Duncan Staff Report

("AN 23-01 et al" – AN 23-01, CPA 24-04, ZMA 24-03, and PLA 24-02)

SUMMARY INFORMATION

Date:	November 21, 2024
To:	City of Banks
From:	Katie Vickers, Contract City Planner Shayna Rehberg, Contract City Planner
Through:	Jolynn Becker, City Manager
Request for:	Annexation (AN 23-01) Property Line Adjustment (PLA 24-02) Comprehensive Plan Map Amendment (CPA 24-04) Zoning Map Amendment (ZMA 24-03)
Applicant:	David Duncan 19700 NW Morgan Road Portland, OR 97231
Owner:	*Parcel 1* Robert Duncan 42585 NW Cedar Canyon Road Banks, OR 97106 *Parcel 2* Holbrook Timber Co., LLC 19700 NW Morgan Road Portland, OR 97231
Location:	*Parcel 1* 2N4250002300 *Parcel 2* 2N331BB05600
Address:	*Parcel 1* 42585 NW Cedar Canyon Road, Banks, OR 97108 *Parcel* 2 14025 NW Main Street, Banks, OR 97106
Zoning:	Washington County Future Development 10 Acre (FD-10)
Site Size:	*Parcel 1 (existing):* 0.61 acres (26,754 SF) *Parcel 2 (existing):* 0.06 acres (2,406 SF) *Parcel 1 (proposed):* approx. 0.21 acres (9,148 SF) *Parcel 2 (proposed):* approx. 0.45 acres (19,602 SF)

TABLE OF CONTENTS

AGENCY COMMENTS

- Attachment A: City Transportation Review Memorandum (November 18, 2024)
- Attachment B: ODOT Transportation Review (November 21, 2024)

EXHIBITS

- Exhibit A: Washington County Notices of Civil Violations
- Exhibit B: Washington County Hearings Officer Decision (2018)
- Exhibit C: 2021 City Request for Enforcement Action
- Exhibit D: Annexation Application Submittal (May 25, 2023)
    - Cover Letter
    - Application Form
    - Annexation Forms and Materials
- Exhibit E: AN 23-01 Incompleteness Letter (July 26, 2023)
- Exhibit F: Applicant's Incompleteness Response (November 21, 2023)
    - Cover Letter Claiming Completeness
    - Fire District Service Provider Letter (SPL)
    - Sheriff SPL
- Exhibit G: City Letter Recommending Denial (January 4, 2024)
- Exhibit H: Applicant Additional Annexation Submittals (February 7, 2024)
    - Cover Letter
    - Engineering SPL
    - ODOT Correspondence
- Exhibit I: AN 23-01 Staff Report (March 26, 2024)
- Exhibit J: Applicant Additional Annexation Submittals (April 1-April 2, 2024)
    - Narrative
    - Parcel 1 Appraisal
    - Parcel 2 Appraisal
    - Natural Resource Assessment
- Exhibit K: City Letter Following Planning Commission Hearing (April 10, 2024)
- Exhibit L: Applicant Additional Annexation Submittals (July-August 2024)
    - July 23, 2024 Transportation Letter (with ODOT correspondence attached)
    - August 9, 2024 CWS Sensitive Area Service Provider Letter
- Exhibit M: Property Line Adjustment Application Submittal (September 20, 2024)
- Exhibit N: PLA 24-02 Incompleteness Letter (September 25, 2024)
- Exhibit O: Combined Comprehensive Plan Map and Zone Map Amendments Application (September 27, 2024)
- Exhibit P: CPA 24-04/ZMA 24-03 Incompleteness Letter (October 10, 2024)
- Exhibit Q: Applicant Additional Submittals (October 22, 2024)
    - Notice of Neighborhood Meeting
    - Notification Mailer Disclaimer and Information Reports
    - Mailing Labels

FIGURES

TABLES

APPLICABLE CITY OF BANKS GENERAL PROVISIONS, ZONING CODE, AND LAND DIVISION STANDARDS

- Annexation
  - General Provisions
    - Annexation Policies and Procedures, Sections 30.01-30.06
- Comprehensive Plan Map Amendment and Zoning Map Amendment
  - Zoning Code
    - Amendments to Comprehensive Plan Map, Zoning Map or Code, Sections 151.300-151.305
    - Residential Zoning Regulations, Sections 151.035 – 151.037
    - Nonresidential Zoning, Sections 151.050 – 151.054
- Property Line Adjustment
  - Land Division Regulations
    - Section 152.012 Property Line Adjustments

SUMMARY RECOMMENDATION

City planning staff finds the proposed application package cannot be recommended for approval until the applicant demonstrates that there is no floodplain fill violation on the property as was found by the Washington County Code Compliance Hearings Officer in 2018 (Exhibits A and B). For that reason, staff recommends **denial** at this time. However, if the applicant demonstrates through Washington County procedures that there is no floodplain fill violation, all other applicable requirements of the City's General Provisions (Annexation), Zoning Code, and Land Division Standards could be met, given fulfillment of Conditions of Approval.

Note: The original Staff Report for AN 23-01 (dated March 26, 2024) is partially reflected in this Staff Report. The Background Information from the original report has been incorporated, and the Findings of Fact from that report served as a starting point but have been edited to reflect the additional information received since the original Staff Report was issued. This Staff Report also includes new findings to address the additional applications (PLA 24-02, CPA 24-04, and ZMA 24-03) that have been submitted since the original Staff Report and the first Planning Commission hearing (on April 2, 2024).

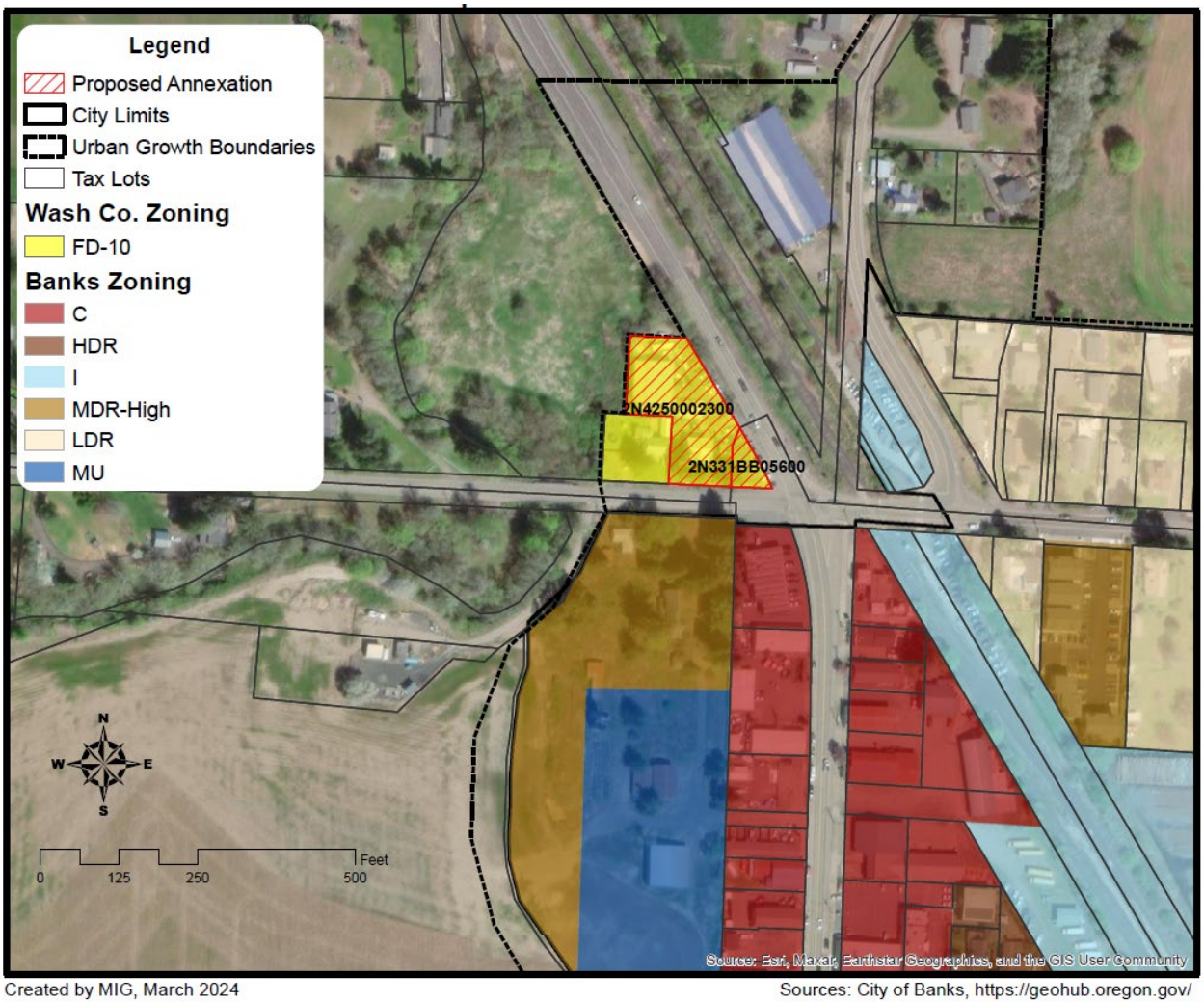
This Staff Report is organized into the following sections:

- Background
- General Provisions (Chapter 30)
- Zoning Code Standards (Chapter 151)
- Land Division Standards (Chapter 152)
- Recommendation

BACKGROUND

In May 2023, the applicant proposed annexation of the properties located at 42585 NW Cedar Canyon Road and 14025 NW Main Street (tax lots 2N4250002300 and 2N331BB05600), at the northwest corner of NW Main Street and NW Cedar Canyon Road (see Figure 1, Location and Zoning Map). The tax lots are located inside the City of Banks Urban Growth Boundary (UGB), adjacent to the city limits. As the property is still within Washington County's jurisdiction, it retains the Future Development 10-acre zoning (FD-10) designation. FD-10 is a land use district that allows limited agricultural, forest, or residential use.

Figure 1. Proposed Annexation



Created by MIG, March 2024 Sources: City of Banks, https://geohub.oregon.gov/

Per the application submittal, the property is currently being used for a residence and an automotive repair. The City's Comprehensive Plan Map shows the property's zoning,

should it be annexed, would be Mixed-Use (MU). Automotive repair is not permitted in the MU zone or any other residential zone within the city.

Under the Washington County Community Development Code (CDC) Section 309-5.1, the section that governs the FD-10 zone, automotive repair is not listed as a permitted use under Section 308 and, thus, it is prohibited. In June 2017, Washington County's Code Enforcement Officer sent the first notice for an alleged land use violation to the property owners (UV17-0088, see Exhibit A). The second notice was sent on July 28, 2017, and the final notice on September 20, 2017. On February 5, 2018, the property owner was served with the required notices for alleged land use violations and, following due course, two Notices of Civil Violations were issued (NCV numbers 00132 and 00135, see Exhibit A). NCV 00132 dealt with the unpermitted automotive use in the FD-10 zone and NCV 00136 was related to unpermitted fill activity in a floodplain.

Both violations were considered in a public hearing overseen by the Washington County Code Compliance Hearings Officer on March 15, 2018. As documented by the Hearings Officer decision of May 9, 2018 (Exhibit B), the automotive use on-site was shown to not be a legally nonconforming use. Specifically, the Hearings Officer found "that Respondent's use of the Property for commercial auto repair is a violation of [Washington County's] CDC 309-5.1. Respondent failed to demonstrate that the use is allowed as a legal nonconforming use." Additionally, the Hearings Officer stated that, "[t]here is no dispute that Respondent placed fill (asphalt chips) on the Property without obtaining a floodplain permit." The applicant was given an opportunity to resolve the two violations instead of paying fines. It is the City's understanding that while fines were paid, the issues were not resolved.

In February 2021, Daniel Kearns, City of Banks City Attorney, filed a request for Washington County to take enforcement action (Exhibit C) but no action was taken, and the violations presumably remain. While the zoning (permitted use) violation could be resolved through an annexation that includes a Comprehensive Plan Amendment and Zone Map Amendment, the fill violation could not be addressed by these amendments and must be resolved with Washington County prior to annexation of this land into the City of Banks. The City does not have the necessary procedures to assess or resolve floodplain violations and staff will urge decision makers to avoid annexing any property with known or documented violations, especially with no plan articulated by the applicant for resolving those violations and making the property and its current use legal.

Regarding the annexation application (AN 23-01), completeness review, staff finding incomplete application materials, and the applicant deeming themselves complete occurred in 2023 and early 2024. On March 26, 2024, a Staff Report was released for the annexation application, which recommended that the application be denied because of insufficient information, materials, and applications provided. A public hearing was held before the Banks Planning Commission on April 2, 2024. At the applicant's request, the

hearing was continued to July 30, 2024. The record was held open, allowing for the submission of additional applications and related materials. The applicant also agreed to waive the 120-day rule deadline. Due to various scheduling factors, the hearing was continued to November 26, 2024.

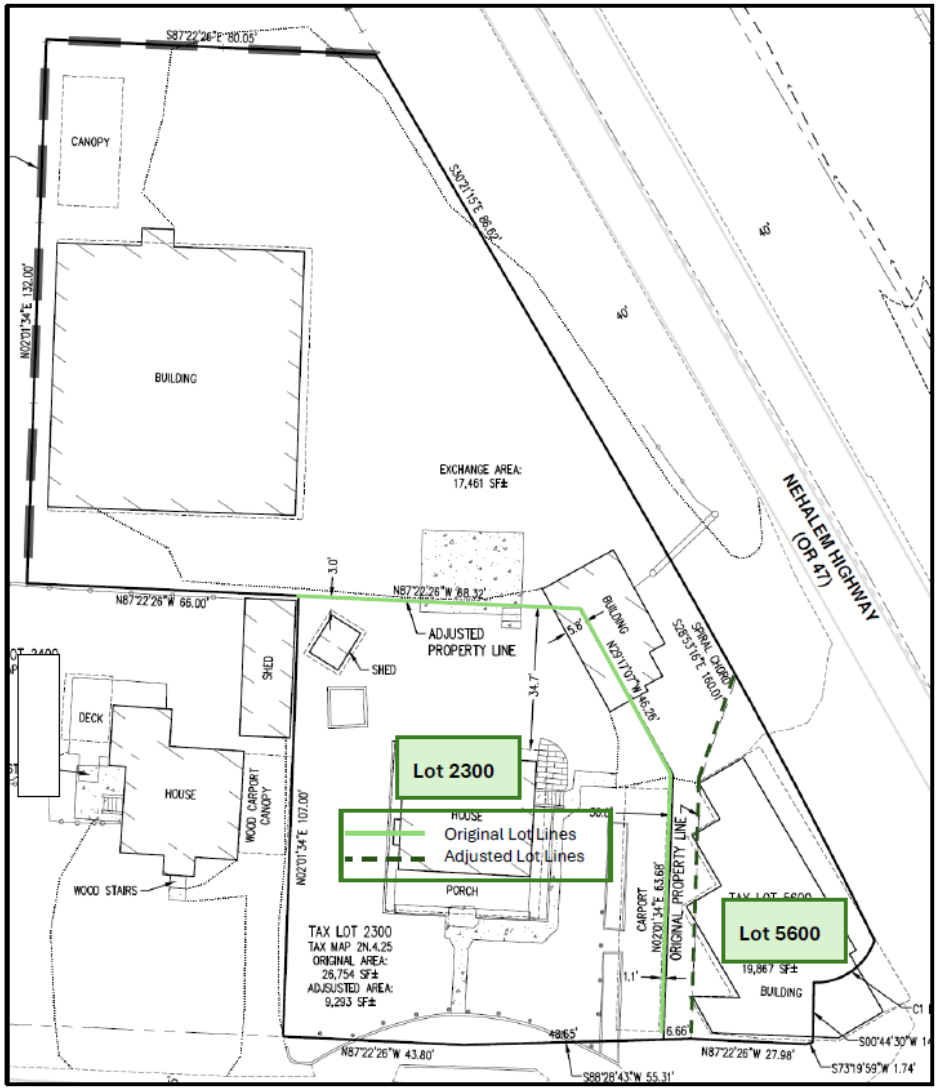
Current Application

The application for annexation was submitted on May 25, 2023 (Exhibit D). In July 2023, an incompleteness letter (Exhibit E) was sent to the applicant detailing the items that would be needed to complete the proposed annexation application. The applicant was also advised that the current use of the site was not permitted in the City zoning planned for the site (the MU zone) and the parcels would also require a Comprehensive Plan Map Amendment application and a Zone Map Amendment application.

The applicant's representative, David Phillips, responded with two Service Provider Letters and a statement that the application be deemed complete (Exhibit F). On January 24, 2024, the applicant was advised, via letter (Exhibit G), that City planning staff would recommend denial of the annexation due to insufficient information and missing applications, and that a public hearing was tentatively scheduled for February 27, 2024. The hearing date was later postponed until April 2, 2024, at Mr. Phillips' request. As noted above, the hearing was continued and the record left open for additional information.

On September 20, 2024, City Planning staff received a Property Line Adjustment application (PLA 24-02) (Exhibit M), along with a Clean Water Services (CWS) Service Provider Letter regarding environmentally sensitive areas on and around the site and correspondence from Oregon Department of Transportation (ODOT) regarding coordination with the Transportation System Plan's assumptions about development and traffic in this area. The Property Line Adjustment (PLA) proposed moving the lot lines of Lot 5600 to the west in order to locate only the existing residence on Lot 2300 (see Figure 2 below). The narrative submitted with the PLA explained that a combined Comprehensive Plan Map Amendment and Zone Map Amendment would be forthcoming, which would propose that Resulting Parcel 1 (Lot 2300, approximately 0.21 acres) with the existing residence be zoned MU once brought into the City of Banks; and that Resulting Parcel 2 (Lot 5600, approximately 0.45 acres) be zoned Industrial (I). An incompleteness letter (Exhibit N) was sent to the applicant on September 25, 2024, which listed the items needed for application completeness.

Figure 2. Proposed Property Line Adjustment



Source: Preliminary Property Line Adjustment Plan, PLA 24-02 Submittal, AKS Engineering & Forestry, LLC.

The applicant then submitted the combined Comprehensive Plan Map Amendment and Zone Map Amendment application (CPA 24-04/ZMA 24-03) (Exhibit O) on September 27, 2024. The application proposes that Lot 2300 be zoned MU, as was originally planned for in the City's Comprehensive Plan, and for Lot 5600 to be zoned Industrial (I). The City's Industrial zone allows for "(v)ehicle and farm equipment repair" (Section 151.053(A)(17)) as an outright permitted use. This would make the auto repair use on Lot 5600 a lawfully permitted use within the City of Banks once all applications in this application package were approved. See Figures 3, 4, 5, and 6 below for existing and proposed Comprehensive Plan and zoning designations.

Figure 3. Existing Comprehensive Plan Designations

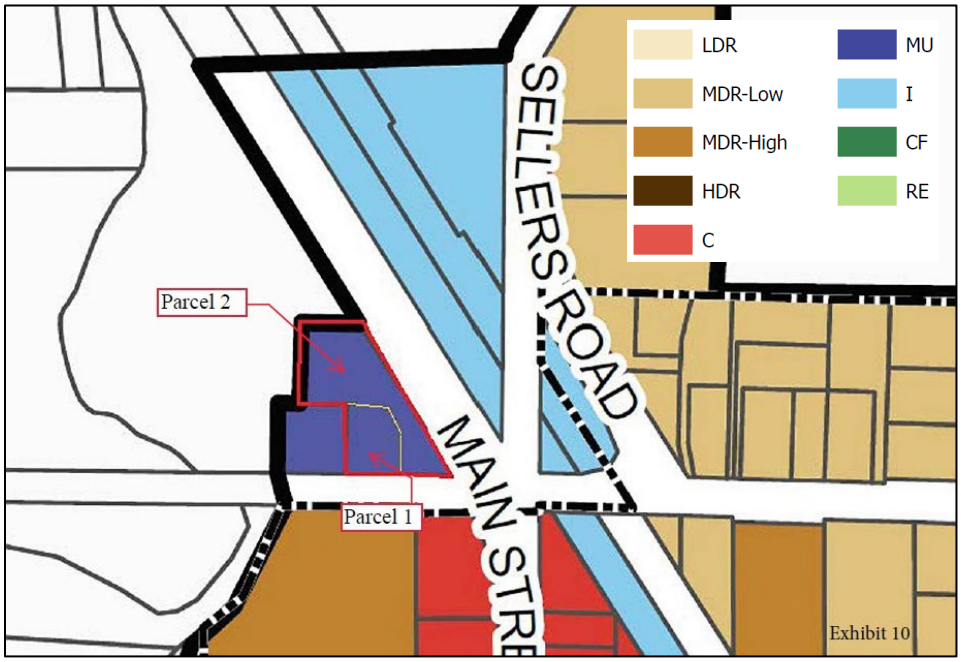


Figure 4. Proposed Comprehensive Plan Designations

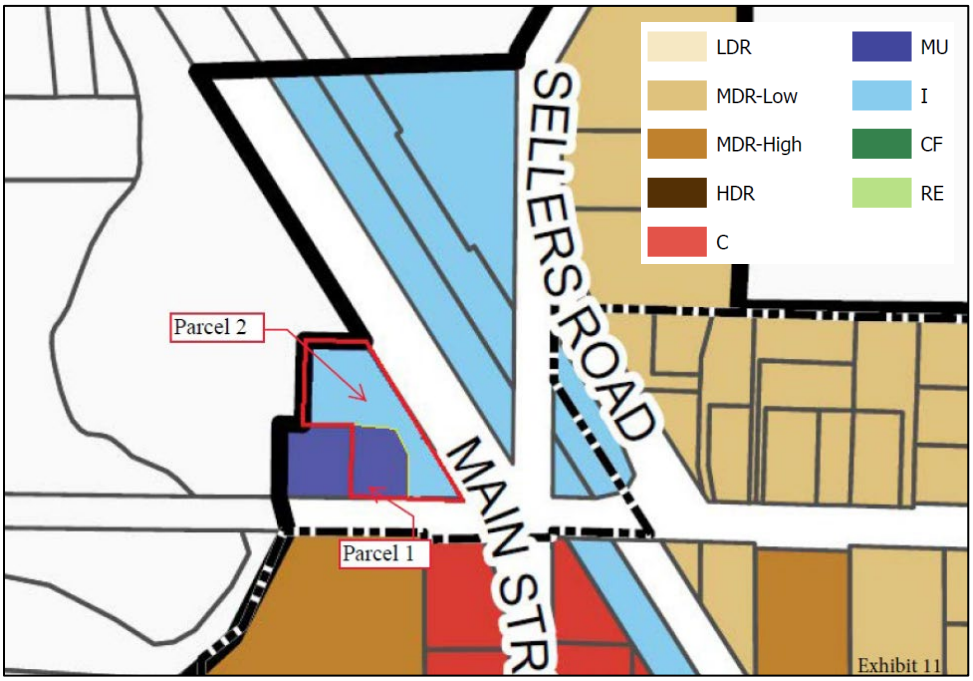


Figure 5. Existing Zoning Designations

Figure 6. Proposed Zoning Designations

City Planning staff sent an incompleteness letter (Exhibit P) for the map amendments (CPA 24-04/ZMA 24-03) on October 10, 2024, listing items necessary for completing those applications. Completeness items were received on October 22, 2024, and more on October 25, 2024; however, there remained outstanding completeness items. In response, two additional incompleteness letters were sent via email: one for the PLA and one for the map amendments, both on October 31, 2024 (Exhibit S).

The applicant submitted completeness materials through November 19, 2024. A letter of completeness was issued for the map amendments (CPA 24-04/ZMA 24-03) on November 18, 2024 and for the PLA (PLA 24-02) on November 19, 2024. All materials submitted by the applicant are provided in exhibits to this staff report (see the Exhibits list on page ii).

CHAPTER 30 GENERAL PROVISIONS

30.00 Annexation Policies and Procedures

30.02 Review Criteria

(A) Eligibility criteria. The Council must determine that property is eligible for annexation based on the following criteria:

(1) The property is contiguous to the existing city limits;

(2) The property is located within Banks Urban Growth Boundary; and

(3) Any other prerequisite requirement that may be applicable under the Oregon Revised Statutes.

Finding: The parcels proposed for annexation are contiguous to the existing city limits and are within the Banks UGB. Per ORS 222, specifically ORS 222.120, .125 and .170, the applicant has provided the necessary consent for annexation (see Exhibit D). This criterion is met.

(B) Timeliness criteria. The Council must determine that it is timely to annex property based on the following criteria.

(1) An adequate level of urban services and infrastructure is available or will be made available in a timely manner.

(a) ADEQUATE LEVEL means conforms to adopted plans and ordinances, or as may be determined by the agency that provides the service or infrastructure.

(b) URBAN SERVICES means police; fire; school facilities; parks and recreation facilities; greenways and open spaces and other city-provided services.

(c) INFRASTRUCTURE means sanitary sewer, water, storm drainage, and streets.

Finding: The applicant has not provided specific information addressing whether the proposed annexation conforms or could conform to adopted plans (e.g. Banks Comprehensive Plan, Transportation System Plan (TSP), Banks Water System Master Plan, etc.), as referred to in the first part of Subsection (a).

Alternatively, adequate levels of service or facilities can be determined and stated by the providers. To this end, the applicant was required to provide statements about adequate services and facilities from the following providers:

A. Washington County Sheriff – The applicant provided a signed Service Provider Letter (SPL) from the Sheriff in a supplemental submittal on November 21, 2023 (Exhibit F).

B. Banks Fire District – The applicant provided a signed SPL from the Fire District Chief in a supplemental submittal on November 21, 2023 (Exhibit F).

C. Clean Water Services (CWS) – The applicant provided an environmental (Sensitive Area and Vegetated Corridor) SPL from CWS (dated August 9, 2024) in a supplemental submittal made in Summer 2024 (Exhibit L). The SPL includes a map figure from the Natural Resource Assessment that Pacific Habitat Services prepared for the applicant (dated April 2, 2024, Exhibit J).

   Regarding sewer and stormwater services that CWS provides, the applicant stated in their original May 25, 2023 submittal (Exhibit D) that they had "communicated with Clean Water services to confirm sanitary and sewer water services can be extended to the Property. Based on these communications, Applicant believes such services can be provided and the adjacent creek would be the designated destination for run off." In addition, the applicant points to CWS mapping available online that shows stormwater main lines that currently run nearby in NW Banks Road and sewer main lines that run south of the site in NW Cedar Canyon Road. However, without statements directly from CWS about providing these services, the City will defer to CWS and the applicant's requirement to annex to CWS' service area in order to satisfactorily address these service issues. See potential Conditions of Approval at the end of this report for related language.

D. Banks City Engineer – The applicant provided a signed SPL from the City Engineer in a supplemental submittal on February 7, 2024 (Exhibit H).

E. Oregon Department of Transportation (ODOT) – The applicant provided correspondence from ODOT in a supplemental submittal on February 7, 2024 (Exhibit H) and again in Summer 2024 as an attachment to a transportation-related letter dated July 23, 2024 (Exhibit L). In the correspondence, ODOT called for coordination with development and traffic assumptions in the City's TSP and with the City Transportation Engineer to determine whether a transportation impact and significant effect analysis was needed. See statements below from the City Transportation Engineer regarding this application and, later in this narrative, regarding the map amendments applications.

   Given Parcel 2 currently has access on State Highway 47 (OR 47), information is also needed regarding this highway access point. In the Site Description section of the narrative included in the applicant's supplemental submittal on April 1, 2024 (Exhibit J), they state that Washington County will relocate the existing driveway for the automotive repair business approximately 50 feet north of its existing location

on OR 47. The access relocation will be completed as part of the County's improvement project at the OR 47 (NW Main Street)/NW Cedar Canyon Road/NW Banks Road intersection.

F. Banks Transportation Engineer – The applicant coordinated with the City Transportation Engineer about a transportation analysis to address State Transportation Planning Rule requirements related to proposed Comprehensive Plan Map and Zone Map changes. Although technically separate applications from the Annexation application, they are all interdependent. The City Transportation Engineer provided a memorandum on November 18, 2024 (Attachment A) that agreed with and accepted the transportation analysis provided by the applicant (dated November 14, 2024, Exhibit V). ODOT also concurred (Attachment B).

Given fulfillment of proposed Conditions of Approval, this criterion will be met.

> *(d) BE MADE AVAILABLE IN A TIMELY MANNER means that improvements needed for an adequate level of urban services and infrastructures will be provided in a logical, economical, and efficient manner and are made available in accordance with the development agreement or other funding mechanism at the time of approval. Improvements for the needed infrastructure and urban services must be secured by a development agreement or other funding mechanism that places the primary economic burden on the annexed property and not on the city.*

Finding: The applicant is solely responsible for guaranteeing all necessary facilities and services to their site. In the case of CWS sewer and stormwater services, this responsibility includes the applicant going through proper procedures for annexation of the site to the CWS service area and the applicant bearing all costs of extending facilities and services to and onto their site. Potential Conditions of Approval at the end of this report reflect this. Given fulfillment of Conditions of Approval, this criterion will be met.

> *(2) Sufficient planning and engineering data must be provided, and all necessary studies and reviews must be completed in such a manner that there are no unresolved issues regarding development of the annexation property. It may not be timely to annex property if the appropriateness of the proposed use could be altered by plans or studies that are underway, or are needed, to update, clarify, or provide additional specificity to the property use. Examples of needed studies may include, but are not limited to, public infrastructure plans, buildable lands inventories, area refinement plans, park study, or any related planning study pertaining to growth management.*

Finding: While the City knows of no studies or plans for the site to be underway, sufficient data and reviews "completed in such a manner that there are no

unresolved issues regarding development of the annexation property" are not available, and unresolved issues exist regarding development of the site. Specifically, to the City's knowledge, the applicant has not resolved the finding of unpermitted fill in a potential floodplain, an issue named in Washington County's Notice of Civil Violations (dated February 5, 2018, Exhibit A) and affirmed by the County's Hearing Officer (dated May 9, 2018). This unresolved issue is discussed further in the next finding and prevents this criterion from being met.

(3) The Council may consider, at its discretion, any other factors that affect the timeliness or wisdom of any particular annexation petition.

Finding: As detailed in the Background section of this application, the applicant has been found in violation of Washington County land use and civil code regarding an unpermitted use (auto repair business) and unpermitted fill on the site. Along the lines of what the applicant argued in the narrative submitted on April 1, 2024 (Exhibit J), City planning staff can agree that the issue of the unpermitted use (auto repair business) could be addressed by approving the annexation, approving the PLA, and approving Industrial (I) Comprehensive Plan and zoning designations for the parcel where the auto repair business would be located.

However, the City has a Flood Damage Prevention ordinance whose objectives include: "to ensure that those who occupy the areas of special flood hazard [floodplain] assume responsibility for their actions; and (t)o manage the alteration of special flood hazard areas [floodplains] and stream channels to maintain their natural and beneficial functions." (Section 151.365(B)(5) and (6)) Given these objectives, the discretion of this criterion, and the overall discretionary and non-land use nature of an annexation, the Planning Commission may consider the outstanding fill-related violation on the site in its recommendation to City Council. City planning staff recommend consideration of this violation. If the applicant demonstrates that there is no floodplain fill violation on the property, then approval of this application should be considered and Conditions of Approval are proposed at the end of this report accordingly.

Another outstanding issue is the applicant's payment of application process costs to the City. Again, this criterion allows discretion for the Planning Commission to consider such issues in its recommendation, as well as the City Council in its deliberations and decision. Similar to the code violation, staff recommend this payment issue as a Condition of Approval if approval is considered following the applicant demonstrating that there is no floodplain fill violation on the property. Condition of Approval language is proposed at the end of this report.

(4) The burden for providing the findings and cost thereof for this section and § 30.03 is placed upon the applicant.

Finding: Resolving the unpermitted fill issue and otherwise fulfilling Conditions of Approval (including payment-related conditions) are critical components of the applicant meeting this criterion.

30.03 Application Requirements.

An application for annexation must be made on forms provided by the Commission and must include the following material:

(A) Written consent to the annexation signed by the requisite number of affected property owners, electors, or both within the area to be annexed, as provided by state law;

(B) A metes and bounds legal description or acceptable alternative legal description of the territory to be annexed as certified by the Washington County Assessor's office;

(C) The County Assessor's quarter section map(s) showing the proposed annexed area and adjacent city territory;

(D) General land use plan indicating types and intensities of proposed development, transportation corridors, watercourses, significant natural features, open space, freeways and adjoining development;

(E) A detailed statement of overall development concept and methods by which physical and related social environment of the site, surrounding area, and community will be enhanced;

(F) A detailed statement of additional facilities required to meet any increased demand and a plan for the phasing in of any such facilities in accordance with the projected demand;

(G) A detailed statement outlining method and source of financing required will be made available in a timely manner to the hearing body to show how the applicant plans to provide any required additional facilities;

(H) A detailed statement of availability, capacity, and status of existing water, sewer, drainage, transportation, park and school facilities;

(I) Comprehensive narrative of potential negative physical, aesthetic, and related social effects of the proposed development on the community as a whole and on the smaller subcommunity or neighborhood that it will become a part of; and proposed actions to mitigate the effects;

(J) Narrative demonstrating need for the urban development proposed for the annexation area; need should be demonstrated based upon a factual analysis of the following factors:

(1) Availability within the current city limits of undeveloped land designated for proposed urban development;

(2) Analysis of immediate, short-term (1 to 5 years) demand for proposed urban development; and

(3) Probable phasing of proposed urban development consistent with projected demand for the period that the annexation area is expected to be developed.

(K) List of property owners (printed on self-adhesive labels) within 300 feet of the exterior boundary of the annexation property; the list shall be based on the latest tax assessment records at the Washington County Department of Assessment and Taxation and legible scale drawing of the site.

Finding: The above application requirements have been submitted as follows:

(A) The signed annexation application was submitted as part of the original Annexation application (see Exhibit D).

(B) Legal Descriptions for the two original parcels were submitted on October 22, 2024 as part of the incompleteness items for PLA 24-02 (see Exhibit Q).

(C) The applicant did not submit County Assessor's quarter section map(s) clearly as a standalone exhibit. However, tax maps are included in the appraisal reports in the applicant's supplemental submittal on April 1, 2024 (Exhibit J) and in the title reports in the applicant's supplemental submittal for the PLA application on October 22, 2024 (Exhibit Q).

(D) A land use plan is not required as no development is being proposed. Therefore, this item is not applicable.

(E) A statement of the development concept is not required as no development is being proposed. Therefore, this item is not applicable.

(F) – (J) These items are also more suited to if development was being proposed as part of this application package. Therefore, these items are not applicable.

(K) The list of property owners was received as part of the CPA 24-04/ZMA 24-03 Incompleteness Items (see Exhibit Q).

Therefore, the applicant has provided required materials and this standard is met.

30.04 Application Review Process.

(A) The Commission must hold at least 1 public hearing on the application.

(1) Once a completed application, including the appropriate filing fee, has been filed and accepted by the City Recorder, then the City Planner will schedule a public hearing to be held by the Commission.

(2) Notice of the public hearing must be published in a newspaper of general circulation in the city not less than 5 days nor more than 15 days prior to the date of the public hearing.

(3) Written notice of the public hearing regarding the application must be mailed to all property owners within 300 feet of the exterior boundary of the property, not less than 20 days prior to the hearing date.

(4) Written notice of the public hearing regarding the application must be mailed to Washington County and the County Community Planning Organization (CPO 14) not less than 20 days prior to the hearing date.

Finding: After the original application was submitted (Exhibit D) and found incomplete (Exhibit E), the applicant submitted additional materials for the Annexation application (see the Exhibits list on page ii). As is statutorily allowed, the applicant claimed the application complete on November 21, 2023 (Exhibit F).

The November 26, 2024 Planning Commission hearing is a continuance of the April 2, 2024 hearing. Notice of the November 26, 2024 Planning Commission hearing was mailed to owners within 300 feet of the site and to CPO 14 on November 6, 2024. Notice will be published in a general circulation newspaper on November 21. Notice will also be published preceding the City Council hearing. These requirements are and will be met.

CHAPTER 151 ZONING CODE

151.233 Type III Procedure (Quasi-Judicial Review; Public Hearing).

Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council.

Finding: This application package consists of the applications listed in Table 1 below. While the code currently classifies the PLA application as a Type III procedure, that application has been consolidated with the other applications in this package and will be reviewed and decided through a Type IV procedure. The Planning Commission will hear and make a recommendation to the City Council about the set of four applications in this application package.

Table 1. Applications and Procedure Types

Application File #	Application	Procedure Type
AN 23-01	Annexation	Type IV
CPA 24-04	Comprehensive Plan Map Amendment	Type IV
ZMA 24-03	Zoning Map Amendments	Type IV
PLA 23-02	Property Line Adjustment	Type III

151.234 Type IV (Legislative Decisions).

A. Application requirements.

1. Application forms. Legislative applications shall be made on forms provided by the City Planning Official.

2. Submittal information. The application shall contain all of the following information:

a. The information requested on the application form;

b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);

c. The required fee, except when the City of Banks initiates the request; and

d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards; and

e. Evidence of neighborhood contact, pursuant to § 151.236.

Finding: Application and notice requirements for the Annexation application are addressed in response to Section 30.03 and Section 30.04 earlier in this staff report. The rest of this finding will address the PLA and Map Amendments applications.

The applicant submitted a signed application form, fee, and initial materials for the PLA application (Exhibit M). They submitted a series of additional materials through November 19, 2024. City planning staff deemed the Property Line Adjustment application complete on November 19, 2024 (Exhibit Y).

The applicant submitted application forms as part of the Map Amendments applications that were originally submitted (Exhibit O). The applicant subsequently submitted additional materials through November 14, 2024 after the applications were found incomplete (see the Exhibits list on page ii). City planning staff deemed the Map Amendments applications complete on November 18, 2024 (Exhibit W).

These requirements are met.

B. Procedure.

1. *Hearings on legislative land use requests are conducted similar to City Council hearings on other legislative proposals, except the notification procedure for legislative land use requests must conform to state land use laws (O.R.S. 227.175), as follows:*
2. *The city shall notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments (zone change, rezoning with annexation, or comprehensive plan amendment) at least 35 days before the first public hearing at which public testimony or new evidence will be received. The notice shall include a DLCD Certificate of Mailing.*
3. *At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice shall be prepared in conformance with O.R.S. 227.175 and mailed to:*
    a. *Each owner, resident or tenant whose property would be directly affected by the proposal, e.g., rezoning or a change from one Comprehensive Plan land use designation to another, see O.R.S. 227.186 for instructions;*
    b. *Any affected governmental agency;*
    c. *Any person who requests notice in writing; and*
4. *At least 10 days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the city.*
5. *For each mailing and publication of notice, the City Recorder shall keep an affidavit of mailing/publication in the record.*

Finding: Notices provided for the Map Amendments applications are listed below:

- The City notified the Department of Land Conservation and Development (DLCD) of the Comprehensive Plan Map and Zoning Map Amendments on October 31, 2024, 26 days before the first evidentiary hearing for the map

amendments on November 26 and 40 days before the second scheduled hearing (with the City Council) on December 10, 2024.

- The City mailed notice of the Planning Commission and City Council hearings to affected property owners, tenants, and governmental agencies on November 6, 2024.
- Newspaper notices are following the procedures for Annexation applications in Section 30.04, where notice in a general circulation newspaper is required before both the Planning Commission hearing and the City Council hearing.
- The City Recorder holds record of the affidavits for mailings and publications.

151.300 Amendments to Comprehensive Plan Map, Zoning Map or Code

151.301 Authorization to Initiate and Approve Amendments.

An amendment to the Comprehensive Plan text or map, and/or to the text or zoning map of this title may be initiated by the City Council, by the Planning Commission, or by application of a property owner or their authorized agent.

Finding: The application package has been submitted by the property owners and their representative. Signed land use applications have been submitted, and are included in this report as Exhibit O.

151.302 Procedure.

(A) Except for corrections, amendments to zoning code text are legislative (Type IV).

(B) Amendments to the Zoning Map that affect only one parcel are Type III actions. Amendments to the Zoning Map that affect more than one parcel are Legislative (Type IV) actions.

(C) Amendments to the Zoning Map that require an amendment to the Comprehensive Plan are legislative (Type IV) actions.

(D) Amendments that do not meet the criteria under divisions (A) through (C) may be processed as quasi-judicial amendments, pursuant to the Type III procedure.

Finding: The proposed map amendments include a Comprehensive Plan Amendment, going from a City of Banks Mixed Use Comprehensive Plan designation to Industrial for Proposed Parcel 2 (see Figures 3 and 4). The Zoning Map Amendment involves two parcels, going from Washington County FD-10 zoning to City of Banks Mixed Use (MU) zoning for Proposed Parcel 1 and City of Banks Industrial (I) zoning for Proposed Parcel 2 (see Figures 5 and 6). Therefore, pursuant to Subsections (B) and (C) above, these map amendments must be processed through a Type IV procedure.

Figure 3. Existing Comprehensive Plan Designations

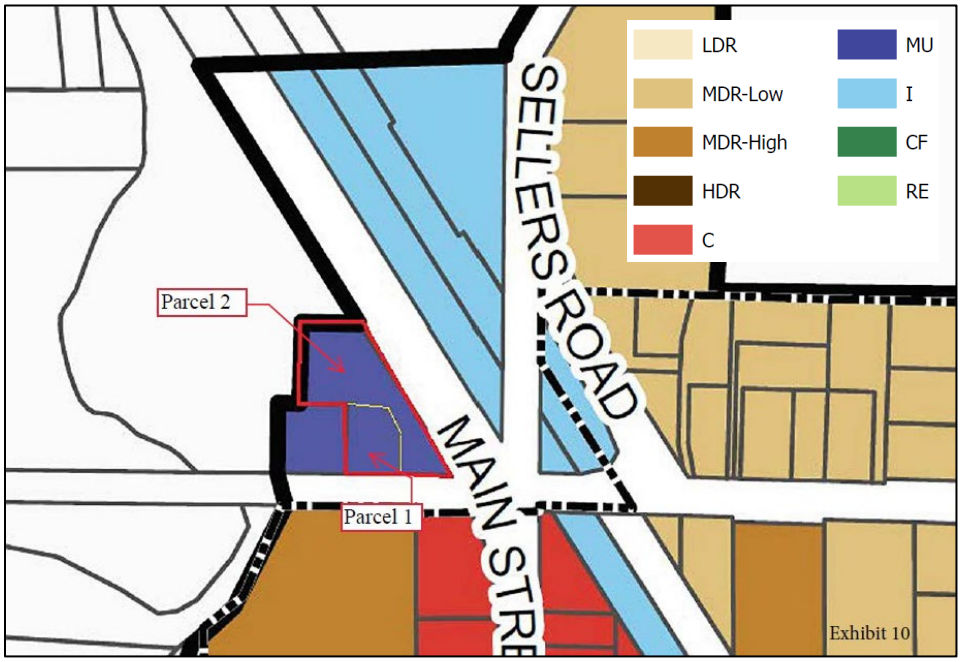


Figure 4. Proposed Comprehensive Plan Designations

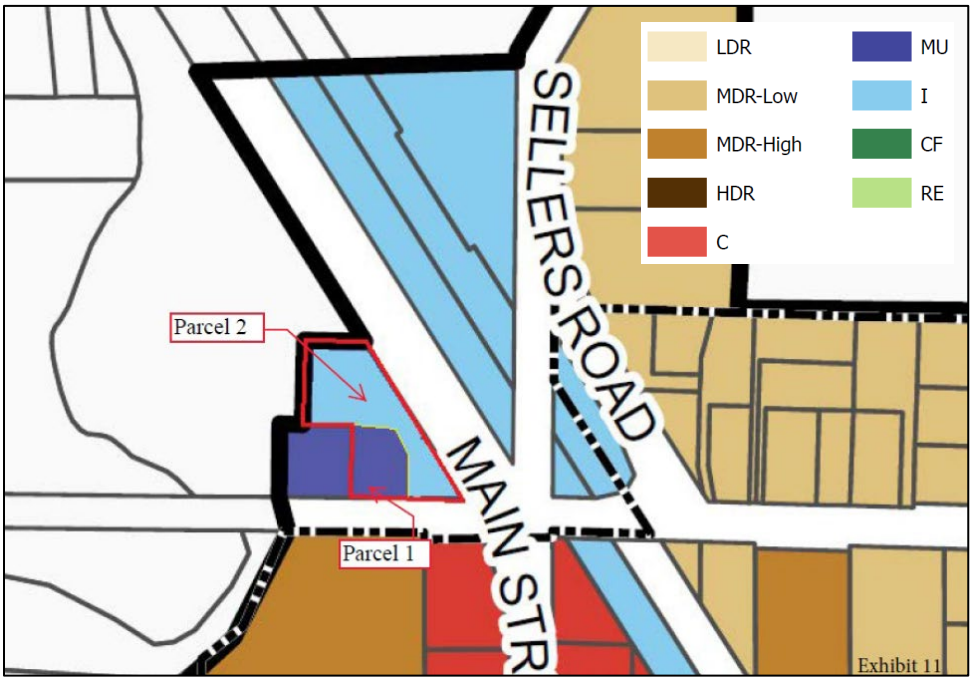


Figure 5. Existing Zoning Designations

Figure 6. Proposed Zoning Designations

151.303 Criteria.

Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Zoning Code, or Comprehensive Plan shall be based on all of the following criteria:

(A) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;

Finding: See the findings below for consistency with applicable Oregon Statewide Planning Goals and associated Oregon Administrative Rules. This criterion is met.

Oregon Statewide Planning Goals

The proposed Comprehensive Plan Map and Zone Map Amendments must comply with the applicable Statewide Planning Goals and associated Oregon Administrative Rule requirements as presented below.

GOAL 1: CITIZEN INVOLVEMENT- To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases the planning process.

Finding: Goal 1 requires public participation at all levels of land use planning processes. This application for map amendments – a Type IV procedure – requires neighborhood outreach. A neighborhood meeting was held on November 6, 2024, as evidenced in Exhibits Q, T, and U.

The City of Banks has provided written notice of the proposed map amendments to DLCD, and public notice of the application package has been mailed to property owners surrounding the properties and affected government agencies, with information on how to provide comments during the public hearings. Notice of the proposed map amendments will also be published in a local newspaper of common circulation in Banks.

The proposed amendments are consistent with Goal 1.

GOAL 2: LAND USE PLANNING- To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Finding: Goal 2 requires jurisdictions to have a comprehensive land use plan and corresponding implementation regulations. These applications for Comprehensive Plan Map and Zone Map Amendments propose to amend the City's Comprehensive Plan Map and Zoning Map related to the subject properties, as shown above in Figure 3, 4, 5, and 6. Chapter 151 (The Banks Zoning Code) acts as the

implementing regulation of the City's land use policy framework, and the proposed map amendments are required to follow the guidelines and criteria set forth in the code.

The proposed annexation and map amendments are being processed through a Type IV procedure and the PLA the application is being processed through a Type III procedure. Consistency with applicable criteria is addressed throughout this report. As the Comprehensive Plan Map and Zone Map are being amended, concurrent and subsequent land use applications must adhere to the proposed map designations, granted approval of the amendments.

The proposed amendments are consistent with Goal 2.

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

Finding: The project site is not located in a City Historic Overlay Zone. The site does not contain historic resources listed in the City's Comprehensive Plan inventory.

The site is located near West Fork Dairy Creek, a perennial creek, and a wetland area. A portion of the CWS-regulated Vegetated Corridor associated with the wetland extends into the northwest corner of the site as determined by a Natural Resource Assessment prepared by Pacific Habitat Services (see Exhibit J). The applicant has provided a signed SPL from CWS (Exhibit L) stating that the proposal "will not significantly impact the existing Sensitive Areas found near the site."

The proposed amendments are consistent with Goal 5.

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

Finding: The map amendments support the proposed annexation, which is associated with the applicant arranging annexation to CWS' service area. Upon annexation into the service area, the applicant can arrange connection to CWS' stormwater system. This connection should reduce impacts the site and its runoff has on surrounding properties and environment, particularly the West Fork Dairy Creek resources north and west of the site. The proposal is consistent with Goal 6.

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

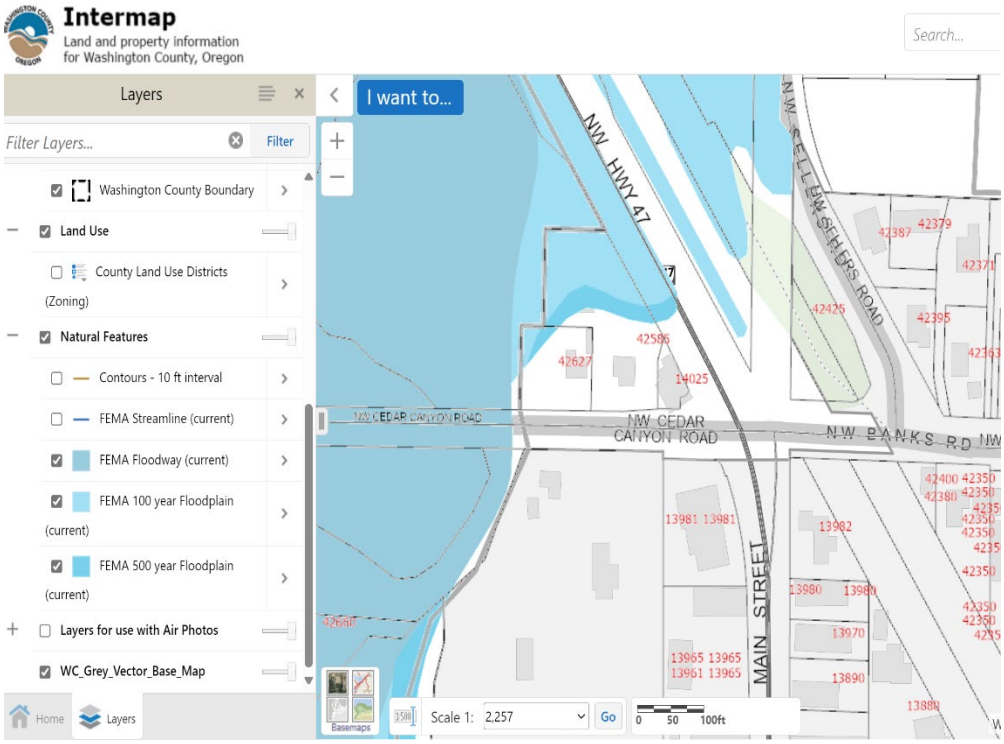
Finding: As shown in Figure 7 below, part of the site and existing auto repair business building is in floodplain associated with West Fork Dairy Creek, as last mapped by the Federal Emergency Management Agency (FEMA).

City planning staff understand that no development is proposed as part of this application package. If any development is proposed in those areas in the future, that development would need to comply with local, state, and federal requirements regarding flood area delineation and development.

However, the FEMA-mapped floodplain on the site is the location of an unpermitted fill violation that has been established by Washington County through code enforcement procedures (see Exhibits A and B). Staff do not recommend this application package be recommended for approval until the applicant demonstrates that there is no floodplain fill violation on the property. Once the applicant has demonstrated this, approval should be considered and Conditions of Approval are proposed at the end of this report accordingly.

The proposal – including the proposed map amendments – will be consistent with Goal 7 if the applicant demonstrates that there is no floodplain fill violation on the property, the Annexation application is recommended for approval, and Conditions of Approval are fulfilled.

Figure 7. FEMA Floodplain and Floodway Mapping



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.

Finding: Goal 9 requires local governments to have a suitable amount of land to provide for economic growth, which is typically focused on major industrial and/or commercial developments and a supply of land ready for local investment.

These proposed Comprehensive Plan Map and Zone Map Amendments would convert land zoned Washington County FD-10 to City of Banks mixed-use and industrial zoning designations. The land proposed for Industrial Comprehensive Plan Map and zoning designations (Proposed Parcel 2) is currently developed with an automotive repair use, which brings an active business use into the city. While there are no plans or proposals for development or redevelopment in this application package, the Mixed-Use zoning designation proposed for Proposed Parcel 1 would allow for a mix of business and residential uses on the property in the future.

The proposed amendments are consistent with Goal 9.

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

Finding: Goal 10 requires cities to inventory and plan to meet and enhance the housing needs of its residents. The City of Banks expanded its UGB in 2011 and included the 2009-2029 Residential Land Needs Analysis in the UGB amendment findings. The analysis identified a projected need for 984 new single-family detached and attached housing units by 2029.

These map amendments maintain the existing Mixed-Use Comprehensive Plan Map designation for Proposed Parcel 1, while converting County zoning to City Mixed-Use (MU) zoning. The MU zoning could potentially accommodate more housing on Proposed Parcel 1, should the property be redeveloped in the future.

Therefore, the proposed amendments are consistent 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.

Finding: Goal 11 requires the provision of adequate public facilities within a jurisdiction. Adequate public facilities and services have been addressed as requirements for annexation (see findings for Section 30.02 earlier in this narrative).

Granted fulfillment of Conditions of Approval attached to the Annexation application in this application package, the proposal – including the proposed map amendments – is consistent with Goal 11.

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

Finding: In accordance with Goal 12, the City of Banks has a recently adopted TSP. The Transportation Planning Rule (OAR 660-012) guides what must be addressed in a TSP as well as in amendments to land use regulations, including zone changes. Compliance of the proposed Comprehensive Plan Map and Zone Map Amendments with the Transportation Planning Rule (TPR) is addressed later in this section, where compliance is found with the TPR (Section 151.305).

The proposed amendments are consistent with Goal 12.

GOAL 14: URBANIZATION- To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Finding: The site was brought into the Banks UGB in 2011 and was designated for mixed use, typically residential and commercial uses. Both lots currently carry Washington County FD-10 zoning, which is an interim zoning district intended to facilitate future development for rural land. The proposed Comprehensive Plan Map and Zone Map Amendments, alongside the proposed annexation and PLA, would result in the addition of approximately 0.45 acres for industrial use (Proposed Parcel 2) and 0.21 acres for mixed use (Proposed Parcel 1) to the city. The proposed amendments are consistent with Goal 14.

(B). The proposed change is consistent with and supportive of the Comprehensive Plan goals, objectives, and policies (the Comprehensive Plan may be amended concurrently with proposed changes in zoning);

Finding: The City of Banks Comprehensive Plan identifies goals and policies for the City to implement in land use decisions. While the Plan was last comprehensively updated in 1989, it has undergone targeted amendments since then and it still provides needed guidance on policy and land use decisions. This includes guidance for applications such as Comprehensive Plan Map and Zoning Map Amendments. Relevant Comprehensive Plan goals, objectives, and policies are addressed in the following findings, and the proposed map amendments have been found consistent with them. This criterion is met.

Comprehensive Plan Goals

1. Citizen Involvement.
Goal: To promote a program of citizen involvement which facilitates the flow of information and ideas between the City and its residents, and ensures the opportunity for citizen involvement in the planning process.

Objective:

Employ a variety of methods of informing citizens and obtaining their opinions and attitudes on matters relative to the planning and decision making process (i.e. questionnaires, public hearings, and advisory committees).

Policies:

3. The development code will provide for citizen involvement opportunities in current planning decisions through notification and public hearing procedures.

Finding: The applicant held a neighborhood meeting for the application package on November 6, 2024. Documentation of the neighborhood meeting is included in Exhibits Q, T, and U.

The City sent written notice to property owners in the area and affected agencies regarding the Planning Commission and City Council hearings. Notice of the hearings will be published in a newspaper in accordance with Type IV and annexation procedures. Interested parties will have the opportunity to provide written or oral testimony regarding the map amendments to the Planning Commission and City Council prior to and at the hearings.

The proposed amendments are consistent with the goal, objective, and policy above.

2. Land Use
Goal: To provide a process and basis for decisions and actions related to the existing and future uses of land, and to ensure the orderly development of the City of Banks.

Objective:

a. *Land uses should be located to take advantage of existing public facility systems and physical features, and to minimize development costs.*

Finding: Adequate public facilities and services have been addressed as requirements for annexation (see findings for Section 30.02 earlier in this narrative). As part of those requirements, the applicant obtained signed SPLs from service providers including Washington County Sheriff, Banks Fire District, City of Banks Engineering, and CWS Environmental Review (Exhibits F, H, and L).

In addition, the land uses currently on the site proposed for Map Amendments, as well as any uses that may be developed or redeveloped on the site in the future, are located at the intersection of major roadways, adjacent to existing facility systems.

Granted fulfillment of Conditions of Approval attached to the Annexation application in this application package, the proposal – including the proposed map amendments – is consistent with this objective.

b. Land uses should be situated so as to achieve compatibility and to avoid conflicts between adjoining uses.

Finding: Given its location inside the City's UGB but not yet inside the city limits, the subject site is currently zoned FD-10, a Washington County holding zone designation, and has urban Comprehensive Plan land use designations from the City of Banks. The proposed map amendments will allow for the existing development, which includes a residential use (that will be permitted as a nonconforming use in the MU zone) and an industrial use (that will be permitted outright in the I zone).

The existing uses have been present on the site for many years, as detailed in the applicant's materials, and have done so with no known significant conflicts. The uses are compatible with the adjacent and nearby residential uses and nearby industrial uses in both scale and intensity of use.

The proposed amendments are consistent with this objective.

d. Opportunities for a variety of land uses should be provide commensurate with population growth and demonstrated need.

Finding: Although the subject site is less than an acre, the site can still contribute toward needed housing and employment for the City of Banks. The adopted 2009-2029 Residential Land Needs Analysis that supported the 2011 UGB expansion, a more recent (August 2022) citywide residential needs analysis prepared for the Aerts Addition Master Planned Development in East Banks, and the adopted 2005-2025 Economic Opportunities Analysis have all indicated a need for more housing and employment opportunities in the city. Existing and potential permissible future uses on the subject site can help address that need. These uses would be enabled by the proposed map amendments. Therefore, the proposed amendments are consistent with this objective.

Policies:

6. Requests for plan and zoning map amendments must demonstrate compliance with the goals, objectives and policies of the Comprehensive Plan, and with the criteria and procedures in the Development Ordinance.

Finding: As addressed in the findings in this section and other sections of this staff report, the map amendments application narrative and supporting exhibits demonstrate compliance with applicable Comprehensive Plan and Zoning Code requirements. The proposed amendments are consistent with this policy.

5. Open Space, Scenic and Historic Areas, and Natural Resources
Goal: To protect and enhance through proper use and development the open spaces, scenic and historic areas, and natural resources of the area.

Finding: The project site is not located in a City Historic Overlay Zone. The site does not contain historic resources listed in the City's Comprehensive Plan inventory.

The site is located near West Fork Dairy Creek, a perennial creek, and a wetland area. A portion of the CWS-regulated Vegetated Corridor associated with the wetland extends into the northwest corner of the site as determined by a Natural Resource Assessment (see Exhibit J). The applicant has provided a signed SPL from CWS (Exhibit L) stating that the proposal "will not significantly impact the existing Sensitive Areas found near the site."

The proposed amendments are consistent with this goal.

6. Air, Water, and Land Resource
Goal: To maintain and improve the quality of the air, water, and land in the Banks area.

Finding: The map amendments support the proposed annexation, which is associated with the applicant arranging annexation to CWS' service area. Upon annexation into the service area, the applicant can arrange connection to CWS' stormwater system. This connection should reduce impacts the site and its runoff has on surrounding properties and environment, particularly the West Fork Dairy Creek resources north and west of the site. The proposal is consistent with this goal.

7. Areas Subject to Natural Disasters and hazards
Goal: To protect life and property from natural disasters and hazards.

Finding: As shown in Figure 7, part of the site and existing auto repair business building is in floodplain associated with West Fork Dairy Creek, as last mapped by the FEMA.

City planning staff understand that no development is proposed as part of this application package. If any development is proposed in those areas in the future, that development would need to comply with local, state, and federal requirements regarding flood area delineation and development.

However, the FEMA-mapped floodplain on the site is the location of an unpermitted fill violation that has been established by Washington County through code

enforcement procedures (see Exhibits A and B). Staff do not recommend this application package be recommended for approval until the applicant demonstrates that there is no floodplain fill violation on the property. Once the applicant has demonstrated this, approval should be considered and Conditions of Approval are proposed at the end of this report accordingly.

The proposal – including the proposed map amendments – will be consistent with this goal if the applicant demonstrates that there is no floodplain fill violation on the property, the Annexation application is recommended for approval, and Conditions of Approval are fulfilled.

9. Economics
Goal: To provide for the economic diversification and stability of the area.

Objective:

A balance should be achieved between commercial and industrial opportunities in the City.

Finding: These proposed Comprehensive Plan Map and Zone Map Amendments would convert land zoned Washington County FD-10 to City of Banks Mixed-Use and Industrial zoning designations. The land proposed for Industrial Comprehensive Plan Map and zoning designations (Proposed Parcel 2) is currently developed with an automotive repair use, which brings an active business use into the city. While there are no plans or proposals for development or redevelopment in this application package, the Mixed-Use zoning designation proposed for Proposed Parcel 1 would allow for a mix of commercial and residential uses on the property in the future. The proposed amendments are consistent with this objective.

Policies:

2. The City will continually research and study the need for industrial/commercial sites and maintain an inventory of such lands.

Finding: As stated above, the proposed map amendments would increase the overall amount of industrial land in the city by about 0.5 acres. Additionally, there is an active industrial use on the site (automotive repair). This will help maintain industrial opportunities close to NW Main Street and the center of the city. The proposed amendments are consistent with this policy.

6. The City will encourage economic development and diversification by providing sufficient zoned, buildable, and serviceable land for industrial and commercial uses.

Finding: The proposed Comprehensive Plan Map and Zone Map Amendments facilitate addition of industrial land to the city and would allow an existing industrial business to be annexed into the city as a permitted use. While no development or

redevelopment is proposed in this application package, the Mixed-Use zoning designation proposed for Proposed Parcel 1 would allow for a mix of commercial and residential uses on the property in the future. Both parcels provide opportunities close to NW Main Street and the center of the city. Therefore, the proposed amendments are consistent with this policy.

10. Housing
Goal: To increase and improve the supply of housing commensurate with the community's needs.

Policies: 4. Amendments to the comprehensive plan map and zoning map will be consistent with the City's housing needs projections (PROJECTED RESIDENTIAL USE, Table 3, page 40).

Finding: The subject site was brought into the UGB in 2011 to, for one, help meet City residential land needs. These map amendments maintain the existing Mixed-Use Comprehensive Plan Map designation for Proposed Parcel 1, while necessarily replacing County interim zoning. The update to City Mixed-Use (MU) zoning means the property can accommodate more housing should it be redeveloped in the future. Therefore, the proposed amendments are consistent with this goal. Therefore, the proposed amendments are consistent with this goal and policy

11. Public Facilities and Services
Goal: To coordinate and arrange for the provision of public facilities and services in an efficient, orderly and timely manner.

Objectives:

a. *Public water and sewer should be improved and provided to all areas with the established urban growth boundary*.

Finding: The subject parcels are currently connected to the City's existing water system and they are serviced by an on-site septic system. The parcels would be eligible to connect to the CWS sewer system upon annexation to the City and annexation to CWS' service area, as well as upon approval of the proposed PLA and map amendments. Therefore, this proposal is consistent with this goal and objective.

e. Development of the City should occur in such a way as to facilitate the provision of police, fire protection and other services.

Finding: As part of this application package, the applicant obtained signed SPLs from CWS Environmental Review, Washington County Sheriff, Banks Fire District, and the City of Banks Engineer regarding adequate services and facilities (see Exhibits F, H, and L). Therefore, this proposal is consistent with this objective.

12. Transportation
Goal: To develop and encourage a safe, convenient, and economic transportation system.

Finding: In accordance with Statewide Goal 12 and the TPR, the City of Banks has codified TPR compliance requirements in its Zoning Code in Section 151.305. That code helps ensure that proposed map amendments such as these protect and promote a safe, convenient, and economic transportation system, consistent with this City goal. See the findings for Section 151.305 later in this staff report for compliance with TPR requirements and this City goal.

14. Urbanization

Goal: To provide for the orderly and timely conversion of rural land to urban use.

Finding: The site was brought into the Banks UGB in 2011 and was designated for mixed use. Both lots currently carry Washington County interim FD-10 zoning. The proposed map amendments, along with the proposed annexation and PLA, transition the site from a holding zone and would add approximately 0.45 acres of land for industrial use (Proposed Parcel 2) and 0.21 acres of land for mixed residential and commercial use (Proposed Parcel 1) to the city. The proposed amendments are consistent with Goal 14.

Objectives:

c. The City should give priority to residential and light industrial land development.

Finding: The subject site is proposed to be designated for both industrial and mixed (residential and commercial) uses. Therefore, the map amendments are consistent with this objective.

(C) The proposed change is compatible with the surrounding existing and planned land use pattern.

Finding: The existing land uses of the surrounding properties are a mixture of residential, commercial/employment, and open space. The proposed map designations (Mixed-Use and Industrial) are compatible with these land uses and their designations. The change from the Mixed-Use Comprehensive Plan Map designation to Industrial for Proposed Parcel 2 will be consistent with nearby industrial properties, to the east and southeast, which are also designated and zoned Industrial.

Additionally, the uses on the subject site – which will be permitted and allowed to continue under the proposed map amendments – are established uses that have existed in concert with surrounding uses for many years with no known conflicts.

Therefore, this criterion is met.

(D) Public facilities (i.e. transportation system, water supply, sewer service, storm water disposal, and police and fire protection) are capable of supporting the uses permitted in the proposed zone.

Finding: Adequate public facilities and services are addressed as requirements for annexation (see findings for Section 30.02 earlier in this narrative). Granted fulfillment of Conditions of Approval attached to the Annexation application in this application package, the proposal – including the proposed map amendments – will meet this criterion.

151.305 Transportation Planning Rule Compliance.

(A) Amendments that affect transportation facilities. Amendments to the Comprehensive Plan and Zoning Code which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Banks Transportation System Plan. This shall be accomplished by one of the following:

(1) Adopting measures that demonstrate that allowed land uses are consistent with the planned function of the transportation facility;

(2) Amending the TSP or Comprehensive Plan to provide transportation facilities, improvements, or services adequate to support the proposed land uses; such amendments shall include a funding plan to ensure the facility, improvement, or service will be provided by the end of the planning period;

(3) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation;

(4) Amending the planned function, capacity or performance standards of the transportation facility; or

(5) Providing other measures as a condition of development or through a development agreement or similar funding method, specifying when such measures will be provided.

Finding: The applicant arranged for the preparation of a transportation analysis in order to confirm that the proposed map amendments would not constitute a significant effect on existing or planned transportation facilities in Banks (Exhibit V).

More specifically, the analysis was necessary for the Map Amendments for Proposed Parcel 2, where the Comprehensive Plan Map and Zone Map designations are proposed to be Industrial instead of Mixed-Use. A Mixed-Use designation was assumed in the City's latest Transportation System Plan and any of its associated modeling and analysis.[1]

The analysis that ARD Engineering prepared for the applicant followed proper procedures, comparing the number of estimated trips that could be generated by "reasonable worst case" development scenarios under Mixed-Use zoning and under Industrial zoning. The City's Transportation Engineer reviewed the analysis and concurred with its methods and findings (see Attachment A).

The City Transportation Engineer and applicant's consultant agree that there would be no significant effect associated with the proposed map amendments for Proposed Parcel 2 because, for one, the "worst case" findings were that a net reduction in trips could result from the change from a Mixed-Use designation to an Industrial designation.

Therefore, the map amendments are permissible according to this requirement and no Conditions of Approval are needed to establish mitigation measures for potential impacts of the proposed map amendments.

Staff appreciate and highlight ARD Engineering's note that their analysis only addresses the impact of the proposed map amendments and that it is still possible that a transportation impact analysis would be needed related to any future applications for development or redevelopment on these properties.

[1] As noted in the Transportation Analysis, the TPR does not require this "significant effect" analysis where proposed zoning is consistent with the existing comprehensive plan map designation and no changes to the comprehensive plan map are proposed (OAR 660-012-0060(9)). Therefore, the analysis is not necessary for Proposed Parcel 1, where Mixed-Use zoning is proposed consistent with the existing Mixed-Use Comprehensive Plan Map designation and no changes to the Comprehensive Plan Map designation are proposed.

Residential Zoning Regulations

Planning staff note: Mixed-Use Zone regulations are addressed below in order (a) to establish the permissibility of the existing uses given the proposed zoning designations; and (b) to refer to them in the next section of the staff report where PLA findings are presented.

151.035 Purpose.

(A) This subchapter regulates allowed land uses in the residential zones ("uses") and sets forth lot and development standards, including minimum dimensions, area, density, coverage, structure height, and other provisions that control the intensity, scale, and location of development. The regulations of this chapter are intended to implement the City of Banks Comprehensive Plan and the purposes of this Code, per §§ 151.001 and 151.002.

(B) The intent and purpose of each residential zone is described as follows:

(6) Mixed-Use (MU) zone is intended to provide a mix of medium density residential uses together with small to medium scale retail commercial and civic uses that emphasize a pedestrian environment.

Finding: The density requirements generally described above are specified in Section 151.037 and are summarized below in Table 2.

Table 2. Mixed-Use Zone Minimum and Maximum Density

	MU
Minimum Density (DU/Net Acre)	10.0
Maximum Density (DU/Net Acre)	16.9

With one existing residential unit on an approximately 0.21-acre site (Proposed Parcel 1, Tax Lot 2300), the density requirement cannot be met. The result is a legally non-conforming use, which both the applicant's representative and the City are aware of and acknowledge.

151.036 Permitted Land Uses in Residential Zones.

Finding: Table 3 summarizes the use permissions specified for the MU Zone in Section 151.036.

Table 3. Mixed-Use Zone Permitted Land Uses

	MU
Single-Dwelling, Detached	MPD

There is an existing single residential detached home on Proposed Parcel 1 (Tax Lot 2300). Given the requirement that this type of housing be permitted in the MU Zone only through a Master Planned Development process, the existing residential use would be a legally non-conforming use in the MU zone. Again, both the applicant's representative and the City are aware of and acknowledge this non-conforming use.

151.037 Development Standards for Residential Zones

Finding: Table 4 summarizes the dimensional standards established in Section 15.037 that would apply to the parcel in the proposed MU zone.

Table 4. Mixed-Use Zone Dimensional Standards

	MU
Minimum Lot Area - Detached SF	 - N/A
Minimum Lot Width - Detached SF	 - 40'
Minimum Lot Depth	1.5 times the minimum lot width, or 100 feet, whichever is less
Maximum Building Coverage (%) - SF Detached	 - N/A
Setback Requirements:	
Minimum Front Yard	0'
Minimum Side Yard (Accessory Structures)	0' 2' Note 5: In the MU Zone, there is no minimum side yard requirement unless abutting LDR, MDR-L or MDR-H zoning, in which case the minimum side yard requirement is 5 feet.
Minimum Street Side Yard	5'
Minimum Rear Yard (Accessory Structures)	 2'
Maximum Building Height	35'
Minimum Landscaping (percent of total site)	10

- Lot width and depth – Tax Lot 2300 (Proposed Parcel 1), where MU zoning is proposed and assuming approval of the PLA, is approximately 48 feet wide and 106 feet deep, per the Preliminary Property Line Adjustment Plan (Exhibit X, Sheet 03).

- Setbacks – Given the aerial view and dimensions on the Preliminary Plan (Exhibit X, Sheet 02), also shown as Figure 9 below, the house and shed on the lot appear to meet applicable front and rear setback standards. Because the lot does not abut LDR or MDR residential zones and is proposed to be zoned MU, no side yard setbacks are required.
- Building height – From Google Street View, the home appears to be well less than 35 feet tall.
- Landscaping – Landscaping appears to occupy at least 10 percent of the lot as seen in the aerial view on the Preliminary Plan (Exhibit X, Sheet 02) and in Figure 8 below.

Nonresidential Zoning Regulations

Planning staff note: Industrial Zone regulations are addressed below in order (a) to establish the permissibility of the existing uses given the proposed zoning designations; and (b) to refer to them in the next section of the staff report where PLA findings are presented.

151.053 General Industrial Zone; Permitted Land Uses.

(A) Uses permitted outright. No building, structure, or land shall be used, and no building or structure shall hereafter be erected, enlarged, or altered in this zone, except for the following uses:

(17) Vehicle and farm equipment repair;

Finding: The Applicant is requesting Industrial Comprehensive Plan Map and zoning designations for Tax Lot 5600 (Proposed Parcel 02). This would allow the existing use – an automotive repair business – to be annexed into the City of Banks as an outright permitted use.

151.054 Development Standards for Nonresidential Zones.

Finding: Table 5 summarizes the dimensions standards specified for the I Zone in Section 151.054.

Table 5. Industrial Zone Dimensional Standards

	I
Minimum Lot Width and Depth	None, unless setbacks are required. Note 1: If a side yard setback is required, a minimum lot width of 25 feet is required. If a rear yard setback is required, a minimum lot depth of 50 feet is required.
Setback Requirements:	
Minimum Front Yard	20’
Minimum Side Yard - Abutting residential zone - All other	 20’ None
Minimum Street Side Yard	20’
Minimum Rear Yard - Abutting residential zone - All other	 20’ 10’
Maximum Building Height	35’, or 3 stories, whichever is less
Minimum Landscaping (percent of total site)	5
Build-to line requirement	None

Pursuant to Section 151.366, Definitions: “LOT LINE, FRONT. The lot line separating the lot from the street other than an alley. In the case of a corner lot, the front lot line is the shortest lot line along a street…” Proposed Parcel 2 (Tax Lot 5600) is a corner lot and, thus, its front lot line is located along NW Cedar Canyon Road. That makes the lot line parallel to the front lot line on the north border of the lot the rear lot line, and all the other lot lines side lot lines.

- Lot width – A minimum width of 25 feet is required. Given the dimensions shown in the Preliminary Property Line Adjustment Plan (see Exhibit X, Sheet 02), also Figure 8 below, it appears the front lot line is a minimum of 33 feet. Given the irregular shape of the lot, the code definition of lot width being average width, and that the front lot line as one of the narrowest widths of the lot, the minimum width standard should be satisfied.

- Lot depth – A minimum depth of 50 feet is required. Depth is also difficult to determine given the lot’s irregular shape and no definition for determination in the code. However, whether measured as a perpendicular from the front lot line to the nearest lot line or the distance between the front lot line and rear lot line, the measurement would be greater than 50 feet.

- Front setback – A minimum front setback of 20 feet is required, which the existing building along the front lot line does not meet. However, as indicated

in the Preliminary Property Line Adjustment Plan (see Exhibit X, Sheet 03), Figure 9 below, the building is to be removed.

- Rear setback – The rear lot line abuts Washington County AF-20 zoning, so a minimum 10-foot setback applies. The canopy shown in the Preliminary Plan (Exhibit X, Sheet 03), Figure 9 below, appears set back at least 5 feet from the rear lot line but not quite 10 feet. The Preliminary Plan and Figure 9 also show parking surface and cars beyond the rear lot line and off the subject property.

- Street side setback – The building on the front lot line of the property also runs along the street side lot line. It does not meet the minimum 20 foot street side setback, but it is due to be removed. The Preliminary Plan, as seen in Figure 9, shows an entrance arch, gate, and parking extending beyond the property on the street side lot line.

- Other side setbacks – The business' primary building is located near a side lot line on the west side of the lot. This side lot line does not abut a street or a residential zone (it abuts County AF-20 zoning) and, thus, there is no minimum side yard setback requirement. The other building on the non-street side lot line is literally on the lot line. See the Preliminary Plan and Figure 9. Given that the zoning proposed for the adjacent property (Proposed Parcel 1, Tax Lot 2300) is considered residential zoning, a minimum 20-foot setback is required, which this building does not meet.

- Building height – From Google Street View, the tallest building on the lot – the business' primary building, a warehouse-style structure – does not appear to be taller than a typical two-story home. Thus, it appears to be less than 35 feet tall.

- Landscaping – Given a proposed lot area of roughly 19,800 square feet, about 990 square feet of landscaping would be needed. From the aerial view seen in Figure 9, at least a few hundred square feet of vegetation may be present. However, the amount of landscaping that is on Proposed Parcel 2 (Tax Lot 5600) is not clear. With the building on the south end of the lot being removed, that area should be an opportunity for landscaping, granted vision clearance requirements for a corner (intersection) are met.

Figure 8. Preliminary Property Line Adjustment Plan (Sheet 2)

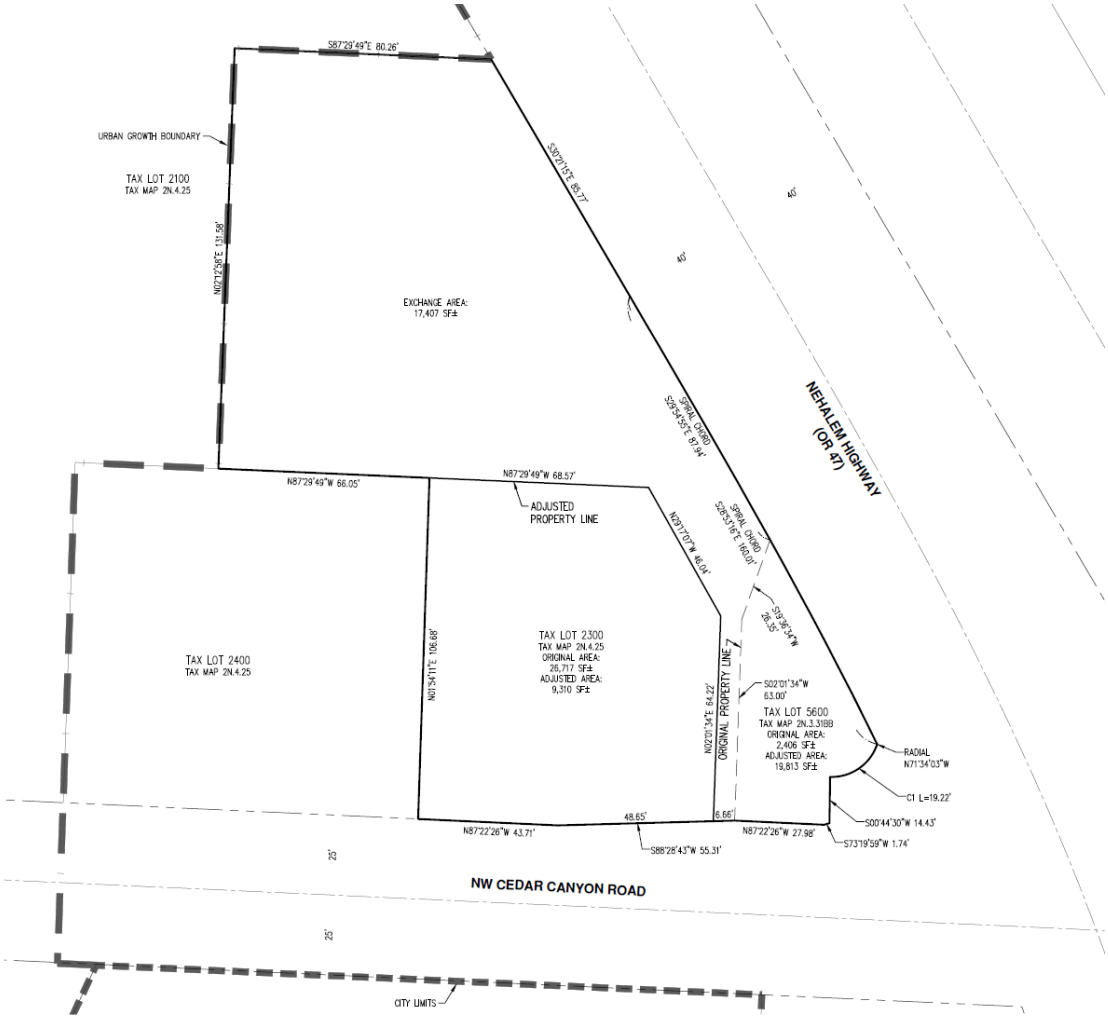


Figure 9. Preliminary Property Line Adjustment Plan (Sheet 3)

CHAPTER 152 LAND DIVISION REGULATIONS

PLA 24-02 Property Line Adjustment

152.012 Property Line Adjustment

A property line adjustment is the modification of lot boundary when no lot is created. The Planning Commission reviews applications for property line adjustments pursuant with the administrative land use decision procedure under § 151.232. Administrative Review. The application submission and approval process for property line adjustments is as follows:

(A) Submission requirements. All applications for property line adjustment shall be made on forms provided by the city and shall include information required for a administrative land use review, pursuant with § 151.232 Administrative Review. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of lands subject to any flood hazard area overlay; existing fences and walls; and any other information deemed necessary by the Planning Commission for ensuring compliance with city codes. The application shall be signed by all of the owners as appearing on the deeds of the subject lots.

Finding: The applicant submitted a Preliminary Lot Line Adjustment Plan (see Exhibit X, Sheets 01-03), two sheets of which are provided above as Figures 8 and 9. However, the plan does not identify all dimensions of the lots and existing structures, and does not identify the location and dimensions of elements like driveways and parking areas. At least one building is shown straddling the proposed adjusted lot line.

In terms of basic information about the proposed PLA, see Figures 2, 8, and 9 and Exhibits M, Q, R, V, and X in this staff report. The following provides the change in lot sizes for Tax Lot 2300 (Parcel 1), where the existing home is located, and Tax Lot 5600 (Parcel 2), where the existing business is located.

Parcel 1 (existing): 0.61 acres (26,754 SF)
Parcel 1 (proposed): approx. 0.21 acres (9,310 SF)

Parcel 2 (existing): 0.06 acres (2,406 SF)
Parcel 2 (proposed): approx. 0.45 acres (19,813 SF)

(B) Approval criteria. The Planning Commission shall approve or deny a request for a property line adjustment in writing based on all of the following criteria:

(1) Parcel creation. No additional parcel or lot is created by the lot line adjustment.

Finding: No additional parcel or lot is being created by the lot line adjustment. This criterion is met.

(2) Lot standards. All resulting lots and parcels conform to the applicable lot standards of the underlying zone, including lot area, dimensions, setbacks, and coverage. As applicable, all lots and parcels shall conform to any flood hazard area overlay requirements; and

Finding: Proposed Parcel 1 and Parcel 2 meet or appear to meet the lot standards for the proposed MU and I zones, respectively, with the following exceptions.

- Parcel 2 rear yard setback – The canopy shown near the rear lot line (Exhibit X, Sheet 03, and Figure 9) does not appear to meet the minimum 10-foot rear yard setback requirement.
- Parcel 2 side yard setback – A building is shown on the interior side yard lot line (see Exhibit X, Sheet 03, and Figure 9) where a minimum 20-foot side yard setback is required.
- Parcel 2 landscaping – Given a proposed lot area of roughly 19,800 square feet, about 990 square feet of landscaping is required. It is not clear whether this requirement is met.
- Parcel 2 uses beyond property lines – Uses shown in the Preliminary PLA Plan (Exhibit X, Sheet 03, and Figure 9) extend beyond the lot lines. An area used for parking extends beyond the rear lot line. Parking, the entrance arch, and gate extend beyond the street side lot line (OR 47).

The setback standards above that are not met can be accepted as nonconforming development. However, landscaping standards are more reasonable to meet (i.e., easier to put in plants than move buildings) and will be required as Conditions of Approval. In addition, any uses that extend beyond property lines must be brought within property lines. This issue is also addressed in Conditions of Approval at the end of this report.

While there is a formal flood hazard overlay established in the City Zoning Code and on the City Zoning Map, the code does include requirements related to flood areas. As addressed earlier in this report, the FEMA-mapped floodplain on the site (Parcel 2) is the location of an unpermitted fill violation that has been established by Washington County through code enforcement procedures (Exhibits A and B). Staff

do not recommend this application package be recommended for approval until the applicant demonstrates that there is no floodplain fill violation on the property. Once the applicant has demonstrated this, approval should be considered and Conditions of Approval are proposed at the end of this report accordingly.

If the applicant demonstrates that there is no floodplain fill violation on the property, the Annexation application is recommended for approval, and Conditions of Approval are fulfilled, this criterion will be met.

(3) Access and road authority standards. All lots and parcels conform to the standards or requirements of § 151.174(E), and all applicable road authority requirements are met. If a lot is nonconforming to any city or road authority standard, it shall not be made less conforming by the property line adjustment.

Finding: The standards from Section 151.174(E) are provided below.

> *(E) Access and maneuvering.*
>
> *(1) Groups of more than 4 off-street parking spaces shall be served by a driveway or aisle so that no backing movements or other maneuvering within a street other than an alley will be required.*
>
> *(2) Service drives or aisles to off-street parking areas shall be designed and constructed to facilitate the flow of traffic and to provide maximum safety to pedestrians and vehicular traffic on the site.*
>
> *(3) Service drives or aisles shall be clearly and permanently marked and defined through the use of bumper rails, fences, buildings, walls, paintings, or other appropriate markers and shall not be considered as parking spaces.*

Regarding Subsection (E)(1), from the Preliminary Plan, it appears there are more than four off-street parking spaces on Parcel 2 and that backing and maneuvering can be accommodated on-site.

Regarding Subsections (E)(2) and (E)(3), it is not clear how service drives and aisles are designed and delineated on Parcel 2. Conditions of Approval are proposed related to this topic.

Given that Parcel 1's driveway on NW Cedar Canyon Road and Parcel 2's driveway on OR 47 are both affected by the pending intersection project at OR 47 (Main Street)/NW Cedar Canyon Road/Banks Road, it is expected that Washington County and ODOT are coordinated on the restoration and, in the case of Parcel 2, relocation of these driveways.

In fulfilling Conditions of Approval, this criterion will be met.

(C) Recording property line adjustments.

(1) Recording. Upon the city's approval of the proposed property line adjustment, the applicant shall record the property line adjustment documents with Washington County within 60 days of approval and submit a copy of the recorded survey map to the city, to be filed with the approved application.

(2) Time limit. The city's approval of the property line adjustment expires if not recorded within 60 days of approval. The applicant shall submit a copy of the recorded property line adjustment survey map to the city within 15 days of recording and prior to any application being filed for a building permits on the reconfigured lots.

Finding: The PLA will be recorded as detailed in the standards above, which is documented in Conditions of Approval at the end of this report. Therefore, in meeting Conditions of Approval, this standard will be met.

RECOMMENDATION

Based on the above findings, City planning staff finds the proposed application package (AN 23-01 et al": AN 23-01, CPA 24-04, ZMA 24-03, and PLA 24-02) cannot be recommended for approval until the applicant demonstrates that there is no floodplain fill violation on the property as was found by the Washington County Code Compliance Hearings Officer in 2018 (Exhibits A and B).

For that reason, approval cannot be recommended at this time. However, if the applicant demonstrates through Washington County procedures that there is no floodplain fill violation, all other applicable requirements of the City's General Provisions (Annexation), Zoning Code, and Land Division Standards could be met, given fulfillment of Conditions of Approval.

At this time, staff recommends **denial** of this application request, with the following potential Conditions of Approval for consideration if the applicant demonstrates the absence of any floodplain fill violation on the property.

Conditions of Approval

General

1. Approval of these applications will not be made final until the applicant has paid any balance owed to the City for the City's cost of processing these applications. Terms regarding payment were stated on the application forms signed by the applicant.

Annexation Application (AN 23-01)

A1. The applicant is solely responsible for guaranteeing all necessary facilities and services to their site. In the case of Clean Water Services (CWS) sewer and stormwater services, this responsibility includes the applicant going through procedures for annexation of the site to the CWS service area and the applicant bearing all costs of extending facilities and services to and onto their site.

A2. Uses on the properties must be conducted in compliance with applicable local, state, and federal environmental regulations and permits.

Property Line Adjustment Application (PLA 24-02)

P1. Pursuant to Section 152.012(B)(3) and its reference to requirements in Section 151.174(E), before recording the PLA, the applicant must provide additional information to planning staff about how service drives and aisles on Proposed Parcel 2 are designed and delineated for safe and orderly operation and consistent with Section 151.174(E)(2) and (3).

P2. Pursuant to Banks Municipal Code Section 152.012(C):

(1) Upon final City approval of the PLA, the applicant must record the property line adjustment documents with Washington County within 60 days of approval and submit a copy of the recorded survey map to the City, to be filed with the approved application; and

(2) If the PLA documents are not recorded within 60 days of approval, the City's approval of the PLA expires. The applicant shall submit a copy of the recorded PLA survey map to the City within 15 days of recording, as well as prior to any application being filed for building permits on the reconfigured lots, if that should be the case.

P3. All uses and development associated with Proposed Parcel 1 and Proposed Parcel 2 must be contained within property lines. The applicant must remove encroachments into neighboring properties and right-of-way (e.g., parked vehicles and parking surfacing) prior to providing the City the recorded PLA survey map.

P4. Pursuant to Section 152.012(B)(2) and compliance with lot standards, it is not clear from submitted plans whether landscaping on Proposed Parcel 2 meets the minimum 5% landscaping for Industrial lots. For parking and circulation areas on Proposed Parcel 2 adjacent to roadways (OR 47 and NW Cedar Canyon Road), the applicant must screen these areas consistent with Section 151.176(B). Any landscaping that is used for this screening will count toward meeting the minimum landscaping standard. Before providing the City with the recorded PLA survey map, the applicant must provide evidence of the screening being installed and demonstrate that landscaping meets the 5% minimum landscaping standard.