



Land Use Covenant Instructions

Property Description

A legally sufficient property description must be provided within the Land Use Covenant (LUC), and a map indicating the area or areas to which specific activity and use limitations apply must be attached as “Exhibit A”. Please refer to the Guidance for Preparing Land Use Covenant Maps, provided in Appendix A of these instructions.

Please provide the information requested on the LUC template for each parcel covered by the LUC. The LUC template provides for the listing of up to three contiguous parcels. However, if parcels are not contiguous, exist across multiple tax maps/districts, or otherwise cannot be clearly be described using the template, an exhibit (Exhibit B) should be provided to describe all affected parcels.

If the area subject to restriction is a subset of the larger parcel(s), provide a survey description (metes and bounds) and attach a survey plat of the restricted area as Exhibit A. However, if the description is longer than one page, please include as an exhibit instead (Exhibit B or C).

NOTE: In addition to the map that must be attached to the LUC, a georeferenced file must also be provided to the WVDEP project manager in either ESRI® shapefile or a computer aided drafting format (dwg or dng) adequate to accurately delineate the area or areas to which the specific controls apply.

Use of Site-Specific Remediation Standards

(Voluntary Remediation Program Sites Only)

If a site-specific remediation standard is being applied, the LUC must state whether residential or non-residential exposure assumptions were utilized in deriving the site-specific standard. If only de minimis or uniform standards are being applied, the applicable sentence should be deleted from the template.

Identified Contaminants of Concern at Property

Provide a list of contaminants of concern that exceed residential standards in list or table format by media (surface soil, subsurface soil, groundwater). If the list is extensive, a table should be included as Exhibit B, C, or D.

Activity and Use Limitations

Common activity and use limitations (AULs) using preferred standard language are listed for your convenience. Delete all AULs that are not applicable and renumber the list accordingly. Additional AULs or revised language that may be appropriate based on site-specific conditions are to be proposed by the applicant and approved by both the property owner and WVDEP prior to inclusion in the LUC.

Engineering Controls

If the site requires one or more engineering controls to attain/maintain the remediation standard (e.g., soil cover, asphalt/concrete pavement, impermeable cap, soil venting system, groundwater pumping system, etc.), these controls must be listed in the LUC, and language regarding their maintenance and/or operation must be included. If an engineering control is required, please use the standard language provided in the template for your convenience. Simply delete this section if it is not applicable.

Covenant Holders

A “holder” means the grantee of an environmental covenant. Any person, including any person that owns an interest in the property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is recreated, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder, and the relationship of each covenant holder to the property should be described. The property owner must always be included as a holder. WVDEP should not be listed as a holder, unless the agency makes such a request.

LUC Inspections

The property owner must inspect the property at least annually and document compliance with AULs and maintenance of engineering controls. WVDEP has developed a Land Use Covenant Inspection Form template, and its use is encouraged for this purpose. The owner may propose an alternate form for review by WVDEP. The approved form must be included as an exhibit.

Signature and Notarization

The LUC must be signed and notarized by the agency, every holder, and, every owner of the fee simple of the real property subject to the covenant. If several holders sign before the same notary, their signatures may be listed together and only one notarization, referring to all such holders, will be needed for those signatures.

Procedure for Execution

1. The entity requesting a LUC submits a draft in MS Word format to WVDEP for approval.
2. WVDEP reviews the draft and either approves the LUC for signature or provides comments for revisions.
3. The entity requesting the LUC and any other covenant holders sign the approved version, and the original document, including original signatures, is returned to WVDEP. The LUC must be an original document containing all original signatures for recording by the county clerk.
4. WVDEP provides the final signature and returns the executed document to the entity requesting the LUC for filing.

Filing

The LUC, and any amendment or termination of the covenant, must be recorded in every county in which any portion of the real property subject to the covenant is located. The entity requesting the LUC (i.e. Voluntary Remediation Program applicant) is responsible for properly recording the original signed Land Use Covenant with the county clerk and requesting the clerk to return a copy of the recorded instrument to the West Virginia Department of Environmental Protection:

Office of Environmental Remediation
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

APPENDIX A

Guidance for Preparing Land Use Covenant Maps

Each LUC must contain a map indicating the area or areas to which specific activity and use limitations apply. The LUC, including this map, will be recorded (as a paper copy) in the deed book of each county in which any portion of the site is located. When these paper documents are scanned or photocopied, it is important that copies of the LUC maps continue to accurately depict the activity and use limitations information that was provided in the original LUC. Therefore, the following guidelines must be followed when preparing maps to be used in association with a LUC.

Basic Map Standards

All maps should include at a minimum the following:

1. Title: “Exhibit A – Site Map Showing Activity and Use Limitations”
2. Graphical scale bar
3. North arrow
4. Legend keyed to any symbols used
5. Property boundary
6. VRP site boundary (*VRP Sites only*)
7. Specific activity and use limitation boundaries
8. Engineering control boundaries, where applicable (e.g., cap or cover limits)

In some cases, the boundaries of one or more items specified in 5 through 8 may coincide. If so, this should be clearly noted. If not, specific boundaries and/or areas must be clearly delineated using line styles, cross hatching, etc. (no color – see below) to designate these areas. Line styles and patterns must be explained in the legend.

Graphical Standards

To ensure that scanned or photocopied versions of LUC maps accurately depict the activity and use limitations the following standards must be followed:

1. 8.5 x 11 format – 8.5 x 14, 11 x 17, and 24 x 36 sizes are not acceptable
2. Black and white – Color images are not acceptable
3. Minimum resolution of 300 DPI, but adequate to clearly and accurately depict the required information and allow for photocopying
4. Use line styles, patterns, and other black and white methods to distinguish boundaries/areas
5. No dark backgrounds, such as an aerial photos or satellite images
6. Do not include environmental sample locations