

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Google - Diridon/DW - DA Body Revisions in Response to City's Comments
Date: Tuesday, April 6, 2021 2:42:21 PM
Attachments: [Google - DA - revisions to POPOS Provisions-c.docx](#)

From: Straka, Stephanie <SStraka@coblentzlaw.com>
Sent: Wednesday, March 3, 2021 9:42 AM
To: Miller, Gregg <gmiller@coblentzlaw.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Subject: RE: Google - Diridon/DW - DA Body Revisions in Response to City's Comments

[External Email]

Johnny,

Apologies, but I inadvertently left out some details for Exhibit F3 in the POPOS provisions to the DA. Please see attached redline changes, and please make sure that these get to Nicolle. Thanks.

Stephanie R. Straka | Special Counsel
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Direct 415-772-5750 | Cell 951-333-5572 | Office 415-391-4800

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From: Miller, Gregg <gmiller@coblentzlaw.com>
Sent: Tuesday, March 2, 2021 11:52 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Straka, Stephanie <SStraka@coblentzlaw.com>
Subject: Google - Diridon/DW - DA Body Revisions in Response to City's Comments

Johnny: attached are redlined and clean versions of the DA body. The redline is marked against the City comments of 2-24 thru Section 2 and of 2-26 thru the balance of the DA body. We combined those two sets of comments into one document and then redlined against it. The clean version contains our edits in response to the City's comments. Please note that the attached remains subject to Google's review and comment. Thanks,

Gregg Miller
Coblentz Patch Duffy & Bass LLP

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4.1.3 Project Features. In addition to the Community Benefits, Developer has opted to provide the following additional Project Features as a Public Benefit:

(a) Privately-Owned Publicly Accessible Open Space. In addition to the City-Dedicated Open Space described in Exhibit E hereto, and the Park Improvements to the City-Dedicated Open Space described therein, Developer is providing as a Project Feature certain Privately-Owned Publicly Accessible Open Space totaling approximately 10.2 acres (approximately seven (7) acres of which will be further subject to restrictive covenants as described herein, referred to herein as the “Covenant Privately-Owned Publicly Accessible Open Space”), generally depicted on Exhibit E5.2 hereto and as described in the Downtown West Design Standards and Guidelines (referred to therein as "Project Sponsor-Owned Open Space").

Prior to issuance of a Temporary Certificate of Occupancy for any building on the development parcel corresponding to a Covenant Privately-Owned Publicly Accessible Open Space, as provided by the schedule in Section 4.1.3(a)(i) below, Developer shall execute and record an open space and public access restrictive covenant, in form and substance satisfactory to the City Attorney and substantially in the form attached hereto as Exhibit F1 (“Public Access Restrictive Covenant”). The Public Access Restrictive Covenants shall set forth the categories, boundaries, and limitations on use of the Covenant Private-Owned Publicly Accessible Open Space, all in accordance with the DWDSG. For the hours of operation and scope of permissible park use provisions set forth in Exhibit F2, which Exhibit shall be incorporated by reference into the Public Access Restrictive Covenants, except as required for maintenance and repair, or to protect the public health and safety, as determined by Developer/owner in its reasonable judgment, these provisions may not be changed or modified with respect to the Covenant Privately-Owned Publicly Accessible Open Spaces if such change or modification would be more restrictive, or would restrict

or eliminate a permissible use, without prior approval by the Director of PRNS; provided, however, that a permanent decrease in the hours of operation for any Covenant Privately-Owned Publicly Accessible Open Space by ten percent (10%) or more shall require a public hearing by the City Council and approval by a majority vote.

For provisions regarding public events, private events, and temporary closures, which provisions are set forth in Exhibit F3, except as required for maintenance and repair, or to protect the public health and safety, as determined by Developer/owner in its reasonable judgment, any permanent change or modification to these provisions that would reduce by ten percent (10%) or more the cumulative amount of reservable areas or the total number of days or hours during which private events may occur shall require prior approval by the Director of PRNS.

In addition to the provisions included in Exhibits F2 and F3, which apply to all Privately-Owned Publicly Accessible Open Spaces, Developer will provide rules for the Privately-Owned Publicly Accessible Open Spaces regarding prohibited conduct, which rules generally will prohibit conduct that interferes with permissible park uses and general public use and enjoyment of the Privately-Owned Publicly Accessible Open Spaces. These rules, and any updates to the same, will be posted on a website and at each Privately-Owned Publicly Accessible Open Space.