

## Municipal Opportunities for Redevelopment of Brownfields: New Round of Grants Available

The Connecticut Department of Economic and Community Development (“DECD”) has just announced that it is accepting applications for a new round of grants totaling up to \$7.5 million. Funds will be awarded to help remediate and redevelop brownfield sites throughout the state. The application deadline is April 14, 2015.

The Connecticut General Assembly has provided municipalities with significant incentives to put brownfield sites back into productive use. Brownfields are defined by statute as “any abandoned or underutilized site where redevelopment, reuse or expansion has not occurred due to the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the redevelopment, reuse or expansion of the property.”

Historically, the potential costs and liability risks associated with taking title to brownfield sites served as significant deterrents for municipalities interested in acquiring such properties to promote redevelopment. However, several funding and liability relief programs are now available through the Connecticut Department of Energy and Environmental Protection (“DEEP”) and DECD’s Connecticut Office of Brownfield Remediation and Development. These programs are geared specifically towards municipalities that acquire brownfields. Redevelopment of brownfield properties can be beneficial to municipalities to the extent that redevelopment removes blight, attracts private investment and new jobs to vacant or abandoned properties, remediates environmental contamination and can return properties to tax rolls.

### I. Available Funding Opportunities for Municipalities

On September 18, 2014, Governor Dannel P. Malloy announced that almost \$1.7 million in assessment grants have been awarded to 11 municipalities by the DECD to advance the redevelopment of brownfield sites in the State of Connecticut. Approximately \$3.8 million was awarded to 21 communities in April 2014. The grants were offered as part of the State’s 2014 Brownfield Financial Programs. Nearly \$90 million in state funding for brownfield remediation and redevelopment have been allocated in the form of loans and grants to municipalities and developers since 2011.

If you have any questions about the issues addressed here, or any other environmental matters, please feel free to contact:

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There are two key funding opportunities for municipalities. The first is the Municipal Grant Program authorized by C.G.S. § 32-763. It provides grants of up to \$4 million to eligible cities, towns and regional development agencies. Criteria considered in awarding the grants are the availability of funds, estimated costs of assessment and remediation, economic condition of the municipality, relative need of the project for financial assistance, degree to which a grant is necessary to induce the applicant to undertake the project, public health and environmental benefit of the project, benefits to the municipality, region and state, time frame in which the contamination occurred, relationship of the applicant to the person or entity that caused the contamination, length of time the brownfield has been abandoned, taxes owed and projected revenues that may be restored to the community, and relative need for assessment of the brownfield. The municipality is not required to own the property to be eligible for this funding as long as it has an access agreement for the property.

The second is the Targeted Brownfield Development Loan Program offered pursuant to C.G.S. § 32-765. It provides low-interest loans of up to \$2 million to potential brownfield purchasers and current brownfield owners, including municipalities and economic development agencies, provided that they have not contributed to the contamination. The loans contain flexible or deferred interest and principal payment schedules and maximum terms of 20 years. Applications are accepted on a rolling basis. The DECD Commissioner has the discretion to forgive portions or all of the principal or interest due under the loans when such forgiveness is in the best interests of the State.

If a loan recipient's property is not subject to the Connecticut Transfer Act, the recipient must enter the property into a remediation program pursuant to either the Voluntary Remediation Program or the Abandoned Brownfield Cleanup Program. Criteria considered in awarding the loans are the merit and viability of the project, economic and community development opportunity, municipal support, contribution to the community's tax base, past experience of the applicant, compliance history and ability to pay.

Funds may be used to assess, investigate, remediate and develop brownfields in their communities. In certain circumstances, a recipient may use the funds to make a low-interest loan to a brownfield redeveloper.

## **II. Liability Protection**

A municipality, economic development agency, nonprofit economic development corporation, or non-stock corporation or limited liability company established by a municipality may take advantage of the Municipal Brownfield Liability Relief program which offers a municipality the opportunity to take title to brownfields without liability concerns so long as:

1. it intends to acquire title to such brownfield for the purpose of redeveloping or facilitating the redevelopment of such brownfield;
2. it did not contribute to the pollution;
3. it has no legal affiliation with a party responsible for the pollution; and
4. it is not already obligated to remediate the pollution on the property.

This program provides municipalities with an incentive to foreclose on properties that require significant environmental remediation as a way to bolster economic development. Although the municipality is not required to fully investigate or remediate a brownfield, it is obligated to make good-faith efforts to minimize the risk to public health and the environment and submit a plan and schedule for steps to facilitate redevelopment and cleanup. A municipality is also obligated to serve as a good steward by complying with the requirements of the Significant Environmental Hazard notification program, which requires that specific environmental hazards be reported to the Commissioner of DEEP. The Municipal Brownfield Liability Relief program also exempts a municipality from filing under the Connecticut Transfer Act when acquiring the property.

Note that acceptance into the program does not limit a municipality's ability to seek funding under Connecticut's brownfield grant or loan programs.

A municipality may also obtain a covenant not to sue, without paying a fee, which provides that the Commissioner of DEEP shall release claims that are related to pollution or contamination on or emanating from the property. To obtain the covenant, the property must be remediated in accordance with DEEP's Remediation Standard Regulations ("RSRs") in effect on the effective date of the covenant, and any environmental land use restriction necessary to comply with the RSRs must be recorded on the land records and must remain in effect.

Municipalities are also provided with liability relief via C.G.S. § 22a-133dd which permits any municipality, economic development entity, or Licensed Environmental Professional to enter a property to conduct an investigation (not remediation) without liability for preexisting conditions if an owner cannot be located, the property is encumbered by tax lien, a notice of eminent domain has been filed, the municipality finds an investigation to be in the public's interest to determine if property should be redeveloped or a municipal official determines investigation necessary to assess potential risk to health or environment. In the event that the municipality's activities exacerbate the environmental conditions at the property, the municipality is only responsible for responding to contamination exacerbated by its activities.

If you have any questions or would like assistance in evaluating or applying for this opportunity, please contact Sarah P. Kowalczyk at 860.240.6068/[skowalczyk@murthlaw.com](mailto:skowalczyk@murthlaw.com) or any member of our Environmental Practice Group.