

# **PARTICIPATING SPECIAL ENTITY AGREEMENT**

**Between**

**THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
and the  
PHILLIPS 66 PIPELINE LLC**

## **1.0 PARTIES**

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and Phillips 66 Pipeline LLC (“Participating Special Entity” or “PSE”) as of the Effective Date.

## **2.0 RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1** The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP,” or “Plan”) is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within East Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on Covered Species and their habitats while allowing for certain development and other activities in selected regions of the County and the Cities of Pittsburg, Clayton, Oakley, and Brentwood.
- 2.2** The Conservancy is a joint powers authority formed by its members, the County of Contra Costa (“County”), the City of Pittsburg (“Pittsburg”), the City of Clayton (“Clayton”), the City of Oakley (“Oakley”) and the City of Brentwood (“Brentwood”), to implement the HCP/NCCP.
- 2.3** The HCP/NCCP covers approximately one-third of the County, or 174,082 acres, all in East Contra Costa County, in which impacts from certain development and other activities are evaluated, and in which conservation will occur.
- 2.4** The area covered by the HCP/NCCP has been determined to provide, or potentially provide, habitat for twenty-eight (28) species that are listed as endangered or threatened, that could in the future be listed as endangered or threatened, or that have some other special status under federal or state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Wildlife (“CDFW”), under incidental take permit 2835-2007-01-03, for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for the Phillips 66 Pipeline Repair Project , Line 200, Spring 2013 and seeks extension of the Conservancy’s permit coverage to conduct operational and safety repairs at three repair sites Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92) that are located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County, as further described in Exhibit 1.
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference.

### 3.0 **DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and CDFW under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 **“Application”** means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.
- 3.2 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Conservancy pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFW in the State Permit issued to the Conservancy pursuant to California Fish and Game Code section 2835.

- 3.3** “**CDFW**” means the California Department of Fish and Wildlife, a department of the California Resources Agency.
- 3.4** “**CESA**” means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.5** “**Changed Circumstances**” means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.6** “**Covered Activities**” means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.7** “**Covered Species**” means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.0 and the IA.
- 3.8** “**Effective Date**” means the date when this Agreement is fully executed.
- 3.9** “**Federal Listed Species**” means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.10** “**Federal Permit**” means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.11** “**FESA**” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.12** “**Fully Protected Species**” means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.13** “**HCP/NCCP**” or “**Plan**” means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.

- 3.14 “Implementing Agreement”** or **“IA”** means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated January 22, 2007.
- 3.15 “Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFW under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.16 “Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.17 “NCCPA”** means the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.18 “Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 “Party”** or **“Parties”** means any or all of the signatories to this Agreement.
- 3.20 “Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 “Permits”** means the Federal Permit and the State Permit.
- 3.22 “Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 “Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 “Project”** means the Phillips 66 Pipeline Repair Project , Line 200, Spring 2013, as described in Section 2.7.
- 3.25 “State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.

- 3.26** “Take” has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27** “Unforeseen Circumstances” under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. “Unforeseen Circumstances” under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.28** “USFWS” means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.29** “Wildlife Agencies” means USFWS and CDFW.

#### **4.0** **PURPOSES**

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Project, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are to ensure implementation of each of the terms and conditions of this Agreement, and the relevant terms of the IA, the HCP/NCCP, and the Permits, and to describe remedies and recourse should either Party fail to perform its obligations as set forth in this Agreement.

#### **5.0** **AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS**

##### **5.1** **General Framework**

As required by FESA and NCCPA, the HCP/NCCP includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Chapter 6 of the HCP/NCCP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. PSE shall implement all applicable avoidance and minimization measures as required by the HCP/NCCP, including but not limited to those identified in Chapter 6, as described in the Application and this Agreement.

##### **5.2** **Surveys and Avoidance Measures**

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey

report for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. This planning survey report is contained within the Application, which describes the results of the planning survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Project and shall be performed by PSE. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

### **5.3 No Take of Extremely Rare Plants or Fully Protected Species**

Nothing in this Agreement, the HCP/NCCP or the Permits shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the HCP/NCCP (“No-Take Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. PSE shall avoid Take of these species.

#### **5.3.1 Golden Eagle**

The Permits do not authorize Take of the golden eagle and PSE shall avoid Take of any golden eagle. The avoidance measures set forth in the HCP/PCCP, including but not limited to Conservation Measure 1.11, should be adequate to prevent Take of golden eagles, but the Conservancy shall notify PSE in writing of any additional or different conservation measures that are designed to avoid Take of these species and that apply to PSE. PSE shall implement all such avoidance measures to avoid Take of golden eagles.

### **5.4 Fees and Dedications**

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of \$10,924.14, which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

Development Fee: \$5,462.07

Contribution to Recovery: \$5,462.07

The payment must be paid in full before any ground-disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2014 and construction of the Project commences before March 15, 2014, the amount due will be as stated above. If PSE pays on or after March 15, 2014 or construction of the Project does not commence before March 15, 2014, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

## **6.0 TAKE AUTHORIZATION**

## **6.1 Extension of Take Authorization to PSE**

As provided in Chapter 8.4 of the HCP/NCCP, after receipt of the Wildlife Agencies' written concurrence that the Proposed Activity complies with the HCP/NCCP, the Permits and the IA, and after execution of this Agreement, payment of fees [*or dedication of land as set forth in Section 5.6*], compliance with the California Environmental Quality Act (Public Resources Code section 21000, et seq.) ("CEQA"), the Conservancy shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the HCP/NCCP and the Permits.

### **6.1.1 Compliance with the California Environmental Quality Act**

The Conservancy's issuance of a Certificate of Inclusion to the PSE is a public agency action that must comply with CEQA. For purposes of the Project, the Conservancy is the CEQA lead agency. The Conservancy has determined the Project is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

## **6.2 Duration of Take Authorization**

Once the Take authorization has been extended to the Project, it shall remain in effect for a period of fifteen (15) years, unless and until the Permits are revoked by USFWS or CDFW, in which case the Take authorization may also be suspended or terminated.

## **6.3 Section 7 Consultations with USFWS**

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with USFWS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)). The PSE acknowledges that, if the Proposed Activities are authorized, funded, or carried out by a federal agency, the federal agency and the Proposed Activities must also comply with Section 7. As provided in Section 16.1 of the IA, USFWS has made a commitment that, unless otherwise required by law or regulation, it will not require any measures under Section 7 that are inconsistent with or exceed the requirements of the HCP/NCCP and the Permits for activities covered by the HCP/NCCP and the Permits.

The Project is not authorized, funded, or carried out by a federal agency and therefore PSE is not required to comply with Section 7 of FESA with regard to the Project.

## **7.0 RIGHTS AND OBLIGATIONS OF PSE**

### **7.1 Rights**

Upon the Conservancy's issuance of a Certificate of Inclusion to PSE, PSE may Take the Covered Species while carrying out the Project in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the IA, the HCP/NCCP, and the Permits. The authority issued to PSE applies to all of its elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their

officers, directors, employees and agents to the extent that they participate in the implementation of the Project. PSE shall periodically conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and PSE shall be responsible for supervising their compliance with those terms and conditions. All contracts between PSE and such persons and entities shall require their compliance with the Permits.

## **7.2 General Obligations**

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the HCP/NCCP, the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 6.0 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9.0 (Funding). PSE shall implement all measures and adhere to all standards included in the Application, and PSE shall reserve funding sufficient to fulfill its obligations under this Agreement, the IA, the HCP/NCCP and the Permits throughout the term of this Agreement. PSE will promptly notify the Conservancy of any material change in its financial ability to fulfill its obligations under this Agreement.

## **7.3 Obligations In The Event of Suspension or Revocation**

In the event that USFWS and/or CDFW suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of the IA, PSE will remain obligated to fulfill its mitigation, enforcement, management, and monitoring obligations, and its other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all impacts resulting from implementation of the Project prior to the suspension or revocation.

## **7.4 Interim Obligations upon a Finding of Unforeseen Circumstances**

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, PSE will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described in Section 15.2.2 and Section 15.3.2 of the IA, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless PSE consents to do so.

## **7.5 Obligations In The Event Of Changed Circumstances**

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP, and PSE shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of the IA.

## **7.6 Obligation to Compensate Conservancy for Administrative Costs**

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's

Administrative Costs shall not exceed \$5,000 in the aggregate. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

This provision is not intended to, and shall not be construed to, limit PSE's duty to indemnify the Conservancy as provided in Section 7.7 of this Agreement.

### **7.7 Indemnification**

PSE agrees to defend, indemnify, and hold harmless the Conservancy and its board members, officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "Proceedings") brought against Conservancy or its board members, officers, contractors, consultants, attorneys, employees, or agents arising out of or resulting from any of the following.

- Decisions or actions of the Conservancy related to the Project, this PSE Agreement, or compliance with the California Environmental Quality Act of 1970, as amended ("CEQA") with regard to the Project; and
- The negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE.

Notwithstanding the above, (i) PSE shall have no duty to defend, indemnify, or hold harmless the Conservancy to the extent damages are sought in a tort claim arising out of or resulting from the individual negligence, recklessness, or intentional misconduct of any representative, employee, or agent of the Conservancy and (ii) the indemnification obligations set forth above shall in no way limit the rights and remedies of PSE with respect to any breach of the terms and conditions of this PSE Agreement by the Conservancy.

PSE's duty to indemnify the Conservancy includes, but is not limited to, damages, fees and/or costs awarded against or incurred by Conservancy, if any, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with any Proceedings.

#### **7.7.1 Enforcement of Indemnification Provision**

PSE agrees to indemnify Conservancy for all of Conservancy's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.

#### **7.7.2 Compliance Costs**

PSE agrees to defend, indemnify and hold harmless Conservancy, its officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as this Agreement or any document required for purposes of compliance with CEQA) if made necessary by any Proceedings.

#### **7.7.3 Obligations in the Event of Litigation**

In the event that PSE is required to defend Conservancy in connection with any Proceedings, Conservancy shall have and retain the right to approve, which approval shall not be withheld unreasonably:

- the counsel to so defend Conservancy;
- all significant decisions concerning the manner in which the defense is conducted; and
- any and all settlements.

Conservancy shall also have and retain the right to decline to participate in the defense, except that Conservancy agrees to reasonably cooperate with PSE in the defense of the Proceedings. If Conservancy participates in the defense, all Conservancy fees and costs shall be paid by PSE.

PSE's defense and indemnification of Conservancy set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the Proceedings.

### **7.8 Fee Simple Owner of Project Site**

PSE owns an easement for the pipeline to be repaired during the Project but is not the fee simple owner of the land in the Project site. PSE is solely responsible for securing from the fee simple owner any authorization necessary to perform the Project and is solely responsible for complying with any conditions of such authorization.

## **8.0 REMEDIES AND ENFORCEMENT**

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

## **9.0 FORCE MAJEURE**

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

- Within seven (7) days after the occurrence of the Force Majeure, the Party invoking this section shall give the other Party written notice describing the particulars of the occurrence;
- The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and
- When the Party is able to resume performance of their obligations, it shall give the other Party written notice to that effect.

## **10.0 MISCELLANEOUS PROVISIONS**

### **10.1 Calendar Days**

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

### **10.2 Notices**

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

John Kopchik  
 East Contra Costa County Habitat Conservancy  
 c/o Contra Costa County Department of Conservation and Development  
 651 Pine Street, North Wing, 4<sup>th</sup> Floor  
 Martinez, CA 94553  
 Email: john.kopchik@dcd.cccounty.us  
 Phone: 925-335-1227

Frank L. Nichols  
 Phillips 66 Pipeline LLC  
 1232 Park Street, Suite 300  
 Paso Robles, CA 93446  
 Email: frank.l.nichols@p66.com

Notices shall be transmitted so that they are received within the specified deadlines. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

### **10.3 Entire Agreement**

This Agreement, together with the IA, the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

### **10.4 Amendment**

This Agreement may only be amended with the written consent of both Parties.

### **10.5 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be able to recover its attorneys' fees and costs.

### **10.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

### **10.7 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

### **10.8 Relationship to the FESA, CESA, NCCPA and Other Authorities**

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal law.

### **10.9 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

### **10.10 References to Regulations**

Any reference in this Agreement, the IA, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

### **10.11 Applicable Laws**

All activities undertaken pursuant to this Agreement, the IA, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

**10.12 Severability**

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

**10.13 Due Authorization**

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

**10.14 No Assignment**

The Parties shall not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity.

**10.15 Headings**

Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Implementing Agreement to be in effect as of the date last signed below.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**

By: \_\_\_\_\_  
JOHN KOPCHIK, Executive Director

DATE: \_\_\_\_\_

**PHILLIPS 66 PIPELINE LLC**

By: \_\_\_\_\_  
BILL A. HALLETT, Attorney-In-Fact

DATE: \_\_\_\_\_



East Contra Costa County  
Habitat Conservation Plan  
Natural Community  
Conservation Plan

City of Brentwood  
City of Clayton  
City of Oakley  
City of Pittsburg  
Contra Costa County  
ECCC Habitat Conservancy

Template prepared by the  
ECCC Habitat Conservancy

651 Pine Street, North Wing, 4th Floor  
Martinez, CA 94533-0095  
Phone: 925/335-1290  
Fax: 925/335-1299  
www.cocohcp.org

**City/County of Contra Costa County  
Application Form and Planning Survey Report  
to Comply with and Receive Permit Coverage under  
the East Contra Costa County  
Habitat Conservation Plan and  
Natural Community Conservation Plan**

**Project Applicant Information:**

Project Name: Phillips 66 Pipeline Repairs Project, Line 200, Spring 2013  
Project Applicant's Company/Organization: Phillips 66 Pipeline, LLC  
Contact's Name: Terry Elrod  
Contact's Phone: (559) 935-0388 Fax: (559) 935-8638  
Contact's Email: terry.w.elrod@p66.com  
Mailing Address: 256 East Polk Street  
Coalinga, CA 93210

**Project Description:**

Lead Planner: Krystal Hinojosa  
Project Location: East Contra Costa County, Marsh Creek Road Corridor and Altamont Wind Resources Area  
Project APN(s) #: Unknown  
Number of Parcels/Units: 4  
Size of Parcel(s): N/A  
Project Description/Purpose (Brief): Phillips 66 Pipeline, LLC is proposing to complete operational and safety repairs at three repair sites (Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92) that are located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County. One of the repairs is located within the Altamont Wind Resources Area, while the two remaining repairs are located in the Marsh Creek Road corridor. The Phillips 66 Line 200 pipeline transports crude oil from the Bakersfield area to the Phillips refinery in Rodeo. The U.S. Department of Transportation pipeline safety regulations require Phillips 66 to perform pipeline repairs within legally-mandated timeframes that range from immediately to 180 days. **These pipeline repairs are all slated to occur in May or June, 2013.**

**Biologist Information:**

Biological/Environmental Firm: Monk & Associates, Inc.  
Lead Contact: Brian Spirou  
Contact's Phone: (925) 947-4867 x 223 Fax: (925) 947-1165  
Contact's Email: brian@monkassociates.com  
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# East Contra Costa County HCP/NCCP Planning Survey Report for Phillips 66 Pipeline Repairs Project Participating Special Entity

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## I. Project Overview

**Project proponent:** Terry Elrod

**Project Name:** Phillips 66 Pipeline Repairs Project

**Application Submittal Date:** March 18, 2013

**Jurisdiction:**  Contra Costa County  Participating Special Entity<sup>1</sup>  
 City of Oakley  
 City of Pittsburg  
 City of Clayton  
 City of Brentwood

**Check appropriate Development Fee Zone(s):**  Zone I  Zone IV  
 Zone II  
 Zone III

See Figure 9-1 of the Final HCP/NCCP for a generalized development fee zone map. Detailed development fee zone maps by jurisdiction are available from the jurisdiction or at [www.cocohcp.org](http://www.cocohcp.org).

**Total Parcel Acreage:** N/A

**Acreage of land to be permanently disturbed<sup>2</sup>:** 0.0-acre

**Acreage of land to be temporarily disturbed<sup>3</sup>:** 0.25-acre

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<sup>1</sup> *Participating Special Entities* are organizations not subject to the authority of a local jurisdiction. Such organizations may include school districts, water districts, irrigation districts, transportation agencies, local park districts, geologic hazard abatement districts, or other utilities or special districts that own land or provide public services.

<sup>2</sup> *Acreage of land permanently disturbed* is broadly defined in the HCP/NCCP to include all areas removed from an undeveloped or habitat-providing state and includes land in the same parcel or project that is not developed, graded, physically altered, or directly affected in any way but is isolated from natural areas by the covered activity. Unless such undeveloped land is dedicated to the Preserve System or is a deed-restricted creek setback, the development fee will apply. The development fees were calculated with the assumption that all undeveloped areas within a parcel (e.g., fragments of undisturbed open space within a residential development) would be charged a fee; the fee per acre would have been higher had this assumption not been made. See Chapter 9 of the HCP/NCCP for details.

<sup>3</sup> *Acreage of land temporarily disturbed* is broadly defined in the HCP/NCCP as any impact on vegetation or habitat that does not result in permanent habitat removal (i.e. vegetation can eventually recover).

# Project Description

**Concisely and completely describe the project and location.** Reference and attach a project vicinity map (Figure 1) and the project site plans (Figure 2) for the proposed project. Include all activities proposed for site, including those disturbing ground (roads, bridges, outfalls, runoff treatment facilities, parks, trails, etc.) to ensure the entire project is covered by the HCP/NCCP permit. Also include proposed construction dates. Reference a City/County application number for the project where additional project details can be found.

## **City/County Application Number:**

Not applicable

## **Anticipated Construction Date:**

May-June, 2013

## **Project Description**

### **Pipeline Repairs**

Phillips 66 Pipeline, LLC (the applicant) proposes to complete three operational and safety repairs to its Line 200 Mainline trunk pipeline. This pipeline currently transports crude oil from the Bakersfield area to the Phillips 66 refinery in Rodeo. The pipeline is located along the west side of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) jurisdictional area. The repair projects consist of three separate pipeline repair sites (hereinafter referred to as “repair sites”), which are identified by the Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92; the location of these repairs are depicted in the regional map provided in Figure 1A. Figures 1B.1 – 1B.3 illustrate the repair site locations at greater resolution. Figures 2.1-2.3 depict an aerial photograph for each repair site location, along with the impact footprint associated with the repairs and the overland access route between the repair site and the existing gravel access road, if necessary.

All proposed work and all impacts are temporary. For the most part, work would be conducted with a backhoe and pick-up trucks with welding equipment and supplies/parts. Overland travel from the nearest dirt access road will be required to reach repair site 216,780.15.92; the other repairs are located immediately adjacent to an existing access road. Temporary impacts associated with the overland travel at repair site 216,780.15.92 are 4,845 square feet (0.11-acre):

The repair sites themselves will each incur impacts to an area that is approximately 40 feet by 50 feet (2,000 square feet) (the “project footprint”). Within the project footprint, the applicant will dig a hole of approximately 10 feet by 20 feet. A shoring box will be installed in the hole to prevent it from collapsing. Earthen ramps will be installed at each end of the trench to provide wildlife an escape route in the event that they should become entrapped. The portion of the footprint that has not been dug will be considered the work area. A backhoe and pickup truck would be the only equipment that would enter the work area.

The project footprint and the temporary access route will be staked and fenced with silt fencing backed by orange construction fencing prior to the commencement of the repair. All construction equipment and work will be limited to the area within the fenceline. All construction equipment and work will be limited to the area within the fenceline. Contained refueling areas with fuel blankets will be established to contain any spills that may occur during equipment refueling.

Best Management Practices (BMPs) will be implemented as part of the repair projects to ensure that there are no impacts to wetlands. BMPs will include the installation of silt fence along the project footprint boundary. Hay bale walls will be installed between the project footprint and adjacent wetlands (where

applicable) to ensure that no de minimus fill enters adjacent wetlands. The location of the BMPs will be mapped with a GPS unit and submitted to the Conservancy to demonstrate compliance with conditions set forth in the HCP/NCCP.

To aid recovery of topsoil and vegetation, a 3 inch organic horizon shall be scalped and separately stockpiled for redistribution (without compaction) over the filled and compacted repair site. Please see additional information below on protecting the seedbank in the section entitled, "Avoidance Measures for Special-Status Plant Species".

The general orientation of soil types shall be maintained when refilling the excavated areas.

Any installed erosion control materials will not include plastic netting, which could result in entanglement and death of California tiger salamanders and other reptiles or amphibians within the material. All trash items will be removed from the repair site to reduce the potential for attracting predators, such as crows and ravens.

Any contaminated soils and materials will be excavated and removed from the site and disposed of appropriately to prevent California tiger salamanders and other wildlife from becoming exposed or killed by the effects of petroleum products.

Once the pipeline repair is complete, the repair site will be re-contoured and re-compacted to its original condition, the 3-inch organic horizon shall be replaced (without compaction) and all impacted areas will be hydroseeded with the native hydroseed mix prescribed below:

<u>Seed Type</u>	<u>Approximate Seeding Rate</u>
California brome ( <i>Bromus carinatus</i> )	15 lbs/acre
Idaho fescue ( <i>Festuca idahoensis</i> )	15 lbs/acre
Creeping wild rye grass ( <i>Elymus triticoides</i> )	5 lbs/acre
Small Fescue ( <i>Festuca microstachys</i> )	5 lbs/acre
Purple needle grass ( <i>Stipa pulchra</i> )	10 lbs/acre
Meadow barley ( <i>Hordeum brachyantherum</i> )	12 lbs/acre

Seed mix shall be applied at a minimum rate of 60 pounds per acre (seeds above can be adjusted in proportion, or as seed availability dictates). Note: California brome and Idaho Fescue are fixed, non-adjustable prescriptions. Others may be adjusted to meet 60 pounds per acre.

Fertilizer shall be 16-20-0 with 13% sulfur and applied at a rate of 250 pounds per acre.

Jute matting and/or straw shall be placed over hydroseed mix on slopes greater than 5 percent to prevent winter erosion. The straw shall be applied at a rate of 2 tons per acre.

Following the spreading of straw, and for areas where straw is not applied, an organic tackifier, such as M-binder, shall be sprayed (over the straw) using the techniques and application rate specified by the manufacturer.

## ***II. Existing Conditions and Impacts***

### **Land Cover Types**

In completing the checklist in Table 1, click in the appropriate fields and type the relevant information. Please calculate acres of terrestrial land cover types to nearest tenth of an acre. Calculate the areas of all jurisdictional wetlands and waters land cover types to the nearest hundredth of an acre. If the field is not applicable, please enter N/A. The sum of the

acres in the *Acreage of land to be “permanently disturbed” and “temporarily disturbed” by project* column should equal the total impact acreage listed above.

Land cover types and habitat elements identified with an (a) in Table 1 require identification and mapping of habitat elements for selected covered wildlife species. In Table 2a and 2b below, check the land cover types and habitat elements found in the project area and describe the results. Insert a map of all land cover types present on-site and other relevant features overlaid on an aerial photo below as Figure 3.

Table 1. Land Cover Types on the Project Site as Determined in the Field and Shown in Figure 3.

Land Cover Type (acres, except where noted)	Acreage of Land to be “Permanently Disturbed” by Project <sup>b</sup>	Acreage of Land to be “Temporarily Disturbed” by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
			Stream Setback	Preserve System Dedication
<b>Grassland<sup>a</sup></b>				
<input checked="" type="checkbox"/> Annual grassland		<b>0.20</b>		
<input type="checkbox"/> Alkali grassland				
<input type="checkbox"/> Ruderal				
<input type="checkbox"/> <b>Chaparral and scrub</b>				
<input checked="" type="checkbox"/> <b>Oak savanna<sup>a</sup></b>		<b>0.05</b>		
<input type="checkbox"/> <b>Oak woodland</b>				
<b>Jurisdictional wetlands and waters</b>				
<input type="checkbox"/> Riparian woodland/scrub				
<input type="checkbox"/> Permanent wetland <sup>a</sup>				
<input type="checkbox"/> Seasonal wetland <sup>a</sup>				
<input type="checkbox"/> Alkali wetland <sup>a</sup>				
<input type="checkbox"/> Aquatic (Reservoir/Open Water) <sup>a</sup>				
<input type="checkbox"/> Slough/Channel <sup>a</sup>				
<input type="checkbox"/> Pond <sup>a</sup>				
<input type="checkbox"/> Stream (acres) <sup>a, d</sup>				
<input type="checkbox"/> Total stream length (feet) <sup>a, d</sup>				
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide				
<input type="checkbox"/> > 25 feet wide				
Stream length by type and order <sup>e</sup>				
<input type="checkbox"/> Perennial				
<input type="checkbox"/> Intermittent				
<input type="checkbox"/> Ephemeral, 3 <sup>rd</sup> or higher order				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project <sup>b</sup>	Acreage of Land to be "Temporarily Disturbed" by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Ephemeral, 1 <sup>st</sup> or 2 <sup>nd</sup> order				
<b>Irrigated agriculture<sup>a</sup></b>				
<input type="checkbox"/> Cropland				
<input type="checkbox"/> Pasture				
<input type="checkbox"/> Orchard				
<input type="checkbox"/> Vineyard				
<b>Other</b>				
<input type="checkbox"/> Nonnative woodland				
<input type="checkbox"/> Wind turbines				
<b>Developed</b>				
<input type="checkbox"/> Urban				
<input type="checkbox"/> Aqueduct				
<input type="checkbox"/> Turf				
<input type="checkbox"/> Landfill				
<b>Uncommon Vegetation Types (subtypes of above land cover types)</b>				
<input type="checkbox"/> Purple needlegrass grassland				
<input type="checkbox"/> Wildrye grassland				
<input type="checkbox"/> Wildflower fields				
<input type="checkbox"/> Squirreltail grassland				
<input type="checkbox"/> One-sided bluegrass grassland				
<input type="checkbox"/> Serpentine grassland				
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)				
<input type="checkbox"/> Alkali sacaton bunchgrass grassland				
<input type="checkbox"/> Other uncommon vegetation types (please describe)				
<b>Uncommon Landscape Features or Habitat Elements</b>				
<input type="checkbox"/> Rock outcrop				
<input type="checkbox"/> Cave <sup>a</sup>				
<input type="checkbox"/> Springs/seeps				
<input type="checkbox"/> Scalds				
<input type="checkbox"/> Sand deposits				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project <sup>b</sup>	Acreage of Land to be "Temporarily Disturbed" by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Mines <sup>a</sup>				
<input type="checkbox"/> Buildings (bat roosts) <sup>a</sup>	—	—		—
<input type="checkbox"/> Potential nest sites (trees or cliffs) <sup>a</sup>	—	—		—
<b>Total (Temporarily Impacted Acres)</b>		<b>0.25</b>		

<sup>a</sup> Designates habitat elements that may trigger specific survey requirements and/or best management practices for key covered wildlife species. See Chapter 6 in the HCP/NCCP for details.

<sup>b</sup> See Section 9.3.1 of the HCP/NCCP for a definition of "permanently disturbed" and "temporarily disturbed." In nearly all cases, all land in the subject parcel is considered permanently disturbed.

<sup>c</sup> Dedication of land in lieu of fees must be approved by the local agency and the Implementing Entity before they can be credited toward HCP/NCCP fees. See Section 8.6.7 on page 8-32 of the Plan for details on this provision. Stream setback requirements are described in Conservation Measure 1.7 in Section 6.4.1 and in Table 6-2.

<sup>d</sup> Specific requirements on streams are discussed in detail in the HCP/NCCP. Stream setback requirements pertaining to stream type and order can be found in Table 6-2. Impact fees and boundary determination methods pertaining to stream width can be found in Table 9-5. Restoration/creation requirements in lieu of fees depend on stream type and can be found in Tables 5-16 and 5-17.

<sup>e</sup> See glossary (Appendix A) for definition of stream type and order.

## Field-Verified Land Cover Map

**Insert field-verified land cover map.** The map should contain all land cover types present on-site. The map should be representative of an aerial photo. Identify all pages of the field-verified land cover map as **(Figure 3a)**. **Please attach representative photos of the project site.**

Figures 3A.1-3A.3 depict the field-verified land cover map for the repair site. Due to missing ground-level photographs Figure 3B has not been included.

## Jurisdictional Wetlands and Waters

Jurisdictional wetlands and waters are defined on pages 1-18 and 1-19 of the Final HCP/NCCP as the following land cover types: permanent wetland, seasonal wetland, alkali wetland, aquatic, pond, slough/channel, and stream. (It should be noted that definitions of these features differ for state and federal jurisdictions.) If you have identified any of these land cover types to be present on the project site in Table 1, complete the section below.

Indicate agency that certified the wetland delineation:

USACE,  RWQCB, or  the ECCC Habitat Conservancy.

Wetland delineation is attached (Jurisdictional Determination)

**Provide any additional information on Impacts to Jurisdictional Wetland and Waters below.**

Monk & Associates assessed the repair sites using U.S. Army Corps of Engineer’s parameters for delineation of other waters and wetlands. No Jurisdictional Wetlands or Waters are present at any of the repair sites, nor will any waters be impacted by the proposed project.

**Species-Specific Planning Survey Requirements**

Based on the land cover types found on-site and identified in Table 1, check the applicable boxes in Table 2a then provide the results of the planning surveys below. In Table 3 check corresponding preconstruction survey or notification requirements that are triggered by the presence of particular landcover types or species habitat elements as identified in Table 2a. The species-specific planning survey requirements are described in more detail in Section 6.4.3 of the HCP/NCCP.

**Table 2a. Species-Specific Planning Survey Requirements Triggered by Land Cover Types and Habitat Elements in the project area based on Chapter 6 of the Final HCP/NCCP.**

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
<input checked="" type="checkbox"/> Grasslands, oak savanna, agriculture, ruderal	San Joaquin kit fox	Assumed if within modeled range of species	Identify and map potential breeding and denning habitat and potential dens if within modeled range of species (see Appendix D of HCP/NCCP).
	Western burrowing owl	Assumed	Identify and map potential breeding habitat.
	California tiger salamander	Possible over summer habitat in proposed project location.	Identify potential breeding habitat
	California Red-legged Frog	Possible over-summer habitat in proposed project location.	Identify potential breeding habitat
<input type="checkbox"/> Aquatic (ponds, wetlands, streams, slough, channels, & marshes)	Giant garter snake	<input type="checkbox"/> Aquatic habitat accessible from San Joaquin River	Identify and map potential habitat.
	California tiger salamander	<input type="checkbox"/> Ponds and wetlands in grassland, oak savanna, oak woodland <input type="checkbox"/> Vernal pools <input type="checkbox"/> Reservoirs <input type="checkbox"/> Small lakes	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
	California red-legged frog	<input type="checkbox"/> Slow-moving streams, ponds, and wetlands	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
<input type="checkbox"/> Seasonal wetlands	Covered shrimp	<input type="checkbox"/> Vernal pools <input type="checkbox"/> Sandstone rock outcrops <input type="checkbox"/> Sandstone depressions	Identify and map potential breeding habitat.
Any	Townsend's big-eared bat	<input type="checkbox"/> Rock formations with caves <input type="checkbox"/> Mines <input type="checkbox"/> Abandoned buildings outside urban areas	Map and document potential breeding or roosting habitat.
	Swainson's hawk	<input type="checkbox"/> Potential nest sites (trees within species' range usually below 200')	Inspect large trees for presence of nest sites.
	Golden eagle	<input type="checkbox"/> Potential nest sites (secluded cliffs with overhanging ledges; large trees)	Document and map potential nests.
<sup>a</sup> Vernal pool fairy shrimp, vernal pool tadpole shrimp, longhorn fairy shrimp, and midvalley fairy shrimp.			

## Results of Species-Specific Planning Surveys Required in Table 2a

**1. Describe the results of the planning survey conducted as required in Table 2a.** Planning surveys will assess the location, quantity, and quality of suitable habitat for specified covered wildlife species on the project site. Covered species are assumed to occupy suitable habitat in impact areas and mitigation is based on assumption of take.

The repair sites are located in California's interior coast range in Eastern Contra Costa County. Two of the repair sites are located in the Marsh Creek Road corridor, while the remaining repair site is located in the Altamont Wind Resources Area. All three of these project sites are characterized by rolling hills vegetated by non-native (ruderal) grassland that is subject to extensive grazing. Stock ponds and ephemeral drainages typify this region, but no waters of the U.S./State will be impacted by the proposed repair projects.

The vegetation community in the area of the repair sites is dominated by ruderal grasses, such as slender wild oats (*Avena fatua*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), Italian thistle (*Carduus pycnocephalus*) and dove weed (*Croton setigerus*). California ground squirrels (*Spermophilus beecheyi*) and their burrows are common in the area of the project sites. Thus, these project sites constitute suitable habitat for the San Joaquin kit fox (*Vulpes macrotis mutica*) and western burrowing owl (*Athene cunicularia*). It is also assumed that the California tiger salamander (*Ambystoma californiense*) and the California red-legged frog (*Rana draytonii*) could over-summer in this grassland habitat.

The project footprints will be staked and fenced prior to the commencement of the repairs. All construction equipment and work will be limited to the area within the fenceline.

**2. Reference and attach the Planning Survey Species Habitat Maps as required in Table 2a (Figure 4).**

See Figures 4.1-4.3, attached.

**Covered and No-Take Plants**

On suitable land cover types, surveys for covered and no-take plants must be conducted using approved CDFG/USFWS methods during the appropriate season to identify any covered or no-take plant species that may occur on the site (see page 6-9 of the Final HCP/NCCP). Based on the land cover types found in the project area and identified in Table 1, check the applicable boxes in Table 2b and provide a summary of survey results as required below. If any no-take plants are found in the project area, the provisions of Conservation Measure 1.11 must be followed (see *Avoidance and Minimization Measures* below).

**Table 2b. Covered and No-Take Plant Species, Typical Habitat Conditions, and Typical Blooming Periods**

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
<input checked="" type="checkbox"/> Oak savanna	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun
<input type="checkbox"/> Oak woodland	Brewer’s dwarf flax ( <i>Hesperolinon breweri</i> )	C		May–Jul
	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun
	Showy madia ( <i>Madia radiata</i> )	C		Mar–May
<input type="checkbox"/> Chaparral and scrub	Brewer’s dwarf flax ( <i>Hesperolinon breweri</i> )	C		May–Jul
	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo buckwheat ( <i>Eriogonum truncatum</i> )	N		Apr–Sep; uncommonly Nov–Dec.
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
	Mount Diablo Manzanita ( <i>Arctostaphylos auriculata</i> )	C	Elevation between 700 and 1,860 feet; restricted to the eastern and northern flanks of Mt. Diablo <sup>b</sup>	Jan–Mar
<input type="checkbox"/> Alkali grassland	Brittlescale ( <i>Atriplex depressa</i> )	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area <sup>b</sup>	May–Oct
	Caper-fruited tropidocarpum ( <i>Tropidocarpum capparideum</i> )	N		Mar–Apr
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun
	Recurved larkspur ( <i>Delphinium recurvatum</i> )	C		Mar–Jun
	San Joaquin spearscale ( <i>Atriplex joaquiniana</i> )	C		Apr–Oct
<input type="checkbox"/> Alkali wetland	Alkali milkvetch ( <i>Astragalus tener</i> ssp. <i>tener</i> )	N		Mar–Jun
	Brittlescale ( <i>Atriplex depressa</i> )	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area <sup>b</sup>	May–Oct
	San Joaquin spearscale ( <i>Atriplex joaquiniana</i> )	C		Apr–Oct
<input checked="" type="checkbox"/> Annual grassland	Alkali milkvetch ( <i>Astragalus tener</i> ssp. <i>tener</i> )	N		Mar–Jun
	Big tarplant ( <i>Blepharizonia plumosa</i> )	C	Elevation below 1500 feet <sup>b</sup>	Jul–Oct
	Brewer’s dwarf flax ( <i>Hesperolinon breweri</i> )	C	Restricted to grassland areas within a 500+ buffer from oak woodland and chaparral/scrub <sup>b</sup>	May–Jul
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
	Diamond-petaled poppy ( <i>Eschscholzia rhombipetala</i> )	N		Mar–Apr
	Large-flowered fiddleneck ( <i>Amsinckia grandiflora</i> )	N		Apr–May
	Mount Diablo buckwheat ( <i>Eriogonum truncatum</i> )	N		Apr–Sep; uncommonly Nov–Dec
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 <sup>b</sup>	Apr–Jun
	Round-leaved filaree ( <i>California macrophylla</i> ) <sup>1</sup>	C		Mar–May
	Showy madia ( <i>Madia radiata</i> )	C		Mar–May
<input type="checkbox"/> Seasonal wetland	Adobe navarretia ( <i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i> )	C	Generally found in vernal pools <sup>b</sup>	Apr–Jun
	Alkali milkvetch ( <i>Astragalus tener</i> sp. <i>tener</i> )	N		Mar–Jun
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun

<sup>a</sup> From California Native Plant Society. 2007. *Inventory of Rare and Endangered Plants* (online edition, v7-07d). Sacramento, CA. Species may be identifiable outside of the typical blooming period; a professional botanist shall determine if a covered or no take plant occurs on the project site.

<sup>b</sup> See Species Profiles in Appendix D of the Final HCP/NCCP.

## Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b

**Describe the results of the planning survey conducted as required in Table 2b.** Describe the methods used to survey the site for all covered and no-take plants, including the dates and times of all survey's conducted (see Tables 3-8 and 6-5 of the HCP/NCCP for covered and no-take plants). In order to complete all the necessary covered and no-take plant surveys, both spring and fall surveys are required, check species survey requirements below.

**If any covered or no-take plants were found, include the following information in the results summary:**

- Description and number of occurrences and their rough population size.
- Description of the “health” of each occurrence, as defined on pages 5-49 and 5-50 of the HCP/NCCP.

- A map of all the occurrences.
- Justification of surveying time window, if outside of the plant's blooming period.
- The CNDDDB form(s) submitted to CDFG (if this is a new occurrence).
- A description of the anticipated impacts that the covered activity will have on the occurrence and/or how the project will avoid impacts to all covered and no-take plant species. All projects must demonstrate avoidance of all six no-take plants (see table 6-5 of the HCP/NCCP).

In accordance with the HCP/NCCP, a total of 10 covered and no-take species have the potential to occur in the grasslands in the project areas. These species include big tarplant (*Blepharizonia plumosa*), Contra Costa goldfields (*Lasthenia conjugens*), showy madia (*Madia radiata*), large-flowered fiddleneck (*Amsinckia grandiflora*), alkali milkvetch (*Astragalus tener* var. *tener*), round-leaved filaree (*California macrophylla*), Mt. Diablo fairy lantern (*Calochortus pulchellus*), Brewer's dwarf flax (*Hesperolinon breweri*), diamond-petaled California poppy (*Eschscholzia rhombipetala*), and Mt. Diablo buckwheat (*Eriogonum truncatum*). One of the repair sites (Site ID 204,220.12.21) occurs along a non-native annual grassland/oak savannah ecotone. While the repair footprint at this site is only expected to impact non-native annual grassland, the rare plant survey area will intrude upon oak savannah. Thus, Diablo helianthella (*Helianthella castanea*) will also be searched for during the rare plant surveys described below.

As Phillips 66 is on an urgent timeline to complete the federally-mandated repairs, rare plant surveys will not be completely finished prior to the repair work. To properly survey for the ten rare plant species with the potential to occur in the area of the repair sites (that is, to survey during the known blooming period of the ten species), surveys at the repair sites would need to be conducted in April, May, and August of 2013. Thus, the April and May surveys will occur prior to the repair projects, while the August survey will occur afterwards. Special-status plant surveys shall follow all HCP/NCCP guidelines and shall be conducted when the special-status plants under consideration are known to be flowering and readily identifiable. Rare plant surveys shall be conducted within the project footprint and access area of the repair site, and within a 200 foot buffer around the repair site. Although one of the rare plant surveys would be conducted after the project is completed, M&A believes that, in the unlikely event that a rare plant does occur within the project footprint, it would likely be part of a larger population that extends beyond the project footprint. This larger population would be detectable during the Spring 2013 surveys. M&A believes that conducting these rare plant surveys will provide an accurate assessment of impacts to special-status plant species.

To further minimize impacts to rare plants, Phillips 66 will salvage and stockpile the topsoil of the repair area. The topsoil would be replaced over the repair area after ground-disturbing activities are completed to replace the existing seed bank. Please refer to the avoidance measures below for additional details on soil stockpiling.

A rare plant survey report shall be submitted to the East Contra Costa County Conservancy by September 30, 2013. If special-status plant species are identified on or within 200 feet of the repair areas and access areas, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 "Plant Salvage when Impacts are Unavoidable," Section 6.31. "Covered and No-Take Plants," and Table 5-20 "Protection Requirements for Covered Plants" in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

## Avoidance Measures for Special-Status Plant Species

Out of an abundance of caution, to ensure that no repair-related impacts occur to special-status plants in the project area, the applicant will implement the following avoidance measures:

- All plants and their associated bulbs, seed and soil will be salvaged from the project site footprints prior to construction by a qualified botanist. Any topsoil removed will be stored separately from

the subsoil. The salvaged topsoil will be replaced over the disturbed area after the ground-disturbing activities are completed. Finally, the area will be re-seeded/vegetated with any salvaged seeds/blubs.

### III. Species-Specific Monitoring and Avoidance Requirements

This section discusses subsequent actions that are necessary to ensure project compliance with Plan requirements. Survey requirements and Best Management Practices pertaining to selected covered wildlife species are detailed in Section 6.4.3, *Species-Level Measures*, beginning on page 6-36 of the Final HCP/NCCP.

#### **Preconstruction Surveys for Selected Covered Wildlife**

If habitat for selected covered wildlife species identified in Table 2a was found to be present in the project area. In Table 3, identify the species for which preconstruction surveys or notifications are required based on the results of the planning surveys. Identify whether a condition of approval has been inserted into the development contract to address this requirement.

**Table 3. Applicable Preconstruction Survey and Notification Requirements based on Land Cover Types and Habitat Elements Identified in Table 2a.**

Species	Preconstruction Survey and Notification Requirements
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are in the project area. Provide written preconstruction survey results to USFWS and CDFW within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water's edge. Document any sightings of garter snake.
<input type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFW regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFW regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Document and evaluate use of all habitat features (e.g., vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend's big-eared bat (p. 6-37)	Determine if site is occupied or shows signs of recent occupation (guano).
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Determine whether nests are occupied.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.
<b>Note:</b> Page numbers refer to the HCP/NCCP.	

## **Preconstruction Surveys as Required for Selected Covered Wildlife in Table 3**

**Describe the preconstruction survey's or notification conditions applicable to any species checked in Table 3.** All preconstruction surveys shall be conducted in accordance with the requirements set forth in Section 6.4.3, *Species-Level Measures*, and Table 6-1 of the HCP/NCCP.

### **San Joaquin Kit Fox**

Prior to any ground disturbance related to covered activities, a USFWS/CDFW–approved biologist will conduct a preconstruction survey in areas identified in the planning survey as supporting suitable breeding or denning habitat for San Joaquin kit fox. The survey will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction survey will be conducted within 30 days of ground disturbance. On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed project footprints to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership will not be surveyed. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities.

### **Western Burrowing Owl**

Prior to any ground disturbance related to covered activities, a USFWS/CDFW—approved biologist will conduct a preconstruction survey in areas identified in the planning survey report as having potential burrowing owl habitat. The survey will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 2012).

On each parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

### **California Tiger Salamander**

[The Project will not impact California Tiger Salamander (CTS) breeding habitat, but rather only potential estivation habitat. The HCP/NCCP minimization measure for CTS only requires notification if breeding habitat will be impacted.]

### **California Red-legged Frog**

[The Project will not impact California red-legged frog (CRLF) breeding habitat, but rather only potential estivation habitat. The HCP/NCCP minimization measure for CRLF only requires notification if breeding habitat will be impacted.]

### **Golden Eagle**

Prior to implementation of covered activities, a qualified biologist will conduct a preconstruction survey to establish whether nests of golden eagles are present and occupied (see HCP Section 6.3.1, Planning Surveys). If nests are occupied, minimization requirements and construction monitoring will be required.

## **Construction Monitoring & Avoidance and Minimization Measures for Selected Covered Species**

If preconstruction surveys for key covered wildlife species establish the presence of any such species, construction monitoring will be necessary. In Table 4, check the boxes for the species that will be assessed during the preconstruction surveys (see Table 3). A summary of the construction monitoring requirements for each species is provided in Table 4 and these measures must be implemented in the event that preconstruction surveys described in Table 3 detect the covered species. A summary of avoidance measures is also provided in Table 4 and these measures must be implemented if construction monitoring detects the species or its sign. These construction monitoring and avoidance requirements are described in detail in Section 6.4.3, Species-Level Measures, of the Final HCP/NCCP.

### **Construction Monitoring Plan Requirements in Section 6.3.3, Construction Monitoring, of the Final HCP/NCCP:**

- Before implementing a covered activity, the applicant will develop and submit a construction-monitoring plan to the Implementing Entity<sup>4</sup> for approval.**

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

<sup>4</sup> The East Contra Costa County Habitat Conservancy and the local land use Jurisdiction must review and approve the plan **prior** to the commencement of all covered activities (i.e. construction).

## **Construction Monitoring & Avoidance and Minimization Measures as Required for Selected Covered Wildlife in Table 4**

**Describe the construction monitoring and avoidance and minimization measures applicable to any species checked in Table 4.** A summary of avoidance measures is provided in Table 4, these measures must be implemented if construction monitoring detects the presence of the species. The construction monitoring & avoidance and minimization measures requirements are described in detail in Section 6.4.3, Species-Level Measures, of the HCP/NCCP.

### **San Joaquin Kit Fox**

#### **Construction Monitoring**

If dens are identified in the survey areas outside the proposed disturbance footprints, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones, unless avoidance measures indicated below are implemented. Exclusion zone radii for potential dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

#### **Avoidance and Minimization Measures**

- If a San Joaquin kit fox den is discovered in the proposed project footprints, the den will be monitored for 3 days by a USFWS/CDFW–approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.
- Unoccupied dens should be destroyed immediately to prevent subsequent use.
- If a natal or pupping den is found, USFWS and CDFW will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFW.
- If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal’s normal foraging activities).

### **Western Burrowing Owl**

#### **Avoidance and Minimization and Construction Monitoring**

If burrowing owls are found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1– January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a buffer zone (described below).

Mitigation for unavoidable impacts include:

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to

excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995, California Department of Fish and Game 2012). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

### **Golden Eagle**

#### **Avoidance and Minimization**

Covered activities will be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the PG&E biologist will coordinate with CDFG/USFWS to determine the appropriate buffer size .

#### **Construction Monitoring**

Construction monitoring will focus on ensuring that no covered activities occur within the buffer zone established around an active nest. Although no known golden eagle nest sites occur within or near the urban limit line, covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring will ensure that direct effects to golden eagles are minimized.

## ***IV. Landscape and Natural Community-Level Avoidance and Minimization Measures***

**Describe relevant avoidance and minimization measures required to address the conservation measures listed below. If a conservation measure is not relevant to the project, explain why.**

### **For All Projects**

#### **HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion**

Briefly describe how the project complies with this measure. See page 6-21 of the Final HCP/NCCP for details.

No waters of the U.S. and/or State (i.e., wetlands or other waters) will be impacted by the proposed repair projects. Regardless, construction fencing backed by silt fencing shall be installed around the project footprint to contain equipment and any side-cast material to the project footprint itself.

#### **HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds**

Briefly describe how the project complies with this measure. See page 6-23 of the Final HCP/NCCP for details.

Complete details of the potential for rare plants and mitigation for potential impacts are provided on pages 13-14 of the PSR. Please refer to the "Results of Covered and No-Take Plant Species Planning Surveys

Required in Table 2b.” Marginal rare plant habitat is located on the repair site. However, rare plant surveys will be conducted in accordance with HCP/NCCP guidelines in April and August of 2013, and the results will be submitted to the Conservancy by September 30, 2013.

No suitable nesting habitat for fully protected birds (as defined under Sections 3511 and 4700 of the California Fish and Game Code) occurs in the proximity of the repair sites. No suitable habitat for other fully protected wildlife species occurs on the project sites.

The grasslands in the area of the repair sites provides suitable nesting habitat for ground-nesting birds. Impacts to common ground-nesting birds and raptors such as northern harrier (*Circus cyaneus*) and western meadowlark (*Sturnella neglecta*) are not addressed in the HCP/NCCP; however, all of these birds are protected under the Migratory Bird Treaty Act (50 CFR 10.13) and their eggs and young are protected under California Fish and Game Codes Sections 3503, 3503.5. Potential impacts to these species from the proposed projects include disturbance to nesting birds, and possibly death of adults and/or young. No active nests have been identified in the adjacent grasslands; however, no specific surveys for ground nesting passerine birds or raptors have been conducted.

In order to avoid impacts to ground-nesting birds and raptors, a nesting survey shall be conducted 15 days prior to commencing with proposed projects if this work would commence between March 15th and September 15<sup>th</sup>. The results of these preconstruction surveys will be contained within the Construction Monitoring Plan. The nesting surveys shall include examination of the areas within 200 feet of the repair sites, and their associated access areas. If ground-nesting birds are identified during the surveys, a qualified biologist shall determine whether the repair work could negatively impact the nest. If the repair work has the potential to negatively impact the nest, all work shall be delayed until a qualified biologist determines that the young have fledged the nest or that it is otherwise no longer in use.

If more than 15 days elapse between the date of the nesting survey and the start of the repairs, the nesting survey shall be repeated until the site no longer supports potential nesting habitat.

### **For Projects on or adjacent to Streams or Wetlands**

#### **HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks**

Briefly describe how the project complies with this measure. See page 6-15 and Table 6-2 of the Final HCP/NCCP for details. For questions on the stream setback requirements, please contact the Conservancy.

The repair site footprints are not within a stream setback area as defined in the HCP/NCCP. As such, no impacts to wetlands are expected. Regardless, construction fencing backed by silt fencing shall be installed around the project footprint to contain equipment and any side-cast material to the project footprint itself.

#### **HCP/NCCP Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization**

Briefly describe how the project complies with this measure. See page 6-33 of the Final HCP/NCCP for details.

No impacts will occur to waters of the U.S./State as a result of the proposed pipeline repairs project. Regardless, construction fencing backed by silt fencing shall be installed around the project footprint to contain equipment and any side-cast material to the project footprint itself.

### **For Projects adjacent to Protected Natural Lands (existing and projected)**

Covered activities adjacent to permanently protected natural lands will require a variety of special considerations to address issues associated with characteristics of the urban-wildland interface. These considerations are intended to minimize the impacts of development on the

integrity of habitat preserved and protected under the terms of the Plan. Permanently protected natural lands are defined as any of the following (see the latest Preserve System map on the Conservancy web site, [www.cocohcp.org](http://www.cocohcp.org)).

- Publicly owned open space with substantial natural land cover types including but not limited to state and regional parks and preserves and public watershed lands (local and urban neighborhood parks are excluded).
- Deed-restricted private conservation easements.
- HCP/NCCP Preserve System lands.
- Potential HCP/NCCP Preserve System lands (see Figure 5-3 in the HCP/NCCP).

### **HCP/NCCP Conservation Measure 1.6. Minimize Development Footprint Adjacent to Open Space**

Briefly describe how the project complies with this measure. See page 6-14 of the Final HCP/NCCP for details.

The proposed project consists of conducting pipeline repairs for an existing pipeline utility. Urban development will not result from the projects proposed herein.

### **HCP/NCCP Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property**

Briefly describe how the project complies with this measure. See page 6-18 of the Final HCP/NCCP for details.

The proposed project consists of conducting pipeline repairs for an existing pipeline utility. Urban development will not result from the projects proposed herein.

### **HCP/NCCP Conservation Measure 1.9. Incorporate Urban-Wildland Interface Design Elements**

Briefly describe how the project complies with this measure. See page 6-20 of the Final HCP/NCCP for details.

The proposed project consists of conducting pipeline repairs for an existing pipeline utility. Urban development will not result from the projects proposed herein.

### **For Rural Infrastructure Projects**

Rural infrastructure projects provide infrastructure that supports urban development within the urban development area. Such projects are divided into three categories: transportation projects, flood protection projects, and utility projects. Most rural road projects covered by the Plan will be led by Contra Costa County. All flood protection projects covered by the Plan will be led by the County Flood Control District. Utility projects will likely be led by the private companies that own the utility lines. A complete discussion of rural infrastructure projects is presented in Section 2.3.2 of the Final HCP/NCCP beginning on page 2-18.

### **HCP/NCCP Conservation Measure 1.12. Implement Best Management Practices for Rural Road Maintenance**

Briefly describe how the project complies with this measure. See page 6-25 of the Final HCP/NCCP for details.

Not applicable

### **HCP/NCCP Conservation Measure 1.13. Implement Best Management Practices for Flood Control Facility Maintenance**

Briefly describe how the project complies with this measure. See page 6-26 of the Final HCP/NCCP for details.

Not applicable

### **HCP/NCCP Conservation Measure 1.14. Design Requirements for Covered Roads outside the Urban Development Area**

Briefly describe how the project complies with this measure. See page 6-27 of the Final HCP/NCCP for details.

Not applicable

## ***V. Mitigation Measures***

### **Complete and Attach Exhibit 1 (Permanent Impact Fees) and/or Exhibit 2 (Temporary Impact Fees) Fee Calculator(s) for Permanent and Temporary Impacts.**

- Briefly describe the amount of fees to be paid and when.
- See Section 9.3.1 of the HCP/NCCP for details. If land is to be dedicated in lieu of fees or if restoration or creation of jurisdictional wetlands or waters is to be performed in lieu of fees, summarize these actions here and attach written evidence that the Conservancy has approved these actions in lieu of fees.

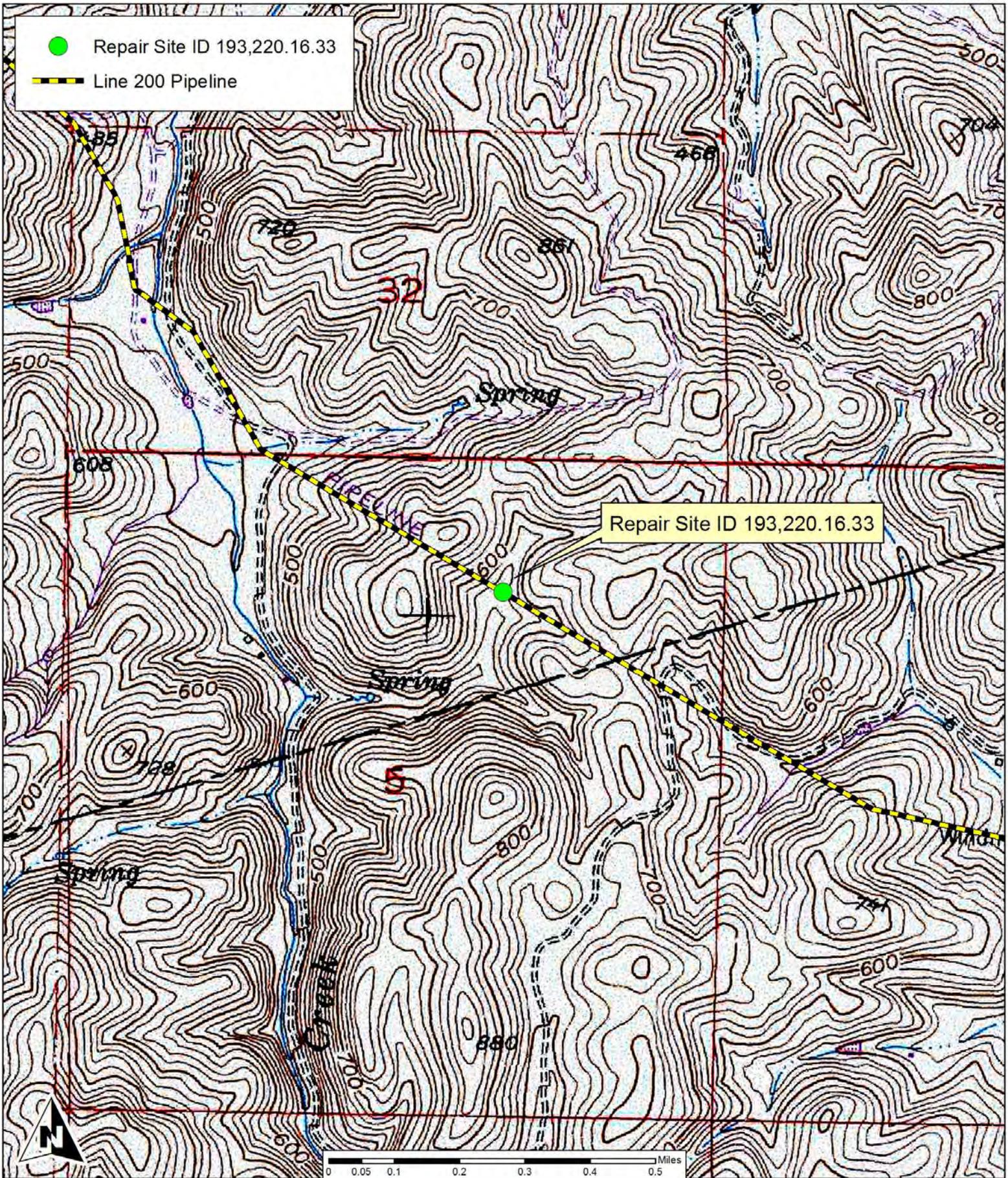
The HCP/NCCP Fee Calculator has been included with this Planning Survey Report. As is shown in the Fee Calculator, a fee of \$5,462.07 is due for temporary impacts to 0.25-acre of land within HCP/NCCP Development Fee Zone Two. This fee shall be paid upon receipt of all project approvals and permits.

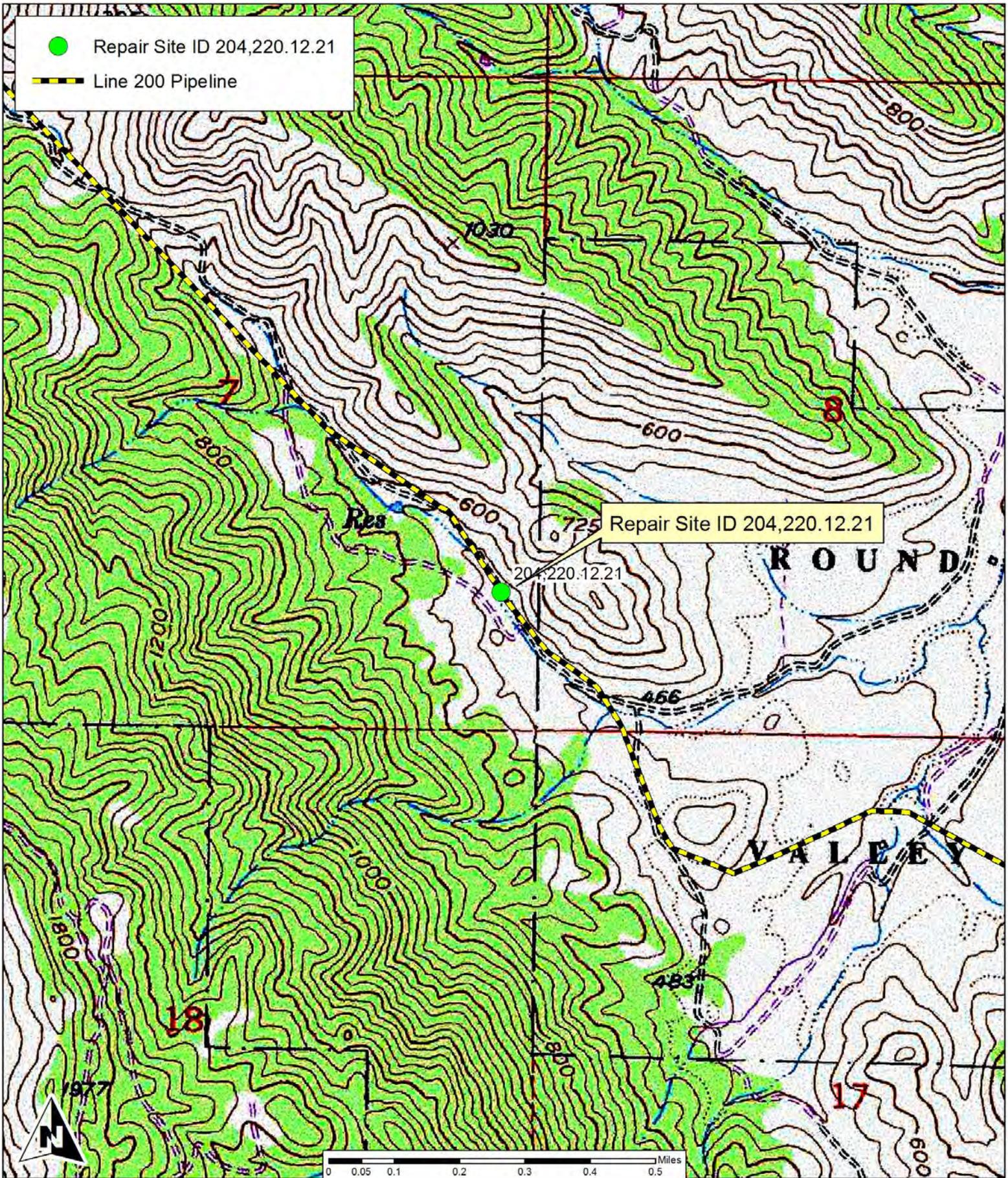


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Figure 1A. Phillips 66 Pipeline LLC  
 Pipeline 200 Repair Site ID 193,220.16.33, ID 204,220.12.21,  
 and ID 216,780.15.92 Vicinity Map  
 East Contra Costa County, California

County: Contra Costa  
 Map Preparation Date: March 29, 2013





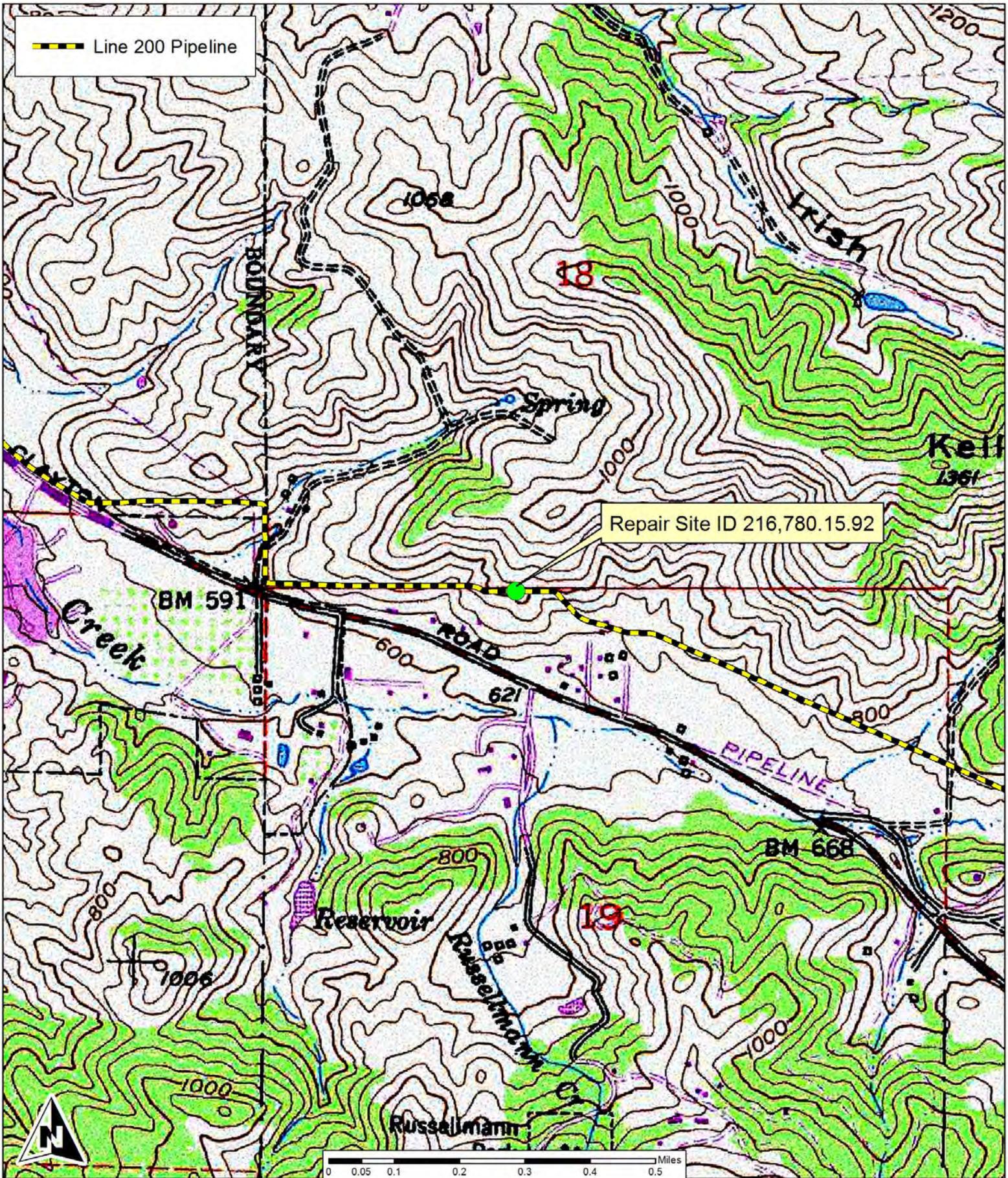
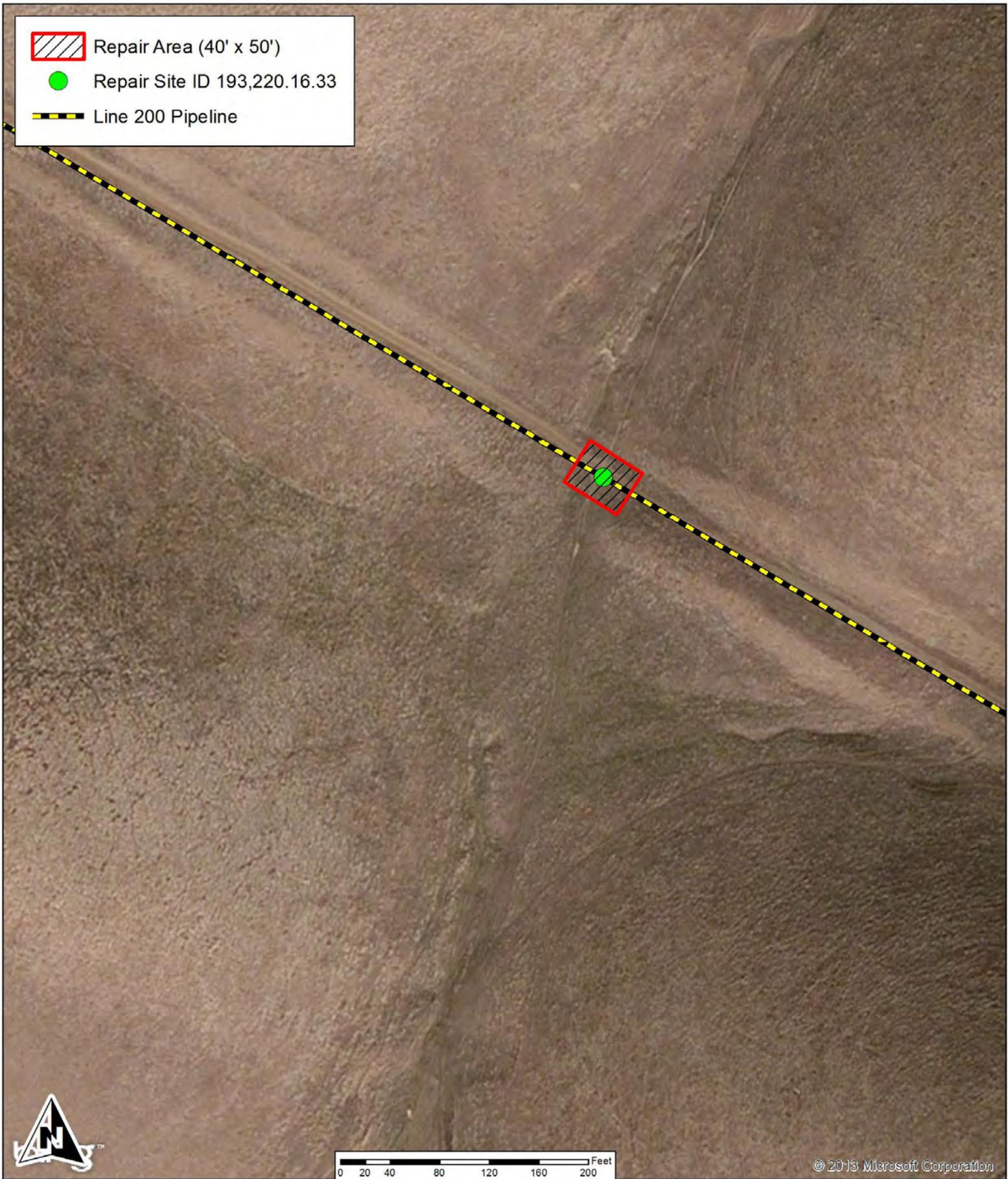


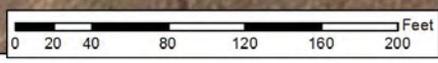
Figure 1B.3. Phillips 66 Pipeline LLC  
 Pipeline 200 Repair Site ID 216,780.15.92 Location Map  
 East Contra Costa County, California



 Repair Area (40' x 50')

 Repair Site ID 193,220.16.33

 Line 200 Pipeline



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Figure 2.1. Phillips 66 Pipeline LLC  
Pipeline 200 Repair Site ID 193,220.16.33 Site Plan  
East Contra Costa County, California

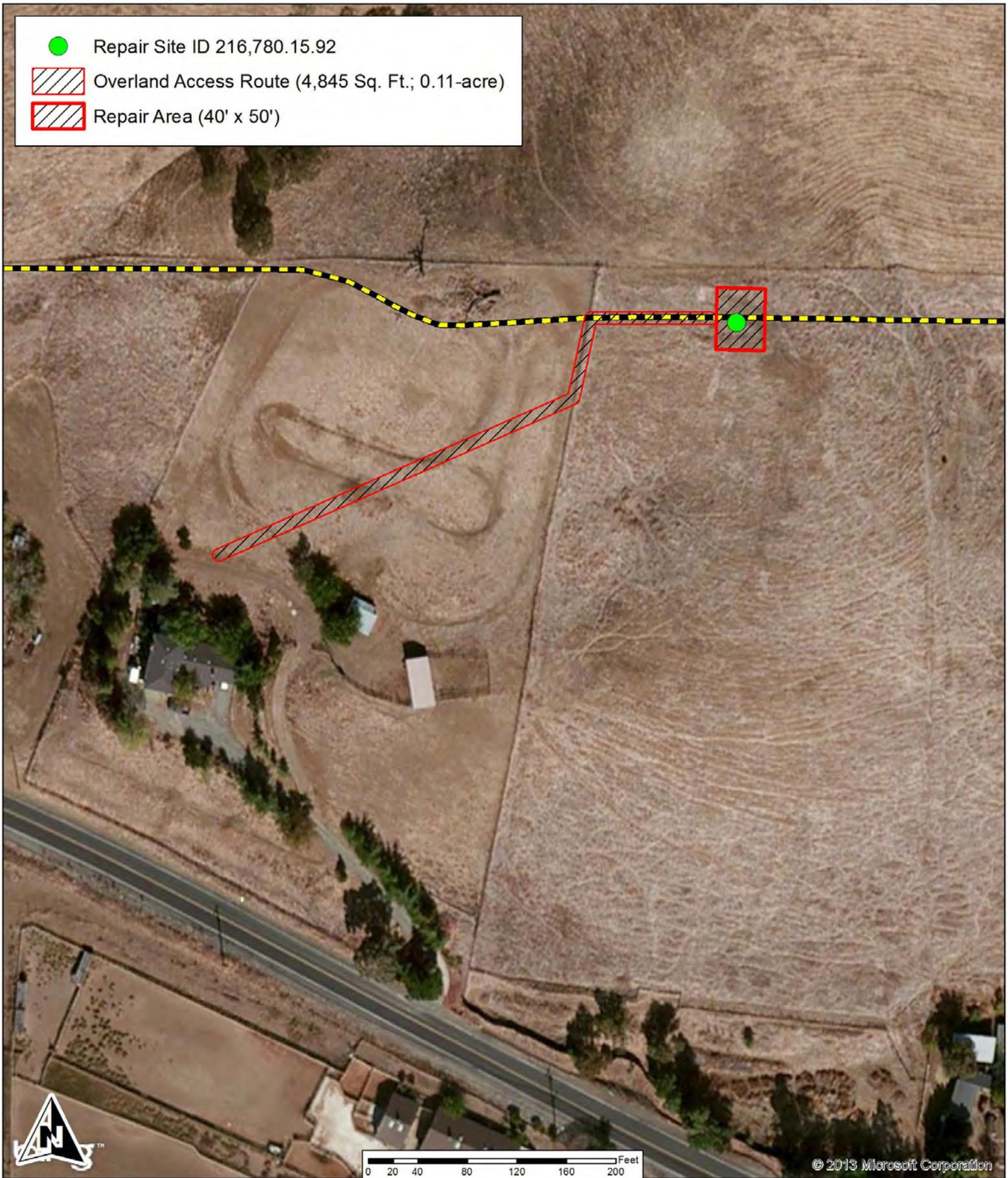
Aerial Photograph Source: Bing Maps  
Map Preparation Date: February 13, 2013



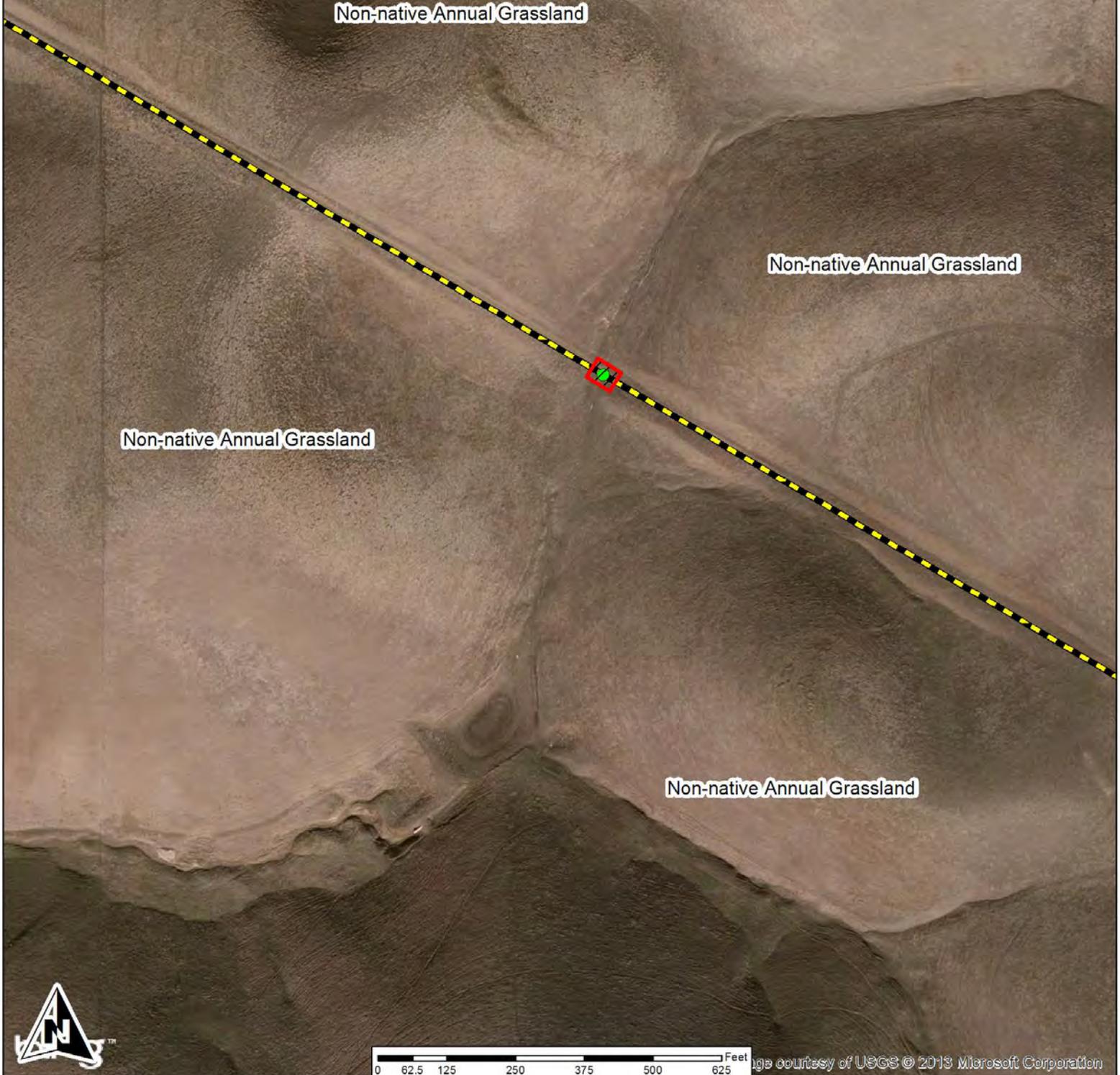
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Figure 2.2. Phillips 66 Pipeline LLC  
Pipeline 200 Repair Site ID 204,220.12.21 Site Plan  
East Contra Costa County, California

Aerial Photograph Source: Bing Maps  
Map Preparation Date: February 13, 2013



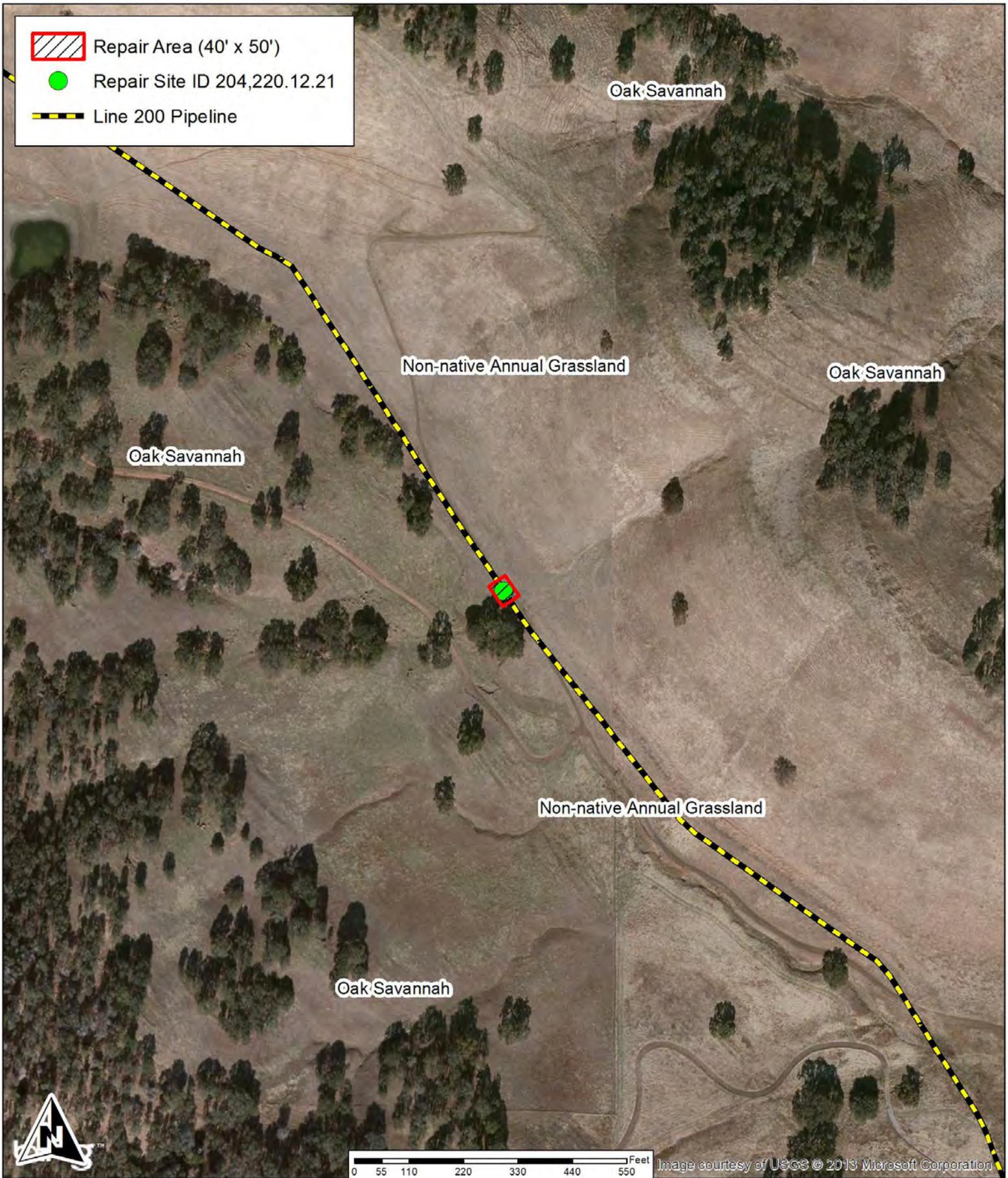
-  Repair Area (40' x 50')
-  Repair Site ID 193,220.16.33
-  Line 200 Pipeline



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Figure 3A.1. Phillips 66 Pipeline LLC  
Pipeline 200 Repair Site ID 193,220.16.33 Land Cover Types  
East Contra Costa County, California

Aerial Photograph Source: Bing Maps  
Map Preparation Date: February 13, 2013



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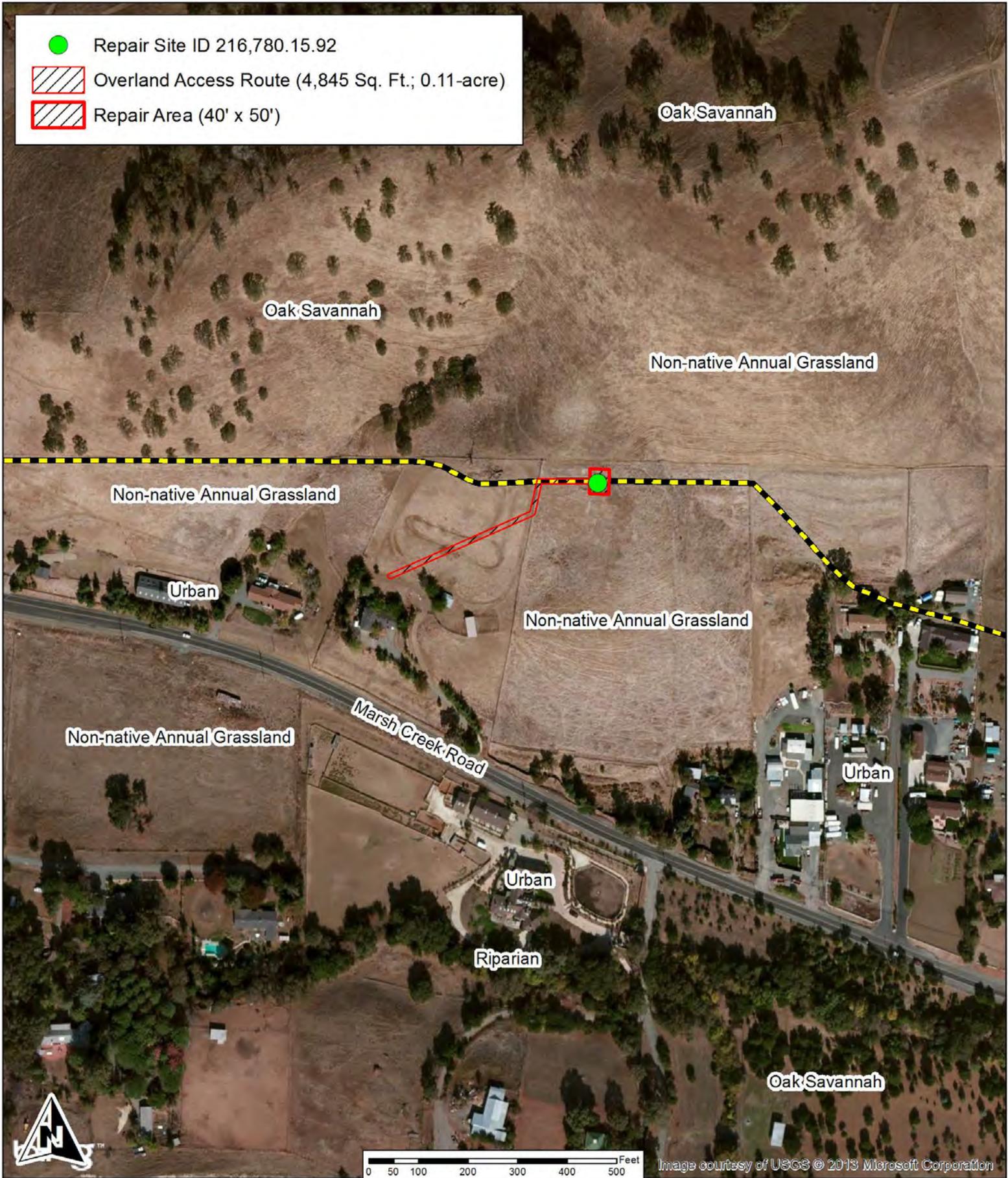
Figure 3A.2. Phillips 66 Pipeline LLC  
Pipeline 200 Repair Site ID 204,220.12.21 Land Cover Types  
East Contra Costa County, California

Aerial Photograph Source: Bing Maps  
Map Preparation Date: February 13, 2013

● Repair Site ID 216,780.15.92

▨ Overland Access Route (4,845 Sq. Ft.; 0.11-acre)

▨ Repair Area (40' x 50')



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Figure 3A.3. Phillips 66 Pipeline LLC  
Pipeline 200 Repair Site ID 216,780.15.92 Land Cover Types  
East Contra Costa County, California

Aerial Photograph Source: Bing Maps  
Map Preparation Date: February 13, 2013

-  Repair Area (40' x 50')
-  Repair Site ID 193,220.16.33
-  Line 200 Pipeline

Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.

Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.

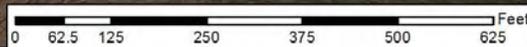
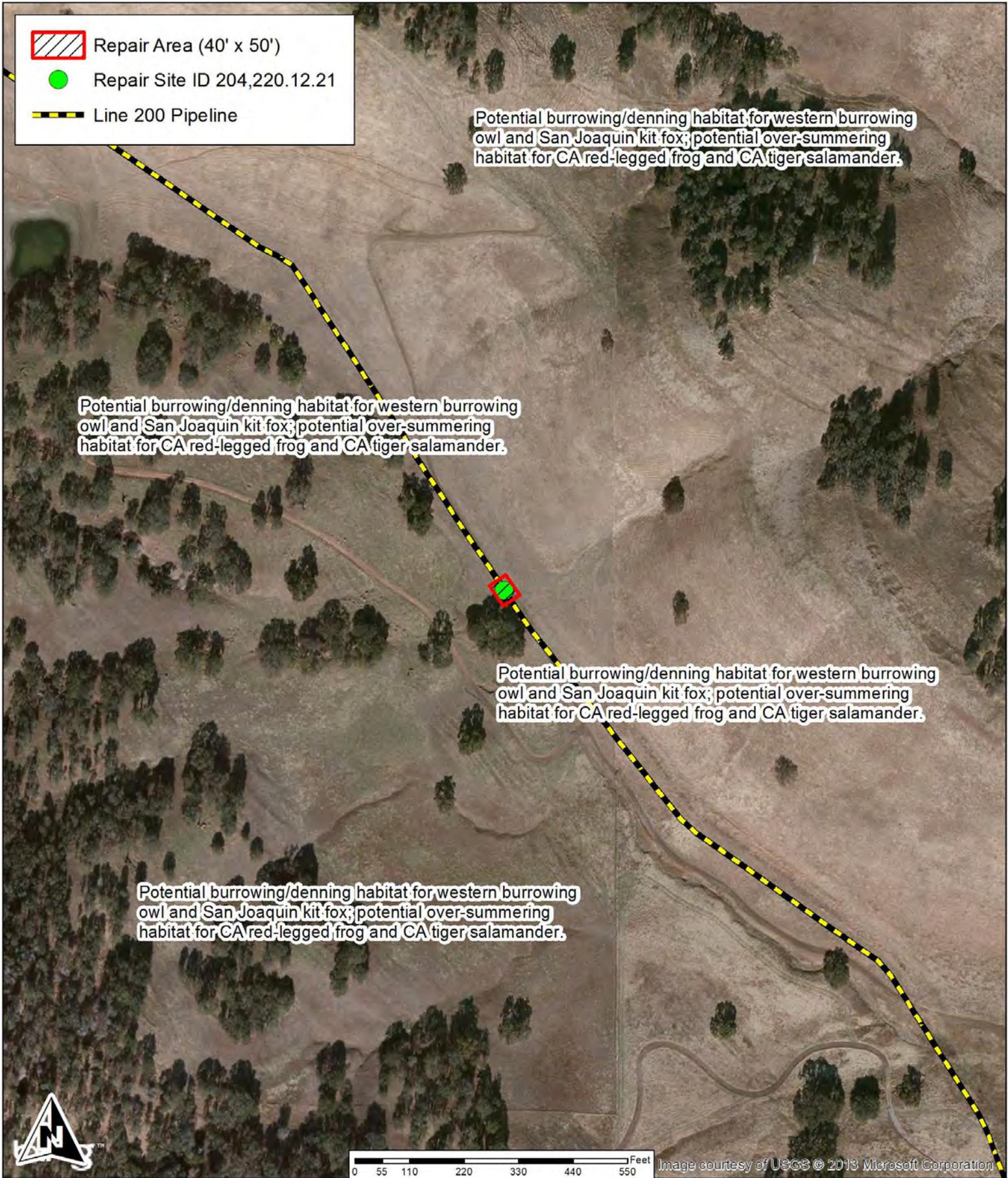


Image courtesy of USGS © 2013 Microsoft Corporation

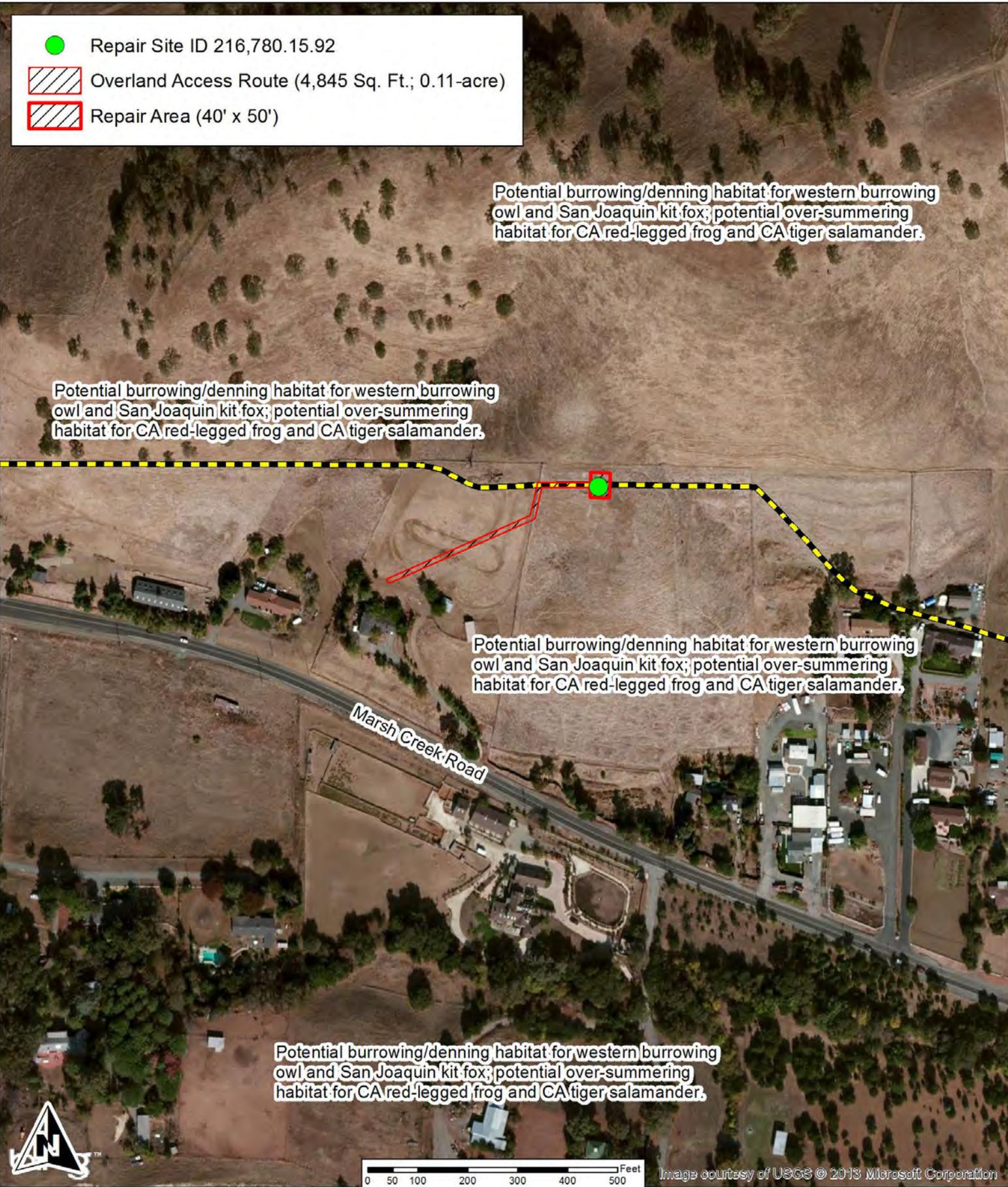
Monk & Associates  
 Environmental Consultants  
 1136 Saranap Avenue, Suite Q  
 Walnut Creek, California 94595  
 (925) 947-4867

Figure 4.1 Phillips 66 Pipeline LLC  
 Pipeline 200 Repair Site ID 193,220.16.33 Wildlife Habitats  
 East Contra Costa County, California

Aerial Photograph Source: Bing Maps  
 Map Preparation Date: February 13, 2013



- Repair Site ID 216,780.15.92
- Overland Access Route (4,845 Sq. Ft.; 0.11-acre)
- Repair Area (40' x 50')



Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.

Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.

Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.

Potential burrowing/denning habitat for western burrowing owl and San Joaquin kit fox; potential over-summering habitat for CA red-legged frog and CA tiger salamander.



Image courtesy of USGS © 2013 Microsoft Corporation

Figure 4.3. Phillips 66 Pipeline LLC  
 Pipeline 200 Repair Site ID 216,780.15.92 Wildlife Habitats  
 East Contra Costa County, California

# Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

## PROJECT APPLICANT INFO:

Project Applicant: Phillips 66 Pipeline Company

Project Name: Phillips 66 Pipeline Repairs, Line 200, Spring 2013

APN (s): unknown

Date: March 29, 2013

Jurisdiction: Participating Special Entity

### DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

**Acreage of land to be  
permanently disturbed (from  
Table 1)<sup>1</sup>**

	Full Development Fee		Fee per Acre (subject to change on 3/15/14 <sup>2</sup> )	
Fee Zone 1		x	\$10,924.14 =	\$0.00
Fee Zone 2	0.250	x	\$21,848.28 =	\$5,462.07
Fee Zone 3		x	\$5,462.53 =	\$0.00
Fee Zone 4 <sup>3</sup>		x	\$16,386.21 =	\$0.00
<b>Development Fee Total =</b>				<b>\$5,462.07</b>

### \*\*WETLAND MITIGATION FEE

	Acreage of wetland		Fee per Acre (subject to change on 3/15/14 <sup>2</sup> )	
Riparian woodland / scrub		x	\$71,547.41 =	\$0.00
Perennial Wetland		x	\$123,103.63 =	\$0.00
Seasonal Wetland		x	\$257,781.10 =	\$0.00
Alkali Wetland		x	\$239,894.25 =	\$0.00
Ponds		x	\$123,103.63 =	\$0.00
Aquatic (open water)		x	\$61,025.73 =	\$0.00
Slough / Channel		x	\$130,468.80 =	\$0.00
<b>Linear Feet</b>				
<b>Streams</b>				
Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$428.23 =	\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$644.98 =	\$0.00
<b>Wetland Mitigation Fee Total =</b>				<b>\$0.00</b>

### FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee \_\_\_\_\_  
 Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments \_\_\_\_\_  
 Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant \_\_\_\_\_

**Reduction Total = \$0.00**

### CALCULATE FINAL FEE

Development Fee Total	\$5,462.07
Wetland Mitigation Fee Total +	\$0.00
<b>Temporary Impact Fee Total (From Exhibit 2) +</b>	<b>\$0.00</b>
<b>Fee Subtotal =</b>	<b>\$5,462.07</b>
<b>Contribution to Recovery +</b>	<b>\$5,462.07</b>
<b>TOTAL AMOUNT TO BE PAID =</b>	<b>\$10,924.14</b>

#### Notes:

1 City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

2 The Conservancy is currently conducting the periodic fee audit required by the HCP/NCCP which could result in further adjustment to some or all fees in 2013. If the Conservancy Board approves changes to the fees based on the periodic fee audit on April 4, 2013 the fees will be adjusted to match the Board-approved fees. If the periodic audit is not adopted then fees will be as shown above.

3 "Fee Zone 4" is not shown on Figure 9.1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (see page 9-21 of the HCP).

**Template date: March 15, 2013**