

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 95-9-20-2

) IN THE MATTER OF AMENDING CHAPTER
) 21 OF LANE MANUAL TO ADOPT REGULA-
) TIONS TO PROHIBIT THE EXPORT OF
) UNPROCESSED TIMBER TAKEN FROM
) LANDS OWNED OR MANAGED BY
) LANE COUNTY (LM 21.440)

The Board of County Commissioners of Lane County orders as follows:

Chapter 21 of Lane Manual is hereby amended by adding the following pages:

REMOVE THESE PAGES

INSERT THESE PAGES

21.440 - 21.440(2) to
21.440(8) - 21.440(11),
i.e. 21-34 to 21-38
(a total of five new pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these additions is to adopt regulations to prohibit the export of unprocessed timber taken from lands owned or managed by Lane County (LM 21.440).

Adopted this 20th day of September, 1995.

Ellie Swandi

Chair, Lane County Board of Commissioners

FILED

SEP 26 1995

COUNTY CLERK

Pam DeWille

APPROVED AS TO FORM
DATE 9-11-95 Lane County
Stephen W. ...
OFFICE OF LEGAL COUNSEL

IN THE MATTER OF AMENDING Chapter 21 OF LANE MANUAL TO ADOPT REGULATIONS TO PROHIBIT THE EXPORT OF UNPROCESSED TIMBER TAKEN FROM LANDS OWNED OR MANAGED BY LANE COUNTY (LM 21.440)

bj/10017

21.440 Sale of County Timber & Log Export Regulations

(1) Subject to ORS Chapter 275 and other Federal and State Laws it shall be the policy of Lane County to sell County Timber to the highest bidder.

(2) Definitions. As used in this subchapter, the following words and phrases shall mean:

(a) County Lands. Lands owned or managed by Lane County.

(b) County Timber. Any timber owned or managed by Lane County.

(c) County Timber Sale Contract. Any contract with Lane County for the sale of County timber.

(d) Export. Unprocessed timber loaded on a vessel or other conveyance with a foreign destination, or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

(e) Performance Bond. The security required by a County timber sale contract that ensures satisfactory performance of contract requirements by the timber sale purchaser.

(f) Person. An individual, partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(g) Unprocessed timber or Unprocessed County timber. Trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

(i) Lumber or construction timbers, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture;

(ii) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;

(iii) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in LM 21.440(2)(g)(ii) above and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8-3/4 inches in thickness;

(iv) Chips, pulp, or pulp products;

(v) Veneer or plywood;

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- (vi) Poles, posts, or piling cut or treated with preservatives for use as such;
- (vii) Shakes or shingles;
- (viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;
- (ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips;
- (x) Firewood cut in pieces 48 inches or less in length.

(3) Criteria for Eligibility to Bid on County Timber Sale Contracts.

(a) In addition to all other requirements of law, any person submitting a bid for the purchase of County timber must certify, in a form and manner specified by the County Administrator or Designee, that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(b) In addition to all other requirements of law, a person previously not eligible to bid for County timber under LM 21.440(3)(a) above may bid for County timber if the person certifies in form and manner specified by the County Administrator or Designee that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) Unless exempted by LM 21.440(6) below, the person has not exported unprocessed timber from County lands for a period of not less than 24 months prior to the date of submission of the bid; and

(iii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(4) Prohibition of Indirect Substitution.

(a) In addition to all other requirements of law, no person who is prohibited from purchasing County timber directly from the County may purchase County timber from any other person.

(b) Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from this prohibition.

(5) Prohibition of Export of County Timber. All unprocessed timber, as defined in LM 21.440(2) above, which originates from County lands, may not be exported.

(6) Surplus Timber. The prohibitions against export contained in this provision shall not apply to specific quantities of grades and species of unprocessed timber originating from County land which, at the time of harvest, the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

(7) Reporting Requirements.

(a) Before the execution of a timber sale contract or the County in any other manner sells County timber, a purchaser of County timber must:

(i) Notify the County Administrator or Designee of the delivery destination of all timber purchased. Notification will be made in a form and manner described by the County Administrator or Designee; and

(ii) Deliver to the County Administrator or Designee a certification of the eligibility to purchase County timber of any person to whom the purchaser intends to sell, trade, exchange, or otherwise convey the purchased County timber, and their intent to comply with the terms and conditions contained in this section.

Certification will be made in a form and manner as prescribed by the County Administrator or Designee. Obtaining certification shall not relieve the purchaser's responsibility to provide the County Administrator or Designee with an accounting of the delivery destination of that timber.

(b) Any performance bond required by a County timber sale contract may be retained by the County Administrator or Designee until he or she receives satisfactory notification of County timber delivery destination.

(c) Failure to provide the County Administrator or Designee with a final accounting of the delivery destination of County timber will be considered a violation of this provision. Violators shall be subject to the penalties contained in LM 21.440(8) below.

(8) Remedies for Violation.

(a) The County Administrator or Designee shall keep a written record of all persons whom he or she believes have violated the requirements of this provision.

(b) A person whose name appears on the record for violations as stated in LM 21.440(8)(a) above, and who again violates the requirements of this provision shall be disqualified from bidding on or purchasing County timber for a period of five years following the date of the violation.

(c) The County Administrator or Designee may cease operations on and/or terminate any County timber sale contract entered into with a person who has violated the requirements of this provision.

(d) The County Administrator or Designee may assess damages for violations of this provision according to the following formula:

(i) $D = (OSV+AC)-(PR+RSV)$, where:

(aa) D = Damages and Expenses.

(bb) OSV = Original Sale Value (timber only - does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales.

(cc) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law.

(dd) PR = Payments Received.

(ee) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the County Administrator or Designee's estimate of remaining volume, multiplied by the dollar values stated in the contract.

(e) The County Administrator or Designee shall promptly notify the person in writing of any action taken under LM 21.440(8)(b), (c), or (d) above. The notice shall include the nature and date(s) of the violation(s), and where appropriate, the date of contract termination and/or cessation of operations, the period of disqualification, and the amount of assessed damages and how they were calculated. If the person is disqualified, the notice shall also include a statement of the appeal rights and procedure described in paragraph LM 21.440(8)(f) below.

(f) A person who receives notification from the County Administrator or Designee of disqualification may appeal the decision to the Board of County Commissioners.

(i) A written request must be received by the County Administrator, 125 E. 8th Ave., Eugene, OR., 97401, no later than 15 days after the date of the County notification.

(ii) After a timely appeal request is received, the Board of County Commissioners will schedule a public hearing. The appellant will receive at least 15 days' written notice of the hearing.

(iii) Following the hearing, the Board of County Commissioners shall make written findings and issue a written decision. A copy of the findings and decision will be mailed to the appellant. The Board's decision shall be final.

(g) If a person does not timely appeal a disqualification notice, then the decision of the County Administrator or Designee shall be final.

(h) The County Administrator or Designee's decision to cease operations, terminate a timber sale contract, or assess damages shall be final.

(9) Log Branding and Marking Requirements.

(a) All County timber originating from county timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, one end of all logs originating from County timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the County Administrator or Designee.

(b) If properly marked County timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a county brand specifically used for this purpose and signifying the unprocessed timber is County timber ineligible for export. The County's export restriction branding hammers can be obtained from the County Administrator or Designee, at cost, upon request.

(10) Timber Sale Contracts. All County timber sale contracts shall contain the following provision:

"The Federal Forest Resources Conservation and Shortage Relief Act of 1990 and state law prohibits the export of unprocessed timber originating from County lands. Violations of that Act, ORS 526.801 to 528.831 or the Lane County Log Export Regulations may result in termination of this contract, assessment of damages, disqualification from bidding on or purchasing County timber for up to five years, or federal or state legal action. In any legal action brought by the County to enforce this provision of the contract, the County, if it prevails, shall be awarded its reasonable costs and attorney fees."

(11) Enforcement.

(a) Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the County Administrator or Designee, or contracted by the County Administrator or Designee to other County, state or federal agencies. Any alleged violations of the export prohibition provisions of these log export regulations will be referred by the County Administrator or Designee to the appropriate federal or state agency for prosecution or other legal action.

(b) Once the County Administrator makes a final decision that assesses damages, the full amount of damages shall be immediately due and payable. If payment is not made within 30 days, the County may enforce payment through civil legal proceedings, in which the County, if it prevails, shall be awarded its reasonable costs and attorney fees.