

Brownfield Redevelopment: Tennessee Redevelopment of Environment and Conservation and Nashville Site Owner Execute Voluntary Agreement



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/22/2021

The Tennessee Department of Environment and Conservation Division of Remediation (“TDEC”) and Nashville Gulch Hotel, LLC, (“Nashville Gulch”) executed a March 30th Brownfield Voluntary Agreement (“BVA”) addressing a Nashville, Tennessee, site. See Site I.D. 19-709.

The BVA addresses what it describes as the “Proposed W Hotel Site” (“Site”).

Many states (including Tennessee and Arkansas) and the federal government have statutes, regulations, and policies that are intended to address “brownfields.” Brownfields are often referred to as real property (improved or unimproved), the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants or contaminants.

Incentive provisions, liability exemptions, and action/cleanup standards have been utilized for a number of years to attempt to reduce the barriers for reuse or redevelopment of brownfield properties. The goal of the brownfield programs is to encourage redevelopment investment in such properties to increase the local tax base, facilitate job growth, utilize existing infrastructure, and take pressure off greenspace.

Tennessee has operated a Brownfield Redevelopment Program since 1996. The state’s program includes T.C.A. § 7-53-316 (Redevelopment of Brownfield Sites and Economically Disadvantaged Areas) which can provide in some instances tax increment financing for brownfield sites. It is intended to provide incentives for the redevelopment of urban brownfield redevelopment projects.

The BVA provides that:

... pursuant to Tennessee Code Ann. § 68-212-224, the Commissioners authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and/or remediation of a hazardous substance site or Brownfield Project and who do not generate, transport or release that is to be addressed at the Site.

The BVA sets out the actions required by Nashville Gulch including the scope and schedule of activities at the Site in response to the actual, threatened, or perceived release of hazardous substances. In return, the BVA provides that it is:

... intended to settle and resolve completely the potential liability of the Voluntary Party for the real or perceived threat of the presence of hazardous substances, solid waste, or any other pollutant at the Site

which may otherwise result if and when Voluntary Party becomes the owner and/or operator of the Property.

Components of the BVA include:

- Site Location
- Eligibility
- Financial Requirements
- Identification and Documentation of Matters Addressed
- Agreed Liability Relief
- Administrative Settlement; Third Party Liability
- Agreed Actions to Be Taken
- Additional Requirements
- Submission of Information, Report, or Studies
- Reservation of Rights
- Site Description and Survey
- Summary of Technical Reports for the Site
- Notice of Land Use Restrictions

A copy of the BVA can be downloaded [here](#).