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Senate Rural Communities and Economic Development Committee
Oregon State Capitol
900 Court Street NE - Room 347
Salem, OR 97301

Re: Request of support for SB 1575

Dear Senators Arnie Roblan, Herman Baertschiger Jr., Ginny Burdick, Betsy Close, and Floyd Prozanski,

Today I am offering my testimony in favor of Senate Bill 1575. This bill is being offered by my Senator, Chuck Thomsen, SD 26. The bill results from nearly 2.5 years of working through the process of establishing a permanent facility for the primary processing of forest products (PFPPFP) on timber resource (TBR) land. Senator Thomsen, Dave Hunnicutt of Oregonians in Action and I have the writing and editing of this bill to date. I also apologize in advance for the use of a number of acronyms here to help speed up the process.

First, there is an important inaccuracy in the summary of the bill before you. The summary states that it "...is not prepared by the sponsors of the measure..." It further states that SB 1575, "Allows the establishment in forest zone or mixed farm and forest zone of facility for utilizing raw logs." The SB 1575I does *not* "allow the establishment of anything on TBR land. The Oregon Revised Statutes (ORS) governing Timber Resource (TBR) land uses were originally written in 1975 and the Clackamas County Zoning and Development Ordinances (ZDO) followed shortly thereafter and are based directly on the ORS. My land use hearing is governed by the ORS AMD ZDO from 2012. On July 1st of 2013 Clackamas County adopted an updated version of the TBR ZDO which gave more 'definition' to the ZDO and made it consistent with the language of the other ZDO. I share this because the original text of the ZDO that I am governed by states that there are four allowable uses on TBR land. Without a land use permit you can grow trees and you can have a home if the home either is grandfathered in or if the parcel passes a template test to see if a home is allowed. The Marmot site qualifies for both. The only other two uses listed in ZDO 406 require a

Conditional Use Permit (CUP). With a CUP a landowner can establish a "logging shop" or a "permanent facility for the primary processing of forest products.." Also in the ORS and ZDO, sawmills are the only PFPPFP listed by name. *Clackamas County ZSO 406.04 Uses Authorized D.* These laws are essentially unchanged since the ORS were written in 1975 and in the Clackamas County Zoning and Development Ordinances (ZDO) from the time they were written. The ZDO were updated July 1, 2013.

Clackamas County ZDO Section 406.03 - DEFINITIONS, provides thirteen definitions that are pertinent to the ordinances. However, there is no definition of what a PFPPFP is in this list. The definition of a PFPPFP is critical to the application of the existing laws. SB 1575 does not create any new uses. Neither does it conflict in any way with current ORS or ZDO. Rather it only adds a needed definition where one is missing.

It is now important to give a condensed time sequence of my CUP process so that I can further explain why SB 1575 came about.

1. Mark Fritch Log Homes (MFLH) was notified in March of 2011 that the site where MFLH had been located for 21 years had been sold and that the new owner was forcing MFLH to relocate and gave MFLH 3 months to leave the property.
2. The previous site 2 miles east of Sandy was zoned TBR.
3. The TBR zoning allows for the use of the property as a (PFPPFP).
4. MFLH contacted the Clackamas County Planning Staff (CCPS) to confirm the suitability of relocating the operations to a new site on TBR land.
5. Property acquisition was started looking for suitable lot zoned TBR.
6. The Marmot Road site, 12 miles east of Sandy, was located and the TBR zoning was confirmed.
7. MFLH reconfirmed with the CCPS that MFLH would be allowed to relocate to the site and required the issuance of a CUP.
8. MFLH began negotiating the terms of the lease/purchase agreement.
9. CCPS confirmed that they felt I could conform to the conditions set for the CUP
10. The CUP process was initiated, the property secured and the relocation of the business began.
11. Clackamas County Planning Department policy allows for the operation of a business while the CUP is in process if they believe that the CUP can be secured. The policy also allows the continuation of operation during any appeal or remediation process should the CUP be turned down.
12. The CUP application was accepted by the CCPS after several revisions.
13. The land use hearing was held
14. The hearings officer (HO) found that, by the HO's definition, the operations of MFLH were not those of a (PFPPFP).
15. MFLH appealed this decision to LUBA, failed at LUBA and then appealed to the Oregon Court of Appeals and awaited their determination.
16. March through June of 2013, Chuck Vance of Sandy applied for a CUP for his PFPPFP operations on TBR land also 12 miles from Sandy on nearly identical conditions as MFLH's CUP application.
17. Mark Fritch and Chuck Vance met with Senator Thomsen and Representative Johnson to see what could be done legislatively to correct the issue by providing a definition for PFPPFP. This process continued in parallel with the judicial appeals process.

18. The Vance CUP hearing was held in October in Clackamas County for the same issue as MFLH had and with Ken Helm, the same HO as MFLH had had.
19. MFLH testified and submitted documentation of what a PFPPFP is at the Chuck Vance CUP hearing.
20. The HO acknowledged the testimony of MFLH in the Final Order for the Chuck Vance CUP application stating that there was a lack of definition of what a PFPPFP is and that this lack of definition should be dealt with "through a legislative process " and not in "a quasi judicial land use proceeding.....by what some call "legislating from the bench."
21. MFLH failed to over turn the original and LUBA rulings at the Oregon Court of Appeals.
22. Consistent with recommendations of the HO in Chuck Vance's Final Order (FO), a legislative resolution was sought to resolve the MFLH CUP issues.
23. Senator Thomsen worked with MFLH to draft Senate Bill 1575 using materials provided by Scott Leavengood, OSU Director of Wood Innovations and Technology program to provide a concise definition of what a PFPPFP is in the ORS and ZDO.
24. The Senate Bill *does not allow any new uses of TBR land*. It only provides the needed definition that was not provided in the original laws.
25. For this reason, I request that you support Senate Bill 1575.

In reading documents submitted as testimony in opposition to SB 1575, many claims of what will be allowed by the bill are made. Many claims against me and my activities on the Marmot Road site have also been made. Over the past 2.5 years, my opponents have anonymously turned me into various state and county agencies eleven times for supposed violation of state and county laws. I have dealt with each and every one of these allegations in a detailed and professional manner. I want to point out that I have proven in eleven out of eleven instances that I was not in any way in violation. I will make no further attempt to address these issues today unless you have specific questions for me.

Regarding claims of my violations and illegal activities, I encourage the committee to direct their questions to the Clackamas County counsel here today, Mike McCallister Director of Clackamas County Planning and Development, Kimberley Benthin Clackamas County Code Compliance and Enforcement Officer or any of the Clackamas County Commissioners. These people will confirm that I have worked with diligence, accuracy and respect with all Clackamas County and State of Oregon rules, regulations, policies and ordinances throughout this process.

Again, please do not be misled by arguments that SB 1575 expands authorized uses; it does not. SB 1575 specifically limits the primary processing to those uses beginning with raw logs and at the end of the process results in a finished primary material that is then used in secondary processing or by the end consumer. In fact, the last sentence of the bill specifically prohibits secondary processing facilities by requiring that facilities covered by the bill must use raw logs in its processes.

Please find attached a copy of the PNW-GTR-868, the USFS report that describes the disposition of all logs harvested in Oregon and the Pacific Northwest. This document lists many of the different forms of primary processing of forest products and show the history and evolution of the processes included in the list. This list will continue to expand as we find new ways to wisely use our natural resources. Scott Leavengood, OSU School of Forestry provided this information to me. I have also submitted into the record a list of primary processing activities that I gleaned from PNW-GTR-868. These two documents were the primary source

of information that Senator Thomsen and I used to write the original bill which was then submitted to the Legislative Counsel. Legislative Counsel then rewrote the bill to their satisfaction.

This bill is a simple definition of what the primary processing of forest products is and is not. The original laws were written over 38 years ago and the land use case that brought this issue to light is the first place where any case law was generated relating to what primary processing of forest products is. I promise you that it will not be another 38 years before this issue comes up again. A definition of primary processing of forest products is needed in Oregon law. This is a simple and clean bill that can be passed with bipartisan support and improve the lives of people on both sides of the issue. It clarifies the rules that we live by.

I wish to thank the members of the Rural Communities and Economic Development Committee for the time today spent listening to my request. I have learned an enormous amount about Oregon and Clackamas County Land Use Law. One thing that I've become very aware of is that, in this country, we have one hell of a legal system, but I wonder about our justice system. I am here today to ask that we seek justice in this matter and not what is just legal.

Respectfully,

Mark Fritch