

Staff Report 32

APPLICANT:

Phillips 66 Company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Pacheco Creek, adjacent to Assessor's Parcel Number 159-140-050, near Martinez, Contra Costa County.

AUTHORIZED USE:

Caretaker status and maintenance of one non-operational 8-inch-diameter pipeline previously used for the transportation of petroleum products.

TERM:

5 years, beginning April 26, 2022.

CONSIDERATION:

\$503 per year, with an annual Consumer Price Index adjustment; and \$805 for the unauthorized occupation of State land for the period prior to April 25, 2022.

SPECIFIC LEASE PROVISIONS:

- Liability Insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Surety bond or other security in the amount of \$1,000,000 with the Lessor reserving the right to increase the bond amount.
- Lessee agrees to deliver on or before the fourth anniversary of the lease a good-faith estimate prepared by a reputable contractor for the costs of full removal of

the improvements. Lessor and Lessee agree that the Surety Bond required in Section 1 may be modified to reflect the estimated removal costs.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 17, 1995, the Commission authorized a 25-year General Lease – Right-of-Way Use to Chevron U.S.A., Inc. for modification and reactivation of an existing 8-inch-diameter pipeline to transport refined petroleum products ([Item C55, October 17, 1995](#)). On February 2, 2004, the Commission authorized an assignment of the lease to the ConocoPhillips Company ([Item C28, February 2, 2004](#)).

On December 5, 2012, the Commission authorized assignment of the lease to the Phillips 66 Company ([Item C38, December 5, 2012](#)). On August 17, 2017, the Commission authorized revision of rent from \$100 per year to \$450 per year, effective September 20, 2017 ([Item C47, August 17, 2017](#)). The lease expired September 19, 2020. The Applicant has applied for a caretaker lease of the pipeline.

The pipeline is located southeast of Martinez and crosses over Pacheco creek. The pipeline was placed into non-operational status and purged with nitrogen in 2001. Cathodic protection is maintained on the pipeline. The Applicant continues to maintain the pipeline as non-operational.

Staff's goals are for the Applicant to either test, repair, and restore the pipeline for service, or decommission the line and restore the Leased Lands to the conditions existing prior to the installation or construction of any Improvements, at the sole discretion and direction of the Commission. This proposed caretaker lease is for a limited duration of 5 years to provide the Applicant time to assess its future plans for the pipeline and develop the necessary feasibility studies and California Environmental Quality Act compliance to undertake future work. The proposed lease contains language obligating the Applicant, by year 4 of the lease, to provide either a plan to restore the pipeline for use, along with a new lease application, or decommission the pipeline and restore the Leased Lands. In the event the pipeline is decommissioned, that work must begin by April 25, 2027. Staff seek to eventually eliminate these types of inoperable improvements on or under State lands.

Public access to Pacheco Creek in the vicinity of the lease premises is limited to dirt roads or walking across creeks. There are no designated trails, boating activities, or parks in or adjacent to the lease premises. In addition, the lease premises is near an area that is primarily industrial and is used by the oil and gas industry.

Commission staff believes that the proposed lease for the non-operational pipeline in Pacheco creek will not substantially interfere with the Public Trust needs and values at this location because recreational use is minimal. Furthermore, the proposed lease for the pipeline will allow the Applicant to continue maintenance of the pipeline and develop proposals for either its operatble use or decommissioning which is in the long-term best interests of the State.

CLIMATE CHANGE:

The lease area consists of a portion of Pacheco Creek and adjacent leveed marshlands, and is a tidally influenced site vulnerable to flooding at current sea levels. 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 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,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

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

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events. In addition, 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).

The combination of these projected conditions could have the potential for more frequent and stronger storm events that may expose the lease area to higher flood risks and cause structures to be damaged or dislodged, presenting hazards to public safety, as well as dangers for navigation. Conversely, prolonged drought conditions could lower water levels exposing previously submerged structures to the elements.

According to the applicant, the existing pipeline is totally exposed above Pacheco Creek. Therefore, it is vulnerable to sea level rise and more frequent flood events. The pipeline may need additional fortification or repair and maintenance to ensure it does not become dislodged or degraded, as it could pose a risk to public safety.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

ENVIRONMENTAL JUSTICE:

Staff reviewed environmental justice data that indicated high pollution burdens to the surrounding communities. These burdens may result in impacts to health such as asthma and cardiovascular disease. In addition, the same data showed high burdens related to toxic releases, groundwater threats, hazardous waste, and solid waste. Furthermore, the data revealed that the neighboring communities are disadvantaged. As part of an environmental justice outreach and engagement effort, staff sent letters on March 3, 2022, to environmental justice organizations in Contra Costa County, providing notification of the proposed lease and requesting input. The letters included a brief description of the lease and included the name of a staff person as a point of contact. Commission staff did not receive any feedback from the environmental justice organizations.

CONCLUSION:

For all the reasons stated above, staff believes that issuance of 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, for the term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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 would not be allowed to caretake and maintain the one non-operational 8-inch-diameter pipeline used for the transportation of petroleum products and may be required to remove the pipeline and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic, and Environmental Justice," and "Leading Climate Activism" 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Description
- B. Pipeline Easement
- C. Site and Location Map

RECOMMENDED ACTION:

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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$805 for the unauthorized occupation of State land from September 20, 2020 through April 25, 2022.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning April 26, 2022, for a term of 5 years, for caretaker status and maintenance of one non-operational 8-inch-diameter pipeline previously used for the transportation of petroleum products, as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$503, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond or other security in the amount of no less than \$1,000,000.
3. Authorize the Executive Officer or designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, as specified in the lease.

EXHIBIT A

LEASE 7859

LAND DESCRIPTION

A 10.00 FOOT WIDE STRIP OF TIDE AND SUBMERGED LAND SITUATED IN THE BED OF PACHECO CREEK, BEING A PORTION OF THAT PARCEL OF LAND IN THE UNINCORPORATED AREA, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, CONVEYED TO CENTRAL CONTRA COSTA SANITARY DISTRICT BY GRANT DEED RECORDED MARCH 16TH, 1956 AS FILED IN BOOK 8698, AT PAGE 643 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER FOR SAID COUNTY; SAID STRIP OF LAND LIES 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A 2" OPEN IRON PIPE AS SHOWN ON THAT AMENDED MAP OF RECORD OF SURVEY FILED IN BOOK 54, AT PAGE 50 OF LICENSED SURVEYOR'S MAPS IN THE OFFICE OF THE RECORDER FOR SAID COUNTY, FROM WHICH A 2" IRON PIPE WITH TAG "CEN SAN" BEARS NORTH 33° 05' 10" EAST, 2179.37 FEET AS SHOWN ON SAID MAP (54-LSM-50);

THENCE, NORTH 6° 19' 12" WEST, 354.66 FEET, TO A POINT ON THE EASTERLY BOUNDARY LINE OF THE RAILROAD RIGHT OF WAY OF THE SAN FRANCISCO AND SAN JOAQUIN VALLEY RAILWAY COMPANY BY DEED RECORDED FEBRUARY 18, 1899, IN BOOK 81 OF DEEDS, AT PAGE 344, IN THE OFFICE OF THE RECORDER FOR SAID COUNTY;

THENCE, LEAVING SAID RAILROAD RIGHT OF WAY, NORTH 35° 03' 06" EAST, 165.90 FEET, TO THE **POINT OF BEGINNING** (TOP OF BANK);

THENCE, NORTH 33° 00' 30" EAST, 32.01 FEET MORE OR LESS TO THE **POINT OF TERMINATION** (TOP OF BANK);

EXCEPTING THEREFROM ANY PORTION LYING LANDWARD OF THE ORDINARY HIGH WATER MARKS OF PACHECO CREEK.

THE SIDELINES OF SAID STRIP, TO BE LENGTHENED AND/OR SHORTENED TO BEGIN AND TERMINATE AT THE ORDINARY HIGH WATER MARKS OF PACHECO CREEK.

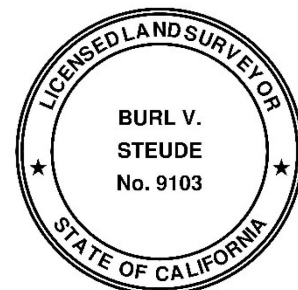
SEE THE ATTACHED EXHIBIT "B" PLAT, HEREIN REFERENCED AND MADE PART HEREOF.

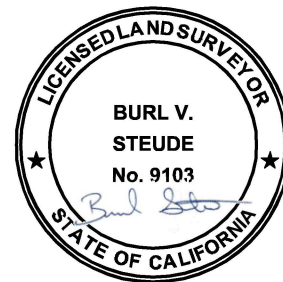
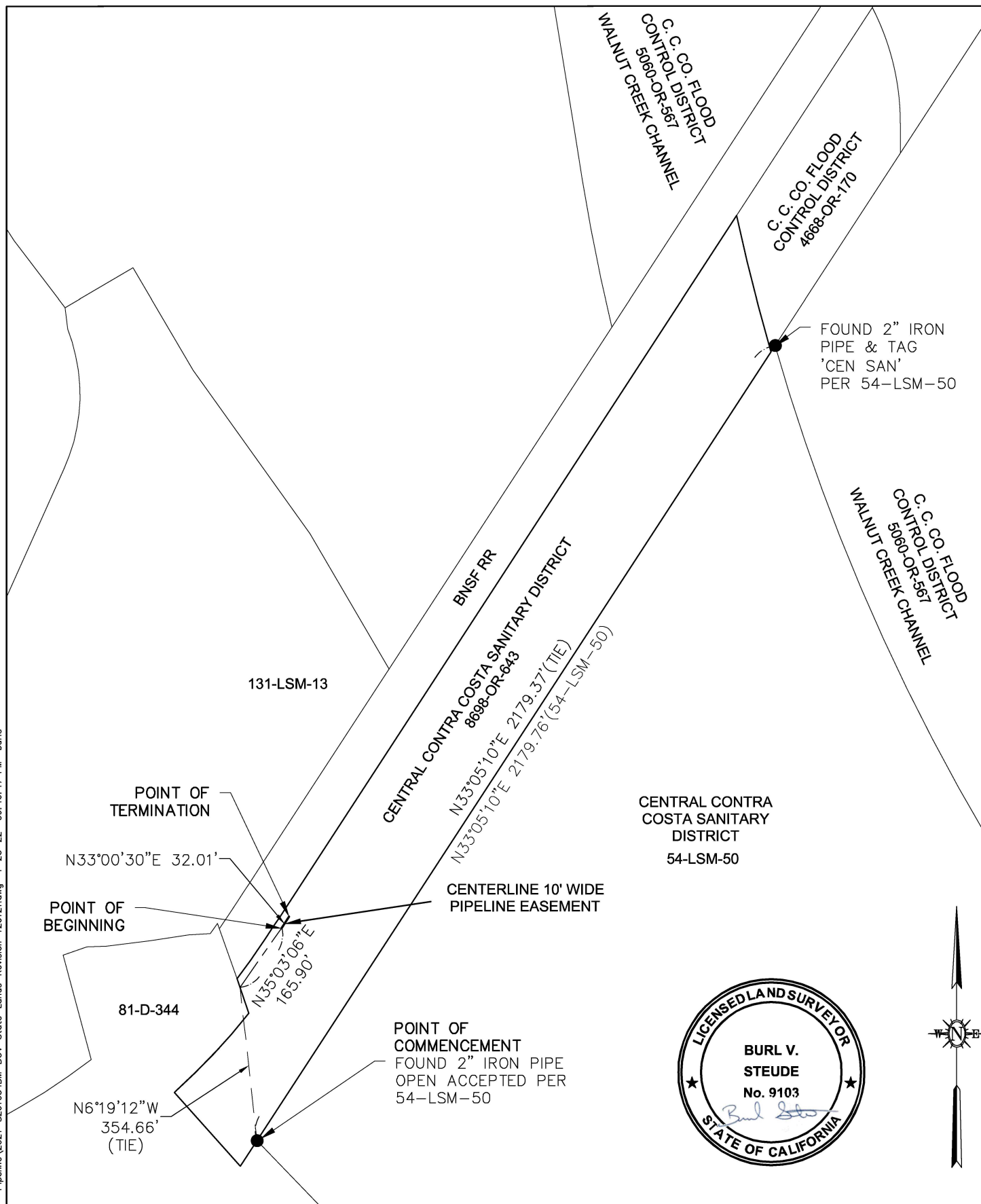
THE BEARINGS AND DISTANCES FOR THIS LEGAL DESCRIPTION ARE BASED ON NAD83, CALIFORNIA STATE PLANE, ZONE 3. MULTIPLY DISTANCES BY 1.0000618 TO OBTAIN GROUND DISTANCES.

END DESCRIPTION

Prepared by: 
Burl Steude, L.S. 9103

Date: 1-20-2022

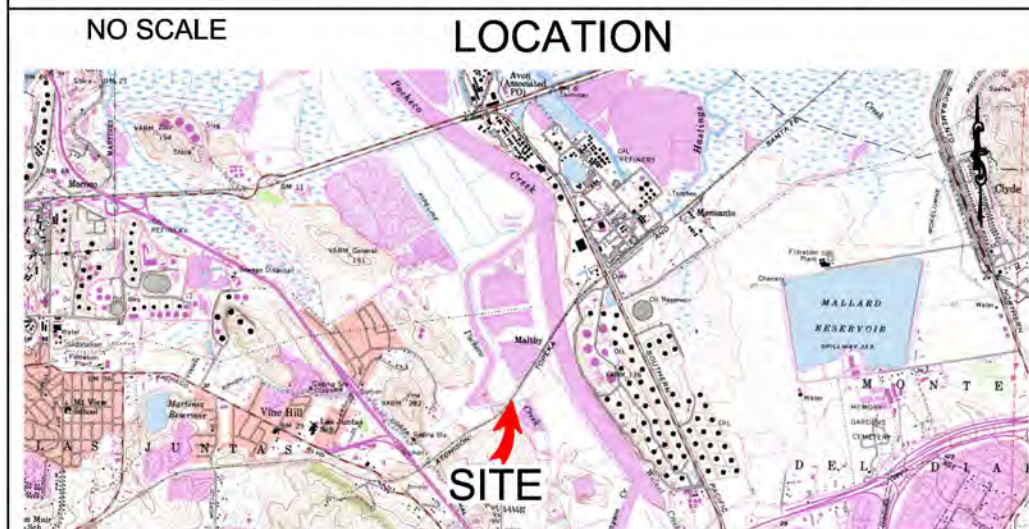
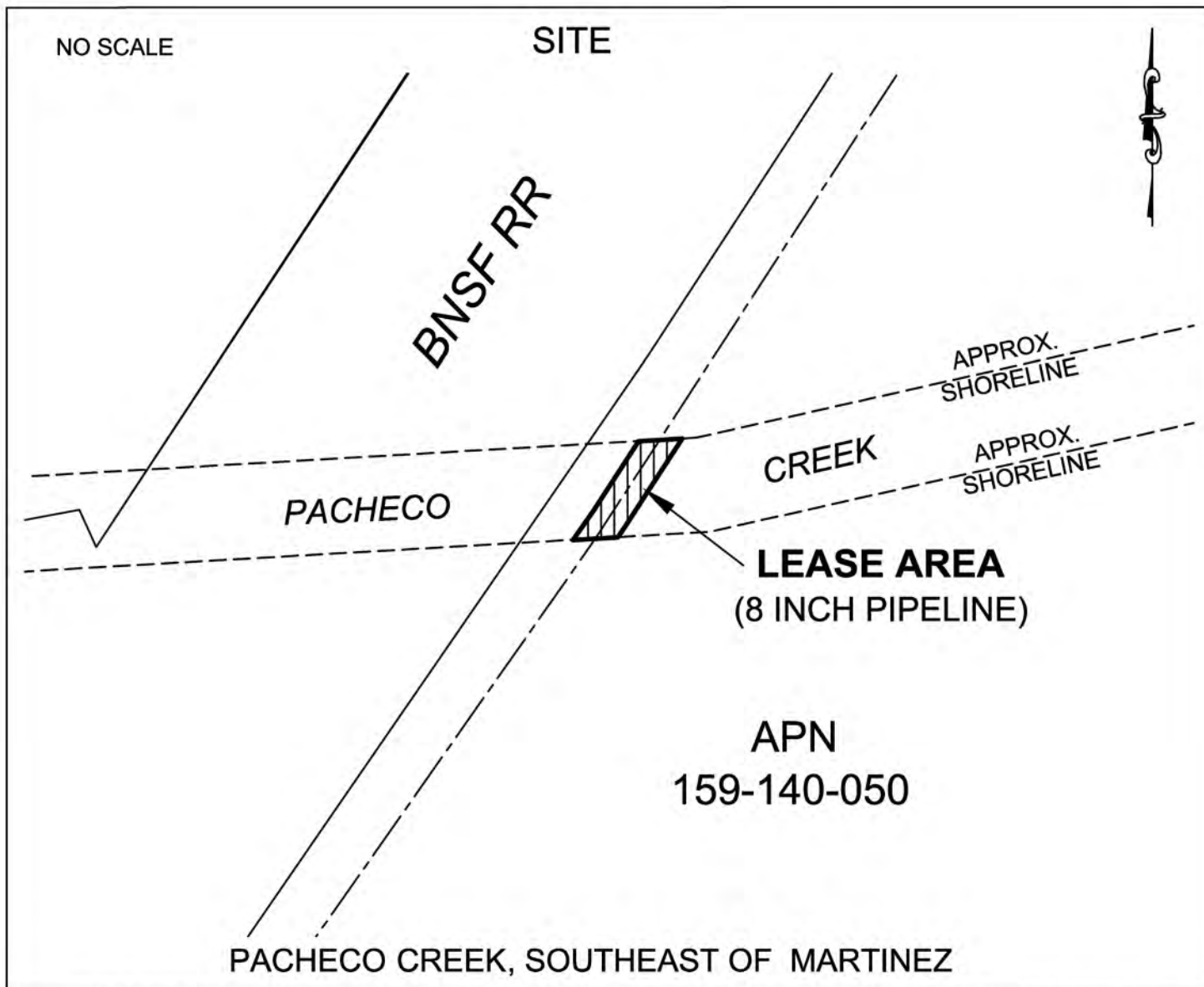




1 INCH = 300 FEET

EXHIBIT B
PIPELINE EASEMENT
COUNTY OF CONTRA COSTA, CALIFORNIA

DRAWN BY BVS	CHECKED BY RBP	SHEET 2 OF 2	DATE 01/20/2022
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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.

EXHIBIT C
 LEASE 7859
 PHILLIPS 66 COMPANY
 APN 159-140-050
 GENERAL LEASE -
 RIGHT-OF-WAY USE
 CONTRA COSTA COUNTY



TS 01/20/2022