

**BEFORE THE PLANNING COMMISSION  
FOR TANGENT, OREGON**

In the matter of an application for Conditional Use and Site Plan Approval to Expand an Existing Industrial Metal Fabrication Facility in the City's HC/I Zone.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
FINAL ORDER**

**(L&M Industrial Fabrication)**

**I. Summary:**

This is the Planning Commission's final decision approving with conditions this application to expand an existing industrial metal fabrication facility on two lots in the City's Highway Commercial – Industrial (HC/I) zone by approving a new conditional use permit and a site plan for the expanded operation.

**II. Introduction to the Property and Application:**

Applicant.....L&M Industrial Fabrication  
Attn: Matt Smith, President  
31975 Rolland Drive  
Tangent, OR 97389

Property.....T12, R4W, S1, TLs 101 & 107, Street address: 31975 Rolland Drive (33740 Hwy 99E)

Applicable Criteria:.....Tangent Development Code 2.400 (Site Plan Review) and 2.500 (Conditional Uses)

Summary of the Proposal: L&M Industrial Fabrication ("L&M") owns and operates an industrial steel fabrication and welding operation in the City of Tangent at 31975 Rolland Drive (the "Tangent Property"), on two tax lots (TLs 101 & 107) zoned Highway Commercial/Industrial (HC/I). L&M obtained a conditional use permit and site plan approval in 2003 that was limited to L&M's requested operation at that time, including only TL 107, 24 employees and operational hours from 7:30 a.m. to 4:30 p.m. In the intervening years since 2003, L&M's operation grew to include the adjacent parcel to the north (TL 101), an expanded work force of 100 employees and 24-hour a day operations. In this application, L&M seeks retroactive approval for the nature and extent of its current operations with approval for an eventual workforce of 140 people and round the clock operations. This decision also approves two new uses on TL 101: Tec Laboratories and JBD Construction.

**III. Summary of the Proceeding and Record:**

L&M requests an expansion of its 2003 conditional use permit and approval of a corresponding site plan for the expanded operation. The expansion will make use of an additional tax lot (TL 101) located adjacent to and north of the original parcel (TL 107), and is basically designed to allow the current nature and extent of L&M's steel fabrication operation, with the provision that it may employ as many as 140 employees in shifts spread throughout the 24-hour day. The two tax lots are currently integrated with L&M's operations, and many elements, such as parking, serving both parcels are located on one or the other lot. The current mix and intensity of operations requested in this application, is a

significant expansion beyond what was allowed in the 2003 permit and what was requested by L&M at that time.

These applications were prompted by daytime and nighttime noise complaints from residential neighbors west of the subject property. The City Council reviewed these complaints and the then-existing land use approvals for L&M and concluded that L&M had likely expanded substantially beyond the nature and extent of the operation allowed by its 2003 permit and site plan. In lieu of initiating formal code enforcement proceedings, the City Council directed L&M to immediately curtail its operations and apply for a new and expanded conditional use permit and site plan that reflected the nature and extent of operations it desired. Pending a decision on such an application, the City Council issued an Order on Interim Regulations, which it subsequently amended once. This final order, when fully implemented, is intended to replace the Council's March 9, 2020 First Amended Order on Interim Regulations.

In response to the City Council's initial (November 7, 2019) order, L&M submitted a land use application on December 4, 2019. The City Planner issued a comprehensive report on the consolidated applications on January 9, 2020, announcing a January 16, 2020 hearing before the Planning Commission. A substantial number of people testified at the January 16<sup>th</sup> initial evidentiary hearing – both for and against the application. L&M announced that it was replacing its acoustical engineer and would revise significantly its noise mitigation plan. At the conclusion of public testimony, the Planning Commission continued the hearing several times without taking testimony due to the COVID 19 virus. The Commission eventually reconvened on April 18, 2020 to complete public testimony, leaving the record open for submission of written comment on any relevant issue until April 25, with the applicant having until May 2<sup>nd</sup> for submission of final rebuttal. The record closed May 2, 2020. The Planning Commission reconvened on May 14, 2020 to deliberate and tentatively approved the applications with 30 conditions.

#### IV. Findings:

The approval criteria are listed and analyzed in the original (January 2020) staff report and subsequent (April 2020) Addendum. The Commission adopts as its own and incorporates herein by this reference, both staff reports as findings in support of this decision that address the applicable approval criteria. The Commission adopts the following additional, supplemental findings:

1. Past noise complaints and on-going compliance with City and state noise standards: This set of applications arose in response to noise complaints from residential neighbors to the L&M site. Many of those same neighbors testified before us in opposition to the proposal and urged denial or strict conditions of approval. These complaints, in fact, may not end with the issuance of this decision. The neighborhood noise complaints have driven this process, but as a legal matter, they are not part of our consideration in determining whether it is possible for the applicant to meet the city's noise standards in TMC 7.20.050(2) and OAR Ch 340, Div. 35. The noise complaints certainly inform our understanding of how bad the situation is without a city-issued permit and conditions requiring compliance with the city's noise standards, but these complaints are not evidence that it is impossible for the applicant to comply with the conditions or meet the city's noise standards. The complaints are only evidence that the applicant likely violated the noise standards in the past, and we conclude the solution to that problem is to issue a permit with conditions designed to force compliance.

The Planning Commission's sole focus in this matter is to determine whether the applicant can meet the approval criteria through the imposition of conditions. We find that the only credible and expert evidence in the record is that of Art Noxon and Kerrie Standlee, both acoustical engineers. These experts have expressed their opinions that compliance with the City's noise standards is possible with the imposition of conditions. These engineers, in fact, are the architects of the noise mitigation plan

expressed in Condition 2 below. The conditions we impose require on-going compliance and periodic reviews with these noise standards. This means the applicant will have to maintain constant awareness of the noises it creates and constant communication with the affected neighbors. The periodic reviews that we require, while quasi-judicial land use hearings, will be limited to reviewing compliance with the conditions of approval and will not be an opportunity to relitigate the applicable criteria. It will also provide an opportunity for L&M and the neighbors to request modifications to the conditions of approval. Any such modifications must still be based upon a demonstration that the operation will comply with the applicable CUP and site plan criteria. In this light, complaints of past noise violations are not determinative of the future, but future violations will indicate that conditions need to be tightened.

2. General limitation on hours of operation: Many opponents argued for more restrictions on business and operational hours for L&M. The City, as a general regulatory matter, however, does not regulate business hours. Instead, it regulates excessive noise through its nuisance ordinance, and compliance with that ordinance is required by several express conditions of this decision. Only through the city's regulation of noise can or does it regulate business hours, and those are expressly set forth in the Sound Mitigation Plan in Condition 2.
3. Planning Commission "jurisdiction" or authority: One witness repeatedly challenged the Planning Commission's "jurisdiction" to hear or decide these consolidated permits. Our jurisdiction is to decide quasi-judicial land use permit applications throughout incorporated City of Tangent. This authority comes from ORS 227.010 to 227.120, which empower the Planning Commission to "Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180." In particular, ORS 227.170 (Hearing procedure; rules), 227.175 (Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing), and 227.180 (Review of action on permit application; fees), direct the Planning Commission to hear and decide quasi-judicial land use permit applications such as this one, and these statutes, along with ORS 197.763, set forth the procedural rules for our hearing process.

In short, ORS 227.010 to 227.120 and ORS Ch. 197, along with the State-wide Planning Goals generally, authorize and require the Planning Commission to decide these permit applications according to specific procedures and to apply the substantive standards in the City's development code and comprehensive plan. The City is currently following those procedures, and the substantive approval standards are listed and analyzed in the two staff reports. These standards narrowly define the Planning Commission's authority to decide these consolidated permit applications and to impose conditions that ensure compliance with the mandatory approval criteria in the code. The process that we follow is ORS 197.763 and 227.175, which the City has adopted in its development code and is following scrupulously in this matter.

Finally, several witnesses argued that the City should favor its citizens over a non-resident corporation. In this and all other proceedings, the City is legally obligated to follow the applicable law. Nowhere in federal, state or local law is there an arbitrary preference for local residents over non-citizens of a local community, nor is there a legal preference for voters versus non-voting corporations. In fact, the Supreme Court has recognized that corporations have the same First Amendment rights as do individuals. The Constitution places great importance on property rights, equal protection, and due process rights. While the neighbors own their property and have certain attendant property rights, so too does the applicant. L&M Welding owns its property, which makes it a corporate citizen of Tangent, and it is entitled to equal protection of its property rights under the law.

For the Planning Commission, that law consists primarily of the City's land use regulations, which specify what uses are allowed on private property and under what circumstances. Consequently, it would be unlawful – a violation of equal protection, a deprivation of protected property rights, a violation ORS 197.763, 227.175, and the City's land use regulations – for the City to arbitrarily discriminate against a property owner/applicant in favor of local voters and deprive this property owner certain valuable property rights. State law and the local code require complete objectivity and the impartial application of the applicable approval criteria, and the Planning Commission is legally obligated to follow those legal requirements. The City's land use regulations do not allow the Planning Commission to discriminate against this applicant property owner in favor of the neighboring property owners, especially when to do so would deprive it certain protected property rights with no legal justification. The Planning Commission was appointed by the City Council to carry out these legal requirements set forth in state law and the City's land use regulations and to render a decision based on the applicable criteria in the code.

4. Constitutionality of Rolland Drive improvements: Condition 14 below requires the applicant to construct half-street improvements along its Rolland Drive frontage. As previously explained in this decision and the April 2020 Staff Report, which is incorporated herein by reference, this site was never intended or approved for this level of industrial operation. Instead, the applicant's original (and approved) metal fabricating operation grew far beyond its 2003 approval without benefit of city permits. Throughout that time, the applicant has used two Rolland Drive entrances to the facility for heavy truck traffic and employee cars on a daily basis. No right-of-way frontage improvements were required by the original permit, and Rolland Drive was in relatively good condition at that time. After 17 years of heavy industrial use, with the promise of even more heavy truck traffic, the applicant will continue to use two Rolland Drive accesses, and employees will presumably use the Rolland Drive and Hwy 99E sidewalks to access near-by shops for lunch and other errands.

The Commission finds that an essential nexus has existed in the past, continues to this day, and will exist in the future between the applicant's operation and impacts on, and use of, Rolland Drive. Based on the long history of heavy truck traffic, employee cars, and employee pedestrian travel along the site's frontages, right-of-way improvements are warranted because of the demand this use places on these public facilities. Consequently, right-of-way frontage improvements are warranted and lawful.

The Commission also finds that the specific right-of-way improvement required by Condition 14 is the bare minimum because it requires only half-street improvements and only for Rolland Drive (not Hwy 99E). There literally is no lesser right-of-way improvement the City could require. Nonetheless, we find that the cost of the required half-street improvement is roughly proportional to the significant impact this industrial user has caused since 2003, continues to cause and will cause in the future under this permit. Rolland Drive has been this facility's primary truck and employee entrance, which has caused significant wear on this public facility. This is a substantial amount of use by vehicles, and by extension pedestrians, to and from this facility. Given the applicant's extensive and on-going use of this public facility, the cost of designing and constructing half-street improvements is proportional to the use this applicant derives from Rolland Drive.

#### **V. Decision and Conditions.**

These consolidated applications (conditional use permit and site plan) are approved in substantial conformance with the applicant's latest preliminary site plan and all written and verbal representations of the applicant, L&M Industrial Fabrication, subject to the applicant's fulfillment and compliance with the following conditions, which shall be interpreted consistently with the foregoing findings incorporated herein by this reference:

1. **Applicable Laws.** The applicant shall comply with all local, state and federal regulations and requirements applicable to this property and the activities occurring thereon, including Tangent's noise requirements in TMC 7.20.050(2) and the DEQ noise standards in OAR Ch 340, Div. 35.
2. **Noise Mitigation Plan.** Prior to any additional hours of operation being authorized by the city, the applicant shall implement all elements of the following mitigation plan consistent with the applicant's March 9, 2020 Acoustical Engineering Report by Art Noxon, Attachment C to the April 14, 2020 staff report, hereby incorporated into this decision, with exceptions indicated by these conditions of land use approval. Evidence of completion of the mitigation plan shall be supported by acoustical test data documenting that all proposed operations comply with the applicable DEQ maximum noise standards.

Following are the specific elements of the required noise mitigation plan, as supported by recommendations from the City's acoustical engineer, Kerrie Standlee, whose report at Attachment D to the April 2020 staff report is hereby incorporated into this decision:

- a) Retain the temporary straw bale sound barrier currently located along the west property line of Tax Lot 101 until an engineered 12-foot high earthen berm can be constructed to replace the barrier where shown in applicant's drawing P202B on the east side of the arborvitae trees. Berm to extend north to the north property line or top of bank of Oak Creek and will encroach into the riparian setback pursuant to the Variance required by Condition 9.
- b) Install a 12-foot high acoustic panel wall system between the Subarc building and the earthen berm where shown in applicant's drawing P202B to close-off the gap between the earthen berm and the Subarc building. Install a 9-foot high acoustic panel wall system on the boundary between Tax Lot 101 and Tax Lot 107 where shown in applicant's drawing P202B. Retain the temporary straw bale sound barrier between the two tax lots until the acoustic panel wall is in place.
- c) Install a 12-foot high acoustic panel wall system adjacent to the south wall of the sub arc building to the southerly property line or provide professional acoustical testing and evidence that it is not necessary to meet the applicable noise standards.
- d) Install and maintain a new conveyor system component on the in-feed and out-feed sides of the Voortman beamline to eliminate the steel-on-steel scraping noise that radiates from the conveyors.
- e) Maintain the UHMW slide material that has been installed on top of the structural beamline in-feed conveyor system to eliminate steel-on-steel scraping noise that radiates from the conveyor.
- f) Install acoustic wall treatments to the west wall of the Subarc building as proposed by Art Noxon in the applicant's March 9, 2020 Acoustical Engineering report. Attach mufflers to all open vents on building. Cover the translucent panels at the top of the west wall and acoustically treat any other openings in the wall.
- g) Install and maintain rubber isolation material below the steel pad located inside the Subarc building where cone separation occurs.
- h) Install and maintain magnetically attached rubber pads to the forks of all forklift trucks used to load and unload steel material to conveyors, trucks and storage bins outside the buildings.
- i) Install and maintain UHMW material to the top of the angle iron in-feed slide rack to eliminate steel-on-steel impact noise when angle iron is placed onto the in-feed rack.

- j) Install and maintain rubber sleeves on the angle iron in-feed rollers to eliminate steel-on-steel impact noise when the angle iron pieces fall from the in-feed rack to the rolls.
  - k) Either install and maintain automatic volume-adjusting broad-band back-up warning signals on all forklifts used outside the buildings or decrease the volume on the existing signals to the acceptance of the city's acoustical engineer.
  - l) Immediately limit operation of the angle iron machine to occur only between the hours of 7 a.m. and 7 p.m.
  - m) Immediately limit material staging, truck and trailer loading, and all other outdoor activity on Tax Lot 101 to between 7 a.m. and 7 p.m., except that trailers located in the staging area along the northeast property boundary, adjacent to Highway 99E, may be accessed and removed from the site at any time, and the employee parking may be utilized during all hours.
  - n) Effective immediately, doors shall remain closed on all buildings between the hours of 7 p.m. and 7 a.m. unless the applicant demonstrates through professional acoustical study that DEQ nighttime standards can be met with doors open.
3. Phasing. All noise mitigation described in Condition 2 shall be considered Phase I of the project and shall be completed, and the applicant shall call for City verification, within 60 days of the effective date of this decision, except those elements (l)-(n), which take effect immediately with this decision.

The "effective date" of this decision shall be the day after the expiration of all appeal periods applicable to the City's variance decision (see Condition 9) with no appeal being filed. Staff may grant through an administrative process one 30-day extension for completion of Phase I upon the applicant's showing of good faith progress and a feasible plan for completion.

Until the Noise Mitigation Plan (Phase I) described in Condition 2 is completely implemented and compliance verified by City staff, the First Amended Order on Interim Regulations (March 9, 2020) or any subsequent amendment shall continue to control operations at the site. Any modification(s) to the Interim Regulations prior to fulfillment of the Noise Mitigation Plan shall be within the sole discretion of the City Council through a public hearing type process. Phase II shall be completed within 90 days of the effective date for this decision and shall consist only of parking lot and berm landscaping and erosion control plantings, lighting improvements, and construction of the covered employee break area. Phase III shall consist only of the removal of the south driveway onto Oregon Highway 99E, installation of buffering plantings in this area to code, and construction of a sidewalk to ODOT standards, all of which shall occur within 30 days of approval by ODOT for abandonment of the driveway.

This equates to the following phasing plan:

Phase I: Condition of Approval items 2(a)-(k), above, shall be completed to the City's satisfaction within 60 days of the effective date for this decision, as defined in Condition 9, subject to a single 30-day extension that staff may grant.

Phase II: All landscaping and erosion control (except front yard buffering in place of the abandoned driveway) shall be installed to the city's acceptance; all exterior lighting shall be in place; and the new employee break area shall be installed to the city's acceptance, all within 90 days of the effective date for this decision.

Phase III: Buffering and sidewalk construction in place of the abandoned driveway on Highway 99E shall be completed to the city's acceptance within 30 days of ODOT's approval to close the road approach.

Within 14 days of the effective date of this decision, the applicant shall submit a revised phasing plan consistent with the above.

4. Hours of Operation. The limitation on hours of operation in the First Amended Order on Interim Regulations (March 9, 2020) shall remain in effect until the applicant completes Phase I to the City's satisfaction and demonstrates compliance with the balance of adopted conditions of site plan and conditional use approval. Any modification(s) to the Interim Regulations in the meantime shall be within the sole discretion of the City Council through a public hearing type process.

Upon city acceptance of compliance with Phase I measures and these conditions of approval, the applicant may resume day and night operations within the parameters of this decision and the conditions contained herein.

At that point, the City Council will repeal, and this decision will fully replace, the First Amended Order on Interim Regulations. Except for the activities described in Condition 2m, no outdoor activities are permitted on the north lot (TL 101) between the hours of 7 p.m. and 7 a.m. The angle iron machine shall not be operated between 7 p.m. and 7 a.m.

The applicant may apply in the future to modify this conditional use permit to allow additional operations, revise the site plan, and/or expand hours of operations so long as the applicant provides suitably credible evidence that any such modifications will comply with the applicable conditional use permit approval standards, including compliance with DEQ noise limitations, and all other applicable criteria of the Tangent Land Development Code. All such future modification requests that present any new or modified noise impact(s) shall include analysis by a suitably qualified acoustical engineer and shall be reviewed by the City's acoustical engineer.

5. Flood Plain Development Permit. Within 14 days of the effective date of this decision, the applicant shall submit a City of Tangent Flood Plain Development Permit form for construction of the earth berm; employee break area; parking lot; and water quality feature within the flood zone. Applicant shall comply with any conditions imposed on the Flood Plain Development Permit.
6. Audio/Visual Record. The applicant's existing site audio and video surveillance shall be utilized to provide date and time-stamped recordings of the site, to be maintained for at least 30-day intervals and made available upon request by the City of Tangent to address any claims of excessive noise or violation of any other conditions of approval for up to one year from the effective date of this decision. This record shall be sufficient to demonstrate compliance with any applicable condition(s) in response to any complaints from affected property owners or the City.
7. Professional Acoustical Verification. The City shall provide its contracted acoustic engineer to evaluate the applicant's acoustical testing results required to verify that plant operations are within DEQ maximum noise levels and consistent with these conditions.

Testing shall be performed upon completion of the applicant's mitigation plan (Phase I), and at 1, 3, 6 and 12 month intervals thereafter. The applicant shall submit the data from these measurements to the City for review by its acoustical engineer. After one year from completion of Phase I, the City Council will determine whether further testing is necessary. The applicant shall reimburse the City for its actual reasonable costs

associated with its acoustical engineer related to review of the applicant's acoustical engineering reports and verifying compliance with the requirements of this permit and any modifications thereto.

8. Berm Specifications. The applicant shall construct an earth berm consistent with Sheet P300 of the application. A 12-inch deep drainage swale, with an area drain connected to the existing storm drain system, shall be provided as shown on the applicant's Sheet P300, except that the drainage swale between the berm and existing tree line shall be setback a minimum of 2 feet from the trees to avoid damage to tree roots. The area between the berm and trees shall be maintained free from encroaching weeds.
9. Companion Variance application. Several elements of the Phase I noise mitigation and other elements on the site plan are anticipated to encroach upon the 50 foot setback from Oak Creek along the north boundary of Tax Lot 101. Within 14 days of the planning commission's decision on this conditional use and site plan request, the applicant shall submit a fully complete application for a Variance to this setback standard to allow construction of the northern portion of the earth berm, stormwater quality swale, employee break area, parking and any other component of the site plan that is proposed to encroach into the 50-foot buffer of the Oak Creek Drainage. The applicant shall comply with or otherwise fulfill all conditions of the City's variance decision once it becomes final. Because the present conditional use and site plan decision is contingent upon the variance, the "effective date" of the present decision shall be the day after the expiration of all appeals applicable to this decision or the City's variance decision, whichever is later.
10. Drop Box Locations and Outside Storage. Drop boxes and bins for steel materials on Tax Lot 107 shall be located between buildings to buffer and reduce noise impacts upon neighbors west of the property. Any such bins on Tax Lot 101 shall be located east of the existing northeasterly "Structural Building" that is proposed to remain on site at build-out. No outside storage is permitted beyond L&M's raw materials currently observable on site, consisting of steel beams of various sizes and configurations and finished products awaiting shipping. All raw materials and fabricated items shall be stored in an orderly and compact arrangement on the property, and solely in the locations indicated by the approved site plans and these conditions of approval. All other existing outside storage, e.g., various items located between JBD Construction and the creek, shall be removed from the entire site within 7 days of the effective date of this decision.
11. Forklift Speeds and Material Handling BMP's. Maximum forklift speed in the yard shall be 5 miles per hour and shall be posted with signage on Tax Lot 101.

The applicant shall revise its employee training procedures and written Materials Handling Plan of Best Management Practices (BMP's), included as an Appendix to the application, to include this maximum forklift speed. Additional amendments to the BMP's shall include:

- a) Line 2, replace "and/or" with "and";
- b) Require forklift operators to: i) be certified operators (to minimize noise impacts upon neighbors resulting from dropping and mis-handling of materials); and ii) verify regularly that magnetic rubber fork pads are in place and in good repair on all forklifts in operation;
- c) Beam rolling near the west property line reportedly has caused ground vibrations. The BMP's shall provide that tube beams shall only be flipped or rolled on UHMW covered in-feed rails and no others, and that beams shall only be flipped in the center of the north yard.



- d) The following additional provisions, from the applicant's acoustical study by Art Noxon, PE, Attachment C to the April 2020 staff report, shall also be incorporated into the written BMP's:

*"Beam rolling will be moved into the middle of the north yard and located on a concrete deck fit with floating on (stet) rubber supported timbers. Truck loading will be in this central area. New safety rule is that lifts will not be adjusted on a trailer, they will be removed and lowered back to the ground. This will eliminate fork banging on loads that are stacked high off the ground."*

Within 14 days of the effective date of this decision, the applicant shall amend its Material Handling BMP document to include the foregoing changes and provide a copy to the City.

12. Landscape and Irrigation Plan. Within 30 days of the effective date of this decision, the applicant shall submit for City approval a detailed landscape and irrigation plan. The plan shall include front yard buffering where the driveway is proposed to be abandoned, parking lot shade trees (9 medium canopy trees, 6 large canopy trees, or an acceptable mixture thereof) with protective curbing, and earth berm landscaping and erosion control plantings in accordance with development code requirements. All acoustic panels shall be faced with varying materials, textures, and/or shrubs or other treatments to comply with LDC 5.134(2)(k), and this shall be illustrated on the landscape plan.

Front yard (east side) buffering improvements along Highway 99E shall consist of existing vegetation placed in conjunction with prior land use approvals, and new plantings, consistent with code specifications for buffering, in the area of the abandoned driveway. All required landscaping shall be perpetually maintained by the applicant or replaced as necessary to maintain conformance with these conditions of approval. Plans shall indicate the means of irrigation or maintenance of all landscaping improvements.

13. DEQ Noise Standards Compliance. The applicant is responsible for ongoing compliance with OAR Ch. 340, Div. 35, and when requested by the City shall provide documentation from an Oregon licensed acoustical engineer that the applicant's operations comply with the applicable state noise standards.

14. Rolland Drive Improvements. Within 30 months from the effective date of this decision, the applicant shall obtain city right-of-way permit(s) and complete construction of a half-street improvement along its Rolland Drive frontage, constructed to local street standards, including curb, gutter, sidewalk and related storm drainage facilities on the north side of the street. No improvements are required on the south side of Rolland Drive. The City Engineer will provide the applicable standards, consistent with the City's Public Works Design Standards for local streets.

15. Engineered Drawings Required. The applicant shall submit design plans for the proposed site work, including vehicular and pedestrian access, parking, storm drainage and grading, exterior sound attenuation, and roadway and frontage improvements for review and approval by the City Engineer prior to the start of construction activity. Rolland Drive improvements design shall be provided for city engineer approval within 12 months of the effective date of this decision.

The new parking lot shall have a gravel surface, provided with wheel stops to delineate spaces, drain into a vegetated water quality swale subject to city approval, and parking lot landscaping shall be protected by concrete curbs. Parking lot lighting and any other exterior lighting shall be shielded, cut-off fixtures that do not create glare upon neighboring properties.

16. Stormwater Quality and Catch Basins. A vegetated water quality swale shall be designed and constructed subject to city approval between the parking lot and Oak Creek. This construction is dependent upon a Variance to the land development code's 50-foot riparian setback (see Condition 9) and the floodplain development permit discussed in Condition 5. Existing catch basins for the current stormwater collection and detention facility shall be equipped with insert collectors to prevent debris from entering the system within 30 days of the effective date of this decision.

17. Parking and Pedestrian Policies. The applicant shall amend its Parking and Pedestrian Guidelines to read "*Parking and Pedestrian Policies*," and shall require new hires to be trained on the policies at orientation, including use of designated walkways and avoiding walking across the materials staging and shipping yards. This is intended to avoid conflicts and potential safety hazards between pedestrians and truck and forklift traffic in the interior of the industrial complex.

Prior to any use of the new parking lot, pedestrian access shall be clearly identified on the ground with signs directing foot traffic to the striped pedestrian accessway on the western property boundary, consistent with the approved pedestrian circulation plan (Appendix to Exhibit 1). The applicant's current parking and pedestrian document instructs employees to walk from the new parking lot east to the sidewalk on Highway 99E and shall be amended to direct this traffic to the designated pedestrian accessway. A copy of the amended Parking and Pedestrian Policies shall be provided to the city within 14 days of the effective date of this decision.

18. NPDES Permits.

- a) Within 60 days of the City accepting construction of the berm, western parking lot, the applicant shall apply to DEQ and obtain approval of a modified Storm Water Pollution Control Plan and an updated NPDES 1200-Z permit and shall provide copies of the approvals to the city.
- b) The applicant shall obtain, and comply with the requirements of, a DEQ NPDES 1200-C permit, if applicable; however, owners and operators working sites under one acre or which do not require a 1200-C permit must still comply with best management practice performance requirements. If a permit is required, the applicant shall provide a copy to the City.
- c) Stormwater improvements shall comply with the applicant's existing Stormwater Pollution Control Plan.

19. Revised Traffic Study. Within 30 days of the effective date of this decision, the applicant shall provide to ODOT and the City with a revised professionally prepared traffic study with updated information concerning vehicle movement, current and full build-out truck and passenger vehicle traffic counts and locations, and adjacent roadway impacts to reflect the closing of the south access on Hwy 99E. The updated plan shall address the comments in ODOT's January 7, 2020 review letter.

20. Compliance with County and State Agency Requirements.

- a) The applicant shall comply with all applicable requirements of the Linn County Building Department.
- b) The applicant shall demonstrate to the City's satisfaction compliance with Oregon Health Authority (OHA) requirements, as applicable, regarding the on-site wells and water system and any applicable water system regulations.

- c) The applicant shall comply with all ongoing applicable requirements of the Oregon Department of Environmental Quality (DEQ), Air Division, concerning its Air Contaminant Discharge Permit, and provide evidence of compliance.
21. Timing and Maintenance Responsibility of Improvements. All improvements to the site or facility, including any improvements or modifications required by these conditions, shall be completed consistent with the timelines stated herein, unless modified following a duly noticed public hearing. Any uncompleted improvements deferred through the hearing process will be subject to an Improvements Agreement and financial security acceptable to the City Attorney. Required sound mitigation measures are not eligible for deferral, an improvement agreement, or financial security.

The applicant is responsible for maintaining the private improvements associated with this decision as long as L&M operates at this location and/or owns the subject property. For those conditions calling for the installation of a permanent berm or sound wall, where noise protection is currently provided by straw bales, the applicant shall at all times maintain compliance with the applicable City and DEQ noise standards as the permanent installation is constructed. This may require maintaining the straw bales until the permanent installation is complete.

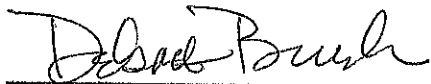
22. ADA Compliance. The applicant is responsible for demonstrating compliance with the Americans with Disabilities Act (ADA) for parking lot, building and site access. The new parking lot is not required to include ADA spaces, as the five required spaces are provided on TL 107, including two ADA van accessible spaces.
23. Lot Consolidation Required. In lieu of the applicant complying with off-street parking and other development requirements relative to the boundary between TLs 101 and 107, within 30 days of the effective date of this decision, the applicant shall apply with the city for consolidation of the two parcels. Within 10 days after the City's approval of the lot consolidation, the applicant shall record the replat with both the Linn County Surveyor Department and Linn County Records Department, and a copy of the recorded plat provided for the city's files.
24. When Conditions Are Satisfied. Upon satisfaction of these conditions of approval, the applicant shall submit a letter informing the City of Tangent of their completion and requesting written verification of the city's acceptance.
25. Scope of Approval, Future Modifications. The scope of this approval includes two new uses on Tax Lot 101, Tec Laboratories and JBD Construction, in the near term, and incorporation of the balance of Tax Lot 101 for the applicant's existing industrial operation, to include construction of a new 71-space parking lot as shown on the applicant's site plans. No new structural development is associated with this approval, although the existing storage building interior to Tax Lot 101 is planned for demolition.

The Glass Man is another existing business that was approved through site plan review in 2018. The applicant's approved full build-out scenario includes the eventual removal of all non-L&M Welding businesses from the site, demolition of one existing building as stated, and full occupancy of the subject property by L&M within 5 years, with employment of 140 people (100 on day shift, 40 on night shift).

Any change or expansion of the activities or development described in this decision, or any occupancy of a portion of the site by another business not described herein, shall require prior approval by the City of Tangent as an Alteration or Expansion of Conditional Use, Site Plan Review, and/or other applicable procedure(s) in effect at that time.

26. Revised Site Plans Required. Within 14 days of this decision, the applicant shall submit final revised graphics for this proposal that reflect the preliminary drawings as modified by this decision. Final site plans shall be accompanied by a cover sheet that lists titles and sheet numbers for all drawings. At a minimum, plan sheets must include improvements associated with Phases I, II, and III as described in this decision; pedestrian and bicycle circulation plans; the vehicle circulation plan; and the approved earth berm construction drawing (Sheet P300 of applicant's March 9, 2020 application submittal). Once staff has verified that the final site plans are correct and complete, they shall become binding elements and part of this Final Decision.
27. Periodic Review for Compliance and Revision of Conditions. The applicant's compliance with this permit shall be reviewed by the Planning Commission in a duly noticed public hearing for performance, condition compliance, and possible revision of conditions 6 months after the effective date of this decision, 12 months after the effective date of this decision, and annually thereafter until and unless the planning commission determines that no further review is necessary. The applicant may seek modification(s) to this permit and any of the conditions stated herein as part of these review proceedings, or it may apply for modification(s) outside of this schedule.
28. Noise Hot Line and Noise Working Group. Until completion of the first 12-month compliance review required in Condition 27, the applicant shall maintain and operate the Noise Hot Line and Noise Working Group established pursuant to the First Amended Interim Regulations, as follows:
- a) Noise Hot Line. L&M shall establish a quick or immediate telephone communication line ("Hot Line") that near-by neighbors can use to contact L&M whenever they perceive noise or vibration that exceeds the City's Noise Standard in TMC 7.20.050(2). L&M will provide the City Manager with the Hot Line information and will provide a summary of all noise complaints to the City Manager monthly with L&M's response to each complaint or explanation of the circumstances surrounding each complaint, until and unless the planning commission determines that no further reporting is necessary.
  - b) Noise Working Group. L&M shall obtain contact information for the active and willing near-by residential neighbors and form a volunteer Noise Working Group. L&M will coordinate its sound mitigation and testing work with the members of the Noise Working Group, notify the members of the Group about noise testing, and solicit feedback from the members on noise tests.
29. Payment of Fees. The applicant shall pay in full all outstanding City invoices for cost reimbursement related to this consolidated application before seeking verification of Phase I compliance.
30. On-going Compliance with these Conditions Required and Penalties for Non-Compliance. The City reserves the right to monitor the status of compliance with these conditions and to initiate a compliance review proceeding. Failure to comply with any condition of approval may result in the City's withholding building and occupancy permits, imposition of civil fines, and other legal action, including revocation of these land use approvals, and/or withholding future land use approvals until the applicant demonstrates compliance.

**IT IS SO ORDERED** by the Tangent Planning Commission this 21 day of May 2020.



Debra Brush, Chair

### STATEMENT OF APPEAL RIGHTS

Any party with standing may appeal this decision to the Tangent City Council by filing a written appeal with the Tangent City Recorder at City Hall 32166 Old Oak Drive., P.O. Box 251, Tangent, OR 97389), along with the required appeal fee (one-half of the application fees for this matter). This decision is not appealable directly to the Land Use Board of Appeals and will not become final until the expiration of the 12-day appeal period.