APPLICANT: Michael DeSousa, USA c/o CWS
10374 Battleview Parkway
Manassas VA 20109

OWNERS OF USA
WILMARTH, DAVID & CHERYL
RECORD: CWS ATTN: AUDREY EWELL
132 SWAIN CT
10374 BATTLEVIEW PKWY
REEDSPORT, OR 97467
10374 BATTLEVIEW PKWY
MANASSAS, VA 20109

REQUEST: Multi-line property line adjustment

STAFF CONTACT: Jill Rolfe, Planning Director

MAP NUMBER(S) / LEGAL DESCRIPTION
ASSESSOR’S MAPS: Township 23S Range 12W Section 03 Tax Lot 1700
Township 23S Range 12W Section 04D Tax Lot 1800
Township 23S Range 12W Section 04D Tax Lots 90000 through 90011

PROPERTY LOCATION
The subject property is located northeast of the City of Lakeside, off of Ten Mile Lake (Carlson Arm), and is boat access only.

APPLICABLE CRITERIA
Coos County Zoning and Land Development Ordinance (LDO) and Coos County Comprehensive Plan (CCCP)

LDO § 1.3.250 Applications to Correct Violations
LDO §3.3.800 Lawfully Created Lots and Parcels
LDO §3.3.152 Property Line Adjustment Approval Criteria

1. BASIC FINDINGS

A. **Zoning:** The zoning is Rural Residential-2 (RR-2) and Forest Mixed Use.

The purpose of the “RR-2” district is to provide for small acreage homesites outside of Urban Growth Boundaries, where a moderate intensity of land development is appropriate, but where urban services and facilities may not be available or necessary. The “RR-2” district provides for continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural and forestry uses.

The purpose of the “F” Zone is to designate forest lands and protect them for forest uses, except where findings establish that certain limited non-forest uses may be allowed. Some of the areas covered by the “F” zone are exclusive forest lands, while other areas include a combination of missed farm and forest uses.

Mixed Farm-Forest Areas “MU” areas include land which is currently or potentially in farm-forest use. Typically such lands are those with soil, aspect, topographic features and present ground cover that are best suited to a combination of forest and grazing uses. The areas generally occupy land on the periphery of large
corporate and agency holdings and tend to form a buffer between more remote uplands and populated valleys. In addition, these “mixed use” areas contain ownership of smaller size than in prime forest areas. Some are generally marginal in terms of forest productivity, such as areas close to the ocean.

In certain areas of the County, these “mixed use” areas consist of extensive uplands where the lands are held predominantly by ranchers who manage their properties interchangeably between grazing and forestry depending on the economic base of each commodity at any given time. An essential management approach practiced by these ranchers is to maintain enough upland grazing acreage to sustain livestock during the winter months due to the flooding of lowland areas. Some intensive forest management is practiced on these lands, but not to the same extent as in “prime forest areas”, and grazing is in many places a co-dominant use. There are typically mixtures of farm and forest uses in these areas. Certain non-forest uses will be allowed in areas that meet the criteria of this classification as established in the zoning ordinance.

B. **Site Description:** Tax lot 1700 in section 3 contains 6.00 acres. Tax lot 1800 in section 04D contains approximately 7.46 acres and the 90000 series tax lots located in section 4D contain approximately 7.75 acres. This area has tree vegetation with some cleared areas. The properties are partially located within the Coastal Shoreland Boundary.

C. **Background:** The following applications have been completed on the properties:

**T23S-R12W-S3-Tax Lot 1700**

- July 9, 1992, a Hearings Body Conditional Use (File No. HBCU-92-18) was approved to allow camp site development.
- August 18, 1992, a Verification Letter, also referred to as a Zoning Compliance, (File No. VL-92-398) was issued to alter existing dwelling, construct two camping shelters, and a 16 x 24 accessory building with two bathrooms, one shower and one storage area.
- June 24, 1997, a single property line adjustment was approved with Tax Lot 1700 in Section 03 and 1800 in Section 4D which consolidated those tax lots onto the same deed (one metes and bounds legal description). The tax lot numbers remained the same because the section line splits the property and for assessment purposes the properties remained two tax lots.
- 2010 the property was seized by the United States of America and an order of forfeiture was filed with the Coos County Clerk’s Office.
- July 2011 tax lot 1700 was sold to the Wilmarths creating an illegal land division.
- March 23, 2012, a compliance determination requested by the new owner of tax lot 1700 and at that time they were given options for correcting the violation (illegal land division).

**T23S-R12W-S4D-Tax Lot 1800**

- August 19, 1985, an Administrative Condition Use (File No. ACU-85-59) was approved to construct a health lodge for physically handicapped children and adults.
- August 19, 1985, a Verification Letter, also referred to as a Zoning Compliance, (File No. VL-85-411) was issued to construct the health lodge.
- June 24, 1997, a single property line adjustment was approved with Tax Lot 1700 in Section 03 and 1800 in Section 4D which consolidated those tax lots onto the same deed (one metes and bounds legal description). The tax lot numbers remained the same because the section line splits the property and for assessment purposes the properties remained two tax lots.
- 2010 the property was seized by the United States of America and an order of forfeiture was filed with the Coos County Clerk’s Office.
- July 2011 tax lot 1700 was sold to the Wilmarths creating an illegal land division splitting the single parcel that was created through the property line adjustment that was approved in 1997.
T23S-R12W-S4D-Tax Lots 90000-90011

- December 3, 1998, a Hearing Body Application (File No. HBCU-98-08) was approved by the Planning Commission to change or alter a grandfathered use from a summer retreat for handicapped children to a privately owned residential retreat in the Forest Mixed Use Zone.
- December 23, 1998, an Appeal of a Planning Commission Decision (File No. AP-98-008) was filed by Department of Land Conservation and Development (DLCD). In response to the appeal the applicant withdrew application File NO. HBCU-98-08.
- February 23, 2000 a Plan Map Amendment and Rezone (File No. AM-99-09/RZ-99-04) was approved to rezone the Forest Mixed Use property to Rural Residential – 2.
- May 1, 2003, an application for Condominiums (File No. CON-02-01) was approved by the Planning Commission. (This changed the tax lot number to the current configuration)
- 2010 the property was seized by the United States of America and an order of forfeiture was filed with the Coos County Clerk’s Office.

These properties are not part of the illegal land division but are being utilized to correct the violation. The reason this application is viewed as a multiple property line adjustment because tax lot 1800 will be incorporated into the 90000 series tax lots as open space. The requires adjusting the outer plat line of 90000 to take in tax lot 1800 which will no longer exist once everything is completed and the documents are recorded.

### II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

<table>
<thead>
<tr>
<th>LDO</th>
<th>§ 1.3.250</th>
<th>Applications to Correct Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>LDO</td>
<td>§3.3.800</td>
<td>Lawfully Created Lots and Parcels</td>
</tr>
</tbody>
</table>

#### SECTION 1.3.250. Applications to Correct Violations.

1. When a violation of this Ordinance is found by the Planning Director to exist for a given ownership of land, and when a discretionary application may be submitted by the owner of the subject property in order to correct the violation, said owner may submit an application to correct the violation but may submit no other application to allow development or use of the subject property until the violation is corrected. Applications submitted to correct violations shall submit the “late filing fees” set forth at Section 1.3.825 of this Ordinance.
2. Submission of an application to correct a violation does not relieve a landowner from complying with the requirements of this Ordinance, and does not preclude enforcement actions otherwise authorized by this Ordinance. [OR-92-07-012PL]
3. Where application is made for approval of the creation of lots or parcels which were improperly formed without approval required by this Ordinance, said application may be considered to allow the lawful creation of said lots or parcels notwithstanding that less than all the owners of the subject property have applied or otherwise granted consent to submit the application. [OR-93-12-017PL 2/23/94]

#### SECTION 3.3.800. Lawfully Created Lots and Parcels.

The following lots or parcels shall remain discrete lots or parcels, unless individual lot or parcel lines are changed or vacated or the individual lot or parcel is further divided as provided by this Ordinance:

1. Lots or parcels created prior to January 1, 1986; or
2. All lots or parcels lawfully created after January 1, 1986. (OR-00-05-014PL)
3. Separate tax lot or tax account numbers do not in themselves divide property into separate discrete lots or parcels.
4. Mortgages, trust deeds, or liens do not divide property.
5. Deeds for lawfully created lots or parcels not in the “same ownership” do divide property. “Same ownership” shall include land deeded to the same persons (initials are considered the same full names).
6. Land sales contracts and trust deeds do divide property if there are no applicable planning, zoning or partitioning ordinances or regulations.

7. The presence of public road easements or public road dedications do not of themselves divide property into separate discrete lots or parcels. (OR 93-02-001PL 3-31-93)

8. Submerged lands claimed by the state in fee and other intervening ownerships, do divide property into separate discrete lots or parcels.

9. Private road easements do not divide property.

**FINDING:** The violation is the illegal creation of parcels without going through the proper land use process (land division or property line adjustment). As described in the background tax lots 1700 and 1800 were one lawfully created parcel but contained separate tax lot numbers because the section line split the property. Separate tax lot or tax account numbers do not in themselves divide property into separate discrete lots or parcels, neither do land sales contracts, unless the contract took place prior to any zoning or partition ordinance were adopted. In this case there were land use ordinances including partition regulations in place.

Therefore, the applicants had to either combine tax lots 1700 and 1800 back into one property, apply for a land division or consolidate tax lots 1800 and 90000 by completing a property line adjustment. The land division was not an option because the property did not meet the required minimum parcel size. The applicants chose to consolidate tax lots 1800 and 90000.

---

<table>
<thead>
<tr>
<th>LDO</th>
<th>§3.3.152</th>
<th>Property Line Adjustment Approval Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SECTION 3.3.152 Approval Criteria.</strong> A property line adjustment may be approved if it complies with all of the following:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. The existing lots or parcels were lawfully created in accordance with Section 3.3.800;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. No new parcels will result from the adjustment;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless the building or improvement does not currently comply, in which case the building or improvement shall not be rendered more nonconforming by the adjustment;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Resulting lots or parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment, or</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
c. Property line adjustments by a public body for the purpose of incorporating excess right-of-way property into adjacent property shall not be subject to minimum lot size requirements.

6. Property line adjustments on land zoned Exclusive Farm Use, Forest and Forest Mixed Use may not be used to:
   a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
   b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
   c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

7. The adjustment shall not result in parcel(s) that overlap a city limit or county line.

8. The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.

9. If any of the parcels involved in the lot line adjustment(s) is subject to conditions of a prior land use permit, then the area added to that parcel shall be subject to any conditions imposed under the permit.

FINDING: This property line adjustment application is to resolve an unlawfully created parcel. Therefore, once this process is completed that parcel will comply with LDO, Section 3.3.152(1). There will be no new parcels created from this process. All building and improvements will maintain the minimum setbacks. All adjusted parcels will be large enough to accommodate the uses allowed on these properties.

The forest portion of the properties that are involved in the property line adjustment are smaller than the minimum size and the adjustment will not change that. The residential zoned portion is in compliance with the minimum lot size and will remain in compliance. The Forest portion of the property is not being resized for the purpose of a dwelling; therefore, LDO, Section 3.3.150(6) does not apply.

The properties do not include any city zoning and will not cross a city boundary. The property line adjustment will not change any access or easements.

The property line adjustment will extend the outer boundary of a condominium plat; therefore, tax lot 90000 (parent parcel) is subject to covenants and restrictions as found in the Condominium Declaration for Woodpecker Condominium. This document will have to be amended to include the consolidation of tax lot 1800. Tax lot 1800 must remain as open common space and shall not be developed with any residential development unless a rezone is applied and approved.

According to Mike Dado, County Surveyor a survey is required for the adjust parcels because the size is less than 10 acres. The applicant is required within one year the date of final approval to survey and complete any condominium requirements. All surveys and recorded documents must be provided to the Coos County Planning Department. If this is not completed the violation will remain.

Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor’s office can process the property line adjustment deed.

III. NOTIFICATION AND APPEAL RIGHTS

The Planning Department mailed individual written notice of the decision to the owners of record of all property located within 250 feet of the subject property. Notice of Decision with a copy of the staff report was forwarded to Applicant(s)/Owner(s), Dave Perry, DLCD, Property Owners, Coos County Surveyor and Confederated Tribes. Notice of Decision will be provided to Coos County Assessor, Coos Forest Protective Association, Coos County Board of Commissioners and the Coos County Planning Commission. In addition, notice of the decision was posted at the Coos County Courthouse, Coquille Annex and North Bend Annex. All notices were mailed and posted on April 23, 2013.
This decision may be appealed to the Coos County Hearings Body pursuant to Article 5.8 of the Coos County Zoning and Land Development Ordinance within 15 days from the date of written notice. This means that appeals must be received in the Planning Department by 5 p.m. on May 8, 2013, in order to be considered. This decision will not be final until the period for filing an appeal has expired. Detailed information about the appeal process, filing fees and additional information will be provided by the Planning Department upon request. The decision is based upon the submitted application, supporting evidence, facts, and findings to the criteria.

### IV. CONDITIONS OF APPROVAL

1. Pursuant to ORS 215.416(1), the fees charged by the Planning Department for permit applications represent the average cost of processing the application. If the actual cost of processing the application exceeds the average cost, then the applicant shall be responsible for paying the full amount. If such an amount is due, it must be paid before a zoning compliance letter can be issued.

2. The applicant is required within one year the date of final approval to survey and completed any condominium requirements. All surveys and recorded documents must be provided to the Coos County Planning Department. If this is not completed the violation will remain.

If you have any questions please contact staff.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

C: Howard Crombie, Confederated Tribes
   Property Owners
   File

EC: Dave Perry, DLCD
    Mike Dado, County Surveyor

Attachments: Applicants Submittal
             Decision Notice
             Property Line Adjustment Map
             Vicinity Map