



# CURRY COUNTY COMMUNITY DEVELOPMENT

94235 MOORE STREET, SUITE 113

GOLD BEACH, OREGON 97444

*Becky Crockett*  
Planning Director

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**File:** P-2201

**April 5, 2022**

## **FACTS AND FINDINGS FOR PRELIMINARY PLAT APPROVAL**

### **LAND USE ACTION**

- Land Use Review:** Division of Land (Minor Partition) into two parcels.
- Proposed Development:** The applicant requests approval to divide a 285.02-acre Forestry Grazing (FG) property into two (2) parcels, effectively separating the home site from the resource land. The proposed division would create two parcels of 275.42 acres and 9.60 acres.

### **GENERAL INFORMATION AND FACTS**

- Property Owner:** Delores Mayea, Living Trust
- Applicant:** Julie Kelleher & Georgia Mayea
- Agent:** Russ Dodge
- Assessor Map/Tax Lot:** Assessor Map 3215-27 / Tax Lot 100
- Addresses:** 93773 Elk River Road, Sixes
- Location:** About 2.5 miles east of Elk River Road's intersection with US Hwy 101
- Zoning:** Forestry Grazing (FG)
- Current Land Use:** Residential, forestry and farm use
- Existing Development:** Single-family home site legally established by placement of the manufactured home permitted in 1982 (permit # MCC-8482). The Applicant intends to move homesite to new 9.6 acre parcel upon approval of the preliminary plat.
- Surrounding Land Use:** Adjacent properties are of mixed uses with some parcels having residential, commercial timber, and farm/grazing uses. Hensley Hill/Elk River Rural Land Exception areas are nearby.

Previous Land Use Actions: None

**DECISION CRITERIA AND STANDARDS**

**Curry County Zoning Ordinance**

Section 3.050 Forestry Grazing Zone (FG)  
Section 3.054 Lot Size

**Curry County Land Division Ordinance**

**Article II - Minor Partitions**

Section 2.0210 Standards and Procedures

**Article VI - Requirement for All Divisions of Land**

Section 6.0110 Availability of Public Services  
Section 6.0210 Street and Road Specifications  
Section 6.0310 Natural Hazards Areas  
Section 6.0410 Disclosure Statement

**FINDINGS OF CONFORMANCE**

**Curry County Zoning Ordinance (CCZO) – Article III**

**CCZO Section 3.050 – Forestry Grazing Zone (FG).**

*Purpose of Classification: The Forestry Grazing Zone is applied to resource areas of the county where the primary land use is commercial forestry with some intermixed agricultural uses for livestock uses. The purpose of the Forestry Grazing Zone is:*

- (a) to implement the forest land policies of the Curry County Comprehensive Plan; and*
- (b) to implement Statewide Planning Goal 4 with respect to forest lands in the county.*
- (c) to implement the agricultural land policies of the Curry County Comprehensive Plan with respect to livestock grazing and related farm uses which are intermixed with forest land in some parts of the county; and*
- (d) to implement Statewide Planning Goal 3 with respect to intermixed farm and forest land in the county.*

**FINDING:** Per the preliminary plat provided by Russ Dodge, surveyor, the subject property is 285.02 acres. The applicant proposes a property division to separate the homesite from the resource land. Both parcels will retain Forestry Grazing zoning. The larger parcel will continue under timber production, with the existing homesite being moved to the smaller parcel.

**CCZO Section 3.054 – Lot Size**

1. *The minimum lot size within the Forestry Grazing (FG) zone is eighty (80) acres. Notwithstanding the above minimum lot size; the placement of dwellings on parcels created in this zoning designation is subject to the requirements of Section 3.053 of this ordinance.*

2. *New land divisions less than eighty (80) acres may be approved for the following uses:*

*d) to allow the establishment of a parcel for a dwelling subject to the following requirements:*

*(1) the parcel established shall not be larger than five (5) acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than ten (10) acres;*

**FINDING:** As proposed, Parcel 1 will be 275.42 acres and Parcel 2 will be 9.60 acres. The applicant requests the parcel with the homesite to be larger than the allowed 5 acres to provide direct access from Elk River Road. This criterion is met.

*(1) the dwelling existed prior to June 1, 1995;*

**FINDING:** The homesite was established with the installation of septic system in 1979 (08-234-79N) and the manufactured dwelling was placed in 1982 (MCC-8482). This criterion is met for Parcel 2.

*(3) the remaining parcel, not containing the dwelling, meets the minimum lot size of the zone; or*

**FINDING:** The remaining parcel has a proposed lot size of 275.42 acres. This criterion is met for Parcel 1.

*(4) the remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum lot size of the zone;*

**FINDING:** The remaining parcel has a proposed lot size of 275.42 acres. This criterion is met.

*(5) the remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal;*

**FINDING:** Parcel 1 has a proposed lot size of 275.42 acres. This criterion is met.

*(6) the minimum size tract eligible for this type of land division is 40 acres;*

**FINDING:** The tract prior to partition is 285.02 acres. This criterion is met.

*(7) the tract shall be predominantly in forest use and that portion in forest use be qualified for special assessment under a program under ORS Chapter 321; and*

**FINDING:** The tract will continue to be used for predominantly forest and grazing uses. This criterion is met.

*(8) the remainder of the tract shall not qualify for any uses allowed under ORS 215.283 that are not allowed on forest land.*

**FINDING:** The remaining parcel will not qualify for any uses allowed under ORS 215.283 that are not allowed on forest land in the future. This criterion is met.

*(9) the property owner shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, stating that no new dwellings shall be allowed on the parcel unless authorized by law or goal while it is zoned for forest use has been recorded with the County Clerk.*

**FINDING:** Evidence of a recorded deed restriction prohibiting a dwelling on the parcel was not provided with the partition application. With evidence that the restriction has been recorded with the County Clerk, this condition will be met.

*(10) the restriction imposed in (viii) above shall be irrevocable unless a statement of release is signed by the county Planning Director indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the subject property is no longer subject to statewide planning goals pertaining to agricultural or forest land.*

**FINDING:** Evidence of a deed restriction prohibiting a dwelling on the parcel was not provided with the application. The applicant will be required to provide evidence of this restriction. With this condition, the requirement will be met.

*(11) the property owner shall provide evidence that a signed statement declaring that the owner of the subject property will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use has been recorded with the County Clerk.*

**FINDING:** A signed statement from the property owner declaring that the owner of subject property will not in the future complain about accepted farming or forest practices on nearby lands was not provided. With evidence of a signed statement recorded with the County Clerk prior to final approval, this criterion will be met.

#### **Curry County Land Division Ordinance Article II – Minor Partitions**

##### **CCLDO Section 2.0210. Standard and Procedures for Submission of Plans and Maps**

- 1) *The map shall be of a size and scale prescribed by the Planning Director and shall contain the following:*
  - a) *North point, scale and date of application,*
  - b) *Names and addresses of the partitioner and of the engineer or surveyor employed, if any, to make the survey and map.*
  - c) *Written legal description of the entire property and of the proposed partitions.*

- d) *Description and location of all permanent and reference monuments found or set within the area.*
- e) *Names and location of existing streets.*
- f) *Location and outline of existing buildings on the lots being partitioned and within 100 feet thereof.*
- g) *Approximate acreage of the lots and any property retained by the partitioner.*
- h) *Location of all existing and proposed utilities, easements, sewer and water lines, septic test holes, drainfield areas, location of water source, and power poles.*
- i) *Zoning districts and restrictions in that area.*
- j) *A vicinity map showing the general area, if required.*
- k) *A statement indicating number of lots sold from the same tract by the same owner since January, 1974.*

**FINDING:** Dodge Surveying & Planning provided the preliminary plat for the application. Most of the required items were incorporated in the preliminary plat. The applicant will be required to have the surveyor include all items listed under this requirement in the final partition plat. The final partition plat will need to include locations of the water source, septic system, and power poles. The final partition will also need to include the location of any easements recorded with the County Clerk. With this condition, this CCLDO requirement will be met.

#### **Curry County Land Division Ordinance Article VI – Requirements for All Divisions of Land**

##### **CCLDO Section 6.0110. Availability of Public Services**

*A statement shall accompany all initial applications describing the availability of public services, such as police and fire protection, schools, and school buses and electric, telephone or other utilities. The statement shall indicate the proximity of such services in addition to giving an estimate of the capacity of the service to effectively absorb the increased demand reasonably anticipated to be placed on the services as a result of the land development.*

**FINDING:** The subject property is within the Elk River Rural Fire Protection District, and it is served by Coos Curry Electric Co-Op. The Applicant did not include signed statements from these two service providers. According to sanitation records, a septic system was installed in 1979 with repairs in 2001. The applicant intends to install an on-site well and new septic system for the replacement homesite on Parcel 2. A site evaluation and verification of an adequate domestic water source will be required to replace the dwelling. The applicant will also need to confirm availability of service with Sixes Rural Fire Protection District and Coos Curry Electric Co-Op at that time. With these conditions, this standard of the CCLDO is met.

##### **CCLDO Section 6.0410. Disclosure Statement**

*Upon the offering for sale of any Subdivision, Planned Unit Development, Major Partition, or Minor Partition, a copy of a disclosure statement shall be given by the owner or his agent or salesmen to every prospective purchaser.*

*The original of the disclosure statement shall be approved by the Planning Director and become a part of*

*the permanent record of the application.*

*The disclosure statement shall include the following:*

- 1) Name and address of the developer*
- 2) A statement of the uses for which the property is prepared and offered by the developer.*
- 3) A statement of the zoning of the property and the uses permitted in that zone.*
- 4) A statement describing access to the property, ownership of the access, and the party responsible for maintaining the access.*
- 5) A statement describing common areas and facilities, if any, and any restrictions on their use.*
- 6) A statement describing existing water and sewer facilities.*
- 7) A statement describing any restrictions established by the county.*
- 8) A statement describing any known or potential hazards on the property such as geologic hazards, erosion and flooding, etc.*
- 9) A statement indicating any ownership rights retained by previous owners such as mineral rights, unsurveyed easements, airspace reservations, etc.*

**FINDING:** A disclosure statement was not included in this partition application. The applicant is required to submit a disclosure statement to the Planning Dept for review prior to final plat approval. The disclosure statement must then be filed simultaneously with the final plat. With this condition, this standard of the CCLDO will be met.

**COMMENTS RECEIVED:**

Surrounding property owners were notified of this pending application by mail on February 9, 2022 and were provided 20 business days to submit written comments.

Micah Horowitz, Senior Transportation Planner of the Oregon Department of Transportation responded via an email sent February 10, 2022, that the partition would not significantly affect ODOT. **Response:** None.

Joseph and Jeanmarie Marsh, adjacent property owners to the east responded via email, sent March 10, 2022, with concerns that an agricultural lease would be terminated due to the partition and would negatively affect the movement of their cattle. **Response:** An important element of the Curry County Comprehensive Plan is to preserve the integrity and purpose of farming and forestry in the county. It is desirable for the Marshes to be able to continue moving cattle across the subject property. However, the adopted Comprehensive Plan and Zoning Ordinance provides for the partitioning of the Mayea's property. It behooves both parties to continue to work together to allow the traditional uses of the properties. The County doesn't have the authority to oversee a lease agreement between private parties. Therefore, because of the County Code allowance the County cannot prohibit the proposed land division.

Joy Wolf, adjacent property owner to the west, responded via sent an email March 10, 2022, clarifying the location and permitted uses of two easements recorded on survey map CS-32-384. **Response:** This application is a conditional use request for a land use decision. The basis of the decision relies on whether the property can meet, with conditions, the requirements of the CCZO. The continued use of the easement is the Applicant's responsibility; and, if an issue precipitates from that use, it is a civil matter between affected property owners.

**CONCLUSION:**

The proposed partition (P-2201), with conditions, will meet the standards under the Curry County Zoning and Land Division Ordinances.

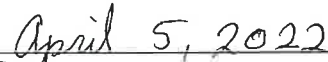
**DECISION AND CONDITION OF APPROVAL:**

This preliminary partition request (P-2201) to divide a 285.02-acre parcel, identified on Curry County Assessor's Map 3215-27 as Tax Lot 100, into two (2) parcels is hereby **APPROVED**, subject to meeting the following conditions:

1. The final plat must comply with Curry County Land Division Ordinance Section 2.0210.
2. Prior to replacing the manufactured home with a new single-family dwelling, a site evaluation must be performed by Josephine County On-Site Septic program.
3. Prior to replacing the manufactured home with a new single-family dwelling, a domestic water source must be identified.
4. Prior to replacing the manufactured home, the applicant must confirm the availability of service from Coos Curry Electric Co-op and Elk River Rural Fire Protection District.
5. Prior to final plat approval, the replacement homesite must be established on the new parcel.
6. Prior to final plat approval, a deed restriction will be recorded with the County Clerk prohibiting any new dwellings built on both parcels.
7. Prior to final plat approval, a signed statement recorded with the County Clerk will be provided that the owner will not in the future complain about accepted farming or forest practices on nearby lands.
8. Prior to final plat approval, a Disclosure Statement, as required under Curry County Land Division Ordinance Section 6.0410, must be submitted to the Planning Department for review.
9. After review, the Disclosure Statement must be recorded simultaneously with the final plat.
10. The final plat must be filed within twelve (12) months of the date of this approval. Approval shall become null and void unless the final plat is recorded or written request for an extension of time is received by the Planning Department.

This decision is limited to the Planning Director's review of applicable zoning rules and land use law, as outlined in the Curry County Zoning Ordinance (CCZO) and the Curry County Land Division Ordinance (CCLDO). Other county, state and federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating the development.

  
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Becky Crockett  
Planning Director

  
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Date