



The Legal Pad

Brownfield Redevelopment— The Maryland Uniform Environmental Covenants Act

By Soo Lee-Cho

Most would agree that redevelopment of abandoned or underutilized properties and obsolete structures in declining urban centers (i.e., urban infill) not only improves the quality of life in those communities, but promotes regional smart growth strategies. Urban centers tend to have infrastructure and centrally located amenities already in place, such as convenient access to public transportation that provide attractive development opportunities. There may be properties in such areas that, although ripe for redevelopment, are hindered by the existence of environmental contamination from past commercial or industrial uses on the site that require remediation prior to redevelopment.

The regulations concerning clean-up of these “brownfield” sites can often be overwhelming. But properly addressing the environmental hazards and returning these properties to productive use can reduce human health risks, provide jobs and tax revenues, as well as revitalize deteriorated neighborhoods. Recognizing these benefits, federal, state and local governments have enacted laws and instituted programs that incentivize would-be redevelopers, minimize liability concerns, and turn “brownfields” into opportunities for investment. Among other things, regulations have been adopted that better define legal liabilities (eliminating some potential lawsuits), extend liability protections to lenders involved with “brownfield” redevelopment, promote state voluntary response programs and offer grants, low interest loans and tax incentives for clean-up of contaminated sites (e.g., Asset Conversion, Lender Liability, and Deposit Insurance Protection Act (1996); Small Business Liability Relief and Brownfield Revitalization Act (2002); Maryland Brownfields Revitalization Incentive Program (1997); Montgomery County Brownfields Property Tax Credit Legislation, Bill 32-98).

In 2005, the State of Maryland enacted the Uniform Environmental Covenants Act (UECA), which codifies requirements for “environmental covenants” used to implement and enforce land use restrictions and other protective measures placed on “brownfield” properties as a means to remediate contamination. (Annotated Code of Maryland, Environment Article, Title 1, Subtitle 8). Environmental covenants can be used to restrict property uses or impose operational, maintenance or access requirements to prevent exposure to contamination that is

allowed to remain on the property. It provides for an alternative form of environmental protection, which is less expensive than actual removal of the contaminant.

Although the general goal of most clean-ups is to return a site to a condition where it can be used for any purpose, the rationale behind the use of environmental restrictions is that often times it is not always technically possible or economically practicable. The environmental covenant, therefore, limits the allowable uses on the property to what is determined to be “safe uses” in order to protect against inadvertent exposure to residual contamination. Moreover, its codification provides governmental entities with clear authority to enforce the covenant and assures that the restrictions are properly recorded in the local land records. As a result, prospective purchasers are put on notice of the covenant, which serves to then bind successive owners of the property.

Under the UECA, the holder of the environmental covenant can include the Maryland Department of the Environment (MDE) or any state or federal agency that determines or approves the environmental response project for which the covenant is required. As such, it explicitly confirms that an environmental covenant is enforceable by MDE and the appropriate unit of local government, as well as by parties to the covenant or by other parties with affected ownership interests.

In sum, the UECA provides broad legal protection for environmental restrictions that, in turn, reduces the risk of unacceptable human exposure to contamination left on-site and the consequential environmental liabilities and clean-up costs. The idea is that with the added assurance provided by the enactment of a statutory scheme, environmental regulators, property owners, local governments, environmental groups, developers, lenders and title insurance companies are more likely to find that environmental restrictions on properties are a reliable means to achieve remediation and to encourage the reuse of “brownfield” sites.▼

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