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April 30, 2003

Re: AB-485, A Request for Support

Submitted by: The Landwell Company, in Henderson, Nevada

Dear Senate Natural Resources Committee Member:

I would appreciate your consideration of support for AB-485. The attached sheets give an overview of the bill. Passage of this bill will help promote the cleanup of contaminated industrial sites (brownfield), and reclaim them as valuable developable property.

A brief history of the bill:

- Introduced on March 24th, 2003
- Heard and passed as amended on April 7th, 2003, from the Assembly Natural Resources Committee. The vote in committee was unanimous.
- Assembly final passage was on April 22nd. A second amendment was applied on the floor. The amended bill received a 42 – 0 vote for passage.

Please note:

1. The bill is supported by Nevada Division of Environmental Protection and the City of Henderson. There was no opposition from environmental interests.
2. Amendments #313 and #544 were added in the Assembly.
3. Amendments were added to provide clarity on the lien issue and certain tort issues. The Realtors were satisfied with the amendment on lien language. Assembly Majority Leader Barbara Buckley was in agreement with the clarification language dealing with the tort issue.

If you have any further questions please contact me.



Terry K. Graves

72nd Nevada Legislature

Carson City Las Vegas
775-884-3186 702-362-2818
Fax 775-884-4631 Fax 702-871-7054
Email: gravestk@AOL.Com Cell: 702-499-4545

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Talking Points in Support of A.B. 485

Introduction:

AB485 is a bill that proposes to overcome some of the hurdles involved in developing previously contaminated land. Contaminated land that has been cleaned and decontaminated can be put to beneficial use through development. These cleaned up properties are generally referred to as "brownsfield" lands. Beyond the rigors of cleaning and decontaminating the land, the problem of how to handle the potential future environmental liability issues is of concern. This bill provides that in large part the liability stays with the original owner. This allows developers an opportunity to invest in the land without subjecting them to undo liability for the past environmental issues. This legislation is typical of "brownsfield's" law that is being adopted across the country.

What the bill does:

- limits liability to the State of Nevada for new purchasers;
- encourages prospective purchasers to purchase and reuse properties that would otherwise remain contaminated and undeveloped;
 - increases tax base;
 - promotes sustainable in-fill development;
 - encourages parties to purchase contaminated land and clean up land in order to achieve development goals.

What the bill does not do:

- it does not limit any tort liability of any party
- it does not limit any civil liability of any responsible party
- it does not reduce the liability of the seller (the seller remains obligated to the State)
- it does not reduce the buyer's liability in all cases. (if the buyer does not "exercise appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances," the buyer does not meet the definition of "prospective purchaser" and does not qualify for the limitation of liability provisions)

SUMMARY OF A HYPOTHETICAL TRANSACTION AND CLEANUP UNDER PROPOSED LEGISLATION AB 485

Currently, environmentally impaired properties are typically not viewed as attractive investments because the purchase of such sites would expand liability to new purchasers and their lenders. The proposed legislation would reduce this problem and facilitate the cleanup and redevelopment of contaminated property by protecting new owners from liability to the State, so long as they comply with certain conditions. The typical transaction that would be facilitated by the proposed legislation can be summarized as follows.

Seller A owns property that was formerly used for industrial purposes and is contaminated. Seller A has no current tenants and lacks the financial means to remediate the property and return it to an active, beneficial use. Buyer B is a real estate developer and believes Seller A's property is a better location to construct a business park than the previously undeveloped parcel of land Buyer B has been evaluating 5 miles outside of the city limits.

Under the proposed legislation, Buyer B would be able to purchase the property without assuming the liability to the State that has typically been imposed on a new owner of property under Nevada law. As a condition for this liability protection, Buyer B must perform certain due diligence, cooperate with cleanup efforts and avoid exacerbating any remaining contamination at the site. Seller A will remain liable to the State for cleanup of the property. However, Seller A is now able to finance the cleanup with funds from the sale of the property.

As a result of this transaction, Buyer B is able to develop the business park in a preferred location. Seller A is able to sell a property that was effectively abandoned and use a portion of the proceeds to satisfy the State's demands to remediate contamination. The State benefits from the remediation of property that was previously unfeasible due to lack of private funds for the cleanup. Finally, the city and local residents enjoy the benefits of an increased tax base, additional jobs, removal of an eyesore and the benefits of in-fill development.