

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Atty-Client Privilege - PA Terms
Date: Tuesday, April 6, 2021 2:27:22 PM
Attachments: [PRNS Parkland Agreement Understanding to Google.docx](#)

From: Phan, Johnny
Sent: Thursday, February 4, 2021 9:45 AM
To: Miller, J. Gregg <gmilller@coblentzlaw.com>
Subject: FW: Atty-Client Privilege - PA Terms

Hi Gregg – Please send the attached outline to the Google Parks team. The City Parks team is having a hard time understanding where are some of the agreed upon terms memorialized in the draft Parkland Agreement. I will call you to discuss. Thanks. Johnny

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PRNS Parkland Agreement Understanding

1. Parkland Obligation

TABLE 1 – Parkland Obligation

Unit Type	Mid-Rise	High-Rise	Total	Land Obligation	In-Lieu Fee
Market Rate	112	3,288	3,400	15.68	\$50,536,000
Low-Income	600	0	600	4.21	\$6,780,000
Total Units	712	3,288	4,000	19.89	\$57,316,000

Once the parkland obligation is finalized, the individual units will have a blended parkland obligation per unit regardless of typology (High-Rise or Mid-Rise) or affordability. If the units in Table 1 remain, then Table 2 and 3 show the obligation by unit and north and south of Santa Clara.

TABLE 2 – Parkland Obligation by Unit

Land	0.00497 ac
In-Lieu Fee	\$14,329

TABLE 3 – Parkland Obligation North and South of Santa Clara

	Units	Land Obligation	In-Lieu Fee
South of Santa Clara	2,900	14.42	\$41,554,100
North of Santa Clara	1,100	5.47	\$15,761,900

2. Meeting the Obligation

Turnkey Parks and trails: 4.8 acres of constructed, deeded and dedicated parks and trails.

TABLE 4 – Land Dedication

Area Name	Acreage Proposed	Land Dedication Credit	North or South of SC
Los Gatos Creek Connector	0.76	\$2,449,814	South
Los Gatos Creek Parkland	0.54	\$1,740,658	South
Los Gatos Creek Trail	0.28	\$902,563	South
Social Heart (total acreage shown here; credit provided at 75% of total)	0.57	\$1,378,021	South
Los Gatos Creek Trail East	0.25	\$805,860	South
Subtotal Acreage south of SC	2.4		
St John’s Triangle	1.51	\$4,867,394	North
Northend Park	0.89	\$2,868,862	North
Total (north and south of Santa Clara Street)	4.8	\$15,013,172	

Costs to spend on construction (still remains to be discussed with Google; does NOT reflect their recent proposal of \$197 per SF).

TABLE 5 – Land Improvement Credits

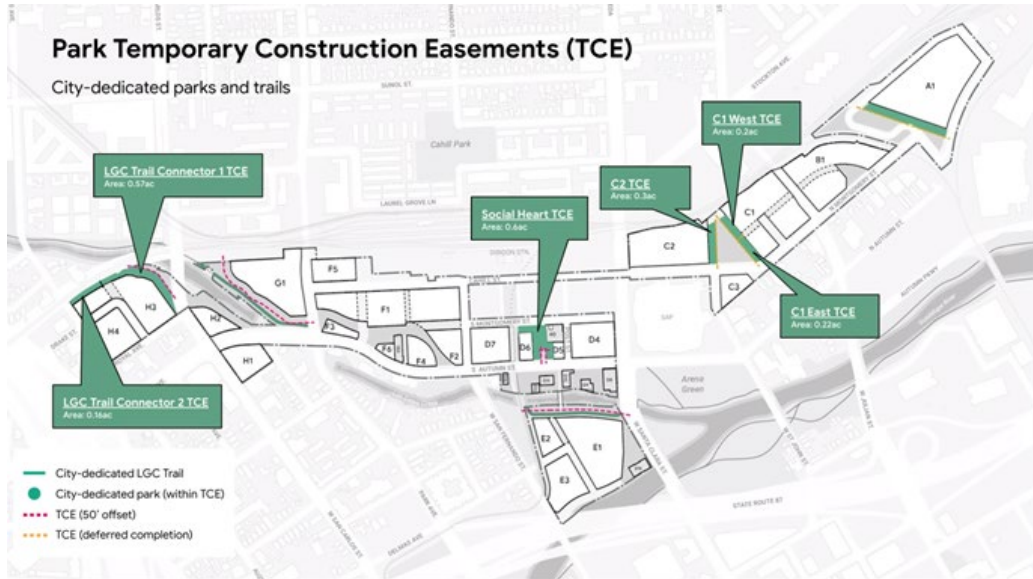
Area Name	Total Cost Proposed (October 2020)	Less 17.5% City Fees	Net Available for Construction	\$ per SF Available for Construction
Los Gatos Creek Connector	\$5,546,682	\$970,669	\$4,576,013	\$138
Los Gatos Creek Trail on G + parkland @ Los Gatos Creek Park (needs to be updated with 0.54 increase if accepted)	\$2,794,907	\$489,109	\$2,305,798	\$189
Social Heart	\$6,359,123	\$1,112,847	\$5,246,276	\$211
Los Gatos Creek Trail East on E	\$1,835,040	\$321,132	\$1,513,908	\$139
Subtotal \$ south of SC	\$16,535,752	\$2,893,757	\$13,641,995	
St John's Triangle	\$14,195,567	\$2,484,224	\$11,711,343	\$178
Northend Park (Need to be updated with 0.54 reduction)	\$8,225,748	\$1,439,506	\$6,786,242	\$175
Total	\$38,957,067	\$6,817,487	\$32,139,580	

The combination of land and improvements as noted above provides \$53,970,239 of the \$57,316,000 parkland obligation. This leaves a gap on the overall project of \$3,345,761.00. \$2,000,000 of the remaining in-lieu fee can be used for optional kiosks and pavilions in City-dedicated parks detailed in the DWDSG. The remainder obligation will be met through in-lieu fees. If the City does not use all the allocated kiosks and pavilions budget, the remainder be paid to the City as in-lieu fees.

South of Santa Clara with 2,900 housing units proposed and 2.4 acres of public park to be built and xx of improvement credits, there is an imbalance of sss on the parkland obligation for those 2,900 housing units. This imbalance would be met by the proposed parks north of Santa Clara, which will be constructed after the development South of Santa Clara. This agreement seeks to provide a temporary means of balancing the obligation and insuring that adequate recreational space is available for those 2,900 units with the POPOS.

In the event that there are Hazardous Materials on any of the Park Site in excess of generally accepted environmental screening limits for park land uses, (e.g. Environmental Screening Limits and California Human Health Screening Limits) and/or in violation of any hazardous materials/waste laws, the Director shall have the right to require Developer, as a condition of acceptance, to remediate the condition, including without limitation, removal of the Hazardous Materials. The type of remediation required for the Park Site shall be at no cost to the City and be subject to the review and approval of the Director.

Temporary construction easements in parks must be completed within 6 months after TCO before Final Certificate of Occupancy can be issued for of the building it fronts.



3. What if Google delivers slight variations to the proposed City-dedicated park area due to building footprint or other minor changes?

Google can reallocate area between City-dedicated parks without amendments as long as the total amount of open space and City-dedicated land does not decrease.

The credit for land dedication and improvements will be adjusted based on the SF of the area change relative to the original anticipated size of the park (See Table 6 below). Both the land and the improvements will vary pro rata based on actual final SF of dedicated park.

TABLE 6 – Parkland “True up”

Park/Trail	Land Expected (ac)	Land Expected (SF)	Land Value per SF	Actual Land Accepted (SF)	Percentage of Accepted Land/Land Expected (%)
Los Gatos Creek Connector	0.76	33,106	\$74		
Los Gatos Creek Park	0.54	23,522	\$74		
Trail on G – in Los Gatos Creek Park	0.28	12,197	\$74		
Social Heart	0.57	24,829	\$56		

Trail on E – in Los Gatos Creek East	0.25	10,890	\$74		
Saint John Triangle	1.51	65,776	\$74		
Northend Park	0.89	38,768	\$74		

4. How will the Social Heart be protected from the underground parking garage?

A well-capitalized Google affiliated entity will continue to own the parking garage (or guarantee by parent), so that access to our parcel can be maintained forever and will have insurance requirements.

5. Privately Owned Open Space

Google proposes the following open space areas for public “permanent” public access south of Santa Clara Street.

TABLE 7 – POPOS “Permanent” Land

Reference Name of Space	Acreage
Los Gatos Creek Park	0.51
The Meander	1.04
Creekside Walk at South Autumn Street	0.70
Gateway Plaza	0.65
Los Gatos Creek East	0.36
Riparian Setback	2.20
Total	5.46

This does not include spaces identified by Google as Riparian Corridor, Mid-Block Passages or Semi-Public Open Space. City will not provide credit towards the project’s parkland obligation for any privately owned space. The permanent POPOS are a temporary way to off-set the public parks and housing imbalance south of Santa Clara.

Google to provide a map

6. What is excluded from “permanent” POPOS’ areas?

TABLE 8 – Excluded areas in “permanent” POPOS

Excluded Area	Applicable “Permanent” POPOS
Existing building footprint	Creekside walk
Parking garage entrances and other encumbrances	All

7. What rules will govern these POPOS?

Need these from Google

8. How will these POPOS be managed/activated?

Advisory Committee

9. When can an entire POPOS be closed to the public?

No more than one entire park may be reserved for a private event at one time, except for one time per year, when all privately owned public spaces may be reserved for no more than five consecutive days.

Each POPOS shall not individually be closed for public access during Public Access Hours more than six times per year, nor for more than eight hours in any one month.

10. When can the sections of the POPOS be closed to the public?

TABLE 9 – POPOS’ Reservation

Description	Los Gatos Creek Park	The Meander	Creek Walk at Autumn Street	The Gateway and Los Gatos Creek East	Northend Park
Hours Open to Public	Sunrise – 12am	Sunrise – 10pm	Sunrise – 12am	Sunrise – 12am	Sunrise – 12am
Reservable Area	25% area at any one time (23k sf of 96.5k sf) Approx. 92% will be open to the public throughout the year	50% area at any one time (45k sf of 98k sf) Approx. 84% will be open to the public throughout the year	35% area at any one time (22.75k of 65k sf) Approx. 83% will be open to the public throughout the year	35% area at any one time (32.5k sf of 93k sf) Approx. 88% will be open to the public throughout the year	50% area at any one time
Google Events %/year each designated event zone within the park may be reserved by Google	Up to 73 days per year (20%) from Sunrise – 12am	Up to 73 days per year (20%) from Sunrise – 12am	Up to 127 days per year (35%) from Sunrise – 12am	Up to 73 days per year (20%) from Sunrise – 2am	73 days per year (20%) from Sunrise to 12am
Private Sponsored Events %/year each designated event zone within the park may be	Up to 54 days per year (15%) from Sunrise – 12am	Up to 54 days per year (15%) from Sunrise – 12am	Up to 54 days per year (15%) from Sunrise – 12am	Up to 54 days per year (15%) from Sunrise – 2am	54 days per year (15%) from Sunrise to 10 pm

reserved by Google					
Specialty Community Events (per year in designated event zones)	1	2	0	3	
Free Public Programs	12	74	18	18	

11. When will the Parks and POPO's be Delivered?

Developer has agreed to construct the city dedicated parks and the privately owned open space areas in accordance with the following schedule:

Need graphic from Google

TABLE 10 – Delivery Schedule

Open Space	Ownership	Outside Date	EIR Phasing	Delivery Trigger
Los Gatos Creek Trail (D/E)	City Dedicated	12 months after TCO	1	E1
Los Gatos Creek Trail (G)	City Dedicated	12 months after TCO	1	G1
Los Gatos Creek Trail Connector 1	City Dedicated	12 months after TCO	1	Dedication of land with 1 st residential building overall. Improvements with the residential building that pushes site coverage above 60% on H3
Social Heart	City Dedicated	12 months after TCO	1	Earlier of 1,000 Units, D7, or D4
Northend Park	City Dedicated	12 months after TCO	2	A1
Los Gatos Creek Connector 2	City Dedicated	12 months after TCO	2	Dedication of land with 1 st residential building overall Improvements with final residential building in H3
St. John Triangle	City Dedicated	12 months after TCO	3	Earlier of C2 or 3,250 Units

Creekside Walk at South Autumn Street	Privately-owned	30 months after TCO	1	Later CoO of D8-D13
Gateway to San José	Privately-owned	30 months after TCO	1	CoO E1
Los Gatos Creek East	Privately-owned	30 months after TCO	1	CoO later of E1 or E2
The Meander	Privately-owned	30 months after TCO	1	(F Office [excluding areas between F2/F4/150 South Montgomery, which are to be delivered within 30 months from the issuance of temporary certificate(s) of occupancy for the final building of F2, F4 or 150 South Montgomerys]); In the event F3 and/or F6 have not received temporary certificate of occupancy within twenty-four (24) months following issuance of a temporary certificate of occupancy for the office building on F1, the area of the Meander within fifty (50) feet of those buildings would be completed within six (6) months of issuance of temporary certificate of occupancy for buildings on F3 and/or F6
Los Gatos Creek Park 1	Privately-owned	30 months after TCO	1	G1
Los Gatos Creek Park 2	Privately-owned	30 months after TCO	2	H2
N. Montgomery Pocket Park	Privately-owned	30 months after TCO	2	B1

12. How will be POPOS be insured?

Liability insurance.

13. What if POPOS are delivered (sign-off of final inspection) after the 30 month trigger shown in Table 10?

If they fail to deliver:

1. They don't deliver a POPOS relative to the trigger building in the required time Failure to timely deliver the POPOS will result in a monthly penalty fee of \$10 per square foot until the POPOS is delivered with an additional yearly fee (\$200) and after XX amount of time it goes into default and City can hold additional approval or permits.

2. They don't keep up with the overall SF of open space per unit (currently proposed at 52 SF/ unit)

14. Addressing the Imbalance of Public Park to Residential Development South of Santa Clara

The 2,900 units proposed south of Santa Clara Street would result in a parkland obligation of 14.34 acres or \$42,157,300. Total city dedicated parkland proposed south of Santa Clara Street and improvements results in YYY, leaving a gap in the obligation of ZZZZ.

Google can be permitted to build all 2,900 units south of Santa Clara Street without temporarily constructing St John's Triangle or Northend Park if they construct and make available for public use 4 of the 6 acres "Permanent" privately owned open spaces noted in Table 7 above. These spaces will serve to temporarily meet the parkland obligation. Before being issued a certificate of occupancy for any residential building (north or south of Santa Clara) Developer must demonstrate that the combination of dedicated city parks and privately owned spaces provide a minimum of 52 square feet of recreation space per unit (cumulatively).

TABLE 11 – Amount of City-dedicated park per resident

Number of residents	Corresponding area of public park when project is completed
4,000	4.8 acres
1	0.0012 acres (52 SF)

15. Private Recreation Credits for Residential Buildings

Developer can apply for Private Recreation Credits for any proposed residential building at the time of conformance review. Private Recreation Credit can be issued by PRNS in accordance with Resolution 73587, dated January 9, 2007.

Private Recreation Credit exhibits shall be submitted by Developer with each conformance review packet for the residential building for which credit is being requested. PRNS will review exhibits and document the amount of available credit for each building. The amount of credit awarded for each residential building and the cumulative credits available for the total project will be documented by the city and provided to the Developer. Private recreation credits will be "banked" and not applied to the park fee until the terms noted below.

16. When can Developer Use Private Recreation Credits?

“Banked” Private Recreation Credits can be applied under the following conditions:

- (1) After 2.4 acres of publicly owned park has been dedicated and accepted south of the Santa Clara Street; and
- (2) Developer has demonstrated use of reasonable business efforts to acquire and dedicate the parks north of Santa Clara; and
- (3) Developer has completed construction of and provided “with similar rights to a dedication” commitment on at least 4 of the 6 acres of areas identified in Table 7 (pending review of mapping)

17. North of Santa Clara Check-in Dates

In Year 10 and Year 15: Google will need to deliver parks corresponding to the built or in-progress units. If Google has built more than 2,000 units (therefore incurred an obligation that can only be delivered via parks north of Santa Clara), then on a tri-annual (once per 3 years) after year 20: The City can:

1. Wait until Northend parks plan is delivered per triggers in Table 10.
2. City can elect to have Google fee out of remaining units of fee (inflated at CCI)

18. What if Developer Never Builds Residential North of Santa Clara?

1. If less than 2,000 units are built south of Santa Clara, then Google needs to build at least the required parks to meet minimum parks per unit before the 30 year mark, even if trigger buildings not built.
2. If more than 2,000 units built south of Santa Clara, then Google needs to build 2.4 acres of parks, plus fee out or use private rec credit for any units above 2,000.

NOTE: that the 30 year settlement can not be fulfilled by POPOS (as they could during the 30 year period)--even if the trigger buildings are not built the actual parks have to be built as part of settlement.

19. When does Developer Post Bond for City Parks?

Developer will post bonds as defined in the Standard Parkland Agreement (payment, performance, etc.) at the time building permit is issued for associated building as defined in the Table 10, above.

20. Design / Conformance Review Process

For City owned Parks: PW / PRNS / Developer coordination on outreach and design review and comment at 35%, 65%, 95% - typical turnkey process

Privately Owned Open Spaces: Conformance review shall be in accordance with process outlined in DWDSG

Remaining Parks Issues/Questions in [Spreadsheet](#)