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F9a & F9b

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Staff:	S. Targ
Staff Report:	1/29/21
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STAFF REPORT: APPEAL NO SUBSTANTIAL ISSUE DETERMINATION

Appeal Nos.: **A-1-PTA-20-0028 and A-1-PTA-20-0074**

Applicant: Richard Wasserman

Local Government: City of Point Arena

Local Decisions: Approval with Conditions

Location: 44600 Port Road (also known as 240 Port Road),
City of Point Arena, Mendocino County (APN 027-081-12).

**Project Description
A-1-PTA-20-0028:** Construct a two-story, 800-square-foot, 18-foot-high residential accessory barn/workshop.

**Project Description
A-1-PTA-20-0074:** Amend permit subject to A-1-PTA-20-0028 to modify conditions of approval and authorize after-the-fact, 38 cubic yards of grading.

Appellants: Arabella Akossy and Debra Keipp

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeals raise a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify; others may submit comments in writing. (14 CCR § 13117.) If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeals have been filed.

On June 23rd, 2020, the City of Point Arena approved a local coastal development permit for property owner Richard Wasserman to construct a two-story, 800-square-foot, 18-foot-high residential accessory barn/workshop. On July 16, 2020, the Commission received an appeal of the City's approval from Arabella Akossy.

The applicant subsequently applied for an amendment to the approved/appealed permit to address issues raised in the appeal. On November 18, 2020, the City approved the permit amendment, correcting the size of the approved structure (960 square feet vs. 800 square feet), authorizing 38 cubic yards of grading after-the-fact, and modifying the conditions to increase protection for the Point Arena Mountain Beaver. The permit amendment was approved with a special condition declaring that the amendment supersedes the original permit and the prior approval has no legal effect. On December 9, 2020, the Commission received two appeals to the permit amendment from Arabella Akossy and Debra.

The appeals raise contentions related to protection of the endangered Point Arena Mountain Beaver (PAMB), water quality, land use compatibility, noise impacts to neighboring properties, and City procedures in processing the applications. Staff recommends that the Commission find that none of the eleven contentions of the two appeals submitted for the permit amendment (Appeal No, A-1-PTA-20-0074) raise a substantial issue of conformance of the amended project with the policies and standards of the certified LCP. Staff believes that as the biological surveys performed prior to approval of the amendment did not discover evidence of the presence of PAMB on the subject property and as Special Condition 2 restricts noise generating activities to protect PAMB on adjoining lands, no substantial issue is raised with regard to

conformance of the approved development with the policies of the certified LCP that protect PAMB habitat. Staff believes that the contentions regarding the protection of water quality do not raise a substantial issue as conditions of the permit amendment require best management practices and required adherence to building code to protect water resources.

Staff believes that the contentions that the permit amendment does not comply with zoning restrictions and will create negative noise and light impacts do not raise a substantial issue as the approved use complies with all RA-2 zoning restrictions, and the permit amendment contains conditions to prevent light and noise impacts. Finally, staff believes that the procedural contentions do not raise a substantial issue as the City's CDP process provided adequate opportunity for public participation consistent with the noticing requirements in the certified LCP and the other procedural contentions do not raise valid grounds for appeal.

If the Commission finds that the appeal of the permit amendment raises no substantial issue as recommended by staff, the permit amendment becomes effective at that point, and the special condition referenced above renders the original approval as having no legal effect. In that case, no development can be performed under the original approval and the appeal of the original permit becomes effectively moot. Therefore, staff is recommending that the Commission find that the contentions raised under Appeal No. A-1-PTA-20-0028 for the original permit approval also do not raise a substantial issue.

The motion to adopt the staff recommendation of No Substantial Issue is found on Page 5.

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EXHIBITS

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[Exhibit 12 – Local Notice of Final Action \(Original Permit\)](#)

[Exhibit 13 – Local Notice of Final Action \(Permit Amendment\)](#)

I. Motions and Resolutions

A. Appeal No. A-1-PTA-20-0074

Motion A:

I move that the Commission determine and resolve that Appeal No. A-1-PTA-20-0074 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution A:

The Commission hereby finds that Appeal No. A-1-PTA-20-0074 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

B. Appeal No. A-1-PTA-20-0028

Motion B:

I move that the Commission determine and resolve that Appeal No. A-1-PTA-20-2008 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution B:

The Commission hereby finds that Appeal A-1-PTA-20-2008 raises No Substantial Issue with respect to the grounds on which the appeal has

been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

II. Appeal Jurisdiction and Procedures

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Section 30603 states that an action taken by a local government on CDP application may be appealed to the Commission for certain kinds of developments. Pursuant to section 30603(a)(1), the City's approvals are appealable to the Commission, because the approved development is located between the sea and the first public road (Highway 1) paralleling the sea.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "substantial issue" is defined in section 13115 of the Commission's regulations:

"When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:

- (1) the degree of factual and legal support for the local government's decision;
- (2) the extent and scope of the development as approved or denied by the local government;
- (3) the significance of the coastal resources affected by the decision;
- (4) the precedential value of the local government's decision for future interpretations of its LCP; and
- (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor."

Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

Commission staff has analyzed the administrative record for the original approved project and subsequent amendment, including, but not limited to, the City's Final Local Action Notices for the approvals (Exhibits 12 & 13), the appellants' claims (Exhibits 10 & 11), and the relevant requirements of the certified LCP (Appendix A). Staff is recommending that the Commission find that the appeals of both City actions raise no substantial issue with respect to the grounds on which each appeal was filed.

In this case, because the staff is recommending that the appeals raise no substantial issue, the Commission will hear arguments and vote on the substantial issue question for each appealed action. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeals raise a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants, and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If the Commission determines that the appeals do not raise a substantial issue, the local government approvals will stand. If the Commission determines that an appeal raises a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

III. Local Government Actions

A. Appeal No. A-1-PTA-20-0028

On June 23, 2020, the City of Point Arena City Council approved CDP No. 2020-02 with conditions. The approved development authorizes the construction of a two-story, 800-square-foot, 18-foot-high residential accessory barn/workshop. The City's final action is attached as Exhibit 12. The City granted its approval subject to four special conditions including, but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) "Best Management Practices" (BMPs) for construction; and (3) a condition directing the City Planner to produce revised findings to the staff report to list the correct zoning and setbacks for the subject property, to correct the approved project plans to show the correct orientation of the authorized structure, and to clarify the use of the second story of the approved structure for storage purposes.

B. Appeal No. A-1-PTA-20-0074

On November 18, 2020, the Point Arena City Council approved CDP Amendment No. 2020-02(01) with conditions, which modifies the original permit and its findings and conditions approved on June 23, 2020. The City's final action and approved project plans for the amendment are attached as Exhibit 13. The approved permit, as amended, corrects certain errors in the original permit (e.g., the approved structure is ~960 square feet in size vs. 800 square feet), modifies the conditions of approval of the original CDP, and also authorizes, after the fact, ~38 cubic yards of grading. The City

granted its approval of the permit amendment subject to five special conditions including, but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) “Best Management Practices” (BMPs) for construction; (3) protective measures for adjacent environmentally sensitive Point Arena Mountain Beaver habitat areas; and (4) a declaration that the subject amended CDP supersedes the original permit CDP #2020-02, and the prior approval has no legal effect as of the issuance date of the subject amended CDP.

IV. Filing of Appeals and Relationship of Two Appeals

A. Appeal No. A-1-PTA-20-0028

The Coastal Commission’s North Coast District Office received the City’s Notice of Final Local Action on CDP No. 2020-02 on July 3, 2020. On July 16th, the Commission received an appeal of the City’s approval from Arabella Akossy. The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the City’s Notice of Final Action (Exhibit 12). On August 11th, the applicant, Richard Wasserman, submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal. The applicant subsequently applied for an amendment to the approved/appealed permit to address issues raised in the appeal.

B. Appeal No. A-1-PTA-20-0074

The Commission’s North Coast District Office received the City’s Notice of Final Local Action on CDP Amendment No. 2020-02(01) on November 23rd, 2020 (Exhibit 13). On December 9, 2020, the Commission received two separate appeals of the City’s approval of the amendment from Arabella Akossy and Debra Keipp. Both appeals were filed in a timely manner, within 10 working days of receipt by the Commission of the City’s Notice of Final Action (Exhibit 13).

V. Summary of Appeal Contentions

A. Appeal No. A-1-PTA-20-0028

The following is a summary of contentions raised by Arabella Akossy, in her appeal of the City’s approval of the original permit. The majority of the below contentions were restated and included as contentions on the appeal of the amended permit and are addressed in this staff report under analysis of appeal contentions (Finding VI).

1. The approved project was based on several factual errors, which resulted in inadequate and incomplete review, including (a) a miscalculation of “floor area” inconsistent with the LCP definition, (b) failure to list the “workshop” use of the structure in the project description and findings and consider the noise impacts associated with that type of use, and (c) a misrepresentation of property boundaries and setback descriptions, which will result in siting the structure on the property in a manner that violates LCP setback requirements.

2. The approved project may adversely impact endangered Point Arena Mountain Beaver (PAMB) habitat inconsistent with LCP policies that protect PAMB ESHA, because (a) the survey for the PAMB was incomplete and not conducted in accordance with agency prescribed protocols, and (b) no noise mitigation measures were required for the proposed workshop use of the permitted structure.
3. The approved project will be used for a commercial Home Occupation enterprise (a woodworking workshop) that will generate significant noise impacts in the RA-2 zoning district, which under the LCP expressly excludes any allowance for commercial activity.
4. The approved project violates LCP policies that require runoff control and water quality protection, because the City's approval failed to address (a) unpermitted grading activities conducted for approved development in advance of permit approval, and (b) the storage of chemicals and other hazardous substances normally associated with a woodworking workshop.
5. The City did not follow proper hearing and noticing procedures.
6. The City did not follow proper CEQA guidelines in its review of the project in two ways. First, the City improperly granted a CEQA exemption for the project, even though the project site is located in a mapped PAMB buffer area under the LCP, and State CEQA Guidelines state that categorical exemptions do not apply to projects located where they may impact an officially mapped and designated environmental resource of hazardous or critical concern. Second, the City's review process was not objective because of an apparent conflict of interest between the applicant (a City Council member) and the consulting firm hired to conduct the PAMB survey (the same firm that is under contract with the City for regular engineering consulting services).

B. Appeal No. A-1-PTA-20-0074

The following is a summary of contentions raised by Arabella Akossy and in some cases also by Debra Keipp in their separate appeals of the City's approval of the permit amendment. Again, the analysis of all contentions is included in Finding VI below.

1. The approved project as amended may adversely impact endangered PAMB habitat inconsistent with LCP policies that protect PAMB ESHA, because (a) the survey for the PAMB was incomplete and not conducted in accordance with agency prescribed protocols, and (b) the approved development is located within Mountain Beaver Buffer Area (MBBA) as defined in the certified LCP and is therefore located within PAMB ESHA.
2. The approved project as amended will adversely impact adjacent PAMB ESHA, because (a) no "visual disturbance" measures (e.g., restricting nighttime illumination) were included as CDP conditions to protect PAMB, (b) workshop noise, dust, toxic solvents, etc. could contaminate Arena Creek and adjacent

PAMB ESHA, and (c) the approved permit, as amended, fails to include adequate measures to protect adjacent ESHA.

3. The City did not follow proper CEQA guidelines in its review of the project, because the City improperly granted a CEQA exemption for the project, even though the project site is located in a mapped MBBA under the LCP, and State CEQA Guidelines state that categorical exemptions do not apply to projects located where they may impact an officially mapped and designated environmental resource hazardous or critical concern.”
4. The scope of development approved under the CDP amendment excludes certain alleged unpermitted past grading work and major vegetation removal that in part is functionally related to the permitted development (i.e., within the footprint of the “existing” driveway to the proposed structure). By not considering all (alleged) past unpermitted grading under this permit amendment, the approved development may adversely impact downstream property and ESHA (Arena Creek and associated riparian habitat) through the discharge of polluted and concentrated runoff, inconsistent with the water quality protection policies and standards of the LCP.
5. The approved project as amended does not adequately address potential fire hazards associated with the project, such as the storage of flammable materials in the approved workshop structure.
6. The approved project as amended does not conform with the minimum yard setbacks required for the RA-2 zone.
7. The approved project as amended will be used for a commercial Home Occupation enterprise (a woodworking workshop) that will generate significant noise and other nuisance impacts in the RA-2 zoning district, which, under the LCP, expressly excludes any allowance for commercial activity.
8. The siting and design of the structure as approved under the CDP amendment combined with its alleged intended use for woodworking purposes will adversely affect the use and enjoyment of the neighboring property from noise and light pollution.
9. The siting and design of the structure as approved under the CDP amendment combined with its alleged intended use for woodworking purposes will adversely affect the use and enjoyment of the neighboring property from added traffic and loss of privacy.
10. The City’s review process was not objective or fair for numerous reasons including, but not limited to, circulation of inaccurate and incomplete information throughout the permit amendment process, conflicts of interest, and “special treatment” associated with the applicant being a member of the City Council.

11. The applicant failed to post the required CDP notice near the subject property, but rather posted inaccurate and incomplete notices at the post office and City Hall, inconsistent with LCP noticing requirements.

VI. Findings & Declarations for No Substantial Issue

A. Project Description

The development authorized under the original approved permit includes the construction of a two-story structure residential accessory barn/workshop with a 400-square-foot footprint (~800 square feet total floor area) and a maximum height of 18 feet above natural grade. A roof would extend from the barn/workshop structure over an adjacent 444-sq.-foot concrete slab to be used for equipment storage. The barn would be clad in natural wood siding with a green roof, white wood window frames, and red wood doors. The development approved under the amendment includes all of the development approved under the original permit and also includes after-the-fact authorization of 38 cubic yards of grading in an approximately 10-foot by 50-foot area approximately 100 feet east of the barn site conducted in September of 2019. In addition, the amendment corrected an error of the original permit to clarify that the total floor area of the approved structure is approximately 960 square feet instead of 800 square feet.

B. Environmental Setting

The project site is located in the City of Point Arena, Mendocino County, at 44600 Port Road (also known as 240 Port Road, APN 027-081-12) between the first through public road (Highway 1) and the sea. The property is 7.4 acres in size and is planned and zoned for Residential Agriculture uses with a 2-acre minimum lot size (RA-2). The property originally was developed in the late 1800s and is currently developed with a single-family residence.

The surrounding lands are planned and zoned as Suburban Residential to the north and east, and Agriculture Exclusive, to the south and west. The project site and its immediate surrounding areas are not visible from any public vantage points.

The property is located within a mapped Natural Hazard area according to the Natural Hazards Map of the LCP due to steep slopes. However, small patches of areas on the property do not contain steep slopes.

The project site also is located within the LCP-designated buffer area for the federally endangered Point Arena Mountain Beaver (PAMB). The Mountain Beaver Buffer Area, as defined in the LUP glossary is "A 500 feet wide area measured from the centerline of Arena Creek or the edge of or centerline of (if a creek) any other area which may contain species of the Point Arena Mountain Beaver and where special consideration may be necessary if signs of the mountain beaver are found within this radius." The project site is approximately 300 feet from Arena Creek.

C. Analysis of Contentions

For the reasons discussed below, the Commission finds that all but three of the contentions raised by the appellants under Appeal No. A-1-PTA-20-0074 for the permit amendment present valid grounds for appeal, but none raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP or the public access and recreation policies of Chapter 3 of the Coastal Act. Valid contentions are discussed in subsection (1) below, and invalid contentions are discussed in subsection (2) below. The policies and standards relevant to appeal contentions are shown in Appendix A.

The contentions raised under A-1-PTA-20-0028 for the original permit approval are not separately analyzed herein, because, as discussed above, the approved permit, as amended, includes a condition declaring that the subject amended CDP supersedes the original permit (CDP #2020-02) and that the prior approval has no legal effect as of the issuance date of the subject amended CDP. In addition, the applicant has submitted correspondence stating that no development will occur under the original CDP (#2020-02) approved by the City and that he considers the original permit to be null and void.

Therefore, if the Commission finds that the appeal of the permit amendment raises no substantial issue as recommended by Commission staff, the permit amendment becomes effective at that point, and the special condition referenced above renders the original approval as having no legal effect, and no development may be performed under that approval. In that case, the appeal of the original permit becomes effectively moot, and therefore, staff is recommending that the Commission find that the contentions raised under Appeal No. A-1-PTA-20-0028 do not raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP.

1) Valid Contentions

a. Contention Related to Siting of Development in PAMB ESHA

The Akossy appeal contends that the approved project as amended may adversely impact endangered PAMB habitat inconsistent with LCP policies that protect PAMB ESHA, because (a) the survey for the PAMB was incomplete and not conducted in accordance with agency prescribed protocols, and (b) the approved development, which is located within the officially mapped MBBA, is therefore located within PAMB ESHA.

Applicable LCP Policies:

Please see Appendix C for the full text of the Land Use Plan (LUP) policies and Implementation Plan (IP) standards applicable to this contention.

Discussion:

As noted in Finding VI-B above, the subject site is located in the “Mountain Beaver Buffer Area” (MBBA) as defined in the LCP. The LUP glossary defines the MBBA as follows:

A 500 feet wide area measured from the centerline of Arena Creek or the edge of or centerline of (if a creek) any other area which may contain species of the Point Arena Mountain Beaver and where special consideration may be necessary if signs of the mountain beaver are found within this radius.”

The project site is approximately 300 feet from Arena Creek and is mapped on the “Opportunities and Constraints Map: Biological Resources and Trails” map referenced in LUP Land Use and Development element, Section 7. As such, “special consideration may be necessary if signs of the mountain beaver are found” within the area. The LCP specifically mentions north-facing slopes within the MBBA as known habitat for PAMB.

As noted in LUP Chapter X (Coastal Element) Section 2.4 policy 15, the LCP defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments”. Point Arena Mountain Beaver Buffer Area (MBBA) is not itself listed as a type of ESHA under the LCP.

To determine whether PAMB habitat or any other type of ESHA is present on the project site, the applicant submitted a biological assessment and survey report in support of the CDP application. The biological report (SHN October 2018, Exhibit 4) included the results of a habitat assessment and survey for PAMB completed in 2018 by a qualified biologist who had been trained by the U.S. Fish and Wildlife Service (USFWS) on the appropriate PAMB assessment and survey protocol developed by the USFWS. The report describes the subject site in part as follows:

“The project site consists of a level area with non-native grassland on a southwest-facing slope. The level area is currently used for equipment storage and is overwhelmingly dominated by non-native botanical species... The remainder of the parcel surrounding the study area was characterized by varying dominance of the aforementioned [non-native grass] species. Portions of the parcel to the west and up-slope to the north were dominated by mature non-native Monterey cypress (Hesperocyparis macrocarpa) and Monterey pine (Pinus radiata). The oldest trees were planted as windbreaks and provide suitable nesting habitat for nesting birds...Currently, the parcel is developed with a single-family residence and adjacent outbuildings. Aerial imagery dating back 20 years (Google Earth, 2018) shows little change within the study parcel.”

The report concludes: “No special status species were observed at the project site or within the study area.” The report goes on to state that “PAMB habitat does not exist within the project area, however, potential habitat for the PAMB was observed 250 feet to the east and 250 feet to the south of the project area... No impact to these areas is anticipated as a result of this project.”

USFWS protocol for PAMB assessments and surveys provides that “If PAMB are determined to be absent following complete assessments and surveys within 250 feet of the impact area, these negative surveys will be considered valid for a period of 2 years.”

Because the PAMB surveys were conducted in July of 2018, almost two years prior to the City's approval of the original permit in June of 2020, the validity of the negative surveys was scheduled to expire prior to commencement of construction of the authorized structure. The City and applicant agreed that an updated PAMB survey would be appropriate to consider in support of the subject CDP amendment application, which also would address other issues raised under Appeal No. A-1-PTA-20-0028 of the original permit approval.

The updated survey was completed on October 22, 2020 by Greg Schmidt, biologist with the USFWS Endangered Species Program (Arcata Field Office), which oversees the protection and recovery of PAMB and other federally listed species in the region.¹ Pursuant to USFWS protocol for PAMB assessments and surveys, Mr. Schmidt's survey included the proposed workshop site and areas within 100 feet of this site, including the area that had been graded in 2019 without CDP authorization and which was authorized after-the-fact under the subject CDP amendment. According to Mr. Schmidt, the only potential suitable PAMB habitat found within the survey's 100 foot range is located in the southern border of the subject parcel in an area comprised of blackberry brambles approximately 50 feet long by 15-20 feet wide. This entire blackberry patch was surveyed for PAMB. No PAMB burrow entrances or other indicators of the presence of PAMB were found during the on-site presence/absence survey. Mr. Schmidt documented the presence of suitable habitat on the neighboring parcel, over 100 feet south of the proposed development. That suitable habitat was not surveyed, as it occurs more than 100 feet from the project area. Mr. Schmidt notes that PAMB presence within that suitable habitat is unlikely, because the habitat patch occurs on a dry, south-facing slope, suggesting only marginal suitability (PAMB are more commonly found on moister, north-facing slopes as reflected in several of the LCP policies cited above).

Therefore, there is a high degree of legal and factual support for the City's determination that the approved development is not located within ESHA or within 100 feet of ESHA. As such, the contentions that (a) the survey for the PAMB was incomplete and not conducted in accordance with agency prescribed protocols, and (b) the approved development is located within PAMB ESHA do NOT raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP regarding development within ESHA.

b. Contention Related to Development Degrading Adjacent PAMB ESHA

Both the Akossy and Keipp appeals contend that the approved project as amended will adversely impact adjacent PAMB ESHA, because (a) no "visual disturbance" measures (e.g., restricting nighttime illumination) were included as CDP conditions to protect PAMB, (b) workshop noise, dust, toxic solvents, etc. could contaminate Arena Creek

¹ After the filing of Appeal No. A-1-PTA-20-0028, City staff consulted with Mr. Schmidt, who offered to visit the project site to assess its PAMB habitat during an upcoming planned trip to Point Arena for other work assignments in the area.

and adjacent PAMB ESHA; and (c) the approved permit fails to include adequate measures to protect adjacent ESHA.

Applicable LCP Policies

Please see Appendix C for the full text of the Land Use Plan (LUP) policies and Implementation Plan (IP) standards applicable to this contention.

Discussion:

As discussed above, potential PAMB habitat occurs just over 100 feet from the approved development site, although the habitat was judged by the qualified biologist to be marginal due to its location on a south-facing (i.e., relatively dry) slope, and no evidence of PAMB presence was observed during the biological surveys performed for the approved development. However, because the project site is located within the 500 foot PAMB buffer area of Arena Creek, the LCP requires the application of certain restrictions within the MBBA for “noise generating projects.” As required by IP sec. 5.24:

Mitigation for noise generating projects within 500 feet of occupied habitat shall include the following restrictions from December 15 through June 15:

- A. The action and related activities shall be greater than 100 feet from occupied habitat.
- B. Noise-generating activities shall be limited to the use of hand tools and light power-tools (e.g. axe, etc.)
- C. No tools shall be used that require an air compressor.
- D. No power tools shall be operated while in direct contact with the ground.

Although the approved project is not necessarily a “noise-generating project,” the applicant has stated that the authorized barn/shop is intended in part to support non-commercial woodworking activity. Thus, the City’s approval of the amended permit includes Special Condition 2, which requires compliance with the above-cited noise mitigation measures required by the LCP. Specifically, the condition requires a suite of PAMB protection measures, including, but not limited to: (1) during the PAMB breeding season (December 15th-June 15th), only hand tools and light power tools may be used, and the use of an air compressor is prohibited; (2) no power tools shall be operated while in direct contact with the ground; (3) very severe ground vibration (such as pile driving or blasting) is prohibited at any time of year; (4) limitations on rodent control measures (including trapping and application of poison bait or fumigants), and (5) pet control requirements.

Several LUP polices and IP standards mirror the requirements of Coastal Act section 30240(b) that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and be compatible with the continuance of those habitat areas. Policy 4 of Section 7 of the Land Use and Development element of

the LUP, Policy 28 of LUP Chapter X, and section 5.22 of the IP all require in part that buffers between development and ESHA be a minimum of 100 feet and larger if necessary to protect the resources of the ESHA from significant degradation. Policies 1 and 12 of LUP Chapter X and section 5.22 of the IP all state in part that development adjacent to ESHAs shall be sited and designed to prevent impacts that could significantly degrade the ESHA and shall be compatible with the continuance of the ESHA.

As noted above, the approved development is located more than 100 feet away from potential PAMB habitat. In addition, other measures have been incorporated into the project to protect adjacent PAMB ESHA from significant degradation and to ensure compatibility with the continuance of the habitat. These measures include (1) the proposal on the project plans to have the exterior light that will be attached to the structure be downcast and shielded, consistent with Coastal Element policy 25 (Appendix A), and (2) requirements to implement appropriate erosion and runoff control BMPs during construction. Special Condition 4 requires submittal of a grading and Best Management Practices plan prior to issuance of the building permit to address, among other requirements, site revegetation and stabilization and stormwater runoff control.

Therefore, there is a high degree of legal and factual support for the City's determination that the approved development as conditioned will not significantly degrade PAMB ESHA and will be compatible with the continuance of the PAMB habitat. As such, this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP, including, but not limited to, the policies and standard cited above regarding the protection of ESHA from adjacent development.

c. Contentions Related to Grading and Previously Unpermitted Grading on Site

Both the Akossy and Keipp appeals contend that the scope of development approved under the CDP amendment excludes certain alleged unpermitted past grading work and major vegetation removal that in part is functionally related to the permitted development (i.e., within the footprint of the "existing" driveway to the proposed structure). By not considering all (alleged) past unpermitted grading under this permit, the approved development may adversely impact downstream property and ESHA (Arena Creek and associated riparian habitat) through the discharge of polluted and concentrated runoff, inconsistent with the water quality protection policies and standards of the LCP.

Applicable LCP Policies

Please see Appendix D for the full text of the Land Use Plan (LUP) policies and Implementation Plan (IP) standards applicable to this contention.

Discussion:

The appellants contend that significantly more grading has occurred on the property without the benefit of a CDP than the 38 cubic yards/700 square feet conducted in 2019

and authorized after-the-fact under the CDP amendment. In addition, the appellants contend that the alleged additional unpermitted grading exceeds the amount of grading that would be excluded from CDP requirements by a categorical exclusion order issued by the Commission for certain development activities within the City of Point Arena, Categorical Exclusion Order E-81-3. As reflected in IP sec. 6.11-C-1 (See Appendix D) Categorical Exclusion Order E-81-3 approved by the Commission on May 6, 1981 exempts from CDP requirements certain categories of development, including “any excavation or fill or combination thereof” that is less than both of the following: (i) 1,000 square feet of surface area, and (ii) 50 cubic yards of material. An added contention is that such illegal grading may have adverse effects on the functionality of the applicant’s existing nearby septic system.

Commission Enforcement staff investigated allegations of unpermitted site grading on the subject property. In addition to the photographic evidence that detailed the 38 cubic yards/700 square feet of grading conducted in 2019, there is evidence, in aerial imagery, that additional disturbances have occurred on the subject property. After reviewing information that the City of Point Arena staff provided and reviewing aerial imagery Enforcement staff contacted the property owner. The property owner stated that approximately 11 of the Monterey Cyprus trees that form the windbreak on the western side of the property, fell during a high wind event sometime in the 1990s. The property owner additionally stated that, over an approximate ten years period, the fallen trees were used, moved, chopped up, or removed, and that occasionally this required a backhoe. The property owner stated that, in addition to moving the rootballs and trunks, this backhoe was used to blade the old road. Although enforcement staff cannot be certain about the extent of past grading activities, there is no evidence to suggest that such past grading activities exceeded the area and amounts covered under Categorical Exclusion Order E-81-3 and, therefore, these activities may not require CDP authorization. Although it may be that some of the previously activities would not have fallen under Categorical Exclusion Order E-81-3, Enforcement staff did not find that coastal resource damage has occurred or is ongoing as a result. The 38 cubic yards/700 square feet of grading conducted in 2019, is authorized, after-the-fact, under the approved CDP amendment. Enforcement staff was not requested by the local government to assist in enforcement, the City has found no enforcement records on file for cases of past grading violations on the property and does not have any open enforcement cases. Mendocino County handles grading and building permits on behalf of the City and has no records on file for past grading permits, although the County Building Department did have multiple building permits on file for permitted development on the site dating back to the 1990s.

There is no evidence that the approved structure is functionally dependent on past grading work that has not been covered within the scope of the local CDP authorization, and a review of historic aerial imagery detects no changes to the specific approved accessory structure site itself. The development is served by the main driveway for the residence on the north side of the existing house. There is no LCP requirement that the barn/shop structure have its own separate driveway access. The approved CDP amendment addresses the 38 cubic yards that were graded in 2019 in an approximately

700 -square-foot area east of the authorized building site, and any other alleged unpermitted grading work on the site can continue to be investigated.

The approved CDP amendment includes conditions to ensure that grading work will not lead to erosion or sedimentation off site. The LCP requires that site grading and preparation work be supported by appropriate geologic investigations. As such, the City required submittal of a geotechnical report in support of the original application. The report, completed by licensed Professional Geologist Thomas Cochrane in November of 2019 (Exhibit 5), confirms that the building site is assuredly stable to support the proposed barn/shop structure. In fact, the report notes that a building occupied the authorized construction site in the past: “The proposed garage/storage building site is south and west of the residence. The surface was graded many years ago into a level area. An old building was previously located at the proposed site.” The Hazards findings in the City’s staff report on the permit amendment also reflect the past grading that has occurred on the site, noting that while the property is located within a mapped Natural Hazard area, “small patches of areas on the property do not contain steep slopes” and “the barn is to be sited in an area that was an old road bed and is already graded flat.” As noted in the Environmental Setting Finding, the property originally was developed in the late 1800s, and according to the applicant in the CDP application submitted to the City, “the land has seen many changes and been shaped repeatedly by heavy equipment both obscuring old features and building new ones. Original farm buildings have been removed and built again; roads built then became overgrown. It is near one of these original roads, near the Cypress wind break, where I propose the new barn to be...”

The geology report includes recommendations that “a minimal depth of footing of twelve inches should remove whatever loose rock is at the surface. A qualified Geotechnical person should observe the excavation for the footings”. In addition, the report states that “the site is highly adequate for the proposed structure. It is protected by the wind by a grove of trees to the west. The underlying bedrock faults and cracks are old geologic features and considered inactive and of no immediate threat to the property”. No retaining walls are required to support the proposed structure.

The LCP requires that land disturbance not lead to concentrated runoff, erosion, or water quality pollution and that development incorporate appropriate BMPs to control and treat runoff onsite, to minimize erosion and sedimentation. To address these requirements, the approved CDP amendment includes Special Condition 4, which requires submittal of a stormwater and BMP plan prior to issuance of the building permit that addresses past grading documented to have occurred in 2019 and proposed grading for new construction authorized under the permit as amended. The plan is required to demonstrate that stormwater will be treated on site and that stormwater runoff will be controlled so as not result in erosion or sedimentation off site. These requirements are consistent with LCP policies and standards which require effective “methods for controlling erosion and sedimentation during construction” and “proposed site design and source control best management practices (BMPs) to minimize post-construction polluted runoff and impacts to water quality”.

As discussed above, the property consists of mostly southwest-facing slopes near the outer margin in the mapped 500-foot PAMB buffer area around Arena Creek, and the property does not support high quality habitat for PAMB. The City's ESHA findings for approval of the CDP amendment state that the area where the after-the-fact grading occurred "was determined to be located in an area that does not contain PAMB habitat, which was verified by Greg Schmidt of U.S. Fish and Wildlife Service after his site visit."

Therefore, there is legal and factual support for the City's determination that the approved development, as conditioned, will ensure that all stormwater runoff will be treated on site, will not result in off-site erosion or sedimentation, and that areas of ground disturbance will be stabilized as soon as possible after disturbance, consistent with LCP requirements. Also, the extent and scope of the residential accessory development approved by the City is relatively minor. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as amended and approved with the grading and water quality policies and standards of the certified LCP.

d. Contentions Related to Fire Hazards

The Akossy appeal contends the approved project as amended does not adequately address potential fire hazards associated with the project as required by the LCP, such as hazards from the potential storage of flammable materials in the approved barn/workshop structure.

Applicable Policies from the LUP:

LUP Chapter VII (Community Health and Safety Element) section 3 includes the following policies related to Hazards, including fire protection:

1. New development shall: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

...

10. The City should require all new building and remodeling plans to be in conformance with applicable building and fire code standards. Prior to commencement of grading or construction, plans shall be submitted for approval to the City of Point Arena.

Discussion:

The City's approval, as amended, includes Standard Condition 5, which requires the applicant to obtain a building permit prior to construction. The requirement to obtain a building permit will ensure that the structure will be built in conformance with applicable

building and fire code standards, which will minimize fire risk associated with the new structure. The requirement to obtain a building permit is consistent with the applicable Community Health and Safety Element policy cited above, which requires that all new building plans be in conformance with applicable building and fire code standards, and such plans must be submitted for the City's review and approval prior to commencement of construction. The permitted structure is a residential accessory structure to be used for non-commercial purposes, and the LCP does not include any policies related the storage of solvents, chemicals, gasoline, and other hazardous fuels in residential/non-commercial accessory structures. Therefore, there is a high degree of legal and factual support for the City's determination that the approved development, as amended and conditioned, will reduce the risk of fire hazards consistent with LCP requirements. Also, the extent and scope of the development approved by the City is relatively minor, and this contention raises only local issues as opposed to those of regional or statewide significance. Moreover, the significance of the coastal resources affected by the City's decision is relatively low, as is the precedential value of the local government's decision for future interpretations of the LCP. As such, this contention does not raise a substantial issue of conformance of the project as approved with the fire safety policies and standards of the certified LCP.

e. Contentions Related to Conformation to Property Setbacks

Both the Akossy and Keipp appeals contend that the approved project as amended does not conform with the minimum yard setbacks required for the RA-2 zone due to inaccurate mapping of property boundaries both on the approved site plan and on the ground.

Applicable Standards from the IP:

IP Articles 4 and 5 include the following standards related to yard setbacks:

Sec. 4.06: Residential Agriculture or RA-2 Zone:

The residential agriculture zone applies to properties designated on the Zoning Map which are suitable for very low-density residential use and limited agricultural activities and contribute to maintaining the city's rural and small-town character and small-scale agricultural activities. This land use designation also allows for buffer areas between exclusive agriculture areas and higher density residential areas. Septic systems and wells are permitted.

...

C. Other regulations

- 1) Minimum lot area: two (2) acres.
- 2) Minimum lot width: 250 feet.
- 3) Maximum lot depth: 3 times lot width.
- 4) Minimum yards: front, 20 feet; rear, 15 feet; side, 10 feet.

...

Sec. 5.09 Accessory structures:

With the exception of garages, wells, and pumphouses, accessory structures shall be located in the area between side property lines from the rear lot line to the rear of the front yard. Accessory structures shall not be closer than 10 feet to any on-site building and not closer than 15 feet to any side lot line abutting a street...

Discussion:

For the RA-2 zone, the minimum setbacks required for new development are as follows: 20 feet for the front yard, 15 feet for the rear yard, and 10 feet for the side yard. The approved site plan shows the new structure sited well behind the minimum required setbacks. The shortest distance between the structure footprint and a property line is shown as 34 feet from the side yard to the south.

The appellants allege that the approved site plan is flawed with respect to depicting the actual property boundaries, but the appeals provided no conclusive evidence of property boundary mapping errors. The City's findings for approval of the CDP amendment address the property line boundary contention as follows:

"It is the responsibility of the property owner to accurately portray and site the building such that it meets the required minimum setbacks. The property boundary will need to be accurately flagged by the applicant prior to the first building permit inspection so that the building inspector can check the setbacks in the field. Any property boundary dispute is a private matter between property owners; however, if it is determined that the structure when inspected or built does not meet the minimum setback requirements, an amendment to this Coastal Development Permit will be needed for any proposed reduction in setback requirements, in addition to any other permits required."

In addition, Standard Condition 7 of the CDP amendment states the following:

This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

Therefore, there is legal and factual support for the City's determination that the approved development, as conditioned, will conform with the minimum yard setbacks required for the RA-2 zone. In addition, this contention regarding a particular property line dispute raises only a local issue as opposed to an issue of regional or statewide significance, and the extent and scope of the accessory structure development approved by the City is relatively minor. Moreover, no significant coastal resources are affected by the City's action with regard to the property line dispute. Therefore, the

Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the development setback policies and standards of the certified LCP.

f. Contentions Related to Potential Home Occupation Use

The Akossy and Keipp appeals both contend that the approved project will be used for a commercial Home Occupation enterprise (a woodworking workshop) that will generate significant noise and other nuisance impacts in the RA-2 zoning district, which, the appellants contend under the LCP, expressly excludes any allowance for commercial activity.

Applicable LCP Policies

Please see Appendix E for the full text of the Land Use Plan (LUP) policies and Implementation Plan (IP) standards applicable to this contention.

Discussion:

The scope of development authorized under the approved CDP amendment includes construction of a barn/workshop, but not a Home Occupation use (e.g., commercial woodworking business). According to the City's findings for approval of the CDP amendment,

“The proposed barn is to be used for storage associated with existing livestock maintenance and proposed agriculture as described in the Coastal Development Permit application. The structure will also be used as a residential accessory workshop. Typically, a residential accessory workshop is used for repair and maintenance activities associated with the residence, and for hobbies. They are not permitted for commercial purposes except those allowed with a valid Home Occupations permit.”

As cited above, a Home Occupation use requires a Home Occupation permit as well as separate CDP authorization where the use constitutes “development” under the LCP and the Coastal Act. The City's findings address the potential for the proposed residential accessory structure to transition to a Home Occupation use as follows:

“Should the accessory structure be used for commercial purposes, a Home Occupations permit shall first be obtained, and the commercial use will need to be compatible with the residential neighborhood, in that it cannot cause significant impact or nuisance. If a proposed Home Occupations use will constitute development as defined in the LCP, a Coastal Development Permit will be needed at the time the Home Occupations use is requested... An intensification of use that would warrant a Coastal Development Permit for any future home occupations may include but is not limited to a commercial use that results in an increase in traffic to the site, an increase in noise above that typically associated with residential use or the use of equipment that produces

gasses or other offensive smells beyond that normally associated with a residential use.”

Standard Condition 6 of the CDP amendment states in part that the permit may be revoked if “the use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance” (emphasis added). The risk of significant noise nuisance associated with the non-commercial use of the structure (e.g., for hobby woodworking) is further minimized by Special Condition 2, discussed in the ESHA contention above, which imposes several noise restrictions on the use of the structure to protect PAMB ESHA, including, but not limited to: (1) during the PAMB breeding season (December 15th-June 15th), only hand tools and light power tools may be used, and the use of an air compressor is prohibited; (2) no power tools shall be operated while in direct contact with the ground; and (3) very severe ground vibration (such as pile driving or blasting) is prohibited at any time of year.

Therefore, there is a high degree of legal and factual support for the City’s determination that the approved development, as conditioned, will conform with the LCP requirements for allowed uses in the RA zone. In addition, the extent and scope of the residential accessory development approved by the City is relatively minor, and this contention regarding the potential future use of the approved accessory for a home occupation raises only a local issue as opposed to those of regional or statewide significance. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as amended and approved with the policies and standards of the certified LCP with regard to the use of the approved development.

g. Contentions Related to Noise and Light Impacts on Neighbors

Both the Akossy and Keipp in their appeals contend that the siting and design of the structure as approved under the CDP amendment combined with its purported use for commercial woodworking purposes will adversely affect the use and enjoyment of the neighboring property from noise and light pollution.

Applicable Policies from the LUP:

LUP Chapter VIII (Noise Element) includes the following policy related to noise control:

3. New development in all zones must not raise the ambient noise levels in any residential zone within the city. Where residential zoning is adjacent to other zones, the lower residential noise limits will apply.

Applicable Standards from the IP:

Sec. 5.26 Control of noise:

New development shall conform to noise control policies set forth in the Noise Element of the General Plan or in any noise ordinance that may be in effect and in conformance therewith, and the Planning Commission may require that noise

studies be prepared as a condition of any permit review, and may also require that a developer mitigate for negative noise impacts.

Discussion:

The LCP includes various policies related to noise control, including the above excerpts from the noise element of the LUP and the certified IP. The approved residential accessory use is allowed within the zone in which the site is located and is subject to the same noise and nuisance requirements as adjacent residential properties. In addition, the approved permit amendment includes conditions that restrict noise for PAMB protection as discussed above in Contention (b). As shown on page one of the approved project plans, the exterior lighting attached to the structure will be downcast and shielded to minimize light pollution on surrounding properties. In addition, the CDP amendment includes Standard Condition 6, which states in part that the permit shall be subject to revocation or modification if found that “[t]he use for which the permit was granted is conducted so as to be detrimental to the public health, welfare, or safety, or to be a nuisance.”

Therefore, there is a high degree of legal and factual support for the City’s determination that the approved development, as conditioned, will conform with the noise and exterior lighting restrictions of the LCP. Also, the extent and scope of the development approved by the City is relatively minor, and this contention regarding the noise impacts on adjoining property generated by use of the accessory structure raises only local issues as opposed to those of regional or statewide significance. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project, as amended and approved, with the noise and light pollution policies and standards of the certified LCP.

h. Contention Related to Inadequate Noticing of Development

The Akossy appeal contends that the applicant failed to post the required CDP notice near the subject property, but rather posted inaccurate and incomplete notices at the post office and City Hall, inconsistent with LCP noticing requirements.

Applicable LCP Policies

Please see Appendix F for the full text of the Implementation Plan (IP) standards applicable to this contention.

Discussion:

Pursuant to the certified IP noticing requirements for an appealable CDP hearing, the City published the hearing notice in the Independent Coast Observer (a local weekly news publication). The City’s noticing met the requirements for hearings on appealable projects set forth in Title 14, CCR section 13565. No evidence exists in the local record that the applicant posted notice of the CDP application as close as possible to the subject property. However, the applicant posted two copies of the notice in conspicuous places easily read by the public (at the Point Arena Post Office and at City Hall), and notice was emailed and mailed to all property owners within 100 feet of the project. As

required by the IP, the notice was postmarked no less than 10 days prior to the public hearing. The City has provided a copy of a certified receipt that confirms that the hearing notice was mailed 11 days prior to the hearing. As discussed in Finding IV, the Commission's North Coast District Office received the City's Notice of Final Local Action on CDP Amendment No. 2020-02(01) on November 23rd, 2020 (Exhibit 13). The NOFA met all of the noticing requirements for appealable CDPs under Title 14 CCR sec. 13571. As the local record does not contain evidence that the applicant posted notice of the CDP application at or near the subject property, a question exists as to whether the project conforms with the specific requirements of section 6.19(4) of the IP that two notices be posted as close as possible to the subject property. However, as (1) notices were posted in conspicuous places frequently visited by the public, (2) all property owners within 100 feet of the project were emailed and mailed individual notice of the hearing on the permit amendment as required by provisions of the IP, and (3) the appellants were informed of the hearing in sufficient time to participate in the City's review of the permit amendment, there is legal and factual support in the local record confirming that the County's CDP process provided adequate opportunity for public participation consistent with the noticing requirements in the certified LCP. Therefore, the Commission finds that the noticing contention of the appeals does not raise a substantial issue of conformance with the noticing provisions of the certified LCP.

2) Invalid Contentions

Contentions Related to CEQA Compliance, Privacy Impacts, and Alleged Bias

Three additional contentions raised in the Akossy appeal include the following:

- The City did not follow proper CEQA guidelines in its review of the project, because the City improperly granted a CEQA exemption for the project, even though the project site is located in a mapped MBBA under the LCP, and State CEQA Guidelines state that categorical exemptions do not apply when "The project is located in a sensitive environment such that the project may impact an officially mapped and designated environmental resource hazardous or critical concern."
- The siting and design of the structure as approved under the CDP amendment, combined with its alleged intended use for woodworking purposes, will adversely affect the use and enjoyment of the neighboring property from added traffic and loss of privacy.
- The City's review process was not objective or fair for numerous reasons including, but not limited to, circulation of inaccurate and incomplete information throughout the permit amendment process, conflicts of interest, and "special treatment" associated with the applicant being a member of the City Council

Discussion:

The concerns raised by the appellants do not allege an inconsistency of the local approval with a policy or standard of the certified LCP. Therefore, these contentions are not valid grounds for an appeal.

Though the appellant's contentions regarding compliance with CEQA fail to assert that the approved project is inconsistent with the certified LCP, the approved CDP amendment includes conditions requiring fulfillment of mitigation measures specified to protect PAMB habitat (such as the required noise restrictions), water quality (such as erosion control measures), and archaeological resources. The measures were required by the City as enforceable CDP conditions to ensure that the proposed development will avoid significant effects on the environment.

3) Conclusion

For the reasons stated above, the Commission finds that there is factual and legal evidence in the record to support the City of Point Arena's approval of CDP amendment #2020-02 (01). The Commission therefore finds that the appeals raise no substantial issue with respect to the grounds on which they were filed.