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After recording, return certified copies to:

Vol M04 Page 73097

**Grantor**

Pinecone, LLC  
PO Box 257  
Klamath Falls, OR 97601  
Att: Robert J. Shaw

State of Oregon, County of Klamath

Recorded 10/26/04 12:27 p m

Vol M04 Pg 73097-3102

Linda Smith, County Clerk

Fee \$ 46.00 # of Pgs 6

**Grantee**

Oregon DEQ  
2146 NE 4<sup>th</sup> St  
Bend, OR 97701  
Att: Toby Scott

'04 OCT 26 PM 12:27

**EASEMENT AND EQUITABLE SERVITUDE**

This Easement and Equitable Servitude is made OCT. 12, 2004 between Pinecone, LLC (Grantor) and the Oregon Department of Environmental Quality (DEQ or Grantee).

**RECITALS**

A. Grantor is the owner of certain real property located in Klamath Falls, Oregon, Klamath County on Tax Map 380932DA, Tax Lot 800, Block 111 of the Klamath Addition (Property), the location of which is shown on Attachment A to this Easement and Equitable Servitude, and referenced under the name Former Modoc Lumber ECSI #2307 in the files of DEQ's Environmental Cleanup Program Eastern Region, Bend office. Please contact this office to review a detailed description of the residual risks present at the Property and found in the DEQ Staff Report for the Former Modoc Lumber site (ECSI # 2307, August 2004).

B. On August 30, 2004, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property, Staff Report for the Selected Remedial Action for the Former Modoc Lumber, Klamath Falls, OR. The remedial action selected requires, among other things: restrict future land use to industrial/commercial uses, a DEQ-approved soil management plan, an approved final cap to prevent direct contact to site soils.

C. On April 1, 2000, Grantor entered into a Voluntary Cleanup Agreement (Agreement) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. The provisions of this easement and Equitable Servitude are intended to protect human health and the environment.

Easement and Equitable Servitude  
Pinecone, LLC

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## 1. GENERAL DECLARATION

Grantor declares that all real property located in Klamath County, State of Oregon, and described in the legal description, Attachments A to this Easement and Equitable Servitude, is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the equitable servitude granted in paragraph 3 and easement granted in paragraph 4 below, shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitude.

## 2. DEFINITIONS

2.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

2.2 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

## 3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 **Soil Management Restriction:** Owner shall use a DEQ-approved soil management plan in the event the soils on the Property need to be disturbed, including without limitation any excavation, drilling, scraping, or erosion.

3.2 **Maintenance of Final Cap:** Owner shall maintain the final surface cover in accordance with a monitoring and maintenance plan to verify cap integrity, document any repair activities, and provide current land use.

3.3 **Land Use Restrictions:** The following operations and uses are prohibited on the Property:

3.3.a Residential use of any type; and

3.3.b Agricultural [food-crop] use of any type.

#### **4. EASEMENT (RIGHT OF ENTRY)**

During reasonable hours and subject to reasonable security requirements, DEQ as Grantee shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with. Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to DEQ the right, privilege, and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

#### **5. GENERAL PROVISIONS**

5.1 Within 15 days of the execution, Grantor shall record this Easement and Equitable Servitude in the records of deeds of real property in the county where the Property is located, such recordation being expressly authorized by statute including, without limitation, ORS 93.710. Grantor shall provide DEQ with a file stamped copy of the Easement and Equitable Servitude within five (5) days of recordation.

5.2 All conditions and restrictions contained in this Easement and Equitable Servitude shall run with the land until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.3 Owner, as defined in Paragraph 2.2 above, is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.4 Any Owner of the Property shall not occupy or allow other parties to occupy the Property unless the controls listed above are maintained to protect public health and the environment.

5.5 Any Owner shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the Owner's interest in or occupancy of the Property, or the start of development activities or change in use of the Property that might expose human or environmental receptors to contaminants at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in Paragraph 3 above


without prior written approval from DEQ as provided in Paragraph 3.1 and 3.2 or removal of the condition or restriction as provided in Paragraph 5.2 above.

5.6 Any Owner shall notify DEQ no less than thirty (30) days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Klamath County zoning code or any successor code. As of the date of this Easement and Equitable Servitude, the base zone of the Property is Mixed Use.

5.7 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in Paragraph 4 above, may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

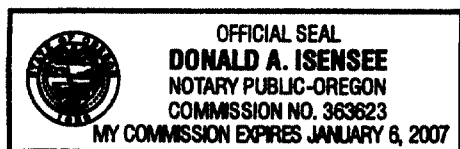
GRANTOR: Pinecone, LLC

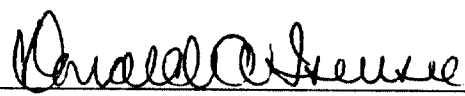
By:   
Robert J. Shaw

Date: 10/12/04

STATE OF OREGON                    )  
  ) ss.  
County of KLAMATH            )

The foregoing instrument is acknowledged before me this 12<sup>th</sup> day of October, 2004, by Robert J. Shaw of Pinecone, LLC, on its behalf.



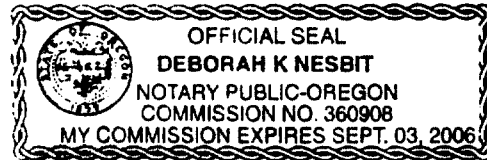
  
NOTARY PUBLIC FOR OREGON  
My commission expires: 1-6-07

GRANTEE: State of Oregon, Department of Environmental Quality

By: Joni Hammond  
Joni Hammond, Administrator, Eastern Region

Date: 10-18-04

STATE OF OREGON )  
County of Multnomah ) ss.



The foregoing instrument is acknowledged before me this 18<sup>th</sup> day of October, 2004, by Joni Hammond of the Oregon Department of Environmental Quality, on its behalf.

Deborah K Nesbit  
NOTARY PUBLIC FOR OREGON  
My commission expires: September 03, 2006

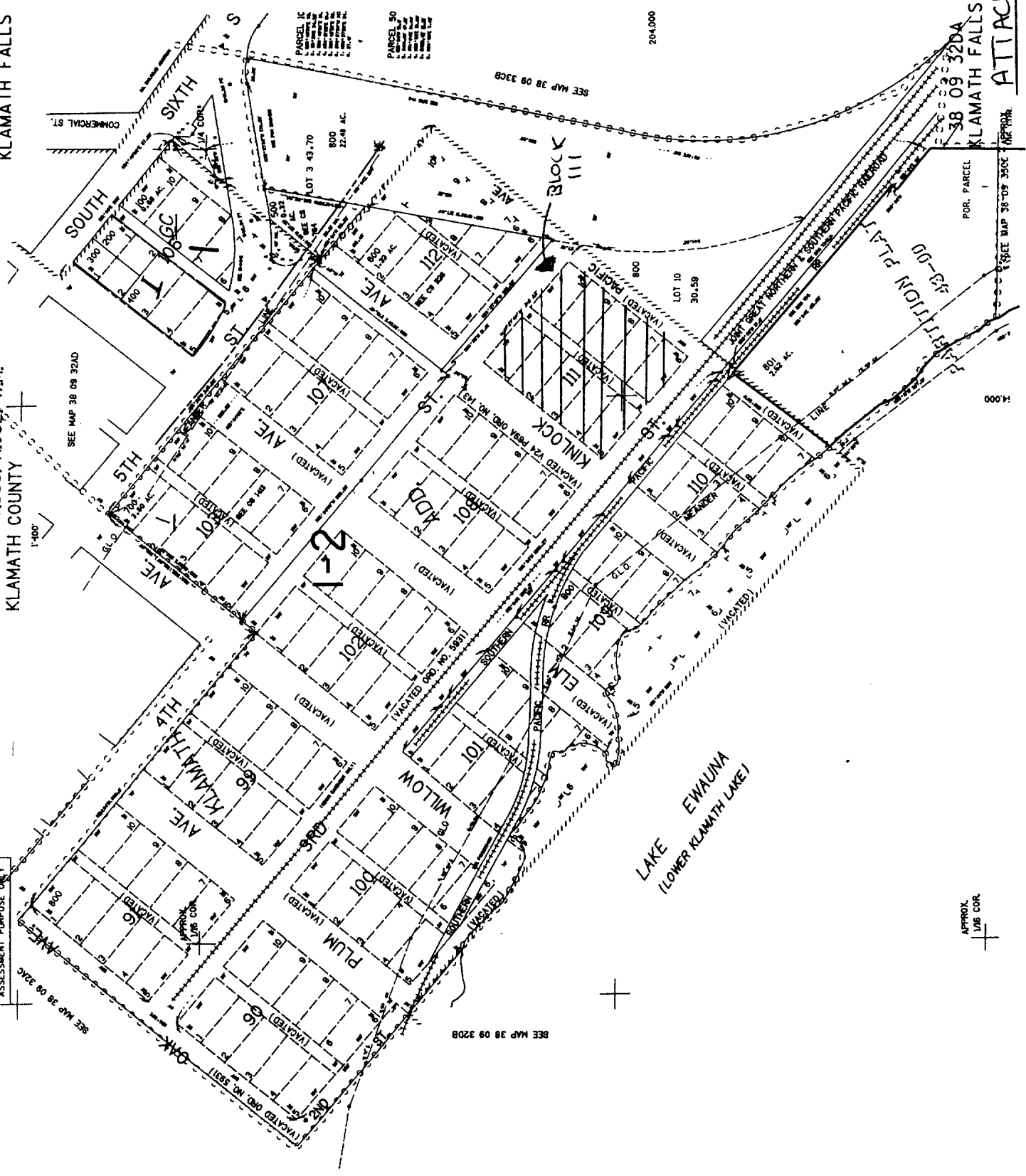
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ATTACHMENT A

38 09 32DA  
KLAMATH FALLS

NE 1/4 SEC. 32 T.38S. R.09E. WM.  
KLAMATH COUNTY

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY



APPROX  
1/8" COR.