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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the SEPA Appeal of
WPDC CLEVELAND, LLC
of approved Building Permit BLDG-2016-09802/BPLN-2016-02092 authorizing alterations to the structure at 16390 Cleveland Street, Redmond
Issued February 17, 2017.

File Nos: BLDG-2016-09802
BPLN2016-02092

APPELLANT WPDC CLEVELAND, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. SUMMARY

Over a nine-month period beginning in June 2016, the City conducted a surreptitious, piecemeal review of the Origins Cannabis project's proposed conversion of an abandoned warehouse into a marijuana retail sales business ("Project"). Along the way, the City disregarded basic permit processing, notice and substantive code requirements, culminating in the approval of limited interior renovations for a non-code-compliant building. Confronted with the deficiencies in the process and application, the City issued a "stop work order" for some improvements. Applicant then withdrew the required Site Plan Entitlement application for all remaining improvements (e.g., windows and doors) needed to make the building habitable and code-compliant. The Project cannot proceed "as-is" or at all. Appellant respectfully requests that the Hearing Examiner grant this motion, reverse the City's decision to issue the building change of use permits, and issue a stop work order.

1 **II. STATEMENT OF ISSUES**

2 This appeal addresses the City’s issuance of two permits, BLDG-2016-09802 and
3 BPLN2016-02092, for the Origins Cannabis Project (collectively, the “Decision”).
4 Appellant WPDC raised 13 enumerated issues with subparts in the Appeal. Appellant seeks
5 partial summary judgment on the following issues:

- 6 **A.** Whether the City Erred in the Piecemeal Processing of the Origins Cannabis
7 Project’s Applications, Prematurely Issued the Decision and Deprived WPDC of
8 Required Notice and Due Process?
- 9 **B.** Whether the City Erred by Failing to Require Code-Compliant Onsite Parking for the
10 Change of Use from Warehouse/Storage to Marijuana Retail Sales or Other
11 Commercial Use?
- 12 **C.** Whether the City Erred by Failing to Require Code-Compliant Onsite Parking for the
13 Increased Floor Area from Warehouse/Storage to Marijuana Retail Sales or Other
14 Commercial Use?
- 15 **D.** Whether the City Erred by Failing to Require Code-Compliant Onsite
16 Garbage/Recycling, Off-street Parking For Service Vehicles and the Building is Not
17 Code Compliant?
- 18 **E.** Whether the City Erred by Allowing a Marijuana Retail Use to be Located Within
19 1,000 Feet of the Downtown Park Playground?
- 20 **F.** Whether the City Erred by Failing to Issue a “Stop Work Order” for All Approved
21 Work Subject to this Appeal and Upon Notice that the Decision was Issued in Error,
22 Obtained by Misrepresentation of Material Fact and Exercised Contrary to Code?

23 **III. EVIDENCE RELIED UPON**

24 Appellant relies on the March 2, 2017 Appeal of Origins Cannabis Type I Permit --
25 BLDG-2016-09802 and BPLN2016-02092 and attachments thereto (“Appeal”); the
26 Declaration of Aaron M. Laing and exhibits thereto; the Declaration of Kevin R. Wallace
and exhibits thereto; the Declaration of Michael J. Read, P.E. and exhibits thereto; the
Declaration of Matthew M. Woolsey and exhibits thereto; the Declaration of Jason Bailey;
the Declaration of Lee Keller and exhibit thereto; and the Declaration of Rick Driftmier,
AIA and exhibit thereto.

1 **IV. MATERIAL FACTS**

2 In addition to the facts set forth in the Appeal, Appellant respectfully requests that
3 the Hearing Examiner consider the following material facts on four key topics: the Project
4 Site’s Existing Conditions & History, Application and Process Issues, the Redmond
5 Downtown Park, and Deficiencies & Impacts.

6 **A. Project Site’s Existing Conditions & History**

7 The Origins Cannabis Project is proposed to be located in an existing, abandoned
8 warehouse building at 16390 Cleveland Street, Redmond, WA 98052, King County tax
9 parcel number 719880-0085 (the “Project Site”). *See* Appeal. Appellant owns the adjacent
10 abutting parcel to the Project Site, which parcel is located at 16330 Cleveland Street (the
11 “WPDC Property”). *See id.*, Wallace Decl., ¶¶ 2-4, **Ex. A**. The WPDC Property and the
12 Project Site are in the City’s Downtown – Old Town (“OT”) zone. *See* Appeal. The WPDC
13 Property is developed with a retail building and associated surface parking, and it is
14 occupied by the locally-owned Prime Steakhouse restaurant. *See* Appeal; Wallace Decl., ¶ 4;
15 Bailey Decl., ¶¶ 2-3. The WPDC Property surrounds and abuts the Project Site on the west
16 and north sides; the parking lot and garbage / recycling areas of the WPDC Property abut the
17 exterior of the building on the Project Site. *See id.*

18 The Project Site has no onsite parking and no exterior garbage / recycling facilities;
19 the Project Site has no easement rights over any portion of the WPDC Property, other than a
20 +/- five-foot (5’) wide maintenance easement around the exterior. *See* Appeal; Wallace
21 Decl., ¶¶ 2-5, **Ex. A**. The easement cannot be used for construction, parking, garbage /
22 recycling, deliveries or any other purpose other than to maintain the exterior of the existing
23 building. *See id.*

24 The abandoned warehouse on the Project Site has not been occupied or used for any
25 City-authorized or permitted use since at least January 1, 2000. *See* Laing Decl., ¶¶ 2-3, **Ex.**
26 **A**. Local architect Rick Driftmier, whose offices have been located near the Project Site

1 since 2002, has not seen any businesses operating in the old warehouse for at least the past
2 15 years. *See* Driftmier Decl., ¶¶ 1-7. Public records for the Project Site for activities in the
3 warehouse over the past 17 years include code enforcement records and police records for
4 unauthorized activities in the building. *See* Laing Decl., ¶¶ 2-3, **Ex. A**.

5 Since the outset of this process last June, the City and the Project proponent have
6 repeatedly and unequivocally recognized that the prior / existing use of the building was for
7 warehouse / storage, not for retail, and that a land use permit was required. *See generally*
8 Laing Decl., ¶¶ 4-20, **Exs. B-R**. On June 6, 2016, applicant owner / agent Sean Miller sent
9 an email to the City, with the following questions “regarding a use change and remodel
10 we’re looking to begin”:

- 11 1. **The property does not currently have water or sewer inside the**
12 **building.** Are water and sewer available and what will be the
13 approximate fees to bring them to the site?
- 14 2. **For a use change from warehouse to retail are Water and Sewer**
15 **required?**

16 *See* Laing Decl., **Ex. B** (emphasis added). In response to follow-up questions from City
17 Engineer Min Luo and City Planner Gary Lee, on June 13 and 15, 2016, Mr. Miller further
18 explained:

19 . . . I estimate approximately 60-75 customers per day would be entering the
20 facility. **It will be used for retail purposes. The building currently is used**
21 **for warehouse space and office space. . . . So it will be converting [from]**
22 **warehouse to retail.** . . .

23 We are simply looking to remodel the interior and exterior. We are looking to
24 improve the property by bringing in water/sewer and installing a bathroom.
25 We envision keeping the old town theme and putting a reclaimed and or
26 wood/brick exterior façade. We are looking to set the building up for retail
sales

The major dilemma we are trying to deal with is the parking.

See id. (emphasis added).

1 On July 5, 2016, Mr. Lee responded that, because the “property has been grand-
2 fathered regarding parking in the past . . . **no parking would be required for this building**
3 **as general retail/office use**” and referenced required frontage improvements, due to the
4 value of the proposed Project. *See id.*, **Ex. C** (emphasis added). Two weeks later, in
5 response to inquiry from Applicant’s attorney Vicki Orrico, Mr. Lee further explained both
6 that “parking had been grandfathered for the existing square footage of the building” and
7 that “**The anticipated exterior modifications to the building will require an**
8 **Administrative Modification application review approval (prior to issuance of a**
9 **building permit)**, which also requires **Design Review by the Design Review Board.**” *See*
10 *id.*, **Ex. C** (emphasis added).

11 **B. Applicant and Process Issues**

12 On July 29, 2016, City Development Services Center Supervisor Carol Lewis
13 assigned City Building Plans Examiner Janise Goucher to the “land use permit” for the
14 Project under permit file number “LAND-2016-01420 Andorra.” *See* Laing Decl., **Ex. D**. On
15 August 9, 2016, City Public Works Project Manager Lisa Singer emailed Mr. Lee regarding
16 the pre-application meeting for permit number LAND-2016-01420, asking whether Mr. Lee
17 had spoken to “utilities about [the Project’s] water and sewer connection” or asked Applicant
18 whether “they are ok with chopping off the building and doing the frontage improvements?”
19 *See* Laing Decl., **Ex. E**.

20 On September 1, 2016, Ms. Goucher and City Plans Examiner Anita Randall held a
21 “pre-application meeting for Andorra (16390 Cleveland)” and learned *for the first time* that
22 Applicant proposed to have “recreational cannabis” as the use. *See* Laing Decl., **Ex. F**. Ms.
23 Goucher then emailed City Planner Jason Rogers to confirm that the location was approved
24 for recreational marijuana retail sales, who responded that “The location is acceptable for
25 retail marijuana” and that he had “also conveyed to anyone who asked that the site/building
26 is extremely challenging, but I’m not sure that part of my message gets received ☺” *See id.*

1 That same day, City Building Code Enforcement Officer Deborah Farris emailed Ms.
2 Goucher and Ms. Randall to direct them to the City’s retail marijuana regulations structural
3 requirements in Redmond Zoning Code (RZC) 21.41.050, which require that “. . . marijuana
4 retailers must operate in a permanent structure designed to comply with the City Building
5 Code.” *See* Laing Decl., **Ex. G**.

6 Between November 7 and 17, 2016, Mr. Lee, Mr. Miller and various City officials
7 exchanged emails about the value of the proposed Project’s improvements and the value of
8 the existing warehouse building to determine whether and to what extent frontage and other
9 improvements would be required. *See* Laing Decl., **Ex. H**. Mr. Miller provided the City an
10 October 3, 2016 Appraisal Report prepared by CJM for Andorra Ventures LLC for the
11 Cleveland Street Building located at 16390 Cleveland Street, Redmond, WA (“Appraisal
12 Report”), and Mr. Miller represented to the City that he estimated the value of the
13 improvements at \$131,977. *See* Laing Decl., **Exs. H & Y**. The Appraisal Report set the
14 building value at \$250,000 using a cost approach; the City estimated its value (based on the
15 cost to rebuild) at \$158,833.11 or \$198,140.40. *See id.*

16 The Appraisal Report’s author wrongly assumed that the existing warehouse had
17 water / sewer, stating “Public services are present and service is adequate.” *See* Laing Decl.,
18 **Ex. Y** at 5, 26. The Appraisal Report also repeatedly states, “**According to Mr. Miller, the**
19 **estimated renovation budget is \$235,000 with a construction timeline of 12 to 14**
20 **weeks.**” *See id.*, **Ex. Y** at 5, Existing Condition, 29, & 62. The Appraisal Report also states:
21 “**The intended use of this appraisal is to assist in establishing market value for**
22 **acquisition purposes. The report is intended for no other use.” *See id.*, **Ex. Y** at 11
23 (emphasis added).**

24 Professional construction cost estimator Matthew Woolsey of The Woolsey
25 Company has prepared a Unit Cost Estimate for the improvements identified in the Origins
26 Cannabis approved building permit submittal and the related (now withdrawn, as detailed

1 below) Design Review Board submittal. *See* Woolsey Decl., ¶¶ 2-10, Exs. A-I. According
2 to Mr. Woolsey, the actual, conservative value of the Origins Cannabis Project’s approved
3 and planned improvements is \$545,603—more than twice the estimated value of the existing
4 warehouse building. *See id.*, ¶ 10, Ex. I.

5 On December 9, 2016, Applicant submitted applications for the Origins Cannabis
6 Project’s building permit (BLDG-2016-09802) and change of occupancy permit (BPLN-
7 2016-02092 to change the use from “warehouse” to “retail.” *See* Laing Decl., Ex. P. There
8 is no reference to the “land use permit” number “LAND-2016-01420 Andorra” (the permit
9 number assigned in July and used for the pre-application conference) in any of Applicant’s
10 building permit or change of use permit submittal materials; there is no reference to the
11 proposed use being “marijuana retail sales” use in any of the building permit or occupancy
12 permit submittals—the permits only reference “retail suites, storage and office.” *Compare*
13 Laing Decl., Ex. D. with Ex. P.

14 On January 4, 2017, City Planner Cameron Zapata emailed Mr. Miller the following:

15 Hi Sean,

16 Per our phone conversation, I am sending this email to recap what we had
17 discussed.

- 18 • **The previous use was storage/warehouse.**
- 19 • **The retail marijuana shop will only be going in retail space A,**
20 **however since the entire space is changing occupancies, impact**
21 **fees will be generated for the whole structure.** Please see the
22 attached impact fee estimate.
- 23 • **The exterior improvements can be a separate permit, however the**
24 **drawings will be required to be updated to *only* reflect the interior**
25 **improvements.** An issue matrix will be sent to you by Jozanne Moe
26 (plans examiner) once all reviewers have completed their review and
this comment will be included in the matrix.
- **We had also discussed that the exterior work will require [you] to**
go through the Design Review Board, I have attached the

1 **application and schedule to this email for your reference. The**
2 **approval of the DRB will hold up the approval of the exterior**
3 **alteration permit. . . .**

3 *See* Laing Decl., **Ex. I.** (italics in original; bold / underlining added). In response, Mr. Miller
4 asked if his “architect could redraft the drawings only showing the interior modification” and
5 explained that the “application was intended to be for the interior only with only replacing
6 doors and windows on the exterior.” *See id.* Ms. Zapata responded, stating “Hi Sean, Any
7 work on the exterior is considered a commercial exterior alteration permit. So if it (is)
8 interior only then windows would not be included.” *See id.*

9 On January 12, 2017, Mr. Miller’s architect Tom Morris followed up with Ms.
10 Zapata by email, proposing the following solution to the interior versus exterior permit issue
11 raised on the 4th:

12 Hi Cameron,

13 Regarding your comments on the Origins Tenant Improvement
14 project, **this existing building is currently unheated with a simple sliding**
15 **barn door assembly-which would not be appropriate for a retail**
16 **establishment. Is it acceptable to simply cloud the exterior storefront**
17 **portion of work and identify is as “work to be done under a separate**
18 **permit”?** The reasons are the energy calculations need to be completed based
19 on this design. . . .

20 *See* Laing Decl., **Ex. J.** (emphasis added).

21 Per this exchange, the Site Copy of the approved architectural plans for the Project
22 dated January 25, 2017 state in red letters in cloud boxes “Interior Only Permit,” “All
23 exterior work is under a separate permit,” “PL: Exterior modifications are not to be included
24 within this permit,” all windows, doors and other exterior features are placed in “cloud”
25 outlines with the statement “NOTE: ALL EXTERIOR WORK TO BE SUBMITTED
26 UNDER A SEPARATE PERMIT APPLICATION.” *See* Woolsey Decl., **Exs. A.** The
27 designs and materials for the exterior work (*i.e.*, windows, doors, cladding, *etc.*) were

1 submitted for review by Morris Architects on March 21, 2017 under Site Plan Entitlement
2 permit number LAND-2017-00290. *See* Laing Decl., Ex. R; *see also* Woolsey Decl., Ex. H.

3 Between January 25, 2017 and February 10, 2017, City review staff also determined
4 that the Project was erroneously exempted from transportation impact fees, after Mr. Lee
5 raised the following question:

6 **For this cinderblock building that was used as warehouse (not retail**
7 **sales) should we charge them impact fees for retail sales for all of their**
8 **square feet? And give them credit for “warehousing/storage” for all of**
9 **the existing square feet?**

9 *See* Laing Decl., Ex. K (emphasis added). City Engineer / Planner Andy Chow also asked
10 whether Applicant submitted any sort of transportation impact study (*e.g.*, a “trip general
11 report”) to show that estimated PM peak hour trips would not exceed 30 but received no
12 response. *See id.*

13 Professional transportation engineer Michael J. Read of Transportation Engineering
14 NorthWest (TENW) has prepared a Comparative Trip Generation and Parking Generation
15 Analysis for Origins Cannabis Project. *See* Read Decl., ¶¶ 2-7, Exs. A-D. Noting that
16 “marijuana retail sales” is not a use that has been studied or included in current professional
17 publications, Mr. Read conducted site surveys of existing marijuana retail sales businesses
18 nearby and in the Puget Sound area. *See id.* Mr. Read concluded the following:

19 Based on the evaluation of standard ITE trip generation and parking
20 generation rates as well as observed marijuana retail stores at other
21 representative locations within the Puget Sound region, **the proposed**
22 **Redmond Origins project is estimated to generate approximately 120 new**
23 **weekday PM peak hour trips (61 entering, 59 exiting), which would**
24 **trigger both a review of transportation concurrency and traffic**
25 **operational impacts under City code. As noted in the evaluation,**
26 **proposed marijuana retail use has substantially higher vehicle trip**
generation (by more than a factor of 10) than typical retail uses and a
significantly higher trip generation rate (by more than a factor of 100) in
contrast to historical warehouse uses.

1 Peak demand of parking generation is estimated to range between 21 and
2 27 stalls during the p.m. peak period of adjacent street traffic. Given that
3 no on-site parking is available to the subject property, parking impacts
4 would occur to both public on-street parking as well as available private
5 parking lots immediately adjacent to the site and the vicinity, resulting in
6 significant impacts.

7 *See id.*, Ex. D (emphasis added).

8 On February 22, 2017, Appellant WPDC first learned of the Origins Cannabis
9 Project when Kevin Wallace received an email from Mr. Driftmier, who alerted Mr. Wallace
10 that construction activities were occurring in the building on the Project Site. *See* Wallace
11 Decl., ¶ 7; Laing Decl., Exs. L & M; Driftmier Decl., ¶ 4. As of that date, WPDC had not
12 received any notice of any permit application or permit approval for any activity on the
13 Project Site from the City of Redmond. *See* Wallace Decl., ¶ 7.

14 On February 24, 2017, Mr. Wallace contacted Mr. Lee to inform him that WPDC
15 would file an appeal and asked that, as a courtesy, Mr. Lee notify Applicant to avoid
16 Applicant incurring any unnecessary expense. *See id.*, ¶¶ 7-8, Ex. B; *see also* Laing Decl.,
17 Exs. L & M. Mr. Lee then notified Mr. Miller of the forthcoming appeal and separately
18 notified City Assistant Development Director Jason Lynch and Ms. Lewis that the City had
19 erroneously issued the Origins Cannabis building permit for the interior improvements
20 without requiring at least one parking stall for the proposed mezzanine. *See* Laing Decl.,
21 Exs. L & M. Following an internal exchange with Mr. Lynch and Ms. Lewis, Mr. Lee then
22 informed Mr. Miller and Applicant's attorney Ms. Orrico that the City had "issued [the
23 tenant improvement permit] in error" and that the representation in July 2016 regarding
24 "grandfathered" parking did not apply to the mezzanine as "no mezzanine was proposed at
25 that time." *See id.*, Ex. L.

26 In notifying Mr. Miller of the forthcoming appeal from WPDC, Mr. Lee explained:
"Because you are required to have an approval of a pending Administrative Modification
application to modify the exterior, I believe that [Mr. Wallace] will also appeal that

1 approval. His appeal(s) will then require a hearing by the Hearing Examiner.” See Laing
2 Decl., Ex. L.

3 On March 3, 2017, the City issued a “stop work order” for the mezzanine
4 improvements but allowed the remainder of the interior improvement work to continue. See
5 Laing Decl., Exs. N & P.

6 On March 21, 2017, Applicant submitted an application for the Andorra Site Plan
7 Entitlement, permit number LAND-2017-00290, to allow for the proposed exterior
8 improvements to be reviewed, per Mr. Lee’s direction to Mr. Miller on July 5, 2016. See
9 Laing Decl., Exs. C & R; see also *id.*, Exs. I-J.

10 On April 6, 2017, the City of Redmond Design Review Board held a public hearing
11 on the Site Plan Entitlement application for the Project. See Laing Decl., Exs. R & Z;
12 Wallace Decl., ¶¶ 10-11, Ex. C; Woolsey Decl., Ex. H. During the public hearing, Mr. Lee
13 responded to questions from the Design Review Board and made the following comments
14 about the Origins Cannabis Project’s application submittal materials, the City’s processing
15 of the same and the next steps in the process (identified by page and line number from the
16 official transcript of the recording):

17 **Page 5**

18 5 **MR. LEE:** I’m Gary Lee, City of
19 6 Redmond, and this is the Andorra project. This is the
20 7 exterior remodel of the existing (indiscernible) on
21 8 Cleveland Street. And we have a sign-in sheet for
22 9 people who would like to speak to this. And I would
23 10 like to address a couple things first.

24 **Page 6, line 17 – Page 7, line 4 (MR. LEE)**

25 17 So specifically addressing the parking
26 18 and garbage comments. Parking, the building has
19 nonconforming parking status. **They do have to provide**
20 **additional parking for the addition of the mezzanine.**
21 They can provide or with that right obtain parking off

22 site by an easement or agreement from a neighbor who
23 would grant that to them for (unintelligible) or
24 whatever the agreement is.

25 **There may be a requirement for**
1 **additional parking for the marijuana retail sales use.**
2 They would have to provide that required parking in
3 the same manner, by agreement off site agreement with
4 a neighbor.

Page 8, line 3 – Page 9, line 2

3 **CHAIRMAN MEADE: Why is it not all up**
4 **together?** Is there a potential for a different
5 tenant?

6 MR. LEE: Yes, it is. The remaining
7 portion. And Applicant can speak to that too. It
8 can actually be marijuana may not go in there. It
9 could be tennis shoes or bubble gum, but they also,
10 they have a intent to include marijuana as in one of
11 the lease spaces.

12 CHAIRMAN MEADE: I see.

13 **MALE VOICE: I have a question. I'm**
14 **just curious as to why that we didn't do, like, a**
15 **preapplication review of this? Why the move straight**
16 **to approval for tonight?**

17 **MR. LEE: That's a good question. We**
18 **did have a preapplication meeting, but not with the**
19 **Design Review Board earlier in the year, and at that**
20 **point the revisions weren't as dramatic or**
21 **(unintelligible).**

22 **They jumped the gun. They submitted a**
23 **building permit application and the -- we issued a**
24 **part of the building permit and then there was an**
25 **appeal on that building for the application. So now**
1 **we've kind of gotten ourself all twisted up in time**
2 **and processing. So we jumped into just approval.**

Page 37, line 11 – Page 39, line 7

11 CHAIRMAN MEADE: Okay. I have a
12 couple of follow-up questions here. You said the --
13 I'm not sure how the evaluation was shown for the
14 building originally. The King County (unintelligible)
15 shows that it's a \$23,500 building, with a \$329,000

16 lot. What is -- what has the appraisal been delivered
17 to you, and...

18 MR. LEE: Yeah, Applicant provided
19 us some appraisal numbers. Had an appraisal. I have
20 some numbers that they have provided to us at a
21 \$250,000 value. Before requiring the appraisal, we
22 had our building department do a replacement cost
23 value on the building and it came up pretty close, so
24 that's, that's (unintelligible).

25 CHAIRMAN MEADE: I know some
1 municipalities are required to provide an estimate
2 appraisal from a professional in this situation to
3 show that we're in compliance. It would appear that
4 -- I don't know what the budget of their project is,
5 but it does appear that it's going to exceed. Is it a
6 hundred percent of the value of the building before
7 you have to?

8 MR. LEE: A hundred percent of that,
9 yeah. **So that's -- they still haven't provided us**
10 **with the right cost estimate, so that, that's going to**
11 **have to be provided to us.**

12 CHAIRMAN MEADE: Yeah.

13 MR. LEE: **But the original early**
14 **estimates, of which Mr. Laing referred to, that was**
15 **very early on and was, I'm sure, very, you know, bare**
16 **bones. So it's gotten a lot bigger now.**

17 **So that is a big question now whether**
18 **or not they will be equaling or exceeding that value.**

19 CHAIRMAN MEADE: **Yeah. I would**
20 **suggest the city staff should have a continuing**
21 **understanding of what the budget is.**

22 I attempted to do a project down the
23 street on a similar building -- I don't know -- five
24 years ago and it didn't pass, though, because we would
25 have had to tear a corner of the building down before
1 the sidewalks were done. There was no power, there
2 was no water. The building was uninsulated.

3 It was a very interesting kind of
4 building, just right behind the old Redmond hotel, and
5 I know that we were going to be right at the valuation
6 and beyond really quickly with the modest
7 (unintelligible) of that space, so...

22 CHAIRMAN MEADE: Gary, while they're
23 looking, can you talk to us about the hearing examiner
24 meeting? What --

25 MR. LEE: Sure.

1 MALE VOICE: -- would be happening and
2 so forth, where they are in that process.

3 MR. LEE: So where we are right now is
4 we got, like, extended the hearing to a date which
5 would hopefully include the conclusion of this
6 (unintelligible) timeline, which would be the issuance
7 of the decision on this, so that that decision is
8 appealable and at that time that we would have the
9 hearing.

10 **So as we mentioned earlier, we had an**
11 **appeal on a building permit and the building permit**
12 **appealed basically all the things that we're talking**
13 **about here, parking, marijuana use, and the appeal is**
14 **somewhat not ripe for appeal because the land use**
15 **permit should be building first and then consolidating**
16 **all the issue into one appeal hearing.**

17 **So the appeal hearing will probably be**
18 **extended. We do have a request for information**
19 **regarding traffic. So that the take up committee will**
20 **be asking for some more information regarding the**
21 **traffic impact analysis;** therefore, probably will have
22 -- definitely have to reschedule the hearing to get
23 that material in and reviewed before a decision is
24 issued.

25 **So people usually don't appeal**
1 **building permits. Just have that's what they appeal**
2 **here. They usually appeal land use permits, and**
3 **usually there's a land use permit that has the public**
4 **notice that goes out. So there was a mistake here in**
5 **that the building permit was issued for the tenant**
6 **improvement prior to this.**

7 **There should have been this site plan**
8 **entitlement application or administrative modification**
9 **application submitted before the building permit was**
10 **issued. So trying to get that all taken care of.**

11 CHAIRMAN MEADE: So, I'm sorry. Just
12 to follow up on that a little bit. So was the city --
13 **what is the city going to do or what is the city**

14 currently doing with the building permit application?

15 **MR. LEE:** The building permit
16 application that was appealed for was a tenant
17 improvement for the interior only including this
18 mezzanine. There was a plan shown for the exterior
19 modifications, but we told them we cannot issue that
20 permit until this application is submitted.

21 So they gave -- so the building permit
22 that was issued was only for the inside, okay, and
23 since that building permit was issued and since they
24 have appealed that, we have issued a notice of
25 correction on that interior building permit that said
1 you continue -- you continued to work -- you can
2 continue to work on the inside, but not on the
3 addition of the mezzanine, because the mezzanine
4 requires additional parking stall.

5 You need to provide us with the proof
6 that you have additional parking stall, by an
7 agreement, by easement, and you have to have this
8 application approved first.

9 **CHAIRMAN MEADE:** One more question.
10 **On the tenant improvement plans, did that call for**
11 **plumbing and power, heating?**

12 **MR. LEE:** So with this -- yes, yes.
13 **And there will be some construction plan that will**
14 **require mutual hookups. As far as this, there will be**
15 **some more construction review to provide all necessary**
16 **water service, because that's -- the building permit**
17 **application is for a change in occupancy from a**
18 **warehouse to a commercial space that requires**
19 **plumbing.**

19 **Page 45, line 17 – Page 47, line 2**

20
21 **MR. KRUEGER:** Well, I'm not ready to
22 **vote on this. I want this to go through the normal**
23 **procedures.** I want to know how this fits in with the
24 current historic core versus what planning commission
25 might be reviewing it and adopting.

26 I mean, it needs to be -- you know,
per what was in place when they made their application
that they're making and, you know, it would need to
have a staff letter and recommendation, an explanation
on exactly how it does meet the different aspects of

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the design guidelines.
I mean, they can go ahead with the improvements on the inside, I mean, if they want to take the chance of doing that, I guess, if that's been, been issued, but as far as the exterior and the outside, just go and have a complete application that shows us, you know, all the different aspects that we're going to want to see.

CHAIRMAN MEADE: Yeah, I agree. I mean, coming from a place, obviously, (unintelligible) it's kind of gotten out of hand where it should be.

I consider that the valuation is really that the building has to be replaced or comport to code, because I'm not certain that that valuation of the project is, is -- the project is.

(Unintelligible) knowing what's remained of this building, seeing these plans, I don't see the building remaining. Some (unintelligible), some walls. Utilities, new systems, new windows, new structure. It's a whole new everything. It's a new building, so...

On top of that, we need a complete submittal to see all the elevations of the building, including roof, so we can see what's going on (unintelligible) about, what other treatments (unintelligible).

See Laing Decl., Ex. Z (emphasis added).

On April 13, 2017, City of Redmond Mayor John Marchione responded to a citizen comment from a local business owner regarding the Origins Cannabis Project, saying

Cliff,

Thank you for your email. So far, the City has only authorized remodeling of the interior. We have not authorized any use beyond storage. If the owner wants to use the building for retail uses he would have to make upgrades, including providing for parking.

As part of the review process for this property, City staff will be analyzing the parking. I appreciate your comments and will share them with staff.

See Laing Decl., Ex. Q (emphasis added).

1 On April 20, 2017, Applicant withdrew the Site Plan Entitlement application and
2 informed all parties to the appeal that it “would not be refileing it”; the City notified parties of
3 record, including Appellant WPDC, by letter dated April 25, 2017. *See* Laing Decl., **Exs. O**
4 **& AA.**

5 **C. Redmond Downtown Park**

6 On April 21, 2015, the Redmond City Council unanimously approved the adoption
7 of the Redmond Downtown Park Master Plan for a new park located at 16101 Redmond
8 Way, less than three blocks (about 800 feet) from the Origins Cannabis Project Site. *See*
9 Laing Decl., **Exs. S & X**; Wallace Decl., ¶ 16; Appeal. Among the elements of the approved
10 Master Plan, the Downtown Park will feature a splash playground for children described
11 variously as a “Water play area,” “splash pad” and “Fountains of water jets—Fun for the
12 kids!” *See* Laing Decl., **Exs. S, U, V & X.**

13 On August 5, 2015, the State of Washington Department of Commerce notified the
14 City that it had awarded the City a \$3,000,000 grant for the construction of the Downtown
15 Park. *See id.*, **Ex. T.** On August 1, 2016, the City issued the approved Site Plan Entitlement
16 permit for the Downtown Park; the Site Plan Entitlement application had been submitted on
17 June 13, 2016, and Mr. Lee served as the Planner. *See* Laing Decl., **Exs. U, V & X.** The
18 Site Plan Entitlement states on the fourth page that “This decision is not vested to the
19 development regulations in effect until a complete building permit application is submitted.”
20 *See id.*, **Ex. U.** On September 19, 2016 and October 24, 2016, the City’s Parks Department
21 submitted applications for the two building permits needed to construct two structures (a
22 restroom and a pavilion) within the Downtown Park. *See id.*, **Ex. W.** Construction of the
23 Downtown Park commenced in the fall of 2016 and is ongoing, with a projected opening
24 date in 2018. *See id.*

1 **D. Deficiencies & Impacts**

2 Local architect Rick Driftmier has reviewed the approved plans for the Origins
3 Cannabis interior renovation permit and determined the plans are deficient for several
4 reasons: the project’s change of use requires the whole building to be brought up to current
5 code for Americans with Disabilities Act (“ADA”) standards, energy code, International
6 Building Code and City zoning code requirements; the permit process / sequencing did not
7 follow City code; if the interior improvements are allowed to proceed without the required
8 exterior improvements, then the building will not meet energy code, plumbing, building
9 exiting or ADA requirements. *See* Driftmier Decl., ¶¶ 1, 2, & 5-7, **Ex. A**.

10 Since late-February 2017, representatives and contractors associated with Applicant
11 have repeatedly trespassed on the WPDC Property by parking in the Prime Steakhouse
12 parking lot while working in the building and by having materials and a porta-potty dropped
13 off in the parking lot. *See* Bailey Decl., ¶¶ 2-12; Keller Decl., ¶¶ 2-8, **Ex. A**; Wallace Decl.,
14 ¶¶ 2-14.

15 In early March, 2016, Mr. Miller approached Prime Steakhouse owner Jason Bailey
16 during lunch and asked to lease four spaces in the parking lot, stating that Mr. Miller’s
17 customers “would park there anyway.” *See* Bailey Decl., ¶ 6. On April 7, 2017, customers
18 for the Prime Steakhouse were unable to park in the lot for a lunch reservations and called to
19 cancel; Mr. Bailey went outside to check the lot and saw three persons exit the warehouse
20 building on the Project Site, enter three separate vehicles and leave. *See* Bailey Decl., ¶¶ 10-
21 11. The cancelled reservation resulted in an estimated loss of \$400 to \$600. *See id.*
22 Additional trespasses like this and other issues, such as the Project Site’s lack of parking, a
23 loading / delivery area and garbage / recycling area are likely to occur and will further
24 impact the Prime Steakhouse and Appellant WPDC. *See* Bailey Decl., ¶¶ 2-12; Keller Decl.,
25 ¶¶ 2-8, **Ex. A**; Wallace Decl., ¶¶ 2-14; Read Decl., **Ex. D**.

1 Although Applicant asserted in the materials submitted to the Design Review Board
2 that it had obtained an offsite parking spot, to-date this does not appear to be true. *See*
3 Wallace Decl., ¶ 15, Ex. D.

4 V. STANDARD OF REVIEW

5 Summary judgment is appropriate when “there is no genuine issue as to any material
6 fact and ... the moving party is entitled to a judgment as a matter of law.” *See* CR 56(c);
7 *Donatelli v. D.R. Strong Consulting Eng’rs, Inc.*, 179 Wn.2d 84, 90, 312 P.3d 620 (2013).
8 Under Washington law, local ordinances are interpreted the same as statutes, and the
9 interpretation of “a municipal ordinance . . . is a question of law[.]” *City of Gig Harbor v.*
10 *North Pacific Design, Inc.*, 149 Wn. App. 159, 167, 201 P.3d 1096 (2009), *review denied*,
11 166 Wn.2d 1037, 217 P.3d 783 (2009)(internal citations omitted).

12 Reviewing bodies “construe zoning ordinances as a whole and reject any
13 unreasonable construction. [The] primary purpose in interpreting a zoning ordinance is to
14 ascertain the legislative intent. If the language is unambiguous, [the reviewing body will]
15 rely solely on the statutory language. When a statute or ordinance is unambiguous,
16 construction is unnecessary because the plain meaning controls.” *Id.*

17 In the present matter, two additional fundamental rules of statutory construction are
18 pertinent: (1) the legislative body (*i.e.*, the City Council) “is presumed to know the statutory
19 scheme at the time it decides to amend it,” and (2) the City Council’s use of different terms
20 in the code is presumed to have different meaning for such terms. *Id.* at 175, 183 (holding
21 Gig Harbor’s Hearing Examiner erred as a matter of law by ignoring code’s “plain language
22 meaning” and using similar but distinct terms “interchangeably”).

23 Finally, in applying and enforcing, local administrative staff is strictly bound by the
24 authority delegated to them through the plain, express language of the municipal code. *See,*
25 *e.g., Graham Neighborhood Ass’n v. F.G. Assocs.*, 162 Wn. App. 98, 117-18, 252 P.3d 898,
26 *review denied*, 172 Wn.2d 1024, 268 P.3d 225 (2011). By statute, local governments have

1 “the authority to determine when land use applications are complete and how such
2 applications must move forward,” and the administrative processing of land use applications
3 must be consistent with a local government’s adopted codes. *See id.* (holding staff erred and
4 exceeded authority by “reviving” expired application “in the absence of any discernable
5 process and in the complete absence of public notice and hearing”); *see also* RCW
6 36.70B.050, .060, .110 & .120. Municipal staff cannot process permits through “unwritten”
7 or “unpublished informal policy,” as such a process is “an invalid delegation of power.” *See*
8 *Biermann v. City of Spokane*, 90 Wn. App. 816, 822, 960 P.2d 434 (1998), *review denied*,
9 137 Wn.2d 1004 (1999)(holding hearing examiner’s reliance on staff’s “unwritten policy”
10 was improper).

11 VI. AUTHORITY AND ARGUMENT

12 As carefully detailed above, in the City’s own words the City erred repeatedly in the
13 processing and approval of the Origins Cannabis Project. The City allowed Applicant to
14 “jump the gun” and seek a building permit without first obtaining the necessary Site Plan
15 Entitlement permit and without going through the City’s required public process.
16 Consequently, Appellant was denied its due process rights to comment on the applications
17 prior to the City issuing—and then retracting—the permits needed for the Project.

18 Applicant has withdrawn and stated it will not resubmit the required Site Plan
19 Entitlement permit application, so it cannot complete necessary interior and any exterior
20 improvements—including basic improvements like doors and windows. The Project Site is
21 within a state-mandated buffer for playgrounds. Nevertheless, Applicant continues
22 construction on limited interior improvements, despite clear code requirements that all work
23 cease during the pendency of this appeal. Appellant respectfully requests that the Hearing
24 Examiner grant this motion, reverse the City’s Decision, and issue a stop work order until
25 the appeal process is complete and all required permits have issued.

1 A. **Whether the City Erred in the Piecemeal Processing of the Origins**
2 **Cannabis Project’s Applications, Prematurely Issued the Decision**
3 **and Deprived WPDC of Required Notice and Due Process?**

4 By code, Applicant was required to obtain a Site Plan Entitlement permit prior to
5 obtaining a building permit for the Origins Cannabis Project. By failing to proceed per code,
6 Applicant’s building permit and change of use permit were issued in error, and Appellant’s
7 due process rights were violated. The permits should be reversed, withdrawn and only
8 allowed to be pursued and issued in compliance with the procedural and substantive
9 requirements of the City’s code.

10 Per Redmond Zoning Code (RZC) 21.76.050.C., building permits are Type I
11 decisions, Administrative Modification permits are Type II decisions, and Site Plan
12 Entitlement permits are Type II decisions; there is no “change of use” permit under RZC
13 21.76050.¹ See RZC 21.76.050.C. – Table 21.76.050B.

14 Per RZC 21.76.020.A., following a pre-application conference of some nature, a land
15 use application of some type is typically required as a prerequisite to applying for other types
16 of permits. See Figure 21.76.020A. With specific regard to building permits, RZC
17 21.76.020.H., Building Permit Review, provides in relevant part:

- 18 ...
19 **3. Scope. This section shall govern all building and construction codes**
20 **procedures and shall control in the event there are conflicts with other**
21 **administrative, procedural and enforcement sections of the Redmond**
22 **Zoning Code.**
23 4. Procedures.
24 a. **All land use permits required by the RZC must be obtained before**
25 **any building or construction permit may be issued.**

26 ¹ In fact, there is no reference to a “change of use” permit in any of the City’s codes. It appears that the City
uses the permit number reference “BPLN” for “Change of Occupancy” permits. The requirements for such
permits are identified on the City’s online permit center webpage at
<http://www.redmond.gov/cms/One.aspx?portalId=169&pageId=136461>, which contains a link to the
application form. According to the City’s website, applicant’s should “Determine if you need a land use
permit. In addition to the change of occupancy, if your proposal is changing the use from a land use
perspective, a land use permit may be required.”

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...
c. All building and construction permits shall comply with the approved land use permit(s), if a land use permit is required. . . .

(Emphasis added.) Per RZC 21.76.020.E., Design Review per the process set forth in RZC 21.76.060.G. is required for “all applications requiring a building permit for exterior modifications . . . and that have a total valuation of \$50,000 or more.”

By code, “a Site Plan Entitlement is required for any . . . private proposal for new construction or exterior modification to a building or site, including . . . commercial, . . . expansion, or exterior remodeling of structures, parking, or landscaping, where the proposed use is shown as permitted in the applicable permitted use chart.” See RZC 21.76.070.Y. (Emphasis added).

With regard to process, RZC 21.76.050.E., Consolidated Permit and Appeal Process, provides in relevant part:

1. Where this Code requires more than one land use permit for a given development, all permit applications (**except Type I applications**) may be submitted for review collectively according to the consolidated review process established by this section.

...
4. Where a development requires more than one land use permit but Applicant elects not to submit all applications for consolidated review, applications may be submitted and processed sequentially, provided that the permit subject to the highest numbered process type must be submitted and obtained first, followed by the other permits in sequence from the highest numbered type to the lowest.

...
6. All appeals of project permit decisions for a single project shall be consolidated and heard together in a single appeal, except for appeals of environmental Determinations of Significance. . . .

(Emphasis added.) By code, Type I permits alone do not typically require public notice; Type II permits, including Administrative Modifications and Site Plan Entitlements, require public notice to all property owners within 500 feet of the project site, posting of the site and

1 a minimum comment period of 21 days. *See* RZC 21.76.050.F.-G.; RZC 21.76.060.D.-E.;
2 RZC 21.76.070.Y.; & RZC 21.76.080.B.

3 In the land use context, Washington courts have long-recognized that “[d]ue process
4 requires only that notice be reasonably calculated under the circumstances to inform a party
5 of the pendency of proceedings affecting him or his property.” *South Hollywood Hills*
6 *Citizens Ass’n v. King County*, 101 Wn.2d 68, 74, 677 P.2d 114 (1984). In 1995, the
7 legislature codified land use application public notice requirements. *See* RCW
8 36.70B.060(2) & RCW 36.70B.110. “One of the specific statutory requirements for public
9 notice of an impending land use decision is to ensure that the decision makers receive
10 enough information from those who may be affected by the action to make an intelligent
11 decision.” *Prekeges v. King County*, 98 Wn. App. 275, 280, 281, 990 P.2d 405 (1999).
12 Substantial compliance is required for notice requirements, and “[t]he key to achieving
13 substantial compliance with a procedural statute is the satisfaction of the substance essential
14 to the purpose of the statute.” *Id.*

15 Here, from the outset and throughout the permit process, the City and Applicant have
16 repeatedly acknowledged and reiterated that the existing abandoned warehouse building is
17 not suitable or habitable for anything other than storage use: it has no water, sewer,
18 insulation windows, heating / cooling, parking, garbage / recycling area, loading area, *etc.*
19 As early as July 5, 2016, the City told Applicant that a land use permit subject to Design
20 Review Board review and approval “prior to issuance of a building permit” due to
21 anticipated and necessary exterior modifications to the old warehouse. Instead, Applicant
22 inexplicably abandoned the land use permit component of its Project (permit number
23 LAND-2016-01420) following the September 2016 pre-application meeting and “jumped the
24 gun” by submitting a building permit application and change of use application for “retail”
25 and “office” uses (not “marijuana retails sales” use) on December 9, 2016.

1 In late-January 2017, the City and Applicant attempted to correct this processing
2 error by reducing the scope of the building permit approval to “interior improvements only”
3 and by excluding the approved interior expansion / mezzanine until a Site Plan Entitlement
4 permit was approved in accordance with City codes. In late February, the City issued a
5 “stop work order” on the mezzanine, in part because Applicant failed to provide required
6 parking for the expanded space.

7 In late March 2017, Applicant submitted an incomplete application to allow for the
8 mezzanine and exterior improvements to be reviewed and approved. The City has admitted
9 in great detail that it erred in processing and approving the building permit and change of use
10 permit without first processing and approving the required land use permit:

11 **Page 8, line 13 – Page 9, line 2**

12 13 **MALE VOICE:** I have a question. I’m
14 just curious as to why that we didn’t do, like, a
15 preapplication review of this? Why the move straight
16 to approval for tonight?

17 18 **MR. LEE:** That’s a good question. We
19 did have a preapplication meeting, but not with the
20 Design Review Board earlier in the year, and at that
21 point the revisions weren’t as dramatic or
(unintelligible).

22 They jumped the gun. They submitted a
23 building permit application and the -- we issued a
24 part of the building permit and then there was an
25 appeal on that building for the application. So now
1 we’ve kind of gotten ourself all twisted up in time
2 and processing. So we jumped into just approval.

21 **Page 40, line 22 – Page 43, line 19**

22 23 **CHAIRMAN MEADE:** Gary, while they’re
24 looking, can you talk to us about the hearing examiner
25 meeting? What --

26 **MR. LEE:** Sure.

1 **MALE VOICE:** -- would be happening and
2 so forth, where they are in that process.

3 **MR. LEE:**

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....

10 So as we mentioned earlier, we had an
11 appeal on a building permit and the building permit
12 appealed basically all the things that we're talking
13 about here, parking, marijuana use, and the appeal is
14 somewhat not ripe for appeal because the land use
15 permit should be building first and then consolidating
16 all the issue into one appeal hearing.

17 So the appeal hearing will probably be
18 extended. We do have a request for information
19 regarding traffic. So that the take up committee will
20 be asking for some more information regarding the
21 traffic impact analysis; therefore, probably will have
22 -- definitely have to reschedule the hearing to get
23 that material in and reviewed before a decision is
24 issued.

25 So people usually don't appeal
1 building permits. Just have that's what they appeal
2 here. They usually appeal land use permits, and
3 usually there's a land use permit that has the public
4 notice that goes out. So there was a mistake here in
5 that the building permit was issued for the tenant
6 improvement prior to this.

7 There should have been this site plan
8 entitlement application or administrative modification
9 application submitted before the building permit was
10 issued. So trying to get that all taken care of.

11 CHAIRMAN MEADE: So, I'm sorry. Just
12 to follow up on that a little bit. So was the city --
13 what is the city going to do or what is the city
14 currently doing with the building permit application?

15 MR. LEE: The building permit
16 application that was appealed for was a tenant
17 improvement for the interior only including this
18 mezzanine. There was a plan shown for the exterior
19 modifications, but we told them we cannot issue that
20 permit until this application is submitted.

21 So they gave -- so the building permit
22 that was issued was only for the inside, okay, and
23 since that building permit was issued and since they
24 have appealed that, we have issued a notice of
25 correction on that interior building permit that said
1 you continue -- you continued to work -- you can

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2 continue to work on the inside, but not on the
3 addition of the mezzanine, because the mezzanine
4 requires additional parking stall.

5 You need to provide us with the proof
6 that you have additional parking stall, by an
7 agreement, by easement, and you have to have this
8 application approved first.

9 CHAIRMAN MEADE: One more question.
10 On the tenant improvement plans, did that call for
11 plumbing and power, heating?

12 MR. LEE: So with this -- yes, yes.
13 And there will be some construction plan that will
14 require mutual hookups. As far as this, there will be
15 some more construction review to provide all necessary
16 water service, because that's -- the building permit
17 application is for a change in occupancy from a
18 warehouse to a commercial space that requires
19 plumbing.

Page 45, line 17-19

17 MR. KRUEGER: Well, I'm not ready to
18 vote on this. I want this to go through the normal
19 procedures.

(Bold text and underlining added.)

Following this revealing exchange at the Design Review Board hearing, Applicant withdrew the Site Plan Entitlement permit application and stated that it "would not be refileing it." Without the land use permit, the building cannot be complete and will not be suitable or habitable for any use.

By statute, local governments have "the authority to determine when land use applications are complete and how such applications must move forward," and the administrative processing of land use applications must be consistent with a local government's adopted codes, not informal, unwritten policies. *See Graham Neighborhood Ass'n*, 162 Wn. App. at 117; *Biermann*, 90 Wn. App. at 822. City staff lacked the authority to disregard the plain process requirements of RZC 21.76.020.H. and RZC 21.76.050.E. and

1 allow Applicant to submit much less receive approval of the building permit without first
2 obtaining the Site Plan Entitlement permit and going through Design Review per RZC
3 21.76.020.E. and RZC 21.76.060.G. for the required exterior renovations / improvements,
4 the mezzanine and the proposed change of use. *See id.*

5 Further, RZC 21.76.090.B., Post-Approval Actions, provides in relevant part:

6 B. Commencement of Activity. Except for Master Planned Development
7 approvals, . . . Type I, Type II, Type III, Type IV, and Type V permits are
8 assumed valid unless overturned by an appeal decision. **Project activity**
9 **commenced prior to the end of any appeal period, or withdrawal of,**
10 **or final decision on, an appeal, may continue at the sole risk of**
11 **Applicant; provided, however, that:**

12 . . .

13 **2. Where Applicant begins or continues project activity after an appeal**
14 **has been filed, only project activity that will be unaffected in any way**
15 **by the outcome of the appeal will be allowed.**

16 (Emphasis added.)

17 The appeal of the building permit and change of use permit was filed on March 2,
18 2017. On March 8, 2017, the City issued a correction / stop work notice for the mezzanine
19 portion of the building permit. Per the unequivocal language of RZC 21.76.090.B.2., *all*
20 *activity* related to the building permit should have ceased on March 2. As with other code
21 requirements, the City does not have the authority to disregard, modify or otherwise ignore
22 the plain language in the code. *See Graham Neighborhood Ass'n*, 162 Wn. App. at 117;
23 *Biermann*, 90 Wn. App. at 822. Applicant's representatives and contractors have been
24 observed continuing to work since March 2; they continue to trespass on Appellant's
25 property, have caused business losses to Appellant's tenant Prime Steakhouse and have told
26 Prime Steakhouse's owner that the Origins Cannabis customers will park in the restaurant's
lot regardless of whether they have the right to do so.

In sum, the City failed to comply (substantially or otherwise) with the processing and
notice requirements of RZC 21.76.020.E., RZC 21.76.020.H., RZC 21.76.050.E., RZC

1 21.76.050.F.-G., RZC 21.76.060.D.-E., RZC 21.76.060.G., RZC 21.76.070.Y., and RZC
2 21.76.080.B. *See South Hollywood Hills*, 101 Wn.2d at 74; *Prekeges*, 98 Wn. App. at 280;
3 *see also* RCW 36.70B.060(2) & .110. By erroneously processing and approving the building
4 permit and change of use permit prior to and without the land use permit and Design
5 Review, the City denied Appellant (along with many other nearby property owners) its due
6 process rights to comment on the Origins Cannabis Project prior to issuance of the Decision.
7 *Accord id.* Many of the issues of appeal could have been avoided, had the permit process
8 been followed. By allowing Applicant to continue to work, despite the code’s plain language
9 and Appellant’s good faith effort to avoid Applicant incurring unnecessary expenses, the
10 City is only exacerbating the situation.

11 Appellant now respectfully requests that the Hearing Examiner grant this motion,
12 reverse the Decision, issue a “stop work order” for all approved work on the Project Site²
13 and require Applicant to obtain the necessary Site Plan Entitlement permit prior to the City
14 issuing the building permit and change of use permit subject to this appeal.

15 **B. Whether the City Erred by Failing to Require Code-Compliant**
16 **Onsite Parking for the Change of Use from Warehouse/Storage to**
17 **Marijuana Retail Sales or Other Commercial Use?**

18 It is beyond dispute that the building on the Origins Cannabis Project Site is
19 proposed to be converted from an abandoned warehouse (*i.e.*, warehouse / storage use) to
20 marijuana retail sales use (and possibly general retail sales use). Thus, it is beyond dispute
21 that there is a “change of land use” proposed. The City’s “marijuana retail sales” use did not
22 even exist until June 2014 when the City adopted Ordinance No. 2744 and amended RZC
23 Chapter 21.41 to include such uses in the City’s zoning code. The City’s land use regulations

24 ² In the Hearing Examiner’s April 21, 2017 Response to Request for Hearing Examiner Action, the Hearing
25 Examiner requested that Appellant submit a proper motion on the issue of Applicant’s continued work on the
26 Project Site and further ordered that Appellant may submit a limited motion addressing solely that issue. For
efficiency, and because the issues are intertwined with other issues on appeal, Appellant brings this request as
part of this motion.

1 differentiate “marijuana retail sales” from other uses, including “general sales or services”
2 and “warehousing.” The City’s code unequivocally requires nonconforming sites / buildings
3 / parking to be brought up to code for a “change in land use.” The old warehouse has no
4 onsite parking. Between two and five parking spaces per 1,000 square feet of “marijuana
5 retail sales” use are required in the Redmond OT Zone plus bicycle parking, so the City
6 erred in issuing the building permit and change of occupancy for marijuana retail sales use
7 and any other non-warehouse use. The Decision should be reversed.

8 The Project Site is located within Redmond’s Downtown Old Town (OT) zone,
9 which requires at least two parking spaces per 1,000 square feet for “general sales or
10 services” and “marijuana retail sales” land uses. *See* RZC 21.10.030.D. - Table 21.10.030C.
11 “Warehousing” is not a permitted use in the OT zone. *See id.* “General sales or services” and
12 “marijuana retail sales” land uses are treated as different, distinct uses in the OT zoning
13 table. *See id.* Similarly, RZC 21.78, Definitions, provides the following relevant land use
14 definitions:

15 **General Sales or Services.** An establishment engaging in the retail sale,
16 rental, or lease of goods or the provision of services, including but not limited
17 to automobile sales or service; heavy consumer goods sale or service; durable
18 consumer goods or service; the sale or service of other consumer goods,
19 grocery, food and beverage sales; health and personal care services; finance
20 and insurance services; real estate services; professional services;
21 administrative services; and restaurant and food services. **General sales or
services does not include hotels, motels, and other accommodation services;
mail order or direct sales establishments; membership wholesale/retail
warehouses; and packing, crating, and convention and trade show services;
and marijuana retail sales.**

22 **Marijuana Retail Sales.** The sale of usable marijuana, marijuana-infused
23 products, and marijuana concentrates by a marijuana retailer in a retail outlet.

24 **Warehousing.** The use of a building primarily for the long-term storage of
25 goods and materials.

26 (Emphasis added.) By code and definition, “marijuana retail sales” use is not “general sales
or services” use, much less “warehousing” use. *See id.*

1 The City's general parking requirements are found in RZC 21.40.010.C., Vehicle
2 Parking, which provides in relevant part:

3 C. Administration. In the administration of this section, the following rules
4 shall be used:

5 1. Nonconforming Parking.

6 a. A development that met the parking requirements in effect at the time it was
7 approved but that does not have sufficient parking spaces to meet the current
8 requirements of this chapter, may continue to operate with the parking
9 deficiency as long as no enlargement or land use change is made that would
10 require additional parking spaces;

11 b. When a development with nonconforming parking is enlarged so as to
12 require additional parking spaces, the requirements of this chapter shall apply
13 only to the enlargement;³

14 c. When a preexisting building with nonconforming parking is remodeled or
15 rehabilitated but not enlarged, the existing use of the building may continue
16 without providing additional parking. In the event that the land use is
17 changed or increased by an addition of building square footage, the minimum
18 level of parking required, including bicycle parking required by this chapter,
19 consistent with the new or increased land use affected by the change must be
20 provided, or an approved Transportation Management Program, as provided
21 in RMZ, Transportation Management Program, must be implemented for the
22 site that effectively reduces parking demand;

23 d. When additional uses are placed on the same lot with the nonconforming
24 parking or an enlarged lot of which the lot with nonconforming parking is a
25 part, the requirements of this chapter shall apply only to the additional use;
26 and

27 e. When a use in a development with nonconforming parking is
28 terminated, the area vacated shall not be occupied by a use requiring
29 more parking spaces than the terminated use, unless the required
30 additional parking spaces are provided.

31

32 (Emphasis added.)

33 Professional transportation engineer Michael Read of TENW prepared a comparative
34 parking demand analysis for "warehousing," "general sales or services" (specialty retail),

35 ³ The City has already conceded that it erred in approving the interior mezzanine without requiring parking for
36 the new use / area and issued a "stop work order." Appellant concurs that the City erred and addresses that
error below.

1 and “marijuana retail sales” and concluded that “marijuana retail sales” has a profoundly
2 greater parking demand than the prior (but long-since abandoned) “warehousing” use for the
3 existing building on the Project Site. Mr. Read estimates that the “warehousing” use would
4 require two parking stalls, “specially retail” would require eight parking stalls and
5 “marijuana retail sales” use would require 21 parking stalls—similar to a fast-food restaurant
6 with drive-through. Mr. Read further points out that, by City code, conversion of the old
7 warehouse to “general sales and services” use would require an increase from two parking
8 stalls to six parking stalls and to seven parking stalls for “marijuana retail sales.”

9 In July 2016, inexplicably and without reference to any code section, parking
10 analysis or other basis, the City informed the Applicant that parking would be
11 “grandfathered” for the Applicant’s “general retail/office use.” *It is important to note that,*
12 *at the time the Applicant received such direction, the Applicant had yet to disclose to the*
13 *City both the mezzanine (which the City later and correctly determined needed parking) or*
14 *the actual proposed use of the site for “marijuana retail sales,” which was not disclosed*
15 *until the September 2016 pre-application meeting for the long-since abandoned (but*
16 *required) land use permit for the Project.* During the Design Review Board meeting, Mr.
17 Lee acknowledged the oversight and stated: “There may be a requirement for additional
18 parking for the marijuana retail sales use.” To-date, the Applicant has not submitted a
19 change of occupancy application to allow for “marijuana retail sales” use; only its now-
20 withdrawn Design Review Board submittal references such use.

21 Regardless, the City’s nonconforming parking code consistently uses the disjunctive
22 “or” to distinguish use changes from enlargements⁴ and unambiguously requires that parking

23 ⁴ “When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court
24 may look to a dictionary for such meaning. The dictionary describes ‘or’ as a ‘function word’ indicating ‘an
25 alternative between different or unlike things.’ WEBSTER’S THIRD NEW INTERNATIONAL
26 DICTIONARY 1585 (2002). In this sense, ‘or’ is used to indicate an inclusive disjunctive— one or more of the
unlike things can be true. . . . But the dictionary notes ‘or’ can also mean a ‘choice between alternative things,
states, or courses,’ and gives the usage: ‘will you have tea [or] coffee.’ This is the exclusive disjunctive— one
or the other can be true, but not both.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 243 P.3d 1283

1 be made code compliant for any enlargement *or* “land use change,” “additional [land] use,”
2 or “new [land] use.” *See* RZC 21.40.010.C.1.a.,c. & d. However characterized, the Origins
3 Cannabis Project will place new, additional and changed uses in the abandoned warehouse
4 and must therefore provide code-compliant parking for the new use(s). *See id.*

5 Moreover, whereas here the previous nonconforming use of the site (“warehouse”)
6 has been terminated, “the area vacated shall not be occupied by a use requiring more parking
7 spaces than the terminated use, unless the required additional parking spaces are provided.”
8 *See* RZC 21.40.010.C.1.e. Mr. Lee acknowledged to the Design Review Board, and Mr.
9 Read confirms, that “There [not only] may be a requirement for additional parking for the
10 marijuana retail sales use,” there is a need for at least eight and perhaps as many as 27
11 additional parking spaces just for the marijuana store. Inasmuch as the office mezzanine and
12 other generic retail spaces will have new uses filling an abandoned warehouse, those
13 additional spaces / uses must provide more parking, too. *See id.*

14 This same result is also required by RZC 21.76.100.F.7., which provides in part:

15 7. Abandonment of Rights to Nonconformities.

16 a. All rights to a legal nonconforming use are lost:

- 17 i. If the use is changed, or
18 ii. If the use is abandoned for 12 months, or

19 . . .

20 b. All rights to nonconforming parking shall be lost if the primary structure on
the lot is demolished or rebuilt as defined in RZC Article VI, Definitions.
Rights shall not be lost if a building is merely vacated for less than one year.

21 The Project Site and old warehouse building have never been used for retail, office or uses
22 other than warehouse / storage, so no nonconforming parking rights or retail, office or other
23 uses exist. The warehouse building has been vacant and abandoned for more than a year, so
24 all nonconforming rights for the warehouse / storage use have been lost, including any rights

25 (2010)(internal citations omitted).

1 to nonconforming parking for a warehouse / storage.

2 Finally, RZC 21.76.100.F.9.a.&b. prohibit the alteration or expansion of a
3 nonconforming structure and require that “[a] legal nonconforming structure shall be brought
4 into full compliance with the RZC when alteration or expansion of the structure takes place,
5 and the following takes place within any three-year period: . . . The costs stated on all
6 approved building permit applications for the structure equal or exceed the value of the
7 existing structure at the beginning of that three-year period.” On this point, Mr. Lee stated to
8 the Design Review Board that the Applicant’s “cost estimate . . . was very early on and was,
9 I’m sure, very, you know, bare bones. So it’s gotten a lot bigger now. So that is a big
10 question now whether or not they will be equaling or exceeding that value.” Even were one
11 to assume that Applicant’s Appraisal Report correctly estimated the building’s existing value
12 at \$250,000, the actual value of the proposed and required improvements (interior and
13 exterior) will exceed \$500,000. Applicant’s effort to avoid the three-year rule by
14 piecemealing the permit process should not be allowed.

15 In sum, the code’s plain, unambiguous language requires nonconforming sites to
16 provide conforming parking (including bicycle parking) any time there is a change of use,
17 especially where the prior nonconforming use has been abandoned or the cost of
18 improvements will exceed the building’s value. The City erred by informally telling the
19 Applicant that parking was “grandfathered,” but Applicant invited and compounded this
20 error by failing to disclose its primary proposed use—marijuana retail sales, not “general
21 retail/office use”—and by failing to follow the required permit process (as detailed above).
22 Appellant thus respectfully requests that the Hearing Examiner grant this motion, reverse the
23 Decision, issue a “stop work order” for all approved work on the Project Site and require
24 Applicant to obtain the necessary Site Plan Entitlement permit—including required
25 parking—prior to the City (re-)issuing the building permit and change of use permit subject
26 to this appeal.

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C. Whether the City Erred by Failing to Require Code-Compliant Onsite Parking for the Increased Floor Area from Warehouse/Storage to Marijuana Retail Sales or Other Commercial Use?

Recognizing that this brief is lengthy, Appellant hereby incorporates by reference the code references in the prior section and notes that it is undisputed that the Applicant’s proposed mezzanine creates an “enlargement . . . that would require additional parking spaces,” adds “building square footage” and fails to provide any much less code-compliant parking (including bicycle parking) on the Project Site. *See* RZC 21.40.010.C.1.a-c.; RZC 21.76.100.F.7.; RZC 21.76.100.F.9.a.&b. Again, Appellant respectfully requests that the Hearing Examiner grant this motion, reverse the Decision, issue a “stop work order” for all approved work on the Project Site and require Applicant to obtain the necessary Site Plan Entitlement permit—including required parking—prior to the City (re-)issuing the building permit and change of use permit subject to this appeal.

D. Whether the City Erred by Failing to Require Code-Compliant Onsite Garbage/Recycling, Off-street Parking For Service Vehicles and the Building is Not Code Compliant?

RZC 21.41.050 requires that “[a]ll marijuana processors, marijuana producers, and marijuana retailers must operate in a permanent structure designed to comply with the City Building Code.” In addition to lacking required vehicular and bicycle parking, there is no code-required “parking facilities for service vehicles” per RZC 21.40.010.E.8., no onsite garbage / recycling enclosure per RZC 21.38.020 and multiple ADA, energy code, plumbing and ingress / egress issues, as detailed by architect Rick Driftmier. Again, Appellant respectfully requests that the Hearing Examiner grant this motion, reverse the Decision, issue a “stop work order” for all approved work on the Project Site and require Applicant to obtain the necessary Site Plan Entitlement permit—including required parking—prior to the City (re-)issuing the building permit and change of use permit subject to this appeal.

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E. Whether the City Erred by Allowing a Marijuana Retail Use to be Located Within 1,000 Feet of the Downtown Park Playground?

While it is not clear that Applicant ever submitted an actual permit for a “marijuana retail sales use” (or that it did not withdraw such permit when it terminated its Site Plan Entitlement application), it is clear that a such a use cannot be lawfully permitted on the Project Site. As noted above, RZC 21.41.050 requires that “[a]ll . . . marijuana retailers must operate in a permanent structure designed to comply with the City Building Code.” RZC 21.41.030 further provides that “No . . . marijuana retailer shall locate in the city without a valid license issued by the Washington State Liquor and Cannabis Control Board, and must at all times conform with state law and city regulations. In the event any city regulation conflicts with state law or state regulations, the more restrictive provision shall prevail.” (Emphasis added.)

In addition to the City Building Code and other requirements, RZC 21.41.040.C., states in relevant part that “No marijuana retailer shall locate within 1,000 feet, measured in the manner set forth in WAC 314-55-050(10), from any [elementary school, secondary school or playground] **in existence at the date of application to the City** and as defined in WAC 314-55-010 as of the date of adoption of this chapter.” (Emphasis added.)

The City’s code, however, contains limiting language (in bold) not found in WAC 314-55-050(10)&(11), which state in relevant part:

(10) The WSLCB shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
-

(11) A city or county may by local ordinance permit the licensing of marijuana businesses within one thousand feet but not less than one hundred feet of the facilities listed in subsection (10) of this section except elementary

1 and secondary schools, and playgrounds.

2 WAC 314-55-010(24) defines “Playground” as “a public outdoor recreation area for
3 children, usually equipped with swings, slides, and other playground equipment, owned
4 and/or managed by a city, county, state, or federal government.” State law does not contain
5 the limiting language highlighted above in RZC 21.41.040.C., and the City’s land use code
6 does not define “in existence” for purposes of the code. To the extent the “in existence”
7 language above is less restrictive than the language in the WAC, the WAC standards govern.
8 *See* RZC 21.41.030.

9 For over a decade, our courts have recognized that vested permit rights should not be
10 ignored in the land use process and should be treated as “existing development,” noting
11 “‘Existing’ includes vested projects.” *See Gold Star Resorts, Inv. V. Futurewise*, 140 Wn.
12 App. 378, 394, n.41, 110 P.3d 1132 (2007)(citing *Quadrant Corp. v. Growth Management*
13 *Hearings Board, et al.*, 154 Wn.2d 224, 240-41, 110 P.3d 1132 (2005)), *affirmed in part,*
14 *reversed in part on other grounds*, 164 Wn.2d 1034, 197 P.3d 1185 (2008); *see also In re*
15 *Expansion of Spokane County Urban Growth Area*, 181 Wn. App. 369, 379-80, 325 P.3d
16 434, *review denied*, 181 Wn.2d 1010 (2014).

17 Here, in April 2015 the City Council unanimously adopted the Downtown Park
18 Master Plan for a new park located less than 1,000 feet from the Origins Cannabis Project
19 Site. The Downtown Park will feature a splash playground for children described as a
20 “Water play area,” “splash pad” and “Fountains of water jets—Fun for the kids!”, which
21 clearly meets the definition of a “playground” under WAC 314-55-010(24). The state
22 awarded the City a \$3,000,000 grant for the construction of the Downtown Park.

23 On August 1, 2016, the City issued the approved Site Plan Entitlement permit for the
24 Downtown Park; the application was submitted on June 13, 2016. The Site Plan Entitlement
25 states on the fourth page that “This decision is not vested to the development regulations in
26 effect until a complete building permit application is submitted.” On September 19, 2016

1 and October 24, 2016, the City’s Parks Department submitted applications for the two
2 building permits needed to construct two structures (a restroom and a pavilion) within the
3 Downtown Park. The Downtown Park project vested on September 19, 2016; construction
4 commenced in the fall of 2016 and is ongoing, with a projected opening date in 2018.

5 Applicant did not submit a building permit application or change of occupancy
6 application until December 9, 2016; those applications did not disclose “marijuana retail
7 sales” use, and Applicant withdrew its March 21, 2017 Site Plan Entitlement, which
8 disclosed such use. Under Washington law, the Downtown Park playground was “in
9 existence at the time of the [Origins Cannabis building permit and change of occupancy]
10 application to the City,” per RZC 21.41.040.C and WAC 314-55-050(10)&(11), which has
11 no such requirement. *Accord Gold Star Resorts*, 140 Wn. App. at 394, n.41. Because the
12 marijuana retail sales use cannot be located on the Project Site, Appellant respectfully
13 requests that the Hearing Examiner grant this motion, reverse the Decision (to the extent
14 such use was even disclosed or approved), issue a “stop work order” for all approved work
15 on the Project Site and require Applicant to obtain the necessary Site Plan Entitlement
16 permit prior to the City (re-)issuing the building permit and change of use permit subject to
17 this appeal.

18 **F. Whether the City Erred by Failing to Issue a “Stop Work Order”**
19 **for All Approved Work Subject to this Appeal and Upon Notice**
20 **that the Decision was Issued in Error, Obtained by**
21 **Misrepresentation of Material Fact and Exercised Contrary to**
22 **Code ?**

23 Appellant has already detailed in Section VI.A. the many procedural deficiencies that
24 mandate that the Decision be reversed and withdrawn and, for brevity, incorporates them by
25 reference here. Appellant has additionally demonstrated substantive deficiencies with the
26 approved building permit and that, if approved, a marijuana retail sales use is prohibited on
the site under state law. *See* Sections VI.B.-E. above. Appellant has notified the City of
these procedural and substantive deficiencies, but the City continues to allow Applicant to

1 move forward with construction of interior improvements, per the Decision. This is error.

2 RZC 21.76.090, Revocation of Permits, provides in part that

3 1. The Administrator may determine that any approved permit should be
4 revoked upon a finding that one or more of the following conditions exist:

5 a. The permit was issued in error and the revocation is made within the 21-
6 day appeal period under the Land Use Petition Act, RCW 36.70C; or

7 b. Approval of the permit was obtained by misrepresentation of material
8 fact; or

9 c. The permit is being exercised contrary to the terms of approval. . . .

10 It is clear that the building permit and change of use permit were issued in error—the City
11 has repeatedly and in great detail admitted and explained as much to the Design Review
12 Board and Applicant. *See* RZC 21.76.090.1.a. It is also clear that the building permit and
13 change of use permit (which did not authorize marijuana retail sales use) were issued based
14 on misrepresentations of material fact regarding the value of the proposed improvements,
15 which far exceed the value of the existing, abandoned warehouse on the Project Site. *See*
16 RZC 21.76.090.1.b. Given that an appeal has been pending, the “permit is being exercised
17 contrary to the terms of approval,” which require compliance with City codes. *See* RZC
18 21.76.090.1.c.

19 Appellant and its tenant Prime Steakhouse restaurant continue to suffer trespasses
20 and other issues as a direct result of the City’s failure to stop all work on the Project Site. By
21 code, the City should have issued a “stop work order” pending this appeal. *See* RZC
22 21.76.090.B.2. It did not. Appellant has shown good cause, and the City’s code is clear that
23 all work must cease. In light of the record and law, the City should have withdrawn the
24 permit under RZC 21.76.090.E., too. Appellant has made this request to the City and
25 informally to the Hearing Examiner. Per the Hearing Examiner’s April 21, 2017 Order,
26 Appellant reiterates its request and hereby moves the Hearing Examiner (again) to issue a
“stop work order” for all remaining previously permitted work, pending the outcome of this

1 appeal and completion of the required permit process.

2 **VII. CONCLUSION**

3 There is a well-established legal principle that one cannot accomplish indirectly what
4 one cannot accomplish directly. *See, e.g., Smith v. Orthopedics Intern., Ltd., P.S.*, 170 Wn.2d
5 659, 244 P.3d 939 (2010). This rule is particularly apt here. The City and Applicant have
6 proceeded with an unlawful, piecemeal permit process that seems designed to evade public
7 notice or participation in order to allow a marijuana retail sales use in an unsuitable location.
8 Having withdrawn its required Site Plan Entitlement permit application, Applicant Origins
9 Cannabis has ensured that no use—retail, office or otherwise—can actually be approved on
10 the Project Site. It’s not even clear that this appeal is ripe or can proceed without the Site
11 Plan Entitlement decision, given that the prerequisite land use permit has not issued and has
12 been withdrawn. *See* RZC 21.76.095.E.6.; *see also* RCW 36.70B.060(3), RCW 36.70B.110
13 *and* RCW 36.70B.120(2). Mr. Lee remarked as much during the Design Review Board
14 hearing. Whatever the case, Appellant respectfully requests that the Hearing Examiner grant
15 this motion reverse the Decision, issue a “stop work order” for all approved work on the
16 Project Site and require Applicant to obtain the necessary Site Plan Entitlement permit prior
17 to the City (re-)issuing the building permit and change of use permit subject to this appeal.

18
19 Dated this 1st day of May, 2017.

20
21 SCHWABE, WILLIAMSON & WYATT, P.C.

22
23 By:


24 Aaron M. Laing, WSBA #34453
25 alaing@schwabe.com
26 *Attorneys for Appellant WPDC*
Cleveland, LLC

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, hereby declare under penalty of perjury, under the laws of the
3 State of Washington, that the following is true and correct:

4 That on May 1, 2017, I caused to be served by e-mail transmission *Appellant WPDC*
5 *Cleveland, LLC's Motion for Partial Summary Judgment; the Declaration of Aaron M.*
6 *Laing and exhibits thereto; the Declaration of Kevin R. Wallace and exhibits thereto; the*
7 *Declaration of Michael J. Read, P.E. and exhibits thereto; the Declaration of Matthew M.*
8 *Woolsey and exhibits thereto; the Declaration of Jason Bailey; the Declaration of Lee Keller*
9 *and exhibit thereto; and the Declaration of Rick Driftmier, AIA and exhibit thereto* and this
10 *Certificate of Service* to the following counsel:

11 **Attorney Vicki Orrico, Orrico@jmmlaw.com**

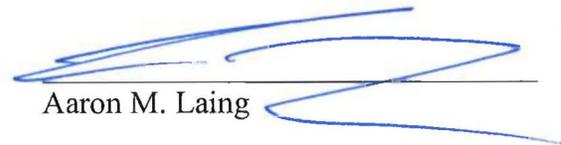
12 **Attorney James Haney, jhaney@omwlaw.com**

13 **Attorney Daniel Kenny, dpkenny@omwlaw.com**

14 And to the Office of the Hearing Examiner in care of:

15 **Cheryl D. Xanthos, cdxanthos@redmond.gov**

16 Dated this 1st day of May, 2017.

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22 Aaron M. Laing