

## SURFACE USE AND EASEMENT AGREEMENT

This AGREEMENT dated the 21<sup>st</sup> day of January 2014, by and between Brad E. White and Pamela K. White, whose address is 9136 Road BB, Pleasant View, CO 81331, whether one or more "Grantor"), and Kinder Morgan CO2 Company, L.P., a Texas Limited Partnership whose address is 1001 Louisiana Street, Suite 1000, Houston, TX 77002, ("Grantee").

WITNESSETH:

In consideration of the sum of Ten and More Dollars (\$10.00+), Grantor and Grantee agree as follows:

***Grantor is the record title owner of Section 1: Tract 37 (containing Lots 5, 6, 11 and 12), Township 38 North, Range 19 West, N. M. P. M., Montezuma County, CO, and uses and farms all that part of the property lying between the north line of Tract 40, as defined by that certain Dependent Survey and Subdivision of Sections survey dated August 27, 1984, (being the same and common line as the south line of Tract 37 of Section 1: Township 38 North, Range 19 West, N. M. P. M., Montezuma County, CO), and the east-west ¼ line of Section 1, Township 38 North, Range 19 West, N. M. P. M., Montezuma County which property is part of Tract 40 and owned of Record by John A. Kuenzler, Susan A. Kuenzler and James V. Kuenzler.***

Grantor agrees to, and hereby provides to Grantee the right, privilege, and easement, on, over, under and through Grantors record title property and the property by use and farming as defined next above, regardless as to what part of Grantees use and operations lie upon or cover Grantors' record title property or the property by use and farming, to construct, use, create, relocate, or modify a well pad approximately 5 acres, more or less. Together with a 60 foot wide right of way and easement, the location of which is depicted on the survey attached as Exhibit "D", hereto and made a part hereof, for pipelines, and roads which driving surface will not to exceed a width of fifteen (15) feet on each side of center, of the usual (graveled) or customary character, and includes the right, privilege, and easement to construct, operate, maintain, protect, inspect, test, repair, alter, replace, move, remove, change the size of and abandon in place a pipeline or pipelines, and flow lines, and includes the right, privilege, and easement to drill, test, complete, re-complete, rework, re-enter, pump, operate, construct, and maintain a well, associated production facilities, and pipelines, and the right, privilege, and easement to construct, operate, maintain, protect, inspect, a well pad location as shown on the well pad planview & cross sections location plat attached as Exhibit "C", hereto and made a part hereof. Grantee shall have the full and complete use of the original well pad for future operations, with the right and privilege to reduce the size of said well location during interim reclamation periods, together with the right and privilege to enlarge the size of the well location from interim reclamation size to the original limits of disturbance size of location to allow Grantee reasonable and necessary use of the surface estate "to explore for, develop, test, and produce oil and gas (the term gas as used herein shall include but not limited to Carbon Dioxide Gas "CO2")" ("subsequent operations").

1. Grantor acknowledges that the premises are to be utilized by the Grantee for the purpose of constructing a well pad and access road(s) for Grantees use related to oil and gas development thereon for the purpose of drilling and producing one (1) CO2 well from the surface location upon Grantor's record title property and the property used and farmed (the "Land") as depicted on Exhibits "A", "B", "C" and "D", attached hereto and made a part hereof, **regardless as to what part of Grantees use and operations lie upon or cover Grantors' record title property or the property by use and farming.**

2. Grantee shall have full and complete use and access to the original approximately 5 acre, more or less well pad location at all times. Grantor and Grantee further agree that the payment is for all damages to the real estate, including, but not limited to, damages to growing crops, trees, sod, damage to croplands, Conservation Reserve Program reimbursements or losses, construction of access road and preparation and use of the well location area, preparation and use of reserve pits, and construction, installation, and maintenance of production equipment and production facilities, such as pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, testing, transportation, and sale of oil, gas and other materials, and rights of ingress and egress to and from, and at all times over and along and upon the real estate for the purposes herein expressed. Notwithstanding the preceding, Grantor and Grantee further agree that the consideration for potential future damages to crops resulting from the rights and privilege of Grantee to enlarge the size of the well pad location from interim reclamation size to the original limits of disturbance size of location to allow Grantee reasonable and necessary use of the surface estate "to explore for, develop, and produce oil and gas (including but not limited to Carbon Dioxide Gas "CO2")" ("subsequent operations")" will be based on crop values per acre at such time or times.

3. This Agreement shall have a term co-extensive with the life of the well to which access is hereby authorized and so long thereafter as needed. Any abandoned well will be plugged and abandoned according to the procedures set by the Colorado Oil & Gas Commission.

4. Grantee shall maintain the road(s) in a condition comparable to other existing trails and roads, and install culverts, cattle guards, and/or gates where appropriate and mutually agreed upon; provided, however, that future changes in the use of the premises by Grantor which require the addition or modification of gates, cattle guards, culverts or similar facilities, shall be the sole responsibility of the Grantor. Grantee agrees to a yearly weed control to keep the well pad and roads clear of all types of unwanted weeds.

5. Grantee hereby indemnifies and holds Grantor harmless from and against any and all claims, damages and causes of action arising out of Grantee's operations on the Property, unless such claims, damages or causes of action result in whole or in part from Surface Owner's conduct on the Land. Grantor hereby indemnifies and holds Grantee harmless from and against any and all claims, damages and causes of action asserted against Grantee by any surface tenant or occupant of Surface Owner's Land in connection with any damage or disturbance caused by Grantee to lands or growing crops asserted by such occupant or surface tenant. Grantor may allocate the payment hereunder with any surface tenant or occupant, if applicable, as they shall mutually determine between themselves and Grantee shall have no responsibility in connection therewith. The payment and other agreements made by Grantee and contained herein constitute the full and

entire consideration to be paid by Grantee to Grantor, for all damages (except for potential future damages to crops resulting from Grantee's "subsequent operations" as specified and provided for in paragraph 2 above), to and use of the surface of the Land resulting from Grantee's reasonable oil and gas activities.

6. This agreement is subject to an unrecorded Letter Agreement of even date by and between the parties hereto relative to the above-described Land. No variations, modifications or changes shall be binding upon either party unless set forth in a document duly executed by both parties. Further, this Agreement shall not be interpreted or construed to be an adaptation of any other agreement between the parties hereto, or their predecessors, and nothing contained herein shall in any way be construed to mean the adoption, ratification or waiver of any other agreement between the parties hereto.

7. This Agreement shall be construed, interpreted and governed by the laws of the state where the Land is located. This Agreement is binding upon the heirs, successors and assigns of the parties hereto and the privilege of assigning in whole or in part is expressly allowed.

8. Grantor agrees that the Grantee shall have the right, but not the obligation, at any time to redeem for Grantors, by payment, any mortgage, taxes or other liens on the above-described real estate in the event of default of payment by the Grantor. The Grantee shall then be subrogated to the rights of the holder thereof and the Grantor agrees that any such payments made by the Grantee for the Grantor may, at Grantee's option, be deducted from any amount of money, which becomes due or payable to the Grantor pursuant to the terms of this Agreement

9. This Agreement is subject to the terms and conditions as set forth in that certain Letter Agreement of even date entered into by and between Grantor and Grantee.

10. Surface Owner agrees that the terms of this Agreement reasonably accommodate Surface Owner's use of the Land pursuant to C.R.S. § 34-60-127.

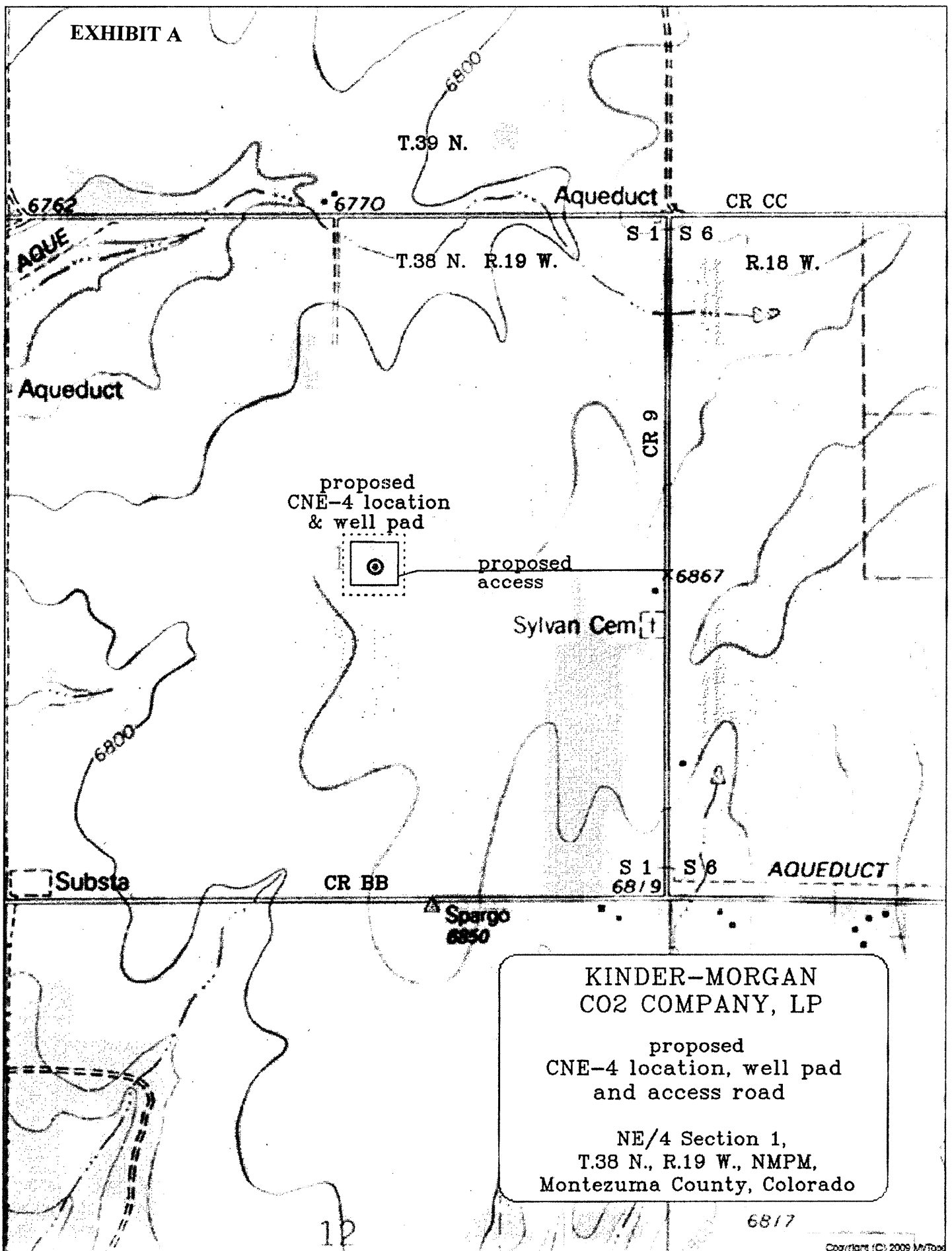
11. **No Waiver of Rights.** This Agreement or even the willingness to consider executing this Agreement will not be construed as a waiver of any rights of ingress or egress, access or other reasonable use of the surface that Kinder Morgan has under any oil and gas lease or other agreement or under any local, state or federal laws, rules or regulations, pertaining to the Land. This Agreement is intended to avoid any issue or question as to the use of the Land but is not a waiver of other contractual or legal rights in the event this Agreement is deemed unenforceable for any reason. Kinder Morgan reserves its rights under all existing leases, contracts, laws, rules and regulations regarding the ingress or egress, access and other reasonable use of the surface of the Land.

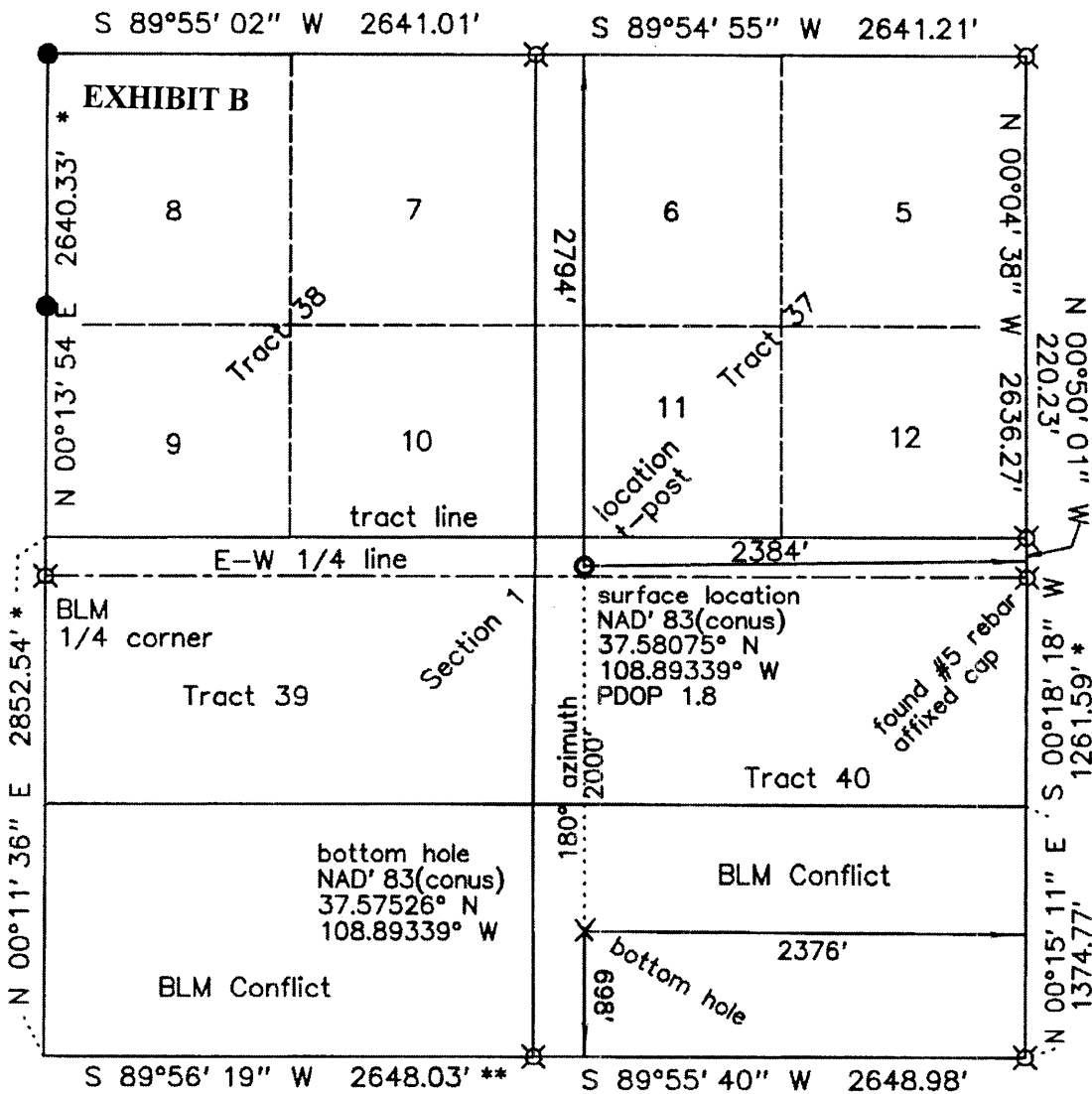
12. **Consultation and Meeting Procedures.** Grantor hereby confirms the consultation and meeting procedures requirements as required by Rule 306 of the Colorado Oil and Gas Conservation Commission ("COGCC") rules have been fulfilled by Grantee.

13. **Notices.** Grantor hereby confirms that the surface owner Notices requirements as required by Rule 305 of the COGCC have been fulfilled by Grantee and furthermore, Grantor hereby



EXHIBIT A





KINDER MORGAN CO2 COMPANY, LP

CNE-4  
 2794' FNL & 2384' FEL (surface location)  
 6845.4' grd. el. NAVD '88 (from OPUS)  
 698' FSL & 2376' FEL (bottom hole)  
 Section 1, T.38 N., R.19 W., NMPM  
 Montezuma County, CO

Notes:

- 1) Distances/dimensions are perpendicular to section/aliquot lines.
  - 2) Surface use is Fee dry land farming.
  - 3) GPS was corrected with OPUS, GPS operator was R.J. Caffey, CO LS 36562.
  - 4) There are no buildings, roads or visible utilities within 1000 feet.
- No utility spot was conducted.

date of survey : 09/26/2013  
 date of plat : 09/26/2013  
 plat revised : 11/10/2013

KNOW ALL MEN BY THESE PRESENTS that I, GERALD G. HUDDLESTON, do hereby certify that this plat was prepared from field notes of an actual survey made by me or under my supervision and that the same is true and accurate to the best of my knowledge and belief.

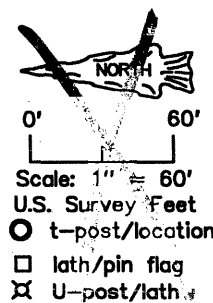
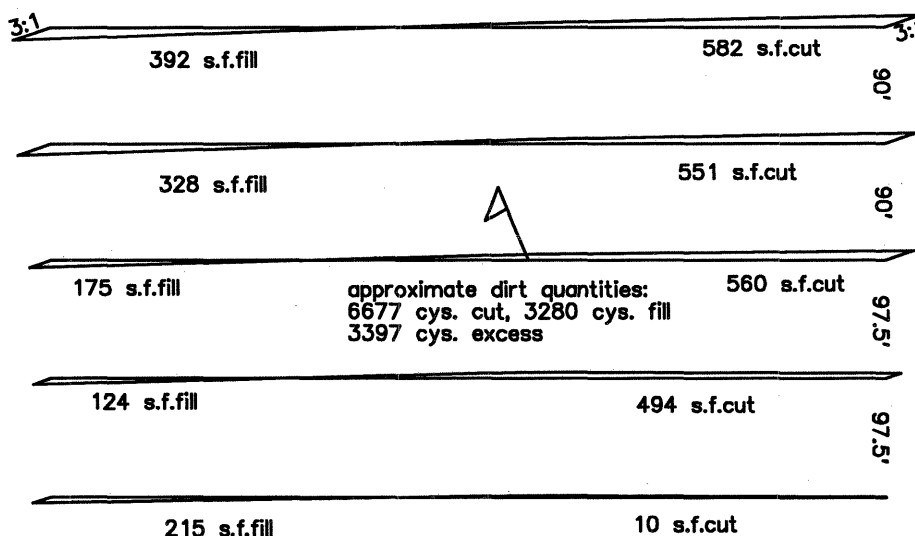
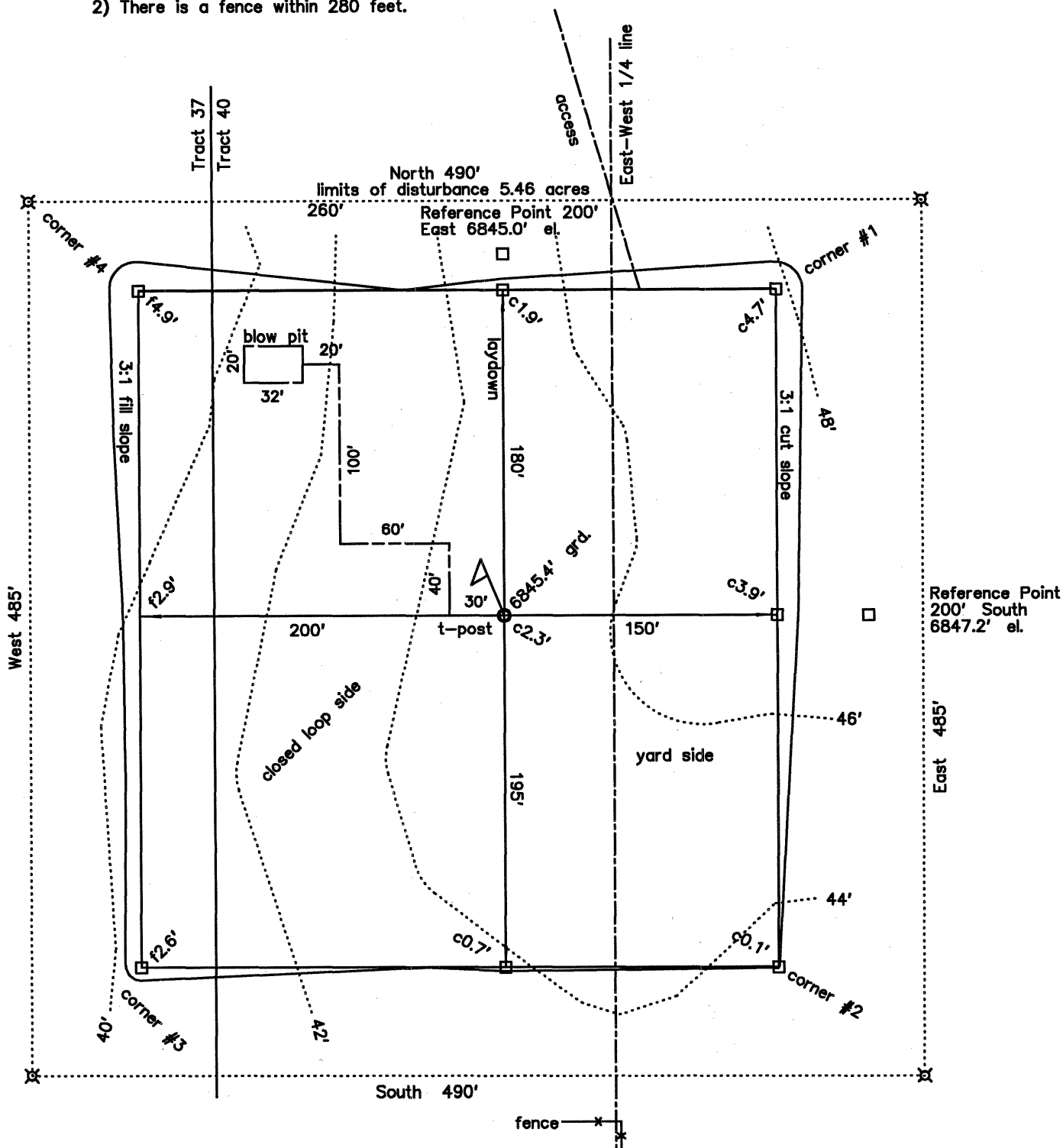


HUDDLESTON LAND SURVEYING - POD KK, CORTEZ, CO - 970 565 3330

# EXHIBIT C

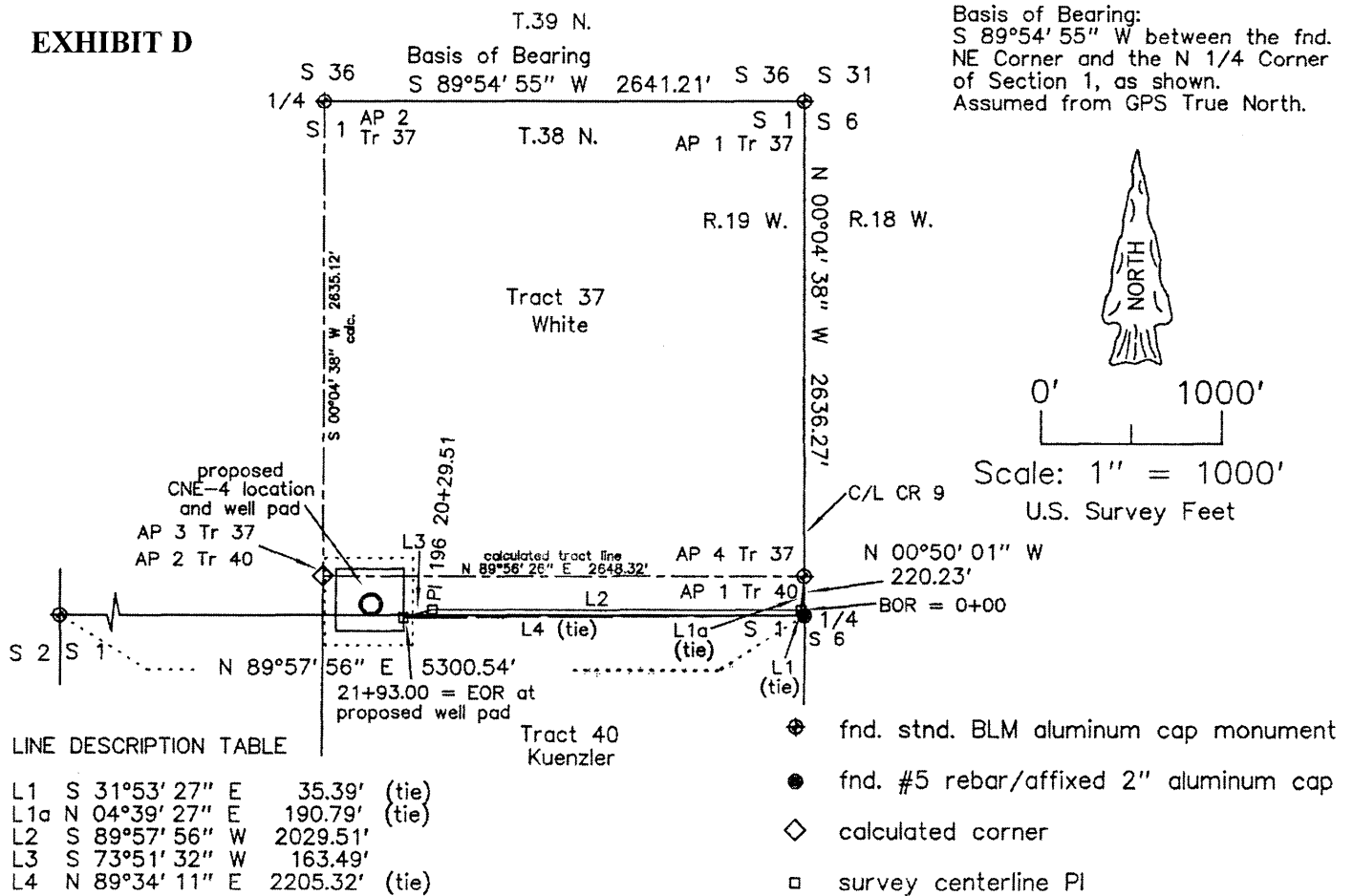
Kinder Morgan CO2 CNE-4  
Well Pad Planview  
& Cross Sections

- Notes:  
1) There are no buildings, roads or visible utilities within 1000 feet.  
2) There is a fence within 280 feet.



**COPY  
REDUCED**

EXHIBIT D



LEGAL DESCRIPTION - 60 Foot Wide Right of Way and Easement

A 60 foot wide right of way and easement lying 30 feet each side of the following centerline description contained in Tract 40 in the NE/4 of Section 1, T.38 N., R.19 W., NMPM, Montezuma County, Colorado:  
Beginning at a point on the West right-of-way line of CR 9, from which point the E 1/4 Corner of said Section 1 bears S 31°53' 27" E a distance of 35.39 feet and AP 1 of said Tract 40 bears N 04°39' 27" E a distance of 190.79 feet; thence S 89°57' 56" W a distance of 2029.51 feet; thence S 73°51' 32" W a distance of 163.49 feet to a point on a proposed well pad and the end of said right of way and easement, from which point the E 1/4 Corner of said Section 1 bears N 89°34' 11" E a distance of 2205.32 feet. SUBJECT TO all easements of record or prescriptive.



NOTICE:  
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

KINDER-MORGAN CO2 COMPANY, LP
Proposed CNE-4 right of way and easement
Kuenzler Tract 40, T.38 N., R.19 W. NMPM, Montezuma County, Colorado
6 October 2013
HUDDLESTON LAND SURVEYING P.O. DRAWER KK / CORTEZ, CO 81321 / (970) 565-3330

KNOW ALL MEN BY THESE PRESENTS that I, GERALD G. HUDDLESTON, do hereby certify that this plat was prepared from field notes of an actual survey made by me or under my supervision and that the same is true and accurate to the best of my knowledge and belief.