

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the matter of CU 19-90, correcting)
the Order dated December 4, 1990, af-)
firming the Planning Commission's denial of) ORDER 90-204
an application for a Conditional Use Permit.) CU 19-90

Whereas, on December 4, 1990, the Board of County Commissioners approved a form of final order in CU 19-90 before the form was approved for submission to the Board; and

Whereas, the Order dated December 4, 1990, reflects the Board's October 23, 1990, action affirming the Planning Commission's decision to deny the application, but is not in the proper form to reflect the Board's complete findings and reasons for its decision.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS ORDERS:

The Order of the Board dated December 4, 1990, in CU 19-90 is amended to read as set forth in Exhibit A attached hereto.

ADOPTED this 6th day of December, 1990.

(SEAL)



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By Gladys McCoy
Gladys McCoy, Chair
Multnomah County, Oregon

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By John L. DuBay
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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY**

In the Matter of the Review of)
the Planning Commission Decision)
which denied "Beaver Bark",)
a bark transfer and processing)
Operation in an EFU zoning district.)

FINAL ORDER
CU 19-90
90-198

This matter came before the Board of Commissioners (Board) for a hearing on October 23, 1990, upon an appeal by the applicant from the Planning Commission order denying the application for a conditional use permit.

The Planning Commission (Commission) held a public hearing on the Conditional Use request on August 13, 1990. After receiving testimony, the Commission denied the CU in a 4-2 split vote. The Commission adopted Findings supporting the denial decision at that same meeting. After the applicant appealed that decision, the Board heard the matter on October 23, 1990. After considering evidence, staff recommendations, arguments from the applicant, and other testimony, the Board affirmed the Planning Commission decision by a unanimous vote. The Board adopted the following findings and conclusions to support that decision.

I. NATURE OF PROCEEDINGS

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

"We, Lynne D. and Bowlus Chauncey, propose to stockpile, on a small scale, load

1 *and deliver various related wood by-products from an approximate 70' x 225'*
2 *area, incl., to nurserymen, animal farmers, businesses and private individuals.*
3 *The majority of our product is picked up at the mills and delivered directly to the*
4 *customer. Multnomah County Fair and Portland Meadows are two such*
5 *accounts.*

6 *The idea of Beaver Bark was conceived when it became increasingly more diffi-*
7 *cult to obtain at a retail level the cedar chips, shavings, and Hawg fuel needed*
8 *for our Arabian horse farm. After locating these products at the wholesale level,*
9 *we began stockpiling for our own use. Then several neighboring nursery grow-*
10 *ers began to notice and asked if we could get shavings, sawdust, and compost for*
11 *them. Word spread fast, even beyond our hill neighborhood. It was at this time*
12 *we determined that it was possible for our family to actually make a profit by*
13 *supplying these products to friends, neighbors, etc."*

14 The County was notified of the bark dust/bark mulch business in February, 1990
15 through a zoning violation complaint. Staff determined that the activity was not
16 authorized by any previous land use approvals and it therefore violated the County
17 Zoning Ordinance. Mr. and Mrs. Chauncey were notified of the zoning violation in a
18 letter dated May 23, 1990. The request for a Conditional Use was filed July 6, 1990.

19 II. APPLICABLE REVIEW STANDARDS

20 Under MCC 11.15.2012, the following conditional uses are allowed in the EFU zone:

- 21 (1) (B)(1) *"...Commercial activities that are in conjunction with farm uses".*
22 and
23 (2) (B)(5) *"...Facilities for the primary processing of forest products, pursuant*
24 *to ORS 215.213(2)(i)".*

25 These uses may be permitted when found to satisfy *Conditional Use Approval Crite-*
26 *ria* in MCC .7105 – .7640. Based on testimony heard on 8/13/90, the proposed busi-
 ness is not "primary processing of forest products", since the bark material brought to
 the site is already ground. The proposed use is "secondary" processing of the forest
 product, since the bark is re-ground on the site. Therefore, the application may be
 permitted only as a commercial activity that is in conjunction with farm use.

 The following section presents findings regarding the proposed Conditional Use Per-
 mit; the applicable standard is in ***bold italics***, applicant's responses are presented
 first in *italics*, followed by staff comments, which are hereby adopted by the Board.

1 **A. Conditional Use Criteria (MCC .7120)**

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

3 *"As we live in a farm and forest area, these products are already a common sight,*
4 *as are the trucks used to deliver them along with other farm and nursery prod-*
5 *ucts, i.e.: feed; hay; nursery stock; farm machinery and equipment; etc. The area*
6 *we are using is screened from existing neighbors by trees and shrubs.*

7 *We have been stockpiling, loading, and unloading these same products for many*
8 *years on this same site for our own personal use. It is only now that we are*
9 *attempting it on a commercial basis."*

10 **Staff Comment:** The Exclusive Farm Use area in which this property is located
11 is bounded on the east by the City of Portland, on the south by Washington Coun-
12 ty, on the west by Cornelius Pass Highway, and the north by Skyline Boulevard.
13 The area is generally low-density-rural-residential and agricultural in character.
14 There are a mix of rural non-farm residences, generally on small 2 to 10 acre
15 sites; and farm-related residences, generally on sites of 20 to 40 acres. The land
16 on this and surrounding sites slopes generally to the southwest, and is generally
17 rolling fields and pastures with scattered patches of woodlands. Staff observed
18 no other commercial or industrial uses within a mile of the site.

19 Kaiser Road is a two lane paved rural County road with gravel shoulders. It prin-
20 cipally serves only local residents and farmers in the area.

21 The bark-mulch business is not consistent with the area character in terms of its
22 scale (several truck trips per day), its intensity (diesel trucks and chipper/grinder
23 equipment operating several hours, 6-days/week), and its location (close to resi-
24 dences both north and south of the storage area). Similar noise or dust impacts
25 associated with common agricultural practices (*i.e.* tractors, plowed fields, har-
26 vesting equipment, *etc.*) are much more infrequent and dispersed over larger
27 areas. The diesel engine noise and fumes, chipping/grinding equipment noise,
28 vibrations and dust occur almost daily and in a static location (relative to neigh-
29 boring residences). The wood products processing activities and their off-site
30 effects are industrial in character (secondary processing of forest products) and
31 therefore inconsistent with the rural residential and agricultural character of the
32 area [Reference discussion below under Policy 13, Air, Water, and Noise Quali-
33 ty]. This wholesale/retail distribution operation is not typical of the farm and
34 rural residential land uses characteristic of the area.

1 **A(2) Will not adversely affect natural resources;**

2 *"It is not highly combustible, and as the soil in this area is composed entirely of*
3 *clay, the wood by-products prove to simply enrich it."*

4 **Staff Comment:** The Staff concurs that the effect on natural resources is likely
5 negligible; however, two neighbors, immediately adjacent to the wood products
6 operation complain that dust from the chipping and grinding equipment adversely
7 effects the air quality [Reference 8/1/90 letters from Mr. Thurber and Mr. McCal-
8 lum].

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

9 *"Our equipment is neat, clean, and in good order. It does not constitute an eye-*
10 *sore. However, the majority of it is parked by our barn, which is approximately*
11 *800' from the public roadway and basically hidden from view. We do not run any*
12 *equipment before 8:00 AM, nor after our closest neighbors, within 150', come*
13 *home from work. We do not operate on Sundays or holidays. To the best of our*
14 *knowledge, the Community has welcomed our attempt, and wished us well. We*
15 *have already contributed considerably to our local Skyline Auction, which bene-*
16 *fits the many childrens' organizations in the Skyline, Cornelius Pass, Sauvie*
17 *Island vicinity.*

18 *It is important to note that our land was within the Portland City limits for many*
19 *years, until, after six (6) exhaustive years of concerted effort, we became the first*
20 *to successfully de-annex from the City. Per our request, it was at that time desig-*
21 *nated EFU. We did this in order to ensure the maintenance of all 33.18 acres in*
22 *its entirety as a rural area for our family's future generations. This is a family*
23 *endeavor."*

24 **Staff Comment:** The Staff concurs that the use likely has minimal adverse
25 effects to surrounding farm or forest uses. The almost daily truck traffic on the
26 narrow, winding rural road may conflict with transport of tractors and other farm
27 equipment on the road; however, staff did not observe or receive reports of such
28 conflicts.

29 The dust created by the chipping and grinding of wood products may adversely
30 effect some crop potential on nearby farm land; however, staff did not observe or
31 receive reports of such effects.

1 **A(4) Will not require public services other than those existing or pro-**
2 **grammed for the area;**

3 *"Our property is located in an area of Multnomah County that receives no public*
4 *services now, and our operation has no need for them."*

5 **Staff Comment:** The Staff concurs that the use likely creates no additional pub-
6 lic service demands.

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

10 *"It does not interfere with the habitat of the many animals that live in our area,*
11 *which is not identified as a "Big Game Winter Habitat" area by the State."*

12 **Staff Comment:** The site is not identified as a big game habitat area in the Com-
13 prehensive Plan or by the Oregon Department of Fish and Wildlife.

14 **A(6) Will not create hazardous conditions;**

15 *"It poses no hazard, public or otherwise."*

16 **Staff Comment:** Kaiser Road is a two lane paved rural County road with gravel
17 shoulders. It principally serves local residents and farmers in the area; it is not a
18 primary through route for the County or region, and large truck traffic is not typi-
19 cal for this road. The road curves and dips throughout much of its route. It takes
20 a 90-degree turn at the northeast corner of the site and near the southeast corner
21 as well.

22 The use requires that several large trucks (18-wheelers) drive to and from the site
23 each day. In addition, smaller trucks are reportedly used to deliver the mulched
24 wood products to their destinations – typically adding numerous truck trips each
25 work-day on a local rural road. This type of daily truck traffic – on a narrow
26 rural road which was not designed for nor characterized by such traffic – creates
27 hazards to the neighborhood.

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

29 The following policies of the County's Comprehensive Plan are applicable to
30 this request: Policy 2 (Off-site Effects), Policy 9 (Agricultural Land), Policy 13

(Air, Water and Noise Quality), Policy 14 (Development Limitations), Policy 15 (Areas of Significant Environmental Concern), Policy 16 (Natural Resources), Policy 37 (Utilities), and Policy 38 (Facilities).

a. Policy 2 – Off-Site Effects.

The County's Policy is to apply conditions to its approval of land use actions where it is necessary to:

A. Protect the public from the potentially deleterious effects of the proposed use; or

B. Fulfill the need for public service demands created by the proposed use.

"Our proposal is to make an existing personal operation a commercial one. To date it has not had any "off-site" effects on surrounding properties or the community. Nor is there any reason for it to pose any deleterious effects in the future. Also, it creates absolutely no need for additional public service. It is located on level ground over 300' from nearest creek bed. There is easy and safe ingress and egress to and from Kaiser Road, a very limited traffic roadway. Trees and shrubs screen the operation from adjacent neighbors in all directions."

Staff Comment: The Staff concludes the use creates off-site effects to surrounding residences in terms of noise, dust, and traffic. See discussions under A(I), Consistency With the Area Character; A(6), Hazards, and Policy 13, Air, Water, and Noise Quality.

b. Policy 9 – Agricultural Land.

'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 agriculture use; and

D. Not impacted by urban service; o

1
2 **E. Other areas, predominantly surrounded by commercial**
3 **agriculture lands, which are necessary to permit farm practices**
4 **to be undertaken on these adjacent lands.**

5 **The County's policy is to restrict the use of these lands to exclu-**
6 **sive agriculture and other uses, consistent with state law,**
7 **recognizing that the intent is to preserve the best agriculture**
8 **lands from inappropriate and incompatible development.**

9 *"Of the 33.18 acre farm and forest land we farm in wheat, rye, timber, nursery*
10 *stock, horses, and children, an area approximately 70' x 225' is devoted to*
11 *storage and loading of retail and personal use forest by-product. We supply much*
12 *of the surrounding agricultural and nursery stock land with wood by-products for*
13 *varied uses. Our predominantly clay soil is highly enriched by these forest by-*
14 *products for future additional agricultural use."*

15 **Staff Comment:** The County's policy is to preserve the best agricultural lands
16 from inappropriate and incompatible land uses. As noted above under A(1),
17 **Consistency With the Area Character**, the commercial/industrial nature of this
18 wood products business is not consistent with the agricultural character of the
19 vicinity.

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

21 **Multnomah County, recognizing that the health, safety, welfare,**
22 **and quality of life of its citizens may be adversely affected**
23 **by air, water and noise pollution, supports efforts to improve**
24 **air and water quality and to reduce noise levels. Therefore,**
25 **it is Multnomah County's policy to:**

26 **A. Cooperate with private citizens, businesses, utilities and pu**
27 **lic agencies to maintain and improve the quality of air and**
28 **water, and to reduce noise pollution in Multnomah County.**

29 *"Storage and delivery of forest by-products cause no air pollution. All product*
30 *remains at ground level until loaded by farm tractor into trucks or into the barn.*

31 *Forest by-products stored at ground level do not cause hazardous leaching into*
32 *underground water supplies. In fact they act as a screen or filter for polluted rain*
33 *water.*

1 *The area in question is level ground over 200' from nearest creek bed.*

2 *Noise from truck and farm tractors necessary for loading or unloading of forest*
3 *by-products are a more than familiar sound in this predominantly agricultural*
4 *area, therefore do not constitute a noise hazard."*

5 **Staff Comment:** The Staff notes that the noise level, and the frequency and
6 duration of the noise, likely exceeds that typically associated with a residence or
7 most farm activities. While common farming activities may include the operation
8 of tractors or other noisy machinery, the frequency and duration of these activities
9 is only occasional, generally occurring during planting and harvest times of the
10 year.

11 The bark mulch-wood products processing activity, on the other hand, creates
12 noise effects on an almost daily basis, and for several hours each day. The princi-
13 ple noise effects are from diesel trucks delivering or removing the material, and
14 from the grinding and/or sorting machinery which is used in the operation. Staff
15 received correspondence from nearby residents regarding adverse noise and air
16 quality effects from the requested use. A neighbor, Mr. McCallum, writes about
17 noise and other aspects of the business in an August 1, 1990 letter: "...Using
18 two 40' bin trailers hauled by diesel tractor, bark and sawdust is
19 hauled onto the property and dumped. The material is then piled
20 and moved using one large front end loader, and several smaller
21 loaders. Material containing large junk or rocks is sorted using a
22 machine which is a diesel driven tub of approximately 10' diameter.
23 This equipment spins and shakes until the chunks have been
24 mulched, and heavier objects are segregated, a process requiring
25 several hours daily. Finally, the material is reloaded to three stan-
26 dard dump trucks which haul away to landscape projects. An
27 average day might be two large loads in, ten dump trucks out,
28 and several hours of moving material in and out of the power
29 sorter/sizer. ... All this heavy equipment is operated with maximum
30 power and minimum muffling. Often several machines are operat-
31 ed simultaneously. ... In fact, our house and property serve to shel-
32 ter the Chaunceys from the intense noise and billowing clouds of
33 wood dust and dirt which arise from their industry." Mr. McCallum
34 resides immediately south of the area used for storage and transfer of the bark and
35 sawdust materials (9847 NW Kaiser road; Tax Lots '13' & '40').

36 Additional comments regarding noise and air quality effects from this use are
37 presented in an August 1, 1990 letter from Mr. Thurber, the neighbor immediately
38 north of the bark-mulch storage and transfer site (9865 NW Kaiser Road; Tax Lot
39 '39'). He writes "...The Chaunceys employ a machine which grinds

1 up the bark chips into smaller chips or mulch. The machine is one
2 of the noisiest, foulest implements I have ever encountered. On the
3 average, it seems to be run between 3 and 5 times per day for
4 between 30 and 45 minutes each time. When this machine is oper-
5 ating, it is impossible to carry on a normal conversation outside my
6 house, anywhere on my property. Although there is a heavily
7 wooded ravine between my house and their operation, the
8 machine is only about 250 feet from my house, and the topogra-
9 phy of the ravine has always been such that all noises from that
10 area are not just audible, but seem to be magnified. ... Even inside
11 the house, the noise of the machine is obnoxiously obvious, even if
12 a radio or television set is on. And even when the machine is not
13 on, the Chaunceys use tractors and front-loaders to move and
14 load bark products, which by themselves are a significant increase
15 in the noise levels in our neighborhood."

16
17 Planning staff visited the site on July 31, 1990 and observed and heard the
18 chipper/grinder equipment in operation. They concur that the noise effects to the
19 immediately adjacent properties are significant. For these reasons, the Staff con-
20 cludes the proposed commercial use and wood products processing does not com-
21 ply with Policy 13 of the Framework Plan.

22
23 Based upon testimony received, the Staff finds that adverse air quality effects
24 from the operation are significant, and therefore the proposal is not consistent
25 with Policy 13.

26 **d. Policy 14 - Development Limitation**

**The County's policy is to direct development and land form
alterations away from areas with development limitations
except upon a showing that design and construction tech-
niques can mitigate any public harm or associated public
cost, and mitigate any adverse effects to surrounding per-
sons or properties. Development limitations areas are those
which have any of the following characteristics:**

A. Slopes exceeding 20%;

B Severe soil erosion potential;

C. Land within the 100 year flood plain

D. A high seasonal water table within 0-24 inches of the sur-

1 *face for 3 or more weeks of the year;*

2 **E. A fragipan less than 30 inches from the surface;**

3 **F. Land subject to slumping, earth slides or movement.**

4 *"Our operation is located on high level ground no where near any area of land*
5 *with a high seasonal water table. Loading and unloading of timber by-products*
6 *does not require excavation or any changes in the lay of the land. As the land is*
7 *level and we are placing product on top of it, we thereby reduce any potential*
8 *naturally occurring erosion problems."*

9 **Staff Comment:** The Staff concurs.

10 **e. Policy 15 – Areas of Significant Environmental Concern**

11 **The County's policy is to designate as areas of significant envi-**
12 **ronmental concern, areas having special public value in**
13 **terms of one or more of the following:**

14 **A. Economic value, e.g., A tourist attraction;**

15 **B. Recreation value, e.g. , rivers, lake, wetlands;**

16 **C. Historic value, e.g., Historic monuments, buildings, sites or**
17 **landmarks;**

18 **D. Educational research value, e.g., ecologically and scientifi-**
19 **cally significant lands;**

20 **E. Public safety, e.g., municipal water supply watersheds, flood**
21 **water storage areas, vegetation necessary to stabilize river**
22 **banks and slopes;**

23 **F. Scenic value, e.g., areas values for their aesthetic appear-**
24 **ance;**

25 **G. Natural areas value, e.g., areas values for their fragile char-**
26 **acter as habitats for plant, animal or aquatic life, or having**
 endangered plant or animal species, or for specific natural
 features, or valued for the need to protect natural areas; or

1 **H. Archeological value, e.g., areas valued for their historical,**
2 **scientific and cultural value.**

3 *We are not located near a shoreline nor in an area of critical or unique habitat for*
4 *man or animal. We are not in an area with significant historical or archeological*
5 *features. We are not proposing any change in landscape that would impact views,*
6 *vistas or public value, etc. Our land does not contain flood water storage areas."*

7 **Staff Comment:** The Staff concurs.

8 **Policy 16 - Natural Resources**

9 **The County's policy is to protect natural resource areas and to**
10 **require a findings prior to approval or a legislative or quasi-**
11 **judicial action that the long-range availability and use of the**
12 **following will not be limited or impaired.**

13 **A. Mineral and aggregate sources;**

14 **B. Energy resource area;**

15 **C. Domestic water supply watershed;**

16 **D. Fish habitat areas; and**

17 **E. Wildlife habitat areas; and**

18 **F. Ecologically and scientifically significant natural area.**

19 *"Our land is located in an area of mostly open farm land with small stands of fir*
20 *trees. It does not contain mineral, aggregate, energy, or watershed areas. Nor are*
21 *there significant habitat or ecological areas as designated by government poli-*
22 *cy."*

23 **Staff Comment:** The Staff Concur

24 **Policy 37 - Utilities**

25 **The County's policy is to require a finding prior to approval of a**
26 **legislative or quasi-judicial action that:**

1 **Water and Disposal system**

2 **A. The proposed use can be connected to a public sewer and**
3 **water system, both of which have adequate capacity; or**

4 **B. The proposed can be connected to a public water system, and**
5 **the Oregon Department of Environmental Quality (DEQ) will**
6 **approve a subsurface sewage disposal system on the site; or**

7 **C. There is an adequate private water system, and the Oregon**
8 **Department of Environmental Quality (DEQ) will approve a sub-**
9 **surface sewage deposal system; or**

10 **D. There is an adequate private water system, and a public**
11 **sewer with adequate capacity.**

12 *"Public water, sewer, and drainage systems are unavailable in this area of Mult-*
13 *nomah County. With no public facilities on the grounds, we have no need for*
14 *water or a subsurface sewage disposal system. Neither does our operation utilize*
15 *or have need for public energy or communication systems."*

16 **Staff Comment:** The Staff concurs.

17 **Policy 38 – Facilities**

18 **The County's policy is to require a finding prior to approval of a**
19 **legislative or quasi-judicial action that:**

20 **School**

21 **A. The appropriate school district has had an opportunity to**
22 **review and comment on the proposal.**

23 **Fire Protection**

24 **B. There is adequate water pressure and flow for fire fighting**
25 **purposes; and**

26 **C. The appropriate fire district has had an opportunity to**
 review and comments on the proposal.

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"Timber and bark products and by-products are not designated hazardous or highly combustible. However, our local fire department is within six (6) miles and the Washington County Fire Department that answers calls in our area is less than four (4) miles. Our well is more than adequate at a tested 42 gpm.

Our facility has no impact whatsoever upon the local school district; and we rarely see police or County Sheriffs in this area."

II. FINDINGS OF FACT

The applicants own two contiguous tax lots: a 7.48 acre parcel (T.L. '45') – where the bark and mulch is stored and processed, and a 25.70 acre property (T.L. '44') – where they maintain two houses: a primary farm related residence, and a “farm help” residence (reference PRE 50-81). The 33.18 acres generally slopes gently to the west and south. It is principally open field and pasture land, with some wooded areas in the northeast and northwest portions of the site. The two houses are in the south-central portion of the 33.18 acres. A barn near the north boundary adjoins the bark-mulch storage area. A gravel drive loops though the site. It accesses Kaiser Road at the southeast corner of Tax Lot '45' and again at the north end of the Kaiser Road frontage on Tax Lot '44'.

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1 **3. Zoning and Comprehensive Plan Designation**

2 The plan designation of the parcel is **Agriculture**. The parcel is zoned EFU,
3 **Exclusive Farm Use**.

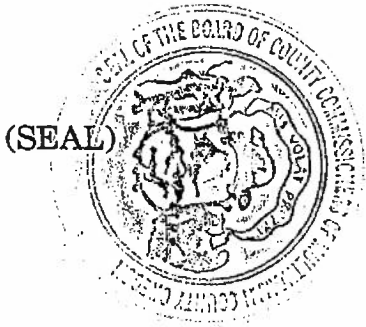
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5 **III. EVALUATION OF THE APPLICATION**

6
7 After hearing testimony, arguments and weighing the evidence, the Board
8 finds the Conditional Use proposal does not satisfy the approval criteria and
9 review standards based on the facts and for the reasons stated in the forego-
10 ing staff comments which are hereby adopted by the Board.

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15 **V. CONCLUSIONS AND DECISION**

16
17 Based on the above findings and evaluation, the Board of Commissioners
18 concludes that the proposed Conditional Use does not comply with the applica-
19 ble standards of the Multnomah County Code. Therefore, the Board of Commis-
20 sioners affirms the Planning Commission decision and denies the Conditional
21 Use requested in CU 19-90.

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3 DATED this 6 day of December, 1990
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Gladys McCoy
Gladys McCoy, Multnomah County Chair

REVIEWED:
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: *John DuBay*
John DuBay, Chief Deputy County Counsel