

COASTAL CONSERVANCY

Staff Recommendation
May 27, 2021

PACIFIC SHORES ACQUISITION PROGRAM

Project No.19-044-03
Project Manager: Karyn Gear

RECOMMENDED ACTION: Authorization to disburse up to \$940,000 to the Smith River Alliance, Inc. to acquire beach, dune, wetland, upland and forested parcels in the vicinity of the Pacific Shores subdivision, adjacent to Lake Earl, Del Norte County.

LOCATION: Adjacent to Lake Earl Wildlife Area, Del Norte County

EXHIBITS

- Exhibit 1: [Project Location Map](#)
 - Exhibit 2: [Pacific Shores Parcel Ownership Map](#)
 - Exhibit 3: [Del Norte County Assessor Parcel Numbers](#)
 - Exhibit 4: [Project Letters](#)
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RESOLUTION AND FINDINGS

Staff recommends that the State Coastal Conservancy adopt the following resolution and findings.

Resolution:

The State Coastal Conservancy hereby authorizes disbursement of up to nine hundred forty thousand dollars (\$940,000.00) to the Smith River Alliance, Inc. (“the grantee”) to acquire one or more of the parcels within and adjacent to the Pacific Shores subdivision in Del Norte County as identified on Exhibit 3 to the attached staff recommendation, subject to the following conditions:

1. Prior to the disbursement of funds for acquisition of each parcel, the grantee shall submit for the review and approval of the Executive Officer of the Conservancy (Executive Officer):
 - a. All relevant acquisition documents for the acquisitions including, without limitation, appraisal, purchase and sale agreement, deed, escrow instructions, environmental or hazardous materials assessment, and title report;

- b. A baseline conditions report; and
 - c. Evidence that sufficient funds are available to complete the acquisition.
2. The grantee shall pay no more than fair market value for each parcel, as established in an appraisal approved by the Executive Officer.
 3. Each parcel acquired under this authorization shall be managed and operated for natural resource protection; habitat preservation, restoration and enhancement cultural resource preservation and public access that is compatible with those purposes. The property shall be permanently dedicated to those purposes by an appropriate instrument approved by the Executive Officer.
 4. Conservancy funding shall be acknowledged by erecting and maintaining a sign on at least one of the acquired parcels or in a nearby publicly-viewable area, the design and location of which are to be approved by the Executive Officer.
 5. The grantee shall acquire only those parcels for which there is a willing seller.

Findings:

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

1. The proposed authorization is consistent with Chapter 6 of Division 21 of the Public Resources Code, regarding coastal resource enhancement projects.
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.

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Conservancy authorize a \$940,000 grant to the Smith River Alliance, Inc, ("SRA") to acquire parcels in and adjacent to the Pacific Shores subdivision in Del Norte County to preserve and enhance the beach, dune, wetland, upland and forest habitat within these parcels and to provide for appropriate public access (see Exhibits 1 and 2: Project Maps). This recommended grant amount is expected to provide enough funding to acquire approximately 160 acres from willing sellers. Currently there are approximately 400 acres of unprotected land in and adjacent to the Pacific Shores subdivision. Exhibit 3 contains the current list of Del Norte County Assessor Parcel Numbers of the parcels comprising the 400 acres. Only parcels on this list will be acquired with this funding. The proposed acquisition program is a critical step in finally resolving the Pacific Shores controversy, which has now spanned more than fifty years.

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 Exhibits 2). Consisting largely of sensitive dune and wetland habitat, with some

areas of beach, upland and forest, 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 roads, unpermitted development and illegal dumping have degraded the wetland and dune habitat on the subdivision lands.

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. As Pacific Shores lots are acquired by the State, they are added to the Lake Earl Wildlife Area for management by DFW. Approximately 430 parcels, totaling 400 acres, are still unprotected (see Exhibits 2 and Exhibit 3). 28 of the parcels are currently owned by the County of Del Norte, acquired through tax-default, and the County is prepared to sell these to SRA for their appraised value.

In December 2019, the Conservancy authorized a grant to SRA for a third phase of preacquisition studies to restart the lot purchase program begun in 2003. With funds from that authorization, SRA has undertaken a number of activities, including identifying and mapping all existing unprotected parcels, commissioning an appraisal and a Phase 1 Environmental Assessment for Pacific Shores, and obtaining title reports for the first 28 parcels proposed for acquisition under this program. The appraisal has identified one consistent value for each of the ½ acre subdivision lots, and also provides values for two larger 25-acre adjacent beach and dune parcels. At the time of the Phase III funding authorization, staff noted that it would likely recommend that the Conservancy fund WCB's acquisition of parcels identified through this process. However, through further discussions with WCB and SRA, it became clear that the most efficient path forward is for SRA to acquire lots as they become available. SRA will then transfer parcels in bundled groups at no cost to WCB. This will enable WCB to minimize individual transactions and will enable a more efficient Department of General Services review process. With the recommended funding authorization, SRA anticipates it will be able to

acquire approximately 160 of the 400 unprotected acres remaining over the next eighteen months.

In accordance with the Conservancy's tribal consultation policy, staff contacted Del Norte County tribes to provide information about the proposed project. In response, the Tolowa Deeni' Nation ("Tribe") requested a formal Government-to-Government tribal consultation (See Exhibit 4). The Tribe identifies the Pacific Shores subdivision as lying within its traditional 'Eechuu-le' Yvtlh-'i~ (Etchulet District) and notes that there are multiple cultural sites scattered throughout the subdivision. The Tribe requested that any lots purchased through this program be transferred to the Tribe, rather than the WCB, who has purchased and/or been the recipient of all 1,100 parcels acquired to date. Staff has offered to facilitate a conversation with DFW and WCB to discuss the potential for future tribal ownership of the Pacific Shores subdivision. In addition, to address the Tribe's concerns about cultural sites on the property, staff recommends that the restricted future uses of the property include protection of cultural resources. At this time, staff recommends the Conservancy proceed with the project as proposed, so as not to lose the current momentum for acquiring lots and resolving the Pacific Shores subdivision issue.

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 project area includes open and vegetated dunes, wetlands, forests and grasslands. 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, within the ancestral homeland of the Tolowa people. 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 and Pacific Shores 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.

Grant Applicant 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.

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 below.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section below.
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 is supported by Congressman Jared Huffman, Senator Mike McGuire, Assembly Member Jim Wood, Del Norte County Board of Supervisors, the Coastal Commission, Sierra Club, Northcoast Environmental Center and the Tolowa Dunes Stewards. See Exhibit 4: Project Letters.
5. **Location:** See the "Project Summary".
6. **Need:** Conservancy funds are needed to acquire the lots identified through the feasibility study. Providing funding to SRA is the most efficient way to get lots acquired, consolidated, and transferred to the State for long term management.
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 and restore wetlands and dune habitat, thereby creating a landscape that may be more resilient to climate change.

Additional Criteria

9. **Urgency:** SRA has begun the process of identifying willing sellers and has obtained an appraisal and Phase 1 report. Funds are needed for the lot acquisitions so that momentum is not lost, and documents remain fresh.

10. **Innovation:** SRA has demonstrated flexibility and an innovative approach to resolving the Pacific Shores issue. Its willingness to take on the thorny issue of Pacific Shores, work on standardizing transaction documents and processes, acquire individual parcels, hold and then bundle groups for transfer to WCB is exceptional.

11. **Readiness:** Smith River Alliance has developed transaction documents, completed the Phase 1 Environmental Analysis, and has submitted the appraisal to the Department of General Services for review and approval. The first 28 parcels to be funded under this authorization are ready for acquisition, which, if funding is provided, should be completed in Fall 2021. Subsequent acquisitions from willing sellers identified through the feasibility study will move through the program on a rolling basis.

12. **Realization of prior Conservancy goals:** See Project Summary.

13. **Cooperation:** The project has been developed in cooperation with the SRA, Wildlife Conservation Board, California Department of Fish and Wildlife, and County of Del Norte, to finally resolve the issue of habitat protection at Pacific Shores.

PROJECT FINANCING

Coastal Conservancy	\$940,000
Project Total	\$940,000

Conservancy funds for this project are expected to come from an appropriation to the Conservancy from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoors Access for All Act of 2018, California Public Resources Code Sections 80000-80173 (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 acquisition of parcels associated with 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 Division 21 of the Public Resources Code, relating to the enhancement of coastal resources. 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 to 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 of this ecologically significant area by facilitating public ownership and management, which will enable enforcement, future enhancement of natural resources, and resolution of 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. The proposed acquisitions are thus consistent the LCP.

Section 31253 authorizes the Conservancy to provide up to the total cost of any coastal resource enhancement project. The proposed project would be funded solely by the Conservancy, but when lots are acquired from willing sellers, they will be bundled in groups, transferred to the Wildlife Conservation Board, and maintained and managed by the California Department of Fish and Wildlife.

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

Consistent with **Goal 5, Objective A** of the Conservancy's 2018-2022 Strategic Plan, the proposed project would protect up to 160 acres of significant coastal property.

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.

CEQA COMPLIANCE:

The proposed project is categorically exempt from the California Environmental Quality Act under several sections of the CEQA Guidelines at Cal. Code of Regulations title 14. First, to the extent the property will be used for public access and recreation, it is exempt pursuant to section 15316 as an acquisition of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and the management plan for the park has not been prepared; the majority of the property being acquired is in a natural condition. There is no existing management plan. The project is also exempt under section 15313 as an acquisition of land for preservation of fish and wildlife habitat, and section 15325 as a transfer of an interest in land to preserve open space and habitat. The acquisitions will protect the natural resources of the property for open space and habitat conservation and will allow restoration and enhancement of natural conditions.

Upon approval of the project, Conservancy staff will file a Notice of Exemption.