



APPEAL APPLICATION FORM

To file an appeal of a Type I or II decision or a SEPA determination, please complete the attached form and pay the applicable fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by PERSONAL DELIVERY at City Hall 1st Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85th Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

Standing to Appeal:

- **Appeal to the Hearing Examiner of a SEPA determination** - Any interested person may appeal a threshold determination, adequacy of a final EIS, and the conditions or denials of a requested action made by a nonelected City official based on SEPA. No other SEPA appeals shall be allowed.
- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond’s Office of the Hearing Examiner no later than 5:00 p.m. on the 14th calendar day following the date of the decision.

Should the appellant prevail in the appeal, the application fee will be refunded (City of Redmond Resolution No. 1459). The application fee will not be refunded for appeals that are withdrawn or dismissed.

Hearing Examiner or City Council decision may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Please continue to page 2 to select your appeal type.

(Staff Use Only)
File No: _____
Date Received: _____
Receipt No. _____

Please check the applicable appeal:

- Appeal to the Hearing Examiner of a SEPA determination *RZC 21.70.190(E)*. **(Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)**
- Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) *RZC 21.76.060(I)*

Section A. General Information

Name of Appellant: C. R. Homebuilders, LLC

Address: c/o Duana T. Koloušková, Applicant's Representative
Johns Monroe Mitsunaga Kolouskova PLLC 11201 SE 8th St. Suite 120

City: Bellevue State: WA Zip: 98004

Email: kolouskova@jmmlaw.com

Phone: (home) _____ (work) 425-451-2812 (cell) _____

Name of project that is being appealed: Holmgren Short Plat

File number of project that is being appealed: LAND-2017-00548

Date of decision on project that is being appealed: September 19, 2018

Expiration date of appeal period: October 3, 2018

What is your relationship to the project?

- Party of Record Project Applicant Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

Please see attached Statement on Appeal, submitted herewith.

1
2 **BEFORE THE HEARING EXAMINER FOR THE CITY OF REDMOND**
3

4 In re the matter of the Appeal by
5 CR HOME BUILDERS LLC

6 Appellant,

7 vs.

8 THE CITY OF REDMOND, PLANNING
9 AND COMMUNITY DEVELOPMENT
10 DEPARTMENT, and PUBLIC WORKS
11 DEPARTMENT

12 Respondent.

**Holmgren Short Plat,
LAND-2017-00548**

**NOTICE AND STATEMENT
OF APPEAL OF
CR HOME BUILDERS LLC**

13 **A. Appellant.**

14 This appeal is brought by:

15 CR HOME BUILDERS LLC
16 C/O: Todd Levitt
17 Murray Franklyn Companies
18 14410 NE Bel-Red Road
19 Bellevue, WA 98007

20 CR HOME BUILDERS LLC, the property owner and applicant for the subject permit
21 and one of the Murray Franklyn Family of Companies (“Applicant”), brings this appeal to
22 challenge the final Decision of the Directors of the Technical Committee, Short Plat
23 Division, of Planning and Community Development Department and Public Works
24 Department, identified below.
25

1 **B. Jurisdiction.**

2 This appeal is brought pursuant to Redmond Zoning Code 21.76.060, which provides
3 for appeal of a Type II decision within 14 days of its issuance.

4 **C. Decision Appealed.**

5 On September 19, 2018, the Directors of the Technical Committee Short Plat
6 Division, of Planning and Community Development Department, and Public Works
7 Department (hereinafter the “Committee”), issued a Decision denying Applicant’s request to
8 subdivide an existing 0.48-acre site in the R-4 zoning district into three (3) lots. The project
9 is commonly known as the Holmgren Short Plat, named after the Applicant’s predecessors in
10 interest. A true and correct copy of the Decision is attached.

11 **D. Appellant/Applicant’s Interest and Standing and Site Description.**

12 CR Home Builders LLC c/o Todd Levitt, as the property owner and applicant, has
13 standing to bring this appeal.

14 The site is 0.48 acres in size, comprised of two parcels, 1425059181 and
15 1425059128, located in the Overlake neighborhood.

16 **E. Summary of Facts Pertinent to Appeal.**

17 The issue raised in this matter pertains to whether there is unregulated drainage or a
18 Class IV stream on the subject property. While the Applicant sent out its critical area
19 biologist twice in two separate wet weather seasons (each time during high precipitation) as
20 well as its geotechnical consultant, neither team was able to find evidence of such a stream.
21 The City had previously concurred with these site investigations and analysis, and advised
22 the Applicant’s predecessor in interest of such. However, upon anecdotal concerns by two
23 neighbors and a ‘concern’ by a representative from the Snoqualmie Tribe, the City, without
24 more, retracted its determination and denied the Short Plat – after the DNS had been issued
25 and with no controverting biological analysis in the record.

1 The evidence in the record shows there has been periodic drainage on the subject
2 property. There is much discussion in the record as to the genesis of that drainage. However,
3 Redmond Code expressly distinguishes drainage flows from classified streams. RZC
4 21.64.020(A)(2)(d). In this circumstance, the drainage and explanation as to why it is
5 drainage and not a Class IV stream has been addressed in written reporting by the
6 Applicant's qualified experts, and never refuted by another qualified expert report. Instead,
7 for example, the Snoqualmie Tribe comment merely expresses that there is some drainage on
8 the site, and summarily concludes that such must necessarily constitute a stream without
9 looking to any Code-based standards.

10 There has been no historical evidence presented as to the existence of a Class IV or
11 any stream on the subject property. The only evaluation of a site in the immediate vicinity
12 prior to this application was for a short plat immediately east of the property in the late
13 1990's – the Wickman Short Plat. The Wickman Plat provided the only site-specific critical
14 area analysis for it and the subject Holmgren property. That analysis, as detailed in the
15 Wickman SEPA checklist, and supported by the City's DNS and approval for the Wickman
16 Short Plat, reflects only a Class V drainage that does not meet the City's adopted standards
17 and criteria for a 'stream'.

18 In 2005 it appears the City mapped a Class IV stream in the area as part of city-wide
19 mapping, but the Applicant has never been provided with any material that supports such
20 mapping. Redmond Code provides expressly that such mapping is for general guidance only,
21 not to be relied on for development application review, and any site evaluations must be done
22 by a qualified professional of the specific site. RZC 21.64.020(A)(2)(e). All site
23 investigations have revealed there is no stream on the subject property. Even in the notes for
24 a prior Boundary Line Adjustment approved for the property, the surveyor stated in the
25

1 General Notes that, while the City most recently had indicated a stream on site, he found no
2 evidence of any such feature. The City approved the BLA, including this Note.

3 In January 2017, City staff expressly agreed in correspondence with the prior
4 property owner that no stream exists on the property. Instead, the City asked the prior
5 property owners to ensure a wetland reconnaissance was performed upon any development
6 application.

7 In support of this Holmgren Short Plat application, the Applicant retained a critical
8 areas biologist to investigate the site; that work was performed in October 2016, during a
9 time of record-high precipitation. The Applicant's geotechnical engineers evaluated the site,
10 including digging test pits, in February 2017, and again found no evidence of a stream,
11 though they did find evidence of stormwater drainage runoff from the neighboring property,
12 as discussed in their report. The findings of the Applicant's critical area biologist and
13 geotechnical engineer were consistent. Therefore, the Applicant submitted a SEPA Checklist
14 stating it had not found any regulated streams onsite.

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

21 There is no historical photography or other analysis demonstrating the existence of a
22 stream. For example, historical photos dating back to 1936 do not show any evidence of a
23 stream, bank or streambed. Likewise, area mapping of critical areas does not reflect the
24 historical existence of a stream on the property.

1 It was only in August 2017, at a neighborhood meeting to take input on the
2 application, that two neighboring property owners asked what the drainage onsite is. Those
3 individuals provided some photographs of work being performed on the property and a short
4 video of what appears to be flowing water, taken under unknown conditions, but no analysis
5 of any stream or material that would differ from expert conclusions of stormwater drainage
6 or other groundwater seepage during high precipitation events. Based solely on the photos
7 (which do not show a stream) and video (which appears to show flowing water but provides
8 no information about where it was taken or where the water was coming from or flowing to),
9 the City retracted its prior biological determination, rejected the Applicant's onsite
10 investigation, historical analysis and standards-based analysis, and instead concluded that a
11 Class IV stream exists on the property. After the City's purported retraction of its prior
12 opinion, the City received further information from the Applicant's predecessor explaining
13 that the Wickmans had bulldozed a portion of their property and, in doing so, had crushed a
14 storm pipe on the Holmgren property, which the Holmgrens had not repaired. The City did
15 not address this additional information.

16 As a result of the neighboring property owner concerns, the Applicant sent out its
17 critical area biologist for a second site investigation to again review the site during another
18 rainy season. The Applicant submitted a follow up critical areas review on May 3, 2018,
19 explaining in detail the work performed to evaluate the site and any potential of critical areas,
20 as well as the conclusion that there is no evidence of a a Class IV (or any other) stream on
21 site. The review explained the standards applied to the review performed, what work was
22 performed to support the determination and what evidence was reviewed. Review of any
23 potential onsite streams was performed consistent with 2016 Washington State Department
24 of Ecology standards.
25

1 Based on this analysis, the City issued a Determination of Non-Significance under
2 SEPA on May 17, 2018 with no mitigation measures associated therewith. No appeal was
3 filed regarding the DNS. That DNS was based on the SEPA Checklist which states that there
4 is no regulated stream onsite and relies on the critical area and geotechnical reporting of the
5 Applicant's expert consultants – the only expert reports in the record. Staff comments in the
6 margin note that there has been a question of whether a stream exists but also reference the
7 Applicant's critical areas analysis, which concludes there is no on-site regulated stream.

8 In a comment made after the DNS was issued, the Snoqualmie Tribe commented that
9 the Tribe's representative believes a stream may run through the site. Once again, no
10 evidence of a stream was provided to support the concern. To the contrary, the letter is vague
11 as to what drainage is onsite, and merely concludes that any drainage is a rough equivalent to
12 a stream. This conclusion is inconsistent with City Code, which provides for an evidence-
13 based analysis of any on site water features based on criteria adopted into the City's critical
14 area regulations. Those regulations were followed in the Applicant's critical area evaluations,
15 which did conclude there was some drainage but no features that met the criteria for a Class
16 IV stream.

17 Despite the evidence in the record and the previously issued DNS, the City denied the
18 Short plat and instead is requiring the Applicant to submit a critical area report documenting
19 a Class IV Stream. The Applicant disagrees with the City's conclusions; the City's denial of
20 the Homgren Short Plat. This appeal ensues.

21 **F. Appeal Issues.**

22 1. The City's decision to deny the short plat application on the basis of alleged
23 existence of a Class IV stream on the site is not supported by evidence, not supported by the
24 standards in Redmond Zoning Code Chapters 21.64, 21.74 and 21.76, and not lawful under
25 Washington State statutes, regulations and caselaw.



**Technical Committee
Short Plat Notice of Decision
Transmittal Letter**

September 19, 2018

Mr. Todd Levitt
Murray Franklyn Companies
14410 Bel-Red Road
Bellevue, WA 98007

Subject: Holmgren Short Plat, LAND 2017-00548

Location: Parcel ID 1425059181 & 1425059128

Dear Mr. Todd Levitt:

The City of Redmond Technical Committee has reviewed and denied your proposal to subdivide the above referenced property into three (3) single-family lots. The Notice of Decision, including the Technical Committee's analysis of your proposal, is listed below under Section VIII. Should you have any questions about these items please contact Scott Reynolds at sreynolds@redmond.gov.

The decision to deny your application may be appealed to the Hearing Examiner by filing an appeal to the Hearing Examiner within 14 calendar days of the date of this decision. Appeal forms are available on-line at www.redmond.gov. A completed appeal form must be submitted by 5:00 p.m. on the last day of the appeal period and must be delivered in person to the attention of the Office of the City Clerk-Hearing Examiner at the City Hall 1st Floor Customer Service Center.

Sincerely,

ERIKA VANDENBRANDE
Director
Planning and Community Development
Department

MARTIN PASTUCHA
Director
Public Works Department

**Technical Committee Short Plat
Notice of Decision**

Project Name: Holmgren Short Plat

Location: Parcel ID 1425059181 & 1425059128

Project File Number: LAND-2017-00548

Project Description: Three lot short plat on a 0.89-acre site in the R-4 zoning district

Applicant: Todd Levitt
Murray Franklyn Companies
14410 Bel-Red Road
Bellevue, WA 98007

Application Date: June 12, 2017

Notice of Application Date: June 22, 2017

**State Environmental
Policy Act**

**SEPA Threshold
Determination:** Determination of Non-Significance (DNS)

SEPA File Number: SEPA-2018-00504

Date Issued: May 17, 2018

<u>Technical Committee Decision</u>	Decision Date:	September 19, 2018
Denial	Appeal Deadline:	October 3, 2018

This decision may be appealed to the Hearing Examiner by filing an appeal with the Planning and Community Development Department within 14 calendar days of the date of this decision. Appeal forms are available on-line at www.redmond.gov. A completed appeal form must be submitted by 5:00 p.m. on the last day of the appeal period. If you have any questions, please contact Scott Reynolds, Planner at 425-556-2409 or sreynolds@redmond.gov.

Erika Vandenbrande

ERIKA VANDENBRANDE
Director
Planning and Community Development
Department

Martin Pastucha

MARTIN PASTUCHA
Director
Public Works Department

I. Proposal

The applicant is proposing to subdivide an existing 0.48-acre site in the R-4 zoning district into 3 lots. The site currently has a Class IV mapped stream on parcel 1425059181 or “the property” and a barn structure that is proposed to be removed to the south. The property is in the Overlake neighborhood.

II. History

- A. Past to 1960’s - The historic topographic mapping shows the natural flow path from west to east across the property. Prior to the City of Redmond Stream Classification mapping, the 1966 Crescent Lane Subdivision (Volume 79 pages 20&21), & the 1967 East Crescent Lane Subdivision (Volume 81 pages 99&100) were approved and recorded to the north and west of the Property. The Crescent Lane development diverted some of the historical runoff through a stormwater network around the proposed Holmgren Short Plat. The Crescent Lane development also regraded the upper basin, filling some of the historical fill path¹.
- B. 1993 - The Growth Management Act (Chapter 36.70A RCW) required cities identify and protect their sensitive areas including; wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. With Ordinance 1693 the City adopted the Sensitive Area Regulations that included a stream map. The Stream map was prepared by a consultant team based off “*best available information such as aerial photographs, soil conversation survey maps, topographic maps, FEMA maps, and in many instances, light field surveys. Information from these sources were compiled, interpreted and transferred to the City’s Street System Map.*”². No stream was identified on the property but it does show a topography ravine in the area of the property.

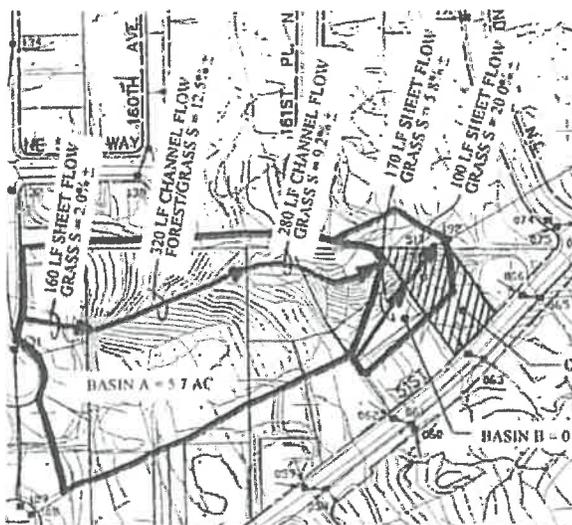
1993 Stream Map (Clipped to the Property)



¹ See Attachment A
² See Attachment B

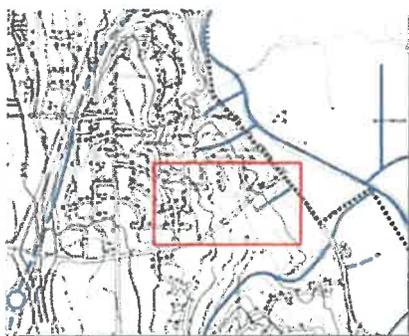
- C. 1998/1999 - Wickman Short Plat was approved directly east of the property. Wickman Short Plat shows a utility easement on the parcels east of the property, to convey the runoff from the property east towards the Sammamish River. The associated Storm Report³ calls out Channel Flow across the Property. In addition, an existing 10" & 4" PVC in the rear of the Wickman Short Plat was existing and allowed to continue with the approval of the Property⁴.

Off-Site basin for Wickman Preliminary Stormwater Report² (Clipped)

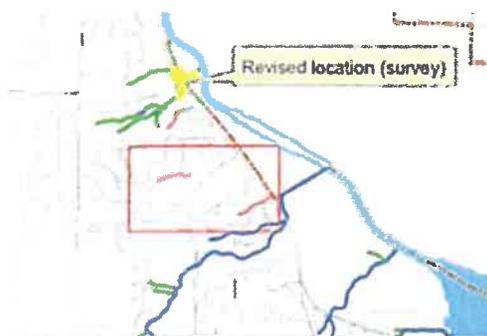


- D. 2005 - An updated Critical Areas Stream Classification Map was approved by Ordinance 2278 and include a Class IV stream on the property.

1993 Stream Map (Clipped to the Property)



2005 Stream Map (Clipped to the Property)

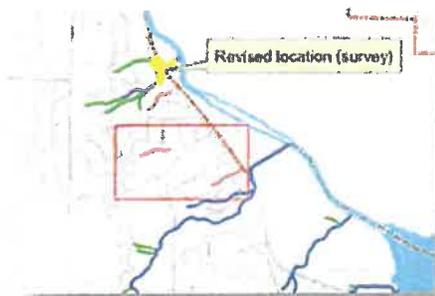


³ See Attachment D

⁴ See Attachment C, D & E

- E. 2009 - Updated Stream Map was approved by Ordinance 2448 and still included the Type IV stream as shown in 2005.
- F. 2012 - The City of Redmond reviewed the Forman Property or Timbers at Marymoor (LAND-2013-01511) which included a western addition to the stream segment on the property. As part of the Notice of Decision on the Timbers of Marymoor states: *“City maps show a Class IV stream running from west to east within a ravine at the north end of the subject property. Although runoff is naturally directed into this topographic feature, no stream channel is present. Dense vegetation and/or lack of scour indicates that storm flows are an insufficient volume and duration, and therefore do not produce a channel. Additionally, no channel was present within at least 40 feet of the down slope end. There may have been a stream here at one time, but currently the hydrologic inputs are insufficient to sustain a stream.”*⁵. Known at this time, the 40 feet comment was based off observation only and no critical area review was done on the Holmgren Short Plat property as part of the statement.
- G. 2015 - Former owners John T. and Barbara N. Holmgren (per warranty deed 20170510001174) completed a Boundary Line Adjustment in May 2015 to change the property line between Lot 20 of East Crescent Lane and the property. The Boundary Line Adjustment Plat (Recording Number 20160601900007) shows the City of Redmond Mapped Class IV stream on the plat. A City of Redmond determination of the critical areas were not done at that time but Surveyor Timothy A. Griffin included under General Note two: *“Location Type IV stream per City of Redmond GIS Map No evidence of stream seen on the ground”*-Timothy A. Griffin
- H. 2016 - The area where the stream was removed from the Timbers property was put into a Native Growth Protection Area. The City of Redmond updated the City of Redmond Critical Areas Stream Classification Map by Ordinance 2819, removing the western stream segment on the Timbers at Marymoor property but still shown on the property. (Redmond Zoning Code “RZC” Map 64.3).

2005 & 2009 Stream Map (Clipped to the Property)



2016 Stream Map (Clipped to the Property)



⁵ See Attachment F

- I. 2016 - City of Redmond Staff, Cathy Beam and Tom Hardy were contacted in December 2016 by Annie Catlin identifying herself as the daughter of John T. and Barbara N. Holmgren. Ms. Catlin requested that City staff come out to the property with the desire to remove the stream classification on the Holmgren property with supporting statements; *"Though there has never been water or stream in my parents back yard"* & *"still no water exist or flows where indicated on my parent's property"*. – Ms. Catlin December 13, 2016

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>>>> From: annie catlin [mailto:annecatlin@hotmail.com]
>>>> Sent: Tuesday, December 13, 2016 1:46 AM
>>>> To: Cathy Beam <CBEAM@REDMOND.GOV>mailto:CBEAM@REDMOND.GOV>
>>>> Subject: Re: Holmgren stream question
>>>>
>>>>
>>>> Hi Cathy,
>>>>
>>>>
>>>>
>>>> Thank you for your response I am wordy and in foreign territory so I am going to bullet point this in an effort to
>>>> spare your time. I am trying to help my parents sell their land, so I am reaching out for help
>>>>
>>>>
>>>>
>>>> Holmgren Plot: 1425059181 had a BLA last year to expand from 8800 sq. ft. to nearly 23000 sq. ft. (Redmond map
>>>> shows both property lines as of 12/7/16, King County map show new line)
>>>>
>>>> Pre BLA the stream only showed in the original 8800 sq. ft. \[Download Holmgren Wetland Resources Report to my
>>>> computer and view stream location\]
>>>>
>>>> Post BLA the stream blue line expanded further west and east on the map. This extension cuts my parents property
>>>> in half as well as runs underneath 3 houses that have been permitted and built in the past 17 months on the property to
>>>> the west. (See PDF)
>>>>
>>>> \[Download Holmgren Wetland Resources Report to my parents property\]
>>>>
>>>>
>>>> My parents can no longer maintain the scale of yard they have. I can't keep up with it, and it needs to be sold.
>>>>
```

- J. January 2017 - Based on the site conditions at that time and Ms. Catlin's statements, Cathy Beam and Tom Hardy agreed via email that, *"The City has confirmed that there is no stream across the property. Please be sure to include a wetland reconnaissance report with any future land development application"* – Cathy Beam January 13, 2017

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From: Cathy Beam [mailto:CBEAM@REDMOND.GOV]
Sent: Tuesday, January 17, 2017 4:13 PM
To: annie catlin <annecatlin@hotmail.com>
Cc: Tom W. Hardy <TWHARDY@redmond.gov>
Subject: RE: Holmgren Wetland Resources report

Happy New Year Annie.

Thank you for working reaching out to the City regarding critical areas on your property and sharing your information
with us. The City has confirmed that there is no stream across the property. Please be sure to include the wetland
reconnaissance report with any future land development application.

Sincerely,

Cathy Beam, AICP
City of Redmond, WA
cbeam@redmond WA | Redmond, WA
(509) 875-2200 | www.redmond WA

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record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of
confidentiality or privacy asserted by an external party.
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III. Subdivision Application Review History

- A. June 12, 2017 - The Holmgren Short Plat application was deemed complete per the Determination of Completeness.
- B. June 30, 2017 - Staff provided the first Additional Information letter to address outstanding code compliance issues. Staff noticed that the submittal showed a new pipe going across the property. The City of Redmond Senior Engineer, Jeff Dendy noted in the first Additional Information letter, *“it is unclear what runoff the western pipe located between the trees to be saved is to collect. The critical area report states that there is no stream.”* – Jeff Dendy Section IV.B.2.g & *“The storm reviewer acknowledges that the critical area report states that there currently is no stream onsite. The Geotech report states that some boring had heavy seepage. It is possible that before the area developed, there was a stream.”* – Jeff Dendy Section IV.B.2.g of additional information letter.
- C. August 21, 2017 - The resubmitted Geotechnical Report by Terra Associates⁶, provided clarification regarding borings near the mapped stream. *“At Test Hole IT-101, we observed six inches of mulch overlying one-foot of loose drain rock enveloping a perforated pipe overlying loose to medium dense silty sand with scattered organics to the termus of the excavation.”* -Section 3.2 & *“Moderate to heavy seepage was observed near the mapped location of the stream at Test Pit TP-1, and Test Holes IT-101 and IT-102 at depths of one to one and one-half feet. This seepage was noted to flow from the contact between the upper topsoil/mulch fill and the underlying weathered glacial till. Additionally, the pipe enveloped with drain rock observed at Test Hole IT-101 was noted to produce a steady flow of water at an estimated rate of approximately one gallon per minute. Based on these seepage conditions, it is our opinion that the local surface water flows are being directed to flow near the contact of the native till soil and the organic fill and drain rock/pipe system that have been installed.”* -Section 3.3

The Report further states; *“In our opinion (Terra), the proposed development would adequately reduce/divert the current groundwater seepage such that the detention vault would not be adversely impacted. The Proposed interceptor drain on Lot 3 which bisects the drainage path upgradient of the vault combined with the vault wall and footing drainage system installed on the below-grade portion of the vault will prevent groundwater flow from becoming impounded upgradient of the buried structure.”* & *“After the vault is installed and the fill to establish Lot 2 and Tract A is in place the side slopes of the drainage channel will be mostly eliminated.”* - Section 5.9. The map provided below shows the proposed interceptor drain across the project.

- D. August 24, 2017 - At the neighborhood meeting, neighbors including Stephanie Monk and Cornelia Kimmell brought up the concerns regarding the presence of a stream on the property and a location of a neighboring private well impacts. Staff requested neighbors to provide any documentation to the City of Redmond that may exist.

⁶ See Attachment G

- E. September 12, 2017 - Staff completed a site visit to the property to better understand the topography challenges, the revised geotechnical report and neighbor's comments.
- F. September 22, 2017 - Ms. Monk and Ms. Kimmell provided video evidence dated February 2015 that shows surface flow of water on the property contrary to Ms. Catlin email statements on December 13, 2016. Other photo evidence was provided showing that a gravel filled trench with perforated pipe was installed in the approximate location of the mapped Class IV stream dated September through November 2016 (shown below). This work was prior to the City of Redmond visiting the site and making a stream determination in January 2017.



- G. October 2, 2017 - Given the Geotech information & neighbors' video/photos documentation, staff asked the applicant to provide more information with a Second Add Information letter: *"Staff's original decision regarding the Stream determination was based off the information available at that time. As a result of the updated information*

contained within the Geotech report and public comments received, please provide more information pertaining to the date of installation of the perforated pipe and loose drain rock, including the purpose for the work. Please submit any other relevant information regarding the stream. This will enable staff to make the best determination on moving forward.” – Scott Reynolds Section I.B.2.g Second Add Information Letter

- H. November 15, 2017 - The applicant responded to the City’s Additional Information request with: *“The applicant has not performed any work on the property and did not install the drain pipe or loose drain rock. The King County Mapping System identifies a stream, but based on both the applicant’s biologist and the City’s biologist, the stream does not exist.” – James A. Olsen November 15, 2017*
- I. December 12, 2017 - City staff took a video two parcels downstream that showed significant base flow in the system without recent rain.
- J. December 20, 2017 - The City included further comments as part of the Third Additional Information letter: *“After reviewing the information provided by the community and your response, the City of Redmond has determined that the Class IV stream did exist on the property and was put into an unpermitted piped system. As a result the January 17, 2017 e-mail determination by Cathy Bean and Tom Hardy regarding the stream is null and void due to information being withheld as part of the determination. To finish out the review: I. A critical area report shall be provided by a qualified professional and include the extent of the pipe, possible presence of wetlands and any stream information. The Critical Areas Report shall be submitted in accordance with the City’s reporting requirements as outlined in Redmond Zoning Code Appendix A ” - Scott Reynolds Section I.B.2.a Third Add Information Letter.*
- K. February 14, 2018 - The resubmittal included a “Critical Area Determination Report” dated February 14, 2018 and a letter dated February 13, 2018 from Ms. Caitlin on behalf of her father Mr. Holmgren. The letter claims: *“When I was in high school 98/99 the Wickman’s, for whom I was a Nanny, decided to develop the apple orchard adjacent to the Healea/Holmgren property line. While doing so they brought a small bull dozer down the property line between the Holmgren and Wickman at the existing chain-link fence. They were remedying a mushy hillside which was created from runoff at their apple orchard. ... It was discovered some years later they had crushed the end of our drain pipe, which my parent never addressed in a timely fashion.” – Ms. Catlin*
- L. April 3, 2018 – In reviewing the applicant’s “Critical Area Determination Report” (prepared by Scott Brainard of Wetland Resources, dated February 14, 2018), the City found the document did not meet the City’s Critical Area reporting requirements under RZC Appendix 1, specifically addressing all known best available science. Staff provided redline comments to address supporting evidence for the pipe replacement and known information.

- M. May 4, 2018 - The applicant resubmitted with the following response to the City of Redmond's request to provide additional supporting evidence and show code compliance with the Redmond Zoning Code: *"The applicant has carried any reasonably conceivable burden of establishing there is no critical area on the site."* & *"Regardless, the appropriate forum for a determination of the Application now lies with the Technical Committee, and the Applicant request that the matter be submitted for a decision."* – James R. Lynch May 4, 2018

IV. SEPA Determination

- A. May 17, 2018 - The City of Redmond issued a Determination of Nonsignificance. The City received two comments from Matthew Bearwalde of the Snoqualmie Tribe and Karen Walter of the Muckleshoot Tribe.
- B. June 18, 2018 - The City of Redmond shared the two comments it received and issued a Request for Additional Information.
- C. June 22, 2018 - The applicant responded to the tribes' comments stating, *"Again, the applicant has carried any reasonably conceivable burden of establishing there is no critical area on the site, and there is no data or analysis in the record that would remotely carry the burden of proving to the contrary"* –Mr. Lynch June 22, 2018
- D. July 13, 2018 - In response, Mr. Bearwalde provided follow-up⁷ comments stating: *"The applicant's June 22nd, 2018 response to the City of Redmond's June 18th Request for Additional Information contends that the applicant's eyewitness narrative fully and credibly explains running surface water. The Snoqualmie Tribe takes issue with this statement. The applicant's argument that no stream exists on the Holmgren site hinges at least partially on the story of the neighbor's allegedly formerly broken pipe, now fixed. We ask, where is the documentation of the broken pipe that is now fixed? This should be a simple matter to resolve and would lend partial credence to the applicant's narrative of no stream having been present on the site prior to its recent alteration."* – Mr. Bearwalde July 13, 2018
- E. July 17, 2018 - The City of Redmond provided Mr. Bearwald's response to the applicant. The applicant responded to the City stating: *"Just to confirm, the applicant does not intend to provide additional materials at this time, as the Tribes' comments are addressed in detail in prior submissions responding to the neighbor's materials. We do not know when or under what circumstances the neighbor's video was made, but our materials confirm the observed surface water resulted from a broken drainage pipe, and that was consistent with the historical data and biologists analysis"*- Mr. Lynch July 17, 2018

⁷ See Attachment H

V. Post Decision History

- A. July 25, 2018 - Application was presented to the Technical Committee for a decision, the outcome was denial. The official Notice of Decision was under review by the Directors but not yet signed.
- B. July 26, 2018 - The City responded to the Applicant's request for Technical Committee outcome, "*The Technical Committee has denied the Holmgren Short Plat application. More information is contained in the official Notice of Decision letter that will be sent to you in the next couple of days.*" – Scott Reynolds
- C. August 2, 2018 - City Staff met with Todd Levitt based off his request prior to the official Notice of Decision being released.

VI. Outstanding Code Compliance Issues

- A. The May 3, 2018 "Critical Area Determination Report"⁸ or "The Report" by Wetland Resources fails to meet the reporting requirements for a Critical Area Report as required by Critical Area Ordinance (RZC 21.64.010.G.2.a-b & RZC 21.64.010.C.2) and Review standards (RZC 21.76.070.B.3.ii.a). The following items were not included:
 - 1. RZC Appendix 1.A.1. Name of the Proposal, "Holmgren Short Plat" is missing from the document.
 - 2. RZC Appendix 1.A.3. Scott Brainard is not listed as the author of the report coversheet.
 - 3. RZC Appendix 1.A.4. Technical expertise/special qualification of Scott Brainard has not been provided.
 - 4. RZC Appendix 1.A.6. Vicinity Map of all parcels involved in the proposed subdivision have not been provided.
 - 5. RZC Appendix 1.A.7. Identification of the development proposal being addressed including the City file number has not been provided.
 - 6. RZC Appendix 1.A.8. Site acreage and current and past uses on the property have not been provided.
 - 7. RZC Appendix 1.A.12. Bibliography of published information referenced, including maps and best available science material has not been provided.
 - 8. RZC Appendix 1.B.1.a. Wildlife Report has not been included within the Critical Area Report.
 - 9. RZC Appendix 1.A.17 Test Pit S3 depth only goes down to 18" stopping at the known imported topsoil layer per Terra Associates Geotechnical Report⁹. Lack of current scientific information regarding the soil condition below 18" has not been provided that would clarify on what existed prior to the above photo work taking place.

⁸ See Attachment I

⁹ See Attachment G

10. RZC Appendix 1.A.17. The Report states there is no stream but the plans and Geotech Report⁸ recommends capturing surface flows due to shallow subsurface water in the same area that is mapped as a Class IV Stream. The report does not address the inconsistency in information and in addition, the Washington Department of Fish and Wildlife does not allow piping of a Class IV streams.¹⁰
 11. RZC Appendix 1.A.17 The Report fails to address the video and photo evidence provided by Ms. Monk and Ms. Kimmell as stated above.
 12. RZC Appendix 1.A.17 The Report states that “approximately 100 linear feet of pipe was replaced” but does not give a mapped location or accurate location of either the “original” or “replaced” pipe.
 13. RZC Appendix 1.A.17 The Report fails to address the Wickman Preliminary Storm Water Report that calls out a stream channel in 1998/1999. In addition, the Wickman report fails to identify a buried pipe on the Property, contradictory to Ms. Catlin’s statements about pipe replacement.
- B. The “Critical Area Determination Report” that was submitted based the conclusion of a pipe replacement on four (4) items below. It is found that the supporting items have failed to provide the best available science to support the claim of a pipe replacement due to:
1. **“Wickman Short Plat”** – The Wickman Short Plat was recorded in 1999, approximately six years before the Class IV stream was mapped on City of Redmond Critical Areas Map. The Wickman Preliminary Storm Report does not state anything about a buried pipe. (Further explained under Section II. C&D above and VII.B. below)
 2. **“1936 King County Aerial Photography”** - The 1936 King County Aerial Photo does not provide a high-quality detail image to accurately show small details. Staff is unable to confirm the claim that “*no observable stream channel east or west of the site*”- *Scott Brainard* based off the photo.
 3. **“Previous Owners Supplied photos in area of concern just prior to pipe replacement”** – The photo does not clearly show the ground at the eastern end of the property where the “existing” pipe was installed, to prove presence or absence of a channel at that location. A Type IV stream can be intermittent, therefore the lack of any surface flows in the photo is inconclusive. (Further explained under VII.B. below)
 4. **“Written testimony from the previous property owner on the historical site conditions and the reason behind the pipe replacement”** - Scott Brainard’s reference to Ms. Catlin’s statement that an existing pipe was crushed in 1998/1999 has not been supported by scientific evidence or Wickman Preliminary Storm Report¹¹.

¹⁰ Including Washington Hydraulic Code WAC 220-660 & 220-660-030 (153)

¹¹ See Attachment D

C. Additional code compliance issues:

1. Private well R_473921122073201 listed under King County Water and Land Services Groundwater Well Data Viewer is not shown on the plan set with appropriate buffers. Staff was unable to confirm compliance with WAC 173-160-171.

VII. Critical Area Report Review

- A. The City of Redmond has a mapped Class IV stream on the property (Parcel ID 1425059181) since 2005 as stated in Section II above. The City of Redmond's January 2017 Stream determination was based off incomplete information from Ms. Catlin who represented the past owners.
- B. The current definition of a Class IV streams is; *"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"* per RZC 21.64.020.A.2.d.iv.
- C. The Critical Area Regulations (RZC 21.64.010.G.2.a-b & RZC 21.64.010.C.2) and Decision Criteria standards (RZC 21.76.070.B.3.ii.a) required the applicant to submit a Critical Area Report by a qualified consultant.
- D. Per RZC 21.76.070.B.3.c. *"The burden of proof for demonstrating that the application is consistent with the applicable regulations is on the proponent. The project application must be supported by proof that it conforms to the applicable elements of the City's development regulations and the Comprehensive Plan, and that any significant adverse environmental impacts have been adequately addressed."*
- E. Matthew Bearwalde of the Snoqualmie Tribe¹² and the City of Redmond Natural Resource Division reviewed the applicants "Critical Area Determination Report"¹³ and is unable to confirm or agree with the conclusion.
- F. The City's request for the applicant to provide code compliance with the Critical Area Regulations has been rejected by the applicant as referenced above. Since the information in the "Critical Area Determination Report" failed to show rigorous analysis and lacks code compliance for the City to make a determination, the City using the precautionary principle¹⁴ is left with the only option to limit development until the uncertainty is resolved.

¹² See Attachment H

¹³ See Attachment I

¹⁴ Supported by City of Redmond Comprehensive Plan NE-20

VIII. City of Redmond Permit Decision

The submitted Critical Area Report is code deficient based off Section VI above and needs more rigorous analysis per Section VII above. The City is unable to condition the plat as a possible outcome of an updated code compliant Critical Area Report could be that a stream is on the property. This would cause significant changes to the plat affecting multiple code compliance standards.

The City's desire is to work with the applicant to achieve code compliance, yet the applicant has requested a decision and the City will honor the request stated above. The City is left with no other option but to deny the application based off lack of compliance with the short plat subdivision criteria RZC 21.74.030.B.1.a & c, more specifically, showing compliance with the Critical Area Report requirements¹⁵.

IX. Attachments

- A. Crescent Lane As-Builts
- B. 1992 Memo to City Council for Sensitive Area Ordinance.
- C. Wickman 2 Lot Short Plat As-Builts
- D. Wickman Preliminary Stormwater Report Wickman 2 Lot Short Subdivision
- E. Wickman SEPA Checklist
- F. Forman Property (Timbers at Marymoor) NOD
- G. Holmgren SP Geotechnical Report
- H. Holmgren SEPA Letter from Snoqualmie Tribe
- I. Critical Area Determination Report

¹⁵ RZC 21.76.070.B.3.ii.A., RZC 21.76.070.B.3.c, RZC 21.64.010.C.2, RZC 21.64.010.G.2.a-b & RZC Appendix I