



## MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

### REMEDIATION AND REDEVELOPEMENT DIVISION

#### ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

##### INSTRUCTIONS:

When environmental contamination is proposed to remain in place under a road right-of-way (ROW) owned or controlled by a local unit of government (LUG), tribal government, or other authority, except the Michigan Department of Transportation, the "Road Right-of-Way Alternate Institutional Control" form (Form) may serve as an alternate institutional control mechanism pursuant to Section 20114d(5)(a) of Part 201, Environmental Remediation, or Section 21310a(4) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Acceptance of this institutional control by the LUG or other ROW authority is discretionary and voluntary. This Form replaces the Road Dedication Letter, which is no longer accepted as an approved institutional control.

The submitter is responsible for identifying property ownership interests, subject to documentation available on public record, associated within the ROW. In addition to this Form, if the submitter determines that the LUG or other ROW authority controls the ROW through an easement, the submitter may need to obtain consent from any underlying property owners who own fee simple title under the ROW and should consider recording restrictive covenants for adjacent properties. However, the restrictive covenants need not apply to the property underlying the ROW. Furthermore, the LUG or other ROW authority may require approval of certain permits, license agreements, or financial bonding that may be necessary for the ROW prior to submission of this alternate institutional control.

Documentation that all relevant exposure pathways have been evaluated and that there are no other potential exposures above unrestricted residential criteria within the ROW must be provided to the Department of Environmental Quality as part of a Response Activity Plan or No Further Action Report pursuant to Part 201 or a Final Assessment Report or Closure Report pursuant to Part 213 of the NREPA.

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# DRAFT



**ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL**

**INSTRUCTIONS:** *The party proposing to use the road ROW as an alternate institutional control (IC) shall complete Sections 1 through 4. If any underlying fee simple title ownership interests exist in the affected ROW, the submitter shall obtain consent, as appropriate, of all parties in Section 3. The LUG, tribal government, or other authority who owns or controls the ROW, except the Michigan Department of Transportation, shall complete Section 5. The party proposing shall submit the completed form and all attachments with a Response Activity Plan or No Further Action Report pursuant to Part 201 or a Final Assessment Report or Closure Report pursuant to Part 213 to the appropriate District Office. See DEQ form EQP4410 at [www.michigan.gov/DEQrrd](http://www.michigan.gov/DEQrrd) Office Map for a complete list of RRD District and Field Offices. The MDEQ Reference Number can be obtained by contacting the Remediation and Redevelopment Division at [deq-rrd@michigan.gov](mailto:deq-rrd@michigan.gov) or by calling 517-284-5153.*

<b>SECTION 1. SUBMITTER INFORMATION:</b>		<b>MDEQ REFERENCE NUMBER:</b> [REDACTED]	
SITE OR FACILITY NAME:		SITE OR FACILITY ID NUMBER:	
STREET ADDRESS:			
CITY:	ZIP:	COUNTY:	
NAME OF PARTY PROPOSING ROW IC:		EMAIL ADDRESS:	
STREET ADDRESS:		CITY:	STATE: ZIP:
CONTACT PERSON:		PHONE:	FAX:
DEQ District Office: <input type="checkbox"/> Cadillac <input type="checkbox"/> Gaylord <input type="checkbox"/> Grand Rapids <input type="checkbox"/> Jackson <input type="checkbox"/> Kalamazoo <input type="checkbox"/> Lansing <input type="checkbox"/> Saginaw Bay <input type="checkbox"/> SE Michigan <input type="checkbox"/> Upper Peninsula			

<b>SECTION 2. AFFECTED ROAD RIGHT-OF-WAY INFORMATION:</b>
1. Location/description of affected ROW:
2. Known or Suspected Contaminant(s) Type (Check all that apply): <input type="checkbox"/> Petroleum <input type="checkbox"/> Volatile Organic Compounds <input type="checkbox"/> Metals <input type="checkbox"/> Other
3. Is residual/mobile NAPL present: <input type="checkbox"/> YES <input type="checkbox"/> NO
4. Media Contaminated: a. <input type="checkbox"/> Soil Depth to contaminated soil: b. <input type="checkbox"/> Groundwater Depth to contaminated groundwater: Predominant groundwater flow direction:
5. Contamination present within ROW construction/excavation zone: <input type="checkbox"/> YES <input type="checkbox"/> NO
6. Presence of utilities in affected ROW: <input type="checkbox"/> YES <input type="checkbox"/> NO If present, show the location, depth and cross section of each utility on a Scaled Drawing (see #10) Impact to stormwater system: <input type="checkbox"/> YES <input type="checkbox"/> NO Impact to stormwater permit and discharge limits: <input type="checkbox"/> YES <input type="checkbox"/> NO Is the stormwater system classified as a Municipal Separate Storm Sewer System (MS4): <input type="checkbox"/> YES <input type="checkbox"/> NO
7. Have all affected easement holders in ROW received notification of existing conditions: <input type="checkbox"/> YES <input type="checkbox"/> NO
8. Does the ROW have any underlying fee simple title ownership interests: <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, consent of underlying fee title holders obtained (see Section 3) to the use of this institutional control: <input type="checkbox"/> YES <input type="checkbox"/> NO
9. Exposure risks present: <input type="checkbox"/> Drinking Water <input type="checkbox"/> Direct Contact <input type="checkbox"/> Inhalation <input type="checkbox"/> Soil Excavation/Relocation  a. Based on the exposure risks identified above, insert a paragraph below which describes the affected media, the nature and extent of the hazardous substances, the cleanup criteria exceeded, the routes of potential exposure, any response activities that have been taken to address the contamination, and any activities that could result in exposure to hazardous substances that would cause this alternate institutional control to not be protective of public health, safety, and welfare (e.g. use of the groundwater for consumption, irrigation, or any other use; any excavation or intrusive activity that would result in contaminated soils to be placed at the ground surface or otherwise exacerbate the extent of contamination). See example language below.



## ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

9.a. *continued*

Example language if contaminated groundwater is an exposure risk and construction activities would require dewatering or management of groundwater:

Management and disposal of the groundwater for short-term dewatering for construction purposes should be conducted in accordance with all applicable local state, and federal laws and regulations and in a manner that does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

Example language if contaminated soil is an exposure risk and construction activities would require soil excavation, relocation and/or disposal:

Management of all contaminated soils, media and/or debris located in the road right-of-way shall be in accordance with the applicable requirements of Section 20120c or Section 21304b of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

10.  Provide a Scaled Drawing and Property Description, or survey if available, that describes the subject property, obtained from a title commitment or vesting deed. At a minimum, the Scaled Drawing should include:

- A north arrow.
- A graphical scale bar and scale statement (e.g. 1"=50').
- The limits of the property plotted, to scale, showing the relationship to LUG or other Authority ROW.
- The transportation corridor name identified.
- A statement identifying the Township, Range, Section, and Quarter Section where the parcel is located.
- The limits of the area of impact plotted to scale. This area should be hatched and labeled appropriately.
- The location of significant site features such as buildings, drives, parking lots, and road surface.
- Cross section illustrating affected Right-of-Way, media, utilities and distribution of contaminated media.
- Most-recent analytical data illustrating contaminant compounds and concentrations within contaminated media.

11. Permanent markers required by the LUG, tribal government, or other authority to be placed within ROW:  YES  NO

### SECTION 3. CONSENT OF FEE SIMPLE TITLE OWNER, IF APPLICABLE:

I, as the underlying fee simple title owner, do hereby consent to the use of this alternate institutional control and that the aforementioned Local Unit of Government, tribal government, or other authority is exercising its authority to assure the reliability of this alternate institutional control to prevent exposure to hazardous or regulated substances located below the road surface.

<b>Signature</b>	<b>Print</b>	<b>Property Identification #</b>	<b>Date</b>
<b>Signature</b>	<b>Print</b>	<b>Property Identification #</b>	<b>Date</b>
<b>Signature</b>	<b>Print</b>	<b>Property Identification #</b>	<b>Date</b>
<b>Signature</b>	<b>Print</b>	<b>Property Identification #</b>	<b>Date</b>



**ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL**

**SECTION 4. SUBMITTER SIGNATURE:**

I hereby attest to the accuracy of the statements in this document and all attachments. I further certify that the language on this form has not been modified.

<b>Signature</b>	<b>Print</b>	<b>Date</b>

**SECTION 5. LUG OR OTHER AUTHORITY CONFIRMATION OF ROAD RIGHT-OF-WAY INSTITUTIONAL CONTROL:**

Name of Local Unit of Government or other Authority:

*The aforementioned Local Unit of Government (LUG), tribal government, or other authority attests that the current use of the affected road right-of-way is for public transportation. The LUG, tribal government, or other authority has no current plans to relocate, vacate, or abandon the affected portion of the affected road right-of-way. The LUG, tribal government, or other authority understands that the submitter intends to rely upon the existence of said road right-of-way to prevent unacceptable exposure to hazardous substances that may be present in the soil and/or groundwater within the affected road right-of-way. The LUG, tribal government, or other authority understands that there may be additional costs to the LUG, tribal government, or other authority when disturbing the area of impact in the future. The LUG, tribal government, or other authority has a reliable mechanism to track the location and will provide notification of the contamination in the affected road right-of-way to parties requesting access.*

*The LUG, tribal government, or other authority executing this alternate institutional control certifies that EITHER of the following conditions has been met:*

a. *based on representations of the submitter, all/any persons with ownership interests in the property/properties underlying the affected right-of-way described in this document have been notified regarding the conditions that are known at the time this alternate institutional control is executed, and consent for use of this alternate institutional control from fee simple title ownership interests has been obtained where necessary.*

-OR-

b. *the LUG, tribal government, or other authority exercises exclusive control over the roadway and underlying properties affected by this alternate institutional control and is exercising its authority to assure the reliability of this alternate institutional control to prevent exposure to hazardous or regulated substances located below the road surface.*

*If the affected road right-of-way is proposed to be relocated, vacated or abandoned, the LUG, tribal government, or other authority will notify the appropriate Department of Environmental Quality District Office, identified in Section 1, and any adjacent/underlying property owners no less than 90 days prior to the road being relocated, vacated, or abandoned. With my signature below, I certify that I am legally authorized to sign on behalf of the LUG, tribal government, or other authority.*

<b>Signature of Authorized LUG or Authority Official</b>	<b>Print Authorized LUG or Authority Official</b>	<b>Date</b>
<b>Name of Local Unit of Government</b>	<b>Address, City, State, Zip</b>	
<b>Phone Number</b>	<b>Fax Number</b>	<b>Email Address</b>