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FILED  
CLERK, U.S. DISTRICT COURT  
JUL 12 2007  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HILLCREST CHRISTIAN SCHOOL, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) CITY OF LOS ANGELES; LOS ANGELES )  
 ) CITY COUNCIL, )  
 )  
 ) Defendants. )

No. CV 05-08788 RGK(RCx)

**ORDER RE COURT TRIAL**

ENTERED  
CLERK, U.S. DISTRICT COURT  
JUL 13 2007  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

**I. INTRODUCTION**

Plaintiff Hillcrest Christian School ("Hillcrest") sued Defendants City of Los Angeles and Los Angeles City Council (collectively "City"). Hillcrest alleges the City violated the United States Constitution and Religious Land Use & Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, et seq., by limiting the use of its property and denying its application for a conditional use permit.

A bench trial was held on May 29, 2007. Additionally, both parties submitted trial briefs. Based on the credible evidence and the reasonable inferences drawn from that evidence, the Court finds in favor of the City.

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

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1 This opinion serves as the findings of fact and conclusions of  
2 law required by Rule 52 of the Federal Rules of Civil Procedure. Any  
3 finding of fact that constitutes a conclusion of law is adopted as  
4 such, with the converse also being true. SCANNED

5  
6 **II. Findings of Fact**

- 7 1. Hillcrest operates a private school located at 17531 Rinaldi  
8 Street, in Los Angeles, California (the "East Campus"). The East  
9 Campus was originally approved in 1964 for use as a sanctuary  
10 with a recreation hall, nursery, Sunday school, library room,  
11 prayer room and other related uses.
- 12 2. In 1976, the City approved a Conditional Use Permit ("CUP")  
13 allowing the East Campus to be used as a school. The CUP allowed  
14 a maximum of 230 kindergarten through sixth grade students, and  
15 35 preschoolers.<sup>1</sup>
- 16 3. The East Campus is situated on a 4.5 acre lot.
- 17 4. In 1982, the City granted a new CUP allowing for the construction  
18 of a new 20,000 square-foot classroom building and gymnasium, and  
19 for a phased enrollment expansion up to a maximum of 450  
20 students.
- 21 5. In 1990, the City approved another new CUP allowing for the  
22 addition of grades 7-9 and an increase in enrollment up to 500  
23 students.
- 24 6. In 1996, the City again approved another CUP allowing for an  
25 increase of enrollment up to 800 students in grades K-12.

26  
27 <sup>1</sup> Because the East Campus is located in an A-1 zone, the  
28 operation of a school is a conditional use, requiring a CUP. Los  
Angeles Municipal Code ("LAMC") § 12.24.

1 7. The 1996 CUP included 38 conditions of approval, three of which  
2 are at issue in this case: Conditions 7, 15 and 31.<sup>2</sup>

3 8. Condition 7 provides that the existing enrollment at the East  
4 Campus (500 students) may be increased "by 60 students annually  
5 until it reaches a maximum of 800." Condition 7 was later  
6 modified to require that student enrollment be reduced from 800  
7 to 600 students, "[a]t such time that upper grades relocate to a  
8 new site."

9 9. Condition 15 provides that the hours of operation of the East  
10 Campus shall be in accordance with the following schedule:

- 11 a. School - Monday through Friday, 7 a.m. until 7 p.m.,  
12 during the normal September through June school year.<sup>3</sup>
- 13 b. Church - Sunday, 7 a.m. until 7 p.m.
- 14 c. On a maximum 3 days per year, limited to Fridays  
15 and/or Saturdays, the overnight indoor use of the  
16 property by the school and/or church is authorized for  
17 not more than 100 persons under appropriate  
18 supervision. A log of such days shall be maintained  
19 by the school administration and shall be submitted to  
20 the Zoning Administrator annually for inclusion in the  
21 case file as evidence of compliance.

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23 <sup>2</sup> The Court ruled previously that Conditions 16 and 26 are  
24 time-barred.

25 <sup>3</sup> Hillcrest has operated later than 7 p.m., conducting  
26 various activities other than classroom education. Hillcrest  
27 provided calendars of its activities (demonstrating this later  
28 use) to the City which apparently did not object. Only after  
Hillcrest submitted its West Campus CUP did the City decide to  
"enforce" its interpretation of Condition 15 which disallows any  
activities on campus after 7 p.m.

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- 1 10. Condition 31 provides that student enrollment "in Grades 11 and
- 2 12 shall not exceed a combined total of 100."
- 3 11. In 1999, Hillcrest applied to the City, pursuant to LAMC § 12.24
- 4 U 24, for a CUP to build a new 5.5 acre West Campus on land it
- 5 had purchased directly across the street from the East Campus.
- 6 12. On May 14, 2001, before the City Planning Commission considered
- 7 Hillcrest's request for the West Campus CUP, Hillcrest filed a
- 8 request to modify the existing 1996 East Campus CUP. As is
- 9 relevant here, Hillcrest sought to modify Condition 7 to read
- 10 that "enrollment at the 'East Campus' shall not exceed 800
- 11 students and the combined enrollment of the 'East and West
- 12 Campuses' shall not exceed 1200 students." Hillcrest also sought
- 13 to modify Condition 31 to provide that "at such time as a
- 14 certificate of occupancy is issued for the 'West Campus' said
- 15 condition will be null and void." Hillcrest did not request any
- 16 modification to Conditions 15, 16, or 26.
- 17 13. Because Hillcrest was applying for a CUP to operate a school, the
- 18 City Planning Commission was the initial decision-maker on
- 19 Hillcrest's application. The City Planning Commission, however,
- 20 designated the Zoning Administrator ("ZA") as a hearing officer
- 21 to conducting the public hearing on Hillcrest's application.<sup>4</sup>
- 22 14. On January 18, 2002, the ZA held a public hearing on Hillcrest's
- 23 applications for a West Campus CUP and modification of the East
- 24 Campus CUP. The ZA received oral and written testimony both from
- 25 those favoring and those opposing the project.
- 26
- 27

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28 <sup>4</sup> Such designation is pursuant to LAMC § 12.24 D.

1 15. On February 28, 2002, Hillcrest's application, along with the  
2 ZA's report and recommendation, came before the City Planning  
3 Commission. At the hearing, Hillcrest requested that the  
4 Commission take no action on its application, and instead that it  
5 be granted additional time to conduct meetings with the community  
6 and to revise the project accordingly.

7 16. Roughly one year later, on February 19, 2003, Hillcrest submitted  
8 its revised request to the City Planning Commission. The revised  
9 request included several design changes and offered certain  
10 street improvements and operational conditions which sought to  
11 mitigate the West Campus project's impact on traffic. Hillcrest  
12 still requested approval of a West Campus project occupying  
13 75,000 square-feet, with an enrollment of 600 students.  
14 Additionally, Hillcrest requested more modifications to the 1996  
15 East Campus CUP. Most relevant, Hillcrest requested that  
16 Condition 15 be modified to allow for expanded school operating  
17 hours. Specifically, Hillcrest requested that the school be  
18 allowed to operate until 10:00 p.m. Monday through Saturday; that  
19 the church hours be extended to 9:00 p.m. on Sundays; that church  
20 services be allowed from 5:30 p.m. until 10:00 p.m. on  
21 Wednesdays; and that Hillcrest be permitted to use the church  
22 facilities to hold both weddings and funerals on twenty Sundays  
23 per year between the hours of 9:30 a.m. and 10:00 p.m.<sup>5</sup>

24 17. Hillcrest's revised request did not seek modification to  
25 Conditions 16 or 26 of the 1996 East Campus CUP.

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26 <sup>5</sup> Hillcrest's use of the premises for church-related  
27 functions is largely a money-making enterprise for the school  
28 since for the most part, Hillcrest does not hold church services  
itself but rents the facilities to other religious organizations.

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1 18. The City Planning Commission held a public hearing on Hillcrest's  
2 revised request on June 26, 2003. At the hearing, the ZA  
3 recommended approval of Hillcrest's request, but only with  
4 numerous modifications, and over 100 additional conditions. Both  
5 Hillcrest and interested community members were allowed to  
6 testify at the hearing.

7 19. At the conclusion of the hearing, the City Planning Commission  
8 rejected Hillcrest's request in its entirety.

9 20. The City Planning Commission mailed its determination to  
10 Hillcrest and other interested parties on July 25, 2003.

11 21. On August 5, 2003, Hillcrest appealed the City Planning  
12 Commission's decision, in its entirety, to the City Council.

13 22. On December 3, 2003, the Planning and Land Use Management  
14 Committee ("PLUM") of the City Council held a public hearing on  
15 Hillcrest's appeal.

17 **III. Conclusions of Law**

18 Hillcrest alleges the City violated the U.S. Constitution and  
19 RLUIPA. Specifically, Hillcrest claims that the City improperly  
20 denied its application for a CUP that would allow it to build the  
21 proposed West Campus. Additionally, Hillcrest claims that the East  
22 Campus CUP contains illegal conditions.

24 **A. Judicial Standard**

25 1. RLUIPA

26 As is relevant here, RLUIPA may be violated in two ways: (1) by  
27 placing a *substantial burden* on religious exercise (2) by treating  
28 religious institutions on *unequal terms* with similar non-religious

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1 institutions. 42 U.S.C. §§ 2000cc(a), (b).

3 a. *Substantial Burden*

4 Under substantial burden analysis, a government may not "impose  
5 or implement a land use regulation in a manner that imposes a  
6 substantial burden on the religious exercise of a religious assembly"  
7 unless the regulation satisfies strict scrutiny. *Id.* § 2000cc(a)(1).  
8 "[F]or a land use regulation to impose a substantial burden, it must  
9 be oppressive to a significantly great extent. That is, a substantial  
10 burden on religious exercise must impose a significantly great  
11 restriction or onus upon such exercise." *Guru Nanak Sikh Society of*  
12 *Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006)  
13 (quotations omitted).

14 RLUIPA defines "religious exercise." "The use, building, or  
15 conversion of real property for the purpose of religious exercise  
16 shall be considered to be religious exercise of the person or entity  
17 that uses or intends to use the property for the purpose." 42 U.S.C. §  
18 2000cc-5(7)(B).

19 To overcome strict scrutiny, the government must show that there  
20 is a compelling governmental interest behind the burden on religious  
21 exercise and, that the burden is the product of the least restrictive  
22 means of satisfying the governmental interest. *Guru Nanak Sikh*  
23 *Society of Yuba City*, 456 F.3d at 985-86.

24 Finally, Hillcrest bears the burden to prove that the City's  
25 denial of its application imposed a substantial burden on its  
26 religious exercise. 42 U.S.C. § 2000cc-2(b).

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1                   b.                   *Equal Terms*

2                   Under RLUIPA, "[n]o government shall impose or implement a land  
3 use regulation in a manner that treats a religious assembly or  
4 institution on less than equal terms with a nonreligious assembly or  
5 institution." *Id.* § 2000cc(b)(1).

6

7                   2.                   U.S. Constitution; Free Exercise Clause and Due Process  
8                   Clause of the Fourteenth Amendment

9                   Under the Free Exercise Clause, the application of zoning  
10 regulations that involve individualized assessments on religious  
11 exercise is subject to strict scrutiny where that application results  
12 in a substantial burden. *Employment Division v. Smith*, 494 U.S. 872  
13 (1990). The Ninth Circuit has held that the Free Exercise Clause is  
14 no less protective than RLUIPA. A violation of RLUIPA necessarily  
15 amounts to a violation of the Free Exercise Clause. *Guru Nanak Sikh*  
16 *Society of Yuba City*, 456 F.3d at 992.

17                   In general, the Due Process Clause of the Fourteenth Amendment  
18 confers both procedural and substantive rights. See *Foucha v.*  
19 *Louisiana*, 504 U.S. 71, 80 (1992). So-called substantive due process  
20 violations result only where the government's action was clearly  
21 arbitrary and unreasonable, having no substantial relation to the  
22 public health, safety, morals, or general welfare. *Euclid v. Ambler*  
23 *Realty co.*, 272 U.S. 365, 395 (1926). However, substantive due  
24 process claims are not proper where an explicit textual basis in the  
25 constitution exists which prohibits a particular type of governmental  
26 behavior. *Armendariz v. Penman*, 75 F.3d 1311, 1319 (9th Cir. 1996).

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1 Hillcrest relies heavily on *Guru Nanak Sikh Society of Yuba City*  
2 *v. County of Sutter*, 456 F.3d 978. *Guru Nanak* has many factual  
3 similarities and the Court agrees that the case is apt. However, *Guru*  
4 *Nanak* does not support a violation of RUILPA (and thus the Free  
5 Exercise Clause) in this case. A discussion of *Guru Nanak* is  
6 instructive.

7 In *Guru Nanak*, a non-profit religious organization, *Guru Nanak*  
8 Sikh Society (the "Society"), sought to construct a Sikh temple on  
9 land zoned for low density residential use, primarily large lot single  
10 family residences. The Society applied for a CUP. Despite a  
11 recommendation of approval from staff, the Planning Commission voted  
12 unanimously to deny the CUP. The denial was based on citizens' voiced  
13 fears that the resulting noise and traffic would interfere with the  
14 existing neighborhood.

15 Following its denial, the Society eventually acquired nearly 30  
16 acres located in an agricultural area outside of the city. The  
17 Society filed another application for a CUP. Various state and county  
18 departments reviewed the Society's application, adding various  
19 conditions which the Society accepted. Again, the application  
20 received staff support, and the application was approved by the  
21 Planning Commission. However, upon appeal to the County Board of  
22 Supervisors by several neighbors who opposed the project, the Board of  
23 Supervisors denied the application.

24 The Ninth Circuit held that the denial of the Society's  
25 application violated RLUIPA because it placed a substantial burden on  
26 the Society's exercise of religion. The Ninth Circuit was guided by  
27 "the history behind . . . the two CUP application processes, and the  
28 reasons given for ultimately denying these applications." *Gura Nanak*,

1 at 989. In short, the Court found that two denials, based upon  
2 "inconsistent" reasoning by the City and County left the Society's  
3 future fraught with "delay, uncertainty, and expense." *Id.* That is  
4 not the case here. SCANNED

5 In *Guru Nanak*, the substantial burden stemmed in part from the  
6 fact that, absent a CUP, the Society lacked a temple in which to hold  
7 services. For the Society, the ultimate denial of a CUP placed its  
8 very existence in question. Hillcrest does not face the same dire  
9 burdens of uncertainty. Hillcrest already operates a school through  
10 which, by its own accounts, it prodigiously exercises its religious  
11 beliefs. Rather, Hillcrest claims that it is burdened because it  
12 cannot further *expand*. But expansion and existence certainly differ in  
13 degree. Moreover, in *Guru Nanak*, there were two denials, founded upon  
14 inconsistent and vague reasons. It was the *second* denial, based on  
15 shaky reasoning, that created the "delay, uncertainty, and expense"  
16 which the Ninth Circuit found substantially burdensome.

17 There is nothing in the record which suggests that Hillcrest  
18 would not be successful if it attempted to build a second campus on  
19 another parcel, or even if it significantly scaled back its current  
20 project. The reasons given by the City include traffic concerns as  
21 well as general concerns about the impact of such a large project  
22 situated among a residential neighborhood. Certainly, the reasons  
23 given by the City Council could have been stated with greater  
24 coherence and clarity. However, the Court has considered the totality  
25 of dealings between Hillcrest and the City. The history of  
26 Hillcrest's application amply demonstrates the City's ongoing concerns  
27 about Hillcrest's development plans. Unlike *Guru Nanak*, the City's  
28 concern, although generally relevant to any CUP application in a

1 similarly zoned area, were shaped by concerns which relate to the  
2 particular site chosen by Hillcrest as well as the ambitious scope of  
3 the Hillcrest's plans.

4 In short, the City has not denied Hillcrest the opportunity to  
5 expand, nor to continue its religious exercise. Rather, the City has  
6 denied Hillcrest's ability to expand its school in a single location.  
7 Hillcrest's land use travails demonstrate unfortunate but familiar  
8 pitfalls of this country's localized land use planning system. But  
9 these travails do not amount to a violation of law.

10  
11 ii. *Equal Terms*

12 The thrust of Hillcrest's argument is that a denial of the West  
13 Campus CUP violates RLUIPA's substantial burden test. However, the  
14 Court finds additionally that the City did not violate RLUIPA's equal  
15 terms provision. Hillcrest offered virtually no evidence suggesting  
16 that Hillcrest was treated differently than any non-religious  
17 institution during its pursuit of its West Campus CUP. Hillcrest  
18 provided the Court with a detailed account of its arduous application  
19 process, a process unarguably wrought with difficulty and expense.  
20 However, there is no comparative evidence before the Court suggesting  
21 that non-religious organizations are treated differently during  
22 similar land-use endeavors or that a similar CUP would have been  
23 granted to a non-religious institution.

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b. *Denial of the West Campus CUP Does Not Violate the U.S. Constitution*

Since there is no violation of RLUIPA, there is no violation of the Free Exercise Clause. Moreover, Hillcrest's substantive due process claim is not proper. As noted above, substantive due process claims are not proper where the constitution provides an explicit textual which prohibits a particular type of governmental behavior. *Armendariz v. Penman*, 75 F.3d 1311, 1319 (9th Cir. 1996). Here, Hillcrest's rights are explicitly rooted in the Free Exercise Clause.

2. *The Conditions Contained in the East Campus CUP Do Not Violate RLUIPA or the U.S. Constitution*

Hillcrest argues that the conditions contained in the East Campus CUP place a substantial burden on its religious exercise, and also violate RLUIPA's equal terms provision.<sup>6</sup> The Court disagrees with both assertions.

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<sup>6</sup> Specifically, the Court considers only whether the conditions contained in the East Campus CUP, as presently interpreted and enforced by the City, violate RLUIPA or the U.S. Constitution. During trial and in its briefs, Hillcrest has complained that the conditions in the East Campus CUP were once interpreted or enforced differently by the city. The City either changed its interpretation or decided to enforce the letter of those conditions (depending on one's point of view) only after Hillcrest applied for a West Campus CUP. Presumably Hillcrest attracted the City's scrutiny concerning it had complied with its existing East Campus CUP. Hillcrest claims that the hours of operation contained in condition 15 were understood to restrict the hours of classroom education but not to restrict other types of use.

However, the Court does not address whether the City's recent "enforcement" of the East Campus conditions is proper other than to consider how it bears on a violation of RLUIPA or the U.S. Constitution, since those are the only questions before the Court.

1 a. *Substantial Burden Analysis*

2 The conditions in the East Campus CUP fall far short of imposing  
3 the kind of significant burden on religious exercise contemplated by  
4 RLUIPA and the United States Constitution. "[F]or a land use  
5 regulation to impose a substantial burden, it must be oppressive to a  
6 significantly great extent. That is, a substantial burden on  
7 religious exercise must impose a significantly great restriction or  
8 onus upon such exercise." *Guru Nanak Sikh Society of Yuba City v.*  
9 *County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (quotations  
10 omitted).

11 Here, the onus on religious exercise is minimal. Despite the  
12 conditions, Hillcrest operates school of significant size, conducts  
13 church services, holds meetings, funerals, and weddings.

14  
15 b. *Equal Terms Analysis*

16 Hillcrest claims that the conditions contained in the East Campus  
17 CUP are more burdensome than conditions placed on non-religious  
18 schools. The Court disagrees.

19 The Court has carefully considered all of the evidence presented  
20 at trial. Most relevant are the various CUPs granted by the City to  
21 non-religious schools which the Court has reviewed and compared with  
22 Hillcrest's CUP.<sup>7</sup> The Court notes the difficulty inherent in any such  
23 comparison. The City granted the various CUPs at different times.  
24 Moreover, by their nature, CUPs address site-specific concerns.  
25 Additionally, the Court is not blind to the human element contained  
26 within the application process. The process is often political and

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<sup>7</sup> Exhibits 39-51.

1 far from scientific; each CUP was approved only after negotiation  
 2 between many individuals representing many different contingents  
 3 With these caveats noted, the Court finds that careful  
 4 examination of the CUPs in evidence renders no discernible disparity  
 5 between the treatment of Hillcrest and any other non-religious school.  
 6 That is not to say that the CUPs are all the same. They are not.  
 7 Some are more lenient in certain areas, some less lenient. However,  
 8 the Court finds no evidence suggesting that Hillcrest was treated on  
 9 less than equal terms with any nonreligious organization.

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c. *U.S. Constitution*

For the reasons noted above, there is no violation of the U.S. Constitution. In short, since there is no violation of RLUIPA, there is no violation of the Free Exercise Clause. Finally, a substantive due process claim is not proper.

**III. CONCLUSION**

For the foregoing reasons, the Court grants judgment in favor of Defendants.

**JUL 12 2007**  
 \_\_\_\_\_  
 Dated

*R. Gary Klausner*  
 \_\_\_\_\_  
 R. Gary Klausner  
 United States District Judge