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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeal of
Rory and Donna Veal
Of the October 17, 2019
Administrative Decision file number
LAND-2019-00814 regarding their Real
Property known as
Tax Parcel Number 352605-9123

NO. APL LAND- _____

DECLARATION OF JAMES E. HANEY

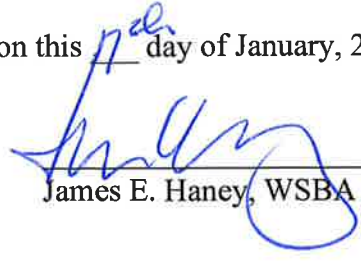
I, James E. Haney, declare as follows:

- 1. I am over eighteen years of age and otherwise competent to testify herein. This Declaration is based upon my personal knowledge.
- 2. I am counsel for Respondent City of Redmond in above-captioned case.
- 3. Attached to this Declaration as Exhibit A is a true and correct copy of the July 18, 2019 agreement between the City of Redmond and Rory and Donna Veal regarding the process to be used to resolve the parties' dispute over the drainage course on the Veal property.
- 4. Attached to this Declaration as Exhibit B is the August 19, 2019 Declaration of Rory Veal submitted in support of his application for an administrative interpretation.

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1 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
2 is true and correct.

3 EXECUTED at Seattle, Washington this 17th day of January, 2020.

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6 _____
7 James E. Haney, WSBA #11058

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1 **DECLARATION OF SERVICE**

2 I, Erin Kelly, an employee of Ogden Murphy Wallace, PLLC, make the following true
3 statement:

4 On the date below, I filed the attached document via email to:

5 ***Office of the Hearing Examiner***

6 Cheryl Xanthos
7 Deputy City Clerk
8 cdxanthos@redmond.gov

9 ***Appellant Representation***

10 Jenna Mandell-Rice
11 Duncan Greene
12 Brent Carson
13 Van Ness Feldman LLP
14 dmg@vnf.com
15 brc@vnf.com
16 jrm@vnf.com

17 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
18 is true and correct.

19 EXECUTED at Seattle, Washington this 17th day of January 2020.

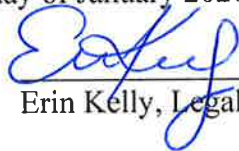
20 
21 _____
22 Erin Kelly, Legal Assistant

EXHIBIT A

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on the date last executed below by and between the City of Redmond, a municipal corporation (the "City") and Rory and Donna Veal, a married couple (the "Veals"). The City and the Veals are each a "Party" and together are referred to as the "Parties."

Recitals

- A. The Veals own two parcels of land in the City of Redmond, namely that real property legally described in Exhibit A (the "North Veal Property") and that real property legally described in Exhibit B (the "South Veal Property") (together the North Veal Property and South Veal Property are referred to as the "Veal Properties").
- B. On August 23, 2018, the Veals filed a \$3,600,000 damages claim against the City for water trespass onto the North Veal Property (the "Damages Claim"). A component of the Damages Claim was the reduction in value to the North Veal Property that the Veals allege to have been caused by the City's position that a drainage feature on the North Veal Property (the "Drainage Feature") was a Category IV Stream regulated by the City under Redmond Zoning Code (RZC) Chapter 21.64.
- C. On December 20, 2018 the City denied the Damages Claim.
- D. The Veals have not yet filed a lawsuit against the City to pursue its Damages Claim in court.
- E. Since January 2019, the Parties have been engaged in efforts to reach agreement on a process that could resolve all or a portion of the Damages Claim without the need for litigation.
- F. The Parties have recently identified the City's code interpretation process, under RZC 21.76.070.D (the "Code Interpretation"), as a process that might be able to resolve all or a portion of the Damages Claim.
- G. This Process Agreement is intended to document the process the Parties agree to follow using a Code Interpretation.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

Agreement

1. The Recitals set forth above are incorporated herein by reference.
2. **Scope of Code Interpretation.** The Veals will file a request for a Code Interpretation by the City following the provisions of the Redmond Zoning Code (RZC) Chapter 21.64. The Parties agree

that the Code Interpretation that will be issued by the City will determine whether (1) the Drainage Feature on the North Veal Property is a City regulated Class IV stream, or (2) the Drainage Feature is not regulated by the City. If the City determines that the Drainage Feature is a Class IV stream, it will also determine whether it is a perennial or intermittent stream.

3. Person Responsible for Code Interpretation. As provided by the RZC, the Code Administrator is responsible for preparation and issuance of the Code Interpretation. The Code Administrator may delegate that responsibility.
4. Timing for Code Interpretation and Related Public Disclosure Requests.
 - a. The Veals will apply for the Code Interpretation within thirty days (30) of the Effective Date of this Agreement. A complete copy of the Code Interpretation, including all exhibits, will be provided by the City to all consultants retained by the City to assist the City on its preparation of the requested Code Interpretation.
 - b. The City will issue its Code Interpretation within sixty (60) days of the City's receipt of the Veals' request for a Code Interpretation.
5. Site Access. The City will be provided access to the North Veal Property in order to issue its Code Interpretation but such access shall be limited to gathering information specific to the Code Interpretation. Daytime access for parking at the South Veal's property at 9859 Red-Wood Road (Parcel 0225059135) will be permitted during the City's site visit. The City's access shall be limited to a fifty-foot wide corridor (twenty-five feet in width on either side of the center-line of the Drainage Feature) and shall be limited to non-invasive testing (e.g. visual observation, photographs, hand measurements, and hand-auguring). The site visit by the City is limited to one day and notice to the Veals shall be provided a minimum of five (5) days in advance. Permission to enter the Veal Properties will terminate after the site visit. The City shall return the Veal Properties to the same condition they were prior to such access. The City will defend and hold the Veals harmless from any and all claims or damages to the extent arising from, out of, or in connection with the City's access to the Veal Properties as a result of any act or action by the City's employees, agents, contractors or consultants.
6. Code Interpretation Appeals. The timing and process for any administrative or judicial appeals of the issued Code Interpretation shall be as set forth in the provisions of the RZC and RCW Chapter 36.70C.
7. Delay in Litigation and Tolling of Statute of Limitations.
 - a. The Veals agree not to file any judicial claims against the City related in any way to the Damages Claim starting on the Effective Date of this Agreement and ending on the date the City issues the Code Interpretation; or, if the Veals file an administrative appeal of the Code Interpretation, ending on the date the City Hearing Examiner issues a decision on such administrative appeal.

- b. The Parties agree that any statute of limitations or other time limitation applicable to any claim, defense or avoidance in any way related to the Damages Claim shall be tolled during the period between August 24, 2018 and ending on the date the City issues the Code Interpretation or, if the Veals file an administrative appeal of the Code Interpretation, ending on the date the Hearing Examiner issues a decision on such administrative appeal (the "Tolling Period"). The Parties further agree that they will not assert, plead, or raise any such claim, defense, or avoidance, or any defense or avoidance based on laches or other equitable principles concerning the timeliness of commencing a civil action as it relates to the Tolling Period, but the Parties reserve all rights to assert existing claims, defenses, or avoidance based on equitable principles, including statute of limitations and laches defenses, that are unrelated to the Tolling Period. This provision is not intended to affect any rights that existed on the commencement of the Tolling Period, but rather to preserve the status quo as it existed on the commencement of the Tolling Period. Nothing in this Agreement shall (1) restrict or otherwise prevent the Parties from asserting at any time any claim, defense, or avoidance that is unrelated to the subject matter of the Damages Claim; (2) be construed or characterized as an admission of liability or wrongdoing in any way pertaining to the claims, defenses, avoidances, or issues in the Damages Claim, or as an admission that any statutes of limitations or similar equitable defenses are applicable to the claims described herein. Except as expressly provided herein, the Parties reserve all existing rights, claims, privileges, defenses, avoidances, and contentions as against one another with regard to any actions or proceedings they may enter into pertaining to the Damages Claim, and the Parties proceed under this Agreement without prejudice to, or waiver of, those rights, privileges, defenses, avoidances, and contentions.
- c. In the event that the Mayor, as the individual executing this Agreement for the City, determines that he does not have the legal authority to agree to the tolling provisions of Section 7.b of this Agreement, and that such authority rests solely with the Redmond City Council, the Mayor shall notify the Veals of this determination within five (5) business days of the Effective Date of this Agreement and, within forty-five (45) days of Effective Date of this Agreement the Mayor agrees to present this Agreement to the City Council and recommend that the City Council authorize the Mayor to accept the provisions of Section 7.b. this Agreement. The Mayor shall notify Veal of the Council's decision within three (3) business days.
- d. The Parties agree that they will proceed with all other terms of this Agreement notwithstanding the fact that the provisions of Section 7.b. of this Agreement may not be enforceable unless and until the City Council authorizes the Mayor to agree to these terms; provided that if the Mayor notifies the Veals that he does not have the legal authority to agree to the tolling provisions and the City Council does not authorize the Mayor to accept the tolling provisions within the forty-five (45) day period, the Veals

may anytime thereafter file judicial claims against the City related in any way to the Damages Claim.

8. General Terms

- a. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in a writing signed by duly authorized representatives of the respective Parties.
- b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be in King County Superior Court.
- c. Headings. The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement.
- d. Authority. Except as specifically provided in Section 7, the persons executing this Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Agreement on the terms and conditions herein stated.
- e. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
- f. Effective Date. This Agreement shall be effective on the last date this Agreement is executed by a party (the "Effective Date").
- g. Notice. Any notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when delivered by personally delivered, delivered by private courier service (such as Federal Express), three days after being deposited in the United States Mail, or by email and, on the same day, deposited in the United States Mail, addressed as follows:

To City:

Maxine Whattam
Chief Operating Officer
City of Redmond
P.O. Box 97010
Mail Stop 4NEX
Redmond, WA 98073-9710
Email: MWHATTAM@redmond.gov

To Veals:

Rory and Donna Veal
9859 Redmond Woodinville Rd NE
Redmond, WA 98052
Email: rveal@frontiernet.net

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year identified below.

CITY:

By: _____

Title: FINANCE DIRECTOR

Date: 7/18/19

VEALS

By: _____

Date: _____

By: _____

Date: _____

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on the date last executed below by and between the City of Redmond, a municipal corporation (the "City") and Rory and Donna Veal, a married couple (the "Veals"). The City and the Veals are each a "Party" and together are referred to as the "Parties."

Recitals

- A. The Veals own two parcels of land in the City of Redmond, namely that real property legally described in Exhibit A (the "North Veal Property") and that real property legally described in Exhibit B (the "South Veal Property") (together the North Veal Property and South Veal Property are referred to as the "Veal Properties").
- B. On August 23, 2018, the Veals filed a \$3,600,000 damages claim against the City for water trespass onto the North Veal Property (the "Damages Claim"). A component of the Damages Claim was the reduction in value to the North Veal Property that the Veals allege to have been caused by the City's position that a drainage feature on the North Veal Property (the "Drainage Feature") was a Category IV Stream regulated by the City under Redmond Zoning Code (RZC) Chapter 21.64.
- C. On December 20, 2018 the City denied the Damages Claim.
- D. The Veals have not yet filed a lawsuit against the City to pursue its Damages Claim in court.
- E. Since January 2019, the Parties have been engaged in efforts to reach agreement on a process that could resolve all or a portion of the Damages Claim without the need for litigation.
- F. The Parties have recently identified the City's code interpretation process, under RZC 21.76.070.D (the "Code Interpretation"), as a process that might be able to resolve all or a portion of the Damages Claim.
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- b. The Parties agree that any statute of limitations or other time limitation applicable to any claim, defense or avoidance in any way related to the Damages Claim shall be tolled during the period between August 24, 2018 and ending on the date the City issues the Code Interpretation or, if the Veals file an administrative appeal of the Code Interpretation, ending on the date the Hearing Examiner issues a decision on such administrative appeal (the "Tolling Period"). The Parties further agree that they will not assert, plead, or raise any such claim, defense, or avoidance, or any defense or avoidance based on laches or other equitable principles concerning the timeliness of commencing a civil action as it relates to the Tolling Period, but the Parties reserve all rights to assert existing claims, defenses, or avoidance based on equitable principles, including statute of limitations and laches defenses, that are unrelated to the Tolling Period. This provision is not intended to affect any rights that existed on the commencement of the Tolling Period, but rather to preserve the status quo as it existed on the commencement of the Tolling Period. Nothing in this Agreement shall (1) restrict or otherwise prevent the Parties from asserting at any time any claim, defense, or avoidance that is unrelated to the subject matter of the Damages Claim; (2) be construed or characterized as an admission of liability or wrongdoing in any way pertaining to the claims, defenses, avoidances, or issues in the Damages Claim, or as an admission that any statutes of limitations or similar equitable defenses are applicable to the claims described herein. Except as expressly provided herein, the Parties reserve all existing rights, claims, privileges, defenses, avoidances, and contentions as against one another with regard to any actions or proceedings they may enter into pertaining to the Damages Claim, and the Parties proceed under this Agreement without prejudice to, or waiver of, those rights, privileges, defenses, avoidances, and contentions.
- c. In the event that the Mayor, as the individual executing this Agreement for the City, determines that he does not have the legal authority to agree to the tolling provisions of Section 7.b of this Agreement, and that such authority rests solely with the Redmond City Council, the Mayor shall notify the Veals of this determination within five (5) business days of the Effective Date of this Agreement and, within forty-five (45) days of Effective Date of this Agreement the Mayor agrees to present this Agreement to the City Council and recommend that the City Council authorize the Mayor to accept the provisions of Section 7.b. this Agreement. The Mayor shall notify Veal of the Council's decision within three (3) business days.
- d. The Parties agree that they will proceed with all other terms of this Agreement notwithstanding the fact that the provisions of Section 7.b. of this Agreement may not be enforceable unless and until the City Council authorizes the Mayor to agree to these terms; provided that if the Mayor notifies the Veals that he does not have the legal authority to agree to the tolling provisions and the City Council does not authorize the Mayor to accept the tolling provisions within the forty-five (45) day period, the Veals

To Veals:

Rory and Donna Veal
9859 Redmond Woodinville Rd NE
Redmond, WA 98052
Email: rveal@frontiernet.net

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year identified below.

CITY

By: _____

Title: _____

Date: _____

VEALS

By:  _____

Date: 7/18/19 _____

By:  _____

Date: 7/18/19 _____

EXHIBIT B

1 BEFORE THE CITY OF REDMOND

2

3 In Re: Administrative Interpretation
Request filed by Rory and Donna Veal

DECLARATION OF RORY VEAL

4

5 I, Rory Veal, under oath, declare and state as follows:

6 1. I am over eighteen years of age, have personal knowledge of the matters
7 herein, and am competent to testify regarding all matters set forth herein.

8 2. My wife Donna and I own an approximately three-acre parcel of vacant
9 land in the City of Redmond, King County tax parcel number 352605-9123 (the "Veal
10 Parcel").

11 3. Donna and I have been working with the City of Redmond to resolve
12 certain issues related to the Veal Parcel, including the question of whether a portion of the
13 Veal Parcel that currently serves as a drainage feature (the "Drainage Feature") is
14 regulated by the City's Critical Areas Ordinance, RZC Chapter 21.64 (the "CAO").

15 4. In addition to our ownership of the Veal Parcel, we also own the adjacent
16 parcel to the south, where we live in our single family home at 9859 Redmond
17 Woodinville Road NE. When purchased that parcel in 1984, we observed that the Veal
18 Parcel was an open pasture with no indication of a ditch, stream, wetland, or other water
19 body.

20 5. Aerial photographs from the mid-1930s show a farmhouse and areas of
21 agricultural activity in the same location where the Drainage Feature now exists, with no
22 indication of any ditch, stream, or other water body. Aerial photographs from subsequent
23 decades confirm that, until the late 1990s, there was still no indication of any ditch,
24 stream, or other water body where the Drainage Feature now exists. Attached as Exhibit 1
25 are true and accurate copies of a series of aerial photographs depicting the Veal Parcel.

DECLARATION OF RORY VEAL - 1

1 6. In 1978, the owner of the property directly upslope of the Drainage Feature
2 filed a short plat application (Short Plat 78-41) with the City of Redmond for a four-lot
3 subdivision of that property. In 1979, the City approved the short plat with standard
4 conditions of approval, including conditions requiring lot drainage and storm drainage
5 improvements, but no conditions related to the protection of a “stream” or other drainage
6 way.

7 7. In 1993 and 1997, the City of Redmond adopted updates to the CAO and
8 its “Stream Classification Map.” The 1993 and 1997 maps did not depict a stream in the
9 vicinity of the Drainage Feature. Attached as Exhibit 2 are true and accurate copies of the
10 1993 and 1997 maps.

11 8. During the 1990s, a developer named Ron Kluger began pursuing
12 approvals for a 12-lot subdivision of property across Red-Wood Road NE immediately
13 uphill from the Veal Parcel, which he called “Redwood Manor.” Mr. Kluger has signed
14 an affidavit confirming that no streams were present on the Redwood Manor property
15 during his ownership. Attached as Exhibit 3 is a true and accurate copy of Mr. Kluger’s
16 affidavit.

17 9. One of the submittals for the Redwood Manor plat application was a 1994
18 drainage report prepared by Litchfield Engineering (the “1994 Drainage Report”).
19 Attached as Exhibit 4 is a true and accurate copy of the 1994 Drainage Report. Attached
20 as Exhibit 5 is a true and accurate copy of the As-Built Grading and Drainage Plan for
21 Redwood Manor, with my annotations added in blue.

22 10. The 1994 Drainage Report described the drainage downstream from
23 Redwood Manor as follows:

24 At the discharge point, the drainage flows down a natural drainage swale in a
25 westerly direction towards the Sammamish River. The swale descends at a slope

1 ranging from 15 to 35% and is approximately 3 feet deep, 3 feet wide with
2 sideslopes nearly vertical. The sidewalls of the swale are bare native sands and
gravel and appear stable as no significant signs of erosion were noted.

3 City staff members have claimed this is a reference to the Drainage Feature, but that claim
4 is incorrect. As discussed in a report we obtained from Dodds Consulting Engineers (the
5 “Dodds Report”), the “swale” described in the 1994 Drainage Report was not located on
6 the Veal Parcel. Attached as Exhibit 6 is a true and accurate copy of the Dodds Report.
7 The final plat for Redwood Manor was recorded in 1997, and the plat was accepted by the
8 City of Redmond in June of 2003. Construction of homes on the lots continued into the
9 early 2000s. As discussed in the Dodds Report, the storm drainage design for Redwood
10 Manor directed all of the storm water, roof drains, foundation drains, and yard drains into
11 the Red-Wood Culvert. Several diversion ditches were also re-directed into the Red-
12 Wood Culvert.

13 11. In 1998, Donna and I purchased the Veal Parcel. At the time, we observed
14 that there was no indication of any ditch, stream, or other water body on the Veal Parcel.
15 Storm water from the culvert simply disbursed and filtered through the thick field grasses.
16 By the early 2000s, however, all of the additional water from Red-Wood Road NE,
17 Redwood Manor, and other uphill development was beginning to cause visible changes to
18 the Veal Parcel, as can be seen in the aerial photographs included in Exhibit 1.

19 12. In 2002, five years after the discharges from Redwood Manor began, the
20 City of Redmond adopted another update to its CAO and Stream Classification Map. For
21 the very first time, the Stream Classification Map showed a Class IV Stream. At the time
22 of the 2002 update, the RZC did not require buffers or other setbacks from Class IV
23 Streams. In 2003, Donna and I moved to Idaho, where we lived until the fall of 2014.

24 13. In spring of 2014, Donna and I entered into a purchase agreement to sell
25 the Veal Parcel. In April of 2014, approximately 15 years after the discharges from

DECLARATION OF RORY VEAL - 3

1 Redwood Manor began, Tom Hardy, City of Redmond Stream and Habitat Planner,
2 conducted a site visit and made a preliminary determination that streams and wetlands
3 may be present on the Veal Parcel. As a result of the City's position regarding potential
4 streams and wetlands, the buyer terminated the purchase agreement based on a failed
5 contingency.

6 14. In November of 2014, we moved back to Redmond from Idaho.

7 15. In 2015, Donna and I were made aware that the City was again updating
8 the CAO and Stream Classification Map. This amendment proposed to extend the
9 "stream" across the rest of the Veal Parcel. We met with City staff to request that the
10 extension of the "stream" depicted on the Veal Parcel be removed from the proposed
11 Stream Classification Map. Because we were not aware that existing "stream" segments
12 could be removed from the map, we did not ask the City to remove the existing segment
13 of the "stream" depicted on the Veal Parcel, but limited our request to the proposed
14 extension. In our meeting with City staff, we presented information supporting our belief
15 that the Drainage Feature is not regulated, and staff suggested that we hire a hydrologist.

16 16. We then retained a professional hydrologist, Ed McCarthy (P.E., PS) to
17 perform an "upstream" analysis of the Drainage Feature (the "McCarthy Report"), which
18 was completed in August of 2015. Attached as Exhibit 7 is a true and accurate copy of the
19 McCarthy Report. In the McCarthy Report, Mr. McCarthy concluded that the
20 development of Redwood Manor, the widening of Red-Wood Road NE, and the
21 redirection of surface and ground water from other upstream properties has resulted in an
22 average increase of 447% in the amount of surface water flowing through the Red-Wood
23 Culvert. According to Mr. McCarthy, peak flows have increased by over 900%. Mr.
24 McCarthy further concluded that, as a result of these increases in flow, an "incised" and
25 "artificial" channel was formed within the Drainage Feature. The McCarthy Report also

DECLARATION OF RORY VEAL - 4

1 concluded that the City of Redmond should have required that the water from Redwood
2 Manor be piped across the Veal Parcel at the time the subdivision was approved. Notably,
3 the McCarthy Report only addresses surface water, and does not address the additional
4 water added by the developer's diversion of ground water through foundation drains,
5 diversion ditches, and French drains. Some of these drains collect groundwater from as
6 much as 15 feet below the existing grade and direct this water into the Red-Wood Culvert.
7 This water emanates from underground springs and delivers water into the system even in
8 drought conditions. I personally recorded video showing this discharge, a true and
9 accurate copy of which is available at <https://youtu.be/bellsywPHVs>. Nor does the
10 McCarthy Report discuss the additional diversions noted in the Dodds Report. Because of
11 these omissions, the volume and duration of increased flow indicated in the McCarthy
12 Report is greatly understated. We submitted a copy of the McCarthy Report to the City
13 and met with City staff to discuss it.

14 17. In late 2015, we were informed that the Staff Report for the pending update
15 to the Stream Classification Map was being modified so that the "stream" on the Veal
16 Parcel would not be extended. In October of 2015, a Technical Committee Report was
17 issued in advance of the Planning Commission Report on the map update. Attached as
18 Exhibit 8 is a true and accurate copy of the Technical Committee Report. The Technical
19 Committee Report mentioned the Veal Parcel, stating that "staff does not recommend a
20 modification to the Streams Classification Map for this property because there is not
21 compelling evidence to warrant a classification change." In December of 2015, the
22 Planning Commission published its report to the City Council. Attached as Exhibit 9 is a
23 true and accurate copy of the Planning Commission report. The Planning Commission
24 report included a lengthy discussion about the Veal's public comments and concluded that
25 the upper portion of the Drainage Feature is not a regulated "stream." In March of 2016,

DECLARATION OF RORY VEAL - 5

1 the City Council adopted an ordinance that incorporated the updated Stream Classification
2 Map, which showed no “stream” in the upper portion of the Drainage Feature, into the
3 RZC.

4 18. In January of 2016, Donna and I identified an additional source of water
5 flowing onto the Veal Parcel. Large amounts of water were being directed onto the Veal
6 Parcel because of the failure or “slump” of Red-Wood Road NE. Preliminary studies
7 showed approximately 53,000 gallons of water per week were being diverted and
8 discharged onto the Veal Parcel. I personally recorded video showing this discharge, a
9 true and accurate copy of which is available at
10 <https://www.youtube.com/watch?v=JZ2ZsJXychQ&feature=youtu.be>. This water had the
11 effect of greatly increasing soil saturation levels, and the “slump” situation was serious
12 enough that the City of Redmond conducted an investigation and concluded that the
13 roadway could collapse if the situation worsened. The road slump is being carefully
14 monitored to this day.

15 19. In mid-2016, we consulted with attorney Charlie Klinge of Stephens and
16 Klinge LLP, and ESM Consulting Engineers, who told Donna and me that we had the
17 right to protect our property from impacts of the water discharging from the “slump” and
18 the Red-Wood Culvert. ESM sent us a letter dated June 24, 2016, stating that “Your
19 dilemma was easily understood once we were standing at the base of Woodinville-
20 Redmond Road (SR-202), and seeing all of the recent evidence of erosion caused by the
21 uncontrolled runoff from the roadway and culvert.” Attached as Exhibit 10 is a true and
22 accurate copy of the ESM letter.

23 20. In light of the ongoing “slump,” and based on those consultations with Mr.
24 Klinge and ESM and the City’s recent decision not to classify the upper portion of the
25 Drainage Feature as a “stream,” we felt compelled to take action. We dug a spur ditch to

1 collect the “slump” water, and we cleaned the channel of the ditch where water had been
2 jumping the banks and flooding out across the Veal Parcel. I personally recorded video
3 showing the water jumping the banks, a true and accurate copy of which is available at
4 <https://youtu.be/CcUrqpE3Bvo>. We also placed an approximately 8-foot-long piece of
5 ABS pipe at the outfall from the Red-Wood Culvert in an effort to determine whether the
6 water could be piped across the surface of the Veal Parcel as was suggested by the
7 attorney.

8 21. In September of 2016, we received a letter from Tom Hardy asserting that
9 our drainage work in response to the recent “slump” violated the City’s CAO and other
10 provisions of the RZC. The letter directed us to contact the City’s Code Enforcement
11 Officer and set up a meeting, which we did. I met with City staff members Carl
12 McCarthy, Tom Hardy, and Emily Flanagan, and presented evidence including historic
13 aerial photographs, impervious surface calculations, the McCarthy Report, and the
14 conclusions of the Planning Commission stating that there is no stream in the upper
15 portion of the Drainage Feature. The meeting was adjourned with the Enforcement
16 Officer taking the matter “under advisement.”

17 22. In 2017, in preparation for a potential sale of the Veal Parcel, Donna and I
18 engaged professional wetland and stream biologists and civil engineers to analyze current
19 conditions and provide reports. In September of 2017, Beaver Creek Environmental
20 Services issued a “Stream Assessment Report” for the Veal Parcel. Attached as Exhibit
21 11 is a true and accurate copy of the Beaver Creek “Stream Assessment Report.” The
22 report states that “[t]he drainage on this site does not meet the criteria for a categorization
23 as a City of Redmond ‘stream.’” Beaver Creek also prepared a “Wetland Evaluation and
24 Delineation Report,” which concluded that the “wetland” identified on the property was
25 artificially created and not a regulated wetland. This conclusion is consistent with a 1996

DECLARATION OF RORY VEAL - 7

1 report from Terra Associates, Inc. (the "Terra Report"), which stated that "the long term
2 impact of storm drainage improvements has resulted in the creation of the small wetland."
3 Attached as Exhibit 12 is a true and accurate copy of the Beaver Creek "Wetland
4 Evaluation and Delineation Report." Attached as Exhibit 13 is a true and accurate copy of
5 the Terra Report that was provided to us by the City of Redmond.

6 23. Donna and I then initiated marketing efforts to sell the Veal Parcel.
7 Because of the desirable location, the interest was very high. However, a series of
8 purchase agreements and other arrangements with buyers were terminated after the City
9 insisted that the upper portion of the Drainage Feature is a regulated "stream."

10 24. In May of 2018, City staff member Emily Flanagan issued a memo titled
11 "City Review of Stream Assessment Report" (the "2018 Staff Memo") in which City staff
12 opined that "the entire watercourse downstream from Red-Wood Road is a Class IV
13 stream." Attached as Exhibit 14 is a true and accurate copy of the 2018 Staff Memo. In
14 the 2018 Staff Memo, staff admitted it was "likely true" that, as indicated in the McCarthy
15 Report, "Redwood Manor has increased the amount of water being conveyed across Red-
16 Wood Road," and staff did not disagree with McCarthy's model that predicted "a small
17 amount of runoff" under the pre-developed condition. Nevertheless, staff rejected the
18 conclusions in the McCarthy Report for a single reason: "The definition of a stream is not
19 dependent on how much flow there is in the stream. If any portion is from a natural
20 source it is a stream." The 2018 Staff Memo also indicated that staff disagreed with the
21 conclusions in the Beaver Creek reports for "two primary reasons": first, "the watercourse
22 was not originally constructed," but instead was, according to staff, "created by natural
23 flow patterns, not constructed as a stormwater runoff device"; and second, "the hydrology,
24 though altered by the development of Redwood Manor, contains a portion of naturally
25 occurring flow." The memo also stated that "illegally clearing and grading a natural

1 drainage does not turn it into an artificially created stormwater ditch” — but we never
2 made any such claim, and our position that the Drainage Feature is artificial is not in any
3 way dependent upon that recent work.

4 25. In mid-2018, Cathy Beam, Senior Planner, proposed that we allow the
5 Washington Department of Fish and Wildlife (“WDFW”) to make a binding
6 determination as to the regulated status of the “stream.” We rejected that proposal
7 because it would have denied any right of appeal and negated our due process rights. As
8 part of that exchange, City staff initiated contact with WDFW, which investigated all of
9 the historic records at its disposal to see if there had ever been a stream in this location.
10 Donna and I also conducted our own research into historical maps of the Veal Parcel. Our
11 research and the research by WDFW confirmed that there was nothing in the historic
12 records showing that a stream existed in this location. Attached as Exhibit 15 are true and
13 accurate copies of documents reflecting these research results.

14 26. Donna and I then tried to submit an application to the City seeking
15 authorization to install a storm drainage pipe that would convey the water across the Veal
16 Parcel. City staff initially claimed that we would not be allowed to submit such an
17 application, and later indicated that the application could be submitted but would be
18 summarily denied based on RMC 15.24.050, which prohibits “speculative” clearing and
19 grading. With the City’s rejection of every effort we made to fairly resolve the issues
20 outside of litigation, we submitted a claim for damages to the City in August of 2018.

21 27. In November of 2018, we discovered yet another source of water
22 discharging onto the Veal Parcel. A large area of land lying northerly of the Veal Parcel
23 is meant to drain into a gully to the north, but because the storm drain was not built in
24 accordance with the RZC, the water bypasses the drain, travels south, and then empties
25 onto the Veal Parcel. According to calculations I made using measurements from the

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1 City's Geographic Information System, this source adds approximately 20% to the
2 drainage area identified in the McCarthy Report. I personally recorded video showing this
3 new discharge, a true and accurate copy of which is available at
4 https://youtu.be/69Dr28_AZjU.

5 28. In December of 2018, the City's insurer, Travelers, sent us a letter stating
6 that it was denying our claim for damages because, according to Travelers, "the historical
7 records indicate that your property had a stream and wetlands located on it before you
8 purchased the land." To support that statement, Travelers pointed to the 1994 Technical
9 Report and the Terra Report. As explained above and further discussed below, neither of
10 those reports identifies the existence of a stream on the Veal Parcel.

11 29. In 2019, Donna and I continued to meet with City staff and other City
12 officials to discuss potential avenues for resolution of the "stream" issue. In July of 2019,
13 we entered into a process agreement under which we would request an Administrative
14 Interpretation from the City, and the City would make a formal determination regarding
15 the regulated status of the Drainage Feature. I have prepared this declaration in support of
16 our request for an Administrative Interpretation pursuant to RZC 21.76.070.D and that
17 process agreement.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 EXECUTED this 19th day of August, 2019.

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Rory Veal, Declarant