

May 3, 2011

CERTIFIED LETTER

RETURN RECEIPT REQUESTED

BEER SCANNED

MAY 17 2011

Mr. Andy Walker VP, Risk Management
United Petroleum Transport
4312 S. Georgia Place
Oklahoma City, Oklahoma 73129

RE: NO FURTHER ACTION DETERMINATION FOR GARNETT ETHANOL SPILL SITE

Name of Voluntary Party: United Petroleum Transport

Legal Description of Property: SW ¼, SW ¼, NE ¼, and NW ¼, NW ¼, SE ¼, Sec. 2, T20S, R20E

Property Location: 5 miles NE of Garnett, Mile Marker 103.5 Hwy 169, Anderson County, Garnett, Kansas

Voluntary Agreement No.: 10VCP0023

Dear Mr. Walker:

The Kansas Department of Health and Environment (KDHE) has completed its review of the available documents as of May 3, 2011 for the subject property. Based on the information presented in the documents, volatile organic compounds (VOCs), ethanol, and metals were identified in the soil, and VOCs were identified in the surface water at the subject property. The attached determination summary identifies the nature and status of the contamination detected.

KDHE's evaluation of the available documents for the subject property indicates that VOCs and metals contamination impacting the subject property are present at levels that do not exceed the KDHE approved risk-based cleanup levels. KDHE has determined that contamination at the subject property does not pose a significant risk to human health or the environment. Therefore, pursuant to Kansas Statutes Annotated 65-34, 161 *et seq.*, KDHE declares that No Further Action is necessary at the subject property. This No Further Action determination is issued to United Petroleum Transport and extends to successors and assigns of the subject property. This determination is conditioned upon United Petroleum Transport recording in the office of the Register of Deeds in and for Anderson County, KDHE's determination summary describing the contamination remaining at the subject property, the enclosed legal map showing property boundaries, and this letter containing KDHE's No Further Action determination. **An affidavit (form enclosed) indicating that the enclosures have been attached to the property deed must be returned to KDHE prior to termination of the voluntary agreement.**

KDHE's No Further Action determination applies only to the portion of the subject property assessed as identified on the attached survey map and is based exclusively on information provided to KDHE through May 3, 2011. This determination pertains only to the identified known conditions on the subject property and does not account for activities that may be conducted at the subject property which could cause future releases of contaminants.

If you have any questions concerning KDHE's determination for No Further Action, please contact Project Manager, Darryl Morgan at (785) 291-3244 or legal counsel, Paul Marx at (785) 296-1330.

Sincerely,



Aaron Dunkel
Assistant Secretary


RLB/bd

Attachments: KDHE No Further Action Determination Summary
Survey of Property and Site Boundaries
Affidavit Form

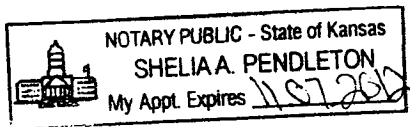
cc: Rick Bean > Bryan Bain > Darryl Morgan > Garnett Ethanol Spill, (C3-022-72589)
Paul Marx, Legal
David Stutt, SEDO

State of Kansas)
County of Shawnee)

This instrument was acknowledged before me on May 13, 2011 by
Aaron Dunkel as Assistant Secretary
of the Kansas Department of Health and Environment.



Notary Public



My appointment expires: _____

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
1000 SW JACKSON, SUITE 410
Phone (785) 296-1673 * FAX (785) 296-7030

VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

NO FURTHER ACTION DETERMINATION SUMMARY

SUMMARY DATE: May 3, 2011

PROPERTY NAME: Garnett Ethanol Spill

Mile Marker 103.5 Highway 169, Approximately 5 miles Northeast of
Garnett, Anderson County, Kansas
SW ¼, SW ¼, NE ¼, and NW ¼, NW ¼, SE ¼, Sec. 2, T20S, R20E

PREPARED BY: Darryl D. Morgan: Darryl D. Morgan Date: 5/13/2011

REVIEWED BY: Unit Chief: [Signature] Date: 5-13-2011

Section Chief: [Signature] Date: 5-13-11

CONTAMINANTS IDENTIFIED AT PROPERTY:

Soil: Benzene (CAS # 71432); Ethylbenzene (CAS # 100414);
Toluene (CAS # 108883); Xylene (CAS # 1330207);
1,3,5-Trimethylbenzene (CAS # 108678); Naphthalene (CAS # 91203);
1,2,4-Trimethylbenzene (CAS # 95636); Ethanol (CAS # 64175);
n-Propylbenzene (CAS # 103651); Arsenic (CAS # 7440382);
Barium (CAS # 7440393); Chromium (CAS # 7440473);
Lead (CAS # 7439921); Mercury (CAS # 7439976);

Surface Water: Benzene (CAS # 71432); Ethylbenzene (CAS # 100414);
Toluene (CAS # 108883); Xylene (CAS # 1330207);
1,2,4-Trimethylbenzene (CAS # 95636); Naphthalene (CAS # 91203);
n-Propylbenzene (CAS # 103651);

CONTAMINANTS EVALUATED AT PROPERTY:

Soil: Volatile Organic Compounds (VOCs – EPA Method 8260)
Ethanol (EPA Method 8015)
Total Petroleum Hydrocarbon (Method TX 1005)
Arsenic, Barium, Cadmium, Chromium, Lead, Selenium, Silver, Mercury
(8 RCRA Metals – EPA Method 6010/7471)

Ground Water: Volatile Organic Compounds (VOCs – EPA Method 8260)
Ethanol (EPA Method 8015)
Total Petroleum Hydrocarbon (Method TX 1005)

Surface Water: Volatile Organic Compounds (VOCs – EPA Method 8260)
Ethanol (EPA Method 8015)
Total Petroleum Hydrocarbon (Method TX 1005)

The Brent and Dan Rockers property is an approximate 13.5-acre farmstead located at mile marker 103.5, Highway 169, approximately 5 miles northeast of Garnett, Anderson County, Kansas. The property is bordered by Highway 169 and agricultural land to the west, and agricultural land to the north, south and east. On November 24, 2008, a United Petroleum Transport (UPT) tanker truck roll-over accident occurred at mile marker 103.5 on Highway 169. The UPT tanker truck was transporting ethanol fuel (E-85) and the roll-over released approximately 7,500 gallons of E-85 fuel into a drainage ditch located on the property owned by Brent and Dan Rockers. UPT personnel contacted Basin Environmental & Safety Technologies (Basin), Oklahoma City, Oklahoma and Basin personnel arrived onsite to conduct an emergency response cleanup.

According to information provided in the document titled, "Truck Accident/Fuel Release, United Petroleum Transport, Highway 169, Garnett, Kansas," dated February 23, 2010, prepared by Basin on behalf of UPT, approximately 8,297 gallons of product and water was recovered from the release area and along the south flowing drainage ditch using a vacuum truck. Soil samples collected and laboratory analysis indicated the maximum detected concentrations were located at the release area and along the drainage ditch. The following contaminants of concern (COC) were noted: benzene (0.982 mg/kg); ethylbenzene (0.202 mg/kg); toluene (0.242 mg/kg); xylene (95.6 mg/kg); ethanol (41,700 mg/kg); naphthalene (0.0039 mg/kg); n-propylbenzene (0.29 mg/kg); 1,2,4-trimethylbenzene (0.104 mg/kg); and 1,3,5-trimethylbenzene (0.050 mg/kg). The detected benzene concentration exceeded its Risk-Based Standard for Kansas (RSK) level of 0.168 mg/kg. Surface water samples collected from the drainage ditch detected benzene (224 µg/L), ethylbenzene (15.7 µg/L), toluene (342 µg/L), xylene (97.1 µg/L), 1,2,4 trimethylbenzene (5.97 µg/L). Water samples collected from the onsite pond and well did not detect COC at concentrations above their respective laboratory reporting limits.

Remedial activities conducted at the site included product recovery using a vacuum truck and application of Gator Wash[®]/Oil Gator[®]. The Gator Wash[®] was mixed at a 6 to 1 ratio and applied with the Oil Gator[®] to the impacted area to enhance bioremediation. In addition, the surface areas impacted were scarified with an aerator to promote volatilization of the ethanol.

In April and June 2009, Basin conducted soil/surface water sampling at the site to determine if the soil/surface water had been remediated. Confirmation sampling included the collection of 23 soil samples and one surface water sample. Analytical results indicated benzene (0.88 mg/kg), toluene (0.204 mg/kg), and/or ethanol (1,500 mg/kg) were detected in seven of the soil samples collected from the area of the release. The detected benzene concentration exceeded its RSK level at one sample location. No other contaminants of concern were detected above their respective laboratory reporting limits in the surface water sample obtained.

Based on this information, UTP entered the Voluntary Cleanup and Property Redevelopment Program (VCPRP) to address the potential contamination associated with the E-85 fuel release. Voluntary Agreement 10VCP0023 was executed on April 19, 2010.

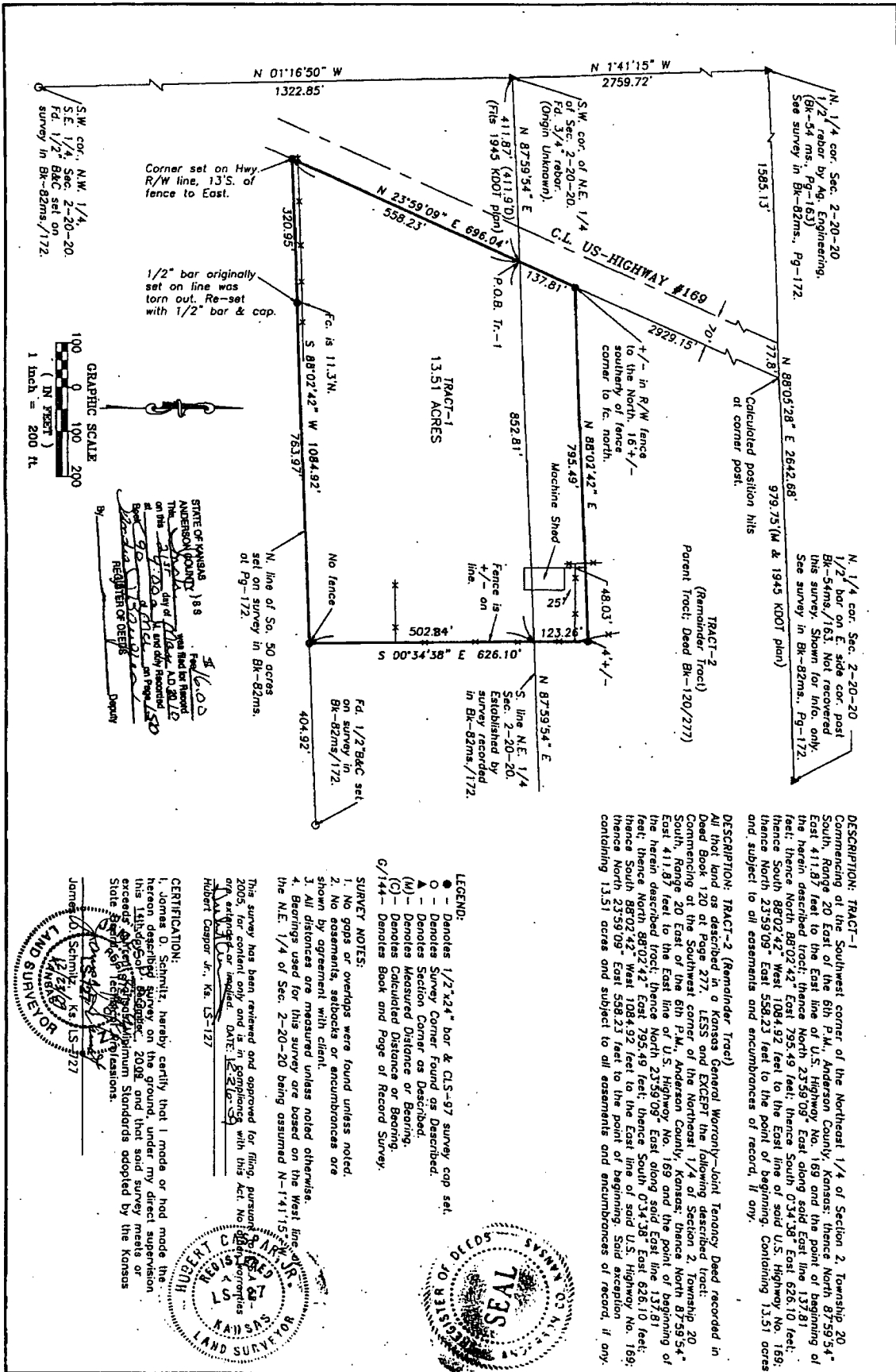
On November 10, 2010, C. H. Guernsey & Company (Guernsey) on behalf of Basin submitted a Voluntary Cleanup Investigation (VCI) Work Plan to evaluate the area E-85 ethanol release and included the collection of soil/groundwater/surface water samples for laboratory analyses of benzene, toluene, ethylbenzene, and xylene (BTEX), and ethanol. On February 7, 2011, a VCI report prepared by Guernsey was received by KDHE and as indicated therein, soil, groundwater, and surface water analytical results are as follows:

Soil: Fifty three soil samples were collected from 27 soil borings at the release area and along the drainage pathway and laboratory analyzed for BTEX and ethanol. BTEX constituents were detected in three of the 27 borings (SB-5, SB-6, and SB-24) but at concentrations below their respective Residential RSK levels. These three borings were located in the area of the release. Ethanol was not detected at concentrations above its laboratory reporting limits in the 27 soil borings. Volatile organic compounds (VOCs) were not detected at concentrations above their respective laboratory reporting limits in the two KDHE verification samples obtained (SB-24 and SB-25).

Ground Water: Groundwater was encountered in four of the 27 borings (SB-10, SB-25, SB-26, and SB-27) and the onsite well. Soil boring SB-10 was located in the drainage ditch adjacent south (downgradient) of the release area. Soil borings SB-25 through SB-27 were located in the drainage ditch at the furthest downgradient location from the release area. BTEX and ethanol were not detected at concentrations exceeding their respective laboratory reporting limits in the groundwater samples obtained from the soil borings or the onsite well, including the KDHE's verification sample (SB-26).

Surface Water: Surface water samples were collected from the onsite pond and another pond located adjacent south of the property. BTEX and ethanol were not detected at concentrations exceeding their laboratory reporting limits in the surface water samples obtained.

Results of the VCI indicate trace detection of the contaminants of concern, but at concentrations below their applicable Tier 2, Residential Scenario, RSK levels. Therefore, KDHE has determined that any residual VOCs, ethanol, TPH GRO/DRO, and 8 RCRA metals in soil and surface water are insignificant. All requirements of the VCPRP have been met. Thus, a "No Further Action" determination based upon insignificant contamination is therefore recommended for the subject property.



	P.O. Box 70, 106 S. 5th St. MOUND CITY, KANSAS 66056 913-795-3192	CERTIFICATE OF SURVEY	JOB NO. AN-09-08 DATE: 12-21-09 DRAWN BY: J.D.S.	ORDERED BY: Brent Rockers
	This survey has been reviewed and approved for filing pursuant to the provisions of the Kansas Surveying Act, Chapter 65, Kansas Statutes Annotated, and that said survey meets or exceeds the minimum Standards adopted by the Kansas State Board of Surveying.			
	CERTIFICATION: I, James D. Schmitz, hereby certify that I made or had made the hereon described Survey on the ground, under my direct supervision and in accordance with the Kansas Surveying Act, Chapter 65, Kansas Statutes Annotated, and that said survey meets or exceeds the minimum Standards adopted by the Kansas State Board of Surveying.			

LAND SURVEY REFERENCE REPORT
Department of Archives
Kansas State Historical Society
6425 SW Sixth Avenue, Topeka, KS 66615-1099
(785) 272-8681 Ext. 322 FAX (785) 272-8682



Land Surveyor: James D. Schmitz
Company: Schmitz Surveying Services
Street Address: P.O. Box 70
City, State: Mound City, Ks.
Zip Code: 66056

L.S. Reg. Number: 727
Project Number: An-09-08
Telephone Number: 913-795-3192
Date of Survey: December 14, 2009
County of Survey: Anderson

This report is filed as a (check only one):

- SURVEY REFERENCE REPORT (K.S.A. 58-2011a). NOTICE OF ENDANGERMENT ACTIVITY (K.S.A. 58-2011b).
There is a \$4.00 per corner filing fee, which must accompany the Land Survey Reference Report.
 NOTICE OF COMPLETION OF ENDANGERMENT ACTIVITY AND REPORT OF RESTORATION (K.S.A. 58-2011c).
This may only be filed after filing a prior NOTICE OF ENDANGERMENT ACTIVITY. There is no filing fee.
Endangerment report was filed on _____.

LOCATION CODE OF MARKER IN TOWNSHIP (see illustration on back): 19A

Legal Description: North Quarter Section Corner Section: 2 Township: 20 Range: 20

Survey Datum (if known): Assumed & Local to Project North: _____ East: _____

Corner Status Prior to Survey: Existent Obliterated Lost Endangered
Monument Condition: Found Set Reset Found Record

Detailed Monument Description: 1/2" rebar By Agricultural Engineering Associates, Bk. B mcl, Pg. 163 found at record location.

REFERENCE MARKS AND MEASUREMENTS: (Please, no symbols or abbreviations.)

NOTE: ALL MEASUREMENTS ARE HORIZONTAL SLOPED UNLESS NOTED OTHERWISE.

R1 76.9 ESE to PK nail in corner post

R2 69.4 SE to PK nail in corner post

R3 33.35 SW to PK nail in corner post

R4 6.6 NW to PK nail in 4"x8" twin hackberry

R5 _____

R6 _____

R7 _____

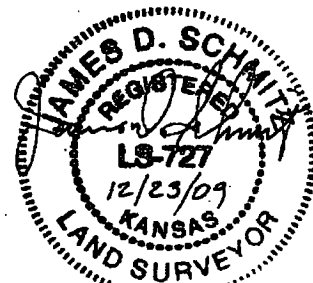
R8 _____

DETAILED METHOD OF RECOVERY OR ESTABLISHMENT: Found at record location with magnetic locator.

SURVEYOR'S CERTIFICATE:

This is to certify that I, James D. Schmitz, have found evidence of the corner hereon described and that the statements contained hereon correctly represent the evidence, corner, monuments, and accessories for the corner.

THIS BLANK FORM MAY BE PHOTOCOPIED



The original signature and date shall be across the Land Surveyor's Professional seal.

90 mcl / 150

LAND SURVEY REFERENCE REPORT
Department of Archives
Kansas State Historical Society
6425 SW Sixth Avenue, Topeka, KS 66615-1099
(785) 272-8681 Ext. 322 FAX (785) 272-8682



Land Surveyor: James D. Schmitz
Company: Schmitz Surveying Services
Street Address: P. O. Box 70
City, State: Mound City, KS.
Zip Code: 66056

L.S. Reg. Number: 727
Project Number: AN-09-08
Telephone Number: (913) 795-3192
Date of Survey: December 14, 2009
County of Survey: Anderson

This report is filed as a (check only one):

- SURVEY REFERENCE REPORT (K.S.A. 58-2011a). NOTICE OF ENDANGERMENT ACTIVITY (K.S.A. 58-2011b).
There is a \$5.00 fee for the first five reports filed per township per submission and a \$1.00 fee for each additional report filed.
 NOTICE OF COMPLETION OF ENDANGERMENT ACTIVITY AND REPORT OF RESTORATION (K.S.A. 58-2011c).
This may only be filed after filing a prior NOTICE OF ENDANGERMENT ACTIVITY. There is no filing fee.
Endangerment report was filed on _____

LOCATION CODE OF MARKER IN TOWNSHIP (see illustration on back): 19C

Legal Description: Center Section Corner Section: 2 Township: 20 Range: 20

Survey Datum (if known): _____ North: _____ East: _____

Corner Status Prior to Survey: Existent Obliterated Lost Endangered
Monument Condition: Found Set Reset Found Record

Detailed Monument Description: 3/4" rebar 8" deep found per record location

REFERENCE MARKS AND MEASUREMENTS: (Please, no symbols or abbreviations.)

NOTE: ALL MEASUREMENTS ARE HORIZONTAL SLOPED UNLESS NOTED OTHERWISE.

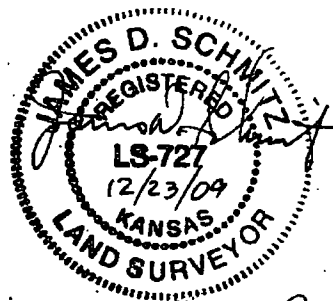
- R1 34.1 NW to bottom near side 2" steel corner post
R2 56.9 SW to mag nail and bottle cap in south hedge post
R3 72.9 WNW to mag nail and bottle cap in power pole
R4 30.4 NE to mag nail and bottle cap in power pole
R5 _____
R6 _____
R7 _____
R8 _____

DETAILED METHOD OF RECOVERY OR ESTABLISHMENT: Found per County ties.

SURVEYOR'S CERTIFICATE:

This is to certify that I, James D. Schmitz, have found evidence of the corner hereon described and that the statements contained hereon correctly represent the evidence, corner, monuments, and accessories for the corner.

THIS BLANK FORM MAY BE PHOTOCOPIED



The original signature and date shall be across the Land Surveyor's Professional seal.

90 mcl / 150

AFFIDAVIT

STATE OF KANSAS)
) SS:
COUNTY OF _____)

COMES NOW, _____, an adult and after being duly sworn, state:

1. I am the person who made application to place the following property into the Voluntary Cleanup and Property Redevelopment Program:

Garnett Ethanol Spill Site
Approximately 5 miles Northeast of Garnett, Mile Marker 103.5 Hwy 169, Anderson
County, Kansas
SW ¼ SW ¼ NE ¼ and NW ¼ NW ¼ SE ¼, S2, T20S, R20E

2. I received a No Further Action Determination Letter and a No Further Action Determination Summary from the Kansas Department of Health and Environment (KDHE) regarding the above described property within the context of the Voluntary Cleanup and Property Redevelopment Program.

3. A map prepared of the above described property by *James D. Schmitz L.S. No, 727*, surveyor, and submitted the map to KDHE.

4. On _____, _____, I filed the original No Further Action Determination Letter and No Further Action Determination Summary issued by KDHE and the KDHE approved property map with the Register of Deeds for the County in which the property is located.

Affiant

Subscribed and sworn to before me, a Notary Public for the above county and state on the _____ day of _____, _____.

Notary Public
My appointment expires on: _____, _____