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### Thoughts on the need for a definition of the Primary Processing of Forest Products -

My name is Mark Fritch and it is my land use issue in Clackamas County that is the reason that you are all contributing your time on this committee. There are many things that I've seen and learned over the last 3.5 years that may clarify some of the issues you are all dealing with currently. My experience may offer insights pertinent to your work on defining what the Primary Processing of Forest Products (PPFP) is. I will make my points regarding PPFP first. I will then follow it with some background information that support my statements.

The Oregon Forest Practices Act (OFPA) was passed in 1971 and every county in the state was required to then implement their own Zoning and Development Ordinances (ZDO) to make the land use activities within the county conform to the OFPA. Some counties such as Washington County wrote their ZDO which are both quite complex and quite different from the text of the OFPA, yet they serve to meet the state land use laws. Clackamas County took a different approach and adopted the state laws almost verbatim as their ZDO's.

The Clackamas County ZDO 406 covers the issues of land use on timber resource (TBR) land. I was originally held to the ZDO that said that on TBR land you could raise timber and have a home if it was grandfathered in or met a land use template. The ZDO went on to say that with a Conditional Use Permit (CUP) you could have a 'logging shop' or a 'permanent facility for the primary processing of forest products.' In both the Oregon Revised Statutes (ORS) and the ZDO, no definition of PPFP was given and the only PPFP mentioned by name are sawmills. This is where our current problem began forty three years ago.

For forty one years, county planning departments were free to determine what was and was not a PPFP and on that basis issued their CUP's. My CUP request was the first case to ever be challenged as to whether or not it was actually a PPFP. In his review of my request, the hearings officer (HO) recognized or was shown that there had never been a challenge as to what was a PPFP and that no case law or definition had been created in the forty one years since the OFPA was passed into law. The hearings officer then wrote his own definition of PPFP and determined that my operations did not fit his ideas of a PPFP.

I felt that this finding was grossly in error. I immediately filed for a LUBA appeal within the allotted seven days. I then approached the Clackamas County Commissioners to see if the issue could be remanded to the county before we had to go to LUBA. The board of commissioners contacted the Clackamas County counsel and they agreed that it should be brought back to the county level for additional hearings. I secured the commissioners' agreement about ten days after my CUP was declined.

My opponent's attorney filed a motion preventing the issue from being remanded saying that there was precedence on the issue saying that I would have had to have the commissioners pass the remand within the same seven days as my application to LUBA. I missed the opportunity to bring the review back to an open discussion by about three days. It was at this time that I realized that this ruling, if not overturned, would become a de facto state law that would become the measure for all future land use requests for siting any PFP that was not a sawmill. While this was very important to my case, I also realized that it held the opportunity to cause a lot of excess time and expense for future land use applicants, county planning departments and for the general public. I made it my personal commitment correct this. I did not do this just for my sake, but because I consider myself to be a dedicate professional forester, educator and business owner that has a commitment to my county and state in regards to matters of forestry and the policies that govern them.

The heart of the matter centers on the fact that there was no definition of PFP place in the ORS and ZDO. This definition would have clarified the decision process for me, the county planning staff, the hearings officer and the community members. This lack of a definition of PFP has cost me over \$100,000.00 personally and I have no idea what the costs have been to the county, state and the general public as well. Since the determination made by my HO has become the legal precedent, it now holds the potential of costing the counties, the state, forest land owners, processors and the public countless dollars and hours to argue over what is and is not a PFP. A definition is needed.

In the absence of a definition, the HO in my CUP defined PFP for himself. I felt that this definition was a big enough issue that it should not have been done in a vacuum by the HO alone. I felt that the determination of my CUP should have been put on hold while we dealt with the definition as a group. This was my intent in requesting that the issue be remanded to Clackamas County. The problem, in my opinion, was that he looked at the term PFP and focused on the adjective 'primary' without looking at the noun 'process.' This is critical. Adjectives by themselves are nearly worthless until they are applied to the related noun. The HO looked at my process and said that the first step, peeling the logs, was the 'entire primary process' rather than the first step within the process. In fact, peeling the logs is only one of the first steps within the process of creating a logwork package.

In the original ORS and ZDO it states that you can have, "..... a permanent facility for the primary processing of forest products." That's the law, it is very clear and it is not being called into question. No new uses were ever being asked for in any request that I made. In every case it was purely a request for a definition so the existing law could be accurately executed. Sawmills are the only named PFP and this is not being called into question. However, the law did not limit PFP to being only sawmills. In the absence of a definition and with only sawmills noted as PFP, it seems that the intent of the law may well have been to point to what type of operations would be PFP by comparing them to sawmills. I will offer more on this in shortly.

Now we get to the first major problem in not having a definition of a PFP. While the lack of this definition has given county planning departments a lot of freedom and latitude over the years to do what works within their jurisdiction, that freedom is now gone. The precedent set in my case can and has been used to challenge other PFP operations already. Anytime there is now opposition to a new CUP request, each use other than a 'sawmill' must now be argued against the precedence set in my situation. That will be unbelievably expensive in time and money that everyone can put to better use. A definition of PFP is needed.

In view of the need, the question now becomes one of how to write a definition that best serves the needs of all involved. The first thing that comes to mind for me is that we need a definition of PFP and not a list of PFP's. In the end it would be a definition that would be used to populate the list any way. The reason for a definition is two fold. It would allow the public, landowners, processors and county planners to all know what they were dealing with before they start a CUP. If a processor wanted to site a new operation on TBR land they would know in almost every case whether they should pursue the CUP of that site or look for another site. It provides clarity and sets the boundaries before the process starts. Even with the definition of PFP, there is still no guarantee whether or not a particular CUP will be granted. All CUP applications still need to pass all the other criteria set forth in each county's regulations. This is not carte blanche for the processors nor is it completely restrictive. It would serve everyone well.

Secondly, a definition would restore the freedom of interpretation to the county planning departments. In the past, a lack of a definition and no precedent gave the county planning agencies maximum flexibility. Planners are now very limited by virtue of the precedent set in my case. A definition would restore nearly all of the freedom that was present before my case was determined.

I believe that simply creating a list of PFP's is not a good approach to solving the problem. While a list is fine if a processor is on the list, the problem is just recreated each time a new process is developed. With each new process developed, the process of determining if the activity was a PFP or not would happen all over again. The use of just listed PFP's would not protect new developments in the forest products industries. A good definition in the beginning would solve the problems downline.

As with the original ORS and ZDO which served us well for many years, it may be wise to incorporate a list of currently recognized PFP's to speed up the planning process. This two step approach would provide a definition for when it is needed and then a list of 'recognized primary processes that include, but are not limited to,.....' to make the process more efficient. The U.S. Forest Service document 'PNW-GTR 868 report, Oregon's Forest Products Industry and Timber Harvest, 2008: Industry Trends and Impacts of the Great Recession through 2010,' soon to be updated is a good basis for creating a list of processors since it shows the evolution and periodic recognition of newly recognized PFP's being added to their list. This report lists at least 16 PFP's recognized by the USFS. A list of these is attached at the end of this report.

There is one person in Oregon that I believe is the most knowledgeable on the topic of primary processing as any one I have met. Scott Leavengood is the director of the Wood Innovation Center at OSU School of Forestry. It is his job to track all current, new and upcoming forest products developments. If there is any one person in the state that would be aware of the need for a definition or what that definition might be, it is Scott. He is on the leading edge of what is happening in making the best use of our forest resources.

When I first realized that a definition of PFP was needed at the state and local levels, I called Scott. He asked if I wanted a complex, technical answer or the simple, down and dirty answer. Given that the most simple explanation is most often the most accurate, I asked for the down and dirty version. Scott laughed and said, "If you have log decks, you're a primary processor." That pretty well nails it. If you start with a raw log, or other raw, forest-harvested product (i.e. floral foliage, mushrooms, medicinals) and process it, you are a PFP.

I want to return to my previous discussion on how to determine what a PFP is. This one last point deals with my operation in particular. Since sawmills are the only PFP named in Oregon ORS

and Clackamas County ZDO, it is possible to use sawmills as a template for evaluating other PFP's. Remember the operative term being considered is 'primary processing.' Process is defined as,

*"a series of actions or operations conducing to an end; especially : a continuous operation or treatment especially in manufacture "*

This is clearly what we are dealing with here. Now you can apply the adjective 'primary.' I suggest that the HO determined that peeling logs, the first step in the primary processing of logs into a logwork package, was the entire primary process. This does not hold up to scrutiny when compared to the recognized PFP of sawmilling. There is no sawmill that I've ever seen that puts their logs through their debarker, kicks them out of the mill and says that they're done with the sawmilling process. They haven't even gotten to the first saw yet. All sawmills go on to cut, shape, trim, finish, stack and ship their product which is then used to make other things such as houses, roof trusses, pallet boards, cabinets and furniture. The same is true with log building. Peeling the logs is only one of the initial steps within the process. We then go on to mark, cut, shape and finish each log. Yes, we are not using sawmill equipment when we do logwork, but our steps are much like the sequence of a sawmill. Even when a logwork package is shipped and reassembled, there is still much work to do to the logwork before the carpenters begin their processes.

My opponents have said that I'm building houses and not doing primary processing. To that I offer that we are not installing any floors, cabinets, plumbing, electrical, windows, doors, finishes, insulation, sealants or roofing in the primary processing of raw logs into a logwork package. We are not creating double-wides that get towed to a site, slid together and the utilities attached. Saying that creating a logwork package is building a house is like saying that several units of 2x6 and OSB are a house. Yes, our lumber is really funky and weird, but it is only a building material and not a complete house. Our tools and processes are quite primitive in nature, but when a logwork package is done and shipped out, the real work has only just begun. Pre-building logwork packages is not that different from sawmilling.

In conclusion, I believe that the work of this committee is quite valuable. It will save time, money, confusion and grief for landowners, community members, processors and county planners to name a few. It will simplify and clarify a system that worked well for over forty years and has recently been upset. A definition that is simple and clear is the best result since it will return the freedom and certainty to the public and agencies. It will save confusion and does not allow any new uses on timber resource land. The more simple the definition, the more useful it will be. All we need to do is make sure that we are defining the noun 'process' and not just the adjective 'primary.' Or as Scott Leavengood said, "If you have log decks, you're a primary processor."

I also want to thank the committee for taking the time from some very busy schedules to do this work. It is probably more valuable than you realize right now. I am also willing to support the work of the committee in any way you might need. Please don't hesitate to call me.

## List of Primary Processes of Forest Products from USFS PNW-GTR 868 -

This list of primary processes utilizing raw forest products began with a review of the U.S. Forest Service General Technical Report PNW-GTR-868 entitled "Oregon's Forest Products Industry and Timber Harvest, 2008: Industry Trends and Impacts of the Great Recession Through 2010." The list was further developed with input from people within the Oregon Forest Industries.

All of these processes begin with raw logs or other raw, forest-harvested material. The materials then pass through their multi-step, primary process and create a product that is then shipped to secondary processors. The USFS GTR mentions engineered wood products, board plants and plywood producers as primary processors. These would most likely be considered secondary processors unless they produce their own lumber, pulp and veneer on the same site as their final product is produced. While the end point of each primary process may vary a bit based on the individual process, all begin with a raw, primary forest product and then ship their finished product to a secondary processor.

1. Sawmills
2. Veneer plants
3. Plywood plants \*
4. Chipping facilities
5. Pulp and board facilities \*
6. Log sorting, debarking, grading and transportation facilities
7. Bark product producers
8. Utility pole and piling producers
9. Fence Post and Rail manufacturers
10. Firewood processors
11. Woody biomass energy producers
12. Fuel pellet producers
13. Log home builders
14. Log house log providers
15. Log furniture manufacturers
16. Shake and shingle mills
17. Cedar products producers
18. Engineered wood products producers \*

\* - These processes could be argued to be PFP only if their production starts with raw logs. For example, veneer plants are often stand-alone facilities that ship the veneer to a plywood layup plant. If the veneer plant and the plywood plant were on the same site and the veneer was passed directly to the layup stage, the plywood plant might well be considered a PFP.

There are other primary processors of minor forest products that are not made from raw logs. It may be wise to add mention of these to protect future uses that are not common now. Some of these include, but are not limited to:

1. Christmas tree processing and shipment facilities
2. Forest based floral materials
3. Wild harvested mycology products processors
4. Wild harvested fruit and berry processors

Secondary processors of forest products begin with a material that has been through a primary processing facility. A list of these secondary processors might commonly include the following processes.

1. Plywood mills
2. Paper and board mills
3. Truss plants
4. Production framing panel plants
5. Engineered wood products plants
6. Glulam beam manufacturers
7. Pallet board manufacturers
8. Cabinet and furniture manufacturers.