommodations in the Downtown West project plus 300 hotel rooms

Google's Downtown West Mixed-Use Plan also contemplates other uses, such as Limited-Term Corporate Accommodations, event center(s), Central Utilities, Plant(s), and logistics/warehouse.

This maximum build-out estimate does not preclude the development of projects under planning review prior to establishing the capacity framework or of other permitted uses for which capacity is available. The Diridon Station Area is within the Downtown Strategy 2040 boundary, which includes capacity beyond what is shown in Table 1.

In addition to the capacity scenarios in the CEQA analysis, the Plan includes an estimated illustrative build-out program outside of Google's Downtown West Mixed-Use Plan based on identified potential development sites and a predominant land use structure for the Diridon Station Area that reflects the Plan's guiding principles. Table 2 shows the estimated illustrative build-out program for the predominant land use structure. To support the proposed increase in development intensification in the Diridon Station Area Plan, planned residential units are proposed to be reallocated from Horizon 2 and 3 Urban Villages, and planned jobs are proposed to be reallocated from North Coyote Valley and other Growth Areas to the Diridon Station Area Plan (Attachment H). Proposed reallocation of planned jobs associated with the Downtown West Mixed-Use Plan and Diridon Station Area Plan Amendment would result in removing all planned employment growth in the North Coyote Valley Employment Growth Area, consistent with the General Plan 4-Year Review Task Force's recommendation pertaining to the long-term future of Coyote Valley. The Planning Commission and City Council will consider all remaining policy recommendations on Coyote Valley and other scope of work items from the General Plan 4-Year Review in late summer/fall 2021.

Table 2. Illustrative Build-Out Scenario Program

	Google's Downtown West Mixed-Use Plan (DW)		Diridon Station Area Outside DW*		Complete Diridon Station Area*	
Land Use	Total	Units	Total	Units	Total	Units
Residential	Up to 5,900	Units	Up to 7,000	Units	Up to 12,900	Units
Office	Up to 7,300,000	SF	Up to 6,400,000	SF	Up to 13,700,000	SF
Active Use/Retail	Up to 500,000	SF	Up to 536,000	SF	Up to 1,036,000	SF
Hotel	Up to 1,100**	Rooms	-	Rooms	Up to 1,100**	Rooms

* The estimated theoretical maximum build-out outside of Google's Downtown West Mixed-Use Plan used in the environmental analysis is based on identified potential development sites.

**This includes 800 Limited Term Corporate Accommodations in the Downtown West project plus 300 hotel rooms

Google's Downtown West Mixed-Use Plan also contemplates other uses, such as Limited-term Corporate Accommodations, event center(s), Central Utilities, Plant(s), and logistics/warehouse.

4. General Plan Land Use/Transportation Diagram Changes: The vision for the 2014 Plan was categorized by three zones.

- Northern Zone: a high-intensity business district with a higher concentration of businesses and commercial uses.
- Central Zone: a commercial-focused area which included the Diridon Station, a planned baseball stadium, and a mix of employment, retail, hotel, and entertainment uses.
- Southern Zone: a residential-focused area including mixed-use, residential, parks, business, and hotel uses.

The Plan builds on the 2014 Plan and the community's recommendations to reflect changed conditions and City Council direction since the past Strong Neighborhood Initiative Plans and/or Business Improvements Plans were adopted, and to transform the Diridon Station Area into a more dynamic, sustainable, and equitable mixed-use urban neighborhood. The Plan's land use strategy includes removing the 2014 Plan's three distinct zones to establish a more mixed land use approach. The strategy takes into account the City's policy goal for a jobs/housing balance and provides flexibility on some sites to accommodate either office or housing development, providing flexibility for the Plan to respond to market demand.

The Plan includes modifying the General Plan Land Use/Transportation Diagram for certain properties within the boundaries of the Plan (Attachment B), including:

- Changes to the Transit Residential General Plan land use designation within the Diridon Station Area to increase the minimum and maximum residential densities from 50 – 250 dwelling units per acre (DU/AC) to 65 - 450 DU/AC.
- Changes to the Urban Residential General Plan land use designation within the Diridon Station Area to increase the minimum and maximum residential densities from 40 – 95 DU/AC to 50 - 95 DU/AC.
- The area north of the Alameda in the Diridon Station Area outside of Google's Downtown West Mixed-Use Plan would generally be converted from Transit Employment Center to Downtown or Commercial Downtown, with the exception of the blocks between North Autumn Street and Autumn Parkway, which would remain Transit Employment Center. The blocks north of West Julian Street between Stockton Avenue and Union Pacific Railroad tracks would be changed to Commercial Downtown, and Downtown between North Montgomery Street and Autumn Street. The blocks south of West Julian Street between North Montgomery and North Autumn Street would be changed to Downtown, and Commercial Downtown between North Autumn Street and the Guadalupe River.
- The Urban Village area bounded by West Julian Street to the north, West Santa Clara Street to the south, Union Pacific Railroad tracks to the east, and Stockton Avenue to the west would be changed to Downtown.
- The Urban Village and Mixed-Use Commercial area in the Diridon Station Area north of The Alameda east of Stockton Avenue would be changed to Transit Residential.
- The southernmost triangular area between the Los Gatos Creek Trail and Interstate 280 would be changed from Combined Industrial/Commercial to Urban Residential and Commercial Downtown.
- In the area generally bounded by Barack Obama Boulevard (Bird Avenue) to the east, Park Avenue to the north, State Route 87 to the east, and Auzerais Avenue to the south, a few sites would change from Neighborhood Residential to Downtown and one site from Downtown to Open Space, Parklands, and Habitats.
- The area generally bounded by West San Carlos to the South, Sunol Street to the west, Park avenue to the north, and the Union Pacific Railroad tracks to the east would be converted from Urban Residential and Mixed Use Commercial to Transit Residential, with the exception of some sites along Sunol Street which will remain Urban Residential.
- An Outer Safety Zone Overlay for the Diridon Station Area with a maximum occupancy of 300 people per acre with 20 percent of the gross area required as Open Space. The Open Space requirement could also be achieved on the adjacent park land, Guadalupe River Park and Gardens, as well as State Route 87. The overlay would also preclude uses such as regional shopping centers, theaters, meeting halls, stadiums, schools, large day care centers, hospitals, nursing homes, or similar activities. No above ground bulk fuel storage would be allowed.

The mix of uses throughout the Diridon Station Area puts residential, commercial, and recreational uses closer together, promoting an increase in walking, biking, and other low-impact ways of travel. It provides for a more diverse and sizable population and increased commercial activity to support public transit use. This can also enhance the vitality and safety of neighborhoods by increasing the number of people and amount of activity on the street at different times of the day and evening. The dynamic experience can attract pedestrians and help increase economic activity and enhance public life, making streets, public spaces, and active uses into places where people meet.

5. Increase in Maximum Building Height Limits: The increased maximum building height limits allow for desired growth and are in response to City Council directive in March 2019. The establishment of maximum building heights is essential to ensuring that new development is integrated and compatible with the surrounding neighborhoods and with key City assets, including historic resources and the Guadalupe River Park.

As shown in Attachment C, the Plan establishes new allowable building height limits outside Google's Downtown West Downtown West Mixed-Use Plan. Building height limits within Google's Downtown West Mixed-Use Plan are governed by the proposed Google project approvals. Heights shown within Google's Downtown West Mixed-Use Plan in the Plan are approximate and are shown for illustrative purposes only.

The Plan's allowable heights for areas outside of Google's Downtown West Mixed-Use Plan take into account community input, the City's published elevation limits which are based on FAA flight procedures for the Norman Y. Mineta San José International Airport, height transition concepts, the Downtown Design Guidelines and Standards massing transition standards, and typical heights for mid-rise and high-rise construction.

The Plan establishes three types of height limits:

- High-Rise height limits, ranging from 170 to approximately 295 feet, are intended to allow development up to the maximum height permitted by the City, contingent upon required FAA airspace safety determinations. High-Rise height limits increase from north to south across the Diridon Station Area and are primarily located on sites near Diridon Station, the rail line, freeways, and the Guadalupe River Park. For both office and residential projects, maximizing allowable height is crucial for making high-rise building construction economically feasible given the City/ FAA height restrictions for the area. The High-Rise heights in the Plan are approximate and are provided for reference; applicants will need to coordinate with San José Airport Department staff and the FAA airspace safety review process for site-specific allowable height determinations. In some areas adjacent to lower-height contexts, additional height and massing transition standards apply. See 9. *Update to Reflect/Build on the Downtown Design Guidelines and Standards*.
- Mid-Rise height limits, ranging from 110 to 130 feet, are intended to create urban districts and neighborhoods that are lower in scale than High-Rise areas, in order to transition from High-Rise areas to existing low-rise residential neighborhoods. Mid-Rise height limits are located in the Sunol Street and West San Carlos Street area, and Central Delmas Park areas. Building codes typically require any building with an occupied level more than 75 feet above grade to be constructed to high-rise standards, which can make it economically challenging to take full advantage of these allowable heights; however, lower-rise development is still permitted in these areas. In some areas adjacent to lower height contexts, additional height and massing transition standards apply. See 9. *Update to Reflect/Build on the Downtown Design Guidelines and Standards*.
- Transitional height limits, ranging from 65 to 90 feet, are generally located near relatively low-density residential areas and are accompanied by height transition standards for specific locations. These lower height limits can apply to standalone development or to portions of sites where additional height is permitted, such as the podium portion of a high-rise building.

In all height areas, subject to FAA determination of no hazard, limited extrusions exceeding the maximum building height limits in the Plan by up to 15 feet may be allowed for elevator shafts, rooftop amenities and equipment, and architectural treatments, as long as such extrusions do not exceed the City's published elevation limits, which are based on FAA flight procedures for the Norman Y. Mineta San José International Airport, and receive required airspace safety determinations.

6. Transportation Network Changes: The Plan aims to increase the share of people moving around in the Diridon Station Area on foot or by public transit, bike, shared micro-mobility, carpooling, and other alternatives to single-occupancy vehicles (SOV) from the current level of 40 percent to at least 75 percent by 2040. Achieving these targets will require that the Diridon Station Area become much more people-focused. This is not only to improve the mobility network and outcomes, but also to create a place that is more attractive, sustainable, vibrant, and equitable. Non-SOV modes tend to be better for the environment, they take up less space, they are more affordable, and they do more to promote access to opportunities for disadvantaged populations. The Plan builds on the vision of the 2014 Plan, the goals of the General Plan, and reflect the overall spirit and characteristics the community indicated are important in planning for mobility in the Diridon Station Area.

To ensure a balanced, multimodal transportation network, the General Plan organizes public streets according to “street typologies”. Each street is assigned a street typology that considers its surrounding land uses, street context, and the need to prioritize or accommodate certain travel modes. The Plan proposes changes to the transportation street typology designations (Attachment D), and to planned transportation improvements to ensure a balanced, multimodal transportation network that moves people to and within the Diridon Station Area in ways that are efficient, equitable, and safe, and that also supports the Diridon Station Area as an attractive people-focused place.

The Plan also identifies transportation network improvements to ensure an expansive and equitable network. The transportation network improvements are grouped by the type of access they provide to the Diridon station Area:

- Statewide transit access
- Regional and citywide access
- Local and neighborhood access
- Placemaking and new connections at and near the station

The transportation network improvements are listed in Section 4.4 of the Plan (Attachment L). These projects are in various stages of planning and would require discretionary actions and environmental review separate from the analysis presented in the Diridon Station Area Plan Addendum to the Downtown Strategy 2040 Final Environmental Impact Report.

7. Changes to Parks and Open Space: The open space strategy for the Diridon Station Area looks to the Department of Parks, Recreation and Neighborhood Service’s Activate SJ to create a people-focused and service-driven Plan. Public spaces in the Diridon Station Area will infuse Activate SJ’s guiding principles of stewardship, nature, equity and access, identity and public life and incorporate a mix of uses that are intended to meet the needs of a variety of users. The Plan promotes access to a large and diverse variety of parks, plazas, trails, and recreational facilities for all residents. The strategic priorities outlined in the Plan will help to carry the City’s open space system into the future, identify opportunities and guide decisions that result in more equitable and accessible public spaces and public life.

While many of the strategies in the 2014 Plan remain the City recognizes that the urban character and increased density in the area requires a different approach to parks and open space. The City has shifted its open space strategy toward the planning of a dispersed network of open spaces and neighborhood parks that provide a variety of multi-generational experiences and enhanced connection to the natural assets of the area, rather than one large community park. The 2014 DSAP contemplated an eight-acre community park (a portion of which was to be located at the former Fire Training Station, a four-acre site). This was envisioned as the central open space not only for existing and future residents of the Diridon Station Area, but also residents of the broader San José community. In 2018,

the Fire Training Station Site was sold by the City to Google with an agreed upon understanding that the sale would result in no net loss of open space in relation to the eight-acre park previously identified in the 2014 DSAP.

The changes to parks and open space in the Plan includes the removal of the planned park site south of the Ballpark site in the 2014 DSAP, and changes to the planned Los Gatos Creek Trail. The open space strategy for the Diridon Station Area consists of 10 acres of publicly owned open spaces, as a supplement to the existing open space surrounding the Diridon Station Area. The proposed publicly owned open spaces include neighborhood parks, trail segments, and plazas (Attachment E). Though the Plan identifies 10 acres of open space, the City recognizes the need to explore more ways to increase access to parks and other publicly accessible open space.

8. Changes to Infrastructure: The existing utility infrastructure serving the Diridon Station Area may need augmentation to support the desired or required capacity for full build-out of the Plan.

Full build-out of the Plan would necessitate several infrastructure improvements to accommodate anticipated demand, including improvements to sanitary sewer and stormwater systems, which will require upsizing of distribution main lines to address existing deficiencies and accommodate increased demand capacity. The City will also prepare a separate infrastructure financing study following the adoption of the Plan. See Section 3.19 of the Diridon Station Area Plan Amendment Addendum to the Downtown Strategy 2040 Environmental Impact Report (Attachment M), for a full discussion of utility improvements.

9. Update to Reflect/Build on the Downtown Design Guidelines and Standards: The San José Downtown Design Guidelines and Standards adopted in 2019 (DDG) apply to the Diridon Station Area and provide guidance for the form and design of buildings, their appearance in the larger cityscape, and their interface with the street level public realm. The DDG defines the design objectives for the elements that determine the image of Downtown and refines the concepts of other plans, translating them into an operational document that increases predictability for developers and their architects for development in Downtown.

The DDG applies generally to the General Plan Downtown Growth Area, including the Diridon Station Area. The Plan also includes additional design standards that are specific to the Diridon Station Area and build on the existing Downtown Design Guidelines and Standards (DDG) to facilitate development consistent with the objectives of the Plan. Projects within the Diridon Station Area must be consistent with these standards in addition to the Downtown Design Guidelines and Standards, with exception of properties within Google's Downtown West Mixed-use Plan, which are required to comply with the Downtown West Design Guidelines and Standards (DWDSG) and the DDG Standards that are not superseded by the DWDSG.

The urban design direction in the Plan expands upon and will be incorporated into the DDG document following adoption of the Plan.

The Plan includes the following additional height and massing transition design standards:

- Stepback Plane: The primary stepback plane standards apply to the areas shown in Attachment F, which are adjacent to properties at the edge of the Diridon Station Area where mid-rise and high-rise height limits are found and where the adjacent properties have a Neighborhood Residential General Plan land use designation that limits buildings to lower heights. In order to facilitate an informed dialogue with nearby residents, development on sites affected by the stepback plane standards must provide perspective renderings from ground level, illustrating the proposed development in relation to the adjacent properties, as part of their Planning permit application.

10. Implement Climate Smart San José and City's Updated GHG Reduction Strategy: The Diridon Station Area will significantly increase overall sustainability through a mix of uses, high-density, sustainably designed buildings, and an urban environment that promotes walking, biking, and transit. Making sustainable systems and materials visible and comprehensible throughout the Diridon Station Area can contribute to San José's vision of becoming the world center of clean tech innovation.

In accordance with City's policies for reducing greenhouse gas emissions and green design (e.g. [Climate Smart San José](#), [San José's Green Building Ordinance](#), [Building Reach Code and Natural Gas Infrastructure Prohibition Ordinances](#), [Zero Waste Strategic Plan](#), the Downtown Transportation Plan, the Downtown Design Guidelines and Standards, and the [Green Stormwater Infrastructure Plan](#)), the Plan includes strategies that encourage site planning to integrate sustainable practices and expand beyond the scale of a building or a site to the larger context of the district.

11. Update Parking Strategy: The 2014 Plan contains numerous parking and transportation demand management strategies. The Plan reinforces those and recommends a Parking and Transportation Management District and Transportation Management Association to coordinate and manage parking and transportation demand management strategies in the Diridon Station Area.

CONFORMING REZONING

The City of San José's Zoning Ordinance (Title 20 of the Municipal Code) is intended to promote the public peace, health, safety, and general welfare of residents, while supporting the goals and policies of the 2040 General Plan.

The Conforming Rezoning analyzes Zoning Ordinance changes within the Diridon Station Area undertaken by the City of San José as part the Plan to comply with State law and support the Plan's vision for the area. As shown in Attachment G, certain properties within the Diridon Station Area are proposed to be rezoned to the conventional Zoning Districts that align with the underlying General Plan land use designations of the respective sites. These sites' Zoning Districts would be rezoned from Combined Industrial/Commercial, Commercial General, Commercial Neighborhood, Commercial Pedestrian, Downtown Primary Commercial, Heavy Industrial, Industrial Park, Light industrial, Two-Family Residential, and Transit Residential to Downtown Primary Commercial, Open Space, and R-M Residence District (Multiple Unit/Lot).

DIRIDON STATION AREA PLAN OVERVIEW

The Plan builds on the General Plan and other City plans to establish a framework for future public and private investment in the Diridon Station Area, to achieve the vision of the Plan. Chapter 1 is the introduction. Chapters 2, 3 and 4 address broadly related topics. Each of these chapters includes a framework section, key principles, and a discussion of related plans and projects, followed by more detailed discussion of related topics.

- Chapter 1 – Introduction: describes the project vision, related projects, presents a station area profile, provides an overview of planning for equity and the engagement process and timeline, and outlines the organization of the Plan document.
- Chapter 2 – Diridon Station Area Development: discusses multiple topics related to development within the Diridon Station Area, including land use, building heights, urban design, affordable housing, and infrastructure capacity and demand. It includes a discussion of Google's Downtown West Mixed-Use Plan within the Diridon Station Area.

- Chapter 3 – Open Space and Public Life: describes the envisioned open space and trail network, public art, and public life strategy for the area, including the trail and open space systems that connect to the Diridon Station Area as well as those within it.
- Chapter 4 – Mobility: includes a description of the envisioned mobility network connection to the Diridon Station Area. It discusses important related plans, including the Diridon Integrated Station Concept Plan, and includes a framework for an area-wide parking and Transportation Demand Management strategy.
- Chapter 5 – Plan Implementation: describes actions the City will take together with and after the Plan is adopted. These include CEQA and environmental clearance, key planning amendments, director's update to the Downtown Design Guidelines and Standards, coordinating and constructing major projects over time, and possible ways to measure progress as the Plan is implemented.
- Appendix A – Maximum Build-Out: discusses the Plan's maximum build-out methodology and calculations, including assumptions and exclusions.
- Appendix B1 – Public Feedback: summary of 2019-21 Outreach
- Appendix B2 – Public Feedback: summary of 2018 Outreach
- Appendix C1 – Companion Documents: Diridon Station Area Plan Amendment Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report
- Appendix C2 – Companion Documents: Diridon Affordable Housing Implementation Plan

ANALYSIS

Adoption of the Plan and associated General Plan Amendment and Conforming Rezoning was analyzed with respect to:

- Envision San José 2040 General Plan
- Title 20 of the Municipal Code (Zoning Ordinance)
- Senate Bill 330
- California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

General Plan Major Strategies

The following describes the Plan's consistency with the General Plan Major Strategies. The General Plan Major Strategies are listed first, followed by the analysis:

- Major Strategy #1 – Community Based Planning: Embody the community values and goals articulated through an extensive and meaningful community-based planning process. The City's commitment to effectively engaging representatives of all segments of the San José community in the development and implementation of the Envision San José 2040 General Plan is critical to ensure that the Plan will promote San José's continued growth into a leading world city, while maintaining social equity in its operations.
- Major Strategy #9 – Destination Downtown: Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/ placemaking goals.

- Major Strategy #11 – Design for a Healthful Community: Support the physical health of community members by promoting walking and bicycling as commute and recreational options, encouraging access to healthful foods, and supporting the provision of health care and safety services.

Analysis: In 2018, the City launched a community engagement process for the Diridon Station Area. As part of this process, the City Council appointed 38 organizations to a new Diridon Station Area Advisory Group (SAAG), which included equity advocates. The City also set up a new website (www.diridonsj.org) and held a variety of events and activities to engage the general public. In fall 2019, the City officially launched the process of amending the 2014 DSAP. The process included three rounds of public outreach and engagement in fall 2019, spring 2020, and fall 2020.

The 2019-21 engagement process evolved from the original plan due to the COVID-19 crisis. The City had to extend the process and switch to digital tools for the 2020 engagement events. Throughout the process, the goal was to hear from all segments of the San José community, such as residents living in the area, Downtown businesses, developers, transit riders, and affordable housing, labor, and environmental advocates. To help reach populations that are typically under-represented in planning processes, the City established a small grant program and partnered with seven community-based organizations to assist with 2020-21 outreach and engagement. The City also offered many of the meetings and materials in Spanish and Vietnamese. For in-person community meetings, the City typically offered refreshments and supervised activities for children.

The Plan integrates land uses, urban design, open spaces, and mobility to enhance Downtown San José, while respecting existing surroundings. Some of the features that make the area supportive of improved health and economic outcomes include great transit access, proximity to jobs and cultural amenities in Downtown, trails and open space along the Guadalupe River, and a mix of housing types that support a range of income levels – including several affordable housing buildings.

The goal is to retain and leverage these features, increase opportunities for low-income residents to live and work in this highly connected area, and increase access to the new and existing resources for all San José residents, especially those with the greatest needs. With these goals and community input in mind, the City used an equity lens when developing the Plan. The City will center these goals in the review of development proposals, negotiation of development agreements, and design of public infrastructure projects.

General Plan Policies

The following describes how each of the Diridon Station Area Plan chapters are consistent with General Plan policies. The General Plan Policies are listed first, followed by the analysis. Summaries of the chapters may be found in the Diridon Station Area Plan Overview Section of this report.

1. Chapter 1 – Introduction:

- Active Community Engagement Policy CE-1.9: Appoint advisory bodies, task forces, or ad hoc committees as needed to ensure broad perspective. Encourage membership of such groups to reflect community diversity.

Analysis:

The community engagement process has had equity as a key consideration. The goal has been to hear from all segments of the San José community and to pay special attention to reaching populations that are typically under-represented in planning processes. Examples include including equity advocates on the 38-member advisory group, establishing a small grant program for community-based organizations to assist with outreach and engagement, offering many of the meetings and materials in Spanish and Vietnamese, and reducing logistical barriers to participation in community meetings.

The Plan includes guiding principles that reconfirm and adapt the 2014 Plan's objectives, themes and goals to include input received through the broader Diridon Station Area outreach process in 2018-21. The 2014 themes and goals were based on the collective input received during the Existing Conditions Report phase of the 2014 Plan, to gain consensus on the primary goals and objectives.

The Plan includes the following area-wide guiding principles that embody the overall spirit and characteristics that the community indicated are important to include in the Plan. The guiding principles serve as the foundation to achieve the vision of the Plan, consistent with the Downtown strategy outlined in the General Plan. They can also be used as a basis for ongoing evaluation and subsequent detailed planning projects, a framework for policies in the Diridon Station Area, and for review of planning applications for individual projects as they come forward.

- Consider social equity throughout implementation of the Plan.
- Consider the effects on climate change throughout the implementation of the Plan.
- Ensure the area is accessible and welcoming to all.
- Promote a healthy, safe neighborhood environment that is resilient in the face of natural disasters, public health emergencies, and economic cycles.
- Advance economic opportunities by supporting small/local businesses, entrepreneurship, and living wage jobs, education, and job training.
- Establish Diridon Station and the surrounding area as a local, citywide, and regional destination where all residents and visitors, regardless of race, ethnicity, age, gender identity, physical ability, and income level can live, work, and play.
- Preserve and build upon existing cultural assets, reflect the city's cultural diversity, and honor the history of the Ohlone people, and other indigenous peoples.
- Understand and respond to local context and community needs.
- Educate and inform the public about the area planning process and Equitable Transit-Oriented Development (eTOD) concepts.
- Practice community engagement that utilizes clear, consistent communication and inclusive strategies for involving historically marginalized communities and that builds trust, relationships, and capacity over time.
- Foster connection between community members through design, programming, and civic engagement.

12. Chapter 2 – Diridon Station Area Development:

- Land Use and Employment Policy IE-1.5: Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale.
- Land Use and Employment Policy IE-1.6: Plan land uses, infrastructure development, and other initiatives to maximize utilization of the Mineta San José International Airport, existing and planned transit systems including fixed rail (e.g., High-Speed Rail, BART and Caltrain), Light-Rail and Bus Rapid Transit facilities, and the roadway network. Consistent with other General Plan policies, promote development potential proximate to these transit system investments compatible with their full utilization. Encourage public transit providers to serve employment areas.

- Land Use and Employment Policy IE-1.7: Advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California.
- Community Noise Levels and Land Use Compatibility Policy EC-1.1: Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include:
 - Interior Noise Levels
 - The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency over the life of the Plan.
 - Exterior Noise Levels
 - The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the San José International Airport and the Downtown, as described below:
 - For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. Some common use areas that meet the 60 dBA DNL exterior standard will be available to all residents. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. On sites subject to aircraft overflights or adjacent to elevated roadways, use noise attenuation techniques to achieve the 60 dBA DNL standard for noise from sources other than aircraft and elevated roadway segments.
 - For single family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as backyards.
- Community Health, Safety, and Wellness Policy CD-5.2: Foster a culture of walking by designing walkable urban spaces; strategically locating jobs, residences and commercial amenities; providing incentives for alternative commute modes; and partnering with community groups and health services organizations to promote healthful life-styles for San José residents.
- Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.
- Downtown Urban Design Policy CD-6.3: New development within the Downtown Growth Area that is adjacent to existing neighborhoods that are planned for lower intensity development should provide transitions in height, bulk and scale to ensure that the development is compatible with and respects the character of these neighborhoods, as they are designated in the General Plan.
- Affordable Housing Policy H-2.6: Incorporate an affordable housing implementation plan in the preparation of each Urban Village plan, specific plan, master plan, or strategy plan that include plans for housing.

- Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.
- Safe Airports Policy TR-14.1: Foster compatible land uses within the identified Airport Influence Area overlays for Mineta San José International and Reid-Hillview airports.
- Safe Airports Policy TR-14.2: Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
- Safe Airports Policy TR-14.3: For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San José International and Reid- Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
- Safe Airports Policy TR-14.4: Require avigation and “no build” easement dedications, setting forth maximum elevation limits as well as for acceptance of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.

Analysis:

The Station Area Development strategy is founded on an Equitable Transit-oriented Development approach. The strategy includes removing the 2014 Plan’s three distinct zones to establish a more mixed land use approach, increasing building height limits to help support equitable development, and updating urban design direction to build on the San José Downtown Design Guidelines and Standards to ensure design excellence and sensitivity to surrounding established lower-density residential neighborhoods.

The mix of uses throughout the Diridon Station Area puts residential, commercial, and recreational uses closer together, promoting an increase in walking, biking, and other low-impact ways of travel. It provides for a more diverse and sizable population and increased commercial activity to support public transit use. This can also enhance the vitality and safety of neighborhoods by increasing the number of people and amount of activity on the street. The dynamic experience can attract pedestrians and help increase economic activity and enhance public life, making streets, public spaces, and active uses into places where people meet.

Residential uses are strategically located throughout the Diridon Station Area to enhance vitality, to achieve a jobs/housing balance, and maximize the competitiveness for state funding affordable housing sources. For stand-alone affordable housing projects, it is assumed that units will be provided in a mix of mid-rise and high-rise buildings. Incorporating a range of height limits not only provides transitions in building heights adjacent to lower density residential areas, but also provides opportunities for a variety of affordable housing types to be developed close to public transit.

The Plan’s allowable heights for areas outside of Google’s Downtown West Mixed-Use Plan take into consideration community input, the City’s published elevation limits which are based on FAA flight procedures for the Norman Y. Mineta San José International Airport, height transition concepts, the Downtown Design Guidelines and Standards massing transition standards, and typical heights for mid-rise and high-rise construction. In some areas adjacent to lower-height contexts, additional height and massing transition standards apply.

These additional design standards are specific to the Plan and build on the existing Downtown Design Guidelines and Standards (DDG) to facilitate development consistent with the objectives of the Plan. Projects within the Diridon Station Area must be consistent with these standards in addition to the Downtown Design Guidelines and Standards, with exception of properties within Google's Downtown West Mixed-use Plan, which are required to comply with the Downtown West Design Guidelines and Standards (DWDSG) and the DDG Standards that are not superseded by the DWDSG.

Increased building height limits create a supportive environment for equitable development and makes more efficient use of scarce transit-adjacent land and preserves natural resources by accommodating urban growth in the city's core instead of undeveloped areas at the city's edge. It also provides for opportunities for an increase in quality housing for people of all income levels through the City's Inclusionary Housing Ordinance. Reaching the Plan's goal for 25 percent affordable housing in the Diridon Station Area, along with strategies for tenant protection and the preservation of existing affordable units, will also ensure low-income residents benefit from new development. The Plan also incorporates the executive summary of the Diridon Affordable Housing Implementation Plan (AHIP) (Section 2.5 of the Plan).

The City's Envision San José 2040 General Plan also requires that projects within the Airport Influence Area be consistent with height, safety and noise policies identified in the CLUP, or that the City find, by a two-thirds vote of the City Council, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.

As part of the General Plan Amendment and Conforming Rezoning, staff is seeking City Council adoption of a Resolution by 2/3 majority making certain findings required by California Public Utilities Code Section 21676 that the proposed City-initiated General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) is consistent with the purposes set forth in California Public Utilities Code Section 21670 and overruling the Santa Clara County Airport Land Use Commission's (ALUC) determination that the proposed City-initiated General Plan Amendment and Conforming Rezoning is inconsistent with the ALUC noise and height policies as defined by the Comprehensive Land Use Plan for the San José International Airport (CLUP). See Resolution No. _____ for further details on consistency with the Airport policies (Attachment J).

13. Chapter 3 – Open Space and Public Life:

- San José as the Silicon Valley Cultural Center Policy AC-2.1: Site public art in key locations. Prioritize innovative public art in three regional destination areas: Downtown, North San José, and the Mineta San José International Airport. Place public art at transportation hubs: pedestrian, bike and transit improvements in pedestrian priority areas; encourage the inclusion of public art at VTA and BART stations, including Diridon Station; and integrate a broad range of art projects into the trail network to connect neighborhoods and bring people closer to nature. Integrate public art into bond-funded park, library, community facility and public safety projects. Cultivate community-based art projects that support neighborhood revitalization goals.
- Cultural Opportunities Policy VN-4.3: Consider opportunities to include spaces that support arts and cultural activities in the planning and development of the Downtown, new Urban Village areas and other Growth Areas.
- Downtown Urban Design Policy CD-6.5: Design quality publicly accessible open spaces at appropriate locations that enhance the pedestrian experience and attract people to the Downtown. Use appropriate design, scale, and edge treatment to define, and create publicly accessible spaces that positively contribute to the character of the area and provide public access to community gathering, recreational, artistic, cultural, or natural amenities.

- High Quality Facilities and Programs Policy PR-1.7: Design vibrant urban public spaces and parklands that function as community gathering and local focal points, providing opportunities for activities such as community events, festivals and/or farmers markets as well as opportunities for passive and, where possible, active recreation.
- Contribute to a Healthful Community Policy PR-2.3: Design and construct new parks, trails, and amenities in a manner that promotes their safe utilization and which allows access to each type of recreation experience for people of all abilities to the maximum extent possible.
- Provide and Equitable Park System Policy PR-3.1: Provide equitable access to parks, trails, open space, community centers, dog parks, skate parks, aquatics facilities, sports fields, community gardens, and other amenities to the greatest extent feasible in order to provide a high quality of life for our residents.
- Community Identity Policy PR-4.1: Collaborate with the community in the design, programming, and operation of parks and recreation facilities to ensure that these facilities meet their needs.
- Grand Parks Policy PR-5.5: Connect the Guadalupe River Park & Gardens to other assets in the City via a network of trails and bike paths to encourage connectivity and community and to maximize the park's use and accessibility.
- Interconnected Park System Policy PR-7.4: Meet the parks needs and expand recreational opportunities for residents in dense, urban areas partially by focusing on improving connections (particularly trail, bicycle, and pedestrian networks) to large parks and recreation facilities.
- Fiscal Management of Parks and Recreation Resources Policy PR-8.3: Give priority to the purchase and land banking of properties as they become available for future park and recreation facility developments.
- Trails as Transportation Policy TN-2.8: Coordinate and connect the trail system with the on-street bikeway system, and consider policies from the Circulation and the Parks, Trails, Open Space, and Recreation Amenities/Programs sections of this Plan to create a complete BikeWeb to serve the needs of San José's diverse community.
- Accessible, Safe, and Well-Functioning Trails Policy TN-3.3: Design bridges, under-crossings, and other public improvements within the designated Trail Network, including grade separation of roadways and trails whenever feasible, to provide safe and secure routes for trails and to minimize at-grade intersections with roadways.

Analysis:

Working in concert with the existing planned development and mobility plans for the area, the City envisions a future where residents and visitors arrive to Diridon Station and are greeted with plazas and parks that are vibrant and provide active and passive recreation for residents, workers, and visitors. The park, plaza, trail, and mobility networks, along with public art envisioned in the Plan, provide a hub of activity and transitions to nearby neighborhoods and Downtown. Together, these assets will provide for vibrant public life throughout the Diridon Station Area.

Public spaces in the Diridon Station Area will provide multi-generational opportunities for recreation activities that are intended to meet the needs of the wide variety of users expected in this area. All residents regardless of race, age, gender identity, income, physical ability or culture have the right to health, wellness and access to parks and recreational opportunities, and these spaces will seek to foster respect and integration for all. This is especially important in dense, urban areas, such as the Diridon Station Area, where there is a greater variety in population demographics. In addition, a key planning outcome identified in ActivateSJ to improve equity and access, is to ensure all residents are

within a 10-minute walk of a quality park. The planned location of the parks, plazas, and trail segments described in the Plan will ensure this goal is met.

The Plan promotes access to a large and diverse variety of parks, plazas, trails, and recreational facilities for all residents. The strategic priorities outlined in the Plan will help to carry the City's open space system into the future. It will identify opportunities and guiding decisions that result in more equitable and accessible public spaces and public life.

Diridon Station Area is surrounded by single-family homes to the north, west, and south, and Downtown to the east. Residential development in these neighborhoods and in Downtown have created more opportunities for parkland dedication and funding through the Park Impact Ordinance and Parkland Dedication Ordinance. Existing parks and open spaces adjacent to the Diridon Station Area include the Guadalupe River Park, Guadalupe River Trail, Cahill Park, Del Monte Park, Los Gatos Creek Trail, Discovery Dog Park, and Theodore Lenzen Park. While these open spaces are not part of the Diridon Station Area, their adjacency makes them important assets when considering the future plans for this urbanized area. The City recognizes that the surrounding parkland and trails will see an increase in use with the increase in residents, workers, and transit users anticipated in the Diridon Station Area. To account for this increased use, the City recognizes more funding will need to be allocated to the maintenance and enhancement of these spaces. The City may also target additional parkland in the surrounding area to help mitigate the increased use.

The open space strategy presented in the Plan calls for approximately 10 acres of publicly owned open spaces, including neighborhood parks, trail segments, and plazas dispersed through the existing neighborhoods and future developments. The 10 acres will supplement the existing open space surrounding the Diridon Station Area.

The Los Gatos Creek Trail will provide connections to the parks and plazas in the Diridon Station Area, with on-road (and future under rail) connections from the neighborhoods west of Diridon Station to Downtown in the east. In the future, the trail will be located on a flyover that will reduce pedestrian and bike rider conflicts and eliminate the at-grade crossing at Santa Clara Street. Open space will be centered around the Los Gatos Creek to preserve, protect, and celebrate the natural environment.

A balanced distribution of interconnected parks, trail segments, and plazas will complement and enhance the existing parks and trails that surround the Diridon Station Area. The proposed network will provide active and passive recreation, transportation, education, and cultural benefits to residents, workers, and visitors throughout the Diridon Station Area. The neighborhood parks and plazas can respond to the character and needs of the existing neighborhoods while also serving as the catalyst to spur public life that supports local business and encourage new development. The trail segments will allow for recreation and active transportation that connect the Diridon Station Area's open space network and key features to the broader neighborhood and Downtown. Connecting neighborhood parks, plazas and other open spaces to the existing planned street network with a consistent system of signage and public art will create diverse and accessible open spaces.

14. Chapter 4 – Mobility:

- Attractive City Policy CD-1.3: Further the Major Strategies of this Plan to focus growth in appropriate locations; design complete streets for people; promote Grand Boulevards, Main Streets, and Downtown; support transit; and foster a healthful community.
- Community Health, Safety, and Wellness Policy CD-5.1: Design areas to promote pedestrian and bicycle movements, to facilitate interaction between community members, and to strengthen the sense of community.

- Downtown Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
- Balanced Transportation System Policy TR-1.1: Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).
- Maximize Use of Public Transit Policy TR-3.4: Maintain and improve access to transit stops and stations for mobility-challenged population groups such as youth, the disabled, and seniors.
- Vehicular Circulation Policy TR-5.1: Develop and maintain a roadway network that categorizes streets according to function and type, considers the surrounding land use context, and incorporates the concepts of "complete streets."
- Parking Strategies Policy TR-8.1: Promote transit-oriented development with reduced parking requirements and promote amenities around appropriate transit hubs and stations to facilitate the use of available transit services.
- Parking Strategies Policy TR-8.2: Balance business viability and land resources by maintaining an adequate supply of parking to serve demand while avoiding excessive parking supply that encourages automobile use.
- Parking Strategies Policy TR-8.3: Support using parking supply limitations and pricing as strategies to encourage use of non-automobile modes.
- Parking Strategies Policy TR-8.5: Promote participation in car share programs to minimize the need for parking spaces in new and existing development.
- Parking Strategies Policy TR-8.6: Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Urban Villages and other Growth Areas.
- Parking Strategies Policy TR-8.7: Encourage private property owners to share their underutilized parking supplies with the general public and/or other adjacent private developments.
- Parking Strategies Policy TR-8.8: Promote use of unbundled private off-street parking associated with existing or new development, so that the sale or rental of a parking space is separated from the rental or sale price for a residential unit or for non-residential building square footage.
- Parking Strategies Policy TR-8.9: Consider adjacent on-street and City-owned off-street parking spaces in assessing need for additional parking required for a given land use or new development.

Analysis:

The Plan sets forth a transportation network that moves people to, from, and within the Diridon Station Area in ways that are efficient, equitable, and safe, and that also supports the Diridon Station Area as an attractive people-focused place. In addition, the network aims to connect existing neighborhoods – particularly low-income communities of concern east of State Route 87 – to the Diridon Station Area. The Plan prioritizes walking, public transit, and bicycling within the core Diridon Station Area, while locating automobile circulation and parking facilities at the perimeter of the Diridon Station Area. This allows motorists to drive to and park on the perimeter of the Diridon Station Area easily without compromising the pedestrian and transit-oriented quality of the core area.

There are four key principles to transform the Diridon Station Area into the envisioned dynamic mixed-use urban district. The Diridon Station Area's transportation system must:

- *Bring people together, prioritizing walking, transit, and bicycling as modes that move the greatest number of people while using up the least amount of land, and addressing their need for safety, health, dignity, comfort, and enjoyment*
- *Be environmentally and economically sustainable, emphasizing easy access to transportation options that are affordable and clean, and that allow residents and workers – especially those of lesser means – to access jobs, services, and housing, both within the Diridon Station Area and throughout the city and region*
- *Foster community development, social interaction among people, and public life, advancing the vision for a vibrant and livable Diridon Station Area with neighborhoods that are complete, unique, and reflective of its diverse history*
- *Promote social and economic equity, supporting inclusive access to transportation modes that provide the most economic and health benefits for a wide variety of people who live, work, and play in the Diridon Station Area.*

The Plan uses Envision San José 2040 General Plan Designations, called Street Typologies. Street Typologies reflect a street's primary function and adjacent land use context. In doing so, street typologies establish the need to accommodate multiple travel modes and promote desired travel speeds. Street typologies provide direction for a Complete Street network that accommodates all people traveling on it.

While the City seeks to prioritize sustainable, affordable, and space-efficient modes in the Diridon Station Area, the area must accommodate all modes. Planning for private vehicles, taxis, ride-hailing vehicles, and service vehicles is critical to creating an accessible and economically vibrant place. Providing different modes with clear priority and separated networks to access the Diridon Station Area not only will improve conditions for pedestrians, cyclists, and transit users, but will also support Diridon Station Area growth in the most space-efficient and sustainable way. The Plan identifies a total of 54 transportation network improvements in the Diridon Station Area. See Section 4.4 of the Plan for further details (Attachment L).

To effectively utilize the parking supply within the Diridon Station Area and achieve the mode shift goals for the area, several parking management strategies are encouraged of all new development in the area. These strategies are also important to maintaining the parking spaces needed for the SAP Center per the City's Arena Management Agreement, and include, but are not limited to, shared parking, unbundled parking, parking supply, priced parking, a residential parking permits program, and parking distribution.

Key to achieving the transportation and mobility goals in the Diridon Station Area is a Transportation Demand Management (TDM) framework- comprised of three components: 1) a Parking and Transportation Management District; 2) a Transportation Management Association; and 3) project-level TDM requirements. See Section 4.5 of the Plan for further details (Attachment L).

15. Chapter 5 – Plan Implementation

- Community Partnerships Policy CE-2.3: Support continuation of existing and formation of new community and neighborhood-based organizations to encourage and facilitate effective public engagement in policy and land use decisions.

Analysis:

Throughout the implementation of the Plan, the City intends to set objectives and measure progress in fulfilling ongoing activities recommended in the Plan, as well as the Diridon Affordable Housing Implementation Plan. Monitoring key indicators of equitable development will help the City respond to changing conditions and advance the Plan's equity goals. Collecting, tracking, and reporting on equity-related data should be part of a broader citywide effort that may be accelerated with the new Office of Racial Equity and incorporated into existing processes, such as the General Plan Four-Year Review process. It will be important to track trends for the city as a whole, as well as different neighborhoods, to understand the full picture.

In addition to monitoring metrics, achieving the Plan's goals and equity objectives will also require continued engagement of the community. The City intends for this to involve using clear, consistent communication to inform people about planning processes and decisions, involving the public in the review of private proposals and development of public projects (consistent with City requirements and policies), and using inclusive strategies for engaging historically marginalized communities. Community members have dedicated a tremendous amount of time and energy contributing to planning decisions affecting the Diridon Station Area, not just in recent years but for decades. Outreach and engagement moving forward should build upon that strong foundation and commitment. For example, future engagement opportunities could include involving community members in monitoring key indicators, completing local needs assessments, and working together on neighborhood-driven projects and programs.

Title 20 of the Municipal Code (Zoning Ordinance)

The City of San José's Zoning Ordinance (Title 20 of the Municipal Code) is intended to promote the public peace, health, safety, and general welfare of residents, while supporting the goals and policies of the 2040 General Plan.

State law (SB 1333, 2019) requires charter cities, such as the City of San José, to have conformance between a City's Zoning Ordinance and the General Plan. When the Plan is adopted, the zoning therefore, needs to be made consistent for properties located within zoning districts where there are inconsistencies between the zoning and General Plan land use designations.

Analysis:

The City-initiated Conforming Rezoning (C20-002) is consistent with Senate Bill (SB) 1333 and will align properties' Zoning Districts with the proposed General Plan land use designation changes in the Diridon Station Area Plan. As shown in Attachment G, certain properties within the Diridon Station Area are proposed to be rezoned to the conventional Zoning Districts that align with the underlying General Plan land use designations of the respective sites. The Conforming Rezoning is a rezoning of existing sites with Zoning Districts that include Combined Industrial/Commercial, Commercial General, Commercial Neighborhood, Commercial Pedestrian, Heavy Industrial, Industrial Park, Light industrial, Two-Family Residential, and Transit Employment Center. These sites will be rezoned to Zoning Districts that include Downtown Primary Commercial, Open Space, and R-M Residence District (Multiple Unit/Lot). Sites with a General Plan designation of Downtown or Commercial Downtown will be zoned Downtown Primary Commercial. Sites with a General Plan designation of Open Space, Parklands, and Habitats will be zoned Open Space, and sites with a General Plan designation of Urban Residential and Transit Residential will be zoned R-M Residence District.

Senate Bill (SB) 330

Governor Gavin Newsom signed Senate Bill 330, the Housing Crisis Act of 2019, on October 9, 2019 to catalyze housing that would offset the high rents and home ownership costs leading to increasing homelessness. The bill is intended to speed up housing construction in California by decreasing the time it

takes to obtain building permits and limiting fee increases on housing applications. The bill limits local agencies from reducing the number of residential units that can be built on properties that allow housing by changing general or specific plan land use designations and/or zoning in a manner that would result in a reduction of housing capacity without taking action to replace that housing capacity elsewhere in the agency's jurisdiction. The local agency is required to amend its general plan land use designations or zoning elsewhere to ensure no net loss in residential capacity within the jurisdiction whenever it implements land use controls that reduce residential capacity.

Analysis:

The Plan and the associated General Plan Amendment (GP20-007) would not reduce the intensity of residential uses, because its implementation would result in increased residential development. Additionally, the Plan establishes higher maximum residential densities within the Plan area than in the General Plan for the Transit Residential, and Urban Residential land use designations.

The proposed Conforming Rezoning (C20-002) does not reduce the intensity of residential uses. The Conforming Rezoning would increase the residential capacity because the existing Heavy Industrial, Industrial Park, and Light industrial Zoning Districts do not allow residential development, while the proposed Downtown Primary Commercial and R-M Residence District (Multiple Unit/Lot) zoning districts allow residential uses. Therefore, the proposed General Plan Amendment and Conforming Rezoning are in compliance with SB330.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

In compliance with the California Environmental Quality Act (CEQA), the City prepared an Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution no. 78942) to address the environmental impacts of the project.

The Diridon Station Area Plan Amendment (DSAP Amendment), and as described in the Initial Study/Addendum, does not create any of the conditions described in Section 15162 of the CEQA Guidelines that call for the preparation of a subsequent EIR. No new significant impacts would occur, and no previously examined significant effects would be substantially more severe than those identified in the Downtown Strategy 2040 Final Environmental Impact Report. Thus, an Addendum to the adopted FEIR is the appropriate environmental documentation to analyze the potential environmental impact.

As an Addendum to a previously adopted EIR, public circulation is not required under CEQA. However, as part of the public outreach and engagement process for the DSAP Amendment, the City posted the Initial Study/Addendum on the City's website for a period of 30 days and solicited public comments from March 1, 2021 through April 1, 2021. The City received 17 comment letters, which have been posted to the project's website for the Initial Study/Addendum.

The Initial Study/Addendum, public comment letters, and the City's responses to those comments, are posted to the City's website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/diridon-station-area-plan-amendment>. The Downtown Strategy 2040 Final Environmental Impact Report can be found at <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/downtown-strategy-2040>.

PUBLIC OUTREACH**2014 Diridon Station Area Plan**

The Diridon Station Area planning process that culminated in the 2014 Plan was initiated in June 2009. Throughout the study, extensive efforts were made to engage members of the business and development community, as well as residents within the immediate area and surrounding long-established neighborhoods. The surrounding areas have neighborhood associations with a history of active participation in both City and private development proposals and activities. Many of these associations have been supportive of improving transit and pedestrian access and circulation but remain focused on ensuring that new future development within their neighborhoods will enhance the area's amenities and will not detract from current residents' quality of life.

In 2009, the City Council and Redevelopment Agency Board established the Diridon Station Area Good Neighbor Committee (GNC) to provide a forum for neighbors to work collaboratively in solving problems in the neighborhood arising from development in the Diridon Station Area. The GNC discussed potential impacts of existing and planned development and collaborated to recommend reasonable implementation priorities. The 31-member committee met 22 times over a 14-month period and achieved its purpose through the creation and unanimous adoption of the Diridon Station Framework for Implementation (Framework) in 2011.⁷ The Framework focused on six interest areas: land use, neighborhood quality of life, parking and traffic, parks and trails, pedestrian and bicycle connections and connectivity, and public transportation systems. For each of the GNC's interest areas, the Framework identified the top three objectives to guide future implementation. In addition, three public community workshops and a considerable number of community events by related groups contributed to the creation of the 2014 Plan.

In April 2011, the City Council accepted the plan that defined the maximum development potential for the area and the project description and directed the consultant team to begin the environmental analysis. In June 2014, City Council approved the Final Plan and certified the Environmental Impact Report.

2021 Diridon Station Area Plan (the Plan)

In 2018, the City launched a community engagement process to ask people about their vision for the Diridon Station Area given Google's interest in a development at the core of the Diridon Station Area. As part of this process, the City Council appointed 38 organizations to a new Diridon Station Area Advisory Group (SAAG). The City also set up a new website (www.diridonsj.org) and held a variety of events and activities to engage the general public. The 2018 process generated a list of desired outcomes related to Housing and Anti-Displacement; Jobs and Education; Land Use and Design; Transportation and Parking; Parks and Public Space; and Environmental Sustainability. Key findings from the process were that the community's overall vision for the area had not changed and that social equity should be a top consideration.

In 2019, the focus of the City's community engagement was on the Diridon Integrated Station Concept Plan (DISC), a collaboration between the City and transit agency partners. It generated feedback on the future station's design, layout, access, and effects on and integration with surrounding neighborhoods. The community input informed a Concept Layout for Diridon Station and informed the development of the Plan.

In fall 2019, the City officially launched the process of amending the 2014 Plan – along with reviewing Google's Downtown West Mixed-Use Plan development proposal and completing areawide studies to comprehensively plan for the Diridon Station Area. The process included three rounds of public outreach and engagement in fall 2019, spring 2020, and fall 2020. As part of the fall 2019 round, staff shared initial thinking about the scope of changes under consideration and the intended process for analyzing and proposing the amendments to the 2014 Plan. In spring 2020, staff shared draft concepts related to land

use, heights, design, mobility, parks, open space, and trails. In fall 2020, staff released the Draft Amended Plan and Draft Affordable Housing Implementation Plan for the Diridon Station Area for public review.

The 2019-21 engagement process evolved from the original plan due to the COVID-19 crisis. The City had to extend the process and switch to digital tools for the 2020 rounds. Throughout the process, the goal was to hear from all segments of the San José community, such as residents living in the area, Downtown businesses, developers, transit riders, and affordable housing, labor, and environmental advocates. To help reach populations that are typically under-represented in planning processes, the City established a small grant program and partnered with seven community-based organizations to assist with 2020-21 outreach and engagement. The City also offered many of the meetings and materials in Spanish and Vietnamese. For in-person community meetings, the City typically offered refreshments and supervised activities for children.

From early 2018 through Spring 2021, City-led community engagement related to the Diridon Station Area included:

- 19 Station Area Advisory Group (SAAG) meetings
- 14 SAAG small group discussions
- Over 20 community meetings hosted by the City or its partners
- 3 online surveys with over 2,000 responses
- Over 200 online feedback forms submitted
- Over 75,000 page views and 36,000+ unique visitors on diridonsj.org
- 9 pop-ups at community events
- 5 virtual office hours
- Many meetings with community groups

In addition to these efforts, Google and the City's transit partners conducted their own outreach to guide their projects.

Community Feedback Summary

The feedback from the public is summarized below according to major topics of concern. They include boundary expansion, building height limits and office/commercial uses and space, parks and open space and community services/facilities, and transportation. A summary of the feedback received for each of these topics is discussed below.

1. **Boundary Expansion:** In June 2020, City staff proposed an updated boundary that included two eastern expansions to include a residential area and commercial area that abuts the Guadalupe River Park and a portion of Google's Downtown West Mixed-Use Plan east of Delmas Avenue.

Most of the feedback received in regard to boundary expansion focused on the impact that future development would have on adjacent neighborhoods, and a concern that this impact would not be analyzed in the environmental impact report because the neighborhoods were outside the DSAP boundary.

The following are community feedback on boundary expansion heard throughout the engagement process:

- Expand Southern boundary down to Interstate 280: This would include the approximately 8 blocks including residential and commercial uses that are currently in between the Plan boundary and Interstate 280.
- Expand Eastern boundary to State Route 87: This would include the approximately 7 blocks including residential and commercial uses, Arena Green, and portions of the Guadalupe River Park that are in between the Plan's boundary and State Route 87.

Examples of some changes in the Plan, following community feedback, include:

- Incorporation of the area bounded by Autumn Street, St John Street, the Guadalupe River, and West Julian Street
 - Incorporation of the old San José Water Company site bounded by West Santa Clara Street, Los Gatos Creek, West San Fernando Street, and the Guadalupe River, which would place all Google's Downtown West Mixed-Use Plan within the Plan's boundary
 - Incorporation of undeveloped areas along Los Gatos Creek between West Santa Clara Street and Park Avenue to allow for potential park and trail development
2. Building Height Limits: The topic of maximum allowable building heights was one of the most discussed topics during the community engagement effort for the Plan.

In June 2020, City staff proposed a preliminary concept heights map, showing areas where height limits were proposed to be increased up to the FAA limits; increased to an intermediate height; or kept the same as in the 2014 Plan. Given that this was a major topic of interest for some members of the public, City staff held a series of additional meetings and focused conversations with the Diridon Area Neighborhood Group (DANG) and other organizations discussing building height limits, with the intention of developing an approach that would address community concerns and meet City goals.

The following are specific themes heard throughout the engagement process:

- Impacts to residential areas, open space, and historic buildings: Many had concerns on impacts of overshadowing, lack of privacy, loss of mountain views, and temperature changes to adjacent existing residential areas (Del Monte, Delmas Park, Lake House, and Rhodes Court), open space (Los Gatos Creek), and historic buildings (Stations Depot and Former San José Water Company and Trammel Crow Site).
- Use FAA Maximum Heights: Some felt that the proposed heights were too low and needed to utilize maximum Federal Aviation Administration (FAA) height limits to provide more housing or commercial space throughout the whole area.
- Taller buildings near transit: Some felt that there was an opportunity to provide taller buildings near transit such as housing, office, or a mix of both.
- Pandemic and overcrowding concerns: Others felt that the heights were too high because the pandemic has led to physical distancing that has driven down the use of office space and will further decrease the use of apartment and condo style buildings. Their concern is that these tall buildings would be vacant and a waste of money.
- Impacts to airport flight paths: Some shared concern that heights would reduce the number of flights going to the airport, causing the airport to eventually shut down.
- More Affordable Housing: Many wanted to see an increase in height to make affordable housing in the area more economically feasible.

- Staff recommended heights are “About Right”: A majority of Spring 2020 survey respondents felt that the staff recommended heights were about right.

Examples of some changes in the Plan, following community feedback, include:

- Increasing the maximum height in the area around the Diridon Station to a maximum of 295 feet.
 - Creating a transitional building height limit between 65 and 90 feet adjacent to lower density residential areas along Stockton Avenue, West Julian Street, The Alameda, Park Avenue, Auzerais Avenue, and Sunol Street.
 - Implementing stepback plane standards to ensure gradual increases in building heights for development adjacent to historic districts, and lower height context.
 - Maintaining unobstructed views of buildings and corridors down The Alameda and east of Diridon Station.
3. Office/Commercial Uses and Space: In June 2020, City staff proposed expanding the development program based on the preliminary concept heights and land use structure. The development program included 12.9 million square feet of office/commercial uses and 12,900 residential units for the entire Diridon Station Area, including the 7.3 million square feet of office/commercial uses and 5,900 residential units proposed in Google’s Downtown West Mixed-Use Plan.

The following are specific themes heard throughout the engagement process:

- More office and commercial and less housing: There was a direct connection to housing on this topic. Community members who wanted more commercial and office in the Diridon Station Area were more likely to want less housing in the area.
- Variation between uses: Many also wanted to see a variation between the many nonresidential uses that could include office, retail, restaurant, and entertainment.
- Including existing and new small businesses: Some wanted to make sure that existing and new small businesses were not forgotten and had affordable and accessible spaces within the area.
- Providing essential amenities in the area: Many expressed that the area needed essential amenities such as grocery stores, schools, parks, farmers markets, and mental health services.
- Pandemic and overcrowding concerns: Some thought the square footage was too high because of existing and future vacancies related to the pandemic, in addition to business displacement from all of the redevelopment in the area.
- Less office and commercial to make room for more housing: Others wanted less commercial space in the area to provide more square footage for housing.
- Staff recommended square footage is “About Right”: A majority of survey respondents liked the development capacity for the most part. They thought there was a good balance between commercial and housing in the area.

Examples of some changes in the Plan, following community feedback, include:

- Revised land use and heights that would potentially increase the maximum commercial, including Google’s Downtown West Mixed-Use Plan, to 13.7 million square feet.*
- Revised land use and heights, and urban design street designations that would potentially increase the maximum Active Use/Retail to 1 million square feet. * Most streets in the Diridon Station Area will include some active ground floor with retail for a lively downtown. This includes Stockton Ave, West Julian Street, The Alameda/West Santa Clara Street, Cahill Street, North/South Montgomery

Street, Park Avenue, West San Fernando, West San Carlos Street, Delmas Avenue, and Barack Obama Boulevard (portions of South Autumn Street, South Montgomery Street, and Bird Avenue).

*The square foot values are an estimate based on identified potential development sites outside of Google's Downtown West Mixed-Use Plan, and Google's Downtown West Mixed-Use Plan development program.

4. Parks, Open Space, Community Services and Facilities: In April 2020, City staff shared a preliminary capacity analysis that showed a cumulative parkland goal of 62 acres, or equivalent recreation amenities. Given that this was a significant issue for some members of the public, City staff held a series of additional meetings and focused conversations with DANG and other organizations discussing parks, open space, and community centers, with the goal of developing an approach that would address community concerns and meet City goals.

The following are specific themes heard throughout the engagement process:

- More safe parks and open space: People want to see large parks with diverse programming including basketball courts, skate parks, bicycling, dog parks, and community gardens.
- Connecting the Los Gatos Creek Trail to Guadalupe River Trail: Executing the Los Gatos Creek Trail Master Plan is a high priority of the community. This includes providing an off-street trail alignment from the Auzerais Avenue to Arena Green.
- Flexible meeting spaces for a variety of community needs (ranging from small rooms to an auditorium): These spaces would be used by afterschool programs, non-profits, cultural organizations, and for community performances.
- Edible Community Gardens and Public Kitchen Facilities: Many shared an interest in having community gardens with edible food and public kitchens to provide food, resources, and a community gathering space for the most vulnerable residents of San José.
- Funding existing Community Centers in neighborhoods such as Gardner: There was concern raised in building a new community center in the Diridon Station Area, when the adjacent Gardner Neighborhood Community Center is underutilized due to limited general fund resources.
- A new Diridon Community Center: People were excited by the idea of having a community center dedicated to the Diridon Station Area.

Examples of some changes in the Plan, following community feedback, include:

- Calling for approximately 10 acres of publicly owned open spaces, including neighborhood parks, trail segments, and plazas dispersed through the existing neighborhoods and future developments. The 10 acres will supplement the existing open space surrounding the Diridon Station Area.
- Completing the final sections of the Los Gatos Creek Trail from Auzerais Avenue to Park Avenue, Park Avenue to West San Fernando Street, and West San Fernando Street to West Santa Clara Street; and completing the section of Guadalupe River Trail on the west bank from West St. John Street to West Julian Street. Building upon previously approved master plans, the design of these trail system improvements will use the Trail Program Planning and Design Toolkit to ensure design conformance with the rest of the City's trail network.
- Planning for a new regional community center with a minimum of 13,000 square foot space, with the subsequent design and programming determined through additional community outreach and engagement. The City is exploring new funding mechanisms to solve the operation and maintenance funding issue, including a potential ballot measure targeted for 2022. The City will

not proceed with the planning or development of a community center in the Diridon Station Area until this operation and maintenance funding issue is resolved.

5. Transportation: Getting to, through, and around the Diridon Station Area was a much-discussed topic by all, regardless of the preferred form of travel (walk, bike, take transit, drive, or a combination). To meet these needs, the city began the Draft Downtown Transportation Plan in 2020. The Downtown Transportation Plan will:

- Improve circulation, whether by foot, bike, car, or transit
- Improve transportation equity and access to places for everyone
- Improve the comfort and enjoyment of streets, public plazas, paseos, and parks
- Support and complement the identity of Downtown

These goals are important for the Diridon Station Area and also guided the development of the mobility chapter for the Plan. In June 2020, City staff shared some initial information on the Downtown Transportation Plan within the Diridon Station Area that included potentially enhancing bike corridors, improving the Barack Obama Boulevard (Bird Avenue)/Interstate 280 interchange to make it safer for pedestrians, closing the State Route 87 off-ramp to West Santa Clara Street, improving the State Route 87/West Julian Street interchange to keep vehicular traffic moving, and additional public service lanes on West Santa Clara Street for buses and emergency vehicles. This was a major topic of discussion that was a near-even split between people who prioritized individual vehicles and those who were firm advocates for active transportation.

The following are specific themes heard throughout the engagement process:

- More frequent and affordable public transportation: Many wanted more frequent public transportation, with shuttles, bus lanes, and stops particularly in South San José. Some in South San José shared that it is currently difficult and time intensive to access the station via transit.
- Maintain car infrastructure (roads and parking) throughout the area: Like the concerns shared above from the survey, many wanted to make sure that the downtown would still be accessible by individual vehicles and that any bicycle, pedestrian or transit improvement would not cause traffic and delay their commutes to work or a Sharks game. Many shared that if parking was reduced in the area, they would never return to a Sharks game or visit the downtown.
- Bike and pedestrian infrastructure throughout the area: Many wanted to see bike lanes (separated, with planters, and contiguous), bike parking, pedestrian signage, wider sidewalks, pedestrian boulevards, more lighting for pedestrians, and upgrading pedestrian infrastructure to continue meeting Americans with Disability Act (ADA) standards. Many saw bike and pedestrian improvements as integrated efforts that would benefit each other and make the area safer for those who walk, bike, and take transit.
- Development will cause traffic: There was some concern shared about how the development of the area with Google and other businesses would impact traffic for neighbors trying to get to work or downtown.
- Concerns regarding the State Route 87 off-ramp closure/Improvement to the State Route 87/Julian street interchange: Many respondents were concerned that closing off-ramps to vehicles would cause more congestion and make it harder for people to attend Sharks games or visit the Downtown area.
- Concerns about the addition of public service lanes on Santa Clara Street: People were concerned about the congestion that would be brought on by having lanes only for buses and emergency

vehicles. Many shared that they did not use public transportation and did not see the need for its efficiency.

- Excitement about improvement to the light rail system: Many shared that they were excited to see the Diridon Integrated Station Concept Plan be implemented and have a more efficient commute around the Bay Area.
- Excitement about enhancing bike corridors between Downtown and Diridon Station: Many were excited about making the Downtown area safer for bicyclists and further connecting the existing bikeway network for more efficient commutes across the bay thanks to the Diridon Station Area.
- Excitement about the improvement to the Barack Obama Boulevard (Bird Ave)/Interstate 280 interchange: Many were excited about this improvement to make the interchange safer and more comfortable for those who walk and bike in the area.
- Connection to the airport: Some shared that the station should have a direct connection to the airport. This would make travel even more efficient across the bay and around the world.

Examples of some changes in the Plan, following community feedback, include:

- Updated land use putting homes, offices and recreational uses closer together in more areas to promote an increase in walking, biking, and other low-impact ways of travel.
- Updated street network that moves people to and within the Diridon Station Area in ways that are efficient, equitable, and safe, and that also supports the Diridon Station Area as an attractive people-focused place.
- Updated transportation improvement projects to ensure an expansive and equitable network. Fifty-four (54) transportation network improvements are grouped by the type of access they provide to the Diridon Station Area:
 - Statewide transit access
 - Regional and citywide access
 - Local and neighborhood access
 - Placemaking and new connections at and near the station
- Incorporating several parking management strategies that include shared parking, unbundled parking, parking supply, priced parking, residential parking permit program, and parking distribution.
- Establishing a Transportation Demand Management framework that includes a Parking and Transportation Management District, a Transportation Management Association, and project-level transportation demand management requirements.

Community input has been central to the development of the Plan. For example, based on community input, the Plan emphasize equity as a primary objective, significantly adds development capacity, includes design standards for providing transition between new mid- and high-rise buildings and existing low-rise residences, proposes a wider mix of uses across the area, identifies new ways to improve the pedestrian environment, revises the open space plan to ensure better access to recreational, nature-based, and community amenities, and updates the mobility network to prioritize walking, public transit, and bicycling within the core Diridon Station Area, while locating automobile circulation and parking facilities at the perimeter of the Diridon Station Area. These changes and others balance the range of aspirations and concerns expressed by community members throughout the engagement process.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Plan boundary and posted on the City website.

The staff report is posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Jose Ruano

Approved by: /s/ , Deputy Director for Chu Chang, Acting Director

Attachments:

Attachment A: Vicinity Map

Attachment B: General Plan Land Use Designations

Attachment C: Building height Limits

Attachment D: Transportation Street Typology Designations

Attachment E: Open Space Network

Attachment F: Stepback Plane Locations

Attachment G: Zoning Districts

Attachment H: Planned Job Capacity and Housing Growth Areas by Horizon

Attachment I : General Plan Amendment Draft Resolution

Attachment J: ALUC Override Draft Resolution

Attachment K: Conforming Rezoning Draft Resolution

Attachment L: Diridon Station Area Plan

Attachment M: Diridon Station Area Plan Addendum to the Downtown Strategy 2040 Environmental Impact Report

Attachment N: EIR Addendum Resolution

Attachment O: Comments on Initial Study/ Addendum to DSAP Amendment

Attachment P: Public Comments as of 04/20/2020

Attachment Q: Letter from Caltrans Division of Aeronautics

GP20-007 & C20-002 List of Attachments

- Attachment A: [Vicinity Map](#)
- Attachment B: [General Plan Land Use Designations](#)
- Attachment C: [Building height Limits](#)
- Attachment D: [Transportation Street Typology Designations](#)
- Attachment E: [Open Space Network](#)
- Attachment F: [Stepback Plane Locations](#)
- Attachment G: [Zoning Districts](#)
- Attachment H: [Planned Job Capacity and Housing Growth Areas by Horizon](#)
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[Correspondence Received After April 21, 2021](#)

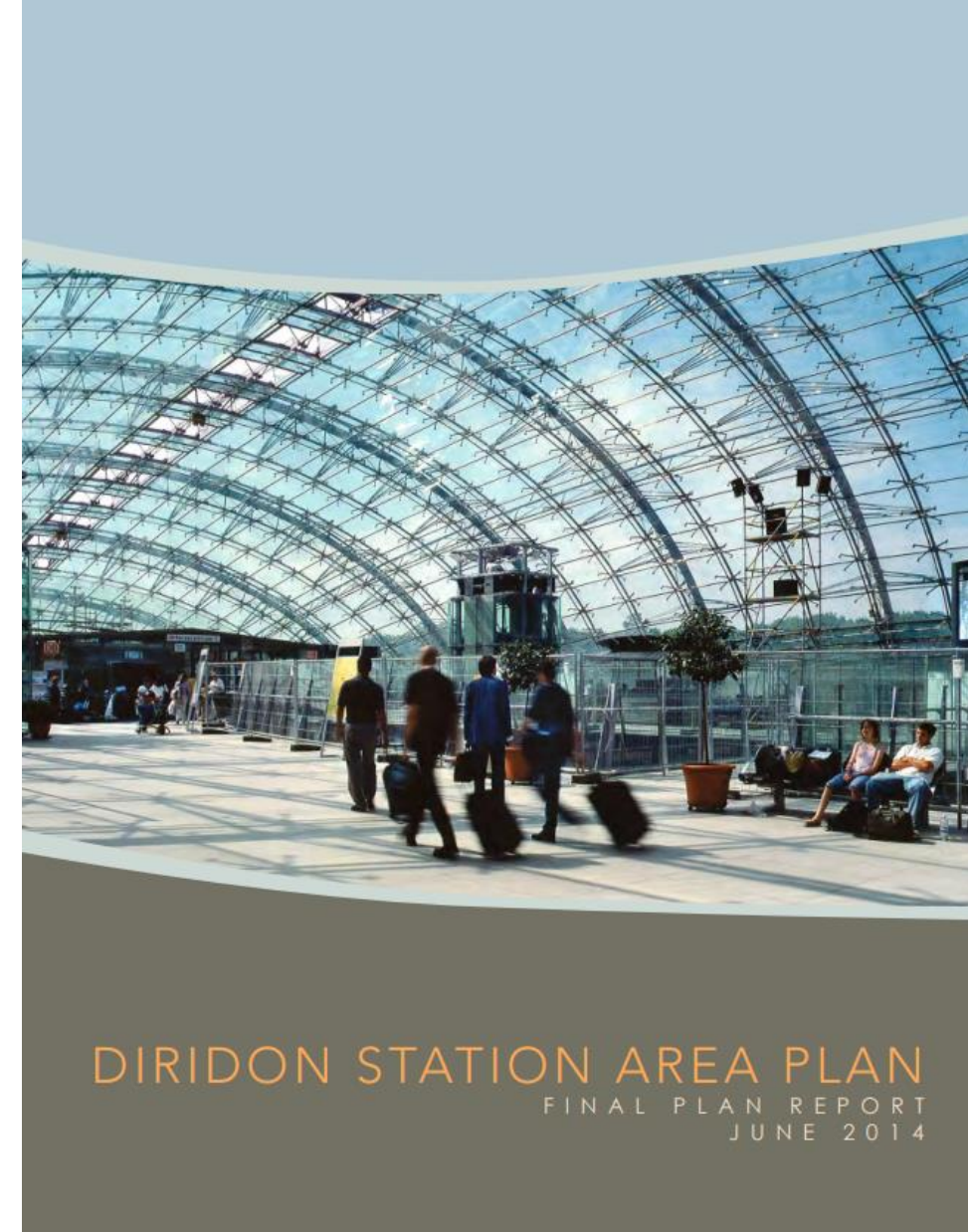


Photo : Sergio Ruiz, SPUR

Planning Commission: Diridon Station Area Plan (DSAP)

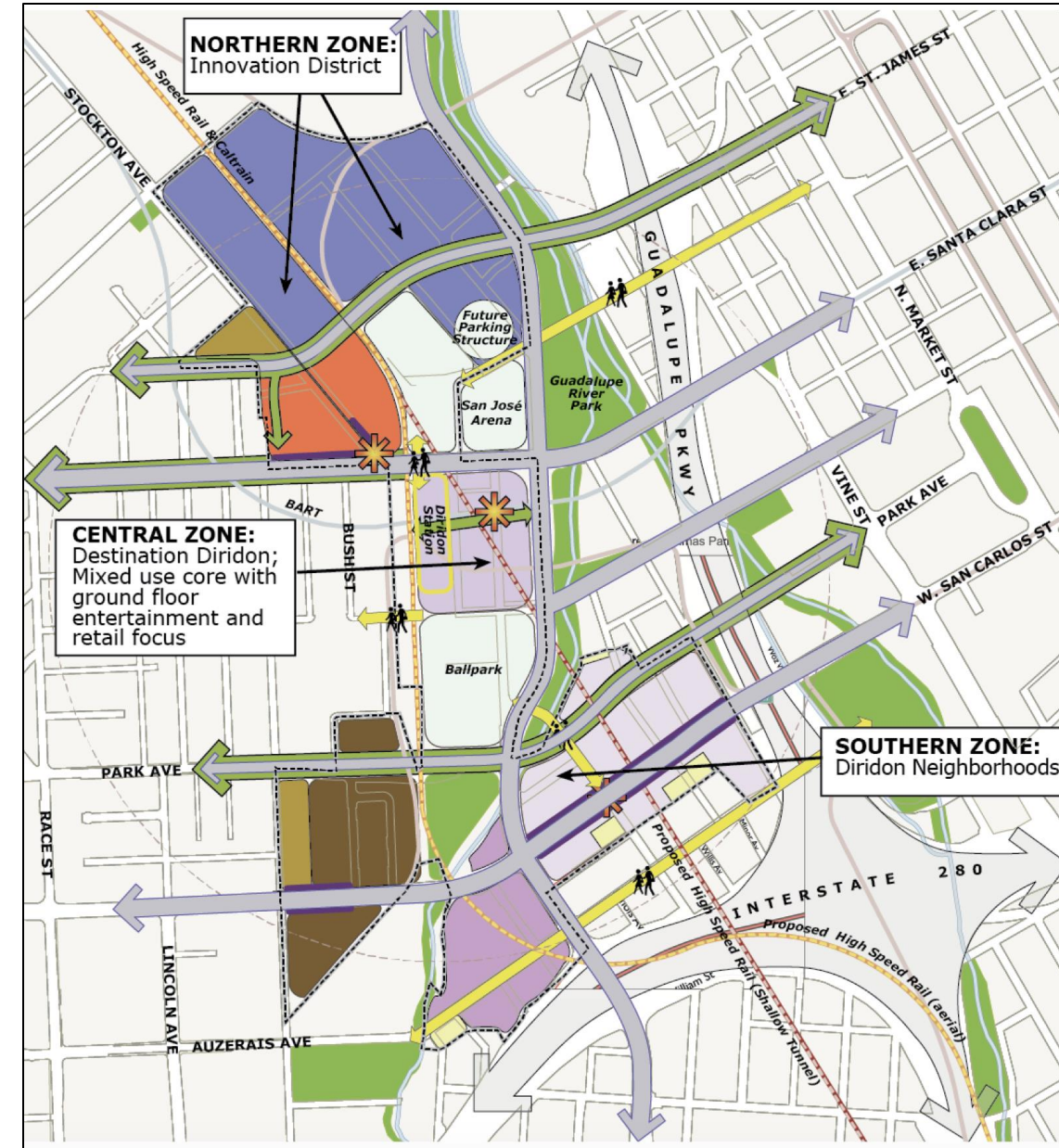
Wednesday, April 28, 2021 | 6:30 PM

- Establish Diridon Area as **major destination**
- Foster a **lively public realm** that supports walking and bicycling
- Create a **new intermodal station** of architectural significance
- Encourage high-density land uses that support **high transit ridership**
- Use **art** to create a strong **sense of place**
- Reflect Silicon Valley's **spirit of innovation** and San José's **rich history** through distinctive architecture and **civic spaces**

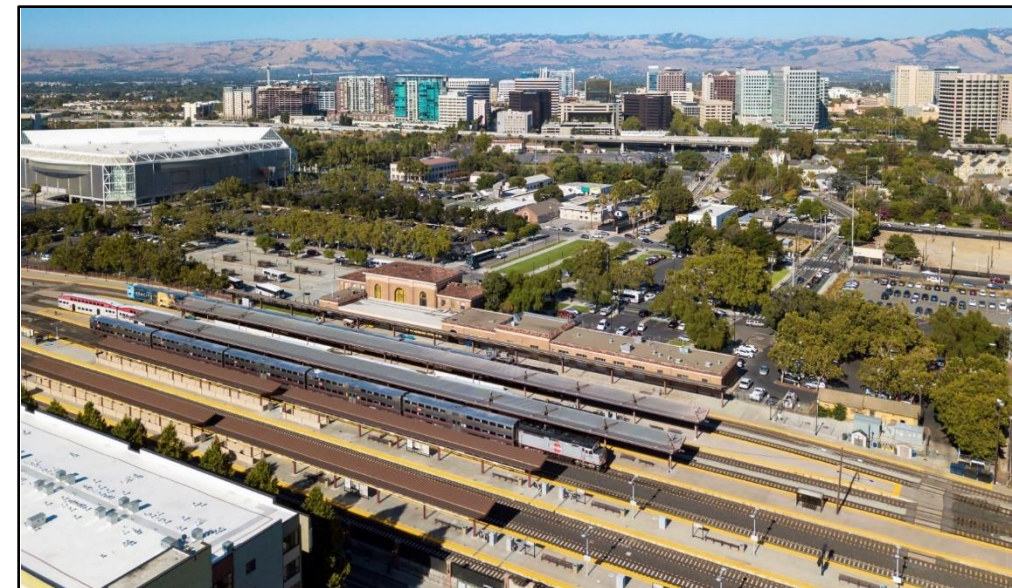


Why Amend the DSAP?

- No ballpark
- Google's mixed-use development
- Potential for increased building height limits and development capacity
- Initiated Diridon Integrated Station Concept Plan, Downtown Transportation Plan, and Diridon Affordable Housing Implementation Plan
- Adopted Downtown Design Guidelines and Standards (2019), Climate Smart San José, ActivateSJ, etc.



Transit Hub Planning for 8X Passenger Growth



From early 2018 through Spring 2021

- **19** SAAG meetings
- **14** SAAG small group discussions
- **Over 20** Community Meetings and Partner Events
- **3** online surveys with **over 2,000** responses
- **Over 75,000** page views and **36,000+** unique visitors on diridonsj.org
- **9** pop-ups at community events
- **5** virtual office hours
- **Over 12** meetings with the DANG
- **Many** meetings with other community groups



What we did with the input



- Analyzed potential development capacity increases and considered City policies for Job/housing balance
- Land use concept approach puts homes and offices closer together in more areas than the 2014 DSAP, which allows for a potential increase in walking, biking or other low impact ways of travel
- Height concept approach includes transitional concepts and compatibility with surrounding neighborhoods
- Potential boundary expansion to the east to include Google's entire project within the DSAP, and allow for potential park and trail development

“Activate 24/7, with eyes on the street. Recognize the balance needed—not just office uses”

“Opportunity to increase heights and plan to maximize housing as best use”

“Beyond the Google project, what is the City's plan for the rest of the area (capacities, residential units, office space, traffic, etc.)?”

“Focus on pedestrian and non-vehicular modes of transportation”

“Missing opportunity to improve Los Gatos and Guadalupe River Park trail [connections]”

“Boundary expansion east to 87”

“Shorter heights near creeks and neighborhoods”

1. Affirm the general vision
2. Update the 2014 objectives, themes and goals to reflect input received through the 2018-21 outreach process
3. Add an equity lens and updated thinking on environmental sustainability
4. Recommend increased height limits that balance neighborhood compatibility and other goals
5. Provide DSAP-specific design guidelines and standards that build on the Downtown Design Guidelines and Standards (2019)
6. Propose new General Plan designations to support the recommended development types and levels



Viva CalleSJ Open Streets (*Gehl*)



SOFA Street Fair (*Team San Jose*)

- Increase opportunities for people to live and work in the area
- Establish strategies for the production and preservation of affordable housing and protection of renters
- Develop a parks and recreation system that serves each neighborhood and demographic group with equity
- Support inclusive access to transportation modes that provide the most economic and health benefits



Affordability



Density



Transit



Walkability



Mixed-Use



DIRIDON STATION AREA PLAN

Cover Image © SJVTA

DRAFT | APRIL 2021

-
- An aerial photograph of San Jose, California, showing the downtown area and surrounding regions. The image is labeled with four key locations: 'SAN JOSE DOWNTOWN' in the upper left, 'SAP CENTER' in the lower left, 'DSAP AREA' in the center, and 'DIRIDON STATION' in the lower right. The SAP Center is a large, modern building with a distinctive white, tent-like roof. The Diridon Station is a large transit hub with multiple tracks and platforms. The DSAP Area is a large, open area with many parking lots and some commercial buildings. The San Jose Downtown area is characterized by several tall, modern skyscrapers. The image is credited to Christopher Kao/Droneshot.com.

Context

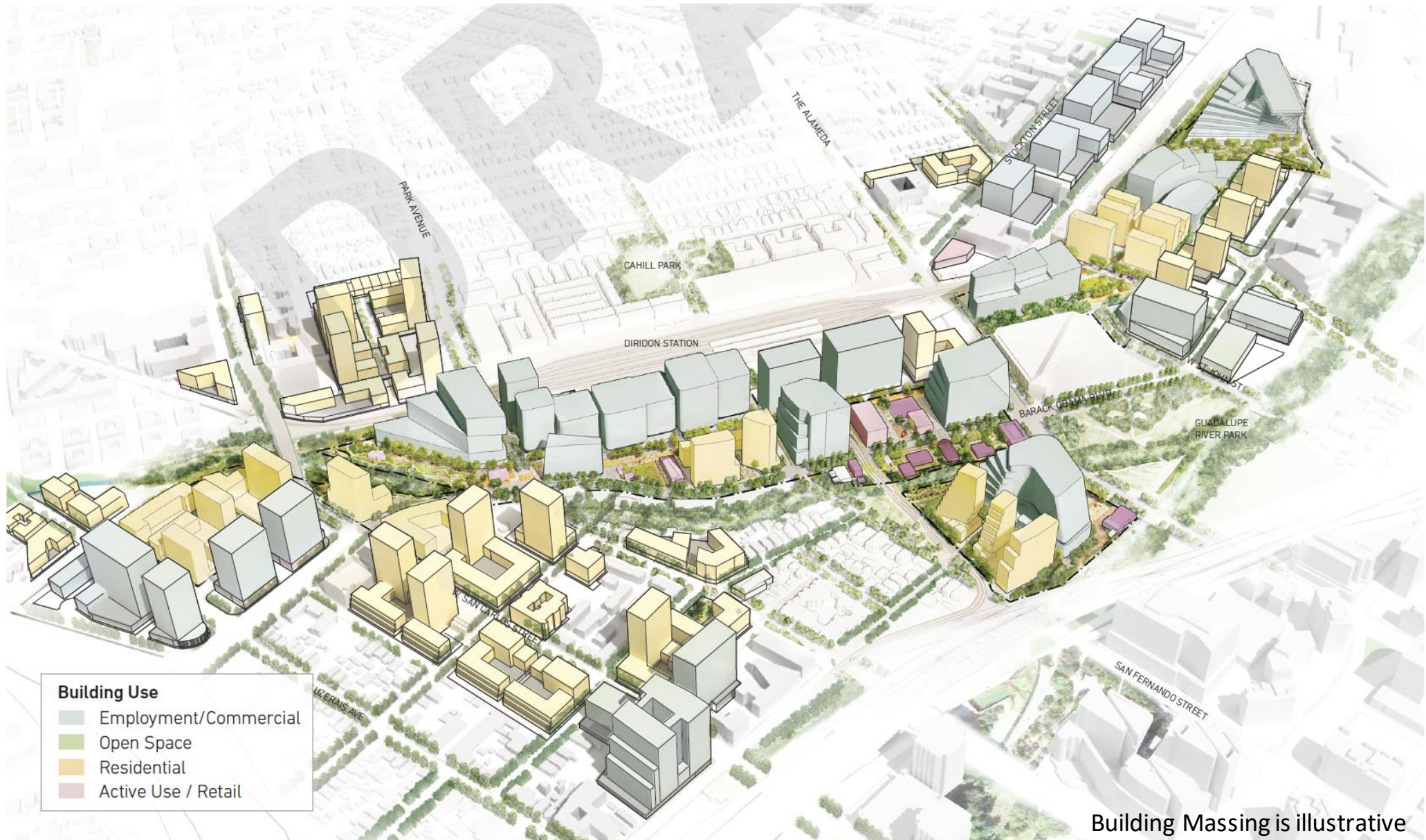
- 2014 DSAP Boundary
- DSAP Boundary Expansion
- Downtown West Boundary
- DISC Footprint (conceptual)
- Half-mile Radius

Map Labels: CINNABAR ST, W JULIAN ST, THE ALAMEDA, W SAN FERNANDO ST, PARK AVE, CAHILL PARK, DIRIDON STATION, S MONTGOMERY ST, SAN JOSE ARENA, GUADALUPE RIVER PARK, DELMAS AVE, W SAN CARLOS ST, AUZERAS AVE, W SANTA CLARA ST, W ST JOHN ST, ST SJAMES ST, DOWNTOWN, DISCOVERY MEADOW, 87, 280.

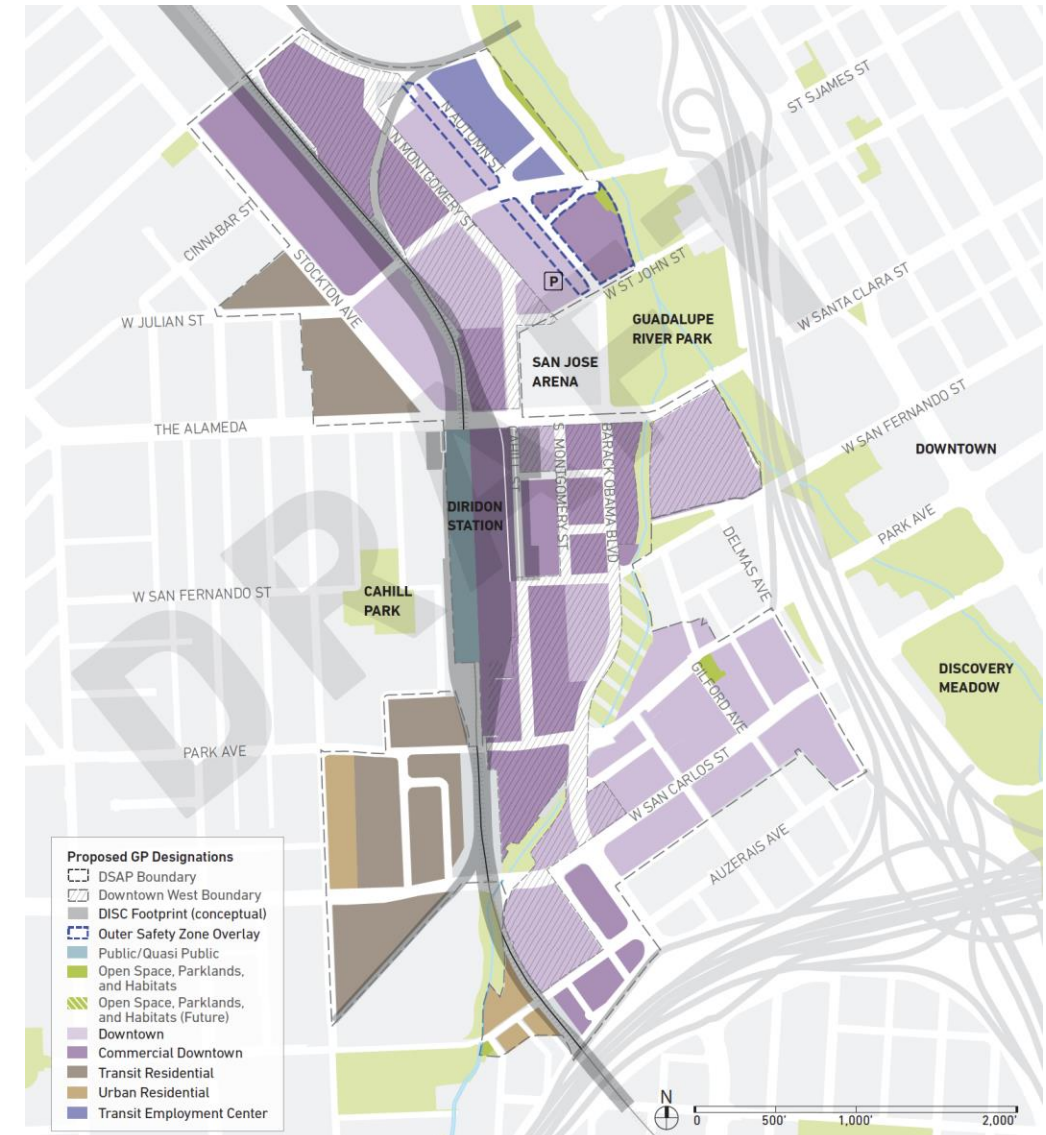
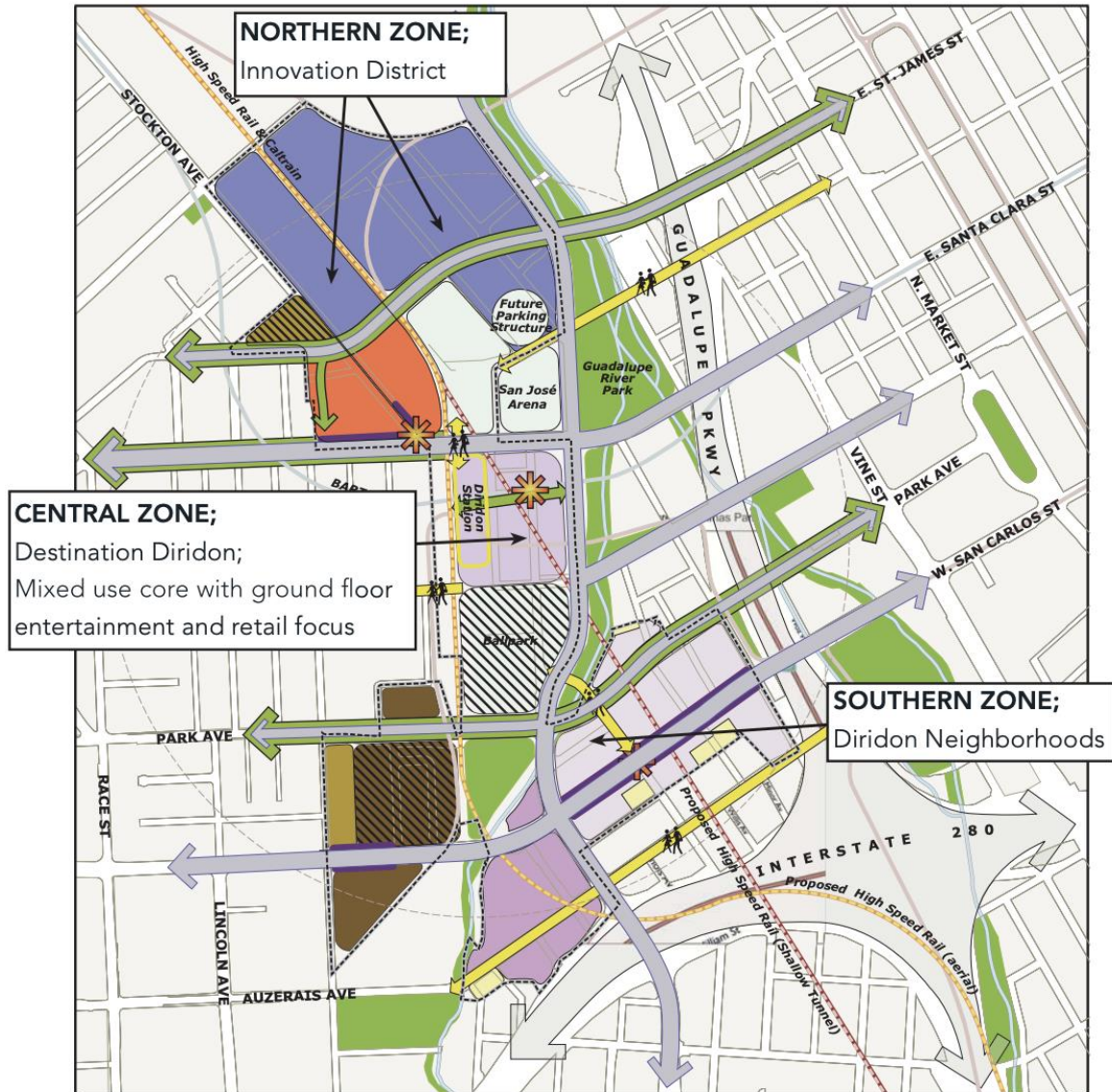
Scale: 0, 500', 1,000', 2,000'

North Arrow: N

Major Changes – Land Use



Major Changes – Land Use



- To achieve consistency with the Outer Safety Zone, this Plan includes an Outer Safety Zone Overlay.
- The overlay includes density restrictions that apply to new development within the overlay boundary
- The following criteria, shown in Table 3-3-1, apply to new development within the Outer Safety Zone Overlay

Table 3-3-1: Outer Safety Zone Overlay Criteria

Maximum Occupancy	Open Space Requirement	Land Use
Non-residential, maximum 300 people per acre (includes open area and parking area required for the building's occupants and one half of the adjacent street area).	20% of gross area or could be achieved on the adjacent park land, Guadalupe Garden and Creek area, as well as State Route 87.	Residential – if non-residential uses are not feasible, allow residential infill to existing density. No regional shopping centers, theaters, meeting halls, stadium, schools, large day care centers, hospitals, nursing homes or similar activities. No above ground bulk fuel storage.



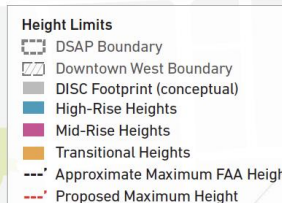




Table 2-3-2: Diridon Station Area Theoretical Maximum Build-out used in Environmental Analysis

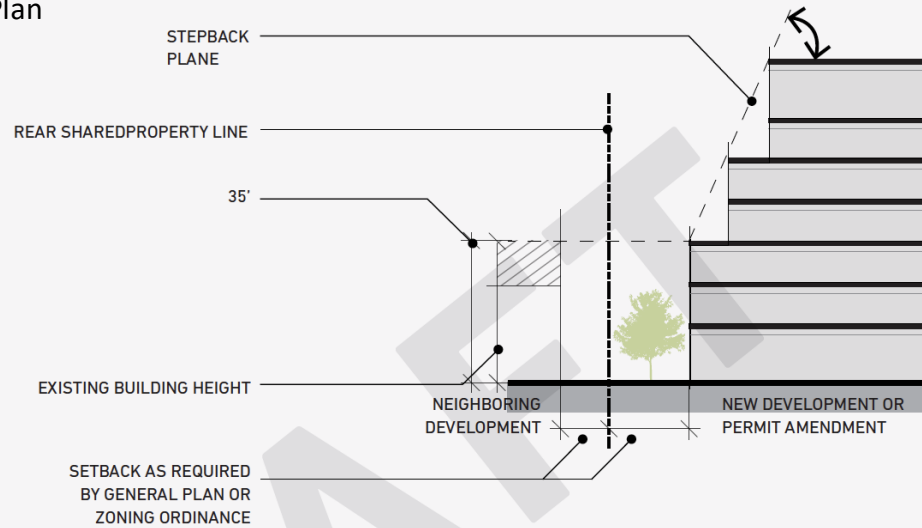
	Google's Downtown West Mixed Use Plan (DTW)		Diridon Station Area Outside DTW		Complete Diridon Station Area*	
Land Use	Total	Unit	Total	Units	Total	Units
Residential	Up to 5,900	Units	Up to 7,619	Units	Up to 13,519	Units
Office	Up to 7,300,000	SF	7,144,154	SF	Up to 14,444,154	SF
Active Use/Retail	Up to 500,000	SF	Up to 536,000	SF	Up to 1,036,000	SF
Hotel	Up to 300	Rooms	–	–	Up to 300	Rooms

* The estimated theoretical maximum build-out outside of Google's Downtown West Mixed Use Plan used in the environmental analysis is based on identified potential development sites.

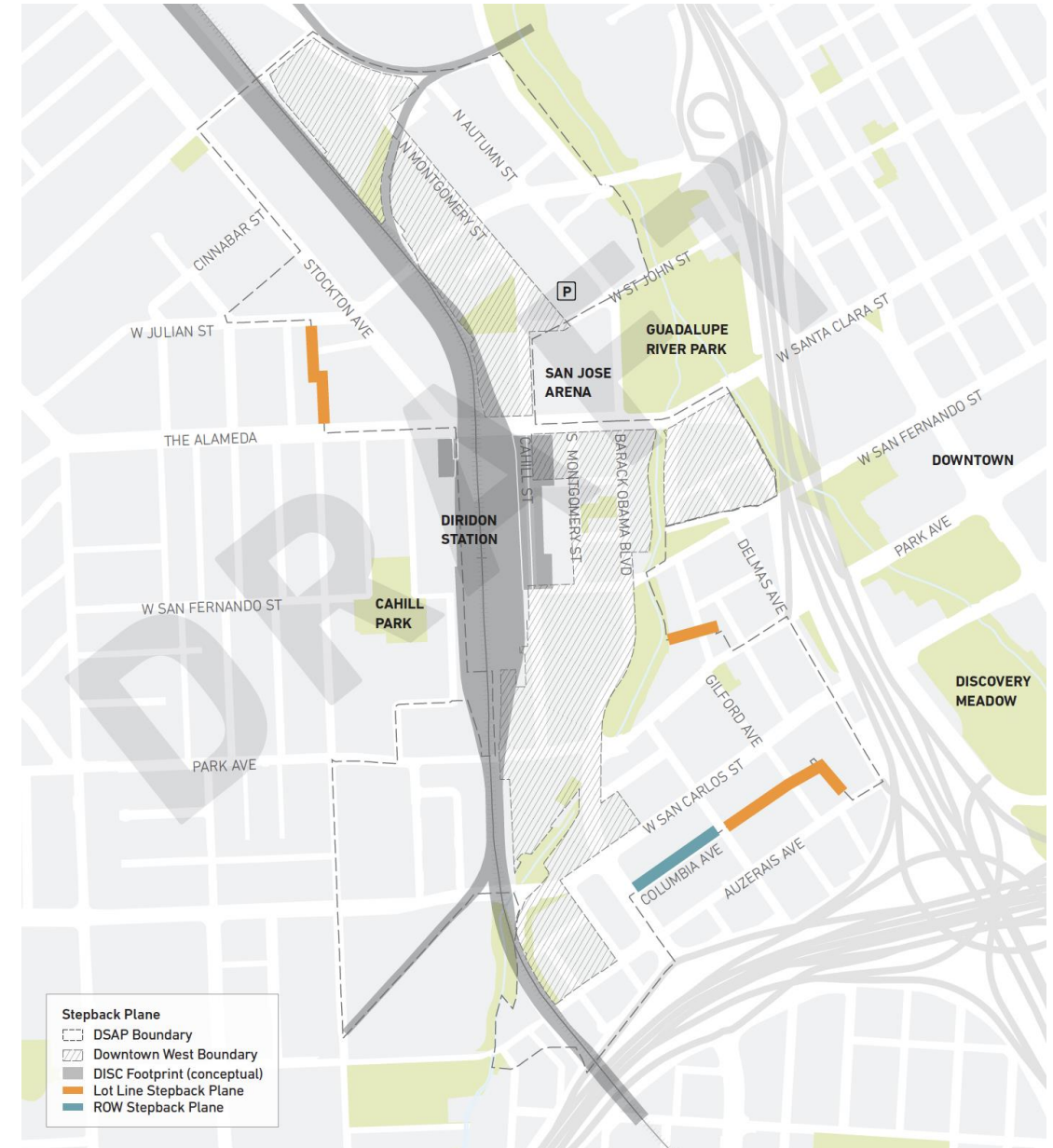
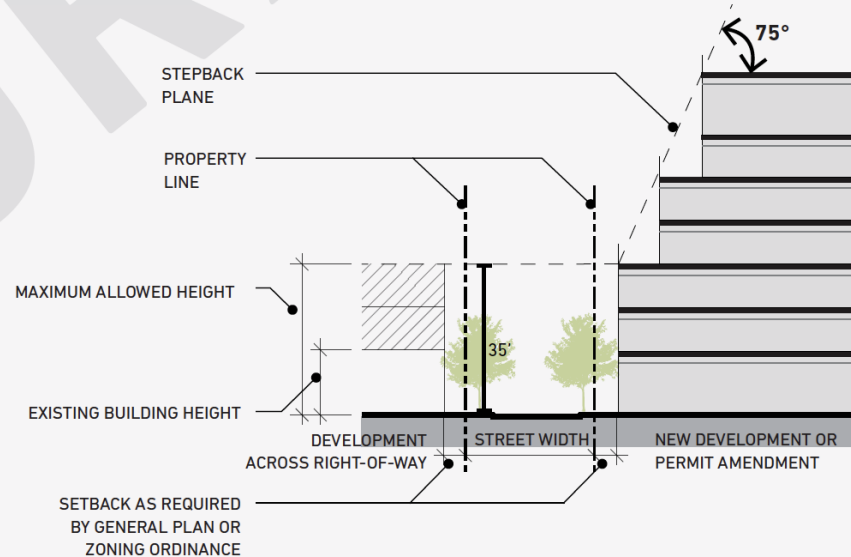
Google's Downtown West Mixed-Use Plan also contemplates other uses, such as Limited-term Corporate Accommodations, event center(s), Central Utilities, Plant(s), and logistics/warehouse

Major Changes – Design Standards

Lot Line Stepback Plan Diagram



Right of Way Stepback Plan Diagram



Major Changes – Parks & Open Space



Ricardo Lara Linear Park, Lynwood, CA



Pacific Plaza, Dallas, TX



Guadalupe River Trail, San José, CA

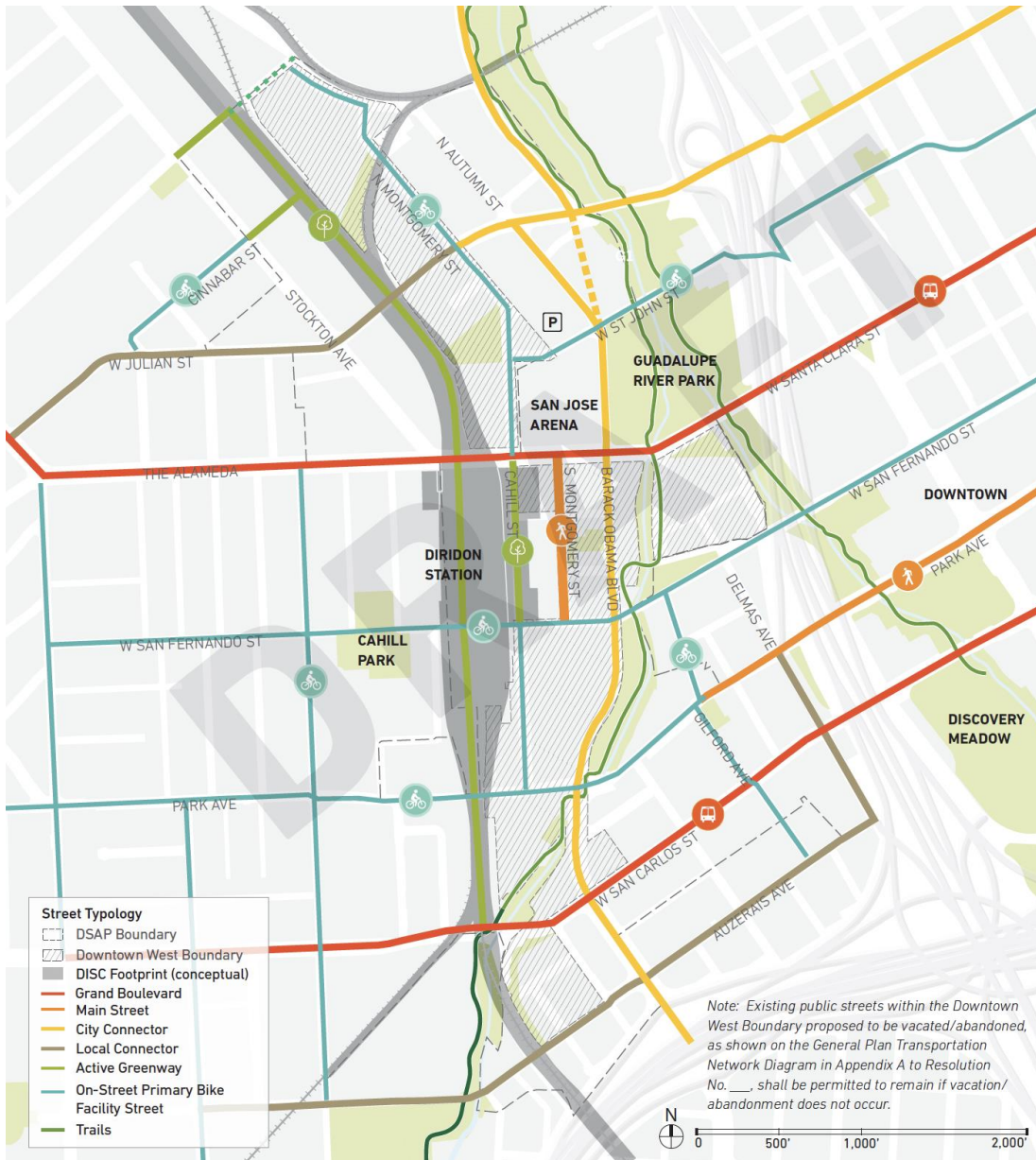






Hunters Point South, Long Island City, NY



Hunter's Point South, New York City, NY

Major Changes – Transportation



				
Grand Boulevard	PRIMARY	PERMITTED	PERMITTED	PERMITTED
Primary Bicycle Facility	PERMITTED	PRIMARY	PERMITTED	PERMITTED
Main Street	PERMITTED	PERMITTED	PRIMARY	PERMITTED
Connector	PERMITTED	PERMITTED	PERMITTED	PERMITTED
Trail		PERMITTED	PERMITTED	
Active Greenway		PERMITTED	PERMITTED	

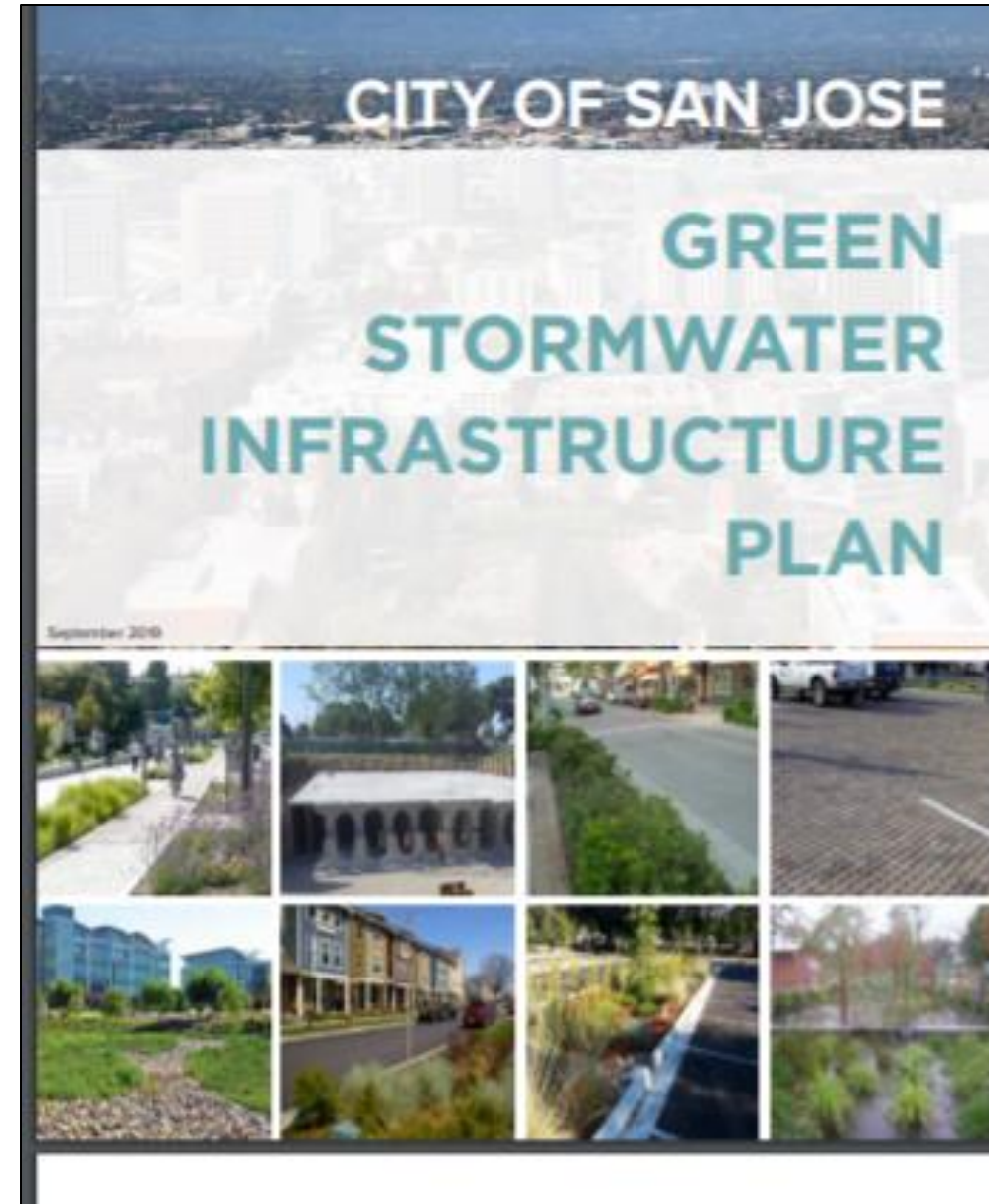


District Approach

- Manage public parking as a shared resource
 - New commercial parking incentivized to be shared/publicly available
 - Existing landowners encouraged to enter into shared parking agreements
 - Use pricing to efficiently manage parking – especially for events
- “Unbundle” residential parking – rent/sold separately from the residential units
- Establish a Transportation Management Association to implement and monitor TDM programs

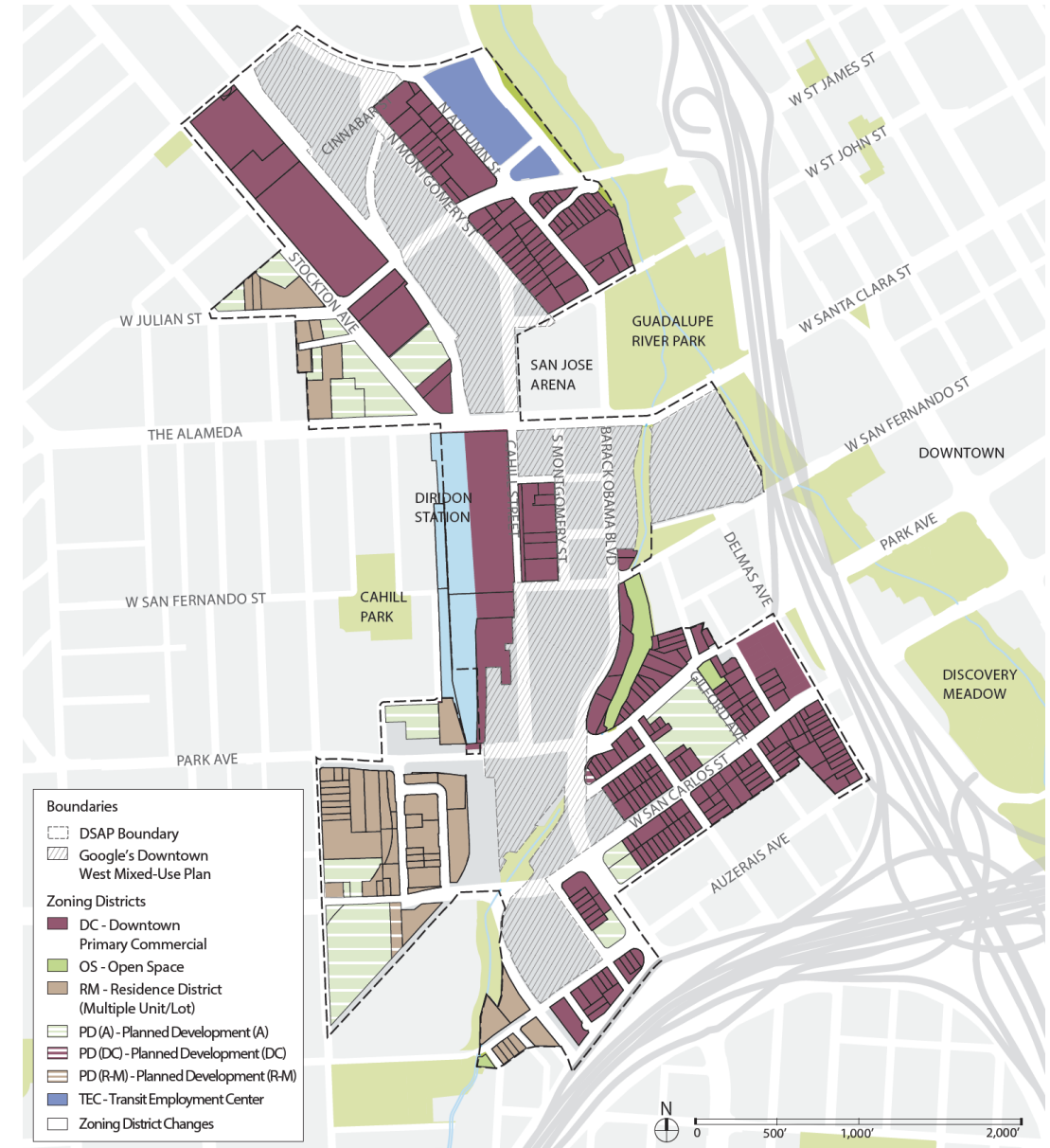
The Diridon Station Area development will embody the City's robust environmental plans and policies including:

- **Climate Smart San José** – measures to reduce greenhouse gas emissions resulting from energy and mobility and to conserve water
- **San Jose Reach Code and Natural Gas Infrastructure Prohibition Ordinances** – including all-electric buildings and EV charging infrastructure
- **Green Stormwater Infrastructure Plan** – improving the water quality of stormwater runoff
- **Green Building Policy** – with varying LEED® certification requirements based on the project type



The Conforming Rezoning analyzes Zoning Ordinance changes within the Diridon Station Area to:

- Comply with Senate Bill (SB) 1333 to bring the existing sites' Zoning Districts into conformance with the existing and amended Diridon Station Area Plan
- To support the amended Diridon Station Area Plan's vision.



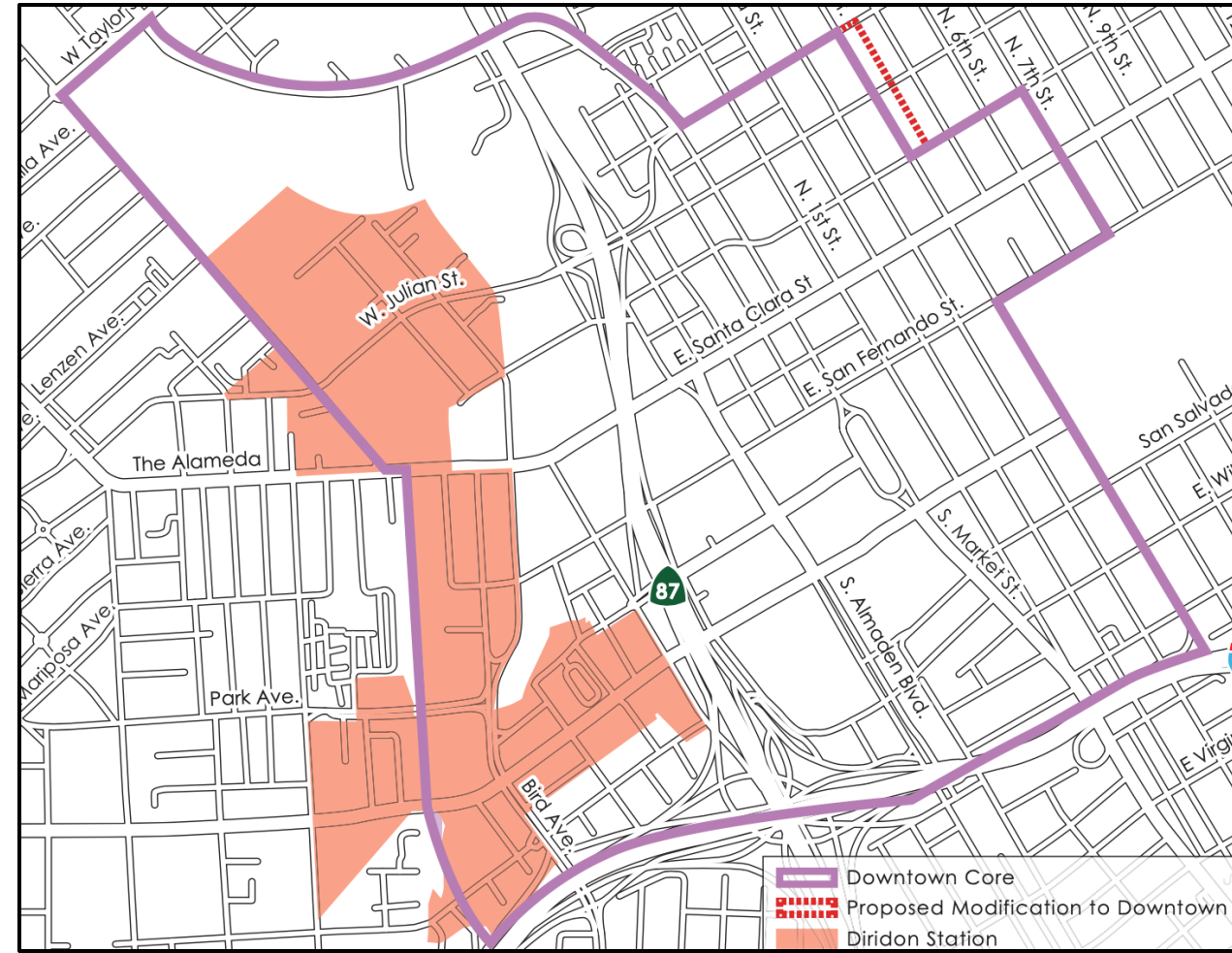
Initial Study/Addendum to the Downtown Strategy 2040 EIR

DSAP is a Sub Area of Downtown

- Development Downtown, including DSAP sub-area, evaluated in Downtown Strategy 2040 EIR (2018)
 - Superseded 2014 DSAP EIR
 - Measures in Downtown Strategy 2040 EIR apply to development in DSAP

Public Review March 2 – April 1, 2021

- Not required for an Addendum, but part of community outreach and public participation in the planning process
- 17 comment letters received from Local Agencies, Individuals, Advocacy Groups, and Businesses
- Response to Comments and Errata, posted to City's website April 23, 2021



Initial Study/Addendum to the Downtown Strategy 2040 EIR

Criteria for Preparation of an Addendum instead of Supplemental EIR

- *No Substantial Project Changes* “which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.”
- *No Substantial Changes in Circumstances* resulting in new impacts or the increase in severity of previously identified impacts
- *No Substantial New Information* resulting in new impacts or increase in severity of previously identified significant impacts

Subsequent Project-Level Environmental Analysis

- Individual development projects required to prepare project-level CEQA analysis
- Will evaluate project impacts to resource areas identified in Downtown Strategy 2040 EIR
- Same process as all development projects Downtown (i.e. Downtown West, Cityview Plaza, San Carlos Marriott)

Staff recommends that the Planning Commission recommend to the City Council all of the following actions:

1. Adopt a Resolution adopting an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report
2. Adopt a Resolution overruling the Santa Clara County Airport Land Use Commission's (ALUC) determination that the proposed City-initiated General Plan Amendment and Conforming Rezoning are inconsistent with the ALUC noise and height policies
3. Adopt a Resolution approving the General Plan Amendment (File No. GP20-007)
4. Approve an Ordinance rezoning certain real property within the boundaries of the Diridon Station Area Plan (File No. C20-002)

Board of Directors

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United Way Bay Area

Gina Dalma, Vice Chair
Silicon Valley Community Foundation

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Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

STAFF

Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

April 27th, 2021

Planning Commission
City of San José
200 E. Santa Clara St.
San José, CA 95113

Dear Chair Caballero, Vice Chair Bonilla, and Commissioners Case, Garcia, Lardinois, Oliverio, and Torrens:

RE: Diridon Station Area Plan Amendments and Affordable Housing Implementation Plan

On behalf of Silicon Valley at Home and our members, we write today to express our support for the staff-recommended Amendments to the Diridon Station Area Plan, including the Affordable Housing Implementation Plan. As a member of the Station Area Advisory Group (SAAG), SV@Home has been actively involved in all community engagement and policy development efforts around Diridon from the very beginning. We would like to thank staff for their excellent work developing this comprehensive plan and for their cooperative approach to receiving and including community feedback. The Planning and Housing Departments should be commended for this achievement.

The Amendments to the Diridon Station Area Plan set the framework and expectations for development across the 240-acre Station Area, inclusive of Google's Downtown West proposal. And while Downtown West will catalyze development across the Area, the development of a complete, vibrant neighborhood can be made possible only through a forward-looking, ambitious, but achievable, vision. We believe that this Plan accomplishes this, and key to its overall success will be the success of its residential components.

SV@Home strongly supports staff recommendations on the overall land use plan and distribution of uses, the development capacity numbers, and the allowable heights for the entire Station Area. These factors are critical to the Plan's total housing capacity number: 13,519 new homes. When these new homes are added to recent and underway residential development in the Area, the Station Area will approach a total of 15,000 homes, a key goal that tracks with SV@Home's own data-driven capacity analysis. Importantly, this housing-rich vision relies on the other staff recommendations on land use and height allowances. Modifications, especially any reductions, to these allowances would undermine the potential for housing across the Station Area. **Therefore, we urge the Planning Commission to approve staff recommendations on land use, housing capacity, and height allowances to meet San José's overall housing vision for the Station Area.**

We support staff's significant work in developing an assessment, through the Affordable Housing Implementations Plan, of the challenges that lie ahead for both reaching the target of 25% affordable within the Station Area, and responding to the Council and community mandate to address the risks of displacement in adjacent communities. We believe that the extension of the City's current 3Ps approach (production, preservation, and protection) to the local housing crisis is the right frame to craft a response to these challenges, and

April 27, 2021

Re: Diridon Station Area Plan Amendments and Affordable Housing Implementation Plan

Page 2 of 2

support the comprehensive range of policy proposals and recommendations for proactive administrative efforts presented in the Plan. This will not be simple or easy. City Staff will need the full support of the City Council and the community, in assembling the resources and prioritizing policies to implement the Plan. Monitoring its progress will be essential to its success. We believe that that the collective commitment to this effort is both clear and sincere, and that the successful racial and economic integration of the Station Area, and surrounding neighborhoods, will be a gauge for generations of San Joséans in assessing equitable growth in the city.

Overall, we are excited by the opportunity presented by the redevelopment of Diridon Station and are strongly supportive of staff's housing-rich vision. SV@Home is looking forward to continuing to work closely with the City and the community to ensure that the overall housing and affordable housing goals are met.

Sincerely,



Leslye Corsiglia
Executive Director



FW: Support jobs and homes near transit - Planning Commission 2021-04-28 Agenda Items 8(a) and 8(b)

Severino, Lori <Lori.Severino@sanjoseca.gov>

Wed 5/5/2021 2:18 PM

To: Ruano, Jose <Jose.Ruano@sanjoseca.gov>; Rood, Timothy <timothy.rood@sanjoseca.gov>; Eidlin, Eric <eric.eidlin@sanjoseca.gov>; Zenk, Jessica <Jessica.Zenk@sanjoseca.gov>

FYI

From: PlanningSupportStaff

Sent: Wednesday, May 5, 2021 9:38 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Cc: Tu, John <john.tu@sanjoseca.gov>; Han, James <James.Han@sanjoseca.gov>; Severino, Lori <Lori.Severino@sanjoseca.gov>

Subject: FW: Support jobs and homes near transit - Planning Commission 2021-04-28 Agenda Items 8(a) and 8(b)

Correspondence for City Council packet

From: Pat Blevins [REDACTED]

Sent: Tuesday, May 4, 2021 8:27 AM

To: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>

Subject: Support jobs and homes near transit - Planning Commission 2021-04-28 Agenda Items 8(a) and 8(b)

[External Email]

I don't know if its too late to offer an opinion about how the City can support both jobs and homes near transit, but if I may, I think this is the most positive choice.

By placing new homes, whether houses or rental units far from transit lines the City just increases our already intractable problem with traffic. Further, with no real traffic control offered by the police department, individuals drive recklessly and put people's lives in danger.

But if people could live near where they work or have easy access to clean, public transportation, car traffic would not worsen.

Thank you for considering this opinion after the Commission meeting was held.

Patricia Blevins

San Jose

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FW: Lowing come housing close to Google Headquarters

Severino, Lori <Lori.Severino@sanjoseca.gov>

Wed 5/5/2021 2:22 PM

To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>; Clements, Kristen <Kristen.Clements@sanjoseca.gov>; Klein, Nanci <Nanci.Klein@sanjoseca.gov>; Breslin, Emily <Emily.Breslin@sanjoseca.gov>; Zenk, Jessica <Jessica.Zenk@sanjoseca.gov>; Eidlin, Eric <eric.eidlin@sanjoseca.gov>; Rood, Timothy <timothy.rood@sanjoseca.gov>; Ruano, Jose <Jose.Ruano@sanjoseca.gov>

FYI

From: PlanningSupportStaff

Sent: Thursday, April 29, 2021 1:21 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Cc: Han, James <James.Han@sanjoseca.gov>; Tu, John <john.tu@sanjoseca.gov>; Severino, Lori <Lori.Severino@sanjoseca.gov>

Subject: FW: Lowing come housing close to Google Headquarters

Correspondence for City Council packet

From: Susan Babbel [REDACTED]

Sent: Wednesday, April 28, 2021 6:10 PM

To: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>

Subject: Lowing come housing close to Google Headquarters

[External Email]

I have noticed that on the maps the proposed low income housing to be placed near the new Google headquarters, is all located within a very small area. I live at Cahill Park as an owner, and live across the street from the low income housing built a year ago. The transition has been difficult with many more call responses from police, fire response teams, and ambulances. Theft of packages has gone up dramatically since it opened. Trash in the area has gone up, as well as cars double parked and parked illegally of people visiting those that live in the building. My concern is with so many more units going up within a several block radius, that area of town will become the new projects.

I realize there is a great need for low income housing, of which I approve of, so I would like to propose that managers live on site, and security round-the-clock be hired to help with all of the above mentioned problems. Additionally, there have been many more smokers that come outside to smoke. They end up crossing the street to Cahill Park since they have to be 25 feet away from a building. So they come to our building. smoking and trash both need to be thought of in the proposals.

Finally, there is no parking. I realize that everyone is supposed to take public transportation, but in reality that does not always happen. As it is my friends that come to visit have to park far away to see me. Many of them do not live close to public transportation.

Thank you for taking the time to listen to a long time, original Cahill Park owner.

Susan

[Sent from Yahoo Mail for iPhone](#)

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FW: Downtown West & DSAP Amendment: Emails for CC

Hill, Shannon <Shannon.Hill@sanjoseca.gov>

Wed 5/5/2021 11:29 AM

To: Canales-Mora, Elizabeth <Elizabeth.Canales-Mora@sanjoseca.gov>

Cc: Downtown West Project <downtownwest@esassoc.com>; Keyon, David <david.keyon@sanjoseca.gov>; Tu, John <john.tu@sanjoseca.gov>; Han, James <James.Han@sanjoseca.gov>; Ruano, Jose <Jose.Ruano@sanjoseca.gov>

Hi Elizabeth,

Please include the email below in the package for the 5/25 City Council hearing.

Thanks!

Shannon Hill
Planner, Environmental Review
Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Shannon.Hill@sanjoseca.gov | (408) 535 - 7872

From: mary cassel [REDACTED] >
Sent: Friday, April 30, 2021 3:30 AM
To: Hill, Shannon <Shannon.Hill@sanjoseca.gov>
Subject: Re:

[External Email]

I Hope this is safe!!!! Reg Dierdon planning : better put some parking towers in - cars Will come and our neighborhood streets are already overcrowded. Where would we park? We can't put up parking **P** towers !!!

On Wed, Apr 28, 2021, 6:34 PM Hill, Shannon <Shannon.Hill@sanjoseca.gov> wrote:

Hi Mary,

Your email below has been forwarded to the Planning Commission for their consideration at tonight's Planning Commission meeting.

Best regards,

Shannon Hill
Planner, Environmental Review
Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Shannon.Hill@sanjoseca.gov | (408) 535 - 7872

From: mary cassel <[REDACTED]>
Sent: Wednesday, April 28, 2021 5:21 PM
To: Hill, Shannon <Shannon.Hill@sanjoseca.gov>
Subject:

[External Email]

Name : Mary Cassel

Concerned about changes proposed - open. Space and parks - dierdon

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FW: Diridon Station Area Plan

Severino, Lori <Lori.Severino@sanjoseca.gov>

Wed 5/5/2021 5:08 PM

To: Dave Javid <dave@plantoplace.com>; Ruano, Jose <Jose.Ruano@sanjoseca.gov>; Rood, Timothy <timothy.rood@sanjoseca.gov>; Zenk, Jessica <Jessica.Zenk@sanjoseca.gov>; Eidlin, Eric <eric.eidlin@sanjoseca.gov>; Burnham, Nicolle <nicolle.burnham@sanjoseca.gov>; Mendez, Zacharias <Zacharias.Mendez@sanjoseca.gov>

FYI

From: Ann Chung [REDACTED]
Sent: Wednesday, May 5, 2021 5:03 PM
To: Severino, Lori <Lori.Severino@sanjoseca.gov>
Subject: Diridon Station Area Plan

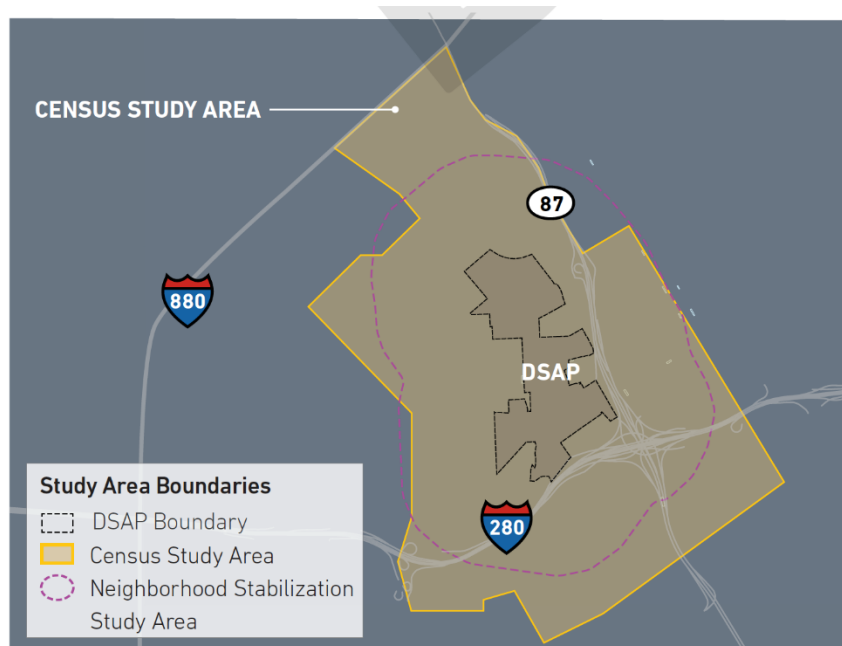
[External Email]

I think the Diridon Station Area should have less parking lots. It would also be nice to have rooftop gardens accessible to the public for free.

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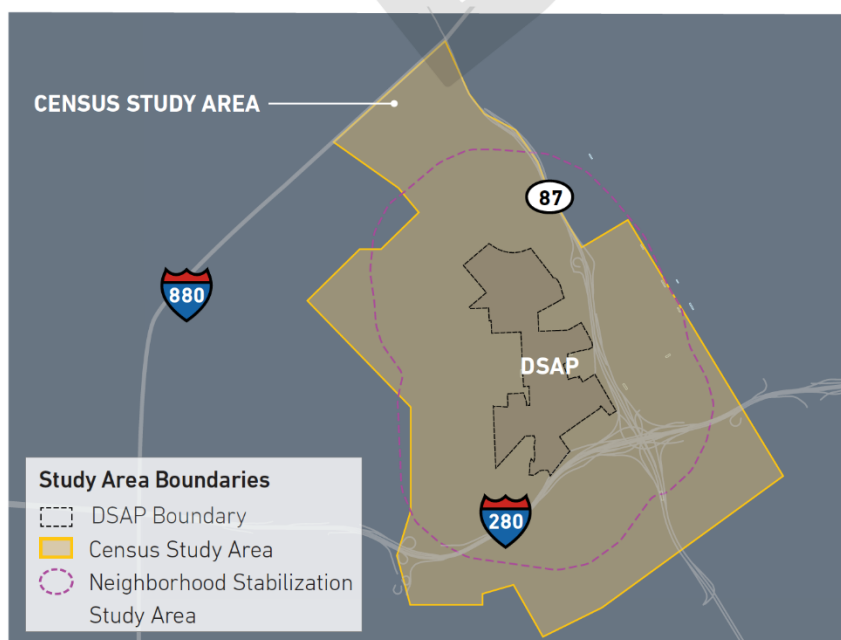
2.5 Affordable Housing

The Diridon Affordable Housing Implementation Plan (Affordable Housing Plan) summarized here characterizes the need for affordable housing in the Diridon Station Area (DSA) and surrounding communities, in light of the large-scale transit investments planned for Diridon Station, Google's Downtown West Mixed-Use Plan, and other future development, which will transform the Diridon Station Area. These combined investments will enhance job and transit access to the region. They are likely to increase the value of properties in the area and attract new development and more residents, workers, and visitors. At the same time, it is important to ensure that existing residents – especially lower-income households – can also benefit from these investments.



In 2015, U.C. Berkeley and Working Partnerships USA published a case study on the Diridon Station area that documented uses over time and identified displacement of former residents as a key issue. This work illustrates the need to house residents at a variety of incomes as the Diridon Station Area grows. It also supports the City's taking a holistic approach to consider not just incremental production of housing, but also complimentary strategies that protect existing renters and existing affordable homes in the area. While the Affordable Housing Plan does not reach back to document residents who used to live in this area, the City intends to

~~redocument~~document the history of these former residents in its future work.



As a comprehensive approach to housing growth in the Diridon area, the Affordable Housing Plan outlines potential strategies to **produce** new affordable housing units, **preserve** the affordability of the neighborhoods for lower-income residents, and **protect** vulnerable residents from displacement. It applies to the Diridon Station Area and surrounding neighborhoods within approximately one-half mile (the Neighborhood Stabilization Area) and is based on an analysis of demographic and housing data, the local policy context, and best practices from other cities and regions.

Note that development and implementation of these strategies will require a combination of non-City funding, legislative and judicial support, City Attorney review, City Council action, and the community's involvement. Implementation would be subject to these constraints.

GOALS AND TARGETS ~~AND GOALS~~

PRODUCTION

Build-out of ~~this~~the Amended Diridon Station Area Plan, ~~including Google's~~ (DSAP) and the Downtown West Mixed-Use Planproject, if approved, has the potential to add ~~between 10,619 and 13,519~~up to 12,900 new housing units in the ~~Plan area~~DSA by 2040.

Based on City Council direction, staff is recommending a goal that 25 percent of all housing units in the Diridon Station Area be affordable to ~~a~~renters with a range of incomes from extremely low-income to moderate-income households, ~~including Google's Downtown West~~

~~Mixed-Use Plan, at buildout of the land use plan (2040). While there are~~ The DSA is currently 141 units of income-restricted affordable housing (or 20%) in the Diridon Station Area as of 2019, the overall close to this goal ~~is to achieve 25% affordability for the Diridon Station Area including existing units.~~ Therefore, it is assumed that at least about 25% of future new housing ~~production~~ would need to be deed-restricted affordable units to maintain this share and achieve the affordability goal.

The Affordable Housing Plan envisions the production of new affordable units for households at a range of incomes, ~~from including~~ extremely low ~~to~~, very low-, low-, and moderate-income households. The new apartments ~~will~~ are intended to house the general public as well as formerly-homeless residents, families, seniors, residents with disabilities, and other populations. ~~Under the 25 percent goal, the number of affordable housing units to be added is estimated at between 2,655 and 3,380 units by 2040 in the Diridon Station Area.~~ In addition, this Affordable Housing Plan includes a **sub-goal that a minimum of 30 percent of new affordable units be for extremely low-income residents at or below 30 percent of area median income**, including those eligible for permanent supportive housing. ~~This sub-goal would result in 797 to 1,014 extremely low income units created or preserved by 2040.~~ To the extent enough public subsidies were available, this target could be exceeded.

PRESERVATION

In the area within a half-mile of the Diridon Station Area, or the Neighborhood Stabilization Area, about 15 percent of housing units (1,322 units) are deed-restricted affordable units that provide long-term affordability to lower-income residents. ~~In addition, there are another~~ Another 319 deed-restricted affordable units were in the pipeline as of mid-2020. ~~This~~ The Affordable Housing Plan establishes a goal to preserve the affordability of all existing affordable units, as well as forthcoming new deed-restricted units, ongoing -- targeting no net loss of existing deed-restricted affordable units in the Neighborhood Stabilization Area through 2040 and beyond.

In addition, about 10 percent of existing housing units (840 out of 8,512 units) in the Neighborhood Stabilization Area ~~are in older multi-family buildings that~~ are regulated by the City's Apartment Rent Ordinance (ARO). The ARO provides tenants with protections by limiting rent increases to five percent annually, with other increases that may be awarded after a fair return petition process, and requiring defined "just causes" for evictions. It is estimated that approximately two-thirds of ARO units (560 out of 840 units) are occupied by ~~low~~ lower- and moderate-income households. ~~However,~~

Many of the units multifamily buildings in the area are protected under the ARO and are unsubsidized, so lower- and moderate-income households may still face housing cost burdens. There are also older multifamily buildings and duplexes in the area that are not deed-restricted,

~~and therefore do not provide long-term affordability.~~ ARO-protected but offer relatively affordable rents. As the area develops, there will be increasing pressure to redevelop these properties, potentially displacing lower-income renters. Acquiring, rehabilitating, some of these units and converting ~~these units~~ them to deed-restricted homes is an important strategy for ensuring that the lower- and moderate-income tenants of multi-family/multifamily apartments in the neighborhood stabilization area can remain in place. ~~As many of these units occur in small buildings, doing this work will require intensive work.~~

~~The~~ therefore, the Affordable Housing Plan ~~establishes a goal~~ includes the strategy to develop a Preservation Pilot ~~program~~ program to acquire and rehabilitate existing duplexes and multi-family/multifamily units, and turn them into long-term, deed-restricted affordable homes that are affordable to lower- and possibly moderate-income households. It ~~ALSO~~ sets a goal to preserve 10% of duplexes and multi-family/multifamily units in the Neighborhood Stabilization Area most likely to go up for sale, ~~OR (530 units. The affordable housing plan also sets a goal).~~ As many of ~~no net loss of existing restricted affordable~~ these units occur in small buildings, achieving this target will require intensive work.

PROTECTION

Lower-income renter households are more vulnerable to displacement than homeowners. It is estimated that there are approximately 3,900 low-income renter households in the Neighborhood Stabilization Area with an income below 80% of the area median income. ~~Lower-income households are far more likely to be Black/African American, Hispanic/Latinx, American Indian/Alaskan Native, and Native Hawaiian/Pacific Islander than the general San José population.¹ Many (AMI).~~ While some of these renters live in deed-restricted or ARO units, many do not have ~~inadequate~~ adequate protections from excessive rent increases and evictions. ~~Anti-displacement policies, including enhanced renter protections, can help to reduce incidences of homelessness.~~

~~About~~ without just causes. For example, about 27 percent of renters live in single-family, duplex, or condo units, which have very weak tenant protections compared to multi-family/multifamily units protected under the City's Apartment Rent Ordinance ARO. The majority of renters who live in single-family homes and duplexes are not protected by existing local and State laws. Enhanced renter protections can help to reduce incidences of displacement and homelessness. It can also help advance racial equity, as lower-income households are far more

¹ U.S. Census, American Community Survey 2014-2018 5-Year data for San José.

likely to be Black/African American, Hispanic/Latinx, American Indian/Alaskan Native, and Native Hawaiian/Pacific Islander than the general San José population.²

The Affordable Housing Plan aims to **maintain the number of low-income renters in the Neighborhood Stabilization Area** (approximately 3,900 households) to ensure that existing lower-income residents can stay in place and benefit from the new investments that will occur in the Diridon Station Area.

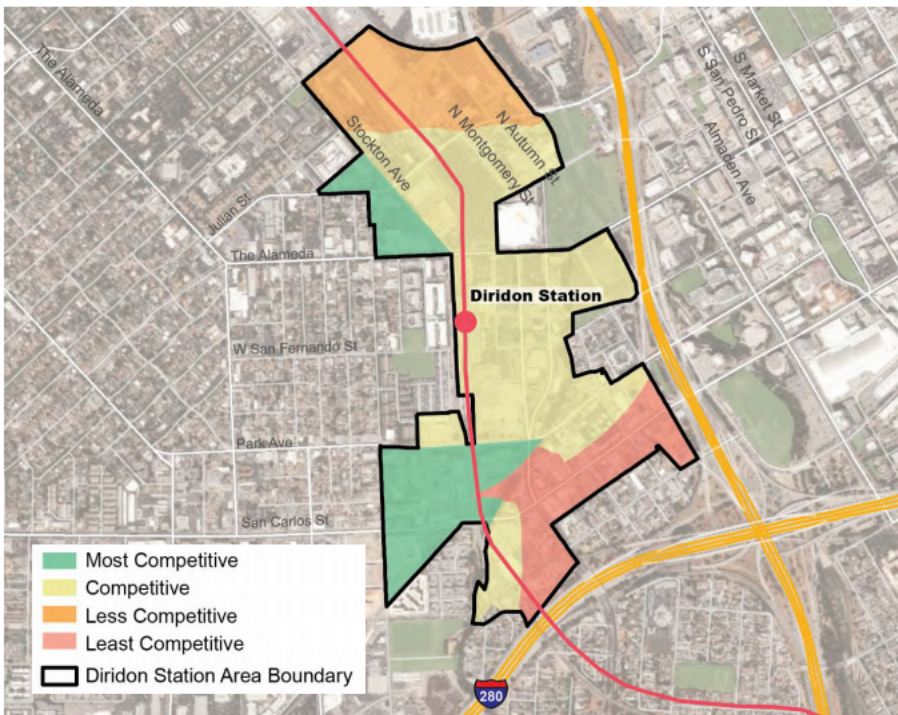


Figure 2-5-1: Measure a: locational scoring competitiveness in Diridon Station Area (Diridon Affordable Housing Implementation Plan DRAFT, Nov 2020)

² U.S. Census, American Community Survey 2014-2018 5-Year data for San José.

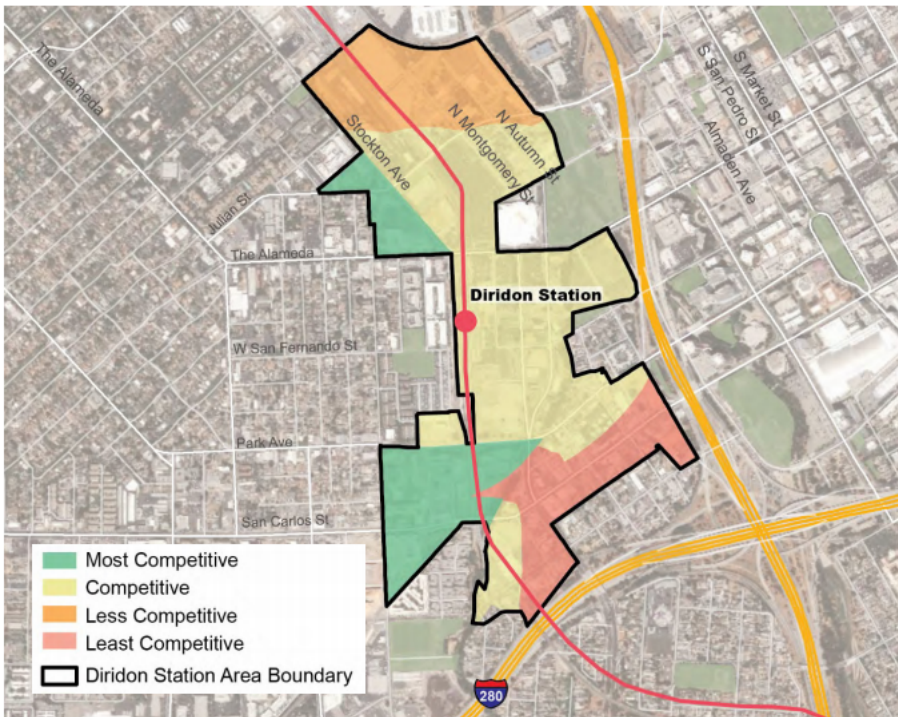


Figure 2-5-1: Measure a: locational scoring competitiveness in Diridon Station Area (Diridon Affordable Housing Implementation Plan DRAFT, Nov 2020)

STRATEGIES

PRODUCTION

The strategies around affordable housing production are listed below. The affordable housing production goal is focused primarily on construction within the [Diridon Station Area DSA](#). New affordable units will be provided through a variety of methods, such as inclusionary requirements for market-rate development projects and [stand-alone](#) deed-restricted affordable projects subsidized by public, private, and philanthropic funders.

1. Maximize competitiveness for State funding sources by prioritizing sites within a one-half mile walkshed of Diridon Station for affordable housing. Affordable housing projects can apply for competitive funding sources, including the [state's](#) Affordable Housing [for and](#) Sustainable Communities program (AHSC), Transit-Oriented Development ~~(TOD)~~ Housing Program, [\(TOD\)](#), and Infill Infrastructure Grant Program (IIG), as well as the County's Measure A funds. Projects will be most competitive for these sources when located within a short walk – ideally within the one-half mile walkshed of Diridon Station. Therefore, to the extent possible, the sites within this walkshed should be prioritized for future affordable housing development projects.

2. Partner with transit agencies and affordable housing developers to leverage Affordable Housing ~~for~~and Sustainable Communities grants for affordable housing developments near the Station. Affordable housing proposals near Diridon Station are potentially most competitive for AHSC funds because of the potential to leverage GHG reductions associated with transit investments at Diridon, including Caltrain electrification and eventually ~~VTA's BART~~the VTA Bart Silicon Valley ~~Phase II~~ Extension ~~Project~~.Phase II. There are also high-frequency bus routes and light rail stations in and near the Station area. First-last mile pedestrian and bike improvements may also ~~be leverageable~~.³qualify for AHSC funds⁴ The City will continue coordination with VTA across the planned transportation and housing efforts to maximize competitiveness for transit-oriented development funding sources.

3. Prioritize the use of Commercial Linkage Fee revenues generated in the Diridon Station Area for affordable housing projects within the Plan area. The City Council approved a new Commercial Linkage Fee in September 2020. Depending on the amount of commercial space approved in the ~~Diridon Station Area~~DSA, this could produce tens of millions of dollars for affordable housing over the next two decades. Reinvesting fees generated through DSA development in the DSA will help align affordable housing development with job growth in both space and time.

4. Update regulations to facilitate mass timber and other innovative and cost-effective construction technologies. The introduction of cost-effective innovative technologies such as mass timber has the potential to greatly reduce the cost of housing construction, making mid-rise and high-rise development projects more financially feasible. The City of San José can put policies in place to facilitate the transition to new construction technologies by updating building codes and permitting processes. San José's building code would need to adopt new standards consistent with the Universal Building Code in order for mass timber to be implemented at a larger scale, especially for taller buildings.

5. Implement park fee credit changes that support the Inclusionary Housing Ordinance. The City discounts its park fees by 50 percent for deed-restricted housing units affordable at 80 percent of the area median income and below. The City Council also recently approved a time-limited reduction of up to 50 percent for deed-restricted moderate-income housing units (with rents for households at 81 to 100 percent of the area median income) to encourage the

³Timing is key for AHSC applicants in that the transit improvement must be a near-term project in order to be incorporated. For example, the Caltrain electrification project is likely suitable for an AHSC application soon, while the BART extension, which will be substantially completed by 2028 (followed by testing), will take place too far in the future to be leverageable now.

⁴ Timing is key for AHSC applicants in that the transit improvement must be a near-term project in order to be incorporated. For example, the Caltrain electrification project is likely suitable for an AHSC application soon, while the BART extension, which will be substantially completed by 2028 (followed by testing), will take place too far in the future to be leverageable now.

production of a broader cross-section of units.^{5[1]} In addition, a proposed change to the fee on a per-square-foot basis rather than on a per-unit basis may improve the development feasibility of certain market-rate units. An evaluation and update of the park fee program is underway and should be complete by 2022.

6. Support policies that increase the production of accessory dwelling units (ADUs) in the Diridon Station Area and surrounding neighborhoods. Facilitating ADU construction is one way that the City can meet its goals to produce more moderate-income and middle-income housing. Building small ADUs in established residential neighborhoods is a straightforward and sensitive way to increase the housing supply while providing existing homeowners opportunities to supplement mortgage payments with rental income. The City has implemented reforms that facilitate accessory dwelling unit production, including easing multiple building requirements in conformance with new State laws⁶ and offering pre-approved ADU designs through the ADU/Single-Family Master Plan Program.⁷ The City should further explore ways to incentivize the creation of new deed-restricted ADUs, not just for single-family properties, but also for lots that currently contain duplexes or small ~~multi-family~~~~multifamily~~ buildings.

7. Explore ways to increase access to new affordable housing for residents with disabilities. Living close to major transit is a necessity for many residents with physical disabilities. As the Diridon Station Area integrates housing at a range of affordability levels, the City should explore ways to ensure access to new affordable homes in this area for residents with disabilities. The City should incent or require ‘universal ~~design~~~~design~~’ for the affordable apartments it subsidizes. The City should also require that marketing plans for affordable apartments include outreach to people with disabilities, and should explore requiring or tracking that affordable, accessible apartments are occupied by people with disabilities.

8. Design and implement ~~State authorized~~ City-approved local tenant preferences for affordable homes in the Diridon Station Area. As part of its work on San José’s Citywide Residential Anti-Displacement Strategy, City staff are developing an Anti-Displacement Tenant Preference and Neighborhood Tenant Preference. Both preferences have the potential to help prevent local lower-income renters vulnerable to displacement from being forced to leave San José. Preferences give applicants to affordable apartments who meet the preference eligibility criteria ~~priority over~~ the ~~ability~~~~general public~~ to ~~apply~~~~be considered~~ for ~~set asides~~~~a portion~~ of

⁵-Resolution 79913, <https://records.sanjoseca.gov/Resolutions/RES79913.pdf>.

[1] Resolution 79913, <https://records.sanjoseca.gov/Resolutions/RES79913.pdf>.

⁶ In conformance with new state laws that took effect in 2020, San José eliminated minimum lot size requirements and design standards, increased maximum ADU building size, and relaxed parking replacement requirements for ADUs in garages. The full list of changes is located here: <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/secondary-unit-ordinance-updates>

⁷ Strategic Economics, “San José Moderate-Income Housing Analysis Appendix,” 2019; City of San José Planning, Building and Code Enforcement, “Pre-approved ADUs,” <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-permit-plan-review-process/adu-single-family-master-plan-program>

the affordable apartments ~~that would otherwise be available to the general public~~. In this way, preferences may increase the likelihood of priority applicants getting into the housing they seek. The City should analyze and design its local preferences for City Council ~~and~~, State of California, and affordable housing financing approval so they are implemented on affordable units in the Diridon Station Area and Neighborhood Stabilization Area on a deal-by-deal basis.

9. Approve a City subsidy per unit amount appropriate for the Diridon Station Area.

Standalone affordable housing developments are likely to contain deeply-affordable units, including permanent supportive housing, in the Station Area. ~~Urban~~ Land costs and urban building forms appropriate for the Station Area are also likely to be more expensive than developments in lower-rise areas. For project feasibility, the City should acknowledge and preapprove higher affordable housing subsidy amounts per unit appropriate for the product to be built in this Area. The Affordable Housing Plan's analysis of recently built projects indicates that \$225,000 per unit is ~~an appropriate~~ the approximate amount of City subsidy ~~target that may be required~~, assuming a development obtains no development funding from the County. Staff will conduct additional analysis on the appropriate subsidy level.

PRESERVATION

Preservation of ~~existing multifamily units would formalize~~ affordable homes will be realized through two primary methods: extending the length of affordability ~~of older for existing~~ restricted-affordable housing, and the Preservation Pilot Program. The Preservation Pilot Program is focused on the half-mile around the Diridon Station Area, a lower-density area, recognizing that the Station Area itself is planned for redevelopment with high-density housing. The strategies for housing preservation are listed below.

1. Extend affordability restrictions on existing deed-restricted affordable housing. City staff should do focused work to extend the length of affordability for existing restricted-affordable housing in both in the Diridon Station Area and the Neighborhood Stabilization Area. Units in the Diridon Station Area will count towards achieving the overall balance goal of 25% restricted affordable housing. This work will likely require the City to offer subsidies in exchange for lengthened affordability, especially for unsubsidized properties for the long term. with restrictions resulting from the City's past Inclusionary Housing programs, or to subsidize or forego City loan repayments to support developments' financial restructuring and rehabilitation.

2. Establish a Preservation Pilot Program. The City does not have a history of acquiring funding the acquisition, rehabilitation, and converting ~~conversion of~~ privately-owned multifamily housing into deed-restricted affordable housing. ~~The~~ Therefore, the first step is to develop a Preservation Pilot Program specifically for the Neighborhood Stabilization Area, ~~which is a half-~~

mile area around the DSA, to preserve existing multifamily and duplex units and formalize the affordability of these older properties for the long term. Considering that this selection process may ultimately depend on which property owners are motivated to sell, a screening process is needed to prioritize properties that could be good candidates for preservation. The program could screen properties based on the condition/quality, adjacent development activity, or location. location, or whether they are adjacent to development activity. This Pilot program would work in conjunction with the other preservation strategies, which are intended to streamline the property acquisition, affordability restriction implementation, property rehabilitation, and property maintenance aspects of the program.

The City goal is to preserve 10% of duplexes and multi-family units most likely to go up for sale, or 530 units. The Affordable Housing Plan also sets a goal of no net loss of existing restricted affordable permanent units, and no net loss of homeless shelter beds and interim housing units for the unhoused.

The Preservation Pilot program and achieving the goals set would require multifaceted strategies that streamline acquisition, affordability restriction implementation, property rehabilitation and property maintenance. These include:

3. Conduct outreach to ~~non-profit~~ nonprofit and community-based organizations with capacity to conduct preservation activities. The City could provide information to interested nonprofits to develop a base of qualified developers for preservation activities and begin to build the program. The City could also help make connections between emerging nonprofits and experienced developers that will joint venture and increase nonprofits' capacity.

4. Identify funding sources for preservation. Typically, preservation projects require a significant amount of subsidy from cities, because it is harder to qualify for Low-Income Housing Tax Credits and other funding sources focused on production. The City could potentially access its Measure E revenues to fund preservation projects.

5. Identify funding sources and partners to build local organizations' capacity. Preservation activities are often focused on particular neighborhoods and are driven by local residents' desire to improve conditions for their area. Local community-based and tenant organizations are natural candidates to do this challenging work that has limited profitability. San José lacks experienced community development corporations as many other cities have. Therefore, dedicated funding for ongoing capacity building and partner organizations to teach real estate development skills are needed to grow the capacity of existing local organizations that want to do preservation work in the Neighborhood Stabilization Area around Diridon.

6. Implement complimentary policies that support preservation activity. Right of first refusal policies (such as Tenant Opportunity to Purchase and Community Opportunity to Purchase acts) elevate the position of lower-income tenants interested in communal ownership models and ~~non-profit~~nonprofit housing entities: who are motivated to help keep housing stable and affordable over the long-run. Development of asset building and homeownership strategies, as part of these programs or in addition, could also involve community land trusts active in this geographic area. The City should continue its support of land trust formation. The City could also identify ~~candidates~~candidate buildings for acquisition ~~/ and~~ rehabilitation based on the property conditions and the financial capacity of the property owner to make improvements. This could entail bringing problematic buildings with multiple tenant complaints and/or tax delinquencies under public or ~~non-profit~~nonprofit stewardship.

PROTECTION

The Affordable Housing Plan's protection strategies incorporate many of the elements from the recently approved Citywide Residential Anti-Displacement Strategy, in addition to other implementation actions that are specific to the needs of residents in the Diridon Station Area and surrounding neighborhoods in the Neighborhood Stabilization Area.

Because the majority of the tenant protection strategies would be implemented Citywide~~citywide~~, it is not possible to quantify the costs associated with implementing these strategies specifically at the Neighborhood Stabilization Area scale.

1. Establish a Housing Collaborative Court to provide legal support for tenants facing eviction. Many households in the Diridon Station~~Neighborhood Stabilization~~ Area are vulnerable to eviction, and this will be exacerbated after the expiration of the temporary COVID-19 moratorium. The Citywide Residential Anti-Displacement Strategy recommends coordinating with the Santa Clara County Courts~~courts~~ and the State to establish a Housing Collaborative Court and partially fund the costs for legal services for evictions during COVID-19. If this strategy is successful, the City could explore a longer-term arrangement together with the County to continue providing funding for legal services to increase tenant representation and help prevent evictions. The cost of implementation is not yet determined, but this strategy would be applicable to the entire City. Until this model is established, the City should devote additional funding for legal support to prevent local tenants against evictions.

2. Create a "satellite office" in the Plan area~~DSA~~ to provide education resources to tenants and landlords. The City of San José currently provides support for tenant and landlord education of their rights under the Apartment Rent Ordinance (ARO), Tenant Protection Ordinance (TPO), and Ellis Act Ordinance through its Rent Stabilization Program ~~(RSP)~~. The City also has local enforcement tools so that tenants who have experienced violations to these laws

can submit a petition to the ~~City's~~ Rent Stabilization Program for an administrative hearing. Establishing a satellite office in the ~~Diridon Station Area~~DSA would improve residents' access to services, so that they can understand their rights under existing local and ~~state~~State laws, and potentially reduce unlawful evictions and rent increases. ~~Having~~In addition to a physical office space to use could also make it easier for, the City staff ~~and could consider~~ other ways to increase access to tenant and landlord education, such as digital tools, pop-up or mobile sites, and partnerships with community-based organizations ~~to give "Know Your Rights" trainings to residents and property owners pertaining to City ordinances and other laws.~~

3. Consider options for enforcing the Tenant Protection Act of 2019 (AB 1482).⁸ AB 1482, signed into law in 2020, prevents rent-gouging and requires just causes for eviction. AB 1482 covers many homes in the ~~Diridon Station Area and surrounding neighborhoods~~Neighborhood Stabilization Area, but the only enforcement mechanism is suing under State Law. The Council-approved Citywide Residential Anti-Displacement Strategy recommends the City to sponsor State legislation for local education and enforcement to help increase understanding and compliance with AB 1482 as well as the City's ordinances.

4. Expand San ~~José's~~José's existing Tenant Protection Ordinance (TPO) to include all rental units (including ~~duplex~~duplexes, single-family homes, and rented condo/townhome ~~rental~~ units). The TPO in its present form only protects renters in buildings with three or more units. Expanding the TPO to units in these other types of buildings would provide just cause eviction protections and relocation assistance for an additional 2,318 renter households, who comprise 27 percent of renter households in the Neighborhood Stabilization Area.

5. Expand San ~~José's~~José's existing Apartment Rent Ordinance (ARO) to include ~~duplexes~~renter-occupied duplex units. The ARO, which limits rent increases for existing leases to 5 percent annually, ~~(unless a petition allows a greater increase)~~, only protects buildings occupied in 1979 or earlier with three units or more. There are currently 422 renter households in duplexes that were built in this timeframe, 380 of which are in investor-owned duplexes. Expanding the ARO to protect renters in either all older duplexes, or just investor-owned duplexes, would increase the share of renters in the Neighborhood Stabilization Area covered by the ARO from just 10 percent to 14 percent.

6. Explore applicability of a Certificate of Preference program. In addition to implementing all approved tenant preferences in new and preserved units, ~~the~~ City ~~staff~~ should explore whether a Certificate of Preference program could be established in the Diridon area. It is possible that this type of program could allow current, and perhaps past, residents who lived in this area and were displaced due to the Station development to receive enhanced preferences to rent

⁸ AB 1482 (Chiu, 2019), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482

affordable units, or to buy a home using a City program. These types of programs have benefitted residents displaced by federal redevelopment programs in the 1950s and 1960s, but it is possible they could be supported by remaining State redevelopment law or federal law under certain circumstances.



Memorandum

TO: CITY COUNCIL

FROM: Mayor Liccardo
Councilmember Davis
Councilmember Perez

SUBJECT: SEE BELOW

DATE: 05/25/21

APPROVED:

DATE: 05/24/21

SUBJECT: City-initiated General Plan Amendment amending the Diridon Station Area Plan and a Conforming Rezoning in response to Senate Bill (SB) 1333 to bring existing Zoning Districts into conformance with the existing and amended Diridon Station Area Plan and to support the amended Diridon Station Area Plan's vision.

RECOMMENDATION

- 1) Return in the fall with neighborhood interface measures in specific areas where single-family homes abut new development over 90 feet in height, if development incorporates a single-family residential parcel along an interior lot-line (this includes portions of Gifford, Rhodes Court, and Park Avenue.) Such measures may include larger buffers, or design modifications.

DISCUSSION

Among the most thoughtful, active, and collaborative partners during the Diridon Station Area Plan Amendment Process have been the residents living directly within and immediately adjacent to the Downtown West development site who came together to form a working group known as the Diridon Area Neighborhood Group (DANG). Council District 3, District 6, and Mayor's Office staff met with DANG at least four times, and the city staff met with the group on four different occasions prior to the release of the draft plan in October 2020 followed by an additional four times in 2021. Neighborhood concerns were documented and a concerted effort to address those concerns has been made.

We acknowledge that residents in the DANG will be directly affected by changes and development in the Diridon plan area with daily impacts during many years of construction. These recommendations recognize the importance of allocating funds to help support the needs of this community, and to pay special attention to the neighborhood interface issues.

BROWN ACT: The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff



Memorandum

TO: CITY COUNCIL

FROM: Mayor Liccardo
Councilmember Davis
Councilmember Perez

**SUBJECT: DOWNTOWN WEST MIXED-
USE PLAN**

DATE: 05/21/21

APPROVED:

DATE: 05/21/21

RECOMMENDATION

Accept staff recommendations with the following modifications:

- 1) Allocate \$1M from the Early Payment for Job Readiness and Community Stabilization fund for programming at the Gardner Community Center that will be sensitive to the needs of the community, including workforce development and children's programs.
- 2) Allocate 55% (about \$2M) of the long-term corporate accommodations (LTCA) parks contribution (in section 4.42 of the development agreement) for parks within $\frac{3}{4}$ mile from the boundaries of the Downtown West development site regardless of district boundaries and/or freeway infrastructure.
- 3) Allocate 10% (about \$2M) of the \$22.3M unallocated Community Benefit Commitment to be spent within the $\frac{3}{4}$ mile from the boundaries of the Downtown West development site regardless of district boundaries and/or freeway infrastructure with input from that community and the District 3 and District 6 Councilmembers' offices.

DISCUSSION

We thank the community, city staff, and private partners for the tremendous effort and collaboration that has occurred prior to the vote on this historic project for the City of San Jose. The revitalization of the Diridon Station Area of Downtown San Jose is a model for future urbanization around the world. The entire city came together to make sure this project is the best it can be for our current and future residents, workers, and visitors. It will be truly transformational.

We ask enthusiastically to urge our colleagues to approve these recommendations in concert with those in the staff memo.

BROWN ACT: The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 14, 2021

COUNCIL DISTRICTS: 3 & 6

SUBJECT: GP19-009, PDC19-039, PD19-029, HP20-002, HL20-005, HL20-004, & PT20-027: THE PROJECT INCLUDES A DEVELOPMENT PROGRAM WITH THE FOLLOWING USES: A MAXIMUM OF 7.3 MILLION GROSS SQUARE FEET (GSF) OF COMMERCIAL OFFICE SPACE; A MAXIMUM OF 5,900 RESIDENTIAL UNITS; A MAXIMUM OF 500,000 GSF OF ACTIVE USES (COMMERCIAL RETAIL/RESTAURANT, ARTS, CULTURAL, LIVE ENTERTAINMENT, COMMUNITY SPACES, INSTITUTIONAL, CHILDCARE AND EDUCATION, MAKER SPACES, NON-PROFIT, AND SMALL-FORMAT OFFICE SPACE); A MAXIMUM OF 300 HOTEL ROOMS; A MAXIMUM OF 800 LIMITED-TERM CORPORATE ACCOMMODATIONS; A MAXIMUM OF TWO EVENT AND CONFERENCE CENTERS TOTALING UP TO 100,000 GSF; A MAXIMUM OF 4,800 PUBLICLY ACCESSIBLE COMMERCIAL PARKING SPACES AND A MAXIMUM OF 2,360 UNBUNDLED PARKING SPACES FOR RESIDENTIAL USE; DEMOLITION OF A MAXIMUM OF 7 RESIDENTIAL UNITS AND APPROXIMATELY 755,000 GSF OF NONRESIDENTIAL STRUCTURES; REMOVAL AND REPLACEMENT OF A MAXIMUM OF 254 ORDINANCE-SIZED TREES; REALIGNMENT OF LOTS AND ALLOW A MAXIMUM OF 38 LOTS, 19 COMMON LOTS, AND A MAXIMUM OF 5,900 RESIDENTIAL CONDOMINIUMS AND 20 COMMERCIAL CONDOMINIUMS; A "DISTRICT SYSTEMS" APPROACH TO DELIVERY OF ON-SITE UTILITIES, INCLUDING DESIGNATED INFRASTRUCTURE ZONES WITH A MAXIMUM OF TWO (2) ON-SITE CENTRALIZED UTILITY PLANTS TOTALING UP TO 130,000 GSF; ONE OR MORE ON-SITE LOGISTICS CENTERS TO SERVE THE COMMERCIAL ON-SITE USES THAT WOULD OCCUPY A TOTAL OF ABOUT 100,000 GSF; A TOTAL OF APPROXIMATELY 15 ACRES OF PARKS, PLAZAS AND OPEN SPACE, INCLUDING AREAS FOR OUTDOOR SEATING AND COMMERCIAL ACTIVITY (SUCH AS RETAIL, CAFES, AND RESTAURANTS), GREEN SPACES, LANDSCAPING, MID-BLOCK PASSAGES, RIPARIAN SETBACKS, AND TRAILS; AND VARIOUS OTHER IMPROVEMENTS TO THE PUBLIC REALM TO IMPROVE TRANSIT ACCESS AND PEDESTRIAN AND BICYCLE CIRCULATION AND FACILITATE CONNECTIVITY, BOTH WITHIN THE SITE AND TO AND FROM SURROUNDING NEIGHBORHOODS LOCATED ON AN APPROXIMATELY 84-GROSS ACRE SITE GENERALLY BOUNDED BY LENZEN AVENUE TO THE NORTH, CAHILL STREET AND THE CALTRAIN RAIL TRACKS TO THE WEST, AUZERAIS AVENUE TO THE SOUTH, AND LOS GATOS CREEK AND HIGHWAY 87 TO THE EAST (450 WEST SANTA CLARA STREET) (GOOGLE, OWNER).

RECOMMENDATION

The Planning Commission voted 5-0-2 (Vice Chair Bonilla absent and Commissioner Lardinois abstained) to recommend that the City Council take all of the following actions:

1. Adopt a Resolution certifying the Downtown West Mixed-Use Plan Environmental Impact Report (EIR) and making certain findings concerning significant impacts, mitigation measures and alternatives, and adopting a statement of overriding considerations and a mitigation monitoring and reporting program, all in accordance with the California Environmental Quality Act, as amended (CEQA); and
2. Adopt a Resolution by two-thirds majority making certain findings required by California Public Utilities Code Section 21676 that Proposed General Plan Amendment File No. GP19-009 and Planned Development Rezoning File No. PDC19-039 are consistent with the purposes set forth in California Public Utilities Code Section 21670 and overruling the Santa Clara County Airport Land Use Commission's (ALUC) determination that the proposed project is inconsistent with the ALUC noise and height policies as defined by the Comprehensive Land Use Plan for the San José International Airport (CLUP); and
3. Adopt a Resolution amending the Envision San José 2040 General Plan to revise the land use designation of the project site, amend General Plan policies LU-6.1 and LU-1.9, and implement other text amendments and amendments to General Plan diagrams related to the Downtown West Mixed-Use Plan; and
4. Adopt a Resolution amending the 2014 Diridon Station Area Plan, a component of the General Plan, to revise the land use designations for the project site, expand the Diridon Station Area Plan boundary, and implement other text amendments and amendments to diagrams related to the Downtown West Mixed-Use Plan; and
5. Approve an Ordinance amending Title 20 to add Section 20.70.700 to clarify that project-specific ordinances for the Downtown West Mixed-Use Plan shall govern development within the Downtown West Planned Development Zoning District and supersede any conflicting provisions in Title 20; and
6. Approve an Ordinance rezoning an approximately 80-gross acre site on certain real properties extending approximately one mile from north to south, and generally bounded by: Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, State Route 87, Barack Obama Boulevard, and Royal Avenue to the east; Auzerais Avenue to the south; and the Caltrain rail corridor and Cahill Street to the west from the HI Heavy Industrial, LI Light Industrial, A(PD) Planned Development, PQP Public/Quasi-Public, Commercial Neighborhood, DC Downtown Primarily Commercial, CG Commercial General, CIC Combined Industrial/Commercial to the DC(PD) Planned Development Zoning District, to allow developing up to 5,900 residential units; up to 7,300,000 gross square feet (GSF) of office space; up to 500,000 GSF of active uses such as retail, cultural, arts, civic etc.; up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 GSF; up to two central utility plants totaling

approximately 130,000 GSF; logistic/warehouse(s) totaling approximately 100,000 GSF, and approximately 15 acres of open space; and

7. Adopt a Resolution approving, subject to conditions, a Planned Development Permit, including the Downtown West Design Standards and Guidelines (DWDSG), the Downtown West Improvement Standards, the Conceptual Infrastructure Plan Sheets, and Conformance Review Implementation Guide, to allow a maximum of 5,900 residential units; a maximum of 7,300,000 gross square feet (gsf) of office space; a maximum of 500,000 GSF of active uses such as retail, cultural, arts, civic etc.; a maximum of 300 hotel rooms; a maximum of 800 limited-term corporate accommodations; a maximum of two event and conference centers totaling up to 100,000 GSF; a maximum of two central utility plants totaling approximately 130,000 GSF; logistic/warehouse(s) totaling approximately 100,000 GSF and approximately 15 acres of open space on an approximately 78-gross acre site extending approximately one mile from north to south, and generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery street, Los Gatos Creek, the Guadalupe River, State Route 87, Barack Obama Boulevard, and Royal Avenue to the east; Auzerais Avenue to the south; and the Caltrain rail corridor and Cahill street to the west; and
8. Adopt a Resolution approving, subject to conditions, the Vesting Tentative Map to subdivide 136 lots into no more than 178 lots and allow a maximum of 5,900 residential condominiums and a maximum of 20 commercial condominiums on an approximately 84-gross acre site; and
9. Approve an Ordinance approving a Development Agreement between the City of San José and Google LLC for the Downtown West Mixed-Use Plan; and
10. Adopt a Resolution authorizing Major Encroachment Permits for District Systems at various locations within the Downtown West development area; and
11. Adopt a Resolution approving the Construction Impact Mitigation Plan; and
12. Adopt a Resolution amending the Historic Preservation Permit HP16-002 (File No. HP20-002) to revise the terms of the permit to be consistent with the Downtown West Mixed-Use Plan, which includes the San José Water Works City Landmark at 374 West Santa Clara Street.

Recommendations from the Historic Landmarks Commission

13. Adopt a Resolution to amend the boundary of the Southern Pacific Depot City Landmark (File No. HL94-100) from a 12.5-gross acre site to an 11.54-gross acre site located at 65 Cahill Street; and
14. Adopt a Resolution to amend the boundary of the San José Water Works City Landmark (File No. HS91-57) from a 0.96- gross acre site to a 0.31-gross acre site at 374 West Santa Clara Street in downtown San José; and

Additional Recommendations to be detailed in a separate supplemental memorandum to the City Council:

15. Adopt Resolutions conditionally vacating portions of South Montgomery Street, Otterson Street, Park Avenue, Cinnabar Street with the reservation of public easements over the vacated area; and
16. Adopt a Resolution authorizing Major Encroachment Permits for Streetscape Improvements at various locations within the Downtown West development area.
17. Approve the allocation of Google's early payment of \$7.5 million and the allocation of up to \$22.3 million in Community Benefits funding that will be paid by Google as office buildings are built over time.
18. Clarification on the recommendation to approve a Development Agreement: Approve an Ordinance (a) approving a Development Agreement between the City of San José and Google LLC for the Downtown West Mixed-Use Plan and (b) delegating the authority to the City Manager, or designee, to (i) negotiate and execute a Reimbursement Agreement and amendments thereto consistent with reimbursement agreement term sheet attached as Schedule A to the Development Agreement; and (ii) negotiate and execute Transfer Agreements related to the affordable housing sites described in Exhibit D of the Development Agreement).

OUTCOME

If the City Council approves the actions listed above, the applicant will be able to implement the Project pursuant to the Project approvals and entitlement documents, including subsequent conformance reviews and development of uses established and authorized under the Planned Development Zoning District's General Development Plan.

If the City Council denies certain actions listed above, the project site will remain as is.

EXECUTIVE SUMMARY

On April 28, 2021, the Planning Commission conducted a public hearing pursuant to the requirements of CEQA and considered certification of the Downtown West Mixed-Use Plan EIR, with a Statement of Overriding Considerations and various permits and approvals listed above.

During the public hearing, staff and the applicant provided project overview presentations. Public testimony was received from a total of 45 individuals, organizations agencies. After discussion, the Planning Commission voted to recommend that the City Council approve the project.

HEARING BACKGROUND

Prior to the April 28, 2020 Planning Commission hearing, the project was taken to the following commission bodies for formal recommendations.

Airport Land Use Commission (ALUC)

As portions of the project fall within the Airport Land Use Commission (ALUC) Airport Influence Area surrounding Mineta San José International Airport (SJC), the General Plan Amendment (land use designations) and Planned Development Rezoning were referred to the ALUC. On December 16, 2020, the ALUC found the General Plan and Planned Development Zoning inconsistent with certain ALUC noise and height policies as defined in the “Comprehensive Land Use Plan for San José International Airport” (CLUP). The ALUC found the rezoning and general plan amendment would be inconsistent with the CLUP Noise Policy N-4 and Table 4-1 because a portion of the site would permit residential outdoor patios or outdoor activity areas within the CLUP’s 65 A-weighted decibels (dBA) Community Noise Equivalent Level (CNEL) noise contour. The ALUC found the proposed rezoning and general plan amendment were also inconsistent with the CLUP H-1 height policy, as the project may propose building heights that exceed FAR Part 77 Surfaces. The CLUP height policy references FAR Part 77 Surfaces to determine compatible land uses in the Airport Influence Area.

On February 19, 2021, the City notified the ALUC and the Caltrans Division of Aeronautics of the City’s intention to overrule the determination by the ALUC with a two-thirds vote of the City Council, providing a draft City resolution making specific findings that the proposed action is consistent with the purposes set forth in Section 21670 of the California Public Utilities Code (Section 21670). The City received Caltrans comments on March 23, 2021 and ALUC comments on April 15, 2021. The Planning Commission Staff Report and Draft Resolution includes the required findings for overruling of the Determination of Inconsistency by the ALUC. The action by the City Council requires a two-thirds majority vote of the quorum to overrule ALUC’s inconsistent determination.

Historic Landmarks Commission

The project proposed modifications to the boundaries of the San José Water Works City Landmark from a 0.96- gross acre site to a 0.31-gross acre site (File No. HL20-005) and the Southern Pacific Depot City Landmark HL94-100 from a 12.5-gross acre site to an 11.54-gross acre site (File No. HL20-004). Additionally, the project includes amending an existing Historic Preservation Permit for the San José Water Works City Landmark. Therefore, pursuant to the City’s Historic Preservation Ordinance, the project was referred to the Historic Landmarks Commission (HLC) for a recommendation on revisions to the landmark boundaries and amendments to the existing Historic Preservation Permit. On March 17, 2021, the HLC conducted a public hearing, heard public comments, and by a vote of 4-0-2 (Commissioners Arnold and Royer absent) recommended that City Council adopt a resolution to approve the Historic Preservation Permit Amendment to revise the terms of the permit to be consistent with the Downtown West Mixed-Use Plan, and approve the modifications to both historic landmark boundaries.

Parks and Recreation Commission

On November 4, 2020, the Parks and Recreation Commission (PRC) heard an informational presentation on the Downtown West Design Standards and Guidelines and open space plan. On March 8, 2021, PRC heard the project again and took action to “Recommend that City Council approve the open space concept of the Downtown West Design Standards and Guidelines”. The motion passed 5-2-1 (Vega and Snider opposed and Adas absent).

Planning Commission

On April 28, 2020, the Planning Commission conducted a public hearing to consider and make recommendations to the City Council on the adequacy of the Downtown West Mixed-Use Plan EIR and associated approvals and permits, pursuant to CEQA. This memorandum summarizes the Planning Commission Public Hearing on the Downtown West Plan.

Staff Presentation

Rosalynn Hughley, Deputy City Manager, provided an introduction to the project and summary of the City’s objectives and goals for the Diridon station area, driven by community input. Lori Severino, Diridon Program Manager, summarized the significant amount of effort that went into community engagement and incorporating feedback from the community members and various stakeholders since early 2018. Staff provided an outline of the various project applications and permits and an overview of the proposed development program and land use plan.

Staff provided a summary of the purpose of the Environmental Impact Report (EIR), the public circulation period and response to comments on the Draft EIR (DEIR), minor changes made to the Project since public circulation of the DEIR to reduce environmental impacts, significant and unavoidable impacts requiring a Statement of Overriding Considerations, significant impacts reduced to less-than-significant with mitigation, and alternatives to the proposed Project evaluated in the DEIR.

Nanci Klein, Director of Economic Development, provided an overview of the proposed Development Agreement, including a set of equity-focused Community Benefits. The presentation highlighted the various benefits to the public resulting from the project’s investments in community priorities: affordable housing, community stabilization (anti-displacement), economic opportunity, parks/open space, transportation, and environment. The presentation also described the Community Advisory Committee for the Community Stabilization and Opportunity Fund, as described in Exhibit H of the Draft Development Agreement, and key business terms of the Development Agreement (e.g., legally binding and enforceable for 30 years).

Staff provided an overview of the District System and infrastructure improvements proposed by the Project sponsor. The Project proposes construction of an underground utility corridor (“Utilidor”) for private utilities within the public right-of-way at various locations. The Project also proposes improvements to the West San Fernando Street bridge, Los Gatos Creek, sanitary sewer and storm upgrades, as well as other transportation improvements.

Staff provided an overview of the Transportation and Parking elements of the Project. Overall, the Project emphasizes places for people, including ample sidewalks and protected bikeways with planted buffers. It also includes mobility hubs with access to improved public transit, shared streets for all modes and shared parking. Staff also outlined how the City has been coordinating

with Sharks Sports and Entertainment (SSE) and would meet the terms of the existing Arena Management Agreement (AMA) between SSE and the City.

Staff provided an overview of the parks and open space plan and discussed the Parkland Agreement and its integration into the overarching Development Agreement. Additionally, staff presented Project's parkland obligation, lands to be City-owned, and the project-sponsored open space.

Regarding the Project's housing approach, staff shared the goal of providing 25% of all housing in the DSAP affordable to a range of incomes from moderate to extremely-low incomes. The strategy includes production, preservation and prevention actions that will provide stability for existing residents and create new affordable housing for others. The Project meets the Inclusionary Housing and Commercial Linkage Fee requirements through building moderate income units onsite, dedication of three affordable housing sites, and payment of commercial linkage fees. Community benefits include a fourth site for affordable housing development.

Staff also provided three clarifications in the staff report (see updated Staff Report Attachment A); staff provided some updated language referencing the staff report attachment and clarified the calculations for the overall project improvements and parks and open improvement dollar amount.

During the presentation, Commissioner Oliverio asked if residential portions could proceed ahead of commercial development if the Project were approved and how much of the site was being converted to residential use. Staff clarified that approximately 18 acres of previously non-residential designation would now have a Downtown land use designation under the General Plan, which could allow residential uses to be developed. However, the Downtown designation is not solely a residential designation; it also permits commercial and office uses. Additionally, the project would be intensifying the amount of residential and commercial allowed with the new General Plan and Planned Development Zoning District land uses.

Commissioner Oliverio and Chair Caballero asked about the Arena Management Agreement (AMA) parking and value of the street improvements. Staff expanded on the efficiency of shared parking with several scenarios in considered for district parking and staff stated as part of billion dollar of improvements by the project, that includes approximately five miles of street upgrades, which would be a significant investment. Commissioner Oliverio asked about the timeline for delivery of City-owned parks and associated triggers. Staff clarified that the delivery schedule and triggers are outlined in Exhibit E3.1 of the Parkland Agreement. Staff added that the delivery of City-owned parks in association with the Project is linked to the development of either residential and/or commercial buildings within certain areas of the Project site, depending upon the dedication in question.

The entire staff PowerPoint presentation to the Planning Commission is attached to this memorandum (Attachment B).

Public Hearing

Alexa Arena and Laura Crescimano led the applicant's PowerPoint presentation on the Project (included in Attachment C). Ms. Arena shared the timeline of engagement with the City and the community at large and described how the engagement process led to the project framework. Ms. Arena provided a summary of the Project scope for office, residential (including affordable units),

parks and open space, riparian habitat, and sustainability. She explained that the Project supports the City's General Plan goals and creates a central social district connecting the different uses. Further, she shared that "Google is here for the long haul" as a community partner to help build upon San José's identity and to implement the vision for this part of Downtown. The Project includes amenities that nearby neighborhoods can enjoy, supporting the principles of a "15-minute city." The project includes significant community benefits, including up to \$154.8 million for equity-driven programs through the community stabilization and opportunity pathways fund.

Laura Crescimano of SITELAB urban studio provided an overview of the Project design approach. The Project is unique as it may include up to 30 or more buildings, more than three miles of street improvements, and ten different types of parks. Given the scale of the Project, it may take more than ten years for build out. Instead of including just one design, the Project through its Development Standards and Design Standards and Guidelines creates opportunities for buildings to be dynamic and contextual for each site. The design is meant to prioritize the pedestrian experience, connect to the ecology of the area, and create active public areas with diverse design and experiences. The project uses both detailed design requirements with measures that allow it to be context-sensitive and adaptable to the evolving conditions and needs of the site. As such, the Project needed to consider the site's architectural and historic resources. To demonstrate how the various standards and guidelines create the general buildable envelope, Ms. Crescimano provided a conceptual example using the block north of the Lakehouse Historic District and showed some examples of various designs that could fit within that envelope.

Lastly, Ms. Arena summarized that the Project is meant to be a place for learning, part of the Downtown gateway, and increase access to the natural ecology. The Project aims to celebrate San José's diversity and history and bring activation to the area, all while being carbon-neutral. The presentation concluded with the overall value in public benefits that the Project provides.

Public Comments

A total of 45 members of the public provided comments on the Project, with 41 people primarily expressing support and four people expressing concerns or opposition. The following provides a summary of expressions of support:

- A transformative project, creating a vibrant urban center near Diridon Station and SAP Center; a model for the rest of Downtown
- Project would make San José a destination
- Project takes the right steps in densifying the area
- The inclusion of housing and significant affordable housing
- Appreciation of the effort to address displacement
- Development will help homelessness in the community
- A pedestrian focus design and 15-minute City design approach
- Successful outreach approach by the City and Google; community input incorporated as part of the Project and Development Agreement; appreciation for Google's

responsiveness to multiple community organizations; Project should be the standard for outreach for other development proposals

- Significant support from the community organization and various groups
- Process facilitated community empowerment
- Appreciation of the Community Stabilization Opportunity Pathways Fund and other benefits
- Desire to not overpark the site; focus on other modes to access the SAP Center; embrace the change from the City's car-centric history
- Additional parking is not necessary; Project could reduce amount of parking
- Prioritize public transit
- Support for bicycle infrastructure
- Support for the ecological consideration of the project in its design elements; Project is a strong example of climate leadership
- Desire to embrace the new residents and workers coming to the area
- Project has incorporated additional historic preservation measures since the original proposal
- Support of the additional availability of park space
- Good opportunity for union jobs in the hospitality industry

The following is a summary of comments expressing concerns and opposition to the project:

- A better use of the land would be for food production
- Project should have no car-supporting infrastructure
- Insufficient water and electrical infrastructure
- Concern about the pollution and impact of construction.
- People will not take public transit to the site
- Concern about the lack of parking, given other development proposals in the area are under-parked
- Land sold to Google should have been provided to a community land trust
- Insufficient analysis of impacts to natural resources (i.e., anthropocentric analysis)
- Sixty (60) decibel threshold for noise impacts is unenforceable without noise monitoring network
- Affordable housing is separated from market-rate housing

Planning Commission Discussion

Commissioner Torrens moved to recommend approval of staff's recommendation and the motion was seconded by Commissioner Oliverio.

Commissioner Torrens shared she was impressed by how the Project was received by public commenters compared to when the Project was initiated in 2018; she indicated that the applicant has done much to gain community support. She shared her gratification with Google's long-term approach and investment in San José.

Commissioner Oliverio stated there is no guarantee that Google will build all the commercial and office development and that it may take 20 or 30 years for full buildout; he referenced that it took Santana Row significant time to be fully constructed. He stated the Project was a great opportunity for the City and that not all project applicants can enter into development agreements; it is up to the City Council to pursue and require them.

Chair Caballero complimented the staff and applicant for their hard work and was excited to see hundreds of people at one of the community outreach events. She shared her excitement for the Project and acknowledged that no project or development is ever perfect. She expressed that the Project was a great opportunity for better parks, transportation, and streets and to make Downtown vibrant. Lastly, she shared she was glad to see the 25% affordable housing and sustainability of the Project.

The Planning Commission voted 5-0-2 (Bonilla absent and Lardinois abstained) to recommend that the City Council approve and adopt all project actions.

ANALYSIS

Analysis of the proposed project, including conformance with the General Plan, and City Council policies, is contained in the attached staff report.

Letters Received

Staff received several letters/emails from organizations and individuals supporting the project, including from the following organizations:

- Diridon Area Neighborhood Group (DANG)
- Preservation Action Council of San José (PAC*SJ)
- Sierra Club Loma Prieta Chapter
- Santa Clara Valley Chapter of California Native Plant Society
- Santa Clara Valley Audubon Society
- Committee for Green Foothills
- Silicon Valley Leadership Group (SVGL)
- Silicon Valley Rising (SVR)
- Housing Action Coalition (HAC)
- San José Downtown Association (SJDA)
- Silicon Valley Bicycle Coalition (SVBC)
- Silicon Valley at Home (SV@Home)

- Santa Clara Valley Transportation Authority (VTA)

Additionally, staff received many letters/emails expressing concerns about the project and/or opposition to the project. After posting the Planning Commission staff report, the City received approximately 600 letters/emails from Sharks fans requesting denial or changes to the Project related to parking, circulation, and construction impacts. On the afternoon of the April 28, 2021 Planning Commission hearing, Silicon Valley Law Group, representing Sharks Sports & Entertainment LLC, submitted a letter in response to the First Amendment to the Draft Environmental Impact Report (DEIR). The City's response to this letter is included in Attachment D.

CONCLUSION

The Planning Commission voted 5-0-2 (Bonilla absent and Lardinois abstained) to recommend that the City Council to approve and adopt all the above listed action.

EVALUATION AND FOLLOW-UP

Should the City Council certify the EIR and adopt the associated Statement of Overriding Considerations and MMRP and approve all applications listed above, the applicant will be able to move forward with the conformance review and development of the project, which includes:

- A maximum of 7.3 million gross square feet (gsf) of commercial office space
- A maximum of 5,900 residential units
- A maximum of 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space)
- A maximum of 300 hotel rooms
- A maximum of 800 limited-term corporate accommodations
- A maximum of 100,000 gsf of event and conference space
- A maximum of 4,800 publicly accessible commercial parking spaces and a maximum of 2,360 unbundled parking spaces for residential use
- A "District Systems" approach to delivery of on-site resources, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf
- One or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of approximately 100,000 gsf
- A total of approximately 15 acres of parks, plazas and open space, including 4.8 acres of

turnkey public park and 10.2 acres of privately own publicly accessible open space that will include areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails.

- Various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhood

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The Project would increase the development intensity of the site and would implement design features for a high-performing, energy-efficient development. The Project is a transit-oriented development (TOD) which facilitates job creation within City limits, and due to its accessible location and required transportation demand management (TDM) measures, facilitates mobility choices other than single-occupancy, gas-powered vehicles.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. Staff distributed a notice of the public hearing to the property owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website.

Overview: Given the size of the project, the outreach has been extensive and involved both City and applicant-sponsored outreach and coordination. The community engagement process began in early 2018, when the City established the Diridon Station Area Advisory Group (SAAG) to advise the City on issues affecting the Diridon Station Area, including the Google development project. Since then, staff has conducted five rounds of outreach and engagement, with each round including a variety of methods. Google began their own outreach in 2018 as well.

2018: The first major milestone in the public process was the Diridon Station Area Civic Engagement Report (October 2018), which outlined a set of Desired Outcomes for the Diridon Station Area and Google project across six topic areas. It documented SAAG discussions and input from the general public conducted between February and October 2018. The MOU with Google was based on the input gathered through the 2018 process and was the foundation for the City's review of the proposed project, as it included a shared vision and goals.

2019-2020: Staff completed additional public outreach and community engagement before and after Google submitted its development application in October 2019. The main objectives of this outreach were to increase understanding of the planning and development review processes and secure feedback on initial and draft concepts under consideration. This occurred over several rounds of Diridon Station Area outreach and engagement. In 2019, Google expanded its outreach and engagement efforts to understand community priorities and concerns, ultimately holding over 100 meetings and having conversations with thousands of local residents. This input informed the design and programmatic aspects of their application.

In fall 2019, the City hosted a Downtown West Community Meeting and other events to solicit feedback on the initial application. In addition to project-focused outreach efforts in 2019, the City hosted a Scoping Meeting to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the DEIR. In Spring 2020, the City conducted an online survey on draft concepts for the DSAP Amendment and trade-offs related to Community Benefits to inform the Downtown West project review and Development Agreement processes.

2020-2021: In Fall 2020, staff held or participated in more than 20 meetings about the Downtown West project and the related efforts, including six hosted by the City's community partners and formally noticed second community meeting on October 19, 2020. This Phase was focused on collecting feedback on the draft plans made available in October 2020, including the Draft Downtown West Design Standards and Guidelines and updated application documents.

In 2021, the City has continued with focused outreach and engagement to prepare for the public hearing processes. During the 2020-21 timeframe, Google also continued holding its own design workshops (pre-COVID) and has continued hosting virtual engagements and sharing informational videos (post-COVID).

Draft Development Agreement (April-May 2021): In April, the City held SAAG and Community meetings and offered an online comment form to collect feedback on the staff-recommended Draft Development Agreement, released April 6, 2021, along with an [Informational Memo](#). Feedback on the Draft Development Agreement received at these two meetings and through 13 online comment forms have been largely positive. SAAG and community members commended the City and Google for its public outreach and for being responsive to community input in developing the Community Benefits and affordable housing approach. Several SAAG members suggested the project should serve as a model for other agreements and developments. There was notable praise for the structure of the "Community Stabilization and Opportunity Fund," which empowers community members to allocate Fund dollars. There were also several questions about the intended oversight and selection process for the Fund's Community Advisory Committee. Several community members expressed desire to avoid political influence and maximize transparency in the Committee selection process and in the administration of the Fund.

As part of outreach on the Development Agreement, staff requested specific input on how the City should allocate the \$7.5 million that would be paid by Google within 120 days after Final Approval (i.e., the latter of Council approval or resolution of project-related litigation) for "job readiness and community stabilization". The top suggestions included: tenant education, community land trust, legal services for tenants facing eviction, affordable housing for the currently unhoused, rent stabilization, and job training.

In addition to this feedback, topics with at least two comments include concerns or suggestions related to: transportation/parking (concerns about impacts), affordable housing (concentration and locations), climate change (want more attention to it), parks/open space (amount, access, maintenance), and equity (such as wanting employee benefits provided to contracted employees). There is general desire for continued outreach and inclusive engagement to keep community members informed and involved.

The April meeting summaries and comments received to date on the Draft Development Agreement are available at: www.diridonsj.org/downtownwestda.

Broad Outreach and Engagement Efforts: A consistent goal of the City's engagement process for the Diridon Station Area has been to hear from the full range of the San José community. The City completed grant agreements with seven community-based organizations to help reach and involve underrepresented populations in the engagement process. These community partners are African American Community Services Agency, Catalyze SV, Friends of Caltrain, Latino Business Foundation, San Jose Jazz, SOMOS Mayfair, and Trinity Episcopal Cathedral.

The COVID-19 pandemic in March 2020 curtailed in-person outreach. Staff adjusted to continue outreach and engagement using online methods — enhancing diridonsj.org, creating videos, implementing online surveys, and hosting virtual meetings.

Summary: Since the beginning of the coordinated Diridon Station Area engagement process in February 2018, the City has hosted 19 SAAG meetings, 14 SAAG small group discussions, 30+ community meetings and partner events, three online surveys (2,260 responses), nine pop-ups at community events, and five virtual office hours. There have been 93,000+ web page views and 36,000+ visitors on diridonsj.org.

Collectively, the initial and ongoing community input over the last three years has helped shape the overall vision, shared goals, and top priorities for the Downtown West project and its community benefits. The SAAG in particular has been instrumental in representing a variety of needs and interests — including the many San José residents struggling with the high cost of living who need more affordable housing options, protections from displacement, and educational, job training, and employment opportunities. The City is grateful for the thoughtful civic contributions of these individuals and organizations. The City also recognizes the significant outreach and engagement effort that Google has led and their responsiveness to incorporating community feedback into the Downtown West project.

Staff's contact information has been available on the community meeting notices and on the project webpage. The staff report is posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office, Office of Economic Development, Department of Transportation, Department of Public Works, Department of Parks, Recreation and Neighborhood Services, Housing Department.

CEQA

The City of San José, as the lead agency for the proposed project, prepared a Draft Environmental Impact Report (DEIR). The DEIR was circulated for public review and comment from October 7, 2020 to December 8, 2020, including a 15-day extension in response to requests from the public.

The total duration of the public review period was 62 days. The City published the First Amendment to the DEIR on April 16, 2021, which includes responses to public comments submitted during the public circulation period along with revisions to the text of the DEIR made in response to comments, as necessary. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project. The DEIR, First Amendment, comments received during public circulation, and supporting technical reports can be found at <https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/downtown-west-mixed-use-plan>.

Prior to the April 28, 2021 Planning Commission hearing, Silicon Valley Law Group, representing Sharks Sports & Entertainment LLC, submitted a letter in response to the First Amendment to the DEIR. The City's response to this letter is included as an attachment to this memorandum (Attachment E).

The public comments received during DEIR circulation, comments received leading up to the Planning Commission hearing, and testimony during the hearing, do not identify inadequacies in the DEIR or present new previously unidentified significant impacts that require recirculation of the EIR. The recirculation of a DEIR is required when significant new information is added to the DEIR after public notice is given of the availability of the DEIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a DEIR is not "significant" unless the DEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

/s/

CHU CHANG, Secretary
Planning Commission

For questions, please contact Robert Manford, Deputy Director, at robert.manford@sanjoseca.gov.

Attachments

Attachment A:	Updated Planning Commission Staff Report and associated attachments to resolutions, ordinances, and exhibits.
Attachment B:	Staff Presentation at Planning Commission
Attachment C:	Applicant Presentation at Planning Commission
Attachment D:	City Responses to EIR Letter from Silicon Valley Law Group representing Sharks Sports & Entertainment, dated April 28, 2021

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: May 17, 2021

Approved



Date

5/17/2021

SUPPLEMENTAL

**SUBJECT: ADDITIONAL INFORMATION RELATED TO THE DEVELOPMENT
AGREEMENT FOR GOOGLE'S DOWNTOWN WEST PROJECT**

REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to:

- Describe changes to the Development Agreement since the draft was published on April 6, 2021.
- Summarize key considerations related to Project implementation.
- Make additional recommendations for City Council consideration related to implementing the Development Agreement and Community Benefits for the Project.
- Provide additional detail on the above through the attached appendices:
 - A. Appendix A: April 6, 2021 Info Memorandum summarizing the Development Agreement and Key Summary slides from SAAG presentation.
 - B. Appendix B: Public comments on the Development Agreement (including notes from the Station Area Advisory Group (SAAG) and Community meetings and online comment form).
 - C. Appendix C: Menu of recommendations allocating the early \$7.5M community benefit contribution (of which \$3.0M will now be paid within 30 days of Council Approval) and the unallocated \$22.3M community benefit contribution.
 - D. Appendix D: Electric Microgrid for the Downtown West Project.
 - E. Appendix E: Responses to San José Sharks letters.

BACKGROUND

On May 25, 2021, City Council is scheduled to consider Google's proposed Downtown West project (including the Development Agreement), the City-initiated amendments to the Diridon Station Area Plan (DSAP), and the City's Diridon Affordable Housing Implementation Plan (AHIP). These projects, which have been advanced simultaneously, respond to Council and community direction, and set an ambitious but achievable vision for equitable development within the Diridon Station Area (DSA). The projects collectively support a goal of 25% affordable housing within the DSAP. The Downtown West Project proposal provides:

- Up to \$154.8 million for a Community Stabilization and Opportunity Pathways Fund (the "Fund");
- Up to \$45 million of other Community Benefits funding (including a \$7.5 million early payment to the City and up to \$22.3 million for an unspecified purpose in the Draft Development Agreement);
- Over \$253 million to meet City requirements at full buildout (including affordable housing, public parks and other fees and improvements), and
- Over \$1 billion in infrastructure investments and project features at full buildout that create additional public benefits (such as open space and sustainability investments).

The Draft Development Agreement that governs the Downtown West Project was posted for public review on April 6, 2021 along with a detailed memorandum (see summary of the Development Agreement in Appendix A). This marked a key milestone in the Project, following adoption of a Memorandum of Understanding (MOU) in 2018, application submittal in 2019, and release of the Draft Environmental Impact Report (DEIR) in 2020. If approved, the Development Agreement would be legally binding and enforceable over a 30-year term.

On April 14, 2021, the SAAG reviewed the proposed Development Agreement and members provided comments; all representatives that provided comments, with the exception of one, expressed support for the Draft Development Agreement. On April 17, 2021, the City held a Community Meeting to gather comments from the general public; the discussions were facilitated by community partner organizations and included one breakout room in Spanish. On April 28, 2021, the Planning Commission held a public hearing on the proposed Downtown West Project and unanimously voted to recommend that the City Council approve the proposed Project, including the Development Agreement. Staff also offered an online comment form at www.diridonsj.org/downtownwestda from April 6 through May 10, 2021. The meeting summaries and comments received are attached as Appendix B to this memorandum and summarized in the Planning Commission transmittal memorandum to Council on the Downtown West Project (May 14, 2021).

I. ADDITIONAL RECOMMENDATIONS RELATED TO THE DEVELOPMENT AGREEMENT

The draft Development Agreement included two amounts of unallocated Community Benefits funding, pending public review and comment and Council direction. The first of these amounts was \$7.5 million in funding that would be paid by Google after Final Approval.¹ As discussed below, the \$7.5 million funding will now be paid in two tranches: \$3.0 million will be paid even earlier: 30 days after City Council Approval; the remaining \$4.5 million will be paid 120 days after Final Approval. The second amount is up to \$22.3 million in funding that will be paid by Google over time, at a rate of \$3.06 per square foot of office at Temporary Certificate of Occupancy of each building. The intent is for City Council to allocate these Community Benefits funds.

The City has received a significant amount of community feedback on how to allocate community benefit funds, going back to the 2018 engagement process that resulted in a [list of Desired Outcomes](#) and informed the [MOU with Google](#). In 2020, the City conducted an online survey asking about community benefit preferences. As noted above, staff solicited comments on the Draft Development Agreement earlier this spring, and asked about priorities related to job readiness, community stabilization, and other needs.

As described in more detail in Appendix B, recent public comments suggested that funding be prioritized to support housing stability (legal services, tenant education, rent stabilization, and long-term housing affordability through land trusts and rent stabilization) and economic opportunity/education (programs that address poverty and create opportunity, including for job training, after school activities, and other programs). Staff considered this input, along with other community feedback from 2018-21 and Council direction on community benefit priorities, in making recommendations on the unallocated funding, as shown in the table below.

Recommendations for \$7.5 Million of Early Funding	Recommendations for up to \$22.3 Million of Funding Over Time*
<u>\$3.0 Million:</u> Immediate Community Stabilization and Ownership Programs (<i>including tenant education/outreach, eviction protection services, land trust predevelopment/ feasibility</i>)	<u>\$10.3 Million:</u> Educational Opportunity (<i>including College/Career Readiness, College Scholarships</i>)
<u>\$3.25 Million:</u> Scholarships and Job Training (<i>including scholarships/training for at-risk youth/ adults; childcare to support workforce participation</i>)	<u>\$7.5 Million:</u> Community Stabilization Programs (<i>including Ownership models, Homeless Outreach and Street-Based Services</i>)

¹ The Development Agreement generally defines "Final Approval" as City Council approval of the Project (including the Development Agreement) and, if applicable, resolution of any appeals or referendums challenging Council approval.

<u>\$1 Million</u> : Neighborhood Programs to Support Economic Recovery/Resilience in and around the DSA	<u>\$2.5 Million</u> : Early Childhood Education and Childcare Support
<u>\$250,000</u> : Funding to Initiate Community Stabilization and Opportunity Pathways Fund, including first Five-year Strategic Plan (Governance/Management)	<u>\$2 Million</u> : Seed Funds for Neighborhood Programs in and Around the DSA to Support Economic Resilience

** These programs will be funded proportionally as the Project is built*

In addition to the Planning Commission's recommendation of Project approval, City staff recommends that the Council:

- A. accept staff's recommendations on allocation of the early payments of \$3.0 and \$4.5 million; and
- B. accept staff's recommendations on allocation of the up to \$22.3 million in Community Benefits funding that will be paid by Google as office gets built over time.

The programs to be funded directly by the City are intended to focus on increasing economic opportunity, housing security, and support services for disadvantaged communities and under-resourced residents, such as first-generation college goers, people of color, and at-risk youth. While most of the funds would be eligible citywide, the neighborhood and childcare programs are intended for residents of the Diridon Station Area and surrounding neighborhoods, including the Gardner neighborhood south of I-280.

The early payment of \$3.0 million would occur 30 days after Council Approval and remaining \$4.5 million would occur 120 days after Final Approval, in advance of when the first payment toward the \$154.8 million Fund would be made. Staff recommends that the \$3.0 million payment advanced by Google support Community Stabilization and Ownership Programs, in light of COVID and the large number of individuals and families who are in a vulnerable housing position and in need of immediate tenant protection and assistance. This may include tenant education/outreach, eviction protection services, land trust predevelopment/feasibility.

Staff further recommends that the second \$4.5 million be spent on economic recovery, pilot programs and laying the groundwork for long-term strategies. For the funds that will come in over time as office projects get built, the intent is for City Council to direct funds in ways that implement the City's housing and workforce plans, complement the Fund's Strategic Plan, and fill in gaps – all to advance the City's equitable development goals. The categories provide flexibility for the City to identify programs that are relevant at that time that funds come in from Google.

If approved by Council, staff would use the \$3.0 million immediately after payment, consistent with the menu above and the City's contract processes. For the remaining funds, City staff will prepare specific recommendations for funding individual programs, as aligned with Council direction and the City's contract processes.

II. CHANGES/UPDATES SINCE DOCUMENTS WERE PUBLISHED ON APRIL 6, 2021

Since the Draft Development Agreement was released on April 6, 2021, the City has made changes as staff has completed final negotiations with Google and has refined the Development Agreement and select Entitlement documents.

These changes are summarized in the section below and address issues related to 1) early payment of community benefits; 2) affordable housing; 3) streets and rights of way; 4) reimbursement for City costs associated with Subsequent Approvals; 5) district utilities and microgrid (also summarized in Appendix C); and 6) payments for occupancy of rights of way. This section also addresses some of the questions raised recently as part of the engagement process on the Development Agreement. As described in Section III and in Appendix E, the City has also made changes in response to comments from the Sharks Sports & Entertainment (SSE).

Early Payment of Community Benefits

The Draft Development Agreement included an early payment of \$7.5 million by Google for pressing community needs within 120 days of Final Approval. City staff solicited feedback on the use of these funds; community members highlighted the impact of COVID and the large number of individuals and families who are in a vulnerable housing position and in need of immediate tenant protection and assistance. Working together, the City and Google have agreed that the \$7.5 million will be paid in two tranches to address these immediate needs. As described above, \$3.00 million will be paid even earlier (30 days after Council Approval) for Community Stabilization and Ownership programs. The remaining \$4.5 million will be paid 120 days after Final Approval as before, for use consistent with Council direction on Staff's recommendations.

Housing Updates and Housing Questions about Location

Since publication on April 6, 2021, additional documents referenced in the Development Agreement have been completed and are now publicly available. These include:

- Updated Inclusionary Housing Ordinance (IHO) administrative guidelines, which are updated to reflect the new IHO rules that the Council approved on February 23, 2021;
- Transfer Agreement Templates for the Affordable Housing Sites that further describe the mechanism to transfer the sites, and the penalties for failure to complete the transfers; and
- Edits to Exhibit D of the Development Agreement so that two affordable housing sites will be accelerated with the first office building, and transferred well advance of any IHO

May 17, 2021

Subject: Additional Information related to the Development Agreement for Google's Downtown West Project

Page 6

obligations. This is in addition to one site on Autumn Street² (“Autumn Street Parcels”) outside of the Project site that will be transferred 90 days after Final Approvals, and clarify the City’s remedies if these sites are delayed.

Some public comments have asked why affordable housing is “concentrated” in one geographic area. The diagram below shows the location of affordable housing within the Project.



In total, there are about 1,000 affordable units planned within and immediately adjacent to the Downtown West Project site. These units would be offered to families with a range of incomes, consistent with Council direction and community input, and would be distributed throughout the Project area:

- 200 units for households making up to 100% of the Area Median Income (AMI) would be integrated into market rate buildings across the Downtown West Project site.
- 800 units affordable to families earning 30-80% of the AMI would be located on four sites dedicated to the City by Google. These sites would be located adjacent to proposed market-rate housing. Providing these units in standalone buildings, rather than integrated within market-rate buildings, enables use of affordable housing financing and supports deeper levels of affordability (i.e., lower income limits).
- Google would transfer three of the four parcels (“H5”, “H6” and the Autumn Street Parcels³) for 30-80% AMI residents to the City early in the Project. Google would transfer to the City the Autumn Street Parcels 3 months after Final Approval and would

² The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

^{3 3} The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

transfer the H5 and H6 parcels in parallel with Google's first office building, potentially in advance of residential development that would trigger Inclusionary Housing Ordinance requirements. This will facilitate construction of the affordable housing by non-profit developers as soon as possible; these parcels are all in locations where the infrastructure to serve them already exists or where it will be built early in the Project. The early dedications also make it more likely that Measure A funds will be available to further deepen affordability levels.

The sites for affordable housing were selected in locations more suitable for "podium construction" which is more economically feasible, while balancing higher density in other locations to maintain a high level of overall housing production. This will reduce development costs for the non-profit developer on a per-unit basis, enabling affordable housing to be built sooner, as sufficient financing for high rise development is difficult to obtain. Should construction of additional height become feasible, the City has the ability to build additional density.

Streets/ROW Vacation

Since the documents were published, the parties have determined that there are some portions of City-controlled Right of Way (ROW) that were intended to be included in the Privately-Owned Publicly Accessible Open Space where the fee interest in the sites is neither owned by the City or Google.

The newly-published documents include five additional resolutions that allow conditional vacation of a portion of South Montgomery Street, Park Avenue, Otterson Street, and Cinnabar Street with the reservation of public easements over the entire area to be vacated ("Subject Portion"). On these five Subject Portions the vehicular component of the right of way will be vacated, and the bicycle and pedestrian component of the ROW will remain in place, which allows them to continue to function consistently with the proposed open space plan as defined in the Downtown West Design Standards and Guidelines (DWDSG) in the event that the underlying fee interest remains with the current, legacy owners of the Public ROW where the City has an existing easement.⁴ The Project's Environmental Impact Report and related studies evaluated the removal of motorized vehicular traffic from the Subject Property consistent with the General Development Plan (GDP) and DWDSG.

The modifications also clarify that if Google is unable to acquire and manage the space as Privately-Owned Publicly Accessible Open Space, they will still pay for the maintenance of these spaces for a minimum of 50 years.

⁴ See Str. & Hwy. § 8309;_see also *Martis Camp Community Association v. County of Placer* (2020) 53 Cal. App. 5th 569, 598 (confirming a local agency's ability to terminate certain public uses of a street through a vacation while reserving other public uses and rights of access).

Staff recommends the reservation of certain public easements from the proposed vacation as described in Section 5 of the Resolution. These include a public easement for “non-vehicular transportation and pedestrian access purposes” and related “improvements,” which may include “street furniture, hardscaping and landscaping and other facilities that serve the public use in the public easement.”

Staff also recommends that Council authorize encroachment permits for streetscape improvements to allow Google to install and maintain improvements and facilities that serve the public using the Subject Portion. The encroachment permits would be issued by the Director of Public Works after the satisfaction of specified criteria. The permits would have an initial term of fifty years, with the option for Google to extend up to ninety-nine years, subject to the City's right of revocation or termination as specified in the Encroachment Agreement.

Reimbursement Agreements

Google has agreed to reimburse City costs for the expedited review and processing of Subsequent Approvals. This may include costs to employ full-time, dedicated staff, hourly costs for other City staff, and consultant costs. City staff and Google have negotiated a term sheet, attached to the Development Agreement, since the project documents were published on April 6, 2021, which will be the basis for negotiation of an annual Reimbursement Agreement between the City and Google, estimated to begin in the 2022-2023 fiscal year (July 1, 2022), and which process is aligned with the City's standard budgeting process. The City and Google are currently finalizing a work plan and budget for the 2021-2022 year consistent with the Term Sheet for Subsequent Approval through the budget process, which covers the approximately 13 months of City Staff work between City Council action on May 2, 2021^h and June 30, 2022.

Electric Microgrid

A major component of the Downtown West Project is a proposed “District Systems” approach to more efficiently handle some of the utility needs of the development. Consistent with this approach, and in alignment with City Council priorities related to energy resiliency, Google is proposing an advanced microgrid electrical distribution system with renewable energy generation and storage resources distributed throughout the development. One of the main benefits of the microgrid is more resilient, clean, and affordable energy for the community within the Project. The implementation of a microgrid is consistent with the objectives of the Memorandum of Understanding between the City and Google and helps support the response to AB 900 environmental goals.

There are currently three available options under consideration for operating this system and providing electric service to the development, which were discussed during a City Council Study Session on March 25, 2021: 1) PG&E retail/ Community Microgrid Enablement Program (CMEP) service, 2) City provided service, and 3) private (Google provided) service. All electric service options are being thoroughly evaluated and explored by the City and Google. No immediate decisions to select one of the options are necessary at this time; all three options will

be enabled through the entitlement to maintain flexibility. The work to analyze these options, and ultimately to construct a microgrid to commence operations, would be funded by the developer. The developer will also select the option due to schedule constraints and investments required to meet the objectives of the microgrid and development.

City staff, under the direction of City Council and in collaboration with Google, has conducted analyses to evaluate the legal, regulatory and economic feasibility and the potential benefits and risks of this option. City provided electric service is a viable approach that would likely result in energy cost savings as well as more reliable and resilient energy for the residents and businesses within the development. Attachment D, titled Electric Microgrid for the Downtown West Project, thoroughly describes staff's analysis of the City-provided electric service option.

Within Appendix J of the Development Agreement the City and Developer defines a pathway to further investigate and develop the City Electric Service option. Appendix D describes additional analysis (funded by the Developer) that must be completed before any decisions would need to be made by City Council. In particular, this would include a business plan and draft agreements. The business plan would better describe expected rates, tariffs, operations, and organizational structure as well as include a detailed analysis of the opportunities and risks including the economic, climate, and resiliency risks and benefits. It is expected that the business plan and the framework for an agreement with the Developer would be brought forward for City Council consideration in the Fall of 2021. Final approval by City Council to establish City provided electric service to the Development would occur in Spring 2022 to meet the potential Development schedule.

Public Right of Way Occupancy Fee

The Project proposes to construct underground utility corridors (referred to collectively as the "Utilidor") for the conveyance of private utilities within the project area. The Utilidor is an underground infrastructure corridor measuring twenty-one feet in depth by twenty-four feet in width that will take permanent occupancy within the public right of way and therefore should be subject to fees for such use and occupancy. The Utilidor will house a range of utilities for the Project and will enable innovative approaches to delivery of district systems. The Utilidor will also house an electrical distribution microgrid; the City imposes a franchise fee for other electrical and gas utilities for their use of the public right of way, and as such, similarly proposes an occupancy fee within the public right of way.

A negotiated Public Right of Way (PROW) Occupancy Fee for the Utilidor mirrors existing franchise fee structures based on cubic fee data from ten California Public Works agencies and would establish a market-based fee for the use of the public right of way. This fee is based on a rate per cubic foot (based on similar California structures) which is then applied to the length of each Utilidor section crossing the PROW to calculate the overall fee. City staff proposes a PROW Occupancy Fee of \$43 per linear foot of electric distribution within the Utilidor crossing the public right of way, escalated at 2% annually.

III. KEY CONSIDERATIONS RELATED TO PROJECT IMPLEMENTATION

The Development Agreement includes many elements that provide certainty to both the City and to Google and is designed in a way to encourage timely development, while also providing community benefits to the public. However, there are certain external factors that cannot be mitigated by the City or Google that may affect the timing or scale of development and associated community benefits. This section provides additional information regarding 1) timing of the development; 2) streamlining of judicial review of potential litigation; 3) additional work in progress regarding coordination with Sharks Sports & Entertainment and potential impact on timing of development program; and 4) potential development capacity impacts of the Diridon Station Integrated Concept (DISC).

Development Timing and Feasibility

It is important to note that the vast majority of City fees and Community Benefits are paid over time, as the Project gets built. Key exceptions to this are: a) the \$7.5 million early community benefits payment; b) the transfer of the Autumn Street parcel; and c) payments of associated community benefits at 10 years (on 2 million square feet of office) and 20 years (on 4 million square feet of office) to maintain the Development Agreement if development performance thresholds (the same square footage of office development) are not met.

In the aggregate, the City and Google's interests are aligned around supporting the completion of the development plan. The greater the velocity of development, the sooner the City receives the benefits. Although the City has mitigated significant risk by requiring performance and early delivery of community benefits, there is still a risk that Google may not build all of the development capacity and the resulting Community Benefits paid may be proportionally less.

Assembly Bill 900 and Senate Bill 7

The Project has sought to streamline potential litigation challenging the project approvals by having the proposed Project certified by the Governor under Assembly Bill 900 (Jobs and Economic Improvement Through Environmental Leadership Act of 2011, or "AB 900") and complying with the strict requirements of AB 900, which was intended to: a) create good paying jobs and sustainable urban development; and b) support the development of housing and affordable housing. The AB 900 deadline for City Council certification of the EIR and project approvals was December 31, 2020. Due to the COVID-19 pandemic, the EIR and project approvals were not ready for City Council consideration before December 31, 2020. Senate Bill 7 (Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021, or "SB 7") would extend this deadline for the proposed Project and other previously certified projects. The Assembly recently approved SB 7 by a vote of 70-1, and the bill is now awaiting the Governor's signature. SB 7 is an urgency statute so it would take effect immediately.

It is anticipated that SB 7 will be passed into law before the May 25, 2021. City Council meeting, which would streamline the litigation timeline for the Project to approximately nine months from the date the certified records are before the Court. City staff will provide a verbal update on the status of SB 7 at the May 25 City Council meeting.

Sharks Sports & Entertainment

The City values its relationship with the San Jose Sharks and has an Arena Management Agreement (AMA) that sets out mutual obligations of the City and the Sharks Sports & Entertainment (SSE), the owner of the Sharks and operator of the SAP Center. Since the publication of the Development Agreement, SSE has submitted various letters to the City relating to the EIR, requests for modifications on the project approvals, as well as their other concerns.

Two key priorities for SSE, which are reflected in the AMA and their comment letters, are adequate parking and efficient access/departure for fans, before and after games and events. The City and/or Google have met with SSE roughly 75 times since early 2019 to discuss these concerns. The City and Applicant continue to engage multiple respected consultants to conduct extensive supplementary event-related analysis and have made changes to address key concerns.

Traffic: From the inception of the Project, SSE has expressed concern that development around the SAP Center will alter traffic patterns and/or increase traffic, impacting access for fans. The City and Google have worked diligently with two respected parking and traffic consultants to evaluate multiple strategies to improve traffic flow at peak times. Results of this work show that at the peak times (rush hour and events) access to parking could take 0.5 to seven minutes longer from neighboring highways (I-280 or SR-87), relative to non-event days, depending on the route selected.

Parking: The Development Agreement includes detailed metrics requiring the Project to replace parking capacity as surface lots are redeveloped with buildings. These metrics also take into consideration parking availability over time, as development occurs. Planned parking considers several zones of proximity to the SAP Center, to ensure that new parking is convenient and generally located between the SAP Center and nearby freeways to make for efficient trips and avoid between people walking and driving. The requirements are also conservative, since Google may provide more than the required parking amount and other nearby parking locations also provide capacity.

The City's approach has focused on meeting the end result of access, traffic flow, and parking availability. SSE has not always agreed with this approach, with a preference for requiring specific improvements (e.g. specific parking garage locations or road widening).

The City will continue to work diligently with SSE to honor the AMA and implement measures that result in similar access for fans. SSE has requested that the City and Google remove Lots A/B/C from the proposed Project. This is unnecessary because transfer and development of Lots

A/B/C could only occur during the term of the AMA if SSE enters into a parking agreement, which would require SSE's consent. Lots A/B/C would enable the construction of approximately 1,000 homes and 665,000 square feet of office (estimated 2,660 jobs) as well as associated infrastructure improvements and community benefits. The City's responses to recent SSE letters are included in Appendix E.

Diridon Integrated Station Concept Plan (DISC)

Diridon Station is located adjacent to the Project. The City of San José, Caltrain, California High-Speed Rail Authority, Metropolitan Transportation Commission, and Santa Clara Valley Transportation Authority (VTA) have partnered together on the Diridon Integrated Station Concept Plan (DISC) to expand and redesign the station. The future station project and associated rail investments will bring substantial new and improved transit connections to the area. Both the City and Google support the DISC vision. The Development Agreement and specifically the Parkland Agreement (Exhibit E) also outline how Project open spaces and adjacent rail structures are being concurrently planned for greater community connectivity and integration.

That said, the design and engineering for these projects are still conceptual, and there is some risk that the final alignment of rail tracks and outer perimeter of DISC construction could impact the land available for the Project. Early design work by the DISC team and by peer-review engineers indicates that this is not a substantial risk and that there are viable alignment options that would not impact the Project.

Google, the City, and the other DISC Partner Agencies have worked together to define a "transit buffer zone" which provides some flexibility for design of the final alignment within a corridor that aligns with the design work performed to date. If the final design of the rail corridor stays within the transit buffer zone, the Project should be viable as planned. If the final design of the rail corridor goes beyond the transit buffer zone, many Project fixed costs (such as infrastructure) would remain the same, but development capacity would decrease, which decreases overall project feasibility. If this occurs, the available community benefits per square foot of office space will be impacted. The Development Agreement Section 4.2.2 provides a formula for determining this impact and outlines a process for eminent domain proceedings by the DISC Partner Agencies to eliminate or reduce potential impact to community benefits.

May 17, 2021

Subject: Additional Information related to the Development Agreement for Google's Downtown West Project

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CONCLUSION

The Project's plan sets, documents, exhibits were updated to reflect all the modifications shared in this memorandum; updated resolutions and ordinances are linked on the City Council Agenda. In summary:

- Since the release of the Development Agreement on April 6, the City has engaged the public to generate comment through multiple venues.
- Certain changes have been made to the documents released on April 6 as final negotiations have been completed and the Development Agreement and select Entitlement documents have been refined.
- Although the Development Agreement provides certainty to both the City and Google, there are certain factors that may affect the project's timing, feasibility, and community benefits that are important for Council and the public to consider.
- Staff recommends that Council approve the use of \$7.5 million and \$22.3 million of previously-unallocated community benefits payments as proposed.

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Nanci Klein, Director of Economic Development at (408) 535-8184.

RESOURCES

Project Webpages

- [Google Project Website - Application Documents and City's Review Process for Downtown West Project](#)⁵
- [Google's Project Webpage](#),⁶ - Social Infrastructure Plan, video, and other information

Shortcuts to Project Documents

- [Updated Development Agreement \(May 14, 2021\)](#)⁷

⁵ www.sanjoseca.gov/GoogleProject

⁶ <https://realestate.withgoogle.com/sanjose/>

⁷

<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/60a29a1210bcf63b5c1caec9/1621269033923/%28i%29+Ordinance+-+Downtown+West+Development+Agreement+-+051421.pdf>

- [Updated Project Plan Sets, Documents, and Exhibits since posting for Planning Commission](#)⁸
- [Environmental review page for the Downtown West Project](#)⁹

Public Meeting and Community Engagement Materials (2018-2020)

- [Info Memo on the Development Agreement](#)¹⁰
- [Video Recording \(English\) of the April 14th](#)¹¹ Station Area Advisory Group (SAAG) Meeting
- [Diridon Station Area Civic Engagement Report \(2018\)](#)¹² – including list of Desired Outcomes for the six topic areas
- [Spring 2020 Online Survey Results](#)¹³
- [Fall 2020 Community Engagement Info and Summary of Feedback Received](#)¹⁴
- [Information about Google's Updated Submittal for the Downtown West Project, Including Background Presentations by the City \(Process\) and Google \(Design Standards and Guidelines\)](#)¹⁵
- [Presentation for City Council Study Session \(November 16, 2020\)](#)¹⁶

ATTACHMENTS

- Appendix A: April 6, 2021 Info Memorandum summarizing the Development Agreement and Key Summary slides from SAAG presentation
- Appendix B: Public comments on the Development Agreement (including notes from the Station Area Advisory Group (SAAG) and Community meetings and online comment form)
- Appendix C: Menu of recommendations allocating the early \$7.5M community benefit contribution (of which \$3.0M will now be paid within 30 days of Council Approval) and the unallocated \$22.3M community benefit contribution
- Appendix D: Electric Microgrid for the Downtown West Project
- Appendix E: Responses to San José Sharks letters

⁸ <https://www.sanjoseca.gov/home/showdocument?id=72581&t=637562553613570000>

⁹ <https://www.bit.ly/GoogleProjectEIR>

¹⁰ <https://www.sanjoseca.gov/Home/ShowDocument?id=71001>

¹¹ <https://youtu.be/IQwDWazpANU>

¹² <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

¹³

https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5f593395784ed35a65eb5cd5/1599681436414/DiridonSpringSurveySummary_08142020_final_web.pdf

¹⁴ <https://www.diridonsj.org/fall2020>

¹⁵ <https://www.diridonsj.org/fall2020-google>

¹⁶

<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5fb419f8b077c623dfc38c8f/1605638668019/Diridon+Study+Session+-+111620.pdf>

Appendix A



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: April 6, 2021

Approved

Date

4/6/2021

INFORMATION

**SUBJECT: STAFF-RECOMMENDED DRAFT DEVELOPMENT AGREEMENT FOR
GOOGLE'S DOWNTOWN WEST PROJECT**

PURPOSE

- Provide the public with an overview of the staff-recommended draft Development Agreement for the Downtown West project, including the process informing its preparation and other background context.
- Support the Station Area Advisory Group (SAAG) in their review and discussion of the Development Agreement.
- Highlight the range of public benefit commitments expressed in the Development Agreement and delivered by the project.

EXECUTIVE SUMMARY

The City has been working with Google since 2017 to develop a project for the Diridon Station Area. The release of staff's recommended Draft Development Agreement for the Downtown West project is a key milestone in this journey, following adoption of a Memorandum of Understanding (MOU) in 2018, application submittal in 2019, and release of the Draft Environmental Impact Report (DEIR) in 2020. The Development Agreement is subject to City Manager and City Council review and approval.

The Development Agreement addresses the top priorities expressed by the City Council in 2018, which were reinforced through extensive community engagement from 2018 through the present. The Development Agreement addresses these priorities (affordable housing, anti-displacement, and jobs/education) as "Community Benefits." The Development Agreement also addresses

other topics that are important to the community, including parks and open space, transportation, and environmental sustainability.

The Downtown West project exceeds the Citywide requirements for affordable housing and supports the goal for 25% affordable housing in the Diridon Station Area through land dedication, use of commercial linkage and inclusionary housing in-lieu fees, and distributing affordable units amongst the market-rate housing. The equity-focused Community Benefits detailed in the Development Agreement also includes a first-of-its-kind "Community Stabilization and Opportunity Pathways Fund" that could generate up to \$155 million over 30 years, as Google builds out its 7.3 million gross square feet of office space. The Fund spans the interdependencies between housing, education, and jobs and is structured to involve community participation in the grant-making process.

Notably, the project would deliver over \$1 billion in infrastructure and project features with no subsidy from the City; an unusual feature for a project of this scale, leaving more General Fund money for the City to capture from the project. At full buildout, the total amount of Community Benefit contributions is expected to be \$200 million on top of the \$1 billion in infrastructure and project features proposed by Google. These project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free entertainment programming and more. The Development Agreement details how the Downtown West project would provide well-maintained, activated, and publicly accessible private spaces and how the project would meet park and recreational requirements through building and dedicating 4.8 acres of turnkey parkland and trail connections.

Through an innovative district systems approach to utilities, LEED certification, and other environmental commitments, the project would set a new standard for climate action — generating zero net new greenhouse gas emissions during construction and 30 years of operations. The Development Agreement also facilitates ongoing coordination with the Diridon Integrated Station Concept Plan, in support of planned transit investments.

This memorandum provides background information, an overview of the Development Agreement, and next steps.

The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14 and a Community Meeting on April 17 to review and discuss the Development Agreement. Staff will provide all comments received at these meetings as well as from an online tool to the Planning Commission and City Council when they consider the full Downtown West project package later this spring. The website <https://www.diridonsj.org/> includes the upcoming engagement opportunities, project updates, background information, and the ability to sign up for email updates and submit comments.

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INITIAL PROJECT WORK (preceding the Development Agreement)

Phase 1 (Concept Development and Land Sale): In 2014, the City adopted the Diridon Station Area Plan (DSAP). In 2017, there was a need for an anchor use to replace the previously planned baseball stadium. Google expressed interest in developing office space near Diridon Station in Downtown San José, consistent with the vision set forth in the DSAP. In adopting the DSAP, the City recognized that realizing the vision of the DSAP would require a leading developer to assemble parcels. In June 2017, the City entered into an exclusive negotiating agreement (ENA) with Google for properties formerly owned by the Successor Agency to the Redevelopment Agency (totaling ~6 acres), the City-owned Fire Training property (~4 acres), and property next to SAP Center known as Lots A/B/C (~10 acres).

MOU: On December 4, 2018, City Council approved a [Memorandum of Understanding \(MOU\) with Google](#)¹ to guide collaboration on a mixed-use development project moving forward. The MOU outlined guiding principles and shared goals for a mixed-use, transit-oriented development to be proposed by Google. The MOU also affirmed the intent to negotiate a Development Agreement and the process for negotiating Community Benefits as part of the Development Agreement. The MOU was based on extensive community input and provided a foundation for the City’s review of Google’s application.

Land Sale: Also, at the December 4, 2018 meeting, City Council approved Purchase and Sales Agreements with Google for the former Redevelopment sites and the Fire Training property, as well as an Option/Negotiation Rights Agreement for Lots A/B/C. The December 2018 Council action completed staff’s work efforts from “Phase I: Concept Development and Land Sale” and launched “Phase II: Project Design and Review.” These 20 acres of land are in addition to the approximately 40 acres that Google purchased from private parties to assemble the project site.

Phase II (Project Design and Review): On October 10, 2019, Google submitted its application for a mixed-use development project (Downtown West Mixed-Use Plan) to the City. The project

¹<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5c9114de652dea9c2028888a/1553011936239/Final+MOU.pdf>

site is approximately 80 acres (including approximately 20 acres of right-of-way) and is largely within the existing [Diridon Station Area Plan \(DSAP\)](#)² boundary of 250 acres. The project proposes approximately:

- Up to 7.3 million gross square feet (GSF) of office space;
- 4,000 units of new housing (Draft EIR clears up to 5,900 units);
- Up to 500,000 GSF of active uses (retail, cultural, arts, etc.);
- 100,000 GSF of event space, hotel use (up to 300 rooms), and up to 800 rooms of limited-term corporate accommodations;
- 15 acres of parks and open space; and
- Infrastructure and utilities.

City's Review Process: The Google application includes a General Plan amendment (including amending the DSAP), a Planned Development Rezoning, a Planned Development Permit, and other related permits and approvals.³ The City is reviewing the project in three parallel processes: development review, environmental review, and Development Agreement negotiation. Development review involves staff from multiple departments reviewing the proposal for consistency with City policies, objectives, and regulations. Environmental review involves preparation of an Environmental Impact Report (EIR) to analyze and disclose the potential impacts of the project, consistent with the California Environmental Quality Act (CEQA).

AB 900: On December 30, 2019, the State of California approved Google's application to participate in the AB 900 program (Jobs and Economic Improvement Through Environmental Leadership Act). The program encourages the development of large projects that create jobs and that meet a high standard of public benefits by offering the streamlining of the judicial review process under CEQA (see [Info Memo dated August 19, 2019](#)⁴). The AB 900 program expired at the end of 2020, but the State legislature is currently considering an extension through Senate Bill (SB) 7.

Related City Efforts and Timing: Concurrent with reviewing Google's application, staff initiated a process to amend the DSAP and prepare a Diridon Affordable Housing Implementation Plan (AHIP). The focus of these planning efforts is on non-Google sites, although staff has ensured coordination with the Downtown West project, as appropriate. Staff also continues to support coordination of the Downtown West project with the Diridon

²<https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/citywide-planning/area-plans/diridon-station-area-plan>

³ Refer to project website for all application documents and additional information about the review process: www.sanjoseca.gov/googleproject

⁴<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5d5c5e61e1d5150001a6fdf2/1566334563522/D+SA+Update+-+Info+Memo+-+081919.pdf>

Integrated Station Concept Plan (a partnership between the City, Caltrain, VTA, High-Speed Rail and the Metropolitan Transportation Commission), the Downtown Transportation Plan, and other separate but related projects.

Timing: Google's Downtown West project, along with the Amended DSAP and AHIP will all go to the Planning Commission and City Council for consideration later this spring (2021). Please refer to the City's project [webpage](http://www.sanjoseca.gov/GoogleProject) (www.sanjoseca.gov/GoogleProject) for the latest information on the public hearing process.

ONGOING COMMUNITY ENGAGEMENT

Central to all this work, staff is considering previous and ongoing community input in its evaluation and recommendation of the Development Agreement and other implementation documents.

2018: The first major milestone in the public process was the [Diridon Station Area Civic Engagement Report](https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf)⁵ (October 2018), which outlined a set of Desired Outcomes for the Diridon Station Area and Google project across six topic areas. It documented SAAG discussions and input from the general public. The SAAG was established in early 2018 to advise the City on issues affecting the Diridon Station Area, including the Google development project. Google began their own outreach in 2018 as well. The MOU with Google was based on the input gathered through the 2018 process.

2019-2020: Staff completed additional public outreach and community engagement before and after Google submitted its development application. The main objectives of this outreach were to increase understanding of the planning and development review processes and secure feedback on initial and draft concepts under consideration. This occurred over several rounds of Diridon Station Area outreach and engagement. In 2019, Google expanded its outreach and engagement efforts to understand community priorities and concerns, ultimately holding over 100 meetings and having conversations with thousands of local residents. This input informed the design and programmatic aspects of their application. In Spring 2020, the City conducted an online survey on draft concepts for the DSAP Amendment and trade-offs related to Community Benefits.

2020-2021: In Fall 2020, staff held or participated in more than 20 meetings about the Downtown West project and the related efforts, including six hosted by the City's community partners. This Phase was focused on collecting feedback on the draft plans made available in October 2020, including the Draft Downtown West Design Standards and Guidelines and updated application documents. In 2021, the City has continued with focused outreach and engagement to prepare for the public hearing processes. Google continued holding its own

⁵ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

design workshops (pre-COVID) and has continued hosting virtual engagements and sharing informational videos (post-COVID).

Broad Outreach and Engagement Efforts: A consistent goal of the City's engagement process for the Diridon Station Area has been to hear from the full range of the San Jose community. The City completed grant agreements with seven community-based organizations to help reach and involve under-represented populations in the engagement process. These community partners are African American Community Services Agency, Catalyze SV, Friends of Caltrain, Latino Business Foundation, San Jose Jazz, SOMOS Mayfair, and Trinity Episcopal Cathedral.

The COVID-19 pandemic in March 2020 curtailed in-person outreach. Staff adjusted to continue outreach and engagement using online methods — enhancing diridonsj.org, creating videos, implementing online surveys, and hosting virtual meetings.

Since the beginning of the coordinated Diridon Station Area engagement process in February 2018, the City has hosted 18 SAAG meetings, 14 SAAG small group discussions, 30 community meetings, and partner events, three online surveys (2,260 responses), nine pop-ups at community events, and five virtual office hours. There have been 93,000+ web page views and 36,000+ visitors on diridonsj.org.

Collectively, the initial and ongoing community input over the last three years has helped shape the overall vision, shared goals, and top priorities for the project and its Community Benefits. The SAAG has been instrumental in representing a variety of needs and interests — including the many San Jose residents struggling with the high cost of living who need more affordable housing options, protections from displacement, and educational, job training, and employment opportunities. The SAAG has also been a key venue for convening neighborhood leaders, who have put in many hours to understand the proposed Downtown West project and the City's proposals and to advocate for consideration of local impacts and benefits. Many of the SAAG organizations have convened their own events over the past three+ years to hear from their community members and have reflected their needs, aspirations, and ideas during the SAAG meetings.

Community input, including the work of the SAAG, has been instrumental in shaping the Development Agreement. Doing this work well takes time and effort. The City is grateful for the thoughtful civic contributions of these individuals and organizations. The City also recognizes the significant outreach and engagement effort that Google has led and their responsiveness to incorporating community feedback into the Downtown West project.

DEVELOPMENT AGREEMENT BACKGROUND

Purpose: A Development Agreement is a tool that provides a consistent regulatory framework (also known as “vesting rights”) for a large development project that will be built out over many

years. Development Agreements are negotiated as part of the entitlement process and are typically approved along with other City actions enabling the project. In exchange for this certainty, developers often provide Community Benefits that go beyond any benefits from meeting City requirements.

MOU Foundation: As described in the Background section, the MOU with Google provides a foundation for negotiating the Development Agreement. It anticipates that the Development Agreement will include vested project approvals and Community Benefits, including a framework for community benefit delivery.

Community Benefit Methodology: In determining the value of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City's actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. According to the MOU, the total value of Community Benefits shall not include any costs associated with (1) City requirements, (2) environmental mitigations, or (3) discretionary project Features proposed by Google.

Community Benefit Priorities: In identifying the Community Benefits, Council directed staff to prioritize three categories:

- Affordable housing;
- Displacement prevention and community stabilization; and
- Education, job training, and employment opportunities (including support for small businesses).

Subsequent community input has reinforced that these are the most pressing needs that should be addressed in developing the Community Benefits in the Development Agreement. Staff recognizes the interrelationship between affordable housing, community stabilization, opportunity pathways, and small business/employment opportunity. These are the pillars of Equitable Development — a shared goal in the MOU — and the collective investment in each can lead to better outcomes for San Jose residents, especially marginalized communities that too often bear disproportionate impacts.

In addition to these top priorities, community members also expressed interest in parks/open space, transportation (including transit, trails, bicycle, and pedestrian networks), environmental sustainability (including ecology and climate action), land use/design, and cultural and historic preservation. These topics are reflected in the shared goals for the project.

Distinction between Community Benefits and Public Benefits: Community Benefits are defined in the Development Agreement as contributions that go above and beyond standard City or State requirements and that are aligned with the Council priorities described in the MOU. The

Development Agreement and other project documents also provide other benefits. The broader term “Public Benefits” includes the Community Benefits, City requirements, environmental mitigations, and project features that Google has voluntarily agreed to implement and that support other goals articulated by the community, e.g., additional open space, trails, ecological enhancements, historic preservation, and sustainability features.

Process: Arriving at a staff-recommended Draft Development Agreement has required extensive analysis and ongoing community engagement. The release of the Draft Downtown West Design Standards and Guidelines and the Draft Environmental Impact Report in October 2020 marked major milestones. Since this time, the focus has been on preparing the Affordable Housing Plan and Parkland Agreement, and negotiating the other aspects of the Development Agreement, including the Community Stabilization and Opportunity Pathways Fund. The staff recommended Draft Development Agreement is now available at www.sanjosca.gov/GoogleProject, for public review and is subject to City Manager and City Council review and approval.

DEVELOPMENT AGREEMENT OVERVIEW

If approved, the Development Agreement for the Downtown West project would be legally binding and enforceable over a 30-year term. It would deliver on public benefits in four main ways:

- Establishes the vested project approvals that lock in how the project will fulfill City requirements including requirements related to affordable housing, parkland, transportation, and infrastructure;
- Includes \$200 million in Community Benefits that address the City's top priorities and supports ongoing community involvement;
- Secures commitments on project features, such as local hire, privately-owned publicly accessible parkland, and environmental features such as a district systems approach to utilities; and
- Provides incentives for the timely delivery of public benefits through performance measures.

As described further in the following sections, if approved, the Development Agreement and the project itself would:

1. Provide land and funds to meet the 25% affordable housing goal for the Downtown West project;
2. Provide funds and a community governance structure to address displacement and expand economic opportunities for underserved residents through a new **Community Stabilization and Opportunity Pathways Fund**;
3. Enhance the public realm through a mix of publicly accessible **parks and open spaces**;

4. Improve the **transportation** system;
5. Advance **environmental sustainability, climate action, and resiliency** through a District Systems approach to utilities and other infrastructure investments; and
6. Provide for **historic preservation** to enhance the identity of the neighborhood.

Affordable Housing (Requirements + Community Benefits)

The City Council and Community have consistently prioritized affordable housing production and preservation, as well as anti-displacement strategies, as the top issues to address when planning for the Google project and future of the Diridon Station Area. The affordable housing package supports the goal for 25% of new housing to be affordable at a mix of affordability levels, ranging from extremely low-income to moderate-income.

The Downtown West application includes General Plan amendments and zoning changes that significantly increase residential uses throughout the site, and the Development Agreement contemplates 4,000 new housing units as part of the project (note that the EIR analyzes a maximum of 5,900 units).

The project is subject to several City requirements related to affordable housing:

- The ***residential portion of the project*** must comply with City's Inclusionary Housing Ordinance (IHO). As documented in the Development Agreement, the project will comply with the IHO by:
 - Dedicating three pad ready sites to the City (to be used for the construction of approximately 600 units for extremely low to low-income households);
 - Paying IHO fees for residential development once the credit from the dedicated land sites is exhausted; and
 - Providing 5% of the units built on-site for moderate income households (170 total) — to be integrated with market-rate housing.
- The ***commercial office portion of the project*** will pay the required Commercial Linkage Fee for office construction, which could generate up to \$87.6 million for affordable housing as Google builds out the 7.3 million gross square feet of office space.

The Development Agreement specifies that the City, subject to City Council appropriation of funding, will use a good faith effort to direct CLF generated from commercial development within the project site to the production of affordable housing on land transferred from Google to the City for affordable housing development and then to affordable housing production within the DSAP.

In addition to these required fees, Google will provide the following Community Benefits to increase the supply of new affordable housing (valued at about \$15 million dollars):

- Early dedication to the City of an additional 0.8-acre site located in the DSAP, outside of the Downtown West project. The City is recommending rezoning this site and, if approved, could allow for potentially 200 units of affordable housing.⁶
- Provide an additional 30 moderate-income units, integrated on-site within market-rate housing.

Overall, the project exceeds the City's baseline inclusionary housing requirements and supports the goal for 25% affordability for the Diridon Station Area through land dedication, use of fees generated by the project, and integrating affordable units on-site. The target is to provide 1,000 affordable units in the Diridon Station Area, based on 25% of the 4,000 units proposed by the Downtown West project. Of these units, roughly 600 units will be built on three sites dedicated by Google within the project site, and 200 additional units may be built on a site dedicated by Google outside of the project site (see footnote 6). Land dedication by Google and early release of three of these four sites allows the City to leverage external funding sources to achieve lower income limits (i.e., deeper affordability). Through the City's use of land dedication and fees and ability to leverage additional resources, the City is targeting 40-45% of the units built on dedicated housing sites to be available to extremely low-income households earning under 30% of the Area Median Income (AMI).

The total investment in new affordable housing **production** would be approximately \$183 million. In addition to production, the project would address affordable housing goals through investments in **preservation** and **protection** through a new fund, as described in the following section.

For additional information about the Affordable Housing plan, please refer to Development Agreement Exhibits C (Community Benefits) and D (Affordable Housing Program)

Community Stabilization and Opportunity Pathways (Community Benefits)

Consistent with community feedback and Council direction, the staff-recommended Community Benefits include a new "Community Stabilization and Opportunity Pathways Fund" (Fund). The Fund is a resource to *minimize displacement from rising costs* (Community Stabilization) and to *maximize opportunities for youth and adults to participate in job opportunities* through training education and support (Opportunity Pathways). The Fund recognizes that these challenges are systemic and interrelated. It would provide grants that are aimed at a measurable impact on community stability and economic opportunity for communities that have historically been

⁶ The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

affected by structural racism and where risk of displacement is the highest, including East San Jose and Greater Downtown.

Community Stabilization. In addition to producing new affordable housing, the Fund would apply to the following priorities articulated by Council and the community related to housing:

- Preventing displacement and homelessness through the preservation of existing affordable housing;
- Increasing services and shelter for people experiencing homelessness;
- Pursuing new models of community ownership; and
- Increasing protections for low-income renters.

Opportunity Pathways: Hand in hand with stabilizing housing costs, the City Council, SAAG, and public have generally agreed on the importance of helping San Jose residents of all skill and educational levels and diverse backgrounds to prepare for and secure good-paying jobs.

Accordingly, the Fund would support these priorities:

- Programs and services related to adult and youth occupational skills training;
- College/post-secondary scholarships;
- Career exploration for middle and high school youth;
- Early childhood education; and
- Small business and entrepreneurship support.

Contributions: The project would contribute \$21.20 per gross square foot of office to the Fund as office buildings are completed (up to \$154,760,00 million if the commercial office capacity of 7.3 million gross square feet is built out). For example, for a million square feet of office completed, the project would contribute \$21.2 million to the Fund.

Structure: The Fund structure emphasizes the importance of a decision-making process that:

- Balances technical expertise and lived experience;
- Amplifies local voices and empowers residents of impacted communities;
- Focuses on equity; and
- Provides a data-driven and transparent decision process.

The recommended structure features a third-party Fund Manager and a Community Advisory Committee, with City oversight and support. The Committee includes representation from local residents (representing the lived experience of impacted communities), direct service providers and other technical experts.

Following final approval of the Development Agreement, the City would need to adopt an ordinance to create the Committee. Next steps would be selection of Committee members and the Fund Manager. The Fund Manager would then work with the Committee to prepare a Five-

Year Strategic Plan for City Council approval. As contributions to the Fund come in, the Fund Manager would administer the grant-making process and recommend qualified grant recipients to the Committee for approval, consistent with the Strategic Plan. Putting decision-making authority in the hands of local residents and leaders to drive equity-focused outcomes is a unique model, compared to similar funds in the U.S.⁷

For additional information about the Community Stabilization and Opportunity Pathways, please refer to Exhibit H of the Development Agreement.

Early Payment (Community Benefit)

In addition to the Fund, as part of the Community Benefits, Google will make an early payment of \$7.5 million to the City for job readiness and community stabilization, in support of existing City strategies such as the City's Citywide Residential Anti-Displacement Strategies. Staff will make specific recommendations for the use of this early payment and Council will allocate the funds as part of the approval package.

The intent is to invest early in these two critical areas, ahead of office building completion (when the Fund will be set up and begin to receive contributions from the project).

For additional information about the Early Payment, please refer Exhibit C of the Development Agreement.

Additional Project Commitments to Jobs & Opportunity (Community Benefit)

In addition to improving opportunity pathways through education and job training through citywide programs, the MOU and community feedback encourage Google to directly advance economic opportunity through using progressive hiring practices, prioritizing the hiring of local residents, providing opportunities to local businesses, and offering programs that connect their employees to local youth. Accordingly, Google has committed to the following as discretionary project features in the Development Agreement:

- Prevailing wage for all on-site construction workers;
- 30% local hire goal for on-site construction positions;
- Ongoing collaboration with work2future and good faith efforts to hire local residents;
- Support for disadvantaged businesses through
 - Providing 10% business inclusion target for disadvantaged businesses, for commercial office building construction;
 - Working with vendors to secure ongoing service contracts for office buildings;
- Promotion of Google employee volunteer/mentorship programs;

⁷ This is based on research completed by Estolano Advisors, who worked with the City and Google to identify and evaluate potential fund structures.

- Career development workshops targeted for underserved communities; and
- Ongoing monitoring and reporting.

For additional information about Economic Opportunity, please refer to Exhibit G of the Development Agreement.

Parks and Open Space (Requirements/Project Features)

The community-driven goals for the public realm include a variety of publicly accessible amenities, including parks, open space, plazas, and trails; improving the connectivity of the open space and trail networks; activating public spaces through temporary and permanent programming; keeping new and existing spaces well-maintained, safe, and accessible; and ensuring spaces are welcoming to all.

Through a mix of discretionary project features and City requirements, at full buildout the project will provide up to 15 acres of open space, including 4.8 acres of improved public parks and trails (dedicated to, and operated and maintained by the City,) and approximately 10.2 acres of privately owned publicly accessible open spaces (where the ongoing maintenance and programming would be funded by the project applicant, rather than the City). These privately owned open spaces will have similar hours as City parks and will offer community rentals of reservable areas and year-round free programming.

The approach to open space emphasizes access and proximity across the Downtown West project, rather than concentrating all the open space in one area. This approach to public open space fits the urban context, provides safe and pleasant connectivity for bikes and pedestrians, and complements the other large open spaces in the vicinity.

For additional information about Parks and Open Space, please refer to the main body of the Development Agreement, and the Parkland Agreement (Exhibit E of the Development Agreement).

Transportation (Requirements/Project Features)

The shared goals in the MOU and community feedback both call for the project and City to:

- Create attractive, vibrant, and safe experiences for pedestrians and bicyclists;
- Provide multimodal connections to Diridon Station, Downtown, adjacent neighborhoods, and the open space network (Guadalupe River, Los Gatos Creek);
- Contribute to ambitious citywide targets for reduced car travel;
- Proactively manage car parking to adapt to changes in travel patterns, minimize land dedicated solely to parking, and encourage shared parking across the district;
- Provide convenient access to the SAP Center;
- Support a functional, accessible, and seamless public transit system for all users;

- Allow adaptability (accommodate future mobility options); and
- Facilitate a safe, operational transportation system during construction work.

Consistent with these objectives, the project includes multimodal transportation improvements throughout the project such as efficiencies to the street network, expanded sidewalks, bikeway facilities, electric vehicle charging stations, and dynamic lanes — flexible space that can be used for multiple purposes over time. These project features are reflected in the infrastructure plans and Downtown West Design Standards and Guidelines.

As part of the development review process, the City required preparation of a Local Transportation Analysis (LTA) to evaluate the project against City policies and identify any necessary improvements to the transportation system. As required by the LTA, the project will provide about \$30 million in improvements, including: complete street improvements along Barack Obama Boulevard, support for transit projects recommended in the Diridon Station Area Plan, multimodal improvements to Auzerais Avenue, and \$10 million for local needs identified in future Focused LTAs. These will be documented as Conditions of Approval for the project.

Also consistent with City policies, the project will provide shared, publicly available parking in conjunction with commercial development (4,000 spaces at full buildout). Residential parking will be rented or sold separately to lower housing costs for those who choose to live without a vehicle.

As part of the environmental requirements, the project will prepare a Transportation Demand Management (TDM) plan to manage traffic and emissions, limiting solo occupancy vehicle trips to a maximum of 35%, with penalties up to \$5 million per year for non-compliance.

The Development Agreement also provides for coordination with the ongoing Diridon Integrated Station Concept Plan (DISC) effort. This includes:

- Reinforcing shared MOU goals and ongoing collaboration;
- Establishing a Transit Project Buffer Zone in anticipation of land that may be needed to construct rail improvements; and
- Including provisions on temporary construction easements, long-term park use, and community benefit implications.

For additional information about Transportation, please refer to the main body of the Development Agreement and Exhibit K.

Environmental Sustainability, District Systems, and Ecology (Project Features)

Community input for the project also included advancing the City's sustainability goals: supporting the "Climate Smart San Jose" Plan; reducing greenhouse gas (GHG) emissions;

adhering to LEED Gold or Platinum standards for green building; serving as a model for eco-district planning, design, and implementation; exploring a district systems approach; and restoring and enhancing the wildlife habitat, water quality, and flood protection of the creek corridors.

Consistent with the MOU, the City and Google have studied a district-wide program of shared utilities. As a voluntary project feature, the Google proposes a sustainable "District Systems" approach to the provision of certain utilities, such as energy (heating and cooling), electricity (microgrid), wastewater treatment, and recycled water.

The project documents subject to City Council approval will incorporate City goals related to District Systems to ensure proper design review, permitting, and oversight of the onsite wastewater treatment and electrical infrastructure; continuity of District Systems services; properly maintained and operated infrastructure, and rate equity.

In addition to District Systems and meeting existing City Green Building Codes, discretionary project features related to sustainability include:

- Zero net new greenhouse gas emissions during construction and 30 years of operations;
- Enhancements to the riparian habitat;
- Design for bird safety and night sky controls;
- All electric development;
- 2,200+ new trees;
- 100% native plant palette;
- Replacement of San Fernando Bridge to reduce flood risk;
- 7.8 megawatt of on-site solar energy production; and
- Designed to be eligible for LEED-ND Gold certification

Through these environmental requirements and commitments, the project would set a new standard for climate action and ecological enhancements.

Historic Preservation (Project Features)

The MOU and community feedback include the goal to preserve and integrate historic and cultural assets into the project design to reinforce the identity of the area. Discretionary features of the project include retaining, relocating on-site, or partially salvaging six of the nine historic resources under CEQA. The resources to be retained and repurposed include the San Jose Water Company Building (374 W. Santa Clara Street); Kearney Patternworks and Foundry building (40 S. Montgomery Street); and Hellwig Ironworks building (150 S. Montgomery Street). A grouping of three Victorian bungalows on Julian Street (559, 563, and 567 W. Julian Street) and the Stephen's Meat Products sign would be relocated on-site. Portions of the facade of the Sunlite

Bakery Building (145 S. Montgomery Street) would be salvaged and incorporated into the project.

As required by the EIR, the other three historic resources would be available for others to purchase and relocate. In addition to the CEQA historic resources described above, the project will also relocate the buildings at 35 S. Autumn Street on-site; support the relocation of the building at 91 S. Autumn Street (Poor House Bistro) off-site; and support the relocation costs of other on-site structures of merit (including eligible) to off-site locations, if property owners elect to receive them, up to the equivalent cost of demolition.

Community Benefits Valuation and Timing

In determining the valuation of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City's actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. Consistent with the MOU framework, the following costs are not considered Community Benefits: costs required to mitigate impacts under CEQA; costs associated with project design, project elements, or other improvements proposed by Google as part of its development; and costs incurred to meet City standard requirements, conditions of approval, fees, or taxes.

The following table illustrates the value of the Community Benefits by category. One of the distinguishing factors of this agreement is that all Community Benefits are focused on equity and are directed at low-income individuals, in the form of related anti-displacement and opportunity components. Other Development Agreements tend to focus the Community Benefits on parks and sustainability. This Development Agreement achieves parks and sustainability goals, but as part of meeting baseline requirements or voluntary project features, not as Community Benefits. Some of the Community Benefits will be delivered early on, while others are tied to the development of office space and will be delivered over time.

	Community Benefit Value (at 7.3M GSF)	\$/per GSF of Office	Timing
Community Stabilization and Opportunity Fund	\$154.8 Million	\$ 21.20	As office gets built
Early Payment for Job Readiness and Community Stabilization	\$7.5 Million	\$ 1.03	120 days after Final Approval*

30 Additional Moderate-Income Units	\$7.0 Million	\$ 0.96	With market-rate residential development
Land Transfer to the City (0.8 acres for consideration of affordable housing) ⁶	\$8.4 Million	\$ 1.15	3 months after Final Approval*
Currently Unallocated Community Benefit Commitment	\$22.3 Million	\$ 3.06	As office gets built
TOTAL	\$200 Million	\$ 27.40	

* "Final Approval" means following City Council approval of the project documents and resolution of any legal challenge to those approvals.

At full buildout, the total amount of Community Benefit contributions is expected to be \$200M on top of more than \$1 billion in voluntary project features proposed by Google. As previously described, these project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free programming; and more.

Oversight and Performance

The Development Agreement is legally binding and enforceable and requires an annual review of the performance and compliance by the Planning Director and a report to the Planning Commission. The City cannot force Google to build, but the Development Agreement includes requirements for performance to maintain Development Agreement rights, including milestones at 10 or 20 years, which respectively require completion of 2 and 4 million GSF of office *or* payment of Community Benefits on the equivalent amount of office. In addition, Google is limited to transferring office development rights/land to no more than 40% of constructed office square footage to ensure growth of jobs and tax base.

NEXT STEPS

The City released the staff-recommended Development Agreement to the public on April 6, 2021. The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14, 2021 and a Community Meeting on April 17, 2021 to review and discuss the Development Agreement. The public may also comment on the Development Agreement using

an online tool. Staff will provide all feedback received to the Planning Commission and the City Council, for their consideration. Visit <https://www.diridonsj.org/> for more information.

/s/

Nanci Klein

Director of Economic Development

For questions, please contact Nanci Klein at (408) 535-8184.

RESOURCES

Project Webpages

- [Google Project Website - Application Documents and City's Review Process for Downtown West Project](#)⁸
- [Google's Project Webpage](#),⁹ - Social Infrastructure Plan, video, and other information

Shortcuts to Project Documents

- Staff-recommended Development Agreement
- [Draft Environmental Impact Report \(DEIR\) for the Downtown West Project](#)¹⁰

Community Engagement Materials (2018-2020)

- [Diridon Station Area Civic Engagement Report \(2018\)](#)¹¹, including list of Desired Outcomes for the six topic areas
- [Fall 2020 Community Engagement Info and Summary of Feedback Received](#)¹²
- [Information about Google's Updated Submittal for the Downtown West Project, Including Background Presentations by the City \(Process\) and Google \(Design Standards and Guidelines\)](#)¹³
- [Video](#)¹⁴ (timestamp: 7:30 to 53:30): presentation from the Downtown West Community Meeting on Oct. 19, 2020
- [Downtown West Community Meeting \(October 19\) Materials](#)¹⁵
- Presentation for City Council Study Session (November 16, 2020)

⁸ www.sanjoseca.gov/GoogleProject

⁹ <https://realestate.withgoogle.com/sanjose/>

¹⁰ <https://www.bit.ly/GoogleProjectEIR>

¹¹ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

¹² <https://www.diridonsj.org/fall2020>

¹³ <https://www.diridonsj.org/fall2020-google>

¹⁴ <https://www.youtube.com/watch?v=ddmcFntNG7A&feature=youtu.be>

¹⁵ <https://www.diridonsj.org/general-events/community-meeting-downtown-west-fall2020>

HONORABLE MAYOR AND CITY COUNCIL

April 6, 2021

Subject: Staff-Recommended Draft Development Agreement for Google's Downtown West Project

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- [Summary of the City's 2018 Community Engagement Process](#)¹⁶

Related Plans

[Citywide Residential Anti-Displacement Strategy](#)¹⁷

[Draft Amended Diridon Station Area Plan](#)¹⁸

[Draft Diridon Affordable Housing Implementation Plan](#)¹⁹

General

[Background Information](#)²⁰

[FAQs, Info Memos, and Other Resources](#)²¹

[Station Area Advisory Group \(SAAG\) Webpage](#)²² with past meeting materials

¹⁶ <https://www.diridonsj.org/archive>

¹⁷ <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/citywide-anti-displacement-strategy#:~:text=By%20focusing%20attention%20on%20Production,greatest%20asset%20%2D%20its%20existing%20residents>

¹⁸ https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5f9783e6506bd2232c50f52e/1603765259907/20201026_D_SAP_Report_web.pdf

¹⁹ <https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5fa9c16b09511e6a4e5a07b4/1604960644280/Draft+Diridon+Affordable+Housing+Implementation+Plan.pdf>

²⁰ <http://www.diridonsj.org/diridon-station-area-plan-google-project>

²¹ <https://www.diridonsj.org/resources>

²² <http://www.diridonsj.org/saag>



Diridon Station Area Advisory Group (SAAG) Draft Meeting Notes | April 14, 2021

Date + Time *April 14, 2021 | 6:00 PM*

Location *Zoom Webinar – Virtual Meeting*

Meeting Objectives

- *Provide a brief update on the Diridon Station Area engagement process.*
- *Review and discuss the staff-recommended Draft Development Agreement for the Downtown West project.*

AGENDA

1. Welcome and Introductions
2. Meeting Minutes from SAAG Meeting on November 9, 2020
3. General Process and Community Engagement Update
4. Downtown West Development Agreement
5. Public Comment
6. Adjournment

ATTENDANCE

SAAG Members: 26 of the 38 SAAG members were present at the meeting (*please see the Meeting Minutes posted to the project website for the names of SAAG members that were present*)

City Staff/Presenters:

- *Lori Severino – Diridon Program Manager*
- *Nanci Klein – Director of Economic Development*
- *Rosalynn Hughey – Director of the Planning, Building, and Code Enforcement Department*
- *Robert Manford – Deputy Director, Planning Building and Code Enforcement*
- *Tim Rood – Planning Division Manager*



- John Tu – *Planner IV, Planning Division*
- Jose Ruano – *Planner II, DSAP Project Manager*
- James Han – *Planner II, Planning Division*
- Nicole Burnham – *Deputy Director of Parks, Recreation, and Neighborhood Services*
- Jessica Zenk – *Transportation Deputy Director*
- Eric Eidlin – *Station Planning Manager*
- Rachel VanderVeen - *Deputy Director, Housing Department*

Consultant Team:

- Dave Javid, Paul Kronser and Suhaila Sikand (*Plan to Place*)
- Matt Raimi and Diana Benitez (*Raimi + Associates*)

Public: There were approximately 70 members of the public present at the Zoom call, or via the local public broadcasting or YouTube Live.



MEETING SUMMARY

The primary agenda items were to provide a brief update on the engagement process and to review and discuss the components of the staff-recommended Draft Development Agreement for the Downtown West project. Nanci Klein welcomed everyone to the meeting and Dave Javid, from Plan to Place followed with approval of the last SAAG meeting minutes (November 9, 2020) and Agenda Overview. Staff then gave a presentation, followed by a round of comments and questions from SAAG members. Staff responded to questions and reiterated appreciation for the SAAG's time and input. The meeting ended with public comments and adjourned around 8:20pm.

The full set of meeting materials, including the agenda, presentation, video recording, draft minutes, and information distributed in advance, are available at: www.diridonsj.org/saag. Background information about the Development Agreement and [Frequently-Asked Questions about the Downtown West Project \(April 2021\)](#) are available at: www.diridonsj.org/downtownwestda.

SAAG Discussion

The following summarizes the SAAG comments following the presentation. Responses to questions by City staff are represented in *italics* below.

- For years the Sharks have supported the DSAP vision and we signed a letter of intent to work towards development. We were under the assumption that the development agreement would protect parking. We have provided comments to advocate for the preservation of existing access and parking and to protect the arena during construction. None of our requests have been taken into consideration, and we feel the development should not proceed at the cost of the arena. We cannot support the project as currently proposed.
 - *Nothing has changed the fact that the Sharks are incredibly important to San José. Our teams have been working to find very solid ways for patrons to get in/out of the arena. We value the Sharks as partners, so we can come to a place where we will all be happy. [See the [Frequently-Asked Questions about the Downtown West Project \(April 2021\)](#) for more information].*



- I appreciate the collaborative nature of this whole process and the commitment made to Transit Oriented Development (TOD). This aligns with the High Speed Rail (HSR) statewide plan to build housing around our stations. We look forward to continuing to work together to implement our project and others in the Diridon Area.
- Thank you to the Google and City staff for coming together to create a Development Agreement (DA) of this caliber. I am delighted and anxious to welcome Google and their development to my neighborhood. Google is setting a top notch standard for design, infrastructure, fee structure, and community outreach. I hope the City will require the same thoughtfulness and standard for all developers in the DSAP area. Generally, a project's feasibility is based on how strong the financial benefit is for the developer. We must remember the impact development has on our neighborhoods and ensure that high design standards are applied to the whole DSAP.
- Thank you Google for all the time spent walking the neighborhood and getting to know us as people and create an agreement that includes us in the design scheme. Hopefully other developers will be held to the same standards. I would like assurance that the community benefit funds won't get lost in the paperwork as staff and direction changes (e.g., different council members, mayor). How can we can guarantee City oversight for this fund?
 - *The DA is legally binding. There will be an annual performance review that goes to the Planning Commission. The specifics you heard are embedded in DA. You can read DA and exhibits - there is an index to help you. We share your concern about oversight. We need to make sure that as staff and council changes, the DA moves forward as intended. We appreciate the comment and it will be taken to Council. There is a lot of work on Anti-displacement including City policies, eviction moratoriums, and how the stimulus fed dollars are used. There will be an intensive effort going forward for that. Staff acknowledges that this project raises all boats and expectations of what is possible in San José.*
- I am excited to see this DA, and that the community would be the lead in Fund decision making. I am glad that the Fund is focusing on anti-displacement. COVID has exacerbated the existing housing deficit and disproportionately impacts low-income residents. We have seen 21% increase in the demand for our services (Law Foundation of Silicon Valley). Thank you to the City and to Google



for your hard work and looking forward to seeing this move forward!

- Thank you Google for committing to an integrated agreement. The DA offers a good start to parks and trails and I am hoping for additional money to be put toward surrounding neighborhood improvements if there isn't enough space within DSAP. I would like to ask the City to hold other developers, especially within the DSAP, to the same standards to which Google has been held, and to make sure the standards to which Google is being held are maintained, particularly for parks. Thanks to the Sharks, we really want to support them, and the surrounding neighborhood equitably, so the traffic management plan should consider impacts.
- Thank you to the City for listening and engaging in dialogue. Listening is key in this process. As we move to the next round, please involve the Community Land Trust, which supports community dialogue and empowerment. Please continue to center the voices of the people that are most impacted and draw on the living experiences of people. Those closest to the pain are closest to the solution.
- Residents are excited about this project and we have great support from City staff and the Department of Transportation. I would request that all parties consider that our impact zone extends outside of the DSAP boundary. For example, mitigating traffic intrusion issues, such as those on Laurel Grove and Bush. Let's make sure that these continue to be monitored and considered. We appreciate being heard and seeing the change occur.
- I commend Google and City Staff for their leadership and patience. This process has effectively integrated competing interests. We have supported the project from day one. This is a significant investment that will go beyond the City's benchmarks for housing and open space, and the agreement will be a paradigm for other cities. I appreciate the efforts to provide connectivity and the \$10M set-aside for transportation is good. We are a business focused organization (San José Downtown Association), and also understand the need to include systems that support business such as housing, open space, etc. Regarding the community benefits, we think job education, training, and employment opportunities are a priority. We have 30 years of supporting small businesses in the downtown core and can be a key partner in this business stabilization endeavor. Re-training workforce will be important as well as bolstering current business operations.



- San José State has been downtown San José's largest employer and largest landowner, and the City's public university, transforming students' lives in San José and Silicon Valley for over 150 years. SJSU would welcome Google's presence in downtown San José to further transform the city into a destination where all of us can work, live, play and grow.
- I want to commend the City and Google for driving this thoughtful process; it has resulted in a vast Community Benefits package. I continue to support this TOD.
- These development standards should be the norm for the City, they are top notch. Can we get clarification on the Mayor's comments that the depot is going to be relocated? I appreciate Google's willingness to work with the broader community, which needs to encompass all areas. I look forward to the next phase of community involvement.
 - *The historic depot is a gem - many people love it. To date, only conceptual work has been done, which shows us that we really need to rethink if the station can operate at the level it should and if we can leave it where it is. The next step is to get into much more detail and consider options such as re-location or keeping it in place. This study has not yet been done, but will be done in the future. [Note that since the meeting, the City has worked with Caltrain to add a response to this question in the [Frequently-Asked Questions for the Diridon Integrated Station Concept Plan.](#)]*
- I am excited for this agreement, and think the community benefits are well thought out. This proposal does a great job with community stabilization to help prevent displacement and focus on connections. Prioritizing community input as part of the process can inform future partners and will be a continuing resource. I hope we can work with Sharks and come to an agreement.
- I would like to acknowledge union members and working members who have showed up to make their voices heard. Google and the City listened and as a result there are significant benefits for community and working people including commitments to high-quality blue-collar jobs. The question I've had throughout the process is, will people who build and work on the campus be able to live in San José? I am happy to see that there's commitment to make that happen. Thanks for hearing our voices, we've created something special and it should be a model moving forward.



- Thanks to the City and Google for working with us and all surrounding stakeholders.
- We wanted to make sure decision makers were listening and that this project would be a model for the region and country. Thousands of people showed up and spoke up, and what we heard today is that the City listened. I echo that tenant education and organizing is critical and should be considered for allocation of the early money.
- We are excited about the housing components. The 4,000 new homes will help jumpstart housing across the area and create a vibrant neighborhood. I like that Google worked with the City to meet the 25% affordability goal and are excited to see 1,000 deed-restricted homes. We like the approach of combining some on-site units and dedicated parcels, so the City can reach deeper levels of affordability and bring some of the affordable homes online as soon as possible. Getting parcels early is a great opportunity to leverage Measure A funds and get homes for some of our most vulnerable neighbors. The community benefits package will be a tremendous resource to respond to needs of tenants, support preservation, and help counter displacement pressure – including beyond Google’s footprint. We are also supportive of staff’s DSAP Amendments, which will help us get to our goal of 15,000 new housing units over the station area. This will require ongoing work and continued community engagement to meet our goals. We are committed to staying involved as a partner.
- I offer strong support for the package outlined today. The community benefits package is a model for development in the tech sector for community displacement and creates power structures for those to have a voice in these strategies. This is an enormous opportunity to do something that hasn't been done before. It is smart to invest in anti-displacement activities. Providing access to legal services for eviction, and access to state/federal resources to prevent eviction is essential.

PUBLIC COMMENTS

The following is a brief summary of public comments following the SAAG discussion.

- I am concerned that the Chicano community has not been articulated in these conversations. Silicon Valley Rising and SOMOS are not representative of Latinos. The property that Google bought from the city is not legitimate and historic redlining denied people of color access to this area. Mexicans were not allowed equal protection under the law.



- I appreciate the presentation and questions on the DA and city fees. I have reviewed the project and believe that Google and the City have been listening.
- I would like a better understanding of the Sharks' parking requests. It is great news if the Depot can be saved. I would stop planning for two high speed rails underground in Downtown West, they require more than 2 months to construct.
- I see a lot of large mega projects and this one is the cream of the crop. The SAAG, City staff, and community have put in a lot of work. The significant community benefits package, infrastructure, and affordable housing at no cost to the City is a once in a lifetime transformative proposal. This should be a standard, but may be hard for other private developers to meet.
- Having a union job with awesome healthcare has made such a difference in my life. Google's commitment to quality service jobs and affordable housing is appreciated. It means service workers like me can have a stable life in San José!
- How will the historical neighborhood going up in the Stockton Avenue area work? The future potential of high speed rail going through Alameda County is an interesting concept. Do the heights of buildings account for the southern flyaway area? I don't think those can be over 120-150'. Height has been an issue in the past. Regarding the East side, this is similar to the Vancouver downtown.



San José Diridon Station Area

COMMUNITY MEETING SUMMARY

Date and time: April 17th, 2021, 10:00am - 12:00 pm

Format: Zoom Meeting

Purpose: to share information and receive comments on the Draft Development Agreement for Google's proposed Downtown West project

Agenda:

1. Welcome, Interpretation, and Live Poll
2. Introductions and Agenda Overview
3. Staff Presentation on the Draft Development Agreement:
 - a. Background + Context
 - b. Development Agreement overview
 - c. Affordable Housing
 - d. Community Stabilization and Economic Opportunity
 - e. Parks/Open Space
 - f. Transportation
 - g. Environmental Sustainability and District Systems
 - h. Historic Preservation
 - i. Community Benefits Value
4. Participant Small Group Discussions facilitated by the City's community partners: SOMOS Mayfair, African American Community Service Agency (AACSA), and Trinity Episcopal Cathedral
5. Report-back and Wrap-up

Project Team Members in Attendance:

City Staff/Presenters

- Nanci Klein – *Director of the Office of Economic Development (OED)*
- Lori Severino – *Diridon Program Manager*
- Rosalynn Hughey – *Director of the Planning, Building, and Code Enforcement Department*

- Bill Ekern – *Diridon Project Manager, OED*
- Tim Rood – *Planning Division Manager*
- John Tu – *Planner IV, Planning Division*
- José Ruano – *Planner II, DSAP Project Manager*
- James Han – *Planner II, Planning Division*
- Rachel VanderVeen - *Deputy Director, Housing Department*
- Nicole Burnham – *Deputy Director of Parks, Recreation, and Neighborhood Services*
- Eric Eidlin – *Station Planning Manager, DOT*
- Lori Mitchell/Matt Cano - *District Systems*

Consultant Team

- Dave Javid, Paul Kronser - *Plan to Place*
- Diana Benitez, Alessandra Lundin, Wenhao Wu – *Raimi + Associates*

Community Partners

- Oliva Ortiz - *SOMOS Mayfair*
- Matt Gustafson - *SOMOS Mayfair*
- Andrea Portillo - *SOMOS Mayfair*
- Lupe Guerrero - *SOMOS Mayfair*
- Oladotun Hospidales - *African American Community Service Agency (AACSA)*
- Steve Sosnowskli - *Trinity Episcopal Cathedral - Downtown*

Link to slideshows: [Presentation](#) (English), [Presentación En Español](#) (Spanish), and [Trình bày tiếng Việt](#) (Vietnamese)

Link to outreach flyers: [English](#), [Folleto en español](#) (Spanish), [tiếng Việt](#) (Vietnamese)

MEETING OVERVIEW

On April 17th, 2021, the City of San José hosted a virtual community meeting to share information and receive comments on the Draft Development Agreement for Google's proposed Downtown West project. The meeting offered live interpretation services in Spanish and Vietnamese. Approximately 50 community members attended the meeting.

Dave Javid (Principal with Plan to Place, City's consultant) welcomed the meeting participants, made an announcement about live interpretation, and conducted a live poll. Nanci Klein (City's Director of Economic Development) introduced the project team and agenda. Staff then gave a presentation about the Downtown West project.

After the presentation, meeting participants were evenly distributed into five virtual break out rooms or small groups, for a facilitated discussion. Each group was facilitated by a member of the Community Partners that received grants to help the City with outreach and engagement over the last year. One of the breakout rooms was one held in Spanish.

Following the Small Group Discussions, facilitators reported back to the main group the key themes and takeaways that were discussed. Dave Javid then noted the upcoming meetings, including the Planning Commission Meeting on April 28th and the City Council Meeting planned for May 25, along with resources available on the project website (www.diridonsj.org).

After the meeting, the City posted [Responses to Frequently-Asked Questions on the Downtown West project \(April 2021\)](#), which address many of the questions raised at the Community Meeting. Other resources include:

- [Draft Development Agreement](#) (April 2021)
- [Info Memo](#) on the Development Agreement (April 2021)
- [Planning Commission Staff Report for the Downtown West project](#) (April 2021)
- [City's Google Project page](#) with all project documents and information about the City's review process
- [Google's Downtown West Project website](#)

Community members are encouraged to email the project team with any remaining questions:

- Lori at lori.severino@sanjoseca.gov for questions related to the Downtown West Development Agreement or community engagement questions
- James at james.han@sanjoseca.gov for other questions related to the project and the City's review process

POLL RESULTS

The live poll included demographic questions, a question about the topics participants were most interested in, and a question about participants' understanding of the project and previous engagement. The following is a summary of the poll results (see full results in the appendix below):

- 19% of respondents said they had not participated in previous Diridon Station Area engagement events over the past 3 years, while 31% said they had participated in “many” activities and another 44% said they had attended 1-4 events. The remaining 6% said they had not attended any events but had completed online surveys or feedback forms.
- 50% of meeting participants live in the Diridon Station Area and 33% said they live in another San José neighborhood.
- The most represented age group was between the ages of 25 to 44 (50% of respondents).
- Topics of interests that meeting participants were most interested in learning about included Anti-Displacement/Community Stabilization (50%) and Affordable Housing (22%).

SMALL GROUP DISCUSSIONS

During the Small Group Discussions, community members were encouraged to ask questions and offer comments on the presentation and Draft Development Agreement. The facilitators used the following discussion prompts:

- What do you think overall?
- Which types of strategies, programs, or outcomes would you prioritize to support job readiness and community stabilization using the early payment of \$7.5 million?
- What are your thoughts on the Fund concept, including the third-party manager structure and the composition of the Community Advisory Committee?

The following is a summary of all comments and questions received across the five groups (x # indicates comments that were shared by multiple participants).

1. What do you think overall?

Support for Project and Process

- a. Good presentation, goals, principles and context. This is a good start, commend the City for getting the project moving so quickly and listening to the concerns about displacement. **x3**
- b. Credit to City and Google in engaging and developing a plan that is good for the city and Downtown. **x2**
- c. Continue to build accountability with meetings to inform the community on progress, decisions made, and any potential changes from the original plan. **x2**
- d. Google has been very good at engaging, walking neighborhoods as volunteers. Their engagement should be the norm for community engagement, not the exception. Others coming into the Diridon area should take the same approach.
- e. Appreciate the City efforts on communicating the plan.

Remaining Concerns

- f. Still hearing high-level information about this complex and extensive program and would like to see more about district-scale utilities and how it will work, and where that infrastructure will be in the Plan Area.
- g. Concerned that issues in the neighborhood are not being addressed including: food growth, housing, low park space and public access.
- h. In general, climate change does not have a voice. All of the undeveloped land should be food production.
- i. Chicanos are not represented in the Development Agreement.
- j. Concerned that the riparian corridor and public parks maintenance will fall on the City, not Google. Afraid this will lead to public parks deteriorating while private areas will be maintained. Parks should be maintained as well as or better than Google spaces.
- k. The Parks + Open Space plan does not have enough parkland or open space, which appears to be a form of discrimination. The concept of private pay to play is not OK.

- l. Concerned that a similar experience will happen as when Facebook moved into Palo Alto and people were being judged on how they looked.
- m. All real estate listings mention Google is coming which is causing a massive displacement, which is really happening.
- n. Make sure there is flexibility in what can be built.

Other Questions and Suggestions

- o. Seen the economy bump up with affordable housing being built. When employees come from Google, will they be first in line for new housing? Or will it be for anyone?
- p. What does affordable housing look like 20 years down the road?
- q. What are the types of programs and opportunities for local students and pipeline from, for example, San José State into the workforce?
- r. How do the transportation programs relate to the equity goals? How will transportation benefits go to all? And when will this occur in the process? For example, usually transportation benefits go to full-time employees and not necessarily employees in retail, janitorial, or contract work.
- s. If employees don't work directly for Google but are contractors (e.g., janitorial staff), will they be able to get these benefits? Ideally everyone who works in the area will have the ability to get a transit pass. Would like to see more commitment on transit passes.
- t. Look at unintended consequences on existing communities (e.g. displacement) as we see an influx of high-paying jobs.
- u. Placemaking - there are a lot of little things, but how does the project make this a district? How to encourage culture and identity? How to brand this area as distinct?
- v. Can you explain the oversight performance slide - Google can transfer 40% of constructed sq ft?
- w. Is there any research done on big companies investing in other areas, such as Urban Villages? Micro HQs can be spread throughout the city, so people don't need to commute as far.

2. Which types of strategies, programs, or outcomes would you prioritize to support job readiness and community stabilization using the early payment of \$7.5 million?

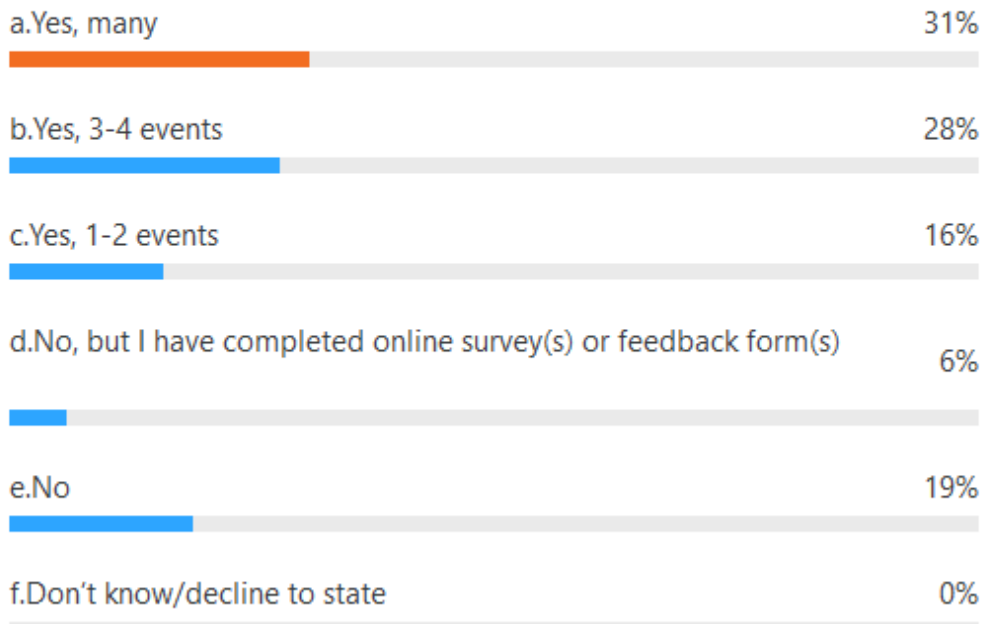
- a. Make sure that undocumented folks have access to resources. **x3**
- b. Would like for the first round of funding to focus on legal services for tenants facing eviction, community land trust, tenant education and organization. **x2**
- c. Housing support is needed for the most vulnerable. **x2**
 - i. To pay back rent and overdue utility bills
 - ii. To build truly affordable housing (low-income and homeless communities)
 - iii. To support rent stabilization and long term leases all around the City - not just rental speculation
 - iv. For tenant services and maintenance
 - v. For rent forgiveness
- d. Job training **x2**
 - i. There should be job training and it should start at the core of where poverty begins. Without a job, you can't keep paying rent and without rent you can't keep a job. Small programs are needed to start, and a plan to approach large corporations is needed.
- e. It is important to educate and inform the Latino community to get vaccinated. Vaccines and resources should be accessible via transit or available in various locations. We must think about access for these programs.
- f. The funding decisions need to be outcome oriented and to see the connections, such as support for job readiness.
- g. Would like to see a museum built to memorialize the progression of what has happened in the City.
- h. Public school facilities and funding tends to fall through the cracks because kids don't have stability at home. Added funding for after school activities would help.

3. What are your thoughts on the Fund concept, including the third-party manager structure and the composition of the Community Advisory Committee?

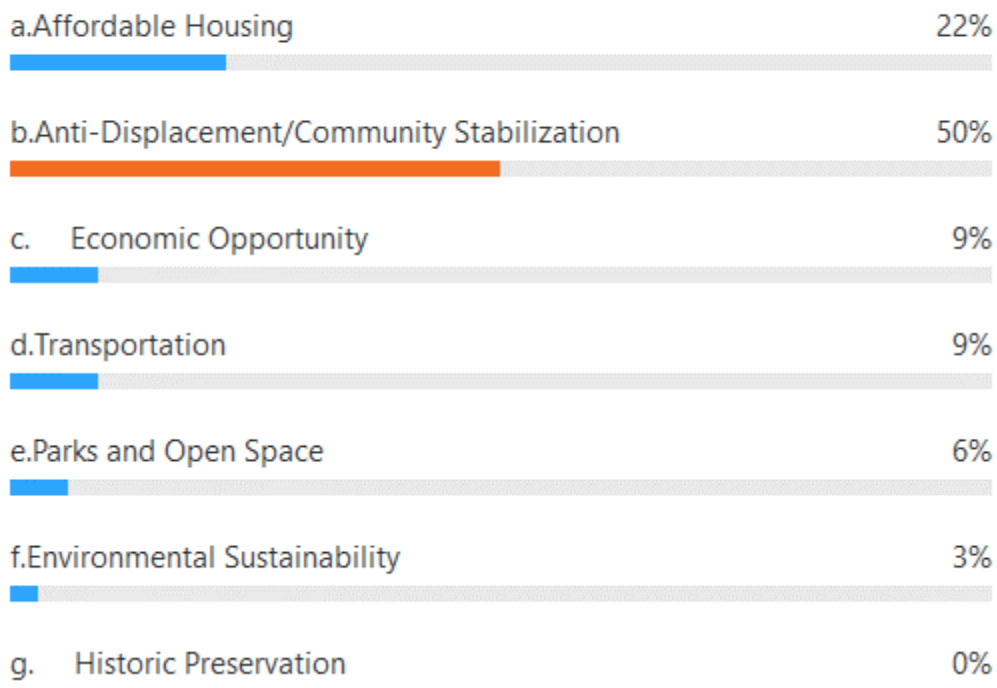
- a. Make sure to select the right people for the committee and that they actually think about the most vulnerable. This includes people with lived experience and community organizations (e.g., LUNA and Somos Mayfair)
x2
- b. This is the largest fund for the community in this region. Great to see this rare opportunity of community empowerment.
- c. There is hope that the first leg of the early funding will directly support the community and that a fund manager will be responsible for working with the committee to make decisions.
- d. Non-profits will garner political and financial power through this process.
- e. The Fund concept should not to be influenced by politics and be ethical:
 - i. There may need to be training of the community advisory committee on ethics.
 - ii. Make sure that these committee members are not influenced by external administrators or by non-voting members.
- f. We would like to see developers add to the fund to continue supporting the low-income communities.
- g. Question about the diversity of voices on this committee - Will there non-voting members, for example one from Google? Would there be possibility to have local community organizations to have non-voting members?
- h. This process must be open and transferable, so diversity is upfront.
- i. How long will it take to distribute the \$154 million into the Fund?
- j. What is the role of the external Fund administrator?
- k. What made the City decide to hand over decision-making to the community and are there concerns about implementation?
- l. Were there lessons learned from composition of the SAAG that could inform the committee selection?

APPENDIX - Live Poll Results

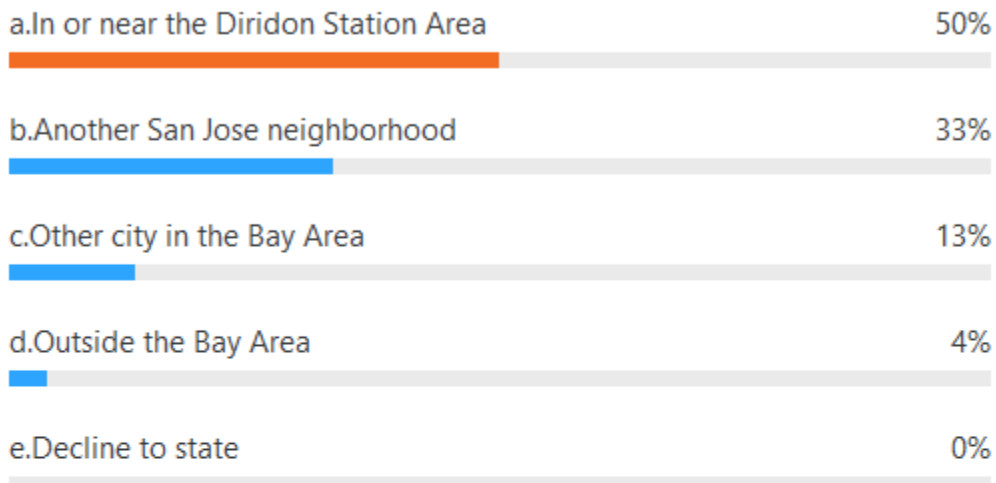
1. Before tonight, have you participated in previous Diridon Station Area engagement events in 2018-2020?



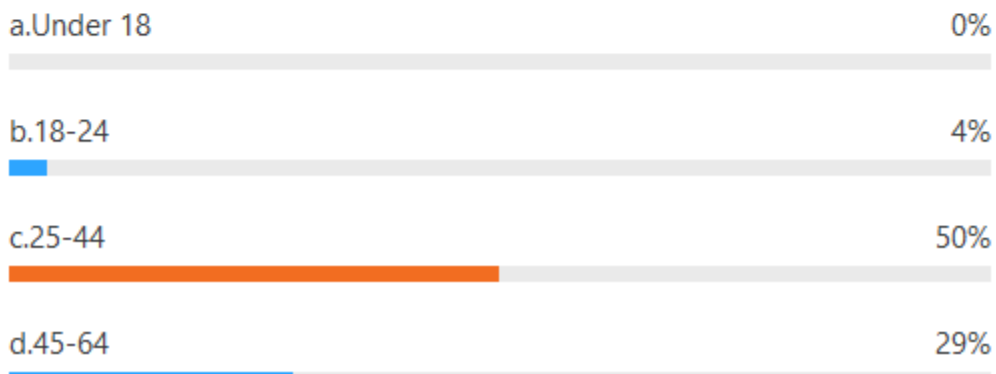
2. Which of the following topics are you most interested in?



1. 1.Where do you live?



2. 2.What is your age?



SJ DIRIDON | Website Comments

Downtown West Development Agreement

Comments Received as of 5.10.2021

I am concerned that the proportion of space allocated for non-office and non-residential space is too low, this includes other commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space. In the current plan there is more than 10x office space compared to all of these other uses combined.

In order to be part of the surrounding community, we need more space for these diverse uses. Google employees eat breakfast lunch and dinner in private cafes on their other campuses, and have bikes maintained by private mechanics, and massages by private masseuses. We need integration with the community as opposed to walls between employees and non-employees. We need opportunities for small businesses to exist and compete as opposed to food provided for free by giant contracted catering companies.

Have we explored opening access to these private cafes, or otherwise ensuring that employees are incentivised to use community cafes and services?

Hi,

"In the Draft document; it highlights the zoning allocated for housing including where affordable housing is located.

I would like to highlight that the affordable housing is not appropriately spread over the area at all (DSAP).

It all gets located into a small area by San Carlos / Bird with about 1700 units (constructed and planned to be) !

H6 + H5 + H1 (600units)

Delmas Park (123 units)

Park / McEnvoy (330 units)

777 park avenue (182 units)

MyEnvoy (365 units)

777 West San Carlos St (149 units)

750 West San Carlos (79 units)

There is pretty much no unit planned north of the area which are within the DSAP boundary (except few part of the "400 units" which are "still" mostly within the same San Carlos / Bird area).

Having proper mix of housing make sense and shouldn't be concentrated within the same area"

Great plan!! Let's get the Google project in San Jose started ASAP before Bay Area lose another high-profile company to another state (ex: Texas)!!

Can the google development FIX Stockton avenue as the gateway to the google village I.e. traffic calming , roundabouts, tree lined median to stop the speeding etc .

Very pleased with this plan, let's get it out in place!!

My family is concerned about the large concentration of social housing units (1000 from google, and additional ones from City) being planned and already in place in the area surrounding Diridon station. We feel it will present too much additional load on already poorly graded public schools in our area (Meritt Trace Elementary 4/10, Herbert Hoover Middle School 3/10, etc) which will motivate a family like ours to move out to areas with better public schools.

We are also concerned that the large concentration of social housing in one relatively small area would lead to the formation of NYC style housing projects with the associated crime, poverty, and economic deterioration since middle class families will gradually abandon the area due to safety and quality of life concerns.

I would like to see San Jose focus on improving its economics fundamentals by attracting employers to San Jose which will lift the entire area by providing jobs across all tiers and a strong tax base for the city. Instead it seems that San Jose is trying to make it difficult for companies to come here, creating multiple hurdles from well intended concerns. Lets stop doing that. We cannot feed and house the needy if we don't have money from the tax base..

As a long time SJ resident, I would to thank everyone for their effort and let's get this project done in no time.

Thanks for taking my comments. I am concerned that the land that is being dedicated to the city for affordable housing is only being zoned for mid-rise development. I am not sure how the city would be able to build to 300 dwelling units per acre on this land if it is zoned for mid-rise development. Please consider changing the planned development to allow high-rise develop on these blocks so that the maximum amount of affordable housing can be built.

Thanks and cheers,

Considering the areas that are set aside for affordable housing, and the discussion regarding Community Land Trusts, would it be possible to transfer the cost of the land (arguable the highest cost) to the City as City-owned land, and, instead, create a Community Building Trust?

Considering the Singapore-model of public housing, imagine that the land would be City-land. A mixed-use building on the lot, however, would be long-leased to a Community Trust with members consisting of unit-owners residing in the building. This would be a blend between traditional public housing, the Singapore-model of 99-year leases in public housing, community land trusts and traditional apartment building co-ops.

As the area is stepping closer to approval, the City should jump further ahead to the physical elements possible to prevent displacement, increase housing supply, and enable San Jose residents to generate wealth within the City.

Sincerely,
Nam Nguyen

Love Google Project! Let's move forward NOW! Time for action!

MENU OF RECOMMENDATIONS FOR THE UNALLOCATED COMMUNITY BENEFITS

\$7.5M_{UPFRONT}

*THESE FUNDS ARE PRIMARILY FOCUSED ON QUICK ALLOCATION TO
EXISTING PROGRAMS WITH KNOWN RESULTS*

UP TO \$22.3M_{OVER TIME}

*THESE FUNDS WILL COME INTO THE CITY AS OFFICE IS BUILT, WITH
\$3.05 FOR EVERY SQUARE FOOT OF OFFICE COMPLETED*

These funds are in addition to \$170M+ in other community benefits, including:

- \$154.8M for the Community Stabilization and Opportunity Pathways Fund, which would be governed by a Community Advisory Committee
- \$16.4M for affordable housing purposes

And \$253M to meet City requirements, including:

- \$87.6M of Commercial Linkage Fee for affordable housing production
- Approx. \$80.5M in Inclusionary Housing Fees and direct production of affordable units
- 4.8 Acres of City Parks and trails
- \$30M for local transportation improvements

\$7.5M_{UPFRONT}

IMMEDIATE COMMUNITY STABILIZATION AND OWNERSHIP \$3.0M

Prevent displacement of San Jose residents, including through supporting housing affordability, legal services for people facing eviction, tenant education and outreach, and other renter protection programs.

- This will in part support the first step of predevelopment and feasibility assessment of community ownership models like land trusts, in anticipation of future collaboration through the Fund and other City initiatives.

SCHOLARSHIPS FOR YOUTH AND ADULTS FOR JOB-TRAINING \$3.25M

Support opportunity pathways for underserved or at-risk youth and adults to access jobs and financial security, including through extended learning programs, career exploration opportunities, and training/retraining of San Jose residents.

- This will in part fund early childhood education and childcare services to support workforce participation.

NEIGHBORHOOD PROGRAMS TO ASSIST WITH RESILIENCE AND ECONOMIC RECOVERY \$1.0M

Invest early in programs at the Gardner Community Center to uplift individuals, support economic recovery, and build community among residents of the broader Diridon Station Area.

- Specifics to be determined based on neighborhood listening sessions.

STARTUP OF FUND \$250K

Initiate Community Stabilization and Opportunity Pathways Fund, including establishing Community Advisory Committee, selecting Fund Manager, and supporting the development of the first 5-year Strategic Plan.

- Includes associated public outreach and community engagement.

UP TO \$22.3M_{OVER TIME}

EDUCATIONAL OPPORTUNITY \$10.3M

Support underserved or at-risk youth and adults through K-12 programs, college scholarships, mentorship programs, and job training and placement programs.

- Includes college readiness program to make sure that students graduating from high school in San Jose can attend college and succeed in STEAM careers – with focus on first-generation, underserved minority, and female students.

COMMUNITY STABILIZATION \$7.5M

Prevent displacement of San Jose residents, with a focus on: 1) supporting San Jose residents' ability to access eviction protection services; 2) contributing to ongoing operations/expansion of community ownership models in San Jose; and 3) providing homeless outreach and services.

EARLY CHILDHOOD EDUCATION AND CHILD CARE \$2.5M

Increase options for affordable, accessible, and quality childcare for lower-income residents and workers in the Diridon Station Area and surrounding neighborhoods through:

- Funding for tenant improvements to build one or more childcare centers;
- Subsidy to childcare providers and/or families.

NEIGHBORHOOD PROGRAMS \$2M

Seed funds for programs aimed at economic resilience and community stability serving communities in the Diridon Station Area and surrounding neighborhoods.

(The intent is for the City to expend these dollars proportionally as the funds come in overtime, following completion of individual office buildings)

Appendix D

ELECTRIC MICROGRID FOR THE DOWNTOWN WEST PROJECT

The purpose of this attachment is to provide City Council with information regarding the initial legal, regulatory and economic feasibility and the potential benefits and risks of City provided electric service to the Downtown West Mixed-Use Project (“Development”). City provided electric service is one of three electric service options under consideration for the Development.

This memorandum also summarizes the other two options – current Investor Owned Utility (IOU) retail service or privately (Google) provided service – and describes the additional analysis and major work streams to be completed before any consequential decisions would need to be made by City Council regarding the City providing electric service to the Development. Likewise, Google, Inc. (“Developer”) is continuing to evaluate and explore the other two electric service options. City staff and the Developer will continue to collaborate and coordinate on these efforts.

ANALYSIS

A major component of the Development is a proposed “District Systems” approach to more efficiently handle at least some of the utility needs of the development. Where feasible, utilities such as electricity, thermal (heating and cooling), wastewater, recycled water, and solid waste flows would be delivered through district-wide infrastructure, rather than individual and building-specific systems.

Consistent with the District Systems approach, the Developer is proposing an advanced microgrid electrical distribution system to serve the development. The system would include electric distribution lines coming from a dedicated transmission substation to connect the majority of buildings and amenities within the development area in a microgrid. Renewable generation technologies including photovoltaic arrays and building-integrated photovoltaic products may be located on building rooftops and facades. In addition, storage technologies such as batteries may also be deployed within the substation area, central utilities plant, or buildings throughout the development. The microgrid would include controls to share power between buildings to provide limited operation in the event of an outage. Both storage and generation on-site would allow the realization of benefits such as:

- Provide power to key development area loads in the event of a utility wide grid outage;
- Increase renewable energy by allowing it to be shared between buildings; and
- Allow the generation and storage technologies to provide grid services and balance demand and onsite generation with grid import and export.

Options for Providing Electric Distribution Service to the Development

There are three options for providing microgrid electric service to the Development. As further described below, the options relate to whether the current Investor Owned Utility IOU, the City, or Google will be the ultimate owner/operator of the microgrid infrastructure after Google completes the required improvements. The Developer and City staff continue to collaborate on

the studies and analyses necessary for the implementation of a microgrid. The critical issue for both the developer and the City is that if a microgrid is implemented that it come online in sequence to support the development envisioned by developer.

1. *IOU Retail Service* – Like all other development projects in the City, taking retail service from the IOU is an available option. A comprehensive set of established regulations, tariffs, processes, and a franchise exist that would allow the developer to obtain electric service from the IOU to the project. It should be noted that the CPUC is implementing rules to facilitate the commercialization of microgrids pursuant to Senate Bill (SB) 1339.¹ As such, the developer is working to potentially take advantage of the Community Microgrid Enablement Program whereby the IOU would provide enhanced support for the development and implementation of high-priority multi-customer microgrids serving vulnerable customers and critical facilities. This type of arrangement may be an improvement over typical IOU retail service and remains an option.
2. *City Provided Electric Service* – In this option, the City would create a local public utility that operates the electric distribution system to provide electric service to the development. The utility would own all or part of the distribution system. Staff has analyzed the initial feasibility of this approach and believes that this is a viable and promising option. Local public electric utilities exist throughout California and have a proven track record of providing excellent, low-cost service to their customers. The driving force behind many of the benefits of a public utility is that a city council or local board governs and oversees the design, construction, operation, and rate setting of the electric system, meaning that the local community owns the utility and, therefore, controls the utility's priorities through open meetings and transparent business decisions. A benefit of a city microgrid is that local public utilities must provide cost-based rates and do not pay taxes or collect a rate of return for investors, which provides cost savings for ratepayers.
3. *Developer Owned and Operated Microgrid* –The developer will engage with the CPUC to determine if the developer may own and operate the microgrid with modified CPUC regulation or oversight provisions that apply to microgrids. State law preempts the City from engaging in matters of the State, and therefore the City cannot exercise a regulatory role over a privately-owned microgrid. As a result, the City and developer have negotiated conditions of approval for the Vesting Tentative Map which will require the developer to demonstrate to the City that developer's ownership and operation of the microgrid is consistent with all applicable federal and state regulatory requirements. The Vesting Tentative Map conditions of approval helps to ensure that appropriate structures, controls, and covenants are in place to effectively protect the public and customers. The developer would be required to make this demonstration prior to approval of a final map.

This includes the confirmation of specific measures for 'continuity of service' which will in the event of a failure of the microgrid business obligate the Office owners to step in and support the system's operation in perpetuity. This provision underpins the private operation of the system and ensures that the City will not be responsible for managing or mitigating for

¹ CPUC Rulemaking 19-09-009 (Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339).

a business failure. The ‘continuity of service’ provision is structured to ensure that residential and retailers are not impacted by a potential business failure and that support of the City will rest with the owners of the multi-billion dollar commercial assets. If the Developer owned and operated Microgrid is the selected option, the City will be paid an occupancy fee for the electric services crossing the street.

Regardless of the ultimate ownership of the microgrid system, the infrastructure will be constructed by Google as part of its overall project. To this end, the construction would be subject to the appropriate regulations that cover electrical grid construction. The constructed grid would be turned over to either the IOU or the City, as with all such public improvements in development, should one of those options be the solution. If Google retains ownership the system as a private utility, they would be subject to the conditions issued by the CPUC or other appropriate regulatory bodies.

Application for Interconnection to the Transmission System

Following City Council’s February 25, 2020 direction, staff worked directly with an expert electric transmission, distribution and energy systems consulting firm (Flynn Resource Consultants Inc.) and the Developer to prepare a wholesale transmission interconnection application for the purpose of the City providing electric distribution service to the Development. The interconnection application provided a variety of technical information about the proposed interconnection configuration and loads to be served. The application was submitted on April 30, 2020. The City is continuing to work through this process.

Confirmation of Legal and Regulatory Feasibility

In addition to preparing and submitting an interconnection application and initiating the various studies, staff also continued to evaluate the legal and regulatory feasibility of the City providing electric distribution service to the Development. The City Attorney’s Office utilized Duncan, Weinberg, Genzer and Pembroke, P.C. (DWGP), an outside law firm with extensive knowledge and experience in the energy and utility industry, to perform this evaluation.

The general scope of the evaluation was to review the legal and regulatory requirements, issues or potential impediments, and processes for establishing a public electric utility. Specific areas of analysis included existing franchise agreements; federal and state regulation, utility models; City policies, laws and regulations; funding; construction and acquisition of new assets; and interconnection to the transmission system.

Overall, the evaluation confirmed that the City has a clear legal and regulatory path to provide electric service to the Development. The following is a summary of the analysis and conclusions from the DWGP evaluation.

Federal and State Regulation

There are several federal and state regulators that oversee various aspects of providing electric utility service. In principle, each of these agencies is responsible for regulating certain aspects of the energy industry and electric system, but in practice there are cases where responsibilities

overlap or shift depending on the issue or characteristics of a specific utility. The electric service provided by the City may be regulated or require coordination with various agencies and entities including the Federal Energy Regulatory Commission (FERC), North American Electric Reliability Corporation (NERC), California Independent Systems Operator (CAISO), CPUC, and the California Energy Commission. As such, the evaluation identified several regulations, requirements and processes for which the City would or may need to comply, but these are standard for all municipal utilities. The preliminary legal analysis did not identify major issues or concerns within the federal and state regulatory framework that could preclude or even reasonably impede the City from providing electric service to the Development, but some issues may arise during the design or developing phase of the project.

Utility Models

There are several options legally available to the City for structuring and forming a public electric utility. Each are briefly described below.

City Utility Department – Under the authority of the California Constitution as a Charter City, City Council could establish a public utility within a City department – existing or new. City Council would then establish reporting requirements (e.g. through the City Manager or directly to City Council) for the utility and be responsible for legislative (e.g. rates), policy (e.g. retail service options), financing (e.g. funding operations and infrastructure), and oversight (e.g. reliability, security and risk) functions. Numerous California communities, including Los Angeles, San Francisco, Palo Alto, and Santa Clara provide electric distribution service through a city department.

Municipal Utility District (MUD) – State law establishes MUDs as a legal structure to provide electric distribution service within the territory boundaries of two or more public agencies. The formation process for a MUD may be initiated through a resolution from half or more of the public agencies involved or a petition by at least ten percent of eligible voters within the territory boundaries. Formation of a MUD requires an election and approval by voters in the area that the MUD will serve. A MUD is governed by a board comprised of five directors allocated among five wards of the MUD. Directors are elected at the time of a general election by the voters in the area being serviced by the MUD. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. The board decides policy and is responsible for oversight of the MUD. The Sacramento Municipal Utilities District is an exemplary example of a California MUD.

Joint Powers Agency (JPA) – The California Joint Exercise of Powers Act creates a structure for two or more public agencies to enter into a joint powers agreement and jointly carry out common obligations. A JPA may only act within the authority of its member agencies, but no member can directly or solely control the actions of a JPA. JPAs are governed by a board of directors as specified in the joint powers agreement among the member agencies. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. In the California energy sector, joint powers agencies engage in community choice aggregation (e.g. MCE, SVCE, etc.), development and operation of transmission assets (e.g. Transmission Agency of Northern California) and the development and purchase of generation resources for members (e.g. Southern California Public Power Agency, Northern California Power Agency,

and the newly formed California Community Power). Staff is not aware of any joint powers agency that provides retail electric distribution service in California.

Consumer Cooperative (CC) – a CC is a member-owned entity authorized by California statute. A CC is not a public agency but an entity that is democratically controlled by its members and not organized to make a profit. Members of a CC include those who receive the products and services provided by the CC. A CC is governed by a board of directors as designated in the articles of incorporation or bylaws established by the incorporators. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. Electric distribution cooperatives that operate in California include Plumas-Sierra Rural Electric Cooperative, and Anza Electric Cooperative operates in the territory surrounded by Southern California Edison.

Additional information related to each of the options briefly described above is summarized in Table 1 below:

Table 1 - Public Utility Formation Options

Key Element	City Utility Department	Utility District	Joint Powers Agency	Cooperative Ownership
Voter approval required	No	Yes	No	No
Franchise required	No	No	No	Yes
Limited to City Boundaries	Yes	No	No	No
LAFCO Approval Required	No	Yes	Yes	Yes
Constitutional Borrowing Limits	Yes	No	No	No
Eminent Domain Powers	Yes	Yes	No	No

There are a variety of issues that City Council would need to consider when determining the structure that is the best fit for the City, including timelines for forming a utility, accountability to the customers of the utility, funding and efficiency of operations, and financing distribution infrastructure.

City Policies, Laws and Regulations

The legal analysis examined the City Charter and other City ordinances and policies to identify any changes that would need to be made to enable the City to provide electric service to the Development. ***The evaluation concluded that the City's existing Charter and Municipal Code authorize the City to engage in electric utility operations, but some amendments may be required.***

Funding

The evaluation specifically looked at the process for issuing revenue bonds that would be paid back by utility revenues and it identified the required City Charter and voter approved amendments that may be needed to accomplish this.

Another approach for funding the installation and construction of facilities could be through an agreement with the Developer, whereby the Developer would fund and perform the installation and construction of the required utility facilities which may ease formation and result in lower costs to be recovered in electric rates.

Construction and Acquisition of New Assets

The evaluation looked to identify any legal issues related to constructing or acquiring new electric utility assets. The evaluation concluded that there are no major legal issues impeding the City in this regard, but some updates to the City Charter and Municipal Code may be prudent and several procedures and standards should be followed by the City to avoid legal risks.

Interconnection to the Transmission System

The evaluation included a legal feasibility analysis regarding the interconnection options for the City to transmission or distribution level service from the existing utility. The evaluation further described the procedures for establishing an interconnection, including the statutory framework, application process, system studies, and other considerations. Again, based on the information provided, the study identified a clear path for interconnection system to serve the Development.

Service Analysis and Economic Feasibility Study

Consistent with the direction provided by the City Council on February 25, 2020, staff worked with its consulting partner, Flynn Resource Consultants Inc., and the Developer to perform an electric service analysis to understand the economic feasibility of the City providing electric service to the Development. The study identified and analyzed the projected full costs for the City, based on the best available information, to establish and provide electric service to the project. These costs were then utilized as a basis for future cost-recovery over a 50-year time period. In summary, the study indicated an expected base case savings of approximately 20% for the City to provide electric utility service to the Development compared to current costs.

It is important to understand that there are several uncertainties that could impact the relative cost of City provided electric service, however, there are also many ways to mitigate against these risks, including pursuing a resolution of major potential risks before making a final commitment to undertake City electric service to the Development.

Financial Modeling: Economic Feasibility Analysis

The consultant developed a financial model to produce important financial information about the economic feasibility and performance of a City utility, including annual cost per kilowatt-hour of electricity to serve the City utility customers. To accomplish this, the model identified the

factors, or cost drivers, that would directly affect the cost of service and, ultimately, future customer rates. The model then allowed the consultant to input various assumptions for each cost driver depending on the best assumptions that could be made with available data and using their best engineering judgment. For example, the consultant performed an analysis to determine the estimated amount of energy that would be consumed annually by the customers once the project is fully built out. This analysis applied industry standard data on energy consumption amounts per square foot for different building types to the planned building square footage data provided by the Developer. The result of this analysis became the “base case” assumption for the annual energy consumption cost driver. However, knowing that there are several valid and practical reasons for which actual energy usage could be measurably less or more than the base case assumption, the consultant developed two “sensitivity case” assumptions for energy usage. Sensitivity cases of 75% of the base case and 110% of the base case were used, which resulted in higher and lower costs per kWh, respectively, to serve the project since some of the utility costs are fixed.

Once all of the cost driver data were defined and entered into the model, the consultant was able to determine an estimated annual cost per kilowatt-hour of electricity of a City utility under the base case scenario. The model also allowed the consultant to toggle between each base case assumption and the associated sensitivity case assumptions to understand the effect that each sensitivity case assumption would have on the cost per kilowatt-hour. Ultimately, this information was used to compare the estimated costs of service for a City utility against the cost of corresponding service from the existing utility to determine if, and under which scenarios, a City utility would offer an economic benefit to customers.

Main Cost Drivers

As described above, cost drivers are specific factors that directly affect the estimated cost of service for a City utility. The most consequential, or key cost drivers identified and used in the financial model are described below:

- Annual Customer Energy Usage at Buildout – The amount of energy consumed annually by end-use customers within the Development area, net of planned on-site generation.
- Departing Load Charges – Retail customers within areas currently served by an IOU are responsible for certain charges under the Transferred Municipal Departing Load (E-TMDL) tariff. These charges include wildfire fund charge, DWR power charge, nuclear decommissioning and, potentially, Power Cost Indifference Adjustment (PCIA).
- Infrastructure Capital Costs – The cost (including contingencies) of the City utility distribution facilities, City-owned customer substation, new IOU facilities required for interconnection to the transmission system and, potentially, network upgrades to the transmission system.
- Retail Rates – For comparison purposes, the analysis uses a forecast of current retail rates for each rate class expected to be served within the Development.
- Cost of Debt – The cost of debt financing for the infrastructure capital items.

- Staffing – Includes cost of salaries, benefits and other employee compensation for personnel to manage and operate the utility. Staff positions would include senior leadership, office administration, engineering, and field operations and maintenance.
- Generation Component Adjustment due to Diablo Canyon Retirement – Adjustments to generation rates are expected in 2026 when Diablo Canyon Power Plant is to be retired, which would directly impact the differential between City costs and current rates.

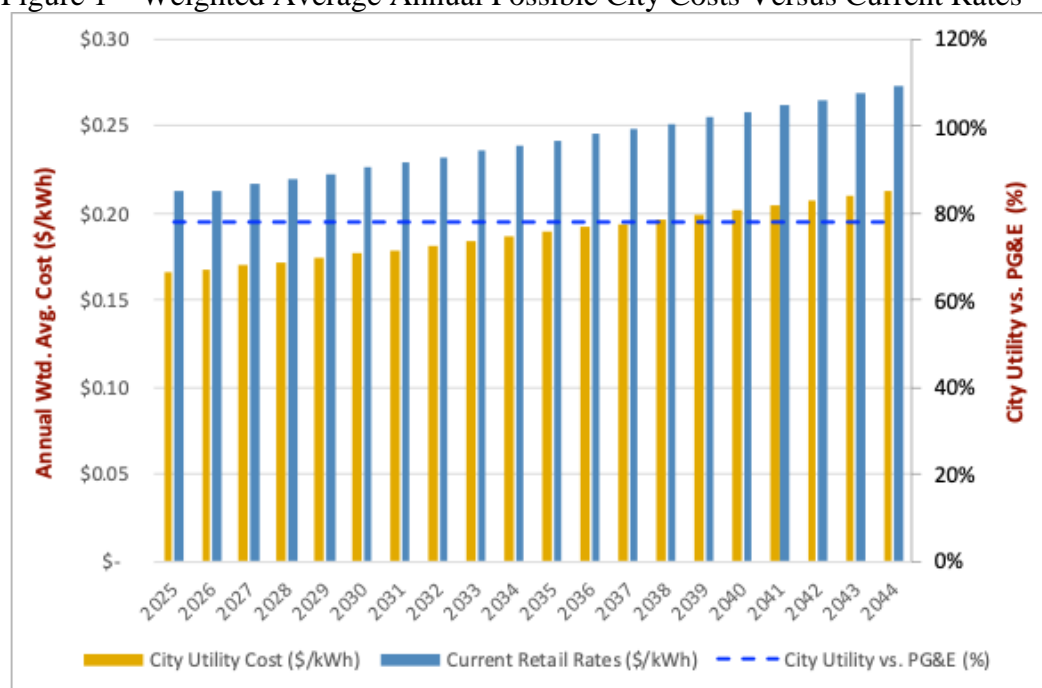
Base Case Assumptions and Sensitivity Case Assumptions

Base case assumptions represent the most likely estimate of the value for each cost driver using the best information available and solid engineering judgement. Sensitivity case assumptions represent reasonable upper and lower bounds scenarios, though not necessarily the most extreme scenarios. Table 2 below shows the base case and sensitivity case assumptions for the key cost drivers.

Preliminary Findings

The consultant’s analysis found that with base case assumptions, the net present value of the cost for the City to provide utility service to the Development over 50 years is approximately 80% of current costs, which equates to City costs being approximately 20% lower than the costs to of current retail service for a comparable 100% renewable and GHG-free product. Savings of this amount could be used to develop City electric rates that would be lower than current rates for providing 100% Renewable Portfolio Standard (RPS)/Green House Gas (GHG)-free power to the project. Figure 1 illustrates the comparison between possible City costs and current rates on an annual basis.

Figure 1 – Weighted Average Annual Possible City Costs Versus Current Rates



The projected savings between possible City costs and current retail rates is a weighted average over 50 years accounting for the present value of all costs associated with capital infrastructure, operations and maintenance, staffing, resource procurement and all other costs of operating a municipal utility, including a 5% contribution to the City in lieu of taxes and franchise fees.

As previously described in Table 2, there are sensitivity case assumptions for each key cost driver and, depending on which sensitivity case is applied in the model, the cost of service savings for City provided service increases or decreases compared to the base case scenario. Such increases or decreases would have a follow-on impact on the rates that would need to be charged to recover the costs. One of the most impactful cost drivers, for example, is whether PCIA charges will be applicable for City utility service to the Development. If they are, the savings for City utility service would decrease to approximately 11% (City costs approximately 89% of current rates). Another important cost driver would be if the actual energy consumed by the customers of the City utility were 110% of the amount estimated in the base case scenario, the overall savings would increase to approximately 25% (City costs at 75% of current rates). Conversely, should the actual energy consumption by the customers be 75% of the base case scenario, the overall savings would decrease to approximately 12% (City costs at 88% of current rates). This type of analysis allows the City and the Developer to understand which cost drivers and uncertainties are more impactful on the economic feasibility of City provided service.

While the City has been careful to use reasonable assumptions about the costs to build, own and operate the distribution utility, as well as reasonable assumptions about the costs of taking retail utility service from the IOU for a comparable 100% RPS/GHG-free product, if the base assumptions prove to be wrong in multiple areas with adverse outcomes and without corresponding favorable outcomes in other areas, the costs of City utility service could be higher than current costs. ***It is therefore important to resolve key uncertainties or to identify potential mitigating measures to address adverse outcomes for those uncertainties that cannot be resolved prior to forming a City utility and committing significant capital towards the project.***

The City and the Developer have identified the uncertainties and are actively working to resolve them or identify potential mitigation measures. The main cost drivers are described below.

- Departing Load Charges (PCIA Charges) – the Developer is pursuing resolving the uncertainty related to whether the end-use customers within the Development will be required to pay PCIA charges prior to the City making a commitment to providing City utility service to the Development.
- Infrastructure Capital Cost (Interconnection Facilities) – The City and Developer are working to better understand the costs of interconnecting to the existing transmission system.
- Infrastructure Capital Cost (Network Upgrades) – Upon completion of the interconnection system impact and facilities studies, the City will better understand the expected network upgrade costs and whether any would be allocated to the City.
- Annual Customer Energy Usage at Buildout – Lower than estimated project load levels over which to recover the utility costs would require higher City rates case scenario.

In summary, the analysis that includes the most accurate and reasonable base case assumptions clearly demonstrates that City provided utility service is economically feasible and could result in significantly reduced electric utility costs. With that said, there are still uncertainties that could change this outcome. Therefore, the City and the Developer will continue to refine cost assumptions and identify economic opportunities and risks associated with City provided utility service. Any necessary evaluation, mitigation measures, or other actions will be fully considered and appropriately presented to City Council.

Climate and Resiliency Benefits

One of the main benefits of the City owning and operating the electric distribution system is that the City and the Developer can better work together to advance our shared interest in building an advanced microgrid with on-site renewable generation and energy storage, thus making the energy service more resilient, clean, and affordable for the community. Having control over such a microgrid will position the City and the Developer to provide benefits to the City and the City's end-use customers that may not be realized without the City's involvement in the project. ***For example, the City and the Developer would be able to design the distribution system to provide power to critical loads during public safety power shutoff events.*** The City and the Developer would also continually look to deploy and maximize the benefit of new technologies and renewable energy systems, and closely coordinate on the installation of electric vehicle charging stations throughout the Development and on the development of electric vehicle charging rates that are tailored to adapt to changing electric market conditions and prices.

Agreement Framework with the Developer

The City and the Developer prepared language to be included in the Development Agreement that provides a framework to confirm the viability of the City to provide electric service to the Development, and then, subject to respective City and the Developer actions, approvals, and/or agreements, negotiate and enter into a business relationship with the Developer on the ownership and operation of the electric distribution system. Assuming the City determines it will take all necessary steps to establish a City utility, the business relationship would include terms related to the following:

- Microgrid design standards and process.
- Development and installation of the microgrid.
- Ownership, operation and maintenance of the microgrid.
- Alterations and/or reconfigurations of the microgrid.
- Energy Services, e.g. supply of energy to the project and establishment of rates.
- Customer relations, e.g. response to customer inquiries, adjudication of customer complaints, meter reading and billing.

Next Steps

Additional work by City staff, in close coordination with the Developer, over the next six to 12 months is required to fully evaluate, define and implement the legal, financial, design and engineering, and operational requirements related to the City providing electric service to the

Development. Below is a summary and estimated time frame for the major work plan items to continue with this process.

Phase 1

1. Interconnection Process and System Studies (Present – December 2021)

City staff and the Developer would continue to work to advance the City's interconnection application and system studies, if determined to be the best course of action.

2. Legal and Regulatory Roadmap to Establish a Public Utility (June – December 2021)

Staff in the City Attorney's Office would secure and work with outside counsel to fully define the federal, state and local/City legal and regulatory requirements, steps and timelines to form a utility and to provide electric service to the Development. This would be a "roadmap" study that considers all laws, regulations, and standards, and details the required or recommended filings, modifications, approvals, elections, agreements and other related actions.

3. Business Plan and Agreement(s) with the Developer (June – September 2021)

The business relationship between the City and the Developer for the City to establish a utility and provide electric service to the Development would be negotiated and defined following City approval of the Development. The business plan would better describe expected rates, tariffs, operations, and organizational structure as well as include a detailed analysis of the opportunities and risks including the economic, climate, and resiliency risks and benefits. It is expected that this item will be brought forward for City Council consideration in the Fall of 2021.

Phase II

4. Electric Distribution System Design and Engineering (September 2021 – 2022)

Following approval of the business plan and confirmation of economic, climate, and resiliency benefits; City staff would secure an expert consultant to coordinate with the Developer on the development of design standards and review engineering and design plans for construction of the electric distribution system.

5. Interconnection & Engineering and Construction Agreements (March 2022)

If City Council decides to establish a City utility and the City proceeds with its interconnection application, an Interconnection Agreement and other engineering and construction agreements for the required system improvements would be negotiated. Any necessary recommendations to City Council regarding these agreements would be brought forward to City Council at the appropriate time.

6. Formation of the City Utility (2022)

Following approval of the business plan and the legal and regulatory roadmap; the City would recommend to City Council the formation of a City Utility and obtain authorization for the required or recommended regulatory filings, approvals, elections, agreements and other related actions. Some of these actions may occur after the formation of the utility.

Phase III

7. Implementation and Operation of the City Utility (TBD)

Following formation of the City Utility, the City would recommend a series of operational steps and agreements to begin operations including approval of rates, tariffs, design standards, staffing plans, new classifications, operating and consulting agreements, and other items to commence operations.

Appendix E

City of San José's Responses to Sharks Sports & Entertainment's E-Mails and Letters to the City Concerning Its Rights Under the Arena Management Agreement

May 14, 2021

Sharks Sports & Entertainment (SSE) has written certain e-mails and letters to the City of San Jose (City) concerning its existing rights under the Arena Management Agreement. This document supplements the administrative record by providing additional details, responses and/or recommended actions to address those claims. Specifically, this document addresses SSE comments outlined in the following:

- Email and memo from Jim Goddard dated April 1, 2021 ("Requests for Modifications to Protect the SAP Center");
- Letter from LMA Law, LLP dated April 21, 2021 ("Summary of Key Provisions from AMA and related contracts bearing on issues related to Google Project"); and
- Letter from LMA Law, LLP dated April 27, 2021 ("SSE's Objection to Development Agreement").

SSE comments from the Summary of Key Provisions of the Arena Management Agreement dated August 15, 2018, as amended (AMA) are excerpted below in ***bold italics***, using their original numbering. Where responses also address specific items from SSE's Requests for Modifications, we have noted those items in brackets as [Request for Modification #]. Our response follows in normal text, bulleted. We have also highlighted in yellow recommended actions that would require some form of modification to pending entitlement documents.

1. ARENA LAND TITLE RIGHTS AND PERMITTED USES.

SSE Comments:

- A. *The above provisions would prohibit the City from taking any of the following actions, unless SSE consents in its sole and absolute discretion:*
 - *Issue a PD Permit with respect to Lots ABC, and/or record a certificate of such issuance (per SJMC 20.100.300)*
 - *Approve a tentative map that includes Lots ABC and/or record a final map*
 - *Record a Development Agreement against Lots ABC*
 - *Grant land or easements for a street or a utility corridor through Lots ABC*
 - *Encroach onto the Arena Land for improvements along W. Santa Clara Street or N. Autumn Street (Barack Obama Blvd.)*
 - *Create any other record encumbrance or burden on SSE's leasehold estate or title to the property*
- B. *SSE currently has the right to implement all uses permitted under the AMA without any planning approvals or permits. Therefore, unless modified to allow the continuation of such uses as permitted (rather than legal non-conforming), the proposed General Plan, DSAP and Zoning changes would be in direct conflict with SSE's express rights under the AMA.*
- C. *Under Google's General Development Plan (GDP), Google would have the right to establish a wide variety of uses with limited review by the City. The GDP should be amended to allow the City to impose conditions to protect the successful operation of the Arena, specifically to ensure that the new uses do not unreasonably disrupt or conflict with Arena events, including vehicular access and parking.*

- **City Response:**

- The AMA provisions cited by SSE reflect the City's obligations to allow SSE certain possession and management control rights over the Arena Facilities and Arena Land, including Lots ABC. The City acknowledges that redevelopment of Lots ABC cannot proceed during the term of the AMA absent a mutually-agreed parking agreement amendment to the AMA. *[Request for Modification #2]*
- The AMA does not preclude the City from exercising its general police power to enact amendments to the General Plan or zoning. Under §36.2 of the AMA, the City is obligated to have "good, marketable and insurable title to the Arena Facilities and Arena Land free and clear of any liens, encumbrances, security interests, liabilities, assessments, pending assessments, agreements, leases, judgments, claims, rights, easements, restrictions or other matters *that would affect Manager's [SSE] rights under this Agreement.*" General Plan and zoning ordinances cannot be considered "encumbrances" or "restrictions" on title under this provision, since it is not possible for the City to maintain title free and clear of General Plan and zoning provisions. Moreover, as noted above, nothing in the proposed project approvals would prevent SSE from undertaking activities the City is required to permit SSE to undertake under the AMA. *[Request for Modification #2]*
- While SSE's characterization of the City's obligations is in some respects inaccurate, the discrepancies are not relevant, as nothing in the proposed project approvals prevent the City from complying with its obligations under the AMA with respect to legal non-conforming uses. Nonetheless, the City proposes to address SSE's concerns by adding the following language to the PD Zoning Ordinance: *[Request for Modification #3]*

Existing Uses and Structures. The City Council does not intend to prohibit any uses and/or structures the City is obligated to allow on Lots ABC pursuant to the Arena Management Agreement by and between the City of San José and San José Arena Management, LLC, as amended through December 4, 2018 (the "AMA"). The uses the City is required to allow on such property under the AMA, which include parking and supporting entertainment uses, are consistent with the General Plan as amended through the effective date of this ordinance, including the applicable Downtown and Commercial Downtown land use designations. All uses and structures the City is required to allow on such property under the AMA, to the extent such uses or structures do not conform to the requirements of this ordinance, the applicable GDP and/or the applicable PD Permit, are deemed legal non-conforming uses or legal non-conforming structures. The ordinances applicable to legal nonconforming uses and legal nonconforming structures, which are in Chapter 20.150 of the Municipal Code, as that chapter may be amended, shall be applied to such legal nonconforming uses and structures in a manner that does not breach any obligation of the City under the AMA with respect to Lots ABC. §20.150.030 and §20.150.300 through 20.150.320 of the Municipal Code shall not be applicable to such property. Further, if requested by Sharks Sports & Entertainment, the Director of PBCE or designee, in consultation with the City Attorney, may reduce, adjust or waive any requirement that is necessary to enable the City to comply with its obligations under the AMA.

- Further, Google and the City have agreed to remove Lots ABC from the legal description of the area covered by the proposed Development Agreement between City and Google (DA) and instead Lots ABC would be a "Potentially Participating Parcel," meaning that the effectiveness of the DA would be deferred on Lots ABC until Google acquires title for Lots

ABC. [Request for Modification # 2; also responds to April 27 Objection to Development Agreement]

- While the City believes that none of its rights would have been impaired as originally written in the Development Agreement, these proposed changes fully address any concerns raised by SSE and ensure SSE's rights with respect to Lots ABC are fully protected.
- SSE's request that the proposed General Development Plan (GDP) be amended to allow the City to impose conditions to protect the successful operation of the Arena, and specifically to ensure that the new uses do not unreasonably disrupt or conflict with Arena events, including vehicular access and parking, is not necessary to ensure compliance with the AMA and is not required by the AMA provisions cited by SSE. City acknowledges it has the obligations in the AMA to not unreasonably interfere with SSE's ability to manage and operate the Arena, to make reasonable good faith efforts to make the Arena and adjacent areas under City control available for events, and, generally, not to interfere with SSE's rights under the AMA. The City has and will continue to make these efforts. The proposed GDP does not conflict with these AMA obligations. To the extent this request is intended to seek the City's consideration of how approval of the GDP itself might affect operations and costs related to the Arena, please see response to item 2 below. [Request for Modification #14]

2. CONSTRUCTION ON OR ADJACENT TO ARENA LAND

SSE Comments:

- A. The above provisions would prohibit the City from allowing construction of street or utility improvements on Lots ABC or any other part of the Arena Land, unless SSE consents in its sole and absolute discretion.***
- B. In addition, the City could not allow construction of improvements to the frontage areas along W. Santa Clara Street and N. Autumn Street, if SSE disapproves such improvements based on the criteria stated in §28.5.2(a).***
- C. The City may not unreasonably withhold consent for SSE to install improvements in the public right away along the street frontages related to crowd control, the protection of an unimpeded path of travel, homeland security, and so forth.***
- D. The Downtown West Design Standards and Guidelines (DWDSG) do not satisfy the requirements of §12.1.3(a) and therefore the City may not apply them to the Arena***

Facilities.

- E. The City should ensure that its policies and guidelines relating to construction mitigation plans for the Google Project (and other projects in the Diridon area) address the unique needs of the Arena with respect to event operations, and that costs and expenses related to construction mitigation are not imposed on SSE.***
- **City Response:** [Requests for Modification #8 and #9]
 - Even with reading the provisions generally discussed above in Response No. 1, the AMA does not give SSE veto power over a City general police power decision to allow or undertake development outside of the Arena Land, including development and activities within public rights of way. Likewise, there is nothing in the AMA that gives SSE an unfettered right to construct offsite facilities in rights of way or elsewhere, regardless of compliance with City land use regulations. Further, SSE's claims in these comments are inconsistent with the AMA parties' intent. As reflected in the "Side Letter Regarding Future Discussions" dated August 15, 2018, the parties contemplated "development of the Diridon Station Area," into a "master-planned transit-oriented community," which involves issues that are "complex, and the situation is constantly evolving." The focus of

the letter is not restriction of land use regulations or any constraints on surrounding development, but rather discussions regarding “access and parking needs of the SAP Center.”

- To the extent the citation to §28.5.2(a) is intended to refer to improvements outside of the Arena Facilities, the citation is misplaced as §28 addresses only “Capital Repairs and Replacements, Capital Enhancements and other Alterations *to the Arena Facilities*” (§ 28.1), and this limitation applies to the definition of “Capital Projects” in §28.1.1. To the extent the citation to §28.5.2 is intended to refer to improvements to Arena Facilities, please see the response to item 1 above.
- Because the proposed DWDSG (and the proposed project approvals as a whole) would not mandate redevelopment of Arena Land during the term of the AMA absent a mutually-agreed upon amendment to the AMA, they do not conflict with §12.1.3(a) in the manner alleged.

3. CITY’S PARKING OBLIGATIONS UNDER AMA

SSE Comments:

A. The City failed to prepare an adequate parking analysis for the Google Project as a whole, as required by Section 21.1.1(b). Further, it appears that the City does not intend to do so for development proposals going forward. This is a breach of the AMA.

• City Response:

- The requested analysis is provided in the Commercial Parking Evaluation, provided in Chapter 11 and Exhibit H to the Local Transportation Analysis (Appendix J2 of the Draft EIR), which addresses the project’s projected parking demand, demand management strategies, and the parking supply to be provided by the project, consistent with AMA §21.1.1(b), as well as mitigation strategies relating to neighborhood traffic and parking intrusion. This parking analysis meets the requirements of §21.1.1(b). See Response to Comment 3.2(C), below, regarding further parking analysis that will occur pursuant to Exhibit K of the Development Agreement and as stated in the Implementation Guide. *[Request for Modification #10]*
- It is premature to analyze spaces impacted or needed during construction, as no specific building design has been proposed at this time and the analysis will require site-specific, up-to-date information about effects on parking availability from construction of specific buildings. Construction parking plans will not deprive SSE of its contractual parking rights under the AMA. See Response to Comment 3.2(C), below, regarding further parking analysis that will occur pursuant to Exhibit K of the Development Agreement and as stated in the Implementation Guide. *[Request for Modification #12]*
- Additionally, the City is proposing a comprehensive Parking and Transportation Management District as part of its proposed DSAP amendments (separate from the Downtown West project) to provide coordinated strategies for parking and multimodal access within the Diridon Station area. As noted in the City’s Draft DSAP Amendments (October 2020), “These strategies are important to maintaining the parking spaces needed for the SAP Center per the City’s Arena Management Agreement, and include, but are not limited to, shared, priced and unbundled parking requirements.” *[Request for Modification #10]*
- To address concerns about impacts on parking during construction, the proposed requirements for Subsequent CIMP’s have been amended to require an assessment of parking impacted or needed during construction. In particular, the following requirement has been added to CIMP, §E: *[Request for Modification #12]*

- **Parking Space Assessment**

[In this section, we will identify the number of parking spaces needed during construction of the applicable phase. We will also describe other construction-related impacts to parking during construction of the applicable phase.]

B. The Conformance Review process eliminates the City's ability to comply with Section 21.1.1(a) with respect to development proposals going forward. Allowing SSE (along with other members of the public) to review development proposals within a 7 or 10 day window just prior to a public hearing is not what this Section intended; rather, the intent was to provide the project submittals to SSE when the City receives them, with sufficient time to make meaningful modifications to the project based on SSE's comments.

- **City Response:** [Request for Modification #5]

- The City acknowledges that it has obligations under AMA §21.1.1 to refer to SSE certain development proposals, including providing SSE with documents provided by an applicant as part of the project submittal and then to provide any timely received comments from SSE to the applicant and to consider such comments, all "to ensure that the required number of Available Parking Spaces is maintained." There is no overarching meet and confer requirement unrelated to meeting parking obligations. Moreover, the City has met and conferred with respect to the proposed Google development, which the City acknowledges poses a "significant land use and development decision" within the meaning of §21.1.1." The AMA does not obligate the City to refer subsequent applications for projects that have already been discussed with SSE to SSE.
- Nonetheless, the City intends to allow SSE and any interested party a substantial amount of time to comment and discuss subsequent applications with the City. This comment significantly understates the time available for SSE, and other interested parties, to review and provide feedback on Conformance Review submittals. The Conformance Review process is entirely consistent with the referral process described in §21.1.1(a).
 - First, the Conformance Review process for Vertical or sponsor-owned Open Space applications, as described in the proposed Implementation Guide, requires the City to make an application available on the Planning Division's website at the time of application submittal, and an email notification will be sent to all subscribing individuals within 7 business days of the submittal. Because the application must be made publicly available at the time of submittal to the City, the City cannot provide any earlier opportunity for review.
 - Following submittal, Planning staff will then have 45 business days to determine whether the application is complete, potentially extended through a meet-and-confer process, and after a determination of completeness, the project sponsor must hold one community meeting 10-30 business days after a determination of completeness, with public notification. Further, the Director of PBCE's Conformance Review hearing requires 72 hours advance notice, which cannot be issued before the community meeting.
 - Based on these timelines, from the time of application submittal to conformance review approval, assuming expeditious processing, this is likely to take 30-60 days, and could take longer.
- As outlined above, there is much more time than 7 to 10 days for this process to occur and the City expects that SSE will have ample time to review proposals, provide comments, and for the City to consider such comments prior to making any final determination(s). To

ensure that there is adequate time for this process, the City will promptly provide SSE with application materials upon receipt from Google.

C. The proposed Exhibit K to the Development Agreement (Exhibit K), as currently drafted, contains provisions that are inconsistent with the City's parking obligations under the AMA and/or may make it difficult for the City to satisfy such obligations. For example:

- i. The 4,800 commercial parking spaces for the Google Project is a maximum, rather than a minimum.**
- **City Response:** *[Request for Modification #10]*
 - The comment suggests that no minimum parking requirement exists. However, there is a minimum parking requirement as Exhibit K would impose a "Required Parking Ratio" at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area, until the project has provided a total of 4,000 publicly-accessible parking spaces.
 - Exhibit K would recognize that the "Required Parking Ratio is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons."
 - Exhibit K further would require that at least 2,850 available parking spaces be maintained in aggregate within the project boundary and within one-third ($\frac{1}{3}$)-mile radius of the SAP Center, the same number of spaces that currently are available on Google-owned parcels within that $\frac{1}{3}$ -mile radius thereby requiring the minimum parking requirements as provided in the AMA.
- ii. Exhibit K fails to provide for any periodic assessment as to whether Google is meeting its goal that 85% of "publicly accessible" spaces will be "Available" for use by SAP Center customers, or for any consequences if Google fails to achieve such goal; thereby significantly increasing the risk that the City will fail to meet its Minimum Off-Site Parking Requirements under the AMA.**
- **City Response:**
 - As described in §20 of the AMA, the City (together with SSE) has certain obligations to monitor parking supply and utilization, and to take certain steps to maintain the Minimum Off-Site Parking Requirements. These obligations are not affected or diminished by the proposed Development Agreement, and the City would continue to monitor the availability of off-site parking spaces, including within Downtown West, through this existing monitoring process.
 - Additionally, Exhibit K would provide for confirmation of parking availability within Downtown West. §2.a states: "During the Conformance Review process, the Project will be required to confirm that at least 2,850 Available parking spaces will be maintained in aggregate within the Project boundary and within one-third ($\frac{1}{3}$)-mile radius of the SAP Center." Compliance with this requirement will be evaluated during the Conformance Review process for each office building, and verified prior to issuance of building permits for each office building.
- iii. The AMA limits Long Term Temporary Conditions to 3 years, whereas Exhibit K allows 5 years.**
- **City Response:** The City agrees that the Development Agreement should be aligned with AMA concepts regarding long term temporary conditions such that Exhibit K §2.b will be amended to read:

If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in §2.a.i, for a single period that will exceed three (3) years, the City shall verify that its parking obligations pursuant to the Arena Management Agreement continue to

be met. If the City's obligations continue to be met, then the temporary failure of the project to satisfy the Required Parking Ratio may continue for another two (2) years, for a maximum of (5) years. After (5) years, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies as part of the Parking Delivery Plan during construction. If, however, it is determined after the initial 3-year period that the City will not meet its parking obligations under the Arena Management Agreement due to temporary failure of the project to satisfy the Required Parking Ratio, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies at that time.

iv. The AMA requires that Temporary Conditions be mitigated in accordance with a Temporary Parking Agreement entered into between the City and SSE, but Exhibit K does not provide for SSE's input into Google's proposed "interim parking management strategies."

- **City Response:** As AMA §19.3.2 provides, if it becomes necessary to utilize temporary facilities or measures to satisfy the Minimum Off-Site Parking Requirements due to Temporary Conditions, this would be subject to a separate written Temporary Parking Agreement approved by SSE and the City. Nothing in DA Exhibit K contradicts AMA §19.3.2 or diminishes SSE's role in securing a Temporary Parking Agreement with the City to the extent required by the AMA. Exhibit K, §2.b, would provide a parallel process for Google to work with the City in proposing solutions necessitated by Temporary Conditions, but it does not supplant, modify or otherwise impact SSE's existing rights under the AMA regarding Arena parking.

4. LOT E/MILLIGAN/DELMAS WEST PARKING OBLIGATIONS

SSE Comments:

A. It is clear that the City is not going to be able to fulfill its obligations under the above agreements and therefore will be in breach.

- **City Response:** As discussed with SSE, the City is in the process of undertaking environmental clearance activities for the Milligan surface parking lot and planned Lot E parking. Analyses associated with this work is underway and progressing. Some external factors – most notably, COVID-19 and its impact on staffing and funding, as well as initial findings regarding the historic structure on the Milligan site, have contributed to slower than anticipated progress. The City has discussed these projects, their progress, and schedule challenges with SSE, and will continue to work with SSE to deliver the Milligan and Lot E projects as quickly as possible. In keeping with the meet and confer process outlined in the AMA, the City intends to continue to collaborate with SSE and advance the planned parking as quickly as possible; in so doing, the City will not be in breach of contract. *[Request for Modification #11]*

B. The Google Project documents should be modified to provide that the Delmas West development will not proceed unless and until the conditions set forth in the First Amendment to the AMA are satisfied.

- **City Response:** *[Request for Modification #11]*
 - The AMA does not require that project entitlements reflect the restrictions on Delmas West. The First Amendment to the AMA provides that a condition precedent to SSE's agreement to allow Google to locate Replacement Parking on Delmas West is that the Lot D Lease include a covenant that Google keep Delmas West open as parking until certain conditions are met. The Lot D Lease now includes the required language. This both satisfies the First Amendment to the AMA and it adequately protects SSE's rights.

- C. ***For purposes of consistency, and to help ensure that the City does not breach the relevant agreements, the provisions of Exhibit K to the Development Agreement regarding an Alternative Parking Arrangement on Lot E should incorporate the relevant provisions of the above agreements, including:***
- i. ***The obligation to provide priority parking for Arena guests***
 - ii. ***Management of the parking facility by SSE***
 - iii. ***SSE's option to purchase the Lot E parcels***
- **City Response:** While nothing in Exhibit K to the Development Agreement can be read to abrogate any of the rights SSE has regarding Lot E, as a show of good faith, the City and Google have agreed to amend Exhibit K so that it explicitly acknowledges SSE's rights by adding the following language: [Request for Modification #11]
 - ***In the event the Alternative Parking Arrangement results in designation by the City of "Lot E" for the development of additional parking by Developer, subject to any necessary environmental clearance, nothing in this Exhibit shall preclude the City from complying with its obligations under the Arena Management Plan with respect to Lot E, including regarding parking priority being provided for SAP Center event-related parking at least until June 30, 2025, which entity would manage the parking, and/or any option agreements to purchase that property.***
- D. ***The proposed zoning for the Lot E and Milligan sites should be changed from Downtown Primary Commercial to Public/Quasi-Public allow for the construction of stand-alone public parking facilities, so as to maximize potential parking capacity and ingress/egress functionality for event purposes.***
- **City Response:** The City intends to fully comply with its commitments regarding Lot E and Milligan. Those commitments do not require the Public/Quasi-Public designation for those sites. In fact, the only site in the DSAP with that designation is Diridon Station itself. The DSAP specifically calls for parking on the sites, which is all that is needed. The AMA does not require that parking be the only use at those sites. Further, when the City is considering any development project covered by AMA §21.1.1, it will meet and confer with SSE regarding parking, but nothing further is required at this time. [Request for Modification #16]

5. CHANGES TO STREET NETWORK

SSE Comments:

- A. ***Consistent with the above goal of achieving the best street and intersection function for the benefit of both the Arena and the Google Project, the street network configuration proposed by SSE should be adopted instead of the street network configuration proposed by Google. This would help ensure that the streets will preserve the existing functional capacity as intended under the AMA (even though such capacity will still be grossly inadequate to accommodate the enormous increase in traffic volume generated by the Google Project).***
- **City Response:** [Request for Modification #4]
 - The AMA does not require that streets be maintained to preserve their existing functional capacity. The provision of the AMA referenced by SSE (§21.2.3) requires the City and SSE to work together to achieve "the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area". To that end, the City has coordinated extensively with SSE regarding the proposed streets and intersection network for the Diridon Area. In the process of considering changes to the street network, the City and Google have sought to balance the needs of future development, including the project, and the Arena operations. This has been done through extensive and frequent meetings over the last several years and has been documented in

technical studies, including the site-wide Focused LTA and more recently ingress and egress analysis by Fehr & Peers. This has been undertaken in good faith and with the goal of benefiting both the Arena and other development, including Downtown West. While SSE may not agree with the analysis or with the proposed changes, SSE approval is not required even though mutual agreement is always the goal. This coordination and analysis is detailed in the City's response to Request for Modification #4 below.

- The City has been responsive to SSE's input by compromising, making adjustments, and general cooperation in solving the issues raised and advice given by SSE since at least early 2019 and continuing through the responses in this letter including adjustments to numerous elements of the circulation and parking by the City and/or Applicant, including:
 - As part of the Amended Diridon Station Area Plan, maintaining highway access from NB 87 to Santa Clara Street, proposing improvements to highway access at 87/Julian, and including a direct Autumn Parkway extension from Julian to St. John Street.
 - Increasing the width of Barack Obama Boulevard between Santa Clara and San Fernando Streets; originally, this stretch of Barack Obama Boulevard was proposed as a two-lane roadway with flexible curb use; the City and Downtown West project have increased the curb lane to be a fully drivable space (12', including gutter space).
 - Increasing parking figures (up to 4,800 parking spaces) proposed in the Downtown West project, with a minimum of 4,000 parking spaces required at full build out and a requirement that – at any given time during Downtown West construction – at least 2,850 parking spaces remain available to SAP Center patrons.
 - Incorporating a full entrance to and at least partial exit from the Delmas parking lot at Santa Clara Street, as detailed in the following response.
 - In line with requests from the Wenck memo, the City and project will restripe Delmas between San Fernando and Park to two southbound lanes and maintain travel lanes along Julian Street.
 - Further, analysis by Fehr & Peers on behalf of the City confirms that Arena ingress/egress will continue to function. See the response to Request for Modification #4 below for further detail. While SSE may not concur with the F&P conclusions, the AMA does not give SSE any approval rights.

B. The Google Project documents should be revised to make it clear that in lieu of keeping Delmas Street open between Santa Clara and San Fernando Streets, Google will be required to provide a driveway to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

- **City Response:** [Request for Modification #6]
 - The Delmas Development will include a driveway from Santa Clara Street directly to the underground parking. This change was made to the project in response to SSE's request. While the project is not showing the driveway visually because the precise location of the driveway depends on the design, the Santa Clara driveway is addressed in the proposed Downtown West Design Standards and Guidelines (DWDSG) in Standard 6.17.3 - Parking and Loading Access in Open Space. This Standard reads "Access to below-grade parking shall be permitted on project sponsor-owned open space and the Social Heart City-dedicated open space in accordance with the Parkland Agreement. ..." DWDSG Figure 6.54, Prohibited Curb Cut Locations, also inherently permits a driveway at this location because it is not a protected edge.
 - However, to the extent the DWDSG was unclear on this point, **Standard S6.17.7 has been revised to clarify that "full vehicular ingress and, at a minimum, partial vehicular egress shall be provided between West Santa Clara Street and the below grade parking garage**

under block E1...” This is also seen on Figure 6.54 as a preferred curb cut location, rather than not identified (which was the case in previous drafts), or prohibited.

- Further, the project applicant developed a Delmas Avenue Memo to provide supplemental information to the Local Transportation Analysis (LTA), evaluating the operations of Autumn Parkway with the removal of Delmas under future conditions with the full buildout of the project. Please see the City’s Downtown West webpage for the full memo (“Supplemental Analysis for the Downtown West Mixed-Use Project,” April 16, 2021). The analysis concludes operations and intersection queuing along Autumn Parkway would operate within acceptable range and that the segment of Delmas Avenue between Santa Clara Street and San Fernando Street could be vacated to through traffic. This confirms that closing Delmas does not impair the overall function of the streets in the area.
- C. ***In order to help preserve the City’s ability to perform its obligations under the AMA as set forth above, the Google Project documents (including the Conformance Review Implementation Guide) should be revised as follows:***
 - i. ***Plans for any proposed changes to streets important for ingress/egress to the Arena must be provided to SSE for comment prior to preparation of the LTAs described below***
 - ii. ***In addition to all other topics required by the City’s Transportation Analysis Handbook, the scope of LTAs for future development proposals must include LOS/capacity analysis of the affected intersections during the 6 to 7 pm peak arrival hour for SAP Center events.***
 - iii. ***Draft LTAs for future development proposals must be provided to SSE well ahead of public circulation, to give SSE an opportunity for meaningful input***
- **City Response:** *Request for Modification #5*
 - As Downtown West is implemented, the Project Applicant will conduct additional Focused LTAs in alignment with the scoping and timing as outlined in the Implementation Guide. For the general public, focused LTAs will be posted to the City’s website and will be reviewed by the Director of PBCE and/or the Director of Public Works as part of the conformance review process. In addition, as an added effort to coordinate with SSE, the City will inform SSE when such Focused LTAs are submitted by the applicant and provide copies to allow SSE ample time to review. Further, in accordance with the AMA, the City will meet with SSE in advance of any work on the relevant streets.
 - The obligation under the AMA is for the City to coordinate with SSE on changes to streets. The City will meet this obligation as proposed changes to streets that may impact Arena ingress and egress come forward, but this obligation does not give SSE a right to participate in every step of the development process, such as by reviewing changes proposed by an applicant prior to preparation of the Focused LTAs. The applicant will follow the process set forth in the Implementation Guide, and the City will promptly provide SSE notice of submitted documents, such proposed changes to streets and Focused LTAs, and will meet with SSE to work together in good faith. In that way, the City will seek and obtain SSE’s input as part of the ongoing coordination effort.
 - Both the site-wide Focused LTAs and future Focused LTAs analyze daily conditions including pm peak hours which are defined as 5-6pm as scoped in coordination with San Jose Department of Transportation (DOT) and in alignment with the City’s Transportation Handbook. The Project applicant has undertaken additional supplemental and voluntary analysis to understand project impacts to SAP Center ingress and analyze a 6:30-7:30pm timeframe as previously requested by SSE.
 - ***If any changes to the Project’s proposed road network are proposed that would potentially change the findings of the completed ingress analysis***

(<https://www.sanjoseca.gov/home/showdocument?id=72951>), the City and Google will require future Focused LTAs to analyze ingress for potential impacts to SSE Operations, as requested in this document. This change is documented in the Implementation Guide.

6. TRAFFIC AND PARKING MANAGEMENT PLAN (TPMP)

SSE Comments:

A. *The proposed use of dynamic lanes and planned reliance on major revisions to the TPMP to manage event traffic is not consistent with either the express provisions or the intent of the Arena TPMP.*

• City Response:

- The results of the Focused LTA of the project's internal roadway show that for day-to-day operations, a three lane facility (one lane in each direction, plus one dynamic lane) is sufficient. Roadway systems are typically designed for "normal daily" use and the City will work with SSE to determine future traffic control measures, including potential use of a dynamic lane on Barack Obama Blvd for added through capacity, manual traffic control of intersections, and turn restrictions, to facilitate efficient access for SAP Center event traffic.
- The project does not rely on major revisions to the TPMP to manage event traffic. The DSAP area is undergoing significant transformation, not just by the Downtown West Project, but with DISC, the extension of BART, high speed rail, Caltrain electrification, and other development. As such, revisions to the TPMP are not only planned but will be necessary as these various projects are constructed and come online. Indeed, as noted above, the AMA and TPMP contemplate that the TPMP will be updated every three years. Subdivision (a) of § 23.1.3 of AMA states: "The Arena TPMP is intended to be a working document and contains both the ability and requirement to adjust to changing conditions, and to improve as the parties may agree, provided that no such changes shall operate to limit or reduce the scope and purpose of the Arena TPMP."

B. *The approvals for the Google Project should be conditioned upon Google's obligation to fund any incremental traffic operation expenses incurred by SSE or the City as a result of revisions to the street network arising from the Google Project – such funding should not come from surcharges on parking passes purchased by SAP Center customers (see discussion below in §7).*

• City Response: [Request for Modification #7]

- Google is required to provide substantial parking allowing for public access and SAP events as part of its development.
- Today, SSE pays for the full cost of the Transportation and Parking Management Plan (TPMP). The TPMP is expected to change, as construction and new projects (BART, Downtown West, and other developments) materially change access needs and opportunities. It is not appropriate for one party (Downtown West or another single project) to bear the responsibility for any increased cost. However, it is also not appropriate to ask SSE to bear the increased burden.
- The City has suggested moving to a more equitable system for paying for TPMP. There are a variety of options to account for the cost of this program. The City looks forward to determining the best approach with SSE and other stakeholders.
- In the Event Egress and Ingress analysis performed to date by Fehr & Peers and others, while TPMP needs may increase, the full value and appropriate amount of that additional TPMP remains to be determined.

7. DISTRICT PARKING FEES.

SSE Comments:

- A. *Any District parking designed to provide parking for Arena events should not impose surcharges on top of market rate parking fees. This would amount to a “New Tax” payable by SSE’s guests.***
- B. *The intent of the above provisions was to ensure that SSE and/or its guests would not bear the financial burden of development in the Diridon Station area by others, as that would essentially amount to an unfair subsidy.***
- **City Response:**
 - The City is aware that under the AMA the City is not allowed to impose a new tax payable by SSE’s guests (and/or others in the Diridon Area). Today, SSE pays the full cost of the Transportation Parking and Management Program (TPMP). The City agrees that the anticipated increased (incremental) cost of TPMP should not be borne by SSE. The City is exploring different funding options. One option under consideration is a small tax on top of market rate parking fees as one way in which to sustainably fund a robust Transportation Parking and Management (TPMP) and/or Transportation Demand Management Program. This could relieve the cost burden of TPMP currently borne by SSE and ensure that the full range of people who drive and park to events pay for the cost to manage the associated traffic (not just those who park at sites managed by SSE). Again, the City would not pursue with or without SSE’s partnership and an amendment to the AMA.

8. COMPETING FACILITIES.

SSE Comments:

- A. *The event/conference center (and auditorium) uses allowed as part of the Google project should be limited to uses that are adjunct to the project sponsor’s corporate business, so that any such new facility will not compete with the Arena.***
- **City Response: [Request for Modification #13]**
 - The Project does not propose to inhibit the variety of events or activities at the Arena. The City does not propose to “...finance, financially support or participate in the construction of...” “...an arena, amphitheater or comparable facility with over 5,000 seats, used for events typically held in comparable major arenas.” Rather, Google is the project sponsor and the City’s participation is that of a regulatory agency granting zoning and planning approval, making §4.2 of the AMA inapplicable.
 - As defined in the GDP, an “event/conference center” is “a facility owned, leased, or made available by a business entity for the purpose of events organized or funded by the business entity, including but not limited to product launches/announcements, corporate meetings, conferences, seminars, small conventions, and screenings.” (GDP Sheet 4.01, emphasis added.) The Project “event/conference centers,” which would have a maximum aggregate capacity of up to 2,000 attendees, are not within the range of types of events SSE manages and is far short of the 5,000 seat capacity required to be considered a “Competing Facility” under the AMA. This is further evidence that the parties to the AMA never intended to restrict facilities such as the Project’s “event/conference center”.
 - Finally, §4.2 of the AMA does not prohibit competition or require limitation on uses of facilities as described and envisioned in the project.

9. SPECIAL EVENTS.

SSE Comments:

- A. *Under the Google Project's GDP, Special Events (of up to 45 consecutive days or recurring weekly or monthly for a longer period) and Limited Term Uses (longer than 45 consecutive days) may be scheduled on Private Property with no coordination with OCA or permits from the City (except for fire department or noise permits). For example, such events could occur within the large triangular area between Parcel E1 and W. Santa Clara Street, a block away from SAP Center at the entrance to a proposed shared parking facility. Per Exhibit F3 to the Development Agreement, this space may be privately reserved for up to 127 days per year, from Sunrise to 9:00 PM. This could cause major conflicts for Arena events, in terms of both traffic congestion and available parking.***
- i. In keeping with the intent of the above provisions, the Google approval procedures for Special Events and Limited Term Uses should include referral to SSE and OCA for schedule coordination to avoid conflicts with major events at SAP Center.***
- B. *Rights granted for the Google Project should be subject to other applicable existing City and County ordinances. For example, food peddlers should be required to obtain County health permits and should be prohibited from peddling within 500 feet of the Arena on event days as provided by the City's peddler ordinance.***
- **City Response: [Request for Modification #15]**
 - The City has been engaged in communications with SSE regarding this Project and therefore has complied with its obligations under the AMA. The AMA imposes no obligations respecting operations of private third parties' implementation and operation of their projects, so there is no obligation for third parties to coordinate schedules for major events outside of the Arena and the Arena Green which take place on property not owned by the City. Moreover, the proposed project approvals would not exempt the project from regulations pertaining to food peddlers.
 - The proposed GDP also states that certain Special Events or Limited-Term Uses that require a fire permit or noise permit must notify the Police Department and Department of Transportation to provide applicable City departments with relevant information regarding large Special Events or Limited-Term Uses to ensure appropriate coordination with other large events in the City to ensure the public safety of event participants, users of City streets, and adjacent property owners.

**City of San Jose's Responses to Sharks Sports & Entertainment's Letter Dated April 2, 2021 Concerning
Requests for Modifications to the Downtown West Project
May 14, 2021**

SSE requests that the City and Google make the following modifications to the draft land use entitlements applications proposed by Google for the Downtown West Mixed Use Plan, in order to ensure the City-owned arena is properly protected and that the primary objective of the current Diridon Station Area Plan, adopted in 2014, is fulfilled:

- ***Ensure the continued vitality of the San José Arena, recognizing that the San José Arena is a major anchor for both Downtown San José and the Diridon Station area, and that sufficient parking and efficient access for San José Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San José Arena's on-going success.***
- ***At a minimum, the City and Google are required to ensure that the proposed land use entitlements are consistent with SSE's rights under the Arena Management Agreement. In many instances, the land use entitlement documents directly conflict with the AMA, and require modification in order to conform.***

Request #1: Expressly incorporate the current DSAP objective to protect the arena in each of the project approvals requested by Google, and require each future development within the mixed-use plan to fulfill this obligation prior to receiving final city approval.

Comment: Both Google and the City have assured SSE that the Downtown West project will benefit the arena and that future development of the project will not impact the facility's operations or the safety of its patrons, consistent with the DSAP arena objective above. However, this objective is not included anywhere in the goals of the project, nor is it incorporated into any of the specific application documents. This objective must be embedded in the project approvals to ensure the requirement will be achieved. The land use approvals Google seeks are unprecedented in terms of the breadth of flexibility provided and lack of discretionary review the City will retain going forward. However, the applications remain completely silent about the future operations of the arena. Unless specific language to protect the arena is included now, the City may not be able to prevent future developments that will likely imperil the operations of SAP Center.

City Response:

The City and Google recognize the value of the SAP Center as an anchor for both Downtown San José and the Diridon Station area. The successful partnership has spanned many years and will continue into the future.

The Diridon Station Area Plan aims to “ensure the continued vitality of the SAP Center, recognizing that it is a major anchor for both Downtown San Jose and the Diridon Station area, and pursue best efforts to maintain a sufficient supply of parking and efficient vehicular and pedestrian access for SAP Center customers, compliant with the standards set forth in the Arena Management Agreement.” The Plan also contains policies designed to provide sufficient parking for SAP Center customers and create a shared parking district for private development, transit users, and visitors, including especially the patrons of

events at the SAP Center (Amended DSAP, p. 153). The DSAP also describes the City's AMA obligations for parking and the way in which the parking management strategies contained in the DSAP are designed to meet those obligations, including plans for the parking structure just north of the Arena.

Under the buildout of the Downtown West program, SSE patrons will have access to more parking than what currently exists. At the City's requirement, Google will construct at least 4,000 spaces at full buildout, and also ensure that at least 2,850 parking spaces remain available for SSE patrons throughout the duration of project construction (see draft DA, Exhibit K). These spaces have been planned with event egress and ingress in mind.

The Project's Downtown West Design Standards and Guidelines (DWDSG) speaks to a transportation network and streets that were designed with the SAP Center's needs in mind. For example, §6.10, Street Specific Design Intent includes language regarding how Cahill Street, South Montgomery (Meander), and West Santa Clara Streets were designed to support and offer event access to SAP Center. And in particular, Barack Obama Boulevard was designed to provide additional capacity for SAP Center ingress and egress.

Also in the DWDSG (56.8.3.), "Private streets shall be permitted to be closed as needed by the project sponsor for special events and security in the locations identified in Figure 6.19, provided proper notification is provided and **SAP Center event access is maintained as needed.**" Downtown West has made special accommodations to ensure that these objectives are met. However, this objective does not explicitly state that the goal is to "protect" the Arena. Further Downtown West is only a portion of the DSAP area. With that, Downtown West cannot carry out the entirety of the DSAP objectives, but rather is responsible for its portion and has made these special accommodations to that end.

Several of the Project's objectives, referenced in the Project Description of the EIR, speak to encouraging the vitality of Downtown San Jose and ensuring sufficient access and connectivity. Some of the relevant project objectives include:

- Incorporate high-quality urban design, architecture, and open spaces with varied form, scale, and design character to enliven San Jose's downtown.
- Build upon the project's location at the convergence of a significant regional and statewide transportation hub and the city's Downtown to create a world-class, architecturally iconic civic/cultural center for the City of San Jose, particularly through the combination and juxtaposition of historic and contemporary design elements.
- Improve pedestrian, bicycle, and transit connectivity within the project area, as well as between the project area and existing adjacent neighborhoods, in order to create a highly active and lively pedestrian and bicycle-friendly environment.
- Consistent with the MOU, develop a project with minimal parking, while adhering to AMA parking requirements, and robust Transportation Demand Management measures in order to encourage active transportation and public transit use, and to support implementation of the City's Climate Smart plan.

Request # 2: Maintain the current General Plan and Zoning District designations on the arena parking lots as "Public/Quasi Public" and maintain the current parcel lines for the arena land (including the

adjacent parking lots) without new mapping; remove these parcels from the Downtown West project entitlement approval documents.

Comment: Neither the City nor Google has made a formal request for SSE to consent to the transfer of the arena parking lots (Lots A, B and C) for inclusion in the project, nor have the issues SSE identified more than two years ago to support potential transfer been addressed in any material way. In order for the arena to remain a thriving part of the downtown and continue to serve as a long-term home for the Sharks, arena parking lots should not be included in the Google project until their development is reasonably foreseeable.

More important, the City is precluded under the Arena Management Agreement from creating new burdens on title to the property leased by SSE under the agreement, including the arena parking lots A, B and C. Rezoning of these specific parking lots adjacent to the arena as part of the Google project and approving the PD Permit and Tentative Map with these parcels included will create a burden on title to the arena property and so cannot be undertaken by the applicant or the City without SSE's consent. Google has already excluded properties owned by Caltrain and the VTA, and so can easily accomplish this modification.

City Response:

The City and Google share the desire for the Arena and SSE to remain a thriving part of the downtown and Diridon Station Area, and to continue to serve as a long-term home for the Sharks. Moreover, the City and Google recognize that, for the duration of the existing AMA, SSE would need to consent to an amendment to the AMA before transfer of the Arena parking lots ABC or development of that land could occur under the term of the AMA and that, to date, SSE has not been willing to provide such consent.

That said, a number of items in this request require clarification.

First, the City and Google agree that SSE has rights to operate parking on Lots ABC and are making changes to project documents to affirm and clarify these rights [AMA Key Provision #1]. As further articulated in AMA Key Provision #1, the Downtown West project would not create a burden on title affecting SSE's rights.

Second, the parcel owned by VTA is included in the project entitlement approval documents, including the PD Zoning District; however, this parcel as currently contemplated will continue to be owned and developed by VTA pursuant to the GDP standards and any subsequent planned development permit for the VTA parcel. Caltrain-owned parcels were removed during the formal submission process, and thus were excluded from the analysis for entitlements and/or from the infrastructure and community benefits.

Finally, SSE requests that the City and Applicant remove Lots ABC from the proposed Project. As articulated in AMA Key Provision #1, the City and Applicant have adjusted project documents to clarify that timing of the development program and benefits would not occur until the transfer of Lots ABC to Google. This maintains the ability to create approximately 1,000 homes and 665,000 square feet of office (estimated 2,660 jobs) on Lots ABC, as well as the associated infrastructure improvements and community benefits, upon either an amendment of the AMA or its expiration.

Importantly, the Option/Negotiation Rights Agreement allows the City, Google, and SSE to continue to collaborate on mutually beneficial solutions for Lots ABC in the coming years.

Request # 3: Clarify that, even if and when SSE approves of changes to the zoning for arena parking lots A, B and C, the interim use of that property shall remain an existing permitted use pursuant to current zoning district designation without a requirement to obtain a Downtown West Use Certificate or Use Permit or any other conditions of approval. Further, clarify existing non-conforming uses to expressly state that these arena parking lots will remain a conforming use rather than become legal non-conforming one as provided for in the applications.

Comment: The City has obligations to its residents (who approved and paid for the arena), to not shorten or diminish the usefulness of the arena facilities, and has made similar agreements with SSE in the AMA. The A, B and C parking lots are integral to the success of the SAP Center and must remain permanent, at least so long as the current AMA remains in place, especially with the elimination of adequate parking supply in the area. Changing the allowed uses on these lots prior to imminent development, and making existing permitted uses legally non-compliant, will limit the arena operator's ability to maximize the economic use of the facilities as currently allowed by the AMA.

City Response:

It is the City full intention to continue the current use of parking Lots ABC until such time as the site is scheduled for development. Please refer to response to AMA Key Provision #1.

To be clear, the City does not agree with the claim that there's an "elimination of adequate parking supply in the area." There is no evidence of the elimination of adequate parking in the area; to the contrary, the proposed General Development Plan calls for a minimum of 2,850 commercial, publicly-accessible parking spaces to be provided within the Downtown West Planned Development Zoning District and – per Exhibit K of the Development Agreement – a total of at least 4,000 publicly-accessible parking spaces at full buildout of the proposed commercial space. A minimum of 2,850 parking spaces will also remain available during all phases of construction (Development Agreement, Exhibit K). Moreover, the Option Agreement for Lots ABC between Google and the City provides that, for the duration of the AMA, the Option cannot be exercised by Google unless an amendment to the parking agreement of the AMA is negotiated and agreed to by SSE. This ensures that, for the duration of the AMA, the parking provided on Lots ABC will not be eliminated without the prior consent of SSE.

Request # 4: Modify the circulation plan and mobility requirements to provide the following street network changes:

- a) Delete all references to the Cahill Street extension north of Santa Clara Street across arena parking lots until such time as the properties are available for development, and after SSE consents to a transfer of the property.***

- b) Provide two through lanes and a left turn lane in each direction on Barack Obama Blvd. (Autumn Street) between Santa Clara Street and Park Avenue in accordance with currently adopted City plans for Autumn Street.*
- c) On Santa Clara Street, maintain two general traffic through lanes in each direction and one or two left turn lanes, as needed, between Stockton Avenue and Almaden Blvd.*
- d) Maintain level of service D or better during the arrival peak hour for SAP Center events on principal traffic routes used by SAP Center customers (Autumn corridor, W. Santa Clara corridor, and Julian corridor), except that no traffic lanes would need to be added beyond the existing lanes at any intersection to achieve level of service D. This exception would not apply to Barack Obama Blvd. (Autumn St.), because that street is planned to be converted from one-way to two-way operation (see point b) above).*

Comment: SSE has repeatedly advised the City and Google that proposed reduction in street network capacity by eliminating roads and lanes on remaining ones, while increasing daytime population in the area by a factor of 20, will create gridlock for residents, workers, and visitors, including arena patrons. SSE continues to share information with the City and Google which confirms this patently obvious conclusion. Studies produced by the City and Google rely on unrealistic trip reduction assumptions, a system of road management (including dynamic lanes and conversion of streets to one-way operation during event peak periods), and other expensive traffic control operations to justify the project. Unfortunately, these and other possible measures will not be able to overcome the fundamental problems caused by reduced roadway capacity, which would make arrival for patrons to the arena during the peak hour before an event incredibly problematic at best, and at worst result in a local transportation system failure. Once the project is approved, the City will have no recourse to make any future modifications when the inevitable problems arise. Therefore, the City should not give up this critical roadway capacity.

City Response:

The City and Google have taken the SSE's concerns regarding traffic and circulation very seriously. Extensive transportation analysis have been undertaken for the Downtown West project, including:

- Transportation Analysis required by CEQA
(<https://www.sanjoseca.gov/home/showpublisheddocument/65077/637376179515130000>)
- Local Transportation Analysis (LTA) required by the City, outside of the CEQA process
(<https://www.sanjoseca.gov/home/showpublisheddocument/66893/637407905500770000>)
- Supplemental Analysis: Site-Wide Focused LTA
(<https://www.sanjoseca.gov/home/showpublisheddocument/71643/637547859588730000>)
- Supplemental Analysis: Delmas Closure
(<https://www.sanjoseca.gov/home/showpublisheddocument/71637/637547855517170000>)
- Supplemental Analysis: Parking and Neighborhood Traffic Monitoring Plans
(<https://www.sanjoseca.gov/home/showpublisheddocument/71639/637547855529500000>)
- Transportation Demand Management Plan
(<https://www.sanjoseca.gov/home/showpublisheddocument/71645/637547861237300000>)

In addition, the City and Google have hired multiple consultants to study event egress and ingress. These analyses were not required per standard city policies and/or practices, but have been completed because

of the import of the SAP Center and our shared goal of maintaining high-quality access to it for all patrons/employees. These analyses have been coordinated with SSE. It is in the City and SSE's mutual interest that access to and from the SAP Center continue to function efficiently and effectively. Numerous other major league and event facilities function well in dense urban areas; the expertise of consultants with Fehr and Peers and Nelson Nygaard who have worked for other Arenas has ensured functional vehicular ingress and egress.

Please refer to Supplemental Analysis: SAP Center Access

(<https://www.sanjoseca.gov/home/showdocument?id=72951>) for summaries of these analyses and their results. The transportation network balances safety, placemaking, and access needs, and allows for flexible use of dynamic lanes – if/when needed – for event-related ingress and egress. These analyses found that the overall transportation network designed by the Downtown West project – including Barack Obama Boulevard, Santa Clara Street, and Julian Street – would function, not only for daily needs but also for event egress and ingress.

The lane configurations requested by SSE are not warranted per the analysis completed by the consultants. Overall, the proposed network accommodates the volume of traffic forecasted as part of the LTA, FLTA, and supplementary ingress/egress evaluation. While some level of congestion is to be expected within an urban environment, the network as a whole functions and maintains vehicular movement without excessive queuing.

To clarify, the City disagrees that the trip reductions are unrealistic; the trip generation assumed in the analyses reflects the location and amount of parking (assumed to be 100% utilized for events); Downtown West project requirements (including for Transportation Demand Management (TDM), <https://www.sanjoseca.gov/home/showpublisheddocument/71645/637547861237300000>); existing and anticipated traffic associated with approved new development projects; and documented travel and access patterns. The Diridon Station area has some of the region's best transit and rail options, with tremendous additional investment underway. Moreover, many developments (including those occupied by Google) have a proven track record of successful TDM programs – even in suburban areas with many fewer transportation options – and the City has instituted penalties for non-compliance that reach up to \$5 million annually.

In response to SSE concerns regarding parking and circulation, the City and DTW project have incorporated numerous elements and/or changes, as articulated in *AMA Key Provision #5*.

Regarding Cahill Street, it would be extended north of Santa Clara Street in tandem with the adjacent development on Lots ABC, not materially before, unless mutually agreed to by all parties involved. [*AMA Key Provision #1*]

Regarding Santa Clara Street, Downtown West does not currently propose any circulation or network changes along Santa Clara other than project frontage improvements along portions of West Santa Clara Street. The City and VTA have proposed continuing to improve the transit experience along Santa Clara Street, as it is a Grand Boulevard and the highest ridership VTA corridor in Santa Clara County. Designs and potential roadway modifications to achieve this – including through “Public Service Lanes” dedicated

to transit and emergency vehicles – are under consideration, as discussed and shared with the SSE multiple times. This is a proposed future improvement that will require future study, design, analysis, and funding. The Downtown West project will contribute to that study as part of the Local Transportation Improvement Project requirements per the LTA.

Regarding the request to generally maintain level of service D during the arrival peak hour, the City has not used Level of Service as an official transportation metric within the Downtown since 2005 (see previous City Council Policy 5-3 and current City Council Policy 5-1). The primary reason is that – within an urban area, a certain level of congestion is to be expected and is in fact desired, as it is an indication of economic success and a thriving place that people want to go to. Roadway systems are typically designed for “normal daily” use, as this avoids inducing speeding, making pedestrians cross large roadways, and other conditions that pose safety concerns when roadways are oversized for normal daily use.

That said, as shown in the LTA, FLTA, and ingress/egress analysis, the City very much continues to work to have a functional, well-designed, and safe transportation network throughout the Diridon area and Downtown. As discussed frequently over the past two years, the City will continue to work with SSE and other stakeholders to update traffic control measures, as needed, including the potential use of the dynamic lane on Barack Obama Boulevard for added through capacity; manual traffic control of intersections, and turn restrictions, to facilitate efficient access for SAP event traffic. Our goal remains to carry out and evolve the TPMP to maintain excellent access and experiences for SAP Center patrons.

The City and Project are not taking any action that materially impedes the implementation of the Arena Transportation and Parking Management Plans (TPMP); to the contrary, the transportation network and roadways were, in fact, designed with existing and potential alterations to the TPMP in mind specifically to facilitate event access. Please refer to *AMA Key Provision #6* for additional detail.

Request # 5: Require that on each occasion when specific development plans are presented to the City for approval, and prior to approving changes to the current street network, the City will include the following as part of the approval process:

- Develop detailed preliminary plans for any proposed street changes desired along principal traffic routes used by SAP Center customers, and provide to SSE for review and comment prior to completion of the LTA discussed below. Any modifications based on results of the LTA or other considerations must also be submitted to SSE for review and comment.***
- Conduct a focused Local Transportation Analysis (LTA) for the proposed development, which will address the development’s impact on level of service at all nearby impacted intersections during the 6 to 7 pm peak arrival hour for events at SAP Center.***

Comment: §21.2.3 of the AMA provides that the City must coordinate with SSE “regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.” It goes on to state that the parties “shall work together in good faith

with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.”

The City’s obligations under the AMA will continue following approval of the land use entitlement documents for the Downtown West project. However, the minimized process for approval of future development within Downtown West may make it difficult, if not impossible, for the City to fulfill such obligations unless the above suggested procedures are required in the entitlement documents.

City Response:

See AMA Key Provisions #5 and #6 for responses and changes to further incorporate SSE’s request.

Request # 6: Modify the project documents to provide that Delmas Street will remain open between Santa Clara and San Fernando streets. As a less desirable alternative, ensure that Google will be required to provide a driveway (entrance/exit) to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

Comment: It is SSE’s understanding, based on discussions with Google representatives and recent presentations by Google’s consultants, that Google plans to provide a driveway at Santa Clara Street to/from the Delmas development parking. Although this was not SSE’s preferred alternative, SSE has determined that it is a satisfactory resolution subject to the final design of the driveway and parking, including all the parking being accessible from this driveway. However, SSE cannot find this requirement in the project approval documents, and it is important to ensure that this parking facility will be easily accessible to arena patrons as represented.

If access to this parking facility is not provided directly from Santa Clara Street, then the convenience and efficacy of this critical supply of “Available Parking Spaces” will be severely curtailed, thus diminishing the value of such parking as mitigation for the impacts on the arena caused by the loss of parking resulting from the project. It would also be contrary to the purpose of the Transportation and Parking Management Plan (TPMP) for the arena, as incorporated into the AMA. Such purpose is stated “to establish event traffic and parking management strategies” that promote efficient and effective vehicular and pedestrian traffic circulation; provide convenient and easy access to and from area parking facilities, and minimize traffic congestion on surrounding roadway facilities, among other things.

City Response:

The City and Applicant have heard and understood the import of direct access to parking under the Delmas site for the SAP Center. See AMA Key Provision #5B for the ways in which the City and Applicant are meeting this request.

Regarding the questions about Delmas Avenue more generally, please see Supplemental Analysis for the Downtown West Mixed-Use Project (Delmas Avenue) at <https://www.sanjoseca.gov/home/showpublisheddocument/71637/637547855517170000>; this memo was also sent to SSE on 4/22/2021 to facilitate its review.

Request # 7: Include a requirement that expressly mandates Google will be solely responsible to fund any additional traffic operation expenses needed to implement the requested proposed street circulation management plan for events at the arena.

Comment: Google must mitigate every impact it creates, including additional costs to support its massive development plan. With respect to traffic operation costs which will amount to millions of dollars a year, the community -- including the arena operator -- must not bear responsibility for funding them, which would essentially serve as a subsidy for Google. SSE and/or its customers certainly should not be asked to mitigate Google's project by covering such costs, as the current approvals likely would require.

City Response:

See AMA Key Provision #6 for responses.

Request # 8: Modify the approval documents to require the consent of the arena operator prior to any improvement along the arena frontage, including Santa Clara Street and sidewalks

Comment: The project approval documents include significant planned modifications along Santa Clara Street. These modifications are conceptual at this point so it is not possible to determine what, if any, modifications would be made to the arena frontage between the existing structure and face of the curb. The City has a requirement to not modify lands leased by SSE without its consent, and to make best efforts to coordinate future changes to the road network with SSE to preserve arena operations. Providing consent rights to street frontage improvements proposed by the project is a simple way to ensure the arena operations and SSE's leasehold rights can be protected, in compliance with the AMA.

City Response:

Per the AMA, the City will continue to coordinate with SSE, when applicable, on issues affecting parking, traffic, and roadways in the vicinity of the SAP Center.

To clarify, the Downtown West project does not propose changes to the SAP Center frontage along Santa Clara Street. The Project is proposing significant modifications to the frontage of Lots ABC to Santa Clara Street (e.g., replacing the carpark entry with the C2 Office building and amended sidewalk). The City and Project will confer and consult with SSE, giving SSE and opportunity to review and provide timely, meaningful comment on the proposed plans.

See also response above to AMA Key Provision #2.

Request # 9: Modify the infrastructure plan and other application approval documents to reflect that the utilidor route will not pass through or under the arena parking lots until such time in the future that the parcels may be transferred to Google and included in the General Development Plan.

Comment: It is not clear why Google has proposed a private utility system as a basic part of its development plan that relies on its ability to traverse property leased and controlled by a third party on a long-term basis without obtaining that party's prior consent, regardless of underlying City ownership. Even without the extension of Cahill Street, installation of the utilidor would create major disruption to arena operations, and granting Google the right to construct it is not a property right the City retains under the AMA.

City Response:

The utilidor system would be installed at the same time as the Cahill Street extension north of Santa Clara Street (see responses to Requests 2 and 4a above), unless otherwise mutually agreed by all parties. Therefore, as noted in the response to Request #4 above, that extension would likely occur simultaneously with the development of Lots ABC, and thereby not create additional and/or separate disturbance to the Arena operations.

See also AMA Key Provision #2.

Request # 10: Make the potential 4,800 commercial parking spaces allowed in the project applications a minimum requirement, not an "up to" maximum.

Comment: Google's applications and the associated technical studies make clear that even under best case scenarios for transportation mode shift improvements, more than 7,000 of the 25,000+ workers will still drive to work in a single occupant vehicle and many more will carpool. More realistic scenarios show that the number of workers who will need to park in the area will likely be thousands higher. This does not account for parking demands that may be created by additional development, including the proposed DSAP expansion, BART, Caltrain or High Speed Rail projects. The proposed parking requirement for Google of only 2,800 spaces will create significant parking deficiencies in the area, along with associated traffic circulation and safety issues for residents and visitors to the area, including arena patrons. While a 4,800-parking space requirement will not solve the challenge, it will certainly help reduce parking deficiencies. Google should be required to fund and build the parking supply its demand will create, not simply have the option to provide it in the future, or rely on a future city district parking plan which may or may not ever be established or achieve the intended results.

City Response:

Please see AMA Key Provision #3, including for clarity around the proposed parking requirement of 4,000 publicly-accessible spaces at full commercial build-out. A detailed parking evaluation for the commercial parking supply is also provided in Appendix H (Parking Analysis for Commercial Uses) to the Local Transportation Analysis.

It should be noted that the technical studies referenced in the comment above do not take the supply of parking into account in assessing travel patterns – which was intentional to make these analyses conservative (i.e., over-estimate, rather than under-estimate, potential vehicular traffic). Reduced and priced parking supply is in-and-of-itself a primary strategy to reduce vehicular travel and associated traffic, pollution, and greenhouse gas emissions. (See Quantifying Greenhouse Gas Mitigation Measures,

California Air Pollution Control Officers Association: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/capcoa-quantifying-greenhouse-gas-mitigation-measures.pdf>)

Request # 11: Conform Google's phasing plan for the Delmas property to comply with the agreement between the City, Google and SSE that parking available on Delmas West must remain available until such time as Block E parking or a suitable alternative is created.

Comment: As part of SSE's agreement to consent to the sale of Lot D to Google, which was critical to the company's commitment to move forward with its Downtown West project, Google agreed to retain all existing parking spaces on the Delmas West site until either (i) 408 new "Available Parking Spaces" are provided on Block E and Milligan or other approved alternative location; or (ii) BART service commences to Diridon, or (iii) Google has constructed at least 500 "Available Parking Spaces" as part of the development on Delmas East (all subject to the specific terms of the Lot D Lease with Google). The City's progress on Block E and the Milligan site has stalled, and there is no timeline for those facilities to be available for parking in the future. Google's project entitlements, including timing of development of the Delmas site, must account for fulfilling this obligation.

City Response:

See AMA Key Provision #4B for responses.

Request # 12: Include specific construction mitigation measures in the final entitlement approvals to protect the unique operations of the Arena (Arena Protection Plan).

Comment: For more than two years, SSE has continued to plead with the City to address the obvious construction impact challenges presented by the BART project, without any substantive response to specific requests. It is clear that Google's project will pose even greater challenges for the arena's continuing successful operations. Yet, the entitlement approvals remain silent on how to mitigate construction impacts, and once approvals are given, the City's ability to manage any impacts to the arena will be greatly reduced. In the event that Google cannot propose basic construction impact mitigation program prior to approvals, the City can and should establish basic performance standards and other mitigation measures (an Arena Protection Plan) to ensure the safe and convenient ingress and egress of arena visitors (over 1.5 million annually), arena employees, vendors and contractors.

City Response:

The Downtown West project has a Construction Impact Mitigation Plan (Plan) that is currently public on the City's website: <https://www.sanjoseca.gov/Home/ShowDocument?id=70985>. The Plan describes that Subsequent Construction Impact Mitigation Plans (Subsequent CIMP) will be submitted for each phase or each individual horizontal, vertical or open space project within the Downtown West project area. As articulated in the Plan, Google will be conditioned to submit a Subsequent CIMP for each phase or individual project within the Downtown West project area. The Subsequent CIMP is required prior to issuance of the Encroachment Permit for the horizontal improvements. As the specific timing and construction methodologies for each project are not yet known and may shift due to market conditions or

other factors, a description of project impacts and mitigations is not available at this point. However, the Plan requires that each Subsequent CIMP provide:

- Scope of Work
- Phasing Schedule
- Construction Methodology
- Mitigation Measures
- Communications Plan
- Potential Impacts to Businesses, including the SAP Center

Additionally, similar to other development projects, Google is required to comply with the Downtown Construction Guidelines.

As discussed with SSE on April 15, 2021, the City is also developing a comprehensive approach to coordinating construction activities across stakeholders in the Diridon area, given the multiple major projects anticipated (BART, Downtown West, and potentially High-Speed Rail and/or the Diridon Integrated Station in the future). This approach is being developed in consultation with SSE and the City will continue to seek SSE's input to mitigate construction impacts.

See also changes made per *AMA Key Provision #3*.

Request # 13: Modify Google's permitted uses to ensure that the allowed auditorium and event/conference center uses are adjunct only to the applicant's corporate business, so that the facility will not create competition for the arena or convention center.

Comment: The applicant has represented to the public that these facilities are intended to support its larger corporate business with occasional use for community events. However, the definition of the uses would allow any property owner within the district to utilize such a facility in the future for commercial events that could easily create competition for both the arena and convention center. This is likely unintended but clearly a permitted use in the entitlement documents as currently drafted, and this use limitation needs to be added to avoid harm to these important community facilities and their economic development benefits to the City.

City Response:

The City is interested in the auditorium and event/conference center complementing other Downtown institutions like the SAP Center and Convention Center. We believe that the auditorium and event/conference center, as proposed, would accomplish this objective. See *AMA Key Provision #8* for a full response.

Request # 14: Modify the conditions and administrative permits requirements to allow the Director of PBCE to impose reasonable conditions related to the operation of the future specific use/development proposed to ensure it will not create unreasonable operational impacts for the arena.

Comment: Upon approval of the land use entitlement applications, the applicant or future property owners would have the ability to establish a wide range of uses by right with limited ability by the City to make modifications to protect the public's interest, including the continued successful operation of the arena. As continued vitality of the arena is a basic objective of the DSAP, the City can and should preserve its rights to protect the building's ongoing success, particularly since many of the proposed uses will likely conflict at times with the arena's event and daily operations.

City Response:

The Sitewide Focused LTA and Ingress/Egress supplemental studies have evaluated the Project's potential circulation and transportation network to ensure that the permitted uses will not create unreasonable operational impacts and to aid in detailed designed of the roadways moving forward. For other uses, such as administrative uses, the Director of PBCE has the discretion to impose any other reasonable conditions of approval related to the operation of the specific use that is subject to the Administrative Permit to protect the health and safety of the community, as stated on General Development Plan (GDP) Sheet 4.02. Special Uses and Conditional Uses would go through a discretionary process, and may be subject to additional reasonable conditions as well.

Additionally, GDP Sheet 4.05 in the PD Zoning outlines the required coordination and permits for Special Events and Limit-Term Uses and references the coordination needed with Planning, Office of Cultural Affairs, Fire, Police and/or Department of Transportation to ensure the public safety of event participants, users of City streets, and adjacent property owners.

See also AMA Key Provision #1 and #9.

Request # 15: Ensure that for any special uses that could create conflicts with arena operations, Google's administrative permit requirements include a procedure whereby the arena operator must be notified of the application for the proposed activity, and before granting any permit for approval the Director must consult with the arena operator and impose reasonable conditions to protect the arena's operations.

Comment: The proposed uses described in the Google development plan include live entertainment, auditorium, outdoor vending and other special events that, as currently drafted in the Conditions of Administrative Permit section, will likely create conflicts with arena operations without any recourse by the City to correct them. This relinquishment of land use authority goes well beyond the scope of use or approval process for typical projects. The permit procedures in the entitlements guarantee that Google can schedule a wide-ranging number of large events that could trigger road closures or competition for scarce parking on arena event days, without any oversight by the City or the need for any coordination or deference for events at the arena. Neither Google nor successive owners of parcels covered by the entitlements should be granted unique rights to schedule these types of events without going through the approval procedures imposed on others in the area, and without consideration for potential conflicts with the arena operations.

In addition, use rights granted in the entitlement documents should not conflict with other City ordinances. For instance, the outdoor vending rights appear to conflict with the updated peddler's

ordinance adopted by the City less than 2 years ago. At minimum, the specific protections granted to the arena in the ordinance should be included (or incorporated by reference) in the entitlement documents.

City Response:

See *AMA Key Provision #9* for responses.

In addition to the requirements described in response #14, the City coordinates activities that occur near the Arena and endeavors to avoid conflicts in operations (and to mitigate those conflicts when they arise). During the construction period, the Construction Impact Mitigation Plan requires coordination among the City and other area stakeholders, including SSE.

Live entertainment, auditorium, and outdoor vending are considered ongoing uses and as such, there will be no mandated noticing for these uses. These uses are permitted by right, as long as they meet the criteria on the Planned Development Zoning Sheet 4.02. PD Zoning Sheets 4.02 and 4.03 describes the process and conditions of approval for the Administrative Permits for particular uses. Activation activities are a desired and important program element for the City and broader community.

The Director of PBCE may impose reasonable conditions of approval related to the operation of the specific use that is subject to the Administrative Permit to protect the health and safety of the community. There are safeguards in place in the event of any noncompliance with respect to the requirements of the Administrative Permit and subsequent PD Permit pursuant to the remedies available to the City of San Jose Municipal Code. The conditions for Outdoor Vending was created through review of the City's Ordinance with a few modifications to reflect site-specific allowances for the privately-owned publicly accessible open space. Should Google host an event that requires closure of public rights-of-way that allow for vehicle access, then this type of event would be coordinated through the typical City of San Jose Event Permit Application.

Request # 16: The City must ensure that any update to the Diridon Station Area Plan does not preclude the ability to establish a stand-alone parking structure on Block E as long planned for the site.

Comment: Both the Lot E and Milligan sites are anticipated to be interim parking lots and potentially, new parking structures that would serve arena patrons. However, current draft of the proposed DSAP Amendment would modify the zoning designation for these sites. This along with new mixed use design guidelines, would preclude the properties from being developed solely as a stand-alone parking structure in a manner that will protect future arena operations long contemplated by the City and as reflected in the currently adopted DSAP.

Specifically, the proposed zoning designations for these sites are Downtown Primary Commercial. We believe that instead these sites should be zoned Public/Quasi-public to allow the construction of public parking facilities. We are also concerned that requiring the future structures to be "wrapped with active uses" will diminish parking capacity and ingress/egress functionality for event purposes, and cause access and safety impacts to pedestrians accessing the parking from either the arena or other nearby

uses. Also, because there is a potential for both sites to be used for interim parking uses, §5.4 Surface Parking Lots of the Downtown Design Standards and Guidelines (DDGs) should not be required.

In addition, because these future required parking facilities must provide for safe and efficient ingress and egress that supports access to the street network, in accordance with the objective of the DSAP to ensure the continued vitality of the Arena consistent with the provisions of the AMA, the future parking lots and structures on these sites must not be required to be consistent with §3.5.3 Parking and Vehicular Access Location of the DDGs. The ability of parking facilities to best serve arena events is tantamount to pedestrian safety and good transportation management.

City Response:

The City fully intends to include the parking garage at Lot E, as articulated in the draft City-initiated Diridon Station Area Plan amendments. The design of the garage is yet to be completed, but would prioritize consideration of parking structure design and capacity. This is outside of Google's purview and outside of the boundary of the Downtown West project. However, it is addressed in the City-initiated DSAP amendments.

That said, the City believes it is important that future parking structures have an active ground floor, which helps with pedestrian safety, security, and visual interest, and allows space for businesses. With respect to this particular garage, the City would potentially consider some exceptions to this requirement, if required to realize parking capacity or other related needs. However, the City also reserves the right to allow for other commercial development over the planned garage, which is why the Downtown Commercial designation is more appropriate than the requested Public/Quasi-Public designation.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: May 25, 2021

Approved

Date

05/25/21

SUPPLEMENTAL

**SUBJECT: AGREEMENT BETWEEN THE CITY, SHARKS SPORTS &
ENTERTAINMENT AND GOOGLE/DOWNTOWN WEST**

REASON FOR SUPPLEMENTAL MEMORANDUM

This Supplemental Memorandum describes the proposed changes to the project approvals for the Downtown West Project based upon a proposed settlement agreement among the City of San José (City), Sharks Sports & Entertainment (SSE), and Google, LLC (Google). Staff recommends the City Council approve the changes summarized in Exhibits A and B to this Supplemental Memorandum as part of the project approvals for the project.

BACKGROUND

The City values its relationship with the San Jose Sharks, and the team is a source of pride and excitement for San José. Governing the relationship between the City and SSE, the owner of the Sharks and operator of the SAP Center, the Arena Management Agreement (AMA) between the City and SSE set out the mutual obligations of the parties. The City, Google, and SSE have been coordinating regularly regarding the proposed Downtown West project and City's Diridon Station Area Plan (DSAP) amendment since 2018. A number of changes to both the proposed Downtown West project approvals and the City's DSAP Amendment were incorporated based on SSE requests.

Since the publication of the Development Agreement and proposed Downtown West project approvals, SSE has submitted several letters to the Planning Commission and City relating to the EIR, requests for modifications on the project approvals, as well as other concerns. Since the Planning Commission hearing on April 28, 2021, approximately eight (8) additional modifications were made to the Downtown West project approvals for City Council consideration, as articulated in the City's responses to recent SSE letters (included in Appendix E of the May 17, 2021 Supplemental Memo at

<https://sanjose.legistar.com/View.ashx?M=F&ID=9418095&GUID=7B4FA339-C7BB-48BB-B89F-D642D4CC33AC>).

During the week of May 17, 2021, SSE submitted three additional letters requesting clarifications and assurances the proposed project approvals would not impact the existing AMA.

ANALYSIS

City, Google, and SSE have continued to coordinate to resolve outstanding concerns. This memo summarizes additional clarifications and changes to planning documents and/or other agreements, including a proposed limited-scope amendment to the AMA and the Settlement Agreement itself.

Revisions to Downtown West Project Documents

- Revise the Zoning Ordinance to clarify that it, the GDP, and the PD Permit will allow SSE to continue to use Lots ABC, in keeping with the Arena Management Agreement (AMA).
- Clarify that:
 - Nothing in the Development Agreement is intended to affect provisions of the Option/Negotiation Rights Agreement between City and Google pertaining to Lots ABC dated December 4, 2018 (Option Agreement); and
 - The Development Agreement only applies to participating development parcels; Lots ABC are potentially participating parcels, unless and until Google completes the purchase contemplated in that Option/Negotiation Rights Agreement.
- Revise Exhibit K of the Development Agreement to further clarify provisions related to the AMA and associated parking requirements.
- Add three items to the Conformance Review process, as part of the City Council action:
 - Verification that the number of commercial/publicly-accessible parking spaces satisfies the Required Parking Ratio
 - Demonstration that at least 2,850 Available parking spaces remain within the Project boundary and 1/3-mile of the south entrance of the Arena
 - The project sponsor will meet and confer with SSE during the schematic design phase of the parking facilities to discuss operational efficiencies.

Language for these items is generally contained within Exhibits A and B attached. Each of the revisions contained in Exhibits A and B shall automatically become effective at such time as the City Council has approved the AMA amendments referenced in the Settlement Agreement.

Issues Resolved in Other Documents

While the following is intended and stated in the Project documents, the City and Google hereby further clarify the proposed configuration of West Santa Clara Street and Barack Obama Boulevard near the SAP Center. As depicted in the Downtown West Vesting Tentative Map and Downtown West Design Guidelines and Standards, no reductions in general traffic through lanes are being proposed or approved as part of the Downtown West project along West Santa Clara Street. Per the proposed Amended Diridon Station Area Plan, the City and Valley Transportation Authority (VTA) are exploring potential public service lane configurations to maintain reliable transit and emergency vehicle service; this is a separate effort from Downtown West and will continue to be coordinated with area stakeholders, including SSE.

Similarly, regarding Barack Obama Boulevard between Santa Clara and San Fernando Streets, the City retains final decision-making authority over the public right-of-way. As shown on page 16 of the Vesting Tentative Map (VTM), this portion of the roadway (curb-to-curb space) includes two options:

- A dynamic lane on one side of the roadway and two through lanes
- A through lane on one side of the roadway, one center turn lane, and a second through lane on the other side of the roadway

The first option for the portion of Barack Obama Boulevard between Santa Clara and San Fernando Streets is illustrated on page 271 of the Downtown West Design Standards and Guidelines (DWDSG, draft as of March 2021). The second option is very similar to the illustration of Barack Obama Boulevard between San Fernando and Park Avenue, as depicted on page 272 of the DWDSG. The City will determine the final configuration of the public right-of-way, including this portion of the roadway, during the Conformance Review process, including with ongoing input from SSE. This clarification will be included in the Settlement Agreement.

In addition to the above changes to the Downtown West plans and agreements, the City further commits to the following:

- Today, SSE pays for the cost of event-related Transportation and Parking Management Program (TPMP), including Off-Site Traffic Control Services; the City will identify funding sources to cover the incremental growth of the cost of TPMP, beyond the baseline (pre-COVID costs as of 2019, adjusted for inflation based on the Consumer Price Index (CPI)). The identification and selection of these potential funding sources will include consultation with Diridon Area partners like SSE and area property owners. This is proposed to be codified in a limited-scope amendment to the AMA.
- The City will create a trigger system within its new development and project review system to notify City staff when a proposed project or permit request requires a review of the AMA and/or coordination with SSE. This, as well as the following two items, will be City obligations in the Settlement Agreement.
- Additionally, as a City process improvement, the City will ensure that Construction Impact Mitigation Plans (CIMPs) for vertical and open space development are shared

with SSE for feedback prior to building permit submission to allow time for meaningful review and input.

- The City will facilitate event coordination processes for all parties near the SAP Center. Following the completion and commencement of the use of Privately-Owned Publicly Accessible Open Space and/or the event/conference center within the Project site, Google, SSE, and other area event operators shall meet on a quarterly basis, as described in Exhibit A.
- In order to maintain Arena operations, including but not limited to safety and security, changes to public sidewalks along the West Santa Clara Street and Barack Obama Boulevard Arena frontages will be reviewed and approved by SSE, whose approval must not be unreasonably withheld.

Settlement Agreement

The settlement agreement among the City, Google, and SSE resolves the vast majority of concerns raised by the parties. In this Settlement Agreement, SSE provides the City and Google a covenant not to sue in exchange for certain modifications and clarifications to the project documents as well as certain City obligations in the Settlement Agreement itself including a limited-scope amendment to the AMA. The covenant not to sue would be limited to challenges to the legality of any of the project and Amended DSAP approvals and allegations that City's adoption of any project and Amended DSAP approvals have resulted in a breach of the AMA or the Option Agreement. The Settlement Agreement covers only the present iteration of the AMA and any future amendments, aside from the limited-scope amendment described herein, would be outside its intended scope.

Moreover, the Settlement Agreement is conditioned upon Council approval of the revisions generally contained in Exhibits A and B and Council's future discretionary approval of the proposed limited-scope amendment to the AMA. These Exhibits include proposed revisions to the project documents and this Memorandum outlines additional City commitments outlined above, as well as the amendment of the AMA incorporating both the changes reflecting that SSE will not incur any incremental costs of TPMP beyond inflationary adjustments (the source of those funds is yet to be identified and selected).

While the revisions stated in this Supplemental Memorandum compromise the bulk of the issues that have been resolved, not every issue by each party could be addressed in the Settlement Agreement. Likewise, it is reasonable to anticipate that further issues may arise that will not be covered by the proposed Settlement Agreement. For such issues, the parties will continue to meet and confer in good faith to find amenable resolutions to both outstanding and forthcoming issues.

HONORABLE MAYOR AND CITY COUNCIL

May 25, 2021

Subject: Agreement between the City, Sharks Sports & Entertainment, and Downtown West

Page 5

CONCLUSION

As summarized in this memo, the City, Google, and SSE have continued to coordinate to resolve outstanding concerns. As described in this Supplemental Memorandum, City staff recommends that the additional clarifications and changes to planning documents and/or other agreements be included for consideration with the underlying Memorandum and agenda item(s).

/s/

Nanci Klein

Director of Economic Development

For questions, please contact Nanci Klein at (408) 535-8184.

Attachment

Exhibit A

Exhibit A to Supplemental Memorandum

a. Ordinance Rezoning the Property to the DC (PD) Planned Development Zoning District (“PD Zoning Ordinance”)

i. Section 6, paragraph B of the PD Zoning Ordinance has been revised to include language acknowledging that the City does not intend to prohibit any uses and/or structure the City is obligated to allow under the AMA and that any non-conforming use limitations established under Chapter 20.150 of the San Jose Municipal Code do not apply to Lots ABC to the extent necessary to allow uses or structures the City is obligated to allow under the AMA. Section 6, paragraph B of the PD Zoning Ordinance has been modified to read as follows:

Existing Uses and Structures. The City Council does not intend to prohibit any uses and/or structures the City is obligated to allow on Lots ABC pursuant to the Arena Management Agreement by and between the City of San José and San José Arena Management, LLC as amended through December 4, 2018 (the “AMA”). The uses the City is required to allow on such property under the AMA, which include parking and supporting entertainment uses, are consistent with the General Plan as amended through the effective date of this ordinance, including the applicable Downtown and Commercial Downtown land use designations. The requirements of this ordinance, the GDP, the PD Permit, and Municipal Code chapter 20.150 shall not apply to Lots ABC (and Lots ABC shall retain their existing Industrial / Heavy Industrial zoning) until such time as the Project Sponsor acquires fee title or any other legal or equitable interest that includes a right to possession of Lots ABC.

b. Development Agreement.

i. Sections 3.3 and 14.6 of the Development Agreement have been revised to incorporate SSE's requested edits in its letter dated May 17, 2021, to clarify Developer's rights and obligations with respect Development Parcels, as follows:

Section 3.3 revision: Developer may pursue approval of Final Maps for Development Parcels in phases that include only portions of the associated Tentative Map.

Section 14.6 revision (now 14.7 due to addition of provision noted below): Developer shall exercise full dominion and control over the Development Parcels ~~Project Site~~, subject only to the limitations and obligations of Developer contained in this Agreement.

ii. A new Section 14.2 has been added to the Development Agreement (and the subsequent provisions of Section 14 renumbered accordingly) to include the following clarification:

Relationship to Option Agreement. Nothing in this Agreement is intended, nor shall be interpreted to affect, eliminate, or modify the provisions of or the City's rights under the Option/Negotiation Rights Agreement between the City of San José, a California municipal corporation, and Google LLC, a Delaware limited liability company, dated December 4, 2018, for the property referred to as "Lots A-C," and more particularly described in Exhibit A to that Agreement, located in the City of San José, California.

c. Exhibit K to Development Agreement, Downtown West Parking Requirements. Exhibit K has been revised to clarify that (i) the parking spaces to be provided by the Project will be located within 1/3-mile of the south entrance to the SAP Center, (ii) 2,850 commercial parking spaces within the Project Site boundary and within 1/3-mile of the south entrance to the SAP Center will remain "Available," as defined in the Exhibit, and (iii) to make other clarifying edits all as shown in Exhibit B to this Supplemental Memo. .

d. Conformance Review Implementation Guide. Section II (Vertical Conformance Review Application Submittal Requirements) of the Conformance Review Implementation Guide has been revised to incorporate SSE's requested edits in its letter dated May 17, 2021, to establish a meet and confer process with SSE on select parking-related vertical improvements. A new subsection (m) has been added under Section II.B.1 as follows:

(m) Meet and Confer with Sharks Sports & Entertainment (SSE) on Select Parking-Related Vertical Improvements. At least seven (7) business days before submitting a Conformance Review Application for Vertical Improvements (schematic level of design) that includes replacement parking facilities proposed by the project sponsor to be made available to SSE, the project sponsor shall provide written notice to up to three SSE representatives, as identified by SSE, of the anticipated Conformance Review Application. If within seven (7) business days of receiving such notice, SSE requests a meet and confer meeting ("Meet and Confer") with the project sponsor and the City regarding the Conformance Review Application, then the project sponsor shall provide SSE with a copy of the project sponsor's Conformance Review Application concurrent with its application submittal to the City. The project sponsor and city shall use commercially reasonable efforts to schedule and conduct the Meet and Confer with SSE within seven (7) business days following Conformance Review Application submittal. At the Meet and Confer, SSE may provide the project sponsor with comments on the applicable Conformance Review Application, which comments shall be (1) limited to the design and function of those parking facilities proposed to be publicly accessible, including for SSE and its patrons; and (2) focused on industry best practices relating to the design and function of such parking facilities. The City may in its discretion consider comments provided by SSE during the Meet and Confer as part of the City's review of the Conformance Review Application pursuant to the timelines set forth in Section IV.B.

e. Conformance Review Implementation Guide. Appendix A (Downtown West Planned Development Zoning District Vertical and Open Space Conformance Review Approval Form) of the Conformance Review Implementation Guide has been revised to clarify that compliance with Exhibit K parking requirements will be reviewed as part of the Conformance Review process. The following clarifications were added such that Section B (Consistency Determination), subsection 2(e) of Appendix A reads as follows:

(e) If a Vertical Conformance Review Application includes office development, the development proposal described in the Application complies with the requirements of Exhibit K to the Development Agreement, as follows:

(1) The number of commercial/public parking spaces satisfies the Required Parking Ratio.

☐ Yes

☐ No

(2) The project sponsor has demonstrated that at least 2,850 “Available” parking spaces will be maintained in the aggregate within the Project boundary and within one-third (1/3)-mile radius of the south entrance to SAP Center (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG). A publicly-accessible parking space is “Available” if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

☐ Yes

☐ No

Exhibit B

Exhibit K

Downtown West Parking Requirements

Recitals:

- A. This Exhibit is intended to ensure that sufficient parking is publicly-accessible within the Project site, for the Project uses, and ~~also that those publicly-accessible spaces will provide~~ sufficient "Available" parking (as defined below) for the SAP Center, ~~to help~~ ensure consistency with the City's obligations under the Arena Management Agreement.
- B. Today, approximately 2,850 Available surface parking spaces exist on property that will be redeveloped as part of the Downtown West project. Developer and the City anticipate the replacement of ~~approximately 2,850 existing available surface parking spaces on property that will be redeveloped as part of the Downtown West project~~ that parking, and the development of at least 1,150 additional spaces (for a total of at least 4,000 publicly-accessible parking spaces) at full buildout of office space within the Downtown West project. ~~This would ensure the long-term sustainability of the SAP Center. These parking,~~ which spaces do not will all be located within 1/3 mile of the south entrance to the Arena (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG). These 4,000 parking spaces include the parking spaces existing on the property known as "Lots ABC" adjacent to the SAP Center, which currently contain 1,422 "Available" parking spaces, but exclude the up to 2,360 residential parking spaces to be included in the project. ~~Terms~~
- C. The project will target 85% of said 4,000 publicly-accessible parking spaces (3,400 at full buildout) to be "Available" as defined below. This would help ensure the long-term sustainability of the SAP Center.
- A-D. Unless otherwise indicated, terms that are used but not defined in this Exhibit shall have the meanings given to such terms in the body of the Development Agreement to which this Exhibit is attached. For purposes of this Exhibit K, a publicly-accessible parking space is "Available" if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

Parking Requirements:

1. **Overall Requirements:** Over the course of the development of the Project, Developer shall be required to provide publicly-accessible off-street parking spaces serving new office development at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area (which shall mean eighty-five percent (85%) of the total gross floor area) of such office buildings (the "Required Parking Ratio"). At the point of full build out of office space within the Downtown West project, the Required Parking Ratio shall be 0.645 spaces, and the project shall provide at least 4,000 publicly-accessible spaces. ~~within 1/3 mile of the south entrance to the Arena (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the~~

Exhibit B

DWDSG).

- a. Once 4,000 publicly-accessible parking spaces are operational and in compliance with these terms, the Required Parking Ratio will no longer apply provided that the 4,000 publicly-accessible spaces shall be maintained as described herein.
- b. Developer may construct up to 4,800 publicly-accessible parking spaces at its discretion; this parking would be reviewed as part of the Conformance Review process.
- c. The Required Parking Ratio represents a reduction from standard City parking requirements, which would require as many as 15,500 spaces at Downtown Commercial parking ratios (2.5 spaces per 1,000 square feet of Floor Area), or 6,600 spaces with application of available standard parking reductions (1.06 spaces per 1,000 square feet of Floor Area). ~~The~~The City Council has determined that a Required Parking Ratio of 0.645 spaces per 1,000 square feet of Floor Area is warranted given the area's rich transit and mixed-use environment, sustainability and air quality imperatives, traffic reduction and City's multimodal goals, the fact that this parking is available to the public, and transportation demand management requirements.
- d. The Required Parking Ratio is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons. With this in mind, the commercial parking spaces will be publicly-accessible and priced to allow for maximum efficiency to support the SAP Center, as well as the multimodal goals of the City and Project.
 - i. At 4,000 publicly-accessible commercial parking spaces, the ~~project targets~~Developer will target at least 85% of such spaces (3,400) to be Available for SAP Center event use.
- e. If, over the course of the Development Agreement, some parking is found to be no longer warranted, the Director of PBCE may, in its sole discretion, reduce the Required Parking Ratio and/or overall amount without requiring an amendment to the Development Agreement or to this Exhibit.
- f. ~~The~~Notwithstanding any reduction in the Required Parking Ratio approved by the Director as described above, the parking requirement must be satisfied in part through at least 2,850 publicly-accessible commercial spaces within the Project Site, including existing parking.
- g. As an option to satisfy the requirement for the 2,851 to 4,000 publicly-accessible parking spaces set forth above (Section 1), Developer may deliver this parking either within the 1/3-mile radius of the south entrance to the SAP Center (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG) or through an Alternative Parking Arrangement.
 - i. Alternative Parking Arrangement: If Developer determines that it will not provide any number of the remaining required parking spaces within the Project Site, then, in order to meet the Required Parking Ratio, the City shall

Exhibit B

have the right to designate additional land owned by the City and within ½ of a mile of the south entrance to the SAP Center (the "Additional Parking Property") for Developer to build additional parking spaces; Developer would then be required to build additional spaces on the Additional Parking Property, subject to obtaining appropriate environmental clearance and any discretionary approvals, as well as ensuring compliance with any contractual obligations of the City; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly-accessible spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.¶

- ii. In the event the Alternative Parking Arrangement results in designation by the City of "Lot E" certain parcels located at St. John and N. Montgomery Streets north of the Arena (known as "Lot E") for the development of additional parking by Developer, subject to any necessary environmental clearance, nothing in this Exhibit shall preclude the City from complying with its obligations under the Arena Management Agreement with respect to Lot E, ~~including regarding parking priority being provided for SAP Center event related parking at least until June 30, 2025, which entity would manage the parking,~~ and/or any option agreements to purchase that property.
- h. The City's Department of Transportation will review the design of parking facilities as part of a Vertical Conformance Review Application and may require one or more future Focused Local Transportation Analysis (Focused LTAs) to provide building-specific analysis as defined in the Conformance Review Implementation Guide.
 - i. Developer and SSE shall meet and confer regarding parking facility design during the schematic design and development process.
- 2. Phasing:- The requirements below are to ensure that sufficient parking exists, at any given specific time, for the continued operational needs of the SAP Center, as well as the multimodal goals of the City and Project.
 - a. Compliance with this requirement shall be evaluated during the Conformance Review process for each office Building, and verified prior to issuance of Building Permits for each office Building.
 - i. Proposed parking spaces included as part of a previously approved Conformance Determination shall be counted to determine whether the Required Parking Ratio will be satisfied upon construction of the office building that is the subject of a Conformance Review. Surface parking spaces in the Project also shall be counted during the Conformance Review process to determine whether the Required Parking Ratio will be satisfied. For clarity, this means that, to determine whether the Required Parking Ratio will be satisfied, each Conformance Review for an office building shall account for (i) surface parking spaces in the Project, (ii) proposed parking spaces included in a previously approved Conformance Determination that have not yet been constructed, (iii) parking spaces

Exhibit B

already constructed as part of the Project, and (iv) the parking spaces included in the subject Conformance Review application. In the event a proposed office building or buildings would result in the elimination of existing surface parking spaces, the Conformance Review Application for that building shall not be denied for the temporary failure to satisfy the Required Parking Ratio during construction of the building or buildings if the Project would continue to provide a ratio of 0.5 spaces for each 1,000 square feet of Floor Area, and so long as the Required Parking Ratio is satisfied upon issuance of a Certificate of Occupancy for that office building or buildings.

- ii. During the Conformance Review process, the Project will be required to confirm that at least 2,850 “Available” parking spaces will be maintained in aggregate within the Project boundary and within one-third (1/3)-mile radius of the south entrance to the SAP Center.
- b. If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in Section 2.a.i, for a single period that will exceed three (3) years, the City shall verify that its parking obligations to ensure a certain number of available parking spaces pursuant to the Arena Management Agreement continue to be met. If the City's obligations continue to be met, then the temporary failure of the project to satisfy the Required Parking Ratio may continue for another two (2) years, for a maximum of (5) years. After (5) years, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies as part of the Parking Delivery Plan during construction. If, however, it is determined after the initial 3-year period that the City will not meet its parking obligations under the Arena Management Agreement due to temporary failure of the project to satisfy the Required Parking Ratio, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies at that time.
- e.—To the extent the Option Agreement for Lots A/B/C is exercised prior to 2040, the Developer must be in compliance with the Required Parking Ratio, subject to Section 2(a)(i), prior to beginning vertical development on Lots A/B/C. -To the extent the existing Second Amended and Restated Arena Management Agreement between the City and San José Arena Management, LLC is terminated earlier than 2040 or at its scheduled expiration in 2040, Section 1d.i. and Section 2a.ii shall no longer apply.

c.

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