

State of Oregon, County of Klamath  
Recorded 06/13/05 11:27a m  
Vol M05 Pg 43909-20  
Linda Smith, County Clerk  
Fee \$ 76.00 # of Pgs 12

05 JUN 13 AM 11:27

Space above this line for Recorder's use.

**After recording, return to:**

Oregon DEQ  
2146 NE 4<sup>th</sup> Street  
Bend, OR 97701  
Att: Joe Klemz

### EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made June 6, 2005 between Klamath Investments, Inc. ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("**DEQ**" or "**Grantee**").

### RECITALS

A. Grantor is the owner of certain real property located at 3734 Washburn Way, Klamath Falls, in Klamath County, Oregon, Klamath County Assessors' Map 39 9 10 BC, Tax Lot #2700 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Klamath Moving & Storage, LUST #18-94-0017 in the files of DEQ's Underground Storage Tank Cleanup Program in the Eastern Region, Bend office, 2146 NE 4<sup>th</sup> Street. Interested parties may contact the Bend office to review a detailed description of the residual risks present at the Property and described in "Corrective Action Plan For Klamath Moving & Storage, January 29, 2004."

B. On June 6, 2005, the Director of the Oregon Department of Environmental Quality or delegate, selected the remedial action for the Property set forth in the Corrective Action Plan (CAP) entitled "Corrective Action Plan For Klamath Moving & Storage, January 29, 2004." The remedial action requires, among other things, institutional controls such as: prohibition on residential use of certain areas of the Property; prohibition on the use of shallow ground water; prohibition of excavation to shallow groundwater within a 100 foot radius of the locations as defined in the CAP as HA-5, BH-5 and PW-01 (Attachment C); prohibition of any residential use within a 50-foot radius of locations BH-5 and Soil-1 (Attachment D).

Easement and Equitable Servitudes  
Klamath Investments, Inc.

7600 Keith C Welch Sr

C. On June 6, 2005, Grantor entered into an Easement and Equitable Servitudes (Agreement) with DEQ, under which Grantor agreed to implement the selected remedial action (CAP), including the required institutional controls.

D. The provisions of this Easement and Equitable Servitudes are intended to protect human health and the environment. DEQ's issuance of a "Conditional No Further Action" letter is dependent upon the recording of this easement with Klamath County, and the full compliance by the current and future Owners with all institutional controls set forth in Section 3 of this Easement. Failure to comply with any or all institutional controls may result in the revocation of the Conditional No Further Action.

## 1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "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.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "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.
- 1.8 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

## 2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a Conditional No Further Action letter (CNFA), grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, 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 Servitudes.

## 3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

**3.1 Groundwater Use:** Owner shall not extract through wells or by other means, the groundwater at the Property for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk levels for such use. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

**3.2 Soil Excavation:** In the event that subsurface excavation activities are necessary on the Property, any contaminated soil excavated must be managed in accordance with DEQ Cleanup Rules (OAR 340-122). Requirements include notification of DEQ, proper oversight to protect workers from unacceptable exposure, and proper handling, characterization, and disposal of any contaminated soil generated during excavation activities.

**3.3 Development Restrictions:** Except upon prior written approval from DEQ, Owner shall not conduct operations on the Property or use the Property in any way that will or likely will penetrate the soil cap to a depth exceeding 3 feet below ground surface or that would jeopardize the soil cap's protective functioning as a basic control which prevents exposure to contaminated soil, including (except as noted) any excavation, drilling, or erosion.

**3.4 Re-Development Restrictions:** Prior to any additional development or re-development of the Property, Owner must submit a copy of professionally prepared plans for the proposed development to DEQ (UST Program or its successor) for review. Prior to submittal to DEQ, all such plans must be approved (stamped) by a professional environmental engineer licensed in the State of Oregon. Plans must include provisions for dealing appropriately with any contamination on the Property affected by the development activities, consistent with Recitals B and C of this Easement.

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

- a. Residential use as described in Paragraph 3.6; and
- b. Agricultural [food-crop] use.

**3.6 Residential Use Restrictions:** The Property is currently zoned Heavy Industrial (IH); this zoning code allows "Worker Residential" use as a Conditional Use (Article 53.4). This E&ES prohibits any residential use of the Property within a 50 foot radius of locations BH-5 and Soil-1. A sub-surface investigation must be completed prior to consideration of residential uses for any other location(s) on the Property.

**3.7 Notice of Transfer:** 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 Owner's interest in the Property, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Section 3 without prior written approval from DEQ as provided in Paragraph 3.3 or removal of the condition or restriction as provided in Paragraph 5.1 below.

**3.8 Zoning Changes:** 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 Servitudes, the base zone of the Property is Heavy Industrial (IH).

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

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner, the violation of any condition or restriction contained in this Easement and Equitable Servitudes,

provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and 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 Owner for such entry and any action taken to abate, mitigate, or cure a violation.

## 5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the Deed Records of Klamath County, certifying that the condition no longer exists or that the restriction is no longer required in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 1.7 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

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

## 6. Removal of Restrictions – Vacation and Release

6.1 Owner may petition DEQ for removal of any or all of the conditions or restrictions contained herein by submitting such petition, in writing, to DEQ. Petition must include evidence satisfactory to DEQ in its reasonable discretion, that the circumstances on the Property intended to be addressed by such condition or restriction, no longer exist or have been remediated to a state which is no longer subject to DEQ's regulations or jurisdiction or that no hazard to human health continues to exist on the Property.

6.2 This Easement and Equitable Servitudes shall be vacated and released, in its entirety, upon submittal to and concurrence by DEQ of evidence, which demonstrates that for a period of twelve (12) consecutive months, the contamination levels in the soil and groundwater, are within the "risk-based standards" then in effect for similar properties.



43914

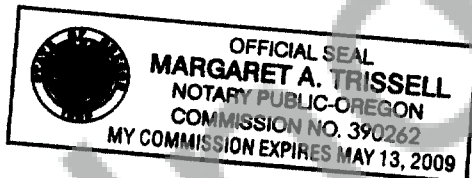
IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and  
Equitable Servitudes as of the date and year first set forth above.

GRANTOR: Tom Tufford

By: [Signature] Date: 6/10/05

STATE OF OREGON                    )  
  ) ss.  
County of MULTNOMAH            )

The foregoing instrument is acknowledged before me this 10 day  
of JUNE, 2005, by THOMAS L. TUFFORD of KLAMATH INVESTMENTS, INC  
on its behalf.



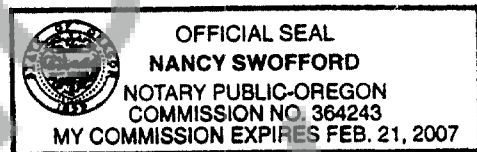
Margaret A. Trissell  
NOTARY PUBLIC FOR OREGON  
My commission expires: 5/13/09

**GRANTEE:** State of Oregon, Department of Environmental Quality

By: Sheila A Monroe Date: June 6, 2005  
 Sheila A. Monroe, Cleanup Manager, Eastern Region

STATE OF OREGON           )  
   ) ss.  
 County of Deschutes )

The foregoing instrument is acknowledged before me this 6<sup>th</sup> day of June, 2005,  
 by Sheila A. Monroe of the Oregon Department of Environmental Quality, on its  
 behalf.



Nancy Swofford  
 NOTARY PUBLIC FOR OREGON  
 My commission expires: 2-21-07

**ATTACHMENT A**

**Legal Description of the Property**

SW corner of the SW quarter of the NW quarter of  
Section 10 T39S, R9E W.M.  
Tax Lot 2700 Klamath County Assessors' Map 39 09 10BC  
**Affected Area Description**

**ATTACHMENT B**

**Map of Property**

**ATTACHMENT C**

Map w/locations HA-5, BH-5, PW-01

**ATTACHMENT D**

Map w/locations BH-5, Soil-1



**ATTACHMENT A****Legal Description of the Property**

SW corner of the SW quarter of the NW quarter of  
Section 10 T39S, R9E W.M.  
Tax Lot 2700 Klamath County Assessors' Map 39 09 10BC

**Affected Area Description**

**Address:** 3747 Washburn Way, Klamath Falls, OR

**Parcel Number:** Tax Lot Number 2700 on Klamath County Assessors' Map 39 9 10 BC

The affected areas of the Property are located:

1. within a 50-foot radius of soil boring location "Soil-1" identified on Attachment C; and
2. within a 100-foot radius of the locations identified as BH-5, HA-5 and PW-01.

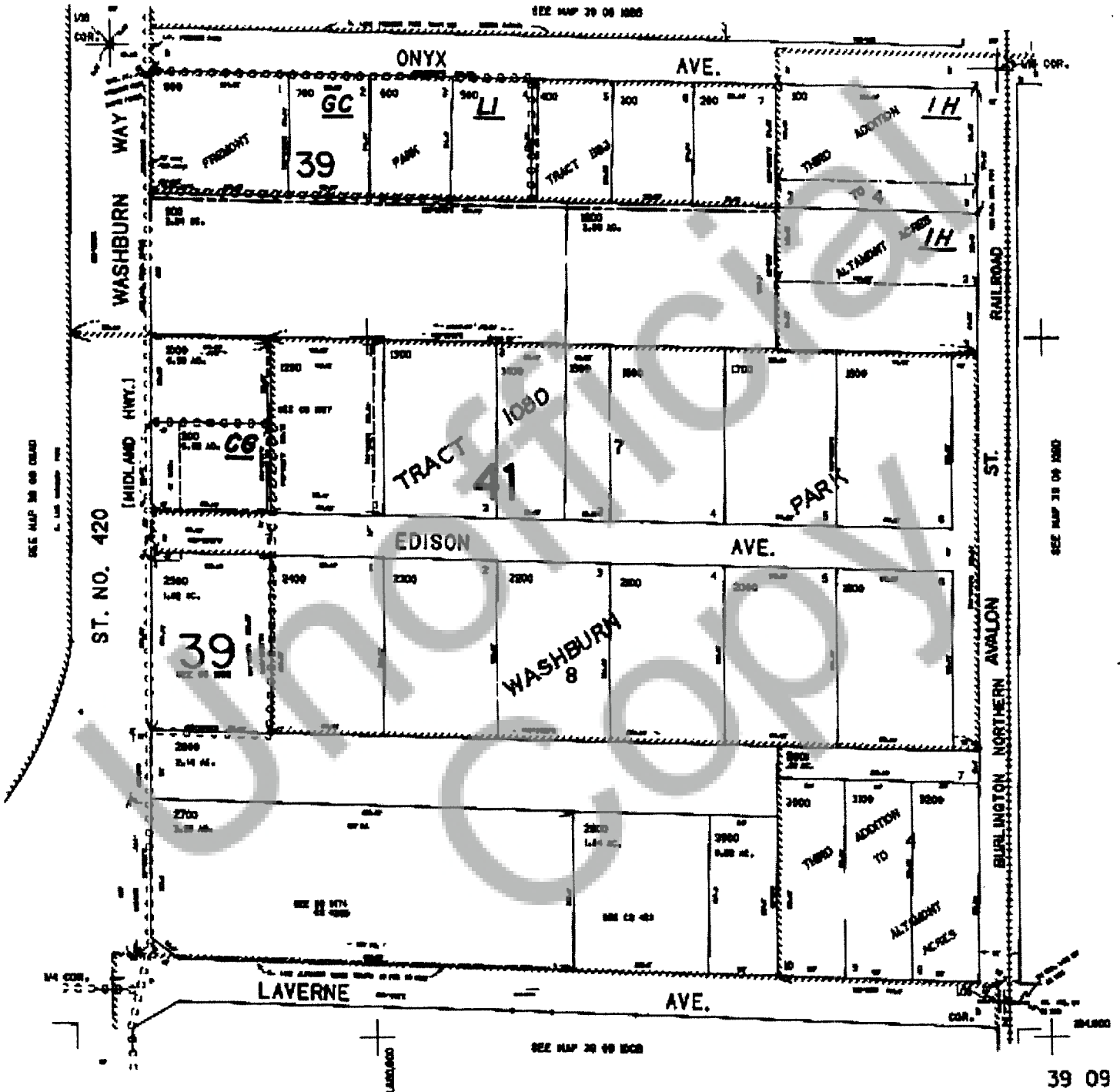
43918

SW1/4 NW1/4 SEC. 10 T.39S. R.09E. W.M.  
KLAMATH COUNTY

39 09 10BC

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

T.400



Easement and Equitable Servitudes  
Klamath Investments, Inc.

## Attachment C

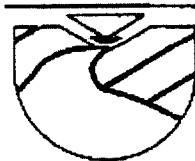
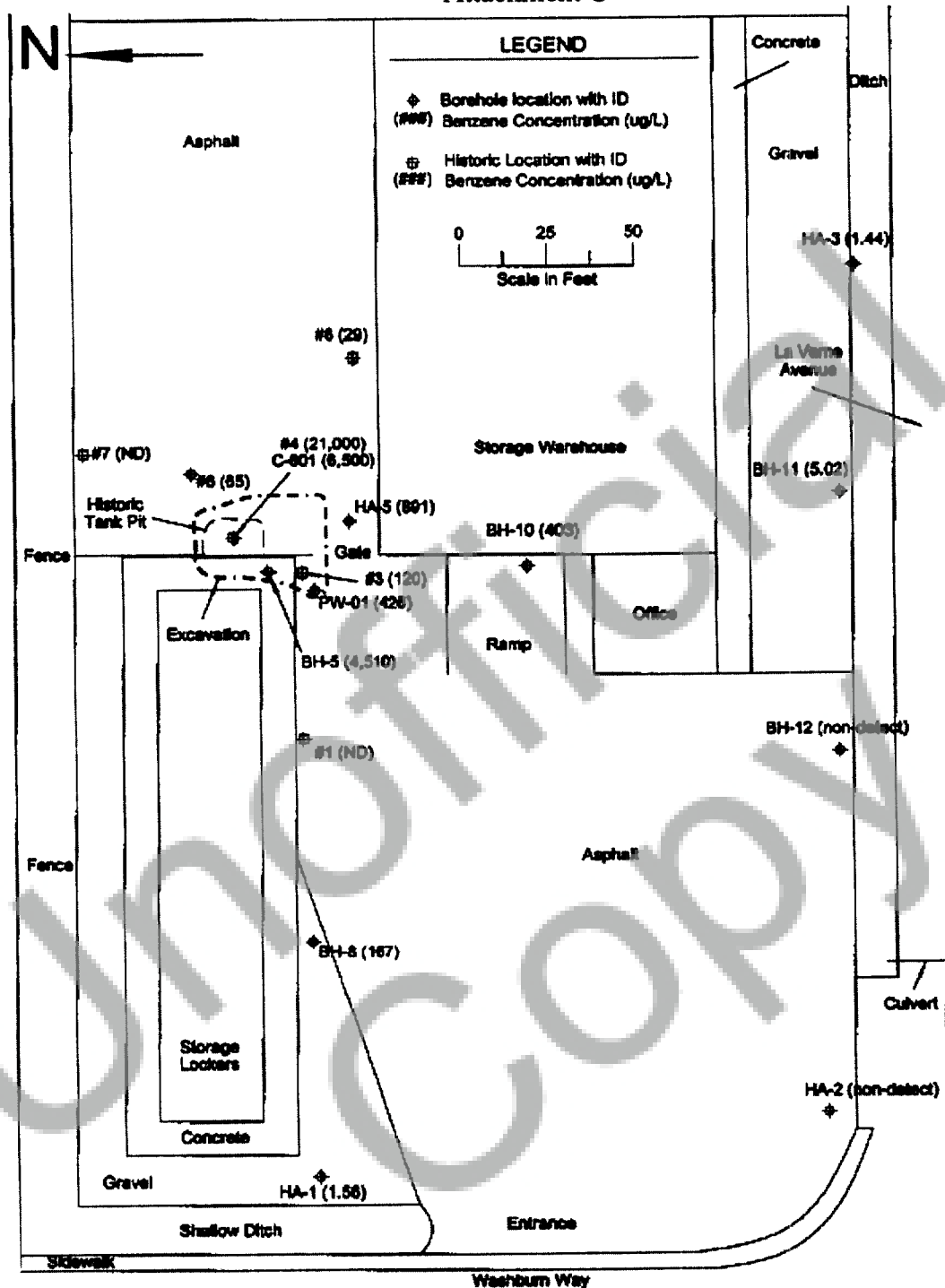
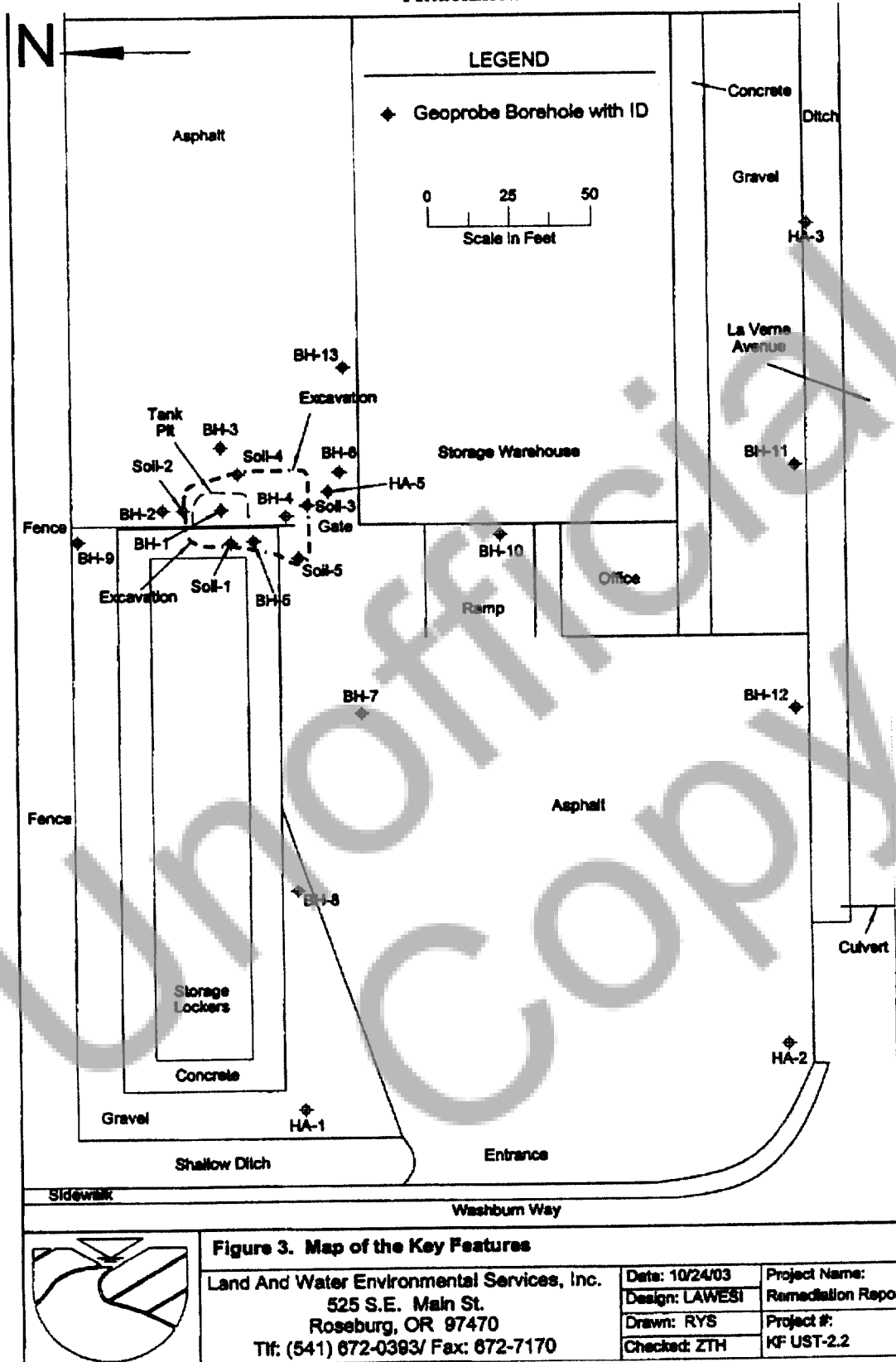


Figure 5. Groundwater Sampling Locations with Benzene Concentration

Land And Water Environmental Services, Inc.  
 525 S.E. Main St.  
 Roseburg, OR 97470  
 Tel: (541) 672-0393/ Fax: 872-7170

Date: 10/24/03	Project Name:
Design: LAWESI	Remediation Report
Drawn: RYS	Project #:
Checked: ZTH	KF UST-2.2

## Attachment D



Easement and Equitable Servitudes  
 Klamath Investments, Inc.