



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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MEMO

Date: September 8, 2016
To: Steve Kountz
From: Laura Lehman
Bureau of Development Services
Cc: Rebecca Esau, BDS Land Use Services Supervisors
Re: BDS Comments on Fossil Fuel Terminal Proposed Draft

Thank you for the opportunity to review and comment on the proposed code language for the Fossil Fuel Terminal Zoning project. This project will help implement new policy direction for fossil fuel distribution and storage facilities through changes to the zoning code.

The comments below highlight our primary areas of concern and provide comments on the proposal. We look forward to working with BPS staff to address our concerns and to providing additional feedback as the project develops.

Primary Areas of Concern

1. Nonconforming Situation Review

The proposed code is intended to implement policy direction to allow development of emergency backup capacity, infrastructure that will accelerate transition to non-fossil fuels, safety and efficiency improvements, service to end users, and infrastructure for processing of used petroleum products at existing Bulk Fossil Fuel Terminals. The proposed code prohibits Bulk Fossil Fuel Terminals and existing facilities would become non-conforming uses. As noted in the code analysis, expansions of nonconforming uses require a Type II Nonconforming Situation Review. The approval criteria for Nonconforming Situation Review in an I zone are as follows:

With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:

- a. The hours of operation;*
- b. Vehicle trips to the site and impact on surrounding on-street parking;*
- c. Noise, vibration, dust, odor, fumes, glare, and smoke;*
- d. Potential for increased litter; and*
- e. The amount, location, and nature of any outside displays, storage, or activities.*

Approval of expansions of existing terminals consistent with the stated policy direction will be problematic and may not be possible – it will be difficult to show that expansion of tanks or addition of capacity would not increase fumes or odors per criterion (c). Expansions that result in additional vehicle trips, either due to movement of goods or additional staff on-site, would not be approvable per criterion (b). Lastly, new storage tanks would be considered additional exterior storage, and would likely be unable to satisfy criterion (e).

BDS suggests an approach similar to that used for Drive-Through facilities in the Hollywood Plan District (33.563.210.D). In the zones where fossil fuel terminals currently exist, this approach would be to prohibit Bulk Fossil Fuel Terminals unless there was a legal terminal on the site on a specific date, and then to provide limits for expansions of terminals that were existing as of that date. The limits on expansion could include that expansions be for seismic or safety upgrades, that they be for non-fossil fuels, or that they be infrastructure for re-processing of used fossil fuels. If including limits related to infrastructure, the proposed Code would need to be specific about what this includes. (Note that it will be difficult to ensure that infrastructure is used only for non-fossil fuels or used fuels, as BDS regulates the development of processing infrastructure but does not regulate the type of fuels processed). The limitations could include a cap on the volume of storage that could be permitted, to ensure that the expansions permitted would be appropriate for emergency backup or for service to end users.

An alternative approach would be to designate Bulk Fossil Fuel Terminals as a Conditional Use, subject to the approval criteria of 33.815.125 for Specified Uses in Industrial Zones. Expansions beyond the limitations of 33.815.040.B would require conditional use review. In order to prohibit new Bulk Fossil Fuel Terminals but allow expansions through the conditional use process, the use could have a footnote in the Allowed Uses table for the I zones, stating that new Bulk Fossil Fuel Terminals are prohibited, but that those that were legally in place on a specified date are a conditional use.

2. Description of the Proposed “Bulk Fossil Fuel Terminals” Use Category

The code concept includes a new land use category – Bulk Fossil Fuel Terminals. The use description includes an exception for industrial, commercial, institutional, and agricultural firms that exclusively store fossil fuels for use as an input. If these facilities otherwise meet the use characteristics (have marine or railroad access to transport fuels, or have storage capacities exceeding 5 million gallons), it will be difficult for BDS to determine whether the fossil fuels are being used exclusively as an input. If such a facility did begin shipping fuels that were being stored on site, that would constitute a change in operations rather than a change of use, and could occur without notice to BDS.

The use characteristics described in 33.920.300.A refer to firms that rely on access by marine services, railroad, or regional pipelines. The reference to firms could be confusing – the characteristics refer to the use and the facility, not necessarily to the firm that is conducting the use.

3. **Size Limits in General**

The code should make it clear whether the storage capacity limits in the proposed Bulk Fossil Fuel Terminals use category apply to sites, or to operators, of which there could be more than one on a site. BDS will need guidance about how best to verify the capacity of existing and/or proposed fossil fuel storage on a site or per operator – through information shown on a site plan, or through manufacturer or other specifications. Storage capacity is not something that BDS will easily be able to inspect or enforce.

4. **Methanol**

Fossil fuels will be defined as part of this project. The analysis on page 24 of the proposed draft document states that methanol is intended to be included in this definition, and that the proposed code is intended to limit large methanol plants. The analysis also states, however, that biogas is intended to be excluded and that the proposed definition specifies that fossil fuels are made from decayed plants and animals that lived millions of years ago, in order to exclude biogas. Methanol produced from natural gas appears to meet the proposed definition, but methanol produced from other sources such as biomass does not appear to meet this definition. It also appears that a facility producing methanol would fit the manufacturing and production use category, regardless of the input, and therefore would not be limited by the proposed code language.