

# Response to Public Comments

## Tropicana Shopping Center Commercial Development Project

File Number: H15-014

Prepared by the



In Consultation with



May 2020

**RESPONSES TO COMMENTS ON THE  
TROPICANA SHOPPING CENTER COMMERCIAL DEVELOPMENT PROJECT  
INITIAL STUDY  
File No. H15-014**

**Introduction**

This memorandum addresses the issues raised in public comments received by the City of San José on the Initial Study for a Draft Mitigated Negative Declaration (MND) prepared for the proposed “Tropicana Shopping Center Commercial Development Project.”. A total of nine comment letters were received from 848 individuals and two agencies, these letters are attached to this memorandum.

**A. Linh Nguy and Hung Nguy and signed by 30 other commenters (March 20, 2019)**

**Comment A.1: OBJECTION #1:** We are the Owners at Tropicana Foods store and other owners of the "L shaped" buildings in the shopping Center, we own an appurtenant easement to use the parking lot for parking and customer access for our businesses. Owner Dennis Fong is not permitted to build any building on the Easement Parking lot. Please see attached:

Document #1: Recorded Declaration of Restrictions: Document #1739423, dated Dec. 15, 1959, in Book 4637, Page 441-457.

Item #2: Covenants, Conditions, Restrictions and Rights, Easement in the Declaration of Restriction, executed by Max w. Walden and Amy J. Walden, recorded Dec. 15, 1959 in Book 4637, page 441-457. Page 10: These Agreement, charges, covenants ... shall inure to the benefit of and binding upon all owners ...

Item #4: Location of Building: No building or other structure shall be erected or maintained upon those portions of Exhibit "A" (note the whole shopping center) as are described in Exhibit "B" (note the parking lot) attached hereto ....

Item #6: Parking Areas: Exhibit "A" (It is the whole shopping center). Exhibit "B" is the Parking area. Line 3: Each and every owner of any portion of ... present or future, together with their tenants .. , any interest or right in said Exhibit "A" (shopping center) ... , shall have and hold an easement which is hereby granted and created overall and each and every part and parcel of that portion of Exhibit "A" described in Exhibit "B" for the purpose of parking motor vehicles ... and right to ingress to and egress from the same, ..

Please see Hung Nguy, our Landlord, of Tropicana land Co, OBJECTION ON ITS EASEMENT RIGHT in more details, with Recorded GRANT DEED document #1739426 recorded Dec 15, 1959, in book 4637 pages 460-463.

**Response A.1:** The City has requested the subject documentation to determine if the building would be located on any easement. However, construction of buildings on an easement is not an impact under CEQA nor is it subject to environmental review. Further, there was no specific concern regarding the technical analysis related to the environmental review that was raised. Therefore, no response is possible related to environmental analysis of constructing a building on an existing easement.

The City as lead agency and land use authority for the project has discretion to determine what amount of parking is adequate for the project under the City's own Zoning Code, and has made the required findings. Regardless, per the 2002 First District Appellate Court ruling in *San Franciscans Upholding the Downtown Plan et al. v. City and County of San Francisco*, parking is not an environmental impact under CEQA, the relevant question is whether a potential lack of parking will lead to secondary environmental impacts, such as noise and air quality impacts related to drivers searching for parking, if unavailable at the project site. The City's findings regarding project parking being adequate under the Zoning Code are based on substantial evidence contained in the Site Development Permit, as explained on page 14 and 71 of the IS/MND.

**Comment A.2: OBJECTION #2: FAILURE of EIR TO PROPERLY CONSIDER ENVIRONMENTAL IMPACT CAUSES FROM THE PROJECT**, include Traffic Analysis, Noise Study, Parking Analysis. The Parking capacity in the parking lot is only adequate for the current existing merchants, who own the Easement right. The new project will not only take parking spaces to which we, Tropicana Foods and other "L shape Building" merchants are legally entitled, and which are needed for current uses, but further cause severe parking problems by having cars park for the use of the proposed new building (far over capacity).

In the Mitigated Negative Declaration, page 2, the conclusion is simply: . "P". TRANSPORTATION/ TRAFFIC: The project would not have significant impact on transportation/traffic, therefore no mitigation is required. Infact, the Intersections of Story Road and King Road is one of the busiest and most congested intersection in San Jose. A traffic Analysis is an important report needed for the project and will confirm our concerns

Attached to this letter are pictures of crowded parking at this busy intersection.

Document #2: GRANT DEED EASEMENT Document #1739426 recorded Dec. 15, 1959, in book 4637 pages 460-463 conveys from City Title Ins Company to Trustees of the REIT of America, Nguy's (dba Tropicana Land Co) predecessor in interest. "TOGETHER WITH A Non-Exclusive easement as hereinafter define as an appurtenance to the above parcel. .. an Easement for ingress and egress ... for the Parking lot.

Above Parking lot's Easement recorded documents to support stopping Dennis Fong from building a new three level building with a total of 31,744 SF in Tropicana Shopping Center's Easement parking lot. The proposed project will take away 100 parking spaces from the Easement parking lot. It will effect all merchants within the shopping center, Therefore Parking Analysis is required for this project.

In the Initial Study/Mitigated Negative Declaration, there is no applicable and appropriated traffic study. There is no parking analysis which considers the effect on the crowded parking lot. There is no analysis at all, or consideration of, the Easement that Mr. Nguy and other merchants entitled to park on the parking lot now threatened to be taken by Fang's development.

We have not agreed to (or signed any documents) to modify the existing Easement or Parking Lot Agreement, we follow the description in above recorded documents regarding the maintenance and use of the parking lot.

We need your urgent review of the enclosed recoded documents and assistance to stop Mr. Fong from constructing more buildings on the Easement parking lot, which is already over its intended capacity. Thank you for your help.

**Response A.2:** While the commenter states that the Initial Study/Mitigated Negative Declaration failed to properly consider noise, no specific concern regarding the technical analysis was raised. Therefore, no response is possible.

The City as lead agency and land use authority for the project has discretion to determine what amount of parking is adequate for the project under the City's own Zoning Code, and has made the required findings. Regardless, per the 2002 First District Appellate Court ruling in *San Franciscans Upholding the Downtown Plan et al. v. City and County of San Francisco*, parking is not an environmental impact under CEQA, the relevant question is whether a potential lack of parking will lead to secondary environmental impacts, such as noise and air quality impacts related to drivers searching for parking, if unavailable at the project site. The City's findings regarding project parking being adequate under the Zoning Code are based on substantial evidence contained in the Site Development Permit, as explained on page 14 and 71 of the IS/MND. As a result, no secondary effects would occur.

The commenter is correct in stating that no formal traffic study was done for the proposed project. Because the project is located in the Evergreen-East Hills Development Policy (EEHDP) area, the project is not required to prepare a traffic study. The EIR for the EEHDP provides project-level environmental review for the Revised Evergreen Development Policy components of the Evergreen-East Hills Vision Strategy (EEHVS). The approved development for the EEHVS area includes 500,000 square feet of commercial space and 75,000 square feet of office space. The proposed project would develop 20,748 square feet of office space and 10,996 square feet of retail space within the Tropicana Shopping Center property. The City's Department of Public Works reviewed the project plans and determined that it would be in conformance with the City's Transportation Level of Service Policy (Council Policy 5-3) and would not create a significant traffic impact as long as the project development conforms with the levels of commercial retail and office space defined by the EEHVS. The City has determined that the project would be consistent with development levels evaluated by the EIR for the EEHDP and a determination of less than significant can be made with respect to traffic impacts.

**B. M. Dean Sutton, Sutton Law Firm Letter (March 22, 2019)**

**Comment B.1: OBJECTION 1: FONG HAS NO RIGHT TO ENCROACH ON EASEMENT FOR PARKING**

Enclosed is copy of GRANT DEED dated December 15, 1959, recorded in Book 4637, Page 460, as Document 1739426. The deed grants an appurtenant easement on "parcel 2" (now Fong), for the benefit of "parcel 1" (now Nguy and others) for ingress, egress, and parking for employees and customers.

Please note the plan set forth also in the DECLARATION OF RESTRICTIONS recorded December 15, 1959, as Doc. 1739423, Bk 4637, Pg 441 , which, in essence, says the merchants, who are the dominant owners of Parcel "A" (the whole center), have a perpetual and appurtenant easement for parking on Parcel "B" (the parking lot currently owned by Fong.) In short, by the owners of the Tropicana Food store, and other owners of the "L-shaped" buildings in the shopping center, own an appurtenant easement to use the parking lot for parking and pedestrian access for their businesses. They are dominant easement owners of parcel "A," with a nonrevocable, perpetual, appurtenant easement for parking on parcel "B," the parking lot owned by Fong.

I am informed that Mr. Fong is now requesting permission from the City to build a new, large three-story building of over 30,000 sq. ft. which would cover much of the parking lot. Not only would a new building remove from use many parking spaces now used by Nguy, an estimated 87, a new building would greatly increase the number of vehicles being parked in the few remaining spaces. Parking is a material and important property right and part of the easement owned by our client and the other merchants, which has not been, and cannot be, unilaterally terminated by Fong or anybody else.

**Response B.1:** See Response A.1

**Comment B.2: OBJECTION 2: FAILURE OF EIR TO PROPERLY CONSIDER TRAFFIC/PARKING**

Mr. Nguy further objects to the Negative Declaration, because the report fails to properly consider the effect on traffic and parking.

The new project will not only take parking spaces to which my client is legally entitled, and which are needed for current uses, but further cause severe parking problem by having cars park for the use of the proposed building.

Despite the voluminous EIR with accompanying reports, the major impacts on traffic and on parking are woefully and blithely disregarded.

In the Mitigated Negative Declaration, page 2, the conclusion is simply: " ... P. TRANSPORTATION/TRAFFIC - The project would not have a significant impact on transportation/traffic, therefore no mitigation is required.

On page 109 of the Initial Study, at 4.17.1 entitled TRANSPORTATION/TRAFFIC, there is boilerplate recitation of various agencies and policies which affect transportation.

There is, however, that I can find, no applicable and appropriate traffic study. There is no parking study which considers the effect on the already-crowded parking lot. There is no analysis at all, or consideration of, the easement Nguy and the other merchants own to park on the lot now threatened to be taken by Fong's development.

The EIR is therefore fatally defective on its face.

**Response B.2:** See Response A.2.

**C. County of Santa Clara, Roads and Airports Department (March 28, 2019)**

**Comment C.1:** As per the attached Reid-Hillview Airport Airspace Plan, the project needs to get an Avigation Easement.

**Response C.1:** The project will be required to obtain all necessary permits and easements.

**Comment C.2:** Please provide a status report for the Evergreen-East Hills Vision Strategy (EEHVS) as to approved/developed commercial and office square footage, therefore please list the projects and what is left.

**Response C.2:** The City Council adopted Resolution No. 74742, Certifying the Environmental Impact Report for the Evergreen-East Hills Development Policy on December 16, 2008. The Evergreen Development Policy to provide for traffic allocation for the future development of the following uses: 500 detached residential dwelling units; 500,000 square feet of commercial retail space; and 75,000 square feet of office space. Of the 500,000 square feet commercial retail and 75,000 square feet office that was established in the 2008 EEHDP, only 55,260 square feet of commercial and 59,231 square feet of office are remaining from the original allocation.

**D. Thao Bui (March 30, 2019)**

**Comment D.1:** I, Thao Bui is one of owners in the Tropicana Center where the proposed project, I'm also the one beside the proposed project's owner as *we* both have the land of parking lot that has been granted the easement to the other owners in the center.

Once again, I'd like to express my concerns of this project. Although *I've* had sent it to the Planning Department through Rebecca Bustos and John Tu who worked on this project before.

First of all, there' re some legal documents that related to the easement of the parking lot's land in the center which granted the use of parking lot's land to the other owners for the parking on purpose. Those documents were recorded in County of Santa Clara that City of San Jose needs to review it carefully. I hope City will give me the same favor is not to consider those documents in future if I'd build something on my land as City does the favor to the proposed project's owner today.

Secondly, without my consent City of San Jose allows the proposed project included my property parcel 486-10-087 Into the project for all studies, parking lot's analysis. Besides it there's some issue that will impact on my property is according to the plan the sidewalk on my courtyard will be cut in order to add some more parking stalls while I worked with the proposed project's owner and allowed to add some extra handicap stalls on *my* property next to the other sidewalks.

I reserve my rights and oppose everything that taking away my rights on decision based upon my consent.

I'm willing to work with the proposed project's owner and City *of* San Jose in mutual benefits.

**Response D.1:** See Response A.1 regarding easement building location and parking.

Regarding development on the subject parcel, development would be contained entirely on parcel 486-10-091 as shown in Figure 4.11-1 on page 91 of the IS/MND. Further, there was no specific concern regarding the technical analysis related to the environmental review that was raised. Therefore, no response is possible related to environmental analysis of constructing a building on an existing easement.

**Comment D.2:** I also suggest that City of San Jose should consider the actual condition of lack of parking in the center, community feedback as traffic study must be required for the corner of King and story road only, Traffic safety on-site circulation, environment factors and CEQA review for Site development permit. I believe that parking and loading area will be worsen more than the existing traffic condition. In other words, the proposed site development will have tremendous impact to daily traffic volumes *or* traffic patterns beside the lack of parking in the center and tremendous environmental impact.

I can't imagine how bad is traffic congestion during construction time if city of san Jose allows this project happened while we all are owners and merchants in the center knowing that we lack of parking space for workers and customer who shop at the center as well.

If you or some the other officers please stop by at the center to realize how hard to find a parking space on the weekday. Therefore you be able to see what we're concerning and if you can go around to find a parking space in 10 minutes on Friday, Saturday and Sunday that's lucky you are but not yet if you can get out of the center in 15 minutes you will be the luckiest one so far.

**Response D.2:** Please see response A.2.

**E. Aaron R. Resendez (March 31, 2019)**

**Comment E.1:** I am writing to you the same day when our Latino Social Justice Leader Cesar E. Chavez was born, and this day is very important to me to bring my voice up in opposing this huge development at Tropicana Shopping Center. I live across the street at Arbuckle Neighborhood where many residences are already crowded due to housing, traffic congestions and healthy issues. We are underserved by the City of San Jose.

Reading the environmental impact report (EIR) I noticed a big discrepancy on environmental issues affecting our community, issues that have not been addressed like a needed Traffic Study, a needed Traffic Analysis inside the shopping center that has an existing 1204 chairs just counting Restaurants and health issues that will affect our community forever. Inform elected official about the real environmental consequences.

I am asking you to forward this proposal all the way to San Jose City Council-members and the Mayor, you cannot make a sole decision based on these facts written by consultants that don't live in this neighborhood. Please use your awareness and judgement with Justice in favor of this underserved community.

We need to improve the governmental decision-making through disclosure and analysis of the environment of this land-use decision. This environmental impact report has many untrue factors, EIR should provide decision makers with more information which enables them to make better decisions which will take into account environmental consequences. The community and experts completely disagree regarding the decision of constructing the three-story office building.

Protecting our community; you need to follow a protocol of analysis and public disclosure of environmental impacts proposed for this project and you have to adopt all feasible measures to mitigate those impacts according to The California Environmental Quality Act (CEQA).

This EIR will be challenged in court if approved at the planned Director's Hearing.

**Response E.1:** The commenter has provided no specific concerns regarding potential impacts from the project on the neighborhood, nor which conclusions in the Initial Study/Mitigated Negative Declaration are believed to be incorrect. As such, the City cannot provide any additional information or respond to the commenter's concerns. Please see Response A.2.

## **F. Santa Clara Valley Transportation Authority (April 1, 2019)**

**Comment F.1:** Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for 20,748 square feet of office space and 10,966 square feet of retail space on 0.9 acre in an existing shopping center at the southwest corner of King Road and Story Road. We have the following comments.

### **Bus Stop Improvements:**

VTA has an existing bus stop fronting the new development on southbound King Road. The bus stop is served by VTA frequent bus routes 22 and 77 and is one of VTA's highest ridership stops. The initial study states that the project will construct a 12-foot wide attached sidewalk along South King Road, which would improve existing asphalt area behind the sidewalk. With over 250+ average weekday boardings at this bus stop VTA recommends the installation of a second shelter. VTA's Board adopted Pedestrian Access to Transit plan identifies the intersection of Alum Rock Avenue and King Road (Focus Area I) as a priority area. Project 17 recommends the addition of shaded structures at this intersection to improve the pedestrian experience. For more details visit: <https://gis.vta.org/pedaccess/>

VTA has several existing amenities listed below and requests that the amenities be maintained or improved as follows:

- Maintain or improve existing PCC bus pad and duckout per VTA Standard.
- Maintain or improve existing 8'x40' passenger pad per VTA Standard.
- Maintain or improve existing 7'x25' shelter pad per VTA Standard.
- Maintain or improve existing shelter with VTA's new standard shelter.
- Maintain or improve the 2 existing VTA metal benches
- Maintain or improve VTA real-time sign and solar light.
- Place trees and landscaping outside of the bus stop area
- Install a new VTA shelter with a new 7'x25' shelter pad. (see attached figure)

VTA requests to be notified of updated site plans to ensure the placement of driveways, landscaping and any other features do not conflict with bus operations. VTA's Transit Passenger Environment Plan provides design guidelines for bus stops. This document can be downloaded at <http://www.vta.org/tpep>.

VTA has a Bus Stop Placement, Closures and Relocations Policy. If the project should require temporary removal or relocation of the bus shelter due to construction, VTA requests that the City require the project application to pay all costs associated with removal/relocation. Any removal or relocation of the shelter should be coordinated through VTA and to be conducted by VTA's contractor, at the Requesting Party's expense. The applicant is required to notify VTA for the shelter removal or relocation with a minimum of two weeks of notice.

**Response F.1:** As described in the IS/MND, the project site is adjacent to existing VTA facilities. Planning for the expansion of these facilities is undertaken during the project review phase and not during review of the environmental document. This comment does not specifically relate to the analysis in the IS/MND. Further, maintenance of amenities is not an issue for evaluation under CEQA. All fair share fees would be paid per the City of San José payment schedule.

The City Public Works Department will work in coordination with VTA regarding their facilities as part of the project review process. However, this comment does not specifically relate to the analysis in the IS/MND, and no further comment is needed.

The project will be conditioned to comply with the VTA Bus Stop Placement, Closures and Relocations Policy. However, this comment does not specifically relate to the analysis in the IS/MND, and no further comment is needed.

**G. Jesus R Flores (April 8, 2019)**

**Comment G.1:** I am writing to express my strong opposition of the Environmental Impact Report of the Site Development Permit for the construction of a three-story commercial office building within the existing Tropicana Shopping Center.

For many residents of our city, the intersection of Story and King Rd is a historic one, with rich heritage and social value. Story and King has also served as a commercial epicenter to East San Jose residents. The Tropicana is the name with which this area is commonly identified. In addition, Tropicana is also the name of the shopping center located at the same intersection and is, by its popularity, one of the most visited commercial sites of the area.

There are several matters that have not been addressed correctly in the Environmental Impact Report (EIR) including; Land Use and Planning, Traffic and Transportation and even Population and Housing. It is paramount that this document accurately reflects all potential impacts that this development could have on surrounding businesses and community members. East San Jose residents have dealt with many challenges for generations now, local jurisdictions and stakeholders should focus on creating opportunities for residents, not continuing to impact overall quality of life in East San Jose.

It is comprehensible that the most adverse and dramatic impact this development will have is to the many Local Family Owned Small Business presently located at the site. As intended, this plan will wipe out around 100 existing parking spots, will increase traffic, and worsen the already existent shortage of parking at the center. Therefore, many of these small businesses may be left out of business because the proposed 3-story building will block views to the other businesses that are all one single story. This, added to the increase of the center's traffic and parking challenges, will surely drive customers away and put local family owned businesses in a vulnerable position.

At this time, there are over 1300 letters of opposition to this specific matter that are being sent or have already been submitted to public record. Please pay attention to the residents, business owners, and community advocates who have been compelled to voice their opposition to a development that will seriously impact the core of the character of a culturally rich area that been a staple in East San Jose for generations.

In these times when the displacement of local family owned businesses is affecting so many Latino Businesses in our city, it is imperative we all do everything possible to protect the character and flavor that the small businesses at Tropicana shopping center provide us.

**Response G.1:** An Initial Study/Negative Declaration was prepared for the project. While the commenter states that the Initial Study/Mitigated Negative Declaration failed to properly consider Land Use and Planning, Traffic and Transportation and Population and Housing, no specific concern regarding the technical analysis was raised. Therefore, no response is possible. Please refer to Response A.2 with regard to the analysis of traffic and parking. CEQA only addresses physical impacts to the environment. The effect of a project on existing businesses is not within the purview of CEQA, but may be considered by the decision-makers.

A total of 848 comment letters were received from the public. After careful review, it was determined that the 841 community letters were copies of two form letters, both of which are presented below:

## **H. Community Letter # 1**

**Comment H.1:** We are opposed to Negative Declaration Re Proposed Project H15-014:

**Opposition Item #1 Easement Right:** Tropicana Shopping Center Merchants and Property Owners have the Easement right to use the parking lot for ingress, egress, and parking for employees and customers. it is for their customer to park during their shopping. The Easement right cannot be taken away or vote out of existence or by majority votes. The new building should not be allowed to build on Easement parking lot.

**Response H.1:** See Response A.1

**Comment H.2:** **Opposition Item #2: Over-crowded parking:** The existing parking spaces are only adequate for currently merchant, its customers, and staffs. It is already overcrowded. The new development will not only taken away the parking spots for the building, it also taken more parking spaces for new building staffs and its patronages. More parking taken away will effects all merchants within shopping center. The Parking analysis is very important for the project.

**Opposition #3: Congested Traffic** on Story and King road intersection is the most congested intersection in San Jose. The new development will cause more traffic to the area, included evergreen, down town, and the whole area. Traffic analysis is required for the project.

**Opposition #4: Construction period:** will badly effected all merchants business and create noise and dust to the area. Noise study and Air study are needed for the project. it will substantially affected [sic] the surrounding community and its neighbors.

**Opposition #5: Environmental impact report:** Notices to surrounding neighbors communities to allow them to express their concerns on Traffic, Parking, Air and noise etc. Environmental impact report is very important for the project. We live and work here locally.

**Response H.2:** Please see Response A.2 regarding the parking and traffic study comments.

As discussed in *Section 4.3 Air Quality*, a Community Risk Assessment (See Appendix A) was completed to evaluate the potential health risks from construction of the project. The increased cancer risks and PM 2.5 concentration resulting from the project were found to be below applicable BAAQMD significance thresholds with identified mitigation MM AQ-1.1. As discussed in *Section 4.13 Noise and Vibration*, standard measures are proposed to reduce the construction noise and vibration impacts of the project on nearby residences and businesses.

Based on the findings presented in the Initial Study, it is concluded that all potential impacts from the project can be mitigated to a less than significant level and, therefore, an EIR is not required, and the commercial project qualifies for an MND.

## I. Community Letter # 2

**Comment I.1:** We, the Tropicana Shopping Center Small Businesses, are in opposition of the Environmental Impact Report of the Site Development Permit for the construction of a three-story commercial office building within the existing Tropicana Shopping Center.

This are some of the facts that have not been addressed correctly.

1. LAND USE AND PLANNING-The project would have a significant impact on land use and planning, therefore more scrutiny is required.
2. POPULATION AND HOUSING-The project would have a significant impact on population and housing. (See all existing homeless on Story and 101 Hwy.)
3. TRANSPORTATION/TRAFFIC-The project would have a significant impact on transportation/traffic, therefore a Traffic Study on Story and King Roads Intersection is needed. (This is one of the worst intersections in San Jose)
4. UTILITIES AND SERVICE SYSTEMS-The project would have a significant impact on utilities and service systems, they have to fix their services at La Placita Tropicana before going into another project. (PLEASE CHECK!)
5. MANDATORY FINDINGS OF SIGNIFICANCE - conditions identified in this Initial Study would degrade the quality of the environment, substantially affecting the surrounding, community or neighbors. We live and work here!

**Response I.1:** While the commenter states that the Initial Study/Mitigated Negative Declaration failed to properly consider Land Use and Population and Housing impacts, no specific concern regarding the technical analysis was raised. The proposed project would construct a new building on a parking lot of an existing shopping center consistent with the General Plan and Zoning Code, and would not result in the displacement of housing and/or people. Therefore, the project would have a less than significant impact on land use and population and housing. Please refer to Sections *4.11 Land Use and Planning* and *4.14 Population and Housing* of the Initial Study.

Please refer to Response A.2 for traffic concerns.

Regarding Utilities, the proposed project is part of the planned growth of the City and would not result in a substantial increase in wastewater generation and water demands at the site, relative to what was assumed in the General Plan and the EEVHS. Please refer to Section 4.18.4 for detailed discussion of impacts of project on Utilities and Service Systems.

As discussed in *Section 4.19 Mandatory Findings of Significance*, the proposed project would have no significant unavoidable environmental impact. No other

potential risks to human beings were identified in the analysis. the commenter provides no specific concerns. As a result, no further response is possible.

## Public Coments Attachments

March 20, 2019

Attached list of Tropicana Merchants signatures

From: Linh Nguy,  
Salvador Ibarra  
Dan Duran  
La Tropicana Food LP  
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(408) 923-7833

Linhnguy9@yahoo.com (408) 985-3189  
SalvadorIbarra\_Trop@yahoo.com (408) 985-3225  
DandTrop@aol.com (408) 985-3226

From Hung Nguy  
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1630 Story Road  
(408) 888-0746

Henry88nguy@gmail.com

To: Mrs. Rosalynn Hughey, Director  
City of San Jose Planning Director  
200 E. Santa Clara Street  
San Jose, CA 95113  
(408) 535-3555

Rosalynn.hughhey@sanjoseca.gov

Adam Peterson  
Contract Environmental Team  
San Jose, Planning, Building  
and Code Enforcement Dept.  
(408) 535-1241

Adam.petersen@sanjoseca.gov

Maya Esparza, Member  
San Jose City Council, District 7

Maya.esparza@sanjoseca.gov

Tong John Tu Planner IV Project Manager  
200 E. Santa Clara Street  
San Jose, CA. 95113

John.tu@sanjoseca.gov

**Re: OBJECTION TO NEGATIVE DECLARATION FOR Project H15-014** Re Proposed  
Tropicana Shopping Center Commercial Development Project APN # 486-10-091, Applicant:  
Dennis Fong; 1692 Story Road, San Jose, CA 95122.

To The City of San Jose.

We are groups of owner and merchants at Tropicana Shopping Center, we hereby object to the proposed development by Mr.Fong of building a three story building with 31,744 sq ft building on an Easement Parking lot that we are entitled to use for our business,

**OBJECTION #1:** We are the Owners at Tropicana Foods store and other owners of the "L shaped" buildings in the shopping Center, we own an appurtenant easement to use the

parking lot for parking and customer access for our businesses. Owner Dennis Fong is not permitted to build any building on the Easement Parking lot . Please see attached:

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"P". TRANSPORTATION/ TRAFFIC: The project would not have significant impact on transportation/traffic, therefore no mitigation is required. Infact, the Intersections of Story Road and King Road is one of the busiest and most congested intersection in San Jose. A traffic Analysis is an important report needed for the project and will confirm our concerns

Attached to this letter are pictures of crowded parking at this busy intersection.

**Document #2: GRANT DEED EASEMENT Document #1739426** recorded Dec. 15, 1959, in book 4637 pages 460-463 conveys from City Title Ins Company to Trustees of the **REIT of America, Nguy's (dba Tropicana Land Co) predecessor in interest**. "TOGETHER WITH A Non-Exclusive easement as hereinafter define as an appurtenance to the above parcel...an Easement for ingress and egress...for the Parking lot.

Above Parking lot's Easement recorded documents to support stopping Dennis Fong from building a new three level building with a total of 31,744 SF in Tropicana Shopping Center's Easement parking lot. The proposed project will take away 100 parking spaces from the Easement parking lot. It will effect all merchants within the shopping center, Therefore Parking Analysis is required for this project.

In the Initial Study/Mitigated Negative Declaration, there is no applicable and appropriated traffic study. There is no parking analysis which considers the effect on the crowded parking lot. There is no analysis at all, or consideration of, the Easement that Mr. Nguy and other merchants entitled to park on the parking lot now threatened to be taken by Fong's development.

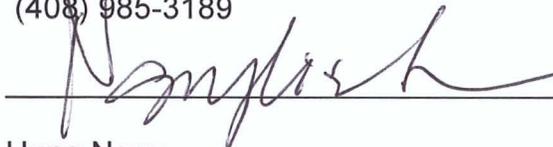
We have not agreed to (or signed any documents) to modify the existing Easement or Parking Lot Agreement, we follow the description in above recorded documents regarding the maintenance and use of the parking lot.

We need your urgent review of the enclosed recoded documents and assistance to stop Mr. Fong from constructing more buildings on the Easement parking lot, which is already over its intended capacity. Thank you for your help.

Regards,

The undersigned merchants at the Tropicana Shopping Center:

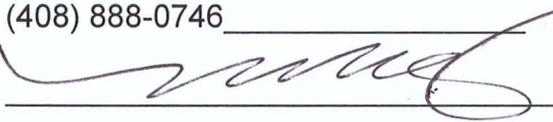
Linh Nguy,  
La Tropicana Foods LP  
(408) 985-3189



Salvador Ibarra  
Tropicana Foods  
(408) 985-3225



Hung Nguy  
Tropicana Land Co  
(408) 888-0746

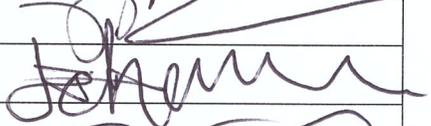
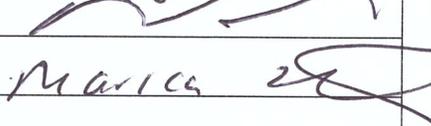
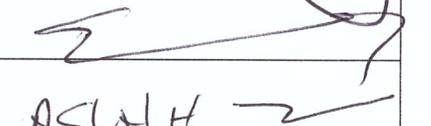
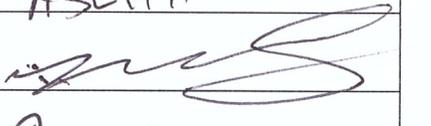
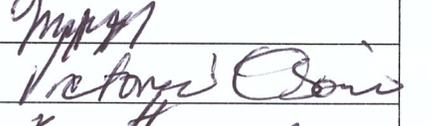
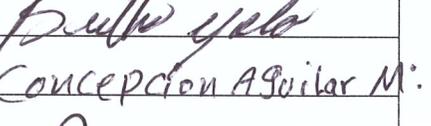
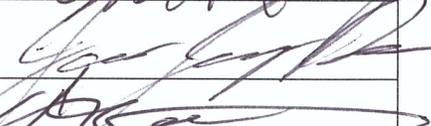
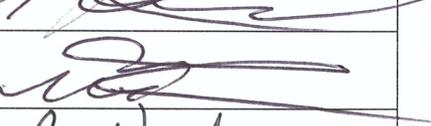
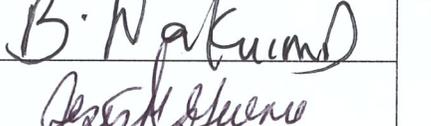
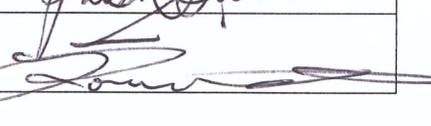
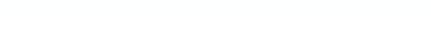


DAN E DURAN  
TROPICANA FOODS

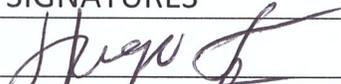
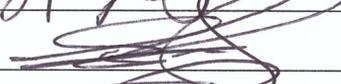
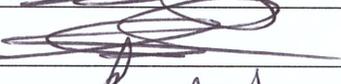
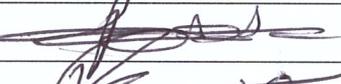
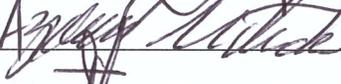


Enclosed: Declaration of Restriction Doc# 1739423  
Grant Deed Doc# 1739426  
Pictures of crowded parking lot and congested traffic at Story and King Road

ATTACHED LIST OF TROPICANA MERCHANTS SIGNATURES

FIRST , LAST, Merchants	PHONE #	SIGNATURES
Tropicana Hair and Nail		
Tropicana Money Transfer		
Tropicana Barber Shop		
Tropicana Estrace		
Tropicana Laundromat		
One stop Dental		
El Girasol Cafe		
Tropicana Ashli Y mas		
Joyeria Risita Joyeria		
Vanesa		
G M Taxes		
Estilos Y Mas		
Bariedades Melchor		
De La Rosa Imports		
Bay Area Home Fashions		
El Conpadre Western Wear		
Hey Staycy Hair Salom		
Release Tropicana Bella		
Clinica Familiar		
Bellas!		
Rocio Guerrero		

ATTACHED LIST OF TROPICANA MERCHANTS SIGNATURES

FIRST, LAST	PHONE #	SIGNATURES
El Girasol		
Tropicana Barber		
Stacy Ht-Solon.		
GIRASOL PROMOTIONS		
Super Soccer.		
Mariscos La Lapa		
America Lopez		
Montes de Oro Azucena		
Jose AZUCENA		

**SUTTON LAW FIRM**  
**M. DEAN SUTTON, ESQ.**

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**CAPITOLA, CA 95010**  
**831-431-6483**

**408- 516-9086 FAX**  
**SuttonLawFirm.com**  
**SuttonLawF@aol.com**  
**slf@suttonlawfirm.com**  
**REPLY TO SANTA CLARA OFFICE**

**SILICON VALLEY OFFICE**  
**900 LAFAYETTE ST. #200**  
**SANTA CLARA, CA 95050**  
**408-294-2280**

March 22, 2019

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Tong John Tu, Planner IV  
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Maya Esparza, Member  
San Jose City Council, District 7  
200 E. Santa Clara St.  
San Jose, CA 95113

maya.esparza@sanjoseca.gov

Re: Hung "Henry" Nguy, Tropicana Land Company  
Tropicana Foods, 1630 Story Road, San Jose, CA 95122  
File H15-014, Tropicana Shopping Center Commercial Development Project

**OBJECTIONS TO NEGATIVE DECLARATION RE PROPOSED FONG  
DEVELOPMENT ON EASEMENT OF PARKING LOT**

To the City of San Jose:

Sutton Law Firm represents Mr. Hung "Henry" Nguy, a general partner in Tropicana

Ricard Doyle, Esq., et al.  
City of San Jose  
Re: Hung "Henry" Nguy  
Re: Tropicana Foods easement  
March 22, 2019  
Page 2

Land Company, a general partnership which owns the property of the Tropicana grocery store at 1630 Story Road, San Jose, CA 95122. The property is leased to Tropicana Foods which operates the grocery store. Parking on the parking lot is a material factor in the use of the property.

Mr. Nguy hereby objects to a proposed development by Mr. Fong of Nguy's parking easement on parking lot.

Specifically, Mr. Nguy hereby objects to the "INITIAL STUDY/MITIGATED NEGATIVE DECLARATION" dated March 2019.

### **OBJECTION 1: FONG HAS NO RIGHT TO ENCROACH ON EASEMENT FOR PARKING**

Enclosed is copy of GRANT DEED dated December 15, 1959, recorded in Book 4637, Page 460, as Document 1739426. The deed grants an appurtenant easement on "parcel 2" (now Fong), for the benefit of "parcel 1" (now Nguy and others) for ingress, egress, and parking for employees and customers.

Please note the plan set forth also in the DECLARATION OF RESTRICTIONS recorded December 15, 1959, as Doc. 1739423, Bk 4637, Pg 441, which, in essence, says the merchants, who are the dominant owners of Parcel "A" (the whole center), have a perpetual and appurtenant easement for parking on Parcel "B" (the parking lot currently owned by Fong.)

In short, by the owners of the Tropicana Food store, and other owners of the "L-shaped" buildings in the shopping center, own an appurtenant easement to use the parking lot for parking and pedestrian access for their businesses. They are dominant easement owners of parcel "A," with a nonrevocable, perpetual, appurtenant easement for parking on parcel "B," the parking lot owned by Fong.

I am informed that Mr. Fong is now requesting permission from the City to build a new, large three-story building of over 30,000 sq. ft. which would cover much of the parking lot.

Not only would a new building remove from use many parking spaces now used by Nguy, an estimated 87, a new building would greatly increase the number of vehicles being parked in the few remaining spaces. Parking is a material and important property right and part of the easement owned by our client and the other merchants, which has not been, and cannot be, unilaterally terminated by Fong or anybody else.

For your information, enclosed herewith are copies of:

Ricard Doyle, Esq., et al.  
City of San Jose  
Re: Hung "Henry" Nguy  
Re: Tropicana Foods easement  
March 22, 2019  
Page 3

1. Correspondence dated February 22, 2006 from Sutton Law Firm, M. Dean Sutton, to Mr. Dennis B.K. Fong, which sets forth an analysis of the easement rights and CC&R documents concerning the Tropicana shopping center;
2. Grant Deed For Easement recorded December 15, 1959, Doc. 1739426, Bk 4637, Pg 460
3. Declaration Of Restrictions recorded December 15, 1959, Doc. 1739423, Bk 4637, Pg 441

Please note that our client has never acquiesced, waived, or in any other way agreed to the proposed development. Mr. Nguy has always asserted his easement rights and has not lost them. For example, Mr. Nguy made his objection to the proposed development at the public meeting with Rebecca Bustos in August, 2016. For many years, until the present time and since 2010, Nguy has been billed for his fair share of CAM maintenance costs of the parking lot, which he has duly paid.

## **OBJECTION 2: FAILURE OF EIR TO PROPERLY CONSIDER TRAFFIC/PARKING**

Mr. Nguy further objects to the Negative Declaration, because the report fails to properly consider the effect on traffic and parking.

The new project will not only take parking spaces to which my client is legally entitled, and which are needed for current uses, but further cause severe parking problem by having cars park for the use of the proposed building.

Despite the voluminous EIR with accompanying reports, the major impacts on traffic and on parking are woefully and blithely disregarded.

In the Mitigated Negative Declaration, page 2, the conclusion is simply: "... P. TRANSPORTATION/TRAFFIC – The project would not have a significant impact on transportation/traffic, therefore no mitigation is required.

On page 109 of the Initial Study, at 4.17.1 entitled TRANSPORTATION/TRAFFIC, there is boilerplate recitation of various agencies and policies which affect transportation.

There is, however, that I can find, no applicable and appropriate traffic study. There is no parking study which considers the effect on the already-crowded parking lot. There is no analysis at all, or consideration of, the easement Nguy and the other merchants own to park on the lot now threatened to be taken by Fong's development.

The EIR is therefore fatally defective on its face.

Ricard Doyle, Esq., et al.  
City of San Jose  
Re: Hung "Henry" Nguy  
Re: Tropicana Foods easement  
March 22, 2019  
Page 4

Please call if you have questions.

Very truly yours,

SUTTON LAW FIRM

A handwritten signature in blue ink, appearing to read "M. Dean Sutton", is written over the printed name.

M. Dean Sutton

Nguy3  
Enclosures

# SUTTON LAW FIRM

M. DEAN SUTTON

1570 THE ALAMEDA #224  
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SuttonLawF@aol.com

PH (408) 294-2280  
FAX (408) 516-9086  
mdeansutton.com

February 22, 2006

Mr. Dennis B.K. Fong  
383 South First Street  
San Jose, CA 95113

Re: GB - General Business  
Nguy, Henry  
Tropicana Foods, 1630 Story Road, San Jose, CA 95122  
Issue: Easements terminable on January 1, 2010?

Dear Mr. Fong,

Sutton Law Firm has been retained to advise and represent Mr. Hung "Henry" Nguy of Tropicana Land Company, who owns the building known commonly as Tropicana Foods at 1630 Story Road, San Jose, CA 95122.

The Tropicana Foods store is subject to an old and complex series of documents which describe easements to use the parking lot, owned by others. Please see a copy of my letter from Fulton Law Firm of February 22, 2002, concluding that the dominant easement owners are not obligated to pay for capital improvements, as opposed to costs of maintenance of existing facilities.

Mr. Nguy has now asked a new question concerning the documents:

Can the owner of the servient land (the parking area) subject to the easements, on January 01, 2010 or at any other time, terminate the easement rights of the owners of the dominant land, including the Tropicana Foods building, to use the parking lot?

From a review of the documents, the short answer is "no."

For convenience, clarity, and brevity, and not out of disrespect, I shall refer to the owner of the Tropicana Foods building as "Nguy," the parking lot as the parking area, the other original buildings in an "L" shape as the "L-shape" buildings, and the two new pad buildings added in 2004 in the parking area as the "two new pad buildings."

## DOCUMENTS REVIEWED

I reviewed copies of:

1. Covenants, Conditions, Restrictions and Rights, Easement and Obligations in the Declaration of Restrictions, executed by Max W. Walden and Amy J. Walden, recorded December 15, 1959, Book 4637, Page 441 et seq.;
2. Amendment to said CC&Rs by instrument executed by Max W. Walden and Amy J. Walden, recorded March 15, 1961, Book 5163, Page 329;
3. Amendment to said CC&Rs by instrument executed by Max W. Walden and Amy J. Walden, recorded April 13, 1962, Book 5538, Page 340;
4. Grant Deed of real property and an easement for, among other things, ingress and egress of pedestrians and for the parking of vehicles, recorded December 15, 1959, Book 4637, page 460;
5. Parking Lot Agreement, dated February 12, 1960, recorded March 20, 1961, Book 5109, Page 5;
6. Parking Lot Agreement, dated November 14, 1961, recorded December 28, 1961, Book 5414, Page 377 and Page 383;
7. Parking Lot Agreement, dated December 21, 1965, recorded January 27, 1966, Book 7262, Page 52;
8. Tropicana Phase 3 Owners % Contribution To Parking Lot Renovation, 1 page, asking Nguy, et al to pay \$249,537.08 for proposed capital improvements for the parking lot renovation;
9. Owner Participation Agreement, dated November 7, 1997, with attendant documentation and subsequent cancellation letter;
10. Preliminary Report, as of August 21, 1998, Order No. 808373-SEL, Chicago Title Company, 1110 West Taylor Street, San Jose, CA 95110, 408-292-4212, Laura Miller, Title Officer, re 1630 Story Road, San Jose, CA, 16 pages;

#### **EASEMENTS FOR USE OF THE PARKING LOT**

It appears that there at least two separate bases for easement rights to use the parking lot for the benefit of the Tropicana Foods building now owned by Nguy.

First, the Covenants, Conditions, Restrictions and Rights, Easement and Obligations in the Declaration of Restrictions, executed by Max W. Walden and Amy J. Walden, recorded December 15, 1959, Book 4637, Page 441 et seq., provides at page 441 that the whole shopping center (described on Exhibit "A") will be used for commercial purposes, and that a portion of the whole (described on Exhibit "B") will be the "parking area." Numbered paragraph 6., on page 5

of the document, provides in relevant part:

6. PARKING AREAS. That portion of Exhibit "A" hereinbefore referred to and described in Exhibit "B" hereto shall be and the same is hereby designated as the "parking area," and each and every owner of any portion of the tract of land hereinbefore described as Exhibit "A", either present or future, together with their tenants, employees, invitees, patrons, and customers, and any and all other persons, firms or corporations who have, or may in the future have, any interest or right in said Exhibit "A", or any parcel thereof, by law or otherwise, shall have and hold an easement which is hereby granted and created over all and each and every part and parcel of that portion of Exhibit "A" described in Exhibit "B" for the purpose of parking motor vehicles belonging to the owners of portions of Exhibit "A" and to their tenants, invitees, patrons and customers, together with the right of ingress to and egress from the same, and the right of ingress to and egress from the buildings erected and maintained on Exhibit "A", and for the purpose of loading and unloading commercial and other vehicles. ...

The document then sets forth agreements, charges, covenants, and restrictions for management of the property in paragraphs 7, 8, and 9:

7. PARKING AREA MAINTENANCE. The owners of each and every part or parcel of Exhibit "A" and each of them, shall be obliged, by virtue of their ownership of such part or parcel, to become a party to, and to remain a party to, during the period of such ownership, an agreement for the installation and maintenance of the parking areas hereinabove referred to, which agreement is hereafter referred to as "maintenance agreement." ...

8. ARCHITECTURAL COMMITTEE. ...

9. COVENANTS RUNNING WITH THE LAND. Each and every express agreement, charge, covenant and restriction contained in this Declaration of Restrictions shall be covenants running with the land, and the breach of any thereof, or the continuance of any such breach, may be enjoined abated or remedied by appropriate proceedings by the Declarant or his successors or assigns or by the owner or owners of any portion of the tract of land hereinbefore described, but by no other person or persons.

...  
These agreements, charges, covenant and restrictions shall inure to the benefit of and be binding upon all owners of any portion or portions of the tract of land hereinbefore described and all persons claiming under them or any of them until January 1, 2010, at which time the same shall be extended automatically for successive periods of ten (10) years, unless subsequent to January 1, 2010, the owners of more than one-half (1/2) of the total area of said tract of land shall agree in writing to alter, amend, change or revoke said agreements, charges, covenants

Mr. Dennis B.K. Fong

February 22, 2006

Page 4

and restrictions in whole or in part.

In the event that one or more of the agreements, charges, covenants and restrictions shall be adjudged to be unlawful or invalid by a court of competent jurisdiction, the remaining provisions shall in nowise be affected thereby, but shall remain in full force and effect.

Nothing herein contained shall prevent the Declarants, in making conveyances of any part of the tract of land hereinbefore described, from imposing other and further agreements, charges, covenants and restrictions upon any property so conveyed.

"Exhibit A" refers to the whole shopping center, and "Exhibit B" refers to the rest of the shopping center not in the parking area parcel, ~~which includes the Tropicana Foods and the "L"-shaped buildings.~~

#### ANALYSIS

The question is one of proper construction of the document. Did the parties intend that the "easement," or just the "agreements, charges, covenant and restrictions" be terminable by vote of majority ownership of the property as of January 1, 2010?

It appear that the "easement" is not terminable by majority ownership vote, but the "agreements, charges, covenant and restrictions" are amendable by majority ownership vote as of January 1, 2010.

#### INTERPRETATION TO CARRY OUT INTENT OF THE PARTIES

It seems clear that in 1959, the draftsmen and parties intended to use terms in the Common Law sense. There are no special terms or special definitions present to give words unusual meanings. A contract should be interpreted so as to carry out the intent of the parties:

"The purpose of the law of contracts is to protect the reasonable expectations of the parties." (Ben-Zvi v. Edmar Co. (1995) 40 Cal.App.4th 468, 475 [47 Cal.Rptr.2d 12].) A lease agreement establishing a landlord-tenant relationship is a contract and is subject to the general rules governing the formation and interpretation of contracts. (Medico-Dental etc. Co. v. Horton & Converse (1942) 21 Cal.2d 411, 418-419; Valley Investments v. BancAmerica Commercial Corp. (2001) 88 Cal.App.4th 816, 822 [106 Cal.Rptr.2d 689].) Formation of a contract requires parties capable Page 1269 of consent, the consent of those parties, a lawful object, and sufficient consideration. (Civ. Code, 1550.)[5] "Mutual assent or consent is necessary to the formation of a contract. [Citations.] Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their

unexpressed intentions or understandings. [Citation.] Mutual assent is a question of fact. [Citation.]" (Alexander v. Codemasters Group Limited (2002) 104 Cal.App.4th 129, 141 [127 Cal.Rptr.2d 145].) "The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. [ 1636.] Such intent is to be inferred, if possible, solely from the written provisions of the contract. [ 1639.] The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," . . . controls judicial interpretation. [ 1638.]' [Citations.] . . . [L]anguage in a contract must be interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract. [Citation.] Courts will not strain to create an ambiguity where none exists. [Citation.]" (Waller v. Truck Ins. Exchange, Inc. (1995) 11 Cal.4th 1, 18-19 [44 Cal.Rptr.2d 370].) Interpretation of a contract "must be fair and reasonable, not leading to absurd conclusions. [Citation.]" (Transamerica Ins. Co. v. Sayble (1987) 193 Cal.App.3d 1562, 1566 [239 Cal.Rptr. 201].) "The court must avoid an interpretation which will make a contract extraordinary, harsh, unjust, or inequitable. [Citation.]" (Strong v. Theis (1986) 187 Cal.App.3d 913, 920-921 [232 Cal.Rptr. 272].) Section 1643 provides: "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." In the event other rules of interpretation do not resolve an apparent ambiguity or uncertainty, "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." ( 1654.) "Stipulations which are necessary to make a contract reasonable . . . are implied, in respect to matters concerning which the contract manifests no contrary intention." ( 1655.)  
ASP Properties Group, L.P. v. Fard, Inc. (2005) 133 Cal.App.4th 1257, D044896

## SUMMARY OF "EASEMENT" LAW

References to "CalJur3d," refer to California Jurisprudence, 3d Edition, Easements and Licenses in Real Property, 2005 CDROM Edition, by section number, and to citations therein.

An "easement" for the benefit of specific land at Common Law is an interest in land that is not terminable, but rather, is an "hereditament," which is inheritable and not revocable. An "easement" is distinguishable from "covenants that run with land," "licenses," "profits," and "tenancies" or "leases," which are terminable and revocable.

An "easement" is a nonpossessory interest in the land of another; it is an incorporeal right that entitles its owner to use or enjoy the other's land, or to prevent the other property owner from using his or her land. An easement has also been defined as a restricted right to specific, limited, definable use or activity on another's property, which right must be less than the right of

ownership. Easement" is also defined by statute, Civ. Code §887.010, to mean a burden or servitude upon land, whether or not attached to other land as an incident or appurtenance, that allows the holder of the burden or servitude to do acts upon the land. An easement may be granted for a fixed period or in perpetuity, and the nature of the ownership interest in an easement may be that of a freehold or a chattel real, according to its duration. Accordingly, it may be an estate in fee, including a base or determinable fee, or it may be a lesser estate, even one for a term of years. However, an easement is always distinct from the occupation and enjoyment of the land itself, and does not confer title to, or property rights in, the land subject thereto. Thus, an easement, although an interest in land, is not land or an estate in land, and may not, therefore, act as the servient tenement for another easement. An "easement" is a nonpossessory interest in the land of another that gives its owner the right to use the land of another or to prevent the property owner from using his land. Beyer v. Tahoe Sands Resort (2005) ( Cal App.3d ). (CalJur3d, §1)

An easement differs from a covenant running with the land and from an equitable servitude, in that covenants are created by promises concerning the land, which may be enforceable by or binding upon successors to the estate of either party, while an easement is an interest in the land, created by grant or prescription. (CalJur3d, §2, §5) (Committee to Save Beverly Highlands Homes Ass'n v. Beverly Highlands Homes Ass'n. (2001) 92 Cal. App. 4th 1247).

Easements may be "appurtenant" or "in gross." An appurtenant easement, which is generally created by a grant, entails a dominant tenement, in favor of which the obligation exists, and a servient tenement, on which the obligation rests. Thus, an easement appurtenant to the land is attached to the land of the owner of the easement benefits him or her as the owner or possessor of that land. In contrast, an easement in gross is a mere personal interest in the land of another and is independent of a dominant tenement. An easement appurtenant cannot be severed from the land and transferred separately so as to convert it into an easement in gross. (CalJur3d, §8)

#### **INTERPRETATION OF "DECLARATION OF RESTRICTIONS"**

Here, the parties set up a complicated, but consistent, plan for use of the subject land. In the document, there are three parcels established: the grocery store (now the Nguy/Tropicana Foods store), the other L-shaped buildings with various owners, and the parking area.

There is an easement appurtenant granted in paragraphs 1, 3, and 6, across and over the parking area for the benefit of the grocery store and the L-shaped buildings. The easement is for the benefit of specific land and not for the personal benefit of identified persons. It is not "in gross." It is therefore an interest in land, and cannot, therefore, be revoked or terminated.

The document then creates covenants that run with the land in paragraphs 2, 5, 7, 8, and 9, including the Architectural Committee and reference to separate Maintenance Agreement which sets up charges to each merchant for maintenance costs of the parking area.

It is these "agreements, charges, covenants and restrictions," therefore, and not the

Mr. Dennis B.K. Fong  
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“easement” (which is conspicuously absent), which is subject to being amended by the vote of more than one-half of the owners after January 1, 2010, referred to in paragraph 9, at document page 10.

The existing system of payment of charges for maintenance costs can be voted out, it appears, but the existence of the appurtenant easement right to park on and otherwise use the parking area cannot be voted out of existence. The easement is in the Declaration of Restrictions for all of the original merchants, and the Grant Deed separately grants the easement for the Nguy Tropicana Foods building alone.

No subsequent amendment, transfers, agreements, or any other document reviewed appears to change this conclusion. When the two new pad buildings were built in 2004, nothing appears to change this conclusion.

#### **GRANT DEED OF EASEMENT RECORDED DECEMBER 15, 1959, Book 4637, page 460**

This conclusion is supported and conclusively demonstrated by the separate Grant Deed of real property and an easement for, among other things, ingress and egress of pedestrians and for the parking of vehicles, recorded December 15, 1959, Book 4637, page 460.

The Grant Deed conveys from City Title Insurance Company to the Trustees of the Real Estate Investment Trust of America, Nguy's predecessor in interest, real property which is now the Tropicana Foods building only (~~called Parcel 1~~) and an easement on the parking area (~~called Parcel 2~~). ... **“TOGETHER WITH a non-exclusive easement as hereinafter defined as an appurtenance to the above parcel, over and upon the following described property: ... .”**

The Grant Deed expressly recites that: “Said easement described in Parcel 2 hereof is for the benefit of the owner of and appurtenant to Parcel 1 herein, and said easement may be used, among others, for the following purposes ... [list of specific uses] ... and for all other purposes set forth [in the Declaration of Restrictions referred to above.]”

#### **SUBSEQUENT DOCUMENTS**

The various subsequent documents, including parking lot agreements, carry out the intent of the parties in providing for management and maintenance of the parking area. The Parking Lot Agreement recorded at Book 5414, Page 377, and Book 7262, Page 52, both provide that exclusive control of the management of the common facilities and the power of decision shall be vested in a majority in interest of the owners of the dominant property, who shall vote according to their relative ownership interests. The merchants are referred to as the owners of the “Dominant Parcel,” and the owners of the parking area (called the “Common Facilities”) are referred to as the owners of the “Servient Property.” This language is consistent with a recognition of the existence of an irrevocable easement appurtenant, with separate maintenance agreement.

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The owner of the servient property has the duty to maintain it, and the owners of the dominant property have the duty to pay their fair share of the maintenance costs (but not capital improvements.)

The amendments to the Declaration of Restrictions only refer to specific uses, such as for sale of groceries, and do not amend or modify the easement rights of the parties.

I note that it appears that when the two new pad buildings were built, all owners agreed to add them, allowing them to use the parking area, and adjusting the mathematical formula to determine the charges for maintenance for each merchant. However, nothing appears to have changed the existing easement rights.

Also, it appears that the RDA recently bought the small, rectangle-shaped lot out near the corner of the property, now parcel #4861068, from Albert Toy and Lily Wong Toy, but again nothing in that transaction appears to have changed the easement rights.

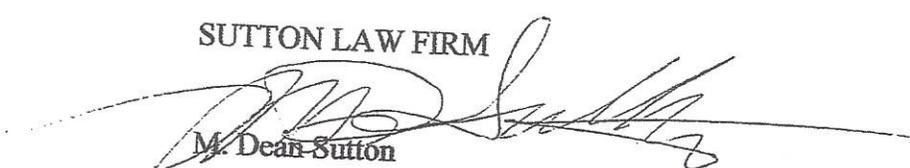
#### CONCLUSION

The conclusions stated herein are based on the documents and law reviewed, and are subject to change upon other information.

The existing system of payment of charges for maintenance costs can be amended by vote, it appears, but the existence of the appurtenant easement right to park on and otherwise use the parking area cannot be voted out of existence. The easement is in the Declaration of Restrictions for the Nguy Tropicana Foods building and for the original L-shape buildings, and separately by the Grant Deed which grants the easement for the Nguy Tropicana Foods building alone.

Very truly yours,

SUTTON LAW FIRM

  
M. Dean Sutton

MDS:nguy.004

~~cc:~~  
Henry Nguy  
Tropicana Foods  
1630 Story Road  
San Jose, CA 95122

3.60

1739426

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(CORPORATION)  
GRANT DEED

CITY TITLE INSURANCE COMPANY

a corporation organized under the laws of the State of California

does hereby GRANT to  
O. KELLEY ANDERSON, EDWIN D. BROOKS, JOHN H. GARDINER, GEORGE  
HOWLAND, CHARLES SEGAL, PHILIP H. THEOPOLD AND FRANCIS C. WELCH,  
AS TRUSTEES under Declaration of Trust of REAL ESTATE INVESTMENT  
TRUST OF AMERICA

all that real property situated in the City of San Jose

County of: Santa Clara

State of California, described as follows:

BEGINNING at a point in the Southwesterly line of that certain  
10.989 acre parcel of land designated "Not a part of this Subdivision",  
and shown upon that certain Map entitled, "Tract No. 1739, Tropicana  
Village, Unit No. 1", a Map of which was filed for record in Book 94  
of Maps, page 19, et seq, distant thereon South 37° 54' 20" East,  
170.33 feet from the most westerly corner thereof in the Southeasterly  
line of Story Road, as said 10.989 acre parcel and Story Road are  
shown upon said Map; thence North 52° 06' 31" East, 20.10 feet to  
the TRUE POINT OF BEGINNING of this description; thence continuing  
North 52° 06' 31" East, 105.02 feet; thence South 37° 59' 54" East,  
145.03 feet; thence South 52° 08' 15" West 107.09 feet; thence  
South 37° 57' 03" East, 14.00 feet; thence South 52° 08' 15" West,  
33.05 feet; thence North 37° 57' 03" West, 41.41 feet; thence at  
right angles South 52° 02' 57" West, 19.97 feet; thence at  
angles North 37° 57' 03" West, 11.95 feet; thence at right angles  
North 52° 02' 57" East, 8.32 feet; thence at right angles North  
37° 57' 03" West, 24.18 feet; thence at right angles South 52° 02'  
57" West, 13.38 feet; thence North 37° 55' 47" West, 81.42 feet to  
the true point of beginning.

TOGETHER WITH a non-exclusive easement as hereinafter defined as an  
appurtenance to the above parcel, over and upon the following described  
property:

That certain real property situate in the City of San Jose, County  
of Santa Clara, State of California, described as follows:

BEGINNING at the most Easterly corner of that certain 10.989 acre  
parcel of land designated "Not a part of this Subdivision", and shown  
upon that certain Map entitled, "Tract No. 1739 Tropicana Village  
Unit No. 1", a Map of which was filed for record in Book 94 of Maps,  
at page 19, et seq, in the Southwesterly line of King Road, as shown  
on said Map; thence along said Southwesterly line of King Road, North  
37° 54' 20" West 461.47 feet; thence leaving said line parallel with the  
Southeasterly line of said 10.989 acre parcel, South 52° 05' 40" West  
145.81 feet; thence parallel with said Southwesterly line of King Road,  
North 37° 54' 20" West 194.78 feet to the intersection thereof with the  
Southeasterly line of Story Road, as shown upon said Map; thence along  
said Southeasterly line, South 49° 42' 45" West 454.85 feet to a point  
distant thereon North 49° 42' 45" East 140.00 feet from the most Westerly  
corner of said 10.989 acre parcel; thence at right angles South 40° 17' 15"  
East 140.00 feet; thence parallel with said Southeasterly line of Story  
Road, South 49° 42' 45" West 145.85 feet to the intersection thereof  
with the Southwesterly line of said 10.989 acre parcel; thence along  
said Southwesterly line, South 37° 54' 20" East 491.41 feet to the most  
Southerly corner thereof; thence at right angles along the Southeasterly  
line of said parcel, North 52° 05' 40" East 740.06 feet to the point  
of beginning.

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EXCEPTING THEREFROM the following described parcel of land:  
BEGINNING at a point in the Southwesterly line of that certain  
10.989 acre parcel of land designated "Not a part of this Subdivision"  
and shown upon that certain Map entitled, "Tract No. 1739, Tropicana  
Village, Unit No. 1", a Map of which was filed for record in Book 94  
of Maps, page 19, et seq, distant thereon South 37° 54' 20" East,  
170.33 feet from the most Westerly corner thereof in the Southeastery  
line, of Story Road, as said 10.989 acre parcel and Story Road are  
shown upon said Map; thence North 52° 06' 31" East, 20.10 feet to  
the TRUE POINT OF BEGINNING of this description; thence continuing  
North 52° 06' 31" East, 165.02 feet; thence South 37° 59' 54" East,  
145.03 feet; thence South 52° 08' 15" West 31 feet, more or less,  
to the intersection thereof with a line drawn parallel with and dis-  
tant Northeasterly 154.00 feet at right angles from the Southwesterly  
line of said 10.989 acre parcel; thence along said parallel line,  
S. 37° 54' 20" E. 100.50 feet; thence at right angles S. 52° 05'  
40" W. 40.00 feet; thence at right angles S. 37° 54' 20" E. 66.00  
feet to the intersection thereof with a line drawn parallel with  
and distant Northwesterly 150.00 feet at right angles from the South-  
easterly line of said 10.989 acre parcel; thence along said parallel  
line N. 52° 05' 40" E. 73.00 feet; thence at right angles S. 37°  
54' 20" E. 40.00 feet; thence at right angles N. 52° 05' 40" E. 80.00  
feet; thence at right angles N. 37° 54' 20" W. 20.00 feet; thence at  
right angles N. 52° 05' 40" E. 136.50 feet; thence at right angles  
N. 37° 54' 20" W. 25.00 feet; thence at right angles N. 52° 05' 40"  
E. 64.00 feet; thence at right angles N. 37° 54' 20" W. 25.00 feet;  
thence at right angles N. 52° 05' 40" E. 260.00 feet to a point  
distant Southwesterly 12.50 feet at right angles from the Northeasterly  
line of said 10.989 acre parcel being the Southwesterly line of King  
Road; thence at right angles S. 37° 54' 20" E. 150.00 feet to the  
intersection thereof with a line drawn parallel with and distant North-  
westerly 30.00 feet at right angles from the Southeastery line of  
said 10.989 acre parcel; thence along said parallel line, S. 52° 05'  
40" W. 582.50 feet to the intersection thereof with a line drawn parallel  
with and distant Northeasterly 45.00 feet at right angles from the  
Southwesterly line of said 10.989 acre parcel; thence along said parallel  
line N. 37° 54' 20" W. 272.25 feet; thence leaving said parallel line  
N. 52° 08' 15" E. 0.21 feet; thence N. 37° 57' 03" W. 41.41 feet; thence  
at right angles S. 52° 02' 57" W. 19.97 feet; thence at right angles  
N. 37° 57' 03" W. 11.95 feet; thence at right angles N. 52° 02' 57"  
E. 8.32 feet; thence at right angles N. 37° 57' 03" W. 24.18 feet;  
thence at right angles S. 52° 02' 57" W. 13.38 feet; thence N. 37° 55'  
47" W. 81.42 feet to the true point of beginning.

2x

Said easement described in parcel 2 hereof is for the benefit  
of the owner of and appurtenant to Parcel 1 herein, and said easement  
may be used, among others, for the following purposes: the installation  
and maintenance of all utility lines, for water, gas, oil and sewer  
pipe lines, for telephone and electric light and power lines, together  
with the necessary poles and conduits; for ingress and egress of  
pedetrans, for the parking of vehicles of occupants, employees,  
patrons and customers of the owner and tenants of the buildings  
constructed on parcel 1 herein while those persons are, at the  
time of parking, occupants, customers and patrons of the owner or  
tenants of Parcel 1, the installation and maintenance of overhanging  
canopies, marquees, and signs which shall not extend more than ten  
(10) feet from the building constructed on parcel 1, for the installation  
of underground footings to support the foundation of the building

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Said easement described in parcel 2 hereof is for the benefit of the owner of and appurtenant to Parcel 1 herein, and said easement may be used, among others, for the following purposes: the installation and maintenance of all utility lines, for water, gas, oil and sewer pipe lines, for telephone and electric light and power lines, together with the necessary poles and conduits; for ingress and egress of pedestrians, for the parking of vehicles of occupants, employees, patrons and customers of the owner and tenants of the buildings constructed on parcel 1 herein while those persons are, at the time of parking, occupants, customers and patrons of the owner or tenants of Parcel 1, the installation and maintenance of overhanging canopies, marquees, and signs which shall not extend more than ten (10) feet from the building constructed on parcel 1, for the installation of underground footings to support the foundation of the building constructed on parcel 1, and for all other purposes set forth in that certain Declaration of Restrictions made by Max W. Walden and Amy J. Walden, dated December 14, 1959, and recorded December 14, 1959, as Document No. 1737423 in the office of the County Recorder of Santa Clara County, California, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainders and remainders, rents, issues and profits thereof.

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constructed on parcel 1, and for all other purposes set forth in that certain Declaration of Restrictions made by Max W. Walden and Amy W. Walden, dated December 14, 1959, and recorded December 15, 1959, as Document No. 1739426 in the office of the County Recorder of Santa Clara County, California, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

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WITHOUT WARRANTY EXPRESS OR IMPLIED. SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RIGHTS OF WAY, EASEMENTS AND RESERVATIONS NOW OF RECORD.

IN WITNESS WHEREOF, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its duly authorized officers.

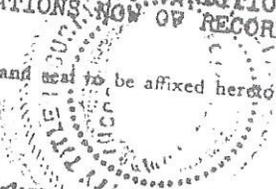
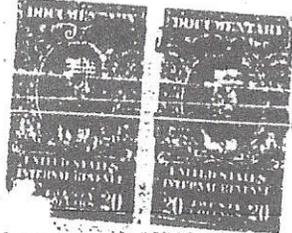
Dated: December 15, 1959

By \_\_\_\_\_

By \_\_\_\_\_

CITY TITLE INSURANCE COMPANY

By [Signature]  
Vice President  
By [Signature]  
Assistant Secretary



SOLELY FOR RECORDER'S USE

1739426  
BOOK 4637 PAGE 460  
FILED FOR RECORD  
AT REQUEST OF  
City Title Insurance Co.  
Dec 15 12 52 PM 1959

OFFICIAL RECORDS  
SANTA CLARA COUNTY  
SYL C. TULLY  
RECORDER

1000  
C  
D

STATE OF CALIFORNIA  
COUNTY OF

Santa Clara

On December 15, 1959

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

T. C. Merlin known to me to be the Vice President, and

Rene Halou known to me to be the Assistant Secretary of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

[Signature]  
M. L. Seal  
My Commission Expires: 9-30-63 Notary Public

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CITY TITLE INSURANCE COMPANY

shown upon said Map; thence north

CT 136153

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1739423

DECLARATION OF RESTRICTIONS

1. PRELIMINARY. This instrument, hereinafter for convenience referred to as "Declaration of Restrictions" is made and entered into this the 11th day of December, 1959, by and between MAX W. WALDEN and AMY J. WALDEN, his wife.

Max W. Walden and Amy J. Walden, his wife, are the owners of certain real property situate, lying and being in the City of San Jose, County of Santa Clara, State of California, more particularly described on Exhibit "A" attached hereto and by reference made a part hereof.

The undersigned are desirous of establishing a general and uniform plan for the improvement and development of said tract of land for commercial and/or business purposes which will inure to the benefit of and be binding upon themselves, and on each and every person who may hereafter become owners or tenants of owners of said tract of land or any part or parcel thereof.

2. DECLARATION OF RESTRICTIONS. The undersigned, owners of the real property described in Exhibit "A" hereto, do hereby declare that said tract of land, and each and every part and parcel thereof, is held and shall be conveyed subject to the agreements, charges, covenants and restrictions hereinafter set forth.

3. PURPOSES FOR WHICH LAND MAY BE USED. The said tract of land, (described in Exhibit "A" hereto), and each and every part and parcel thereof, shall be used solely for commercial or business purposes, including the erection and maintenance of buildings designed and used for commercial or business purposes and the necessary and appurtenant areas devoted to use as sidewalks, aisles for ingress to and egress from buildings, driveways and areas for loading and unloading

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belonging to owners and tenants of owners, and to their employees, invitees, patrons and customers. For so long as: (a) Lucky Stores, Inc. or its successors or assigns maintain and operate a super market type of store on the premises described in Exhibit "A", or (b) the store building to be occupied by Lucky Stores is maintained as a site in which a super market may be operated (whichever of the foregoing exists for the longer period of time), said tract of land (hereinafter referred to sometimes simply as Exhibit "A"), and each and every parcel or part thereof, shall not contain a general market, super market, theatre, liquor store, grocery store, meat market, poultry - fish market of any type; provided, that any such hereinbefore prohibited use of Exhibit "A" which is incidental to a use which is not hereby prohibited, and which is not substantially competitive with the operations of a super market by Lucky Stores, Inc., its successors or assigns, shall not constitute a violation hereof. It is also expressly provided that the maintenance and operation of Lucky Stores, Inc., its successors and assigns which conflicts with this paragraph is hereby excepted from the provisions of this paragraph.

4. LOCATION OF BUILDINGS. No building or other structure shall be erected or maintained upon those portions of Exhibit "A" as are described in Exhibit "B" attached hereto and by reference made a part hereof; provided, however, that any minor encroachment into the areas described on said Exhibit "B" incidental to the erection of a building permitted under the terms of this Declaration of Restrictions, or to the operation of a business in such building, shall not constitute a violation of this Declaration of Restrictions; provided further that any encroachment of a canopy or similar appurtenance to any such building, not exceeding ten (10) feet into the area

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The foregoing restriction shall be in no wise construed as forbidding the construction and maintenance of awnings and signs of normal size and height attached to and reasonably necessary for the convenient and proper use of the commercial or business structure erected upon said Exhibit "A", nor the installation and maintenance of parking areas, including such fences, barriers, columns and lighting standards and other structures as may be reasonably necessary for the maintenance and operation of said parking area, in a clean, safe and sightly condition, nor the erection and maintenance of sidewalks of a width of not more than ten (10) feet adjoining any commercial or business structure erected upon said Exhibit "A". These restrictions shall also not prohibit the use of the property described in Exhibit "B" for the construction below ground level of necessary foundations and/or footings for buildings, the erection of which is permitted under this Declaration of Restrictions. In addition, these restrictions shall not be construed as forbidding the granting of appropriate and proper easements for storm drains, utilities, sewers, or other proper services necessary for the orderly development and operation of Exhibit "A", and the buildings and facilities erected thereon within the limitations hereof.

5. BUILDINGS. All buildings erected upon said Exhibit "A" shall be for commercial or business purposes and shall be designed and built in conformity with the highest and best architectural and engineering standards. Such buildings shall be of standard construction, employing concrete and steel, reinforced concrete, prefabricated concrete panels on a steel, concrete and steel or reinforced concrete framework, concrete block, brick, stone or other masonry construction, or a combination thereof, but fabricated wooden trusses and sheathing may be used in the construction of the roofs of such buildings. No building shall be erected or maintained upon said Exhibit "A".

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wood or of wood, lath and plaster construction.

The foregoing restriction shall in no wise be construed as forbidding the use of wood, glass, metal, plastic or plaster, or a combination thereof, for the purpose of storefront construction, decoration or embellishment or for temporary or moveable partitions within such commercial or business buildings.

All buildings constructed, erected or maintained upon said Exhibit "A" shall be planned, constructed, developed and maintained in a manner calculated to produce the most attractive, harmonious and practical commercial or business development possible. Building and plot plans for all buildings and/or structures to be constructed, erected, placed, assembled, altered or permitted to remain on any portion of said Exhibit "A", including awnings, awning frames, marquees, permanent signs, sign structures and other appurtenances thereto, shall be submitted by the owner of such portion of said Exhibit "A" to the Architectural Committee hereinafter provided for by the terms of paragraph 8 hereof, for approval prior to the commencement of any work or labor or the furnishing of any materials in connection with such work of improvement.

The only factors to be considered by the Architectural Committee as a basis for the approval or disapproval of such building or structure and the building and plot plans therefor are style, design, appearance and location of such building or structure so proposed to be constructed, erected, placed, assembled, altered or permitted to remain on said tract of land or any part or parcel thereof.

Unless within fifteen (15) days after the submission of such building and plot plans, the same shall be disapproved in writing by said Architectural Committee, the same may be considered to have been approved. Said Architectural Committee may, however, issue a written approval of such building and plot plan

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Approval, when duly acknowledged, may be recorded in the office of the County Recorder of Santa Clara County, California. Such written approval, however, shall in no wise have the effect of or be construed as in any manner amending, altering, modifying or waiving any or all of the agreements, charges, covenants and restrictions herein set forth.

The decision of a majority of the Architectural Committee upon any matter or matters submitted or referred to it under the terms hereof shall be final for all purposes, provided, however, that such decision shall not be in violation of the agreements, charges, covenants and restrictions herein contained.

Neither the Architectural Committee nor any member or members thereof shall be responsible or liable for any loss or damage resulting from the approval or disapproval of any building and plot plan so submitted, nor be liable in any manner whatsoever for any errors, defects or omissions in said building and plot plans or in any building constructed, erected, placed, assembled, altered or permitted to remain on said tract of land in accordance with such building and plot plans, or otherwise.

6. PARKING AREAS. That portion of Exhibit "A" hereinbefore referred to and described in Exhibit "B" hereto shall be and the same is hereby designated as the "parking area," and each and every owner of any portion of the tract of land hereinbefore described as Exhibit "A", either present or future, together with their tenants, employees, invitees, patrons and customers, and any and all other persons, firms or corporations who have, or may in the future have, any interest or right in said Exhibit "A", or any parcel thereof, by law or otherwise, shall have and hold an easement which is hereby granted and created over all and each and every part and parcel of

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of parking motor vehicles belonging to the owners of portions of Exhibit "A" and to their tenants, invitees, patrons and customers, together with the right of ingress to and egress from the same, and the right of ingress to and egress from the buildings erected and maintained on Exhibit "A", and for the purpose of loading and unloading commercial and other vehicles. It is expressly declared that, and the use of the premises described as Exhibit "A", is restricted so that at no time during the continuance of these restrictions shall the area available for parking of vehicles be less than three times the area occupied by buildings in said Exhibit "A".

7. PARKING AREA MAINTENANCE. The owners of each and every part or parcel of Exhibit "A" and each of them, shall be obliged, by virtue of their ownership of such part or parcel, to become a party to, and to remain a party to, during the period of such ownership, an agreement for the installation and maintenance of the parking areas hereinabove referred to, which agreement is hereinafter referred to as "maintenance agreement." Said agreement shall provide that the parking area shall be appropriately graded in a uniform manner to provide for proper drainage and shall be prepared, surfaced, laid out, lighted and maintained in a uniform manner. The said maintenance agreement shall also provide that the parking area shall be laid out, and marked to provide a uniform parking pattern throughout the same. The owners of the various parts and parcels of land comprising Exhibit "A" may at their option, organize a Committee or designate one of their number as the agency, or agent, responsible for the cleaning and maintenance of said parking area in a uniformly clean, safe and sightly condition; the cost of such cleaning, installation and maintenance shall be borne by the said

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property described in Exhibit "B" bears to the total area of such land in Exhibit "A" which is outside of the boundary of the property described in Exhibit "B". It is expressly understood that there shall be included as part of the cost of cleaning and maintenance above referred to, any and all taxes and assessments levied and assessed against the property described in said Exhibit "B"; provided, however, that in no event shall the owner of any of the property in Exhibit "A" outside of the boundaries of Exhibit "B" be obligated by virtue of such maintenance agreement to expend any sums by way of reimbursement for the cost of the original installation of any parking area, or for any expenditure which is, under ordinary accounting practices, properly chargeable as a capital expenditure.

8. ARCHITECTURAL COMMITTEE. Declarants do hereby establish an Architectural Committee to be composed of three persons, and do hereby appoint as the first members of said Committee MAX OK  
WALDEN, AMY J WALDEN, and KAY A  
APAYDIN. The members of said Committee, whether H.W.  
appointed hereby or appointed by Declarants' successors or assigns, or elected by the owners of portions of the land hereinbefore described, as hereinafter provided, shall serve without compensation. The duties of said Architectural Committee shall be to examine, study and approve or disapprove building and plot plans for buildings and/or other structures to be constructed, erected, placed, assembled, altered or permitted to remain on any portion of the tract of land hereinbefore described, in accordance with the provisions of this agreement.

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they may relieve himself or themselves of the obligation of appointing and maintaining said Committee as hereinafter set forth.

In the event that Declarants or their successors or assigns shall relieve themselves of the obligation of appointing and maintaining said Architectural Committee, the record owners of seventy-five (75%) per cent of the area included in Exhibit "A" but outside the premises described in Exhibit "B" shall be vested with and shall have full power and authority to appoint and maintain such Architectural Committee, together with the power and authority to remove a member or members of said Committee and to elect a successor or successors to fill any vacancy or vacancies created by removal, death, resignation or inability to act. Each owner of a portion of the tract of land hereinbefore described shall have votes as to any and all matters concerning which the owners of portions of the tract of land hereinbefore described have a right to vote under the provisions of this Declaration of Restrictions, equal in number to the number of square feet contained in the portion of said tract of land owned by such owner.

Declarants or their successors or assigns shall have the right at any time, at their option, to relieve themselves of the obligation of appointing and maintaining the Architectural Committee by executing, acknowledging and filing for record in the office of the County Recorder of Santa Clara County, a notice of surrender of such obligation referring therein to this Declaration of Restrictions.

No removal or appointment of any member or members of the Architectural Committee, or the appointment of a new Committee composed of other than the three persons hereinbefore in this paragraph, shall be effective for any purpose or purposes

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a written notice of such removal or appointment referring specifically therein to this Declaration of Restrictions, and stating the name and address of the member or members so removed or appointed.

Such recordation of the notice of surrender or of the notice or notices of removal or of appointment as hereinbefore provided, shall be deemed to be notice to all persons holding or owning any interest in the tract of land hereinbefore described of the contents of said notice and of the matters therein set forth.

9. COVENANTS RUNNING WITH THE LAND. Each and every express agreement, charge, covenant and restriction contained in this Declaration of Restrictions shall be covenants running with the land, and the breach of any thereof, or the continuance of any such breach, may be enjoined, abated or remedied by appropriate proceedings by the Declarant or his successors or assigns or by the owner or owners of any other portion of the tract of land hereinbefore described, but by no other person or persons.

The continued breach of any agreement, charge, covenant or restriction herein contained, or the failure of any owner or owners to enjoin, abate or remedy the same shall in nowise be or be construed to be a waiver of any such agreement, charge, covenant or restriction or a consent to or waiver of any subsequent breach thereof by any owner or owners or any person or persons entitled to enforce the same.

The breach of any of the foregoing provisions, agreements, charges, covenants or restrictions or any action taken to enjoin, abate or remedy the same, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any portion or portions of the tract of land hereinbefore described, but said provisions, agreements, charges, covenants and restrictions shall be binding upon and effective against any owner

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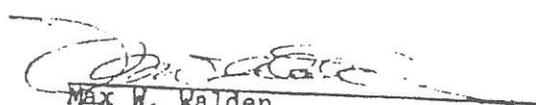
sale or otherwise.

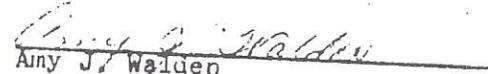
These agreements, charges, covenants and restrictions shall inure to the benefit of and be binding upon all owners of any portion or portions of the tract of land hereinbefore described and all persons claiming under them or any of them until January 1, 2010, at which time the same shall be extended automatically for successive periods of ten (10) years, unless subsequent to January 1, 2010, the owners of more than one-half (1/2) of the total area of said tract of land shall agree in writing to alter, amend, change or revoke said agreements, charges, covenants and restrictions in whole or in part.

In the event that one or more of the agreements, charges, covenants and restrictions shall be adjudged to be unlawful or invalid by a court of competent jurisdiction, the remaining provisions shall in nowise be affected thereby, but shall remain in full force and effect.

Nothing herein contained shall prevent the Declarants, in making conveyances of any part of the tract of land hereinbefore described, from imposing other and further agreements, charges, covenants and restrictions upon any property so conveyed.

10. EXECUTION. IN WITNESS WHEREOF, this Declaration of Restrictions has been executed by the undersigned as of the day and year first hereinabove set forth.

  
Max W. Walden

  
Amy J. Walden

STATE OF CALIFORNIA  
COUNTY OF  
Santa Clara  
On December 15, 1959  
the undersigned before me,  
a Notary Public  
County and State,  
personally appeared Max W. Walden and Amy J. Walden

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THIS DOCUMENT IS THE PROPERTY OF THE CITY OF SANTA CLARA AND IS LOANED TO YOU BY THE CITY OF SANTA CLARA. IT IS TO BE RETURNED TO THE CITY OF SANTA CLARA UPON REQUEST. ANY REPRODUCTION OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF THE CITY OF SANTA CLARA IS PROHIBITED.

FORM OF CONSENT

BOOK 4637 PAGE 451

The undersigned, being the Beneficiaries and trustees, respectively, under the deeds of trust recorded on the dates and in the books and pages set forth after their respective names, hereby consent to the execution of the foregoing Declaration of Restrictions by MAX W. WALDEN and AMY J. WALDEN, his wife, and agree that the real property which is the subject of said Declaration of Restrictions shall be held and conveyed under all of the terms, conditions and covenants as set forth therein.

*Otis H. Winfield*  
OTIS H. WINFIELD, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa Clara  
County, Calif., Page 521

*John Devincenzi*  
JOHN DEVINCENZI, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa  
Clara County, Calif., Page 519

*Doris T. Winfield*  
DORIS T. WINFIELD, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa Clara  
County, Calif., Page 521

*James A. Crane*  
JAMES A. CRANE, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa  
Clara County, Calif., Page 519

CITY TITLE INSURANCE COMPANY,  
a corporation  
By *[Signature]* VICE PRESIDENT  
Assistant Secretary  
Trustee under Deed of Trust  
recorded Jan. 6, 1959 in Book  
4281, Official Records, Santa  
Clara County, Calif., Page  
521

*Herman K. Schwarz*  
HERMAN K. SCHWARZ, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa  
Clara County, Calif., Page 519

*Herman P. Schwarz*  
HERMAN P. SCHWARZ, Beneficiary  
under Deed of Trust recorded  
Jan. 6, 1959 in Book 4281,  
Official Records, Santa  
Clara County, Calif., Page 519

CITY TITLE INSURANCE COMPANY,  
a corporation  
By *[Signature]* VICE PRESIDENT  
Assistant Secretary  
Trustee under Deed of Trust  
recorded Jan. 6, 1959 in Book  
4281, Official Records, Santa  
Clara County, Calif., Page 519

1739423DEC1559

STATE OF CALIFORNIA,

County of Alameda } ss.

On this 15th day of December in the year one thousand nine hundred and Fifty-Nine

before me, Ben F. Detweiler, a Notary Public in and for the

County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Otis H. Winfield, Doris P. Winfield, John DeVincenti, James A. Crane, Herman K. Schwarz and Herman P. Schwarz

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Alameda the day and year in this certificate above written.

Notary Public in and for the County of Alameda, State of California.

Notary's Form No. 34—(Acknowledgment General) (C. C. Sec. 1189)

My Commission Expires

DEC 1 1961

STATE OF CALIFORNIA  
COUNTY OF

BOOK 4637 PAGE 452

Santa Clara

On December 15, 1959

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

T. C. Harlin

Vice-

President, and

BOOK OF CONSENT

1739423 DEC 15 59

of Santa Clara, State of California, in the City of San Jose, County

BEGINNING at the most Easterly corner of that certain 10.989 acre parcel of land designated "Not a part of this Subdivision", and shown on that certain Map entitled, "Tract No. 1739 Tropicana Village Map, No. 1", a Map of which was filed for record in Book 94 of Maps, at page 19, et seq, in the Southwest line of King Road, as shown on said Map, thence along said Southwesterly line of King Road, North 37°54'20" West 461.47 feet, thence leaving said line parallel with the Southeastery line of said 10.989 acre parcel, South 52°05'40" West 145.85 feet; thence parallel with said Southwesterly line of King Road, North 37°54'20" West 194.78 feet to the intersection thereof with the Southeastery line of Story Road, as shown upon said Map; thence along said Southeastery line of Story Road, South 49°42'45" West 454.85 feet to a point distant thereon North 45°42'45" East 140.00 feet from the most Westerly corner of said 10.989 acre parcel; thence at right angles South 40°17'1 East 140.00 feet; thence parallel with said Southeastery line of Story Road, South 49°42'45" West 145.85 feet to the intersection thereof with the Southwesterly line of said 10.989 acre parcel; thence along said Southwesterly line, South 37°54'20" East 491.41 feet to the most Southerly corner thereof; thence at right angles along the Southeastery line of said parcel, North 52°05'40" East 740.06 feet to the point of beginning.

1739423 DEC 15 59

That certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

**BEGINNING** at the most Easterly corner of that certain 10.989 acre parcel of land designated "Not a part of this Subdivision", and shown upon that certain Map entitled, "Tract No. 1739 Tropicana Village, Unit No. 1", a Map of which was filed for record in Book 94 of Maps, at page 19, et seq, in the Southwesterly line of King Road, as shown on said Map; thence along said Southwesterly line of King Road, North 37°54'20" West 461.47 feet; thence leaving said line parallel with the Southeasterly line of said 10.989 acre parcel, South 52°05'40" West 145.81 feet; thence parallel with said Southeasterly line of King Road, North 37°54'20" West 194.78 feet to the intersection thereof with the Southeasterly line of Story Road, as shown upon said Map; thence along said Southeasterly line, South 49°42'45" West 454.85 feet to a point distant thereon North 49°42'45" East 140.00 feet from the most Westerly corner of said 10.989 acre parcel; thence at right angles South 40°17'15" East 140.00 feet; thence parallel with said Southeasterly line of Story Road, South 49°42'45" West 145.85 feet to the intersection thereof with the Southwesterly line of said 10.989 acre parcel; thence along said Southwesterly line, South 37°54'20" East 491.41 feet to the most Southerly corner thereof; thence at right angles along the Southeasterly line of said parcel, North 52°05'40" East 740.06 feet to the point of beginning.

**EXCEPTING THEREFROM** the following described parcel of land: **BEGINNING** at a point in the Southwesterly line of that certain 10.989 acre parcel of land designated "Not a part of this Subdivision" and shown upon that certain Map entitled, "Tract No. 1739, Tropicana Village, Unit No. 1", a Map of which was filed for record in Book 94 of Maps, page 19, et seq, distant thereon South 37° 54' 20" East, 170.33 feet from the most Westerly corner thereof in the Southeasterly line of Story Road, as said 10.989 acre parcel and Story Road are shown upon said Map; thence North 52° 06' 31" East, 20.10 feet to the **TRUE POINT OF BEGINNING** of this description; thence continuing North 52° 06' 31" East, 165.02 feet; thence South 37° 59' 54" East, 145.03 feet; thence South 52° 08' 15" West 31 feet, more or less, to the intersection thereof with a line drawn parallel with and distant Northeastery 154.00 feet at right angles from the Southwesterly line of said 10.989 acre parcel; thence along said parallel line, S. 37° 54' 20" E. 100.50 feet; thence at right angles S. 52° 05' 40" W. 40.00 feet; thence at right angles S. 37° 54' 20" E. 66.00 feet to the intersection thereof with a line drawn parallel with and distant Northwestery 150.00 feet at right angles from the Southeasterly line of said 10.989 acre parcel; thence along said parallel line N. 52° 05' 40" E. 73.00 feet; thence at right angles S. 37° 54' 20" E. 40.00 feet; thence at right angles N. 52° 05' 40" E. 80.00 feet; thence at right angles N. 37° 54' 20" W. 20.00 feet; thence at right angles N. 52° 05' 40" E. 136.50 feet; thence at right angles N. 37° 54' 20" W. 25.00 feet; thence at right angles E. 64.00 feet; thence at right angles N. 37° 54' 20" W. 25.00 feet; thence at right angles N. 52° 05' 40" E. 260.00 feet to a point distant Southwestery 12.50 feet at right angles from the Northeastery line of said 10.989 acre parcel being the Southwesterly line of King Road; thence at right angles

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Intersection thereof with a line drawn parallel with and distant North-  
westerly 30.00 feet at right angles from the Southeasterly line of  
said 10,989 acre parcel, thence along said parallel line, S. 52° 05'  
40" W. 682.50 feet to the intersection thereof with a line drawn parallel  
with and distant Northeastly 45.00 feet at right angles from the  
Southwesterly line of said 10,989 acre parcel; thence along said parallel  
line N. 37° 54' 20" W. 272.25 feet; thence leaving said parallel line  
N. 52° 08' 15" E. 0.21 feet; thence N. 37° 57' 03" W. 41.41 feet; thence  
at right angles S. 52° 02' 57" W. 19.97 feet; thence at right angles  
N. 37° 57' 03" W. 11.95 feet; thence at right angles N. 52° 02' 57"  
E. 8.32 feet; thence at right angles N. 37° 57' 03" W. 24.13 feet;  
thence at right angles S. 52° 02' 57" W. 13.58 feet; thence N. 37° 55'  
47" W. 81.42 feet to the true point of beginning.

**From:** [Petersen, Adam](#)  
**To:** [Pooja Nagrath](#)  
**Cc:** [Shannon George](#); [Tu, John](#)  
**Subject:** FW: UPDATE: Extended Public Comment Period: Tropicana Shopping Center Commercial Development (H15-015)  
**Date:** Friday, March 29, 2019 10:11:36 AM  
**Attachments:** [Avigation Easement.pdf](#)  
**Importance:** High

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Pooja,

Attached are comments from the County on the Tropicana project.

Sincerely,

**Adam Petersen**

Contract Environmental Team  
City of San Jose Planning, Building  
and Code Enforcement Department  
200 East Santa Clara Street, Room 300  
San Jose, CA 95113  
408.535.1241

[adam.petersen@sanjoseca.gov](mailto:adam.petersen@sanjoseca.gov)  
<http://www.sanjoseca.gov/>

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**From:** Aghegnehu, Ben [mailto:ben.aghegnehu@rda.sccgov.org]  
**Sent:** Thursday, March 28, 2019 11:47 AM  
**To:** Petersen, Adam <Adam.Petersen@sanjoseca.gov>  
**Cc:** Talbo, Ellen <Ellen.Talbo@rda.sccgov.org>  
**Subject:** RE: UPDATE: Extended Public Comment Period: Tropicana Shopping Center Commercial Development (H15-015)  
**Importance:** High

March 28, 2019

**Adam Petersen**

Contract Environmental Team  
City of San Jose Planning, Building  
and Code Enforcement Department

**SUBJECT: Draft Mitigated Negative Declaration - Tropicana Shopping Center Commercial Development (H15-015)**

Dear Adam Petersen,

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Draft Mitigated Negative Declaration - Tropicana Shopping Center Commercial Development (H15-015) and has the following comments:

- As per the attached Reid-Hillview Airport Airspace Plan, the project needs to get an Avigation Easement.
- Please provide a status report for the Evergreen-East Hills Vision Strategy (EEHVS) as to approved/developed commercial and office square footage, therefore please list the projects and what is left.

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or [ben.aghegnehu@rda.sccgov.org](mailto:ben.aghegnehu@rda.sccgov.org)

Thank you,

**Ben Aghegnehu**

Associate Transportation Planner  
County of Santa Clara | Roads & Airports  
101 Skyport Rd | San Jose, CA, 95110  
408-573-2462 (o)

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**From:** Petersen, Adam <[Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov)>  
**Sent:** Friday, March 15, 2019 4:40 PM  
**To:** Petersen, Adam <[Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov)>  
**Subject:** UPDATE: Extended Public Comment Period: Tropicana Shopping Center Commercial Development (H15-015)

Good Afternoon,  
The public comment period has been extended by one week. The new public comment period is March 11, 2019 to April 8, 2019, and an errata is available on the website at:  
<http://sanjoseca.gov/index.aspx?NID=4994>

Sincerely,

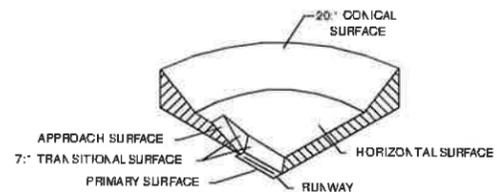
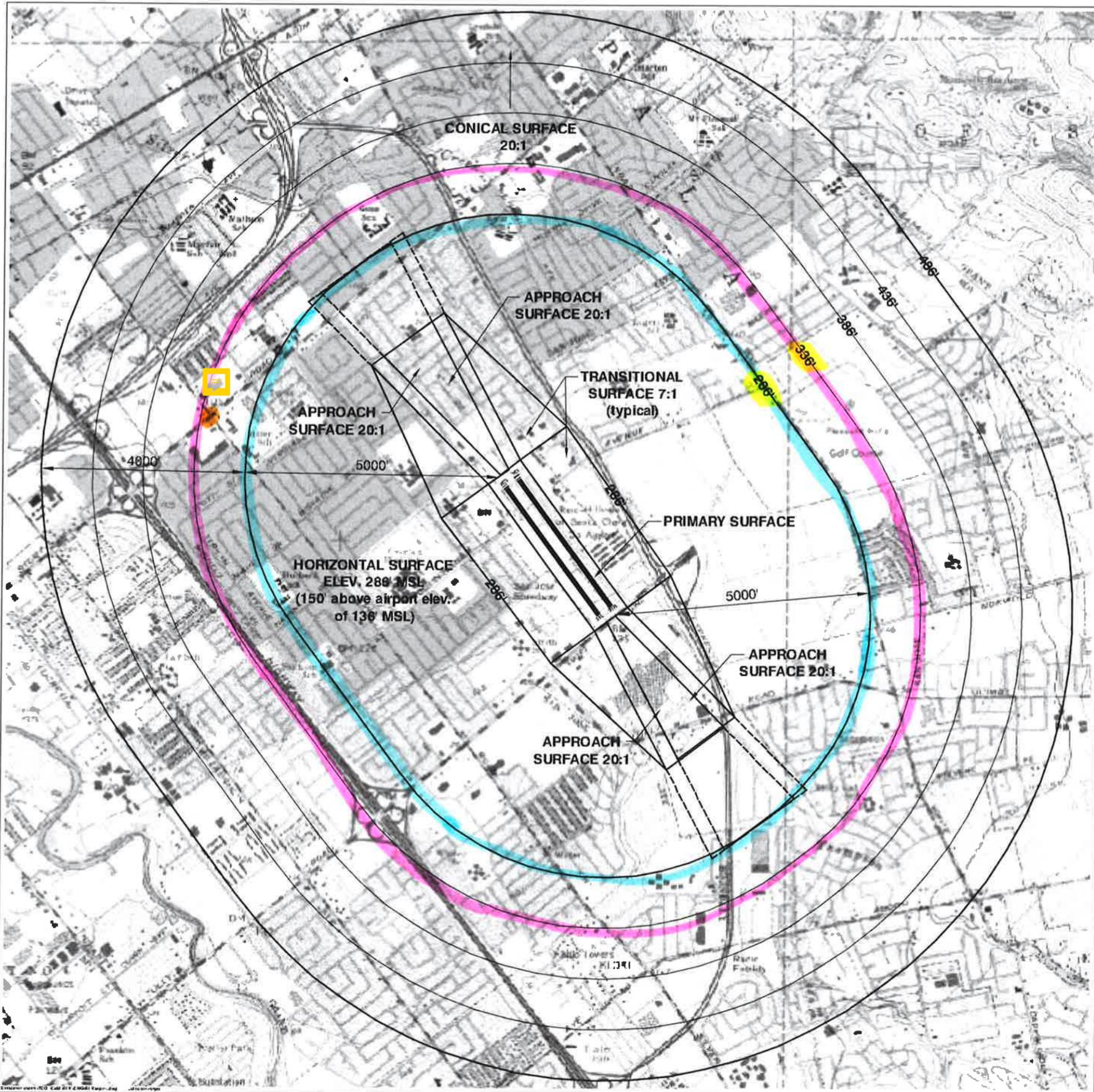
**Adam Petersen**

Contract Environmental Team  
City of San Jose Planning, Building  
and Code Enforcement Department  
200 East Santa Clara Street, Room 300  
San Jose, CA 95113  
408.535.1241

[adam.petersen@sanjoseca.gov](mailto:adam.petersen@sanjoseca.gov)  
<http://www.sanjoseca.gov/>

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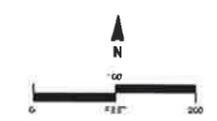
**From:** Petersen, Adam  
**Sent:** Monday, March 11, 2019 11:24 AM  
**To:** Petersen, Adam <[Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov)>  
**Subject:** Public Review Draft Mitigated Negative Declaration: Tropicana Shopping Center Commercial Development (H15-015)



TYPICAL FAR PART 77 SURFACES

**NOTES:**  
 All elevations in feet above mean sea level (MSL) and NAVD83.  
 No terrain penetration of indicated surfaces.

**SOURCES:**  
 Reid-Hillview Airport Construction Chart No. CC5891  
 USGS Topographic Maps



NO.	REVISION	SPONSOR	DATE
<b>REID-HILLVIEW AIRPORT          SAN JOSE, CALIFORNIA</b>			
<b>AIRSPACE PLAN</b>			
<small>44000101, 44000102, 44000103, 44000104, 44000105, 44000106, 44000107, 44000108, 44000109, 44000110, 44000111, 44000112, 44000113, 44000114, 44000115, 44000116, 44000117, 44000118, 44000119, 44000120, 44000121, 44000122, 44000123, 44000124, 44000125, 44000126, 44000127, 44000128, 44000129, 44000130, 44000131, 44000132, 44000133, 44000134, 44000135, 44000136, 44000137, 44000138, 44000139, 44000140, 44000141, 44000142, 44000143, 44000144, 44000145, 44000146, 44000147, 44000148, 44000149, 44000150, 44000151, 44000152, 44000153, 44000154, 44000155, 44000156, 44000157, 44000158, 44000159, 44000160, 44000161, 44000162, 44000163, 44000164, 44000165, 44000166, 44000167, 44000168, 44000169, 44000170, 44000171, 44000172, 44000173, 44000174, 44000175, 44000176, 44000177, 44000178, 44000179, 44000180, 44000181, 44000182, 44000183, 44000184, 44000185, 44000186, 44000187, 44000188, 44000189, 44000190, 44000191, 44000192, 44000193, 44000194, 44000195, 44000196, 44000197, 44000198, 44000199, 44000200</small>			
DESIGN: DU	DRAWN: JL	DATE: June 2017	SHEET: 2 OF 3

**PUBLIC NOTICE**

**INTENT TO ADOPT  
A MITIGATED NEGATIVE DECLARATION  
CITY OF SAN JOSE, CALIFORNIA**

**Project Name:** Tropicana Shopping Center Commercial Development Project    **File No.:** H15-014

**Description:**

The project consists of the construction of a three-story commercial office building totaling 31,744 square feet, of which 20,748 square feet would be office space and 10,996 square feet would be retail space.

**Location:** Southwestern corner of the Story Road and South King Road intersection, at 1664 Story Road in San José, California

**Assessor's Parcel No.:** 486-10-091

**Council District:** 7

**Applicant Contact Information:** Dennis Fong; 1692 Story Road San José, CA 95122

The City has performed an environmental review of the project. The environmental review examines the nature and extent of any adverse effects on the environment that could occur if the project is approved and implemented. Based on the review, the City has prepared a Draft Mitigated Negative Declaration (MND) for this project. An MND is a statement by the City that the project will not have a significant effect on the environment if the project implements the protective measures (mitigation measures) identified during the environmental review.

The public is welcome to review and comment on the Draft MND. The public comment period for this Draft MND begins on **March 11, 2019, and ends on April 1, 2019.**

The Draft MND, Initial Study, and reference documents are available online at: <http://www.sanjoseca.gov/index.aspx?nid=2165> . The documents are also available for review from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San José Department of Planning, Building and Code Enforcement, located at City Hall, 200 East Santa Clara Street; and at the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street.

For additional information, please contact Adam Petersen at (408) 535-1241, or by e-mail at [Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov).

Circulation period: **March 11, 2019, and ends on April 1, 2019**

Sincerely,

**Adam Petersen**

Contract Environmental Team

City of San Jose Planning, Building  
and Code Enforcement Department  
200 East Santa Clara Street, Room 300  
San Jose, CA 95113  
408.535.1241

[adam.petersen@sanjoseca.gov](mailto:adam.petersen@sanjoseca.gov)

<http://www.sanjoseca.gov/>

March 30, 2019

Adam Peterson  
Contract Environment Team  
City of San Jose Planning, Building  
And Code Enforcement Department  
200 Ease Santa Clara St, Room 300  
San Jose CA 95113  
408 535 1241

RE: SITE DEVELOPMENT PERMIT FILE NO. H15-014.  
PETITION TO AGAINST THE NEGATIVE DECLARATION  
RE. PROPOSED DEVELOPMENT PROJECT FILE H15-014.

Dear Mr. Peterson and All,

I, Thao Bui is one of owners in the Tropicana Center where the proposed project, I'm also the one beside the proposed project's owner as we both have the land of parking lot that has been granted the easement to the other owners in the center.

Once again, I'd like to express my concerns of this project. Although I've had sent it to the Planning Department through Rebecca Bustos and John Tu who worked on this project before.

First of all, there're some legal documents that related to the easement of the parking lot's land in the center which granted the use of parking lot's land to the other owners for the parking on purpose. Those documents were recorded in County of Santa Clara that City of San Jose needs to review it carefully. I hope City will give me the same favor is not to consider those documents in future if I'd build something on my land as City does the favor to the proposed project's owner today.

Secondly, without my consent City of San Jose allows the proposed project included my property parcel 486-10-087 into the project for all studies, parking lot's analysis. Besides it there's some issue that will impact on my property is according to the plan the sidewalk on my courtyard will be cut in order to add some more parking stalls while I worked with the proposed project's owner and allowed to add some extra handicap stalls on my property next to the other sidewalks.

I reserve my rights and oppose everything that taking away my rights on decision based upon my consent.

I'm willing to work with the proposed project's owner and City of San Jose in mutual benefits.

I also suggest that City of San Jose should consider the actual condition of lack of parking in the center, community feedback as traffic study must be required for the corner of King and story road only, Traffic safety on-site circulation, environment factors and CEQA review for Site development permit. I believe that parking and loading area will be worsen more than the existing traffic condition. In other words, the proposed site development will have tremendous impact to daily traffic volumes or traffic patterns beside the lack of parking in the center and tremendous environmental impact.

I can't imagine how bad is traffic congestion during construction time if city of san Jose allows this project happened while we all are owners and merchants in the center knowing that we lack of parking space for workers and customer who shop at the center as well.

If you or some the other officers please stop by at the center to realize how hard to find a parking space on the weekday. Therefore you be able to see what we're concerning and if you can go around to find a parking space in 10 minutes on Friday, Saturday and Sunday that's lucky you are but not yet if you can get out of the center in 15 minutes you will be the luckiest one so far.

Enclosed here are some image of parking lot with no parking space and crazy traffic during weekday that I took it.

Thank you for considering my concerns.

Best Regards,

Thao Bui  
Owner of Parcel 486-10-087

A handwritten signature in black ink, appearing to read 'Thao Bui', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the signature.

**RE: Initial Study/Mitigated Negative Declaration Tropicana Shopping Center  
Commercial Development Project File Number: H15-014**

March 31, 2019

Dear Rosalynn Hughey,

I am writing to you the same day when our Latino Social Justice Leader César E. Chávez was born, and this day is very important to me to bring my voice up in opposing this huge development at Tropicana Shopping Center. I live across the street at Arbuckle Neighborhood where many residences are already crowded due to housing, traffic congestions and healthy issues. We are underserved by the City of San José.

Reading the environmental impact report (EIR) I noticed a big discrepancy on environmental issues affecting our community, issues that have not been addressed like a needed Traffic Study, a needed Traffic Analysis inside the shopping center that has an existing 1204 chairs just counting Restaurants and health issues that will affect our community forever. Inform elected official about the real environmental consequences.

I am asking you to forward this proposal all the way to San José City Council-members and the Mayor, you cannot make a sole decision based on these facts written by consultants that don't live in this neighborhood. Please use your awareness and judgement with Justice in favor of this underserved community.

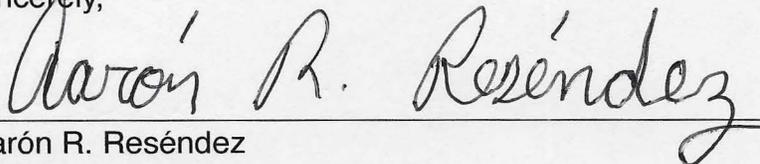
We need to improve the governmental decision-making through disclosure and analysis of the environment of this land-use decision. This environmental impact report has many untrue factors, EIR should provide decision makers with more information which enables them to make better decisions which will take into account environmental consequences. The community and experts completely disagree regarding the decision of constructing the three-story office building.

Protecting our community; you need to follow a protocol of analysis and public disclosure of environmental impacts proposed for this project and you have to adopt all feasible measures to mitigate those impacts according to The California Environmental Quality Act (CEQA).

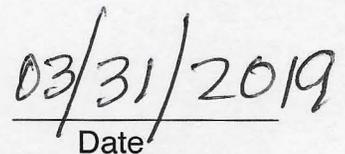
This EIR will be challenged in court if approved at the planned Director's Hearing.

Do not hesitate to call me if you have any questions or concerns.

Sincerely,



Aarón R. Reséndez  
408-380-9707 cell.

  
Date



April 1, 2019

City of San Jose  
Department of Planning and Building  
200 East Santa Clara Street  
San Jose, CA 95113

Attention: Adam Petersen

Subject: City File No. H-15-014 / Tropicana Shopping Center Commercial

Dear Mr. Petersen:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for 20,748 square feet of office space and 10,966 square feet of retail space on 0.9 acre in an existing shopping center at the southwest corner of King Road and Story Road. We have the following comments.

Bus Stop Improvements:

VTA has an existing bus stop fronting the new development on southbound King Road. The bus stop is served by VTA frequent bus routes 22 and 77 and is one of VTA's highest ridership stops. The initial study states that the project will construct a 12-foot wide attached sidewalk along South King Road, which would improve existing asphalt area behind the sidewalk. With over 250+ average weekday boardings at this bus stop VTA recommends the installation of a second shelter. VTA's Board adopted Pedestrian Access to Transit plan identifies the intersection of Alum Rock Avenue and King Road (Focus Area I) as a priority area. Project I7 recommends the addition of shaded structures at this intersection to improve the pedestrian experience. For more details visit: <https://gis.vta.org/pedaccess/>

VTA has several existing amenities listed below and requests that the amenities be maintained or improved as follows:

- Maintain or improve existing PCC bus pad and duckout per VTA Standard.
- Maintain or improve existing 8'x40' passenger pad per VTA Standard.
- Maintain or improve existing 7'x25' shelter pad per VTA Standard.
- Maintain or improve existing shelter with VTA's new standard shelter.
- Maintain or improve the 2 existing VTA metal benches
- Maintain or improve VTA real-time sign and solar light.
- Place trees and landscaping outside of the bus stop area
- Install a new VTA shelter with a new 7'x25' shelter pad. (see attached figure)

City of San Jose  
April 1, 2019  
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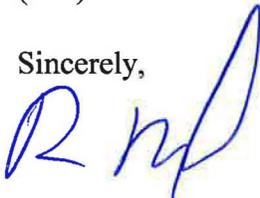
VTA requests to be notified of updated site plans to ensure the placement of driveways, landscaping and any other features do not conflict with bus operations. VTA's Transit Passenger Environment Plan provides design guidelines for bus stops. This document can be downloaded at <http://www.vta.org/tpep>.

VTA has a Bus Stop Placement, Closures and Relocations Policy. If the project should require temporary removal or relocation of the bus shelter due to construction, VTA requests that the City require the project application to pay all costs associated with removal/relocation. Any removal or relocation of the shelter should be coordinated through VTA and to be conducted by VTA's contractor, at the Requesting Party's expense. The applicant is required to notify VTA for the shelter removal or relocation with a minimum of two weeks of notice.

Prior to any construction or bus stop impact, please contact [bus.stop@vta.org](mailto:bus.stop@vta.org).

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,



Roy Molseed  
Senior Environmental Planner

cc: Ryan Do, San Jose Development Services  
Patricia Maurice, Caltrans  
Brian Ashurst, Caltrans

SJ1903

**Re: Letter of Opposition to the  
Environmental Impact Report of the Site Development  
Permit File Number: H15-014**

I am writing to express my strong opposition of the Environmental Impact Report of the Site Development Permit for the construction of a three-story commercial office building within the existing Tropicana Shopping Center.

For many residents of our city, the intersection of Story and King Rd is a historic one, with rich heritage and social value. Story and King has also served as a commercial epicenter to East San Jose residents. The Tropicana is the name with which this area is commonly identified. In addition, Tropicana is also the name of the shopping center located at the same intersection and is, by its popularity, one of the most visited commercial sites of the area.

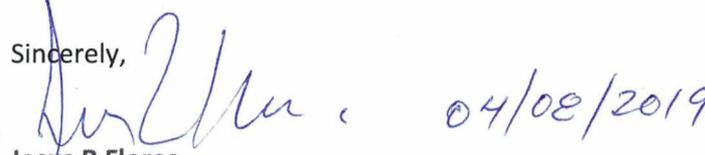
There are several matters that have not been addressed correctly in the Environmental Impact Report (EIR) including; Land Use and Planning, Traffic and Transportation and even Population and Housing. It is paramount that this document accurately reflects all potential impacts that this development could have on surrounding businesses and community members. East San Jose residents have dealt with many challenges for generations now, local jurisdictions and stakeholders should focus on creating opportunities for residents, not continuing to impact overall quality of life in East San Jose.

It is comprehensible that the most adverse and dramatic impact this development will have is to the many Local Family Owned Small Business presently located at the site. As intended, this plan will wipe out around 100 existing parking spots, will increase traffic, and worsen the already existent shortage of parking at the center. Therefore, many of these small businesses may be left out of business because the proposed 3-story building will block views to the other businesses that are all one single story. This, added to the increase of the center's traffic and parking challenges, will surely drive customers away and put local family owned businesses in a vulnerable position.

At this time, there are over 1300 letters of opposition to this specific matter that are being sent or have already been submitted to public record. Please pay attention to the residents, business owners, and community advocates who have been compelled to voice their opposition to a development that will seriously impact the core of the character of a culturally rich area that been a staple in East San Jose for generations.

In these times when the displacement of local family owned businesses is affecting so many Latino Businesses in our city, it is imperative we all do everything possible to protect the character and flavor that the small businesses at Tropicana shopping center provide us.

Sincerely,

  
Jesus R Flores  
President

Alum Rock Santa Clara St. Business Association

ARSCSBA

408.924.0848 office

408.674.0402 cellular

[jesus@jesusflores.net](mailto:jesus@jesusflores.net)

**"Petition to against the Negative Declaration Re.  
Proposed Development Project File H15-014"**

WE ARE: Merchants: \_\_\_\_\_, Customers \_\_\_\_\_, Staffs \_\_\_\_\_  
Neighbors: \_\_\_\_\_, Owners \_\_\_\_\_ X

We are opposed to Negative Declaration Re Proposed Project H15-014:

Opposition Item #1 Easement Right: Tropicana Shopping Center Merchants and Property Owners have the Easement right to use the parking lot for ingress, egress, and parking for employees and customers. it is for their customer to park during their shopping. The Easement right cannot be taken away or vote out of existence or by majority votes. The new building should not be allowed to build on Easement parking lot.

Opposition Item #2: Over-crowded parking The existing parking spaces are only adequate for currently merchant, its customers, and staffs. It is already overcrowded The new development will not only taken away the parking spots for the building, it also taken more parking spaces for new building staffs and its patronages. More parking taken away will effects all merchants within shopping center. The Parking analysis is very important for the project.

Opposition #3: Congested Traffic on Story and King road intersection is the most congested intersection in San Jose. The new development will cause more traffic to the area, included evergreen, down town, and the whole area. Traffic analysis is required for the project.

Opposition #4: Construction period: will badly effected all merchants business and create noise and dust to the area. Noise study and Air study are needed for the project. it will substantially affected the surrounding community and its neighbors.

Opposition #5: Environmental impact report: Notices to surrounding neighbors communities to allow them to express their concerns on Traffic, Parking, Air and noise etc. Environmental impact report is very important for the project. We live and work here locally.

NAME and Signature: DAN DURAN Date 3-29-19

Address: 368 CHATEAU LA SALLE DR #1095111  
428

Phone: 9853726 Email DADOTRAP@AVL.COVN

**Tropicana Shopping Center  
Commercial Development Project  
File Number: H15-014**

We, the Tropicana Shopping Center Small Businesses, are in opposition of the Environmental Impact Report of the Site Development Permit for the construction of a three-story commercial office building within the existing Tropicana Shopping Center.

Nosotros, los pequeños comerciantes de Tropicana Shopping Center, estamos en oposición a el Reporte de Impacto a el medio ambiente y permiso para construcción de un edificio comercial de tres pisos de altura dentro del existente Centro Comercial Tropicana.

This are some of the facts that have not been addressed correctly.  
Estos son algunos de los factores que no han sido abordados correctamente.

1. LAND USE AND PLANNING—The project would have a significant impact on land use and planning, therefore more scrutiny is required.
2. POPULATION AND HOUSING—The project would have a significant impact on population and housing. (See all existing homeless on Story and 101 Hwy.)
3. TRANSPORTATION/TRAFFIC—The project would have a significant impact on transportation/traffic, therefore a Traffic Study on Story and King Roads Intersection is needed. (This is one of the worst intersections in San José)
4. UTILITIES AND SERVICE SYSTEMS—The project would have a significant impact on utilities and service systems, they have to fix their services at La Placita Tropicana before going into another project. (PLEASE CHECK!)
5. MANDATORY FINDINGS OF SIGNIFICANCE — conditions identified in this Initial Study would degrade the quality of the environment, substantially affecting the surrounding community or neighbors. We live and work here!

NAME Guadalupe Suarez  
ADRESSS 40 E. Rosemary St. Apt-240  
SAN JOSE, CA 95122  
PHONE ( ) \_\_\_\_\_  
EMAIL: \_\_\_\_\_  
DATE: April 1, 2019