



U.S. DEPARTMENT OF
ENERGY

OFFICE OF
**ENVIRONMENTAL
MANAGEMENT**

Institutional Controls – The Interplay of Real Estate Law, Regulatory Requirements and Local Code

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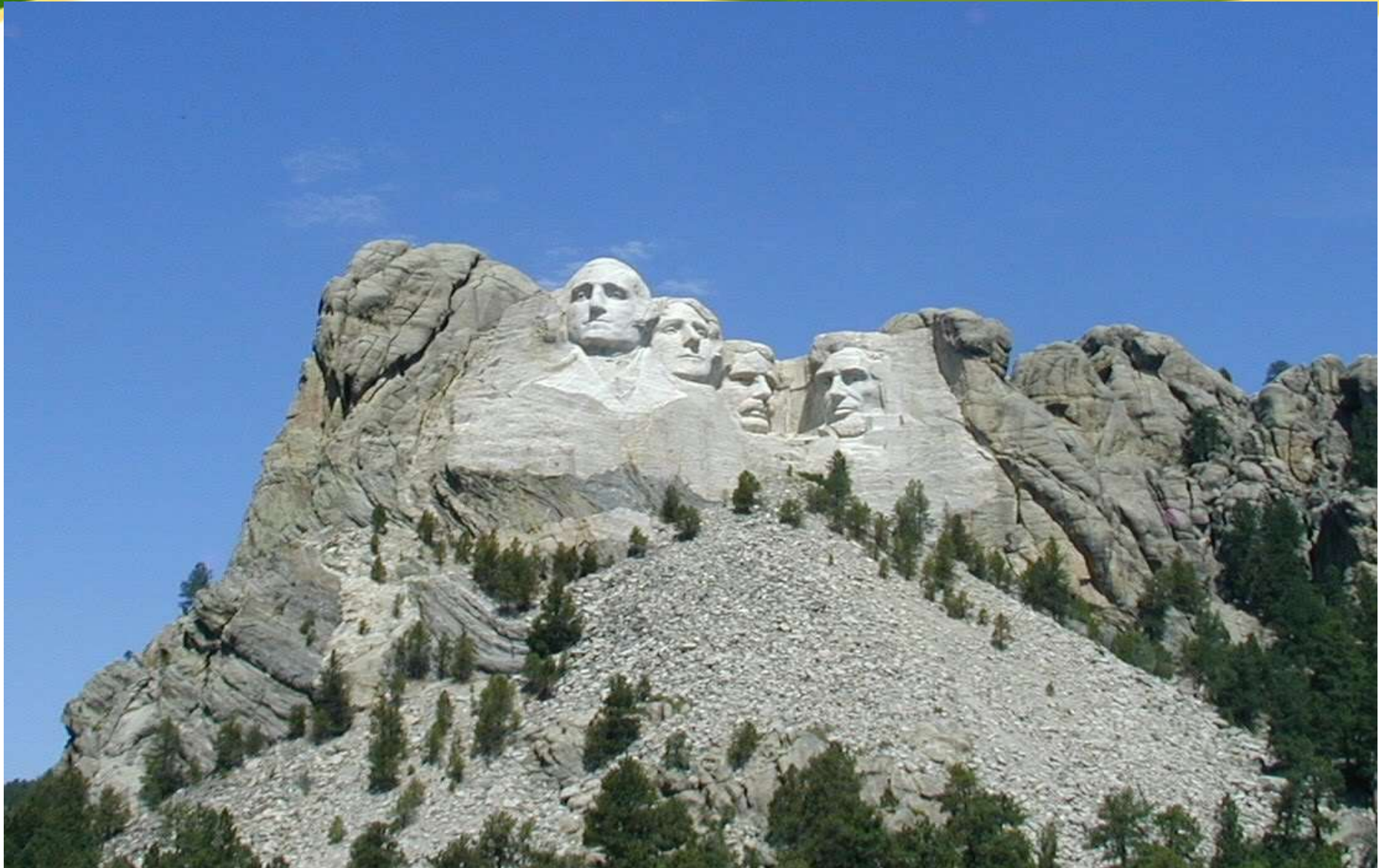
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- Article I, Section 8, Clause 3: (the “Commerce Clause”)
- [The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- Congress can regulate “interstate commerce”
- What is sold that NEVER travels in interstate commerce?

Real Property



Real Property Law

- Real Property Law is state law
 - Federal law application, e.g. 10 CFR Part 770
- **Must** understand state requirements
 - Adverse possession
 - Sale contract filed in Recorder's Office
 - Paper roads
 - Environmental Covenants
 - Utah Water vs Ohio Water

Mound CERCLA Cleanup

- Mound Environmental Restoration Program est. 1984
- Mound placed on National Priorities List November 21, 1989
- Integrated with the land transfer process – “release blocks”
- 1998 Sale Contract – “as is, where is”
 - “ the Seller shall not be obligated to repair, replace or rebuild any structures required to be totally or partially removed as a result of remediation activities”
- Site cleaned to an “industrial use” standard
 - Zoning “heavy industrial”
 - Not free release
- Institutional Controls as part of remedy
 - Ongoing Groundwater Remediation – Ohio water law

- **Site-Wide Institutional Controls – No Environmental Covenant**
- Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of the ... Mound Plant ... without prior written approval from ODH, OEPA, and USEPA, or successor agencies.
- Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

Deed Restrictions

- Grantee covenants not to use, or allow the use of the Premises for any **residential or farming** activities, or any other activities which could result in the **chronic exposure of children under eighteen years of age to soil or groundwater** from the Premises. Restricted uses shall include, but not be limited to:
 - (1) single or multi family **dwelling**s or **rental** units;
 - (2) **day care** facilities;
 - (3) **schools** or other educational facilities for children under eighteen years of age; and
 - (4) **community centers**, playgrounds, or other **recreational** or religious facilities for children under eighteen years of age.
- The United States Department of Energy or its successor agency shall be contacted to resolve any questions which may arise as to whether a particular activity would be considered a restricted use.

Technical (T) Building

- The Technical Building was designed as a two-story building of great strength to be constructed five stories underground, with aboveground towers and an outside-accessible service tunnel. Completed 12/20/48
- Bomb shelter type reinforced concrete construction with a fifteen-foot thick roof, sixteen-foot thick walls, 30” interior firewalls, and built on an eight-foot thick slab
- 105,570 square feet of interior floor space, with two main floors (the Service Floor or first floor and the Operations Floor or second floor). The floor level for the service floor was located approximately fifty feet below ground level

Mound - T Building



T Building D&D



T Building D&D



T Building D&D

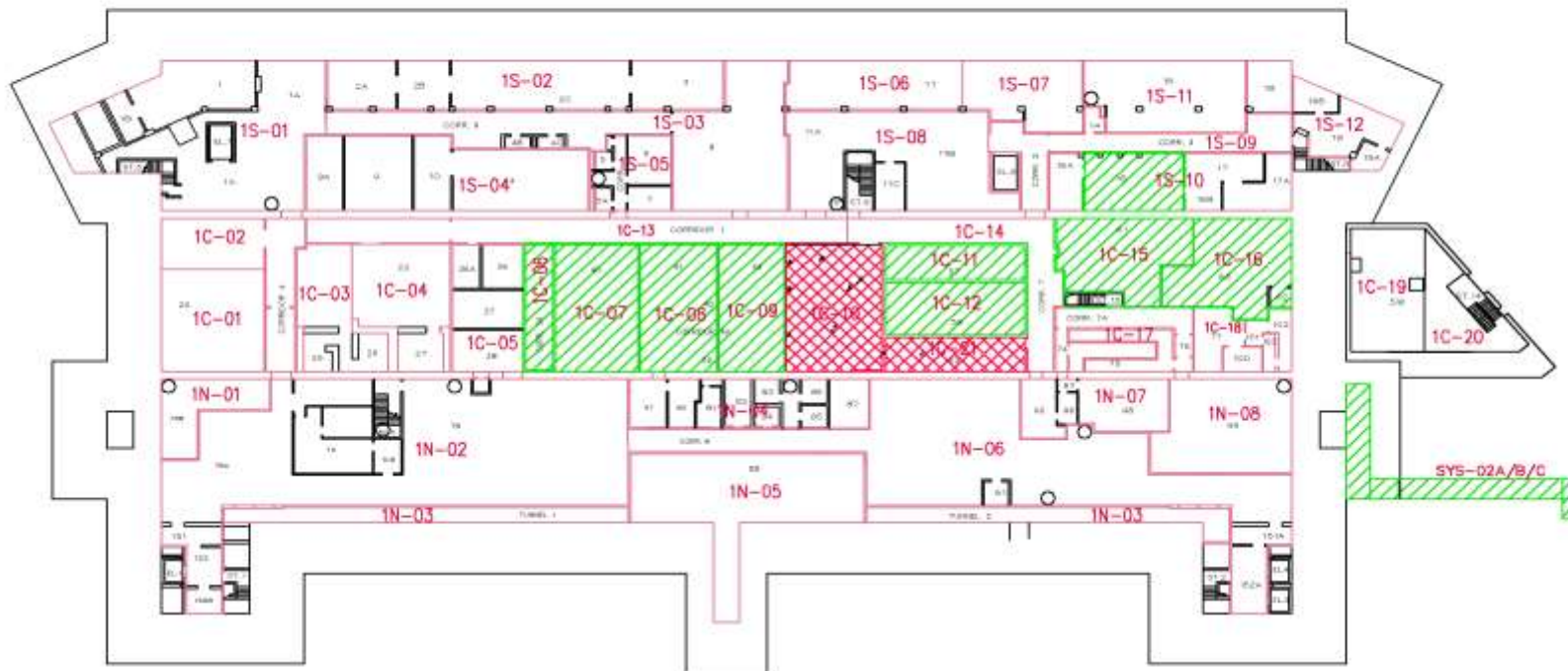




T Building – Deed Restrictions

- Grantee covenants, in regard to the structure known as “T Building” as shown in Exhibit B attached hereto, that for areas 1C-06 (corridor 39), 1C-07, 1C-08, 1C-09, 1C-11, 1C-12, 1C-15, 1C-16, 1S-10 and SYS-02A/B/C, Grantee shall not remove concrete floor material to a location outside that specified in paragraph 1.1(a) [**soils restriction**] without the approval of USEPA or Ohio EPA,
- and for areas 1C-10 and 1C-21, Grantee shall take no action that causes a penetration in the concrete floor of those areas without the prior approval of USEPA and Ohio EPA. The specified areas mentioned above are on the first floor of T Building and are designated in the T Building drawing in Exhibit B hereto. [**penetration restriction**]
- T Building is a five-story structure, entirely underground, located at and about Latitude N 39°37’48.75” and Longitude W 84°17’13.65” depicted in a diagram and photographs in Exhibit B. Ground level at the top of T Building is at an approximate elevation of 872’ AMSL. [**location**]

T Building Deed Exhibit

EXHIBIT B



-  REMOVAL PROHIBITION
-  PENETRATION PROHIBITION
- SURVEY UNITS IN RED
- ROOM NUMBERS IN BLACK

T - BUILDING FIRST FLOOR



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|  U.S. DEPARTMENT OF ENERGY Legacy Management GRAND JUNCTION, COLORADO |  NAVARRO <small>Work Performed Under DOE Contract No. DE-LM0004201 Navarro Research and Engineering, Inc. Contractor to the U.S. Department of Energy Office of Legacy Management</small> |
| | |
| DATE PREPARED: JUNE 27, 2017 | FILENAME: S1610801 |

T Building D&D



- Environmental Covenant – Ohio Revised Code §§ 5301.80 – 5301.91
 - 5301.82 Contents of environmental covenant - required signatures.
 - (A) An environmental covenant shall contain all of the following:
 - (1) – (8)
 - (B) In addition to the information required by division (A) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed the environmental covenant, including any of the following:
 - (1) – (4)
 - (C) In addition to other conditions for an agency's approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property that is the subject of the environmental covenant to sign the covenant.
 - ***Effective Date: 12-30-2004 "PARCEL NINE"***
- Local Zoning
 - City of Miamisburg Overlay District
- Permit Requirements
 - Building Permit Requirements