

ANNOTATED MINUTES

Tuesday, August 13, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 PR 4-91
 ZC 4-91 **PUBLIC HEARING - ON THE RECORD 10 MINUTES PER SIDE**

In the Matter of an Appeal of the June 3, 1991 Planning Commission Decision to DENY Requested Amendment of the Comprehensive Plan Map, Changing the Designation of the Subject Site from Exclusive Farm Use to Multiple Use Forest for the Portion of the Subject Property Lying North and West of NW Germantown Road; and DENY Requested Amendment of Sectional Zoning Map #708, Changing the Subject Property from EFU, Exclusive Farm Use to MUF-19, Multiple Use Forest for that Portion Lying North and West of NW Germantown Road, all for Property Located at 14715 NW OLD GERMANTOWN ROAD

TESTIMONY HEARD. MOTION TO REJECT PLANNING COMMISSION'S DECISION AND ADOPT THE MULTNOMAH COUNTY PLANNING STAFF REPORT TO APPROVE WITH ZONE CHANGE WAS APPROVED.

- P-2 CU 6-91 **PUBLIC HEARING - ON THE RECORD, WITH ADDITIONAL TESTIMONY; APPELLANT ALLOWED 15 MINUTES FOR SCOPE OF FARM USE AND IMPACTS; 45 MINUTES PER SIDE; TOTAL 1-1/2 HOURS**

In the Matter of an Appeal of the June 3, 1991 Planning Commission Decision to APPROVE, SUBJECT TO CONDITIONS, a Requested Conditional Use Permit for a Commercial Activity that is in Conjunction with Farm Uses in the EFU Zoning District, for Property Located at 9833 NW CORNELIUS PASS ROAD

PUBLIC HEARING POSTPONED UNTIL TUESDAY, SEPTEMBER 3, 1991 WITH THE SAME CONDITIONS.

Tuesday, August 13, 1991 - 1:30 PM
Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-3 Review of Agenda for Regular Meeting of August 15, 1991.

Tuesday, August 13, 1991 - 2:30 PM
Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-4 Board Discussion and Policy Direction for the Development of an Agenda for the September 4, 1991 Joint Cities/County Government Meeting. Presented by Hank Miggins, Dave Warren and Maureen Leonard.
- B-5 Board Discussion on Business Income Tax Issues.
-

Thursday, August 15, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointment of Elsie Hastings to the Portland/Multnomah Commission on Aging through July, 1994; and the Appointment of Bonnie Morris to the Multnomah County Library Board through August, 1995

APPROVED.

DEPARTMENT OF HUMAN SERVICES

- C-2 Ratification of an Intergovernmental Agreement Between the Oregon Department of Energy and Multnomah County, Providing Federal Department of Energy Rebate Funds for Weatherization of Oil, Oil/Wood, or Wood Heated Homes for Clients of the Aging Services Division, Community Action Program Office, for the Period July 1, 1991 through June 30, 1993

APPROVED.

- C-3 Ratification of an Intergovernmental Agreement Between Mt. Hood Community College and Multnomah County, Providing Work Activity Center Services for Clients of the Social Services Division, Developmental Disabilities Program, for the Period July 1, 1991 through June 30, 1992

APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-4 Ratification of Amendment No. 2 to the Intergovernmental Agreement Between the State Fire Marshall and Multnomah County Providing an Extension to the Regional Hazardous Materials Emergency Response Team Services Contract, for the Period June 30, 1991 through December 31, 1991

APPROVED.

REGULAR AGENDA

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-1 ORDER in the Matter of Exempting From Public Bidding a Maintenance Service Contract with Dynix System for Existing Hardware and Software

ORDER 91-113 APPROVED.

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

DEPARTMENT OF HUMAN SERVICES

- R-2 ORDER in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

ORDER 91-114 APPROVED.

DEPARTMENT OF HUMAN SERVICES - continued

- R-3 Ratification of a Memorandum of Understanding Between the Oregon Housing Agency and Multnomah County Establishing a Housing Agency Low Income Rental Housing Fund Pilot Project to be Administered by the Aging Services Division, Community Action Program through June 30, 1992

APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 Ratification of an Intergovernmental Agreement Between the Oregon Emergency Management Division and Multnomah County Whereby Multnomah County Agrees to Cooperate in the Implementation and Maintenance of an Emergency Management Program in Order to Qualify for Emergency Management Assistance Funding for the 1990-91 Federal Fiscal Year

APPROVED.

- R-5 Request for Approval of a Notice of Intent to Co-Sponsor, with the Oregon Department of Fish and Wildlife and the Nature Conservancy, an Application to the Northwest Power Planning Council Concerning a Wildlife Mitigation Grant Proposal for Properties Located Within the Sandy River Gorge

APPROVED.

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-6 Introduction of Officer Beth Fernandez, North Miami Beach Police Department, Participating in an Officer Exchange Program with the Multnomah County Sheriff's Office, Safety Action Teams (10:00 AM TIME CERTAIN)

NON-DEPARTMENTAL

- R-7 RESOLUTION in the Matter of the Plan for Altering the Boundaries of Commissioner Districts as Required by the Multnomah County Home Rule Charter, Section 3.15

RESOLUTION 91-115 APPROVED.

- R-8 Second Reading and Possible Adoption of an ORDINANCE Creating the County Peace Task Force and the Thousand Crane Award to Recognize Citizens who are Leading Multnomah County Toward a Peaceful Non-Nuclear Future

TESTIMONY HEARD. ORDINANCE 693 APPROVED.

- R-9 RESOLUTION in the Matter of Proposing Multnomah County as a Member of the Northwest Oregon Region for the Regional Strategies Program

RESOLUTION 91-116 APPROVED.

- R-10 RESOLUTION in the Matter of Approving a Request to Transfer 3533 N.E. 11th Street Property to Give Us This Day, a Charitable Organization, for Low Income Housing

CONTINUED TO THURSDAY, AUGUST 22, 1991 WITH A PUBLIC HEARING.

- R-11 RESOLUTION AND ORDER in the Matter of the Appeal of James Weaver, dba Abe's Second Hand Store

RESOLUTION 91-117 APPROVED.

- R-12 RESOLUTION in the Matter of a Process to Determine Future Delivery of Law Enforcement Services in Multnomah County

RESOLUTION 91-118 APPROVED AS AMENDED.

- R-13 RESOLUTION in the Matter of the Sheriff's Countywide Role in Law Enforcement in Multnomah County

RESOLUTION 91-119 APPROVED.

- R-14 Budget Modification NOND #1 Authorizing Adjustment of Appropriations and Revenues to Offset 1991-92 Revenue Shortfall. Reduces JDH Construction, Reduces Transfer from General Fund to Jail Levy Fund and Recognizes Increased State Revenue

CONTINUED TO THURSDAY, AUGUST 22, 1991

SUPPLEMENTAL AGENDA

Thursday, August 15, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

UNANIMOUS CONSENT ITEM

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-15 RESOLUTION in the Matter of Issuance of an Industrial
Development Revenue Bond State of Oregon to Powell Valley
Iron and Equipment, Inc.

NOT APPROVED.



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS FOR THE WEEK OF

AUGUST 12 - 16, 1991

Tuesday, August 13, 1991 - 9:30 AM - Planning Items. . . .Page 2
Tuesday, August 13, 1991 - 1:30 PM - Agenda ReviewPage 2
Tuesday, August 13, 1991 - 2:30 PM - Board Briefings . . .Page 2
Thursday, August 15, 1991 - 9:30 AM - Regular Meeting. . .Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are recorded and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers
Friday, 6:00 PM, Channel 27 for Paragon Cable (Multnomah East) subscribers
Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

Tuesday, August 13, 1991 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 PR 4-91
 ZC 4-91 PUBLIC HEARING - ON THE RECORD 10 MINUTES PER SIDE

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** Giff - motion
Sk - Ind*

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** Motion to postpone hearing until Sept. 3, 1991 w/ same conditions*

Tuesday, August 13, 1991 - 1:30 PM

Multnomah County Courthouse, Room 602

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Multnomah County Courthouse, Room 602

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(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-1 ORDER in the Matter of Exempting From Public Bidding a Maintenance Service Contract with Dynix System for Existing Hardware and Software *91-113*

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

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- R-2 ORDER in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody *91-114*

DEPARTMENT OF HUMAN SERVICES - continued

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DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 Ratification of an Intergovernmental Agreement Between the Oregon Emergency Management Division and Multnomah County Whereby Multnomah County Agrees to Cooperate in the Implementation and Maintenance of an Emergency Management Program in Order to Qualify for Emergency Management Assistance Funding for the 1990-91 Federal Fiscal Year
- R-5 Request for Approval of a Notice of Intent to Co-Sponsor, with the Oregon Department of Fish and Wildlife and the Nature Conservancy, an Application to the Northwest Power Planning Council Concerning a Wildlife Mitigation Grant Proposal for Properties Located Within the Sandy River Gorge

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-6 Introduction of Officer Beth Fernandez, North Miami Beach Police Department, Participating in an Officer Exchange Program with the Multnomah County Sheriff's Office, Safety Action Teams (10:00 AM TIME CERTAIN)

NON-DEPARTMENTAL

- R-7 RESOLUTION in the Matter of the Plan for Altering the Boundaries of Commissioner Districts as Required by the Multnomah County Home Rule Charter, Section 3.15 91-115
- R-8 Second Reading and Possible Adoption of an ORDINANCE Creating the County Peace Task Force and the Thousand Crane Award to Recognize Citizens who are Leading Multnomah County Toward a Peaceful Non-Nuclear Future 693
- R-9 RESOLUTION in the Matter of Proposing Multnomah County as a Member of the Northwest Oregon Region for the Regional Strategies Program 91-116
- R-10 RESOLUTION in the Matter of Approving a Request to Transfer 3533 N.E. 11th Street Property to Give Us This Day, a Charitable Organization, for Low Income Housing, ~~91-116~~
Continued to 8-22-91 for Public Hearing w/notice.
- R-11 RESOLUTION AND ORDER in the Matter of the Appeal of James Weaver, dba Abe's Second Hand Store 91-117
- R-12 RESOLUTION in the Matter of a Process to Determine Future Delivery of Law Enforcement Services in Multnomah County 91-118

NON-DEPARTMENTAL - continued

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in Law Enforcement in Multnomah County 91-119
- R-14 Budget Modification NOND #1 Authorizing Adjustment of
Appropriations and Revenues to Offset 1991-92 Revenue
Shortfall. Reduces JDH Construction, Reduces Transfer from
General Fund to Jail Levy Fund and Recognizes Increased
State Revenue

Continued to 8-22-91

DATE 8-13

NAME KEW LARSON

ADDRESS _____

STREET

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # _____

SUBJECT _____

_____ FOR _____ AGAINST

PLEASE PRINT LEGIBLY!

Meeting Date: August 13, 1991

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: Public Hearing

BCC Informal _____ (date) BCC Formal August 13, 1991 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION _____

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION Denial ~~APPROVAL~~

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

PR 4-91/ZC 4-91 Decisions of the Planning Commission of June 3, 1991 and appealed by the applicant, with recommendation to the Board for denial, with the Scope of Review being On The Record, with oral argument limited to ten minutes per side.

(If space is inadequate, please use other side)

SIGNATURES:

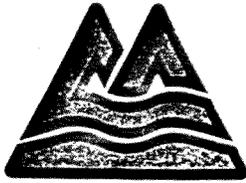
ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER Sharon Cowley

(All accompanying documents must have required signatures)

MULTNOMAH COUNTY BOARD OF COUNTY COMMISSIONERS
1991 AUG - 6 AM 9:42



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

Date: 08/13/91 Time: 9:30 a.m. Place: Room 602, Multnomah County Courthouse

**PR 4 6-91 Public Hearing - On The Record
ZC 4-91**

Review the Decision of the Planning Commission of June 3, 1991, **denying** requested amendment of the Comprehensive Plan Map, changing the Plan designation from Exclusive Farm Use to Multiple Use Forest and **denying** requested change in zone from EFU to MUF-19, all for that portion of the property lying north and west of NW Germantown Road, for property located at **14715 NW Old Germantown Road**.

Scope of Review.

On the Record

Oral Argument.

Each side will have **ten minutes** to present oral argument before the Board.

Proposed Parcelization

Parcel I
14.29 acres

Proposed access
for Parcel I

NW Germantown Rd.

Parcel II
21.75 acres

Existing home
and associated
buildings

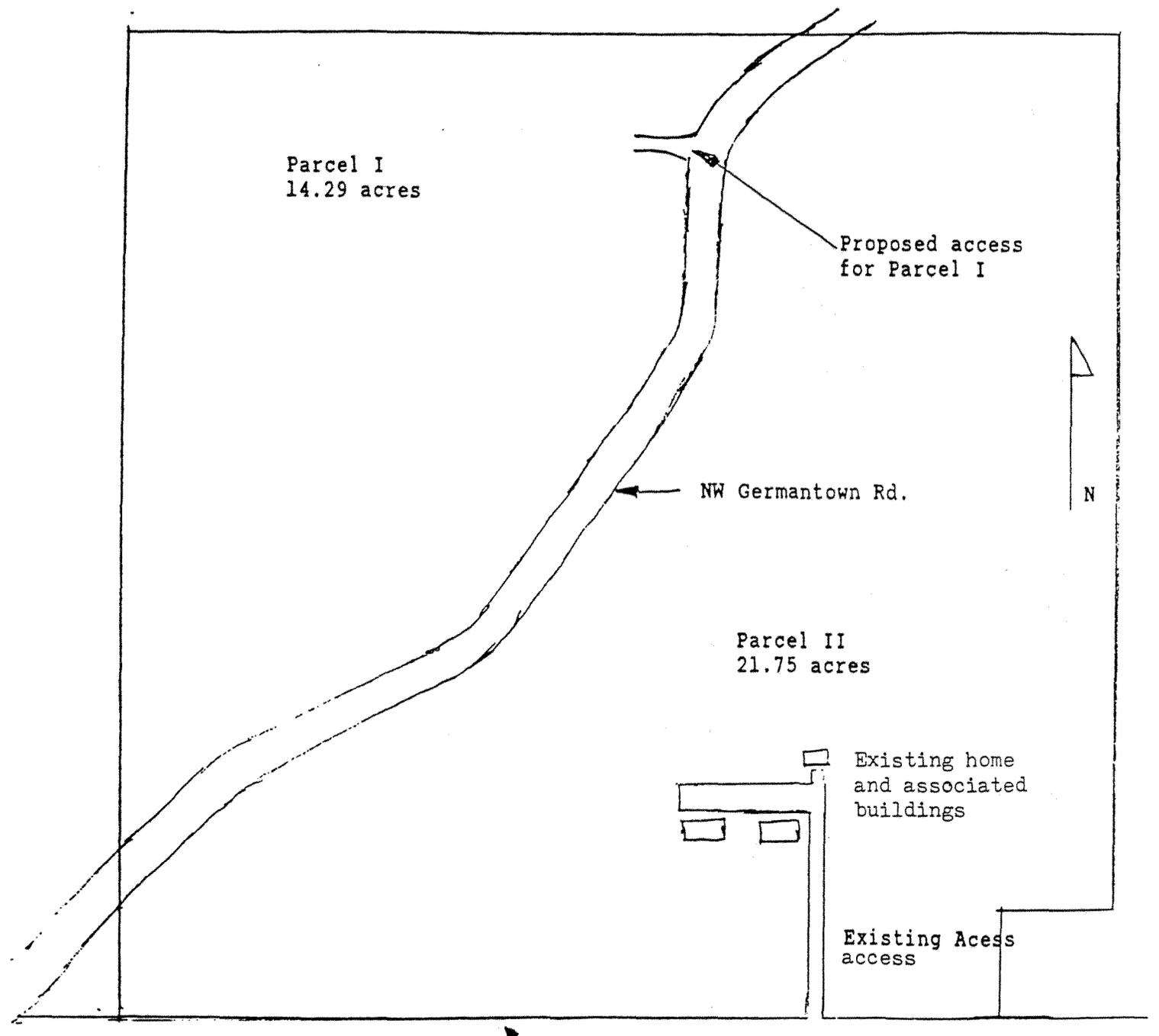
Existing Access
access

NW Old Germantown Rd.

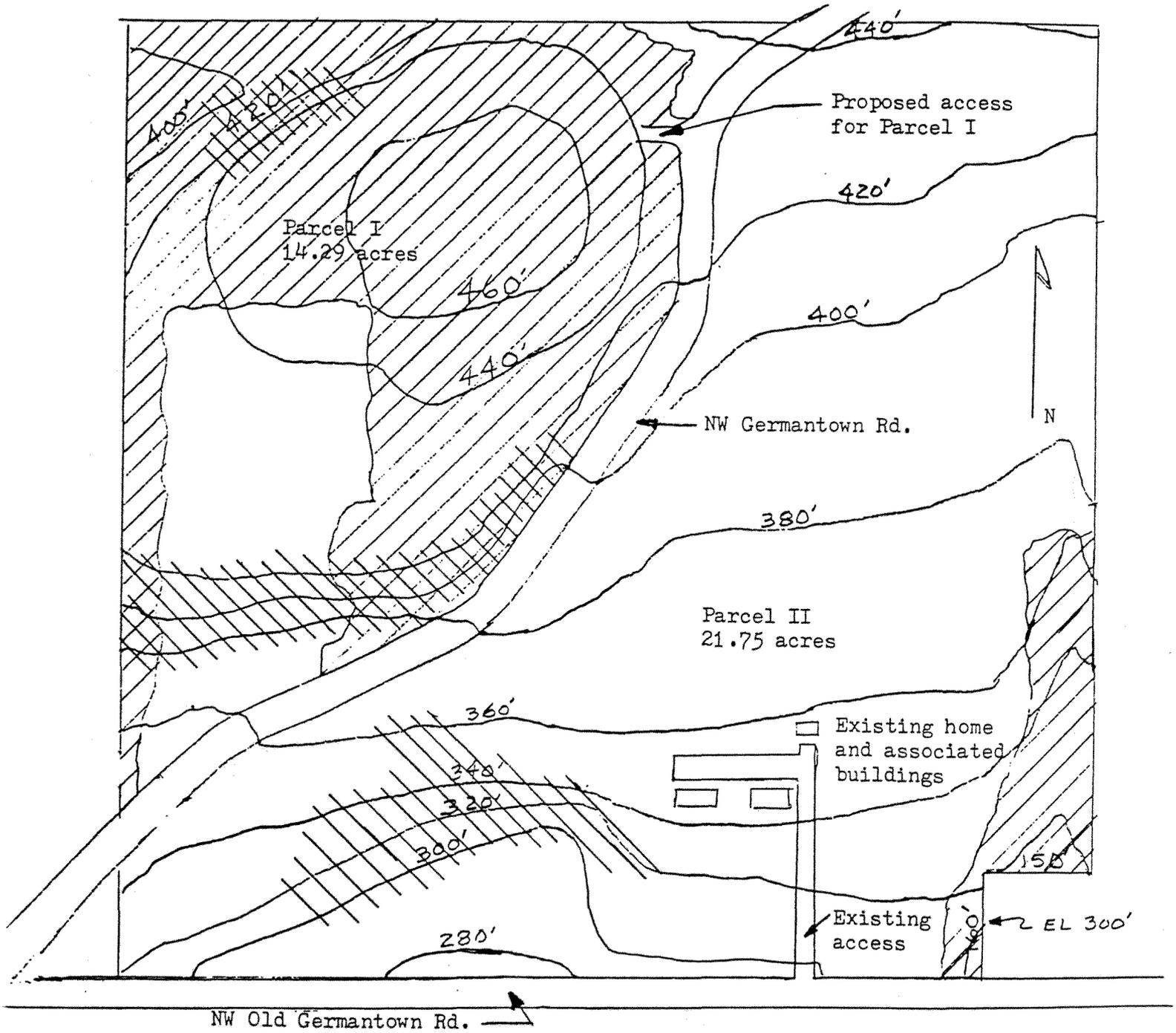


Scale : 1 inch = 200 feet

PR 4-91/ZC 4-91



Development Limitations
and
Topography



-  Timber
-  Steep slopes

Scale: 1 inch = 200 feet
PR 4-91/ZC 4-91

PR 4-91
ZC 4-91

Mailed
to Ken
Larson -
Return to
Planning
Dept.

43 min.
@ 1.75
per min /
75.25
+ 150.00
= 225.25
to file



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

625.85
625.85

NOTICE OF REVIEW

1. Name: LARSON, EUGENE, KENNETH

2. Address: 9321 NW OLD SKYLINE AND PORTLAND, OR 97231

3. Telephone: (503) 289 - 5191

4. If serving as a representative of other persons, list their names and addresses:

ANDY HUSERICK 14715 NW OLD GERMANTOWN RD
PORTLAND, OR 97231

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?

DENIAL OF PLAN CHANGE PR 4-91
AND ZONE CHANGE ZC 4-91

6. The decision was announced by the Planning Commission on JUNE 3, 1991

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

REPRESENTATIVE OF APPLICANT ~~FOR~~
(ANDY HUSERICK) FOR THE PLAN AND ZONE
CHANGE LISTED IN PARAGRAPH 5, ABOVE.

MUF-19 '13'
20 Ac.

N W 160th AVENUE
'11'
40 Ac.

EFU

KAISER

MUA-20

'32'
7.72 Ac.

MUA-20

'24'
1.81 Ac.

EFU

'27'
25.47 Ac.

'28'
2.00 Ac.

'12'
14.00 Ac.

Washington Co.

CITY OF PORTLAND BOUNDARY

EFU

'42'
37.71 Ac.

'2'
19.11 Ac.

EFU

'16'
34.19 Ac.

'43'
39.14 Ac.

'44'
20.39 Ac.

'15'
38.50 Ac.

CITY OF PORTLAND

'39'
20.00 Ac.

MUF-19

'17'
39.4 Ac.

EFU

'20'
34.14 Ac.

EFU

MUF-19

HP-1

MUF-19

'1'
30.01 Ac.

'13'
25.42 Ac.

ANDREWS AC

RR

EFU

RR

RR

RR

RR

Zoning Map
Case #: PR 04-91 & ZC 04-91
Location: 14715 NW Old Germantown Rd
Scale: 1 inch to 800 feet (approx)
Shading indicates subject property



CITY OF PORTLAND BOUNDARY

Partition - 4.58 Ac
- Plat
Parcel 1 4.68 Ac
Parcel 2 1.98
Parcel 3 1.80 Ac
1990-57

16 15 14 13 12 11 10 9 8 7

17 18 19 20 21 22 23 24 25 26

16000

15500

15000

14500

14000

44

43

42

41

(A)

119.41 Ac.

'23'
5.0 Ac.

'24'
5.0 Ac.

'1'
5.31 Ac.

'29'
5.00 Ac.

'27'
4.17 Ac.

'28'
2.00 Ac.

'26'
90.00 Ac.

'28'
2.50 Ac.

'20'
2.50 Ac.

'27'
3.00 Ac.

'25'
2.00 Ac.

'30'
2.00 Ac.

'32'
2.00 Ac.

43

'12'
11.76 Ac.

'11'
11.55 Ac.

'2'
6.75 Ac.

'20'
6.40 Ac.

'18'
6.40 Ac.

'19'
6.40 Ac.

'38'
2.80 Ac.

'25'
1.13 Ac.

'3'
1.98

OL

GERMANTOWN ROAD

GERMANTOWN ROAD

ALDER CREEK

GERMANTOWN RD

N W OLD GERMANTOWN ROAD

N W 160th AVENUE

N W KAISER ROAD

N W KAISER RD

N W

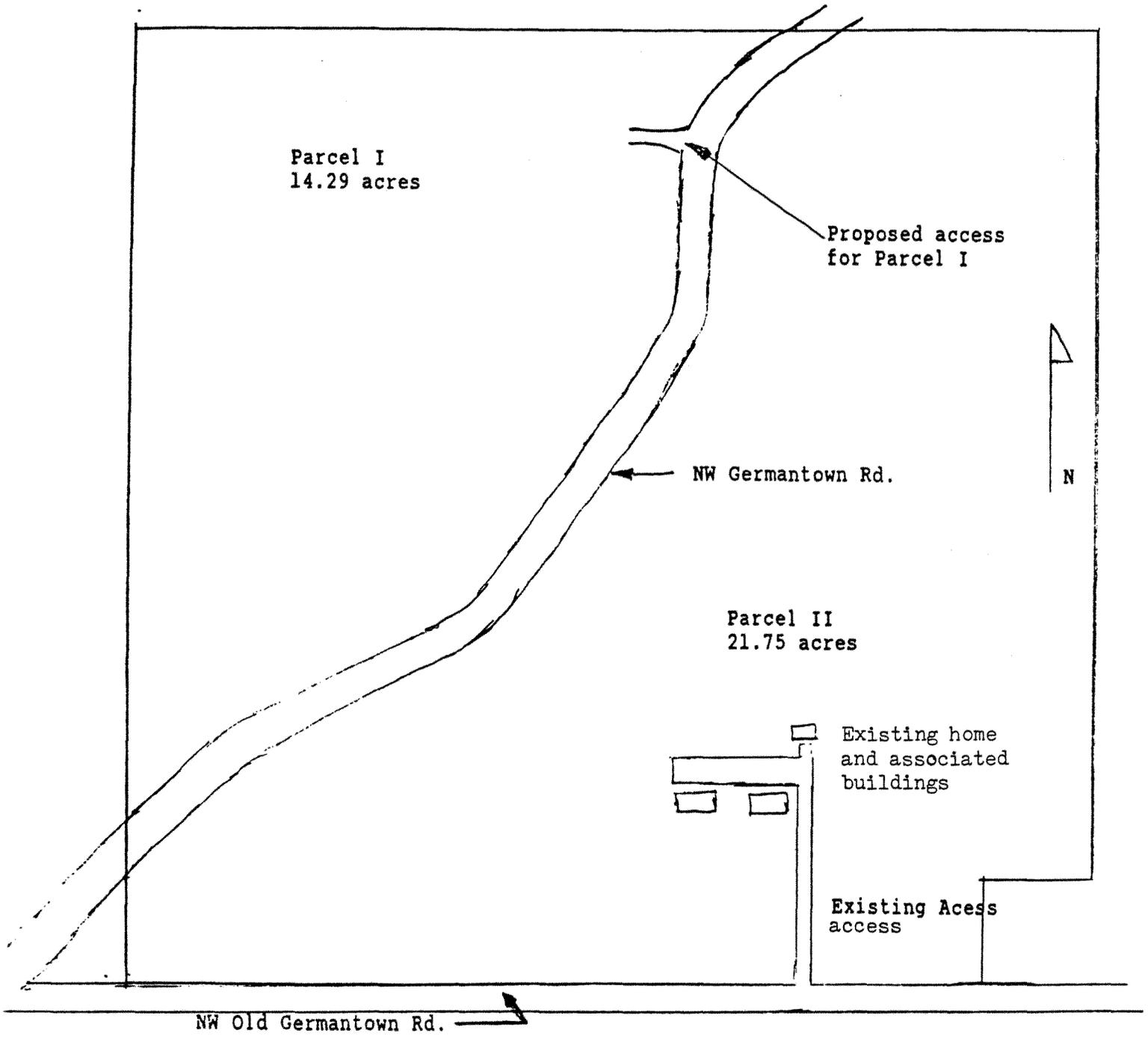
16000

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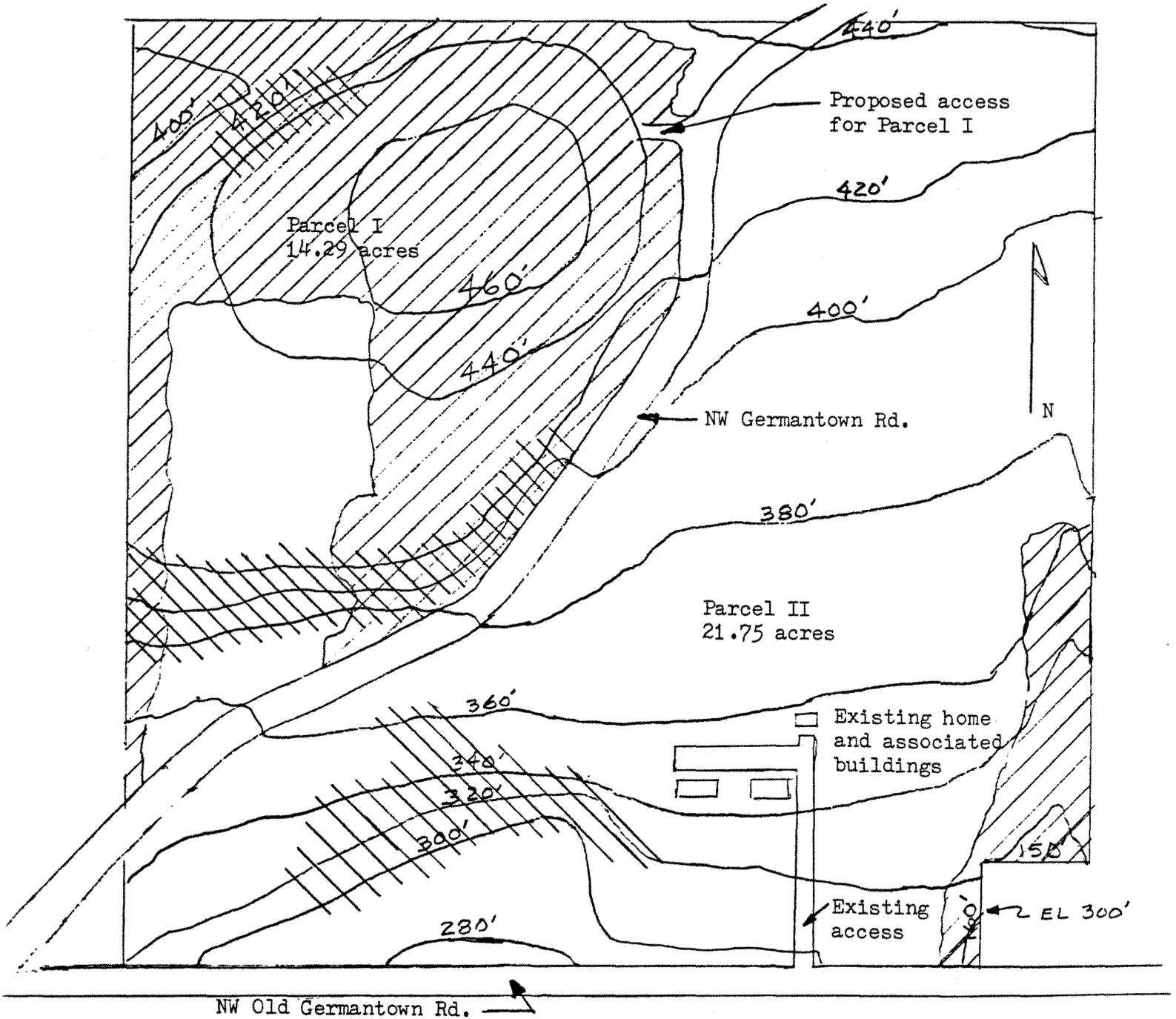
Proposed Parcelization



Scale : 1 inch = 200 feet

PR 4-91/ZC 4-91

Development Limitations
and
Topography



Scale: 1 inch = 200 feet

PR 4-91/ZC 4-91

Findings of Fact:

Note: Portions of the submitted application narrative are used in the findings section of this report. To distinguish the applicant's submittal from staff comments they will be in *italic* type and be indented.

References by the applicant to Parcel I are referring to that portion of tax lot '20' which is north and west of NW Germantown Road. References to Parcel II are concerning the remainder of the tax lot south and east of NW Germantown Road.

Additional findings submitted by the applicant for the June 3rd Planning Commission Hearing is attached and made part of this record. This attachment is entitled "Planning Commission Continuance Data For PR 4-91/ZC 4-91".

1. Applicant's Proposal:

- A. The applicant requests a plan and zone change from Exclusive Farm Use (EFU zone) to Multiple Use Forest (MUF-19 zone) for the portion of the subject property that is located on the northwest side of NW Germantown Road. This area contains 14.29 acres of the total 36.18 acres in tax lot '20'. The applicant's position is that there is sufficient difference between the two portions of the property on each side of NW Germantown Road to warrant differing plan and zone designations.

2. Background Information:

- A. The Exclusive Farm Use zoning district "lot of record" definition does not include the provision that a County maintained road intersecting a parcel would create separate lots. This provision is in all other rural zone regulations except the Commercial Forest Use zone. The requested plan and zone change would, by the MUF lot of record definition, create separate lots on each side of NW Germantown Road. A resource related residence could then be placed on the new MUF zoned lot. The change in zoning would create two new lots without the need for land division application or approval.

3. Site Information:

A. Current Land Use:

The majority of Parcel II (approximately 21 acres), with the exception of an approximately 1 acre home site, has been utilized for agricultural production. Approximately 72% of Parcel I is heavily timbered with the remaining 28% in agricultural production (Christmas trees). Historically, this use pattern on the property has been constant. No dwellings or other permanent structures are located on Parcel I.

B. Soils:

Two different soil series are present on the subject property, Cascade Silt Loam series and Helvetia Silt Loam. The Cascade Silt Loam series is the predominant soil series present on the subject property. Four variants occur on the subject property within this series (7B, 7C, 7D and 7E). One variant in particular predominates on the property, 7c, the majority of which covers over 90% of Parcel II. One small area of Helvetia Silt Loam is located on the southern edge of the property.

The significant factor with respect to soils is their location relative to slope changes, elevation, and slope orientation. Elevations on the subject property vary between less than 280 feet at the extreme southern portion of proposed Parcel II to over 460 in the center of proposed Parcel I. The significant factor with respect to overall elevation is to note that approximately 90% of Parcel I is at elevations in excess of 400 feet, while approximately 90% of Parcel II is less than 400 feet in elevation.

Parcel I exhibits the most radical slopes changes and greatest variations in slope orientation, with a third of the property having a northerly sloping orientation and the balance having steep south and easterly orientations. Parcel II exhibits very little slope change with the entire slope having a southerly orientation.

The portion of the property best suited for timber production is utilized for timber production, with the exception of 3.93 acres of Parcel I which is currently in Christmas tree production. This is based on the presence of only Cascade Silt Loam series soils in these portions of the property (which have a suitable Timber Site Index of 155), the higher elevations and the wide variation in steepness and orientation of slopes. It should be noted that the steep south facing slopes of the 3.93 acre area in Parcel I, currently in Christmas tree production will, under a proposed Forest Management Plan be converted to timber production in order to stabilize these soils and prevent silting of drainage ditches in the public right of way along NW Germantown Road.

All areas under cultivation lie within proposed Parcel II, with the exception of the 3.93 acres in Christmas tree production on Parcel I. Additionally it should be noted that approximately 12 acres in the eastern portion of Parcel II were fully tilled in 1987 to enhance drainage and maximize production in this area. Also, it is the applicants plan to tile additional areas of Parcel II in order to enhance drainage in areas not presently tilled.

C. Topography:

Elevations range from approximately 280 feet at the southern edge of the property to over 460 feet in the center of proposed Parcel I. This variation

of less than 200 feet has only minimal influence on the treatment and use of this land.

The most influential topographical characteristics determining the use of this land are the wide variation in slope changes and orientation to be found on Parcel I as compared to the relatively constant and southerly slope of Parcel II. The steep and varying slopes of Parcel I are not suited to any type of mechanized agriculture. The small area on Parcel I that has been cultivated has historically been subject to excessive erosion and would consequently benefit from reforestation.

D. Access to Site:

The subject property borders NW Old Germantown Road on the south and is bisected by NW Germantown Road. Under the division proposal Parcel II will be served (as it always has) by NW Old Germantown Road and Parcel I will be served by NW Germantown Road. The original farm dwelling is located on Parcel II.

E. On-site Services:

The farm dwelling on Parcel II is serviced by an existing well and on-site sewage disposal system. Electric Power and telephone service are readily available to Parcel I. Water for Parcel I will be provided by a well, and on-site sewage disposal will be provided by a septic tank/drainfield system.

4. Vicinity Information:

- A. The subject 36 acre lot is zoned EFU as are properties to the west and south. The north property line abutts the MUF-19 district and the east line abutts RR (five acre minimum lot size). The subject area proposed for MUF -19 zoning is contiguous to that zoning designation.
- B. NW Old Germantown Road intersects with NW Germantown Road 150 feet from the southwest corner of the subject property. The city boundary of Portland is one-half mile to the north. Washington County is one-quarter mile to the south.
- C. The EFU zoned parcels near the subject site are mostly cleared of forest and are in some type of cultivation or pasture. A majority of the MUF-19 land to the north has been cleared of trees and is quite open compared to the thick forest growth on the portion of the subject site proposed for rezoning.

5. Ordinance Considerations:

- A. MCC 11.05.290 specifies factors to consider in review of a quasi-judicial plan revision. MCC 11.05.120(B) classifies the proposed amendment as quasi-judicial since no Compre-

hensive Plan Policy amendments are proposed. It must be demonstrated that the revision is:

- (1) Consistent with standards in MCC 11.05.180 (LCDC goals);
- (2) In the public interest; and
- (3) In compliance with applicable elements of the Comprehensive Plan.

B. MCC 11.15.8230(D) lists approval criteria for a change of zoning classification. It must be demonstrated that:

- (1) Granting the request is in the public interest;
- (2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property;
- (3) The proposed action fully accords with the applicable elements of the Comprehensive Plan."

6. Compliance with Ordinance Criteria:

A. In the public interest:

The proposal to divide and rezone this property is expressly intended to increase the agricultural and timber productivity of the land. The very intent of Goals 3 and 4 is to preserve resource lands for the continued production of farm and forest products, respectively. Under this proposal both of these objectives will be obtained.

Proposed Parcel I seems to fit perfectly with the Policy 12 (Multiple Use Forest Area) criteria. The second paragraph of the "Introduction" states: "The intent of this classification is to encourage small wood lot management, forestry, reforestation and agriculture." This proposal serves the public interest since it conforms to this intent statement.

Rezoning Parcel I to MUF-19 in no way affects the agricultural potential of Parcel II. The purpose of the Agricultural Land Area Classification under Policy 9 is to preserve the best agricultural lands from inappropriate and incompatible development. Parcel II will be preserved for agricultural use and still be free from incompatible development under this proposal.

7. Comprehensive Plan Policies:

A. Policy No. 9, Agricultural Land Area:

Introduction

The purpose of the Agricultural Land Area Classification is to preserve the best agricultural lands from inappropriate and incompatible development and to preserve the essential environmental characteristics and economic value of these areas.

The intent of this classification is to establish these areas for exclusive farm use with farm use and the growing and harvesting of timber as primary uses.

Policy: The County's policy is to designate and maintain as exclusive agricultural, land areas which are:

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;
- B. Of parcel sizes suitable for commercial agriculture;
- C. In predominantly commercial agricultural use; and
- D. Other areas, predominantly surrounded by commercial agricultural lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.

(1) Applicant's Response:

The areas that are best suited for agriculture based on historical use, current use, soils, topography, slope orientation, elevation, degree heating days and minimal erosion potential are utilized for commercial agriculture. All of the land in this ownership utilized for agriculture will continue to be used for that purpose, with the exception of the 3.93 acre area of Parcel I presently planted in Christmas trees which shall be reforested in order to check excessive erosion in that area.

The county was correct in designating proposed Parcel II for agriculture based on the plan policies. The proposal to change the zoning on Parcel I to Multiple Use Forest (MUF-19) and divide off Parcel II still conforms with policies 9 A. through E. The two proposed parcels in this case are separated by an existing county road. Proposed Parcel II will still be bounded on the south by land under cultivation which is zoned for exclusive farm use.

The area comprising Parcel I should have more appropriately been zoned for forest use based upon the following factors:

1. *The bulk of this Parcel has always been in timber production.*
2. *The higher average elevation of this parcel with respect to Parcel II.*
3. *The steep and irregular orientation of the slopes preclude any type of mechanized agriculture.*
4. *Inspection of the site by a licensed forester on a micro level has shown this parcel to have a site index of 107 (based on a 50 year growth cycle); making it very well suited for timber production.*
5. *The history of erosion problems associated with that portion of the parcel in Christmas tree production indicates it would be better suited from a soils standpoint for forestry uses.*

Staff Comment: The proposed zone change would leave the 21.75 acres southeast of NW Germantown Road as a separate EFU zoned lot. To determine if this size of parcel was atypical of other EFU zoned parcels, a count of other EFU parcels in Sections 5, 8, 9 and 16 (1N1W) was completed. In those sections there are 36 parcels with that zoning with a total area of 813.82 acres. Using those figures, the average size of EFU lots in the vicinity of the subject site is 22.61 acres. Therefore, the 21.75 acre lot that would result from the proposed action would not seem to be an uncommon parcel size for the existing farm practices in that area of Multnomah County.

Policy 9E allows in some circumstances the zoning of non-agricultural areas as EFU lands. However, due to the abutting fairly heavily traveled road (NW Germantown Road) it is not necessary to zone this property EFU "to permit farm practices to be undertaken on these adjacent lands".

B. Policy No. 12, Multiple Use Forest Areas:

Introduction

The purpose of the Multiple Use Forest Area classification is to conserve those lands suited to the production of wood fibre by virtue of their physical properties and the lack of intensive development; however, in areas where the lands are suitable and the use does not impact existing forestry or agricultural uses, other uses will be allowed.

The intent of this classification is to encourage small wood lot management, forestry, reforestation and agriculture. Other non-forest or non-farm uses such as rural planned developments, limited service commercial, extractive industries and cottage industries may also be allowed.

Policy: The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:

- A. Predominately in Forest Site Class I, II, III, for Douglas Fir As Classified by the U.S. Soil Conservation Service;
- B. Suitable For Forest Use and Small Wood Lot Management, But Not in Predominately Commercial Ownerships;
- C. Provide with rural services sufficient to support the allowed uses, and are not impacted by urban-level services; or
- D. Other areas which are:
 1. Necessary for watershed protection or are subject to landslide, erosion or slumping; or
 2. Potential reforestation areas, but not at the present used for commercial forestry; or
 3. Wildlife and Fishery habitat areas, potential recreation areas, or of scenic significance.

(1) Applicant's Response:

The proposed division and rezoning of Parcel I conforms very closely with the intent statement of policy 12. Furthermore, this proposal conforms point by point with policies A through D as follows:

- A. *The soils identified in the Soil Survey for Multnomah County, Oregon are predominantly in Forest Site Class II.*
- B. *Parcel I is a small parcel in private ownership and is highly suitable for forest use and small wood lot management.*
- C. *The subject parcel has rural services such as paved road access, electricity, and telephone. In addition, the property is capable of supporting a well (based on well log records from the Oregon Department of Water Resources) and septic drain fields (based on soils data from the Soil Survey for Multnomah County, Oregon).*
- D. *The subject parcel is sufficiently steep to require watershed protection. This has been evidenced by the excessive erosion tree production, as opposed to the forested area where soil conditions have remained stable. Parcel I should be maintained and encouraged for forest use instead of being utilized for farm use based on*

the current EFU zoning.

Staff Comment: The applicant has prepared a forest management plan for the area proposed to be zoned MUF-19. The plan is not a criteria of approval for the zone change but is supporting evidence of the properties forest producing capacity. The plan includes two different stand areas:

1. A 10.36 acre area with a stand composition of 93.9% Douglas Fir and 6.1% Maple. The age of the Douglas Fir is 50-80 years and the Site Index is 107. The Initial harvest in 1991 would be 55 trees.
2. A 3.93 acre area of over 2,000 Christmas Trees.

A site preparation, stocking survey, and replanting plan schedule was also submitted.

C. Policy No. 13, Air, Water, and Noise Quality:

Air, water and noise pollution are minimal on the subject property with the exception of jet aircraft leaving Portland International Airport.

The proposed use of proposed Parcel I for timber management and Parcel II for agriculture support air and water quality parameters.

The greatest potential threat to water quality would be ground water pollution from any future septic system on proposed Parcel I. The predominant soil series, Cascade Silt Loam (7B & 7C) have a seasonal high water table perched on fragipan. The fragipan ranges from 20-30 inches in depth. Either a cap and fill or sand filter septic system may have to be installed in order to prevent septic system failure.

Any subsequent resource dwellings should be sensitively placed to minimize soil erosion and take advantage of optimum siting for septic tanks. This proposal substantially complies with this plan policy.

D. Policy No. 14, Development Limitations:

Despite the fact that the property increases in general from south to north, the slopes are fairly uniform. Slopes exceeding 20 percent are isolated in small pockets. The hazard of erosion is rated as "moderate" in the S.C.S. soil manuals with the exception of an area in the northwest corner of Parcel I, an area on the easterly side of Parcel I bordering NW Germantown Road, and an area in the southwestern portion of Parcel II.

Seasonally high water tables are present on both parcels. Water tables are in the 18-30 inch range. The farm dwelling on Parcel II is served by an existing septic tank/drainfield. A septic tank/drainfield on Parcel I would have to

be designed so that it would not fail during winter wet periods.

The depth to fragipan is 20 -30 inches where the Cascade Silt Loam is located. This means that both parcels have shallow depth to fragipan. Any roads, septic tank/drainfields and home sites would have to be designed to mitigate any potential adverse impacts.

Overall, any proposal for development on these parcels could be accommodated as long as the limitations are considered during the design phase. Both Parcels have a moderately severe problem with shallow soils and seasonal wetness; however, with proper design and drainage any potential adverse impacts can be overcome.

E. Policy No. 16, Natural Resources:

The subject property is unquestionably a wildlife habitat area. The wild life habitat area basically encompasses all of Parcel I and the major portions of the undeveloped areas of Parcel II. Any proposal to develop this property would at most result in only one forest related dwelling unit on Parcel I in addition to the existing farm dwelling unit on Parcel II. The existing farm uses on Parcel II for Christmas tree and hay production are compatible with wildlife habitat requirements. The existing and proposed forest use of Parcel I is compatible with wildlife habitat requirements.

In summary, the existing and proposed uses of the property substantially conform to this goal.

F. Policy No. 22, Energy Conservation:

This policy has limited application to this property. The development of energy-efficient land use practices is the major point of concern with respect to this proposal. Any increase in density would be for the purpose of managing the resource base for farm and forest uses.

G. Policy No. 37, Utilities:

The subject property will place a relatively low demand on utility services since the zoning would only allow one additional dwelling. Paved road access, electrical power, and telephone are available to the site. However, sanitary sewer, storm sewer, and domestic water are unavailable. Sewage disposal will have to be provided by a septic tank, and water will be from wells.

Drainage is not a problem now. When the driveway and additional resource dwelling is constructed drainage will have to be considered. The potential for modifying rainfall/runoff rates and volumes will come primarily from the

proposed driveway entering Parcel I from the eastern boundary along NW Germantown Road (not so much from a potential homes site). The proposed driveway will be designed so as to minimize accelerated runoff. Rapid runoff would erode or undercut the road unless the speed of the runoff is arrested.

In summary, the property can be served by utilities with out placing a heavy demand on public services or the local environment. Proper drainage will be required during driveway construction to protect the integrity of the driveway and to protect downhill residences and county ditches.

H. Policy No. 38, Facilities:

The subject property is currently in a fire protection district (see General Application). Any proposal to locate a resource dwelling on Parcel I will take into account fire protection considerations. Any dwelling unit will have setbacks from timber harvesting areas, and fire fuel (such as low brush vegetation) will be removed from around the buildings.

The property is located in the Portland School District, and the General Application provides for their being contacted about this proposal. The impact of this proposal will be difficult to weigh until such time that an actual demand is placed on the system.

Staff Comment: The public facilities of the area should be adequate.

I. Summary of Conformance with Comprehensive Plan Policies:

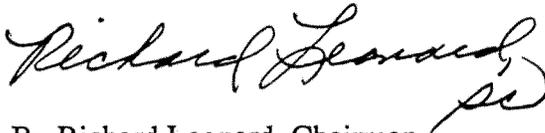
This proposal substantially conforms with all the applicable policy standards of the Multnomah County Plan. Any potential adverse impacts from anticipated development can be mitigated. Sensitive placement of homes, buildings, and driveways will help satisfy policy requirements for reducing environmental impact.

The provision of utilities and public facilities to the subject property is favorable. The net increase in potential dwelling units is only one; not enough to strain public facilities and services.

8. Conclusions:

- A. The proposed plan amendment and zone change satisfies the applicable approval criteria.
- B. Conditions of approval are necessary to assure site development is consistent with comprehensive plan policies and implementing regulations.

Signed June 3, 1991



By Richard Leonard, Chairman

Filed With the Clerk of the Board on June 13, 1991

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. on Monday, June 24, 1991 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, June 25, 1991 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Planning Commission Continuance Data

For

PR 4-91/ZC 4-91

PROPOSED COMPREHENSIVE PLAN AMENDMENT

AND ZONE CHANGE

Owner:

Andy Huserick

Location:

Township 1N, Range 1W, Section 8, Tax Lot 20
Multnomah County, Oregon

Applicants:

Andy Huserik (owner)
14715 NW Old Germantown Rd.
Portland, OR 97231

and

Ken Larson (Representative)
9321 NW Old Skyline Blvd.
Portland, OR 97231

Background

This document submits additional information to the Multnomah County Planning Commission in support of an application by Andy Huserik to:

1. divide a 36.04 acre parcel known as Tax Lot 20, Township 1N, Range 1W, Section 8, Multnomah County, Oregon into two parcels of 14.29 acres (Parcel I) and 21.75 acres (Parcel II). Parcel I is designated as that area of Tax Lot 20 lying north and west of NW Germantown Road and Parcel II contains the remaining area of Tax Lot 20 which lies south and east of NW Germantown Road.

2. change the Comprehensive Plan Designation for Parcel I from Agriculture to Forestry.

3. change the zoning for Parcel I from Exclusive Farm Use (EFU) to Multiple Use Forestry-19 (MUF-19).

Purpose:

To show how this proposal conforms with the Multnomah County Comprehensive Plan, how this proposal is in the public interest and that a public need for the change exists. This is based on proof of a change in the neighborhood and a mistake in the planning and zoning for this property.

Comprehensive Plan Policy 2, Off-Site Impact

Public safety, as well as forest and farming practices, have been greatly impacted by the designation of this property as EFU. Due to the heavy traffic on NW Germantown Road and the character of the road bordering the property it has become impossible to move equipment safely between Parcels I and II.

Based on traffic studies obtained from Multnomah County Traffic Engineering (see attached traffic studies dated June 9, 1987 and June 12, 1990) it has been determined that traffic on NW Germantown Road in the vicinity of the subject property has more than doubled since the acknowledgment and acceptance of the Comprehensive Plan in 1980 by LCDC, which established the current zoning. Actual figures for June of 1990 show the annual average daily traffic flow to be 2170 vehicles per day. Annual average traffic flow for 1991 is projected to be 2314 vehicles per day. Average annual traffic flow in 1980 is calculated to have been 1142 vehicles per day.

The character of the road in this vicinity makes movement of heavy slow moving equipment such as tractors and bulldozers between Parcels I and II especially hazardous. The road has numerous curves which limit sight distances, and grades in excess of 10 to 15 percent which greatly increase braking distances. These factors combined with the relatively heavy traffic flows have created this hazardous situation.

Rezoning Parcel I as MUF would create a lot of record which would be eligible for a resource related dwelling. A resource related dwelling on Parcel I would eliminate the need to move farm and forest related equipment between Parcels I and II since all equipment necessary to manage the small woodlot proposed for Parcel I would be kept on Parcel I. This would eliminate the safety hazard while still keeping the this property as a forest resource, as

it historically has been.

Comprehensive Plan Policy 9, Agricultural Land Area

A mistake was made in designating Parcel I for exclusive farm use based upon historical use, the erosion potential of the soils and the impact of NW Germantown Road.

The Agricultural Soil Capability for the soils on this parcel are designated as III and IV (which is in keeping with the requirements of Policy 9), but the agricultural erosion potential remains high. Over two thirds of Parcel I has slopes in excess of 8%, causing it to be defined as "highly erodible land" by the USDA Soil Conservation Service. While erosion is not specifically addressed in Policy 9, it is addressed in Policy 12, paragraph D.1. Areas subject to erosion are specifically recommended for designation as Multiple Use Forest under Policy 12.

Historically, the majority of Parcel I (72%) has been in timber production since 1907. Conversion to Multiple Use Forest will not effect agricultural practices on neighboring properties, to the west and to the south, which are currently zoned EFU (Exclusive Farm Use).

Public safety, as well as forest and farming practices, have been greatly impacted by the designation of this property as EFU. Due to the heavy traffic on NW Germantown Road and the character of the road boarding the property it has become impossible to move equipment safely between Parcels I and II.

Policy 9, paragraph D. specifically states that it is the County's policy to designate and maintain as Exclusive Agricultural, land areas which are not impacted by urban services. An arterial road such as NW Germantown provides a dedicated urban service due to the fact that the majority of traffic on this road is commuter traffic moving between residential areas in the Tualatin valley and the urban industrial areas of Multnomah County. It should be noted that urban service impacts are not a criteria required to be considered in the designation of land as Multiple Use Forest under Policy 12.

Comprehensive Plan Policy 12, Multiple Use Forest Area

The proposed division and rezoning of Parcel I conforms very closely with the intent statement of policy 12. Furthermore, this proposal conforms point by point with policies A through D as follows:

- A. The soils identified in the Soil Survey for Multnomah County, Oregon are predominantly in Forest Site Class II.
- B. Parcel I is a small parcel in private ownership and is highly suitable for forest use and small wood lot management.
- C. The subject parcel has rural services such as paved road access, electricity, and telephone. In addition, the property is capable of supporting a well (based on well log records from the Oregon Department of Water Resources) and septic drain fields (based on soils data from the Soil Survey for Multnomah County, Oregon).
- D. The subject parcel is sufficiently steep to require watershed

protection. This has been evidenced by the excessive erosion experience in that area of the subject parcel presently in Christmas tree production, as opposed to the forested area where soil conditions have remained stable. Parcel I should be maintained and encouraged for forest use instead of being utilized for farm use based on the current EFU zoning.

Note: Paragraph D. of Policy 12 states that it is the County's policy to designate and maintain as Multiple Use Forest areas which are subject to erosion. Over two thirds of Parcel I is cascade silt loam series soils with slopes in excess of 8%, causing them to be classified as "highly erodible land (HEL)" by the USDA Soil Conservation Service (see attached letter from Peggy A. Olds, District Conservationist to Andy Huserick). This policy statement is very explicit, but appears not to have been applied as it should have when this property was rezoned in 1980.

Description of How Proposal is in the Public Interest

The following statement is in addition to statements previously made in applicants initial application presented to the County Planning Commission on May 6th, 1991:

This proposal promotes public safety by keeping farm and forest related equipment off a hazardous stretch of roadway. At the same it allows Parcel I to be preserved as a resource land for maximum forest productivity.

Previous Precedents:

A Comprehensive Plan Amendment and Zone Change were granted for conversion of 2 parcels from EFU to MUF-19 while creating a third substandard EFU parcel. This approval was granted in 1990 for land described as T1N, R1W, Section 5, Tax Lots 5,6 and 7. The property had soils predominantly of the same soils series as the subject property and all soils had Soil Capability ratings of III and IV, as does the subject property, with the exception of less than an acre which was rated as VI. Arguments for acceptance of that proposal were the same as presented in this proposal, with the exception of the safety concerns involving movement of farm and forest related equipment across Germantown Road.

A copy of the Planning Commissions decision regarding that president setting application will be made available to the Commissioners at the June 3rd, 1991 meeting.

Summary of Conformance with Comprehensive Plan Policies

This proposal substantially conforms with all the applicable policy standards of the Multnomah County Plan. Any potential adverse impacts from anticipated development can be mitigated. Sensitive placement of homes, buildings, and driveways will help satisfy policy requirements for reducing environmental impact.

The provision of utilities and public facilities to the subject property is favorable. The net increase in potential dwelling units is only one; not enough to strain public facilities and services.

Road Counted: NW Germantown Rd
 Reference: W of NW Old Germantown Rd

Date: 06/12/90
 Starting Date: 06/07/90
 Starting Time: 12:00 AM
 Date of Count: 06/07/90
 Day: THURSDAY

Direction: Type: Machine #
 1 EB MC 6
 2 WB MC 6

PERIOD	Eastbound					Westbound					Both
	15min	30min	45min	60min	Hourly Total	15min	30min	45min	60min	Hourly Total	
12:00 AM	4	0	3	2	9	4	6	3	4	17	26
01:00 AM	0	0	0	0	0	2	3	0	1	6	6
E 02:00 AM	1	1	0	0	2	1	2	0	1	4	6
N 03:00 AM	2	0	2	0	4	2	0	1	2	5	9
D 04:00 AM	1	1	8	2	12	1	3	0	0	4	16
05:00 AM	3	8	16	14	41	3	4	5	8	20	61
D 06:00 AM	18	33	41	34	126	4	11	6	8	29	155
F 07:00 AM	60	68	94	51	273	14	19	17	11	61	334
08:00 AM	28	8	20	10	66	12	7	11	7	37	103
P 09:00 AM	15	16	11	17	59	16	5	7	12	40	99
E 10:00 AM	16	13	12	12	53	9	11	4	11	35	88
R 11:00 AM	9	12	15	8	44	14	9	9	14	46	90
I 12:00 PM	10	11	11	17	49	10	6	13	14	43	92
D 01:00 PM	17	17	13	18	65	14	14	11	15	54	119
D 02:00 PM	22	17	15	21	75	15	18	12	20	65	140
03:00 PM	11	16	13	17	57	18	11	14	19	62	119
C 04:00 PM	22	18	27	16	83	13	18	19	30	60	163
D 05:00 PM	23	20	22	14	79	41	98	138	100	377	456
U 06:00 PM	19	10	12	8	49	39	23	20	15	97	146
N 07:00 PM	9	4	7	10	30	19	10	8	10	47	77
T 08:00 PM	4	4	5	4	17	3	11	3	8	25	42
S 09:00 PM	6	3	4	5	18	7	2	5	6	20	38
10:00 PM	9	8	7	2	26	7	5	4	3	19	45
11:00 PM	5	3	3	1	12	2	3	6	8	19	31

DAILY TRAFFIC VOLUMES 1249 1212 2461

ANNUAL AVERAGE DAILY TRAFFIC 1100 1070 2170 ✓

MORNING PEAKS

EVENING PEAKS

PERIOD	EB	WB	BOTH
15 07:45 AM	94		
MINUTE 07:30 AM		19	
PEAK 07:45 AM			111
PEAK 08:00 AM	273		
HOUR 08:00 AM		61	
08:00 AM			334

PERIOD	EB	WB	BOTH
15 04:45 PM	27		
MINUTE 05:45 PM		138	
PEAK 05:45 PM			160
PEAK 05:30 PM	86		
HOUR 06:00 PM		377	
06:00 PM			456

PEAK HOUR FACTORS

PHF 0.726 0.803 0.752 0.796 0.683 0.713

Road Counted: Germantown Rd.
 Reference: W. of Old Germantown Rd.

Date: 06/09/87

E X

Date of Count: 05/19/87

1 Direction Counted: EB 1 Type of Counter: S-R
 2 Direction Counted: WB 2 Type of Counter: S-R

Day: TUESDAY

INPUT COUNTS

HOURLY SUMMARY

PERIOD	1	2	EB	WB	BOTH
06:15 AM	0	3	0	0	0
06:30 AM	0	6	0	0	0
06:45 AM	0	11	0	0	0
07:00 AM	106	18	106	18	124
07:15 AM	0	10	0	0	0
07:30 AM	0	25	0	0	0
07:45 AM	0	38	0	0	0
08:00 AM	182	44	182	44	226
08:15 AM	0	7	0	0	0
08:30 AM	0	18	0	0	0
08:45 AM	0	23	0	0	0
E 09:00 AM	68	32	68	32	100
N 10:00 AM	39	26	39	26	65
D 11:00 AM	31	22	31	22	53
12:00 PM	27	26	27	26	53
J 01:00 PM	25	30	25	30	55
F 02:00 PM	32	40	32	40	72
03:00 PM	82	47	82	47	129
P 04:00 PM	57	103	57	103	160
E 04:15 PM	0	26	0	0	0
R 04:30 PM	0	63	0	0	0
I 04:45 PM	0	98	0	0	0
D 05:00 PM	46	145	46	145	191
D 05:15 PM	0	50	0	0	0
05:30 PM	0	92	0	0	0
C 05:45 PM	0	132	0	0	0
D 06:00 PM	46	168	46	168	214
U 06:15 PM	0	22	0	0	0
N 06:30 PM	0	41	0	0	0
T 06:45 PM	0	56	0	0	0
S 07:00 PM	32	68	32	68	100
08:00 PM	23	36	23	36	59
09:00 PM	21	30	21	30	51
10:00 PM	26	20	26	20	46
11:00 PM	15	17	15	17	32
12:00 AM	7	12	7	12	19
01:00 AM	3	13	3	13	16
02:00 AM	1	3	1	3	4
03:00 AM	1	4	1	4	5
04:00 AM	2	4	2	4	6
05:00 AM	5	7	5	7	12
06:00 AM	28	8	28	8	36

MORNING PEAKS

PERIOD	EB	WB	BOTH
15			
MINUTE 08:00 AM	182	44	226
PEAK			
PEAK			
HOUR 08:00 AM	182	44	226

EVENING PEAKS

PERIOD	EB	WB	BOTH
15			
MINUTE 05:00 PM	46	47	93
PEAK			
PEAK			
HOUR 05:45 PM	46	179	225

PEAK HOUR FACTORS

	EB	WB
P		
H	0.25	1.39
F		

DAILY TRAFFIC VOLUMES 905 923 1828

WEEKLY AVERAGE DAILY TRAFFIC 890 900 1790 ✓



May 23, 1991

Andy Huserick
14715 NW Old Germantown Road
Portland, OR 97231

Dear Andy,

At the request of your consultant, Mr. Ken Larson, I have been asked to comment on the suitability of the soils on your property for forest uses and agricultural uses, and the effects of annually planting a crop(s) on these same soils. The property in question is located in Section 8 of T1N, R1W.

The soils on this site are mapped predominantly Cascade silt loam, with slopes ranging from 3-30%. The Cascade is a deep, somewhat poorly drained soil, which is underlain by a fragipan layer at approximately 27-30 inches on undisturbed sites. The fragipan restricts water movement and root development below this level, and causes a perched water table at a depth of 18-30 inches from December to April.

The Cascade soils are frequently used for both agricultural and forestry uses. Cascade silt loam (7B) at the 3-8% slope phase is considered a prime farmland soil if drained. It is suited to growing most climatically adapted crops of this region with a proper drainage system installed. The Cascade soil at the other slope phases (greater than 8%) are not considered prime farmland, and in fact are classified highly erodible land (HEL) for Food Security Act purposes. These soils are subject to significant erosion if annually tilled and left without adequate cover during critical rain periods. This mapping unit is generally not farmed when slope exceeds 10-12% on a field.

The Cascade series is also a highly productive soil for forestry uses. Most common forest management hazards are rated slight to moderate at all slopes except those exceeding 30%. Site index is a common expression of site quality for forestland soils. It is the average height dominant and co-dominant trees on a site will attain at a key age, such as 50 or 100 years.

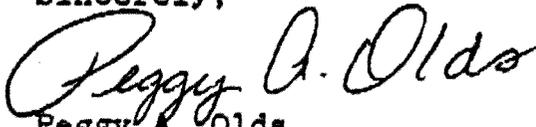


The Cascade has a site index of 157 for Douglas fir, or a site class 2, where the range of site classes is 1-7, with soils in site class 1 being the most productive. This soil is well suited for commercial timber production, Christmas tree cultivation and similar forestry-related uses.

A soils map has been made available to your consultant, which shows the mapping unit locations and gives you an idea of the acreage size of each of the Cascade soil's slope phases.

If you have any further questions, please feel free to give me a call at 231-2270.

Sincerely,



Peggy A. Olds
District Conservationist
Portland Field Office

cc: Ken Larson, Professionals 100

**A PORTION OF THE PLANNING COMMISSION MEETING
OF MAY 6, 1991
PR 4-91/ZC 4-91**

PRESENT: Chairman Leonard, Douglas, Fry, Hunt, Fritz, Al-Sofi, Atwill,
and Yoon

STAFF: Cowley, Pemble, Clifford, and Hall

Leonard: With that introduction we will proceed with our first item, which is, first item on General Planning is PR 4-91/ZC 4-91, at 14715 N.W. Old Germantown Road. We have the Staff Report.

Clifford: I'm Gary Clifford with the Planning Staff. The proposal before you is a 36-acre parcel that is presently zoned Exclusive Farm Use. It is divided by N.W. Germantown Road into a 14-acre site on the northwest side and a 21-acre area on the southeast. The proposal before you is to have the parcel on the northerly side rezoned to Multiple Use Forest, MUF-19, which is the zoning adjacent on the north boundary of this property. It is the applicant's position that there is sufficient difference between, differing between the sides of the road, the property on each side of the road, that they deserve Plan and zone designations.

The Exclusive Farm Use zone is one of the few zones which does not recognize that a county maintained road creates separate lots. Most all other zones they do, the road does create a separate lot. So the applicant by, if this proposal is approved, will be definition have a separate lot of record, separated by a county maintained road and that northerly lot proposed for the Multiple Use Forest would then be eligible for a resource management residence.

It is the applicant's position that both of those lots on that northerly site has always been in timber production. Its higher in elevation and has steep and irregular slopes that make it very difficult for agriculture. And he has actually had a forester do a forest management plan and has laid out a program

for forestry practices on that parcel. I'll show the slides now.

Leonard: Before we go on I'll note for the record that Commissioner Fritz has joined us. He joined us during the Manager's Report so he has heard all of this.

Clifford: I'm at the southwest, near the southwest corner of the property on N.W. Germantown Road. Off to the left is the northerly side of that road, and the forested part. Immediately on the westerly side of that portion of the property is a Christmas tree farm and its comprised of a little over a quarter of that 14 acres. And that's what you see immediately in front of you.

Just a little bit further eastward along Germantown Road you can see the breaks between on the left side is the area, the forested area, and to the right is the cleared farm land that is proposed to be left to the Exclusive Farm Use.

This is an existing driveway that goes on up to the property where they've been conducting Christmas tree sales, and I assume this is could be an entrance to a future residence.

You can see, this is up on the property a little way. Its showing the height of the timber and then looking south you can see the open area on the other side of the road where its all cleared, on the other side of the trees there. This is probably a better view, I'm on the easterly side of the property looking to the southwest. On the right-hand side is the forested area; to the left is the cleared farm land.

And this is what the south side of the property, the south side of the road, looks like. It has a combination of pasture, cleared land, and some Christmas trees. Farming also.

There are some agricultural buildings; I am looking, I'm going slowly to the west. There's some agricultural buildings and the existing residence on the farm/dairy.

And this is some more, this is extreme westerly side of the property. Still showing the south side where,

at this area, its in Christmas trees. On the left is the forest

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UNIDENTIFIED VOICE. INAUDIBLE.

Clifford: And to your right is the south side.

UNIDENTIFIED VOICE. INAUDIBLE.

Clifford: Yes. You can see it in the, on the right hand of the picture there.

Yoon: Are there any living structures on it?

Clifford: No. Just forest and Christmas trees.

And a little bit further, it just shows the cleared area where its zoned EFU, off into the distance. That's why most of that land was zoned Exclusive Farm Use, is that it has been cleared at some time. From the original forest.

Leonard: Any questions for Staff about the slides?

I have one question. The slides didn't show the property or the conditions of the area to the west of the subject area. Is that also forest area or is that cleared land?

Clifford: Its a combination of some cleared and a little bit of forest, but most of its cleared.

Leonard: That is Tax Lot '15'?

Clifford: Yes. Most of its cleared.

Fry: Do you know when the existing home was built on the land?

Clifford: No, I don't. The, one of the things we did was try and wonder about the Exclusive Farm Use land that was left of 21 acres. Whether that was a viable site to be left in just farming and what not, and we looked at the size of the farms within a mile radius of this, and the average Exclusive Farm Use lot was 22-acres. So this 21-acre piece is not atypical of what the size of farms that are existing already.

And so, the Staff recommendation is for approval of that portion of forest...

Fry: Just another question. If the applicant had simply come in with a desire to partition a piece of property into two pieces to allow another home, would that be approved under the Exclusive Farm Use?

Clifford: No. The minimum lot size as of February of last year is now 38 acres in the Exclusive Farm Use.

Fry: So they would essentially have to zone the old piece MUF and then split it up into 19-acre units?

Clifford: Yes. If, and so if, and all of the other smaller lots in EFU were created prior to February of last year.

Hunt: I have two questions for you. The first is their argument that the slopes are steeper on Parcel 1 than on Parcel 2. Parcel 1 if you take your highest slope to your lowest grade, you've got 120 feet and on Parcel 2 if you go from your highest grade to your lowest you've got 160 feet, so it seems there is more of a slope difference on the Exclusive, the side they want to keep in Exclusive Farm Use.

Number two question is on page 9, on, this is part of the Comp Plan. Correct? Number 7(A)? Okay, the second paragraph. It talks about in EFU land the harvesting of timber as a primary use also. So, I don't understand why Staff thinks that its necessary to divide it up into two different types of....Why we should re-amend this.

Clifford: Okay. Under, on page, your first question was that what they have is the steepest, the area with the steepest slopes, even though like you said, there is a greater difference in total but the actual, where the contour lines are closest together, those are the areas of the steepest slope and what I understand is that they have difficulty with their equipment on that steep of slope and, where the lines are really close together on the northerly side, and its having trouble with the tractors even on the Christmas tree cultivation area, and they're planning to return that in the forest management plan back to just forest rather than Christmas trees.

The other, on page 10, under Staff Comments, in the middle of the page there, it says Policy 9E allows in some circumstances the zoning of non-agricultural lands as EFU, and, but the main criteria for doing that was that it would promote the continuation or continuity of farming and then in Staff opinion, that's such a heavily travelled road that even crossing on farm equipment its so much dissimilar to the other that it isn't really needed just to say if you would continue farming on the adjacent parcel.

- Hunt: Yes, but since EFU is not just agriculture, but timber as a primary use too, I don't understand that part of the argument.
- Clifford: I have just historically and what's presently on the site.
- Fritz: Gary, I have to tell you I have some problems and I want You know, I do recognize when we have to deal with long-standing smaller lots of record inside _____ zones. We do grant conditional uses, we do all sorts of things, but it seems rather silly of us to start creating new lots of record that are smaller than, in this case, 19 acres. We're saddled with so much of that from the past, why would we want to do that now?
- Clifford: Okay, I....
- Fritz: Isn't there another, its just goes against what common sense to me to create a lot of less than fourteen and a half acres and then rezone it MUF-19.
- Clifford: Okay. I guess one of the justifications is that if it was zoned forestry, it would already be a separate log of record. Because there's a county maintained road that separates the two halves.
- Fritz: But this is EFU?
- Clifford: Right. And, so, what we're saying is yes, they tried to zone across roads to theoretically keep farming, you just run your tractor to the other side of the road, but, this could just as well have been zoned MUF from the beginning if someone had looked at the photo, I guess.

- Fritz:** Okay. I do have a second question. On page 9, its apparently the...italicized is the applicant's words?
- Clifford:** Yes.
- Fritz:** Comments on the applicant's words, "6.A. In the Public Interest". *The proposal to divide and rezone this property is expressly intended to increase the agricultural and timber productivity of the land.* How would that be true character?
- Clifford:** It would be required to submit a forest management plan I guess is what, and that would, which they have done, and they....
- Fritz:** It wouldn't have MIXED VOICES. INAUDIBLE.
- Clifford:** Yes. In EFU they wouldn't have a reason to, yes. Because that's the only....
- Leonard:** Any other questions of Staff?
- Atwill:** Getting back to Commissioner Hunt's question, does the definition of farming include timber harvesting?
- Clifford:** No, but it does include Christmas trees.
- Atwill:** It does. Okay.
- Leonard:** Any other questions of Staff?
- Okay. We'll go on to the applicant's testimony. Is the applicant or the applicant's representative here?
- Larson:** My name is Ken Larson, representing Andy Huserick I live at 9321 NW Old Skyline Boulevard.
- I can see that people are wondering what's the driving point behind this. What is the point. This is kind of a personal issue and its kind of aside from the justifications of land use itself, but Mr. Huserick is basically semi-retired. His family has farmed this land historically for many, many years. I mean, this goes back into the 1920s. Okay. 1907. And, he has run a Christmas tree operation there, a U-Cut, for many, many years. Its well know; well established; very successful. The thing that, the real problem for

him is a problem of logistics. He, okay, its a very dangerous stretch of Germantown Road. Germantown Road has become a real high-traffic road even though it looks pristine in the photos. He's having, people are basically going from the Tualatin Valley, Beaverton area, and using that as a commuting route over to the industrial area in North Portland. Its become really dangerous for him to try to carry on activities on both parcels. He has to move caterpillars across those roads. He, even though he puts out signs and spaces them well down the road, its a down-hill stretch of road and its very difficult for people to get braked and do it safely and its just become a hazard for him to try to maintain that side of the road and do it properly. He, as you saw, his dwelling is on the lower side, the south side, and he is having to cross the county road to get up in there, and to do so safely is, as I said, next to impossible.

Additionally, he's wanting to reforest everything because, there's two reasons for that: he has the liability and a U-Cut operation of somebody walking across Germantown road with a Christmas tree on their shoulder and oblivious to the on-coming traffic and there's a real concern for liability there. And, just the safety of the people, you know, alone his liability. Also, he has some concern in terms of, and its a concern for the county, historically there's been some real problems there with the steeper portions on the southerly portion of the parcel that he wishes to change to Multiple Use Forest; there's some very bad erosion problems that are causing silting in the county ditches, and water overflowing the road in that area, and this will eliminate that also through the re-forestation because as you know, with Christmas tree operations they use heavy herbicides and to you know, to keep the vegetation down and the areas free and clear of the growth. So, that was his main emphasis for wanting to do this. That's because its become impossible for him to continue to maintain those areas because of the increased traffic and the liability associated and the safety concerns. And, that's not a bogus issue. That's real and he has to deal with that daily.

In terms of other aspects of the plan we've tried to show historically that its always been forested. There is aerial photos that we'll show you that date

back a lot of years and, obviously, from the age of the timber you can see that its always been forested. But, what we're trying to do is show you through the Report and the application that we truly do meet MUF standards. We are also contiguous with other MUF lands to the north and, when they went about setting up the Comprehensive Plan and establishing where the various resource boundaries are, they basically tried to do it along tax lot boundaries at that time thinking it was the best and they kind of took a broad sweep and they weren't able to do the detailed analysis that we have done in terms of what is best Multiple Use Forest and what is best Exclusive Farm Use. In this case, you know, we're kind of on a micro level where their original establishment of the boundary is on a macro level. So, hopefully, you'll see the reality is that we really do meet the guidelines; we do try to show you where it really does.

In response to one question regarding the changes in elevation over one parcel over the other, it looks, in general, as if the slopes are steeper if you were to look at your plat that you were looking at. However, if you look at that plat you'll realize it covers a much greater distance to see those changes in elevation. Additionally, the key here is the variation in the orientation of the slopes. The other parcel is primarily a southerly slope, the EFU parcel, and that's really well suited for agriculture. Its consistent and constant. The other parcel has all sorts of different orientations, southerly, easterly, over a third of it has a northerly slope, and so, you have a variety of growing conditions and a sort of micro environment, if you will, on the parcel. And, in general, the one thing that they're best suited for is agriculture and that is, I should say, is forestry, and that's what we're trying to see here that it is all returned to forestry. And, that is something that is under the forest management plan. The Christmas tree farm is to be abandoned and is to be reforested. So it will all be reforested under the proposed management plan.

Any questions?

Fry:

The same question as before. Do you know when the house was built, on the...?

- Larson:** The home there is a replacement home that was actually built in about 1988, wasn't it? And the original home, which Andy was born and raised in, and lived all his life in, when was that home built Andy?
- Huserick:** 1929.
- Larson:** 1929, so, it was a replacement. One for the other and it sits basically right on the same site that the original home.
- Fry:** Okay. Basically there has been a house on this...? Okay. The other question is, I don't know if you have this map..
- Larson:** Yes, I do.
- Fry:** That we have, but does your client own Tax Lot '17', which is directly to the south?
- Larson:** No, that does not belong to him. He owns only the one tax lot in question here. He owns no other property in the area.
- Fry:** Do you know what the use of that property is?
- Larson:** That's EFU, agriculture.
- Fry:** Is it being used as farm do you know?
- Larson:** Yes it is. Its pasture, primarily.
- Fry:** Going west, I believe, to number 15, is that separate ownership?
- Larson:** Yes it is.
- Fry:** And do you know what the use of that is?
- Larson:** That's a combination of forest and pasture.
- Fry:** Thank you.
- Leonard:** Any other questions for Mr. Larson? Yes. Commissioner Atwill.
- Atwill:** You might have mentioned this, but to support your contention that use of both parcels for farming is no

longer possible because of increased traffic. Do you have any evidence of traffic accidents on Germantown Road?

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Larson: I don't have any with me. Only that we live there and we've seen enough of them.

Atwill: There have been some?

Larson: Oh, lots of accidents. We're constantly pulling people out of the ditch along Germantown Road. They're, anyone that lives there can tell you that its a real hazard.

Al-Sofi: I have a question. If this parcel, as you're asking, someone is supposed to be reforesting this other property and they will have to have access just as your applicant did. Are you passing this over to someone else?

Larson: Well, I guess the difference is being that ultimately somebody, Mr. Huserick will eventually sell this and ultimately somebody will put a dwelling on it. I mean, will do so and they will apply to do so under all the county guidelines that exist for a MUF-19 and that will, we don't try to hide that fact in our report. We allude to the fact that that is a possibility and we also indicate that we'll seek to have all the septic site surveys done and environmental analysis will be done and the location of the house will be done such that we take into consideration erosion and the environmental impact. But the idea being that a person that lives on that can manage it as a micro site, you know, a small wood lot, as is called for under the Comprehensive Plan. And, its very much in keeping with what the Comprehensive Plan originally had stated.

Yoon: I'm getting confused. Let me just ask a simple question. The idea is to change the zoning on this is to separate these tax lots and to sell this lot? Is that what it all comes down to?

Larson: Well, it ultimately, it can be sold. But the point is that he can no longer manage it. Because of the safety considerations here.

- Yoon:** I'm a little simple here on _____ EFU and MUF but it appears to me on EFU he can continue to harvest that. Harvest timber products. So I don't quite understand why we've got to go to MUF for him to be able to manage this.
- Larson:** Sure, he can harvest it but he has to manage it. If its under his ownership he's established on a farm on the lower side. Okay, he has to go across Germantown Road with his equipment, where his sheds are, where his equipment is staged. He can't afford two different sets of equipment, one on that lot and another on the parcel below.
- Yoon:** So by changing the zoning he doesn't have to go across the road?
- Larson:** No. He can sell the parcel and he can build a, and whoever buys it can build a dwelling on it and manage it on as a small woodlot, which is in keeping with the Comprehensive Plan.
- Atwill:** Well, I have another question. Is there anything to prevent him from leasing the woodlot management aspect of that property and let someone else put the equipment there?
- Larson:** On a parcel like that, people don't lease, okay, woodlots and manage them because that's a long-term project. I mean, it just doesn't happen. I mean, that's, when we talk about woodlots and forestation we're talking about something that's 50, 60, 70, 80 years out. I mean, what good would that be...
- Atwill:** So we just want to sell this property so someone can put a house on it?
- Larson:** Ultimately that would be what would happen. No one has tried to hide that. We made it clear that that is ultimately what will happen. And, the reason being just what we've stated. The safety considerations, the logistics of trying to manage the property, and also the fact that we do want to put it into forest use, because that's what its best used for. Because of the terrain, the topography.
- Leonard:** I have a question relating to your statement about traffic. You stated that traffic has increased due to

development in Washington County. Do you have any data to support that? Traffic counts?

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Larson: Do I have traffic counts?

Leonard: Yes.

Larson: I don't have any specific traffic counts. I mean, traffic counts can be obtained if that's what you need. There are several....

Leonard: One of our CHANGE OF TAPE.

Changing real estate value isn't necessarily one of the criteria we consider.

Larson: Of course not.

Leonard: Any fact that would support your notion that there have been changed conditions would be of interest to our Commission.

Larson: Sure. Is that something that I could present at a later date? To support that? I mean, it's something that I'm sure I can come up with. I know the City of Portland has to do traffic counts on the intersection at Skyline and Germantown that would tell us just exactly what kind of flow we're getting.

Leonard: That's a good question, whether the Commission would like to obtain additional information and continue this decision until more information is available or that they feel there is enough information available to make a decision tonight.

MIXED VOICES. INAUDIBLE.

Larson: Excuse me. I'm sorry.

Leonard: The discussion is to _____

Fritz: We've discussed _____ applicant to ask to continue this or INAUDIBLE.

Fry: Yes. I guess I'd like for applicant to favor though, because I'd personally like to hear if there's anybody to testify and then because I see some bigger issues. I understand and appreciate and respect that issue.

I'm considered about some other issues that I'd like to put on the table at _____

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Leonard: Okay. We have a couple of more questions. Commissioner Hunt.

Hunt: I appreciate _____ problem, but the zoning of the property, there's a lot of ownership on Sauvie Island where Reeder Road in the summertime is very frequently travelled. Probably more so than Germantown Road. Are we going to then divide that up because of a hardship? I think, we, you know. I appreciate Mr. Huserick's problem. He has the option of leasing. I don't know if its a problem we should be looking at. If its just traffic that is the reason that we're going to change the zoning, if its traffic that's the only argument, and since EFU land can be timber land, I see that as the only argument in this case.

Larson: I would beg to differ, that Reeder Road during the week is practically dead as opposed to the weekend.

Hunt: In the summertime?

Larson: And that's when most farmers are doing their work is during the week.

Hunt: They do it seven days a week.

Larson: Well, that's fine. I'm an old farm boy myself.

Fritz: With all due respect, we may be getting into a premature discussion of the issues of public _____ but if I'm reading the Commissioners here....

Hunt: I was commenting on the continuance.

Fritz: I would like to see some of the information regarding increased traffic before I make a final decision and therefore want to continue this hearing to the next meeting. I would not _INAUDIBLE.

Al-Sofi: Well, I had one more question and I'm trying to understand. Is your position that anyone who had a farm on the south side of this road would be unable to use this forest lot? Or are you saying this particular applicant in his particular circumstances is unable to use that?

Larson: Well, quite frankly, he is the only tax lot on the whole stretch of Germantown Road that is divided by Germantown Road.

Al-Sofi: I don't think that answers my question.

Larson: The point I'm making is you're trying to, re-phrase it, maybe I'm misunderstanding, I'm sorry. Go ahead.

Al-Sofi: Are you saying that anyone who happened to own this property, irrespective of his conditions or whatever, would be unable to use that forest lot to such advantage? Or are you saying this particular application....

Larson: No, I'm saying that basically, anyone is going to have a problem trying to move equipment across that road in a safe manner, and, if you look at that stretch of road there, you'll see the curves. There are blind curves all the way along there and there is no real safe crossing. In that whole stretch of area. To move equipment back and forth has just become a hazard. That's one of the things, one of the primary considerations.

Douglas: I'd like to question the Board here. How many of you have driven Germantown?

MULTIPLE ANSWERS. INAUDIBLE.

Question number two, have you ever taken a cat across a road like that?

Alright, now, I have. Believe me, if you don't put plank down to run the cat across you're going to have the Roadmaster down your neck. And I can understand his problem. Number two thought is, I have farmed a lot in my life and I can see where this should have been in Multiple Use Forest to start with. I believe its an error to start with as far as being an exclusive agriculture on that upper side where a roadway divides there, I suggest that it be so. However, I would suggest that we go ahead and hear the testimony from both sides, and with that in mind, I'm not trying to give testimony. Its not that. Its just that I would like to prevail on you with a little bit of my experience. So, I would suggest that we go

ahead and hear the, except if you want to continue, that's something we can do at anytime.

Leonard: Well, for the applicant's information, before we make a decision tonight I will give you another opportunity to comment on the question of continuance.

Larson: Excuse me.

Leonard: Before we make a decision tonight I will give you an opportunity to request a continuance if you feel that is in your interest.

Larson: I get the impression that I best do that.

Leonard: Well, lets see what the rest of the testimony raises. I mean additional information that somebody may add to the testimony.

Larson: Okay.

Leonard: Is there anyone else present who wishes to testify in favor of the application? Anyone here that wishes to testify in opposition?

Haus: My name is Mark Haus. I live at 14531 NW Germantown Road. I'm just north of the property and I've been there about two and a half years now. And I definitely attest to the fact that Germantown Road is a busy road and pulling a cat across it is going to be a lot of trouble. There hasn't, he doesn't currently pull that cat across there that often. If so, its just to pull the brush down and clean up the site. Herbicides he could put down by hand or by other means.

I think that the real issue here is that they want to break it up so they can develop the other side. They want to put a house on it. I really don't have a problem with that. I kind of have a problem with the approach that they've taken to do that. With, claiming that this is basically going to be for increasing the agricultural productivity of timber resources on that side of the road. Or the use that its difficult to take the cat across the road to maintain that portion of the timber land. I don't see any problem with doing that. I don't know if this is the correct approach though. If they would come across and just basically say we would like to buy this 14-

acre piece on the north side off to put a house on it and then we will go ahead and manage it as a small timber lot, that would have been fine, but to basically say that its difficult in pulling equipment back and forth across the road is why this needs to be split off into a different zoning. That doesn't make sense.

Leonard: Okay. I think the applicant has understood our very strict planning policies in the EFU zone. We could not approve a partitioning to allow a second house.

Haus: I've heard everybody say it up here. I just wanted to _____.

Leonard: We just can't say yes to that kind of a request.

Haus: But, then again, I would like to say that I think this is probably an appropriate partition irregardless of how the zoning laws go. It is a 14-acre piece that would support a house just fine. It would fit in the area. Now, I suppose that's in favor of his proposal to divide it but, just, I live in very close proximity to this and I don't see a problem with that at all. So, I think maybe you should know that before you look at turning him down based on the information that he's provided.

Leonard: Do you have any information on increased traffic in the area, that you're aware of?

Haus: Maybe I should have brought my tow trap in and showed you how well used it is from pulling people out of the ditch up there. I think that is basically, yes there is a considerable amount of traffic up there. We have more than a few times requested both Multnomah County and the County Sheriff to patrol more in that area, and we do have written letters that we have sent down to them. To come down and _____ because they really come through there. Especially in the summer time. And I know that's when he's out doing a lot of his work.

Leonard: Any questions for Mr. Haus?

Douglas: I would like to make a comment. I thank you for both sides. I can see that you're open minded.

Haus: Well, I am and like I said, we are getting some development up in that area and I hope that, I'm a fisheries biologist by trade, and I hope that the environmental impacts that are associated with these kind of developments are looked at closely. We do have a major contribution into that upper watershed, Alder Creek, and hope that's looked at in your decision making.

Leonard: Thank you. Is there anyone else who would like to testify for or against this case?

Okay, before we close the public testimony portion of the hearing, is the Commission inclined to continue this at the applicant's request?

Fry: Can I just say a couple of things?

Leonard: Yes, Commissioner Fry.

Fry: I think the issue of the road comes both ways in the sense that if this affect were to increase density on this property in terms of its interface with the road, the road is a dangerous road. It speaks against increasing the density and having splitting the parcel off, so I don't want to, I mean, do you see I see them going down a road that may in fact be a dead end, because in fact when you go down it far enough it speaks exactly the opposite of where they want to go.

And the second, is to me the only real legitimate issue here is whether the density, whether its appropriate to increase the density in this area and I think the issues that are not answered in my mind are: what happens to the parcel left behind? I mean, can it, and you know I have a different opinion as to the conventional wisdom. The conventional wisdom is that 21 acres is not sufficient to support a _____ farm use. That's the wisdom. And so that would be a question. Are we taking a viable piece of farm and making two non-viable parcels out of this. And I don't see any discussion on that issue at all. And, also, from strictly a point of view of this 14 acres being viable, whether the potential of connecting it with other adjacent users to create a bigger piece of farm land. And I'm not saying that the, I'm not telling the owner that they have to, because they can't, I

don't want to say to the owner that if you can no longer handle the entire lot you need to sell this tax lot 15, because I don't think that's fair. But from a strictly land use point of view, that's another solution to a problem that doesn't increase the density. And, so, that's where my discomfort comes here, is that its the wrong process to deal with a density issue. Now maybe it is legitimate to increase the density here. Maybe its not. I just would hate to send him down one way and try and kind of keep trying to make something work that's on the wrong track.

Leonard: Any other comments from the Commission?

Douglas: My thought on that was that it was mis-labelled to start with. It has always been forest; it should have been forest right from the word go. I don't think it should have been Exclusive Farm Use. Separated by a road, number one, and when you're talking about density you're talking about mainly the people who travel through there. No necessarily the people who live there. Because there isn't that number of houses on that road. One house, I can't see any effect of it, to speak of. But my thought is that it was mis-labelled or mis-zoned to start with and I think this is something that should be put back in appropriate.

Leonard: Commissioner Yoon.

Yoon: Where are we ____?

Leonard: We're polling the Commissioners thoughts on whether it would be worth continuing this to give the applicant opportunity to get more information.

Yoon:Mr Douglas is saying, but are we going to separate the two tax lots? I mean, we could change the zoning and keep the tax lots together.

Leonard: Well, the, what Staff has explained is that we don't have to do any partitioning the way that our zoning would be applied if we apply one zone to the area north of the road that's different from EFU to the south of the road. That defacto partitions that would allow the separate sale and development of the parcel to the north. So, the road right-of-way has already split the ownership. But the EFU zoning doesn't recognize that as effectively separating

those two parcels. If we rezone the area to the west and the north, the different zoning classification would effectively allow that to be recognized as a separate parcel. 19

Yoon: INAUDIBLE.

Leonard: Okay. Commissioner Hunt.

Hunt: My main argument still is in EFU you can have harvesting of timber as a primary use, so, there are I'm sure many people with property where there's a road dividing EFU land and I don't think that's a valid argument. Even Highway 30 you have places where EFU is on both sides and is owned jointly by that person. I, you know, if we want to look at an amendment later on to change it so that you can subdivide EFU land into two parcels when a road divides it, so be it, but for this particular case I can't agree. Since timber can be in the EFU land.

Douglas: The argument on this is that, lets say on the Island, we have land on both sides of the road. We take our wheel track and go back and forth. To go up in the timberland, you take a wheel tractor up there, on the steep slope to harvest timber, you just don't do it. You have a cat or something similar.

Hunt: For example on my property, I have some deep ravines and most of my land is agriculture land. But to get from one side of the ravine to the other I have to take the cat down the road too. I don't have a choice in the matter. I take along the edge, I'd be in trouble but I do take the edge, not on the pavement. In other words, sometimes that happens.

Leonard: Commissioner Yoon has another comment.

Yoon: INAUDIBLE ... to change anybody's mind on the Commission.

Leonard: I think there are a couple of areas that haven't been documented very fully. I mentioned the traffic count. If there has been a change in traffic counts. We don't have information on the agricultural soils classification to see whether the amount of acreage or the property all falls into the Class 1,2,3 and 4 and how much falls into various

100 percent is Class 2?

Douglas: Are you certain of that? Steep slopes are not Class 2.

MIXED VOICES. INAUDIBLE.

Leonard: Okay. Staff, can you clarify this?

Clifford: We have two different classifications here I think. One is for forest site class and the other is farm/agricultural soils. And, so, when you're saying Site 2 that's forest capability. And I think you're asking about the agricultural...

Douglas: So that's not a soils classification...

Clifford: That's a site class capability of growing timber

Leonard: Well our Policy asks that EFU be applied as Class 1, 2, 3, and 4.

Hunt: Can you show that any of this that's on Parcel 2 is not agriculture soil with a capability of 1, 2, 3, or 4? From an SDS?

Or Parcel 1, excuse me.

Clifford: Okay. Applicant submitted just the _____ of the fact that he just evaluated the timber production capability.

Leonard: For my own standpoint I would like to know that it isn't 1, 2, 3, or 4 before making a decision to act favorably on this.

Hunt: I would agree with that.

Leonard: Yes. Commissioner Fry.

Fry: That's fine with me and I'm only one vote but I just cannot support this regardless of that information until I know why the lot that is being left won't be changed to MUF. I mean, if the EFU goes to MUF and you've got RR on one side, MUF-19 on the other and it's kind of strange and what's basically a small lot as far as it goes, 21 acres, why don't we just do MUF for all of it? I mean, that's where I'm coming from and

unless that is answered in my mind I can't support it. And I'm not saying I would oppose a MUF the whole site either. I'm just saying that to me that's the real issue.

Al-Sofi: Well, wouldn't MUF put **INAUDIBLE**.

MIXED VOICES.

Leonard: Well, under the MUF zoning the road would create two parcels.

Douglas: That is a fallacy with exclusive agriculture is the fact they're the only ones that can have parcels with those values. The rest of them with a road are automatically divided.

Leonard: The policy is to maintain aggregation of farm ownerships.

Douglas: The question I have for Commissioner Fry, if both of these parcels were asked for MUF, would you be in favor of it?

Fry: The answer is I don't know. Because a case has been made, yes. I'm just saying that is a legitimate, straight forward approach, in my belief. And I would entertain it. And you know how I feel about small lot farms.

Leonard: Okay. Applicant. Mr. Larson, would you come back up so we can discuss where we want to go with this.

Based on what you've heard in this discussion, would you wish to have us make a decision this evening or would you like to have continuance until the June hearing?

Larson: I would have an opportunity to gather more information. Can I consult with Mr. Huserick?

We would like to ask for a continuance and you know, from a couple of different angles. I think on the road situation the one thing that's really being ignored is the fact that we're talking about a road that has a lot of curves and is blind. As compared to some of the comments that Commissioner Hunt has made with respect to Highway 30, which is straight, and when

somebody pulls out they can see somebody coming for half a mile away. And, also, vs. Reeder Road, which is flat and somebody coming around a blind corner at least doesn't have gravity working in their favor.

Leonard: We don't want to get so much information on that for you to convince us that it wouldn't even be safe to have one driveway coming out of this site.

Larson: Yes, I know, exactly. But, I'm talking about in terms because as Commissioner Douglas has indicated, he does move caterpillars back and forth across that road and he does and they move slowly. I mean, you don't rev them up and go. It takes a little time.

Fry: What is the reason you didn't apply for MUF for the entire, making the argument that the increased traffic on the road essentially has taken a viable Exclusive Farm Use parcel of 36 acres and made it not viable for farm use anymore, which would then feed into an MUF argument. So why didn't you include the whole tax lot?

Larson; Because there had been a precedent set before this hearing on another hearing that was approved in the general area that had it was where they had divided off a holding that had been all EFU and they had created a couple of MUF parcels. As a result the applicant had been successful and it seemed like the route to take. I mean that....

Fry: So you mean your applicant has no preconceived against MUF?

Larson: No. He would have no problem at all if you wanted to call it all MUF.

Leonard: Mr. Fry, I think we've received quite a bit of information showing that Parcel 2 has been historically used as agricultural rather than forest uses.

Larson; Exactly. And that's why we have gone along this line, because of the historical use. We felt that Commissioners would lay more favorably to maintaining the particular uses. You know. And I think the question about it being a viable, could he

maintain himself on the 21 acres, as anybody on a Christmas tree operation, yes, I mean he's doing it today because the three or four acres he has on the other side of the road are really not of any impact in terms of his capabilities to produce on the other portion.

Leonard: Commissioner Hunt.

Hunt: Now, just a suggestion for Mr. Larson. If you could come back showing a predominant soil on Parcel 1 is not Class 1, 2, 3, or 4 agriculture classification, I think it would take that into consideration.

Larson: Sure. Okay, I will keep that in account in asking for a continuance here.

Leonard: Okay. Is there a motion to continue?

Fritz: So move.

Leonard: This would be to June 3rd, 6:00 p.m. Is that in your motion?

Fritz: Indeed.

Leonard: All those in favor. Unanimous affirmative vote.

Thank you.

**A PORTION OF THE PLANNING COMMISSION MEETING
OF JUNE 3, 1991
PR 4-91/ZC 4-91**

PRESENT: Chairman Leonard, Douglas, Yoon, Fry, Al-Sofi

Staff Present: Cowley, Pemble, Clifford, Prescott, Ewen and Hess

Leonard: Following that brief introduction we'll begin with the first case, which is Line 1, PR 4-91, 14715 NW Old Germantown Road. This is a continuation of a case which was heard last month and was continued for additional information.

Clifford: Mr. Chairman, for the record, my name is Gary Clifford with the Planning Staff. As was mentioned, last month this item was before you and the Commission gave the applicant the option of continuing the item and bringing some more information back, specifically the information about the traffic counts along the road that separates the property and some more information on the forest productivity class of the northwesterly parcel. And, if the Commission would like, I can quickly go through the slides, just as a refresher of what the site was like, or, that's your option.

Leonard: I think some of the clarification on some of the information we asked for was on the agricultural productivity class in the northwest...

Clifford: Okay. Forest and agriculture. You're right.

Leonard: And traffic information on Germantown Road.

Anyone want to see the slides again?

Dispense with the slides and go on.

Clifford: Okay. I think that the best thing that we could probably do is just have the applicant present. Its the white pages attached to the Staff Report. And, the Staff recommendation was for approval if the Commission goes with that recommendation they could just incorporate these additional findings into the Staff Report.

Leonard: Some of the reports have white pages and some of them are all yellow.

Clifford: Okay. Its called "Planning Commission Continuance Data" and I believe the applicant can present that.

Leonard: Okay. Is the applicant or the applicant's representative here?

Yes. Would you explain your additional information please.

Larson: Ken Larson. Do you need my address?

Leonard: Yes.

Larson: Okay. 9321 NW Old Skyline Boulevard, Portland, Oregon 97231. Okay. This was a piece, as you remember, that was currently zoned EFU and its 38-acre minimum and it was dividing this parcel into two parts and the southeastern parcel, the bigger parcel, was a little over 21 acres and we were proposing to leave that as EFU and to get a change in zoning on the northwestern parcel, which is primarily forested and large firs, and with approximately three acres of Christmas trees on it, a little over three acres of Christmas trees. Its about a 14-acre, plus, parcel.

The question, the application was based upon, on the conditions, soil, historic use, and what not, and I think, does everybody pretty well remember this? Okay, for the sake of brevity I'll get to the specific points, which were, you asked about soil productivity and okay. Soil productivity, basically, was, okay, let me get back down in here, and also there was a question about the traffic count because of the impact on trying to move heavy equipment from one parcel to the other. The resource dwelling on the southeastern parcel and there is no resource dwelling on the north, the western parcel. And the applicant has to move heavy equipment, caterpillars, tractors, and what not, across this road and its become a real hazard.

Let me address that issue first. We were able to obtain traffic data, studies from 1987 and in June of 1987 and June of 1990 that showed that traffic has

increased considerably. Presently the average traffic flow is 2170 vehicles per day. The annual average traffic flow for 1991 is projected to be 2314 vehicles per day. And, in 1980 when the Comprehensive Plan was approved and this zoning was changed, it was calculated to have been approximately 1142 vehicles per day. This was based upon the data that was taken in 1987 and 1990 and looking and calculating that there was approximately a six percent increase annually in traffic on N.W. Germantown; and this was a conservative method. We could have used a straight line approach, in which case it would have shown that the traffic had increased by over 140 percent. An additional 140 percent.

So, I guess what we're trying to show is that there is definitely a change in character over what it had been when the zoning was established in 1980.

As far as the land is concerned, I think the thing we want to point out that the character of the road in this vicinity makes movement of slow-moving equipment such as tractors and bulldozers between Parcels 1 and 2 especially hazardous. The road has numerous curves which limits sight distances and grades in excesses of 10 to 15 percent, which generally increase braking distances. These factors combined with the relatively heavy traffic flows have created this hazardous situation.

Rezoning Parcel 1 MUF would not create a lot of, would create a lot of record which would be eligible for a resource-related dwelling. A resource-related dwelling on Parcel 1 would limit the need to move farm and forest related equipment between Parcels 1 and 2 since all equipment necessary to manage the small woodlot proposed for Parcel 1 would be kept on Parcel 1. This would eliminate the safety hazard which while still keeping this property as a forest resource as it historically has been.

Now, one of the things I wanted to point too is that this is the only parcel along Germantown Road in all of Multnomah County that has farmable land that you could not divide. There was four other parcels that we identified that were split by Germantown Road but one was, but they were situations where you had only, two of the situations you only had less than an

acre or so on either side of the road. And the other situation was west of Kaiser Road, and in that situation the parcels were large parcels. Germantown Road was straight and flat and they were zoned EFU but they were both sides of the road they were over 40 acres and the owner, had he had a traffic problem, would have been able to alleviate the movement of equipment by selling off a parcel. Where we cannot do that in that situation. So, this is the only real case where you have resource land that is viable for commercial purposes or as a small woodlot, what have you, where this situation exists on all of Germantown Road.

Okay. In terms of the soil capabilities. We believe a mistake was made in designating Parcel 1 for Exclusive Farm Use based upon the historical use. And, also, the erosion potential of the soils and the impact of N.W. Germantown Road. The agricultural soil capability, the soils on this parcel was designated as 3 and 4, which is in keeping with the requirements of Policy 9. But, agricultural erosion potential remains high. Over two-thirds of Parcel 1 has slopes in excess of 8%, causing it to be defined as "highly errodable land" by the USDA Soil Conservation Service. While erosion is not specifically addressed in Policy 9, it is addressed in Policy 12, paragraph D. (1). That's your MUF guidelines. Okay. Areas subject to erosion are specifically recommended for designation as Multiple Use Forest under Policy 12. Historically the majority of Parcel 1, 72%, has been in timber production since 1907. Conversion to Multiple Use Forest will not affect agricultural purposes of neighboring properties to the west and to the south, which are currently zoned EFU, Exclusive Farm Use.

Leonard: Excuse me, Mr. Larson, are you telling us that the resource capability of the Parcel 1 area is better based on the soil capabilities for timber production than for agriculture production?

Larson: I'm not making that statement. The statement I'm making, and we have a letter from, okay, attached to this, from the representative of USDA Soil Conservation Service, Peggy Olds, and basically what she is pointing out is, and what I would point out in her letter, is that this is a moderate to severe, its a severe in our case over 72% is in the classification of

severe, it has a severe erosion potential. On this particular land. And, by, and under Policy 12 it specifically states that you use that designation, MUF, on those parcels where erosion is a problem. So, what I'm saying is that originally it should have been zoned as MUF. To make a statement, its Site Class 2 in terms of forest productivity, which is the next to the highest productivity.

Leonard: All of Parcel 1 is Site Class 2?

Larson: All of Parcel 1. Yes. Forest Site Class 2. And then in terms of its agricultural potential its 2 and 3.

Leonard: Can you tell us what proportion of the Parcel 1 is Class 2 agricultural capability? What proportion is Class 3 or or less?

Leonard: Let me see. Let me look back here and I can give you a rough idea of what it is. It would be the same as that that is considered to have a severe erosion potential, which would be 72%. It would be a 3.

Leonard: Seventy two percent of Parcel 1 is a Class 3 ...

Larson: Yes.

Leonard: Any other questions for Mr. Larson?

Al-Sofi: Well, I have a question. Its not necessary to change this tough to MUF in order to have forest production because its been that way historically. Is that correct?

Larson: He can still keep it in forest production but CHANGE OF TAPE still maintaining its resource. There's been a forest management plan developed for the site. It does not call for clearcutting; its a very conservative and very responsible plan to manage this 14-plus acres as a woodlot. And the main reason, the driving reason too, is obviously the safety aspect. We're giving you an avenue to do it that meets the criteria and we're showing you that it could have, it would probably better been designated MUF from a soil standpoint, and, also, what we're trying to show from a safety standpoint we don't want to be moving heavy equipment across that road. Because of the safety not only of Mr. Huserick trying to move his

equipment across the road, but for the public because when he gets his bulldozer out there he doesn't have any chance to get out of the way and it, you know, have an accident that would injure somebody in the public.

Al-Sofi: But theoretically from the public point of view, he could park his bulldozer over there without having it partitioned and leave it over there.

Larson: But what you're asking him to do, when you do that, is that you're asking him on what's already a small piece and is really of questionable commercial value, you're asking him then to start to maintain two sets of equipment. He's going to have to erect a building over there to store the equipment in; he's going to have to buy two bulldozers for a piece of land that's just over 36 acres. I mean, you know,....

Al-Sofi: I'm not asking you to do that. I asked you if that was something that could be done. From a point of view of the public's interest as opposed to a particular person ...

Larson: Well, from the point of view, its, you know, its not being asked of anybody else. Why should it be asked of him. I mean, to, I mean, do you see what I'm saying?

Al-Sofi: Oh, I do see.

Larson: Okay, I guess. For me to admit and say sure, we'll go out tomorrow and buy another bulldozer but that's not a realistic solution. I think what he's asking for here is very much in keeping with things that have been done in the past and have gone on in recent history. And, specifically, I wanted to point out that previous precedents have been set. A Comprehensive Plan Amendment and Zone Change was granted for conversion to two parcels from EFU to MUF-19 while creating a third, substandard EFU parcel, which is what we're doing. However, still, at the approximate average size of everything within a mile that's zoned EFU, and this approval was granted in 1990 for land described as T. 1N, R. 1W, Section 5, Tax Lot '5', '6' and '7'. The property had soils predominantly of the same soil series as the subject property and all soils had soil capability ratings of 3 and 4, as did the subject

property with the exception of less than an acre which is rated 6. I'm sorry, when I said 2 and 3, on our capability, it is 3 and 4. Correction. And 4 is 72 percent of it is 4. I was saying 2 and 3.

Okay. Arguments for acceptance of that proposal were the same as presented for this proposal with the exception of the safety concerns involving movement of farm and forest related equipment across Germantown Road. So, you granted that in 1990. Okay. With none of the overriding concerns having to do with safety. These were contiguous parcels yet you allowed them to be re-zoned and I fail to see why this wouldn't be judged by the same criteria and if not, even in greater light, it would be a more favorable light, considering the hazards with moving equipment across Germantown Road.

Leonard: Any more questions for Mr. Larson?

Okay. Thank you. Is there anyone else here who would like to testify in support of this application? If there's anyone else who would like to testify in support, this is your opportunity. Seeing none, is there anyone who would like to testify in opposition to this application? Certainly. This is the time to do that.

I assume Mr. Huserick would like to speak in favor of the application.

Huserick: I'm Andy Huserick and the reason I don't want to....

Leonard: Could you state your address for the record.

Huserick: I live at 14715 NW Old Germantown Road, Portland, 97231. The reason I don't want to take my equipment across that road at night is because of vandalism. I don't dare leave my Kubota tractor over there, the one I use in between the rows of those Christmas trees. A friend of mine had one stolen out on Sunset Highway; left it out there in his nursery and the next morning he came back and it was gone. You can load those Kubota tractors in a pickup and haul them away. You can do it easy. And I don't want to leave that cat across that road either. If they break those lines coming from the main diesel pump coming up into the injectors, then I've got a problem. I can't

get those lines right down here in Portland. They don't, Halton Tractor doesn't keep parts like that to an old cat. And you have to go back east to get them. It takes time to get them. But, once you get them and put them in you've got a problem getting that motor running again. You've got to bleed those injectors and you don't do that in 15 minutes. That's an old cat and if you gotta go to three streps to get that thing running it takes about an hour and a half to get it going. And, my other piece of machinery I use for spraying trees I wouldn't dare leave that over there either because that could be, that weighs 300 pounds and three good men could pick that up and put it in a pickup and its gone. And that's the reason I won't leave that equipment across there. I have to bring them back in the evening. And I have an awful time. I have to wait until its almost dark when the traffic is down and get that equipment back across the road again. And its getting, its just too much traffic. Its getting just to dangerous.

Leonard: Okay. Mr. Huserick, do you have any idea of where the vandalism comes from? The people that live in the area?

Huserick: Well, anybody sees it driving by. They see you got a Kubota tractor, something like that, a small piece of equipment, if anybody is in the market of wanting one of those things there is always people that will go out and get one for them.

Leonard: But these people driving by on Germantown Road, they....

Huserick: Yes.

Leonard: Okay. Commissioner Yoon.

Yoon: I have a couple of questions Mr. Larson or Mr. Huserick. On this map, this black area, is that where the Christmas trees are?

Larson: Yes. That's where the Christmas trees are.

Yoon: I've got a second question. Is, what is the rationale for the access road being up here where it is?

Larson: Oh, its up there?

- Yoon:** Yes. Which would take you right through the forest land.
- Leonard:** Mr. Larson, could you come to the podium to speak.
- Larson:** I'm sorry, that didn't get on the record.
- Leonard:** Also, after you testify could you fill out one of those witness cards please and leave it with the Clerk.
- Larson:** I was also going to, that entryway, that's an approximate location where we would propose putting in an entry onto the property. Andy just had an entry in that approximate location approved so that he can remove some trees, and, we tried to pick the safest spot we could in terms of line of sight because there's going to be a logging truck going in and out of there because under his plan he's going to be able to take 55 trees out of there the first year. And, then he won't be cutting trees for another five years after that and then he'll take 20% and then in five years beyond that he'll take another 20%.
- Yoon:** Do you have a proposed home site for this piece of property over here?
- Larson:** No, we don't have a proposed home site. We've not tried to you know, saddle anyone with where they would end up with a home site.
- Yoon:** So, my understanding of the access road is basically for the logging trucks.
- Larson:** Well, that would probably be where, that would probably be the access for the homesite as well because that is the flattest spot also coming onto the property off of Germantown Road; otherwise if you get down there's, did that one show the existing, there was an existing...
- Douglas:** It shows its steeper down low.
- Larson:** Yes, and about half way between the two corners of the property line along Germantown Road, that's where the existing access is on and off, and then the one up above is another, is a new access for log trucks. But, ultimately I think that should anyone

build on this that's the obvious spot that someone would use. To access the property because that's the, how should I say it, its the only place you can get up onto the property relatively safely and flat, everything else is very steep getting up on to the property.

Yoon: You went through the numbers rather quickly. Can you tell me the percent of logging he's anticipating over the next couple of years, I mean, you went through them

Larson: He was looking at 55 trees and the plan that we filed specifically locates each of those 55 trees that would be taken out. This is not a clear cut, its selective cutting and then over the next, and in the plan is projected for ten years, and then there would be 20% of the tree stand removed in 5 years and another 20% in 5 years beyond that. There would be some, you know, there would be some trees allowed to be removed in between those periods but it would be just falls, snags, that they would be taking out of there and just trying to cultivate the area and get the maximum production out there.

Yoon: What percent is 55 trees represent?

Larson: It would be right in there at that 20% mark.

Yoon: Twenty percent?

Larson: Yes.

Al-Sofi: Just partitioning this property won't cure the problems, obviously, it would have to be sold and someone put in a homesite. If this property were partitioned but not sold what would happen to the safety problem would still be there. Correct?

Larson: Its the intention of Mr. Huserick to sell it when it is partitioned.

Al-Sofi: Well, I understand that's his intentions but I'm just saying in the event it weren't sold.

Larson: It will sell. Now,....

Al-Sofi: He's going to price it down, in other words?

- Larson:** Yes. It will be priced to sell. Its a very much in demand area.
- Leonard:** Any other questions for Mr. Larson? Thank you. Is there anyone else who would like to testify on this case. Seeing none, we'll close the public portion of the hearing. Discussion of the Commission.
- Fry:** I don't think the road is any, I don't think its relative at all. In my own opinion. Theoretically anybody that would buy 14 acres, and I've been pricing farm equipment _____ and for years. Its not going to buy _____. The reality is being as friendly as this man apparently is, there's going to be, because I already utilize the equipment of my neighbors. That's just so, I think frankly if we get into the situation where we use this as an excuse to buy land, I think that's a real mistake. And, I would let the Staff, even if we were to entertain this, how many parcels in east county, in west county, are we cutting up because of the same issue. So, a roads been, I don't think that's a relevant argument. I frankly feel the only relevant argument is should the whole parcel have been zoned Multiple Use Farm, MUF. In other words,...
- Leonard:** MUF would be Multi Use Forest.
- Fry:** Right. With EFU improperly put on this land and that's the other half of their case, and I guess I'm just not personally convinced but others may be convinced. I just don't see that's it a wrong designation.
- Yoon:** I'm a little _____. Did Staff basically say that they thought this was basically correcting something that was overlooked?
- Al-Sofi:** I didn't get _____
- Leonard:** Staff recommended approval. Not a lot of analysis why. I think we're being asked to sort through what might be appropriate and what's pertinent here.
- Douglas:** Might I say something here?
- Leonard:** Yes, Commissioner Douglas.

Douglas: This is one of the things that I think was probably miss-zoned to start with, number one. Number two, this is what I was speaking of. This is an area that is not prime farm ground, or secondary or whatever you want to call it. Its in an erosion area and I think timber would be much better. I think it should be out of farming period. Just if nothing more than that reason. Moving equipment across there is hazardous, there's no question but when it comes down to it it still could be done. But it is dangerous. But, just for the reasons I've stated that it is a heavy slope, it should be in timber. I really believe it should be partitioned that way. Either that or make the whole place that's become the whole thing or MUF zoning.

Yoon: Would you agree that if they have a timber management plan that I assume transfers to the new owners, that basically we should change this thing into MUF zoning?

Fry: Take the whole site, not just Parcel 1. Is that what you're saying?

Douglas; Well, just the way it lays here. The original part is not so steep, it is still _____. I'm aware of the property. I've gone down there a number of times, probably as most of you have. They do have erosion there, can have it, and it should not be plowed up. It should be in something that would be stable. And I believe that forest is it. For that reason I will be voting for this.

Leonard: Okay. Further discussion and comment?

Fry: Well, I just want to say, I understand what you're saying about flat land vs. steep land. I don't happen to agree with what you're saying though. That steep land by definition is not agricultural. In fact some of the finest land in the world is used for some types of agriculture.

MIXED VOICES. INAUDIBLE.

Fry: Right. And the soil is good, so....

Douglas: Well, this is Class 3 and 4 which is not...

Fry: Is not great.

Douglas: Is not great. This is actually what the issue of LCDC is coming to, what's secondary land?

Fry: No one really knows.

Leonard: Well, it appears from the information that's been presented that is not secondary forest land, considering its site capability for forest use it is very desirable for timber production land. And, based on the facts as presented I'm persuaded it has a higher forest value than farm value and based on that criteria alone, and not considering road traffic and hazards in the road, I'm persuaded that the MUF-19 is a more appropriate land use plan designation and zoning.

Yoon: I would agree with that too. Especially with this one part of the _____ that was written by the 50-acre as the soil and water conservation said, it could be climatically adapted with a proper drainage system. So, I think the cost of a proper drainage system appears _____ as far as good agricultural land would probably be prohibitive. You know, given that soil. And I'd probably go along with what you're saying too.

Fry: Can I ask, is MUF-19 the most extensive forest zone we have?

Leonard: No. We have a commercial timber zone which requires substantially larger lots than this is.

MIXED VOICES. INAUDIBLE.

Leonard: CT.

Al-Sofi: INAUDIBLE.

Fry: Can I ask a question?

Leonard: Yes.

Fry: If this whole parcel was MUF to begin with, they would,

Yoon: Both sides of the road.

Fry: Both sides.

Leonard: Then the presence of the road would create a partition.

Fry: I do agree with you that your reasoning is valid to approve this but I can't get myself to believe.

Yoon: I make a motion we accept the Staff recommendation contingent or assuming there is a forest management plan.

Douglas: I'll second that.

Leonard: Discussion of the motion. All those in favor.

NOTE. MOTION CARRIES.

For a Plan Amendment we need five affirmative votes. The first question here is the Comprehensive Plan change. While the motion passed, it didn't pass by enough votes to carry out the plan amendment.

Yes, Mr. Larson.

Larson: INAUDIBLE.

Leonard; Could you come to the microphone please.

Larson; If the Commission felt it was more appropriate to re-zone the entire parcel as MUF-19, in other words both parcels, the entire piece of property is re-zoned, we would support that.

Yoon: Would that require a forest management plan on the other parcel?

Leonard; I think we have a question for Staff here. Gary, if the whole tract, the whole ownership, were re-zoned as MUF-19, would it require a farm or forest management plan for what's been designated as Parcel 2?

Clifford: No, those are really only required when they are applying for a resource-related residence. And they have drawn-up one for Parcel 1. And if someone submitted that with the required fee, it most likely

would be approved for the creation of a resource residence.

15

Yoon: I guess the question to ask is, Commissioner Fry, would you support MUF-19 on both sides?

Fry: My own personal opinion is that there has been no change of circumstance here that is valid to change the Plan amendment. Therefore the only argument that could be made is that it was a mistake originally to put EFU on this land and that it should have been properly zoned MUF. And that's my reading of the situation. So if someone would be able to prove to me that the county did in fact make a mistake, and that hasn't been proven yet, I certainly would entertain that. But, I'm going to be a hard sell because I don't, my own feeling is the Exclusive Farm Use does allow forest and, in fact, it promotes forest, and that, I just personally have no argument made to me why the density should increase in this area. That's just my own opinion.

Leonard: Okay. Commissioner Yoon.

Yoon: The process for the applicant then is to make an appeal to the County Commission.

Leonard: That would be one avenue open to them.

Yoon: Of which basically the vote would be recorded it was four for and one against.

Leonard: Right.

Yoon: And we require five.

Al-Sofi: There was one abstention. I just didn't vote.

Leonard: We had three. We missed that in the voice vote. We had three affirmative vote, one negative vote, and one abstention.

Yoon: What are their other alternatives?

Leonard: Re-submit a new application.

Yoon: Submit a new application or just make an appeal to the county commission?

Douglas: I still think we made a mistake when this was designated.

Yoon: I would agree with you. We did.

MIXED CONVERSATION.

Larson: The way I understand it, I can appeal to the Board of Commissioners, at this point?

Leonard: Yes.

Larson: And if I want I can come back six months later, and if I should fail there and ask for re-zoning of the entire...

Leonard: Submit a new request.

Fry: Actually, can't they immediately submit a new, if it was a different parcel? You'd have to ask Staff.

I think the six months is only with the identical application.

Leonard: Substantially identical.

Okay.

END.

Meeting Date: August 13, 1991

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ (date)	BCC Formal <u>August 13, 1991</u> (date)
DEPARTMENT <u>DES</u>	DIVISION <u>Planning</u>
CONTACT <u>Sharon Cowley</u>	TELEPHONE <u>2610</u>
PERSON(S) MAKING PRESENTATION _____	<u>Planning Staff</u>

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Hour

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 6-91 Decision of the Planning Commission of June 3, 1991 and appealed by the opposition, with recommendation to the Board for approval with conditions

Hearing Rescheduled to 9-3-91.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER *[Signature]*

(All accompanying documents must have required signatures)



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

Date: 08/13/91 Time: 9:30 a.m. Place: Room 602, Multnomah County Courthouse

CU 6 91 Public Hearing -

Review the Decision of the Planning Commission of June 3, 1991, **approving, subject to conditions**, requested conditional use for a commercial activity that is in conjunction with farm uses in the EFU zoning district, for proeprty located at **9833 NW Cornelius Pass Road**.

TREES = WASHINGTON COUNTY
1290

PROPOSED AREA
APPROX
75X 200

x x x y
y x x
PASTURE + TREES
x x x y

RES

TAX LOTS
0 0 58 WOODED
0 0 4.24 AC
0 0 0 0 0 0

EXISTING ROAD

CORNELIUS PASS Rd.

20.10 AC

FARM

WOODED AREA

KRAISER Rd

WASHINGTON COUNTY
16-9-91

FARM

RES



DEPARTMENT OF ENVIRONMENTAL SERVICES
 DIVISION OF PLANNING AND DEVELOPMENT
 2115 SE MORRISON STREET
 PORTLAND, OREGON 97214 (503) 248-3043

*Being
 Fee
 \$517.50
 Last
 day to
 file
 notice
 of Review
 Monday
 June
 4, 1991
 4:30pm*

NOTICE OF REVIEW

See Attached Notice

1. Name: *Bines*, *Parish*, *(U)*

2. Address: *2995* *Portland*, *Portland*, *OR*
Last Middle First Street or Box City State and Zip Code

3. Telephone: () -

4. If serving as a representative of other persons, list their names and addresses:
See attached

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
approval of conditional use application

6. The decision was announced by the Planning Commission on *6/13*, 19*91*

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

See attached

RECEIVED
 JUN 24 1991

Multnomah County
 Zoning Division

Please return this original form

NOTICE OF REVIEW

1. - 3. RALPH W. JONES
9985 N.W. Kaiser Road
Portland, Oregon 97231
Tel. (503) 645-6581

1. - 3. KENT B. THURBER
9825 N.W. Kaiser Road
Portland, Oregon 97231
Tel. (503) 645-3724

1. - 3. David P. Roy
9949 N.W. Kaiser Road
Portland, Oregon
Tel. (503) 629-5464

4. The following persons join in this appeal:

The Board of the Citizens for the Preservation
of Skyline Ridge
George Sowder, President
16618 N.W. Skyline Boulevard
Portland, Oregon 97231

Ray DeSilva
10030 N.W. Cornelius Pass Road
Portland, Oregon 97231

Harold and Lorraine Mason
9980 N.W. Kaiser Road
Portland, Oregon 97231

5. The Decision to be reviewed is the approval, subject to conditions, of the Conditional Use Application of:

Bowlus and Lynne D. Chauncey
9825 N.W. Kaiser Road
Portland, Oregon 97231

for the property located 9833 N.W. Cornelius Pass Road, Portland, Oregon, being Tax Lot 58, Section 5, 1N-1W, 1990 Assessor's Map, consisting of 4.24 acres, which property is currently agricultural land zoned for Exclusive Farm Use.

6. The Decision was announced by the Planning Commission and filed with the Clerk of the Board on June 13, 1991.

7. Ralph W. Jones claims status as a party pursuant to MCC 11.15.8225 as a result of his filing of written Responses to the Narrative and Supplemental Narrative of the applicants and as a

result of his testimony in opposition to the application given during the public hearing June 3, 1991. Kent B. Thurber and David P. Roy claim status as parties as a result of their testimony in opposition to the application given during the public hearing on June 3, 1991.

8. The GROUNDS FOR REVERSAL of the Decision of the Planning Commission are as more fully stated in the Statement of Ralph W. Jones in Appeal of the Planning Commission Decision, CU 6-91, #90. In summary, those grounds are:

a. The applicants' bark dust business is not, and will not be, conducted in conjunction with farm uses.

b. Approval of the conditional use application will afford an unfair competitive advantage to applicants over other bark dust vendors who obey state and county land use and zoning laws.

c. The Planning Commission failed to give proper consideration to, or erroneously considered that the applicants satisfied, conditional use criteria stated in MCC .7120, in that:

1. The Planning Commission erroneously determined the bark dust manufacturing and distribution business was consistent with the area;

2. The Planning Commission did not properly consider all the ramifications of the adverse impact of applicants' bark dust manufacturing business on water quality in the Rock Creek drainage basin, which drains into the Tualatin River. In addition, the Commission erred in determining that there would be no adverse impact on air quality and wildlife resources;

3. The Planning Commission erroneously determined the bark dust manufacturing and distribution business would not conflict with local farm uses;

4. The Planning Commission erroneously determined the bark dust manufacturing and distribution business will not require additional services;

5. The Planning Commission erroneously determined the bark dust manufacturing and distribution business will not create hazardous conditions in the area;

6. The Planning Commission erroneously determined that the bark dust manufacturing and distribution business will not violate County land use policies, or that limiting conditions on use of the site will mitigate adverse effects on the local environment, specifically with regard to the following policies:

a. Policy 2 - off-site effects are not properly considered or are misstated;

b. Policy 9 - agricultural land will be eliminated from potential production forever and the proposed use

will accelerate strictly commercial, non-agricultural pressures on surrounding agricultural land in the area;

c. Policy 13 - the proposed business will have a substantial negative impact on air, water and noise quality in the area;

d. Policy 14 - significant and stringent limitations will have to be imposed to prevent local environmental damage;

e. Policy 16 - the business will have a negative impact on natural resources in the area;

f. Policy 37 - the business will impact on local utility services if other limitations on use are enforced; and,

g. Policy 38 - the business will potentially have a substantial impact on facilities, including increasing stress on fire, police and emergency services in the area.

9.(b) The desired scope of review is on the RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE.

10. The grounds on which the request to introduce new evidence is submitted are as follows:

a. The Planning Commission did not afford the opponents of the application commensurate opportunity to discuss the negative implications of the proposed bark dust business. The applicants, their attorney and experts were allowed unlimited opportunity to present their testimony in support of the application. Those individuals who offered testimony in opposition to the application were limited in time and forced to rush their presentations.

b. The opponents to the application were afforded no opportunity to rebut the testimony of the applicants' experts, nor to evaluate their reports submitted to the Planning Commission.

c. The applicants' testimony in support of the application contained statements that induced the Planning Commission to erroneously approve the application for conditional use. Specifically, those statements were with regard to the nature, substance and geographic scope of the applicants' business.

Appellants, Messrs. Jones, Thurber and Roy request the Commissioners permit them one hour in which to provide supplemental testimony. In addition, appellants request additional time to review the videotape of applicants' business activities at their current Kaiser Road location, which videotape evidences: the pollution of applicants' environment (in terms of dust, noise, diesel fuel exhaust from machinery and vehicles); the inconsistency of their commercial activity with the environment at the proposed Cornelius Pass Road site; and, the course of Cornelius Pass Road from the summit at the intersection with Skyline Boulevard on the north to the intersection with Cornell Road on the south. Additional perspectives of the site,

the effects of pollution caused by a similar bark dust business and the relationship to other industrial activities of another similar bark dust business are contained in slides that are also part of the record that appellants request time to display for the Commissioners. To the extent that the Commissioners have the opportunity to pre-review the videotape and slides, guided by the Slide and Videotape Indices that are also part of the record, the amount of time required to view the exhibits and respond to questions will be lessened. Appellants are of the opinion that the time requested for their presentation will materially aid the Commissioners in reaching their opinion while overall also materially conserving the time of the Commissioners. To the extent necessary, appellants also request rebuttal time as necessary to respond to further assertions by the applicants.



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

Decision

**This Decision Includes Conditions of Approval,
Findings of Fact, and Conclusions**

June 3, 1991

**CU 6-91, #90 Conditional Use Request
(Transfer/Storage/Processing of Bark and Wood By-products)**

Applicant requests conditional use approval in order to operate a commercial business in an EFU (exclusive farm use) zone. The business would include the sale, storage and processing of bark mulch, sawdust, wood chips and related nursery products.

Location: 9833 NW Cornelius Pass Road
Legal: Tax Lot '58', Section 5, 1N-1W, 1990 Assessor's Map
Site Size: 4.24 Acres
Size Requested: Same
Property Owner: Bowlus and Lynne D. Chauncey
Applicant: Bowlus and Lynne D. Chauncey
9825 NW Kaiser Road, 97231
Comprehensive Plan: Agricultural
Present Zoning: EFU, Exclusive Farm Use District

PLANNING COMMISSION

DECISION: Approve, subject to conditions, the requested Conditional Use for a commercial activity that is in conjunction with farm uses in the EFU District, based on the following Findings and Conclusions.

TREES = WASHINGTON COUNTY
1290

RES

PROPOSED AREA
APPROX
75x200

xxx
x x x
PASTURE + TREES
x x x

RES

00
00
00

TAX LOTS
0 58 WOODED
0 4.24 AC
0 0 0 0 0

EXISTING ROAD

CORNELIUS PASS Rd.

20.10 AC

FARM

WOODED AREA

KAISER Rd

WASHINGTON COUNTY
FARM
6-9-91

RES

Conditions of Approval:

1. Obtain *Design Review* approval of all proposed site improvements including, but not limited to: grading, clearing, landscaping, fencing, parking and maneuvering areas, vehicle storage areas, and exterior materials and colors of any structures. Site work shall not proceed until required Design Review approvals are obtained, or as determined by the Director.

As part of Design Review, provide a *Noise Abatement Plan*, prepared by an acoustical engineer. Design Review may require enclosures, berms, structures or other devices to avoid or reduce adverse noise effects to neighboring residences and assure the design addresses applicable DEQ noise level restrictions for new uses.

As part of Design Review, provide a *Stormwater Management Plan*, prepared by a qualified professional; the plan shall identify methods for treating and/or controlling leachates and water run-off from the bark mulch storage area [Reference Oregon Administrative Rules (OAR) 340-45-015 regarding polluting discharges into waters of the State].

2. Obtain a *Grading and Erosion Control Permit* for any land disturbing activities associated with the commercial use of the site (Ref. MCC .6710).
3. Complete Engineering Services requirements (if any) for access, dedication, or improvements along Cornelius Pass Road. For information, contact Dick Howard at 248-3599.
4. The existing house approved by PRE 5-83 shall be removed prior to final approvals or occupancy of the site for the commercial use. The applicant may replace the house with a structure used as an office solely in conjunction with this conditional use. Any replacement dwelling shall be approved in accordance with applicable requirements in MCC .2010(A) [for a farm-related residence] or MCC .2012(B)(3) [for a non-farm residence].
5. It is the operator's responsibility to comply with noise level restrictions prescribed by the State Department of Environmental Quality (Ref. OAR 340-45). The hours of operation for on-site processing and loading activities shall be limited to 8:00 AM to 5:00 PM, Monday through Friday; and 9:00 AM to 5:00 PM, on Saturdays. Except for vehicles entering or leaving the site between 6:00 AM and 6:00 PM on Monday through Saturday, the business and any associated vehicles or equipment may not operate on Sundays or Legal Holidays, or on other days beyond the hours prescribed above. The business' vehicles must be stored on-site or at another approved off-site location.
6. It is the operator's responsibility to comply with water quality restrictions prescribed by the State Department of Environmental Quality (Ref. OAR 340-45).
7. If the use is not established on the site within two years, this approval shall expire, except as specified in MCC 11.15.7110(C).

Findings of Fact:

1. Summary and Background of the Proposal:

The applicant requests approval to operate a commercial wood products business within an Exclusive Farm Use (EFU) district. They describe their request as follows:

"Applicants seek conditional use approval to operate a bark dust business on property zoned for exclusive farm use. They propose to stockpile, load, and deliver various related wood byproducts to nursery people, farmers, businesses and individuals. There is a demand for this product in the area and local availability will benefit the community, both in terms of agricultural use and rural residential use.

The property is bordered by Cornelius Pass Road to the west [east]; the Multnomah County line to the south and east [west], and an undeveloped road right of way to the north. The site consists of a 4.24 acre parcel with three, possibly four, separate access points onto Cornelius Pass Road.

Most of the surrounding property is zoned for exclusive farm use, with the exception of a small Washington County parcel which is zoned as a rural commercial district. Applicants understand that conditional use approval for operation of a golf course on adjacent property is being sought from Washington County; however, at the time of this application, the golf course has not been approved and therefore, will not be addressed as an existing use for purposes of this application."

2. Site and Vicinity Information:

The 4.24 acre site contains a farm-related residence (reference PRE 5-83). The residence is a single-wide mobile home. The site measures approximately 1300-feet by 200-feet, with the long dimension and east boundary along Cornelius Pass Road. The property slopes to the south and west, and flattens out towards the south end. The northern 1/3 (or so) is a cleared Fir forest, with some remaining trees. Some younger Firs (originally planted for Christmas tree production) are grouped near the center of the site, near the mobile home. The south 1/3 (or so) is more open, with pasture and scattered brushy trees; this area is proposed for the bark mulch storage and commercial operation. A shallow drainage swale (and associated riparian vegetation) is located at the extreme southwest corner of the property.

Surrounding properties are zoned EFU, both within Multnomah and Washington County. The nearest residence is located near the northwest corner of the site, just west of the Multnomah/Washington County boundary. This residence is approximately 800-feet from the bark mulch storage area indicated on the site

plan. A second nearby residence is located east of Cornelius Pass Road on Tax Lot '57'; it too is located approximately 800-feet from the bark storage area indicated on the site plan (based on air photo interpretation). A few rural residences are located further west in Washington County, across the small valley formed by Rock Creek, and further east along the southerly side of Kaiser Road.

3. Zoning and Comprehensive Plan Designations:

The plan designation of the parcel is **Agriculture**. The parcel is zoned EFU, **Exclusive Farm Use**. On March 16, 1983, the Planning Director approved a farm-related residence on the site in conjunction with a farm management plan for the 4.24 acre property (Ref. PRE 5-83). Applicant addresses this prior land use approval as follows:

"Applicants intend to continue to use the existing structure as a farm-related dwelling for management of the Christmas trees on the property. A portion of the structure may be used as an on-site office for the proposed business operation, but its primary purpose will be a residence for on-site management of the Christmas trees.

The bark dust operation will not affect the management plan for the Christmas trees on the sight. The former owner planted 1500 Christmas trees in 1980. Several trees were harvested prior to this sale; however, the Applicants intend to replant Christmas trees on the harvested land. In addition, some of the by-products from the Christmas tree operation will be used for the new commercial bark dust business.

The actual operation is not proposed for the area on which the trees are planted. There will be no adverse consequences for the Christmas trees or the soil. The materials used by the business actually serve to enhance the soil."

The owner (then Jerry Waters) submitted a 6-year management plan for Christmas tree production on the site. The proposed commercial use will require approximately 1/2 acre of the 4.24 acre site. This estimate assumes 15,000 square feet of area for the bark mulch storage (near the south boundary), and additional areas for vehicle maneuvering and storage, and an office. A new commercial use on a 1/2 acre portion of the site alters the farm management plan approved by PRE 5-83. In addition, new regulations applicable to the Tualatin Basin may require that the bark mulch storage area be separated from the drainage swale near the south boundary by a 100-foot undisturbed buffer [Ref. MCC .6730(A)(2)(a)].

Condition #4 requires that the existing farm-related residence be addressed in one of three ways:

1. Remove the mobile home; or,
2. Obtain approval of a farm-related residence and management plan which reflects the commercial use on the south portion of the site [Ref. MCC .2010(A)]; or,
3. Obtain approval of non-farm residence on the site [Ref. MCC .2012(B)(3)].

4. Ordinance Considerations:

Conditional uses allowed in the EFU zone are specified in MCC 11.15.2012. Subsection (B)(1) specifies “...*Commercial activities that are in conjunction with farm uses*”. Such uses may be permitted when found to satisfy *Conditional Use Approval Criteria* in MCC .7105 – .7640.

The following section presents findings regarding the proposed Conditional Use Permit; the applicable standard is in *bold italics*, applicant’s responses are presented first in *italics*, followed by staff comments.

A. Conditional Use Criteria (MCC .7120)

A(1) Is consistent with the character of the area;

“The subject site is located in a farm and forest area. There is a mixture of farm related residences, rural non-farm residences, farm use, and rural commercial use on the surrounding property. This gives the area an agricultural/rural-residential/rural-commercial character.

The proposed operation consists of stockpiling and transporting wood by-products. These products are used extensively in farm and forest areas by nursery people, farmers, businesses, and private individuals. The impacts of truck traffic and noise generated by the on-site handling of the product are not unlike impacts of farm or forest use. Cornelius Pass Road is a major truck route in the area and can accommodate the additional traffic generated by the proposed use. The multiple points of access provide a good on-site traffic flow and there is adequate sight distance at each access point. Therefore, any traffic generated by the business is consistent with the character of the area, both in terms of noise and safety.

With respect to other on-sight noise, the actual location of the operation is at least 1000 feet from the nearest residence. The noise generated by the trucks and loading equipment is similar to that generated by existing traffic and other farm equipment and machinery. Most farming operations are carried on seven days a week. The proposed six-day per week commercial operation is not inconsistent with agricultural practices in the area. Moreover, the

hours of operation have been tailored to minimize any potential conflict with all surrounding uses.

Given the local need for the product, the relatively minimal off-site impacts of the operation, and the on-site location in proximity to nearby residences, it is clear that the proposed operation is consistent with the character of the area."

Staff Comment: As noted under finding #2. above, the area is generally agricultural in character. The land on this and surrounding sites slopes generally to the south or southwest, and is generally rolling fields and pastures with scattered patches of woodlands. Rock Creek flows near the site. Its valley floor lies to the west and south (mostly within Washington County).

The operation consists of **processing** as well as "...stockpiling and transporting wood by-products." It is the processing activity (grinding and chipping) which in part creates noise effects to surrounding residents. Condition #1 requires a *Noise Abatement Plan* to assure the use remains consistent with the area character.

The applicant also provides the following traffic study and analysis to support a conclusion that the use is consistent with the area character:

"1. Traffic Impacts

A. 24 Hour Counts

Applicants have obtained traffic counts at four separate locations in the surrounding area. All counts are based upon an average for a twenty-four hour period. Two counts were performed in Multnomah County and two in Washington County. The results were as follows:

Multnomah County

North of Sheltered Nook
closer to St. Helens Hwy.

North of Kaiser Road

North 2,520
South 2,650
Total 5,170

North 2,750
South 2,870
Total 5,620

Washington County

*North of Germantown Road to
South of Chauncey property*

South of West Union Road

North 2,288

South 2,287

Total 4,575

North 3,761

South 3,645

Total 7,406

These traffic figures are based upon actual vehicle trips per day, regardless of whether the vehicles are cars or trucks. However, the Applicant will convert the actual number of anticipated truck trips to passenger car equivalents.

B. Passenger Car Equivalents

Trucks are assigned passenger car equivalent ("PCE") values for purposes of determining traffic impacts. The County traffic division provided the following information for purposes of determining the PCE for trucks:

Flat terrain — 2.2 PCE per truck

Rolling terrain — 5.0 PCE per truck

Mountainous — 10.0 PCE per truck

Cornelius Pass Road, at the site, has terrain which is between flat and rolling; therefore, we will assign a value of 5 PCE per truck for considering traffic impacts.

C. Maximum Truck Traffic Generated

A maximum of five trucks will be used at the peak period of operation between March and July. The approximate number of trips per truck is stated below, listing actual trips first, followed by the PCE value assigned for trucks:

- | | |
|------------------------------------------------------|----------------|
| <i>1. Ford Dump Truck with 26,000 pound capacity</i> | |
| <i>V8 with 390 cubic inch engine</i> | <i>8 trips</i> |
| | <i>40 pce</i> |
| <i>2. Ford Dump Truck with 26,000 pound capacity</i> | |
| <i>V8 with 265 cubic inch engine</i> | <i>6 trips</i> |
| | <i>30 pce</i> |

3. International Truck with 26,000 pound capacity	6 trips 30 pce
4. White semi-truck with Cummins 290 horsepower engine	4 trips 20 pce
5. International semi-truck with General Motors 415 horsepower engine (Detroit - 8V92T)	6 trips 30 pce

Total trips: 30
Total PCE: 150

These figures are based upon maximum truck trips during the peak season from March to July. If averaged over the entire year, the number of trips would be significantly lower.

D. Impact Analysis

For purposes of this analysis, the Applicants have assumed a PCE of 5 for each truck and the highest traffic count in the area, South of West Union Road: 7406. Therefore, this presents a worst case analysis and the true impact will be substantially less.

150 trips is approximately .0203 (2.03 percent) of the total of 7,406 trips per day. The actual percentage of increase is likely to be lower because the existing traffic count figures do not include adjustments for the passenger car equivalent values assigned to trucks.

Assuming a worst case analysis, take 10% of the total traffic, in both directions, to reach a peak hour figure of 740. The proposed operation will add approximately 15 pce (3 actual) trips to the peak hour total.

The road is a two lane paved surface with gravel shoulders. Typically, a single lane has capacity for 1000 cars per hour. However, we will use a conservative estimate of 750 per lane to account for variables such as truck volumes, road widths, and intersections.

<i>Total peak hour traffic estimate:</i>	740
<i>Southbound peak:</i>	740 x .63 = 465
<i>Northbound peak:</i>	740 x .37 = 275
<i>Lane Capacity, conservative estimate:</i>	750
<i>Volume/Capacity Ratio (465/750):</i>	.62
<i>Level of Service:</i>	<i>B - Below Capacity</i>

Based on the foregoing analysis, the existing road has more than enough capacity to accommodate the additional traffic generated by the proposed operation.

E. Access

There are at least three points of access on the proposed site, as illustrated on the attached map. A possible fourth point is located at Kaiser Road; however, the Applicants do not intend to use that access at this time. The three existing points of access provide a good on-site traffic flow. In addition, there is adequate sight distance at each access point.

The number of actual trips per day generated by the proposed operation is approximately 30, rather than the 150 pce figure used to compute the above percentage.

F. Traffic Conclusion

Cornelius Pass Road has the capacity to accommodate the traffic generated by the proposed operation safely. Therefore, any traffic generated by the business is consistent with the character of the area."

Staff Comment: Reference the May 6, 1991 memo to Scott Pemble, from Robert Johnson, PE, (Traffic Engineering Staff). He agrees that the proposed use should not cause capacity or safety problems on Cornelius Pass Road. The May 7, 1991 Planning Commission minutes includes comments from Scott Pemble (Acting Planning Director/Senior Transportation Planner) regarding traffic effects from the project.

John Dorst (Right-of-way Permits Chief) indicates site accesses will likely be limited to two points (an entrance and exit) as part of Design Review of the proposed use.

A(2) Will not adversely affect natural resources;

"The site has not been designated as a significant wildlife habitat, nor has the County inventoried it as a Goal 5 resource. The bark dust operation will not adversely affect water or air quality. Forest by-products stored at ground level do not cause hazardous leaching into the groundwater, rather they act as a filtering system to purify rain water. In addition, the operation will not create unacceptable dust levels to pollute the air. Furthermore, the wood by-products serve to enrich the clay soil in the area. Therefore, the proposed operation may have a beneficial affect, but clearly will have no adverse affect on natural resources."

Staff Comment: The leachate and run-off from open storage of large quantities of bark mulch and related wood by-products can adversely effect water quality in nearby water bodies, streams or wetlands. Lyle Christianson from the State DEQ indicates the primary effects of concern are the acid PH level of run-off from mulch piles, and the discharge of organic material (sawdust, bark, etc.) into streams or wetlands. Condition #1 requires that the applicant provide a *Stormwater Management Plan* which identifies methods for treating and/or controlling leachates and water run-off from the bark mulch storage area. Oregon Administrative Rules 340-45-015 sets standards and requirements for discharges into waters of the State. If the water run-off is not sufficiently treated on the site, a discharge permit is required from DEQ.

A(3) Will not conflict with farm or forest uses in the area;

"The farm or forest uses in the area consist of open fields, pastures, wheat fields, and small woodlots. The proposed operation will not conflict with any of these uses. On the contrary, to the extent that any bark dust may drift onto adjoining lands, it serves to enrich the soil."

Staff Comment: Staff concurs that the use likely has minimal adverse effects to surrounding farm or forest uses.

The dust created by the chipping and grinding of wood products may adversely effect some crop potential on nearby farm land; however, staff did not observe or receive reports of such effects. The only adjoining farm uses are pastures. A golf course proposed on the property to the south (in Washington County) has not been approved or denied as of this writing.

A(4) Will not require public services other than those existing or programmed for the area;

"The operation will not require any public services at all."

Staff Comment: Staff concurs that the use likely creates no additional public service demands.

A(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

"The site has not been identified as a 'Big Game Winter Habitat Area' by the state."

Staff Comment: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife.

A(6) Will not create hazardous conditions;

"Cornelius Pass Road has the capacity to carry the limited truck traffic generated by the proposed use and does not pose any traffic safety hazards. The multiple access points, coupled with the adequate sight/distance of the access points further support the absence of hazardous conditions. In addition, there are no steep, on-site slopes subject to erosion as a result of the operation, and there is no threat to water quality. Therefore, the proposed business will not create hazardous conditions on-site or .off."

Staff Comment: Staff generally concurs with the above finding. Applicant also provides a traffic impact analysis which in part demonstrates consistency with this criteria; reference findings above under A(1): Consistency with the area character. Condition #1 requires Design Review of the site improvements including vehicle accesses and on-site maneuvering/parking areas. Condition #3 also requires Engineering Services review and approval of access points to the site. This further insures that the use will not create hazardous traffic conditions.

A(7) Will satisfy the applicable policies of the Comprehensive Plan.

The following policies of the County's Comprehensive Plan are applicable to this request: Policy 2 (Off-site Effects), Policy 9 (Agricultural Land), Policy 13 (Air, Water and Noise Quality), Policy 14 (Development Limitations), Policy 16 (Natural Resources), Policy 37 (Utilities), and Policy 38 (Facilities).

a. Policy 2 – Off-Site Effects.

"This policy is to condition approved uses to minimize the offsite effects. Applicants have voluntarily restricted the hours of operation to mitigate any potential conflicts of off-site effects on surrounding uses terms of noise, dust, or traffic. The nearest residence is 1000. Surrounding farm land is either used for pastures, wheat crops, forestry, and christmas trees, and will not be affected by the proposed operation. In addition, the rural commercial uses on the adjoining Washington County property will not be impacted because they are not accessible by Cornelius Pass Road and the businesses are not in close proximity to the actual operation."

Staff Comment: The use creates off-site effects to surrounding residences in terms of noise. Conditions of approval address potential adverse noise effects (refer to Policy 13 discussion below). Conditions of approval also address off-site effects relative to community design, water quality, erosion control, and traffic.

b. Policy 9 – Agricultural Land.

"The Applicants' business consists of stockpiling and transporting wood by-products. These products are used extensively in farm and forest areas by nursery people, farmers, businesses, and private individuals. The proposed use will take only 15,000 square feet (75' x 200') out of farm use while the business is in operation. However, should the land be returned to farm use in the future, the wood by-product residue left by the stockpiling will serve to enrich the clay soil and create better farm land. Therefore, the proposal is consistent with to preserve agricultural lands for agricultural purposes."

Staff Comment: The County's policy is to preserve the best agricultural lands from inappropriate and incompatible land uses. Conditions of approval are necessary to mitigate adverse effects to surrounding properties. Adverse effects to surrounding agricultural lands or practices are negligible.

c. Policy 13 – Air, Water, and Noise Quality.

"Policy 13 is designed to protect the regional airshed through compliance with federal, state, and local regulations. The operation of Applicants' business will not have an adverse impact on air quality for the regional airshed, nor will it violate any state or federal air quality regulations."

With respect to noise, Applicants have located the operation at least 1000 feet from the nearest residence, which minimizes the off-site impacts. In addition, they have restricted the hours of operation to reduce any conflict with surrounding uses.

The bark dust operation will not adversely affect water quality. The wood by-products actually serve to filter rain water and remove impurities before it reaches the ground water. Therefore, the stockpiling of wood by-products is actually beneficial for water quality.

This policy supports efforts to improve and control the County's air, water, and noise quality, while balancing the social and economic needs in the community. There is a need for Applicants' product and the resulting impacts with respect to air, water, and noise are minimal or non-existent. Therefore, the proposed use does not violate Policy No. 13."

The applicant provides additional information regarding noise levels generated by the proposed use:

"With respect to on-sight noise, the actual location of the operation is at least 1000 feet from the nearest residence. The noise generated by the trucks and loading equipment is similar to that generated by existing traffic and other farm equipment and machinery. The following is a list of the machinery and trucks to be used in the business. The approximate decibel count, based upon a distance of 50 feet, for each piece of equipment is as follows:

A. On Site Machinery

1. Front End Loader - General Motors "Euclid" - Double muffled for noise reduction.

75-78db at 50 feet

2. Tractor - Allis Chalmers - 200 with 90 horse-power engine and Farm Hand Tub Grinder - F-900. 80db at 50 feet

B. Trucks - In addition to the loader and grinder, there are three dump trucks and two semi trucks:

*1. Ford Dump Truck with 26,000 pound capacity - V8 with 390 cubic inch engine
82db at 50 feet*

2. Ford Dump Truck with 26,000 pound capacity - V8 with 265 cubic inch engine

82db at 50 feet

3. International dump truck with 26,000 pound capacity - V8 82db at 50 feet.

4. White semi-truck with Cummins 290 horsepower engine 82db at 50 feet

5. International semi-truck with General Motors 415 horsepower engine 85db at 50 feet

Applicants will not object to a condition that the noise be kept within the standards established by the Department of Environmental Quality."

Staff Comment: The Oregon Department of Environmental Quality regulates new uses which increase noise levels. Mr. Terry Obtshka at the DEQ indicates that the distance between the proposed use and the two nearest residences will reduce noise levels; however, the distance alone will not sufficiently address the decibel reductions necessary to comply with DEQ standards for new uses. As part of Design Review (Condition #1) the applicant must provide a *Noise Abatement Plan*, prepared by an acoustical engineer. Design Review may require enclosures, berms, structures or other devices to avoid or reduce adverse noise effects to neighboring residences and assure applicable DEQ noise level restrictions are met by the proposed use. Condition #5 further addresses the noise impact issue by restricting the Saturday hours to 9:00 AM—5:00 PM (rather than proposed 8:00 AM)

The leachate and water run-off from open storage of large quantities of bark mulch and related wood by-products can adversely effect water quality in nearby water bodies, streams or wetlands. Lyle Christianson from the State DEQ indicates the primary effects of concern are the acid PH level of run-off from mulch piles, and the discharge of organic material (sawdust, bark, etc.) into streams or wetlands. Condition #1 requires that the applicant provide a *Stormwater Management Plan* which identifies methods for treating and/or controlling leachates and water run-off from the bark mulch storage area. Oregon Administrative Rules 340-45-015 sets standards and requirements for discharges into waters of the State. If the water run-off is not sufficiently treated on the site, a discharge permit is required from DEQ.

d. Policy 14 – Development Limitations.

"The proposed site does not have any of the development limitations listed under Policy 14 of the Comprehensive Plan. The slopes do not exceed 20% and there is no severe soil erosion potential, nor is the land subject to slumping, earth slides or movement. Furthermore, it is not located within the 100 year flood plain and it does not have a high seasonal water table. Therefore, the proposed use is consistent with this plan policy."

Staff Comment: The site is located within the Tualatin River Drainage Basin. The State DEQ has imposed erosion control requirements for the Tualatin Basin to address seasonal water quality problems in the Tualatin

River (reference OAR 340 and MCC 11.15.6710).

Condition #2 requires approval of a Grading and Erosion Control Permit for any land disturbing activities on the site.

e. Policy 16 – Natural Resources

“This policy requires County designation of certain areas to be protected. The proposed site has not been designated as an area of significant environmental concern having special public value, nor is it likely to be considered for such designation. Therefore, the bark dust operation is consistent with this policy.

This policy requires protection of natural resources and findings that long-range availability of certain resources will not be limited or impaired by the use. This business will not limit or impair any mineral or aggregate sources, energy resources, domestic water supply watershed, fish habitat areas, wildlife habitat areas, and ecologically or scientifically significant natural areas.”

Staff Comment: Staff concurs. New regulations applicable to the Tualatin Basin may require that the bark mulch storage area be separated from the drainage swale near the south boundary by a 100-foot undisturbed buffer [Ref. MCC .6730(A)(2)(a)].

The leachate and run-off from open storage of large quantities of bark mulch can adversely effect water quality in nearby water bodies, streams or wetlands. State DEQ staff indicate the primary concerns are the acidic PH level of run-off from mulch piles, and the discharge of organic material (sawdust, bark, etc.) into streams or wetlands.

Condition #1 requires that the applicant provide a *Stormwater Management Plan* which identifies methods for treating and/or controlling leachates and water run-off from the bark mulch storage area. Oregon Administrative Rules 340-45-015 sets standards and requirements for discharges into waters of the State. If the water run-off is not sufficiently treated on the site, a discharge permit is required from DEQ.

f. Policy 37 – Utilities

“The utilities policy requires adequate water and disposal systems, drainage, and energy and communication facilities. Public water and sewage are unavailable in this area of Multnomah County. The existing mobile home on

the site has an adequate private water system and subsurface sewage disposal. Run-off from the site will not adversely affect water quality in the area, nor will it alter the drainage on adjoining land. In addition, communication facilities are available and there is an adequate energy supply to handle the needs of the operation. The actual operation of the business will not require energy or communications facilities."

Staff Comment: Staff concurs.

g. Policy 38 - Facilities

"The facilities policy requires a finding of adequate school, police, and fire services for the proposed use. The bark dust operation will have no impact on the local school district.

The wood by-products are not designated as hazardous or highly combustible. The local fire department is approximately six miles away and the Washington County Fire Department, which will answer calls for the proposed site, is less than four miles away. The County Sheriff can provide adequate protection for the business."

Staff Comment: Staff concurs that the use does not likely create additional demands for public services.

B. Exclusive Farm Use Conditional Use Approval Criteria (MCC .7122)

MCC .7122 (A) (1): An applicant must demonstrate that the proposed Conditional Use:

Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.;

"Surrounding farm and forest use consists of wheat fields, grazing pastures, and small woodlots. Applicants' proposed use will not require any change in farm or forest practices on these lands."

Staff Comment: Staff concurs.

MCC .7122 (A) (2): An applicant must demonstrate that the proposed Conditional Use:

Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

"Because the proposed bark dust operation will have no affect on the surrounding farm or forest practices, it will not increase the cost of those practices. Therefore, the proposal meets the additional approval standards set forth in MCC 11.15.7122."

Staff Comment: Staff concurs.

Conclusions:

1. Based upon the findings above, the use proposed – as conditioned herein – satisfies applicable Conditional Use approval criteria.

Signed June 3, 1991

Richard Leonard,
By Richard Leonard, Chairman *RL*

Filed With the Clerk of the Board on June 13, 1991

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before **4:30 PM. on Monday, June 24, 1991** on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, June 25, 1991, in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

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Multnomah County
Zoning Division

BRIEF BY RALPH W. JONES IN APPEAL OF THE DECISION OF THE PLANNING
COMMISSION IN THE APPLICATION FOR CONDITIONAL USE SUBMITTED BY
BOWLUS AND LYNNE D. CHAUNCEY, CU 6-91, #90, FILED JUNE 13, 1991.

RALPH W. JONES
9985 N.W. Kaiser Road
Portland, Oregon 97231

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BRIEF BY RALPH W. JONES IN APPEAL OF THE PLANNING COMMISSION
DECISION IN CU 6-91, #90, FILED JUNE 13, 1991.

GROUNDNS FOR REVERSAL OF DECISION

The Planning Commission's Decision Allowing Conditional Use by Beaver Bark/Chauncey is being appealed on a number of grounds. It is contended that the Planning Commission approved the conditional use by wrongly concluding the proposed bark dust manufacturing and distribution business is a commercial activity that is in conjunction with farm uses. In arriving at its erroneous conclusion, the Planning Commission further failed to give proper consideration to, or erroneously decided that the applicants satisfied, conditional use criteria stated in MCC .7120.

I. THE APPLICANTS' COMMERCIAL BARK DUST MANUFACTURING AND
DISTRIBUTION BUSINESS IS NOT, AND WILL NOT BE, CONDUCTED "IN
CONJUNCTION WITH FARM USES."

A. THE APPLICANTS' USAGE IS NOT IN CONJUNCTION WITH FARM
USE IN AN AGRICULTURAL CONTEXT.

There is no dispute that the bark dust manufacturing and distribution business is a commercial venture. The applicants contend that the term "in conjunction with farm uses" is to be interpreted in the broadest possible context, however, so they can pursue their commercial activity in an agricultural area zoned for exclusive farm use. Under their theory, as long as there is a christmas tree on the property that may have some use in their business, or there is an agricultural consumer who uses some of their wood by-products in the consumer's business, the "in conjunction with farm use" test is satisfied. The test advocated by the applicants is a "commercial context" test only, i.e., if the commodity manufactured and sold by them bears any relationship to agriculture, then the manufacturing is permissible in an EFU zone. Their proposed test is wrong.

Oregon's land use laws and policies are aimed at protecting agricultural lands from rampant and wasteful Southern California-style commercial development. The premise for the determination by the State (and its citizenry) that agricultural lands must be protected is that it is in the best interests of society to protect the means of food production. Decisions affecting the uses to which agricultural lands may be put must be made, consistent with those laws and policies, within an "agricultural context," i.e., will the proposed use satisfy the common interest of preserving agricultural lands. To further those goals,

alternative zoning has been provided for other land uses. For example, specific zoning has been developed for forestry uses, for commercial uses, for industrial uses and for residential uses. Consistent with those laws and policies, Multnomah County has zoned the particular land in question as agricultural land for exclusive farm use only; it has provided for other, inconsistent land uses by zoning other areas for commercial or industrial use. Washington County has done likewise. Indeed, land suitable for the proposed manufacturing and distribution business has been zoned for commercial or industrial use only three miles south of the proposed site.

In an agricultural context, the applicants' proposed use of the land for a bark dust manufacturing and distribution business is NOT "in conjunction with farm use." Under the broad definition of "in conjunction with farm use" advocated by applicants a number of uses not in an agricultural context would be permissible. As examples, the following businesses would be permissible because their products are used in agriculture even though the uses of the land are not, in an "agricultural context," consistent with the policies behind the zoning laws:

1. A wood preservative processing plant, because it manufactures preservative-treated lumber and poles that farmers and nurserymen use in their businesses;
2. A plywood mill, because it manufactures plywood that farmers use to construct their barns and storage buildings;
3. A slaughterhouse, because it produces animal by-products that are used to manufacture feed and feed supplements that farmers feed to farm animals and fowl;
4. A fertilizer plant, because it manufactures fertilizers that farmers use on their fields;
5. A chemical plant, because it manufactures herbicides and pesticides used by farmers on their crops;
6. A plastics manufacturing plant, because it manufactures plastic pots in which nurserymen grow plants to sell to consumers;
7. A petroleum refinery (with "Christmas trees" on its grounds), because it manufactures diesel fuels, gasoline and oil products used by farmers in their farm equipment;
8. A concrete batch plant, because it manufactures concrete that is used by farmers in foundations and floors for their barns and other outbuildings.

The applicants' proposed manufacturing and distribution business could have been inserted as an item on this list, reading:

9. A bark dust business, because it manufactures and distributes bark dust that is used by farmers and nurserymen in their businesses.

As is apparent from the above exercise, a substantial number of manufacturing and distribution businesses can be proposed for the site that are distantly related to agriculture in that the businesses produce products (like bark dust) that have agricultural uses. All of these businesses produce products that also have substantial non-agricultural uses. It is clear that the use of land by such businesses to carry out their manufacturing activities is not, in an "agricultural context," in conjunction with farm use.

Viewed in an agricultural context, the usage proposed by the applicants is inconsistent with the policies behind Oregon's land use laws and policies. The proposed usage is not in conjunction with farm use. Their application to conditionally use the proposed site to manufacture and distribute bark dust should be denied.

B. THE CHAUNCEY WOOD BY-PRODUCTS BUSINESS.

During applicants' testimony on June 3, 1991, Mr. Chauncey testified that his wood by-products were delivered 51% to farmers and nurseries, 39% to residential users and 10% to retailers. To substantiate his claim of a local usage for his product, he further testified that 90% of the deliveries to farmers and nurseries were made within 10 miles of the present business location on Kaiser Road. As best as can be determined in the absence of complete and accurate disclosure by the applicants of the nature and scope of their commercial wood by-products business, the business has two discreet parts. The first part consists of the transportation of sawdust and wood shavings from producers of those products to the businesses that use those products. In this regard, applicants' business partner stopped at the Jones residence on April 29, 1991, in the company of Mr. Kerrie G. Sandlee to request permission (which was given) to emplace a noise meter on the Jones property. During the course of the conversation, the applicants' partner stated that they regularly haul semi-truck loads of wood by-products to Tillamook. If they do in fact deliver wood by-products to that area, it may be to dairies in that area. Also, during their testimony on June 3, 1991, the applicants testified that Mr. Don Motz, of Motz & Sons Nursery, 11445 N.W. Skyline Blvd, is a customer of theirs, suggesting that they make regular deliveries of bark products for use in his commercial nursery business. According to Mr. Motz, he is a customer of the applicants, but for sawdust, which he purchases in approximately November by the semi-truck load in preparation for the winter (January) processing of bare-root trees; the sawdust is used to heel in the roots to avoid damage to the roots and the death of the trees. Applicants appear to be purposefully confusing the bark dust manufacturing and

distribution part of their business with their other wood by-products distribution business to state that 90% of their business deliveries are west of their property on Kaiser Road.

It further appears that applicants are holding themselves out to the general public as in business to provide bark dust products to the TRI-COUNTY AREA. Applicants have both an east-side and a west-side telephone listing, but there is no indication of the location(s) of their businesses (if there are two locations). If they obtained an east-side telephone listing for the convenience of east-side callers, then its only purpose would be to encourage far east-side callers to order bark dust from them. By omitting their address from, and including an east side phone number with the legend "SPEEDY DELIVERY" in, their advertisements, they could attempt to secure east-side business. In the Portland area, reference to the "tri-county area" is generally understood to include Clackamas, Multnomah and Washington Counties. If the applicants' manufacturing and distribution business is all conducted from their present Kaiser Road address, then at least two-thirds of their service area lies to the east of them - some parts of that area being at a substantial distance from the Kaiser Road site. They also indicated, however, that 90% of their farm and nursery business lies to the west. Given that they make two-to-three four hour round trips per day toward Tillamook, it appears that the majority of their business is located at substantial distance from the Kaiser Road site. Their testimony that there is a local need for their product is fallacious.

On or about June 17, 1991, one of applicants' semi-trucks was observed delivering a load of bark dust to the company, Best Buy in Town, which sells bark dust (among other landscaping products) to the public from its yard at the intersection of Cornelius Pass and Cornel Roads (See Exhibits Slide Index and Slides ## 7 & 8). Upon inquiry, it was determined that Beaver Bark wholesales bark dust to Best Buy in Town as well as to other retailers. The trucking by Beaver Bark of bark dust products to other retailers confirms that applicants' bark dust business is further bifurcated in that wholesale quantities of bark material are delivered to other retailers. The smaller quantities manufactured and delivered as a result of applicants' present business activities clearly appear to be destined for the residential and landscaping markets in the tri-county area east of their Kaiser Road location.

C. THE UNFAIR COMPETITIVE ADVANTAGE AFFORDED BY USE OF AGRICULTURAL LAND IN CONTRAVENTION OF LAND USE LAWS.

Applicants were apparently able to acquire the Cornelius Pass Road site for relatively little expense. Similar property in a more appropriately-zoned industrial area will probably be more expensive than the subject property. To the extent that applicants are able to subvert the zoning laws to use the

agricultural land in question for industrial purposes they will realize a windfall. As a result of this improper windfall, applicants will be able to operate their business with less overhead expense and an accordingly greater potential profit margin. This greater potential profit margin will translate to an unfair economic advantage over companies that lawfully conduct their business activities in conformity with appropriate land use laws.

II. THE PLANNING COMMISSION FAILED TO GIVE PROPER CONSIDERATION TO, OR ERRONEOUSLY CONCLUDED THAT THE APPLICANTS SATISFIED, CONDITIONAL USE CRITERIA STATED IN MCC .7120.

A. OVERVIEW OF ERRORS IN THE PLANNING COMMISSION DECISION.

As a condition precedent to approval of their application for conditional use, the applicants must establish that their proposed use of the property is a commercial use, IN AN AGRICULTURAL CONTEXT, in conjunction with a farm use. In addition to the above facts that establish that the proposed conditional use is a strictly commercial manufacturing and distribution business (not in an agricultural context) that is NOT in conjunction with a farm use, it is clear that the conditional use criteria specified in MCC .7105 - .7640 are also not satisfied. Specifically, the conditional use criteria that are not satisfied by this application, and which criteria the Planning Commission Decision either does not properly address or erroneously determines to be satisfied by the proposed conditional use, are as follows:

1. The proposed bark dust manufacturing and distribution business is inconsistent with the area;
2. The proposed bark dust manufacturing and distribution business will adversely affect natural resources;
3. Although minimal, there is the possibility of conflict of the proposed bark dust manufacturing and distribution business with farm or forest use in the area;
4. The proposed bark dust manufacturing and distribution business will require public services other than those existing or programmed for the area;
5. Although the area is located outside a designated big game winter habitat, the proposed bark dust manufacturing and distribution business will detrimentally impact on the abundant wildlife in the area;
6. The proposed bark dust manufacturing and distribution business will create hazardous conditions;

7. The proposed bark dust manufacturing and distribution business does not satisfy the applicable policies of the Comprehensive Plan. Particularly, the proposed bark dust manufacturing and distribution business will violate the following applicable policies:

a. Policy 2 - Off-site effects: The proposed manufacturing and distribution business will have multiple and potentially substantial off-site effects.

b. Policy 9 - Agricultural Land: The proposed manufacturing and distribution business will forever eliminate the subject agricultural land from agricultural production. In addition, the intended usage will accelerate the nibbling process that is eroding the base of available farm land and will serve as a precedent for the establishment of other similar non-agricultural businesses in the area.

c. Policy 13 - Air, Water and Noise Quality: The proposed manufacturing and distribution business will have a substantial negative impact on air, water and noise quality in the area.

d. Policy 14 - Development Limitations: Stringent and multiple development limitations would have to be imposed, and are recommended, to prevent damage to the environment by the proposed manufacturing and distribution business.

e. Policy 16 - Natural Resources: The proposed manufacturing and distribution business will have a substantial, negative effect on natural resources in the area.

f. Policy 37 - Utilities: Although minimal (except with regard to the substantial water run-off problems associated with the site), the proposed manufacturing and distribution business will impact on the need for public services in the area.

g. Policy 38 - Facilities: The proposed manufacturing and distribution business will require additional services from fire, police and emergency vehicles; given the location and remoteness of the site, the provision of these services in emergency situations will be significantly delayed.

In addition to the above-cited factors, two additional criteria for approval are applicable: The applicants must demonstrate that their proposed conditional use (a) will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use (MCC .7122(A)(1)) and (b) will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use (MCC .7122(A)(2)).

The criteria that the applicants must satisfy to gain

approval of their conditional use request are considered below. To the extent possible, when repetition of a previous discussion becomes necessary because of repetitious allegations made by the applicants, the reader will be referred to the earlier discussion. In arriving at its Decision in support of the application, the Planning Commission failed to give adequate consideration to the evidence introduced by the opponents of the proposed manufacturing and distribution business, or failed to arrive at a decision consistent with the evidence submitted.

1. THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS IS INCONSISTENT WITH THE AREA.

Initially, it should be emphasized that the proposed bark dust manufacturing and distribution business is totally antithetical to the local area in which applicants are attempting to locate. As the photographic and videotape exhibits disclose, the surrounding Rock Creek valley area is essentially undeveloped agricultural and timber land with a scattering of residences (See Exhibits Slide #14 and the Slide Index; Videotape of the local environment, at approximate counter references 11:25 - 12:60 and the Videotape Index; See also the slides taken by Staff representative Mark Hess). The Staff report concludes that "the area is generally agricultural in character" (Staff Report, at Staff Comment, p. 8). The property lies adjacent to the marshy area surrounding Rock Creek, and the southwest corner of the site is part of that marshy area (in triangular shape approximately 100-plus feet along the west line to the north by 75 feet along the south line to the east) (See Exhibits, Annotated Copy of the June 3, 1991, Staff Report, Page 3, prepared by Ralph Jones; Slides ## 16 - 19). The subject property has approximately 90 - 100 rangy fir trees (originally planted as Christmas trees by registered owner Jerry Waters in 1980) scattered over the lower two-thirds of the site. Mature trees on the northern third were harvested by the previous contract vendees before purchase by the applicants; the harvested area is littered with debris from the logging (See Exhibits Slides ## 2 - 6 and Index of Slides; Slides taken by Staff). Surrounding land has been or is being farmed or grazed, or is timbered.

The sole piece of commercial property in this otherwise exclusive farm use or rural residential area is the Rock Creek Tavern, which has been located at its present site across the valley on Old Cornelius Pass Road for over a century (including the time the business premises were occupied by what was then the town of Phillips' blacksmith shop); the commercial zoning for the tavern was grandfathered in when local zoning laws were adopted. Other than the proximate Rock Creek Tavern, there are no other strictly commercial ventures in the immediate area. Application for the golf course on the adjacent property to the south of the site was denied in part due to the commercial nature of that proposed usage (Washington County Notice of Decision, Case No. 90-711-Su/d, ¶¶ 76 - 81, 100 - 118, dated May 24, 1991). The

closest other strictly commercial activities are located at the intersection of Cornelius Pass and West Union Roads and at the intersection of Skyline Boulevard and Cornelius Pass Road. The intrusiveness and inconsistency of the applicants' proposed strictly commercial manufacturing and distribution business are not supported by the distant presence of these other commercial ventures. All other uses of surrounding properties are consistent with the purpose and spirit of the EFU and Rural Residential zoning of the area and inconsistent with the applicants' proposed use of the property in question. (Response of Ralph Jones to narrative statement of Chauncey, pp. 2 - 3).

According to the May 13, 1991, letter testimony of Mr. Robert Baker, President, Skyline Realty, the effect of allowing a commercial bark dust manufacturing business to operate at the proposed site would be negative. Properties affected by the proposed business activity will experience a decline in value of upwards of 10 percent. In our economic system, market forces are a clear indicator of relative worths, and the relative worth of property next to such an inconsistent activity is, in Mr. Baker's evaluation, 10 percent less because of the destruction of the rural atmosphere and view. Clearly, if the proposed bark dust manufacturing and distribution business were consistent with the surrounding EFU and rural residential usages, there would be no diminution in value of surrounding properties.

Further evidence of the inconsistency of the usage is provided by the very operation of the applicants' business at its current Kaiser Road location (See Videotape at approximate counter references 0 - 10:10). Review of the videotape taken of that operation and made part of this record clearly evidences the incompatibility of the proposed commercial manufacturing and distribution business with the environment at the proposed site. The business is dusty, noisy and the activity is totally inconsistent with the more idyllic activity in the local valley; further, the heavy trucks and loader belch large clouds of noxious diesel smoke. The slides and videotape of the business on 170th near T-V Highway provide further evidence that such a bark dust business would be inconsistent with, and harmful to the local environment (See Slides ## 20 - 24 and Slide Index; Videotape at approximate counter references 10:20 - 11:25). The view of such large piles of bark dust in the Rock Creek valley would most certainly be inconsistent with the verdant, unspoiled scenery that now exists there. Furthermore, the air quality would change too, as evidenced by the smell emanating from the water sample taken from the edge of the pile at the 170th location (See the Exhibit Water Sample, ditch run-off, in the jar with the red-and-white checkered cap).

Final evidence of the inconsistency of the proposed manufacturing and distribution business with the Rock Creek valley environment is provided by the slides and videotape of a bark dust business and its environs near the intersection of Cornelius Pass and Cornell Roads approximately eight miles south

of the proposed site (See Exhibits, Slides ## 7 & 8 and Slide Index; Videotape at approximate counter references 17:00 - 18:40 (this view is near the end of the road trip proceeding south on Cornelius Pass Road at references 12:60 - 18:40) and Videotape Index). That bark dust business is located in an industrial area with railroad tracks on one side and a concrete batch plant with large piles of sand and gravel on the other side; across the street are the facilities of Northwest Natural Gas, which include a large parking area, many service trucks, pipe, what appears to be a huge gas transmission facility and a large warehouse. South of this area, across Cornelius Pass Road is the beginning of an area zoned for industrial usage that extends back approximately 2.2 miles towards West Union Road and west to Helvetia Road and including approximately 4.5 square miles, or 3,000 acres, of land zoned for industrial usage. When Mr. Baker was describing this land to me he indicated that this land was part of a "glut" of industrial-zoned land in the Hillsboro area. Such land would be far more consistent with the applicants' business operations than would the proposed site, as evidenced by the fact that such a business already exists there. Such land is also closer to the Sunset Freeway and closer to applicants' admitted service area. The location of the proposed bark dust manufacturing and distribution business on the proposed site is not only inconsistent with the environment, it is illogical given the availability of other commercial property closer to the Freeway.

2. THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WILL ADVERSELY AFFECT NATURAL RESOURCES.

a. WATER POLLUTION:

The applicants stated that their bark dust manufacturing and distribution business will not adversely affect water quality. They further stated that "(forest) by-products stored at ground level do not cause hazardous leaching into the groundwater, rather they act as a filtering system to purify rain water." The evidence against them on this point is clear. As the letter testimony of Mr. William Fletcher indicates, and as the Staff, found, the leachate and run-off from bark dust piles can pollute ground water and affect the water quality in nearby bodies of water, streams and marsh lands. The main areas of concern are increased acidity of the run-off and the discharge of organic materials. As shown by the water samples, the contrast between rain water and the leachate is obvious. As the leachate water sample evidences (the Exhibit in the bottle with the red-and-white checked cap), another concern of such an operation is the smell of the water, which is merely a reflection of the odor emanating from the bark dust. That noxious odor will permeate the area and will be immune to other efforts to control pollution emanating from the sight.

Control of the polluted water will require exceptional

efforts that will for all intents and purposes permanently remove the site from agricultural usage. First, to control ground water pollution, the applicants will need to pave the bark dust storage area (alleged to be approximately 15,000 square feet in area). Second, they will need a system of ditches and berms to control the run-off. Third, they will need a settling pond of sufficient size to contain the run-off (this pond should also be of impervious material to prevent the polluted water from entering the ground water). And finally, they will need a treatment facility of some sort to purify the discharge from the pond before it enters Rock Creek (filtering that discharge through the bark dust piles will not purify the water). Emplacement of all these improvements will guarantee that the site continues as non-agricultural commercial property.

An additional effect of all the pollution control efforts is the movement of the processing site on the property further north and closer to nearby residences. As shown by the Annotated copy of the June 3 Staff Report, at p. 3, the wetland intrudes onto the subject property in a triangular shape extending north approximately 100 feet. To comply with Multnomah County ordinances, an additional 100 foot undisturbed buffer must be maintained between the marshy area and the treatment facility below the settling pond. The pond will need to be of substantial size and with substantial berming - probably in the area of 100 feet total - because of the slope of the ground and the potential for heavy run-offs. The processing and storage site would sit north of the pond some additional feet and extend north according to the applicants' plans another 200 feet. Instead of sitting on the south edge of the property, the proposed manufacturing and distribution site would need to be located close to the "residence" (the gutted mobile home) near the center of the site and probably within 500 feet of neighbors' residences. At that new location, the noise intrusion will be much greater.

There is an additional problem related to their pollution of the environment. In order for the applicants to efficiently operate the trucks, loaders and re-manufacturing equipment necessary for the operation of their business, they will need a large on-site fuel supply. Inevitably, diesel fuel will be spilled during the filling of the on-site storage tank or during the filling of the vehicles or machinery. This spilled diesel fuel will be carried with the run-off into the contiguous wetlands and thence into the creek, further polluting the proposed site, the wetlands and the creek.

b. AIR POLLUTION:

Particulate matter from movement and processing of the bark dust will also be a problem. Applicants' dismiss the effects of this by stating that it will be good for surrounding soils. However, that does not address the issue of the effects of blowing bark dust upon nearby residences from the more northerly site. Nor does it address the issue of the potential impact of

blowing dust upon vehicles traveling Cornelius Pass Road and the possibility of dust-caused accidents and injuries. Additional air pollution will result from the smells emanating from the storage piles and the leachate settling pond. The presence of that pollution source can be determined simply by smelling the leachate water sample Exhibit. Finally, an additional source of pollution is injected into the local air by the operation of the applicants' diesel powered equipment and trucks. Review of the videotape Exhibit (at approximate counter references 0 - 10:10) of their operation at the present Kaiser Road site discloses large clouds of diesel smoke belching from their equipment when operated.

c. WILDLIFE RESOURCES:

Since the latter part of March of this year, the following large animals and birds have been observed in the vicinity of the subject property:

1. Elk (a herd of approximately 30 animals was seen three days later further north near Skyline), two head, which were attempting to cross Cornelius Pass Road into the wetlands to the south of the subject property to follow the creek north up the ridge and past the proposed manufacturing site;
2. Cougar, spotted on two separate occasions approximately two weeks apart, just below our house and following the timberline coming from the direction of the subject property;
3. Deer, four head, crossing our field toward the proposed manufacturing site;
4. Hawks, both red tail and American Kestrel can be regularly found overflying the subject property searching for rodents;
5. Vultures, were overflying the subject property searching for food; and,
6. Coyotes, which regularly traverse the southern end of my property and the proposed site.

Smaller mammals, such as raccoon, skunks and possum also inhabit the property in this area, and would be adversely affected by this manufacturing business. In addition, beaver have been seen in Rock Creek immediately downstream from this property and the effluent and run-off from bark dust leachings could adversely affect their habitat. Finally, Chinese Pheasant and quail have been seen in areas surrounding the proposed site; shy as these birds are, they will be driven from the area by the manufacturing process, noise, dust and activity.

Although it could be debated whether wildlife constitutes a natural resource, there are many proponents of that view. It is clear that many of the local inhabitants appreciate the presence of this wildlife and view it as an enhancement to the area. Although such fauna does not contribute to the manufacturing process, in the classic economic sense of resource exploitation, it is a resource of the spirit. The presence of the applicants' manufacturing and distribution business will probably adversely affect these animals or drive them from the area.

3. ALTHOUGH MINIMAL, THERE IS THE POSSIBILITY OF CONFLICT OF THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WITH FARM OR FOREST USE IN THE AREA.

The applicants are currently renting approximately 20 acres of their Kaiser Road property to Mr. Don Motz, who is presently raising a crop of rye grass. My property is likewise being rented to Mr. Bruce Bowe to farm; before Mr. Bowe, Mr. Tim VanDomolen farmed wheat on the property. Mr. Bowe (as did Mr. VanDomolen before him) accesses the property from Cornelius Pass Road with his equipment. To the extent that he must bring his equipment onto that road, a hazardous situation is created due to the constant and fast movement of traffic on the road. To the extent that applicants increase the hazards of using the road for any other travelers on Cornelius Pass Road, they will also increase the hazards of use of the road by Mr. Bowe.

4. THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WILL REQUIRE PUBLIC SERVICES OTHER THAN THOSE EXISTING OR PROGRAMMED FOR THE AREA.

The applicants avowed that the operation will not require any public services at all; the Staff concurred that the use likely creates no additional public service demands. The applicants misstate the impact of their proposed operation and the Staff is apparently unaware of or unconvinced about the public service issues presented. First, the ingress and egress of applicants' heavily loaded trucks to and from the site may break down the shoulders of Cornelius Pass Road as they have the shoulders at the intersection of Kaiser and Cornelius Pass Roads. Since the applicants began their operation on Kaiser Road, the increased volume of heavy truck traffic on Kaiser has lead to a degradation of the road surface at the intersection; the southeast corner of that intersection is breaking down. There is every reason to believe that the substantial volume (as admitted in applicants' supplemental narrative statement) of heavily loaded trucks entering and leaving the site will also degrade the shoulders and road surfaces at those points.

Second, their operation (with the increased likelihood of sparks or other ignition sources attendant upon the operation of heavy equipment and the presence on the site of highly flammable fuel reserves) substantially increases the likelihood of fire in the area. Fires, once started in the area of the proposed site, will be difficult to fight because of the large piles of bark dust, the absence of water mains and (especially during dry spells) the amount of dry grass and brush in the area. The increased hazards occasioned by the presence of this operation will undoubtedly require increased vigilance and attention by fire fighting officials. The nearest fire stations are located approximately 4-6 miles away on Skyline Boulevard (Multnomah

County volunteer fire department jurisdiction) and at the intersection with the Sunset Highway (Washington County fire department jurisdiction). Because of the boundary location of the site between the two fire districts and the fact that the Skyline fire department is a volunteer department, there may be additional complications that could slow the receipt of critical services to the area.

Officials from both departments stated that bark dust piles present additional hazards because they can spontaneously combust. The substantial amount of fuel that applicants propose to stockpile without an adequate water supply can be "frightening," according to one of those officials. Fires occasionally start in those piles and become substantial problems, requiring substantial amounts of water and tying up many men and fire fighting equipment for many hours. If water had to be trucked in by the equipment, as would be required at the proposed site, substantial additional time would be required. Spontaneous combustion becomes an even greater problem in dryer, hotter weather as the bark dust dries out. Fires actually begin internally (and undetected) and once surrounding material is disturbed, begin burning vigorously. Contrary to the applicants' protestations, it is not necessary to drive on bark dust to create the conditions essential for the occurrence of spontaneous combustion.

Third, police services to the area are notoriously slow. The area is serviced by the Multnomah County Sheriff's office which has assigned one deputy to patrol the west county area and Sauvie Island. If difficulties occur, deputies are dispatched from the east county area. On two separate occasions, we have had to call upon county sheriff services and had to wait more than two hours for the arrival of officers. Recent complaints by me to that office requesting increased officer patrols on Cornelius Pass Road because of speeding trucks and aggressive driving habits of the truck drivers through the area where the proposed site is located have resulted in no response. The presence of increased numbers of slow, heavily-laden trucks entering that busy traffic pattern will undoubtedly increase the need for already scant police services.

Fourth, emergency medical service needs will undoubtedly increase for the same reasons. We have had to call for life flight services for two major accidents that occurred in the Rock Creek valley where the manufacturing site is proposed. Ambulances regularly ply Cornelius Pass Road responding to emergency calls. Because of the speeds at which Cornelius Pass Road is traveled, the deceptiveness and narrowness of the Road, the volume of traffic that regularly travels the Road and the number of heavily loaded and overloaded vehicles on the Road, the increased hazards caused by applicants' slow moving, heavily laden trucks will undoubtedly lead to more accidents and the need for more medical services.

5. ALTHOUGH THE AREA IS LOCATED OUTSIDE A DESIGNATED BIG GAME WINTER HABITAT, THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WILL DETRIMENTALLY IMPACT ON THE ABUNDANT WILDLIFE IN THE AREA.

It is agreed that the site proposed for the bark dust manufacturing and distribution business is not located inside a designated big game habitat. It is believed that the wildlife present in the area constitutes a natural resource that will be detrimentally impacted by the applicants' proposed business activities, however. See the discussion at Section 2.C. above.

6. THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WILL CREATE HAZARDOUS CONDITIONS.

a. THE EXPERTS' COMMENTS

During his summation, the lawyer for the applicants suggested that the evidence presented in behalf of the applicants was more credible because it was provided by experts; evidence in opposition to the proposed manufacturing and distribution business was, by inference, less reliable because it was merely anecdotal. Experts are used in litigation to attempt to clarify points of fact beyond the experience of normal living; they are also used to confuse and conceal. A good expert is like a good make-up artist - with the application of enough make-up even the worst acne can be concealed. However, the acne still exists and a little scratching around is sufficient to uncover it. As Webster's New International Dictionary would define it, the anecdotal information presented by the witnesses in opposition was literally, unpublished items; narratives of secret or private details of history. It is the applicants' unpublished items, their secret or private details, that the experts seek to conceal and that the witnesses in opposition seek to expose.

When asked by the Planning Commission, the applicants' traffic expert admitted that he relied in part upon, and that his study was generally the same as but extended slightly beyond, the Multnomah County Staff report prepared by Robert E. Johnson, Traffic Engineer. Accordingly, it is worth noting a few flaws in that report. The County report notes that when it speaks in terms of vehicles it speaks of passenger vehicles because there have been "no conclusive studies done to determine the appropriate sight distance for trucks." As is acknowledged, acceleration is much slower for trucks and substantially longer sight distances are required for trucks. It is indisputable that fully loaded trucks will require even greater substantial sight distances. Additionally, the conclusion that there may be adequate sight distance for passenger vehicles is based upon the premise that the vehicles that travel Cornelius Pass Road obey the posted speed laws of 45 mph in Multnomah County and 55 mph in Washington County. Equally as important is the safe stopping

distance, which the report provides for passenger vehicles, but not for trucks; trucks, and particularly heavily loaded trucks, require much greater distances to stop than do passenger vehicles. The report concluded that given the limited sight distance proceeding south from the most southerly "exit only" driveway, passenger vehicles may not have a "problem" decelerating sufficiently quickly to avoid an accident if warning signs are installed in both directions to alert motorists to trucks entering the highway.

Given the circumstances of Cornelius Pass Road, and particularly the circumstance of the stretch of the Road in question, it is clear that the applicants' trucks entering and leaving the Road will create a substantial public hazard. According to the report, page 2, prepared for the applicants by Kittelson & Associates (the Kittelson report) 90 percent of applicants' trucks will leave the site proceeding south, in the direction of the least sight distance. Those heavily loaded trucks, carrying up to 12 cubic yards of material, will accelerate out of the site at a substantially slower rate than a passenger vehicle and will require a substantially greater sight distance than a passenger vehicle. In addition, truck traffic requiring much greater safe stopping distances than passenger vehicles will be attempting to avoid applicants' trucks. It is important to note that truck traffic constitutes approximately one-quarter to one-half of the traffic on Cornelius Pass Road (See Response to Supplemental Narrative by Ralph Jones, subsequently referred to as the Jones Supplemental Narrative Response, p. 2) and that the truck traffic is constant throughout the day (Daly-Standlee & Associates Noise Report, subsequently referred to as the Standlee study, pp. 4 - 5 and Exhibits 1 & 2). Finally, as testified to by Ralph Jones, vehicles on that Road regularly exceed the posted speed limits. For example, two large trucks were clocked on Cornelius Pass Road proceeding past the site on May 10, 1991, at 3:40 p.m. travelling at 72 miles per hour. Given the substantially reduced sight distances for trucks, the substantially greater safe stopping distances required for trucks, the abundance of trucks and passenger vehicles on that road and the regularly recurring driving in excess of posted speed limits by both passenger vehicles and trucks, a "problem" will be created for other users of Cornelius Pass Road by the applicants vehicles at that site. (As a post-script, warning signs on that stretch of highway will do no more good than the existing speed control signs do in regulating the flow of traffic. Until regular traffic enforcement is undertaken by the Sheriff's Office, which has been requested on multiple occasions, traffic signs in that area will continue to be ignored.)

The Kittelson report is similarly deficient. First, it is admittedly premised in part on the Multnomah County study; it was admitted to be basically the same with "some refinements," and for the reasons stated above is similarly deficient. It is also deficient in its own right in a number of critical respects. The

report states that the most critical time of the day is the p.m. peak hour of 4:45 to 5:45, not the morning hours when the majority of applicants' trucks will be operating. As shown by applicants' Standlee study, the traffic is relatively constant throughout the day, with its peak usage occurring in the mid-morning hours (pp. 4 - 5, Ex. 2). It is during this peak usage time that applicants admit they will be accessing Cornelius Pass Road - and in the direction of the least safe sight distance - the most frequently (Kittelton report, p. 2). They also attempt to justify the peak load carrying capacity of Cornelius Pass Road by using improper statistical assumptions for base data on numbers of vehicles and the number of passenger car equivalents in the mountainous area of the site (See Jones Supplemental Narrative Response, pp. 1 - 3).

Additionally, the Kittelson report has determined a "C" level of service for applicants' southbound loaded trucks, in part because of the "large number of acceptable gaps...in...the traffic stream ...due to the relatively low volume of traffic on Cornelius Pass Road." This "C" determination is deficient for the reasons stated in the discussion of the Multnomah County traffic report above. It is further deficient because, due to the constancy of the flow of traffic and the expectation of greatest truck usage during the peak morning flow times, there are not a lot of "acceptable" gaps in traffic. Additionally, the volume of traffic on Cornelius Pass Road is not "relatively low" (unless comparison is being made to the Sunset Freeway during 5:00 rush hour traffic). As the Standlee study indicated, on p. 4, the noise level attributable to Cornelius Pass Road is "higher than one would find in many urban settings" - which is a direct correlation to the heavy volume of traffic on the Road.

The Kittelson report also wrongly represents that there have been no accidents within one-quarter mile of the Beaver Bark site. As testified by Ralph Jones and verified by slides there have been accidents on and immediately opposite the site within the last nine months. Slide Exhibit # 11 shows the utility pole on the proposed site that was severed by a truck travelling south at high speed on Thanksgiving Day, 1990. Clearly, that vehicle would not have been able to avoid one of applicants' trucks given the safe sight and safe stopping distances advocated as adequate by the applicants. (Interestingly, the only two improvements to the property since the Jones Responses were filed with the County were the emplacement of a mail box at the site and the removal of the utility pole - the evidence of the accident.) Slide Exhibits ## 12 and 13 evidence the accident opposite the mobile home at the more northerly entrance to the site on the other side of Cornelius Pass Road where a Toyota crashed. The driver, who had been attempting to pass a long string of traffic backed up behind a south-bound truck, lost control of the vehicle in the shoulder gravel and rolled, totally destroying his vehicle and severely injuring himself. The remnants of the Toyota are clear evidence of the speed of the vehicle and further evidence of the inadequacy of the safe sight and safe stopping distances

advocated by the applicants. Neither accident was prevented by the presence of traffic regulation signs in the area.

The Kittelson report also corresponds to the Multnomah County traffic report with regard to sight distances. Since the deficiencies in this regard have been adequately discussed, no further discussion will occur here. The reader is invited to review the comments above with regard to these sight and stopping deficiencies. Finally, the report concludes that the applicants' trucks will add less than one percent to the overall traffic load on Cornelius Pass Road. That conclusion ignores the fact that the overall count is based on a 24-hour sampling period using statistics applicable to the stretch of the Road south of West Union Road. The applicants' trucks will be accessing the Road during the most heavily used portion of the day and at a location with totally inadequate sight distance. Additionally, as the evidence in the record indicates, the site is at the location on Cornelius Pass Road most frequently used to pass other vehicles and most used at higher than designated speeds (as concluded in the report) to accelerate up or down the hill. The site will not operate at an acceptable level of service in that area; it is the WRONG place to locate the bark dust manufacturing and distribution business proposed by the applicants.

(Two additional comments made by the Kittelson representative during his testimony require responses. First, he states that the reason trucks do not need greater safe sight and stop distances is because the driver sits up higher than does the driver of a passenger vehicle. This is ridiculous. The added elevation will do no good when a slowly accelerating loaded truck pulls from the site into the path of a heavily loaded truck speeding south down hill past the site. Second, they will avoid planting to the north along the property line to avoid blocking visibility. The only method of attempting to integrate that manufacturing and distribution business into the local environment would be to plant a heavy curtain of trees around it, but applicants do not want to do that for safety reasons. In order to locate their business at that site they must sacrifice either the environment or travelers on the road - that is a clear and damning indication of how inconsistent with the local area the applicants' proposed business is.)

b. NARRATIVE IN OPPOSITION

The information contained herein was submitted to the Planning Commission based upon more than 11 years residency in the area adjacent to Cornelius Pass Road and opposite the proposed site. It reflects a familiarity gained by close observation of the traffic and driving habits of motorists on the Road. To attempt to visualize the road for the Planning Commission, and for the County Commissioners if necessary, the videotape of the Road was prepared; the pertinent portion of the tape is at approximate counter locations 12:60 through 18:40, as

indicated by the Videotape Index. Review of the videotape shows the substantial difference in the terrain from the crest of the Tualatin Mountains on the north to the flat valley floor near the intersection of Cornelius Pass and Cornell Roads in the south. Applicants' Supplemental Narrative and the Kittelson report are based upon the erroneous equation of those two terrains in computing the acceptable traffic load on Cornelius Pass Road.

Applicants obtained traffic count information from the County and attempted to determine the potential impact upon the environment by numerically quantifying that information. Their analysis is defective because they used basic data applicable to Cornelius Pass Road south of West Union Road in computing pce's, which area has a terrain markedly different from the proposed site, and they failed to adequately consider the actual composition of the traffic past the proposed site. The numerical analysis also does not take into consideration the difficult conditions that exist with regard to that particular stretch of the Road.

Initially their computations are defective because they used the 5.0 pce determination applicable to terrain south of West Union Road which is flat-to-rolling. Applicants' proposed site of operation is near the base of the Tualatin Hills, where the grade increases dramatically and quickly, and the roadway becomes quite serpentine. Indeed, a short distance from the proposed site, just over the crest of the hill, the road is a switchback that slows traffic to a bare crawl. The serpentine course of Cornelius Pass Road south from the crest is set out on the videotape at the referenced location. What cannot be determined from the tape is the steepness of the descent before the road straightens past the property and flattens as it enters the rock creek valley and Washington County. The use of the 5.0 pce drastically understates the terrain in the area. More appropriately, the 10 pce equivalent figure should have been used for the calculations. Their suggestion that a reduction in actual truck traffic generated by them should also be considered (since on an annualized basis their operation will have a lesser impact), is inappropriate - the traffic hazard created by their operation should not be minimized by inference or otherwise. Because their application is for the subject property in Multnomah County and not a hypothetical piece south of West Union Road, their potential difficulty of ingress and egress should be determined using the conditions applicable to the site.

In discussions with the traffic engineer from the Multnomah County Transportation Department, it was verified that the character of the traffic past the site is not all automobiles. In fact, a substantial part of it is truck traffic that would radically skew the calculations made by the applicants. Instead of making calculations based upon the assumption of the erroneous 7,406 automobile trips, the calculation must start based upon inclusion of the total of all truck trips. In other words, the impact of their trucks on traffic cannot be made in a vacuum; it

must be made based upon the fact that their trucks will contribute to the total truck traffic to be accounted for in the computation of the traffic impact. Inclusion of the truck traffic in the sampling calculations is doubly imperative because of the substantially greater safe sight and safe stopping distances required for trucks - both those currently on the road and those to be used by the applicants. The information in question is based upon classification studies performed by the County at the intersection of Skyline Boulevard and Cornelius Pass Road in May and October 1989 (as a resident in the area and observer of the local traffic, the only significant difference between then and the current time is an apparent overall increase in traffic on the road). The statistics are as follows:

Date of Classification Study:	MAY 3, 1989		OCTOBER 10, 1989	
Direction of vehicle travel:	<u>North</u>	<u>South</u>	<u>North</u>	<u>South</u>
Type of vehicles & number:				
1. Motorcycle	20	-0-	6	4
2. Automobile	1,571	1,125	1,963	1,929
3. Buses	26	-0-	14	17
4. 2 Axle, 4 tires (rear)	821	1,326	312	411
5. 2 Axle, 6 tires (rear)	17	-0-	7	14
6. 3 Axle	28	156	32	70
7. 4 Axle	1	31	22	12
8. 5 Axle	62	65	99	71
9. 6 Axle	9	12	19	35
10. 7 Axle	<u>69</u>	<u>20</u>	<u>52</u>	<u>41</u>
Totals, categories 4 - 10	1,007	1,610	543	660

Of the total 5,359 vehicles counted on May 3, 1989, 2,617 (49%) were trucks; of the total 5,166 counted on October 10, 1989, 1,203 (23%) were trucks. However, it is not known to what factor(s) the fluctuation of vehicles with rear duals is attributable. Discarding the aberrant May southbound count still produces a dual rear wheel vehicle count of 700 - 800 vehicles per day total. Since automobiles generally do not have rear duals, and excluding buses, the total of categories 4 through 10 would be a safe count of truck traffic on Cornelius Pass Road. Given that exclusion there would have been 1,291 north- and south-bound trucks on the road on May 3, and 1,203 north- and south-bound trucks on the road on October 30, 1989. Adding applicants' 30 trips per day to 1,247 (the average of the two counts) would produce 1,277 truck trips, or the equivalent of 12,470 automobile pce's for that hilly, mountainous stretch of Cornelius Pass Road. That is a significant divergence from the applicants' self-interested minimization of the significant traffic problem on Cornelius Pass Road.

Regardless of the massaging given to these traffic capacity numbers, the true picture of traffic on Cornelius Pass Road comes from an understanding of the driving habits of those passing by

the site and the accident statistics for that road. According to information provided by the Multnomah County Transportation Department, there have been a substantial number of accidents on the 4.2 Mile stretch of Cornelius Pass Road from Highway 30 on the north to the Multnomah County line on the south. The accident count is as follows:

<u>YEAR</u>	<u>TOTAL</u>	<u># INVOLVING TRUCKS</u>
1985	19	2
1986	13	1
1987	20	2
1988	14	2
1989	18	3
1990 (6 MONTHS)	8	3
TOTALS	92	13

By their letter dated May 1, 1991, the State of Oregon also provided statistics for the 31 accidents that occurred from January 1, 1986 through December 31, 1990, for the portion of Cornelius Pass Road on both sides of the property from the crest at Skyline Boulevard to Germantown Road, a distance of two miles. The interesting aspect of these statistics is the number of accidents that occur on dry surfaces (21 or 67.7% of the accidents), during the day (17 or 54.8%) and not at an intersection (20 or 64.5% of the accidents). These statistics demonstrate that an accident is most likely to occur during a dry day on open road (conditions matching those for the operation of the business at the proposed site. These statistics do not include unreported accidents or accidents for 1991, of which there have already been several on the Road.

Vehicles regularly speed through this area, either accelerating hard to climb the hill going north (such as the two trucks clocked doing 72 mph at 3:40 on may 10, 1991) or accelerating downhill through the valley (such as the two vehicles involved in accidents at the proposed site) to ascend the far hill. Because the stretch of the Road is the last place to "safely" pass, cars and trucks traveling north begin passing on the long sweeping curve in Washington County to avoid being caught behind a slower driver. Cars and trucks proceeding south begin passing on the top of the downhill straight-away, often attempting to pass long strings of traffic in the process. Especially frequent are the attempts to pass trucks impeding the flow of traffic. The narrow and steep-sided (or non-existent) shoulders, road-side ditches and narrow lanes combine with human error to create multiple opportunities for mayhem on the road. Several accidents have occurred in the immediate vicinity of the proposed site; as indicated above, one occurred on the site in question and another occurred on the opposite side of the road.

In order to access the more northerly driveway on the site from Cornelius Pass Road, the delivery and semi-trucks must make a sharp 180-degree turn which is approximately 30 feet in diameter from the edge of the pavement to the driveway on the

property that parallels the Road (See Slide Index and Slide # 10). Since the driveway is substantially below the grade of the road, departure from the Road will be slow (particularly for the semi-trucks which require considerably more space than the smaller delivery trucks). Applicants have stated that they intend to widen the access at that site. However, unless they remove the mobile home they may have only a limited, and probably insufficient, amount of space available. Any attempt at access to Cornelius Pass Road at that north access will be made more difficult by the incline and by visibility that is restricted by a hedgerow of trees and brush on the county right-of-way (See Slide Index and Slide # 9 and Videotape Exhibit at approximate counter references 12:60 through 14:00). The brush and trees block visibility of south-bound traffic above Kaiser Road (approximately 500 feet north of the drive). Any trucks attempting to navigate that narrow turn up on to the road will proceed slowly up onto the roadway and will need to cross the centerline to complete the turn southbound. Similar difficult conditions exist for the south access to the property, except that visibility to the south is restricted by the curvature of the road and roadside brush. Vehicle entrances or exits at the southerly access will create the greatest hazards to traffic moving in both directions on Cornelius Pass Road. Most particularly, attempts to move either of the applicants' two semi-trucks on to or off of the property will require sufficiently more maneuverability than is probably safely possible on that road. It will also require a substantially greater graveled or paved area on the property to maneuver the semi-trucks.

Given the hazardous traffic circumstances that exist in that area, it would be extremely unwise to permit the applicant to establish his business operations on the proposed site.

7. THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS DOES NOT SATISFY THE APPLICABLE POLICIES OF THE COMPREHENSIVE PLAN. PARTICULARLY, THE PROPOSED BARK DUST MANUFACTURING AND DISTRIBUTION BUSINESS WILL VIOLATE THE FOLLOWING APPLICABLE POLICIES:

a. POLICY 2 - OFF-SITE EFFECTS: THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL HAVE MULTIPLE AND POTENTIALLY SUBSTANTIAL OFF-SITE EFFECTS.

As the Decision indicates, this conditional use creates off-site effects for the surrounding area in terms of noise, community design, water quality, erosion control and traffic. The proposed use is also inconsistent with the area: it will adversely affect natural resources; it conflicts with farm use in the area; it may require substantially greater levels of fire, police and emergency services than are currently available in the area; and it creates substantial hazards in the area (all as more fully discussed above). Given the severe impacts of the proposed

business on the local environment, and the number of conditions that will need to be imposed, it is clear that the proposed manufacturing and distribution business does not satisfy applicable policies of the Comprehensive Plan.

b. POLICY 9 - AGRICULTURAL LAND: THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL FOREVER ELIMINATE THE SUBJECT AGRICULTURAL LAND FROM AGRICULTURAL PRODUCTION. IN ADDITION, THE INTENDED USAGE WILL ACCELERATE THE NIBBLING PROCESS THAT IS ERODING THE BASE OF AVAILABLE FARM LAND AND WILL SERVE AS A PRECEDENT FOR THE ESTABLISHMENT OF OTHER SIMILAR NON-AGRICULTURAL BUSINESSES IN THE AREA.

In order to operate at the proposed site, a substantial part of the area will have to be graveled or paved to permit operation of the vehicles and equipment on the site. In addition, to prevent contamination of ground water and the Rock Creek watershed, they will have to pave the 15,000 square foot manufacturing and storage area; the settling pond will need special work to assure that polluted waters do not escape. Even if they were permitted to store the bark dust on the ground, the adverse effects that substantial amounts of bark dust will have upon the soil will essentially sterilize the soil absent substantial remedial efforts (See the Exhibits Videotape at approximate counter references 10:20 - 11:25; Slide Index and Slides # 20 - 24). As anyone familiar with gardening can testify, bark dust is applied as a ground cover to flower gardens and ornamental areas to stop the growth of weeds. It effectively prevents or markedly slows the growth and establishment of vegetation when lightly applied to an area. When applied thickly, nothing grows except the rare hardy weed. When bark dust and other wood by-products such as sawdust and wood chips are worked into the soil, they rob the soil of nitrogen thereby destroying the ability of the soil to grow anything without the addition of substantial amounts of soil enhancers. As is stated in Q & A: HUNDREDS OF CAN-DO ANSWERS TO A GARDENER'S TOUGHEST QUESTIONS, by the editors of ORGANIC GARDENING MAGAZINE (1989):

Q. last fall, I tilled in 3-1/2 inches of wood chips and manure (bedding material from a barn) throughout my garden. I have been told that wood chips will use up the nitrogen in my soil. Do I need to add anything else to the soil before I plant this spring?

A. Although you supplied some nitrogen when you added manure along with the wood chips, it won't be enough. You will have to add more nitrogen this spring, and probably for several years, until the wood chips have broken down. *** If you don't add nitrogen, it will be taken from the soil and used to break down the wood rather than feeding your plants. Pages 33-34.

* * *

Q. I have access to wood chips and cow manure and would like to use them to make compost. In what

proportions should I mix them?

A. Composting wood chips is usually not practical because they contain a lot of carbon and relatively little nitrogen, explains Dr. Charles Michler, a researcher at the Forestry Sciences Laboratory in Wisconsin. You would have to mix 80 to 100 pounds of manure with every pound of wood chips to compost them within a month or so.

It's better to use wood chips as a mulch for fruit, perennial vegetables, and ornamental plantings. Since the chips break down so slowly (only about 1 percent a year), they won't rob a significant amount of nitrogen from the soil, Michler adds. Page 46.

* * *

Q. Since I do a lot of woodworking, I have a lot of sawdust. However, some of my friends cringe when I use it as a mulch in my garden. They claim it robs the soil of nitrogen, but it always seems to work fine for me. What is right in the long run?

A. * * * The trouble with sawdust is that it's relatively indigestible to soil microorganisms. They use so much nitrogen in their efforts to decompose the sawdust that little is left for the plants. The plants may then turn yellow - an obvious hunger sign. Page 62.

Clearly, the volumes of bark dust contemplated by the applicants would effectively sterilize the soil where they were operating, and dust scattered in any noticeable quantity onto surrounding grounds would require remedial efforts to maintain soil health.

The establishment of applicants' proposed bark dust manufacturing and distribution business at the proposed location, whether conducted with the requisite environmental safeguards or even without concern for the impact on the environment, will effectively and forever remove the subject land from agricultural production. The establishment of the business activity at that site will also accelerate the nibbling process eroding the base of agricultural land in the State. The Oregon Legislature's recent report addressed this issue when it spoke of lax enforcement of land use laws and the misuse of farm lands. Clearly, the proposed conditional use violates the Comprehensive Plan. The imposition of conditions of approval as suggested in the Decision do not adequately protect the subject property and the agricultural environment into which that proposed manufacturing and distribution business is sought to be injected.

c. POLICY 13 - AIR, WATER AND NOISE QUALITY: THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL HAVE A SUBSTANTIAL NEGATIVE IMPACT ON THE AIR, WATER AND NOISE QUALITY IN THE AREA.

The negative impact that the applicants' proposed bark dust

manufacturing and distribution business will have on the local environment has previously been discussed. See sections 2.a. and b., above. The impact of the business on local noise levels will also be detrimental.

Applicants' noise expert has concluded that the noise produced by the operation of their bark dust manufacturing and distribution business will not violate applicable DEQ noise standards, using the maximum allowable statistical sound level in any one hour (commonly known as the maximum allowable rule). The expert premises his report upon several facts: a computer generated prediction of the site generated noise that could be expected at the nearest residences once the manufacturing and distribution business begins; the distance to the local residences; and the sound output that is produced by the equipment operating at its current location. Initially, it should be noted that the applicants have been operating their business at their present location for approximately one year in complete disregard for their neighbors and with obvious disdain for zoning laws applicable to all the other citizens in the area. To expect them to install equipment or take other steps to minimize their impact on their neighbors is to expect the impossible. Their operation was captured on videotape by one of their neighbors; this videotape, which evidences the amount of noise and pollution generated by their equipment, is included in the record as an exhibit, at approximate counter references 0 - 10:10.

At the proposed location, the applicants' equipment will be operated allegedly at the southwest corner of the property. However, in order to comply with DEQ water pollution abatement regulations the site will need to be moved several hundred feet north from the property line to provide the 100 foot buffer zone which extends from the marshy area on the southwest corner, which marshy area extends north along the west property line approximately 100 feet. In order to further protect the marshy area from the effects of the bark dust leachate (See Slide Index and Slides ## 20 - 24 and water sample taken from the drainage ditch at pile side in the jar with the red-and-white checkered lid) a settling pond to catch and treat the runoff will also be needed on the downhill (southwest) side. To provide the proper storage size, provide for necessary berming and because of the slope of the property, that pond may need to be another 50-to-100 feet across. It is not inconceivable that the proposed 200 foot site of operations will be moved up hill toward the Jones residence east of Cornelius Pass Road a total of at least 500 feet. Instead of noise being transmitted 800 feet, it will be transmitted less than 500 feet. The impact of the noise will be greater than suggested and will violate DEQ standards at the new location.

The Standlee report also does not consider the shape of the terrain at the site. As the videotape of the local environment (at approximate counter references 11:25 - 12:60 and Videotape

Index) discloses, road noise is greatest in the area of the swale opposite the proposed site. Instead of flat terrain that would tend to dissipate noise evenly in all directions, the curvature of the ground and uphill slope tend to funnel the noise up the hill toward the Jones residence. Attenuation of the offending noise will accordingly be reduced. A further deficiency in the report is presented in the failure to consider the aggregating impact of the several noise sources. In the same fashion that a band sounds louder than the individual instruments considered separately, sound from the site will also be augmented and enhanced. The same principal can be demonstrated by waves at the coast: water waves will tend to aggregate when the crest of one wave rides over the crest of another wave. In the case of this application, there will be a three decibel augmentation for each of the different noise sources at the site. This augmentation will also increase the amount of noise reaching the Jones residence and may result in violation of the DEQ maximum allowable rule.

Finally, although the Standlee study reaches conclusions concerning the loudness of the sound (the decibels), it does not take into consideration the negative tonal effect of the sound produced. An example of the tonality-decibel dichotomy is provided by the sound made by scraping fingernails on a blackboard. While not particularly loud, the tone of the nails can be very discomfoting to listeners. The operation of grinding equipment and diesel engines at the upper limits of their operating ranges may also produce tonal discomfort separate and apart from the effects of sound intensity (decibels) for those within earshot.

The combination of the above factors makes it more difficult to mathematically predict what effects a noise source will have on adjacent properties. Attempting to computer model what may happen given the variables presented does not provide guaranteed results. The risk of error of adopting as gospel the Standlee study, without imposing stringent sound limitations, will redound to the detriment of the local environment. Approval of the application without, at the very least strict limitations on the crusher, the loader and the trucks, and the hours during which any of the equipment or trucks may be operated or moved about, may result in an irremediable situation.

The Decision seeks to ameliorate the negative impacts of the applicants' proposed business by imposing certain conditions. One of those conditions is that the applicants must limit their times of use of the site and the times when motor vehicles can be loaded and operated at the site. Applicants have already indicated their desire to avoid the motor vehicle limitations. Given their history of violation of the zoning laws at their present site, any conditions imposed on their operations will require monitoring and enforcement in the future. Assuredly, this will needlessly consume county resources. Rather than attempting to impose multiple conditions of use on the subject

property that will need enforcement, eliminate the future problems by denying the conditional use now.

d. POLICY 14 - DEVELOPMENT LIMITATIONS: STRINGENT AND MULTIPLE DEVELOPMENT LIMITATIONS WOULD HAVE TO BE IMPOSED, AND ARE RECOMMENDED IN THE DECISION, TO PREVENT DAMAGE TO THE ENVIRONMENT BY THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS.

The Decision recognizes the development limitations that are imposed to protect water quality in the Tualatin River Drainage Basin. Because of those limitations, the location of the manufacturing facilities on the site will be moved north closer to local residences and subjecting them to greater environmental pollution effects, as discussed in subsection c., above. The Decision does not consider the collateral affects occasioned as a result of imposition of the development limitations, however.

e. POLICY 16 - NATURAL RESOURCES: THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL HAVE A SUBSTANTIAL, NEGATIVE IMPACT ON NATURAL RESOURCES IN THE AREA.

The Decision acknowledges the significant water pollution that will occur at the proposed site absent stringent limitations as discussed above. However, the Decision does not take into consideration the fact that wild life in the area constitute a natural resource that needs to be protected. As discussed in section 2.c., above, there is a substantial amount of wildlife in the area that will be impacted by this proposed manufacturing business. Those resources will be damaged or destroyed by approval of the conditional use and location of the business at the proposed site.

f. POLICY 37 - UTILITIES: ALTHOUGH MINIMAL (EXCEPT WITH REGARD TO THE SUBSTANTIAL WATER RUN-OFF PROBLEMS ASSOCIATED WITH THE SITE), THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL IMPACT ON THE NEED FOR PUBLIC SERVICES IN THE AREA.

The Decision recognizes the need for water run-off controls as part of pollution control requirements for the site. However, other services that will be potentially called upon to handle emergencies will require the presence of communications equipment. In addition, if the Staff conditions of approval in paragraph 5 regarding on-site storage of vehicles are enforced, applicants will undoubtedly install security lighting. Such lighting will require additional utility services. It will also introduce light pollution into the area and further destroy the rural ambience.

g. POLICY 38 - FACILITIES: THE PROPOSED MANUFACTURING AND DISTRIBUTION BUSINESS WILL REQUIRE ADDITIONAL SERVICES FROM FIRE, POLICE AND EMERGENCY VEHICLES; GIVEN THE LOCATION AND REMOTENESS OF THE SITE, THE PROVISION OF THESE SERVICES IN EMERGENCY SITUATIONS WILL BE SIGNIFICANTLY DELAYED.

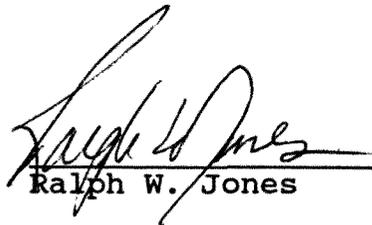
The Decision denies that there will be any additional demand for public services. As discussed extensively in section 4, above, this is simply not the case. For all the reasons stated in that discussion, it is highly probable that additional services will be required as a result of the location of the business at that site. Unfortunately, those services, when needed, will be required on an emergency basis. Given the remoteness of the site from the sources of the services, the possibility of serious harm or death exists.

EXCLUSIVE FARM USE CONDITIONAL USE APPROVAL (MCC .7122):

Two additional requirements are imposed by county ordinances. To the extent of the discussion above, in section 3, the proposed business will have minimal impact on farm or forest practices on surrounding lands; the business will likewise have minimal impact on the cost of farming operations on surrounding lands.

CONCLUSION

Based upon the above discussion it is clear the Development Commission erroneously concluded that the applicants' bark dust manufacturing and distribution business is a commercial activity in conjunction with farm use. The Planning Commission made their determination in a commercial context and not in an agricultural context. It is also clear that the Commission either erroneously failed to consider the violations of MCC .7105 - .7640 that will occur as a result of applicants' bark dust manufacturing and distribution business, or erroneously failed to consider all of the ramifications of their decision with regard to the insufficiently stringent limitations on use of the site. The application for conditional use should accordingly be denied.


Ralph W. Jones 7/31/91

A PORTION OF THE PLANNING COMMISSION MEETING
OF MAY 7, 1991
CU 6-91

PRESENT: Chairman Leonard, Douglas, Fry, Hunt, Fritz, Al-Sofi, Atwill
and Yoon

Staff Present: S. Cowley, Pemble, Prescott, Ewen and Hess

Leonard: Last item on the agenda tonight is Line 7, CU 6-91,
9833 NW Cornelius Pass Road. The Staff Report.

Fry: Mr. Chair, would it be appropriate for me to motion
continuance at this time since I think the Staff Report
should also be heard by the rest of the people who
might want to return?

Leonard: Well, the Staff Report is for the benefit of the
Commission, and

Al-Sofi: INAUDIBLE.

Fry: People may want to object to what the Staff states in
the Staff Report.

Leonard: Well, to open the hearing, we also want to have an
opportunity for anyone here tonight to testify. I
think for them to give that testimony we want to
give them the information that we're going to be
getting.

Fry: Would Mark's testimony then be available for people
to read so that they could respond to it?

Leonard: I think it would be appropriate for us to ask Mark to
summarize his oral Staff Report.

Fry: Okay. INAUDIBLE.

Atwill: Mr. Chairman, this is a matter I wanted to withdraw
myself from. Should I do that at this time?

Leonard: Yes.

Atwill: For the record I'd like to withdraw from consideration
of voting on this matter. I have worked with Mr.

Sullivan recently and although I do not see any potential or actual conflicts, for the appearances of propriety I would like to withdraw myself.

Leonard: Lets go ahead with the oral Staff Report.

Hess: Okay. This is a request for a Conditional Use within an EFU zone. The property, as you said, is located at 9833 NW Cornelius Pass Road. The proposal would be to apply for a Conditional Use for a commercial use in conjunction with farm uses. The criteria for Conditional Use are listed for you beginning on page 7 of the Staff Report. Its the applicant's burden to demonstrate the proposed Conditional Use is consistent with the character of the area; that it will not adversely affect natural resources; that it will not conflict with farm or forest uses in the area; that it will not require public services other than those existing or programmed for the area; that it will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that impacts will be acceptable; that it will not create hazardous conditions; that it will satisfy applicable policies of the Comprehensive Plan. The Staff Report identifies the following policies as applicable to this request: Policy 2, Off-Site Effects; Policy 9, Agricultural Land; Policy 13, Air, Water and Noise Quality; Policy 14, Development Limitations; Policy 16, Natural Resources; and Policy 37, Utilities; and Policy 38, Facilities.

The Staff Report that you have before you tonight concludes that the proposal adequately demonstrates consistency with those criteria. Oh, I'm sorry, I forgot to mention that there are two other criteria that one, that in approving Conditional Uses within and EFU you must also demonstrate that the proposed Conditional Use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use. And that it will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted for farm or forest use. And citations for the aforementioned criteria are include in your Staff Report. As I was about to say, this Staff Report does conclude that the applicant has carried the burden.

I mention on page 11 of the Staff Report, that the Transportation Division Staff will be providing you with additional comments. Those comments were, you should have as a memo to Scott Pemble, Acting Planning Director, from Robert E. Johnson, Traffic Engineer, dated May 6, 1991. There is some supplemental Staff material that was from the Traffic Engineer for the County responding to the traffic study that the applicant included in its submittal.

And, I understand that you've received some additional materials in the mail that were testimonies. We have just also received those today and so we don't have any copies prepared for you regarding those. There are a number of other letters in the file that I believe you have copies of as well.

Leonard: We received, to clarify what we got here, we received a packet of various letters, one dated 4/24/91, to Department of Environmental Services from Harold and Lorraine Mason. One dated the 25th of April 1991, Mark Hess from Ray, can't read the last name and Janice and can't clearly read the last name.

Al-Sofi: Ray DeSilva.

Leonard: Ray DeSilva. Okay. Ray DeSilva. A letter to the Planning Commission from George Sowder of the President of the Board of the Citizens for the Preservation of Skyline Ridge; memo from Ray Johnson, Robert Johnson, DES County Engineer, to Scott Pemble, that's dated May 6, 1991. And we also have a copy of the Final Order on CU 19-90.

Fritz: Mr. Chairman, that last document was provided by my request. I don't know if the other members of the Commission also received responses from Ralph W. Jones,...

Al-Sofi: Yes, I did.

Fritz: I felt a response to the I guess I initial statement of the applicant and the response of the supplemental statement and the reason the Final Order of CU 19-90 was requested was because respondent Jones made several references to this.

- Hess:** Do all the Commissioners have the response that Mr. Jones mailed directly to you? He mailed directly to you is my understanding, so that's the ..
- Leonard:** We need to clarify that those documents are available and ask that Staff obtain copies of those and provide them to the record.
- Hess:** I have obtained them this evening.
- Fry:** I didn't get anything on this case in the mail at all.
- Hess:** At all?
- Fry:** On this case.
- Hess:** At all? Did you get a Staff Report?
- Fry:** Well, I got it from the County but
- Leonard:** Was it supplemental? Mailed to us by the Division?
- Fry:** I'm sorry. I just said I didn't get anything from anybody else except the County.
- Hess:** I see. Okay. So you have not received the ...
- Fry:** Right.
- Hess:** The testimony from...
- MIXED VOICES:** INAUDIBLE.
- Hess:** You might check your envelopes.
- Leonard:** I think all of the Commissioners that received this correspondence, regarding this issue, if you did receive something you need to note that for the record.
- Fritz:** I did provide a copy to Mark for the record.
- Hess:** And, Mr. Jones gave me a copy this evening as well. For our record.
- I do also slides of this site if you...

- Leonard:** Before we get off this exparte contact with the material mailed directly to the Commissioners, of the Commissioners here how many recall receiving direct mailings on this case?
- Fritz:** Well, just the Ralph Jones mailing.
- Leonard:** Two mailing from Ralph Jones and Staff has copies of those?
- Fritz:** Right.
- Fry:** Two mailings....
- Hunt:** I also received phone calls from a Nora Riches, Mel Jenkins, Brian Lightcap and one other person, but before they had a chance to even tell me what item on the agenda we were going to hear, I referred them to Staff, so I'm not even sure it would be exparte contact, but I just thought for the record...
- Leonard:** Well, the mail would be.
- Hunt:** The mail would be but the phone calls, they wanted to ask me about something on our agendas but I refused to talk to them.
- Leonard:** And Commissioner Al-Sofi received two letters from Mr. Jones?
- Al-Sofi:** I received this.
- Hess:** I have copies of two items that Mr. Jones prepared. One item Mr. Jones submitted to me tonight indicates "Response to Narrative Statement of Chauncey Application" on the top and it says "Respondent: Ralph W. Jones". The second items says "Response to Supplemental Narrative of Chauncey Application. Respondent: Ralph W. Jones. Those are the two items that he submitted.
- Douglas:** I don't recall receiving that but I'll check at home to make sure.
- Leonard:** I received, recall receiving the first mailing which had the Notice and response to narrative statement but not supplemental.

- Atwill:** I got both of them together.
- Leonard:** Okay. We've disclosed all of this.
- Hess:** Is there an interest on the part of the Commission to see the slides?
- Al-Sofi:** I'd don't exactly know what we're supposed to do with the things like this; when we give disclosures.
- Fry:** Just a point of order because this is a contested case. I think the attorney would want to see the slides because this isn't something documented by the Staff Report. I mean, I just wanted
- Leonard:** We'll have an opportunity to review the slides.
- Hess:** This is supposed to be my context shot here. I'm in Washington County at this time. The hill in the distance is the hill where the or the valley I guess, preceding the valley in the distance, is the valley that's formed by Rock Creek. The Chauncey's existing operation, which you may remember recall from last summer, those of you who were on the Commission at that time, is located in the right hand side of the slide up on the hill where the clearing is beneath that forested area. The proposed site is located, this is Cornelius Pass Road on the left hand of the slide, and as it goes down through that valley in the distance is where the proposed bark dust commercial site operation is located.
- And this is also Cornelius Pass Road. Now I'm in the bottom of that valley that's formed by Rock Creek. I'm still in Washington County. The sign that's up there, right above that van if you can see that, is the "Welcome to Multnomah County" sign, I believe, or maybe its just to the right of the van. In any event, the site's that the subject of this request is in the center of the slide and you can, the white object that's right in the center is the mobile home that exists on the site. There is some, you can see some evergreen trees in the foreground, or in front of the mobile home. That's the old remnants of what was the Christmas tree operation that looks to be, looks like they've grown beyond their Christmas tree saleability stage.

The operation where they want to put the barkdust is in the meadow that's in the foreground of those trees. I'm standing on the site that is proposed for a golf course. Its called "Cornelius Pass Golf Course" in Washington County.

And, this is the entering Multnomah County sign and, also looking north on Cornelius Pass Road the subject site is on the left. Left hand side of the slide there.

Fry: INAUDIBLE.

Hess: This is Cornelius Pass Road looking to the south. I'm looking to the south now along Cornelius Pass Road. The subject site is on the right, the mobile home that is on the site is on the far right hand of the slide. The Christmas trees you can see, silhouetted I guess, they're in the center. Beyond the Christmas trees is where they're proposing to do the barkdust storage and transfer operations.

The sweeping curve that's there in the distance is traversing the site that is proposed for the golf course, Cornelius Pass Golf Course, in Washington County. That case is before the Hearings Officer and is expected to make a decision on May 24th, for the golf course question.

Another view of the site. This is the mobile home, there on the left hand side of the slide and some of the Christmas tree stock that's on the property. You can see one of the nearby houses in the distance there, with the sort of orange roof. Just to the right of the center of the slide.

Leonard: That house is in Washington County?

Hess: That's right. The Washington County boundary is right where those Christmas trees stop and the brushy growth there begins. This is the County line.

Leonard: The zoning in Washington County is also EFU?

Hess: That's correct.

And, this is another view looking south on Cornelius Pass Road, looking into Washington County. The property is just out of view on the right hand side of

the slide, and this truck is travelling through the section of Cornelius Pass that would go through that property that is proposed for the golf course. The golf course proposal straddles the road, so there would be golf course, if its approved, on both sides of Cornelius Pass Road here.

Now I'm on Old Cornelius Pass Road in Washington County and I'm looking to the east. And, this, I believe is the Hyatt House, which is a one of the nearby residences, one of the closest residences to the proposed bark commercial operation. And, so that roof line that is roughly just immediately right of the center of the slide, I believe is the Hyatt's manufactured house that sits on that property. Also in Washington County.

Again, I'm on Cornelius Pass Road; I'm looking across the little valley formed by Rock Creek, looking due east and that where the large conifers come down and that slice in the horizon line there is where Kaiser Road joins Cornelius Pass Road, in Multnomah County. I'm looking across that little valley The subject property then would be to the right of that intersection with Cornelius Pass Road.

Al-Sofi: How close is the property to the..

Hess: To the site? It looks to be anywhere from 100 to 300 feet; its sort of hard to say. Its sort of, its in a meandering, braided stream kind of pattern right in there in that area, and I did not have any good maps available to tell me exactly how far it is and its very, you know, brushy, riparian sort of growth through that bottom land; sort of a swale pattern, the creek, as it goes through that property there. It is not on the site but it is very close to it in the southwest corner.

This is another view across that little valley formed by Rock Creek. The subject property is in that clump of, or just beyond that clump of trees in the center of the site. The clump of deciduous trees.

And, this is another view looking out to the southeast. The residence on the right is that one with the orange roof that I mentioned earlier in the slides. This is one

of the open pasture areas that separates Old Cornelius Pass Road from the subject property.

9

I'm standing roughly in the same location as I was in the previous slide, now looking east/northeast. The deciduous growth that breaks into two meadows that you see there, one in the foreground and one in the distance, is the riparian area where Rock Creek is flowing through the valley. The subject property is just beyond that brushy growth that is running along the stream corridor.

And, I think this is my final slide, just taking you back to where we started. The subject property again on the center of the slide. Cornelius Pass Road in view here looking north.

Fritz: Mr. Chairman, for the record I do want to note that it appears that when the weather is nice Staff has a tendency to take more slides.

Al-Sofi: I want to commend you for that.

Pemble: Let me just clarify the "Bob Johnson Memo" that you have. It explains the issue about traffic. You'll get an explanation from the applicant's traffic engineer, Dan Seeman, who I'm sure will be here next month. What you have is, essentially, the concern that was raised is how do you determine whether you have adequate sight-line distance to maneuver a truck in and out of the sight. given that you'd have an opportunity at some point down in the horizon to discern that traffic was on-coming and a truck at a dead-stop situation, could accelerate onto the roadway and maneuver.

There are two tests you apply, one of two tests you can apply and Bob is essentially explaining those in traffic engineer jargon. Simply what it means is that the two test, one is "can you stop safely", an on-coming vehicle, could they stop safely given that they could see a truck entering the roadway. The other test is, which is much more stringent, "what does it take in terms of sight-line distance to ensure a truck can enter the roadway and the on-coming traffic would not have to slow down, given the posted travel speed". So, the second test is much more stringent, saying you don't have to alter your speed or course;

you can continue at 55 miles an hour and not have to slow down. What he concludes in his Staff Report is there's ample room for any car to stop with a truck entering the roadway and that would not create a problem. What he's suggesting, I think, in his report, it takes about nine, you'd require about a nine-mile an hour drop in speed in order for an on-coming truck, on-coming traffic, to slow down so that they would not have contact with the entering vehicle onto the roadway. That's a much more stringent test, and actually what we conclude, and its a reasonable conclusion, that this particular site does not offer any particular traffic hazard with respect to the ingress/egress movement of a truck onto the Cornelius Pass roadway.

Does everybody understand what I just said?

Hunt: As you know, I live in the area and so I travel Cornelius Pass Road all the time. My biggest concern would be where Skyline and Cornelius Pass meet. The county's going to do a new intersection right now because of the amount of accidents that have occurred at that five-way intersection. Is there a reason to be concerned here?

Pemble: There's no relationship between that intersection improvement and this segment of road.

Hunt: So you really feel that the trucks coming down would not be a problem at all?

Pemble: Correct. It doesn't represent a traffic problem for us.

Al-Sofi: Is it appropriate for the Staff to respond to any of the allegations if you will in the list of things Mr. Jones has.....

Pemble: Is it appropriate?

Al-Sofi: Would it be appropriate if this continues to next month that there be some type of Staff findings to --
----- some of those?

Pemble: I don't know what Mr. Jones' comments are, quite frankly. I don't see, its not really a problem; its an allegation and I guess our comment is if we have

differing points of view we have differing points of view and we come from a different discipline and, what we're saying is that there is not a traffic problem associated with this...

Al-Sofi: I wasn't even thinking of the traffic hazard there but some of the, whether barkdust is good for the soil for example, is there a conflict of opinion here?

Pemble: I think what you have, what you're going to get in any one particular application is a number of points of view and what you're going to have to do as a Planning Commission is sift through that because you're going to have to determine which points of view or which findings make the most sense to you; what seems to be the most rational.

If we can respond to comments or questions which are entered as evidence at the time of the hearing, that's appropriate; what we attempt to do in the Staff Report is to respond to every piece of evidence that's been submitted prior to the actual hearing; at the hearing you will get additional information. Sometimes that will raise questions in your mind as to whether some additional kind of comment need to be made and you'll probably have a continuance and say we would like Staff to kind of investigate this issue a little further, that's perfectly fine, but 90% of the time we're going to have to take the evidence as you hear it at the hearing and make a determination whether its appropriate or not.

Hunt: I'm curious about one thing that maybe Staff or Transportation Department could refer to next month when the hearing continues. Because of the road, you know, what would the sight distance be during bad weather or because because its in the northwest hills there tends to be a little bit more snow on the ground and that kind of thing. Could you kind of, you don't have to answer right now but under more hazardous conditions.

Pemble: Lets say that there is always an opportunity at any location to have hazardous conditions.

Hunt: Right.

Pemble: Given the environment and what we try to base our calculations on our normal driving conditions, and I suspect if we're in an area where there is an inordinate concern about fog, 60% of the time or 90% of the time, that would restrict vision, then that would be more of an issue but in this case I don't think there's a real distinction to be made there.

Hunt: Okay.

Leonard: Okay. Any more questions of Staff?

We'll open the public testimony portion of the hearing. Is the applicant or the applicant's representative here? The applicant and the applicant's representative is not here. We did indicate earlier we would be continuing this to June and we will give the applicant an opportunity to testify at that continued date.

Is there anyone here that would like to testify in favor of the application? Is there anyone here who would like to testify in opposition? Is there anyone here who would like to testify on this case?

Fry: I move to continue this to____ can we continue it to time certain?

Leonard: Date certain.

Fry: Excuse me.

Leonard: That will be June.

Fry: Date certain June?

INAUDIBLE CONVERSATION.

Leonard: This will be Line 3 on June.

Fry: Okay. I continue this to Line 3, June 3rd, 1991.

Man: Second.

Leonard: Discussion of motion?

Call for the question. All those in favor of the motion
to continue this say aye.

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NOTE. THIS HEARING IS CONTINUED.

**A PORTION OF THE PLANNING COMMISSION MEETING
OF JUNE 3, 1991
CU 6-91**

Commission Members Present: Chairman Leonard, Douglas, Fry, Yoon, and Al-Sofi

Staff Present: Cowley, Pemble, Clifford, Prescott, Ewen and Hess

Leonard: Okay. We'll re-open the meeting and proceed with Line 3, CU 6-91, 9833 NW Cornelius Pass Road. Before we get on to the Staff Report I'd like to note that there was a similar application by this applicant before the Commission in the past year and some of the Commission members heard testimony and were present for that case. While this is a new case, a new application, the situation, potentially, there may be information that was presented at the prior hearing that may have bearing on this case. Also, in my own situation, the company I work with is involved in the design and planning of the golf course in Washington County to the south of this case; I'm not personally involved in that case and I don't feel it will have any bearing on my decision in this application, so I will not excuse myself unless somebody has an objection.

Fry: Do you want us to identify ourselves if we were at the hearing?

Leonard: Yes. Would you please.

Commissioner Yoon was there, Commissioner Fry, Commissioner Douglas were all present at the hearing of the prior case. Okay, with that prelude lets get on with the oral Staff Report.

Hess: My name is Mark Hess, I'm with the County Planning Staff. And, this is a continuation of a matter which you opened last May 7th, regarding file number CU 6-91. You should have a revised Staff Report dated June 3, 1991 that supplements and modifies the Staff Report which you heard on May 7th.

The application before you is a commercial use, commercial business in an Exclusive Farm Use zone, for the sale, storage and processing of bark mulch,

sawdust, wood chips, and related nursery products. The conditions of approval which Staff is recommending, because we are recommending approval with conditions, are identified for you on page 4 of the Staff Report. The last two conditions should be re-numbered from what you have before you; they should be Condition 6 and 7.

Condition No. 4, which is referring to the existing mobile home on the site, applicant has indicated to Planning Staff that they intend to proceed with a farm management plan so there's, condition No. 4 which identifies three different routes to go in terms of how to deal with the existing house on the site. They are indicating they will be going with a resource-related residence, which is an administrative process that would be handled by the Planning Staff should you move for an approval tonight.

The Conditional Use criteria are listed for you in the Staff Report beginning on page 7. I just wanted to run through those real quickly for the record. In approving a conditional use in an Exclusive Farm Use zone you must find that the use is consistent with the character of the area, that it will not adversely affect natural resources, that it will not conflict with farm or forest uses in the area, that it will not create hazardous conditions, that it will satisfy applicable elements of the Comprehensive, or applicable policies, of the Comprehensive Plan; policies which we have identified in the Staff Report which apply to this request are Policy 2, Off-Site Effects; Policy 9, Agricultural Land; Policy 13, Air, Water and Noise Quality; Policy 14, Development Limitations; Policy 16, Natural Resources; Policy 37, Utilities; and Policy 38, Facilities. There is some additional criteria on page 18 of your report that are Exclusive Farm Use Approval Criteria, which you must also find are satisfied by the request. And, those are that the proposed use "*will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use*", and that the proposed use "*will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*" The Staff Report reaches an affirmative conclusion in terms of the proposal's addressing of the criteria subject to the conditions

which I noted earlier in the report. I think the most important condition to call your attention to is the first condition, which calls for design review, and as part of design review that they develop a noise abatement plan and a storm water management plan as part of developing this commercial use on the property.

In the interest of brevity I will just open it for questions now and I will go through the slides if you would like me to go through them again, from the last meeting.

Leonard: Any questions of Staff? I have one question, Mark. As I understand the request, they are requesting Conditional Use approval and the specific conditional use item is listed as 11.15.2012, Conditional Uses of the Item 1, which is ... "*Commercial activities that are in conjunction with farm uses.*"

Hess: That is correct.

Leonard: Based on the materials that were submitted and your understanding of the case, can you describe how this use is in conjunction with farm uses? Proposed conditional use.

Hess: Right. Applicant's submittal has indicated that the wood by-products which they deal in, bark mulch primarily, sawdust and other wood by-product materials, are extensively used by nurserymen and other agricultural practices, orchardists, etc. that operate in the vicinity. And, it was the Commission's finding on the prior case that that was in fact a commercial use, that's CU 19-90 that I'm referring to when I say 'the prior case'. Not at this location but a similar application. They did conclude at that time that this would be construed as a commercial use that is associated with farm uses. The activity of selling bark and providing bark mulch type of material. And, the applicant's have, while they were not able to convince the county that they've met all the approval criteria at their prior location, they were, as a part of that decision it was concluded that that was in fact a commercial use in conjunction with farm uses.

- Leonard:** Okay. I don't recall that from the hearing. My recollection was that there was a question whether the bark dust activity was in conjunction with farm uses or....
- Hess:** You may be recalling there was another category of use which we were on the gray area of, which was the primary processing of wood products and it was determined that this was in fact secondary processing of wood products, not primary, therefore not, it didn't fall into that box in terms of a conditional use within an EFU zone but it was the Commission's opinion at that time that it did fall into the commercial use slot but not the primary processing of wood products slot.
- Leonard:** As I recall, the Commission on that case voted to deny the application that did not have any affirmative findings with regards to anything.
- Hess:** They did vote to deny it but there was affirmative findings on a number of the criteria. And CU 19-90 Final Order is made a part of this record. I believe you should have that from the prior May 7th hearing, that was given to you that evening. The principal basis for denial at the prior location, which is on Kaiser Road, was traffic impacts and noise impacts. It was not based upon this not being a commercial use in conjunction with farm uses. Is that what you're trying to be clear about?
- Leonard:** That's not my recollection of the discussion ...
- Hess:** Okay. But there was, as I recall, the Planning Commission did not agree that this was primary processing of wood products; they considered it secondary processing so they didn't feel that type of an application was appropriate for this use.
- Leonard:** As I recall in the prior case there was a good deal of discussion and some sense of consensus on the part of the Commission, but the only votes that were taken, or the only vote that was taken, was to deny the request. I don't recall in detail what the stated reasons were.
- Hess:** Then ,subsequent to your decision, that denial decision was appealed to the Board and the Board

then adopted more detailed findings in support of the denial. They affirmed your denial but with substantially more findings to support that.

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Leonard: Okay. So there is an approved body of findings in relation to the denial?

Hess: Yes.

Leonard: At the Board.

Hess: Right. And that was entered into the record on May 7th.

Fry: I didn't see the Order from CU something.

Hess: CU 19-90.

Fry: Yes. You said it was attached to the record and I what I don't have.

Hess: It was distributed to the Commission last May.

Fry: Last May?

Hess: A month ago.

Fry: Okay. So its not attached to the Staff Report.

Hess: No, its not attached to the June 3rd Staff Report that you have. And Sharon is checking to see if she has one.

Al-Sofi: I have a question. I wasn't at that prior meeting but I can't understand what you said about commercial activities in conjunction with farm use; it was because it was used on farms? Was that my understanding?

Hess: Yes, the applicant's indicating that, and they're asking you to interpret that, that code section which allows us to approve commercial uses in conjunction with farm uses in EFU zones, they're asking you to interpret this use as one of those types of commercial uses that are in conjunction with farm uses. They've argued that by saying this product that they sell and process on their site is extensively used by nurserymen, orchardists, and their clients are in

many cases, they are indicating, are in agricultural production.

Al-Sofi: Do clients, so if they wanted one of those caterpillar tractors then that would be in conjunction with farm use?

Hess: There has been much debate at many levels, county and state as to what that commercial use is in conjunction with farm use is made. Is that a fertilizer store, is it a tractor, and each county must make their own determination as to what they believe that actually entails and does not entail.

Fry: My memory is actually along the lines of the Chair, and so just to get this clear, the findings you're referring to came out of the County Commissioners and not the Planning Commission?

Hess: That's correct.

Fry: Because I recollect the idea that it needed to be located to serve the farming needs of the location within which its located. Not that its located there because its agriculture and serves a regional or statewide market. My understanding is that you have to locate it at Point "A" because you're serving the area around Point "A" not because you happen to be...is that true, Mark?

Hess: I don't, I understand what you're driving at but I don't know of any criteria that asks us to site commercial uses in conjunction with farm uses based on some kind of analysis of the types of farming activities that are going on in the vicinity and the demand for the type of commercial use.

Fry: No, I'm just saying....

Hess: I don't know of any kind of a tie that we have ordinance wise.

Fry: What I see in the criteria that relates to this is that the commercial use needs to be located in the area to serve the area's agricultural needs. And I just wanted to get a clarity to the criteria.

Hess: There is, I mean, what it sounds like you may be recalling is in the rural centers we have and when we are approving commercial uses in rural centers there is some language that says that in our Comprehensive Plan that says commercial uses in rural centers shall be designed to serve the agricultural and rural residential needs of that vicinity. So there's a tie in a rural center when we're approving rural service, rural service commercial uses is what they're called in our code; that you can make a connection between "what's the market area of this particular commercial use?"

Fry: Well I think this, because of in the material I've been reading the case is being made that these people may be "agricultural related" but they're serving a statewide market, therefore they could locate in any light industrial zone, you know, in Portland, Beaverton, Hillsboro, Forest Grove

Hess: Yes, I think if your intent is to bring that kind of discussion into this application, the fact that they have to be consistent with our Comprehensive Plan would allow to enter into that kind of analysis.

Fry: Its there already, its...

Hess: They have to show they are consistent with not only our zoning code criteria but also the Comprehensive Plan Policies and if you look into our policies you know, you could bring in that kind of analysis as to whether this is serving the agricultural land base of Multnomah County or that vicinity.

Leonard: Commissioner Yoon.

Yoon: Mark, in the conditions of approval, specifically points one and two and five, paragraphs one, two and five, it says you're going tie in Design Review approval. That approval is going to be essentially by Staff?

Hess: That is correct.

Yoon: Okay. And so we're

Hess: Its an administrative approval. It is subject to public notice and appeal.

Yoon: It seems to me that putting together the Design Review and getting the approval of these departments and enforcing the INAUDIBLE..I mean you have a rather comprehensive set of conditions here, all the way from operating hours through noise abatement through stormwater, I mean, is that going to be a formal process? I mean, you guys are going to spend a lot of time on this, INAUDIBLE, I mean, just look at here, you're going to have a lot of people calling you to go out there.

Hess: Well, I don't have a comment to your question except to say that later tonight there is some discussion about zoning enforcement procedures that the county

Yoon: Is that true that on point 5 that was one of the original problems of the last process we went through as far as the operating hours. I mean, which there was a lot of disagreement, let me put it that way, on what in fact was happening.

Hess: As to what those actual hours were.

Yoon: And in fact were they being adhered to.

Hess: That's my recollection as well.

Leonard: Any other questions of Staff? Okay, thank you.

Is the applicant or the applicant's representative here?

Hess: Was there a decision on the slides?

Commissioner Al-Sofi would like to see them.

Yoon: Are these slides the new area or the old place?

Leonard: These are the same slides you showed last month?

Hess: You may recall there was one sunny day in April and this is it.

This slide is an overview shot. This is Cornelius Pass Road on my left. This is showing the general hilled neighborhood that you will hear discussed this

evening. The Chauncey's originally made an application for the bark mulch, Beaver Bark Business, on their present property, which is located in the far distance on the right hand side of the slide. I'm looking to the northeast right now.

The site where they're currently proposing the activity on Cornelius Pass Road is behind the trees on the left hand side. I'm in Washington County at this point looking down into the valley where the golf course proposal has been made.

And, the subject site is on the left hand or the center of the slide. The white, little mobile home there is in the center of the slide; its on the site. You can see some of the Christmas tree stock; its there in front of the mobile home.

This is Cornelius Pass Road as it travels through, just entering Washington, or just entering Multnomah County.

VOICE: Are there any homesites INAUDIBLE?

Hess: Any home sites?

INAUDIBLE VOICE IN THE BACKGROUND.

Hess: Yes, there is. There's a house at the extreme northwest corner of the property owned by Mrs. Hyatt, I believe.

And, this is another view again. I'm entering Multnomah County looking north on Cornelius Pass Road; the property is on the left hand side of the slide. The area where there's tall grass there that's browned out, that's where the bark mulch storage area is proposed. In front of the Christmas tree stock. Just downslope of the Christmas tree stock.

INAUDIBLE VOICE IN THE BACKGROUND.

Hess: Yes, its 55 miles an hour in Washington County and 45 in Multnomah County.

And, now this is looking south on Cornelius Pass Road and the site is on the right hand side of the road

there. The existing mobile home is just on the right hand side of the slide. The bark storage area, again, would be in that area that's beyond the Christmas tree stock. The proposed golf course is where the road takes a sweeping curve there on the left hand side of the slide.

Another view of the subject property; you can see some of the Christmas tree stock and some brushy growth behind it; the mobile home on the left hand side of the slide. There's an existing house in the far distance with a red roof or an orange tile roof perhaps, I can't ...

INAUDIBLE VOICE.

Hess:

Yes, its on Old Cornelius Pass Road.

Another view looking south into Washington County; the proposed golf course is on both sides of the road in this location. So its immediately south of the subject property.

Now I'm on Cornelius Pass Road looking over towards Mrs. Hyatt's house. Cornelius Pass Road, the new Cornelius Pass Road, is right in front of that clump of Fir trees that's in the background there. And this little valley here is where Rock Creek flows through the area; just west of the subject property.

This is another view of that valley, Rock Creek Valley, looking due east.

This is another view of that valley. I was trying to capture a western view of the site and you can't really see it very well because of the brushy growth that and trees and so forth that lines Rock Creek as it flows through this little basin area here.

And, another view of that same basin. That house with the red roof that I mentioned earlier is on the right hand side of the slide. Its on Old Cornelius Pass Road looking to the southeast.

INAUDIBLE QUESTION FROM EITHER THE COMMISSION OR THE AUDIENCE.

Hess: Rock Creek is part of the Tualatin River Drainage Basin and so it is affected by the Tualatin Basin erosion control provisions and stormwater management that's imposed by the state. 11

INAUDIBLE QUESTION.

Hess: Not that I'm aware of.

Another view again from Old Cornelius Pass Road looking to the east. The subject property is behind the brushy trees that you see in the center of the slide that are following the creek. The field beyond those trees that you see in the distance is the wheat field which is just to the east of the subject property. On the east side of Cornelius Pass Road.

And I think this is my final shot again, I'll take you to where we were. That wheat field I just mentioned in the previous slide is just on the right hand side of the road there in the distance and the subject site is in the center of the slide.

Leonard: Thank you for refreshing our memory and now the applicant.

Douglas: Excuse me, can I ask Mark a question? Mark, hasn't this been used for various wood operations or different operations in the past year?

Hess: This particular site?

Douglas: This particular site, it seems like to me, that I remember that being in a wood lot or a wood cutting operation.

Hess: My understanding is that it was in Christmas tree production since the early 80's; there was the north third or so logged in the last few years. I looked at a 1986 air photo and it was all in timber, the northern third and now they're not there so I assume its been logged in the interim.

Douglas: I'm speaking from memory now and sometime that fails, but it seems to me like there was loads of logs hauled in and wood was cut up and stacked and sold there at one period of time.

Hess: I'm not familiar with that. You might direct your question to the applicant.

Sullivan: Thank you Chair Leonard, members of the Planning Commission. For your record my name is Ed Sullivan. My office address is 111 S.W. Fifth Avenue, Suite 3200, here in Portland. My clients do indicate what you suggested Commissioner Douglas is true, that indeed there was a wood processing operation on the property.

Mr. Chairman, members of the Commission, what we have before the Commission tonight is a resource related, wood processing use which includes among other things stock piling, processing, loading, and delivery from this site. It involves trees from this parcel, from other lands under the ownership of the applicant, and from other sites and sources. The trees on this site are cultured Christmas trees and part of a farm use. The trees either on the site or off the site are processed into bark dust, the bark dust also comes from other sources such as lumber mills.

Staff made reference earlier to an earlier conditional use permit which was denied, and indeed it was. I did, while the Chair was asking a number of questions, look at the previous conditional use permit and I'm looking at the Board's Final Order on page 2, lines 20 through 23, and the inference I get from that is that the Board felt that it had to apply the Conditional Use Permit standards, not for primary processing but rather for commercial activity in conjunction with a farm use and proceeded to do that. The only assumption I can draw is that the Board felt that those were the standards that were applicable.

What I would like to do tonight, bearing that denial in mind, is to compare the two proposals, the one that was before you last year that was denied and the denial upheld and the one that is before you tonight.

In terms of the character of the area we're now talking about a site near the urban growth boundary and near some commercial zoning in an exception area in Washington County. There have been some opponents which have confused the Rock Creek Tavern with a non-conforming use. That facility,

however, is within an area both planned and zoned commercially. And we have to assume that will be developed in that way. I believe the golf course has a tentative denial or recent denial from the Hearings Officer and may well be appealed. Whatever the decision of the Washington County Planning folks are we're able to address both farming as well as the golf course proposal.

The subject site, unlike the last one, is not on Kaiser Road, which was a very big issue in the last Planning Commission disposition of this matter and before the Board. And, therefore, not on a road which was limited effectively to local traffic. This application deals with Cornelius Pass Road, a county arterial. The Staff, based on the information before it from professionals, has indicated that both the traffic capacity and traffic safety issues have been resolved with regard to this site.

In addition, the other issues raised in the last denial on a different site, as I know the Commission knows, dealt with such things as traffic, noise, and water quality effects. We believe you will hear testimony tonight and you will see the material that we've presented that with the conditions of approval recommended by Staff to deal with these issues, including submission of this use to the County Design Review process, that this use meets the county's standards for a conditional use permit. We are in agreement with Staff on most of the conditions proposed should this use be approved.

When the Chauncey's had their last application denied it was because they failed to bear their burden of proof, particularly with regard to the effects of their operation on farm uses. And again, the issues that were raised and decided by the Planning Commission and Board of Commissioners revolved around traffic, noise, and water quality. We hope that you will find that our testimony deals with those issues effectively. Staff finds it and we certainly agree.

Now Staff recommends approval of this use with a number of conditions. We will ask you to look at two of those conditions tonight and ask you to modify them. I'm going to give you a handout in a moment which will set forth our proposals to modify the

conditions. Let me go through the two conditions which we ask you to take a look at. The first relates to hours of operation. We would like the limitations on hours of operation to apply only to on-site processing operations. We expect to have delivery trucks on the site filled by the end of the operating day if they're taking something out from the site. We also expect that trucks leaving the site may wish to do so before 8:00 in the morning. We would like to have those trucks be able to enter and leave the site before 8:00 or after 5:00 for any long-hauls so that they can be brought back to the site. All we want to be able to do is to start and leave; start the trucks and leave or to come back on the site. We are perfectly prepared to abide by all noise requirements, all traffic regulations, and all conditions the county might otherwise impose. Further, we do not propose to take any processing operations outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday and 9:00 to 5:00 on Saturdays. And, as I've indicated, I propose new language to deal with this issue in condition 5.

A second modification of that condition relates to the requirement that all trucks used at the site be stored on the site. This is a new condition which was not in the May report but does appear for the first time in the June report. We think that that condition is not well taken because it invites vandalism or leaves us with the alternative of either hiring a watchman and perhaps forces us to ask for a dwelling on the site. We can, we suggest that that condition be deleted.

So those are the two conditions with regard to trucks and hours of operation. We had a concern about the mobile home condition. We do wish to replace the home. Staff indicated that and that was correct. We are willing to either have that home be another dwelling either in conjunction or not in conjunction with the farm use as Staff has suggested. We also suggest though, that if there is a non-residential structure on the property that it could be an accessory use for an office for this operation. We are willing with regard to a single family dwelling to go through the county's process and accept the county's disposition of that matter. We realize that the placement and all other aspects of that structure are subject to the county's design review.

Now our order of presentation tonight, at least our organized presentation, will be as follows: First, Mr. Chauncey and Mike German, who both propose to work on the site, will come up and testify regarding the nature of the proposed barkdust operations on the basis of their own experience in this field. They will tell you about the area of the subject site proposed for operations, the nature of operations proposed, give you a profile of the customers, particularly those in the farming, and again, particularly in the nursery industry, and give you an idea of what is proposed to occur on the site. They will tell you from their experience both as farmers and as people involved in the barkdust industry that barkdust is used in nursery operations, in farming operations, as well as residential gardening. They will talk about how much of the site is to be paved and, based on their knowledge and experience, the probability of fire hazards based on the allegations made by some of the opposition.

Next I will ask John Staveren from Scientific Resources, Inc. to testify. After giving his qualifications Mr. Staveren will deal with the wetlands and water quality issues in this case, including those that were raised as part of the June Staff Report. Mr. Staveren will suggest that a 50-foot setback from the southwest corner of the property, on which there might be a wetland, will be adequate and will speak to the improbability of any water pollution from the subject use. Mr. Staveren will also discuss the use of erosion control conditions and plans to mitigate any adverse effects as proposed by Staff. I would point out now however that the attempts to liken this use to a log pond or any other use involving chemicals which are used in the treatment of wood products is simply not well taken at all. The product we take is from the tree itself, not through any chemical added to the wood, which would not be finished or varnished. Mr. Staveren will also indicate his agreement with the proposed conditions of approval relating to water quality including those, again, in the June report.

After Mr. Staveren is finished, Mr. Dan Seeman of Kittelson and Associates will testify. Again, after stating his own qualifications Mr. Seeman will

respond to the traffic capacity, traffic safety, and level of service uses.

Next Kerrie Standlees, a sound engineer will testify. Again, after stating his qualifications Mr. Standlees will share the results of his investigations on noise issues at the site. He will deal with appropriate DEQ...

THIS PORTION LOST TO CHANGING OF TAPE.

Sullivan cont.

...any other witnesses in favor of the application have testified, I will conclude briefly and will reserve time to respond to any opposing arguments.

Let me mention, Mr. Chairman, that we are in agreement with the Staff's view that this is not only a commercial activity in conjunction with a farm use, because it uses some of the agricultural products on site, but also because it creates a product which is used in pure agricultural and nursery operations. I might suggest to you also that in Clackamas County there was a more restrictive version of this. The Clackamas County ordinance at one time said that commercial activity in conjunction with farm use and defined it in such a way that the product had to come purely from agricultural products and purely had to be used in agricultural applications. The Hearings Officer in Clackamas County found that that was the case but that was an unusual ordinance because of the way it was drafted. When the County Commissioners dealt with that again, particularly regarding the nursery industry in Clackamas County, they decided to take the statutory language *commercial activities in conjunction with farm use*, which is your standard in the Multnomah County Ordinance, and found that they ought to change that ordinance so as to reflect state law and so as to allow nursery operations to take place so that the product didn't have to originate purely from agricultural sources or did it have to be applied in a purely agricultural way. It could be used for residential sales and the like. So, the case involved was a case called "Burkey vs. Clackamas County;" I got involved after that case was decided and was able to persuade Clackamas County Commissioners to modify the ordinance to exactly the wording that is used in Multnomah County. And I believe that the

operation before you is a commercial activity in conjunction with a farm use.

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Leonard: Yes, before we have a question I would ask everybody who is planning to testify on this case to please be succinct in your comments and statements. We've already had two cases that have taken longer than scheduled and we have five more cases, agenda items, scheduled after this and a lot of people waiting to hear those cases, so as you proceed, please try to be succinct.

Commissioner Fry.

Fry: I have two questions. The first question maybe another speaker is going to answer but, unfortunately, the map we received puts your sliver of property into the very edge of the map, and so we have no knowledge of the surrounding properties and so just to pick your brain and maybe it would be more appropriate for someone else to answer this question, what is the property directly to the west?

Sullivan: I think the property in Washington County is all exclusive farm use. There is a further, you'll hear the footage and I don't have it, from me, there is a commercially zoned area but it is not immediately adjacent to this property.

Fry: And that's under separate ownership from this parcel?

Sullivan: Yes.

Fry: And what about to the south; is that also a parcel under separate ownership?

Sullivan: I'd have to ask. That's the golf course property I think.

Fry: So the only property under the ownership of your client is this sliver of land?

Sullivan: Yes, that's correct Commissioner.

Fry: And that's all that's at issue. Okay.

More _____, and I know you have had a lot of experience with land use state law, it troubles me in terms of "what is the commercial activities that are in conjunction with farm use"? What is that _____ statement mean? And as an example, I'm just trying to brainstorm, I suppose a person that whittles from trees and creates scarecrows, you know, that could go out into the farm land, it would seem to me why isn't that a commercial activity? And, so what I'm asking is, my interpretation is and I'm not saying its correct, is that the use must be located at this location because its in conjunction with farm uses which prohibits its location anywhere else.

Sullivan: I don't think that's what the ordinance says and I guess that may be the difference. The Clackamas County ordinance had, in addition to those two things about originating and being used in farm zones, a provision that it couldn't be located in any other zone. That's not in the Multnomah County ordinance. And I suggest that if the activity is otherwise in conjunction with farm use by the product, by the use of the product, by the use of the Christmas trees which are a part of the farm use under ORS 215.203, that this use qualifies under the county's code.

Fry: So basically your position is that any commercial activity that can be shown to be in conjunction either source or where its going in farm use are allowed as long as they meet the criteria in any EFU zone?

Sullivan: It is a qualified conditional use. Now whether you wish to go further on that is an issue for you to deal with.

Fry: General criteria, then it does get in the gate.

Sullivan: That's correct. Let me also mention there's a case called Conner vs Coos County, its a late 1970s, in which a feed store which was just based on a piece of property, was found to be a commercial activity in conjunction with farm use. There's nothing in there about the base or that it has to be there because of some considerations relating to farming.

Al-Sofi: I have one question. What is this non-conforming use that gives us the Rock Creek Tavern? There was a reference to that.

Sullivan: The Rock Creek Tavern as I understand it is not a non-conforming use. What they did was to take an Exception and to zone an area in that intersection as commercial, Rural Commercial.

Al-Sofi: But you're not saying there is another non-conforming use?

Sullivan: No, no, no. I'm sorry and if you heard me say that I didn't.

Leonard: Any other questions for Mr. Sullivan?

Chauncey: Bo Chauncey, 9825 N.W. Kaiser Road. The proposed site was purchased by us in January of this year. The former owners rented the land to us until April 22nd, so the land was available to us on April 23rd. This is our busy season and we've had little time to do anything to that property.

Yoon: Pardon me, Mr. Chauncey. You're saying that Mr. Waters is not the property owner, you are the property owner?

Chauncey: We are the property owners. There was people that purchased it from Waters were Bingels and they lived there until the 22nd of April.

The proposed area is on the southern portion of the land. This, we plan to contain the size, with, the size of the site with a road to encompass it. Here we will store bark, chips, and sawdust. We grind some of the bark into smaller sizes and deliver to farmers, nurseries, retailers, and residences. Last year 51% of our business came from farmers and nurseries, 39% from residences, and 10% from other retailers.

Unlike Mr. Jones, we farm our land. He wrote at great length on this application. As far as I know, in the last 46 years there hasn't been a crop taken off his land.

I've been a farm owner for almost 20 years and one engaged in this business. And an operation such as

our does not change excepted farm and forest practices nor does it increase the cost of farm and forest practices on surrounding lands devoted to those use. We have a wheat field next to our current operation and it is very healthy. There is one to two feet of bark as a base and we will remove that and then we will plow it up and we will plant that. So, bark is good for our soil.

Mike Jermann will speak about different products that come out of bark.

Jermann:

My name is Mike Jermann, 6356 N. Wilbur. Basically I was going to talk a little bit about product and effect. I can name several nurseries that use our product that I've been in business with and talked to the last 15 to 30 years. Some of these are Fishback Nursery, Don Motts, Thrifty Feed and Seed, _____ Nursery on St. Helens Road. These people all use various and sundry wood by-products and mixtures of for potting and for hilling.

Some of the other things they do with the sawdust, particularly, is they will plow this in with their soil to prevent clotting of the soil when they put small trees and things in for the winter.

In my experience I've not had any nurserymen complain to me other than extraction of nitrogen where wood by-products have done any damage, either in storage or plowed in to the soil, to cause any problems with their soil.

The other thing I was going to address was fire damage. Fire. We know when you have wood or wood products you do have a fire potential. Barkdust piles, sawdust piles, you have a lack of oxygen; you don't get raging fires from this. You get more of the smoke, smudge. Fires generally do not spontaneously combust if there is, the piles are not 20 feet, they are not piled over 20 feet or they're not driven on. In my experience, and I've worked for other companies, we did not have any fires that were not either arson set or set from careless smoke. About all I have.

Yoon:

Can I ask questions?

Leonard:

Yes. Commissioner Yoon.

Yoon: Kind of a blind question that you probably can answer, in the Staff Report under "*C. Maximum Truck Traffic Generated*", it says approximately 30 trips, is that 30 trips a day?

Jermann: Yes.

Yoon: How many of those trips are to pick up source material?

Chauncey: One-third.

Yoon: One-Third?

INAUDIBLE QUESTION.

Chauncey: I said a third of those would be to pick up.

Yoon: And what is the average distance you go to pick up the source material?

Chauncey: Anywhere from 2 to 60 miles.

Yoon: And, so the other two-fifths of time you're delivering material, right?

Chauncey: Yes.

Yoon: And what is the average distance that, I would say average distance? How many of those trips are within a 10-mile radius?

Chauncey: Ninety percent.

Yoon: Do you have people on-site coming to get materials?

Chauncey: No, we don't.

Yoon: So its delivery only.

What are the times of day that these trucks are going to be in use?

Chauncey: The, we leave sometimes, in the semis, empty, at 5:00 in the morning. Most of the time they leave at six. The other trucks don't leave until 8:00.

- Yoon:** And they come back at various times of the day or what?
- Chauncey:** The semis can come back anywhere from 9:00 to 10:00 to 11:00; sometimes they might not even get back until 1:00.
- Yoon:** And then they do an afternoon trip too?
- Chauncey:** Yes. They leave
- Yoon:** So, essentially its a wholesale and retail operation both?
- Chauncey:** Yes. Its a wholesale/retail.
- Leonard:** Commissioner Fry.
- Fry:** Why are you located here and not in an industrial park?
- Chauncey:** We feel that we're located right where we need to be. We're closer to our customers.
- Fry:** So its and issue of proximity and that no other land fits the same locational criteria?
- Chauncey:** We believe that, yes.
- Yoon:** They talked about three alternatives for entry and exit. What are your preferred entry and exit?
- Chauncey:** The top is where we're going, well, actually its the middle of the property where we would enter and we would leave down at the bottom.
- Yoon:** So, of the three, you would go through the middle and come out of the far distance, the southwest or whatever it is?
- Chauncey:** Yes Sir.
- Leonard:** Okay, I have a couple of questions Mr. Chauncey. Mr. Sullivan mentioned that some of your raw material or source material comes from the Christmas tree operation on your site, as I understand his testimony. Based on what you said and what Mr. Sullivan said, could you tell us what portion of the raw material

comes from your 4-acre site versus material that's trucked-in from somewhere else?

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Chauncey: Well, the 4-acre site would have to be redeveloped and replanted. Its been logged off. We have logged off our, you know, we took some trees off of our land that we're using the bark on right now, and as you know, it takes some time. We would probably, I would say, get less than one percent.

Leonard: Maybe I should re-phrase the question. Could you tell us how many tons or truck loads or units or some quantity of raw material you bring to the site per year? Total aggregate quantity. Just some rough idea.

Chauncey: I'd just give you a guess.

Leonard: Sure. Sure. Just something to go on.

Douglas: I'd say 60,000 pounds per day, 20 days a month, do you think that's relatively accurate?

Chauncey; Yes.

Douglas: On a year around.

Chauncey: On a year round basis.

Leonard: Could you give us any idea how many pounds per acre per year of wood by-products are produced on a good acre of forest land?

Chauncey: No, I can't. I can't. I'm not an expert on that.

Leonard: We talk about, or hear about site index classes of 150, which relates to the board feet or cubic feet of timber grown per year, a small portion of the timber growth is in by-product categories. He uses the limbs and twigs and the bark that's removed from the sawmills. The stuff that's grown on your site, what kind of things go into your raw material input? Christmas tree prunings?

Chauncey: Any prunings and that type of thing can be chipped and turned into sawdust. I can't give you a breakdown as far as, I'm not an expert on as far as...

- Leonard: Just a rough estimate on an annual basis. Are we talking about maybe one, two, three cubic yards of material that would actually come off of your property?
- Chauncey: No. I would say probably four hundred units once its in, once its set up.
- Leonard: Four hundred units?
- Chauncey: Yes.
- Leonard: What's a unit?
- Chauncey: A unit is 7.4 yards.
- Leonard: Two hundred cubic feet.
- Chauncey: Yes.
- Leonard: Of material, raw material that would go into your production on an annual basis from your property. So four hundred units times two hundred cubic feet...
- INAUDIBLE FROM COMMISSION OR AUDIENCE.
- Chauncey: Yes.
- Leonard: You're saying you've got 400 units?
- Chauncey: I'm guessing what we just got off ours, so....
- Leonard: So that's 80,000 cubic feet per year?
- Chauncey: That would be after probably five years.
- Leonard: How do we translate 80,000 cubic feet into 60,000 pounds per day, 20 days per month? What I'm trying to get at here is some sense of whether we have some plausible conjunction between farm activity and your commercial chipping or whether its truly a diminimus relationship. Are we just talking about sweeping the yard trimmings and throwing them in your chipper or do you have semi truck after semi truck that's bringing the stuff, then it wouldn't make any difference to your operation at all whether you were cleaning up your own yard trimmings or is there

really a contribution here for what's being raised on site.

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Chauncey: There would be a contribution maybe once every five or six years. You know, fairly substantial. Other than that you're, I can't argue that fact.

Fry: Just to clarify the site map, the site is 4.24 acres, right?

Chauncey: Yes it is.

Fry: Okay. The site plan is a little confusing because it puts it looks like the wooded acres are. Its just a minor point but it, the whole site is 4.24 so the wooded portion of the site is probably about an acre and a half.

Chauncey: On the top portion there?

Fry: Right.

Chauncey: Yes.

Fry: Okay. Also, you own other property in this area, right? You were saying, it sounded to me like you were taking trees from the other property. Was that, did I mis-hear you or something?

Chauncey: Yes, I did.

Fry: You did say, so you did, so you are agreeing you own other property that could be a source of this material?

Chauncey: Yes.

Leonard: And that other property is in the immediate area?

Chauncey; Yes, it is.

Leonard: So its in related farm properties?

Chauncey: Yes it is.

Leonard: Okay.

Fry: Do you mind telling us the gross acreage of that?

Chauncey: Well there is, the gross acreage of what we have up there is 33-acres; its not all in woods.

Leonard: Okay. Based on the numbers you're giving us it sounds like a very small percentage at best of your raw material would be coming from either the property or nearby area; that most of its hauled from sawmills and commercial forest land?

Chauncey: Yes.

Leonard: Okay.

On the site where your customers and where your deliveries go you stated that 51% of your customers are farmers and nurserymen. Could you or did you submit an exhibit that has a map showing the location, how far afield those go?

Chauncey: No, we did not.

Leonard: What percentage are in the immediate vicinity, within the farming area that's bounded, say, between the urban growth boundary north of Sunset Highway over the hill towards St. Helens Road? Out towards Helvetia and ...

INAUDIBLE COMMENTS.

Chauncey: With 90% within 10 miles.

Leonard: Ten miles goes a long ways.

Chauncey: Well, it goes mostly to the, mostly right in the same vicinity and then it will go mostly to the west, not towards Portland.

Leonard: Okay. Its actually, 90% of your sales would be in a tighter radius than 10 miles?

Chauncey: Yes.

Leonard: Its primarily in the commercial nursery operations in the hills north of Sunset Highway?

Chauncey: Yes.

My name is John VanSteveren, I'm a wetlands ecologist with a degree in fresh water and marine biology. And I'm currently employed by Scientific Resources, Inc., 11830 SW Kerr Parkway, Lake Oswego.

I was asked to determine if there any direct impact to wetlands on the project site due to placement of bark material. We determined that wetlands were restricted to the southern portion of the property; in particular there is a man-made ditch in what appears to be an excavated pond. These are the extent of any wetland areas on the project site.

In that sense we feel there will be no direct impact as the bark material will be placed further to the north.

I talked about the wetlands on the site, as I said, they consisted of a ditch and a swale complex, the ditch and swale currently receive stormwater runoff from the north, from higher elevations to the north, also from stormwater from Cornelius Pass Road, which is located to the east. Once stormwater runoff enters the ditch and the pond complex it cannot migrate to the south and into the _____ and the _____ wetland which are associated with Rock Creek, as there is no exit down the stream. The only way they could migrate is through the soil profile itself.

We were also asked to comment on any water quality issues that would be raised with the placement of bark material on the project site. We have determined, I've had discussions with Loren Goner and Lyle Christensen, both of DEQ; I asked Loren Goner specifically if there would be any detrimental effects felt because of bark materials placed adjacent to a wetland area and he stated in his opinion he did not know of any detrimental effects. I asked Lyle Christensen the same question today and he stated he knew of one project in Boring where a pile of bark material was placed immediately adjacent to Deep Creek. DEQ had determined that there was acidic runoff from this bark material but he stressed to me that there was no filter strip in between the bark material and Deep Creek, the wetland area. In addition he told me that the bark material was old

and I assume it was decomposing and the _____ and _____ which are a constituent, a natural constituent of bark material, are probably entering the wetland because of its old age.

What would happen on the project, I also informed him of this, that we propose a 50-foot buffer between the wetland area that we have identified in the southwest portion of the project site and the bark material itself. Its buffer would be a vegetated swale which is currently on-site. I talked to Lyle Christensen about the fact that this is the agreed use, DEQ and EPA both suggest using grass swales to get rid of any contaminants which are in stormwater runoff and also would help to decrease the acidity found in bark material runoff. What is peculiar to the site is that after the water, if there is any and I'm not convinced there will be any increased acidity from the bark material but if there is any it will be first filtered by the 50-foot filter strip which is consistent with the recommendations of the Division of State Lands, it would then enter as I said before as in the other stormwater _____ ditch and pond complex. And, as I've said, once its in the pond itself it would not be able to migrate to the Rock Creek wetlands which are to the south and southwest of the project site. It would be exposed once it reaches the pond to the soil profile which would further filtrate any contaminates or any increased acidity which is in the water itself.

I'll be brief. We think that as already determined there will be no direct impact by the placement of the bark material on the project site and in our discussions with DEQ we determined there will also be no indirect issues involved with water quality, especially if the 50-foot buffer is kept vegetated proper and left intact.

Leonard: Any questions? Yes, Mr. Yoon.

Yoon: What is the distance from this piece of property to Rock Creek?

VanStaveren: I think, I was told, from the southwest corner its probably 150 feet.

Yoon: And that's up...?

DanStaveren: That's downstream.

The project site slopes to the south/southwest.

Yoon: The testimony from DEQ, did they put that in writing to you?

DanStaveren: No, they haven't.

Yoon: Are they going to do that?

DanStaveren: I didn't ask them to.

Yoon: And your particular opinion, your testimony, did you put that in writing to the client?

DanStaveren: I have not, at this point. We were first hired to direct our comments to the direct impact of wetlands on the project site but during discussions with the Staff at SRI we haven't yet put it in writing but we will.

Yoon: But you will put that in writing?

DanStaveren: We will put that in writing as far as the stormwater management plan.

Yoon: And DEQ will put there's in writing too?

DanStaveren: I will ask them; I don't know. I can't comment on that.

Yoon: Okay. Thank you.

Fry: Do you have a copy of the site plan?

DanStaveren: No, I don't, except what's....

Fry: Okay. On the site plan, where is the pond located that you were talking about?

DanStaveren: The pond is in the extreme, see where the number 6 is?

Fry: Right.

DanStaveren: Its in that location.

- Fry:** Does that pond go beyond their property?
- DanStaveren:** I couldn't determine the project's boundary itself. It probably would, but it appears to be perhaps, but I'm not sure, Mr Chauncey can help me, it might be exactly on the property itself.
- Chauncey:** I think its on the property itself.
- Fry:** Is that a year-round pond? Is there water there even in the middle of the summer?
- DanStaveren:** Well, I'll tell you what we did. We went there several months ago. We dug a soil pit within the pond itself to 18 inches and found no water table, and yet there was ponded water to the west of this. There was hardly any water, 9 inches at the deepest and its approximately 4 feet deep on the southern side and perhaps 6 feet deep on the northern side. So, its a fairly deep pond. So I think if you're worried about any overflow from the pond its unlikely.
- Fry:** I kind of get an idea of, so basically there's a man-made ditch coming down into the pond?
- DanStaveren:** There's a man-made ditch paralleling running north/south of Cornelius Pass Road. Then there's a culvert, a 12 inch culvert that directs that water into another man-made ditch which is along the southern boundary of the project site and it puts the water into the pond. I don't why it was excavated but it does appear to be man-made and there are what appears to be dredge swales separating the pond almost entirely from the northern project's site, or from the project site itself on the northern boundary of the pond.
- Fry:** Okay. It would have helped if this stuff would have been on the site plan. Actually I'm a little surprised it wasn't put on the site plan.
- DanStaveren:** I submitted a wetlands determination report. I just assumed that was given to you.
- Fry:** Okay, that's all.
- Leonard:** Okay. Any other questions?

I have one. You suggested a 50-foot setback or buffer from the wetland area for the bark mulching operation. The stormwater management recommended buffer is 100 feet I believe. Would it be feasible to develop the site plan position of bark mulch operation with a 100 feet setback?

DanStaveren: I can't comment on when, if its, to us a 50-foot buffer is sufficient. In fact there are, and I, they were prepared by Brown and Caldwell but they might be adopted by Clackamas and Multnomah County Stormwater Management Program. Its been suggested a 25-foot buffer, so...

Leonard: We're being asked in a subsequent hearing on an ordinance adoption this evening to adopt the criteria of 100-foot buffer for another drainage, but to adopt the same criteria and standards as apply to the Tualatin Basin. So, there's been a determination somewhere that 100-foot buffer is a good idea.

DanStaveren: Yes, I, my opinion and I think the opinion of David McCallister who is a PhD with our staff and he has more water quality experience than I do, but both of us agree that a 50-foot buffer is probably adequate to filter out any contaminates. I know, I was reading this morning, that a 25-foot buffer as I've stated is already suggested and it might be adopted by Multnomah County but I can't comment further than that.

Leonard: You don't know whether imposition of 100-foot buffer would preclude the development that's proposed or not?

DanStaveren: I'm not sure.

Leonard: Okay. Thank you.

Seeman: My name is Dan Seeman. I'm an associate with Kittelson and Associates. Our address is 610 SW Alder Street, Portland, 97205. I've been a practicing transportation planner for 12 years. We prepared at the request of the Chauncey's, a traffic analysis of the impacts of the proposed operations. I'd like to submit that to you now.

And what I'll do is present to you a short overhead presentation; I promise it to be short, and that will summarize the findings of our traffic analysis.

Fry: Can I ask just, have you seen the Staff Report?

Seeman: Yes, I have.

Fry: Is the traffic impact data in the Staff Report, is that basically a summarization of your report?

Seeman: Yes, it is. We have some refinements; we have gathered some additional data that will help you in making your decision and we also concur with your Staff Findings and Recommendations and analysis.

Fry: Okay, so nothing you say will in any, I mean, this is good baseline information, that's what you're saying.

Seeman: That's exactly right.

As a part of the traffic analysis we addressed 4 basic elements, that is: the trip characteristic of the site, the capacity on Cornelius Pass Road, the operational characteristics and the site driveways, and their safety characteristics at those driveways.

Again, I agree with you here; we don't have the best of maps available but its a great improvement over the maps. They show a rectangular site which is however, INAUDIBLE. What this site plan shows is that there there will be two ingress driveways on the northern half of the site. The furthest north driveway will be about 470 feet south of Kaiser Road and the next one will be about 625 feet south of Kaiser Road.

The egress driveway would be at the south end of the property about 1200 feet south of Kaiser Road.

Now I'm going to talk a little bit about the site generated trips. That has been discussed a little bit earlier in this hearing. As stated before, there would be during the peak summer months, the highest month of operation, you would have about 30 total vehicle trips, that being about 15 in and 15 out during the course of the day. During the peak hour, that is,

the P.M. peak hour of operation which we measured on Cornelius Pass Road in front of the site would be about 4:45 to 5:45 P.M. There would be two truck trips in and two truck trips out.

During the really the highest level of operations, the barkdust operation, would be in the morning, sort of surrounding morning peak hour. Morning peak hour is from 7:00 to 8:00. Their current operation has its peak slightly before that morning peak hour and again slightly after that peak hour. Again, you can see there is a total of 15 in and 15 out for the entire day.

To sum up sight generated vehicle trips, that proposed number of trips equates to about the same amount as three houses. I'll get a little bit more into a discussion of passenger car equipment a little bit later. That number of trips equates to again about three houses _____. The proposed use the peak site traffic occurs during periods of relatively slow background traffic as evidenced by the number of P.M. peak hour trips being two in and two out during the peak hours.

Now I want to discuss with you just shortly how that impacts the overall traffic on Cornelius Pass Road. As entered into the record by Multnomah County that the daily traffic on Cornelius Pass Road is about 7400 vehicles. Those trip totals, 30 vehicle trips added to the system by the site, amount to about less than one percent of the overall traffic demand on that roadway.

INAUDIBLE VOICE IN THE BACKGROUND.

Seeman: If your point is about the highest hour of the day that would amount to, I'm guessing right now, but that would amount to roughly ____ percent of the total traffic demand, which could be something to reach about 5,000 cars a day.

Yoon: What percent, you do have a breakdown, what percent of automobiles versus trucks _____?

Seeman: According to county data ten percent of the traffic on Cornelius Pass Road as recorded today are trucks. So,

Yoon: During this period of time?

Seeman: Oh, during those eight hours that you discussed. I'd guess _____ probably ten percent.

Yoon: Have you driven that road during that period of time? There's a lot more than ten percent trucks.

Seeman: I think, again, when I get into the discussion of passenger cars _____ it probably feels like a heck of a lot more than ten percent trucks because trucks take up a greater amount of capacity of the roadway system than a standard passenger car.

The, during the peak hour, the peak direction traffic demand on Cornelius Pass Road is 320 vehicles. There are 320 vehicles heading southbound on Cornelius Pass Road between 4:45 and 5:45. The off-peak _____ is less than that northbound _____ and the number of vehicles we would be adding to that traffic stream is two, which would increase that volume insignificantly, as you can see. Now, by applying standard traffic engineering procedures one would equate a single truck to about five passenger cars. Even applying that equivalency that's two trucks to equate about ten passenger cars, which would again be fairly insignificant.

The line that I have drawn across the top of this picture shows the capacity of that road. Again, that's a very conservative estimate of the capacity that's been used in the Metro model for that particular road. Applying standard traffic engineering procedures to determine what that capacity is we would come up with a value of about _____; what this show is that we're well under capacity for operating at a "J" or a "B" level service on Cornelius Pass Road with or without the site.

This figure shows the level of service at those driveways. In other words, the level of difficulty that a vehicle either entering the site or exiting the site would have with the Cornelius Pass traffic stream. And as you can see, those projected levels of service would be for the entering driveway _____ and the exiting driveway the level of service "C". Again, that's the level of service used for only two vehicles during the P.M. peak hour and during that P.M. peak

hour its very unlikely there even be a left-turning vehicle out of the site, which is the level of service or the movement that we experienced at that level of service which is C; again, that's a very, very acceptable level of service.

Fry: Can I ask a question? Is this basically due to the speed of traffic?

Seeman: Based on the volume of traffic and the speed of traffic which, a combination of which, creates the number of acceptable gaps that exiting vehicles could experience trying to enter the property.

Fry: What if it happens outside of P.M. peak? In the southbound driveway? INAUDIBLE.

Seeman: It would improve to actually "A" during the off-peak hours.

Fry: Okay. So the only "C" that occurs is during P.M. peak, primarily through left turn lanes, meaning that when you've got a big truck coming on the road and lots of cars beside you that was a concern, not a problem but INAUDIBLE.

Seeman: That's right. And to emphasize that even a bit more, according to _____, 90% of the traffic that exits the site would, to make delivery, be exiting to the right and not to the left so its very unlikely that of those two vehicles one would be making a left turn during peak hours.

Fry: So the right turn, what kind of level of service would that be?

Seeman: "C".

Fry: So the only "C" that occurs is P.M. peak left turns?

Seeman: That's right.

Al-Sofi: I have a question. What do you think of the capacity of the road? What exactly does that mean? I mean, filled up bumper to bumper, ___ what does that mean?

Seeman: Not at all. Capacity is a measure, or I should say, level of service is a measure of comfort that a driver experiences when using a roadway facility. That's a combination of travel time, and the amount of delay; and again, if there is friction that one feels along the side of the road. On a rural highway which one **INAUDIBLE** such as this that certainly doesn't mean that we will be filling it up. Level of Service "A" points to a free-flow; the level of service **INAUDIBLE TO STATIC** 20 to 25 miles an hour while a "C" level of service still _____ to a free flow or 55 miles an hour in this particular section despite the **STATIC**.

Al-Sofi: You only use the term capacity when **STATIC ON THE TAPE. UNABLE TO TRANSCRIBE.**

Seeman: Again, a level of service "C" according to Multnomah County standards is considered acceptable.

Leonard: To clarify Commissioner Fry's comment on level of service "C", that relates only to driver convenience and perceived comfort level, not to safety. That classification of level of service "C" doesn't imply that there is anything unsafe about that left turn onto the site.

Seeman: That's correct.

The summary of traffic operation that we observed and analyzed, Cornelius Pass Road currently operates at level of service "A". The site traffic represents less than one percent increased traffic on Cornelius Pass Road. With site traffic, Cornelius Pass Road will continue to operate at level of service "A" and the site driveways will operate at very acceptable levels of service.

The second major item that we considered in the traffic analysis was safety; safe for trucks to exit and enter the site with respect to traffic on Cornelius Pass Road. Two things that we looked at as part of that analysis was the accident history on Cornelius Pass Road and also the availability of site distance.

We requested accident records from both Multnomah County and Washington County and we asked for accident data a quarter of a mile in each direction extending from the site and according to the data

which was given us, the three and a half year period from '87 through the first half of '90, for Multnomah County and only '87 through '89 for Washington County. INAUDIBLE. There were no reported accidents, which actually surprised me a little bit because that section of roadway even if it were a safe section of roadway, which I would consider it to be, you'd expect it to have a reported accident along that section.

I might also add that as part of this analysis we conducted a speed survey along Cornelius Pass Road to see what speed vehicles really are travelling on that roadway. What we found was that despite the posted 45 mile per hour sign on the Multnomah County section, the average speed uphill was 55 miles an hour and downhill was 56 miles an hour and the 85th percentile, which is generally the speed that speed limits are set by, was 61 miles an hour uphill and 62 miles an hour downhill. Now, in discussing the sight distance speeds, _____ entering vehicles from the driveway, we assumed that we should _____ satisfy those speeds in excess of the INAUDIBLE.

What this figure shows is the sight distance available from each of the driveways. You can see that the northernmost driveway, that is the driveway that would be used or the driveway that would be used for entering vehicles had greater than 1100 feet available sight distance to the north before the vehicles, on-coming vehicles, would be coming around the curve. And, from the south driveway there _____ greater than 1700 feet of sight distance to the north and greater than 800 feet of sight distance to the south.

What this figure shows is the amount of sight distance required in order to maintain a safe condition, and so the sort of most right-hand green column shows the required sight distance. As you can see, its far in excess of what is available at both driveways.

Al-Sofi: What kind of vehicle is required by sight distance?

Seeman: Yes. I took particular attention to find that out and ran _____ in the traffic engineering handbook which is the standardized text that's accepted for

this purpose. And this, while there isn't _____ differentiation for between trucks and passenger cars, the fact that trucks have considerably greater, well, the driver is sitting much, much higher and is able, especially in this case, to see a much greater distance. Because the limitation on sight distance to the south, which is the most limiting factor....

INAUDIBLE QUESTION.

Seeman: Yes, that 800 foot distance is really obscured by the presence of foliage, bushes, which are planted along the roadway to the south and a truck driver would be able to see considerably higher than that. And, for that reason, the procedure for conserving sight distance is considered _____ between trucks and cars, so my answer to your question is that does apply to trucks as well as passenger cars.

Al-Sofi: Is that what it says in the handbook?

Seeman: Yes.

Fry: Really its not average though, I mean, that truck takes just the amount of time it takes a vehicle to get across the road. Is that INAUDIBLE?

Seeman: This is the amount of time that it takes the truck to get into position on the roadway and to get into position and ensure the on-coming vehicles have safe stopping sight distance so he won't rear end into that truck. It will safely stop. Slow down.

Fry: INAUDIBLE.

Seeman: That's correct.

Leonard: Okay. Thank you. Pardon me, you're not done.

Seeman: I conclude and summarize. No reported accidents on that section of roadway. The sight distance is adequate for both ingress and egress. There is a recommendation that we had sight lines should be clear to maintain at least 700 feet of sight distance for egressing vehicles. And to summarize our overall traffic analysis, the proposed project would add less than one percent _____ Cornelius Pass roadway

traffic. Cornelius Pass Road will continue to operate at very acceptable service levels with the proposed project. The site driveways will operate at very acceptable levels of service and site driveways will operate safely.

Fry: Now, you realize its impossible for us to protest certain conditions?

Seeman: I've seen them imposed before.

Fry: And this is on adjacent property that's not owned by the applicant? You're not saying that's where they a second route that's right at the edge of the property that we go to the property next to it and impose conditions on their property.

Seeman: I guess I'm not saying that because there is 800 feet of available sight distance. Its strictly for _____ that's planted there and there really isn't any need to require that sight line in that direction. What I'm saying is that I think you would want to prevent the property owner, that is the Chaunceys, from planting anything that would obscure the egressing sight line to the north.

Al-Sofi: If the driveway level going out of the property onto Cornelius Pass Road, is there any type of incline or is that straight?

Seeman: I think there is a slight incline. Its not anything particularly unusual, so the answer is its not really significant.

Leonard: I have one question related to the vicinity map that we don't have as part of this record. When the traffic, 90% of the traffic comes and goes from the south to the south, where does that traffic go once it leaves the site and Multnomah County?

Seeman: I really can't answer that question. I really restricted my analysis to the immediate vicinity and I think the Chaunceys , MIXED VOICES, sorry I can't help you with that.

Yoon: Actually I can answer that for you. Its a discrepancy in numbers basically and for people who are making a left hand turn that gets you over to 185th, that goes

straight down to the Tualatin industrial area and Beaverton. If you go down about two miles from there there is a left turn you can make and go over to 105th.

Leonard: About two miles?

Yoon: Yes. Well, left two miles, I'm sorry. That's why there is a discrepancy in numbers that goes as far south as you can versus INAUDIBLE.

Leonard: Okay. Lets have the next witness here.

Standlees: My name is Kerrie Standlee. I'm with Daly, Stanley and Associates. We reside at 11855 S.W. Ridgecrest Drive in Beaverton. I'm a registered acoustical engineer in Oregon. I've been practicing acoustical engineering for approximately 15 years. I have a degree in architectural engineering, Masters Degree in engineering with a specialty in noise and vibration.

Daly, Stanley and Associates was asked to take a look at proposed operation that Beaver Bark is proposing to put on the site. And, I kind of have a feeling that everyone, like myself, expected a fairly industrialized-type operation. When I was first contacted and they said there was going to be bark chipping and running motors and things like that involved, I expected an industrial operation. Once I got to their existing facility and saw the equipment they were using I realized that it really is not an industrial operation in the sense of what industrial operation can be. We have done quite a bit of work for wood processing facilities and this operation comes close to being an industrial-type operation. The only equipment that they have that would be considered industrial is the front end loader, and in this case they have gone the extra step to make it quieter than most running motors would be.

In the process of conducting the study, we did, we basically did three steps: we went out and monitored the existing equipment, took measurements of the equipment, the sound levels; we monitored the existing sound levels at residences adjacent to the proposed site of the operation; and then we took the measurements we measured at the equipment and

projected that at the proposed sight to the residences around the site.

The Staff Report has a few errors that I'd like to bring out at this point relative to the sound levels of the equipment that was used. It's my understanding that prior to our being brought into the project, when this material for the application was originally put together and that the Staff commented on, an acoustical consultant was contacted for just general information about equipment. That person gave some levels which you see listed here but really had no idea of the equipment that was being used. Subsequent to that, we, like I said, measured the equipment and, looking at page 15 of the Staff Report, the "on-site machinery", the front end loader shows on the Staff Report that it would be 75-78db at 50 feet. We measured 83dba at 15 feet, which would translate into 73 dba at 50 feet. The reason that it's quieter than normal is because they have two mufflers on the equipment instead of the normal one that you would find on a front end loader.

The tractor with the hand hub grinder was estimated originally at 80dba at 50 feet, we measured 85dba at 15 feet, which would translate to 75dba at 50 feet.

The dump trucks, which are listed as three different dump trucks here, I believe they must have been assumed to be heavy dump trucks because the levels that were shown here were for your general heavy dump truck equipment, which would have three axles or more. The equipment that they're actually using is a gasoline truck that would be similar to a UPS delivery truck. It has two axles, it's not a heavy weight vehicle, it was measured to be 68dba at 50 feet; that's basically the same as a medium sized truck on the highway or most cars at 50 feet. So there was significant difference there and what is actually being used and what was expected by different people.

The semi trucks were, of course, in the heavier truck range and we used 85 dba at 50 feet for the analysis for their trucks.

You look on the report that you have a copy of now. We monitored the sound level, as I said, at two

residences adjacent, or closest, to the property. The sound levels as you see in Exhibit 1, at the nearest residence east of Cornelius Pass Road are fairly constant throughout the period of proposed operation between 8:00 and 5:00. We made continuous measurements throughout that period and had the equipment tell us the hourly L10, 50 and 90 db levels, that levels equalled or exceeded 1%, 10%, 50^ and 90% of an hour. As you can see, its fairly constant through there. And the reason is, of course, is because the of traffic on Cornelius Pass Road.

- Leonard:** Excuse me Mr. Stanley. Do you have much more to present? I'm gathering from your comments and testimony here that you're saying that this isn't particularly noisy? And you've submitted written material that we can review.
- Standlees:** That's correct.
- Yoon:** INAUDIBLE.
- Leonard:** Would you feel particularly put out if we were to cut you off here, ask you any questions and get on with other people?
- Standlees:** No, I would feel cooled off if I get outside the room here. Its pretty warm in here.
- Leonard:** Do we have any questions for Mr. Standlee?
- Fry:** I just want to make it clear so that in his professional opinion at the property line there would not be any illegal noise.
- Standlees:** The DEQ standard is not a property line standard. Its a 25 foot from the nearest residence. It does not require the source to control their sound within their property.
- Fry:** Okay. Does that mean that if someone were to build a house legally with a permit within 25 feet of the property line that standard would then change? And so then they would be forced to change their operation to come into compliance with that standard?

Standlees: Correct.

Fry: Do they realize that?

Standlees: I believe so.

Leonard: I have another question for Mr. Standlee. Would you say, based on your professional judgement, that the equipment that is to be used here is typical of the kind of agricultural processing equipment vehicles, etc. that might be found in a commercial agricultural setting?

Standlees: Yes. A front end loader is the heaviest piece of equipment that they have and there are a lot of agricultural facilities that have front end loaders. Especially for hauling at dairies for hauling hay and material.

Leonard: If this were a situation where a front end loader was hauling manure out of the dairy farm or whatever, would the DEQ regulation eliminate the noise to 25 feet from the property line be applicable in the Exclusive Farm Use zone?

Standlees: The DEQ addresses commercial and industrial sources only. If you had a dairy, which would be a commercial operation, it would still be regulated by DEQ.

Leonard: Okay.

Standlees: And everything associated with the dairy would have meet the standard. The standard is not a maximum level standard. It is a statistical standard which says that the sound level a certain percent of the hour must be below a certain level. So therefore, if you start up a tractor and have it run for five minutes the fact that makes a certain level is not necessarily a determining factor. Its how long that level is present, which could be a determining factor.

Leonard: Okay. So its possible that it would be subject, even the front loader for a dairy, might be subject to regulations and restrictions?

Standlees: Correct.

Leonard: In an Exclusive Farm Use zone?

Standlees: Correct. There is no exception for farm equipment in DEQ.

Leonard: Okay.

Standlees: In terms of a commercial operation. If it is shown that the farm is a residential activity that may be different. DEQ does not address residential noise sources.

Leonard: Any other questions for Mr. Standlee?

Standlees: I'd like to make one final point, and that is that we have found in our analysis that the operation as proposed would meet all DEQ standards without any additional noise control. However, the applicant has indicated that they're planning to make additional changes, such as: currently they use a tractor, the power take-off of a tractor, to drive their grinding machine. They propose in the future to change to an electric motor which will take-off the major source currently at the site. The tractor is the major noise source they currently have.

Leonard: Thank you.

Sullivan: Mr. Chairman, to close the initial presentation I have four points to make: First, as you asked, I believe, Mr. Chairman, about the 100 foot setback. Our review, quickly here, is that it would cut it pretty close given the size of the site. We suggest to you that if you do approve this that you go with the 50 feet recommended by Staff. The second issue relates to the fact of DEQ and our consultant Mr. VanStaveren putting certain things in writing. These issues were raised for the first time at the last Staff Report and we asked our folks go back and check with DEQ and give you their results tonight and, as I've heard them mention, they are willing to put that in writing for you. Third item is to mention that we have two bases, and I hope I made that point articulately in my opening comments, for relationship to farm use. The first being the amount of trees on the site. Even a minimal amount, as we read Craven vs. Jackson County, which is a wine grapes case, and the issue was can you have a winery with a tasting parlor if all

the grapes aren't grown on the land, and the Oregon Supreme Court appeared to say that yes, you could. The other point, the other base was that this is a product in farming including in the nursery industry, which is part of farming. The last point I want to make is that when you hear 60,000 pounds a day coming into the site you should equate that into truck loads, and that's one-and-a-half truck loads. That's all I want to say now, thank you.

Leonard: Any questions for Mr. Sullivan at this time? Thank you. Is there anyone else who would like to testify in support of this application? Is there anyone who would like to testify in opposition to the application?

Thurber: Mr. Chairman, Members of the Commission, my name is Bernie Thurber and I live at 9865 N.W. Kaiser Road. I can locate my residence for you on the map on the inside cover of their application. Its tax lot '39'. Its the little triangular place on Kaiser Road just to the right and below the center of the picture. Its marked two acres.

When the Chaunceys applied for their initial application on the one that some of the members have referred to, that occurred earlier this year,...

Leonard: Excuse me Mr. Thurber, I missed the location of your residence.

Thurber: I think it would help if, yes, pointing to it here, tax lot '39', its right there where Kaiser Road comes into Brooks Road.

Leonard: Okay. So that's somewhat over a half-mile away from the proposed site?

Thurber: It is. However, I'm surrounded on two sides by the Chauncey's existing property. They own I believe Tax Lot '45' and '44'. When the Chauncey's applied for their original permit, I was involved with a group of neighbors who organized an opposition to it; we submitted at time a petition with, I believe, over 20 signatures to it. We testified in opposition. When the Chauncey's continued to loose both here and at the County Commissioners and appealed to LUBA, I was a member of five other homeowners that intervned in that proceeding. That proceeding was eventually

dismissed. I mention this only because we continue to be in opposition to the Chauncey's continued operation, which continues today even though they have yet to receive any permit to operate it.

Leonard:

Are you in your opposition to their continued operation, are you referring to their relocation to the proposed site or their continued operation on their existing property?

Thurber:

I'm here speaking in opposition to their current proposal, which is to move down here to the new site. I think that its important to put that request in the context of their continued operation for over a year at their existing site, for which they have no permission. That's important in my mind because there are a number of conditions which Staff have recommended be placed on this permit if its granted. Its the opinion of the neighbors if you had to pick a candidate in whom you would have a great deal of confidence to comply with those conditions, you would not pick a candidate who had been in operation continuously in violation of the land use planning laws, despite the opposition of the neighborhood.

Its true that most of the factors that affected us in the previous application do not affect us now. There is however, one significant factor and that's the traffic. When you use Kaiser Road on a regular basis, as all of in this neighborhood do, you are very much aware of how fast the traffic comes down off the hillside. Cornelius Pass to the north on the other side of the hill is very windey, traffic moves quite slowly. On the slides that were shown earlier when you're looking to the north up the hill, that's the last of a series of slow-sweeping turns after some very sharp ones and the proposed new site for this operation is on the first straightaway that you come to as you're travelling towards Portland, or excuse me, towards Beaverton from the north. It is our universal experience that when you're turning from Kaiser Road to the south onto Cornelius Pass, the only way in which you can do that safely is to accelerate as quickly as your automobile can accelerate. Its been my frequent experience that after turning from Kaiser Road onto Cornelius Pass accelerating as fast as I can, by the time I finish my second or third shift and look in my rear view mirror, there are a number

of cars right on my bumper. I think this is significant because what that means is you've got a traffic pattern here which I don't think traffic engineers can be expected to understand, which is that, in order to avoid collisions people have to accelerate coming down the hill as they're approaching the area where the Chauncey's are expecting to be turning onto Cornelius Pass or turning off it.

Fry: Can I ask a question?

Thurber: Sure.

Fry: Is Kaiser Road and Cornelius Pass Road, is that intersection uncontrolled?

Thurber: That's correct. Well, there's a Stop Sign on Kaiser Road.

Fry: There is a Stop Sign on Kaiser but there's no control on Cornelius Pass at all.

Thurber: No, there's not.

Leonard: Our tax map shows that intersection is a four-way intersection. I don't recall from driving by there whether

Thurber: Its not a four-way intersection. There's an unimproved gravel road that continues across Cornelius Pass Road. I always thought that was a driveway. Apparently its a dedicated road, but...

Leonard: Essentially then Kaiser Road and Cornelius Pass Road is a "T" intersection?

Thurber: That's correct. And the only other thing I wanted to mention is that although apparently their studies indicated that there have been no accidents since 1987, I know of three in my personal knowledge just within the last couple of years. There was one about a month ago; there were flares all over the intersection of Kaiser and Cornelius Pass and there have been a number of quite serious accidents within the relatively recent past.

Leonard: Those accidents were at the Cornelius Pass/Kaiser intersection?

Thurber: At or near.

Yoon: Chairman Leonard, we have some statistics that basically shows eight accidents, a total of 92 accidents in the last six years on that stretch of road, which kind of contradicts what the traffic engineer told us. Its on page 3 of this letter from, supplemental narrative of Mr. Jones.

Leonard: Okay. To clarify what that document is, as I recall there was discussion of a letter being mailed directly to some of the Planning Commissioners; some of the Commissioners had recalled receiving the letter and some didn't recall receiving it. Just to put everybody on an equal footing, has that letter ever been entered into the record as far as this proceeding? Since Commissioner Yoon has been quoting from it can we borrow your copy and enter it in the record?

At-Will: I was handed out. I just saw it.

Leonard: Okay.

Hess: This is Mark Hess here. Last month, as the hearing was opened, those two letters were entered into the record as part of the Staff Report.

Leonard: Okay. Thank you.

Yoon: Mark, could we...before you sit down? Mark, I've got one question to ask you on that. I always hate to get caught in a situation where both sides are telling the truth and you know, are that far apart. Did we get any independent, did we get any verification from Staff of which number we're running on on this issue?

Hess: I have not investigated either one of those claims.

Fry: This is 4.2 mile stretch. Do you remember what the traffic engineer's stretch was?

Yoon: A quarter of a mile or so.

- Fry:** A quarter of a mile? Okay, so the other report was for one mile and this is for 4.2 mile. That might explain it.
- Leonard:** Please continue.
- Thurber:** I don't know anything about the letter and I have nothing further to say unless you have any more questions.
- Leonard:** Any questions for Mr. Thurber? Okay. Thank you.
- Is there anyone else who wishes to testify in opposition?
- Jones:** My name is Ralph Jones. I'm the one who submitted the letter. For purposes of trying to aid this discussion, I had quite a bit of information and I feel I'm probably in the best position of anyone here to give a statement because my property overlooks the road over the subject property and I've got a _____
- Leonard:** Could you give your address for the record?
- Jones:** My address is 9985 NW Kaiser Road, Portland, 97231.
- Yoon:** I have a question to ask before he starts.
- Leonard:** Yes. Commissioner Yoon.
- Yoon:** Is anything you're going to say substantially different than the two letters I have?
- Jones:** I have additional information on that there have been considerable questions raised as to water quality. I have some samples to show, the individuals that....
- Leonard:** Mr Jones, before you get into that, could you identify the location of your property on the tax map?
- Jones:** Yes. It would be Tax Lot '57', second page. It would be exactly across from Cornelius Pass Road.
- Leonard:** Right across ...?
- Jones:** Yes. To answer one question immediately, getting into this question that was raised over here with

regard to accidents at the property sight. I have just gotten, it came in after the first hearing, so I was not able to submit copies of this. I provided copies of that before the hearing started; its a report from the State of Oregon Department of Transportation in relation to the number of accidents that have occurred on the section of Cornelius Pass Road that extends from the intersection of Germantown Road, which is south of the subject property about three-quarters of a mile, up to the crest of Skyline and Cornelius Pass at the top of the Tualatin Mountains.

If I can just, I had proposed to do this in somewhat of a different order but just because that one particular question comes out - this particular report indicates that in the period 1986, January 1, 1986 through December 31, 1990, there were a total of 31 accidents on that stretch of road.

Leonard: What stretch are you referring to?

Jones: That would be Germantown Road to Skyline Crest.

The interesting part about the statistics that go with that is that of those 31 accidents, 21 of them were on dry surfaces, about two-thirds of the accidents; another 17 occurred during the day time. That's about a little over 50% of the accidents. And, 20 of those 31 accidents occurred not at an intersection. We're again talking two-thirds. We're limiting this down to an area that corresponds to not at an intersection, daylight operation hours that we're talking about and dry surfaces usually in the summertime.

Leonard: Do you have information about what number of accidents were related to farm activity or farm vehicles?

Jones: Not with regard to farm activity. These statistics generally just relate to the total environment of that road. I think there, if I could get into it, I've got some video tapes that would show the layout the road for those who are not totally familiar with it. It would cover the particular section of road. I also have some slides that were taken of the subject area that would provide considerable information to this body.

Yoon: Are you submitting that traffic report as an exhibit?

Jones: I have, for the purposes of assisting your group, annotated the Staff Report with references to my own submissions earlier and with regard to additional comments I had intended to make this evening. I think it would be helpful to the body here to understand and be able to relate my comments to the Staff Report. Principally because a lot of the statements that were made in the Staff Report are mere adoptions of allegations that were made by the Chaunceys in their application and I felt it necessary to refer to a portion of.....

Leonard: Mr. Jones, we received some material tonight that I have here that I believe relates to what you are saying and I believe it is part of the record. There's a hand written page, a photograph, I think there's one copy of that which I will pass around; a copy of the Staff Report with notes on it. That would be the annotated, your annotated copy. Hand written, paper that stated video tape index, ...

Jones: That would be....

Leonard: Chauncey residence, barkdust business, local environment, so on, describing some scenes of what you would show on the video tape.

Jones: That would be the items on the index broken down like numerical identification. Also attached to that, I believe its attached or separate document, is an index to slides, the details of the number of slides that also relate to the Chauncey property. I think it would be helpful.

Leonard: Yes, that's attached, numbers, number one, two,...sixteen, twenty-four slides.

Yoon: I was asking specifically about the state traffic report.

Leonard: There's some more attachments here.

Yoon: Inaudible.

Leonard: There's a letter "To Whom It May Concern" from a William B. Fletcher II, a water resource specialist, environmental section, Oregon State Highway Division. I believe came to us from Mr. Chauncey ...

Jones: No. That was submitted to me by Mr. Fletcher. The purpose was to indicate to your group the true facts with regard to the effect of rain water and leaching, the process it goes through.

Leonard: Okay, then there is an additional item dated May 1, 1991 from the Oregon Department of Transportation, Thomas Peterson, _____ Data Supervisor, addressed to you, and attached to that is Oregon State Highway Division, Planning Section, accident summaries by year. For years 1986 through 1990 listing some statistics ...

Jones: That is the information I was just speaking to in response to

Leonard: We have that as part of the record and I'll share this with the other Commissioners.

Jones: I would indicate also that with regard to this question, it was requested whether there were any accidents on this site during the last three years, which was the allegation that was made by the applicant's experts. In fact there have been a couple of accidents; one of them sheared off the power pole that gives it back to the mobile home. On Thanksgiving Day last year there were three people in a truck, miraculously none of them were injured, probably because they were drunk. That power pole was just replaced. I've got some photographs of it before it was replaces. The severed portion was left standing against the power pole that was replaced; the two of them make kind of an odd combination to see one short power pole, stubby little critter, sitting next to the main supporting one.

The other one was an accident that occurred across the street, almost directly across the street. There was a Toyota coming down Cornelius Pass Road last Fall before this accident occurred; it attempted to pass a long string of cars, it was behind a truck, and since that's the first place other than one exception on the St. Helens side of Cornelius Pass Road that you

can quote: "safely pass vehicles", he ended up driving into the ditch to avoid a head-on collision and rolled his vehicle. I've got some slides of a mile of trash that's left beside the road that includes bumper parts, grill parts, etc., part of his fender was torn off and thrown out into our field. This individual was fairly seriously hurt; we called Life Flight so he could get some immediate assistance.

There was another accident just down about where the bridge is located, late last winter. This person we also called Life Flight; I went by just immediately after the accident occurred after running a babysitter home. This person was also very severely injured and it resulted from crossing the line.

The area is quite accident-prone. As these statistics show, there is a considerable danger with regards to usage of that highway. I tend to avoid it as much as I can because of the problems. I spoke to the Arco representative. They are one of the main fuel truck users that take their trucks back and forth because they cannot use Highway 26 because of the tunnel. They were aghast with the idea of having to contend with these types of vehicles coming in and off this property, with heavily loaded fuel trucks. Quite honestly I am too because with property subject to a tanker trunk exploding after contact with one of these trucks, I think the whole area might be in difficulty if there was a fire problem. There is considerable hazard here.

I would like to get into my presentation. I think it would be helpful to understand a little bit about this. We've had a video tape prepared of the Chauncey's operation that was submitted for the last hearing. I realize that some or most of you have seen that already. I would propose to go beyond that point which would have that as part of the record. And get into a little bit more of the detail with regard to that property and that road that passes by it, if that's acceptable.

Leonard:

Can you limit you limit your presentation to a maximum of ten minutes?

Jones:

It would be very difficult.

- Leonard:** How much time do you think you need to get through this?
- Jones:** If you'd like to see the slides and the videotape, I think one portion of the videotape particularly, is very helpful with regard to this simply because of the access problem on that road, taking a view of it. Part of that tape would also be helpful from understanding the issue of the environment in which they wish to plant their operation. And then the slides I think, are very very helpful.
- Leonard:** Can you get through them in twelve minutes? Fifteen Minutes? How much time would you like to....
- Jones:** I would say between fifteen and twenty minutes.'
- Leonard:** Lets do it in fifteen and then we'll go on to questions from that.
- Yoon:** I'm assuming this letter from Mr. Fletcher is speaking as a citizen, not the State of Oregon.
- Jones:** He does not represent the State of Oregon. He is just a person who works down there.
- Before I get started, while that is warming up, I'd like to show you something else.
- Mixed Voices. Inaudible.
- Leonard:** We can't hear your testimony until we get the tape going.
- Mark, are you ready to go with the tape there?
- Hess:** No, I'm not.
- Leonard:** Mr. Jones, why don't you go ahead and describe the _____ exhibits.
- Can you speak at the podium so it will be recorded.
- Jones:** The one bottle that has the yellow cap on it is bark dust that has been put in water. You can see the amount of material that is floating in the water that would be the leachate that would run-off from barkdust piles in rain. The second bottle, with the red

cap on it, is an interesting bottle. Its taken as a sample from one of the barkdust operations and is the actual run-off from one of these piles. That I collected. I would like, if you would excuse me for a second. Let me pass that around; you can see what the material is like; take a sniff.

Leonard: What barkdust operation ...?

Jones: The one on 170th and TV Highway. This is the one that I spoke with the county people. This is material comes off, slides that I have would show that material.

Leonard: Could you describe where you collected the sample?

Jones: I collected this from the _____ the front, back of the pile, it came off and I think the slide...

Leonard: Is this within just a few feet of the barkdust pile?

Jones: Pardon.

Leonard: This collection, is just a few feet

Jones: Right at the base of the pile.

Leonard: Right at the base of the pile.

Jones: The third container would be, with the screw-on cap on it, clear, just plain old rain water, and, I'm not afraid to drink that but I sure as hell don't want to drink the stuff that's on _____ which is supposedly purified version of rain water.

MIXED CONVERSATION AMONG COMMISSION MEMBERS.

Jones: This part you've seen already ...Inaudible.

Leonard: You're re-submitting it as part of this exhibits for this case? That's for this case?

Jones: It shows all the dust and the dirt and the noise

The main loader ...

Leonard; Do you have a sound track?

Jones: The sound track is on.

Leonard: Okay. On fast forward you don't hear it.

Fry: Yes, we've seen it; some us have seen it.

Leonard: Would you like it to be slowed down so you can hear the noise?

Al-Sofi: Yes.

Leonard: Could you slow it down just long enough to hear some of the noise.

CHANGE OF TAPE.

GRINDING NOISE FROM TAPE.

Al-Sofi: How far away was this video from the site?

Jones: I'm not sure how far away this was taken.

INAUDIBLE.

Leonard: I think you can speed it up now.

Okay. Does the Commission have a sense of the nature of the activity from the video we've seen so far?

Maybe we should move on to the slides now.

Jones: INAUDIBLE.

LOUD NOISE. UNABLE TO TRANSCRIBE VOICES.

Fry: Is this the existing site?

Leonard: This is not Mr. Chauncey's operation.

Jones: This is not Chauncey's operation. This is on 170th
_____.

Leonard: Thank you.

Jones: INAUDIBLE DUE TO NOISE OF VIDEO.

Jones: This is the environment adjacent to the original place of business. This is my place, the back yard. _____ get down close to the highway here.

Little Rock Creek Valley. _____ home. Right in here the highway area _____. Down off of here is where they want to place their barkdust operation.

Leonard: The field in the foreground is your property? And that's where you practice your agricultural activities?

Jones: We have been working the farm; we've been working the farm for the last several years on this ground. We grow wheat.

Leonard: You yourself don't actually drive the tractor and harvest the crop?

Jones: INAUDIBLE.

Leonard: Okay, so the farm relationship between your dwelling and that field is that you own it and you live there, you lease the field to someone who is farming it.

Jones: Essentially.

Leonard: Okay.

Douglas: Excuse me. How far is your house from the Cornelius Pass Road?

Jones: From this, well, on an angle, straight over here for about 450, down here is the power pole that's located about 600 feet.

Douglas: You're not a farmer, so what is your occupation if I might ask?

Jones: I work in downtown Portland.

Fry: Is that the sight plan map?

Jones: Yes it is.

Fry: Is that your house?

Jones: Well, no, this is not my house. My house is right about here.

Fry: Right about _____

Jones: This is the Skyline hills. This is looking INAUDIBLE.

NOISE FROM THE VIDEO
POOR SOUND TRANSMISSION.

Al-Sofi: Mr. Jones, Mr. Douglas can't see.

Douglas: I've been down that road so many times its pathetic.

VIDEO CONTINUES. VERY NOISY.

This is the new mailbox. This is where the pole was severed. This is _____ Washington County.

I'd like to go on to the slides if I could. I think they will be a little more helpful now.

That's the stuff that's been down in the mobile home.
_____ All the appliances were taken out. _____

This is the site that's left over. There is nothing left on the site anymore. All that's left there are the stumps and debris left from the logging. That was done before the Chauncey's acquired it.

This is one of the Christmas trees on the site.

This is another batch of the trees. You can see this was taken with a telephoto lens. They're pretty close together; those trees are about 15 - 20 feet tall now. I suppose ones that are more in the open the City of Portland might want in another 30 40 years for the Pioneer Courthouse Square.

This is one for the family who can't decide between stars or an angel on top. It has a nice double top on it.

This is a barkdust operation down on the other end of Cornelius Pass Road. The tall building on the top right behind the trees is the Lone Star Concrete Batch Plant. The railroad is on this side, the barkdust

operation is right in the middle. There is Northwest Natural Gas across the street. This is a purely industrial area.

Fry: How far is this away?

Jones: This is down on the other side of Sunset Highway; its about five miles from the site. This is part of a very large stretch of property. Mr. Bob Baker from Skyline Realty informed me that there were about somewhere between 20 and 30 square miles of land that are in the square between Cornelius Pass Road on the east, Helvetia Road on the west, West Union Road on the north, and be on around Cornell Road and the Dawson Creek Industrial Park on the south side, that would be available for this kind of usage. In fact this is part of that site area that would be available to these people if they wanted to located in an area that's more conducive to their operation than the one they're in now.

This is the road north. There is a view of Cornelius Pass Road going north taken from the right-of-way of the subject property. That car coming down the road is this side of Kaiser Road, so you don't have much visibility coming up from the driveway.

That is the inside diameter of a turn that a truck would be required to make onto the property. You've got about 30 feet. That's kind of difficult for a semi truck to make a turn like that.

There's the severed power pole, the one that was removed. The shorter section was taken out some time between the time this photo was taken at the end of April and the end of May.

There's the road looking south; the tree on the left side is on my property. That's the beginning of the automobile accident that represents what's left of the car that was involved in trying to pass traffic coming down the hill. That's a Toyota _____. They're usually put together pretty good but this one wasn't.

The stretch of the road there, the elevated portion, represents the area of greatest sound conduction. You notice the telephone pole right behind the car is

the one that's severed and the replacement piece taken out. This was supposed to be transmitted up to my place from this area.

This is a drainage swale that runs diagonal across the property. This drains the lower portion of my field. You can see the well established channel that drains into the beginning of the swamp area on the corner of the Chauncey property there. I estimated, standing back on the corner, that we're probably 100, maybe a 125 feet north on their west property line for the swamp area. Its an interesting little story that goes out there. I pulled several people out of the swamp before the Chauncey's were around. They go back in the area and do whatever else they want and get stuck in there in the summertime because of the amount of water that's on the ground. Nice little place.

This is the swamp area behind that little hill you can see. The ditch is full of water. This was taken, this particular photo was taken about two weeks ago, before the latest heavy series of rain. This water goes on back into the woods. You can see their corner stake right here in the foreground. This is all brush and swampy area; a lot of water in the ground. The apple tree up there is the northern end of this swamp area. You can see the water in the right foreground; this is what's sitting on the ground back in that swamp area, contrary to what their expert indicated. There is a little bit of water standing down there and it wasn't even before the latest rains hit.

This is just that other barkdust operation to show the lack of vegetation.

There's that ditch again. A perspective a little up close on it. This is what would be draining into that swamp area that you'd have to contend with. Not very delectable. I wouldn't want to drink it.

Go ahead and get the lights now please.

I'd like to make just a few more comments on, if I could please, ...

Leonard:

I'd like to have you conclude in two minutes and that will have given you 20 minutes from the beginning of your presentation here. Can you make that?

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Jones:

I'll give it a try.

I don't mean to sound facetious here its just that this whole process has just seemed to engender a lot of distortion and I feel somewhat constrained and I realize there is a time limit because of other people wanting to talk.

As far as the 50-foot buffer being able to accommodate this, there's going to be a lot of runoff that lower water puddling that occurred on their property, what they call the pond, was actually the start of a lot of runoff that comes off the hills off my property, skirts across what would be the southeast corner of my property, it goes down a drainage ditch that drains into their property. You've got water from my fields, from the hillside and you've got water from their fields and pulled off Cornelius Pass Road that run onto this property and it all goes through this area into the swamp land. Its going to carry this material. About the only way you're going to stop it is to have some impervious hard surface under their area which is going to in essence destroy this property as far as any future farm use is concerned because they'll have to protect the ground, put in some kind of a water collection system to keep this material from going on into the swamp area and into Rock Creek. So there's an awful lot that has to be done as far as protecting this ground is concerned.

The traffic flow, Mr. Stanley managed to comment the noise is fairly constant through this area, that's an indication there's a constant flow of traffic on Cornelius Pass Road. The difficulty with Cornelius Pass Road is not so much what can the road accommodate, its the fact that the trucks that go through there, particularly go through quite fast. I usually don't use the road in the evenings. I go out fairly early in the morning to avoid most of the traffic. Occasionally when I come back I do run into problems and I would like to address just the Staff Report on traffic problems there if I could just for a moment. I'd like to start by indicating that on May 10th I happened to be coming back about 3:40 in the

afternoon and there was a gasoline tanker with trailer followed by another box-type of truck, approximately a 26-footer proceeding north from _____ Germantown at the intersection with Cornelius Pass Road and Germantown. I sped up because I could see these vehicles and clocked them going down that hill and across that valley and back up the other side at 70 miles an hour. Truck traffic does not slow down. A month ago I called the Sheriff's office and tried to get them out here because I had a trucker riding my tail from the little valley clear up to the intersection with Kaiser Road before I could make a turn, and what I mean by "riding my tail", I mean I was looking out my rear view mirror and all I could see was the bottom of his grill because he was about a foot behind my vehicle. Sheriff's office has been called by me many times to come out and try to track the traffic that goes through there because to "mighty fast" is an understatement; comes down that hill very fast because there are a lot of cars that generally try to get around trucks; trucks are going slow from the other side of the mountain. There's one hairpin curve on the other side _____ slows vehicles down considerably. You get over the top of the hill you've got a long train of traffic behind them; by the time you get down to where there's a passing area, this area here is where it all occurs. And because of that area its a real difficult spot. I think it would be, of any place on that road, to put such an operation where you've got vehicles coming and going, the worst place to do it. Its really a terrible spot. Apart from all the other objections I have to it, the traffic area is a hazard to other people on the road, this is not the area to put that plant.

If you've got any questions, I realize I've kept you, I appreciate your....

Leonard: Questions for Mr. Jones?

Douglas: Yes. You've lived there how many years?

Jones: I've lived there since about 1979 so we're talking going on 12 years now.

Douglas: Have you noticed any farming activities, any crops grown on that parcel?

Jones: Yes. I've had wheat, oats.

Douglas: No, I don't mean on your parcel.

Jones: On that property right there?

Douglas: On the property in question.

Jones: The only property that was, the only activity that was done on there was Jerry, Jerry Waters I believe was his name, he got a group of his buddies when he first bought the property and started putting in those Christmas trees. Out of the many hundreds that he put in there are about, I'd say about 80 and 100 trees left, that are still in the wild state. They've never been tended; they've never been harvested any that I've ever seen; there was a wood yard on there at one time. I think you raised the issue..

Douglas: That's what I was questioning about, but there actually hasn't been any farming operation there on that parcel.

Jones: There has been no farming activity on that ground. No. The logging was the closest thing you could say to any harvesting done.

Douglas: That logging was sawing, I take it, with chain saws and such as that. Did that bother you at all?

Jones: Well, I left one day and when I came back there was nothing there.

Douglas: I drove by that a number of times and that was in existence quite a while.

Leonard: Any further questions for Mr. Jones?

Is there anyone else who would like to testify in opposition to this?

Man: Mr. Chairman, would you be kind enough to let a lot of us go home that are scheduled for much later tonight _____ ?

Leonard: Okay. I'd like to see how much more testimony we have on this, and we do have a lot of cases following

this and we want to address continuing those other cases. At least some of them. We'll get to that very shortly.

How many people would like to speak in opposition to this case? The gentleman in the red shirt. Are there any others? Okay, we'll take... was there one more hand, in opposition? Okay. There's one more person want to speak in opposition then? And Mr. Sullivan asked for opportunity for brief rebuttal. We will conclude that and then address what we're going to do with the rest of the cases this evening. It should be fairly brief.

Jones: Would you like me to leave the water samples?

Leonard: Yes. They are part of the record.

Can we turn the monitor off, its flickering.

Roy: Mr. Chairman, members of the Commission, my name is David Roy and I live at 9949 N.W. Kaiser Road. If you look on your map its Tax Lot '60', which is two lots due east of the proposed site. Its the 28.37-acre site. Just follow the Washington County line, on the bottom. Tax Lot '60'.

I'm opposed to the present Conditional Use Permit application on the basic premise that its really no different than the prior application that was before you before, CU 19-90, except the only really distinction being, they are now moving it next to a busy highway that runs through a farming area. And, I think when you actually look at the proposal and look at that, its probably, while they would propose that that's a reason to permit it but its really more of a reason to deny it. Cornelius Pass is a busy highway that already has a significant impact on that area. We all obviously need highways to come to and from various areas but I don't think we need to add to the negative impact that those kind of highways have upon rural residential and farming areas by adding this type of commercial/industrial application right in the middle of that neighborhood. In the middle of that area.

From my standpoint where they are proposing to move it is better than it is presently existing, and you

know, where it has existed for a long time but I don't think moving it is going to solve the problems that are already existing in where they are operating right now.

In that respect I'd ask you to look at map again, that we just looked at to locate my site, and I think you realize from looking at that map that this is not what you'd call an agricultural area, I mean a true agricultural area. I grew up in eastern Washington...

Leonard:

I'd like to interrupt here that the map we're referencing is page two of your, this is the zoning map that identifies the subject site, Mr. Roy's property and the other two individual's who spoke in opposition, is EFU zoned land.

Roy:

That's right and what I mean when I say "true agricultural site" I mean the largest parcel in that area is 38.6 acres, which is my neighbor across the street, and I believe my parcel is the next largest farming area. I farm my parcel but not very economically, lets put it that way.

And, I think what's important to note and when you're looking and when you're applying the type of conditions that you apply, this is when I say this isn't a true agricultural area, this type of commercial/industrial use situated in the center of a true agricultural area would have a much more minimal impact because you're going to have a lot larger site. Look at this map; this is a rural residential area. Its zoned EFU but nevertheless the impact that you have to look at is the impact on the people who live in that area, and the impact that this site will have in an area of small, residential farms, which is what is really located there. Its significantly greater than what you would have if you put it in an industrial site or even in an agricultural site that has large holdings with the houses and the residences in a much farther distance from each other. There talking here about locating 600 feet basically from the nearest residence and, you know, 600 feet in that area is not very far so it can't a situation where you're talking about locating it next to someone that lives in that area and its going to, its a significant impact that is not agriculture in nature. In that respect I think its important to look at why it was

denied previously, from where it was located, because I'm saying what you have here tonight is very similar to what you had before and if you look at the Final Order from the County Commissioners they talk about this business in a number of places, and they talk about its not consistent with the area character in terms of its scale, its intensity, and its location. They also just answer another question that was brought up at the very beginning of this hearing about this issue, about commercial use, commercial activity within a farm use area. You'll notice that they say on Page 3 of that Final Order that ..*"The wood products processing activities and their off-site effects are industrial in character (secondary processing of forest products) and therefore inconsistent with the rural residential and agricultural character of the area."* That's in the Order by the Board of Commissioners from the 1990, CU 19-90 Order, so that, I think is what the Board was alluding to at the very beginning when you were trying to put your finger on what exactly was discussed there.

They also point out that the wholesale/retail operation is not typical of the farm and rural residential land uses characteristics of the dairy. It goes on and talks about the dust created from the chipping operation as being again, inconsistent with the rural residential of the area. The daily truck traffic on a narrow rural road was not denying nor characterized by such traffic, creates a hazard. In that respect, I'm a member of the Board of Directors of the fire department in that area, RFPD #20. We look each month at a review of the responses that our department handles. We average approximately four to five traffic accidents per month, that we respond to, they generally have to be of a, you know, something involving bodily injury, generally for us to be involved.

I don't have the facts at my fingertips but I know from reviewing those on a monthly basis that that stretch is a stretch that we look at, almost on a monthly basis, as having some problem. The primary problem being is the speeding aspect. You've got an area where people are accelerating down hill and passing. A lot of our accidents are single-car accidents leaving the roadside, you know, going off

the road because of the fact that they're going around another car and losing control of their vehicles.

Leonard: Mr. Roy, your fire district you're a board member of, covers what geographic area?

Roy: Its RFPD #20, it continues clear out on Skyline, out to, I couldn't even really describe the exact, but it continues out Skyline probably another 12 miles. From, let me get my orientation down, west of Cornelius Pass and then it comes then, we have a jagged edge that runs around, basically we run down by Germantown, approximately in that area, and then up over the top of Skyline Ridge. Its RFPD #20, Multnomah County Rural Fire Department.

Leonard: And it covers the rural area along Skyline down to the Washington County line?

Roy: Right. And, so in connection with that, we look at these and those are the types of accidents, and so, what you're going to interpose on that from a safety standpoint is slow-turning trucks. And, that's going to create a situation that's going to be extremely problematic, I think, in the long run as far as safety hazard.

Again, going on to some of the aspects of the report that were noted that the commercial, again, throughout this previous Order, and that's what I think you really ought to look at because we're not really talking about a distinction here; they go on again about the commercial/industrial nature of this wood products business is not consistent with the agricultural character of the vicinity. And I think you have to look at that from the agricultural and the type of area that it is in the sense that its a rural residential.

The Staff, in this present report, has attempted to accommodate some of the problems that were created by the prior application and were actually pointed out in the prior application by posing somewhat stringent conditions upon it. I don't think conditions are going to be adequate. One, the Design Review process is not going to be, it may be able to have some masking aspect both from a sound, both

from a _____ view, etc. But it won't change the fact that what you, the Planning Commission, are interposing a commercial/industrial activity within a rural residential agricultural section. That has an impact that goes beyond the simple effect of "does it prevent the adjacent farmer from operating on his land". I mean, again, we cannot point to a situation where its going to prevent that person from farming but it will have a significant impact upon the area. An area that is pretty much unique within this county, from the nature and the mix that it is.

The hours of operation, I think its already been shown by the applicant that that's not going to be adhered to. They're going to require a lot of different changes to that; they're going to require exceptions throughout, and so, right away, one of the conditions that the Staff placed a great emphasis upon is immediately called into question. And I think from that standpoint you've got to look at the credibility of the applicants that are before you. The bottom line here is these individuals have already been operating for approximately a year and a half without a permit, and we're going to solve that problem by giving them a permit that has conditions that qualifies the way they can operate on another parcel? I mean, I think that's, you gotta be realistic here when you look at it. You gotta look at what you're doing and what the final outcome is going to be and what the impact upon all the people in the area is and will be. And, so, without....

- Leonard: Any questions?
- Douglas: Do you take in the area for fire control clear down to St. Helens Highway?
- Roy: Not, yes for the most part.
- Douglas: You go with accidents then on both sides of the hill. What side are more accidents on?
- Roy: Its really hard to tell, but primarily you're talking about the south side of the hill as being. The accidents you have down below, on the north side of the hill going down a steep grade, are usually, cars aren't going to fast enough to do, you're going to have more property damage accidents from the

standpoint of injuries to the car and less personal people-type injuries just because of the reduced speed. There is the one section, the two major sections, and again, I can't quote you statistics on that, but the two where you'd have the ability to accelerate is where you primarily have more of the problems.

The other one, you have the problems on the curve in the winter you know, when you have adverse conditions, but again, I'm trying to refer now to normal, dry pavement type conditions. Again the type that we have the problems with are the problems where you have more speeding because then you're going to have significant physical injury to the occupant of the car.

Douglas: I have real problems with that because I've seen some accidents on the west turn on the north side.

Roy: Oh, well, I'm not saying there aren't accidents.

Douglas: It was not a minor accident.

Roy: There clearly are.

Douglas: I'm not going to argue with you. Lets not put it that way. What I have too, not only from my own visual, but from county maintenance trucks and such as that that the primary place is right at the top, right at Skyline intersection.

Roy: That intersection, the one that's being realigned right now, I mean, that is clearly

Douglas: There is a majority of accidents on that pass.

Roy: Well, majority, you'd have to look at the numbers to see, I mean, there have been a significant number of accidents that's why the realignment is going through there, because of that problem.

Douglas: I also had a logging truck tip over right square in front of me. Right down just above the mill, right on the corner, so don't say that there isn't...

Roy: Oh no, I didn't say that. Don't misunderstand me. I'm saying that the

Leonard: Commissioner Douglas, do you have any more questions?

Okay. Thank you Mr. Roy.

Now, we told you that we'd give the applicant an opportunity to present their concluding remarks then we'll take about a ten minute recess and then see what we're going to do with the rest of the hearings.

How much time would you like for your closing?

Sullivan: Ten minutes.

Leonard: Can you do it in five?

Sullivan: I've got each of the experts; you had a whole bunch of testimony put on a moment ago and I'm going to respond to it.

They had an hour and a half; we put ours on in 50 minutes.

Leonard: Twenty five minutes till eleven.

Seeman: Five minutes, no more. The first issue that was brought up... my name is Dan Seeman, Kittelson and Associates. First issue that was brought up was the issue of unsafe left turn out of Kaiser Road from Mr. Bernie Thurber, and the fact is, that does have unsafe sight distance turning left from Kaiser Road looking to the right, because the curve to the right is within 5 to 600 feet. I already pointed out to you that the necessary sight distance to maintain safe safety is about 680 feet, indicating that that is an unsafe location. We do not intend to access our site at that point. We've accessed our site 500, at a minimum of 500 feet, south of that site and further south, thereby having a safe access at that point.

Another major discrepancy that we had was accidents. I told you that the reported accidents for the section of roadway a quarter-mile north and a quarter-mile south of our site was reported as zero. That is, both Multnomah County and Washington County reported to me zero accidents during the period 1987, '88, '89, and half of '90 for Washington,

for Multnomah County. Those were statistics that were provided by to me by your staff; I have those records for my file in Multnomah County, I'm sorry, for Washington County. The Multnomah County reports were recorded, or reported, to me over the phone so I would have to obtain those from your staff; I'd be glad to do that. The discrepancy I see is that we're talking about, I'm talking about a distance a quarter-of-a-mile in either direction of our quarter-of-a-mile length site, so in other words the section of road that is three-quarters of a mile long, while the reported accidents that Mr. Jones told you about are for a section that is two-and-a-half miles long, which I might add, includes a long stretch of very curvey and relatively dangerous roadway. There's no question about that by the number of accidents that he reported to you. The fact is that the section of roadway we are to access onto is providing a very good sight-line in both directions; more than adequate and there have been no accidents reported in that section of road; indicating from my professional traffic engineering ...

Leonard: Mr. Jones presented photographs of accidents that we, as I understand it, did occur within that three-quarter mile stretch of road.

Seeman: And, I'm might add that all accidents are not reported. Not all accidents fell within that time frame that I quoted to you. If that period of time that those accidents occurred was after the 19, the reported time that I gave to you, then I wouldn't have reported those to you. However, the three-and-a-half year period that I did report to you indicates to me, and should indicate to you, that that is a relatively safe section of roadway.

Another comment that was made was that this is a very bad point in order to access, for their driveways to access, Cornelius Pass. In my professional opinion, this is about the best point for their access to Cornelius Pass Road for that very reason, those very good sight-lines.

The last point that I want to bring up is the turn radius into the sight. He pointed out that the existing driveway would not provide for very good turning into the sight. The fact is that this driveway would be

entirely reconstructed and, for the Chauncey's benefit as well as to meet county standards, would provide for adequate turning radius for those trucks. Thank you.

Standlee:

This is Kerrie Standlee again. I didn't hear to many issues brought up about sound, specifically, as being a problem this time. I think that issue has been dealt with quite well in the study and the results of the study. There was some comment that the people believed that the site was not appropriate for this activity, that it should be an industrial zone, and an example was given for an existing facility at the corner of Cornelius Pass Road and Cornell. That facility used to be located adjacent to a residence; that residence was changed within the last year to Lone Star Concrete. I did the study for Lone Star for making that a concrete sight and there was no impact on that residence prior to Lone Star coming in there so therefore we can assume that an agricultural operation such as a barkdust operation/nursery, which it was a nursery/barkdust operation before, didn't have an impact on residences located next door.

The point that the Staff brought out in the report, is which is erroneous, is that Mr. Terry Obteshka indicated that he had concerns about the noise from the operation being able to meet the standard. I talked to Mr. Obteshka today because I was surprised by that reaction and the thought that the chipper was an industrial grade chipper and he was responding to that, which is not the case. He was expecting the level of the chipper to be 105dba at 15 feet. I presented data to you to show the level is, in fact, 85dba at 15 feet. Therefore, we have data which takes care of the concerns that were brought up in the Staff Report. The Staff Report was not based on accurate data. So, I believe the issues are taken care of in terms of the noise. If you have any more questions I'll address those.

DanStaveren:

John DanStaveren, Scientific Resources. I have just a few brief comments. The first is the water quality sample brought up by Mr. Jones. It was obvious by looking at the slides that those water quality samples were collected adjacent to the bark pile where there

is no filtering capacity at all, so these are, you know, run-off perhaps from old bark waste, I'm not sure.

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In a related issue I want to comment briefly on Mr. Fletcher's letter to the Board where he said there may be some negative effects of run-off from bark material. While that may be true, he doesn't state what the capacity would be if it was filtered, and we are proposing at 50-foot filter, which as I stated before, approved by DEQ and the EPA.

Also, to do with the TV Highway, Mr. Jones made a statement in his submission to you that the Department of Environmental Quality is currently seeking to hold run-offs from just such a barkdust manufacturing and distribution business near 170th and TV Highway. Well, I called up Lyle Garner; he looked, or Loren Garner, he looked through the records and at this point, in fact after this was written even, DEQ had taken no official action on that. They had no official opinion. No letters had been written. HE had received some comments or some phone calls from people who lived near the area but they had taken no action and they said they had no action to take at that time.

One other comment is the swampy area described by Mr. Jones is a slough _____ Oregon Ash Wetland which is located to the south of the property boundary, as I understand it, and is not on the property itself.

In closing, from basing my conversations with DEQ, Lorner Garner and Lyle Christensen, and my experience with the _____ of _____ swales infiltrating contaminates from storm water runoff, it appears to me that water quality issues can be taken care of on-site.

Sullivan:

Ed Sullivan, to close Mr. Chairman and members of the Commission. First of all, something was made by Mr. Thurber about you can't trust these guys because they've been going for a year and a half. We were up in the former case which was dismissed. The dismissal was a voluntary dismissal. I have a copy of that and I'm going to put it in the record here. The reason for the dismissal is that we located another site, this one, and the county and us made an

agreement that the present operation could occur on the present site until this issue was dealt with by the Commission and by the Board of Commissioners. This isn't a matter of someone trying to get away with anything. The LUBA appeal was dismissed on that basis.

Leonard: What was the date of that dismissal?

Voice: The letter I have was dated April 24th, 1991.

Sullivan: That's right.

Leonard: So that was a matter of two or three weeks prior to this scheduled date?

Sullivan: That's right. That's right.

The second point is that you've heard a lot of anecdotal testimony tonight. What we've tried to do is bring forth experts. We've asked them to set out what the issues are; set out what their professional views on those issues were; to suggest conditions to respond to Staff conditions. They did that. What you did not hear tonight from the opposition is equal credibility in terms of experts on traffic, noise, and water quality, which are the issues in this case. We have had our experts up here for your questioning; we've had them respond to testimony that was delivered tonight and our experts do have the ability to give you the conditions and to indicate to you that all of the standards can be met.

Also, I'd like to note that the video that was presented to you tonight, the noise, you could hear the wind blowing so it gives you some idea of the noise, came from a one muffler loader. This is a two muffler loader that's been proposed in this case. The other part of the video, which dealt with the 170th and TV Highway site, was not this site, it was the Woodco Site. We don't know whether that's a non-conforming use; we don't know anything about the legal history of that site.

On the issue of whether or not this ought to be in an industrial zone, this is a resource-related use. It does not require the same kind of urban level services and facilities as does a rural use. This is a

processing use. If you get, if you have to put them into urban areas then there's an issue of whether the rent levels will drive out the business. That's why you have them in rural areas; that's why they're permitted as commercial activities in conjunction with farm uses. Because they do serve the farming community and particularly the sub-set known as the nursery community.

Now, at the end of the opponent's presentation, they went both ways. They asked you to preserve farm uses and farming areas but they admitted at the end that this is not a farming area. What you have here are a number of rural residential uses who don't want natural resource-related uses in their neighborhood. They don't want it at all and that's why you have the amount of opposition and the level of hysteria which talks about drug houses and the like. That's not the issue here. The issue is whether or not this is a use that is permitted and whether or not we've met the standards. I submit that we have. There hasn't been an agricultural use identified in this area. There hasn't been a commercial forestry use in this area, and to protect the rural residential land owners we have suggested conditions, we have asked you to look at the testimony that we've presented, and we ask you now to approve this use. If you have any questions I'll be glad to try.

Leonard: Any questions? Thank you.

Okay. We will take about a ten minute recess. Before people get up and leave I want to go through the rest of the cases that are scheduled tonight.

Commissioner Fry pointed out that we will close the public testimony portion of the Chauncey case. So, public testimony is concluded on that case.

Okay. We'll re-convene the hearing on Line 3, CU 6-91, 9833 N.W. Cornelius Pass Road. We've concluded the public testimony portion of this hearing and its now time for the Planning Commission to talk about it. Decide what they want to do. Is there any discussion on it?

Fry: Well, I just, I think in terms of entering in the gateway, my key issue was the intent of the law to

keep commercial uses outside the agricultural area unless they by definition have to be in an agricultural area. That's one _____. Or, _____, can't we just what the attorney's saying, cause we just want commercial uses within the agricultural areas to be agricultural in base. And, I have to admit in reading the ordinance I have to go with the more liberal interpretation because it doesn't it just basically says commercial activities that are in conjunction with farm uses. And maybe the intent was to make sure the uses were you know, things like we have out in Corbett. I remember a commercial use where a guy actually worked on farm machinery and had to be located there because he was keeping all the machinery in the area in good shape. But, so I guess my interpretation of this law and the way the applicant has spelled it out, and I think this is the key issue of which this whole case will turn, I have to personally feel that this use is permitted in the agricultural area. So then, if I slow away from that, and I think that's an issue that's definitely contestable, in higher courts if you will, but I'm just saying at our little level I'd have to find in favor of the applicant on that issue.

Which then gets me into all the criteria. Is it consistent with the character of the area, you know, these kind of things. And I guess the bottom line for me is the only issue that I'm concerned about is the wetland. I'm not convinced that this will not erode the adjacent property. I don't really frankly care what happens to their property. Its their property, they can do what they want with it, but I do think there's a chance of their activity flowing onto an adjacent property, which, and I'm not satisfied with 50 foot buffer, frankly, I just don't think that cuts it.

Leonard: Can we get some clarification from Staff on that buffer?

Hess: Yes, I wanted to comment that in the Staff Report there is the erosion control provisions that were adopted by you and affirmed by, adopted by, our Board recently. Impose a 100 foot buffer on all streams and wetlands within the Tualatin Basin so this 100 foot buffer is in our code today. And if there is a wetland there then there is a 100 foot buffer from that wetland. Unless, and here's the only

qualifier to that, unless they get approval of a mitigation plan consistent with OAR 340. OAR 340 is Oregon Administrative Rules and its referring to the section of 340 that deals with the Tualatin Basin. So there is a 100 foot buffer in place in our code today, with a mitigation plan being the only way to reduce that 100 foot buffer.

Douglas: Well, that buffer, 100 foot buffer is in the stuff right now?

Hess: Its in effect. Yes. And it says, the wording says "100 foot undisturbed buffer".

Douglas: And that would apply....

Hess: shall be provided between any wetland stream blah blah blah.

Leonard: Even if the wetland were in Washington County on the adjacent property?

Hess: That's correct.

Leonard: This parcel would still measure 100 feet from that wetland boundary?

Hess: That's correct. The intent of our ordinance is to comply with the Tualatin Basin regulations, which are not, which certainly cross county lines.

Fry: Mark, have you checked the site out? I mean, have...

Hess: I haven't walked in the swamp.

Fry: And Rock Creek is only 150 feet away from their property line is the creek itself?

Hess: That seems a reasonable guesstimate on the

Fry: And the wetland would be more than just the creek I would assume?

Hess: Yes. There's a wet area before you get to the actual creek itself.

Douglas: Between the property and the creek.

- Fry:** Looking at the site plan, I've got to complain a little bit. I mean, I have to do site plans and this is not really up to the ones that keep getting sent back to me. This has no scale on it and I don't know, you know, just to complain a little bit to Staff, we're allowing site plans that don't really make it in other jurisdictions. Particularly, I mean, the pond should have definitely been on the site plan. And there's no scale on the site plan. I don't want to spend too much time complaining on this.
- Leonard:** They will have to submit a detailed site plan drawn to scale as part of the design review process.
- Hess:** That's correct.
- Leonard:** Okay. Question to clarify this buffer reduction request. There is a procedure for submitting a mitigation plan to reduce the required buffer dimension. As I understand it, it's not a request to the Planning Commission, it's an administrative review procedure.
- Hess:** That's right.
- Leonard:** So it would be inappropriate for the Commission to authorize a 50 foot buffer tonight. We don't have the power to do that.
- Hess:** I would agree with you. There is no, well, you do have some expert testimony I suppose that would argue that 50 feet is sufficient but you do not have a mitigation plan that's been provided to you that would persuade you to
- Leonard:** We don't have a site planinaudible.
- Hess:** This citation of the 100 foot buffer is 11.15.6730(A)(2)(a). And that's on page 17 of your Staff Report.
- Al-Sofi:** Well, I'd like to state that as the only attorney up here that statutes are normally strictly construed, not liberally construed, and I don't believe that barkdust is activity in conjunction with farm uses, by the way. I wouldn't mind if he was growing strawberries and selling them at the side of the road. I think that's a commercial activity in conjunction

with farm use. And I'm not saying I wouldn't think other things were but I don't see how this is any different than manufacturing tractors, trailers, and fertilizing plant that anything else that farmers have to use. That's my feeling about it. I don't think that there's any reason this thing has to be construed liberally.

Fry: I think that is really the issue that this all turns on, and we can debate it here, and I might say a fertilizer plant is appropriate in a farm use zone and I could be wrong. I guess all I was saying I just want to make it clear where I was _____.

Al-Sofi: Okay.

Mixed voices.

Fry: And I guess that's up to the court system to decide.

Yoon: I don't think I can support the Staff recommendation and having nothing to with this particular segment. I've got five reasons that I have a problem, is, first thing is there's so many conditions set to the approval, I always wonder when you have an approval about this long and the conditions this long, then I begin to worry why we approved it in the first place. So, I'm kind of uncomfortable with that. I'm also uncomfortable with the policing that's going to be required of that. That's more staff than Multnomah County has.

Number two: its interesting the one thing both sides agree on is its a rural residential area. And I would agree with that and I would also agree that I don't think this particular operation is consistent with that area. The second problem I have with that is, try as they might, they're not getting any of their source material here. They're going to have to go someplace else to get their source material. And, I have a real problem with that.

The third point I have, and I guess I disagree with the traffic engineer, not quantatively but qualitively. I don't think he drives it as regularly as George or I do. And, I know that stretch, and I will agree with anybody that says that that's the only time you're going to pass, whether you're coming north to south

or south to north. For a couple of reasons. Number one, its straight and number two, its the only area where you can pass according to the lines on the road. I think trucks are going to have a problem in that area because they're going to have to be slowing down. Let me put it this way, maybe its a great constraint, maybe its a passive restraint, me knowing this now if we approve this I probably would not pass anymore on there because I would be worried like hell if there's any trucks coming out there. So, I think we have a, you know, maybe you could make that into a "no passing" area but that's not something that's under our control.

The fourth problem I have is that there obviously is a discrepancy on whether there have been accidents there or not. I'm here to tell you that I drove by two of those accidents. Once when the helicopter was lifting off and another time after the thing was sheared, so, I know there have been accidents there. I'm not doubting Mr. Seeman but obviously he's not getting the same information that Mr. Jones is. Maybe if you work for the U.S. Attorney's Office he could get it. Who knows. And, this has become so acrimonious that I just fail to see that there's really been you know, I question Mr. Sullivan's thinking that there's been essentially good faith here. I sat in on the last meeting in May of 90 and eleven months later they decide to withdraw contingent upon this. I just don't think that its going to happen.

George is my neighbor and he'll tell _____.

Douglas:

I don't have as many problems as you do. I drive Cornelius Pass probably more than at least as much as you do. In fact I was just over it today. Accidents I've seen and accidents I've heard, my family's had accidents up there, and all of them have been on this side. It doesn't mean they don't happen, I mean on the north side. That doesn't mean they don't happen on the other side. I believe both the reports because in that period of time I would imagine that that could be true. It is a dangerous road. I don't know where we can drive today that is not dangerous, to be perfectly frank with you. There, I don't have as much, what do I want to say, distrust, or, I don't feel that they would do as much harm to the environment as what they're saying.

Yoon: I don't disagree with that. I don't have a problem with _____ nor with the chemical

Douglas: I also think our last speaker hit the nail on the head. Had that been registered as rural residential that may be one of the things the people want to go for. In rural residential I would definitely vote against it but since it is Exclusive Farm Use, and I know that it is used on farms and nurseries and whatever, I will probably be voting for it. It is a dangerous stretch of road. There's no question about it but it is not much more dangerous than than any of the rest of them around the country. Just can't say that its you've got a place that's perfect.

Yoon: Yes, but the trucks pulling out are going to exacerbate the situation. I mean, and especially all the trucks that are moving that cannot go through Highway 26. They've go to come across Cornelius Pass Road and they happen to come through between 9:00 and 11:00 in the morning. Because they start off the docks at 8:00 in the morning too.

Leonard: I think this case raised a number of very interesting issues. The public comment at the beginning of the meeting this evening regarding the assault on the resource land in Oregon is certainly directly related to this case. We've heard considerable opposition from people that have characterized their own residence as rural residential rather than EFU; our zoning for the property is clearly EFU for this parcel and the surrounding area. One of the key provisions for EFU zoning is to protect the farm uses from the encroachment of urban and rural residential constraints, and because of that consideration, I am persuaded on the side of the agriculture related uses rather than protecting the rural residential uses from noise, dust, traffic, whatever is related to the agricultural activity. I'm very concerned about this issue of commercial use in conjunction with farm uses. What does "in conjunction" mean? We don't have very good guidance on that. That was a very important issue in the previous hearing of Chauncey's application. At that time, as I recall, we didn't have a lot of information to establish what was in conjunction with a farm use and what wasn't. What I've heard tonight is testimony about quantities of

raw material that, to me anyway, clearly show that there is no plausible conjunction between the farm use of this 4-acre parcel and the bark mulch use. Any incidental twigs and chips, trimmings that may go into the chipper, that were grown on this four acres or on the rest of Chauncey's property, or even on other farm properties in the area, it doesn't appear to make up a significant part of their raw material. They are bringing material from sawmills and commercial timber operations. We did hear from Mr. Chauncey this evening that over half of his customers are agricultural. There are farms and nurseries; there is ample evidence to show that the bark mulch is used in commercial nursery and farming operations. There is a clear connection between the product and farm activity.

We also hear testimony from Mr. Chauncey that some 90 percent of those farm customers are in the immediate vicinity, farm vicinity, north of the urban area along Sunset Highway, and south of Skyline and the rural area. Even though 90 percent of the truck trips and the traffic delivering this product go south on Cornelius Pass Road, presumably down to West Union before they turn west, they may be going through the urban area; there's kind of a peripheral question that we need to take a Goal 14 Exception to allow that agricultural traffic to go through the urban area to get to those farm customers but we don't really have a clear picture of the route that people are taking. There does appear to be testimony that supports the notion that there is a substantial farm use in the immediate vicinity for the product that would be processed here. And, before this evening, I was not persuaded one way or the other but based on testimony this evening I'm persuaded that there is at least a plausible basis that this is a commercial/farm related use and would be persuaded to vote in favor of the application, albeit with some concern about the traffic impacts and the way that impact is to be controlled.

Fry: Well, can I just move the Staff Report and if its seconded maybe we can talk about the conditions?

Leonard: Well, there was a request by Mr. Sullivan to modify some conditions ...

Fry: Well we could talk about conditions first, but I just like to get....

I was going to move the Staff Report; why don't I just move the Staff Report, okay?

Leonard: Its your game.

Fry: Okay. I'll move adoption of the Staff Report without conditions.

Douglas: I have a question about that. In other words, do you intend then if you want these conditions to put amendments on that?

Fry: Right. And I can discuss them. I just don't know how to do this business.

Leonard: Well, procedurally I think you're heading in the right direction.

Move adoption, get a second and then go for the amendments.

Douglas: In that case I'll second it.

Fry: Okay. Personally, I don't really feel comfortable about the proposed.... I personally am very comfortable with the Staff's conditions and my concern about water quality is addressed under Condition 5, and my only comment if it needs be any stricter than that I don't see it needing to be any stricter, I think Staff's got a clear view of that.

Leonard: The water quality condition was corrected to be Condition 6, I believe.

Fry: Okay. You're correct.

Leonard: On page 4 of the Staff Report.

Fry: So I just want to give a little legislative intent here for what its worth, I'm personally very concerned because they do in fact meet the water quality but I'm satisfied that the condition technically does that. As long as they're held to its standards. I'd be willing to entertain a motion but at this point I wouldn't really advocate any changes.

- Yoon:** Does the Staff think they release these conditions?
- Leonard:** We have a question for Staff.
- Yoon:** Do you think you can release these conditions?
- Hess:** Under the present enforcement mechanisms that we have available I would say that we don't have the resources to adequately police them. However, we have some suggested amendments before you.
- Fry:** We live in a complaint-driven system and so that unfortunately, or fortunately, that's the way our government enforces them.
- Yoon:** Yes, but you never pass them....
- Douglas:** You want to remember one thing and that is the fact that they are right along the freeway and anything they do they'll be seen. Those reports will come in, I can...
- Fry:** So, I guess the bottom line is, I'm not saying that everyone is going to vote for this but are there any amendments to my motion?
- Douglas:** I would like to but I'd like to have Mark's comments on those amendments. Do you have any problem with those amendments?
- Hess:** Yes, I do. If you recall, the applicant had suggested a couple of revisions to the ...
- Douglas:** I have them right in front of me.
- Hess:** Okay. Conditions 4 and 5 are the ones they've suggested amending. Condition 4, their revision to Condition 4, the only suggestion I would make to you if you were inclined to adopt their proposal is to delete the word "mobile home" where it says the applicant may replace the house with a mobile home used as an office and replace that with "the applicant may replace the house with a structure used as an office". I think it would be important not to imply that a mobile home is a
- Douglas:** With a structure instead of a mobile home?

Hess: Correct.

Al-Sofi: This would include a mobile home?

Hess: Pardon me.

Al-Sofi: Which would include a mobile home?

Douglas: No.

Al-Sofi: It would not include a mobile home.

Hess: It would be a structure. And if that structure happens to be a mobile home, if that mobile home can comply with building code requirements for an office use, then so be it. I just didn't want to have any kind of implication in this condition that we were in some back way approving a residence.

Leonard: Clarify Condition No. 4. The original administrative approval of a residence in relation to a farm management plan would be extinguished, if it hasn't already expired or lapsed, with this approval?

Hess: The intent of our originally proposed Condition 4 would stay the same, that they have to either remove the residence or obtain either a farm related approval for a residence or a non-resource residence. They would have those three options to deal with the existing mobile home.

But what they're suggesting is "that we want to have an office on the site". And, if we also want a residence in addition to the residence we'll come back through the process and do what it takes to get a residence.

That's the way I'm reading their Condition 4.

Fry: Mark, has Staff, if the word "structure" is put in there then you don't have a serious problem with their amendment?

Hess: That's correct.

Fry: What about 5?

Hess: Five I have some more problems with.

Yoon: INAUDIBLE?

Hess: Well, if you are in fact approving a commercial use, the commercial use may in fact require an office. I think that's all they're asking for recognition of.

Leonard: That's my understanding of what the proposed condition is.

Hess: Right.

Leonard: I would say that it makes sense to let them have a business office in a business.

Hess: Yes. And I think taking out the words "mobile home" and replacing them with "structure" accomplishes that.

Douglas: Okay. Number 5.

Hess: On number 5, number 5 is the one where it was dealing with the hours of operation and they'd asked you to amend that to limit the hours of operation for on-site processing to only those 8:00 to 5:00, Monday through Friday and 9:00 to 5:00 on Saturdays and then to not place those kinds of restrictions on vehicles entering or leaving the site. My concerns with that, and then they also asked you to delete the section that says business vehicles must be stored on site. So, I have a couple of concerns with their suggestion. One is that the vehicles that would be leaving earlier than 8:00 a.m. I assume would be operating under diesel engines, which requires them to be turned on and warmed up and this kind of noise and fumes, etc. would be going on at very early hours when the typical ambient noise level, and I'm using the DEQ's jargon there, but the ambient noise levels are fairly low in the morning, and that's the intent of limiting the hours is to make sure that their noise isn't producing use, or activity doesn't start up at a time when there's not a lot of other noise going on because the road hasn't picked up its traffic yet

Leonard: But it is consistent with EFU zoning of the area which allows farm operations. Farmers get up early; start

their tractors early, that's part of the game living in an EFU zone.

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Hess: That's true, but its up to you to decide if this particular use starts up its vehicles on the same kind of frequency and duration as a farmer would. I would contend that they don't. That farmers don't plow their fields every morning, six days a week.

Douglas: Inaudible.

Hess: They might do it for a month or so out of the year. A month or two. But you're the farmer. I'm not.

Yoon: Mark, but if we take all of their recommendations, which means take this wording out, then they say they don't have to store the vehicles there, how can there be any vehicles there _____ its four o'clock in the morning _____

Hess: That's the other problem I have. Storage of the vehicles, I suggested that to you because there was concern in some of the testimony that you heard that some of the vehicles may be stored where they are currently operating. And, if you were to take their suggestion or another amendment perhaps would be that the business vehicles must be stored on site unless applicable land use approvals are obtained for storage of commercial vehicles on another site. If you want to allow them to store the vehicles someplace for convenience or security reasons or whatever reasons they might have for storing their vehicles elsewhere, you might want to give them an out in the way that's worded. But, I was only intending to make sure that they didn't just run up the road and store them where _____

Yoon: Yes, but there's nothing to prevent them from storing it at their current place. I mean, you know they have to be operating or they can store the vehicle.

Hess: That's a storage of a commercial vehicle. If its in fleet storage then that's a commercial use.

Yoon: I mean this is a very poorly defined paragraph.

- Leonard:** At the Chauncey's location on Kaiser Road, that is an EFU zone?
- Hess:** That is correct.
- Leonard:** Would they require specific approval to store commercial vehicles, dump trucks, for use elsewhere?
- Hess:** Sure.
- Leonard:** Okay.
- Hess:** As you've seen in other applications for commercial uses in conjunction with farm uses. And, if they were, you know, storing their tractors that they were using on their farm operation at that location, clearly that would not require any kind of an approval. But if they semi-trailer rigs out there with Beaver Bark on them, that I would contend is not an activity that is going on at that site. Its an activity that's going on at this site. Therefore that commercial use is going on in two sites rather than the one site that you may approve tonight.
- I'm simply trying to make that connection so...
- Yoon:** And I want to understand this very clearly, I mean, any of those vehicles, we're not just talking about the trucks. We're also talking about the processing equipment too aren't we? So, in fact, if they don't have to store it then they would be moving it from their other site. And you're saying that it would require, it would be required for them to have an approval to basically park that where they are now.
- Hess:** Correct.
- Leonard:** Okay. We might be able to get at the concern here by changing Staff's recommendation to something that might say the vehicles be stored on-site or at another approved off-site location.
- Hess:** Exactly. That would address my concern with the vehicle storage issue.
- The other issue that they are asking about, the extended hours for the vehicles to come and go, I don't know how to....I can tell you my concern based

Yoon: That will be Kaiser Road. That won't be here. Because the vehicles won't be here.

Leonard: Well, wherever they come from.

Al-Sofi: Inaudible.

Yoon: No. They still can't operate MIXED VOICES. INAUDIBLE.

Leonard: The processing activity.

For me, if we can buy the notion that this a farm-related, commercial activity that is serving the EFU area and those farmers are as likely as not to get up before 8:00 and to need the product delivered so they can get on with their work before 8:00, then I would, I guess I'd be persuaded to support the applicant's proposed amendment to not restrict the hours of delivery.

Yoon: Well, I'm not going to support the thing anyway because I'm not still persuaded that this is farm related activity. Nursery related activity I can agree with, not farming.

Douglas: Well, nursery is farming.

Yoon: Well, I mean in the sense, and I know where the nurseries are in that area and I'm not persuaded this is the place for it to be.

Douglas: A large portion of our farmers and nurseries now...

Leonard: Do we have a motion on the amendment?

Fry: I tend to agree with your reasoning. My only concern though is except for vehicles entering or leaving the site I just don't want to give a blank check. I mean, I definitely agree and my own personal opinion is they have a right to enter the site around 6:00 a.m. because that's when things start happening out there. At least where I live. But I don't want, the way this condition is written, technically they could be running all night long and I don't like that idea

- either because everybody, including the creatures, need to sleep.
- Douglas:** They can't load or unload or anything like that. Its strictly ...
- Fry:** INAUDIBLE. I just think that, I'm trying to make this realistic and while I do agree those vehicles should be allowed to enter and leave the site in a much broader time frame I'm just not comfortable saying "anytime". And, maybe there is something you could help us on Mark.
- Leonard:** Say, 6:00 a.m. to 6:00 p.m.
- Fry:** I would feel comfortable with that. I don't know if they would but....
- Yoon:** If the vehicles are stored on site.
- Leonard:** Or other approved location.
- Yoon:** Yes, but they wouldn't be leaving or coming then.
- Fry:** Things really do start out at 6:00 a.m. in _____
- Leonard:** Do you have a motion?
- Fry:** Okay. I'll motion to amend my first motion to amend Condition 4 and to amend Condition 5 and to replace those conditions with the applicant's language as further amended, and then to be perfectly clear, the further amendments would be to replace the word "mobile home" by the "structure" and to add to re-eliminate the brackets around "the business vehicle must be stored on site". So, to retain that statement and to add to that statement "or at another approved off-site location". And then the final amendment is to add, and I may need help work seeking here, but except for vehicles entering or leaving the site between 6:00 a.m. and 6:00 p.m., well, what do you guys think of that. ...
- Douglas:** Do you think 6:00 p.m. is long enough for that? Some of them may come in late.
- Yoon:** Well, they said they were done at 5:00 in the afternoon.

- Fry:** Generally I think its the morning that's more important than evening.
- Douglas:** Yes, probably so.
- Fry:** I'm not sure if I got my English right though, its getting late. Except for vehicles entering or leaving the site between 6:00 a.m. and 6:00 p.m. Does that work? Mark?
- Hess:** Yes. That's would be correct.
- Al-Sofi:** I have a question here. "Entering and leaving". Can they be loaded and unloaded? Because it says on-site processing shall be limited but loading and unloading may not technically be classified....
- Hess:** That's a good question. They did testify that those trucks leave in the morning empty. And, but you could certainly add that.
- Fry:** Theoretically they could load the trucks the night before for leaving in the morning.
- Douglas:** They may have a delivery to make at 7:00 o'clock in the morning. How are they going to do it _____?
- Fry:** And so they load the truck the night before, which I don't have a problem with, or the day before, _____
- Hess:** The applicant indicates loading would occur in their 8:00 to 5:00 parameters.
- Al-Sofi:** Well, it doesn't state that. That's what I'm saying.
- Hess:** Right.
- Fry:** Well, the way I read it is "hours of operation for on-site processing"...
- Leonard:** And loading.
- Fry:** And we could add, okay, the fourth amendment then is add "and loading". Just make that totally clear that that was....
- Leonard:** And unloading.

Fry: Okay. Loading activity, does that cover it?

Yoon: Well, if I was going to support this, INAUDIBLE.

Al-Sofi: I'm not going to support this.

Yoon: Well, lest just move on. I call for the question.

Man: These hours of loading and unloading entering _____ Monday through Saturday?

Fry: Right. It shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday and 9:00 a.m. to 5:00 p.m. Saturday. I don't have a problem with that. And I don't hear any problem with the applicant.

Okay. Did you want me to summarize these changes?

Leonard: I think Staff has this.

Yoon: We need a second for your amendment.

Douglas: I'll second it.

Leonard: Okay. Discussion on the motion to amend?

Yoon: Call for the question.

Leonard: Call for the question. All those in favor of the amendments?

Opposed.

Okay. Four to one. The amendments pass. Is there discussion on the main motion now? Further discussion?

All those in favor of the application as amended, the Staff Report as amended?

Opposed. Okay. Motion carries three to two.

END OF TRANSCRIPT.



GLADYS McCOY, Multnomah County Chair

Room 134, County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
(503) 248-3308

M E M O R A N D U M

TO: Board of County Commissioners
Department Managers
Auditor
District Attorney
Sheriff
Clerk of the Board

FROM: Gladys McCoy *G.McCoy*
County Chair

DATE: July 3, 1991

RE: Absence

Please be advised, I will be on vacation the week of August 12 - 16 and will not be present for the board meetings ~~August 13 and August 15.~~

BOARD OF
COUNTY COMMISSIONERS
1991 JUL - 3 PM 2:55
MULTNOMAH COUNTY
OREGON