

COASTAL CONSERVANCY

Staff Recommendation  
December 19, 2019

**PACIFIC SHORES PREACQUISITION FEASIBILITY STUDY PHASE III**

Project No.19-044-01  
Project Manager: Karyn Gear

**RECOMMENDED ACTION:** Authorization to disburse up to \$588,000 to Smith River Alliance, Inc. to undertake a third phase of feasibility analysis and pre-acquisition planning activities, and minor clean-up actions, for properties within the Pacific Shores Subdivision adjacent to the Lake Earl Wildlife Area in Del Norte County.

**LOCATION:** Pacific Shores Subdivision, adjacent to the Lake Earl Wildlife Area, approximately 4 miles north of Crescent City, Del Norte County.

**PROGRAM CATEGORY:** Resource Enhancement

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EXHIBITS

Exhibit 1: [Project Location Map](#)

Exhibit 2: [Ownership Map](#)

Exhibit 3: [Project Letters](#)

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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed five hundred eighty-eight thousand dollars (\$588,000) to The Smith River Alliance, Inc. (“the grantee”) to determine the feasibility of public acquisition of parcels in the Pacific Shores Subdivision, Del Norte County, and for initial property acquisition activities and minor clean-up actions for such parcels. Prior to the disbursement of funds, the grantee shall submit for the review and written approval of the Executive Officer of the Conservancy (Executive Officer) a detailed work program, schedule, and budget, and the names and qualifications of any contractors to be used in the development of the project.”

Staff further recommends that the Conservancy adopt the following findings:

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“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent Public Resources Code Sections 31251 *et seq.* regarding enhancement of coastal resources.
  2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.
  3. The Smith River Alliance, Inc. is a nonprofit organization organized under section 501(c)(3) of the U.S. Internal Revenue Code, and whose purposes are consistent with Division 21 of the Public Resources Code.”
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**PROJECT SUMMARY:**

Staff is recommending the Conservancy authorize disbursement of up to \$588,000 to The Smith River Alliance, Inc. (SRA) to undertake Phase III of the Pacific Shores Preacquisition Feasibility Study (the project), which consists of a number of preacquisition activities related to potential public acquisition of properties from willing sellers in the Pacific Shores subdivision in Del Norte County. The preacquisition activities include outreach to landowners, preparation of appraisals and site assessments, and preparation of acquisition documents.

Pacific Shores is a 1,535-lot subdivision located on the shores of Lakes Earl and Tolowa, and adjacent to the Department of Fish and Wildlife’s Lake Earl Wildlife Area and the Tolowa Dunes State Park (see Exhibit 1). Consisting largely of sensitive dune and wetland habitat, the land was subdivided in the 1960’s into approximately ½ acre lots, sold to individual lot owners, and approximately 27 miles of subdivision roads and an electric transmission line were constructed. However, because of the sensitive habitat, natural hazards, water quality concerns, and difficulties in siting development and infrastructure such as sewage and water systems, the subdivision is a “white hole” in the certified Del Norte County Local Coastal Program, and therefore remains in the Coastal Commission’s permit jurisdiction. The Coastal Commission has not approved any residential development of the subdivision, and except for the road system that crosses dunes and wetlands, some unpermitted campsites with trailers, and one home (constructed pre-Coastal Act and subsequently purchased by the State), the subdivision remains undeveloped. Due to the road access, historically the subdivision has had problems with illegal dumping. The road, unpermitted development and illegal dumping have degraded the wetland and dune habitat on the subdivision lands. Currently approximately 30 lots are in County tax-default.

Lake Earl has been identified as a State acquisition priority since 1975 by the Department of Fish and Wildlife (DFW), and, beginning in 1977, a series of public acquisitions began to preserve and protect sensitive habitat land, leading to the designation of DFW’s Lake Earl Wildlife Area in 1979. However, due to the complexity of negotiating with over 1000 individual

property owners and continuing controversy over development proposals, the Pacific Shores lots remained largely in private hands until the early 2000s, when the Conservancy provided funding to SRA for two phases of feasibility studies and preacquisition activities that identified willing sellers and readied properties for purchase by the Wildlife Conservation Board (WCB). By the end of the second phase, 711 lots had been acquired by WCB through this cooperative effort, bringing the total state ownership to 779 of the 1,535 lots. Since the completion of that program, the Border Coast Regional Airport Authority (BCRAA) has acquired an additional 183 lots, which are being conveyed to the State, and additional lots have been transferred to the State in settlement of litigation, leaving approximately 430 lots still in private ownership (see Exhibit 2: Property Ownership). As Pacific Shores lots are acquired by the State, they are added to the Lake Earl Wildlife Area.

This proposed funding authorization would enable SRA to restart the acquisition program begun in 2003. SRA will contact property owners and identify willing sellers, obtain an appraisal for properties in the subdivision to determine current fair market value; undertake necessary Phase 1 and Phase 2 environmental site assessments; obtain and analyze title reports; develop standardized transaction documents for purchase; and assist the County of Del Norte and WCB with acquisition of the lots currently in tax default. The project also includes cleaning up sites that contain dumped materials if the clean-up consists of removal of nonhazardous materials and disposal of such materials in a proper disposal site. Any sites requiring clean-up that involves hazardous materials or grading or other more complex remediation actions would not be cleaned up as part of this project. Staff expects to return to the Conservancy for future funding authorizations to provide acquisition funding to WCB for willing seller and tax default lots identified through this process. SRA anticipates that the proposed authorization will enable it to identify and prepare approximately 100 lots for public purchase through implementation of this phase.

**Site Description:** Pacific Shores is a 1,535-lot subdivision, undeveloped save for the roads that were constructed subsequent to the subdivision in the 1960s and some unpermitted campsites. The subdivision lies adjacent to Lakes Earl and Tolowa, approximately four miles north of Crescent City in Del Norte County, and lies in the Smith River plain. Though called “lakes” these water bodies (also referred to as the Lake Earl/Tolowa complex) are actually an estuarine lagoon that is fed by heavy winter rains, several creeks in the coastal plain, and extensive groundwater sources, and is periodically open to the ocean. A large sandbar separates the lagoon from the Pacific Ocean, which periodically breaches, either naturally or mechanically, opening the lagoon to the ocean. The sand then builds back up over time, and the lagoon closes. This lagoon and its surrounding wetlands were identified as one of California’s 19 most productive wetlands and has been a DFW acquisition priority since 1975. It provides habitat for at least 14 federally listed, California Species of Special Concern, or rare and endemic species, including bald eagle, peregrine falcon, western snowy plover, marbled murrelet, sand dune phacelia, Oregon silverspot butterfly, seaside hoary elfin and greenish blue butterflies, tidewater goby, green sturgeon, coho salmon, steelhead, and coastal cutthroat trout. The California Species of Special Concern list includes 40 bird species found at Lake Earl. In addition

to the listed species, other species recorded at Lake Earl include over 300 bird species, 21 species of fish and at least 40 species of mammals. The area also lies within the Del Norte Coast Important Bird Area, which the Audubon Society has identified as one of the most ornithologically significant coastal bird areas in the State.

**Grantee Qualifications:** SRA was incorporated in 1980, and its mission is to provide for the long-term protection, restoration and stewardship of natural resources within the Smith River watershed. SRA has a record of success completing two previous Conservancy-funded phases of feasibility studies for Pacific Shores acquisitions, which resulted in public acquisition of 711 lots. SRA is thus well qualified to undertake the work proposed in this authorization. SRA has also successfully managed other grants from the Conservancy, including grants for restoration of watershed lands, restoration planning, and fish barrier removal.

**Project History:** In June 2002, the Conservancy supported the first phase of SRA's preacquisition feasibility analysis in an effort to help resolve the long-standing controversy related to development of Pacific Shores and provide an alternative for landowners. Pursuant to that authorization SRA contacted many landowners within the subdivision, prepared standardized transaction documents and maps, and undertook initial pre-acquisition activities. In 2003, the WCB approved \$3,000,000 for the acquisition of lots identified through the feasibility study, and in 2004, due to the overwhelming interest from landowners, the Conservancy awarded a second grant to SRA to undertake additional preacquisition feasibility activities. At the conclusion of the Phase II program in 2008, WCB had acquired 711 lots from sellers identified through the program, bringing the total state ownership to 779 parcels.

In 2005, DFW approved a Management Plan for Lake Earl that contained the goal of managing lagoon water levels at eight to ten feet before mechanically breaching the sand bar to lower lake levels and ameliorate localized flooding. Managing lagoon water levels at Lake Earl has been a hotly contested issue for over 150 years. Initially disputes over lake level management in the 1860s pitted mill operators (who wanted high water levels to float logs) against ranchers, (who wanted the lake levels low to reclaim grazing land). Since the 1960s and 70s the argument has been between those who wish to develop property around Lake Earl and at Pacific Shores, and those who are concerned with maintaining important coastal habitats. Pacific Shores property owners desired the lake be managed at a low level (four feet) and resource and regulatory agencies, concerned about impacts to fish and wildlife habitat, requested a higher lake level before the sand bar is breached.

In 2006 Del Norte County petitioned the Local Area Formation Committee (LAFCO) to dissolve the Pacific Shores Water District (District). The District was created in 1987 with the purpose of advancing water and sewage development at Pacific Shores and assessed property owners annually. Some of the assessed funds were used for preliminary environmental studies, but the majority of the funds were used for various unsuccessful lawsuits brought against public agencies and governmental officials. In 2008 LAFCO determined the District was highly unlikely to obtain approval for development due to environmental and regulatory constraints and dissolved the District.

In 2007, some of the remaining property owners and the Pacific Shores Property Owners Association filed suit against the Department and others over the issue of water level management. That case was finally resolved in 2016 at the court of appeal which held that DFW had caused a physical taking of lots within Pacific Shores through its water management. As part of the settlement of that case, flowage easements in favor of the State were recorded on the lots. A subsequent case with additional property owners was settled by the State for an undisclosed amount, and 150 parcels were transferred to DFW.

In 2013, 183 lots were purchased by the Border Coast Regional Airport Authority for mitigation related to airport improvements, and those lots are in the process of being conveyed to the State of California for management by DFW.

As of June 30, 2019, there were an estimated 430 parcels remaining in private ownership, of which approximately 30 are in tax default (see Exhibit 2: Property Ownership Map).

#### **PROJECT FINANCING**

<b>Coastal Conservancy</b>	<b>\$588,000</b>
<b>Project Total</b>	<b>\$588,000</b>

Conservancy funds for this project are expected to come from an appropriation to the Conservancy from the California Drought, Water, Climate, Coastal Protection, and Outdoors Access for All Act of 2018, California Public Resources Code Sections 8000-80173 (Proposition 68). Pursuant to Chapter 9, Section 80120 (f) the Conservancy may expend funds for the acquisition of parcels that will allow for protection and restoration of coastal dune, wetland, upland and forest habitat associated with estuarine lagoons and designated wildlife areas. The proposed project consists of the preacquisition activities that are necessary to facilitate acquisition of parcels within the Pacific Shores subdivision. Parcels in this subdivision contain dune, wetland and forest habitat adjacent to DFW's Lake Earl Wildlife Area, a coastal estuarine lagoon. Thus, the proposed authorization is consistent with the funding source. Further, the proposed project is consistent with the funding guidelines for expenditure of Proposition 68 adopted by the Conservancy on December 6, 2018 as described in various sections of this staff recommendations. (See Pub. Res. Code section 80010). Proposition 68 requires that at least 15% of funds allocated for Chapter 9 be used for projects that serve Severely Disadvantaged Communities (SDACs). The proposed project is located in Del Norte County, a small, rural coastal county with approximately 24.6% of its residents living in poverty. Both disadvantaged and severely disadvantaged communities are in close proximity to Pacific Shores. The project will benefit these communities by helping to consolidate public ownership and management of this important natural resource leading to improved site conditions. The project will further benefit these disadvantaged communities by helping to finally resolve the future of Pacific Shores, which has been the subject of much litigation over the years, draining County resources that could otherwise be spent benefitting the community.

**CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:**

The proposed project is consistent with Chapter 6 (Sections 31251 et seq) of Divisions 21 of the Public Resources Code, relating to the enhancement of coastal resources, and with Section 31111.

Section 31111 authorizes the Conservancy to award grants to nonprofit organizations to undertake plans and feasibility studies. The proposed authorization would enable SRA, a nonprofit organization, to undertake a third phase of a feasibility study of acquiring lots from willing sellers in the Pacific Shores subdivision. SRA is an appropriate partner for this project in that they have among their principal purposes restoration of the Smith River and its watershed.

Pursuant to Section 31251, the Conservancy may award grants to nonprofit organizations for the purpose of enhancement of coastal resources that because of improper location of improvements, natural or human induced events or incompatible land uses have suffered loss of natural and scenic values. Grants under this chapter are to be utilized for the assembly of parcels of land within coastal resource enhancement areas to improve resource management. The Pacific Shores subdivision has suffered a loss of natural values due the 27 miles of road, unpermitted campsites, and illegal trash dumping. The proposed project is consistent with this section in that it would lead to improved resource management by consolidating property management and enforcement and help to resolve long-term conflicts between proposed development and management of the Lake Earl ecosystem.

Section 31252 requires that all areas proposed for resource enhancement by a nonprofit organization be identified in a certified local coastal plan as requiring public action to resolve existing or potential resource protection problems. The Pacific Shores subdivision is a "white hole" in the Del Norte County Local Coastal Plan. However, the LCP contains policies identifying wetlands and coastal dunes as sensitive habitat that should be protected and in particular, stating that Lakes Earl and Tolowa should be protected. See "Consistency with the with Local Coastal Program Policies" section below.

Section 31253 authorizes the Conservancy to provide up to the total cost of any coastal resource enhancement. The proposed project would be funded solely by the Conservancy, but when lots are acquired from willing sellers, the Department of Fish and Wildlife would take on ongoing maintenance and management responsibilities.

**CONSISTENCY WITH CONSERVANCY'S [2018-2022 STRATEGIC PLAN](#) GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 6, Objective C** of the Conservancy's 2018-2022 Strategic Plan, the proposed project will plan for the preservation and enhancement of a coastal floodplain.

Consistent with **Goal 15, Objective B**, the proposed project entails a collaboration between the Conservancy, SRA, the County of Del Norte and the Wildlife Conservation Board to protect a resource of statewide importance.

Consistent with **Goal 16, Objective A**, the project area is located in a disadvantaged community, and helps the community to resolve a long-term resource protection issue.

### **CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on October 2, 2014, in the following respects:

#### **Required Criteria**

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Promotion and implementation of state plans and policies:** The 2015 California State Wildlife Action Plan identifies Coastal Dune and Bluff scrub in the North Coast and Klamath Province as a conservation target, and acquisition of priority habitat through fee title acquisition as a conservation strategy. The plan further identifies engaging with state agencies and the NGO community to achieve shared objectives. The Marine Province recommendations in the SWAP include acquiring property to secure high-quality estuary and lagoon ecosystems.

The proposed project is also consistent with the 2004 Pacific Coast Joint Venture Strategic Plan Update, which recommends acquiring additional lands for addition to existing wildlife areas as those lands become available as an objective for Northern California. The plan also identifies the Lake Earl Wildlife Area and the adjacent Tolowa Dunes State Park as particularly important for migratory and overwintering water-associated birds.

4. **Support of the public:** The project has the support of State Senator Mike McGuire, Assemblyman Jim Wood, US Fish and Wildlife Service, Tolowa Dune Stewards and others. See Exhibit 3: Project Letters.
5. **Location:** The proposed project is located within the coastal zone of Del Norte County. (Exhibit 1: Project Location)
6. **Need:** The Conservancy's funding is critical to restarting the lot acquisition program from willing sellers. Without the necessary preacquisition work completed, WCB will be unable to move forward with acquiring the tax defaulted and willing seller properties, and the existing checkerboard ownership pattern will continue to be challenging for land managers.

7. **Greater-than-local interest:** Lake Earl, California’s largest coastal lagoon, has long been identified as a critical natural resource, providing habitat for over 300 species of birds on the Pacific Flyway. Restarting the lot acquisition program will help to resolve the longstanding controversy over development in this sensitive area.
8. **Sea level rise vulnerability:** The Pacific Shores subdivision has significant ocean frontage and is thus vulnerable to sea level rise. Acquiring lots from willing sellers will ensure that no development will occur. In addition, as additional lots are acquired, and entire blocks within the subdivision move into public ownership, there may be the opportunity to remove existing roads, restoring wetlands and dune habitat, and thereby creating a landscape that may be more resilient to climate change.

**Additional Criteria:**

9. **Urgency:** Thirty lots in the subdivision are currently in tax default. Preacquisition work is needed now to ensure that these lots, along with those with willing sellers, move into public ownership.
10. **Resolution of more than one issue:** The proposed project will lead to the resolution of conflicts over inappropriate development in a highly scenic natural resource area, preservation of endangered species, and improvement of natural resources management.
11. **Conflict resolution:** As discussed in the “Project History” section above, the Pacific Shores subdivision has been the subject of controversy for many decades. The subdivision is identified as an “area of deferred certification” in the Local Coastal Program, as the County and Coastal Commission were not able to reach consensus on resolving the inherent conflicts between protecting the sensitive habitat at Lake Earl and developing houses on residential parcels. The proposed project will provide an alternative for landowners who wish to sell their parcels.
12. **Innovation:** The project is an innovative partnership involving SRA, WCB, the Conservancy, and DFW to resolve a multi-decades long natural resource issue on the North Coast.
13. **Readiness:** SRA is prepared to begin work on the feasibility study and preacquisition activities immediately.
14. **Realization of prior Conservancy goals:** “See “Project History” above.”
15. **Cooperation:** The proposed project is a cooperative effort of the Coastal Conservancy, WCB, SRA and DFW.

**CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:**

The Pacific Shores Subdivision is identified as an “Area of Deferred Certification” in the County of Del Norte’s Local Coastal Program (LCP) certified by the Coastal Commission on October 12,



1983. The Coastal Commission's January 2000 LCP Annual Report notes that the unresolved issues are natural hazards, water quality, environmentally sensitive habitat areas, public works and location of new development.

The proposed project is consistent with the following specific policy of the Del Norte County LCP:

Coastal sand dunes...should be maintained in their existing states or returned to their natural states where feasible to ensure their values as groundwater recharge regions and wildlife habitats. [p.70]

As a general policy, the County of Del Norte "...recognizes the economic and biologic significance of maintaining and where possible enhancing marine resources, coastal waters and sensitive coastal habitats." General policies designed to achieve these important goals include, but are not limited to: 1) Maintain, and where feasible enhance the existing quality of all marine and water resources; 2) Encourage programs (e.g. habitat rehabilitation) designed to improve the quality of coastal fisheries and other marine resources; 3) Maintain all surface and subsurface waters at the highest level of quality to ensure the safety of public health and the biological productivity of coastal waters; 4) Avoid the impairment of water quality or adversely effect the biological productivity of coastal waters from agricultural was; and 5) Protect environmentally sensitive habitat areas against any significant disruption of habitat values [LCP VI (c) et seq.]

The LCP further acknowledges that Lake Earl and Tolowa, and their immediate marshlands are "...recognized as major locations of excellent wildlife habitat, native or natural vegetation and of aesthetic value. These areas should be protected from adverse activity. No further commitment to development should be allowed except that which is in the best interest of the public health, safety and welfare..." [LCP, Marine and Water Resources, VI(B)(4)(c)]

**CEQA COMPLIANCE:**

The proposed project is statutorily exempt from preparation of an Environmental Impact Report or Negative Declaration under the California Environmental Quality Act (CEQA) section 15262 in that it involves only planning and feasibility studies for potential future activities that have not yet been approved or funded. Upon approval of the project, Conservancy staff will file a Notice of Exemption.

To the extent the project includes minor clean-up actions to remove dumped material, such work is exempt from CEQA pursuant to the CEQA Guidelines at California Code of Regulations Title 14, Section 15304. This section exempts minor alterations in the condition of land that do not involve removal of healthy, mature, scenic trees. The minor clean up actions will be limited to removing dumped materials; no trees will be removed. If SRA identifies lots that require major remediation actions, those lots will not be cleaned up as part of this project.