

For: Monday, September 8, 2014, City Council Meeting

Advance Packet Information

Dated: August 29, 2014

Included in this packet is documentation to support the following Agenda items:

PUBLIC HEARINGS/FINAL ORDERS/ORDINANCES

1. Quasi-judicial public hearing in the matter of File ANX-1-14, a request to annex approximately 13.33 acres located adjacent to the eastern boundary of the North Bank Chetco River Road. [Planning, pg. 2]
 - a. CSA Planning transmittal with proposed conditions of approval, applicant memo and final order. [pg. 8]
 - b. Planning Commission Packet containing exhibits A & B. [See *Attachment "B"* - provided separately]
 - c. Planning Commission Supplemental materials (Exhibits C-G) [pg. 74]
2. Ordinance 14-O-738, amending the City of Brookings limits and zoning map. [Planning, pg. 108]
 - a. Ordinance 14-O-738 [pg. 109]

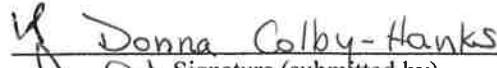
*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least ten days advance notification. Please contact 541-469-1102 if you have any questions regarding this notice.

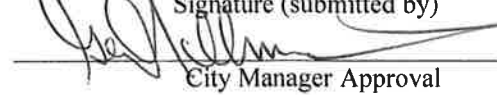
CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: September 8, 2014



Signature (submitted by)



City Manager Approval

Originating Dept: PWDS -Planning

Subject: Request to annex approximately 13.33 acres of land into the City of Brookings; Assessor's Map 40-13-32D, tax lots 2000 & 1500; located adjacent to the eastern boundary of the North Bank Chetco River Road, approximately 380 feet northeast of its intersection with Thompson Road and adjacent to the Chetco River as well as approximately 3,294 feet of North Bank Chetco River Road. The subject properties are owned by Mahar/Tribble, LLC. The current Curry County zoning on taxlot 2000, 7.77 acres is Light Commercial (C-1) and taxlot 1500, 5.56 acres is Industrial (I). The applicant is requesting a comprehensive plan change and zone change to Two-Family residential (R-2) as well as an amendment to the Chetco River Estuary Shoreland Boundary along the eastern boundary of tax lot 2000.

Recommended Motion Options:

1. A motion to approve File ANX-1-14 as requested to annex two tax lots comprising of approximately 13.33 acres of land into the City of Brookings as well as approve the Final Order, Findings of Fact, and conditions of approval as provided with staff report.
2. A motion to approve File ANX-1-14 as requested to annex two tax lots comprising of approximately 13.33 acres of land into the City of Brookings as well as approve the Final Order, Findings of Fact, and conditions of approval as provided with staff report with the deletion of condition (3)(f) regarding the 500 year floodplain.

Financial Impact: Approximately \$1,100 in additional taxes prior to development of the subject property.

Background/Discussion: The City of Brookings and Mahar/Tribble, applicant have conducted several pre-application meetings as well as staff attending and commenting on meetings resulting from applications submitted to Curry County. To obtain sewer service to allow for residential development of the property at urban densities, the applicant and the City entered into an infrastructure financing agreement for sewer service for the subject properties. The applicant then submitted a request for annexation that includes a comprehensive plan change, a zone change, as well as relocation of the shoreland boundary. The specific details of their development plan will be provided at the time a future subdivision, planned community or other land use application is submitted.

Property Location, and Description and Ownership; Assessed Value: The public right of way to be annexed is the County Road Right-of-Way of North Bank Chetco River Road from the existing City limits northeastward to the northern property line of the Tax Lot 1500; from the city limits this portion of North Bank Chetco River reviewed for annexation is approximately 0.82 miles. North Bank Chetco River Road has two-paved travel lanes with no other improvements. Although following the annexation, this portion will be located within the city limits, there is no proposal to change the maintenance responsibilities and they will remain with Curry County.

The subject property being reviewed for annexation (as well as the associated Comprehensive Plan Map Amendment and Zone Change) is identified on Assessor's map 40-13-32D; Tax Lots 1500 and 2000. The property lies between North Bank Chetco River Road and the Chetco River/Estuary beginning approximately 0.35 miles northeast of the existing City limits and extending along said right of way an additional half mile (approximately). The property is approximately 13.33 acres according to Applicant's findings. The record owner of the private property is Mahar/Tribble LLC according to the Curry County assessment records furnished by the Applicant. The Assessor's records indicate that Tax Lot 1500 has a Taxable Real Market Value of \$354,780 and Tax Lot 2000 has a Taxable Real Market Value of \$145,360. The Consent to annex forms were signed and duly executed by the members of the LLC being Ronald Tribble and Michael T Mahar, said membership was verified on the Oregon Secretary of State's business registry database search via the internet.

Comprehensive Plan Map and Zoning: The City and County have an effective two map system within the Urban Growth Area wherein the County's zoning map functions as the comprehensive plan map for a property until it is rezoned as part of annexation. At the time of annexation, the City's Comprehensive Plan Map is amended to reflect the approved City Comprehensive Plan Map designation along with the concurrent zone change. The subject property currently has a County designation of C-1 (Commercial Light) for the southern portion (Tax Lot 2000) and Industrial for the northern portion (Tax Lot 1500).

Proposed Comprehensive Plan Map and Zoning Map Amendments: The plan and zoning map amendment review is to go to a medium density residential plan designation with the corresponding R-2 zoning. The Plan Map amendment also proposes to amend the Shoreland Boundary along the southern portion of the property being tax lot 2000 (Statewide Planning Goal 17).

Existing Improvements and Historical Use: The subject property currently has no structural improvements. The property has been used for mining/construction staging and storage. The geologic report provided by the Applicant would support the proposition that the site has been mined historically. The relatively recent history indicates the property has not been actively mined because Oregon Department of Geology and Mineral Industries (DOGAMI) has no records of mining at the site. Aside from the occasional construction/mining staging or vehicle storage the property has had limited intensive use for many years.

Adjacent and Surrounding Land Use:

South: To the south and southeast is the Chetco River. To the southwest is a small water inlet referred to as "Snug Harbor" being Site #13 in the City's Coastal Shorelands element. Across Snug Harbor to the southwest is an approximately 5 acre resort development (Chetco River Resort LLC). The Applicant states that this resort contains "Park Model RVs". Further southwest is a resort development known as Riverside RV Resort. Both resorts have a County R-2 zoning designation.

East: To the east and northeast is the Chetco River. Immediately northeast and on the easterly side of North Bank Chetco River Road are small rural residential properties along the Chetco River that are zoned County RR-5.

North: To the north, on the west side of North Bank Chetco River Road, is Tax Lot 200 which is a relatively large parcel that is predominantly zoned R-2 but appears to also have a small strip of Industrial zoning as well; the parcel has dispersed development. Immediately to the north across the North Bank Chetco River Road is Tax Lot 100 which is outside the City's Urban Growth Boundary. The UGB line juts down to a point for access to Tax Lot 100 on North Bank Chetco River Road. This parcel has a County FG zoning designation and has historically been used for mining and a grant of limited exemption for mining was issued but the DOGAMI file was closed in 1998, in compliance with DOGAMI rules and regulations at the request of the owner Mr. Curry.

West: Property to the west and southwest across North Bank Chetco River Road are zoned County R-2 and contain 0.5 to 1.5 acre lots with single family dwellings.

An aerial photo map of the subject property and surrounding area is included in the record and depicts the pattern of land parcelization and structural development in the area.

Soils and Geology: The Applicant provided a Geologic Hazard Evaluation dated February 29, 2008. That report analyzes the soil and geologic suitability of the site for urban development (specifically single family homes); that report is incorporated in the record. The underlying geology is essentially a river bar composed of gravel and silty sand. Portions of the site have been filled through a combination of flood deposition and human placement.

Natural Hazards: The subject property is located within the Federal Emergency Management Agency (FEMA) mapped 100-year floodplain of the Chetco River. The site is also located within the Tsunami Inundation Zone mapped areas prepared by DOGAMI. The Geologic Hazard Evaluation provided with the application identifies concerns for differential settlement from a seismic event. The differential settlement would result from liquefaction. Standard building foundations would be negatively impacted from this type of settlement because portions of the foundation would be located on a base that is no longer level.

Applicant's Natural Hazard Mitigations: The Application addresses natural hazard issues that are raised in the Geologic Hazard Evaluation in a workmanlike manner. The Geologic Hazard Evaluation ultimately concludes that development can feasibly be accomplished with adequate safety margin. On Page 8 of the Evaluation, Garcia Consultants make six recommendations to increase factors of safety.

The owners have already taken measures to reduce hazard risks in accordance with the Garcia Consultants' recommendations. On September 17, 2008, Curry County approved a land use request to authorize the placement of engineered fill in the floodplain. The application states that this fill was placed approximately four years ago.

The Applicant has also obtained a Conditional Letter of Map Revision (CLOMR) from the FEMA on May 29, 2009 for fill in the floodway. If the Applicant were to place this fill in the floodway they could complete the Letter of Map Revision process. FEMA could then issue a revised floodplain map specific to this site showing the filled area to be located outside the 100-year floodplain.

The Applicant provides detailed information on proposed townhome foundation designs with pilings to implement Geologic Hazard Evaluation recommendation #4. Page 2 of the Applicant's Comprehensive Plan review states that, "development for residential use will focus on site plans that are all above the 100-year floodplain and M/T [Mahar/Tribble LLC] is planning to have finished floor levels above 500-year flood levels.

Topography: Topography of the site is generally flat with slopes down to the Chetco River. Because of the tsunami and flooding hazards on the site, topography relative to the river and estimated heights of tsunami impacts or Chetco River flooding are critically important. An easily readable topography map is not provided with the Application. The Natural Hazard Evaluation, found on page B-153, contains somewhat legible topographic information. It indicates that the lowest point on the property is approximately 7.37 feet above mean sea level (msl) and the highest point is approximately 21.95 feet above msl. The Applicant indicates that fill has been placed in accordance with the prior land use approval from Curry County. It appears that additional fill is proposed consistent with the CLOMR issued by FEMA. An easily readable series of maps that explains the topographic history of the site not provided. Such a map series would begin with the original topography prior to any fill, followed by a map that depicts the existing conditions and provides cross-sections with fill added, followed by a map that depicts the areas not yet filled but where the Applicant intends to fill under the CLOMR with cross-sections that show the depth of fill.

Fire District: The property is currently located in the Brookings Rural Fire Protection District. Following annexation, the property will be served by the City of Brookings Fire/Rescue. This change is one in title and government financial accounting but without practical implication because the site is already served by the same personnel through the rural service district for county lands in the area.

Sanitary Sewer: Ultimate development of the property will require sewer system upgrades including a lift station. Applicants have an Infrastructure Financing Agreement with the City of Brookings for the needed improvements that was signed by all parties in the month of July 2013. The proposed improvements are adequate to serve the subject property as well as additional lands within the UGB in the area.

Water: 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. The Public Works Utility Confirmation Form indicates there is a 14-inch water main in the County road that is adequate to serve the subject property.

Storm Water Drainage: Applicant has provided a copy of a 1200-C Permit under the National Pollution Discharge Elimination System (NPDES). This permit expires November 30, 2015. According to representatives from Department of Environmental Quality, this permit is all that is required for residential construction under the NPDES requirements. 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.

Transportation:

- a. **Access:** Access to the property will be via North Bank Chetco River Road.

- b. **Street Classification and Maintenance Responsibilities:** North Bank Chetco River Road, a Curry County road, is classified as a Collector in the City's 2002 Transportation System Plan. Following annexation, this portion of the North Bank Chetco River Road will be located within the city limits of the City of Brookings. The application does not propose any change to the maintenance responsibilities and they will remain with Curry County.
- c. **Transportation Capacity Impacts:** The proposed amendments will change the designations of the subject properties from a combination of Commercial and Industrial to Medium Density Residential (R-2). The Commercial designation is approximately 5.1 acres (potentially developable) and the industrial is approximately 4.2 acres (potentially developable). Overall, the Industrial trip generation would typically be comparable to the residential generation. However, the trip generation for typical commercial uses is much higher than would typically be expected for a medium density residential. As such, the proposed plan map amendment is expected to reduce potential trip generation on the site and is not expected to result in any transportation capacity impacts that warrant detailed study. This expectation is confirmed by Oregon Department of Transportation (ODOT) correspondence. ODOT has no concerns with the proposed amendments from a transportation facility adequacy standpoint; the North Bank Chetco River Road intersection with Highway 101 is managed by ODOT and is the intersection where capacity impacts (if any) would be most acute.

Statewide Planning Goals:

The Applicant has provided findings that address all the statewide planning goals. The goals most affected by the annexation request are Goal 9, Economic Development and Goal 17, Coastal Shorelands.

Goal 9 is affected by the request to change both the comprehensive plan and zoning designation. This request removes approximately 4.2 acres of potentially developable industrial lands and 5.1 acres of potentially developable commercial.

The City adopted an Economic Opportunities Analysis (EOA) in 2009. The EOA identified a surplus of 7 industrial sites sized 2 to 5 acres. The removal of this site would reduce the surplus to 6 but the City would continue to have an adequate supply over the 20-year planning period. The EOA identified a deficit of 1 commercial site in the 5 to 10 acre size. In the EOA the commercial site on the subject property was constrained by the wetland and not included in the inventory. Therefore, re-designating the site as residential would not exacerbate the deficit projected in the EOA.

Goal 17 is affected by the request to relocate the Shoreland Boundary, identified as the 100-year floodplain, adjacent to the southern half of the subject property. The Applicant is requesting the Shoreland Boundary be amended to follow the revised 100-year floodplain following completion of FEMA's requirements. A more detailed analysis of this request as well as findings addressing all the statewide planning goals can be found in the staff report for the Planning Commission beginning at page B-15. A proposed condition of approval requires the completion of FEMA requirements, Letter of Map Revision, be finalized prior to any development on the property. The Planning Commission voted to revise this condition to allow for the northern portion of the property to be developed with a phased plan. The southern portion would require the Letter of Map Revision to be issued from FEMA prior to development or final plat approval.

Planning Commission review and Conditions of Approval:

The City contracted with CSA Planning in a staff review capacity for this annexation request. Jay Harland, Principal, presented to the Planning Commission at their August 5, 2014 meeting in which they recommended approval to City Council by a 3 to 2 vote. The issues raised by members of the Planning Commission focused on concerns regarding potential construction within the 100-year flood plain and the complexity of the application. The Brookings zoning ordinance prohibits residential development within the Shoreland Boundary. By the Shoreland Boundary also being the 100-year floodplain boundary, this prohibits residential development within the 100-year floodplain.

As stated above the Planning Commission accepted the location of the Shoreland Boundary to coincide with the 100-year floodplain and specifically modified Condition of Approval 3(c) to allow the Letter of Map Revision to be deferred until the southern portion of the property affected by the CLOMR obtains final plat and/or development permits.

After the hearing, the Applicant and his Attorney as well as the Harland, the Building Official, and the Planning Manager participated in a conference call to discuss the conditions of approval in detail. Following the call, the applicant's Attorney drafted revised language agreed upon for the conditions of approval. Staff believes the revised language does not change the content or intent of any conditions approved by the Planning Commission but simply reflects more precise language that will prevent confusion during future development applications.

The Applicant's Attorney also submitted a memo regarding the imposition of Condition 3(f) regarding verification of the lowest finished floor for residential development be at or above the 500-year floodplain. The Attorney requests this condition be stricken. Staff agrees that the 500-year floodplain certificate would exceed the minimum requirements and does not appear to be necessary to satisfy any criteria to which the application is subject.

Final Order and Adopting Ordinance:

A draft Final Order with Findings of Fact and Conditions of Approval as well as an Adopting Ordinance has been provided for review. Staff recommends these conditions of approval pending Council's decision on the Applicant's request to strike condition 3(f). Motion 2 contains the language to strike this condition.

Harland has provided a transmittal memo in Attachment A. He will attend the City Council meeting to present and answer questions.

Policy Considerations: None.

- Attachment(s):
- A. CSA Planning transmittal with proposed conditions of approval, applicant memo, draft final order
 - B. Planning Commission packet (Exhibit A & B)
 - C. Planning Commission Supplemental Packet (Exhibit C - G)



CSA Planning, Ltd

4497 Brownridge, Suite 101
Medford, OR 97504

Telephone 541.779.0569
Fax 541.779.0114

Jay@CSAplanning.net

Transmittal Memorandum

To: City Council, City of Brookings Oregon

Date: August 25, 2014

Subject: Planning File No. ANX-1-14

On August 5th, 2014, the City of Brookings Planning Commission conducted a public hearing on the above captioned matter and voted 3 to 2 in recommending approval of Planning File No. ANX-1-14. The record for those proceedings have been compiled by City Staff and Council packet on this matter has been prepared by City Staff. During the Planning Commission hearing, I functioned as the staff planner under contract with the City. In that capacity, I summarize the hearing below and point the City Council to the following hearing highlights:

- The hearings process identified the relevant substantive criteria that were found to be applicable to the subject Application. The criteria identified by staff were uncontroverted by testimony at the hearing and the Planning Commission recommendation is based upon the applicability of the staff identified criteria.
- The staff report, and associated a power point presentation, was provided with a thorough review of the major aspects of the application including but not limited to the following:
 - Review of the application under the Annexation criteria, and especially the impacts criteria related to public facilities adequacy.
 - Review of the application under the criteria for Comprehensive Plan Map amendment, and especially the criteria relating to the proposed shoreland boundary amendment and the Statewide Planning Goal 9 criteria to remove the subject lands from the employment land supply and add them to the residential land supply.
 - Review of the application under the criteria for Zone Change.
- Following the staff report, the Applicant provided testimony in support of their application. The Applicant generally concurred with the staff report and presentation except for the following points:
 - The manner in which the LOMR condition was structured would limit the ability to phase the project.
 - The Applicant argued that the shoreland boundary can be properly interpreted to be coincident with the 100-year floodplain once the LOMR is completed. The Applicant argued that this interpretation is consistent with Statewide Planning Goal 17 by operation of the City's Acknowledged Comprehensive Plan.
- Staff briefly interjected that the language proposed by the Applicant to address the timing and structure of the LOMR condition was acceptable from a staff perspective.
- Following the Applicant's testimony, additional testimony was received by the public. This testimony was generally supportive of the application and no specific objections to the project were lodged.
- The Planning Commission closed the public hearing and rendered its decision. The Planning Commission recommended approval on a vote of 3-2. The adopted motion



specifically accepted the Applicant's argument regarding the location of the shoreland boundary being coincident with the 100-year floodplain (post LOMR). The Planning Commission's motion specifically modified Condition of Approval 3(c) to allow the LOMR completion process to be deferred until the portion of the site affected by the CLOMR obtains final plat and/or development permits. The Planning Commission's decision functioned to transform the Staff's Draft Conclusions of Law into the recommended conclusions of law before the Council, except for the location of the amended shoreland boundary wherein the findings offered by the applicant were accepted and replace those provided in the initial staff report.

Enclosed with this memo you will find the following additional materials:

1. Two submittals are provided from the Applicant's Attorney Dan O'Connor. One submittal is a memo regarding the imposition of Condition 3(f) by the Planning Commission. The Applicant requests this condition be stricken. The nature and background on this issue appears to be fairly characterized by Mr. O'Connor. Ultimately, the Staff position on this request is that we agree with the Applicant that the 500-year floodplain certificate would exceed the minimum regulatory requirements and does not appear to be necessary to satisfy any mandatory criteria to which the application is subject. The second memo contains supplemental findings with respect to the shoreland boundary amendment. Staff's position is that these findings are consistent in all material ways with the findings reached by the Planning Commission on that particular matter.
2. There is a draft ordinance and draft final order for the Council's consideration and adoption in the event the Council approves the Application. You should note that the conditions of approval section is blank in the order; this is explained in the next item.
3. After the hearing, the Applicant, his Attorney, Donna Colby-Hanks, Lauralee Snook and myself participated in a conference call. The primary purpose of this conference call was to discuss the conditions of approval in some detail. A revised set of conditions of approval has been submitted to the record by the staff. Each condition was discussed individually. Following our call, Dan O'Connor drafted the revised condition language that is attached to reflect language agreed upon in the call between the parties. Staff believes the revised language does not change the content or intent of any conditions of approval as recommended by the Planning Commission but simply reflects more precise language that will prevent confusion during future development applications. Staff recommends these conditions of approval be those ultimately adopted; pending also the Council's decision on the Applicant's request to strike condition 3(f).

CSA Planning, Ltd.

A handwritten signature in black ink, appearing to read 'Jay Harland', is written over a horizontal line.

Jay Harland
Principal

cc. File

DRAFT CONDITIONS OF APPROVAL

1. Prior to approval of any new development permits or final plat approval on the subject property, the Applicant is required to record a deed declaration against the subject properties that acknowledges the existence of the Infrastructure Financing Agreement between the parties and its essential role in determining sewer feasibility to achieve municipal zoning. The Deed Declaration shall state that the existence of the Infrastructure Financing Agreement between the City and the Mahar/Tribble LLC was essential in approving the municipal zoning for the property by determining the provision of sewer was feasible and shall state that the City is under no obligation to extend sewer in a manner other than specified in the terms of the Infrastructure Financing Agreement.
2. Prior to issuance of any development permits or final plat approval, the owners must furnish the City of Brookings with a legal description prepared by a registered professional land surveyor that describes Shoreland Boundary as approved herein for the entire length of the subject properties and the boundary shall be staked at 50-foot intervals by the surveyor who prepared the legal descriptions. Notwithstanding the foregoing, the staking of the Shoreland Boundary on that portion of the subject property included within the approved FEMA Conditional Letter of Map Revision shall be completed contemporaneously with the completion of the FEMA Letter of Map Revision.
3. Development on the site is required to comply with the following Hazard Mitigation conditions:
 - a. Prior to issuance of any development permits or final plat approval, Applicant will provide a statement from an Oregon Registered Engineering Geologist that the fill placed four years ago satisfies the recommended 95% compaction and is appropriate for residential and street construction.
 - b. Prior to issuance of any development permits or final plat approval, Applicant will provide a statement from an Oregon Registered Engineering Geologist that any new fill will satisfy the recommended 95% compaction and is appropriate for residential and street construction.
 - c. Prior to issuance of any development permits or final plat approval on the portion of the subject property located within the existing 100-year floodplain, Applicant will complete the Letter of Map Revision process with FEMA that establishes the revised 100-year floodplain elevations and the floodway boundary for the site.
 - d. In the event any future development is to be located within the 100-year floodplain, topographic information will be provided for development permits that demonstrate the ground elevation building pads have been raised 1-foot above the 100-year floodplain elevation.
 - e. A report from an Oregon Registered Engineer or an Oregon Registered Engineering Geologist shall be provided with all building plans for residential foundations at the time

of building plan submittal to the City that explain how the proposed foundation designs are consistent with Recommendations No. 4 through 6 set forth on Page 7 of the Geologic Hazard Evaluation Report dated February 29, 2008, and prepared by Garcia Consultants. A copy of the aforementioned report being contained in the record.

f. Prior to building permit final inspection, residential building permits will provide an Elevation Certificate verifying that the lowest finished floor is at or above the FEMA 500 year flood elevation.



MEMORANDUM

TO: City of Brookings City Council

FROM: Dan O'Connor

RE: Planning File No. ANX-1-14

DATE: August 26, 2014

Honorable Council Members:

A public hearing was conducted before the City of Brookings Planning Commission (“the Planning Commission”) on August 5, 2014. The Planning Commission voted to recommend approval of the above-stated Application. During the public hearing there was discussion concerning the removal of Condition of Approval 3(f), which states:

f. Prior to building permit final inspection, residential building permits will provide an Elevation Certificate verifying that the lowest finished floor is at or above the FEMA 500 year flood elevation.

Condition 3(f) resulted from written comments made by the Applicant indicating a possible design standard allowing for the issuance of an Elevation Certificate verifying that the lowest finished floor is at or above the FEMA 500 year flood elevation. The aforementioned comments were not intended to constitute a stipulation to a standard that exceeds the City’s Flood Damage Prevention Code. Instead, the statement was simply a design goal for future development.

Based on the foregoing, the Applicant respectfully requests that Condition 3(f) be deleted. There appeared to be no objection to the removal of Condition 3(f) during the Planning Commission’s public hearing. Instead, it appeared that the proposed modification was inadvertently omitted from the Motion for Approval and subsequent vote. Applicant acknowledges and accepts that any development on the subject property will need to comply with the City’s Flood Damage Prevention Code. It is important to note that Condition 3(f) was not imposed to demonstrate compliance with any applicable standards or criteria. Furthermore, it is Applicant’s understanding that City staff has no objection to the proposed modification.

Thus, Applicant respectfully requests that Condition 3(f) be stricken. Your consideration of this matter is greatly appreciated.

HUYCKE O'CONNOR JARVIS, LLP



DANIEL O'CONNOR, OSB No. 950444



MEMORANDUM

TO: City of Brookings Planning Commission

FROM: Dan O'Connor

RE: Planning File No. ANX-1-14

DATE: August 5, 2014

Dear Planning Commissioners:

Applicant is proposing alternate findings concerning the Chetco River Estuary Shorelands Boundary amendment set forth in Section A below; an alternate Conclusion of Law set forth in Section B; and an amendment to the Conditions of Approval set forth in Section C.

A. Chetco River Estuary Shorelands Boundary Alternate Findings.

Applicant is only proposing a map amendment to the Shorelands Boundary and not a text amendment to the City of Brookings Comprehensive Plan. Both the City and County have acknowledged comprehensive plans, which contain coastal and estuary shoreland provisions. Neither the City's Comprehensive Plan nor the City's Land Development Code contain specific provisions concerning the location of the Shorelands Boundary. Consequently, the City has relied on the provisions of the Curry County Comprehensive Plan which specifically identifies the Shorelands Boundary for the Chetco River estuary as the 100-year floodplain. Therefore, the *Shoreland Identification Minimum Criteria* identified on page 23 of the Staff Report is inapplicable. Specifically, the aforementioned criteria are limited to circumstances involving the adoption of Comprehensive Plan provisions in accordance with Statewide Planning Goal 17, which is not the case here.

Notwithstanding the foregoing, the proposal is consistent with the Staff Report with the exception of stated *Criterion 1*. It is important that the current riparian setback is 75 feet and the Applicant is not proposing a riparian setback reduction as part of this Application. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit.

The wetland on the subject property has no in-flow hydraulic connection with the estuary. Instead, the wetland is the result of storm water runoff from transportation improvements and other development located within the vicinity of the subject property. In other words, the wetland is not the result of a naturally occurring hydraulic system. Consequently, the wetland should not be included within the Chetco River Estuary Shorelands Boundary.

B. Proposed Amended Conclusion of Law.


The City of Brookings has an acknowledged Comprehensive Plan and Land Development Code (LDC), neither of which contain specific locational criteria relating to the Chetco River Estuary Shorelands Boundary. Consequently, the City has interpreted its Comprehensive Plan in a manner to be consistent with the Curry County Comprehensive Plan, which designates the 100-year floodplain boundary as the Chetco River Estuary Shorelands Boundary. The Chetco River Estuary Shorelands Boundary shall be the 100-year floodplain boundary as determined by the approved CLOMR-F as identified on Page 201 of the Record. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit. Notwithstanding the foregoing, the 75-foot riparian setback for the Chetco River shall remain unchanged until such time the Applicant obtains the appropriate land use approval(s) to reduce the riparian setback.

C. Proposed Amendment to Conditions of Approval.

Applicant respectfully requests that Condition of Approval (3) be stricken and replaced with the following:

“All future divisions and development on the subject property shall comply with Chapter 15 of the City’s Municipal Code (Building Codes and Flood Damage Prevention) as well as all other applicable regulations set forth in the LDC.”

HUYCKE O’CONNOR JARVIS, LLP



DANIEL O’CONNOR, OSB No. 950444

**BEFORE THE CITY COUNCIL
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

**In the matter of Planning Commission File No.) Final ORDER
ANX-1-14; application for approval of annexation,) and Findings of
City initiated.) Fact
)**

ORDER approving an annexation of approximately 13.33± acres, identified as tax lots 2000 and 1500 on Assessor's Map 40-13-32D, located adjacent to the eastern boundary of the North Bank Chetco River Road, approximately 380 feet northeast of its intersection with Thompson Road and adjacent to the Chetco River including approximately 3,294 feet of North Bank Chetco River Road from the city limits boundary to the subject property at Ferry Creek, and approving the relocation of the Shoreland Boundary adjacent to tax lot 2000.

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with Chapter 17.144, Annexations, Brookings Municipal Code; and,
2. The Brookings Planning Commission duly considered the above described application on the agenda of its scheduled public hearing on August 5, 2014; and,
3. Recommendations were presented by the Jay Harland, CSA Planning in the form of a written staff report dated July 24, 2014, and by oral presentation, and evidence and testimony presented at the public hearing; and,
4. At the conclusion of said public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the Planning Commission, upon a motion duly seconded, accepted the Staff Report and recommended, with one revision to the proposed conditions of approval, that the City Council approve the request; and,
5. The Brookings City Council duly considered the above described application in a public hearing at a regularly scheduled public meeting held on September 8, 2014, and it is a matter of record; and,
6. At the conclusion of said public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, accepted the Planning Commission's recommendation and approved the request.

THEREFORE, LET IT BE HEREBY ORDERED that the application for an annexation of the subject parcels and the relocation of the Shoreland Boundary adjacent to tax lot 2000 is approved. This approval is supported by the following findings and conclusions:

FINDINGS

The CSA Planning staff report dated July 24, 2014 with the exception of the findings for Criterion 1 of Goal 17, Coastal Shorelands, provide the findings in this matter. The memo dated August 5, 2015 submitted by Daniel O'Connor, Huycke O'Connor Jarvis, LLP provide replacement findings for criterion 1 of Goal 17. Both the staff

report and O'Connor's memo are attached (Attachment A) to and hereby made a part of this Final Order. The following are general findings to show that all of the criteria have been met.

1. The findings address the application procedure requirements in BMC Section 17.144.020 as well as each of the goals of the City's Comprehensive Plan.
2. The findings address the annexation impact analysis requirements in BMC Section 17.144.030.
3. The materials satisfy all of the criteria presented in BMC Chapter 17.144, Annexations, of the Land Development Code, to justify the proposed annexation.
4. The findings address the relocation of the Shoreland Boundary adjacent to the southern portion of the property (tax lot 2000) , the comprehensive plan change from industrial/commercial to residential, and the zone change from Curry County Industrial (I)/Light Commercial (C-1) to City of Brookings Two-family Residential (R-2).

CONCLUSIONS

The materials provided in the CSA Planning staff report dated July 24, 2014 and the O'Connor memo dated August 5, 2014 satisfy all of the criteria presented in BMC Chapter 17.144, Annexations, of the Land Development Code, to justify the proposed annexation.

CONDITIONS OF APPROVAL

LET IT FURTHER BE OF RECORD that the City Council **APPROVED** the requested annexation and the Shoreland Boundary relocation subject to the above stated Conditions of Approval.

Dated this 8th day of September, 2014.

Ron Hedenskog, Mayor

ATTEST:

Donna Colby-Hanks, Planning Manager

BEFORE THE CITY COUNCIL AND PLANNING COMMISSION

FOR

THE CITY OF BROOKINGS, OREGON

IN THE MATTER OF AN APPLICATION TO)
ANNEX LAND INTO THE CITY'S)
MUNICIPAL BOUNDARY, AMEND THE)
COMPREHENSIVE PLAN, AND AMEND THE)
ZONING ON PROPERTY LOCATED ON)
NORTH BANK CHETCO RIVER ROAD)
ALSO DESCRIBED AS TOWNSHIP 40)
SOUTH, RANGE 13 WEST, SECTION 32D)
(WILLAMETTE MERIDIAN), TAX LOTS)
1500 and 2000 WITHIN THE CITY OF)
BROOKINGS URBAN GROWTH)
BOUNDARY)

STAFF REPORT AND
DRAFT CONCLUSIONS OF LAW

Planning File No. ANX-1-14)

Applicant/Owner: Mahar/Tribble, LLC)
Agent: Ron Tribble)

I

DOCUMENT PURPOSE AND FUNCTION

Sections I-IV of this document constitutes the Staff Report required by ORS 197.763. This report was prepared by CSA Planning, Ltd. under contract for Professional Land Use Planning Services on behalf of the City of Brookings, Oregon.

Section II of this document describes the nature and scope of the application and summarizes the key issues the Planning Commission will need to resolve in formulating its recommendation to the City Council. Section II is structured to be general in nature intended to present a relatively complex project in a simple fashion with straightforward language.

Section III recites the criteria Staff has identified as applicable to the proposal.

Section IV constitutes the Staff recommendation for Findings of Fact for the application.

Section V is a *draft set of conclusions of law* for consideration by the decision making bodies should the project be *approved*. If the application is ultimately denied then the draft conclusions would be rejected for any criteria the application is found not to satisfy and alternative conclusions justifying the denial would be prepared. The *draft conclusions of law* represent the nature and form of conclusions of law that should be adopted by a local



government to explain a decision to approve an amendment to the Comprehensive Plan and a related land use decision for the zone change and associated annexation. While some draft conclusions of law may read as categorically satisfied, this is a function of the nature of the application and the criteria itself. The staff report in Section II of this document is intended to identify the key issues for the application review. The subjective judgments and decision that will be recommended by the Planning Commission and ultimately decided by the City Council *may differ* from the reasoning provided in these *draft* conclusions. After such decisions are rendered through the planning process, a *final* set of conclusions of law will be written for adoption and these conclusions will reflect the recommendations made by the Planning Commission and the ultimate decision of the City Council.

Section VI is a draft set of conditions of approval (if any are recommended) for consideration by the Planning Commission and the City Council.

II

NATURE AND SCOPE OF APPLICATION & SUMMARY OF KEY ISSUES FOR REVIEW

The application proposes to annex approximately 13.3 acres of land into the City of Brookings along North Bank Chetco River Road. The proposal includes amendments to the Comprehensive Plan and Zoning Map that will change the designation of the subject properties from commercial and industrial to residential and an amendment to the Shoreland Boundary for Tax Lot 2000.

1. **Are the impacts of the Annexation acceptable to the City of Brookings?** The Applicant has provided analysis and evidence that impacts to the City of Brookings will not be adverse to any significant degree.
2. **Has the Applicant justified the Comprehensive Plan Map Amendment from Commercial and Industrial to Residential?** The Applicant has provided arguments and evidence in support of this request. If the Staff findings are accepted, it does not appear the Comprehensive Plan provides a compelling quantitative basis for the requested amendment for the commercial portion of the project. The amendment would, thusly, need to be based upon qualitative and locational considerations. In simple terms, is the site better located for residential use than for commercial uses, notwithstanding UGB-wide land supply considerations?
3. It appears that the property can be adequately served by public facilities and services and so the Zone Change appears to meet the applicable criteria if the Application for Annexation and Comprehensive Plan Map amendment is approved.
4. **Has the Applicant demonstrated that all the land that must be identified within the amended Shoreland Boundary has been included?** Each Goal 17 identification criterion is additive and the City will need to determine if the proposed Shoreland Boundary meets the criteria.



III

RELEVANT SUBSTANTIVE APPROVAL CRITERIA

The criteria, under which a consolidated quasi-judicial land use application for Annexation, Comprehensive Plan Map Amendment, and Zone Change must be considered, are set forth in the State Law, State Administrative Rules, the City of Brookings Comprehensive Plan and the City of Brookings Land Development Ordinance (hence forth BLDO). The applicable criteria are recited verbatim below, as follows:

ANNEXATION CRITERIA

OREGON REVISED STATUTES

222.111 Authority and procedure for annexation.

- (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.
- (2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.
- (3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.
- (4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.
- (5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.
- (6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.
- (7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.

222.115 Annexation contracts; recording; effect. A contract between a city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of property of the landowner shall be recorded and, when recorded, shall be binding on all successors with an interest in that property.



222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

- (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.
- (2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.
- (3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.
- (4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:
 - (a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;
 - (b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or
 - (c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.
- (5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.
- (6) The ordinance referred to in subsection (4) of this section is subject to referendum.
- (7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

222.170 Effect of consent to annexation by territory; proclamation with and without city election.

- (1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:



- (a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or
 - (b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.
- (2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:
- (a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or
 - (b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.
- (3) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120, the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.
- (4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 or railroad or is exempt from ad valorem taxation shall not be considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section.

222.173 Time limit for filing statements of consent; public records.

- (1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.
- (2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505.

222.175 City to provide information when soliciting statements of consent. If a city solicits statements of consent under ORS 222.170 from electors and owners of land in order to facilitate annexation of unincorporated territory to the city, the city shall, upon request, provide to those electors and owners information on that city's ad valorem tax levied for its current fiscal year expressed as the rate per thousand dollars of assessed valuation, a description of services the city generally provides its residents and owners of property within the city and such other information as the city considers relevant to the impact of annexation on land within the unincorporated territory within which statements of consent are being solicited.

222.177 Filing of annexation records with Secretary of State. When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:

- (1) A copy of the resolution or ordinance proclaiming the annexation.
- (2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.
- (3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.



- (4) A copy of the ordinance issued under ORS 222.120 (4).
- (5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4).

222.179 Exempt territory. The amendments to ORS 222.210, 222.230, 222.240 and 222.270 made by chapter 702, Oregon Laws 1985, do not apply in territory subject to the jurisdiction of a local government boundary commission

222.180 Effective date of annexation.

- (1) The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided in ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.
- (2) For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described in ORS 222.177.

222.183 Notice of annexation when effective date delayed for more than one year.

- (1) If the effective date of an annexation is more than one year after the date of a proclamation of annexation, the city, through its recorder or other city officer or agency performing the duties of recorder under this section, shall send notice to the county clerk of each county within which the city is located. The notice shall be sent not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.
- (2) The notice described in subsection (1) of this section shall be in addition to any other notice or filing required under ORS 222.010 to 222.750.

URBAN GROWTH AREA JOINT MANAGEMENT AGREEMENT

IX. Annexations and Provision of City Services

- C. Annexation of land shall comply with all provisions of the Public Facilities Plan and the Transportation System Plans for the UGA.

BROOKINGS LAND DEVELOPMENT ORDINANCE

**Chapter 17.144
ANNEXATIONS**

17.144.010 Generally.

A proposal to annex territory to the city of Brookings shall be processed in accordance with the requirements contained herein; provided, that the proposal complies with the provisions of ORS 222.111 to 222.180 and ORS 222.840 to 222.915.

17.144.020 Application procedures.

An application for annexation may be filed with the city on a form prescribed by the city, accompanied by a filing fee in the amount established by general resolution of the city council. Said application shall contain the following information:

- A. Vicinity map identifying the proposed area of annexation and existing city limits.
- B. Assessor's parcel maps of the proposed annexation area, which maps shall indicate and identify those parcels for which consents to annex have been signed by either electors and/or owners depending on which annexation process is used under the provisions of the ORS.



- C. Consent to annex forms completed and signed by all property owners within the territory proposed to be annexed.
- D. Legal metes and bounds, or lot and block description of the territory proposed to be annexed.
- E. Specific information on each parcel within the territory proposed to be annexed as follows:
 - 1. Current assessed valuation as shown on the Curry County assessor's tax rolls.
 - 2. Acreage.
 - 3. Map and tax lot number.
 - 4. Owners of record and/or registered electors residing on the premises of the subject parcel.
- F. Addresses of all dwelling units and businesses within the territory proposed to be annexed.
- G. Significant natural features within the area proposed for annexation including, but not limited to, streams, wetlands, slopes, and areas of geological significance.
- H. Adjoining land uses.
- I. Proposed land uses/development plan of the territory proposed to be annexed.
- J. Written findings of fact prepared by the petitioner(s) or petitioner(s) representatives which address the following:
 - 1. Existing land uses within the territory proposed to be annexed.
 - 2. Existing zoning and comprehensive plan designations within the territory.
 - 3. Existing improvements, such as water system, streets, sanitary sewer, and storm drainage.
 - 4. Proposed or existing local improvement districts within the territory proposed to be annexed.
 - 5. Urban services needed and necessary to service the territory proposed to be annexed, including the availability of the same relative to capacity, condition and cost of extension and/or improvement to urban standards and an estimated timeline for any required improvements. City staff will provide written information regarding existing infrastructure and any improvements that would be necessary to serve the territory proposed to be annexed, as well as any other properties within the urban growth area that would also be served by these improvements in the future.
 - 6. Compliance with all applicable goals and policies of the comprehensive plan.
 - 7. Compliance with all of the items listed in BMC 17.144.030.
 - 8. The burden of providing the findings is the responsibility of the applicant.

17.144.030 Annexation impact analysis.

The following criteria shall apply to all annexation requests:

- A. The proposed use for the site complies with the Brookings comprehensive plan and with the designation on the Brookings comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Brookings comprehensive plan.
- B. An adequate level of urban services and infrastructure to accommodate anticipated future development either is available, or can reasonably be made available. An adequate level of urban services shall be defined as: municipal sanitary sewer, storm drainage, and water service meeting the requirements enumerated in the Brookings public facilities plan and the land development code for provision of these services. The adequacy of these services shall be considered in relation to annexation proposals. If any substandard infrastructure exists within the boundaries of the area proposed for annexation, the city may deny an annexation application.



- C. Documentation of impacts on existing streets within the annexation area and adjacent transportation facilities by future development of the area. The adequacy of the transportation facilities shall be considered in relation to annexation proposals.
- D. As development occurs within the annexed area new streets shall be constructed to the standards of the Brookings transportation system plan and land development code. While it is preferred that public streets located within the city limits be a part of the city-maintained street system, streets within the annexed area shall remain in the county's jurisdiction until such time as they are improved to the city street standards. If the proposed annexation includes the transfer of county maintained roads to the city maintained street system, said streets located within the annexation area shall be improved to city standards prior to annexation approval, or the formation of a local improvement district to fund said street improvements shall accompany the annexation application.
- E. Documentation of the availability and adequacy to serve the proposed annexation with police, fire, parks, and school facilities and services.
- F. Improvements for needed infrastructure shall be secured by a funding mechanism that will place the economic burden on the territory proposed for annexation and not on the city of Brookings

17.144.040 Zoning of annexed property.

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. The zoning designation of annexed territory shall be specified in the annexation ordinance and shall become effective upon acceptance of the annexation by the Secretary of State.

17.144.050 Hearing process.

- A. The planning commission will conduct a public hearing to consider the application request. The commission will review the materials submitted and analyze how the application relates to the criteria stipulated in BMC 17.144.030. A recommendation from the planning commission will be forwarded to the city council.
- B. The city council will consider the planning commission's recommendation and whether the application meets the appropriate criteria. The council will make a decision to approve or deny the requested annexation

COMPREHENSIVE PLAN MAP AMENDMENT AND ZONE CHANGE CRITERIA

STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process...

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions...

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands...

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture...

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces...

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state...



GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS
To protect people and property from natural hazards...

GOAL 8: RECREATIONAL NEEDS
To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts...

GOAL 9: ECONOMIC DEVELOPMENT
To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens...

GOAL 10: HOUSING
To provide for the housing needs of citizens of the state...

GOAL 11: PUBLIC FACILITIES AND SERVICES
To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development...

GOAL 12: TRANSPORTATION
To provide and encourage a safe, convenient and economic transportation system...

GOAL 13: ENERGY CONSERVATION
To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles...

GOAL 14: URBANIZATION
To provide for an orderly and efficient transition from rural to urban land use...

GOAL 16: ESTUARINE RESOURCES
To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

GOAL 17: COASTAL SHORELANDS
To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

OREGON ADMINISTRATIVE RULES (OAR)

660-009 Economic Development

660-009-0010

Application

- (1) This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.
- (2) Comprehensive plans and land use regulations must be reviewed and amended as necessary to comply with this division as amended at the time of each periodic review of the plan pursuant to ORS 197.712(3). Jurisdictions that have received a periodic review notice from the Department (pursuant to OAR 660-025-0050) prior to the effective date of amendments to this division must comply with such amendments at their next periodic review unless otherwise directed by the Commission.
- (3) Cities and counties may rely on their existing plans to meet the requirements of this division if they conclude:



- (a) There are not significant changes in economic development opportunities (e.g., a need for sites not presently provided for in the plan) based on a review of new information about national, state, regional, county and local trends; and
 - (b) That existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 to 660-009-0030.
- (4) For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:
- (a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or
 - (b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or
 - (c) Adopt a combination of the above, consistent with the requirements of this division.
- (5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.
- (6) The amendments to this division are effective January 1, 2007. A city or county may voluntarily follow adopted amendments to this division prior to the effective date of the adopted amendments.

OREGON TRANSPORTATION PLANNING RULE

Oregon Administrative Rules Chapter 660, Division 12

660-012-0060 Plan and Land Use Regulation Amendments

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or 2 comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.



CITY OF BROOKINGS COMPREHENSIVE PLAN

Goal 2 Land Use Planning

2. The burden of proving the need for a change in land uses shall be borne by the proponent of the land use request.
3. In instances where public hearings are required, relative to this Plan, the Planning Commission and City Council will follow procedures established in the City's Zoning Ordinance. These bodies are responsible for considering the effects of a decision on the entire community and should not be swayed unduly by persons testifying for or against a particular course of action, but must place this input into its proper perspective and base the final decision on all information provided to them.

Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources

1. It is the policy of the City of Brookings to protect natural and scenic resources by encouraging the conservation of ecologically and scientifically significant natural areas, scenic views and sites, historic areas, local energy sources, and mineral and aggregate resources.
2. Reference is made to the Chetco River Estuary Plan and Inventory—Goal 16.

Goal 7 Natural Hazards

1. When development is located in areas of known natural hazards, the density or intensity of the development shall be limited by the degree of the natural hazard.
2. When development is planned in areas of identified hazards, the developer will be required to show that property development will not be endangered by the hazard and that appropriate safeguards will be taken.

Goal 9 Economy

- f. Provide an adequate supply of sites of varying locations, configurations, and size, to accommodate industrial and other employment over the planning period;

Related Implementation

8. Provide commercial and industrial land to meet the site characteristics and site sizes described in the EOA;
9. Limit retail commercial land supply to encourage retail infill and redevelopment to areas within the existing Urban Growth Boundary, especially in downtown;

Goal 10 Housing

2. City shall provide for a variety of housing options and sites and plan for suitable locations. It is recognized the private sector will continue their leadership role in this function.

Goal 11 Public Facilities and Services

- 1 B. Water distribution, pumping and storage. New development requiring extension of water mains, pumping and storage facilities will be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.
- 1 E. Wastewater collection facilities. New development requiring extension of sewer mains and new pumping stations will be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.
1. F Streets and other infrastructure facilities. The City's Public Works Department will inspect and maintain all public street and subsurface infrastructure facilities. The extension of existing streets for new development shall be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.



1. GStorm drain facilities. New development requiring new storm drain systems or the extension of existing systems including provision of detention basins, will be paid for and constructed by the developer pursuant to the provision of the current City of Brookings Standard Specifications document.

Goal 14 Urbanization

9. The conversion of land from urbanizable to urban within the Urban Growth Area must occur in an orderly and well planned manner that considers the economic and environmental issues identified as a part of the Urban Growth Boundary amendment and pursuant to the provisions of Section 10, Policies Related to Conversion of Urbanizable Land To Urban Land within the Urban Growth Area, of the City/ County Urban Growth Area Joint Management Agreement.

The provisions cited in Finding number 3 above are considered to be policies of this plan.

Goal 16 Estuarine Resources

10. Actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alterations. Such activities in clued dredging, fill, in-water structured, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow land disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

- A. The type and extent of alterations expected;
- B. The type of resource(s) affected;
- C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
- D. The methods which could be employed to avoid or minimize adverse impacts.

Goal 17 Coastal Shorelands

3. The City will manage floodplain areas in coastal shorelands to promote use and development consistent with hazards to life and property. Priority uses for floodplain areas shall include recreation, open space and uses that are water-dependent.
7. It is City policy to require the maintenance and, where appropriate, restoration and enhancement of riparian vegetation consistent with water dependent uses.
8. Land use management practices and nonstructural solutions to erosion control and flooding is preferred to structural solutions. Where shown to be necessary, water and erosion control structures must be designed to minimize adverse impacts on water currents, erosion and accretion problems.
11. To protect coastal headlands and outstanding scenic resources and to protect against geologic hazards the City has prohibited non-water dependent related structures within the ocean coastal shoreland boundary.

CITY OF BROOKINGS LAND DEVELOPMENT ORDINANCE

Chapter 17.140

LEGISLATIVE TEXT AMENDMENTS AND QUASI-JUDICIAL COMPREHENSIVE PLAN MAP AND/OR ZONE CHANGES

17.140.010 Procedure.



The Brookings comprehensive plan and land development code may be amended by adopting revisions to reflect changes in the law, clarify language or procedures, correct mistakes, or to reflect changing community conditions. Amendments to the text follow legislative procedures.

This chapter also provides standards and procedures for quasi-judicial amendments to consider comprehensive plan map and/or zone changes for specific properties.

17.140.020 Proposed amendments.

- A. An amendment to the text of the comprehensive plan or land development code may be proposed as a legislative hearing by the city council, planning commission, planning director, or an individual.
- B. A comprehensive plan map and/or zone change for specific properties may be initiated as a quasi-judicial hearing by a property owner or the city.

17.140.040 Application for a comprehensive plan map and/or zone change.

The property owner, authorized agent, or the city may make application for a zone change amendment by filing an application with the planning department for review by the site plan committee pursuant to Chapter 17.80 BMC. After the site plan committee determines the application is complete, a quasi-judicial hearing before the planning commission will be scheduled. Such application shall be accompanied by the following information:

- A. A completed land use permit application form.
- B. A description of the subject property, the requested zoning designation, and the proposed uses.
- C. Compatibility of the proposed zoning designation with the surrounding land uses.
- D. Impacts on city services and streets serving the area.
- E. Statement and supportive evidence indicating the manner in which the proposed zone change amendment is in conformance with the comprehensive plan for the city of Brookings, applicable provisions of this code, and any applicable statewide planning goals.
- F. The application shall be accompanied by a nonrefundable filing fee in the amount established by general resolution of the city council.

17.140.050 Qualified comprehensive plan map and/or zone change.

- A. When considering a comprehensive plan map and/or zone change, the planning commission and city council may qualify, or condition, a zone change such that:
 - 1. The property may not be utilized for all the uses ordinarily permitted in a particular zone; or
 - 2. The development of the site must conform to certain specified standards; or
 - 3. Any combination of the above.
- B. A qualified zone change shall be dependent on findings of fact including but not limited to the following:
 - 1. Such limitations are deemed necessary to protect the best interests and ensure compatibility with the surrounding property or neighborhood; or
 - 2. Such limitations are deemed necessary to protect public safety and the city's best interests and/or infrastructure; or
 - 3. Such limitations are deemed necessary to prevent or mitigate potential adverse environmental effects

17.140.060 Action by the planning commission.

- A. Upon filing of said application for an amendment as described in BMC 17.140.030 or 17.140.040, the matter shall be referred to the planning commission and a public hearing shall be held on the matter for which notice shall be given as provided in Chapter 17.84 BMC.



**Staff Report and
Draft Conclusions of Law**

Planning File No. ANX-1-14: Annexation, Comprehensive Plan Map Amendment, and Zone Change
Tribble/Mahar LLC: Applicant and Owner

- B. In the case of a text amendment, the planning commission shall review the draft language and make any revisions that are considered necessary. The planning commission shall recommend approval, qualified approval, or denial to the city council.
- C. In the case of a comprehensive plan/zone change amendment, the planning commission shall recommend the approval, approval with conditions, or denial of the application to the city council.
- D. In the case of a simple zone change amendment (changing from one residential zone to another residential zone, or from one commercial zone to another commercial zone), the planning commission is the decision-making body and may approve, approve with conditions, or deny the application.
- E. If the proposed zone change is for property containing a mobile home park, notice shall also be provided to tenants of such mobile home park. The commission may recommend an alternate zoning designation for the area under consideration.

17.140.070 Action by the city council.

- A. Following the planning commission hearing and recommendation for a comprehensive plan/zone change, a hearing before city council shall be scheduled. Notice of said public hearing shall be given as provided in Chapter 17.84 BMC.
- B. In the case of a text amendment, the council shall enact an ordinance approving or denying the amendment.
- C. In the case of a zone change amendment, the council shall enact an ordinance to approve, approve with conditions, or deny the application.
- D. The council may opt to remand the proposal to the planning commission for further review. A council remand shall communicate specific concerns and issues for the planning commission's consideration. The commission shall reconsider the proposal at their next regularly scheduled meeting and report their findings and recommendations at the next regular meeting of the city council.
- E. To adopt an ordinance for a zone change, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. It must be found that the amendment complies with and conforms to the comprehensive plan goals, policies, generalized land use map, and any applicable statewide planning goals.



IV

FINDINGS OF FACT

The City of Brookings Planning Commission and City Council herewith incorporate and adopt by reference the evidence provided in the application and the findings of fact offered by the Applicant, where such findings do not conflict with the findings herein. The City of Brookings Planning Commission and City Council herewith finds the following related and additional facts to be true with respect to this matter:

- 1. Property Location, and Description and Ownership; Assessed Value:** The public right of way to be annexed is the County Road Right-of-Way of North Bank Chetco River Road from the existing City limits northeastward to the northern property line of the Tax Lot 1500 in Section 32D of Township 40 South Range 13 West; from the city limits this portion of North Bank Chetco River reviewed for annexation is approximately 0.82 miles.

The private property reviewed for annexation (as well as the associated Comprehensive Plan Map Amendment and Zone Change) is identified Tax Lots 1500 and 2000 in Section 32D of Township 40 south Range 13 on the assessors maps of Curry County. The property lies between North Bank Chetco River Road and the Chetco River/Estuary beginning approximately 0.35 miles northeast of the existing City limits and extending along said right of way an additional half mile (approximately). The property is approximately 13.33 acres according to Applicant's findings. The record owner of the private property is Mahar/Tribble LLC according to the Curry County assessment records furnished by the Applicant. The Assessor's records indicate that Tax Lot 1500 has a Taxable Real Market Value of \$354,780 and Tax Lot 2000 has a Taxable Real Market Value of \$145,360. The Consent to annex forms were signed and duly executed by the members of the LLC being Ronald Tribble and Michael T Mahar, said membership was verified on the Oregon Secretary of State's business registry database search via the internet.

- 2. Comprehensive Plan Map and Zoning:** The City and County have an effective two map system within the Urban Growth Area wherein the County's zoning map functions as the comprehensive plan map for a property until it is rezoned as part of annexation. At the time of annexation, the City's Comprehensive Plan Map is amended to reflect the approved City Comprehensive Plan Map designation along with the concurrent zone change. The subject property currently has a County designation of C-1 (Commercial Light) for the southern portion (Tax Lot 2000) and Industrial for the northern portion (Tax Lot 1500).
- 3. Proposed Comprehensive Plan Map and Zoning Map Amendments:** The plan and zoning map amendment review is to go to a medium density residential plan designation with the corresponding R-2 zoning. The Plan Map amendment also proposes to amend the Shoreland Boundary (Statewide Planning Goal 17).
- 4. Existing Improvements and Historical Use:** The subject property currently has no structural improvements. The property has been used for mining/construction staging



and storage. The geologic report provided by the Applicant would support the proposition that the site has been mined historically. The relatively recent history indicates the property has not been actively mined because DOGAMI has no records of mining at the site. Aside from the occasional construction/mining staging or vehicle storage the property has had limited intensive use for many years.

5. Adjacent and Surrounding Land Use:

South: To the south and southeast is the Chetco River. To the southwest is a small water inlet referred to as “Snug Harbor” being Site #13 in the City’s Coastal Shorelands element. Across Snug Harbor to the southwest is an approximately 5 acre resort development (Chetco River Resort LLC). The Applicant states that this resort contains “Park Model RVs”. Further southwest is a resort development known as Riverside RV Resort. Both resorts have a County R-2 zoning designation.

East: To the east and northeast is the Chetco River. Immediately northeast and on the easterly side of North Bank Chetco River Road are small rural residential properties along the Chetco River that are zoned County RR-5.

North: To the north, on the west side of North Bank Chetco River Road, is Tax Lot 200 which is a relatively large parcel that is predominantly zoned R-2 but appears to also have a small strip of Industrial zoning as well; the parcel has dispersed development. Immediately to the north across the North Bank Chetco River Road is Tax Lot 100 which is outside the City’s Urban Growth Boundary. The UGB line juts down to a point for access to Tax Lot 100 on North Bank Chetco River Road. This parcel has a County FG zoning designation and has historically been used for mining and a grant of limited exemption for mining was issued but the DOGAMI file was closed in 1998, in compliance with DOGAMI rules and regulations at the request of the owner Mr. Curry.

West: Property to the west and southwest across North Bank Chetco River Road are zoned County R-2 and contain 0.5 to 1.5 acre lots with single family dwellings.

An aerial photo map of the subject property and surrounding area is included in the record and depicts the pattern of land parcelization and structural development in the area.

6. **Soils and Geology:** The Applicant provided a Geologic Hazard Evaluation dated February 29, 2008. That report analyzes the soil and geologic suitability of the site for urban development (specifically single family homes); that report is incorporated and adopted by reference herein. The underlying geology is essentially a river bar composed of gravel and silty sand. Portions of the site have been filled through a combination of flood deposition and human placement.

Soils mapped on the property by the US Department of Agriculture, Natural Resource Conservation Service (NRCS) 1987 include Unit 15A Bagness - Pistol River complex 0-3% slopes. Bagness silt loam, well drained, as mapped for the entire area of TL 2000 and southwest to southeast portions of TL 1500 and Unit 274D Winchuk silt loam, 3-15% slopes as mapped for the northwest to northeast portion of TL 1500 within the study area.



7. **Natural Hazards:** The subject property is located within the FEMA mapped 100-year floodplain of the Chetco River, Community Panel Number 410052 0520 C. The site is also located within the SB379 Tsunami Inundation Zone mapped areas prepared by DOGAMI. The Geologic Hazard Evaluation provided with the application identifies concerns for differential settlement from a seismic event. The differential settlement would result from liquefaction. Standard building foundations would be negatively impacted from this type of settlement because portions of the foundation would be located on a base that is no longer level.
8. **Applicant's Natural Hazard Mitigations:** The Application addresses natural hazard issues that are raised in the Geologic Hazard Evaluation in a workmanlike manner. The Geologic Hazard Evaluation ultimately concludes that development can feasibly be accomplished with adequate safety margin. On Page 8 of the Evaluation, Garcia Consultants make six recommendations to increase factors of safety.

The owners have already taken measures to reduce hazard risks in accordance with the Garcia Consultants' recommendations. On September 17, 2008, Curry County approved Planning File No. AD-0816. This land use approval authorized engineered fill in the floodplain. The application states that this fill was placed approximately four years ago.

The Applicant has also obtained a Conditional Letter of Map Revision from the Federal Emergency Management Agency on May 29, 2009 for fill in the Floodway. If the Applicant were to place this fill in the floodway they could complete the Letter of Map Revision process then a revised floodplain map specific to this site would be issued by FEMA.

The Applicant offers additional hazard risk mitigation information in their submittal, although this information is not formally stated as stipulations. Specifically, the Applicant provides detailed information on proposed townhome foundation designs with pilings to implement Geologic Hazard Evaluation recommendation #4. Page 2 of the Applicant's Comprehensive Plan review states that, "development for residential use will focus on site plans that are all above the 100-year floodplain and M/T [Mahar/Tribble LLC] is planning to have finished floor levels above 500-year flood levels. The Applicant has not provided the finished floor elevation associated with this proposal or a comparison to existing site elevations.

9. **Topography:** Topography of the site is generally flat with slopes down to the Chetco River. Because of the Tsunami and Flooding hazards on the site, topography relative to the river and estimated heights of tsunami impacts or Chetco River flooding are critically important. An easily readable topography map is not provided with the Application. Page B-46 of the Natural Hazard Evaluation contains somewhat legible topographic information. It indicates that the lowest point on the property is approximately 7.37 feet above msl and the highest point is approximately 21.95 feet above mean sea level. The Applicant indicates that fill has been placed in accordance with the prior land use approval AD-0816 from Curry County. It appears that additional fill is proposed consistent with the CLOMR issued by FEMA. An easily readable series of maps that explains the topographic history of the site not provided. Such a map series would begin



with the original topography prior to any fill, followed by a map that depicts the existing conditions and provides cross-sections with fill added, followed by a map that depicts the areas not yet filled but where the Applicant intends to fill under the CLOMR with cross-sections that show the depth of fill.

- 10. Fire District:** The property is currently located in the Brookings Rural Fire Protection District. Following annexation, the property will be served by the City of Brookings Fire/Rescue. This change is one in title and government financial accounting but without practical implication because the site is already served by the same personnel through the rural service district for County lands in the area.
- 11. Sanitary Sewer:** Ultimate development of the property will require sewer system upgrades including a lift station. Applicants have an Infrastructure Financing Agreement with the City of Brookings for the needed improvements that was signed by all parties in the month of July 2013.
- 12. Water:** 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. The Public Works Utility Confirmation Form indicates there is a 14-inch water main in the County road.
- 13. Storm Water Drainage:** Applicant has provided a copy of a 1200-C Permit under the National Pollution Discharge Elimination System. This permit expires November 30, 2015. According to representatives from DEQ, this permit is all that is required for residential construction under the NPDES requirements. 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.
- 14. Transportation:**
 - a. **Access:** Access to the property will be via North Bank Chetco River Road.
 - b. **Street Classification and Maintenance Responsibilities:** North Bank Chetco River Road is classified as a Collector in the City's 2002 Transportation System Plan. North Bank Chetco River Road is a County Road. Following annexation, this portion of the North Bank Chetco River Road will be located within the city limits of the City of Brookings. The application does not propose any change to the maintenance responsibilities and they are expected to remain with Curry County.
 - c. **Transportation Capacity Impacts:** The proposed amendments will change the designations of the subject properties from a combination of Commercial and Industrial to Medium Density Residential (R-2). The Commercial designation is approximately 5.1 acres (potentially developable) and the industrial is approximately 4.2 acres (potentially developable)¹. Overall, the Industrial trip generation would

¹ Potentially developable acreage is that acreage that is expected to be free from environmental and regulatory constraints, if approved, and this acreage will be available for development.

typically be comparable to the residential generation. However, the trip generation for typical commercial uses is much higher than would typically be expected for a medium density residential. As such, the proposed plan map amendment is expected to reduce potential trip generation on the site and is not therefore expected to result in any transportation capacity impacts that warrant detailed study. This expectation is confirmed by ODOT correspondence. ODOT has no concerns with the proposed amendments from a transportation facility adequacy standpoint; the North Bank Chetco River Road intersection with Highway 101 is managed by ODOT and is the intersection where capacity impacts (if any) would be most acute.

- 15. Annexation Impacts Analysis:** The findings required for the Annexation Impact analysis are primarily essentially focused on impacts to public facilities and services. The impacts to facilities and services are analyzed hereinabove with the exception of Parks, Schools and Police Protection. Applicant provides an analysis of these facilities in the Annexation Impact Analysis in the Applicants submittal. Applicant projects impacts will be no more than minimal to Police, Parks and Schools. While not extensive, Applicant's findings on the adequacy of these facilities appear reasonable given the small size of the annexation and associated ultimate development.

The Impact Analysis must substantiate that the "economic burden of annexation" must be borne by the territory to be annexed and not by the City of Brookings. Presumably this aspect of the Impact Analysis relates to facility infrastructure improvements. Implementation of the sewer financing agreement and continued maintenance of North Bank Chetco River Road by Curry County will assure that the economic burden of annexation is borne by the annexed territory.

- 16. Employment Land Supply and Demand Analysis:** The structure of the City's Comprehensive Plan is such that land use designations within the City's Urban Growth Boundary retain a County Plan Comprehensive Plan Map Designation until a property is annexed, at which time the most similar City Comprehensive Plan Designation is applied. The City's Economic Element and associated Economic Opportunities Analysis (henceforth referred to as EOA) inventoried all industrial and commercial land within the UGB but outside City limits as employment land under Statewide Planning Goal 9. Consequently and in the context of the subject application, the proposed annexation and request to apply a residential plan map designation upon annexation is a change of Urban Plan Designation out of an employment land category and triggers compliance with the OAR 660 Division 009 rule.

On Page 3 of the Applicant's submittal entitled, "Comprehensive Plan Review" the Applicant addresses Goal #9 Economy which is the Economy Element of the City of Brookings Comprehensive Plan. The Applicant provides no specific findings to the Division 009 rule or the parts of the City's Comprehensive Plan that address the rule. Applicant's findings state, "The Industrial Land Use Survey conducted by the City of Brookings shows that this property could be taken out of commercial and industrial zoning and rezoned to residential without impacting the need for Industrial Land." The Applicant's statement is logically flawed because changing the designation of land



affects supply not demand. Moreover, Staff is unaware of any adopted document entitled, "Industrial Land Use Survey". The adopted relevant documents are the City's Economic Element (a short statement of policies and implementation strategies) and the most recent EOA completed in 2009 and adopted by reference into the Comprehensive Plan through Ordinance 09-O-639.

When making amendments to the Comprehensive Plan Maps that affect the supply of employment land, the essential analysis is to determine the effect that change in supply will have on the City's overall supply of employment lands in relation to the 20-year projected demand. These overall analyses are conducted as part of an EOA that is adopted to comply with OAR 660-009. The City of Brooking has a relatively current EOA adopted in 2009 through Ordinance 09-O-639. Page iv provides an EOA summary in the form of Table S-4. As configured post-fill approved in the CLOMR, the resulting property would have approximately 5.1 acres of potentially developable commercial land and 4.2 acres of potentially developable industrial land. In terms of the Table S-4, this means the site falls in the category for Industrial Site Sizes 2-5 acres for the industrial portion (TL 1500). The EOA projects a surplus of 7 sites and 27 acres in aggregate for that industrial site size category. The proposed amendment to residential and out of industrial would reduce the surplus supply to 6 sites and approximately 23 acres over the planning period; the City's UGB would continue to have an adequate supply of 2-5 acre industrial sites over the planning period even after TL 1500 is changed to residential upon annexation approval.

The commercial portion (TL 2000) cannot be resolved through a straightforward application of net commercial supply in the EOA. The post-fill site size is approximately 5.1 acres which would place the site into the 5-10 acre site size category in Table S-4. That category has a deficit of 1 site and approximately 4 acres². However, a review of EOA Map 5 depicts site constraints that were applied to determine site and acreage supplies of developable employment land. CSA Planning prepared a Map 5 supplement that depicts a larger scale inset map for the subject property. That map shows that Tax Lot 2000 to be almost entirely covered by a wetland constraint assumed in the UGB-wide analysis for the EOA. Based on Applicant's more detailed mapping and as indicated herein above, Tax Lot 2000 includes approximately 5.1 acres of developable lands not constrained by wetlands as was indicated in the EOA. It is not uncommon for this type of UGB-wide coverage to have mapping assumptions that turn out to ultimately be incorrect when examined on a larger scale. The net result is that the subject property does not appear to have been included in the inventory of supply for commercial sites 5-10 acres. Therefore, amending the designation will not have the effect of exacerbating the deficit projected in the EOA in the relevant site size category.

However, the more detailed evaluation of wetlands constraints at the subject site means that the subject commercial land effectively balances the supply with demand in the EOA for commercial site sizes 5-10 acres. Amending the subject property to residential will

² The EOA appears to have an arithmetic error. If the Site Size category is 5-10 acres then the minimum acreage deficit in that category must be 5 acres.

not worsen the projected deficit in the EOA, but the projected deficit will continue to persist.

Ultimately, the proposed amendment to residential for Tax Lot 2000 is not determinative under the Economic Element and the associated EOA on a quantitative employment land supply basis alone for the reasons described above. As such, the proposed amendment requires findings of a qualitative nature that explain why eliminating the commercial designation is not inconsistent with the adopted EOA because any adverse quantitative implications are small and are offset by the qualitative benefits resulting from the amendment. The Economic Element contains relevant findings text, policies, and implementation strategies that could serve as a basis to approve the amendment, such as the following:

Economic Element Findings:

5. The Brookings area has developed a strong retirement housing industry. Retirees are an important source of economic stability to the community. Curry County and Brookings continue to have a population that is older than the State average due to in-migration of retirees. (EE p.1)

Commercial Policies

- 2(b) Commercial districts should offer good visibility and access and should generally be located along major arterials streets (EE p.3)
- 2(c) Commercial districts should result in concentrated groupings of retail, service, and office uses.

Economic Element Implementation Strategies

9. Limit retail commercial land supply to encourage retail infill and redevelopment to areas within the existing Urban Growth Boundary, especially in downtown; (EE p.5)
21. Provide opportunities for development of housing for seniors, ranging from single-family detached dwellings to nursing facilities. (EE p.5)

17. Housing Land Supply and Demand Analysis: The City of Brookings has not conducted a Housing Element update for many years. The last housing supply analysis was conducted in 1995 as part of a UGB amendment. The Applicant has not provided any substantive analysis explaining how the proposed amendments will affect residential land supply in relation to demand.

The 2000 Census indicates the 97415 Area Code had a population of approximately 13,093 people and had approximately 5,945 households. The 2012 5-year American Community Survey estimates there were 13,610 people and 6,412 households in the 97415 Area Code in 2012. The area code is a larger geography than the UGB and includes the entire Brookings UGB plus additional rural county lands and these estimates



therefore include households and population that are outside the UGB³. The 1995 UGB Needs Analysis Table 13 estimated there would be 15,341 people and 7,904 households just within the Brookings UGB by 2012 (not counting rural households within the zip code). Because of the rather large disparity between the housing projections in the Comprehensive Plan reference document and the observed population changes by the Census, it does not appear that an acute shortage of residential lands exists in the aggregate based upon this rather cursory comparison of observed data and the Comprehensive Plan's original projections and associated land supply that was approved through the UGB expansion. Without a full Goal 10 compliant Housing Element update to the Comprehensive Plan by the City of Brookings, it is difficult to know if there is a compelling aggregate UGB-wide quantitative land supply basis to support the proposed amendment to residential from a shortage standpoint.

Quasi-judicial UGB amendments need not be based solely on aggregate UGB-wide supply and demand analysis. This is especially true for a project that involves approximately 9.3 acres of buildable land assuming the LOMR process is completed consistent with the CLOMR. More localized qualitative factors may provide reasons to justify an amendment. The Applicant's Comprehensive Plan Review rightly observes that the subject property is urbanizable land within the UGB. This urbanizable land is constrained by public facilities deficiencies with respect to sewer availability. The Applicant's findings observe their intent to provide sewer service as part of a residential development of the site that will serve a broader urbanizable area. This reasoning, in combination with a determination that the change is not inconsistent with the City's most recent EOA, provides some basis to support the proposed amendment to residential⁴.

18. Estuary Analysis: The proposed annexation, comprehensive plan map amendment(s) and zone change are not proposing to make any substantive changes to the estuary boundary. The adopted boundary maps were adapted from FEMA maps reproduced in a manner that makes precise legibility at a scale for development permitting on individual properties challenging. The definitional boundary of the estuary has been interpreted to be the Mean Higher High Water Line (or MHHWL) for development permitting purposes in the County and the City. Applicants have prepared engineering maps the MHHWL depicted as the Estuary Boundary.

19. Shorelands Boundary Amendment Analysis: Applicant proposes an amendment to the Shorelands Boundary in the Chetco Estuary. Applicant requests the Shoreland Boundary be amended to follow the revised 100-year floodplain boundary following completion of fill consistent with the CLOMR approval from FEMA. The proposed amendment affects the southern portion of the project on Tax Lot 2000 and would remove approximately 3.4 acres from the Shoreland Boundary area. Statewide Planning Goal 17 includes specific

³ The Brookings Harbor Census geography is somewhat complicated. A more precise census tract based analysis is likely feasible but would not be expected to result in meaningfully different results.

⁴ Additional qualitative reasons to support the proposed change to residential may arise during the hearings process after these initial Findings of Fact were prepared.



minimum criteria which must be inventoried within Shoreland Boundaries. The below analysis summarizes Applicant's proposal with respect to the proposed boundary:

Goal 17 Shoreland Identification Minimum Criteria:

Criterion 1 – Lands subject to Ocean flooding must be included. Applicant proposes to include all lands within the 100-year floodplain consistent with this part of Criterion 1. The second part of the criterion requires that all lands within 50 feet of an estuary boundary be included in the Shoreland Boundary. The Applicant's request is not consistent with this requirement and there are locations where the proposed Shoreland Boundary would be less than 50 feet from the estuary boundary. There are portions of the existing boundary that is not proposed to be moved (primarily on Tax Lot 1500) that is less than 50 feet from the estuary boundary. There is limited case law on Goal 17 application and preliminary research did not provide guidance on whether the entire site affected by the Application must now comply with the Goal as currently written.⁵

Criterion 2 – Adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body must be identified as Shoreland. The Applicant provided a geologic hazard analysis and did not identify an area of geologic instability that is related to or will impact a coastal water body.

Criterion 3 – Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas must be included in the Shoreland Boundary. The Applicant's Attorney provides argument against including lands within a safe-harbor riparian setback of 75 feet within the Shoreland Boundary based upon a Curry County Comprehensive Plan provision.

It is unclear how a County Plan provision is relevant to a City Comprehensive Plan Amendment. Even if that provision applies, an amendment today must comply with the Goals as they are currently written. Moreover, the logic proposed by Applicant's Attorney appears problematic. Placing fill in a floodplain is a hydraulic analysis process not a Comprehensive Plan amendment process. If this logic were universalized, it would allow all Shoreland Boundaries to be reduced to the extent permitted in the hydraulic analysis review and then make the Comprehensive Plan review to amend the boundary deterministic without regard for the other criteria in Goal 17 for identifying the proper location of the Shoreland Boundary. This would create a procedural loophole that would allow plan map amendments to be pre-determined outside the plan amendment process and justified without application of the goals. The seven criteria for Shoreland Boundary inclusion must all be addressed and they are additive to each other.

⁵ This appears to be a policy question for the Planning Commission and ultimately the City Council during the proceedings.



Criterion 3 is about riparian resources and the requirement that they be included within the Shoreland Boundary. A safe-harbor riparian setback provides a logical basis to include certain lands within the within the Shoreland Boundary and exclude others. This setback is depicted on the Applicant's map for the most part; Applicant's map is incomplete because it does not extend the setback around the MHHWL at the northernmost projection of Snug Harbor. It is possible an alternative boundary (other than the 75' setback) can be shown that captures riparian resources adequately under the goal, but such a boundary must be based on evidence and arguments that relate to riparian resources and not Criterion 1 which pertains to areas of ocean flooding. Such an argument would begin with a Goal 5 analysis of riparian resources that begins at the resource inventory stage and applies the correct Goal 5 process.

Criterion 4 – The wetland delineation and associated information provided with the Application indicates that a wetland exists at the northeast end of the Snug Harbor backwater that is hydrologically connected to the Chetco River. The evidence indicates the area where the wetland has been delineated should be identified in the Shoreland Boundary. It is not clear from the Applicant's map where the wetland is in relation to the proposed Shoreland Boundary amendment.

Criterion 5 – Areas necessary for water-dependent and water-related uses must be included in the Shoreland Boundary. The Brookings Goal 17 and 18 plan on pages I 17/18 – 13 through 15 identifies 14 sites Especially Suited to Water-Dependent Development. Snug Harbor is identified as Site # 13. The text of the plan appears to indicate the actual site is the resort site on the east bank of Snug Harbor and not the subject property.

The goal also requires all dredge material disposal sites be included in the Shoreland Boundary. Dredge Material Disposal Site #3 (DMD) in the Chetco River Estuary plan is depicted on the subject property. Applicant's Attorney provided supplemental findings and evidence on this issue and argues the DMD site is located on the extreme southern end of the subject property and will be retained within the Shoreland Boundary.

Based upon the Applicant's findings, the proposed Shoreland Boundary amendment would not impact the supply of lands within the Shoreland Boundary that were identified for water-dependent or water-related uses⁶.

Criterion 6 – While the subject property has attractive traits, there are no known aesthetic or scenic resources of an *exceptional* quality that would warrant inclusion in the Shoreland Boundary.

⁶ A Shoreland Boundary amendment that does not affect the supply of water-dependent or water-related uses does not appear to trigger compliance with OAR 660 Division 37, based upon the Staff's understanding of the applicable case law. For this reason, the staff report does not address compliance with this administrative rule.

Criterion 7 – The property is in an estuary area not a headland area.

20. Wetlands and Riparian Evidence Review: The Applicant provided a wetland delineation and subsequent communications from the Army Corp of Engineers and the Division of State Lands. Based upon that communication it appears that if the fill is located as proposed no permits from the Corp or DSL will be required and wetland impacts will be minimized.

The Chetco River is on the City's acknowledged list of Goal 5 resources of fish bearing streams and this resource list references the Chetco River Estuary Plan as the City's in-depth analysis of fish and wildlife resources.

V

DRAFT CONCLUSIONS OF LAW

The following conclusions of law are *draft* conclusions of law that are intended to explain how the application could be found to comply with all the relevant criteria based upon the record to-date. Nothing in these conclusions of law should be read to be a recommendation for approval. If the application is ultimately approved these conclusions of law will be used as an initial version upon which a final set of conclusions of law will be drafted to reflect the decisions made during the proceedings. If the Application is ultimately denied, conclusions of law for denial will be prepared for the criteria for which the application was found not to comply.

* * * * *

ANNEXATION CRITERIA

OREGON REVISED STATUTES

222.111 Authority and procedure for annexation.

- (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

Conclusions of Law: The City Council concludes it has reviewed the City's Charter and found the annexation has been approved in the manner provided by the City's Charter and that the proposed territory for annexation is separated only by right of way that is a County Road being North Bank Chetco River Road.

- (2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

Conclusions of Law: The City Council concludes the initiation of the annexation is by petition of the owners of the territory to be annexed by and through the consent to annex form and filing of the annexation application.

- (3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.



Conclusions of Law: The Council concludes the Applicant has not made any requests with respect to taxation rates and the City does not grant any under this statute accordingly.

- (4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

Conclusions of Law: The Council concludes the property is not part of any district named in ORS 222.465 and is only part of a Fire District in ORS 222.510 but not the entire district and declares the subject property shall be withdrawn from that district on the effective date of the annexation.

- (5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Conclusions of Law: The City Council concludes that submission to electors of the city is not required under ORS 222.170 where the owners of the property have consented to the annexation.

- (6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.

Conclusions of Law: The City Council concludes that submission to electors of the city is not required under ORS 222.170 where the owners of the property have consented to the annexation.

- (7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.

Conclusions of Law: The City Council concludes that submission to electors of the city is not required under ORS 222.170 where the owners of the property have consented to the annexation.

222.115 Annexation contracts; recording; effect. A contract between a city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of property of the landowner shall be recorded and, when recorded, shall be binding on all successors with an interest in that property.

Conclusions of Law: The City Council concludes that there is no contract for annexation for the subject annexation.

222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

- (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.



Conclusions of Law: The City Council concludes the Charter does not require submission to the electors of the City for annexation.

- (2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Conclusions of Law: The City Council concludes the Charter does not require submission to the electors of the City for annexation and the City did in fact fix a day for the public hearing before the legislative body for electors to appear and be heard on the proposed annexation.

- (3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

Conclusions of Law: The City Council concludes the required notice was provided.

- (4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:
 - (a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;
 - (b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or
 - (c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

Conclusions of Law: The City Council concludes it held the hearing under subsection (2) rather than declaring the property annexed under (4)(b) above.

- (5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

Conclusions of Law: The Council concludes the ordinance for the annexation territory withdrew the subject property from all districts named in ORS 222.510 and the subject property is not within a district named in ORS 222.465.

- (6) The ordinance referred to in subsection (4) of this section is subject to referendum.

Conclusions of Law: The Council concludes it did not utilize the ordinance option in subsection (4) above.



- (7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

Conclusions of Law: The Council concludes, based upon the record that the legal land owner of the property is Mahar/Tribble LLC and 100% of the ownership in the LLC consented in writing to the annexation.

222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Conclusions of Law: The Council concludes there are no electors within the annexed territory and 100% of the contiguous land owners have consented to the annexation and therefore an election is not required. The City Council concludes they elected to hold a hearing for the annexation.

222.170 Effect of consent to annexation by territory; proclamation with and without city election.

- (1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:
- (a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or
 - (b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

Conclusions of Law: The Council concludes there are no electors within the annexed territory and 100% of the contiguous land owners have consented to the annexation and therefore an election is not required. The City Council concludes they elected to hold a hearing for the annexation under ORS 222.120.

- (2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:
- (a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or
 - (b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.



Conclusions of Law: The Council concludes there are no electors within the annexed territory and 100% of the contiguous land owners have consented to the annexation and therefore an election is not required. The City Council concludes they elected to hold a hearing for the annexation under ORS 222.120.

- (3) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120, the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

Conclusions of Law: The City Council concludes it has dispensed with the submitting the question to the electors of the City.

- (4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 or railroad or is exempt from ad valorem taxation shall not be considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section.

Conclusions of Law: The City Council concludes there is no known public utility, telecommunications carrier or railroad right of way within the territory to be annexed.

222.173 Time limit for filing statements of consent; public records.

- (1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.
- (2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505.

Conclusions of Law: The City Council concludes that the consent to annex was granted within one year of the decision to annex the subject territory.

222.175 City to provide information when soliciting statements of consent. If a city solicits statements of consent under ORS 222.170 from electors and owners of land in order to facilitate annexation of unincorporated territory to the city, the city shall, upon request, provide to those electors and owners information on that city's ad valorem tax levied for its current fiscal year expressed as the rate per thousand dollars of assessed valuation, a description of services the city generally provides its residents and owners of property within the city and such other information as the city considers relevant to the impact of annexation on land within the unincorporated territory within which statements of consent are being solicited.

Conclusions of Law: The City Council concludes that it did not solicit statements of consent and that the consent was initiated at the free will of the property owners; the Council further concludes that they would have provided the above prescribed information to the Applicants had any such information been requested..

222.177 Filing of annexation records with Secretary of State. When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:



- (1) A copy of the resolution or ordinance proclaiming the annexation.
- (2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.
- (3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.
- (4) A copy of the ordinance issued under ORS 222.120 (4).
- (5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4).

Conclusions of Law: The City Council concludes that all required documentation can feasibly and will be transmitted to the Secretary of State.

222.179 Exempt territory. The amendments to ORS 222.210, 222.230, 222.240 and 222.270 made by chapter 702, Oregon Laws 1985, do not apply in territory subject to the jurisdiction of a local government boundary commission

Conclusions of Law: The City Council concludes that the subject annexation did not proceed under a boundary commission process.

222.180 Effective date of annexation.

- (1) The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided in ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.
- (2) For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described in ORS 222.177.

Conclusions of Law: The City Council concludes that the annexation is not delayed in the ordinance beyond the date on which the annexation is filed with the Secretary of State.

222.183 Notice of annexation when effective date delayed for more than one year.

- (1) If the effective date of an annexation is more than one year after the date of a proclamation of annexation, the city, through its recorder or other city officer or agency performing the duties of recorder under this section, shall send notice to the county clerk of each county within which the city is located. The notice shall be sent not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.
- (2) The notice described in subsection (1) of this section shall be in addition to any other notice or filing required under ORS 222.010 to 222.750.

Conclusions of Law: The City Council concludes no notice is required because the effective date has not been delayed more than one year.

URBAN GROWTH AREA JOINT MANAGEMENT AGREEMENT

IX. Annexations and Provision of City Services



- C. Annexation of land shall comply with all provisions of the Public Facilities Plan and the Transportation System Plans for the UGA.

Conclusions of Law: The City Council herewith incorporates and adopts the Findings of Fact in Section IV and based thereupon concludes that adequate facilities can and will be provided to the subject properties consistent with the requirements in the Public Facilities Plan and the Transportation System Plan for this area.

BROOKINGS LAND DEVELOPMENT ORDINANCE

Chapter 17.144 ANNEXATIONS

17.144.010 Generally.

A proposal to annex territory to the city of Brookings shall be processed in accordance with the requirements contained herein; provided, that the proposal complies with the provisions of ORS 222.111 to 222.180 and ORS 222.840 to 222.915.

Conclusions of Law: The City Council concludes that the annexation has been processed in accordance with the applicable statutory provisions and its conclusions of law are provided herein above and are herewith incorporated and adopted by reference.

17.144.020 Application procedures.

An application for annexation may be filed with the city on a form prescribed by the city, accompanied by a filing fee in the amount established by general resolution of the city council. Said application shall contain the following information:

- A. Vicinity map identifying the proposed area of annexation and existing city limits.

Conclusions of Law: The Council concludes the record contains the required vicinity map.

- B. Assessor's parcel maps of the proposed annexation area, which maps shall indicate and identify those parcels for which consents to annex have been signed by either electors and/or owners depending on which annexation process is used under the provisions of the ORS.

Conclusions of Law: The Council concludes the record contains the required Assessor's parcel map.

- C. Consent to annex forms completed and signed by all property owners within the territory proposed to be annexed.

Conclusions of Law: The Council concludes the record contains the required consent forms signed by the LLC that owns the private land within the territory to be annexed, Mahar/Tribble LLC and both Michael Mahar and Ron Tribble each signed the consent form.

- D. Legal metes and bounds, or lot and block description of the territory proposed to be annexed.

Conclusions of Law: The Council concludes the record contains the required legal metes and bounds description of the territory to be annexed.

- E. Specific information on each parcel within the territory proposed to be annexed as follows:



1. Current assessed valuation as shown on the Curry County assessor's tax rolls.
2. Acreage.
3. Map and tax lot number.
4. Owners of record and/or registered electors residing on the premises of the subject parcel.

Conclusions of Law: The Council herewith incorporates and adopts the Findings of Fact in Section IV and based upon the same concludes the Applicant submitted information on current Taxable Real Market Value of the subject properties on the Assessor's roles, the acreage of the territory, the map and tax lot numbers, and the owners of record for the territory. The Council concludes there are no electors residing on the premises of the territory to be annexed.

F. Addresses of all dwelling units and businesses within the territory proposed to be annexed.

Conclusions of Law: The Council concludes the territory to be annexed does not contain any dwelling units or businesses because the subject property is vacant and has been for many years.

G. Significant natural features within the area proposed for annexation including, but not limited to, streams, wetlands, slopes, and areas of geological significance.

Conclusions of Law: The Council concludes the Application included significant technical details that included analysis of the Chetco River and its hydraulics, a wetland delineation, a map of the topography and a geologic report that analyzed the geologic conditions at the site.

H. Adjoining land uses.

Conclusions of Law: The Council herewith incorporates and adopts the Findings of Fact in Section IV (sub 5) and concludes the application contains information on the adjoining land uses and these uses have been considered and evaluated in the context of the subject annexation.

I. Proposed land uses/development plan of the territory proposed to be annexed.

Conclusions of Law: The Council concludes the Applicant provided some preliminary schematics of potential development concepts for the property. The Council concludes these are preliminary but are adequate for purposes of evaluating the annexation request and the associated land use applications for plan amendment and zone change.

J. Written findings of fact prepared by the petitioner(s) or petitioner(s) representatives which address the following:

1. Existing land uses within the territory proposed to be annexed.

Conclusions of Law: The Council concludes the Application provided information on the existing land uses within the territory to be annexed. The Council concludes the subject property is vacant and therefore impacts from annexation on the property, as it is currently being used, will be negligible.

2. Existing zoning and comprehensive plan designations within the territory.



Conclusions of Law: The Council concludes the Application provided information on the existing map designations for the property; the subject property is planned and zoned for commercial uses on the south lot TL 2000 (zoned C-1) and for industrial uses (zoned I) on the north lot TL 1500.

3. Existing improvements, such as water system, streets, sanitary sewer, and storm drainage.

Conclusions of Law: The Council concludes the Application provided information on the status of existing improvements. The Council concludes there is an existing water line at the property and the site is served by and fronts on a collector street. The Council concludes that there is no municipal storm drainage at the site and there is no sanitary sewer at the site.

4. Proposed or existing local improvement districts within the territory proposed to be annexed.

Conclusions of Law: The Council concludes no local improvement districts are known to exist in the territory to be annexed.

5. Urban services needed and necessary to service the territory proposed to be annexed, including the availability of the same relative to capacity, condition and cost of extension and/or improvement to urban standards and an estimated timeline for any required improvements. City staff will provide written information regarding existing infrastructure and any improvements that would be necessary to serve the territory proposed to be annexed, as well as any other properties within the urban growth area that would also be served by these improvements in the future.

Conclusions of Law: The City Council herewith incorporates and adopts the information provided by the Applicant on urban services and the Findings of Fact in Section IV, and based thereupon, concludes the site can feasibly and will be served by urban services that are appropriate for urban intensity development of the site.

6. Compliance with all applicable goals and policies of the comprehensive plan.

Conclusions of Law: The City Council herewith incorporates and adopts its conclusions of law below where each of the relevant goals and policies of the comprehensive plan are addressed.

7. Compliance with all of the items listed in BMC 17.144.030.

Conclusions of Law: The Council herewith incorporates and adopts its conclusions of law addressing 17.144.030 and concludes the application has demonstrated compliance with all the provisions therein.

8. The burden of providing the findings is the responsibility of the applicant.

Conclusions of Law: The City Council concludes the Applicant provided findings in the initial annexation application submittal and nothing during the proceedings has shifted the burden to the City or any other party.

17.144.030 Annexation impact analysis.



The following criteria shall apply to all annexation requests:

- A. The proposed use for the site complies with the Brookings comprehensive plan and with the designation on the Brookings comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Brookings comprehensive plan.

Conclusions of Law: The City of Brookings concludes that the plan map within the urban growth area is what was inventoried in the Economic Opportunities Analysis and during the 2005 UGB expansion. Those maps reflect the County designations. The City concludes that the existing designations are commercial and industrial and the Applicant proposes a redesignation to residential. Consistent with this request, the Council herewith incorporates and adopts the balance of the conclusions of law herein wherein the criteria for redesignation is analyzed and the application is found to comply.

- B. An adequate level of urban services and infrastructure to accommodate anticipated future development either is available, or can reasonably be made available. An adequate level of urban services shall be defined as: municipal sanitary sewer, storm drainage, and water service meeting the requirements enumerated in the Brookings public facilities plan and the land development code for provision of these services. The adequacy of these services shall be considered in relation to annexation proposals. If any substandard infrastructure exists within the boundaries of the area proposed for annexation, the city may deny an annexation application.

Conclusions of Law: The Council herewith incorporates and adopts the Findings of Fact in Section IV of this document together with all related evidence prepared by the Applicant and concludes as follows:

1. The City Council concludes that municipal sewer is only available based upon a financing agreement that has been reached between the City of Brookings and the Applicant. The Council concludes it has imposed conditions on the land use applications associated with this annexation to assure the property can be adequately served with sewer. The Council further concludes that failure to complete the sanitary sewer extension consistent with the Infrastructure Financing Agreement shall not cause the financial burden of sewer extension to be shifted to the City.
 2. The City Council concludes that the subject property is not served by municipal storm drainage. However, the site is located on the Chetco River and so drainage is readily available. At the time development permits are requested, the Applicant may be required to evaluate upstream drainage conditions to assure storm drainage pipe sizing is adequate for the stream that approximately bisects the property. Storm-drainage on the site appears feasible.
 3. The City Council concludes that a 14-inch water main exists in the County Road and that is expected to be adequate in condition and capacity to R-2 development on the subject property.
- C. Documentation of impacts on existing streets within the annexation area and adjacent transportation facilities by future development of the area. The adequacy of the transportation facilities shall be considered in relation to annexation proposals.



Conclusions of Law: The Council concludes the record contains evidence and analysis regarding impacts on adjacent streets and the adequacy of transportation facilities. Based upon the evidence in the record and the Findings of Fact in Section IV, the City concludes that the change in land use categorization is expected to reduce the potential trip generation of the site and will, therefore, lessen the potential impacts to the transportation system that would result from ultimate development of the subject property under the existing commercial and industrial designations.

- D. As development occurs within the annexed area new streets shall be constructed to the standards of the Brookings transportation system plan and land development code. While it is preferred that public streets located within the city limits be a part of the city-maintained street system, streets within the annexed area shall remain in the county's jurisdiction until such time as they are improved to the city street standards. If the proposed annexation includes the transfer of county maintained roads to the city maintained street system, said streets located within the annexation area shall be improved to city standards prior to annexation approval, or the formation of a local improvement district to fund said street improvements shall accompany the annexation application.

Conclusions of Law: The Council concludes that new development within the proposed annexation area will require that any new streets be constructed to the standards of the Brookings TSP and the land development code. The Council further concludes that the annexation does not propose the transfer of county maintained roads to the city maintained street standards. The Council concludes that future development permitting may require improvements along the frontage with North Bank Chetco River Road as a condition of future development approval.

- E. Documentation of the availability and adequacy to serve the proposed annexation with police, fire, parks, and school facilities and services.

Conclusions of Law: The City Council herewith incorporates the Findings of Fact in Section IV and the Applicant's findings regarding police, fire, parks and school facilities and services, and concludes based upon the same, that such facilities and services will be available and adequate to serve the proposed annexation territory.

- F. Improvements for needed infrastructure shall be secured by a funding mechanism that will place the economic burden on the territory proposed for annexation and not on the city of Brookings

Conclusions of Law: The City Council concludes it has entered into an Infrastructure Financing Agreement with the owners of the subject property for the extension of municipal sewer service and this agreement will assure needed sewer infrastructure will not place an economic burden on the City of Brookings and the economic burden will be borne by the territory to be annexed. The City Council concludes all other needed infrastructure include normal course of development improvements that can and will be imposed through conditions of future development approval.

17.144.040 Zoning of annexed property.

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. The zoning designation of annexed territory shall be specified in the annexation ordinance and shall become effective upon acceptance of the annexation by the Secretary of State.



Conclusions of Law: The City Council concludes the application included a request of City zoning and that zoning can and will be specified in the annexation ordinance making the zoning designation effective upon acceptance of the annexation by the Secretary of State.

17.144.050 Hearing process.

- A. The planning commission will conduct a public hearing to consider the application request. The commission will review the materials submitted and analyze how the application relates to the criteria stipulated in BMC 17.144.030. A recommendation from the planning commission will be forwarded to the city council.
- B. The city council will consider the planning commission's recommendation and whether the application meets the appropriate criteria. The council will make a decision to approve or deny the requested annexation

Conclusions of Law: Based upon the evidence in the record, the City Council concludes that the hearings process specified herein has been followed.

COMPREHENSIVE PLAN MAP AMENDMENT AND ZONE CHANGE CRITERIA

STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process...

Conclusions of Law: The City Council concludes the subject application is an annexation and consolidated quasi-judicial land use application. The City Council concludes the City has an adopted and acknowledged Comprehensive Plan and Development ordinance that specify how quasi-judicial Comprehensive Plan amendments are processed to satisfy Goal 1. The City concludes that it has followed this adopted and acknowledged process and therefore Goal 1 has been satisfied for the subject application.

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions...

Conclusions of Law: The City Council concludes the subject application is an annexation and consolidated quasi-judicial land use application. The City Council concludes the City has an adopted and acknowledged Comprehensive Plan and Development ordinance that specify criteria, application submittal requirements, and a public hearing and written record process that provides opportunities for the submission of supplemental evidence prior to the final land use decision for a quasi-judicial Comprehensive Plan amendment. The City concludes that it has applied the relevant criteria and based upon the application submitted and the evidence in the record, conclude the proposed amendment has an adequate factual base to satisfy the Goal 2 land use planning requirements.

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands...

Conclusions of Law: The City Council concludes the proposed amendments do not concern land planned and zoned for agricultural use and most all of the lands in the vicinity are within the Urban Growth Boundary and are, therefore, planned for ultimate urbanization.



For these reasons, the City Council concludes the proposed amendments are consistent with Goal 3.

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture...

Conclusions of Law: The City Council concludes the proposed amendments do not concern land planned and zoned for forest use and most all of the lands in the vicinity are within the Urban Growth Boundary and are, therefore, planned for ultimate urbanization. For these reasons, the City Council concludes the proposed amendments are consistent with Goal 4.

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES
To protect natural resources and conserve scenic and historic areas and open spaces...

Conclusions of Law: The City Council concludes the identified Goal 5 resources for this amendment includes riparian and wetland resources. With respect to wetlands, the City concludes the Applicant has provided delineation data to demonstrate where the wetlands are on the subject property. The Council herewith incorporates and adopts its conclusions of law with respect to the amended Shoreland Boundary and concludes that such boundary will include the identified wetlands. The Council concludes that the land use protections within the Shoreland Boundary area are adequate to achieve Goal 5 for the site with respect to wetlands.

With respect to riparian protections, the Applicants state their intention to maintain a Riparian Setback of 75-feet for the project. A 75-foot setback from the Chetco River is consistent with the safe-harbor provisions of OAR 660-023-0090.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY
To maintain and improve the quality of the air, water and land resources of the state...

Conclusions of Law: The Council concludes that residential development of the subject site is expected to represent lower degrees of potential impact on the air, water and land resources quality than would be expected from combined industrial and commercial development of the site. The City Council concludes that the extension of sewer service to this area further reduces potential adverse environmental impacts from development of the site. Ultimately, the Council concludes that State (and sometimes Federal) permits are required for various types of urban development to assure development does not adversely impact the quality of air, water and land resources and the proposed development can feasibly and will obtain all required permits (if any).

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS
To protect people and property from natural hazards...

Conclusions of Law: The City Council concludes the site is subject to flooding and potential Tsunami inundation. Applicants have engaged engineers and geologists to assess the risk. Applicant's Geologic report concludes the subject property can be developed with



residential development in a safe manner if certain precautions specified in the report are applied and the fill approved through the CLOMR is placed in accordance with sound engineering practices for structural fill. The City Council concludes that, if the recommended precautions are required as a condition of any future development permit and the CLOMR approved fill is placed in accordance with sound engineering practices for structural fill in the floodplain, then the site can be developed in a manner that represents acceptable levels of risk to people and property from potential natural hazard risks. Consistent with this conclusion, the City Council has applied site specific conditions of approval that will be applied to any future development proposals to assure natural hazard risks are mitigated consistent Applicant's Experts' submittals to the record.

GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts...

Conclusions of Law: The City Council concludes that the site will not adversely affect recreational opportunities for the area as a whole and the supply of parks and recreational opportunities will not be diminished by the proposed amendments.

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens...

Conclusions of Law: The City Council concludes that State of Oregon has adopted a thoroughgoing rule to implement Goal 9 within Urban Growth Boundaries and the Council concludes compliance with OAR 660-009 fully implements Goal 9. The Division 009 rule provides that City's may amend their comprehensive plans to change more than two acres from employment land to another land use category if the change is consistent with the local plan provisions that address the Division 009 rule. Accordingly, the City of Brookings herewith incorporates and adopts the below Conclusions of Law addressing OAR 660 Division 009 and those conclusions of law addressing the City's plan provisions that address Division 009 and conclude thereupon that the proposed amendment complies in all ways with Goal 9.

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state...

Conclusions of Law: The City Council concludes the proposed amendment will allow for additional housing opportunities within the City of Brookings and for this reason the amendment complies with Goal 10.

GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development...

Conclusions of Law: Based upon the Findings of Fact in Section IV and the evidence provided by the Applicant, the City Council concludes that water, sewer and storm drainage can be supplied to the subject properties consistent with the City's Goal 11 Public Facilities



planning. The City Council further concludes that other municipal services such as police and fire can feasibly and will serve the subject property following annexation.

GOAL 12: TRANSPORTATION
To provide and encourage a safe, convenient and economic transportation system...

Conclusions of Law: The City Council concludes that State of Oregon has adopted a thoroughgoing rule to implement Goal 12 and the Council concludes compliance with OAR 660-012 fully implements Goal 12. Accordingly, the City of Brookings herewith incorporates and adopts the below Conclusions of Law addressing OAR 660 Division 012 and concludes that the proposed amendment complies in all ways with Goal 12.

GOAL 13: ENERGY CONSERVATION
To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles...

Conclusions of Law: The Council concludes that the proposed amendments have minimal energy conservation implications. The current commercial and industrial designations are both urban in nature as is the proposed residential designation. The Council does not expect substantially different energy consumption differences and concludes the amendment is consistent with Goal 13.

GOAL 14: URBANIZATION
To provide for an orderly and efficient transition from rural to urban land use...

Conclusions of Law: The City Council concludes that the subject property is within the City's Urban Growth Boundary and that the property can and will be annexed concurrently with the proposed plan map amendment application. The Council further concludes that the project will result in the extension of sewer into an area that is not currently served and this will support additional urban intensity development of the area over time. The Council concludes that the proposed amendment is consistent in all ways with Goal 14.

GOAL 16: ESTUARINE RESOURCES
To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Conclusions of Law: The City Council concludes the proposed amendments are adjacent to (and to a small degree include) properties identified as estuarine resources. The Council Concludes the City and County have similar adopted maps for estuarine resources at the subject property and they are based upon the Mean Higher High Water Line (MHHWL). The Council Concludes the Application included more precise mapping of the MHHWL on the subject properties but that the improved precision is consistent with the smaller scale maps adopted by the City. The Council, therefore, concludes the Applicant's mapping is nothing more than refinement to the estuary-wide mapping and no amendments of any material degree are proposed, the Application makes no change to the City's adopted and acknowledged Goal 16 program and the application is consistent in all ways with Goal 16.

GOAL 17: COASTAL SHORELANDS



To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

Conclusions of Law: The northern half of the annexation area (TL 1500) is an area where no changes to the 100-year floodplain have occurred or are planned and the Applicant proposes no changes to the existing Shoreland Boundary in this area; the Council concludes the application proposes no amendment to the Shoreland Boundary on TL 1500 and the boundary shall remain at the 100-year floodplain extent for TL 1500.

On TL 2000, the Council concludes the Applicant has requested an amendment to the Shoreland Boundary. The Council concludes the requested amendment must result in an amended Shoreland Boundary that identifies all lands to be included within the Shoreland Boundary consistent with the 7 criteria for Shoreland Boundary identification; the Council finds these identification criteria to be additive.

The Council herewith incorporates and adopts the findings of fact in Section IV, and based upon the same, concludes the Shoreland Boundary proposed by the Applicant does not include all lands that must be identified and does not comply with Goal 17.

However, the Council concludes that an amended boundary can be approved that does comply with Goal 17. A Shoreland Boundary that is 75-feet from the MHHWL (and the coincident Estuary Boundary) except also including the wetland delineated at the northernmost projection of Snug Harbor does satisfy the Goal 17 identification criteria for the following reasons:

1. All land within the 100-year floodplain would be identified as Shoreland and so would all land within 50-feet of an estuary boundary.
2. No areas of geologic instability would be excluded from the boundary.
3. The proposed boundary relies upon the Goal 5 safe harbor for the protection of riparian resources through imposition of a 75-foot riparian setback to which the Applicants have agreed to comply. Thus, the proposed boundary would include all protected Goal 5 riparian resources which are presumed (under Goal 5) to be necessary to maintain water quality and temperature necessary for the maintenance of fish habitat.
4. The required inclusion of the wetland identified adjacent to the northernmost projection of Snug Harbor would be identified as Shoreland.
5. The proposed amendment would not alter the supply of lands available for water-dependent and water-related uses in the Chetco River Estuary Plan.
6. No areas of exceptional aesthetic or scenic quality would be removed from the Shoreland Boundary.
7. No coastal headlands would be removed from the Shoreland Boundary.



OREGON ADMINISTRATIVE RULES (OAR)

660-009 Economic Development

660-009-0010

Application

- (1) This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.
- (2) Comprehensive plans and land use regulations must be reviewed and amended as necessary to comply with this division as amended at the time of each periodic review of the plan pursuant to ORS 197.712(3). Jurisdictions that have received a periodic review notice from the Department (pursuant to OAR 660-025-0050) prior to the effective date of amendments to this division must comply with such amendments at their next periodic review unless otherwise directed by the Commission.
- (3) Cities and counties may rely on their existing plans to meet the requirements of this division if they conclude:
 - (a) There are not significant changes in economic development opportunities (e.g., a need for sites not presently provided for in the plan) based on a review of new information about national, state, regional, county and local trends; and
 - (b) That existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 to 660-009-0030.

Conclusions of Law: The City Council concludes that there have not been significant changes since 2009 and that existing inventories, policies and implementing measures may be relied upon because they meet the requirements of OAR 660-009-0015- OAR 660-009-0030.

- (4) For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:
 - (a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or
 - (b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or
 - (c) Adopt a combination of the above, consistent with the requirements of this division.

Conclusions of Law: The City Council concludes Division 009 is applicable because the proposed amendments change over two acres of industrial to a non-industrial use designation and over two acres of employment land to non-employment uses (residential). The Council concludes the proposed amendment is consistent with Division 009 pursuant to (a) above because the amendment is consistent with its most recent Economic Opportunities Analysis and the parts of the City's Comprehensive Plan that address the requirements of Division 009.



- (5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.

Conclusions of Law: The Council concludes the effort for the subject amendment is appropriate.

- (6) The amendments to this division are effective January 1, 2007. A city or county may voluntarily follow adopted amendments to this division prior to the effective date of the adopted amendments.

Conclusions of Law: The Council concludes it has applied the effective version of the Division 009 rule and that the City's most recent EOA was found to comply with the current and effective version of the Division 009 when it was adopted in 2009.

OREGON TRANSPORTATION PLANNING RULE

Oregon Administrative Rules Chapter 660, Division 12

660-012-0060 Plan and Land Use Regulation Amendments

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (D) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or 2 comprehensive plan; or
 - (E) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Conclusions of Law: The Council herewith incorporates and adopts the Findings of Fact in Section IV related to transportation and also the correspondence in the record from ODOT. Based upon these findings and evidence in the record, the City Council concludes as follows:

- Changing the land use designation from industrial and commercial to residential will not change the collector function of North Bank Chetco River Road because no additional transportation demands are expected to result.

- The Applicant proposes no changes to the standards implementing the functional classification system.
- The residential travel and associated access is not inconsistent with the City's collector functional classification.
- ODOT has expressed no concerns about the intersection of North Bank Chetco River Road and Highway 101 which would be the intersection, if any, that would be affected. Ultimately, the potential trip generation is expected be less under the residential designation, and thus, system performance will be better than if developed under the prevailing land use designations.

CITY OF BROOKINGS COMPREHENSIVE PLAN

Goal 2 Land Use Planning

2. The burden of proving the need for a change in land uses shall be borne by the proponent of the land use request.

Conclusions of Law: The Council concludes the Applicant has provided evidence and findings in support of their requested change in land use.

3. In instances where public hearings are required, relative to this Plan, the Planning Commission and City Council will follow procedures established in the City's Zoning Ordinance. These bodies are responsible for considering the effects of a decision on the entire community and should not be swayed unduly by persons testifying for or against a particular course of action, but must place this input into its proper perspective and base the final decision on all information provided to them.

Conclusions of Law: The Council concludes it has no bias in this matter and has followed the procedures in the CBMC and the decision to approve the amendment is based solely on evidence in the record and testimony provided at the public hearings.

Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources

1. It is the policy of the City of Brookings to protect natural and scenic resources by encouraging the conservation of ecologically and scientifically significant natural areas, scenic views and sites, historic areas, local energy sources, and mineral and aggregate resources.

Conclusions of Law: The Council concludes that it has reviewed the evidence and the subject property does not contain ecologically and scientifically significant natural areas (except wetland and riparian resources that are elsewhere handled under Goal 5) or scenic view and sites or historic areas or local energy sources or mineral and aggregate resources.

2. Reference is made to the Chetco River Estuary Plan and Inventory—Goal 16.

Conclusions of Law: The Council concludes this policy functions to recognize the interrelation between Goal 5 resources within the estuary plan such as riparian resources and wetland resources and the broader Estuary Plan itself. The Council concludes that it has properly applied the Estuary Plan in its decision herein to amend the Shoreland Boundary but in a manner that is consistent in all ways with Goal 5.



Goal 7 Natural Hazards

1. When development is located in areas of known natural hazards, the density or intensity of the development shall be limited by the degree of the natural hazard.

Conclusions of Law: The City Council concludes the site is subject to flooding and potential Tsunami inundation. Applicants have engaged engineers and geologists to assess the risk. Applicant's Geologic Hazards Evaluation concludes the subject property can be developed with residential development in a safe manner if certain precautions specified in the report are applied and the fill approved through the CLOMR is placed in accordance with sound engineering practices for structural fill. The City Council concludes that, if the recommended precautions are required as a condition of any future development permit and the CLOMR approved fill is placed in accordance with sound engineering practices for structural fill in the floodplain, then the site can be developed in a manner that represents acceptable levels of risk to people and property and does not, therefore, warrant a limitation on development intensity beyond that applied by the based zoning designation.

2. When development is planned in areas of identified hazards, the developer will be required to show that property development will not be endangered by the hazard and that appropriate safeguards will be taken.

Conclusions of Law: The City Council concludes the site is subject to flooding and potential Tsunami inundation. Applicants have engaged engineers and geologists to assess the risk. Applicant's Geologic report concludes the subject property can be developed with residential development in a safe manner if certain precautions specified in the report are applied and the fill approved through the CLOMR is placed in accordance with sound engineering practices for structural fill. The City Council concludes that, if the recommended precautions are required as a condition of any future development permit and the CLOMR approved fill is placed in accordance with sound engineering practices for structural fill in the floodplain, then the site can be developed in a manner that represents acceptable levels of risk to people and property from potential natural hazard risks. Consistent with this conclusion, the City Council has applied site specific conditions of approval that will be applied to any future development proposals to assure natural hazard risks are mitigated consistent with Applicant's Experts' submittals to the record.

Goal 9 Economy

- f. Provide an adequate supply of sites of varying locations, configurations, and size, to accommodate industrial and other employment over the planning period;

Related Implementation Strategy

8. Provide commercial and industrial land to meet the site characteristics and site sizes described in the EOA;

Conclusions of Law: The Council concludes that EOA Table S-4 depicts the City's supply in relation to demand of commercial and industrial land supply to meet the site characteristics and site sizes described in the 2009 EOA. The Council herewith incorporates and adopts the Findings of Fact in Section IV, and based upon the same, reaches the conclusion of law in this section.



With respect to industrial land supplies, the Council concludes that the industrial portion of the amendment falls in the category for Industrial Site Sizes 2-5 acres. The Council concludes that the EOA projects a surplus of 7 sites and 27 acres in aggregate for 2-5 acre industrial site size category. Consequently, the Council concludes that the proposed amendment to residential and out of industrial would reduce the projected surplus industrial land to supply to 6 sites and approximately 23 acres over the planning period and so the Council concludes that the proposed amendment will result in the City's UGB continuing to have an adequate supply of 2-5 acre industrial sites over the planning period consistent with Policy f. and the related Implementation Strategy 8.

With respect to the Commercial portion, being Tax Lot 2000, the City Council concludes that this land was not included as a supply of commercial lands in the 2009 EOA analysis due to assumed wetland constraints. As such, its amendment to residential will not affect the commercial site size supply and demand conditions in the City's EOA. The Council further concludes that there are sound qualitative reasons to support the amendment to residential, as follows:

- The findings of the Economic Element recognize the City has developed a strong retirement housing industry and that retirees are an important source of economic stability for the community and these findings are expressed as Policy 21 to encourage development of housing for retirees as an economic development strategy. The Council concludes that, while the subject site is not being restricted strictly to retirement development, it appears the Applicant's intention is to target this market segment and expanded retirement housing development is recognized as a benefit in the Economic Element.
- The Economic Element includes qualitative site considerations for commercial lands that recognize the qualitative characteristics needed for commercial sites. The Economic Element recognizes that commercial sites should have good visibility and should generally be located along major arterial streets. The Council concludes that the subject property has good visibility off of the North Bank Chetco River Road but that this road is a collector with relatively low traffic volumes. As such, the site is challenged from a commercial use standpoint and the best evidence of its qualitative challenges is the fact that it has been zoned for commercial use for many years under the County but no significant commercial development has ever taken place. The Council further observes that the Economic Element recognizes that viable commercial sites need at least small concentrated groupings of interrelated commercial uses such as retail, service and office uses. The Council concludes the subject site is isolated in ways that are not likely to result in concentrated grouping of retail, service and office uses.
- The Council further concludes that the EOA seeks to limit retail commercial land supply to encourage infill and redevelopment, especially in downtown. Because the subject site was not inventoried as supply, the proposed amendment will not alter the supply of commercial sites projected in the EOA and that supply was acknowledged to comply with Division 009 despite the small deficit of commercial land in this site



size category. The Council concludes that this small deficit support the desired redevelopment in the City's core and the proposed amendment will advance this policy.

9. Limit retail commercial land supply to encourage retail infill and redevelopment to areas within the existing Urban Growth Boundary, especially in downtown;

Conclusions of Law: The Council concludes the proposed amendments will continue to slightly limit commercial land supply in the City to advance the policy objective stated in Policy 9.

Goal 10 Housing

2. City shall provide for a variety of housing options and sites and plan for suitable locations. It is recognized the private sector will continue their leadership role in this function.

Conclusions of Law: The Council concludes the proposed amendments will add land supply for housing options within the City at a suitable location and the plans for development will be reviewed when they are submitted by the private sector for development.

Goal 11 Public Facilities and Services

- 1 B. Water distribution, pumping and storage. New development requiring extension of water mains, pumping and storage facilities will be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.

Conclusions of Law: Based upon the evidence, the Council concludes there is existing water supply to the site that is adequate in condition and capacity.

- 1 E. Wastewater collection facilities. New development requiring extension of sewer mains and new pumping stations will be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.

Conclusions of Law: Based upon the Infrastructure Financing Agreement between the City and the Applicant, the City Council concludes sewer extension to the subject properties can feasibly and will be constructed to the City's current standards.

1. F Streets and other infrastructure facilities. The City's Public Works Department will inspect and maintain all public street and subsurface infrastructure facilities. The extension of existing streets for new development shall be paid for and constructed by the developer pursuant to the provisions of the current City of Brookings Standard Specifications document.

Conclusions of Law: The Council concludes that street infrastructure improvements will occur at the time of development and this policy can and will be implemented through the City's development code and public works code implementation.

1. G Storm drain facilities. New development requiring new storm drain systems or the extension of existing systems including provision of detention basins, will be paid for and constructed by the developer pursuant to the provision of the current City of Brookings Standard Specifications document.



Conclusions of Law: The City Council concludes the subject property is adjacent to the Chetco River and storm drainage will be handled directly on-site, with treatment and flow metering to City standards.

Goal 14 Urbanization

9. The conversion of land from urbanizable to urban within the Urban Growth Area must occur in an orderly and well planned manner that considers the economic and environmental issues identified as a part of the Urban Growth Boundary amendment and pursuant to the provisions of Section 10, Policies Related to Conversion of Urbanizable Land To Urban Land within the Urban Growth Area, of the City/ County Urban Growth Area Joint Management Agreement.

The provisions cited in Finding number 3 above are considered to be policies of this plan.

Conclusions of Law: The Council concludes it has reviewed the provisions in Finding 3 and concludes the proposed amendment is consistent in all ways with the finding.

Goal 16 Estuarine Resources

10. Actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alterations. Such activities include dredging, fill, in-water structured, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow land disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

- A. The type and extent of alterations expected;
- B. The type of resource(s) affected;
- C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
- D. The methods which could be employed to avoid or minimize adverse impacts.

Conclusions of Law: The City Council concludes the proposed amendments are adjacent to (and to a small degree include) properties identified as estuarine resources. The Council Concludes the City and County have similar adopted maps for estuarine resources at the subject property and they are based upon the Mean Higher High Water Line (MHHWL). The Council Concludes the Application includes more precise mapping of the MHHWL on the subject properties but that the improved precision is consistent with the smaller scale maps adopted by the City. The Council, therefore, concludes the Applicant's mapping is a refinement to the estuary-wide mapping and no amendments of any material degree are proposed, the Application makes no change to the City's adopted and acknowledged Goal 16 program and the application has taken appropriate precautions to prevent any alteration of the estuarine ecosystem.

Goal 17 Coastal Shorelands

3. The City will manage floodplain areas in coastal shorelands to promote use and development consistent with hazards to life and property. Priority uses for floodplain areas shall include recreation, open space and uses that are water-dependent.



Conclusions of Law: The Council concludes the Applicant has obtained approval to fill a portion of the floodplain consistent with FEMA requirements and this will prevent hazards to life and property. Once filled, the Council concludes the priorities for recreation, open space and water-dependent uses are no longer applicable.

7. It is City policy to require the maintenance and, where appropriate, restoration and enhancement of riparian vegetation consistent with water dependent uses.

Conclusions of Law: The Council concludes that preservation of the Shoreland Boundary and the prohibition of residential development within it will result in the restoration and enhancement of riparian vegetation over time.

8. Land use management practices and nonstructural solutions to erosion control and flooding is preferred to structural solutions. Where shown to be necessary, water and erosion control structures must be designed to minimize adverse impacts on water currents, erosion and accretion problems.

Conclusions of Law: The Council concludes that the Applicant's proposed solutions of erosion control and flooding are necessary. The Council further concludes the Applicant has engaged professionals to design fill and recommend development methods that will minimize adverse impacts on water currents, erosion and accretion problems.

11. To protect coastal headlands and outstanding scenic resources and to protect against geologic hazards the City has prohibited non-water dependent related structures within the ocean coastal shoreland boundary.

Conclusions of Law: Council concludes the subject site is within the estuary coastal shoreland boundary not the ocean coastal shoreland boundary. Moreover, the Council concludes that following approval to amend the Shoreland Boundary consistent with Goal 17 no non-water dependent structures will be located within the Shoreland Boundary.

CITY OF BROOKINGS LAND DEVELOPMENT ORDINANCE

Chapter 17.140

LEGISLATIVE TEXT AMENDMENTS AND QUASI-JUDICIAL COMPREHENSIVE PLAN MAP AND/OR ZONE CHANGES

17.140.010 Procedure.

The Brookings comprehensive plan and land development code may be amended by adopting revisions to reflect changes in the law, clarify language or procedures, correct mistakes, or to reflect changing community conditions. Amendments to the text follow legislative procedures.

This chapter also provides standards and procedures for quasi-judicial amendments to consider comprehensive plan map and/or zone changes for specific properties.

Conclusions of Law: The Council concludes the City has followed the CBMC procedures for quasi-judicial amendments.

17.140.020 Proposed amendments.

- A. An amendment to the text of the comprehensive plan or land development code may be proposed as a legislative hearing by the city council, planning commission, planning director, or an individual.



- B. A comprehensive plan map and/or zone change for specific properties may be initiated as a quasi-judicial hearing by a property owner or the city.

Conclusions of Law: The Council concludes the Comprehensive Plan Map amendment and zone change for the specific subject properties has been initiated by the property owners.

17.140.040 Application for a comprehensive plan map and/or zone change.

The property owner, authorized agent, or the city may make application for a zone change amendment by filing an application with the planning department for review by the site plan committee pursuant to Chapter 17.80 BMC. After the site plan committee determines the application is complete, a quasi-judicial hearing before the planning commission will be scheduled. Such application shall be accompanied by the following information:

Conclusions of Law: The Council concludes the Comprehensive Plan Map amendment and zone change for the specific subject properties has been initiated by the property owners. The Council further concludes that the required information functions as criteria for the subject amendment.

- A. A completed land use permit application form.

Conclusions of Law: The Council concludes the Applicant signed the appropriate form.

- B. A description of the subject property, the requested zoning designation, and the proposed uses.

Conclusions of Law: The Council concludes the Application includes a description of the subject property, the application specifies the requested residential plan designation and the associated R-2 zoning designation and states the Applicant's desire to ultimately develop housing on the site.

- C. Compatibility of the proposed zoning designation with the surrounding land uses.

Conclusions of Law: The City Council concludes the Application has evaluated compatibility. The Council herewith incorporates and adopts the Findings of Fact in Section IV, and based upon these findings, concludes the proposed R-2 zoning is compatible with surrounding land uses for the following reasons:

- Lands to the South are across Snug Harbor and are developed under the proposed R-2 zoning which the Council concludes is compatible with R-2 zoning on the subject site.
- To the east and northeast is the Chetco River. Immediately northeast and on the easterly side of North Bank Chetco River Road are small rural residential properties along the Chetco River that are zoned County RR-5. The Council concludes the R-2 zoning is compatible with the Chetco River and uses to the east and northeast.
- To the north is Tax Lot 200 which is a relatively large parcel that is predominantly zoned R-2 but appears to also have a small strip of Industrial zoning as well; the parcel has dispersed development. Immediately to the north across the North Bank Chetco River Road is Tax Lot 100 which is outside the City's Urban Growth



Boundary. The UGB line juts down to a point for access to Tax Lot 100 on North Bank Chetco River Road. This parcel has a County FG zoning designation and has historically been used for mining and a grant of limited exemption for mining was issued but the DOGAMI file was closed in 1998, in compliance with DOGAMI rules and regulations at the request of the owner Mr. Curry. The Council concludes that the proposed R-2 zoning is compatible with the surrounding uses to the north and northwest and that the end of mining of Tax Lot 100 means that potential conflicts between aggregate uses and residential uses is not be expected.

- Lands to the west and southwest are also residentially zoned and they are located across North Bank Chetco River Road which provides separation from uses to the west. The Council concludes this separation and similar zoning is adequate to conclude the uses are compatible.

D. Impacts on city services and streets serving the area.

Conclusions of Law: The City Council herewith incorporates and adopts the conclusions of law in Section IV subsections 11-14, and based upon the same, concludes the project has assessed impacts on City service and streets serving the area and these impacts are expected to be no more than minimal.

- E. Statement and supportive evidence indicating the manner in which the proposed zone change amendment is in conformance with the comprehensive plan for the city of Brookings, applicable provisions of this code, and any applicable statewide planning goals.

Conclusions of Law: The Council concludes the application includes statements and supporting evidence on the proposals conformance with the comprehensive plan for the City of Brookings, applicable code sections and all applicable statewide planning goals. The City Council herewith incorporates and adopts its Conclusions of Law addressing the same, and concludes thereupon, that the application is in conformance with the comprehensive plan, applicable code provisions and the statewide planning goals.

- F. The application shall be accompanied by a nonrefundable filing fee in the amount established by general resolution of the city council.

Conclusions of Law: The Council concludes the Applicant paid the required fee.

17.140.050 Qualified comprehensive plan map and/or zone change.

- A. When considering a comprehensive plan map and/or zone change, the planning commission and city council may qualify, or condition, a zone change such that:

1. The property may not be utilized for all the uses ordinarily permitted in a particular zone; or
2. The development of the site must conform to certain specified standards; or
3. Any combination of the above.

- B. A qualified zone change shall be dependent on findings of fact including but not limited to the following:

1. Such limitations are deemed necessary to protect the best interests and ensure compatibility with the surrounding property or neighborhood; or



2. Such limitations are deemed necessary to protect public safety and the city's best interests and/or infrastructure; or
3. Such limitations are deemed necessary to prevent or mitigate potential adverse environmental effects

Conclusions of Law: The City Council concludes that a qualified zone change is necessary and appropriate in this instance. These qualifications are imposed through the conditions of approval applicable to the project and are laid forth in the below Section VI. The Council concludes that these limitations are dependent on findings of fact and conclusions of law that state, in material substance, the following:

- Mitigation of potential adverse environmental effects will be achieved by requiring on-site locating of the Shoreland Boundary
- Protection of public safety will be assured through implementation of the Applicant's proposed natural hazard mitigations
- The City's best interests and its infrastructure will be protected through the sewer infrastructure financing agreement and ultimate extension of sanitary sewer to the subject properties

17.140.060 Action by the planning commission.

- A. Upon filing of said application for an amendment as described in BMC 17.140.030 or 17.140.040, the matter shall be referred to the planning commission and a public hearing shall be held on the matter for which notice shall be given as provided in Chapter 17.84 BMC.

Conclusions of Law: The Council concludes that hearings were scheduled with the Planning Commission and held consistent with CBMC 17.140.060(A).

- B. In the case of a text amendment, the planning commission shall review the draft language and make any revisions that are considered necessary. The planning commission shall recommend approval, qualified approval, or denial to the city council.

Conclusions of Law: The Council concludes the application does not include a text amendment.

- C. In the case of a comprehensive plan/zone change amendment, the planning commission shall recommend the approval, approval with conditions, or denial of the application to the city council.

Conclusions of Law: The Council concludes the planning commission made a recommendation to the Council.

- D. In the case of a simple zone change amendment (changing from one residential zone to another residential zone, or from one commercial zone to another commercial zone), the planning commission is the decision-making body and may approve, approve with conditions, or deny the application.

Conclusions of Law: The Council concludes the subject application involves a plan amendment and is not a simple zone change and therefore the ultimate decision-making body is the City Council.



- E. If the proposed zone change is for property containing a mobile home park, notice shall also be provided to tenants of such mobile home park. The commission may recommend an alternate zoning designation for the area under consideration.

Conclusions of Law: The Council concludes the zone change does not involve a mobile home park.

17.140.070 Action by the city council.

- A. Following the planning commission hearing and recommendation for a comprehensive plan/zone change, a hearing before city council shall be scheduled. Notice of said public hearing shall be given as provided in Chapter 17.84 BMC.

Conclusions of Law: The Council concludes the required hearing was scheduled and held.

- B. In the case of a text amendment, the council shall enact an ordinance approving or denying the amendment.

Conclusions of Law: The Council concludes the application does not concern a text amendment.

- C. In the case of a zone change amendment, the council shall enact an ordinance to approve, approve with conditions, or deny the application.

Conclusions of Law: The Council concludes it has adopted an ordinance laying forth the Council's decision on the application and the Findings of Fact and Conclusions of Law herein are an exhibit to the ordinance that monuments the Council's decision.

- D. The council may opt to remand the proposal to the planning commission for further review. A council remand shall communicate specific concerns and issues for the planning commission's consideration. The commission shall reconsider the proposal at their next regularly scheduled meeting and report their findings and recommendations at the next regular meeting of the city council.

Conclusions of Law: The Council concludes that it did not determine a remand was necessary.

- E. To adopt an ordinance for a zone change, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. It must be found that the amendment complies with and conforms to the comprehensive plan goals, policies, generalized land use map, and any applicable statewide planning goals.

Conclusions of Law: Based upon all the foregoing being the evidence in the record, the Findings of Fact in Section IV and the Conclusions of Law all herewith incorporated and adopted the Council Concludes it has found the comprehensive plan amendment and associated zone change to comply with the Comprehensive Plan and all applicable statewide planning goals.



MEMORANDUM

TO: City of Brookings Planning Commission
FROM: Dan O'Connor
RE: Planning File No. ANX-1-14
DATE: August 5, 2014

Dear Planning Commissioners:

Applicant is proposing alternate findings concerning the Chetco River Estuary Shorelands Boundary amendment set forth in Section A below; an alternate Conclusion of Law set forth in Section B; and an amendment to the Conditions of Approval set forth in Section C.

A. Chetco River Estuary Shorelands Boundary Alternate Findings.

Applicant is only proposing a map amendment to the Shorelands Boundary and not a text amendment to the City of Brookings Comprehensive Plan. Both the City and County have acknowledged comprehensive plans, which contain coastal and estuary shoreland provisions. Neither the City's Comprehensive Plan nor the City's Land Development Code contain specific provisions concerning the location of the Shorelands Boundary. Consequently, the City has relied on the provisions of the Curry County Comprehensive Plan which specifically identifies the Shorelands Boundary for the Chetco River estuary as the 100-year floodplain. Therefore, the *Shoreland Identification Minimum Criteria* identified on page 23 of the Staff Report is inapplicable. Specifically, the aforementioned criteria are limited to circumstances involving the adoption of Comprehensive Plan provisions in accordance with Statewide Planning Goal 17, which is not the case here.

Notwithstanding the foregoing, the proposal is consistent with the Staff Report with the exception of stated *Criterion 1*. It is important that the current riparian setback is 75 feet and the Applicant is not proposing a riparian setback reduction as part of this Application. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit.

The wetland on the subject property has no in-flow hydraulic connection with the estuary. Instead, the wetland is the result of storm water runoff from transportation improvements and other development located within the vicinity of the subject property. In other words, the wetland is not the result of a naturally occurring hydraulic system. Consequently, the wetland should not be included within the Chetco River Estuary Shorelands Boundary.

B. Proposed Amended Conclusion of Law.

The City of Brookings has an acknowledged Comprehensive Plan and Land Development Code (LDC), neither of which contain specific locational criteria relating to the Chetco River Estuary Shorelands Boundary. Consequently, the City has interpreted its Comprehensive Plan in a manner to be consistent with the Curry County Comprehensive Plan, which designates the 100-year floodplain boundary as the Chetco River Estuary Shorelands Boundary. The Chetco River Estuary Shorelands Boundary shall be the 100-year floodplain boundary as determined by the approved CLOMR-F as identified on Page 201 of the Record. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit. Notwithstanding the foregoing, the 75-foot riparian setback for the Chetco River shall remain unchanged until such time the Applicant obtains the appropriate land use approval(s) to reduce the riparian setback.

C. Proposed Amendment to Conditions of Approval.

Applicant respectfully requests that Condition of Approval (3) be stricken and replaced with the following:

“All future divisions and development on the subject property shall comply with Chapter 15 of the City’s Municipal Code (Building Codes and Flood Damage Prevention) as well as all other applicable regulations set forth in the LDC.”

HUYCKE O’CONNOR JARVIS, LLP



DANIEL O’CONNOR, OSB No. 950444

ATTACHMENT "B"

See separate document

This page intentionally blank

Supplemental Packet For Planning Commission

Hearing Date: August 5, 2014 7:00 pm - Council Chambers

Exhibit C

Doc. #	Received:	From	page #	Description
C-1	7/27/2014	City Staff	6	City/County documents
C-2	7/31/2014	Alan Murray	1	Letter of support

Segment 15 - Pistol River Estuary

The shoreland boundary in the Pistol River Estuary is defined as being the 100 year flood plain boundary extending upstream to the head of tide. For further information see the Estuarine Resources element of the comprehensive plan.

Segment 16 - Pistol River to the City of Brookings

This segment of shoreland is cliffed shoreline except for that area immediately south of the mouth of Pistol River which is a coastal dune field. This area includes the Crook Point headland and Boardman State Park which comprises most of the shoreland of this segment. The shoreland boundary in this segment is defined as the inland limit of the active foredunes in the Pistol River dunefield and the top of the cliff in the seacliff shoreline from Crook Point to Boardman State Park. The coastal shoreland boundary is defined as U.S. 101 within Boardman State Park due to the exceptional scenic quality of the shoreline west of U.S. 101 in this area. The shoreline boundary from the southern boundary of Boardman State Park to the City of Brookings is defined as following the top of the cliff.

Segment 17 - City of Brookings

The coastal shoreland boundary within the city of Brookings is defined by the Brookings Comprehensive Plan.

Segment 18 - Chetco River Estuary

The shoreland boundary in the Chetco River Estuary is defined as being the 100 year floodplain boundary extending upstream to the head of tide. For further information see the Estuarine Resources element of the comprehensive plan.

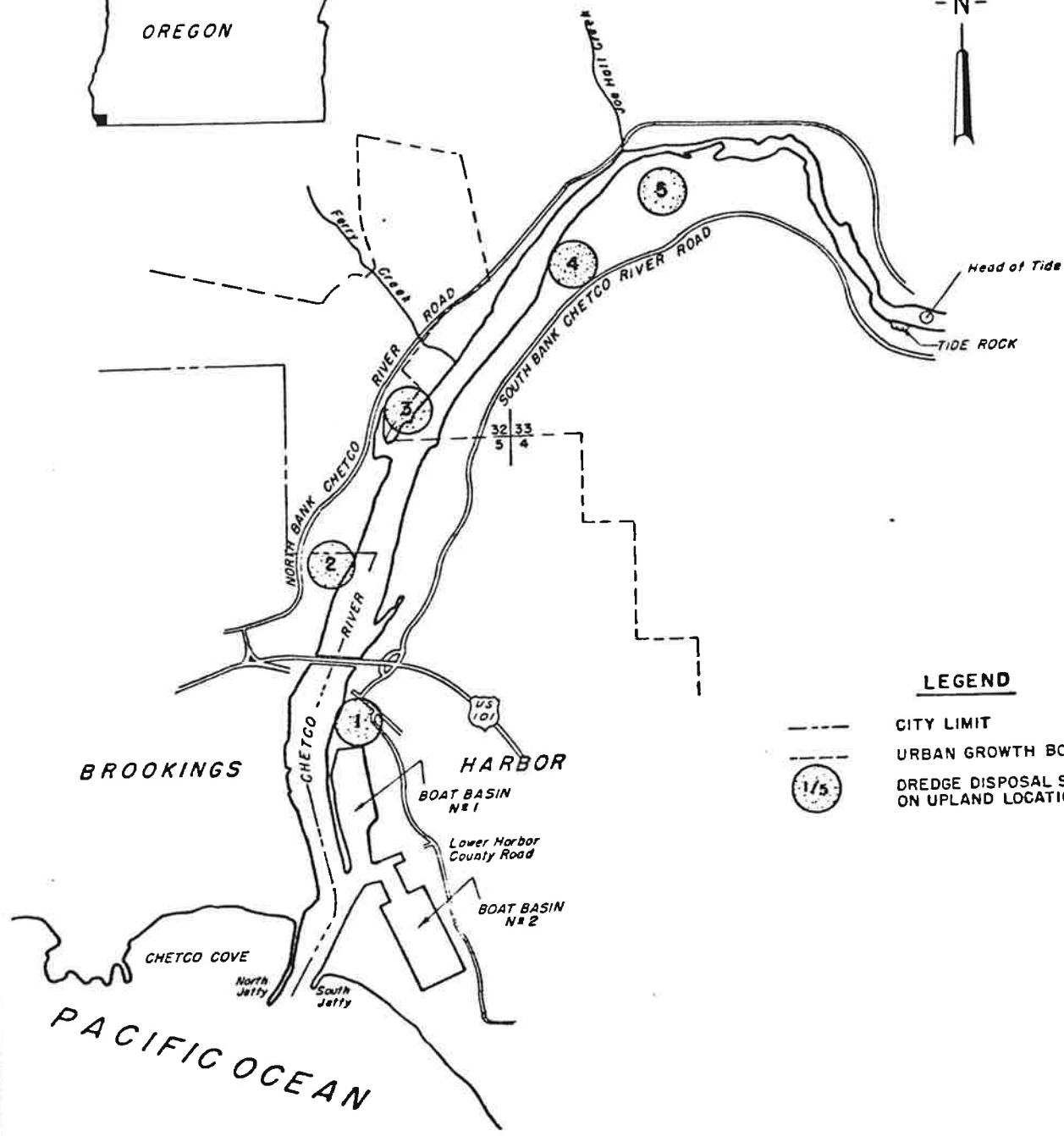
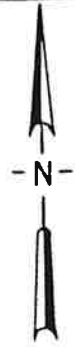
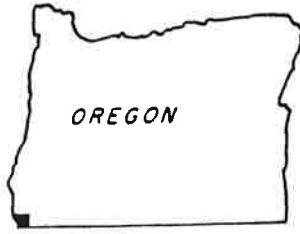
Segment 19 Chetco River to Winchuck River

This segment of shoreland is cliffed shoreline which is almost entirely in private ownerships which are developed with residential uses. The shoreline boundary is defined as following the top of the cliff.




Segment 20 - Winchuck River Estuary

The shoreland boundary in the Winchuck River Estuary is defined as being the 100 year floodplain boundary extending upstream to the head of tide. For further information see the Estuarine Resources element of the comprehensive plan.

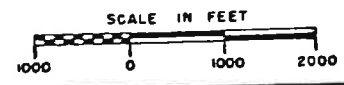
- buildings at the west edge of the property. Shoreline is protected with rock and cement riprap. There is good road access to 101 at the west end of the Bridge. Major development constraint here is the floodplain. Any building requires engineering hydrologist approval and must be raised 15 feet above mean sea level. Sewer service could be obtained by pumping uphill to City main.
12. KEMP PARCEL. North and adjacent to the above-described shoreland (west riverbank approximately RM 1.1) is an approximately 10-acre vacant site now in pasture and wooded hillside. The river has cut a vertical bank; soil is silty loam over river gravel and has been approved for shallow septic tank installation. Adjacent natural river channel maintains itself in this area at approximately three feet (mean low water); channel could be deepened with minimal dredging, spoils deposited on site. Access to the North Bank Road would be very steep; best access would be via Ganty parcel to the south. Major development constraint here is the floodplain. Any building requires engineering hydrologist approval and must be raised 15 feet above mean sea level. Sewer service could be obtained by pumping uphill to distant City main. Owner plans sport boat moorage, commercial recreational facilities.
13. SNUG HARBOR. North of the above parcels at approximately RM 1.3 on the east bank is Snug Harbor Resort. Fourteen acres of shoreland in one ownership include a small boat harbor with floating dock and boat ramp, recreational vehicle park, several residences, pastures, and wooded areas. Much of the site is on the floodplain, where buildings must be raised approximately eight feet to be 15 feet above sea level. Shoreline is protected with rip rap and vegetation; huge rock several stories high could afford spectacular views. Snug Harbor is now shallow, due to silting, but 20-foot scour area off mouth slopes to natural channel, which could be maintained at four feet or greater depths with minimal dredging, spoils deposited on shoreland. Owner plans expansion of existing moorage basin and tourist facilities.
14. EIDE RANCH. Immediately downstream and opposite Snug Harbor on the east bank (approximately RM 1.28) is a flat, undeveloped area now in pasture, part of a 10-acre homestead and ranch that fronts South Bank Road. Natural four-to-six-foot channel is accessible from this site across seasonal gravel bars. Terrain and road access above the parcel is steep. Sewer service is available by pump uphill to existing residential development across South Bank Road. Gravel bar immediately downriver of this site is protected as a Natural Area, to maintain productive seasonal algae beds. Pilings and dock construction would be within resource capabilities with care taken to maintain adjacent gravel bars. Owner plans small moorage basin and hillside residential development.



LEGEND

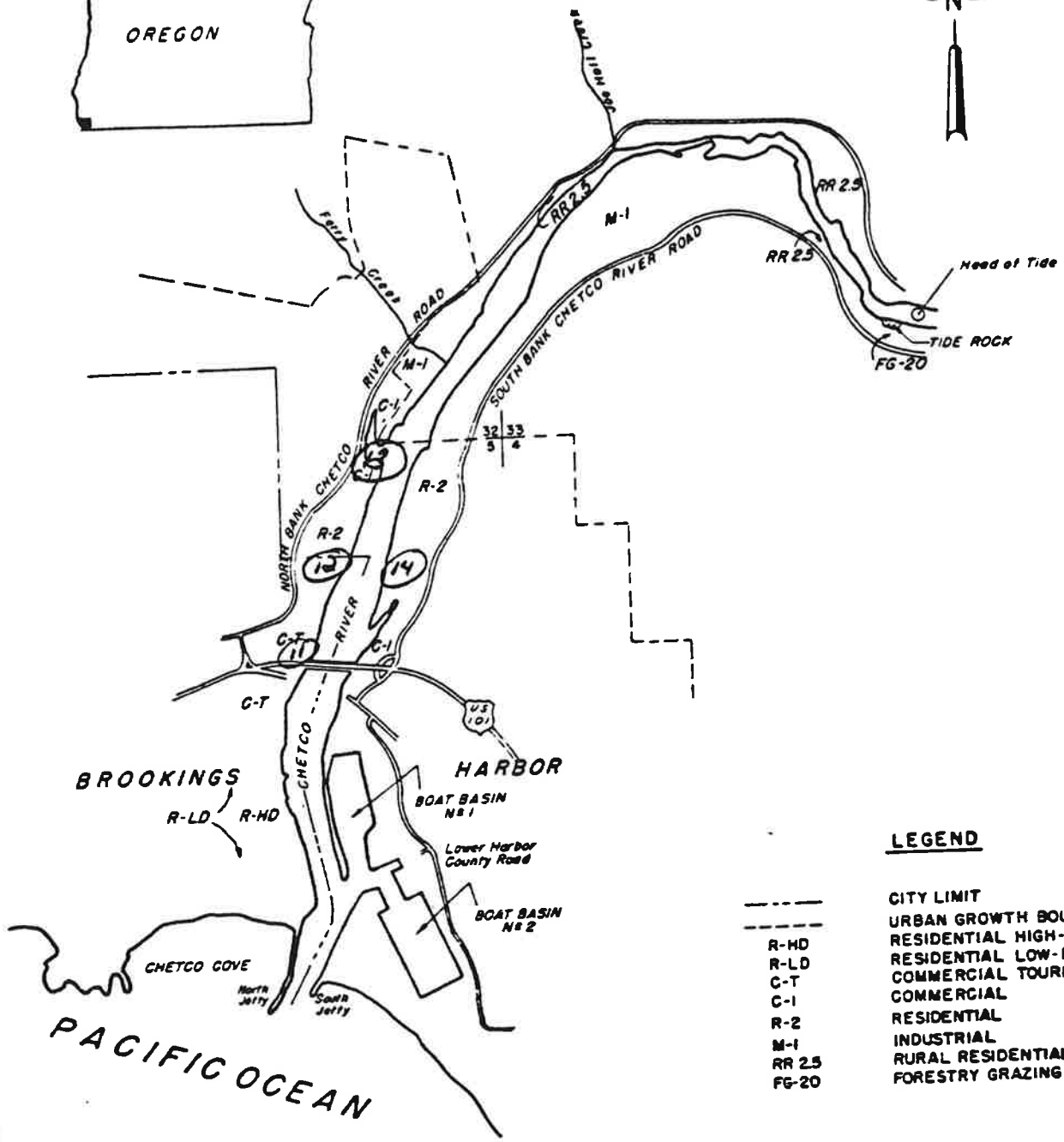
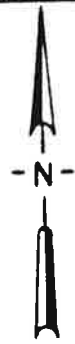
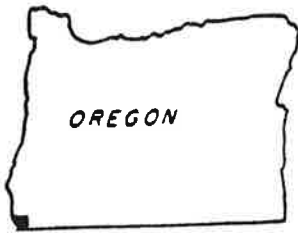
-  CITY LIMIT
-  URBAN GROWTH BOUNDARY
-  DREDGE DISPOSAL SITES, ALL ON UPLAND LOCATIONS.

**DREDGE DISPOSAL SITES
CHETCO RIVER ESTUARY**



**COMPREHENSIVE PLAN
BROOKINGS, OREGON
NOVEMBER 1983**

*Basic Outline From Oregon Division of State Lands
Tideland Ownership of Chetco River, February, 1973*

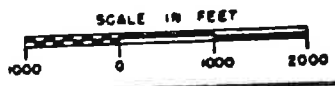


LEGEND

- CITY LIMIT
- URBAN GROWTH BOUNDARY
- R-HD RESIDENTIAL HIGH-DENSITY
- R-LD RESIDENTIAL LOW-DENSITY
- C-T COMMERCIAL TOURIST
- C-1 COMMERCIAL
- R-2 RESIDENTIAL
- M-1 INDUSTRIAL
- RR 2.5 RURAL RESIDENTIAL
- FG-20 FORESTRY GRAZING

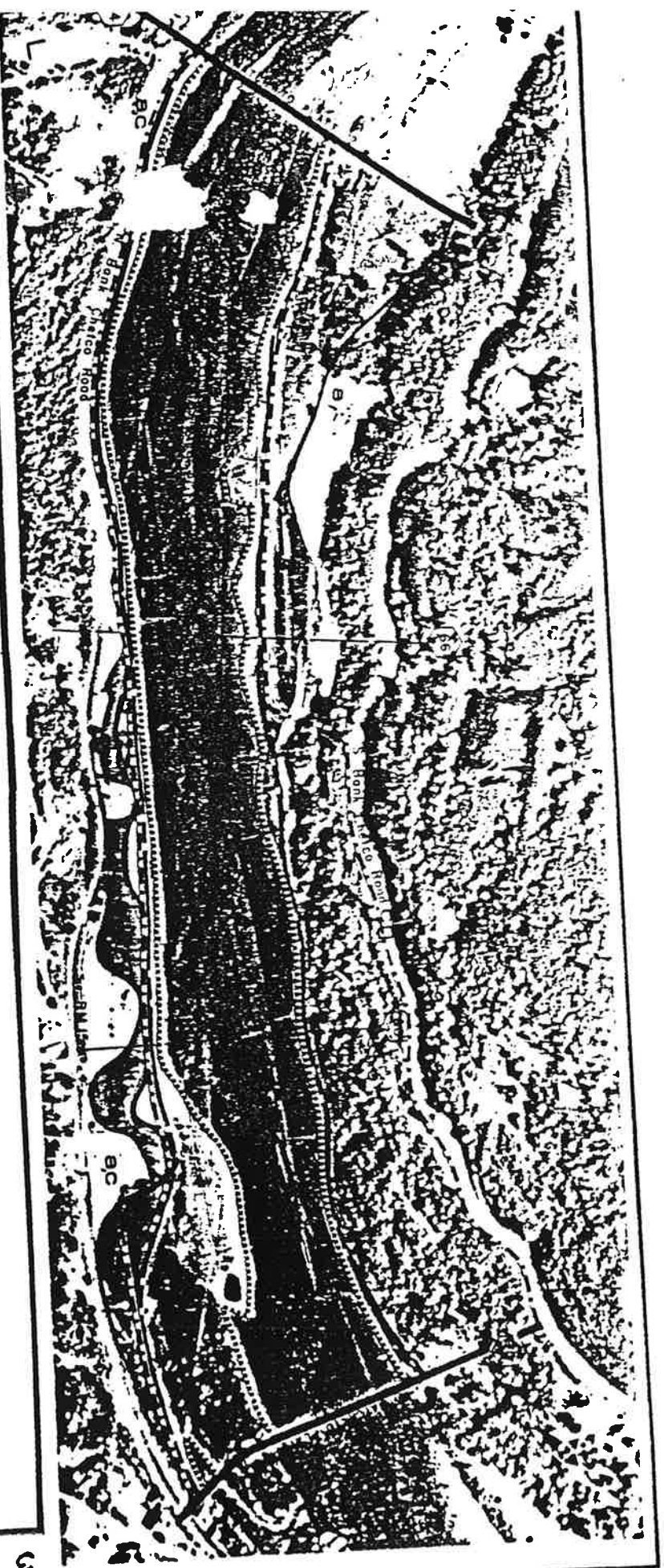
*D-sites Especially Suited to Water-Dependent Development
Sites 11-14*

**SHORESIDE ZONING
CHETCO RIVER ESTUARY**



**COMPREHENSIVE PLAN
BROOKINGS, OREGON
NOVEMBER 1983**

Basic Outline From Oregon Division of State Lands



LEGEND

	Estuarine Boundary
	Proposed Floodway
	100 Year Flood Boundary
	Estuary Shoreland Boundary*
	500 Year Flood Boundary
	Special Flood Conditions
	Reach Break
	Benchmark
	Corporate Limit



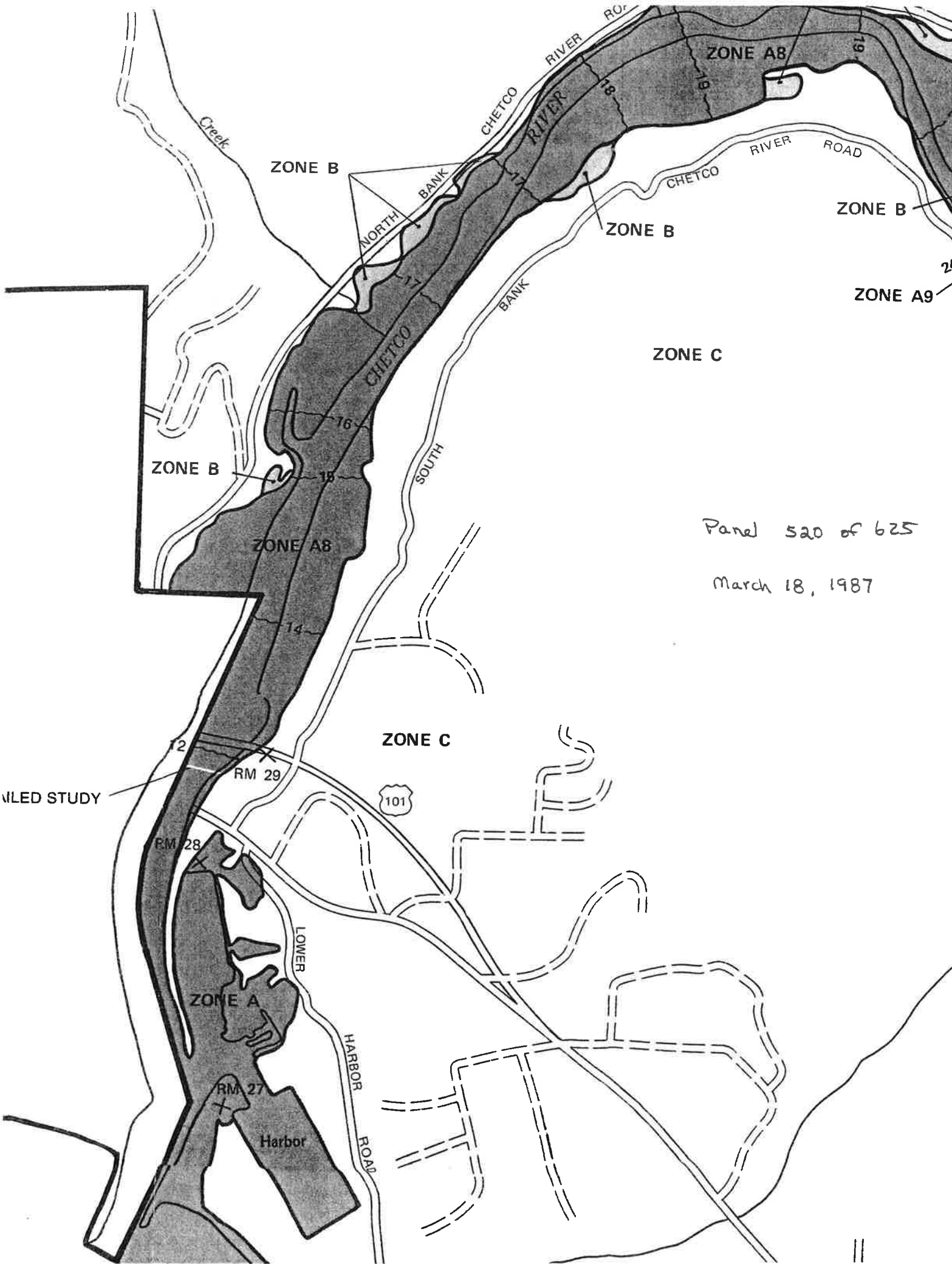
Chetco River Estuary Boundaries

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
FLOOD HAZARD MAP
CHETCO RIVER
CURRY COUNTY, OREGON



Photograph made by Iron Curry Co. 1976. Flood
boundary drawn by the Oregon State Soil
APPENDIX B
PLATE 3 OF 6

* 0.5
† 0.7 Streamflow With River Mile



Panel 520 of 625

March 18, 1987

Chetco River Resort



Where the River meets the Sea

®

RECEIVED
JUL 31 2014
CITY OF BROOKINGS

Exhibit C-2

July 31st, 2014

From: Alan Murray

To: City of Brookings

Reference: Land Use action file #ANX-1-14

Dear Sirs:

After a review of the process and intent of Mike Mahar and Ron Tribble I would like to support their request to annex into the City of Brookings and support their application.

Having known and worked with Mike Mahar for many years and his track record I believe this would be a welcome addition to the City of Brookings. My conversations with Ron Tribble leads me to believe he intends a 1st class development.

It is my understanding the sewer would run through the North Bank Chetco Road and that I would not be required to pay for that or zone into the City but could if I chose at a later date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan Murray'.

Alan Murray

Chetco River Resort, LLC
97748 N. Bank Chetco River Rd.
PO Box 6411, Brookings, OR 97415
888-487-4659/fax 707-487-1063
Email:email@whiterockresort.com
www.chetcoriverresort.com

Application:

- **Annexation**
- **General Land-Use Plan Amendment;**
 - Commercial and Industrial to Residential
 - Shoreline Boundary Change
- **Zone Change**
 - From Commercial and Industrial To Medium Density R-2



Planning File No.: ANX-1-14

Applicant / Owner: Mahar / Tribble LLC (M/T)

Agent: Ron Tribble

Attorney: Dan O'Connor

Map & Tax Lot: 40-13W-32D-1500 & 2000

*Size (Acres): 13.33 acres by M/T &
0.85 miles of Right-of-Way (4.85
acres)*

City of Brookings Urban Growth Boundary Map



Vicinity Map



Subject Property Map



Background Information

- **Proposed Annexation Area:** Approximately 0.82 miles of North Bank Chetco River Road Right-of-Way & approximately 13.3 acres of private land situated between NBCRR and the Chetco River
- **Current Plan / Zone:** Tax Lot 2000 is currently designated C-1 (Commercial Light) and Tax Lot 1500 is currently designated Industrial (County)
- **Proposed Plan/Zone:** Medium Density Residential with an R-2 zoning
- **Historic Use:** Currently vacant; The property was historically (not recently) used for mining/construction staging and storage.
- **Soils and Geology:** Applicant provided a Geologic Hazards Evaluation. The Report identifies concerns for differential settlement from a seismic event resulting from liquefaction. Mitigation measures are recommended.
- **Natural Hazards:** The Site is within the SB379 Tsunami Inundation Zone; FEMA mapped 100-year floodplain with a FEMA-approved Conditional Letter of Map Revision(CLOMR)

Background Continued

- **Transportation:** Access is from North Bank Chetco River Road, a County Collector
- **Fire District:** The property is currently within the Brookings Rural Fire Protection District
- **Sanitary Sewer:** Applicant's have an Infrastructure Financing Agreement with the City of Brookings for the needed sanitation improvements.
- **Water:** Per Applicant, a main water line for the City of Brookings is adjacent to the property in the NBCRR with a lateral to the property.
- **Storm Water:** Applicant provided a copy of a 1200-C Permit. Being next to the river, storm drainage is feasible.

Background Continued

Adjacent and Surrounding Uses:

- **Southwest:** The Chetco River is situated to the southeast. Across the river to the southeast are small rural residential properties with County RR-5 Zoning.
- **Southwest:** At the southwest portion of the subject property and immediately beyond is a small water inlet referred to as “Snug Harbor” being Site #13 in the City’s Coastal Shorelands element. Across Snug Harbor to the southwest is a 5-acre resort and further to the south is a resort development known as Riverside RV Resort; both have County R-2 Zoning.
- **Northeast:** Between North Bank Chetco River Road (NBCRR) and the Chetco River is a small residential property.
- **West:** NBCRR runs along the entire westerly boundary of the subject property. Across NBCRR to the west are R-2 zoned lots ranging from 0.5 to 1.5 acres in size with single family dwellings. Lot 200 to the northwest is relatively large parcel predominantly zoned R-2 with a small strip of industrial zoning. Also to the northwest is lot 100 County-zoned FG historically used for mining that was closed in 1998 per DOGAMI files.

Main Heading Criteria Citations:

- Statewide Planning Goals 1 – 17
- Oregon Revised Statutes (ORS) 222 – Annexations
- Oregon Administrative Rule (OAR) 660-009 Economic Development
- OAR 660-012 Transportation Planning Rule (TPR)
- Urban Growth Area Joint Management Agreement
- City Comprehensive Plan (Plan)
 - Goal 2 Land Use Planning
 - Goal 5 Open Space, Scenic and Historic Areas and Natural Resources
 - Goal 7 Natural Hazards
 - Goal 9 Economy
 - Goal 10 Housing
 - Goal 11 Public Facilities and Services
 - Goal 14 Urbanization
 - Goal 16 Estuarine Resources
 - Goal 17 Coastal Shorelands
- City Land Development Ordinance (LDO)
 - Chapter 17.140 ... Quasi-Judicial Comp Plan Changes

Annexation

- City Legislative Body elects to review the request through this land-use process and not to refer to voters.
- Consent from all legal owners
- Comply with Public Facilities Plan and Transportation System Plan
- Submittal Docs
 - Maps; Descriptions; Assessment Info.; Inventory; Surrounding Uses; Proposed Land Uses; LID; Services Availability; Findings
- Annexation Impact Analysis

Annexation Impact Analysis

- Comply with Comp Plan
- Adequate Level of Urban Services and Infrastructure Is Available or Can Be Made Available
 - Municipal Sewer, Water, Storm Drainage
- Impacts on Streets and Adjacent Transportation Facilities
- New Streets to Comply With TSP Standards
- Adequacy of Police, Fire, Parks, Schools
- Funding
 - Infrastructure Financing Agreement
- Zoning to be Applied at Time of Annexation

Comp Plan Amendment

From Employment Land To Residential

Statewide Planning Goals

1. Citizen Involvement
2. Land Use Planning
3. Agricultural Lands
4. Forest Lands
5. Natural Resources, Scenic and Historic Areas and Open Spaces
6. Air, Water and Land Resources Quality
7. Areas Subject to Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities
12. Transportation
13. Energy Conservation
14. Urbanization
15. (Not Applicable)
16. Estuarine Resources
17. Coastal Shorelands

Comp Plan Amendment

From Employment Land To Residential

OAR 660-009 Economic Development

- Division 009 is applicable because over 2 acres of industrial land is changing to non-industrial and over 2 acres of commercial is being converted to a non-employment land use
- Proposes to Rely on Comp Plan; EOA; Existing Inventories

Comp Plan Amendment

From Employment Land To Residential

OAR 660-009 Economic Development - Continued

- **Quantitative Analysis**
 - **Industrial Land Supply and Needs**
 - Sufficient supply for 2-5 acre Industrial Sites if subject removed.
 - **Commercial Land Supply and Need**
 - Deficient 1 Commercial site 5-10 acres and supply is even with need for sites 2-5 acres.
 - Based on Map 5 Constraints, the Commercial portion of subject lot was netted-out and not counted toward supply
 - Refined wetlands mapping indicated the site has roughly 5.1 acres of unconstrained commercial
 - Policy decision to consider a no-net change **Quantitatively**

Comp Plan Amendment

From Employment Land To Residential

OAR 660-009 Economic Development - Continued

- **Qualitative Analysis**
 - Is the site better suited as Residential than Commercial
 - Plan and EOA elements in support:
 - Strong Retirement housing industry and retirees are important source of economic stability
 - Site does not possess qualitative site considerations for Commercial being
 - Should be located along major arterial street
 - Good Visibility
 - Concentrated Groupings of interrelated commercial uses
 - EOA supports limit retail commercial land supply to encourage infill and redevelopment in downtown.

Comp Plan Amendment

From Commercial and Industrial to Medium Density R-2

- **Housing Supply and Demand**
 - Last housing supply analysis was 1995
 - Difficult to ascertain quantitative supply basis from a residential shortage standpoint
 - Qualitative factors support
 - Urbanizable Land
 - Benefits to greater area by extending sewer
 - Not inconsistent with EOA
 - Support retirement housing determined to be important to economy

Comp Plan Amendment

From Commercial and Industrial to Medium Density R-2

- **City of Brookings Land Development Ordinance (BLDO) 17.140**
 - Quasi-Judicial Procedures
 - Appropriate Forms
 - Compatibility with Surrounding Uses
 - Impacts on City services and streets serving the area
 - Qualified Comp Plan and/or Zone Change & Imposition of Conditions (See staff recommended conditions)

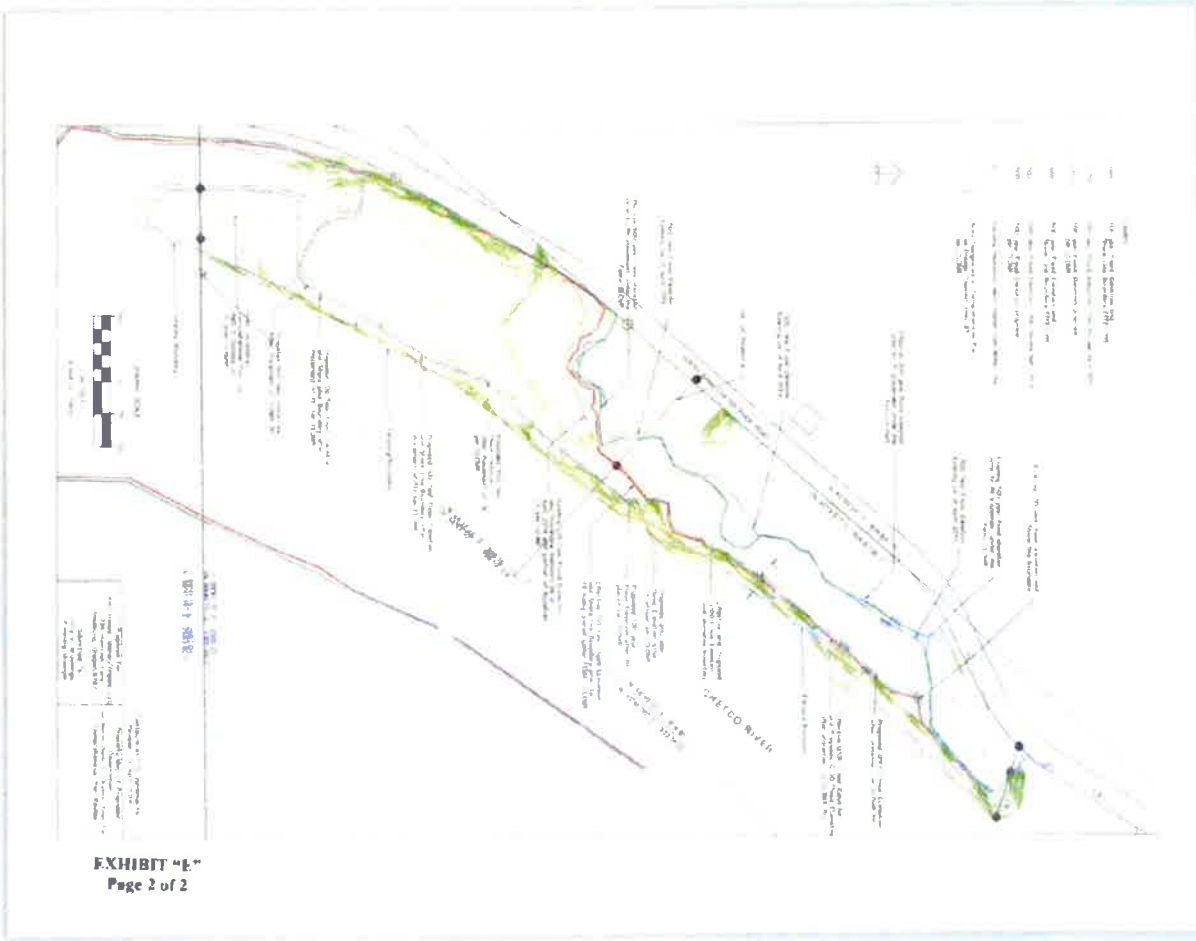
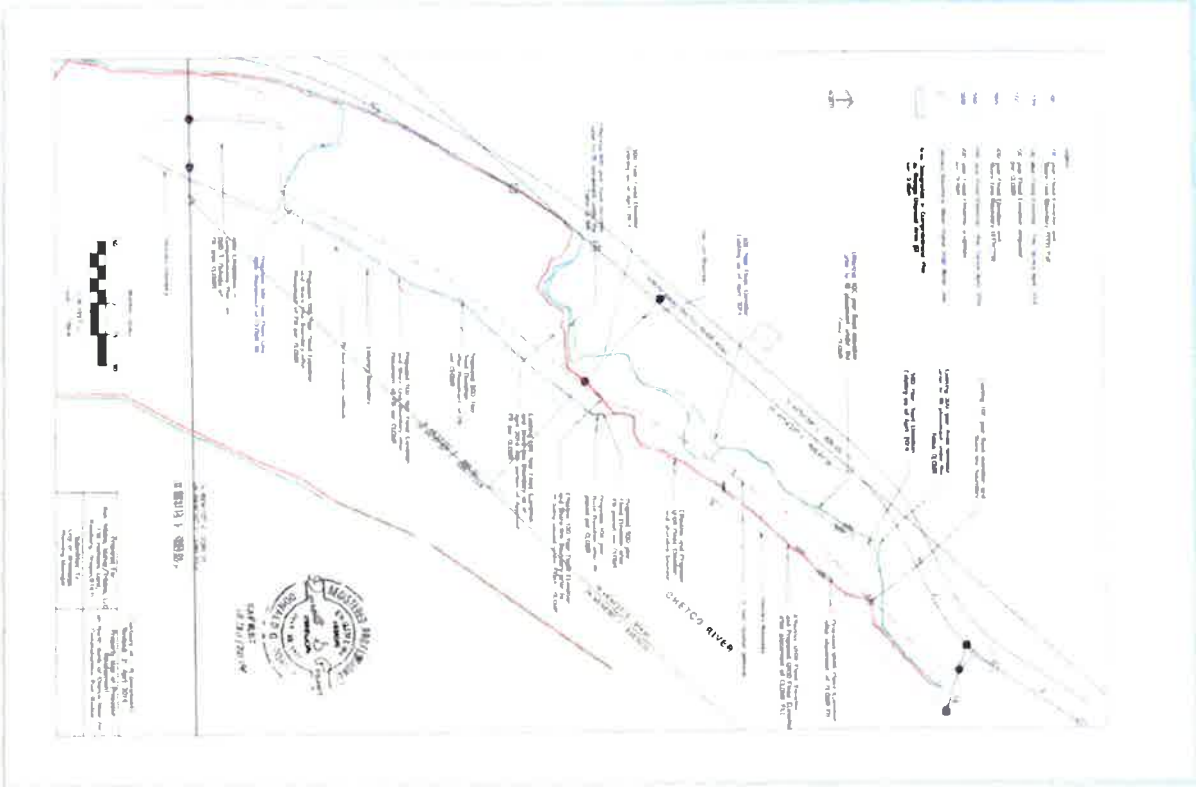


Comp Plan Amendment

Shoreland Boundary Amendment

- Goal 17 Shorelands & Goal 16 Estuaries
 - Proposal to amend the Chetco Estuary Shorelands Boundary
 - Shoreland Identification Minimum Criteria:
 - Subject to Ocean Flooding
 - Geologic instability where related to or will impact coastal water body
 - Natural or man-made **riparian resources**, especially vegetation necessary to stabilize shoreline and maintain water quality...necessary for fish...
 - Wetland Delineation
 - Water-dependent and water-related uses
 - Dredge Material Disposal Site #3; Snug Harbor Site #13
 - Exceptional aesthetic or scenic resources
 - Estuary v Headland Area

Applicant's Plan



Comp Plan Amendment

Natural Hazards

- **Floodplain**
 - Conditional Letter of Map Revision from FEMA (CLOMR)
- **Geology**
 - Geologic Hazards Evaluation
 - Ultimately concludes that development can feasibly be accomplished with adequate safety margins if mitigation measures properly imposed and implemented.

Zone Change

To R-2 Medium Density

The zone change criteria are essentially addressed by the public facilities adequacy requirements for Annexation and the requirements for the Comprehensive Plan Map Amendment.

Conditions of Approval

(Staff Recommended)

- Deed Declaration explaining responsibility for sewer extension
- Amended Shoreland Boundary legal description and Staking
- Hazard Mitigation Conditions

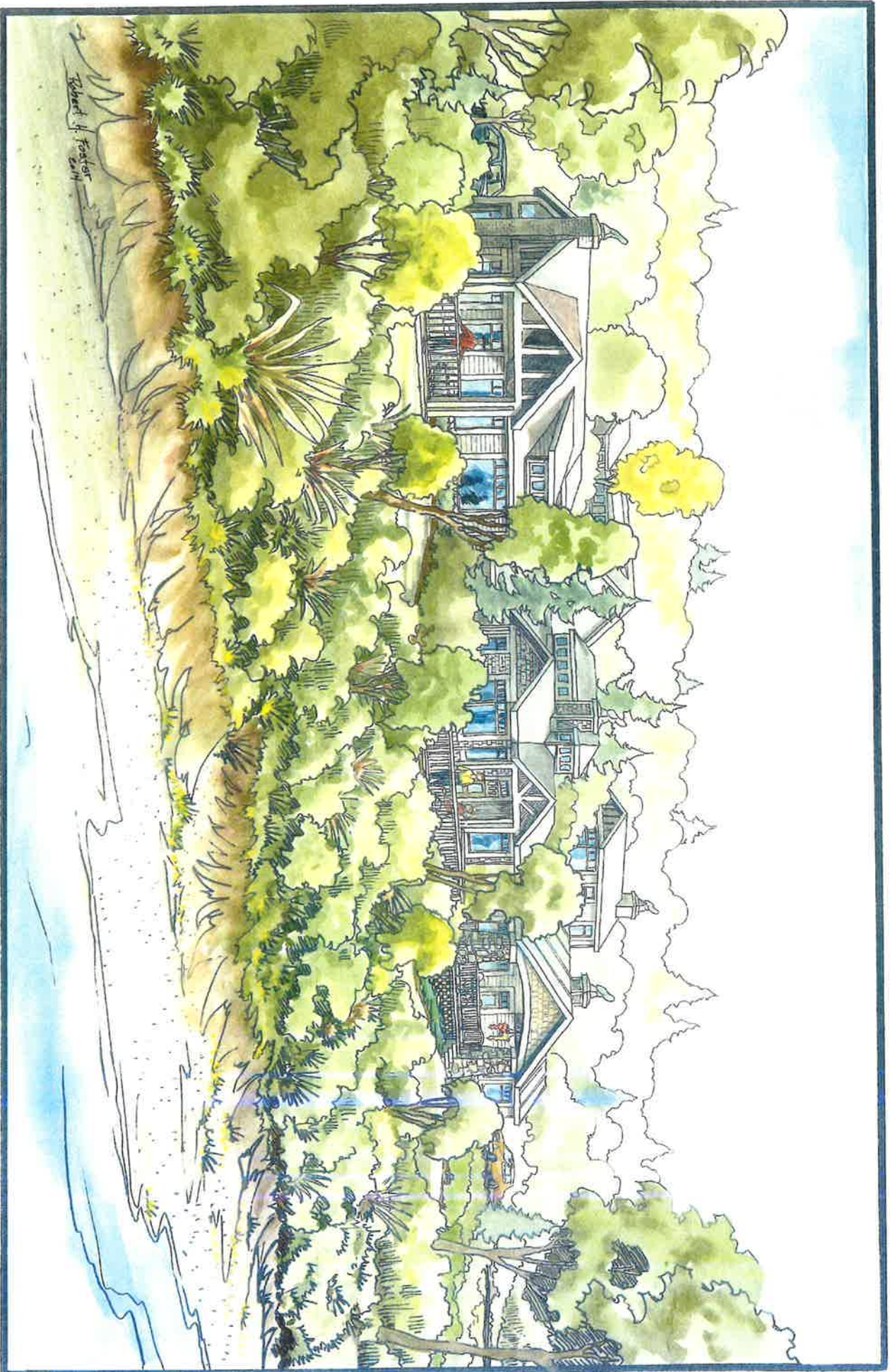


Exhibit E
Submitted R. Tribble



MEMORANDUM

TO: City of Brookings Planning Commission

FROM: Dan O'Connor

RE: Planning File No. ANX-1-14

DATE: August 5, 2014

Dear Planning Commissioners:

Applicant is proposing alternate findings concerning the Chetco River Estuary Shorelands Boundary amendment set forth in Section A below; an alternate Conclusion of Law set forth in Section B; and an amendment to the Conditions of Approval set forth in Section C.

A. Chetco River Estuary Shorelands Boundary Alternate Findings.

Applicant is only proposing a map amendment to the Shorelands Boundary and not a text amendment to the City of Brookings Comprehensive Plan. Both the City and County have acknowledged comprehensive plans, which contain coastal and estuary shoreland provisions. Neither the City's Comprehensive Plan nor the City's Land Development Code contain specific provisions concerning the location of the Shorelands Boundary. Consequently, the City has relied on the provisions of the Curry County Comprehensive Plan which specifically identifies the Shorelands Boundary for the Chetco River estuary as the 100-year floodplain. Therefore, the *Shoreland Identification Minimum Criteria* identified on page 23 of the Staff Report is inapplicable. Specifically, the aforementioned criteria are limited to circumstances involving the adoption of Comprehensive Plan provisions in accordance with Statewide Planning Goal 17, which is not the case here.

Notwithstanding the foregoing, the proposal is consistent with the Staff Report with the exception of stated *Criterion 1*. It is important that the current riparian setback is 75 feet and the Applicant is not proposing a riparian setback reduction as part of this Application. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit.

The wetland on the subject property has no in-flow hydraulic connection with the estuary. Instead, the wetland is the result of storm water runoff from transportation improvements and other development located within the vicinity of the subject property. In other words, the wetland is not the result of a naturally occurring hydraulic system. Consequently, the wetland should not be included within the Chetco River Estuary Shorelands Boundary.

B. Proposed Amended Conclusion of Law.

The City of Brookings has an acknowledged Comprehensive Plan and Land Development Code (LDC), neither of which contain specific locational criteria relating to the Chetco River Estuary Shorelands Boundary. Consequently, the City has interpreted its Comprehensive Plan in a manner to be consistent with the Curry County Comprehensive Plan, which designates the 100-year floodplain boundary as the Chetco River Estuary Shorelands Boundary. The Chetco River Estuary Shorelands Boundary shall be the 100-year floodplain boundary as determined by the approved CLOMR-F as identified on Page 201 of the Record. The riparian area on the subject property has been degraded to such an extent by historical industrial uses that it currently provides no environmental benefit. Notwithstanding the foregoing, the 75-foot riparian setback for the Chetco River shall remain unchanged until such time the Applicant obtains the appropriate land use approval(s) to reduce the riparian setback.

C. Proposed Amendment to Conditions of Approval.

Applicant respectfully requests that Condition of Approval (3) be stricken and replaced with the following:

“All future divisions and development on the subject property shall comply with Chapter 15 of the City’s Municipal Code (Building Codes and Flood Damage Prevention) as well as all other applicable regulations set forth in the LDC.”

HUYCKE O’CONNOR JARVIS, LLP



DANIEL O’CONNOR, OSB No. 950444

City of Brookings – Planning Department
898 Elk Drive
Brookings, OR 97415
(541) 469- 1137 Fax: 469-3650
TTY (800) 735-1232
dcolbyhanks@brookings.or.us
www.brookings.or.us



Memo

To: City Council
From: Planning Commission
Date: August 12, 2014
Re: ANX-1-14, Tribble annexation

At the hearing of August 5, 2014, the Planning Commission voted to recommend approval of ANX-1-4 with revision of condition of approval (3)(c) to read as follows:

3. c. Prior to issuance of any development permits or final plat on the portion of the property within the existing 100-year floodplain, Applicant will complete the Letter of May Revision process with FEMA that establishes the revised 100-year floodplain elevations and the floodway boundary for the site.

Respectfully submitted,

Bryan Tillung, Chair

CITY OF BROOKINGS
COUNCIL AGENDA REPORT

Meeting Date: September 8, 2014

Donna Colby-Hanks
Signature (submitted by)

Originating Dept: PWDS -Planning

City Manager Approval

Subject: Adopting Ordinance for amending the City limits and zoning map of the City of Brookings for File ANX-1-14, annexing approximately 13.33± acres.

Recommended Motion: Motion to approve Ordinance 14-O-738.

Financial Impact: None.

Background/Discussion: This application was reviewed and approved at the City Council meeting held on September 8, 2014.

Policy Considerations: None.

Attachment(s): Adopting Ordinance 14-O-738.

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 14-O-738

IN THE MATTER OF ORDINANCE 14-O-738, AN ORDINANCE AMENDING THE CITY LIMITS AND ZONING MAP OF THE CITY OF BROOKINGS BY ANNEXING 13.33 ± ACRES CONSISTING OF TAX LOTS 2000 AND 1500 ON ASSESSOR'S MAP 40-13-32D, DESIGNATING THE AREA RESIDENTIAL, AND APPLYING THE TWO-FAMILY RESIDENTIAL (R-2, 6,000 SQ. FT. MINIMUM LOT SIZE) FOR EACH TAX LOT.

Sections:

- Introduction.
- Section 1. Declaration of Annexation.
- Section 2. Declaration of withdrawal from the Brookings Rural Fire Protection District.
- Section 3. Uncollected Taxes
- Section 4. Submittal to Secretary of State.
- Section 5. Rezoning.

WHEREAS, property owners have petitioned the City of Brookings for annexation of the real property described in Exhibit "A" and depicted on map Exhibit "B" attached hereto, and that said territory is contiguous to exiting city limits pursuant to ORS 222.111; and

WHEREAS, notarized consent petitions for the annexation of each of the two tax lots have been filed with the City of Brookings which consents represent over a majority of the electors registered in the territory proposed to be annexed and the owners of more than half of the land in that territory, pursuant to ORS 222.170(2); and

WHEREAS, the City Council adopted Final ORDER ANX-1-14 for the subject Annexation, Comprehensive Plan Map Amendment, and Zone change. The finding of fact and conclusions of law are relied upon and incorporated by reference herein and the same are reached by and through the Council's enactment of Ordinance 14-O-738.

The City of Brookings ordains as follows:

Section 1. Declaration of Annexation. That the property in the territory described in Exhibit "A" and depicted on map Exhibit "B", attached hereto and by this reference made a part hereof, which said real property is situated in Curry County, Oregon, and is contiguous to the City of Brookings, and the same is hereby annexed to the City of Brookings.

Section 2. Declaration of withdrawal from the Brookings Rural Fire Protection District. That the property described in Exhibit "A" and depicted on map Exhibit "B" attached hereto is hereby withdrawn from the Brookings Rural Fire Protection District upon annexation of the aforementioned property to the City of Brookings.

Section 3. Uncollected Taxes. That all the uncollected taxes therefore levied by such district shall become the property of the City of Brookings and be delivered to up upon collection.

Section 4. Submittal to Secretary of State. That the City Recorder be, and is, authorized and directed to make and submit to the Secretary of State a copy of this ordinance, and a copy of the statement of consent of all the land owners of said real property heretofore filed with him.

Section 5. Rezoning. Concurrent with the annexation, the property described in Exhibit "A" and depicted on map Exhibit "B" attached hereto is hereby rezoned from Curry County zoning classification of Commercial/Industrial to Two-Family Residential (R-2, 6,000 sq. ft. minimum lot size) City of Brookings zoning classification as described below:

Assessor Map 40-13-32D tax lot 2000 is hereby rezoned Light Commercial (C-1) Curry County zoning classification to Two-Family Residential (R-2) City of Brookings zoning classification; and

Assessor Map 40-13-32D tax lot 1500 is hereby rezoned from Industrial (I) Curry County zoning classification to Two-Family Residential (R-2) City of Brookings zoning classification.

First Reading: _____ Passage: _____
Second Reading: _____ Effective Date: _____

Signed by me in authentication of its passage this _____, day of _____, 2014

ATTEST:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

EXHIBIT A

40-13-32D, TL1500 & 2000

A tract of land within the Southeast Quarter of Section 32, Township 40 South, Range 13 West, Willamette Meridian, Curry County, Oregon, lying between the North Bank Road and the Chetco River, described as follows:

BEGINNING at the Northeasterly corner of the Stutsman Tract, as recorded in Book 12, Page 235, Deed Records of Curry County, Oregon, said point being North 1131.6 feet and East 1599.0 feet from the South One-Quarter Section corner of said Section 32, said point lying on the Southeasterly right-of-way line of the North Bank Chetco River Road;

thence Southwesterly, following said Southeasterly right-of-way line a distance of 1288 feet, more or less, to a point on the South boundary of said Section 32 which bears South 89°41'15" West, 15.2 feet from the Meander Corner Common to Section 32, Township 40 South, Range 13 West, and Section 5, Township 41 South, Range 13 West, said Meander Corner being North 89°41'15" East a distance of 1012.4 feet from the South Quarter Corner of said Section 32;

thence North 89°41'15" East, a distance of 15.2 feet to said Meander Corner;

thence North 89°41'15" East, following the Southerly line of Section 32, a distance of 314.1 feet to an iron pipe lying on the right bank of the Chetco River;

thence continuing North 89°41'15" East, following the Southerly line of said Section 32, a distance of 15.3 feet to the Southeast corner of the Southwest Quarter of the Southeast Quarter, Section 32;

thence North 44°37'20" East, a distance of 999.1 feet (record bearing is North 45°00' East);

thence North 45°46' East a distance of 933 feet, more or less, (record North 44°37'20" East, 919 feet, more or less), to the South one-sixteenth corner of said Section 32;

thence North 2°18' East, following the Easterly line of said Section 32, a distance of 431 feet, more or less, to a point (record bearing is North 0°04' West);

thence North 71°52' West a distance of 147 feet, more or less, to a point lying on the northerly bank of the Chetco River;

thence North 71°52' West a distance of 107.85 feet, more or less, to a point lying on the Southeasterly right-of-way line of the North Bank Chetco River Road, said point further described as being North 1848.0 feet and East 2496.7 feet from said South Quarter Corner of said Section 32;


thence Southwesterly, following said southeasterly right-of-way line of said road, a distance of 1175 feet, more or less, to the POINT OF BEGINNING.

NORTH BANK CHETCO RIVER ROAD

That portion of the North Bank Chetco River Road bounded on the South by the North line of Government Lot 2, Section 5, Township 41 South, Range 13 West, Willamette Meridian, and on the North by Ferry Creek in Section 32, Township 40 South, Range 13 West, Willamette Meridian.

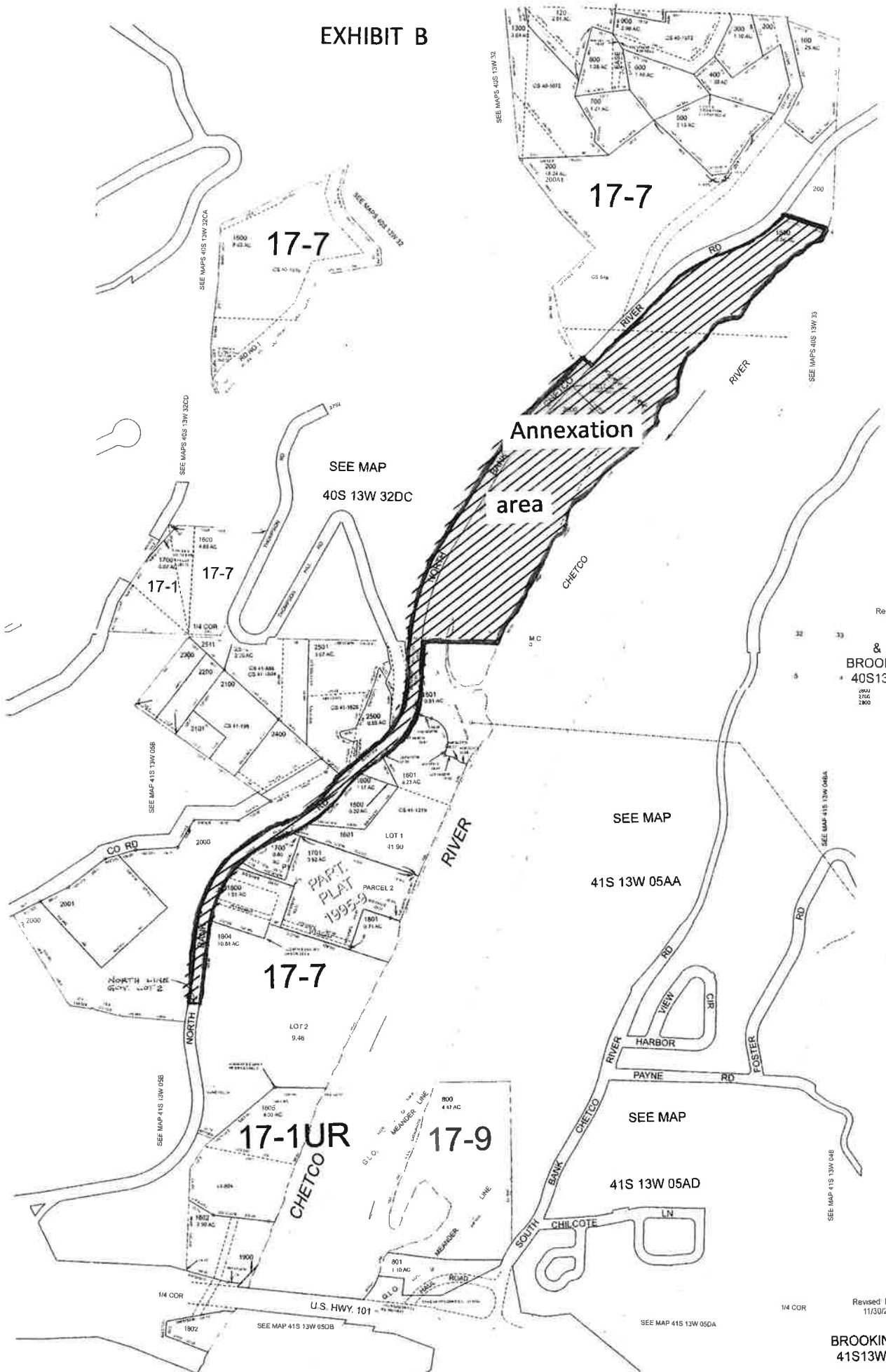
The North Bank Chetco River Road is described in deed to Curry County, recorded February 6, 1938 in Curry County Book of Records, Deed Volume 23, Pages 84-86.

REGISTERED
PROFESSIONAL
LAND SURVEYOR


OREGON
JULY 25, 1995
RICHARD P. ROBERTS
2730

EXPIRATION DATE: 12/31/14

EXHIBIT B



Revised RAA
2/10/2011

& INDEX
BROOKINGS
40S13W32D

0921
2766
2800

SEE MAP

41S 13W 05AA

SEE MAP

41S 13W 05AD

Revised RAA
11/30/2009

BROOKINGS
41S13W05A