**BEFORE THE LAND USE HEARINGS OFFICER**
**OF CLACKAMAS COUNTY, OREGON**

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| Regarding an Application for a Conditional Use | ) | **Case File Nos.** |
| Permit for the Primary Processing of Forest | ) | **ZO295-14-C &** |
| Products and a Home Occupation for a General | ) | **Z0309-14-HOEX** |
| Contracting Business. | ) | **(Fritch)** |

## A. SUMMARY

1. The applicant and owner is Mark Fritch, doing business as Mark Fritch Log Homes.
2. The subject property is located at 59905 East Marmot Road, Sandy, OR 97055. The legal description is T2S, R6E, Section 22AA, Tax Lot 100. The subject property is approximately five acres and is zoned TBR – Timber District.
3. On June 18, 2015, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. The record was left open for the submission of new evidence, responses to the new evidence, and the applicant's final legal argument. After additional evidence and argument were submitted, the record was closed.

## B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on June 18, 2015. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planners Sandy Ingalls and Lorraine Gonzalez discussed the staff reports and recommended approval of the application.
3. The applicant's attorney, Andrew Stamp, the applicant, and neighbors testified in favor of the application.
4. A number of opponents testified in opposition to the application, as did attorney for some of the opponents, Jennifer Schwartz.
5. This case involves two applications, one for a conditional use permit and one for a home occupation permit. The two applications and the record for the two applications were consolidated because many of the arguments overlap.
6. At the conclusion of the public hearing, the Hearings Officer left the record open for an additional three weeks for the submission of new evidence, another three weeks for responses to the new evidence, and two additional weeks for the applicant's final

legal argument. A surprisingly large number of issues arose during the open record period. Eventually, the open record period was extended for various reasons and all submitted evidence and argument was allowed into the record.[1] The record was finally closed on September 25, 2015.

## C. DISCUSSION

The subject property is an approximately five-acre parcel zoned TBR and located at 59905 East Marmot Road, Sandy, Oregon 97055, located approximately .12 miles north of the intersection of East Marmot Road (Marmot Road) and East Barlow Trail Road. The property is roughly diamond shaped and is relatively flat along Marmot Road while sloping upwards towards the north end of the property. The property is mostly covered in timber except for an open area near Marmot Road where most of the proposed conditional use permit (CUP) and home occupation (HO) would occur. There is an existing manufactured home and accessory building. Two small streams cross the property and drain to the west under Marmot Road, which is a minor arterial. Properties to the north, south, and east are also zoned TBR and range in size from approximately 75 to 100 acres. The Historic Barlow Trail runs along the southern boundary of the property. Properties across Marmot Road are zoned RRFF-5 (Rural Residential Farm Forest District – 5 Acre Minimum) and part of a rural residential area created before current planning and zoning regulations were in effect. The RRFF-5 properties range in size from approximately half an acre to almost two acres. The RRFF-5 properties are wedged between Marmot Road and the Sandy River.

The applicant, Mark Fritch of Mark Fritch Log Homes (MFLH), builds custom log homes. For many years, MFLH operated elsewhere in the County, but a few years ago the business was relocated to the subject property. As part of the process of building log homes, MFLH would construct the exterior walls of the log home on site and then disassemble the logs, transport them to the building site, and reassemble them. The RRFF-5 neighbors complained to the County, and the County initiated an enforcement action against MFLH. In response to that enforcement action, MFLH applied for a CUP to operate a permanent facility for the primary processing of forest products (PPFP). Another hearings officer denied that CUP, and the Land Use Board of Appeals (LUBA) and the Court of Appeals upheld the denial. __ Or LUBA __ (LUBA No. 2012-094, Sep. 16, 2013), *aff'd* 260 Or App 767 (2014). As discussed later, LUBA held that the assembling of the exterior shells of the log walls and additional work done to the logs was not a PPFP.

MFLH now requests a CUP for the activities LUBA stated qualify as PPFP activities (the parties dispute whether the requested uses constitute a PPFP). MLFH also requests a HO for a general contracting business to operate the business and to conduct some of the activities that LUBA held were not PPFP activities. MFLH proposes to build a larger accessory building to house the HO and seeks an exception to allow more square footage for the HO. MFLH also proposes to move some of the activities to a bench area further away from Marmot Road. Opponents, primarily neighbors residing in the RRFF-5 lots across Marmot Road oppose the applications.

### 1. Procedural Issues

Opponents argue that the applications must be denied because MFLH did not wait the required time for filing a new application after an earlier application was denied. Clackamas

[1] The hearings officer's letters of July 28, 2015, July 31, 2015, and August 21, 2015 provide a detailed discussion of the issues that arose during the open record period.

County Zoning Ordinance (ZDO) 1305.02(E) imposes a two-year filing prohibition.[2] ZDO 1305.02(H) provides that: "If an application for an administrative action is denied, an applicant may refile for consideration of the same or substantially similar application only if [certain conditions are met]." According to opponents, the current applications are substantially similar to the CUP application that was previously denied. The earlier CUP application was denied by the hearings officer on November 26, 2012 and the current application was filed on August 5, 2014. If opponents are correct that the two applications are substantially similar then the application was filed too soon and must be denied.[3] Opponents argue that the current applications are substantially similar to the earlier application "because it proposes all the same business activities that were previously denied on the same property, none of which have been reduced in scope and intensity."

There have been a number of LUBA opinions discussing the "substantially similar" language in ZDO 1305.02(H). Those cases explain that an application is the "same or substantially similar" if there has been little to no change in the nature and intensity of the proposed use. Applications are not substantially similar if the proposed use has been significantly reduced in scope and intensity. *Rozenboom v. Clackamas County*, 24 Or LUBA 433 (1993); *Munn v. Clackamas County*, 37 Or LUBA 621 (2000); *Henkel v. Clackamas County*, 56 Or LUBA 495 (2008). In essence, a second application may not be filed before the two-year time period if it is just a "beefed-up" attempt to approve the original proposed use. A "pared-down" version of the application that significantly reduces the scope and intensity of the proposed use is permissible.

In the present case, the new applications are substantially different from the original CUP that was denied. As discussed later, LUBA held that the initial processing of logs was a permissible PPFP, but secondary processing such as custom notching and pre-assembling the log wall shells were not PPFP activities. The present applications eliminate the pre-assembly of log wall shells entirely. Some other secondary processing activities are proposed, but they are much more limited than the original application because such secondary processing activities will have to occur indoors as part of the HO. For instance, the secondary processing of large logs will not be possible because of the size of the building that such work would have to occur in. MFLH is also proposing to use different, less noisy equipment, such as an electric crane. MFLH is also proposing to have less vehicles on site. Opponents argue that "all the same business activities" will continue and the scope and intensity will not be reduced. A large portion of the earlier CUP activities have been moved offsite, particularly the pre-assembly of the log wall shells. In fact, the activities that were the primary reason the original CUP was denied have been eliminated from the proposal. The present applications significantly reduce the scope and intensity of the proposed use. Therefore, the applications do not violate. ZDO 1305.02.[4]

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[2] ZDO 1305.02 was in effect when the applications were submitted, but has been replaced with almost identical language in ZDO 1307.16. A number of ZDO provisions have been amended since these applications were filed. All the ZDO citations in this decision are to the ZDO provisions in effect when the applications were filed.

[3] Opponents' argument assumes that the date of denial was the previous hearings officer's decision. If the LUBA or the Court of Appeals decision is the date of denial then the new application would be even more untimely. None of the exceptions to the two-year limitation are at issue.

[4] MFLH renews its objection to materials submitted during the open record period. Those issues were addressed in earlier letters from the hearings officer, and I see no need to revise the resolution of those issues. I do agree with MFLH that the mere reference to websites in opponents' materials are not sufficient to submit such evidence into the record, and those websites were not considered.

## 2. Conditional Use Application

ZDO 1203.02 provides the approval criteria for conditional uses:

"A. The use is listed as a conditional use in the zoning district in which the subject property is located.

"B. The characteristics of the subject property are suitable for the proposed use considering the size, shape, location, topography, existence of improvements, and natural features.

"C. The proposed use is consistent with Subsection 1007.09, and the safety of the transportation system is adequate to serve the proposed use.

"D. The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

"E. The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.

"F. The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the property is located, Section 800, and Section 1000."

### a. 1203.02(A)

ZDO 1203.01(A) requires that the proposed use be listed as a conditional use in the subject property's zoning district. The property is zoned TBR. ZDO table 406-1 lists the conditional uses allowed in the TBR zone, which includes; "Permanent facility for primary processing of forest products" and "permanent logging equipment repair and storage."[5] MFLH describes the proposed activities contemplated under the CUP as: log prep and peeling, sawmilling, firewood, wholesale cut to order, as well as equipment repair and storage. LUBA discussed the meaning of PPFP as follows:

> "As noted, the hearings officer concluded that 'primary processing' included de-barking and milling of the raw logs, but did not include the 'further processing of the logs into a log structure, and all of the associated design, staging cutting, notching, assembling and disassembling * * *. We understand the hearings officer to have concluded that de-barking and milling logs into shorter or thinner logs qualifies as 'primary' of 'initial' processing, but that more refined processing, such as notching and shaping the log ends according to a custom design so that the individual logs fit precisely together to form the walls of the log home, goes beyond primary processing. Although it is a closer question, we agree with the hearings officer that custom notching and shaping of log ends to form the interlocking components of the walls of a log home goes beyond primary processing of forest products, within the meaning of OAR 660-006-

[5] Table 406-1 implements OAR 660-006-0025.

0025(4)(a)." Slip Op 9-10.

It seems reasonably clear that viewed in isolation, the proposed activities: log prep and peeling, sawmilling, firewood, and wholesale cut to order would be considered primary processing activities rather than secondary activities.[6] The peeling and sawmilling is specifically stated by LUBA to be a primary processing. MFLH proposes to collect leftover and scraps to sell as firewood. No additional processing would occur to the firewood, so I do not think this constitutes secondary processing. MFLH would not be performing the custom notching and shaping discussed by LUBA. Opponents argue that the proposed wholesale cut to order is a secondary processing activity. MFLH explains that occasionally certain customers need different sizes of lumber than are generally cut. This does not strike me much differently than the lumber produced in the standard industry sizes. Whether the timber is being cut to standard sizes or custom sizes, it is still just timber being cut for sale. This is different than timber being cut to a particular size and then being worked on again to produce a more finished product such as the locking ends for the shell of a log home.

Although it is not specifically listed as a proposed use for the CUP, MFLH proposes to use fungicides on newly cut logs. MFLH asserts this is a primary processing activity while opponents argue it is a secondary processing activity. Mr. Stamp goes into exhaustive detail about the fungicides, Britewood XL and Sol Brite E, but I agree with his argument that such treatment is part of the primary processing of forest products. As he explains, the application of fungicides is a standard forest practice, as aerial spraying of such chemicals in greater concentrations than with handheld sprayers is explicitly permitted in TBR zones. I agree that applying fungicides is different than activities such as pressure treating lumber and railroad ties. Those are secondary activities that are designed for specific purposes. The application of fungicides is a primary activity that is necessary no matter what the timber is eventually used for.

Opponents also argue that the attempted bifurcation of the CUP and HO is merely a shell game to allow MFLH to do exactly what the previous hearings officer, LUBA, and the Court of Appeals held could not be done. Initially, opponents repeat a recurring theme of their arguments – assuming the proposed use is the same as the use that was denied in the earlier case. As explained, the present case proposes a significantly different use than the earlier case. Even though the HO use is proposed to conduct activities that would not be permissible under the CUP that does not mean that a CUP cannot be obtained for uses allowed as a conditional use. Opponents would have a point if the CUP use and HO use were essentially the same. If the production of log homes took logs from the CUP occurring outside to the HO occurring inside, worked on the logs, took the logs back outside and started conducting a CUP activity on them then that would likely constitute the impermissible shell game as described by the opponents. That is not the proposed case here. MFLH proposes to conduct all the primary activities outside as part of the CUP. Once the primary processing of the logs are finished some of the logs may be brought inside for secondary processing as part of the HO use. Once the logs are brought inside, however, they are no longer part of the CUP activity. The logs cannot return to the CUP activity for any reason, and they will be taken to the eventual home site for construction. I do not see any reason there cannot be two activities on the same property conducting different activities, even if some of those activities would

[6] There does not seem to be a dispute about the proposed equipment repair and storage, except perhaps how vehicles are counted for purposes of the HO.

not be permissible under the other permit.

The activities proposed by MFLH are PPFP activities that are an allowed conditional use in the TBR zone. ZDO 1203.01(A) is satisfied.

**b. ZDO 1203.01(B)**

ZDO 1203.01(B) requires that the characteristics of the subject property be suitable for the proposed use, considering size, shape, location, topography, existence of improvements, and natural features. The June 11, 2015 staff report does a thorough job of explaining why the characteristics of the property are suitable for the proposed use. The property is large enough, there is a flat area suitable for the CUP and HO activities, the slope to the northeast does not affect the proposed uses, and there is access to a minor arterial. I adopt and incorporate the findings regarding ZDO 1203.01(B) in the staff report in this decision

Opponents argue that the characteristics of the property are not suitable for the proposed use, but those arguments are based on the proposed use's effect on nearby properties, for instance being located in residential neighborhood. ZDO 1203.01(B) is more concerned with whether the proposed use is a good fit for the property itself, not with any effects on nearby properties – there are other approval criteria that deal with that issue. It is not speculative as to whether the property is suitable for the proposed use because the proposed uses (and some even more intense uses) have been occurring on the property for some time. Opponents' arguments are really arguments that the proposed uses are not suitable for the area, not that the proposed uses are not suitable for the property itself. The only argument that might apply to the property itself is the opponents' argument about polluting the streams on the property. Even those arguments are more about the proposed use's impacts on the streams rather than the property as unsuitable for the proposed use due to the location of the streams on the property. The streams are is in areas of the property that do notes cause any obstacles to the proposed uses.

ZDO 1203.01(B) is satisfied.

**c. ZDO 1203.01(C)**

ZDO 1203.01(C) requires that the proposed use be consistent with ZDO 1007.09 – Transportation Facilities Concurrence and that the safety of the transportation system is adequate to serve the proposed use. The staff report explain how this approval criterion is satisfied. I adopt and incorporate the staff report findings regarding ZDO 1203.01(C) in this decision. In addition, opponents challenge the adequacy of site distances necessary for safety. According to opponents, it would be necessary to clear trees and brush on neighboring properties to obtain adequate site distances and that there is no evidence neighboring property owners would agree to allow such clearing. The County's traffic engineer, however, testified that there were adequate site distances without the need to clear trees and brush on adjoining properties. I agree with the County's traffic engineer.

ZDO 1203.01(C) is satisfied.

**d. ZDO 1203.01(D)**

ZDO 1203.01(D) provides that a proposed conditional use must not substantially limit, impair, or preclude the use of surrounding properties for their primary uses. In the present case, the surrounding properties include adjacent TBR properties and the RRFF-5 properties across Marmot Road. While sometimes it is difficult to determine exactly what

constitutes the surrounding area, in the present case all of the people who allege the use of their property would be impacted by the proposed uses are the RRFF-5 neighbors. The adjoining TBR properties do not object to the applications. There are many primary uses for RRFF-5 zones, but the only RRFF-5 zone uses at issue in the present case are the residential uses of the neighbors. Thus, the crux of this issue is whether the proposed CUP activities would substantially limit, impair, or preclude the use of the RRFF-5 properties for residential use.

Opponents' primary arguments for why the proposed uses would violate this standard are noise, vibrations, and fumes. The staff report thoroughly analysis opponents' arguments regarding alleged impacts on neighboring properties. I adopt and incorporate those findings in this decision, and expand upon those findings as follows. Beginning with noise, opponents provided substantial amounts of testimony and evidence that the existing noise from MFLH's activities are unbearable and make residential use of their property almost impossible. MFLH provided noise studies to support its position that that the noise would not be very loud. Opponents also provided a noise study stating that the existing uses violate state noise regulations. MFLH also provided testimony from its sound expert rebutting opponents' expert.

Much of the competing noise studies' analysis goes towards whether the proposed noise would violate Department of Environmental Quality (DEQ) noise regulations. Mr. Stamp comprehensively explains the history of DEQ noise regulations and their enforcement or lack of enforcement by DEQ. I agree with Mr. Stamp's argument that DEQ noise regulations are not approval criteria for ZDO 1203.01(D). The approval criterion is a very subjective standard. I can imagine scenarios where the DEQ noise regulations could be exceeded but not result in substantially limiting, impairing, or precluding primary uses. I can also imagine scenarios where the DEQ noise regulations are not exceeded but still result in violating 1203.01(D). I do agree with Mr. Stamp, however, that the DEQ noise regulations are a good place to start.

MFLH's noise expert concluded that the vast majority of the PPFP activities would meet DEQ noise regulations without mitigation. MFLH also proposes to move the sawmill, which is the loudest piece of equipment, farther away from Marmot Road and to shield it from the road with sound barriers. Furthermore, MFLH has replaced the original crane with a much quieter electric crane and has eliminated vehicles that have caused noise from the proposal. According to MFLH's noise expert, with the sawmill moved farther from the road and shielded, the noise from the property would not violate DEQ noise standards. Opponents' sound study measured ambient noise levels and took issue with MFLH's noise expert's methodology and conclusions. I find MFLH's noise expert's conclusions more persuasive than opponents' expert. MFLH's expert conducted more extensive and more precise testing, and MFLH's expert's explanation regarding the differences between the experts is also persuasive.

> "Our modeling study results closely correlate to the 2012 actual operational measurement data. Our original report in October 2012 measured the sound levels of ACTUAL Fritch operations at the two receiver sites (Jacobs and Welsh). The findings revealed that in NO cases were the measurements above the DEQ limits of the County dBA limits, even with lower river flows. This study was previously criticized by Acoustic Design Studio as needing to have a more detailed noise modeling approach to verify the

> theoretical noise levels. This led to a very costly and time-consuming requirement for the noise modeling and analysis which shows the levels to be accurate and in compliance in the worst-case scenario. It appears now that DSA is saying we need verification of the actual combined noise levels during operation to prove the modeling is accurate. By making this assertion, DSA has now created a circular argument to try to assert the data or analysis is incomplete. The data is complete, and all potential uses and combinations are accounted for in our modeling analysis and actual site sound verification." Listen Acoustics August 6, 2015 Memorandum.

The DEQ noise standards are fairly stringent. The amount of noise that violate the DEQ standards is not exceptionally higher than ambient noise from the river and Marmot Road which is currently used by many large trucks. Based upon MFLH's noise expert's study, I agree that the noise that would be generated by the proposed uses should not exceed the DEQ noise standards. Even if the DEQ noise standards would be exceeded on occasion, I do not believe that it would be a regular occurrence. The RRFF-5 neighbors do not have a right to uninterrupted peace and quiet. RRFF-5 zones also allow activities that create noise, such as lawnmowers, leaf blowers, and other power tools. While I tend to agree with Mr. Stamp that opponents' characterizations of the noise in the past is at least slightly hyperbolic, even if it is more accurate – that testimony applies to many activities that would not occur under the proposed applications. While I do not doubt that on occasion the noise from the proposed use might be inconvenient or annoying, that does not mean ZDO 1203.01(D) is violated. Additionally, the subject property is zoned TBR. TBR zoning allows numerous noisy activities as permitted uses such as road construction and harvesting of trees. While opponents argue that forest use of the property would only involve harvesting trees every 20 years, there is nothing that would prevent MFLH from operating chainsaws on a frequent basis. Although I would reach the same conclusion otherwise, the proposed uses should also be considered in context of the uses permitted in the existing zoning. In other words, people living across the street from a TBR zone must expect the potential of more noise than if they lived across the street from a residential zone. In any event, I do not see that the noise to be caused by the proposed uses would substantially limit, impair, or preclude the RRFF-5 neighbors' residential use of their property.

Opponents also argue that fumes and vibrations from the proposed activities will substantially impair, limit, or preclude their residential use of their property. Some opponents testified that they could not keep their windows open due to fumes generated by MFLH. MFLH conducted a test where neighbors were asked to determine how far away from the diesel engines they could smell exhaust. The neighbors smelled exhaust from 50 to 80 feet away when the wind was blowing towards them. While this is not the most scientific test, it is more persuasive than opponents' claims of unbearable fumes. Furthermore, the Peterbilt truck that caused much of the exhaust has been repaired and emits significantly less exhaust. I do not see that the fumes likely to be generated by the proposed use would substantially limit, impair, or preclude residential use of the RRFF-5 properties.

MFLH also conducted a vibration test that demonstrated that vibrations would be minimal to the RRFF-5 properties. The results of the test state:

> "Using a simple method of measurement, two things were determined. First, the activities of the applicant would not create any vibration that could be felt by human beings on the property of the adjacent neighbors.

> To that end, we discovered that there is no likelihood of vibration being produced by the applicant's equipment that will be felt within the neighboring residents' homes or on their properties. Secondly, even with artificially high test procedures of dropping logs it was found that typical heavy truck traffic exceeded the log drop test results." June 4, 2015 Vibration Study and Analysis.

Again, although this is not the most scientific test, it is more persuasive than anecdotal testimony from neighbors. Even if there were a noticeable amount of vibration emanating from the property, that would hardly substantially limit, impair, or preclude residential use of the RRFF-5 properties.

Opponents also argue that the ongoing activities are scaring away wildlife and that effects from the chemicals used to treat the raw logs are killing fish. Initially, I do not see how any alleged effects on fish and wildlife are pertinent under the analysis for ZDO 1203.01(D). While opponents are correct that fish and wildlife management programs are allowed primary uses under the RRFF-5 zone, no actual fish and wildlife management programs are alleged to be operating anywhere near the property. Even if such impacts could be considered under ZDO 1203.01(D), it is difficult to understand how less wildlife and fish in the area could substantially limit, impair, or preclude residential use of the RRFF-5 properties. Furthermore, even if such effects could violate ZDO 1203.01(D), MFLH has provided ample evidence that wildlife do still frequent the area and that the proper use of fungicides (which are permitted uses in TBR zones) will not adversely affect fish.

None of opponents' arguments demonstrate that the proposed uses on the property would substantially limit, impair, or preclude residential use of the RRFF-5 properties. MFLH has demonstrated that ZDO 1203.01(D) is satisfied.

**e. ZDO 1203.01(E)**

ZDO 1203.01(E) requires that the proposal satisfies the applicable goals and policies of the comprehensive plan. The staff report addresses applicable comprehensive plan goals and policies. I adopt and incorporate those findings in this decision. Opponents also raise other comprehensive plan goals and policies they believe are applicable. Robin Jacobs cites numerous goals and policies from the comprehensive plan. Ms. Jacobs does not explain why the goals and policies are applicable to the present applications. Many of the policies she cites are broad general goals such as "conserve forest lands" or "prohibit land uses that conflict with forest uses." The proposed uses are uses that are permitted in the TBR zone – primary processing of forest products. I do not see how uses that are allowed in the zone do not conserve or conflict with forest uses. Ms. Jacobs cites Forest Land Use policy 5.0 which states, "Prohibit commercial and industrial development in forest area." Even if this were an applicable approval criterion, the ZDO has provisions regarding commercial and industrial uses and the proposed uses are not commercial or industrial uses. Ms. Jacobs continually refers to the proposed uses as industrial uses, but they are forest and home occupation uses not industrial or commercial uses.

Wildlife and Distinctive Resource Policy 5.0 provides, "Minimize adverse wildlife impacts in sensitive habitat areas, including deer and winter elk winter range below 3,000 feet elevation, riparian areas, and wetlands." Part of the property is within the deer and winter elk range below 3,000 feet. The proposed uses would occur on the already cleared area closer to Marmot Road and the cleared bench area. As discussed earlier, MFLH has documented that there is significant wildlife activity on the property including deer and elk. The proposed

use minimizes adverse impacts on wildlife.

Ms. Jacobs cites a number of Noise and Air Quality policies, but I do not see that they are applicable approval criteria. They are either aspirational or direct the County to implement procedures to protect noise and air quality, which the County has done in the ZDO. Ms. Jacobs also cites a number a Water Resource Goals and policies. Again, I do not see that these are approval criteria, and to the extent they are there is nothing about the proposed uses that violate those policies. The various policies cited by Ms. Jacobs provide general direction to protect certain resources. Those resources are protected by the specific provisions of the ZDO, particularly in Section 1000 discussed later.

ZDO 1203.01(E) is satisfied.

**f. ZDO 1203.01(F)**

ZDO 1203.01(F) requires that the proposed use comply with any applicable requirements of the zoning district, Section 800, and Section 1000. The staff report address a number of applicable provisions and explains how those provisions are satisfied. I adopt and incorporate those findings in this decision. Opponents argue that the proposal does not comply with ZDO 1002 regarding the protection of natural features and ZDO 1008 regarding storm drainage.

ZDO 1002.02(A) requires that: "All development be planned, designed, constructed, and maintained with maximum regard to significant natural terrain features and topography, such as hillside areas, floodplains, and other significant land forms." In this case, there are no significant natural terrain features or topography. In any event, the staff report explains that the proposed development will have the maximum regard for significant features because the development will be sited on the areas that has been disturbed since the 1930s or 1940s.

ZDO 1002.02(B) requires that "development be planned, designed, constructed and maintained to avoid a substantial probability of pollution, contamination, or siltation of lakes, rivers, streams * * and injury to wildlife and fish habitats." Opponents initially argue that MFLH's use of fungicides to treat raw logs would pollute the streams on the property and reach the Sandy River. As explained earlier, fungicide use is a permitted use on the property, MFLH would not have large amounts of the fungicides on the property, the fungicides would be used according to directions, and there will be a 50-foot setback from the streams. The development is designed to avoid a substantial probability of pollution to the streams and river or injury to fish and wildlife habitat.

ZDO 1008 provides the requirements for storm drainage. The storm drainage plan relies on a bioswale that is already constructed. MFLH's engineer states that the bioswale in working adequately. Opponents argue that the storm drainage system is inadequate. Opponents argue that it was not designed by an engineer, and they retained a hydrologic assessment from a geo-consulting firm. Opponents' expert stated that there is not a stormwater management plan, the effectiveness of the bioswale has not been demonstrated by engineering analysis, and that a "detailed topographic survey (by a licensed surveyor) and maps accurately showing drainage feature locations and elevations has not yet been completed." Stormwater management was reviewed by the County twice and by DEQ once and found to be adequate. MFLH's expert persuasively responded to all of opponents' arguments. I agree with MFLH that there is no requirement that the stormwater management plan must be specifically designed by an engineer. The question is whether the stormwater management plan is adequate, and the County, DEQ, and MFLH's expert agree that is.

MFLH's evidence is more persuasive than opponents' evidence.' ZDO 1008 is satisfied.

ZDO 1203.01(F) is satisfied.

**g. Other Approval Criteria**

Opponents argue that the applications violate ZDO 704 regarding the Principal River Conservation Area (PRCA). The PRCA includes property within one-quarter mile of certain rivers, including the Sandy River. ZDO 704.09(A) provides:

> "Development and tree-cutting activities controlled by Section 704 in a [PRCA] shall be reviewed to ensure consistency with Section 704. Proposed developments on lands within 150 feet of the mean high water line shall be reviewed through a Type II application pursuant to Section 1307. For lands beyond 150 feet of the mean high water line, notice shall be sent to the U.S. Forest Service and Bureau of Land Management."

As the staff report explains, the property is 225 feet from the mean high water line, so a PRCA permit is not required. Opponents argue, however, that the streams on the site require additional review because they should be classified as a small Type F stream. ZDO 704.03(D) provides:

> "Section 704 also applies to land that is located within 50 feet of the mean high water line of small Type F streams, identified on the WPRC maps. The location of these streams may vary from these maps if more specific information is provided. Classified as SCAs, these small streams are designated in the Comprehensive Plan as those that generally have annual average flows of less than two cubic feet per second."

Although the streams on the property are not designated as small Type F streams in the Comprehensive Plan or WPRC maps, opponents argue they have fish and should be considered small Type F streams. Opponents also provide communications from the Department of State Lands that the streams should be considered essential salmon habitat (ESH). According to opponents, this is the type of "specific information" envisioned by ZDO 704.03(D) and therefore subjects the proposed development to ZDO 704. Even if opponents are correct that the streams should be classified as small Type F stream, the streams are not classified as small Type F streams in the Comprehensive Plan or applicable maps. The "specific information" that may be provided in ZDO 704.03(D) only allows that the "location of these streams may vary from" the maps. The "specific information" only allows the location of previously classified streams to be adjusted when the streams are in slightly different locations than depicted on the maps. The provision does not allow streams to be re-classified.

ZDO Section 704 is satisfied.

Under Table 406-1, ZDO 406.05(A)(1)&(6) apply to PPFP uses:

"1. The use may be allowed provided that:

"a. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and

"b. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly

increase risks to fire suppression personnel."

"* * * * *

"6. A land division for the use may be approved pursuant to Subsection 406.09(D).

The staff report thoroughly explains why these approval criteria are satisfied. I adopt and incorporate those findings in this decision. Opponents argue that the PPFP use will increase the risks of fire hazards, fire suppression costs, and risks to fire suppression personnel. As the staff report and MFLH point out the proposed uses have been reviewed and approved by the Hoodland Fire District. The letter from the Hoodland Fire District stating that there will not be increased risks of fire hazards, increased risks of fire suppression costs, or increased risks to fire personnel is more persuasive than opponents' arguments to the contrary.

ZDO 406.05(A)(1)&(6) are satisfied.[7]

All of the approval criteria for a CUP are satisfied.

**3. Home Occupation**

MFLH proposes to conduct a general contractor home occupation (HO) business within an addition to an existing accessory building. They HO would take place in the existing building until the addition is completed. The general contractor business would include office use, recycling, reusing, and repurposing building material, building timber frame structures, secondary processing and the assembly of wood products, and storage of logs, equipment, and tools. MFLH also submitted a request for an exception to the square-footage maximum.

Table 406-1 allows HOs in TBR zones. In addition to the approval criteria for HOs, Table 406-1 requires compliance with ZDO 406.05(A)(1),(2),(5), and E(1). The staff report thoroughly explains how those approval criteria are satisfied, and I adopt and incorporate those findings in this decision. ZDO 406.05(E)(1) requires that the HO not "unreasonably interfere with other permitted uses in the zoning district in which the property is located * * *." Opponents argue that the staff report findings are inadequate to demonstrate that the HO use will not unreasonably interfere with their residential use of their RRFF-5 properties. ZDO 406.05(E)(1), however, requires that the proposed use not unreasonably interfere with other permitted uses "in the zoning district in which it is located." The property is located in a TBR zone, so even if the HO would unreasonably interfere with the neighbors' residential use it would be irrelevant because they are in a different zoning district. There is no believable evidence that the HO would unreasonably interfere with other TBR uses. ZDO 406.05(A)(1) was addressed under the CUP approval criteria.

ZDO 822.05 provides the approval criteria for a level three HO. Before addressing the approval criteria, opponents argue that the proposed use does not constitute a HO. ZDO 822.02(D) defines a home occupation as:

> "An occupation or business activity which results in a product or service; is conducted, in whole or in part, in a dwelling unit and/or an accessory building normally associated with primary uses allowed in the underlying zoning district; is conducted by at least one resident of the dwelling unit;

[7] ZDO 406.05(A)(6) is not applicable as MFLH is not seeking a land division.

and *is clearly subordinate to the residential use of the subject property*. * * *"

Opponents argue that the proposed expansion of the accessory building will result in a 4210 square-foot building that is almost four times the size of the residential dwelling. Opponents also argue that the HO can operate up to 70 hours per week. According to opponents, the broad scope and intensity of the proposed uses run counter to the notion that they are clearly subordinate to the residential use of the property. I do not see that the size of the HO accessory structure compared to size of the dwelling is particularly relevant in determining whether the HO is clearly subordinate to the residential use. It would be one thing if the dwelling was so small or dilapidated that the owner clearly was not using the dwelling as his or her main residence, but that it not the case here. Although the dwelling is relatively small, Mr. Fritch certainly appears to reside there. Opponents' argument that the address of the owner being listed is shown as living in Vancouver applies to the previous owner of the property, not Mr. Fritch. Whether Mr. Fritch lives in a meager house or a mansion the use would be the same residential use.[8]

Opponents also conflate the HO use with CUP use. The CUP PPFP uses, however, are not part of the consideration in determining whether the HO is clearly subordinate to the residential use. The primary part of the HO will be as office space for the general contracting part of MFLH's business. This is a very typical type of HO. There will also be some secondary processing of forest products inside the accessory structure. While opponents are correct that just because an applicant says an approval criterion will be met does not mean that it is met, a large part of building log homes is assembling the logs into a home. That activity can no longer occur on the property. The secondary processing that will occur will be by necessity on smaller parts of the homes rather than the logs that make up the shell of the homes. I agree with MFLH that the secondary processing will be significantly reduced from what had occurred previously on the property. While it is a reasonably close call, I agree with MFLH that the proposed HO is clearly subordinate to the residential use of the property,

The staff report does a thorough job of explaining why the approval criteria for a HO are satisfied. A number of those findings are not challenged by opponents. Therefore, I adopt and incorporate the findings in the staff report in this decision except as follows.

ZDO 822.05(D) provides:

> "Building Space: The home occupation may be conducted in a dwelling unit * * *. A maximum of 1,500 square feet of accessory space may be used for the home occupation. If only a portion of an accessory building is authorized for use in the home occupation, a partition wall at least seven feet in height, or a height as required by the County Codes Division, whichever is greater, shall separate the home occupation space from the remainder of the building A partition wall may include a door, capable of being closed, for ingress and egress between the home occupation space and the remainder of the building."

Opponents argue that the accessory building proposed to be used for the HO will exceed the 1500 square-foot requirement and will even exceed the 3000 square-foot

[8] Opponents also argue that the accessory building is not a "building normally associated with the primary uses allowed in the underlying zoning district." Accessory building are permitted uses in TBR zones. The accessory building has been use for TBR uses in the past, and it meets the HO definition.

requirement under the proposed exception. A large part of opponents; arguments repeats their earlier argument that that the PPFP and HO uses cannot be bifurcated and that they are all part of one combined use. As explained earlier, I do not agree with opponents that MFLH cannot separate their uses. The proposed addition will only be 3000 square feet. The allowed square footage is addressed in more detail later under the exception request. MFLH is requesting an exception to the square footage requirement of ZDO 822.05(D) so compliance with ZDO 822.05(D) is not required.

ZDO 822.05(E)(5) provides:

> "Between 8:00 a.m. and 6:00 p.m., a Level 3 Major Home Occupation shall not create noise that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level. Between 6:00 p.m. and 8:00 a.m., a home occupation shall not create noise that is detectable to normal sensory perception off the subject property. Noise generated by passenger vehicles exiting or entering the subject property shall be exempt from these standards. These off-property noise standards shall not apply to public right-of-way and railroad rights-of-way."

Opponents argue that the noise from the ongoing operations on the property regularly violate the noise standards. One problem with opponents' argument is that they are basing their argument on noises occurring outdoors. The HO use would occur indoors, initially in the existing accessory building and eventually in an addition to the accessory building. MFLH's noise experts conducted a noise study demonstrating that the noise from inside the accessory building would not violate the noise standards. There was some confusion regarding the noise reports from MFLH's expert. Opponents eventually were able to review all of the noise study conclusions. Opponents argue that the noise study did not properly consider the nearest property line. As Mr. Stamp explains, however, the nearest property line is clearly marked on the map form the noise study. Opponents also argue that the noise study improperly considered the ambient noise level. Again, as Mr. Stamp explains, the measurements were taken on March 26, 2015 and conservative estimates were used for the ambient noise level. Furthermore, although the existing structure does a good job of containing noise inside the building, the proposed addition will be even better insulated than the present building. MFLH's expert noise testimony is more persuasive than that from opponents and their expert. ZDO 822.05(E) is satisfied.

ZDO 822.05(F) provides:

> "Vibration, Glare, Fumes, and Odors. The home occupation shall not create vibration, glare, fumes, or odors detectable to normal sensory perception off the subject property. Vehicles entering or exiting the subject property shall be exempt from this standard, but idling vehicles shall not."

Opponents argue that vibrations and fumes/odors from equipment would be detectable on their property. Again, opponents base much of their argument on activities that have occurred in the past on the property. Opponents also base their arguments on activities that occurred outdoors rather than inside the accessory structure as would be required by the HO. Furthermore, opponents again conflate the proposed PPFP use with the proposed HO use. MFLH provided a vibration study that demonstrates that even with dropping logs from a much higher elevation than would be done in actual operation there was no vibration detectable to humans off the property. This evidence is much more persuasive than opponents' anecdotal evidence based on prior uses that were not inside the accessory

structure.

Opponents argue that a number of vehicles emit fumes and odors that can be detected on their property. Initially, the only such vehicle proposed to be used as part of the HO is the one ton truck. As discussed under the CUP provisions, MFLH conducted a fumes test and odors could not be detected more than 60 feet away from the trucks. MFLH has suggested an additional condition of approval requiring any idling of vehicles associated with the HO to be for ten minutes or less and to be more than 60 feet from the property line. With this additional condition of approval ZDO 822.05(E) is satisfied.

ZDO 822.05(H) provides:

> "No outside storage, display of goods or merchandise visible from outside an enclosed building space, or external evidence of the home occupation shall occur, except as specifically allowed by Subsection 822.05. Notwithstanding this provision, business logos flush mounted on vehicles used in the daily operations of the home occupation are allowed."

Opponents argue that multiple parts of the HO will be located outside of the accessory structure. Again, opponents conflate the proposed PPFP use with the proposed HO use. Opponents argue that the existing storage containers will be visible. The storage containers, however, are being relocated to bench area of the property to be used as sound barriers for the sawmill. The containers are not part of the proposed HO. Opponents argue that the raw logs and portable mill will be visible. Both the logs and the mill are part of the PPFP CUP use not the HO use. Therefore, they may be located outside. Opponents also argue that finished products will be stored outside. Opponents are correct that finished products may not be stored outside, but MFLH does not propose to store any finished products outside. Any finished products of the HO will be taken directly from the accessory structure offsite. ZDO 822.05(H) is satisfied.[9]

ZDO 822.05(K) provides:

> "Parking: Parking associated with the home occupation shall be regulated as follows:
>
> "1. Vehicles associated with the home occupation shall not be stored, parked, or repaired on public rights-of-way.
>
> "2. The maximum number of vehicles that are associated with the home occupation and located on the subject property shall not exceed five at any time, including, but not limited to, employee vehicles, customer/client vehicles, and vehicles to be repaired. Vehicles to be repaired shall be located within an enclosed building or in an area not visible from off the subject property.
>
> "3. No more than one of the five vehicles permitted to be located on the subject property at one time shall exceed a gross vehicle weight of 11,000 pounds. * * *"

[9] The staff report states that equipment that is used for both the CUP and HO uses may be stored outside, but that is incorrect. Any equipment that is used for the HO must be stored inside, even if it is also used for the CUP.

Opponents argues that more than five vehicles will be on site associated with the HO. Again, opponents attempt to attribute PPFP uses, and vehicles associated with the PPFP, to the HO. There is only one vehicle specifically proposed to be used for the HO – the one ton truck. Some of the employee vehicles will be for the HO as well. While opponents are correct that MFLH stated that employee vehicles are more difficult to assess, that does not mean that five vehicles or less cannot be restricted to the HO use. As MFLH states:

> "Moving forward, for purposes of accounting, half the employees will be associated with the PPFP use, and half will be associated with the HO use. Generally speaking, there should be no problem meeting the vehicle standard. Assuming two full time employees dedicated to the HO operation, this is only two vehicles assuming both employees drive to the site." June 8, 2015 Letter.

While it may cause some logistical problems, MFLH can keep the number of vehicles on site associated with the HO limited to five or less. There is a proposed condition of approval to this effect, which opponents wish to have clarified. I think it is clear, only a total of five vehicles may be on site in associated regardless with both the CUP and the HO uses ZDO 822.05(K) is satisfied.

ZDO 822.05(M) provides:

> "Prohibited Uses: The following uses shall be prohibited as a home occupation:
>
> "1. Amy use that requires a structure to be upgraded to a more restrictive use, under the current edition of the Oregon Structural Specialty Code, than aircraft engine repair; and
>
> "2. Hazardous materials on the subject property in quantities greater than those normally associated with the primary uses allowed in the underlying zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code, whichever is less."

Opponents argue that the proposed use of the structure is not specifically provided for in the Oregon Structural Specialty Code (OSSC), and therefore the structure must be classified in the group that the occupancy most nearly resembles. Aircraft engine repair is classified as a "Moderate Hazard" for storage, and therefore the proposed use cannot be approved if it would require an upgrade to a classification greater than "Moderate Hazard." Opponents further argue that the proposed use should be assigned an "H occupancy" because it will allegedly contain combustible materials like treated logs and sawdust. MFLH responds that the proposed uses are allowed uses and cite to a letter from their building code specialist. Although the parties' arguments are difficult to follow, MFLH's expert appears to state that the current storage use of the accessory building is an S-1 occupancy, that woodworking such as the secondary processing that is proposed for the HO is an F-1 occupancy and that only 10% of the accessory building can be used for woodworking without increasing the use to an F-1 occupancy. MFLH's expert explains that aircraft engine repair would likely be classified as an F-1 occupancy. Therefore, if the secondary processing proposed for the HO is an F-1 occupancy and aircraft engine repair is an F-1 occupancy then the proposal would not need to be upgraded to a more restrictive use than aircraft engine repair. Furthermore, as MFLH explains there will be a very limited amount of chemicals stored in the accessory building

and would not be present in amounts "greater than those normally associated with the primary uses allowed in the underlying zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code." ZDO 822.05(M) is satisfied.

ZDO 822.06 provides:

"A. An exception to any of the standards identified in Subsections * * * 822.05(C) through (M) requires review as a Type III application * * * and shall be subject to the following standards and criteria:

"1. The subject property shall take direct vehicular access to a road with a functional classification of collector, minor or major arterial, or freeway/expressway * * *

"2. The use shall remain compatible with the area. The following factors shall be considered when determining if a use if compatible with the area:

"a. The number of standards identified in Subsection * * * 822.05(C) through (M) that will be exceeded; it is presumed that the more standards exceeded, the more difficult it will be to demonstrate compatibility;

"b. The character of the neighborhood, including such factors as the presence of other similar uses, proximity of other dwellings, the level of surrounding traffic, the size of accessory buildings, background noise levels, and other outside storage uses.

"c. The ability to mitigate impacts by screening, landscaping, building location, building design, and other property improvements (for example, driveway or road improvements);

"d. Potential environmental impacts, including effects on air and water quality; and

"e. Provision of adequate and safe access to public, County, or state roads.

"3. Services adequate to serve the proposed use shall be available, including transportation, public facilities, and other services existing or planned for the area affected by the use. * * *

"B. Notwithstanding Subsection 822.06(A):

"1. Maximum accessory space for the home occupation shall not exceed 3,000 square feet; and

"2. If the subject property is in an EFU, TBR, or AG/F zoning district, the number of employees shall not exceed five."

The staff report explains how the requirements for the proposed exception are satisfied, and I adopt and incorporate those findings in this decision. In addition, opponents argue that under ZDO 822.06(2)(a) many of the standards in ZZDO 822.05(C) through (M) are exceeded. As explained earlier, however, I do not agree with opponents that any of those

standards are violated. The only standard that an exception is required for is the size of the accessory building. As there is only one standard being exceeded that points in favor of approving the exception rather than denying it. Opponents also argue that under ZDO 822.06(2)(b) the size of the proposed addition to the accessory structure is much larger than anything in the area. While the proposed addition may be larger than other accessory structures in the area, there is already an existing accessory structure on the property, and I do not see that enlarging an existing structure on a five-acre TBR parcel particularly changes the character of the neighborhood. Opponents' arguments regarding noise, fumes, pollution, and impacts on fish and wildlife have already been addressed. Furthermore, most if not all of the alleged impacts would come from the proposed PPFP use not the HO use.

MFLH has satisfied the criteria for an exception to the accessory structure size limitation of ZDO 822.05(D). As the proposed accessory structure has not built yet, MFLH proposes to use the existing accessory structure until the new addition is built. The conditions of approval require MFLH to erect a partition to restrict the HO use to 1500 square feet as required by the ZDO. MFLH would prefer not to build the partition because the use of the existing portion of the accessory structure is only temporary. While that is understandable, the ZDO requires the partition.

The approval criteria for the proposed HO use and exception are satisfied.

## D. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** applications Z0295-14-C and Z0309-14-HOEX, with the following conditions of approval.

## E. CONDITIONS OF APPROVAL

**Conditional Use Conditions of Approval**

- **General Conditions:**

1) Approval is for the specific use identified in the application materials and on the submitted site plan to the extent they are subject to the Clackamas County Zoning and Development Ordinance and Comprehensive Plan and consistent with the remaining conditions of approval. This land use permit is based on the submitted written narrative and plan(s) dated August 5, 2014 and subsequent submitted materials dated November 26, 2014, and deemed complete on December 4, 2014. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Deana Mulder, at (503) 742-4710 or at deanam@co.clackamas.or.us.

3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Lori Phillips in the Clackamas County Development Agency. Lori Phillips can be contacted at (503) 742-4331, or loriphi@co.clackamas.or.us. The statement of use

is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

4) If approved, the conditional use is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:

   a. A building permit for a new primary structure that was part of the conditional use approval; or

   b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

**Planning and Zoning Conditions:** Sandy Ingalls, (503) 742-4532, sandying@clackamas.us

1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

2) This approval is for a request for a conditional use permit for a permanent facility for the primary processing of forest products including hand pealing logs for home "shells"; sawmilling and processing lumber, timber and specialized materials; logging equipment repair and storage; and log splitting into firewood for sale on the 5-acre site in the TBR zone. The facility will be open from Monday through Friday from 8:00 am to 6:00 pm with rare weekend work. The facility includes an office, shop, saw mill, trucks, along with equipment and materials associated with the proposed use. There will be an average of 4 employees plus the owner working on log projects. The site takes access off SE Marmot Road.

3) The applicant is approved for the following uses on site through this conditional use permit:

   a. Preparation and peeling of logs used in the construction of log homes, log home restoration and sale to others.

   b. Sawmilling and processing of lumber, timbers and specialized materials for sale.

   c. Producing (cutting) and selling firewood.

   d. Office facility (and restroom) for operation of the business.

   e. Wholesale distribution of milled boards, lumber, timbers and logs.

   f. Storage of boards, lumber, timbers and logs for sale.

   g. Preparing heavy log and timber pieces for use in the homes that are built off-site, not including pre-building i.e. assembly of log home shells.

   h. Storage of tools, equipment and vehicles needed in logging operations.

4) **Prior to any development or issuance of any development permits**, a written irrevocable statement shall be recorded with the deed records for the county binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

5) On-site lighting shall be designed, located, shielded, or deflected so as not to shine off-site onto structures, upwards or impair the vision of the driver of any vehicle on a right-of-way. Prior to final occupancy, submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.

6) All signs shall be reviewed and approved pursuant to Subsections 1010.07 and 1010.13 of the ZDO, prior to installation of the signs.

7) Noise: Sound created on site which is audible off the site shall not exceed the maximum permitted by the State Department of Environmental Quality (DEQ). The facility shall comply with ambient noise levels of 60 dB(A) from 7:00 am until 10:00 pm and 50 dB(A) from 10:00 p.m. to 7:00 a.m. Hours of operation for the Conditional Use Permit and Home Occupation Exception Permit (Z0309-15-HOEX) shall be the same: 8:00a.m. to 6:00p.m.

8) The applicant will comply with all DEQ regulations and obtain all required permits.

9) The storage of materials and equipment shall occur only in the designated areas.

10) The applicant shall keep the site circulation dust free, by either paving the roads or using a treatment on on-site roads with a solution that holds dust down. In the dry season use best management practices solutions for retarding dust levels on site in work areas and site circulation systems.

11) **Prior to final occupancy**, the address to the subject property shall be posted at the driveway entrance at the public road in numbers a minimum of 3 inches in height for easy identification by emergency service providers.

12) The applicant shall keep the log preparation/pealing "yard" watered (damp), when preparing logs during the dry season.

13) Prior to final occupancy the applicant will prepare and submit a revised/ final landscape plan illustrating the proposed vegetative screening along Marmot Road using native plant species in the landscape scheme, to be reviewed for approval prior to site being re-vegetated.

- **Building Code Division Conditions:** Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.us

1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
   a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
   b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
   c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
   d. All necessary permits and approved plans must be issued and maintained onsite as required.
   e. All required inspections, corrections, and final approval must be obtained.

**IV. Engineering Division Conditions:** Ken Kent, (503) 742-4673, kenken@co.clackamas.or.us

1) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with *Clackamas County Roadway Standards.*
2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
3) The applicant shall design one, minimum 28-foot wide, driveway approach in conformance with *Roadway Standards* Drawing D500 at the existing easterly driveway approach location.
4) The applicant shall permanently remove the westerly driveway approach and replace it with matching edge of pavement, shoulder, ditch and landscaping to prevent any future use unless approved to remain through a modification process, including associated improvements.
5) The applicant shall provide a copy of the surface water management plan to DTD Engineering, Deana Mulder.
6) The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the parking and maneuvering areas, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. Loading spaces shall also be afforded adequate maneuvering room. The applicant shall show the paths traced by the extremities of anticipated large vehicles (delivery trucks, fire apparatus, garbage and recycling trucks), including off-

tracking, on the site plan to insure adequate turning radii are provided for the anticipated large vehicles maneuvering on the site and at the site driveway approach intersecting with Marmot Road. All parking and maneuvering areas shall be surfaced with screened gravel or better, except for the required paved driveway approach and paved parking space and adjacent accessible area for the disabled. (*ZDO* subsection 1015.04 B7)

7) The Proposed Five parking spaces shall meet minimum *ZDO* section 1015 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all compact, carpool, disabled (minimum of one required), and loading berth spaces on the plans. Parking layout geometry shall be in accordance with *ZDO* Table 1015-1 and *ZDO* Figure 1015-1.

8) The applicant shall provide and maintain adequate intersection sight distance and adequate stopping sight distance at the driveway intersection with Marmot Road. Adequate intersection sight distance for drivers turning left into the site shall also be provided and maintained. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct minimum sight distance requirements. Minimum intersection sight distance, at the driveway intersection with Marmot Road, shall be 316 feet easterly, and 349 feet westerly along Marmot Road, measured 14.5 feet back from the edge of the travel lane. (*Roadway Standards* section 240)

9) Applicant shall comply with County Roadway Standards clear zone requirements in accordance with Roadway Standards section 245.

10) Prior to certificate of occupancy, the applicant shall provide an Engineer's cost estimate to Clackamas County Engineering for any unfinished improvements required by conditions of approval. The estimate shall be submitted for review and approval of quantities of asphalt concrete, aggregates, and any other required improvements and associated construction costs.

11) Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:

    a) Written approval from the local Fire District for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.

    b) Written approval from the Department of Transportation and Development for surface water management facilities and erosion control measures.

    c) A set of street and site improvement construction plans, including a striping and signing plan, for review, in conformance with *Clackamas County Roadway Standards* Section 140, to Deana Mulder in Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

        i) The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.

        ii) The minimum fee is required for eight or fewer, new or reconstructed parking spaces. For projects with more than eight parking spaces, the fee will be calculated at a per parking space rate according to the current fee structure for

commercial/industrial/multi-family development at the time of the Development Permit application.

iii) The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

12) Before the County issues a Development Permit, the applicant shall submit a construction vehicle management and staging plan for review and approval by the County DTD, Construction and Development Section, if the public road right-of-way is planned to be used for construction staging. That plan shall show that construction vehicles and materials will not be staged or queued-up on public streets and shoulders without specific authority from DTD. If the public road right-of-way is not planned to be used for construction staging, a note shall be added to the construction drawings stating that the public road right-of-way will not be used for construction staging.

**V. <u>Hoodland Fire District #74 Conditions:</u>** Scott Kline, (503) 622-3125

1) Exhibit 27, Log storage areas need to meet the requirements for stability and stay within size requirements.

2) Storage of wood chips and sawdust need to stay below the minimums set forth in the code.

3) Submit an "Emergency Plan" for review and approval by the Fire Marshall.

**Home Occupation Conditions of Approval**

1. Approval is for **THREE YEARS only**. Continuation of the use beyond the three year approval period will require submittal of a home occupation renewal application.

2. Compliance with Sections 406 and 822 shall be met. Failure to comply will be cause for revocation of this permit.

3. The operator of the home occupation shall reside in a dwelling unit on the property. This decision is not transferrable to other parties.

4. There shall be no more than five employees located on the property at a given time.

5. The applicant is limited to 3,000 square feet of accessory building space for the home occupation use. All activities and storage of equipment and materials associated with the home occupation use shall be conducted entirely within this enclosed space.

6. ***Prior to operating the home occupation and issuance of a building permit the applicant shall*** obtain and have final the appropriate building permits to convert the existing accessory structure to commercial for the home occupation use. The permit will likely include a "Change of Use" permit, to store conduct the home occupation activities within the structure. A "Statement of Use" form for operating the commercial home occupation within the proposed structure. A commercial building permit is required for a new accessory structure to accommodate the home occupation us. The pre-existing and new accessory structures shall be in conformance with the Clackamas County Building Codes Division, State of Oregon Structural Specialty Code and/or One and Two Family Dwelling Code, and Hoodland Fire District standards and regulations. Richard Carlson of the Clackamas County Building Codes

Division can be reached at (503) 742-4769 or by email at richardcar@co.clackamas.or.us. Specific requirements may be:

A. All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.

B. Compliance with the following conditions is required prior to the commencement of any new use or occupancy:

   i. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.

   ii. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.

   iii. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.

   iv. All necessary permits and approved plans must be issued and maintained onsite as required.

   v. All required inspections, corrections, and final approval must be obtained.

C. The **Hoodland Fire District #74 Conditions:** Scott Kline, (503) 622-3125

   i. Exhibit 27, Log storage areas need to meet the requirements for stability and stay within size requirements.

   ii. Storage of wood chips and sawdust need to stay below the minimums set forth in the code.

   iii. Submit an "Emergency Plan" for review and approval by the Fire Marshall

7. ***Prior to operating the home occupation and issuance of a building permit the applicant shall*** submit evidence to the Planning and Zoning staff for submittal to case file Z0309-14-HOEX that a recorded statement to recognize the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules.

8. Hours of operation shall be limited to between the hours of **8 AM to 6 PM**. The home occupation shall not create noise that exceeds 60 dBA when measured off the property. To include, but not limited to, idling equipment or vehicles associated with the home occupation use. Hours of operation outside of 8 A.M. to 6 P.M. shall not create noise detectable to normal sensory perception off the subject property. Any idling of vehicles or machinery shall be for no more than ten minutes and shall be located at least 60 feet from any property lines.

9. The home occupation shall not create glare from security or other lighting, fumes, vibrations, or electrical interference off the subject property.

10. The home occupation use shall not create visible or audible electrical interference in radios, televisions, or other electronic devices off the subject property.

11. No outside storage associated with the home occupation shall be allowed. Outdoor storage includes products (building materials and equipment, work site debris, etc)

transported to the property from and for job sites, and equipment that is not intended for road use that are dedicated solely to the home occupation activities.

12. Any signage shall comply with Subsection 1010.06(B) and 1010.06(B).

13. There shall not be more than 30 vehicle trips per day on the subject site as a result of the home occupation use.

14. There shall be no vehicles or construction equipment repaired, parked or stored in the public right-of-ways.

15. There **shall not be more than five vehicles** associated with the home occupation on the site at any given time, and not more than *one* of the five vehicles located on the property shall be in excess of 11,000 pounds gross vehicle weight.

16. Parking shall be provided in defined areas on the property.

17. The home occupation shall not include the storage of hazardous materials in excess to quantities exempt from the current edition of the Oregon Structural Specialty Code on the site.

18. Maintain compliance with the Oregon State Northwest Department of Environmental Quality (DEQ) standards for proper management, burn, and disposal of waste on a property. The NW DEQ office can be reached at http://www.state.or.us/nwr/about.htm or at (503) 229-6945.

19. ***Prior to the issuance of building permits,*** the applicant shall submit a statement of use to Lori Phillips in the Clackamas County Development Agency. Lori Phillips can be contacted at (503) 742-4331, or loriphi@co.clackamas.or.us. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

20. ***Prior to the issuance of building permits***, the applicant shall comply with the requirements of the Clackamas County Traffic Engineer conditions as noted in Exhibit 23, dated February 3, 2015. The applicant can contact Ken Kent of the Traffic Engineering and Development at (503) 742-4673 or by email at kenken@co.clackamas.or.us

21. Approval is subject to the above stated conditions. Failure to comply with all conditions of approval shall be cause for revocation of this permit.

DATED this 24th day of November, 2015.

Fred Wilson
Clackamas County Hearings Officer

## ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).