

The background of the slide is a composite image of space. The top half shows the Earth's horizon with a bright blue atmosphere against the blackness of space. The bottom half shows a dark, cratered surface, likely the Moon, with a bright light source illuminating the horizon from the right. The text is overlaid on this background.

# **Lining Up the Planets for Conditional Closure: a Five-Parcel Brownfields Project**

**(Avoiding Mercury in Retrograde!)**

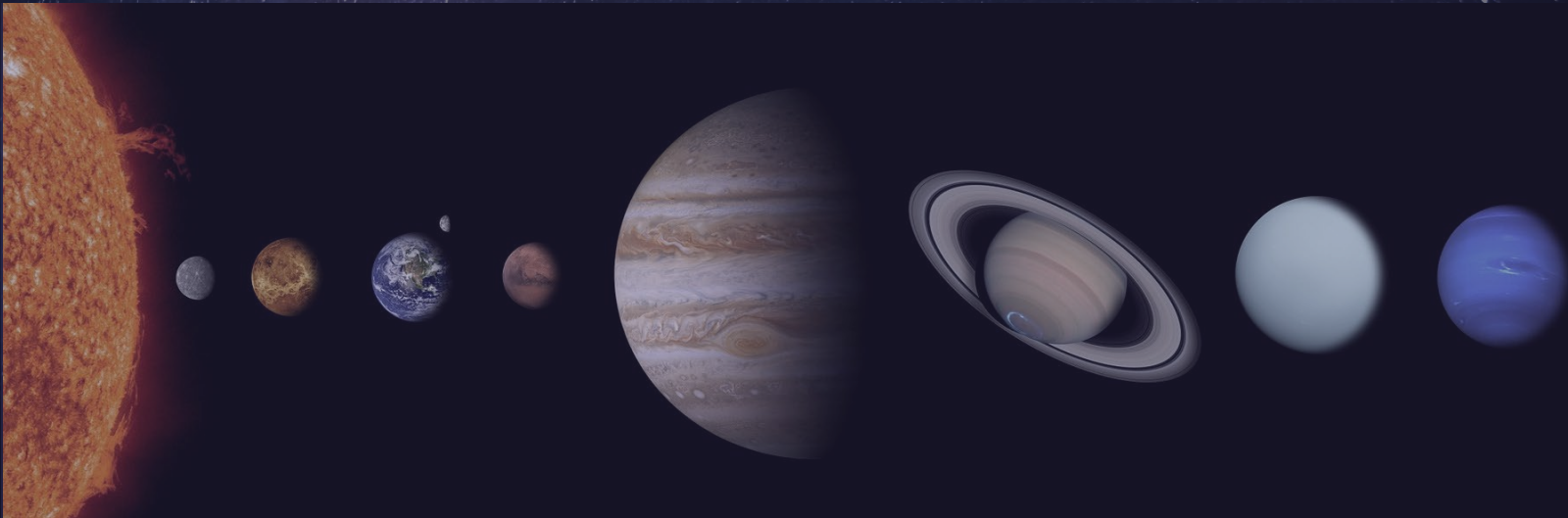
**Lisa Duchene, Esq., The Goldstein Environmental Law Firm**  
**Allison Amram, P.G., Hillsborough County EPC**  
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# PROJECT OVERVIEW

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The Former Hudson Nursery Brownfields Project in Tampa, Florida, involved coordinating technical, legal, and regulatory issues for five separate properties with different owners, tenants, and encumbrance holders, and additional offsite contamination under a county-owned roadway.

- Ultimately required six Declarations of Restrictive Covenant (DRCs)
- Project Complete: received Conditional Site Rehabilitation Completion Order (C-SRCO) in 2019





# Avoiding Mercury in Retrograde!

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- FUN FACTS: WHAT IS “MERCURY IN RETROGRADE”?
- When the planet nearest to the Sun is retrograde, it appears to move "backwards" (east to west rather than west to east) across the sky. This apparent reversal in Mercury's orbit is actually just an optical illusion to the people viewing it from Earth.
- Because the Roman god Mercury was said to govern travel, commerce, financial wealth, and communication, in astrological circles, Mercury the planet became linked to those matters as well.
- It's a “Murphy's Law” kind of phenomenon. Crashed computers, missed flights, miscommunications with colleagues, etc., might be blamed on the chaos that ensues when Mercury starts retrograding. (MentalFloss.com)
- When working on a five-parcel project, avoiding Mercury in Retrograde may be good advice! 😊

# FORMER HUDSON NURSERY BROWNFIELD SITE REDEVELOPMENT

Greg Schultz, PE  
Senior Principal, Cardno, Inc.



# Background

- > Former plant nursery on +/- 10-Acre parcel in North Tampa
- > Operated for +/- 40 years before ceasing operations in 2003/2004
- > Major structures removed in 2006
- > Primary contaminants of concern
  - Arsenic in soil only
  - Organochlorine pesticides in soil and groundwater

# 2006 Aerial Photograph



# Assess the Problem – How bad is it?

- > Historical assessment/source removal work conducted by others from 2005–2006
- > Assessment work conducted by Cardno between 2007–2009
- > Work put on hold in late 2009 until December 2011 while viable developer sought
- > Extent of soil impacts fully defined as of 2012 SSAR by Cardno
- > Brownfield Site Rehabilitation Agreement (BSRA) executed in August 2014
- > Brownfield Site Assessment Report (BSAR) submitted January 2015
  - Combined historical soil data with new groundwater results
  - Low-level dieldrin impacts on the southern edge of the site and north ROW of Floyd Road

# How to Reach Closure?

- > Client OK with conditional closure under Risk Management Option II (RMOII)
- > Commercial redevelopment planned
- > Costly to excavate and dispose of soil off-site
- > Portions of the planned asphalt parking lot, concrete features and building slabs would serve as the Engineering Control (EC)
- > Developed a plan to relocate contaminated soil from outside the footprint of the parking lot
  - Reduced the need for imported fill material
  - Eliminated the need for off-site disposal of contaminated soil
  - Allowed tax credit recovery for costs associated with portions of the parking lot serving as the EC
- > Plan to restrict groundwater use (plume must be stable/shrinking)



# Soil Relocation Plan



# Groundwater



**LEGEND:**

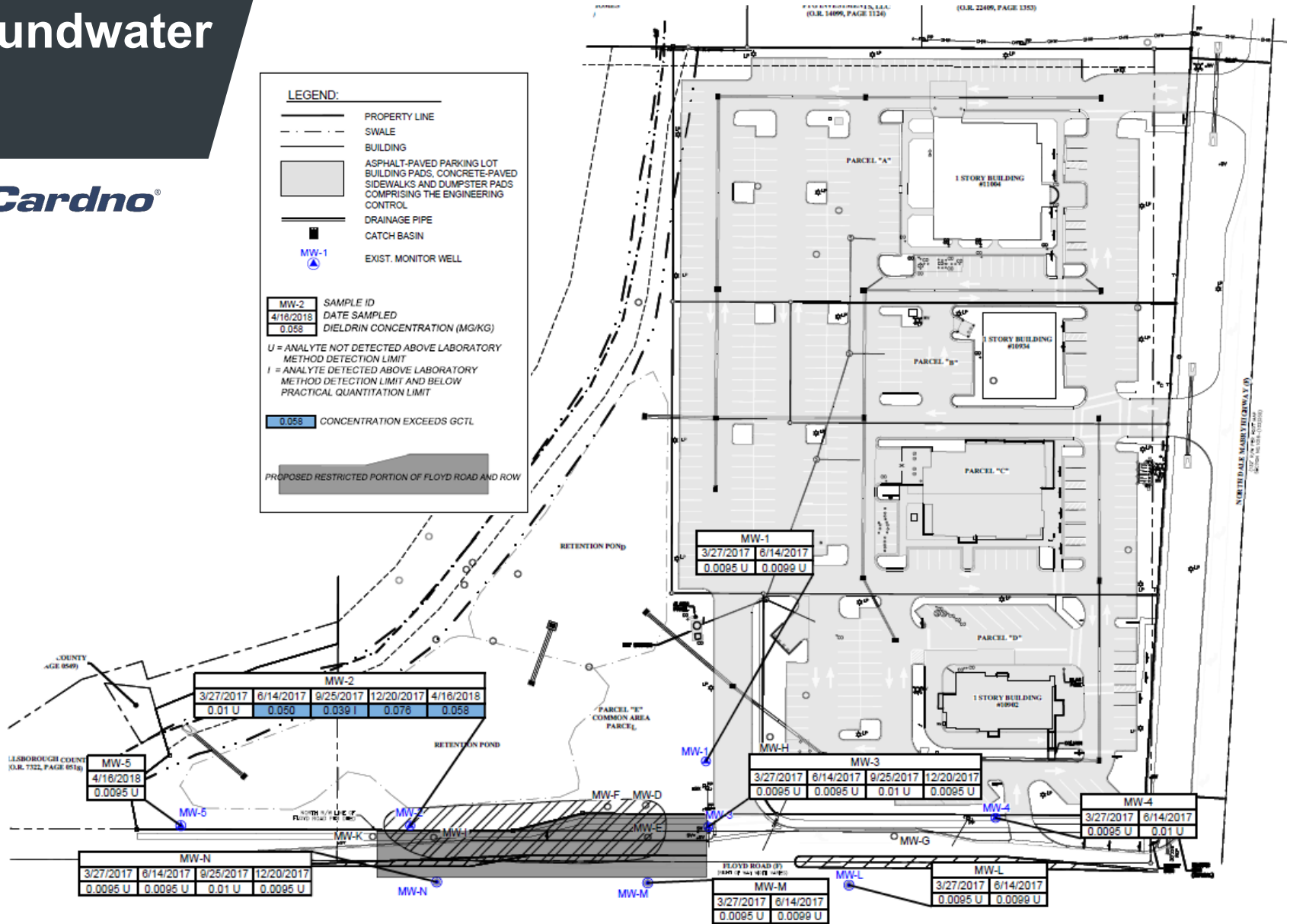
- PROPERTY LINE
- SWALE
- BUILDING
- ASPHALT-PAVED PARKING LOT, CONCRETE-PAVED BUILDING PADS, CONCRETE-PAVED SIDEWALKS AND DUMPSTER PADS COMPRISING THE ENGINEERING CONTROL
- DRAINAGE PIPE
- CATCH BASIN
- EXIST. MONITOR WELL

MW-2	SAMPLE ID
4/18/2018	DATE SAMPLED
0.058	DIELDRIN CONCENTRATION (MG/KG)

U = ANALYTE NOT DETECTED ABOVE LABORATORY METHOD DETECTION LIMIT  
 I = ANALYTE DETECTED ABOVE LABORATORY METHOD DETECTION LIMIT AND BELOW PRACTICAL QUANTITATION LIMIT

0.058	CONCENTRATION EXCEEDS GCTL
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PROPOSED RESTRICTED PORTION OF FLOYD ROAD AND ROW



# So, Fairly Straightforward Process Right?

- > Assess the site
- > Develop a Remedial Action Plan (RAP)/Soil Management Plan
- > Relocate contaminated soil to the area to be capped
- > Build the EC/Cap (parking lot, sidewalks, and select building pads)
- > Prepare an Engineering Control Maintenance Plan (ECMP)
  - Documents ongoing inspection and maintenance criteria/requirements
- > Establish that the small area of groundwater impacts are stable or shrinking
  - 5 quarters of monitoring conducted
  - EPCHC concurs impacts are stable
- > Deed restrict (Institutional Control) to prevent the use of groundwater at the site

# But Wait!! Not So Fast!

- > Site subdivided into 5 separate parcels after development completed
- > Groundwater contamination now extends beneath the adjacent roadway
  - Land from the site given to Hillsborough County for a turn lane into the development
  - Former monitoring wells in this area were abandoned/destroyed by construction
  - Former monitoring well locations with dieldrin impacts are now under the turn lane

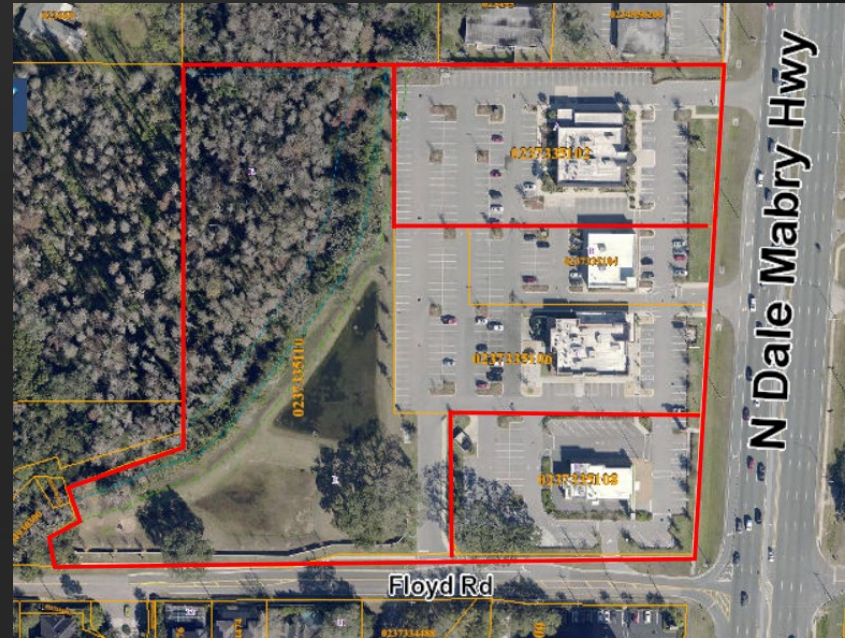
# What to Do!

- > Develop 6 separate Declaration of Restrictive Covenant (DRC) packages
  - Distinct ECs based on the Parcel
  - Groundwater restrictions only on the common area parcel (and adjacent roadway!)
- > Determine how to deed restrict a roadway that doesn't have a deed!?!)

# THE REGULATORY PERSPECTIVE HEADING TO CLOSURE

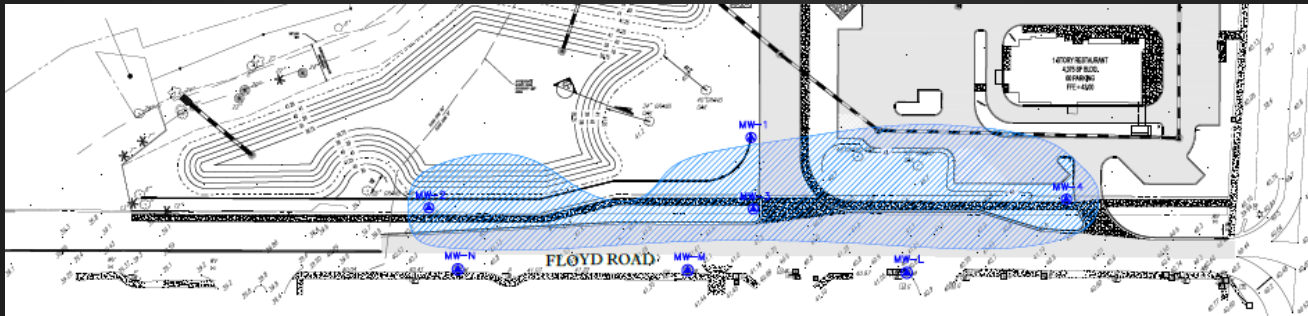


- Soils – 2016 Soil Management / RAP completion report and Engineering Control Maintenance Plan
- Groundwater – 2017 Start monitoring for groundwater stabilization
- What else happens? Property sales... triggers BSRA actions
  1. Notify EPC within 15 days of property sale
  2. Provide new Site Access Agreement



# GROUNDWATER MONITORING FOR STABILIZATION

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2018 – One Year of Groundwater Monitoring complete.... but

- Dieldrin concentrations increased; installed downgradient well
- PRFBSR requests conditional closure for the 4 parcels that do not have groundwater affects.

# NO GO

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SRCO issued only when the entire Brownfield site is cleaned up and controlled. The entire Brownfield site is one “contaminated site” as defined in §376.301(11) Florida Statutes.





# CAN DO!

## EPC issues a “Comfort” letter to a prospective buyer

## What’s in a “Comfort” letter?

- Brownfield Program information
- Site Status
- Future owner responsibilities

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July 24, 2018

Avinx Florida LLC  
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Fort Lauderdale, Florida 33301

RE: Status of Site Rehabilitation for the Former Hudson Nursery, Brownfield Site BF291403001,  
located at 3811 Floyd Road, Tampa with respect to Property located at 10902 North Dale Mabry  
Highway, Folio 0233733-5108.

To Whom it may Concern:

The Environmental Protection Commission of Hillsborough County (EPC) was asked to provide a status update for property located at 10902 North Dale Mabry, Folio 0233733-5108 ("the Property"), to outline the current regulatory status of the Brownfield site. The Property is a part of the Former Hudson Nursery, Brownfield Site BF291403001, located at 3811 Floyd Road in Tampa (see attached map). Brownfield sites are qualified properties undergoing environmental site cleanup and redevelopment.

BW Dale Mabry Floyd, LLC executed a voluntary Brownfield Site Rehabilitation Agreement (BSRA) with the EPC on August 19, 2014 to conduct site rehabilitation under Chapter 62-780, Florida Administrative Code (F.A.C.). The Former Hudson Nursery Brownfield site has completed soil and groundwater assessments, and groundwater monitoring for site closure is ongoing. An overview of the current soil and groundwater conditions at the Property, based on information submitted to and on file with the EPC, is summarized below.

**Soil:** Arsenic, Polynuclear Aromatic Hydrocarbons (PAHs) and Dieldrin were found in the soils above the Residential and Leachability based Soil Cleanup Target Levels specified in Chapter 62-777, F.A.C. These affected soils were placed beneath impermeable pavement as an engineering control, which provides a barrier to prevent human exposure and leaching of contaminants into the groundwater.

**Groundwater:** The groundwater was sampled in 2008 and 2012 and was found to have dieldrin above the Groundwater Cleanup Target Levels (GCTL) of Chapter 62-777, F.A.C. Later sampling in March and June 2017 found that dieldrin has met the GCTL in monitoring well MW-4, located on or immediately adjacent to the Property (see attached map). After two clean samples, the EPC considers the groundwater in this area as unimpacted. However, one well located west of the Property still has dieldrin above the GCTLs, and groundwater elevations are still measured in MW-4. Any new property owner will need to sign a Site Access Agreement (attached) with the EPC to allow for access to this

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# GROUNDWATER READY FOR CONDITIONAL CLOSURE?

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- Summer 2018 – Q5 Cardno recommends NO FURTHER ACTION PROPOSAL
- EPC agrees that closure is viable; send Q5 NFAP to FDEP-ODBS
- Fall 2018 – FDEP-ODBS agrees that conditional closure appropriate

Groundwater is stable...

Engineering soil controls are in place...

Time for Institutional Controls!





# THE DRC PROCESS

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- The process to draft, negotiate, and execute a Declaration of Restrictive Covenant (DRC) to achieve a conditional site closure is challenging for *one* property. This project had *six* affected properties and DRCs!
- The keys to success:
  - Clear communication up front; and document your decisions with follow-up emails
  - Establish “Roles” (who does what; write it down; follow through) for client, consultant, attorney, agency staff
  - Organization is a must (tracking spreadsheet; checklists for each parcel)
  - Patience! (Lots of it!)
- Brownfield Sites in Florida are subject to Chapter 62-780, F.A.C., and the referenced guidance in the Institutional Controls Procedures Guidance (ICPG): <https://floridadep.gov/waste/waste/content/institutional-controls-procedures-guidance>



# LOGISTICS: NOTICE LETTERS

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- Five Parcels with different owners, different tenants with recorded leases; and multiple other “Encumbrance Holders” (i.e., mortgagees, multiple utility easements, drainage easements held by Water Mgt District; etc.)
- Notice Requirements triggered; see Subsection 62-780.220(7), F.A.C.:
  - “Prior to the Department’s approval of institutional controls, institutional and engineering controls, or alternative CTLs, the PRSR shall mail notice of the Department’s intent for such approval to the local government(s) with jurisdiction over the property(ies) subject to the institutional or engineering control, to real property owner(s) of any property subject to the institutional or engineering control, to any resident or business tenant, and to any party holding a materially affected encumbrance in the area subject to the control (see the Institutional Control Procedures Guidance referenced in subsection 62-780.100(7), F.A.C., for guidance).”

# WHO GETS A NOTICE LETTER?

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Local Governments

Residents or Business Tenants

Encumbrance Holders



# LOGISTICS: CONSENT/JOINDERS

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- A Consent/Joinder is NOT necessarily required for every Encumbrance Holder
- See ICPG for guidance on when required
- Most often depends on the express terms of the previously recorded encumbrances...
  - Does the Mortgage require Consent/Joinder before the property can be further encumbered?
  - Does a Recorded Lease give the Lessee rights that may conflict with IC/EC restrictions, or will the IC/EC place affirmative obligations on the Lessee? (e.g., EC maintenance such as parking lot inspections/repairs or reporting of cracks and potholes)
  - Does a Utility Easement intersect with contaminated media (groundwater or soil)? Note: FDEP's current position is that a C/J is not required.





# DRC EXHIBITS FOR EACH PARCEL

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- **Exhibit A**: the Legal Description of the Property.
- **Exhibit B**: a survey map depicting existing stormwater features on the property, if any (the DRC restricts enlarging or modifying without prior agency approval).
- **Exhibit C**: map of Engineering Controls (ECs), as applicable:
  - Be sure to clearly mark as impervious versus two-feet of clean fill/landscaped areas;
  - Depends on whether site has exceedances of Direct Exposure SCTLs or Leachability-Based Groundwater Criteria SCTLs; or both.
- Provide GPS or State-Plane Coordinates for location of stormwater features and ECs.





# SMALL ASTEROID STRIKE!

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- Expect the unexpected! Our 11<sup>th</sup> hour challenge was offsite contamination under a roadway.
- FDEP required a separate DRC with the “owner” of the road – in this case Hillsborough County.
- The County was reasonable and agreed to a DRC (not all Counties will agree to this!)
- Odd scenario of roadway “ownership” (title is not always clear; sometimes a ROW dedication is more like an easement and not fee title).
- Timeframe start to finish for six DRCs: 18 months!
- The TEAM APPROACH was absolutely critical and required frequent and clear communication amongst all parties!



# POST LEGAL STUFF

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- Site controls need to be added to the Institutional Controls Registry (ICR)
- Shape files needed for all IC/EC sites
- What about the future? Need future land owners/tenants aware of ECs/ICs because...

REDEVELOPMENT  
HAPPENS AGAIN  
...AND AGAIN!





# LIFE AFTER C-SRCO

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- Changes to stormwater features or Engineering Controls are not prohibited; just requires agency pre-approval.
- May involve a site “re-opener” and subsequent amendments to DRC and C-SRCO.
- Rights and Responsibilities: any new owner takes title subject to DRC and is obligated to comply or face potential enforcement action.
- FDEP’s goal is IC/EC Audits every five years.
- ICPG is constantly evolving! It is frequently updated so always check for latest version on FDEP’s website (don’t rely on printed hard-copy!)

# FOR MORE INFO:

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