

DTSC's Land Use Covenant Quick Reference Guide

What is a Land-Use Covenant (LUC)?

Under federal and state laws, institutional controls help protect against unsafe exposure to hazardous substances on public or private property. These restrictions are supported by toxicological evaluation or screening. Land Use Covenants (LUCs) are a tool that the Department of Toxic Substances Control (DTSC) utilizes when exposure to contamination can be controlled through specifically defined restrictions.

When is it needed?

LUCs are used when DTSC has determined that it is safe to leave specific types of contamination at a property as long as defined restrictions are adhered to. A decision document identifies the remedy for environmental contamination that best fits the site conditions (for example, a Removal Action Workplan, Corrective Measures Study, or a Preliminary Endangerment Assessment, or equivalent). A decision document identifies the restrictions of a LUC. DTSC and the property owner(s) enter a LUC that allows ongoing use of the property within the limits defined in the decision document. Common LUC provisions include stating that a remedial system should not be disturbed, limiting soil disturbance, or disallowing sensitive uses like schools or hospitals. Restrictions identified in LUCs apply to affected areas only and are not more restrictive than is needed to protect human health and the environment.

What is the process?

A LUC is subject to public participation requirements, like any other remedy. The decision document that includes the LUC is subject to public review and comment. Upon DTSC approval of the decision document, the approved LUC is filed with the local county recorder's office. LUCs "run with the property," meaning an LUC and its provisions are binding on all current and future property owners and users. All LUCs are subject to annual inspections and reporting to DTSC to ensure ongoing compliance. Some LUCs require an additional review every five years.

Can it be modified?

A LUC remains in effect until it is formally removed or modified. DTSC will review applications and information supporting a LUC termination or variance. For example, if a new owner completes additional cleanup to remove contamination, DTSC could go through the process of a public notice and terminate the LUC.

Authority

Civil Code section 1471 and Health and Safety Code section 25202.5, 25355.5, 25395.99, and California Code of Regulations, title 22, section 67391.1.

Per Assembly Bill 871, DTSC must notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction.

For more information, contact: Maryam.Tasnif-Abbasi@dtsc.ca.gov