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Protecting the Oregon Coast

Sept. 8, 2014

Honorable Mayor Hedenskog and Members of City Council
c/o City of Brookings
Public Services Department
Planning Services Division
898 Elk Drive
Brookings, OR 97415

Re: Mahar Tribble, File # Anx-1-14

Submitted via email to Donna Colby-Hanks: dcolbyhanks@brookings.or.us

Dear Mayor Hedenskog and Members of Brookings City Council,

Oregon Coast Alliance is an Oregon nonprofit corporation whose mission is to protect and help in restoring coastal natural resources, and work with residents for livable communities.

We write this letter out of concern for the proposal advanced for the so-called Mahar Tribble property, which consists of 13.3 acres of land bordering the Chetco River along the North Bank Chetco River Road. The applicants propose, in a single application, an annexation of the land into the City of Brookings, a zone change from commercial/industrial zoning to Residential, and an amendment of the Shoreland boundary.

We note at the outset that far too many issues are wrapped up in a single application, making it impossible for decision-makers or the public to adequately analyze them. Thus, ORCA's first recommendation is: separate the application into three components, and deal with each separately, beginning with the annexation, followed by the Shoreland revision proposal, and lastly the requested zone change/comprehensive plan change. These three components should be remanded to the Planning Commission for **individual** consideration.

There are many important natural features associated with Tax Lot 2000, a part of which includes the Snug Harbor area. It is important for the City to make its determinations based on stewardship of the environment, especially for salmon habitat.

We note several issues that the city must take into account in their deliberations, and this is certainly not an exhaustive list.

Annexation

It is apparent from submitted maps that the Mahar Tribble property application, if approved, would be a so-called “cherry stem annexation.” A portion of North Bank Road would have to be annexed in order to bring the Mahar Tribble land into city limits. This would create an ungainly, inefficient city boundary that directly conflicts with state law. ORS 222 requires annexed territories to be “contiguous” to a city boundary, and the Mahar Tribble property is clearly not contiguous.

According to Brookings City Code Ch. 17.144.020, the Applicant must provide all relevant materials showing that the annexation meets city and state criteria. This includes “urban services needed and necessary to service the territory...including the availability of the same relative to capacity, condition and cost of extension and/or improvement to urban standards...” (Brookings Code 17.144.020(J)).

In other words, it is the Applicant’s burden to show that urban-level services are available for this annexation, and that it meets state criteria for an annexation. As the application contains no analyses of water supply, stormwater management or sewer infrastructure costs beyond vague and imprecise statements, the Applicant has clearly not met his burden of proof. *See* further discussion below.

Zoning Request

The applicant is requesting a zone change from Industrial and Commercial to Residential-2. As Brookings city code notes, “A request for a city zoning designation for the territory proposed to be annexed shall be considered at the time of the annexation proposal; however, the city council will ultimately determine the zoning to be applied.” (Brookings Code Chap. 17.144.040).

Since, as the city’s Code makes clear, City Council is the ultimate determining authority for a zone change and the associated comprehensive plan map change, the applicant’s request for Residential zoning should not be determined at this time. The development plan submitted with the annexation application is incomplete and has many problems ranging from floodway location to stormwater management. ORCA recommends Council separate the annexation proposal from the requested zone change, and remand both back to the Planning Commission to be considered separately. City Council clearly has this power (Brookings Code Chap. 17.140.070 (D)). As in all other aspects of the application, Goal 2 of the Statewide Land Use Goals states clearly, “The burden of proving the need for a change in land uses shall be borne by the proponent of the land use request.” Once again, the Applicant has failed to meet his burden.

Riparian Setback

In 2009, Mahar Tribble sought to obtain a variance to allow a reduction in the County's "Safe Harbor" 75-foot riparian setback. The Curry County Planning Commission turned it down. Similarly in this application, Mahar Tribble owners argue they should not have to comply with the City's "Safe Harbor" 75 ft. setback either. *See* further discussion below under the topic of Shorelands Boundary.

Application maps make clear that the owners will not lose anything like a substantial portion of land from adhering to any 75 ft. riparian setback. Plenty of development room remains, exactly as was the case in 2009 when the Dept. of Land Conservation and Development (DLCD) recommended against the applicant's variance request (*see* attached DLCD letter).

The possible other restoration or mitigation options mentioned in the application materials are vague, and do not show the same benefit of retaining the 75 ft. buffer. The lower Chetco currently suffers from temperature problems that affect salmon habitat. Maintaining a healthy and vigorous riparian buffer with trees is essential for the City to meet the requirements of Criterion 3 of the Shorelands Boundary to protect fish habitat. There is no substantive analysis, or Goal 5 analysis/inventory of existing riparian resources, in the Applicant's materials that would even allow such a process of alternatives to be considered at this time.

Changing the Shoreland Boundary

The Applicant also desires to change the Shoreland boundary. As is clear from FEMA and other maps, this is a flood and tsunami area in the upper estuary. The Mahar Tribble property has been flooded as recently as 2012, in a regularly occurring winter storm that caused high waters in the Chetco and its tributaries. In that storm, Ferry Creek (which goes through the property) flooded both the North Bank Road and the Mahar Tribble property, and the surging Chetco was within one foot or less of the lower section of the property.

This flooding was *not* a 100-year storm event. This property is classified by FEMA as being both in the floodplain and (much worse) largely in the floodway, meaning that it is in greater danger of hazard during serious floods, and it is clear from the picture below that the property is very vulnerable to flooding even during regular high water events. Goal 17 of the Statewide Land Use Goals recommends that floodway development should be more strictly controlled than it has been – a recommendation that perfectly fits this property.



Mahar Tribble property and North Bank Road during March 2012 high-water event.

Yet, the Applicants desire to add more fill to the area and shrink the Shoreland boundary by 3.4 acres. It is extremely bad policy to change a Shoreland boundary based on allowing fill requested by the Applicant; it is also exactly backwards from the planning process. The Comprehensive Plan process for Shoreland boundary amendment must be undertaken *first*, prior to any discussion of whether fill is appropriate because of development needs. Goal 7 recommends that local governments limit the placement of fill in floodplains, and the Brookings comprehensive plan and ordinances must encourage this directive. Adding fill to flood-prone areas simply exacerbates the river currents and increases damage to neighboring properties. We note here, as does the Staff Report (page. 17-18), that the Applicant has not provided topography maps showing original elevation and elevation subsequent to existing and proposed fill. Thus, yet again, the Applicant has failed to meet his required legal burden of proof for this proposal.

Goal 17 requires several criteria to be met as part of the Shoreland boundary inventory, including: (a) all lands subject to ocean flooding; (b) all riparian resources "necessary

to stabilize the shoreline and maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas"; (c) wetland areas; (d) all dredge material disposal sites; (e) areas necessary for water-dependent and water-related uses, which in this case includes Snug Harbor.

Given that Snug Harbor is an identified site (#13) for water-dependent uses, a Shoreland boundary change is inappropriate, especially as the applicant's map is unclear about whether his portion of Snug Harbor is part of the County-identified site.

Furthermore, the city's 75 ft. "Safe Harbor" riparian setback is part of the Shoreland boundary. Given Criterion 3 above that all riparian resources "necessary to maintain water quality and temperature necessary for fish habitat and spawning" must be included in the Shoreland boundary, there are no grounds on which the City could shrink the Shoreland boundary in such a manner to reduce or eliminate the 75 ft. setback, whether through allowing additional fill or any other means. This area of the Chetco contains steelhead and several kinds of salmon, including SONC coho, which are listed as Federally-Threatened under the Endangered Species Act. Brookings cannot take any actions that would place Threatened species at risk, without violating Federal law *and* case law interpreting the Endangered Species Act.

We note in addition that the Applicant's map does not show the 75 ft. riparian setback around the northern edge of Snug Harbor; thus it is incomplete, which makes analysis yet more difficult.

Costs to City: Stormwater, Water, Sewer

The application materials and the staff report do not show any indication of costs to the city of pursuing this project. This is part the Applicant's burden for an annexation application under City ordinance (Brookings Code, Chap. 17.144), and he has not met it adequately. Though there is a 2013 cost financing agreement between the owners and the city for sewer infrastructure, the Applicant has provided no cost estimates that would give the public and City residents benchmarks for the taxpayer costs of the development. This is so even though the staff report clearly states the extent of necessary upgrades: "Ultimate development of the property will requires sewer system upgrades including a lift station." (Staff Report. p. 18).

There is likewise no information about stormwater treatment, other than vague statements about treating it and returning it to the Chetco. In an area with high rainfall and fairly frequent flooding/high water, this is clearly insufficient. The Applicant provided no cost analysis, nor analysis of effects to the river of stormwater flows. The Applicant only provided a copy of its 1200C permit from the Dept. of Environmental Quality (DEQ), but this covers *only* the permit required for construction activity.

The Applicant is certainly not meeting his burden of proof when, as the staff report describes it, "The actual storm water drainage system design will be reviewed by the

City of Brookings to verify it meets their minimum engineering standards for storm water management.” (Staff Report, p. 18). Before any annexation, before any zone change, the Applicant must present a detailed report showing how stormwater will be managed to meet Brookings’ standards and maintain the Chetco’s water quality for salmonid habitat.

The Applicant provided no assessment of water needs for the development, neither domestic potable water needs, nor the requirements for fire hydrants. More importantly, the Applicant submitted no studies or analyses of whether or not the City of Brookings has water available for this development. The City has recently refused water to the Salmon Run golf course, for example, though requested repeatedly to provide it. The Mahar Tribble staff report merely says, “Applicant states that the main water line for the City of Brookings is adjacent to the property in North Bank Chetco River Road and that a lateral exists to the property...Public Works...indicates there is a 14-inch water main in the County road.” (Staff Report, p. 18). But this says absolutely nothing about **water availability** – only that the water pipe is nearby. Brookings *cannot* approve this application without requiring of the Applicant an extensive analysis as to whether water is available, and making a determination based on that and its own information.

Conclusion

The Mahar Tribble application for annexation, zone change and Shoreland boundary change is far too complex to be considered at once. The City Council should separate it into three components and remand all three to the Planning Commission to be considered separately.

Furthermore, the Shoreland boundary cannot be changed as the applicant requests, because of the importance of the riparian resources in the area. The 75. ft. setback is required by law unless a substantive alternative, based on a riparian resources inventory, has been presented. The applicant has presented no such plan.

The applicant has failed to meet his burden that this annexation meets the criteria for annexation in the Brookings City Code, especially in the matter of infrastructure availability and costs, and water availability.

City Council needs to make a separate and independent determination as to whether a zone change/comprehensive plan change to Residential-2 is appropriate, *after* a complete development application has been submitted. Not before.

ORCA requests the Council to leave the record open for **two weeks** in order for further information to be brought into the record, and for adequate time to respond to Applicants’ submissions.

Please make this letter and all attachments part of the record of this matter.

Thank you,

/s/ Cameron La Follette

Cameron La Follette
Executive Director