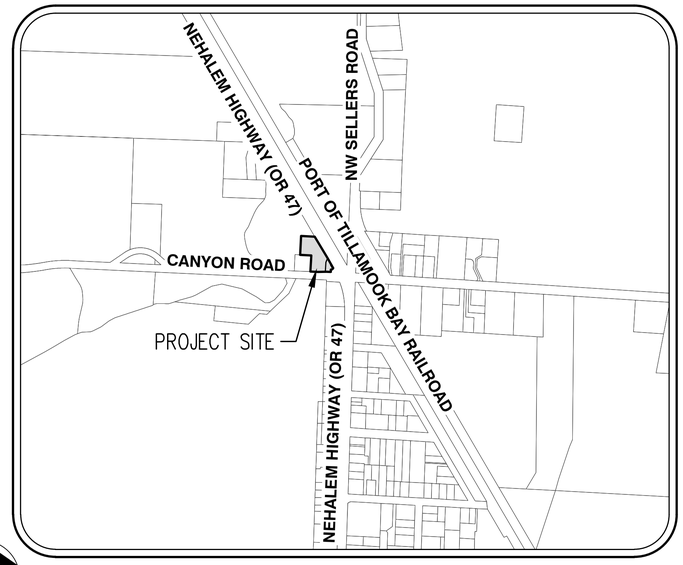
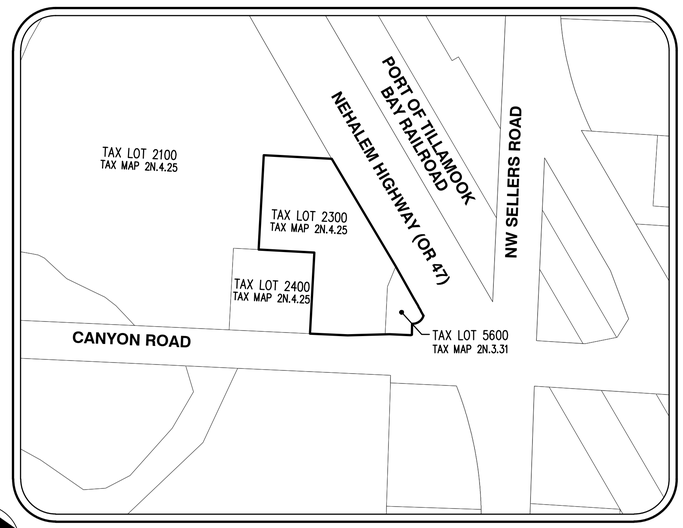
WHITE LANE

PROPERTY LINE ADJUSTMENT APPLICATION

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 2 NORTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF BANKS, WASHINGTON COUNTY, OREGON



VICINITY MAP
NOT TO SCALE



SITE MAP
NOT TO SCALE

SHEET INDEX:

CONSULTING FIRM:

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CONTACT: MICHAEL KALINA
12965 SW HERMAN ROAD, SUITE 100
TUALATIN, OR 97062
PH: 503-563-6151

APPLICANT:

DAVID DUNCAN
42585 NW CEDAR CANYON ROAD
BANKS, OR 97106

PROPERTY OWNERS

TAX LOT 2300: ROBERT R. DUNCAN

TAX LOT 5600: HOLBROOK TIMBER COMPANY, LLC.

SITE DESCRIPTION:

TAX LOT 2300, WASHINGTON COUNTY ASSESSOR'S MAP 2N.4.25, AND TAX LOT 5600, WASHINGTON COUNTY ASSESSOR'S MAP 2N.3.31, LOCATED IN THE SE 1/4 OF SECTION 25, TOWNSHIP 2 NORTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF BANKS, WASHINGTON COUNTY, OREGON.

SITE LOCATION:

42585 NW CEDAR CANYON ROAD
BANKS, OR 97106

PROJECT PURPOSE:

A PROPERTY LINE ADJUSTMENT BETWEEN TAX LOTS 2300 AND 5600.

AREA TABLE

TAX LOT 2300, TAX MAP 2N.4.25
EXISTING AREA: 26,754 SQUARE FEET±
ADJUSTED AREA: 9,293 SQUARE FEET±

TAX LOT 5600, TAX MAP 2N.3.31
EXISTING AREA: 2,406 SQUARE FEET±
ADJUSTED AREA: 19,867 SQUARE FEET±

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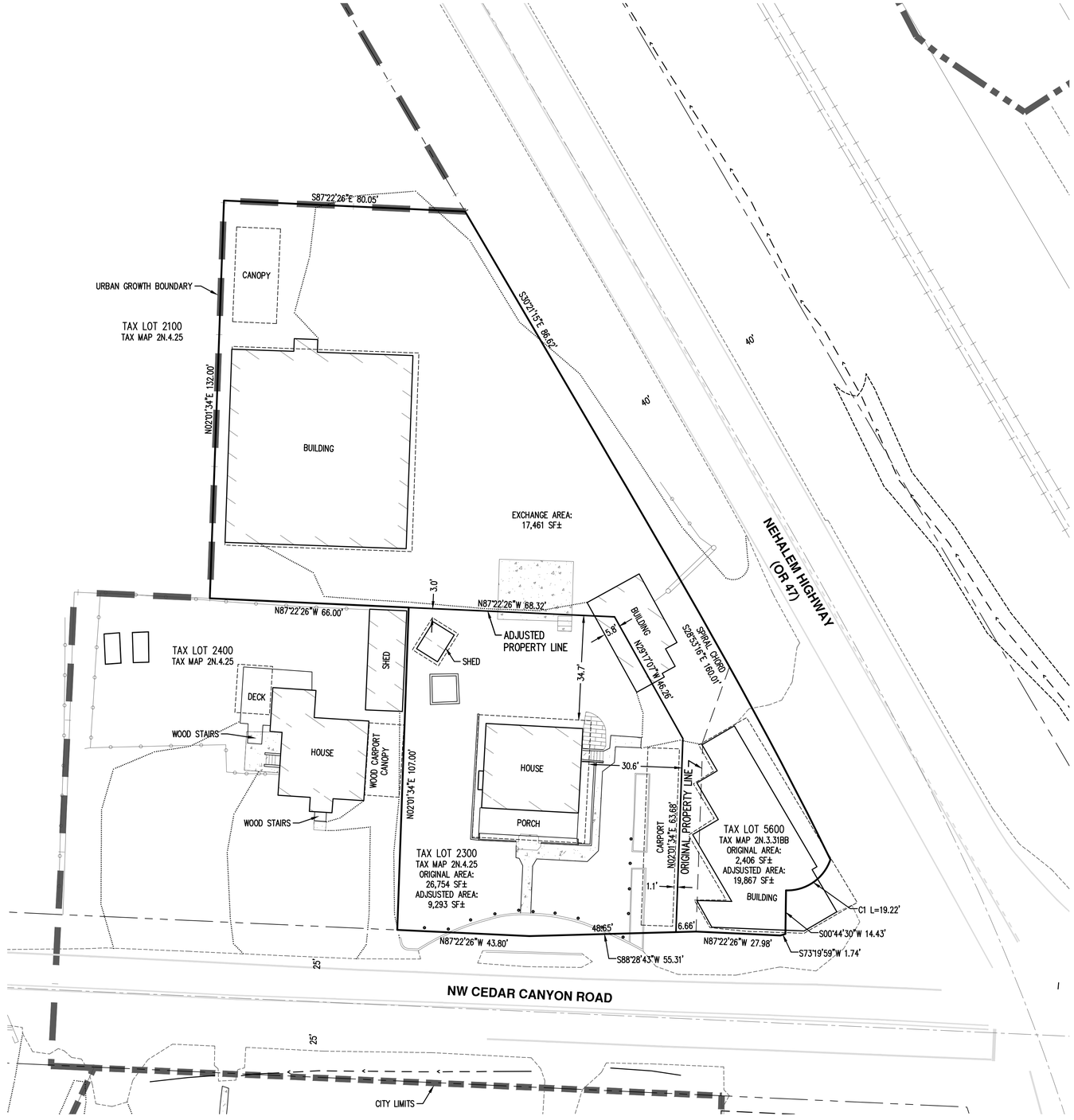
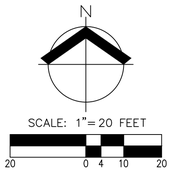
COVER SHEET
42585 NW CEDAR CANYON ROAD
BANKS, OREGON

REGISTERED PROFESSIONAL LAND SURVEYOR
PRELIMINARY
NOT FOR CONSTRUCTION
OREGON
NOV 9, 2024
CRIC NYGREN
091799PLS
RENEWS: 12/31/2026

JOB NUMBER:	11803
DATE:	10/24/2024
DESIGNED BY:	
DRAWN BY:	EN/MK
CHECKED BY:	MK

01





NOTES:

1. ALL INFORMATION SHOWN IS FROM FIELD WORK THAT WAS CONDUCTED FOR WASHINGTON COUNTY RIGHT-OF-WAY IMPROVEMENTS AT THE INTERSECTION OF NEHALEM HIGHWAY, CEDAR CANYON ROAD, BANKS ROAD, AND MAIN STREET. SAID WORK WAS CONDUCTED BETWEEN OCTOBER 2020 AND JUNE 2023.

2. AERIAL PHOTO SHOWN IS FROM A AERIAL FLIGHT CONDUCTED JULY 2020.

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PRELIMINARY PROPERTY LINE ADJUSTMENT PLAN
42585 NW CEDAR CANYON ROAD
BANKS, OREGON

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 9, 2024
CRAIG NYGREN
091799PLS
RENEWS: 12/31/2026

PRELIMINARY
NOT FOR CONSTRUCTION

JOB NUMBER:	11803
DATE:	10/24/2024
DESIGNED BY:	
DRAWN BY:	EN/MK
CHECKED BY:	MK

02

AKS DRAWING FILE: 11803 PLA-02.DWG | LAYOUT: 02 PRELIMINARY PROPERTY LINE ADJUSTMENT PLAN

AMENDED APPLICATION NARRATIVE STATEMENT FOR ZONE CHANGE & COMPREHENSIVE PLAN AMENDMENT

File No. CPA 24-04 / ZMA 24-03

ROBERT DUNCAN
HOLBROOK TIMBER CO., LLC
BANKS, OREGON

OCTOBER 25, 2024

PREPARED BY:

DAVID M. PHILLIPS
VF LAW
6000 MEADOWS RD, STE 500
LAKE OSWEGO, OR 97035

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CITY OF BANKS FILE	No. CPA 24-04 / ZMA 24-03[1]
DATE FILED	September 27, 2024
REQUEST	Zone Change to Industrial & Comprehensive Plan Amendment to Industrial
PROPERTY OWNERS	Robert R. Duncan 42585 NW Cedar Canyon Rd Banks, OR 97106 duncan_09@msn.com Holbrook Timber Co., LLC[2] 19700 NW Morgan Rd. Portland, OR 97231 david@duncanlawpdx.com
APPLICANT'S REPRESENTATIVE	David M. Phillips VF Law 6000 Meadows Rd., Ste. 500 Lake Oswego, Oregon 97035 Phone: 503.684.4111 Email: David.phillips@vf-law.com
PROPERTY ADDRESSES	14025 NW Main St, Banks, OR 97106 42585 NW Cedar Canyon Rd, Banks, OR 97106
PROPERTY TAX IDS	T2N, R33, Sec. 1BB, Tax Lot 5600 T2N, R42, Sec. 500, Tax Lot 2300
PROPERTY SITE AREA	Approximately 0.73 acres (combined)
ZONING	Washington County FD-10 (Future Development 10-acre)
COMPREHENSIVE PLAN DESIGNATION	City of Banks MU (Mixed Use)
CRITERIA	§§ 151.300-306
APPLICATION FEE DEPOSIT:	$ 2,700

[1] This application is related to a concurrently pending annexation application, File No. AN 24-01, and a concurrently pending property line adjustment application, File No. PLA 24-02.
[2] Holbrook Timber Co., LLC, acting through David Duncan, is the applicant.

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TABLE OF CONTENTS

EXHIBITS

SUMMARY OF CHANGES IN AMENDED APPLICATION

Applicant originally filed this application on September 27, 2024. The original application sought only amendments of the City's Zoning Map and Comprehensive Plan Map to reflect a rezone of a parcel perspective zoned as Mixed Use to Industrial. After consultation with planning staff, applicant files this amended narrative statement to resolve the issues raised in the incompleteness letter dated October 10,

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2024. Accordingly, this amended narrative statement provides support for the following map amendments: (1) amending the Comprehensive Plan Map to designate Parcel 2 as Industrial; (2) amending the Zoning Map to apply the new Comprehensive Plan Map designation (Industrial) to Parcel 2; and (3) amending the Zoning Map to apply the existing Comprehensive Plan Map designation (Mixed Use) to Parcel 1.

I. PROPOSAL SUMMARY

A. General Information

VF Law represents Robert Duncan and Holbrook Timber Company, which is owned by David Duncan, in several concurrently filed land use applications pending before the City of Banks with the ultimate goal of annexing two properties into the City Limits. The instant application seeks to change the zoning designation of two subject properties. To accomplish this, applicant seeks to amend the Comprehensive Plan Map designation for one property and amend the Zoning Map designations for both properties. These requests are summarized in Table 1, *infra*.

Table 1	*Parcel 1*[3]	*Parcel 2*
Zoning Map, current	No designation	No designation
Zoning Map, proposed	Mixed Use	Industrial
Comp. Plan Map, current	Mixed Use	Mixed Use
Comp. Plan Map, proposed	Mixed Use (no amendment)	Industrial

This application is submitted concurrently with an application for a property line adjustment that will place all industrial land uses onto one of the two parcels-at-issue and the single-family residence onto its own parcel. The applicant has also filed a pending application to annex the properties from Washington County into the City, which annexation will be facilitated by the instant application.

B. Nature of Application

Presently, the two subject properties are inside the UGB but outside of the City's limits. Because the properties are not under the City's jurisdiction, the City's Zoning Map does not apply a zoning designation to them.[4] When the subject properties were brought into the UGB, the City prospectively identified them as receiving a Mixed-Use ("MU") zoning designation by so indicating on the City's Comprehensive Plan Map.[5] For one of the parcels resulting from the

[3] References to Parcel 1 and Parcel 2 refer to the parcels of land that will result from the currently pending application for a property line adjustment.
[4] Exhibit 8 is an excerpt of the City's current Zoning Map centered on the two properties involved in this application. The two involved properties are identified with a red border, and the yellow property line reflects the new shared property line proposed by the concurrently filed PLA application.
[5] Exhibit 10 is an excerpt of the City's current Comprehensive Plan Map centered on the two properties involved in this application. The two involved properties are identified with a red border, and the yellow property line reflects the new shared property line proposed by the concurrently filed PLA application.

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concurrent PLA application, this MU designation must be changed to an Industrial ("I") designation through an amendment to the Comprehensive Plan Map.[6] Concurrent with their annexation, the City's Zoning Map must be also amended to apply a zoning designations to the two properties. *See* Banks Municipal Code ("BMC") § 151.025 (directing the City to apply BMC §§ 151.300 – 151.306, which establishes requirements for zoning and map amendments, when applying an initial designation to newly annexed property). For both parcels, the designation shown on the Comprehensive Plan Map, as amended, should be applied unchanged.[7]

C. Factual Background

The subject properties are two parcels of land. The first parcel of land currently contains both a residential dwelling and a light industrial business, an automotive repair business (now-TL 2300). The second parcel of land contains a small commercial building (now-TL 5600). Through a concurrent property line adjustment ("PLA"), one parcel, identified as "**Parcel 1**," will contain only the existing single-family residence, and the second parcel, identified as "**Parcel 2**," will contain only the existing automotive repair business. *See, e.g.*, Ex. 8 (showing the approximate configuration of both parcels after approval of the PLA). Because the reconfiguration of the two parcels is necessary to isolate the existing residential and industrial uses on their own lots, any reference to Parcel 1 or Parcel 2 refers to the post-PLA lot configuration.

Now-Tax Lot 2300 is a 0.66–acre parcel with both a current residential use and a light industrial use. The southern half of TL 2300 is improved with a single-family residence with driveway access to NW Cedar Canyon Road. The residence was built in the 1921. The northern half of TL 2300 is an established automotive repair business with driveway access to State Highway 47. An automative repair business—or other similar light industrial use—has occurred on the site continuously since the shop building was built in the 1980s.

Now-Tax Lot 5600 is a 0.06-acre parcel on which a commercial building, formerly used as a service station, is located; the building is approximately 1,891 square feet. It is anticipated that the existing building on TL 5600 will be removed.

Presently, although both properties are within the City's UGB, they are outside of the City's limits and in unincorporated Washington County. The properties are currently zoned Future Development-10 ("FD-10"), and they were prospectively designated on the City's Comprehensive Plan Map as Mixed Use ("MU"). The MU designation is appropriate for Parcel 1, which will host the single-family residence. That designation is not, however, appropriate for Parcel 2, which will host the automotive repair business. Applicant and the City agree that

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[6] Exhibit 11, which follows the same conventions as Exhibit 10, represents applicant's proposed amendment to the City's Comprehensive Plan Map. The zoning designation of Parcel 2 is changed from MU to I while the zoning designation for Parcel 1 is unchanged.

[7] Exhibit 9, which follows the same conventions as Exhibit 8, represents applicant's proposed amendments to the City's Zoning Map. The MU designation should be applied to Parcel 1, and the I designation should be applied to Parcel 2.

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Industrial ("I") is the most suitable zone and designation to permit this longstanding business to continue. *See* BMC § 151.053(A)(17) (permitting outright an automotive repair business in the Industrial zone).

No new development is sought or proposed on either Parcel 1 or Parcel 2. Instead, the map amendments sought by the application are intended to bring the two parcels into compliance with the City's zoning ordinance, which compliance is necessary for the two properties to annex into the City.

The two properties were brought into the City's urban growth boundary years ago and was nominally given the MU designation at that time. *See generally* Banks Ord. No. 2011-04-01 (expanding the UGB to include the subject properties and nominally designating them MU). No change of use or additional development has occurred since that time. This application, in a sense, seeks to unwind this prospective designation of Parcel 2 and instead have the City designate the property as Industrial. This application narrative lays out the reasons that this zoning and designation is appropriate, that the property complies with the requirements to be zoned and designated as Industrial, and that the parcel is located suitably to be zoned and designated as Industrial.

A. Access: Access to Tax Lot 2300 via NW Main Street / OR-47 and NW Cedar Canyon Road.

B. Topography: Tax Lot 2300 is generally flat. There is a small area of wetland bordering the West Fork Dairy Creek on the western side of the property, an area that is currently vacant and that Applicant does not plan to build anything on.

C. Natural Features: West Fork Dairy Creek is the only notable natural feature on or near Tax Lot 2300.

D. Natural Hazards: Tax Lot 2300 does not contain any identified landslide hazard areas. A small part of the property is within a floodplain and wetland.

E. Well/Septic: Tax Lot 2300 is connected to the municipal water supply. The residence and auto shop connect to use an on-site septic system. Connection to the City's sanitary sewer system should be possible after annexation.

F. Surrounding Land Use: Tax Lot 2300 is on the edge of the City of Banks to the south and east. The parcel immediately west of TL 2300 contains a single-family residence. The properties south and east of the subject properties are designated Industrial. *See* City Zoning Map (Jan. 26, 2022); Banks Ord. No. 2024-08-01 (amending Comprehensive Plan Map and Zoning Map to designate as Industrial the parcel south of NW Cedar Canyon Rd). The land to the north and west is generally used for agriculture.

G. Wildlife Habitat: Tax Lot 2300 does not contain any significant fish, riparian, bird, or

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big game habitat areas. The area around West Fork Dairy Creek is not identified on Washington County's maps as containing any wildlife habitat.

D. Zoning History of Subject Properties

The City brought the subject properties into the UGB in 2011 pursuant to Ordinance No. 2011-04-01 ("UGB Ord."). During the process leading up to the UGB expansion, the City identified a need for 12 acres of commercial land and 81.55 acres of Industrial land. *See* UGB Ord., Ex. A at 21. The subject properties were included in the land necessary to satisfy the identified commercial needs of the City. *See* UGB Ord., Ex. A at 30 ("The three small tax lots located in the triangle of land between Cedar Canyon Road and OR 47[.]"); *see also* UGB Ord., Ex. A at Fig. 11. The City gave these reasons for the designation "the interest of providing commercial land that would promote compact growth, be located in a visible spot from a marketing sense, and be logical in relation to the transportation system[.]" *Id.* Ultimately, however, the City designated these properties as MU without offering a property-specific explanation. *See* UGB Ord., Ex. A at Figs. 12, 13.

In a similar vein, a significant period in the planning studies leading up the City's UGB expansion, the subject properties were marked as intended for industrial use. In June 2009, the Preliminary Preferred Alternative identified the subject properties as subject to designation as either commercial or industrial. *See* UGB Ord., App'x A at 4; *id.* at Attach. 3. Beginning in December 2009, the alternative maps presented to the City showed the subject properties are recommended for an Industrial designation. *See, e.g.*, *id.* at Attachs. 5–9. Once again, the report to the City did not explain why an MU designation was ultimately selected over an Industrial or Commercial designation.

II. CITY OF BANKS ZONING CODE.

> AMENDMENTS TO COMPREHENSIVE PLAN MAP, ZONING MAP OR CODE.
>
> § 151.300 PURPOSE.
> The purpose of this subchapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and Zoning Map. Amendments may be necessary from time to time to reflect changing community conditions, to correct mistakes, or to address changes in the law.
>
> § 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.

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§ 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.

Applicant's Response: This application seeks amendments to the Comprehensive Plan Map and the Zoning Map. The BMC identifies the applicable procedure as a Type IV Legislative action. *See* BMC § 151.302(B) (requiring application of Type IV procedures where an amendment affects more than one parcel). This application will be evaluated as a quasi-judicial application. *See, e.g.*, *Strawberry Hill 4 Wheelers v. Bd. of Comm'rs*, 287 Or 591 (1979).

§ 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;

Applicant's Response: As discussed in detail in Section IV *infra*, the application is consistent with the Statewide Planning Goals (and relevant Oregon Administrative Rules).

This code provision is not an approval standard because it only requires that factors be "considered." LUBA has often stated that a local code provision requiring that "consideration . . . be given to [certain specified] factors" does not establish mandatory approval standards for local government decisions, but rather merely lists "factors" which the local government must consider. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993); *Thormahlen v. City of Ashland*, 20 Or LUBA 218 (1990) (Where the local code states that required determinations regarding the compatibility and impacts of proposed developments are to be based on *consideration* of certain listed factors, the factors are not themselves approval standards, and no one factor is conclusive.).

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Also, the City Council must be mindful as to what issues may form the basis of an approval or a denial. For example, in a related context, LUBA has found that a city's decision violates ORS § 227.173(1) where the city relies on "factors" or "considerations" unconnected to approval standards in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000). This case does not involve the issuance of a "permit" per se, but the same general principle applies to PAPAs and zone changes: the decision must be based on standards and criteria, and cannot be approved or denied on factors that are unrelated to applicable Code standards.

The applicable statewide planning goals and guidelines, comprehensive plan policies, and implementing ordinances can be found in the narrative below.

> *Continuing § 151.303*:
> (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);

Applicant's Response: This application does not propose any text amendments to the Comprehensive Plan at this time. As discussed in detail in Section IIII *infra*, this application is consistent with the relevant Comprehensive Plan goals, objectives, and policies.

> *Continuing § 151.303*:
> (C) The proposed change is compatible with the surrounding existing and planned land use pattern.

Applicant's Response: This application—along with the concurrent annexation applicant and PLA application—will resolve the inconsistent uses occurring on now-TL 2300. Currently, both a single-family residence and an automotive repair business are coexisting on a single parcel. Approval of applicant's combined applications will result in a parcel zoned MU with a single-family residence (Parcel 1) and another parcel zoned I with the automotive repair business (Parcel 2). Both uses, although occurring on the same legal lot, have been in place and in use for many years—they are, by definition, "compatible with the surrounding . . . land use pattern[.]" The requested amendment to the Comprehensive Plan Map merely recognizes this longstanding reality.

The existing automotive repair business fits most naturally in the Industrial zone and designation because it is a use permitted outright. BMC § 151.053(A)(17). Moreover, there are several other parcels designated Industrial adjacent or nearly adjacent to the business. Indeed, the property immediately south of the subject properties was recently rezoned Industrial. *See* City Ord. No. 2024-08-01. There are also other industrial uses nearby, including the school bus depot and log yard along Commerce St. *See* City of Banks Zoning Map. The City has generally aligned its industrial zone along NW Commerce Street, as is plainly visible on the Zoning Map,

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and rezoning Parcel 2 to Industrial extends the line of industrial properties. As a result, this would not constitute impermissible spot zoning, and follows the pattern of land use that has already been established both on and around this parcel.

The presence of the two properties designated MU to the south (Parcel 1 and TL 2400) does not provide a reason to deny the Industrial designation. The City's zoning map is replete with areas where properties zoned for residential uses, including MU, are immediately adjacent to properties zoned Industrial. For example, in September 2024, the City approved Comprehensive Plan Map and Zoning Map amendments for the Sunset View at West Banks Master Planned Development. *See generally* City Ord. 2024-08-01. In so doing, the City rezoned MDR-High property adjacent to MU properties as Industrial, finding no difficulty concluding that surrounding compatibility standard met.

The proposed amendments affecting Parcel 1 are likewise compatible with the extant uses and planned land use pattern. When the City brought Parcel 1 into the UGB, it prospectively designated it MU. The application seeks only to have that designation applied through an amendment to the Zoning Map.

> *Continuing § 151.303*:
> (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.

Applicant's Response: Applicant meets this standard.

- Transportation system: The parcel is served by roads on two sides.
- Water supply: The parcel receives municipal water from the City of Banks.
- Sewer service: The parcel is serviced by an on-site septic system, although it would be eligible to connect the municipal sewer system following annexation.
- Storm water disposal: Excess storm water that falls onto the parcel drains into the adjacent wetland and Dairy Creek.
- Fire protection: See the Banks Fire District service provider letter, attached at Exhibit 3.[8]
- Police protection: See the Washington County Sheriff's Office service provider letter, attached at Exhibit 4.[9]

[8] Exhibit 3 was obtained as part of the concurrent annexation application.
[9] Exhibit 4 was obtained as part of the concurrent annexation application.

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§ 151.304 RECORD OF AMENDMENTS.

The City Recorder shall maintain records of amendments to the text of this Code and the Zoning Map in a format convenient for public use. In the case of a map amendment, the map shall be made part of the ordinance.

Applicant's Response: This is a directive to City planning staff, and a response from the applicant is not required.

§ 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.

(B) Exceptions. Amendments to the Comprehensive Plan or land use regulations with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the

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Transportation System Plan may be approved when all of the following criteria are met:

(1) The amendment does not include property located in an interchange area, as defined under applicable law;

(2) The currently planned facilities, improvements or services are not adequate to achieve the standard;

(3) Development resulting from the amendment will, at a minimum, mitigates the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development; and

(4) The road authority provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility.

Applicant's Response: Applicant has consulted with the City's Transportation Engineer regarding transportation-related issues raised by this application. The analysis required by BMC § 151.305(A) is only implicated where a proposed amendment would "significantly affect a transportation facility[.]" *Id.* Applicant proposes no new development, so the expected future use of Parcel 2 (i.e., the continued operation of the automotive repair shop) should not cause an increased demand on a transportation facility. But even if the operation of an automotive repair business is considered a new use, it would not be expected to have a significant effect. Applicant has retained Michael Ard, PE, to conduct a transportation analysis of the continuation of the existing use of Parcel 2 as well as possible uses allowed in the Industrial zone and, for Parcel 1, an analysis of the possible uses allowed in the MU zone.

§ 151.306 LIMITATION ON REAPPLICATIONS.

No application of a property owner for an amendment to the text of this chapter or to a zone boundary shall be considered by the City Council within the 1-year period immediately following a previous denial of the request, except the City Council may permit a new application if in the opinion of the City Council new evidence or a change of circumstances warrant it.

Applicant's Response: This is not a reapplication. No prior application has been filed with the City of Banks seeking an amendment and regarding this parcel.

§ 151.036 PERMITTED LAND USES IN RESIDENTIAL ZONES.

The land uses listed in Table 2.2-A as "P" are permitted in the residential zones, subject to the provisions of this Code. Uses listed as "S" are permitted subject to the specific standards in §§ 151.075

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through 151.085. Land uses designated with a "CU" require conditional use approval prior to development or a change in use, in accordance with §§ 151.270 through 151.273. Only land uses which are specifically listed as "P", "S" or "CU" in Table 2.2-A and land uses which are approved as "similar" to those listed in this table may be permitted. [Table omitted.]

Applicant's Response: Parcel 1: The current detached single dwelling that will end up on Parcel 1 is listed as "[p]ermitted, subject to master planned development approval in §§ 151.335 through 151.344." Because the home on Parcel 1 was built in 1921, applicant does not need to seek master planned development approval for the City to approve the requested PLA. The use of Parcel 1 may continue as a nonconforming use in the MU zone.

§ 151.053 GENERAL INDUSTRIAL ZONE; PERMITTED LAND USES.

The land uses listed here are permitted in the I Zone as shown, subject to the provisions of this chapter. Only land uses that are specifically listed, and land uses that are approved as "similar" to those listed per § 151.006(A) may be permitted.

(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;

* * *

Applicant's Response: Parcel 2: the applicant intends to continue the current use of Parcel 2 as an automotive repair business, which use is allowed outright under this provision.

III. CITY OF BANKS COMPREHENSIVE PLAN

Determining whether any given Comprehensive Plan policy is an "applicable" approval standard can present vexing questions for practitioners. In some cases, the plan itself will provide a "roadmap" by expressly stating which, if any, of its policies are applicable approval standards. For example, if the comprehensive plan specifies that a particular plan policy is itself an implementing measure, LUBA will conclude that policy applies as an approval criterion for land use decisions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990). On the other hand, where the comprehensive plan emphasizes that plan policies are intended to *guide* development actions and decisions, and that the plan must be implemented through the local code to have effect, such plan policies are not approval standards for individual conditional use decisions. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991). Similarly, statements from introductory findings to a comprehensive plan chapter are not plan policies or approval standards for land use

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decisions. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991). Comprehensive plan policies which the plan states are specifically implemented through particular sections of the local code do not constitute independent approval standards for land use actions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990). Where the county code explicitly requires that a nonfarm conditional use in an exclusive farm use zone "satisfy" applicable plan goals and policies, and the county plan provides that its goals and policies shall "direct future decisions on land use actions," the plan agriculture goals and policies are applicable to approval of the nonfarm conditional use. *Rowan v. Clackamas County*, 19 Or LUBA 163 (1990).

Often, however, no roadmap is provided. In those cases, the key is to look at the nature of the wording of the plan provision at issue. LUBA has often held that some plan policies in the comprehensive plan will constitute mandatory approval criteria applicable to individual land use decisions, depending on their context and how they are worded. *See Stephan v. Yamhill County*, 21 Or LUBA 19 (1991); *Von Lubken v. Hood River Count*y, 19 Or LUBA 404 (1990). For example, where a comprehensive plan provision is worded in mandatory language – such as when the word "shall" is used – and is applicable to the type of land use request being sought, then LUBA will find the standard to be a mandatory approval standard. *Compare Axon v. City of Lake Oswego*, 20 Or LUBA 108 (1990) (Comp plan policy that states that "services shall be available or committed prior to approval of development" is a mandatory approval standard); *Friends of Hood River v. City of Hood River*, 67 Or LUBA (2013), *aff'd in part, rev'd in part on other grounds,* 236 Or App 80 (2014). Conversely, use of aspirational language such as "encourage" "promote," or statements to the effect that certain things are "desirable" will generally not be found to be mandatory approval standards. *Id.; Neuschwander v. City of Ashland*, 20 Or LUBA 144 (1990); *Citizens for Responsible Growth v. City of Seaside, 23 Or LUBA 100* (1992), *aff'd w/o op*. 114 Or App 233 (1993).

In some cases, an otherwise applicable plan policy will be fully implemented by the zoning code. Where the text of the comprehensive plan supports a conclusion that a city's land use regulations fully implement the comprehensive plan and displace the comprehensive plan entirely as a potential source of approval criteria, demonstrating that a permit application complies with the city's land use regulations is sufficient to establish consistency/compliance with the comprehensive plan. *Save Our Skyline v. City of Bend*, 48 Or LUBA 211-12; *Murphy v. City of Ashland*, 19 Or LUBA 182, 199 (1990); *Miller v. City of Ashland*, 17 Or LUBA 147, 169 (1988); *Durig v. Washington County*, 35 Or LUBA 196, 202 (1998) (explicit supporting language is required to establish that land use regulations entirely displace the comprehensive plan as a source of potentially applicable approval criteria for land use decisions). However, a local government errs by finding that its acknowledged zoning ordinance fully implements the acknowledged comprehensive plan, thus making it unnecessary to apply comprehensive plan provisions directly to an application for permit approval, where the acknowledged zoning ordinance specifically requires that the application for permit approval must demonstrate compliance with the acknowledged comprehensive plan and the county does not identify any zoning ordinance provisions that implement applicable comprehensive plan policies. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

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7. Areas Subject to Natural Disasters and Hazards

Goal: To protect life and property from natural disasters and hazards.

Objective: Development in areas of known natural disasters and hazards should exclude any facilities that are sensitive to this type of hazard.

Policies: The City will prohibit development or land form alterations in areas with natural development limitations except upon showing that design or engineering techniques can eliminate or mitigate any public harm or adverse effects to surrounding persons or properties. Consideration shall be given to such natural hazards as:

Slopes exceeding 25%
Severe soil restrictions
Areas within the 100-year flood plain (which will be considered open spaces)
Seasonally high water table with 24 inches of the surface
Land subject to slumping, movement, and geological fault
Natural drainageways

Applicant's Response: This application is consistent with this part of the Comprehensive Plan. The City's policy here is to "prohibit development or land form alterations" in hazard areas. But this application does not propose any development—the automotive business has and will continue to operate. Further, no development exists in areas identified as "natural hazards" under this policy. *Cf.* Ex. 5 (discusses, in the context of a natural resources assessment, the surrounding hydrology). In any event, the applicant is aware that a small part of Tax Lot 2300 is located within an area subject to flooding. A site assessment report and wetland determination prepared by licensed engineer John Van Staveren is attached as Exhibit 6 and illustrates precisely the area that is rendered undevelopable by this Comprehensive Plan policy.

9. Economics

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

Objective:
a. A balance should be achieved between commercial and

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industrial opportunities in the City.

b. Businesses and industries with a sustained growth potential should be encouraged.
c. To maximize the utilization of local manpower as job opportunities increase.

Policies:

1. The City, through cooperation and a close working relationship with the public and private sectors, will encourage new employment opportunities.
2. The City will continually research and study the need for industrial/commercial sites and maintain an inventory of such lands.
3. The City will work with private institutions, citizens, and other governmental agencies to develop and implement a coordinated economic development plan which maximizes the public benefit.
4. The City will protect existing and planned industrial and commercial areas from encroachment by incompatible uses.
5. The City will coordinate with the Oregon Department of Economic Development in seeking new industrial uses.
6. The City will encourage economic development and diversification by providing sufficient zoned, buildable, and serviceable land for industrial and commercial uses.

Applicant's Response: All of these policies are directives to City staff and do not bind the applicant. The applicant notes that this Comprehensive Plan provision as a whole appears oriented around developing new uses, and creating and maintaining new economic opportunities rather than bringing existing businesses into the City.

Transportation

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

Objectives:

a. City street improvements should be a priority and a better maintenance program should be developed.
b. Development should occur in such a manner as to encourage and facilitate pedestrian movements.
c. Alternative modes of transportation, such as public transit and bicycles, should be encouraged and promoted.

Policies:

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1. The City will promote a balanced, safe, and efficient transportation system. In evaluating parts of the system, the City will support proposals which:
    - Protect the quality of neighborhoods and the community
    - Provide for adequate street capacity optimum efficiency and effectiveness

Applicant's Response: This policy provides a directive to City staff and does not constitute an approval criterion for this application.

Transportation policies continued:

2. The City will require uses fronting on arterials to limit the points of access to minimize conflicts between local and through traffic consistent with the traffic needs of the proposed use and physical features of the subject site.

Applicant's Response: Parcel 1 does not have frontage on an arterial, so this criterion does not apply. Parcel 2 does not have defined driveways to provide access to and from the arterial it fronts (Highway 47). The applicant is developing a plan to direct all traffic in and out of the site through a single point of access. Once that plan is implemented, the site will comply with this provision. This can be made a condition of approval.

Transportation policies continued:

3. The City will promote adequate transportation linkages between residential, commercial and industrial use areas. This will be done through street improvements, new streets, marked turning lanes, warning signs, and/or speed reduction. Problems identified in the plan are of first priority.
4. The City will support efforts to secure a regional mass transit system.
5. The City will maintain a street classification system in accordance with the State of Oregon:

    Arterial: Wilson River Highway (No. 6), Nehalem State Highway (No. 47)

    Local Roads: Banks Road, Sellers Road, all other roads within city limits.
6. New developments will be encouraged to provide street trees and landscaping to achieve a pleasant visual effect.
7. The City will promote development of a bicycle and pedestrian system to link residential areas to other land uses, especially parks, open spaces, schools, the downtown core area and commercial areas.
8. New land developments will be designed to reduce the

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percentage of land devoted to streets.

9. The City will coordinate with the Oregon Department of Transportation in the implementation of the Six Year Highway Improvement Program, consistent with local needs and with highway compatibility guidelines.
10. Operation, maintenance, repair or preservation of existing public road and highway facilities, as well as improvements within the existing right-of-way are consistent with the Comprehensive Plan and permitted in all zoning designations.

Applicant's Response: These policies provide directives to City staff or only apply to new development, and do not constitute approval criteria for this application.

Urbanization

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

Objectives:

a. An urban growth boundary should be established and updated to coincide with various stages of growth.
b. An urban environment should be promoted which contributes to functional efficiency and visual attractiveness in both public and private properties, and which conveys a sense of community.
c. The City should give priority to residential and light industrial land development.
d. A balance between commercial and light industrial land use is desirable.

Policies:

1. The City has established an urban growth boundary; growth and development will be directed and encouraged within this area on developable lands (as shown and defined in the plan element section). Development will be consistent with the capacity and capability of public services.

Applicant's Response: While this is not an approval criterion, the applicant notes that the subject properties have been in the City of Banks' urban growth boundary for some time, and that its land is shown as developable on the City's published map. *See generally* City Ord. No. 2011-04-01 (expanding UGB to include subject properties).

Urbanization policies continued:

2. The urban growth boundary will be updated and expanded when the vacant developable land within the boundary is utilized or

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committed.

Applicant's Response: This is a directive to City staff and does not constitute an approval criterion.

Urbanization policies continued:

3. Upon request, the City will annex lands within the urban growth boundary when it is demonstrated that such annexations are consistent with the Comprehensive Plan policies, are within the capabilities of the City's services and facilities, and abut the city limits.

Applicant's Response: The applicant has prepared a separate annexation request, and the relevant Comprehensive Plan policies are discussed therein. The properties meet these criteria.

Urbanization policies continued:

4. The City will establish a zone of mutual concern within the urban growth boundary. Proposals within this area will be coordinated with Washington County.
5. The City will enter into a formal agreement with the County on how to coordinate issues within the urban growth area. The agreement shall include, but not be limited to: zoning, subdivisions, roads, service conditional uses, variance, major partitions, and annexations (see Implementation, pg. 60)
6. The City will recognize two types of urban growth areas within the urban growth boundary: Immediate Growth Areas within the Urban Growth Boundary served by water and sanitary sewers; or specifically identified by the City of Banks as intended for urban development purposes within the immediate future. Immediate Growth Areas are intended to include areas defined by the State LCDC as Urban Land.
7. Future urban Areas are lands between the Immediate Growth Boundary and the Urban Growth Boundary. Future Urban Areas are intended to include areas defined by the State LCDC as Urban land. Areas in this land use category are to maintain their rural or agricultural character until such land is required for urban use and has been redesignated "Immediate Urban".
   The 3 acres located behind Oak Village Shopping Center have been designated Future Urban because no immediate need for development has been established and no specific development proposals have been submitted.
8. Conversion of this area from Future Urban to Immediate Urban will be considered on a determination that a need exists for additional immediate urban land and that adequate public

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Phone: 503-684-4111
Fax: 503-598-7798

facilities and services are available to the area.

Applicant's Response: Each of the above provisions is a directive to City staff and do not constitute approval criteria with regard to this application.

> *Urbanization policies continued*:
> 9. Zone changes, subdivisions. and other similar administrative action which would allow urban-intensity development in the Future Urban Area will be preceded by a Comprehensive Plan change to designate the site in question as "Immediate Urban".

Applicant's Response: Applicant instead proposes applying the MU designation to Parcel 1 and the I designation to Parcel 2 for the reasons discussed *supra*. The "Immediate Urban" district is interim, and it is intended to designate sites for development. Because this property is already developed, the City should skip the step of designating it "Immediate Urban" and instead move ahead to its long-term designation of Industrial. Moreover, Washington County has zoned the subject properties FD-10.

IV. STATEWIDE PLANNING GOALS

Citizen Involvement (Goal 1)

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

Finding: The intent of Goal 1 is to ensure that citizens have meaningful opportunities to participate in land use planning decisions. As stated in the Goal, the purpose is: "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Goal 1 has five stated objectives that are relevant to a zone change:

> *Citizen Involvement -- To provide for widespread citizen involvement.*
>
> *Communication -- To assure effective two-way communication with citizens.*
>
> *Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.*
>
> *Technical Information -- To assure that technical information is available in an understandable form.*

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> *Feedback Mechanisms – To assure that citizens will receive a response from policy-makers.*

Citizen involvement is always applicable to both quasi-judicial and legislative land use applications. The City's acknowledged Comprehensive Plan and Code include citizen involvement procedures with which the review of this application will comply. This process allows for citizens to communicate their input into this application review conducted by the City at public hearings or by submitting written comments. Applicant is hosting a neighborhood meeting and has provided notice of that meeting to all nearby land owners as required by the BMC. This process complies with Goal 1.

Land Use Planning (Goal 2)

> To establish a land use planning process and policy framework as a basis for all decision and actions related to use.

Finding: Goal 2 requires all incorporated cities to establish and maintain comprehensive land use plans and implementing ordinances. It also requires cities to coordinate with other affected government entities in legislative land use processes. The purpose of Goal 2 is:

> 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.

The City's Code and Comprehensive Plan are acknowledged to be in compliance with statewide planning goals and guidelines. Goal 2's coordination obligation will be met because the applicant and City shall seek public comment from any affected unit of government, to the extent these comments have not already been obtained and submitted into the record. The procedural requirements for a zone change are contained in the Code, which involves assessment of the application's merits, notice to affected parties, and public hearings. The proposal is to change the zoning on the subject properties from Washington County FD-10 to City of Banks MU (Parcel 1) and I (Parcel 2), in compliance with Goal 2. Notice of the zoning map amendment will be provided by the City of Banks to the Oregon Department of Land Conservation and Development (DLCD), as required. The City's decision will be based on findings of fact.

Agricultural Lands (Goal 3)

> To preserve and maintain agricultural lands.

Finding: This Goal is not applicable since the properties are not "agricultural land" and have no identified agricultural resources on site.

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Forest Lands (Goal 4)

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.

Finding: The subject properties do not contain forest land. Therefore, Goal 4 does not apply to these properties.

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

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

Finding: There are no identified Goal 5 resources on or near the properties. A Natural Resource Assessment of TL 2300 found only "376 square feet of vegetated corridor from an off-site wetland extend into the northwest corner of the parcel." Ex. 5 at 3. The subject properties are not designated as an open space, scenic, or historic area and has no Goal 5 natural resources to protect. There are no natural resources located on the subject properties. There are no landslide hazard areas. There are no historic resources or cultural areas located or identified on the sites. There are no identified mineral or aggregate resources on the sites. The sites are not located downtown or in a neighborhood conservation district. Therefore, this goal is satisfied.

Air, Water and Land Resources Quality (Goal 6)

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

Finding: Goal 6 requires that the local government establish that there is a reasonable expectation that the use for which land use approval is requested will also be able to comply with the state and federal environmental quality standards that it must satisfy to be built. *Hess v. City of Corvallis,* 70 Or LUBA 283 (2014). The local government only need show it is reasonable to expect that applicable state and federal environmental quality standards can be met in order to show compliance with Statewide Planning Goal 6 (Air, Water and Land Resources Quality). *Graser-Lindsey v. City of Oregon City*, 74 Or LUBA 488 (2016). *See also Nicita v. City of Oregon City,* 74 Or LUBA 176 (2016) (In approving a change in the comprehensive plan and zoning map designations for a property to allow construction of a medical office building, a city only needs to establish that it is reasonable to expect that federal and state environmental standards will be met in the future when permits for the medical office building are sought.).

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Phone: 503-684-4111
Fax: 503-598-7798

In this case, the applicant does not propose to build any new structures. The site is currently zoned for future development, and this application proposes rezoning Parcel 1 as MU (which was prospectively applied when the properties were brought into the UGB) and rezoning Parcel 2 to Industrial as a more permanent zoning. The zone change request will have no impact with regard to this Goal. Development applications submitted in the future may create additional impervious surfaces which would increase storm water effluent unless those impacts are mitigated. However, it is reasonable and likely that engineering solutions exist which can successfully mitigate those impacts, and therefore, compliance with this goal can be deferred to future development proposals. Accordingly, the requested amendments to the Comprehensive Plan Map and Zoning Map are consistent with Goal 6.

Areas Subject to Natural Disasters and Hazards (Goal 7)

To protect people and property from natural hazards.

Finding: Goal 7 requires local governments to evaluate risks from natural hazards and to avoid or prohibit development in areas "where the risk to public safety cannot be mitigated." *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008). The subject properties are not located within a potential landslide or earthquake hazard area. Part of the site is in a floodway, as mapped by FEMA and the City of Banks. No development exists on the part of TL 2300 site that has been deemed hazardous, and no new development is proposed in any case. If any development is proposed at any time in the future, it will also have to comply with BMC § 151.365-380, which set out standards for new development in flood areas that at a minimum comply with Goal 7. Therefore, the zoning map amendment proposal is consistent with avoidance of natural disasters and hazards under Goal 7.

Recreational Needs (Goal 8)

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.

Finding: Goal 8 requires governmental organizations with responsibilities for providing recreational facilities plan for meet the recreational needs of the community. The City of Banks has adopted a Park and Recreation Master Plan (2022) that implements this Goal. When LUBA reviews a post-acknowledgment comprehensive plan or land use regulation amendment for compliance with Goal 8, the relevant concern is whether the amendment has direct or secondary effects on "recreation areas, facilities and opportunities" inventoried and designated by the acknowledged plan to meet the local government's recreational needs. Goal 8 does not require that there will be no adverse effects on any recreational activity occurring in the vicinity of the proposed amendment. *Salem Golf Club v. City of Salem,* 28 Or LUBA 561 (1995).

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Phone: 503-684-4111
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The properties are presently zoned Washington County FD-10, and this application proposes zoning Parcel 1 to MU and Parcel 2 to Industrial. The properties have not been planned for recreational use. The requested amendments to the Comprehensive Plan Map and Zoning Map will not result in a reduction of land planned or reserved for recreational use. The FD-10 zone does allow certain recreational uses as an allowed use in the zone. Nonetheless, the City does not need to re-evaluate compliance with Goal 8 due to that fact. Rather, when, for example, a local government rezones private property that once supported a private golf course, but which is not in the local government's park plan or Goal 8 inventory, LUBA has held that Goal 8 does not require the local government to consider acquisition of that property to establish a new public golf course to satisfy a "recreational golf need." *Smith v. City of Salem,* 61 Or LUBA 87 (2010). *See also Whittemore v. City of Gearhart*, 75 Or LUBA 374 (2017). The properties are not designated or inventoried in a manner that requires the application of Goal 8. Consequently, the requested amendments to the Comprehensive Plan Map and Zoning Mapa are in compliance with this Goal.

Economic Development (Goal 9)

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 provide adequate opportunities for a variety of economic activities but does not require local governments to protect one type of economic activity against impacts created by other economic and noneconomic uses." *Setniker v. ODOT*, 66 Or LUBA 54 (2012). It applies to industrial and commercial-zoned land within an urban growth boundary, and requires that cities maintain an inventory of available industrial and commercial land to promote the economy of the State. This proposal seeks to bring additional land into the City of Banks' Goal 9 inventory, and it complies with the Goal in that it promotes economic activity by allowing the currently existing use of the property to continue unabated.

Housing (Goal 10)

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

Finding: Goal 10 provides for the housing needs of Oregon citizens by specifying that jurisdictions must plan for and accommodate needed housing types "at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density." Goal 10 requires local governments to inventory-to-inventory buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

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Phone: 503-684-4111
Fax: 503-598-7798

The site is currently zoned FD-10, designated MU, and contains an industrial use of land. While this zoning designation can allow housing to be built under some circumstances, it causes no loss of housing to rezone and designate the site to match its current use.

Washington County Community Development Code (WCCDC) § 309-1 states that "[t]he FD-10 District recognizes the desirability of encouraging and retaining limited interim uses until a need for more intensive urban land use activities develops and such lands are annexed to a city." However, this site is already fully developed. Parcel 2's limited size and surrounding topography would generally prohibit additional development without extensive and impractical wetland and floodway mitigation, and the current use on the usable portion of Parcel 2 is listed as a permanent, less interim permitted use in the City of Banks' Industrial zone and district. Rezoning and redesignating the site for residential use would be impracticable when the City of Banks already contains a large reserve of future residences on land that is better suited for them. This application is consistent with Goal 10.

Public Facilities and Services (Goal 11)

> 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 concerns the provision of public health, safety, and welfare facilities such as water, sewer, and transportation. OAR 660-011-0005(5). Full urban services are available to serve the site. Attached as Exhibit 6 is an excerpt of Clean Water Services' "Sanitary Sewer & Storm Sewer Map."[10] Sanitary sewers are shown in red and stormwater facilities are shown in green. At present, the applicant proposes no changes to existing public facilities and services provided to the site. As such, Goal 11 does not apply to this application.

Transportation (Goal 12)

> To provide and encourage a safe, convenient and economic transportation system.

Finding: Goal 12 requires local governments to "provide and encourage a safe, convenient, and economic transportation system." In the quasi-judicial context, Goal 12 requires a local government, when approving a comprehensive plan amendment,[11] to either demonstrate that

[10] Available at https://cws.maps.arcgis.com/apps/webappviewer/index.html?id=a2a448a5079d4dc18f78383af829f247

[11] Notably, Goal 12 applies directly to comprehensive plan amendments. *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999). The fact that the local government has adopted comprehensive plan policies and development approval criteria that are intended to implement Goal 12 and that will be applied to subsequent development proposals does not obviate the need to show goal compliance at the time the plan amendment is finalized. *Bicycle Transportation Alliance v. Washington County*, 127 Or App 312, 873 P2d 452, *on reconsideration*, 129 Or App 98 (1994).

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"transportation systems"[12] affected by the amendment will be "safe and adequate," or by demonstrating that the proposed change will not result in greater or different transportation demands than those allowed by the existing acknowledged designations.[13] The transportation impacts of the proposal are discussed *supra*. As noted, applicant has retained a traffic engineer to evaluate the tariff impacts of the requested zoning designation for the two sites in compliance with the TPR.

Energy Conservation (Goal 13)

To conserve energy.

Finding: LUBA and the Courts have never given any regulatory affect to this Goal. The proposed amendments present a positive alternative from an energy consumption and efficiency standpoint, when compared to any decision which would result in the use on Parcel 2 no longer being allowed and either being relocated or demolished and redeveloped. This application is consistent with Goal 13.

Urbanization (Goal 14)

To provide for an orderly and efficient transition from rural to urban land use.

Finding: The subject properties are being annexed into the City of Banks concurrent with this application. The properties have been planned for urban land use. The properties are already within the City of Banks' urban growth boundary and have received a Comprehensive Plan designation from the City. Changing the Comprehensive Plan designation of Parcel 2 to another City designation will not trigger Goal 14. Its current zone is set by Washington County, and the request to rezone the property is largely motivated by the applicant's desire to orderly and efficiently transition the property into the City. This application therefore complies with Goal 14.

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[12] The term "transportation systems" is defined in Goal 12 as "one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas."

[13] *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999) (decision which rezones land to allow an industrial use generating 120 truck trips per day through local streets and a state highway must demonstrate compliance with Goal 12); *Gaske v. Lane Co.*, 3 Or LUBA 147 (1981); *Conarow v. Coos Co.*, 2 Or LUBA 190 (1981); *ODOT v. Clackamas County*, 27 Or LUBA 141 (1994); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995); *ODOT v. Clackamas Co.*, 23 Or LUBA 370, 376-77 (1992); *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 108-9 (1995); *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000). *See also generally Metro Service Dist. v. Board of County Commr's*, 1 Or LUBA 282, 292 (1980); *Lee v. City of Portland*, 2 Or LUBA 31 (1981).

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Goals 15 through 19

Finding: The following Goals are not applicable to this application: Willamette River Greenway (Goal 15); Estuarine Resources (Goal 16); Coastal Shorelands (Goal 17); Beaches and Dunes (Goal 18); and Ocean Resources (Goal 19).

V. CONCLUSION

Applicant has demonstrated compliance with all relevant and applicable portions of the Banks Code of Ordinances and Comprehensive Plan. Accordingly, applicant respectfully requests the City make the following map amendments: (1) amend the Comprehensive Plan Map to designate Parcel 2 as Industrial; (2) amend the Zoning Map to apply the new Comprehensive Plan Map designation (Industrial) to Parcel 2; and (3) amend the Zoning Map to apply the existing Comprehensive Plan Map designation (Mixed Use) to Parcel 1. These proposed amendments are visualized in the proposed amended Comprehensive Plan Map attached as Exhibit 11 and the proposed amended Zoning Map attached as Exhibit 9.

Thank you for your consideration of this application. Please do not hesitate to contact us with any questions.

Sincerely,

VF LAW

/s/David M. Phillips

David M. Phillips
Attorney

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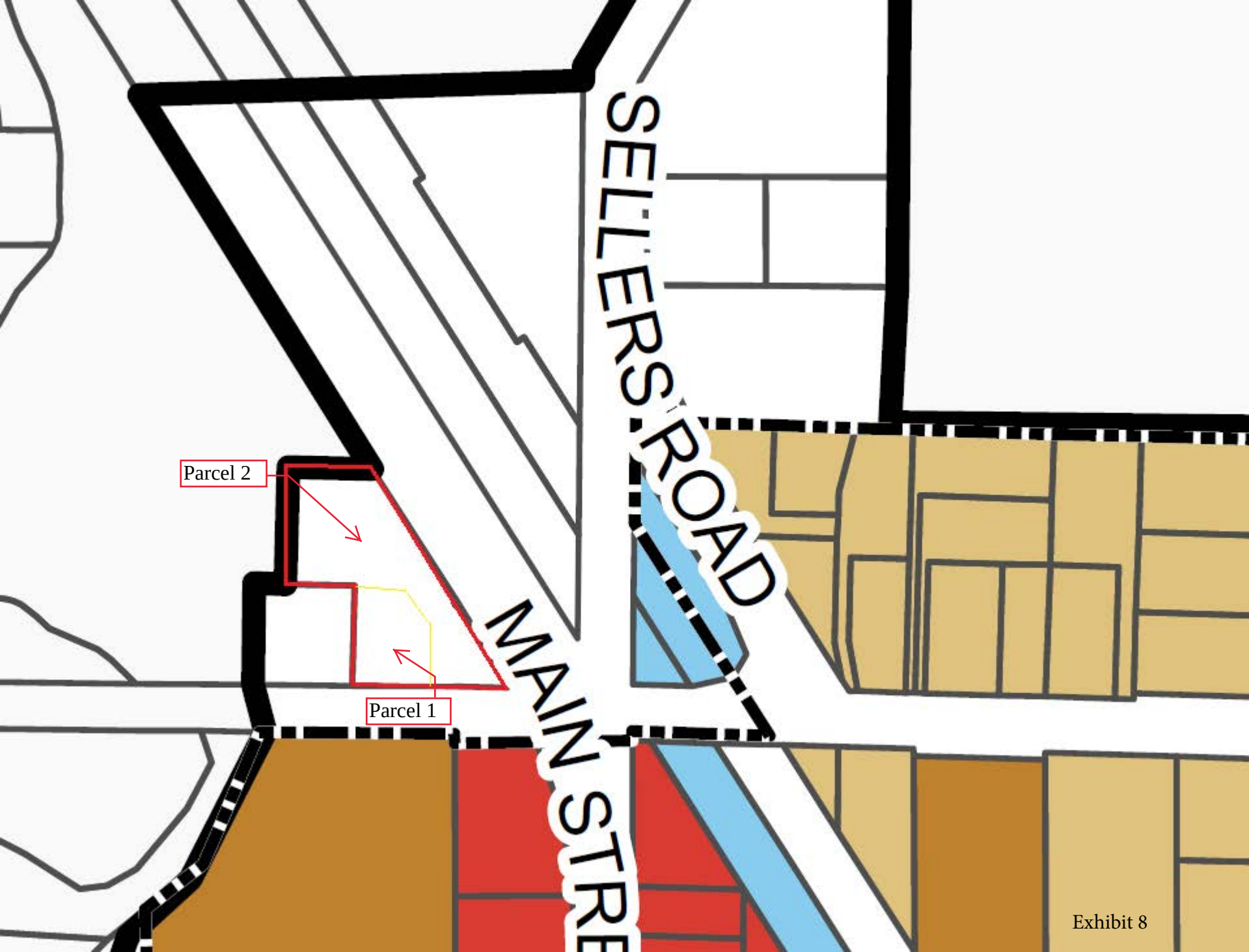
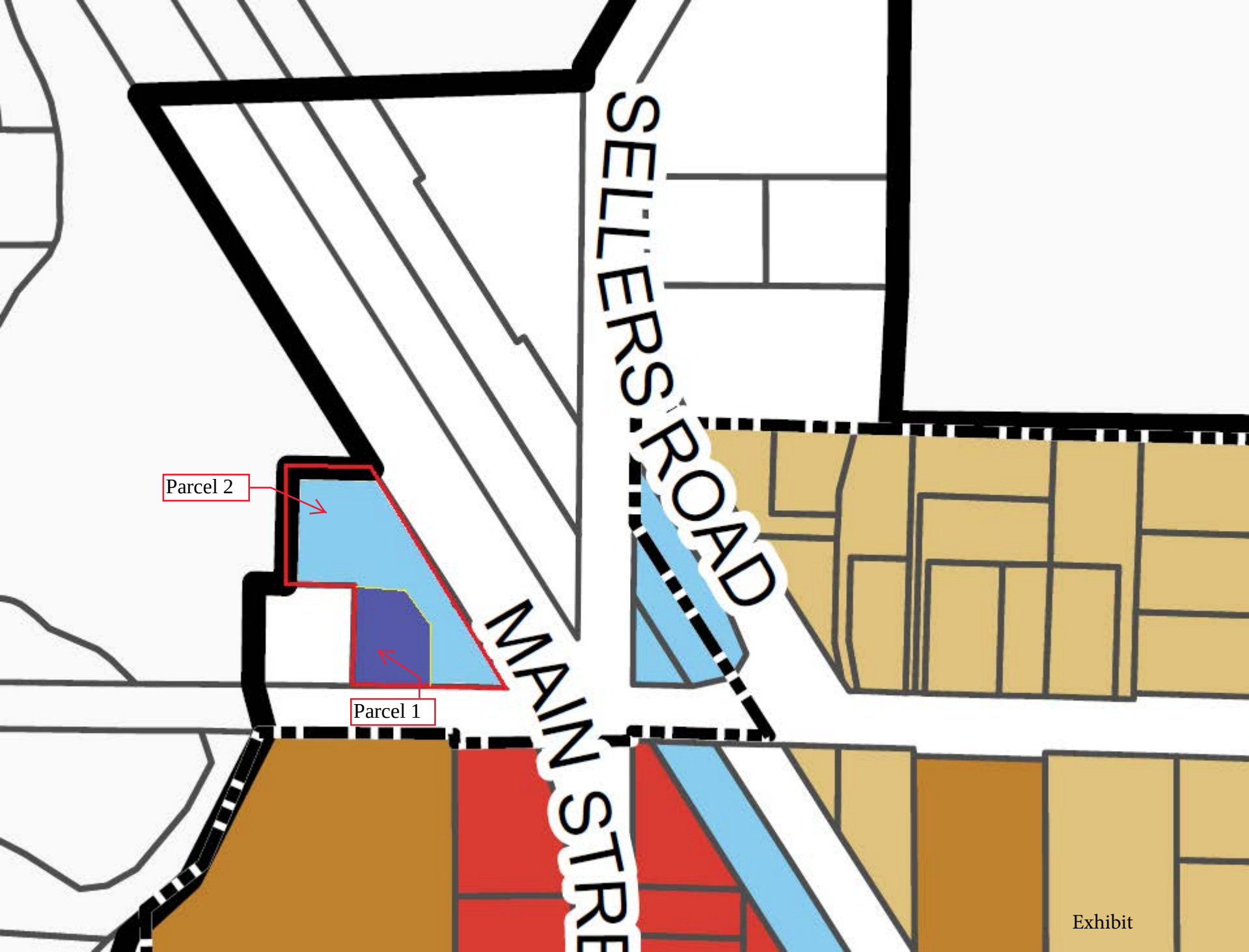


Exhibit 8



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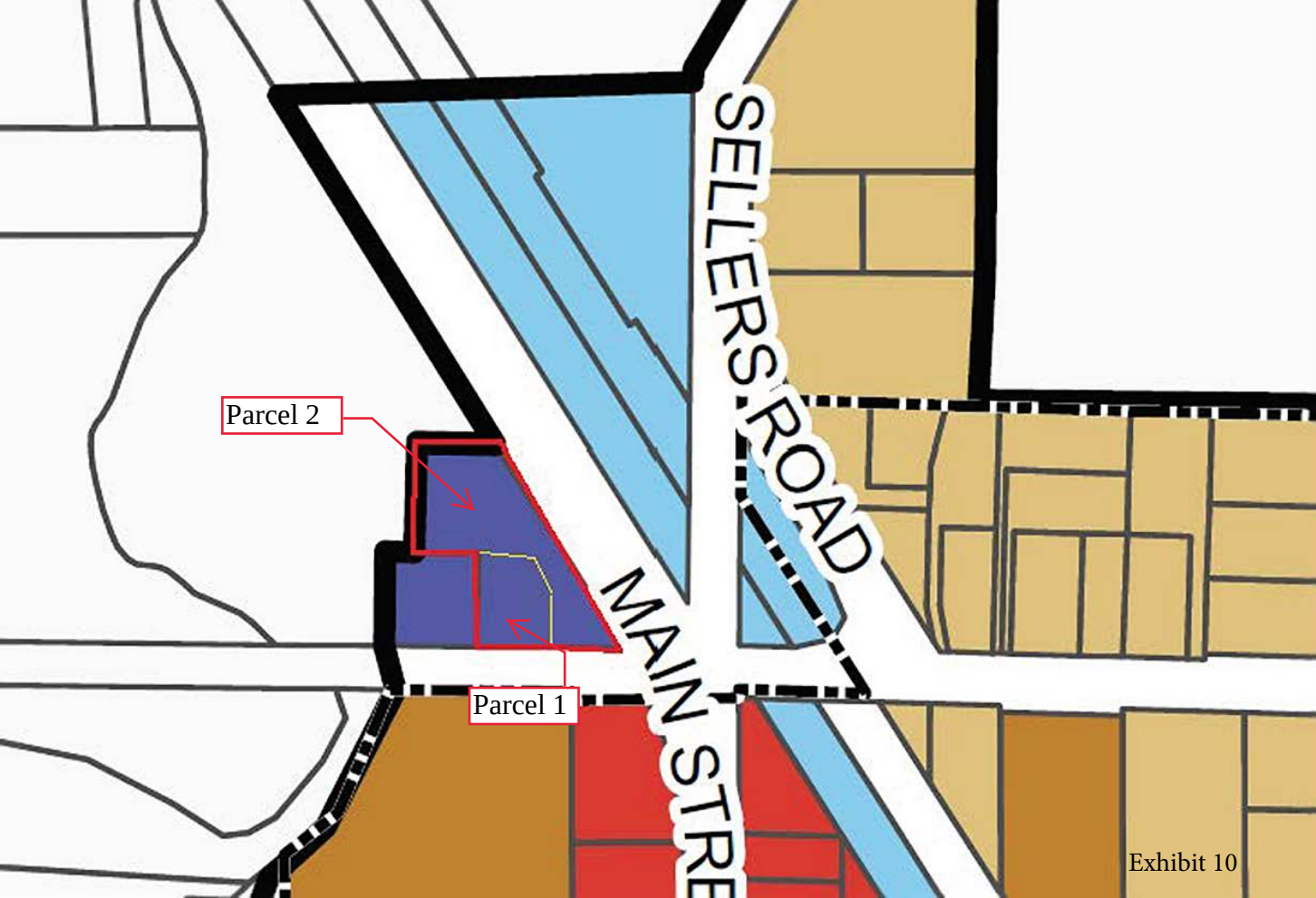

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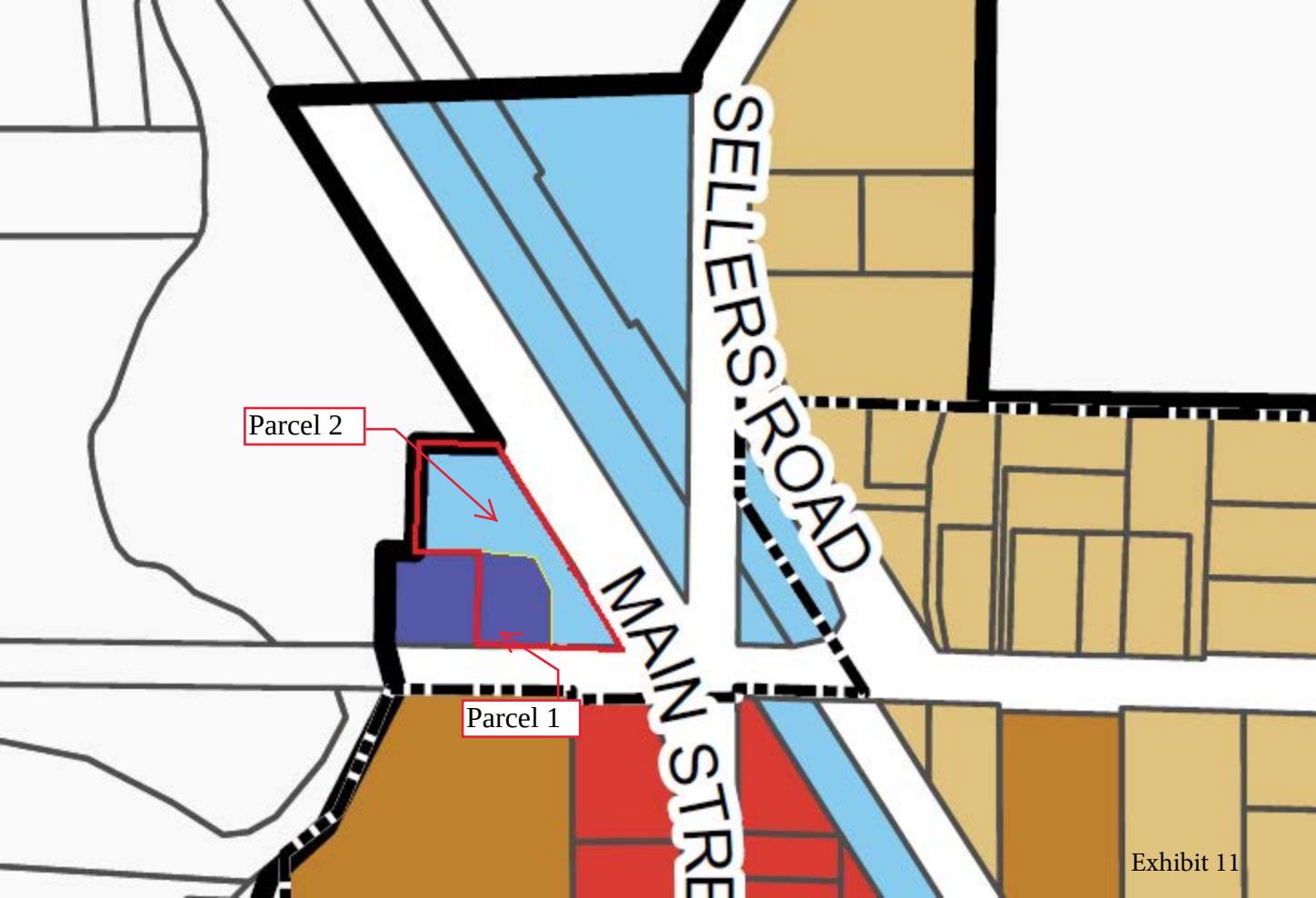

Exhibit 11