

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Preliminary Draft Google Exhibits A and B
Date: Tuesday, April 6, 2021 3:06:54 PM

From: Straka, Stephanie <SStraka@coblentzlaw.com>
Sent: Thursday, March 25, 2021 9:36 AM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Miller, Gregg <gmiller@coblentzlaw.com>
Subject: RE: Preliminary Draft Google Exhibits A and B

[External Email]

Thanks, Johnny. Has the City surveyor seen/reviewed the VTA and Autumn Street legal descriptions (Autumn = C2)?

Stephanie R. Straka | Special Counsel
Coblentz Patch Duffy & Bass LLP
Direct 415-772-5750 | Cell 951-333-5572 | Office 415-391-4800

This transmittal is intended solely for use by its addressee, and may contain confidential or legally privileged information. If you receive this transmittal in error, please email a reply to the sender and delete the transmittal and any attachments.

From: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Sent: Wednesday, March 24, 2021 11:01 PM
To: Miller, Gregg <gmiller@coblentzlaw.com>; Straka, Stephanie <SStraka@coblentzlaw.com>
Subject: [EXTERNAL] Preliminary Draft Google Exhibits A and B

Comments from City Surveyor.

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](tel:(408)535-1900)
Direct No.: [\(408\) 535-1981](tel:(408)535-1981)
Fax No. [\(408\) 998-3131](tel:(408)998-3131)

I have reviewed the Legal Description (Exhibit A) and the Project Boundary map (Exhibit B) and have the following comments.

Legal Description (Exhibit A)

The legal description, which describes the boundary of the Development Agreement, actually describes three (3) separate sites named **PARCEL 1** (east of Los Gatos Creek), PARCEL 2 (between Santa Clara and Lenzen), and PARCEL 3 (west of Los Gatos Creek, between Santa Clara and Auzerais).

The legal description contains **only** course information (bearings and distances) without any boundary details. Although the description is not a normal description that will transfer rights, it should contain at least a few streets so that it is apparent where the intent of the boundary line should follow.

Eg. "...along the southerly line of Santa Clara Street...", "...along the easterly line of Barack Obama Blvd, formerly know as South Autumn St...", "...to the most northwesterly line of Auzerais Street...".

The legal description courses also seem too detailed with too many minor jogs. However, Exhibit B seem very smooth in comparison and does not show all the jogs and curves as described in the legal. I believe they have a GIS shapefile that may be a better and simpler shape for the boundary. That should be used for the legal description.

At the end of the legal description for PARCEL 3, there is an exception clause for only Document 16434322 (APN 259-38-139). However, Exhibit B shows multiple parcels to be excluded that are not listed in the legal description exclusions. Per DA Recital, Section H (pg 10-11):

*As reflected in Exhibit B, the Project Site for purposes of this Agreement also does not include certain property owned by the Pacific Gas and Electric Company (a portion of APN 261-35-002), certain property owned by the Peninsula Corridor Joint Powers Board (APN 261-34-020), or certain other property owned by VTA (APNs 259-38-139, 259-38-114, 259-38-134 [**NOTE-working with VTA to include**]),*

I recommend that HMH revise the Legal Description to 1) ADD calls to Streets and Boundary lines, 2) simplify and match course information as shown on the Exhibit B parcel shapes, 3) provide a Closure Report for the Parcels, and to 4) add additional references for the Exception parcels that are to be excluded from the DA, shown on Exhibit B, but not described as an exception.

Project Boundary map (Exhibit B)

I recommend that HMM revise the Project Boundary Map to 1) label Streets and Boundary lines, 2) label each specific Parcel and its Point of Beginning (POB), 3) add additional feature information to the Legend, and 4) verify the additional references for the Exception parcels that are shown, but not included, in the Legal description.

Sorry for the delay in responding, this was very complicated review due to the complexity of the legal description. Please let me know if you have any questions or comments.

Steve Choy, PLS
City of San José, Dept. of Public Works
408-793-6986 vm | 408-375-3206 cell

This message is from outside the City email system. Do not open links or attachments from untrusted sources.