

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Preliminary Draft: Proposed Approach for H1 - For Google
Date: Tuesday, April 6, 2021 2:57:35 PM
Attachments: [Proposed Approach for H1 - For Google.DOCX](#)

From: Phan, Johnny
Sent: Wednesday, March 17, 2021 8:09 AM
To: Miller, J. Gregg <gmler@coblenzlaw.com>
Subject: Preliminary Draft: Proposed Approach for H1 - For Google

Hi Gregg – See attached related to H-1. Thanks. Johnny

Johnny V. Phan

Chief Deputy City Attorney
Office of the City Attorney
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
Main Ph: (408) 535-1900
Direct No.: (408) 535-1981
Fax No. (408) 998-3131

NOTICE TO RECIPIENT: This communication is intended **only** for the person to whom it is addressed, and may be protected by law. If you receive this in error, any review, use, dissemination, distribution, or copying is strictly prohibited. Please notify us immediately of the error and delete this communication and any attached documents from your system. Thank you for your cooperation.

PROPOSED H1 Approach

In order for the City to accept the H-1 site, Google must do the following and the City will have no more than the following obligations:

- a. Google will seek approval of and implement to completion a Remedial Action Plan (RAP) and any other documents required by the applicable regulatory agency, which must include the characteristics below.
- b. RAP implementation shall result in the site being cleaned to an adequate level, as certified by the applicable regulatory agency, to allow construction and operation of residential uses above the first floor.
- c. Google must clean out and dispose of all the contaminated soil to the satisfaction and approval of the applicable regulatory agency.
- d. Google has ongoing responsibility for any ongoing remediation and monitoring including but not limited to contaminated groundwater, to the satisfaction and approval of the applicable regulatory agency and Google retains full responsibility and liability for anything related to or resulting from the remediation and monitoring activities.
- e. Google has the obligation to deliver:
 - i. Certification from the applicable regulatory agency that the site will be safe for housing use with a proposed passive vapor intrusion (venting) mitigation system after the initial stage of cleanup is complete (before the site is transferred), and (Comment: The regulatory agency will likely not certify site is safe until vapor intrusion mitigation system is installed); and
 - ii. A certification of fully completed clean up to apartment building owner, once Google receives it.
- f. City or housing developer has obligation to install a passive vapor intrusion mitigation system, including a vapor barrier and passive venting system, and is responsible for correct installation to protect inhabitants. There will be no ongoing regulatory/monitoring requirements that are the responsibility of the City or housing developer.
- g. Google has responsibility to make sure (when negotiating the RAP) that installation of vapor barrier and passive vapor intrusion mitigation (venting) system is all the City or housing developer needs to do to allow for residential use of the property, and that a passive vapor barrier and passive vapor intrusion mitigation system required by the RAP shall not cost more than \$500K in total at the time the City receives the site. If the agency requires or if Google agrees with the applicable regulatory agency on something more costly, then Google shall pay the difference.
- h. Google must conduct all work necessary to obtain regulatory approval to permit commercial uses, services and/or property management uses on the ground floor and residential uses as outlined above.
- i. Google must keep the City informed of the timing and status throughout the RAP Process, including the draft and final RAP.
- j. Google must respond to any inquiries or orders from the applicable regulatory agency to their satisfaction.
- k. Google must prosecute all work diligently to completion.
- l. Google must pay all agency oversight and permitting costs associated with the above.
- m. To the fullest extent permitted by law, Google shall defend and indemnify the City for any and all claims or costs incurred arising out of contamination at the site, including but not limited to regulatory orders, enforcement actions, and third party claims, but excluding any claims arising

out of the City or housing developer's installation and maintenance of the passive vapor intrusion mitigation system, including a barrier and passive venting system, and any claims arising from failure of these systems.

The City would like flexibility to use new/innovative building technologies such as Mass Timber which may not require a concrete podium, but is willing to commit to building a concrete slab/foundation on top of the vapor barrier and restrict residential uses to the second floor and higher.