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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 _____

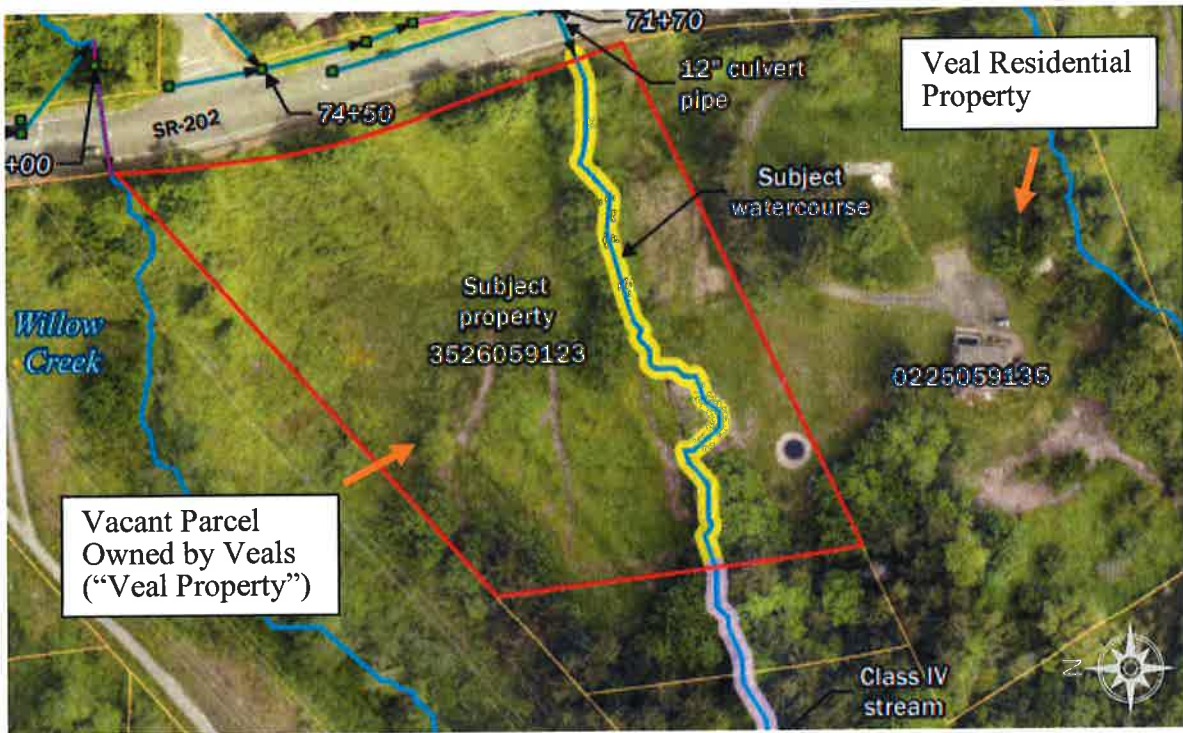
**CITY’S OPPOSITION TO APPELLANT’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

I. INTRODUCTION AND RELIEF REQUESTED

Respondent City of Redmond (“City”) opposes Appellants’ motion for partial summary judgment. The motion mischaracterizes the administrative interpretation on appeal in this matter, then seeks what amounts to an advisory opinion from the Hearing Examiner on whether the mischaracterized interpretation is sound. Because the legal points raised in Appellants’ motion are unnecessary to decide this case, and because this case is essentially a factual dispute that must be resolved after full hearing, the Hearing Examiner should deny Appellants’ motion.

1 **II. COUNTERSTATEMENT OF FACTS¹**

2 Appellants Rory and Donna Veal (“Appellants” or “Veals”) own two adjacent parcels of
3 property in the City of Redmond. The southern parcel, tax parcel 225059135, contains a single-
4 family home, which is the Veals’ primary residence. The Veals purchased this southern parcel in
5 1984. The northern parcel (hereinafter “the Veal Property”), tax parcel 3526059123, is vacant.
6 The Veals purchased the Veal Property in 1998. Both parcels are shown in the image below:



19 The Veal Property is bounded by State Route 202 (also known as Red-Wood Road NE) to
20 the east (which is at the top of the image above), by other residential properties to the south and
21 west, and by a park/open space parcel containing Willow Creek to the North. The Veal Property
22 slopes gently downhill from east to west. To the east, across SR 202, is a residential subdivision
23 known as “Redwood Manor” that sits at a higher elevation than the Veal Property.

24
25 ¹ The City has confined its counterstatement of facts to those facts relevant to this motion for summary judgment. The
26 City disputes many of the other facts offered in Appellants’ motion but will save it for rebuttal of those facts for the
hearing on the merits.

1 As shown on the map above, a narrow watercourse (“the Watercourse”²) runs across the
2 southern third of the Veal Property from east to west. The Watercourse emanates from a 12-inch
3 culvert running under SR 202. The Watercourse has a defined channel that is roughly 2.6 feet
4 wide with .4-foot-high vertical banks and a “wetted depth” of .4 feet. *See* Ex. F to Declaration of
5 Jenna Mandell-Rice (“Herrera Memo”) at 12. It is uncontested that much of the current flow in
6 the Watercourse comes from the stormwater and up-basin natural flows intercepted by the
7 Redwood Manor stormwater and catch basin system, which discharge into the 12-inch culvert.

8 Around 2016, the Veals assert that a “slump” in SR 202 began to appear and that this slump
9 began to direct additional water into the Watercourse. *See* Ex. B. to Declaration of James E. Haney
10 (“Veal Decl.”) at ¶ 18. In response, the Veals dug a spur ditch to collect water from the
11 Watercourse. They also placed an 8-foot-long pipe at the outfall of the 12-inch culvert in an
12 attempt to see whether the Watercourse could be piped. *Id.* ¶ 21. In response to these efforts,
13 Redmond staff member Tom Hardy sent the Veals a letter informing them that their work on the
14 Watercourse violated the Redmond Zoning Code (“RZC”) because the Watercourse was a
15 regulated stream under the City’s Critical Areas Ordinance.

16 In 2017, the Veals began the process of trying to sell the Veal Property. As part of this
17 effort, they engaged Beaver Creek Environmental Services to perform a “Stream Assessment
18 Report” for the property. *Id.* ¶ 22. The Beaver Creek Environmental Services report concluded
19 that the Watercourse “appears created out of upland as a surface water runoff device, and therefor
20 is unregulated by City of Redmond.” *See* Ex. E to Decl. of Jenna Mandell-Rice (“Administrative
21 Interpretation”) at 9 (quoting Beaver Creek Stream Assessment Report).

22 In 2018, Emily Flanagan, a Senior Surface Water Engineer at the City, reviewed the Beaver
23 Creek Stream Assessment Report along with other materials submitted by the Veals. Ms. Flanagan
24 then issued a Memorandum to Mr. Veal in which she disagreed with the Beaver Creek Stream
25 Assessment Report. *See* Ex. C to Decl. of Jenna Mandell-Rice (“Flanagan Memo”). In her

26 ² The Veals refer to the Watercourse as a “Drainage Feature.”

1 Memorandum, Ms. Flanagan noted that the Department of Fish and Wildlife interprets streams
2 include watercourses where “any portion of the watercourse is derived from natural sources,”
3 adding that the City follows this interpretation in its own projects. *See* Flanagan Memo at 3-4.
4 Ms. Flanagan then analyzed whether the watercourse on the Veal Property contained any portion
5 of natural flow, and she also analyzed Beaver Creek’s assertion that the watercourse was
6 “artificial” and therefore excluded from the definition of a stream under the City’s Code. *Id.* Ms.
7 Flanagan disagreed with the Veals’ and Beaver Creek’s assertions for two reasons. First, she
8 concluded that “the ravine at the downstream portion of the drainage was created by natural flow
9 pattern,” and she characterized the Watercourse as a “natural drainage.” *Id.* at 5. Second, she
10 found that the drainage course was not artificial because it was not “naturally constructed.” *Id.*

11 In 2019, the Veals and the City reached an agreement regarding the process they would use
12 to resolve their dispute about the whether the Watercourse was a regulated stream under the RZC.
13 *See* Ex. A to Decl. of James E. Haney (“Process Agreement”) § 2. In this Process Agreement, the
14 parties agreed that the Veals would submit a request for an administrative interpretation that would
15 determine “whether (1) the Drainage Feature on this North Veal Property is a City regulated Class
16 IV stream, or (2) the Drainage Feature is not a regulated by the City.” *Id.* The Process Agreement
17 also authorized the City or its consultants to perform a site visit to gather facts relevant to the
18 Administrative Interpretation. *Id.* § 5.

19 The Veals submitted their application for an administrative interpretation on August 18,
20 2019. In their application letter, their attorney argued “that the Veal Parcel did not historically
21 contain any streams or other water features that would be regulated by the City’s CAO” and that
22 “the current channelized condition within the Drainage Feature was created solely by human-made
23 drainage activities” Ex. to D to Decl. of Jenna Mandell-Rice (“Administrative Interpretation
24 Request”) at 2. The request then stated:

25 The only remaining question is a legal one: whether the City’s CAO regulates areas
26 that, like the Drainage Feature, were not historically wet and did not contain a
natural drainage channel or “watercourse”—but as a result of recent human actions

1 that collected and gathered large volumes of stormwater from uphill developments,
2 have become wet and channelized, taking on some of the characteristics of a stream.

3 Administrative Interpretation Request at 2.

4 Despite the Veals' framing of the administrative interpretation as a purely legal issue, the
5 City proceeded with the broader inquiry originally posed in the parties' Process Agreement,
6 namely, whether "the Drainage Feature on this North Veal Property is a City regulated Class IV
7 stream," *id.* § 2, a question that entailed factual investigation. To this end, the City commissioned
8 Herrera Consultants to perform an objective evaluation of whether the Watercourse met the
9 definition of a Class IV stream under the RZC—a step fully contemplated in the parties' Process
10 Agreement. Herrera performed a site visit and issued a Technical Memorandum that investigated
11 "whether the watercourse would have existed as a stream prior to land development" and whether
12 the Watercourse should be classified as a regulated stream under the RZC. *See* Ex. F to Declaration
13 of Jenna Mandell-Rice ("Herrera Memo") at 2, 4. After extensive review of the historical record,
14 the geomorphology and hydrogeology of the area, and current site conditions, Herrera concluded
15 that the Watercourse was formed by natural processes and would have existed on the property in
16 natural (i.e., pre-development) conditions. *See, e.g.,* Herrera Memo at 5 ("The geologic and
17 hydrogeologic history of the area indicate how the watercourse formed naturally over time."); *id.*
18 at 7 ("All [figures] indicate an erosional watercourse through the Subject Property under natural
19 drainage conditions"); *id.* at 12 ("[T]he watercourse formed through natural erosional processes
20 over time"); *id.* at 14 ("Natural stream channel formation is evidenced by the topography,
21 geology surface soils, and hydrogeology of the site"); *id.* ("Although the flows in the stream
22 may have changed over time, the drainage feature conveys a stream that occurred naturally before
23 the construction of any stormwater facilities in the vicinity of the Subject Property."); *id.* at 15 ("It
24 is our determination that the watercourse on the Subject Property is a naturally formed
25 watercourse.").

1 On October 17, 2019 the City's Deputy Director³ of Planning and Community
2 Development, Carol Helland, issued the Administrative Interpretation for the Veal application. In
3 the Administrative Interpretation, Ms. Helland reached the following conclusions regarding the
4 submitted evidence:

- 5 (1) photos submitted by the Veals were not of sufficient resolution to show
6 the presence or absence of the narrow (2.6-foot) stream on the property,
id.;
- 7 (2) Mr. Veal's observations of the Veal Property when they purchased their
8 residential parcel to the south did not demonstrate the absence of a stream
9 because a narrow stream is difficult to detect visually even when standing
10 right next to it, *id.* at 7;
- 11 (3) a stormwater study prepared for the Redwood Manor subdivision from
12 1994 demonstrated the presence of a "natural drainage swale" on the
13 property at that time, *id.*;
- 14 (4) most importantly, the Herrera report was the most convincing and
15 technically proficient of the professional studies performed on the issue,
16 and it concluded that the Drainage Feature was created by naturally
17 occurring surface flows, *id.* at 11.

18 Given all of this, Ms. Helland concluded, "The watercourse located on the Subject Property
19 is properly defined as a stream pursuant to RZC 21.78 S Definitions and RZC 21.64.020.A.2.d
20 because although the flow and location may have changed overtime due to artificial influence, it
21 occurred naturally from the passage of water." *Id.* at 11. In response to the Veals' argument that
22 the stream was an "Intentionally Created Stream" because it was made by "artificial" water (i.e.,
23 stormwater), Ms. Helland rejected the factual premise of this argument, concluding "The Materials
24 included in the Veal's [sic] application do not provide the documentation needed to demonstrate
25 that the stream on the Subject Property is manmade. In contrast, the Herrera Memo provides a
26 thorough and scientific analysis that finds *the watercourse across the Subject Property occurred
naturally.*" *Id.* at 13 (emphasis added). Ms. Helland therefore concluded that the Watercourse
was regulated as a Class IV stream and subject the City's critical areas ordinance. This appeal
followed.

³ Ms. Helland is now the Interim Director of Planning and Community Development.

1 III. ARGUMENT

2 A. Standard of Review

3 1. *Summary Judgment Standard.*

4 Under the Redmond Hearing Examiner’s Rules of Procedure, parties shall have the right
5 of “motion” and “all other rights essential to a fair hearing.” Redmond Hearing Examiner Rules of
6 Procedure § V.A.⁴ Likewise, under section VI.A.2.g, the Hearing Examiner has the power “[t]o
7 consider and rule upon all procedural and other motions appropriate to the proceeding.” Hearing
8 Examiners will frequently refer to the Rules of Civil Procedure where appropriate and analogous.

9 Under CR 56(c) parties may seek summary judgment where where there is no dispute of
10 material fact and the movant is entitled to judgment as a matter of law. CR 56(c). One of the
11 primary policy goals of the summary judgment mechanism is to create a mechanism through which
12 “dilatatory tactics resulting from the assertion of unfounded claims or the interposition of specious
13 denials or sham defenses can be defeated, parties may be accorded expeditious justice, and some
14 of the pressure on court dockets.” Charles Alan Wright, Arthur Miller, and Mary Kay Kane,
15 *Federal Practice and Procedure* § 2712 (2019).

16 Substantive motions for summary judgment that address the merits of the case are seldom
17 appropriate in Hearing Examiner proceedings. Hearing Examiner proceedings are already
18 designed to be “expeditious,” *see* Redmond Hearing Examiner Rules of Procedure § IV.F, and
19 summary judgment motions—especially those that go to the merits—tend only to add time and
20 expense to proceedings. Moreover, while summary judgment may be used to narrow issues for
21 resolution, it is not be used as “an unfair substitute for trial,” *Babcock v. State*, 116 Wn.2d 596,
22 809 P.2d 143 (1991). Nor may summary judgment be used as a means of extracting advisory
23 opinions from a tribunal, as courts are “not authorized to render advisory opinions or
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⁴ The Redmond Hearing Examiner Rules of Procedure are available online at
26 <https://www.redmond.gov/DocumentCenter/View/2932/Redmond-Hearing-Examiner-Rules-of-Procedure-PDF>.

1 pronouncements upon abstract or speculative questions” *Wash. Beauty College, Inc. v. Huse*,
2 195 Wn. 160, 164, 80 P.2d 403 (1938).

3 **2. Standard of Review for Administrative Interpretation.**

4 Administrative Interpretations are Type I processes under the RZC. RZC tbl. 21.76.050B.
5 In the Hearing Examiner’s review of an administrative interpretation, the Hearing Examiner acts
6 as an appellate body and conducts an open-record hearing. RZC 21.76.060.I.1. In a Type I appeal,
7 the appellant has the burden of “proving that the Type I or II decision is not supported by a
8 preponderance of the evidence or was clearly erroneous.” RZC 21.76.060.I.4. In assessing the
9 Director’s decision in a Type I appeal, the Hearing Examiner must “accord substantial weight to
10 the decision of the department director” *Id.*

11 **B. Stream provisions under the RZC.**

12 The core question in this case is “whether (1) the Drainage Feature on this North Veal
13 Property is a City regulated Class IV stream” *See* Process Agreement, Ex. A to Decl. of
14 James E. Haney (“Haney Decl.”) § 2. Under the RZC, a Class IV stream is defined as “those
15 natural streams that are not Class I, Class II, or Class III.”⁵ RZC 21.64.020.A.2.d.iv. A “stream”
16 is defined as:

17 Those areas where surface waters produce a defined channel or bed. A defined
18 channel or bed is an area which demonstrates clear evidence of the passage of water
19 and includes, but is not limited to, bedrock, channels, gravel beds, sand and silt
20 beds, and defined-channel swales. The channel or bed need not contain water year-
21 round. This definition is not meant to include artificially created irrigation ditches,
22 canals, storm, or surface water runoff devices or other entirely artificial
23 watercourses unless they are used by salmonid or created for the purposes of stream
24 mitigation.

25 RZC 21.78(S).

26 Additionally, the critical areas ordinance exempts “Intentionally Created Streams” from
critical areas regulations (unless the stream was created for mitigation purposes). *See* RZC

⁵ The Class IV stream definition also provides that Class IV streams “are either perennial or intermittent, do not have fish or the potential for fish, and are non-headwater streams.” RZC 21.64.020.A.2.d.iv.

1 21.64.010.D.1.b (exempting “activities involving artificially created wetlands or streams
2 intentionally created from non-wetland sites . . .”). The Code defines “Intentionally Created
3 Streams” as “[s]treams created through purposeful human action, such as irrigation and drainage
4 ditches, grass-lines swales, and canals.” RZC 21.78(I). The substantive critical areas regulations
5 elaborate on this definition, noting that “Intentionally Created Streams” are “manmade streams
6 defined as such in these regulations and do not include streams created as mitigation.” RZC
7 21.64.020.A.2.d.v.

8 Where a property owner believes their stream is an “intentionally created stream,” the
9 property owner has the burden of showing “purposeful creation” by introducing “documents,
10 photographs, statements, and/or other evidence.” *Id.* In reviewing claims of “purposeful creation”
11 (and other development applications) the comprehensive plan directs the City to use the
12 “precautionary principle when there is an absence of valid scientific information or incomplete
13 scientific information accompanying a development application” and to “use rigorous analysis to
14 appropriately limit development and land use activities until the uncertainty is sufficiently
15 resolved.” *See* City of Redmond Comprehensive Plan 2030 § NE-20 at p. 4-4.⁶

16 **C. Appellants’ motion seeks an impermissible advisory opinion on factual**
17 **matters not before the Hearing Examiner.**

18 Under these definitions, it is clear that a pristine watercourse in an undeveloped
19 environment that is fed by natural water sources and flows where it flows without human
20 intervention would be a “stream.” It is also clear that, were a human to dig a defined channel with
21 a pick or shovel to collect sheet flows for drainage or irrigation purposes, this channel would not
22 be a regulated “stream,” both because it does not fit the stream definition and because it meets the
23 criteria of an exempt “intentionally created stream.”⁷

24 ⁶ The City of Redmond Comprehensive Plan may be found online at <https://www.redmond.gov/DocumentCenter/View/8836/Comprehensive-Plan---Redmond-2030-Complete-PDF>.

26 ⁷ This would be the case unless the channel were created for mitigation purposes. *See* RZC 21.64.020.A.2.d.

1 The Veals are adamant that a third circumstance exists on their property—a circumstance
2 between the clearly “natural” and clearly “artificial,” which they describe as “unintentionally
3 artificial”: they insist that the Watercourse would not have existed in natural, pre-development
4 conditions, and that the channel only exists on their property because of the volume of stormwater
5 and intercepted natural flows being directed onto their property via the 12-inch culvert running
6 under SR 202. So committed are they to this factual story, they conclude that the City must believe
7 the “unintentionally artificial” scenario creates a “stream” because the City ultimately concluded
8 a stream exists on their property. In support of this (mis)characterization of the City’s argument,
9 they have latched on to certain isolated statements in the Flanagan memo while virtually ignoring
10 the language and reasoning of the City’s Administrative Interpretation (the decision that is actually
11 on appeal) and supporting Herrera memo. They now move for a preliminary ruling from the
12 Hearing Examiner on whether, as a matter of law, the factual scenario that they believe exists on
13 their property creates a “stream” subject to critical areas regulation under the RZC.

14 The Veals’ motion essentially seeks a prohibited advisory opinion from the Hearing
15 Examiner. Contrary to the Veals’ representations, the City does not believe that a single drop of
16 “natural” water in a watercourse renders it a stream. To the contrary, the City’s Administrative
17 Interpretation concludes that (1) the Watercourse on the Veal Property was created through natural
18 (*i.e.*, pre-development) surface flows, (2) the Watercourse continues to be fed in part by natural
19 sources, and (3) the Watercourse is therefore a regulated Class IV stream rather than an
20 “intentionally created stream” under the RZC.⁸

21 Given that City’s position is and has always been that the Watercourse was created by
22 natural surface flows, nothing in this case calls upon the Hearing Examiner to issue a blanket ruling
23 on whether natural flow is it itself sufficient to render a watercourse a regulated stream. Such a
24 ruling at this stage would go beyond the Hearing Examiner’s scope of review in this case—namely,

25 ⁸ This conclusion is consistent with Ms. Flanagan’s findings in her 2018 memo, in which she concluded that the
26 Watercourse was a stream because it was created by natural flow patterns and still conveyed natural flow. *See*
Flanagan Memo at 5.

1 to determine whether the Administrative Interpretation is clearly erroneous or unsupported by
2 substantial evidence—because the Administrative Interpretation did not assert that the presence of
3 natural flow *per se* renders a watercourse a regulated stream, regardless of the nature of the
4 watercourse’s channel formation.

5 Nor will this hearing be expedited or narrowed if the Hearing Examiner issues the ruling
6 Appellants seek because, given the factual nature of the parties’ dispute, the evidence at hearing
7 will look much the same whether the Hearing Examiner grants Appellants’ motion or not. If the
8 Hearing Examiner grants Appellants’ motion, and holds that a “stream’s” channel have been
9 naturally formed, the City will put forward evidence that the Watercourse was naturally formed
10 and the Veals will attempt to put forward evidence that it was not. If the Hearing Examiner denies
11 Appellants’ motion, the City will still put forward evidence that the Watercourse was naturally
12 formed, and the Veals will attempt to put forward evidence that it was not because these have been
13 the parties’ positions all along.

14 The only difference that granting Appellants’ motion will make is that the Hearing
15 Examiner will have issued a pronouncement in a factual vacuum that could have unforeseen
16 implications if the evidence at hearing lands in some gray territory between the “natural” and
17 “unintentionally artificial” positions the parties have taken so far. For instance, what if the stream
18 would have formed in *roughly* its current position under natural conditions, but the added volume
19 of stormwater has caused the position of the creek to shift six inches due to accretion, erosion, or
20 avulsion? What about a foot? Ten feet?

21 The Hearing Examiner should not issue a pre-hearing ruling on a the purely academic
22 question of whether a position the City never expressed is consistent with the RZC, especially
23 when that question need not be decided if the City shows that the Watercourse was created by
24 natural processes. *Hayden v. Mutual of Enumclaw*, 141 Wn.2d 55, 68, 1 P.3d 1167 (2000) (quoting
25 *State v. Peterson*, 133 Wn.2d 885, 894, 948 P.2d 381 (1997) (“Principles of judicial restraint
26 dictate that if resolution of an issue effectively disposes of a case, we should resolve the case on

1 that basis without reaching any other issues that might be presented.” (internal quotations
2 omitted)). The Hearing Examiner should allow this matter to proceed to full hearing on the factual
3 question at the heart of this case.

4 **D. The City disagrees with Appellants’ interpretation of the RZC.**

5 While the City believes that the Watercourse was created by natural processes, the City
6 cannot concede at this stage that natural channel formation is a requirement for meeting the
7 definition of a “stream” under all circumstances because this requirement is not apparent from the
8 Code language.

9 The first part of the RZC’s definition of “stream” reads:

10 Those areas where **surface waters** produce a defined channel or bed. A defined
11 channel or bed is an area which demonstrates clear evidence of the passage of water
12 and includes, but is not limited to, bedrock, channels, gravel beds, sand and silt
13 beds, and defined-channel swales. The channel or bed need not contain water year-
14 round.

15 RZC 21.78(S) (emphasis added). This definition does not require the “defined channel or bed” to
16 have been produced by *natural* waters, only “surface waters.”⁹ The Watercourse meets this part
17 of the definition because it is clearly an “area[] where surface waters produce a defined channel or
18 bed.”

19 The definition then removes “artificially created irrigation ditches, canals, storm, or surface
20 water runoff devices or other entirely artificial watercourses unless they are used by salmonid or
21 created for the purposes of stream mitigation” from the definition of “stream.” RZC 21.78(S).¹⁰

22 ⁹ The Veals also argue that the word “natural” in the definition of a Class IV stream, *see* RZC 21.64.020.A.2.d.iv,
23 narrows the definition such that only watercourses with a bed or channel formed under natural processes qualifies as
24 a Class IV stream. This reading is strained at best. The word “natural” in the Class IV definition is clearly meant to
25 simply exclude those artificial watercourses and “intentionally created streams” that are exempt from the critical areas
26 regulations.

27 ¹⁰ The RZC likewise exempts “intentionally created streams,” defined as “[s]treams created through purposeful human
28 action, such as irrigation and drainage ditches, grass-lines swales, and canals,” RZC 21.78(I), from regulation. RZC
29 21.64.010.D.1.b. The substantive critical areas regulations elaborate on this definition, noting that “Intentionally
30 Created Streams” are “manmade streams defined as such in these regulations and do not include streams created as
31 mitigation.” RZC 21.64.020.A.2.d.v. The Veals argued in their request for an administrative interpretation that the
32 Watercourse was both an “Intentionally Created Stream” under RZC 21.78(I)¹⁰ and an “artificially created . . . storm[]

1 The Veals argue that the “artificial” watercourse category is broad enough to include watercourses
2 that were not created intentionally or purposely.

3 The City does not necessarily disagree with this proposition, but that does not necessarily
4 mean the bed of a “stream” must have been created through natural processes. First, the “entirely
5 artificial” language in the stream definition *does* distribute to the other items in the list of excluded
6 “artificial” water conveyances. Use of the word “other” in the “other entirely artificial” list item
7 indicates that the drafters believed the preceding items in the list were also “entirely artificial.”

8 Given as much, the City can devise several scenarios off-hand in which a watercourse that
9 does not have a channel created solely from natural processes may be a “stream” under the RZC.
10 For instance, if a landowner installed a culvert in the 1950s that redirected a naturally occurring
11 stream such that the redirected flow carved out a new defined channel or bed, that redirected stream
12 could be a regulated “stream” under the City’s CAO because the watercourse is not “entirely
13 artificial” even though the bed of the new stream path is was not created solely by natural
14 processes. Similarly, if the addition or subtraction of streamflow due to upstream stormwater
15 improvements caused the stream to change its path, this watercourse should not necessarily be
16 removed from the stream definition simply because the new channel was influenced by the actions
17 of man. If adjacent mining causes the land and stream path to shift (a common problem in mining
18 areas), should the new flow path no longer be a stream?

19 These examples are not meant to put forth a unified theory of the City’s stream definitions,
20 but merely to illustrate why the City cannot agree to a broad-strokes, generalized pronouncements
21 about the meaning of the RZC provisions when (1) the facts of this case do not call for it and
22 (2) the interpretation put forth by Appellants rests on a strained and unconvincing reading of the
23 RZC provisions. Neither the City nor the Hearing Examiner should be required to issue grand
24

25 or surface water runoff device[] or other entirely artificial watercourse[]” under RZC 21.78(S). *See* Ex. D to Decl. of
26 Jenna Mandell-Rice at 20. In their motion, they appear to concede that the Watercourse is not an “intentionally created
stream” because it was not purposefully constructed. *See* Appellants’ Mot. for Summ. J. (“MSJ”) at 21.

1 pronouncements on meaning of the RZC that go beyond the issues presented by the facts of this
2 case. *See Hayden*, 141 Wn.2d at 68.

3 **IV. CONCLUSION**

4 The Hearing Examiner should deny this motion for summary judgment because it seeks an
5 advisory legal ruling on an issue that is not necessary to resolve this case and that could have
6 unforeseen implications for other development permits in the City. The Hearing Examiner should
7 allow this matter to proceed to full hearing on the merits without needless preliminary rulings so
8 that her final decision can be informed by the unique and highly technical facts of this case.

9
10 DATED this 17th day of January, 2020.

11 OGDEN MURPHY WALLACE, PLLC

12
13 By 

14 James E. Haney, WSBA #11058
15 Katherine Hambley, WSBA #51812
16 Attorneys for Respondent
17 jhaney@omwlaw.com
18 khambley@omwlaw.com

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***

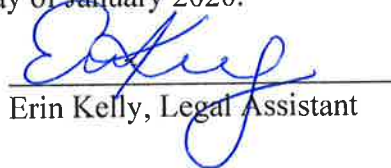
6 Cheryl Xanthos
7 Deputy City Clerk
8 cdxanthos@redmond.gov

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 Erin Kelly, Legal Assistant