



March 2, 2017

Honorable Members of the Alaska Legislature
Alaska State Capitol Building
P.O. Box 110001
Juneau, AK 99801-0001

SUBJECT: SB 64 – UNIFORM ENVIRONMENTAL COVENANTS ACT

Dear Members of the Alaska Legislature:

I write today on behalf of Cook Inlet Housing Authority (CIHA) to express its support for SB 64, which would encourage the development of previously contaminated sites by providing clarity to prospective purchasers while ensuring the enforceability of applicable land use restrictions, monitoring requirements, and continuing controls for these properties.

As an Alaska Regional Housing Authority, CIHA believes that the development or redevelopment of unproductive and blighted properties is good for communities. As part of our efforts in this arena, we have worked to develop contaminated sites on a fairly regular basis, and we understand that the process of purchasing and developing such properties can be extraordinarily complicated and expensive. Documentation of cleanup efforts and land use restrictions can be difficult to compile, and the full implications of prior and ongoing remediation efforts to a prospective purchaser are often uncertain. This makes private sector development of such sites not only unattractive, but often virtually impossible. The result is that otherwise desirable properties are often not successfully returned to productive use, remaining vacant and contributing to urban blight.

The creation of a recordable interest in land subject to a remediation project would provide needed clarity to prospective purchasers which will help contaminated properties to be returned to beneficial use. The Act sets forth the legal characteristics of the covenant and lays out a specific process for its termination or modification under appropriate circumstances. Purchasers will have express notice of the type of environmental restrictions and controls that apply to a contaminated property and may therefore be far more willing to undertake an otherwise infeasible development or redevelopment project.

At the same time, the legislation affirms the validity of properly created agreements respecting the use and treatment of applicable contaminated sites, so that prescribed remediation controls and use limitations may be effectively enforced over time. The recorded covenant can clearly identify applicable property restrictions and ongoing obligations to ensure that contaminated properties are monitored and used in a manner that is environmentally sound and safe for the community, while providing holders an express legal basis for enforcement of the obligations provided therein.

For these reasons, CIHA fully supports the passage of SB 64. Thank you for your time and attention to this legislation.

Respectfully,



Carol Gore
President/CEO



**Statement of Benjamin Orzeske, Chief Counsel from the Uniform Law Commission,
to the Alaska Senate Community and Regional Affairs Committee in support of SB 64,
the Uniform Environmental Covenants Act, February 28, 2017.**

Chairman Bishop and Members of the Committee:

Thank you for considering SB 64, which would enact the Uniform Environmental Covenants Act (UECA) in Alaska. This bill is based on a uniform act produced by the Uniform Law Commission (ULC). The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable. Alaska has a long and successful history of enacting uniform acts including the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Transfers to Minors Act, and dozens of others.

UECA will allow the owners of hazardous or contaminated Alaskan real estate to enter into environmental covenants with the consent of the Department of Environmental Conservation. An environmental covenant is an enforceable restriction on the use of the land. For example, a former landfill site might have a restriction stating that the landowner cannot excavate and must maintain structures built to contain the waste. A site with soil contaminated by petroleum products might have a restriction stating that groundwater cannot be pumped to the surface.

You may think, why can't landowners enter into these agreements under current laws? The answer is: they can – but future owners probably will not be bound by those agreements. Various common-law doctrines dating back to medieval England and incorporated into United States property law work against these long-term restrictions on real property. UECA overrides the common law to allow parties to voluntarily execute legally binding, environmental covenants.

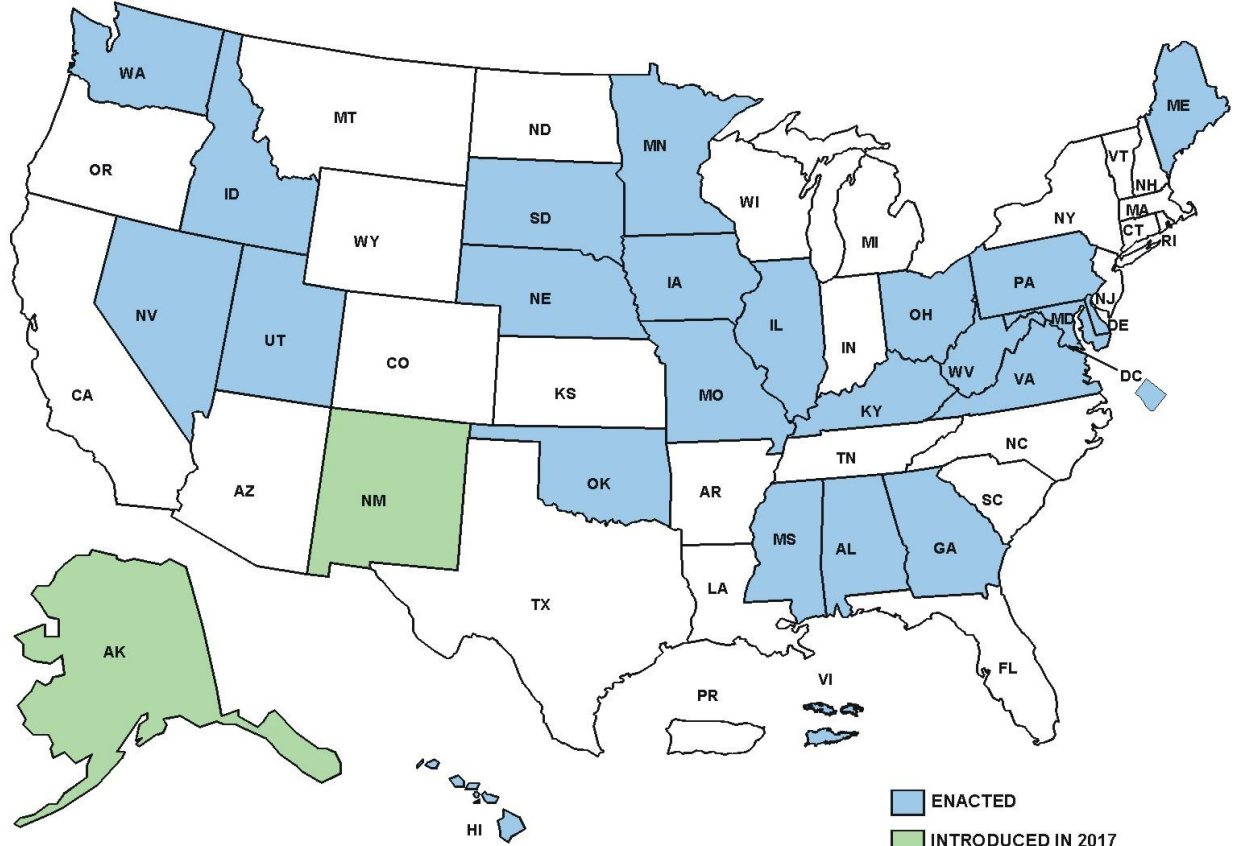
An environmental covenant is recorded in the land records and “runs with the land,” binding not only the current owner but also the owner's heirs or assignees. It is a very flexible tool that can include any type of use restriction or reporting requirement that the parties believe is appropriate for the particular parcel of land. It can only be changed or eliminated with the permission of all the parties to the original agreement (including the Department of Environmental Conservation), or their successors.

If environmental covenants were available fifty years ago, we might have avoided large-scale disasters like Love Canal in upstate New York, or Times Beach in Missouri. They are an important tool for ensuring environmental restrictions are monitored and enforced in the long run. This allows land that otherwise might lie vacant due to indefinite remediation requirements to return to a productive use, with appropriate restrictions to ensure public safety.

UECA was completed by the ULC in 2003 and has since been adopted by twenty-three states, plus the District of Columbia and the U.S. Virgin Islands. Your enactment of SB 64 will give the Alaska Department of Conservation a powerful tool to ensure Alaskans also can benefit from the use environmental covenants.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

UNIFORM ENVIRONMENTAL COVENANTS ACT



As of February 2017