

**From:** [Han, James](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Google EIR Letter  
**Date:** Friday, December 18, 2020 12:20:05 PM  
**Attachments:** [Google 2020Dec7 EIR Comments Dresden.pdf](#)

---

James Han  
Planner | Planning Division | PBCE  
City of San José | 200 East Santa Clara Street  
Email: [james.han@sanjoseca.gov](mailto:james.han@sanjoseca.gov) | Phone: (408)-535-7843  
For More Information Please Visit: <http://www.sanjoseca.gov/planning>

San José City Hall is closed in response to COVID-19.  
I am working remotely in accord with governor's and City's direction.  
I will monitor email during this time.

-----Original Message-----

From: Hill, Shannon <[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov)>  
Sent: Tuesday, December 8, 2020 8:54 PM  
To: Tu, John <[john.tu@sanjoseca.gov](mailto:john.tu@sanjoseca.gov)>; Burnham, Nicolle <[nicolle.burnham@sanjoseca.gov](mailto:nicolle.burnham@sanjoseca.gov)>; Sanderfer, Larissa <[Larissa.Sanderfer@sanjoseca.gov](mailto:Larissa.Sanderfer@sanjoseca.gov)>; Ruano, Jose <[Jose.Ruano@sanjoseca.gov](mailto:Jose.Ruano@sanjoseca.gov)>; Severino, Lori <[Lori.Severino@sanjoseca.gov](mailto:Lori.Severino@sanjoseca.gov)>; Han, James <[James.Han@sanjoseca.gov](mailto:James.Han@sanjoseca.gov)>  
Cc: Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>  
Subject: FW: Google EIR Letter

Hi All,

I am forwarding the attached comment letter because you are cc'd, and it pertains to the greater DSAP as well.

Thank you,

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

-----Original Message-----

From: Jean Dresden [REDACTED]  
Sent: Tuesday, December 8, 2020 4:00 PM  
To: Hill, Shannon <[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov)>  
Subject: Google EIR Letter

[External Email]

See attached

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

December 7, 2020

Shannon Hill, Planner III  
Department of Planning, Building, and Code Enforcement  
200 E. Santa Clara Street, T-3  
San Jose, CA. 95113

Via email

### **Downtown West/Google EIR Comments.**

This letter will serve primarily as comments on the Downtown West EIR and Downtown West. Because the DSAP Plan and the Downtown West project are so inter-related, some comments may drift from a laser-focus on the EIR.

Today, I am writing as an individual who has been involved in a variety of community advocacy efforts, including park, riparian, and transit issues. By way of introduction to those who don't know me, I was recently awarded the Lifetime Achievement Award from the League of Conservation Voters of Santa Clara Valley. I entered into heady company with that award, so I am quite proud and I share greater detail in the footnote.<sup>1</sup>

It is completely unclear whether the Downtown West Design Guidelines are considered part of the project description. If so, they should have been discussed in greater detail within each of the sections of the formal EIR. Further, the sheer volume of pages and changes from long-standing established city policies suggest requires additional time for analysis. Significant impacts are potentially buried within 132 pages if design guidelines are not discussed further. This letter merely touches on the concerns.

### **SCOPE**

**When and how will this EIR be revised or supplemented to reflect pending newest GP changes?** Specifically, this Google EIR sets a unit and square footage ceiling. Recent actions at the General Plan task force suggest thousands of units will be shifted to downtown. What

---

<sup>1</sup> <https://www.scclcv.org/index.php/awards.html>

Other prior winners Cole Wilbur (2019); Rod Diridon Sr. (2018); Barbara Marshman (2018); Senator Dan McCorquodale (2016); U.S. Secretary of Transportation (ret.) Norm Y. Mineta (2015); Senator John Vasconcellos (posthumous) (2014); Don Weden (2013); Mondy Lariz (2012); Dianne McKenna (2011); Eric Carruthers (2009); Mary Davey (2008); Philip and Florence LaRiviere (2007); Peter Szego & Lee Sturtevant (2006); Jeff Oberdorfer (2005); Lois Hogle (2004); Larry Dawson (2003); Jim Compton (2002); Lilian Branon (2001); Bob and Judy Levy (2000); Trixie Johnson (1999); Byron Sher (1997); Alan Cranston (1996)

fraction are expected to be allocated to Google lands? Which to DSAP? Which to old Downtown? Will the allocation to Google/Downtown West be below their ceiling?

Circlepoint, the Environmental Consultant to DSAP argued in their letter accompanying the DSAP Administrative Draft that a simple addendum was necessary to that EIR<sup>2</sup>. How will the increases affect that argument for DSAP? Shouldn't the administrative draft be revised to be a supplemental, or a new EIR? Or should the ENTIRE Downtown Strategy EIR be revised to reflect the thousands of new units.

Thinking about Circlepoint's argument, how will unit increases allocated to Google lands affect this current EIR? Will revisions be made to this Google draft and re-circulated? Will an addendum or supplemental be required to reflect the increase?

## GENERAL PLAN AMENDMENTS

**Google** has submitted several General Plan Amendments.

The following one is both grammatically awkward and/or incorrect and its intent is unclear.

Specifically,

LU-1.9 Preserve existing Public / Quasi-Public lands **or include parks and open space improvements in redevelopment projects** in order to maintain an inventory of sites suitable for Private Community Gathering Facilities, particularly within the Residential Neighborhoods, Urban Villages and commercial areas, and to reduce the potential conversion of employment lands to non-employment use. **Public / Quasi Public lands located within the Diridon Station Area Plan may be re-designated to other uses provided that such uses will advance San Jose's employment growth or housing goals and include parks and open spaces within the development.**<sup>3</sup>

Please explain the intention of this amendment. What, if anything, does this have to do with the Fire Training Center? Does this amendment grant permission for current parks to be destroyed for a private community gathering spaces such as a church, a new hockey stadium, or a music amphitheater? Would park conversion rules (ie requiring an election) still apply?

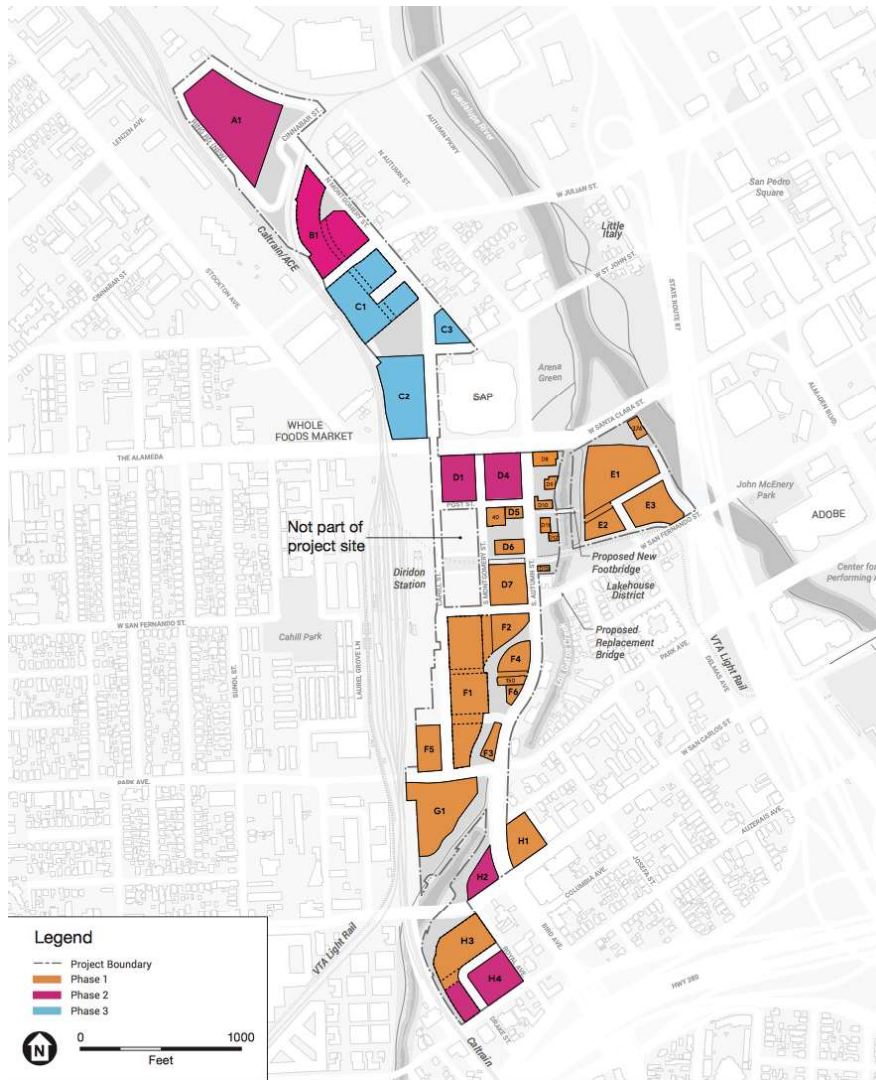
## PHASING

The EIR Project description includes a phasing map. Recent community meetings show a different phasing. Please clarify.

---

<sup>2</sup> <https://www.sanjoseca.gov/Home/ShowDocument?id=65899>

<sup>3</sup> Page 5. <https://www.sanjoseca.gov/Home/ShowDocument?id=65118>



## RIPARIAN

### 100-foot setback – Lifetime Opportunity

The Google project and the City of San Jose have failed to follow the policies and intent of the City's various General Plan policies. The General Plan calls for a 100 foot setback. The City certified that it substantially conformed the Santa Clara County Consortium's "Land Use Near Streams". The City's Riparian Study and the various Downtown Designs Guidelines suggest 30 feet may be appropriate under certain circumstances. Importantly, neither the Riparian Study nor the Downtown Design Guidelines envisioned a redevelopment project where a single owner would scrape 80 acres, close streets, create new streets, re-locate and re-align streets and utilities. The city is proposing cooperating with this by vacating street dedications and facilitating reconfiguration.

Throughout the country, when cities have had such a major redevelopment opportunity, they have chosen to improve the quality of the river habitat and setback. Why not San Jose? Not



since the 1920s has there been such an opportunity to change the quality of this creek's habitat and its relation to built space. This is a rare, 100-year opportunity and San Jose is choosing to miss it and co-sign Google's choice for a minimum setback despite its protestations of nature as a priority.

What do regulatory agencies say about squandering this opportunity? How will their comments be integrated into the thinking on the EIR and the project?

How could Measure T funds (2018) for "Prevent flooding and water supply contamination" be used to increase the setback and protect the water quality?

## **100-year flood levels**

Valley Water released a report that indicates that the 100 year flood height will be higher, due partially to climate change and changes in the modelling methodology. The portion that was shared does not indicate the context of the forecast. That is,

Is Valley Water's report a forecast for existing conditions? How will this forecast change over time with more peak concentrated events in individual watersheds, as shared by Valley Water at the Council Study session on Coyote Valley in 2018?

The report indicates that Google has options: replace West San Fernando bridge, remove plants from the stream and rehabilitate the vegetation, or use other flood mitigation. What are the impacts of each of the alternatives, not just Google's selection?

The EIR does not address what will happen over time, that is:

What would happen to the flood heights if the channel were not cleared? In ten years?

Is this clearing of the channel a one-time event? Is Google (and subsequent adjacent land owners) expected to clear the channel regularly? With what frequency? With what frequency will the water district update the model of the 100 year event?

Rehabilitation of the riparian corridor requires removal of invasive species and planting of replacements. In other habitat restorations, the removal of plant life has encouraged transient encampments. The requirement to form basins for watering creates a stair-step profile that is popular for campsites for the unhoused. Drip irrigation lines are frequently cut in order to be used as plumbing and structural supports for transient campsites. How will the applicant address these challenges? For how many years?

## **Gravel Deposits**

Los Gatos Creek carries significant gravel load. Changes in the gradient of the creek change deposition rates. How will the applicant protect gravel beds used as habitat?

Los Gatos Creek carries high loads of large debris during peak events, including boulders and concrete used for retaining walls. During peak events, there is high velocity. Due to scouring

caused by these peak events, extensive repairs have been required within 2 miles of the project site. How will the applicant prevent scouring of creek bank?

### **Vesting Map and Underground Parking near Los Gatos Creek**

The Vesting Map indicates that Google is reserving underground rights adjacent to Los Gatos Creek. What is this for parking garages? How close will it be to the creek? Will a 30 ft setback be maintained? If not, how will the stability of the bank be maintained considering most of the habitat/plant life will be removed? The soil reports indicated high erosive characteristics. How will the applicant protect the bank from erosion after it has been destabilized from building an underground parking garage nearby?

The hydrology report did not discuss the multiple layers of the underground water table. The upper layers of the underground water table have a high flow rate. (California High Speed Rail 2010 Tunnel Technical Appendix analysis showed that “shotcrete” would be difficult to pour—with much disappearing in the flow of the underground water table.) How will this high flow rate affect the dewatering for parking garage construction? The same report showed water depths of 4 to 18 feet in the Diridon Station Area. This is different from the EIR report which states 25 ft to underground water. Please provide the dates and data for the EIR and explain the difference from CHSRA report.

During the summer, the Los Gatos Creek in the project area stays wet with one to three feet of water. It is fed by the adjacent water table. Underground structures change the flow of underground rivers. How will the construction of underground parking garages affect the depth of the water in the creek? How will the applicant maintain the depth of the water after the parking garages are constructed?

The prior holder of the entitlements on block E1 and E2 chose not to build over concerns of the interaction with the high water table and the parking garage causing the building to float. How will Google avoid this problem?

### **Vesting Map and Older Buildings on East Side of Autumn Street.**

In the EIR’s project description section Figure 2.7 shows that the applicant has the intention of maintaining several older buildings along Autumn Street labelled D8, D9, D10, D11, and D12. Several of these buildings are within the 30 feet setback, with D9 and D12 at the top of bank. In the vesting maps pages 7A, and 9A these are called Lots 17, 18, 19, 20, 21, 22, and 23.<sup>4</sup>

What are the long-term plans for these properties?

Is there anything in this plan that prevents a future application to demolish these buildings and construct something to the FAA and General Plan height limits?

---

<sup>4</sup> Downtown West Google Map. <https://www.sanjoseca.gov/Home/ShowDocument?id=65148>

The Downtown West Design Guidelines states (page 85) for S4.8.3

**Los Gatos Creek Riparian Setback.** Downtown West shall maintain a 50-foot riparian setback from the Los Gatos Creek Riparian Corridor for new building construction, consistent with the Riparian Corridor Policy Study Guideline 1C and City Policy 6-34 Section A. 1)-3).

If existing structures encroach on the Los Gatos Creek Riparian Setback, replacement structures are permitted subject to standards of Sections 5.5 and 5.6.

In section 5.5.7 (page 178) “If structural assessment reveals existing structures at Creekside Walk at Autumn Street (See Section 4.16) cannot reasonably be retained, replacement structures shall be permitted. Existing structures include blocks D8, D9, D10, D11, D12, and D13. Replacement structures shall not exceed existing block footprints within the 50-foot Los Gatos Creek Riparian Setback. Replacement structures shall be subject to applicable standards in Sections 5.6, 5.7, 5.8, and 5.13.”

If a new building, of any size, were built to replace these buildings, what setback would they have to conform to? Would the new buildings be allowed to have a zero setback and other intrusions within the 30-foot setback? If intrusion into the 30 ft setback is allowed, how is that compatible with the stated goal of environmental enhancement?

### **Pedestrian Bridge**

Multiple maps show a pedestrian bridge located between West Santa Clara Street and the light rail tracks. Google’s Design How far is the pedestrian bridge from the West Santa Clara Street and the light rail tracks’ bridge? How far is it from the West San Fernando bridge? How does a pedestrian bridge conform to City of San Jose Riparian Study Guidelines<sup>5</sup> and Santa Clara County Consortium Land Use near Streams?<sup>6</sup>

---

<sup>5</sup> City of San Jose Riparian Corridor Policy  
<https://www.sanjoseca.gov/home/showdocument?id=15579>

Table on Page 35 Interpretive Nodes/Riparian Corridor/Stream Crossings > 500 foot Intervals  
Page 44 “Guideline 4D: Interpretive Nodes and Paths. Interpretive nodes and paths may penetrate riparian areas at intervals not to exceed an average of one every 500 linear feet of riparian corridor. This guideline allows for paths to cross creeks at sufficient intervals and provides opportunities for trail users and others to experience the creek environs while minimizing impacts to biotic resources”

<sup>6</sup> Land Use Near Streams. <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>

San Jose's guidelines state that no bridges that are within 500 feet of another crossing are allowed.

Various Google documents use different language to describe this bridge and the plans. Please clarify what is intended. There are different environmental impacts from each design as well as different permitting requirements. According to Land Use Near Streams, more regulatory agencies are involved it support structures go inside top of bank.

One document has "The bridge will be a single span, with piers located outside of the TOB [top of bank] to the extent feasible." A separate document (DW Design Guidelines S4.8.6, page 87) has

**S4.8.6 Creek footbridge design.** A new Los Gatos Creek crossing shall be permitted within the Project between West Santa Clara Street and West San Fernando Street. This crossing shall use low impact design strategies. Examples of low impact design strategies include but are not limited to:

- Columnless, clear span footbridge within the riparian corridor.
- Perforated materials for sunlight and stormwater permeability.
- Footbridge footings, abutments, and construction ground disturbance to be outside the TOB to the extent feasible, and any disturbance of the creek bank to be restored to a natural condition.

The Diridon Station Area Plan Draft (DSAP) makes clear that a trail is expected to be constructed on the east side of the Los Gatos Creek between West San Fernando and West Santa Clara. However, it also states that due to the volume of pedestrians and potential for user conflict, the DSAP plan calls for a flyover trail from West San Fernando to West Santa Clara<sup>7</sup> to serve trail users instead of office workers.

Please clarify the property ownership of the footings of the bridge. Will it be a pedestrian pathway from a Google property to another Google property? How is it appropriate to destroy public riparian habitat by providing a privately-owned walkway from one private property to another?

Frequently, unhoused persons use bridges footings and the loss of plant life to gain access to creek beds to build encampments. If Google gains approval to violate the City's Riparian Policy AND gains permission from various other government agencies to build the private and redundant pedestrian bridge, how will Google design the bridge so that transient access to the creek bed is minimized?

### **Viewing Stations and Decks and Klosks**

The City of San Jose affirmed that its riparian policies are substantially in compliance with the Land Use Near Stream policies which specifically articulates that overhangs and decks are not

---

<sup>7</sup> Draft Diridon Station Area Plan 2020. Page 80. <https://www.diridonsj.org/fall2020-dsap>

allowed.<sup>8</sup> The Downtown West Design Guidelines describe extensive decking, boardwalks and overlooks. The City's Riparian Setback policy calls for minimizing structures within the riparian setback with separations of 250 feet. The policy rejects multiple trails within the riparian setback. Applicant describes a plan for riparian enhancement, yet they plan to construct many structures and walking trails in addition to the multi-use trail. For what purpose are there so many structures? If applicant is desiring to educational facility, what other locations within San Jose, with more robust Creekside habitat would be able to absorb this intensification of use? To what extent would the decking and boardwalk structures serve as construction materials for transient encampments? How will multiple foot paths serve to provide access to the creek bed for inappropriate access to the riparian habitat by both those seeking to explore the creek bank and those who wish to carve a campsite on the bank? How will that increase in access serve to further degrade the riparian habitat?

### Shade, Riparian Habitat and Re-Oaking

The applicant proposes constructing large buildings adjacent to the Los Gatos Creek. They provide a shade analysis for the structure bordered by West Santa Clara and Delmas Avenue. It gives a hint on the possible shade impacts to the re-oaking project and the renovation of the Los Gatos Creek bed. In addition, large buildings are planned to surround the creek north of West San Carlos. What shade impacts will there be? How will that affect the biotic productivity of the creek? How will shady habitat impact insect populations that are needed for birds and fish? If insect populations in the creek drop, will birds and fish still be attracted to the creek? How will buildings be designed to ensure a minimum of four hours per day of filtered sunlight on the creek? How will the creek rehabilitation be impacted by extensively shaded creek environment? What reduction in herbaceous growth is expected?

Applicant writes that re-oaking is a value and wishes to plant oaks in the riparian enhancement zones. However, the applicant's documents do not indicate which species will be selected nor how that species will be successful in a highly shaded environment. Applicant's consultant has verbally indicated that Valley Oak (*Quercus lobata*) will be planted. It does well when there is a water table within reach of its roots. This oak requires year-round access to water and forms large root structures to carry its above ground structure. Specimens are known to have dropped roots 25 feet to reach water. However, oaks that absorb too much water toss off limbs.<sup>9</sup> What acorn source will be used to maintain genetic integrity? What successful stands of

---

<sup>8</sup> Land Use Near Streams page 3.9. **III.A Overhang Top of Bank** Decks, pathways, buildings or any other structures (excluding road crossings, outfalls, and bank protection structures) may not overhang or encroach beyond or within the top of bank.

<sup>9</sup> Re-Oaking Silicon Valley. [https://www.sfei.org/sites/default/files/biblio\\_files/Re-Oaking%20Silicon%20Valley%20SFEI%20August%202017%20med%20res\\_B.pdf](https://www.sfei.org/sites/default/files/biblio_files/Re-Oaking%20Silicon%20Valley%20SFEI%20August%202017%20med%20res_B.pdf)

and Oak Woodland Management Plan for Santa Clara County

[https://www.sccgov.org/sites/dpd/DocsForms/Documents/CEQA\\_OaksPlan.pdf](https://www.sccgov.org/sites/dpd/DocsForms/Documents/CEQA_OaksPlan.pdf) and California Native Plant Society CalScape [https://calscape.org/Quercus-lobata-\(Valley-Oak\)](https://calscape.org/Quercus-lobata-(Valley-Oak))

oaks have been planted in urban environments when surrounded by highrises that shade the environment most of the day? *Quercus lobata*'s growth habitat is large and spreading with heavy branches. How will long periods of shade impact the density and strength of the wood as the tree gets larger? Will trees have to be regularly harvested so that they don't get too big? What research analysis has been done on oak tree wood quality/density when raised in shade? Considering that soil studies by BART and CHSRA of Downtown West discovered locations where the water table was at a depth of as little as 4 ft, how will the oaks be protected from absorbing too much water? If oaks are planned for being on top of parking structures, how will the depth of soil be calculated to support the large canopy?

## **PARKS and OPEN SPACE**

In this section, the discussion focuses on key questions—

- What's a Park? What's the role of Commercial operations in parks?
- Will there be adequate **PARK** land to meet resident's needs for recreation?
- What's the role of the Design Guidelines within the EIR process?
- When are the Design Guidelines finalized?
- Will the public's needs for park and recreation be served?
- What acreage meets those parks and recreations needs?
- Will commercial plans conflict with fulfilling park needs?
- What entity operates the parks and Google properties?
- What entity decides what meets the public's needs at construction and over time?

## **What makes a park in an urban environment?**

New York City has much experience with an urban environment. The New York State Supreme court wrote this definition of a park when residents pushed back against the City of New York's establishment eating and drinking establishment within Manhattan's 3.7 acre Union Square Park.

"A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. Parks facilitate free public means of pleasure, recreation and amusement and thus provide for the welfare of the community. They must be kept free from intrusion of every kind which would interfere in any degree with their complete use for this end."<sup>10</sup>

---

<sup>10</sup> *Union Square Park Community Coalition v. New York City Department of Parks and Recreation*, 2013 N.Y. Misc. LEXIS 81; 2013 NY Slip Op 30020U (1/25/2013). Quoted in Law Review, June 2013. George Mason University.



They also wrote,

"Park purpose" is an esoteric concept rather than a set formula, and divining it is an art rather than a science. Some uses are obviously more "park" than others; but on what side of the "park-versus-non-park" dividing line does a particular use fall?... [S]ome uses clearly are proper; some uses clearly are not; and some uses depend on the particulars. Furthermore, all uses could be plotted on a spectrum, from, at one end, unvarnished, pristine nature, undisturbed by civilization, to, at the other end, private pecuniary interest and common-denominator commercialism."

The court considered whether the use would be "open to all" and whether the commercial operations would displace other more unique park activities. They were untroubled by casual commercial operations, such as a snack bar providing refreshments that served in support of the activities that were only able to be performed in the park, such as jogging or playing an active game. They opined that they were troubled by expensive restaurants and a holiday market that "is pure, crass commercialism" and "the very antithesis of park use."

With this in mind, how will the City's parks stay focused on park and recreation and not be impaired by commercial activities that take from the primary purpose of parks.

### **Design Guidelines**

Importantly, it is completely unclear whether the Downtown West Design Guidelines are intended as part of the EIR/Land Use and therefore something that will be accepted or rejected within the EIR. There has NOT been robust engagement on the specifics within the Design Guidelines which are overly proscriptive with very little flexibility to meet future needs. Please explain the relationship of the Downtown West Design Guidelines with the EIR. Please explain what, if any, robust discussion of design guidelines will be held? Will there be a charrette? Will the public be allowed to participate? Will individual public parks within the project go through a community outreach process or is what Google wrote the final decision to be accepted or not by the City Council? How will the guidelines be allowed to change over time? How can they be amended? Is any of this open for discussion?

Further, the Downtown West Design Guidelines split guidelines for parks and open space across multiple chapters. It makes the appearance of trying to hide something. The park/open space design guidelines should be collapsed into a single chapter for ease of reference—even if it means some standards are published twice. Electronic storage is cheap. For what reason were these standards separated? How does separating the park standards into separate chapters serve to enlighten and facilitate review by the public, the City staff and Council and future facility designers?

Who decides what the final elements and amenities will be in the Google-owned Private Parks? What entity is the final arbiter of design?

### **Inflated Acreage Numbers**

The applicant commingles park acreage, riparian setbacks, habitat enhancement and walkways that facilitate pedestrian movement between buildings as though they are a single unit. They advertise **15 acres** of parks and open space, yet a deeper look shows a meager 4.8 acres of **public park land** to serve up to 5900 resident units (6000 to 10,000 people) and untold number of employees and visitors.

Please provide a sample calculation demonstrating how 4.8 acres meets the Parkland Dedication Ordinance, using assumptions of units, credits for private recreation, turnkey construction credits and which, if any, of the Google-owned “open space” qualifies for park credits.

“St John Triangle” at 1.51 acres is included within the 4.8 acres of public park land. However, this property is currently part of the SAP parking lot and owned by the City. Has the city sold this property to Google so that Google can dedicate it back to the city? If it has not been sold, please explain why this land is not being retained by the city so that it is not dedicated back at an inflated value?

The vesting map indicates that Lot 15 (or Lot 14 depending on the page in the document) will be on top of an underground parking garage. When did the City change from accepting dedication of only those properties that are *fee simple*? The complexities that the underground garage caused with the Hayes Mansion sale gave the Council another opportunity to remind staff that such future entanglements should be avoided.

**Applicant’s Proposed distribution of unbuilt space.**

<b>City Dedicated Park and Trail</b>		<b>4.8 Acres</b>
Los Gatos Creek Trail	0.53 acres	
City Park	4.27 acres	
<b>Privately Owned Publically Accessible Park</b>		<b>4.12 Acres</b>
<b>Semi-Public Open Space</b>		<b>2.02 Acres</b>
<b>Los Gatos Creek Riparian Setback</b>		<b>2.20 Acres</b>
<b>Los Gatos Creek Riparian Corridor</b>		<b>0.29 Acres</b>
<b>Mid-block Passage</b>		<b>1.57 Acres</b>

**TOTAL ACREAGE OF “PARK” –only 8.9 acres.**

The **privately owned publically accessible parks “may have more limited hours of public access than City-dedicated parks”**<sup>11</sup> Nowhere is there a published statement of access. Will the public be allowed one day per week? One day per month? One day per year—like Grammercy Park in New York City? Will this property be closed for Google events, such as conventions or sales trainings or retreats? Who decides when it is open or closed? Who decides when it is *too*

---

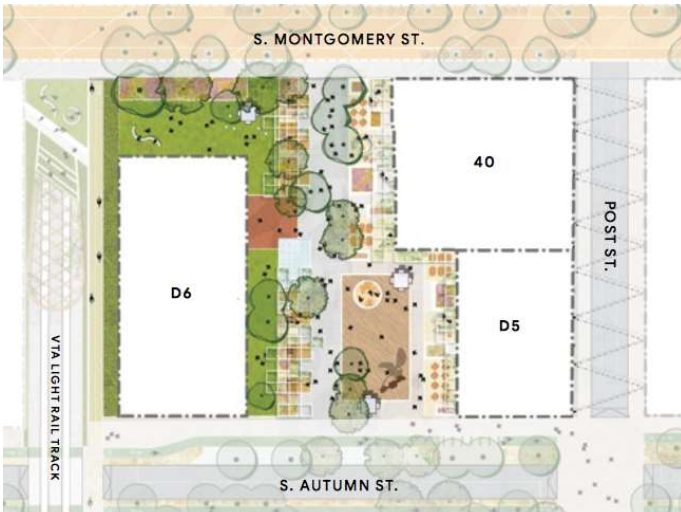
<sup>11</sup> Downtown West Design Guidelines. Page 71.

*limited?* How does limited access promote equity, a key principle of both San Jose's General Plan Park policies and *Activate SJ*?

As an example of a specific concern, the "Los Gatos Creek Multi-Use Trail" (0.28 acres) is within the Google-owned "Los Gatos Creek Park" which is comprised of 2.21 acres and is subject to Google's closure and limited hours. How will the City's Multi-Use trail stay open if Google controls the operating hours of all of the surrounding land? Will trail users be expected to detour? What reduction in park credit will be made as a result of limitation?

**Semi-Public Open Space** is described as property that is adjacent to City-dedicated park or privately owned park and used for commercial activities *such as* outdoor seating for restaurants and/or landscaping buffers. Google indicated that this was a strategy for activation. What other things could be placed in this private space? Open air stores? T-mobile booths? Who decides what is appropriate? How would this commercialization immediately adjacent to the *park* land potentially impair the use of parkland for recreation, for example, who/what prevents the restaurant users from spilling into the recreation area? What if people want to kick a ball or play tag? How will user conflict be resolved? Will the commercial properties needs take priority over other users?

By way of example, the "Social Heart" is designed so that it is nearly completely surrounded by this commercial activity—the semi-public open space. The proposed public park (0.57 acres—just over the bare minimum for dedication) is irregularly shaped with a shared use path along Light Rail, a small buffer lawn, and a plaza that could be activated. Its primary focus is the commercial activities (0.22 acres) in the *semi-public open spaces* along the building edges. How does this property's design compare to the definition of a park as illuminated by the New York court? How is the shared path along light rail any different from a typical easement next to a building and why should it qualify for parkland credits? It is a sidewalk. If the walkway is dropped from the dedication, does the remaining public park drop below 0.5 acres? If so, that is below the City standard for parkland dedication and the city should not accept its dedication. The 60% hardscape makes this space hot and unpleasant. Considering it is on top of a parking lot, it's more like a retail mall and better operated by a private entity.



### **Los Gatos Creek Riparian Setback, Los Gatos Creek Riparian Corridor, Walkways**

Walkways are just that, walkways. The City is cooperating with the removal of streets for more buildable area. Walkways are not “open space;” they allow for the movement of people. They are cold channels of travel between tall buildings. They do not belong in a chart of “open space” but rather in a transportation and circulation chart.

**Los Gatos Creek Riparian Corridor** is a type of open space, but not useable and not a gift of Google to the citizens of San Jose. It is disingenuous to brag about the open space that Google is providing by including in proclamations “the project brings 15 acres of parks and open space.” The creek was already there. It will be there long after Google ceases to exist.

**Los Gatos Creek Riparian Setback.** Although Google makes a big deal of the setback, it is a required element and not a special gift. They are retaining the right to rebuild with the reduced setback when the old, non-historic buildings are not removed. Further they plan to add to these buildings. Although they intend to improve the landscaping, there is no improvement to the setback over the current setbacks because they are keeping all the buildings and adding to them. It is disingenuous to claim “open space” for landscaping around buildings that intrude deeply into the minimum riparian setback (in some cases to the top of bank). Further, San Jose Riparian Corridor policy calls for very limited passive recreation within setbacks, specifically trails. The additional elements proposed within the setback violate the policy and should not be built or installed.

### **Diridon Integrated Station Concept**

The DISC may take some land from Google. Google has shown that 20% of their project is parks and open space and that 20% of the land taken would be parks and open space. They have declared this fair and equitable. However, community calculations show that ALL of the parkland that would be taken is city-owned parkland. How is this equitable? Please confirm. Also please address the truth of the following analysis:

If the city accepts the park dedication, its highest and best use becomes Parkland and will be worth less than when Google dedicates it. This, combine with the inflation of land values, the money received would buy much less land—if it is available.

**Would it be accurate to say that Google has shifted the risk of parkland loss entirely to the city and the city mostly likely will have less parkland if the DISC is built?**

Please explain this language about DISC land taking from page one of the Vesting Map.<sup>12</sup> Why with the City get less land?

#### **NOTE RELATING TO DISC PROCESS AND POTENTIAL CONDEMNATION**

1. ANY MODIFICATION TO LOTS, PUBLIC EASEMENTS OR IMPROVEMENTS SHOWN HEREON AS A RESULT OF THE PROCEDURE DESCRIBED IN DWDSG STANDARD S5.5.4 RELATING TO CONDEMNATIONS SHALL BE PERMITTED WITHOUT THE NEED TO AMEND THIS VESTING MAP OR APPROVAL OF A SEPARATE TENTATIVE MAP OR VESTING TENTATIVE MAP.
2. LOTS A & B SHALL BE IRREVOCABLY OFFERED FOR DEDICATION TO THE CITY AS OPEN SPACE PURSUANT TO THE ASSOCIATED PHASED FINAL MAP. AS OF THE APPROVAL OF THE VESTING MAP, IT IS ANTICIPATED THAT LOT A & B WILL BE 0.93 ACRES, AND THAT SUBDIVIDER WILL PROVIDE AN EXECUTED GRANT DEED TO THE CITY CONCURRENT WITH

THE ASSOCIATED PHASED FINAL MAP AT THE TIME OF APPROVAL OF SAID MAP TO TRANSFER LOTS A & B TO CITY.

1. IN THE EVENT THAT THE CITY ACCEPTS THE DEDICATION OF LOTS A & B, AND LOTS A & B INCLUDES 0.93 ACRES, SUBDIVIDER SHALL BE PERMITTED TO REDUCE THE SIZE OF ANY OF LOTS P,Q, R OR A PORTION OF LOT 14 (FUTURE AIRSPACE PARCEL) ON FUTURE PHASED FINAL MAPS BY 0.26 ACRES, OR TO OFFSET THE AMOUNT OF ANY PAYMENTS TO CITY PURSUANT TO CHAPTER 19.38 OF THE MUNICIPAL CODE THAT WOULD OTHERWISE BE REQUIRED PURSUANT TO THE [PARKLAND AGREEMENT BETWEEN THE CITY AND SUBDIVIDER DATED \_\_\_\_\_, 2021] IN AN EQUIVALENT AMOUNT.
2. IN THE EVENT THAT ANY PORTION OF LOTS A & B ARE CONDEMNED PRIOR TO THE CITY'S ACCEPTANCE OF LOTS A & B, SUBDIVIDER SHALL DEDICATE THE NON-CONDEMNED PORTION OF THE AREA SHOWN HEREON AS LOTS A & B TO
3. THE CITY, AND SHALL COOPERATE AS NECESSARY WITH THE CITY TO EFFECTUATE THE DEDICATION, INCLUDING, BUT NOT LIMITED TO, BY PROVIDING A REPLACEMENT GRANT DEED IF REQUIRED.

#### **NORTH END PARK AND DISC**

The north end of the Google project is surrounded by three railroad tracks. The DISC would elevate the tracks. What rules does the Federal Railroad Administration have for setbacks from elevated heavy rail? The DSAP indicates the possibility of using land underneath the tracks for recreation. Does the FRA allow this? UPRR possible an RFP in 2017 for a short-haul freight line for two of those tracks. Does short-haul freight fall under the Federal Transit Administration or the FRA? If under the FTA, do they have different rules? If the FRA allows recreation under heavy rail, please provide an example. If they do not, please provide information on how users of the park will be shielded from the noise from elevated freight? What noise levels will be

---

<sup>12</sup> Vesting Map. <https://www.sanjoseca.gov/Home/ShowDocument?id=65148>

created? If the park is built before the DISC is constructed, might the newly elevated track have to conform to Federal standards and provide specialized noise mitigations? Or will it be considered pre-existing?

### **North End Park and Design**

This park has the **only** active recreational elements of all 10 of the parks and parklets in the project application. It is adjacent to a Google office building and as far away as possible from the proposed housing. It has the appearance that Google is proposing this park with these amenities to meet the needs of their workers rather than the new residents of DSAP. For what reason was the largest park with the most active amenities placed next to the office building?

It is bisected by a perimeter road, reducing the usability of the space. For what reason was it design with such a wasteful and curving perimeter road? Why not access the office building parking lot via Lenzen and not the realigned perimeter Cinnabar street? There has been some discussion of opening either Lenzen or Cinnabar to Stockton Avenue after the DISC is built. If so, consideration should be made of the impacts of the increased traffic through the park if Cinnabar is opened. Further, the portion of the park that is adjacent to the southern branch of the railroad track is a useless property. At one point Google proposed a dog park, but the city has experience with linear dog parks and has found that they are underutilized (Discover Dog Park). Now, they are suggested a maintenance facility for the parks department. The Parks Department has a yard at Guadalupe Gardens and does not need a facility here. A better solution to this dead space is re-think the perimeter road. Alternatively, move one of the high rises to this location and in its now vacant footprint, dedicate a park that is closer to the residents, will not suffer from train noise and is not bisected by a perimeter road.

### **North Montgomery Pocket Park 0.35 acres**

Bound by block B1 to the west north and south with maximum heights. Please calculate how many minutes of sun will this park get each day at different times of the year? How heavily used are pocket parks with very limited sun? How will the lack of use by traditionally housed persons lead to use by unhoused community members. Considering the “Re-oaking plan” proposed for the site can Valley Oaks survive the very limited hours of sunlight? .

### **Phasing**

The posted project documents give one set of phases while presentation have been giving another set of phases. Please clarify. Also please clarify the approximate flow of park fees and land dedication. From most recent presentations, it appears that the North End park is scheduled for phase 3, long after the residential units are built and certificates of occupancy are issued. Please clarify whether the park would be built or put on hold until the DISC is built? If DISC timing is more like 25 years, will the North End park not be built? What happens to the park dedication if Google decides to abandon the project after Phase 2 and never build phase 3? Will there be no park? When does the City take possession of the dirt?



## **Census Data**

The EIR includes an analysis of census data with respect to school age children, concluding there were few children. There's a flaw with this analysis. Multi-unit affordable housing built with 2 and three bedroom units are full of children. In the 2010 census, downtown multi-unit buildings (midrises and highrises) were not built with inclusionary affordable units. Google has made some commitments about inclusionary affordable housing. How might this change the profile of tenants? Will Google be choosing to build only studios and one-bedroom apartments? If so, there will be no/few children. Families need bedrooms. Google controls whether there will be children by choosing the number of bedrooms in each unit. There is nothing inherent in highrises that preclude children.

The EIR Census Data should be updated to include the demographics of the housing type—what is the ratio of men vs. women?

## **Privacy Concerns**

Google originally planned to construct a similar project in Toronto.<sup>13</sup> It became embroiled in many conflicts including privacy concern. Data collection devices were to be embedded into the structures. Does Google (or its corporate affiliates or consultants) plan to collect data on the community's use of the public spaces? How will it collect data? Will measuring devices be embedded into the infrastructure? Will users get real-time feedback for their presence, eg an advertisement? If some sort of monitoring program is put into place, will buildings and parks have signage warning users that they are being monitored? Will there be a way for them to opt out? Without turning off their smart phones?

## **Operations**

In contrast to the overwhelming proscriptive detail about park design, there is nothing revealed about park operations and management? How will the parks be managed? What group will make decisions? Will it be a single organization? How will it be funded? How will the interface be handled between commercial operations and park operations? How will maintenance be handled? What group will activate the park? What is the role of the community in the process in the decision-making process, if any? What role will the community have once there is a management group? Will neighbors be able to participate in a feedback loop or will they be told by the management group, "go away?" How will they City ensure that all city residents and visitors are treated equitably by the management group?

---

<sup>13</sup> Alphabet is Google's parent company. Sidewalk Labs is a subsidiary.

<https://www.businessinsider.com/alphabet-sidewalk-labs-abandons-project-for-quayside-toronto-neighborhood-2020-5> <https://www.bloomberg.com/news/articles/2018-09-07/what-s-behind-the-backlash-over-sidewalk-labs-smart-city> <https://www.fastcompany.com/90327859/sidewalk-labs-built-this-free-app-for-people-watching>

## **COVID and POST-COVID**

The COVID pandemic has changed human behavior. There has been increased park usage documented by many agencies throughout the world.<sup>14</sup> Locally, the Open Space Authority counted a 600% increase in usage. Despite closed playground, many San Jose parks experienced strong use patterns by walkers and family groups with imaginative play. Some bloggers are beginning to write how design will have to change so that parks and public spaces can meet human needs. No one knows whether we return to our prior behaviors, or have we fundamentally change. Will we want less density, more nature, options to step back from strangers and stay just in our pod? The bloggers suggest that park managers and designers need to improve flexibility in our existing and future parks so that they can meet the need of the next pandemic as well as whatever preference the community holds after this pandemic resolves. How is Google looking at their park design guidelines through the lens of COVID and POST-COVID?

## **EQUITY OF ACCESS and CULTURE**

Google's values statements indicate an interest in equity and a valuing of what makes San Jose. However, the nuts and bolts of Downtown West Design Guidelines do not reflect these values in the parks. By way of example, the park designers are told to stick with the Google project palette. This suggests the parks will be uniform in appearance. That is so NOT San Jose. The guidelines for each park don't even hint at access for children, elderly, disabled, poor, language minority. With such a prescriptive set of design guidelines, the absence of mention is surprising. As one participant stated in a November community meeting, even the names of the parks are not culturally sensitive to the strong Latinx culture of San Jose. Photos and illustrations do not reflect San Jose's cultural diversity. How will Google reach out to specialized communities in a meaningful way to get feedback on the individual designs? This would mean deep focused discussions and interactive conversation, not hour-long overviews about Google.

## **TRANSPORTATION and PARKS**

The underlying theory of Downtown West and the DSAP is that people who live and work their will be able to meet their needs without a car. How will the parks meet that need? Where can residents or workers go after work and play soccer? Play basketball? Go running? Commune with a forest? Play volleyball? Climb a wall? How do they get to the wilder spaces like those in

---

<sup>14</sup> Parks and the pandemic, Trust for Public Land Special Report  
<https://www.tpl.org/sites/default/files/Parks%20and%20Pandemic%20-%20TPL%20special%20report.pdf>  
<https://kinder.rice.edu/urbanedge/2020/04/10/covid-19-era-renewed-appreciation-our-parks-and-open-spaces>  
<https://gehlpeople.com/blog/managing-public-space-in-the-new-normal/>  
<https://norcalapa.org/2020/07/equitably-resolving-public-space-in-the-time-of-covid-19/>

Alum Rock Park? Kelley Park? The Open Space Authority Parks? How do they do it without a car? Until there are realistic answers to those questions, the recreational needs of the people who live and work at Downtown West will not be met without a car. The current proposed parks's designs don't even come close.

## **HEAT ISLAND EFFECT**

The early pages of the Downtown West design guidelines mention parks as a strategy to counteract the heat island effect. With this in mind, it is surprising that there is a high percentage of hardscape, impervious and semi-pervious surfaces in the designs. How can parks serve to capture heat when they have been designed with 60% (or more) hardscape? In what ways could the percentage of hardscape be reduced?

Thank-you for the opportunity to comment.

Sincerely,

Jean Dresden

cc

James Han, Planning Downtown West Project Manager

Nicolle Burnham, PRNS Deputy Director

Larissa Sanderfer, PRNS Downtown West Project Manager

Jose Ruano, DSAP Project Manager

Lori Severino, Manager Diridon Station Area Advisory Group

Board, San Jose Parks Advocates