



Oregon

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May 7, 2015

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Katherine Daniels, Farm and Forest Lands Specialist

SUBJECT **Agenda Item 10, May 20-21, 2015 LCDC meeting**

RULEMAKING REGARDING A DEFINITION FOR PRIMARY PROCESSING OF FOREST PRODUCTS

I. AGENDA ITEM SUMMARY

The Land Conservation and Development Commission (commission) continued its March 12, 2015, public hearing on draft amendments to Oregon Administrative Rule (OAR) chapter 660, division 6, to its May 2015 meeting to accept additional testimony and to adopt proposed rule amendments. The proposed amendments would create a definition for the primary processing of forest products in forest zones.

For additional information about this report, please contact Katherine Daniels, Farm and Forest Lands Specialist, at 503-934-0069 or at katherine.daniels@state.or.us.

II. BACKGROUND

“Primary processing of forest products” is a use that is permitted outright in forest zones if it is temporary and portable (OAR 660-006-0025(3)(d)) and is subject to discretionary approval if it is a permanent use (OAR 660-006-0025(4)(a)). However, “primary processing” is currently undefined in statute and rule as it applies to forest land. A recent Land Use Board of Appeals opinion and the introduction of an unsuccessful legislative bill in 2014 to define the use prompted the Association of Oregon Counties to request the commission to define primary processing in rule.

The commission initiated rulemaking and appointed a rules advisory committee (RAC) at its September 25–26, 2014, meeting. The RAC met three times between September 2014 and January 2015 to develop a definition. The RAC agreed on the basic components of definition but could come to no consensus on some of the details. On March 12, 2015, the commission reviewed a department status report, accepted public testimony, continued the hearing to the May commission meeting and directed staff and the RAC to continue to work on the issues of scale and impact. Materials related to these RAC meetings and commission hearing are available at <http://www.oregon.gov/LCD/Pages/Forest-Processing.aspx>.

Among the key issues discussed by the RAC has been the difference between “primary” and “secondary” processing. Existing literature generally states that primary processing involves the initial processing steps that result in a component that is then either shipped to market in a semi-finished state or utilized in a secondary processing step to manufacture a finished product. For example, primary processing could result in the production of lumber or posts, while secondary processing could involve the manufacture of furniture or cabinetry. There can be many steps involved in these two processes and often a gray area where the two meet.

Small-scale primary processing that also involves secondary processing (*e.g.*, manufacturing lumber and outdoor furniture) can potentially be approved as a home occupation, provided the processing takes place within a dwelling or permitted outbuilding.¹ This option could make sense for many small woodlot owners producing craft products from forest materials.

In recent years, primary processing has diversified significantly to involve a number of non-timber forest products, such as floral materials, medical and edible materials, and woody biomass and fiber from timber. Some of these forest products require only preparation, such as cleaning, treating, sorting or packaging, and not any kind of processing, before they are shipped to market; an example of this is mushroom collection. Others require only one or two primary processing

¹ The regulations for home occupations reside in ORS 215.448. They provide:

The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

- (a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
- (b) It shall employ on the site no more than five full-time or part-time persons;
- (c) It shall be operated substantially in:
 - (A) The dwelling; or
 - (B) Other buildings normally associated with uses permitted in the zone in which the property is located; and
- (d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

steps and not any secondary steps before they are shipped to market; an example of this would be biofuels conversion, which requires only pyrolysis (a thermal treatment) and densification or pre-treatment and fermentation.

III. RULES ADVISORY COMMITTEE MEETING

Following the March commission meeting, staff contacted RAC members, suggesting several potential alternative approaches to the scale and impact issues, which could be used singly or in various combinations. The RAC held a meeting on April 20, 2015, at which four of the 11 RAC members attended. Four of the absent members, however, had submitted written responses to the optional approaches presented by staff.² The attending RAC members held a productive discussion and, while considering the input from absent members, made progress towards agreement in most areas. These options and RAC members' response are explained in section IV of this report.

IV. RULE OPTIONS

A. Areas of Agreement in Principle

A majority of RAC members support the following base definition, although nearly all members support the addition of language that clarifies the base definition:

Primary processing of forest products means the initial treatments of logs or other forest plant or fungi materials to prepare it for shipment for further processing or to market. Treatments may include, but are not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion or other similar methods of initial treatments.

This proposed definition recognizes that primary processing can involve multiple initial treatments and that many types of forest products besides logs exist. The definition is somewhat broad and open-ended, to allow counties discretion in reviewing proposed uses.

² Mark Nystrom, Association of Oregon Counties; Steve McCoy, 1000 Friends of Oregon; Jim James, Oregon Small Woodlands Association; and Mike McCallister, Clackamas County, attended the RAC meeting. Dave Hunnicut, Oregonians in Action; John Borge, citizen; John Tokarczyk, Oregon Department of Forestry; and Linc Cannon, Oregon Forest Industries Council, provided responses to questions prior to the meeting. Those who neither attended the last meeting nor sent in responses to questions include Joy Vaughan, Oregon Department of Fish and Wildlife; Jonathan Manton, Central Oregon LandWatch; and Rhett Lawrence, Sierra Club.

B. Areas without RAC Consensus

1. Extent of Primary Processing

Some RAC members, including the Oregon Small Woodlands Association (OSWA), Oregon Forest Industries Council (OFIC) and Oregonians in Action (OIA) support a more generous definition of primary processing.

Option 1: Include all on-site processing. This proposal would amend the first sentence of the base definition to state:

Primary processing of forest products means the initial treatments of logs or other forest plant or fungi materials **at a single location and by the same operator** to prepare it for shipment for further processing or to market.

The intent behind this proposed wording is to clarify that *all* of the processing that takes place at the original location by the same operator is “primary processing,” and that secondary processing is triggered when the product is transferred to another location or another operator. Other RAC members pointed out that the proposed wording does not achieve the intended goal because only the initial treatments identified in the base definition are allowed. Commissioner Cribbins additionally noted that there are small mills that perform one or two types of primary processing, such as debarking and sawing, and then pass the product on to a second small mill that might dry or plane the wood. This division of expertise facilitates efficiencies in small facilities. There was consensus among RAC members early in the deliberations that all of these activities are primary processing activities. Thus, the proposed wording could inadvertently narrow the scope of the definition. Finally, “at a single location” would not be applicable to temporary and portable facilities, which are not necessarily stationary.

Option 2: Expand the range of treatments included in the definition. The RAC member representing OSWA will propose an expanded range of treatments that fall under the definition of “primary processing of forest products” for the commission’s consideration. This wording is not available at the time of preparation of this staff report because the shortcomings in the proposed wording for Option 1 were only recognized by the RAC at its final meeting on April 20, 2015.

Option 3: Maintain the existing draft definition. A majority of RAC members concurred with the listing of initial treatments to be included in the definition of primary processing.

The department recommends at this time that the commission select Option 3. Department staff will provide an analysis of forthcoming proposals in a supplemental report if possible, or as a hand-carry at the hearing if necessary.

2. Origin of Forest Products

A few RAC members, including the Oregon Department of Forestry and 1000 Friends of Oregon, would like the definition to include a limit on the origin of forest products that can be utilized by a permanent primary processing facility to ensure that large-scale facilities are not sited on forest land. (See also subsection 3, “Scale of Processing Facility.”) The department recommends that the commission consider the following options.

Option 1: Same or contiguous tract. This option would add a provision to the base definition that states: “**Permanent facilities may utilize only forest products grown upon a tract of land or contiguous land where the facility is located.**” This limitation currently applies to temporary, portable forest processing facilities in EFU zones. Those RAC members who support this limitation feel that it is needed to prevent the siting of large saw mills on forest land, while those who oppose it feel that it is so restrictive as to essentially prohibit timber processing of any kind on any but the very largest ownerships. Some RAC members noted that, alternatively, this could lead to unnecessarily small facilities that may be less efficient than somewhat larger facilities. Those members note that, because of transportation costs, primary forest processors are naturally motivated to seek out nearby sites for forest products.

Option 2: Portion from same or contiguous tract. This option would amend the base definition by adding: “**A forest tract on which a permanent facility is located (and contiguous land) must provide at least one-quarter of the forest products processed at the facility.**” This limitation currently applies to small-scale farm processing facilities in exclusive farm use (EFU) zones. RAC members raised concerns that it may be difficult for a county to determine how the one-quarter of products is measured. This is somewhat straightforward for annual farm crops, but less obvious for materials that may only be harvested once in 40 years. This limitation engenders somewhat less RAC support but also somewhat less opposition than does Option 1.

Option 3: Oregon materials. This option would amend the base definition by adding a different origin requirement: The first sentence of the definition would state:

Primary processing of forest products means the initial treatments of logs or other forest plant or fungi materials **harvested within the state of Oregon** to prepare it for shipment for further processing or to market.

Some RAC members, including the Clackamas County planning director, believe that the sources of forest products for primary forest processing should be limited to Oregon. This would be similar to the current requirement that farm stands sell products from the “local agricultural area” (defined to include the state of Oregon as well as adjacent counties), and the case law

standard that commercial activities in conjunction with farm use “enhance the farming enterprises of the local agricultural economy” (which is undefined). However, some RAC members feel that it is unlikely that there would be a demand for out-of-state timber to be processed in Oregon because of the transportation costs involved in moving timber.

Option 4: Maintain the existing draft definition.

The department recommends the commission select Option 3 or 4. Staff found the arguments in favor of limiting materials to those harvested in Oregon persuasive, but there may be areas of the state or non-timber products where this limitation is not necessary. Staff will refine its recommendation upon conclusion of testimony.

3. Scale of Processing Facility

Several RAC members are open to the idea of limiting the scale of processing facilities, although there is no agreement on wording to this effect. The department recommends that the commission consider the following options.

Option 1: Building size limitation. The RAC discussed an option to limit the size of buildings used for processing to 10,000 square feet. This limitation currently applies to small-scale farm processing facilities in EFU zones and some RAC members think it is a clear and workable standard for forest zones. However, unlike farm processing which takes place primarily indoors, processing of forest products often takes place outdoors. Therefore, this limitation would only partially address the issue of scale of a facility. There was a slight preference among RAC members for this option over Option 2, although some members feel that the size limit is too small.

Option 2: Processing facility size limitation #1. The RAC also discussed an option that would amend the base definition to add: “**The footprint of a processing facility, including any building, lay down area and storage, may not exceed one acre.**” To the extent that a forest processing facility involves the use of machinery and application of chemicals, an outdoor location would likely have more potential for adverse impacts to neighboring properties than would an indoor location. However, there was some concern about the meaning of “footprint” and whether one acre is the appropriate size limit.

Option 3: Processing facility size limitation #2. This variation on the combined indoor-outdoor processing area size limitation discussed by the RAC adds clarity by specifying that the size limitation applies only to areas actively used for processing (and therefore not to storage and laydown areas). This option would amend the first sentence of the base definition as follows:

Primary processing of forest products means the initial treatments of logs or other forest plant or fungi materials to prepare it for shipment for further processing or to market **provided that any buildings or outdoor areas actively used for processing do not exceed one acre in total area.**

This wording would incorporate elements of Options 1 and 2. It would be clearer than Option 2 yet would address concerns about impacts of outdoor processing activities from a scale perspective. It would not include a floor-area limit on buildings, however. The intent of this wording would be to apply only to the land area actively used for processing as reflected in the definition, excluding lay down and log decks and other ancillary improvements.

Option 4: Maintain the existing draft definition and leave scale unaddressed.

The department recommends the commission select Option 3 or similar language that limits the area of buildings and outdoor processing facilities without unduly limiting passive outdoor areas such as log decks.

4. Mitigation of Adverse Impacts

Several RAC members expressed concerns about potential adverse impacts of primary processing facilities, either to nearby farm or forest operations, or to nearby residential neighbors. While a majority of RAC members agreed that appropriate setbacks should be required, some felt that this should be a requirement in rule, and others felt that it should be left entirely to counties.

Option 1: Specific setback in the definition. This option would amend the base definition to add a new sentence: “**All portions of processing facilities involving machinery or the use of chemicals, where not fully enclosed in a building, are subject to a minimum setback of 250 feet from property lines.**” This proposed setback would help protect neighbors from noise and odors of outdoor forest processing. However, it would require a parcel of at least six acres and some RAC members think this is too restrictive a standard and not responsive enough to different types of forest processing. It could also push development *closer* to neighbors than necessary and conflict with other setback requirements, such as those for riparian area protection. The standard also functions as more of a review criterion than part of a definition. One RAC member, a Clackamas County citizen, supports a setback of 500 feet.

Option 2: General requirement for setback. Rather than including a number, this option would simply include a requirement for an appropriate setback. This option would also add a new sentence: “**Permanent processing facilities shall be subject to an appropriate setback from adjacent properties that is adequate to reasonably mitigate noise, odor or other impacts generated by the facility.**” This option leaves it to counties to establish the appropriate setback. While counties already have setback requirements, they don’t necessarily have specialized and considered setbacks for specific uses. However, this standard functions as more of a review criterion than part of a definition.

Option 3: Maintain the existing draft definition and leave mitigation of adverse impacts unaddressed.

The department recommends the commission select the concept of a general requirement in Option 2, but word it as a definition rather than as a property development standard. Draft language to this effect is included in the draft motion below.

V. DEPARTMENT RECOMMENDATION & DRAFT MOTION

The department recommends that the commission adopt an amendment to OAR 660-006-0005 to add a definition of “primary processing of forest products” that substantially conforms to the base definition recommended by the RAC with appropriate limits on scale of operation and consideration of mitigation of adverse impacts. The department finds the following definition balances the interests represented on the RAC, permits reasonable use of forest property, and conforms to the department recommendations in section IV of this report. The area permitted to be used for processing would be slightly larger than the one acre discussed by the RAC. The precise method of impact mitigation would be left to the counties.

Primary processing of forest products means the initial treatments of logs or other forest plant or fungi materials [*harvested within the state of Oregon*], in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or both, that are adequately separated from adjacent properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses. Treatments may include, but are not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

Recommended motion: I move the commission adopt the amendments to OAR 660-006-0005 as recommended by the department and explained in the staff report.

Optional motion: I move the commission adopt amendments to OAR 660-006-0005 as recommended by the department with the following changes: [specify section number and language of deviations from staff recommendations].

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May 5, 2015

TO: Katherine Daniels, AICP, Farm and Forest Lands Specialist
Oregon Dept. of Land Conservation and Development

SUBJECT: Comments to Land Conservation and Development Commission
regarding Definition of Primary Processing of Forest Products

I have attended all four Rules Advisory Committee meetings and have gained a greater appreciation for the difficulty of defining “primary processing of forest products” that satisfies all parties.

My family and a coalition of our Marmot Road neighbors sympathize with small woodland owners who wish to establish permanent processing facilities for various forest resources to enhance their incomes. We believe this can be accomplished in accordance with Oregon’s 40-year history of successful land use planning and without disturbing residential neighbors. It is vital that farms and forests continue to be protected from being taken over by general industries throughout the state.

Recommendations:

1. **Allow the current definition of primary processing of forest products to stand.** It has served Oregonians well for 40 years and is satisfactory to most of the counties that responded to the RAC survey.

2. **If you adopt a rule defining primary processing of forest products, include a mandatory minimum 500-foot setback from residential-zoned property.** Current and future owners and residents need assurance they will continue to be able to use and enjoy their homes and property in terms of health, safety, and livability.

3. **If you adopt the proposed base definition of primary processing, delete the words “shaping” and “notching.”** These treatments are unique to building log homes, a permanent general industry which is permitted only on rural-industrial and general-industrial-zoned land, not on forest land. Deletion of these terms would not affect woodland owners who wish to establish permanent processing facilities for berries, mushrooms, wreath-making, biomass, etc.

Our History

My family and I have owned property between the Sandy River and Marmot Road (the historic Barlow Trail) since 1945. We have maintained the summer cabin hand-crafted by our grandfather in 1948 and five urban-sized lots zoned Rural Residential Farm Forest-5 as a quiet retreat for family and friends for seven decades. Our neighbors have all invested and resided in their riverfront homes for decades as well.

The tranquility of our neighborhood was shattered in 2011 when Mark Fritch Log Homes, a general industry that involves outdoor storage and processing, moved in across the road. Fulltime residents, including retirees and families, have been subjected year round to industrial-level noise from heavy diesel construction equipment, multiple chainsaws, power saws, sawmill equipment, and other power-driven equipment, plus strong, carcinogenic diesel and other exhaust fumes, as well as industrial chemical fumes coming from the log home industry. It was not surprising to note that not one committee member would like to reside next to an industry when that question was asked at a recent RAC meeting.

Conclusion

The options we recommend would both preserve timber-zoned land for the growth and harvest of timber and other forest resources and prevent conflicts between incompatible land users.

Suzanne I. Piland