

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Preliminary Draft - Affordable Housing Sites  
**Date:** Tuesday, April 6, 2021 2:59:17 PM  
**Attachments:** [Proposed Approach for H1 - For Google.DOCX](#)

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**From:** Phan, Johnny  
**Sent:** Thursday, March 18, 2021 6:54 PM  
**To:** Miller, J. Gregg <[gmliller@coblenzlaw.com](mailto:gmliller@coblenzlaw.com)>  
**Subject:** Preliminary Draft - Affordable Housing Sites

Hi Gregg – Following up on recent meetings on the affordable housing sites, below are additional information from City staff on a framework for H1, H5, and H6.

1. City will sign transfer agreements at the same time as the DA. Need to finish drafting now, so that we all have security about how it will work, at the same time that we execute the DA.
2. Transfer agreements will have three types of contingencies (a) general 90-day feasibility contingency, (b) no negative material change contingency, (c) Updated Remedial Action Plan (RAP) contingency (for H1 only).
  - a. During the 90 day feasibility contingency, which is general in nature, City can reject any of the sites for any development feasibility-related reason including but not limited to title issues. During this period, if City rejects a site, then Google has the option to fee out of that site at 100% of dedication value (inflated by CCI until the time the City receives that value).
  - b. After the 90 day period, if the City has waived general feasibility contingencies, there are only two reasons that the City can reject the site:
    1. **Material Damage:** 90 days before the fulfilment of conditions precedent to transfer, Google shall order and provide to the City an updated Phase 1 (for H5 and H6) and an updated title report (for any property being transferred). If City can demonstrate that the sites have been materially changed/damaged (either because the new Phase 1 shows new or worsened environmental conditions, or there are new encumbrances on title). If this is the case, City shall provide notice to Google within 45 days, and Google shall have 45 days to fix the problem. If Google cannot resolve the issues, City and Google shall meet and confer about whether City still wants the site. If City rejects the site because it got worse (in terms of the Phase 1 or new

encumbrances on title), then this is considered a default on the part of Google and City has the option to require Google to fee out at 150% of the site value agreed in the IHO, increased by CCI from 2021 up to the date that the fee is paid.

2. **If the RAP contingency is not met** (and only on H1). This is not discretionary and only depends on the RAP meeting the list of criteria (previously provided and attached). If Google's negotiated RAP meets these criteria, City has to accept it. If Google's RAP does not meet these criteria, then City and Google can meet and confer and City can choose to accept or reject the site.
3. If the RAP does not meet the criteria (for H1), or if Google otherwise defaults on transferring a site (H1, H5 or H6) after the 90 day contingency has been waived, then Google owes a fee equal to 150% of the site value agreed in the IHO increased by CCI from 2021 up to the date that the fee is paid.

## **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**

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## 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.