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## Commentary

### **33.258.070.D.2.a(6) Nonconforming Development**

What is nonconforming development?

Nonconforming development exists where a site met all the regulations at the time it was developed but does not meet the current regulations because of subsequent changes to the Zoning Code. For example, many parking lots were built before Portland required landscaping. Such development is "grandfathered in," meaning that it can remain as long as there are no changes to the site.

What are upgrades to nonconforming development?

Upgrading nonconforming development means bringing it closer to compliance with the current regulations.

When are such upgrades required?

If an owner is making alterations to the site, upgrading nonconforming development may be required. This upgrade is typically required when the alterations cross a certain dollar threshold. Some items are exempt from the threshold, meaning they do not count toward the threshold. These can include improvements that are required by City regulations, such as seismic upgrades, or improvements that contain a substantial public benefit, such as earthquake upgrades or stormwater management facilities.

In keeping with the kinds of exemptions described above, staff proposes exempting actions to remove or remediate hazardous substances from the threshold that triggers nonconforming upgrades, because the cleanup of hazardous substances has substantial public benefit. An applicant meeting the required landscaping standards in the river setback per 33.475.220 also provides public benefit and also is proposed to be exempted from the threshold that triggers nonconforming upgrades.

### 33.258.070 Nonconforming Development

A.-C. No change

#### D. Development that must be brought into conformance.

1. No change
2. Nonconforming development with an existing nonconforming use, allowed use, limited use, or conditional use. Nonconforming development associated with an existing nonconforming use, an allowed use, a limited use, or a conditional use, must meet the requirements stated below. When alterations are made that are over the threshold of Subparagraph D.2.a., below, the site must be brought into conformance with the development standards listed in Subparagraph D.2.b. The value of the alterations is based on the entire project, not individual building permits
  - a. Thresholds triggering compliance. The standards of Subparagraph D.2.b., below, must be met when the value of the proposed alterations on the site, as determined by BDS, is more than \$153,400. The following alterations and improvements do not count toward the threshold:
    - (1) Alterations required by approved fire/life safety agreements;
    - (2) Alterations related to the removal of existing architectural barriers, as required by the Americans with Disabilities Act, or as specified in Section 1113 of the Oregon Structural Specialty Code;
    - (3) Alterations required by Chapter 24.85, Interim Seismic Design Requirements for Existing Buildings;
    - (4) Improvements to on-site stormwater management facilities in conformance with Chapter 17.38, Drainage and Water Quality, and the Stormwater Management Manual; and
    - (5) Improvements made to sites in order to comply with Chapter 21.35, Wellfield Protection Program, requirements.
    - (6) Energy efficiency or renewal energy improvements that meet the Public Administrator incentive criteria whether or not the project applies for and receives the incentive;
    - (7) Landscaping required by 33.475.220; and
    - (8) Removal or remediation of hazardous substances conducted under ORS 465.200-545 & 900.