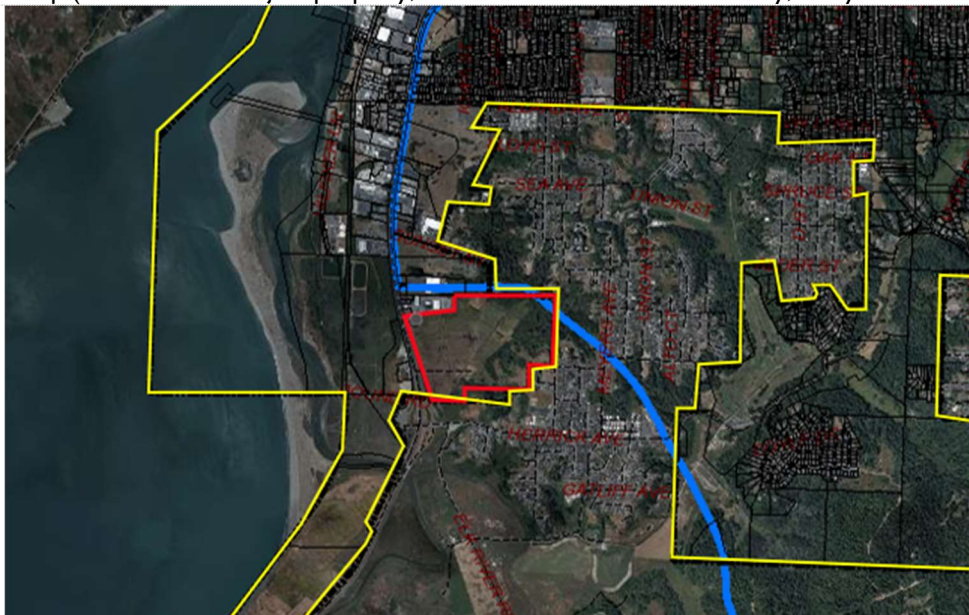


Title:	Appeal of Carrington Company Lot Line Adjustment Coastal Development Permit, and Associated Lot Line Adjustment
Project:	Coastal Development Permit CDP-23-0003 (appeal), and Lot Line Adjustment LLA-23-0001
Location:	4775 Broadway (aka 4635 Broadway)
APN:	302-171-035
Applicant:	The Carrington Company
Property Owner:	Francis and Carole Carrington, Trustee of the Carrington Family 2000 Trust
Purpose/Use:	Lot line adjustment between three parcels resulting in three parcels
Application Date:	May 8, 2023
General Plan:	Coastal Agriculture (A), and Inland Agriculture (A) and Residential Estates (RE)
Zoning:	Coastal Agriculture (AC), and Inland Agriculture (A) and Residential Estates (RE)
CEQA:	Exempt under §15305, Class 5 Minor Alterations in Land Use Limitation
Staff Contact:	Caitlin Castellano, Senior Planner
Recommendation:	Hold a public hearing; and Adopt resolutions finding the project is exempt from CEQA, sustaining the Director’s conditional approval of the Coastal Development Permit CDP-23-0001, and approving the Lot Line Adjustment.
Motion:	“I move the Planning Commission find the project is exempt from CEQA, adopt a resolution to sustain the Development Services Director’s conditional approval of the Carrington Company Lot Line Adjustment Coastal Development Permit, and adopt a resolution to conditionally approve the associated Lot Line Adjustment, at 4775 Broadway.”
Appeal Status:	The City’s final action on the Coastal Development Permit is appealable to the California Coastal Commission.

Figure 1: Location map (red outline is subject property, blue line is coastal zone boundary, and yellow line is City limits)



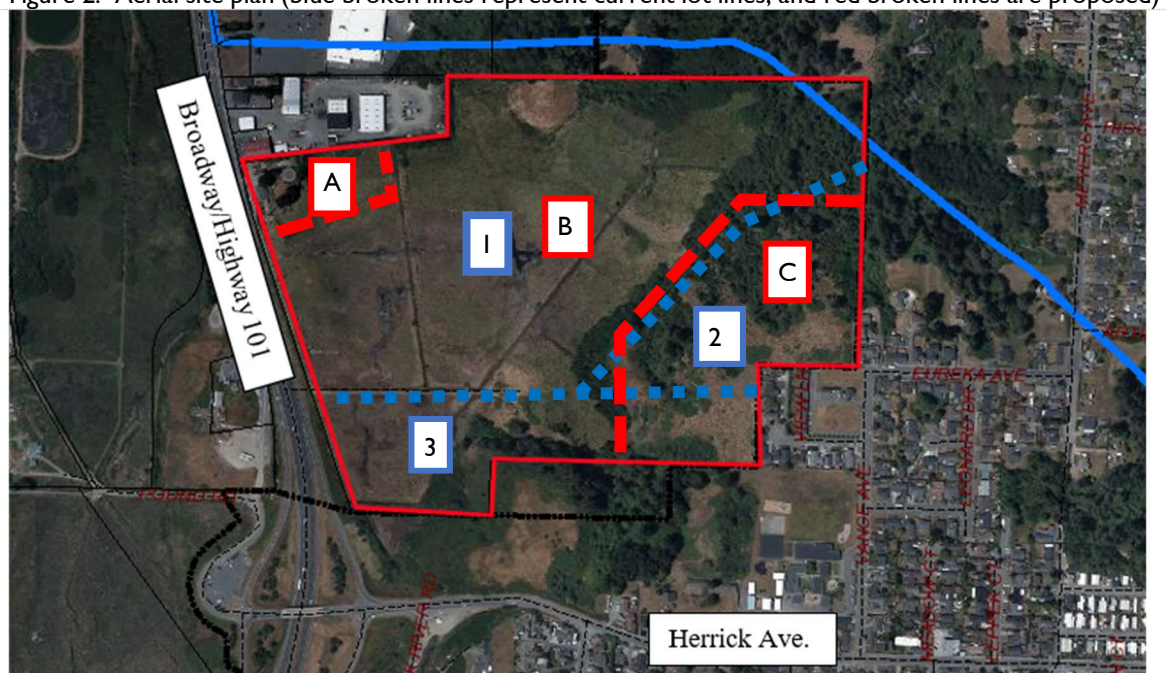
Appeal of Carrington Company Lot Line Adjustment Coastal Development Permit, and Associated Lot Line Adjustment
 Project No: CDP-23-0003(appeal), and LLA-23-0001

PROJECT SUMMARY

A Lot Line Adjustment (LLA) is proposed to adjust the lot lines between three parcels (identified as one Assessor's Parcel Number), resulting in three parcels, all under the same ownership (Figure 2).

Parcel	Acres	
	Before LLA	After LLA
1/A	54.7 (1)	3 (A)
2/B	14.0 (2)	61.3 (B)
3/C	15.83 (3)	20.23 (C)

Figure 2: Aerial site plan (blue broken lines represent current lot lines, and red broken lines are proposed)



The property is approximately (~) 85 acres and has three distinct areas: (a) the small raised terrace at the northwestern corner of the property used by Butler Valley, Inc. where farm-related structures are concentrated; (b) the large lowland area of grazed wetlands; and (c) the large upper terrace area along the eastern side of the property. The LLA would move existing lot lines to roughly separate these three areas, which will result in the Butler Valley operation, the lowland grazing operation, and the upland open space area being located on their own separate legal parcels. According to the applicant, the purpose of the LLA is to convey proposed resultant Parcel A to Butler Valley, Inc., retain resultant Parcel B and continue leasing it for grazing, and potentially sell resultant Parcel C in the future. No physical development or new uses are proposed on any of the resultant parcels at this time.

The three parcels are located in the Coastal Zone (except a small portion at the northeast corner of existing Parcel 1/resultant Parcel B), and the proposed LLA is considered development as defined by the Coastal Act and Eureka Municipal Code (EMC) §10-5.2906.2(u); therefore, a Coastal Development Permit (CDP) is required pursuant to EMC §10-5.29302. A CDP (CDP-23-0003) was conditionally approved by the Development Services Director at a noticed public

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Project No: CDP-23-0003(appeal), and LLA-23-0001

hearing on November 13, 2023, and has been appealed to the Planning Commission as described below.

The LLA also requires separate approval under the City's subdivision ordinance (EMC Chapter 154) which implements the Subdivision Map Act. Typically, the Director acts on the LLA, but EMC Chapter 154 allows the Director discretion to require a public hearing be held by the Planning Commission when the proposed development arouses extraordinary public concern. Due to the appeals of the CDP to the Planning Commission, the Director has chosen to elevate the decision on the associated LLA to the Planning Commission as well. As conditioned, the CDP will not become effective until the LLA is approved, and the LLA cannot be recorded until the CDP is approved and effective.

SUMMARY OF CDP APPEAL

The Director of Development Services conditionally approved a CDP for the project on November 13, 2023 (Attachment 4). 18 community members (not including City staff) attended the hearing, of which nine spoke at the hearing, including the applicant's agent. The Director-level approval received nine appeals. Concerns expressed include the City's noticing procedure, use of Zoom to conduct the Director's Hearing, and a belief the LLA CDP facilitates or even authorizes future development that would have an impact on sensitive natural resources, particularly on the upper terrace area along the eastern side of the property (resultant Parcel C).

Actions by the Director may be appealed by any aggrieved person within 10 calendar days of the decision. The aforementioned appellants submitted appeals within the 10-day appeal period, and constitute "aggrieved persons" (and therefore have standing for appeal) because they spoke at the Director hearing on the CDP, and/or otherwise informed the City of the nature of their concerns prior to the hearing (such as through a public comment letter). The written comments received prior to the Director's decision on the LLA CDP are included in Attachment 5. Pursuant to Eureka EMC §10-5.29310.2 (Appeals), the appeals must state why the decision of the Director is not in accord with the City's Local Coastal Program and/or why it is believed that there was an error or an abuse of discretion by the Director. The full text of the appeals is included as Attachment 3.

SUMMARY OF DIRECTOR APPROVAL OF CDP

Pursuant to EMC §10-5.29310.1, to approve a CDP, the Director (or Planning Commission on appeal) must find the proposed development (i.e. the LLA) conforms to the policies of the certified Local Coastal Program (LCP). The Local Coastal Program is divided into two components: the Land Use Plan (LUP) and Implementation Plan (IP). The findings for the November 13, 2023 Director-level decision include findings of consistency with the Agriculture (A) land use designation, the applicable goals and policies of the adopted and certified LUP, and the applicable Coastal Agriculture (AC) development standards of the IP (i.e. the coastal zoning code) (Attachment 4).

The Director approved the CDP subject to three Conditions of Approval, two of which are intended to prevent impacts to coastal resources including limiting future development in environmentally sensitive habitat areas (ESHAs) on resultant Parcel B, and ensuring resultant Parcel B maintains legal access over resultant Parcel A so it can continue being used for grazing

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since it would not have its own access to a public road after the LLA. The third condition alerts the applicant to the need for the LLA to be approved prior to the CDP becoming effective. The full text of the Conditions of Approval can be found in the Director's Resolution in Attachment 4.

PLANNING COMMISSION REVIEW OF CDP

The Planning Commission is charged with reviewing the action taken by the Development Services Director; which, in this instance, was to conditionally approve the LLA CDP to reconfigure three parcels resulting in three parcels. Upon conclusion of the public meeting, the Planning Commission may sustain, modify, or overrule the Director-level decision. The standard of review for the proposed LLA CDP is consistency with the certified policies of the LCP (EMC §10-5.29310.1).

ANALYSIS OF APPELLANT'S CONTENTIONS+

This section provides background on the appeals and analysis of the appeal contentions.

Contention I: Error and Abuse of Discretion by the Director

The appellants contend the Director erred and abused discretion in approving the CDP by not properly noticing all property owners and residents within 300 feet of the site; not providing sufficient noticing time prior to the hearing, including inadequate time for people to request accommodations, in part because the noticing period included Veterans Day; not providing notice in a manner that could be understood by all nearby property owners; not posting a public hearing notice sign at various locations; and holding the public hearing via Zoom which prohibited non-English speaking citizens, people with hearing impairments, and those who do not have a computer, adequate internet access, or knowledge of how to use a computer and/or Zoom from participating in the hearing.

Development Services – Planning properly noticed the project in accordance with the EMC and California Government Code (CGC) §65090 et seq. as described in the Director's CDP Report. The property owners identified by the appellants as not receiving the postcard public hearing notice were included on the noticing mailing list, and the fully pre-paid postcards were mailed on Thursday, November 2, 2023 by placing them in a United States Post office mail box at Eureka City Hall. None of these notices have been returned to the City by the post office to date. No one requested special accommodations at any time ahead of or during the meeting. A physical notice was posted on the chain-link fence along Broadway, slightly south of the driveway and farmhouse (associated with Parcel 1/proposed resultant Parcel A). A Director hearing is not subject to the meeting procedures in the Brown Act (CGC §54950) and therefore is not required to be held in-person and may be held however the jurisdiction deems appropriate (such as via Zoom) so long as the meeting details were included in the noticing (which they were). This was confirmed by the City Clerk and City Attorney.

Conclusion

For the reasons described above, the Director did not err and abuse their discretion in approving the CDP at a duly noticed public hearing on Zoom. Also, the appeal of the Director's decision on the CDP triggers a new public hearing by the Planning Commission, which was noticed as described in the Public Hearing Notice section below, and the meeting will be held in-person in the Council Chambers at Eureka City Hall and via Zoom.

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Contention 2: Decision Not in Accord with the City's Local Coastal Program

The appellants further contend the project is not in accordance with the certified LCP because the LLA facilitates or even pre-authorizes future development of sensitive natural resource areas, particularly on resultant Parcel C, which would be inconsistent with the LCP and other state and federal protection regulations. Some of the appellants contend that the LLA approval is based on the outdated 2012 wetland delineation mentioned in the staff report, which may underestimate the extent of environmentally sensitive habitat area (ESHA) on resultant Parcel C. The appellants also contend that City staff did not consult with the local tribes because the Wiyot Tribe's Natural Resources Director provided comment at the meeting relating to existing tribal cultural resources on the property. The appellants also contend the LLA is not consistent with several planning principles included in the June 2023 Draft Coastal Land Use Plan (LUP), which has not been adopted and therefore is not the current standard of review for CDPs.

In addition to the findings to support conditional approval of the CDP in the Director's Staff Report, it is important to note existing Parcel 2 (~14 acres in size) which covers most of the upper terrace will largely become resultant Parcel C (~20 acres in size), and could be sold separately now, or in conjunction with existing Parcel 3 to a developer seeking to develop the upper terrace.

The LLA does not approve an increase in the number of parcels on the property or any physical development. Although the property owner previously contemplated development on the upper terrace (resultant Parcel C) as indicated in the wetland delineation report attachment, the property owner now wants to sell the upper terrace and no development is contemplated as part of the LLA. As described in the CDP Staff Report (Attachment 4), the LLA only reconfigures parcels and does not change the Agriculture land use/zoning designation which limits allowed uses and structures on the property. To develop resultant Parcel C (and/or resultant Parcel A or B) with any of the limited uses allowed in the Agricultural land use/zoning designation, a CDP would be required triggering environmental review under CEQA, and the development would have to be found consistent with the City's certified LCP, including the ESHA protection policies, in order for the City to approve the CDP. The CDP and CEQA document would also be referred to relevant resource agencies, and the applicant would be required to obtain any necessary state and federal permits, in addition to the CDP, prior to the City approving a building permit.

To develop resultant Parcel C with uses not allowed by the Agricultural land use/zoning designation, such as a residential subdivision (a concern expressed at the Director's hearing), in addition to the process described in the paragraph above, an LCP amendment would be needed to both change the land use/zoning designations of the parcel and also move the urban limit line in the certified LCP to encompass the property (the property currently lies outside of the LCP's delineated urban limit line, and LUP Policy 4.A.7 prohibits the extension of urban services beyond the urban limit line). The LCP amendment would be required to be reviewed by the Planning Commission, adopted by City Council, and certified by the Coastal Commission. The LUP amendment could only be approved if found in conformance with the Coastal Act, and the IP amendment could only be approved if found consistent with, and adequate to carry out, the City's LUP.

Regarding the contention about the 2012 wetland delineation, resultant Parcel C will be larger than existing Parcel 2 because it will also include the upper terrace portion of existing Parcel 3.

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By enlarging the parcel to capture more of the upper terrace, the LLA is not removing a developable footprint, and instead is only increasing the potential for a developable footprint outside of wetlands. For this reason, it was not necessary to request a biological resource report and wetland delineation, or condition the project with a deed restriction for the upper terrace (as was done for resultant Parcel B). The 2012 wetland delineation report was included for informational purposes and was not the basis for the LLA CDP approval.

Regarding the contention about tribal notification, the three local tribes were properly notified of the proposed LLA project via a standard project referral, and the Wiyot Tribe THPO responded via email with “Caitlin at this time the Wiyot Tribe has no concerns for said LLA.” Any future projects resulting from the LLA will be referred to the local Tribes for further review and comment.

Lastly, conformance with the certified policies of the LCP is the standard of review for CDPs, not the June 2023 Draft LUP, and City staff believe the required findings included in the Director’s CDP Staff Report to approve the LLA CDP have been met.

Conclusion

The proposed project, as conditioned by the Director’s approval, is consistent with the City’s certified Local Coastal Program. As a result, the Director’s decision on the CDP should be sustained.

LOT LINE ADJUSTMENT ANALYSIS

Pursuant to the City’s subdivision regulations in EMC Chapter 154, an LLA may be approved when land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not created; and the LLA does not result in violations of the EMC. Also, for properties in the Coastal Zone, EMC Chapter 154 indicates a CDP may be required for an LLA.

The City performed a legal parcel review, which confirmed there are three legal parcels under one Assessor’s Parcel Number (APN), and the LLA will not create more parcels than originally existed prior to the LLA.

As described above, most of the property is located within the Coastal Zone with a Coastal Agriculture (AC) land use designation, and a small area at the northeastern corner of the property is located outside of the Coastal Zone (in the Inland Zone) and is designated inland Agriculture (A) and Estate Residential (ER). Although the City’s Local Coastal Program (LCP) Land Use map online shows the upland portion of the property along the east property line as being designated as coastal Rural Residential (RR), the Coastal Commission did not certify the RR designation when the LCP’s Land Use Plan (LUP) was comprehensively updated in 1997; therefore, all of the land within the Coastal Zone is designated A and zoned Coastal Agriculture (AC). The minimum lot size for a parcel in the AC zoning district is 3-acres, and the resultant parcels conform to the applicable zoning districts development standards. The minimum parcel size for the Inland A zoning district is 20 acres, and for the RE zoning district, 10,000 square feet, but this LLA does not create a new parcel nor increase any nonconforming aspects of the parcels. Therefore, the proposed LLA conforms to the EMC.

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Additionally, based on the analysis in the CDP staff report (Attachment 3), the proposed project as conditioned is consistent with the certified LCP. Conditions were included to ensure avoidance of impacts to coastal resources, including, limiting future development in the environmentally sensitive habitat areas on resultant Parcel B, and ensuring resultant Parcel B maintains legal access over resultant Parcel A, which will protect agricultural lands for their resource, aesthetic, and economic values.

Conclusion

The project meets the definition of an LLA (i.e., a greater number of parcels than originally existed are not created), there are no violations of the EMC resulting from the LLA, and the LLA has been conditioned to ensure the associated CDP is approved and effective prior to the LLA recordation. As a result, the LLA can be found consistent with the City’s subdivision regulations and the State Subdivision Map Act and can be approved.

ENVIRONMENTAL ASSESSMENT

The City of Eureka, as Lead Agency, has determined the proposed project is categorically exempt from the provisions of the California Environmental Quality Act, in accordance with §15305, Minor Alterations in Land Use Limitation, Class 5 of the CEQA Guidelines. Class 5 exempts minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including minor LLAs not resulting in the creation of any new parcel. The overall property has an average slope of less than 20% (at approximately 11%), and the proposed LLA will not result in the creation of any new parcel, just the reconfiguration of three existing parcels resulting in three parcels. Further, the City of Eureka as the lead agency has determined none of the exceptions to the Class 5 exemption are applicable to the project as no subsequent development after the LLA is proposed at this time.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners within a 300-foot radius of the site on or before December 1, 2023. In addition, the notice was posted on the City’s website and bulletin boards. A public hearing notice sign was posted on the site near the Butler Valley operations at 4635 Broadway (on the chain-link fence along Broadway, south of the driveway) and at the northwest corner of Vance and Eureka Avenues (near the property owners access gate/parcel within the County’s jurisdiction) on or before December 1, 2023.

STAFF CONTACT

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DOCUMENTS ATTACHED

- Attachment 1: Planning Commission Resolution on CDPpages 8-9
- Attachment 2: Planning Commission Resolution on LLApages 10-13
- Attachment 3: Filed Appeals on CDPpages 14-41
- Attachment 4: Director CDP Staff Report with Attachments.....pages 43-110
- Attachment 5: Public Comments Received Prior to Director Decision.....pages 111-126