

**Norton, Brian**

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**Subject:** RE: FW: [External] RE: Opposition to Proposed Project Case No. PR-2021-000897

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**From:** Harper-Scott, Danielle <[DHarper-Scott@riversideca.gov](mailto:DHarper-Scott@riversideca.gov)>

**Date:** Wednesday, May 11, 2022 at 10:45 AM

**To:** Chris Costanzo <[ccostanzo@costanzoinv.com](mailto:ccostanzo@costanzoinv.com)>

**Subject:** FW: [External] RE: Opposition to Proposed Project Case No. PR-2021-000897

Good morning Chris –  
Please see the attached letter of opposition.

Sincerely,  
Danielle

**Danielle Harper-Scott**

City of Riverside  
Community & Economic Development, Planning Division  
Main: 951-826-5371  
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**From:** Michael J. Alti <[michael@attorneyforhoa.com](mailto:michael@attorneyforhoa.com)>

**Sent:** Monday, March 21, 2022 2:07 PM

**To:** Harper-Scott, Danielle <[DHarper-Scott@riversideca.gov](mailto:DHarper-Scott@riversideca.gov)>

**Cc:** 'Valorie Moser' <[valorie@attorneyforhoa.com](mailto:valorie@attorneyforhoa.com)>

**Subject:** [External] RE: Opposition to Proposed Project Case No. PR-2021-000897

Dear Ms. Harper-Scott:

I understand that you and your team at the City had a conference last Thursday with Jay Harvey and Terry Pries, two of the directors of the Orangecrest Hills Commercial Owners Association ("Association"). We understand that the March 31 hearing is being continued to April 14. Our team is still researching this matter, and we still have not received a copy of the City's files related to Case No. PM 30369, even though Mr. Harvey and Mr. Pries had been told by City staff that it was going to be made available to us about 2 weeks ago. Not having the complete file puts us at a grave disadvantage, because we do not have access to all City documents relevant to the proposed project at 19260 Van Buren Blvd.

We are also concerned that the City itself may not be aware of all applicable conditions, covenants and other restrictions applicable to the proposed project, including conditions which the City itself has imposed. I had sent you copies of two recorded covenants/agreements as well as a grant deed back on March 8. Since then, we also learned of an additional recorded covenant which the City required back in 2002.

Please find attached a copy of a second Covenant and Agreement recorded on May 17, 2002 regarding the future uses of the property. I would like to point out the following:

1. Recital C on the first page states, "As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal

Department of the City to prohibit automobile oriented uses, including drive-thru restaurants ... on Parcels 1, 4, 5, 8 and 9 of Parcel Map 30369."

2. Recital D on the top of the second page explains that the developer recorded the Covenant and Agreement acceptable to the City's Planning and Legal Departments to comply with the City's conditions.
3. Section 1 on Page 2 clearly states that Parcel 1 (the Parcel where the proposed project at 19260 Van Buren Blvd. is located) is prohibited from being developed with or having thereon any drive-thru restaurants..."
4. Section 2 confirms that anyone with an interest in any portion of the Property (including Parcel 1) "shall be deemed to have consented and agreed to the restrictions on the use of the Property."
5. Section 3 gives the City enforcement rights, and Section 4 establishes that the covenants run with the land and are binding on all owners and their successors.
6. The Covenant and Agreement was signed by the Deputy City Attorney and the Planning Department.
7. The proposed drive-thru restaurant at 19260 Van Buren Blvd. would directly conflict with this recorded covenant which the City required 20 years ago.

We hope that you find this information useful, and we respectfully request that the City honor all previously required conditions and covenants when considering the proposed project. For the reasons previously stated and the reasons stated above, the Association absolutely opposes the proposed drive-thru restaurant at 19260 Van Buren Blvd.

Finally, since the City's planning files on Case No. PM 30369 have not yet been made available to us, please let us know when they will be available. If we do not receive them well in advance of the hearing on the proposed project, the Association will be seriously prejudiced in this matter.

Sincerely,

Michael Alt, Esq.  
Community Legal Advisors Inc.  
310.613.8482  
[michael@attorneyforhoa.com](mailto:michael@attorneyforhoa.com)

Community Legal Advisors provides general counsel and assessment collection services to community associations, subdivision and entitlement services to builders, and dispute resolution and advice to owners. You can learn more about us at [www.attorneyforhoa.com](http://www.attorneyforhoa.com).

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**From:** Michael J. Alt <[michael@attorneyforhoa.com](mailto:michael@attorneyforhoa.com)>  
**Sent:** Tuesday, March 8, 2022 2:34 PM  
**To:** 'Dharper-scott@riversideca.gov' <[Dharper-scott@riversideca.gov](mailto:Dharper-scott@riversideca.gov)>  
**Cc:** 'Valorie Moser' <[valorie@attorneyforhoa.com](mailto:valorie@attorneyforhoa.com)>  
**Subject:** Opposition to Proposed Project Case No. PR-2021-000897

Dear Ms. Harper-Scott:

Thank you for calling me back this morning. Community Legal Advisors, Inc. represents the Orangecrest Hills Commercial Owners Association ("Association") which manages the common areas of the shopping center in which the proposed project at 19260 Van Buren Blvd. ("Parcel") is located. We understand that the applicant Costanzo Investments, LLC and the owner Kohl's Department Stores, Inc. seek to construct a new drive-thru restaurant within the parking areas located on the Parcel. However, the parking areas are defined as part of the Association's Common Area under a number of recorded covenants and agreements, including covenants required by the City. The proposed structure would violate these covenants and agreements, including well-established parking easements. We informed the owner of the Parcel (Kohl's) about this issue by letter dated January 14, 2019, and never received any response from them.

While we are still awaiting a copy of the City's files related to Case No. PM 30369 and we just requested a title report for the Parcel, I would like to briefly summarize two of the key covenants and agreements, copies of which are attached.

#### Covenant and Agreement Establishing Easements for Ingress, Egress, Parking and Utilities

This Covenant and Agreement was recorded on May 17, 2002 and encumbers Parcels 1 through 9 of PM 30369. The Parcel at 19260 Van Buren Blvd is Parcel 1 of that map. Please note the following:

8. Recital 3 on the first page states, "As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal Department of the City to assure mutual access for ingress, egress, parking and/or utilities across all parcels."
9. Recital 4 on the top of the second page explains that the developer recorded the Covenant and Agreement to comply with the City's conditions.
10. The definition of "Common Area" in Section 1 is "all the area of Parcels 1 through 9 of the Property other than building areas." This means the parking areas are part of the Common Area.
11. Section 2 established nonexclusive easements for parking, ingress and egress over all the Common Area located within each parcel, including the parking areas.
12. Section 3 is entitled "Barriers" and states, "No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic..."
13. Section 7 establishes that the covenants, including the easements, run with the land and are binding on all owners and their successors.
14. Section 8 gives the City enforcement rights, and Section 9 requires approval by the City and Declarant in order to amend (note the Declarant Orangecrest Hills L.P. no longer has any interest in the shopping center – its successor would be the Association which now manages the common areas of the shopping center.)
15. The Covenant and Agreement was signed by the Deputy City Attorney and the Planning Department.

In summary, the Covenant and Agreement was required by the City and established easements over the parking areas within the Parcel (19260 Van Buren Blvd.), and the proposed project would violate the Covenant and Agreement, including these established easements.

#### Operation and Easement Agreement

Around the same time the Covenant and Agreement was recorded, a separate Operation and Easement Agreement ("OEA") was recorded which, among other things, established the Association as the party responsible for managing and maintain the common areas of the shopping center. The OEA is generally consistent with the Covenant and Agreement, and here are a few key provisions:

1. Section 2.1 establishes non-exclusive easements for the passage and parking of vehicles over and across the parking and driveway areas of each parcel, including the Parcel at 19260 Van Buren Blvd. Notably, Section 13.1 states that "the easements referred to in Section 2.1 and 2.2 cannot be terminated without the written consent of the Planning Director of the City." Section 12.3 also requires the consent of the affected property owners, which was never requested or received.
2. Section 3.2 allows the construction of buildings only within the building areas shown on the Site Plan attached to the OEA. The proposed building would clearly violate that.
3. Section 4.2 of the OEA requires that the parking area on the Parcel comply with the requirement to have 4.0 parking spaces for each 1000 SF of floor area.
4. Section 4.5 provides that "No Party shall make changes to the improved Common Area on its Parcel without the approval of the Association." Here, even though we sent Kohl's a letter informing that about the requirement for Association consent 3 years ago, they ignored us and never submitted any type of request for Association approval.

In summary, the OEA prohibits construction of a new building in the parking area on the Parcel, which would impair well-established easement rights for the surrounding businesses.

Grant Deed. We also obtained a copy of the Grant Deed by which Kohl's acquired the Parcel in 2002. A copy is attached. Please note that the second page of the Grant Deed specifically excepts all the easements for access, ingress, egress, maintenance, repair and other purposes as described in the OEA.

In short, the proposed project would violate the above-referenced Covenant and Agreement as well as the OEA. It would interfere with well-established parking rights, including those easement rights specifically required to be established by the City pursuant to the conditions of approval for Case No. PM 30369. The Association absolutely opposes the proposed project for these and other reasons. We reserve the right to provide you additional comments as we receive and learn more information.

Thank you for your consideration.

Michael Alti, Esq.  
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Community Legal Advisors provides general counsel and assessment collection services to community associations, subdivision and entitlement services to builders, and dispute resolution and advice to owners. You can learn more about us at [www.attorneyforhoa.com](http://www.attorneyforhoa.com).

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