

Mayor's Office: Council Agenda Item Request Form
*This form and supporting documents (if applicable) are due the Wednesday
prior to the COW meeting by noon.*

Date Received (office use)	
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Date of Request	6.7.2017
Requesting Staff Member	Christina Oliver (Parks and Recreation)
Requested Council Date	6.13.2017
Topic/Discussion Title	Welby Pit Resolution – Environmental Covenant
Description	<p>In preparation for developing the Welby Pit into a regional park, the Parks and Recreation Planning Division has been working with their environmental consultant, Kleinfelder, to assess any environmental impacts that may exist on the existing site due to previous mining and other public works operations. At one point the County ran an asphalt plant on site and would store oil in two underground storage tanks. The plant has since been dismantled, but the tanks have yet to be closed in place. The Parks and Recreation Planning Division is working with Kleinfelder to close and seal the tanks in order to move forward with development. In various discussion with Kleinfelder, the Division of Environmental Response and Remediation, and the Division of Water Quality, the Planning Division has decided that it would be wise to place and record an environmental covenant on the property. This covenant would identify the tanks location along with any limitations of future development on the said locations. By establishing this environmental covenant it helps mitigate the risk to public health, safety, and the environment.</p>
Requested Action¹	Approve resolution.
Presenter(s)	Walt Gilmore, Christina Oliver (Parks and Recreation)
Time Needed²	5 mins
Time Sensitive³	No
Specific Time(s)⁴	N/A

¹ What you will ask the Council to do (e.g., discussion only, appropriate money, adopt policy/ordinance) – in specific terms.

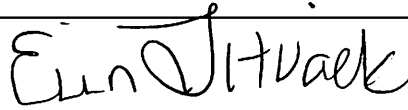
² Assumed to be 10 minutes unless otherwise specified.

³ Urgency that the topic to scheduled on the requested date.

⁴ If important to schedule at a specific time, list a few preferred times.

Contact Name & Phone	Christina Oliver 385.468.1788
Please attach the supporting documentation you plan to provide for the packets to this form. While not ideal, if supporting documents are not yet ready, you can still submit them by 10 am the Friday morning prior to the COW agenda. Items without documentation may be taken off for consideration at that COW meeting.	

Mayor or Designee approval:





Ralph Chamness
Chief Deputy
Civil Division

Lisa Ashman
Administrative
Operations



SIM GILL
DISTRICT ATTORNEY



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

May 24, 2017

Mr. Walt Gilmore, Associate Director
Salt Lake County Division of Parks and Recreation
2001 S. State Street, Suite S4-700
Salt Lake City, UT 84190

RE: Welby Pit Asphalt Plant Environmental Covenant & Related Resolution

Dear Walt,

Enclosed, please find the above referenced documents, approved as to form. They are being forwarded to you for further processing in accordance with County policies.

Please contact me at the number provided below with any questions or concerns you may have.

Sincerely,

MEGAN L. SMITH
Deputy District Attorney
Civil Division
Telephone: (385) 468-7792

EC: Martin Jensen
Christina Oliver
Jon Ruedas
Brent Laulusa
Chris Preston
David Clemence

RESOLUTION NO. _____

DATE: _____

**A RESOLUTION OF THE SALT LAKE
COUNTY COUNCIL AUTHORIZING THE CREATION OF AN
ENVIRONMENTAL COVENANT APPURTENANT TO
THE WELBY PIT ASPHALT PLANT**

WHEREAS, Salt Lake County (the “County”) owns a parcel of real property located at approximately 5200 West 9780 South in South Jordan Utah; identified as parcel No. 26124000060000 (“County Property”); and

WHEREAS, a portion of the County Property which was historically used as a County-operated gravel pit and asphalt plant was subject to an environmental response project conducted by the Utah Division of Water Quality (the “Project”); and

WHEREAS, as part of the Project, the Utah Department of Environmental Quality has imposed several activity and use limitations on the Property to address remaining soil contamination on the Property; and

WHEREAS, pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. § 57-25-101, et seq., (the “Act”) the County desires to enter into an environmental covenant on the Property, attached hereto as Exhibit “A”, in perpetuity to record and provide notice of the activity and use limitations imposed on the Property; and

WHEREAS, pursuant to the Act, an environmental covenant is a servitude and is considered an interest in real property; and

WHEREAS, pursuant to County Ordinance § 3.30.040, the County Council authorizes the Executive to acquire interests in real property pursuant to resolution; and

WHEREAS, the Division of Parks and Recreation requests that the Council authorize the Mayor to enter into said environmental covenant on the Property.

NOW, THEREFORE, be it resolved by the Salt Lake County Council that it accepts the request from the Division of Parks and Recreation and authorizes the Mayor to enter into an environmental covenant as described in Exhibit "A".

DATED this ____ day of _____, 2017.

SALT LAKE COUNTY

By _____
Steve DeBry, Chairman

ATTEST:

Salt Lake County Clerk

Voting:
Council Member Bradley voting ____
Council Member Bradshaw voting ____
Council Member Burdick voting ____
Council Member DeBry voting ____
Council Member Granato voting ____
Council Member Jensen voting ____
Council Member Snelgrove voting ____
Council Member Wilson ____
Council Member Winder Newton ____

APPROVED AS TO FORM
District Attorney's Office
By: Megan L. Smith
Deputy District Attorney
Megan L. Smith
Print Name
Date: 5/24/17

Environmental Covenant
Welby Pit Asphalt Oil Release
May 22, 2017

When Recorded Return To:
Salt Lake County
2001 South State Street, Suite S4-700
Salt Lake City, Utah 84114-4575

With a Copy To:

Wynn John, Project Manager
Welby Pit Asphalt Oil Release
Utah Department of Environmental Quality
Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

A portion of Salt Lake County Parcel No. 26124000060000
(As described herein)

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"). Salt Lake County, as grantor ("Grantor") makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the "Property"). 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. that is administered by the Division of Water Quality ("DWQ") in the Utah Department of Environmental Quality. The environmental response project is identified by DWQ as the Welby Pit Asphalt Oil Release.
 - a. Background Information: This Environmental Covenant applies to a portion of property that is located within the Salt Lake County Welby Gravel Pit, which was historically used as a County-operated gravel pit and asphalt plant. The Environmental Covenant "Site" is located at the former asphalt plant in the vicinity of two underground

concrete vaults that historically contained asphalt-oil. The plant was dismantled and use of the asphalt-oil vaults was discontinued in the early 2000's. The vaults are built-in-place concrete with approximate capacities of 29,000-gallons (west tank) and 7,000-gallons (east tank), and are approximately 30 years old. The vaults were determined by the Division of Environmental Response and Remediation ("DERR") to be exempt from Underground Storage Tank rules because the material they contained was not regulated. Therefore, the site was transferred to and is regulated by DWQ. The location of the Site with respect to the larger Welby Pit area is identified in the attached Figure 1. A detailed map showing the release area, boring locations and environmental covenant area is depicted on Figure 2.

b. Environmental Response Actions: Investigations were conducted at the Site in 2016, at which time a release of petroleum hydrocarbons was identified and reported to the DERR. The Site was assigned Facility Identification Number 4000901 and Release Site NKB. The DERR subsequently transferred the release file and information to DWQ. Asphalt-oil impacted soils were found to be localized in the immediate area surrounding the vaults with a lateral extent of less than 20 feet from the outside edges of the vaults, and a vertical extent from approximately 5 feet below ground surface (bgs) to depths ranging from approximately 15 feet to 35 feet below ground surface (bgs). Total petroleum hydrocarbons as diesel-range organics (TPH-DRO) and/or Oil and Grease were detected above site screening levels in the Site subsurface soils at depths between 5 feet and 31.5 feet bgs, which are presented in the attached Table 1. The released product (asphalt oil) is highly-viscous. The product's resistance to flow and the underlying clay soils have aided in containment of the release. Based on the age and viscosity of the release, it is reasonable to conclude that the contaminants identified in the Site subsurface soils have stabilized and are not likely to migrate significantly from the current location.

Depth to groundwater at the Site is approximately 270 feet bgs; therefore the release does not present a concern to groundwater quality. The Welby Pit is proposed for future use as a public park.

Due to the stable nature of the contaminants identified at the Site, along with the lack of potential environmental receptors, the identified petroleum-impacted soil will remain on Site under this Environmental Covenant.

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.** Salt Lake County is 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 on file with the DWQ as the "Welby Pit Asphalt Oil Release" .

8. **Activity and Use Limitations.** As part of the environmental response project described above, the following activity and use limitations are imposed on the Property to address the remaining soil contamination at the Site.

a. **Land Use Limitations:** *The Site will be limited to public/commercial/industrial or open space use. Residential uses are prohibited.*

b. **Groundwater Use Limitations:** *Depth to water is approximately 270-feet or greater. No indications of potential groundwater impacts were identified during the investigation. The Site has no groundwater use limitations due to this release. However, groundwater extraction beneath the Site is restricted by a Well Prohibition Covenant recorded against the Site via deed restriction because it is within the boundaries of the Southwest Jordan Valley Groundwater Plume.*

c. **Construction Limitations:**

i. In the event that future construction activities involving soil excavation are planned for the environmental covenant oil impacted area detailed in the attached Environmental Covenant Area Map (Figure 2), workers will be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous materials facilities (29 CFR 1910.120).

ii. Asphalt-oil impacted soil that is removed at that time shall be treated/disposed in accordance with applicable law. Owner shall maintain documentation demonstrating the proper handling and disposal of contaminated soil, including waste manifests, and shall submit to the UDEQ upon request.

iii. When constructing any structure, Owner shall install, maintain and operate vapor-related engineering controls to eliminate the potential for subsurface vapor phase petroleum to migrate into the structure, unless a vapor intrusion risk assessment is conducted and shows that there is no unacceptable vapor intrusion risk, as determined by UDEQ.

d. Compliance Reporting. Upon request, Owner or Holder shall submit written documentation to the UDEQ verifying that the activity and use limitations remain in place and are being followed.

a. Periodic Agency Oversight. Agency may register the Property with Blue Stakes to obtain notification of planned excavations in the area. Blue Stakes charges a fee for each notification. Upon request, Holder shall reimburse Agency for notification fees and any associated Agency oversight. Agency may conduct periodic inspections and reviews to assess the protectiveness of the activity and use limitations described herein. Upon request, Holder shall reimburse Agency for costs associated with inspections and reviews.

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 Holders 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 twenty (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 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.

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;" 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 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.

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 Salt Lake 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:

Wynn John, Project Manager
Welby Pit Asphalt Oil Release
Utah Department of Environmental Quality
Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

If to the Grantor/Owner/Holder:

Salt Lake County
2001 South State Street, Suite S4-700
Salt Lake City, Utah 84114-4575

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.

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

Salt Lake County as Grantor, Owner, and Holder

Date _____

Print Name: _____

APPROVED AS TO FORM

District Attorney's Office

By: Megan L. Smith

Deputy District Attorney

Megan L. Smith

Print Name

Date: 5/23/17

State of Utah

County of Salt Lake

On this _____ day of _____, 20____ appeared before me, _____, as authorized representative of Grantor, Owner, and Holder who, his identity been satisfactorily established to me, executed the foregoing environmental covenant in my presence.

Notary Public

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).

Kim Shelley, Acting Director
Division of Water Quality
Utah Department of Environmental Quality

Date

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

On this _____ day of _____, 20____ appeared before me Walt Baker, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing environmental covenant.

Notary Public

Exhibit A
Property Legal Description

The Environmental Covenant Site lies within a portion Salt Lake County of parcel 26124000060000 described as follows:

A parcel of land being part of an entire tract located in the Southeast Quarter of Section 12 of Township 3 South Range 2 West of the Salt Lake Base and Meridian. Said entire tract was conveyed to Salt Lake County per that Warranty Deed recorded as Entry No. 2299951 in Book 2782 at Page 173 in the Office of the Salt Lake County Recorder. The boundary of said parcel of land, as surveyed by the Salt Lake County Surveyor's office, is described as follows:

Beginning at a point 1043.79 feet N. 89°43'03" W. (Record = West) along the south line of said Southeast Quarter and 2102.68 feet N. 0°16'57" W. from the Southeast Corner of said Section 12; thence N. 54°44'08" W. 90.19 feet; thence N. 34°45'27" E. 61.90 feet; thence S. 54°44'52" E. 90.02 feet; thence S. 34°48'13" W. 61.92 feet to the point of beginning.

The above-described parcel of land contains 5578 square feet in area or 0.128 acres, more or less.

The basis of bearing is N. 89°43'03" W. between the southeast corner and the south quarter corner of Section 12, Township 3 South, Range 2 West, SLB&M

The Environmental Covenant Site is defined by a rectangular area with dimensions 60 feet by 90 feet (approximate 0.128 acres) consisting of the asphalt-oil vault footprint with a 20 foot buffer on all sides. The Site located in the approximate north center of the Salt Lake County Welby Pit, with an entrance at 5200 West and 9800 South in South Jordan, Utah, as indicated on the attached Figures 1 and 2.

TABLES

FIGURES