



## Planning and Community Development Staff Report

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**Proposal Name:** Veal Administrative Interpretation

**Proposal Address:** King County Tax Parcel No. 352605-9123

**Proposal Description:** Applicants seek an administrative interpretation of the Redmond Zoning Code Chapter 21.64 to classify a drainage feature located on their property.

**File Number:** LAND-2019-00814

**Applicants:** Rory and Donna Veal

**Decisions Included:** Interpretation of the Redmond Zoning Code; (Type I Review, RZC 21.76.070.D)

**Planner:** Cathy Beam, Principal Planner

**State Environmental Policy Act Threshold Determination:** **EXEMPT**

**Director's Decision:** **Interpretation of the Redmond Zoning Code**  
Erika Vandenbrande, Director  
Planning and Community Development

*Carol V. Helland*

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Carol V. Helland, Deputy Director  
Planning and Community Development

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Application Date: August 19, 2019  
Decision Publication Date: October 17, 2019  
Project Appeal Deadline: October 31, 2019

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**Interpretation of the Director  
Redmond File No. LAND-2019-00814**

**I. INTRODUCTION**

The Applicants, Rory and Donna Veal (the “Veals”) own property described as King County Parcel No. 352605-9123 in Redmond, Washington (the “Subject Property”). The Applicants seek an administrative interpretation of the regulations contained in Chapter 21.64 of the Redmond Zoning Code (RZC). A request for administrative interpretation is processed as a Type I review, and the Director’s decision may be appealed to the Hearing Examiner.

**Summary of the Interpretation Request:** The Applicants seek an administrative interpretation of RZC Chapter 21.64 to determine whether a drainage feature<sup>1</sup> on the Subject Property is regulated as a Class IV Stream or not, and whether it is perennial or intermittent if it is determined to be a regulated stream.

**Short Answer:** The Director has determined that the described drainage feature located on the Subject Property is a Class IV Perennial Stream. Although flow and location may have changed over time, the stream occurred naturally and is not manmade.

**II. INTERPRETATION**

**A. Framework for this Administrative Interpretation**

1. Purpose of an Administration Interpretation – RZC 21.76.070.D.1. Any interested person may apply for an interpretation of the RZC where the code, or its application to specific circumstances, is ambiguous; i.e., where the code is susceptible to two or more reasonable interpretations. The purpose of this administrative interpretation is to describe how the code applies to the specific circumstances of this application for an administrative interpretation.
2. Scope of this Interpretation. Rather than being defined by RZC 21.76.070.D.2, the scope of this interpretation is defined by the terms of an agreement entered into between the Veals and the City in an effort to resolve disputes between the parties without the need for litigation. A copy of the Process Agreement is included as Attachment A to this administrative interpretation.

Stream classifications must be determined by the Department of Planning and Community Development. In preparing this administrative interpretation, Department staff considered the factors included in RZC 21.64.020.A.2.e and the materials submitted by the applicants. Attachment B includes an index of

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<sup>1</sup> The term “drainage feature” is used by the applicant to describe the watercourse located on the Subject Property that is the topic of this interpretation request, and it is not determinative of its classification as a regulated stream.

the application materials submitted by the Veals in support of their administrative interpretation request.

The City also hired a qualified consultant to evaluate and classify the drainage feature described on the Subject Property. The Herrera Technical Memo (the "Herrera Memo") is included with this administrative interpretation as Attachment C. The work conducted by Herrera was the minimum necessary for the City to make the stream classification determination requested by the Veals. Restrictions on access described in the Process Agreement did not allow for a full assessment of the Fish and Wildlife Habitat Conservation Areas that may be located on the Subject Property. Attachment A; paragraph 5. For instance, a wildlife report was beyond the scope of this interpretation. A full riparian corridor characterization could not be accomplished with the restricted buffer access. In addition, because the interpretation is not requested in the context of a development proposal, written discussion of mitigation sequencing is not possible. A full critical areas report meeting the requirements of RZC Appendix 1 would be required before the Veals pursue any regulated activities on the Subject Property. RZC 21.64.010.G.2.b.

The identification and evaluation of any wetlands on the Subject Property is not within the scope of the administrative interpretation described in the Process Agreement. Attachment A; paragraph 2. The analysis provided in the Herrera Memo regarding wetlands located on the Subject Property is not determinative of their extent, characterization or type. The Herrera Memo identifies conditions on the Subject Property that are indicative of the presence of wetlands. The actual type, extent and boundaries of those wetlands would need to be determined in the field by a qualified consultant pursuant to the procedures, definitions and criteria set forth in RZC 21.64.030 before the Veals pursue any regulated activities on the Subject Property. RZC 21.64.010.G.2.b.

3. Process for this Interpretation – RZC 21.76.070.D.3. This administrative interpretation request is a Type I process that involves administrative review and a decision by the Director of Planning and Community Development or their designee. RZC 21.64.020.A.2.e; RZC 21.64.010.C.3; and Attachment A paragraph 3. Administrative interpretations are categorically exempt from review under the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(a). As required by the applicable review procedures in the City code, this administrative interpretation uses generally recognized principles of statutory construction. RZC 21.76.070.D.5.

Appeals of Type I decisions of the Director are made to the Hearing Examiner in an open record hearing. Any appeal of the Director's decision is required to be in written form and must be received by the Redmond City Clerk's Office no later than 5:00 p.m. on the 14<sup>th</sup> day following the date of the decision. RZC

21.76.060.D.4 and 21.76.060.I. Appeal decisions made by the Hearing Examiner may be appealed to the King County Superior Court.

**B. Site Description.**

The stream located on the Subject Property was reviewed and analyzed by Joanna Crowe Curran and Brianna Blaud of Herrera Environmental Consultants, Inc. A thorough description of Subject Property areas made available for site access under the terms of the Process Agreement is provided in the Herrera Memo. Attachment C at pages 4 through 16. A timeline describing development in the vicinity of the Subject Property is also included in the Herrera Memo. Refer to Appendix B of Attachment C. For brevity, the site description and timeline are not repeated here, but are incorporated by this reference as if set forth in full.

**C. Applicable Code Provisions.**

RZC 21.78 I Definitions define “Intentionally Created Streams” as follows:

Intentionally Created Streams. Streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals.

RZC 21.78 S Definitions define a “Stream” as follows:

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

Streams are a subset of Fish and Wildlife Habitat Conservation Areas that are required to be designated Class I, Class II, Class III, and Class IV according to the following criteria of RZC 21.64.020.A.2.d:

- i. “Class I” streams are those streams identified as “Shorelines of the State” under the City of Redmond Shoreline Master Program.
- ii. “Class II” streams are those natural streams that are not Class I and are either perennial or intermittent and have salmonid fish use or the potential for salmonid fish use.
- iii. “Class III” streams are those natural streams that are not Class I or Class II and are either perennial or intermittent and have one of the following characteristics:
  - A. Non-salmonid fish use or the potential for non-salmonid fish use; or

- B. Headwater streams with a surface water connection to salmon-bearing or potentially salmon-bearing streams (Class I or II).
- iv. "Class IV" streams are those natural streams that are not Class I, Class II, or Class III. They are either perennial or intermittent, do not have fish or the potential for fish, and are non-headwater streams.
- v. Intentionally Created Streams. These are manmade streams defined as such in these regulations and do not include streams created as mitigation. Purposeful creation must be demonstrated to the Committee through documentation, photographs, statements, and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales, or other artificial watercourses unless they are used by salmonid fish or created for the purpose of stream mitigation.

#### **D. Analysis.**

Streams fall into three categories which include shorelines of the state, natural streams and manmade streams. RZC 21.64.020.A.2.d. For this reason, this interpretation uses the term stream to refer to the watercourse located on the Subject Property and described by the applicants as a drainage feature.

Stream classifications are required to be determined by the Department based on consideration of maps, criteria contained in the critical areas regulations, and consideration of the technical reports submitted by qualified consultants in connection with an application. RZC 21.64.020.A.2.e. The Veal's application for administrative interpretation contains documentation, aerial photographs, affidavits of individuals, technical reports produced in support of project applications in the vicinity of the Subject Property, hydrology and stream assessment reports that were prepared for the Subject Property in 2015 and 2017 respectively, and a legal analysis. Attachment B contains an index of the documents submitted by the applicant in support of this interpretation. The materials included in the application submittal is available in City File No. LAND-2019-00814.

The City also engaged Herrera to conduct data collection and background investigation, a site inspection, and code review, and to produce a written technical memorandum assessing the conditions of the stream. Attachment C contains the Herrera Memo. Attachment D includes the scope of work negotiated with Herrera to produce a technical memorandum in connection with this specific administrative interpretation request.

Application materials submitted by the Veals maintain that the stream located on the Subject Property was manmade and constitutes an Intentionally Created Stream consistent with the definition of Stream contained in RZC 21.78 and the criteria of RZC 21.64.020.A.2.d.v. City staff considered the Veal information together with the additional factors that are required to be considered when the Department is called upon to classify a stream.

**The watercourse located on the Subject Property is not an Intentionally Created Stream and is determined by the Department to be a Class IV Perennial Stream based on consideration of the following factors (RZC 21.64.020.A.2.e):**

**Maps (RZC 21.64.020.2.e.i through iv).** A review of the Department of Fish and Wildlife priority habitat and species maps, anadromous and resident salmonid distribution maps contained in the habitat-limiting factors reports published by the Washington State Conservation Commission, and federal and state information and maps related to species of concern do not indicate the presence of a stream on the Subject Property. Attachment B - Exhibit 11 page 2. However, the absence of identification on the above-referenced maps is not determinative of the absence of a stream on the Subject Property.

A critical area on the Subject Property has been shown on City maps in the vicinity of the stream since at least 1994. Maps indicating the presence of a wetland were adopted by the City Council in 1993 and included in the Draft Environmental Impact Statement for the Comprehensive Plan Update in 1994 (the "1994 Draft EIS"). Attachment G. A map indicating the presence of a stream segment was first adopted as part of the City's Sensitive Areas Regulations by Ordinance No. 1955. Attachment E. A colored geographic information system (GIS) version of the map included in Ordinance No. 1955 was also made available for public distribution starting in September 1997. Attachment F.

Stream and wetland maps are continuously updated to reflect critical areas and associated buffers as they are identified at a site-specific level during the development review process. RZC 21.64.020.A.2.a. Mr. Veal's own declaration acknowledges that at the time they purchased the Subject Property in 1998, the passage of water across the site was evident in the vicinity of the stream and wetlands shown on adopted City maps from the same time period. Attachment B – Declaration of Rory Veal paragraph 11.

**Application of Criteria in the Critical Areas Regulations (RZC 21.64.020.A.2.e.v).**

The Veals seek to demonstrate through "documentation, photographs, statements, and/or evidence" that the watercourse across the Subject Property is an Intentionally Created Stream under the terms of RZC 21.64.020.A.2.d.v. The Veal information does not demonstrate the facts needed to classify the stream as manmade, and such a determination is not supported by the evidence.

**Photographs from the Veal Application:** Aerials dating back to 1936 were provided to support the contention that a stream was not historically visible on the Subject Property and that it was created after the property was purchased by the Veals. What the aerials show is that the Subject Property was historically managed. The vegetation on the Subject Property was maintained consistent with its historic use as a dairy farm. Buildings located on the Subject Property and the adjacent property to the south, were clearly set back from the location of the mapped stream. The aerials are grainy and the scale would make it difficult to detect a narrow stream that is obscured by grass. Mowing and grazing

associated with the historic farm use would also have prevented vegetation from establishing near a watercourse that could have helped to visually define the stream on old aerials of such poor visual quality. The aerial photographs provided by the Veals do not demonstrate the historic absence of a stream.

Statements from the Veal Application: The Declaration of Rory Veal describes general observations of the Subject Property that are not adequate to demonstrate that a stream did not exist. He notes that when the Veals purchased the Veal Property to the south in 1984, they observed the Subject Property to be “open pasture with no indication of ditch, stream, wetland, or other water body.” Attachment B – Declaration of Rory Veal paragraph 4. The 2019 site investigation by Herrera and City staff illustrate that the narrowly incised stream is difficult to detect even when an individual is immediately adjacent to it. Attachment C – Appendix C includes photos taken after the stream was exposed using an electric hedge trimmer. The absence of a small narrowly incised stream in 1984 would not have been verifiable by distant observation.

Documents from the Veal Application: The position advanced in the Declaration of Rory Veal at paragraph 10 is not supported by information contained in the 1994 Drainage Report by Litchfield Engineering and contemporaneously produced City records. The 1994 Drainage Report confirms that a stream was known to exist on the Subject Property long before Redwood Manor was constructed. The 1994 Drainage Report described the drainage downstream from Redwood Manor as follows:

At the discharge point, the drainage flows down a natural drainage swale in a westerly direction towards the Sammamish River. The swale descends at a slope ranging from 15 to 35% and is approximately 3 feet deep, 3 feet wide with sideslopes near vertical. The sidewalls of the swale are bare native sands and gravel and appear stable as no significant signs of erosion were noted. Attachment B – Exhibit 4, 1994 Drainage Report page 2.

The area described in the 1994 Drainage Report was contemporaneously shown on the 1993 sensitive areas map and the wetland map included in the 1994 Draft EIS for the Comprehensive Plan Update. Critical areas on private property are often not mapped, because access absent a pending development proposal is not available to City staff. Critical areas become part the City’s identified critical area inventory as they are identified at a site-specific level. RZC 21.64.020.A.2.a. The 1994 Draft EIS indicates that a water-related critical area was identified and began to appear on City maps of the Subject Property around the same timeframe that the 1994 Drainage Report was submitted in support of the Redwood Manor permit application. Attachment G.

In 1997, the Redmond City Council adopted a sensitive areas stream map by Ordinance No. 1955. Attachment E. The map in this ordinance shows the stream segment on the Subject Property consistent with the 1994 Drainage Report for Redmond Manor and the wetland maps included in the 1993 sensitive areas regulations and the 1994 Draft EIS. Colored maps prepared for public distribution in September 1997 also clearly identify a

Class IV Stream segment on the Subject Property before it was purchased by the Veals in 1998. Attachment F. These pieces of evidence rebut Veal's contention that the stream did not show signs of existence on the ground until after Redwood Manor was completed, and they support the City staff findings in 2018 that a stream existed on the Subject Property before construction of the stormwater system associated with the Redwood Manor project. Attachment B – Exhibit 14 page 4 paragraph 3.3.

The position advanced in the Declaration of Rory Veal (Attachment B – paragraph 10) and the other documents contained in the Veal application materials do not rebut the findings contained in the 1994 Drainage Report and the contemporaneous identification of a wetland on the Subject Property in documents produced by the City in 1993 and 1994. The stream was described on the Subject Property by Litchfield in the 1994 Drainage Report. Attachment B – Exhibit 4 page 2. The site-specific information from the 1994 Drainage Report is consistent with wetland information that was contemporaneously included in the 1993 sensitive areas maps and the 1994 Draft EIS. Attachment G. The stream location and classification were then adopted into City code in 1997. Attachments E, F and G.

#### **Technical Reports Submitted by Qualified Consultants (RZC 21.64.020.2.e.vi).**

Since the stream at issue first appeared on adopted City maps in 1997, four reports have been prepared to evaluate the watercourse on the Subject Property. Three of the reports were provided in the Veal application materials, and one report was prepared under contract with the City.

#### **Technical Reports from the Veal Application:**

- McCarthy Hydrology Assessment 2015. Referred to as the “McCarthy Report” contained in Attachment B – Exhibit 7.
- Beaver Creek Environmental Services, Inc. Stream Assessment Report September 2017. Referred to as the “Beaver Creek Stream Assessment” contained in Attachment B – Exhibit 11.
- Dodds Consulting Engineers, Inc. P.S. History of Surface Water Drainage through WSDOT SP202 Culvert @ Station 71+70 August 2019. Referred to as the “Dodds Consulting Report” contained in Attachment B – Exhibit 6.

#### **Technical Report from consultant retained by the City:**

- Herrera Technical Memorandum October 2019. Referred to as the “Herrera Memo” contained in Attachment C.

Of the three technical reports submitted with the Veal application and considered in the preparation of this interpretation, only one of them was prepared with the stated purpose of classifying the stream by consultants qualified to identify and evaluate the sensitive area in question. Refer to the Beaver Creek Stream Assessment contained in Attachment B – Exhibit 11.



The RZC authorizes the City to retain a qualified consultant to review and confirm the applicant's reports, studies and plans. RZC 21.64.010.G.3. Herrera was retained by the City for this purpose. Only the Herrera Memo classifies the stream based on existing City code requirements governing classifications and ratings of a Fish and Wildlife Habitat Conservation Areas. Refer to the Herrera Memo contained in Attachment C.

### **Beaver Creek Stream Assessment (Attachment B – Exhibit 11).**

The study methods used in the Beaver Creek Stream Assessment included an on-site evaluation that was conducted on July 18, 2017. The stated “objective of this evaluation was to define and delineate potential drainage corridor areas which may be present within and adjacent to the project area as defined by the water-typing criteria noted within the WDNR Forest Practice Rules (WAC 222-16-030).” Attachment B – Exhibit 11 page 3 Study Methods.

The Beaver Creek Stream Assessment states that the study methodology relies on the water typing system of WAC 222-16-030. The WAC specifically defines “natural waters” for the purposes of administering the referenced state code section as only excluding “water conveyance systems which are artificially constructed and actively maintained for irrigation.” WAC 222-16-030(5). The Beaver Creek Stream Assessment itself demonstrates that this definition is not met when it concludes that the drainage feature may or may not have been artificially constructed to drain stormwater and that the photo evidence suggests it is becoming more distinct and visible over time. Attachment B - Exhibit 11 page 4 Findings and Conclusions. If the drainage feature had been artificially created and actively maintained over time as required by state code, it should have been visible all along. The Beaver Creek Stream Assessment methodology used to reach the ultimate Findings and Conclusions does not provide the analysis necessary to demonstrate that the stream is not a “natural water.”

The Beaver Creek Stream Assessment contains no analysis to support a conclusion that the watercourse is not a natural one that should be designated as a Class I, Class II, Class III, or Class IV stream. The final stream determination contained in Attachment B – Exhibit 11 page 3 is made based on limited analysis and field observations that include unsubstantiated conclusions about the origin of the water flowing onto the Subject Property. The report findings are supported only by a bulleted list of generic drainage characteristic that are ostensibly verified by photo evidence. Attachment B - Exhibit 11 page 4 Findings and Conclusions.

The stream determination included in the Beaver Creek Stream Assessment states “that **one area of the site exhibited characteristics applicable as a “stream;”** but then goes on to conclude without explanation that “this feature **appears** created out of upland as a surface water runoff device, and therefor is unregulated by City of Redmond.” Attachment B – Exhibit 11 page 3 (emphasis added). There is no discussion of how this conclusion was reached through application of the City code. There is also no explanation as to why

the full length of the watercourse would not be properly classified as a more restrictive Class IV Stream since this protective approach is prescribed by RZC 21.64.020.A.d.

Finally, the Beaver Creek Stream Assessment specifically notes that: "Stream boundaries, classifications, ratings, and proposed buffers must be reviewed and approved by the City of Redmond Planning Services and potentially other regulatory agencies" and that Beaver Creek "is not responsible for design costs incurred before this document is approved by appropriate resource and permitting agencies." This statement rightly acknowledges that the report is not determinative of the proper stream classification until it is reviewed and approved by the Department. RZC 21.64.020.A.e. In Spring of 2018, Mr. Veal sought City verification of the stream classification based on the reports that had been prepared for the Subject Property. In May 2018, City staff rightly concluded that the "watercourse on parcel 3526059123 meets the criteria of a Class IV Stream from the pipe outlet under Red-Wood Road, across the whole length of the parcel, and down the ravine to where it discharges to the wetland." Attachment B – Exhibit 14 page 7. The stream determination provided in the Beaver Creek Stream Assessment was not approved by the City or, based on available information, by any other resource or permitting agency. Declaration of Rory Veal paragraph 25.

Essentially, City staff concluded that relevant factors demonstrate the watercourse constitutes a stream pursuant to RZC 21.64.020.A.2.d, and that although the flow and location may have changed over time, the stream occurred naturally before the construction of any stormwater facilities in the vicinity of the Subject Property. The Beaver Creek Stream Assessment does not provide the level of detail or analysis required of a written stream assessment. It does not demonstrate that the 1997 stream mapping on the Subject Property is inaccurate or that the stream is manmade.

### **Herrera Memo (Attachment C).**

Consultant services were sought from Herrera to identify and evaluate the critical area at issue in this administrative interpretation. Of the technical studies referencing the stream on the Subject Property, only the Herrera Memo classifies the stream based on existing City code requirements governing classifications and ratings of a Fish and Wildlife Habitat Conservation Area.

Herrera assigned a fisheries biologist and a fluvial geomorphologist to conduct a site visit and document the existing stream conditions on the Subject Property. They were joined on the site visit by Gary Schimek and Carol Helland from the City of Redmond and Rory Veal. Attachment C – page 4.

The Herrera Memo included an examination of the Veal's application materials in addition to a more in-depth examination of the underlying topography. The Herrera analysis considered the geologic and geomorphic history of the watercourse and surrounding land to determine whether the stream existed prior to the surrounding land development. Attachment C – pages 4 through 11. This analysis shows how the stream over the

Subject Property formed naturally overtime through a combination of spring discharge and contribution from a perched aquifer. Conclusions in the Herrera Memo are supported by topographic contour patterns and the presence of road culverts installed in the early 1900's to convey natural flow. This evidence is indicative of the many small drainages that exist in the hillslopes above the Sammamish River. These conclusions are also consistent with stream identification and typing that has occurred at the site-specific level for public<sup>2</sup> and private<sup>3</sup> development projects proposed in the Sammamish River Valley.

The evidence presented in the Herrera Memo indicates that the erosional watercourse through the Subject Property was created by natural drainage conditions. Attachment C - page 7. Natural streams are required to be designated as Class I, Class II, Class III, or Class IV streams according to the criteria contained in RZC 21.64.020.A.2.d. The Herrera Memo provides a detailed assessment of the watercourse conditions that includes a description of the stream, the flow and gradient characteristics, stream bed conditions, stream bank stability and stream bank vegetation required by RZC Appendix 1 section B.2.c.ii.A. Attachment C – pages 12 through 16 The evidence of the passage of water occurring on the Subject Property prior to any upland development is clearly documented in the Herrera Memo based on the geomorphology and hydrology of the area. Attachment C – page 16 Conclusions.

The Herrera Memo is the only technical report prepared for the stream on the Subject Property that provides the information necessary for the City to make the stream classification determination requested by the Veals.

#### **E. Conclusion.**

Application of the referenced code provisions as provided in this interpretation give effect to its intent. The watercourse located on the Subject Property is properly defined as a stream pursuant to RZC 21.78 S Definitions and RZC 21.64.020.A.2.d because although the flow and location may have changed overtime due to artificial influences, it occurred naturally from the passage of water. This determination is supported by evidence of historical drainage patterns, constructed conveyances, soils information and physical conditions documented in the Herrera Memo together with an evaluation of the factors contained in RZC 21.64.020.A.2.e.

The stream on the Subject Property is designated as a Class IV Perennial Stream.

### **III. CONSISTENCY WITH APPLICABLE DECISION CRITERIA**

In making an interpretation of the provisions of the RZC, the Director is required to demonstrate consistency with applicable decision criteria. RZC 21.76.070.B.3.a (Criteria

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<sup>2</sup> 9800 Red-Wood Road ravine stabilization. SEPA Review SEPA-2016-01674.

<sup>3</sup> Proctor Willows development. Master Planned Development LAND-2019-00349, Development Agreement LAND-2019-00351 and SEPA Review SEPA-2019-00807.

Applicable to All Land Use Permits) and RZC 21.76.070.D.4 (Administrative Interpretation Decision Criteria).

**A. Consistency between the Interpretation and Applicable Comprehensive Plan provisions.**

The City's Comprehensive Plan contains framework policies which express the core concepts upon which the Comprehensive Plan is based. These foundational policies set the direction for how various elements of the Plan address the trends, opportunities, and mandates facing the City. One of the main goals of the Plan is to protect and enhance the quality of the natural environment, and to sustain Redmond's natural resources as the City continues to accommodate growth and development. Comprehensive Plan Goals, Vision and Framework Policies – A. Goals for Redmond. Protection, enhancement and restoration of habitat and natural ecosystem function is prescribed to provide resilience and adaptability, prevent natural hazards, and support biological imperatives for clean water and air. Comprehensive Plan - FW-6. Redmond is viewed as a green city that should be maintained with an abundance of trees, forested areas, open space, parks, wildlife habitats, riparian corridors, access to shorelines and other elements of its beautiful natural setting. Comprehensive Plan – FW-38.

In addition, the Natural Environment Element has policies that specifically address critical areas and riparian corridors.

NE-20 Use the precautionary principle when there is an absence of valid scientific information or incomplete scientific information accompanying a development application. Use rigorous analysis to appropriately limit development and land uses activities until the uncertainty is sufficiently resolved.

NE-75 Protect and enhance rivers, streams and lakes, including riparian and shoreline habitat, to protect water quality, reduce public costs, protect fish and wildlife habitat, and prevent environmental degradation. Protect both perennial and intermittent streams to preserve natural hydraulic and ecological functions, fish and wildlife habitat, recreational resources, and aesthetics.

NE-76 Maintain natural hydrological functions within the city's ecosystems and watersheds and encourage their restoration to a more natural state.

NE-78 Avoid development impacts to riparian corridors. Protect riparian vegetation within stream buffers to maintain ecological functions. Enhance and rehabilitate these areas if they are impacted by development and encourage this when development takes place on adjacent uplands. Establish stream buffers to protect riparian ecological functions that contribute to healthy stream systems.

NE-79 Preserve and enhance the natural appearance of stream corridors.

NE-84 Avoid alteration of riparian stream corridors to the maximum extent possible. Whenever possible, avoid reduction in the capacity of natural drainage courses and minimize enclosures of natural drainage ways. Discourage stream relocation except as identified in NE-81. Replace and enhance the flood control and habitat values of drainage courses when relocation or alteration is necessary for public benefit. Require enhancement when alteration of a stream to increase the usability of a site is permitted.

Both the Framework Policies and specific Natural Environment Element policies support the Department's interpretation which will protect and enhance the natural ecosystem on the Subject Property, avoid impacts to those systems, and maintain their hydrological functions. The materials included in the Veal's application do not provide the documentation needed to demonstrate that the stream on the Subject Property is manmade. In contrast, the Herrera Memo provides a thorough scientific analysis that finds the watercourse across the Subject Property occurred naturally. Even if the findings in the Herrera Report do not provide absolute certainty that the stream was natural, the presented evidence is compelling. Policy NE-20 requires use of the precautionary principle when classifying critical area resources. The Department finds that the Herrera Memo contained the rigorous scientific analysis necessary to determine the watercourse is a Class IV Perennial Stream that warrants the limitations on development and land use activity required by the critical areas regulations for a natural watercourse.

#### **B. Consistency between the Interpretation and Applicable Regulations.**

The Redmond critical areas regulations are intended to preserve the City's environmental features and only allow development where critical areas are appropriately considered and the development is compatible with unique characteristics of the on-site resources. RZC 20.64.010.A. Fish and Wildlife Habitat Conservation Areas are defined to include streams, underground waters, and other surface waters and watercourses, and these are always considered to be natural waters unless they constitute a water conveyance system that was "artificially constructed and actively maintained for irrigation." RZC 21.64.020.A.1.e. The photographs, statements and documents provided in the Veal application do not adequately demonstrate that the stream on the Subject Property is not a natural water of the state.

As early as 1994, evidence of critical areas on the Subject Property was captured in City mapping. The 1994 Draft EIS on the Comprehensive Plan update identified wetlands on the Subject Property in the vicinity of the stream. These details emerged as data about the watercourse was contemporaneously collected to support permit approvals for Redmond Manor. By 1997, the stream on the Subject Property was included on maps adopted by the City Council and was shown on colored inventory maps that were distributed to the public from the permit counter. All of this information was publicly available prior to the Veal's purchase of the Subject Property in 1998 and prior to the construction of Redwood Manor. This further supports staff conclusions in 2018 that

although flow and location may have changed over time, the stream of the Subject Property occurred naturally and is not manmade.

Even if the stream had not appeared on maps prior to development located in vicinity to the Subject Property, the stream class determination of the Department in this interpretation is appropriate. Critical areas maps are only intended to be a general guide. They are for the assistance of property owners and other interested parties. The critical area boundaries are generalized, and the actual type, extent and boundaries of critical areas are required to be determined in the field by a qualified consultant. RZC 21.64.010.E.2.

The Herrera Memo produces the science-based analysis necessary to appropriately classify the stream on the Subject Property. RZC 21.64.020.A.2.e. No other technical memo reviewed in preparation for this administrative interpretation compares in site-specific detail, investigative specificity, or depth of analysis undertaken to produce the Herrera Memo. If a conflict is deemed to exist between a mapped stream location and designation, the criteria and standards of the critical areas regulations are required to control, and the Herrera Memo was produced in compliance with these standards and regulations. RZC 21.64.010.E.2. The stream class determination of the Department relies on the best scientific data available about the Subject Property, and a Class IV Perennial Stream determination is necessary to protect the public health, safety, and general welfare. RZC 21.64.010.B.4.

**C. The provisions of the RZC shall be considered to be the minimum requirements adopted for the promotion and protection of the public health, safety, and general welfare, and all administrative interpretations shall be made in this context.**

Protection of critical areas is in accordance with the Growth Management Act and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals. There are multiple purposes for Critical Areas regulations. Among them includes assuring the conservation and protection of critical areas from loss or degradation by classifying and designating critical areas to restrict land uses and development which are incompatible with environmentally critical areas. RZC 21.64.010.A.2. Identification, regulation, and protection of critical areas is necessary to protect the public health, safety, and general welfare. RZC 21.64.010.B.4.

**D. The RZC is not intended to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties, except where the agreements may conflict with the enforcement of the RZC.**

This criterion is not applicable to this interpretation request as it is specific to ensuring the Zoning Code does not interfere with, abrogate, or annul any easements, covenants, or other agreements between the parties. The Applicants seek an administrative

interpretation of RZC Chapter 21.64 to classify a stream located on the Subject Property and to determine whether the stream is perennial or intermittent.

**E. In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, resolutions, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and charts of the RZC, the text shall govern unless otherwise stated.**

Critical areas regulations apply as an overlay and in addition to zoning, land use, and other regulations established by the City. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to environmentally critical areas apply. RZC 21.64.010.F.1. The stream classification determination of the Department in this interpretation is appropriate. The interpretation relies on a review of maps, photos, statements and technical documents. It relies on the best scientific information available, and applies the applicable standards, regulations and criteria to the specific facts and circumstances of this interpretation request to give meaning to all applicable code provisions. The interpretation is also consistent with the precautionary principle mandated by the Comprehensive Plan by determining that the watercourse on the Subject Property is a Class IV Perennial Stream that warrants the limitations on development and land use activity required by the critical areas regulations for a natural watercourse.

**F. Interpretation of the Official Zoning Map shall be as set forth in RZC 21.04.020.B.**

This criterion is not applicable to this interpretation request. The Applicants seek an administrative interpretation of RZC Chapter 21.64 to classify a stream and to determine whether the stream is perennial or intermittent. This decision of the Department does not include an interpretation of the Official Zoning Map.

**G. Interpretation of the Redmond Comprehensive Plan is to be made recognizing that the boundaries of the plan categories are not exact but illustrate general relationships and locations.**

This criterion is not applicable to this interpretation request. The Applicants seek an administrative interpretation of RZC Chapter 21.64 to classify a stream and to determine whether the stream is perennial or intermittent. This decision of the Department does not include an interpretation of the Redmond Comprehensive Plan.

## **V. APPEAL**

Appeals of Type I decisions of the Director are made to the Hearing Examiner in an open record hearing. Any appeal of the Director's decision is required to be in written form and must be received by the Redmond City Clerk's Office no later than 5:00 p.m. on the 14th

day following the date of the decision. RZC 21.76.060.D.4 and 21.76.060.I. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court.

**ATTACHMENTS:**

- A. Process Agreement between the City and the Veals
- B. Veal Administrative Interpretation Application Submittal Index
- C. Herrera Technical Memorandum dated October 17, 2019
- D. Herrera Scope of Work Task Order #19-01
- E. Ordinance No. 1955 effective November 27, 1997
- F. 1997 Sensitive Areas Map - Stream Classification. Redmond Community Development Guide Supplement No. 2 – December 1999
- G. 1993 Sensitive Areas Map – Wetlands and City of Redmond Comprehensive Plan Draft Environmental Impact Statement August 1994 – Appendix A.