

Instrument # 418369 # Pages: 7  
ELMORE COUNTY, Idaho  
Dec 15, 2010 12:49:19 pm Fee: \$ 28.00  
For: LEANN SCHWEIKERT  
MARSA PLUMMER, Recorder  
DELLIS, Deputy

Recording Requested By and  
When Recorded Return to:

STATE OF IDAHO  
COUNTY OF ELMORE  
I hereby certify that this instrument is a true and correct  
copy of the original now on file or of record in this office.  
Date: 12-15-10  
MARSA PLUMMER, CLERK  
Ex-officio Auditor and Recorder  
By: [Signature] Deputy

RECEIVED

DEC 17 2010

DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
BOISE REGIONAL OFFICE

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL  
COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by William H. and Doris Leann Schweikert ("OWNER"), and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health, and the environment. William H. and Doris Leann Schweikert are a "holder" as defined in Idaho Code § 55-3002(6). OWNER, as the current property owner, grants this Environmental Covenant to all signatories to this instrument.

**Property.** This Environmental Covenant concerns real property located at 601 South 3<sup>rd</sup> West, Mountain Home, County of Elmore, State of Idaho, legally described as Will Hawley's Auto Service, Parcel A0067001001B, Legal Description Sec 36 T3S R6E Lots 1-3 W of HWY Lot 4 & N 5' Lot 5 Blk 1 (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A. [map is attached.]

**Property Ownership.** OWNER hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the property, holds fee simple title to the property, and OWNER has the power and authority to enter into this Environmental Covenant.

**Reason for Activity and Use Limitations.** The Property described above was previously used to operate as a full service gas station, known as Will Hawley's Auto Service, becoming contaminated with multiple petroleum releases. On June 23 and June 24, 2010, underground storage tanks (UST) and dispenser islands were decommissioned at the Property. This Environmental Covenant is required because residual concentrations of the petroleum constituent ethylbenzene remain in soil in the former east UST basin on the Property. The concentrations are above allowable risk-based concentration as determined by the

Department, therefore, future use of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the 2010 UST Decommissioning Data can be found at the Boise Regional DEQ Office located at 1445 North Orchard in Boise, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, OWNER, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

1. There shall be no extraction of groundwater under, the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation, or an industrial or commercial use.
2. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care, or hospital use.

OWNER, or its successors in interest, shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. The Activity and Use Limitations are imposed due to conditions resulting from former uses of the Property. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, the Owner or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or any successors in interest, and Department.

Amendment by Consent. The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. The OWNER, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

1. The Property or any subdivided portion thereof is shown in a Department-approved document not to contain contaminated soils or groundwater; or
2. Contaminated soils and groundwater are at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use

Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

**Concurrence of Subsequent Owners Presumed.** All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

**Recording/Filing of Environmental Covenant.** This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. The Environmental Covenant or any amendment or termination shall be recorded by OWNER, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, OWNER, or its successors in interest, shall provide to the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by OWNER, or by its successors in interest, to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

**Compliance Reporting.** Owner[s], or and any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

**Enforcement.** The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against OWNER or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of OWNER, or its successor in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, to require that the Owner correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, to file civil actions against the Owner as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

**Non-Waiver.** No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

**Property Access.** The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

**Notice of Conveyance of Property.** Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyor of the Property, shall provide written notice to the Department and each municipality or other local government in which the Property is located, the name and address of all the then Owners and/or Occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

**Notices.** All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as either OWNER or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

**OWNER:** William H Schweikert and Doris Leann Schweikert  
1575 Windmere Drive  
Mountain Home, ID 83647

**THE DEPARTMENT:**  
Idaho Department of Environmental Quality  
**ATTN:** State Remediation Manager  
1410 N. Hilton  
Boise, ID 83706

**Costs and Expenses.** All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

**Partial Invalidity.** If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

**Headings.** Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

**Idaho Code References.** All references to the Idaho Code sections include successor provisions.

**Reservation of Rights.** Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and OWNER or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of OWNER or any other

responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments

Accepted:

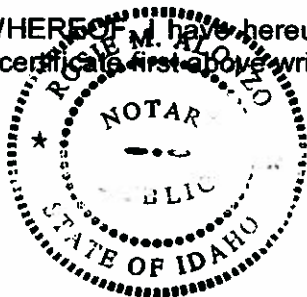
Idaho Department of Environmental Quality

Signature: [Handwritten Signature]  
Printed Name: Toni Hardesty  
Title: Director, Idaho Department of Environmental Quality  
Date: 12/8/10

State of Idaho            )  
  ) ss.  
County of Ada            )

On this 12 day of 8, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: Rosie M. Alonzo  
Residing at: Nampa, Idaho  
Commission Expires: 1/31/2015

Signature and Acknowledgments

Accepted:

Property Owners

Signature: William H. Schweikert  
 Printed Name: William H. Schweikert  
 Date: 11-15-2010

Signature: Doris Leann Schweikert  
 Printed Name: Doris Leann Schweikert  
 Date: 11/15/2010

State of Idaho )  
 ) ss.  
 County of Elmore )

On this 13<sup>th</sup> day of Nov, in the year of 2010, before the undersigned Notary Public, personally appeared, William H. Schweikert and Doris Leann Schweikert known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho:  
 Residing at: 1111 Stone  
 Commission Expires: 11/15/2012

Illustration From: Brown and Caldwell (1999)

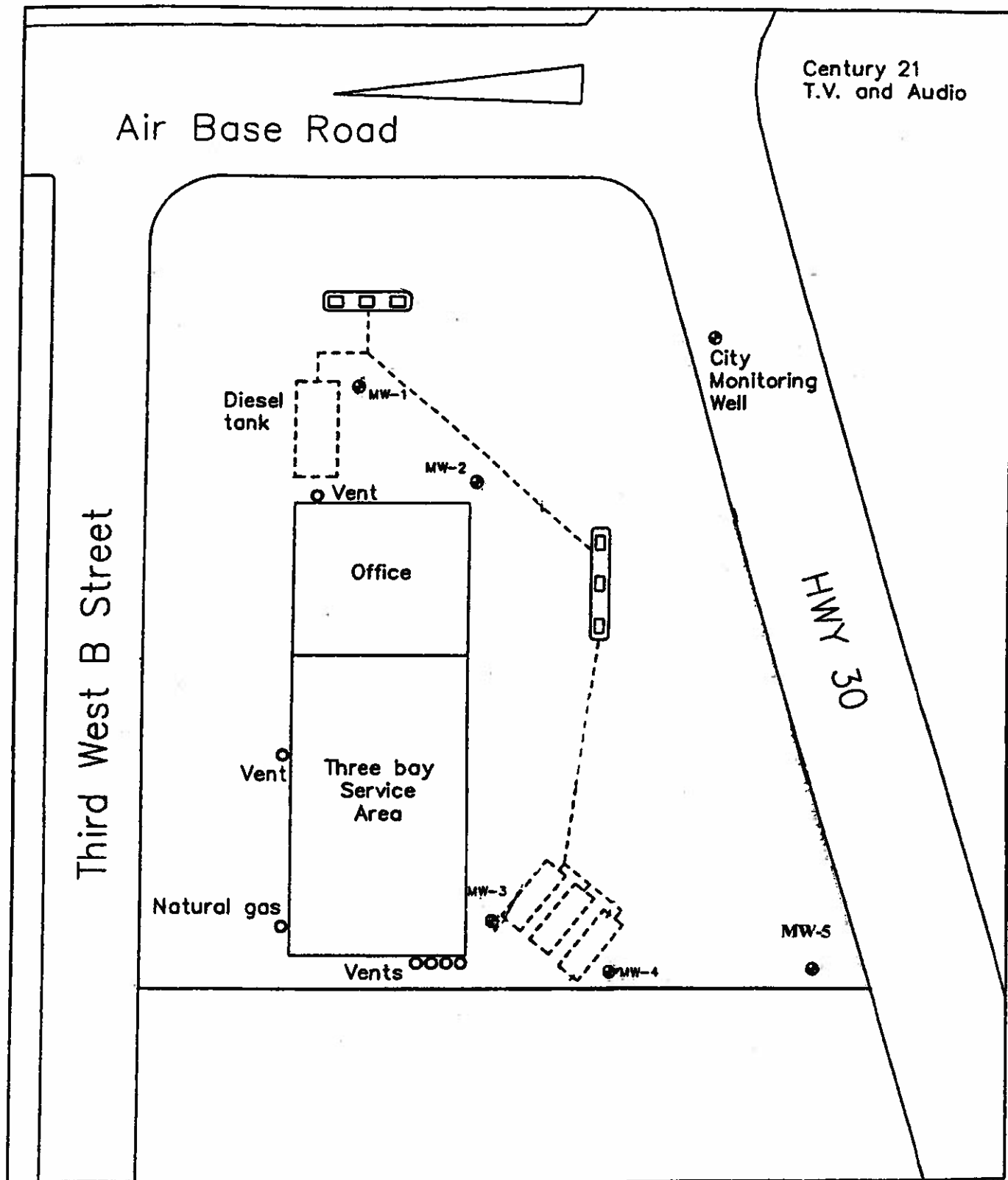


FIGURE 1

SITE LOCATION MAP

BILL'S SINCLAIR  
MOUNTAIN HOME, IDAHO

NO SCALE

LEGEND

● MW-4 CW MONITORING WELL

CAS AND ASSOCIATES  
FEBRUARY 2000