

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #CDLP23-02053;
JASON TOSTE (APPLICANT) AND CANDELARIO BARRAGAN (PROPERTY OWNER)**

I. FINDINGS

A. Land Use Permit Findings

The Exclusive Agricultural (A-40) Zoning District allows for merchandising of agricultural supplies and services incidental to agricultural use under County Code Section 84-80.404(1), Uses – Requiring a Land Use Permit if certain findings can be made.

1. The project shall not be detrimental to the health, safety and general welfare of the County.

Project Finding: The project is for a Land Use Permit to recognize existing landscaping business "Candy's Landscape" that has been in operation since 2007, and a Variance to allow a 26-foot side yard (where 50-feet is the minimum required) for the existing locations of the four buildings being used for this business, and also includes a request for approval of a Variance to allow a lot merger with the subject property and neighboring property located at 14121 Byron Hwy that results in an approximately 15-acre parcel (where 40 acres is the minimum lot size required).

Generally, construction activities related to permitting existing buildings are not associated with negative impacts to health and safety in the County so long as they are properly permitted and follow applicable State and local regulations. The project's compliance with County Ordinance, the California Building Code, and the California Fire Code ensure that the project will be constructed in accordance with all applicable health and safety regulations. Also, the continued operation of a landscaping business of less than twenty employees where the primary function of the business does not take place onsite, and it is found to be a service that is incidental to agricultural use, should not be detrimental to the area's general welfare as it has functioned as such without complication. Lastly, a lot merger that requires no real improvements should be seen as nondetrimental to health and safety. Therefore, as conditioned, the project is not anticipated to be detrimental to the health, safety, and general welfare of the County.

2. The project shall not adversely affect the orderly development within the County or the community.

Project Finding: The project site is within an agricultural area with both residential and agricultural buildings, and agricultural businesses like those that operate from the subject property. The work necessary to permit these four existing buildings to continue to function as they have is consistent with the area, and the lot merger will not change the property's existing operations and creates a more conforming property with respect to lot area. Therefore, as conditioned, the project is not anticipated to adversely affect the orderly development within the County or the community.

3. The project shall not adversely affect the preservation of property values and the protection of the tax base within the County.

Project Finding: The project is not of a type or scale that would expectedly adversely affect property values due to the fact that the buildings are existing and have not created any previous nuisance which would expectedly affect property value in the vicinity. In fact, properly permitting these four buildings and increasing the lot size will improve the value of this property, thereby increasing the County's tax base and encouraging similar high-quality development. Therefore, as conditioned, the project is not anticipated to adversely affect the tax base within the County.

4. The project shall not adversely affect the policy and goals as set by the General Plan.

Project Finding: The project site is within the Agricultural Core (AC) General Plan Land Use designation. This designation allows agricultural activities and businesses that provide services incidental to agricultural uses such as the existing landscaping business. During harvesttime, "Candy's Landscape" installs erosion control measures for farms to keep the mud and runoff from going onto neighboring properties, and provides cleanup services for after harvesttime. Also, work mainly takes place offsite and the buildings, materials, and equipment for the business are consistent with the agricultural uses that currently take place onsite and within the surrounding area. Also, for this project to require the house at 14121 Byron Hwy first be entitled as an Accessory Dwelling Unit prior to the lot merger, thus maximum density of 1 dwelling unit per 40-acers holds. The project as a whole is found to be consistent with the policies and goal as set by the General Plan. Therefore, as conditioned, the overall project is consistent with the AC General Plan Land Use designation.

5. The proposed project shall not create a nuisance and/or enforcement problem within the neighborhood or community.

Project Finding: The project does not involve any land use types that would create permanent noise sources, odors, smoke, or any other byproduct inconsistent with the area. The project's compliance with all Building Regulations and conditions of

approval ensure that all project elements are permitted and constructed in a manner that does not encourage any nuisance related to drainage, mosquito or vector habitat, substandard buildings/structures, or any other known nuisance types. Therefore, as conditioned, the project is not anticipated to create a nuisance and/or enforcement problem within the neighborhood or community.

6. The project shall not encourage marginal development within the neighborhood.

Project Finding: The project, as conditioned, will not encourage marginal development within the area because development is controlled by the County's Zoning Code and General Plan. Also, the buildings are existing and the project is found to be consistent with the current County Code, and the surrounding area. Therefore, as conditioned, the project is not anticipated to encourage marginal development within the neighborhood.

7. That special conditions or unique characteristics of the subject property and its location or surroundings are established.

Project Finding: The "Candy's Landscape" business has been in operation since 2007 with a County business license, but as the County Tax Collector Department did not verify zoning approval during this time a business license was issued without first obtaining a Property Use Verification Permit from the Planning Department as would be required today. The business license is still valid and in good standing, but to be able to issue a building permit to permit the four existing buildings, the buildings' use first needs to be found consistent with the respective zoning district, and thus receive approval of a Land Use Permit that finds the existing business to provide services incidental to agricultural use per County Code Section 84-80.404(1). These four buildings also need to receive approval of a Variance to allow a 26-foot setback as their existing locations are in the required 50-foot side yard area. Both the Land Use Permit and Variance must first receive approval prior to the building permit moving forward to resolve code enforcement case #CECF24-00274.

B. Variance Findings to A-40 50-foot Side Yard Requirement

County Code Section 26-2.2006 states that all of the following findings must be made to approve the Variance permit application.

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

Project Finding: The granting of a variance to retroactively allow a 26-foot side yard (where 50-feet is the minimum) for four buildings that range in size from 1,000 to 2,300 square-feet will not constitute a grant of special privilege due to the lot size limitation of this property when compared to the neighboring properties.

The subject property is located within an A-40 Exclusive Agricultural Zoning District, which requires a minimum of 40 acres. This property is only 12 acres, but the surrounding properties are between 35 and 45 acres, allotting them far more room to establish such buildings outside of setback areas. Therefore, the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective A-40 land use district in which the subject property is located.

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding: The requested variance is to allow a reduced side yard (where 50-feet is the minimum) to allow these existing buildings to remain and be permitted. In addition to the subject property being smaller than its neighboring properties, the location of the buildings used to be in relation to the front property line, so the buildings were in compliance with the minimum 25-foot front yard setback, but with the addition of the two properties (14065 and 14091 Byron Highway) the property line was brought closer to the buildings and became a side yard. Thus, strict application of the A-40 zoning regulations would deprive the subject property of the rights enjoyed by other properties in the immediate vicinity and within the identical land use district.

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

Project Finding: The intent and purpose of the A-40 Exclusive Agricultural land use district is for all types of agriculture activities, including businesses that provide services incidental to agricultural uses. These four existing buildings are for "Candy's Landscape", a business found to provide services incidental to agricultural uses. The property's primary function is still agricultural in raising livestock and horses, with the center of the property reserved for the outdoor arena for the horses, and the livestock buildings throughout. Therefore, approval of the variance previously stated in order to contain a business incidental to agricultural uses meets the intent and purpose of the A-40 land use district.

C. Variance Findings to A-40 40-acre Lot Area Requirement

County Code Section 26-2.2006 states that all of the following findings must be made to approve the Variance permit application.

- 1.** That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

Project Finding: The granting of a variance to allow an approximately 15-acre lot area (where 40 acres is the minimum required) for a lot line adjustment to merge 14101 and 14121 Byron Highway will not constitute a grant of special privilege due to the lot size limitation of this property when compared to the neighboring properties.

The properties are located within an A-40 Exclusive Agricultural Zoning District, which requires a minimum of 40 acres. 14101 Byron Hwy is only 12 acres, and 14121 Byron Hwy is 3-acres, but the surrounding properties are between 35 and 45 acres. Merging the lots would create a lot more conforming with the zoning's lot area standard and be more consistent with the area. Therefore, the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective A-40 land use district in which the subject property is located.

- 2.** That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of the rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding: The requested variance is to allow a resultant lot to be 15 acres (where 40 acres is the minimum required). In addition to the subject property being smaller than its neighboring properties, the zoning used to be A-2, so the properties were conforming, but became substandard in lot area after Rezoning 300-RZ was completed in 1993. Thus, strict application of the A-40 zoning regulations would deprive the subject property of the rights enjoyed by other properties in the immediate vicinity and within the identical land use district.

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the property is located.

Project Finding: The intent and purpose of the A-40 Exclusive Agricultural land use district is to have lots 40 acres or greater in lot area. Merging the lots would create a lot more conforming with the zoning's lot area standard and be more consistent with the area, and therefore, meet the intent and purpose of the A-40 land use district.

D. Variance Findings to the County Off-Street Parking Ordinance (Chapter 82-16)

County Code Section 26-2.2006 states that all of the following findings must be made to approve the Variance permit application.

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

Project Finding: The granting of variances to Code Section 82-16.404 - Design and Layout and for no bicycle parking would not constitute a grant of special privilege because the area does not warrant surfacing, striping, lighting, bicycle parking etc. as the the neighboring agricultural businesses do not have such parking improvements, and the business has functioned sufficiently without a standard parking lot.

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding: The parking requires approval of the variances stated above because the parking lot is existing and functions sufficiently without a standard parking lot. Also, requiring surfacing would create runoff that could impact neighboring properties, which could deprive the subject property of the rights enjoyed by other properties in the immediate vicinity and within the identical land use district.

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

Project Finding: The intent and purpose of the A-40 Exclusive Agricultural land use district is for all types of agriculture activities, including businesses that provide

services incidental to agricultural uses. Parking is necessary for the “Candy’s Landscape” business, but should be maintained in its current condition to maintain a rural aesthetic. Therefore, approval of the variance previously stated meets the intent and purpose of the A-40 land use district.

E. California Environmental Quality Act (CEQA) Findings

The project is categorically exempt from the review requirements of the California Environmental Quality Act (CEQA) per Class 3: CEQA Guidelines Section 15303(e), New Construction or Conversion of Small Structures, which allows for the construction and location of limited numbers of new, small facilities or structures such as garages, carports, patios, swimming pools, and fences. The four buildings for this project are comparable to garages or carports. They may be existing, but they need to be permitted, so some construction may be necessary, and they are used for a “small facility” i.e. the landscaping business; and

Categorical Exemption -Class 5: CEQA Guidelines Section 15305(a) - Minor Alterations in Land Use Limitations: Minor alterations in land use limitations (such as lot line adjustments) in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The properties are relatively flat, the land uses will not change as a result of a lot merger, and the project is conditioned to require an accessory dwelling unit application be approved prior to approval of a lot line adjustment to not have two dwelling units on one agricultural property, thus, not changing the density.

II. CONDITIONS OF APPROVAL FOR COUNTY FILE #CDLP23-02053:

Project Approval

- 1.** This approval is based on what is generally shown in the application materials accepted by the Department of Conservation and Development, Community Development Division (CDD) on November 15, 2023, and revised project plans accepted on November 14, 2024, and is for the following:
 - A Land Use Permit for “Candy’s Landscape” business, is APPROVED.
 - A Variance to allow a 26-foot side yard (where 50-feet is the minimum required) for four buildings used for “Candy’s Landscape” business, is APPROVED.

- A Variance to allow an approximately 15-acre parcel (where 40 acres is the minimum lot size required) for a lot line adjustment to merge 14101 and 14121 Byron Highway, is APPROVED.
 - Variances to the County Off-Street Parking Ordinance to *Design and Layout* and for no bicycle parking, are APPROVED.
2. Any change from this approval will require review and approval by CDD and may require the filing of an application to modify this Land Use Permit and/or Variance.
 3. This application is subject to an initial application deposit of \$5,500.00, which was paid with the application submittal, plus time and material costs if the application review expense exceeds the initial fee deposit. **Any additional fee due must be paid prior to submittal of building permit(s), or within 60 days of the effective date of this Land Use Permit, whichever occurs first.** Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the Department of Conservation and development may seek a court judgment against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant or owner may obtain current costs by contacting the project planner.

Building Permit

4. No construction is approved with this permit. Any construction at the project site will require issuance of grading and/or building permits from the Department of Conservation and Development, Building Inspection Division, prior to commencement of work.
5. Prior to issuance of a building permit application, the permittee shall obtain a Flood Plain Permit from the County Public Works Department.

Candy's Landscape

6. This land use permit is not transferable or assignable to another person, even if property ownership changes.
7. Candy's Landscape shall be permitted a maximum of 20 employees.
8. All equipment and materials for Candy's Landscape shall remain inside the four buildings that are located behind 14065 and 14091 Byron Highway or within immediate proximity of them.

Parking Requirements

9. A parking plan that includes a minimum of seven (7) 8.5'x18.5' vehicle parking spaces shall be submitted to CDD for review and approval, shall be present in the plans for a building permit, and shall be maintained for the life of the business.
10. The approved parking plan shall be in place prior to final building inspection. As-built photos shall be provided to CDD for review and approval to verify compliancy with this condition.
11. These parking spaces may only be used for Candy's Landscape.

Signage

12. Signage for Candy's Landscape is prohibited onsite to maintain the rural character for the area.

Lighting

13. In the event that any outdoor lighting is proposed for Candy's Landscape, a lighting plan shall be submitted to CDD for review and approval prior to installation. The lighting shall be deflected down so that light shines only onto the project site and not toward adjacent properties. Prior to final building inspection, as-built photos shall be provided to CDD for review and approval to verify compliancy with this condition.

Lot Line Adjustment

14. All exhibits associated with the Lot Line Adjustment shall reflect the lot area approved by this Variance Permit approval. All other development standards for the underlying A-40 Zoning District shall be met by the Lot Line Adjustment unless otherwise approved under a separate Variance Permit application.
15. Prior to approval of a Lot Line Adjustment, the permittee must obtain approval of an Accessory Dwelling Unit application

Construction Period Restrictions and Requirements

16. The following shall be implemented during project construction and **shall be present on the site plan for building permit(s) as construction notes:**

Unless specifically approved otherwise via prior authorization from the Zoning Administrator, all construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (State and Federal)
Birthday of Martin Luther King, Jr. (State and Federal)
Washington's Birthday (Federal)
Lincoln's Birthday (State)
President's Day (State)
Cesar Chavez Day (State)
Memorial Day (State and Federal)
Juneteenth National Independence Holiday (Federal)
Independence Day (State and Federal)
Labor Day (State and Federal)
Columbus Day (Federal)
Veterans Day (State and Federal)
Thanksgiving Day (State and Federal)
Day after Thanksgiving (State)
Christmas Day (State and Federal)

For information on the actual days and dates that these holidays occur, please visit the following websites:

Federal: <http://www.federalreserve.gov/aboutthefed/k8.htm>

State: <http://www.sos.ca.gov/holidays.htm>

- a. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
- b. The project sponsor shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors and concrete pumps as far away from sensitive receptors as possible.
- c. The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flows.
- d. Transporting of heavy equipment and trucks shall be limited to the hours of 9:00 A.M. to 4:00 P.M., Monday through Friday, and is prohibited on state and federal holidays.
- e. Unnecessary idling of internal combustion engines is prohibited.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A.** NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B.** Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:
- Contra Costa County Public Works Department
 - Contra Costa County Building Department
 - Contra Costa County Health Services, Environmental Health Division
 - East Contra Costa Fire Protection District
 - Bethany-Byron Irrigation District
- C.** It is unlawful to engage in business in the unincorporated area of the county without first procuring a business license from the Tax Collector following CDD approval of this application.