



November 10, 2025

City Council
City of Tualatin
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RE: City Council Appeal of Architectural Review for Lam Research Corporation's TUX Facility (AR 24-0002): Response to Exhibit K

Dear Mayor Bubenik and City Councilors:

Lam Research Corporation ("Lam") provided detailed legal analysis and findings that provide a basis for denying the appeal of the ARB's approval of the Tux Project ("Project") in AR 24-0002 in Lam's October 24, 2025, which is included in the Council's packet as Exhibit G (the "Offered Findings").

The Offered Findings include a detailed analysis of noise related issues in Section III.B. The purpose of this testimony is to respond to testimony submitted on behalf of the Appellant on November 3, 2025 (Exhibit K) that objects to noise-related issues.

The November 3, 2025 testimony does not provide a legal or evidentiary basis for denying or modifying the ARB's approval of the Project in AR 24-0002.

The Architectural Review process is limited in scope, and the applicable criteria do not include noise standards. The City has appropriately imposed a condition of approval to ensure future compliance with TDC 63 (which incorporates the Noise Ordinance) standards, and the record contains substantial evidence supporting the Project's consistency with applicable law.

For these explained in the Offered Findings this letter, we respectfully request that the City Council deny the appeal and affirm the ARB's approval of AR 24-0002.

I. Executive Summary

A. Applicability of Noise Standards

Appellant contends that Lam Research must demonstrate compliance with various noise-related standards during the Architectural Review process.

This argument fails to recognize that not every provision in the Tualatin Development Code (TDC) or Noise Ordinance (Tualatin Municipal Code (TMC) 6-14) is a mandatory approval

standard. The Tualatin Development Code does not include noise standards as mandatory approval criteria for Architectural Review.

Instead, noise is regulated through performance standards under TDC 63.051 and the Tualatin Municipal Code (TMC 6-14), which apply only once a project is operational. These standards are enforced through Code Enforcement, not during land use review. The City has appropriately imposed a condition of approval (A25) requiring future compliance with these performance standards.¹

Other noise-related provisions cited by Appellant are aspirational purposes statements that provide context, but are not approval criteria.

B. Evidence of Compliance with Noise Limits

Appellant alleges that Lam has not demonstrated the Project, especially when added to its existing facilities, will comply with the applicable noise criteria.

This argument is misplaced, as noise-related provisions are not mandatory approval standards and thus do not require evidentiary proof during Architectural Review. Nonetheless, Lam has provided substantial expert evidence demonstrating that its existing facility complies with noise standards and that the proposed Project is expected to do so as well. The modeling includes cumulative impacts and refutes Appellant's acoustic study, supporting the feasibility of compliance with the Noise Ordinance. Appellant does not refute this expert evidence.

C. Conditions of Approval

Appellant argues that because Lam has not proposed any design changes or mitigation strategies to reduce noise from the new facilities, the Project should be denied.

Conditions of approval must be tied to mandatory approval standards. Since noise is not among those standards, additional noise-related conditions would exceed the City's authority under TDC 33.020. Condition of Approval A25 already requires compliance with TDC Chapter 63 and the Noise Ordinance once the Project is operational. The record contains substantial evidence supporting this condition, and no further conditions are warranted.

¹ Condition of Approval A25 requires: "The following items apply to the site in an on-going manner...The proposed development must comply with the Environmental Regulations of TDC 63," which includes the requirement in TDC 63.051 that the use "must comply with the Oregon State Department of Environmental Quality standards relating to noise and the City of Tualatin noise ordinance in, TMC 6-14."

II. Analysis

A. Applicability of Noise Standards

Appellant's Arguments: Appellant argues that Lam must demonstrate compliance (or that it “could comply”) with a variety of noise related provisions² that are applicable during Architectural Review before the City can approve the Project.

Authority Relied Upon by Appellant: Appellant claims that there are several noise-related standards, including:

- Reference to “objectionable noises” in **TDC 62.100**;
- Requirement in **TDC 63.051** to comply with Tualatin noise ordinance and DEQ standards;
- Regulation of “noise disturbances” in **TMC 6-14-030 and 6-14-020**;
- Decibel limits described in **TMC 6-14-050**; and
- Aspirations of sustaining “tranquility and contentment: and promotion of “peace, health and welfare” in **TDC 33.020(1)(i)**.

Relevant Offered Findings: Section III.B

Additional Response: Black letter law is that a quasi-judicial application may not be approved unless the applicant demonstrates compliance with all mandatory approval standards, or that compliance is feasible. *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff'd*, 67 Or App 274, *rev. denied*, 297 Or 82 (1984).

The problems with Appellant’s arguments about noise-related standards are they (i) fail to address that not every provision in the Tualatin Development Code or Tualatin Municipal Code is a mandatory approval standard; and (ii) they do not demonstrate that any of the noise-related standards are mandatory approval criteria.

As relevant here, there are three categories of code provisions:

² Appellants arguments and the acoustic study have focused exclusively on noise impacts. However, Exhibit K includes a few passing references to vibrations. Appellant’s vibrations argument is completely undeveloped and no evidence is provided. Lam’s manufacturing and labs use highly sensitive equipment which cannot tolerate vibration, which means that unsubstantiated speculation about off-site vibrations off-site are unreasonable. Further, the vibration standard in TDC 62.052 is a performance standard, so it is irrelevant to the Architectural Review.

Category	Characteristics	When Applied	Proof Required During Land Use Application	Relevant Case Law
Mandatory Approval Standard³	Binding criterion for approval	At land use application	Compliance or feasibility	<i>Meyer</i>
Performance Standard	Regulates how a use functions	Once a use is operational, through enforcement	None, because they are “not necessary prerequisites to issuance of a permit”	<i>Simonson v. Marion County</i> , 21 Or LUBA 313, 322 (1991).
Aspirational Purpose Statements	Nonbinding policy or intent	n/a	None; may be used to guide interpretation	<i>Mariposa Townhomes v. City of Medford</i> , 68 Or LUBA 479 (2013)

When evaluating a provision to determine if it is a mandatory approval standard or if it is something else, the City must first look at the text of the provision, and then relevant context. *Simonson v. Marion County*, 21 Or LUBA 313, 322 (1991).

Mandatory Approval Standards: TDC 73A through 73G.

Mandatory approval standards are preconditions to granting a land use application and are expressly incorporated as an approval criterion. Here, the application is for Architectural Review, and the approval criteria are listed in TDC 33.020(5) (Approval Criteria), which specifies that industrial development “...must comply with the applicable standards and objectives in TDC Chapter 73A through 73G.” The standards and objectives in TDC Chapter 73A through 73G do **not** contain noise standards; they do **not** incorporate by reference the Tualatin Municipal Code, or the Noise Ordinance. Therefore, the only mandatory approval standards, which are limited to TDC Chapter 73A through 73G, do not include noise standards.

Appellant does not explain why, despite the absence of noise standards in TDC Chapter 73A through 73G, noise standards are mandatory approval standards.

The noise standards cited by Appellant are either performance standards or aspirational provisions, based upon the text and context of the cited provisions.

³ The Offered Findings refer to the mandatory approval standards as development standards. We use the terms interchangeably, with the meaning being that they are standards for which compliance must be determined (or that compliance is feasible) prior to land use approval.

Performance Standards: TDC 63.051 and TMC 6-14 (decibel standards and “noise disturbance”).

Performance standards are ongoing operational or performance requirements that govern how a use functions after approval. The requirement in TDC 63.051 to comply with the Tualatin noise ordinance in TMC 6-14 and applicable DEQ noise standards is a performance standard.

The text of TDC 63.051, and the incorporated Noise Ordinance provisions, indicate that they are performance standards because they impose measurable criteria on operating uses. The context of TDC 63.051 (and the incorporated TMC 6-14) supports that conclusion. First, the location and heading are relevant: TDC 63.051 is housed in the generally applicable Chapter 63 “Environmental Regulations” portion of the TDC, not in the Architectural Review section in Chapter 33. The cross referenced noise standards are not located in the Tualatin *Development* Code at all; they are located in the separate Tualatin *Municipal* Code.

As noted in the Offered Findings, the purpose statement in TDC 63.010 provides context for interpreting Chapter 63, and explains, “...It is intended that the following standards provide statutory authority for the **enforcement** of regulations relating to noise...” Emphasis added. Enforcement applies after operation begins, and enforcement is conducted pursuant to procedures set out in the Tualatin *Municipal* Code (TMC 7-1), a regulatory scheme that is entirely separate from the TDC; context which supports characterizing TDC as a performance standard, not mandatory development standards. Similarly, the applicability provision in TDC 63.020 does not specify that the standards apply during Architectural Review.

LUBA has affirmed a local jurisdiction describing a noise standard as a performance standard, and concluded that “such performance standards are not necessarily prerequisites to issuance of a permit although they may be stated as conditions to operate under a permit” and “we do not believe the county was required by its ordinances to find the noise standard satisfied as a prerequisite to surface mining permit.” *Zusman v. Clackamas County*, 13 Or LUBA 39, 45 (1985). Also see *Simonson v. Marion County*, 21 Or LUBA 313, 322 (1991) (quoting and relying upon *Zusman* to conclude “where a local government’s code simply imposes an ‘operational requirement’ or ‘performance standard’ to be satisfied during operation of a use, ‘[s]uch performance standards are not necessary prerequisites to issuance of a permit.’”))

In laymen’s terms, a performance standard is different than a mandatory approval standard. A performance standard must be followed once the Project is operating, but it does not have to be met in order for Architectural Review to be approved.

Because performance standards must not be met as a prerequisite to approving Architectural Review, no findings or evidence are required to address noise-related performance standards, and they cannot be a basis for denying the Architectural Review. Nevertheless, condition of approval A25 requires compliance with the noise performance standards in TDC Chapter 63 (which

incorporates the Noise Ordinance), and substantial evidence demonstrates that compliance is feasible.

Aspirational Purpose Statements: TDC 33.020(1)(i) (tranquility and peace) and TDC 62.100 (objectionable noises).

LUBA precedent has consistently concluded that purpose statements or similar aspirational provisions are not mandatory approval criteria, absent explicit wording to the contrary. See *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013). Purpose statements may guide the interpretation of an ambiguous standard or provide context, but they are not mandatory approval standards.

Appellant cites two different purpose statement provisions, TDC 33.020(1)(i) (Architectural Review Purpose) and TDC 62.100 (Manufacturing Park Zone Purpose), and alleges that they impose noise standards on the Project. Appellant has failed to point to explicit wording that incorporates these purpose statements as mandatory approval criteria, or otherwise explain why they are applicable.

The aspirational purpose statements in TDC 33.020(1)(i) and TDC 62.100 are not included in the Architectural Review mandatory approval criteria (TDC 73A to 73G) and are not incorporated by reference by those criteria. The irrelevant purpose statements do not impose a noise standard on the Project, no findings or evidence are required to address inapplicable purpose statements, and they cannot be a basis for denying the Architectural Review.

B. Evidence of Compliance with Noise Limits

Appellant's Arguments: Appellant alleges that Lam has not demonstrated that its facilities, especially when added to its existing facilities, will comply with the applicable noise criteria.

Relevant Offered Findings: Section III.B.v.

Additional Response: Appellant's argument that Lam has not carried the evidentiary burden related to noise issues is premised upon the assumption that the noise limitations are mandatory approval criteria. For the reasons explained above (and incorporated herein), the noise-related provisions are not mandatory approval criteria; they are performance standards or aspirational purpose statements.

Because the noise-related provisions cannot be the basis for denying the Architectural Review application, there is no evidentiary burden that Lam must meet related to noise.

Although Appellant has not demonstrated that noise provisions are mandatory approval standards, Appellant alleges "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.” First, no additional manufacturing facilities are proposed. More importantly, Appellant’s argument completely ignores the expert evidence offered by Colin Gordon Associates and the related detailed findings in the Offered Findings about the evidentiary basis for concluding that (1) the existing facility does not violate the Noise Ordinance; and (2) the Project is not expected to violate the Noise Ordinance. Appellant also does not explain why Condition of Approval A25, which requires compliance with the Noise Ordinance, is inadequate to ensure compliance.

Although not required, Lam has provided expert evidence analyzing the existing facility’s compliance with the Noise Ordinance and modeling of the Project’s expected compliance with the Noise Ordinance. The expert evidence in the record supports condition of approval A25, which requires that once operational, the Project must comply with TDC Chapter 63 and the Noise Ordinance. Lam has gone beyond what is required and has provided substantial evidence that it is feasible for the Project to meet the Noise Ordinance.

C. Conditions of Approval

Appellant’s Arguments: Appellant argues that because Lam has not proposed any design changes or mitigation strategies to reduce noise from the new facilities, the Project should be denied.

Authority Relied Upon by Appellant: Appellant argues that general sections of the Tualatin Development Code provide authority to require conditions limiting noise from the Project, including:

- **TDC 33.020(6)(a)(iii)**, which authorizes Architectural Review decisions to imposed conditions of approval to implement the requirements of the Tualatin *Development* code.
- **TDC 33.020(6)(b)(iv)**, which explains that an allowed type of condition of approval is on that require plan modifications, such as “changes in the design or intensity of the proposed development, or in proposed construction methods or practices, necessary to assure compliance with this chapter.”
- **TDC 33.020(1)(i)**, purpose statement of Architectural Review includes aspirations of sustaining “tranquility and contentment: and promotion of “peace, health and welfare” in
- **TDC 63.020**, applicability of Chapter 63 to industrial uses and Manufacturing Planning Districts

Relevant Offered Findings: Section III.B.iii

Additional Response: A condition of approval may be imposed only if (1) necessary to ensure compliance with a mandatory approval standard; and (2) the evidence supports a conclusion that the condition is necessary. *King v. Washington County*, 60 Or LUBA 253 (2009).

Because the noise-related provisions are not mandatory approval standards and cannot be the basis for denying the Architectural Review application, there is no basis for imposing additional

conditions of approval. Additionally, the evidence in the record demonstrates that compliance with the Noise Ordinance is feasible, and condition of approval A25 requires compliance. There is no evidentiary basis for additional conditions of approval.

The code provisions cited by Appellant do not change this analysis, or the detailed findings in Section III.B.iii of the Offered Findings. As explained above, the aspirational purpose statements in TDC 33.020(1)(i) and TDC 63.020 are not binding, and cannot be the basis for conditions of approval.

The only authority for a condition of approval is TDC 33.020(6)(a)(iii); TDC 33.020(6)(b)(iv) simply provides examples of the types of conditions that may be imposed, assuming that the condition is lawful.

The City is authorized to impose conditions of approval that implement the Tualatin *Development Code*, per TDC 33.020(6)(a)(iii). The Tualatin Noise Ordinance, however, resides in the Tualatin *Municipal Code*, not the Tualatin *Development Code*, and thus falls outside the scope of allowable AR conditions.

TDC Chapter 63 (Industrial Uses and Utilities and Manufacturing Zones – Environmental Regulations) is a requirement of the Tualatin Development Code, so TDC 33.020(6)(a)(iii) authorizes conditions of approval that require compliance with TDC Chapter 63. Accordingly, condition of approval A25 appropriately requires the proposed development to comply with TDC Chapter 63.

III. Conclusion

Appellant has not demonstrated a legal or evidentiary basis to overturn the ARB's approval of the Project. The noise-related provisions cited are performance standards or aspirational statements—not mandatory approval criteria—and cannot serve as grounds for denial. Lam has provided substantial evidence of feasible compliance and supports the City's condition of approval requiring adherence to applicable noise regulations.

For these explained in the Offered Findings this letter, we respectfully request that the City Council deny the appeal and affirm the ARB's approval of AR 24-0002.

Very truly yours,



Dana L. Krawczuk