

Recording Requested By and
When Recorded Return to:

252540
Custer County Req. of
Ben R. Forsgren
Time 12:54 PM Date 10/25, 2016
Lura H. Baker, Clerk
Cherry Cusemer \$ 46⁰⁰
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 Ben Roy Forsgren and Janet T. Forsgren, husband and wife, ("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. Ben Roy Forsgren and Janet T. Forsgren is a "holder" as defined in Idaho Code § 55-3002(6). Ben Roy Forsgren and Janet T. Forsgren, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 55 Lower Stanley Highway 75, Stanley, Idaho, in Custer County and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as "the Property"). The Activity and Use Limitations described herein apply to an approximately 25 foot by 50 foot portion of the Property referred to as the Restricted Area. The Restricted Area is illustrated on the map attached hereto and marked as Attachment B.

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 described above consists of a general store, motel, private residence, pump house, and a fuel dispenser for diesel fuel and regular grade gasoline. Three above ground storage tanks (ASTs) were removed in 1988. Soil petroleum contamination was identified. On September 23, 1994, Jim Funderburg (former owner) entered into a Consent Order with the Department to remediate the Property. Beginning in 1995, a corrective action plan ("CAP") was implemented. Remediation activities included the use of an air sparge system and oxygen releasing compounds in the groundwater.

This Environmental Covenant is required because after implementation of the CAP residual concentrations of Benzene and Naphthalene remain in the groundwater underlying the Restricted Area. These groundwater concentrations 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 Jerry's Country Store (Facility Identification Number 6-190045) administrative record can be found at the DEQ Idaho Falls Regional Office, 900 North Skyline, Suite B, Idaho Falls, ID 83402.

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

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. Ground water may be extracted as part of an environmental investigation or remediation project.

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

Contaminated groundwater 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 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 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. The Owner, 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 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 the 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: Ben Roy Forsgren and Janet T. Forsgren
HC 67 BOX 300
Stanley, ID 83278

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 the Owner or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of the 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:

Idaho Department of Environmental Quality

Signature: *John H. Tippets*Printed Name: John H. TippetsTitle: Director, Idaho Department of Environmental QualityDate: 10/18/16

State of Idaho)

) ss.

County of Ada)

On this 18 day of October, in the year 2016, 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: Basie M. AlongeResiding at: Nampa, IdahoCommission Expires: 11/21/2020

Signature and Acknowledgments

Accepted:

Property Owner

Signature:

Printed Name: Ben Roy Forsgren and Janet T. Forsgren

Title:

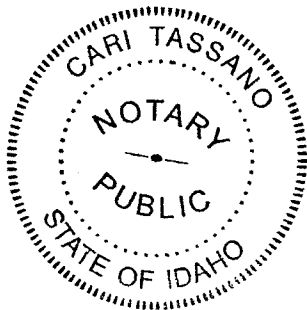
Date:

owner
5 Oct 2016

State of Idaho, county of Custer, ss.

On this 5th day of Oct, in the year 2016, before me, a Notary Public in and for said County and State, Ben Roy Forsgren and Janet T. Forsgren personally appeared, known or identified to me to be the persons whose names executed this Environmental Covenant, and acknowledged to me that they 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:

Cari Tassano
Stacy
3/27/2020

Attachment A Legal Description and Deed of Property

252540

0219699



A Pioneer Company

PIONEER TITLE COMPANY
OF ADA COUNTY

821 West State Street / Boise, Idaho 83702-5836 / Telephone (208) 336-6700

WARRANTY DEED

For Value Received

JAMES M. FUNDERBURG, A MARRIED MAN AS HIS SOLE AND SEPARATE ESTATE

hereinafter referred to as Grantor, does hereby grant, bargain, sell, and convey unto

BEN ROY FORSGREN AND JANET T. FORSGREN, HUSBAND AND WIFE

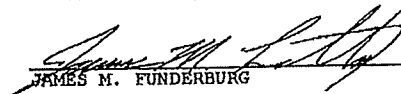
hereinafter referred to as Grantee, whose current address is HC 67 BOX 300, STANLEY, IDAHO 83278

the following described premises, to-wit:

LEGAL ATTACHED AS EXHIBIT "A", Official Records of CUSTER County, Idaho.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his 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 said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: October 14, 1999.


JAMES M. FUNDERBURG

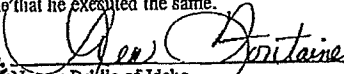
STATE OF IDAHO)

ss.

COUNTY OF CUSTER)

On This 14th day of October, in the year 1999, before me, a Notary Public in and for said State, personally appeared JAMES M. FUNDERBURG, known or identified to me to be the person(s) whose name(s) is subscribed to the within Instrument, and acknowledged to me that he executed the same.




Notary Public of Idaho
Residing at Boise, Idaho
Commission expires: 6/10/2000

Notary Public
Custer County Title
Time 4:38 P.
10-15-99
Ethel M. Peck
Barbara C. Beardslee
600 Deputy

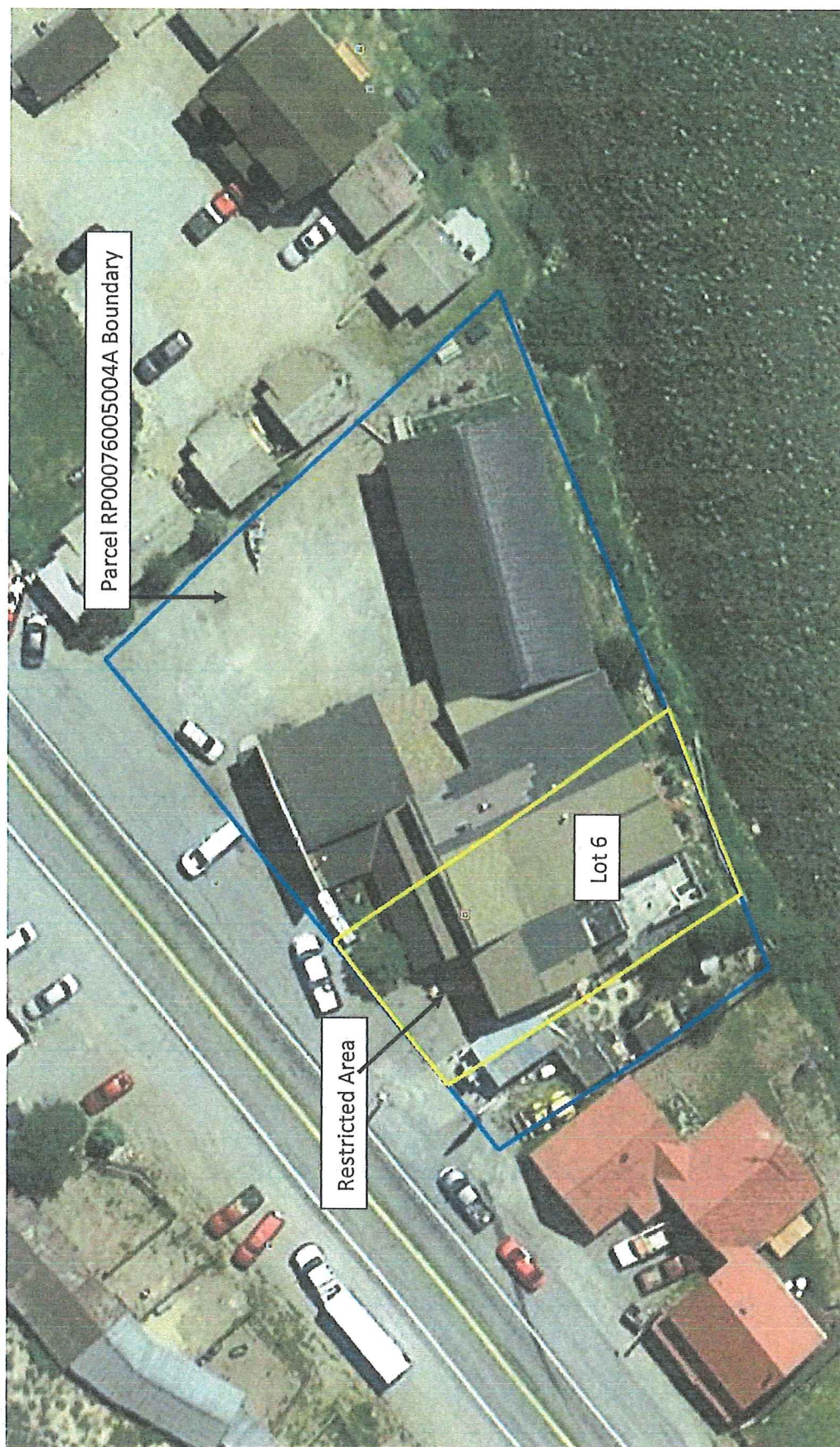
TRACT DESCRIPTION**Tract 00-41**

Parcel Number: RP 00076005004A A

Buyer: Forsgren, Ben Roy & Janet T
Seller: Funderburg, James MInstrument Number: 219697-99
Date: 10-15-99

Lot 4, Lot 5, Lot 6, the East 20 feet of Lot 7, and the West one-half of the Platted Alley adjacent to the East boundary line of Lot 4, Said portion of said Alley being 10 feet in width and 145 feet long, all located in Block 5, Government Townsite of Lower Stanley, Custer County, Idaho in Section 3, Township 10 North, Range 13 East, Boise Meridian, Custer County, Idaho.

Attachment B Map of Restricted Area



**NOTICE OF ANNUAL COMPLIANCE REPORTING
FOR ENVIRONMENTAL COVENANT**

This Notice of Annual Compliance Reporting for Environmental Covenant form is to assist property owners with the Compliance Reporting provision included in the Environmental Covenant. Owner[s] 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. This annual report requirement runs from the effective date of the Environmental Covenant, the date on which the Environmental Covenant was officially recorded with the property deed.

MAIL ANNUAL NOTICE TO:

Idaho Department of Environmental Quality
State Response Program Manager
1410 N. Hilton
Boise, ID 83706

CURRENT PROPERTY OWNER NAME: _____

DATE OF ANY OWNERSHIP CHANGES THIS PAST YEAR:

PROPERTY NAME AND ADDRESS:

ENVIRONMENTAL COVENANT

COUNTY RECORDERS INSTRUMENT NUMBER:

GENERAL DESCRIPTION OF ACTIVITY AND USE LIMITATION(S):

**OWNER(S) VERIFIES COMPLIANCE WITH THE ACTIVITY AND USE LIMITATIONS IDENTIFIED IN THE
ABOVE REFERENCED ENVIRONMENTAL COVENANT IN THIS ANNUAL REPORT FILED WITH THE IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY.**

PROPERTY OWNER REPRESENTATIVE (PRINT/TYPE)

TITLE

SIGNED

DATE