

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions to Run with the Land (Declaration) made by HIGHWAY AND LAKE PETROLEUM, INC, an Idaho Corporation, ("HALP") its successors and assigns, and the State of Idaho, Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions, 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). HALP and the Department agree that each and all of the Restrictions are enforceable by the Department, against HALP.

Ownership. HALP is the fee owner of certain real property in the City of Sandpoint, County of Bonner, State of Idaho, described as Lots 4,5,6,7, and 8 in Block F of Laws Third Addition to Sandpoint, Idaho, and is subject to this Declaration ("Property"). The Property is legally described as follows:

Lots 4,5,6,7, and 8 in Block "F" of Law's Third Addition to Sandpoint, Idaho, according to the plat thereof, recorded in Book 1 of Plats, Page 42 records of Bonner County, Idaho: EXCEPTING any portion thereof included in the State Highway and the right of way owned by the Spokane International Railway Company, ALSO EXCEPTING that parcel conveyed to the City of Sandpoint, Idaho by deed recorded in Book 44 of Deeds, Page 557, records of Bonner County, Idaho.

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. HALP 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.

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

1. The property 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.
2. 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 as part of the Corrective Action Plan of the Consent Order, is prohibited without prior written approval from the Department.
3. 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.

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 petroleum hydrocarbons at various locations in the soils which may present a risk to public health and the air and water quality at the Property. In addition, the Restrictions are imposed in furtherance of the public policy as stated in Idaho Code 39-7202(1)(Supp. 1996). HALP also intends 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 hazardous substances or petroleum hydrocarbons.

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. HALP, 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 current 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 HALP, 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, including without limitation, all buildings, regradings and subsurface structures or wells, constructed in violation of this Agreement. 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 HALP, 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.

HALP:

Marilyn Dalby
Highway and Lake Petroleum, Inc
400 Highway 200 East
Sandpoint, ID 83864

THE DEPARTMENT:

Susan P. Hansen 6/7/01
Idaho Department of Environmental Quality
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814-2648

Costs and Expenses. All costs of removing the foregoing deed restrictions, 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. The foregoing deed restriction shall run with the land and be binding on HALP 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/Servitude are solely for the convenience of the parties and are not a part of the Conservation Easement.

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 on 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 HALP or any other responsible party. Nothing in this Declaration shall affect the obligations of HALP 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 Restriction shall be the date of signature by the Department.

Accepted:

Idaho Department of Environmental Quality- Holder

By: Gwen P. Fransen
 Printed: GWEN P. FRANSEN
 Its: Department of Environmental Quality
 Date: 6/7/01

Property Owner

By: Marilyn Dalby
 Printed: MARILYN DALBY
 Its: Highway & Lake Retirement, Inc.
 Date: 6-6-01

FILED BY
 M. Dalby
 2001 JUN 12 PM 4:37
 JANE SCOTT
 SONNER COUNTY RECORDER
 gmb
 DEPUTY

DECLARATION OF RESTRICTIONS- 4

Ret:
 400 Hwy 200E
 SDPT