

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

In the Matter of the Application of	)	LAND 2013-01665
	)	
	)	
<b>Tom Ellsworth</b>	)	
	)	
	)	
For approval of an Alteration to a	)	FINDINGS, CONCLUSIONS,
Geologic Hazard Area	)	AND DECISION
_____	)	

**SUMMARY OF DECISION**

The request for approval of an alteration to a geologic hazard area to allow installation of a sewer main extension across parcel number 0325059081, owned by the Rowan Tree Church, for future service to parcel number 0325059100, owned by the Applicant, is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Tom Ellsworth (Applicant) requested approval of an alteration to a geologic hazard area for construction of a sewer main extension across the Rowan Tree Church property to allow future service to parcel number 3025059100. Both parcels contain slopes that qualify as geologic hazard areas and the buffer area associated with a Class IV stream.

**Hearing Date**

The Redmond Hearing Examiner conducted an open record hearing on the request on July 21, 2014.

**Testimony**

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

- Thara Johnson, Associate Planner, City of Redmond
- Steven Fischer, Planner, City of Redmond
- Tom Ellsworth, Applicant
- John Nelson, Civil Engineer, Applicant Representative
- Leonard Steiner, member of the public

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**Exhibits**

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

1. Technical Committee Report to the Hearing Examiner, with the following attachments:
  1. General Application Form
  2. Project Contact Form
  3. Vicinity Map
  4. Zoning Map
  5. SEPA Application Form
  6. Completeness Letter
  7. Public Notice Site Plan
  8. Public Notice Tree Preservation Plan
  9. Notice of Application and Certificate of Publishing
  10. SEPA Determination of Non-Significance, Addendum & Environmental Checklist
  11. Notice of Public Hearing and Certificates of Posting
  12. Plan Set (Sheets 1-5; Note: there is no Sheet 6)
  13. Critical Areas Report
  14. Geotechnical Report
  15. Ellsworth Property Slope Review
  16. Slope Stability Analysis
  17. Tree Health Assessment
  18. Fee in Lieu Tree Replacement Justification
  19. Decision Criteria Analysis
  20. Comprehensive Plan Map (Sewer Plan)
  21. Notice of Application Public Comment Letter
  
2. Planning Staff's PowerPoint presentation

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions in support of the decision and recommendation:

### FINDINGS

#### *Procedural Background*

1. The Applicant requested approval of an alteration to a geologic hazard area in order to construct a sewer main extension to serve future development of the 2.62-acre parcel at the intersection of NE 100th Street and 134th Avenue NE (the Ellsworth property, parcel number 0325059100). The proposed sewer extension would cross the adjacent Rowan Tree Church property (Church property, parcel number 0325059081) through a steep ravine containing slopes that meet the City's definition of a geologic hazard area. *Exhibit 1, Attachments 1 and 12; Johnson Testimony.*
  
2. The application was deemed to be complete on February 12, 2014. *Exhibit 1, page 2; Exhibit 1, Attachments 1 and 6.* Notice of Application (NOA) for this proposal was published, mailed to surrounding property owners, and posted on April 25, 2014. During the NOA public comment period, the City received one public comment addressing

wildlife alleged to be present on the Ellsworth site and protection of its habitat. *Exhibit 1, page 3; Exhibit 1, Attachments 7, 8, 9, and 21.*

3. On April 22, 2013, the City of Redmond Technical Committee, acting as State Environmental Policy Act (SEPA) Responsible Official, issued a determination of non-significance (DNS) for a related boundary line adjustment that increased the size of the Ellsworth property by 12,315 square feet (SEPA 2013-00530). For review of the instant sewer extension proposal, the City required an updated SEPA checklist addressing the extension through the steep slope area. Upon completion of review, the Technical Committee adopted the previous DNS and issued an addendum DNS on June 23, 2014. *Exhibit 1, pages 3-4; Exhibit 1, Attachment 10; Johnson Testimony.*
4. Notice of the July 21, 2014 public hearing for the instant application was posted on the site, at City Hall, and at the Redmond Regional Library on June 30, 2014. Notice of hearing was mailed to property owners within 500 feet of the site and to parties of record on the same date and included in a one-time newspaper publication. *Exhibit 1, page 4; Exhibit 1, Attachment 11.*
5. Surrounding properties to the east, south, and west are developed with primarily residential uses. The area where the sewer extension is proposed contains a forested ravine with a stream flowing in it. *Exhibit 1, Attachment 13; Site visit.*

#### *Site Description*

6. The subject property is an undeveloped parcel in a residential area bordering NE 100th Street at its north boundary. The center of the site is dominated by grasses and scrub/shrub vegetation. The eastern and southern portions of the site contain forested vegetation. The subject property was reviewed by professional consultants for the presence of critical areas. A perennial stream was identified along the eastern site boundary, which enters the northeastern corner of the site. The stream is a tributary to the Sammamish River; it does not support fish or have the potential to support fish in the vicinity of the subject property. The stream was identified as a Class IV stream pursuant to Redmond Zoning Code (RZC) 21.64.020.2.d, which requires a 36-foot no disturb buffer. The stream's buffer meanders within and along the subject property's eastern boundary. There are no wetlands on or near the subject property. No priority habitats have been identified on-site. All proposed work would occur outside and to the west of the stream buffer. *Exhibit 1, Attachment 13; Exhibit 1, Attachment 12, Sheet 5.*
7. The stream near and on-site flows in a ravine. In the northern half of the Ellsworth property, the ravine is shallow. In the southern half, it becomes broader and steeper and there are portions with a bank taller than ten feet with sides up to and exceeding 40% in grade. The geotechnical report concluded that the potential for deep-seated instability in the ravine is low, if the following guidelines are implemented:
  - Maintain a minimum 15-foot buffer between the top of slope areas in the proposed development area

- Construct a highly-visible temporary fence along this 15-foot buffer prior to beginning substantial site clearing and grading activities
- Avoid placing debris or fill within the 15-foot buffer and on the steep slopes themselves
- Discharge concentrated runoff away from the steep slope areas

*Exhibit 1, Attachment 14.*

8. These steep areas satisfy the Redmond critical areas ordinance definition for landslide hazard areas. *Redmond Zoning Code (RZC) 21.64.060.B.7.* The minimum required buffer from a landslide hazard area is 50 feet. *RZC 21.64.060.C.2.* However, buffers may be reduced to a minimum of 15 feet when a qualified professional demonstrates through technical studies that the reduction will adequately protect the proposed and surrounding development from the critical landslide hazard. *RZC 21.64.060.C.3.* The Applicant's geotechnical study of the site concluded a reduced 15-foot buffer would adequately protect proposed and existing surrounding development from landslide hazards, and the Technical Committee administratively approved the buffer reduction to 15 feet. *Exhibit 1, Attachment 14; Exhibit 1; Johnson Testimony.*

*Project Information and Analysis of Submitted Materials*

9. In order to provide municipal sewer service to the subject property, the proposal would extend an existing sanitary sewer line across steep slopes from an existing manhole on the Church property into the southeastern corner of the Ellsworth property. The 20-foot-wide easement route through the Rowan Tree Church property was selected by Church personnel to avoid areas of their property with significant religious importance and to minimize disruption to their property. Proposed construction techniques would confine ground disturbance within the easement area agreed to by the Church. *Exhibit 1; Exhibit 1, Attachment 12.*
10. The proposed easement is generally in conformance with the alignment of future sewer expansions shown in the City's Sewer Comprehensive Plan. *Exhibit 1, Attachment 20; Exhibit 4.* Other sewer alignments were considered at the time the City drafted the existing Sewer Comprehensive Plan; however, the instant route was selected as the least disruptive, most efficient alignment for serving future development south of 100th Avenue NE and east of 132nd Avenue NE. *Exhibit 1, page 7.*
11. In order to reach the subject property, the sewer line must cross the steep slope area. The Applicant submitted a professionally prepared slope stability analysis based on the proposed sewer design. The analysis reviewed the site for potential shallow instability in the looser, more surface soils and failures that could extend into the glacial till. The report concluded that the earlier recommended safety factors/guidelines were adequate to protect the slopes in the vicinity of the future sewer line and manholes if their recommendations were followed. *Exhibit 1, Attachment 16.*

12. The City retained an independent geotechnical consultant to review the analysis submitted by the Applicant. The City's consultant took no exception to the Applicant's submitted geotechnical information and did not oppose the reduction of the landslide hazard area buffer to 15 feet. The consultant also supported the proposed sewer extension route so long as the recommendations of the geotechnical engineer are implemented and the manholes and pipes would be located no closer than five feet from the top of the slope and designed to bear within the deeper glacial till. *Exhibit 1, Attachment 15.*
13. The area of 40% and greater slopes would not be disturbed during the construction of the sewer line extension. The Applicant consulted with City Staff to arrive at the proposed alignment, and with the geotechnical data submitted, it was determined to be the best route. The project would minimize impacts to on-site slopes to the maximum extent possible. There would be no impact to the stream or the associated buffer. Disturbed areas would be replanted and temporary erosion control measures would be left in place until the new plantings become established. *Exhibit 1, page 7.*
14. The Redmond Zoning Code requires all healthy landmark trees and 35 percent of all healthy significant trees be saved. Landmark trees are greater than 30 inches in diameter at breast height, and significant trees are between six and 30 inches in diameter at breast height. *RZC 21.72.060.* The health of the existing trees on the Ellsworth and Church properties was assessed by a professional arborist, who evaluated a total of 105 trees within the project limits. Fifty-six trees within the project boundaries were determined to be significant. The proposed sewer line route was selected with tree placement in mind, but it is not possible to avoid all significant trees. The project would remove seven trees, retaining 87% of all significant and landmark trees, satisfying the City's tree retention requirements. Because the Ellsworth property would be subdivided for residential development in the future and the best location for new tree planting is not now known, the Applicant proposed to provide replacement trees through payment of fees in lieu of planting on-site. The fee in lieu proposal was administratively approved. *Exhibit 1, Attachments 17, 18, and 19; Johnson Testimony.*
15. At the open record hearing, public comment was offered expressing concerns about the following: impacts that would result from future residential development of the Ellsworth parcel, specifically impacts to the stream and to the wildlife the commenter has personally observed in the stream area; disruption to nesting trees resulting from the sewer line extension; the density for which the site is zoned; excessive new residential development in the vicinity; and a recommendation that the City should purchase the subject property for retention as wildlife habitat. *Steiner Testimony.*
16. In response to public comment, City Staff testified that the subject property is located in a fairly newly annexed area that is experiencing the first onset of development with extension of sewer line. The City is aware of the need for parks and open space to be provided in the vicinity; however, the proposal is not for a park. All future development in the area would be required to comply with critical areas codes in effect at the time of application with regard to open space, habitat, and tree preservation. *Johnson Testimony.*

17. The accepted plan set is dated May 30, 2014. Planning Staff accepted and reviewed: the SEPA checklist; the arborist's report; tree replacement by fee in lieu proposal; the critical areas report, the geotechnical report and the slope stability analysis. Professional consultants prepared each report submitted by the Applicant, and the City accepted each report as satisfying the applicable RZC requirements for pre-development review. The City retained an independent consultant for a second look at the geotechnical analysis, who concurred with the Applicant's consultant's findings. The Technical Committee, comprised of staff from the Planning, Public Works, and Fire Departments, reviewed the Applicant's submittals for compliance with City codes and regulations and recommended project approval subject to conditions. *Exhibit 1, pages 1, 8 -11; Johnson Testimony.*
18. At hearing, the Applicant waived objections to the recommended conditions of approval in the Technical Committee report. *Nelson Testimony.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is authorized to conduct open record hearings and issue decisions on Type III permits, including alterations to geologic hazard areas, pursuant to RZC 21.76.050.B and .C.

### Criteria for Review

Pursuant to RZC 21.76.070.E, the Examiner shall approve an application for alteration to geologic hazard areas if findings can be entered showing the following criteria are satisfied:

- a. There is no reasonable alternative to locating in a Landslide Hazard Area. Alternative locations which would avoid impact to the Landslide Hazard Area are shown to be economically or functionally infeasible.
- b. A geotechnical evaluation has been conducted to identify the risks of damage from the proposal, both on-site and off-site, and to identify measures to eliminate or reduce risks. The proposal shall not increase the risk of occurrence of the potential geologic hazard.
- c. Impacts shall be minimized by limiting the magnitude of the proposed construction to the extent possible, any impacts must be eliminated or mitigated by repairing, rehabilitating, restoring, replacing, or providing substitute resources consistent with the mitigation and performance standards set forth in RZC 21.64.010(L) and (M).

### Conclusions Based on Findings

1. There is no better alternative to locating the proposed sewer extension through the landslide hazard area. The proposed sewer line was identified as a planned utility project in Redmond's Comprehensive General Sewer Plan. Regardless of specific route, extension of this sewer line would cross the subject property's steep slopes. The

proposed alignment minimizes impact to the subject property, to the on-site slopes, and the adjacent stream. *Findings 6, 7, 8, 9, 10, 12, 13, and 17.*

2. The submitted geotechnical reports evaluated the proposed design in light of site conditions and determined that, assuming compliance with geotechnical recommendations, the proposal would not reduce slope stability on- or off-site and would not increase the risk of occurrence of geologic hazards. City Staff determined that the geotechnical reports complied with applicable CAO reporting standards and also obtained independent geotechnical review, which concurred with the reports. A condition of approval would ensure that site clearing, construction, and revegetation comply with the recommendations of the geotechnical report. *Findings 6, 7, 8, 11, 12, 13, and 17.*
  
3. No work is proposed in the geologic hazard area. As conditioned, impacts to the geologic hazard area buffer would be avoided to the extent possible and unavoidable impacts would be minimized and mitigated. No increased risk for geologic hazard is anticipated as a result of the proposal. The selected path of the sewer line avoids impacts to the off-site stream. Only seven significant trees would be removed from the project area, which would be replaced through financial contribution to the City's tree fund. Conditions would ensure that erosion control measures are in place prior to construction and that the recommendations of the geotechnical report are followed during earthwork and construction. The proposal was reviewed for compliance with SEPA requirements and a DNS was issued. *Findings 3, 6, 7, 8, 9, 11, 12, 13, 14, and 17.*

**DECISION**

Based on the preceding findings and conclusions, the request for approval of an alteration to a geologic hazard area to allow installation of a sewer main extension across parcel number 0325059081, owned by the Rowan Tree Church, for future service to parcel number 0325059100, owned by the Applicant, is **GRANTED** subject to the conditions below.

**A. Site Specific Conditions of Approval**

The following table identifies those materials that are approved with conditions as part of this decision.

<b>Item</b>	<b>Date Received</b>	<b>Notes</b>
Plan Set	05/30/2014	<i>and as conditioned herein.</i>
SEPA Checklist	05/30/2014	<i>and as conditioned herein and as conditioned by the SEPA threshold determination on April 22, 2013 and Addendum issued on June 23, 2014.</i>
Proposed Tree Retention Plan	05/30/2014	<i>and as conditioned herein.</i>
Geotechnical Report	09/27/2013	<i>and as conditioned herein.</i>

The following conditions shall be reflected on the Civil Construction Drawings, unless otherwise noted:

**1. Public Works Transportation and Engineering**

**Reviewer: Kurt Seemann, Senior Engineer**

**Phone: 425-556-2881**

**Email: kseemann@redmond.gov**

**a. Easements and Dedications.**

No easements or dedications are required.

(Code Authority: RZC 21.52.030(F); RMC 12.12)

**b. Street Frontage Improvements**

No street frontage improvements are required.

(Code Authority: RZC 21.52; RZC 21.54.020(B); RMC 12.12; RZC Appendix 2)

**2. Development Engineering – Water and Sewer**

**Reviewer: Jim Streit, P.E. Sr. Utility Engineer**

**Phone: 425-556-2844**

**Email: jstreit@redmond.gov**

**a. Water Service.** Water services are not part of this project.

(Code Authority: RZC 21.17)

**b. Sewer Service.** Sewer service requires a developer extension of the City of Redmond sewer system as follows: Install a new 8-inch diameter sanitary sewer main as shown on drawing ELLS-001 by Land Development Advisors, LLC, dated April 21, 2014. No other sanitary sewers will be constructed as part of this project. This sanitary main will be constructed by boring under the neighbor's property between MH 1 and the existing sanitary manhole shown to the south.

(Code Authority: RZC 21.17)

**c. Easements.** Easements shall be provided for all water and sewer improvements as required in the Design Requirements for Water and Sewer System Extensions. Easements for the water and sewer mains shall be provided for City of Redmond review at the time of construction drawing approval. Offsite easements must be recorded prior to construction drawing approval.

(Code Authority: RZC Appendix 3)



**3. Development Engineering – Stormwater/Clearing and Grading****Reviewer: Lisa Rigg, P.E., Senior Engineer****Phone: 425-556-2758****Email: [lrigg@redmond.gov](mailto:lrigg@redmond.gov)****a. Water Quantity Control:**

- i. No formal water quantity control is required for this project.  
(Code Authority: RMC 15.24.080)

**b. Water Quality Control**

- i. No formal water quality control is required for this project.  
(Code Authority: RMC 15.24.080(2)(d))

**c. Clearing and Grading.**

- i. Peer Review has been completed. Recommendations from Geotech Consultants Inc. for the Geotechnical Engineering Study on Ellsworth Estates shall be complied with.  
(Code Authority: RMC 15.24.080)

**d. Temporary Erosion and Sediment Control (TESC).**

- i. Work prohibited October 1<sup>st</sup> through April 30<sup>th</sup>.  
(Code Authority: RMC 15.24.080)

**e. Department of Ecology Notice of Intent Construction Stormwater General Permit.** Notice of Intent (NIO) must be submitted to the Department of Ecology (DOE) at least 60 days prior to construction on a site that disturbs an area of one acre or larger. Additional information is available at:  
[www.ecy.wa.gov/pubs/0710044.pdf](http://www.ecy.wa.gov/pubs/0710044.pdf).

(Code Authority: Department of Ecology Rule)

**4. Fire Department****Reviewer: Scott Turner, Assistant Fire Marshal****Phone: 425-556-2273****Email: [sturner@redmond.gov](mailto:sturner@redmond.gov)**

- a. The current submittal is generally adequate for Site Plan Entitlement Approval,  
(Code Authority: RMC 15.06; RZC Appendix 2, RFD Standards, RFDD&CG)

**5. Planning Department**

**Reviewer: Thara Johnson, Associate Planner**

**Phone: 425-556-2470**

**Email: tmjohnson@redmond.gov**

- a. **Tree Preservation Plan.** A Tree Preservation Plan depicting all significant and landmark trees required to be preserved as part of the site development must be provided with the civil construction drawings. A plan showing the location of preserved trees and containing protection language approved by the City shall be shown on the face of the deed or similar document and shall be recorded with the King County Department of Records and Elections.

(Code Authority: RZC 21.72.060 (D) (2))

- b. **Tree Replacement.** Tree Replacement shall be provided at a 1:1 ratio with a total of seven trees to be replaced through the Fee-in-Lieu program.

Code Authority: RZC 21.72.080

**B. Compliance with City of Redmond Codes and Standards**

This approval is subject to all applicable City of Redmond codes and standards, including the following:

**Transportation and Engineering**

RMC 6.36:	Noise Standards
RZC 21.52:	Transportation Standards
RZC 21.54:	Utility Standards
RMC 12.08:	Street Repairs, Improvements & Alterations
RZC 21.76.020(G):	Site Construction Drawing Review
RZC 21.76.020(H)(6):	Preconstruction Conference
RZC 21.76.020(H)(7):	Performance Assurance
RZC Appendix 3:	Construction Specification and Design Standards for Streets and Access
City of Redmond:	Record Drawing Requirements, Version 10-2005 (2005)
City of Redmond:	Standard Specifications and Details (current edition)

**Water and Sewer**

RMC 13.04:	Sewage and Drainage
RMC 13.08:	Installing and Connecting Water Service
RMC 13.10:	Cross-Connection and Backflow Prevention
RZC 21.17.010:	Adequate Public Facilities and Services Required

RZC Appendix 4:	Design Requirements for Water and Wastewater System Extensions
City of Redmond:	Standard Specifications and Details (current edition)
City of Redmond:	Design Requirements: Water and Wastewater System Extensions - January 2000.

## Stormwater/Clearing and Grading

RMC 15.24:	Clearing, Grading, and Storm Water Management
RZC21.64.060 (C):	Planting Standards
RZC 21.64.010:	Critical Areas
RZC 21.64.040:	Frequently Flooded Areas
RZC 21.64.050:	Critical Aquifer Recharge Areas
RZC 21.64.060:	Geologically Hazardous Areas
City of Redmond:	Standard Specifications and Details (current edition)
City of Redmond:	Stormwater Technical Notebook, Issue No. 5 (2007)
Department of Ecology:	Stormwater Management Manual for Western Washington (revised 2005)

## Fire

RMC 15.06:	Fire Code
RZC Appendix 3:	Construction Specification and Design Standards for Streets and Access
City of Redmond:	Fire Department Design and Construction Guide 5/6/97
City of Redmond:	Fire Department Standards

## Planning

RZC 21.08:	Residential Regulations
RMC 3.10	Impact Fees
RZC 21.32, 21.72:	Landscaping and Tree Protection
RZC 21.34:	Exterior Lighting Standards
RMC 6.36:	Noise Standards
RCZ 21.64:	Critical Areas
RZC 21.44:	Signs

RZC Appendix 1:	Critical Areas Reporting Requirements
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## Building

2012 International Building Codes (IBCs)
2012 Uniform Plumbing Code
2012 International Residential Code (IRC)

**DECIDED** August 4, 2014.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner

**Note:** Pursuant to RZC 21.76.060.J, (6) any party of record may file a written request for reconsideration with the Hearing Examiner within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted in support of or in opposition to a request for reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or the revised decision shall be sent to all parties of record.

Pursuant to RZC 21.76.060.M, all Type III Hearing Examiner decisions may be appealed to the City Council. Any party with standing (detailed at RZC 21.76.060.M.2.a) may appeal this decision by filing the appropriate appeal form along with the required fee no later than 5:00 pm 10 business days following the expiration of the reconsideration period. See RZC 21.76.060.M for further detail on appeal requirements.