## Attachment 38: Institutional Controls Quick Reference Table

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| Institutional Control | Description | Documentation Required from PRSR  (electronic copy preferred) | Departmental Considerations |
| Declaration of Restrictive Covenant | A recordation made in the county property records by a property owner, and agreed to by DEP, restricting use of or access to property in order to control the spread of contamination or exposure to contamination. | * Draft Restrictive Covenant. * Deed to property. * Legal description of property to be restricted. * Survey of area of restriction (if different from whole property or if there are stormwater features that need to be maintained). * Title report. * Published notice. * Mailed notice to holders of interest in the real property to be restricted. | * Most common type of IC received by the Department. * Since many of these are/have been done, review can be accomplished quickly. * This type of control runs with the land in perpetuity due to statutory exclusion from the Marketable Records Title Act (MRTA). |
| Municipal or County Ordinance requiring connection to water system | A local government regulation requiring that property owners hook up to an existing system that supplies potable water. | * Copy of the ordinance, or specific web link to documentation, the property owner wishes to rely upon, including maps supporting the characterization of the contamination property as within the service area and within the required proximity to the water system. * Document or statement that property is either undeveloped or connected to water system. * Deed to source property. * Published notice. * Mailed notice to any offsite property owners, if contamination goes beyond property lines. * Possibly deeds to off source properties impacted. This decision to be made on a case by case basis. * Possibly title work to determine encumbrances for both the source and non-source properties. This decision to be made on a case by case basis. | * This type of IC is only contemplated for groundwater contamination. * OGC must evaluate any ordinance proposed to ensure the ordinance is valid and meets the definition of IC in statute. * Is this type of IC adequately protective considering the contamination at issue? I.E. is there a significant exposure risk if the contaminated GW is utilized or spread for non-potable uses. |
| Memorandum of Agreement for Land Use Controls (MOALUC) or Memorandum of Agreement for Restrictive Covenant (MOARC) for Ports and Airports | An agreement between a governmental or quasi-governmental entity with a high degree of control over access to the contaminated media. | * Draft MOA (MOALUC, MOARC, other names possible) – these are complex documents, generally developed between OGC and governmental entities’ counsel. * Deed(s) to property. * Legal description of property to be restricted. * Details about known existing contamination. * Construction Management Plan (for some agreements- this can also be handled in the body of the MOA) * Title report. * Published notice. * Mailed notice to holders of interest in the real property to be restricted. | * This type of IC is limited to governmental or quasi-governmental entities that have appropriate control over access to contaminated media within their jurisdiction. |
| Interagency Agreement (DOT MOU is our only current example) | An agreement between agencies that controls access to and exposure/spread of contamination. | * Signed Interagency agreement that sets out framework for the IC – this is a complex document. * Proposal for a map note – developed with and acceptable to DEP and DOT, includes a request letter from DEP, summaries of soil and groundwater data and surveys and other documents detailing contamination. * Reference to map note to be recorded in County land records. | * Currently, the only such agreement we have in place is the DOT MOU. * DOT MOU is limited to petroleum contamination only in DOT ROWs. Adding other contaminants is currently being negotiated between DEP and DOT. |
| Land Management Plans for State Owned Lands (currently Board of Trustees lands only, see above for DOT). | Plans developed by DEP or possibly other agencies for land owned and controlled by the state. | * Management plan. * Statement from both the leasee and staff with DEP DSL approving the control. | * These can only be enacted on state owned lands. |
| Delineated areas under 62-524 | Areas that have been identified by rule of the Department as contaminated, which are used to inform decisions by Water Management Districts (WMD) on well and consumptive use permits (CUP). | * Rule reference to the specific part of 62-524 delineating the area * Published notice * Possibly title work to determine encumbrance holders for both source and non-source properties. This determination to be made on a case by case basis. * Mailed notice to any off-site property owners affected. | * Currently delineated areas are limited to those areas already adopted by rule. Those include historic EDB sites, some superfund/CERCLA sites and a few miscellaneous sites. Since delineated areas target potable water well installations, may still need to consider whether there is a significant exposure risk if the contaminated GW is utilized or spread for non-potable uses. |
| Municipal or County Zoning or Land Use Classifications, DRIs, Development Orders, or Deed Notices | Zoning classifications, land use categories, Development of Regional Impact Final Orders, development orders, or deed notices. | * These will all require various different components to form complete packages. All of them may be acceptable as part of a layered IC, but it is not likely that any of them can form the basis of an IC alone. Communicate with OGC early in the development of any closure plan that includes the use of these types of controls. * Published notice | * These may provide some utility if layered along with other controls. |
| Conservation Easements | An easement given by the Property Owner for conservation purposes. | * Draft conservation easement and supporting documentation (much of this is similar to the supporting documentation required for a Restrictive Covenant, see the Conservation Easement handbook, SLER 1515 for specifics). * Published notice | * This type of IC is recognized by statute, but may not be a good fit for controlling access to or spread of contamination. * Requests to evaluate this type of IC should be forwarded to OGC early in the process of developing the IC. |