



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

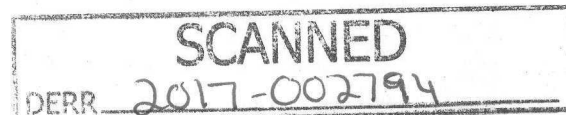
Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION

Brent H. Everett
Director

FILE COPY



ERRL-0168-17

March 29, 2017

Michael L. Dever, President
Colony Land Development, LLC
5726 Dixie Highway
Fairfield, Ohio 45014

Wes Johnson
Menlove-Johnson, Inc.
420 North Redwood Road, Unit F
North Salt Lake, Utah 84054

Re: **No Further Action**

Toyota Bountiful, located at 2380 South Highway 89, Bountiful, Utah
Petroleum Release from Slim Olson's Distributing
Facility Identification No. 3000171, Release Site MUV

Dear Mr. Dever and Mr. Johnson:

The Division of Environmental Response and Remediation (DERR) received an Application for DERR Oversight (Aboveground Storage Tanks (AST) or Underground Heating Oil Tanks) dated June 22, 2015, (Application) submitted pursuant to the December 4, 2000, Memorandum of Understanding (MOU) between the Division of Water Quality (DWQ) and DERR, requesting oversight of a risk assessment of the Toyota Bountiful property located at 2380 South Highway 89, Bountiful, Utah (Toyota Bountiful Property). The Application was signed by Wes Johnson on June 22, 2015. The Application listed Release Site EJJW, but that release is closed, and the petroleum release determined to be affecting the Toyota Bountiful Property is Release Site MUV.

The Toyota Bountiful Property risk assessment was to review risks to the Toyota Bountiful Property from an AST petroleum release from the Slim Olson's Distributing property located at 2301 South Highway 89, Bountiful, Utah identified as Release Site MUV. Normally, the DWQ would review a petroleum release from an AST, but based on the MOU, the DERR may provide administration of petroleum releases from ASTs under the DERR's existing policies, guidelines, standards and procedures for leaking underground storage tank releases.

The file for the off-site impacts from Release Site MUV on the Toyota Bountiful Property has been reviewed by the DERR Project Manager, who has recommended that no further corrective action be required at this time. This no further action applies only to the off-site impacts of Release Site MUV affecting the Toyota Bountiful Property and is applicable only under the conditions specified in the Environmental Covenant No. 3008062 (Book 6722, pages 96-104) recorded with the Davis County Recorder on March 15, 2017. Based on the submissions of information and documentation from Wes Johnson's environmental consultant (Kleinfelder, Inc.) and conditioned upon adherence to the activity and use limitations contained in the Environmental Covenant, no further action is required with respect to the off-site impacts of Release Site MUV on the Toyota Bountiful Property, and the release and the residual petroleum contamination from the release do not pose a known threat to human health or the environment at the Toyota Bountiful Property.

This no further action determination is subject to the execution and recording of the Environmental Covenant and is based on current land usage, exposure pathways, potential receptors, and other site-specific risk characteristics at the Toyota Bountiful Property. In the future, if changes to these characteristics create a threat to human health or the environment, additional corrective action may be required.

If you have any questions regarding this matter, please contact **Mike Pecorelli**, the DERR Project Manager, at (801) 536-4291.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent H. Everett".

Brent H. Everett, Director
Division of Environmental Response and Remediation

BHE/MJP/stt

Enclosure: Recorded Environmental Covenant

cc: Brian E. Hatch, M.P.H., E.H.S., Director, Davis County Health Department

When recorded, return to:
Colony Land Development, LLC
Attn: Michael L. Dever, President
5726 Dixie Highway
Fairfield, Ohio 45014

With copy to:
Mike Pecorelli
Project Manager
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
195 North 1950 West, 1st Floor
P.O. Box 144840
Salt Lake City, Utah 84114-4840

ENVIRONMENTAL COVENANT

This environmental covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the "Utah Act"). Colony Land Development, LLC, a Utah limited liability company, as grantor ("Grantor") makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the "Property"). The street address of the Property is 2380 South Highway 89, Bountiful, Utah. This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this environmental covenant is imposed to mitigate the risk to public health, safety and the environment.
2. Environmental Response Project. An environmental response project was conducted on the Property under the authority of the Utah Water Quality Act, Title 19, Chapter 5, of the Utah Code Ann. and pursuant to the Memorandum of Understanding dated December 4, 2000, between the Division of Water Quality ("DWQ") and the Division of Environmental Response and Remediation ("DERR") in the Utah Department of Environmental Quality ("UDEQ"), providing regulatory oversight to the DERR for petroleum releases from an aboveground storage tank (AST) and underground heating oil tank (UHOT) regulated by DWQ.

The environmental response project is identified by DERR in connection with a petroleum release from the Slim Olson's Distributing, Inc. facility identified by DERR as Facility ID No. 3000171, Release Site MUV located at 2301 South Main Street, Bountiful, Utah. Release Site MUV consists of a retail gasoline and diesel fuel dispensing system with aboveground storage tanks from which a release of petroleum hydrocarbons is believed to have affected soils beneath the Property. The Property is currently operating as a commercial facility which sells and services new and used automobiles. The Property is an improved area that is comprised of two buildings (the main sales and

service building and a used automobile building) connected by an asphalt parking lot.

Confirmation soil sampling on the Property has indicated that there are subsurface soils in an area of the northeast corner of the Property at depths of 20-24 feet that are affected by petroleum hydrocarbon compounds associated with Release Site MUV at concentrations exceeding UDEQ Initial Screening Levels. The approximate aerial extent of petroleum-contaminated subsurface soils on the Property is depicted on attached Figure 1. Further information regarding the remaining contamination may be found at the Agency's offices by referencing paragraph 7, below. The environmental response project conducted on the Property consisted of soil sampling and soil vapor testing and submission to DERR of a Human Health Screening Evaluation Report prepared by Kleinfelder, Inc. dated April 11, 2016, concluding that there is no excess risk posed to the current business and its employees from the known petroleum contamination under the northeast corner of the Property. By letter dated June 21, 2016, the DERR requested this environmental covenant to impose activity and use limitations on the Property to address potential future risks at the Property from the known petroleum contamination under the northeast corner of the Property.

3. Grantor. The Grantor of this environmental covenant is also an Owner as defined in Paragraph 4.
4. Owner. The "Owner" of the Property is a person who controls, occupies, or holds an interest (other than this environmental covenant) in the Property at any given time. Because this environmental covenant runs with the land, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this environmental covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof "Transferees"). Upon transfer of an Owner's interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.
5. Holder. Colony Land Development, LLC, a Utah limited liability company, shall be the grantee ("Holder") of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this environmental covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of the Property.
6. Agency. The Utah Department of Environmental Quality ("UDEQ") is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency or the UDEQ. The Agency may enforce this environmental

covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant

7. Administrative Record. The environmental response project is assigned Facility Identification No. 3000171, Release Site MUV ("Administrative Record") on file with the DERR.
8. Activity and Use Limitations. As part of the environmental response project described above, the following activity and use limitations imposed on the Property.
 - a. Use Limitations. Residential uses are prohibited.
 - b. Groundwater Use Limitations. Extraction or use of ground water, except for investigation or remediation thereof or as described in subparagraph 8.c.ii. below, is prohibited.
 - c. Construction Limitations.
 - i. In the event that future construction activities involving soil excavation are planned in the petroleum-contaminated area shown on attached Figure 1, workers will be required to comply with the Occupational Safety and Health Administration ("OSHA") training for hazardous materials facilities (29 CFR 1910.120).
 - ii. Petroleum-contaminated soil or water that is removed shall be properly treated and/or disposed in accordance with applicable law. It is recommended that the Owner retain a Utah DERR certified underground storage tank consultant to oversee the removal of contaminated soil, and that the owner retain a Utah DERR certified soil and groundwater sampler to conduct sampling.
 - iii. In order to address potential vapor intrusion issues, if structures are placed above the contaminated area shown on attached Figure 1, Owner shall install and maintain a vapor mitigation system in any enclosed buildings to be occupied by humans, unless a vapor intrusion risk assessment is conducted and shows that there is no vapor intrusion risk, as determined by the Agency.
 - iv. Prior to construction. Owner shall notify the Agency of its construction plans and document how it will achieve compliance with the construction limitations, including providing Agency with copies of its application for a building permit with its vapor mitigation system plans, and a report and photos documenting installation of the vapor mitigation system, if a vapor mitigation system is required.

- d. Compliance Reporting. Upon request, Owner shall submit written documentation to the Agency verifying that the activity and use limitations remain in place and are being followed.
9. Compliance Enforcement. This environmental covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this environmental covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take action to enforce any non-compliance. Nothing in this environmental covenant shall restrict the Agency from exercising any authority under applicable law.
10. Rights of Access. The right of access to the Property is permanently granted to the Agency and the Holder and their respective contractors for necessary response actions, inspections, implementation and enforcement of this environmental covenant.
11. Notice upon Conveyance. Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this environmental covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Davis County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this environmental covenant.
12. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:
- a. that it is the sole fee simple owner of the Property;
 - b. that it 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;
 - c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant, and has notified the Agency of the names and contact information of the persons holding such encumbrances as provided in Paragraph 16, below, entitled: "Notice;" and,
 - d. that this environmental covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.

13. Amendment or Termination. This environmental covenant may be amended or terminated pursuant to the Utah Act. Except as set forth herein. Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination.
14. Effective Date, Severability and Governing Law. 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 Davis County Recorder. 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. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.
15. Recordation and Distribution of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this environmental covenant, Grantor shall file this environmental covenant for recording in the same manner as a deed to the Property, with the Davis County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.
16. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this environmental covenant shall be submitted to:

If to the UDEQ:

Mike Pecorelli
Facility Identification No. 3000171, Release Site MUV
Division of Environmental Response and Remediation
UDEQ
195 North 1950 West, 1st Floor
P.O. Box 144840
Salt Lake City, Utah 84114-4840

If to the Holder:

Colony Land Development, LLC, a Utah limited liability company
Attn: Michael L. Dever, President
5726 Dixie Highway
Fairfield, OH 45014

17. Governmental Immunity. In executing this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant 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.

Colony Land Development, LLC, a Utah limited liability company,
as Grantor, Owner and Holder



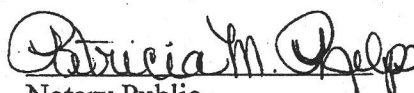
Michael L. Dever, President

Date 2-24-17

State of OHIO)
 :SS
County of CLERMONT)

The foregoing environmental covenant was acknowledged before me this 24th day of February 2017, by Michael L. Dever, the President of Colony Land Development, LLC, a Utah limited liability company.




Notary Public
PATRICIA M. PHELPS
Notary Public, State of Ohio
My Commission Expires October 31, 2021

Utah Department of Environmental Quality

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett

Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

1 MARCH 2017
Date

State of Utah)
 :SS
County of Salt Lake)

The foregoing environmental covenant was acknowledged before me this 1st day of March, 2017, by Brent H. Everett, Director of the Division of Environmental Response and Remediation, Utah Department of Environmental Quality.

Susan Woepfel

Notary Public

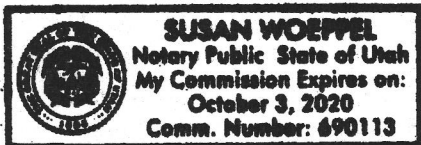


Exhibit A
Property

Colony Land Development, LLC (AKA Toyota Bountiful)

2380 South Highway 89, Bountiful, Utah 84010
Petroleum Release from Slim Olson's Distributing
Facility ID No. 3000171, Release ID MUV

Davis County Parcel No. 06-093-0089
2.80 acres

Legal Description

BEGINNING ON THE WEST LINE OF HIGHWAY 91 AT A POINT SOUTH 64°01'15" WEST 239.87 FEET AND NORTH 0°01'45" WEST 1989.40 FEET FROM A DAVIS COUNTY INTERSECTION MONUMENT NORTH 0°01'15" WEST 1313.35 FEET AND NORTH 87°21' WEST 373.70 FEET, MORE OR LESS, FROM THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN AND RUNNING THENCE NORTH 87°21' WEST 270.56 FEET, MORE OR LESS, TO THE EAST LINE OF THE BAMBERGER RAILROAD RIGHT OF WAY; THENCE ALONG SAID RIGHT OF WAY SOUTH 26°55' WEST 415.00 FEET TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED UNDER #06-093-0036; THENCE SOUTH 26°44' WEST 126.5 FEET; THENCE SOUTH 86°25' EAST 220.50 FEET TO THE WEST LINE OF SAID HIGHWAY 91; THENCE NORTH 31°22' EAST 136.8 FEET ALONG SAID WEST LINE TO THE SOUTHEAST CORNER OF PROPERTY DESCRIBED IN TAX #06-093-0035; THENCE NORTH 31°20' EAST 435.93 FEET TO THE POINT OF BEGINNING.

Figure 1
[Site map showing aerial extent of subsurface contamination]

