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Enviro. land use restrictions and their role in risk mgmt.

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Those in the commercial and industrial real estate industry may be familiar with an administrative tool known as an *environmental land use restriction* (ELUR). ELURs are considered an institutional control for managing environmental risks associated with properties containing soils, groundwater or other environmental media which have been impacted by hazardous materials. In Rhode Island and Connecticut, the ELUR serves the same purpose although it is far more difficult to implement in Connecticut. In Massachusetts, the equivalent institutional control is referred to as an *activity and use limitation* (AUL).

ELURs typically exist in a format drafted by a state's regulatory agency and their purpose is to clearly document the existence and distribution of hazardous materials at a property and identify current and future activities that would be incompatible since they could result in potential human exposure to the known impacted environmental media. ELURs are essentially deed restrictions that after being recorded on the title of a property (typically in the land evidence records) will run with the land on which the contaminated site is located and is binding on all owners, tenants and successors. Although they vary from site to site, ELUR restrictions may include no use of potable groundwater, no residential development, regular maintenance of an engineered control (an impervious barrier overlying contaminated material) or specific procedures for servicing buried utilities in the site.

People often ask why an ELUR is necessary at a site where the current use is already consistent with risk-based exposure assumptions, especially if the current property zoning precludes an incompatible land use. The answer is that once state environmental regulators agree to a site cleanup remedy that allows contaminants exceeding residential criteria to remain at a site, they need assurances that the land use will not be changed (deliberately or inadvertently) in the future. Without this type of institutional control, a petition to change the zoning can be requested of the local municipality and activities associated with a high risk of exposure to contaminants would be possible. For these reasons, regulatory approval of an ELUR typically requires annual inspections by a qualified environmental professional to ensure that site improvements and activities remain consistent with the origi-

nal ELUR conditions.

Some property owners have a distinct aversion to the thought of giving up their rights to a property through an ELUR. However in some cases, the cost of cleaning up commercial or industrial properties to residential standards is cost prohibitive making an ELUR in conjunction with limited engineered controls the only viable option to achieving compliance with cleanup requirements. Additionally, once an ELUR has been recorded on a property, at any time in the future, the current or future property owner can contact the regulators with a plan to conduct additional remediation and achieve residential cleanup criteria. At that point, the ELUR would be amended to reflect that the restrictions no longer apply at the site.

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