

## EXHIBIT D

### Findings of Fact

#### Comprehensive Plan Map Amendment, and Rezone

#### 1457,1555, 1575, and 1595 E Airport Rd

Application to Amend the City of Hermiston Comprehensive Plan Map and associated Zoning Map, effecting a change to the zoning of the subject property.

**Applicant/Owner:** Simon and Simon Land Company, LLC  
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#### **Purpose of This Application:**

Mike and Deannie Simon, members of Simon and Simon Land Company, LLC, seek to amend the zoning designations of the subject property identified as Tax lots 900 and 906 of Assessor's Map 4N 28 13C in the City of Hermiston. Current zoning is C-2 Outlying Commercial and M-1 Light Industrial with the zoning boundary running at a northwest to southeast angle across the subject properties. It is the desire of the Simon's to have the zoning boundary be reconfigured with the result being that Tax lot 900 would be zoned C-2 Outlying Commercial and Tax lot 906 would be zoned M-1 Light Industrial. A third Tax lot in their ownership at this location, Tax lot 903, is not proposed for change.

#### **Documents to be Modified:**

- City of Hermiston Comprehensive Plan Map.
- City of Hermiston Zoning Map.

#### **Current Use of the Property:**

Most of the subject property is bare with improvements on Tax lot 900 consisting of three manufactured homes. No development has occurred on either Tax lot 903 or 906.

**Surrounding Uses:** This area south of Hermiston is a mix of commercial, light industrial, and residential uses of a rural nature. The development on the subject property is less than a half mile from Highway 395 which intersects near a veterinarian clinic. The Hermiston Airport is to the north, the Eastern Oregon Trade and Event Center (EOTEC) to the northeast, and a Denny's, a hotel, Ranch and Home, and the Walmart Distribution

Center all to the south along Highway 395. Zoning of the area is also a mix including Light Industrial, Heavy Industrial, and Outlying Commercial with overlays applied to both the Hermiston Airport and the EOTEC (which also serves as the Umatilla County Fairgrounds). The Comprehensive Plan designations of the subject property are Commercial and Industrial, like properties in the vicinity.

**Required Review:**

The City of Hermiston Zoning provisions, found as part of Title XV Land Usage, in Chapter 157 Zoning part 157.226 Amendments provides the requirements for amendment to the Zoning Map and at (E) provide the Approval Criteria. The City of Hermiston also provides application forms with procedures for both a Comprehensive Plan Map Amendment and a Zone Change. Both applications have several questions that reflect the Zoning ordinance provisions that will also be included here. As this is also a request to amend the Comprehensive Plan Map the 14 Statewide Planning Goals are also considered.

City of Hermiston Zoning 157.226 Amendments (E) Approval Criteria: The review criteria are listed in **bold** with responses in regular text.

**(E) Approval criteria.**

**(1) The following criteria must be followed in deciding upon a quasi-judicial proceeding:**

**(a) The burden in all land use proceedings is upon the applicant, whether a zone change, conditional use or variance is the subject of the hearing;**

*Response:* The applicant is submitting this application with supporting material to provide evidence for the decision-making body to consider.

**(b) The requested zone change or conditional use must be justified by proof that:**

**1. The change is in conformance with the Comprehensive Plan and also the goals and policies of the plan;**

*Response:* The City of Hermiston Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission addressing the applicable 14 Statewide Land Use Planning Goals. For this request Goals 1 Citizen Involvement, 2 Planning Process, 9 Local Economy, and 12 Transportation would be deemed applicable. Goal 10 Housing, Goal 11 Public Services and Facilities, and Goal 14 Urbanization could be deemed applicable.

The following City of Hermiston Comprehensive Plan Policies are considered:

- Policy 1: The City of Hermiston will insure that citizens have an adequate opportunity to be involved in all phases of the planning process.

*Response:* As this request will be heard by both the Planning Commission and City Council, with notice to adjoining landowners and affected agencies Goal 1 and Policy 1 are being met.

- Policy 2: The City of Hermiston will monitor and update periodically its comprehensive plan and implementing ordinances to respond to changing conditions.

*Response:* This request provides an opportunity for the City of Hermiston to evaluate this area of the community and authorize a change responding to a request for change that will support maintaining limited housing on a portion of the subject property proposed to be zoned C-2 along with clarification of the type of uses that can be allowed on the adjoining property proposed to be zoned M-1.

- Policy 4: The City of Hermiston will promote compact urban development within and adjacent to existing urban areas to insure efficient utilization of land resources and facilitate economic provision of urban facilities and services.

*Response:* This proposal maintains current development pattern in this area of Hermiston and will more clearly identify the types of uses on the two tax lots that are the focus of this request.

- Policy 18: The City of Hermiston will facilitate industrial development as a means of creating new jobs and fostering the economic well being of the community.

*Response:* The M-1 zoning on tax lot 906 will provide clarity on the types of uses that can be allowed leading to a more focused development pattern.

- Policy 19: The City of Hermiston will assure the availability of a sufficient supply of commercial land to accommodate 20-year projected need and strive to achieve the balanced distribution of commercial activities in neighborhoods, downtown, and along outlying highways.

*Response:* Maintaining the smallest tax lot with C-2 zoning maintains the supply of commercial land and clarifies the types of uses that can be allowed on tax lot 900. It is the only portion of the subject property that has been developed with three manufactured homes, which is a use if established can be maintained, which the applicant intends to do for the foreseeable future.

- Policy 20: The City of Hermiston supports economic development and job growth which will diversify and strengthen the mix of economic activity in the local marketplace and provide employment opportunities for local residents.

*Response:* The applicant intends to further develop tax lot 906 proposed to be zoned M-1 through a partition or subdivision, creating as many as five or six lots for industrial use. This request to clarify the zoning on the subject property makes that future development easier to accomplish.

- Policy 21: The City of Hermiston will encourage the home-building industry to provide a variety of housing opportunities in sufficient quantities at affordable prices to meet the housing needs of its residents.

*Response:* This request seeks to retain three homes on a portion of the subject property. While those homes could be removed at a future date and replaced with a commercial use at a point in the future it is not anticipated to occur in the foreseeable planning future.

- Policy 22: The City of Hermiston will protect and enhance the quality of life in residential neighborhoods.

*Response:* While there are homes on a portion of the subject property the area is not zoned for residential use and the applicant is not seeking residential protections. They are seeking to continue the residential use as allowed in the C-2 zone.

- Policy 23: The City of Hermiston will plan for the timely and efficient provision of a full complement of urban services and facilities in all developed and developing areas within the community. Timely means a point within the 20-year timeframe when the city deems development appropriate for a given property based on factors including but not limited to the need for additional urban development within the urban growth boundary and the extent of undeveloped or undeveloped land between the existing development and the subject property.

*Response:* Public services are available within the Hermiston Airport and EOTEC facility and can support development of the subject property, both the current residential development and future proposed industrial development following extension at the applicant's expense.

- Policy 31: The City of Hermiston will promote a balanced, well-integrated local transportation system which provides safe, convenient and energy-efficient access, and facilitates the movement of commodities.

*Response:* The relocation of the Umatilla County fairgrounds with the development of the EOTEC has allowed for improvements of Airport Road and the local transportation network. As development continues in this area additional improvements may be needed which can be done by developers in cooperation with the City.

- Policy 32: The City of Hermiston will protect the operation of the Hermiston Airport from conflicting land uses and encourage expansion of air and rail transportation to facilitate economic development.

*Response:* The proposed realignment of the current zoning will not change the types of uses that are allowed on the subject property. Current zoning should have been accomplished in such a way that would protect the airport. Future development requests on the subject property should be accomplished with an understanding that both the Hermiston Airport and the EOTEC are in the vicinity to the north and northeast. The Hermiston Airport creates special height restrictions for this property and future buildings will be constructed in conformance with the airport conical approach surface within the airport master plan.

- Policy 34: The City of Hermiston will comply with the requirements of the Transportation Planning Rule with the adoption of the Transportation System Plan and related amendments to implementing ordinances.

*Response:* The City of Hermiston has an acknowledged Comprehensive Plan and Transportation System Plan that implements the Transportation Planning Rule. This realignment of zoning on the subject property does not impact the potential traffic impacts along Airport Road or to the intersection of Airport Road with Highway 395. Specific traffic

impacts based on development can and should be considered at the time of development proposal.

The request before the City of Hermiston is not to change the zoning of the subject property but to consider a reconfiguration of how the zoning is applied. Currently the zoning runs at a northwest to southeast angle across the two Tax lots that are subject to this request. The applicant is asking for each Tax lot under consideration to have discrete zoning applied as shown on the included map. This request can be found to be consistent with the Goals and Policies identified in the list above. Also reviewed are the 14 Statewide Land Use Planning Goals later in this narrative.

**2. The showing of public need for the rezoning and whether that public need is best served by changing the zoning classification on that property under consideration;**

*Response:* This request seeks to have both the Comprehensive Plan and Zoning designation applied separately to each of the subject Tax lots to eliminate confusion about what types of activities can occur as the list of allowable uses is different when the Light Industrial use zone is compared to the Outlying Commercial use zone. The public need is met when that confusion is eliminated, and the public can observe consistent application of the City of Hermiston Zoning provisions to this and other properties in the vicinity.

**3. The public need is best served by changing the classification of the subject site in question as compared with other available property.**

*Response:* There are no other properties under consideration. This is not about adding new land to a zoning classification, but more about eliminating confusion on the subject property.

**4. The potential impact upon the area resulting from the change has been considered.**

*Response:* No impact upon the area has been identified as neither of the current zoning designations are being removed; they are being reconfigured to eliminate confusion related to the uses allowed on the subject property. The same list of potential commercial or light industrial uses can still occur on the subject properties.

**(c) The courts will require a "graduated burden of proof" depending upon the more intensive land use that will occur as a result of the proposed rezoning.**

*Response:* No change in intensity of land uses will occur. The result of this action will be to have clear requirements for the subject property as to whether Light Industrial or Outlying Commercial is applicable.

**(d) Procedural process for a quasi-judicial hearing.**

**1. Parties at a public hearing must have an opportunity to be heard, to present and rebut evidence.**

**2. There must be a record which will support the findings made by the City Council or Planning Commission.**

*Response:* This application narrative, along with the required application forms and maps, will provide the initial evidence for the Planning Commission and City Council to consider. The anticipated public hearings will provide additional opportunities for both the applicant and neighbors to provide evidence and testimony to the record.

Comprehensive Plan Map Amendment Application Questions:

**1. Explain how the requested change is in conformance with the comprehensive plan and also the goals and policies of the plan.**

*Response:* See E(1)(b)(1) response above

**2. Describe the public need for the comprehensive plan amendment and whether that public need is best served by changing the zoning classification on the property under consideration.**

*Response:* See E(1)(b)(2) response above.

**3. Explain how the public need is best served by changing the classification of the site in question as compared with other available property.**

*Response:* See E(1)(b)(3) response above.

**4. Explain how the potential impact upon the area resulting from the change has been considered.**

*Response:* See E(1)(b)(4) response above.

Application to Amend Zoning Ordinance (Text or Map) Application Questions:

**1. Explain how the requested change is in conformance with the comprehensive plan and also the goals and policies of the plan.**

*Response:* See E(1)(b)(1) response above.

**2. Describe the public need for the rezoning and whether that public need is best served by changing the zoning classification on the property under consideration.**

*Response:* See E(1)(b)(2) response above.

**3. Explain how the public need is best served by changing the classification of the site in question as compared with other available property.**

*Response:* See E(1)(b)(3) response above.

**4. Explain how the potential impact upon the area resulting from the change has been considered.**

*Response:* See E(1)(b)(4) response above.

**The 14 applicable Statewide Planning Goals are also considered.**

**Goal 1 Citizen Involvement: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.**

*Response:* The City of Hermiston Comprehensive Plan and Zoning Ordinance outlines the City's citizen involvement program that includes the activities of the Planning Commission and provides for the public hearing process with its required notice provisions. These notice provisions provide for adjoining and affected property owner notice; notice to interested local, state, and federal agencies; and allows for public comment to the process.

The applicant asserts that this application is consistent with Goal 1.

**Goal 2 Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

*Response:* Goal 2 establishes the underlining process that a county or a city needs to utilize when considering changes to their Comprehensive Plans and development codes. This requested change of Comprehensive Plan and Zoning designation is also guided by Goal 2 requirements. This application meets those requirements for this request.

The applicant asserts that this application is consistent with Goal 2.

**Goal 3 Agricultural Lands: To preserve and maintain agricultural lands.**

*Response:* The Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with Oregon Revised Statute 215.203 et. seq. Goal 3 does not allow nonfarm uses like industrial development on lands zoned for exclusive farm use. This application is to consider modifications to the application of the Light Industrial and Outlying Commercial use zones within the city limits on lands that have already been identified for urban industrial and commercial uses.

Goal 3 would not apply to this action.

**Goal 4 Forest Lands: 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.**

*Response:* There are no forest lands in the City of Hermiston.

Goal 4 would not apply to this action.

**Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources: To protect natural resources and conserve scenic and historic areas and open spaces.**

*Response:* The subject property does not have any overlays or other known cultural or historical sites. There are no wetlands inventoried on the subject property.

The City of Hermiston finds that this application is consistent with Goal 5.

**Goal 6 Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.**

*Response:* Goal 6 addresses the quality of air, water, and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed change in Comprehensive Plan and Zoning Map designation does not seek approval of a specific development but seeks to modify the application of the City of Hermiston's Light Industrial and Outlying Commercial zoning designation to allow for more clear application of those use zone requirements on the subject property. The list of allowable uses is not proposed to change, and therefore anticipated impacts are also not anticipated to change.

The City of Hermiston finds that this application is consistent with Goal 6.

**Goal 7 Areas Subject to Natural Hazards and Disasters: To protect people and property from natural hazards.**

*Response:* Goal 7 works to address natural hazards and disasters and through a comprehensive plan amendment process would seek to determine if there are known natural hazards and seek to mitigate any concerns. There are no known natural hazards on the subject property, and it is located significantly above and outside the influence of the Umatilla River which has a history of flooding.

The City of Hermiston finds that this application is consistent with Goal 7.

**Goal 8 Recreation Needs: 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.**

*Response:* No recreation components are included in this application. However as industrial or commercial activities are sited, an increase in tax base for the City of Hermiston would occur. That tax base would provide additional revenue to the City of Hermiston leading to the opportunity for increased investment in parks and recreation opportunities for its citizens and visitors.

The City of Hermiston finds that this application is consistent with Goal 8.

**Goal 9 Economy: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**



*Response:* Goal 9 requires local governments to adopt comprehensive plans and policies that contribute to a stable and healthy economy. Hermiston has a Comprehensive Plan that has been acknowledged to comply with Goal 9.

The City of Hermiston finds that this application is consistent with Goal 9.

**Goal 10 Housing: To provide for the housing needs of citizens of the state.**

*Response:* Housing is not specifically considered as part of this application. There are however homes on Tax lot 900, the smaller Tax lot in the southeast corner of the subject property. The Outlying Commercial that is being requested does allow the retention of homes, along with their replacement and enhancement, something the applicant wants to ensure.

The City of Hermiston finds that this application is consistent with Goal 10.

**Goal 11 Public Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

*Response:* Goal 11 requires local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services. The goal provides that urban and rural development be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the area to be served. This area of Hermiston has public services available readily extendable.

The City of Hermiston finds that this application is consistent with Goal 11.

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

*Response:* Goal 12 requires local governments to provide and encourage a safe, convenient, and economic transportation system, implemented through the Transportation Planning Rule. Later in this narrative compliance with the Transportation Planning Rule is considered and evaluated.

The City of Hermiston finds that this application is consistent with Goal 12.

**Goal 13 Energy: To conserve energy.**

*Response:* Goal 13 directs local jurisdictions to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles. Access to Highway 395 to the west provides energy efficiency and convenient access. And any future development will need to occur in compliance with the acknowledge Zoning Ordinance.

The City of Hermiston finds that this application is consistent with Goal 13.

**Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside**

**urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

*Response:* Goal 14 prohibits urban uses on rural lands. To locate urban uses on rural lands, local governments must either expand their urban growth boundaries to add property or take a Goal 14 exception setting forth reasons why urban development should be allowed on rural lands. This application is to change the Comprehensive Plan and Zoning Map designation on lands within the city limits allowing industrial and commercial uses on the subject property.

The City of Hermiston finds that this application is consistent with Goal 14.

The applicant would find that this application is consistent with the Statewide Planning Goals 1 through 14. Statewide Planning Goals 15 through 19 are not applicable in eastern Oregon or Hermiston.

**Portions of Oregon Revised Statute 227.175 concerned with applications to local governments for a permit or zone change are applicable. Much of ORS 227.175 has already been incorporated into the City of Hermiston Zoning Ordinance and is implemented through a variety of measures including notice provisions and hearing procedures.**

**227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing.**

**(1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.**

*Response:* The applicant has provided the application on the forms prescribed, paying the required fees, and providing this narrative addressing these and the other requirements in both Oregon law and the law of the City of Hermiston.

**(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.**

*Response:* The applicant is not pursuing multiple applications but is focused on the change in Comprehensive Plan and Zoning Map designations.

**(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.**

*Response:* The applicant understands that these actions will be heard by the Planning Commission and the City Council as they are quasi-judicial in nature.

**(4)**

**(a) A city may not approve an application unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.**

**(b)**

**(A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.**

**(B) This paragraph does not apply to:**

**(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or**

**(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).**

**(c) A city may not condition an application for a housing development on a reduction in density if:**

**(A) The density applied for is at or below the authorized density level under the local land use regulations; and**

**(B) At least 75 percent of the floor area applied for is reserved for housing.**

**(d) A city may not condition an application for a housing development on a reduction in height if:**

**(A) The height applied for is at or below the authorized height level under the local land use regulations;**

**(B) At least 75 percent of the floor area applied for is reserved for housing; and**

**(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.**

**(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an application for a housing development on a reduction in density or height only if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the city must adopt findings supported by substantial evidence demonstrating the necessity of the reduction.**

**(f) As used in this subsection:**

**(A) “Authorized density level” means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.**

**(B) “Authorized height level” means the maximum height of a structure that is permitted under local land use regulations.**

**(C) “Habitability” means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.**

*Response:* The applicant has, primarily through this application narrative, provided evidence that the City of Hermiston Comprehensive Plan is considered and can be met when this request is approved. There are no housing developments requested as part of this application. Housing currently in place on a portion of the subject property will be retained and this application will clarify that it can be.

**(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.**

*Response:* The applicant supports compliance with required notice provisions and meeting the needs of Statewide Planning Goal 1 Citizen Involvement.

**(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a “public use airport” if:**

**(a) The name and address of the airport owner has been provided by the Oregon Department of aviation to the city planning authority; and**

**(b) The property subject to the zone use hearing is:**

**(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or**

**(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”**

*Response:* The Hermiston Airport is immediately to the north of the subject property. Notice to the airport authority is anticipated. The proposal would not have any effect on airport operations. Compliance with any overlay zones, if applicable, are already in force.

**(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway “approach surface” as defined by the Oregon Department of Aviation.**

*Response:* This action is not within the runway approach area based on available maps on the City of Hermiston website.

**(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.**

*Response:* No manufactured dwelling park as defined in ORS 446.003 is located on the subject property.

**(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.**

*Response:* There are tenants on the subject property which the landowner wants to preserve housing availability for. The Hermiston Airport is to the north of the subject property.

**(10)**

**(a)**

**(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.**

**(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.**

**(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.**

**(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.**

**(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals.**

**At the de novo hearing:**

**(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;**

- (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and
- (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)

(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

- (i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;
- (ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

*Response:* The Hermiston Planning Commission held a public hearing on January 11, 2023. The Hermiston City Council held a public hearing on January 23, 2023.

**(11) A decision described in ORS 227.160 (2)(b) shall:**

**(a) Be entered in a registry available to the public setting forth:**

- (A) The street address or other easily understood geographic reference to the subject property;**
- (B) The date of the decision; and**
- (C) A description of the decision made.**

**(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.**

**(c) Be subject to the appeal period described in ORS 197.830 (5)(b).**

*Response:* The City of Hermiston has provided all required notices required by Oregon law and provisions of the City of Hermiston Zoning Ordinance. Direct mail and newspaper

notices were both distributed on December 21, 2023. Any decision prescribed by the City Council is appealable to the Land Use Board of Appeals based on Oregon law.

**(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.**

*Response:* The applicant is aware of these requirements. The City of Hermiston will provide the required notices within five days of the final city council decision.

**(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.**

*Response:* The proposal is a quasi-judicial land use decision and not subject to these requirements.

**Conclusion:** The Hermiston Planning Commission finds that the proposal is prepared in accordance with the applicable laws of the City of Hermiston and State of Oregon. The planning commission therefore recommends that the Hermiston City Council adopt the proposed changes as submitted.