
MEMORANDUM

TO: Jess Byrne, Director
FROM: Keith Dyarmett, LUST Compliance Officer *KD*
THROUGH: Dean Ehler, Assessment & Compliance Unit Bureau Chief *DE*
Kristi Lowder, UST/LUST Program Manager *KL*
Michael McCurdy, WM & R Division Administrator *MM*
LEGAL REVIEW: Susan Hamlin, Deputy Attorney General *SH*
DATE: 12/29/2020
SUBJECT: Environmental Covenant for Arco Service

Attached for your review and signature is an Environmental Covenant for Arco Service located at 330 S Front Street, Arco, Idaho.

The Property described above includes single story convenience store and a dispenser canopy covering the former dispenser islands. Formerly, the Property operated as a gas station with two 10,000-gallon steel gasoline underground storage tanks (USTs), one 6,000-gallon steel diesel UST and one 500-gallon steel waste oil UST. On April 27, 2014, the UST system was decommissioned and a release was detected beneath the northwest dispenser island.

Site assessment activities have included soil sampling and ground water sampling. The analytical results for the ground water samples are below allowable risk-based concentrations as determined by the Department.

This Environmental Covenant is required because residual concentrations of benzene, toluene, ethylbenzene, xylene, and naphthalene in soil remain underlying the Restricted Area of the Property. Soil is above allowable risk-based concentrations. Therefore, future use of the Restricted Area of the Property shall be limited to protect human health and the environment. Idaho Code § 55-3008(1) requires that the attached Environmental Covenant be recorded on the property deed.

The property owner has signed the environmental covenant. If acceptable, please sign the environmental covenant and have it notarized with your signature and return it to me. DEQ will record the Environmental Covenant with Butte County.

Please let me know if you have any questions. I can be contacted at 0442. Thank you.

Attachments: Environmental Covenant for Arco Service

Recording Requested By and
When Recorded Return to:

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 **GRANTORS**, Michael Kozloff and Tisha Kozloff, (“Kozloff”), and the Idaho Department of Environmental Quality (“Department”) pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Kozloff, as the current property owner, grants this Environmental Covenant to all signatories to this instrument. 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. Kozloff is also a “holder” as defined in Idaho Code § 55-3002(6). For recording indexing purposes the holder, Kozloff, is the **GRANTEE** as provided in Idaho Code §55-3008.

Property. This Environmental Covenant concerns real property located at 330 S. Front Street, Arco, in Butte County, identified as Parcel Number RPA0150001009A and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as “the Property”). The Restricted Area of the Property is depicted in the map attached as Schedule B.

Property Ownership. Kozloff 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 Kozloff has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above includes single story convenience store and a dispenser canopy covering the former dispenser islands. Formerly, the Property operated as a gas station with two 10,000-gallon steel gasoline underground storage tanks (USTs), one 6,000-gallon steel diesel UST and one 500-gallon steel waste oil UST. On April 27, 2014, the UST system was decommissioned and a release was detected beneath the northwest dispenser island.

Site assessment activities have included soil sampling and ground water sampling. The analytical results for the ground water samples are below allowable risk-based concentrations as determined by the Department. This Environmental Covenant is required because residual concentrations of benzene, toluene, ethylbenzene, xylene, and naphthalene in soil remain

underlying the Restricted Area of the Property. Soil is above allowable risk-based concentrations. Therefore, future use of the Restricted Area of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of Arco Service (Facility Identification Number 6-120005) administrative records can be found at the DEQ Idaho Falls Regional Office, 900 N. Skyline Drive, Suite B, Idaho Falls, ID 83702.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Kozloff, and any successors in interest, are hereby restricted from using the Restricted Area of the Property, now or at any time in the future, as specifically set forth below:

No buildings of any kind or nature shall be constructed or located on the Restricted Area of the Property.

Breach and Cure of Activity and Use Limitations. Kozloff, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, Kozloff or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by Kozloff or any successors in interest, and the Department.

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. Kozloff, 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 Department that:

Contaminated soil is at levels the Department deems in writing to be adequate for the Restricted Area of 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 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 this Environmental Covenant shall be recorded in the County Recorder's Office of the county in which the Property subject to this Environmental Covenant is located. The owner of the Property shall record this Environmental Covenant, and any amendment or termination thereof, within ten (10) days following receipt of the Department's signature hereon. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, the owner of the Property shall provide to the 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 thereof, 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 the owner of the Property 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; and (e) any other person the Department requires. The validity of this Environmental Covenant is not affected by failure to provide a copy of this Environmental Covenant as required under this section.

Compliance Reporting. Kozloff, or and any successors in interest, shall submit to the Department 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 Department and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner of the Property and any other person using the Property. Failure of the owner or any other user of the Property 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 owner or user of the Property 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 user of the Property 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 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 Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating 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 Conveyer of the Property, shall provide written notice to the 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 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 Kozloff 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:

ATTN: Michael Kozloff and Tisha Kozloff
134 W. Temple Avenue
Arco, ID 83213

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: Assessment & Compliance Unit 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 Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant 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 Kozloff or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of Kozloff 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 instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments

Accepted:

Idaho Department of Environmental Quality

Signature: Jess Byrne

Printed Name: Jess Byrne

Title: Director, Idaho Department of Environmental Quality

Date: 1/6/21

State of Idaho)

) ss.

County of Ada)

On this 6TH day of JANUARY in the year 2021, before me, a Notary Public in and for said County and State, personally appeared Jess Byrne, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality 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: Darika L. Barnes
Residing at: ADA COUNTY, IDAHO
Commission Expires: 08/02/2025

Signature and Acknowledgments

Accepted: Michael Kozloff and Tisha Kozloff



Property Owner:

Signature: [Signature]
Printed Name: Michael Kozloff
Title: owner
Date: 11/11/2020

Signature: [Signature]
Printed Name: TISHA KOZLOFF
Title: _____
Date: NOV. 11, 2020

State of Idaho, county of Battle, ss.

On this 11 day of Nov, in the year 2020, before me, a Notary Public in and for said County and State, personally appeared Michael Kozloff + Tisha Kozloff, identified to me to be the Persons that executed this Environmental Covenant.

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: [Signature]
Residing at: AKCO, ID 83263
Commission Expires: 11-13-2023

Attachment A Legal Description and
Deed of Property

NO. 0017641
RECORDED

APR 05 2010

AM 4:42 PM
BUTTE COUNTY RECORDER

WARRANTY DEED

Order No: 5310LRT

For Valuable Consideration Received:

DENNIS MAYNARD AND CHERI MAYNARD, Husband and Wife,

the Grantors, do hereby grant, bargain, sell, convey and warrant unto

MICHAEL KOZLOFF AND TISHA KOZLOFF, Husband and Wife, as Community Property with right of survivorship, the Grantees, whose current address is:

134 W. Temple Avenue, Arco, ID 83213

the following described premises, to-wit:

Lot 9, 10 and 11, Block 1, ORIGINAL TOWNSITE OF ARCO, City of Arco, County of Butte, State of Idaho, according to the plat recoded in Book 1 of Plats, at Page 4.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

Dennis Maynard

4-5-10
Date

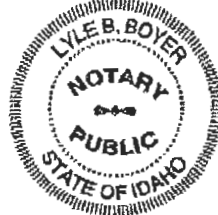
Cheri Maynard

4-5-10
Date

STATE OF IDAHO)
)ss.
COUNTY OF BUTTE)

On this 5th day of April, 2010, before me, the undersigned, a Notary Public, in and for said State, personally appeared **DENNIS MAYNARD AND CHERI MAYNARD**, known to me, and/or identified to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL



Residing at: Arco, Idaho
Commission Expires: 06/05/2015

35315

BT - 967

DEC 21 1999

3:58
BUTTE COUNTY RECORDER
[Signature]

WARRANTY DEED

WARRANTY DEED made this 17th day of Dec, 1999, between S. Warren Wright and Jolene Wright, husband and wife, herein referred to as "Grantors," and Dennis and Cheri Maynard, husband and wife, whose address is Rt 1, Box 84, Moore, Idaho 83255 herein referred to as "Grantee,"

WITNESSETH:

That Grantors, for and in consideration of the sum of \$10 (Ten and no/100 Dollars) and other good and valuable considerations, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do, by these presents, grant, bargain, sell, convey, and confirm unto Grantee and to its successors and assigns forever, all the following described real estate located in the County of Butte, State of Idaho:

Lots 9, 10, and 11, Block 1., Original Townsite of Arco, City of Arco, County of Butte, State of Idaho, according to the plat recorded in Book 1 of Plats, at page 4.

SUBJECT TO:

1. General taxes for 1999 and all subsequent years.
2. Easements either of record or those appearing on the land which affect the described property.

BUT OTHERWISE together with the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining.

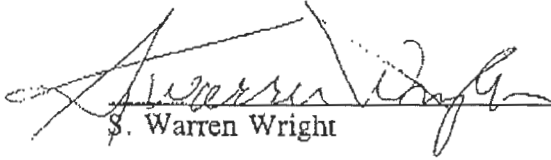
TO HAVE AND TO HOLD, the above-described premises together with the appurtenances unto the Grantee and to its successors and assigns forever.

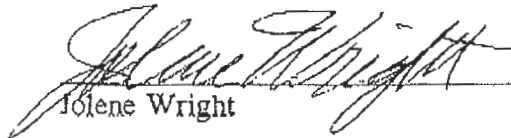
And Grantors and their heirs shall and will warrant and by these presents forever defend the premises in the quiet and peaceable possession of Grantee, its successors and assigns against Grantors and their heirs and assigns and against all and every person and persons whomsoever lawfully claiming the same.

35315

[Handwritten signature]

IN WITNESS WHEREOF, Grantors have hereunto set their hands on the day and year first above written.


S. Warren Wright


Jolene Wright

STATE OF IDAHO

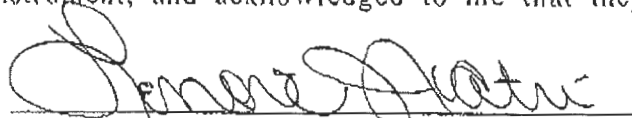
)

) SS.

COUNTY OF BONNEVILLE

)

On December 17, 1999, before me, the undersigned, personally appeared S. Warren Wright and Jolene Wright, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



NOTARY FOR THE STATE OF IDAHO

Commission Expires: 1/28/2003


LENORE J. KATRI
NOTARY PUBLIC
STATE OF IDAHO


Attachment B Map of Restricted Area




Legend

43.634321
-113.297522 — latitude / longitude
geographic coordinates
for restricted area corners

 = Restricted Area

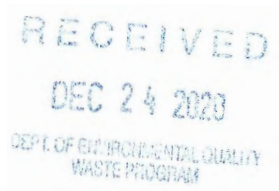
 Approximate
Property Boundary

 Sample/Well Location

	PRINT DATE:	PROJECTION: UTM NAD 83, Zone 11	PROJECT NAME: Former Arco Service Station 300 S. Front Street Arco, Idaho	FIGURE 1 Restricted Area Map	<small>This map was produced using information obtained from several different sources that have not been independently verified. These sources have also not provided information on the precision and accuracy of the data. Information on this map is not a substitute for survey data.</small>
		CARTOGRAPHER: M. Studer			

Signature and Acknowledgments

Accepted: Michael Kozloff and Tisha Kozloff



Property Owner:

Signature: [Signature]
Printed Name: Michael Kozloff
Title: Owner
Date: 11/11/2020

Signature: [Signature]
Printed Name: TISHA KOZLOFF
Title: _____
Date: NOV. 11, 2020

State of Idaho, county of Battle..., ss.

On this 11 day of NOV, in the year 2020, before me, a Notary Public in and for said County and State, personally appeared Michael Kozloff + Tisha Kozloff, identified to me to be the Persons that executed this Environmental Covenant.

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: [Signature]
Residing at: AKCO, ID 83213
Commission Expires: 11-13-2023

