

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers  
**FROM/PHONE:** Phillip R. Holste, Program Manager, 954-797-1041  
**PREPARED BY:** Phillip R. Holste, Program Manager  
**SUBJECT:** Old Business

**AFFECTED DISTRICT:** 3

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** Devine Parcels - Due Diligence

**REPORT IN BRIEF:** On August 15, 2007, the Town Council approved the Devine Parcels purchase contract. In the ensuing months, the Town conducted multiple environmental site assessments that identified soil arsenic levels exceeding the residential soil cleanup level (SCTL) standard of 2.1 mg/kg. Upon completion of the Expanded Phase II ESA, the property owner was offered the choice of the Town remediating the site through an environmental escrow posted at closing or completing their own site remediation until receipt of a No Further Action status from Broward County. The property owner opted to remediate the site.

Earlier this year, the State issued an alternative soil cleanup goal for open space/park sites (Exhibit A). The open space/park SCTL goal for arsenic is 5.5 mg/kg. The open space/park SCTL goal is an option applicable at the Town's discretion. Since the Devine Parcels arsenic soil levels are below the open space/park SCTL goal, the Town can require cleanup to the residential or open space/park goals. If the Town chooses the open space/park cleanup goal, no further remediation would be required. The Town, however, would have to place a declaration of restrictive covenant on the site limiting its use to open space/parks. The site would remain on the County's list of contaminated sites. If the residential SCTL is applied, the property owner would need to remediate arsenic levels between 2.1 and 5.5 mg/kg. No other restrictions would be necessary.

This agenda item requests the Town Council's direction as to which soil cleanup goal will be applied for the Devine Parcels property.

**PREVIOUS ACTIONS:** Devine Parcels Purchase Contract (R2007-232)

**CONCURRENCES:** N/A

**FISCAL IMPACT:** not applicable

Has request been budgeted? n/a

**RECOMMENDATION(S):** Discussion of Devine Parcels Due Diligence

**Attachment(s):** Exhibit A: Email from Broward County Pollution Prevention, Remediation, and Air Quality (PPRAQ Division); Exhibit B: Letter from Broward County PPRAQ to Mr. Devine

Exhibit A: Email from Broward County Pollution Prevention, Remediation, and Air Quality (PPRAQ Division)



"Arrazola, Norman "  
<NARRAZOLA@broward.org

>  
05/27/2008 11:10 AM

To "Phillip\_Holste@davie-fl.gov" <Phillip\_Holste@davie-fl.gov>

cc

bcc

Subject RE: State Alternative Cleanup Level for Parks/Open Space

History:

This message has been forwarded.

Phillip:

As per your request below, below find a copy of an electronic mail by Ms. Ligia Mora-Applegate of the Florida Department of Environmental Protection (FDEP):

“Per our discussion yesterday this is the alternative SCTL for arsenic (5.5 mg/Kg) for direct contact we have used in state parks and rails to trails in Florida provided that SPLP results show no leachability above 10 ug/L. Since it is an alternative SCTL we must place institutional controls on that property that specify that the land use will be a park. This value has been used as a not-to-exceed value therefore avoiding the issues of additivity/apportionment and exposure unit size required when using 95 % UCL.”

Once it is demonstrated that the above alternative SCTL (soil cleanup target level) is met, a Site Rehabilitation Completion Report (SRCR), which details all of the activities that were conducted, confirmatory sampling, etc. must be submitted. The SRCR shall include justification (No Further Action with Conditions Proposal) for the conditional closure under the above alternative SCTL.

We will then approve the SRCR, including the conditional closure. Subsequently, the Declaration of Restrictive Covenants (DRC) would need to be drafted (including exhibits); the DRC is then approved by the County Attorney and is recorded (by you). We will issue a provisional NFAC approval and require proper monitoring well abandonment as well as proof that the constructive noticing requirements in Chapter 62-780.680(8) have been complied with. After this is complied with, you will receive a No Further Action with Conditions Approval from us.

The site will remain in the list of contaminated sites.

Please let me know if I can be of any more help.

Norman Arrazola, P.E.

Engineer III

Pollution Prevention, Remediation and Air Quality (PPRAQ) Division

Mailing Address

115 South Andrews Avenue, Rm A-240

Ft. Lauderdale, FL 33301

Telephone: 954-519-1237

Fax:: 954-765-4804

Exhibit B: Letter from Broward County PPRAQ to Mr. Devine



Environmental Protection and Growth Management Department  
**POLLUTION PREVENTION, REMEDIATION AND AIR QUALITY DIVISION**  
Mailing Address: 115 South Andrews Avenue, Room A-240, Fort Lauderdale, Florida 33301  
954-519-1260 • FAX 954-765-4804

May 30, 2008

Michael J. Devine, Owner  
Devine Parcels  
3000 S. Flamingo Road  
Davie, FL 33330

**RE: Site Assessment Report and Proposal for No Further Action with Controls.  
Devine Parcels, 3000 S. Flamingo Road, Davie, FL 33330.  
EAR License 0943; Incident Date: November 12, 2007.**

Dear Mr. Devine:

The Pollution Prevention, Remediation and Air Quality Division (Division) has reviewed the document titled "Site Assessment/Source Removal Activities, No Further Action Request" (Report), dated May 14, 2008 (received May 22, 2008), and the Engineering Certification dated May 20, 2008 (received May 28, 2008), submitted by your consultant, CRB Geological & Environmental Services, Inc. (CRB). The Report contains a proposal for No Further Action (NFA) with Controls. The Division hereby approves the Report and concurs that the requirements for NFA with Controls, pursuant to Rule 62-780.680, Florida Administrative Code (F.A.C.), have been fulfilled at the referenced site.

The NFA with Controls proposal requests that NFA status be granted for the site by restricting its land use as a park and adopting an alternative soil target level of 5.5 milligrams per kilogram to address existing arsenic contamination in the soil. It will be necessary to prepare a Declaration of Restrictive Covenant (Declaration) referencing the proposed restrictions, which will, once finalized, be recorded as an amendment to the property deed. Please refer to the Florida Department of Environmental Protection's (FDEP) Institutional Control Procedures Guidance document available on the internet at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/wc/csf/icpg.PDF](http://www.dep.state.fl.us/waste/quick_topics/publications/wc/csf/icpg.PDF). This document contains a template which may be used for preparation of the Declaration, as well as information on the administrative procedures necessary to receive final NFA with Controls approval from the Division which will be executing the Declaration. Summarizing, the NFAC Package shall include (but not necessarily be limited to) the following:

- A Draft Declaration containing the approved restrictions,
- A copy of the legal description of the property and a survey of the property,
- A certified copy of the deed,
- A title (ownership) search and an encumbrances search which identifies who the title holder and all others with an interest in the property such as lessees, mortgage holders, liens, and easements. If there are mortgage holders, a "Subordination of Mortgage" may need to be completed and submitted. If there are tenants or lessees, a copy of each lease should be submitted. If this search reveals any easements, certified copies of those easements need to be obtained (along with a map, diagram, or survey showing the relationship of the easement to the contaminated and/or restricted area). Any identified parties with

Michael J. Devine  
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an interest in the real property (such that the proposed restrictions may impact their rights) will need to participate in discussions pertaining to the restriction and approve it.

Any other applicable requirements in the *Institutional Controls Procedures Guidance*.

The Declaration must be prepared and submitted to the Division no later than **August 30, 2008**. Once this information is received, the Division will perform a technical and legal review. Please be advised that the executed Declaration must be recorded with Broward County, the constructive notice requirements pursuant to Rule 62-780.680(8) must be complied with, and all monitoring wells on the referenced property (except those used for release detection, pursuant to Section 62-761, F.A.C.), must be properly abandoned before a Conditional Site Rehabilitation Completion Order can be issued for this case.

If you have any questions, please contact me at (954) 519-1237.

Sincerely,

POLLUTION PREVENTION AND REMEDIATION DIVISION



Norman Arrazola, P.E.  
Engineer III

cc: Doug Lowell, CRB.

