

THOMSEN  STEPHENS
LAW OFFICES

Alan C. Stephens*
Curt R. Thomsen
James D. Holman**
J. Michael Wheeler

*Also Member of Wyoming Bar
**Also Member of Nebraska Bar

Michael J. Whyte
T. Jason Wood
Jacob S. Wessel
Richard R. Friess
Ryan S. Dustin

RECEIVED

JUN 26 2013

Office of the Attorney General
IDEQ

June 19, 2013

SUSAN E HAMLIN DEPUTY ATTORNEY GENERAL
OFFICE OF THE IDAHO ATTORNEY GENERAL
ENVIRONMENTAL QUALITY SECTION
1410 N HILTON
BOISE ID 83706

RE: Blackfoot Short Stop Environmental Covenant Amended

Dear Ms. Hamlin:

Enclosed is a copy of the recorded Blackfoot Short Stop Environmental Covenant.

Sincerely,



J. Michael Wheeler

JMW/jd
7662.001\Hamlin

Enclosure

Recording Requested By and
When Recorded Return to:

Instrument # 649967

BINGHAM COUNTY

6-6-2013


02:25:33 No. of Pages: 13

Recorded for : #054536 THOMSEN STEPHENS LAW

SARA J. STAUB

Fee: 46.00

Ex-Officio Recorder Deputy



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 Dennis and Linda DeRoche, ("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 at 985 South Broadway Street, City of Blackfoot, County of Bingham, State of Idaho (hereafter referred to as "the Property"). The Property is legally described and illustrated in the attached Schedule A.

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 Property has been used to operate a retail gasoline and diesel fuel storage and distribution system. The retail fuel distribution system is presently operated under the business name "The Short Stop". Subsurface soil and groundwater at and adjacent to the Short Stop's underground petroleum fuel storage tanks were impacted by a release of an unknown quantity of regular unleaded gasoline from a leaking underground fuel line that was discovered in April of 2000. On March 13, 2001, the OWNER entered into a Consent Order with the Department to remediate the Property. On October 26, 2001, Owner implemented an environmental response project (Corrective Action Plan), approved by the Department, to remediate petroleum hydrocarbons in subsurface soil and groundwater at and adjacent to the subject gasoline release. On June 9, 2010, a Site Risk

Evaluation ("Risk Evaluation") was prepared using the Idaho Risk Evaluation Manual (REM; Idaho Department of Environmental Quality, July 2004) to assess the health risks of the Chemicals of Concern (CoC) present in soil and groundwater at the Property. The CoC include benzene, toluene, ethylbenzene, and xylenes (BTEX); methyl tert-butyl ether (MTBE); and naphthalene. The risk evaluation determined that risks posed by residual concentrations of these chemicals in soil and groundwater were unacceptable for potential future residential receptors based on the vapor intrusion pathway and for groundwater ingestion.

These unacceptable risks were identified for two portions of the property, described as Areas 1 and 2, also referred to as "Restricted Portions", which are depicted in Schedule B. These Areas coincide with specific parcels in the legal description for the Property found in Schedule A and shown in the plat map in Schedule B. Area 1 consists of Parcel B and Tract 3 (also identified as 2606 and 8740). Area 2 consists of Tract 2 (also identified as T-7911). The Activity and Use Limitations in this Environmental Covenant are therefore necessary to prevent exposure to these receptors via these routes of exposure in the Restricted Portions.

Name and Location of Administrative Record. A copy of the Blackfoot Short Stop administrative file related to this Environmental Covenant can be found at the Idaho Department of Environmental Quality, Pocatello Regional Office, 444 Hospital Way, #300, Pocatello, Idaho 83201

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, OWNER, and any successors in interest, are hereby restricted from using the two Restricted Portions (Area 1 and Area 2), now or at any time in the future, as specifically set forth below:

Area 1 Restricted Portion:

1. With the exception of environmental assessment or remediation purposes there shall be no extraction of groundwater under the Area 1 Restricted Portion for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
2. No buildings intended for residential or non-residential use shall be constructed or located on the Area 1 Restricted Portion.
3. The Area 1 Restricted Portion, and any portion thereof, may be used for commercial and industrial uses only. The Area 1 Restricted Portion shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
4. Within the Area 1 Restricted Portion there shall be no removal of soil containing the CoC without the development of a soils management plan that addresses any contaminated soil encountered during excavation. The soils management plan must be approved by the Department prior to removal of soil.

Area 2 Restricted Portion:

1. With the exception of environmental assessment or remediation purposes there shall be no extraction of groundwater under the Area 2 Restricted Portion for any purpose,

including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

2. The Area 2 Restricted Portion, and any portion thereof, may be used for commercial and industrial uses only. The Area 2 Restricted Portion shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
3. Within the Area 2 Restricted Portion there shall be no removal of soil containing the CoC without the development of a soils management plan that addresses any contaminated soil encountered during excavation. The soils management plan must be approved by the Department prior to removal of soil.

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. The Department will not withhold its consent if the other parties agree to assignment of the Environmental Covenant to a new holder.

Duration and Termination. The Activity and Use Limitations shall apply to the Restricted Portion of 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 Restricted Portion of the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

1. Contaminated soils and/or groundwater are at levels the Department deems in writing to be adequate for the Restricted Portion of the Property to be developed for unrestricted use.
2. To terminate the Activity and Use limitation regarding the construction of buildings in Area 1 or the construction of residential buildings in Area 2 of the Restricted Portion, risks from residual contamination, associated with vapor intrusion, are assessed and deemed by the Department in writing to be acceptable for the specified land use OR a vapor intrusion mitigation system, approved in writing by the Department, is designed, and constructed which demonstrates acceptable reduction in vapor intrusion risk for the specified use. The ability to operate and maintain the vapor mitigation system until such time as it is demonstrated to not be required for protection of human health must also be demonstrated to the satisfaction of the Department.

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 Restricted 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 Restricted Portion of the Property as specified in the Activity and Use Limitations section of this Environmental Covenant.

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: Linda and Dennis DeRoche
985 South Broadway Street
Blackfoot, Idaho 83221

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 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.

Accepted:

Idaho Department of Environmental Quality

Signature: _____

Printed Name: Curt A. Fransen

Title: Director, Idaho Department of Environmental Quality

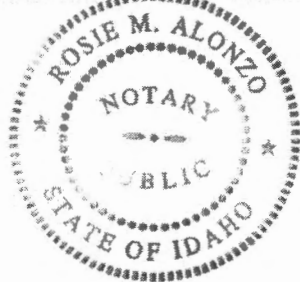
Date:

State of Idaho

County of Ada

On this 28 day of May, in the year 2013, 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:

Residing at:

Commission Expires:

Signature and Acknowledgments

Accepted:

Property Owner:

Signature:

Dennis DeRoche

Printed Name: Dennis DeRoche

Date: 5-15-2013

State of Idaho)

) ss.

County of Bingham)

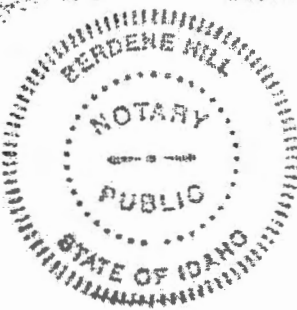
On 5-15, 2013, before me, the undersigned Notary Public, personally appeared Dennis DeRoche, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Berlene Nill
Notary Public for Idaho:

Residing at: Blackfoot

Commission Expires: 12-19-18



SCHEDULE A

PARCEL B:

Commencing at the NW corner of Lot 1, in Block 2 of Kennedy's Addition to the City of Blackfoot, Bingham County, Idaho, and running thence E. along the N. line of said Lot 1 to the Westerly line of South Broadway Street; thence Southwesterly along the Westerly line of South Broadway Street to the S. line of said Lot 1; thence W. along the S. lines of Lots 1 and 2 of said Block 2, 75 feet; thence N. about 100 feet to the N. line of the S2/3 S1/2 of said Lot 2; thence E. to the W. line of said Lot 1; thence N. along the W. line of said Lot 1 to the place of beginning.

EXCEPTING THEREFROM TRACTS 1, 2, AND 3

TRACT 1:

Beginning at the NW corner of Section 10, Township 3 South, Range 35 E.B.M., Bingham County, Idaho; running thence S. $0^{\circ}52'32''$ W. along the centerline of Meridian Street 25.00 feet to the S. line of Riverton Road; thence S. $89^{\circ}15'48''$ E. along the S. line of Riverton Road 368.99 feet to the TRUE POINT OF BEGINNING; running thence S. $0^{\circ}52'32''$ W. 44.55 feet; thence S. $89^{\circ}15'48''$ E. 47.67 feet; thence S. $49^{\circ}13'07''$ E. 102.10 feet to the Westerly right-of-way line of Broadway; thence N. $39^{\circ}21'$ E. along said Broadway 141.08 feet to the S. line of Riverton Road; thence N. $89^{\circ}15'48''$ W. along said Riverton Road 213.77 feet to the TRUE POINT OF BEGINNING.

TRACT 2:

Beginning at the NW corner of Section 10, Township 3 South, Range 35 E.B.M., Bingham County, Idaho; running thence S. $0^{\circ}52'32''$ W. along the centerline of Meridian Street 25.00 feet to the S. line of Riverton Road; thence S. $89^{\circ}15'48''$ E. along the S. line of Riverton Road 368.99 feet to the TRUE POINT OF BEGINNING; running thence S. $0^{\circ}52'32''$ W. 44.55 feet; thence S. $89^{\circ}15'48''$ E. 47.67 feet; thence S. $49^{\circ}13'07''$ E. 102.10 feet to the Westerly right-of-way line of Broadway; thence S. $39^{\circ}21''$ W. along said Broadway 134.17 feet; thence N. $50^{\circ}12'09''$ W. 106 feet more or less to the E. line of Instrument No. 178667 recorded in Bingham County on March 14, 1973; thence N. $0^{\circ}06'50''$ E. along said E. line 148.51 feet more or less to the S. line of Riverton Road; thence S. $89^{\circ}15'48''$ E. 41.66 feet more or less to the TRUE POINT OF BEGINNING.

(Continued)

SCHEDULE A

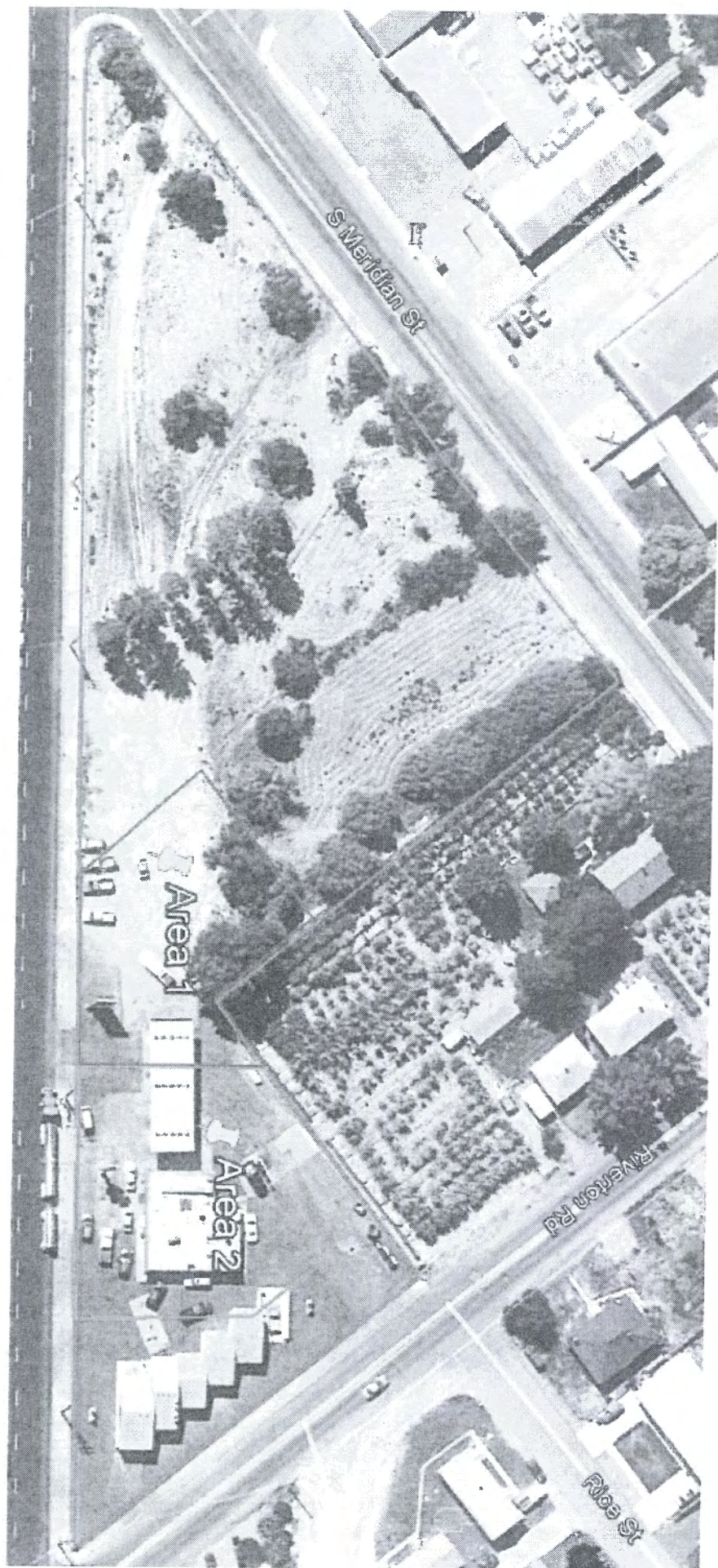
PARCEL A:

Beginning at the NW corner of Section 10, Township 3 South, Range 35 E.B.M., Bingham County, Idaho; running thence S. $0^{\circ}52'32''$ W. along the centerline of Meridian Street 25.00 feet to the S. line of Riverton Road; thence S. $89^{\circ}15'48''$ E. 582.76 feet along the S. line of Riverton Road to the Westerly right-of-way line of Broadway; thence S. $39^{\circ}21'$ W. 275.25 feet along said Broadway to the TRUE POINT OF BEGINNING; running thence along said Westerly right-of-way line of Broadway S. $39^{\circ}21'$ W. 39.00 feet; thence N. $50^{\circ}12'09''$ W. 74 feet more or less to the E. line or E. line extended of Instrument No. 178667 recorded in Bingham County on March 14, 1973; thence N. $0^{\circ}06'50''$ E. 50.7 feet along said E. line more or less to a point that is N. $50^{\circ}12'09''$ W. from the TRUE POINT OF BEGINNING; thence S. $50^{\circ}12'09''$ E. 106 feet more or less to the TRUE POINT OF BEGINNING.

PARCEL C:

Beginning at the NW corner of Section 10, Township 3 South, Range 35 E.B.M., Bingham County, Idaho; running thence S. $0^{\circ}52'32''$ W. along the centerline of Meridian Street 25.00 feet to the S. line of Riverton Road; thence S. $89^{\circ}15'48''$ E. along the S. line of Riverton Road 368.99 feet to the TRUE POINT OF BEGINNING; running thence S. $0^{\circ}52'32''$ W. 44.55 feet; thence S. $89^{\circ}15'48''$ E. 47.67 feet; thence S. $49^{\circ}13'07''$ E. 102.10 feet to the Westerly right-of-way line of Broadway; thence N. $39^{\circ}21'$ E. along said Broadway 141.08 feet to the S. line of Riverton Road; thence N. $89^{\circ}15'48''$ W. along said Riverton Road 213.77 feet to the TRUE POINT OF BEGINNING.

(Continued)



RD.
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8-1-57	12-1-57
9-31-57	12-25-57
10-20-57	1-7-58
12-7-58	1-8-58
1-2-58	1-22-58
7-20-57	1-24-58
1-31-57	1-26-58
2-17-57	1-28-58
10-2-57	1-31-58
11-10-57	1-25-58
12-7-57	2-1-58

CO
O
C

This is a detailed plat map of Section 43, Township 23N, Range 10E. The map shows various land parcels, many of which are owned by the State of North Dakota. The parcels are labeled with owner names and acreage. The map includes the following streets and features:

- Streets:** S Street, S Meridian St, Opal Ave, Broadway, Walker St, Highway 96/237, and Riverton Road.
- Section 43:** The map is divided into four quadrants of Section 43, labeled 1, 2, 3, and 4.
- Parcels and Owners:**
 - Parcel 1: T-4018, T-3870, T-4036, 9476, 8283, 3108, 5619, T-8446, T-7911, T-112123, T-4061, 15533, 3940, T-4121, 2518, 4143, 2618, 13786.
 - Parcel 2: T-10448, T-10449, T-12581, 13637, 13122, 145, S 1/3, 2606, T-9974, N 2/3, 9744.
 - Parcel 3: T-16582, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4132, 4133, 4134, 4135, 4136, 4137, 4138, 4139, 4140, 4141, 4142, 4143, 4144, 4145, 4146, 4147, 4148, 4149, 4150, 4151, 4152, 4153, 4154, 4155, 4156, 4157, 4158, 4159, 4160, 4161, 4162, 4163, 4164, 4165, 4166, 4167, 4168, 4169, 4170, 4171, 4172, 4173, 4174, 4175, 4176, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, 4199, 4200.
 - Parcel 4: T-10448, T-10449, T-12581, 13637, 13122, 145, S 1/3, 2606, T-9974, N 2/3, 9744.
- Other Features:** A north arrow is located in the upper right corner. The map also shows the location of the section relative to the township and range.