

6/2/2020

Fwd: Former American Barrel (The Beverly) - tball@utah.gov - State of Utah Mail

From: **Rebecca Studenka** <rs@wasatch-environmental.com>
Date: Mon, Apr 13, 2020 at 1:06 PM
Subject: Former American Barrel (The Beverly)
To: Brad M. Lauchnor <blauchnor@utah.gov>
Cc: Brad Maulding <bmaulding@utah.gov>

Div of Waste Management
and Radiation Control

APR 13 2020

DSHW-2020-008050

Hello, Brad,

Please see the attached draft SMP and EC for the former American Barrel. Please let me know if it is necessary to mail a hard copy.

Thanks and have a great week!

Rebecca

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

When Recorded Return To:
Tony Hill
C.W. Land
1222 West Legacy Crossing Boulevard, Suite 6
Centerville, Utah 84014

With Copy To:
Ty Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, *et seq.* (the Act). CW The Beverly, LLC, as Owner and Grantor, makes and imposes this Environmental Covenant upon property defined herein and more particularly described in Exhibit A attached hereto and incorporated by reference herein.
2. Notice. Notice is hereby given that The Beverly is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety and the environment.
3. Property. This Environmental Covenant concerns 0.90 acres of real property more particularly described in Exhibit A, which is one parcel numbered 15-01-105-007 owned by CW The Beverly, LLC, located at 63 South 600 West in Salt Lake County, Utah. The property is referred to herein as “The Beverly” (former American Barrel) and depicted on Exhibit B (Figures 1 and 2) attached hereto and hereby incorporated by reference herein.
4. Environmental Response Project. Under the regulatory oversight of the Utah Department of Environmental Quality (DEQ), Division of Waste Management and Radiation Control (DWMRC), an environmental response project, as defined at Section 57-25-102(5) of the Utah Code Annotated, and more fully described in a Site Management Plan (SMP) approved by the DWMRC for The Beverly, has been undertaken to address a release into the soil and shallow groundwater of chlorinated solvents and/or semi-volatile organic compounds (SVOCs) that likely originated from former occupants of The Beverly which included American Barrel (at least 1970s to 1980s) and Myers Container (1990s).

On May 29, 2018, a limited subsurface investigation was conducted on The Beverly property. The scope of work included the completion of eight soil borings to evaluate soil and groundwater conditions at The Beverly. Additionally, a groundwater sample from a previously installed piezometer was collected and three sub-slab soil gas samples from beneath the former northern building were obtained. No soil samples were submitted for laboratory analysis during the May 2018 investigation as none of the soil cores exhibited staining, odors, or elevated photoionization detector readings that would be indicative of contaminated soils.

Groundwater samples were analyzed for volatile organic compounds (VOCs), SVOCs, dissolved Resource Conservation and Recovery Act D-List metals, hexavalent chromium, pesticides, and herbicides.

Based on the results of the May 2018 investigation, tetrachloroethene (PCE) was detected in two groundwater samples collected within the former southern building area at concentrations of 9.95 micrograms per liter ($\mu\text{g/L}$) and 10.6 $\mu\text{g/L}$, exceeding its United States Environmental Protection Agency (U.S. EPA) federal Maximum Contaminant Level (MCL) of 5 $\mu\text{g/L}$. Additionally, PCE was detected in sub-slab soil gas in the western portion of the former northernmost building at a concentration that exceeded the U.S. EPA Vapor Intrusion Screening Level Residential Target Sub-slab and Exterior Soil Gas Concentration.

In June 2018, the owner requested regulatory oversight of the DWMRC to conduct further investigation and potential corrective action activities under Utah Admin. Code R315-101 at The Beverly.

Under the direction and approval of the DWMRC, in September 2018, additional subsurface investigation activities were conducted at The Beverly. Numerous subsurface soil and groundwater samples were collected at The Beverly for analyses of VOCs, SVOCs, and metals. No VOCs, SVOCs, or metals were detected in the soil samples at concentrations above their respective U.S. EPA Regional Screening Levels (RSLs) for Residential or Industrial Soil, with the exception of total arsenic; however, all soil samples collected exhibited arsenic in soil concentrations within the background arsenic concentration range generally accepted by the DWMRC for the Salt Lake City, Utah area.

With the exception of PCE, no VOCs, SVOCs, or metals were detected at concentrations exceeding their respective U.S. EPA federal MCLs. PCE was detected in three groundwater samples in the southern portion of The Beverly at concentrations ranging from 7.23 $\mu\text{g/L}$ to 18.0 $\mu\text{g/L}$, exceeding its U.S. EPA federal MCL of 5 $\mu\text{g/L}$. Based on the results, it appears that a small PCE plume with concentrations exceeding its U.S. EPA federal MCL is present beneath the area of the former southern building; however, it does not appear that the plume extends beyond the Facility boundaries.

Although all soil sampling data collected from The Beverly met unrestricted use screening levels, there was a potential for isolated areas of soil impacts to be

discovered that would need to be addressed during demolition. Therefore, it was necessary to collect soil samples beneath potential source areas such as floor drains or sumps for characterization during demolition of the former buildings that had not been previously identified due to storage of materials in the buildings.

The Owner purchased The Beverly on July 30, 2019. During November 2019, the former buildings located on The Beverly were removed. During demolition and slab removal activities, and under the direction and approval of the DWMRC, numerous soil characterization samples were collected beneath site features where releases to the subsurface could have potentially occurred. These areas included oil/water separators, trench floor drains, pits, underground piping, and a former waste management area. Soil samples were analyzed for VOCs and SVOCs.

Based on the analytical results from the investigation activities, two areas of SVOC-impacted soil at concentrations that exceeded U.S. EPA RSLs for Residential Soil were identified. In January 2020, two excavations were completed in the areas of SVOC impacts. Soil confirmation samples were collected from each excavation and no VOCs or SVOCs were detected in the soil samples at concentrations exceeding their respective U.S. EPA RSLs for Residential Soil.

Based on analytical results from previous subsurface investigations conducted at The Beverly, it appears that a small PCE plume with concentrations exceeding its U.S. EPA federal MCL is present beneath the southern portion of The Beverly; however, it does not appear that the plume extends beyond the Facility boundaries.

Through the SMP and this Environmental Covenant, including necessary activity and use limitations, the risk posed by residual chlorinated solvent contamination in groundwater at The Beverly will be mitigated. The management requirements of the SMP and activity and use limitations of this Environmental Covenant will be protective of human health and the environment.

5. Administrative Record. The SMP project administrative records are maintained and managed by the Utah DEQ DWMRC.

6. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 7.

7. Owner. The Owner of The Beverly is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in The Beverly at any given time. Because this Environmental Covenant runs with the land, the obligations of the Owner are transferred to the Transferee. Except as provided in this Environmental Covenant, upon transfer of an Owner's interest in The Beverly, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve the Owner during the time it holds an interest in The Beverly 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 Beverly.

8. Transferee. The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in The Beverly, 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 Beverly or any portion thereof.

9. Holder. CW The Beverly, LLC is the grantee and Holder of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3)(b) of the Utah Code Annotated.

10. Rights and Obligations of Holder. Holder may enforce this Environmental Covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of The Beverly.

11. Agency. The Utah DEQ is the Agency (as defined in the Act) under this Environmental Covenant. The Utah DEQ may enforce this Environmental Covenant. The Utah DEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the DWMRC is the Utah DEQ representative for this Environmental Covenant.

12. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations on The Beverly:

A. ***Land Use Limitations*** The Beverly is suitable for residential, commercial and industrial use consistent with applicable local zoning laws; provided that residential land use and land use involving sensitive populations include the installation of a vapor barrier beneath the building(s). If future data demonstrate an acceptable level of exposure risk relative to the vapor intrusion pathway, future residential land use and land use involving sensitive populations without the installation of a vapor barrier may be permissible upon prior notification to, and approval by, the Director. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

B. ***Groundwater Limitations*** Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, or bathing purposes. Other uses of groundwater from the shallow unconfined aquifer on The Beverly shall be subject to review and approval by the Director prior to implementation.

C. ***Disturbance Limitations*** Appropriate care shall be exercised during construction, remodeling, and maintenance activities related to human-occupied

structures on The Beverly so as to prevent damage to any vapor mitigation measures which have been installed, and to ensure appropriate repairs are promptly made in the event damage does occur. Appropriate care shall be exercised to protect groundwater monitoring wells on The Beverly, and to ensure appropriate repairs are promptly made, or replacement monitoring wells are promptly installed, in the event damage does occur. Repairs shall be made within a reasonable period of time from the discovery of the damage.

D. **Construction Dewatering Limitations** Dewatering conducted to facilitate construction on The Beverly may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the stormwater system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving facility.

E. **Vapor Intrusion Limitations** For residential enclosed structures intended for human occupancy on the ground floor, appropriate vapor intrusion mitigation measures are required to mitigate exposure risks from the vapor intrusion pathway. Appropriate vapor mitigation measures may include, but are not limited to, installation of a suitable vapor barrier, installation of a passive or active sub-slab or sub-membrane depressurization system, or construction of occupied structures utilizing positive-pressure ventilation systems. If future data demonstrate an acceptable level of exposure risk relative to the vapor intrusion pathway, future residential land use and land use involving sensitive populations on the ground floor may be permissible without vapor mitigation measures subject to prior notification to, and approval by, the Director.

13. **Notice of Breach.** If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on The Beverly constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 60 days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Director.

14. **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.

15. **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 correction of

any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.

16. Rights of Access. Grantor hereby grants to the Utah DEQ and all Holders, the right of access to The Beverly for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.

17. Compliance Reporting. Upon request from the Director, Owner or any Transferee shall submit to the Director written documentation verifying that the activity and use limitations remain in place and are being complied with. If such limitations do not remain in place, are not being complied with, or both, the Owner or any Transferee shall explain the circumstances.

18. 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 Beverly. 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 Beverly (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that The Beverly 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 Salt Lake 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.

19. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- A. that the Grantor is the sole owner of The Beverly;
- B. that the Grantor holds fee simple title to The Beverly which is free, clear and unencumbered;
- C. that the Grantor 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 Grantor has identified all other persons who own an interest in or hold an encumbrance on The Beverly 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 Grantor is a party or by which Grantor may be bound or affected.

20. Amendment or Termination. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the 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 Beverly to which Grantor or Holder has no fee simple interest at the time of amendment or termination. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

21. 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 Beverly with the Salt Lake 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.

22. Recordation and Distribution of Environmental Covenant. Within 30 days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to The Beverly, with the Salt Lake County Recorder's Office. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: the Director, any lessee, and any other person designated by the Director; see Utah Code Ann. §§ 57-25-107].

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

If to the Director:

Ty Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

If to CW The Beverly, LLC:

Tony Hill
C.W. Land
1222 West Legacy Crossing Boulevard, Suite 6
Centerville, Utah 84014

24. Governmental Immunity. In approving 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.

25. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the Utah DEQ for the Utah DEQ's costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

26. The undersigned representative of Grantor represents and certifies that he or she is authorized to execute this Environmental Covenant.

CW The Beverly, LLC
A Utah Limited Liability Company
as Grantor, Owner, and Holder

Tony Hill

Date

State of _____)

ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20__.

Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

On behalf of the Utah Department of Environmental Quality, the Director approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Ty Howard, Director
Division of Waste Management and Radiation
Control

Date

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

Before me, a notary public, in and for said county and state, personally appeared Ty Howard, Director of the Utah Division of Waste Management and Radiation Control, 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 _____ day of _____, 20__ .

Notary Public

This instrument prepared by:

Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, Utah 84104

Exhibit A

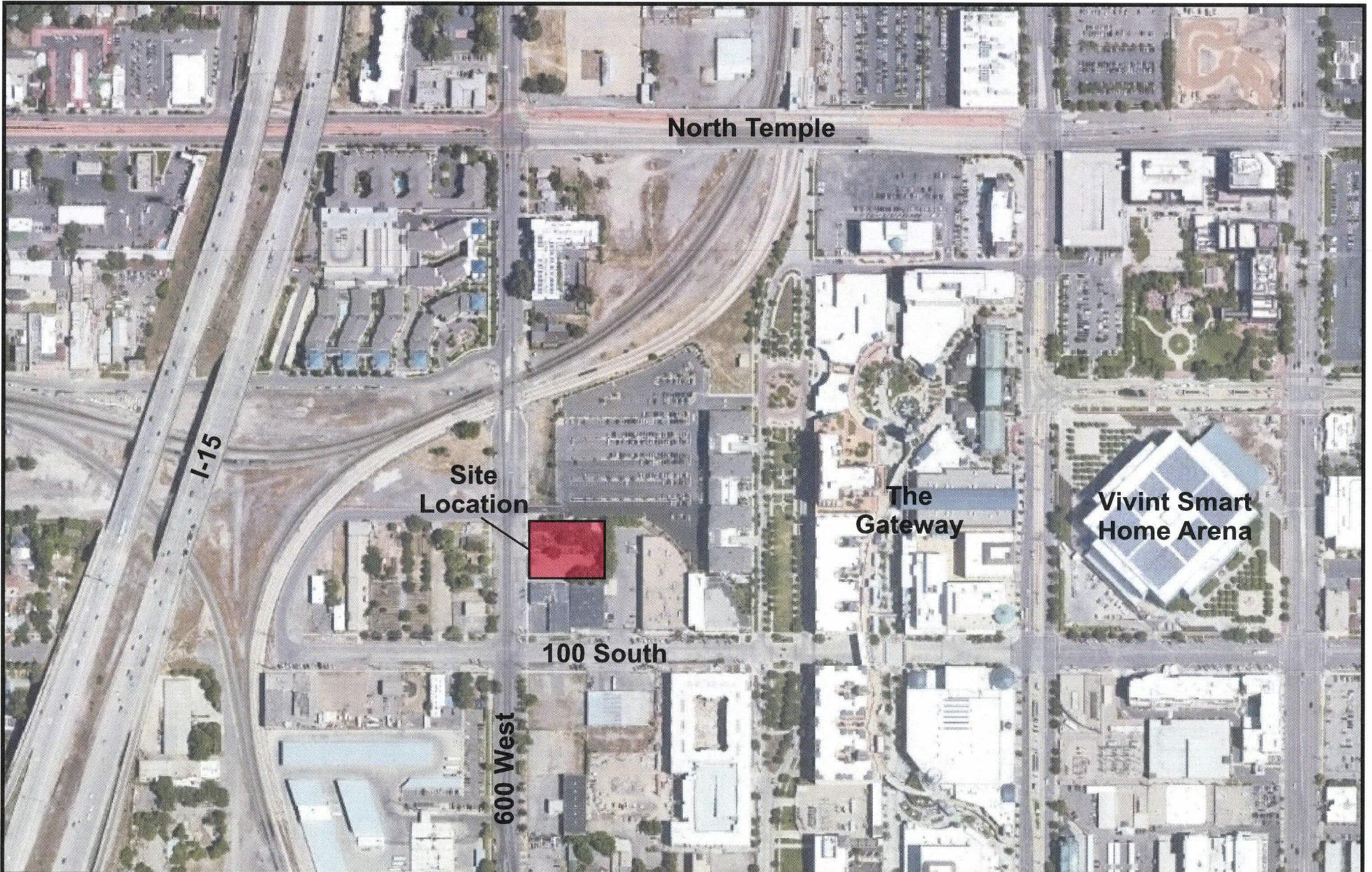
Exhibit A
Legal Description

NORTHEAST QUARTER of SECTION 1, T1S, R1W, SLB&M.

Beginning at a point on the easterly right-of-way line of 600 West Street; Said point being north 00°01'00" west, 223.08 feet and north 89°59'00" east, 71.71 feet from found street monument in the intersection of 600 West Street and 100 South Street; Said point also being north 00°04'12" east, 160.08 feet from the southwest corner of Block 81 Plat "A" of the Salt Lake City survey, and running thence north 00°04'12' west, along said easterly right-of-way, 170.08 feet; thence north 89°55'32' east, 233.19 feet; thence south 00°04'12" west, 165.07 feet; thence south 89°55'28" west, 68.00 feet; thence south 00°04"12" west, 5.00 feet; thence south 89°55'28" west, 165.19 feet to the point of beginning.

Contains 39,319 square feet (or 0.90 acres).

Exhibit B



Scale: 1" equals
approximately 400 feet



Environmental Science and Engineering

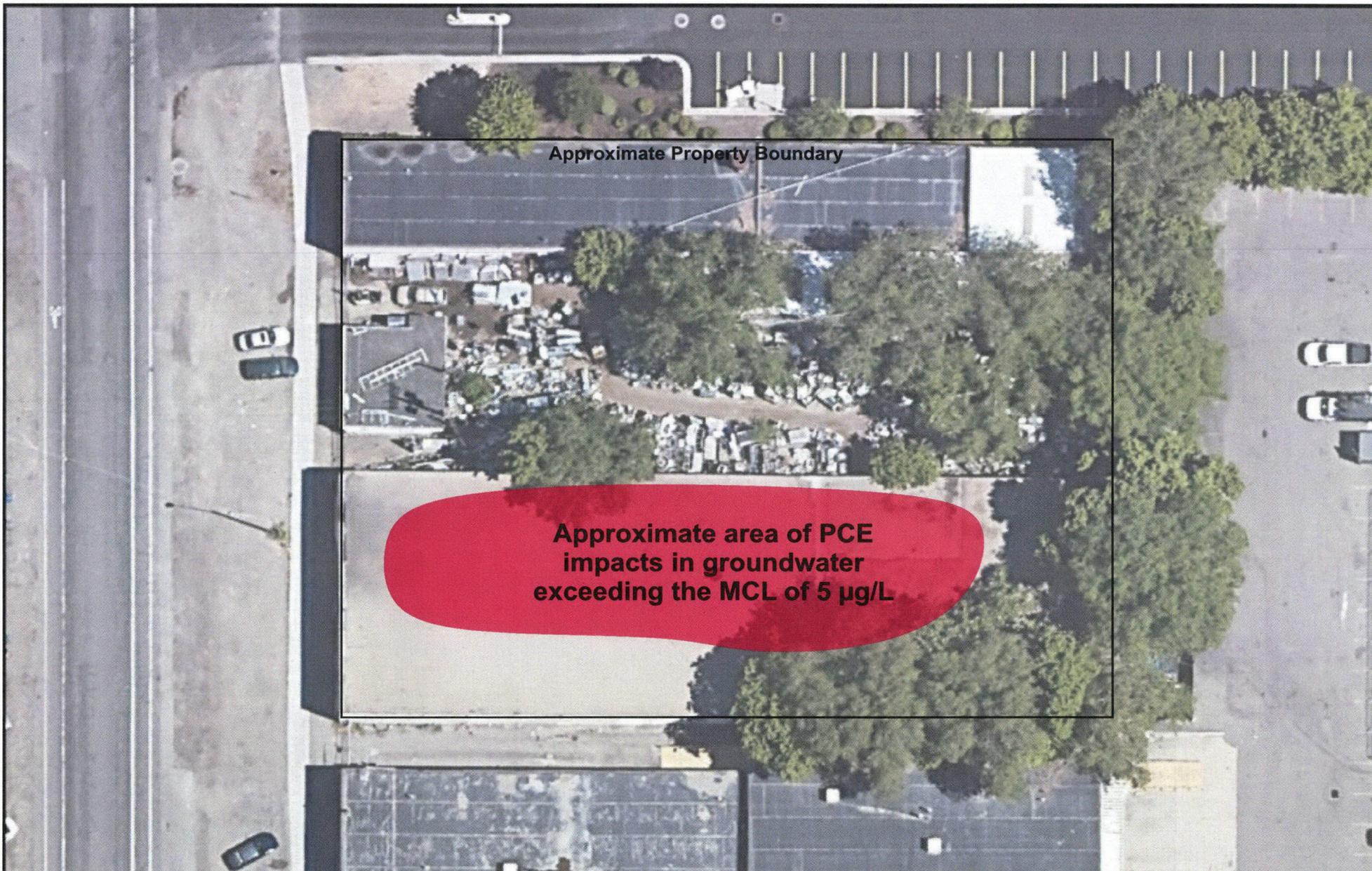
Site Vicinity Map

Former American Barrel Property
45-53 South 600 West
Salt Lake City, Utah

PROJECT NO.: 2241-002B

DATE: 2/20/2020

FIGURE 1



Scale: 1" equals approximately 40 feet



Environmental Science and Engineering

Groundwater PCE Plume Map

Former American Barrel Property
45-53 South 600 West
Salt Lake City, Utah

PROJECT NO.: 2241-002B

DATE: 2/20/2020

FIGURE 2