

## EXHIBIT 5



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July 2, 2014

**VIA EMAIL AND U.S. MAIL**

Gary Kupp, Planner  
County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
E-Mail: Gary.Kupp@dcd.cccounty.us

Re: Subdivision and Development Applications for 3189 Danville Blvd., Alamo

Dear Mr. Kupp:

This letter is sent with respect to the minor subdivision and development plan applications submitted by Albert Rubey (file nos. MS11-0006 and DP12-3029) that are the subject of a hearing before the Zoning Administrator on July 7, 2014. This office represents TRH Holdings, LLC, which owns the property located at 3236 Stone Valley Road ("Property") in Alamo, located immediately across Stone Valley Road from the project site. TRH will address issues that the project raises with respect to parking here and will submit comments under the California Environmental Quality Act under separate cover.

By way of brief background, TRH purchased the Property in April 2012 from Mr. Rubey. In connection with this purchase, TRH obtained rights under that certain Grant of Easement dated April 17, 1979 and recorded on that same day with the Contra Costa County Recorder's Office in book 9312 at page 440, series number 79-49856.<sup>1</sup> That easement specifically grants my client the right to use fifty (50) parking spaces, including the thirty (30) spaces Mr. Rubey intends to use in conjunction with his project. As a co-holder of the parking easement, TRH is concerned that Mr. Rubey's project contemplates that its right to the thirty spaces in question is exclusive and that the County's consideration of his applications is based on this same premise. A brief review of the history of the Property and the easement in question reveals this is not so.

At the time of the grant of easement, the Alamo Plaza Lot (the land adjacent to the Property to the north) as well as the land immediately adjacent to and west of the

<sup>1</sup> A copy of the easement is included with this letter for your reference.

Property was held in common ownership by the grantor of the easement. The express terms of the grant of easement provide for "easements for parking, driveway access, ingress and egress for the customers, invitees, tenants, agents of owners, owners and other users of Grantee's... land." The parking easements encompassed a total of fifty (50) parking spaces: thirty (30) in the Alamo Plaza Lot, and twenty (20) in the property immediately adjacent to and west of the Property.

The grant of easement specifically identifies as the "Dominant Tenement" (i.e., the property entitled to make use of the parking spaces) "certain real property commonly known as 3193 Danville Blvd., Alamo, Contra Costa County, State of California, and 3185 Danville Blvd., Alamo, Contra Costa County, State of California." That "Dominant Tenement" includes the land that now constitutes the Property; thus, the Property is within the "Dominant Tenement" and is therefore subject to rights granted to it under the terms of the easement.

The grant goes on to state without qualification that "[t]he easements granted herein are appurtenant to the Dominant Tenement." The grant further states, "An additional purpose of such easements is to attribute to Grantee's above-described land fifty (50) parking spaces." The grant also indicates that "[s]aid easements consist of a total of fifty (50) standard parking spaces" as identified in Area A and Area B on the attached map.

In sum, the grant of easement clearly conveys a total of 50 parking spaces to the "Dominant Tenement" without limiting or allocating the spaces among the two identified street addresses. As the current owner of a portion of the originally-described "Dominant Tenement," my client TRH is a successor-in-interest to the original grantee and as such is entitled to the full beneficial use of the entire easement as granted and described. This is in accord with California law irrespective of the "adjacency" of part of the Dominant Tenement to the easements in question. (Civ. Code, §§ 801, 803, 806.) It is clear under California law that "adjacency" of the dominant and servient estates is not a requisite for a valid easement. (*Jensen v. Ritter* (1960) 185 Cal.App.2d 473, 478-79.)

My client's right to use the thirty spaces in question is bolstered by the map made part of the grant of easement. That map depicts two areas and designates each as "Rubey Property." It then goes on to state that the land benefitted by the easement is that "designated as Rubey *properties*," plural. (Emphasis added.) Given that there are two areas identified as "Rubey Property" on Exhibit 1 (one of which is the Property), the only reasonable interpretation is that consistent with the text of the grant itself – that the land identified as the dominant tenement ("Rubey properties") is benefitted by the entire grant of 50 parking spaces.

Again, the only reasonable conclusion is that TRH is entitled to make full use of the parking easements as described in the grant of easement, including the thirty Alamo Plaza spaces. This is particularly the case insofar as Mr. Rubey requested that

other parking spaces closer to my client's property be excluded from TRH's purchase in order to serve a different piece of property nearby.

The Staff Report for the applications includes a letter from Mr. Rubey's attorney that purports to determine that TRH does not have the right to the thirty parking spaces in question. However, the analysis in that letter fails to address the plain language of the grant of easement itself, instead relying on a partial reading of the text on the map appended to the grant as Exhibit 1. More specifically, the letter suggests that the phrase "granted to adjacent parcel to the East" in conjunction with the Area A and Area B spaces limits the grant to the "adjacent parcel" shown on the map. However, this analysis omits the subsequent language in each notation cited above which identifies the benefitted land as that "designated as Rubey **properties**," plural. (Emphasis added.) Given that there are two areas identified as "Rubey Property" on Exhibit 1, the only reasonable interpretation is that consistent with the text of the grant itself – that the land identified as the dominant tenement ("Rubey properties"), which includes the Property, is benefitted by the entire grant of 50 parking spaces.

As a final point, TRH has taken steps necessary to ensure its ability to continue to use the parking spaces in question, including correspondence with counsel for Mr. Rubey and the management of Alamo Plaza setting forth the basis of its rights. To date, no party has challenged TRH's right to the spaces in court.

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In summary, based on the documentation that appears in the chain of title, TRH, as owner of the Property, has the present right to make use of the thirty (30) spaces on the adjacent Alamo Plaza Lot. To the extent Mr. Rubey's proposed project is premised on a contrary conclusion, TRH respectfully requests that the County take its rights into account in evaluating his pending applications.

Very truly yours,

MILLER STARR REGANIA



Matthew C. Henderson

MCH:klw

encl.

cc: Rob Hirt (via email)  
Mitch Hertz (via email)