

ORIGINAL

Recording Requested By and  
When Recorded Return to:

FILED BY  
*Scott D. Reed*  
2000 APR -3 P 3:06  
24<sup>00</sup>  
MARIE SCOTT  
BONNER COUNTY RECORDER  
*MS* DEPUTY

748947

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**DECLARATION OF ENVIRONMENTAL COVENANT**

This Declaration of Environmental Covenant (Declaration) made by Phyllis Thurlow, an unmarried woman, ("Thurlow") her successors and assigns, the Idaho Department of Environmental Quality ("Department"), its successors and assigns, and L.D. McFarland Company, Limited ("LDM"), its successors and assigns, sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions") upon and subject to which the Property (as identified below) and every portion thereof shall be owned, improved, used, occupied, leased, encumbered and/or conveyed. The Restrictions are designed to protect natural resources, human health and the environment, and to promote the economically productive use of land.

Each and all of the Restrictions are imposed pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015, and the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130. For purposes of this Declaration, the Department and LDM shall each be a "holder" as defined in Idaho Code § 55-3002(6). Thurlow and the Department agree that each and all of the Restrictions on Use (defined below) are enforceable by the Department, against Thurlow or her successors-in-interest including subsequent owners of the Property. Thurlow and LDM agree that each and all of Restrictions on Claims (defined below) are enforceable by LDM, its successors and assigns against Thurlow or her successors-in-interest including subsequent owners of the Property.

Ownership. Thurlow represents and warrants that she owns the entire fee simple interest in that certain real property in the City of Sandpoint, County of Bonner, State of Idaho, legally described as:

Tax No. 2 in Section 15, Township 57 North, Range 2 West of the Boise Meridian, described as follows:  
Beginning 25 feet West and 575.228 feet South of the center of Section 15; thence West 586.7 feet; thence South 140.772 feet; thence Southeasterly 30' from and parallel with the center of the Great Northern spur 598.78 feet; thence North 260.772 feet to the place of beginning; less Tax No. 29 in Section 15, Township 57 North Range 2 West Boise Meridian, described as follows: Beginning at a point on the North line of the Great Northern railroad spur right of way, which point is 25 feet west of the center line running North and South through Section 15 Township 57 North Range 2 West Boise Meridian; thence North 100 feet; thence West 150 feet; thence South to the Northerly line of said spur right of way; thence Southeasterly to the place of beginning.

(hereafter referred to as "the Property"), which is subject to this Declaration. Thurlow warrants and represents that no other person besides Thurlow has an interest in the Property, as owner, mortgagee, tenant, or otherwise, which interest would be prior to the Restrictions.

Provisions to Run With the Land. Each and all of the Restrictions 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 Restrictions 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 agree for and among themselves, and their successors, that the Restrictions as herein established must be adhered to and that their interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration and any amendment or termination of the Declaration shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Declaration is located. The Declaration shall be recorded by Thurlow within five (5) days of receipt of this Declaration signed by the Department and LDM. Within five (5) days of the recording of this Declaration Thurlow, shall provide to the Department and LDM a copy of this recorded Declaration evidencing compliance with this provision. In addition, a copy of the recorded Declaration shall be provided by Thurlow to the following persons: (a) each person that signed the Declaration; (b) each person holding a recorded interest in the Property subject to the Declaration; (c) each person in possession of the Property subject to the Declaration; (d) each municipality or other local government in which the Property subject to the Declaration is located; and (e) any other person the Department requires. The validity of the Declaration is not affected by failure to provide a copy of the Declaration as required under this section. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Reason for Restrictions. The Property has been subject to residual contamination of chlorinated phenolics and petroleum hydrocarbons (including PCP and PAHs) attributable to historical practices in a nearby real property which operated as a pole yard facility. LDM owned one of the adjacent pole yard facilities and has been remediating that facility under a Voluntary Consent Agreement with the Department. The neighboring pole yard facilities are no longer treating wood products. This Declaration is required because residual concentrations of chlorinated phenolics and petroleum hydrocarbons exceed the remediation standard for groundwater underlying the Property. Future use of groundwater for human consumption at the Property shall be limited to protect human health and the environment. A copy of the Analytical results for the October and December 2003 Groundwater Samples for the Thurlow Property, Sandpoint, dated March 16, 2004 may be found at the Idaho Department of Environmental Quality, Coeur d'Alene Regional Office in Coeur d'Alene, Idaho. Also, LDM and Thurlow have resolved all claims arising from said residual contamination and these Restrictions are necessary obligations on the Property to resolve those claims.

Restrictions on Use. By acceptance and recordation of this Declaration, Thurlow, and any successors-in-interest, are hereby restricted from using the groundwater at the Property, now or at any time in the future, as set forth below. Thurlow and respective successors-in-interest shall be solely responsible for demonstrating that use in the Property is in conformity with the following (the "Restrictions on Use"):

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.

The Restrictions on Use are imposed due to conditions resulting from former uses of nearby Property which contaminated this subject property, specifically the presence of chlorinated phenolics and petroleum hydrocarbons in groundwater which may present a risk to natural resources, human health and the environment at the Property.

Restrictions on Claims. By acceptance and recordation of this Declaration, Thurlow, and any successors-in-interest, are hereby restricted now and at any time in the future, as set forth below (the "Restrictions on Claims"):

1. Thurlow and her successors-in-interest, including any and all purchasers, lessees and possessors of the Property, waive and forever discharge any and all claims whether now known or unknown, suspected or unsuspected, actual or contingent, that could be made under local, state or federal law against LDM, its successors and assigns, relating to residual contamination on the Property.

Amendment by Consent: Assignment. The Declaration may be amended by consent pursuant to Idaho Code § 55-3010. To the fullest extent permitted by law, LDM and its successors and assigns, may assign, in whole or in part, the benefits of the Restrictions on Claims, to any third person or persons, without the need for any further consents from any other party hereto, including, without limitation, the Department, Thurlow, the successors-in-interest of either of them, or any person who may acquire an interest in the Property, so long as any such assignment is in writing and recorded in the official real property records of the county in which the Property is located. Written notice of any assignment by LDM and its successors and assigns shall be provided to the Department, Thurlow, the successors-in-interest of either of them, or any person who may acquire an interest in the Property. All such assignees shall be deemed to be additional holders as defined in Idaho Code § 55-3002(6). No amendment or termination of the Restrictions on Claims may be accomplished without the consent of LDM and all such assignees. LDM, its successors and assigns, may not be removed and replaced as holders pursuant to Idaho Code § 55-3010(4)(b) without their written consent.

Termination by Consent. The Restrictions on Use shall apply to the Property, or any subdivided portion thereof, unless Thurlow, or its successors-in-interest, applies to the Department to have this Declaration terminated with respect to all or part of the Property and:

1. the Property or any subdivided portion thereof is shown in a Department-approved document not to contain contaminated groundwater which exceeds the then current remediation standard; or
2. the contaminated groundwater is remediated to levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Thereafter, the Restrictions on Use shall then be terminated pursuant to Idaho Code § 55-3010(1) as to such portion or part of the Property. The Declaration may also be terminated as provided in Idaho Code § 55-3009.

Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the conveyer of the Property, shall provide written notice to the Department, LDM, its assignees of record, 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 or LDM shall not, by reason of this Declaration, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Enforcement by the Department. Failure of Thurlow, or its successor in interest, to comply with the Restrictions on Use set forth herein shall be grounds for the Department, or its successor, to require that the owner modify or remove any groundwater wells constructed in violation of this Declaration. Violation of this Declaration 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.

Property Access. The Department shall have a right of access to the Property for the purposes of ensuring compliance with the Declaration and the Restrictions on Use.

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 Thurlow 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.

Phyllis Thurlow  
P.O. Box 123  
Sandpoint, ID 83864

THE DEPARTMENT: Idaho Department of Environmental Quality  
**ATTN:** Joe Nagel  
1410 N. Hilton  
Boise, ID 83706

LDM: L.D. McFarland, Limited  
ATTN: Greg McFarland  
1640 East Marc  
Tacoma, WA 98421-2939

Costs and Expenses. All costs of terminating this Declaration, including the cost of any remediation or abatement of any environmental condition related to restrictive uses of or pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Declaration 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 Declaration are solely for the convenience of the parties and are not a part of the Declaration.

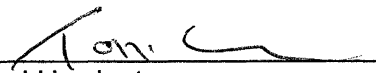
Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Declaration, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Declaration 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 Thurlow or any other responsible party. Nothing in this Declaration shall affect the obligations of Thurlow 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 Declaration shall be the date of signature by the Department.

Accepted:

Idaho Department of Environmental Quality - Holder

Signature:   
 Printed Name: Toni Hardesty  
 Title: Director, Idaho Department of Environmental Quality  
 Date: \_\_\_\_\_

State of Idaho            )  
                                   ) ss.  
 County of Ada            )

On this 17 day of March, in the year 2008, 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 Declaration of 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: 1/30/09

Accepted:

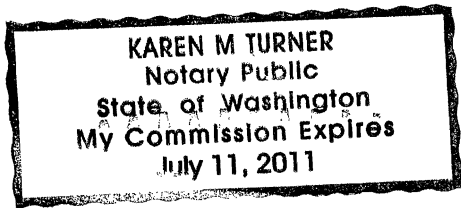
L.D. MCFARLAND COMPANY, LIMITED - Holder

By: [Signature]  
Its: Executive Vice President  
Date: 3/7/08

State of Washington )  
County of Pierce ) ss.

On this 7<sup>th</sup> day of March, in the year 2008, before me, a Notary Public in and for said County and State, personally appeared Greg McFarland, known or identified to me to be the Executive Vice President of L.D. MCFARLAND COMPANY, LIMITED, the corporation that executed this Declaration of Environmental Covenant, and acknowledged to me that the corporation 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: [Signature]  
Residing at: WA  
Commission Expires: 7/11/11

Property Owner

*Phyllis Thurlow*

Phyllis Thurlow

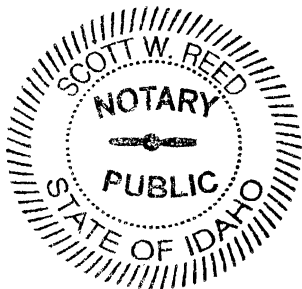
Date: 2/27/08

STATE OF IDAHO )  
 )ss.  
COUNTY OF BONNER )

On Feb 27, 2008, before me, the undersigned Notary Public, personally appeared Phyllis Thurlow, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

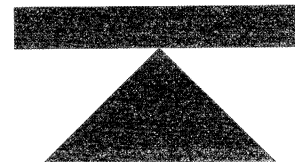
*Scott W. Reed*

Notary Public for Idaho  
Printed Name: Scott W Reed  
Commission Expires: 2/26/09





SCOTT W. REED, Attorney at Law / P.O. Box A / Coeur d'Alene, Idaho 83816 / (208) 664-2161  
FAX (208) 765-5117 / E-mail: scottwreed@imbris.com



April 9, 2008

Joe Nagel  
Department of Environmental Quality  
1410 North Hilton  
Boise, Idaho 83706

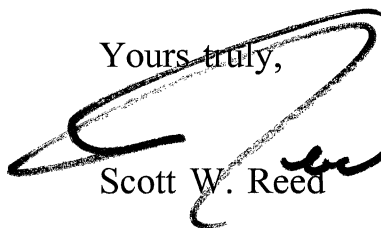
RECEIVED  
APR 11 2008  
DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

Re: L.D. McFarland/Thurlow Declaration of  
Environmental Covenant

Dear Joe:

Enclosed is a copy from Environmental Covenant filed April 3rd with the Bonner County Recorder as number 748947. Copies of the declaration as filed is sent with a copy of this letter to Kevin J. Beaton and to Phyllis Thurlow.

Yours truly,



Scott W. Reed

SWR:kgb

Enclosure

cc: Kevin J. Beaton  
Phyllis Thurlow