

Staff Report 37

APPLICANT:

Phillips 66 Company

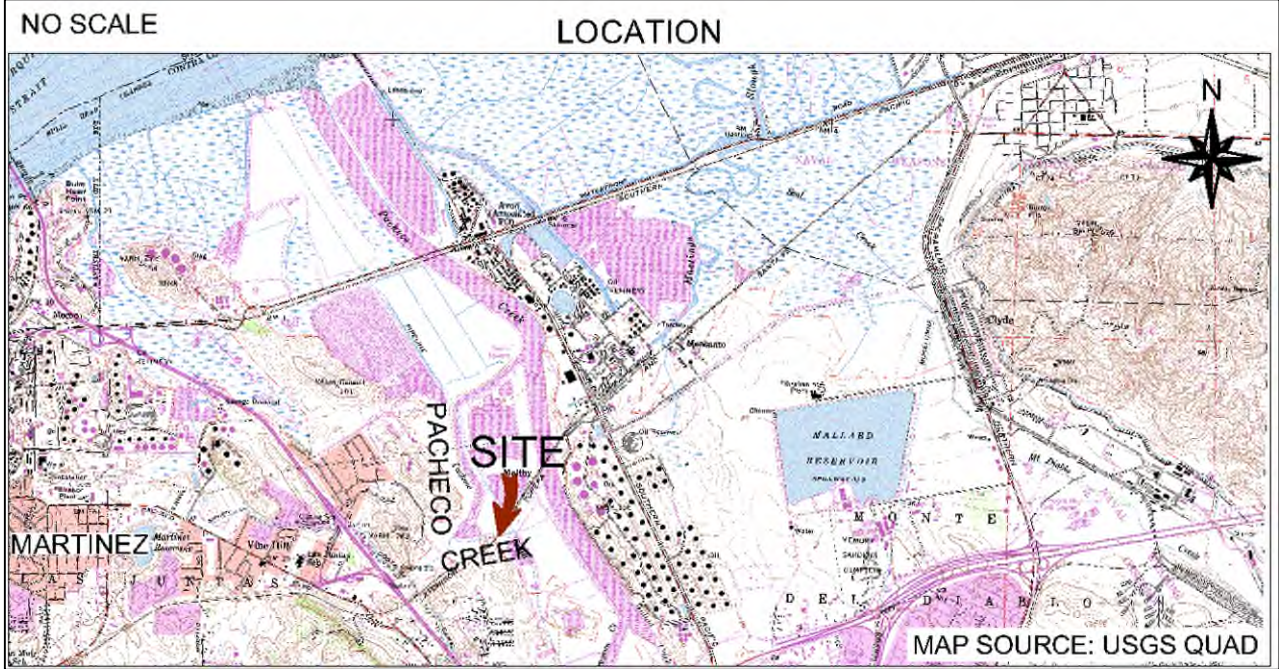
PROPOSED ACTION:

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 (as shown in Figure 1).

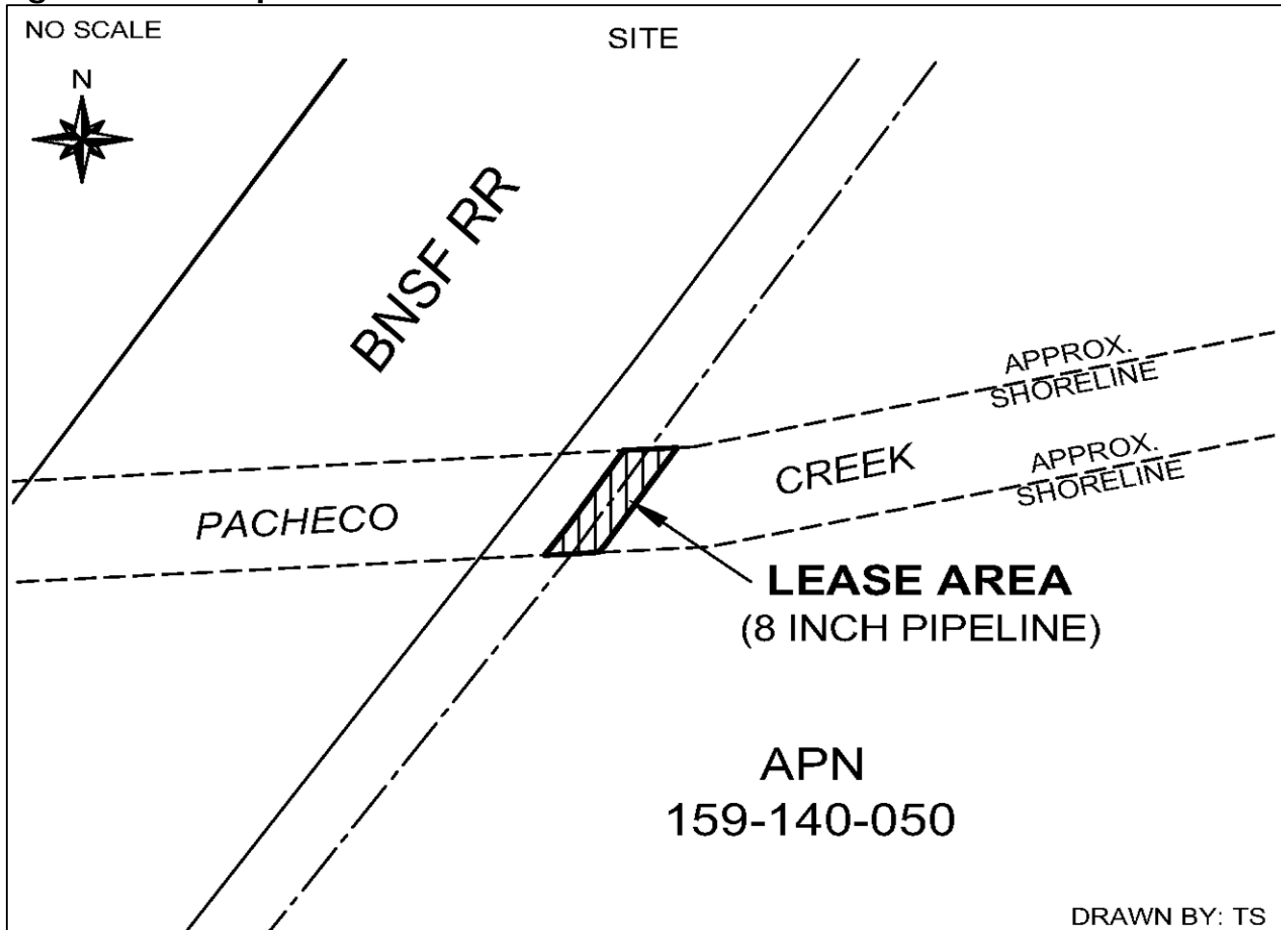
Figure 1. Location



AUTHORIZED USE:

Caretaker status and maintenance of one non-operational 8-inch-diameter pipeline previously used for the transportation of petroleum products (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 October 17, 2024.

CONSIDERATION:

\$599 per year, with an annual Consumer Price Index adjustment as provided for in the lease; and \$2,082 to compensate for the unauthorized occupation of state sovereign land for the existing facilities for the period prior to October 17, 2024.

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.
- 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 submit an application to decommission the pipeline and restore the lease premises. Reuse of the pipeline or decommissioning will require analysis under CEQA and is subject to separate authorization by the Commission. In the event the pipeline is decommissioned, that work must begin by October 16, 2029.

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 55, October 17, 1995](#)). On February 2, 2004, the Commission authorized an assignment of the lease to the ConocoPhillips Company ([Item 28, February 2, 2004](#)).

On December 5, 2012, the Commission authorized assignment of the lease to the Phillips 66 Company ([Item 38, 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 47, August 17, 2017](#)). The lease expired September 19, 2020. The Applicant has applied for a caretaker lease of the pipeline.

Staff is requesting compensation from the Applicant for the unauthorized occupation of State land in the amount of \$2,082 for the period prior to October 17,

2024, the day the proposed new lease would become effective. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation prior to October 17, 2024, ensuring the State is protected. In addition, the compensation ensures that the State is made whole for the Lessee's occupation.

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 lease premises 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 plans for the pipeline, develop the necessary feasibility studies, and go through the California Environmental Quality Act (CEQA) process 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 submit an application to decommission the pipeline and restore the lease premises. Reuse of the pipeline or decommissioning will require analysis under CEQA and is subject to separate authorization by the Commission. In the event the pipeline is decommissioned, that work must begin by October 16, 2029.

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 at this time because recreational use is minimal. Furthermore, the proposed lease for the pipeline will allow the Applicant to continue responsibility for and maintenance of the pipeline and develop proposals for either its operable use or decommissioning which is in the long-term best interests of the State.

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 lease area consists of a portion of Pacheco Creek and adjacent leveed marshlands in a tidally influenced site 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,” “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). 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 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 exposed above the waterline of Pacheco Creek. The pipeline was constructed with this exposure. It is a fixed structure and therefore more vulnerable to sea level rise and more frequent flood events. The pipeline may need maintenance, due to increased flood exposure and more frequent storm events, to ensure it does not become dislodged or degraded and to reduce risks to public safety and navigation.

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 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, or 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. The lessee 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 15061 and California Code of Regulations, title 2, section 2905.

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 issuance of 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 \$2,082 for the unauthorized occupation of state sovereign land for the period prior to October 17, 2024.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning October 17, 2024, 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; annual rent in the amount of \$599 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 surety in an amount 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.