

Written Testimony to the US House of Representatives Committee on Energy and Commerce 114th Congress; Subcommittee on Environment and the Economy

Witness: Clark Henry (CIII Associates LLC)

First, I wanted to say thank you for hearing my testimony about the EPA Brownfields program. It is an honor to address this committee and do so alongside the other witnesses. I have been working on brownfield redevelopment for the past 15 years. I have done so as a public servant with a local municipality (City of Portland, Oregon), a consultant, and a citizen. This includes working very closely with the EPA Office of Brownfields and Land Revitalization (OBLR), local municipalities, property owners, developers, lenders, and community based organizations across the country.

As the manager of the City of Portland Oregon Brownfield program I oversaw the administration of approximately \$2 million of EPA Brownfield Assessment and Cleanup grants resulting in a cleaner environment, new jobs, increased tax revenue and reactivating once derelict land. Now as a consultant I work with municipalities, property owners, developers, and community based organizations nationally.

Where brownfields represent obstacles to making our towns and cities environmentally, economically, and culturally stronger the EPA Brownfield Program provides financial and technical resources that reverse that effect. Land that once sat contaminated and vacant now accommodates employment, housing, commercial space, industrial land, parks, public facilities, and helps stitch communities back together.

Brownfields are often mistaken as a large urban or industrial problem but this is a misperception. I have provided technical assistance and conducted brownfield area wide planning activity in very small rural communities like the Village of Sutherland, Nebraska to cities such as Boston, Massachusetts. This is a national issue that deserves attention in every congressional district

I cannot overstate the positive impact that this program has had on revitalizing properties, leveraging investment, and improving environmental quality in urban and rural communities alike. The funding made available to local municipalities is of course a greatly valued and highly effective tool used to put properties on track to redevelopment. However, when coupled with technical guidance and advocacy from the local municipalities the outcomes are even more compelling.

If there is a theme in this testimony it is to highlight ways in which the federal and local governments can best serve as partners with the private sector and facilitate land revitalization, job creation, investment and improve environmental quality. The following ideas are presented as ways in which the federal government and local governments can serve as compliment to and more closely operate at the speed of private business and investment for the mutually beneficial outcomes of a stronger economy and environment. They are based on my experiences and voiced by other brownfield professionals around the country.

1. **Area Wide Planning** – The introduction of Brownfield Area Wide Planning as a part of the EPA Brownfield Program is a strong indication that the EPA Brownfield Program is adapting to market demand and reflects an intimate understanding of factors that the real estate market responds to. It is used as another method of putting properties, corridors and districts on track for investment, redevelopment, employment, and efficient tax revenue generation. I strongly encourage its formal adoption through statute and made a permanent feature of the EPA Brownfield Program.
2. **Nonprofit eligibility** - Under the current program, the Brownfield assessment grants are available only to units of local government. Nonprofit organizations are not eligible. It is my professional opinion that by making nonprofit organizations eligible entities, it will greatly

increase the capacity of local communities to successfully partner with private investment and development interests to deliver redevelopment products that revitalizes land, creates jobs, housing, and other opportunity that would otherwise not occur. Not only have nonprofit organizations demonstrated their capability to successfully administer grants like this but they are able to do so without the reliance of a local municipality to drive investment and redevelopment.

3. **Administrative costs** - The current program does not include administrative costs as eligible expenses under a grant. I understand there is a slippery slope here and that the purpose of the grant program is not to pay for overhead costs that should be covered by the grant recipient. However, without some administrative costs allowed the result is that there can be insufficient direct assistance and advocacy provided by the local municipality, thereby limiting the effectiveness of the grant resources. Allowing some level of administrative costs provides support for City staff to spend time working more directly with developers and property owners serving as their advocate as they navigate state regulatory programs. As the Program Manager for the City of Portland Brownfield Program I was able to broker relationships, make lenders comfortable with lending on Brownfields, expedite regulatory review processes and as a result see investment and development implemented.
4. **Renewable energy on brownfield properties** – Using brownfield properties to host renewable energy facilities, especially solar facilities, makes sense from multiple perspectives. In terms of land use planning many cities across the country (even primary markets) have large areas of former industrial land that has no foreseeable redevelopment scenario. Even landfills fall into this category. This is due to multiple factors such as a lack of demand for such land by industry;

its location is not suitable for commercial or housing; or that addressing its environmental conditions are cost or technically prohibitive to accommodate other uses. These sites sit vacant, potentially threatening human and environmental health, are financial liabilities to their owners and provide little if any tax revenue. Renewable energy facilities such as solar farms provide the owner with financial benefits and help reduce our dependence on fossil fuels; are compatible with technical and regulatory restrictions; improve community health, the economy, and reduce stigma of entire districts simultaneously. These facilities can even be considered an interim use, making the land available to accommodate more intensive uses as our towns and cities grow. This is an area in which technical assistance best serves this purpose rather than creating a specific allocation for such projects within the EPA Brownfield grant program. Renewable energy projects are already eligible projects within the program. Creating specific carve out of funding for specific types of development represents a slippery slope that begins to federally prescribe how the grant funding will be spent at the local level. It is widely desired by local brownfield efforts that they have the flexibility to direct their grant resources where they are most in demand.

5. **Liability concerns for municipal ownership** – Under the Comprehensive Environmental Response and Liability Act (CERCLA) municipalities who involuntarily acquire property through foreclosure are considered protected against federal enforcement for contamination they did not cause. However, these protections do not extend to municipalities in cases where the properties are acquired voluntarily, such as through traditional sale and purchase agreements as part of public facility expansion, urban renewal activity, etc. To further increase the capacity of local government to leverage investment in brownfield properties, the liability protections provided through involuntary acquisition should be extended to voluntary acquisition. A

potential precedent for such protections at the state level can be found in liability protection provisions in California's Polanco Act.

6. **Make federal tax incentive permanent** - Reinstating the federal tax incentive that expired in 2011 will help bridge financial gaps in project feasibility and result in property redevelopment, jobs, a stronger economy and environment. Brownfield projects are inherently more risky than other development and the tax incentive helps mitigate that uncertainty and as a result leverages private investment.
7. **Multi-Purpose grants** - Under the current program, grants for environmental assessments and for cleanup are awarded to local municipalities separately. Creating multipurpose grants where the recipient can conduct environmental assessments immediately followed by cleanup/remediation can effectively close the gap between assessment, cleanup and redevelopment which often occur.
8. **Expand partnerships to leverage community wide investment and equitable development** – Brownfield development and revitalization is an essential element to creating a strong local and national economy, providing opportunity for entrepreneurship, and improving the lives of communities who live with them. Unfortunately revitalization efforts do not always take advantage of local innovators, investors, and assets. In these cases decision making and financial benefit are held by relatively limited number of interests outside of the communities themselves. Demand for revitalization is far greater than the amount of capital and organizations who currently conduct it. This can change through expanding partnerships between community interests, developers, and local talent using the rapidly expanding world of

crowdsourcing and crowdfunding. This is especially true with recent innovations in the Securities Exchange Commission (SEC) stemming from the JOBS act of 2012. In May 2016 (next month), recent changes to SEC regulations will allow any community investor to make equity based financial investment in local development projects through online portals. This has never been allowed before. Until now only Accredited Investors (those with over \$200k of income and more than \$1million of net worth) have been allowed to make investments through these portals. After 15 years of working on initiatives to integrate local assets into brownfield development projects, this is the most promising innovation I have encountered. In the interest of full disclosure I have started one of these portals and this testimony might be perceived as self-serving but to limit this perception I will not name the portal/company. I strongly encourage EPA and its partners to explore ways in which local grant recipients identify and partner with equity and reward based crowdfunding portals to harness the financial and idea generating power of the crowd and local communities in which they work.

In conclusion, the EPA Brownfield Program is a critical asset used by local municipalities with a proven track record of resulting in jobs, private investment, public benefit, improved environmental quality, and more resilient communities. I encourage you to continue supporting the program by funding the program to the maximum appropriation allowed under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) and to also support its continued evolution into an even more effective vehicle to achieve economic, environmental, social gains and a stronger United States of America.

Sincerely,

Clark Henry

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