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Via Email

City Council
City of Tualatin
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Tualatin Planning Division
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Re: Appeal Hearing for AR26-0002, Building B Lab Addition, Lam Research Campus, SW Leveton Dr.

Dear Mayor Bubenik and City Councilors:

Please accept the following letter for the record in Mr. Hamilton's appeal of AR26-0002, and please hold the record open for an additional week pursuant to ORS 197.797(6).

The Applicant's Current Facility Violates DEQ Standards Relating to Noise and the City's Noise Ordinance and Improperly Conflicts with Surrounding Residential Uses (TDC 62.100 and TDC 63.051)

The city has the authority to deny Lam's application for failing to meet the relevant approval criteria. Evidence in the record shows that Lam's facilities already fail to meet the city's noise standards. Lam has not demonstrated that adding the additional facilities will comply with the city's code requirements for the zone.

First, the existing facility already violates DEQ and city noise ordinance standards described in TMC 6-14. First, Mr. Standlee has provided evidence that "noise levels shown in [Lam's] September 4, 2026 report would be 1 to 2 dB higher," which means that "predicted levels… could exceed both the Oregon DEQ noise regulation L_{50} limits and/or the City of Tualatin noise ordinance limits."

Second, the octave band center frequencies emanating from the applicant's current facilities exceed DEQ limits for the 1000, 2000, and 4000 Hz octave band frequencies. OAR

340-035-0035.[1] These are the frequencies associated with the existing gas yard. The fact that the applicant's existing facility already exceeds DEQ limits shows that adding the proposed facility and previously approved planned facilities will increase the noise levels further. The applicant has failed to demonstrate compliance with DEQ noise standards or that it is feasible to conclude that the proposed development could comply with DEQ standards for octave band sound pressure levels or dBA noise levels in the future. OAR 340-035-0035.

At 1000 Hz octave band frequency, DEQ's regulations include an allowable sound pressure level of 43 after 10:00 PM. Mr. Standlee measured the current facility exceeding this limit on September 13, 2026 (Site 4, 1000 Hz measured 43.5). At 2000 Hz, DEQ's regulations include an allowable sound pressure level of 40 after 10:00 PM. Mr. Standlee measured the current facility exceeding this limit on September 13, 2026 as well (Site 2, 3, and 4, 2000 Hz, measuring 40.6, 41, and 40.7). At 4000 Hz, DEQ's regulations include an allowable sound pressure level of 37 after 10:00 PM. Mr. Standlee measured the current facility exceeding this limit on September 13, 2026 (Site 1, 2, 3, 4, 4000 Hz, measuring 38.6, 39.6, 39.4, and 37.9).

Finally, the readings provided by Mr. Standlee demonstrate that the applicant's current facilities already violated the city's noise standards in TDC 63.051 requires that "[a]ll uses and development must comply with the [DEQ] standards relating to noise and the City of Tualatin noise ordinance in, TMC 6-14. The applicant has failed to demonstrate that adding additional facilities will not further exceed the standards or that it is feasible to comply with the conditions of approval.

Mr. Hamilton and others have already documented "objectionable noise" and "vibration" produced by the existing facility. TDC 62.100. Mr. Hamilton has also documented violations of TMC 6-14. The hums, hisses, pulsing tones, and vibrations produced by Lam certainly qualify as "objectionable." The noises that Lam's existing facilities generate also meet the City's definition of a "noise disturbance," defined as sounds that "disturb[] a reasonable person of normal sensitivities from enjoying their private real property." TMC 6-14-030(b). There is also evidence that Lam's facilities produce sounds that exceed the decibel limits described in TMC 6-14-050. The evidence in the record indicates that the additional research laboratory and manufacturing facilities proposed by Lam would add to those already non-compliant existing sounds and vibrations.

Lam's expansion would only increase the number of facilities and equipment that produce noises and vibrations that emanate from the property. Yet Lam has not demonstrated that its proposed expansion could comply with the requirements in TDC 62.100 and TDC 63.051 that prohibit objectionable noises and vibrations. For that reason, Lam's proposal does not meet the

[1] By failing to list the applicable DEQ standards for noise (TDC 63.051) and/or dangerous substances (TDC 63.058, describing prohibitions on "the storage, transfer, or processing of hazardous [or] toxic… waste"), the city has failed to provide adequate notice (required by the provisions in ORS 197.797) of applicable criteria as referenced in the TDC 63 of the city code. This has interfered with the public's ability to understand and respond to the application, the city staff's decision, and the approval criteria. The same applies to the city's failure to make explicit, which provisions of TMC 6-14 would actually apply to the proposed use, either as an approval criterion or via conditions of approval.

requirements for uses permitted in the zone. TDC 62.100; TDC 63.051. The applicant's own noise study documents the additional sounds and vibrations that their new facilities would produce. Those sounds would only combine with, and add to, the already objectionable hums, hisses, and pulsing tones produced by the property.

The City Council Has the Authority to Require Compliance with TDC 62.100 and TDC 63.051:

Architectural Review decisions may impose conditions of approval that "**[i]mplement the requirements of the Tualatin Development Code**." TDC 33.020(6)(iii). The City Council has the authority to require Lam to comply with TDC 62.100 and TDC 63.051.

Architectural Review also provides broad authority to meet a number of objectives, which include, in relevant part:

- "[s]tabilize and improve property values and prevent blighted areas,"
- "[a]chieve the beneficial influence of pleasant environments for living and working on behavioral patterns."
- "sustain the comfort, health, safety, ***tranquility and contentment*** of residents and attract residents by reason of the City's favorable environment and thus ***promote and protect the peace, health, and welfare of the City***."

TDC 33.020(1)(f), (g), (i).

The applicant and the city are wrong to conclude that the noise regulation is not listed as an approval criterion. If that is the case, then the city would not have any procedural pathway to review or approve proposed industrial uses to determine whether those uses comply with the city's development code. This appears to be the only approval process required for the proposed use. Moreover, the city listed compliance with TDC 63.051 as an approval criteria in its decision and has issued a blanket condition of approval that the proposed development must comply with TDC 63. The city, therefore, cannot conclude, inconsistently, that such standards do not apply. TDC 33.020(6)(iii) provides the city with the authority to implement requirements of the Tualatin Development Code and ensure compliance. The city has also relied on its authority to impose conditions of approval to change site design and address noise in past approvals.

The purpose of the Manufacturing Park Zone includes the statement that "permitted uses *must not cause objectionable noise*… [or] *vibration… emanating from the property*." TDC 62.100. The purpose also includes "limiting uses to those that are of a nature *so as* ***not to conflict with… surrounding residential uses***." TCD 62.100. To that end, TDC 63.051 requires that "[a]ll uses and development must comply with the [DEQ] standards relating to noise and the City of Tualatin noise ordinance in, TMC 6-14.

TCD 63.051 requires that "[a]ll uses and development must comply with [DEQ] standards relating to noise and the City of Tualatin noise ordinance in, TMC 6-14." The applicant has the burden of demonstrating that compliance with these standards is feasible. *Meyer v. City of Portland*, 67 Or App 274, 280 (1984) (requiring substantial evidence for the purpose of determining that compliance is "likely and reasonably certain to succeed"). The applicant and the city have not met that burden.[2] Instead, the applicant (and the city staff) makes a conclusory statement and finding that the noise generated by the proposed expansion "will comply with all applicable Oregon Department of Environmental Quality (DEQ) and City of Tualatin noise standards." Such statements are inadequate.[3] Moreover, the city cannot defer a demonstration of compliance.[4] Based on the fundamental nature of the information that the applicant has failed to provide, the city also cannot accept additional information without also allowing the public the ability to respond to that information.[5] In this case, the city has failed to demonstrate that it is feasible for the applicant to comply with TDC 63 standards.

Conclusion: require Lam to modify its proposal to ensure that its facilities and equipment do not cause objectionable noise to emanate from the property.

This proceeding appears to provide the only land use approval required before Lam can begin construction of the proposed facilities. *See* Chapter 33.020. The planning staff have described this proceeding as providing the required land use approval required prior to construction. Staff have also listed approval criteria, such as TDC 62 and TDC 63.051, as among the relevant criteria to be considered during Architectural Review. Moreover, the City has the authority needed to impose conditions of approval to ensure compliance with the requirements of the development code, which includes requirements in TDC 62.100 and TDC 63.051. TDC 33.020(6)(iii).

For those reasons, Mr. Hamilton requests that the City deny Lam's proposal for failing to demonstrate compliance with TDC 62.100 and TDC 63.051. Lam has not demonstrated that its facilities, especially when added to its existing facilities, will comply with the applicable noise

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[2] To demonstrate compliance, the applicant would have had to provide information about the noise impacts, which included current conditions as well as the changes to those conditions that would occur as a result of the proposed development (and other planned developments). *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, aff'd, 267 Or App 637 (2014) (by failing to adequately describe the use or their adverse impacts, the local government could not meaningfully determine whether those uses complied with the relevant criteria).

[3] *See* Pekarek v. Wallowa County, 33 Or LUBA 225, 229 (1997) ("an unsupported statement in an application or other document is not evidence"); *Dodd v. Hood River County*, 317 Or 172, 180 (1993) (citing *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384, 405 (1988); *Larvik v. City of La Grande*, 34 Or LUBA 467, 470 (1998) (conclusory findings of compliance are inadequate).

[4] *See Butte Conservancy v. Persimmon Development*, (LUBA No 2025-150, Opinion, Jan 26, 2005) (slip op at 11) (citing holdings from *Hodge* and *Thomas*); *Rhyne v. Multnomah County*, 23 Or LUBA 442, 448 (1992) (deferral allows *only* if the subsequent proceeding provides for notice and the opportunity to comment).

[5] *Fasano v. Board of County Commissioners*, 264 Or. 574, 507 P.2d 23 (1973) (explaining due process right to respond); *Mazeski v. Wasco County*, 26 Or LUBA 226, 232-35 (1993).

criteria. Lam has also failed to propose conditions of approval that would ensure that the sounds generated by its equipment could be or would be dampened or canceled out. Lam has the knowledge about the equipment its facilities will use and the noises that the equipment will produce. For that reason, Lam has the burden to propose changes to its facilities' design to ensure compliance with TDC 62.100 and TDC 63.051. The development code does not allow applicants to obtain approval for, and then construct uses that would generate objectionable noises and vibrations or otherwise violate the City's noise ordinance. TDC 62.100, 63.020, 63.051.

Simply put, the development code does not allow Lam to impose a nuisance on its neighbors and residents of the City of Tualatin. The City has the necessary tools to require Lam to demonstrate compliance *prior* to the City's approval of the new and expanded facilities. And the City may impose conditions of approval during the Architectural Review to make compliance a reality. Mr. Hamilton respectfully requests that the City require Lam to explain how it will design its new equipment and facilities in a way that ensures compliance with the City's development code. If Lam cannot meet its burden to demonstrate compliance, then Mr. Hamilton asks that the City deny approval until Lam can demonstrate that its expanded facilities will not produce objectionable noises beyond the property line.

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