

Recording Requested By and
When Recorded Return to:

Microfilm No. **550990**
At 5 Day NOV 2014
At 8:56 O'Clock A M
ABBIE MACE
FREMONT CO RECORDER
Fee \$ 0 Deputy
Recorded at Request of
Dept of Transportation

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 State of Idaho, by and through the Idaho Transportation Department, Division of Highways ("OWNER") 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. OWNER is a "holder" as defined in Idaho Code § 55-3002(6). OWNER, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located on Highway 20 in Ashton, County of Fremont, State of Idaho. The Property is more fully described in the attached Schedule A (hereafter referred to as the "Property"). The Restricted Area (identified on Attachment A) can be described as being approximately 150 feet wide (starting from the western property boundary) by 400 feet long (the full width of the property).

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 OWNER has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Idaho Department of Transportation (ITD) has owned the Property since the 1970s. A September, 1995 decommissioning of two underground storage tanks on the Property led to the discovery of a petroleum release. Source removal was performed in the former underground storage tank basin area during the 1995 decommissioning. Compliance ground water monitoring indicates residual concentrations of benzene and ethyl benzene in groundwater underlying the Restricted Area which are above allowable risk-based concentrations as determined by the DEPARTMENT. 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 Ashton ITD file can be found at the DEPARTMENT office located at DEQ Idaho Falls Regional Office 900 N. Skyline Drive, Suite B Idaho Falls, ID 83402.

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

1. There shall be no extraction of groundwater, except for the purposes of remediation or assessment, under the Restricted Area 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 OWNER, 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, the Owner 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 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. The 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 DEPARTMENT that:

1. groundwater concentrations are such that the DEPARTMENT deems in writing that the restricted portion of the Property is acceptable 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 DEPARTMENT. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, OWNER, 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 OWNER, 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. Owner[s], 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 OWNER or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of OWNER, 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 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 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

OWNER 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: State of Idaho, by and through the Idaho Transportation
Department, Division of Highways
District 6
206 N. Yellowstone Ave.
P.O. Box 97
Rigby, Idaho 83442

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.

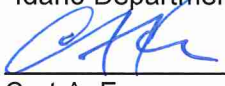
Idaho Code References. All references to the Idaho Code sections include successor provisions.

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 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 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:

DEPARTMENT: Idaho Department of Environmental Quality

Signature: 
 Printed Name: Curt A. Fransen
 Title: Director, Idaho Department of Environmental Quality
 Date: _____

State of Idaho)
) ss.
 County of Ada)

On this 14 day of October, in the year 2014, before me, a Notary Public in and for said County and State, personally appeared Curt A. Fransen, 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. Alongo
 Residing at: Hampton, Idaho
 Commission Expires: 1/30/2015

Signature and Acknowledgments

Accepted:

OWNER: State of Idaho, by and through the Idaho Transportation Department, Division of Highways

Signature: Printed Name: Kimbol Allen P.E.Title: ITD District Six EngineerDate: 10/06/14

State of Idaho)
 JEFFERSON) ss.
 County of ~~Ada~~)

On this 6 day of OCT, in the year 2014, before me, a Notary Public in and for said County and State, personally appeared Kimbol Allen P.E., known or identified to me to be the ITD District Six Engineer that executed this Environmental Covenant, and acknowledged to me that the State of Idaho, by and through the Idaho Transportation Department, Division of Highways 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: RIGBYCommission Expires: 10-1-2020

DH-357 10/74

SCHEDULE ASheet 1 of 1Project No. Ashton Maintenance
Shed Site
Parcel No. Yard No. 06110

Land situated in Fremont County.

A parcel of land being on the Easterly side of the right-of-way boundary of existing U. S. Highway Nos. 191 and 20 as shown on the plans of U. S. Highway Nos. 191 and 20, Project No. F-6471(2) Highway Survey now on file in the office of the Idaho Transportation Department, Division of Highways, and being a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 9 North, Range 42 East, Boise Meridian, described as follows, to-wit:

Commencing at the Northwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 9 North, Range 42 East, Boise Meridian;

thence North 89°18'02" East along the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 75.0 feet to a point in the Easterly right-of-way line of existing U. S. Highway Nos. 191 and 20 and being the REAL POINT OF BEGINNING;

thence South 0°05' West along said existing Easterly right-of-way line 400.0 feet to a point in a line parallel with and 400.0 feet Southerly from the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence North 89°58'02" East along said parallel line 1,242.22 feet to a point in the East line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence North 0°22'37" East along said East line 400.0 feet to the Northeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence South 89°58'02" West along the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 1,244.27 feet to the REAL POINT OF BEGINNING, and containing approximately 11.42 acres.

Attachment A

