

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Google revisions  
**Date:** Tuesday, May 18, 2021 11:30:26 AM  
**Attachments:** [Google - DW - revisions-c.docx](#)

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**From:** Straka, Stephanie <SStraka@coblentzlaw.com>  
**Sent:** Friday, April 16, 2021 9:06 AM  
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**Cc:** Miller, Gregg <gmiller@coblentzlaw.com>  
**Subject:** Google revisions

[External Email]

Johnny, see attached. Thanks.

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The City and Google have recently determined that the City does not have a fee title interest to certain public streets (approximately 1.7 acres) within the proposed Project area that are proposed to be abandoned and developed as part of the Project's Privately-Owned Publicly Accessible Open Space network. Google and the City have discovered that descendants of the original 19th century owners may, in fact, have an ownership interest in the underlying land. Google is committed to working with the City to gain the requisite legal or equitable interest needed so that Google can develop the Privately-Owned Publicly Accessible Open Space in the manner contemplated by the proposed Project documents. In furtherance of that effort, Google proposes the following few revisions to the Development Agreement (including the Parkland Agreement), the Planned Development Zoning General Development Plan, the Downtown West Design Standards and Guidelines, and to the notes and findings for the Vesting Tentative Map.

**Development Agreement, Section 4.1.3(a), Paragraph 6:**

The final acreage and/or boundaries of each Privately-Owned Publicly Accessible Open Space, including each Covenant Privately-Owned Publicly Accessible Open Space, may be subject to adjustment pursuant to the provisions of the DWDSG, except that any reduction in acreage of an individual Covenant Privately-Owned Publicly Accessible Open Space of more than five percent (5%), unless reallocated to another Covenant Privately-Owned Publicly Accessible Open Space, shall only be permissible if necessary due loss of developable area resulting from eminent domain by a DISC Agency(ies) or other government entity, ~~or~~ street abandonment, or if the necessary land is not a Development Parcel. The Privately-Owned Publicly Accessible Open Space shall also be permitted to be reconfigured as permitted by the DWDSG and/or the General Development Plan, with written approval by the Director of PBCE, in consultation with the Director of PRNS, so long as the Project at full buildout continues to provide 7 acres of Covenant Privately-Owned Publicly Accessible Open Space, except to the extent the necessary land is not a Development Parcel. As provided in the General Development Plan, final acreage shall be identified and finally approved at the Conformance Review stage or the processing of a final map that includes the subject open space, whichever occurs first.

**Development Agreement, Section 4.1.3(a)(i):**

Subject to Sections 4.2 and 11.5, Developer shall deliver the Completed Privately-Owned Publicly Accessible Open Spaces identified in Exhibits E2 and E3.2, within thirty (30) months following issuance of a Temporary Certificate of Occupancy for any Building on the Development Parcels or the occurrence of the event as indicated in the following schedule:

...

- the Meander (the later of (i) 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 Montgomery], and (ii) the date on which all of the land for the Meander is a Development Parcel);

...

The following Privately-Owned Publicly Accessible Open Spaces shall be delivered within eighteen (18) months following issuance of a Temporary Certificate of Occupancy for a Building on the indicated Development Parcels, which delivery trigger is the same as for the adjacent City-Dedicated Open Space as referenced in Exhibit E3.2, or the occurrence of the event as indicated in the following schedule ~~and as referenced in Exhibit E3.2:~~

...

- Northend Park (the later of (i) A1, and (ii) the date on which all of the land for Northend Park is a Development Parcel)

**Parkland Agreement (Exhibit E to Development Agreement) Section 4(J):**

In addition to adhering to the schedule set forth in Exhibits E3.1 and E3.2 and the other timing requirements of this Agreement, and the Development Agreement, through Completion and delivery of a combination of (i) City-Dedicated Open Space and (ii) Privately-Owned Publicly

Accessible that is subject to recorded restrictive covenant(s) as described in Section 4.1.3 of the Development Agreement and reflected in Exhibit E7 (the "Covenant Privately-Owned Publicly Accessible Open Space"), Developer shall ensure that a cumulative minimum of fifty-two (52) square feet of Completed open space is provided for each residential unit that is constructed, except to the extent the necessary land is not a Development Parcel. Continued compliance shall be demonstrated and confirmed through the accounting process required as part of the Conformance Review for vertical development. Final acreage of the open spaces shall be verified in the manner set forth in Section 4(B). City shall deny Conformance Review for a subsequent residential building that would cause the cumulative minimum square feet of open space for each residential unit to fall below 52 square feet. Further, pursuant to Section 4.1.3(a)(iii) of the Development Agreement, in the event Developer fails to Complete any Covenant Privately-Owned Publicly Accessible Open Space in accordance with the completion schedule set forth in Section 4.1.3(a)(i) therein, Developer shall be required to pay the Private Open Space Delay Penalty Fee. For clarity, it is understood that Privately-Owned Publicly Accessible Open Space, including Covenant Privately-Owned Publicly Accessible Open Space cannot be used to satisfy Developer's Parkland Dedication Obligation.

#### **Addition to General Development Plan**

This GDP authorizes adjustments to blocks and lots, the street network, and development programming (including but not limited to open spaces, parking, and associated improvements) as reasonably necessary to exclude areas that are shown on the Vesting Tentative Map (approved by Resolution No. \_\_\_\_\_) as public streets to be abandoned and subsequently merged into adjacent lots. Deviations from standards and guidelines in the DWDSG that are necessary in connection with such adjustments shall be reviewed by the Director of PBCE as part of the Conformance Review process as further set forth in the Implementation Guide, and shall be approved by the Director of PBCE without requiring amendment to the DWDSG if findings can reasonably be made that the resulting reconfiguration is consistent with the General Plan and compliance with CEQA has been demonstrated. In the event any portion of the public streets identified for abandonment in the Vesting Tentative Map are not abandoned and merged into the adjacent lot(s) as part of a phased final map, the project sponsor shall have no obligation to improve the subject street area. The project sponsor may request to modify a previously approved Conformance Review Application that assumed the abandonment of a public street or easement; the City shall review and approve such request for modification pursuant to the Conformance Approval Adjustment process.

In the event the portion of existing S. Montgomery Street subject to abandonment, as shown on the Vesting Tentative Map, is not abandoned and merged into adjacent lots, Google may elect to

complete pedestrian and bicycle-related improvements to S. Montgomery, which would be offered for dedication and acceptance by the City. Pedestrian and bicycle-related improvements on such portion of S. Montgomery Street shall be completed consistent with DWDSG standards and guidelines, subject to any requested deviations authorized in this GDP. Google would have no obligation to maintain or operate such improvements after City acceptance.

### **Addition to DWDSG**

Consistent with the Downtown West PD Zoning District and the GDP, in the event the areas shown on the Vesting Tentative Map (approved by Resolution No. \_\_\_\_ ) as public streets to be abandoned in associated phased final maps are not abandoned and merged into adjacent lots, this standard authorizes adjustments to blocks and lots, the street network, and development programming (including but not limited to open spaces, parking, and associated improvements). This standard further authorizes deviations from standards and guidelines elsewhere in the DWDSG as reasonably necessary to accommodate such adjustments. Deviations proposed by the project sponsor pursuant to this standard shall be reviewed and approved by the Director of PBCE as part of the Conformance Review process. The Director of PBCE shall approve such deviations without requiring amendment to the DWDSG if findings can reasonably be made that the reconfigured development and improvements are consistent with the General Plan and compliance with CEQA has been demonstrated.

### **New Vesting Tentative Map Note**

#### NOTES RELATING TO STREETS

1. PROPOSED LOTS DEPICTED ON THIS VESTING MAP MAY BE REDUCED IN SIZE OR RECONFIGURED ON PHASED FINAL MAPS TO ACCOUNT FOR THE EXCLUSION FROM SUCH LOTS OF AREAS CURRENTLY DESIGNATED AS PUBLIC STREETS AND WHICH ARE SHOWN HEREON AS BEING SUBJECT TO ABANDONMENT AND INCLUSION WITHIN THE ADJACENT PROPOSED LOTS. THE RESULTING LOTS, AFTER ACCOUNTING FOR SUCH REDUCTION OR RECONFIGURATION, SHALL BE DEEMED TO SUBSTANTIALLY COMPLY WITH THIS VESTING MAP.

### **Modifications to VTM Resolution Finding No. 18**

Abandonment of Public Streets and Easements.

a. [EXISTING FINDING RENUMBERED] Certain existing public streets and public easements are indicated on the Vesting Tentative Map as being subject to abandonment pursuant to Government Code Section 66434(g). In approving this Vesting Tentative Map, this City Council has determined that the referenced public streets and easements shall be abandoned, that such abandonment will be described on the face of associated phased final maps including by reference to recording data or other official records creating the streets or easements, and that abandonment will be certified by the Director of Public Works pursuant to Government Code Section 66434(g). At the time of approval of phased final maps including such streets and

easements, and provided that the requirements of Government Code Section 66434(g) and the conditions of approval in this Resolution are satisfied, these streets and easements shall be unnecessary for present or prospective public use. The City Council further finds that incorporation of the underlying properties into the adjacent parcels, as described in the Vesting Tentative Map, free of the public street interest and identified public easements, is assumed as part of the Project and is essential for the City and the public to realize the full measure of the Project's public benefits.

b. [NEW FINDING] Subdivider may reduce the size of or reconfigure proposed lots, easements and improvements on phased final maps to account for the exclusion of those areas that are shown on the Vesting Tentative Map as public streets to be abandoned and which are assumed to be merged into adjacent lots. In the event that such lots, easements or improvements are modified as described in the preceding sentence, the phased final map shall be deemed to substantially comply with the Vesting Tentative Map notwithstanding such modifications.

c. [NEW FINDING] If Subdivider does not obtain a legal or equitable interest to those portions of proposed Lot 13 that are shown on the Vesting Tentative Map as public streets to be abandoned and merged with Lot 13, Subdivider may request, and if so requested the Public Works Director shall enter into, an agreement to authorize Subdivider to complete bicycle or pedestrian-oriented improvements upon the adjacent public street areas that have not been so abandoned and merged, the dedication to, and acceptance by City, of such improvements, and the subsequent use of the improvements. The terms of such agreement shall provide that any ongoing maintenance of, and liability for, said improvements will be the City's obligation.