

From: [Wessling, Cheryl](#)
To: [Downtown West Project](#)
Subject: FW: FAQs on DSAP-Google - Update for spring 2020 v6
Date: Tuesday, September 8, 2020 9:46:12 AM
Attachments: [FAQs on DSAP-Google - Update for spring 2020 v6.docx](#)

Per AB900 – Google Project Outreach:

From: Wessling, Cheryl
Sent: Tuesday, April 28, 2020 5:11 PM
To: Handler, Elisabeth <elisabeth.handler@sanjoseca.gov>
Subject: FAQs on DSAP-Google - Update for spring 2020 v6

Elisabeth – Planning staff made a minor change to the wording under height limits and other than that, felt this was good to go. I cleaned up the formatting a bit and fixed the footer.

I agree with Johnny Phan's suggestion that Question #17 gets moved into the Archive section at Diridonsj.org – so I took it off this final draft version. You'll see the email I sent asking Dave to move the text to the Archives – or can Vanessa do that? Please remind me of Vanessa's last name.

The attached version has a shorter name than prior versions and is ready for Kim and Rosalynn to review. I ran spell check on it and it should be clean and typo-free. Maybe cc me on that and I can keep pushing Rosalynn to respond if need be.

Cheryl

Cheryl Wessling, Communications Manager
Department of Planning, Building and Code Enforcement | City of San José
desk/mobile 408.535.6817 | cheryl.wessling@sanjoseca.gov
[Facebook](#) [Twitter](#) [Instagram](#) @buildingsanjose | www.sanjoseca.gov/pbce

FREQUENTLY-ASKED QUESTIONS (FAQS) ABOUT GOOGLE AND THE DIRIDON STATION AREA

Updated April 2020

CONTENTS

- + 1. Why is the City pleased to have Google as the anchor developer of the Diridon Station Area?**
- + 2. What has happened with the Google project and Diridon Station Area Plan since December 2018? What are the next steps?**
- + 3. What does the Google project entail?**
- + 4. How are COVID-19 and Shelter-in-Place affecting the Google project and City-initiated amendments to the Diridon Station Area Plan?**
- + 5. What is the AB 900 program?**
- + 6. Is Google being subsidized to come to San José? Will the company receive tax or fee breaks?**
- + 7. What is the Diridon Station Area Basic Infrastructure Impact Fee? Will Google pay this fee?**
- + 8. What will the City do to prevent residential and business displacement around the Google project and elsewhere in the city?**
- + 9. What land did Google buy?**
- + 10. What kind of jobs will Google create in San José?**
- + 11. What is a Development Agreement?**
- + 12. Now that the City has sold the land to Google, what assurance is there that Google will deliver on the expectations laid out in the Memorandum of Understanding?**
- + 13. How are community benefits being addressed?**
- + 14. What has the City done to discover and address community concerns about the Google project? Has Google been involved?**
- + 15. How does the City Council direction on airport-related height limits affect the Diridon Station Area Plan and future development?**
- + 16. What is the Diridon Integrated Station Concept Plan, and how does it relate to the Diridon Station Area and Google Project?**

+ 17. Why did some City staff and elected officials sign Non-Disclosure Agreements in Spring of 2017? Are they still operative? Has the City met Public Records Act requirements?

Background

The City of San José adopted the [Diridon Station Area Plan \(DSAP\)](#) in 2014 after five years of engagement involving the Diridon Good Neighbor Committee. The DSAP is intended to guide development in support of the major transportation improvements planned for Diridon Station, including electrification of Caltrain service, the extension of BART and the new high-speed rail service. The plan envisions a high-density, mixed-use, vibrant, transit-supportive neighborhood that expands Downtown.

Google and the Diridon Station Area

In 2017, Google expressed an interest in developing a project that would help implement the vision for the Diridon Station Area. In June 2017, the City and Google entered into an [Exclusive Negotiation Agreement](#) for potential sale of about 20 acres of City-owned lands to Google, including about six acres formerly owned by the Successor Agency to the Redevelopment Agency (SARA), the four-acre Fire Training site, and 10-acre “ABC” parking lot next to the SAP Center.

City Actions

In December 2018, City Council approved the sale of the SARA and Fire Training sites at fair market value with no subsidy, as well as an option/Negotiating Rights Agreement for Google to buy the ABC lot. In addition to the Purchase and Sale Agreements for these properties, City Council approved a [Memorandum of Understanding \(MOU\) with Google](#). The MOU sets forth the guiding principles to collaborate on a future mixed-use development in the Diridon Station Area and to negotiate a Development Agreement, which will include a Community Benefits Plan.

The City conducted an extensive [community engagement](#) process leading up to the City Council’s decision on the land sale and MOU. The process included a variety of methods to share information and gather input on the community’s hopes, issues, and ideas. At the core of the process was the [Station Area Advisory Group](#) (SAAG), which includes 38 community member organizations appointed by the City Council. In addition to SAAG meetings, the City also hosted community meetings, walking tours, pop-ups at neighborhood events, presentations to stakeholder groups, and an online feedback form. A summary of this process and the community’s input can be read in the [Diridon Station Area Civic Engagement Report \(2018\)](#).

These FAQs discuss what has happened since December 2018 and the ongoing planning process. For additional background on Google and the Diridon Station Area prior to December 2018, please see the Archive section at <https://www.diridonsj.org/archive>. This includes detailed descriptions of the Exclusive Negotiation Agreement, Memorandum of Understanding, and Purchase and Sale Agreement.

+ 1. Why is the City pleased to have Google as the anchor developer of the Diridon Station Area?

What the City wanted for the area

For many years, San José has dedicated significant resources and solicited considerable community input around how best to maximize the area around Diridon Station. In 2014, the City Council adopted the Diridon Station Area Plan (DSAP) to transform the 250-acre area of Downtown's western side into a vibrant destination for people to live, work, visit, and play. The Plan was created over a five-year period, with extensive involvement from the Diridon Station Area Good Neighbor Committee. Developing the Diridon Station Area according to the Plan would bring new urban-style mixed-use development; improved parks, trails and public spaces; safe, convenient pedestrian and bike connectivity; many more transit options and users; and new housing, shops, and jobs.

An anchor developer

One of the key factors in realizing this vision was being able to attract an "anchor developer" that would undertake development of a significant portion of the area, thus ensuring a cohesive, coordinated project that the DSAP proposed. With Google, the City of San José believes it has found the right partner to serve as anchor developer of a transit-oriented district.

Google signed a Memorandum of Agreement (MOU) with the City that demonstrates their commitment to shared goals, following months of listening to community members about their aspirations and concerns. This is not typical for corporations or developers that are considering a project of this scale. The City recognizes that Google has many options for where and how it grows within the Bay Area and sees this project as an opportunity to maximize benefits to San José. We are glad to have a partner that is willing to work proactively with us and community members to develop a project in San José that can:

- create a welcoming place that is open to and integrated with the rest of the city;
- increase the number of job opportunities for San José residents;
- provide a range of housing opportunities, including affordable, with easy access to transit;
- reduce carbon emissions and mitigate worsening freeway traffic;
- bolster arts and cultural vitality;
- offer a unique urban lifestyle in the South Bay;
- revitalize a long-under-utilized western portion of Downtown;
- support small, local businesses; and
- generate substantial revenues for chronically underfunded city services.

+ 2. What has happened with the Google project and Diridon Station Area Plan since December 2018? What are the next steps?

Community Engagement

In 2018 (Phase I), the focus of the Google project was on community engagement, working towards shared goals, and the sale of several publicly owned lands. On December 4, 2018, City Council accepted the [Memorandum of Understanding \(MOU\)](#) and Purchase and Sale Agreements. As described under Question #12, the MOU is a high-level statement of intent between the City and Google, including the key elements

of Google's development and the benefits to the community. The Purchase and Sale Agreements stated the price and terms to sell City- and SARA-owned land to Google.

Planning begins

The next phase of work (Phase II) began early in 2019, as Google began preparation of a master site plan with its development partner Lendlease. Google developed a conceptual mixed-use framework that they shared with the City and the community in summer 2019.

In October 2019, Google submitted an official application for its Downtown West Mixed-use Plan (Downtown West) to the City's Department of Planning, Building and Code Enforcement (PBCE); see www.sanjoseca.gov/GoogleProject). This submission marked the start of the City's regular review process for the project, which includes staff analyzing the project for consistency with City policies; performing an environmental analysis; engaging the public to share information and gather feedback; and coordinating with Google to make changes to the project in response to this work. Concurrently, the City is negotiating a Development Agreement that will include a Community Benefits Plan. The goal is to develop a project that serves the best interests of the City and its residents.

Updating the Diridon Station Area Plan

Also, as part of Phase II, the City has initiated amendments to the Diridon Station Area Plan to consider new factors since Plan adoption in 2014—such as the lack of a baseball park, the potential for taller building heights, and Google's proposed mix of land uses and public space concepts. The City is also preparing studies and implementation plans that would cover the entire area and address parking, infrastructure financing, and affordable housing.

The City Council will consider the City-initiated amendments to the Diridon Station Area Plan and Google's Downtown West project as part of a comprehensive planning review process through 2020 and into 2021. Community engagement is continuing throughout this period. If City Council approves the project, Google could then begin applying for building permits. It is expected that the project would be constructed in several phases.

In addition to the Google project, other development projects have been built or initiated in the area since the adoption of the Diridon Station Area Plan. The City will continue to process these other applications and take them into account as part of the amendment process.

+ 3. What does the Google project entail?

The Downtown West Mixed-use Plan covers approximately 85 acres, including streets. The project site is mostly within the boundaries of the adopted Diridon Station Area Plan. The project proposes the construction of approximately:

- 6,500,000 to 7,300,000 gross square feet (GSF) of office space, including approximately 1,000,000 GSF on the previously entitled San Jose Water Company Building site east of Los Gatos Creek;
- 3,000 to 5,900 units of new housing;
- 300,000 to 500,000 GSF of active uses, which may include retail, cultural, arts, etc.;

- 100,000 GSF of event space, hotel use (up to 300 rooms), and limited-term corporate accommodations (up to 800 rooms); and
- Conceptual plans for infrastructure, utilities, and public space.

The application describes the location of the above-proposed land uses, the components and arrangement of the conceptual framework that organizes them, and the utility and mobility infrastructure that enables and serves them. See www.sanjoseca.gov/GoogleProject.

+ 4. How are COVID-19 and the Shelter-in-Place orders affecting the Google project and City-initiated amendments to the Diridon Station Area Plan?

As of April 2020, the City is currently focusing on emergency response to the coronavirus pandemic while continuing to provide essential services to businesses and residents. Essential services include continuing with development review via telework, so that staff can keep key planning projects moving forward, including Downtown West.

The City and Google remain committed to the Downtown West project as a major factor in our City's urban future and economic opportunity for residents. While some staff work has slowed, staff are continuing planning and development review work during Shelter in Place conditions.

Timeline adjustments

Given the circumstances, staff have adjusted the target for City Council consideration of the Google's Downtown West Mixed-use Plan from end of 2020 to early 2021. The next key milestone is for the City to release the Draft Environmental Impact Report for public review, currently anticipated for summer 2020.

For the City-initiated amendments to the Diridon Station Area Plan (DSAP), the goal is to release a Draft Amended Plan in fall 2020. This also includes drafts of the Affordable Housing Implementation Plan and Diridon Parking Study.

The City remains committed to community engagement as work on the Diridon projects continues. Due to the Shelter in Place order, this involves using online tools for sharing information and getting public input.

As the situation is constantly evolving, staff acknowledge that ongoing COVID-19 response or recovery work could further affect these timelines and engagement methods.

+ 5. What is the AB 900 program?

Description and Purpose

In 2011, the State Legislature passed Assembly Bill (AB) 900, also known as the [Jobs and Economic Improvement through Environmental Leadership Act](#) (California Public Resources Code Sections 21178-21189.3). The program is for large development projects that create jobs and provide substantial public benefits, such as exceeding high environmental standards and paying prevailing wages for construction jobs. Qualified projects are eligible for a streamlined judicial review process under the California Environmental Quality Act (CEQA). AB 900 is intended to limit construction delay due to CEQA-related litigation after Council approval, in order to facilitate timely delivery of public benefits.

The Governor must approve a project's eligibility to participate in the AB 900 program. Approximately 19 significant California projects have utilized this program, including the Warriors Stadium, Apple Campus, and Inglewood Basketball and Entertainment Center.

Process

On December 30, 2019, Governor Newsom certified the Downtown West Mixed-Use Plan (Google project) as an Environmental Leadership Development Project (ELDP). In San José, the benefits of timely development in the Diridon Station Area include: affordable housing, open space and infrastructure improvements, construction and permanent jobs, green building in support of Climate Smart, property tax revenue, public amenities, alignment with BART construction, and Community Benefit funds for anti-displacement, job training, and other community-identified priorities. "Timely implementation" was identified as a shared goal in the City's MOU with Google in order to maximize integration with planned transit projects and achieve the benefits of implementing the Diridon Station Area Plan.

Transparency

The AB900 program does not affect requirements for the environmental impact analysis or reduce requirements for public engagement under CEQA; in fact, the program comes with enhanced transparency requirements for timely posting of documents related to the project EIR on a public website once the draft EIR is circulated for public review.

Timing for implementation

Currently, the AB 900 program sunsets January 1, 2021, meaning that the City Council would need to act on the Google project by the end of 2020 in order to be eligible for judicial streamlining. As described in question #4, the City has adjusted the target for City Council consideration to early 2021 due to the current COVID-19 emergency. The City anticipates that the State Legislature may extend the AB 900 program, given the effects of emergency response on public decision-making processes.

+ 6. Is Google being subsidized to come to San José? Will the company receive tax or fee breaks?

No. Google has not asked for subsidies or tax breaks, and the San José City Council provided explicit direction ([Council Memo](#)) on June 20, 2017 when the Exclusive Negotiations Agreement was adopted that: "The City shall obtain fair market value for the sale of any publicly owned parcel, and the City shall not subsidize the development with taxpayer dollars." This direction was affirmed in the MOU and Purchase and Sale Agreements that City Council approved on Dec. 4, 2018.

+ 7. What is the Diridon Station Area Basic Infrastructure Impact Fee? Will Google pay this fee?

In August 2019, City Council adopted staff's recommendation to establish an initial impact fee for new development within the Diridon Station Area boundaries so as provide adequate funding for basic City infrastructure to support the new transit-oriented developments. The fee is based on the level of development envisioned in the 2014 Diridon Station Area Plan. The City may use this fee to build infrastructure such as streets, sanitary sewers, storm drainage and flood control, and plazas and open space.

All new development, including the Google project, will pay the fee or construct the equivalent value of infrastructure. This fee is not part of the community benefits package to be negotiated with Google as part of a Development Agreement.

The maximum fees will add no more than one percent to the development budget for any new development. The burden on project budgets ranges from a 0.4 percent increase for the high-rise condominium prototype to a 1.0 percent increase for the midrise office prototype.

Additional fees and financing tools will be proposed in the future as additional needs are identified. The City will prepare a Comprehensive Financing Plan as additional area-serving infrastructure, maintenance, and service needs are identified as part of the DSAP amendment process.

+ 8. What will the City do to prevent residential and business displacement around the Google project and elsewhere in the city?

Citywide Anti-Displacement Strategy for Residents

The City is concerned with residential displacement that occurs when a household leaves its home for reasons beyond its control. This includes rising rents and demolitions of existing housing.

The San José City Council has taken steps to address displacement. The Council acted to strengthen its Apartment Rent Ordinance and enacted the Tenant Protection Ordinance to help tenants stay in their homes and shield them from the impact of rapidly rising rent. The City's Ellis Act Ordinance was enacted to prevent naturally occurring affordable housing from being demolished, and to provide households with relocation benefits if displacement does occur. In addition, the City has set aside millions of dollars to purchase and rehabilitate existing affordable housing. However, the City hears that residents are still impacted by displacement and is working to close the gap so that all residents can stay in the neighborhoods they consider home.

Staff is wrapping up a Draft Citywide Residential Anti-Displacement Strategy, following 18 months of community and stakeholder engagement. Plans to take the Draft Strategy to the Housing and Community Development Commission for review and to the City Council for consideration have been delayed due to the current emergency. The strategy will take into consideration planned growth under the City's General Plan, including new jobs that would be created by the Google project and other proposed developments. For more information, visit <http://www.sanjoseca.gov/displacement>.

Affordable Housing Implementation Plan for the Diridon Station Area

As part of the DSAP amendment and Google project review process, the City will prepare an Affordable Housing Implementation Plan for the Diridon Station Area. The plan will work to identify potential pathways for ensuring that 25% of all new housing built in the Diridon Station Area is affordable. It will also incorporate affordable housing preservation and low-income resident protection strategies, consistent with the adopted DSAP, MOU, City Council direction, and community input.

The Housing Plan will be used to inform the housing policies and strategies in the amended DSAP and Google project, including the Development Agreement and Community Benefits Plan. It may also inform housing policies in other City plans at the Downtown or citywide level, or by other public agencies such as

VTa. The Housing Plan will refer to and build upon the Citywide Anti-Displacement Strategy, the Diridon Station Area Civic Engagement Report (2018), and [VTA's analysis of affordable housing and displacement for the BART corridor](#).

Citywide Anti-Displacement Strategies for Businesses

The City Council directed staff to “explore strategies and financing tools to mitigate small business displacement” as part of a package of directives related to the Google MOU/land sale on December 4, 2018. The City recognizes the potential for public and private investments in the Diridon area and other BART station areas to contribute to involuntary displacement of small businesses. Since then, staff began working on developing strategies to avoid or mitigate development-related displacement of small- to medium-sized businesses.

The City of San José takes any threat to our home-grown businesses very seriously.

- 90% of all businesses in the City are considered small – with fewer than 35 employees.
- Small businesses employ one-third of the workforce in San José.
- About half of small business are owned by immigrants.
- Owning a business contributes to community stability and supports economic vitality and asset building.

The City’s definition of “business displacement” is: property development that creates economic or legal pressure on the most vulnerable, least-resourced businesses, resulting in business relocation and/or failure.

The business anti-displacement plan was presented in a City Council Study Session on September 16, 2019. So far, the City’s small business anti-displacement team has:

- Analyzed neighborhoods across the city to determine the areas most vulnerable to displacement
- Conducted personal interviews with business owners in areas likely to experience significant development
- Created action plans with non-profits that provide services and resources to small businesses and can foster business resilience, developing programmatic capacity
- Selected Alum Rock as the pilot area, and begun development of a resilience-building program to serve businesses there
- Begun to implement strategies in the Alum Rock Corridor and analyze the small business context in the Diridon Station Area.

As part of the DSAP amendment process, staff is planning to recommend policies and strategies to support the resiliency of existing small businesses in the Diridon area and adjacent neighborhoods. This will build upon the community and stakeholder input received to date and additional outreach.

+ 9. What land did Google buy?

In June of 2017, the City and Google entered into an Exclusive Negotiation Agreement for the sale of about 20 acres of City-owned lands to Google, including about six acres formerly owned by the Successor Agency to the Redevelopment Agency (SARA), the four-acre Fire Training site, and 10-acre “ABC” parking lot next to the SAP Center. In December 2018, City Council approved the sale of the SARA and Fire Training sites, as

well as an option/Negotiating Rights Agreement for Google to buy the ABC lot. For reference, Google's proposed Downtown West Mixed-Use Plan covers approximately 80 acres, including streets. The balance of the project site is land acquired from private property owners.

In addition to the Purchase and Sale Agreements for the public land, City Council approved a Memorandum of Understanding (MOU) with Google. The MOU sets forth the guiding principles to collaborate on a future comprehensive, mixed-use development. For more detail on these documents and the properties involved, see the [November 2018 version of these FAQs](#).

+ 10. What kind of jobs will Google create in San José?

At Google's current sites across the Bay Area, there are a variety of technical and non-technical jobs. At this stage in the long-term development process, Google does not know the specific business units that will locate in San José.

+ 11. What is a Development Agreement?

A Development Agreement is a contract between a City and a developer that is adopted by ordinance. The agreement sets the obligations of both parties, and the standards and conditions that govern the development of the property. It contracts the developer to provide benefits to the City, such as infrastructure improvements, public open space, monetary payment into funds, or other community benefits, in exchange for certainty about development standards, such as zoning laws, that will apply over the course of the development, from project entitlement through construction.

+ 12. Now that the City has sold the land to Google, what assurance is there that Google will deliver on the expectations laid out in the Memorandum of Understanding?

Google submitted its [application](#) for a mixed-use development project in October 2019, starting the City's official development review process. Since then, staff has been working with Google to develop a project that meets the shared goals and expectations in the MOU. The MOU and associated City Council direction call for ongoing community engagement to keep the public informed and involved in the process.

Ultimately, City Council will have decision-making authority over the project, and will be comparing it to the goals outlined in the MOU. Approval (i.e., entitlement) of the project will require several discretionary actions, such as General Plan Amendments, Rezoning, Development Permit, Vesting Tentative Maps, and a Development Agreement. A Development Agreement, as described above, stipulates the obligations of the parties and can outline a variety of tools to ensure timely development and provision of community benefits. Tools can include timeframes for development and penalties, including monetary penalties, if the developer does not meet specified timeframes. Other binding requirements could limit or eliminate entitlements for portions of the property if the developer does not perform in a timely fashion.

Collectively, the Development Agreement, City Council approval authority, public involvement, and development review process are intended to hold Google accountable to the expectations laid out in the MOU.

+ 13. How will community benefits be addressed?

A potential Google project could bring many benefits to the City, such as job opportunities for residents, new housing near transit, increased tax revenue, more transit riders, and investments in neighborhood amenities such as trails and public spaces. The Development Agreement with Google (see questions 9 and 10) will include a Community Benefits Plan. This is anticipated to include a financial contribution towards projects and programs for the benefit of San José residents, beyond the general benefits of the project itself and beyond standard city requirements.

Calculating the value of the plan

The City's expectation of a community benefit contribution will be premised on, among other factors, the additional value Google receives as a result of the legislative changes that may be approved by the City Council that enhance the value of both the City/SARA Properties and the private properties acquired by Google, as well as the certainty that could be provided to Google through a Development Agreement.

Negotiating the plan

In developing the Community Benefits Plan, the parties will utilize the input provided through the City's community engagement process (reflected in the [Diridon Station Area Civic Engagement Report](#)) and subsequent input provided by the community or City Council, and the shared goals in the [MOU](#). In developing the Community Benefits Plan, consideration will be given to major categories of community priorities identified in the 2018 community engagement process, including the following:

- Affordable housing, displacement prevention and mitigation
- Education, workforce training, and career opportunities
- Small business opportunity
- Historic and cultural preservation, public art
- Public space, trails, and mobility
- Community nonprofit support, including homeless services
- Habitat and environmental sustainability

+ 14. What has the City done to discover and address community concerns about the Google project, and has Google been involved?

San José launched a community engagement process much earlier than is typical for development projects to gather feedback on community aspirations and concerns.

From February through December 2018, the City of San José managed an extensive community engagement process (link to those pages on the site) to spur community conversation about issues and opportunities, refine the vision for the Diridon Station Area, and help inform the City's negotiations with Google. The process centered on meetings of the Diridon Station Area Advisory Group (SAAG), which includes 38 local organizations appointed by the City Council. To ensure a broad range of participation, the process also included a variety of other methods, including almost 60 events/meetings/pop-up booths, a [website](#), online surveys, and social media. The process accounted for close to 1,500 in-person encounters with community members. Google representatives have attended all SAAG and community meetings to listen to the input.

Outcomes of the engagement process

The [Diridon Station Area Civic Engagement Report](#) describes the 2018 engagement process and feedback received. The most common aspirations were summarized as “Desired Outcomes” under these six categories: Housing and displacement; Jobs, education and economic development opportunities; Land use, design and parking; Public space, creeks and trails; Transportation; and Environmental sustainability. This input has informed, and will continue to inform, a variety of decisions related to the Diridon Station Area, including:

- The Memorandum of Understanding with Google and, later, the Development Agreement, which will include a community benefits commitment and plan
- Google’s development concepts, design thinking, and Downtown West Mixed-use Plan application
- Private development proposals by other property owners, companies, and real estate developers.
- Implementation of and future updates to the Diridon Station Area Plan, Downtown Strategy, and other applicable plans
- Transportation improvements (including the ongoing [Diridon Integrated Station Concept Plan](#) and [Downtown Transportation Plan](#))

Since 2018, the City has continued to hold SAAG meetings and other public engagement activities to share information and gather feedback on the Diridon projects, including the Diridon Station Area Plan amendment process and Google’s proposed project. For more information, see the “Previous Engagement Activities” section at www.diridonsj.org/diridon-station-area-plan-google-project.

Google and their development partner Lendlease have also conducted their own outreach efforts in 2019-20. For example, they hosted a large event at Arena Green in August 2019, have held multiple public workshops, and have tabled at various community events. Visit their project website for updates and event information: <https://realestate.withgoogle.com/sanjose/>.

+ 15. How does the City Council direction on airport-related height limits affect the Diridon Station Area Plan and future development?

Previous height standards

Until February 2019, the City’s practice for regulating building heights in the Downtown core and Diridon Station Area was based in part on the One Engine Inoperative (OEI) take-off paths established by airlines for each of their flights. In June 2017, the City Council directed staff to update the City’s 2007 Airport Obstruction Study and include an economic analysis to identify the trade-offs between maintaining the OEI-based limits and the potential increased building heights. The study determined that using Federal Aviation Administration (FAA) building height limits instead of the OEI-based limits would be safe and would not significantly impact flight operations when aircraft take-off to the south, which happens, on average, 13% of the time. In February 2019, City Council accepted staff’s recommendation to allow buildings in both the Downtown Core and Diridon Station Area up to height limits determined to be safe by the FAA.

What Council decision means

This City Council decision to eliminate the OEI-based height limits makes it possible to increase the maximum building heights in the Diridon Station Area by 70’-150’ over existing height limits, depending on the location. However, this City Council decision did not approve specific changes to the zoning code, General Plan, or DSAP, which ultimately control the allowable height of new buildings. These changes will happen as part of

the City-initiated process of amending the Diridon Station Area Plan and through review of the Google project. While proximity to the airport is a significant limiting factor for building heights Downtown, there are other factors that the City considers when setting building height limits, such as scale compatibility with adjacent land uses and the potential to cast shadows over key public spaces.

Process for changing height limits for this area

Staff is currently studying potential changes to building height limits as part of the City-initiated DSAP amendment process, which began in fall 2019. Staff is considering compatibility issues to make recommendations on the appropriate places to increase height limits and to what extent. See this [presentation](#) for staff's preliminary concepts related to DSAP building height limits as of March 2020.

Council has also directed staff to explore a potential incentive zoning program whereby residential and commercial developers may have increased affordable housing or other requirements in exchange for additional height.

Google's mixed-use development project involves requests for increased building heights beyond existing regulations and up to the FAA limits for much of their project area. Staff is analyzing the proposed heights, along with other proposed development standards, and will make a recommendation. The City Council has final authority over all regulatory changes, including height limits. The framework for calculating the value of a Community Benefits Plan, as set forth in the MOU with Google, will consider the added value created by increasing the allowable building heights (see Question #11 for more information).

Property owners interested in any changes to height limits or other development standards are encouraged to contact the City's Planning, Building and Code Enforcement (PBCE) Department for more information. The City is conducting community engagement as part of the DSAP amendment and Google development review processes to share information and gather feedback about the potential height changes; see [DSAP/Google website](#) for more information.

+ 16. What is the Diridon Integrated Station Concept Plan, and how does it relate to the Diridon Station Area and Google Project?

The Diridon Integrated Station Concept Plan is a collaborative effort to expand and redesign Diridon Station. Electrified Caltrain, BART, and High-Speed Rail service will add to the trains, buses, and light rail that currently serve San José Diridon Station. Implementation of the Diridon Station Area Plan (including the Google project) would bring tens of thousands of new jobs and residents to the area. With these changes, Diridon Station is poised to become one of the busiest intermodal stations on the West Coast. Find details on the Diridon Integrated Station Concept Plan at www.diridonsj.org/disc.

Planning for a new multi-modal station

The City of San José and its Partner Agencies - California High-Speed Rail Authority (CHSRA), Caltrain, Santa Clara Valley Transportation Authority (VTA) - are working together on the Station Concept Plan to develop a world-class center of transit and urban life that provides smooth connections between modes and integration with the surrounding neighborhoods. Achieving this goal will be critical for supporting the transit-oriented development envisioned under the Diridon Station Area Plan (DSAP), which the City adopted in 2014.

Integrating the station with other development and the neighborhoods

Given the important relationship between the station and land use, the DSAP includes a section on a future concept for Diridon Station based on previous planning assumptions. The Station Concept Plan process is generating a new spatial layout for the station and track approaches that will replace the concept included in the DSAP. The Station Concept Plan process is considering the relationship with the surrounding area – including the effects on existing buildings and residents, future development, street grid, connectivity across the tracks and with the station, and the potential for public space and amenities. Coordination among the Diridon Station Area Plan amendment, Google development review, Downtown Transportation Plan, and ongoing Station Concept Plan processes will be essential to meeting shared goals for the area.

The City and its partners have conducted several rounds of public engagement on the Station Concept Plan, including presentations to the City's Station Area Advisory Group. The City will continue to ensure coordination with the public engagement efforts for the Station Concept Plan, as the City advances the DSAP Amendment and Google project review process (including a shared website: www.diridonsj.org).

Details on the Diridon Integrated Station Concept Plan are available at www.diridonsj.org/disc.

+ 17. Why did some City staff and elected officials sign Non-Disclosure Agreements in Spring of 2017? Are they still operative? Has the City met Public Records Act requirements?

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 occasionally entered 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 confidentiality 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 and provided the documents to the public.

On August 16, 2019, the Superior Court found that the City complied with the law in fulfilling the Public Records Act request by the First Amendment Coalition/Working Partnerships. For additional information, see the [court decision](#) and this summary [statement from the City Attorney](#).

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.

###