

From: [Severino, Lori](#)
Cc: [Dave Javid](#)
Subject: SAAG Update
Attachments: [Diridon to Downtown_FINAL.pdf](#)
[Letter to Bill Souders 4-5-19.pdf](#)
[Email from Bill Souders.pdf](#)

Hi SAAG members,

Here are a few updates:

1. **Meeting Summaries:** The Draft Meeting Minutes and Summary from the March 11 meeting are available on the [SAAG webpage](#). Please let me know if you have any comments by May 17. Click [here](#) for the summary of Community Meeting #2 for the Diridon Integrated Station Concept Plan held on March 25.
2. **Upcoming Meetings:** We have scheduled a SAAG meeting for Wednesday, May 22, 6:30-9:00 PM at City Hall in the Wing Committee Rooms (118-120) – same location as usual. The proposed agenda is:
 - Discuss the anticipated, high-level process for the upcoming Diridon Station Area Plan update, including outreach this summer.
 - Update on the Diridon Integrated Station Concept Plan: we will present possible configurations for the future station and lead a discussion on the benefits and trade-offs associated with each configuration.

The Diridon Integrated Station Concept Plan team is also going to present to the [Diridon Joint Policy Advisory Board \(JPAB\)](#) on May 17 at 3:00 at VTA River Oaks Auditorium. The presentation to the SAAG on May 22 will cover the same material as this JPAB meeting, and we will refer you to those materials for advanced review. The third round of public outreach on the Station Concept Plan, which we are planning for June, will also cover this material. Stay tuned!

3. **Correspondence with Bill Souders:** Bill Souders, one of the Downtown Residents representatives on the SAAG, posed some questions to Kim Walesh and requested that we share the correspondence with you all. I have attached his questions and her response letter, and posted them to the website here: www.diridonsj.org/SAAG.
4. **SJSU "From Downtown to Diridon" Class Project:** This semester's capstone class for SJSU's Urban Planning Graduate Program is studying the connections between Diridon Station and Downtown destinations. They are hosting two upcoming events where they will share their work and chat with community members. For more information, please contact Matt Gustafson at matthew.gustafson@sjsu.edu.
 - Community Open House to gather feedback: May 4, 10AM-2PM at the San José Museum of Art (see attached flyer)
 - Final Presentation to share findings and recommendations: May 15, 4-6PM at SJSU Washington Square Hall, Room 208

Please let me or Dave know if you have any questions.

Thanks!
Lori

SJSU's
Master of
Urban Planning
Program Presents

GET CONNECTED : DIRIDON TO DOWNTOWN



CAN YOU FIND YOUR WAY IN SAN JOSE?

A COMMUNITY OPEN HOUSE @ SAN JOSE MUSEUM OF ART

SATURDAY, MAY 4, 2019

10:00AM - 2:00PM

How can San Jose improve connections between Diridon Station and downtown? Come by and give your feedback!

Free Food. Fun Activities for all ages. Entertainment.



A community event to give visitors the opportunity to provide input on the connections between Diridon Station and Downtown San Jose. Activities and engagement for both children and adults!

Have any questions? Email Matthew Gustafson: matthew.gustafson@sjsu.edu

Link to our event: <http://tiny.cc/Diridon2Downtown>

SJSU SAN JOSÉ STATE
UNIVERSITY



CommUniverCity · SJSU
— engage — learn — build —

 @sjsuurbanplanning
#DiridonToDowntown

April 5, 2019

Dear Bill,

Thank you for expressing your concerns in your email letter to me on March 14. I'm glad we could get together recently to discuss your concerns for a few hours in person. As you suggested, I'm going to also put a few key responses in writing for the public record.

Non-Disclosure Agreements

First, I am clarifying that there are no city employees, including me, that are 'still under NDA with Google.'

As soon as the City publicly announced its intent to negotiate with Google on June 9, 2017 -- via the City Council Memo for the June 20 Council meeting -- no City official has been bound to confidentiality by any NDA, as stated early last year by City Attorney Rick Doyle in an official statement (attached). All negotiations proceeded without any NDA-imposed requirement of confidentiality, and City-created documents remain subject to public disclosure under existing local, state, and federal law. This information was also provided in an FAQs document text was distributed to SAAG members and made available on diridonsj.org in July 2018. For your reference, I have provided at the end of this email the complete text to FAQ Question #18 regarding Non-Disclosure Agreements.

Council Decision Regarding OEI/Downtown Height Limitations

I know that you advocated for a different Downtown height limit than the one unanimously adopted by City Council on March 19, and recommended by City staff and by the project Steering Committee. Thank you for investing time to review the staff/consultant analysis and for contributing your views on the topic at the Council meetings.

Your question about our coordination with Google's OEI consultant was one John Aitken and I answered at the Feb. 26 City Council meeting (in the video you attached). As we said, the prior 2006 attempt to resolve the OEI issue with a formal Council-adopted policy failed precisely because of lack of agreement on the facts and analysis. In our 2018 work, we wanted to avoid a situation where Google as the potential master developer in the Diridon Station Area had a different analysis of how high they could build. To that end, the City's OEI consultant Landrum and Brown were authorized to share interim analyses with Google's OEI consultant, after the analysis had been shared with City staff and Steering Committee members. The goal was to ensure that Google was approaching the issue with a technically accurate understanding of the

facts and the analysis of the various air surfaces and scenarios. The task order with Landrum and Brown referenced the term that Google apparently uses for their San Jose: Project Sparta. (Note: The City refers to Google as Google).

On the City's part, there was no attempt to hide that Google is a major stakeholder in Downtown and that we were discussing OEI with them as the potential master developer of the Diridon Station Area. I said at the public Stakeholder Meetings throughout the process that we were coordinating with Google. (Concerns were raised in the public meetings that we were not coordinating with the company.)

Despite our coordination with Google, Google was not involved as a decision-maker. The Airport Director, after reviewing all of the analysis and considerations, and the input of the Steering Committee, recommended Scenario 4 in the best long-term interest of the airport and the City. After two lengthy Council meeting deliberations, Council adopted the recommendation unanimously.

My Trip to University of Toronto/Quayside Project Reflections

Your letter references a 'city-sponsored' trip to Toronto, and your disappointment that I did not provide a report-back to the SAAG. I was invited by the University of Toronto to be the plenary speaker at a Tuesday, May 15 conference entitled "Toronto: Toward a Smart and Inclusive City-Region." The University of Toronto covered all of my travel-related expenses. My talk that generally followed the slides used in our 2018 community meetings. It's clear that many cities globally are wrestling with similar challenges.

Bill, we have known each other for a very long time and I have tremendous respect for your lifetime of contribution to our city, our downtown, and our neighborhood. I respect that you are raising questions that matter to you, and will continue to be available to answer questions or provide clarity on these topics.

Sincerely,


Kim

Attachment A: FAQ Concerning Non-Disclosure Agreements

FAQ 18. Why did some City staff and elected officials sign Non-Disclosure Agreements in Spring of 2017? Are they still operative? What is a Non-Disclosure Agreement?

A Non-Disclosure Agreement (NDA) is a contract that creates a confidential relationship between a person or entity that holds confidential information or a “trade secret”, and a person to whom the information will be disclosed. It is common for purchasers of multiple real estate sites to seek NDAs with the land owner in the very early exploratory stage of real estate projects while both parties are assessing a potential deal, in order to prevent land speculation by other developers. To the extent that such speculation makes a larger land assemblage financially untenable, it does so to the detriment of both the buyer and the seller. For that reason, the City has entered into NDAs in other instances in which large employers have sought to assemble multiple parcels.

Google requested that key City employees and officials sign NDAs in the February-May 2017 time-period when a potential Exclusive Negotiations Agreement was being considered and a draft recommendation was being developed for City Council consideration.

On June 9, 2017, the Administration publicly released its Council memo recommending the Exclusive Negotiations Agreement, which included the recommended Agreement as an attachment. City Council considered and adopted this recommendation at its June 20, 2017 meeting. As soon as the City publicly announced its intent to negotiate on June 9, 2017, the transaction no longer remained confidential. Accordingly, since that date, no City official has been bound to confidentially by any NDA, according to City Attorney Rick Doyle. All negotiations have proceeded without any NDA-imposed requirement of confidentiality, and City-created documents remain subject to public disclosure under existing local, state, and federal law.

Government entities and government employees who enter into NDAs remain subject to the Public Records Act requirements for disclosures. For example, in February 2018, the City received a Public Records Request for the executed NDAs related to the Google-Diridon Station land sale and potential development. The City fulfilled that request, and provided the documents to the public.

In addition, the City has followed—and will continue to follow—all sunshine requirements related to this project, including the requirement that proposed agreements be publicly posted 10 days before coming to Council for approval.

Attachment B: Rick Doyle Official Statement February 16, 2018



For Immediate Release
February 16, 2018

Contact:

Rosario Neaves, Director of Communications
Phone: 408-535-8170
rosario.neaves@sanjoseca.gov

Statement from City Attorney Rick Doyle on San Jose's Non-Disclosure Agreement with Google

San Jose, Calif. – San Jose City Attorney Rick Doyle released the following statement, regarding San Jose's Non-Disclosure Agreement with Google:

"San Jose's Non-Disclosure Agreement with Google has had no effect in constraining the release of any information to the public since June of 2017, months before any negotiations over the price of publicly-owned land took place.

Although the Council just considered a compensation agreement relating to the sale of property to Google on Tuesday, that agreement will have been subjected to no fewer than 15 public hearings by 14 separate governmental agencies before a single parcel of public land changes hands." – *Rick Doyle, City Attorney*

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From: Bill Souders <illsouders@outlook.com>

Sent: Thursday, March 14, 2019 6:33 PM

To: Walesh, Kim

Cc: maria@wpusa.org; testremera@valleywater.org; jim.lawson@vta.org; jean@local393.org; whitneymorris@umpquabank.com; cenders@thecorecompanies.com; jpedigo@catholiccharitiesscc.org; swilley@minoritybusinessconsortium.com; pete.kolstad@gmail.com; nicolejustinebrown@gmail.com; nadia.aziz@lawfoundation.org; leslee@grpg.org; khondayamamoto@greenbelt.org; kcygnusraz@aol.com; ben.tripousis@hsr.ca.gov; jonathan_georgetown@yahoo.com; walterwilson@hotmail.com; Dan Mountsier (dan@mountsier.com); jeffrey@wpusa.org; leslye@siliconvalleyathome.org; laurarwinter@gmail.com; talvarado@spur.org; smcdermott@unitehere19.org; shiloh@bikesiliconvalley.org; edward@saumdesignconsulting.com; jgoddard@sapcenter.com; charlie.faas@sjsu.edu; sondraweber019@gmail.com; Darnell, Harvey; Sutherland, Kathy; scanlone@samtrans.com; calais@adobe.com; Bill Souders

Subject: Backlash in Toronto; Implications for SAAG and Project Spartan?

March 14, 2019

To: Kim Walesh

Cc: SAAG Members

From: Bill Souders

Re: **Backlash to (Alphabet/Google) Sidewalk Labs' Controversial Smart City in Toronto**

Kim, as you will recall from our email thread from last year (see below), I shared the original Quayside article with SAAG members, but we never got any report-back from your city-sponsored trip, as requested.

Since then, much has happened relative to large tech companies choosing to build major headquarters in various cities. Even as Mayor Liccardo continues to assert that San José has not given Google any special incentives, I think it is important that you keep the community members who are participating in your Advisory Group as informed as possible.

Below is an article about strong community backlash, akin to the Amazon HQ2 backlash in Queens, based on recent news from the Toronto Star.

<https://www.citylab.com/equity/2019/02/block-sidewalk-labs-quayside-toronto-smart-city-resistance/583477/>

At the Feb. 2, 2019 City Council Meeting (see video [here](#) at 06:27:00), SJC Airport Commissioners questioned you about Google's involvement in shaping the taxpayer-funded study (~ \$940,000) to determine how much to increase building heights in the Station Area, for land and air rights recently sold to them. The commissioners, who were not included in the OEI Steering Committee, found this information buried in the city contract with consultant Landrum & Brown. The documents required the contractor to host conference calls to provide "briefing and updates" to both the city and a "Project Spartan consultant" and called for calculating "economic impacts that may be directed by the Project Spartan Team."

The study and contract documents included the names of private companies and stakeholders but did not include Google's name. It turns out that "Project Spartan" was Google all along, which was only disclosed publicly after the query by the Airport Commissioner.

<https://sanjosespotlight.com/google-in-san-jose-why-did-consultant-contract-use-a-pseudonym/>

This week, City Council has voted unanimously to eliminate the One Engine Inoperable (OEI) height protection on the Google property in the Station Area, based on your recommendation. For some reason, there was this contractual commitment to collaborate with Google on this far-reaching decision, which concerns significant city and regional assets, beyond the just the property that they purchased (our long-haul International Airport, for example). This was happening with certain city employees on the OEI Steering Committee who were still under NDA with Google, yourself included, and prior to finalizing negotiations on the land sale, and air rights, in December.

<https://sanjosespotlight.com/google-in-san-jose-who-signed-non-disclosure-agreements/>

You led the Steering Committee that collaborated with Project Spartan (Google), and you ultimately made the recommendation to maximize building heights, in spite of the fact that it poses the most risk of airline interruption (and expense) of all scenarios presented, according to your own data. I think it may be worth explaining to the SAAG members why you don't believe that this is an issue. Perhaps you should do so in writing as well, since our next SAAG meeting is not planned (nor scheduled yet) until at least three months from now.

Thank you for your continuing effort to make this community outreach exercise a true success by keeping all relevant information visible, in the sunshine of this open forum. I trust that someone from the City Manager's Office will post this to the SAAG public record to comply with the Brown Act requirements.

Respectfully, Bill

From: Walesh, Kim <Kim.Walesh@sanjoseca.gov>

Sent: Friday, May 25, 2018 3:35 PM

To: 'Bill Souders' <billsouders@outlook.com>

Subject: RE: Forward to SAAG?

Hi—good idea....been swamped so haven't written anything specific....main lesson learned is that all cities are facing the same issue of how to have 'inclusive growth', and that SJ seems way ahead of Toronto in terms of affordable housing requirements and renter protections.

From: Bill Souders

Sent: Friday, May 25, 2018 1:15 PM

To: Walesh, Kim <Kim.Walesh@sanjoseca.gov>

Subject: RE: Forward to SAAG?

Will you be sharing your lessons learned from your trip?

From: Bill Souders
Sent: Wednesday, April 11, 2018 10:16 AM
To: Walesh, Kim <Kim.Walesh@sanjoseca.gov>
Subject: RE: Forward to SAAG?

Excellent. I look forward to hearing about their lessons learned. B

From: Walesh, Kim <Kim.Walesh@sanjoseca.gov>
Sent: Tuesday, April 10, 2018 5:06 PM
To: 'Bill Souders' <bill souders@outlook.com>
Subject: RE: Forward to SAAG?

Thanks, Bill. I am going to Toronto in May to be on a program at the University of Toronto, prompted in part by community reactions to this project—will be great to compare notes

From: Bill Souders
Sent: Wednesday, April 11, 2018 9:16 AM
To: Reid, Tara <Tara.Reid@sanjoseca.gov>; lee.wilcox@sanjoseca.gov
Subject: FW: Google Toronto Quayside - Sidewalk Labs Project

Tara, Lee:

Is there a recommended process, or are there restrictions, for sharing info like this among the SAAG members? For example, should I just be posting the link somewhere or is there an email list that I should be using?

I know this is evolving so I don't want to clutter, misstep, confuse or violate any regulations.

Thanks. B

From: Bill Souders <bill souders@outlook.com>
Sent: Wednesday, April 11, 2018 8:32 AM
To: Walesh, Kim <Kim.Walesh@sanjoseca.gov>; Klein, Nanci <Nanci.Klein@sanjoseca.gov>; Wilcox, Leland <Leland.Wilcox@sanjoseca.gov>; Haley, Loren <Loren.Haley@sanjoseca.gov>; Ortbal, Jim <Jim.Ortbal@sanjoseca.gov>; Dave Javid <dave@plantoplace.com>; Matthew Raimi <matt@raimiassociates.com>; Ekern, Bill <Bill.Ekern@sanjoseca.gov>; Ristow, John <John.Ristow@sanjoseca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Ramirez, Lucas <lucas.ramirez@sanjoseca.gov>; ginnyth@pacbell.net; Jeffrey@wpusa.org; Madison Nguyen <madisonn@thesvo.com>; Leslye Corsiglia <leslye@siliconvalleyathome.org>; maria@wpusa.org; Laura Winter <laurarwinter@gmail.com>; Teresa Alvarado <talvarado@spur.org>; Sarah McDermott <smcdermott@unitehere19.org>; cguardino@svlg.org; Shiloh Ballard <shiloh@bikesiliconvalley.org>; Edward Saum <edward@saumdesignconsulting.com>; Jim Goddard <JGoddard@sapcenter.com>; Kwok-Smith, Candice <ckwok-smith@valleywater.org>; testremera@valleywater.org; Jim.Lawson@vta.org; Fernandez, Monica <Monica.Fernandez@ceo.sccgov.org>; Marquez, Miguel <miguel.marquez@ceo.sccgov.org>; jean@local393.org; Lisa Vlay <lisa.vlay@sjsu.edu>; Charlie Faas <charlie.faas@sjsu.edu>; s_l_alloway@yahoo.com; WhitneyMorris@umpquabank.com; cenders@thecorecompanies.com; Sondra Weber <sondraweber019@gmail.com>; jpedigo@catholiccharitiesscc.org; Darnell, Harvey <harveydarnell@yahoo.com>;

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Cc: Harkness, Kip <Kip.Harkness@sanjoseca.gov>
Subject: Google Toronto Quayside - Sidewalk Labs Project

This is the Quayside project that I referenced on Monday night, for your reference.

<https://www.google.com/amp/s/www.wired.com/story/google-sidewalk-labs-toronto-quayside/amp>

Cheers, Bill



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Live as if you were to die tomorrow.

Learn as if you were to live forever.

--Mahatma Gandhi, 10/02/1869 - 01/30/1948

air rights

Historically, property owners owned to the center of the earth and to the top of the heavens, which included the right to all the air above the property and the right to exclude trespassers from that air. Until the invention of aircraft, the matter typically arose only in disputes over the right to remove tree limbs extending over one's property. Today, aircraft constantly trespass into property owner's air space and violate their air rights. As an accommodation to modern technology, courts allow reasonable trespasses to air rights. Airports and governments frequently purchase air rights adjacent to an airport, called aviation easements, to provide glide paths for aircraft. (Because of the scarcity of prime real estate near city centers, many local governments are investigating and implementing plans to lease air rights above transit hubs to developers, for building hotels and other such projects.)

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