

**FINDINGS AND CONDITIONS OF APPROVAL – COUNTY FILE CDLP23-02055;  
MICHAEL MILANI, MILANI & ASSOCIATES (APPLICANT) / CHERYL GREEN (OWNER)**

**FINDINGS**

A. Land Use Permit Findings

The following are required findings for the approval of a land use permit in the A-40 Exclusive Agricultural District.

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

*Project Finding:* The project is to legalize a previously constructed second single-family residence on the subject parcel and complies with the County General Plan and Ordinance Code. The project does not include any new development, and one additional single-family residence is allowed on a Parcel in the A-40 District with approval of a land use permit. Although there is currently unpermitted conditioned habitable space in the barn, a Condition of Approval is included herein that requires the property owner to remove the conditioned space and restore the agricultural building solely as a barn. Thus, the project will be compatible with land uses on the subject property and surrounding area, and therefore, will not be detrimental to the health, safety, and general welfare of the County.

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

*Project Finding:* As stated above, there is no development proposed with this project and a second single-family residence is an allowed use on a lot within the A-40 District with approval of a land use permit. The project will not impact the agricultural potential of the subject parcel or of the surrounding lots with the same General Plan designation and zoning district. Therefore, the project will not adversely affect the orderly development within the community.

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

*Project Finding:* Legalization of the existing second single-family residence will provide an additional asset to the subject parcel and its use is consistent with other

uses on the parcel as well as in the surrounding area. The project does not impact existing or proposed land uses on surrounding properties. Thus, the project is compatible with the surrounding area and will protect property values in the local area and within the County.

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

Project Finding: The project is consistent with the goals and policies of the Agricultural Lands General Plan land use designation. The project, as conditioned, meets the intent and purpose of the General Plan through providing additional housing that does not exceed the density limitations of the parcel or prohibit any future potential agricultural output of the parcel.

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

Project Finding: As stated above, the project is to legalize an existing second single-family residence and the approval of the land use permit addresses the existence of the unpermitted construction on the parcel. The project does not include any additional development and does not include uses that would be inconsistent with General Plan policies or the County Ordinance Code. In addition, the applicant is advised to contact the East Bay Municipal Utility District and the Contra Costa Mosquito and Vector Control District regarding the project. Thus, the project, as conditioned, will not create a nuisance and/or enforcement problem within the surrounding area.

6. *The proposed project as conditioned shall not encourage marginal development within the neighborhood.*

Project Finding: Approval of the Land Use Permit will not change the established uses on the property, including the two existing single-family residences, barn and other accessory structures, or land uses in the vicinity. Legalization of the second residence does not extend urban services such as water or sewer service. The project will not encourage any uses in the area that are inconsistent with what is allowed. The lots around the subject property have also been developed with single-family residential uses and the project will not change these uses.

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

Project Finding: Consistent with the Agricultural Lands General Plan land use designation, the subject parcel may accommodate one additional single-family residence. The parcel cannot be subdivided as the A-40 Exclusive Agricultural District requires a minimum lot size of 40 acres, and the subject parcel is 14.55 acres in size. However, one additional single family residence can be permitted in the A-40 District with a valid land use permit. Since the second single-family residence has previously been constructed and no new development is proposed, the requested land use permit will only legalize the additional residence. Except for the proposed lot line adjustment that is a minor change in land use limitations, there will be no change to the property and the project does not impede future use of the property. Therefore, the special conditions and unique circumstances of the subject property have been established for this project

B. Exception to the Requirements of County Subdivision Ordinance (Title 9)

The applicant has requested an exception to County Code Division 914 for collecting and conveying stormwater, without diversion and within an adequate storm drainage system. Pursuant to County Code Section 92-6.1002, the Advisory Agency (Zoning Administrator) may authorize exceptions to the requirements and regulations of County Code Division 914. Accordingly, following are the exceptions and findings for granting the requested exceptions.

1. *That there are unusual circumstances or conditions affecting the property.*

Project Finding: The second single-family residence on the subject parcel has already been constructed and has an existing drainage pattern that collects and maintains all drainage runoff on site. These existing conditions constitute an unusual circumstance which warrants granting the requested exception.

2. *That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

Project Finding: The exception is necessary for the preservation and enjoyment of a substantial property right of the applicant to have one additional single-family residence on the subject parcel that is consistent with the AL Agricultural Lands General Plan land use designation and allowed with an approved land use permit

in the A-40 Exclusive Agricultural District. If the exception isn't granted, the property owner will be required to construct drainage facilities at tremendous expense in an area where there are no publicly maintained drainage facilities. Thus, the exception is necessary in order to allow reasonable development of the project site without the burden of unnecessary on- or off-site storm drain improvements that are of limited public benefit.

3. *That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.*

Project Finding: The existing drainage pattern is maintained and concentrated storm drainage is not discharged onto adjacent properties, and therefore the granting of the exception will not be detrimental to the public welfare. or injurious to other property in the project vicinity.

#### C. Variance Findings

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 subject parcel is located in the A-40 Exclusive Agricultural District and is substandard in size for the District. In addition, the parcel, as well as other lots in the immediate vicinity do not have access to municipal utilities and thus rely on well and septic systems which cannot be readily located across property lines. In addition, the parcel is adjacent to a private road and utilities easement serving the neighboring subdivision and as a result, the proposed lot line adjustment cannot alter the shared property line further to accommodate the required front yard. Thus, this variance does not grant a special privilege inconsistent with the limitations on other properties in the vicinity or the A-40 District.

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 subject parcel is developed with a two single-family residences that utilize the same driveway, well water locations and septic system. The one additional single-family residence on the parcel is allowed with an approved Land Use Permit. The subject parcel has limited flat topography and no municipal utility services. The proposed front yard and side yard setback distances as a result of the Lot Line Adjustment will resolve the existing zoning inconsistency of the second residence that straddles a property line that doesn't exist on other properties in the vicinity. If the Variance is not approved, then the second residence will remain partially located on an adjacent lot, which is not permitted. Therefore, strict application of the zoning regulations of the A-40 District will deprive the subject property of rights enjoyed by other properties in the vicinity.

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 proposed Lot Line Adjustment will accommodate the previously constructed second single-family residence. The second residence is allowed with the issuance of a Land Use Permit. As discussed in Section A above, the required findings have been made for granting the land use permit for the one additional single-family residence. The granting of the Variance allows the residence to utilize the existing infrastructure on the lot and retain the rest of the property for future compatible land uses including agricultural uses. Thus, the Variance substantially meets the intent and purpose of the A-40 District in the unincorporated Livermore Valley area.

- D. Small Lot Design Review: The R-40 District requires a lot to be at least 40 acres in area. The subject parcel is 14.55 acres in area. Because of the substandard lot size, the proposed project is subject to Small Lot Design Review and must be found to be consistent and compatible with the surrounding neighborhood in terms of its location, size, height, and design.

1. Location: The subject parcel is currently developed with an existing 3-bedroom, 3-bathroom two-story single family residence and an unpermitted second 3-bedroom, 3-bathroom two-story single-family residence. The second residence that will be legalized with the proposed Land Use Permit is located adjacent to the existing single-family residence and both are located

in the southwestern portion of the lot and are not visible from Morgan Territory Road. With the proposed Lot Line Adjustment, the second residence complies with all development standards for the A-40 District with the exception of two variances for reduced yard setbacks. Accordingly, the proposed project, if approved, will be consistent and compatible with the surrounding neighborhood in terms of location.

2. *Size*: The proposed project includes the legalization of a 2,195 square-foot two-story second single-family residence. Other residences in the immediate vicinity along Morgan Territory Road exceed 3,000 square feet and are a combination of one and stories in height. Therefore, the second residence is consistent in size with other residences in the surrounding neighborhood.
3. *Height*: The existing second single-family residence on the subject parcel is 28.25-feet in height, which is below the maximum 35-foot height allowed for residences in the A-40 District. There is no development proposed which would increase the height of the residence. Overall, the Morgan Territory neighborhood is comprised of one- and two-story residences. Thus, the residence on the subject property is consistent with other residences in the area.
4. *Design*: Residences in the Morgan Territory Road area have a variety of residential styles including contemporary ranch architectural styles and Spanish Mediterranean with variations in finishes and facades. The existing second single-family residence on the subject parcel currently has a wood façade and pitched shingle roof similar to other residences as well as the existing residence on the subject property. No alterations of the second residence are proposed. Thus, the project is consistent with the area in terms of architectural design.

#### E. Environmental Findings

Land Use Permit CDLP23-02055 is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301, Existing Facilities, which provides a Class 1 exemption for permitting an existing private structure, and 15305(a), Minor Alterations in Land Use Limitations, which provides a Class 5 exemption for a lot line adjustment.

## **CONDITIONS OF APPROVAL FOR COUNTY FILE CDLP23-02055**

### Project Approval

1. This Land Use Permit application for one additional single-family residence is APPROVED to legalize an existing 2,195 square-foot two-story second residence with an attached 411 square-foot garage.
2. The Variance to allow a 7.07-foot front yard setback (where 25 feet is the minimum required) and a 43.18-foot side yard setback (where 50 feet is the minimum required) meets the requirements of Section 26-2.2006 of the County Ordinance Code and is APPROVED for a Lot Line Adjustment to accommodate the existing location of the second residence.
3. The Small Lot Design Review for the previously constructed ,195 square-foot two-story second residence with an attached 411 square-foot garage is APPROVED.
4. The Approvals described above are based on:
  - Project application materials accepted by the Department of Conservation and Development, Community Development Division (CDD) on December 4, 2023.
  - Revised project plans accepted by the CDD on September 4, 2024 and September 12, 2024.
5. Any change from the approved plans shall require review and approval by the CDD and may require the filing of an application for a new Land Use Permit and/or Variance. Any exterior change to either single-family residence shall require completion of Small Lot Design Review.

### Required Building Permit

6. Within 90 days of the effective date of this permit, the property owner shall apply for a building permit for the existing 2,195 square-foot two-story second residence with an attached 411 square-foot garage, as shown on the September 12, 2024 project plans. The applicant is responsible for payment of all fees associated with the issuance of the building permit. The applicant may obtain current costs by contacting the Building Inspection Division. A final inspection for the building permit is required to complete this condition.

Use of the Agricultural Building Solely as a Barn

7. The conditioned living space within the existing barn on the subject parcel must be removed and photographic evidence is to be submitted to CDD for verification within 90 days of the effective date of this permit.

Lot Line Adjustment

8. No Lot Line Adjustment is approved with this Permit. An application for a Lot Line Adjustment must be submitted within 30-days of the effective date of this permit.

Application Costs

9. 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 expenses exceed 100% of the initial deposit. **Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first.** The fees include costs through permit issuance and final file preparation. 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 judgement against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant may obtain current costs by contacting the project planner. If the applicant owes additional fees, a bill will be sent to the applicant shortly after permit issuance.

Construction

All construction activity shall comply with the following restrictions, which shall be included in the construction drawings.

10. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.
11. The applicant 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 as far away from existing residences as possible.



12. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
13. A publicly visible sign shall be posted on the property with the telephone number and person to contact regarding construction-related complaints. This person shall respond and take corrective action within 24 hours. The CDD phone number shall also be visible to ensure compliance with applicable regulations.
14. Large trucks and heavy equipment are subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
15. 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 specific details on the actual date the State and Federal holidays occur, please visit the following websites:

Federal Holidays: [Federal Holidays \(opm.gov\)](https://www.opm.gov)

California Holidays: [State Holidays \(ca.gov\)](https://www.ca.gov)

#### PUBLIC WORKS CONDITIONS OF APPROVAL FOR PERMIT CDLP23-02055

The applicant shall comply with the following conditions of approval **prior to issuance of a building permit under this permit and/or prior to initiation of the use proposed under this permit.**

#### General Requirements

16. For Public Works review for compliance relative to this Land Use Permit, a Compliance Review Fee Deposit shall be submitted directly to the Public Works Department in accordance with the County's adopted Fee Schedule for such services. This fee is separate from similar fees required by the Department of Conservation and Development and is a deposit to offset staff costs relative to review and processing of these conditions of approval and other Public Works related services ancillary to the issuance of building permits and completion of this project.
17. Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval of this development. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.

#### Countywide Street Light Financing

18. Property owner(s) shall annex to the Community Facilities District (CFD) 2010-1 formed for Countywide Street Light Financing. Annexation into a street light service area does not include the transfer of ownership and maintenance of street lighting on private roads.

Drainage Improvements

*Collect and Convey*

19. The applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the stormwater to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code.

Exception

The applicant shall be permitted an exception from the collect and convey requirements of the County Ordinance Code provided that the existing drainage pattern is maintained and concentrated storm drainage is not discharged onto adjacent property.

Area of Benefit Fee

20. The applicant is subject to the requirements of the Bridge/Thoroughfare Fee Ordinance for the South County Area of Benefit, as adopted by the Board of Supervisors. Unless payment of this fee for the residence constructed in 2004 can be verified, this fee shall be remitted to the County per the fee schedule in effect at time of payment.

Drainage Area Fee Ordinance

21. The applicant is subject to the requirements of the fee ordinance for Drainage Area 109 as adopted by the Board of Supervisors. Unless payment of this fee for the residence constructed in 2004 can be verified, this fee shall be remitted to the County per the fee schedule in effect at time of the payment.

**ADVISORY NOTES**

**PLEASE NOTE ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL BUT ARE NOT A PART OF THE CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCE AND OTHER LEGAL REQUIREMENTS THAT MUST BE MET IN ORDER TO PROCEED WITH DEVELOPMENT.**

**A. NOTICE OF 90-DAY OPPORTUNITY TO PROTEST FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.**

This notice is intended to advise the applicant that pursuant to Government Code Section 66000, et. Seq, the applicant has the opportunity to protest fees, dedications, reservations, and/or exactions required as part of this project approval. The opportunity to protest is limited to a ninety-day (90) period after the project is approved.

The 90-day period in which you may protest the amount of any fee or imposition of any dedication, reservation, or other exaction required by this approved permit, begins on the date this permit was approved. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and delivered to the CDD within 90 days of the approval date of this permit.

- B. The applicant shall submit building plans to the Building Inspection Division and comply with Division requirements. It is advisable to check with the Division prior to requesting a building permit or proceeding with the project.
- C. The applicant is advised that plans submitted for a building permit must receive prior approval and be stamped by the Environmental Health Division of the Health Services Department.
- D. The applicant must submit building plans to the San Ramon Valley Fire Protection District and comply with its requirements. The applicant is advised that plans submitted for a building permit must receive prior approval and be stamped by the Fire Protection District.
- E. The applicant is responsible for contacting the Contra Costa Mosquito and Vector Control District regarding its requirements and permits.
- F. The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the South County Area of Benefit as adopted by the Board of Supervisors. Payment is required prior to the issuance of a building permit.