



# Petroleum Contaminated Site Closure



# Petroleum Site Closures

- Changes to 62-780, F.A.C.
- The Basics of Closures:
  - Chapter 62-780.680, F.A.C., RMO-I, RMO-II and RMO-III Closures
- Other Considerations for Closure
  - FDOT MOU Closures
  - MOUs for Local Government Transportation Facilities
- Understanding Title Reports – Tamara Blyden
- Establishing Institutional Controls - The Process – Jackie Brooks



# Changes to 62-780, F.A.C.

- 1. Increase the number of options for risk based closures, including using non-recorded controls**
- 2. Provisions to potentially leave product in-place under conditional closures**
- 3. Expanded use of the organoleptic exemption to more sites**
- 4. Noticing changes-mailed notice required in most cases**



# Site Closure Under 62-780, F.A.C.

- **No Further Action and No Further Action with Controls**
  - Risk Management Options I, II and III
  - DEP issues Site Rehabilitation Completion Order
    - With or without controls
- **Ensure all media are addressed**
  - Groundwater
  - Soil
  - Surface water
  - Sediment
- **Potential risks to human health meet statutory criteria**
  - No more than 1E-6 increase in cancer risk



# Risk Management Options

- **RMO I – Meet all “default” Cleanup Target Levels - everywhere**
  - “Clean closure”
  - No restrictions
- **RMO II – Contamination remains on source property**
  - Land use restriction to Commercial/Industrial
    - Engineering Controls can also be used
  - Limited groundwater plume
    - <1/4 acre, not beyond the property boundary
- **RMO III – Contamination may remain on and off source property**
  - All closure strategies available, includes risk assessment
  - All RMOs require proper management of risk



# Keys To Closure

- **Common Endpoints For Soil delineation:**

- Residential Direct Exposure CTLs
- Leachability CTLs
- Background

- **Site-Specific endpoints:**

- **Commercial/Industrial Direct Exposure** (If there is an existing institutional control that restricts land use to commercial/industrial AND the site does not abut a boundary of that control then C/I CTLs can be endpoints)
- **Alternative Cleanup Target Levels (ACTLs)** (only if ACTLs are based on intrinsic chemical properties)



# Keys To Closure

- **Common Endpoints For Groundwater:**

- **Cleanup Target levels**
- **Background**

- **Not Appropriate Endpoints:**

- **Low Yield/Poor quality numbers**
- **Secondary/Organoleptic numbers**



# Keys To Closure

- **Decide What Controls Are Necessary:**

- **Groundwater**

- Potable use
- Storm water features
- Dewatering
- Irrigation well use
- Ground water use based on depth

- **Soil**

- Commercial/industrial
- Engineering controls
- Digging restrictions
- Land use restrictions





# Contact Information

**John F. Wright, P.E.**

**PRP, Team 1**

**850-245-8888**

**[John.Wright@floridadep.gov](mailto:John.Wright@floridadep.gov)**



# Petroleum Restoration Program

## **Other Closures** **John Wright, P.E.**

**2019 PRP Program Meeting**



# Other Closures

- **FDOT Memorandum of Understanding (MOU) Closures**
- **Non-FDOT (City or County) MOUs**

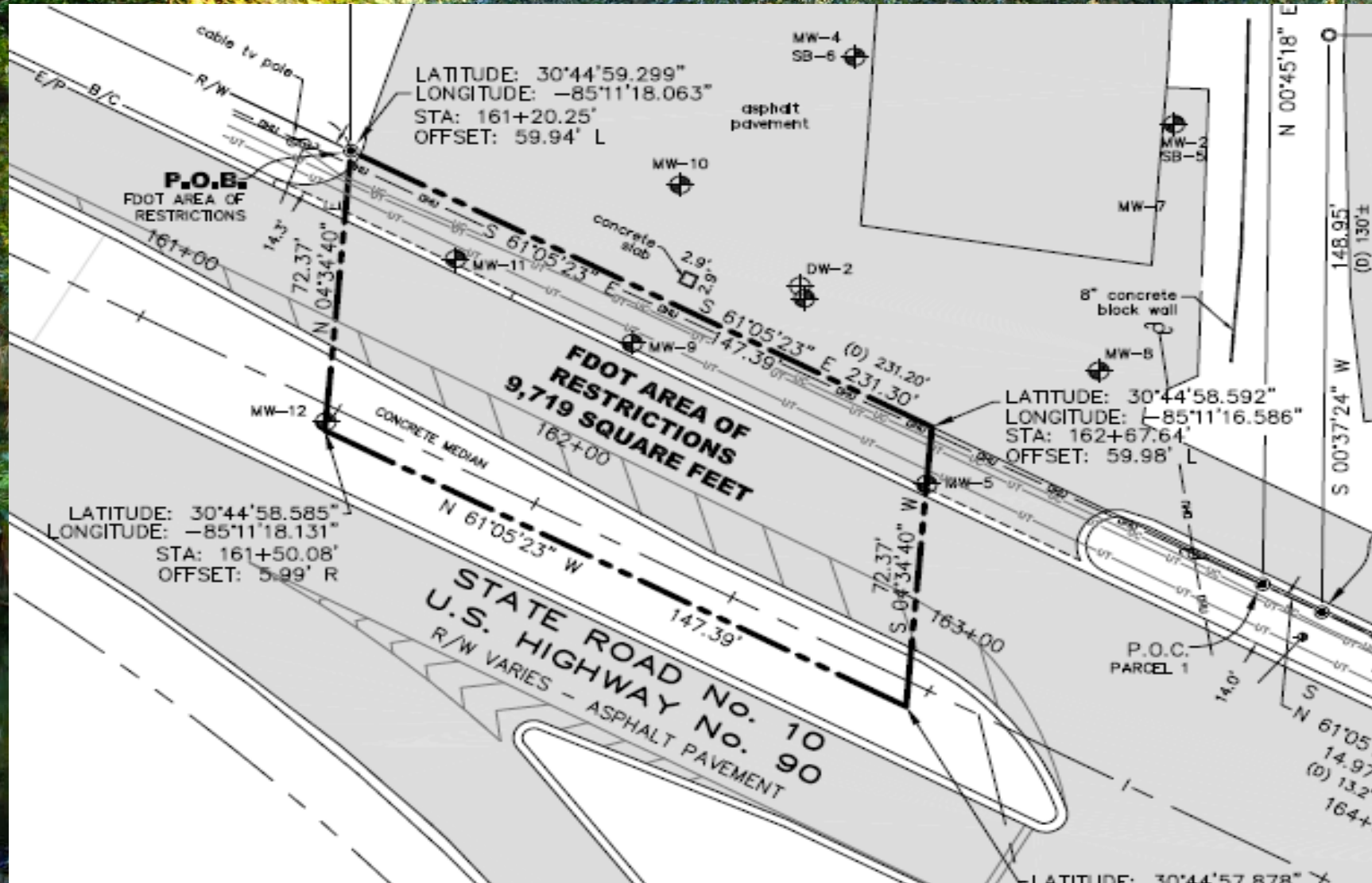


# FDEP/FDOT MOU

- **Allows Conditional Closures for Discharges with Contamination in the FDOT's Right of Way (ROW)**
- **FDOT ROW "Map Note" used as an Institutional Control**
- **Takes advantage of the inherent "Barriers To Exposure" provided by the FDOT's management of the ROW**
  - **Physical Barriers, i.e. road pavement, clean fill**
  - **Administrative Barriers, i.e. FDOT's permitting process that is designed to control all activities in the ROW**
  - **No need for recording of Restrictive Covenant**

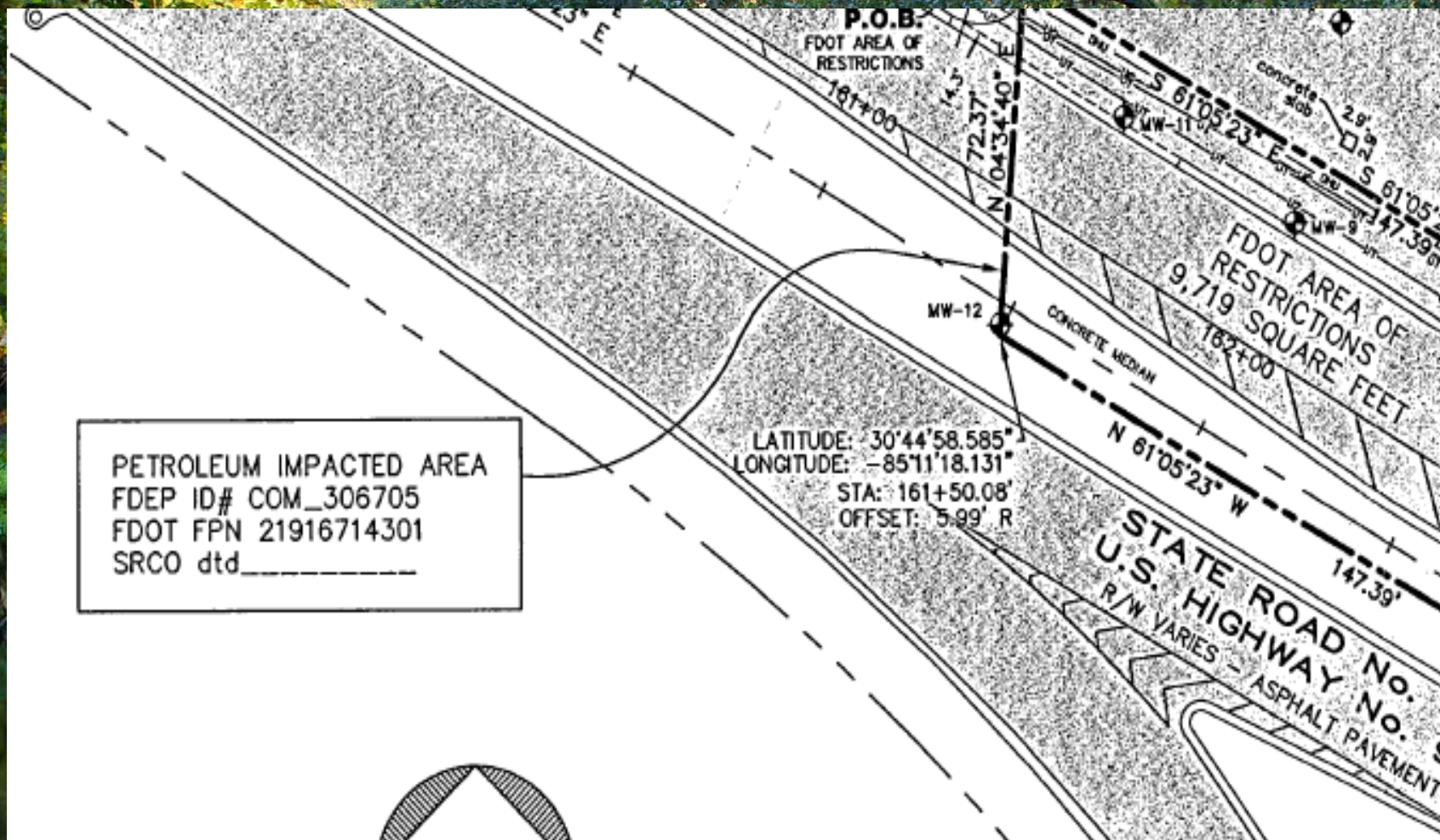


# FDOT ROW Map





# ROW Map Note





# Key Things To Remember

- **A FDOT MOU Closure may be used to close discharges where the source Property is adjacent to FDOT ROW**
- **Verify that it is an FDOT ROW**
- **The Source Property must qualify for closure by:**
  - **Meeting RMO-I Criteria, or,**
  - **RMO-II Establishment of Institutional Control (IC) or Engineering Control (EC) for Groundwater and Soil**
- **The source property owner must sign an indemnification agreement with FDOT**
- **Closures using the FDOT MOU are considered RMO III Closures since the contamination is off-site**



# **FDOT MOU Closure Process**

**Steps for FDOT/FDEP MOU closures are located in Institutional Controls  
Procedure Guidance**

**Attachment 32: Procedure For Use Of FDEP And FDOT MOU**





# Non-FDOT ROW Closures

- **Allows closures where contamination has migrated from source Property to Transportation Facilities under responsibility of City or County Governments**
- **MOU w/Local Government developed on a case-by-case basis**
- **Guidance Document Dated December 15, 2016**



# Non-FDOT ROW Closures

## Information Needed:

- **Map or diagram showing extent of plume**
- **Notice sent to Local Government regarding contamination on the Transportation Facility**
- **Information about the status of the contamination**
- **A legal description of the source property and diagram of the non-source property (Transportation Facility)**



# Contact Information

**John Wright, P.E.**

**PRP, Team 1**

**850-245-8888**

**[John.Wright@floridadep.gov](mailto:John.Wright@floridadep.gov)**



# Petroleum Restoration Program

## Tips For Understanding Title Search Reports Tamara Blyden

2019 PRP Program Meeting



# Title Search Report

## How to Review a Title Search Report

**There are six (6) items you must identify when reviewing a title search report**

- 1. Date of search start. Is it old enough? Must be a thirty (30) year search per MRTA (Florida's Marketable Record of Title Act)**



# Title Search Report

- 2. Date of search end. Is it new enough? Search must be completed within six (6) months of IC execution by FDEP**

**"This will serve to certify that Fidelity National Title Insurance Company has caused to be made a search of the Public Records of Clay County, Florida, ("Public Records") as contained in the office of the Clerk of the Circuit Court of said County, from February 13, 1983, through February 13, 2013 at 8:00 AM, as to the following described real' property lying and being in the aforesaid County, to-wit: "**



# Title Search Report

## **3. Legal description. Check it against the LD in the IC and the Deed. It must match!**

**"Part of Lot 11, STAFFORD CLARK SUBDIVISION, according to survey, recorded in Plat Book 1, Page 51, Public Records of Clay County, Florida, TOGETHER WITH a part of Lot 10, TRAVERS GRANT, Section 39, Township 5 South, Range 26 East, Clay County, Florida, according to survey recorded in Deed Book I, Pages 624 and 625 of said Public Records, more particularly described as follows: "**



# Title Search Report

- 4. Apparent Record/Owner/Fee Simple Owner must be listed, must match the Grantor in the IC/RC and on the deed.**

**"As of the effective date of this Report, the apparent record Fee Simple title owner(s) to the above-described real property is/are: Hess Realty LLC, a Delaware limited liability company, by virtue of Quitclaim Deed, recorded June 10, 2014 in Official Records Book 3650, Page 1874, public records of Clay County, Florida. "**





# Title Search Report

## 5. Chain of Title Listing

**“This listing is not required, however we assume that the creator of the title search report has properly made all the connections. If provided, the latest in time deed should match the apparent record owner/fee simple owner.”**



# Title Search Report

## Example of Chain of Title Listing

### "DEED CHAIN/ CHAIN OF TITLE:

Deed, recorded in Deed Book 31, page 225

Deed, recorded in Deed Book 38, Page 314

Quit Claim Deed, recorded in Official Records Book 115, Page 625

Quit Claim Deed, recorded in Official Records Book 121, Page 411

Quit Claim Deed, recorded in Official Records Book 144, Page 293

Quit Claim Deed, recorded in Official Records Book 191, Page 516, as corrected in Official  
Records Book 373, Page 508 and Official Records Book 727, Page 178

Affidavit, recorded in Official Records Book 868, page 648

Quit Claim Deed, recorded in Official Records Book 868, Page 653, as re-recorded in Official  
Records Book 870, Page 505 "



# Title Search Report

## 6. Encumbrance Listing:

**“Is easements, liens, mortgages, leases, agreements, UCC filings, court orders, taxes paid, notices of tax liens, Notices of Commencement (NOC), covenants/restrictions/conditions, easement located in deeds, and more.”**



# Title Search Report

## Example of Encumbrance Listing:

The following liens against the said real property recorded in the aforesaid Public Records have been found:

1. Notice of Commencement filed September 22, 2014 in Official Records Book 3680, page 1249, of said records.

For 2014 Tax Year Parcel/ID # 390526-015113-003-00, gross tax amount is \$11,137.44, exemption type is None, and payment status is Paid.

Other Related Documents:

2. Covenants, Conditions, Restrictions and Easements set forth in that certain instrument, recorded in Official Records Book 1570, Page 612.



# Contact Information

**Tamara Blyden**

**PRP Team 1**

**850-245-8903**

**[Tamara.Blyden@floridadep.gov](mailto:Tamara.Blyden@floridadep.gov)**



# Petroleum Restoration Program

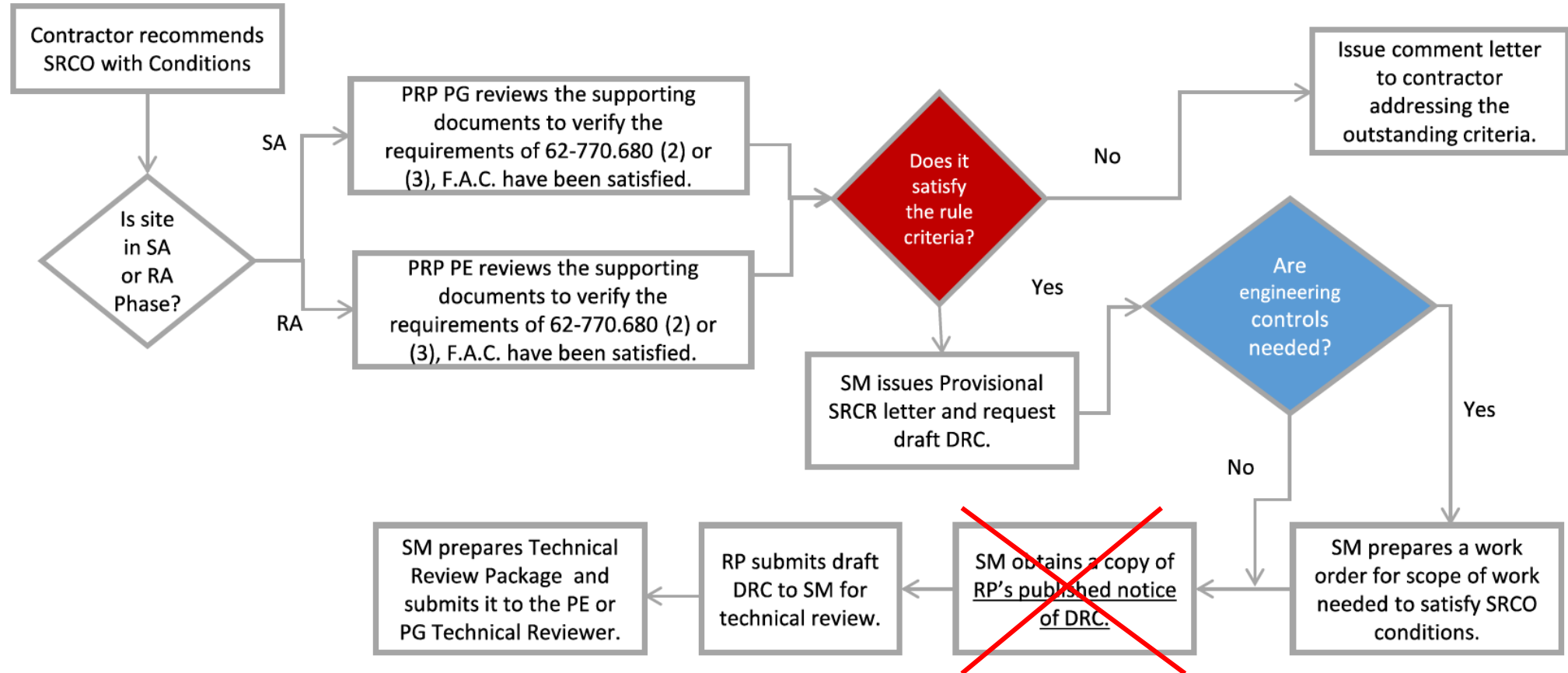
## **RMO II - Conditional Closure Process for Site Managers**

**Jackie Brooks, P.E.**

**Updates were made to this presentation 2/25/19**



# Restrictive Covenant Flow Chart – Technical



Key: PRP – Bureau of Petroleum Storage Systems  
 FDEP – FL Dept of Environmental Protection  
 PE – Professional Engineer  
 RP – Responsible Party  
 SRCR – Site Rehabilitation Completion Report

DRC – Declaration of Restrictive Covenant  
 ICRS – Institutional Control Registry Sheet  
 PG – Professional Geologist  
 SA – Site Assessment

F.A.C. – Florida Administrative Code  
 OGC – Office of General Counsel  
 RA – Remedial Action  
 SM – Site Manager



# Next Steps

**Once Report is approved concurring with NFAC,**

- **Step 1: Issue Deliverable Review Letter**
- **Step 2: Issue Provisional Site Rehabilitation Completion Report Letter  
(ICPG, Attachment 7)**





# What is ICPG ????

- Institutional Controls Procedures Guidance  
-This is your guide full of templates

- Where Do You Find the ICPG?

<https://floridadep.gov/waste/waste/content/institutional-controls-registry-guidance>



# Next Steps

- **Step 3: Include on the DRL the weblink for obtaining the DRC for their review.**
- **Step 4: Once the deliverable review letter is issued, the Site Manager will begin preparing the Draft Restrictive Covenant (this is not the ATC's responsibility).**
- **Step 5: Prepare Purchase Order**





# Allowable Costs for PRP Funding

**Florida Statute 376.3071(5)(b)4, Inland Protection Trust Fund**

## **Professional Land Survey**

**Entire or partial property for restrictions**

## **Title Search Report**

**Ownership and Encumbrance Report**

**Determines who needs to receive Notice**

**Must be performed within 180 days of the IC**

**Review - Affidavit of Title (ICPG, Attachment 8)**





# Allowable Costs for PRP Funding

## Recording Fees

**IC Restrictions are recorded in county public records where the restricted property is located**

## Engineering Control Design & Installation

**Unless an engineering control already exists**





# Allowable Costs for PRP Funding

## Engineering Certification Report:

- **Use SPI Line Item #19-13 to fund this report (case by case)**
- **P.E. Certification of design sufficiency (SPI Line Item # 21-9 through #21-12)**
- **Level of Effort (LOE) equivalent to Level 1 Limited Scope RAP**



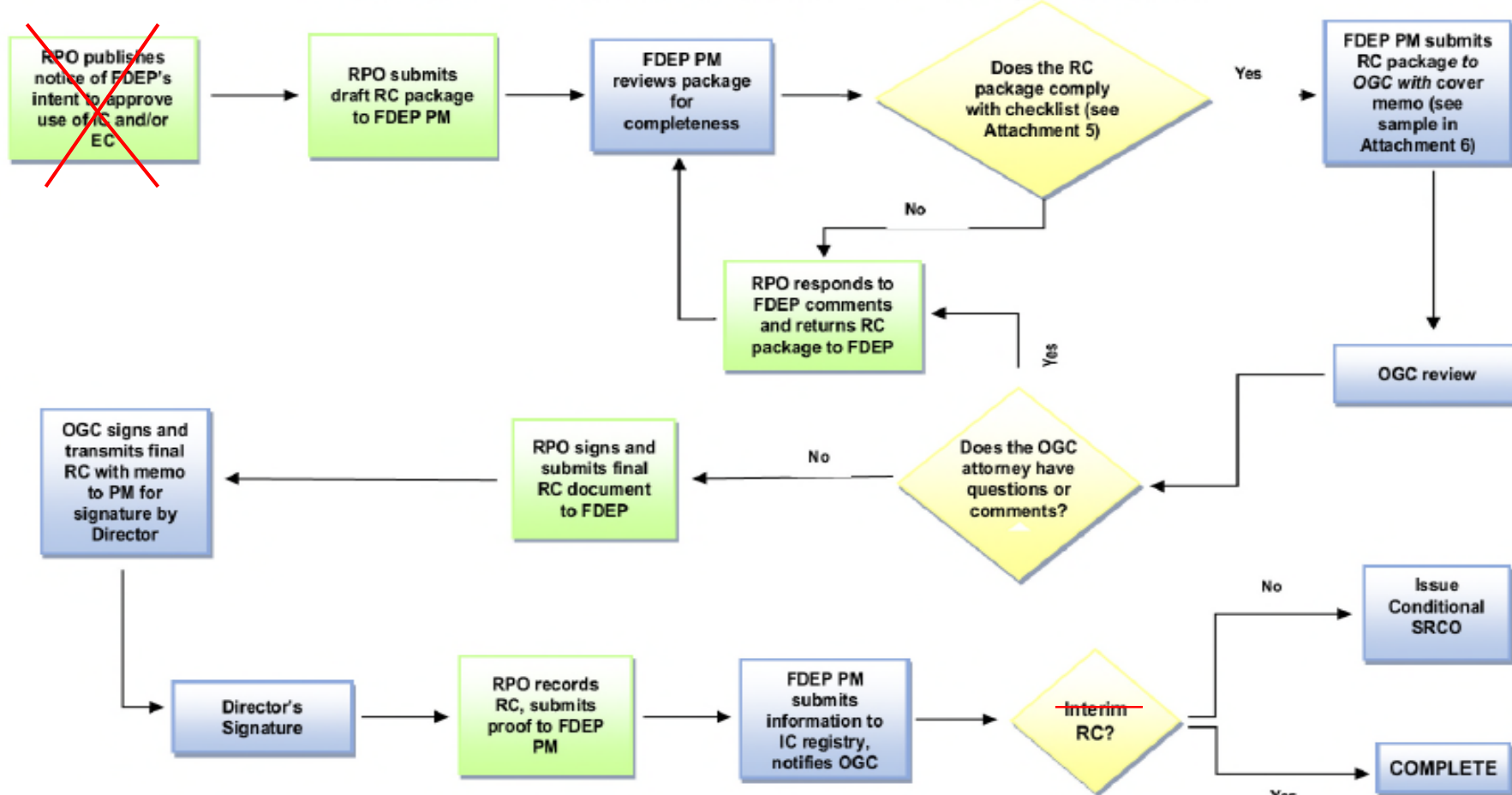
# Costs Not Allowed for PRP Funding

**Legal Representation (fees)**



# Flow Chart – Legal Steps

Attachment 1: Flow Chart Of Restrictive Covenant Approval Process



Key: FDEP - Department of Environmental Protection  
 IC - Institutional Control  
 OGC - Office of General Counsel  
 PM - Project Manager/Site Manager  
 RC - Restrictive Covenant  
 RPO - Real Property Owner  
 SRCO - Site Rehabilitation Completion Order



# Next Steps

- **Step 6: Site Manager (SM) verifies that IC package is complete**
- **Step 7: Team PG/PE reviews and approves IC for technical completeness**
- **Step 8: SM prepares IC package for lead PRP PG/PE Technical**



**Review**





# IC Package

**The IC Package should include:**

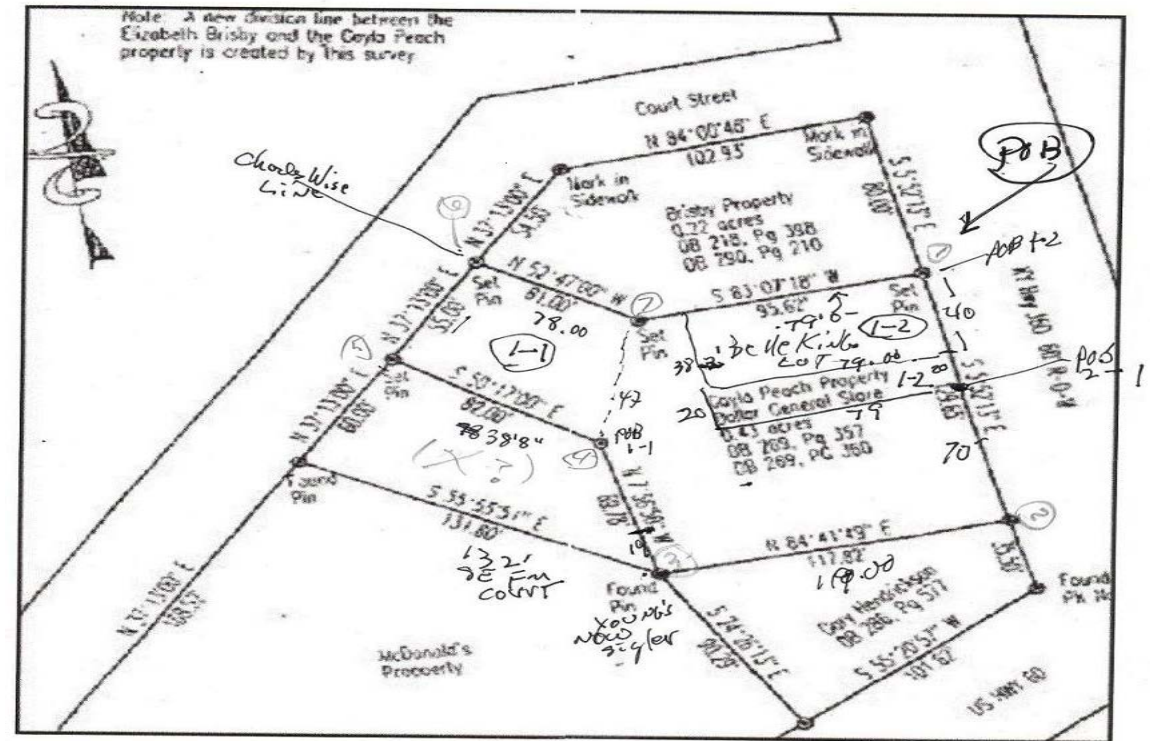
- **IC Checklist**
- **Form A or B**
- **Engineering Certification Report (P.E. Sealed) & PRP Approval Letter**





# IC Package

- **Map of Encumbrances and Restricted Area, and List of Encumbrances**
- **Legal Description of the entire property**
- **Specific Purpose Survey**  
(if only a portion of the site is being restricted)





# IC Package

- **Notices of Intent**
- **Title Report**
- **Subordination of Mortgage,  
if Necessary**
- **Joinder and Consent  
of Encumbrance Holders,  
if Necessary**





# Transmittal Form to OGC

- **Step 9: SM Prepares the Transmittal Form (ICPG, Attachment 6)**

## Memo Includes:

- **Summary of the site**
- **Any proposed restrictions**
- **Identify all affected media (Soil and/or GW)**
- **Cite any special circumstances**
- **Contact information for the ATC, Legal Representative, Site Owner & RP (if different)**
- **VERY IMPORTANT – Statement from the site manager that he/she concurs that the proposed closure meets the rule requirements**



# Next Step

**Step 10: SM sends electronic copy of IC Package to PRP PG/PE Technical Reviewer**

**Teams 5, 6, and Local Programs**

- **Team PE IC: James Treadwell**
- **Team PG IC: Christa Bingel**

**Teams 1 & 2**

- **IC Technical Reviewer – Team PE/PG**





# Next Step

- **Step 11: Following PG/PE review, IC packet should be:**
  - 1) Scan into OCULUS as a single document**
  - 2) Emailed to: Lea Crandall for OGC Tracking #**  
**OGC Agency Clerk:**  
**[Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us)**

**Note: Email should contain the web link to the IC Package in Oculus.**



# Placement of Institutional Controls into Oculus

**Based on Oculus Global Taxonomy, documents should be uploaded into Oculus as follows:**

## **Draft Institutional Controls**

- **Profile: Enforcement\_\_Legal, Document Type: Restrictive Covenants-Deed Restrictions**

## **Final Institutional Controls**

- **Profile: Enforcement\_\_Legal, Document Type: Restrictive Covenants-Deed Restrictions**

## **Final SRCO with Conditions**

- **Profile: Enforcement\_\_Legal, Document Type: Final Orders**



# Legal Review

**The IC is downloaded from Oculus by OGC for Legal Review:**



- **Jordan Bennett –**
- **Paralegal tasked with the initial review of ICs**
- **1<sup>st</sup> point of contact for IC questions**
- **Responsible for tracking all IC packages in OGC**
- **[Jordan.R.Bennett@Floridadep.gov](mailto:Jordan.R.Bennett@Floridadep.gov) or at 850-245-2242**





# Next Steps

- **Step 12: SM waits for OGC comments to be sufficiently addressed.**
- **Step 13: OGC requests that RP (Grantor) execute the IC.**
  - **OGC approves by signature on OGC line of DEP signature page and recommends that DEP (PA of PRP) execute IC.**
  - **SM mails IC to RP (Grantor) for recordation.**
- **Step 14: OGC forwards executed IC to PA for signature.**



# Recordation

This is the stamp applied when the Restrictive Covenant is recorded into public record.

**You will need this**

**Book \_\_\_\_ Page \_\_\_\_**

**for the final ICRS form Tab 18.**

GADSDEN COUNTY NICHOLAS THOMAS  
Instrument: 130001150 Recorded: 02/14/2013 10:38 AM

OFFICIAL RECORDS: 1 of 11  
Book: 771 Page: 172

Recording Fee: \$95.00

This instrument prepared by:  
Amanda H. Anderson, Esq.  
Gardner, Bist, Wiener, Wadsworth,  
Bowden, Bush, Dec, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Matter No. ~~120277~~ 12.2272

**DECLARATION OF RESTRICTIVE COVENANT**



# Next Steps

- **Step 15: SM scans signed final IC into DWM Oculus**
- **Step 16: Prepare well abandonment PO & approve WA report**
- **Step 17: Prepare SRCO with conditions**





# Next Steps

- **Step 18: Complete the Institutional Control Registry Sheet (ICRS).**
- **Step 19: Submit completed ICRS to Brittany Wright  
[Brittany.Wright@dep.state.fl.us](mailto:Brittany.Wright@dep.state.fl.us)**



# ICRS

## Institutional Control Registry Data Sheet

For further information please see: <http://www.dep.state.fl.us/waste/categories/brownfields/pages/ICR.htm>

Jacquelyn R. Brooks Site/Project Manager *		(850) 877-1133 Site/Project Manager Phone # *		
GADSDEN County *		208519577 Facility ID or other DEP Tracking #*		
ONE STOP Facility Name *		208 South Main Street Facility Address *		
Havana City *	32333 Zip *	34 Section *	3 North Township *	2 West Range *
771 Book Number **	172 Page Number **	2-34-3N-2W-0000-00113-0700 Parcel ID *		
30 Lat DD *	37 Lat MM *	14.8900 Lat SS *	84 Long DD *	24 Long MM *
55.7713 Long SS *		DPHO Lat/Long Acquisition Method *		
RESTRICTIVE COVENANT Institutional Control Mechanism *	02/14/2013 Date Recorded *	PETROLEUM Program Area *	01/09/2013 Date Order Issued	 Date IC Removed



# **ERIC is LIVE !!!**

- **New ERIC database replacing ICRS**
- **Site Manager will be responsible for entering IC information into ERIC**
- **FDEP staff are currently being trained on ERIC**

**Please note that until the Site Managers are trained  
Brittany Wright will be entering the ICRS data into ERIC.**



# ICRS Common LSSI Problems

**Here are the most common issues when submitting a new LSSI ICRS:**

- **Enter only “NA” for book # and page #**
- **Enter only “NA” for date record**
- **Date Order issued – LSSI only needs the date that the document was signed by the Director**



# ICRS Common LSSI Problems

**All LSSIs need to have this statement in the Comment area:**

**“Limited groundwater (GW) assessment completed under LSSI Program. Minimal on-site contamination levels met LSSI NFA criteria. Do not use GW for drinking water or irrigation. For clarification, contact DEP LSSI Coordinator.”**





# Remember This!!!

- **NFAC Orders must be PROTECTIVE**
- **Must have a year of monitoring to determine groundwater plume stability**



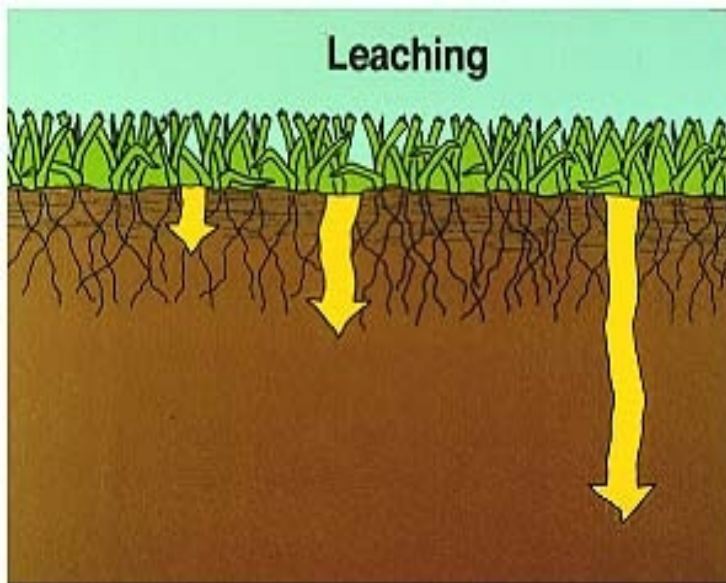
# Remember This!!!

**Groundwater restricted area must include a buffer around (and under) the plume, such that a well installed immediately outside the buffer will not increase the risk to human health or the environment**



# Remember This!!!

**Soil must be addressed for Leachability and Direct Exposure**





# Remember This!!!

**If the proposed restricted area is too small, or you're uncertain, ask for a formal risk assessment**



**Questions???**



## Contact Information

**Jackie Brooks, P.E.**

**PRP, Team 6**

**850-877-1133 ext. 3724**

**[jbrooks@ene.com](mailto:jbrooks@ene.com)**