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Written Testimony of David A. Rabbino;
In Support of HB 2734

Vice-chair Helm and members of the Committee:

Thank you the opportunity to speak to you today. I am here to speak in support of HB 2734, which will authorize local governmental entities to establish Land Bank Authorities and provide tax abatements to eligible entities to enhance the redevelopment and reuse of environmentally impaired properties. I have been an environmental attorney for the past approximately 24 years, including approximately 12 years as an enforcement attorney with the U.S. EPA. Throughout my career, I have been counsel in matters that involve the redevelopment of brownfield/contaminated properties, both as a government attorney and as a private practitioner. It is my belief, as I will discuss in more detail shortly, that passage of HB 2734 will enhance and speed up the redevelopment and reuse of environmentally impaired properties throughout the state.

Problem:

For several decades federal, state, and local governments have been wrestling with how best to bring back into productive use real property contaminated with hazardous substances. These properties are known as "brownfields," and they exist in urban, suburban, as well as rural communities. The difficulty in redeveloping these properties, in large part, stems from the fact that potential developers are scared of acquiring unknown cleanup liabilities. As a result, the developers choose instead to develop either virgin, or "green" property, or properties that have no contamination issues. However, the development of green property comes with a different set of issues, and the number of properties with no contamination issues that are suitable for redevelopment are becoming fewer and fewer.

A major problem with the failure to develop the brownfields is that they result in "dead areas," impairing the value of the surrounding community, reducing property tax revenues, and contributing to general blight conditions.

The federal and state governments have been attempting to address the "liability" concerns through various programs. These include Prospective Purchase Agreements, Voluntary Cleanup Programs, and the issuance of "No-Action Letters." These programs are helpful because they allow parties to define the extent of remedial costs

early on, and they provide either liability relief or some assurance against enforcement actions by a regulatory agency provided the party successfully completes an agreed upon cleanup. While useful, these programs have proven insufficient in providing the necessary incentives for full-scale redevelopment of these troubled properties. It is clear that additional tools are needed to further enhance the redevelopment and reuse of brownfields.

Process:

I have been an active member of the Brownfield Coalition that Mr. Tucker just discussed. Through the efforts the members of the coalition, one of the most diverse and broad-based I have had the pleasure to be a member of, the Coalition determined that legislation focusing on providing "local-control" to city, county, and other governmental entities would provide greater opportunities for the accelerated redevelopment of brownfield properties. HB 2734, which allows for the establishment of Land Bank Authorities and the provision of tax abatement by local governmental entities, will provide two hopefully very useful additional tools to further the development of brownfields in our state.

What is a Land Bank:

A land bank is a separate legal entity from the City, County, or other governmental entity that is granted specific authority with

regard to the acquisition, lease, and redevelopment of environmentally impaired properties. This provides legal protections to the City, County or other governmental entity, while still providing a "local option" regarding the redevelopment of the property.

The purpose of the Land Bank is to:

The purpose of a land bank is to "acquire, rehabilitate and reutilize real property impacted by hazardous substances." The Land Bank Authority is an effort to help local governments "jump start" the redevelopment of environmentally impacted properties by letting them acquire, consolidate, etc., land for future development. Essentially Land Banks can serve as "patient capital" – acquiring properties and holding them until the right development alternative arises, something many private developers are unwilling to do.

Land Bank may:

Land Banks may acquire, lease real property impacted by hazardous substances and handle the property in the same manner as any other "corporate" or private entity. They can conduct removal/remedial actions under agreement with DEQ (PPA). They can assist parties interested in acquiring or leasing land bank properties in entering into agreements with DEQ (e.g., PPAs). They can issue bonds, take on debt, and buy/sell properties as a means of financing their long-term operation.

Land Bank May Not:

Land Banks may not acquire/lease property located outside the jurisdiction of local government that establish them. They also cannot exercise eminent domain.

Designed to Provide for Local Control:

Land Banks may establish priority of uses for the properties they acquire – these can include residential, commercial, low-income, open space. This should allow for greater conformity with local governmental development goals.

The Board of Directors is made up of local representation – school boards, city/county council, community representation – thus ensuring that a broad spectrum of the community is represented in Land Bank Authority decisions.

A Land Bank is a "public body" for record inspection purposes. Its meetings are open to the public, and its records are as well to the same extent as other "public body" entities.

Above all – the choice to establish a Land Bank Authority is up to the local government, and the choice of what properties a Land Bank Authority acquires is also up to the local interests represented on the Board of Directors – in short, this legislation provides total local control over these decisions.

Liability Limitation:

Critically, Land Banks will not be liable to State of Oregon or any person under ORS 465.255, 466.640, or 468B.305 for hazardous substances present at the facility at the time of acquisition. In other words, there is no automatic "owner" liability simply as a result of acquiring the property.

The Land Bank, if it cleans up, may seek to recover "remedial costs" under ORS 465.255(1). This will provide an incentive potentially for some degree of remedial work to be done by the Land Bank, making it more attractive to an outside developer.

These provisions are important – they provide initial liability protection, which should remove the initial concern that exists when acquiring brownfield properties, and they provide an incentive for the Land Bank to engage in some cleanup activities, since it can seek to recover those costs later.

Accountability:

Land Bank would be required to prepare annual reports and submit them to the Governor and the Legislative Assembly per ORS 192.245, and they are subject to periodic audit.

Tax Abatements:

This is not a new concept with regard to land use and development. In the brownfield context, HB 2734 grants local governments the ability to provide property tax abatements to qualified parties to help alleviate the financial risks associated with a party stepping forward and being willing to assume the cleanup obligations that go along with redeveloping such properties. This bill also authorizes further incentives for certain types of redevelopment projects, such as low income housing, by giving a local government the option to offer larger tax abatements to parties willing to take on these types of "less-profitable" development.

Like the Land Bank Authority, the decision on whether to grant tax abatements rests with the local government. It is not mandatory, but rather a discretionary tool for the local government to use or not. Our intent is to provide an option without being overly prescriptive as to the structure of a local tax abatement program.

Conclusion:

I join the other members of the Brownfield Coalition in believing that enacting HB 2734 and creating Land Bank Authorities and allowing for the provision of tax abatements will provide new and hopefully dynamic tools to assist in the redevelopment and reuse of brownfield properties. This, in conjunction with other tools such as

PPAs, will hopefully: 1) make the redevelopment of brownfield properties more certain from a liability perspective; 2) make brownfield redevelopment easier in terms of enabling parties to obtain necessary financing; and, 3) ensure that development is more in tune with the needs and desires of the local community.

I would urge you to move HB 2734 through the legislative process for ultimate passage. I am happy to answer any questions the committee may have.

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