

# Staff Report 16

**APPLICANT:**

Smith River Alliance

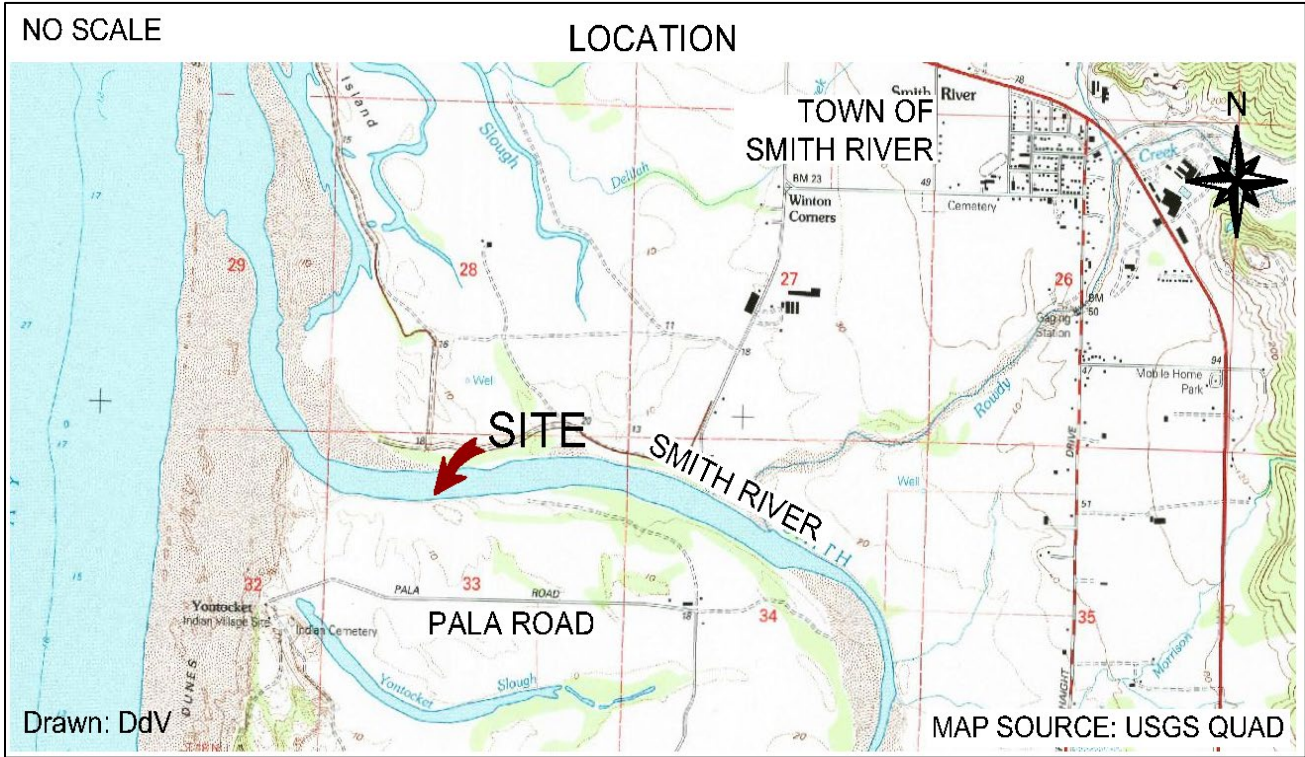
**PROPOSED ACTION:**

Issuance of a General Lease – Other.

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Smith River Estuary Backwater, adjacent to Assessor Parcel Number 103-010-009, near Smith River, Del Norte County (as shown in Figure 1).

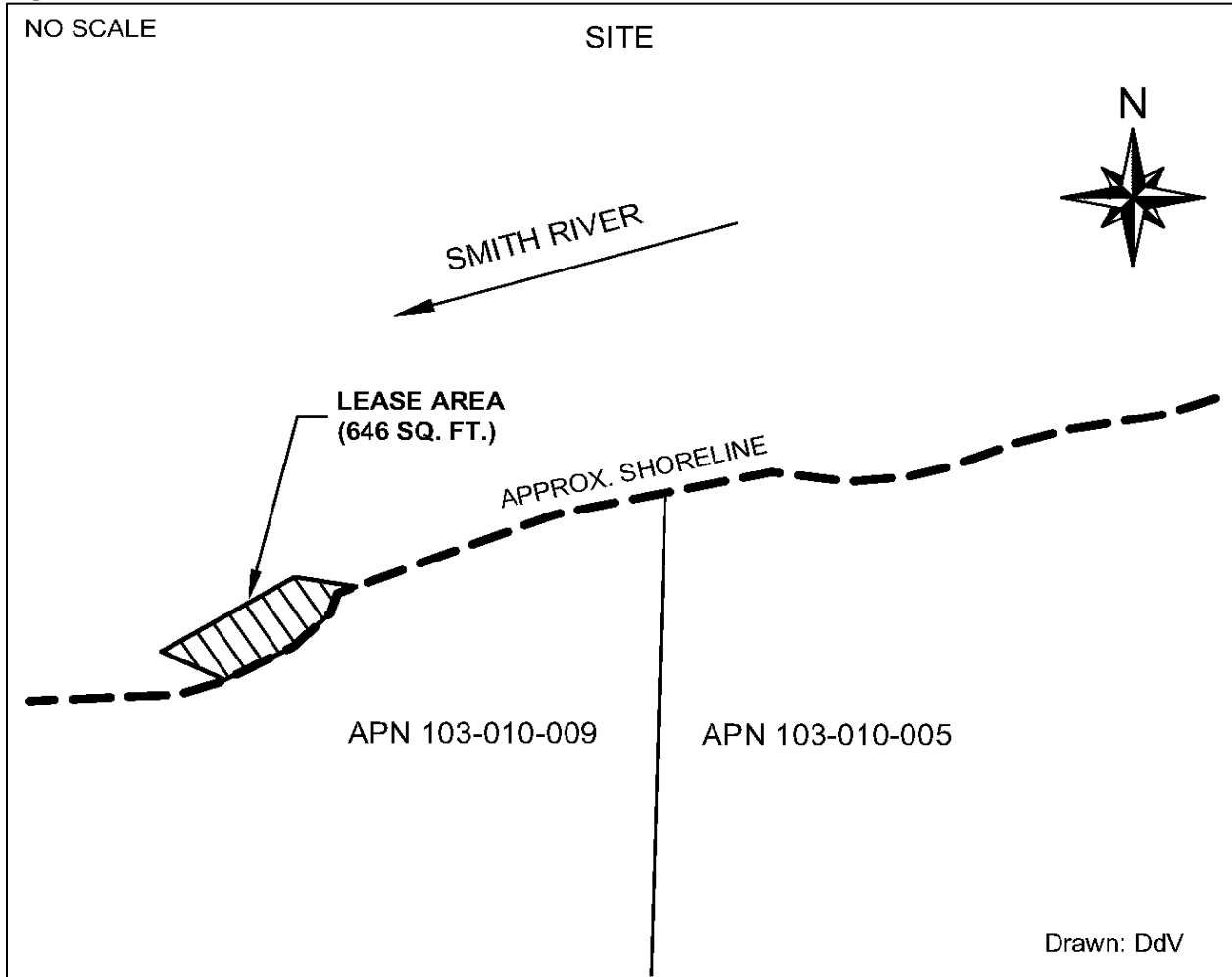
**Figure 1. Location**



**AUTHORIZED USE:**

Restoration and rehabilitation of the bed and backwater of the Smith River channel for riparian habitat enhancement (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

5 years, beginning August 17, 2023.

**CONSIDERATION:**

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest; dredged materials may not be sold.

**SPECIFIC LEASE PROVISIONS:**

- In performing the restoration and rehabilitation operations, the Lessee will adhere to Best Management Practices to control turbidity and protect aquatic resources and habitats from excessive siltation in the general vicinity of the Project.
- Lessee acknowledges that grading materials from the Lease Premises are the property of the State of California and shall not be sold, and that the Lessee is not authorized to grade or remove material for purposes of commercial resale, environmental mitigation credits, or other private benefit without Lessor's prior written consent.
- Within 60 days of completing the restoration and rehabilitation project, Lessee will provide Lessor with photographs, a set of "as built" plans, and written confirmation to evidence completion of the project and identify the contours of the restoration, rehabilitation, and enhancement activities on and adjacent to state land. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized restoration and rehabilitation. Once approved by the Lessor's Executive Officer or designee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

**BACKGROUND:**

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In June 2023, the Smith River Alliance applied for a General Lease – Other, for restoration and rehabilitation of the bed of the Smith River channel and backwater (Project) to improve wildlife and aquatic habitats near the town of Smith River in Del Norte County. The Project is funded by an award from the California Department of Fish and Wildlife Fisheries Restoration Grant Program (FRGP). The FRGP was established in response to rapidly declining populations of wild salmon and steelhead trout and deteriorating fish habitat in California. Each year, FRGP issues millions of dollars in grants to public agencies, Native American Indian Tribes, and nonprofit organizations for projects that lead to process-based restoration, enhancement, or protection of anadromous salmonid habitat. The Project is coordinated by Smith River Alliance (SRA) who is the Applicant for the proposed lease. Stillwater Sciences, a watershed science and environmental engineering consultant, developed the designs for all proposed features, including construction detail, grading plan, preliminary revegetation plan, and erosion and sediment control plan.

The Project encompasses a total of approximately 4.5 acres of land located off of Pala Road with approximately 0.01 acres located on state-sovereign land in the Smith River channel and backwater. The majority of the project is located on land owned by Robert Tedsen and the California Department of Parks and Recreation (Parks). The backwater is a long and narrow depression separated from the mainstem river channel by a vegetated scroll bar that overtops during infrequent high flows. The scroll bar is deposited on the downstream side of a broad point bar that extends nearly one mile upstream to near the Rowdy Creek mouth. The backwater is bordered to the southeast by point bar deposits that support a riparian forest, to the south by floodplain dairy pastures, and to the southwest by portions of Tolowa Dunes State Park.

The proposed work activities include grading, placement of large wood structures, willow baffles and pole planting, a littoral bench, riparian planting, livestock exclusion fencing, and related measures. Sediment material excavated during project grading will be hauled to a disposal site on land owned by Mr. Tedsen and that has been used for sediment material in previous excavation work in the area. The site is located approximately 1,000 feet southeast of the backwater at a naturally high point in the pasture. Mr. Tedsen prefers the proposed disposal site since it does not interfere with any watercourses or flood paths, and it can serve as an evacuation point for livestock during large river floods.

Access to the Project site is via Pala Road to an existing ranch access route south of the backwater. A temporary access road across the pasture would be required from Pala Road. The proposed in-water work activities will occur during periods of low water levels and outside of spawning season to minimize any potential impact on salmonids. The proposed work will enhance the connection between the existing river channel and the adjacent wetland areas owned by Parks and Mr. Tedsen.

The project will increase salmonid access to a mainstem backwater habitat over a range of flows by deepening and widening an existing backwater habitat feature. The planning process included designs that will ensure Project longevity and limit sedimentation in the channel and erosion of the lateral gravel bar. The Project will increase the overall habitat quality and quantity within the backwater feature, increase water quality, and reduce the potential for stranding fish.

A Phase I Cultural Resource Inventory survey was completed and recommended a finding of no impacts to historical, archaeological, or Tribal Cultural Resources as defined under the California Environmental Quality Act (CEQA). The applicant conducted outreach with the Tolowa Dee-ni' Nation and Elk Valley Rancheria. After the applicant conducted multiple presentations about the project, the

Tolowa Dee-ni' asked for a monitor to be present during earth moving activity but had no other requests. The project will follow measures to avoid disturbance of cultural resources, halt construction if any resources are inadvertently discovered until an evaluation of the find can be made by a qualified archaeologist or representatives of local tribes and will follow all permit guidelines and steps outlined in Public Resources Code sections 5097 and 7050.5. A cultural resource monitor will be present during earthwork activities to ensure a rapid response to inadvertent discoveries.

Rehabilitation is anticipated to occur in Summer 2023 and take approximately 1 year to complete, followed by post-completion monitoring and inspections during the subsequent 4 years. Site stabilization would occur immediately after construction activities are complete, and revegetation planting would commence at the beginning of the rainy season, which would presumably begin in November and continue through February. Construction activities would take place during normal working hours.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

The proposed Project will enhance the quality and quantity of off-channel habitat in the Smith River and the larger ecosystem. The project will enhance the fishing experience by restoring and improving habitat in and connected to the river. This wildlife and aquatic habitat restoration project is a water-dependent use that is consistent with the common law Public Trust Doctrine. The proposed habitat restoration will not impede or impair any other Public Trust uses in the area. Waterborne activities such as rafting, kayaking, and fishing are possible through access points. The public can fish in the Smith River using boating vehicles such as kayaks and canoes. The Project will include signage upstream of the work area to inform the public about Project-related equipment in the vicinity. Project work will pause operations as needed to accommodate safe passage of boaters and recreators in the river. In-water project activities will occur when public recreation is at a minimum level. Most of the work will take place on the adjacent wetland area owned by Mr. Tedsen and Parks. The lease includes certain provisions protecting the public's use of the proposed lease area by requiring the Applicant to obtain necessary permits.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located near the mouth of the Smith River, in a tidally-influenced site consisting of low-elevation floodplains and vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “low risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Crescent City tide gauge was used for the projected sea level rise scenario for the associated coastal region as listed in Table 1.

**Table 1. Projected Sea Level Rise for Crescent City**

Year	Projection (feet)
2030	0.5
2040	0.9
2050	1.5
2100	5.9

Source: Table 1, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The Project activities related to habitat enhancement will improve off-channel, slow water, winter rearing habitat for juvenile salmonids and provide high flow refugia for adult salmonids in the Smith River estuary. These restoration activities will reduce main channel flooding by connecting the backwater habitat to the Smith River

mainstem during storm-related flood events and have been designed to accommodate projected sea level rise.

Pursuant to the proposed lease, the applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea level rise.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to perform restoration and rehabilitation measures as defined in project documents. The lessee has no right to a new lease or a renewal of any previous lease.
2. This action is consistent with the "Leading Climate Change Activism," "Meeting Evolving Public Trust Needs," and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 33, Small Habitat Restoration Projects; California Code of Regulations, title 14, section 15333.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

**APPROVALS REQUIRED:**

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U. S. Army Corps of Engineers  
U. S. Fish and Wildlife Service  
California Department of Fish and Wildlife

## **APPROVALS OBTAINED:**

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North Coast Regional Water Quality Control Board  
National Marine Fishery Service

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 33, Small Habitat Restoration Projects; California Code of Regulations, title 14, section 15333.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize issuance of a General Lease – Other to the Applicant beginning August 17, 2023, for a term of 5 years, to authorize the restoration and rehabilitation of the Smith River channel and backwater to improve wildlife and aquatic habitats; consideration: public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; such permitted activity is contingent upon Applicant's compliance with applicable permits, recommendations, or limitations issued by federal, state, and local governments; grading material shall be used for the benefit of the Project and may not be sold.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease and review and approve "as-built" plans and post-completion reports detailing the final location of the restoration and rehabilitation activities, following project completion.