



**City of
Santa Clara**
The Center of What's Possible

City Attorney's Office

October 30, 2020

Mr. Sudhanshu Jain
via email sjain@santaclaraca.gov

**Subject: Additional Analysis of Properties In the Vicinity of the Downtown
Precise Plan**

Dear Mr. Jain:

As you know, in July of this year, in conjunction with your request to have our Office request an opinion from the FPPC with respect to your role as a Planning Commissioner, the Planning Division staff researched the number of residential parcels located within 1000 feet of the proposed boundaries for the downtown precise plan. On a Citywide basis, 2.5% of the residential parcels were determined to be located within 1000 feet of the precise plan boundaries. Although it was not relevant to whether an exception applied with respect to your role as a Planning Commissioner, the analysis also included a determination that approximately 14.7% of the parcels in Council District 5, including your personal residence, were located within 1000 feet of the precise plan boundaries. At the time, the FPPC's "public generally" exception authorized public officials to participate in government decisions, even when a public official had an affected property interest, if 25% or more of the properties within the official's jurisdiction (a "significant segment") were affected in substantially the same manner. 2 C.C.R. § 18703.

On October 2, 2020, you emailed me to ask about the September 17, 2020 update to FPPC Regulation Section 18703, which revised the "public generally" exception. As revised, a "significant segment" of the population is now just 15% of properties in the official's jurisdiction, rather than 25%, if the official's only interest is the official's primary residence. Based on this recent change, and given how close the previous count was to 15%, you asked if the Planning Division could conduct a more detailed analysis of the residential properties in the vicinity of the precise plan boundaries. The July count had used the designated zoning for each parcel listed in the City's GIS system, but since the threshold for the exception at the time was 25%, there was no need for a more refined analysis at that time. With the lowering of the threshold, I forwarded your request to the Planning Division and City Manager's Office, and on October 8, 2020, City Manager Deanna Santana sent you a letter confirming that the City would undertake a more detailed analysis.

This letter is to inform you that the Planning Division has now completed a more refined analysis, which is contained on the attached spreadsheet. As you will see, the City has now determined that **16.34%** of the residential parcels in District 5 are within 1000 feet of the precise plan boundaries.

The refined analysis resulted in a different number based upon the following:

- The previous analysis included only parcels that are zoned residential. A number of parcels within the area are zoned Planned Development (PD) with residential uses. In the refined analysis, Planning Division looked at each PD parcel to determine whether it contained residential uses, and added the parcels containing residential uses to the count.
- The previous analysis did not include non-residentially zoned parcels that have a legal nonconforming residential use. For the revised analysis, Planning Division added parcels to the count where the zoning is, but the use of the property is residential.
- The previous analysis did not include parcels with a zoning of Historic Combining District (HT). There are 10 residential HT parcels within 1000 feet of the precise plan boundaries, and 11 residential HT parcels within District 5 overall.
- Some parcels are listed in the City's GIS system with irregular coding. For example, a parcel zoned R1-6L may be listed just as "R1." The July 2020 search did not capture every parcel with irregular coding.

City staff utilized the City's GIS System, Tidemark database, and individual property records to conduct this exhaustive search, on a parcel-by-parcel basis. In total, it took an estimated 70+ staff hours for the Planning Division to complete the more refined analysis required by your request, and we believe the 16.34% figure to be an accurate calculation of the number of residential parcels in District 5 within the 1000 ft buffer of the precise plan boundaries.

Finally, I should address the issue your legal counsel, J. Byron Fleck, raised about the City's methodology in conducting this count. In a letter addressed to City Manager Deanna Santana dated October 12, 2020, Mr. Fleck indicated that he believed that the City should have conducted a count of residential dwelling units, rather than counting the number of parcels. For your reference, I am attaching a copy of an email last year I received from Ryan O'Connor, one of the FPPC's attorneys, when I was inquiring whether several Council Members could participate in upcoming decisions about the El Camino Real Specific Plan. In the email, Mr. O'Connor informed me that when applying the "public generally" exception, the FPPC "use[s] the parcels of real property – commercial or residential." Based on this direction from the FPPC's attorney, we are continuing to utilize a parcel count when conducting these analyses.

Sincerely,



Alexander Abbe
Assistant City Attorney

Enclosures

cc: Deanna Santana, City Manager
 Brian Doyle, City Attorney
 Andrew Crabtree, Director of Community Development
 Reena Brilliot, Planning Manager

District 5 Analysis			
	District 5	Within 1,000 ft	% of Parcels
Revised Number of Residential Parcels*	3,534	500	
PD Parcels Residential	686	153	
HT Parcels Residential	11	10	
Legal Non-Conforming commercial properties with residential uses	64	39	
Revised Total Residential Parcels (inc PD, HT, LNC)	4,295	702	16.34%

*Revised Number of Residential Parcels included additional parcels from July 2020 analysis to address irregularities found in GIS data

Analysis includes:

Additional residential parcels from July 2020 analysis to address irregularities found in GIS data
 PD parcels with residential uses
 HT parcels with residential uses
 Legal Non Conforming commercial properties with residential uses

From: Ryan O'Connor <roconnor@fppc.ca.gov>
Sent: Wednesday, April 17, 2019 3:49 PM
To: Alexander Abbe <aabbe@SantaClaraCA.gov>
Subject: RE: Additional Information Requested on Your Formal Advice Request to the FPPC

We generally use the parcels of real property – commercial or residential.

From: Alexander Abbe [<mailto:aabbe@SantaClaraCA.gov>]
Sent: Wednesday, April 17, 2019 3:46 PM
To: Ryan O'Connor <roconnor@fppc.ca.gov>
Subject: RE: Additional Information Requested on Your Formal Advice Request to the FPPC

Hi Ryan. Sure, I can reach out to Planning for some additional information.

In my original letter, I gave you the area of land in districts 2 of 3, in square feet. Is this the right metric for the citywide data you're requesting (square feet)? Or would you like us to count the number of parcels (or some other number)?

Thanks

Xander

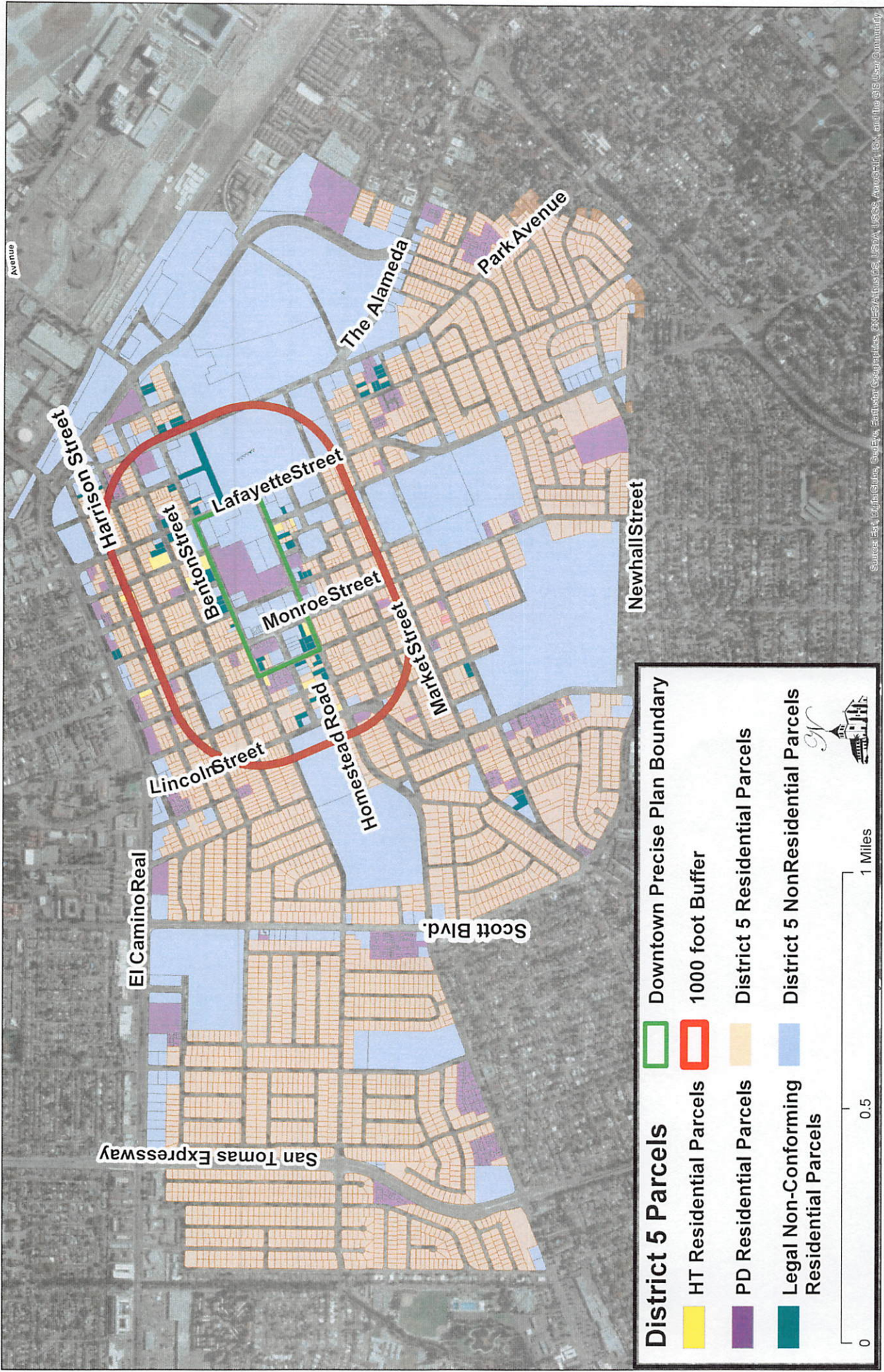
From: Ryan O'Connor <roconnor@fppc.ca.gov>
Sent: Wednesday, April 17, 2019 3:08 PM
To: Alexander Abbe <aabbe@SantaClaraCA.gov>
Subject: FW: Additional Information Requested on Your Formal Advice Request to the FPPC

Correction, I should have specified that the comparison area for the public generally analysis would be the properties within 500 feet of the El Camino Real focus area vs. the entire city.

From: Ryan O'Connor
Sent: Wednesday, April 17, 2019 2:56 PM
To: Alexander Abbe <aabbe@SantaClaraCA.gov>
Subject: RE: Additional Information Requested on Your Formal Advice Request to the FPPC

Thank you for the additional information, Xander. Is there any way that you could gather statistics regarding the amount of residential and commercial properties within 500 feet of El Camino Real in comparison with the amount of those properties within the City's jurisdiction?

Regulation 18703(a) permits public officials to take part in governmental decisions that affect their interests if the effect on the interest is distinguishable from its effect on the public generally. Commonly, an effect on an official's interest is indistinguishable from its effect on the public generally if (1) a significant segment of the public is affected and (2) the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).)




District 5 Parcels

- HT Residential Parcels
- PD Residential Parcels
- Legal Non-Conforming Residential Parcels
- District 5 Residential Parcels
- District 5 Non-Residential Parcels

Downtown Precise Plan Boundary

- Downtown Precise Plan Boundary
- 1000 foot Buffer

0 0.5 1 Miles



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community