## Section B.5: Restricting Future use of the Property Based on Actual Conditions of Exposure – Land Use Restrictions (LURs)

The Sample Declaration of Restrictive Covenant (DRC) ([Attachment 3](https://floridadep.gov/waste/waste/documents/attachment-3-sample-declaration-restrictive-covenant)) includes a suggested definition of what constitutes “residential uses” that are prohibited on properties without Engineering Controls where site soils do not meet the default direct exposure residential Soil Cleanup Target Levels (SCTLs). FDEP calls these prohibitions “Land Use Restrictions” (LURs). The sample DRC uses North American Industry Classification System (NAICS) sector codes[[1]](#footnote-2) to define a broad range of activities that could result in use inconsistent with the exposure criteria upon which FDEP approves unrestricted (i.e. “residential”) direct exposure to soil.

Therefore, the use of the LUR NAICS codes and text as found in the sample DRC constitutes a Risk Management Option (RMO) II (subsection 62-780.680(2), F.A.C.) closure as to soil. However, the use of NAICS sector codes to define restricted uses is not mandatory and the property owner can propose alternative descriptions of the prohibited uses on the property that are consistent with the degree and nature of the cleanup conducted and actual conditions of exposure. For example, if alternative cleanup target levels (ACTLs) have been developed and approved by FDEP for a property based upon a specific set of exposure conditions and assumptions, an alternative description of the prohibited activities, uses or exposure scenarios (alternative LUR language) can be provided in lieu of the sample LUR language, so long as the text captures in narrative form the essential exposure assumptions upon which the ACTLs were derived.

If the proposed alternative LUR language differs from the sample LUR language, FDEP will review the proposal as a request for a RMO III (subsection 62-780.680(3), F.A.C.). For example, where the use of the sample LUR language results in potential ambiguity regarding a specific use that is not intended to be prohibited, FDEP will consider the addition of specific language to the sample LUR language to clarify allowable activities, notwithstanding the broad language of the sample.

Typically, an EC and a LUR should not both be used on the same property for the same contamination. However, there may be instances where both controls are appropriate. For example, a LUR over the entire property and an EC over the area covered by a building might both be used because soil levels underneath the building are suspected to be above industrial levels while soil levels on the remainder of the property are known to be below industrial levels.

1. The NAICS is the standard used by federal agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The code list in Attachment 3 is from the 2017 edition. [↑](#footnote-ref-2)