B/S Chair __ BD of Supv.

Clerk_



HAND-DELIVERED

South Valley Islamic Center

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Office of the Clerk Santa Clara County Board of Supervisors County Government Center, 10th Floor East Wing 70 West Hedding Street San Jose, CA 95110-1705

RE: Addendum to the Appeal.	the Cordoba Center Projec	t Conditional Use Permit (2145
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We would like to begin by clarifying what this appeal by the SVIC is NOT:

- 1) We are NOT appealing the Planning Commission's decision to unanimously approve our Islamic center on August 2, 2012. We are merely asking the Board to modify or remove some of the undluy burdensome and unnecessary conditions linked to that approval.
- 2) We are NOT seeking to change our permit application at the last minute to double the size and occupancy of our Islamic center. On the contrary, SVIC is only asking the Board to restore our Islamic center to the size and scope we originally requested in 2010. SVIC's plans were subsequently scaled back and conditioned at the request of the County staff, not SVIC.

SVIC is appealing simply to remove or modify the following Conditions of Approval for the Use Permit and the Architecture and Site Approval, as adopted by the Planning Commission on August 2, 2012. These conditions and proposed modifications are discussed below in Section I. Additionally, in Section II below, SVIC would like to bring to the Board's attention the disturbing, combined effect of these unnecessary conditions and why we believe these conditions in combination place an unconstitutional and substantial burden on our mosque. It is our position that while these existing conditions place a substantial burden on our congregation and our religious practices, the removal or modification of these conditions are not significant changes with regard to the overall project because these modifications are well supported by the existing environmental tests and studies and stay well within the scale, scope and nature of the project as initially proposed and tested.

I. REQUESTED MODIFICATIONS TO CONDITIONS OF APPROVAL

<u>Use Permit Condition #5</u>: Maximum capacity of the facility is 80 patrons including three (3) staff members. A total of up to three (3) single-day special events with maximum of 150 patrons attendance (including three (3) staff members) occurring between 8 a.m. and 10 p.m., are allowed per year.

SVIC requests that this condition be modified to remove the County's arbitrary limit of 3 single day events per year currently imposed upon the existing maximum occupancy limit of 150 people. Support for this arbitrary limit of only 3 events appears nowhere in the tests or studies submitted in this

case. On the contrary, the extensive record makes numerous references to dozens of various proposed religious events that would involve 150 participants, not just 3. See, e.g., "Notice of Intent to Adopt a Mitigated Negative Declaration" dated 6/6/12 and "Initial Study" dated 5/18/12. This is not surprising since, like other religious institutions, we cannot predict a set number of special events we would host each year because this number would fluctuate annually, particularly for special events such as weddings and funerals. The events involving 150 people or more, which were described in the Initial Study and other documents were meant to be illustrative in order to demonstrate the size, scope and nature of our project; they were never meant to be converted into an arbitrary limit on the number of such events. Despite this, Use Permit Condition #5 imposes an arbitrarily strict limit of only 3 such events without justification. The number of religious events we choose to celebrate with our full congregation should be decided by the traditions of our faith and the needs of our congregation. Thus, there is no reason to limit SVIC's religious festivals to just 3 events for a full congregation of 150 people any more than there is any reason to limit us to 4, 5 or 20 events.

There is also no need for SVIC to conduct any additional tests or studies for the Board to take this requested action because previously submitted data, underlying studies and the extensive record in this application all confirm that the facilities, land, adjacent highway, leach fields and septic system can accommodate a general capacity of 150 people, if not more. A review of this extensive record quickly reveals that the County's entire environmental impact analysis approving our proposed mosque assumed we would host dozens of events per year with 150 participants. Indeed, these same records also reveal repeated assumptions that even 200 people would attend some of these religious events, not just 150. See, e.g., "Notice of Intent to Adopt a Mitigated Negative Declaration" dated 6/6/12 and "Initial Study" dated 5/18/12. In light of this extensive record, there is absolutely no need for any more tests or studies to justify a decision by the Board to remove this arbitrary 3 day limit on our special religious events. Nor should anything in this appeal be construed as requesting or necessitating additional testing. Any such additional tests and studies would not only add to the already growing costs incurred by SVIC in this initial permit process, but would also cause even more delays to a process that has already been unduly delayed at great cost to our small religious congregation. I

Independent studies from State licensed engineers show that both the septic system and the local area traffic pattern can accommodate an attendance of 150 people at the proposed facility *multiple times* a week, not just three times a year. (See Exhibits E & H).

This 3 day limit on our maximum occupancy of 150 people is also quite unusual. Most maximum occupancy limits are a simple number, such as a maximum limit of 20 people on an elevator. Given its unusual nature, one needs to ask why the government would choose to impose such a complicated and unnecessary condition on our mosque? It is our understanding from discussions with County staff that this arbitrary number was imposed upon us due to the pressure placed upon the County

¹ Just before this appeal, SVIC received a bill from the County for over \$24,900, just to pay for the Staff's time spent reviewing our application, including time spent responding to the numerous, repetitive objections and inquiries filed by our opponents. See Exhibit A. This current bill does not include the enormous costs SVIC has incurred in expert tests and analyses and other administrative fees paid by SVIC as part of this permitting process as well as previous bills for Staff time. As a small, non-profit religious organization, these costs are a potential death-knell for our mosque and we in no way wish our appeal to be used as a justification to impose upon us further costs, delays or tests.

by our vocal opposition. This arbitrary 3 day limit was apparently an attempt to appease our opponents in the hopes that our opponents would accept our mosque if only we limited our religious festivals and special events to only 3 days a year. Pressure from our opponents is no justification for placing this substantial and arbitrary burden on our mosque.

Allowing SVIC to make full use of our facility by removing the arbitrary and unusual 3 day limit on our religious events will also not increase the burdens placed on the site because we do not expect this maximum turnout to be a regular occurrence. Like most churches and religious institutions, we do not anticipate a 100% turnout by our congregation on a daily basis. On the contrary, a more likely turnout would be for a fraction of our core members to attend once a week for Friday noon prayers. Even these most devout of congregants would not attend on a daily basis and when they do attend, would only stay for the brief prayer services. A larger turnout of 150 people would only be expected during special events, such as religious holidays, weddings, funerals, etc.. In this way, our facility is unlike an office building or apartment, where occupants come on a regular, daily basis and stay for extended periods of time. For these reasons, modifying the Condition to simply impose a maximum occupancy of 150 people will not significantly affect the burdens placed on the site. Moreover, removal of this arbitrary limit will not significantly change the scope or nature of our Islamic center because the type of events and *estimated* frequency of such events were already well described in the record, including the Initial Study.

Finally, removing this 3 day limit on our maximum occupancy limit of 150 people will greatly simplify several other Conditions of Approval for both the Use Permit and the Architecture and Site Approval. For example, modifying Use Condition #5 will also remove the need for Use Condition #6, as described below. These modifications, in turn, will also reduce the burden – both in terms of time and money – on our congregation.

Thus, we propose Condition #5 be modified to remove the arbitrary 3 day limit on our maximum occupancy limit of 150 people to read simply: "Maximum capacity of the facility is 150 patrons (including three (3) staff members)." This modification would also remove the time restriction for these 3 events (now limited to between 8am and 10 pm), which is consistent with the Planning Commission's decision to remove similar time restrictions in Use Condition #3.

<u>Use Permit Condition #6</u>: Temporary Event Permits and Tent Permits may be required by Department of Environmental Health and Fire Marshal's Office for the three special events that will accommodate up to 150 people.

SVIC requests that this burdensome and time-consuming condition -- which potentially requires SVIC to first obtain both Temporary Event Permits and Tent Permits for our arbitrarily limited 3 religious events -- be removed entirely because the modifications to Use Condition #5 above and ASA condition #1(b) (involving the size of the fellowship hall) below will remove the need for this burdensome condition. If Use Condition #5 is modified as requested above to remove the 3 day limit, it would render Use Condition #6 irrelevant because these conditions would no longer distinguish between events and non-events for purposes of the 150 person maximum occupancy rule. Our proposed modification to Use Condition #5 would also remove the need for SVIC to request Temporary Event Permits for our religious festivals, as is currently required by Use Condition #6, and lessen the

substantial financial burdens these conditions place upon our congregation and our religious practices. This modification will also greatly simplify SVIC's management of our mosque because we will only be required to ensure that no more than 150 people are on site at any given time, without the need for filing repeated Temporary Event Permits.

Moreover, as discussed below regarding ASA Condition #1(b), if the fellowship hall is restored to its original size of 5,000 square feet, there will be no need for us to seek and pay for Tent Permits for our religious festivals because the same number of people who fit into the 5,000 square foot mosque could also be accommodated easily in the 5,000 square foot fellowship hall, with no need for tents. Thus, SVIC requests that Use Condition #6 be removed entirely.

Use Permit Condition #7: No overnight accommodations are allowed.

SVIC requests that this condition be stricken entirely so as to permit SVIC's congregants to remain on-site overnight both for security purposes and to allow us to fully celebrate our religious traditions, just like any other church. One of the main reasons for this request is our growing concern regarding the security of our mosque given the vocal opposition to our Islamic center. First, we ask that the Board take notice of the fact that several mosques across the country, including some here in California, have been the target of various hate crimes, including vandalism and arson. [See Exhibit B press articles on mosque attacks] More recently, this Islamaphobia has grown increasingly violent, as demonstrated by the attack on a Sikh temple in Wisconsin (Sikhs are often mistaken as Muslims).

It is within this context that we have become increasingly worried as some of our opponents in South County have decided to openly oppose our mosque by challenging our religion. Though we recognize that not all of those who object to our Islamic center do so on religious grounds, it is undisputed that at least some of our most vocal opponents have objected to our plans because they object to our religion. This handful of critics have made outrageous claims against us, including suggestions that we are commanded by our faith to lie to non-Muslims, that our religion supports pedophilia and oppresses women, openly describing our religion as "evil" or by suggesting that somehow we are trying to impose Islamic Sharia law upon our fellow South County residents. [See Exhibit C collection of news articles, Friedman etc] We fear that this Islamaphopic rhetoric by these angry few may evolve from a mere war of words, to a more direct attack on us or our mosque as seen with other mosques across the country. Due to these serious security concerns, we feel that it is now necessary to provide around-the-clock security for our mosque.

In addition, we would also like to have the same opportunities enjoyed by other religious institutions by allowing congregants to stay on-site overnight for occasional prayers or retreats. It is not unusual for religious organizations, such as churches, to occasionally allow their facilities to be utilized overnight for events such as midnight masses, retreats, youth events or periods of meditation and fasting. SVIC would like to have the same opportunity to use our religious facilities in a similar fashion. Certainly, we do not plan for these over-night events to be in any way routine or large, but we would like the option of having occasional overnight visitors just as a church or synagogue would enjoy such benefits, both for religious and security purposes. For example, some Muslims choose to celebrate the last day of Ramadan (the fasting period) by staying overnight in their local mosques to pray and meditate during this holy period. These few congregants who choose to engage in this intense religious

meditation and prayer do not pay to stay overnight and only a handful normally choose to pray in this manner. By forbidding all overnight uses of our mosque, the County would deny our congregation the ability to practice our faith and Islamic traditions in this and other ways.

Finally, there is no reason to believe that occasional overnight events would place an undue burden on our facilities since the center's septic systems and leach fields cannot tell the difference between those who pray during the day, and those who pray at night. Traffic concerns would also pose less of a concern at night since there is far less traffic on the roads after hours. Thus, the primary limiting factor on the use of our facility should instead simply be the proposed general 150 person occupancy limit and Use Condition #7 should be removed.

Alternatively, SVIC requests that if the Board chooses not to remove this condition entirely, that this condition be modified to read as follows: "No commercial overnight accommodations allowed." SVIC, of course, has no plans to open a hotel on site, just as we had no plans to open a restaurant when we asked the Planning Commission to modify Use Permit Condition #3, which the Planning Commission voted unanimously to modify by forbidding only commercial food and beverages. For this reason, if the Board does not wish to strike this condition entirely, then SVIC proposes that the condition be modified in the same way that Use Permit Condition #3 was modified to simply exclude commercial overnight accommodation.

Architecture & Site Approval Condition #1(b): The following improvements are included with this approval for the religious institution and cemetery -...

(b) 2,800 sq.ft. multi-purpose hall building

SVIC requests that this condition be modified to restore our fellowship hall to SVIC's original plan to build two identical buildings - a prayer hall and fellowship hall -- each with the same size of 5,000 square feet. Compare Exhibit D-1 (SVIC's original site plan with two, identical 5,000 square foot buildings) with Exhibit D-2 (current site plan as modified by the County cutting the fellowship hall to just 2,800 square feet). SVIC requested these two, identical ranch-style buildings because we envisioned a simple system in which the same number of congregants could meet and pray in the mosque and then move to an identically sized fellowship hall for post-prayer events.

Our request for these two identically sized buildings was made after a thorough survey of the site during which it was determined that these two buildings could both be easily accommodated on the large 16-acre property. Indeed, all of our proposed structures, combined, affect less than 2% of the lot leaving the vast majority of the space open and natural to preserve the quiet, rural character of the site. Simply restoring 2,200 square feet to the already approved 2,800 square foot fellowship hall is not a significant modification to the project in light of the large size of the property.

We are also aware of no valid scientific reason to justify the County's decision to cut the size of our fellowship in light of these studies. Rather, it was made clear to us by County staff during our application discussions that the decision to cut drastically the size of our fellowship hall was an effort to appease those who object to our presence in San Martin. Thus the County's insistence that we cut the size of our fellowship hall was not a limitation placed upon us by the limitations of the site, it was a limitation placed upon our religious center by our opponents.

The result of the County's decision to cut the size of our fellowship hall prevents us from making full use of the facilities because the fellowship hall cannot accommodate the same number of people who meet to pray in our mosque. Instead, SVIC is now forced to provide temporary tents to accommodate the maximum occupancy of 150 people in the smaller fellowship hall. SVIC is also forced, by Use Condition #6, to apply for, wait for and pay for permits from the County for those otherwise unnecessary tents. Restoring the fellowship hall to its originally intended size of 5,000 square feet would remove the need for tents and County-approved Tent Permits when our congregants wish to celebrate our religious events with 150 people. Thus, we ask that ASA Condition #1(b) be modified to read: "(b) 5,000 sq.ft. multi-purpose hall building."

Architecture & Site Approval Condition #37(a): Sewage disposal conditions for the Prayer Hall and Multi-purpose Hall have been determined at 1100 plus 1100 lineal feet of subsurface drainline. The two drainline systems must be connected through a positive diversion valve. A 3000 gallon septic tank and 2000 gallon pump tank will be required. This septic system is adequate to serve a population of 80 persons per day maximum...

We ask that this condition be changed to reflect the modified occupancy rate by stating the well-established fact that our septic system is adequate to serve a population of 150 persons per day maximum, not 80. As we already described above, this modification is consistent with the previously submitted tests and studies conducted for this project, which show that the site can support 150 people without the need for the arbitrary 3 day limit. More importantly, the radically conservative assumptions that the County Staff used (after experiencing the pressure from project opponents that is described above) to calculate the capacity of our proposed septic system, simply cannot be supported by the presumably more-expert standards of the Regional Water Quality Control Board and the U.S. Environmental Protection Agency . See Exhibit E (September 12th Letter of SR Hartsell Environmental Health Consulting). Indeed, the analysis of the Regional Water Quality Control Board (See Exhibit F) shows that even accepting the County's radical assumption of a 15 gallons -per -person wastewater discharge and, even more radically, assuming that much discharge will occur on the site every day for one year, still the 150 person use we request "does not pose a threat to water quality." (Exhibit F-1 p3, last paragraph).

A separate analysis by the Central Coast Regional Water Quality Control Board studying the "worst case scenario" for the septic system indicates clearly that our modest mosque poses no environmental risk and describes the "potential effect on groundwater" as "negligible." See Exhibit _____ Central Coast Regional Water Quality Control Board letter dated May 16, 2012 at 2. This extensive analysis was conducted even before recent soil profile tests were conducted during which a second, 100% leach field was identified to serve as a reserve leach field. See Exhibit G (August 3rd Soil Profile test report). Thus, for all the reasons described above in support of the 150 occupancy limit, we ask that the last sentence of #37(a) be modified to read: "This septic system is adequate to serve a population of 150 persons per day maximum."

² 15 gallons x 150 persons = 2, 250 gallons per day of use. The Regional Board letter states that it modeled the larger flow of 2,500 gallons per day for one full year (which it accurately characterized as "for exceeding the actual design flow;" p.2, last paragraph), but still concluded that the "potential effect on groundwater elevation rise due to discharges to the leach field is negligible." (id., emphasis added.)

Moreover, SVIC and our entire congregation have a vested interest in ensuring that our own septic system is able to accommodate our needs since any septic problems would affect us directly and spoil our hard-earned house of worship. As a non-profit religious organization, we have no incentive to over-burden or abuse our facilities or this beautiful property. On the contrary, since acquiring the land we have done everything we can to improve its condition and ensure the environment is protected. As we have done throughout this entire process, we will continue to cooperate with County Staff to address any unexpected problems that may arise and will ensure we are in full compliance with any applicable laws. Thus, we ask that the last sentence of Condition #37(a) be modified to read: "This septic system is adequate to serve a population of 150 persons per day maximum."

Architecture & Site Approval Condition #37(b): 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. The portable toilets can only remain onsite for the duration of the event (i.e., delivered on Friday and removed the following Monday). Also, the required Temporary Event Permits must be obtained from DEH at least 2 weeks prior to the special event.

(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.

We ask that this condition be removed entirely because it is once-again based on the improper 3 event rule attached to our 150 maximum occupancy limit, which would be removed by amending the conditions described above to allow 150 people generally. Moreover, the number of events permitted in this Condition #37(b) is internally inconsistent with the current Use Permit Condition #5 (e.g., 4 v. 3 events), which further evidences the arbitrary nature of these event limits. Indeed, as described above, the County's own documents make numerous references to dozens of our proposed events to host 150 people, including proposed events to host 200 people. Yet, somehow, the County has chosen to arbitrarily limit our special events to just 3 in Use Condition #5 and to just 4 in this Condition. We argue no such artificial limit should be placed upon our mosque when there is no scientific basis for such restrictions.

As described above, the existing studies and tests indicate that the site and our facilities, including its septic system and our two 100% leach fields can easily accommodate 150 people on a general basis, if not more. Our restrooms are also more than sufficient to accommodate 150 people generally without the need for portable toilets, especially since not all of our 150 attendees will be using the bathrooms at the same time, assuming they choose to use the facilities at all during their short visits to our mosque.

Use Condition #11: An annual report assessing condition compliance regarding the religious institution and cemetery shall be prepared by the Planning Office and submitted to the Planning Commission for review for two (2) consecutive years following approval of the Use Permit....The report shall include information submitted by the property owner/operator as listed below:...

- Report of monthly attendance at the facility and a listing of all special events in excess of 80 persons, including the following information:
 - o Date, duration and name of events of each event (starting and ending time)
 - O Number of maximum patrons and employees that attended each event...

On a related housekeeping matter, we request that Use Condition #11 also be modified such that any ongoing monitoring reports concerning maximum occupancy reflect the modified occupancy limit of 150 people, not the previous "150 for 3 events" occupancy rule. This technical modification would ensure this condition is consistent with the other related conditions, as modified above.

We would also like to point out to the Board the over-reaching nature of Use Condition #11's reporting requirements. While we certainly understand that the County must supervise our facility to ensure we comply fully with the 150 person maximum occupancy limit, we question why the County is requesting that we identify the religious events we are celebrating during those periods. Whether we have 150 people at our mosque to celebrate the Islamic version of Christmas or simply to play Scrabble is irrelevant to determine whether SVIC is in compliance with maximum occupancy rules.

Despite these concerns, and given the tense climate surrounding our proposed mosque, we hereby voluntarily agree to report this religious information to the County when reporting our maximum occupancy data under this Use Condition. This pledge is fully consistent with our on-going efforts to demonstrate to our neighbors and the greater South County community that we are indeed an open and transparent house of worship with nothing to hide. As part of these outreach efforts, we will also continue to open our doors to the public to host various charitable events, open houses and interfaith dialogue events. For these reasons, we simply request that Use Condition #11 be updated to reflect the 150 maximum occupancy number.

II. POTENTIAL GOVERNMENT INTERFERENCE WITH RELIGION

Each of the County's existing Conditions of Approval above, when viewed individually, are unduly burdensome and unnecessary given the clear facts in this case, which show our Islamic center can easily accommodate 150 people, occasional overnight uses, and two identical 5,000 square foot buildings. What is more disturbing is the combined effect these strange and unjustified conditions have on our small religious institution; an effect that we argue unconstitutionally interferes with and substantially burdens our religious practices.

Currently, the County is telling our Muslim congregation that we will only be permitted full attendance of 150 people for 3, single day religious events a year. For all other religious festivals we must restrict our congregation's attendance to our core 80 members. As already discussed above, the tests and technical data in the extensive record so far indicate that our site can support 150 people and in some cases even assumed a higher maximum of 200 people. This same, extensive record also makes it very clear that this 3 event limit is a number imposed arbitrarily on our mosque by the government. In this appeal, we seek to lift the arbitrarily imposed limit of 3 special events for 150 people because this limit unnecessarily and substantially burdens our religious festivals and practices, as well as our personal rites such as marriages and funerals.

The County's existing, convoluted maximum occupancy rate – which only allows a maximum occupancy of 150 people for 3 single-day events per year – would force our religious leaders and congregation to choose only 3 of our faith's religious festivals to open to our full congregation, while restricting attendance at all other religious celebrations to only our core 80 members. This difficult

religious choice limiting the number of religious events our full congregation may attend becomes even more complicated if we choose to celebrate an event that includes our version of "midnight mass." Would that midnight mass count as one event, or two since it would carry into the next day? Would that midnight mass violate a time restriction or the ban on "overnight" uses? These complicated and difficult questions would not only have to be addressed by our religious leaders and accepted by our congregation, but we would also have to discuss these issues with the County when determining whether we have exceeded our arbitrary 3-event limit.

Not only would the County have to rule on these difficult religious festival issues for our mosque, but our mosque would also have to request and pay for advance permission from the County to hold these limited religious events. Use Condition #6 currently requires SVIC to request a Temporary Event Permit for those 3 religious festivals; an on-going requirement that not only takes time, but also will cost our small congregation a lot of money. As a result, we would not only have to hold fundraisers to pay for our religious festivals (coffee, cookies, etc.), but we would also have to raise money to pay the County's permit fees and await their decision on our application before we can host our limited religious events.

This Temporary Event Permit is not the only permit we would have to pay for and apply for before holding a simple religious event. The County's ASA Condition #1(b), cutting the size of our fellowship hall from 5,000 square feet to just 2,800 square feet, forces SVIC to use tents to accommodate the 150 people who wish to attend these limited religious festivals. The County's current Conditions of Approval recognize this tent problem because Use Condition # 6 requires SVIC to apply for Tent Permits before holding these religious events. This is yet another permit our small congregation will have to apply for, wait for and pay for before we can celebrate our limited 3 religious festivals. It also gives the County yet another means of supervising and monitoring our religious activities on an on-going basis, year after year at our expense; an act of interference that no church would ever tolerate or expect. The number of religious festivals we choose to celebrate with our full congregation should be decided by our faith and religious traditions, not by the government.

Not only will these additional permits place unnecessary costs and burdens on our congregation, but it may also open us up to additional public attacks by our vocal opponents. The County's burdensome and on-going permit process would provide yet another opportunity for those who do not want us to worship in San Martin to challenge our presence there, and would further interfere in our ability to celebrate our religious traditions freely. Given the long record of opposition to our current permit application, it is reasonable for us to be concerned that our future efforts to apply for County permits will be similarly contentious and extensive.

All of these complications, costs and government interference in our mosque can easily be avoided if the County not only modifies the 3-event occupancy rule, but also grants SVIC our originally requested 5,000 square foot fellowship hall and occasional overnight uses. Clearly it would be far easier and require less interference by the County in our religious affairs if the Board grants are requests in full. Our request, in sum, is simply a request to be treated as if we were a church. We do not seek to change any laws and we are not requesting any variances. We only wish that these laws and regulations be applied to us fairly in a way that protects our religious freedoms.

CONCLUSION

For these reasons, SVIC respectfully requests that the Board adopt our proposed modifications to the above listed Conditions of Approval in connection with our requested Use Permit and Architecture & Site Approval. Thank you.

Sincerely,

Sal Akhter

Project Manager

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Attachments