

**Public Discussion Draft**  
**RSR Wave 2 – Potential Changes to RSRs**  
**Survey for Environmental Use Restrictions**  
**July 8, 2015**

**The Department of Energy and Environmental Protection is developing “public discussion drafts” of ideas for potential future amendment to DEEP regulations, or new provisions for regulations, to address remediation of releases and sites where hazardous substances or oil have been released. Many of the subject matters for these drafts grew out of the Cleanup Transformation workgroup recommendations from November 2012. The purpose of the public discussion drafts is to provide more detail to the concepts set forth in the November 2012 Workgroup reports and the February 2013 Cleanup Transformation draft report. As a discussion draft, the language is not structured to read exactly as regulation language would, and does not attempt to propose section and subsection outline format. Also, this discussion draft is not a public hearing draft of a proposed regulation; DEEP will further shape and refine the discussion draft after considering public feedback, before offering any formal proposed regulation for amendment/adoption and before initiating the formal regulation adoption process.**

As defined in Section 22a-133o of the Connecticut General Statutes, an “Environmental Use Restriction” (EUR) is a general umbrella term, under which are the specific institutional controls of an Environmental Land Use Restriction (ELUR) and Notice of Activity and Use Limitation (Deed Notice).

This discussion draft presents draft regulations for land surveys prepared for both ELURs and Deed Notices. This document was developed by a work group comprised of representatives from the Department, surveyors, attorneys, and licensed environmental professionals. The purpose of this document is to elicit feedback that will be evaluated by the work group as they work toward development of a final draft prior to the formal regulation adoption process.

The requirements for surveys for ELURs are presented in Section 22a-133q-1(a) of the Regulations of Connecticut State Agencies. Currently, regulations have not been promulgated which describe survey requirements for Deed Notices.

The existing regulations for ELUR Surveys:

- Reference the “Recommended Standards for Surveys and Maps in the State of Connecticut” adopted on September 24, 1992 and effective January 1, 1993 by the Connecticut Association of Land Surveyors, Inc., which have been superseded by State regulation;
- Reference the outdated American Land Title Association and American Congress (ALTA) survey standards and include requirements which are not valuable for ELUR surveys; and
- Require an A-2 survey of the entire property even when the ELUR will apply to only a portion of the property.

The draft regulations contemplated by this discussion draft are anticipated to LEAN and streamline the preparation and approval of EUR surveys. The draft regulations:

- Specify the requirements of EUR surveys and features which must be depicted;
- Are consistent with current regulations, standards, and guidelines for surveys in the State of Connecticut;

- Remove references to ALTA standards; and
- Clarify requirements and provide flexibility when the EUR applies to only a portion of the property, which may result in significant cost savings.

### **Contemplated Revisions to Section 22a-133q of the Regulations of Connecticut State Agencies**

22a-133q-1.

(a) Definitions.

For the purpose of this section, the definitions of the terms shall be the same as the definitions of terms in section 22a-133k-1 of the Regulations of Connecticut State Agencies. In addition, the following definitions shall apply:

- (1) “Environmental use restriction” means a limitation in any instrument executed and recorded as prescribed in section 22a-133o of the General Statutes, the purpose of which is to minimize the risk of human exposure to pollutants and hazards to the environment by (1) preventing the use of specified real property for certain purposes, or (2) prohibiting certain activities on such property.
- (2) “Environmental land use restriction” or “ELUR” means a declaration of environmental land use restriction in the application form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies.
- (3) “Notice of activity and use limitation” or “deed notice” means a notice of activity and use limitation in the application form set forth in section 22a-133q-[reference to be added, currently described in section 22a-133o of the Connecticut General Statutes] of the Regulations of Connecticut State Agencies.
- (4) “Survey” means a survey prepared for environmental land use restriction or deed notice purposes. Such a survey shall be prepared by a surveyor licensed by the State of Connecticut and in accordance with sections 20-300b-1 to 20-300b-20, inclusive, of the Regulations of Connecticut State Agencies.
- (5) “Subject area(s)” means the property or portion(s) of the property subject to ELUR restriction(s) or deed notice restriction(s).
- (6) “Surveyed portion of the property” means the portion of the property surveyed pursuant to section 22a-133q-[reference to be added; (4)(A) herein] of the Regulations of Connecticut State Agencies.
- (7) “Licensed environmental professional” or “LEP” means an environmental professional licensed in accordance with section 22a-133v of the General Statutes.

Section 22a-133q-[reference to be added] Standards and Requirements for Surveys.

- (1) Surveys shall conform to the standards and requirements of this subsection.
  - (A) If the aggregate size of the subject area(s) is fifty percent to one-hundred percent (50% to 100%) of the property, the survey standards and requirements in subdivisions (2) and (3) of this subsection shall apply; and
  - (B) If the aggregate size of the subject area(s) is less than fifty percent (< 50%) of the property, the survey standards and requirements in subdivisions (2) and (4) of this subsection shall apply, or the survey may be conducted pursuant to subparagraph (1)(A) of this subdivision.
- (2) Survey standards and requirements. General.
  - (A) A survey shall be conducted as specified in subdivisions (3) or (4) of this subsection, as applicable.
  - (B) Depict the boundaries of the property as specified in subdivisions (3) or (4) of this subsection, as applicable.
  - (C) Indicate the property description on the map and label as “Property Description” as specified in subdivisions (3) or (4) of this subsection, as applicable.
  - (D) Depict a vicinity map showing the approximate location and configuration of the property in reference to nearby highway(s) or major street intersection(s).
  - (E) Depict the latitude and longitude of a point on the property, plotted and labeled on the survey, in decimal degrees, referenced to the North American Datum of 1983 with an accuracy within 5 meters.
  - (F) Depict the boundaries of the subject area(s) by course and distance as specified in subdivisions (3) or (4) of this subsection, as applicable.
  - (G) The survey shall fix the subject area(s) to the property boundary to Class A-2 Standards of Accuracy, and if deemed appropriate by the LEP or Surveyor, or required by the Commissioner, mark the subject area(s) consistent with section 20-300b-14 of the Regulations of Connecticut State Agencies.
  - (H) Label the subject area(s): “ELUR Subject Area A”, “ELUR Subject Area B”, “ELUR Subject Area C”; or “Deed Notice Subject Area A”, “Deed Notice Subject Area B”, “Deed Notice Subject Area C”, et cetera.
  - (I) Indicate the subject area(s) course and distance description on the map and label as “ELUR Subject Area [insert subject area label] Description” or “Deed Notice Subject Area [insert subject area label] Description”.
  - (J) Indicate by note on the map the subject area(s) restriction.

- (K) Spot elevations, tied to a known datum, shall be indicated in sufficient detail so as to provide an adequate basis to determine if grades are changed in the future for subject area(s) where an engineered control pursuant to section 22a-133k-2(f)(2) of the Regulations of Connecticut State Agencies is or will be constructed, or where polluted soil is rendered inaccessible pursuant to sections 22a-133k-1(32)(A) to 22a-133k-1(32)(C), inclusive, of the Regulations of Connecticut State Agencies.
- (L) Depict adjoining properties identified by most recently published owners' names (N/F, now or formerly) or by subdivision map and lot numbers as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (M) Depict any conflicts with record deed descriptions and maps as specified in subdivisions (3) or (4) of this subsection, as applicable, and identify such conflicts in the map notes.
- (N) Depict the location of encroachments and restrictions as specified in subdivisions (3) or (4) of this subsection, as applicable, and identify such encroachments and restrictions in the map notes.
- (O) Depict record and apparent property ingress and egress as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (P) Depict apparent improvements and features, including but not limited to: grass, landscaped areas, fields, wooded areas and other undeveloped areas, buildings/structures, roadways, driveways, parking lots, sidewalks and other asphalt/bituminous concrete and concrete areas; monitoring wells and remediation equipment/facilities; surface utilities, fences, walls, hedges and visible bodies of water and any other features deemed necessary by the Commissioner as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (Q) Depict observed evidence of current earth moving work, building construction or building additions as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (R) Depict the location of evidence of use by others observed when conducting the survey as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (S) Depict the location and width of plottable, recorded interests and easements and observed evidence of use thereof as specified in subdivisions (3) or (4) of this subsection, as applicable.
- (T) Identify all plottable, recorded interests and easements for the property in the map notes, and reference the volume and page in the municipal land records of the instrument granting the same.
- (U) Identify all non-plottable recorded interests and easements for the property in the map notes, and reference the volume and page in the municipal land records of the instrument granting the same.
- (V) Depict the location of utilities as specified in subdivisions (3) or (4) of this subsection, as applicable.

- (W) Indicate by note on the map the current zoning classification of the property along with a short description.
  - (X) Indicate by note on the map the standards to which the survey was prepared. If a dependent resurvey is conducted, identify by note the map(s) referenced.
  - (Y) The title block of the survey shall read “Declaration of Environmental Land Use Restriction and Grant of Easement, Exhibit C” or “Notice of Activity and Use Limitation, Exhibit “[reference to be added] “.
  - (Z) The title block shall include the type of survey, the name of the property owner, the property address, the date of the survey, and the scale.
  - (AA) Mark the survey submitted with the ELUR or deed notice application “DRAFT”, and include a draft date or number.
  - (BB) When final, the survey shall be signed and sealed in accordance with section 20-300b-20 of the Regulations of Connecticut State Agencies.
  - (CC) The property owner shall submit to the Commissioner a property owner affidavit on a form prescribed by the Commissioner simultaneously with the ELUR or deed notice signed by the owner.
- (3) Survey standards and requirements. Aggregate size of subject area(s) is fifty percent to one-hundred percent (50% to 100%) of the property.
- (A) Conduct a survey of the property that meets the requirements of a Property Survey as set forth in section 20-300b-2(b)(1) of the Regulations of Connecticut State Agencies.
  - (B) The survey shall indicate or depict the following:
    - (i) Boundaries of the property by course and distance.
    - (ii) Property course and distance description on the map, and label as “Property Description”.
    - (iii) Boundaries of the subject area(s) by course and distance.
    - (iv) Adjoining properties identified by most recently published owners’ names (N/F, now or formerly) or by subdivision map and lot numbers.
    - (v) Any conflicts with record deed descriptions and maps affecting the property, and identify such conflicts in the map notes.
    - (vi) Location of encroachments and restrictions affecting the property, and identify such encroachments and restrictions in the map notes.
    - (vii) Record and apparent property ingress and egress.

- (viii) Apparent improvements and features on the property, including but not limited to: grass, landscaped areas, fields, wooded areas and other undeveloped areas, buildings/structures, roadways, driveways, parking lots, sidewalks and other asphalt/bituminous concrete and concrete areas; monitoring wells and remediation equipment/facilities; surface utilities, fences, walls, hedges and visible bodies of water and any other features deemed necessary by the Commissioner.
- (ix) Observed evidence of current earth moving work, building construction or building additions on the property.
- (x) Location of evidence of use by others observed on the property when conducting the survey.
- (xi) Location and width of plottable, recorded interests and easements on the property and observed evidence of use thereof.

For each, indicate in the map notes whether the easement as plotted appears to be inside any subject area(s) where disturbance of an engineered control or exposure of polluted soil is prohibited.

- (xii) Location of utilities existing on or serving the property, as determined by:

Observed evidence together with evidence from plans obtained from utility companies, from the client, markings by utility companies, and other appropriate sources. Indicate by note on the map and reference the source(s) of information; and

Lacking such evidence, excavation or other location methods shall be employed to locate utilities if deemed necessary by the Commissioner.

- (4) Survey standards and requirements. Aggregate size of subject area(s) is less than fifty percent (< 50%) of the property.
  - (A) Conduct a survey of the area(s) on the property in and within one-hundred (100) feet of the subject area(s) that meets the requirements of a Limited Property/Boundary Survey as set forth in section 20-300b-2(c) of the Regulations of Connecticut State Agencies.
  - (B) The survey shall indicate or depict the following:
    - (i) The limits of the surveyed portion of the property.
    - (ii) Boundaries of the subject area(s) by course and distance.
    - (iii) Any conflicts with record deed descriptions and maps affecting the surveyed portion of the property, and identify such conflicts in the map notes.
    - (iv) Location of encroachments and restrictions affecting the surveyed portion of the property, and identify such encroachments and restrictions in the map notes.

- (v) Apparent improvements and features on the surveyed portion of the property, including but not limited to: grass, landscaped areas, fields, wooded areas and other undeveloped areas, buildings/structures, roadways, driveways, parking lots, sidewalks and other asphalt/bituminous concrete and concrete areas; monitoring wells and remediation equipment/facilities; surface utilities, fences, walls, hedges and visible bodies of water and any other features deemed necessary by the Commissioner.
- (vi) Observed evidence of current earth moving work, building construction or building additions within the surveyed portion of the property.
- (vii) Location of evidence of use by others observed on the surveyed portion of the property when conducting the survey.
- (viii) Location and width of plottable, recorded interests and easements on the surveyed portion of the property and observed evidence of use thereof.

For each, indicate in the map notes whether the easement as plotted appears to be inside any subject area(s) where disturbance of an engineered control or exposure of polluted soil is prohibited.

- (ix) Location of utilities existing on or serving the surveyed portion of the property, as determined by:

Observed evidence together with evidence from plans obtained from utility companies, from the client, markings by utility companies, and other appropriate sources. Indicate by note on the map and reference the source(s) of information; and

Lacking such evidence, excavation or other location methods shall be employed to locate utilities if deemed necessary by the Commissioner.

- (C) To complete the survey for the property, the map shall indicate or depict the following:
  - (i) Boundaries of the property based on deed or other available information and presented in the format of a General Location Survey or Compilation Plan as set forth in sections 20-300b-1 to 20-300b-20, inclusive, of the Regulations of Connecticut State Agencies.
  - (ii) Property description on the map and label as “Property Description”. If known, include courses and distances of the entire property.
  - (iii) Adjoining properties identified by most recently published owners’ names (N/F, now or formerly) or by subdivision map and lot numbers.
  - (iv) Means of access to the property and the subject area(s) based on deeds, maps or other available information.

Example Property Owner Affidavit

PROPERTY OWNER AFFIDAVIT

STATE OF \_\_\_\_\_ )
) SS: \_\_\_\_\_
COUNTY OF \_\_\_\_\_ ) (Town)

As of \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the undersigned, being the owner(s) of property located in the City/Town of \_\_\_\_\_, County of \_\_\_\_\_ and State of Connecticut located at \_\_\_\_\_ (the "Property"), being duly sworn, hereby depose(s) and says:

- 1. MECHANICS LIENS. Within the last ninety (90) days, no person has performed work or furnished any labor, service or materials in connection with the construction or repair of any buildings or improvements on the Property for which a mechanic's or materialmans' lien could be filed. (If work has been performed or materials furnished by any person within the last ninety (90) days, attach a mechanic's lien waiver for such party.).
2. TENANTS. There are no tenants or parties in possession of the property except: Enter None or List Tenants.
3. SURVEY UPDATE.
a. I/We have examined a certain survey of the Property made by Enter Surveyor Name/Company dated Enter Date of Survey including Revision Date and entitled, "Enter Title of Exhibit C" (the "Survey").
b. There have been no additional improvements constructed or exterior alterations made since the date of the Survey and the Survey reflects the current status of the Property.

The undersigned makes this affidavit for the purpose of inducing the State of Connecticut Department of Energy and Environmental Protection to accept the Declaration of Environmental Land Use Restriction and Grant of Easement being granted by Enter Property Owner Name. The undersigned is the Enter Property Owner or Duly Designated Agent of the Property Owner and makes this affidavit knowing that reliance is placed on the above statements.

Enter Property Owner/Duly Designated Agent of the Property Owner Name

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Commissioner of the Superior Court
Notary Public
My Commission expires \_\_\_\_\_