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**VIA EMAIL (PSC@PORTLANDOREGON.GOV)**

Ms. Katherine Schultz, Chair  
Planning and Sustainability Commission  
City of Portland  
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**Re: The Working Waterfront Coalition’s Testimony Regarding Central Reach River Overlay Regulations (CC 2035 Proposed Draft, June 2016)**

The Working Waterfront Coalition (“WWC”) represents owners and operators of Portland’s waterfront industrial businesses. The WWC has reviewed the Central City 2035 Proposed Draft (“CC 2035”) and urges the Commission to recommend that the proposed changes related to the Willamette River (detailed below) be removed from the CC 2035 and considered separately at a time when

- (1) there is more guidance on how the City can comply with NMFS’ recent BiOp to FEMA related to floodplain development ordinances and ESA compliance; and
- (2) so that new regulations of all reaches of the river can be considered holistically with input from a broad array of stakeholders, rather than piecemeal.

If the River Regulations<sup>1</sup> continue to be considered as part of CC 2035, WWC has the following concerns:

- The Adopted Comprehensive Plan (June 2016) Policy 6.40 requires that the City facilitate a cleanup of the Portland Harbor Superfund Site that moves forward as quickly as possible. Policy 7.37 (Contaminated Sites) requires the City to “facilitate the cleanup, reuse, and restoration of the Portland Harbor Superfund site.” The proposed regulations

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<sup>1</sup> Our concerns relate to new and amended code provisions that regulate in-water activity and activities adjacent to the Willamette River, including PCC 33.430 (Environmental Overlay Zones), PCC 33.440 (Greenway Overlay Zones), PCC 33.475 (River Overlay Zones), PCC 33.840 (Greenway Goal Exception) and PCC 33.865 (River Review), referred to collectively in this testimony as the “River Regulations.”

of cleanup activities in Section 33.475.500 add additional, unnecessary hurdles to the cleanup process contrary to these Comprehensive Plan policies.

- City policies must allow for a safe working harbor. The WWC objects to the new regulation of dredging in water between 20 and 35 feet in depth, which have the potential to impact industrial activities in the River and create unnecessary additional hurdles for waterfront operators.
- The proposed River Regulations allow for exemptions, but the standards to obtain an exemption are not clear. The Proposed Draft should set clear standards for exemptions from mitigating within the River Environmental overlay. Clear standards to determine impracticability for compliance with contaminated site regulations are needed.

**I. The River Regulations Should Be a Separate Zoning Project that is Considered When Additional BiOp Guidance is Available and All Stakeholders are Engaged**

As the volumes and hours of public testimony attest, the CC 2035 project is a significant undertaking that involves issues ranging from inclusionary housing, FAR transfers and bonuses, building height, parking standards and building requirements, to name a few. The River Regulations add complexity that is unnecessarily premature and piecemeal. The City's ability to comply with NMFS' recent BiOp, the public's ability to participate in how the entire river will be regulated, and avoiding having the PSC consider code that will likely need to be amended again within the next two years are all better served if the River Regulations are removed from CC 2035 and considered as a separate project, as detailed in this letter.

**A. The City should suspend the consideration of new River Regulations until the model ordinance and other guidance from DLCDD and FEMA are available regarding floodplain development.**

On April 14, 2016 the National Marine Fisheries Service (NMFS) delivered a Biological Opinion (BiOp) to the Federal Emergency Management Agency (FEMA). Based on the BiOp, FEMA will set new minimum requirements for local floodplain development ordinances based on federal requirements to protect endangered species. These changes will be incorporated into the National Flood Insurance Program (NFIP). The NFIP is administered by FEMA, which sets standards for local governments that participate in the NFIP, including requirements for local floodplain development regulations. DLCDD assists local governments with implementation of those regulations.

The BiOp includes recommendations, known as "reasonable and prudent alternatives" ("RPAs"), for reducing the impact of NFIP related development on Endangered Species Act (ESA)-protected salmon. The RPA describes an interim phase that calls for FEMA to direct NFIP participating communities to implement new floodplain development permitting standards based

on existing guidance and administrative tools with substantially enhanced technical support from both FEMA and NMFS. DLCD will actively work with local governments and FEMA as FEMA implements NFIP revisions in Oregon, and will provide model codes and technical assistance. Work at DLCD is underway, but the timeline for a model ordinance is not currently published.

The City should suspend the consideration of new River Regulations until the model ordinance and other guidance from DLCD and FEMA are available regarding floodplain development. Otherwise, the City runs the risk of conducting a lengthy public process that results in regulations that are not compliant with the BiOp, and need to be amended. Not only is this a waste of the PSC's and public's time, but will lead to confusing and evolving standards for property owners.

**B. Piecemeal regulation of the river is not appropriate.**

In many places, the Proposed Draft emphasizes that the River Regulations are proposed to apply only to the Central Reach. However, in some maps and staff commentary the limited applicability of the River Regulations is less clear.<sup>2</sup> The WWC is concerned that even if the River Regulations are limited now to the Central Reach, many of the currently-proposed regulations (such as the cleanup rules) will be applied to the North Reach or industrial areas within the Central Reach without further meaningful input from affected parties. For example:

- The River Regulations are not currently proposed for any industrial zoned areas, they contain extensive new regulations for contaminated sites (in addition to federal and state rules that already apply). WWC is concerned that these regulations will be applied to the North Reach in the future, and it is unclear if different standards or exceptions will be available in the North Reach.
- The River Environmental overlay (“e”) is applied based on the presence of natural resources that are ranked in the adopted Natural Resources Inventory (NRI). The new “e” overlay provisions are not currently proposed to apply to the North Reach, but the North Reach has NRI ranked resources. It is unclear if the proposed “e” regulations will apply in the North Reach, or if the River Industrial (“i”) areas will alter the “e” regulations so that the cargo capacity of harbor access land industrial areas is not reduced.

It is crucial that the City engage with all waterfront stakeholders and develop consistent proposals for the waterfront in all areas that do not negatively impact trade on the river.

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<sup>2</sup> For example, although the regulations in 33.475 are not currently proposed for industrial-zoned areas in the Central Reach or the North Reach, Staff comments in the Proposed Draft indicate *that all riverfront areas* will be brought under Chapter 33.475 under future rulemaking.

It is inappropriate and unfair to river stakeholders to propose a piecemeal regulation of the River that does not appropriately notify owners of regulations under consideration that will likely be applied to their land. General policies that may make sense for an open-space zoned site in the Central Reach should not be adopted without assessing their impact on an industrial-zoned site in the North Reach. We strongly urge the Commission to remove the River Regulations from the CC 2035 Proposed Draft and direct Staff to propose these regulations in a complete package with North Reach and industrial area River Regulations.

## **II. Concerns with River Regulations**

### **A. Adding Red Tape to Contaminated Site Cleanup Efforts Conflicts with the Comprehensive Plan Policies**

Adopted Comprehensive Plan Policy 6.40, Portland Harbor Superfund Site requires the City to :

“Take a leadership role to facilitate a cleanup of the Portland Harbor that moves forward as quickly as possible and that allocates cleanup costs fairly and equitably. Encourage a science-based and cost-effective cleanup solution that facilitates re-use of land for river- or rail-dependent or related industrial uses.”

Proposed Section 33.475.500 applies to contaminated sites and adds additional regulatory hurdles to the already complex cleanup process. This additional regulatory ‘red tape’ is inconsistent with the Comprehensive Plan’s direction for the Harbor cleanup. To our knowledge, the City has not communicated with Harbor landowners participating in the cleanup regarding the feasibility of these additional regulations. It is crucial for the cleanup effort that the City engage with Harbor stakeholders before enacting regulations that may frustrate the cleanup process. WWC urges the Commission to remove this section from the Proposed Draft.

### **B. Dredging Should Not Be Regulated by the City**

Proposed Section 33.475.040.B.2.e subjects dredging activities in areas between 20 feet (shallow water) and 35 feet to the regulations of the River Environmental (“e”) zone. WWC acknowledges that this regulation is not currently proposed for industrial users or the North Reach, but as discussed above, it seems very likely that this general regulation will apply to those areas when they are brought under Chapter 33.475 in the future.

Although maintenance dredging and USACE-permitted dredging is exempt from this regulation, additional water activities are sometimes necessary for waterfront industrial users. Subjecting these activities to River Review (many of which do not have the option to meet objective standards under the River Environmental overlay) will increase costs and process for waterfront operators conducting trade on the River.

### **C. Clearer Standards Are Needed for Exemptions**

Section 33.475.440.K (River Environmental Overlay, Mitigation) requires that mitigation must occur within or adjacent to the River Environmental overlay zone. However, according to the Staff commentary preceding this section, mitigation outside of the overlay zone will only be allowed off-site if vegetation density on-site is at a high level. The proposal should clarify if applicants must show that the River Environmental overlay is fully vegetated in order to mitigate in an adjacent area. Objective and fair standards are needed for the mitigation scheme to avoid a costly and drawn-out process.

Section 33.475.500 proposes regulations for cleanup activities on contaminated properties (which we generally object to, as noted above). Subsection 500.H allows a property to avoid complying with the river restoration requirements if doing so would be “impracticable” which “demonstrates that compliance with the requirements not capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project remedial purposes.” It is not clear how the City will determine if the requirements are “capable” of being accomplished by a project. We request that clearer standards be provided for this section.

Thank you for your consideration of these requests.

Very truly yours,



Dana L. Krawczuk

cc: Working Waterfront Coalition Board