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 49th Day: Waived
 Staff: R. T. Ananda - SF
 Staff Report: 3/30/2018
 Hearing Date: 4/11/2018

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
 DETERMINATION**

Appeal Number: A-2-SMC-17-0061

Applicant: California State Parks

Appellants: Sierra Club Loma Prieta Chapter and George Cattermole

Local Decision: Approved with conditions by San Mateo County Planning Commission (County Coastal Development Permit Number PLN2017-00024)

Project Location: Quiroste Valley Cultural Preserve within the portion of Año Nuevo State Park located inland of Highway 1 near Pescadero in unincorporated San Mateo County

Project Description: Implementation of the Quiroste Valley Cultural Preserve Vegetation Management Plan designed to restore heritage grassland habitat, including sensitive species habitat; teach land management and native plant cultivation practices to Amah Mutsun descendants; and fuel modification to reduce risk of wildland fire at a 115-acre area within Año Nuevo State Park

Staff Recommendation: No Substantial Issue

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether

the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

San Mateo County approved a coastal development permit (CDP) to allow the California Department of Parks and Recreation (State Parks) to implement the Quiroste Valley Cultural Preserve Vegetation Management Plan at a 115-acre area within Año Nuevo State Park, located inland of Highway 1 in the unincorporated Pescadero area of San Mateo County. The Appellants contend that the approved project is inconsistent with San Mateo County Local Coastal Program (LCP) policies related to agriculture, environmentally sensitive habitat areas (ESHA), and scenic resources. Specifically, the Appellants contend that the County-approved project would violate applicable LCP policies because it is a cultural activity that is not a permitted use in the zone; will result in a take of the California red-legged frog (CRLF), marbled murrelet, San Francisco garter snake (SFGS), and dusky-footed woodrat; will have a major unmitigated impact on soils and erosion; and will have an impact on scenic resources. The Appellants also raise contentions about infrastructure for drinking water and sanitation facilities for the duration of the project activities; and regarding access, parking cars, storing equipment, and staging.

The County-approved project is fundamentally a habitat restoration project that has explicitly been designed to enhance habitat, including sensitive species habitat. It also will reduce the threat of large-scale wildfire events through establishing a fuel break along a half-mile of the existing access road located at the intersection with Whitehouse Canyon Road in the northeast portion of the project site.

The project is appropriate for the Planned Agricultural District zoning designation because it includes vegetation management and growing of seed food plants historically used by the local indigenous people. It is designed and will be implemented by State Parks to enhance coastal resources at Año Nuevo State Park and the Cultural Preserve.

The project has been designed and will be implemented by State Parks as advised by the California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFWS). The project includes conditions to help ensure the protection of ESHA and sensitive species and also includes State Parks BMPs and its ongoing work with CDFW and USFWS, both of which support the project.

The County analysis does not discuss impacts to scenic resources. However, the County-approved project would limit tree removal to those trees small enough and in locations such that the visual impact would be negligible; and the project will ultimately result in restoration of

visually attractive range of vegetation that includes coastal grasslands which maintain the natural scenery of the project site.

The project is conditioned to include measures that will reduce the potential for soil erosion. Other assertions regarding the provision of drinking water and sanitation facilities for the duration of project activities, and that the County may have inappropriately granted a CEQA Categorical Exemption for the project, have no implications with respect to LCP policies and do not raise a substantial issue.

For all the foregoing reasons, Commission staff has concluded that the County-approved project does not raise a substantial issue with respect to the project's conformance with the San Mateo County LCP. As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 5 below.

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EXHIBITS

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Exhibit 2 – County-Approved Project

Exhibit 3 – County Notice of Final Local Decision

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Exhibit 5 – State Parks BMPs and Impact Avoidance Measures

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Exhibit 12 – Coastal Commission Staff Ecologist Memo

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeals were filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-2-SMC-17-0061 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.*

***Resolution:** The Commission finds that Appeal Number A-2-SMC-17-0061 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.*

II. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

The County-approved project is located on a 115-acre area within the Quiroste Valley Cultural Preserve portion of Año Nuevo State Park, located on the inland side of Highway 1 just downcoast of the unincorporated Pescadero area of San Mateo County (see **Exhibit 1**).

The County-approved project entails the restoration of the current landscape within the Quiroste Valley Cultural Preserve Area (see **Exhibit 1** and **Exhibit 2**). Specifically, in the time since State Parks acquired the land in the early 1980s and established the cultural preserve in October 2008, the vegetation type in the valley has mostly transitioned from a mix of open grasslands (formerly agricultural fields), shrub lands, and a riparian corridor to a landscape dominated by Douglas fir and northern coastal scrub. The County-approved project is designed to restore the site to a grassland-dominated condition in order to reestablish habitats similar to when the area was originally occupied by the local indigenous people, the Amah Mutsun tribe. The project is also intended as a tool to teach the descendants of the Amah Mutsun tribe the land management practices of their ancestors. In addition to these goals, the project includes a vegetation management component that will allow for better access to the site for State Parks' staff, and will establish a fuel break along a half-mile roadside that will be cleared 50 feet on each side of the existing cultural preserve access road at the intersection with Whitehouse Canyon Road in the northeast portion of the project site. This access road serves as access and egress for both State Parks staff and Native Stewards (members of the Amah Mutsun tribe).

The County-approved project is based on a Vegetation Management Plan that includes the mechanical and hand removal of woody plant species, including various shrubs, invasive plants and coyote brush (within 51 acres of coastal prairie); and removal of an estimated 10,000

Douglas fir trees (*Pseudotsuga menziesii*) that are equal to or less than 24-inch dbh (diameter at breast height), mostly smaller trees and saplings,¹ over the course of approximately five years (within a 52-acre area). Ecological and cultural goals are integrated into the project to: 1) improve culturally significant ethnobotanical resources and enhance habitat for state or federally listed plant taxa; 2) enhance and expand habitat for SFGS and CRLF; and 3) reduce fuel loads in the valley and along its southern slopes. These areas have also been identified as important to slow or stop the spread of a wildfire should one occur. See **Exhibit 2** for the County-approved project plans.

In addition, the Applicant, State Parks, follows standard resource conservation and protection procedures when implementing projects such as this within its management areas. State Parks has provided a series of best management practices (BMPs) it follows in this regard, and that would be applied to this project. Such measures include dusky-footed wood rat avoidance measures and biological training; shaded fuel break guidelines; weed management; erosion control measures; location and phasing (as described above) of tree and shrub removal; biomass management measures; and monitoring and seeding plans (see **Exhibit 5**). The project also includes required consultation with California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFWS) designed to further refine habitat and sensitive species protection, which are required to become part of a memorandum of understanding (MOU) between State Parks and CDFW developed by CDFW. Finally, the project also implements measures from the required USFWS 10(a)1(a) recovery permit. See **Exhibit 3** for the range of measures to be applied, and see **Exhibit 7** for USFWS's letter of support for the project.

B. SAN MATEO COUNTY CDP APPROVAL

On September 13, 2017 the San Mateo County Planning Commission approved a coastal development permit (CDP) with conditions for the above-described project. The Coastal Commission received the County's Notice of Final Local Decision in its North Central Coast District Office on Friday, September 29, 2017 (see **Exhibit 3**). The Coastal Commission's ten working-day appeal period for this action began on Monday October 2, 2017 and concluded at 5:00 pm on Friday October 13, 2017. Two appeals, one from the Sierra Club's Loma Prieta Chapter and one from George Cattermole, were received during the appeal period (see below and **Exhibit 4**).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified Local Coastal Programs (LCPs). The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of

¹ Almost half of the trees are equal to or less than 8" dbh (4,700 trees, half of which are less than 2" dbh), about a third of the trees (3,300 trees) measure between 9" and 16" dbh, and 20% of the trees (or 2,000 trees) range from 17" to 24" dbh.

any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) taken on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable to the Commission because the County-approved project is not the designated principally-permitted use under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.

Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act if a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not so located, and therefore the additional finding regarding public access need not be made if the Commission were to approve the project following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, 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. Any person may testify during the de novo CDP determination stage of an appeal.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project raises LCP consistency questions relating to CDP requirements (i.e., that the project constitutes development thus requires a CDP), and they further contend the project is not consistent with LCP policies requiring the protection of agriculture, ESHA, and scenic resources. Specifically, the Appellants contend that the approved project would violate applicable LCP policies (see **Exhibit 6**) because as a cultural activity it is not a permitted use in the Planned Agricultural District (PAD); will result in a take of the California red-legged frog (CRLF), marbled murrelet, San Francisco garter snake (SFGS), and dusky-footed woodrat; will have a major impact on soils and erosion; and will have an impact on scenic resources. The Appellants also raise concerns about infrastructure needed for drinking water and sanitation facilities for the duration of the project construction; and regarding access, parking cars, storing equipment and staging. Please see **Exhibit 4** for the full appeal documents and contentions.

E. SUBSTANTIAL ISSUE DETERMINATION

The term “substantial issue” is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

In this case, and for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial issue with regard to the Appellant’s contentions.

1. Development Requiring a CDP

One of the Appellants indicates that the project requires a CDP. That is true. The County’s LCP requires a CDP for all development in the coastal zone (see LCP policies 1.1 and 1.2 in **Exhibit 6**). The Applicant applied for a CDP and the County approved it. That CDP decision is the subject of this appeal. Thus, the Appellant’s CDP contention does not raise a substantial issue.

2. Agriculture

San Mateo County’s LCP contains policies relating to allowable uses on agricultural land, allowable uses specifically on prime agricultural land, and policies specific to lands designated and zoned Planned Agricultural District (or PAD), such as this. Key referenced policies are listed below, and please see **Exhibit 6** for full text of other applicable agricultural policies in the LCP.

***Section 6350. Purpose of the Planned Agricultural District.** The purpose of the Planned Agricultural District is to: 1) preserve and foster existing and potential agricultural operations in San Mateo County in order to keep the maximum amount of prime agricultural land and all other lands suitable for agriculture in agricultural production, and 2) minimize conflicts between agricultural and non-agricultural land uses...*

***Section 6351D. Definition of Agriculture.** Activities including, but not limited to, the cultivation of food, fiber, or flowers, and the grazing, growing or pasturing of livestock.*

***Policy 5.5 Permitted Uses on Prime Agricultural Lands Designated as Agriculture.**
a. Permit agricultural and agriculturally related development on prime agricultural lands. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, stables for farm animals, fences, water wells, well covers, pump houses, and water storage tanks, water impoundments, water pollution control facilities for agricultural purposes, and*

temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) soil-dependent greenhouses and nurseries; and (4) repairs, alterations, and additions to existing single-family residences.

b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) public recreation and shoreline access trails, (4) non-soil-dependent greenhouses and nurseries, (5) onshore oil and gas exploration, production, and minimum necessary related storage, (6) uses ancillary to agriculture, (7) permanent roadstands for the sale of produce, provided the amount of prime agricultural land converted does not exceed one-quarter (1/4) acre, (8) facilities for the processing, storing, packaging and shipping of agricultural products, and (9) commercial wood lots and temporary storage of logs.

Policy 5.6 Permitted Uses on Lands Suitable for Agriculture Designated as Agriculture.

a. Permit agricultural and agriculturally related development on land suitable for agriculture. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, fences, water wells, well covers, pump houses, water storage tanks, water impoundments, water pollution control facilities for agricultural purpose, and temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) dairies; (4) greenhouses and nurseries; and (5) repairs, alterations, and additions to existing single-family residences.

b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) multi-family residences if affordable housing, (4) public recreation and shoreline access trails, (5) schools, (6) fire stations, (7) commercial recreation including country inns, stables, riding academies, campgrounds, rod and gun clubs, and private beaches, (8) aquacultural activities, (9) wineries, (10) timber harvesting, commercial wood lots, and storage of logs, (11) onshore oil and gas exploration, production, and storage, (12) facilities for the processing, storing, packaging and shipping of agricultural products, (13) uses ancillary to agriculture, (14) dog kennels and breeding facilities, (15) limited, low intensity scientific/technical research and test facilities, and (16) permanent roadstands for the sale of produce.

The project site is located within an area designated by the LCP for agriculture and zoned Planned Agricultural District (PAD), some of which is designated as prime agricultural land per the standards of the LCP. As evidenced by the LCP policies 5.5 and 5.6 above, the LCP allows a wide variety of uses and development on such agricultural land. The Appellants contend that the County-approved vegetation management project is not a permitted use on land suitable for agriculture, prime or otherwise, and as such is inconsistent with LCP Policies 5.5 and 5.6. The Appellants assert that the project purpose, specifically cultivation of native plants that are culturally significant to the Amah Mutsun,² is a “cultural purpose...not an agricultural use, as no

² Such as seed food sources including coast tarweed (*Madia sativa*), California brome grass, and blue wild rye, and berries such as California blackberry (*Rubus ursinus*), thimbleberry (*Rubus parviflorus*), and blue elderberry (*Sambucus nigra*).

crops would be grown for commercial purposes.” The Appellants further contend that removal of native vegetation is not a permitted use in the PAD and it is therefore inconsistent with the agricultural policies of the LCP that designate appropriate uses in the PAD zone. The Sierra Club appeal further states that the County did not refer the project to the Agricultural Advisory Committee or the Pescadero Municipal Advisory Committee, the locally-elected advisory board that represents this geographic area of the County. The Appellants also assert that the project was not referred to neighbors located on Whitehouse Canyon Road.

With respect to the County’s process, the LCP does not require referrals to the identified committees, and the County chose to take this matter through their Planning Commission, as is allowed by the LCP. Further, the County did not require a PAD permit because the project does not result in the conversion of agricultural land. The County’s chosen process does not raise a substantial issue. Additionally, the County provided notice of the project within the LCP-required 300-foot radius of the site.³

With respect to allowable uses, the County made the finding that the project is not a principally-permitted use, that the purpose of the project is for land and vegetation management, and that additionally a small portion of the vegetation clearing will occur on prime soils (Class II). LCP Policies 5.5 and 5.6 specifically allow agriculture on the subject property. LCP Section 6351D defines agriculture as “activities including, but not limited to, the cultivation of food, fiber, or flowers, and the grazing, growing or pasturing of livestock.” Although it is also fair to characterize the overall project as a habitat restoration project, it certainly includes vegetation management and growing of seed food plants historically used by the local indigenous people. More broadly, staff believes agricultural activities are tied to the cultivation of land. The project will allow for the cultivation of plants and is designed and will be implemented by State Parks to enhance coastal resources at Año Nuevo State Park and the Cultural Preserve. Given that context, the County’s approval in this case does not raise a substantial issue.

3. ESHAs

San Mateo County’s LCP defines and designates sensitive habitats and dictates allowable uses in ESHA areas; defines and designates riparian corridors and dictates allowable uses in them; and establishes appropriate buffers for riparian corridors and wetlands. Key referenced policies are listed below, and please see **Exhibit 6** for full text of other applicable ESHA and habitat related policies in the LCP.

Policy 7.3 Protection of Sensitive Habitats.

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

³ Personal communication from Ruemel Panglao, Project Planner, San Mateo County, to Renée Ananda, Coastal Program Analyst, March 23, 2018.

Policy 7.4 Permitted Uses in Sensitive Habitats.

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

Policy 7.12. Establishment of Buffer Zones.

a. On both sides of riparian corridors, from the “limit of riparian vegetation” extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.

c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

Policy 7.18. Establishment of Buffer Zones.

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where: (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

The Appellants contend that the County has not provided adequate analysis of the project’s compliance with LCP policies relating to ESHA and related habitat resources, including sensitive species. Specifically, the Appellants contend that ESHA was not properly mapped and that LCP-required buffers have not been adequately applied. The Appellants further contend that the proposed project will result in adverse impacts to San Francisco garter snake (SFGS) (a federally-listed and state-listed endangered species), California red-legged frog (CRLF) (a federally-listed threatened species and a state-listed species of special concern), and dusky-footed woodrat (a state listed species of special concern). One of the Appellants also raises an additional concern about the project’s potential impact on marbled murrelet (a federally-listed and state-listed threatened species) and its habitat. The Appellants contend that both SFGS and CRLF need protective cover, and the County-approved project will result in a take of these species. One of the Appellants also asserts that an existing picnic table with a bench is dangerous to the marbled murrelet because the table attracts corvids, which are known to prey on marbled murrelet, to the area.

The County analysis specifically cites and considers LCP Policy 7.3, which prohibits any development or land use which would have a significant adverse impact on sensitive habitat areas; LCP Policy 7.11, which requires 50-foot buffers on both sides of a riparian corridor outward from the limit of riparian vegetation for perennial streams, and 30 feet outward for intermittent streams; and Coastal Act Section 30240, which requires that sensitive habitat areas be protected from any significant disruption and that development in areas adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas and to be compatible with the continuance of ESHA (see **Exhibit 6** for LCP policies).

Wetland and Riparian Habitat

The County found that the project's consistency with LCP Policies 7.3 and 7.11 and Coastal Act Section 30240 is illustrated in part on the Project Site Map (see Attachment D of the County staff report, **Exhibit 2**, page 25). This map illustrates and the County made the finding that the required 50-foot buffer has been established outward from the edge of riparian vegetation, consistent with LCP Policy 7.11. In addition, as illustrated on the Project Site Map, a buffer greater than 100 feet is established from the two seasonal wetlands present near the site, but located outside of the project area, consistent with LCP Policy 7.11. There is more than 100 feet of buffer around each of the two wetlands as these areas are well outside of the project site, consistent with LCP policies that require the designation of buffers around riparian and wetland areas (see **Exhibit 2** page 25 and **Exhibit 9**).

An additional appeal contention is that the project activities are not allowed in the designated buffers to the riparian corridors or wetlands per LCP policies 7.9 and 7.12 (see **Exhibit 6** for full text of LCP policies). The project will remove Douglas fir, using hand tools within the riparian buffer and includes placement of survey units (as described by State Parks, see **Exhibit 5**) to monitor the trend toward decreasing Douglas fir cover. These project activities within the designated buffers are consistent with LCP policies 7.9 and 7.12, because those policies permit fish and wildlife management and research activities within riparian corridors and buffer zones.

The County's action does not raise a substantial issue with respect to wetland and riparian habitats.

San Francisco Garter Snake and California Red-Legged Frog

The County's findings and State Parks' project materials both indicate that CRLF and SFGS, both of which are sensitive species (see above for designations), have been identified in Año Nuevo State Park, and that these two species may be present in Quiroste Valley project area. The County found that the goal of State Parks' Vegetation Management Plan is to restore the area to its natural conditions to enhance CRLF and SFGS habitat, and that thusly the project, as proposed and conditioned, will not have any adverse impacts on ESHAs for the CRLF and SFGS consistent with LCP polices that require protection of sensitive species and habitats (see **Exhibit 2** page 8).

Further, the County found that the Applicant is currently working with the CDFW on a Memorandum of Understanding (MOU) for the project that will further refine measures to protect sensitive species, including CRLF and SFGS. The MOU with CDFW will also include a Biological Opinion and "Take" permit from USFWS which is designed to even further refine

species protections based on USFWS expertise. The approved project requires a qualified biologist to be present during all project activities to ensure sensitive species protections.

At its core, the County-approved project is a habitat restoration project, explicitly designed to enhance sensitive species habitat, including for CRLF and SFGS. It has been designed and will be implemented by State Parks as advised by CDFW and USFWS. Further, the project is intended to manage for the greatest biological diversity within the valley. The County found that the approach to vegetation management at Quiroste Valley Cultural Preserve is intended to be “low-impact,” utilizing measures that are expected to decrease the risk of take of SFGS and CRLF during implementation, and ultimately to enhance habitat for these species. Monitoring for breeding birds and special status species will occur prior to work initiation and, if found, impacts to these will be avoided either by confining work to outside breeding bird seasons, or by establishing appropriate buffers. The project includes conditions to help ensure the protection of ESHA and sensitive species (see **Exhibit 3**) and also includes State Parks’ BMPs (see **Exhibit 5**). Along with State Parks’ ongoing work with CDFW and USFWS, which both support the project,⁴ to craft the MOU that will govern the project, these measures assure adverse impacts to CRLF and SFGS will be avoided, lessened, and/or mitigated. In addition, County Condition of approval 8 explicitly requires CDFW and USFWS measures to be part of the project, as well. Finally, Dr. Laurie Koteen, Commission staff ecologist found the project will enhance and restore habitat, including cover areas, for SFGS and CRLF (see **Exhibit 12** for Dr. Koteen’s memo).

The County’s action does not raise a substantial issue with respect to CRLF and SFGS.

Dusky-footed Woodrat and Marbled Murrelet

The County, however, does not explicitly discuss the project’s impacts on dusky-footed woodrat or marbled murrelet in its analysis. Coastal Commission staff, including Dr. Koteen, visited the project site on February 13, 2018. Staff confirmed that the vegetation proposed for removal in the County-approved project does not include nesting areas for the dusky-footed woodrat. Further, the project refinements provided by State Parks clarify that the project includes specific measures to avoid impacts to woodrat nests should they be encountered during project activities (see **Exhibit 5**).

Regarding the marbled murrelet, the County record for the project includes the results of the California Natural Diversity Database query which show that marbled murrelet has not been identified on the site; suitable nesting habitat does not exist within the preserve; and that murrelets are not likely to occur within the preserve. One Appellant contends that there are six old-growth trees in the vicinity of the existing picnic table and bench that can provide habitat for marbled murrelet, and that the existing table and bench will attract corvids, which prey on murrelets, to the area, endangering the murrelets. First, Dr. Koteen reviewed the project site, including the area with the existing table and bench, and believes that there is no habitat for marbled murrelet at the site of the table and bench. This is corroborated by Portia Halbert, State

⁴ Personal Communication from Laura Patterson, Senior Environmental Specialist, California Department of Fish and Wildlife, to Renée Ananda, Coastal Program Analyst, March 26, 2018; and USFWS Letter dated March 2, 2018 (see Exhibit 7).

Parks Senior Environmental Scientist, who specializes in the study of marbled murrelet and is familiar with the project site. Ms. Halbert confirms that the trees “do not provide the adequate cover needed for nesting murrelets” (see **Exhibit 11**). The County-approved project includes Condition 8 which requires a CDFW-approved, qualified biologist or biological monitor be on-site within all zones at all times during project activities. The project also includes implementation of the “Crumb Clean Park” program as a precautionary measure to discourage corvids (see **Exhibit 5**). These measures are designed to ensure the protection of sensitive species and biological resources, consistent with LCP policies that protect sensitive species.

The County’s action does not raise a substantial issue with respect to dusky-footed woodrat and marbled murrelet.

Other

The Appellants assert that the County-approved project does not properly label willow habitat and is not consistent with identifying LCP-required measures to protect this habitat. Specifically, LCP policy 7.2 requires sensitive habitats be designated on maps kept by the County. The Applicant’s General Vegetation Map is now updated to show willow habitat labeled (see **Exhibit 9**). The Applicant has provided clear mapping of all sensitive habitat, including LCP-required riparian buffer mapping, consistent with LCP policies that require sensitive habitats be mapped. The Applicant is also developing an MOU with CDFW for the protection of SFGS and CRLF, which is nearly finalized.⁵ The project will not result in negative impacts to CRLF because wetlands and stream areas with deep pools are not within the project site and will not be affected.

Conclusion

The County-approved project is fundamentally a habitat restoration project that has explicitly been designed to enhance habitat, including sensitive species habitat. It has been designed and will be implemented by State Parks as advised by CDFW and USFWS, both of which support the project. Many other local resource protection and conservation agencies are in support of the project, as well (see **Exhibit 10**). The Commission’s staff ecologist, Dr. Koteen, has visited the site and has reviewed the relevant project materials and concludes support of the project is appropriate because the goals of the Vegetation Management Plan for the Quiroste Cultural Preserve are “in sync” with those of the Coastal Act, cultural preservation, and ecological principles. The County-approved project is appropriate for this area (see **Exhibit 12**) and should result in habitat enhancement and restoration on a fairly large scale. Dr. Koteen and staff believe the Applicant has the experience and expertise to implement the project so as to ensure its success. The County’s action does not raise a substantial ESHA or habitat issue.

4. Visual/Scenic Resources

The LCP protects scenic resources, including via LCP policies 8.8 (Definition of Vegetative Forms), 8.9 (Trees), and 8.10 (Vegetative Cover). Key referenced policies are listed below, and please see **Exhibit 6** for full text of other applicable scenic resource policies in the LCP.

⁵ Personal communication from Tim Reilly, Environmental Scientist, California Department of Parks and Recreation, to Renée Ananda, Coastal Program Analyst, March 22, 2018.

Policy 8.8 Definition of Vegetative Forms. *Define vegetative forms as naturally occurring or introduced vegetation that grows in the Coastal Zone.*

Policy 8.9 Trees.

a. *Locate and design new development to minimize tree removal. ...*

d. *Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities. ...*

f. *Prohibit the removal of living trees in the Coastal Zone with a trunk circumference of more than 55 inches measured 4 1/2 feet above the average surface of the ground, except as may be permitted for development under the regulations of the LCP, or permitted under the Timber Harvesting Ordinance, or for reason of danger to life or property.*

g. *Allow the removal of trees which are a threat to public health, safety, and welfare.*

Policy 8.10 Vegetative Cover (with the exception of crops grown for commercial purposes). *Replace vegetation removed during construction with plant materials (trees, shrubs, ground cover) which are compatible with surrounding vegetation and is suitable to the climate, soil, and ecological characteristics of the area.*

The County-approved project includes the removal of an estimated 10,000 Douglas fir trees, as described above, many of which are quite small in terms of the growth range of the Douglas fir.⁶ The Appellants contend that removal of trees 16” to 24” in diameter at breast height (dbh, where ‘breast height’ is considered to be 4½ feet above the ground) will have a major impact on scenic resources. The LCP provides for the protection of visual resources within the coastal zone, including through policies that are designed to minimize tree removal, and explicitly prohibits the removal of living trees with a trunk circumference greater than 55 inches at 4½ feet above the ground, which translates into a prohibition on tree removal for trees roughly 17.5” dbh and above.⁷

As indicated, most of the trees proposed for removal are quite small, and about a quarter are less than 2’ wide. The County analysis does not include a discussion of impacts to scenic resources. However, Commission staff (Dr. Laurie Koteen, Staff Ecologist and Renée Ananda, Coastal Program Analyst) visited the project site on February 13, 2018 and confirmed that the majority of trees proposed for removal (possibly all) are outlier and smaller individuals (many of them saplings) that are distributed throughout the site at locations along the edges of where larger and older/more established trees are located (see project area photos in **Exhibit 2** pages 29 and 30). Removal of these smaller trees will not result in a significant visual impact as larger trees, which are not identified for removal, will remain in place.

⁶ Almost half of the trees are equal to or less than 8” dbh (4,700 trees, half of which are less than 2” dbh), about a third of the trees (3,300 trees) measure between 9” and 16” dbh, and 20% of the trees (or 2,000 trees) range from 17” to 24” dbh.

⁷ Trees are rarely perfectly circular, but a perfectly circular tree with a circumference of 55” is the same as a perfectly circular tree with a diameter of 17.5”.

In any case, however, the County-approved project when finished would result in a visually attractive range of vegetation, albeit more geared towards grassland than trees. And although a large number of trees would be removed, these are outlier trees (almost half of the total to be removed are 0 – 8” dbh), and the overall finished landscape in the valley should appropriately maintain natural scenery. Again, the project is designed and will be implemented by State Parks to enhance coastal resources at Año Nuevo State Park and the Cultural Preserve. Given the context, the County’s decision does not raise a substantial visual resource issue.

5. Other Contentions

The Appellants contend that the above-described tree removal will cause erosion and soil impacts. The County found that the project complies with the requirements of the regulations applicable to land clearing, including disallowing land clearing during the winter season (October 1 to April 30) to avoid potential soil erosion (unless approved, in writing, by the Community Development Director). The project does not include grading or earth-moving activities, and vegetation removal would predominantly occur at or above the soil line using handsaws, loppers, weed whips, chainsaws, and or other equipment, such as a masticator. The project is conditioned to include measures that will reduce the potential for soil erosion, including County Condition 3 that requires the Applicant to adhere to San Mateo Countywide Stormwater Pollution Prevention Program General Construction and Site Supervision Guidelines (see **Exhibit 3**). In addition, the project includes a series of additional BMPs designed to address such potential issues (see **Exhibit 5**). The County’s action does not raise a substantial issue with respect to erosion and soil impacts.

One Appellant asserts that it is not evident how drinking water and sanitation facilities will be provided for the use of tribal volunteers and/or other visitors for the duration of implementation of the County-approved Vegetation Management Plan activities. The Appellant further indicates that there is no evidence to show what areas will “become sacrifice areas for parking cars, storing equipment and staging the detritus from vegetation removal.” The project entails restoration and cultivation of the land and does not include construction of any permanent drinking or sanitation facilities. A portable toilet will temporarily be used during vegetation removal activities and removed from the site upon completion of the vegetation removal activities. The “Project Access/Staging Map” is included as Attachment D of the County Staff Report. Additionally, County Condition 4 requires the Applicant to remove all equipment from the site upon completion of the use and/or need of each piece of equipment. The assertions with respect to drinking water and sanitation facilities have no implications with respect to LCP policies.

One Appellant also contends that the County may have inappropriately granted a CEQA Categorical Exemption for the project. However, the only appropriate grounds for an appeal to the Coastal Commission are issues related to the project’s consistency with the certified LCP and the Coastal Act’s public access policies. Thus, any CEQA contentions are not appropriate grounds for this appeal. In addition, the substantive issues raised by the Appellant that might relate to CEQA questions are all issues that do not rise to the level of a substantial issue in terms of the project’s conformance with the certified LCP, as detailed above. Thus, even construing this contention broadly, this contention does not raise a substantial issue.

F. CONCLUSION

The Commission, when considering a project that has been appealed to it, must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. The Commission has the discretion to find that the project does not raise a substantial issue of the project's conformance with the LCP. As explained above, the Commission is guided in its decision of whether the issues raised in a given case are "substantial" by the following five factors: 1) the degree of factual and legal support for the County's approval; 2) the extent and scope of the development as approved by the County; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the County'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 first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision. Here, the County's action was supported by documentation provided by the Applicant, as well as the expertise of CDFW and USFWS, whose sign-off on habitat protection measures is required by County condition. The Applicant also provided additional information and details in terms of BMPs that are a part of the proposed project as additional supporting justification. The County's decision, as elaborated in the findings above, is supported by adequate factual evidence and legal support, and this warrants a conclusion that the County's decision on this project does not raise a substantial issue with respect to conformance to the LCP.

The second factor in evaluating whether the appeal raises a substantial issue is the extent and scope of the development as approved by the County. The project comprises vegetation management and habitat restoration within a 115-acre area of the Quiroste Valley in Año Nuevo State Park. As stated above, the project is well-tailored to the stated goals for the project, it will preserve existing coastal grassland and restore shrub and tree areas within the valley to grassland, re-establish the cultivation of seed food in the valley, and provide and enhance habitat for sensitive species. The project is also phased, which allows for a down-scaled approach to removal of woody vegetation, non-natives, and invasive species. The extent of the vegetation management is appropriate to accomplish the goals, particularly since sensitive species will benefit from the project. The scope of the project supports a conclusion that the County's decision on this project does not raise a substantial issue with respect to conformance to the LCP.

The third factor in evaluating whether the appeal raises a substantial issue is the significance of the coastal resources affected by the decision. The County-approved project has both ecological and cultural impacts, some positive and some adverse; however all of the adverse impacts are avoided, lessened, and/or mitigated for. The LCP also requires the protection of coastal resources, including native grasslands that are among the most endangered habitats in California, and which will be restored by the proposed project. Such grasslands provide support for a diverse assemblage of species (plants and animals), and are refugia for many species of special concern, such as CRLF and SFGS, which were raised as concerns by the Appellants. The protection and restoration of native grasslands such as allowed by the County-approved project results in the

protection of other species, as well.⁸ This project will control the invasion of woody plants, non-native, and invasive species that are encroaching into native coastal grassland habitat. Native prairie grasslands are a significant coastal resource that requires protection, and the project will accomplish this. Therefore, the resources are significant, but are also appropriately addressed and should be enhanced through the project, supporting a conclusion that the County's decision on this project does not raise a substantial issue with respect to conformance to the LCP.

The fourth factor in evaluating whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. Here, the project is at its core a habitat restoration project designed to enhance important habitats at a State Park. Further, the project design and specific goals have been tailored to the unique ecological and cultural significance of this special area within Año Nuevo State Park. The County decision appropriately addresses the County's LCP policies given the project context, also supporting a conclusion that the County's decision on this project does not raise a substantial issue with respect to conformance to the LCP.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The project involves restoration of a coastal grassland ecosystem, an ecosystem which serves the people indigenous to this specific area. The Applicant has studied the cultural and ecological history of the project site to specifically guide the habitat restoration and vegetation management within Quiroste Valley. In that sense, the project is a localized issue. At the same time, habitat restoration, particularly at this scale and involving the resources and sensitive species here, is a statewide concern. Fortunately, the County-approved project appropriately resolves and addresses such concerns, and should result in an overall habitat enhancement, also supporting a conclusion that the County's decision on this project does not raise a substantial issue with respect to conformance to the LCP.

No substantial issue is raised with respect to the County's approval of the project. The above-described five factors, when considered together, support a conclusion that the County's decision on this project does not raise a substantial issue of LCP conformance. The project is a vegetation management plan that will benefit native vegetation and fauna of the area, and will restore a heritage habitat condition that will benefit the people indigenous to the area. It will not result in adverse impacts to significant coastal resources because such impacts have been avoided, lessened, and/or mitigated for appropriately.

The Commission finds that Appeal Number A-2-SMC-17-0061 for the above-stated reasons does not present a substantial issue with respect to the grounds on which the two appeals have been filed under Section 30603 of the Coastal Act.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- San Mateo County Record Provided for CDP PLN2017-00024

⁸ Koteen Ph. D., Laurie, Coastal Commission Staff Ecologist, *Coastal Native Perennial Grasslands and Native Grassland Restoration*.

- Sierra Club and Cattermole Appeals

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- California Department of Parks and Recreation
- California Department of Fish and Wildlife
- San Mateo County Planning and Building Department
- Sierra Club – Loma Prieta Chapter
- Committee for Green Foothills