

Proposed Environmental Land Use Regulations

Public Informational Meeting
October 10, 2019



DISCLAIMER: This presentation will not become part of the regulation-making record. The materials contained in this presentation are for informational purposes only. If the information presented herein is in conflict with the formal proposed Environmental Use Restrictions Regulations on the eRegulations website, the eRegulations version shall take precedence.



EURs Regulations

- ▶ EURs are required when pollution remains on a parcel above default cleanup criteria
- ▶ EURs are designed to:
 - ▶ Restrict further use of a parcel
 - ▶ Impose certain affirmative obligations upon the owner

EUR Types

- ▶ ELUR – Environmental Land Use Restriction
 - ▶ Conveys an interest in the parcel to the state
- ▶ NAUL – Notice of Activity and Use Limitation
 - ▶ New tool only available for certain restrictions specified in statute and proposed RSRs
 - ▶ Binds future owners to maintain restriction



EURs Revisions

➤ Goals

- Permit the use of NAULs
- Provide greater detail on:
 - Implementation process
 - Completion of surveys
- Allow for minor disturbances without Commissioner approval
- Require annual inspections by owner
- Continue to protect public health and the environment



➤ Benefits

- More efficient process
- Greater long-term certainty of restriction
- Cost savings with LEP-Implemented NAULs



EUR Regulations - Background

- ▶ Authority to issue the EUR Regulations is found in Conn. Gen. Stat. § 22a-133q.
- ▶ Requirements for EURs found in Conn. Gen. Stat. § 22a-133q and § 22a-133o



Why EUR Revision Now?

- ▶ Key part of the overall DEEP “Transformation” process
 - Companion regulation to the Wave 2 RSRs
- ▶ The proposed EUR Regulations:
 - Replace outdated existing regulations,
 - Based on existing processes,
 - Make important process improvements, and
 - Allow, for the first time, use of NAULs.

NEW!



eRegulations System

- ▶ Official Proposed EUR regulations
- ▶ Notice of intent
- ▶ Fiscal Note
- ▶ Regulatory Flexibility Analysis

[eRegulations System](#)



Public Comment Period

- ▶ Public comment period runs from September 27th to November 12, 2019 at 5 pm
- ▶ May provide comments on the proposed EUR Regulations and only the portions of the proposed RSR Regulations which relate to EURs.



Public Comment Period

- ▶ Verbal:

- ▶ Public Hearing on November 4, 2019 at 1:00 p.m. at DEEP, 5th Floor, Gina McCarthy Auditorium, 79 Elm Street, Hartford, CT

★ Best way to provide comments:

- ▶ Written:

- ▶ Submitted through the [eRegulations System](#)



Outline of the Proposed Regulations

- ➔ **§ 22a-133q-1** – Definitions
- ➔ **§ 22a-133q-2** – Environmental Land Use Restrictions (ELURs)
- ➔ **§ 22a-133q-3** – Notice of Activity and Use Limitations (NAULs)
- ➔ **§ 22a-133q-4** – Surveys
- ➔ **§ 22a-133q-5** – EUR Opinion (formerly the Decision Document)

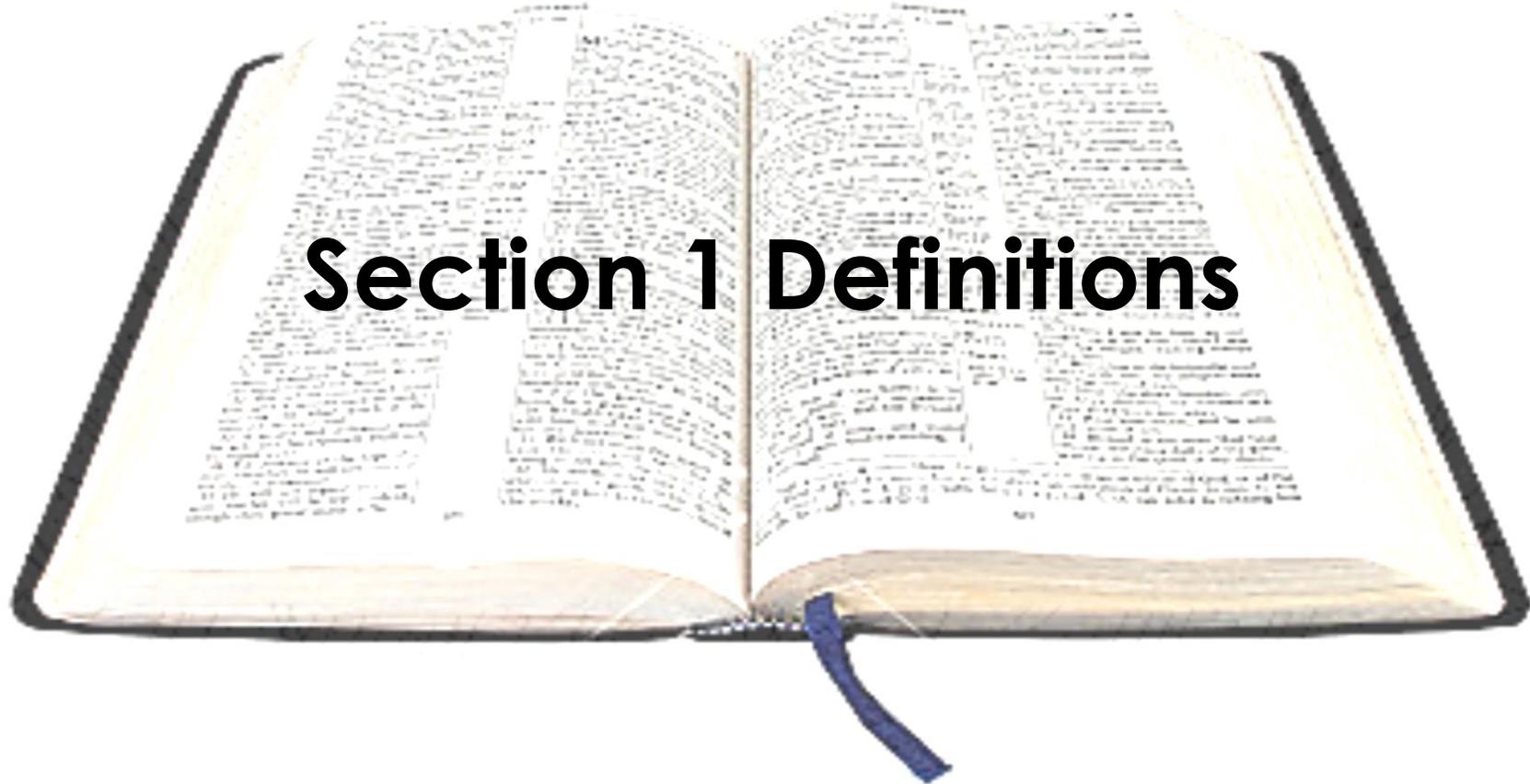


Outline of the Proposed Regulations

- ▶ **§ 22a-133q-6** – Allowable Disturbances
- ▶ **§ 22a-133q-7** – Releases and Terminations
- ▶ **§ 22a-133q-8** – Post Recordation Inspections and Corrective Action
- ▶ **§ 22a-133q-9** – Miscellaneous Requirements
- ▶ **Appendix 1 & Appendix 2** – Templates for ELUR and NAUL



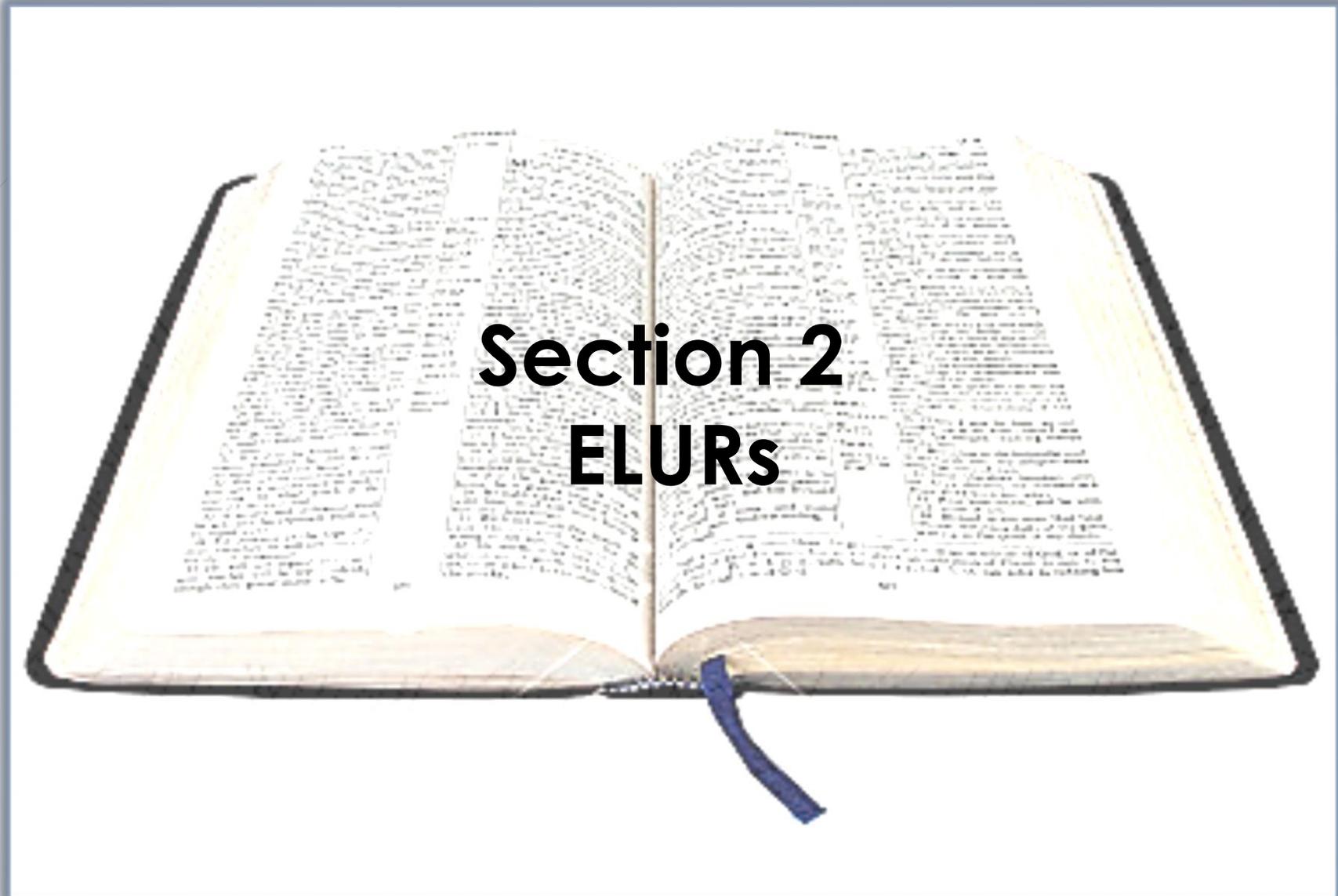
Section 1 Definitions



Definitions

- 30 Definitions
- Definitions for terms originating in the EUR Regulations
- Specific definitions from RSRs incorporated with a catch-all for other necessary terms
- New definitions for legal terms such as: interest, record and subordination agreement





Section 2
ELURs



ELURs

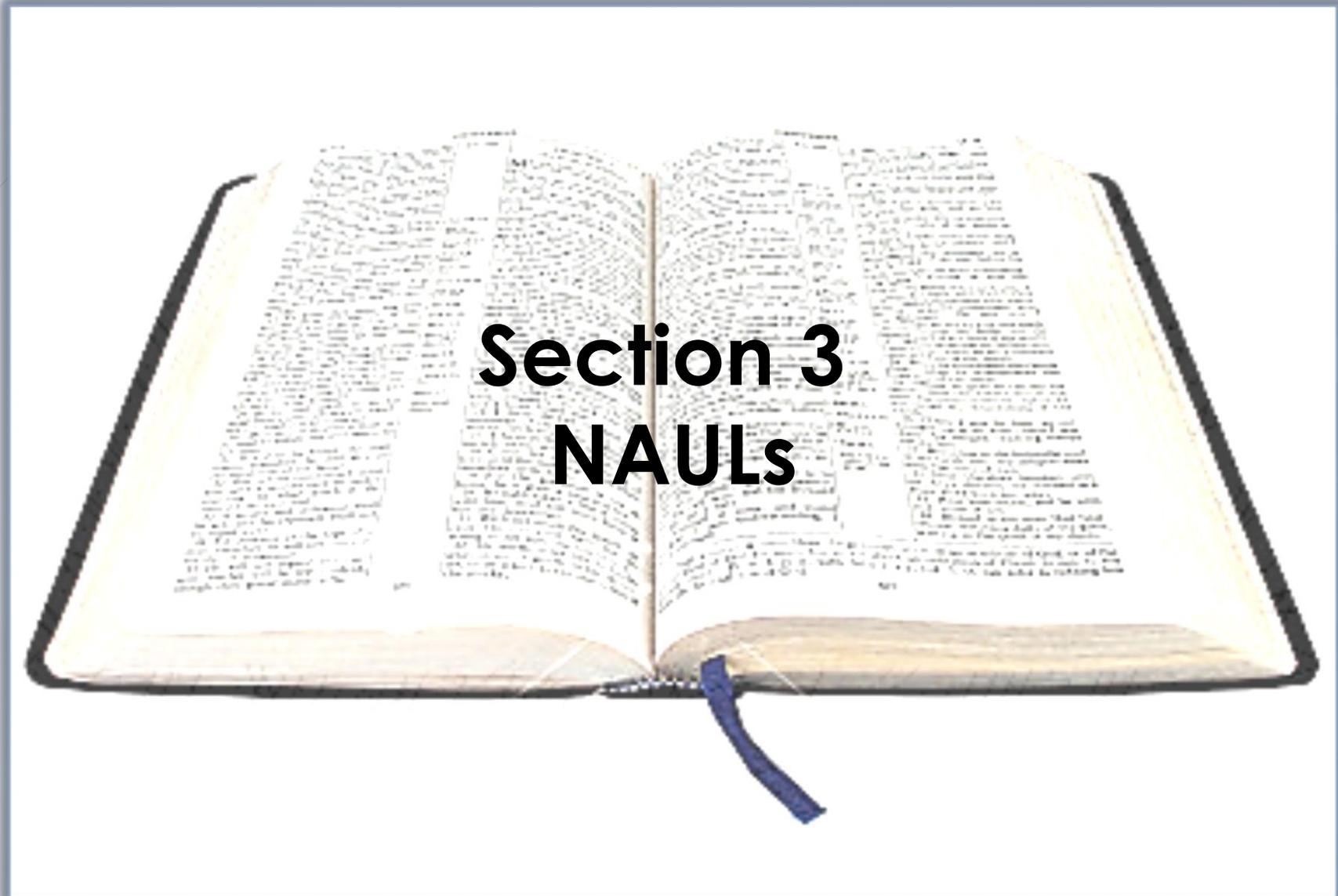
- Reflects existing process with improvements
- Describes:
 - Specifies documents which must be prepared - and who must prepare them - including title search, title evaluation, subordination agreements, survey, and EUR opinion
 - Process for submission of supplemental required or necessary information (including subordination agreements)
 - Specific decision making criteria for Commissioner's approval
 - Process for recording ELUR after acceptance – with specific timelines (some statutory) for each step to ensure title work does not become stale



ELURs

- ▶ Improvements to existing process:
 - ▶ Frontloading of subordination agreements
 - ▶ Process for requesting and providing additional information
 - ▶ Timelines associated with recording
- ▶ Process for LEP approval of an ELUR when permitted by General Statutes § 22a-133y



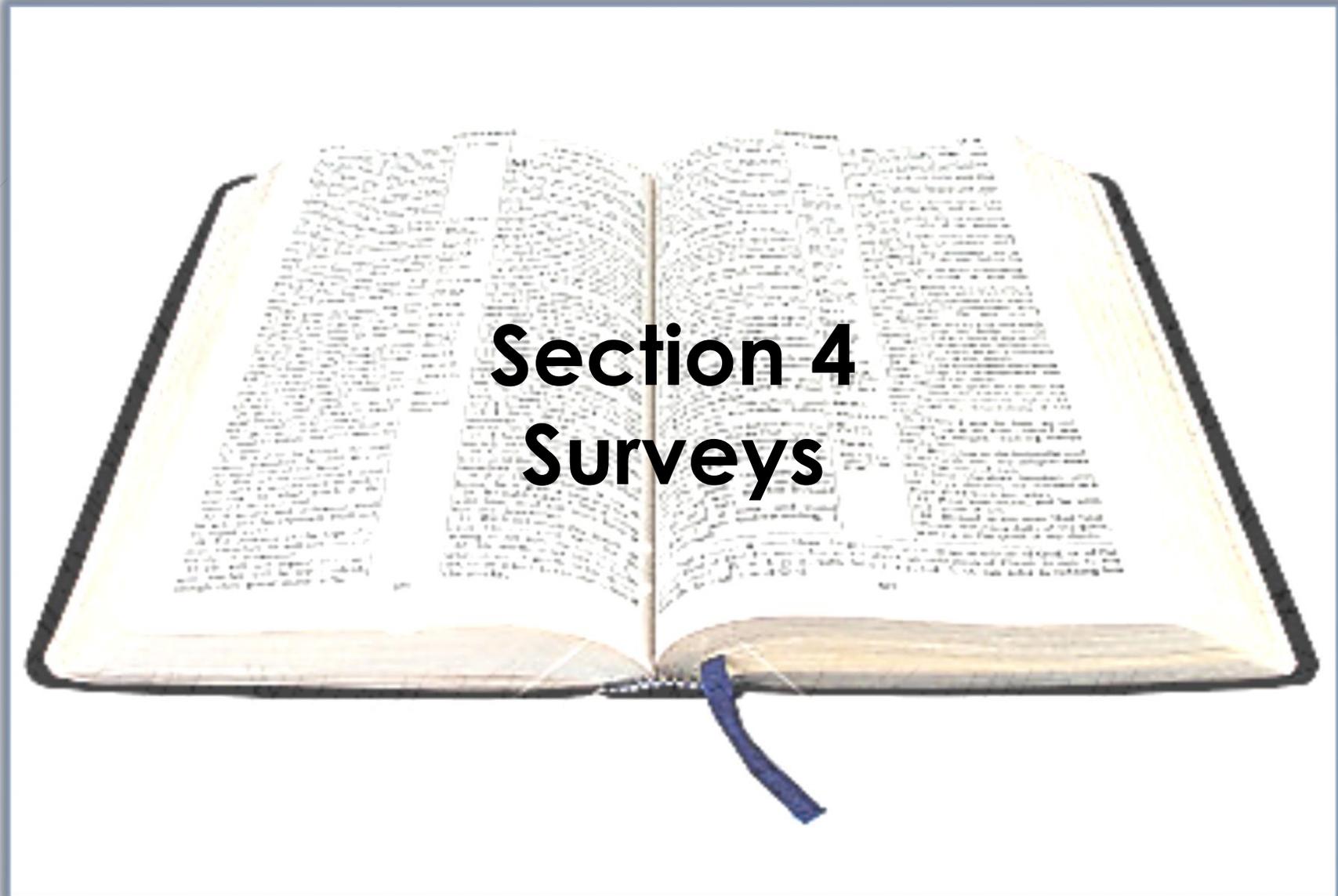


Section 3
NAULs

NAULs

- ▶ NAUL is different than an ELUR because:
 - ▶ State does not obtain an interest in property
 - ▶ Can be approved by an LEP or Commissioner
- ▶ Sets out process for Commissioner and LEP approval of an NAUL
 - ▶ Commissioner approval process largely mirrors ELUR process
 - ▶ LEP approval process relies on LEP and title attorney to ensure statutory requirements are satisfied.
 - ▶ Contains process for recording an NAUL after acceptance – with specific timelines for each step to ensure title work does not become stale.



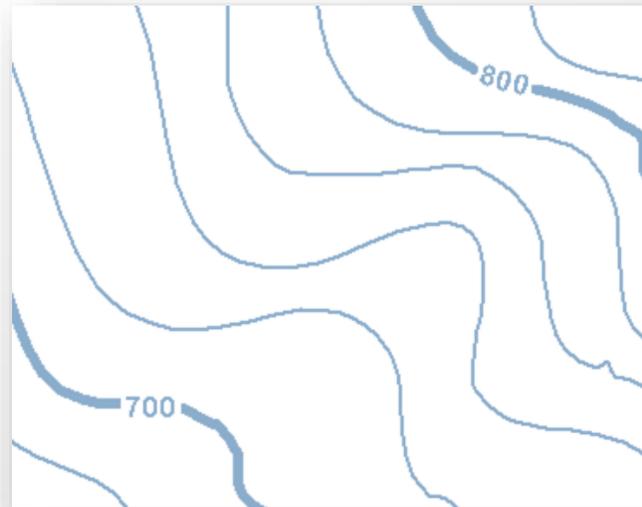


**Section 4
Surveys**



Surveys

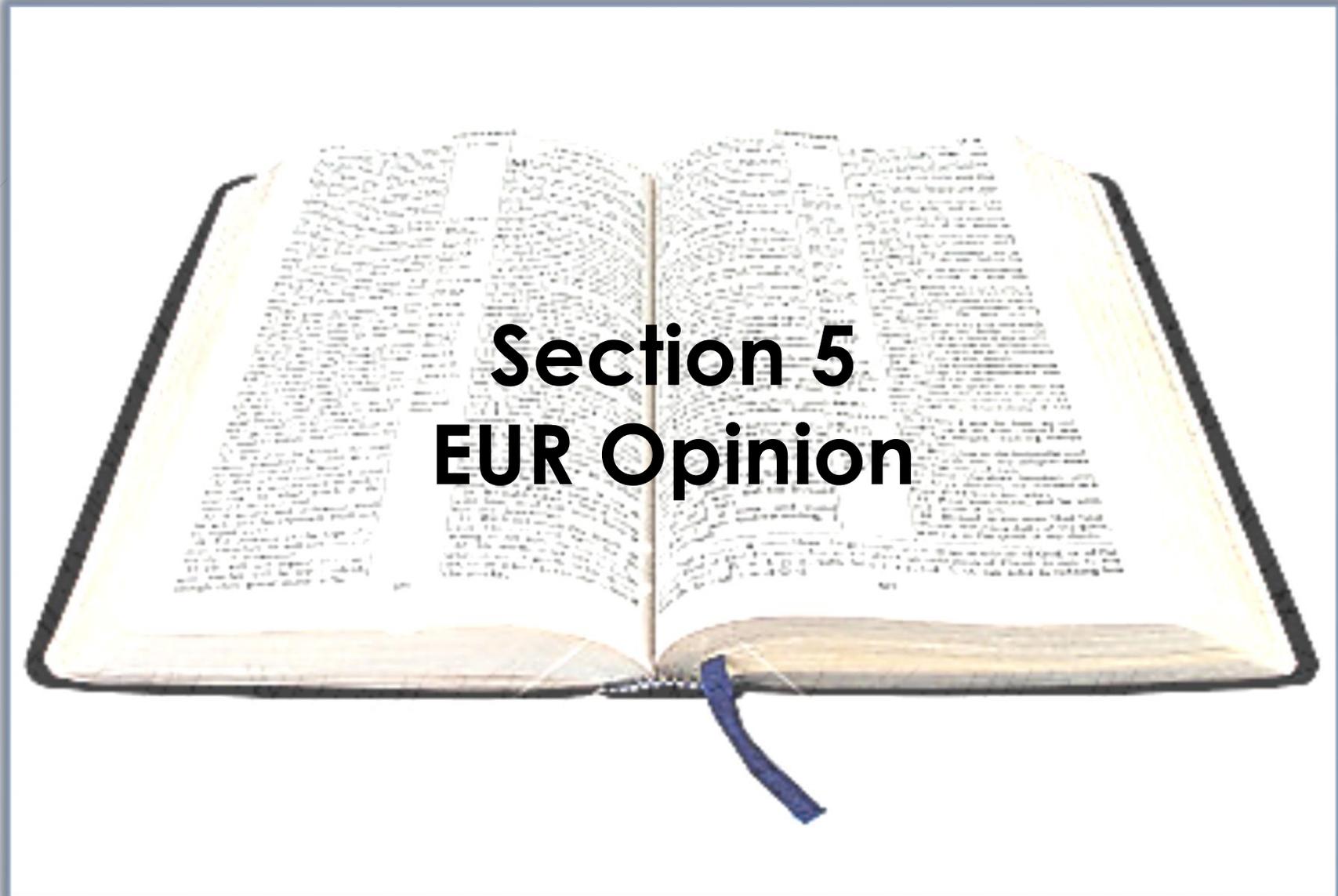
- ▶ Contains detailed requirements for surveys
- ▶ Section is intended to serve as a checklist for a surveyor and to minimize back and forth with the Department and the need to perform multiple rounds of expensive field work.
- ▶ Subsection (a) details general requirements for surveys



Surveys

- ▶ Subsections (b), (c), and (d), contain specific requirements depending on the type/size of EUR:
 - ▶ (b) Specific standards and requirements for surveys when the aggregate size of the subject area(s) is fifty percent to one hundred percent (50% to 100%) of the parcel
 - ▶ (c) Specific standards and requirements for surveys when the aggregate size of the subject area(s) is less than fifty percent (< 50%) of the parcel
 - ▶ (d) Specific standards and requirements for surveys when residential activity is the sole restriction.
- ▶ Subsection (e) requires preparation of a “simplified survey” which is a summary sheet showing the most important information.





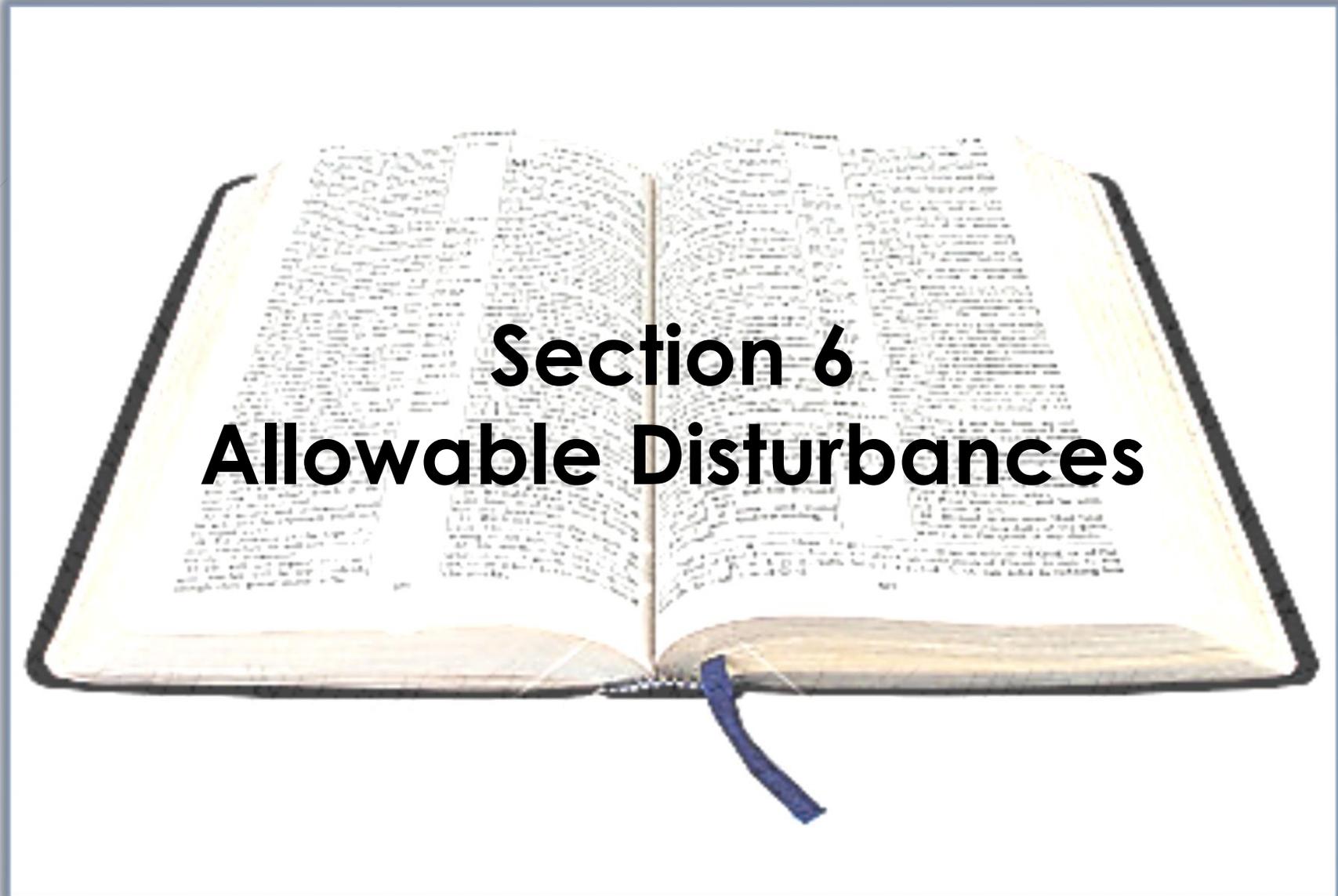
**Section 5
EUR Opinion**



EUR Opinion

- ➔ Replaces “Decision Document” used in current process.
- ➔ Prepared and signed by LEP, recorded on the land records
- ➔ Sets out context for the site, pollutants present, and restrictions imposed on each subject area.
- ➔ Specifies the restrictions and obligations imposed





Section 6
Allowable Disturbances



Allowable Disturbances

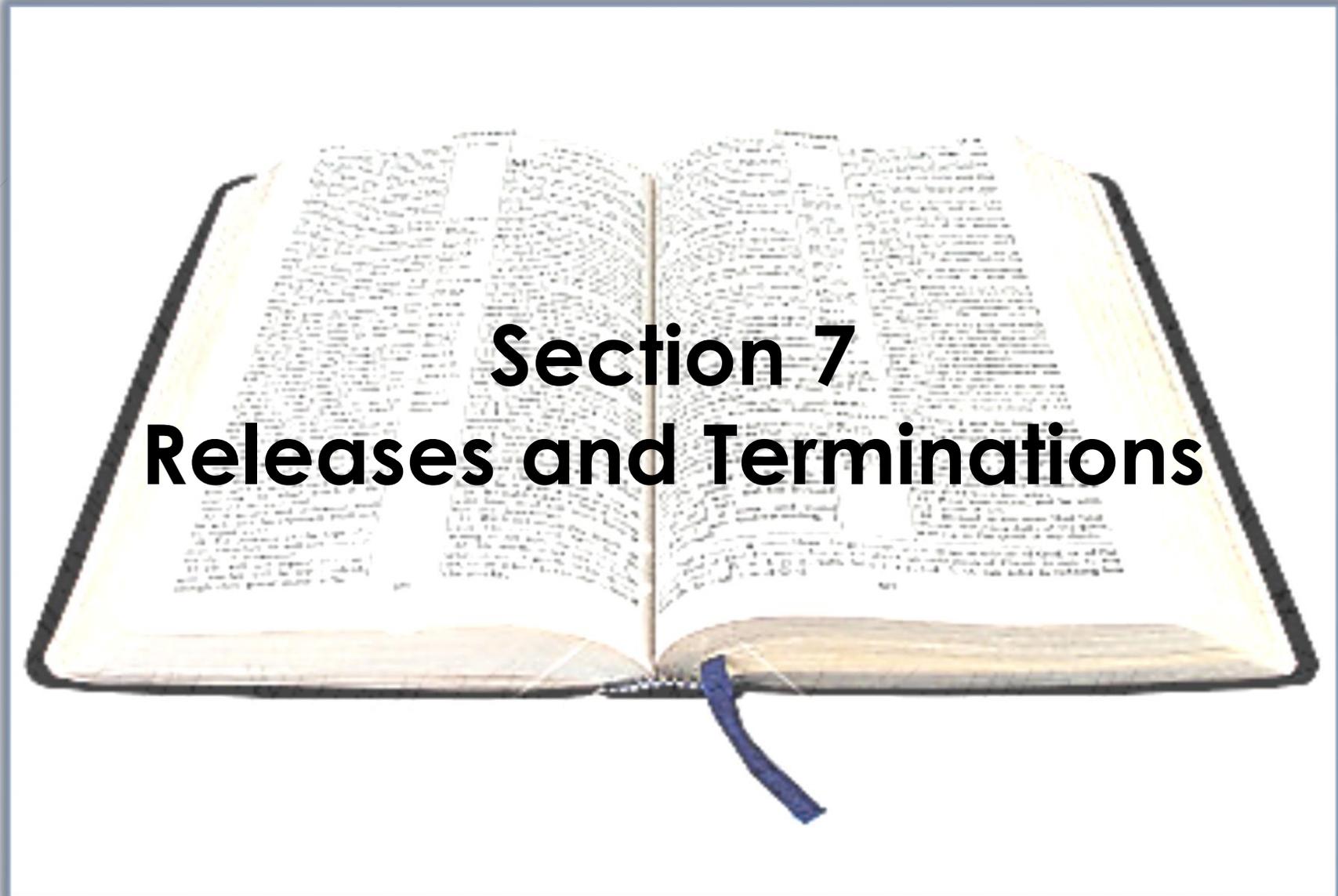
- ▶ LEP implemented mechanism to allow activities that may otherwise violate the provisions of an EUR.
- ▶ Allows excavation that would be otherwise prohibited by an EUR if it is limited in area, depth, duration, and frequency.
- ▶ Requires notice to the Commissioner (but not Commissioner's approval) and provides Commissioner an opportunity to provide comment.



Allowable Disturbances

- Provides detailed instructions for management of polluted soil – these requirements are consistent with the Department's General Permit for Contaminated Soil and/or Sediment Management.
- Requires preparation of completion report when activities are concluded.
- Clarifies Department's enforcement tools in event of non-compliance.





**Section 7
Releases and Terminations**



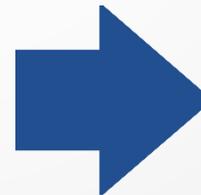
Releases and Terminations

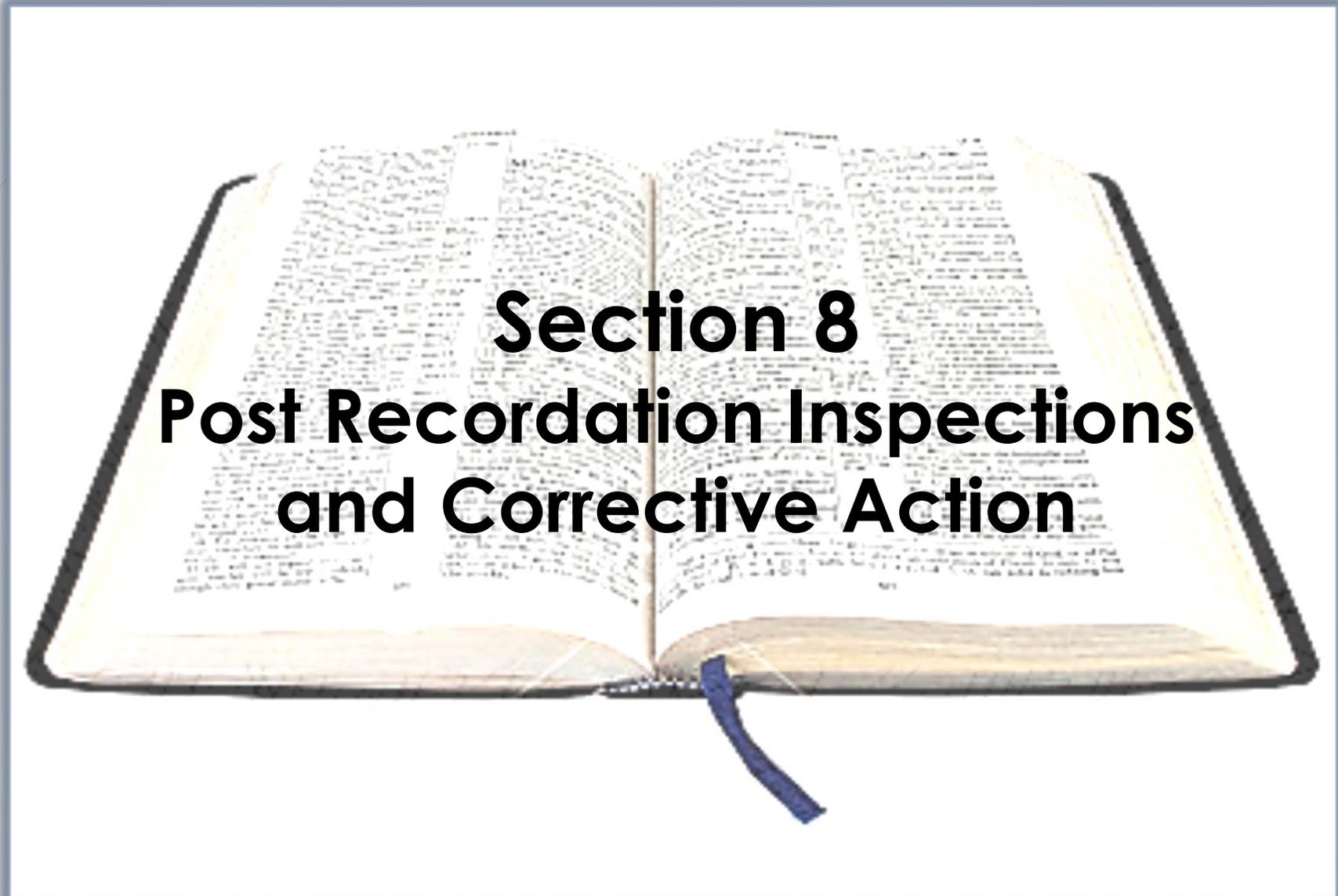
- ▶ Sets out process for obtaining authorization to conduct work otherwise prohibited by an EUR and too large in scope, duration or frequency to be an allowable disturbance.
 - ▶ Identifies specific documents which must be prepared – and who must prepare them.
 - ▶ Sets out standards for approval.
 - ▶ Allows for approval by an LEP of certain releases of an NAUL (limited by frequency and duration of activities).
 - ▶ Allows Commissioner to approve releases for recurring activities when appropriate.
 - ▶ Contains process for recording temporary release – including a termination date.
 - ▶ Requires preparation of completion report when activities are concluded.
 - ▶ Clarifies Department's enforcement tools in event of non-compliance.



Releases and Terminations

- Sets out process for permanently releasing an ELUR or terminating an NAUL if additional remediation has been performed so that such EUR is no longer necessary
- Includes a process for replacing one restriction with a new one if a different approach to remediation is used.





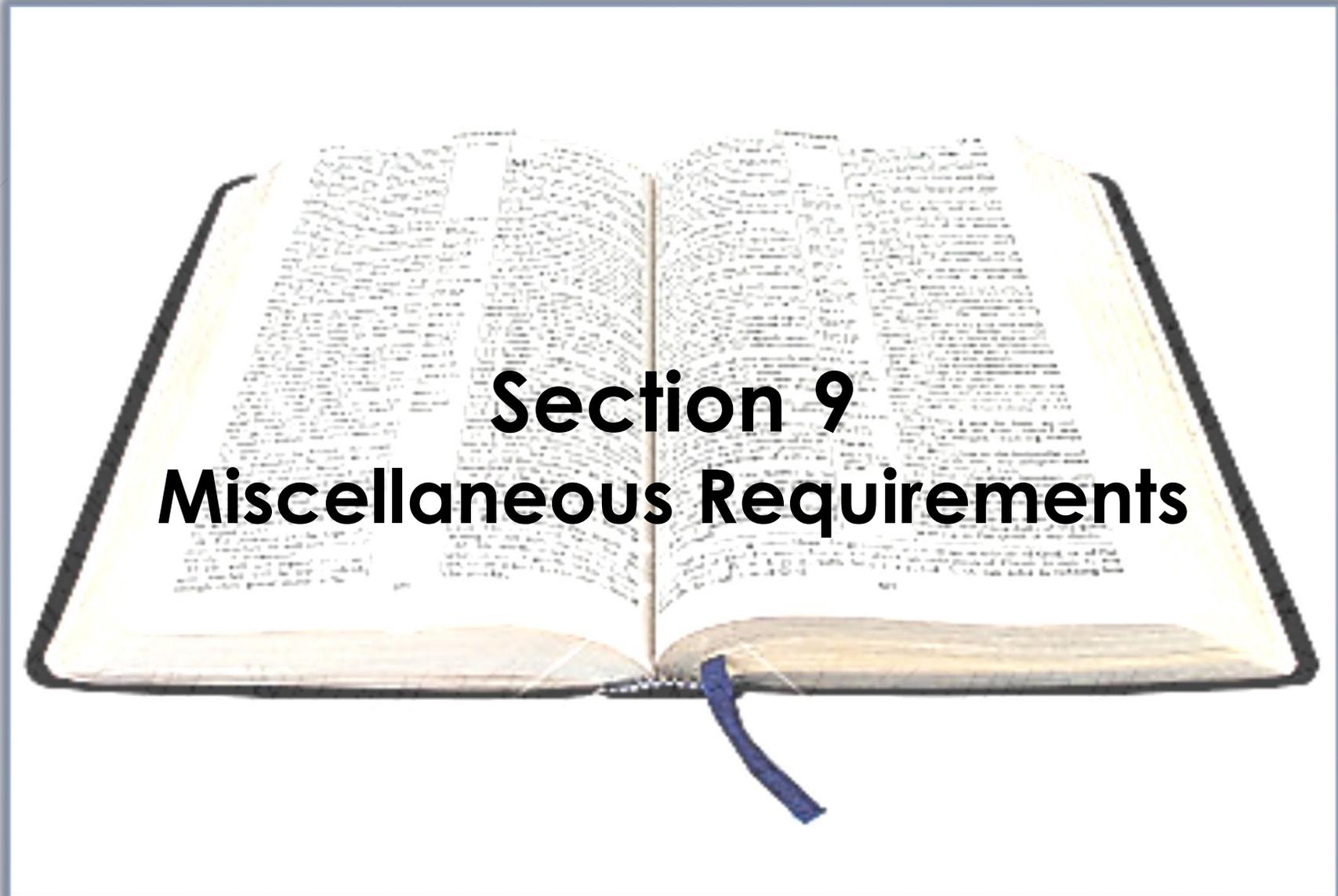
Section 8
Post Recordation Inspections
and Corrective Action



Post Recordation Inspections and Corrective Action

- ▶ Requires annual inspections by owner of a parcel and inspections by an LEP every five years.
- ▶ Sets out process for identifying, reporting and correcting any issues discovered.





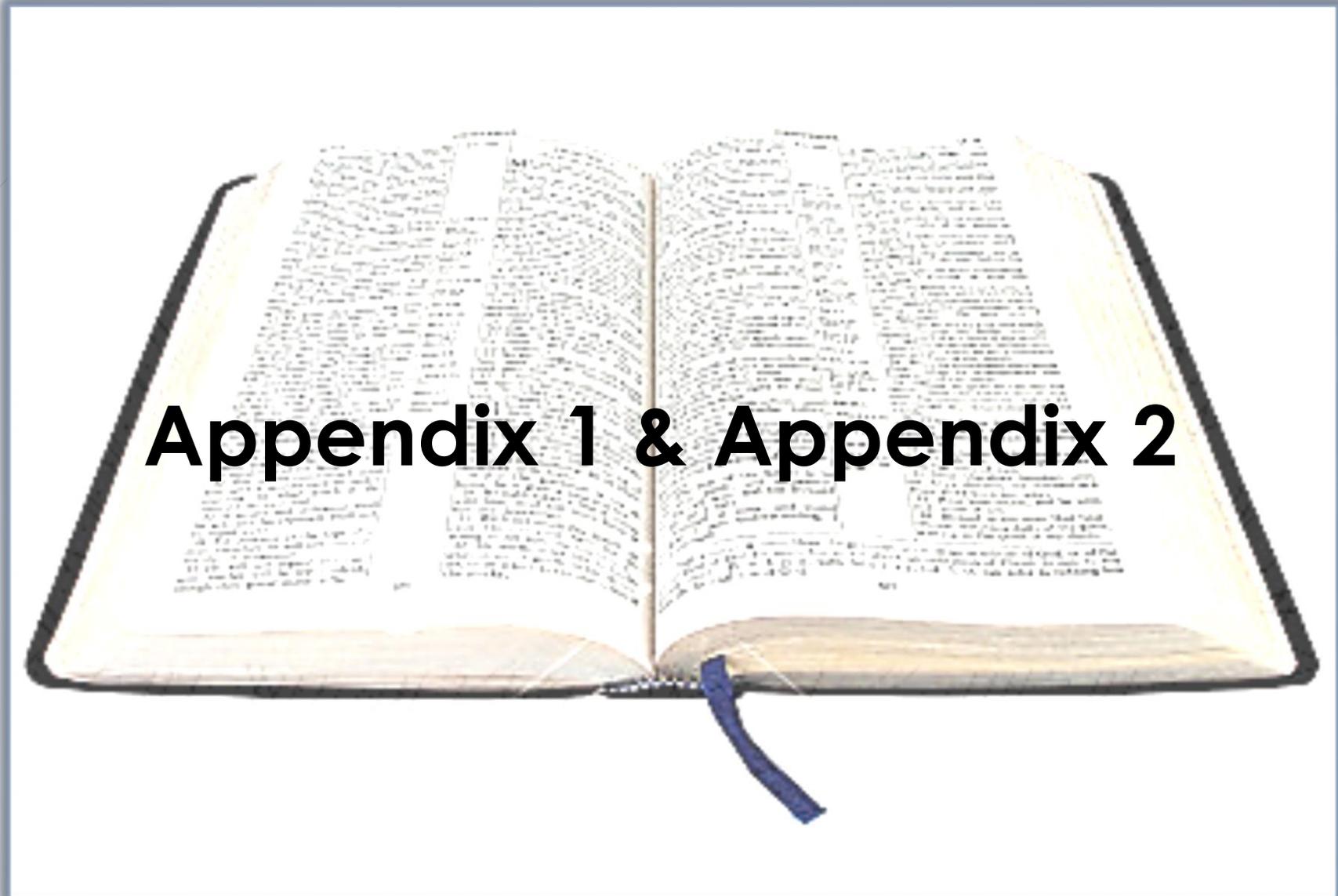
Section 9
Miscellaneous Requirements



Miscellaneous Requirements

- Requires posting of EUR factsheet in occupied building on parcel and that copies be provided to person responsible for health and safety of workers on site.
- Sets out schedule for retention of documents related to EUR.
- Specifies what documents must be provided to new holder of an interest in a parcel subject to an EUR, including a new owner.



An open book with text on the pages and a blue bookmark. The text is too small to read but appears to be organized in columns. The book is centered in the frame.

Appendix 1 & Appendix 2

Appendix 1 & Appendix 2

- Contains the actual language to be executed and recorded on the land records to implement an ELUR or an NAUL.

Declaration of Environmental Land Use Restriction and Grant of Easement

After Recording Returns to:
Environmental Land Use Restriction Coordinator
State of Connecticut Department of Energy & Environmental Protection
Remediation Division
Bureau of Water Protection and Land Reuse
79 Elm Street
Hartford, CT 06106

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT

This Declaration of Environmental land use restriction and Grant of Easement is made this _____ day of _____, 20____, between _____ (the "Grantor") and the Commissioner of Energy & Environmental Protection of the State of Connecticut (the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") described below:

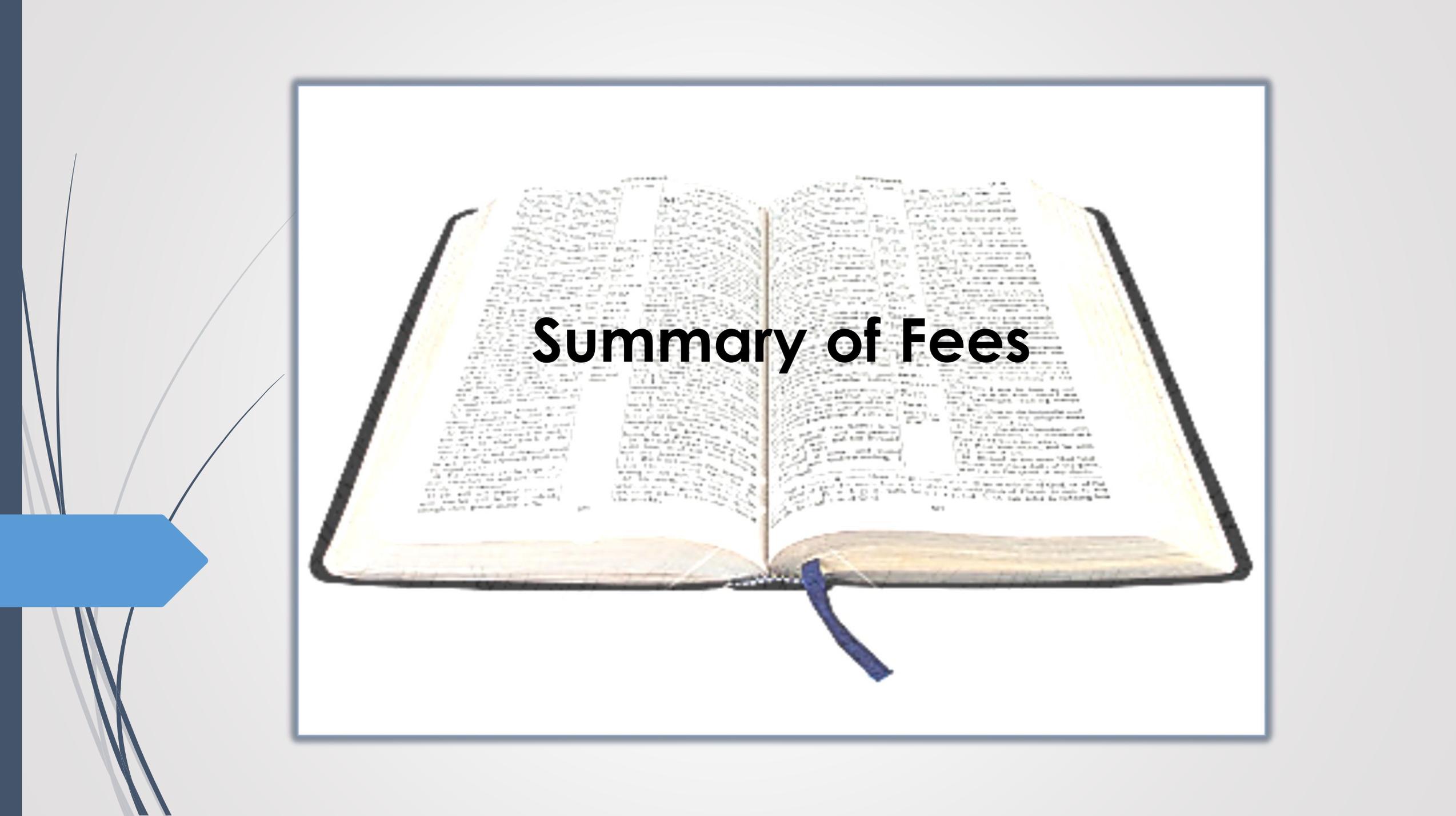
Street address:
City/Town:
State: Connecticut
Assessor's Map
Block
Lot
and/or
Assessor's Account Number:
Volume and Page of Deed:

A description of the property is attached hereto as Exhibit A, and which is made a part hereof, and

WHEREAS, the Grantee has the authority to enter into this declaration of environmental land use restriction pursuant to sections 22a-5, 22a-6, and 22a-133b of the General Statutes; and

Declaration Document - 1



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Summary of Fees

Summary of Fees

- ▶ Commissioner approved:
 - ▶ ELUR - \$5,000
 - ▶ NAUL - \$5,000
 - ▶ EUR Temporary Release - \$1,000

- ▶ LEP Approved:
 - ▶ ELUR – When are waivers requested, \$2,500.
 - ▶ NAUL - \$1,500



Questions?

Please Speak into Microphone

State Your Name and Affiliation

- ★ Reminder, best way to provide comments.
Written: Submitted through the [eRegulations System](#)

