

County of Santa Clara
Department of Planning and Development



64492

DATE: September 25, 2012
TO: Board of Supervisors
FROM: Ignacio Gonzalez, Director
SUBJECT: Appeals of the Planning Commission decision granting approval of Cordoba Center Religious Facility

RECOMMENDED ACTION

Hearing to consider three separate appeals filed relating to the August 2, 2012 decision by the Planning Commission adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and granting approval of Use Permit, Architecture and Site Approval and Grading Approval for the Cordoba Center Religious Facility. Property of South County Partners, LLC. (Assessor's Parcel Number 779-06-002) (File No. 2145-11P APL (1, 2, 3)) (Supervisory District 1)

FISCAL IMPLICATIONS

There are no fiscal impacts to the General Fund as a result of this action.

CONTRACT HISTORY

There is no contract history associated with this action.

REASONS FOR RECOMMENDATION

The Administration recommends the Board of Supervisors declare its intent to deny each appeal with the exceptions noted below and refer to County Counsel for preparation of findings. This action would uphold the Planning Commission decision approving the Cordoba Center Religious Facility but modify Conditions of Approval #3, #5, #6 #7 and #37d approved by the Planning Commission, as set forth in **Attachment A: Staff Recommended Modifications**.

The subject of the public hearing is three separate appeals of the Planning Commission's August 2, 2012 approval of a Use Permit, Architecture and Site Approval, and Grading Approval, and adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Cordoba Center religious facility. All three appeals are included in **Attachment B: Appeal Requests**.

The Board of Supervisors' scope of review is de novo, meaning it may consider the entire scope of the application, including the proceedings and conditions applied by the Planning Commission in approving the project. The Board is not limited in its review by previous decisions or issues raised in the appeals.

PROPOSED PROJECT

The proposed project is a religious institution and cemetery (Zoning Ordinance Code Section 2.10.040, Table 2.20-2) located at 14065 Monterey Road, San Martin; in an unincorporated area of Santa Clara County (see **Attachment C**: Location Map). The property is zoned RR-5Ac-d1 and A1-5Ac-d1.

A Use Permit, Architecture and Site Approval, and Grading Approval are required to construct and operate the religious institution and cemetery. The Planning Commission's approval allows the property to be used for a religious institution and cemetery with the following improvements:

- A 5,000 square foot prayer hall building,
- A 2,800 square foot multi-purpose hall building,
- Outdoor play area and fields, including 2 patio picnic grounds,
- Two outdoor restroom structures totaling 450 sq. ft.,
- Approximately 2 acres of cemetery grounds, and
- A 59-space parking lot with access driveway.

In accordance with the applicant's proposed schedule for use of the facility, the maximum capacity of the facility is 80 persons including three staff members.

Up to three single-day special events not to exceed 150 persons are allowed per year. Because of conflicting Conditions of Approval adopted by the Planning Commission, staff is recommending the Board approve four single-day events. Attendance at special events cannot exceed 150 people and are allowed between the hours of 8 a.m. and 10 p.m.

As proposed by the applicant, the cemetery will have a capacity of 2,400 graves (1,200 deceased persons per acre). Individual graves will be five to six feet below ground level and include tombstones. The cemetery will have gravel pathways for pedestrian access and an access driveway for vehicles transporting the deceased for internment.

Per Use Permit Condition of Approval #7, pursuant to County Ordinance Division B-6, the applicant is required to obtain a Cemetery Permit from the Board of Supervisors prior to operation and establishment of the cemetery.

The Planning Commission's approval was granted pursuant to Sections 5.40.040 and 5.65.030 of the County Zoning Ordinance, County Ordinance Code C12-47 – Grading Ordinance, San Martin Integrated Design Plan, and South County Joint Area Plan. Discussion of the project's conformance with these applicable policies and codes is included in **Attachment D**: Planning Commission Staff Report. Copies of the San Martin Integrated Design Plan and South County Joint Area Plan can be found on the County website at www.sccplanning.org.

The Planning Commission adopted a Mitigated Negative Declaration and approved the project subject to compliance with conditions. Conditions of Approval are included in **Attachment E**: Project Conditions.

MITIGATED NEGATIVE DECLARATION

An Initial Study and Mitigated Negative Declaration (MND) were prepared by the County in accordance with the California Environmental Quality Act (CEQA). The MND identified environmental impacts with feasible mitigation measures to reduce potentially significant impacts to the environment to a less than significant level. A public review period of 30 days was available for members of the public and public agencies to review and comment on the MND. In addition, community meetings were held prior to the Planning Commission's August 2, 2012 consideration of the proposal before the San Martin Planning Advisory Committee (SMPAC) and South County Joint Planning Advisory Committee (SCJPAC).

The MND identifies environmental impacts that are mitigated to a less than significant level, including visual impacts and traffic impacts such as safety associated with ingress and ingress into the facility. The Planning Commission adopted the MND based on a determination that it was completed pursuant to CEQA and reflects the County's independent judgment and analysis. The Planning Commission considered all public testimony and comments received prior to adopting the MND. The MND is included as **Attachment F: Mitigated Negative Declaration**.

THE APPEALS AND STAFF RESPONSE

Three (3) independent appeals were filed regarding the Planning Commission's decision of August 2, 2012 to approve the project. The first appeal filed by Silicon Valley Islamic Center (the applicant) does not seek to overturn approval of the project but requests modification or deletion of eight conditions of approval applied by the Planning Commission. The other two appeals, filed by People's Coalition for Government Accountability and San Martin Neighborhood Association, seek to overturn the adoption of the MND and approval of the project.

The appeals are described below in the order received, followed by staff discussion and response, and a recommendation.

1. Silicon Valley Islamic Center (Filed August 16, 2012)

The appeal filed by the applicant, Silicon Valley Islamic Center (SVIC), is to modify or delete the text of eight Conditions of Approval, approved by the Planning Commission. The appeal does not seek to overturn the Planning Commission's approval of the project.

The Department's response to each of the appeal items is separately addressed below.

Silicon Valley Islamic Center Appeal Issue 1 - Use Permit Condition 5 – Modification of language allowing a capacity of up to 150 people to use the facility on any given day, including three (3) staff members.

The appeal states:

“We request that this condition be modified to allow a capacity of up to 150 people to use the facilities on any given day”

Staff Response and Discussion

The application submitted by the applicant on April 25, 2011, describes the proposed use of the facility by up to 80 persons at one time with up to 30 special events per year of up to 150 people. The applicant’s original project description and a description of the proposed number of people using the site are included as **Attachment G: Project Description**. Given this project description, the project was analyzed and conditioned (Use Permit Condition #5) for a maximum occupancy of 80 persons.

Importantly, the approved wastewater system was designed to handle a maximum of 80 persons. In addition, the potential environmental impacts of the facility were evaluated based on the original project description of up to 80 persons at one time with up to 30 special events per year of up to 150 people. The adopted MND includes this project description.

Per CEQA, a significant modification of the project, such as increasing the capacity of the facility on a daily basis would require a revised Initial Study and environmental analysis. Increasing occupancy beyond 80 persons on a daily basis would require expansion of both the septic tank and the leachfield area, necessitating additional soil tests to determine suitability of onsite soils in the expansion area.

This appeal request also raises the question of the appropriate scale of the project. In approving the Use Permit, the Planning Commission determined that an occupancy of 80 persons maximum for the Cordoba Center conforms to General Plan Policy R-LU 57:

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.

An increase in the size of the proposed Cordoba Center to 150 persons would require a re-evaluation of the project’s conformance with this policy.

For these reasons, staff advises that this appeal request be denied. Changing the maximum daily occupancy from 80 to 150 persons requires revisions to technical reports, additional on-site testing, additional environmental analysis, and a re-evaluation of the project’s consistency with R-LU 57.

Silicon Valley Islamic Center Appeal Issue 2 - Use Permit Condition 6 – Deletion of condition requiring a temporary event permit for the limited three single-day events per year with up to 150 persons. Use Permit Condition #6 refers to the requirement for temporary event permits and tent permits.

The appeal states, “We request the removal of this burdensome condition potentially requiring SVIC to obtain Temporary Event Permits for the limited three (3), single-day events because the modification of Condition #5 will remove the need for this condition.”

Staff Response and Discussion

Condition #6 states that “Temporary Event permits, and Tent permits may be required ... for the three special events that will accommodate up to 150 people.” In accordance with State and County codes, these permits are only required if the applicant proposes to invite the public on the property and serve food (necessitating a Temporary Event permit from the Department of Environmental Health) or if a temporary tent is proposed onsite (necessitating a Tent permit from the Fire Marshal’s Office). For example, a temporary event permit is required if food is prepared and served to the general public. If the applicant does not propose to serve food to the general public or erect a tent for a special event, these permits are not needed. For example, if the center hosts a potluck dinner for members only, no temporary event permit is required.

As a separate action, staff has recognized that the number of special events listed in this condition is inconsistent with other conditions of approval. In order to ensure that the language of this condition is consistent with other conditions, staff recommends modification of Conditions #5 and #6 to recognize that up to four special events a year are allowed under the Use Permit, consistent with Condition #37(b)

For these reasons, staff advises that this appeal request be denied. Staff does support modifications to Conditions #5 and #6 to acknowledge the allowance of 4 special events per year, consistent with Condition #37(b).

Recommended Revised Conditions #5 and #6:

- 5. Maximum capacity of the facility is 80 patrons including three (3) staff members. A total of up to ~~three (3)~~ four (4) single-day special events with maximum of 150 people in attendance (including three (3) staff members) occurring between 8 a.m. to 10 p.m., are allowed per year.***
- 6. Temporary Event permits, and Tent permits may be required by Department of Environmental Health and Fire Marshal’s Office for the ~~three~~ four special events that will accommodate up to 150 people.***

Silicon Valley Islamic Center Appeal Issue 3 - Use Permit Condition 7 – Deletion of condition in its entirety or, alternatively, modification of condition to prohibit only commercial overnight accommodations.

The appeal states “We request that this condition be stricken entirely or, alternatively, that it be modified to read as follows: “No commercial overnight accommodations allowed. We request this modification primarily in light of growing security concerns for our Mosque and to allow us to provide 24 hour security on site, among other reasons.”

Staff Response and Discussion

Staff did not intend to prohibit a caretaker’s residence through Condition #7 and recommends a modification to make this clear in the Conditions of Approval. However, the site plans approved by the Planning Commission do not show a proposed residence or caretaker quarters, nor has a proposed residence been evaluated by County staff. As the addition of a caretaker’s residence would entail a change to the site plan

and further evaluation of the necessary improvements and infrastructure (e.g., wastewater system) to support the residence, staff advises that a residence cannot be allowed without further review. Any applicant proposing a caretaker's residence would submit an application for Building Site Approval, per Section C12-300 of the County Ordinance which would allow staff to ensure the residence is reviewed and constructed in accordance with County requirements.

Staff does recommend a modification of Condition #7 to clarify that a caretaker's residence is not prohibited on the site.

For these reasons, staff advises that Condition #7 be modified to read as follows:

7. No overnight accommodations, except a caretaker's residence, are allowed.

Silicon Valley Islamic Center Appeal Issue 4 – Architecture & Site Approval Condition #1(b) – Modification of condition to permit two buildings each sized at 5,000 square feet.

Appeal states, "We request that this condition be modified to reflect SVIC's original request to have two buildings each with the same 5,000 square footage."

Staff Response and Discussion

ASA Condition #1 approved by the Planning Commission authorizes a 5,000 square foot prayer hall building and 2,800 square foot multi-purpose hall building. The proposed revision of this condition of approval would entail a modification to the site plan and the project description, as evaluated in the Initial Study prepared for the project. Proposed modification of the building size would also necessitate additional review of fire suppression requirements as established by the County Fire Marshal and review.

Because proposed modification to the building would entail additional review by County departments and additional environmental analysis, staff does not support this appeal request. Per Section 5.20.200 of the County Ordinance, if an applicant would like to expand a building, previously approved through a Use Permit and ASA process, they would submit a subsequent application for a modification of the Use Permit and ASA approval.

For these reasons, staff advises that this appeal request be denied.

Silicon Valley Islamic Center Appeal Issue 5 - Architecture & Site Approval Condition #37(a) – Modification of condition to acknowledge septic system has capacity to hold up to 150 persons per day maximum.

The appeal states, "We ask that this condition be modified to reflect the modified occupancy rate by stating that the septic system is adequate to serve a population of 150 persons per day maximum not 80."

Staff Response and Discussion

The required size of a septic system is dependent on the number of people using the system and the percolation rates of surrounding soil. The proposed onsite wastewater system – including the size of the septic tank, location and size of the leachfields, and soil and percolation tests – have been designed for a peak flow capacity of 80 persons. An expansion of the proposed septic system to accommodate 150 persons on a continuous basis has not been evaluated. The applicant’s position that the current proposed system would be adequate to serve 150 persons per day is incorrect. A system to accommodate 150 persons would be significantly larger and may require additional testing to verify feasibility and design.

For these reasons, staff advises that this appeal request be denied.

Silicon Valley Islamic Center Appeal Issue 6 - Architecture & Site Approval Condition #37(b) – Deletion of Condition 37(b) that allows up to four special events per year in excess of 80 persons, with the use of portable toilets. The appeal also requests that Condition #11 regarding post approval monitoring be modified to reflect an increase in occupancy to 150 persons as requested.

The appeal states “We ask that this condition be removed entirely because this condition is based on the previous 80/150 occupancy condition and its event v. non-event distinction, which would be removed by amending the conditions described above to allow 150 people generally”.

Staff Response and Discussion

This condition should not be removed if the Board supports the Planning Commission approved occupancy restrictions. As mentioned above in response to Appeal Issue 2, staff recommends modifying Conditions #5 and #6 to clarify that four special events of up to 150 persons per year are allowed.

For this reasons, staff advises that this appeal request be denied.

Silicon Valley Islamic Center Appeal Issue 7 – Architecture and Site Approval Condition #36d be modified to reflect approval of a reserve field.

The appeal states “SVIC also requests an update to the modified Architectural and Site Approval Condition #37d, which was modified by the Planning Commission on August 2, 2012 to require an “approval of [a] reserve field.”

Staff Response and Discussion

As referenced in the appeal, soil testing was completed by the Department of Environmental Health (DEH) on August 3, 2012, which determined the reserve field area was adequate to support a reserve septic system. Therefore, the deletion of the “approval of a reserve field” condition is consistent with the testing performed by DEH.

For these reasons, staff advises that this condition can be modified as proposed by the appellant as shown below:

37d. Prior to submitting approved septic design plans to obtain a septic permit, the applicant must obtain the field office supervisor's approval, signature and stamp on the septic design plans, and approval of reserve field. No septic permit will be issued unless the septic design plan has been approved by the field office environmental health specialist, and the district office supervisor.

Staff Summary Recommendations, Silicon Valley Islamic Center Appeal

In summary, staff recommends that the Board of Supervisors deny the appeal request by SVIC for five of the seven appeal points raised. Staff does support modification of Conditions of Approval #5, #6, #7 and #37d regarding the number of special events, the potential to construct a future residence on site, and acknowledging the completion of reserve field leachfield testing.

2. People's Coalition for Government Accountability Appeal

(Filed August 17, 2012)

The appeal submitted by the People's Coalition for Government Accountability (PCGA) requests to overturn the Planning Commission's decision to approve the Cordoba Center project. The sixteen-page appeal letter contains numerous statements and references several exhibits and attachments. The appeal letter does not include a numerical listing of appeal grounds but instead makes a series of statements regarding consistency of the project with County requirements and the processing of the application by County staff.

To assist the Board in describing the appeal and providing staff response, staff has identified eleven discussion areas raised in the appeal and provides a response where staff is able to discern the appeal issue raised. The discussion areas referenced below are demarcated on the appeal letter submitted (included in **Attachment B**).

People's Coalition for Government Accountability Appeal Issue 1 – Hours of Operation

The appeal states:

“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 part of the “Conditions of Approval”; and the Initial Study that was used to adopt the Mitigated Negative Declaration.” (People's Coalition for Government Accountability, Appeal, pg. 1.)

Staff Response and Discussion

The hours of operation of 6 a.m. to 11 p.m. were proposed by the applicant. At the August 2, 2012 Hearing, the Planning Commission modified Use Permit conditions of approval #3 to delete these hours of operation.

The Mitigated Negative Declaration prepared for the project assumed the hours of operation as proposed by the applicant (6 a.m. to 11 p.m.). Staff has not conducted additional environmental review to determine if the

change in the hours of operation (allowing nighttime use of the facility) would necessitate a revision to the Mitigated Negative Declaration.

As the applicant has not requested hours of operation beyond 6 a.m. to 11 p.m., staff recommends that the original condition of approval #3 be reinstated by the Board of Supervisors.

For these reasons, staff advises re-instating Use Permit Condition #3 establishing the proposed hours of operation as follows:

3. Hours of operation 6 a.m. to 11 p.m. daily.

People’s Coalition for Government Accountability Appeal Issue 2 – Land Development Engineering Drainage – ASA Condition #29

The appeal states:

“The detention system depicted on the Site and 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 storm water to gush onto neighboring properties that have historically suffered costly catastrophic flooding.” (Pg. 2)

Subsequent statements refer to flooding and reference conflicting information regarding direction of surface water flows from the site.

Staff Response and Discussion

As referenced in **Attachment H**, the County Senior Civil Engineer in the Land Development Engineering Office has determined that the project’s preliminary drainage system is feasible and provides for storm water control in compliance with County requirements. The proposed improvements to the site for the Cordoba Center involve an 11% increase in impervious ground cover over the site. To address new storm water runoff from these improvements, the proposed drainage system, which includes the installation of a detention basin, has been designed to reduce storm water flows from the site to pre-development levels, accounting for both a 10-year and 100-year storm event.

Within the appeal letter, questions are raised regarding the existing and future flow of surface water from the subject property. As referenced in the memorandum from the Senior Civil Engineer, surface water drainage onsite flows in a southwesterly direction. The proposed storm water system for the facility will capture and release storm water using this same natural flow direction. When evaluated from a regional level, surface water (within the larger Llagas and Pajaro watershed), flows in a southeasterly direction.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 3 – Dept. of Environmental Health – ASA Condition #37a – Adequacy of Percolation Tests

The appeal states:

“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 3) Wet weather soils testing is complete based on the time of year; and percentage of total rainfall must be calculated into the equation.” (Pg. 4)

Other statements are included on pages 3 through 6 of the appeal letter that question the adequacy of the percolation tests, including references to past correspondence with the County and the Central Coast Regional Water Quality Control Board (“CCRWQCB”) staff and technical reports prepared for the project.

Staff Response and Discussion

Percolation tests have been conducted for the proposed facility in compliance with County Department of Environmental Health Standards. The percolation tests, completed on 11/08/2006, demonstrate that there is an area on the property of adequate soil consistency and sufficient separation to groundwater to support an onsite wastewater system for the proposal. Site plans approved by the Planning Commission show the siting of a leachfield in the area tested.

Attachment I to this report consists of a full narrative with maps describing all percolation tests and soil testing conducted on the subject site and the results of these tests.

Specific responses to the three issues raised by CFGA are provided below:

“1) Percolation tests are conducted by a reputable consultant”

The Santa Clara County Department of Environmental Health’s “Percolation Test Procedures Consultant Conducted Tests” provides that consultants who conduct percolation tests must be a California Registered Environmental Health Specialist, a California State Registered Civil Engineer, or a California State Certified Engineering Geologist. The percolation tests conducted for the project were performed by Michael Batz, a California Registered Environmental Health Specialist.

“2) Holes are excavated to a required depth of 15-feet”

In accordance with County requirements, a 15 foot deep hole was excavated on the property in both the proposed leachfield area and the expansion area (two holes in total).

“3) Wet weather soils testing is complete based on the time of year and percentage of total rainfall must be calculated into the equation”

Santa Clara County Department of Environmental Health Wet Weather Policy requires that wet weather testing be conducted when a septic system and leachfield are proposed to be installed in an area that contains high groundwater. Portions of the Cordoba Center property are known to contain high groundwater.

In order to ensure that a proposed leachfield does not interface with groundwater, the Wet Weather Policy requires either percolation tests during periods of wet weather (normally during the winter and spring) or alternatively the preparation of a groundwater study by a qualified hydrogeologist evaluating the depth to groundwater.

A groundwater study included as **Exhibit H** in the Planning Commission Report (**Attachment D**) prepared for the project by Geoconsultants, dated April 10, 2012, which concluded that groundwater depth on the subject property ranges from 17 to 25 feet below ground, depending upon the topographic location. The groundwater report has been reviewed and approved by both the Department of Environmental Health and the CCRWQCB.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 4 – Dept. of Environmental Health – ASA Condition #37a(i) – Hours of Operation and peak wastewater.

The appeal states:

““Peak waster flows” are used to determine wastewater discharge flows and cannot be calculated without knowledge of “hours of operation.”” (Pg. 4.)

Staff Response and Discussion

As discussed in the response to PCGA Appeal Issue #1, the determination of peak wastewater flows is based on several factors, including the number of users of a facility and the duration in which it will be used. For the facility proposed in the application, the operator has submitted a specific schedule regarding how the facility will be used, for both prayer services and other activities. Although the condition of approval regarding the hours of operation was modified by the Planning Commission, this does not change the anticipated intensity of use of the buildings and wastewater system. However as noted under the response to People’s Coalition of Government Accountability Appeal Issue 1, staff recommends that the Use Permit #3 establishing the hours of operation be re-instated.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 5 – Dept. of Environmental Health – ASA Condition #37(b)

The appeal refers to Section B11-65 of the County Code which states: “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.” The appeal also refers to groundwater reports that state no guarantee or warrantee that a septic disposal system can be developed at the subject site.

Staff Response and Discussion

According to Dept. of Environmental Health testing and calculations, the proposed on-site waste water system which uses water flush toilets, can handle the proposed maximum occupancy of 80 persons. The peak maximum occupancy of 150 persons three days per year (or four, per the current staff recommendation) will be handled by a combination of on-site capacity and portable toilets.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Governmental Accountability Issue 6 – Future Growth Potential

The appeal states that future growth potential must be included in the Environmental Assessment, stating that CEQA rules necessitate an evaluation of future growth potential of the proposed buildings and additional children on the weekends.

Staff Response and Discussion

The Environmental Assessment prepared for the project evaluated the operation of the facility based on the project description provided by the applicant. This included a maximum occupancy of the buildings at 80 persons and use of the site as a youth retreat by children.

The Environmental Assessment prepared for the project did not evaluate future growth beyond the listed occupancy levels, as it was not proposed by the applicant and any proposed future expansion would necessitate modification of the Use Permit and preparation of subsequent environmental analysis and discretionary approval.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 7 – General Plan Policy R-LU 57 and Zoning Ordinance Code Section 2.20.010(D)

Pages 7-9 of the appeal letter questions the Planning Department’s method of interpreting and applying General Plan Policy R-LU 57 and Zoning Ordinance Section 2.20.010(D) regarding the local serving requirements for commercial and institutional facilities in the rural areas. The statements also assert that Planning staff has changed or added language to these policies and codes. The comment also references a court decision regarding San Jose Christian College and the City of Morgan Hill, and states that the environmental assessment for the project should be voided.

Staff Response and Discussion

The County General Plan and Zoning Ordinances contain policies intended to prohibit the placement of „urban scale“ commercial and institutional uses in rural areas, consistent with broader County growth management and agricultural preservation goals. The policies and ordinances most pertinent to the Cordoba center include General Plan Policy R-LU 57 and Zoning Ordinance Code Section 2.20.010(D) which state:

Commercial, industrial and institutional uses may be established only where they serve the needs of the resident rural population and result in a net overall reduction of travel demand for rural residents.

As documented in the Planning Commission staff report, the Planning Office has historically applied these policies and ordinances by evaluating the size, scale, and intensity of a proposed use. Thus, the Planning Office evaluates the size, scale and intensity of a proposed religious use to determine if it is sized to serve the needs of the rural population. The proposed Cordoba Center, as approved by the Planning Commission, is sized to accommodate a maximum occupancy of 80 people including 3 staff members, and allowed occupancy up to 150 persons including the 3 staff members during special scheduled events. This scale is commensurate with the scale of other religious institutions found in rural settings and consequently has the potential to reduce travel demand in the rural areas depending on the local demand for religious services.

Planning staff has not revised the General Plan policies, which can only be modified by formal action of the Board of Supervisors. The Board of Supervisors may interpret the referenced General Plan policies, independent of the recommendations of the Planning Department.

PCGA refers to *San Jose Christian College v. City of Morgan Hill* (9th Cir. 2004) 360 F.3d 1024 (*San Jose Christian College*), to support its position that the County has not taken into account foreseeable future development in the environmental assessment. The court in *San Jose Christian College* recognized that the College failed to comply with CEQA regulations because the environmental analysis did not consider foreseeable future development and potential impacts of such development where there was evidence in the record demonstrating the College’s larger development plans, which were not evaluated under CEQA. The distinction between *San Jose Christian College* and the Cordoba Center is that the Cordoba Center project at

some point in the future, as proposed and evaluated by the County for purposes of CEQA, is for a capacity of up to 80 persons on a daily basis. If the Cordoba Center requests to expand the project, then it would be required to apply for a modification of its Use Permit which would be subject to a supplemental environmental review.

For these reasons, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 8- Noticing of Planning Commission hearing

The appeal states the August 2, 2012, Planning Commission hearing did not conform to the noticing requirements of County Ordinance Code Division B6.

Staff Response and Discussion

County Ordinance Code Division B6-1 through B6-15 establishes a process for obtaining a cemetery permit prior to the establishment and operation of a cemetery. The noticing requirements for a cemetery permit are established in Section B6-5 and include mailing to neighbors and posting at the site and nearby public streets with signs. An application for a cemetery permit may be reviewed and approved in conjunction with an application for a Use Permit or at a later time. The applicant has elected to go through the cemetery permit process set forth in Division B6 after the Use Permit is approved. Therefore, the noticing requirements established in Section B6-5 are not applicable to the County’s consideration of the Use Permit. Use Permit Condition #9 approved by the Planning Commission requires that prior to the establishment and operation of the cemetery that the applicant obtain a cemetery permit. At that time the noticing requirements of Division B6 or its successor code will be followed.

For this reason, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 9 – Zoning for expired project (Subdivision)

Statements on Page 11 of the appeal letter reference the zoning of the property, the Industrial Use Permit area in San Martin, and states that the subdivision is illegal.

Staff Response and Discussion

The previous subdivision application for the property is no longer active, and is not relevant to the subject Use Permit approval.

For this reason, staff recommends that this appeal request be denied.

People’s Coalition for Government Accountability Issue 10 – Industrial Use Permit Zoning, processing of application, and compliance with South County policies and General Plan requirements.

Statements on pages 11, 12 and 13 of the appeal letter question the legality of the project due to the site’s location in an Industrial Use Permit Zoning District and questions why the project has been under consideration for six years. Statements are also included asserting that the project does not comply with policies regarding soil permeability and San Martin community participation requirements. The appeal references General Plan Policy R-LU 129 and the direction that no new septic systems shall be developed near Llagas Creek. Reference is also made to a previous property owner’s (Rocca family) request for permits for a septic system.

Staff Response and Discussion

The property is partially located within the San Martin Industrial Use Permit Area. This area within San Martin allows industrial type uses in addition to uses allowed within the base zoning district for the property which is Rural Residential and General Use. In both the Rural Residential and General Use districts, religious institutions and cemeteries are allowed subject to obtaining a Use Permit and Architecture and Site Approval.

This project has not been in process for six years as stated by the appellants. The applicant submitted a prior request for a three lot subdivision and religious facility in 2007 that was abandoned. The applicant's first set of plans for the current proposal (Use Permit and ASA for a religious institution and cemetery) was submitted on April 25, 2011.

General Plan Policy R-LU 129 provides that commercial uses generating high volumes of sanitary waste waters (for example, motels and restaurants) should not develop new septic systems in highly permeable soils of Llagas Creek. As shown in the soil profiles and percolation tests conducted for the project included in **Exhibit M** of the Planning Commission Report, and as discussed in further detail under the Response to PCGA Appeal Issue #3, the proposed septic system and cemetery for the project are located on low permeable soils and are sited more than 150 feet away from Llagas Creek.

The County does not have any knowledge of the correspondence referenced by the appellant regarding the Rocca family.

For these reasons, staff recommends that this appeal request be denied.

People's Coalition for Government Accountability Issue 11 – high groundwater

Statements on pages 12–16 of the appeal letter reference high groundwater on the property, and World Health Organization guidelines for the separation of human remains from wells. The appeal letter compares the proposed Cordoba facility with another religious institution in San Martin (Vo Vu Buddhist Facility) with respect to groundwater and other issues. Reference is also made to the geology report prepared for the project and area referenced in the report.

Staff Response and Discussion

As noted in the response to PCGA Appeal Issue #3, groundwater reports and percolation tests prepared for the project demonstrate that the permeability of soils is low and the separation to groundwater in the areas where the leachfields and cemetery are proposed are consistent with County and CCRWQCB requirements.

The CCRWQCB has reviewed the proposed cemetery and septic system and determined that neither will impair groundwater. This determination includes a consideration of the depth of the grave sites (5 to 6 feet), the proposed method of burial preparation and internment, and an estimated separation to groundwater of approximately 12 feet.

The CCRWQCB has confirmed that World Health Organization (WHO) guidelines for the separation of human remains from drinking water are not applicable to the Cordoba Center Cemetery. The WHO guidelines consider the internment of human remains in disaster situations, refugee camps or where there is shallow drinking water wells not constructed to adequate protection standards.

With respect to the referenced geology report, the geologic consultant submitted an addendum report included as **Exhibit J** in the Planning Commission Report which corrects the maps to clearly reflect the subject 15 acres lot.

For these reasons, staff recommends that this appeal request be denied.

Staff Summary Recommendations, People's Coalition for Government Accountability Appeal

Based on the responses to the appeal points discussed above, with the exception of a reinstatement of the Use Permit Condition #3 for proposed hours of operation from 6:00 am to 11:00 p.m., staff recommends that the Board of Supervisors deny the Appeal submitted by the People's Coalition for Government Accountability (PCGA). There is no information or evidence submitted within the appeal that invalidates the Planning Commission's determination that the project conforms to applicable County policies and codes and that the Mitigated Negative Declaration adequately evaluates potential environmental impacts. The Planning Commission staff report describes in more detail the projects conformity with all applicable County codes and policies.

3. San Martin Neighborhood Association Appeal

(Filed August 17, 2012)

The appeal submitted by the San Martin Neighborhood Association requests to overturn the Planning Commission's decision to approve the Cordoba Center project. The six page appeal letter contains three main reasons for the appeal: 1) Flawed County Processing of Project; 2) Failure to Follow County Plans, Policies and Regulations; and 3) Inadequate California Environmental Quality Act (CEQA) Environmental Documentation.

The main points within each of these reasons are summarized below followed by staff response.

San Martin Neighborhood Association Issue 1 – Flawed County Processing of the Project

Appellant asserts flaws in County processing because the San Martin Planning Advisory Committee (SMPAC), and South County Joint Planning Advisory Committee (SCJPAC) were misled by Planning staff's recommendation of a continuance of the project to the Planning Commission. The appeal states that both SMPAC and SCJPAC continued further deliberations on the project to a future date because the staff was planning to recommend a continuance to the Planning Commission. Because the Planning Commission did not adhere to the staff recommendation and instead acted on the proposed project, the appeal alleges SMPAC and SCJPAC were denied due process. The appeal includes several questions regarding the actions of County Planning staff, specifically the reasons for the recommended continuance and reasons why the Planning Commission instead approved the project.

Staff Response and Discussion

As set forth in the Planning Commission staff report, Planning Staff's recommendation to the Planning Commission was approval of the project. However, prior to the SMPAC and SCJPAC Committee meetings, the Department of Environmental Health recommended that the matter be continued to allow for additional soil-profile testing in the required leachfield reserve area for the project.

SMPAC and SCJPAC voted to continue the matter consistent with staff's recommendation. At the August 2, 2012 Planning Commission hearing, County staff provided a report to the Planning Commission regarding the staff's recommendation to continue the matter and reported out the recommendations from SMPAC and SCJPAC to continue the matter to the August meeting. The Planning Commission decided not to continue the matter and instead acted on the project. To address the Department of Environmental Health's concerns regarding the additional soil profile testing, the Planning Commission required additional testing for the leachfield reserve area as a Condition of Approval, which has since been performed.

For these reasons, staff recommends that this appeal request be denied.

San Martin Neighborhood Association Issue 2 - Failure to Follow County Plans, Policies and Regulations (General Plan R-LU 57, Zoning Ordinance 2.20, SC 17.6, Zoning Ordinance 4.10.080, General Plan R-LU 124, 126, 127, 136)

This appeal states that the project does not comply with County of Santa Clara policies and codes, including the General Plan, County Zoning Ordinance, San Martin Integrated Design Plan and Guidelines, South County Joint Area Plan and County Code of Ordinances, Division B6 (Cemeteries). The appeal specifically describes conflict with General Plan policy R-LU 57 and references requirements under the South County Joint Area Plan Policies to locate certain uses in urban areas rather than rural areas. The appeal also states that a new cemetery would conflict with the County Zoning Ordinance and references a previous proposal for a religious facility was denied on the subject property.

Staff Response and Discussion

Consistency of the proposed project with County policies and specifically the applicability of General Plan Policy R-LU 57 were addressed in response to the PCGA Appeal #7 in this report.

With respect to the South County Joint Area Plan policies, the Cities of Morgan Hill and Gilroy have been informed of this proposal, and staff has not received any comments from representatives from either city requesting that the use be relocated to within either city's jurisdiction. As proposed, the Cordoba Center is consistent with established County policies and codes, including R-LU 57, and the County does not have the authority to prohibit the proposed use submitted in the application in a rural area.

The County Zoning Ordinance provisions cited in the appeal regarding proposed cemeteries and the preservation of farmland (Zoning Code 4.10.080) do not apply to the proposed project as these provisions only apply to Agricultural Zoning Districts. The Cordoba Center project is located on property within a Rural Residential Zoning District.

In response to the reference to a previous proposal for a religious institution by another group, County staff has researched all available County records and have found no other applications received for other religious institutions on the subject site.

For these reasons, staff recommends that this appeal request be denied.

San Martin Neighborhood Association Issue 3 – Inadequate CEQA Documentation

Appellant indicates that the Initial Study is inadequate and fails to address potential significant hydrology and water quality impacts and land use impacts from the proposed cemetery. The comment references testimony provided at the SMPAC meeting regarding observations of high groundwater and flooding in the vicinity of the property and requests that an Environmental Impact Report (EIR) be prepared for the project.

Staff Response and Discussion

In accordance with the California Environmental Quality Act (CEQA), an Initial Study was prepared to evaluate the potential significant impacts from the project. Included in the environmental analysis was the preparation of several technical reports, including a traffic report and a hydrogeological report evaluating the depth to groundwater at the site. Based on the technical conclusions within these reports and other analyses, the Initial Study concluded that the project would not result in any significant impacts upon the environment. There has been no independent technical analysis or data submitted supporting an argument that the proposed project could have a significant impact upon the environment and there is no substantial evidence in the record to support an argument of any significant water quality impacts from the project.

Specifically, with respect to potential groundwater impacts, the proposed cemetery and on-site wastewater system for the Cordoba Center have been evaluated by the CCRWQCB which has determined that these facilities will not impair groundwater quality. The CCRWQCB determined that the depth to groundwater in the area for the proposed cemetery greater than 17 feet, providing a separation of 12 feet from the proposed graves and the groundwater table. Regional Board staff has confirmed that the determination of groundwater depth is based on a variety of sources, including (1) Santa Clara Valley Water District monitoring wells, (2) data from the existing groundwater well on the subject property, and (3) soil profiles conducted onsite in support of the proposed septic system. All three of these sources support a determination that the groundwater table is at least 17 feet below the surface at the proposed cemetery site.

With respect to flooding, as discussed in the response to PCGA Appeal Issue #2, the property is not located within a 100 year flood zone, with the exception of a portion of the northeastern area of the property surrounding the west branch of Llagas Creek. Due to the existence of clay soils on the property, localized flooding and ponding does occur on and around the property during rain events, as referenced in public comments received. However the CCRWQCB considered these conditions (localized surface water ponding due to clay soils) as part of its determination that the project will not impair water quality.

In accordance with the County drainage requirements, a storm water collection and detention system will be installed with the proposed improvements, and will be designed to decrease ponding and capture increased storm water runoff resulting from the installation of new impervious surfaces onsite. The storm water

system is designed to reduce storm water runoff rates to pre-development conditions for both a 10 year and 100 year storm. The proposed drainage system should alleviate the observed flooding and ponding.

There is no independent technical analysis or data submitted supporting a finding that the proposed project could have a significant impact upon the environment and there is no substantial evidence in the record to support a fair argument of significant effects associated hydrology and water quality impacts of the project.

For these reasons, staff recommends that this appeal request be denied.

Staff Summary Recommendations, San Martin Neighborhood Association Appeal *Based on the responses to the appeal points, staff recommends that the Board of Supervisors deny the appeal submitted by the San Martin Neighborhood Association. There is no information submitted within the appeal that invalidates the Planning Commission's determination that the project conforms to applicable County policies and codes. Furthermore, there is no substantial evidence in the record to support an argument of significant effects associated with hydrology and water quality impacts of the project. The Planning Commission staff report describes in more detail the projects conformity with all applicable County codes and policies.*

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

CONSEQUENCES OF NEGATIVE ACTION

If the Board of Supervisors denies the appeal by Silicon Valley Islamic Center modifying and deleting conditions of approval, the Use Permit and the Conditions of Approval will remain the same as approved by the Planning Commission.

If the Board of Supervisors grants the appeal by Coalition for Government Accountability, and San Martin Neighborhood Association, the Use Permit and Architecture and Site Approval, and Grading would not be approved and implemented.

STEPS FOLLOWING APPROVAL

The Clerk of the Board will notify the appellants, property owner, and the Department of Planning and Development of the Board's expressed intention and referral to County Counsel. County Counsel will return to the Board with findings to support the Board's expressed intent.

LINKS:

- Linked From: 64605 : Declare intent to grant or deny appeal filed by Silicon Valley Islamic Center, and refer to County Counsel for preparation of findings.
- Linked From: 64606 : Declare intent to grant or deny appeal filed by People's Coalition for Government Accountability, and refer to County Counsel for preparation of findings.
- Linked From: 64607 : Declare intent to grant or deny appeal filed by San Martin Neighborhood Association, and refer to County Counsel for preparation of findings.
- Linked From: 64608 : Declare intent to adopt or reject the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
- Linked From: 64609 : Declare intent to approve, deny or modify the Use Permit, Architecture and Site Approval and Grading Approval.

**Attachment A,
Staff's Recommendations to Cordoba Center Conditions of approval**

Modifications shown in strikethrough (deletion) and underline (addition)

Condition of Approval	Planning Commission Approved Language– (August 2, 2012)	Staff Recommended Modification
Use Permit Condition #3	Hours of operation 6 a.m. to 11 p.m.— (condition deleted)	Hours of operation including special events are restricted to 6 a.m. to 11 p.m. (condition re-established)
Use Permit Condition #5	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 people attendance (including three (3) staff members) occurring between 8 a.m. to 10 p.m are allowed per year.	Maximum capacity of the facility is 80 patrons including three (3) staff members. A total of up to three (3) <u>four (4)</u> single-day special events with maximum of 150 people attendance (including three (3) staff members) occurring between 8 a.m. to 10 p.m. are allowed per year.
Use Permit Condition #6	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.	Temporary Event permits and Tent permits may be required by Department of Environmental Health and Fire Marshal's Office for the three <u>four</u> special events that will accommodate up to 150 people.
Use Permit Condition #7	No overnight accommodations are allowed.	No overnight accommodations, <u>except a caretaker's residence</u> are allowed.
ASA Condition #37d	Prior to submitting approved septic design plans to obtain a septic permit, the applicant must obtain the field office supervisor's approval, signature and stamp on the septic design plans, and approval of reserve field. No septic permit will be issued unless the septic design plan has been approved by the field office environmental health specialist, and the district office supervisor.	Prior to submitting approved septic design plans to obtain a septic permit, the applicant must obtain the field office supervisor's approval, signature and stamp on the septic design plans, and approval of reserved field. No septic permit will be issued unless the septic design plans has been approved by the field office environmental health specialist, and the district office supervisor.

Attachment: Attachment A Staff Recommended Modifications (64492 : Appeals of the Planning