



**RE: Zenith's 2022 LUCS**

Dear Commissioner Dan Ryan,

cc: Mayor Ted Wheeler, Portland City Council, Bureau of Development Services

We are writing on behalf of a coalition of environmental groups in the Portland area to express our serious concern over the City's lack of transparency and community involvement in the recent approval of a Land Use Compatibility Statement (LUCS) for Zenith Energy Terminal Holdings, LLC. We urge the City to rectify this lack of involvement.

As you know, this issue is one of enormous importance to many Portlanders. On September 6, 2022, Zenith submitted a new LUCS application proposing to phase out crude oil over the course of five years and implement a renewable fuel program. This new LUCS was submitted as Zenith continued to appeal the City's denial of its 2021 LUCS. Three weeks later, on October 3, 2022, the Bureau of Development Services quietly approved the 2022 LUCS. In the same week, the Oregon Supreme Court denied review of the City's decision to deny Zenith's 2021 LUCS. Neither the City nor Zenith has made any public statement regarding the legal implications of two conflicting LUCS for one facility or explaining why this decision was made so quickly.

Zenith’s 2021 LUCS application faced extensive public opposition including a push for Tribal consultation, community outreach, and further consideration of the facility’s incompatibility with our land use goals—notably environmental, climate change, and seismic goals. The community has shown significant interest and opposition to Zenith’s operations. Before the City’s decision to deny Zenith’s LUCS last fall, Portland residents, community organizations, and elected officials spoke emphatically and in large numbers against approving the LUCS, including:

- 46 neighborhood organizations signed and submitted a [letter](#) demanding denial of the LUCS;
- 20 Oregon state legislators sent a [letter](#) to Commissioner Dan Ryan asking for denial of the LUCS;
- The Multnomah County Board of Commissioners issued a [statement](#) opposing Zenith’s LUCS application;
- 17 environmental and community advocacy organizations sent a [letter](#) opposing the LUCS; and
- Thousands of residents called, petitioned, or emailed city officials.

Additionally, in 2015, City Council passed a Resolution opposing increases in the transportation of crude oil by rail.<sup>1</sup> Since 2015, Zenith has increased its transportation of crude oil by rail and the City has failed to stand by their statements and enforce the resolution.

For the City to issue a second Zenith LUCS decision without public involvement or opportunity to review Zenith’s claims and without resolving the legal issues surrounding the 2021 LUCS denial, the City has shown a deep lack of consideration for those who live in Portland and face the risks of Zenith’s facility. Frankly, the City officials’ choice to quietly make a decision without community input and review Zenith’s proposed plan has created significant distrust of city government by this city’s impacted residents. It is a signal that the City is not serious about the risks of hazardous fuel storage on the Willamette, oil trains moving through our communities, or climate change. We are deeply troubled that you chose to send a “strong signal to industry” over the health and safety of Portland’s residents.

In addition, Zenith’s use is not compatible with the Comprehensive Plan. As LUBA stated in the recent *Zenith v. City of Portland* case, the City has the authority to deny a LUCS when the proposed use is incompatible with the City’s Comprehensive Plan.<sup>2</sup> Because the City is provided deference in reviewing a local government’s interpretation of its Comprehensive Plan,<sup>3</sup> and because the Plan is replete with direct and clear language that prohibits Zenith’s dangerous activities,<sup>4</sup> the City has very strong and defensible arguments backed by significant evidence that

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<sup>1</sup> Portland Resolution No. 37164 (passed November 4th, 2015) (finding “serious risks are caused by oil-by-rail projects including but not limited to delayed emergency vehicles, oil fires, oil spills, oil explosions resulting from train derailments, increased air pollution, increased water pollution, and contributions to climate disruption induced injury and disease.”).

<sup>2</sup> *Zenith v. City of Portland*, LUBA No. 2021-083, page 23.

<sup>3</sup> ORS §197.829

<sup>4</sup> See, i.e., Portland’s 2035 Comprehensive Plan, Policy 3.3: Equitable development; Policy 4.33: Off-site impacts; Policy 4.79: Natural hazards and climate change risks and impacts; Policy 6.48: Fossil fuel distribution; Policy 7.2:

at least Zenith's oil storage and transfer activities (which would persist for the next five years under Zenith's stated plans) are not allowed under the Plan. Asserting as a legal certainty that oil storage and transfer activities are consistent with the Comprehensive Plan is without merit. The City could and still can deny Zenith's oil storage and transfer activities rather than allowing the community to be threatened by oil train traffic for the next five years.

There is still an opportunity to show that you respect your community by following proper procedures required of Oregon land use law by consulting the public and reconsidering Zenith's LUCS:

**1) The LUCS decision is “quasi-judicial,” entitling it to public involvement**

In *Zenith v. City of Portland*, LUBA found that Zenith's 2021 LUCS decision was a “quasi-judicial” decision.<sup>5</sup> As a quasi-judicial decision, this LUCS decision should have included public involvement in line with Portland City Code, Chapter 33, Section 730. We urge the City to rectify this mistake and expeditiously meet with interested parties and take public comments.

**2) The City should reconsider Zenith's LUCS once a public hearing has occurred**

The City has not properly approved this LUCS because there has been no public involvement. Under OAR 340-018-0050, a local government may withdraw or modify its LUCS any time prior to the issuance of the state permit. We urge the City to withdraw Zenith's 2022 LUCS until public involvement has occurred. We then encourage the City to take the public's opinion into account and properly apply the Comprehensive Plan to Zenith's proposed activities.

Thank you for your consideration.

Signed,

Josie Moberg, Climate Justice Movement Legal Fellow, Breach Collective

Dineen O'Rourke, Campaign Manager, 350PDX

Cassie Cohen, Executive Director, Portland Harbor Community Coalition

Samantha Hernandez, Climate Justice Organizer, Oregon Physicians for Social Responsibility

Mary Peveto, Executive Director, Neighbors for Clean Air

Anna Wilson, Organizer, Portland Youth Climate Council

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Environmental equity; Policy 7.14: Natural hazards; Policy 8.74: Pollution prevention; Policy 9.34: Sustainable freight system.

<sup>5</sup> *Zenith v. City of Portland*, LUBA No. 2021-083, page 26.

Jan Zuckerman, Braided River Campaign

Debra Higbee-Sudyka, Conservation Committee Chair, Oregon Chapter Sierra Club

Ben Stevenson, Sunrise Movement PDX

Audrey Leonard, Staff Attorney, Columbia Riverkeeper

Jonah Sandford, Executive Director, Northwest Environmental Defense Center

Travis Williams, Executive Director, Willamette Riverkeeper

Micah Meskel, Activist Program Manager, Portland Audubon

Sarah Taylor, Chairperson, Linnton Neighborhood Association

Margaret Butler, Action Team, Extinction Rebellion PDX

Leonard Barrett, Board President, Families for Climate

Cathryn Chudy, Board Member, Oregon Conservancy Foundation

Bonnie McKinlay, Core Team Member, Cedar Action

Jill Pham, Executive Director, Portland Jobs with Justice

Peter Sergienko, Metro Portland Cohort, EcoFaith Recovery