

To be recorded with County
Recorder – Utah Code Ann § 57-25-108

After recording, return to:
Salt Lake City Corporation
Renee Zollinger
451 South State Street
P.O. Box 145518
Salt Lake City, UT 84114-5518

With a copy to:

City Attorney
Salt Lake City Corporation
451 South State Street
Salt Lake City, UT 84111

and

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
195 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840

and

Regional Institutional Control Coordinator, EPR-SR
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

RECEIVED

MAR 01 2011

CITY RECORDER

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03/07/2011 08:11 AM \$0.00
Book - 9909 Pg - 8090-8102
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SL CITY RECORDER
PO BOX 145455
SALT LAKE CITY UT 84114
BY: ZJM, DEPUTY - MI 13 P.

Parcel Nos. 08365010120000 and
08363550020000

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Salt Lake City Corporation (referred to herein as the "Owner"), the United States Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ") pursuant to Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2 below to the activity and use limitations set forth herein.

The Property constitutes a portion of the American Barrel Superfund Site ("Site"), comprising about two acres and located at approximately 500 West and South Temple Streets in Salt Lake City, Utah, as depicted generally on the map attached hereto as Exhibit 1. Historical operations on the Site, including a coal gasification plant, pole treating (creosote), railroad operations, and industrial barrel reclamation and storage resulted in the release of various types of hazardous substances into Site soils and shallow groundwater. During relevant time periods, the primary operational areas of the Site were owned by, among other entities, Utah Power & Light Company ("UP&L") and the Union Pacific Railroad Company (and/or their respective corporate predecessors or affiliates). Union Pacific Railroad Company ("UPRR") has owned the Property portion of the Site since the late 1800s. EPA listed the Site on the National Priorities List in 1989.

During the mid 1990s, UP&L undertook certain response actions at the Site, including the Property, in order to implement a Record of Decision issued by EPA for the Site, all pursuant to a Consent Decree between the United States and UP&L entered in the United States District Court for the District of Utah in the matter of United States v. PacifiCorp d/b/a Utah Power & Light Company, Civil Action No. 94-C-1162W. UPRR was not a party to the Consent Decree. Specific response actions undertaken by UP&L associated with the Property included the excavation and removal of soils impacted by organic compounds (tar) and lead.

UP&L achieved construction completion for the Site in 1996 and EPA's five-year reviews in 2001 and 2006 found that the response action was and continues to be protective of human health and the environment. With the consent of EPA, active groundwater remediation efforts (soil vapor extraction) have been completed and shallow groundwater contamination is currently being addressed through monitored natural attenuation. Additional information is available in the Site files at DEQ and in the administrative record on file with EPA in Denver, Colorado.

Notwithstanding the remedial action for the Site, DEQ, in conjunction with the EPA, has determined that the following activity and use limitations are necessary with respect to the Property.

NOW, THEREFORE, Owner, EPA, and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
2. Property. This Environmental Covenant concerns property located in Salt Lake City, Salt Lake County, Utah, comprising approximately two acres, as more particularly described in Exhibit 2 attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. Salt Lake City Corporation is the owner of the Property. Consistent with numbered paragraph 7 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees ("Transferee").

4. Holder. The Owner of the Property is the "Holder" of this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(6).

5. Agency. EPA and DEQ are each an "Agency" in regards to this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(2). Neither EPA nor DEQ assume any affirmative obligation through the entry of this Environmental Covenant.

6. Activity and Use Limitations. As part of the response action described in the administrative record, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- a. Use of groundwater at the Property is prohibited;
- b. Notice is hereby given that contaminated soils may be found at the Property at depths exceeding fifteen (15) feet; and
- c. Excavation or other disposition of potentially impacted media, including excavated material from below fifteen (15) feet and construction-related pumping of groundwater, must be undertaken in accordance with all applicable laws, rules, and regulations, including worker health and safety.
- d. Prior to the construction of any new residential buildings on the Property, an adequate assessment in and around the building footprint shall be performed to determine if a foundation venting system, or other vapor barrier system is necessary due to volatile organic compounds in subsurface soil gas.; and
- e. Owner agrees to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owner, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site.

7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

8. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with

this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ or EPA from exercising any authority under applicable law.

9. Rights of Access - Non-Interference. Owner hereby grants to the DEQ and EPA, their respective authorized officers, employees, representatives, and all other persons performing response actions under EPA or DEQ oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Owner, for the purposes of performing and overseeing response actions at the Site under federal law. EPA or DEQ agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and DEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto. Without limiting the EPA and UDEQ's access rights in the previous sentences, Owner hereby grants to the EPA and UDEQ, their agents, contractors, and employees, the right to access the Property at all reasonable times for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Upon request, Owner shall submit to the DEQ and EPA written verification of compliance with the activity and use limitations contained herein. If the Owner fails to do so, the DEQ and/or EPA may inspect and prepare a status report and recover its costs from the Owner.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2011, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 2011, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

a. Use of groundwater at the Property is prohibited;

b. Notice is hereby given that contaminated soils may be found at the Property at depths exceeding fifteen (15) feet; and

c. Excavation or other disposition of potentially impacted media, including excavated material from below fifteen (15) feet and construction-related pumping of groundwater, must be undertaken in accordance with all applicable laws, rules, and regulations, including worker health and safety.

d. Prior to the construction of any new residential buildings on the Property, an adequate assessment in and around the building footprint shall be performed to determine if a foundation venting system, or other vapor barrier system is necessary due to volatile organic compounds in subsurface soil gas; and

e. Owner agrees to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owner, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site.

Owner shall notify the DEQ and EPA within 20 days after any conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an un-surveyed plat that shows the boundaries of the property being transferred.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

A. that the Owner is the sole owner of the Property;

B. that the Owner holds title to the Property;

C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

13. Amendment or Termination. This Environmental Covenant may be amended or terminated only: (i) by a written instrument duly executed by all of the following: the Owner or Transferree, EPA and DEQ, pursuant to Utah Code Ann. § 57-25-110 and other applicable law; or (ii) pursuant to Utah Code Ann. § 57-25-109. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the

activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to DEQ, EPA and the Salt Lake City Mayor's Office.

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner, EPA or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

DEQ

Project Manager, American Barrel Site
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

Regional Institutional Control Coordinator

U.S. EPA – Region 8

Mail Code: 8EPR-SR

1595 Wynkoop Street

Denver, CO 80202

Remedial Project Manager (Utah Power and Light/American Barrel Superfund Site)

U.S EPA – Region 8

Mail Code: 8EPR-SR

1595 Wynkoop Street

Denver, CO 80202

Owner

Salt Lake City Corporation

Renee Zollinger

451 South State Street

P.O. Box 145518

Salt Lake City, UT 84114-5518

With a copy to:

City Attorney

Salt Lake City Corporation

451 South State Street

Salt Lake City, UT 84111

20. Governmental Immunity. In executing this covenant, DEQ does not waive governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

RECORDED

IT IS SO AGREED:

MAR 01 2011

CITY RECORDER

By

Ralph Becker

1/30/11
Date

Ralph Becker
Mayor

ATTEST:

Christine R. Meeker
CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 1/28/11

SRV

State of Utah)

County of Salt Lake)

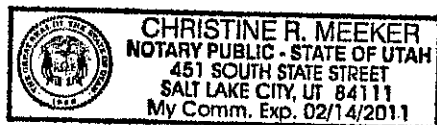
ss:



Before me, a notary public, in and for said county and state personally appeared Ralph Becker, a duly authorized representative of Salt Lake City Corporation, who acknowledged to me that he did execute the foregoing instrument on behalf of Salt Lake City Corporation.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1 day of February 2011.

Christine R. Meeker
Notary Public



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Bill Murray, Director

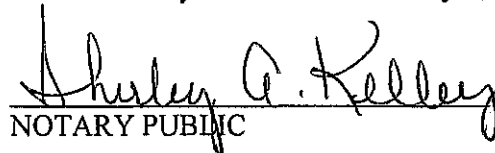
Superfund Remedial Response Program
Office of Ecosystems and Remediation
U.S. Environmental Protection Agency, Region 8

2/15/11
Date

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Before me, a notary public, in and for said county and state, personally appeared Bill Murray, Director of the Superfund Remedial Response Program, Office of Ecosystems Protection and Remediation at the United States Environmental Protection Agency, Region 8, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 15th day of February, 2011.


NOTARY PUBLIC

By Brent H. Everett

10 February 2011
Date

Title: DIRECTOR, DIVISION OF ENVIRONMENTAL RESPONSE
AND REMEDIATION

State of Utah)
) ss:
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Brent H. EVERETT, an authorized representative of the Department of Environmental Quality, who acknowledged to me that s/he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 10 day of February, 2011.

Dana J Powers
Notary Public

This instrument prepared by:

Chapman and Cutler, LP
201 South Main Street, Suite 2000
Salt Lake City, UT 84111

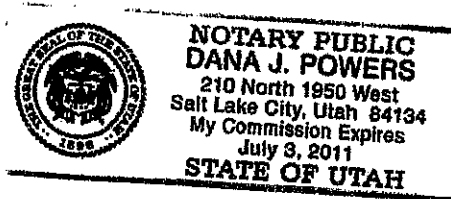


Exhibit 1

Legal Description of the Property

Main Parcel

A portion of Lots 1, 2, and 3 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof and a portion of the vacated South Temple Street, situate in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 66.00 feet S.00°00'35"E. from the southeast corner of said Block 82, said point is 60.76 feet S.89°59'30"W. along the monument line of South Temple Street and 2.88 feet S.00°00'35"E. from the Salt Lake City monument found in the intersection of 500 West and South Temple Streets, and running thence S.89°57'28"W. 573.66 feet along the southerly line of the vacated portion of South Temple Street to the land granted to the Utah Transit Authority; thence along said Utah Transit Authority parcel the following six (6) courses: (1) N.70°03'06"E. 160.24 feet to the beginning of a non-tangent 9658.12 foot radius curve to the left, (2) thence easterly along the arc of said curve 32.59 feet through a delta of 00°11'36" (Note: Chord to said curve bears N.69°58'57"E. for a distance of 32.59 feet) to the beginning of a non-tangent 2120.28 foot radius curve to the left, (3) thence easterly along the arc of said curve 38.97 feet through a delta of 01°03'11" (Note: Chord to said curve bears N.69°21'33"E. for a distance of 38.97 feet) to the beginning of a non-tangent 1321.96 foot radius curve to the left, (4) thence easterly along the arc of said curve 43.65 foot through a delta of 01°53'31" (Note: Chord to said curve bears N.67°53'13"E. for a distance of 43.65 feet) to a point of compound curvature with a radius of 843.29 feet, (5) thence northeasterly along the arc of said curve 41.35 feet through a delta of 02°48'35" (Note: Chord to said curve bears N.65°32'10"E. for a distance of 41.35 feet) to a point of compound curvature with a radius of 765.00 feet, and (6) thence northeasterly along the arc of said curve 363.30 feet through a delta of 27°12'36" (Note: Chord to said curve bears N.50°31'34"E. for a distance of 359.90 feet) to the easterly block line of said Block 82; thence S.00°00'35"E. 341.49 feet along said easterly block line and its extension to the point of beginning.

The above-described parcel of land contains 74,013 square feet or 1.699 acres in area, more or less.

Remainder Parcel

A portion of Lots 1, 2, 3, 7, and 8 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof, and in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 22.28 feet N.00°00'27"W. along the westerly block line of said Block 82 and 198.29 feet N.89°57'28"E. from the Southwest Corner of said Block 82, and running thence N.35°28'05"E. 518.57 feet; thence N.89°57'44"E. 161.13 feet to a point 216.00 feet

S.00°00'35"E. from the Northeast Corner of said Block 82, said point is also in the easterly block line of said Block 82; thence S.00°00'35"E. 51.05 feet along said easterly block line to a point in the northerly UTA right of way line, said point is also the beginning of a non-tangent 735.00 foot radius curve to the right; thence southwesterly along said northerly right of way line and along the arc of said curve 464.87 feet through a delta of 36°14'17" (Note: Chord to said curve bears S.46°00'44"W. for a distance of 457.16 feet) to a point of compound curvature with a radius of 804.81 feet; thence southwesterly along said northerly right of way line and along the arc of said curve 40.31 feet through a delta of 02°52'12" (Note: Chord to said curve bears S.65°33'58"W. for a distance of 40.31 feet) to the beginning of a non-tangent 1355.27 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 39.14 feet through a delta of 01°39'17" (Note: Chord to said curve bears S.67°49'44"W. for a distance of 39.14 feet) to the beginning of a non-tangent 1758.28 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 37.58 feet through a delta of 01°13'28" (Note: Chord to said curve bears S.69°16'05"W. for a distance of 37.57 feet) to the beginning of a non-tangent 17020.52 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 26.65 feet through a delta of 00°05'23" (Note: Chord to said curve bears S.69°55'30"W. for a distance of 26.65 feet) to the point of beginning.

The above-described parcel of land contains 69,411 square feet or 1.593 acres in area, more or less.

Subject to the following easement in favor of the Union Pacific Railroad:

An easement located in Lots 1, 2, 3, 7, and 8 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof, and in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 67.54 feet N.00°00'27"W. along the westerly block line of said Block 82 and 230.56 feet N.89°57'28"E. from the Southwest Corner of said Block 82, and running thence N.35°28'05"E. 462.97 feet; thence N.89°57'44"E. 116.38 feet to a point 216.00 feet S.00°00'35"E. and 44.75 feet S.89°57'44"W. from the northeast corner of said Block 82, said point is also the beginning of a non-tangent 1278.39 foot radius curve to the right; thence southwesterly along the arc of said curve 478.11 feet through a central angle of 21°25'42" (Note: Chord to said curve bears S.42°38'38"W. for a distance of 475.33 feet); thence S.66°25'34"W. 68.75 feet to the point of beginning.

The above-described easement contains 35,594 square feet or 0.817 acres in area, more or less.

Exhibit 2

Site Map

