

July 19, 2016

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VIA EMAIL

Portland Planning and Sustainability Commission
City of Portland
1900 SW Fourth Avenue #7100
Portland, OR 97201

Re: RTF CE Map: Why Auto-Oriented Development Needs CE Zoning to Develop/Redevelop; RTF DT Map: Why Drive-Throughs Are Needed

Dear Chair Schultz and Commissioners:

This letter supports the previous mapping requests made by the RTF/ICSC GR Committee in prior testimony (CE Zone Map submitted 6/28/16; DT Prohibition Map submitted 7/12/16).

Supplemental information in support of RTF's proposed CE Zone Map.

If land previously developed for auto-oriented uses is zoned other than CE (somewhat auto-accommodating under the current CE zone purpose statement), then the land would not be likely to receive any of the land use approvals needed to upgrade the existing auto-oriented development or redevelop it with a new auto-accommodating development, because:

- **Unfeasible Nonconforming Situation Review for Nonconforming QVS Uses.** In other than a CE zone, an existing gasoline service station or fuel station will become a nonconforming use (Quick Vehicle Servicing or QVS) and a nonconforming development (Drive-Through Facility or DT). The applicable review criteria would automatically disfavor expansions of nonconforming gas and fuel stations (QVSs & DTs) when they are placed in mixed use zones, where they would have appearances that arguably would "detract from the desired function and character of the zone." Unless zoned CE, existing gas stations and fuel stations will not be able to expand or upgrade:
 - Under Section 33.258.050 C. 2. a. expansions of building area and exterior improvements for nonconforming uses and developments may be allowed under the nonconforming situation review procedures of 33.258.080.
 - Section 33.258.080 B.3. contains the impossible approval criterion for a nonconforming gas station or fuel station. As stated above, the applicable review criteria disfavor expansions of nonconforming uses and developments which have appearances that "detract from the desired function and character of the zone."

The function and character of the proposed CM zones is pedestrian and transit oriented development. Redeveloping a gas or fuel station built in an old CG in a new mixed use CM1, CM2, or CM3 zone, or in a CMSO overlay, will not be feasible because the required finding is unlikely, based on anticipated comments from neighbors and/or staff. Only CE zoning would be deemed appropriate and, even then the CE zone purpose statement should be revised to make the CE zone primarily auto-accommodating, instead of only incidentally auto-accommodating as now written. See attached proposed Revised CE Zone Purpose Statement in a copy of an email message to the Mayor's Policy Advisor, Camille Trummer.

- **Unfeasible Adjustment Approval for Nonconforming DT Developments.** Likewise, the applicable review criteria disfavor expansions of nonconforming developments which do not any longer fit the character of the new mixed use zone they are in:
 - Under 33.258.070 C. "proposed changes that are not in conformance or do not move closer to conformance, are subject to the adjustment process unless prohibited."
 - Prohibiting DTs in the CM zones and CMSOs makes it legally impossible to get an adjustment to upgrade or remodel one in any zone except the CE zone. Even then, the purpose statement of the CE zone should be revised, as requested above.
 - Staff suggests saying they are considering changing "prohibited" to "not allowed" to avoid that result, but the two terms are synonymous, so LUBA would likely disagree. Further, existing Sections 33.805.030 B. 1.&2. State that uses "not allowed" by the regulations, and restrictions on uses or developments which contain the word "prohibited", are ineligible regulations for adjustments.
 - Under 33.805.040 B. a requested adjustment may be approved in a C zone if the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area", a criteria that an existing auto-oriented drive-through facility development will not be able to satisfy in one of the new mixed use pedestrian-friendly zones that are not auto-accommodating. It will not be feasible to obtain adjustments to redevelop drive-through facilities in any of the new mixed use zones.

Supplemental Information in Support of RTF's Proposed DT Prohibition Map.

As submitted in my oral testimony to PSC during the last hearing, the RTF/ICSC GR Committee worked closely with the Mayor's office in discussing the Mayor's proposed drive-through prohibition policy during the public hearings on the proposed 2035 Comprehensive Plan, resulting in a tacit agreement reflected in the Mayor's revised drive-through policy that drive-through facilities should be prohibited in "walkable areas", while being allowed in other areas which are yet "driveable". Absent this type of input from the RTF, the PSC would not have the benefit of those talks within the related, yet separate legislative process, where the new 2035 Comprehensive Plan policies, including the new drive-through policy, must be implemented now by PSC.

As a result of those negotiations, the proposed drive-through ban policy was revised significantly to remove corridors from the areas of prohibition for new drive-throughs and to clarify that the prohibitions apply only to new drive-through facilities. The following show the initially proposed drive-through policy, followed by the adopted drive-through policy:

Proposed – Drive through facilities. Prohibit drive through facilities in the Central City, and limit them in centers and corridors in order to support a pedestrian-oriented environment and reduce conflicts between automobiles and pedestrians and bicyclists.

Approved – Drive through facilities. Prohibit new drive through facilities in the Central City, and limit new development in the Inner Ring Districts and centers in order to support a pedestrian-oriented environment.

DT Prohibition Map Allows New Drive-Throughs Where Needed by Elderly, Disabled & People with Children.

It is often difficult to spot unintended consequences of legislative proceedings where many significant changes are being considered simultaneously. A dense urban form can mistakenly seek to remove development patterns deemed inconsistent in form, which are yet needed by the populace as to function. Such is the story of the much maligned drive-through facility. Accused of being unsafe (which they are not unsafe as provided to the City Council in evidence submitted in opposition to the Mayor's proposed policy to ban drive-throughs city-wide), or inconsistent with a pedestrian environment, drive-through facilities are very much needed by a significant segment of the populace in their daily lives, as attested to by the individuals shown in the video clips contained in the following links to the related Portland Tribune online newspaper articles: [Portland Tribune Article](#) and [Portland Tribune Article 2](#).

I attach a further email message to Mayor Hale's Policy Advisor, Camille Trummer, outlining that approach, which was to utilize areas of the City rather than base zones to regulate drive-

through facilities, where many of the existing CM base zones proposed to prohibit drive-through facilities are clearly within "driveable" areas of town, where drive-through facilities should continue to be allowed.

In conclusion, the RTF/ICSC GR Committee requests PSC to implement the City's new drive-through policy through mapped areas instead of base zones to distinguish between "walkable" and "driveable" areas of the City. In addition, we request that PSC adopt the RTF's proposed CE zone map. Unless zoned CE, existing auto-dependent facilities will not be able to upgrade or redevelop in the new mixed use CM zones and CMSO overlay. That is because the proposed expansion or redevelopment of an auto-accommodating use and development would be deemed inconsistent with the character and identity of any of the new mixed use zones. Accordingly, the ability to obtain necessary approvals from nonconforming use review or applications for adjustments in the course of such remodels/redevelopments will be unlikely, thus stagnating the ability to accommodate short-term economic development opportunities and preserving the status quo - an unintended consequence to be avoided that is required by new Plan Policy 6.17 which requires PSC to consider the short-term market when transitioning new development regulations.

Thank you for the ability to supplement our prior testimony regarding proposed CE zone and drive-through prohibition maps.

Respectfully submitted,



Mark D. Whitlow

MDW:sv

Enclosure

Cc: Eric Engstrom
Barry Manning
Bill Cunningham
RTF/ICSC GR Committee

Camille,

We request amendments to the CE Zone purpose statement and standards to make them more auto-accommodating, as required for a multimodal system and as described in the Zoning Code's definition of Auto-Accommodating Development.

"Auto-Accommodating Development. Development which is designed with an emphasis on customers who use autos to travel to the site, rather than those which have an emphasis on pedestrian customers. This type of development usually has more than the minimum required number of parking spaces. The main entrance is oriented to the parking area. In many cases, the building will have parking between the street and the building. Other typical characteristics are blank walls along much of the facade, more than one driveway, and a low percentage of the site covered by buildings."

1) Revise CE Zone Purpose statement to make more auto-accommodating:

D. Commercial Employment zone. The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors in areas between designated centers, especially along Civic Corridors that are also Major Truck Streets or Priority Truck Streets. The zone allows a mix of commercial uses, as well as some light manufacturing and distribution uses that have few off-site impacts. The emphasis of this zone is on auto-accommodating commercial and employment uses, but residential use is also allowed. Buildings in this zone will generally be up to four stories tall. Development is intended to be auto-accommodating, as well as pedestrian-oriented, as well as auto-accommodating, and complement the scale of surrounding areas.

2) We propose the following revised development standards to match the above definition:

- allowance for parking between buildings and streets
 - Section 33.130.205 B. & Table 130-2 - Change the Max. Building Setbacks in CE from 10'/20' to Exempt, and add an exemption from the vehicle area frontage limitations of Section 33.266.130. C.3, subject to the modified standards of Section 33.130.215 E. (Alternative maximum building setback for large retailers – we need to revise to fit our needs for smaller sites)
- transit street main entrance location oriented to parking
 - Section 33.130.242 B. Applicability – Add new subsection “3. Does not apply to sites in the CE zone abutting auto traffic streets designated as a Major City Traffic Street or a District Collector Street.”
- allowance for blank walls
 - Section 33.130.230 Ground Floor Windows
 - revise subsection 2. Exemptions to add new “d. Retail store walls devoted to truck loading or external to interior areas used for storage or refrigeration, are exempt from this Section.”

We are also drafting language that we will share now to create preexisting development status for existing DTs, as follows:

33.130.260 Drive-Through Facilities

New drive-through facilities are allowed in the zones which are intended for auto accommodating development. Existing, legally established facilities in all commercial/mixed use zones are allowed outright. The standards for drive-through facilities are stated in Chapter 33.224, Drive-Through Facilities.

- A. **CM1, CM2, CM3, CX, and CE zones.** In the CM1, CM2, CM3, CX, and CE zones, all legally established drive-through facilities in existence as of **[INSERT EFFECTIVE DATE OF CODE]**, are allowed outright and are not subject to Chapter 33.258, Nonconforming Situations.
- B. **CM1, CM2, CM3, and CX zones.** Establishment of new drive-through facilities is prohibited in the CM1, CM2, CM3, and CX zones.
- C. **CE zone.** Establishment of new drive-through facilities is allowed in the CE zone, subject to the following:
1. New drive-through facilities within 50 feet of a residential zone boundary must incorporate landscaping to the L2 standard between the drive-through facility and the residential zone.

We thank you for your continued assistance with the 2035 Plan and the MUZ Code amendments.

Mark

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Vogel, Stephanie (Perkins Coie)

From: Whitlow, Mark (Perkins Coie)
Sent: Tuesday, April 26, 2016 4:54 PM
To: camille.trummer@portlandoregon.gov
Cc: Joseph Angel; Merrill, Melinda S; Joshua L. Lute - Dutch Bros. Coffee (jlute@dutchbros.com); LeFeber Bob; Oxley Gary; Evyan Jarvis (evyanandries@oxleyandassociatesinc.com)
Subject: FW: Draft Meeting with Mayor Notes - Please Comment
Attachments: 26042016[Filename].pdf; Color Figure VII-2.pdf; Auto-Accommodation_001.pdf; PBA-Proposed_MUZ_4-19-16_reduced.pdf

Dear Camille, thank you very much for your time and assistance yesterday. We felt that our meeting with Mayor Hales was a good exchange of ideas and comments. We are prepared to work with you quickly to move forward, so we are providing you with additional information with this message, as well as a standing offer to come in and meet with you in person for additional background or clarity. The bolded captions provide an issue outline.

The following are our notes on the meeting, with related comments regarding next steps.

- **Pre-Existing Status for Existing Auto-Accommodating Uses & Developments.** Don't make existing auto-accommodating commercial developments nonconforming under the new mixed use zones, which do not provide for new auto-accommodating uses or developments, except in a limited way in the CE zone. Even then, 60% of the parcels and 40% of the CG land was converted to zones other than CE, which is a huge downzone for commercial land. See attached Figure VII-1 and Figure VII-2 attached. There is no more auto-accommodating zone or zoning standards being offered by the City for auto-accommodating uses and developments. Out of fairness, the City needs to make existing auto-accommodating developments pre-existing instead of nonconforming, where they will be treated as conforming until the market conditions are right for them to redevelop under the new zone. Pre-existing use or development would mean: *Any lawful use or activity, located in an area that has been legislatively rezoned to a less permissive zone, that is not listed as a permitted principal or conditional use in the less permissive zone.* (Borrowed from 1985 Zone Code). This treatment is consistent with the Policy 6.17 proposed by the RTF/ICSC (to avoid nonconformity).
- **Limit Areas of Prohibition of Drive-Through Facilities.** It was recognized that drive-through facilities are important adjuncts to grocery supermarket store development, both for their own drive-throughs (for pharmacy and grocery pick-up and for fuel stations) and for their pad users to help spread the cost of development. They do not generate traffic as a destination, as operate off pass-by traffic. They operate safely and do not have a history of unsafe operations in the City. Therefore, drive-throughs should not be prohibited broadly, but only in special areas such as the areas now proposed for CMSO zones and the areas mapped to recognize the City's Low-Rise "Trolley Car Era" Commercial Storefront areas. See attached message from Barry Manning with BPS's PowerPoint presentation to PBA containing maps of Low-rise Commercial Storefront Areas.
- **Create Auto-Accommodating Zone(s).** As the meeting progressed, the realization that the City no longer has an auto-accommodating zone (even the CE is a mixed use zone) prompted the Mayor to suggest that we create one now, or draft a new policy that would evolve into one, or make the CE and MU1 zones more auto-accommodating. It was agreed that the City still needs to have an auto mode that is accommodated, even if the mode split shift goes down on the east side past 39th and on the west side past the ridge, over the next 20 years the mode split is likely to be 60 to 70% autos at 2035. See Metro's "[A snapshot of how the Portland region gets around](#)". We need areas for auto accommodating uses, that do not have the FAR and building orientation limitations of the Storefront zones. See the definition of "Auto-Accommodating Development" in the Code (attached). By contrast, see the purpose statement for the new CE zone also attached, where the CE zone is intended to be pedestrian and transit friendly first, with auto-accommodation only as an after-thought. The City's multimodal system will lack adequate accommodation for the auto mode if the 2035 Plan and the MUZ Project are approved. See copies of prior message to BPS request auto-accommodating zoning regarding 12/24/15 email message to Barry Manning, 3/8/16 email message to Tom Armstrong and 3/23/16 email message to Barry Manning. Most households make 9 plus trips a day but only travel 4.4 miles from their home. Travel to

downtown will continue to make great strides in mode split but other trips will take more time and density to evolve because of lack of transit choices and service times available. Auto-accommodating uses need equitable zoning treatment under the MUZ Project.

- **Auto-Accommodating Retail Policies.** We didn't go over the specific policies that are being proposed/opposed by the RTF/ICSC GR Committee, but we list them below, with comments. We assume that the wording of the new policy after policy 4.23 would be changed to reflect our agreement. We would appreciate the Mayor's support of our other proposed policies and would welcome your insight on them, as well as the need for a new auto-accommodation policy and zone.
 - **New Policy after 4.23 Drive-through Facilities.** We are signed up to oppose this policy. This policy has several oversights:
 - drive-through facilities are needed in the daily lives of people with disabilities, the elderly and mothers with children & should be accommodated, not prohibited, by the City's commercial zones and development standards
 - drive-through facilities are an integral component of grocery supermarkets, with their on-site fuel stations, pick-up pharmacy department windows, and drive isles for pick-up of groceries ordered online
 - multimodal mixed-use commercial zones & development standards still need to accommodate the auto mode for grocery stores, banks, dry cleaners, restaurants, pharmacies, car washes, coffee kiosks and fuel stations
 - **Policy 4.79 Grocery Stores.** We proposed this policy language to address the need to provide enough commercial land adequately zoned to allow the continued development and operation of a "full spectrum" of grocery stores, including those offering affordable groceries. This is a commercial gentrification policy to counter the notion that providing upper-end grocery stores is a win for the City's food desert problem. See attached Portland Area Food Desert Map. It also relates to the carbon footprint problem. We have startling statistics showing the large % of Portlanders who drive out of distance to shop for groceries on the fringe of town, or out of town. The City needs to provide traditional zoning to also allow the lower-end grocery store development (e.g., WinCo & Grocery Outlet, etc.), which can't afford structured parking and high rents. The new mixed use zones make the existing problem even worse, instead of fixing it. We are using this policy to also request the City to amend the EOA for "the full spectrum of retail" that wasn't considered when the EOA was adopted. In that same year PDC received a study from Leland Consulting that the City has an inadequate land inventory for auto-accommodating large format retail.
 - **Policy 6.17 Avoid Nonconformity.** We proposed this new policy. You can't immediately tell at the first reading, but that is the intent behind this vague language finally approved by BPS. We call it the anti-nonconformity policy. Basically, it provides policy authority to phase-in new mixed-use development regulations over time when the long-range market shifts, to avoid creating unnecessary short-term market nonconformity now which stagnates redevelopment. For example, we are asking the City to avoid adopting the CMSO until there is 15 minute frequent transit service and a greater transit ridership than there is now outside the central city. The BPS staff handling the Code amendments were not interested in listening to our phasing requests unless the Plan contained a related policy to avoid creating nonconformity by phasing in regulations over time to match the market. However, the new idea to treat existing auto-accommodating developments as preexisting developments that are conforming instead of nonconforming developments would seem to work as an alternative solution.
 - **New Policy after 6.65. Retail Development.** We proposed this policy. It is related in concept to the Grocery Store Policy 4.79. It is another policy basis to advocate for amending the EOA to provide a sufficient land inventory for the "widest range of retail" that are "affordable" in "underserved areas of the City". There really isn't any land available to develop grocery stores even though the existing EOA says that Portland has an adequate land inventory for retail development, but it does not distinguish auto-accommodating from pedestrian/transit friendly retail which have different land needs and development formats. We need more retail land for traditional grocery store development to reduce VMTs. We have assembled a traffic analysis on that point. We are taken by the Mayor's suggestion that we should create a new auto-accommodating policy and zone or make the CE and CM1 and CM2 zones more auto-accommodating

We appreciate the opportunity to work with you to find the proper balance between planning and the reality of the marketplace.

Best, Mark

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Portland-area food deserts

Below is a map of low-income census tracts in the Portland metro area where the U.S. Department of Agriculture has determined that a significant number or share of residents is more than **a half-mile** or **a mile** from the nearest supermarket in urban areas or more than 10 miles from the nearest supermarket in rural areas. For a nationwide map, **see the USDA site.** (<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx>) **Read more: Grocery Outlet's opening in east Portland brings promise to an area lacking supermarkets** (http://www.oregonlive.com/portland/index.ssf/2013/03/grocery_outlets_opening_in_eas.html)

 New Grocery Outlet store



(<https://maps.google.com/maps?ll=45.52,-122.7&z=11&hl=en-US&gl=US&mapclient=apiv3>)

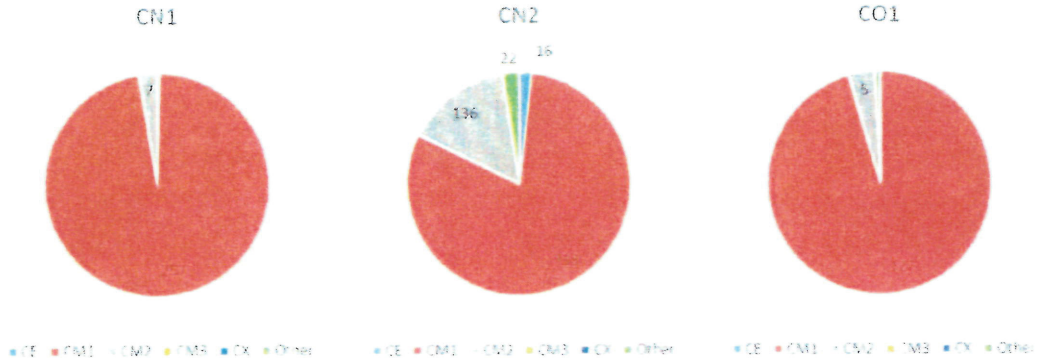
Map data ©2016 Google

Sources: U.S. Department of Agriculture, U.S. Census Bureau; Map: Mark Friesen/The Oregonian

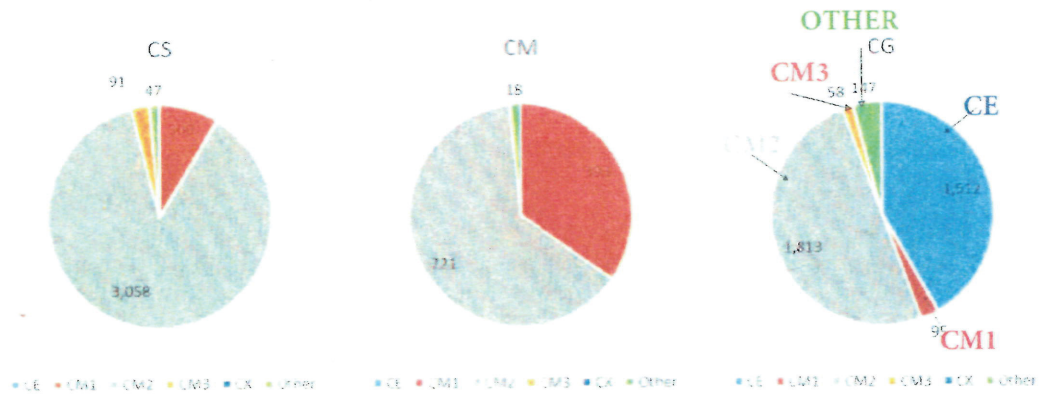
Figure VII-1: Commercial/Mixed Use Rezoning Summary

Number of properties assigned to each new zone, by old zones. Other = non Commercial/Mixed Use (EG1, EG2, R1, etc.)

Small scale commercial zones



Medium scale commercial zones



Medium and large scale commercial zones

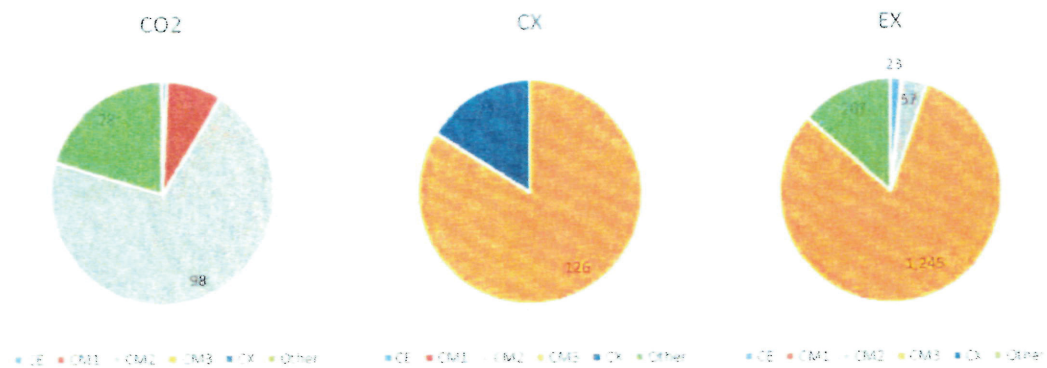
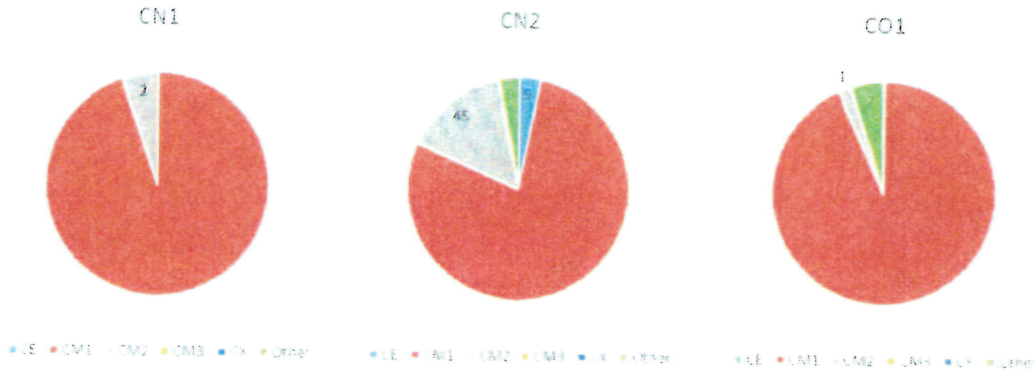


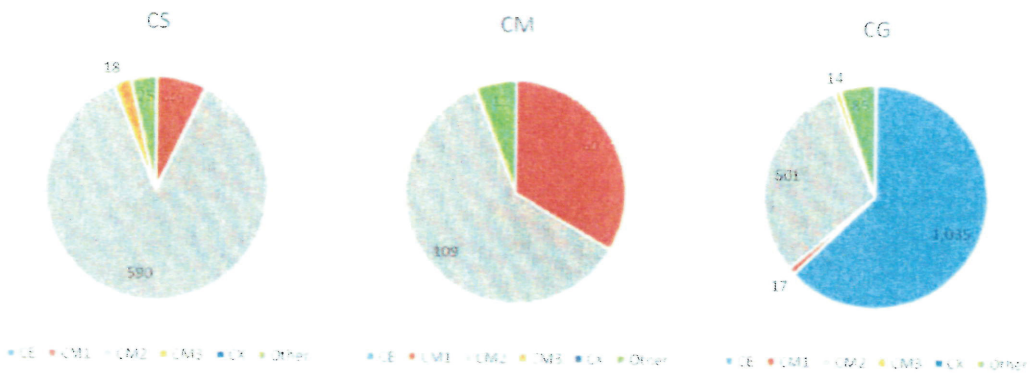
Figure VII-2: Commercial/Mixed Use Rezoning Summary

Number of acres assigned to each new zone, by old zones. Other = non Commercial/Mixed Use (EG1, EG2, R1, etc.)

Small scale commercial zones



Medium scale commercial zones



Medium and large scale commercial zones

