

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

In the Matter of the Appeal of)	NO. LAND-2018-01145
)	
)	
CR Home Builders LLC)	
)	
)	
Of the September 19, 2018 denial of the)	
Holmgren Short Plat)	FINDINGS, CONCLUSIONS, AND
No. LAND 2017-00548)	DECISION
_____)	

SUMMARY OF DECISION

The appeal of the City of Redmond Technical Committee’s decision to deny Short Plat No. LAND-2017-00548 is **DENIED**.

SUMMARY OF RECORD

Request/Appeal:

CR Home Builders LLC (Appellant) requested approval of a short plat to subdivide 0.89 acres of land (Parcels 1425059181 and 1425059128) into three single-family residential lots. The City of Redmond Technical Committee denied the request on September 19, 2018. The basis for denial was that the City did not consider the Applicant’s critical area report to be code-compliant, and that a code-compliant report might indicate a Class IV stream on the property, which would require significant changes to the plat. The Appellant appealed the decision on October 3, 2018.

The Appellant alleged the following:

- (1) The City’s decision to deny the short plat application on the basis of alleged existence of a Class IV stream on the site is not supported by evidence, not supported by the standards in Redmond Zoning Code Chapters 21.64, 21.74 and 21.76, and not lawful under Washington State statutes, regulations, and caselaw.
- (2) The City’s requirement that the Applicant draft and submit a critical areas report is not supported by evidence in the record and the requirements of RZC Chapter 21.64 generally, including but not limited to RZC 21.64.010 provisions regarding when a critical areas study is required.

Hearing Date:

An open record hearing on the appeal was conducted on December 10, 2018. On the record the parties agreed to a January 7, 2019 decision issuance date.

Testimony:

At the open record appeal hearing, the following individuals presented testimony under oath:

For Applicant/Appellant:

Gary Catlin

Jim Olsen, P.E., Principal, Core Design

Ted Schepper, P.E., Principal, Core Design

Scott Brainard, P.W.S., Principal Ecologist, Wetland Resources, Inc.

Todd Levitt, CR Home Builders LLC

Attorney Duana Kolouskova represented the Appellant at hearing.

For the City:

Scott Reynolds, Planner, Redmond Planning and Community Development

Catherine Beam, Principal Planner, Redmond Planning and Community Development

Geoffrey Dendy, Senior Engineer, Redmond Planning and Community Development

Tom Hardy, Senior Planner, Redmond Planning and Community Development

Emily Flanagan, Senior Engineer, Redmond Planning and Community Development

James Haney and Kate Hambley from the City Attorney's Office represented the City.

Exhibits:

At the open record hearing the following exhibits were admitted in the record:

Appellant Exhibits

- A-1. Notice and Statement of Appeal of CR Homebuilders LLC, dated October 3, 2018
- A-2. Set of 18 site photographs taken by Scott Brainard on October 30, 2018
- A-3. King County iMap aerial of site and larger neighborhood surroundings, 2 pages. Printed October 19, 2018
- A-4. Site plan showing stormwater outfalls and pertinent existing features and characteristics, survey date January 30, 2017
- A-5. Timbers Site Plans, dated April 16, 2003, and September 2004 (3 pages)
- A-6. 1965 Road Aerial, King County Road Services Map Vault
- A-7. Rainfall data sheet from Natural Resources Conservation Services Climate Data and Summary Report for dates in February 2015
- A-8. Wickman short plat, recording number 20000105900001, dated January 5, 2000
- A-9. Resume of Scott Brainard, PWS. Principal Ecologist, Wetland Resources, Inc.
- A-10. Resume of Ted Schepper, PE. Principal, Terra Associates, Inc.
- A-11. Resume of Jim Olsen, P.E., Principal, Core Design
- A-12. Email from Tom Hardy to Annie Catlin (cc Cathy Beam), dated December 20, 2016

City of Redmond Exhibits

- C-1. Appeal Staff Report, dated December 3, 2018
- C-2. LAND-2016-00548 – Technical Committee Site Plan Entitlement Transmittal Letter and Notice of Decision (NOD), dated September 19, 2018
- C-3. Appeal Application date stamped received October 3, 2018 by City of Redmond Office of the Hearing Examiner
- C-4. NOD Attachment A : Crescent Lane As-Built as attached to the Technical Committee Site Plan Entitlement, dated August 25, 1966
- C-5. NOD Attachment B : Memo to City Council by Roberta Lewandowski, Director of Planning and Community Development, regarding Sensitive Areas Ordinance, dated March 24, 1992
- C-6. NOD Attachment C: Wickman 2 Lot Short Plat As-Built, dated September 27, 1999
- C-7. NOD Attachment D: Preliminary Stormwater Report for Wickman 2 Lot Short Subdivision, dated July 16, 1998
- C-8. NOD Attachment E: SEPA Environmental Checklist for Wickman 2 Lot Short Subdivision, dated March 31, 1998
- C-9. NOD Attachment F: Technical Committee Notice of Decision and Transmittal Letter, Forman Property (Timbers of Marymoor) NOD, dated July 3, 2014
- C-10. NOD Attachment G: Holmgren Short Plat Geotechnical Report, Second Revision, dated August 21, 2017
- C-11. NOD Attachment H: SEPA Comment Letter from Matt Baerwalde, Water Quality Manager, Snoqualmie Tribe, to Scott Reynolds, City of Redmond, dated July 13, 2018
- C-12. NOD Attachment I: Revision to the Critical Area Determination Report, dated May 3, 2018
- C-13. First Request for Additional Information from City of Redmond Technical Committee to Mr. Todd Levitt, Murray Franklyn Companies, including one attachment (“Attachment A”), dated June 30, 2017
- C-14. Draft Second Request for Additional Information from the City of Redmond Technical Committee to Mr. Todd Levitt, including one attachment (“Attachment A”), dated September 20, 2017
- C-15. Third Request for Additional Information from City of Redmond Technical Committee to Mr. Todd Levitt, including one attachment (“Attachment A”), dated December 20, 2017
- C-16. Fourth Request for Additional Information from City of Redmond Technical Staff to Mr. Todd Levitt, Murray Franklyn Companies, including one attachment (“Attachment A”), dated April 3, 2018
- C-17. Fifth Request for Additional Information from City of Redmond Technical Staff to Mr. Todd Levitt, Murray Franklyn Companies, including one attachment (“Attachment A”), dated June 18, 2018

- C-18. Response to City's First Request for Additional Information, from CORE Design to Scott Reynolds, City of Redmond, dated August 22, 2017
- C-19. Response to City's Second Request for Additional Information, from CORE Design to Scott Reynolds, City of Redmond, including two attachments (June 30, 2014 Transmittal Letter and Notice of Decision for Forman Property Short Plat and July 10, 2013 Stream and Wetland Reconnaissance Study for 16020 NE 51st Street (Forman Short Plat) from the Watershed Company) dated November 15, 2017
- C-20. Response to City's Third Request for Additional Information (mis-titled Response to Second Request for Additional Information), from CORE Design to Scott Reynolds, City of Redmond, including two attachments (statement from Annie Catlin dated February 13, 2018 and updated report from Wetland Resources, Inc., dated February 14, 2018), dated February 27, 2018
- C-21. Response to City's Fourth Request for Additional Information (mis-titled Response to Second Request for Additional Information), from CORE Design to Scott Reynolds, City of Redmond, including two attachments (a letter from CR Home Builders to City of Redmond dated May 4, 2018 and a report by Wetland Resources dated May 3, 2018), dated May 2, 2018
- C-22. Response to City's Fifth Request for Additional Information, from James R. Lynch to Scott Reynolds, City of Redmond, dated June 22, 2018
- C-23. Holmgren General Application, undated
- C-24. City's Determination of Non-Significance for Holmgren Short Plat, SEPA-2018-00504, dated May 17, 2018
- C-25. Holmgren Short Plat Plan Set, dated May 1, 2018
- C-26. USGS Topographic Map Historic topographical mapping, dated 1950
- C-27. King County IMAP Topography Mapping of Holmgren Property, undated
- C-28. Stream Map prepared for City of Redmond, 1993
- C-29. 2005 Updated Critical Areas Stream Classification Map approved by Ord. 2278
- C-30. 2009 Updated Critical Areas Stream Map approved by Ord. 2448
- C-31. 2015 Holmgren Boundary Line Adjustment Plat, Recording No. 20160601900007, dated June 1, 2016
- C-32. Timbers at Marymoor Short Plat, Recording No. 20151106900002, dated November 15, 2015
- C-33. 2016 Updated Critical Areas Stream Classification Map approved by Ordinance 2819
- C-34. Email chain among Annie Catlin, Jeff Dendy, and Cathy Beam concluding in email from Annie Catlin to Cathy Beam dated December 13, 2016
- C-35. Email chain among Annie Catlin, Jeff Dendy, and Cathy Beam, including attached images, concluding in email from Annie Catlin to Cathy Beam dated December 15, 2016

- C-36. Email chain among Annie Catlin, Cathy Beam, and Tom Hardy, including attachment, concluding in email from Annie Catlin to Cathy Beam, cc'ing Tom Hardy, dated January 17, 2017
- C-37. Email chain among Chris Kimmell, Tom Hardy, and Scott Reynolds regarding seasonal stream on Holmgren property, concluding in email from Tom Hardy to Scott Reynolds dated January 4, 2018
- C-38. Email between Scott Reynolds, Cornelia Kimmell, and Stephanie Monk, dated October 24, 2018
- C-39. Video of flowing water sent by Stephanie Monk to City of Redmond, dated February 28, 2015
- C-40. Photos of Holmgren property submitted to City by Stephanie Monk, dated September 27, 2016
- C-41. Photos of Holmgren property submitted to City by Stephanie Monk, dated October 23, 2016
- C-42. Photos of Holmgren property submitted to City by Stephanie Monk, dated October 24, 2016
- C-43. Photos of Holmgren property submitted to City by Stephanie Monk, dated October 25, 2016
- C-44. Photos of Holmgren property submitted to City by Stephanie Monk, dated November 21, 2018
- C-45. Photos of Holmgren property submitted to City by Stephanie Monk, dated June 24, 2017
- C-46. Email from Cornelia Kimmell to Scott Reynolds, Stephanie Monk, Christopher Pirkne, Marion Kee, wavemotiongun@outlook.com, and Jeannine Sielinski, clarifying photographic evidence and including attached photos and map, dated November 10, 2018
- C-47. Video taken by City of Redmond staff of parcels downstream from Holmgren property, dated November 28, 2017¹
- C-48. Initial comments from Matthew Bearwalde, Water Quality Manager, Snoqualmie Tribe, regarding Holmgren Short Plat, SEPA-2018-00504, dated June 8, 2018
- C-49. Initial comment from Karen Walter, Watersheds and Land Use Team Leader, Muckleshoot Indian Tribe Fisheries Division Habitat Program on Holmgren Short Plat, SEPA-2018-00504, dated June 8, 2018
- C-50. Final comment from Karen Walter, Watersheds and Land Use Team Leader, Muckleshoot Indian Tribe Fisheries Division Habitat Program on Holmgren Short Plat, SEPA-2018-00504, dated July 5, 2018
- C-51. Email from Scott Reynolds to Karen Walter and Matthew Baerwalde attaching Applicant's response to SEPA comments (including attachment), dated June 29, 2018

¹ The Exhibit list dates this exhibit December 12, 2017, but the voice speaking on the video states the date of Tuesday November 28.

- C-52. Email chain among Scott Reynolds, Todd Levitt, James Lynch, et al., concluding in email from James Lynch to Scott Reynolds dated July 20, 2018
- C-53. City of Redmond Technical Committee decision on Wickman Short Plat Application, dated October 13, 1998
- C-54. Washington State Register entry 97-24-091 (pp. 85-94)
- C-55. Washington State Register entry 01-12-042 (pp. 497-525)
- C-56. Ordinance No. 1693, June 23, 1992
- C-57. Email from Annie Catlin to Cathy Beam, including attachment (December 28, 2016 Wetland Resources Report), dated December 29, 2016
- C-58. Redmond Comprehensive Plan Policy NE-20
- C-59. February 14, 2018 Critical Areas Report from Wetland Resources, Inc., showing staff comments in redline format, sent to Applicant on April 3, 2018

Other Documents in the Record

Pre-Hearing Order, dated October 16, 2018

Applicant's Prehearing Statement, dated December 3, 2018

Applicant's Final Witness and Exhibit List, dated December 3, 2018

City's First Amended Witness and Exhibit List, dated December 3, 2018

City's Pre-Hearing Brief, dated December 3, 2018

Upon consideration of the argument, testimony, and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Appellant requested approval of a short plat to subdivide 0.89 acres of land (Parcels 1425059181 and 1425059128) into three single-family residential lots and an open space/drainage tract (Tract A). The subject parcels are located on the north side of NE 51st Street in the general vicinity of 162nd Avenue NE in the Overlake Neighborhood of Redmond. *Exhibits C-1, C-2, C-10 (Figure 1), C-23, C-24, and C-25; Exhibit A-4.*
2. Surrounding development includes the Crescent Lane and East Crescent Lane subdivisions, which are located to the north and west of the subject property; the Wickman Short Plat, which is located immediately east of the subject property; and the Timbers at Marymoor/Forman Property plat, which is located immediately west of Parcel 1425059181, the northwestern-most portion of the subject property. *Exhibits A-4, A-5, C-2, C-4, C-6, and A-8.*
3. City of Redmond Critical Areas Map 64.3 (effective March 12, 2016) depicts a Class IV stream traversing the northern portions of the subject property. The stream has not always appeared on the City's critical areas maps; it appeared on the 2005 and 2009

versions but did not appear on the 1993 version. In the 2005 and 2009 map versions, the stream extended farther to the west, encumbering what is now the Timbers at Marymoor Plat west of the subject property. The City removed this western segment of the stream from the 2016 update of the map based on a site-specific determination during review of Timbers at Marymoor that no stream was present on that property. *Exhibit C-2, pages 2-4; Exhibits C-19, C-29, C-30, and C-33.*

4. Critical areas maps adopted by the City are for guidance only. “The actual type, extent, and boundaries of ... streams shall be determined in the field by a qualified consultant according to the procedures, definitions, and criteria established by this chapter.” *Redmond Zoning Code (RZC) 21.64.020(A)(2)(e)*. A “qualified consultant” is “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 ...), 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.” *RZC 21.78*.
5. RZC 21.78 defines “stream” as follows:

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 salmonids or created for the purposes of stream mitigation.

RZC 21.78. This definition, which shows an effective date of April 16, 2011, is the same definition that has been in place since 1992, when the City adopted its Sensitive Areas Ordinance (Ordinance 1693). *Exhibit C-56*.
6. Current regulations define Class IV Streams as “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.” *RZC 21.64.020(A)(2)(d)(iv)*. Perennial Class IV streams require a 36-foot buffer, and Intermittent Class IV streams require a 25-foot buffer. *RZC Table 21.64.020*.
7. The mapped Class IV stream bisects the subject property from west to east, and based on the proposed short plat layout, would run through the building footprint, a stormwater facility, and the access drive on proposed Lot 3. The mapped stream corresponds with an existing ravine that is approximately eight feet deep. *Exhibits C-25, C-28, C-29, C-30, C-31, C-32, C-33, and C-34; Testimony of Gary Catlin and Tom Hardy*.
8. The ravine receives stormwater runoff from surrounding residential development, including the Timbers at Marymoor development (rear footing drains designed to disperse to north towards depression) and the existing structure on the southern parcel

comprising the subject property, known as the Healea parcel (yard drains). *Exhibits A-2, A-4, and A-5; Testimony of Scott Brainard and Jim Olsen.*

9. There is conflicting information in the record as to the status of the drainage course downstream through the adjacent Wickman Short Plat. As approved in 1999 and recorded in 2000, the plat map does not delineate a stream, but it includes a 20-foot drainage easement granted to the City in the area of the mapped stream, which connects to an existing City utility easement to the east. *Exhibit A-8.* The 1998 stormwater report for the Wickman Short Plat describes a drainage course through those parcels that had been enclosed within a 10-inch diameter PVC pipe. It does not mention a piped system to the west on the subject property. *Exhibit C-7.* The As-Built Grading, Erosion Control, Drainage and Utility Plan for the Wickman Short Plat indicates a “Class 5 Drainage” entering the Wickman property from the subject property. *Exhibits C-6 and C-8; Emily Flanagan Testimony.*
10. At the time of the Wickman Short Plat application in 1999, neither State nor City stream classifications included a “Class 5” stream or drainage. At the time, the State Forest Practices Board classified streams into “Types” 1 through 5 (*Exhibit C-54, pages 93-94*), while the City’s then-effective critical areas regulations classified streams into “Classes” I through IV. *Exhibit C-56, Ord. 1693, RMC 20C.40.080(10).* The City suggests that the Wickman application’s reference to a “Class 5 Drainage” likely intended to refer to the Forest Practices Board’s “Type 5” stream, based on the fact that a “Class V” stream did not exist under the City’s critical areas regulations. The definition Forest Practices Board’s Type 5 stream included “all natural waters not classified as Type 1, 2, 3, or 4; including streams with or without well-defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainageways having short periods of spring of storm runoff.” *Exhibit C-54, page 94; see also Exhibit C-56.*
11. The City submitted that the foregoing information explains why, in the Findings of Fact for approval of the Wickman Short Plat, it is stated that “there is one Class IV stream on the northern portion of the property.” *Exhibit C-53, page 17.* The Findings do not indicate the source of the stream determination, or describe how the short plat was compliant with the relevant requirements. *Exhibit C-53.* Class IV streams required no buffering under the ordinances in effect at the time of the Wickman approval. *Catherine Beam Testimony.*
12. The Stream and Wetland Reconnaissance Study prepared by The Watershed Company in 2013 for the adjacent Timbers at Marymoor development (to the west) included the following:

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 indicate 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.

Current conditions do not meet the city's definition of a stream (RCDG 20A.20.190).

Exhibit C-19, Watershed Company Report, page 2. The City, upon review by its Natural Resources Department Staff, concurred with this determination and removed the map designation from the Forman/Timbers property. *Exhibit C-19, Roger Dane email and Forman Short Plat Notice of Decision.*

13. The Appellant has owned the subject property since 2017. The prior owners (since the 1980s), were John and Barbara Holmgren. Their daughter, Annie Catlin, approached the City in late 2016 to have the mapped stream designation removed from the subject property in order to facilitate sale of the property. *Exhibits C-2, C-3, C-20, C-23, and C-34.* In one communication she expressed this by stating, "My goal is just to be able to tell buyers that the stream indicated on the map will not inhibit them from being able to proceed with their development plans." *Exhibit A-12.*
14. Scott Brainard, PWS, Principal Ecologist at Wetland Resources, Inc., investigated the subject property on behalf of the Holmgrens on October 20, 2016 and documented his findings in a Wetland Reconnaissance Report dated December 28, 2016. The report included the following statements relevant to this appeal:

Record precipitation levels had occurred immediately prior to the site visit...

A culvert was observed on the adjacent property to the east. At the time of the site visit, no surface flow was present on-site or was observed entering this off-site culvert. It appears that this is a relic drainage feature and rarely, if ever, conveys hydrology.

WRI determined that no wetlands, streams, or buffers are present on site or within 200 feet. *Exhibit C-57.*
15. Gary Catlin testified at hearing that in 2016, prior to Mr. Brainard's site investigation, he had installed a perforated pipe underground at the base of the ravine to convey stormwater runoff, submitting that he had been replacing preexisting perforated pipe that had been crushed when the Wickman parcels were developed in 1998/1999. At hearing, he testified that he covered the replacement perforated pipe with drain rock, back filled the trench with soil, and seeded the area. He also stated that he connected the downspouts from the Healea parcel to the new pipe and connected the new pipe to the drainage pipe running through the Wickman plat. Mr. Catlin did not know when the original pipe was installed. *Gary Catlin Testimony; Exhibit C-40; Exhibit A-2.* Annie Catlin did not testify at the hearing.
16. The City's Stream and Habitat Planner Tom Hardy and the City's Senior Surface Water Engineer Emily Flanagan visited the site in December 2016 at the request of Annie Catlin. At the time of their visit, it was not raining; the ground was frozen. At hearing, both Mr. Hardy and Ms. Flanagan testified that during the site visit, they were not aware that Mr. Catlin had installed perforated pipe within the ravine, stating that Mr. Catlin did not disclose the presence of the pipe or mention that he had recently replaced it prior to

reseeded the area as he walked them through the site.² Mr. Hardy's assessment based on his site observations at the time was that, at some point in history, a stream had created the ravine on site but that upstream development had apparently rerouted the stream such that it no longer existed. *Testimony of Tom Hardy and Emily Flanagan.*

17. In a follow up email to Ms. Catlin, Mr. Hardy wrote the following:

The topographic depression in the backyard was certainly caused by a stream a long time ago, but like you pointed out in your email, the hydrology was severely altered when development happened to the west During our visit on Friday there was no surface water or defined channel. There are existing pipes immediately to the east of the property ... that collect flow and route it to the City's stormwater system, so there is some flow moving through the property, maybe just subsurface.

Exhibit A-12. On January 17, 2017, City Principal Planner Catherine Beam sent an email to Ms. Catlin stating "[t]he City has confirmed that there is no stream across the property." *Exhibit C-36.* The subsequent Holmgren Short Plat application did not identify a Class IV stream. *Exhibit C-23.*

18. In support of the short plat application, the Applicant submitted a revised Geotechnical Report on August 21, 2017, prepared by Ted Schepper, P.E. of Terra Associates, which notes the following with respect to 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 terminus of the excavation.

The City of Redmond Map 64.3 "Stream Classification" dated March 12, 2016 shows the center of the swale on the northern parcel as a Class IV stream. ... 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 in 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 systems that have been installed.

Exhibit C-10, pages 2 and 3. The seepage observed in the pipe was described by the report as a "steady flow" and also noted was "a light trickle of water seeping out of the soil around tree roots near the mid-point of the south bank of the swale... ." *Exhibit C-10,*

² This differed from Gary Catlin's recollection of the site visit, in which he indicated that he met with Tom Hardy alone, that no one else from the City was present, that Mr. Hardy had used a PVC pipe to pull up sections of earth to look for moisture in the soil, and that he had informed Mr. Hardy about his installation of the replacement perforated pipe. *Gary Catlin Testimony.*

page 3. The report did not identify this observed seepage as an impediment to development. Its recommendation was that “a permanent interceptor drain should be installed perpendicular to the flow line of the swale in order to capture and control this seepage and direct it to an approved point of discharge.” *Exhibit C-10, page 7.*

19. A neighborhood meeting on the subject short plat application was conducted on August 24, 2017. At the meeting, nearby neighbors expressed concern regarding the presence of a stream they believed to exist on the subject property. The neighbors subsequently submitted a video taken February 2015 (depicting a surface flow of water in the area of the mapped Class IV stream) and photographs taken September through November 2016 depicting installation of perforated pipe in gravel-filled trench in area of mapped Class-IV stream. *Exhibit C-2, pages 6-7; Exhibits C-39, C-40, C-41, C-42, C-43, C-44, and C-45.* One neighbor informed the City: "Every winter that we have lived here [since 2000], water has flowed above ground across the Holmgren Short Plat onto our property, and then across our property to the Monk's." *Exhibit C-37.* The City subsequently received SEPA comments from the Snoqualmie and Muckleshoot Tribes expressing concern about the potentially unpermitted undergrounding of an apparent seasonal stream. *Exhibits C-48 and C-49.*
20. No permit had been issued for the perforated pipe installation and fill in the same location where the Class IV stream (Exhibit 29, 30, 33) was shown to be on the Holmgren Property. The City had no record of permits issued for the previous pipe that the Catlins alleged was damaged during construction of the Wickman short plat; at least a clear and grade permit would have been required. *Testimony of Jeff Dendy and Tom Hardy.*
21. On or about September 20, 2017, the City sent a second request for additional information to the Applicant, which specifically requested they address "... 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." *Exhibit C-14.* On November 15, 2017, the Applicant answered as follows:

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. The stream is also shown on King County maps as being located on property to the west that recently platted, leading us to believe the County mapping is inaccurate. Groundwater is not uncommon to encounter on properties and there are numerous ways to handle/mitigate for groundwater with various construction techniques. Also attached please find the city findings, conditions, and Stream Study prepared for the plat to the west of Holmgren (The Watershed Company 7/10/2013).

Exhibit C-19, page 3.
22. City Staff conducted a visit on Tuesday November 28, 2017, at about 11:00 am, to a parcel two lots "downstream" of the subject property to observe the downstream flow from the pipe installed by the Catlins within a stormwater easement. Staff filmed video

(Exhibit C-47) of water being conveyed in a 15-inch corrugated metal pipe, visible through a grated opening. The volume of flow at the time this video was taken appeared, to the City's Natural Resources Staff, to be more outflow than the one gallon per minute of the interflow volumes estimated by the Applicant's consultant. The City indicated that this video was taken on a day not preceded by recent significant storm events. *Tom Hardy Testimony; Exhibit C-47.*

23. The City remained uninformed about the origin of the drain pipe in the location of the mapped stream after the Applicant's response. In light of the concerns, video evidence, and photographs submitted by the neighbors, Staff's observation of downstream runoff volumes, and comments by the Tribes, and in light of the Applicant's unresponsiveness on the subject, on December 20, 2017 the City retracted its January 17, 2017 (email) determination by Catherine Beam and Tom Hardy that there was no evidence of a stream on-site, stating the following:

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.

Exhibit C-15, page 4. The City issued its third request for additional information, specifically requesting a Critical Areas Report prepared in accordance with the requirements of RZC Appendix A addressing the drainage pipe in the location of the mapped stream. *Exhibit C-15.*

24. On January 10, 2018, Applicant consultant Scott Brainard performed a second site investigation on “to evaluate the potential historical presence of a Class IV stream located in a linear depression on the eastern portion of the investigation area.” His findings were documented in a report dated February 14, 2018 and submitted to the City with a new letter from Annie Catlin regarding historic property conditions. *Exhibit C-20.*
25. In review of the February 14, 2018 critical areas report, the City noted that none of the consultant's test pits were dug below the depth of the perforated pipe and drain rock trench installed by the Catlins. This report stated its findings were based on existing vegetation and surface conditions, both of which would have been altered by the installation of the pipe and trench in 2016. The City remained unsatisfied and sent a fourth request for additional information relating to both the SEPA and the short plat applications, requesting additional information for Planning, Transportation, Utilities, and Stormwater review. Specifically called out was a request for a Critical Area Report to address all information related to streams, wetlands, and pipe installation, and to be prepared in accordance with Redmond Zoning Code Appendix A. *Exhibit C-16.*
26. Included in its response to the City's fourth request for additional information was a May 3, 2018 revision by Mr. Brainard of his February 14th report. *Exhibits C-59 and C-12.* Based on his site visit and on review of historical information that he identified as including the Wickman Short Plat as-built plan, 1936 King County aerial photography, a photo taken by prior owner prior to pipe replacement, and written information supplied by Annie Catlin on historical site conditions (including recollections regarding the dry

condition of the yard during childhood, and that a historic drain pipe was damaged in 1998 or 1999, and that she and her husband replaced it in 2016), Mr. Brainard affirmed his conclusion that there are no wetlands, streams, or buffers on or within 200 feet of the site. He did not observe scouring or channeling on the subject property, or flows sufficient to create a stream channel upstream of the subject property. *Exhibits C-12 and C-20*. Of note, his findings included:

- Wetland conditions do not exist within the linear depression.
- No channel can be observed in a photo taken prior to replacement of pipe in 2016.
- Stream channel not evident in 1936 aerial photograph.

Exhibit C-12.

27. The Applicant's response to the City's fourth request included a cover letter stating:

The Applicant has responded to all City comments raised in the City's Requests for Additional Information over the last year, and we formally request that the Application be promptly submitted to the Technical Committee for a final decision.

When the City subsequently issued a fifth request for additional information (Exhibit C-17, June 18, 2018), the Applicant's response was a letter reiterating its earlier stated position that "there is no stream or other critical area on the property, seasonal or otherwise" and its request that the matter be sent to the Technical Committee for final decision. The response, dated June 22, 2018, went on to state:

The suggestion that the site was altered to conceal a "stream" is unfounded and contrary to the factual record, and particularly the firsthand account provided by the prior property owner.

Exhibit C-22 (referencing the narrative statement by Annie Holmgren attached to the Applicant's response to the City's third request for additional information, C-20). Again, Ms. Holmgren did not testify at hearing to provide clarifying information or answer questions on cross examination.

28. The Technical Committee denied the short plat on September 19, 2018. *Exhibit C-2*. The notice of decision characterized the short plat denial as being due to "an incomplete and non-code compliant Critical Area Report," citing the following code sections:

RZC 21.76.070.B.3.a.ii.A:

- ii. Upon review of a land use permit and accompanying site plan, the decision maker shall determine whether building design and/or site design complies with the following provisions:
 - A. The Comprehensive Plan, RZC 21.02, *Preface*, RZC Article I, *Zone-Based Regulations*, RZC Article II, *Citywide Regulations*, and the Appendices that carry out these titles;

RZC 21.76.070.B.3.c:

Burden and Nature of Proof. 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.

RZC 21.64.010.C.2:

To avoid duplication, Types I, II, III, IV, V, and VI Permits shall be subject to and coordinated with the requirements of this chapter [Critical Areas].

RZC 21.64.010.G.2.a and .b: Application Requirements.

- a. Timing of Submittals. A critical areas report, if applicable, must be submitted to the City during application submittal. This is a required component of determining application completeness. The purpose of the report is to determine the extent, characteristics, and functions of any critical areas located on or that have a potential to be significantly adversely impacted by activities on a site where regulated activities are proposed. The report will also be used by the City to assist in the determination of the appropriate critical area rating and establishment of appropriate buffer requirements in accordance with this chapter.
- b. Critical Areas Report Contents. Reports and studies required to be submitted by this chapter shall contain the information indicated in RZC Appendix 1, Critical Areas Reporting Requirements, applicable to each critical area.

RZC Appendix 1: General Information

The following information is required to be submitted for sites containing critical areas.

- A. General Information (required for all critical areas).
 1. Name of proposal as shown on City applications.
 2. Name of applicant as shown on City applications.
 3. Name of organization and individual providing this information.
 4. List any technical expertise/special qualifications of person providing this information.
 5. Date the information was prepared.
 6. Location of the proposed activity (street address and tax parcel number), including a vicinity map.
 7. Clearly identify the development proposal being addressed, including City file number and key project drawing references (originator of drawings, originator's reference number if shown on the drawings, sheet numbers, revision numbers and dates for each sheet, and include reduced copies of key drawings in the report).
 8. Give a succinct but inclusive description of the existing site, including acreage and current and past uses on the property.
 9. A copy of an aerial photo with overlays displaying site boundaries and critical areas.
 10. A single map showing all critical areas at one inch equals 20 feet scale, depicting:
 - a. Identified critical areas and required buffers;

- b. Limits of any areas to be disturbed;
 - c. Site boundary property lines and roads;
 - d. Rights-of-way and easements;
 - e. Existing physical improvements (buildings, fences, impervious surfaces, utilities, etc.);
 - f. Contours at two-foot intervals;
 - g. All natural and manmade features within the maximum buffer area of any critical area on or near the site (in no case less than a minimum 50 feet from the site).
11. A statement specifying the accuracy of the report and key project specific assumptions made and relied upon. List recommendations, if any, for further reporting regarding critical areas related to the proposed project as the project proceeds.
 12. Provide a bibliography of published information referenced, including maps and best available science materials.
 - a. For sites with mitigation, also provide the following information identified in 13 through 17 below. (Information in this section is to be provided only if there are critical areas within or in the vicinity of the site that will be impacted by the proposed project.)
 13. A summary description of reasonable efforts made to apply mitigation sequencing pursuant to RZC 21.64.010.L, *Mitigation Standards, Criteria, and Plan Requirements*, to avoid, minimize, and mitigate impacts to critical areas.
 14. Plans for adequate mitigation, as needed, to offset any impacts, including but not limited to:
 - a. The impacts to on-site and affected off-site critical areas; and
 - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties, and the environment.
 15. A listing of applicable performance standards and a summary of how each applicable performance standard was addressed.
(See RZC 21.64.010.M, *Performance Standards for Mitigation Planning*.)
 16. A discussion of ongoing management practices that will protect the critical area after the project site has been developed, including proposed monitoring and maintenance programs.
 17. Additional information may be required. The Technical Committee may require additional information to be included in the critical areas report when deemed necessary to the review of the proposed activity.
- B. Fish and Wildlife Habitat Conservation Areas Reporting Requirements (includes streams). A fish and wildlife habitat conservation areas report shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
1. Wildlife Report Requirements (in addition to the General Information listed in Appendix 1.A above).
 - a. A wildlife report must be submitted to the City for review. The purpose of the report is to determine the extent, function, and value of wildlife habitat on any site where regulated activities are proposed. The report will also be used by the City to determine the sensitivity and appropriate classification of the

habitat, appropriate wildlife management requirements, and potential impacts of proposed activities. The information required by this report should be coordinated with the study and reporting requirements for any other critical areas located on the site.

Exhibit C-2.

29. With respect to the criteria in Appendix 1, the City submitted that requirements A.1, A.3, A.4, A.6, A.7, A.8, A.12, A.17, and B.1.a were not satisfied. While some items were not sufficiently substantive to merit consideration in the instant decision (e.g., the location of the author's name on the report, not placing the City project number on the report, etc), remaining grounds for denial relate to the fact that the City considers the Applicant's materials submitted to be inadequate based on the failure to address inconsistencies in submitted information, failure to address the neighbors' video and photos, and failure to properly identify the original and replacement pipes. The City contended that the Applicant's critical areas reporting was not code-compliant because it was not based on best available science with regard to its conclusions on the Holmgrens' pipe replacement project. Among other stated grounds for denial, the Technical Committee specifically determined: 1) that Ms. Catlin's statement regarding an existing pipe on the Wickman Short Plat being crushed in 1998 or 1999 was not supported by available evidence including the stormwater report prepared for the Wickman Short Plat (which did not indicate a buried pipe); that the 1936 aerial photograph relied on in Mr. Brainard's February 14th and May 3rd reports is of too poor quality to support a City conclusion that there was no observable stream channel east or west of the site; that the Catlins' photograph of the subject property did not clearly show the eastern end of the property where the "existing" pipe was "replaced" and thus is not sufficient to show the presence or absence of a channel; and because Type IV streams can be intermittent, lack of flow is not conclusive. Based on these identified critical areas report deficiencies, the City determined that the short plat did not satisfy all criteria for approval, specifically, RZC 21.74.030.B.1.a and .c. *Exhibit C-2.*
30. In its comments to the Appellant on Mr. Brainard's February 14, 2018 report, the City had requested additional details regarding the original and replacement pipes, which was not provided in the May 3, 2018 report revision. The latest report stated that it appeared that approximately 100 linear feet of pipe had been replaced, but did not describe the nature of what was replaced, and did not provide information on the diameter, material, etc., of the replacement pipe. There was no information provided about soils beneath the pipe. *Exhibits C-21 and C-59; Tom Hardy Testimony.*
31. Addressing why no stream was shown on Wickman Short Plat, City Planning Staff surmised that the stream had already been undergrounded in a buried pipe on that property at the time of short plat review. Planning Staff testified that an undergrounded stream typically would not go into any sort of easement and that as a Class IV stream, it would not have required a buffer at the time. *Catherine Beam Testimony.*
32. City Senior Stormwater Engineer Jeff Dendy was the City reviewer of the instant plat's stormwater management. Explaining his position on denial of the plat, Mr. Dendy

indicated that he still needs to know how deep Mr. Catlin's pipe was placed and its diameter, orientation, and length; without these data, it is not possible to know how the results from the test pits are influenced by the presence of the underdrain. If the Applicant's consultants were aware of this pipe, he was surprised that it was not more clearly and specifically identified on the civil plans. He testified that if the underdrain were removed, its artificial emptying of the perched aquifer would cease and there might be standing water in the ravine, and that without the fill installed by Mr. Catlin, there could be standing water. Addressing the new information from the Appellant that the flows in the neighbor 2015 video showed roof runoff from a storm event the previous day, Mr. Dendy noted that in his opinion, the flows looked like a higher volume than would have resulted from that the roof downspouts of the one Healea building. Proper identification of the nature of the observed flows matters because if there is a stream, City regulations would not permit the collecting and conveyance of the water that supplies the stream; he needs more information addressing the water on site in order to complete stormwater review. *Jeff Dendy Testimony.*

33. City Natural Resource Staff agreed that the nature of the flows through the site needed better identification before a short plat permit could be issued. As noted by Tom Hardy, the presence of the pipe - regardless of its initial installation date - means there was water on the property. He stated that if the pipe was a replacement in kind, which could be allowed, there should be some evidence of that. To Mr. Hardy's thinking, it is relevant that Mr. Catlin did not inform him of the perforated pipe during their 2016 site visit and that he now testifies he did inform them at that time. When he wrote the December 20, 2016 email stating there was no evidence of stream on site, he believed he had all the information but now that he knows about the pipe and has seen the neighbor's video of conditions prior to its install, he would have viewed the wide expanse of newly seeded and mowed grass differently and may not have reached the same conclusion. The volume of flowing water shown in the neighbors' video makes Mr. Hardy wonder if the historic stream is still potentially present. The pipe and gravel trench were placed in the low point of the ravine, where a stream would be. Site photos show horsetail and reed canary grass, which indicate wetlands, or which no sign remained during his December 2016 visit. Mr. Hardy contended that statements from the neighbors who walked on the site with flowing water, have seen water on it since the year 2000, the historic topography of there being a ravine, and the historic City maps all tie together to suggest a stream has been undergrounded.³ Even a low seep rate of one gallon per minute is not determinative; there is no minimum rate of flow in the City's definition of stream. Mr. Hardy stated that one gallon per minute is a low volume, but not so low that the flow can't create a channel. Finally, Mr. Hardy testified that the information he requested is important because the City has an obligation to investigate the evidence presented and affirmative duty to protect critical areas. *Tom Hardy Testimony.*

³ Mr. Hardy testified that the fact that the Catlins mentioned historic drain tiles for the first time at the hearing - they were never mentioned in the application submittals - further suggests that the City does not have enough information to make the determination as to whether the flows in the pipe are a stream or not. However, the drain tiles are mentioned in the February 13, 2018 letter from Annie Catlin attached to the February 27, 2018 Applicant response to City's third request for info. *Exhibit C-20.*

34. The City's Senior Surface Water Engineer provided credible testimony that the ravine itself can qualify as a channel because it was created by an historic stream. The question of whether there is a surface flow cannot be ascertained because of the presence of the pipe. Emily Flanagan seconded Mr. Hardy's statement that there is not a specific volume threshold before a stream can be designated under City ordinances and that therefore the information in the geotechnical report documenting a volume of only one gallon per minute is not determinative. She submitted that the Appellant's critical areas reporting should have addressed the quantities of water entering the site and whether site soils could convey that water volume in the absence of the pipe. Based on Appellant witness testimony, Ms. Flanagan testified that even accepting there are two sources of flows - stormwater runoff from adjacent parcels' roof drains and interflow from natural subsurface geology - being conveyed in Mr. Catlin's pipe, this would not adequately explain the volume of water shown in the neighbors 2015 video. In her opinion, even a 0.93-inch rain event the previous day would not result in flows from roof drains lasting that long, till the next day, at those volumes. Answering the question of how an Applicant consultant could be expected to prove there is no stream, she suggested that hydrological analysis could show there is or is not enough area contributing to result in those volumes and an analysis of conductivity of the soil could contribute to the understanding of interflow expression. Ms. Flanagan thinks it is likely there is a stream within the pipe, which is located within the natural flow path and contains water from sources besides man made conveyance. Typically, natural stream path with natural waters equals a stream. *Emily Flanagan Testimony.*
35. On appeal, the Appellant argued that the City's position that there is a stream on-site is inconsistent with the City decisions in the Wickman and Forman/Timbers short plats, approved immediately adjacent to the east and west site boundaries along the ravine. Although the Wickman as-built plans call out a drainage that runs through the Wickman and Holmgren properties, the City did not require critical area delineation or buffers on that parcel, which is down slope of the subject property. Likewise, when the Timbers/Forman plat was reviewed in 2013, the site was studied for the presence of a stream and the then-applicant consultant concluded there was no channel present within 40 feet of the down slope end and thus that no stream existed. The City's current position would mean that a stream exists only within the subject property. Despite the reported damage to Holmgren drain tiles during Wickman plat construction, and despite the fact that the Catlins stated they did not repair the broken drain tiles until 2016, no channel formed on the subject property during those 18 or more years. Appellant witnesses argued that the City's repeated requests for information were unreasonable and they decided to appeal rather than provide more information because they were in an endless, frustrating letter writing loop in which, apparently, no amount of information would be enough. *Exhibits C-2 and C-5; Testimony of Jim Olson and Tom Leavitt; Applicant's Prehearing Statement.*
36. At the appeal hearing, the Appellant's geotechnical expert testified that he did not observe any surface drainage during his February and March site visits, nor did he see scour or other evidence of a stream channel. He submitted that the volume he observed flowing through the pipe installed by Mr. Catlin was insufficient to cause a channel and that the

seepage he observed in the test hole – which he identified as interflow – is a common seasonal occurrence. Noting that seeps can exit slopes at sufficient volumes to result in channelization, he testified that he did not observe this on the subject property, and he did not consider the volume of interflow to be sufficient to cause a channel. *Ted Schepper Testimony.*

37. The Appellant further argued that because Scott Brainard (a qualified expert) made a determination that there were no critical areas on the property, the RZC's formal Critical Area Report requirements were not triggered. *Exhibits C-3 and C-12.* At hearing, Mr. Brainard testified that he agreed that the depression on site predates 1936 and is likely glacial in origin. With regard to his revised report, he stated that he had agreed with some City comments requesting additional info; however, he had not agreed (and continued at time of hearing not to agree) with requirement for a critical areas study. Specifically, he had determined more than once that there are no regulated critical areas on site and contended that no critical area report can be required where no critical areas exist. Mr. Brainard stated that over many years working in Redmond, he has never been asked to prepare a critical area report for any property where no critical areas have been identified on site. He noted that no stream was identified on the adjacent Wickman Short Plat (98-03, Exhibit A-8) and asserted that this is relevant because the City had the critical areas ordinance in place at the time. Had there been a stream on the Wickman property, it would have been required to be identified on the face of the final plat and recorded with the County. *Exhibits A-8 and C-56, page 22; Scott Brainard Testimony.*

38. Responding to the neighbor video, Mr. Brainard described the video as showing some surface water flow, which he estimated to be greater than one cubic foot per second (CFS) and acknowledged that it looks like it was filmed from the neighbor property, generally looking west/southwest at the east boundary line of the subject property. When he first saw it, he wondered why that water was flowing there and he reviewed King County rainfall data for February 2015. He understood the video to be filmed on February 28, 2015. On February 27, 2015, rainfall of 0.93 inches was recorded in King County, which is a significant precipitation event. In his opinion, that heavy rain event explains the water shown in the neighbor video. Roof runoff from the Healea structure would have sheet flowed across the subject property because Mr. Catlin had not yet connected that structure's downspouts to the repaired drainage pipe in the bottom of the ravine. He observed that the fact that there is no channel evident indicates that those flows were stormwater runoff, because if that volume of runoff were constant, it would have been enough to create an obvious channel. *Exhibit A-7; Scott Brainard Testimony.*

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CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050 and RZC 21.76.060.I, Technical Committee decisions are Type II decisions that are appealable to the Hearing Examiner.

Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner shall accord substantial weight to the decision of the Technical Committee. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type II decision is not supported by a preponderance of the evidence or was clearly erroneous.

Conclusions Based on Findings:

1. A hearing examiner may overturn an administratively decided permit decision if the record submitted shows that the decision is not based on a preponderance of evidence successfully establishing that the proposition is more probably true than not⁴, or that the local agency's decision was clearly erroneous, meaning that the record submitted leaves the examiner with a firm conviction that a mistake was committed.⁵ An appellant bears the burden of proving by the above preponderance of evidence that an error was committed.⁶ Further, by code, the examiner is required to give substantial deference to the local government's decision.⁷
2. The record submitted fails to create a firm conviction that the City erred; the Appellant has not met its burden of proving that the Technical Committee's determination was unsupported by a preponderance of the evidence or was clearly erroneous. Although by their own terms, the RZC Appendix 1 criteria only apply when there are critical areas on site (suggesting that the reporting requirements do not apply in the absence of a critical area), RZC 21.64.010.G.2.a establishes that the purpose of the critical areas report is to "determine the extent, characteristics, and functions of any critical areas located on or that have a potential to be significantly adversely impacted by activities on a site where regulated activities are proposed." And, RZC 21.76.070.B.3.c is clear that it is the project proponent's burden to demonstrate that such report is not required. Due to the significant discrepancies in the information provided to the City during the review process, the (late-revealed) timing of and scanty factual information about the drain pipe installation relative to the critical areas review, and the Appellant's unwillingness to address the central question of whether a stream had been undergrounded, the City did not exceed the scope of its authority in continuing to question the conclusions of the Appellant's

⁴ RZC 21.76.060.I.4; *Mohr v. Grant*, 153 Wn.2d 812 (2005).

⁵ *Phoenix Development Inc. v. City of Woodinville*, 171 Wn.2d 820 (2011).

⁶ RZC 21.76.060.I.4.

⁷ RZC 21.76.060.I.4.

submitted reports. *Findings 7, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 26, 29, 32, 33, 34, 37, and 38.*

3. To be successful, the Appellant's argument on critical areas reporting required the undersigned to determine that there is no stream on site; however, the evidence submitted was not sufficient to make that determination. Much of the Appellant's evidence was premised on recent observations of lack of surface water flow or apparent stream channel, but such evidence is not determinative given the ability of the piped system to underground the flow and the former owners' actions in clearing and planting the area and maintaining it as lawn. At hearing, Appellant witnesses asserted that the damage done to the Holmgren drain tile during work by the Wickmans explains the flows shown in the neighbor video; however, any damage to the drain pipe done by persons on the Wickman parcel is at the extreme downstream end of the subject property, while the volume of flows shown in the neighbor video clearly originate an unidentified distance upstream of the Wickman property. Nothing submitted by the Appellant adequately explains this. Appellant arguments that such flows would surely have caused a channel if they continued from the time of the 1999 Wickman work are similarly unpersuasive, given that the Catlins' work in the ravine cleared the entire area, undergrounded any flows, and completely removed whatever conditions existed, replacing it with maintained lawn. The Appellant's evidence does not succeed in showing there was not a channel there prior to the Catlins' work. Additionally, the Appellant's critical area evidence did not consider that the ravine itself can be a channel. Contrary to Appellant assertions that no quantum of evidence would apparently satisfy the City, City witness Emily Flanagan outlined specific technical information that could be presented to demonstrate whether the flows observed in the neighbor video could be natural flows instead of conveyed stormwater runoff - specifically study to determine the area contributing to the ravine and soils underlying the ravine, neither of which is outside the scope of information typically provided to address potential critical areas. The City's request for evidence showing that installation of the drain pipe and trench were legal is not an overreach of local government authority, given the neighbor evidence that the City has an obligation to investigate and address in deciding the instant short plat. *Findings 2, 7, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 25, 26, 27, 29, 32, 33, 34, 35, 36, 37, and 38.*

4. This decision does not conclude that the drainage course is a Class IV stream, but rather that additional technical work is required for the determination to be made.

DECISION

Based on the preceding findings and conclusions, the appeal is **DENIED**.

Decided January 14, 2019.

By:



Sharon A. Rice
City of Redmond Hearing Examiner