BEFORE THE HEARING EXAMINER FOR THE CITY OF REDMOND

In re the matter of the Appeal by C. R. HOMEBUILDERS, LLC, Appellant, vs. THE CITY OF REDMOND, PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT, and PUBLIC WORKS DEPARTMENT Respondent.	Holmgren Short Plat, LAND-2017-00548 CR HOMEBUILDERS LLC PREHEARING STATEMENT

I. INTRODUCTION

CR Homebuilders, LLC, the applicant for the subject permit and owner of the property ("CR Homebuilders"), has appealed the denial of its short plat application for the Holmgren property. The City's denial of that short plat lacks foundation in Redmond Zoning Code ("Zoning Code" or "RMZ") and is not supported by substantial evidence.

This case raises a single issue of whether the Zoning Code supports the City's implicit conclusion in its decision that a stream runs through a portion of the Holmgren property. CR Homebuilders examined the site exhaustively with its expert consultants over two wet weather seasons, reviewed all historical evidence for the site and larger area, and its experts concluded that there is no stream on the Holmgren property. The City concurred with that conclusion as recently as 2016. The City also previously concluded that there is no stream uphill or downhill of the Holmgren property. Yet the City changed its mind and

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

apparently has concluded that a stream does exist, based exclusively on one video taken on a single day by neighbors through a chain link fence, immediately after a significant rainfall event. The area all around the Holmgren property is fully developed residential property; the City's determination would mean there is a stream on the Holmgren property that would spontaneously emerge in the middle of a long stretch of open space, with no stream designated or existing either uphill or downhill from it. In essence, it would be an isolated length of stream starting spontaneously on the Holmgren property, running roughly 100 lineal feet, and terminating at the Holmgren property boundary.

The City performed no expert reporting or analysis to support its conclusion. Instead, the City dismissed CR Homebuilders' expert reports for simply not meeting its critical area report requirements, despite the fact that the ecologists specifically concluded there are no critical areas to delineate for any such report. City's Exhibit 2. The City now demands that CR Homebuilders submit a formal critical area report, including delineation of a stream, even though there is no expert evidence that a stream exists based on the City's own classifications and required methodology.

II. FACTUAL BACKGROUND

The Holmgren property is located at 16130 NE 51st Street / 5502 161st Place NE, Redmond just off NE 51st Street. As seen on many different exhibits in the record, a shallow depression runs east-west both uphill and downhill of the Holmgren property. As a result of development over time, this depression receives stormwater runoff from developed properties on higher ground, several of which have point-source stormwater pipes sending stormwater directly into the depression. See e.g. Exhibit A-4 (survey showing storm drains

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

and pipe ends); CR H Exhibit A-5 (Timbers plan sheet C4.02 directing stormwater from foot drains to the NGPE on that site). [1]

For decades, the Holmgrens as well as the property downhill, known as the Wickman property, dealt with the stormwater from the uphill homes and developments by installing drain tiles (Holmgren) or a stormwater conveyance pipe system (Wickman). City's Exhibit 20, attached letter from Annie Catlin, February 13, 2018; City's Exhibit 6, page 5.[2] There is no question that stormwater flows in this depression area during and after storm events. But under the Redmond Code definition of a stream, this runoff does not constitute a classifiable stream that would warrant delineation and buffering.

As part of an extensive review of the site, CR Homebuilders' critical area ecologist and its geotechnical consultant conducted separate site visits, each visiting twice and the ecologist visiting during two separate wet weather seasons (each time during high precipitation). Neither found evidence of a stream on the site. The City originally concurred with these site investigations and analysis, and advised the Applicant's predecessor in interest of such.

---

[1] CR Homebuilders has added a few exhibits to its list in response to the City's list of exhibits. CR Homebuilders believes these materials either should have been part of the City's record or are appropriately added as items that are readily available and should have been considered during the City's application review process.

[2] The City has not identified the specific documents it includes in each of the exhibits containing CR Homebuilders' submittals (the City has done so for its own decision). CR Homebuilders has requested the City provide identification of specific exhibits but has not received that updated list as of signing this brief. Therefore, CR Homebuilders cites to the City's general exhibit number and reserves the ability to supplement the record if the City's exhibits are incomplete.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

A. Historical and background information.

CR Homebuilders recognizes that there is stormwater runoff from neighboring property drains and likely the larger area that naturally gravity-flows to the low point running roughly east-west through the Holmgren property and properties both up and downhill. However, the evidence reflects that there is no historical support for concluding there is any stream on the property. 1936 and 1965 aerial photos show a depression in the area but no evidence of any stream or drainage channelization. City's Exhibit 22, Wetland Resources Report, February 28, 2018, page 4 (1936 aerial reproduced in color with orange site id); Exhibit A-6. As of 1993, the City's sensitive areas review shows there was also no stream on the property or to the east or west. City's Exhibit 2, page 2; City's Exhibit 5. As discussed below, the City approved development of both properties to the east and west, i.e. up and down the depression from the Holmgren property, without designating a stream or buffers thereon.

There have been drain tiles in the east section of the depression on the Holmgren property for decades. City's Exhibit 20, attached letter from Annie Catlin, February 13, 2018. There is also a long-established storm pipe on the downhill property to the east, the Wickman Short Plat. City's Exhibit 6, page 5. As the record reflects, in the late 1990's, the neighboring property owners, then the Wickmans, were doing work in their orchard with a tractor and crushed the tiles. *Id.* For many years thereafter, the drain tiles did not function correctly. Despite that, there was no stream channelization on the property; to the contrary, the Holmgrens were able to mow the area in tennis shoes, and the Holmgrens' goats had no

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

trouble traversing the property in 2015 without even wet feet. *Id.* The Catlins fixed the drain tiles in 2016.

In early 2000, the Wickman Short Plat was recorded for a site immediately downhill and roughly east of the Holmgren property. Exhibit A-8. As detailed in the Wickman SEPA checklist, there is a drainage route on the Holmgren and Wickman properties which did not meet the City's adopted standards for a 'stream'; the City allowed the drainage on the Wickman site to remain piped through the Wickman property. City's Exhibit 6, page 5. The Wickman as-built plans also label this as drainage.[3] City's Exhibit 21, Wetland Resources Report, February 14, 2018, Attachment A. The City did not require the Wickmans to delineate a stream or provide any buffers; to the contrary the City acquired a drainage easement over an existing pipe that immediately connects to a City utility easement to the east. Exhibit A-8. As a result, the Wickman property itself does not contain a stream feature that would, in theory, have connected to any stream uphill on the Holmgren property had one been found.

In 2005, the City issued City-wide critical area maps and labelled a potential stream running through the area that the depression also originally ran through. City's Exhibit 29. That stream was labelled as running across several properties up and downhill of Holmgren – including Wickman and The Timbers (see below), each developed without stream delineation or buffers. As is provided on all City maps, the notation of a stream was expressly taken to be general and meant as an indication for a qualified consultant to review the property with

[3] The plans label this as a "Class V" drainage, but CR Hombuilders has been unable to find any definition or classification of such drainage historically.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

particularity in the event of development. City's Exhibit 19, email string between Nell Lund (The Watershed Company) and Roger Dane (City of Redmond). The Zoning Code provides expressly that such mapping is for general guidance only, not to be relied on for development application review, and any site evaluations must be done by a qualified professional of the specific site. RZC 21.64.020(A)(2)(e). The City's map has a line drawn stream running both uphill and downhill of the Holmgren property, an assumption never substantiated in the field when those properties were developed. These assumptions have been continued to date, despite development of the property in exactly where the stream line was presumed uphill from Holmgren. Compare: Exhibits A-2, second page and Exhibit A-5 (locating Lots 3-8 on top of stream shown on King County mapping and depression contours).

In 2012, the City approved The Timbers subdivision, located immediately uphill and west of the Holmgren property. City's Exhibit 32. The Timbers property contained a portion of the depression and area that the City identified in 2005 as potentially containing a stream. See City's Exhibit 2, page 3 (map shows stream running nearly to 159th Place NE). The Watershed Company conducted a critical area review and concluded that there was no stream on the Timbers property, including in the depression, despite the City's mapping. City's Exhibit 19, Watershed Company report, dated July 10, 2013. The ecologist also concluded "no channel was present within at least 40 feet of the down slope end." City's Exhibit 19, email string between Nell Lund (Watershed Company) and Roger Dane (City of Redmond). The City's reviewer, Roger Dane, concluded as well that there was no stream, but that the lower end of The Timbers (i.e. the eastern end, adjacent to the Holmgren property) needed

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

review for any wetland characteristics. Both Lund and Dane agreed that the City's mapping was never field verified and was merely "gross-scale mapping." *Id.*

The City concluded that no stream existed on The Timbers site, and allowed homes to be built in the area where both the depression contours run and the stream had been assumed in the gross-scale mapping. Exhibit A-5. Going even further, the City allowed the homes located adjacent to the NGPE (again, not delineated with stream or buffer) to drain their stormwater directly into the NGPE area without detention. Exhibit A-5 (note on sheet C.402). In 2016, the City updated its map to remove the stream label from the Timbers property. City's Exhibit 2, page 4.

In 2015, the Holmgrens completed a boundary line adjustment. City's Exhibit 31. While the City insisted that the BLA reflect a stream on the property as a result of the gross-scale City map, the surveyor included a note on the face of the recorded BLA stating that there was "no evidence of stream seen on the ground." The City signed off on that recording including the note. City's Exhibit 2, page 4; City's Exhibit 31.

In 2016 and 2017, the City conducted site visits and discussed the potential of any stream on the property with the Holmgren's adult daughter and longtime resident, Annie Catlin. Based not just on those discussions but also on the City's site visit, the City "confirmed that there is no stream across the property." City's Exhibit 36. Instead, the City instructed Ms. Catlen that she should include a wetland reconnaissance report with the future land use application. CR Hombuilders submitted the land use application six months later.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

B. The Holmgren Short Plat application process.

In preparation for the development application, CR Homebuilders retained a critical areas ecologist and geotechnical engineer to separately investigate the site. The wetland ecologist, Scott Brainard/Wetland Resources, conducted two site visits during two separate wet weather seasons, October 20, 2016 and January 10, 2018, to locate and evaluate whether any jurisdictional wetlands or streams exist on site. City's Exhibit 12; City's Exhibit 23.[4] The October 2016 was performed during a time of record–high precipitation. As was reported in the December 28, 2016, reconnaissance report, Mr. Brainard did not find any evidence of a stream: there was no evidence of any stream channelization or features anywhere on the Holmgren property. Mr. Hardy, the City's planner confirmed that conclusion during a site visit. City's Exhibit 23, WRI December 28, 2016 Reconnaissance, page 1. As Mr. Brainard will testify, the buried pipe was not a concealed or hidden condition.

CR Homebuilders' geotechnical engineers also evaluated the site, including digging test pits, in February 2017, and again found no evidence of a stream, though they did find evidence of stormwater drainage runoff from the neighboring property, as discussed in their report. City's Exhibit 23, City's Exhibit 18. The geotechnical report summarizes groundwater in Section 3.3 of the report. The report explains that it was raining during the site visit and runoff from neighboring property was flowing above the weathered till soils, becoming exposed when the topsoil layer was thin or missing. City's Exhibit 18, Terra Geotechnical Report, page 3. The report notes that it did find seepage at test pits, all of which would have

[4] The City has not listed what documents are contained in this exhibit – if complete, the set would include this report. CR Hombuilders reserves the ability to supplement the record if this exhibit is incomplete.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

been consistent with stormwater runoff flowing to the property during and after storm events. There is a stormwater runoff pipe on the northeast side of the property that has some history of damage and repair. The geotechnical report in support of the present application also notes some seepage in the area of the City's alleged stream, but found no actual evidence of stream; only heavy seepage during a month of extremely high precipitation, significantly above any winter averages. Seepage and stormwater drainage are distinct features from streams as classified under Redmond standards. RZC 21.64.020(A)(2)(d).

The findings of CR Homebuilders' critical area ecologist and geotechnical engineer were consistent. Therefore, the Applicant submitted a SEPA Checklist stating it had not found any regulated streams onsite. City's Exhibit 23, SEPA Checklist. The Short Plat Checklist for the application noted that a mitigation plan was not applicable/required because the critical areas report determined there were no regulated wetlands or streams and that there are no streams, wetlands or ponds on the property. City's Exhibit 23, Short Plat Checklist, pages2, 4.

The City acknowledged that there was no evidence of a stream in their request for additional information. City's Exhibit 13. The City only requested that the critical area report add analysis regarding wildlife and a habitat assessment form. *Id.*, page 5. The City addressed the Native Growth Protection Area only suggesting it include additional trees. *Id.* The City's engineer acknowledged the determination that there is no stream but that there are subsurface flows that would require further stormwater detention work. *Id.*, page 9. The City then moved the application forward to a neighborhood meeting.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

The neighborhood meeting was held in August 2017. At that meeting, two neighboring property owners, Ms. Monk and Ms. Kimmell, provided some photographs of the Catlin's work fixing the damaged drain tiles and a short video of flowing water which appears to be filmed at the east end of the Holmgren property, immediately after a major storm event filmed through a chain link fence. Exhibits 39-45. They did not provide any consultant reporting or analysis, or material that would substantively differ from expert conclusions of that there is stormwater runoff or other groundwater seepage during high precipitation events. CR Homebuilders has never received any explanation for why such video was taking in 2015, but since the drain tiles had not yet been fixed, one may speculate as to downhill property owner concerns about stormwater impacts on their property.

Based on the neighbors' photos (which do not show a stream) and video (which shows water immediately after a major storm event), the City asked for more information related to the Catlin's storm pipe repair work. City's Exhibit 14. CR Homebuilders addressed that question in its responsive materials. City's Exhibit 19, Core letter page 2-3 and attaching the Timbers' Watershed Company assessment.

Despite there being no evidence in the record that any stream exists on the Holmgren property or either up or downhill thereof, and despite qualified consultant reporting from <u>three</u> independent expert critical area consultants and consensus by City staff, the City retracted its prior biological determination, rejected the Applicant's onsite investigation, historical analysis and standards-based analysis, and instead concluded, without any qualified consultant analysis, that a Class IV stream exists on the property. City's Exhibits 16 and 17.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

After the City's purported retraction of its prior determinations, the City received further information from the Catlins explaining that the Wickmans had bulldozed a portion of their property and, in doing so, had crushed a storm pipe on the Holmgren property, which the Holmgrens had not repaired until 2016. The City did not address this explanation. City's Exhibits 21 and 22.

As a result of the City's further concerns, CR Homebuilders also sent out its critical area ecologist for a second site investigation to again review the site during another rainy season, January 10, 2018. City's Exhibit 12. Wetland Resources submitted a follow up critical areas review on May 3, 2018, explaining in detail the work performed to evaluate the site and any potential of critical areas, as well as the conclusion that there is no evidence of a Class IV (or any other) stream anywhere on site. The ecologist not only found no stream where the stormwater pipe was located, but also found no stream uphill between the start of that pipe and the westerly property boundary with the Timbers (another couple hundred lineal feet away). Nowhere on the property was there any evidence of a stream, even in the portion of the property where no stormwater pipe exists. City's Exhibit 12.

Based on this collective evidence, the City issued a Determination of Non-Significance under SEPA on May 17, 2018 with no mitigation measures associated therewith. City's Exhibit 24. No appeal was filed regarding the DNS. That DNS was based on the SEPA Checklist which states that there is no regulated stream onsite and relies on the critical area and geotechnical reporting of the Applicant's expert consultants – the only expert reports in the record. Staff comments in the margin note that there has been a question

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

of whether a stream exists but also reference the Applicant's critical areas analysis, which concludes there is no on-site regulated stream.

In a comment made after the DNS was issued, the Snoqualmie Tribe commented that the Tribe's representative believes a stream may run through the site. City's Exhibit 11. Once again, no evidence of a stream was provided to support the concern. To the contrary, the letter is vague as to what drainage is onsite, and merely concludes that any drainage is a rough equivalent to a stream. This conclusion is inconsistent with the Zoning Code, which provides for an evidence-based analysis of any on site water features based on criteria adopted into the City's critical area regulations, and whose definition of a stream specifically excludes artificially created surface water runoff devices or other artificial watercourses. Those regulations were followed in the Applicant's critical area evaluations, which did conclude there was some drainage but no features that met the criteria for a Class IV stream.

Despite the evidence in the record and DNS, the City denied the Short plat and instead now requires CR Homebuilders to submit a critical area report either documenting a Class IV Stream or providing some further evidence reflecting the lack thereof, despite <u>all</u> available field information confirming that no stream exists. CR Homebuilders strongly disputes the City's conclusions and requests reversal of the City's Holmgren Short Plat denial.

IV. ARGUMENT

Despite the foregoing lengthy factual recitation, this case involves a straightforward question of what the Redmond Zoning Code requires and how it should be correctly applied to the Holmgren property. The foregoing summary of evidence, as will be further testified to,

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

demonstrates how the record supports the conclusion that classification of a jurisdictional stream on the Holmgren property is absolutely unwarranted based on the Zoning Code standards.

The Zoning Code expressly distinguishes drainage/stormwater runoff from jurisdictional, classified streams. RZC 21.64.020(A)(2)(d). With respect to the Holmgren property, the runoff and explanation as to why it is stormwater runoff and not a Class IV stream has been addressed extensively in written reporting by CR Homebuilders' qualified consultants and supported by prior qualified consultant reporting, and never refuted by another qualified consultant report.

RZC 21.78 defines a "stream" as:

> 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. [emphasis added]

RZC 21.78 defines "runoff" as:

> Water originating from rainfall and/or other precipitation that flows from a site during or immediately after a storm.

For the past many years, the options to deal with stormwater running to the low point on the Holmgrens' property that the damaged drain tiles originally handled were either to dig a channel for the stormwater or replace the damaged stormwater conveyance system (the original drain tiles damaged by the Wickmans). The Holmgrens chose the latter. There is no question that stormwater from uphill houses and developments flows to this depression (i.e. the low point), when the drain tiles were damaged. Stormwater runoff will inevitably flow to

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

the depression on the property and downhill to a greater or lesser extent depending on the storm event. But under the Redmond Code definition of a stream, this runoff does not constitute a classifiable stream that would warrant delineation and buffering.

Redmond Code provides clear instruction for to how a site is to be evaluated with respect to whether a jurisdiction stream exists:

> Classification of fish and wildlife habitat conservation areas shall be determined by the Department based on consideration of the following factors:
>
> i. Maps adopted pursuant to this chapter, including the fish and wildlife habitat conservation area core preservation areas map, Critical Area Wildlife Habitat Willows/Rose Hill Neighborhood Map, and stream classification map. These maps shall be used as a general guide only for the assistance of property owners and other interested parties; boundaries are generalized. The actual type, extent, and boundaries of fish and wildlife habitat conservation areas and streams shall be determined in the field by a qualified consultant according to the procedures, definitions, and criteria established by this chapter. In the event of any conflict between the critical area location and designation shown on the City's map and the criteria or standards of this section, the criteria and standards shall prevail;
>
> ii. Department of Fish and Wildlife priority habitat and species maps;
>
> iii. Anadromous and resident salmonid distribution maps contained in the habitat-limiting factors reports published by the Washington State Conservation Commission;
>
> iv. Federal and state information and maps related to species of concern;
>
> v. Application of the criteria contained in these regulations; and
>
> vi. Consideration of the technical reports submitted by qualified consultants in connection with the applications subject to these regulations.

RZC 21.64.020 A.2.e (emphasis added).

Redmond Code defines what constitutes a "qualified consultant":

> For purposes of administering the Critical Areas regulations, "qualified consultant" shall mean a person who has attained a degree in the subject matter necessary to evaluate the sensitive area in question (e.g., biology or ecology for wetlands, streams and wildlife habitat; geology and/or civil engineering for geologic hazards and aquifer recharge areas), and who is professionally trained and/or certified or licensed to practice in the scientific disciplines necessary to identify, evaluate, manage, and mitigate impacts to the sensitive area in question.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

RZC 21.78 (emphasis added).

The Zoning Code does not support elevating an unexplained and unsubstantiated video taken by neighbors, or lay questions or opinions, above the reports in the record written by qualified consultants and supported by prior qualified consultant reporting in years past. The reasons for this are illustrated by the neighbors' video, for example. Had the City researched rainfall events from the time when the neighbors took their video, they would have found the rainfall in the past 24-hours was several times greater than normal rainfall. Exhibit A-7. Stormwater drains that all point their runoff directly to this portion of the depression were draining all that runoff directly to this low point in a totally uncontrolled fashion. At that time, the storm drain tiles had been damaged for many years and were not functional. City's Exhibit 20, attached letter from Annie Catlin, February 13, 2018; Examination of this information by a qualified consultant reveals the video actually supports the conclusion that there is undetained stormwater runoff being directed at this portion of the depression, but provides no evidence of a stream.

Likewise, the Snoqualmie Tribe comment merely expresses that they believe there is some evidence of drainage on the site, but summarily concludes drainage that must constitute a stream without any analysis or reference to Zoning Code-based standards. City's Exhibit 11. The Tribe's concern is answered in the qualified consultant materials and, again, supported by the prior qualified consultant determinations made for The Timbers as well as the determination reflected on the recorded Wickman Short Plat that no stream exists.

The bottom line is that no qualified consultant has ever concluded that a stream exists on the Holmgren property or either uphill or downhill thereof. Although there is speculation about the site's more distant history from decades ago, there simply is no evidence of a stream. The City's mapping is self-acknowledged as generalized and without field verification. Both The Watershed Company and Wetland Resources ecologists separately

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

arrived at the same conclusions that there is no stream in this depression area even despite the old storm runoff drainage tiles and recent repair thereto. It is reasonable to as well bear in mind, as will be testified to, that even during the many years when the tiles were not functioning well or at all, no stream channel developed. Further, there is no evidence of any stream channel on the western side of the Holmgren property where the depression continues uphill, despite there being no stormwater conveyance system. There is equally no wetland in that area, and no stream further uphill. The bottom line is that the Zoning Code does not equate a depression or stormwater runoff with a jurisdictional stream.

CR Homebuilders anticipates that the City will argue that the repaired/replaced storm drainage pipe that starts about 100 lineal feet from the property's east boundary should be removed and then the area monitored for some time to see if a channel develops. However, such a requirement would not resolve the issue: as even if a channel were to develop, that would be the result of stormwater runoff that is coming from storm drain pipes that artificially point stormwater directly down the hill sloping into the depression. Exhibits A-2, A-4. As the critical area ecologist and civil engineer will testify, there are multiple stormwater drains that allow stormwater runoff to flow unregulated directly to the depression both from homes in the Timbers subdivision and existing, older houses. Exhibits A-2, A-4 and A-5 (note at top of Sheet C4.02: "rear footing drains (for basements) shall be disbursed via splash blocks to the north). Photos of the drain pipes from the existing older homes, taken by the ecologist, show stormwater running undetained and free flowing down the slope in into the depression area were the Holmgrens placed the storm drain tiles to accommodate for this very runoff. Exhibit A-2. The Zoning Code does not equate this 'runoff' with a 'stream'. RZC 21.78 definitions (see above). Removing the storm pipe without removing the runoff sources would be illusory.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

Further, had there been stream channelization in the area shown on the City's general (non-verified) mapping, such a stream would exist today not only on the eastern side of the Holmgren property, but also to the west/uphill and into The Timbers property. Yet, no evidence of a stream or wetland exists in those areas as is based on qualified consultant reviews over the past 15 years. City's Exhibit 19 (Watershed review in 2003); City's Exhibits 12 and Exhibit A-2 (Wetland Resources site visits in 2016, 2017, 2018).

Finally, CR Homebuilders anticipates there may be a question as to whether the stormwater conveyance/drainage pipe on the east side of the property constitutes a nonconforming use. Certain the drain tiles were originally installed decades ago, long before formal stormwater management regulation. Repairs to nonconforming uses are allowed under the Zoning Code. RZC 21.76.100.F. To the extent the strormwater system is nonconforming, CR Homebuilders' short plat, with its modern stormwater system will entirely resolve the existing nonconforming use/structure, bringing stormwater management for this site up to modern design standards.

V. CONCLUSION

Based on the record and testimony to be presented, CR Homebuilders will respectfully request the Hearing Examiner to overturn the City's denial and instruct the City to proceed with approving the Holmgren short plat on the basis that there is no jurisdictional stream on the property.

DATED this 3rd day of December, 2018.

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ, PLLC

By _____
Duana T. Koloušková, WSBA #27532
Attorneys for C. R. Homebuilders, LLC

1600-34 Applicant's Prehearing Statement 12-3-18.doc

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818

DECLARATION OF SERVICE

I, Evanna L. Charlot, am a citizen of the United States, resident of the State of Washington, and declare under the penalty of perjury under the laws of the State of Washington, that on this date, I caused to be served a true and correct copy of the foregoing Applicant C.R. Homebuilder's Prehearing Statement upon all counsel and parties of record at the address and in the manner listed below.

Office of Hearing Examiner cdxanthos@redmond.gov
City of Redmond
Cheryl Xanthos, City Clerk
15670 NE 85th St.
Redmond, WA 98073

Attorneys for Respondent City of Redmond jhaney@omwlaw.com
James E. Haney khambley@omwlaw.com
Katherine D. Hambley
Ogden Murphy Wallace, PLLC
901 Fifth Avenue, Suite 3500
Seattle WA 98164-2008

Dated this 3rd day of December, 2018, in Bellevue, Washington.

//s// *Evanna L. Charlot*
EVANNA L. CHARLOT

JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ PLLC
ATTORNEYS AT LAW
11201 SE 8th St., Suite 120
Bellevue, Washington 98004
Tel: 425-451-2812 / Fax: 425-451-2818