



Highpine Oil & Gas Ltd.
(formerly Vaquero Energy Ltd.)

Application for a Oil Effluent Pipeline
Chip Lake Field

August 2, 2005

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2005-080: Highpine Oil & Gas Ltd, Application for an Oil Effluent Pipeline,
Chip Lake Field

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**HIGHPINE OIL & GAS LTD.
APPLICATION FOR AN OIL EFFLUENT PIPELINE
CHIP LAKE FIELD**

**Decision 2005-080
Application No. 1375120**

DECISION

The Alberta Energy and Utilities Board has considered the findings and recommendations set out in the following examiner report, adopts the recommendation, and directs that Application No. 1375120 be approved.

DATED at Calgary, Alberta, on August 2, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

T. M. McGee

**EXAMINER REPORT RESPECTING
HIGHPINE OIL & GAS LTD.
APPLICATION FOR AN OIL EFFLUENT PIPELINE
CHIP LAKE FIELD**

**Decision 2005-080
Application No. 1375120**

1 RECOMMENDATION

Having carefully considered all of the evidence, the examiners recommend that the Alberta Energy and Utilities Board (EUB/Board) approve Application No. 1375120.

2 PRELIMINARY MATTERS

The subject application was originally submitted by Vaquero Energy Ltd. (Vaquero). Subsequent to the May 17, 2005, oral hearing, Vaquero was acquired by Highpine Oil & Gas Ltd. (Highpine). As of June 6, 2005, the EUB's records were updated to reflect that Highpine had assumed all of Vaquero's assets and liabilities.

At the hearing, Vaquero openly discussed the probability of this acquisition; however, the examiners did not have any evidence from the new applicant, Highpine. As such, the hearing was reopened to determine what impacts, if any, the acquisition of Vaquero had on the application. On June 20, 2005, the Board wrote to the interested parties to explain this additional process and provided a schedule for the filing of each party's response. In correspondence dated June 21, 2005, Highpine requested that the Board amend Application No. 1375120 to reflect that Highpine was now the applicant. Highpine further confirmed that it had adopted all of the evidence and commitments (Appendix 2) made by Vaquero. The interveners did not file a response to Highpine's June 21 submission. As such, the examiners considered that the hearing was closed on July 15, 2005.

The examiners are satisfied that the Vaquero application should be transferred to Highpine. However, as both Vaquero and Highpine are separate legal entities, the examiners believe that it is important to distinguish what was presented or committed to by Vaquero and by Highpine. As such, this report refers to the applicant as Vaquero or Highpine, depending on which entity was advancing the evidence or application at the time.

3 INTRODUCTION

3.1 Applications

Vaquero applied to the EUB for a licence to construct and operate An oil effluent pipeline and two spare crossings pursuant to Part 4 of the *Pipeline Act*. The proposed pipeline would total about 1.3 kilometres (km) of 88.9 millimetre (mm) outside diameter (OD) and is proposed to connect an existing Vaquero well at Legal Subdivision (LSD) 11, Section 34, Township 53, Range 10, West of the 5th Meridian (11-34 well) to the existing Vaquero pad location at LSD 3-34-53-10W5M (3-34 pad). The spare bored highway and railway crossings would be 168.3 mm OD pipe segments, with lengths of 0.08 km and 0.15 km.

3.2 Intervention

The Board received a letter of objection on January 18, 2005, from David Jacobs and Claudette Jacobs (the Jacobses), landowners along the proposed pipeline route, expressing their concerns about the pipeline on the basis of its potential interference with their future land development plans. The Jacobses also cited concerns about the notification of the now-existing 3-34 pad site 300 m south of their property, the potential contamination of their water well from both the 3-34 pad site and the 11-34 well location, as well as from the proposed pipeline. The Jacobses also expressed concern regarding the state of the survey cut line along the proposed pipeline route, noting that the cut trees were left where they fell.

3.3 Hearing

The Board scheduled a public hearing that was held in Edmonton, Alberta, on May 17, 2005, before examiner panel W. G. Remmer, P.Eng. (presiding member), T. J. Pesta, P.Eng., and D. K. Boyler, P.Eng. The examiners visited the area of the proposed pipelines on May 16, 2005. Those who appeared at the hearing are listed in Appendix 1.

Following the acquisition of Vaquero by Highpine, the EUB determined that it was necessary to reopen the hearing to consider this change in circumstances. This decision was communicated to interested parties by way of a letter from Board counsel to all parties on June 20, 2005. Highpine responded to this letter on June 21, 2005. The Jacobses, however, did not respond to either the EUB or to Highpine by the submission deadline of July 7, 2005. As such, the hearing was considered closed as of July 15, 2005.

4 BACKGROUND

The Jacobses purchased 18.2 hectares (ha) of land in Section 34-53-10W5M in May 1993, with the intent of developing a 28-cabin resort for tourists travelling between Edmonton and Jasper. The Jacobses built a cabin home on the land, which they occupied until 2002, when they moved to Edmonton. They returned to their cabin periodically after that to work on their cabin development.

Early in 2003, Vaquero posted notices in the local paper and at the Wildwood Post Office notifying residents that it would hold an open house to outline Vaquero's interest and development plans for the Chip Lake area. The Jacobses did not attend this open house. During March 2004, the Jacobses returned to their property and witnessed a drilling rig on the now-existing 3-34 pad location. Mr. Jacobs visited the drilling rig and talked to the drilling consultant on location to express concerns about the proximity of Vaquero's well to the Jacobses' property and specifically to the Jacobses' water well. Vaquero's drilling consultant provided Mr. Jacobs with the phone number for Vaquero's offices in Calgary, and he subsequently contacted Vaquero with his concerns regarding the 3-34 pad. In response, Vaquero attempted to test the Jacobses' water well for quantity and quality in March 2004. However the actual water well test was not conducted until July 2004.

The 11-34 well, north of the Jacobs property was drilled in late July 2004. Vaquero conducted a flare notification to residents within 1.5 km of the 11-34 well. Due to public opposition to the flaring notification and the incinerator that would be located at the 11-34 well, Vaquero started planning for pipeline routes to produce the 11-34 well.

In August 2004, the Jacobses were contacted again by Vaquero representatives to obtain permission to survey the pipeline right-of-way (ROW) across their land, to which they gave their consent. After the survey activities were conducted, the Jacobses contacted Vaquero to voice concerns about the condition of the survey line. On November 25, 2004, the Jacobses met with Vaquero representatives to discuss their concerns about the survey line, the impact of the proposed pipeline, water well testing, and visibility of the 3-34 pad. During this meeting, Vaquero stated that it was willing to place trees on the 3-34 pad to address any aesthetic impacts that the Jacobses may experience. However, full resolution of the issues was not reached at this meeting, and on December 14, 2004, Vaquero submitted a pipeline application to the EUB. The Jacobses were subsequently provided with the water well test results on February 23, 2005, from the tests conducted in July 2004. With no resolution between the parties achieved, the EUB issued a Notice of Hearing on April 7, 2005, for a hearing to be held on May 17, 2005.

5 ISSUES

The examiners consider the issues respecting the applications to be

- need for a pipeline
- pipeline routing
- impacts
- communication/negotiation

6 NEED FOR A PIPELINE

Vaquero stated that the applied-for pipeline was necessary for the recovery of oil effluent from the 11-34 well. Vaquero also stated that it was unable to conduct production testing on the 11-34 well due to outstanding public opposition to the flaring associated with production testing. As such, Vaquero determined that a pipeline must be constructed to tie in the 11-34 well to the 3-34 pad site, where an existing pipeline would transfer the produced fluids to the 15-25-53-10W5M battery for production measurement. Vaquero noted that any future well development in the area was dependent upon these production data. Should additional wells be required to produce the reserves in the immediate area, Vaquero indicated that it would require an additional pipeline to parallel the applied-for pipeline. In that case, Vaquero stated that it would use the applied-for pipeline for production testing of individual wells and the future additional pipeline would be used for group production. In anticipation of needing the group production line, Vaquero informed the Board that it applied to install the bored crossings under the Canadian National Rail (CN Rail) main line and under the westbound lanes of Highway 16.

Vaquero stated that it considered a number of options to transport production from the 11-34 well. The alternative to a pipeline was constructing a battery at the 11-34 well site and trucking out the production. When considering trucking out the production, Vaquero was concerned about the restricted visibility along the county road and the uncontrolled crossing of the CN Rail line. It also had concerns about the increase in traffic along the county road. Vaquero stated that high construction costs and anticipated public opposition from numerous surrounding landowners and residents pertaining to a battery at the 11-34 well site made the facility option impractical. With the battery and trucking option discounted, Vaquero reiterated the need for the pipeline as the only feasible method for production recovery from the 11-34 well.

Vaquero testified about future potential pipeline development plans at the proceeding and noted the potential for an additional 168.3 mm OD pipeline to parallel the currently applied-for pipeline. Due to Vaquero's uncertainty about future development in the area, it did not apply for the 168.3 mm line at this time, except for the bored crossings under the CN Rail line and Highway 16. Vaquero stated that the 168.3 mm OD bored crossings would be completed at the same time as the bored crossing for the applied-for pipeline.

The Jacobses stated that they understood Vaquero's need to produce the 11-34 well and did not challenge the need for a pipeline. The Jacobses also agreed that trucking of the production from the 11-34 well was not a good option, given the concerns associated with the railway crossing.

The examiners are satisfied that Vaquero has a need to transport the oil effluent from the 11-34 well and that a pipeline is the most appropriate option.

7 PIPELINE ROUTING

Vaquero stated that it applied for the most viable of four potential pipeline routes that would take production from the 11-34 well to the 3-34 pad site. All four routes are shown on the attached map. Vaquero submitted that the applied-for route was the most direct, most environmentally friendly, and least expensive of the four routes. Vaquero stated that its preferred route, designated as route 1, would be about 1.3 km in length and consist of two bores, one under the railroad to the north of the Jacobs property and one under the highway at the southern boundary of the Jacobs property. Route 1 would require 1.8 ha, of which 0.4 ha would be on the Jacobs land. Vaquero noted that it obtained consent from all the other landowners in the area, with the exception of the Jacobses.

The second possible route considered by Vaquero is designated as route 2 on the map. This route would be 1.4 km in length and require about 2.1 ha of land and 4 bores. Vaquero contended that portions of this route traversed muskeg or boggy sections and would present more construction challenges than route 1. This route would not cross the Jacobs land.

Vaquero's third potential route is shown as route 3 on the map. Vaquero estimated that route 3 would consist of 1.3 km of pipeline and uses about 2.0 ha of land, 0.3 ha of which would be on the Jacobs property. This route was deemed unfavourable by Vaquero due to concerns regarding setback requirements for the Jacobs residence, an existing Lobstick Gas Co-op Line, and the adjacent county road.

The remaining route, route 4 on the map, is the longest of the four routes considered. Route 4 would be about 1.9 km in length and use about 2.9 ha of land, 0.2 ha of which would be on the Jacobs property. This route would require two bores.

Vaquero reported that due to the long lead time to get a crossing approval from CN Rail, it limited its consideration of locations for the rail crossing to the single location for which it had reached an agreement with CN Rail. In contrast, Vaquero had entertained different crossing locations of the westbound lanes of Highway 16 for each of the four pipeline routing options.

Vaquero argued that route 1 was the most viable option based on the increased environmental disturbance and land required for the construction of routes 2, 3, and 4 and the fact that it had

agreements regarding routing with the landowner to the south of the highway and agreements and conditions with CN Rail and Alberta Transportation for the location of the crossings.

The Jacobses stated that of the four potential routes, the one they most preferred was the routing bypassing their land completely (route 2). However, the Jacobses noted that Vaquero did not provide a schematic of the three alternative routes prior to the hearing and, as such, they did not have adequate time to prepare a response pertaining to each route. The Jacobses acknowledged that Vaquero selected the best routing from a technical perspective, but argued that this technical perspective failed to take into account their future development plans. The Jacobses further stated that if routing of the pipeline off their property was not an option, the next best location would be the placement of the pipeline on the westernmost extent of their property, so as to minimize disruption of the Jacobses' proposed cabin development. This route outlined by the Jacobses was similar in nature to Vaquero's route 4.

The examiners are concerned about the thoroughness of the investigation of alternative routes by Vaquero. The alternative routes are limited not only by the start and end point of the pipeline route, but also by the CN Rail crossing agreement and, to a lesser extent, by the agreed route through the land south of the Jacobs property.

Notwithstanding the above, the examiners find that of the four potential pipeline routes, the one applied for is the preferred route from an environmental perspective, as it is the most direct and will result in the least disturbance. However, the viability of this route must take into consideration the measures that could be taken to minimize the impact on the landowners' proposed cabin development. It is unfortunate that Vaquero and the landowners were unable to conduct a site visit early in their negotiations and reach a common understanding on how to minimize the potential impacts. The examiners encourage the parties to conduct a joint site visit should the pipeline proceed.

8 IMPACTS

Vaquero stipulated that the applied-for route (route 1) was the route that would cause the least amount of environmental disturbance and could be adapted, via commitments, to minimize the impacts of the pipeline felt by the Jacobses. Vaquero further contended that the Jacobses' environmental, aesthetic, and safety concerns would be addressed to a large extent by the commitments it made to them, including

- resculpting of the ROW to reduce its visual impact,
- reducing the ROW from 15 m to 8 m,
- reseeded of the ROW, and
- planting trees (1.8 m tall) at both points where the pipeline enters and exits the Jacobs property (thereby reducing the possibility of trespassers entering the Jacobs land).

Vaquero also committed to planting 1.8 m tall trees on the 3-34 pad in an effort to address the Jacobses' aesthetic concerns regarding that well. Vaquero stated that the present conditions of the survey line would be rectified and cleaned up. Vaquero acknowledged that the Jacobses may ultimately be affected by the placement of the pipeline. However, it contended that its commitments regarding the ROW would help minimize any constraints that the Jacobses may experience with their proposed cabin project. Vaquero noted that its commitment to install

conduits underneath the pipeline ROW at a location chosen by the Jacobses would allow unimpeded crossing of utility lines to service the western portion of the Jacobses' proposed development. If Vaquero and the Jacobses were unable to agree on a location to install the utility crossing conduits, Vaquero stated that it would increase the burial depth of the pipeline across the Jacobs property to 1.8 m. It was Vaquero's position that the developmental plans of the resort (see insert on map) could be altered, as no conclusive plans or developmental permits had been obtained by the Jacobses at the time.

The Jacobses acknowledged the commitments made to minimize impacts, but insisted that these commitments would not eliminate the impacts. Further, the Jacobses asserted that regardless of the mitigation steps taken, they would still feel the consequences of the pipeline, while receiving no benefits from its installation. The Jacobses stated that their land was currently in pristine condition and expressed the belief that the installation of the pipeline would permanently affect its natural state. It was the Jacobses' opinion that few tourists would want to stay at a resort crossed by pipelines and adjacent to an oil well. The Jacobses argued that they would suffer a reduced client base that would result in economic impacts as a result of Vaquero's development. In addition to the environmental and monetary impacts, the Jacobses noted that their entire dealings with Vaquero have resulted in the acceleration of their development plans from their original time frame.

The Jacobses reiterated the fact that the measures committed to by Vaquero would minimize impacts; however, they would still have to deal with a pipeline that they did not want for the duration of their ownership of the land. The Jacobses indicated that should the pipeline remain on their property, the development plans could be modified, as a last resort. The modifications would involve restricting the western portion of the development for summer cabins to deal with issues related to crossing the pipeline with extensive underground infrastructure required by year-round services. In addition, they suggested the cut should be landscaped and adapted to the topography and that coniferous trees should be planted on both sides of the ROW for the entire length.

The examiners acknowledge that although the cabin development is in the initial phases, the project has progressed and will likely be developed over time by the Jacobses. They also note that the Jacobses have already altered their plans and development time frames on account of the proposed pipeline's potential installation. However, the examiners recognize Vaquero's commitments to numerous mitigating measures (Appendix 2) and find that Vaquero has undertaken adequate measures to minimize the impacts to the Jacobses. The examiners do not believe it is necessary to plant coniferous trees on both sides of the entire length of pipeline ROW, but encourage both parties to discuss and agree upon specifics regarding the implementation of Vaquero's commitments. Specifically, Vaquero and the Jacobses should meet on site to consider contouring and other measures to better adapt the pipeline ROW into the topography to further minimize the aesthetic impacts on the cabin project.

9 COMMUNICATION/NEGOTIATION

Vaquero submitted that channels of communication were open for the entire Chip Lake area as far back as March 2003, when they held an open house in Wildwood. Vaquero stated that it was not until March 2004 that its representatives had any direct contact with the Jacobses, when the Jacobses brought forth concerns regarding visual and water well impacts associated with drilling on the 3-34 pad site. Vaquero stated that attempts were made to meet with the Jacobses to test

their well starting in March 2004, but a mutually agreed upon time was not available until July 2004. Vaquero explained the long time frame on the difficulty in contacting the Jacobses due to their move to Edmonton and their work schedules. Vaquero estimated that during its negotiations with the Jacobses, Vaquero and its representatives had up to twenty direct contacts with the Jacobses (be they messages left and returned or phone conversations), including a face-to-face meeting in April 2005 at a location in Edmonton chosen by the Jacobses. Vaquero contended that at this meeting the suggestion of participating in formal appropriate dispute resolution was brought forth, but maintained that no attempt was made by the Jacobses to pursue these discussions.

Vaquero stated that it carried out all public consultation requirements pursuant to EUB *Guide 56: Energy Development Applications and Schedules* for the 3-34 pad location to the south of the Jacobs property, the 11-34 well location to the north, and the associated flaring notification for this 11-34 well, as well as for the proposed pipeline route. Vaquero stated that it regretted any miscommunication regarding the state of the debris left on the survey line for the proposed pipeline. It maintained that it planned to clean up the debris during pipeline construction but emphasized that, regardless of the Board's decision, it would appropriately rectify the condition of the survey line.

The Jacobses expressed frustration regarding their dealings with Vaquero. They stated that their greatest concern related to Vaquero's failure to acknowledge that their future development schemes for the area were in progress or viable. The Jacobses testified that they searched for a long time before buying the property in 1993. They noted that their development plans continued to evolve and, as such, they could not set out conclusive timelines for the project's construction and completion. The Jacobses argued that Vaquero should be required to work within their timelines, and not the other way around. They stated that as time progressed, they found the speed at which Vaquero wanted resolution disconcerting and that this speed did not allow them to fully understand the project's impacts.

The Jacobses stated that incorrect assumptions made by Vaquero contributed to their concern about the pipeline crossing their property. In that regard, the Jacobses particularly noted Vaquero's assumption that they would not object to the pipeline route because they had already provided their approval for the survey work to proceed. The Jacobses also commented on the time it took for Vaquero to provide them with the results of their water well tests, noting that the testing took place in July 2004, but the results were not forwarded to them until February 2005.

The Jacobses stated that they had no face-to-face communications with Vaquero personnel until very late in the process. They considered that Vaquero would not appreciate the scope of their development plans or the project's potential impacts on it without a site visit and an opportunity for Vaquero and the Jacobses to jointly develop the pipeline route.

It is the examiners' view that both parties attempted communication and negotiations with good intentions. The examiners acknowledge the nonconfrontational attitude each party had towards the other during the numerous communication attempts. The examiners find that a fundamental underlying issue that led to the miscommunication was the failure of both parties to understand each other's concerns and issues pertaining to timelines and the impacts felt by both. The examiners consider that a third-party facilitator or mediator may have assisted in overcoming the stumbling blocks to communication experienced by these parties. The examiners are also of the view that the positional attitude of both parties regarding the appropriate amount of compensation prevented true dialog from occurring and led to miscommunication on both sides.

While the examiners are concerned about the lack of effective communication between the parties, they believe that there currently exists an opportunity to develop a sound working relationship. The examiners expect that by building upon the commitments made by Vaquero, a productive working relationship can be developed and utilized in the future dealings between these parties, be they in tandem with issues pertaining to the applied for pipeline or for any additional pipelines that Highpine may require in the future.

10 CONCLUSION

The examiners find that there is a need for the proposed pipeline and that it can be constructed and operated in a safe and environmentally acceptable manner by the applicant. The examiners also find that the impacts to the Jacobses associated with the pipeline can be properly addressed and adequately mitigated. As a result, the examiners are of the view that the subject application is in the public interest and therefore recommends that the Board approve the application.

Dated in Calgary, Alberta, on July 29, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

W. G. Remmer, P.Eng.
Presiding Member

[Original signed by]

D. K. Boyler, P.Eng.
Examiner

[Original signed by]

T. J. Pesta, P.Eng.
Examiner

APPENDIX 1 HEARING PARTICIPANTS

**Principals and Representatives
(Abbreviations used in report)****Witnesses**

Vaquero Energy Ltd. (Vaquero)
D. Naffin
B. K. O’Ferrall, Q.C.

B. Ness, P.Eng.
C. Giorgi
J. Broughton, P.Eng.
E. Binetruy

D. Jacobs and C. Jacobs (the Jacobses)

D. Jacobs
R. Dion

Alberta Energy and Utilities Board staff
J. P Mousseau, Board Counsel
C. Ravensdale
G. McClenaghan, P.Eng.

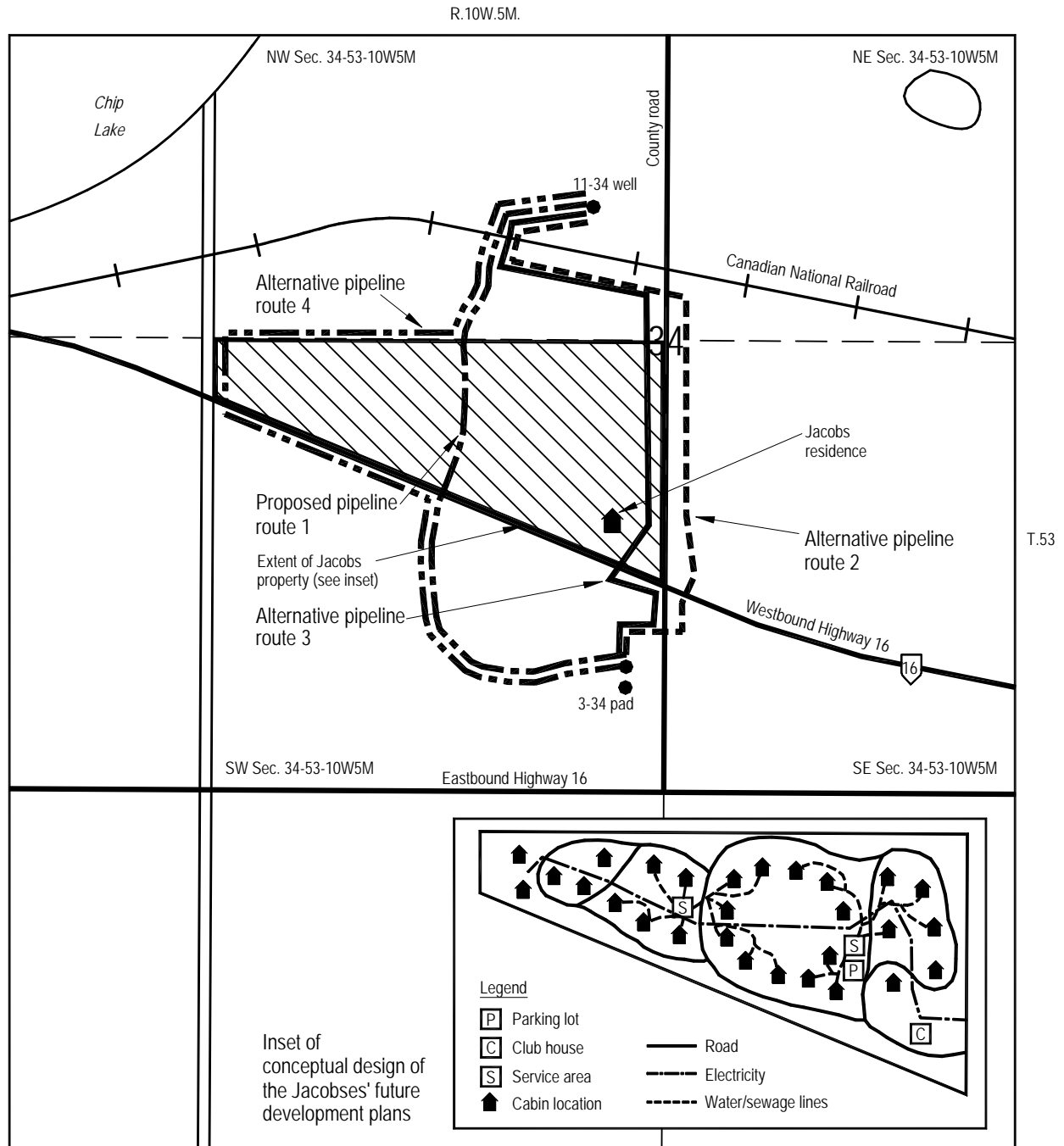
APPENDIX 2 SUMMARY OF COMMITMENTS

The examiners note that throughout the hearing procedures on May 17, 2005, Vaquero committed to undertake certain activities in connection with its pipeline operations that exceed EUB regulations and requirements. These commitments are outlined in Vaquero's April 22, 2005, letter to the Jacobses, were confirmed by Vaquero during the hearing, and are outlined below. Following Highpine's assumption of the application, Highpine confirmed that it adopts all the commitments made by Vaquero in a letter dated June 21, 2005.

It is the examiners' expectations that these commitments will be carried out to their fullest extent and carry with them the expectations of building "good faith" between Highpine and the Jacobses. If these commitments cannot be met, it is the expectation of the examiners that the Board will be advised, at which point the EUB will reassess whether the circumstances regarding the failed commitments warrant a review of the disposition. The examiners also note that the Jacobses have a right to request a review of the disposition in the event that Highpine fails to meet its commitments.

COMMITMENTS BY HIGHPINE

- Highpine will clean up and repair the surveyed right-of-way (ROW) on the Jacobs property.
- Highpine will reduce the ROW from the 15 m needed during construction to 8 m post-construction. The reclamation will be conducted with input from the Jacobses regarding the type of seed to be used.
- Highpine will sculpt the ROW to lessen the visual impression of a straight line going through the Jacobs property.
- Highpine will test the Jacobses' water wells for both quality and quantity in the event of any additional drilling by Highpine occurs near the Jacobses' land.
- Highpine will, upon request, plant a row of approximately 1.8 m high coniferous (Spruce) trees on the 3-34 well site south of the Jacobs property.
- Highpine will plant a row of approximately 1.8 m high coniferous (Spruce) trees at each end of the ROW on the Jacobs land.
- Highpine will repair any fence damaged by construction and ensure that unwanted/unauthorized access to the Jacobs property is eliminated along the ROW to the best of Highpine's ability.
- Highpine will undertake to install conduits across the ROW for the installation of utility lines to be used by the Jacobses, if a location for the conduits can be agreed upon by both parties. If a location for the conduits cannot be agreed upon, Highpine will, instead, trench in the pipeline across the Jacobs property to a minimum depth of 1.8 m.



Map of area with the Jacobses' proposed land development as insert.