



CURRY COUNTY COMMUNITY DEVELOPMENT  
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**Curry County Community Development Department  
Administrative Staff Report and Decision**

Application AD-2103 is a request for Conditional Use approval of an agency coordinated restoration and mitigation plan on a 0.86 acre parcel zoned Rural Residential (RR-5), inside the Brookings Urban Growth Boundary (UGB).

**Background Information**

**Property Owners:** Richard Littlestone & Toni Uchima

**Applicants:** Richard Littlestone & Toni Uchima

**Land Use Review:** Administrative Conditional Use Review for restoration plan.

**Property Description:** Assessor's Map 41-13-15CB, Tax Lot 2900

**Location** Subject property is located just north of Max Lane off of Oceanview Drive at 15292 Oceanview Drive.

**Existing Development:** Property currently includes a residential dwelling and is surrounded by large lot residential development.

**Proposed Development:** Restoration and Mitigation Plan for repair of structural stabilization for residential dwelling above the Ordinary High Water (OHW) of Johnson Creek.

**Adjacent Land Uses:** North – Vacant large lot  
East – Oceanview Drive; large lot residential  
West – Large lot residential; Pacific Ocean  
South – Large lot residential

**Zone:** Rural Residential (RR-5)

**Acreage:** Parcel is 0.86 acres in size

### **Applicable Review Criteria**

The proposed application for a restoration plan must be found in compliance with the following sections of the Curry County Zoning Ordinance ( CCZO).

#### **Curry County Zoning Ordinance (CCZO)**

<b>Section 3.080</b>	<b>Rural Residential Zone (RR)</b>
<b>Section 3.245</b>	<b>Shoreline Overlay Zone</b>
<b>Section 3.280</b>	<b>Riparian Corridor Buffer Overlay Zone</b>
<b>Section 3.284</b>	<b>Hardship Variances and Restoration Provisions</b>
<b>Section 4.011</b>	<b>Riparian Vegetation Set-back</b>
<b>Section 8.030</b>	<b>Standards for Granting a Variance</b>

### **Project Purpose**

The purpose of this land use action is to restore the riparian habitat along Johnson Creek that was compromised during construction activities required for erosion control and bank stabilization. Specifically, the applicant states:

*“The Riparian Mitigation Plan intent is to restore and improve the riparian function of the affected areas of Johnson Creek that suffered from the construction project. The function herein means planting riparian vegetation and cleaning up foreign debris to allow the creek environment to enjoy its previous condition – increasing shade, reducing stream temperatures, increasing drop leaves and insects. Attention is also given to weed control, removal of invasive species, managing the transition to buffer areas, promote natural regeneration, and to restore wildlife habitat. The improvement has already included the removal of tons of debris, trash, and garbage that had accumulated in the creek over many years prior to the construction project.”*



## **Findings**

**Section 3.080 Rural Residential Zone** – *The Rural Residential Zone is designed to allow for the low density residential development outside urban growth boundaries and rural communities defined by the Comprehensive Plan.*

**Finding:** This section of the CCZO states the purpose of the Rural Residential zoning district. While the property is zoned RR-5, it has been included into the City of Brookings Urban Growth Boundary (UGB). The property is developed with a legally established single family dwelling which is an outright permitted use in the zoning district. Curry County Assessor's records indicate the dwelling was legally constructed in 2004. Structural stabilization methods to support the residential use on the property are considered as an accessory structure or use which is "incidental and subordinate to the main use of the property and located on the same parcel, tract or lot as the main use (CCZO)". An accessory structure or use is also permitted outright in the RR zoning district. The stabilization of the residential structure is allowed outright in the underlying zoning district. This finding is met.

**Section 3.245 – Shoreline Overlay (SO) Zone** – *The purpose of the SO zone is to protect shoreland resources identified in the Comprehensive Plan and to apply development standards to all uses within the shoreland boundary as applicable; and Section 3.245 – Solutions to Erosion and Flooding Problems – Nonstructural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary and allowed, water and erosion control structures such as jetties, bulkhead, seawalls, and similar protective structures and fill shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns. Further, where listed as a permitted activity within this zone riprap shall only be allowed upon findings that:*

1. *Land use management practices and nonstructural solutions are inadequate; and*
2. *Adverse impacts on water current, erosion and accretion patterns are minimized.*

**Finding:** The restoration/mitigation project does not include any area along the ocean shoreland. The underlying use in the zone is Rural Residential (RR). The existing dwelling is a permitted outright use in the zone and was established in 2004. The proposed restoration and mitigation plan is being completed in conjunction with a structural wall, including rip rap that is required to stabilize erosion adjacent to and underneath the existing home. The structure is placed above the Ordinary High Water line of Johnson Creek. The structure has not resulted in impacts on water current, erosion or accretion patterns along Johnson Creek. However, the proposed restoration and mitigation plan will re-establish native vegetation where it was



compromised during construction. Further, the project will include cleaning the trash and non-native vegetation (Himalayan blackberry) from the Johnson Creek corridor. This finding is met.

**Section 3.280 – Riparian Corridor Buffer Overlay Zone (RB)** – *The purpose of the RB zone is to insure that riparian corridors identified in the County's Goal 5 water resources inventory (Comprehensive Plan Figure 5.8.A, Table 5.8.A., Table 5.8.C and Table 5.8.D) are protected as habitat for fish, other aquatic life and wildlife, to control erosion and limit sedimentation, and to reduce the effects of flooding. The provisions of this section attempt to accomplish these goals by excluding structures from buffer areas around lakes, streams and associated wetlands, and by prohibiting vegetation removal or other alteration to those buffers. And Section 3.283 Uses Prohibited or Limited within the Riparian Corridor 2. Removal of vegetation in the riparian corridor area, except: a) As necessary for restoration activities, such as replacement of non-native vegetation with native riparian species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.*

**Finding:** The proposed project is along Johnson Creek which is a tributary to the Pacific Ocean and is included in the County's Goal 5 water resources inventory. The restoration/mitigation plan (included with the application) was developed through consultation with the Oregon Department of Fish and Wildlife (ODFW) and the Curry Watersheds Partnership. The proposed plan re-establishes native riparian vegetation where native and non-native vegetation was compromised during construction. The proposed plan includes replacement vegetation that will cover the area from which vegetation was removed, and will exceed the density of the removed vegetation. This finding is met.

**Section 3.284 Hardship Variances and Restoration Provisions - 1. Alteration Requiring Mitigation.** *Permanent alteration of the riparian area by placement of structures or impervious surfaces under Section 3.283 (1) is allowable under the following procedures, subject to the mitigation requirements of 2. Below b) A variance to the riparian setback approved under subsection 4. Below;*

**2. Mitigation Requirements.**

*Proposals for development activities within the riparian area allowed under subsection 1 above, shall be reviewed by the Oregon Department of Fish and Wildlife (ODFW), as per OAR 635-415 Fish and Wildlife Habitat Mitigation Policy. A mitigation recommendation shall be obtained from ODFW. For purposes of designing appropriate mitigation, sites should be considered at least Habitat Category 2" (OAR 635-415-0030), which strives for no net loss of habitat values. Approval of the development proposal shall be as an administrative conditional use permit requiring compliance with the mitigation recommendations of ODFW.*



**Finding:** The applicant has presented the finding to this criteria in their application as follows:

*“The riparian area along the western extent of Johnson Creek was crossed from the southern bank to allow access for equipment to build the reinforcement assembly into the southern eroded hillside of the subject property. The existing decaying and falling bridge was torn out and a more substantial one was put in. Prior to and during the assembly of the reinforcement several tons of trash and garbage (plastic bags, sandbags, wheels, tires) were removed from the creek. Also, during construction, several alder were cut in the riparian area to allow equipment to operate. During rock fill of the reinforcement area, rock spillage of 4-6 inch rock occurred and covered some sections of the creek bank. The riparian vegetation that was affected includes the alders that were cut (three), and willows and grasses that were covered by the rock spillage. Uphill of the creek bank many minor alders and blackberries were removed.*

*It is the intent of this application to propose this Mitigation Plan (Plan) to perform restoration of the damaged riparian area of Johnson Creek and to perform additional mitigation efforts to account for the uphill removal of alders and other native vegetation. The additional mitigation efforts outlined in the Mitigation Plan submitted as part of this Land Use Decision Application. It is the intent of this Plan to meet or exceed the requirements of no net loss of habitat values through mitigation and improvement of the pertinent Johnson Creek area and additional areas as specified by ODFW.*

*In coordination with ODFW, Oregon State Parks, Department of State Lands (DSL), and US Army Corp of Engineers (USACE), the Mitigation Plan for this Land Use Application has been compiled. Also, in support of this Plan is the South Coast Watershed Council (SCWC). Extensive replanting and improvement of the riparian environment along the affected western extent of Johnson Creek is outline and detail of the approach, execution, and monitoring of the Plan is given in the attached document Mitigation Plan.”*

This finding is met.

**Section 3.284 - 4. Variance to Riparian Setback** – *Granting of a variance to riparian setback requires findings that (1) the proposed development requires deviation from the riparian standards; and (2) strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the underlying zone, and that the property owner would be preclude a substantial property right enjoyed by the majority of landowners in the vicinity; and (3) the allowed setback adjustment in subsection 3 above is insufficient to remedy the hardship.*

**Finding:** The development (dwelling) was established in 2004. Since that time, the bank along Johnson Creek began to slough off and erosion began to occur under the dwelling. Seep holes were occurring under the structure posing a risk to the foundation of the structure. An



engineered solution (wall and backfilled riprap) was developed and constructed. This solution did not allow for riparian setbacks to be maintained on the site, thus requiring a deviation from the riparian setback requirements. Strict adherence to the riparian setback likely would have resulted in the dwelling's foundation to become undermined resulting in failure. This result would preclude the property owner the right to continue to live in the dwelling. This right to protect and reside in a dwelling is a right enjoyed by the majority of landowners in the vicinity. A setback adjustment would not be sufficient to allow the engineered solution to protect the dwelling. This finding is met.

**Section 4.011 Riparian Vegetation Set-back** – *The following set-backs shall be required from waterbodies for the protection of riparian vegetation:*

1. *Notwithstanding any yard or other setback requirement in any zone, all structural development located along a stream, river, or lake shall maintain the requirements of the Riparian Corridor Buffer Overlay (RB) zone, if applicable, or if not applicable then a minimum fifty (50) foot setback from the top of the bank of that water body.*
2. *The county shall provide notice to the Oregon Division of State Lands (DSL) for all development permits that are requested which affect wetlands identified on the Statewide Wetlands Inventory (OAR 660-023-0100(7)).*

**Finding:** The applicable requirements of the Riparian Corridor Buffer overlay (RB) Zone are addressed in the findings above. The DSL was notified of the project and provided input to the Planning Department on the issue of impacts to wetlands along Johnson Creek. The DSL determined that the project was not within their jurisdiction as the majority of the work involved actions above the Ordinary High Water (OHW) line of Johnson Creek. Further, the DSL determined that the mitigation and restoration actions were being addressed by the county and the ODFW therefore, they did not feel that additional action by their agency was deemed appropriate. This finding is met.

**Section 8.030 Standards for Granting a Variance** – *A variance may be granted only in the event that the applicant can show that all of the following standards have been met:*

1. *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the owner of the property has not control.*

**Finding:** Exceptional and extraordinary circumstances apply to the applicant's property which do not apply to other residential properties in the vicinity. Specifically, the dwelling was established on the site in 2004. There are no building file notes about notable or observed circumstances to indicate that water seeps and subsequent sloughing along Johnson Creek in the vicinity of the dwelling would occur. The significant water intrusion under the dwelling foundation is a recent

occurrence and has not affected neighboring properties. The applicant has no control over this significant underground geologic occurrence which potentially created a risk of foundation failure. This finding is met.

2. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity.*

**Finding:** The variance to the riparian setback along Johnson Creek is necessary to allow construction of the reinforcement wall and riprap above the Ordinary High Water (OHW) to stabilize the sloughing bank and hydrology seepages that opened up along and under the foundation of the dwelling. This geologic occurrence has not affected nearby properties. The variance to the riparian setback is required to preserve the property rights of the applicant. This finding is met.

3. *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of the comprehensive plan or other county regulation.*

**Finding:** The variance to the riparian setback will not be detrimental to the purpose of this ordinance, properties in the same zone or otherwise conflict with the objectives of the comprehensive plan or other county regulation. The project will result in an environmental lift of resource value for this stretch of Johnson Creek. The elimination of non-native vegetation and trash along and within Johnson Creek has already occurred with the project. The restoration/mitigation plan, when complete, will restore the habitat values to a condition that is significantly better than prior to project development. This finding is met.

4. *The variance requested is the minimum which would alleviate the hardship.*

**Finding:** The requested restoration/mitigation plan exceeds the resulting habitat value at this location along Johnson Creek that would have otherwise existed if the riparian setback could have been achieved. This finding is met.

## **Decision and Conditions of Approval**

Application **AD-2103** for a Conditional Use approval to authorize an agency coordinated restoration and mitigation plan on a 0.86 acre parcel zoned Rural Residential (RR) located on Assessor's Map 41-13 Section 15CB, Tax Lot 2900 is **APPROVED** with the following conditions given this date of April 12, 2021:

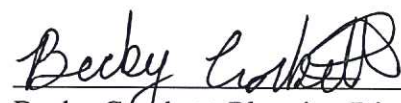


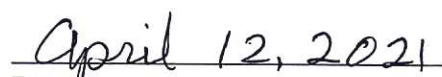
1. This Conditional Use Permit shall be valid for a period of one (1) year unless there is a failure of the applicant to comply with all the conditions of approval. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by the County.
2. The Restoration/Mitigation Plan included in this application (AD-2103) shall be carried out in accordance with recommendations from ODFW.
3. Planted species shall be replaced if they do not survive.
4. A photo history of the restoration area shall be assembled and submitted to the Planning Department for review and verification of the plantings placement and survival. Documentation shall be submitted after year 1 and again after year 2. Failure to achieve the plantings as proposed to meet the Plan objectives will result in this approval being null and void and may result in an Enforcement Action by Curry County.

This decision is limited to the Planning Director's review of applicable zoning rules and land use law, as outlined in the Curry County Comprehensive Plan and the Curry County Zoning Ordinance. 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 development.

#### **Appeal Rights**

The Planning Director's decision on this matter will be final unless appealed to the Curry County Planning Commission within 15 days following the date of the mailing of the notice of appeal (postmarked date). Any appeal must meet the provision of CCZO Sections 2.120, 2.170; and 2.180.

  
Becky Crockett, Planning Director  
Curry County Planning Department

  
Date