



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Catherine Kutsuris, Conservation & Development Director  
Date: February 3, 2009

Subject: Hearing on Joint Appeal of County Planning Commission Approval of Sikh Temple Expansion Project

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## **RECOMMENDATION(S):**

After accepting public testimony and closing the hearing on this appeal:

1. DENY, the joint appeal by Quail Hill Homeowners Association and El Sobrante Valley Planning & Zoning Committee; and,
2. FIND that on the basis of the whole record before the County, including public comments received, there is no substantial evidence that the project will have a significant effect on the environment and that the proposed Mitigated Negative Declaration reflects the County's independent judgment and analysis; and,
3. ACCEPT the recommendation of the County Planning Commission as contained in the attached resolution No. 9-2009
4. ADOPT the proposed Mitigated Negative Declaration for the purposes of satisfying the requirements of the California Environmental Quality Act (CEQA); and,
5. ADOPT the attached Mitigation Monitoring and Reporting Program; and,
6. APPROVE the project subject to the attached modified conditions approved by the County Planning Commission; and,
- 7.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **02/03/2009** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I  
Supervisor

Gayle B. Uilkema, District II  
Supervisor

Mary N. Piepho, District III  
Supervisor

Susan A. Bonilla, District IV  
Supervisor

Federal D. Glover, District V  
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2009

David Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

Contact: John Osborne,  
925-335-1207



## RECOMMENDATION(S): (CONT'D)

DIRECT the Community Development Division to post the Notice of Determination with the County Clerk.

## FISCAL IMPACT:

None. The staff time and materials costs of the appeal are borne by the Applicant.

## BACKGROUND:

**A.** The Sikh Center's congregation currently consists of approximately 500 families. The main service is held on Sundays with a second, smaller service held on Wednesday evenings. Use of the project site by the Sikh Center as a religious institution was originally granted through the issuance of a Land Use Permit by Contra Costa County in 1973 (LP 446-72). The approval at that time consisted of a temple building with associated parking.

In 1977 an amendment to the permit was approved by the County to include Phase 2, a Community Hall and a priest house; and Phase 3, a library, museum and guest houses, with a variance to the height of 66-feet for the dome that is now on the existing temple. It appears from the site plan Phase 2 and 3 were noticeably smaller building footprints than what is currently being proposed. The Sikh Center constructed the temple with parking but did not construct Phase 2 or 3. Currently on the site is a three-story, 21,800 sq. ft. temple with associated parking.

The Sikh Center has since determined that the existing facility needs to be upgraded and expanded to meet the current needs of the congregation. The Sikh Center had, in 2003 after establishing its long term goals, submitted an application to the County for its most pressing needs. This application was for the Community Center Building, now referred to as Phase 1.

At that time during public meetings at the local neighborhood groups a repeated question was asked about the scale, timing and nature of future development on the site. This led to the preparation of a Master Plan that showed proposed development of the site over the next twelve years, and in April of 2006 the Sikh Center resubmitted an application for the Master Plan that consisted of four phases as presented in this staff report.

## **B. Sikh Center's purchase of 1.6-acres of the project site from the East Bay Regional Park District in 2004**

There is approximately 1.6 acres at the south end of the project site that was owned by the East Bay Regional Park District as part of Wildcat Canyon Regional Park (See Attachment 2, Exhibit 4). This portion of land is also the only land of the project site that is located in the City of Richmond. In 2004 the Sikh Center acquired by quitclaim deed from East Bay Regional Park District this portion of land creating APN 419-180-020. According to the applicant the Park District did not want to continue maintaining land

failure issues on a small eastern portion of that land and therefore quitclaimed it to them in exchange for valuable consideration and being released from liability.

Phase 2 of the proposed project, the priest's residences, were located on this portion of the site but were withdrawn for the reasons discussed below under "Phase 2". Currently the only proposed construction on this portion of land is a retaining wall and the extension of the parking lot slightly into the hillside to the southeast of the existing temple.

### **C. Proposed Project**

The proposed project would amend the land use permit to allow for expansion of the facilities by approximately 69,500 square feet. Included in the proposed expansion are three new buildings and a two-story parking structure, all of which are proposed for construction in three phases over approximately twelve years (See Attachment 8, Sheet No. A-03, Phasing Plan). The project also includes a request for variances to building height and number of stories for Phase 1 and 4, as well as variances to retaining wall height, masonry wall height and a request to remove 25 trees, all as described below.

The proposed three phases are as follows:

**Phase 1:** Phase 1 of the project is a proposed Community Center ranging from two to four stories and 33,000 square feet that is connected on the down slope to the existing temple (See Attachment 8, Phase 1, Community Center). The new center would consist of a new dining hall, kitchen, child care center, offices, classrooms, library, assembly area, activity center, bedrooms and an outside play area on the roof. These are uses that, with the exception of the proposed weekday child care center and play area, are currently conducted in the existing temple which otherwise is for religious purposes.

As part of Phase 1 the applicant requests approval of variances to the height of the proposed Community Center (requests up to 57-feet for a proposed dome, where 35-feet is permitted) and up to 4-stories (where 2 ½ stories are permitted). Also requested are variances to the proposed retaining walls (8½-feet requested, where 3-feet is permitted) in the front and side yard setback of the entrance to the site as well as a variance to the height of a proposed masonry wall (up to 8-feet requested, where 6-feet is permitted) along a portion of the eastern property line to replace the existing white cyclone fence that separates the Quail Hill Condominiums from the project site.

Phase 1 also includes reconfiguration of parking areas in the northwest corner of the property and just inside the entrance to the site. In the upper-most parking area, located southeast of the existing temple the parking would be expanded slightly southwards onto a parcel that is located in the City of Richmond (APN 419-180-020). Condition of Approval # 39, as modified by the County Planning Commission, requires the applicant to submit earthwork plans to the City of Richmond for review and approval prior to construction of the new parking area in the City. The City has indicated that they are

satisfied with this condition of approval. This area is where a small landslide is located, which is proposed to be repaired as a separate project prior to the proposed Phase 1 improvements.

**Phase 2:** As previously noted this phase has been eliminated from the project at the request of the applicant in a letter to the County dated October 12, 2008. By way of background the applicant had originally planned Phase 2 which were two priests' residences on a portion of the site located in the City of Richmond but after receiving comments on the CEQA document regarding Phase 2 from the City and East Bay Regional Park District the applicant decided to withdraw that phase of the project. Phase 2 was not dependent on, nor was any other phase dependent on it. The letters from the City and the District (See Attachment 6, Pertinent Correspondence) were primarily concerned with Phase 2. The applicant has indicated that even with the removal of Phase 2 the overall timeline for the three phases would remain approximately the same; approximately 12 years.

**Phase 3:** Phase 3 is a proposed 6,000 square-foot Museum / Information Center that is 35-feet in height and two-stories with a basement, that is located along the eastern edge of the project site, about mid-way up the site (See Attachment 8, Phase 3, Museum/Information Center). The museum will be for the communication of the culture, literature and historical references of Sikhism and of their role in the development of California and the Bay Area. The facility will be open to the public. The museum/information center will include classrooms and small auditorium. Operating hours would be 9:00 a.m. to 6:00 p.m., Monday through Friday, and 10:00 a.m. to 4:00 p.m. on Saturday and Sunday. In addition, the basement will feature a central Emergency Communications Center for use by the Sikh Center during times of natural and personal disaster and is meant to serve the surrounding community as well. The Center would be staffed at times of special needs.

**Phase 4:** Phase 4 is proposed in two phases; Phase 4A is a two-level parking structure to accommodate the parking that will be needed when the parking spaces are removed to construct the Performing Arts Center, which is phase 4B. Construction of the parking structure would occur prior to construction of the Performing Arts Center.

Phase 4B: Phase 4B proposes a Performing Arts Center that is a 30,000 square foot; three-story building that contains a 400 seat auditorium with dance and music classrooms, painting and sculpture studios (See Attachment 8, Phase 4A & 4B Parking Structure & Performing Arts Center). The Performing Arts Center is intended to facilitate the development and advancement of the intellectual and performing arts of the Sikh community by providing a forum for lectures, readings, and music, dance and theater performances. The Performing Arts Center would be open to the public.

As part of Phase 4 variances are requested to the height of the Performing Arts Center up to 48-feet ( where 35-feet is permitted) for the dome and the number of stories up to 3-stories (where 2 ½ stories are permitted).

## Proposed Tree Removal

The project requests approval of a tree permit to remove 22 trees on the project site. Of those 22 trees, 9 are Monterey Pines and the remaining 13 are non-native trees, including palm and cypress. To mitigate for tree removal the applicant has agreed to Mitigation Measure 4.6 which requires the planting of at least 51 native trees on the site.

## **D. General Plan / Zoning Compliance**

### General Plan Compliance

That portion of the project site that is located in the County is designated Single-Family Residential-Low Density on the Contra Costa County General Plan Land Use Map (See Attachment 2, Exhibit 1, General Plan Map). According to the General Plan, the primary use of this designation is for detached single-family homes. However, churches and other similar places of worship are considered secondary uses that are generally compatible with this designation. The southwest corner of APN 420-080-025 is designated as Open Space. This small area is currently undeveloped and no development is proposed here as part of the project.

The project site is also located within the El Sobrante subarea of the Contra Costa County General Plan. Development of the proposed project would not conflict with any policies for this subarea.

### Other General Plan policies that relate to the project

In addition, there are two other policies in the General Plan that relate to the proposed project. The first is the Safety Element relating to geologic hazards on slopes and the other is the Scenic Route policy.

### Safety Element

The Safety Element of the Contra Costa General Plan includes a number of policies that require evaluation of geologic hazards for proposed land development projects in areas of potential hazards. The applicant has submitted a geotechnical report (BSK & Assoc., 2000) and an engineering geology report (Joyce Assoc. 2007) that identify potential geologic hazards. The applicant has agreed to mitigation measures (Mitigation Measure 6.1 through 6.4) that will reduce the impact to less than significant. The County Geologist has determined that the project does not conflict with the Policies set forth in the Safety Element of the General Plan.

Prior to the issuance of grading permits for each phase that is proposed in the County the applicant is required to submit complete geotechnical reports for the review and approval of the County Geologist to verify that the scope of investigation and the details of the corrective grading are appropriate for the project.

## Scenic Route Policy

The site is below the ridge crest, on a parcel that has been previously graded for the existing temple. The Scenic Route policy of the County General Plan identifies roadways which have scenic potential or connect to scenic areas. One of the main intents of the policy is to protect scenic views that are observable from scenic routes. In the project area these include San Pablo Avenue and San Pablo Dam Road. Due to its location on the hillside, topography, existing development and landscaping in the area, the project site is visible from both San Pablo Avenue and San Pablo Dam Road on an intermittent basis only. In addition, the applicant proposes to construct the buildings so that they are tucked into the hillside.

## Zoning Compliance

The zoning for the site is R-7, Single-family Residential, 7000 square foot minimum lot size (See Attachment 2, Exhibit 2). This zoning district allows for Churches, Community Buildings of a quasi-public nature such as the museum (Phase 3) and the Performing Arts Center (Phase 4B), upon the granting of a Land Use Permit. Also, as previously noted the project requires several variances including the height and number of stories of Phase 1 & 4 along with the height of proposed retaining walls and masonry wall.

## **E. County Planning Commission Hearings**

On October 28, 2008, the County Planning Commission (CPC) held a hearing on this project during which testimony was taken from the applicant and the public. Since there was not enough time to hear testimony from all of the interested parties, the Commission continued the hearing to November 18, 2008.

At the November 18, 2008 hearing, after evaluating the project in its entirety, including all public testimony and evidence in the record, the Planning Commission unanimously voted to approve the project as it is proposed by the applicant. This included the approval of the requested variances to the height and number of stories on Phase 1 and 4, as well as variances to retaining wall and masonry wall height with a tree permit as follows:

Phase 1, the Community Center, requires the approval of variances to the height up to 57-feet (where up to 35-feet is permitted) for a proposed dome, and up to four-stories (where 2½-stories are permitted). The Commission determined that because of the site's topography which is steep and the applicant made the effort to excavate the building down into the hillside rather than build it up from the existing grade, the variance request for height and number of stories should be granted for Phase 1. Staff had recommended that certain changes to the building be made so that the height and number of stories be more in compliance with the zoning requirements (See Attachment 9, Staff Study #2 for a comparison of Phase 1, "Plan submitted by Applicant" [this is what the Commission approved] and below it on the same page is what staff recommended in

"Staff Study". The same was the case for "Staff Study #3" in Attachment 9).

Phase 4B, the Performing Arts Center also requires the approval of variances to the height up to 48-feet ( where up to 35-feet is permitted) and up to three stories (where up to 2½ stories are permitted). Similar to their approval of variances for Phase 1, the Commission determined that because of the topography of the site the variances that were requested should be approved.

On November 25, 2008 the County received a joint appeal letter from the Quail Hill Homeowners Association and the El Sobrante Valley Planning & Zoning Advisory Committee (See Attachment 4, Appeal Letter). The appeal points and staff response are listed below.

#### **F. Review of Appeal Letter.**

**Appeal Point #1; Project Entrance** - Summary of Comment: The existing project entrance on Hillcrest Rd. has no left turn lane and, according to neighbors, temple traffic backs up around the entrance to the site, which raises safety issues such as impeding emergency traffic.

**Staff response:** A traffic analysis was prepared by Environmental Science Associates (ESA), an environmental consultant that was retained by the County, and it did not indicate the need for a left turn lane at the entrance to the site. The traffic analysis was reviewed by the County Transportation Planning Section of the Department of Conservation and Development and found it to be adequate. According to the analysis there is little evidence of existing stacking on Hillcrest Road at the project site entrance and Sunday peak period access is adequate to handle existing traffic and the level of additional traffic as a result of the project would not require a separate turn lane.

**Appeal Point #2; Traffic / Hillcrest Road** - Summary of Comment: The traffic volumes provided are understated due to the applicant's contention that no new members will be attracted to the facility. Appellants believe that the expansion, in particular the new 400-seat performing arts center (Phase 4B), will attract new members as well as non-members who will want to attend various performances. This, along with the expansion of the on-site school, will increase traffic and impact the intersection at Hillcrest Road and San Pablo Dam Road.

**Staff Response:** The traffic analysis included all phases of the project, including the 400-seat Performing Arts Center. The trip generation methodology and assumptions presented in the study were determined to be adequate by the County Transportation Planning Section of the Department of Conservation and Development. And, according to the traffic analysis the buildout of the full project (Phases 1 through 4) would not generate the 100 AM or PM weekday peak hour trips necessary to initiate a full traffic study. In addition, according to the analysis the project would generate trips that are cumulatively insignificant and would not contribute to delays that would be apparent to



the average driver. The Performing Arts Center cannot operate concurrently with the temple services.

Regarding the school, there is currently a Sunday school conducted during services. These classes are held in the prayer rooms that are located on the balcony level of the existing temple. Since there is not sufficient space in these rooms to conduct the classes properly and this is not an appropriate location for the classes, the applicant proposes nine new classrooms in Phase 1 to accommodate the existing Sunday School – no expansion of the Sunday school attendance is proposed, and Condition of Approval #12 does not permit other schools to operate on the property with this permit.

**Appeal Point #3; Pedestrian Safety/Parking Issues** - Summary of Comment: As an indication that existing on-site parking is inadequate, neighbors note that during Sunday services temple attendees park in various lots along San Pablo Dam Road. There is an existing church at the corner of Hillcrest and San Pablo Dam Road that also has parking issues. There is a concern that these parking problems will worsen with the expansion and that pedestrian traffic on Hillcrest will increase further. Also, there are limited pedestrian improvements on Hillcrest and the project studies to date fail to either identify or address pedestrian safety issues.

**Staff Response:** First, the pedestrian safety issue; Most of the congregation does not walk to the temple, but rather drives to the temple and parks on the temple site to attend services, so there is no need for off-site pedestrian facilities. As far as on-site pedestrian facilities the project includes internal walk ways to the temple from the on-site parking areas.

Second, the parking issue; Under existing conditions there are 210 parking spaces on the project site. The project applicant provided parking survey data for the months of February and March 2007. The data indicated that the peak hour of project parking demand occurred between noon and 1:00 p.m. on Sundays. The Sunday peak numbers ranged between 87 spaces and 137 spaces for a Sunday average parking demand of 115 spaces. An additional Sunday parking survey was conducted by the environmental consultant for the project on February 10, 2008, and documented the peak parking demand at 135 spaces.

In the case of churches, it has been the County's policy to evaluate the parking based solely on the seating capacity of the sanctuary rather than combining all the uses on the site; the Jewish synagogue in Walnut Creek that was approved in the early 2000's being an example (County File # LP 01-2112).

The Sikh worship hall, which has a gross square footage of 5600 square feet in the assembly area, is located in the existing temple and will remain at this location and this size. The parking requirements for this type of worship hall are found in the County code under "Assembly halls without fixed seating" and the required number of parking spaces is one space for each forty square feet of gross floor area. Given the gross square footage

of the assembly area, the required parking for the site is 140 parking spaces (5600 square feet of gross floor area for assembly divided by 40 square feet of gross floor area for assembly = 140 parking spaces).

The other use on the site that would potentially draw as many people is the proposed Performing Arts Center in Phase 4. The proposed seating for the Performing Arts Center is 400, which under the County code would require 100 parking spaces (Under the code theaters require one space for each four seats). Therefore the parking requirements for the site are driven by either the assembly area, which currently exists and would not be expanded under the proposed project, or Phase 4, the Performing Arts Center. It is staff's recommendation that the parking for the site, for the most part, should be limited to one activity or the other but not to both. The Sikh Center has signed a resolution that states that during the time of the primary religious services being held at the temple there will be no other public activity or program scheduled except for Sunday school, child care and operation of the Information Center (Phase 3). The project is also conditioned to prohibit concurrent public events on the site.

Therefore, based on the County's practice of determining parking space requirements for churches the required parking for the project site is 140 spaces. Staff recommends that 11 parking spaces be added for Phase 1 due to potential increase of parking for the people who may use the bedrooms in the Community Center. This brings the required parking for Phase 1 to 151 parking spaces.

Phase 3 is proposing to add 13 spaces for the Museum/Information Center which would bring the parking to 164 spaces for Phase 3. This is a reasonable proposal since, although it is not the most intense use on the site, it may bring additional people to the site during the main service, since it is one of the uses that are open during services. Therefore staff is recommending that the required parking for Phase 3 is 164 parking spaces.

Phase 4 would add a Performing Arts Center and by doing so eliminate up to 25 parking spaces that were put in at the northeast corner of the site for Phase 1. Prior to the construction of the Performing Arts Center (Phase 4B) these parking spaces would be replaced with a two-level parking structure (Phase 4A) that staff is recommending accommodate at least 36 spaces. This would accommodate the 25 spaces that were lost with the building of the Performing Arts Center and provide an additional 11 spaces for the additional ancillary uses of the site. This would bring the required parking for Phase 4 to 175 parking spaces (164 parking spaces – 25 parking spaces = 139 parking spaces + 36 parking spaces in the two level parking structure = 175 parking spaces). Staff is recommending that the two level parking structure be allowed for Phase 4 to accomplish this. The following parking schedule per Phase is recommended:

- Phase 1 parking – 151 parking spaces,
- Phase 3 parking – 164 parking spaces,
- Phase 4 parking – 175 parking spaces.

In addition the Planning Commission recommended a condition of approval that requires the project to paint some of the existing curbs red in the immediate surrounding neighborhood to prevent parking.

**Appeal Point #4; Construction Traffic** - Summary of Comment: In addition to temple construction there is projected to be a two year East Bay Municipal Utility District (EBMUD) Shapiro Reservoir project above the temple site that, according to the appellants will add construction traffic to Hillcrest Road. There is a concern that construction traffic will have a serious impact on the road, including congestion, safety, structural and noise impacts.

**Staff Response:** Condition of approval # 26 requires the applicant to submit a traffic management plan prior to the issuance of construction permits. The purpose of the plan is to mitigate traffic congestion during construction, which would include the EBMUD project referenced above. Some of the elements of the plan include scheduling of major truck trips and deliveries to avoid peak hours, detour signs if required, designated construction access routes and the applicant has agreed to Mitigation Measure 15.1 that requires them to monitor and correct any damage to the surface streets caused by haul trucks.

**Appeal Point #5; Drainage Plans** - Summary of Comment: Currently, there is a metal plate with no side panels at the entrance to the site that needs to be fixed. This should be done before more traffic is added to Hillcrest Road.

**Staff Response:** The Planning Commission brought up the issue of the metal plate located at the western corner over the culvert. They added a condition (COA#33A) requiring the applicant to replace and reconfigure the metal grate area, subject to the review of the Public Works Department. The applicant is regrading the entrance as a part of the improvements proposed in Phase 1 and will be reworking the project entrance as a part of the overall improvements, all subject to the review and approval of the Public Works Department.

**Appeal Point #6; On-site School** - The appellants request clarification of the school that is proposed for the project site and also clarification on the size of the proposed child-care facility which is to be run during the week, since this may have an effect on the traffic to and from the site.

**Staff Response:** First the issue of the on-site school; See Staff Response to Appeal Point #2.

Second, the size of the child-care facility, according to the plans submitted by the applicant, is 1450 square feet, and the County Transportation Planning Section determined that, at this size, the projected traffic volume for the project does not exceed 100 Peak Hour trips, which would require a Measure C traffic study.

**Appeal Point #7; Landslides** - Summary of Comment: Landslides are a major concern of area residents and studies should be done now, instead of prior to each phase, to address slope stability on the site and surrounding area, since the area has a history of landslides. The appellant points to several landslides in the area that have caused damage in the past.

**Staff Response:** The appellants suggest that there are deficiencies in the analysis of landslide hazards presented in the CEQA document, and that an Environmental Impact Report would provide the thorough analysis requested by the appellants. The appellants go on to point out that there is a long history of landslide-related problems along Hillcrest Road and elsewhere on the flank of San Pablo Ridge.

Staff is in agreement with the viewpoint that the stability issues along Hillcrest road are substantial, and that there are many landslides that have caused structural damage, particularly during unusually wet winter rainy seasons. Many of the projects cited by the appellants are older projects that were constructed without the benefit of a thorough analysis of landslide hazards. The corrective grading for those projects, while it may have been consistent with the standard of care of the time, do not match current standards. A more recent project that was successfully constructed on a site mantled by landslide debris is the Hillcrest Heights Subdivision (SD7582) which was constructed immediately downslope of the Quail Hill project.

In summary, a report with detailed geotechnical recommendations is not needed for approval of development, and would be invalidated by the passage of time. In this case the applicant has submitted an engineering geologic and a geotechnical report that were reviewed by the County Peer Review Geologist; and both the engineering geology and geotechnical reports submitted by the applicant, along with evidence of peer review, were incorporated into the Mitigated Negative Declaration.

The CPC fully considered the comments of speakers who expressed fears regarding stability of the site and with their approval they added Condition of Approval (COA #34A) which ensures that foundation pier holes will be inspected by the project geotechnical engineer. The intent of the COA is to provide documentation that anticipated pier depths are achieved, and that the soil and rock conditions encountered during drilling closely match anticipated foundation conditions; or that appropriate changes are implemented in response to exposed conditions.

**Appeal Point #8; Geotechnical Reports on Landslides** - Summary of Comment: The decisions on the current on-site geology are based on old reports (BSK & Associates, 2000 & Joyce Associates, 2007) and therefore new reports should be submitted before any approvals are granted.

**Staff Response:** The appellants cite a year 2000 geotechnical report issued by the applicant's geotechnical engineer, BSK & Associates, noting that it has been nine years

since the report was issued. This comment also references an engineering geology report prepared by Joyce Associates (2007). The thrust of the appellants comment is that due to the size and complexity of the Sikh Temple project and the impacts of the project on neighbors, a detailed geotechnical report is needed now (prior to approval of the project by the Board of Supervisors). The comment also notes that the engineering geology report issued by Joyce Associates was not intended for the issuance of construction permits. The appellants also note that there will be no further public hearings on the project, implying that the public would not have the opportunity to comment on the adequacy of the report.

It should be recognized that the BSK & Associates report was a foundation investigation for the first phase of construction that was contemplated by the applicant in the year 2000. The design of the project has evolved in the intervening nine years, the California Building Code adopted in 2007 by the County has changed the seismic design parameters, and the Joyce Associates engineering geology report has provided additional information of the scope and direction of the investigations that have been recommended for each future phase of construction. In summary, the foundation investigation of BSK & Associates contains much valuable information (e.g. logs of borings, engineering properties/strength characteristics of the existing fill and bedrock. However, it will need comprehensive updating prior to issuance of construction permits. The proper time for preparation of the update is when the Phase 1 project is following project approval and during the time frame when design work for that Phase is underway. Detailed design studies are not needed for CEQA purposes, and the details of design are not needed for project approval. There is an assumption in the appellants comments that the site cannot/may not be able to support the planned improvements or that the project will cause significant geologic impacts on neighboring property owners. However, no evidence is presented to support this thesis. It is the opinion of the County's Peer Review Geologist that with corrective grading and an efficient drainage system, the stability of the site will be greatly improved, which is a benefit to nearby property owners.

**Appeal Point #9; Biological Impacts** - Summary of Comment: Comments from East Bay Park District state that the project would result in the destruction of habitat for the Alameda Whipsnake, and should be evaluated. And, the wrought iron fence on the eastern property line should be modified in Phase 1 so that it does not present a problem for the deer that move across the site.

**Staff Response:** The comments from East Bay Regional Park District referred to Phase 2, the priest's residences that were proposed on the portion of land that is located in the City of Richmond and adjacent to Wild Cat Canyon Regional Park. Phase 2 has been removed from the project; therefore, there is no impact to Alameda Whipsnake habitat. As for the wrought iron fence along the eastern property line, the applicant is conditioned to modify the fence as part of Phase 1 (COA #20A).

**Appeal Point #10; Aesthetics** - Summary of Comment: The August 26, 2008 letter from East Bay Regional Park District stated that the Initial Study did not provide visual

analysis of the proposed project from adjacent public open spaces and it is out of character with the surrounding residential area. In addition, no effort has been made to provide information to neighbors on the visual impact of the buildings on their views. The appellant suggests that the applicant be required to show neighbors some drawings of what the proposed buildings would look like from their area since this may block their view of the Bay.

**Staff Response:** Exhibit 8, “View from adjacent Wildcat Canyon Regional Park Down to the Sikh Site” that appeared in the October 28, 2008 staff report did show how the Sikh site is viewed from the adjacent public land, and it showed that because of the topography of the site in relationship to the public land above the temple the impact is less than significant ( See Attachment 2, Exhibit 8). Also, as previously noted, the Park District comments were primarily concerned with Phase 2, which has been eliminated from the project.

As for the views of the Bay from the adjacent Quail Hill Condominium development, because of the topography and the existing trees located along the western Quail Hill property line, the proposed buildings would not have a significant effect on the neighbors' views of the Bay.

**Appeal Point #11; Emergency Access** - Summary of Comment: The June 15, 2007 letter from the Fire District indicates that the Fire Truck Access Plan that was submitted by the applicant does not fully comply with Fire District standards.

**Staff Response:** Mitigation Measure 15.2 requires the applicant to submit for review and approval of the Fire District a Fire Truck Access Plan that fully complies with Fire District standards prior to issuance of grading permits for Phase 1.

**Appeal Point #12; Emergency Response** - Summary of Comment: The major concern is the safety of temple occupants, surrounding neighbors and wildlife if there was the need for an evacuation of the temple site. The appellant states that the temple in the past has hosted events that have brought people in the thousands to the site where no police or fire fighters were on hand. The concern is that historically emergency response times have been poor. And, since it has been documented that on other temple sites people have become injured or killed in the event of stampedes, a full Environmental Impact Report is necessary to address these issues.

**Staff Response:** As previously noted, prior to the issuance of any construction permits for the project the applicant is required to submit Fire District access plans to the Fire District for review and approval. According to the applicant there are three events during the year where there would be in excess of 1,000 people at the site. The applicant is required by condition of approval 15, 17 & 18 to mail a courtesy notice to neighbors within 300' radius of the project site 10 days prior to the event, provide private shuttle to over-flow patrons from off-site parking locations such as Park & Ride and to provide traffic safety officers to ensure traffic safety.

## **G. The Religious Land Use and Institutionalized Persons Act (RLUIPA)**

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) and, according to the U.S. Department of Justice Website:

“in passing this law, Congress found that the right to assemble for worship is at the very core of the free exercise of religion. Religious assemblies cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes. Religious assemblies, especially, new, small, or unfamiliar ones, may be illegally discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. Zoning codes and landmarking laws may illegally exclude religious assemblies in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Or the zoning codes or landmarking laws may permit religious assemblies only with individualized permission from the zoning board or landmarking commission, and zoning boards or landmarking commission may use that authority in illegally discriminatory ways.

To address these concerns, RLUIPA prohibits zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where: (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses.

In addition, RLUIPA prohibits zoning and landmarking laws that: (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions; (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination; (3) totally exclude religious assemblies from a jurisdiction; or (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.”

### **Conclusion**

Staff recommends that the Board of Supervisors uphold the County Planning Commission's decision and approve the project as submitted by the applicant, with the attached conditions, and deny the joint appeal by the Quail Hill Homeowners Association and El Sobrante Valley Planning & Zoning Advisory Committee.

### **CLERK'S ADDENDUM**

The staff report was presented by Catherine Kutsuris, Director of the Department of Conservation and Development.

Chair Bonilla opened the hearing and invited comment. The following people spoke: Eleanor Lloyd, El Sobrante Valley Planning & Zoning Committee (Appellant); Randall Henderson, Quail Hill El Sobrante Homeowners Association (Appellant); J.P. Singh (Applicant); Mohinder Datta, Sikh Center; J. David Dacus, resident of Walnut Creek; Ted Goslen, Hillcrest Baptist Church; Lorraine Martin, resident of Walnut Creek; Kate Grayson Boisvert, resident of Walnut Creek; Harpreet S. Sandhu; Gurmeet Singh; Joty Sikand, resident of Hercules; Kulwant Singh; Burbus Kahlon. Dorothy McKee did not wish to speak but left written comments.

Supervisor Gioia requested further information be provided on impacts to the community, including but not limited to those that may arise from an increase in the membership.

The Board REQUESTED additional information from the Department of Conservation and Development; and CONTINUED the Open Hearing to an upcoming Board meeting in approximately eight weeks' time, date to be determined.

#### ATTACHMENTS

- Attach. 1, CPC Resolution No. 9-2009
- Attach. 2, Colored Maps / Graphics
- Attach. 3, CPC Approved Conditions of Approval
- Attach. 4, Appeal Letter
- Attach. 5, Previous CPC Staff Reports
- Attach. 6, Letters Received During CEQA
- Attach. 7, CEQA docs, Mitigation Neg. Dec. / Mit. Mon. Program
- Attach. 8, Existing Temple & Phasing Plan
- Attach. 8 (cont.), Phase 1, Community Center
- Attach. 8 (cont.), Phase 3, Museum/Info Center
- Attach. 8 (cont.), Phase 4A & 4B, Parking Structure/Performing Arts
- Attach. 8 (cont.), Civil Plans, Grading Plans
- Attach. 9, Staff Studies
- Attach. 10, Notification List