

**CALENDAR ITEM
C107**

A 67

12/02/13
W 25306
J. Trout
P. Griggs
D. Brown

S 35

CONSIDER EXPENDITURE FROM THE KAPILOFF LAND BANK FUND BY THE CALIFORNIA STATE LANDS COMMISSION, IN ITS CAPACITY AS THE KAPILOFF LAND BANK TRUSTEE, AUTHORIZING PAYMENT OF \$105,806.51 TO AERA ENERGY LLC FOR NON-OIL CONTAMINATION REMEDIATION FOR THE BOLSA CHICA LOWLANDS RESTORATION PROJECT

PARTY:

Aera Energy LLC
Attn.: Miranda-Lin S. Bailey
Assistant General Counsel
10000 Ming Avenue
Bakersfield, CA 93311

The Bolsa Chica Lowlands involves roughly 1,200 acres of former wetlands near Huntington Beach, Orange County. During 1995-96 California State Lands Commission (Commission) staff worked with three other state and four federal agencies to craft a mitigation plan for the adverse effects of filling portions of San Pedro Bay. This fill enabled development of multi-modal terminal facilities for the Ports of Long Beach and Los Angeles. In 1996, the Commission signed an interagency agreement to buy, plan, design, construct and maintain the Bolsa Chica wetlands to mitigate the impacts from the ports' new facilities. The ports contributed funding and in exchange received environmental mitigation credits.

In February 1997, the Commission, acting in its capacity as the Kapiloff Land Bank Trustee, approved the purchase of 880 acres for the Bolsa Chica Lowlands Restoration Project (Project). Additional funds came from state bond act monies and other sources and was deposited into the Kapiloff Land Bank Fund specifically for the Project and earned interest. Later, an additional property known as the Fieldstone Parcel was acquired with Kapiloff Land Bank funds and added to the Project restoration work.

Restoration construction was largely complete in 2006 when seawater again entered the Bolsa lowlands after a nearly 100-year absence. In all \$151 million has been invested in the restoration and operation. Since then staff has periodically reported to

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the Commission on the progress and success of the restoration. Overall the Project has met the mitigation goals of the 1997 agreement.

The property acquired for the Project contained soil contamination of hydrocarbons and oil field chemicals as well as non-oil contaminants. A Cleanup and Release Agreement (CAR) was signed with the oil field operator and former land owner. The CAR defined the contaminants to be cleaned up and set cleanup levels. The oil field operator, or its successor-in-interest, was responsible for oil related cleanup and the former surface owner, Signal Bolsa Corporation, was responsible for non-oil cleanup. To meet construction deadlines and facilitate initial construction, the Project agreed to clean up at Project expense all oil and non-oil contamination within the 367-acre Full Tidal Basin area. In exchange, the oil field operator agreed to identify and locate contamination on the rest of the site.

Before seawater was allowed into the 223 acres of the Project's Muted Tidal Basins, the oil and non-oil contamination also needed to be removed. The oil field operator, Aera Energy LLC, remediated the oil related contamination in this area at its expense and at the same time also removed non-oil contamination at cost to the Project. By early 2007, the Santa Ana Regional Water Quality Control Board (Regional Board) issued "Determination of No Further Action" letters regarding this portion of the cleanup. Seawater was then allowed into the Muted Tidal Basins to complete the major features of the restoration.

Removal of the non-oil contamination in the Muted Tidal Basins cost \$105,806.51 which the Project agreed to pay and for which the former surface owner was to reimburse the Project. Before reimbursement could be consummated, however, the former land owner, a residential property developer, filed for bankruptcy. On behalf of the Commission and the Regional Board, the Attorney General filed a claim with the bankruptcy court for this amount and an additional \$2.4 million for estimated future cleanup costs. Although a settlement agreement was signed in October 2012, providing for a \$1 million allowed general unsecured claim, it is unclear if any funds will actually be available to pay the claim or when they might be paid.

In order to pay for the cleanup conducted on behalf of Project work in the Muted Tidal Basins, staff recommends that the Commission authorize staff to pay the obligation to Aera LLC from the funds held in trust in the Kapiloff Land Bank Fund for the Project. Should funds later become available from the bankruptcy settlement such funds would be deposited in the Kapiloff Land Bank Fund.

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OTHER PERTINENT INFORMATION:

The staff recommends that the Commission find that the authorization to make the payment to Aera Energy LLC as described herein does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBIT:

A. Location and Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject authorization to make the payment to Aera Energy LLC as described herein is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

1. Find that the Commission is acting in its capacity as Land Bank Trustee under the Kapiloff Land Bank Act, Public Resources Code section 8600 et seq.
2. Authorize the Executive Officer or her designee to make payment of \$105,806.51 from the funds held in trust in the Kapiloff Land Bank Fund for the Bolsa Chica Lowlands Restoration Project to Aera Energy LLC for cleanup of non-oil contamination in the Muted Tidal Basins as described herein.
3. Authorize the Executive Officer or her designee to execute all other documents and to take any other actions consistent with this authorization.

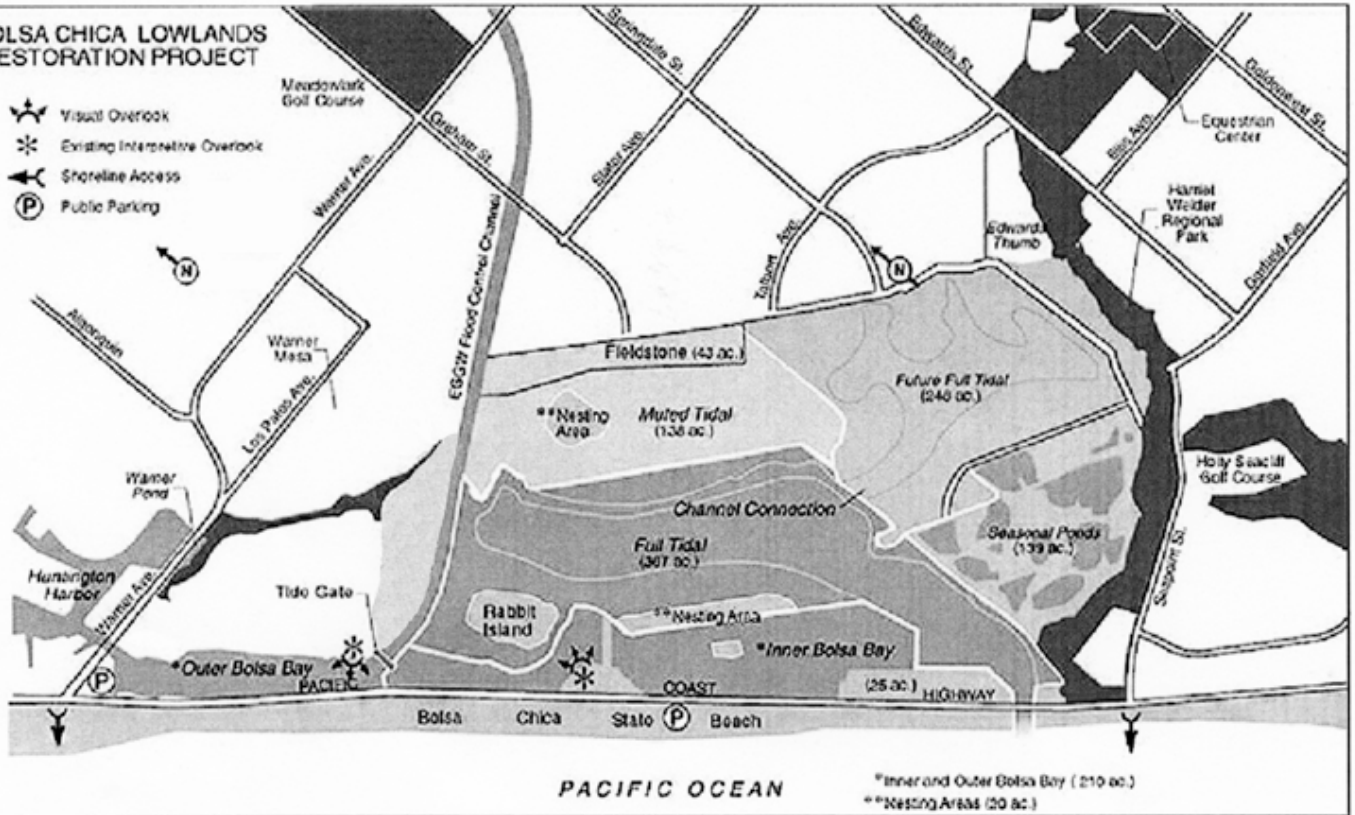
NO SCALE

SITE



BOLSA CHICA LOWLANDS RESTORATION PROJECT

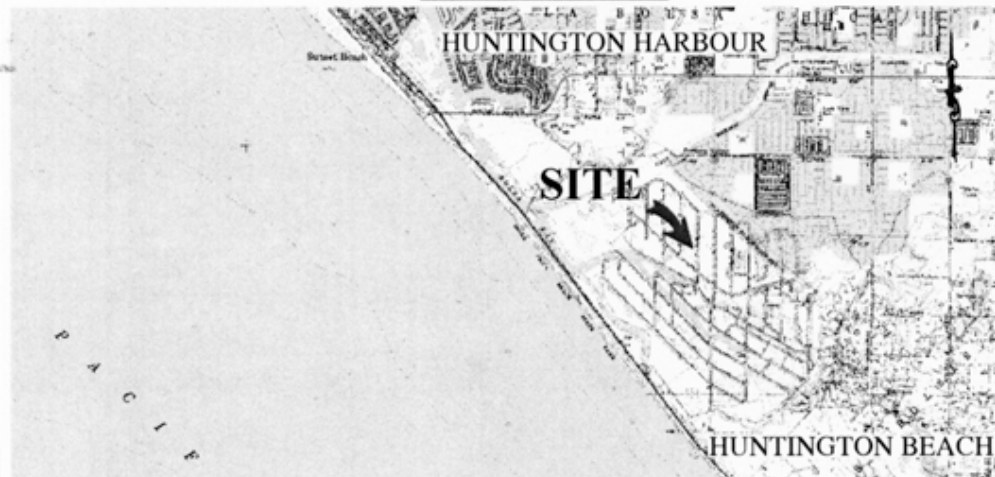
- Visual Overlook
- Existing Interpretive Overlook
- Shoreline Access
- Public Parking



BOLSA CHICA LOWLANDS RESTORATION PROJECT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A W 25306

BOLSA CHICA ORANGE COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.