

River Plan / North Reach
Planning Commission Worksession
Responses to comments on the Proposed Draft
February 24, 2009

TOPIC: Contaminated Sites

1. BRIEF SUMMARY OF COMMENTS ON THE TOPIC:

Many of the comments on this topic describe the substantive requirements in 33.475 as being overly-prescriptive, limiting remediation design alternatives, and hindering the flexibility required to respond to the unique situation on each site. While staff believes that the code has been written to allow the flexibility to utilize whatever remedy is necessary to protect human health and the environment, we have recommended some amendments to the 33.475 cleanup code in the handout titled "Recommended amendments to proposals that include a fee-in-lieu option," dated February 24, 2009. Another concern was the requirement that the final remedy should not preclude the use of the site for uses allowed by the base zone. DEQ also expressed concern about the requirement for flush-mounted groundwater monitoring wells and staff will change that standard. Several comments from the Bureau of Development Services, DEQ and the Port of Portland relate to the wording of the code, consistency with other code sections, and clarification of intent.

2. STAFF-PROPOSED AMENDMENTS IN RESPONSE TO COMMENTS

a. Amendments for Discussion with Planning Commission

Staff proposed amendments are outlined below. Related comments and responses are attached.

Amendment 1: Subsection 33.475.480.C requires that the clean up actions and final remedy not preclude the use of the site consistent with the uses allowed by the base zone and requires that, if the site is in the river industrial overlay zone, the final remedy not preclude the use of the site for river-dependent or river-related activities. In response to comments that describe this requirement as too prescriptive, staff recommends adding the words "to the extent practicable". This change will ensure that subsection 33.475.480.C does not end up dictating or conflicting with the final remedy

RELATED COMMENTS: #343

Amendment 2: Amend Section 33.475.480, Removal and Remediation of Hazardous Substances consistent with the changes outlined in the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009.

RELATED COMMENTS: #291; #300, #308, #337, #365, #386, #387



b. Minor Amendments

Comments and responses are attached. Minor amendments are included in the staff response section of each comment.

c. Technical Amendments

Comments and responses are attached. Technical amendments are included in the staff response section of each comment.

3. COMMENTS THAT DO NOT REQUIRE AMENDMENTS

Comments and responses are attached. ¹¹

**2. a. PUBLIC COMMENTS RELATED TO AMENDMENTS FOR
DISCUSSION WITH PLANNING COMMISSION**



Report of River Plan Comments

<u>Topic 1:</u>	Contaminated sites	<u>Topic 2:</u>	All	<u>Topic 3:</u>	All	<u>Comment Type:</u>	Major policy
<u>Comment ID:</u>	All	<u>Staff Entered:</u>	All	<u>Commentor:</u>	All	<u>Hearing Date:</u>	All
<u>Geo Area:</u>	All	<u>Volume:</u>	All	<u>Document Edited?:</u>	All	<u>TOC Section:</u>	All
<u>Staff Assigned:</u>	All	<u>Comment Addressed?:</u>	All	<u>Individual Review:</u>	All		

Topic 1: Contaminated sites

<u>Comment ID:</u>	291	<u>Commentor:</u>	Schnitzer Steel, Floyd Shider - Ann Gardner
<u>Comment:</u>	<p>SSI has concerns regarding the City's use of these "substantive requirements" for cleanup activities managed by DEQ above the OHWL. In many cases, the City's prescribed method of remediation may not be appropriate for the site based on known contamination conditions or other restrictions. SSI recommends that cleanup approaches be negotiated between the riverfront site owners and DEQ and other agencies as necessary. It may be acceptable for the City to play a role in these negotiations; however standardization of cleanup actions either upland or riverward of the OHWL should not be standardized as part of the City's Proposed River Plan.</p>		

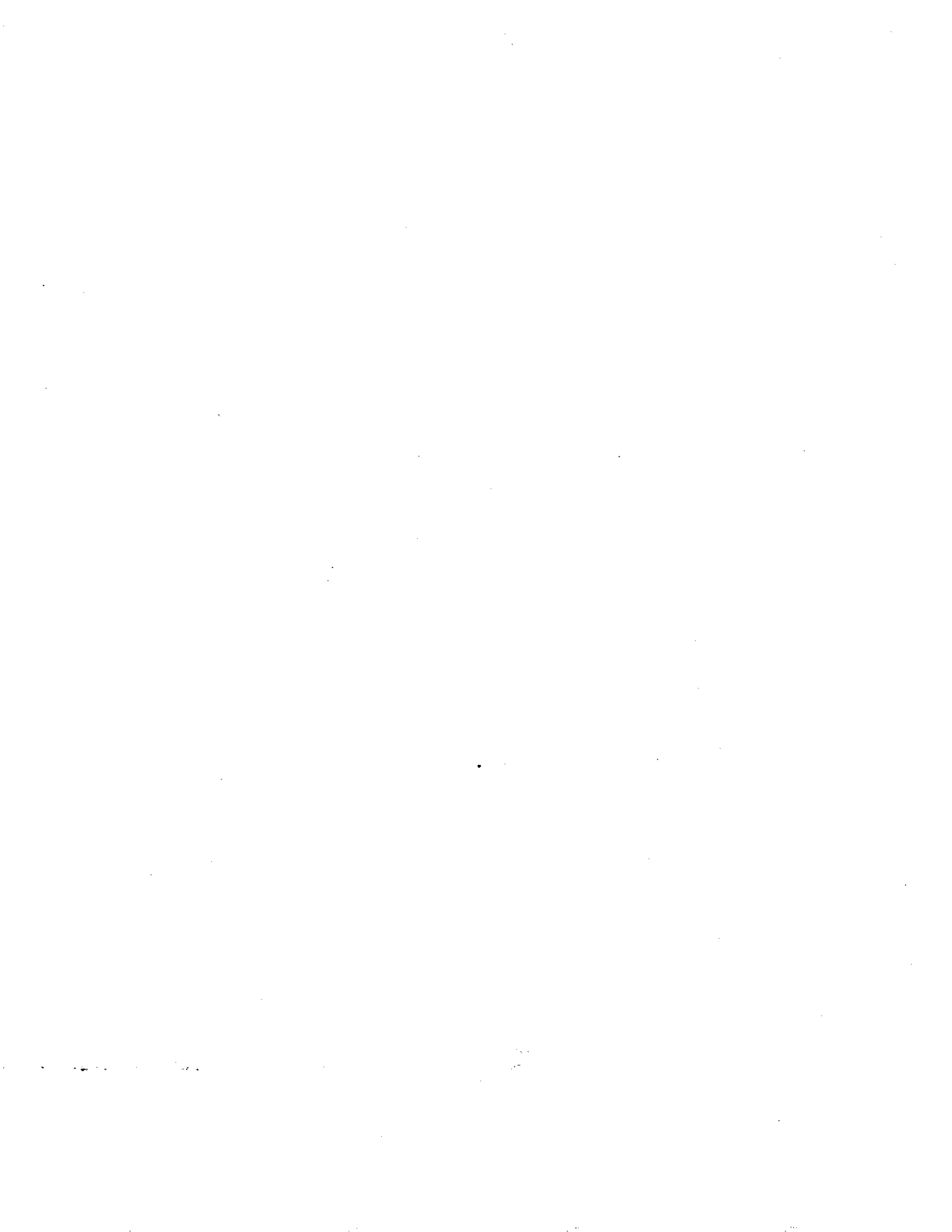
<u>Response:</u>	<p>DEQ-led clean up actions are exempt from local permitting process, but clean up actions are not exempt from the substantive requirements of the local jurisdiction. In the past, it has been hard for applicants and DEQ to identify the substantive requirements in relation to the greenway because every proposal is subject to a discretionary review and the substantive requirement are not identified until the review is complete. In other words, the substantive requirements are not finalized until after a process has occurred--a process from which the clean up action is exempt.</p> <p>River Plan staff worked with DEQ and other stakeholders to identify the most pertinent city interests with respect to DEQ-led clean up actions. Those interests center on the final condition of the river bank; the final condition of the river environmental overlay zone; the ability of the site to be used consistent with city zoning and policies; the affect of monitoring wells on scenic resource values; and the placement of building and structures in relation to the setback and the future greenway trail. The proposed regulations are specific to these interests and are intended to describe a preferred scenario rather than require absolute compliance. In order to ensure that the City's substantive requirement do not result in conflicts with DEQ requirements, staff is proposing several amendment to the code language. Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for more information regarding the changes.</p>
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Comment ID:	300	Commentor:	Port of Portland - Greg Theisen
Comment:	<p>Working with Partners:</p> <p>The complexity of the review process increases while limiting remediation design alternatives; threatening human health and the environment; and affecting the ability of BDS to assess impacts and recommend conditions/mitigation.</p> <p>The Port recommends: - Lessen regulatory scope of the City's role to simplify and streamline administration and application.</p>		
Response:	<p>River Plan staff do not support reducing the scope of the City's interests regarding the outcome of DEQ-led clean up actions. The existing greenway code needs refinement because it does not specify which standards and approval criteria apply to removal and remediation actions. The situation is further complicated by the fact that state statutes exempt DEQ-led clean ups from permit processes, but do not exempt clean up actions from meeting the City's substantive requirements. River Plan staff worked with DEQ, the Bureau of Development Services, EPA and other industrial and regulatory stakeholders to define which city policies and regulations are relevant to clean up actions. Section 33.475.480, Removal and Remediation of Hazardous Substances reflects the choices that were made and clarifies which City regulatory elements apply to clean up actions lead by DEQ. River Plan staff have identified the following City interests with regard to clean up actions. These interests go beyond the interests of DEQ: (1) the affect of the clean up on identified natural resources and the river bank; (2) the affect of the clean up on the use of the site; (3) the affect of the placement of monitoring wells on the scenic qualities of the greenway; and (4) the placement of buildings and equipment in relationship to the greenway setback and the greenway trail.</p> <p>The removal and remediation of hazardous substances code language has been written to guide the clean up actions in relationship to the above listed interests. The proposed code is not intended to supersede DEQ's mandate to protect human health and the environment; the code is intended to augment the clean up process by more clearly identifying which aspects of City goals and policies should be taken into consideration when designing and implementing a clean up actions.</p> <p>The proposed code related to the river bank describes a preferred outcome--a natural bank. The code also acknowledges that a natural bank will not be achievable in all situations and at this point, and staff recommends eliminating the requirement that a fee be paid if the bank can not be restored to a natural condition in favor of providing incentives for a natural bank. The code related to identified natural resource areas requires that the removal of vegetation and alteration of the ground be avoided if possible, and if it is not possible to avoid disturbance, requires that the disturbed area be replanted. The code related to use of the site after the clean up has occurred ensures that the clean up remedy does not preclude use of the site consistent with City zoning. This is especially important in the working harbor where use of industrial sites for river-dependent industrial businesses is crucial for economic vitality. In order to ensure that the City's substantive requirements do not direct the type of clean up remedy selected, staff recommends amending the proposed code regarding the use of the site after the clean up to make it clear that the requirement applies when feasible or practicable. The code related to monitoring wells was intended to preserve the scenic qualities of the greenway, however after further discussion with DEQ, staff recommends amending the code to ensure that this requirement is only applied when DEQ and the Oregon Water Resources Department approve of flush mounted monitoring wells. The code for buildings, structures and equipment in the greenway setback is intended to keep the setback free of structures (in keeping with Goal 15 requirements) and available for development of the greenway trail. The code does not require that any trail be constructed or that the setback be landscaped as the result of clean up actions. The code is also flexible and addresses circumstances when structures, buildings and equipment will need to be placed in the setback.</p> <p>Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for more information regarding the staff recommended changes to the contaminated sites code.</p>		

Comment ID:	308	Port of Portland - Greg Theisen	Commentor:
Comment:	33.475.480 - Removal of Remediation of Hazardous Substances.	The proposed code language places restrictions on the alternative normally available to Oregon DEQ and the applicant. It may work for one project, but not for another. Cleanup decisions need to be site-specific.	
		The proposed code language limits the tools in our tool box by dictating a presumptive remedy for bank and sediment cleanup. All the details are being specified by the City without consideration of the regulatory criteria that are required to guide cleanup decisions. - such as permanence and long-term protectiveness. The City should not establish a predetermined cleanup design; the final remedy selection is the responsibility of the lead cleanup agency (DEQ or the US EPA), and according to the cleanup regulations, must be based on a thorough evaluation of numerous considerations and factors.	
		River Review should not be used to add an unnecessary layer to the cleanup process. Rather, the City should work with DEQ and the stakeholders to develop an incentive plan to encourage parties to perform additional actions to incorporate into the cleanup, to the extent that the City believes there are still gaps after state and federal requirements are met. An example incentive could be to bank credits to be used toward future development or other projects, or a discount on the fee charges on future projects.	
Response:		The existing greenway code needs refinement because it does not specify which standards and approval criteria apply to removal and remediation actions. The situation is further complicated by the fact that state statutes exempt DEQ-led clean ups from permit processes, but do not exempt clean up actions from meeting the City's substantive requirements. River Plan staff worked with DEQ, the Bureau of Development Services, EPA and other industrial and regulatory stakeholders to define which city policies and regulations are relevant to clean up actions. Section 33.475.480, Removal and Remediation of Hazardous Substances reflects the choices that were made and clarifies which City regulatory elements apply to clean up actions lead by DEQ. River Plan staff have identified the following City interests with regard to clean up actions. These interests go beyond the interests of DEQ: (1) the affect of the clean up on identified natural resources and the river bank; (2) the affect of the clean up on the use of the site; (3) the affect of the placement of monitoring wells on the scenic qualities of the greenway; and (4) the placement of buildings and equipment in relationship to the greenway setback and the greenway trail.	
		The removal and remediation of hazardous substances code language has been written to guide the clean up actions in relationship to the above listed interests. The proposed code is not intended to supersede DEQ's mandate to protect human health and the environment; the code is intended to augment the clean up process by more clearly identifying which aspects of City goals and policies should be taken into consideration when designing and implementing a clean up actions.	
		The proposed code related to the river bank describes a preferred outcome--a natural bank. The code also acknowledges that a natural bank will not be achievable in all situations and at this point, and staff recommends eliminating the requirement that a fee be paid if the bank can not be restored to a natural condition in favor of providing incentive for a natural bank. Staff will draft incentives for applicants to include bioengineering techniques as part of the final remedy. The code related to identified natural resource areas requires that the removal of vegetation and alteration of the ground be avoided if possible, and if it is not possible to avoid disturbance, requires that the disturbed area be replanted. The code related to use of the site after the clean up has occurred ensures that the clean up remedy does not preclude use of the site consistent with City zoning. This is especially important in the working harbor where use of industrial sites for river-dependent industrial businesses is crucial for economic vitality. In order to ensure that the City's substantive requirements are not perceived as directing the type of clean up remedy selected, staff recommends amending the proposed code regarding the use of the site after the clean up to make it clear that the requirement applies when feasible or practicable. The code related to monitoring wells was intended to preserve the scenic qualities of the greenway, however after further discussion with DEQ, staff recommends amending the code to ensure that this requirement is only applied when DEQ and the Oregon Water Resources Department approve of flush mounted monitoring wells. The code for buildings, structures and equipment in the greenway setback is intended to keep the setback free of structures (in keeping with Goal 15 requirements) and available for development of the greenway trail. The code does not require that any trail be constructed or that the setback be landscaped as the result of clean up actions. The code is also flexible and addresses circumstances when structures, buildings and equipment will need to be placed in the setback.	
		Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for more	

information regarding staff recommended changes to the contaminated sites code.	
Comment ID:	337
Comment:	<p>1. The City is mandating biotechnical techniques and soil bioengineering be incorporated into bank designs with the 33.475.480.A.1.a section of the code. The City further specifies how to incorporate techniques in section 33.475.480.A.1.b(3) by including figures and dictating the use of willow or dogwood stakes. The specific requirements outlined in the code are too prescriptive and do not allow for site specific conditions and the inevitable changes in bioengineering techniques over time. Predetermined clean up designs limit options and unnecessarily constrain an already complex process.</p> <p>2. On page 55 of Volume 1A, the first bulleted recommendation suggests the creation of a guidance document that clearly states the City's substantive requirements for cleanup activities. The draft code could reference the guidance document and would include the bioengineering techniques that are outlined in 33.475.480.A.1.b(3). This guidance document could evolve over time without requiring a code amendment.</p>
Response:	<p>1. Staff does not intend to mandate that bioengineering techniques be incorporated into DEQ-led clean up remedies. The zoning code language that is cited states that the City has a preference for bank designs that utilize bioengineering techniques such as those shown in the drawings and has been written to be very flexible regarding what that means. The code language states that the drawings are examples of biotechnical techniques and those examples are not exhaustive of the biotechnical techniques that the city prefers. The River Plan staff anticipates that other bioengineering techniques will be used. The proposed code and the commentary acknowledge that bioengineering will not always be possible. Staff recommends amending the code language to provide incentives for including bioengineering techniques as part of the final remedy rather than requiring a payment of the River Restoration Fund..</p> <p>2. River Plan staff does not support the suggestion that the substantive zoning code requirements for DEQ-led clean up actions be included in a guidance document and only referenced in the zoning code. Changes to the substantive requirement should be reviewed as part of a zoning code amendment package so that the public has an opportunity to comment on changes and updates.</p> <p>Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for more information on the staff proposed changes to the contaminated sites code.</p>
Comment ID:	343
Comment:	<p>The draft code language in section 33.475.480(C) precludes any removal or remediation action that is inconsistent with the uses allowed by the base zone or approved conditional use for a site. This new requirement poses serious problems for implementing state and federal environmental remediation decisions, if the remedy prevents future use of the area consistent with the base zone. We recommend that the first sentence in section 33.475.480(C) should be revised to state that "the final remedy should not, to the extent feasible, preclude the use of the site consistent with the uses allowed by the base zone or approved conditional use."</p>
Response:	<p>Staff acknowledges the problems with substantive requirement C regarding use of the site after the final remedy has been installed. Staff will revise the requirement to state that the final remedy should not preclude, to the extent practicable, the use of the site consistent with base zoning.</p>

Comment ID:	365	Commentor:	Evraz Oregon Steel - Debbie Deetz Silva
Comment:	Volume 1A of the River Plan describes enhanced permit coordination where the City would participate, facilitate, and collaborate in the very complicated permitting process. There is a discussion of a pilot process being created. I believe that Evraz Oregon Steel is that pilot process. The City's participation thus far has only amplified the difficulties and magnified the already complicated process. I strongly urge that the cleanup section not be carried forward to City Council without substantial changes. And I welcome the opportunity to work with City staff in conversations to work through these issues and share our experience with the pilot project.		
Response:	River Plan staff recommend several specific changes to the contaminated site code in response to this and other public testimony. Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for more details about the proposed changes. In addition, staff is interested in learning more about the applicant comment that the "City's participation thus far has only amplified the difficulties and magnified the already complicated process". Staff will contact the commentor.		
Comment ID:	386	Commentor:	Port of Portland - Krista Koehl
Comment:	The proposed city regulation tries to dictate how to design the cleanup without consideration of the nine cleanup criteria set out by state and federal regulation. It places emphasis on things like vegetation - how to plant your plants - and habitat, instead of focusing on protection of human health and the environment.		
Response:	The City acknowledges that the primary goal of a cleanup is to protect human health and the environment. DEQ and EPA are the experts in that arena and it is their job to ensure that goal is achieved. The City's proposed regulations assume that DEQ or EPA are overseeing the cleanup and are working to ensure that human health and the environment are protected and the other cleanup criteria are taken into account. That said, there are generally multiple cleanup alternatives that are possible on a given site. The City is expressing a desire to ensure that the surface of the riverbank--after the contamination has been cleaned up or contained--consists of soft surfaces and is vegetated. The proposed substantive requirements regarding bank design will only apply when bioengineering is practicable. In addition, staff recommends that the clean up code be amended as a result of public testimony. Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for details of the proposed staff amendments.		
Comment ID:	387	Commentor:	Port of Portland - Krista Koehl
Comment:	The in-water construction period is very tight in the Willamette--it's only four months, and we barely made it. Looking at the proposed code that the City is putting forth, and how the pilot project is going (basically OSM site), and the inherent subjectivity of the requirements, I really worry if the City code had applied to our site whether we would have ever made it because I think we would have been in a never-ending loop with the City staff. Adding a layer of city bureaucracy to an already difficult, time-consuming and expensive process makes it even harder. I think with the additional requirements here, what the city is trying to do is achieve perfection. I think at the end of the day what actually happens is that less cleanup gets done.		
Response:	The proposed City code is not binding for cleanups conducted under CERCLA regulations, which are required to comply only with those state and federal regulations that are deemed to be Applicable or Relevant and Appropriate Requirements. Therefore the City's proposed code would be considered voluntary guidance for both OSM and the Port's T4 cleanup. The proposed code does not represent an additional layer of bureaucracy. Currently cleanups conducted under DEQ oversight are required to comply with local substantive requirements. The current Greenway code is one such requirement but is vague, confusing, and is not easily applied to clean up scenarios. The proposed code clarifies the City's goals with regard to clean up near the river and makes it easier for responsible parties to comply. -In addition, staff is recommending several amendments to the proposed clean up code. Please see the handout titled "Recommended amendments to proposals that include a fee-in-lieu option", dated February 24, 2009 for details of the staff changes. Staff agrees that timing is important and will recommend that BDS have an advisory time frame for reviewing and producing the compliance letter.		



2. b. PUBLIC COMMENTS RELATED TO MINOR AMENDMENTS

Report of River Plan Comments

Topic 1: Contaminated sites Topic 2: All Topic 3: All Comment Type: Minor policy
Comment ID: All Staff Entered: All Commentor: All Hearing Date: All
Geo Area: All Volume: All TOC Section: All
Staff Assigned: All Comment Addressed?: All Document Edited?: All Individual Review: All

Topic 1: Contaminated sites

Comment ID:	162	Commentor:	Department of Environmental Quality - Keith Johnson
Comment:	<p>33.485.480.D - The proposed restriction to flush mounted wells above the OHW mark is excessive and unreasonable. The definition of OHW is somewhat relative and high water often times exceeds that line. Flexibility for facilities and DEQ is needed to protect wells from flood damage, loss from being covered over with river sediments and site activities such as heavy vehicle traffic. DEQ and responsible parties need to be able to make the most practical decisions regarding well construction that meets the intended purpose and optimal functionality of any well at our cleanup sites. DEQ requests that the City remove this proposed restriction and instead make it only a suggestion or recommendation.</p> <p>In addition, DEQ is unsure about the meaning of the later part of this proposed code, because flush mounting (as opposed to above ground completions) would not pose a risk to boats. We expect that above ground completions that stick up and have protective bollards would pose a hazard to boats. The City commentary states that flush mounted monitoring wells are more consistent with the scenic goal of the Goal 15 Willamette Greenway and with the goals of the River Plan.</p>		
Response:	River Plan staff will revise the requirement for flush mounted monitoring wells to ensure that the requirement only applies when DEQ and the Oregon Water Resources Department agree that flush mounting is feasible.		
Comment ID:	310	Commentor:	Port of Portland - Greg Theisen
Comment:	<p>If the City proceeds with the mandatory regulatory substantive requirements as written we have the following specific comment:</p> <p>33.475.480 does not indicate that these provisions are the only "substantive requirements" an entity must satisfy under ORS 465.315. As currently written, it could be read to require compliance with 33.475.480 and 33.474.100-400 including River Review. A specific statement that .480 contains the only requirements applicable to cleanup action could be a fix (as per suggested addition of "r" under .430 A.</p>		
Response:	Staff will revise the code language to make it clear that 33.475.480 is all that is applicable to DEQ-led clean ups.		
Comment ID:	314	Commentor:	Port of Portland - Greg Theisen
Comment:	<p>If the City proceeds with the mandatory regulatory substantive requirements as written, we have the following specific comment:</p> <p>D. "Monitoring wells must be flush mounted." This is a problem. Oftentimes these wells will be located on a steep slope and will require a stickup for access, stability and protection of the well.</p>		
Response:	River Plan staff recommend revising this substantive requirement to apply only when DEQ and the Oregon Water Resources Department agree that flush mounting is feasible.		

Comment ID:	395	Commentor:	Northern Resource Consulting - Brian Perleberg
Comment:	33.475.430 A. 3. e. - Add to the end of the statement: "except when placing a near shore rock or sand cap or development of a confined upland disposal project to fully contain contaminated sediments."		
Response:	Actions to remove or remediate hazardous substances that are conducted under DEQ authority will be subject to the substantive regulations include in section 33.475.480. The regulations for development in the river environmental overlay zone will not apply to DEQ-led clean up actions. Staff will revise the language at the beginning of the River Overlay Zones chapter to make it clear that DEQ-led clean up actions are subject to section 33.475.480 and are exempt from the other sections of the chapter. In addition, the proposed City code is not binding for cleanups conducted under CERCLA regulations, which are required to comply only with those state and federal regulations that are deemed to be Applicable or Relevant and Appropriate Requirements.		
Comment ID:	409	Commentor:	Schnitzer Steel, Floyd Snider - Ann Gardner
Comment:	Another source of funding for the River Restoration Program is development related to mitigation. If on-site mitigation or other off-site mitigation cannot be performed by the applicant, then the applicants can pay a fee into the Program. While not mentioned in the text of Volume 1A, the cleanup of hazardous substances on a site above the OHWM, when the cleanup is under authority of DEQ, will also likely result in the site owner paying a fee into the Program since such activities do not appear to be the subject of an exception to River Review or the related mitigation requirements.		
Response:	The regulations in 33.475.480 are intended to be the substantive requirements that apply to remedial actions that are exempt under ORS 465.315. The regulations in 33.475.480 are meant to take the place of River Review for such actions. Staff will make this clear at the beginning of the River Overlay Zones chapter.		

2. c. PUBLIC COMMENTS RELATED TO TECHNICAL AMENDMENTS

Report of River Plan Comments

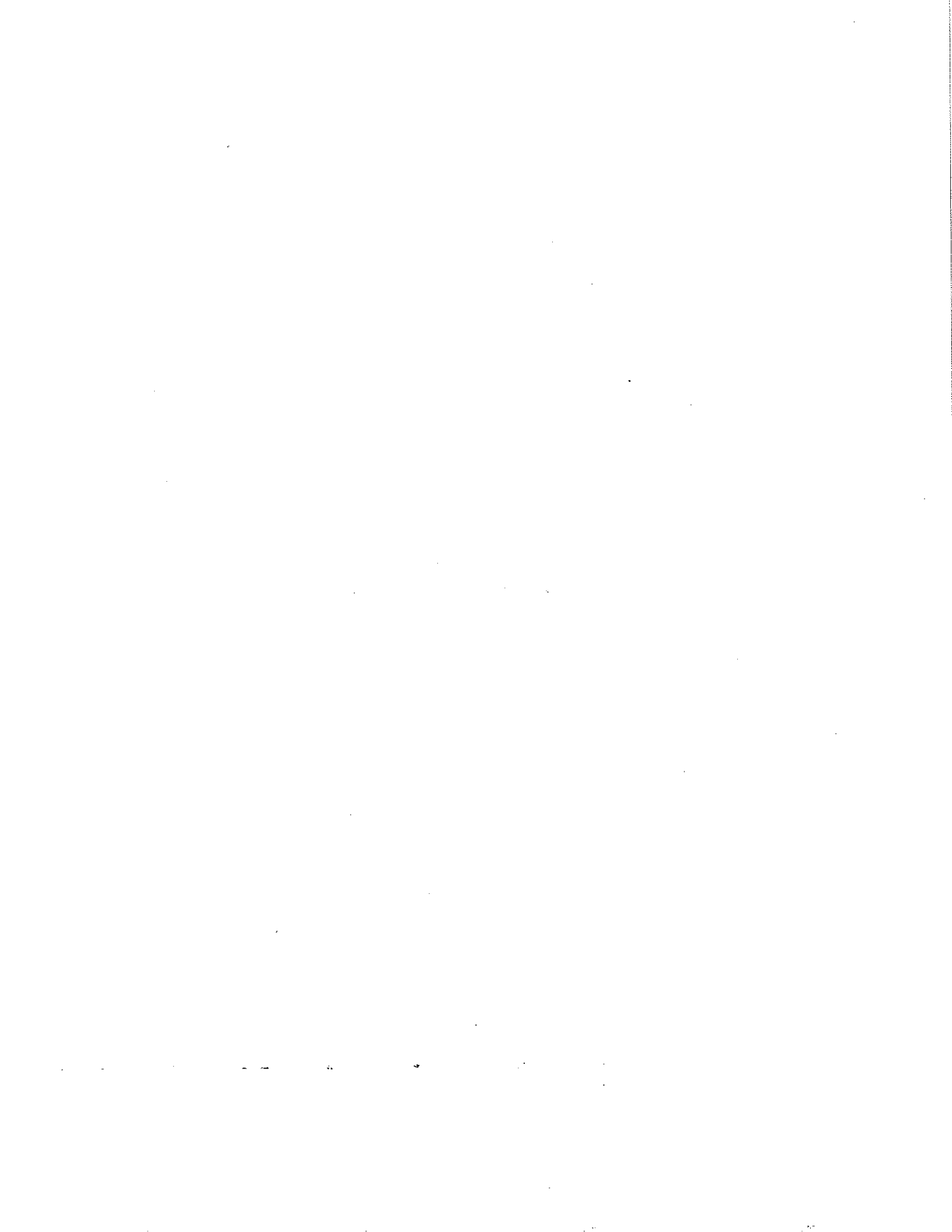
Topic 1: Contaminated sites Topic 2: All Topic 3: All Comment Type: Editorial/technical edit
Comment ID: All Staff Entered: All Commentor: All Hearing Date: All
Geo Area: All Volume: All TOC Section: All
Staff Assigned: All Comment Addressed?: All Document Edited?: All Individual Review: All

Topic 1: Contaminated sites

Comment ID:	127	Commentor:	Bureau of Development Services
Comment:	Note in commentary that an advantage to having these standards (33.475.480) is that it will inform the development of remedies. It is already noted that it is now hard to find out what's needed - add this positive outcome, too.		
Response:	Staff will add this information to the commentary.		
Comment ID:	128	Commentor:	Bureau of Development Services
Comment:	33.475.480. There is a lot of information packed into this first section. Maybe break this into two sections, with the first section titled, "General", and the second section, beginning with the sentence, "For purposes of this section, the regulations apply..." (see midway through second paragraph) titled "Where These Regulations Apply."		
Response:	33.475.480. Note typo in line 6 of second paragraph. "They" should be "The." Staff will review the section introduction with an eye to simplification and we will fix the typo.		
Comment ID:	129	Commentor:	Bureau of Development Services
Comment:	33.475.480.A. The first sentence is a little clumsy, and may read better as "When there is significant alteration of the area riverward of the top of bank, the regulations of this paragraph apply." Tom Carter (consistent with feedback from NMFS, Mike Reed, DEQ and DSL) feels strongly that some cutoff amount of excavation and fill must be given as the dividing line between "significant" and "not significant." Otherwise, this will be very difficult to administer. 50 cubic yards would trigger a permit with DSL, right, so there's precedent for considering that "significant." Add word: repair and maintenance of storm water systems. Remove the following from minor bank alterations: sheet pile walls.		
Response:	Staff will refine the language to address the concerns.		
Comment ID:	130	Commentor:	Bureau of Development Services
Comment:	33.475.480.B.1 Change the word "practical" to "practicable." Practicable means "able to be done." Practical means "suitable." Check other areas of document to catch all uses of the word practical.		
Response:	Staff will make the suggested change.		

Comment ID:	131	Commentor:	Bureau of Development Services
Comment:	33.475.483.E. Add to the end of the paragraph: or how they will not impede future river related or river dependant uses when the site is redeveloped.		
Response:	Staff will make the suggested change.		
Comment ID:	160	Commentor:	Department of Environmental Quality - Keith Johnson
Comment:	<p>DEQ is concerned that the language in 33.475.480.C may not reflect the intent, reflected elsewhere in the Plan, that the regulations applied with some flexibility. 33.475.480 anticipates that the regulations in that section are intended to apply "to the extent feasible." Moreover, the regulations applicable to the River Industrial Overlay Zone acknowledge at least two instances when the use on sites with river frontage might not be river-dependent or river-related: 1 an existing nonconforming use; and 2 a use that is not river-dependent or river-related that has been approved through a River Review. The River Review regulations provide that "uses that are not river-dependent or river-related may locate on a site that fronts the river when the site is found to be unsuitable for river-dependent or river-related uses." The current commentary on 33.475.480.C and the text of that regulation do not seem to recognize the flexibility recognized elsewhere in the Plan, namely, the possibility that the site may be unsuitable for river-dependent or river-related uses or maintenance of that use may be infeasible.</p> <p>Presumably, an existing nonconforming use and a use that is not river-related or river-dependent but has been approved after River Review would both be uses allowed by the base zone or a conditional use. Thus, the "must" in the first sentence of 33.475.480.C may not be as problematic as it would seem on first blush. But the remainder of the text seems to ignore the possibility that the existing, approved, or most likely future use of a riverfront site might not be river-related or river-dependent for reasons that are wholly independent of the removal or remedial action.</p> <p>To that end, DEQ requests revisions to both the commentary and text of 33.475.480.C See suggested language included for consideration in the Document Link of the Comment Database.</p>		
Response:	River Plan staff will make the edits suggested by DEQ. The DEQ edits help clarify the code language.		
Comment ID:	191	Commentor:	Department of Environmental Quality - Keith Johnson
Comment:	The plan should note the role of stormwater in ongoing clean-up activities. DEQ Cleanup program understands the importance of using a cross-program, approach and DEQ would like to see BDS and the City recognize the same.		
Response:	Staff suggests adding the following text to the shaded box on page 56 of Volume 1A: Stormwater evaluation and control are key components of DEQ's Cleanup Program in Portland Harbor. Under the guidance of the Joint DEQ/EPA Source Control Strategy, site contaminants are evaluated to determine if they could leave the site via stormwater. Appropriate source control measures are implemented, including contaminated waste removal, treatment facilities, and implementation of Best Management Practices (BMPs), to minimize pollutant runoff.		
Comment ID:	311	Commentor:	Port of Portland - Greg Theisen
Comment:	<p>If the City proceeds with the mandatory regulatory substantive requirements as written we have the following specific comment:</p> <p>A.1a 100 percent coverage within 5 years. What does 100 percent coverage mean? Is this defined somewhere else in the code? If not, this is problematic for the regulated party and could be impossible to determine compliance.</p> <p>Staff will revise the requirement to make it clear.</p>		
Response:			

Comment ID:	313	Commentor:	Port of Portland - Greg Theisen
Comment:	<p>If the City proceeds with the mandatory regulatory substantive requirements as written, we have the following specific comment:</p> <p>A. 2. "possible" should be replaced with "practicable" to be consistent with DEQ regulations governing selection of remedial actions, which takes into account a number of factors including cost.</p>		
Response:	Staff will make the wording change.		



3. PUBLIC COMMENTS THAT DO NOT REQUIRE AMENDMENTS

Report of River Plan Comments

Topic 1: Contaminated sites Topic 2: All Topic 3: All Comment Type: No edit required
Comment ID: All Staff Entered: All Commentor: All Hearing Date: All
Geo Area: All Volume: All TOC Section: All
Staff Assigned: All Comment Addressed?: All Document Edited?: All Individual Review: All

Topic 1: Contaminated sites

Comment ID:	135	Commentor:	Bureau of Development Services
Comment:	Consider exempting cleanup projects in Greenway Overlay zones, and apply the standards from the North Reach to them, too. (by reference).		

Response: The clean up code has been drafted specifically for the North Reach. Staff worked to identify the relevant City policy objectives related to river-dependent and river-related industrial development and the conditions in the North Reach. More time and policy work is required to identify the relevant policy objectives for the other two reaches of the Willamette River. Therefore, this request is beyond the scope of the River Plan.

Comment ID:	274	Commentor:	Schnitzer Steel, Floyd Snider - Ann Gardner
Comment:	SSI recognizes the uncertainty of the outcome of the Superfund investigation, cleanup, and assessment of natural resource damages and is concerned that the proposed plan will result in significant overlap with the Superfund cleanup process. Nevertheless, remediation goals and objectives for the cleanup are being developed by USEPA and DEQ with significant stakeholder process and will be finalized through completion of the Portland Harbor Record of Decision that will eventually govern remediation design.		

Response: While the subject matter addressed in the River Plan / North Reach may overlap with the Superfund cleanup process, the proposed code is clear that the City's proposed regulations are intended as voluntary guidance for cleanups occurring under CERCLA legislation. For cleanups conducted under DEQ oversight, the proposed City code provides clear substantive requirements to make it easy to comply. The new code will improve coordination between the City and cleanup agencies.

Comment ID:	309	Commentor:	Port of Portland - Greg Theisen
Comment:	If the City proceeds with the mandatory regulatory substantive requirements as written we have the following specific comment: BDS intends to work with an entity to ensure the regulations are met to extent feasible. This approach is workable if: (a) The BDS process does not hinder or slow down cleanup. This is a significant risk given the short in-water work window and construction season. To limit this risk and to meet the City's goal of streamlining the process, there should be a time limit/specific time period for BDS review designated in the code. (b) Although BDS issues an opinion letter, it should be made clear that DEQ is the ultimate decision maker to determine whether applicant has complied with substantive requirements, consistent with state law.		

Response: Staff agrees that timing is important. However, DEQ-led clean up actions are exempt from a City process. Adding a time limit to the code language implies that there is a process to complete. Staff will recommend that BDS have an advisory time frame for reviewing and producing the compliance letter. Regarding comment (b), it is our understanding that DEQ is not the ultimate decision maker regarding determination of whether the application meets the City's substantive requirements--the City has the final authority to determine compliance with its codes. River plan staff will consult with DEQ ensure that our understanding is correct.

Comment ID:	327	Commentor:	Robert J.L. Thompson
Comment:	Constructing treatment wetlands downstream of cleanup efforts will help catch and process some of the accidentally released pollutants during and after the cleanup process.		
Response:	River Plan staff will forward this comment to BES and DEQ for consideration.		
Comment ID:	341	Commentor:	Evraz Oregon Steel - Debbie Deetz Silva
Comment:	The current proposed code language 33.475.480.A.1.b, indicates that an "applicant must demonstrate that all reasonable efforts were made to design the bank in a manner consistent with subparagraph A.1.a". This language leaves room for subjectivity by City staff to determine if an applicant has demonstrated that all reasonable efforts were made. This paragraph should be deleted.		
Response:	River Plan staff does not agree that the language cited should be deleted. Staff is recommending that the City should have a stated preference for a bioengineered river bank after clean up actions have occurred. While this is a stated preference, the code language acknowledges and provides for situation when the preference is not feasible. As such, the City, on behalf of the public, has in interest in reviewing the reasons why a bioengineered bank is not practicable. The intent is to ensure that while the remedial action is being designed, all parties involved with the design evaluate the potential for a bioengineered bank and in the event bioengineering is not feasible, justify clearly why the technique can not be utilized.		
Comment ID:	406	Commentor:	Jan Secunda
Comment:	University of Portland wanting to facilitate access to the river is fine if it isn't a health risk. It is presently a health risk.		
Response:	Thank you for your comment.		