

From: [Hill, Egan](#)
To: [Colli, Garrett J. \(Perkins Coie\)](#)
Cc: [Paul Dunne](#); [Bhavesh Parikh](#); [Do, Ryan](#)
Subject: RE: Infrastructure Language
Date: Monday, March 29, 2021 3:48:00 PM
Attachments: [DWIS DWIP Amendment Process CAO Redline 3.29.21.docx](#)

Thanks, Garrett.

Please see updated CAO redline of the amendment/modification sections of the DWIS and DWIP based on our discussion this afternoon.

From: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>
Sent: Monday, March 29, 2021 2:30 PM
To: Hill, Egan <Egan.Hill@sanjoseca.gov>
Cc: Paul Dunne <pauldunne@google.com>; Bhavesh Parikh <bhaveshp@google.com>
Subject: Infrastructure Language

[External Email]

A Non-Material amendment is a modification or deviation from the Infrastructure Plan that does not include either (i) a new type of infrastructure or improvement that is not contemplated by the Infrastructure Plan and (ii) does not result in a material increase in the City's risk or a material increase in costs to the City.

Garrett Colli | Perkins Coie LLP

PARTNER
505 Howard Street Suite 1000
San Francisco, CA 94105
D. +1.415.344.7160
F. +1.415.344.7260
E. GColli@perkinscoie.com

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DWIS

1.4. Ancillary Documents Providing Standards

These Downtown West Improvement Standards refer to certain ancillary documents to provide standards for horizontal improvements. Such ancillary documents are typically referred to herein by the name of the preparing agency, the name of the document, and the year the document was approved or most recently amended (e.g., “CalTrans Specification (2018)”). It is anticipated that these ancillary documents may be amended or superseded in the future by the agencies responsible for their preparation and approval. In the event that any standard from an ancillary document referenced herein is amended or superseded, the project applicant may submit a request for relief to the City pursuant to Section 1.5 of the DWIS.

1.5. Future Modifications to DWIS, 1992 Specifications, or Ancillary Documents

The project sponsor may submit a written request for relief from:

- (a) The 1992 Specifications (as incorporated by reference in the DWIS) that have not been superseded or modified by the DWIS;
- (b) An existing standard in an ancillary document referenced in the DWIS;
- (c) Application of a future modification of a standard in an ancillary documented referenced in the DWIS as applied to Downtown West; or
- (d) An existing DWIS standard (collectively, “DWIS Modification”).

Requests for a DWIS Modification shall be submitted to, and approved by, the Public Works Director for public improvements or privately-owned improvements on public property, or the Planning Director with respect to privately-owned improvements on private property, provided that the proposed relief: (1) is consistent with sound engineering practices, as may be evidenced by reference to industry standards; (2) would not have a material adverse effect on public or private property, utilities or improvements and (23) if applied, would not result in horizontal improvements that present a substantial-material risk to public health and safety.

The project sponsor may request for a DWIS Modification on an individual basis as applied to an Improvement Plan or similar application, or as a permanent modification to the DWIS. A DWIS Modification pursuant to this Section 1.5 does not require an amendment to the Downtown West PD Permit. Any approved DWIS Modification will be memorialized in an updated version of the DWIS to be retained on file by the City.

INFRASTRUCTURE PLAN

Infrastructure Plan. The Downtown West Infrastructure Plan describes the horizontal improvements to be constructed as part of Downtown West. The Infrastructure Plan, *[which is an exhibit to the Development Agreement]*, works in tandem with the DWIS, and DWDSG, to set forth the City’s and project sponsor’s responsibilities relating to the design and construction of the horizontal improvements.

The Horizontal Review Process is set forth in the [Downtown West Planned Development Zoning Ordinance / DA / Infrastructure Plan] and establishes the submission and review criteria

for 35%, 65% and 95% Improvement Plans (“Preliminary Improvement Plans”) by the Director of Public Works and applicable City agencies. Prior to the submission of the Preliminary Improvement Plans, the project sponsor has the option to submit Preliminary Concept Documents that would provide sufficient information to convey intent in advance of commencing improvement drawings and to seek feedback from Public Works.

As street and infrastructure improvement plans progress from 35%, 65% to 95% Plans, minor deviations will may be reflected in the Plans, examples may include but are not limited to the following:

- location of the ~~utilidor-District Systems infrastructure~~ within a private property ~~and within ROW in designated street~~ as defined in concept infrastructure planned sheets ;
- resizing or pipe material changes for private utilities within the utilidor;
- location and size of utilidor access vaults;
- extent of temporary improvements required;
- location of utility manholes, valves, laterals and related appurtenances;
- specified equipment within the water reuse facility provided that the functional intent of each individual system does not change;
- relocation or resizing of public utilities within the public right-of-way, location or sizing of franchise utilities within the public right-of-way, ~~or location of a utilidor crossing of the public right-of-way,~~ provided that any mitigation proposed by the Developer (including relocation of City Utilities at the Developer’s cost) meets all applicable standards and codes;
- extension of utilities beyond the limits shown within the Infrastructure Plan;
- the location of stormwater treatment facilities within the ROW, provided that it meets all the minimum requirements of the Green Stormwater Infrastructure (GSI) Plan.

Minor deviations are permitted by the permitting agency provided the deviation will not affect the overall system, its configuration and performance, is otherwise compatible with the intent of the Infrastructure Plan, will not have a material adverse effect on public or private property, utilities or improvements, and does not otherwise qualify for treatment as a Non-Material Amendment or Material Amendment as set forth in Section ___.

Section ___: Amendments to the Infrastructure Plan

The project sponsor may request (1) Non-Material Amendments, and (2) Material Amendments from the Infrastructure Plan. The table below details the review process for Non-Material and Material Amendments.

Type of Relief	Standard of Review	Decision Maker
<p>Non-Material Amendment: The project applicant may request a Non-Material Amendment from to the Infrastructure Plan.- <u>A Non-Material Amendment is a modification to or deviation from the Infrastructure Plan that does not either (i) include a new type of infrastructure</u></p>	<p>The project applicant may submit a request for a Non-Material Amendments as part of the Improvement Plan Review process.</p> <p>The Public Works Director shall approve a Non-Material Amendment if the following criteria are met:</p>	<p>The Public Works Director is responsible for reviewing and approving a requested Non-Material Amendment. The Public Works Director shall circulate the requested Non-Material Amendment to applicable City agencies for review. Where a requested Non-Material Amendment</p>

<p><u>or improvement that is not contemplated by the Infrastructure Plan or (ii) result in a material increase in the City's risk or a material increase in the City's costs. Any amendment that is not considered a Material Amendment, defined below, or deviation shall be processed as a Non-Material Amendment.</u></p> <p><u>A-Non-Material Amendments</u> may include <u>such topics as but is not limited to</u>: routing of public utilities within private parcels; public utility distribution / collection adjustments (i.e. altering the drainage watershed of the storm drain system, rerouting a building to a different sewershed, rerouting of utility to alternative street, location of retaining walls within the public ROW); addition of public utility easements.</p>	<ul style="list-style-type: none"> • The DWIS & applicable federal and state standards are met; • The Non-Material Amendment will be in accordance with all <u>applicable appropriate</u> public health or safety standards; • <u>The Non-Material Amendment will not result in a new or more significant environmental impact than previously analyzed under the Downtown West Final Environmental Impact Report.</u> • <u>The Non-Material Amendment will not have a material adverse effect on public or private property, utilities or improvements.</u> <p>Any approved Non-<u>Material</u> Amendments will be memorialized in an updated version of the Infrastructure Plan to be retained on file by the City.</p>	<p>involves improvements within private property, the Public Works Director shall review the request in consultation with the Director of PBCE.</p> <p><u>If the City and project applicant cannot agree on whether a requested amendment is Non-Material or Material, the project applicant may apply to the City Council for reconsideration of the decision of the Public Works Director or Planning Director, as applicable.</u></p>
<p>Material Amendment: The following shall constitute a Material Amendment:</p> <ol style="list-style-type: none"> 1. A change in the service intent of one or more proposed utility systems (collection or distribution) beyond the alternatives listed within the IP; <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2. A <u>significant material</u> change in the required 	<p>The Director of Public Works, or City Council, as applicable, may approve a Material Amendment provided all of the following findings are made:</p> <ol style="list-style-type: none"> 1. The Infrastructure Plan, as amended, is consistent with and furthers the policies of the General Plan (as vested under the DA); 	<p>If the requested Material Amendment, can be approved in reliance on the Downtown West Final EIR, an Addendum to the EIR, or a Supplemental or Subsequent EIR that does not identify any new or substantially more severe significant environmental effects, following mitigation, than the original EIR, the Director of Public Works is responsible for reviewing and approving a requested</p>

<p>flood protection strategy beyond the alternatives listed within the IP;</p> <p>OR</p> <p>3. Addition of utility or crossings within the ROW beyond what was previously submitted in the Major Encroachment Agreement.</p> <p><u>3. Any amendment that is not a Non-Material Amendment.</u></p>	<p>2. The Infrastructure Plan, as amended, conforms in all respects to the PD Zoning District;</p> <p>3. The Material Amendment will not have a materially and adversely affect existing on public or private property, utilities or <u>improvements or third-party private improvements;</u></p> <p>Any Material Amendments will be memorialized in an updated version of the Infrastructure Plan to be retained on file by the City.</p>	<p>Material Amendment. The Public Works Director shall circulate the requested Material Amendment to applicable City agencies for review. Where a requested Material Amendment involves improvements within private property, the Public Works Director shall review the request in consultation with the Director of PBCE.</p> <p>City Council (following a recommendation from Planning Commission) if a Supplemental or Subsequent EIR is required and identifies one or more new or substantially more severe significant effects, following mitigation, than the original EIR.</p>
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