

## **FINDINGS IN SUPPORT OF CITY COUNCIL DECISION AFFIRMING PLANNING COMMISSION APPROVAL OF HENRY K'S PHASE 4 SUBDIVISION PRELIMINARY PLAT AND DENYING HERMISTON IRRIGATION DISTRICT'S APPEAL**

### **I. Summary**

The City Council affirms the Planning Commission's April 15, 2026, decision approving the Henry K's Phase 4 preliminary subdivision plat, subject to the conditions of approval imposed by the Planning Commission, including Condition 1 requiring that the certification required by ORS 92.090(7), be by the Stanfield Irrigation District (SID) within whose boundaries the subject property is located.

The City Council denies Hermiston Irrigation District's ("HID") appeal of the Planning Commission approval. HID appealed on a single issue and did not challenge any other basis for the Planning Commission decision. HID's appeal challenged only that Condition 1 imposed by the Planning Commission should name HID as the ORS 92.090(7) certifying irrigation district and not the Stanfield Irrigation District (SID). However, HID's appeal to the City Council was substantially based upon materials not submitted to the Planning Commission and that HID acknowledges are not a part of the record for the Council's on-the-record appeal. In this regard, HID's counsel expressly acknowledged at the City Council appeal hearing that its appeal submittals C-G were not included in the record, had not been given to the Planning Commission and could not be considered by the City Council under the Hermiston Code. *See Miles v. City of Florence*, 190 Or. App. 500, 509, 79 P.3d 382, 387 (2003) (holding that local ordinance limitations on the scope of a local appeal review are effective).

HID has not demonstrated that the Planning Commission erred in approving the preliminary plat with the revision to Condition 1 to require the ORS 92.090(7) certification from SID rather than HID.

The City Council finds that the Planning Commission correctly approved the application based upon credible and persuasive evidence in the record.

### **II. Scope of Review and Record on Appeal**

The City Council's review is limited to the record established before the City Planning Commission during its evidentiary hearing on the application. HC 157.231(C)(1) requires that appeals to the City Council "shall be on the record" and that the City Council "hearing is for the presentation of argument against the interpretation or application of the chapter in reaching the decision." HC 157.231(C)(4) authorizes the City Council to affirm, reverse, amend, or remand the Planning Commission decision.

The City Council finds that HID's appeal attachments C-G were not submitted to the Planning Commission. As noted, this was confirmed by HID's counsel - during the City Council appeal hearing HID's counsel expressly acknowledged that the documents identified in its appeal were

not on the record and could not be considered by the Council. Accordingly, as required by the City's code, the Council expressly rejects the documents appended to HID's appeal at Exhibits C-G from the record in this matter because they were not submitted to the Planning Commission during its evidentiary hearing. The City Council does not rely on HID appeal attachments C-G in reaching its decision.

HID's appeal makes no claim of error in the Planning Commission decision, other than its sole claim that Condition 1 should name HID as the relevant irrigation district for purposes of the ORS 92.090(7) certification and not SID. HID's May 22, 2026 letter embellishes its appeal and claims: (1) the Planning Commission's record is "incomplete" because it did not consider the evidence HID never gave the Planning Commission that HID now appends to its appeal to the City Council, and claims that (2) evidence the Planning Commission relied upon – a Umatilla County GIS system screenshot and a Pioneer Title report – are not evidence a reasonable person would rely upon to conclude the property is in SID's boundary and not HID's. The Council finds, as explained in greater detail below, that HID is mistaken.

Finally, HID requests that the application be remanded to the Planning Commission so that HID can supplement the evidentiary record. The City Council denies that request for the reasons explained below.

### **III. Applicable Approval Criteria**

The applicable approval criteria include Hermiston Code subdivision standards in HC §§ 154.15 through 154.35 and required minimum improvements in HC §§ 154.60 through 154.66, together with applicable zoning standards in Chapter 157, including the R-2 Medium Density Residential zone standards in HC 157.026 and other applicable provisions identified in the Planning Commission staff report. The City Council adopts and incorporates the Planning Commission Staff Report and findings, and Staff Report to the City Council, as supplemented and clarified by these findings.

The City Council affirms the Planning Commission's unchallenged findings that the proposed preliminary plat complies with all applicable criteria or can feasibly comply with them through the imposed conditions of approval.

### **IV. HID's Stated Concerns**

HID stated they wanted Condition 1 to name HID because they were worried about water from the proposed subdivision affecting HID's canal. First, as explained below, Condition 1 is designed to comply with ORS 92.090(7). ORS 92.090(7) has nothing to do with the concern HID raises about water from the proposed subdivision affecting HID's canal. It simply requires the irrigation district within whose boundaries the proposed subdivision is located to certify that the subdivision will be excluded from the district or will continue to be served within the district.

Second, the unrebutted testimony during the Planning Commission hearing testimony shown on the transcript of that proceeding, indicated that the Feed Canal is approximately 50 to 80 feet higher than the low point of the property near the A-Line Canal and that water collected by the A Line Canal because the Feed Canal operated by HID leaks. The applicant testified during the Planning Commission hearing on April 15, 2026, that, “\*\*\* Phase 4 is situated to the west of [the wetland area] feature, not downstream from it in any way that would concentrate stormwater runoff toward the A-line canal as HID suggests. The preliminary plat before you tonight shows that Phase 4 is accessed via Southeast Columbia Drive and is oriented and graded in a manner that does not place impervious surfaces in proximity to the \*\*\* area HID identifies as its concern.”<sup>1</sup>

Third, staff explained to the Planning Commission that they could not see a situation where subdivision stormwater could flow into the A-Line Canal, because stormwater facilities would have to be designed to retain and manage runoff through the civil design process. HID did not claim otherwise.

Fourth, the applicant submitted the approved stormwater plans for Phase 2 of the subdivision into the Planning Commission record. Those plans demonstrate that the Phase 2 stormwater system was designed to manage stormwater onsite through storm infiltration trenches, dry wells, swales, erosion-control measures, and related facilities. The Phase 2 plans state that storm infiltration trench sizing calculations are based on the 25-year, 24-hour design storm in the City of Hermiston Public Works Standards, Section 2.3, and use the Santa Barbara Urban Hydrograph method. The Phase 2 plans show construction-phase erosion and sediment controls, including silt fencing, construction entrance controls, drainage swales, inlet protection, best management practices, and onsite staging. The April 15, 2026 Planning Commission hearing transcript includes the Applicant’s testimony that HID certified the Phase 2 plat after receiving those engineered drawings showing the stormwater management plan, and that the Applicant testified that Phase 4 would use a substantially similar stormwater design approach (“The stormwater management plan for Phase 4 is expected to be substantially similar in design approach to what was approved for the prior phases as the site conditions, grading, and infrastructure are continuous across the development.”)<sup>2</sup> HID does not claim otherwise.

Fifth, the City’s Public Works standards require, among other things that “[s]urface 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. \*\*\*” The City’s public works standards are mandatory and apply to Phase 4’s civil

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<sup>1</sup>Transcript of Audiotope of Planning Commission Hearing Henry K’s Phase 4 Subdivision, April 15, 2026 at p 17, 00:53:27.

<sup>2</sup> *Id.* at 00:54:51.

storm water management design. HID does not argue that compliance with these City Public Works standards is inadequate to protect any HID canal and the Council agrees with the Planning Commission that they are adequate to do so. HID not claim otherwise or acknowledge those standards at all.

The City Council rejects HID's unsupported assertion that the proposed Phase 4 subdivision development would harm the A-Line Canal. The Council finds that HID's generalized concern that impervious surfaces might affect drainage are undermined by the applicant's and Staff testimony, that the Council determines is the most credible and persuasive testimony in the record, that the Phase 4 property is situated and proposed to be graded such that it does not concentrate stormwater runoff toward the A-Line Canal, that Phase 4's specific stormwater design will be substantially similar to the approved Phase 2 stormwater system that does not direct water to or cause harm to HID's canal and will be required to meet the City's technical public works standards.

#### **V. Irrigation District Certification Under ORS 92.090(7)**

Condition 1 that HID appeals is about ensuring compliance with ORS 92.090(7), which provides:

“Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.”

The purpose of ORS 92.090(7) is limited. It requires a particular certification from the district within whose boundaries the subdivision is situated. The statute does not grant an irrigation district veto authority over preliminary plat approval, or supply leverage to require development agreements, or fencing, does not authorize an irrigation district to impose development conditions, and does not authorize a city to require certification from an irrigation district in whose boundaries the subdivision is not located.

The City Council is aware that originally the Planning Commission's draft Condition 1 required certification from HID. However, before the Planning Commission Hearing and during the Planning Commission hearing, the applicant presented evidence and argument that the subject property is not within HID's boundary and is instead within SID's boundary. HID did not respond to that evidence at the Planning Commission. The applicant's evidence included Umatilla County GIS information showing the SID irrigation district boundary covering the subject property and that the HID district boundary did not cover the subject property. The

applicant provided testimony regarding a Pioneer Title report that identified the subject property as being within the Stanfield Irrigation District and the applicant's lawyer's letter in the record explained that the subject property is not within HID's district.

We pause here to note that HID is mistaken to argue that the contents of the Planning Commission record do not include the Pioneer Title report that Mr. Brandt testified about at the Planning Commission. The applicant submitted the disputed Pioneer Title report to the Planning Commission,<sup>3</sup> as well as a letter from applicant's attorney to HID's attorney explaining in detail why the subject property was not in the HID boundary, submitted a letter to the Planning Commission from the applicant's attorney together with the now disputed Umatilla County GIS information and the Phase 4 approved stormwater design sheets. Those documents were presented by the applicant to City Staff in advance of the Planning Commission hearing for the record of this matter. Indeed, both the applicant and HID presented their material to the Planning Commission via email to City Staff or, as to the applicant, it also presented evidence during the Planning Commission Hearing which the applicant attended. The applicant further presented to the Planning Commission during its evidentiary hearing, his oral and written testimony explaining that the subject property was in SID's not HID's boundary and why naming the correct irrigation district as the ORS 92.090(7) certifying district, turns out to matter.

The Planning Director reviewed the issue of the correct irrigation district to certify the boundary under ORS 92.090(7) during the Planning Commission hearing and recommended revising Condition 1 to require certification from SID rather than HID. The Planning Commission accepted that recommendation based upon the evidence and argument presented to it and decided to change Condition 1 to reflect SID as the proper certifying district.

As noted, HID did not attend the Planning Commission hearing. HID did not offer any testimony or evidence that the subject property was not in fact within SID's and not HID's boundaries. Clearly, HID was aware that there was a dispute about the relevant boundary because the issue was discussed in some detail in the applicant's lawyer's March 23, 2026 letter to HID's lawyer that the applicant placed into the record of the Planning Commission's April 15, 2026 hearing, that the Planning Commission discussed during their hearing on this matter.

The City Council finds that the most credible and persuasive evidence in the record supports the Planning Commission's determination that the appropriate irrigation district to certify the Phase 4 plat under ORS 92.090(7), is SID, not HID. The Council finds that the Umatilla County GIS

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<sup>3</sup> In the transcript of the April 15, 2026 Planning Commission hearing, the applicant, Mr. Brandt, states: "There is a title report, I believe, in one of the documents that I emailed over, from Pioneer Title for the property that does say [the property is] in the Stanfield Irrigation District." Moreover, Mr. Brandt specifically identified the March 21, 2024, Pioneer Title Company report as confirming that HHW's property lies within SID, not HID, and cited Umatilla County ArcGIS as corroborating that conclusion. Staff indicated that the record contained maps showing the irrigation district boundaries and recommended changing the irrigation-district certification condition from HID to SID. The Commission then approved that amendment. HID did not say anything to the contrary and in fact did not attend the Planning Commission hearing at all.

map and the Pioneer Title report are credible and persuasive evidence in this record that the subject property is in SID and not HID – particularly when there is no other evidence<sup>4</sup> in the record. While the Umatilla County GIS disclaimer that HID relies upon in its appeal that the Umatilla County GIS information is for assessment and taxation purposes, the Council finds that does not undermine the Umatilla County GIS information showing the subject property lying within SID’s boundaries, as credible and persuasive evidence of the relevant irrigation district boundary within which the property is located, for purposes of ORS 92.090(7). If for taxation and assessment purposes the subject property is within SID’s boundary, the Council does not understand how that is not compelling evidence that the property is indeed in the SID, not HID, boundary.

Moreover, the County’s GIS map is not the only evidence in the record on this issue. The Umatilla County GIS evidence is consistent with the applicant’s testimony concerning the Pioneer Title report. It is also consistent with the actual terms of the Pioneer Title report, in the record. A title report identifies recorded matters affecting title. The report identifies an irrigation-district-related recorded reservation only for Stanfield Irrigation District — “Reservations, including the terms and provisions thereof, contained in deed Grantor Stanfield Irrigation District recorded September 19, 1946, Book 178 Page 501 Deed Records” — and identifies no comparable deed, reservation, easement, certification, assessment, or encumbrance involving Hermiston Irrigation District. The Council finds that that supports the reasonable inference that the property is within the Stanfield Irrigation District, not HID. That inference is strengthened by the credible and persuasive evidence from the property owner, Mr. Brandt, who testified at the Planning Commission hearing that the subject property is within SID and not HID. The Council also notes that HID stated at the appeal hearing that it was still looking into Pioneer Title and Umatilla County records as credible sources of information concerning its HID boundaries. That is a tacit acknowledgement that both are credible sources of such information.

HID did not submit contrary boundary evidence to the Planning Commission. HID did not appear at the Planning Commission hearing to present evidence, request that the record be left open, or explain why the applicant’s boundary evidence was incorrect. If HID needed more time to respond to the applicant’s evidence concerning district boundaries, it certainly could have requested that the record be left open for the presentation of any such evidence and argument to respond. HID did not make any such request and did not dispute the applicant’s evidence. Parties may not ignore the provided evidentiary hearing and assume that the City Council will order a planning commission “do over” when the Planning Commission outcome is not as the nonparticipating party preferred.

The City Council further finds that HID’s oral testimony at the Council’s appeal hearing that it has delivered water to the property, that it has charged the property for delivered water, and

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<sup>4</sup> The Council notes that the fact that the City previously assumed the subject property was within HID’s boundary, is not evidence that the property is within HID’s boundary.

desires to treat the property as being within its boundary, does not establish that the subject property is within HID's legal boundary for purposes of ORS 92.090(7). Oregon law distinguishes between an irrigation district's boundary and an irrigation district's provision of water service. ORS 545.271 authorizes an irrigation district to furnish water outside the district's boundaries for compensation. As a matter of law, water delivery, standing alone, does not annex land into an irrigation district. Similarly, payment for water delivery or a water-service arrangement does not establish that land is within a district's boundary.

The City Council also finds that Oregon law provides a formal process for changing irrigation district boundaries. ORS 545.051 states that the boundaries of an irrigation district "may be changed in the manner prescribed in ORS 545.051 to 545.126." The City Council finds that there is no evidence in the Planning Commission record of any formal inclusion, annexation, boundary order, county approval, petition, or recorded instrument bringing the Phase 4 property into HID. HID's reference to a federal contract or federally authorized water-service boundary does not demonstrate the effectuation of a state-law required boundary change under ORS chapter 545. In fact, there is no such state-law boundary change in the Planning Commission record and HID did not claim any such document exists. Rather, HID stated it was "feverously" still, at the time of the City Council appeal hearing, trying to find the existence of such a document. At most there is contract between HID and the federal government about what HID's boundaries should or might be, but that does not change what the evidence demonstrates that HID's boundary actually is. ORS 92.090(7) is interested in actual irrigation district boundaries.

Accordingly, the City Council finds that ORS 92.090(7) requires certification from SID, not HID, because that is what the evidence shows. Condition 1 is therefore affirmed.

## **VI. HID's Request for Remand**

HID requests remand to the Planning Commission to supplement the record with additional boundary evidence. The City Council denies that request.

First, HID's request is inconsistent with the nature of this on-the-record appeal. HID's requested remand is based on documents that HID did not submit to the Planning Commission. HID acknowledged that those documents were not part of the Planning Commission record. HID also acknowledged that it did not present water-right, federal-contract, or boundary evidence to the Planning Commission.

Second, HID had an opportunity to participate in the Planning Commission hearing and did not do so. HID submitted written comments on April 15, 2026, concerning stormwater and canal concerns. However, HID did not attend the Planning Commission hearing, HID did not submit its City Council appeal materials to the Planning Commission, did not appear at the Planning Commission to present them, and did not ask the Planning Commission to leave the record open to allow those materials to be submitted. The record also shows that HID knew before the Planning Commission hearing that the applicant disputed whether the property was in HID's

boundary. HID's counsel even stated at the City Council hearing that HID knew the applicant had asserted in earlier phase proceedings that the property was not within HID's boundary and that HID did not agree with that assertion. HID therefore had notice of the issue and an opportunity to submit evidence at the only evidentiary hearing on the matter. It simply chose not to do so.

Third, a remand to the Planning Commission is unnecessary to enable the City to make a legally adequate decision. The Planning Commission record contains adequate, proper, persuasive and credible evidence supporting the finding that the Stanfield Irrigation District is the ORS 92.090(7) certifying district. HID did not submit contrary boundary evidence to the Planning Commission. The City Council is not required, or wise for that matter, to remand merely because a party later wishes it had submitted additional evidence or hopes to locate additional evidence.

Fourth, a remand would add delay and cost to this application for the development of housing contrary to ORS 197A.400. In this regard, the City Council recognizes that the Phase 4 application is for the development of housing and that HID's requested delay is unnecessary and contrary to the cost-effective housing application approval rules in ORS 197A.400 and is also contrary to the timely-review principles in Oregon land use law, including ORS 227.178. HID has shown no adequate reason to justify its request to delay this application for the development of housing for the additional fact-finding it had every opportunity to develop and present at the Planning Commission hearing.

## **VII. Final Decision**

For the reasons stated above, the City Council denies HID's appeal, denies HID's request for remand, affirms the Planning Commission's approval of the Henry K's Phase 4 preliminary subdivision plat, and affirms Condition 1 requiring certification from Stanfield Irrigation District under ORS 92.090(7).