

Sectors in focus

A FOCUS ON BROWNFIELD DEVELOPMENT FOR DATA CENTERS

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Legal strategies

When it comes to developing data centers on brownfield sites, value and risk are two halves of the same coin. Understanding the benefits and incentives available, and building site-specific mitigation strategies are key to success.

What tools are available for developers and investors looking at complex sites?

Value drivers

Public incentives and tax credits

In the US, brownfield redevelopment tax credits and grants are available in many states, including New York's Brownfield Cleanup Program of tax credits, Ohio's brownfield cleanup grants and New Jersey's redevelopment tax credits scheme. In the UK, Land Remediation Relief provides a corporation tax deduction equal to 150% of qualifying remediation expenditure, comprising the ordinary 100% deduction plus an additional 50%, subject to the applicable conditions.

Planning leverage through regeneration

Brownfield redevelopment aligns directly with the regeneration and housing targets many local and state authorities are already pursuing, particularly in declining industrial areas. A scheme that can credibly point to cleaning up contaminated land, removing derelict buildings and improving local roads and utilities can be attractive.

Countering controversy

Community opposition to data center projects is high, and shows every sign of ramping up further. Leveraging brownfield sites can offset these objections, as a means to protect undeveloped countryside and ecosystems, and clean up unsightly contaminated land. This alone doesn't eliminate concerns about electricity and water use, noise or employment impact, but it can shift the starting point of the conversation.

Risk mitigators

Liability protection

In the US, the Bona Fide Prospective Purchaser (BFPP) protection under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) may allow a buyer to acquire property with knowledge of contamination without incurring specified CERCLA owner or operator liability, provided it conducts "all appropriate inquiries" before acquisition and satisfies the statutory threshold criteria and continuing obligations, including taking reasonable steps after closing. Where BFPP applies, it changes the value proposition by providing access to statutory protection. There is no equivalent in the UK or Europe. In the UK, Part 2A of the Environmental Protection Act 1990 operates alongside the planning regime. In France, Germany and other EU Member States, soil, waste, water and environmental-liability rules interact with national permitting and remediation regimes in different ways. The EU Environmental Liability Directive provides an overlay, not a uniform transaction shield, so Member State analysis remains essential.

Modernizing environmental diligence

Developers should evaluate not only historical contaminants but also emerging contaminants, including per- and polyfluoroalkyl substances (PFAS), where evolving regulatory standards may affect future liability and redevelopment costs.

Environmental insurance and cost-cap products

Environmental insurance is often used to supplement, rather than replace, traditional risk-allocation mechanisms. Coverage terms, exclusions, self-insured retentions and underwriting assumptions should be evaluated carefully against site-specific conditions. Protection ranges from catastrophic third-party claims to limiting an owner's out-of-pocket remediation expense, in the form of a cost cap policy.

Environmental schedule risk

Just like permitting and occupancy approvals, environmental investigation, remediation and regulatory closure should be considered as a standalone workstream in diligence and used to inform development pro formas. Environmental issues should be evaluated not only for cost but also for their potential impact on project schedule, including investigation timing, agency review periods, remediation sequencing and regulatory closure requirements. Developers should evaluate not only acquisition and remediation obligations, but also any long-term operational restrictions that may survive redevelopment and affect future expansion, financing or exit opportunities.

Do not silo environmental considerations

A site can be legally usable while still presenting significant development, financing, insurance and exit challenges.

“The question isn't whether a site has environmental challenges. The question is whether those challenges are understood well enough to be managed. The most successful brownfield projects are the ones where developers take the time to quantify risk, structure appropriate protections, and unlock the value that's already embedded in the site.”

Erin Brooks, Office Managing Partner, Chicago.

How BCLP can support you across the data center lifecycle

We help clients compete where others can't, bringing global insight to the legal challenges of next generation digital infrastructure. We understand the unique complexities and commercial drivers of the sector, and look at the whole asset, so you can maximize value. Our seamless coverage across real estate, planning, energy, construction, finance, tax, regulatory, data and disputes helps you connect the dots across the data center lifecycle.

Related capabilities

- Data Centers

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