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SUMMONS ISSUED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By [Signature] Deputy Clerk
K. WHITWORTH

JOSHUA ECKHAUS & JENNIFER OSTRANDER, IN PRO PER

SUPERIOR COURT OF CONTRA COSTA COUNTY
FOR THE COUNTY OF CONTRA COSTA

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 9, FOR ALL
PURPOSES.

N 25 - 2046

JOSHUA ECKHAUS &
JENNIFER OSTRANDER,

vs.

BOARD OF SUPERVISORS
CONTRA COSTA COUNTY,

REAL PARTIES:

CARNELIAN ASSISTED LIVING, LLC,
HUSTON GENERAL CONTRACTING INC.
d/b/a HGCI, INC

Case No.: _____
PETITION FOR WRIT OF MANDAMUS
AND REQUEST FOR JUDICIAL NOTICE
**PROCEEDING REQUIRES REVIEW OF
ADMINISTRATIVE RECORD**

PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR JUDICIAL NOTICE

(Code of Civil Procedure § 1094.5; Government Code § 65009)

1 **I. FACTS COMMON TO ALL CAUSES OF ACTION**

- 2 1. At all times herein mentioned, Petitioners Joshua Eckhaus & Jennifer Ostrander have resided
3 at 2370 Warren Road, Walnut Creek, CA 94595, APN 184120035), immediately adjacent to
4 the Real Party's properties, for the last 24 years. They are bringing this action in order to
5 prevent the construction of a 2-story, 18-bed, elevator equipped, dormitory-style addition 10-
6 feet from their property line that is completely inappropriate and out of character for the
7 neighborhood, would provide seniors a direct line of sight into Petitioner's living space, and
8 would be a complete violation of their rights to safe and peaceful living. That the Respondent
9 has ignored Petitioner's factual claims and evidence of malfeasance involving the Application
10 process, and Named Parties have refused to compromise, has driven Petitioners to seek Justice
11 from the Courts.
- 12 2. Respondent, the County of Contra Costa ("County"), is a municipality located within the State
13 of California, having jurisdiction over the development of land within its unincorporated
14 boundaries. Contra Costa County is a governmental organization duly established and existing
15 under and by virtue of the laws of the State of California as a general law County. The
16 legislative body charged with the duty of governing Contra Costa County's affairs was and is
17 its Board of Supervisors.
- 18 3. Named Parties are corporations whose capacities and responsibilities for the wrongs and acts
19 herein are alleged by Petitioners. Carnelian Assisted Living, LLC (Carnelian) is the corporate
20 owner and operator of a Residential Care Facility for the Elderly (RCFE), a commercial
21 business, which operates across three contiguous parcels located at 2374 Warren Road,
22 Walnut Creek, CA 94595 (APN 184120071) (Carnelian Three), 2380 Warren Road, Walnut
23 Creek, CA 94595 (APN 184120077) (Carnelian One) and 170 Flora Avenue, Walnut Creek,
24 Walnut Creek, CA 94595 (APN 184120077) (Carnelian One) and 170 Flora Avenue, Walnut Creek,
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27 Walnut Creek, CA 94595 (APN 184120077) (Carnelian One) and 170 Flora Avenue, Walnut Creek,
28 Walnut Creek, CA 94595 (APN 184120077) (Carnelian One) and 170 Flora Avenue, Walnut Creek,

1 CA 94595 (APN 184120073) (Carnelian Two) in an R-10 Single Family Residential
2 Neighborhood in the unincorporated Walnut Creek enclave known as Saranap. The Carnelian
3 facility occupies approximately one acre of connected land, surrounded on three sides by
4 single-family residences, and operates without boundaries and includes merged common areas
5 and shared ingress and egress routes.
6

- 7 4. The second named party, Huston General Contracting (HGCI), Inc. with a place of business
8 located at: 101 Lucas Valley Rd, Suite 150, San Rafael, CA, has contracted with The
9 Carnelian to design and build a major addition to one of the three parcels that constitute the
10 facility. Huston General Contracting (HGCI) is the party who completed the Land Use
11 Application CDLP23-02046 and their employee signed said application attesting to its
12 accuracy and completeness, through multiple revisions thereof.
13
- 14 5. The Carnelian RCFE has been operating in one form or another for over fifty years and has
15 been passed down to the third generation of the Grutas family to operate in its current state.
16 This is a cash business with no connection to governmental low-income programs charging
17 fees of \$20,000 and up per bed, per month. In September 2019, ownership of the three parcels
18 were re-titled from personal residences to a single Carnelian Assisted Living, LLC corporate
19 entity, to be consistent with their State licensing profile. This combination of common
20 property owner and licensee inextricably links the business to the specific properties,
21 immortalizing the inseparable nature of the Land Use of these parcels and the State Licensing
22 entity (CCLD) which has regulatory authority over their business. As detailed in Chapter 22,
23 State RCFE Licensing requirements are effective statewide and are not open to interpretation
24 at the local level and would be eligible for Judicial Notice.
25
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- 1 6. The California Department of Social Services, Community Care Licensing Division (CCLD)
2 regulates all aspects of RCFE operations and compliance by the authority of Health & Safety
3 Code § 1569 et seq. and CCR Title 22. ("Residential Care for The Elderly Act") Though the
4 Respondent has jurisdiction over Land Use permits, approval thereof is contingent on (at
5 least) a fiduciary duty to maintain consistency and integrity of State CCLD definitions and the
6 deference accorded it by statute. Though not a Named Party herein, the State CCLD has
7 documented their determination that the Carnelian RCFE is a single 30-bed operation on a
8 three-building campus where one licensee supports the needs of the other two – and which
9 cannot be dismissed as irrelevant to the Application.
10
- 11 7. The Residential Care Facility for the Elderly (RCFE) Act (Code § 1569 et seq) places a
12 statutory limit on the size of RCFEs of six residents. Should an RCFE want to expand beyond
13 the six-bed statutory threshold, a Conditional Land Use permit is required. The intent of the
14 RCFE legislation is to promote additional housing for seniors while simultaneously creating
15 business opportunities for homeowners who could provide RCFE services within the confines
16 of their existing residences, where the seniors are cared for by the occupying resident
17 homeowners. Intended to blend in to the R-10 residential areas, the Act never contemplated
18 an actor who would acquire contiguous homes and try to develop a forty-two bed facility that
19 is totally out of character for the neighborhood, using questionable tactics.
20
- 21 8. Over ninety-five percent of all RCFE facilities in Contra Costa County fall within this
22 statutory range (six or fewer residents) however none have more than six per home on
23 contiguous properties in R-10 single-family residential neighborhoods. Over the years the
24 family who has owned the RCFE expanded Carnelian One from 6 beds to 15 and Carnelian
25 Two from 6 beds to 9. Carnelian Three – the only property included in the Land Use
26
27
28

1 application - is seeking to expand from 6 beds to 18. Therefore, as a single facility, The
2 Carnelian currently houses 30 seniors and seeks to expand to 42. To further eliminate doubt as
3 to the integrated larger operation, The Carnelian represents themselves in marketing materials
4 as a thirty-bed facility as well, and yet claims without explanation that their Land Use
5 application for six beds is accurate.
6

7 9. On paper, the three homes on The Carnelian campus are each licensed separately by CCLD
8 and maintain separate taxable identities (Carnelian One, Carnelian Two, Carnelian Three).
9 Since Carnelian Two and Carnelian Three do not meet the standards required for stand-alone
10 operation specified in Chapter 22, CCLD treats them all as one operation. The fact that
11 Carnelian One supports the needs of Carnelian Two and Carnelian Three under written
12 authorization of CCLD renders the individual licenses of the non-compliant homes moot. This
13 authorization must comply with the following statute:
14

15 10. Title 22. Social Security, Division 6. Licensing of Community Care Facilities (Refs &
16 Annos), Chapter 8. Residential Care Facilities for the Elderly (RCFE), Article 5. Physical
17 Environment and Accommodations, 22 CCR § 87308 states:
18

19 (a) Nothing in these regulations shall prohibit the provision of required services from a
20 centralized service facility serving two or more licensed facilities when approved in writing
21 by the licensing agency.
22

23 11. For clarity, CCLD has recently published updated facility inspection reports affirming the
24 existence of an integrated centralized operation, however multiple requests to CCLD have
25 resulted in their admission that they are unable to produce a current centralized Operating
26 Plan. As discussed in past testimony, the actual report is not necessary to confirm CCLD de
27
28

1 fact acceptance of an integrated operation and its absence at the time of this filing should not
2 negatively affect the premise of the argument.

3 12. There is no contention that The Carnelian does not comply with this statute and will be
4 compelled to produce a Centralized Operating Plan that details the cumulative activities of the
5 three homes that constitute the facility. This plan, while not yet available, is required to
6 document the current thirty bed capacity and serves as the definitive source of operational
7 detail for the facility.
8

9 13. That such an Operating Plan was omitted from the Land Use application, despite its central
10 importance, constitutes a violation of CCLD Licensing provisions: California Health and
11 Safety Code Division 2. Licensing Provisions [1200 - 1796.70]
12 “Chapter 3.2 HSC § 1569 RCFEs 1569.15 (3)(F)(1) The department may deny an application
13 for licensure or may subsequently revoke a license under this chapter if the applicant
14 knowingly withheld material information or made a false statement of material fact with
15 regard to information that was required by the application for licensure. “
16
17

18 14. Omission of the Operating Plan itself should have been enough for Respondent to deny the
19 Application, however they chose to approve it even though it was cited in testimony.

20 15. On or about August 2, 2023, Huston General Contracting (HGCI), on behalf of The Carnelian
21 (Applicant) filed Land Use application CDLP23-02046 with the Contra Costa County
22 Planning and Development department seeking to add a two-story 2665 square foot addition –
23 including an elevator – at the 2374 Warren Rd (Carnelian Three) home which currently
24 houses 6 residents.
25

26 16. The application only mentioned Carnelian One and Carnelian Two in passing and ignored any
27 impact to the additional 24 seniors who would be seriously impacted by the expansion. The
28

1 Carmelian is a highly unusual – many would say incompatible - RCFE as it is by far the
2 largest facility in a single-family neighborhood in all of Contra Costa County, with a current
3 population of 30 seniors across a three-building campus - and is applying for a 42% increase
4 in capacity where a higher degree of scrutiny must be applied.
5

6 17. The application was for a 6-bed facility expanding to 18 beds on a single small parcel (2374
7 Warren Rd) of an existing RCFE, which falsely implied that this was a minor expansion not
8 worthy of extraordinary assessment. That the County accepted the application on its face –
9 after it was proven that The Carmelian is a much bigger and substantial operation – constitutes
10 an abuse of discretion and jeopardizes the well-being of the 24 seniors who are not accounted
11 for in the Application.
12

13 18. Should the Applicant be allowed to develop a single parcel in isolation it would open the door
14 to piecemeal development on the adjoining parcels and would set a new precedent for other
15 commercial businesses exploiting loopholes to encroach on residential neighborhoods
16 elsewhere in Contra Costa County, in defiance of the spirit of the founding legislation.
17

18 19. The Applicant had a choice and could have submitted a proper application to expand the
19 RCFE capacity from 30 to 42, however this would have triggered a much more intensive
20 review – and might not have been successful - than the application they submitted expanding
21 from 6 to 18.
22

23 20. On May 20, 2024, neighbors of The Carmelian were shocked to receive a Notice Of Hearing
24 regarding Land Use application CDLP23-02046 indicating a public hearing would be held to
25 approve the application on May 24, 2024. This was the very first time any of the neighbors
26 had heard about the proposed expansion and were and are vigorously opposed to it.
27
28

- 1 21. With only four days' notice, the residents submitted evidence to the Zoning Administrator
2 which included the indisputable size of the three-parcel facility as well as numerous
3 deficiencies in the Findings and Staff Report issued for the Project. The ZA expressed several
4 reservations about the project including the size and inclusion of an industrial elevator and
5 granted an extension for the parties to find a compromise.
6
- 7 22. Though the neighbors succeeded in making their grievances known, and expressed their
8 willingness to compromise, the Applicant made only cursory efforts to address them and
9 made cosmetic design changes that did nothing to address those concerns. At the following
10 Zoning Administrator hearing on February 3, 2025, the ZA approved the project over the
11 vociferous objections of the neighbors.
12
- 13 23. In a close split vote, on April 23, 2025 the Contra Costa County Planning Commission opted
14 3 to 2 to approve the Land Use application and deny Petitioner's appeal, even after heated
15 discussion regarding the veracity of the variance requests included in the application.
16 Petitioner intends to amend this submission with a transcript of these proceedings upon
17 document production by the County.
18
- 19 24. On July 22, 2025, the Contra Costa County Board of Supervisors voted 4 to 0 to deny
20 Petitioner's appeal and approve the Project as presented. The transcript for this critical
21 testimony will be amended to this Petition when received.
22
- 23 25. This is a question of law, not of fact, and involves novel legal issues of a first impression
24 which have significant public interest implications. Petitioners claim that judgement has never
25 been rendered by the Court settling this question:
- 26 1. Does Contra Costa County have the obligation to accept a Land Use application as
27 presented for the expansion of a CA State regulated RCFE facility, which the State
28

1 regulates as a single business across three contiguous and integrated parcels or, is the
2 County justified in following their “standard practice” in evaluating an application as
3 presented for just one parcel of the three without considering the State determination
4 that it is a three-building, higher capacity, integrated facility and must be evaluated by
5 the County for Land Use as such? Conversely, is the County’s approval of an incorrect
6 application acceptable under the County practice of taking the details therein at face
7 value – even when presented with evidence to the contrary – which ignores the well-
8 being of the current residents not accounted for?
9

10 26. To summarize, the County’s approval constitutes an abuse of discretion because the
11 application itself was inaccurate, misleading, and fundamentally non-compliant with state
12 RCFE licensing, fire, and building requirements and the County chose to approve it even
13 though these facts were made known to them prior to that approval. Approval of this Project
14 threatens the health and safety of 30 vulnerable elderly residents who are not included in the
15 application and are invisible in the evaluation and negatively affects surrounding neighbors
16 with an unnecessary 42% increase in capacity. There are also life-changing risks to the
17 surrounding neighbors from Respondent’s arbitrary and capricious decision.
18
19

20 27. As a result of the seemingly minor and routine land use application presented to the Contra
21 Costa County Planning and Zoning Department, their Planners published a Staff Report
22 containing several erroneous Findings which are themselves grounds for granting this Petition
23 and disqualifying the Land Use application.
24

25 28. By approving the Application in reliance solely on Applicant’s declarations, the County
26 abused their discretion and ignored state supremacy of RCFE licensing requirements, failed to
27 account for required on-site facilities, and undermined essential fire and life safety reviews.
28

1 **II. JURISDICTION AND VENUE**

2 29. Jurisdiction is proper under Code of Civil Procedure § 1094.5.

3 30. Venue lies in Contra Costa County because the County's decision is challenged, and the
4 properties are located here.

5 **III. PARTIES**

6
7 31. Petitioners are Contra Costa County residents living immediately adjacent to the Project, with
8 property rights, safety, and welfare directly affected by the County's decision.

9 32. Respondent Contra Costa County is a political subdivision of the State of California.

10 33. Respondent Board of Supervisors is the legislative body responsible for the challenged land
11 use decision in Contra Costa County.

12 34. Real Party of Interest One is Carnelian Assisted Living, LLC, the Applicant, and common
13 owner/operator of the RCFE complex and compliance there with.

14 35. Real Party of Interest Two is Huston General Contracting, Inc (HGCI) of San Rafael, CA and
15 is the author and responsible signing declarant of the Application.

16 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17
18 36. Petitioners repeatedly raised these issues during the administrative process, warning that
19 reliance on the fatally incorrect application would mislead other reviewing agencies such as
20 Contra Costa Fire. Nevertheless, on July 22, 2025, the Board of Supervisors approved the
21 Land Use Application CDLP23-02046. This mandamus action remains the only way to avoid
22 this potential danger.

23 37. Petitioners exhausted all administrative remedies, appealing Land Use Application CDLP23-
24 02046 to the Zoning Administrator, Planning Commission, and ultimately the Board of
25 Supervisors of Contra Costa County.
26
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1 38. Petitioner will make a formal written request to the Respondent Agency, (Contra Costa
2 County Board of Supervisors) for the preparation of the certified Administrative Record,
3 pursuant to Code of Civil Procedure §1094.5 and Government Code §68630, et seq. The
4 estimated cost for preparation of the record will be paid upon demand by Petitioners.
5

6 39. Petitioners have included a request for Judicial Notice regarding CA State CCLD under
7 Discretionary Judicial Notice (Evidence Code § 452) which allow the Court to consider the
8 State statutes and previously submitted evidence in these deliberations, however this approach
9 does not settle the question of Law presented herein.
10

11 **V. CAUSES OF ACTION**

12 **First Cause of Action: Abuse of Discretion – Violation of State RCFE Licensing Supremacy**

13 40. Respondent approved a project incompatible with state RCFE licensing requirements, which
14 are exclusively governed by CDSS under Health & Safety Code § 1569 et seq. and CCR Title
15 22.
16

17 41. By approving a Land Use application that allows a standalone separately licensed RCFE at
18 2374 Warren Rd (exclusive of the other two) to operate without on-site facilities (kitchen,
19 dining, medication storage) and ignoring the obligation to consider Title 22 in its findings, the
20 County exceeded its authority, undermined state law, and abused their discretion.
21

22 **Second Cause of Action: Abuse of Discretion – Incomplete and Misleading Application**

23 42. Government Code § 65943 requires agencies to ensure applications are complete. The
24 applicant's omission of the State authorized Operational Plan – a requirement under Chapter
25 22 § 87308 for centralized facilities - misrepresented the scale of the Project but the County
26 chose to ignore that fact and chose not to address it during any of the proceedings.
27
28

1 43. Without the required Plan of Operation, the County evaluated the Project as a 6-resident
2 RCFE instead of the 30-resident complex it is. This misrepresentation materially affected
3 density, fire safety, and emergency planning considerations.

4 44. Since the application could easily have been submitted with correct information inclusive of
5 the entire facility the applicant clearly attempted to circumvent the additional statutory
6 obligations (such as a dedicated Fire/Delivery Lane) triggered by the true large size and
7 industrial nature of the commercial operation by only including the smallest of the three
8 buildings that constitute the whole facility.

9 45. Despite repeated pleadings at each stage of appeal, Respondent chose to sidestep the issues
10 and blame any misrepresentations on the Applicant without providing any sort of statutory or
11 ordinal explanation to substantiate their decision to approve the application of a single-parcel
12 and ignored the impact of 42 seniors packed into an RCFE, where the standard is 6.
13

14
15 **Third Cause of Action: Abuse of Discretion – Violation of Building and Physical RCFE**
16 **Requirements**

17 46. California Residential Code § R306.2 requires each dwelling unit to include a kitchen.
18

19 47. CCR Title 22 §§ 87307 and 87555 require RCFEs to provide dining rooms and food service
20 capabilities on-site.

21 48. The 2374 Warren Rd. parcel lacks these mandatory facilities and cannot legally operate
22 independently, even though it is technically licensed to do so. The entire purpose of the
23 Operational Plan is to document the dependency of this licensee on the central building and
24 serves as the States authorization to do so – evaluating this as a single-parcel facility is
25 therefore contrary to State law.
26
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1 49. The facts that the RCFE has been in operation for over 50 years and is structured
2 administratively so as to appear to be three independent facilities is irrelevant to the current
3 existence of a single large RCFE that must be evaluated as such, and claiming such
4 independent operation when convenient is inconsistent with Respondent's fiduciary duty to
5 consider the Petitioner's claims regarding actual size and consistency with state regulations.
6

7 **Fourth Cause of Action: Abuse of Discretion – Failure to Ensure Comprehensive Fire and Life**
8 **Safety**

9 50. California Fire Code §§ 101.3, 101.4, and 1003.6 require review of all interconnected
10 buildings and egress routes.

11 51. Because residents rely on pathways between parcels and centralized services, the facility must
12 be evaluated as one operational complex.
13

14 52. By approving the application without considering the true combined occupant load, egress
15 capacity, and operational interdependence, the County undermined the fire marshal's ability
16 to conduct a proper safety review, leaving residents unprotected.
17

18 53. By mis-stating critical details and omitting the definitive identifying characteristics contained
19 in the Operations Plan the Applicant has violated their sworn statement of accuracy on the
20 application.

21 **Fifth Cause of Action: Abuse of Discretion – Staff Report Findings Incorrect**

22 54. The Carnelian has requested a variance for the width of their driveway in order to
23 accommodate the required parking spaces for their expansion. The Respondent should not
24 have granted that variance because they had no legal basis for doing so. The grant of
25 variances to owners of property covered by comprehensive zoning plans is governed by
26 Government Code section 65906, which states: "Variances from the terms of the zoning
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28

1 ordinances shall be granted only when, because of special circumstances applicable to the
2 property, including size, shape, topography, location or surroundings, the strict application of
3 the zoning ordinance deprives such property of privileges enjoyed by other property in the
4 vicinity and under identical zoning classification. Orinda Assn.[182 Cal. App. 3d 1163]

5
6 55. The Zoning Administrator did not find that there were any “special circumstances” based on
7 “size, shape, topography, location or surroundings” that deprived the owners of “privileges
8 enjoyed by other property” as it must by law. An administrative grant of a variance must be
9 accompanied by administrative findings. A court reviewing that grant must determine whether
10 substantial evidence supports the findings and whether the findings support the conclusion
11 that all applicable legislative requirements for a variance have been satisfied. Topanga
12 Association for a Scenic Community v. County of Los Angeles [11 Cal.3d 506]

13
14 56. Those required findings have not been made here. The staff report describes the location of
15 the building and the addition and then declares that the need for six striped parking spaces
16 means that they need a variance and so one should be granted. “Due to the location of the
17 existing development on-site, the strict application would deprive the subject property of
18 having a dedicated parking area, which is a right enjoyed by other properties.”

19
20 57. This argument is inadequate and specious. First, the property has already been described as
21 having parking spaces, so it is not being deprived of having dedicated parking as enjoyed by
22 other properties. It is only being deprived of having six striped parking spaces which is not a
23 right enjoyed by any other properties in the area.

24
25 58. Secondly, the report identifies no “size, shape, topography, location or surroundings” of the
26 subject property that constitute “special circumstances”. Using the word “location” to
27 describe the development on the property is not a magic charm to invoke variances.
28

- 1 59. The Board of Appeals in Orinda Association made clear the kind of special circumstances
2 finding necessary for a variance: Government Code section 65906 emphasizes disparities
3 between properties, not treatment of the subject property's characteristics in the abstract.
4 Orinda Association v. Board of Supervisors [182 Cal. App. 3d 1146] and there would be no
5 evidence to support such findings since there is no special circumstance depriving the
6 Carnelian of privileges enjoyed by others.
7
- 8 60. The driveway in question is a typical driveway for the neighborhood, and the lot is a typical
9 lot-there is no creek, public utility easement or other non-typical physical property of the lot-
10 so there is no notable difference in size, shape, topography, location, or surroundings.
11
- 12 61. The only reason the Carnelian needs six striped spaces is because it is trying to expand its
13 business into a size which is too large for its residential neighborhood location. The fact that
14 its lot is not big enough to accommodate six spaces is an indication that the business is too big
15 already, not that there is any unfairness to the Carnelian that requires a variance. Despite
16 factual protestations by Petitioner, Respondent ignored the evidence and "rubber stamped" a
17 "minor" Land Use application that was anything but.
18
- 19 62. Required findings for approval of a land use permit include the following: (i) That the
20 proposed project shall not adversely affect the orderly development within the County or the
21 community; (ii) that the proposed project shall not encourage marginal development within
22 the neighborhood; and (iii) that special conditions or unique characteristics of the subject
23 property and its location or surroundings are established.
24
- 25 63. The Staff Report would argue that these findings can all be made because (i) the proposed use
26 in an expansion of pre-existing use of many years standing; (ii) the proposed use is regulated
27 and thus unique; and (iii) the parcel is transitional in the sense that multi-family uses and
28

1 commercial/retail uses are beginning to predominate over traditional residential single family
2 uses.

3 64. A land use permit is a permit issued to a landowner by an administrative agency allowing a
4 particular use or activity not allowed as a matter of right within a zoning district. In *Upton v.*
5 *Gray* (1969) 269 Cal App 2d 352, 357, the court described the purpose of a conditional land
6 use permit to be the following: "The device of providing for the issuance of a special use
7 permit is well recognized as a legitimate zoning procedure. It permits the inclusion in the
8 zoning pattern of uses considered by the legislative body to be essentially desirable to the
9 community, but which because of the nature thereof or their concomitants (noise, traffic,
10 congestion, effect on values, etc.), mitigate against their existence in every location in a zone,
11 or any location without restrictions tailored to fit the special problems which the uses
12 present."
13

14
15 65. Obviously, there is no entitlement to approval of a land use permit – whether or not
16 conditioned. *Wesley Investment Co. v. County of Alameda* (1984) 151 Cal App 3d 672. The
17 issuance of a land use permit is not a matter of legislative discretion; rather it is quasi-
18 adjudicative in nature and must be supported by specific findings which in turn are supported
19 by substantial evidence. *Essick v. City of Los Angeles* (1950) 34 Cal 2d 614,622.
20

21 66. The Staff Report is incorrect in its description of the "neighborhood" as transitioning from
22 traditional single family residential to multi-family, retail and commercial uses. Warren Road
23 is a very traditional single family residential neighborhood – but for the portion of Carnelian
24 that adjoins that street. As to that portion, the present project appearance is residential in type
25 and scale of development.
26
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- 1 67. Had the Staff Report directed its “transitional” comment to the portions of Carnelian that
2 enjoy street frontage on Flora Road, its application might be deemed far more
3 appropriate. Flora Road connects Boulevard Way to Warren Road. There are obviously a
4 number of multi-family projects in that area as well as retail and commercial that front on
5 Boulevard Way – none of which are found along Warren Road.
6
- 7 68. The Staff Report suggests that approval of the requested land use permit would not adversely
8 affect orderly development or lead to marginal development due to the regulated nature of the
9 business being conducted from the Carnelian facility.
10
- 11 69. However, Board of Supervisors cannot defer its responsibility to make findings on land use
12 issues by default to another jurisdiction with different regulatory authority having no role in
13 land use considerations.
14
- 15 70. Staff and the Project Applicant have framed the land use permit issue as one that involves but
16 a single parcel of constrained property as to which there is no consideration. This approach
17 fails to consider the Carnelian as a single facility to be developed in its entirety in the best
18 fashion to balance zoning district and neighbor requirements with the special uses it might
19 need. Approval of this land use permit does in fact cause the adverse effects on orderly
20 development and marginal development that making the required findings is intended to
21 avoid.
22
- 23 71. It is basic planning that any proposed project must be evaluated not merely on its own merits
24 but with respect to the cumulative impact that future development might create. The increase
25 in resident capacity is a Carnelian issue – not a single parcel issue.
26
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1 72. The overall development plan for the Carnelian in its entirety should have been considered by
2 Staff in measuring the particular proposal against the broader findings requirements imposed
3 by County ordinance.

4 73. It is noteworthy that Huston General Contracting, Inc (HGCI), the Carnelian
5 Contractor/Consultant reported to Staff regarding its meeting with neighbors in a letter dated
6 October 2, 2024 and remarked expressly that "...The maximum beds the Carnelian team can
7 accommodate is 18 beds to alleviate the current housing demand and needs (the owners and
8 staff would like to add more but it will burden the owners and their staff beyond their
9 resources available at this time." (Emphasis added) The application focus on but one parcel
10 of three comprising the Carnelian for purposes of increasing resident capacity has created a
11 false dialog in which constraints are deemed acceptable and alternatives have not been
12 investigated – while future development plans and their potential impacts have not even been
13 considered.

14 74. It is not possible to make the required findings in support of the land use permit as presently
15 characterized. In addition, the present application requires a variance which is unnecessary if
16 the constraints of the single parcel and its proposed development are expanded by the review
17 of the entirety of the facility.

18 75. The law has long advocated for the consideration of substance over form. The substance of
19 this application is an increase in resident capacity at the Carnelian. The form is a new
20 proposed and localized two story structure selected to avoid the scrutiny that would come
21 with a full facility Application. A proper request for increased capacity would have
22 considered the entirety of the Carnelian campus in order to best address the parking, traffic,
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1 construction, and capacity use issues that affect all three parcels and not just the one
2 arbitrarily selected by the project applicant.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, JOSHUA ECKHAUS & JENNIFER OSTRANDER pray for judgment as follows:

- 5
- 6 1. That this Court grant Judicial Notice of the evidence provided by State CCLD statutes
7 and records under Discretionary Judicial Notice (Evidence Code § 452) and affirm
8 that Land Use evaluations must consider these as fact. Should the Court grant Judicial
9 Notice and agree that the Application is therefore invalid on its face due to that
10 recognition, then these proceedings can be concluded without further adjudication on a
11 Summary Judgement basis.
- 12
- 13 2. Absent that Judgement, that this Court issue a Writ of Mandate demanding that Contra
14 Costa County vacate and set aside its decision of approval evidenced by Board of
15 Supervisors Resolution 25-3015 of July 22, 2025 regarding Land Use Application
16 CDLP23-02046 and ordering the reconsideration thereof in light of this Court's
17 opinion and judgment;
- 18
- 19 3. For an order directing Respondent to prepare and file the certified Administrative
20 Record of the proceedings associated with Land Use Project CDLP23-02046 with this
21 Court as expeditiously as possible, and to provide Petitioner with a copy at their cost
22 upon completion.
- 23
- 24 4. For an order requiring Respondents, should they choose to reapply for a Land Use
25 permit at this site, fully declare the entire interdependent RCFE complex details and
26 dimensions and its compliance with state and local codes in a resubmission and to
27 confer with local residents during the process.
- 28

1 5. For an order mandating certain Conditions of Approval for any future development of
2 the RCFE that were presented to - but not acted on by – Respondent and were
3 submitted to the record accordingly (Citation pending record production). Examples
4 include:

- 5 1. Noise abatement measures
- 6 2. Parking revisions
- 7 3. Congestion & Nuisance abatement
- 8 4. Construction scheduling detailed disclosure

9
10 5. That this Court award Joshua Eckhaus & Jennifer Ostrander their Court fees and costs
11 herein incurred and as provided in Government Code §800; and

12
13 6. That this Court award Joshua Eckhaus & Jennifer Ostrander such other and further relief
14 as this Court may deem just and proper.

15 **Dated: OCTOBER 16, 2025**

16 **Respectfully submitted,**

17
18 
JOSHUA ECKHAUS

19
20 
JENNIFER OSTRANDER
21 IN PRO PER

22 **VERIFICATION**

23 We, Joshua Eckhaus & Jennifer Ostrander, declare: We are the Petitioners in the above-entitled
24 action. We have read the foregoing Petition for Writ of Mandate and know the contents thereof. The
25 same is true of our own knowledge, except as to those matters stated on information and belief, and
26 as to those matters, we believe them to be true.
27

1 We declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed on October 16, 2025, at Walnut Creek, California



JOSHUA ECKHAUS



JENNIFER OSTRANDER
IN PRO PER