

Recording Requested By and
When Recorded Return to:

Brad Hall & Associates, Inc.
3875 American Way
Idaho Falls, ID 83402

Instrument # 409928

REXBURG, MADISON, IDAHO

5-30-2017 03:00:09 PM No. of Pages: 13

Recorded for : BRAD HALL & ASSOCIATES

KIM H. MUIR

Fee: 46.00

Ex-Officio Recorder Deputy

SR

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 Brad Hall & Associates, Inc., ("Hall"), 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. Brad Hall & Associates, Inc. is a "holder" as defined in Idaho Code § 55-3002(6). Brad Hall & Associates, Inc., as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 727 North 2nd East (Parcels 2-3), Rexburg, Idaho, in Madison 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 a 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. Hall 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 Hall has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above consists of a convenience store, eight above ground storage tanks (ASTs), and fuel dispensers to the east and west of the store. Historic fuel surface releases were reported between 1993 and 1999, apparently associated with bulk fuel delivery to the site ASTs. In 1998, a petroleum release was discovered in the underground storage tanks (USTs) basin during the removal of four USTs. Contaminated soil excavation was performed at the UST basins. On December 24, 1998, Horkley Oil Company entered into a Consent Order. Additional site characterization activities were performed over the years and included soil boring, soil sampling, soil vapor sampling, groundwater well installation, and groundwater sampling. In 2015 two ground water sampling events occurred confirming residual concentrations of Benzene remain in the

groundwater underlying the Restricted Area. This Environmental Covenant is required because 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 Horkley Self Serve 2 (Facility Identification Number 6-330606) 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 Hall, and any successors in interest, are hereby limited from using the Restricted Areas of 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. Hall, 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, Hall 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 Hall 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. Hall, 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 in the Restricted Area 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. Hall, 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 Hall 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.

HALL:

Brad Hall & Associates, Inc.
3875 American Way
Idaho Falls, ID 83402

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 Hall or any other responsible party.


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

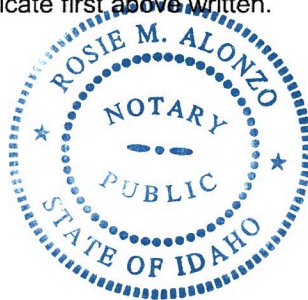
Idaho Department of Environmental Quality


Signature: 
Printed Name: John H. Tippetts
Title: Director, Idaho Department of Environmental Quality
Date: 4/25/17

State of Idaho)
) ss.
County of Ada)

On this 25th day of April in the year 2017, before me, a Notary Public in and for said County and State, personally appeared John H. Tippetts, 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: Pampa, ID
Commission Expires: 11/21/2020

Signature and Acknowledgments

Accepted:

Property Owner

Signature: _____

Printed Name: _____

Title: _____

Date: _____

[Signature]
Leggett II
Trustee
4/19/17

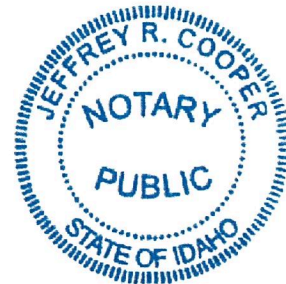
State of Idaho, county of Bonneville, ss.

On this 19 day of April, in the year 2017, before me, a Notary Public in and for said County and State, Bonneville County, Idaho 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: JEFFREY R. COOPER
Residing at: 3875 AMERICAN WAY, Idaho Falls, ID
Commission Expires: 03/02/22

[Signature]



Attachment A Legal Description and Deed of Property

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Jeffery W. Banks
SMITH & BANKS, PLLC
591 Park Avenue, Suite 202
Idaho Falls, ID 83402

Instrument # 369726

REXBURG, MADISON, IDAHO

8-15-2011 02:22:10 No. of Pages: 3

Recorded for : BRAD HALL

KIM H. MUIR Fee: 16.00

Ex-Officio Recorder Deputy

(Space Above For Recorder's Use)

QUITCLAIM DEED

FOR THE CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby acknowledged JAMES HORKLEY ("Grantor"), does hereby release and forever quitclaim unto BRAD HALL & ASSOCIATES, INC. ("Grantee"), whose address is 280 South Holmes, Idaho Falls, Idaho, 83401, and his heirs and assigns forever, all right, title and interest which Grantor now has or may hereafter acquire in the following described real property situated in Madison County, State of Idaho, to-wit:

PARCEL 1:

COMMENCING AT THE SW CORNER OF LOT 2, BLOCK 40 OF THE ORIGINAL REXBURG TOWNSITE AS PER THE RECORDED PLAT THEREOF MADISON COUNTY, IDAHO, AND RUNNING THENCE EAST 8 RODS; THENCE NORTH 3 1/2 RODS; THENCE WEST 8 RODS; THENCE SOUTH 3 1/2 RODS TO THE POINT OF BEGINNING.

ALSO, COMMENCING AT A POINT 214.5 FEET SOUTH OF THE NW CORNER OF LOT 2, BLOCK 40 OF THE ORIGINAL REXBURG TOWNSITE AS PER THE RECORDED PLAT THEREOF, MADISON COUNTY, IDAHO, AND RUNNING THENCE SOUTH 57.75 FEET; THENCE EAST 132 FEET; THENCE SOUTH 57.75 FEET; THENCE EAST 16.5 FEET; THENCE NORTH 115.5 FEET; THENCE WEST 148.5 FEET TO THE POINT OF BEGINNING.

PARCELS 2 & 3:

COMMENCING AT THE SE CORNER OF THE SE 1/4 OF SECTION 18, TOWNSHIP 6 NORTH, RANGE 40 EAST, BOISE MERIDIAN, MADISON COUNTY, IDAHO, AND RUNNING THENCE WEST 375 FEET, MORE OR LESS, TO THE EAST BOUNDARY LINE OF THE OREGON SHORT LINE RAILROAD RIGHT-OF-WAY; THENCE NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE TO WHERE IT INTERSECTS THE EAST LINE OF SAID SECTION 18; THENCE SOUTH 658 FEET, MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPT: BEGINNING AT THE SE CORNER OF SAID SECTION 18, TOWNSHIP 6 NORTH, RANGE 40 EAST, BOISE MERIDIAN, MADISON COUNTY, IDAHO, AND RUNNING THENCE N. 00°11'01" E. ALONG THE EAST LINE OF SAID SECTION 18, A DISTANCE OF 595.00 FEET, MORE OR LESS (SHOWN OF RECORD TO BE 658.00 FEET) TO A POINT IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE EXISTING UNION PACIFIC RAILROAD (YELLOWSTONE BRANCH);

THENCE S. 30°08'26" W. ALONG SAID EXISTING SOUTHEASTERLY RAILROAD RIGHT-OF-WAY LINE 197.0 FEET, MORE OR LESS, TO A POINT IN A LINE PARALLEL WITH AND 60.0 FEET WESTERLY FROM THE CENTERLINE AND BEARS S. 84°08'02" W. FROM STATION 7+13.53 OF THE SALEM ROAD SURVEY AS SHOWN ON THE PLANS OF SAID U.S. HIGHWAY NOS. 191 AND 20, PROJECT NO. ST-6767(502) HIGHWAY SURVEY; THENCE ALONG SAID PARALLEL LINE AS FOLLOWS: S. 05°51'58" E. 276.03 FEET TO A POINT OPPOSITE STATION 4+37.50 OF SAID SALEM ROAD SURVEY; SOUTHERLY ALONG A 2,804.79 FOOT RADIUS CURVE RIGHT 132.0 FEET, MORE OR LESS, TO A POINT IN THE NORTHERLY RIGHT-OF-WAY LINE OF AN EXISTING EAST-WEST COUNTY ROAD, AND OPPOSITE STATION 3+02.78 OF SAID SALEM ROAD SURVEY; THENCE S. 13°05'49" E. LEAVING SAID PARALLEL LINE 17.0 FEET, MORE OR LESS, TO A POINT IN THE SOUTH LINE OF SAID SECTION 18; THENCE EASTERLY ALONG SAID SOUTH LINE 64.64 FEET TO THE PLACE OF BEGINNING.

ALSO EXCEPT: BEGINNING AT THE SE CORNER OF SECTION 18, TOWNSHIP 6 NORTH, RANGE 40 EAST, BOISE MERIDIAN, MADISON COUNTY, IDAHO; THENCE WEST 64.36 FEET; THENCE NORTH 13.21 FEET TO THE TRUE POINT OF BEGINNING ON THE LEFT RIGHT-OF-WAY LINE OF REXBURG NORTH HIGHWAY; THENCE S. 89°43'33" W. 25.04 FEET; THENCE N. 44°43'33" E. 33.42 FEET TO THE LEFT RIGHT-OF-WAY LINE OF SAID PROJECT; THENCE ALONG THE LEFT RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 00°29'01", A RADIUS OF 2804.79 FEET, AN ARC LENGTH OF 23.67 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT:

BEGINNING AT THE SE CORNER OF SECTION 18, TOWNSHIP 6 NORTH, RANGE 40 E.B.M., MADISON COUNTY, IDAHO; THENCE N. 90°00'00" W. 64.36 FEET; THENCE N. 00°00'00" W. 13.21 FEET TO THE EAST RIGHT-OF-WAY LINE OF THE REXBURG NORTH HIGHWAY; THENCE N. 04°30'00" W. 200 FEET TO THE TRUE POINT OF BEGINNING; THENCE N. 04°30'00" W. 170 FEET; THENCE N. 90°00'00" W. 35 FEET TO THE APPROXIMATE SOUTHEASTERLY BOUNDARY LINE OF THE OREGON SHORT LINE RAILROAD RIGHT-OF-WAY; THENCE S. 30°00'00" W. 195 FEET; THENCE S. 89°45'00" E. 145.8 FEET TO THE POINT OF BEGINNING.

Commonly known as: 39 South 2nd West (Parcel 1), 727 North 2nd East (Parcels 2-3), Rexburg, ID, 83440.

TO HAVE AND TO HOLD, all and singular the said real property, together with all appurtenances, tenements, hereditaments, reversions, remainders, rents, issues, profits, rights-of-way, and water rights in anywise appertaining to the real property herein described, as well in law as in equity, unto Grantee, and to ITS heirs and assigns forever.



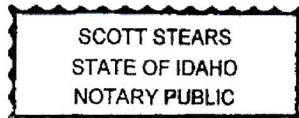
WITNESS the hand of said Grantor this 10 day of August, 2011.

James Horkley
JAMES HORKLEY

STATE OF IDAHO)
 : ss
County of Bonneville)

On this 10 day of August, 2011, before me, a Notary Public in and for said state, personally appeared JAMES HORKLEY, 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.



Scott Stears
NOTARY PUBLIC FOR IDAHO
Residing at Rexburg ID
My Commission Expires 4-6-2012

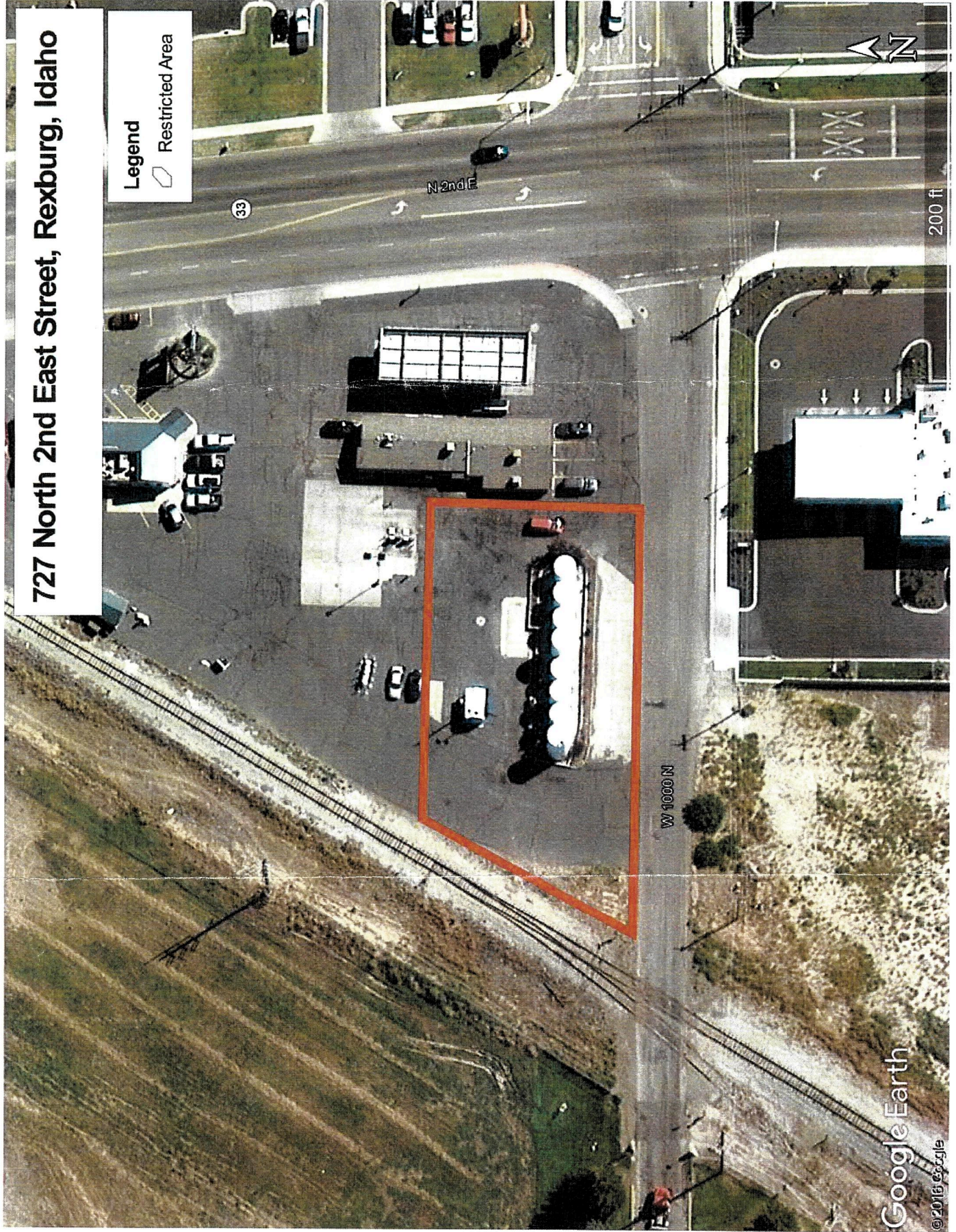
SB

Attachment B Map of Restricted Area

727 North 2nd East Street, Rexburg, Idaho

Legend

 Restricted Area



Google Earth

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