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

4 In re the matter of the Appeal by  
5 C. R. HOMEBUILDERS, 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

CR HOMEBUILDERS LLC  
PREHEARING STATEMENT

13 **I. INTRODUCTION**

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

18 This case raises a single issue of whether the Zoning Code supports the City’s  
19 implicit conclusion in its decision that a stream runs through a portion of the Holmgren  
20 property. CR Homebuilders examined the site exhaustively with its expert consultants over  
21 two wet weather seasons, reviewed all historical evidence for the site and larger area, and its  
22 experts concluded that there is no stream on the Holmgren property. The City concurred with  
23 that conclusion as recently as 2016. The City also previously concluded that there is no  
24 stream uphill or downhill of the Holmgren property. Yet the City changed its mind and  
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1 apparently has concluded that a stream does exist, based exclusively on one video taken on a  
2 single day by neighbors through a chain link fence, immediately after a significant rainfall  
3 event. The area all around the Holmgren property is fully developed residential property; the  
4 City's determination would mean there is a stream on the Holmgren property that would  
5 spontaneously emerge in the middle of a long stretch of open space, with no stream  
6 designated or existing either uphill or downhill from it. In essence, it would be an isolated  
7 length of stream starting spontaneously on the Holmgren property, running roughly 100  
8 lineal feet, and terminating at the Holmgren property boundary.

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

## 18 **II. FACTUAL BACKGROUND**

19 The Holmgren property is located at 16130 NE 51<sup>st</sup> Street / 5502 161<sup>st</sup> Place NE,  
20 Redmond just off NE 51<sup>st</sup> Street. As seen on many different exhibits in the record, a shallow  
21 depression runs east-west both uphill and downhill of the Holmgren property. As a result of  
22 development over time, this depression receives stormwater runoff from developed  
23 properties on higher ground, several of which have point-source stormwater pipes sending  
24 stormwater directly into the depression. See e.g. Exhibit A-4 (survey showing storm drains  
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1 and pipe ends); CR H Exhibit A-5 (Timbers plan sheet C4.02 directing stormwater from foot  
2 drains to the NGPE on that site).<sup>1</sup>

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

10  
11 As part of an extensive review of the site, CR Homebuilders' critical area ecologist  
12 and its geotechnical consultant conducted separate site visits, each visiting twice and the  
13 ecologist visiting during two separate wet weather seasons (each time during high  
14 precipitation). Neither found evidence of a stream on the site. The City originally concurred  
15 with these site investigations and analysis, and advised the Applicant's predecessor in  
16 interest of such.

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

25 <sup>2</sup> 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.

1           A. Historical and background information.

2           CR Homebuilders recognizes that there is stormwater runoff from neighboring  
3 property drains and likely the larger area that naturally gravity-flows to the low point running  
4 roughly east-west through the Holmgren property and properties both up and downhill.  
5 However, the evidence reflects that there is no historical support for concluding there is any  
6 stream on the property. 1936 and 1965 aerial photos show a depression in the area but no  
7 evidence of any stream or drainage channelization. City's Exhibit 22, Wetland Resources  
8 Report, February 28, 2018, page 4 (1936 aerial reproduced in color with orange site id);  
9 Exhibit A-6. As of 1993, the City's sensitive areas review shows there was also no stream on  
10 the property or to the east or west. City's Exhibit 2, page 2; City's Exhibit 5. As discussed  
11 below, the City approved development of both properties to the east and west, i.e. up and  
12 down the depression from the Holmgren property, without designating a stream or buffers  
13 thereon.  
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15           There have been drain tiles in the east section of the depression on the Holmgren  
16 property for decades. City's Exhibit 20, attached letter from Annie Catlin, February 13, 2018.  
17 There is also a long-established storm pipe on the downhill property to the east, the Wickman  
18 Short Plat. City's Exhibit 6, page 5. As the record reflects, in the late 1990's, the neighboring  
19 property owners, then the Wickmans, were doing work in their orchard with a tractor and  
20 crushed the tiles. *Id.* For many years thereafter, the drain tiles did not function correctly.  
21 Despite that, there was no stream channelization on the property; to the contrary, the  
22 Holmgrens were able to mow the area in tennis shoes, and the Holmgrens' goats had no  
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1 trouble traversing the property in 2015 without even wet feet. *Id.* The Catlins fixed the drain  
2 tiles in 2016.

3 In early 2000, the Wickman Short Plat was recorded for a site immediately downhill  
4 and roughly east of the Holmgren property. Exhibit A-8. As detailed in the Wickman SEPA  
5 checklist, there is a drainage route on the Holmgren and Wickman properties which did not  
6 meet the City's adopted standards for a 'stream'; the City allowed the drainage on the  
7 Wickman site to remain piped through the Wickman property. City's Exhibit 6, page 5. The  
8 Wickman as-built plans also label this as drainage.<sup>3</sup> City's Exhibit 21, Wetland Resources  
9 Report, February 14, 2018, Attachment A. The City did not require the Wickmans to  
10 delineate a stream or provide any buffers; to the contrary the City acquired a drainage  
11 easement over an existing pipe that immediately connects to a City utility easement to the  
12 east. Exhibit A-8. As a result, the Wickman property itself does not contain a stream feature  
13 that would, in theory, have connected to any stream uphill on the Holmgren property had one  
14 been found.  
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16  
17 In 2005, the City issued City-wide critical area maps and labelled a potential stream  
18 running through the area that the depression also originally ran through. City's Exhibit 29.  
19 That stream was labelled as running across several properties up and downhill of Holmgren –  
20 including Wickman and The Timbers (see below), each developed without stream delineation  
21 or buffers. As is provided on all City maps, the notation of a stream was expressly taken to be  
22 general and meant as an indication for a qualified consultant to review the property with  
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25 <sup>3</sup> 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.

1 particularity in the event of development. City’s Exhibit 19, email string between Nell Lund  
2 (The Watershed Company) and Roger Dane (City of Redmond). The Zoning Code provides  
3 expressly that such mapping is for general guidance only, not to be relied on for development  
4 application review, and any site evaluations must be done by a qualified professional of the  
5 specific site. RZC 21.64.020(A)(2)(e). The City’s map has a line drawn stream running both  
6 uphill and downhill of the Holmgren property, an assumption never substantiated in the field  
7 when those properties were developed. These assumptions have been continued to date,  
8 despite development of the property in exactly where the stream line was presumed uphill  
9 from Holmgren. Compare: Exhibits A-2, second page and Exhibit A-5 (locating Lots 3-8 on  
10 top of stream shown on King County mapping and depression contours).  
11

12 In 2012, the City approved The Timbers subdivision, located immediately uphill and  
13 west of the Holmgren property. City’s Exhibit 32. The Timbers property contained a portion  
14 of the depression and area that the City identified in 2005 as potentially containing a stream.  
15 See City’s Exhibit 2, page 3 (map shows stream running nearly to 159<sup>th</sup> Place NE). The  
16 Watershed Company conducted a critical area review and concluded that there was no stream  
17 on the Timbers property, including in the depression, despite the City’s mapping. City’s  
18 Exhibit 19, Watershed Company report, dated July 10, 2013. The ecologist also concluded  
19 “no channel was present within at least 40 feet of the down slope end.” City’s Exhibit 19,  
20 email string between Nell Lund (Watershed Company) and Roger Dane (City of Redmond).  
21 The City’s reviewer, Roger Dane, concluded as well that there was no stream, but that the  
22 lower end of The Timbers (i.e. the eastern end, adjacent to the Holmgren property) needed  
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1 review for any wetland characteristics. Both Lund and Dane agreed that the City's mapping  
2 was never field verified and was merely "gross-scale mapping." *Id.*

3 The City concluded that no stream existed on The Timbers site, and allowed homes to  
4 be built in the area where both the depression contours run and the stream had been assumed  
5 in the gross-scale mapping. Exhibit A-5. Going even further, the City allowed the homes  
6 located adjacent to the NGPE (again, not delineated with stream or buffer) to drain their  
7 stormwater directly into the NGPE area without detention. Exhibit A-5 (note on sheet C.402).  
8 In 2016, the City updated its map to remove the stream label from the Timbers property.  
9 City's Exhibit 2, page 4.  
10

11 In 2015, the Holmgrens completed a boundary line adjustment. City's Exhibit 31.  
12 While the City insisted that the BLA reflect a stream on the property as a result of the gross-  
13 scale City map, the surveyor included a note on the face of the recorded BLA stating that  
14 there was "no evidence of stream seen on the ground." The City signed off on that recording  
15 including the note. City's Exhibit 2, page 4; City's Exhibit 31.  
16

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

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

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

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25           <sup>4</sup> The City has not listed what documents are contained in this exhibit – if complete, the set would include this report. CR Homebuilders reserves the ability to supplement the record if this exhibit is incomplete.



1 been consistent with stormwater runoff flowing to the property during and after storm events.

2 There is a stormwater runoff pipe on the northeast side of the property that has some history  
3 of damage and repair. The geotechnical report in support of the present application also notes  
4 some seepage in the area of the City's alleged stream, but found no actual evidence of  
5 stream; only heavy seepage during a month of extremely high precipitation, significantly  
6 above any winter averages. Seepage and stormwater drainage are distinct features from  
7 streams as classified under Redmond standards. RZC 21.64.020(A)(2)(d).  
8

9 The findings of CR Homebuilders' critical area ecologist and geotechnical engineer  
10 were consistent. Therefore, the Applicant submitted a SEPA Checklist stating it had not  
11 found any regulated streams onsite. City's Exhibit 23, SEPA Checklist. The Short Plat  
12 Checklist for the application noted that a mitigation plan was not applicable/required because  
13 the critical areas report determined there were no regulated wetlands or streams and that there  
14 are no streams, wetlands or ponds on the property. City's Exhibit 23, Short Plat Checklist,  
15 pages 2, 4.  
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17 The City acknowledged that there was no evidence of a stream in their request for  
18 additional information. City's Exhibit 13. The City only requested that the critical area report  
19 add analysis regarding wildlife and a habitat assessment form. *Id.*, page 5. The City  
20 addressed the Native Growth Protection Area only suggesting it include additional trees. *Id.*  
21 The City's engineer acknowledged the determination that there is no stream but that there are  
22 subsurface flows that would require further stormwater detention work. *Id.*, page 9. The City  
23 then moved the application forward to a neighborhood meeting.  
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1 The neighborhood meeting was held in August 2017. At that meeting, two  
2 neighboring property owners, Ms. Monk and Ms. Kimmell, provided some photographs of  
3 the Catlin's work fixing the damaged drain tiles and a short video of flowing water which  
4 appears to be filmed at the east end of the Holmgren property, immediately after a major  
5 storm event filmed through a chain link fence. Exhibits 39-45. They did not provide any  
6 consultant reporting or analysis, or material that would substantively differ from expert  
7 conclusions of that there is stormwater runoff or other groundwater seepage during high  
8 precipitation events. CR Homebuilders has never received any explanation for why such  
9 video was taking in 2015, but since the drain tiles had not yet been fixed, one may speculate  
10 as to downhill property owner concerns about stormwater impacts on their property.  
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12 Based on the neighbors' photos (which do not show a stream) and video (which  
13 shows water immediately after a major storm event), the City asked for more information  
14 related to the Catlin's storm pipe repair work. City's Exhibit 14. CR Homebuilders addressed  
15 that question in its responsive materials. City's Exhibit 19, Core letter page 2-3 and attaching  
16 the Timbers' Watershed Company assessment.  
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18 Despite there being no evidence in the record that any stream exists on the Holmgren  
19 property or either up or downhill thereof, and despite qualified consultant reporting from  
20 three independent expert critical area consultants and consensus by City staff, the City  
21 retracted its prior biological determination, rejected the Applicant's onsite investigation,  
22 historical analysis and standards-based analysis, and instead concluded, without any qualified  
23 consultant analysis, that a Class IV stream exists on the property. City's Exhibits 16 and 17.  
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1 After the City's purported retraction of its prior determinations, the City received  
2 further information from the Catlins explaining that the Wickmans had bulldozed a portion of  
3 their property and, in doing so, had crushed a storm pipe on the Holmgren property, which  
4 the Holmgrens had not repaired until 2016. The City did not address this explanation. City's  
5 Exhibits 21 and 22.

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

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

3 In a comment made after the DNS was issued, the Snoqualmie Tribe commented that  
4 the Tribe's representative believes a stream may run through the site. City's Exhibit 11. Once  
5 again, no evidence of a stream was provided to support the concern. To the contrary, the  
6 letter is vague as to what drainage is onsite, and merely concludes that any drainage is a  
7 rough equivalent to a stream. This conclusion is inconsistent with the Zoning Code, which  
8 provides for an evidence-based analysis of any on site water features based on criteria  
9 adopted into the City's critical area regulations, and whose definition of a stream specifically  
10 excludes artificially created surface water runoff devices or other artificial watercourses.  
11 Those regulations were followed in the Applicant's critical area evaluations, which did  
12 conclude there was some drainage but no features that met the criteria for a Class IV stream.  
13

14 Despite the evidence in the record and DNS, the City denied the Short plat and  
15 instead now requires CR Homebuilders to submit a critical area report either documenting a  
16 Class IV Stream or providing some further evidence reflecting the lack thereof, despite all  
17 available field information confirming that no stream exists. CR Homebuilders strongly  
18 disputes the City's conclusions and requests reversal of the City's Holmgren Short Plat  
19 denial.  
20

#### 21 IV. ARGUMENT

22 Despite the foregoing lengthy factual recitation, this case involves a straightforward  
23 question of what the Redmond Zoning Code requires and how it should be correctly applied  
24 to the Holmgren property. The foregoing summary of evidence, as will be further testified to,  
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1 demonstrates how the record supports the conclusion that classification of a jurisdictional  
2 stream on the Holmgren property is absolutely unwarranted based on the Zoning Code  
3 standards.

4 The Zoning Code expressly distinguishes drainage/stormwater runoff from  
5 jurisdictional, classified streams. RZC 21.64.020(A)(2)(d). With respect to the Holmgren  
6 property, the runoff and explanation as to why it is stormwater runoff and not a Class IV  
7 stream has been addressed extensively in written reporting by CR Homebuilders' qualified  
8 consultants and supported by prior qualified consultant reporting, and never refuted by  
9 another qualified consultant report.  
10

11 RZC 21.78 defines a "stream" as:

12 Those areas where surface waters produce a defined channel or bed. A defined  
13 channel or bed is an area which demonstrates clear evidence of the passage of water  
14 and includes, but is not limited to, bedrock, channels, gravel beds, sand and silt beds,  
15 This definition is not meant to include artificially created irrigation ditches, canals,  
16 storm, or surface water runoff devices or other entirely artificial watercourses unless  
17 they are used by salmonid or created for the purposes of stream mitigation. [emphasis  
18 added]

17 RZC 21.78 defines "runoff" as:

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

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

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

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

6 Classification of fish and wildlife habitat conservation areas shall be determined by the  
7 Department based on consideration of the following factors:

- 8 i. Maps adopted pursuant to this chapter, including the fish and wildlife habitat  
9 conservation area core preservation areas map, Critical Area Wildlife Habitat  
10 Willows/Rose Hill Neighborhood Map, and stream classification map. These  
11 maps shall be used as a general guide only for the assistance of property owners  
12 and other interested parties; boundaries are generalized. The actual type, extent,  
13 and boundaries of fish and wildlife habitat conservation areas and streams shall be  
14 determined in the field by a qualified consultant according to the procedures,  
15 definitions, and criteria established by this chapter. In the event of any conflict  
16 between the critical area location and designation shown on the City’s map and  
17 the criteria or standards of this section, the criteria and standards shall prevail;
- 18 ii. Department of Fish and Wildlife priority habitat and species maps;
- 19 iii. Anadromous and resident salmonid distribution maps contained in the habitat-  
20 limiting factors reports published by the Washington State Conservation  
21 Commission;
- 22 iv. Federal and state information and maps related to species of concern;
- 23 v. Application of the criteria contained in these regulations; and
- 24 vi. Consideration of the technical reports submitted by qualified consultants in  
25 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.

1 RZC 21.78 (emphasis added).

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

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

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

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

9 CR Homebuilders anticipates that the City will argue that the repaired/replaced storm  
10 drainage pipe that starts about 100 lineal feet from the property's east boundary should be  
11 removed and then the area monitored for some time to see if a channel develops. However,  
12 such a requirement would not resolve the issue: as even if a channel were to develop, that  
13 would be the result of stormwater runoff that is coming from storm drain pipes that  
14 artificially point stormwater directly down the hill sloping into the depression. Exhibits A-2,  
15 A-4. As the critical area ecologist and civil engineer will testify, there are multiple  
16 stormwater drains that allow stormwater runoff to flow unregulated directly to the depression  
17 both from homes in the Timbers subdivision and existing, older houses. Exhibits A-2, A-4  
18 and A-5 (note at top of Sheet C4.02: "rear footing drains (for basements) shall be disbursed  
19 via splash blocks to the north). Photos of the drain pipes from the existing older homes, taken  
20 by the ecologist, show stormwater running undetained and free flowing down the slope in  
21 into the depression area were the Holmgrens placed the storm drain tiles to accommodate for  
22 this very runoff. Exhibit A-2. The Zoning Code does not equate this 'runoff' with a 'stream'.  
23 RZC 21.78 definitions (see above). Removing the storm pipe without removing the runoff  
24 sources would be illusory.  
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1 Further, had there been stream channelization in the area shown on the City's general  
2 (non-verified) mapping, such a stream would exist today not only on the eastern side of the  
3 Holmgren property, but also to the west/uphill and into The Timbers property. Yet, no  
4 evidence of a stream or wetland exists in those areas as is based on qualified consultant  
5 reviews over the past 15 years. City's Exhibit 19 (Watershed review in 2003); City's Exhibits  
6 12 and Exhibit A-2 (Wetland Resources site visits in 2016, 2017, 2018).

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

## 15 V. CONCLUSION

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

20 DATED this 3<sup>rd</sup> day of December, 2018.

21 JOHNS MONROE MITSUNAGA  
22 KOLOUŠKOVÁ, PLLC

23 By 

24 Duana T. Koloušková, WSBA #27532  
25 Attorneys for C. R. Homebuilders, LLC

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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  
City of Redmond  
Cheryl Xanthos, City Clerk  
15670 NE 85<sup>th</sup> St.  
Redmond, WA 98073

[cdxanthos@redmond.gov](mailto:cdxanthos@redmond.gov)

Attorneys for Respondent City of Redmond  
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[khambley@omwlaw.com](mailto:khambley@omwlaw.com)

Dated this 3<sup>rd</sup> day of December, 2018, in Bellevue, Washington.

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