

## CALIFORNIA COASTAL COMMISSION

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**F6b****ADMINISTRATIVE PERMIT****APPLICATION NO:** E-02-026**APPLICANTS:** AERA Energy LLC**PROJECT LOCATION:** Bolsa Chica Lowland and Bolsa Chica Gap

**PROJECT DESCRIPTION:** The project involves: (a) removing 55-59 cubic yards of soil and 1,500-2,260 square feet of vegetation (predominantly pickleweed and saltgrass) contaminated by petroleum hydrocarbons due to three small oil spills that occurred in July and September 2000; (b) creating 4,520 square feet of pickleweed habitat in Bolsa Chica wet cell 38 to mitigate for the impacts of the above-described wetland soil and vegetation removal; and (c) removing approximately 3.5 cubic yards of soil and 10 square feet of pickleweed contaminated by a fourth small oil spill that occurred in August 2002.

**EXECUTIVE DIRECTOR'S DETERMINATION:** The findings for this determination, and for any conditions, appear on subsequent pages.

**NOTE:** Public Resources Code § 30624 provides that this permit shall not become effective until it is reported to the Commission at its next scheduled meeting. If one-third or more of the appointed Commissioners so request, the Executive Director's permit issuance shall not be effective, and the application shall be set for public hearing at a subsequent Commission meeting.

This permit will be reported to the Commission at the following time and location:

**DATE:** Friday, February 7, 2003  
**TIME:** Meeting begins at 9:00 a.m., Item 6b  
**PLACE:** Hyatt Regency Islandia Hotel and Marina  
1441 Quivira Road  
San Diego, CA 92109

IMPORTANT – Before you may proceed with development, the following must occur:

Pursuant to 14 CCR §13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit’s receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission’s meeting, and once we have received the signed acknowledgement, we will send you a Notice of Administrative Permit Effectiveness.

**BEFORE YOU MAY PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

PETER M. DOUGLAS  
Executive Director

By: Alison J. Dettmer  
ALISON J. DETTMER  
Manager  
Energy and Ocean Resources Unit

**ACKNOWLEDGEMENT OF PERMIT RECEIPT AND ACCEPTANCE OF CONTENTS:**

The undersigned permittees acknowledge receipt of this permit and agree to abide by all terms and conditions thereof.

The undersigned permittees acknowledge that Government Code § 818.4, which states in pertinent part that: “A public entity is not liable for injury caused by issuance ... of any permit,” applies to issuance of this permit.

Applicant’s Signature \_\_\_\_\_  
Date \_\_\_\_\_

## **STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **1.0 EXECUTIVE DIRECTOR'S DETERMINATION (continued)**

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC § 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to the Standard Conditions that are attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

### **2.0 FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION**

#### **2.1 Project Setting and Background**

AERA Energy's ("AERA") oilfield is located within the sensitive habitat area of the Bolsa Chica Lowlands and Bolsa Chica Gap, one of the last large remaining wetlands in southern California. Although the area of the oilfield operations is a generally disturbed wetland and upland habitat, it still provides salt marsh wetland functions and habitat for a variety of wetland plant and animal species.

On July 5 and September 15, 2000, three small oil spills occurred within AERA's oilfield in the Bolsa Chica wetland area. The clean-up and remediation of the oil spill impacts — pursuant to the direction of the California Department of Fish and Game's Office of Spill Prevention and Response ("DFG-OSPR") — required the removal of 55 to 59 cubic yards of soil and the removal of 1,500 to 2,260 square feet of pickleweed (*Salicornia virginica*) and salt grass

(*Distichlis spicata*) that were contaminated by the petroleum-hydrocarbons. On August 30, 2002, a fourth small oil spill occurred and required the excavation of approximately 3.5 cubic yards of soil and approximately 10 square feet of pickleweed.<sup>1</sup>

AERA's North and South Bolsa Oil Fields are located within the unincorporated area of northwestern Orange County, on state property within the Bolsa Chica Lowlands and Bolsa Chica Gap. AERA has a long-term agreement with the California State Lands Commission ("SLC") for the development and operation of the North and South Bolsa Oil Fields, which have been in operation since 1938. In 1973, the Coastal Commission granted to Signal Oil and Gas Co., the former owner and operator of the existing oil and gas facilities, Resolution of Exemption E-2-15-73-71 acknowledging the development's exemption from the otherwise applicable permit requirements of the California Coastal Zone Conservation Act of 1972. This exemption does not, however, apply to new development that is not within the scope of the vested rights recognized by Resolution of Exemption E-2-15-73-71.

On September 28, 2000, the Executive Director issued to AERA Emergency Permit E-00-018-G for the clean-up and remediation of the two oil spills that occurred on September 15, 2000. The clean-up of the July 5, 2000 and the August 30, 2002 oil spills occurred before emergency permits could be issued. The clean-up of these two spills is therefore unpermitted development requiring an after-the-fact ("ATF") coastal development permit. This administrative permit E-02-026 covers: (1) the oil spill clean-up and remediation activities authorized by emergency permit E-00-018-G; (2) the proposed restoration project to mitigate the adverse impacts resulting from the three oil spills and remediation activities in the year 2000; and (3) the unpermitted clean-up and remediation activities for the July 5, 2000 and August 30, 2002 oil spills.

## 2.2. Project Description

Exhibit 1 shows the locations of the oil spills and the restoration site within AERA's oilfield in the Bolsa Chica wetlands. AERA's oil spill remediation and restoration project includes:

- (a) The removal of 55 to 59 cubic yards of soil and 1,500 to 2,260 square feet of vegetation (predominantly pickleweed and saltgrass) contaminated by petroleum hydrocarbons due to three small oil spills that occurred in July and September 2000 at oil well sites 101A, 21A, and 34A.
- (b) A restoration program for the establishment of 4,520 square feet of pickleweed habitat in Bolsa Chica wet cell 38 to mitigate for the impacts of the above-described soil and

Date of Oil Spill and Clean-Up	Location: AERA Well Pad Number/ Bolsa Chica Wetland Wet Cell Number	Soil Excavated	Vegetation Removed
July 5, 2000	North Bolsa Well 34A/ Wet Cell 63	51 cubic yards	Up to 150 square feet of pickleweed and saltgrass removed
September 15, 2000	North Bolsa Well 21A/ On the boundary between Wet Cells 48 and 44	3-5 cubic yards	1,500 -2,100 square feet of pickleweed and saltgrass removed
September 15, 2000	North Bolsa Well 101A/ On boundary between Wet cells 34 and 35	1-3 cubic yards	Approximately 10 square feet of pickleweed removed
August 30, 2002	South Bolsa Well Site 52A/ Wet Cell 9	Approximately 3.5 cubic yards.	Approximately 10 square feet of pickleweed removed.

vegetation removal. The proposed restoration project at Bolsa Chica wet cell 38 provides for mitigation at a 2:1 ratio for the temporal loss caused by the removal of soil and wetland plants during the remediation of the three oil spills that occurred in the year 2000.

- (c) The removal of approximately 3.5 cubic yards of soil and approximately 10 square feet of pickleweed contaminated by a fourth small oil spill that occurred in August 2002 at oil well site 52A.

### 2.2.1 Mitigation for the Short-Term Impacts from Soil and Wetland Vegetation Removal

The removal of soil and wetland plants, as described above, resulted in temporary impacts to the wetland functions of the salt marsh habitat for the following reasons:<sup>2</sup>

- Passive re-establishment of the pickleweed and saltgrass has naturally occurred over a large portion of the impacted areas.
- Excavation of the 55-59 cubic yards of soil did not significantly impact hydrologic functions of the already disturbed areas.
- Excavation of the upper few inches of soil and aboveground biomass associated with the removal of 1500 to 2260 square feet of common pickleweed and limited amounts of saltgrass resulted in minimal impacts to the biochemical functions, specifically nutrient cycling and export of organic carbon.
- Temporary removal of the pickleweed and saltgrass did not measurably impact wildlife due to the disturbed nature of the sites and proximity to oil operations.

The Commission usually requires a 4:1 mitigation ratio in cases where there are permanent impacts to or losses of salt marsh habitat. However, in this particular case, because the removal of the soil and vegetation resulted in only temporary loss of the pickleweed and short-term impacts to the wetland functions, the Executive Director — after consultation with the SLC, DFG-OSPR, the U.S. Fish and Wildlife Service (“USFWS”), and the U.S. Army Corps of Engineers (“USACOE”) — has determined that it is reasonable and feasible for AERA to provide a like-kind restoration for the pickleweed habitat at a 2:1 mitigation ratio.

<sup>2</sup>

Date of Spill /Oilfield Well Location	Soil Excavated	Amount of Pickleweed/Saltgrass Removed	Estimated Amount of Pickleweed and/or Saltgrass That Has Naturally Recovered
July 5, 2000/North Bolsa Well 34A	51 cubic yards	Up to 150 square feet	60-70% cover over the 150 square feet
September 15, 2000/North Bolsa Well 21A	3-5 cubic yards	1,500 - 2,000 square feet	Up to 50% cover in some of the area, but with little recruitment in others
September 15, 2000/North Bolsa Well 101A	1-3 cubic yards	Approximately 10 square feet	10% cover over the 10 square feet
August 30, 2002/South Bolsa Well 52A	Approximately 3.5 cubic yards.	Approximately 10 square feet	Not available yet due to short period of time since August 2002 spill.

Source: AERA's estimates as provided in the earlier AERA November 2001 Conceptual Restoration and Enhancement Plan for Temporal Impacts to Wetland Areas [from Remediation Efforts for July and September 2000 oil spills].

### 2.2.2 Proposed Restoration to Mitigate Impacts

AERA proposes an "off-site" restoration project to establish pickleweed habitat in Bolsa Chica wet cell 38, in lieu of any further restoration at the original oil spill sites, because the sites of the original oil spills are located within or adjacent to the SLC's and USFWS's long-term Bolsa Chica tidal restoration project areas. AERA consulted with the staffs of the Coastal Commission, SLC, USFWS, DFG-OSPR, and USACOE in the selection of the proposed site in wet cell 38 and in the development of the restoration program.<sup>3</sup>

The goal of the restoration program, as described in AERA's *November 2002 Final Restoration Plan: Bolsa Chica Cell 38 to Compensate for Temporary Impacts to Wetland Areas* ("Final Restoration Plan"), is to provide a self-sustaining revegetated pickleweed wetland area in wet cell 38 that has a vegetative cover that is consistent in composition with the vegetative cover of two adjacent pickleweed habitat reference sites. The restoration site in wet cell 38 and adjacent reference sites are shown in Exhibit 2.

The proposed restoration site in wet cell 38 is composed of artificial fill and is at an elevation three to four feet above the grade of the adjacent pickleweed habitat reference site areas, and does not possess any of the soil, hydrology, or plant (e.g., pickleweed) characteristics of a wetland area. The site currently consists of an old access road and abandoned well pad, and a mixture of barren soil with a few patches of upland vegetation species (i.e., mustard, iceplant, and goldenbush).

AERA's *Final Restoration Plan* provides for the creation of the 4,520 square feet of pickleweed habitat in two phases. The first phase of grading and excavation will remove the artificial fill, the access road, and abandoned well pad to achieve comparable elevations to that of the adjacent reference sites, which currently support pickleweed. The excavation and grading will recreate the conditions exhibited by the adjacent pickleweed wetland areas, which based upon the vigor of the existing pickleweed and other vegetative growth are located at optimal elevations with sufficient hydrology. After grading, the soil will be tested and amended, as necessary, to achieve similar soil composition to that of the adjacent reference sites. After grading and preparation of the soil, in the second phase of restoration AERA will plant the restoration site with 90% common pickleweed and 10% alkali heath (*Frankenia salina*). However, depending upon the growth rates of the pickleweed and alkali heath, and colonization by other native plant species found at the adjacent reference sites, the final plant ratios are likely to change. Replanting will be performed as necessary, during the appropriate planting period, with the appropriate-sized stock or by cuttings to ensure that the performance standards are achieved. For the initial planting and any

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<sup>3</sup> AERA first submitted an application and restoration plan for E-02-026 in November 2000. The Commission staff, along with the staffs of SLC, DFG-OSPR, USFWS, and the USACOE has been working with AERA through several revisions of the originally submitted restoration plan.

In this particular case, the above-identified state and federal agencies have a common interest and overlapping jurisdiction related to AERA's proposed project within the Bolsa Chica wetland: (1) AERA's proposed restoration project potentially affects and is affected by the SLC/USFWS project for long-term restoration of the Bolsa Chica wetland — as described in the *Bolsa Chica Lowland Acquisition and Restoration Conceptual Plan (1996)* and supporting documents; (2) AERA's proposed project is the result of emergency oil spill response and clean-up activities, and thus is subject to the OSPR's comprehensive natural resource damage assessment process for the overall oil spill impacts to the wetland; and (3) AERA's proposed project involves dredging and filling in a wetland, and therefore requires review and approval of the USACOE.

replanting, AERA will use donor plants, approved by the applicable resource agencies, obtained from selected sites within its oilfield.

AERA will implement a maintenance and monitoring program to assure the long-term viability of the plantings and success of the restoration project. The maintenance program provides for: (a) irrigation as necessary; (b) removal of invasive species; and (c) replacement plantings for any plants that become diseased or died. The monitoring program will occur for a minimum of three years, or until the project successfully meets the Final Performance Standard, as discussed below. AERA will monitor the site monthly during the first year and quarterly thereafter.

At the end of each monitoring year, AERA will provide to the Commission's Executive Director an annual report that summarizes the performance of the revegetation efforts. These reports will include an analysis of all qualitative and quantitative monitoring data, copies of all monitoring photographs, and maps identifying the monitoring areas, transects, planting zones, etc., as appropriate.

The *Final Restoration Plan* provides the following Annual and Final Monitoring and Performance Standards. The Annual Monitoring Standards (for the first and second year) are for monitoring purposes only and will be used by AERA to determine if the project is on track or if additional remediation or other contingency measures are necessary. The Third Year Final Performance Standard is the absolute performance standard that will be used to determine if the restoration project has been successfully accomplished.

- **First Year Annual Monitoring Standard:**
  - 30% coverage of native species (5% deviation allowed).
  - Non-native species will not exceed 10% coverage.
- **Second Year Annual Monitoring Standard:**
  - 60% coverage of native species (5% deviation allowed).
  - Non-native species will not exceed 10% coverage.
- **Third Year Final Performance Standard:** The following Final Performance Standards will be achieved at the end of three years without maintenance or remediation other than weeding:
  - No statistically significant difference in the average vegetative ground cover of native species between the restoration and reference sites, or if there is such a difference, it shall be no larger than 5% absolute cover. Cover of common pickleweed shall be similar at the restoration and reference sites and the remaining ground cover of native species at the restoration site shall be made up of any combination of the species identified in Table 3 in the *Final Restoration Plan*.
  - Non-native species will not exceed 10% coverage.

The Commission's staff biologist has reviewed AERA's sampling plan and statistical evaluation tests and has determined that they are sufficiently rigorous to accurately measure the Third Year Final Performance Standards.

The *Final Restoration Plan* also provides that the Executive Director shall determine whether the restoration project has successfully met the Final Performance Standards after a period of three years in which there was no remediation or maintenance activities except for weeding. If an annual performance standard is not met for any portion of the restoration project in any year, or if the Final Performance Standards are not met, the applicant will prepare an analysis of the cause(s) of failure and, if determined necessary by the Executive Director of the California Coastal Commission, propose remedial action for approval.

If problems occur with the restoration effort and contingency measures are not successful, AERA's *Final Restoration Plan* provides for an amendment to this permit: "If at any time the applicant decides the restoration is not successful, or if at the end of ten years the Executive Director of the California Coastal Commission determines that the project has not successfully satisfied all the performance criteria set forth herein [in the plan], then the applicant will submit to the Coastal Commission an amendment to the permit that proposes an alternative project that achieves the same level of mitigation as the project described herein [in the plan]."

### 3.0 Coastal Act Issues

#### 3.1 Biological Productivity of Wetlands

Coastal Act § 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Although parts of the Bolsa Chica wetland ecosystem have been degraded by the long-term oilfield operations, it nonetheless still functions as a seasonal salt marsh and provides critical habitat for a variety of animal and plant species. Although the plants and animals of the Bolsa Chica wetland have adapted in part to the residual and chronic petroleum hydrocarbons in the ecosystem produced by the oilfield operations, research by the USFWS has shown that the chronic toxicity in the environment has diminished the overall biological productivity of the Bolsa Chica wetland ecosystem. Additionally, the wildlife of the area can be adversely impacted by walking or flying into the pools of oil resulting from a spill. Therefore, in the event of an oil spill, it is important to remove excess surface petroleum-hydrocarbon contamination as quickly as possible from the environment. In the case of the subject oil spills, the only feasible method to stop the spread of petroleum-hydrocarbon contamination and minimize additional adverse



impacts to the wildlife and to the biological productivity of the surrounding Bolsa Chica wetland areas was for AERA to remove the oil-contaminated soil and vegetation. Although there were short term impacts to the pickleweed habitat at the oil spill site (as discussed in section 2.1 of this report), leaving the contaminated soil and vegetation in place could have resulted in longer term and larger scale adverse impacts to the human, animal and plant populations that co-exist with the Bolsa Chica wetland ecosystem.

As mitigation for the short-term impacts to the pickleweed habitat caused by the removal of soil and vegetation, AERA proposes to restore approximately 4,520 square feet of pickleweed salt marsh habitat in Bolsa Chica wet cell 38 (see section 2.1 of this report) at a site that currently is a degraded artificially filled upland area. The project will restore and expand the biological productivity of degraded salt-marsh habitat areas in Bolsa Chica wetlands.

For the reasons described above, the Executive Director finds that AERA's project for the removal of the oil-contaminated soil and wetland vegetation, and the subsequent restoration project to establish 4, 520 square feet of pickleweed habitat as mitigation for the oil spill impacts, is consistent with the provisions of Coastal Act § 30231.

### **3.2 Environmentally Sensitive Resources**

#### **3.2.1 Dredging of Wetlands**

Coastal Act § 30233 states in relevant part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*

- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

For purposes of Coastal Act § 30233, the excavation, removal, or any other artificial disturbance of any sediment or soil in a wetland may reasonably be considered to constitute an act of “dredging” such material. AERA’s project, which involves the removal of soil and vegetation within the Bolsa Chica wetlands, is classified as a dredging activity within a wetland and is therefore subject to the policies of Coastal Act § 30233.

The Commission’s Executive Director may authorize a project that includes dredging of wetlands if the project meets the three tests of Coastal Act § 30233(a). The first test requires that the proposed activity fit into one of eight categories of uses enumerated in Coastal Act § 30233(a)(1)-(8). The second test requires that there be no feasible less environmentally damaging alternative. The third and final test mandates that feasible mitigation measures be provided to minimize the project’s adverse environmental effects.

The express purpose of AERA’s project is to restore the sites to their pre-oiled natural state by removing the soil and vegetation that was contaminated by surface petroleum-hydrocarbon (see section 2.1). This “restoration” project is an allowable use under Coastal Act § 30233(a)(7) and it therefore satisfies the first test.

As discussed fully in section 2.1, AERA excavated and removed the soil and vegetation because it was the only feasible method of removing the petroleum-hydrocarbons from the wetland areas. The other alternative of leaving the spilled oil in place would have caused larger adverse impacts to the wildlife and to the biological productivity of the surrounding Bolsa Chica wetland areas. Therefore, the Executive Director finds the project consistent with the second test of Coastal Act § 30233(a).

The final test requires that feasible mitigation measures be provided to minimize the project’s adverse effects. Cleanup and remediation of these spills resulted in the loss of pickleweed and saltgrass. As discussed fully in section 2.1 of this report, AERA — after consulting with the staffs of the Coastal Commission, SLC, USFWS, DFG-OSPR, and the USACOE — proposes to restore, at a 2:1 mitigation ratio, pickleweed and salt grass habitat at an old oilfield road and wellpad site in Bolsa Chica wet cell 38 to mitigate for the adverse impacts of the spills on

wetland habitat.<sup>4</sup> The Executive Director thus finds that implementation of AERA's proposed restoration plan will result in adequate mitigation of the project's adverse effects. The Executive Director can thus find that the third and final test of Coastal Act § 30233(a) will be met.

### 3.2.2 Environmentally Sensitive Habitat ("ESHA")

Coastal Act § 30240(a) states:

*Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

Coastal Act § 30107.5 defines "environmentally sensitive area" to mean:

*"...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed by human activities and development."*

The Bolsa Chica wetland is one of the last large remaining salt marsh wetland systems in southern California. Notwithstanding the fact that AERA's oilfield, which is located within Bolsa Chica, is generally a degraded and disturbed salt marsh wetland and upland habitat area due to the long-term oilfield operations, it still provides a valuable seasonal salt marsh wetland function and habitat for a variety of wetland plant and animal species. Accordingly, under Coastal Act policy 30107.5, the Bolsa Chica wetlands qualify as an ESHA.

As discussed above in section 3.2.1, AERA's project in the Bolsa Chica ESHA involves the removal of soil and vegetation that was contaminated by petroleum-hydrocarbons in order to protect and restore the wetland habitat. Usually, any development project that affects or is within an ESHA needs to be consistent with the general policies of Coastal Act § 30240(a) which only allow for development uses that do not cause any significant disruption of the habitat values of the ESHA and which are dependent upon the ESHA resources. There is a substantial question as to whether the excavation or removal of soil and vegetation, the very resources that comprise the ESHA can, at least where such removal is necessitated by an oil spill, be found consistent with either of the two standards contained in section 30240(a).

However, in this particular case the Executive Director need not resolve this issue because AERA's project consists of the "dredging of a wetland," an activity that is also subject to the more specific development standards set forth in section 30233. Therefore, the general ESHA policies of Coastal Act § 30240 are subordinate to the more specific

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<sup>4</sup> *Ibid.*

policies of Coastal Act § 30233 which govern projects consisting of the “dredging of wetlands.”<sup>5</sup>

Section 30233 clearly allows “dredging activities” to be performed, requiring the removal of soil and vegetation that are intrinsic to the habitat values of a wetland. Such activities may be in conflict with the more general policies of Coastal Act § 30240 that require “protection against significant disruption of the habitat values” and “only uses that are dependent on the ESHA resources.” However, the more explicit and specific policies of Section 30233 clearly show the legislative intent to allow “dredging” in wetlands when there are no feasible alternatives and when it is one of the eight allowed uses. In this case, section 30233(a)(7) allows the “dredging” to occur because its purpose is to restore the wetland by removing oil-contaminated soil and vegetation. Thus, the more specific language of Coastal Act § 30233 takes precedence over the more general language of Coastal Act § 30240.

#### 4.0 Alleged Violation

Development consisting of the clean-up and remediation of two oil spills, which required the removal of soil and wetland vegetation — pickleweed and saltgrass — took place on July 5, 2000 and August 30, 2002, without benefit of a coastal development permit.<sup>6</sup> Although development took place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of Chapter 3 of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the subject without a coastal permit.

#### 5.0 California Environmental Quality Act (“CEQA”)

California Public Resources Code § 21080.5(d)(2)(A) states:

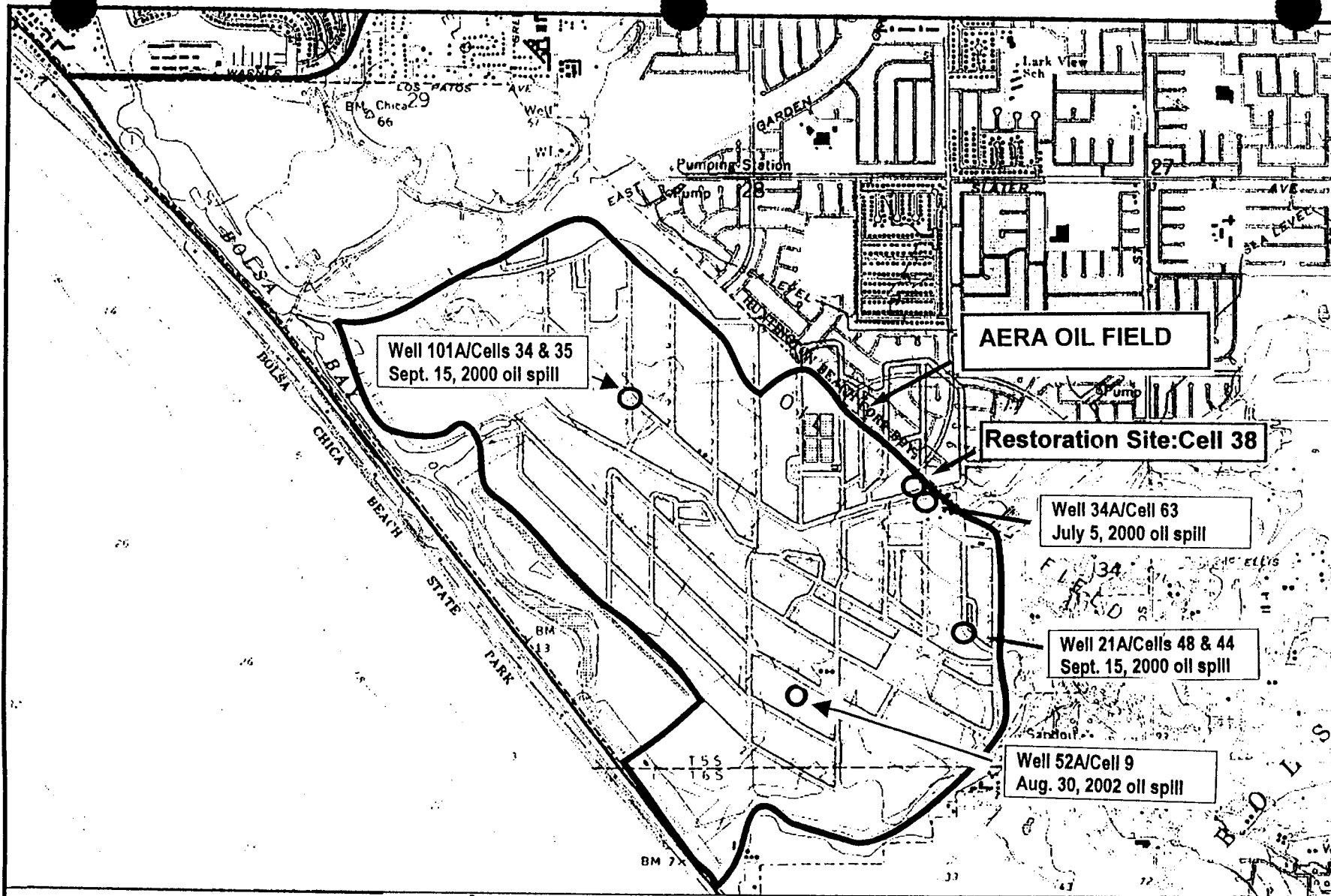
*The rules and regulations adopted by the administering agency shall require that an activity will not be approved or adopted as proposed if there are feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.*

Thus, CEQA requires the consideration of feasible alternatives and mitigation measures to lessen any environmental impacts of the project to a level of insignificance.

For the reasons described in this report, AERA’s proposed restoration project at Bolsa Chica meets the mitigation requirements of § 21080.5 (d)(2)(A) of CEQA.

<sup>5</sup> Giving precedence to the more particular provisions of Coastal Act § 30233 over the more general provisions of Section 30240 is in accord with the general applicable principles of California law. See, for example, Civil Code Section 3534 (“Particular expressions qualify those which are general.”)

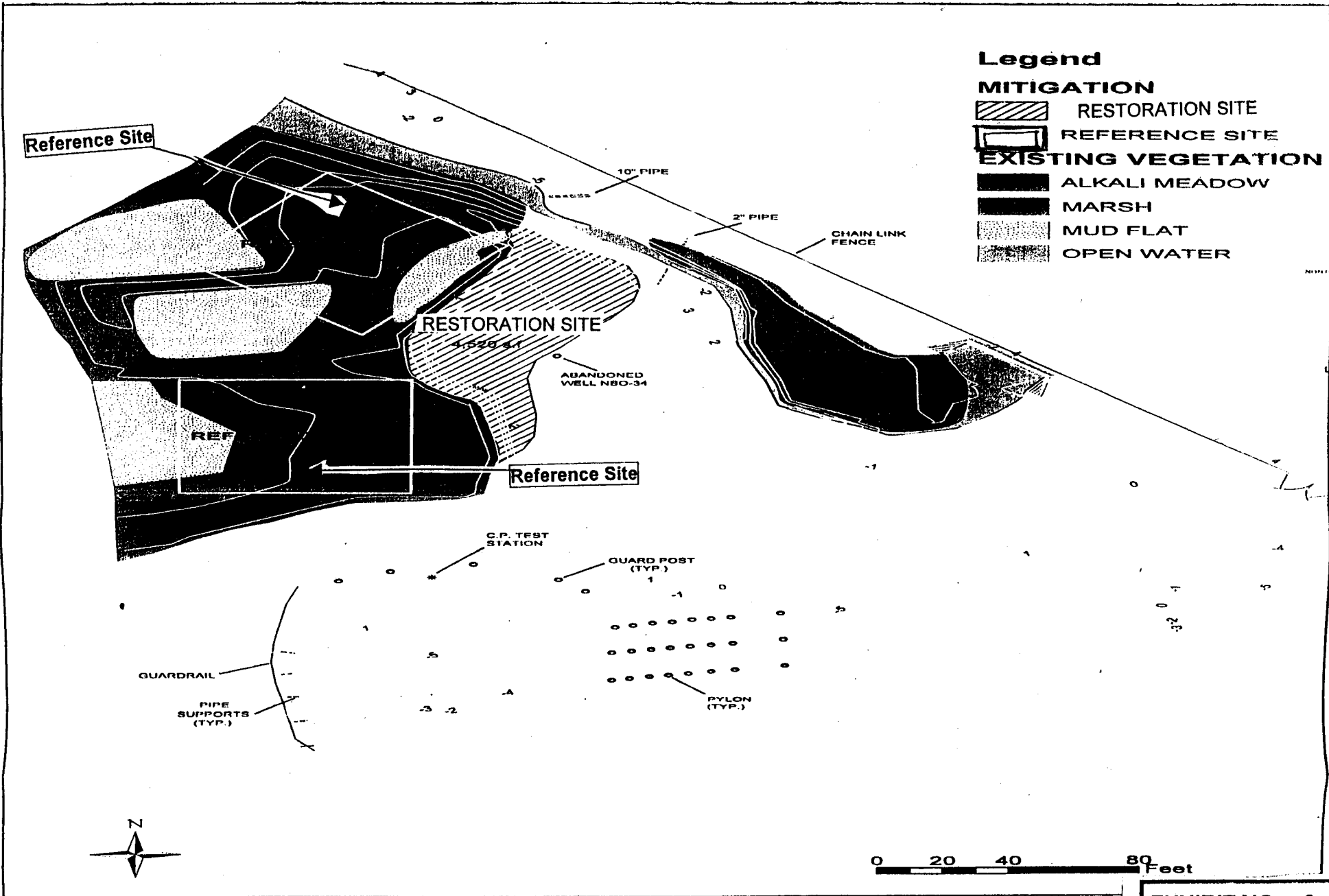
<sup>6</sup> At the July 5, 2000 oil spill, up to 51 cubic yards of soil and 150 square feet of pickleweed, and saltgrass, contaminated by petroleum-hydrocarbons, were removed before an emergency permit could be issued; therefore, this was treated as unpermitted development that required ATF permit E-01-005. On May 24, 2001, the Coastal Commission staff agreed to merge E-01-005 into the application for this follow-up administrative permit CDP E-02-026 in order to simplify the permitting process for AERA. Subsequently, on August 30, 2002, during the clean-up and remediation of another recent small oil spill, approximately 3.5 cubic yards of soil and 10 square feet of pickleweed were removed before an emergency permit could be issued; thus, this was also treated as unpermitted development requiring an ATF permit.



0 5 1 MILE  
 0 1000 FEET 0 500 1000 METERS  
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**AERA ENERGY - BOLSA CHICA**  
 Location Map

EXHIBIT NO. 1
APPLICATION NO.
E-02-026



**AERA ENERGY - BOLSA CHICA**

EXHIBIT NO. 2

APPLICATION NO.

E-026