

**ORDER**  
**THE BOARD OF ARBITRATION**  
Under The Surface Rights Acquisition and Compensation Act, RSS 1978 c S-65

Hearing Nos. 2554, 2555 and 2556

January 18, 2016  
Swift Current, Sk

**IN THE MATTER OF:**

Legal Subdivision 10 of Section 27, Township 15, Range 17, West of the Third Meridian,  
Saskatchewan.

Legal Subdivision 15 of Section 27, Township 15, Range 17, West of the Third Meridian,  
Saskatchewan.

Legal Subdivision 16 of Section 27, Township 15, Range 17, West of the Third Meridian,  
Saskatchewan.

**NEIL RUABEN**

(Owner & Applicant)

- AND -

**HUSKY OIL OPERATIONS**

(Operator & Respondent)

**PURPOSE OF ARBITRATION:**

To hear and receive evidence regarding applications for rental reviews received from the Owner on August 31, 2015.

**APPEARANCES:**

**For the Operator:**

- Cam Dyer, Senior Surface Landman, Husky Energy
- Aaron Tait, Landman, Millennium Land Ltd.

**For the Owner:**

- Neil Ruaben

**For the Board of Arbitration:**

- Don Peterson, Board Member
- James Wilson, Vice-Chairman
- Duane Smith, Chairman

**EXHIBITS:**

**Board Exhibits:**

1. Copy of the Rental Review Applications dated August 31, 2015
2. Copy of the Notice of Hearing
3. Disclosure dated November 12, 2015 from the Operator
4. Disclosure dated December 15, 2015 from the Owner

**Operator Exhibits:**

1. Operator Exhibit Binder
2. RM Map for RM of Riverside covering Section 2 \*
3. Email dated September 25, 2015 from Cam Dyer to Neil Ruaben

**Owner Exhibits:**

1. Disclosure of December 15, 2015
2. Occupant Crop Receipts and crop production yields (actuals) \*\*
3. Email from Kohaly Elash of 28/07/2015
4. Occupant crop production records from rented land within reasonable proximity \*\*
5. Average RM production of area from Sask. Ag. For 2013 and 2014 \*\*

**\*Exhibits submitted by the Operator after the hearing.**

**\*\*Exhibits to be submitted by the Owner and Occupant by April 5, 2016.**

**(please note the documents submitted by the Owner were new evidence and therefore disregarded by the Board).**

**DECISION**

**Crop Loss:**

In determining crop loss values, the Board considered the following facts from the hearing:

1. Mr. Ruaben did not have historical crop records, given his short period of owning the land. However, the Board found it difficult to accept that the occupant renting the land prior to Mr. Ruaben would not provide some form of historical returns, given that it is reasonable to expect Mr. Ruaben would need to have considered these in determining his purchase price for the land. The Board acknowledges this is a unique situation for the Owner in trying to provide historical evidence for a rent review when he just acquired the land.
2. Mr. Ruaben, given his situation as stated above, attempted to present to the Board future crop prices, in addition to future expected yields, which the Board cannot use. The Board can only base their decision on actual data from the previous 3 to 5 years for reasonably comparable, average data of similar soil conditions, proximity, yields, crops grown and prices, to the land in question.
3. Mr. Ruaben was also given an opportunity to provide his renter's actual yield history and prices received as well as comparables in close proximity after the hearing. However, the data supplied was average data for the whole R.M., land in the "Gull Lake Area", which its location cannot be determined in relation to the land in question, along with future price estimates. The Board could not consider this in its decision.

4. The land in question is very low quality land, as agreed to by the Owner, and also substantiated in the soils classification report in the Operator Exhibit No. 1 (Tab 10), which stated this land has "severe limitations". Thus it is highly unlikely this land would produce yields anywhere close to the average R.M. data supplied by the Owner, if the Board had even considered that.
5. Tab No. 9 of Operator Exhibit No. 1 also shows photos indicating very poor crop growth for the year in question with significant volunteer hay growing and the soil being very sandy in nature. All of this indicates a below average yield for this time period.
6. The Owner also stated the farming pattern is a north/south direction, and the photos from the above noted exhibit support the lease is farmed as a teardrop, thus reducing the adverse effect of the well sites. The roadways can also be farmed through.
7. As indicated in testimony and supported by email evidence, the Operator had requested on numerous occasions that the Owner supply actual yields, or comparable data to negotiate fairly. The Board has determined that the Operator attempted on many occasions to reach an agreement with the Owner prior to the hearing however the Owner's supporting documentation was never received, while Husky had provided many comparables to support their position. These 13 comparables are listed under Tab 14 of the Operator Exhibit #1 and have an average \$250.00 /ac crop loss value.
8. The Owner gave testimony that 30 acres of the land (out of 160) had previously been producing hay but has now been broken and is being cultivated. This would also support a lower than average yield for the purpose of this rent review. The Board advised the Owner that if he implemented new farming practices such as above that increased his yields and proper evidence was provided in future rental reviews that future compensation would reflect this.
9. The reference of pricing of commodities other than durum, provided by the owner, cannot be consider by the Board as those crops were not grown on this land. Whether they are grown by producers in the area, or will be seeded in the future by the Owner, is irrelevant to the Board. The Board can only consider the actual farming practices of the land in question.
10. The Board disagrees with the Operator that severance, nuisance and adverse effect should not be paid to an absentee owner. Regardless of land ownership, the Act stipulates this is to be paid for surface leases and it is between the landowner and occupant who is to receive this.

11. Aaron Tait gave testimony based on his experience, that similar offers from the Operator in the area, even other than Husky, would be \$300.00/acre for crop loss, \$1,800.00 for S/N/A and \$100 cumulative effect per well. Mr. Tait is from this area himself and signs numerous leases per year with other landowners.

12. The Owner presented an argument of cumulative effect on this quarter. He stated how, now that there were four wellsites, it affected the number of renters who were interested in renting his land, as the wellsites make it more difficult to farm, especially using precision farming (GPS) technology. He stated that not only did this reduce the number of potential renters, but that his actual rental agreement may be \$10.00/acre less because of this.

**Summary:**

**Crop Loss: \$250.00 per acre**

**Severance/Nuisance/Adverse Effect: \$1,800.00**

**Cumulative Effect: \$125.00**

**Hearing No. 2555 – LSD 10 – 27-15-17-W3M**

1. **CropLoss:** 3.61 acres x \$250.00 = \$902.50
2. **Severance/Nuisance/Adverse:** \$1,800.00
3. **Cumulative Effect:** \$125.00

**Hearing No. 2556 – LSD 15 – 27-15-17-W3M**

1. **CropLoss:** 5.4 acres x \$250.00 = \$1,350.00
2. **Severance/Nuisance/Adverse:** \$1,800.00
3. **Cumulative Effect:** \$125.00

**Hearing No. 2557 – LSD 16 – 27-15-17-W3M**

1. **CropLoss:** 3.66 acres x \$250.00 = \$915.00
2. **Severance/Nuisance/Adverse:** \$1,800.00
3. **Cumulative Effect:** \$125.00

**SUMMARY OF EVIDENCE:**

1. The parties agreed that all evidence received would be applied to all three hearings by consent. It was also agreed upon by the parties that Husky Oil would honor the decision contained herein for the additional location of 9-27-15-17-W3M (submitted by separate application).
2. Mr. Ruaben testified as the Owner of the subject lands. Cross-examination was done during his presentation by agreement of the parties. He reviewed his renter's email regarding equipment size and he testified that his renter used GPS and that it created a lot more work to farm around the wells. He said there was overlapping and field compaction, as well as overspraying. He indicated that the first 2 years of owning the land, were cash/crop share and the third year was crop share. He said the land was in rough shape when he took it over, including a lot of weeds. The land contained 30 acres of broken hay/pasture and 130 acres of cultivated land. He did not know which crops had previously been grown, nor the yields generated. He thought the renter's seeding drill and sprayer did not have sectional controls to reduce overlapping. He said the access roads were built up and couldn't be farmed through but that the wellsite was tear-dropped. Tab 9 of Operator Exhibit No. 1 showed the site and road as being flat and able to be farmed through and that the crop was seeded right up to the edge of the teardrop. The renter's email mentions "contour" drill and individual independent openers, which indicates sectional control, therefore overlap costs should be decreased.
3. Mr. Ruaben further testified that \$40.00 an acre was the cash rent. In 2015 most of the quarter was broken and seeded to durum and yielded 30-35 bushels to the acre. He didn't believe it was sold as yet. In 2014 (on similar land) his renter grew 35 bushels of durum to the acre and sold for \$12.00 a bushel. He said lentils at .56 cents per lb is \$33.00 a bushel. Mr. Ruaben felt that rental payments should increase because of cumulative effect of multiple wells. Mr. Ruaben was to submit actual durum yields and crop receipts/contracts to the Board after the hearing. Once submitted, the Operator would have a chance to respond in writing to the Board. He was also to submit renter's yields and crop receipts on similar land for the past 3 years.
4. Mr. Ruaben said that the land would be continuously cropped with cereals, pulse and oilseed. The Board would need to look at the Sask Crop Guide to develop an average from this for this year. Hay prices were given by the Owner (that his neighbours have received) at \$100.00 to \$200.00 a ton at 1.5 tons per acres (\$160.00 bale average).

5. Page 5 of the Owner's submission contained pictures to demonstrate a good average crop and were taken at the end of July. Owner Exhibit No. 3 was an email from a lawyer in Estevan regarding severance/adverse effect/nuisance and crop loss. The Board advised that little to no weight would be placed on Estevan crop loss data and third party evidence. The Owner stated that \$2,200.00 for severance/adverse effect and nuisance and \$480.00/acre loss of use was being requested of the Operator.

6. Cam Dyer, Surface Landman with Husky Energy provided sworn testimony on behalf of the Operator. The Operator's Exhibit Binder was filed as Operator No. 1. Tab 1 had the registration of ownership as being May 7, 2015. Mr. Dyer felt that there might have been later seeding after the land was broke. He stated that the first contact with Mr. Ruaben was March 12, 2015. Husky's position was \$1,800.00 to be paid for severance, adverse and nuisance and \$250.00/ac for crop loss. He testified that the area is very sandy with dunes within 3 miles and was average soil. This was agreed to be the Owner.

7. Mr. Dyer stated that from June 19 to September 5, 2015 he asked the owner for comparables and supporting evidence and none was provided. He felt future prices were not relevant in determining loss of use. He said a July 14, 2015 email regarding lentil values was irrelevant as they had never been planted. Husky's comment was that absentee owners aren't affected by nuisance and adverse effect; however argument was made by the Owner that the four wellsites caused him to miss out on some renters due to the inconvenience of farming around them and he ended up possibly getting \$10.00/acre less for rent because of the nuisance and adverse effect of the wellsites.

8. Mr. Dyer further testified that an email of July 10, 2015 indicated that precedent values in the area were \$1,800.00 for severance/adverse/nuisance; \$300.00/ac for loss of use and \$100.00 for cumulative effect. He said there was no written evidence supplied by the Owner to Husky (only email comments) after eleven requests for this information.

9. Tab No. 14 of Operator Exhibit Book contained 13 comparables with multiple wells on a quarter section. There was an average of \$250.00/ac for cultivated land and \$125.00/ac for pasture for crop loss. The Southwest quarter of Section 2 had 4 wells on a quarter section. All comparables were within a few miles of the land in question and were cultivated acres and Mr. Dyer felt should have similar production value. Two of the comparables had higher assessments than the Owner's land.

10. Operator Exhibit No. 2 (was to supply RM of Riverside map) with assessments for comparables that were submitted. Mr. Dyer said that all comparables were within the last couple of years and represent a pattern of dealings in the area for Husky.

11. Aaron Tait provided the next sworn testimony for the Operator. He was a landman with Millenium Land Ltd. He stated the current offers for compensation would be \$1,800.00 for severance/nuisance/adverse; \$300.00/ac crop loss and \$100 cumulative per well for 3 wells. He testified he was from the area, knows it well and stated that the land is marginal with most crops grown being rye, wheat and barley. He said he has reviewed 100-300 sites in this area per year. He also said that Millenium works for 3 major Operators in the area and these values directly reflect the values paid by these 3 Operators. He cited an example of a 16.91 acre battery site as having \$175.00/ac loss of use and \$2,200.00 for severance/adverse/nuisance.

12. The Owner stated that he had talked to 4 other owners regarding compensation.

13. Tab No. 9 were pictures of the sites taken in August of 2015 and were reviewed with the Board. The pictures indicated poor growth; farmed to edge of teardrop; poor germination and the photo of an access road indicates hay vs. durum was growing. The road was low profile and could be farmed across. The Owner stated that his renter farmed 150 acres of the quarter section and did not hay anything (100% of it was seeded as durum).

14. The pictures clearly showed that volunteer hay was growing. Productions records that were to be filed at a later date would ultimately show what the land produced regardless of the discrepancy. There was a picture of topsoil which indicated sandy type soil.

15. Tab No. 3 of the Operator binder had an email of July 16, 2015 referencing drought and poor germination as a result. The Owner argued these yields shouldn't be used as a result.

16. Tab No. 7 – August 11, 2015 photos showed a north/south farming pattern. Mr. Dyer argued that there was a minimal adverse effect with this farming pattern and farming through the lease site. The Owner's request for compensation the day of the hearing was \$2,200.00 severance/nuisance/adverse and \$480.00/acre loss of use.

17. \*\* There was agreement between the parties that the Owner would provide to the Board by April 5, 2016:

a) the Occupant's production records within a reasonable proximity

b) Average RM production and revenue for 2013 and 2014 for Sask Agriculture Data for various crops.

- c) Occupant crop receipts/contracts for 2015 and crop production yields for durum.
18. Operator Binder Tab 3 – included an email of September 25, 2015 sending more comparables to Neil and requesting comparables again from Neil. Pasture land just south of Section 27 was significantly lower in assessment. Tab 11 of the Binder included soil classification information. Page 14 of the Soil Map and Report stated “severe limitations that restrict the range of crops. Page 15 depicted insufficient water holding capacity and unfavourable topography. Page 16 stated slightly to moderately stony land. Pages 20 to 25 of the report reveal 15 to 40% sandy materials; high PH levels that limit the number and type of crops to be grown; wind erosion and water erosion.
19. Tab 12 of the Operator binder - Letter from an agrology company noted the most common crops grown. The SAMA value of land of 35-40 on a scale of 25-85 , therefore on the lower end of the scale.
20. Aaron Tait agreed that most owners do a 3 crop rotation without chemical fallow.
21. Tab 13 – Government of Sask Yield data. The Owner wasn't sure when the crop was taken off. He has other land south of Moose Jaw, Riverhurst and North of P.A. ( with no oil and gas activity). He stated “it wasn't a great harvest” as hay intervened and was very light in certain areas.
22. The parties agreed that the Operator would have until April 12, 2016 to respond to the further evidence filed by Mr. Ruaben.
23. The Board would further note that the Operator provided the requested information to the Board on January 22, 2016. The Owner provided the Board with data that was average for the whole R.M., land in the “Gull Lake Area”, which its location cannot be determined in relation to the land in question, along with future price estimates.

**TO WHOM THE COMPENSATION IS PAYABLE:**

The compensation is payable to the Owner, Neil Ruaben.

**COSTS:**

A sheet was submitted by the Owner for \$7,320.00 of expenses.

Husky was also requesting costs given the number of negotiations and requests for data from the Owner. (Mainly for Aaron Tait - \$4,000.00) . The Operator requested no costs be



awarded to the landowner. They indicated hotel, fuel, time and effort on the part of Mr. Cam Dyer would not be requested.

The Operator seeks costs against the Owner for this application. However, there is no general jurisdiction for the Board to award costs to Operators. The Surface Rights Acquisition and Compensation Act provides authority to order reasonable costs in relation to the acquisition of surface rights for wellsites, roadways, battery sites, powerlines and flowline/servicelines.

The Surface Rights Acquisition and Compensation Act allows the Board to award costs relating to the Hearing to the Owner or Occupant. The Board is of the opinion that costs should reflect:

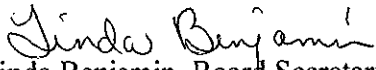
- (a) the nature, importance and complexity of the subject matter;
- (b) the time and skill that were required to prepare and present the necessary material at the hearing;
- (c) the results obtained.
- (d) efforts of the parties to negotiate prior to the Hearing

The Board orders the sum of \$800.00 as the costs of this hearing to the landowner, Neil Ruaben.

The above award is unanimously agreed to by the Board Members present namely:  
Duane Smith, James Wilson and Don Peterson.

**DATED** at the Town of Kindersley, in the Province of Saskatchewan this 3rd day of May, 2016.

THE BOARD OF ARBITRATION

  
Linda Benjamin, Board Secretary  
For Duane Smith, Chairman

TO: Neil Ruaben  
TO: Husky Oil Operations  
Attention: Cam Dyer

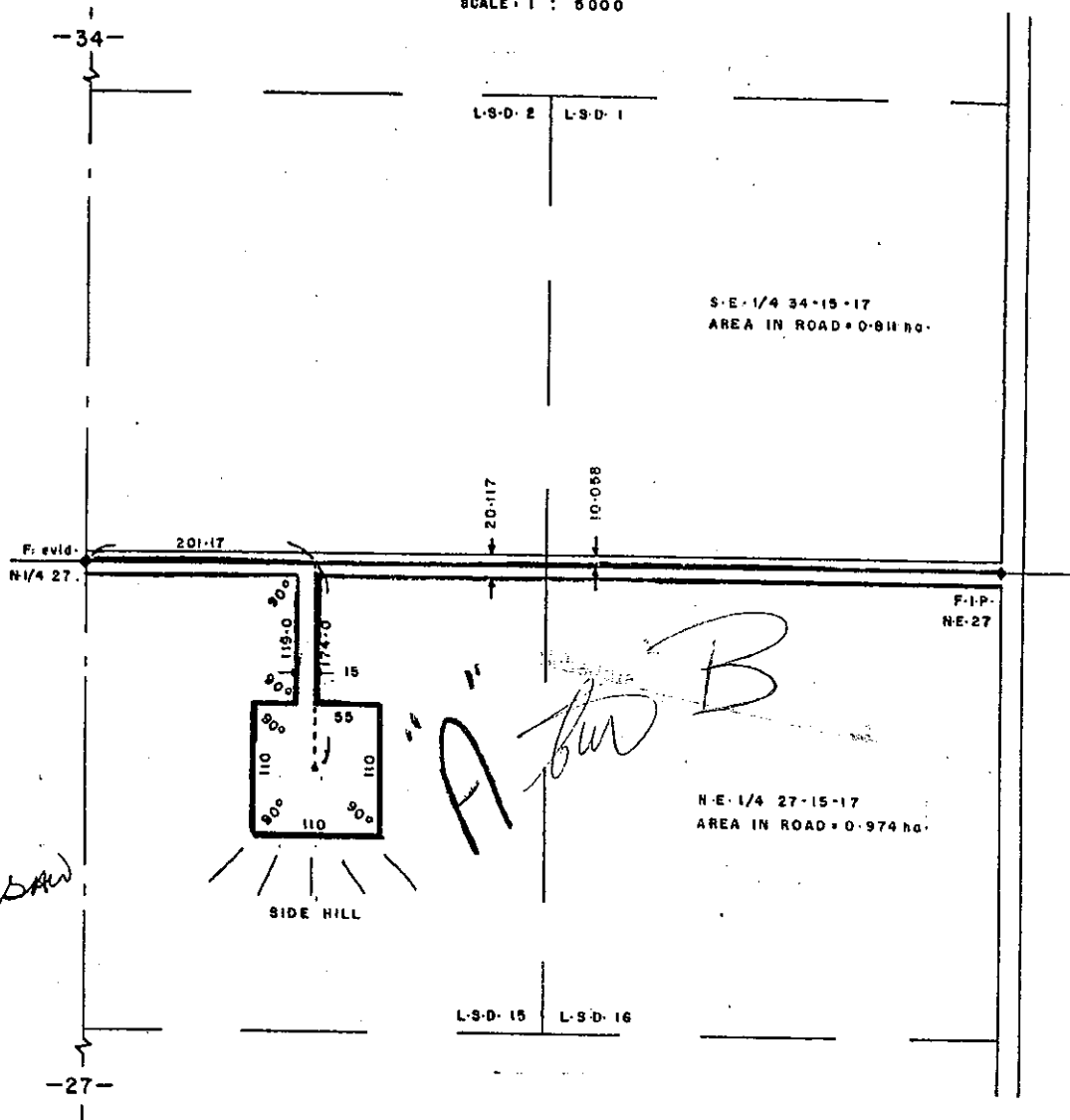


# MOBIL OIL CANADA LTD.

PLAN OF

MOBIL UNION SASKOIL BEV 15-27-15-17  
in  
LSD-15, Sec-27, Tp-15, Rg-17, W3 M.

SCALE: 1 : 5000



CO-ORDINATES:  
201.17 E. of W. bdy } NE 1/4 27-15-17  
174.00 S. of N. bdy }

GR. ELEVATION: 752.96m.

AREAS: Well Site 15.210 ha.  
Access Road 1.785 ha.  
Total 2.995 ha.

**MITCHELL SURVEYS**  
SWIFT CURRENT SASKATCHEWAN

## ÷ LEGEND ÷

- ◆ Monument Found
- Iron Pin Planted

Reg'd. Owner -----

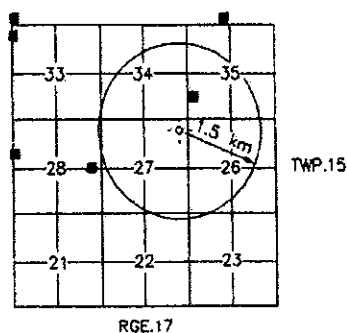
Minerals -----

Operator -----

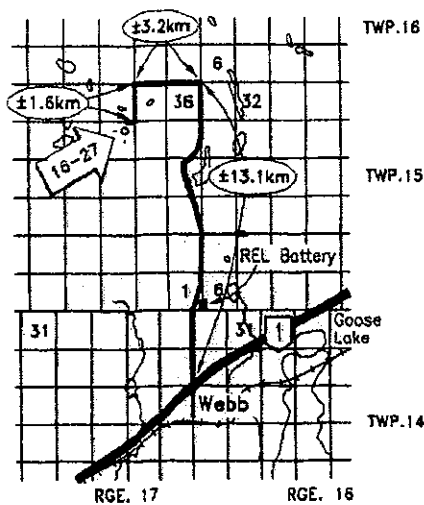
I CERTIFY THAT THE SURVEY REPRESENTED BY  
THIS PLAN IS CORRECT AND TRUE TO THE BEST  
OF MY KNOWLEDGE AND WAS PERFORMED ON  
THE 30TH DAY OF JULY, 1979  
J. W. Mitchell  
SASK LAND SURVEYOR  
Witness: [Signature]  
WITNESS

# RESIDENCE SKETCH (not to scale)

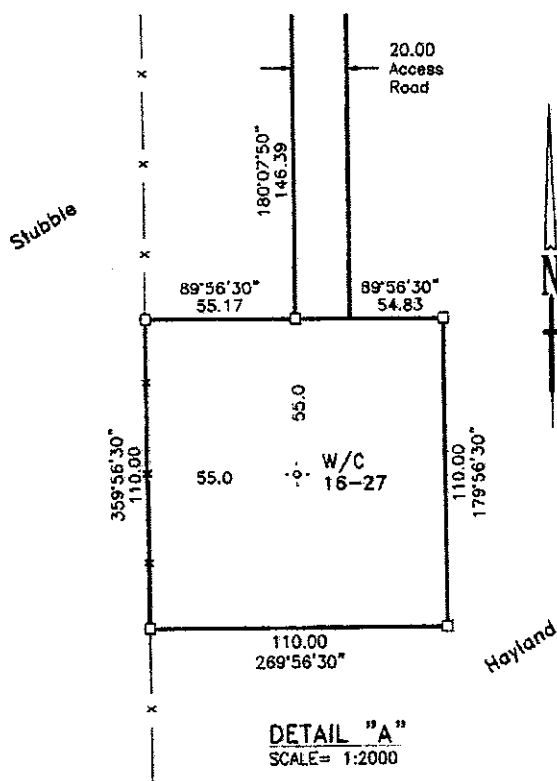
OCCUPIED RESIDENCES SHOWN ... ■  
UNOCC. RESIDENCES SHOWN ..... □  
RESIDENCES MORE THAN 1.5km  
FROM W/C MAY NOT BE SHOWN.



THE NEAREST OCCUPIED RESIDENCE  
IS ±0.6km NE OF WELL CENTRE.



ROUTE MAP  
SCALE= 1:250000



ELEVATIONS		749.6	WELL CENTRE
NW COR.	750.05	NE COR.	750.28
SW COR.	747.70	SE COR.	748.78

## NOTE:

Well centre was moved 26.4 S.  
and 1.8 W. (total 26.4) due to  
topography.

## Coordinates:

### Given:

175.0 m S of N } Bdy. of Sec. 27  
180.0 m W of E }

### Surveyed:

201.4 m S of N } Bdy. of Sec. 27  
161.8 m W of E }

DETAIL "A"  
SCALE= 1:2000

# Renaissance Energy Ltd.

RENAISSANCE BEVERLEY N 16-27-15-17  
WELLSITE AND ACCESS ROAD  
L.S.16 SEC.27 TWP.15 RGE.17 W3M.

## LEGEND

Survey monuments found shown thus ..... ♦  
Wooden hubs shown thus ..... □  
New well centre shown thus ..... -o-

Portions referred to shown thus ..... [ ]

Distances are in metres and decimals thereof.

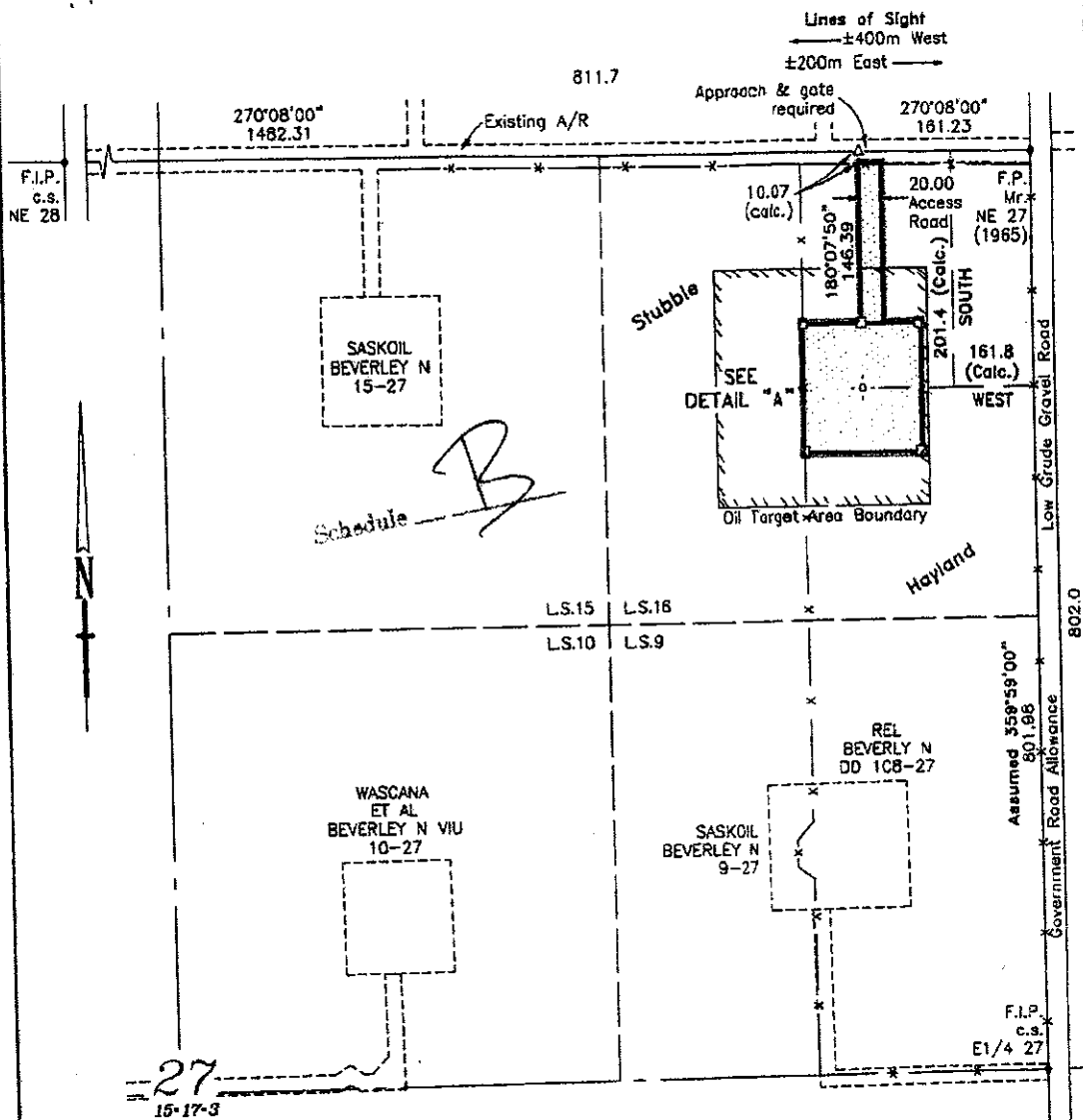
DATUM: 84V009 Elev.=724.81m



CAN-AM SURVEYS LTD.  
900, 340-12 AVE. S.W.  
CALGARY, ALBERTA T2R 1L5  
PHONE : (403) 269-8887  
FAX : (403) 269-8550  
TOLL FREE : 1-800-478-6162

## SCALES AS SHOWN

CALC.: RW	CHK'D: JFS
P.C.: WEP	AFE: 436047
PAGE 1/2, FILE: CA 198-00	



SCALE = 1:5000

#### NOTES:

- \* Underground facilities should be located by the respective authorities prior to construction.

SaskTel : 811  
SaskPower : 1-306-778-9705  
SaskEnergy : 1-800-667-7446

Yes No

The proposed well is at least 75m from any surface improvements ☒ ☐

**ELEVATIONS** 749.6 **WELL CENTRE**  
NW COR. 750.05 NE COR. 750.28  
SW COR. 747.70 SE COR. 748.78

I, Ed Twarowski, Saskatchewan Land Surveyor, certify that the survey represented by this plan is true and correct to the best of my knowledge and was completed on the 29th day of February, 2000

#### COORDINATES:

**LOCAL:**  
201.4 m S of N } Bdy. of Sec. 27  
161.8 m W of E }

**GEOGRAPHIC:**  
LATITUDE 50°17'37.301" N  
LONGITUDE 108°15'10.630" W

**BASE: DATUM = NAD 83**

*Edward Twarowski*  
Saskatchewan Land Surveyor

Witness, Richard Witak

CAN-AM FILE: CA 198-00

REVISION: 0

PAGE: 2/2

RENAISSANCE BEVERLEY N 16-27-15-17

AFE: 436047

**AREAS:**

	ha	Ac.
WELLSITE	1.210	2.99
ACCESS ROAD	0.273	0.67
TOTAL	1.483	3.66



Renaissance Energy Ltd.