

CALIFORNIA COASTAL COMMISSION

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April 8, 2025

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120 West Fir Street
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SUBJECT: Comments on County Coastal Development Permit (CDP) Application No. CDP_2024-0004 (Reimann), 2300 N. Highway 1, Albion (APN 123-290-03).

Dear Liam,

Thank you for providing our office with a copy of the County's staff report dated February 13, 2025¹, and associated State Clearinghouse (SCH) revisions to the Mitigated Negative Declaration (MND) and related documents that were published at the SCH website on March 5, 2025² in association with the subject project (SCH No. 2025010409). The County staff report and MND describe the current project proposal as including the following components: (1) construction of a two thousand (2,000) square foot single-family residence, (2) creation of a circular berm/knoll and landscaped area surrounding the residence, (3) creation of a berm between the residence and an existing parking area, (4) installation of a water catchment area, (5) construction of a seven hundred forty-four (744) square-foot "garage studio" which would be permitted as an Accessory Dwelling Unit (ADU), (6) construction of a five hundred forty-three (543) square-foot storage shed, (7) after-the-fact permitting and additional improvements to an existing driveway, (8) repairing and raising an existing wooden fence, (9) deepening an existing well, (10) installing a new entry gate, (11) installing a new fence near the entrance to the property, and (12) planting within a 0.122-acre area to provide compensatory (1:1) mitigation for direct impacts to wetlands due to the development of the unpermitted driveway. The 12.5-acre parcel is designated and zoned as Rural Residential, 5 acres minimum with a Planned Development combining district (RR:5:PD).

Pursuant to Coastal Act section 30603(a), any CDP granted by the County for development at the subject site would be appealable to the Coastal Commission, including because the subject site is located: (1) between the sea and the first public road paralleling the sea; (2) within 100 feet of a wetland or stream; and (3) within 300 feet of the top of the seaward face of a coastal bluff.

We wish to submit the following comments as a supplement to comments our staff have previously provided regarding the subject project, including but not limited to written comments dated December 13, 2023; discussion during a visit at the site on February 21, 2024 with yourself, the applicant's biological consultants, and staff from CA

¹ Accessible online at

<https://www.mendocinocounty.gov/home/showpublisheddocument/69337/63872458654420000>

² Accessible online at <https://ceganet.opr.ca.gov/2025010409/2>

Department of Fish and Wildlife (CDFW); and in correspondence submitted by the Commission's Enforcement Unit on April 1, 2025 (re: Violation No. V-1-25-0020).

1. Clarification of Project Details

The referral materials described above lack the details needed to accurately and fully evaluate the effects of the development as proposed. For example, neither the application referral, subsequent site plans, or supplementary reports specify the total length and area of proposed after-the-fact driveway improvements, and none of the documents specify the total area of wetland or other ESHAs impacted by the unauthorized driveway construction. Furthermore, the biological materials describe "presumed wetlands" (see Figure 11, Updated Wetland Delineation Map) suggesting that not all wetland features have been fully delineated and mapped on the site plan.

The staff report on Page 12 (pdf page 14) recommends updating the site plan to reflect all biological resources after CDP approval and prior to building permit issuance however the total project effects cannot be fully evaluated without an accurate site plan prior to any local action being undertaken.

Discrepancies also exist with the project described on pages 1 and 2 of the staff report (pdf pages 3 and 4), and the project described in the IS/MND. For example, the staff report and site plan describe the proposed deepening of an existing well but then require as a condition of approval that a new well be drilled outside of ESHA and ESHA buffers. As detailed further below, page 8 (pdf page 10) of the staff report also acknowledges that the proposed project is not the least environmentally damaging feasible alternative and concedes that as proposed:

"...some of these improvements would be located within wetland ESHA or ESHA buffers and may not be permitted, including the new gate and fence in the southesastern corner. Therefore, staff recommends that these features be removed from the scope of this Coastal Development Permit or moved to an area outside of ESHA buffers...this can be accomplished by requiring, as a condition of approval, that the applicant submit a revised plot plan and fencing plan showing that the proposed fencing development would either be removed from the scope of work or occur entirely outside of the scope of ESHA buffers, and that any view-obscuring fencing placed within fifty (50) feet of the eastern property boundary (front lot line) would not exceed three and one half (3.5) feet."

In apparent contrast, page 17 (pdf page 20) of the IS/MND indicates that the development located in ESHA and ESHA buffers has been removed from the project, stating in part:

The proposed single-family residence, berm/knoll, ADU, and storage shed would be located entirely outside of the one hundred (100) foot buffer. However, portions of the water catchment area, portions of the existing driveway, portions of the existing wooden fence, existing eastern well, new entry gate, and new fence would either be located directly within the wetland or the wetland buffer area. These features are not permitted within the wetland ESHA or wetland ESHA buffer area because they are accessory structures associated with residential development, which is not a permitted use within wetlands.

Therefore, the proposed development located within ESHA or ESHA buffers was removed from the scope of this CDP or repositioned to avoid ESHA and ESHA buffers. The water catchment area, improvements to the existing driveway, portions of the proposed improvements to existing fencing, proposed deepening of the existing eastern well, the new entry gate, and new fence were be [sic] removed or repositioned without issue... (emphasis added)

The County staff report also references a site visit by Regional Water Quality Control Board staff on March 27, 2024 and issuance of an Inspection Memo and Notice of Violation, both dated April 26, 2024 that are included beginning on pdf page 87 of the staff report and supporting materials. According to the violation letter, installed culverts appear to be undersized, and conditions including altered site hydrology and unraveling of the edge of the driveway were observed at the site. The violation letter states in part “If continued, the altered hydrology from installing the driveway and culverts resulting in more channelized surface water flow increases the risk of dewatering wetland areas that existed under the previous hydrologic regime.” The application materials do not appear to contain any specifications demonstrating that the driveway has been designed and engineered to accommodate site hydrology without adversely affecting wetlands.

To ensure that all proposed project components are accurately depicted and evaluated as part of any decision to act on the subject CDP application, Commission staff recommend including a revised project description and site plans in the staff report that comprehensively describe in narrative and graphic depiction all components of the proposed project.

2. Protection of Biological Resources

In a letter dated December 13, 2023, Commission staff notified the applicant and County staff that a driveway located on the subject property was not in a location or configuration authorized by the Commission’s prior CDP 1-81-05 for a single family residential development, and that Commission staff had no record of any CDP authorizing the driveway development. Our letter states in part:

“if evidence is not available that demonstrates prior authorization for the driveway in its current configuration, then future application to Mendocino County Planning Department should include a proposal for removal of the current driveway and a restoration, mitigation and monitoring plan to address how areas impacted without the benefit of a permit will be restored to ensure that impacts are reduced to a less-than-significant level. The wetland mitigation plan should propose creation of new or expanded wetlands at a ratio of wetlands created or expanded to wetlands filled at a ratio large enough to compensate for temporal loss of wetland values and functions between the time the wetlands were filled or otherwise impacted by unauthorized driveway construction and the full establishment of wetland values and functions in the wetland area to be created or expanded.”

Instead of proposing removal and restoration of impacted wetland areas, the County staff report recommends after-the-fact authorization of the unpermitted driveway with proposed 1:1 mitigation ratio for planting wetland plants in a portion of the project site.

A. Allowable Uses in ESHAs and ESHA Buffers

Mendocino County Coastal Zoning Code (CZC) Section 20.532.095(A)(1) requires the County to make findings that demonstrate each project is consistent with all provisions of the certified local coastal program, and CZC section 20.496.015(E) requires that if findings cannot be made consistent with the Resource Protection Findings requirements of CZC section 20.532.100, the development shall be denied.

Additionally, to be consistent with LUP Policy 3.1-7 and CZC Section 20.496.020, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with CDFW that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width.

The proposed development would occur within wetland ESHAs and minimum required ESHA buffers, inconsistent with the wetlands and other ESHA protection policies of the certified LCP. The Mendocino County LCP policies including LUP Policies 3.1-4, 3.1-7, 3.1-10 and 3.1-13, and CZC Section 20.496.025, identify a very limited range of specific uses permitted in wetland ESHAs, and the County staff report correctly acknowledges that residential use is not one of the allowable uses permitted within ESHAs.

Therefore, the development as proposed directly encroaches into ESHA and the required minimum ESHA buffers, inconsistent with the ESHA protection policies of the certified LCP. The applicant should be encouraged to explore alternatives and modify the proposed project to ensure that any development would occur outside of ESHA and the required minimum ESHA buffers, as discussed further below.

Additionally, even though Mendocino County's certified LCP allows development of ADUs and JADUs, Mendocino County Coastal Zoning Code (CZC) section 20.458.045 ("Coastal Resource Protections") disallows development of ADUs and JADUs, and development associated with ADUs and JADUs, within 100 feet of the boundary of an ESHA. CZC section 20.458.045 specifies:

All new development associated with an ADU (well, water storage, septic improvements, parking and driveways, vegetation removal for fire safety, etc.) must also be located more than 100 feet from the boundary of an Environmentally Sensitive Habitat Area. An exception to these requirements may be authorized through the administrative coastal development permit process in circumstances where the development is consistent with the standards established in Chapter 20.496. (Emphasis added)

The County's findings and supporting application materials acknowledge that the proposed ADU would rely on the unauthorized driveway that impacts wetland ESHA and minimum ESHA buffers, inconsistent with the requirements of the certified LCP. The staff report also correctly acknowledges the inconsistency of the proposed new

residential development with the biological resource protection policies of the certified LCP, stating in part the following:

The existing driveway's placement within wetland ESHA and resulting LCP inconsistency could be resolved by either (1) denying that portion of the proposed development, (2) requiring the removal of the existing driveway and restoration of the areas in which it intersects ESHA, (3) requiring the removal, relocation, and restoration of the driveway to an area that would completely avoid ESHA and/or ESHA buffers, or (4) denying the entirety of the proposed development. Simply denying the after-the-fact permitting of the driveway would not resolve the inconsistency because the driveway would remain within ESHA and/or ESHA buffers. However, staff believes that requiring the removal of the existing driveway and restoring the areas in which it intersects ESHA or relocating the driveway to an area that would completely avoid ESHA and/or ESHA buffers would constitute a regulatory taking... Indeed, the Biological Scoping Survey, Wetland Delineations, & Botanical Surveys report notes that the "positioning of the driveway, crucial for connecting the Shoreline Highway with the proposed residence, does not allow for relocation elsewhere on the property without compromising ecological integrity." Therefore, the least environmentally damaging alternative would be to allow the existing driveway to remain but implement the RMMP and other mitigation measures to minimize inconsistencies with the LCP.

The biological report does not specify how ecological integrity of the site would be compromised by other alternatives beyond the current impacts to wetland ESHA resulting from driveway impacts. It is thus unclear what facts support the County's conclusions that the driveway in its current configuration is the least environmentally damaging feasible alternative, or how the County determined that the driveway must remain in its current location to avoid a regulatory taking, as discussed further below.

B. Takings Analysis

The County staff report includes a takings analysis that states in part on Page 16 (pdf page 18):

To limit development to the northeastern corner of the property (an approximately two (2±) acre area) would impose a significant economic impact on the landowner because it would require that (1) a new septic tank be installed in the northeastern corner with septic transmission lines that do not cross through ESHA and/or ESHA buffers, and be located at least five (5) feet from the residence; (2) that a new leach field be designed and constructed in the northeastern corner that would be located at least eight (8) feet from the residence; (3) that a new well be drilled and tested that would produce sufficient quantities of water to allow residential development in the northeastern corner to avoid crossing water lines through ESHA and/or ESHA buffers, would be located at least fifty (50) feet from the septic tank, and would be located at least one hundred (100) feet from the leach field; (4) that a new driveway meeting CAL FIRE standards must be constructed in the northeastern corner; (5) that a new encroachment permit be obtained from Caltrans to allow a connection to SR 1 in the northeastern corner; and (6) that tree removal and grading occur to accommodate development in the northeastern corner.

Additionally, the options described above would interfere with the investment-backed expectations of the property owner because they would eliminate the possibility of developing the western portion of the lot. As noted in a letter from the Coastal Commission, CDP 1-81-85 became vested in 1988 due to the installation of the septic system in 1983. This CDP authorized the construction of a residence in the western portion of the property. Therefore, the property owner would have expected that a residence of the same design, size, and location as that approved by CDP 1-81-85 could be constructed in the western portion of the property without obtaining a new CDP and therefore without the application of ESHA regulations. Though perhaps improperly, the County issued a building permit in 2019 that allowed trenching in the location of the existing unpermitted driveway to bring electricity to the western well. That building permit was finalized in 2021. Therefore, the property owner would have expected to have the ability to build within the western portion of the property due to County approval of the electrical trenching. If the County were to require that development occur only within the northeastern corner of the site or otherwise prevent access to the western portion, the vested right to develop in the western portion would be eliminated.

The County's determination that the project must be approved to avoid a possible taking of private property for public use appears unsupported by findings of fact for the following reasons.

1. The County staff report appears to cite a "reasonable investment backed expectation" to develop consistent with the Commission's prior issued CDP 1-81-85 but is not requiring the applicant to develop a driveway consistent with the Commission's previously issued CDP. Instead, the staff report recommends approval for development that is greater than the development authorized by CDP 1-81-85, such as but not limited to authorizing ATF development of what appears to be a larger driveway, plus construction of a 744-square-foot ADU that relies on the driveway, and construction of a 543-square-foot shed and new well, among other developments.
2. The County acknowledges that some development has been undertaken as authorized by CDP 1-81-85 (including development of the septic system and well that the proposed development would rely on) and refers to the prior permit as vested yet does not explain how a regulatory taking would occur when a prior entitlement has been granted and realized on the property.
3. Despite the existing entitlement on the subject property, the staff report presumes that there was a reasonable expectation to retain a driveway in a location not authorized by the underlying CDP 1-81-85 and where prior permit records document the presence of wetlands and other ESHAs. Although the County cites a building permit issued in 2019 (but without a coastal development permit or CDP modification) that authorized trenching to bury electrical conduit underground within the same footprint as the unauthorized driveway, the staff report does not establish a reason to retain the unrelated driveway rather than restore the area above the buried conduit.

4. The County staff report does not demonstrate that approving the proposed project is the minimum necessary to avoid a regulatory taking. As indicated further below, it appears that feasible alternatives exist that could avoid and/or lessen development impacts within ESHAs and ESHA buffers.
5. The staff report describes on Page 5 (pdf page 7) a prior minor subdivision and associated CDP 67-2006 that authorized developing a single-family residence on the northeastern portion of the property ("Parcel 2") but that has since expired. The CDP authorized a 2,445± square foot single-story residence with an attached 640± square foot attached garage (3,085± square feet total) that would have been 18 feet in height above natural grade. Associated development would have included the installation of an on-site septic disposal system, connection to an existing on-site water well, construction of a new encroachment onto State Route 1 (SR 1), and extension of underground utilities to the proposed building site. According to the local record³, the driveway encroachment had been approved by Caltrans and the septic system had been designed and approved. Although the County staff report for the subject project explains that views at this location would not satisfy the applicant's reasonable investment backed expectations, it appears the building site could avoid impacts to ESHAs and thus appears to be a less environmentally damaging, feasible alternative that had previously been approved and should similarly inform any reasonable expectations. The County did not fully evaluate the feasibility of developing in this alternative location and does not address in the staff report how the applicant would have a reasonable expectation to build something other than what was previously approved at the site.
6. The staff report does not provide the basis for determining the need to approve development to avoid interfering with investment-backed expectations, and the application materials do not appear to include information from the applicants concerning the applicants' reasonable investment-backed expectations when they purchased the property. Therefore, the applicants should be asked to provide the following specific information for APN 123-290-03, as well as all property in common contiguous ownership, i.e. any immediately adjacent property also owned by the applicants:
 - 1) When the property was acquired, and from whom;
 - 2) The purchase price paid for the property;
 - 3) The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
 - 4) Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
 - 5) At the time the property was purchased, or at any subsequent time, whether the project has been subject to any development restriction(s) (e.g., restrictive

³ See Application Questionnaire, and March 2007 Site Plan & Details Sheet A1 prepared by Joe Bainbridge Drafting in CDPR #67-2006(2009)

- covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
- 6) Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
 - 7) Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
 - 8) A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
 - 9) The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
 - 10) The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
 - property taxes;
 - property assessments;
 - debt service, including mortgage and interest costs; and
 - operation and management costs.
 - 11) Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

C. Alternatives Analysis

Even if the County determines that development must be approved to avoid a regulatory takings, as part of the analysis of impacts to ESHAs, either the county or the Commission on appeal must at minimum evaluate whether the size, location, and design of the home and ancillary developments are the least environmentally damaging alternative, as compared to the other alternatives (such as but not limited to a smaller house and driveway design and the “no project” alternative).

The January 2025 alternatives analysis provided on the SCH website⁴ does not sufficiently evaluate the range of alternatives, and none of the documents include a numeric accounting that compares the extent of impacts to wetlands and other ESHAs under the various alternatives. Similarly, the discussion of bridge alternatives included in the application materials does not specify the area of the current wetland that has been

⁴ Accessible online at https://files.ceqanet.opr.ca.gov/311191-2/attachment/WaeT9fhI_YFjFyEghJqVCJupQCEy3KsRAK9MbAfZSHFfe1tjOMOiJAT38bGYvtSsas5ClxfBf3z7gfRI0

displaced by the rockered driveway as compared to the area that would be restored if one or more bridges were to be used, instead focusing inappropriately on the temporary disturbances that would occur to wetlands in association with any installation of bridges and/or restoration of previously filled wetlands. The analysis also asserts that replacing culverts with bridges would cause additional disturbance not anticipated by retaining the culverts; but does not address concerns cited by the Regional Water Quality Control Board in their Inspection Memo indicating potential adverse effects from the current design, and does not indicate whether the existing design was properly engineered and sized to accommodate site hydrology.

Although the January 2025 Alternatives Analysis does evaluate the possibility of building on the northeastern portion of the property, it asserts without supporting documentation that a septic system cannot be supported in this location. Since this determination conflicts with information in the local record indicating that a septic system had been designed and approved for the northeastern location under CDP 67-2006, additional information should be provided that demonstrates why building a septic system at this location is no longer feasible.

Therefore, the County should require that the applicant provide a more comprehensive alternatives analysis that quantifies the total areas of impacts under the various alternatives. Based upon documented calculations of total impacts, the applicant should propose, and the County should address in its findings alternative designs that would be less environmentally damaging, including but not limited to developing the driveway and residence within the same footprint authorized by CDP 1-81-85; developing instead on the northeastern portion of the property; and the no-project alternative.

D. Mitigation Measures

After identifying the least environmentally damaging feasible alternative, if the alternatives analysis demonstrates there are no feasible alternatives that do not encroach into ESHA and ESHA buffer areas, the County should demonstrate how the proposed development implements *all* feasible mitigation measures consistent with LCP requirements that include but are not limited to CZC Sections 20.496.020(A)(4) and 20.532.100(A)(1).

The current proposal includes mitigating for previously unauthorized impacts to wetlands at a ratio of 1:1 and does not account for impacts to wetland areas beyond the driveway footprint where Regional Water Quality Control Board (RWQCB) staff indicated ongoing mowing has been occurring and degrading surrounding wetlands. As noted above, our comments in December 2023 included recommendations that wetland mitigation should be proposed “at a ratio of wetlands created or expanded to wetlands filled at a ratio large enough to compensate for temporal loss of wetland values and functions between the time the wetlands were filled or otherwise impacted by unauthorized driveway construction and the full establishment of wetland values and functions in the wetland area to be created or expanded.” The staff report and April 26, 2024 Inspection Memo prepared by RWQCB staff describes historical review of aerial imagery documenting the new driveway construction sometime between 2019 and 2021, indicating that there has been a loss of wetland area and function dating back at least four years and possibly six years, resulting in an ongoing “temporal loss” of

Liam Crowley
April 8, 2025
Application No. CDP_2024-0004 (Reimann)
Page 10

wetlands. The Commission typically requires mitigation for proposed wetland impacts at a minimum ratio of 4:1, and higher ratios when addressing temporal loss associated with unauthorized development; thus, Commission staff continue to recommend that the County should require additional wetland mitigation for ongoing wetland impacts.

3. Public Access

The County staff report correctly references existing public access easements that occur on the property in association with CDP 1-81-85, including a vertical access easement along the southern property boundary extending from Highway 1 to the bluff edge and a lateral access easement extending along the western bluff edge. The county report acknowledges that the offers to dedicate the public access easements were recorded in 1983 and accepted by the Coastal Land Trust in 2003 and 2004. The accessways are now open and managed by Mendocino Land Trust. The recorded access easement and Special Condition 6 of CDP 1-81-85 require that the lateral accessway "shall be 25 feet wide located along the bluff top as measured inland from the daily bluff edge."

The project also proposes to repair an existing split rail fence along the western portion of the property and lower its height "to" ½ foot. Please clarify the proposed height is correct as depicted on the revised site plan dated January 31, 2025. Additionally, it appears that portions of the existing fence may encroach within the minimum 25-foot-wide accessway. Therefore, the site plan should be updated to demonstrate that any fencing will be reconstructed to maintain a 25-foot-wide accessway as measured inland from the daily bluff edge and the fence should be reconstructed accordingly. We recommend the staff similarly condition any permit to require that any future maintenance and/or installation of fencing shall maintain the minimum required vertical and lateral accessway widths, including maintaining the minimum 25-foot-wide lateral accessway as measured inland from the daily bluff edge.

Thank you again for the opportunity to provide comments. Should you have any questions, please contact me at Tamara.Gedik@coastal.ca.gov.

Sincerely,



TAMARA L. GEDIK
Supervising Analyst

Cc: State Clearinghouse
CA Department of Fish and Wildlife
NC Regional Water Quality Control Board