I. **Subject** Property Information

This does not include any adjoining property that is not subject to this matter

<table>
<thead>
<tr>
<th>Account Numbers</th>
<th>1310200</th>
</tr>
</thead>
<tbody>
<tr>
<td>Map Numbers</td>
<td>30S122200-0020</td>
</tr>
</tbody>
</table>

**Property Owners**

MCWILLIAM, MIKE J. & TANYA M.

48922 MCWILLIAMS PIT RD

MYRTLE POINT, OR 97458-876

**Situs Address**

48922 MCWILLIAMS PIT RD MYRTLE POINT, OR 97458

**Acreage**

100.11 Acres

**Zoning**

EXCLUSIVE FARM USE (EFU)

Special Districts/Agencies:

<table>
<thead>
<tr>
<th>Department of State Lands</th>
<th>Coos County Road Department</th>
<th>Army Corps of Engineer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon Department of Fish &amp; Wildlife</td>
<td>Department of Environmental Quality</td>
<td>Dave Perry, DLCD</td>
</tr>
<tr>
<td>Oregon Department of Forestry</td>
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</tbody>
</table>
II. BACKGROUND

1. February 27, 2007 – Letter to Mike McWilliam as a follow up to a conversation at the counter with regard to the four-wheeler events. It was determined that further research was necessary and a written plan with additional information was necessary. It was stated that once that information was provided staff could determine what the next steps would be. The applicant did not provide any additional information at that time.

2. April 30, 2007 – Letter to Mike McWilliam stating that it was brought to staff’s attention that an event was held. The letter explained that a pre-application meeting was necessary to invite various agencies to discuss the proposal and no other permits would be issued on the property until the issue was resolved.

3. June 6, 2007 – In response to a meeting with the Planning Director a letter was sent to Mr. and Mrs. McWilliam stating that the Planning Director had determined the use as a “temporary use” pursuant to CCZLDO § 3.2.100. The letter outlined the following:
   a. Events of no more than 3,000 people may occur no more than 6 times a calendar year;
   b. Parking and Traffic Control – Contact the Highway Department Access Manager for suggestions on how to deal with traffic control. Ingress and Egress will need to provide for safe movement of any vehicle at any time to or from the parking areas. The Access Manager may suggest flaggers, traffic control devices or dust control measures be used during events to ensure the safe and efficient flow of vehicles.
   c. Restricted Hours of Operation – 4-wheel vehicle events may operate during the hours of 9am to 8pm during summer hours and 9am to 5pm during winter hours. Hours may be modified if written consent from neighboring property owners and residents are submitted to the Planning Department.
   d. Fire safety – The property is located outside a rural fire protection district; therefore, you will need approval from the office of the State Fire Marshal or Coos Fire Protective Association that would respond in the event of an emergency for adequate measures for fire safety.

4. March 13, 2008 – The Planning Department had received a letter from Department of Environmental Quality (DEQ) that stated they had no issues with them hosting a 4-Wheel Day event at their ranch located at 48922 McWilliams Pit Road. It was stated that there would be dumpsters and portable restrooms available. It was further stated that “Given that this is a single day happening and that efforts will be made to prevent environmental contamination; this Department has no issues with this event.”

5. April 30, 2008 – Mr. and Mrs. McWilliam came to the Planning Department to inquire if anyone had complained about the event they had the prior weekend. Staff had not received any complaints at that time.

6. April 30, 2008 – A follow-up letter was mailed out to Mr. and Mrs. McWilliam recapping the conversation they had with staff earlier that same day. The letter also explained that after they had left the department staff received information from Department of Land Conservation and Development (DLCD) that a mass gathering can only be held once every three months. DLCD stated that only private non-profit organizations may hold events for donations and all other events where money or goods change hands, whether or not they are called “donations,” are considered a commercial endeavor. After this letter was received the
Planning Director had changed her determination of the use and was considering the use as a commercial event and not a mass gathering which required further review from the County.

7. May 12, 2008 – Planning staff sent out a letter with all options to the McWilliams. The letter explained the options were to request a rezone of the property, continue the event as under the mass gathering laws or stop holding the events. The property owners appeared to have complied because there was no further information, including complaints, available until 2010.

8. April 27, 2010 – A letter was sent to the McWilliams stating that it was brought to the attention of the Planning Director that they were continuing to hold the events in a commercial manner and did not comply with ORS 197.015(10)(d).

9. May 7, 2010 – Another letter was provided to the McWilliams that explained the property would be flagged as in violation and a pre-application meeting was required.

10. May 11, 2010 – A letter was from the Army Corps of Engineers was received addressing possible discharge of dredged or fill material into the waters of the US. This is a violation of Section 404 of the Clean Water Act.

11. May 13, 2010 – McWilliams submitted a pre-application meeting request.

12. June 23, 2010 – A pre-application meeting was held and comments were reviewed.

13. July 2, 2010 – A follow-up letter was sent to the McWilliams. The letter stated that Staff and Counsel were present at the pre-application meeting with DLCD Staff participating through a conference call. There were other agency comments received concerning sediment control. As a result of this meeting County Counsel’s office advised that because the events fall under the small mass gathering provisions, the use was not subject to land use review.

14. July 6, 2010 – A letter was sent to the Coos County Commissioners and Planning Staff from Tanya McWilliam trying to clarify some of the misinformation that had been provided by opponents.

15. October 8, 2010 -The Board of Commissioners held a work session with the property owner and the neighbors. At that time it was decided that the property owners would comply with the ORS 197.015(10)(d) which states a land use decision does not include authorization of a gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours and shall not occur more than once in any three-month period. The Board of Commissioners made a determination that the event was not a land use matter.

16. April 27, 2011- The Planning Director sent a letter to Mr. Seals explaining that Commissioner Main had requested staff to explain the process. Staff explained that the determination was made in the October 8, 2010 meeting that the events were not a land use matter but were regulated by the mass gathering laws.

17. August 5, 2011 – Letter from Katherine Daniels, DLCD stating that if the events occur more than once every three months then it is subject to a land use review. She further explains that Senate bill 960 passed in 2011 Legislative Session provides a new avenue for the approval of event venues in EFU zoning that are “related to and supportive of agriculture.” However, mud bog racing (four wheeling event) is not related to or supportive of agriculture and would not apply to this matter.

18. March 26, 2012 – A letter was sent to the McWilliams regarding a potential violation. The Board of Commissioners requested a letter be sent to the property owners informing them there may be in violation due to inconsistencies with ORS 197.015(10)(d) because of the change in the frequencies of events. The property owners did not respond in writing but did
verbally, letting staff know that they would not host another event within the same three month period.

19. March 31, 2014 – A letter was sent to the McWilliams regarding multiple events within a three month period. The information was provided through the Board of Commissioners office and not directly to the Planning Department. The Planning Department reviewed the information and provided options to the property owners. The options were to rezone the property or comply with ORS 197.015(10)(d). The property owners contacted staff and stated they would consult a land use attorney.

20. May 1, 2014 – A letter from Sean T. Malone, Attorney at Law was received regarding a request for enforcement of two unpermitted uses. Mr. Malone was representing neighboring property owners. He alleged that the events did not qualify under the Mass Gathering Statute and the events were commercial.

21. May 27, 2014 and June 2, 2014 – Mr. Malone sent additional request for enforcement.

22. June 4, 2014 – The Planning Director sent a letter to the McWilliams explain that a violation complaint had been received. The letter outlined the allegations as follows:
   a. The property owners have installed, or allowed installation of, large water tanks on the property to aid in the creation of mud for the events. The tanks appear to be permanent physical alterations to the property, which are prohibited for mass gatherings. Additional permanent physical alterations have also been made to the property in the form of a motocross track.
   b. The aforementioned events are commercial in nature because riders and attendees are charged entrance fees, staff members carry on the events, and vendors’ are present.
   c. The property owners failed to apply for the necessary commercial land use permits.
   d. An unpermitted event occurred on May 18, 2014. A second event is scheduled to occur on June 7th and 8th. If this second event were to occur, it would be in violation of ORS 197.015(10)(d).
   e. There are other allegations of dust, traffic, noise and livability issues. These issues are not regulated by the Coos County Zoning and Land Development Ordinance. However, you may address them in your response.

The letter requested a response to the compliant no later than June 18, 2014.

23. An undated letter was received from the McWilliams on June 19, 2014 with a response to the allegations. The property owners refuted the allegations by stating the water tank was for agricultural uses and they were complying with the law regarding their gathering. The letter stated that the May 18, 2014 event did not occur and there was no dust issue.

24. June 23, 2014 – The Planning Director issued a violation determination. The determination was that there were two violations:
   a. Operation of a nonfarm commercial business on property zoned exclusive farm use (i.e., the acceptance of fees for the “mud-bogging” and “motocross” events that are open to the public); and
   b. Installation of a permanent physical alteration on the property without obtaining prior approval from the Coos County Planning Department.

The letter provided the following remediate
   a. Obtain a zoning compliance letter for any and all permanent physical alterations to the property;
   b. Re-zone property to recreation, commercial, or industrial; or
c. Abate all “mud-bogging” and motocross” activities and remove all physical alterations made to the property.

This was an appealable decision.

25. July 9, 2014 – An appeal of this determination was received.

### III. APPLICABLE REVIEW CRITERIA

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<tr>
<th>APPLICABLE CRITERIA</th>
<th>CCZLDO Article 5.8</th>
<th>CCZLDO § 4.9.300</th>
<th>CCZLDO § 2.1.200</th>
<th>CCZLDO § 2.1.200</th>
<th>CCZLDO Article 1.3</th>
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<tr>
<td>Coos County Zoning and Land Development Ordinance (CCZLDO) and Coos County Comprehensive Plan (CCCP)</td>
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There are two questions that the Board of Commissioners has to consider in this alleged violation:

1. Are the “events” a commercial use; and
2. Have the property owners developed on the property without proper land use permits.

There are other issues such as noise, pollution and traffic which are outside of the scope of this violation issue.

In the past the Board of Commissioners made an interpretation that the mud events complied with ORS 197.015(10)(d). However, there was new evidence submitted to the Planning Department and County Counsel to show that the events no longer met the requirements for ORS 197.015(10)(d).

The first question is, are the event a commercial use. In making this determination Coos County Zoning and Land Development Ordinance (CCZLDO) § 2.1.200 definitions have to be reviewed. The definition of a commercial use states “Privately-owned or operated facility or place of business open to the public for sale of goods or services. Examples include: restaurants, taverns, hotels, motels, offices, personal services, retail stores, recreational vehicle parks, and campgrounds. Public facilities offering similar goods or services are also defined as commercial uses.”

Response: There are several listed defined commercial uses in the ordinances but there is not one that specifically covers mud bogging, motocross or four wheeling events. Therefore, at the time the violation notice was issued staff applied the definition of commercial use in general. Commercial uses require that there be a sale of goods or services. The service in this matter would be the use of the property for some type of recreational vehicle track whether it is for mud events or motocross. The track seems to be open to the public at certain times for a fee which seems to imply this is a commercial use of the property.
Once staff determined that this was a commercial use, staff had to review the applicable ordinance section to establish if the commercial use is allowed within the Exclusive Farm Use (EFU). A commercial activity in conjunction with farm use is defined as “Commercial activities including sales, repair, and storage when in conjunction with a farm use.” A commercial activity in conjunction with a farm use is a listed use under administrative conditional in Article 4.9 of the CCZLDO. However, the commercial activity in this case does not meet the definition and would not qualify.

The other section that has to be considered is Article 3.2 Supplemental Provisions for Uses. Accessory uses are customarily accessory to the lawfully established principal use shall be allowed in all cases unless specifically prohibited or restricted. The primary or principle use of this property is farm. Therefore, there is nothing in the supplemental provisions that would allow for a commercial use unless it meets the definition of commercial activities in conjunction with a farm use or a special temporary use permit was applied for under § 3.2.100. At one time the applicants did receive approval from the Planning Director for the temporary use of the property to hold an event. The issue with this provision is that the event does not seem to be temporary as permanent changes have been made to the property in order to hold the event.

Therefore, pursuant to the EFU zoning there appears to be no way to allow commercial events unless they are in conjunction with a farm use as defined by CCZLDO § 2.1.200.

The second question is, have the property owners developed on the property without proper land use permits.

Response: The relevant definitions to consider are development develop and structure. definition of development is “[t]he act, process or result of developing” and the ordinance defines develop as “[t]o bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.” The definition of structure is a “[w]alled and roofed building including a gas or liquid storage tank that is principally above ground.”

In looking at the definitions and the pictures of the property it appears that there has been a physical change in the appearance of the property and there has been a tank added which is a structure. This leads to the question, were proper land use permits obtained for these changes and what types of permits would be required.

The property owners have stated that the tanks are for livestock water. § 4.9.200 Uses Permitted Outright subsection B states “[a]ther buildings customarily provided in conjunction with a farm use”. If buildings are considered structures then a zoning compliance is required to site the above ground tank to be used for livestock water. This may also qualify under § 3.1.300(C) Accessory Structures within exclusive farm use. This section provides for barns and other agricultural structures accessory to farm use. Either way if the water tank is for livestock water that is a legitimate accessory structure and a zoning compliance letter should be obtained to allow the property owner to obtain the proper state permits required for this development.

The physical change in the appearance of land is actually not a listed use under any zoning district but fill and mining are allowed uses. Staff linked the change to the land as part of the commercial activity; however, if the commercial activity is abated there is no clear path to make a determination of what type of permits Coos County would require.
At this point it appears that the property owners have violated the Coos County Zoning and Land Development ordinance by conducting a commercial use that is not in conjunction with a farm use and by developing the property without proper permits. The Board of Commissioners will make the ultimate decision on this matter. Staff offered some solutions to remedy these violations by:

1. Obtaining a zoning compliance letter for any development; and
2. Either re-zoning the property to a zoning that will allow the commercial use or abate the use.

If the Board of Commissioners finds that the property owners are in violation then pursuant to § 1.3.800 “[a] violation of this Ordinance may, at the discretion of the County, be rectified in either of the following ways:

1. The construction, erection, location, enlargement, or use, or change in use or uses of any structure or property in violation of this ordinance or those conditions and limitations approved pursuant to the provisions of this Ordinance shall be deemed a nuisance and may be enjoined, abated or removed as provided by ORS 215.185; or
2. Upon conviction as provided by ORS 203.065:
   a. a fine or not more than $100 for each day of violation where the offense is a continuing offense but such fine may not exceed $1,000.
   b. A fine of not more than $500 where the offense is not a continuing offense.

If you have any questions please contact staff.

Jill Rolfe
Coos County Planning Director

Attached: The record of the matter including the appeal

EC: Dave Perry, DLCD

CC: All Parties