

MEMORANDUM

TO: John Tippets, Director
FROM: Keith Dyarmett, LUST Specialist *KD*
THROUGH: Michael McCurdy, State Response Program Manager *mm*
Kristi Lowder, UST/LUST Program Manager *KL*
LEGAL REVIEW: Susan Hamlin, Deputy Attorney General *sh*
DATE: 12/29/16
SUBJECT: Environmental Covenant for Tracy Store

Attached for your review and signature is an Environmental Covenant for the Tracy Store site located at 3001 Elba-Almo Road, Almo, Idaho.

The Property described above is currently used to operate a gas station and convenience store. Gasoline and diesel are supplied via an above ground storage tank. Two underground storage tanks (USTs) were removed in 1989 and one UST was removed in 2006. No USTs exists onsite. Evidence of petroleum contamination was discovered during the UST removal in 1989. On March 29, 1991, William Tracy entered into a Consent Order with the Department to remediate the Property. After a number of attempts to remediate the contamination by William Tracy and previous owners, the Department installed a remediation system targeting gasoline impacted groundwater. The remediation system consisted of soil vapor extraction and air sparging in 2011. The system operated for one year. Post remediation monitoring of indoor air and sub-slab soil vapor determined that vapor intrusion was not a concern. An environmental covenant is required because residual concentrations of benzene remain in the groundwater on a portion of the property which are above allowable risk-based concentrations protective of unrestricted use as determined by the Department. Therefore, future use of the property shall be limited to protect human health and the environment. There shall be no extraction of groundwater under, the Restricted Area of the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use. 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 Rosie notarize your signature and return it to me. I will forward the fully executed environmental covenant to the property owner for recording with Cassia County. DEQ will receive a copy of the recorded environmental covenant from the property owner.

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

Thank you.

Attachments: Environmental Covenant for Tracy Store

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 Durfee's LLC, and the Idaho Department of Environmental Quality ("Department") 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. Durfee's LLC is a "holder" as defined in Idaho Code § 55-3002(6). Durfee's LLC, as the current property owner, grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property (hereafter referred to as "the Property") on 3001 Elba-Almo Road, County of Cassia, State of Idaho. The Property is legally described within the deed identified in Attachment A. A portion of the Property, referred to as the Restricted area, is shown in the map as part of Attachment B.

Property Ownership. Durfee's LLC 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 Durfee's LLC has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above is currently used to operate a gas station and convenience store, becoming contaminated with Benzene, Ethylbenzene, Xylenes, and Naphthalene in 1992. After a number of attempts to remediate the contamination by previous owners the Department installed a remediation system targeting gasoline impacted groundwater. The system consisted of three soil vapor extraction (SVE) points and five air sparge points in November/December 2011. This system operated for approximately a year. Post remediation monitoring of indoor air and sub-slab soil vapor determined that vapor intrusion was not a concern. However residual ground water

concentrations of benzene exceeded applicable drinking water standards in selected wells. This Environmental Covenant is therefore required to restrict future use of the Property in order to protect human health and the environment.

Name and Location of Administrative Record. A copy of the Tracy Store Environmental Covenant can be found at the DEQ Twin Falls Regional Office 650 Addison Avenue West, Suite 110 Twin Falls, ID 83301

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

1. There shall be no extraction of groundwater for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

Breach and Cure of Activity and Use Limitations Durfee's LLC, 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, Durfee's LLC 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 Durfee's LLC the Owner or any successors in interest, and 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. Durfee's LLC, 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 ground water is at a level the Department 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 Durfee's LLC, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, Durfee's LLC, or its successors in interest, 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 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 Durfee's LLC, or by its 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; and (e) 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. Durfee's LLC, 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 of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Durfee's LLC or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Durfee's LLC, or its successor 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 Owner 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 Durfee's LLC 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 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 Conveyor 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 Durfee's LLC 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.

OWNER: Janis Durfee
Durfee's LLC
3281 Reid Springs Road
PO Box 193
Almo, ID 83312

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 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 Durfee's LLC or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Durfee's LLC 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: *John H. Tippets*
Printed Name: John H. Tippets
Title: Director, Idaho Department of Environmental Quality
Date: _____

State of Idaho)
) ss.
County of Ada)

On this 16 day of January, in the year 2017, before me, a Notary Public in and for said County and State, personally appeared John H. Tippets, 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: *Rosie M. Alonzo*
Residing at: *Pampa, Idaho*
Commission Expires: *11/21/2020*

Signature and Acknowledgments

Accepted:

Property Owner – Durfee's LLC

Signature: *Janis Durfee*
 Printed Name: Janis Durfee JANIS DURFEE
 Title: *Owner*
 Date: *8 Dec. 2016*

State of Idaho, county of Cassia, ss.

On this 8 day of Dec., in the year 2016, before me, a Notary Public in and for said County and State, personally appeared Janis Durfee, known or identified to me to be the *Janis Durfee-Owner* of Durfee's LLC that executed this Environmental Covenant, and acknowledged to me that Durfee's LLC 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: *Nemma Ward*
 Residing at: *2697 Almo, Id 83312*
 Commission Expires: *7/23/2021*



Attachment A Legal Description and Deed of Property



CASSIA COUNTY
RECORDED FOR:
TITLEONE - RUPERT
03:33:24 PM 09-24-2015
2015-004286
NO. PAGES: 2 FEE: \$13.00
JOSEPH W. LARSEN
COUNTY CLERK
DEPUTY: HYoung
Electronically Recorded by Simplifile

Order Number: 16254788

Warranty Deed

For value received,

also known as Wynn R. Dewsnap

Wynn Redman Dewsnap and Jeannine Dawsnap, Trustees of The Wynn Dawsnap Family Revocable Trust
dated September 2, 1999

the grantor, does hereby grant, bargain, sell, and convey unto

Durfee's LLC, an Idaho limited liability company

whose current address is P.O. Box 193 Almo, ID 83312

the grantee, the following described premises, in Cassia County, Idaho, to wit:

PARCEL NO. 1:
TOWNSHIP 15 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 27: Part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, more particularly described as follows:

Beginning at the Northwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, said corner marked by a 5/8 inch rebar which shall be the Point of Beginning;
Thence North 89°23'02" East along the North line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ for a distance of 115.81 feet to a 1/2 inch rebar;
Thence South 01°01'07" West for a distance of 197.65 feet to a 1/2 inch rebar;
Thence North 89°24'27" West for a distance of 90.80 feet to a 1/2 inch rebar;
Thence North 89°24'27" West for a distance of 13.64 feet to the East right of way of the City of Rocks Backcountry Byway;
Thence along said right of way along a non-tangent curve to the left for a distance of 29.62 feet to the West line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, said curve having a radius of 1108.14 feet and a central angle of 1°31'53" and a long chord bearing of North 11°06'13" West for a distance of 29.62 feet;
Thence North 00°44'29" West along the West line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ for a distance of 166.25 feet to the Point of Beginning.

PARCEL NO. 2:
TOWNSHIP 15 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 27: Part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, more particularly described as follows:

Beginning at the Northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, said corner marked by a 5/8 inch rebar which shall be the Point of Beginning;
Thence South 00°44'29" East along the East line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ for a distance of 166.25 feet to the East right of way of the City of Rocks Backcountry Byway;
Thence along said right of way along a non-tangent curve to the left for a distance of 114.01 feet, said curve having a radius of 1108.14 feet and a central angle of 5°53'42" and a long chord bearing of North 14°49'00" West for a distance of 113.96 feet;
Thence North 17°45'51" West continuing along said right of way for a distance of 58.36 feet to the North line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Thence North 89°23'02" East along said line for a distance of 44.80 feet to the Point of Beginning.

To have and to hold the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Dated: September 24, 2015

Wynn Dawsnup Family Revocable Trust

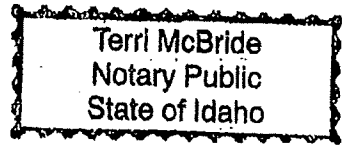
BY: Wynn Redman Dawsnup
Wynn Redman Dawsnup, Trustee

BY: Jeannine Dawsnup
Jeannine Dawsnup, Trustee

State of Idaho, County of Cassia, ss.

On this 24th day of September in the year of 2015, before me, the undersigned, a notary public in and for said state personally appeared Wynn Redman Dawsnup and Jeannine Dawsnup, known or identified to me to be the persons whose names subscribed to the within instrument, as trustees of The Wynn Dawsnup Family Revocable Trust and acknowledged to me that they executed the same as trustees.

Terri McBride
Notary Public
My Commission Expires: 2-5-20
(seal) Residing AT: Rupert



Attachment B Map of Restricted Area

