

My name is David Ashton, Assistant General Counsel for the Port of Portland.

I have specialized in environmental and natural resources law for over 24 years and have extensive experience buying, selling and redeveloping contaminated brownfields around the country and, most recently, in the region served by the Port of Portland. Redeveloping contaminated brownfields is a central component of the Port's regional economic development mission.

The Port of Portland, a member of the Oregon Public Ports Association, is pleased to be part of the statewide coalition supporting the creation of enhanced tools to support brownfield redevelopment. Ports are significant economic development drivers in Oregon, often working in partnership with the local communities they represent.

With Oregon's land use laws encouraging compact development within UGBs, brownfield redevelopment is a necessity for creating jobs and vibrant and healthy communities. These sites, often used for industrial purposes are critical as they yield middle income jobs with excellent tax return.

The land banking authority and tax abatement tools envisioned in HB 2734 are important tools in toolbox to transform these challenging brownfields.

Land banking creates four important new tools for the toolbox.

Protection of Local Governments' General Funds

Setting up a land bank to acquire contaminated brownfields shields a local government's general fund from otherwise potentially open-ended and expensive liabilities associated with contamination. By making the land bank the owner of the contaminated brownfield, the local government minimizes the exposure of its general fund. For its part, the land bank is protected from liability stemming from the contamination by a statutory grant of immunity.

Land Bank's Liability Immunity Simplifies Acquisition

The land bank's statutory immunity under state law allows it to simplify the due diligence and transactional costs necessary before acquisition of a brownfield. The same investigational due diligence necessary to avoid liability under federal law can be used to satisfy state law requirements. Such an approach will be more efficient than the current process for establishing non-liability for contamination, requiring negotiation and implementation of a cleanup agreement with the State. Using the land bank authority tool, brownfield cleanup may be timed to coincide with an identified and fleshed out redevelopment project.

Facilitated Stakeholder Participation In the Redevelopment

By having important stakeholders represented in, or consulted on, the brownfield redevelopment through the land bank's board or advisory committee, land banking has an important mechanism to facilitate the right type of redevelopment project, in the right location, with the optimal balance of industrial, commercial, residential and open space uses.

Effective Cleanup Cost Recovery Remedy

Creating a land bank authority with an effective cost recovery remedy including recovery of legal and expert witness fees, creates an additional brownfields redevelopment tool to reduce the cleanup cost burden on the developer. When identified, the original polluting party may be efficiently held responsible for some or all of the cleanup costs incurred. While the cost recovery remedy already exists against those responsible for oil pollution, the cost recovery remedy would explicitly apply to allow land banks performing cleanups to seek cost recovery in respect of the hazardous substance releases.

In this way, land banking is consistent with the Polluter Pays principle.

Short Term Property Tax Abatement Helps Defray Costly Cleanup and Redevelopment

The short term property tax abatement tool helps defray the costs of cleanup and regulatory compliance - major hurdles to redevelopment.

In our experience, one major hurdle to brownfield redevelopment is the cost of dealing with residual contaminated soil and groundwater, left behind after cleanup, that are nonetheless in the path of construction. Rendering the cost of dealing with and disposing off residual contamination that has to be excavated or removed from foundations, utility trenches and other subsurface structures eligible for local property tax abatement will help float the brownfield redevelopment.

The Port of Portland supports the addition of these important tools to our brownfield redevelopment toolkit.