

FROM: People's Coalition For Government Accountability (PCGA)
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DATE: August 16, 2012

TO: Supervisor Wasserman, District 1
 Supervisor Hsirakawa, District 2
 Supervisor Cortese, District 3
 Supervisor Yeager, District 4
 Supervisor Kniss, District 5

RE: APPEALING PLANNING COMMISSION DECISION - CORDOBA CENTER
 APPELLANTS: People's Coalition for Government Accountability
 FILE NUMBER: 2145-11P-11A-11G-11EA/South County Partners
 MEETING DATE: Planning Commission Hearing/August 2, 2012
 PURPOSE: Use Permit & Architecture & Site Approval/Grading
 for Religious Institution and Cemetery
 LOCATION: 14045 Monterey Road, San Martin.

Dear Board Members:

On August 2, 2012, the Santa Clara County Planning Commission Approved Application for Use Permit, Architecture & Site Approval & Grading to establish a religious institution and cemetery, i.e., PLANNING COMMISSION **REVISED** CONDITIONS OF APPROVAL.

Appellants are contesting the following issues:

1. HOURS OF OPERATION, P.1, ITEM 3.

"Hours of operation 6 a.m. to 11 p.m. daily". **(DELETED)**

QUESTION: How can Planning Commissioners delete a Department of Environmental Health (DEH) requirement which was a part of the "Conditions of Approval"; and the Initial Study that was used to adopt the Mitigated Negative Declaration.

a) If this religious facility was located within "city limits", "hours of operation" would not be an issue.

b) This proposed project is located in a small, rural, unincorporated community adjacent to Llagas Creek; more particularly this site is further restricted by the "Special Area Policies" and "Overlay Map" labeling this site as "San Martin Industrial Use Permit Area" requiring minimal water useage and minimal waste water discharge.

The Cordoba Project (according to Ann Peden) is a commercial facility and one of several requirements Ann listed for evaluating this project was "Hours of operation" which is necessary to determine wastewater discharge flows".

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REBUTTAL: ITEM 3, on P. 1, "Hours of operation 6 a.m. to 11 p.m. daily", therefore, cannot be deleted.

c) The Environmental Assessment (EA) which was used to adopt the Mitigated Negative Declaration was based on "**Hours of Operation**". Does deleting that item negate the Environmental Assessment (EA) & Mitigated Negative Declaration?

2. LAND DEVELOPMENT ENGINEERING: DRAINAGE P. 9, #29, ITEM 2.

"The on-site drainage will be controlled in such a manner as to not increase the down stream peak flow or cause a hazard or public nuisance".

(a) The detention system depicted on the Site & Septic Plan shows a drainage pipe connected to the detention pond which transports water from the detention system to the southwest corner of subject property which will cause a deluge of stormwater to gush onto neighboring properties that have historically suffered costly catastrophic flooding.

RWQCB: See **Attach. I** May 16, 2012 which was sent to SVIC from the Regional Water Board; wherein on P. 3, Paragraph 3, Thea Tryon, stated, "Additionally, a majority of stormwater or surface flow across the property is to the south-southeast, away from the northern property boundary."

"Central Coast Water Board staff has determined that there is no threats from the septic system and cemetery to surface water from **flooding or stormwater runoff flows**."

(b) See **Exhibit 1**, "Objection to Mitigated Negative Declaration", letter written by Donald Bonino; wherein he states that stormwater flows south-southwesterly.

(c) See **Exhibit 2**, a Petition signed by seventy-five (75) property owners who have suffered "costly" catastrophic flooding and/or witnessed flooding in the past 50 years.

(d) The manhole cover on the main Morgan Hill/Gilroy sewer system pipeline located on California Avenue exploded and sent sewage across California Avenue onto the Christmas Tree Farm (it was reported that \$50,000 was paid for damages) then continued downgradient one mile southwesterly before entering the basement of a home.

COMMENT: This is the kind of "layman's engineering" residents and property owners of San Martin understand.

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2. Will CCRWQCB and the County be legally responsible when this project exasperates the rate of stormwater runoffs?

3. DEPARTMENT OF ENVIRONMENTAL HEALTH, P. 14, ITEM #37a*.

"This septic system is adequate to serve a population of 80 persons per day maximum".

REBUTTAL: See Exhibit 3, E-mail dated October 21, 2011; whereby Rick Spohn asked Colleen Oda for an update because Ann Peden did not respond to his earlier inquiry.

"I recently discussed with Ann Peden your question of the septic system testing. She has recently returned from vacation."

"I have confirmed with Ann that percolation tests concluded in 2006 failed". "For the current application, new percolation tests were conducted and are currently under review."

After numerous attempts by PCGA to obtain test results for the "current application", a concerned citizen e-mailed County Counsel and asked if County Counsel could confirm whether or not a new percolation test was performed in 2011.

COUNTY COUNSEL: In her e-mail dated 07-24-12, Marcy Berkman writes about the May 18, 2012 Initial Study on page 19 paragraph 1 which discusses permeable soils; and the most recent percolation test (which PCGA was unable to obtain copies of). Ms. Codiga asked for assistance in obtaining a copy of the 2011 percolation test; due to the fact that Ann Peden confirmed that the 2006 percolation tests failed.

EVIDENCE: See Exhibit 4, whereby County Counsel states, "I was advised that the percolation language (for the Initial Study) was derived from the 2006 report and provided a copy of that report, which was forwarded to you in my last email. From the information I received, it would appear that this is the most recent report. (The 2006 report) (Exhibit 5)"

County Counsel proved that Colleen Oda gave misleading information to staff when they conducted the environmental assessment (EA); and used this same misleading information to adopt a Mitigated Negative Declaration.

At the July 31st, 2012 SMPAC Meeting held at the Grange Hall; as well as at the August 1, 2012 SCJPAC Meeting

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3. held at the Morgan Hill Community Center, Ann Peden displayed information on a screen, to wit: "Applicants must conduct new percolation tests". And, Planning Commission Hearing (scheduled for August 2, 2012) would be continued. (Exhibit 6)

At the August 1, 2012 meeting, a supporter of the Cordoba Project said, "We don't know what happened". Last week the County said that everything was approved and last night, they said we have to do another percolation tests. "How could that happen?" (Available on Video Tape) Answer: Neither the 06-14-06 or 11-08-06 percolation tests passed.

4. On P. 14, #37a*(i), Per Ann Peden, "The peak wastewater flows from the Prayer Hall resulting 300 + 300 linear feet of drain line, the Multi-Purpose Hall 700 + 700, and the Outdoor Restrooms 100 + 100, totaling 1100 + 1100."

"Peak wastewater flows" are used to determine wastewater discharge flows and cannot be calculated without knowledge of "hours of operation". (The formula for calculating peak wastewater flows is Gallons x Number of People x an eight hour period). Therefore, you must include hours of operation".

5. On P. 14, #37b, Per Ann Peden, "Up to four (4) special events exceeding 80 persons are allowed with the sizing of the septic system. These four (4) special events are allowed to augment their restroom capacity with portable toilets.

ARGUMENT: Per ARTICLE 2. ON-SITE DISPOSAL SYSTEMS, Sec. B11-65 "Every place where persons congregate, reside or are employed, and which cannot be connected to a sanitary sewer, **must** be provided with a water flush toilet sewage disposal system. (Exhibit 7)

Approval granted on August 2, 2012 must be temporarily rescinded. This Application cannot be legally approved until 1) percolation tests are conducted by a reputable environmental consultant 2) holes are excavated to a required depth of 15 feet and 3) wet weather soils testing is complete based on the time of year; and percentage of total rainfall must be calculated into the equation.

a) Jeremy C. Wire, Hydrogeologist, HG-93, with Geo-Consultants, Inc., conducted tests on August 27, 2007, i.e., Geology & Soils and Ground Water testing and concluded that, "There should be no adverse effects on the septic system from high ground-water levels".

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4. b) UNDER LIMITATIONS: Jeremy C. Wire wrote: "Geo-Consultants, Inc. does not guarantee nor warrant that a satisfactory septic disposal system can be developed at the subject site, or warrant or guarantee approval of a septic disposal system at the subject site by regulatory authorities".

c) On April 10, 2012, GeoConsultants, Jeremy Wire did an update concerning ground-water conditions since 2007, particularly as related to the proposed cemetery on the property. The focus of this updated study is to determine any possible adverse impacts that the cemetery might have on the relatively shallow ground water in the area relative to nearby individual water supply wells.

d) UNDER LIMITATIONS: Jeremy C. Wire wrote: Geo-Consultants, Inc. does not guarantee nor warrant that a satisfactory project can be developed at the subject site or warrant or guarantee approval of the project by regulatory authorities.

e) GeoConsultants maps depicting individual wells located south-westerly from subject property will be affected by storm water running downgradient from the site. And, the regional board approved this project using the aforementioned defective data. (**See Exhibit 8, GeoConsultants map showing wells located south-southwesterly from site**).

These properties have flooded year after year. The people residing contiguous to subject site experienced being inundated with stormwater completely surrounding their house.

5. 4. WASTEWATER DISPOSAL (SEPTIC SYSTEM), P. 14, 37a..

"This septic system is adequate to serve a population of 80 persons per day maximum".

REBUTTAL: See letter dated 03-20-12 sent to the Regional Water Quality Control Board, Dan Niles, from the South Valley Islamic Center as **Exhibit 9**.

P. 1, Item 1), "Waste water discharge from bathrooms and kitchen into the leach field". "The septic system for this project has been designed for a capacity of 90 people."

"Two separate pump systems have been designed and based on the field percolation rate and ground water test results, duly approved by the Santa Clara County Dept. of Environment Health for the project. Those are clearly shown

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on the project Site & Septic Plan provided by Carnes & Associates."

P. 14, 37(b), continued. "Up to four (4) special events exceeding 80 persons are allowed with the sizing of the septic system.

These four (4) special events are allowed to augment their restroom capacity with portable toilets.

NOTE: The Santa Clara County Wastewater Discharge Ordinance ARTICLE 2. ON-SITE DISPOSAL SYSTEMS, Sec. B11-65 (a) "Every place where persons congregate and which cannot be connected to a sanitary sewer, must be provided with a water flush toilet sewage disposal system." (Exhibit 7)

PCGA asked Ann Peden & Colleen Oda to send us a State Health & Safety Code that allows portable toilets for a religious institution facility where people gather. THEY IGNORED OUR REQUEST.

P. 14, P. 37(b) cont. (i.*) "If there are additional special events exceeding 80 persons, the septic system will need to be enlarged with more capacity both for the septic tank(s) and the leachfields".

NOTE: SEPTIC SYSTEM WILL BE ENLARGED. HOW? UPHILL? OVER ONTO THE CEMETERY? ONTO THE PARKING LOT? WHO APPROVED A SYSTEM FOR LOT 2 IN THE FIRST PLACE GUARANTEEING THAT LOT 2 COULD SERVE 80 PERSONS WHEN APPLICANTS HAVE NEVER PRODUCED A PASSING PERCOLATION TEST?

Besides, applicants reported to the regional board that the maximum occupancy was 90 persons; not 80 persons. (Exh. 9)

Colleen Oda, lead agent conducted an environmental assessment for 80 persons. However, in the 05-25-11 Planning Letter, Colleen calculated (using State Building Codes) a maximum occupancy of the 5000 s.f. Mosque to be 671; and the 5000 s.f. Multi-Purpose Hall at 245 (reduced to 2800 s.f. to 137 maximum occupancy). And an additional 150 children for weekend retreats; which totals 958. (Exhibit 10)

COLLEEN WAS LEGALLY BOUND BY CEQA RULES TO INCLUDE FUTURE GROWTH POTENTIAL OF THE 1/5000 & 1/2800 s.f. BUILDING; PLUS ADDITIONAL CHILDREN ON WEEKENDS FOR THE ENVIRONMENTAL ASSESSMENT (EA).

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7 - **See Exhibit 11**, dated August 2, 2012 Item #7, Planning Commission from Colleen Oda, Paragraph 5, "General Plan Policy R-LU 57 and Zoning Ordinance Code Section 2.20.010(D) can not be implemented for this project in a manner that limits the ability of the applicant to exercise religion, such as dictating residency requirements of patrons using the facility.

COLLEEN ODA CHANGED LANGUAGE THE FOLLOWING LANGUAGE.

R-LU 57. Residential, agricultural and open space uses are the primary uses. Commercial, industrial and institutional uses may be established only where they serve the needs of the resident population and result in a net overall reduction of travel demand.

Per Zoning Sec. 2.20 of the Zoning Ordinance, religious institutions shall be limited in scale, and local serving to the communities in which they are located.

NOTE: On P. 3, Item 5, 05-25-11 Planning Letter, Colleen Oda added for emphasis, "In this case the community **is** San Martin". Please provide written justification that demonstrates how the project meets these requirements.

What Colleen did was to add language to a Land Use Code that was adopted by the Board of Supervisors; however, it did not change the intent of the Code.

See Exhibit 10, the 09-19-11 Planning Letter, regarding Zoning Sec. 2.20, Colleen went even further and added, "and surrounding rural areas." That was a false and material misrepresentation. It is also called fraud.

Colleen Oda has no respect for the General Plan, Rural Land Use Codes, Zoning Codes or South County "SC" Joint Plan Codes that were specifically adopted to protect water quality in San Martin.

NOTE: In the 05-25-11 "Incomplete" Letter, Colleen Oda stated: "Please provide a written justification that demonstrates how the project meets these requirements."

Gary Carnes, Applicant, responded, "San Martin offers a relatively central location for the congregants coming from these communities."

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REBUTTAL: There is no Ordinance, Land Use or Zoning Code that "provides" for arbitrarily selecting a location that is convenient for congregants of religious institutions to meet.

In the local newspapers, applicants stated that congregants would be coming from South San Jose to Hollister. And 150 children from the Bay Area as guests on weekends.

Colleen Oda has no qualms about making up whatever reasons she needs to justify her decisions.

Colleen Oda's deviant **behavior** could potentially result in injury to thousands of people relying on well water.

See Exhibit 11, where Colleen became omniscient and took it upon herself to alter a County Policy, i.e., "General Plan Policy R-LU 57 and Zoning Ordinance Code Section 2.20.010(D) can not be implemented for this project in a manner that limits the ability of the applicant to exercise religion, such as dictating residency requirements of patrons using the facility. (Exhibit 12, General Plan - Local Serving)

Colleen Oda played Judge and Jury when she took it upon herself to add language to R-LU 47 & Zoning Sec. 2.20. If our County wants to change the codes; then Planning staff should ask the Board of Supervisors to amend the Codes. Colleen Oda has made a habit of citing the codes verbatim in her letters to applicant's; then totally reverses County Policies.

In San Jose Christian College v. City of Morgan Hill, the City denied Colleges application due to College's failure to comply with the City's application requirements.

College subsequently filed a complaint, the basis of which was that City's zoning process violated the First Amendment and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. Sec. 2000cc et seq. College also included that the CEQA regulations to College's application "substantially burdened" its religious exercise.

The Court concluded that the City's denial of College's application did not deprive College of its First Amendment Right to the Free Exercise of Religion.

Substantial Evidence Supported the City's Finding that College failed to comply with the CEQA Regulations on the fact tht College's "environmental analysis did not consider

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7 the foreseeable future development and potential impacts of such development..." In making its finding, the City took notice of the discrepancy between the plans submitted to the City and the far more grandiose plans touted in College's newsletters.

It was reasonable for the City to conclude that the truncated plans were proffered to the City to avoid addressing the environmental impacts of the more ambitious plans. (1200 students; instead of 400). And, City reasonably determined that college had failed to meet the requirements of its zoning ordinance and CEQA.

Likewise, Colleen Oda, in the 05-25-11 Planning Office Letter calculated (using State Building Codes) a total of 808 + 150 children on weekends; but only addressed environmental impacts for 80 persons; instead of 808 + 150 children on weekends which does not comply with CEQA Guidelines.

SVIC did not submit plans for two 5000 s.f. buildings and six bathrooms with multiple stalls for a maximum occupancy of 80 persons. NO REPUTABLE FIRM CONDUCTING EIR STUDIES WOULD CONDUCT A STUDY ON THIS PROJECT WITHOUT PERCOLATION TESTS RESULTS; IRRESPECTIVE OF FIRST AMENDMENT RIGHT. See Exhibit 16, GENERAL PLAN - LOCAL SERVICE.

AMPLE INFORMATION IS AVAILABLE TO EXPERTS REGARDING CODES ESTABLISHED FOR DEVELOPMENT NEAR LLAGAS CREEK.

Marcy Berkman, County Counsel, in her 07-24-12 e-mail states, "I was advised that the percolation language for the Initial Study was derived from the 2006 report. It would appear that this is the most recent report. (the 2006 report) (Exhibit 5)

CONCLUSION: Based on County Counsel's discovery, it would appear that the Environmental Assessment (EA) (Initial Study) and the Mitigated Negative Declaration have no value, and, as a result, becomes null and void.

THE SITE & SEPTIC PLAN BOLDLY FLAUNTS THE RESULTS OF THE 11-08-06 PERCOLATION TESTS RESULT FOR 100% EXPANSION OF LOT 2 AS ACCEPTABLE WITH HOLES EXCAVATED FROM FOUR FEET TO SEVEN FEET.

RLUIPA would work in favor of San Martin because of the substantial burden this project would bring to bear on our community; as well as thousands of people in three

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remaining located along the Llagas Creek/Pajaro River/Monterey Bay Estuary; then emptying into the Pacific Ocean.

College's case sets a precedence which is recognized as **authority** for the disposition of future cases. Case Law sets a precedence for all future litigation.

I. IMPROPER NOTICING OF PLANNING COMMISSION HEARING.

PCGA received an e-mail from Bill Shoe on June 12, 2012; wherein he stated, "Due to the requirements of Section B6 of the Ordinance Code, it does not appear possible to hold a hearing before the planning commission next month....the project will not be on a Planning commission agenda until the Sept. 6 meeting date, at the earliest. (**Exhibit 13**)

NOTE: Based on this information, people planned to go on vacation. Then all of a sudden, Colleen Oda sends out Notices regarding the August 2, 2012 Planning Commission Hearing.

At the July 31, 2012 SMPAC & the August 1, 2012 SCJPAC Meetings, **Ann Peden** (using a projector and large screen), Ann Peden advised applicants, to wit:

Planning claimed that they decided to omit the cemetery at this time - it would be discussed at a later date; but it was on the Agenda and it was approved without noticing requirements discussed by Bill Shoe. (**Exhibit 13**)
See Exhibit 14, Department of Planning & Development)

STAFF RECOMMENDATION. (**Exhibit 5**)

- ADDITIONAL PERCOLATION STUDIES NEEDED FOR EXPANSION SYSTEM
- RECOMMEND CONTINUANCE.

Once again, as a result of those two notices, people from San Martin did not attend the Planning Commission Hearing on August 2, 2012. A few people did go just to see how commissioners would announced that the SVIC Item on the Agenda would be continued.

THE BEHAVIOR OF BILL SHOE, COLLEEN ODA AND ANN PEDEN WAS IN VIOLATION OF NOTICING CODES REGARDING THE CEMETERY; DUE TO THE FACT THAT THE CEMETERY AREA WAS NOT POSTED WITH SIGNS EVERY 300' 20 DAYS PRIOR TO THE PLANNING COMMISSION HEARING. (**See Exhibits 12 & 13**).

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II. ZONING.

A. Dept. of Planning & Development; Special Area Policies.

1. **San Martin Industrial Use Permit Area**
2. Geohazard: County Landslide Hazard Zone
3. Habitat Conservation Plan
4. FEEMA Flood Zone: D (99.7%)

On P. 1, ITEM 3, of the 07-05-06 Planning Office Letter, Mark J. Connelly, Planner wrote "The subject property currently has a split zoning of RR-5ac to the northeast, and A1-5ac to the southwest.

Although the five-acre zoning is consistent with the General Plan, the proposed three lot subdivision creates irregular zoning that staff may require to be amended through the subdivision process.

1. Staff completely ignored the 3:1 Depth to Width Ratio for Lot Configuration. LOTS 1 & 2 conformed to the 3:1 ratio, but LOT 3 did not; therefore, the entire subdivision is illegal.

2. Moreover, staff completely ignored the over lay may designed for the corridor along Monterey Road which restricts development of subject parcel to **Industrial Use Permit Area Only**.

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III. GENERAL PLAN, ZONING, LAND USE & SOUTH COUNTY PLAN CODES.

On P. 3 of 12, Paragraph 1, Ranu Aggarwal, Planner, wrote "The property is located in the San Martin Planning Area with the southwestern portion of the property located in the **Industrial Use Permit Area** in San Martin...and to the northeast in the area of the proposed cemetery...and to the southwest in the area of the proposed prayer hall multipurpose hall and the parking.

1. PCGA e-mailed Colleen Oda informing her of this serious error made by Ranu Aggarwal, and asked her to correct the description. We never received an answer from her.

2. A few months later, a PCGA member met with Colleen

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10 and looked at the Site & Septic Plan; at which time Colleen was reminded that she was asked to correct the error. She acknowledged that the Cemetery was, in fact, located on the southwest side of the property on LOT 3; not on the northeast portion of the property along Monterey Highway on LOT 1. And, that the buildings were located in the Industrial Use Permit Area.

3. It is permissible to obtain a use permit to build a prayer hall in RR-5ac zoning; but NOT IN THE INDUSTRIAL USE PERMIT AREA.

QUESTION: Why has this project been allowed to linger for 6 years?

Applicants cannot build a commercial facility on LOT 1; **therefore, it doesn't pass zoning.**

It doesn't pass R-LU 129; or R-LU 57 & Zoning Sec. 2.20. Project must be sized & designed for 6000 people who can use the facility. Very few Muslims reside in San Martin. **NON-MUSLIMS CANNOT USE THIS FACILITY;** Therefore, SVIC can't locate in our Rural, Unincorporated Community. They must locate their facility within City Limits.

According to SC 17.6, if the Cities of Gilroy and Morgan Hill want this facility in South County, it must be located in one of their cities. Why are they ignoring this South County Plan Code?

SVIC has never conducted a passable percolation test or wet weather soils tests. Could it be that they know water can be found almost at ground level during winter months?

The following Codes are some of the easier Codes to read and comprehend. Staff didn't have a problem telling the Baptist Pastor that he could never pass a percolation test and that groundwater was too high. **Why are these same principals not applicable to the Cordoba Center?**

The most egregious violations committed by staff for lack of enforcement were:

1. Per R-LU 129, No new septic systems shall be developed in the highly permeable soils near Llagas Creek.

2. Per R-LU 144, Types of area which have been designated areas of particular concern for development are soils of high permeability.

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3. Per R-LU 145, "In the areas of soils of high permeability activities permitted would be limited to those uses which:

- a) do not provide the potential for contamination of surface runoffs;
- b) will not require additional septic systems;
- c) will not add potential for generating significant volumes of organic liquid wastes or nitrates to the ground water aquifers.

4. Per R-LU 116, "The County endorses the concept of community participation by residents and property owners in decisions affecting San Martin.

a) County staff interpret this code to have been satisfied by allowing a handful of residents speak for three (3) minutes at a community meeting and one (1) minute before the Planning Commission.

b) A PCGA member asked **Jack Bohan, our representative** on the Planning Commission for one hour of his time before the SCJPAC meeting. He said he did not have time because he had to take care of his elderly mother-in-law.

5. Per SC 18.10, "Issues of its future level of development and form of governance (for San Martin) should be resolved by community residents.

6. Per R-LU 124, Commercial Land Uses should be granted within the boundary of the San Martin Commercial Use Permit Area.

a) The Rocca Family had buyers who wanted to tear down the current building and re-build to same structure. It is zoned Commercial Use Permit Area and only have three (3) employees. The County said that they could not do so because they cannot have a commercial business on a septic system. (for 3 people; not 80)

IV. DEH REQUIREMENTS.

1. 07-05-06. Per Gwen Sax. "This parcel as a whole is in an area of potential high groundwater.
- 2, It appears to be in a low lying area adjacent to Llagas Creek. **(Exhibit 14)**
3. High groundwater usually located at less than 15 feet below the natural grade is generally a barrier to installation of a septic system.

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4. On 06-14-06, groundwater was found between 4 and 15 feet.
5. Soil profile locations where percolation tests were conducted was not excavated to the required depth of 15 feet.
6. All three lots will be required to have a wet weather groundwater soil profile due to the presence of high groundwater.

NOTE: After applicants received the aforementioned requirements, they performed a percolation test on 11-08-06 for 100% expansion of LOT 2; but excavated the holes to a depth of 4', 5', 5', 7', 7' and 7'. (See Exhibit 5)

THESE RESULTS WERE MADE A PART OF THE SITE & SEPTIC PLAN ON 10-05-10. COUNTY STAFF REVIEWED AND APPROVED THE 10-05-10 PLANS; AND THESE PLANS WERE USED TO APPROVE THE ENVIRONMENTAL ASSESSMENT (INITIAL STUDY) AND MITIGATED NEGATIVE DECLARATION.

CEMETERY. 02-11-11 Planning Office Letter, P. 8, paragraph 5.

The Cemetery is located in an area of high groundwater. Burials in this location could potentially affect ground water adversely. Provide an alternative to the currently proposed location of the cemetery in an area where groundwater issues do not pose a hazard to public health and safety. (Exhibit 15)

See 05-15-11 Planning Letter, P. 5, ITEM 22.

The World Health Organization (WHO) proposes that human remains must not be buried within 820 feet of any well. This distance may be greater if the site has a steep hydrological gradient or velocity of groundwater flow within an aquifer is rapid. THE PROPOSED CEMETERY DOES NOT MEET ANY OF THE ABOVE REQUIREMENTS.

Submit three copies of a hydro-geology report to determine the flow rate of the groundwater.

See 09-19-11 Planning Letter, P. 3, ITEM 10.

DEH is still waiting for guidance from the CCRWQCB regarding high seasonal groundwater concerns.

GENERAL PLAN - LOCAL SERVING (COMPARABLE FACILITIES) (Exh. 12)

1. Buddhist (VoVu) Church - Approved May 2009 (4.6 acres)

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1300 Church Ave. - 5000 sq. f. 50 persons, 8 caretakers, 6 events of 100 people.

REBUTTAL:

1. The Buddhist Church is located 3.2 miles south-east of the Cordoba Center.
2. They do not have 50 persons on site daily. They have one service per week on Sundays.
3. An unknown lady spoke at the Community Center and said that they bring in bus loads of people; and cars park on each side of the road causing a hazardous situation. THIS IS NOT TRUE. Automobiles are the only source of transportation.
4. This facility is not open from 5:00 a.m. to 11:00 p.m./ 7 days a week/365 days/year. Plus 150 children from the Bay Area every weekend for retreats. (See Exh. 16)
5. There is no mountain on one side of the site that causes storm water to flood hundreds of properties down gradient from the site.
6. This site is zoned RR5ac. NOT INDUSTRIAL USE PERMIT AREA restricted to minimal water usage; and minimal waste water disposal.
7. This site is not burdened with the County "SPECIAL AREA POLICIES"; NOR IS IT LOCATED IN THE COUNTY HAZARD LANDSLIDE ZONE OR FEEMA FLOOD ZONE 99917%).
8. THE BUDDHIST CHURCH IS NOT LOCATED ADJACENT TO THE LLAGAS CREEK THAT RECHARGES OUR WELLS; including the well used by the Buddhist Church. The Cordoba Project could potentially contaminate their well also.
9. This site is located 3.2 miles away from Llagas Creek; and is not burdened with permeable soil. Percolation tests passed for this facility. COUNTY COUNSEL CONFIRMED THAT THERE ARE NO PERCOLATION TEST RESULTS FOR THE CURRENT APPLICATION.
10. High groundwater is not a concern for this facility; and they don't plan on having an ablution facility and 4 acre cemetery. (See Exhibit 16)
11. IF COUNTY STAFF USED THIS FACILITY TO APPROVE THE

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CORDOBA CENTER, THEY DO NOT HAVE A GOOD COMMAND OF COUNTY POLICIES REGARDING DEVELOPMENT ADJACENT TO LLAGAS CREEK (TO PROTECT OUR WELLS), I.E., 1) NO NO NEW SEPTIC SYSTEMS TO BE DEVELOPED IN THE VICINITY OF LLAGAS CREEK DUE TO PERMEABILITY OF SOIL 2) MOVE CEMETERY TO ANOTHER LOCATION; DUE TO HIGH GROUNDWATER 3) COUNTY STAFF FOUND GROUNDWATER AT 4 FEET IN JUNE, AND 4) SAN MARTIN RESIDENTS MUST BE INVOLVED WITH DECISIONS REGARDING DEVELOPMENT IN SAN MARTIN.

2. THE MORGAN HILL BIBLE CHURCH facility was grandfathered in using antiquated land use rules because it was a saloon, dance hall; and whatever called the Silver Saddle.

1. THIS PROPERTY IS LOCATED IN MORGAN HILL; NOT SAN MARTIN. THIS IS NOT A COMPARABLE PROPERTY; NOT ZONED INDUSTRIAL. AND NOT BURDENED BY "SPECIAL AREA CODES" FOR SAN MARTIN.

SCOPE OF PROJECT.

1. The Cordoba Site is a 15+ acre parcel. NOT APPROXIMATELY 50 ACRES AS DEPICTED ON THE MAP SUBMITTED BY THE CONSULTING GEOLOGIST.

2. THIS 50+/- ENCROACHES ON SEVEN NEIGHBORING PROPERTIES. NEIGHBORS ASKED JIM BAKER, COUNTY GEOLOGIST TO SEND THE SOILS REPORT BACK FOR AN AMENDED UPDATE USING ONLY 15+ ACRES. MR. BAKER REFUSED TO DO SO.

QUESTION: What area of the 50 +/- acrege did the geologist use for his report?

3. See County Map showing Morgan Hill as Northern boundary; instead of County of Santa Clara Llagas Creek Park, 50.97 with Llagas Creek adjacent to Cordoba Site. (**Exhibit 16**)

NOTE: It would be interesting to know how County Staff; the Planning Commission Members; and the Board of Supervisors would have and will have voted if they owned property in San Martin or were residents of this community. And, more particularly, if they lived downgradient from the Cordoba Site. (Members of PCGA asked that we include this question)

SEE ATTACHMENTS I, II, III, IV & V; AND BY THIS REFERENCE MADE A PART HEREOF.

PCGA (appellants) reserve the right to supplement the appeal with additional grounds or facts for appeal at or before the hearing by the Board of Supervisors.