



August 9, 2016

Kathryn Schultz, Chair  
City of Portland  
Planning & Sustainability Commission  
1900 SW 4th Avenue, Suite 7100  
Portland, Oregon 97201

Re: Central City 2035 Proposed Draft

Dear Chair Schultz:

Thank you for the opportunity to comment on the Central City 2035 Proposed Draft June 20, 2016. The Port of Portland offered comments to staff in a memo dated March 29, 2016 on the initial draft, focused on direct impacts to the working harbor and Willamette River as a whole. Many of those concerns remain and are reflected in this transmittal. As a result of the complexity of these new proposed regulations (Volume 2 A Part 2: River, Scenic and Trails), as well as the uncertainty caused by the requirements outlined in the recent Biological Opinion on the National Flood Insurance Program in Oregon (the FEMA BiOp), we suggest deferring approval of this section of the zoning code and map amendments until the city has established a direction on the FEMA BiOp and has conducted outreach to the stakeholders who will be affected directly or indirectly by the new proposed regulations.

Our specific concerns on the Central City 2035 Proposed Draft are focused on three areas:

- 1) Impact of the proposed overlay zoning of the river;
- 2) The application of new overlay zone regulations and impact to North Reach properties; and
- 3) Impact of the new regulations to an expeditious Superfund cleanup.

#### 1. Zoning of the River

The Port of Portland is the designated local sponsor to the Army Corps of Engineers (Corps) for dredging and maintenance of the Willamette and Columbia River navigation channels.<sup>1</sup> (ORS 778.115, ORS 777.262.1) As the local sponsor, the Port must provide the land for dredge material placement, and other support as negotiated with the Corps for

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<sup>1</sup> The Port of Portland shares this function of local sponsorship for the Columbia River with other Washington and Oregon Ports. The Port of Portland is the only designated local sponsor for Willamette River dredging.

specific projects.<sup>2</sup> ( 33 USC § 2211). In addition, the Port protects the navigability of the Willamette and Columbia Rivers, through ordinances that establish harbor lines between which no construction of permanent structures may exist if it would impede navigation. The Port coordinates this harbor line with the Corps, who also has the authority to regulate obstructions and ensure navigability.<sup>3</sup>

Most of the Central Reach of the Willamette River is proposed to have a base zone of Open Space (OS) plus new River General (\*g) and River Environmental (e) overlay zones and appears to extend landward to include adjacent developed sites, such as the Riverplace development and the Portland Fire Bureau dock/station north of the Hawthorne Bridge. We are concerned that the combination of these base and overlay zones do not explicitly allow for usual and customary river navigation-related activities such as dredging, capping, and installing or maintaining in-water structures. For example the following sections of the code highlight concerns.

- *Standards for Pile Replacement.* Currently, placement of small numbers of piling and dolphins may be placed in the river without City review. The proposal under code section 33.475.440.D would continue to allow the placement of a small number of piling and dolphins, but only if the applicant removes an equal number of existing piling, plus one. Many if not most applicants will no longer be able to take advantage of this existing approach and will be forced into a more time consuming and complex process, further complicated by State and Federal requirements including in-water work windows.
- *Regulation of Dredging.* We appreciate retaining the exemption for dredging in the federal navigation channel as well as maintenance dredging at existing berths. At the same time, code section 33.475.040.e proposes to regulate other forms of dredging shallower than thirty five feet, even though the City's expressed interest is in regulating shallow water habitat (twenty feet or less in depth), this proposal to regulate well beyond the resource of concern is not consistent with the way resources are regulated in the environmental overlay zone and as a result should be limited only to actual impacts of shallow water habitat in the river.

To address this, the code could be modified to identify those areas of the river where additional uses are allowed in the OS Zone. This approach has been taken on Map 510-10 and Map 510-11 (p. 365-366) of Volume 2A for certain OS-zoned portions of the Central City. Another approach would be to select a more flexible base zone.

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<sup>2</sup> For example, in the *Resolution of Formal Assurances for Local Cooperation* for the Lower Willamette and Columbia River 40-foot project, the Port is required to loan a pipeline dredge with full crew to the Corps without charge other than reimbursement for the operating cost. (November 18, 1963).

<sup>3</sup> Note that the harbor line (or wharf line) is different and distinct from the navigation channel. The navigation channel is the area authorized by Congress to be maintained by the Army Corps of Engineers to a specific depth for the navigability of a river. Harbor line (or wharf line) regulates construction in the river, and may be more extensive than the navigation channel because it also ensures safe movement to and from berths and docks.

It is also unclear how road and bridges are treated and the extent of review and mitigation the City will impose within existing rights of way. As a result, we recommend that these uses and activities be affirmatively allowed either by eliminating the overlay and retaining a base zone that supports this work or by adding allowed uses to the applicable overlay zones.

## 2. New Requirements Applicable to the North Reach

Section 33.440 Greenway overlay zones proposes to apply the regulations of this chapter to land, fills and structures in water within the North and South Reach of the Willamette River. We oppose the application of 33.440 to the North Reach section of the Willamette River. The implications of these legislative land use actions have not been discussed with the community of property owners that will be affected by the proposed action, the effect of which seems to alter the setback and review requirements for projects within the q-overlay zone. In addition, new code section 33.272 (Major Public Trails) would apply to the North Reach as well as other portions of the City. Finally, the definition of "river-related" (code section 33.900) is proposed to be amended and would apply to the entire Willamette River, including the North Reach.

As a result, we recommend eliminating these changes in regulation for the North Reach, until such time as those properties owners and affected parties can be contacted and consider the implication of the proposed changes.

## 3. Impact of the new Regulations on an Expedient Superfund Clean-Up

Portions of the Superfund site (Steel Bridge- North) are included within the Central Reach of the CCP. The Adopted Comprehensive Plan policy (6.41) promotes "quick resolution" and "as quick as possible" clean-up of the Portland Harbor Superfund Site. It is not clear how the regulations proposed for the Central reach in the draft CCP will facilitate an expedient cleanup of the harbor. Rather, the regulations add new substantive requirements and process to an already comprehensive, complex, and expensive Superfund cleanup.

The Port is committed to a cleanup of the Lower Willamette River that protects the health of Portlanders and the environment, and to finding the most cost-effective way to achieve it. At their core, these proposed regulations fail to acknowledge the benefit to river health from federal and state cleanup and restoration requirements and instead burden cleanup design and implementation with additional City processes and requirements. Some examples include:

- *Restoration of the River Bottom.* Code section 33.475.500.G.3 proposes that any removal of hazardous materials in the river requires that the "river bottom be restored to support use by fish and people". Given the variety of conditions on the river bottom including sands, silts, rock and gravel; the dynamic and ever shifting nature of the river bottom; uncertainty as to how "restoration" is defined; as well as potential for conflict with State and Federal regulatory agencies, this requirement will likely complicate and delay cleanup, without any clear incremental benefit beyond the cleanup and restoration required by federal law.

Kathryn Schultz  
August 9, 2016  
Page 4

- *Effective Prohibition of Proven Remediation Techniques.* Code section 33.475.500.G.2.a prohibits hard surface armoring techniques below the top of bank except for outfalls. The same section subsequently states “This is not intended to preclude ...hard surface stabilization methods below the surface if necessary to contain hazardous substances...” However, if the objective is to prevent flow of upland contaminants into the river, it is unclear that an entirely underground structure would be sufficient. Even if it were successful, this requirement could add unnecessary expense and delay, contrary to the City’s adopted policy in support of an expedient cleanup.

We are concerned both about the application of these regulations in the portions of the Superfund site within the Central Reach and the precedent that these regulations set for Superfund cleanup activities in the North Reach of the Willamette River.

We urge the Commission to defer consideration of new “exempt review” policies in 33.475.500 until the City has engaged with parties in the Central Reach *and* the North Reach that are deeply involved in finding a path forward to successful Superfund cleanup. A collaborative approach that includes the City’s Superfund team can produce revisions that enable the City’s zoning regulations to support, rather than detract from, the City’s overall goals for an efficient Superfund cleanup.

We are happy to answer questions and look forward to further discussion on the issues raised.

Sincerely,



Susie Lahsene, Director  
Policy and Planning