## Section C.17: IC Notice Procedures

After FDEP has issued its letter confirming approval of the recommended conditional closure, and prior to FDEP approval of the IC, notice and a 30-day opportunity to comment on the conditional closure proposal must be provided pursuant to Rule 62-780.220(7), F.A.C. As set forth in the rule, notice is to be given by regular mail to:

* local governments with jurisdiction over the property where the contaminated site is located. These include city (if applicable), the county, and the water management district;
* owners of real property subject to the IC. If the real property owner is a Florida entity, or a foreign entity qualified to do business in Florida, to the registered agent for the entity as identified on Sunbiz; otherwise, to the address for the owner, if known, or otherwise as provided on the County Property Appraiser’s website;
* residents or business tenants on the property subject to the IC; provided however, where there are multiple residents, businesses or tenants on any property subject to the proposed IC, the PRSR may publish a Notice of Intent to Approve Use of Institutional Controls. See [Attachment 19](https://floridadep.gov/waste/waste/documents/icpg-attachment-19), , [Attachment 21](https://floridadep.gov/waste/waste/documents/icpg-attachment-21), [Attachment 22](https://floridadep.gov/waste/waste/documents/icpg-attachment-22), and [Attachment 23](https://floridadep.gov/waste/waste/documents/icpg-attachment-23); and
* Any party holding a materially affected encumbrance in the area subject to the IC. Encumbrance holders include existing mortgage holders, holders of recorded leases and easement or other encumbrance holders identified in the Title Report. The notice should be made by the owner to the encumbrance holder if the IC limitations or restrictions could materially affect the encumbrance holder's interest. If the recorded encumbrance specifies the address and requirements for notice (e.g., format, delivery method, required cc’s, etc.), then notice should be provided in accordance with the written requirements of the recorded encumbrance, as well as by mail to the registered agent for the entity as identified in Sunbiz, however such requirements do not replace or supersede the requirements under section 62-780.220(7), F.A.C. See section C.10 Title Report and C.11 Owner’s Notice to Existing Encumbrance Holders of the ICPG and [Attachments 9](https://floridadep.gov/waste/waste/documents/attachment-9-actual-notice-intent-approve-use-institutional-control-easement)A – 9F of the ICPG.

Under Chapter 62-780, F.A.C., notice is to be given at least 30 days prior to FDEP’s formal approval of the recommendation for conditional closure, but may be provided earlier, to allow for comments pursuant to notice[[1]](#footnote-2). FDEP site managers should bring this notice requirement to the owners’ attention early in the process because owners are often interested in obtaining the CSRCO quickly due to pending real estate transactions or bank financing. The requirement for a 30-day comment period after notice is given can result in delays of business activities if owners are unaware of it.

The site manager shall send a copy of FDEP’s conditional closure approval to any party who provides comments to FDEP or requests a copy of the closure approval.

While not required by Chapter 62-780, F.A.C., owners remediating large-scale, high-interest sites may want to consider inviting the public to public forums to become involved while environmental conditions and risks are being assessed and while plans are being developed. For cleanups managed with EPA as the lead, such public forums may be required (see the appropriate EPA rules for more information). If public involvement in the development of controls is requested, owners should focus on whether the restrictions, engineering controls, and land use controls have been drafted to adequately explain what the prohibited and permitted uses of the site will be, and whether there are any continuing obligations and conditions required of the property owner and tenants/lessees. Public comment should be accepted in this process and, if warranted, additional meetings and notices should be scheduled.

1. DEP often provides provisional approval of a conditional closure in advance of the formal approval. This provisional approval indicates that the proposed conditional closure appears to meet the rule requirements and can be a good signal to provide notice if it has not already been provided, or if any of the conditions for closure have changed since notice was provided. [↑](#footnote-ref-2)