City of Portland Planning and Sustainability Commission
1900 SW 4th Ave, Portland, OR 97201

Sent via email to: psc@portlandoregon.gov on September 16th, 2016.

Re: PSC Fossil Fuel Zoning Testimony

350PDX comments on the Fossil Fuel Code Changes Discussion Draft & recommended changes to the proposed draft submitted by BPS Staff to the Planning and Sustainability Commission on September 9th.

Prepared by Mia Reback and Nick Caleb.

Esteemed Members of the Portland Planning and Sustainability Commission,

Thank you for taking the time for in-depth consideration of this important issue. 350PDX believes the fossil fuel terminal zoning code changes should implement the clear language of Resolution #37168 which states that the City of Portland will "actively oppose expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways," and prohibit all new fossil fuel terminals and expansions and existing facilities.

Below, please find our feedback on several amendments currently under consideration.

Fossil Fuel Terminal Size Threshold:

350PDX supports Resolution #37168 being implemented in the clearest way possible to fully prohibit new fossil fuel terminals and terminals expansions. 350PDX encourages the Planning and Sustainability Commission to amend proposed proposed zoning code changes by reducing or eliminating the storage capacity threshold, with preference for eliminating the threshold and prohibiting all new fossil fuel terminals.

With this in mind, we understand and appreciate BPS's strategy in creating the 5 million gallon threshold and believe that this approach in combination with the transloading restriction *probably* will be adequately restrictive on all new fossil fuel terminals in line with the Resolution, but are concerned about the potential for small terminal aggregation that would create a fossil fuel footprint well above what now seems like an aggressive limit (see below). Adding a terminal aggregation restriction will make the 5 million gallon threshold far more palatable to our members.

In the event that PSC decides upon a terminal threshold of 5 million gallons or less, we will strongly urge BPS to conduct a follow up review and plan for these facilities in the near future, and at the latest, in the 2020 Climate Action Plan.

Appendix A and B present two alternative code changes prepared in consultation with Trish Weber, Land Use Consultant for the Center for Sustainable Economy.

Regulating Existing Terminal Expansion:

350PDX supports existing Bulk Fossil Fuel Facilities being designated as legal, non-conforming uses and requiring any expansion go through a Type II review process. Any costs associated with the review process should be borne by the applicant. This is consistent with the spirit and plain language of the Resolution, our new Comprehensive Plan, and Portland's commitments to the health and safety of its residents

350PDX supports no change to the current proposal that designates existing terminals as a non-conforming use and requires any expansion to go through a legal non-conforming situation review.

Additional Review Criteria for Terminal Expansions:

350PDX supports the PSC amending the proposed draft to strengthen restrictions on expansion allowed at existing terminals and add additional review criteria to the the non-conforming use process for Bulk Fossil Fuel Terminals to to include the criteria that are the basis for prohibiting new bulk fossil fuel terminals in the first place - health, safety, and climate.

At the hearing, there was a discussion around the potential for re-locating the capacity of an existing storage tank out of liquefaction zone for the purposes of increasing safety, and whether this would be prohibited by strict review criteria for terminal expansions. We believe this concern to be a moot point as we are unaware of any industrial land suitable for such a re-location that isn't in a liquefaction zone. Additionally, even if it were possible, new infrastructure would be unacceptable because it would lock us into dirty fuels and their carbon emissions for decades to come and contravene the plain language and intent of the Resolution.

We also ask the PSC to take a close look at the history of seismic upgrades in the NW Industrial Area when considering the argument that new regulations would disincentivize future seismic upgrades. Put plainly, facilities in the NW Industrial area have not been investing in seismic upgrades without restrictions on expansion so this argument seems particularly disingenuous. Rather than disincentivizing seismic upgrades, we believe that the non-conforming use designation will inspire even more conversation about how to incentivize or require existing facilities to invest in seismic upgrades. We are communicating several strategies to city staff and expect future reform efforts in line with BPS's recommendation for further Resolution implementation and seismic safety policy.

Appendix C presents a potential code change to support these additional criteria, prepared by Trish Weber, Land Use Consultant for the Center for Sustainable Economy.

Small Terminal Aggregation:

350PDX is concerned about the trend of terminal aggregation in fossil fuel projects, of which we have some examples in the Pacific Northwest. In British Columbia, where nearly two-dozen liquefied natural gas (LNG) export projects are in the proposal stage, the annual production of several LNG proposals would be three to four times larger than the annual production of the largest existing LNG terminal in the world. The way in which the projects would achieve these production volumes is through the aggregation of several terminals of equal size, each with its own liquefaction equipment, storage and other structures. The terminals would be geographic neighbors. Through the benefits of the project umbrella they would be greenlit under the same permits with respect to land use, pipelines, etc. Examples include ExxonMobil's WCC LNG project at Prince Rupert, BC (which would consist of five aggregated facilities), Woodside Energy Holdings Party's Grassy Point LNG project, and Petronas' Pacific Northwest LNG project at Port Edward.

These proposals are a part of a trend to be aware of when limiting bulk fossil fuel terminals. What we have traditionally defined as a "terminal" may in the near future be commonly treated a part of a larger "project" or "network", and the definition of the word terminal may change as the distinction between terminals dissolves and a terminal is no longer a distinct entity.

To prevent this loophole, code language should be added to limit "projects" or "networks" whose aggregate volume is greater than or equal to a Bulk Fossil Fuel Terminal.

Through amendments in the zoning code, the City of Portland can prevent the fossil fuel industry from using subsidiaries and partnerships to build small terminals that in aggregate function like a Bulk Fossil Fuel Terminal.

Appendix D presents potential code language to address terminal aggregation, prepared by Trish Weber, Land Use Consultant for the Center for Sustainable Economy.

Stakeholder & Public Involvement - The Role of Industry

In addition to our feedback on the above amendments, we question the role the fossil fuel industry (terminal operators and utilities) has had in this process. As recent Pulitzer Prize-winning articles have revealed, the fossil fuel industry has been a master of denial of climate change, and delay of action on the science. The fossil fuel industry has known since the 1960s that we must shift away from our reliance on fossil fuels if we are to avoid the dangers of runaway climate change. In the face of this evidence, the City of Portland should analyze its stakeholder involvement with a view to whether the fossil fuel industry -- especially national and

international corporations -- should be given the same ethical and legal weight of "stakeholder input" as local environmental, health, neighborhood and equity organizations when it comes to providing comments that shape the future of their industry.

In the original stakeholder process, it is our understanding that 30 organizations represented Port and industry interests while only 10 represented community, public health, or environmental interests. This distorted engagement by the industry that we are trying to constrain, combined with a reliance on industry-friendly forecasts -- without consideration of our City's climate commitments, the state of the renewable energy industry as a whole, and the prospects for clean energy in our city and immediate region -- is deeply troubling.

In particular, we are concerned with the role industry played in forecasting future demand for fossil fuels - which was instrumental in setting the 5,000,000 gallon terminal size threshold.

Final Comments

The plain language and spirit of the Resolution clearly recognize that fossil fuels are inherently dangerous throughout their entire life cycle and that Portland's seismic instability creates abnormally high risks for infrastructure that is already demonstrably dangerous. Fossil fuel terminal zoning code changes need to reflect the scientific realities of climate change and lower the exposure of Portland residents to the unacceptably high risks inherent in dangerous fossil fuel infrastructure.

Last November, at the end of a year of enormous community participation in local policymaking, the Portland City Council voted 5-0 to say no to new fossil fuel infrastructure because of the inherent dangers it poses to the health and safety of Portland residents. Community organizations overwhelmingly supported the measure over a the objections of a small and vocal group of industry representatives. Since November, the Comprehensive Plan update has clarified Portland's long-term policy goals for climate and seismic safety. Specifically, the plan encourages us to limit fossil fuel infrastructure in line with "regional demand" (Policy 6.48) -- which is currently stagnant and must continually decrease if we are to meet our binding climate commitments and goals -- and contains general proscriptions to regulate industrial areas to protect public health (Policy 6.38c) and ensure seismic safety (Policies 4.14, 4.62, 4.79, 4.80, 4.81, and 4.82). A strong fossil fuel terminal zoning code implementation also follows the city's and state's carbon reduction goals as stated in the 2015 Portland Climate Action Plan and Oregon House Bill 3543. Furthermore, Mayor-elect Ted Wheeler has promised to facilitate the design and implementation of a 100% renewable energy Portland strategy. We have collectively set a path forward and it is up to the Planning and Sustainability Commission to make sure our stated policy becomes law so we can protect the health and safety of Portland residents and begin the just transition to a clean and renewable economy.

Fossil fuels are inherently unsafe when we extract them, transport them, store them, and ultimately burn them. For Portlanders who hadn't previously taken notice of the issue, the recent oil train derailment in Mosier, OR brought full attention to the risks posed to our community every day. There have been too many small spills and close calls in Portland and the surrounding areas. Given the risk of a 9.0 earthquake in the next 30-50 years, Portland must address the current risks from our existing infrastructure in a scientifically sound manner, while simultaneously disallowing new fossil fuel facilities to be built or expanded upon.

Since the Resolution was passed in November 2015, global understanding of the severity of climate change has only increased. We now know that in order to meet the goal of limiting global warming to 1.5C, as laid out in the Paris Climate Agreement, we must begin an immediate transition away from fossil fuels to 100% renewable energy, with greenhouse gas emissions declining to zero far more rapidly than previously thought. We also now have the technology to transition off of fossil fuels to an economy based on energy efficiency and 100% renewable energy[1]. And we now have studies that show that, for the same amount of investment, an investment in energy efficiency and renewable energy will result in far more jobs. In July 2016, the Labor Network for Sustainability released a report called "THE ECONOMIC IMPACT OF CLEAN ENERGY INVESTMENTS IN THE PACIFIC NORTHWEST: ALTERNATIVES TO FOSSIL FUEL EXPORTS" which concluded that "investments in the Pacific Northwest in renewable energy and energy efficiency can generate more jobs in construction, transportation, supply chains, and operations and maintenance than a similar dollar investment in oil, coal, and natural gas infrastructure[2]." This and similar studies are extremely important to consider as we create a "just transition" policy framework that will both provide jobs for people in our community and more safely address our energy future. Given the availability of alternatives to fossil fuels, Portland should prohibit new infrastructure projects whose multi-decade investments would lock us into the fossil fuel economy for another 40 years instead of facilitating the transition to safer alternatives.

We don't need new fossil fuel infrastructure in Portland and industry's own projections confirm it. As city staff accurately pointed out in the Sept. 13 hearing, demand for petroleum and gas in the State of Oregon and natural gas use in the City of Portland has been constant or decreasing consistently. Even Northwest Natural's 2014 Integrated Resource Plan (IRP) does not indicate that Northwest Natural anticipates any increase in storage demand at its Portland LNG facility. On the contrary, NW Natural's projections show capacity remaining constant at its Portland LNG facility throughout the planning period for the report. The City of Portland should not facilitate expansions that aren't needed to meet local demand and not even predicted by the industry. Any short term increases in local demand as we transition to a renewable energy economy can be met by small increases in throughput at existing facilities.

[1] http://web.stanford.edu/group/efmh/jacobson/Articles/I/USStatesWWS.pdf
[2] http://www.labor4sustainability.org/files/NorthPacific_final_03032016_.pdf

Further, other jurisdictions on the west coast are following Portland's work and are beginning to pass related bans on fossil fuel terminals, including Vancouver, WA (Oil Terminal Ban[3]), Hoquiam, WA (Oil Terminal Ban) and Oakland, CA (Coal Terminal Ban). A straight prohibition of new fossil fuel terminals will be consistent with other jurisdictions that are passing full bans, not size restrictions.

There is no negotiating with the physics of climate change. If we don't say "no" to fossil fuels and immediately begin our justice-based transition to a green energy economy, we'll quickly be cooked.

The City of Portland should stay true to the intent and intended impact of the Resolution and comprehensively prohibit new fossil fuel terminals and terminal expansions of any fuel type, of any size, anywhere in Portland.

[3]http://www.cityofvancouver.us/sites/default/files/fileattachments/city_council/page/20031/08_sr099-16_prohibition_of_crude_oil_facilities.pdf

Appendix A: Fossil Fuel Terminal

Industrial Use Categories

33.920.300 Fossil Fuel Terminal*

A. Characteristics. Fossil Fuel Terminals are establishments engaged in the transport and storage of fossil fuels. Terminal activities may also include fuel blending, regional distribution, and wholesaling. The firms rely on access by marine, railroad or regional pipeline to transport fuels to or from the site. There is minimal on-site sales activity with the customer present.

B. Accessory uses. Accessory uses may include retail sales of petroleum products, offices, food membership distribution, parking, storage, truck fleet parking and maintenance areas, rail spur or lead lines, and docks.

C. Examples. Examples include crude oil terminals, petroleum products terminals, natural gas terminals, propane terminals, and coal terminals.

D. Exceptions.

1. Truck or marine freight terminals that do not store, transport or distribute fossil fuels are classified as Warehouse and Freight Movement uses.

2. Gasoline stations and other retail sales of fossil fuels are not Fossil Fuel Terminals.

3. Distributors and wholesalers that receive and deliver fossil fuels exclusively by truck are classified as Warehouse and Freight Movement uses.

4. Industrial, commercial, institutional, and agricultural firms that exclusively store fossil fuels for use as an input are not Fossil Fuel Terminals.

5. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste- Related uses.

6. The storage of fossil fuels for exclusive use at an airport, surface passenger terminal, marine, truck or air freight terminal, rail yard, or as part of a fleet vehicle servicing facility are accessory to their use.

7. Uses that recover or reprocess used petroleum products are not Fossil Fuel Terminals.

** Additional locations in proposed amendment where "Bulk Fossil Fuel Terminal" would be revised to "Fossil Fuel Terminal" are not shown here. It is assumed that if this revision is adopted the necessary updates to other Code sections would be included as well.*

Appendix B: Bulk Fossil Fuel Terminal

Industrial Use Categories

33.920.300 Bulk Fossil Fuel Terminal

A. Characteristics. Bulk Fossil Fuel Terminals are establishments engaged in the transport and bulk storage of fossil fuels. Terminal activities may also include fuel blending, regional distribution, and wholesaling. The firms rely on access by marine, railroad or regional pipeline to transport fuels to or from the site and either have transloading facilities for transferring a shipment between transport modes, or have storage capacity exceeding 2 million gallons (or equivalent volume) of fossil fuels. There is minimal on-site sales activity with the customer present.

B. Accessory uses. Accessory uses may include retail sales of petroleum products, offices, food membership distribution, parking, storage, truck fleet parking and maintenance areas, rail spur or lead lines, and docks.

C. Examples. Examples include crude oil terminals, petroleum products terminals, natural gas terminals, propane terminals, and coal terminals.

D. Exceptions.

1. Truck or marine freight terminals that do not store, transport or distribute fossil fuels are classified as Warehouse and Freight Movement uses.

2. Truck or marine freight terminals that do not have transloading facilities and have storage capacity of less than 2 million gallons are classified as Warehouse and Freight Movement uses.

3. Gasoline stations and other retail sales of fossil fuels are not Bulk Fossil Fuel Terminals.

4. Distributors and wholesalers that receive and deliver fossil fuels exclusively by truck are classified as Warehouse and Freight Movement uses.

5. Industrial, commercial, institutional, and agricultural firms that exclusively store fossil fuels for use as an input are not Bulk Fossil Fuel Terminals.

6. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste- Related uses.

7. The storage of fossil fuels for exclusive use at an airport, surface passenger terminal, marine, truck or air freight terminal, rail yard, or as part of a fleet vehicle servicing facility are accessory to their use.

8. Uses that recover or reprocess used petroleum products are not Bulk Fossil Fuel Terminals.

Appendix C: Nonconforming Situation Review

33.258.80 Nonconforming Situation Review

A. Procedure. A nonconforming situation review is processed through a Type II procedure.

B. Approval criteria. The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. All requests must comply with the following review criteria:

~~1.~~ a. 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.~~ (1) The hours of operation;

~~b.~~ (2) Vehicle trips to the site and impact on surrounding on-street parking;

~~c.~~ (3) Noise, vibration, dust, odor, fumes, glare, and smoke;

~~d.~~ (4) Potential for increased litter; and

~~e.~~ (5) The amount, location, and nature of any outside displays, storage, or activities; and

~~2.~~ b. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:

~~a.~~ (1) Building scale, placement, and facade;

~~b.~~ (2) Parking area placement;

~~c.~~ (3) Buffering and the potential loss of privacy to abutting residential uses; and Lighting and signs; and

~~d.~~ (4) Lighting and signs; and

~~3.~~ c. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone~~.~~; and

2. Because fossil fuels pose risks to safety, health, and livability, including mobility of people, other freight, and other commercial vehicles, because the extraction and combustion of fossil fuels are significant sources of greenhouse gas emissions and major contributors to climate change and pollution, and given the record of crude oil and coal or other fossil fuel transport accidents, Bulk Fossil Fuel Terminal are subject to these additional review criteria. 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 based on the following factors:

a. The effects of greenhouse gas (GHG) emissions and climate change, where:

(1) GHG is defined as the following:

- carbon dioxide,
- methane,
- nitrous oxide,
- hydrofluorocarbons,
- perfluorocarbons,
- nitrogen trifluoride,
- and sulfur hexafluoride,

(2) Both direct and indirect GHG emissions are to be considered, where

- Direct GHG emissions are emissions from the Bulk Fossil Fuel Terminal Use site, and
- Indirect GHG emissions are emissions that are a consequence of the activities of the Bulk Fossil Fuel Terminal Use site, but occur at sources located elsewhere, and

(3) Quantification tools and methodology employed is to be per the White House Council on Environmental Quality's publication *"2012 Guidance for Accounting and Reporting,"* as amended over time.

As the totality of climate change impacts is not attributable to any single action, but are exacerbated by a series of actions, a statement that emissions from a request involving a Bulk Fossil Fuel Terminal represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding the impact of climate change impacts on the surrounding area. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a request, because this approach does not reveal anything beyond the nature of the climate change challenge itself: the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large impact.

(b) The effects of a fire and/or explosion at either the Bulk Fossil Fuel Terminal Site or transportation equipment or infrastructure used to convey fossil fuels to or from the Bulk Fossil Fuel Terminal, and

(c) The effects of a breach and release of fossil fuels from either the Bulk Fossil Fuel Terminal Site or transportation equipment or infrastructure used to convey fossil fuels to or from the Bulk Fossil Fuel Terminal, into the Columbia River and/or contributory waterways.

(d) When considering the effects of (b), and (c), above, the likelihood of an event occurring should be evaluated in the context of the scale and severity of the deleterious impact on the surrounding area.

Appendix D: Small Terminal Aggregation

To prevent this loophole, code language should be added to limit “projects” whose aggregate volume is greater than or equal to a Bulk Fossil Fuel Terminal.

Under the City’s current definitions of “Development,” “Site,” and “Ownership”, if there is a proposal to build things like storage facilities or loading equipment that contribute to the function of the Bulk Fossil Fuel Terminal that are on contiguous lots owned by the same corporation, that is all one Bulk Fossil Fuel Terminal and therefore the maximum quantitative limits apply. However, there is a concern that subsidiary companies will be used to circumvent the proposed size restrictions on new fossil fuel terminals.

Proposal: add the following language to Section 33.910.030 Definitions under "Ownership":

> *"Contiguous lots that are owned by multiple corporations that are subsidiaries of a single corporation are considered to be a single ownership."*

Commentary:
This will prevent them from setting up a number (e.g. five) different subsidiaries, having each subsidiary own one lot of a set of five that are all contiguous, and submitting five different applications, each for 5M gallons, saying that they are five different site because each site is owned by a different entity. This change will say, basically, "No, this is not five different terminals with five different applications because they are on five different sites, because all five sites are owned by the same parent corporation and therefore comprise one site, so it is one development application and thus subject to the maximum limits.

PROPOSED CHANGES

33.910.030 Definitions

Development. All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land. See also Exterior Improvements.

Site. <...> the site is an ownership except as follows:
• If a proposed development includes more than one ownership, then all the ownerships are included as the site.

• If a proposed development includes only a portion of an ownership, and the balance of the ownership is vacant, then the applicant may choose to define the site as the portion of the ownership that is proposed for development.
• If a proposed development includes only a portion of an ownership, and there is other development on the ownership, then the applicant may choose to define the site as the portion of the ownership that is currently developed plus the portion proposed for development.

Ownership. An ownership is one or more contiguous lots that are owned by the same person, partnership, association, or corporation. Ownership also includes lots that are in common ownership but are separated by a shared right-of-way. *Contiguous lots that are owned by multiple corporations that are subsidiaries of a single corporation are considered to be a single ownership.*

<...>