

May 19, 2026

Via Electronic Mail
City Council of the City of Hermiston
c/o City of Hermiston Planning Department
180 NE 2nd Street
Hermiston, OR 97838

Re: Henry K's Phase 4 Subdivision Preliminary Plat Approval — Response to Hermiston Irrigation District Appeal — 4N2813 Tax Lot 210

Dear Council President McCarthy and Councilmembers:

This firm represents Hermiston Home Works, Inc., the applicant for Henry K's Phase 4 Subdivision Preliminary Plat approval. Please include this letter in the record of the above matter.¹ This letter responds to the April 28, 2026, Notice of Appeal filed by Hermiston Irrigation District ("HID").

I. Summary

The Planning Commission properly adjusted Condition 1 to require final plat sign-off by the Stanfield Irrigation District (SID) and not HID because the **only** evidence in the record (from Pioneer Title, Umatilla County GIS data and the applicant), is that the subject property is in SID's boundary, not HID's. The City Council should affirm the Planning Commission's decision.

There is no serious dispute that Henry K's Phase 4 subdivision is not within HID's boundaries. The new materials that HID improperly attaches to their appeal do not show anything different. HID's improper new evidence is about *water delivery/place of use* and has nothing to do with the scope of HID's ORS Chapter 545 *district boundaries*. Condition 1, that HID disputes, is solely about getting the state law required certification from the irrigation district within whose boundary's subdivisions are situated. ORS 92.090(7). That simply does not describe HID.

HID confuses its provision of extra-territorial water with the obligations associated with land within irrigation district boundaries.² They are very different things and HID has no ORS 92.090(7) role as a matter of law. The Planning Commission properly reflected that reality in Condition 1.

¹ This letter contains only argument, not evidence, and so is permissible.

² Irrigation water will be used on the subject property until it is developed. Once developed, irrigation water will not be used; rather water for the subdivision will come from the City of Hermiston.

Irrigation districts are allowed to furnish water to lands not included in the district (ORS 545.271). But state law separately dictates how irrigation-district boundaries are established and changed - through the statutory boundary process in ORS 545.051 to 545.126. No boundary process has ever occurred to put the Henry K's Phase 4 property within the HID boundary. And, regardless, both district boundaries and place of use are irrelevant to the concern HID expresses of protecting the A-Line canal. On the concern HID expresses, HID's A-line canal is in no danger - an owner of land - including the subdivision here - is not allowed to direct its storm water onto the property of another, including HIDs canals. As the City planning director explained at the Planning Commission hearing "applicant's stormwater design must comply with city standards *to not leave the [Henry K's] property.*" That is plain if one reads the City's public works standards that impose that requirement, at 1.1(A)(b).

The proposal seeks approval of a limited land use decision. That means under ORS 197.195, the only standards that can be applied are those that are codified in the City's land use code. Contracts between HID and others are not only irrelevant, but they are also not standards that are codified in the City's code and, so, as a matter of state law, cannot be applied. Similarly, HID's desire to be treated as if the subject property were within its boundaries anyway, when it plainly is not, is not a codified standard that can be applied to this limited land use decision.

HID's appeal attaches 117 pages labeled as Attachments C-G that they **never presented to the Planning Commission** and those pages are not a part of the record. As such, the Council should strike and disregard them and should disregard HID arguments based on those extra-record pages. HID's two-page letter to the Planning Commission was limited to arguing about runoff from Henry K's into the A-Line canal; they raised no issue about the Phase 4 property being in HID's boundaries, even though HID and the applicant had been arguing about that very issue concerning Phase 2, as is plain from the record and even though the applicant raised this issue at the Planning Commission hearing – which led to the disputed adjustment to Condition 1.

HID's appeal should be denied.

II. The Details

A. HID's Appeal Relies on New Evidence Outside the Record that was Never Presented to the Planning Commission and Cannot be Considered

HID's appeal attaches and relies upon documents and factual assertions that are not a part of the Planning Commission record and that were never submitted to the Planning Commission. Hermiston Code of Ordinances (HCO) 157.166 expressly commands that City Council appeals of limited land use decisions – which is what the planning commission decision is - "shall be on the record" of the planning commission proceeding. Similarly, HCO 157.231(C)(1) specifies that City Council appeals "shall" be limited to the record created at the planning commission. HID's attachments C-G are not a part of the Planning Commission record. HID never presented

any of those documents to the Planning Commission. It is respectfully submitted that HID's extra record documents and its arguments relying upon them, must be rejected.

HID's extra record documents consist of 117 pages at HID's appeal Attachments C-G. This large appeal submittal to the Council, is in sharp contrast to HID's 2-page submittal to the Planning Commission. HID's appeal is based on documents the Planning Commission never saw and arguments HID never made. This wait-in-the-weeds tactic is one that the City's code does not permit. Therefore, HID's appeal documents submitted for the first time on appeal should be stricken and the Council should not consider them or HID's appeal arguments that rely upon those extra-record documents.

It is well-settled in Oregon law that there is a difference between evidence and argument. While the underlying statute typically cited for the distinction does not apply to limited land use decisions, ORS 197.797(9) includes helpful definitions that distinguishes evidence and argument. I ORS 197.797(9), expressly defines "argument" as assertions and analysis regarding satisfaction or violation of legal standards or policy, and provides that argument "does not include facts." Conversely, that statute defines "evidence" as facts, documents, data, or other information offered to demonstrate compliance or noncompliance with relevant standards. In Oregon land use, evidence is what proves or disproves facts; argument is what explains what those facts mean under the approval criteria, statutes, goals, or code. Thus, HID can assert in argument to the City Council that the subject property is in its boundaries, but the evidence it can rely upon to prove up on that pitch is limited to the record created at the Planning Commission. Which does not include the 117 pages HID submitted for the first time to the Council, for this appeal.

A concrete example of how this works is outlined in *Eng v. Wallowa County*, 79 Or LUBA 421 (2019), in which an email from a contractor was submitted for the first time at the stage in the local process where the local record was closed – it was submitted with the final written argument - which is not allowed to include evidence. The applicant argued that he could attach the email to his final written argument anyway, claiming the email was just supplying context/rebuttal to opponents' points in earlier phases. LUBA had no trouble saying the email was improper evidence submitted after the local record had closed rather than argument, because it supplied factual information on whether dwellings at issue in that appeal, existed by a relevant date. That is exactly what HID's improper 117-pages attempts – to unlawfully supply factual information not in the local Planning Commission record, on whether the subject property is in HID's boundary.

HID submitted its 2-page April 15, 2026 letter to the Planning Commission, asserting that that they wanted "adequate information for the District to properly evaluate any potential drainage or stormwater issues that may impact the District's facilities", claimed that they did not see any facilities for stormwater drainage" on the preliminary plat, and that it was "on these grounds" that "the District objects to approval of the Phase 4 preliminary subdivision plat." In response, Mr. Brandt submitted evidence and argument including a letter from the undersigned, that the subject property is not in HID's boundaries. Further, both Mr. Brandt and City staff explained that HID's concerns were fully addressed, that Henry K's Phase 4 final plat could not be approved without its stormwater facilities meeting City standards and staff specifically stated

that “applicant’s stormwater design must comply with city standards *to not leave the [Henry K’s] property.*” Mr Brandt further testified that he was concerned about pretending HID was the ORS 92.090(7) certifying authority because they had abused that role in Phase II, so much so that Mr. Brandt had to hire a lawyer to set the issue of what HID could, and importantly could not, do straight.

Mr. Brandt testified that when HID had been required in a prior phase of the Henry K’s subdivision to give its certification, that HID demanded much more than authorized – demanded a draconian “Development Agreement” that was wholly unreasonable:

As a consequence, Mr. Brandt requested the Planning Commission adjust Condition 1 to require SID certification and not HID certification. HID did not argue anything in response and did not submit the 117-pages they are now trying to give you for the first time on appeal. In fact, they did not bother to show up at all during the time set for the Planning Commission hearing. As the Planning Commission and City Staff discussed, Condition 1 is designed to comply with ORS 92.090(7) concerning the circumstance where “a subdivision” is “located within the boundaries of an irrigation district” that the irrigation district must “certify” the plat. The Planning Commission reasonably concluded, based on all the evidence in the record, that the only irrigation district that can provide the required certification is SID, because that is the only irrigation district that the proposed Henry K’s phase 4 is located within.

Therefore, respectfully, HID’s appeal lacks any merit and should be denied.

B. Henry K’s Phase 4 Subdivision is not in HID’s Boundaries

As the Pioneer Title Company report in the record makes plain, Henry K’s Phase 4 Subdivision is not within HID’s Boundaries:

7. Reservations, including the terms and provisions thereof, contained in Deed,
Grantor : Stanfield Irrigation District
Recorded : September 19, 1946, Book 178, Page 501, Deed Records.

Umatilla County’s GIS system confirms Pioneer Title has it right:

³ The verbatim transcript of the Planning Commission proceeding is a part of the Planning Commission record. As LUBA has explained: “the words that are spoken at a local hearing locally, are part of the record.” *Hammack & Associates, Inc. v. Washington County*, 16 Or LUBA 75, 99 n 2, *aff’d*, 89 Or App 40, 747 P2d 373 (1987). We will provide that transcript for review before the City Council hearing.

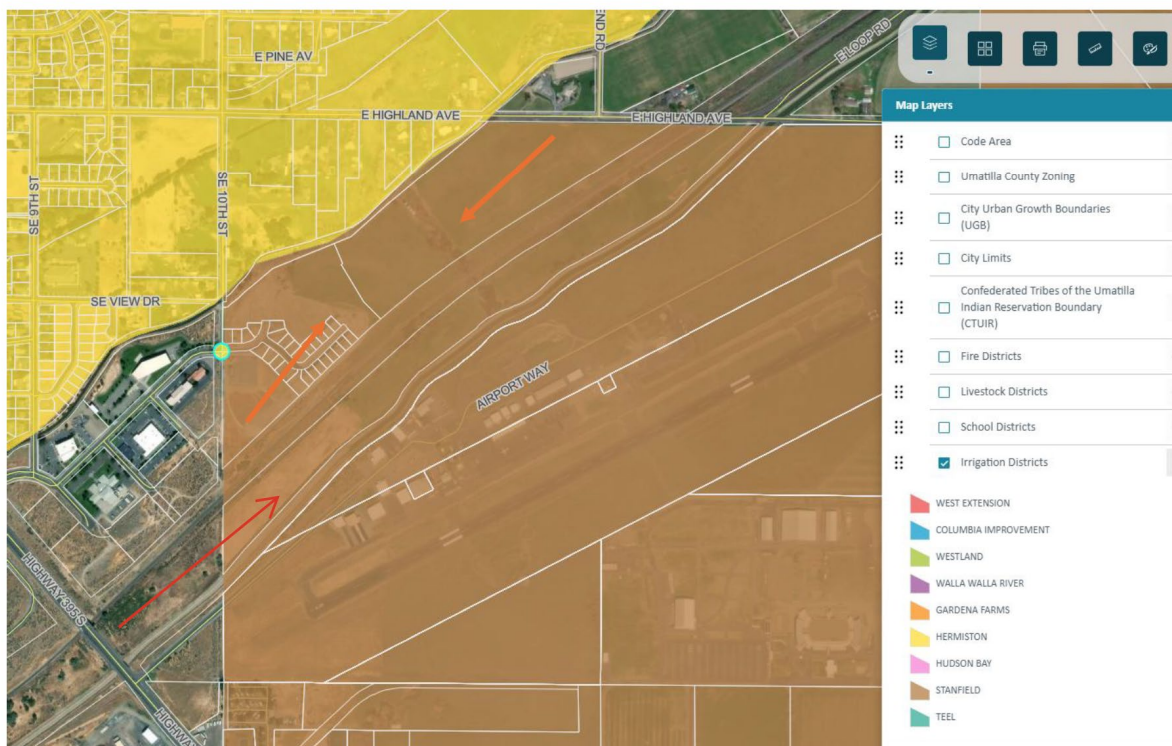
Umatilla County ArcGIS - <https://www.co.umatilla.or.us/departments/at/gis>

Yellow = Hermiston Irrigation District

Brown = Stanfield Irrigation District

Arrows = HHW property

Screenshot taken March 18, 2026



As such, the Planning Commission correctly required certification from Stanfield Irrigation District (“SID”) under ORS 92.090(7) for Condition 1, because the subject property is within SID’s boundaries. HID’s appeal rests on a false premise: it treats water-right places of use, historical water delivery, assessments, and federal project service boundaries as if they are the same thing as state-law irrigation district boundaries. They are not.

ORS 92.090(7) asks a narrow question: whether the subdivision is “within the boundaries of an irrigation district.” If it is, the City must receive and accept the statutory certification from that district. Here, the relevant district is SID. The Pioneer Title materials and Umatilla County GIS boundary records identify the subject property as being within SID, not HID. Those records are the only record evidence for the ORS 92.090(7) boundary question. And even considering the improper evidence HID submitted with its appeal, the result is the same. HID has not

submitted a recorded boundary order, inclusion petition, county court order, board resolution, or other ORS Chapter 545 boundary document as is required if the subject property was included within HID's boundary.

HID's improper extra-record water-right evidence does not answer the statutory boundary question either. HID relies heavily on Water Right Certificate 97930 and related maps showing that HID water rights were appurtenant to, or used on, portions of the property. However, as a matter of law, that does not establish that the subject property is within the HID boundaries. A water-right place of use is a water-law concept. It identifies lands authorized to receive water under a particular water right. It does not define irrigation district boundaries under ORS Chapter 545.

That distinction is built into Oregon law. ORS 545.271 expressly allows an irrigation district, upon receiving proper compensation, to furnish water to lands "not included within the district" and to lands within the district but not subject to district assessment. In other words, Oregon law contemplates exactly the situation HID treats as impossible: a district may deliver water to land that is not inside its district. HID's historical delivery of water, and even HID's prior assessment or billing practice, therefore, do not establish that any part of Henry K's Phase 4, is inside HID's jurisdictional boundary. At most, those facts show that HID historically delivered water to the property, as it is allowed to do – outside of its boundaries.

The same problem defeats HID's reliance on the HB 3111 materials. HID argues that SID's HB 3111 final order shows no SID water rights on the property, and that HID's HB 3111 map shows the property served by HID water rights. But HB 3111 materials concern water-right places of use. They do not redraw irrigation district boundaries. The absence of SID water rights on the property is not evidence that the property is outside SID. Parcels may be within an irrigation district without currently carrying active district water rights. Likewise, the presence of HID water rights on the property does not prove that the property is inside HID, because ORS 545.271 allows water delivery outside district boundaries.

HID's reliance on the 2003 Bureau of Reclamation (BOR) contract is also misplaced. First, that contract is a contract and it is between HID and the BOR. It is not an approval standard for this application, the applicant is not a party to it and regardless, it cannot change HID boundaries. The law makes clear that it is only after following the ORS Chapter 545 processes that land can be added to any irrigation district's boundaries including to HID's boundaries.

Second, the BOR contract concerns federally recognized project service boundaries and lands eligible to receive federal project water. It did not – and could not - amend state-law irrigation district boundaries under ORS Chapter 545. A federal reclamation contract does not and cannot substitute for the Oregon statutory process for changing irrigation district boundaries. HID has identified no ORS Chapter 545 proceeding by which the subject property was included within HID. In this regard, the 2003 contract, Para. 8(a), talks about a "Federally recognized boundary" but that quite clearly is NOT the same or a substitute for a State recognized boundary change under ORS Chap 545. So, do we have a federally approved water delivery contract?

Seems so. But is the Henry K's subdivision within the boundaries of HID, the answer is an unequivocal "no."

There are a lot of good reasons that ORS 545.079 requires recording of an HID Order approving admission to tHID. Official State and County maps are redrawn, assessors may alter tax lot maps for billing purposes, title companies, appraisers, lenders and so many others rely on what's on/in (recorded) the current county records. So far as we know, the 2003 Contract is not recorded and probably does not even meet recording standards. But the point is, that even if it were recorded, it simply does not fulfill HID's statutory requirements to add land to its boundaries.

It is also remarkable that HID does not seem to understand the importance of following ORS Chap 545 processes and it does not explain why they think they can be exempt from Oregon law. Their improper appeal materials even if considered, are simply irrelevant to the statutory boundary question presented in ORS Chapter 545, and ORS 92.090(7) and Condition 1.

HID's own appeal effectively confirms its fatal evidentiary gap. HID states that its staff are "in the process of reviewing historic files and meeting minutes" and reserves the right to supplement the record with additional information concerning HID's state boundaries.

At the outset, we note that HID fundamentally misunderstands the nature of this appeal hearing. This appeal hearing is as a matter of law, based on the record submitted to the Planning Commission. HID is not permitted to supplement the record now, on appeal and its "reservation" of the "right" to do so is improper and ineffective. The Oregon Court of Appeals has confirmed that local code gatekeeping requirements such as the HCO provisions forbidding supplementing the record on appeal – requiring the City Council appeal hearing be on the Planning Commission record - are enforceable and operative. *Miles v City of Florence*, 190 Or App 540, 549-50 (2003) (where local code requires appeal issues to the City Council be identified in the notice of appeal, the council may not consider issues that are not identified in the notice of appeal to the city council, because "local land use appeal ordinances often include—as in this case—provisions that require an appealing party to specify the issues for appeal. *** When such an ordinance limits the local body's review to the issues so specified, the local appeal body cannot go beyond those issues.")

Second, regardless of HID's improper claim of a nonexistent right to "supplement" the Planning Commission record on appeal, if the subject property truly had been included within HID's boundary through the required state-law process, HID would have been able to submit the operative boundary documentation. The absence of that documentation is significant. Water-right records, service history, assessments, federal project maps, and infrastructure proximity simply cannot fill that gap, as a matter of law.

HID's infrastructure concerns likewise do not justify changing Condition 1 in the manner HID requests. HID operates and maintains the A-Line Canal near the property and may have legitimate engineering or coordination concerns regarding stormwater, drainage, access, or construction impacts. But those concerns are not the question presented by HID's appeal. Condition 1 concerns the ORS 92.090(7) irrigation-district certification. HID's proximity to the

property and responsibility for the A-Line Canal do not make HID the district whose certification is required under ORS 92.090(7).

The City has already addressed development-related engineering and stormwater issues through other approval conditions. Condition 2 requires the applicant to sign an improvement agreement and install grading, storm drainage, curb and gutter, sidewalks, street paving, and all service utilities before final approval. Condition 9 addresses the A-Line Canal bridge assessment. Moreover, the required public works design standards for stormwater facilities expressly state, at 1.1(A)(b):

“Surface water or groundwater, and the drainage thereof, caused or effected by the changing of the natural grade of the existing ground, the removal of natural ground cover, or the placement of impervious surfaces, *shall not be allowed to flow over, under, or through adjacent public or private property in a volume or location materially different from that which existed before development occurred.* Any necessary drainage of surface water or groundwater shall be collected and conveyed in an approved manner to an approved point of disposal.” (Emphasis supplied.)

While wholly unnecessary and redundant because the applicant must comply regardless, if the Council wishes to make compliance with Public Works Standard 1.1(A)(b) a condition of approval, the applicant does not object.

The point is, that City’s required Conditions 2 and 9 and the City’s public works standards completely address development impacts, resolving HID’s appeal concern. But none of that provides a basis to rewrite Condition 1 to name the wrong irrigation district.

C. Only Clear and Objective Standards Can be Applied to this Application

The application for the subdivision Phase 4 preliminary plat approval is for the “development of housing.” Per ORS 197A.400, only clear and objective standards and conditions can be applied. The uncertainty HID seeks to introduce as a standard or condition concerning its boundaries, is not clear and objective and is improper under ORS 197A.400. However, to comply with ORS 197A.400, Condition 1 should be clarified to be made clear that the conditioned obligation is simply to obtain SID’s certification per ORS 92.090(7).

III. Conclusion

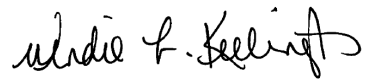
For these reasons, it is respectfully submitted that the City Council should deny HID’s appeal and affirm Condition 1 as approved by the Planning Commission, with the clarification that Condition 1 should be made clear, as ORS 197A.400 requires, to say that the conditioned obligation is to obtain SID’s certification per ORS 92.090(7).

The subject property is within SID’s boundaries, and ORS 92.090(7) requires certification from and only from SID. If the Council wishes to also require a new condition that the applicant must comply with public works standard 1.1(A)(b) concerning storm water, it may

certainly impose a condition so stating, and the applicant would not object. But the record does not support HID's requested revision replacing SID with wrong irrigation district - HID.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendie L. Kellington". The signature is fluid and cursive, with the first name being the most prominent.

Wendie L. Kellington

WLK:wlk

CC: Clients