

CITY OF TANGENT
STAFF REPORT

Applicant:	SteelFab Oregon
Property Owner:	SteelFab, Inc.
Action:	Periodic Review of Compliance with Adopted Conditions of Approval from City of Tangent Land Use Decision ECU 19-01, as Amended by PCR 21-01
Assessor Map	Township 12, Range 4W, Section 1, Tax Lots 107, 101
Address:	31975 Rolland Drive, Tangent, Oregon 97389
Zone:	Highway Commercial/Industrial (HC/I)
Applicable Criteria:	Adopted Conditions of Approval, ECU 19-01 as Amended by PCR 21-01
Contact Person:	City Planner, Creed A. Eckert

BACKGROUND: In May, 2020, the applicant, SteelFab Oregon, formerly L&M Steel Fabrication, was approved for modification of their 2003 conditional use approval (City of Tangent land use file ECU 19-01), to add additional employees and hours of operation to their metal fabrication operation. The applicant was also granted simultaneous site plan approval to permit expansion of their industrial activities onto an adjacent parcel to the north, tax lot 101 (please see Attachment B, Vicinity Map). L&M's operations require conditional use approval in the subject, Highway Commercial / Industrial (HC/I) Zone, because its activities are not contained entirely within an enclosed structure. Conditional uses are required to maintain compatibility with their neighborhood and environs.

The HC/I Zone is a hybrid of commercial and (limited) industrial zoning which permits a wide range of commercial uses, and some industrial uses which do not have significant external impacts or characteristics that might be better suited to the City's General Industrial (GI) Zone, intended for more intensive industrial uses. The subject property, more specifically the north lot (tax lot 101) which was legally approved for incorporation into the development last year, abuts a residential neighborhood on its west boundary. The south lot (tax lot 107) also abuts a single-family residence. Past incidents of materials handling and mishandling, operating equipment and machinery, loading and unloading trucks, and other activities on site have at times severely disturbed neighbors with noise, vibrations, and similar impacts.

The adopted conditions of approval from ECU 19-01 required the applicant to promptly undertake a number of specific measures, the applicant's "Mitigation Plan", in order to reduce noise impacts of their operation to at least within the maximum standards of the Oregon Department of Environmental Quality (DEQ). The very detailed specifics of the applicant's required mitigation plan are outlined in adopted condition no. 2, items (a)-(n) (Please see Adopted Conditions of ECU 19-01 as Amended by PCR 21-01, Attachment C to this report). The decision also imposed certain operational restrictions concerning allowable hours for some of the applicant's specific operations.



Applicant's South Lot Building and Equipment Layout

Some of those current restrictions are described in Appendix A to Attachment A, Applicant's 6 Month Noise Compliance Test Results:

"Voortman line (north end of Industrial building) does not run after 18:00.
Beamline (north end of Structural building) may be loaded by forklift until 22:00. After this time, the Beamline may only be run with material that is already loaded.

Door are closed from 19:00 to 07:00. From 19:00 – 22:00, doors may be opened briefly to move material in and out. Due to high temperatures during the day on July 6, it is possible that doors on the structural building and on the east side of the industrial building may have been slightly open for ventilation."

The applicant requests permission to open some doors at night, as described in detail in Attachment D.1. This is discussed in more detail in a subsequent section of this report. This is the City's second required review of the status of the applicant's compliance with applicable conditions of approval. The first compliance review was conducted in a joint hearing with the city council and planning commission in February of this year (PCR 21-01). Both the prior compliance review and this current evaluation are mandated by condition number 27 from the applicant's land use approval, ECU 19-01. That condition states:

"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. "

While the first scheduled review under the above condition was technically due in November, 2020, it was a bit tardy due to a number of factors, including the holidays and pandemic related challenges. This schedule was also impacted by the fact that, at the 6 month mark following land use approval (in November 2020), the applicant's mitigation plan had just recently been reported as complete, and all parties were awaiting the pending evaluation of its effectiveness by the City's contracted acoustical engineer, Mr. Kerrie Standlee. That report was deemed to be crucially pertinent to the city's review of the status of compliance with adopted conditions. Upon conducting a number of on and off site acoustical measurement tests, Mr. Kerry Standlee completed his report in December 2020.

At their regular scheduled meeting in January 2021, the city council accepted Mr. Standlee's report, and, concurrent with positive recommendations from the city engineer and city planner, determined that the applicant's mitigation plan was complete. Based upon finding that the applicant's mitigation plan had been fully implemented on the ground, and was effective, the council then rescinded their prior order restricting hours and modes of operations. At that point, these aspects came under the sole control and discretion of the planning commission's adopted conditions of approval from the applicant's original land use decision, ECU 19-01.

On February 22nd, 2021, the planning commission and city council jointly conducted a public hearing (PCR 21-01) to review the status of compliance with L&M Fabrication's May 2020 land use approval, ECU 19-01. This was the "6 month" review required under condition 27, above. The commission and council found the applicant to be in compliance with the adopted conditions of approval, and also amended those conditions to reflect a recommendation from the city's contracted acoustical engineer, Mr. Kerrie Standlee. The amended condition of approval, number 2.(I), stipulates that no activities may occur in the sub-arc building between the hours of 7pm and 7am. No other amendments to the conditions of ECU 19-01 resulted from this decision. The new language from PCR 21-01 is underlined in red italics in the attached, revised conditions of approval (Attachment C).

Tonight's hearing comes 6 months after the February review, and is intended as the 12 month review under condition no. 27, above. It also happens to coincide with the applicant's submittal of their most recent noise study, which was required 6 months after the city's acceptance of the physical improvements associated with the applicant's approved mitigation plan:

ECU 19-01 Condition no. 7 requires the applicant to confirm ongoing compliance with DEQ noise standards by providing regular professional reporting from an acoustical engineer, based upon on-and-off-site noise measurements:

"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. "

"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."

The applicant has submitted all test results as required by the above conditions, and the conclusions of those studies have in each case been corroborated by the city's contracted acoustical engineer, Mr. Standlee. While conformance with condition number 7 does not require evaluation in a public hearing setting, and can generally be confirmed administratively, the applicant's timing in submitting this study happens to coincide with the current scheduled public hearing, required by condition 27, to review the applicant's status of compliance with all applicable conditions. For this reason, the applicant's latest noise study is included as Attachment A to this report. The next study, containing the applicant's 12 month test results, will be due in February 2022.

Notice of this public hearing was provided to neighboring property owners and public agencies with a potential interest. To date, no agency or other comments have been received.

CRITERIA: The sole body of decision criteria for this proceeding are the 30 adopted conditions of ECU 19-01 themselves, as amended by PCR 21-01. These are contained in Attachment C to this report. Upon a full review of the pertinent record, including and not limited to a recent professional acoustical study provided by the applicant at Attachment A, and evaluation of the same by the City's contracted acoustical engineer (Attachment E), it appears that the applicant has once again demonstrated substantial, though not entire, compliance with the applicable conditions of approval.

Mr. Standlee finds at Attachment E:

"Finally, I conclude the data presented in L&M's 6-month noise compliance testing report shows noise radiating from operations at the facility on July 6/7 was in compliance with all applicable DEQ noise limits."

Staff notes that the number, frequency and severity of neighbors' complaints concerning noise emanating from the subject property have dropped quite drastically since the applicant's implementation of their mitigation plan, though calls and emails do still come in on occasion. The fact of this reduction in reported disturbances in general suggests the applicant's mitigation efforts have been successful in reducing their most egregious noise impacts. Coupled with the findings of the city's contracted acoustical engineer at Attachment E, this strongly reinforces the city's prior findings in February of this year that a successful mitigation plan has been implemented on the ground and continues to be effective. These facts also encourage a similar finding at this time by the planning commission. The applicant's mitigation plan is the major implementation tool of and force behind the adopted conditions, so a successful mitigation plan necessarily indicates substantial conformance with the conditions of the ECU 19-01 approval.

As stated, the evidence suggests substantial, if not quite entire, conformance with the letter and intent of the adopted conditions. Following is a list of apparent, relatively minor exceptions or pertinent comments, about which the applicant may provide an update at the public hearing:

a) From Condition no. 3, the parking lot lighting and employee break area have not yet been requested for review and approval by the city engineer and planner; and the south driveway has yet to be abandoned and replaced with a sidewalk and front yard buffering.

Staff understands the applicant is awaiting arrival of the overhead cover for the employee break area, and that the applicant was awaiting its installation prior to requesting these inspection. As of this writing, the driveway matter is still pending permit approval from ODOT.

b) Condition 15 required engineered drawings for the required transportation improvements on Rolland Drive to be submitted for city engineer approval by May 2021:

"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."

Staff understands that preparation of these drawings is currently underway by the applicant's engineer, Mr. Lyle Hutchens, if somewhat belated according to the above condition. Prior to or at the public hearing, the applicant may be able to provide an estimated timeline for their completion and submittal for approval by the city engineer.

c) Condition no. 18 required the applicant to obtain their revised National Pollutant Discharge and Elimination System (NPDES) permits from Oregon DEQ, which relate to the applicant's storm water management plan, water quality and erosion control.

Staff does not have current information on the status of this permit as of this writing. The applicant was in compliance with their stormwater management plan required by DEQ prior to construction of the mitigation plan, the completion of which spurred the requirement for an amended plan to be approved by DEQ. The applicant may provide additional information prior to or at the hearing.

d) Condition no. 20(b) required the applicant to coordinate with the Oregon Health Authority regarding the on-site wells and water system and any applicable water system regulations.

The City has received no formal response as of this writing, and it is unclear whether a "community water system" may be required for the number of wells in operation on the applicant's property. Ideally, written confirmation of compliance from OHA would be provided for the city's files.

(e) Condition no. 20(c):

"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."

Staff have been advised by a DEQ representative that the applicant is in conformance with their DEQ air quality permit, and are required to submit annual reports for re-certification.

(f) Condition no. 28:

"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.

Consistent with the above, the applicant implemented a telephone and email notification system for neighbors to promptly and specifically report incidents of egregious noise impacts at the time they occur. L&M has fairly consistently provided the City with copies of these incident logs, along with their responses to any complaints received. A record of complaints received by the applicant over the past six months is located at Attachment G, and includes the applicant's written responses. In viewing this record of complaints since the February compliance review, it appears that in many cases, the neighbors' use of the notification system has combined with the applicant's perpetual audio and video monitoring on site to permit the applicant to identify the precise source of a specific noise incident, and make operational adjustments to avoid it re-occurring. In some other cases, the applicant's on site audio monitoring reportedly did not detect an incident that exceeded DEQ standards.

In total, the applicant recorded 9 reports over the past 6 months, for an average of 1.5 per month, which is significantly less than that experienced prior to implementation of the applicant's mitigation plan. The last complaint recorded on Attachment G was in late June. In addition to the above, city hall received two calls, one in June and one in July, in which neighbors expressed concerns about noise from the subject property, and suggested that noise impacts seemed heightened before and after the applicant's sound monitoring tests. The applicant states they are purposefully unaware when their consultant schedules and conducts sound monitoring testing. The applicant also confirms that, on the dates of the testing, operations were in full swing, including activity on the north yard between the hours of 7am and 7pm, as permitted by the conditions.

Combined with the applicant's reports, this totals 11 complaints over the past 6 months, for an average of just under 2 per month. This is a significant departure from the days prior to construction of the berm and sound walls, and other measures undertaken by the applicant as part of their mitigation plan; at that time, city hall's phone was often almost ringing off the hook on a weekly basis.

Commissioners will note that condition 28 is set to expire following this public hearing, so, unless the condition's wording is amended as part of this compliance review, to extend the date further, the applicant will no longer be required to maintain the noise hot line or noise working group beyond August 20, 2021.

(g) Condition no. 30:

"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."

In the event the applicant were found to be substantially out of compliance with the adopted conditions of approval, this could result in the city withholding future building and/or land use and occupancy permits; levying civil fines; revoking the land use approval ECU 19-01; and / or other potential legal action. Such a finding would not appear to be consistent with the evidence in the record at this time, however, which demonstrates that the applicant has substantially complied with their conditions of land use approval.

The handful of remaining questions discussed above can reasonably be satisfied through ongoing and imminent communications between the applicant and staff. The applicant may also have some additional testimony regarding those items prior to or at the public hearing.

APPLICANT'S REQUESTED MODIFICATION TO CONDITION 2(n):

ECU 19-01 condition 2(n) requires doors to remain closed on all buildings between the hours of 7pm and 7am: "*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.*" Earlier this year, the City Administrator and City Planner gave the applicant a concurring interpretation to permit an exception to this rule, to allow doors on two buildings to be briefly opened for the purpose of loading materials in or out, as needed.

To staff's knowledge, the applicant has generally complied with all of these above stipulations of the adopted conditions of approval, although this has reportedly proven a hardship, both in terms of general operations as well as during periods of extreme hot weather. For instance, in written communication with staff, the applicant's Operations Manager, Mr. Chuck Worley states:

"It is a problem for us not being able to open that door (the south door on the paint building) past 7 PM. That is the shortest way to the paint shop for one, which avoids forklift traffic around the north of the building and past the subarc, which potentially makes more noise closer to the neighbors. We also move some items out that door only, and being able to move them out that side and set them in the south lot allows more access on the east side for the remainder of the night."

Condition no. 27 states in part: "*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.*" Attachment D illustrates the applicant's proposal to allow 3 doors on the east side of the centrally located, "Industrial" building to be open and closed as needed to facilitate operations, and also to improve air flow and general working conditions on particularly hot weather days. In addition, two north and south facing doors on the "Structural" building, the easternmost building on the site, would also be opened or closed freely.

Finally, one door on the southeast side of the Industrial building, as well as the south door on the "Paint" building, are proposed to be permitted to be open strictly for purposes of moving materials in or out and promptly closed, between the hours of 7pm and 7am. All other doors not specifically described above are to remain closed during those hours. Please refer to the applicant's helpful illustrations at Attachment D.1.

At Attachment F, the city's acoustical engineer concurs with the findings of another of the applicant's noise studies, conducted in February of this year specifically to evaluate the prospect of opening doors during nighttime operations. That report, located at Attachment D.2., concluded that doing so would not result in noise impacts exceeding DEQ standards. Based upon the above, Staff recommends approval of the applicant's requested modification to condition 2(n). *NOTE: As of this writing, Staff had not yet received Attachment F, Mr. Standlee's memorandum concerning his analysis of the applicant's open door noise study, Attachment D.2.; however, Mr. Standlee did advise that he had reviewed the report and he concurred with the conclusion that opening doors as proposed by the applicant will not result in noise impacts in excess of DEQ standards. It is anticipated that Attachment F will be forwarded to commissioners and the applicant on Monday, August 16th.*

CONCLUSION AND RECOMMENDATION:

Based upon the findings of fact contained in this staff report, staff recommends a motion and vote that the applicant is in substantial compliance with the conditions of the ECU 19-01 approval as amended by PCR 21-01. Staff further recommends that Condition 2(n) be amended to approve the applicant's nighttime open door proposal contained at Attachment D to this report.

Please note that Condition 27 states that, following tonight's review, the commission shall convene another public hearing to review the status of the applicant's compliance annually hereafter, until and unless further reviews are deemed unnecessary by the planning commission. Staff recommends a finding in the record which either:

- A) Confirms that the annual review is to take place one year from now, in which case no amendment to the condition's wording is necessary, or
- B) Modifies the condition to indicate no further reviews are required.

In any event, the city will retain the right to convene a public hearing at any time as needed to re-evaluate the conditional use and site plan approvals, should this appear necessary based upon future nuisances or other impacts. This would be facilitated by the modification of conditional use procedures.

Please note, the planning commission may utilize the following sample motions in moving forward on this matter, or may develop (an) alternate motion(s).

MOTION IN FAVOR: I move to find that the applicant is in substantial compliance with the conditions of approval, based upon findings of fact contained in the staff report and those established in the record.

OPTIONALLY: I further move to amend Condition of ECU 19-01 Approval number 2(n) to implement the applicant's nighttime open door plan as contained in Attachment D.1. to the staff report.

OR: I further move to amend Condition of ECU 19-01 Approval number 2(n) to implement the applicant's nighttime open door plan as contained in Attachment D.1. to the staff report, with the exception(s) of _____

_____.

MOTION IN OPPOSITION: I move to find that the applicant is not in compliance with the conditions of approval, based upon findings of fact that _____

_____.

- ATTACHMENTS:**
- A. Applicant's 6 Month Noise Compliance Test Results,
ABD Engineering and Design
 - B. Vicinity Map
 - C. Conditions of ECU 19-01 Approval as Amended by PCR 21-01
 - D.1. Applicant's Nighttime Open Door Noise Proposal
 - D.2. Applicant's Nighttime Open Door Noise Study,
ABD Engineering and Design
 - E. City's Acoustical Engineer's Evaluation of Attachment A
 - F. City's Acoustical Engineer's Evaluation of Attachment D.1.
Please Note: This Memo is Forthcoming Under Separate Cover
 - G. Applicant's Log of Noise Complaints and Their Responses, Past 6 Months