

**TESTIMONY OF DOUGLAS C. MACCOURT, ATER WYNNE LLP
ON HOUSE BILL 4063-A**

**Before the Joint Committee on Ways and Means
Subcommittee on Education
February 27, 2014**

Good morning Co-Chairs Monroe and Komp and Members of the Committee. I am Doug MacCourt, Partner in the Oregon law firm of Ater Wynne LLP. Thank you for the opportunity to testify in support of HB 4063-A, which proposes to create a task force on the Oregon Statutory Common School Fund to identify opportunities for making loans from the Common School Fund for the purpose of financing projects that provide significant in-state economic benefits.

For over 25 years, my practice has focused on the development and expansion of business and industry for the private sector, and the funding and development of public infrastructure and municipal facilities for local government. I am before you today in my capacity as project development and finance counsel, and also as a member of a Legislative Working Group led by the Northwest Environmental Business Council (NEBC) comprised of a diverse membership including business and trade associations; state, regional and local government officials; individual business owners and their legal counsel. The Legislative Working Group was formed to analyze and support legislative and other efforts that promote public/private partnerships to create jobs, new business and revenues from underused or contaminated sites throughout the state – Oregon’s “brownfields.”

Providing project financing in the form of loans to create jobs, income and tax revenue and new businesses on underutilized or contaminated brownfield sites is just one of the smart ways to create significant in-state benefits through the Common School Fund.

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The Common School Fund, as set forth in Article VII of the Oregon Constitution and under Oregon Revised Statutes (ORS 327.405 to 327.480), could be utilized for brownfield project finance in full compliance with Article VII and without affecting the investment obligations of the Division of State Lands (DSL) proscribed by Article VII and Oregon statutes. The sources of funds that are dedicated to common school and educational purposes in Article VII and Oregon statutes make up only a small fraction of the total revenue sources that comprise the Common School Fund. Among other things, Article VII and Oregon statutes create a two-part program for DSL to make loans and non-loan investments under the Common School Fund. DSL's investment obligations under Article VII and Oregon statutes are directed at funds *that are not loaned* by the Department from the Common School Fund. The existing constitutional and statutory structure of the Common School Fund is well suited to brownfield project loan financing.

It is important to remember that regardless of whether a project is on a brownfield or a greenfield site, project finance loans generally are made *to revenue streams and against assets*. In addition, project finance loans on brownfield sites are made against the value of the land if it were in clean condition. The determination of the land value as clean or the "cost to cure" is an objective process using well established, scientific standards and criteria. In this way, the lender can verify that the land value alone can secure the repayment of principle and interest even where the condition of the land is impaired.

The loan structure for project finance is one of the reasons that brownfield project loans are no more risky or speculative than any other project finance loan. The data from the State of Oregon's primary brownfield project loan funds administered by the Oregon Business Development Department (Business Oregon) demonstrate this fact. Business Oregon's Brownfields Redevelopment Fund was last capitalized in the 2005-07 biennium resulting in just over \$9.5 million in appropriated funding.

- As of January 31, 2014, Business Oregon has awarded just over \$11.7 million from the Fund to 72 projects (\$2.4 million in grants; \$9.32 million in loans).

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- 5 loans have been paid off and the remaining loans are repaying principal/interest on a monthly basis (loan repayments approximate \$55,000 per month to the State of Oregon).
- Demand for financing to address assessment and cleanup of contaminated industrial/employment properties is steadily increasing during this time of tight commercial lending.
- The current \$388K of unobligated funding is not sufficient to meet current financing demand, which currently exceeds \$7 million.
- The Fund supports one FTE needed to administer the loan program.

Business Oregon also manages a federally capitalized Brownfields Cleanup Revolving Loan Fund (BCF) with similar results. The loans are being made across the state to a wide variety of projects in small towns, larger metropolitan areas and rural communities. Specific loan and project details are too numerous to summarize here but can be provided upon request.

The data from Oregon also illustrate some of the strong potential benefits from brownfield projects. Some of the key findings in a 2013 study conducted by the Oregon consulting firm of Maul Foster Alongi for the City of Portland and Metro to assess the current status and economic potential of metro-area brownfields (the MFA Study) showed that redeveloping the metro area brownfields could result in:

- 138,000 new dwelling units
- \$1.4 billion in new wages
- \$342 to \$427 million in new property tax revenues

Brownfield project development is a statewide opportunity – not just a metro area phenomenon. The MFA Study estimated that there are approximately 5000 brownfield sites on approximately 45,000 acres across the state; less than half in the Portland metro area (about 2300 sites on approximately 6300 acres).

The need for brownfield project finance loans is a rural and urban issue. Under Oregon's statewide land use program, the shuttered wood products mill or the

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vacant industrial site in small and rural areas likely may be one of the few places to grow and expand business in those locations. With the cost of providing new roads, utilities and other public services, redeveloping brownfield sites captures the State of Oregon's sunk infrastructure investment. These benefits magnify the return on investment for brownfield project loans, especially to rural counties and communities with fewer resources. The need cannot be fully met by any single loan fund, but significant in-state benefits will be generated by project finance loans from Common School Fund, including loans to brownfield projects.

Thank you for your time, and I would be happy to answer any questions that you may have.