



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WARDEN

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JUN 03 2005  
DEQ-Coeur d'Alene  
Regional Office

May 31, 2005

Kristi Lowder  
DEQ State Office

Dear Kristi:

Enclosed please find the recorded Declaration of Restrictions regarding Bonner County's former maintenance shop at 1750 Baldy Mountain Road, Sandpoint, Idaho.

Sincerely,

Beth A. Kittelmann  
Legal Assistant

/bak  
Enclosure

cc: Rick Jarvis, DEQ State Office  
Kreg Beck, DEQ Cd'A Regional Office \*

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**DECLARATION OF RESTRICTIONS**

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Regional Office

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Regional Office

Declaration of Restrictions to Run with the Land (Declaration) made by Bonner County (BC), its successors and assigns, and the State of Idaho Department of Environmental Quality (Department), its successors and assigns, sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as 'Restrictions') designed to protect natural resources and maintain air and water quality, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed.

Each and all of the Restrictions are imposed pursuant to the Idaho Uniform Conservation Easement Act, Idaho Code 55-2101 through 2109, and the Idaho Environmental Protection and Health Act, Idaho Code 39-101 through 39-130, and Idaho Code 39-7202(1)(Supp. 1996). For purposes of this Declaration, the Department shall be a 'holder' as defined in Idaho Code 55-2101(2). BC and the Department agree that each and all of the Restrictions are enforceable by the Department against BC.

Ownership. BC is the fee owner of certain real property (Property) in the City of Sandpoint, County of Bonner, State of Idaho, which is subject to this Declaration. The Property is commonly described as 1750 Baldy Mountain Road. The Property is legally described as follows:

A portion of Lot 1 of West Sandpoint Subdivision as recorded in Block 1, Page 152 of Plats, within the records of the Bonner County Recorder, located in Section 16, Township 57 North, Range 2 West of the Boise Meridian, Bonner County, Idaho; more particularly described as follows:

Commencing at the intersection of Third Avenue and Third Street of said West Sandpoint Subdivision; thence along the centerline of Third Avenue North 89°42'18" West a distance of 760.13 feet to the intersection point of said centerline and the East Right of Way line of Great Northern Road; Thence along said East Right of Way line South 16°24'45" West a distance of 181.03 feet and the TRUE POINT OF BEGINNING of this description; Thence continuing along said East Right of Way line South 16°24'45" West a distance of 318.88 feet; Thence leaving said East Right of Way line South 89°42'18" East a distance of 279.69 feet, Thence South 21°30'02" East a distance of 208.52 feet to the North Right of Way line of Baldy Road; Thence along said North Right of Way line South 89°42'18" East a distance of 282.12 feet; Thence leaving said North Right of Way line North 00°17'42" East a distance of 151.69 feet; Thence North 89°42'18" West a distance of 115.32 feet; Thence North 00°17'42" East a distance of 439.53 feet; Thence North 89°42'18" West a distance of

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164.00 feet; Thence South 16°24'45" West a distance of 95.00 feet; Thence North 89°42'18" West a distance of 245.00 feet to the TRUE POINT OF BEGINNING.

A map of the Property is attached hereto as Exhibit A.

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 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, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration shall be recorded in the county recorder's office in the county where the Property is located within five (5) days of the effective date of this Declaration. BC shall provide to the Department a copy of this Declaration evidencing its recording in compliance with this provision within ten (10) days of the effective date of this Declaration. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

The Property. The Property was previously used to operate a maintenance shop and house storage tanks of petroleum products, becoming contaminated with hazardous or deleterious materials, including, without limitation, petroleum hydrocarbon (Contaminants). On August 15, 1995, BC entered into a Consent Order with the Department to remediate the Property. BC implemented a corrective action plan (CAP) for the Property. This Declaration is required because the CAP resulted in residual concentrations of Contaminants in soil and groundwater underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Property shall be limited to protect human health and the environment.

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

1. There shall be no extraction of ground water under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation, or an industrial or commercial use.

2. Subsurface excavation of soil and any activity on the Property that may result in the release or exposure to the environment of a petroleum constituent that remains on the Property is prohibited without prior written approval from the Department.

The foregoing restrictions on use are herein referred to as the 'Restricted Uses.'

The Restricted Uses are imposed out of an abundance of caution due to the former use of the Property and because certain environmental risk evaluations of the Property indicate the presence of Contaminants at various locations in the soils which may present a risk to public health and the air and water quality at the Property. Further the Restrictions are imposed in furtherance of the public policy as stated in Idaho Code 39-7202(1)(Supp. 1996). BC intends further that the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from releases or threatened release of the Contaminants.

Variance and Termination. The Restricted Uses set forth above shall apply to the Property, or any subdivided portion thereof, unless:

A. The Property or subdivided portion thereof is shown in a Department approved risk assessment not to contain petroleum hydrocarbons in the soils or groundwater;

B. Contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Property to be developed for any of the Restricted Uses; or

C. BC, or its successor in interest, applies to the Department to have this Declaration removed with respect to all or part of the Property pursuant to laws, rules and regulations then in effect, and a formal determination is made by the Department in writing to remove the land-use restrictions.

Conveyance of Property. Within thirty (30) days of the closing of any sale, lease, or other conveyance of all or any portion of the Property, the former Owner (in the case of a sale) or Occupant (in the case of a lease) and the then current Owner or Occupant of the Property, or part thereof, conveyed shall provide written notice to the Department of 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 Declaration, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, or by administrative order.

**Enforcement.** Failure of BC, or its successor in interest, to comply with any of the Restrictions set forth herein shall be grounds for the Department, or its successor, to require that the Owner modify or remove any improvements that occur without Department approval, including without limitation, buildings, regradings and subsurface structures or 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 Conservation Easement Act, Idaho Code 55-2101, *et. seq.*

**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 BC, 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.

BONNER COUNTY: Marsha Phillips  
Bonner County Commissioners Office  
215 S. 1<sup>st</sup> Avenue  
Sandpoint, ID 83864

THE DEPARTMENT: Gwen Fransen  
Regional Administrator  
Idaho Department of Environmental Quality  
2110 Ironwood Parkway  
Coeur d'Alene, ID 83814

**Costs and Expenses.** All costs of removing this Declaration, including the cost of any remediation or abatement of any environmental condition of or pertaining to the Property, regardless of mechanism used and the frequency thereof, shall be borne by the party seeking such removal. This Declaration shall run with the land and be binding on BC and its successors and assigns.

**Partial Invalidity.** If any portion of the Restrictions 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.

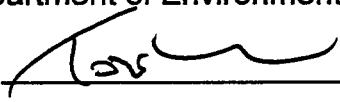
**Idaho Code References.** All references to the Idaho Code sections include successor provisions.

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 BC or any other responsible party. Nothing in this Declaration shall affect the obligations of BC 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.

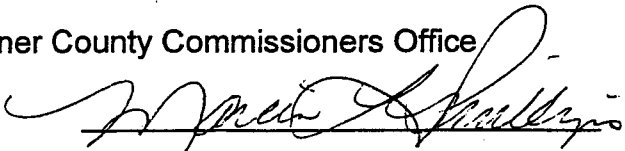
Accepted:

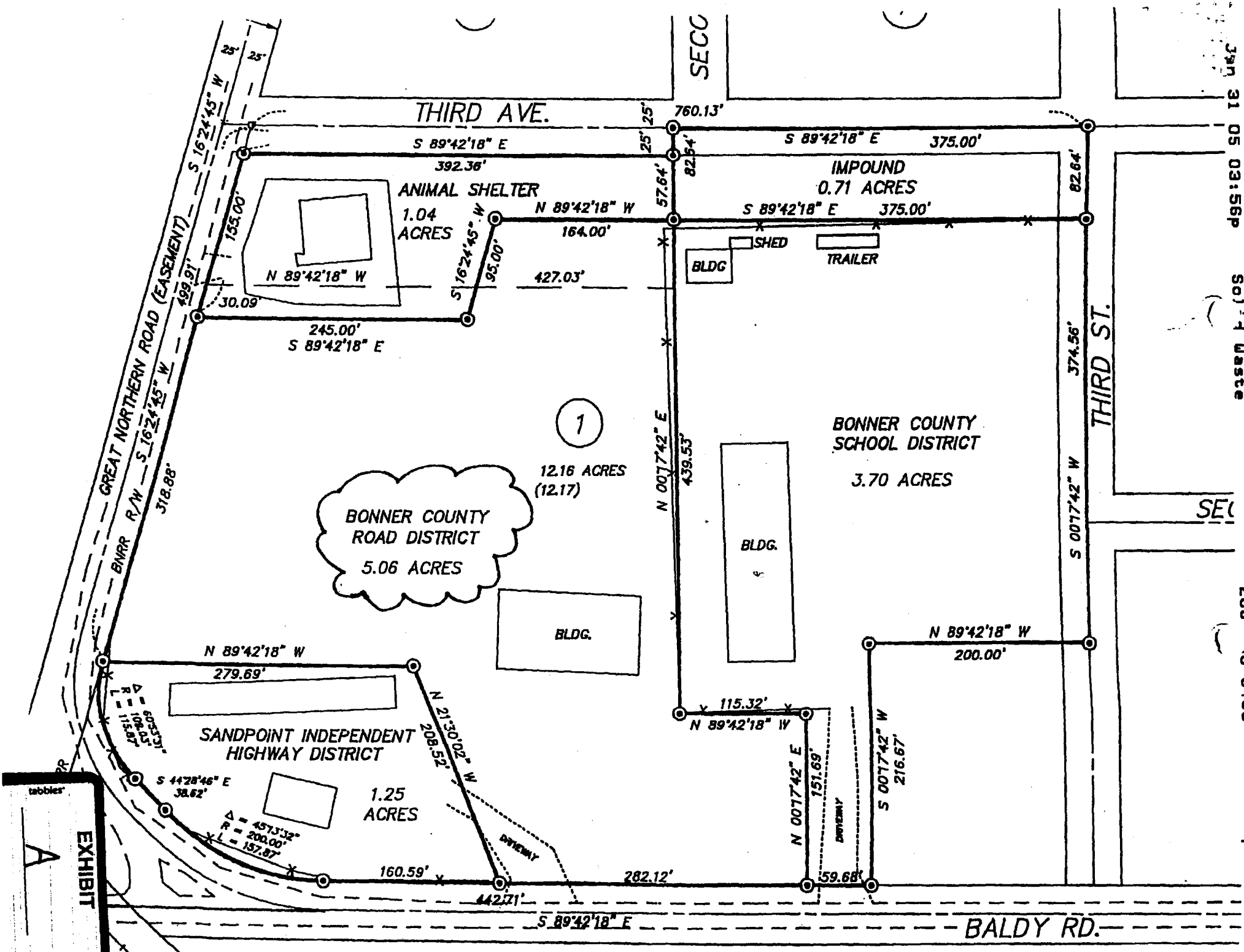
Idaho Department of Environmental Quality - Holder

By:   
Printed: Toni Hardesty  
Title: Director  
Date: 5/17/05

FILED BY  
Bonnie Gault  
2005 MAY 19 10:47 AM  
MARIE SCOTT  
BONNER COUNTY RECORDER  
DEPUTY  
*Bonner County Commissioners*

Bonner County Commissioners Office

By:   
Printed: MARCIA C. PHILLIPS  
Title: COMMISSION CHAIR  
Date: 5/13/05



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EXHIBIT  
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