

Recording Requested By and  
When Recorded Return to:

U.S. Environmental Protection Agency  
Attn: Regional Counsel  
1200 Sixth Avenue, Suite 155  
M/S ORC-113  
Seattle, WA 98101

---

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL  
COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by the First Baptist Church of Orofino, Idaho, Inc., also called First Baptist Church ("Owner") and the United States Environmental Protection Agency ("EPA"), pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. The Owner is a "holder" as defined in Idaho Code § 55-3002(6). First Baptist Church, as the current property owner, grants this Environmental Covenant to all signatories to this instrument.

**Property.** This Environmental Covenant concerns real property located at 291 118<sup>th</sup> Street, Orofino, Clearwater County, State of Idaho; also known as Lot 9, Orofino West Riverside Tracts, according to the recorded plat thereof, situated in Clearwater County, Idaho (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A and Figure 1, and the Restricted Area is depicted in Figure 2 in Schedule B.

**Property Ownership.** Owner hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the property, holds fee simple title to the property and has the power and authority to enter into this Environmental Covenant.

**Reason for Activity and Use Limitations.** The Property described above became contaminated with asbestos cement pipe fragments mixed with soil during a waterline improvement project conducted in Orofino, Idaho between 2009 and 2010. A removal action was taken by EPA Region 10 at the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* The Property is part of a larger site known as the Orofino Asbestos Site and has CERCLIS ID number IDN001002885.

This Environmental Covenant is required because the removal action resulted in asbestos remaining in place at the Property in the First Baptist Church Asbestos Soils Repository ("Repository"). There is not a known safe level or period of asbestos exposure; therefore, future use of the Property shall be limited to protect human health and the environment.

**Name and Location of Administrative Record.** A copy of the administrative record and site file for environmental response actions taken at the Repository and Orofino Asbestos Site can be found at the Superfund Records Center of the EPA Region 10 or its successor agency (EPA Records Center). The current regional office is located at 1200 Sixth Avenue, Seattle, WA 98101.

**Activity and Use Limitations.** By acceptance and recordation of this Environmental Covenant, Owners, and any successors in interest, are hereby restricted from using the Property in a manner that would disturb the integrity of the Repository. The following activity and use limitations are in place:

- A. The Restricted Area of the Property (i.e., the Repository, which includes the area below the asphalt and soil cap and behind the retaining wall), and any portion thereof, may be used for commercial and industrial uses only. The Restricted Area of the property shall not be used for residential purposes.
- B. Unless prior written approval is obtained from the EPA, any activity that damages or disturbs the integrity of the protective barrier or otherwise results in the release or exposure to the environment of any hazardous substances beneath the protective barrier is hereby prohibited. Some examples of activities that are prohibited in the protective barrier areas include, but are not limited to, the following: drilling, digging, excavating, placement of any objects or use of any equipment which could deform or stress the surface beyond its load bearing capacity, piercing the surface with a rod, spike or similar item, bulldozing, or earthwork.
- C. Any activity on the Property that may interfere with the integrity or operation or maintenance of the protective barrier, or the erosion and drainage controls, or any other component of the environmental response project, or the continued protection of human health and the environment, is prohibited without prior written approval from the EPA.
- D. **Parking** – Vehicle parking should be limited to vehicles with rubber tires. Hard tire vehicles (such as fork lifts) should not be allowed and vehicles using snow chains should only be allowed if snow or ice is present. Note that the use of snow chains on the asphalt parking area may cause damage to the asphalt which may require more frequent maintenance and repair. Parking should be short-term only (i.e., limited to one week) to prevent

permanent deformation of the asphalt surface. Pavement striping is allowable. No vehicular traffic is allowed on the soil cap (dry retention basin).

- E. Placement of Permanent or Temporary Structures – No permanent or temporary structures shall be placed on either the asphalt cap or the soil cap without certification by a professional engineer registered in the State of Idaho and approval of EPA.
- F. Snow Clearing – Care should be taken when clearing snow to ensure that no gouging of the surface occurs with the plow blade. The edge of the asphalt, such as where the gravel driveway and asphalt meet, or the drain rock apron between the asphalt and soil cap, can be susceptible to accidental uplift from the blade; caution should be taken in these transitional areas. Snow should not be pushed against the fence. Additionally, excess snow from snow plowing or clearing activities should not be piled on the soil cap area.
- G. Recreation – When recreational activities are being performed on the capped area, attempts to preserve the cover shall be taken. No disturbance (digging or excavation) of the cover is allowed, so permanent placement of equipment on the cap is not allowed. Portable basketball hoops, soccer nets, etc. can be used if weighted down using sandbags or other non-intrusive means as recommended by their manufacturer. The use of stakes is not permitted on the soil cap. The integrity of the PVC liner must be maintained.
- H. Soil Cap Maintenance – The soil cap is comprised of approximately 12 to 15 inches of vegetated soil on top of the PVC liner. No trees, shrubs, or other deep rooting vegetation are allowed on the cap. Woody vegetation must be prevented from becoming established on the cap. Remove any burrowing animals and repair damage caused by them immediately upon detection. Maintain vegetation at 6 inches in height or less.
- I. Owners, and their successors in interest, shall further comply with all of the requirements of the Monitoring and Maintenance Plan (“M&M Plan”) for the Repository. The M&M Plan is located at the EPA Records Center in Seattle.
- J. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by Owners, or their successors in interest, without adequate and complete provision for continued compliance with the M&M Plan for the Repository.
- K. Leases must be restricted to uses and activities consistent with this Environmental Covenant and all lessees must be notified of the restrictions on the use of the Property.

Breach and Cure of Activity and Use Limitations. Owner, or its successors in interest, shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. The Activity and Use Limitations are imposed due to conditions resulting

from asbestos contamination of the Property. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, Owner or any successors in interest, shall notify the EPA's project manager (project manager will be assigned in a letter sent by U.S. Environmental Protection Agency | Region 10 Office of Environmental Cleanup – Emergency Management Program Spill Prevention and Removal Unit) within thirty (30) calendar days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) calendar days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or any successors in interest and the EPA's program manager.

**Amendment by Consent.** The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

**Duration and Termination.** The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. Owner or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the EPA: 1) the Property or any subdivided portion thereof is shown in an EPA approved document not to contain asbestos contaminated soils; or 2) asbestos contaminated soils are at levels the EPA deems, in writing, to be adequate for the Property to be developed for unrestricted use.

**Provisions to Run With the Land.** Each and all of the Activity and Use Limitations 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 Activity and Use Limitations 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 be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

**Recording/Filing of Environmental Covenant.** This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. The Environmental Covenant or any amendment or termination shall be recorded by Owner, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the EPA. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, Owners, or their successors in interest, shall provide to the Idaho Department of Environmental Quality (Department) a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall

post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by Owners, or by their successors in interest, to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; (e) the U.S. Environmental Protection Agency, ATTN: Regional Counsel, ORC Region 10, Suite 155, M/S ORC-113, 1200 Sixth Ave, Seattle, WA 98101; and (f) any other person the Department requires. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

**Compliance Reporting.** Owner and/or any successors in interest shall submit to the EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

**Enforcement.** The EPA and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Owner or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Owner, or successors in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, and/or any party to this Environmental Covenant, to require that the Owners correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011, to file civil actions against the Owner or its successors-in-interest, as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

**Non-Waiver.** No failure on the part of the EPA or the Department, or any holder at any time, to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the EPA's or the Department's or any holder's rights to enforce such term.

**Property Access.** Owner, and its successors in interest, shall allow authorized representatives of EPA the right to enter the Property at reasonable times for the purpose of conducting any activity related to the CERCLA environmental response action(s) including, but not limited to, the following activities:

- A. Evaluating the CERCLA environmental response project and the repository and protective barrier;
- B. Taking samples;
- C. Inspecting any other removal actions conducted at the Property;
- D. Inspecting records that are related to the CERCLA action(s); and
- E. Evaluating and monitoring compliance with this Environmental Covenant.

**Notice of Conveyance of Property.** Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyor of the Property, shall provide written notice to the EPA, Department, 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 EPA and the Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any

conveyance of the Property except as otherwise provided by law.

**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 Owner or its successors, EPA 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:

**OWNERS:** First Baptist Church.  
P.O. Box 1070  
291 118<sup>th</sup> Street  
Orofino, Idaho 83544  
(OR use successors-in-interest's mailing address)

**EPA:** Director  
Office of Environmental Cleanup  
Emergency Management Program  
U.S. Environmental Protection Agency, Region 10,  
Suite 155, M/S ECL-122,  
1200 6<sup>th</sup> Avenue  
Seattle, Washington 98101

**THE DEPARTMENT:** Idaho Department of Environmental Quality  
ATTN: State Response Program Manager  
1410 N. Hilton  
Boise, ID 83706

**Costs and Expenses.** All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

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

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

**Reservation of Rights.** Notwithstanding any provision of this Environmental Covenant, the EPA and the Department retain all of their access and enforcement authorities under any applicable

statute or rule. Nothing in this Environmental Covenant shall affect the EPA's or 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 EPA and Owner or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Owner or any other responsible party under such voluntary consent order or other agreement. The EPA's acceptance hereunder is based upon the information presently known or available to the EPA with respect to the environmental condition of the Property, and the EPA reserves the right to take appropriate action under applicable authorities in the event the EPA determines new information warrants such action.

Compliance with Other Applicable Laws and Regulations. All other applicable laws or regulations, including but not limited to the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 C.F.R. Part 61, Subpart M, shall be complied with as they pertain to the Property or any activities thereon.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.





**SIGN  
HERE**



Signature and Acknowledgments  
Accepted:

Chairman of the Trustees  
First Baptist Church of Orofino, Idaho, Inc.

Signature: \_\_\_\_\_  
Printed Name: William Kessel  
Title: Chairman of the Trustees of the First Baptist Church at Orofino, Idaho Inc.  
Date: \_\_\_\_\_

State of Idaho     )  
                                  ) ss.  
Clearwater County)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared William Kessel, known or identified to me to be Chairman of the Trustees of the First Baptist Church at Orofino, Idaho Inc. which executed this Environmental Covenant, and acknowledged to me that the U.S. Environmental Protection Agency 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: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



## **SCHEDULE A**

The Property is a parcel of land located in Lot 9, Orofino West Riverside Tracts, according to the recorded plat thereof, situated in Clearwater County, Idaho, more particularly described as:

**SEC 2, T36N, R1E, Boise Meridian, OROFINO WEST RIVERSIDE TRACTS, PT LOT 9, CHURCH IMP 63-105B, Clearwater County, Idaho, Assessor parcel # RPA1525001009H, as further depicted in the Record of Survey recorded with the Clearwater County Assessor on October 12, 2011, Instrument # 217772.**

PROJECT: BAPTIST CHURCH  
 DATE: 10-07-2011  
 DRAWN BY: L.S.  
 CHECKED BY: B.L.  
 LOCATION: 136N, R1E, SECTION 2, B.M.  
 FILE: EXHIBITS IN PLAT 117772 (CLEARWATER CHURCH)  
 CLEARWATER COUNTY, IDAHO

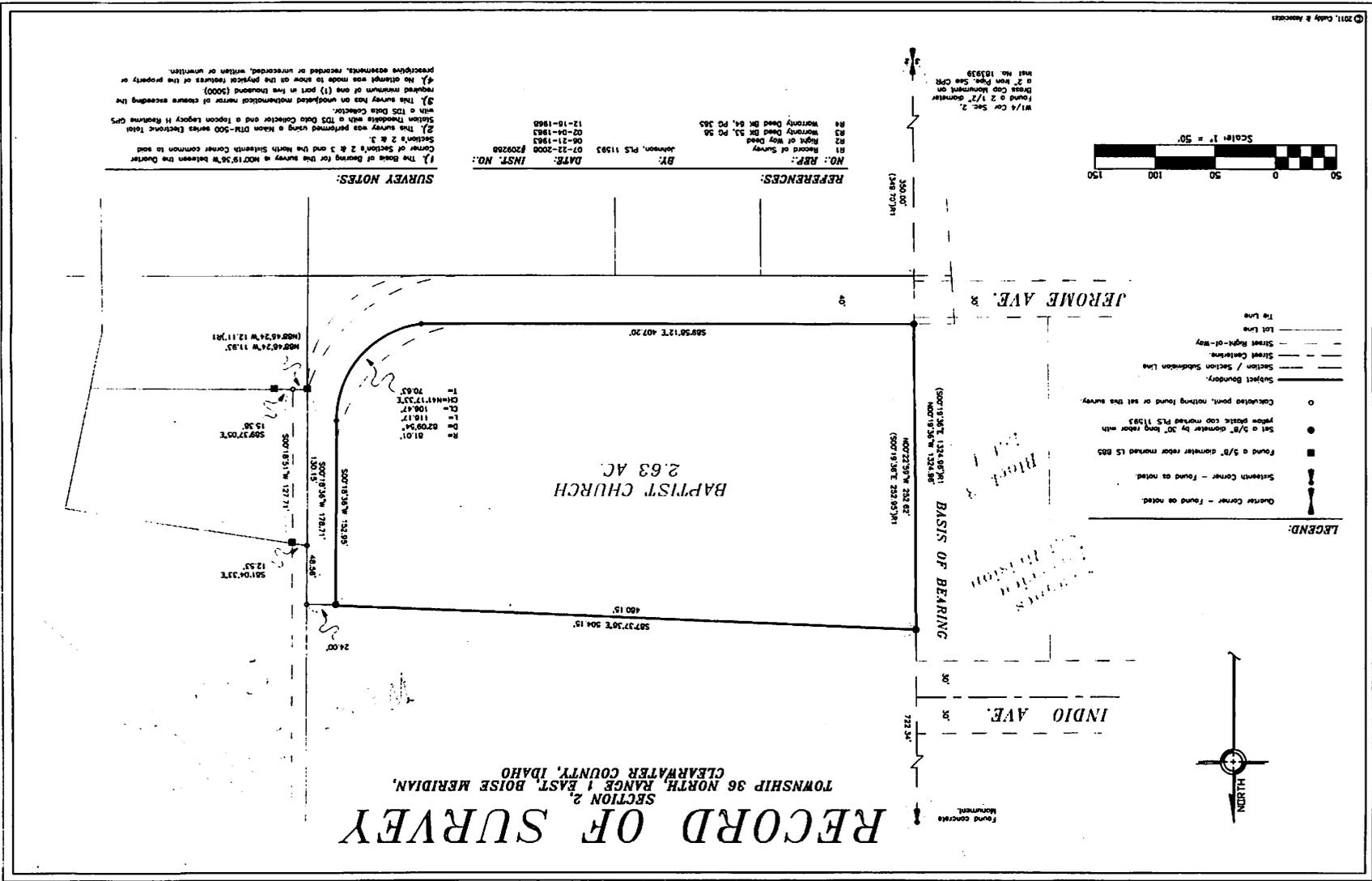
Figure 1 Record of Survey of the church lot

LOCATION OF SURVEY  
 A PARCEL OF LAND SITUATE IN SECTION 2, TOWNSHIP 36 NORTH, RANGE 1 EAST, BOISE MERIDIAN, CLEARWATER COUNTY, STATE OF IDAHO.



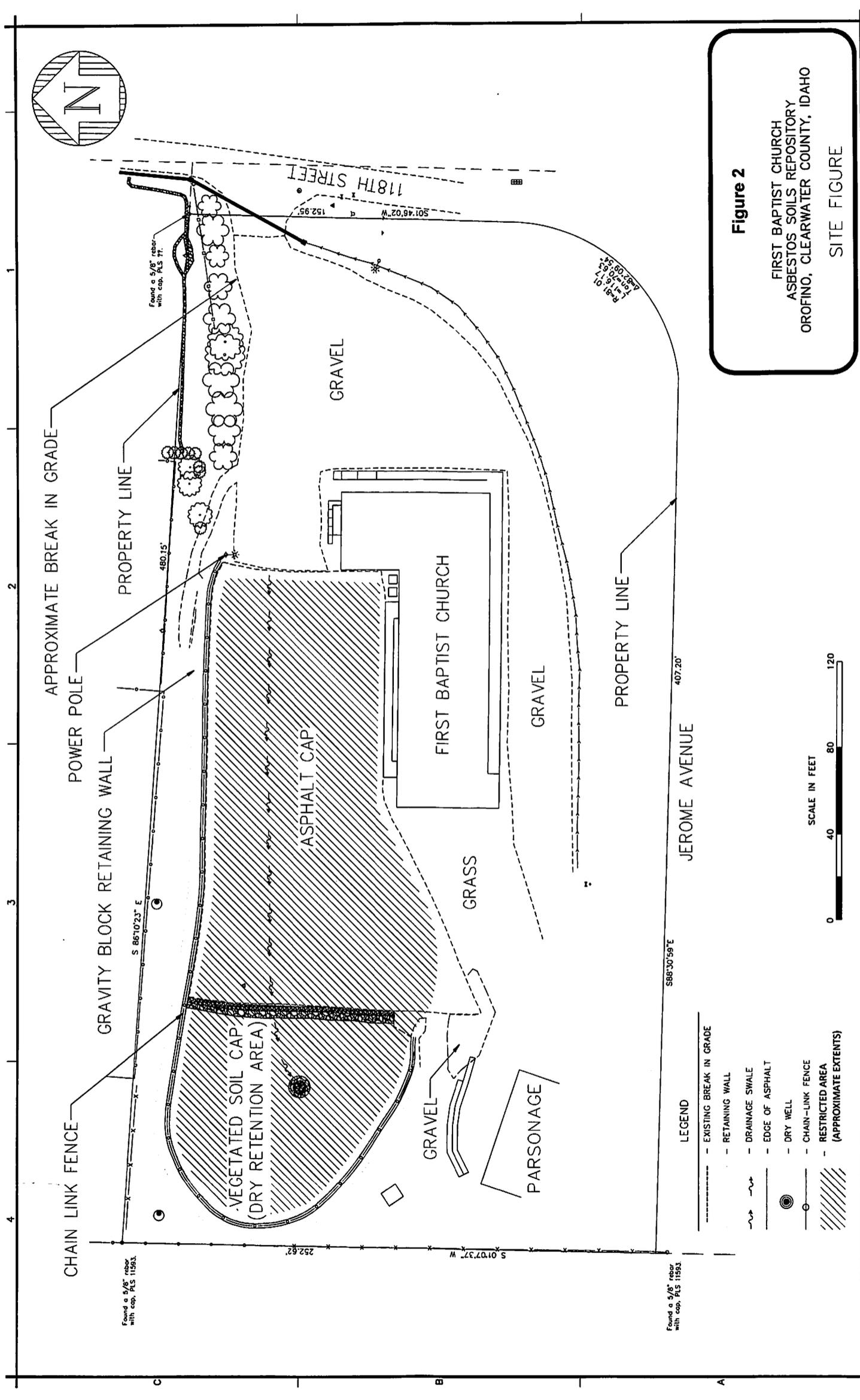
SURVEYOR'S CERTIFICATE  
 I, BEN JOHNSON, REGISTERED SURVEYOR, 1 BEN JOHNSON COUNTY REGISTER, DO HEREBY CERTIFY THAT THIS RECORD OF SURVEY BEING SHOWN IS ACCURATE AND CORRECT AND WAS COMPILED FROM THE NOTES OF AN ACTUAL SURVEY MADE BY ME AND UNDER MY DIRECTION IN ACCORDANCE WITH THE LAWS OF THE STATE OF IDAHO AND AT THE REQUEST OF THE BAPTIST CHURCH.

RECORDER'S CERTIFICATE  
 FILED FOR RECORD  
 AT THE REQUEST OF  
 COUNTY RECORDER  
 INSTRUMENT NUMBER



**SCHEDULE B**

**Map with Property and Restricted Areas**



**Figure 2**  
 FIRST BAPTIST CHURCH  
 ASBESTOS SOILS REPOSITORY  
 OROFINO, CLEARWATER COUNTY, IDAHO  
 SITE FIGURE

- LEGEND**
- - - - - EXISTING BREAK IN GRADE
  - - - - - RETAINING WALL
  - - - - - DRAINAGE SWALE
  - - - - - EDGE OF ASPHALT
  - - DRY WELL
  - - - - - CHAIN-LINK FENCE
  - ▨ - RESTRICTED AREA (APPROXIMATE EXTENTS)



