



# Land Use Compatibility Statement

## What is a land use compatibility statement?

A LUCS is a form developed by DEQ to determine whether a DEQ permit or approval will be consistent with local government comprehensive plans and land use regulations.

## Why is a LUCS required?

DEQ and other state agencies with permitting or approval activities that affect land use are required by Oregon law to be consistent with local comprehensive plans and have a process for determining consistency. DEQ activities affecting land use and the requirement for a LUCS may be found in [Oregon Administrative Rules chapter 340, division 18](#).

## When is a LUCS required?

A LUCS is required for nearly all DEQ permits and certain approvals of plans or related activities that affect land use prior to issuance of a DEQ permit or approval. These permits and activities are listed in section 1.D on p. 1 of the LUCS form. A single LUCS can be used if more than one DEQ permit or approval is being applied for concurrently.

Permit modifications or renewals also require a LUCS when any of the following applies:

1. Physical expansion on the property or proposed use of additional land
2. Alterations, expansions, improvements or changes in method or type of disposal at a solid waste disposal site as described in
3. A significant increase in discharges to water
4. A relocation of an outfall outside of the source property
5. Any physical change or change of operation of an air pollutant source that results in a net significant emission rate increase as defined in

## How to complete a LUCS

Step	Who Does It?	What Happens?
1	Applicant	Applicant completes Section 1 of the LUCS and submits it to the appropriate city or county planning office.
2	City or County Planning Office*	City or county planning office completes Section 2 of the LUCS to indicate whether the activity or use is compatible with the acknowledged comprehensive plan and land use regulations, attaches written findings supporting the decision of compatibility, and returns the signed and dated LUCS to the applicant.
3	Applicant	Applicant submits the completed LUCS and any supporting information provided by the city or county to DEQ along with the DEQ permit application or approval request.

\* Review is needed by the city **and** county if both have jurisdiction.

## Where to get help

For questions about the LUCS process, contact the DEQ staff responsible for processing the permit or approval. DEQ staff may be reached at 1-800-452-4011 (toll-free, inside Oregon) or 503-229-5630. For general questions, please contact [DEQ land use staff](#).

## Translation or other formats

Español | 한국어 | 繁體中文 | Русский | Tiếng Việt | العربية  
800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov)

## **Cultural resources protection laws**

Applicants involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction, or alteration of an archeological site or object or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking, to consider the effect of the undertaking that is included on or eligible for inclusion in the National Register.

For further information, contact the [State Historic Preservation Office](#) or 503-986-0690.

## **Non-discrimination statement**

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).

SECTION 1 - TO BE COMPLETED BY APPLICANT	
<b>1A. Applicant Name:</b>	<b>1B. Project Name:</b>
<b>Contact Name:</b>	<b>Physical Address:</b>
<b>Mailing Address:</b>	<b>City, State, Zip:</b>
<b>City, State, Zip:</b>	<b>Tax Lot #:</b>
<b>Telephone:</b>	<b>Township:            Range:            Section:</b>
<b>Tax Account #:</b>	<b>Latitude:</b>
	<b>Longitude:</b>
<b>1C. Describe the project, include the type of development, business, or facility and services or products provided (attach additional information if necessary):</b>	
<b>1D. Check the type of DEQ permit(s) or approval(s) being applied for at this time.</b> <div style="display: flex; flex-wrap: wrap;"> <div style="flex: 50%;"> <input type="checkbox"/> Air Quality Notice of Construction  <input type="checkbox"/> Air Contaminant Discharge Permit (excludes portable facility permits)  <input type="checkbox"/> Air Quality Title V Permit  <input type="checkbox"/> Air Quality Indirect Source Permit  <input type="checkbox"/> Parking/Traffic Circulation Plan  <input type="checkbox"/> Solid Waste Land Disposal Site Permit  <input type="checkbox"/> Solid Waste Treatment Facility Permit  <input type="checkbox"/> Solid Waste Composting Facility Permit (includes Anaerobic Digester)  <input type="checkbox"/> Conversion Technology Facility Permit  <input type="checkbox"/> Solid Waste Letter Authorization Permit  <input type="checkbox"/> Solid Waste Material Recovery Facility Permit  <input type="checkbox"/> Solid Waste Energy Recovery Facility Permit  <input type="checkbox"/> Solid Waste Transfer Station Permit  <input type="checkbox"/> Solid Waste - Waste Tire Storage Site Permit  <input type="checkbox"/> Solid Waste Commingled Recycling Processing Facility Permit  <input type="checkbox"/> Solid Waste Limited Sort Facility Permit </div> <div style="flex: 50%;"> <input type="checkbox"/> Hazardous Waste Treatment, Storage, or Disposal Permit  <input type="checkbox"/> Pollution Control Bond Request  <input type="checkbox"/> Clean Water State Revolving Fund Loan Application  <input type="checkbox"/> Wastewater and Sewer Construction Plan and Specifications (new and modified systems)  <input type="checkbox"/> Water Quality NPDES Individual Permit  <input type="checkbox"/> Water Quality WPCF Individual Permit (for onsite construction-installation permits use the DEQ <a href="#">Onsite LUCS form</a>)  <input type="checkbox"/> Water Quality NPDES Stormwater General Permit (1200-A, 1200-C, 1200-CA, 1200-COLS, and 1200-Z)  <input type="checkbox"/> Water Quality General Permit (all general permits, except 600, 700-PM, 1700-A, and 1700-B when they are mobile.)  <input type="checkbox"/> Water Quality 401 Certification for federal permit or license </div> </div>	
<b>1E. This application is for:</b> <input type="checkbox"/> Permit Renewal <input type="checkbox"/> New Permit <input type="checkbox"/> Permit Modification <input type="checkbox"/> Other:	

## Oregon DEQ Land Use Compatibility Statement

SECTION 2 - TO BE COMPLETED BY CITY OR COUNTY PLANNING OFFICIAL		
<b>Applicant Name:</b>	<b>Project Name:</b>	
<b>Instructions:</b> Written findings of fact for all local decisions are required; written findings from previous actions are acceptable. For uses allowed outright by the acknowledged comprehensive plan, DEQ will accept written findings in the form of a reference to the specific plan policies, criteria, or standards that were relied upon in rendering the decision with an indication of why the decision is justified based on the plan policies, criteria, or standards.		
<b>2A. The project is located:</b> <input type="checkbox"/> Inside city limits <input type="checkbox"/> Inside UGB <input type="checkbox"/> Outside UGB		
<b>2B. Name of the city or county that has land use jurisdiction</b> (the legal entity responsible for land use decisions for the subject property or land use): <input type="checkbox"/> This project or land use is not within the land use jurisdiction of any other city or county. <input type="checkbox"/> This project is also within the land use jurisdiction of the following city or county:		
<b>2C. Is the activity a composting facility?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes; SB 462 (2013) notification requirements have been met.		
<b>2D. Is the activity or use compatible with your acknowledged comprehensive plan as required by OAR 660-031?</b> Please complete this form to address the activity or use for which the applicant is seeking approval (see 1.C on the previous page). If the activity or use is to occur in multiple phases, please ensure that your approval addresses the phases described in 1.C. For example, if the applicant's project is described in 1.C as a subdivision and the LUCS indicates that only clearing and grading are allowed outright but does not indicate that the subdivision is approved, DEQ will delay its permit issuance until approval for the <i>entire</i> subdivision is obtained from the local planning official.		
<input type="checkbox"/> The activity or use is specifically exempt by the acknowledged comprehensive plan; explain:		
<input type="checkbox"/> <b>YES</b> , the activity or use is pre-existing nonconforming use allowed outright by (provide reference for local ordinance):		
<input type="checkbox"/> <b>YES</b> , the activity or use is allowed outright by (provide reference for local ordinance):		
<input type="checkbox"/> <b>YES</b> , the activity or use received preliminary approval that includes requirements to fully comply with local requirements; findings are attached.		
<input type="checkbox"/> <b>YES</b> , the activity or use is allowed; findings are attached.		
<input type="checkbox"/> <b>NO</b> , complete below or attach findings for noncompliance and identify requirements the applicant must comply with before compatibility can be determined. Relevant specific plan policies, criteria, or standards:  Provide the reasons for the decision:		
Additional comments (attach additional information as needed):		
<b>Planning Official Signature:</b>		<b>Title:</b>
<b>Print Name:</b>	<b>Telephone #:</b>	<b>Date:</b>
<b>If necessary, depending upon city/county agreement on jurisdiction outside city limits but within UGB:</b>		
<b>Planning Official Signature:</b>		<b>Title:</b>
<b>Print Name:</b>	<b>Telephone #:</b>	<b>Date:</b>

**1C. Describe the project, include the type of development, business, or facility and services or products provided (attach additional information if necessary):**

**Summary:** Applicant seeks this LUCS for purposes of obtaining an Air Contaminant Discharge Permit (“ACDP”) that will facilitate the existing use’s continued transition toward renewable fuels by (1) phasing out all crude oil at the site by October 3, 2027 and (2) reducing – through disassembly and removal by October 3, 2029 – 30 of the existing storage tanks on the site on October 3, 2022. These near-term changes will eliminate crude oil activity (whether by rail, marine, or otherwise) on site and continue to move the facility toward renewable fuels while also further improving resiliency. This LUCS will also serve to support Air Quality Notice of Construction (aka Notice of Approval) applications as needed to effectuate the activities stated below.

**Details:** No new development or facilities for handling fossil fuels are proposed in connection with this LUCS application, with the exception of new valves and associated piping/components necessary to handle jet fuel and sustainable aviation fuel (“SAF”) jet fuel blend at the Repositioned Facility. No new storage tanks or rail racks (whether for fossil fuels, renewable fuels, or non-fuel products) are proposed in connection with this LUCS application. This LUCS is limited to (1) new or modified piping, headers, pumps, valves, racks, vapor combustion units etc. that require an Air Quality Notice of Construction and are needed to transload renewable fuels (*e.g.*, installing a header for renewable fuels on the existing rail racks to load and unload renewable fuels, installing additional dock lines for loading and unloading of renewable fuels, refurbishing existing truck racks to deliver additional renewable fuels within the region and installing vapor combustion units), mix, store and transload renewable fuels, jet fuel, and SAF jet fuel blend, or otherwise effectuate the activities described in this application, (2) the pending application for a new Air Contaminant Discharge Permit (“ACDP”) for operations consistent with the 2022 LUCS and this LUCS application, and (3) Title V Air Operating Permit No. 26-2025 until such time as that Title V permit is terminated consistent with the 2022 LUCS and this LUCS application. This LUCS does not include any alterations that are riverward of the top of bank, within the greenway setback, and within 50 feet landward of the greenway setback along the Willamette River (collectively, the “Greenway Review Area”) unless and until the requisite land use approval(s) for such alterations are obtained from the City of Portland (*e.g.*, this LUCS includes the alterations within the Greenway Review Area on Tax lot 1300 (1N1E18C 1300) including use of the dock extending into the Willamette River appurtenant to that tax lot that the City already approved in LU 23-046738 GW). The Repositioned Facility is a river-related and river-dependent marine terminal use, and therefore allowed under the “i” overlay zone.

The site is located at 5501 NW Front Avenue, which is within the Heavy Industrial (IH) zone, and currently contains an existing petroleum, petroleum products, and renewable fuels bulk distribution terminal and asphalt refinery (SIC Codes 4226 and 2911), including (a) bulk storage tanks with an aggregate capacity of 1,518,200 barrels, 44 railcar spots, rail and truck racks, vapor combustion unit (which destroys emissions associated with marine loading of volatile fuels stored at the terminal), piping, fire suppression equipment and facilities, and other associated structures, facilities and equipment on Zenith’s property comprises tax lot 400 (1N1E19B 400), tax lot 500 (1N1E19B 500), and tax lot 1500 (1N1E18C 1500) (collectively, the “**Zenith Property**”), and (b) operations and/or facilities that have the potential to emit air contaminants from third-party tax lot 800 (1N1E18C 800) including use of the dock extending into the Willamette River appurtenant to

this tax lot, tax lot 1600 (1N1E18C 1600), tax lot 1300 (1N1E18C 1300) including use of the dock extending into the Willamette River appurtenant to this tax lot, tax lot 100 (1N1E19B 100), and tax lot 500 (1N1E18C 500) (collectively with the Zenith Property, the “**Repositioned Facility**”).

The Repositioned Facility will continue to be subject to the limitations and compliance measures imposed by the City under 2022-182133-000-00-PR (the “**2022 LUCS**”) for so long as the pending ACDP application to which the 2022 LUCS and this LUCS pertains remains pending and the resulting ACDP permit remains in full force and effect (with such limitations being conditions enforceable by the City of Portland pursuant to PCC 33.700.030<sup>4</sup>). For the avoidance of doubt, the Repositioned Facility will be limited by the following after affirmative approval of this LUCS application (the “**Approval**”) and for so long as the aforementioned ACDP application remains pending and the resulting ACDP permit remains in full force and effect (with such limitations being conditions enforceable by the City of Portland pursuant to PCC 33.700.030<sup>4</sup>):

1. **Near-Term Phase Out of All Crude Oil.** The eight railcar spots that comprise Railcar Rack #1A (*i.e.*, railcar spots 501-504 & 701-704), which are identified on the site plan attached to the 2022 LUCS as Exhibit 3, will not be used to transload crude oil during the five-year period that commenced on October 3, 2022 (*i.e.*, the date the City approved the 2022 LUCS), and Zenith shall not reconnect the existing crude oil header at those eight railcar spots.<sup>5</sup>

By October 3, 2027 (*i.e.*, the fifth anniversary of the City’s approval of the 2022 LUCS), Zenith will cease using the remaining 36 railcar spots and the Repositioned Facility in its entirety (including any Zenith facilities on the other third-party properties) to transload crude oil. For the avoidance of doubt, the Repositioned Facility will not store or handle crude oil (whether by rail, marine, or otherwise) after October 3, 2027. In addition, for so long as DEQ accepts this LUCS for purposes of Title V Air Operating Permit No. 26-2025, consistent with the 2022 LUCS and this LUCS, the owner/operator of the Repositioned Facility will not submit to the DEQ any LUCS that is inconsistent with the phase out of crude oil set forth in this LUCS.

2. **Near-Term Reduction of Existing Storage Tank Capacity.** At the time the 2022 LUCS was approved, the Repositioned Facility included the thirty (30) storage tanks identified in blue on the site plan attached as Exhibit 4 to the 2022 LUCS, which the 2022 LUCS required be disassembled and removed by October 3, 2029 (*i.e.*, the seventh anniversary of the City’s approval of the 2022 LUCS). After October 3, 2022 the owner/operator of the terminal will not construct any new storage tanks for fossil fuels, including jet fuel that would be blended with SAF to produce SAF jet fuel blend. This limitation shall not preclude the construction of new storage tanks so long as any such new storage tank is used

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<sup>4</sup> To the extent the Oregon Dep’t of Environmental Quality incorporates these limitations into the ACDP, they will also be enforceable by the Oregon Dep’t of Environmental Quality under the ACDP. Regardless, though, these limitations will be enforceable with respect to the site – including, but not limited to, the current property owner/operator – by the City of Portland under the LUCS.

<sup>5</sup> Zenith ceased its use of the eight railcar spots for transloading crude oil on October 3, 2022. Zenith disconnected the eight railcar spots from the crude oil header by cutting and removing piping on December 9, 2022, meeting the April 3, 2023 compliance deadline under the 2022 LUCS.

solely for renewable fuels or non-fuel products nor shall this limitation affect existing storage tanks.

Zenith may seek approval using this LUCS to install new internal floating roofs on existing storage tanks that do not have internal floating roofs on October 3, 2022, including on Tank 100, Tank 101 and/or Tank 102, provided that any such storage tanks shall not be used to store crude oil.<sup>6</sup>

3. **Reduce Allowable Emissions of Volatile Organic Compounds by Nearly 80%.** This LUCS will support Zenith's pending application for and approval of an ACDP to replace Title V Air Operating Permit No. 26-2025.<sup>7</sup> The requested ACDP requires volatile organic compound ("VOC") emissions be less than 40 tpy. In contrast, Title V Air Operating Permit No. 26-2025 allows 179 tpy, which is over 4.5 times as much VOCs on an annual basis.

In addition, from October 3, 2022 until issuance of an ACDP consistent with the 2022 LUCS and this LUCS application and successful resolution of any and all appeals or petitions for reconsideration such that the ACDP is in full force and effect, the property owner/operator of the terminal will continue to comply with a rolling 12-month VOC emission limit equal to one-half the current 179 tpy limit – i.e., an interim VOC emissions limit of 89.5 tpy (the "Interim VOC Limit").<sup>8</sup>

4. **Asphalt Refinery Not to be Operated After Issuance of the ACDP.** The owner/operator of the terminal will request, no later than 30 days after issuance of an ACDP consistent with the 2022 LUCS and this LUCS application and successful resolution of any and all appeals or petitions for reconsideration such that the ACDP is in full force and effect, that DEQ immediately terminate Title V Air Operating Permit No. 26-2025. The ACDP will not authorize asphalt refining, the feedstock for which is crude oil.

As used above and in the Compliance Measures below, fossil fuels and renewable fuels are synonymous with the definitions of "fossil fuel" and "renewable fuel" in PCC 33.910.030, with the understanding that renewable feedstocks (as defined by EPA) is considered a "renewable fuel."

**Compliance Measures:** The applicant, which is the property owner/operator of the Repositioned Facility that is the subject of this LUCS, will continue to comply after the Approval of this LUCS with the following measures that were imposed by the 2022 LUCS to assure compliance with the limited use subject to this LUCS:

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<sup>6</sup> Zenith notified DEQ on October 10, 2022 (prior to the November 2, 2022 deadline imposed by the 2022 LUCS) that it was withdrawing that certain Notice of Approval Application, dated December 18, 2019, to install internal floating roofs on Tank 100, Tank 101 and Tank 102 (which are identified as T-100, T-101, and T-102, respectively, on the site plan attached as Exhibit 3 to the 2022 LUCS).

<sup>7</sup> Zenith submitted the pending ACDP application consistent with the 2022 LUCS to DEQ on November 11, 2022, which satisfied deadline of March 31, 2023 under the 2022 LUCS.

<sup>8</sup> After October 3, 2022 Zenith submitted annual reports under Title V Permit 26-2025 to DEQ and PP&D/BDS Land Use Services on February 13, 2023 and April 17, 2024. All reports show that the Repositioned Facility's emissions are below the Interim VOC Limit.

- A. To ensure the site is not used in a manner that conflicts with the crude oil phase out limitation detailed in #1 above, the property owner/operator of the terminal will:<sup>9</sup>
- i. The property owner/operator will allow City inspectors, immediately upon request, to access the terminal to confirm that the eight railcar spots that comprise Railcar Rack #1A (*i.e.*, railcar spots 501-504 & 701-704), which are identified on the site plan attached as Exhibit 3 to the 2022 LUCS are not used to unload crude oil. The property owner/operator will allow City inspectors, immediately upon request, to access the terminal to confirm that the crude oil header at those eight railcar spots has been disconnected at those eight railcar spots so that they cannot be used to unload crude oil.
  - ii. Hire, at its sole expense, an independent, third-party to inspect, sample and test materials delivered to the terminal and unloaded (A) at the aforementioned eight railcar spots removed from crude service during the five-year period between October 3, 2022 and October 2, 2027, and (B) thereafter at any railcar spot on the Zenith Property. The independent, third party must be an EPA registered laboratory and acceptable to the City. In each calendar quarter the independent third-party will conduct at least one random inspection and take samples of and test such delivered materials. The third-party testing service shall conduct such sampling, testing or inspections as the third-party testing service determines is necessary, in its professional judgment, to determine whether the sampled materials are crude oil. Within 30 days of sampling, inspection, and testing, the independent, third-party will report to PP&D Land Use Services whether the sampled materials are crude oil. Samples shall be taken from the piping (*e.g.*, from an in-line sampling port) running between the applicable rail racks and the existing storage tanks within which such materials are stored. The report to PP&D Land Use Services must be accompanied by a signed statement from the independent third-party's qualified professional certifying that the materials sampled are not crude oil. In addition, the City has the right to review and verify the third-party's sampling data but is not authorized to take possession of the data, and the property owner/operator will allow City inspectors, immediately upon request, to access the terminal and infrastructure to conduct its own sampling and testing.
  - iii. Concurrent with submitting any LUCS to DEQ, transmit a copy thereof to PP&D Land Use Services.
- B. To ensure that storage tank capacity on the site is reduced consistent with #2 above, within 30 days after the end of every calendar quarter following October 3, 2022, the property owner/operator of the terminal will report to PP&D Land Use Services on the storage tanks so disassembled and removed in the prior calendar quarter. Timeline:

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<sup>9</sup> As previously noted, Zenith ceased its use of the eight railcar spots for transloading crude oil on October 3, 2022. Zenith disconnected the eight railcar spots from the crude oil header by cutting and removing piping on December 9, 2022 meeting the April 3, 2023 compliance deadline under the 2022 LUCS.



- i. By October 3, 2024 (*i.e.*, the second anniversary of the City's approval of the 2022 LUCS), no less than seven storage tanks shall have been disassembled and removed;<sup>10</sup>
- ii. By October 3, 2026 (*i.e.*, the fourth anniversary of the City's approval of the 2022 LUCS), no less than 14 storage tanks shall have been disassembled and removed;
- iii. By October 3, 2028 (*i.e.*, the sixth anniversary of the City's approval of the 2022 LUCS), no less than 21 storage tanks shall have been disassembled and removed; and
- iv. By October 3, 2029 (*i.e.*, the seventh anniversary of the City's approval of the 2022 LUCS), 30 storage tanks shall have been disassembled and removed.

If storage tank disassembly and removal pursuant to the above timeline is delayed by force majeure, this timeline shall be adjusted accordingly.

To ensure that no new storage tanks for fossil fuels are constructed on the site consistent with #2 above, the property owner/operator will allow City inspectors, immediately upon request, to access the terminal and infrastructure to confirm whether, subsequent to October 3, 2022, any new storage tanks used for storing fossil fuels have been constructed on the site.

If a new internal floating roof is installed subsequent to October 3, 2022 on any existing storage tank that does not have an internal floating roof on October 3, 2022,<sup>11</sup> the Notice of Approval Application associated with such internal floating roof will specify that the subject storage tank will not be used to store crude oil. In addition, the property owner/operator will allow City inspectors, immediately upon request, to access the terminal and infrastructure to confirm that no existing storage tank(s) in which an internal floating roof(s) was first installed subsequent to October 3, 2022 have been used to store crude oil.

C. To ensure that allowable emissions of VOC are decreased consistent with #3 above:<sup>12</sup>

- i. No later than 30 days after issuance of an ACDP consistent with the 2022 LUCS and this LUCS application and successful resolution of any and all appeals or petitions for reconsideration such that the ACDP is in full force and effect, the owner/operator of the terminal will request that DEQ immediately terminate

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<sup>10</sup> Zenith has already satisfied this 2022 LUCS Compliance Measure.

<sup>11</sup> As previously noted, Zenith notified DEQ on October 10, 2022 (prior to the November 2, 2022 deadline imposed by the 2022 LUCS) that it was withdrawing that certain Notice of Approval Application, dated December 18, 2019, to install internal floating roofs on Tank 100, Tank 101 and Tank 102 (which are identified as T-100, T-101, and T-102, respectively, on the site plan attached as Exhibit 3 to the 2022 LUCS).

<sup>12</sup> As previously noted, Zenith submitted an application to DEQ for an ACDP with a less than 40 tpy VOC plant site emission limit to replace the current Title V Air Operating Permit No. 26-2025 on November 11, 2022 and submitted a copy to PP&D/BDS Land Use Services on the same day. This met the compliance deadline of March 31, 2023 set forth in the 2022 LUCS.

Title V Air Operating Permit No. 26-2025 and concurrently transmit a copy of such request to PP&D Land Use Services; and

- ii. The property owner/operator of the terminal will demonstrate compliance with the Interim VOC Limit consistent with the methodology reflected in Title V Air Operating Permit No. 26-2025 as calculated in the Title V compliance report for the terminal (being for the year 2021). Concurrent with submitting annual Title V compliance reports to DEQ after the Approval, the property owner/operator of the terminal will transmit a copy thereof to PP&D Land Use Services.
- D. To ensure that the asphalt refinery is not operated consistent with #4 above, the property owner/operator of the terminal will, no later than 30 days after issuance of an ACDP consistent with the 2022 LUCS and this LUCS application and successful resolution of any and all appeals or petitions for reconsideration such that the ACDP is in full force and effect, request that DEQ immediately terminate Title V Air Operating Permit No. 26-2025 and concurrently transmit a copy of such request to PP&D Land Use Services.

### Compatibility with Title 33 of the Portland City Code

The subject site is within the Heavy Industrial (IH) zone. The Repositioned Facility contains a transloading terminal, which is classified as an existing Bulk Fossil Fuel Terminal use. PCC 33.920.300. Existing Bulk Fossil Fuel Terminal uses are allowed outright in the IH zone “but the total amount of fossil fuel that can be stored on the site in storage tanks is limited to the fossil fuel storage tank capacity that existed on August 31, 2022.” PCC 33.140.100.B.15.a; Table 140-1 (as recently amended by Ordinance 190978). As no new storage tanks for fossil fuels are being proposed, this existing use is allowed in the IH zone.

The Repositioned Facility also contains an asphalt refinery, which is classified as a Manufacturing And Production use. PCC 33.920.320. Manufacturing And Production uses are also allowed outright in the IH zone. PCC 33.140.100; Table 140-1.

Portions of the Repositioned Facility are within the River Industrial (“i”) overlay zone and the site has frontage on the Willamette River. Under PCC 33.440.100.B.2, primary uses that are river-related or river-dependent and allowed by the base zone are allowed by right on sites with River frontage in the “i” overlay zone. The Repositioned Facility is allowed under the base zoning and is a river-dependent and river-related marine terminal; it is therefore an allowed use on the site. Greenway Review is required for alterations that are riverward of the top of bank, within the greenway setback, and within 50 feet landward of the greenway setback along the Willamette River (collectively, the “Greenway Review Area”). PCC 33.440.100.A, 33.440.210.C.1, and 33.440.320.A.2. This LUCS does not include any alterations within the “Greenway Review Area” unless and until the requisite land use approval(s) for such alterations are obtained from the City of Portland (e.g., this LUCS includes the alterations within the Greenway Review Area on Tax lot 1300 (1N1E18C 1300) including use of the dock extending into the Willamette River appurtenant to that tax lot that the City already approved in LU 23-046738 GW).

The Repositioned Facility use and proposed activities are allowed uses under the City’s Zoning Code and approved, except for any alterations within the Greenway Review Area, without land use review pursuant to ORS 197.015(10)(b)(H)(ii). As to any alterations within the Greenway Review Area, they are allowed after the requisite land use approval(s) for such alterations are obtained from the City of Portland.

### Compatibility with the 2035 Comprehensive Plan

Consistent with the City’s decision approving the 2022 LUCS, the additional LUCS is compatible with the 2035 *Comprehensive Plan* for the same reasons, as follows:

*Goal 3.B: A climate and hazard resilient urban form. Portland’s compact urban form, sustainable building development practices, green infrastructure, and active transportation system reduce carbon emissions, reduce natural hazard risks and impacts, and improve resilience to the effects of climate change.*

**Response:** The Repositioned Facility is compatible with Goal 3.B because the Repositioned Facility involves multimodal freight infrastructure, including for renewable fuels, and transitions

out of crude oil. The City Council previously interpreted this goal to guide actions to promote resilient urban form. See Ordinance 190978, Exhibit A, Finding # 80. The *2035 Comprehensive Plan* defines the verbs “reduce” to mean “lessen something relative to the current situation” and “improve” to mean “make the current situation better.”

The Repositioned Facility does not change Portland’s compact urban form and does not include comprehensive plan or zoning map changes. The Repositioned Facility does not change Portland’s sustainable building practices, green infrastructure or active transportation system.

The Repositioned Facility reduces carbon emissions, natural hazard risks and impacts, and improves resilience to the effects of climate change because under the limitations the Repositioned Facility phases out all crude oil by October 3, 2027, immediately reduces VOC emissions to less than 89.5 tpy (“Interim VOC limit”) and, subsequently, less than 40 tpy under the ACDP, removes existing storage tanks, enhances availability of SAF jet fuel blend to the Portland and Eugene airports, and eliminates all asphalt refining from the Zenith Property.

As staff found in PR 20-179970 LUCS and the 2022 LUCS, renewable fuels “contribute to the cleanliness, safety, and ecological performance of the City’s industrial development and freight corridors” and facilities delivering such fuels “promote and incentivize the use of cleaner fuel sources, reduce carbon emissions, and support efforts to slow climate change.”

Therefore, the Repositioned Facility is compatible with Goal 3.B.

*Policy 3.3: Equitable development. Guide development, growth, and public facility investment to reduce disparities; encourage equitable access to opportunities, mitigate the impacts of development on income disparity, displacement and housing affordability; and produce positive outcomes for all Portlanders.*

*3.3.a. Anticipate, avoid, reduce, and mitigate negative public facility and development impacts, especially where those impacts inequitably burden communities of color, under-served and under-represented communities, and other vulnerable populations.*

*3.3.g. Encourage developers to engage directly with a broad range of impacted communities to identify potential impacts of private development projects, develop mitigation measures, and provide community benefits to address adverse impacts.*

**Response:** The Repositioned Facility is compatible with Policy 3.3 because it limits growth in a way that produces positive outcomes for all Portlanders. The phase out of crude oil will reduce the potential impacts currently imposed on all Portlanders, especially those living and working near the rail line. The crude oil is delivered to the terminal exclusively by rail on lines that traverse Portland and the phase out will further decrease the already low chance of a catastrophic event that would be detrimental to all Portlanders.

Additionally, the Repositioned Facility supports living wage industrial jobs for Portlanders, while supporting the phase out of crude oil and transition to renewable fuels. Renewable fuels provide a financially feasible way for Portland residents and businesses to lower their transportation-related greenhouse gas emissions. Existing diesel engines can use renewable diesel thereby avoiding

expensive retrofits or the need to purchase a new vehicle to realize reduced greenhouse gas emissions. Furthermore, the City of Portland's Climate Emergency Workplan recognizes that:

“Diesel is the fourth largest source of local carbon emissions and is responsible for producing harmful air pollutants like soot (PM 2.5). *These pollutants disproportionately impact the health of Black, Indigenous, and low-income community members.* Replacing petroleum diesel at the pump is *a high-impact carbon and equity policy* that City Council has the authority to enact.”

Resolution 37585, Ex. A (emphases added). Increased use of renewable fuels benefits all Portlanders, including historically marginalized communities.

Therefore, the Repositioned Facility is compatible with Policy 3.3.

*Policy 4.33: Off-site impacts. Limit and mitigate public health impacts, such as odor, noise, glare, light pollution, air pollutants, and vibration that public facilities, land uses, or development may have on adjacent residential or institutional uses, and on significant fish and wildlife habitat areas. Pay particular attention to limiting and mitigating impacts to under-served and under-represented communities.*

**Response:** The Repositioned Facility is compatible with Policy 4.33. The *2035 Comprehensive Plan* defines the verb “limit” to mean to minimize or reduce something or the effects of something relative to the current situation or to a potential future situation. The verb “mitigate,” which is not defined in the *2035 Comprehensive Plan*, means to make less severe.

The Repositioned Facility limits public health impacts by reducing carbon emissions because the Repositioned Facility phases out all crude oil by October 3, 2027, immediately reduces VOC emissions to less than 89.5 tpy (“Interim VOC limit”) and, subsequently, less than 40 tpy under the ACDP, removes existing storage tanks, enhances availability of SAF jet fuel blend to the Portland and Eugene airports, and eliminates all asphalt refining from the Zenith Property.

Additionally, the Repositioned Facility is within the Industrial Sanctuary, zoned for Heavy Industrial use and is within the Prime Industrial overlay zone, which is specifically designated for land uses like the Repositioned Facility. The nearest residential and commercial areas are in the Linnton neighborhood, which is about a half mile to the northwest of the Repositioned Facility. The purpose of the Heavy Industrial zone designation is described as follows:

“The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.”

PCC 33.140.030.D. While the existing facility may have impacts related to glare, noise, vibration, and other nuisances, this use in a heavy industrial area supports a land use pattern where potentially objectionable impacts are isolated from homes and other nonindustrial land uses.

Building and landscape design will not be affected by this LUCS or the Repositioned Facility. The Zenith Property does not contain significant fish or wildlife habitat areas as listed on the City's Natural Resources Inventory.

Therefore, the Repositioned Facility is compatible with Policy 4.33.

*Policy 4.36: Air quality impacts. Encourage building and landscape design and land use patterns that limit and/or mitigate negative air quality impacts to building users and residents, particularly in areas near freeways, regional truckways, high traffic streets, and other sources of air pollution.*

**Response:** The Repositioned Facility is compatible with Policy 4.36. The Repositioned Facility is within the Industrial Sanctuary, zoned for Heavy Industrial use and is within the Prime Industrial overlay zone, which is specifically designated for land uses like the Repositioned Facility. Development, building, landscaping, and infrastructure design will not be affected by this LUCS.

Emissions from the Repositioned Facility's operations are regulated by DEQ, and the Repositioned Facility incorporates typically available control technology consistent with DEQ's regulations, which minimizes exposure to air toxics and criteria pollutants. Furthermore, the character of emissions associated with the Repositioned Facility and its products, will be improved as compared to the current facility and will reduce allowable emissions of volatile organic compounds by nearly 80% as compared to the current Title V permit. Issuance of the ACDP permit by DEQ will be predicated on the Repositioned Facility demonstrating to DEQ's satisfaction that it does not cause or contribute to ambient air quality standard exceedances and that toxic air contaminant emissions do not pose a material threat to sensitive individuals working or living in the community. The Repositioned Facility facilitates the use of trains, and as staff found in PR 20-179970 LUCS and the 2022 LUCS, "heavy trucks are less fuel efficient than freight trains" and the use of trains rather than trucks "help[s] to limit diesel emissions and associated air quality impacts from deliveries."<sup>13</sup>

Therefore, the Repositioned Facility is compatible with Policy 4.36.

*Policy 4.62: Seismic and energy retrofits. Promote seismic and energy-efficiency retrofits of historic buildings and other existing structures to reduce carbon emissions, save money, and improve public safety.*

**Response:** The Repositioned Facility is compatible with Policy 4.62. The verb "promote" means to "further the progress of, advance, or raise." The 2035 Comprehensive Plan defines the verb "improve" to mean make the current situation better. Further, seismic and energy-efficiency retrofits can be promoted through incentives or regulatory measures. The purpose of the policy is to reduce carbon emissions, save money and improve public safety. All three elements do not need to be satisfied with every action. Rather, those are three outcomes that may be achieved when the City promotes seismic and energy-efficiency retrofits.

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<sup>13</sup> At least three large tanker trucks are needed to move the same volume of freight as one railroad tank car, and using rail rather than trucks to transport freight results in up to 75% lower greenhouse gas emissions on average. See <https://www.aar.org/wp-content/uploads/2020/06/AAR-Sustainability-Fact-Sheet.pdf>.

Specifically, the Repositioned Facility promotes seismic retrofits and improves public safety because Zenith will not exercise its option to convert three fixed roof tanks to internal floating roof tanks and removing 30 existing tanks.

Therefore, the Repositioned Facility is compatible with Policy 4.62.

### **Policies related to hazards**

*Policy 4.79: Natural hazards and climate change risks and impacts. Limit development in or near areas prone to natural hazards, using the most current hazard and climate change- related information and maps.*

*Policy 4.80: Geological hazards. Evaluate slope and soil characteristics, including liquefaction potential, landslide hazards, and other geologic hazards.*

*Policy 4.81: Disaster-resilient development. Encourage development and site- management approaches that reduce the risks and impacts of natural disasters or other major disturbances and that improve the ability of people, wildlife, natural systems, and property to withstand and recover from such events.*

*Policy 4.82: Portland Harbor facilities. Reduce natural hazard risks to critical public and private energy and transportation facilities in the Portland Harbor.*

*Policy 7.14: Natural hazards. Prevent development-related degradation of natural systems and associated increases in landslide, wildfire, flooding, and earthquake risks.*

**Response:** The Repositioned Facility is compatible with the 2035 *Comprehensive Plan* policies related to natural hazards, including but not limited to Policies 4.79, 4.80, 4.81, 4.82, and 7.14. No natural areas will be disturbed in connection with this LUCS. The Zenith Property is flat, outside the 100-year and 500-year flood plain areas, and outside any mapped landslide hazard area or wildfire risk area.

The Repositioned Facility includes a commitment to remove 30 storage tanks over the next seven years, which will eliminate older tanks that do not meet current seismic standards. Additionally, because the Repositioned Facility will eliminate crude oil from the Zenith Property by October 3, 2027, the potential risks of an impact from crude oil to the surrounding area during a seismic event are reduced.

Therefore, the Repositioned Facility is compatible with Policies 4.79, 4.80, 4.81, 4.82, and 7.14.

*Policy 4.83: Urban heat islands. Encourage development, building, landscaping, and infrastructure design that reduce urban heat island effects.*

**Response:** In Ordinance 190178, Council found that this policy relates to development standards. This policy does not apply here.

*Policy 6.47: Clean, safe, and green. Encourage improvements to the cleanliness, safety, and ecological performance of industrial development and freight corridors by facilitating adoption of market feasible new technology and design.*

**Response:** The Repositioned Facility is compatible with Policy 6.47. “Encourage” is defined in the 2035 Comprehensive Plan to mean “promote or foster using some combination of voluntary approaches, regulations, or incentives.”

The Repositioned Facility will reduce allowable VOC emissions by nearly 80 percent, which will improve air quality. As staff found in PR 20-179970 LUCS, renewable fuels “contribute to the cleanliness, safety, and ecological performance of the City’s industrial development and freight corridors” and facilities delivering such fuels “promote and incentivize the use of cleaner fuel sources, reduce carbon emissions, and support efforts to slow climate change.” Phasing out crude oil further contributes to the objectives in Policy 6.47. The proposed renewable fuels infrastructure will contribute to the City’s sustainable development practices and reduce carbon emissions. The increase in renewable fuels to the City and region will contribute to the cleanliness, safety, and ecological performance of the City’s industrial development and freight corridors. Therefore, improvements that are intended to increase the proportion of renewable fuels in the region’s energy mix promote and incentivize the use of cleaner fuel sources, reduce carbon emissions, and support efforts to slow climate change.

Therefore, the Repositioned Facility is compatible with Policy 6.47.

*Policy 6.48: Fossil fuel distribution. Limit fossil fuels distribution and storage facilities to those necessary to serve the regional market.*

**Response:** The Repositioned Facility is compatible with Policy 6.48. Policy 6.48 calls for the City to “limit” certain facilities, and the 2035 Comprehensive Plan defines “limit” as “[m]inimize or reduce something or the effects of something relative to the current situation or to a potential future situation.” No expansion of the Repositioned Facility’s fossil fuel storage or distribution facilities is proposed in connection with this LUCS. Rather, 30 storage tanks will be removed, and crude oil will be eliminated at the Zenith Property.

The City Council has concluded that continued operation of existing bulk liquid fuel terminals, including Zenith’s terminal (which will be more limited as a Repositioned Facility), is consistent with Policy 6.48. Ordinance 190978, Ex. A, Finding #219. The transition to renewable fuel distribution will help ensure a supply a liquid transportation fuels necessary to serve the regional market.

*Policy 7.2: Environmental equity. Prevent or reduce adverse environment-related disparities affecting under-served and under-represented communities through plans and investments. This includes addressing disparities relating to air and water quality, natural hazards, contamination, climate change, and access to nature.*

*Policy 8.74: Pollution prevention. Coordinate policies, programs, and investments with partners to prevent pollutants from entering the stormwater system by managing point and non-point pollution sources through public and private facilities, local regulations, and education.*



**Response:** Policies 7.2 and 8.74 concerns plans, policies, programs, and investments. This LUCS and the Repositioned Facility are not “plans and investments” under the 2035 Comprehensive Plan. Therefore, these policies do not apply.

*Policy 9.34: Sustainable freight system. Support the efficient delivery of goods and services to businesses and neighborhoods, while also reducing environmental and neighborhood impacts. Encourage the use of energy efficient and clean delivery vehicles, and manage on- and off-street loading spaces to ensure adequate access for deliveries to businesses, while maintaining access to homes and businesses.*

**Response:** The Repositioned Facility is compatible with Policy 9.34. The City Council previously interpreted Policy 9.34 to primarily address the delivery of goods in the commercial and residential areas of Portland.

However, even if the policy does apply to industrial areas, the Repositioned Facility will diversify further into renewable fuels, while taking advantage of an existing rail line and supporting continuing investment in rail infrastructure. Expanding deliveries of renewable fuels by rail will reduce the need for these liquids to be delivered by heavy trucks. Increasing the region’s supply of renewable fuels such as biodiesel also supports a sustainable freight system by increasing the availability of sustainable fuels for local delivery vehicles.

Therefore, the Repositioned Facility is compatible with Policy 9.34.