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

In the Matter of the Appeal of  
**Monica Catunda, et al**  
of the March 2, 2018 Clear and Grade Permit CGP-  
2018-01368 Allowing the removal of 30 Cottonwood  
trees from Idylwood Beach Park in Redmond

NO. LAND-2018-00317  
CITY’S REPLY IN SUPPORT OF  
MOTION TO DISMISS APPEAL

**I. INTRODUCTION**

This matter comes before the Hearing Examiner on the City of Redmond’s Motion to Dismiss Appeal. While this matter is captioned as an appeal of the March 2, 2018 clearing and grading permit obtained by the City for removal of thirty cottonwood trees at Idylwood Beach Park, appellants now argue that they are not appealing the clearing and grading permit at all and are instead appealing a “decision” by the City to commence work under the clearing and grading permit without first obtaining a tree removal permit and a shoreline conditional use permit. Catunda’s Opposition to City’s Motion to Dismiss Appeal at 1. While this novel approach is no doubt dictated by appellants’ failure to appeal the clearing and grading permit in a timely manner, the Hearing Examiner cannot award points for creativity and is limited to deciding this matter under the relevant provisions of the Redmond Municipal Code (RMC) and Redmond Zoning Code (RZC). When those provisions are applied to the facts of this case, it is clear that no tree removal permit or shoreline conditional use permit was required and that the only permit required for the

1 work was a clearing and grading permit. Since that permit was not timely appealed by appellants  
2 (and is apparently not the subject of this proceeding), this appeal must be dismissed

3 **II. STATEMENT OF ADDITIONAL FACTS**

4 In its Motion to Dismiss and the Declarations of David Tucheck and Catherine Beam  
5 submitted with the Motion, the City set forth the essential facts regarding issuance of the March 2,  
6 clearing and grading permit. Having reviewed the Declaration of Alex Sidles in Support of  
7 Catunda's Opposition to City's Motion to Dismiss Appeal, together with the documents attached  
8 to that Declaration as exhibits, some additional facts must be set forth.

9 First, it is true that, as the Opposition and Sidles Declaration detail, the City Parks  
10 Department initially applied for a tree removal permit for the cottonwood removal at Idylwood  
11 Beach Park. Supplemental Declaration of David Tucheck in Support of Motion to Dismiss at p. 1,  
12 ¶ 2. However, on February 8, 2018, Mr. Tucheck was notified by Sabrina Gassaway, the planner  
13 assigned to the tree removal permit application, that a tree removal permit was not required and  
14 that the Parks Department was required to submit a clearing and grading permit application instead.  
15 *Id.* Mr. Tucheck did so on February 23, 2018, and the clearing and grading permit application was  
16 thereafter processed in lieu of the tree removal permit application. *Id.* at pp. 2 - 3, ¶2. Thus, after  
17 February 8, 2018, the tree removal permit was no longer "pending" as the appellants argue, and  
18 the only permit the Parks Department pursued and obtained was the clearing and grading permit.

19 Second, after the clearing and grading permit application was filed, the senior engineer in  
20 charge of reviewing that permit, Geoffrey Dendy, sought the advice of Cathy Beam, a principal  
21 planner with expertise in the City's shoreline regulations, as to whether a shoreline permit was  
22 required for the tree removal work. Declaration of Geoffrey Dendy in Support of Motion to  
23 Dismiss at p. 1, ¶ 2. Ms. Beam responded to Mr. Dendy on February 27, 2018, indicating that no  
24 shoreline permit was required because the tree cutting did not meet the definition of development  
25 under the Shoreline Management Act.

1 Third, neither Ms. Gassaway's determination regarding the requirement for a tree removal  
2 permit nor Ms. Beam's determination regarding the requirement for a shoreline permit were ever  
3 appealed. Such determinations are not generally considered by the City to be appealable, but they  
4 were certainly part of the overall decision to grant the clearing and grading permit and could have  
5 been challenged by appealing that permit in a timely manner under RZC 21.76.060.I.2.c. As is  
6 now undisputed, appellants did not timely appeal (and now say they are not attempting to appeal)  
7 the clearing and grading permit, and so the determinations of Ms. Gassaway and Ms. Beam are  
8 beyond challenge.

9 Fourth, the felling of trees into the waters of Lake Sammamish, heavily relied upon by the  
10 appellants for their argument that a shoreline permit was required, were minimal and did not  
11 interfere with the normal public use of the lake. A total of six trees reached the water during the  
12 City's previous tree removal operations, and each tree was immediately retrieved to the shore, cut  
13 up, and removed. Supplemental Declaration of David Tucheck in Support of Motion to Dismiss at  
14 pp. 2 – 3, ¶¶ 3 - 5. No one was on the lake in the vicinity of the work area at the time these incidents  
15 occurred and anyone who was on the lake could have easily maneuvered around the area during  
16 the 30 minutes or so that it took to remove each tree. *Id.* No rowing classes or other activities  
17 were delayed or canceled due to the work. *Id.* at p. 3, ¶ 6. In short, any interference with the use  
18 of the water was momentary and no "normal public use" of the waters of the lake was impacted in  
19 the least. Appellants' characterization of the work as interfering with the normal public use of the  
20 shoreline is not borne out by the evidence.

21 Finally, appellants' characterization of Steven Fischer's September 7, 2017 email to Karen  
22 Haluza as a "key event" in the history of the Idylwood Beach Park clearing and grading permit is  
23 false. As Mr. Fischer states in his May 23, 2018 Declaration in Support of Motion to Dismiss, the  
24 September 7 email had absolutely nothing to do with Idylwood or any other specific application  
25 and was only a procedural inquiry about who should sign tree removal permits, Mr. Fischer or Ms.  
26 Haluza. May 23, 2018 Declaration of Steven Fischer in Support of Motion to Dismiss, pp. 1 – 2,

¶ 3. This email is entirely irrelevant to this appeal, since no tree removal permit was ever issued for the cottonwood removal at Idylwood and signature authority for such permits is not an issue here.

Having responded to the documents relied upon by appellants and having placed those documents in the proper context, the remainder of this Reply is devoted to the legal issues pertaining to this appeal. Additional facts from the Supplemental Declaration of David Tuckek in Support of Motion to Dismiss, the May 23, 2018 Declaration of Steven Fischer in Support of Motion to Dismiss, and the Declaration of Geoffrey Dendy in Support of Motion to Dismiss are set forth in response to those legal issues.

### III. ISSUES

(1) Are the actions of the City in cutting down cottonwood trees at Idylwood Beach Park without a tree removal permit or a shoreline conditional use permit appealable to the Hearing Examiner [NO].

(2) Was the City required to obtain a tree removal permit to remove thirty cottonwood trees at Idylwood Beach Park? [NO].

(3) Was the City required to obtain a shoreline conditional use permit to remove thirty cottonwood trees at Idylwood Beach Park? [NO].

(4) Should a decision in this matter be postponed while appellants conduct further “discovery”? [NO].

### IV. ARGUMENT

**A. THE CITY’S COMMENCEMENT OF WORK UNDER ITS CLEARING AND GRADING PERMIT IS NOT AN APPEALABLE “DECISION” WITHIN THE MEANING OF THE RZC ON OTHER PERMITS THE APPELLANTS ALLEGE THE CITY WAS REQUIRED TO GET.**

**1. The Hearing Examiner’s Appellate Jurisdiction Extends Only to Written Decisions Approving, Approving with Conditions, or Denying Type I and Type II Permits.**

The appellants’ attempt to appeal the lack of a tree removal permit and the lack of a shoreline conditional use permit for the removal of trees at Idylwood Beach Park must be denied

1 because the Hearing Examiner has no jurisdiction over such matters. Under the RZC, a tree  
2 removal permit is a Type I approval to be decided by the Planning Director. RZC Table  
3 21.76.050B; RZC 21.72.020.A. The Hearing Examiner's appellate jurisdiction over Type I  
4 approvals is set forth in RZC 21.76.060.I.1, which provides, in pertinent part, as follows:

5 For Type I and Type II permits, the Hearing Examiner acts as an  
6 appellate body, conducting an open record appeal hearing when a  
7 *decision* of a department director (Type I) or the Technical  
8 Committee (Type II) is appealed.

8 As used in RZC 21.76.060.I, the term "decision" is defined in RZC 21.76.060.D as the "written  
9 record of the director's decision," which "may be in the form of a staff report, letter, the permit  
10 itself, or other written document indicating approval, approval with conditions, or denial." Here,  
11 the appellants point to no written decision of the Planning Director approving, approving with  
12 conditions, or denying a tree removal permit for the Idylwood Beach Park cottonwood removal.  
13 Without a permit approval, approval with conditions, or denial, there is nothing to appeal under  
14 RZC 21.76.060.I and the Hearing Examiner lacks jurisdiction to hear the appellants' claims.

15 Appellants ignore RZC 21.76.060.D's definition of decision and instead make two  
16 arguments. First, appellants argue that there is still a pending tree removal permit application filed  
17 by Mr. Tolonen of the City's Park Department and that the City's commencement of tree removal  
18 on March 19 somehow constitutes a "decision" on that pending application, making April 2 the  
19 appeal deadline. This is both factually and legally incorrect. Factually, as stated above in the  
20 Statement of Additional Facts and as demonstrated by Ms. Gassaway's email attached to the  
21 Supplemental Declaration of David Tucheck in Support of City's Motion to Dismiss, a  
22 determination was made on February 8, 2018 by the planning staff that a tree removal permit was  
23 not required and that a clearing and grading permit was. The tree removal permit application filed  
24 by Mr. Tolonen was therefore no longer pending as of February 8 and the clearing and grading  
25 permit became the only pending application for the work when it was filed on February 23.  
26 Legally, as pointed out above, the only action on a Type I approval that can be appealed to the

1 Hearing Examiner under RZC 21.76.060.I is a permit approval, approval with conditions, or a  
2 denial. The commencement of tree removal work at Idylwood Beach Park under the City's valid  
3 March 2, 2018 clearing and grading permit is none of those things and is therefore not appealable  
4 to the Hearing Examiner.

5 The second argument made by appellants is that the City's commencement of work on  
6 March 19 under its valid clearing and grading permit was somehow an appealable "decision" on a  
7 shoreline substantial development permit or shoreline conditional use permit, making the deadline  
8 for appeal of that "decision" April 2. Shoreline substantial development permits are Type II  
9 approvals and appeals are governed by RZC 21.76.060.I, the same section that grants the Hearing  
10 Examiner jurisdiction over Type I appeals. For the same reasons as set forth above in connection  
11 with the tree removal permit, the City's work under the clearing and grading permit is not an  
12 appealable "decision" on a shoreline substantial development permit.

13 The case is even more clear for shoreline conditional use permits. Shoreline conditional  
14 use permits are Type III permits on which the Hearing Examiner is the decision-making authority.  
15 RZC Table 21.76.050B; RZC 21.76.060.J. The Hearing Examiner thus has *original* jurisdiction  
16 over shoreline conditional use permits, not *appellate* jurisdiction. Appellants cannot appeal the  
17 lack of a shoreline conditional use permit to the Hearing Examiner under the Hearing Examiner's  
18 appellate jurisdiction, because no such appellate jurisdiction exists.

19 Finally, as the City stated in its initial Motion to Dismiss and as discussed again below, the  
20 only permit the City was required to obtain for removing the cottonwood trees at Idylwood Beach  
21 Park was a clearing and grading permit and no tree removal permit, shoreline substantial  
22 development permit, or shoreline conditional use permit was required. The City obtained the  
23 required clearing and grading permit on March 2, 2018 and no appeal was filed from that permit  
24 decision within the appeal deadline. The permit was thus valid when the City commenced tree  
25 removal on March 19 and it remains valid today. The City's commencement of work under the  
26

1 valid clearing and grading permit is not an appealable “decision” on permits it was not required to  
2 obtain.

3 **2. If Appealable Decisions Were Made Not to Require a Tree Removal Permit or**  
4 **a Shoreline Substantial Development Permit, the Time for Appealing those Decisions**  
5 **Expired Before this Appeal was Filed.**

6 As noted several times in the City’s Motion and in this Reply, tree removal permits are  
7 Type I permits under RZC 21.76.050.B. In this case, a determination was made by Sabrina  
8 Gassaway and Catherine Beam that a tree removal permit was not required for the Idylwood Beach  
9 Park cottonwood tree removal. Supplemental Declaration of David Tuchek in Support of Motion  
10 to Dismiss at p. 1 ¶1. Ms. Gassaway communicated that determination via email to David Tuchek  
11 of the Parks Department on February 8, 2018. Ms. Gassaway’s email determination was the only  
12 written decision made by the City that a tree removal permit was not required, and the Parks  
13 Department followed that determination and submitted a clearing and grading permit application  
14 in lieu of its tree removal permit application on February 23, 2018. Because Ms. Gassaway’s  
15 determination was the basis for the clearing and grading permit application, it follows that the only  
16 way to appeal that determination was to appeal the issuance of the clearing and grading permit,  
17 which appellants did not timely do. RZC 21.76.060.I.2.c. (Type I decisions must be appealed  
18 within 14 days after issuance). Alternatively, if Ms. Gassaway’s determination that no tree  
19 removal permit was required was itself an appealable decision within the meaning of RZC  
20 21.76.060.D, Ms. Gassaway’s February 8, 2018 email was the only written decision on that matter  
21 and the time for appealing that decision has long passed. *Id.* The appellants’ attempt to use the  
22 date the City commenced work under the clearing and grading permit as the date of “decision” for  
23 purposes of the appeal deadline for tree removal permits is not consistent with the facts of this  
24 case.

25 Similarly, the determination that a shoreline permit was not necessary for the Idylwood  
26 Beach Park cottonwood removal came in an email from Cathy Beam, Principal Planner, to Jeff  
Dendy, Senior Engineer, on February 27, 2018. Declaration of Jeff Dendy in Support of Motion

1 to Dismiss at p. 1, ¶ 2 and Exhibit A. As the engineer assigned to the clearing and grading permit  
2 application, Mr. Dendy asked Ms. Beam if a shoreline permit was required and Ms. Beam  
3 responded that it was not. Ms. Beam's email was the only written decision made by the City that  
4 a shoreline permit was not required, and Mr. Dendy followed that decision by issuing the clearing  
5 and grading permit. Because Ms. Beam's determination was the basis for Mr. Dendy issuing the  
6 clearing and grading permit without requiring or waiting for a shoreline permit, it follows that the  
7 only way to appeal that determination was to appeal the clearing and grading permit, which  
8 appellants did not timely do. RZC 21.76.060.I.2.c (Type I decisions must be appealed within 14  
9 days of issuance). Alternatively, if Ms. Beam's determination that no shoreline permit was  
10 required was itself an appealable decision within the meaning of RZC 21.76.060.D,<sup>1</sup> Ms. Beam's  
11 February 27, 2018 email was the only written decision on that matter and the time for appealing  
12 that decision has long passed. *Id.* (Type II decisions must also be appealed within 14 days of  
13 issuance). The appellants' argument that the Parks Department's commencement of tree removal  
14 was the "decision" for purposes of the appeal deadline for shoreline permits is not consistent with  
15 the facts of this case.

16 For the reasons set forth in this Section IV.A, the City Parks Department's commencement  
17 of tree removal on March 19 did not constitute an appealable "decision" that no tree removal permit  
18 and no shoreline permit was required for the work. If there were appealable decisions to this effect,  
19 those decisions were either made at the time the clearing and grading permit was issued or on  
20 February 8, 2018 and February 27, 2018, when Ms. Gassaway and Ms. Beam communicated their  
21 determinations on these issues Mr. Tuchek (in the case of the tree removal permit determination)  
22 and Mr. Dendy (in the case of the shoreline permit determination). Neither of those determinations  
23 was appealed within the 14-day time period required by 21.76.060.I.2.c and the appellants' attempt  
24

25 <sup>1</sup> The City recognizes that Ms. Beam is not the Technical Committee that is charged with making decisions on Type  
26 II permits, but neither is the Parks Department upon whose actions the appellants rely for their argument that commencement of work under the clearing and grading permit constituted an appealable decision that no shoreline permit was required.

1 to appeal them now by arguing that commencement of the work was the triggering date must be  
2 denied.

3 **B. TREE REMOVAL PERMITS AND CLEARING AND GRADING PERMITS ARE**  
4 **MUTUALLY EXCLUSIVE UNDER REDMOND'S CODES: WHERE A**  
5 **CLEARING AND GRADING PERMIT IS REQUIRED, A TREE REMOVAL**  
6 **PERMIT IS NOT.**

7 Municipal ordinances are construed according to the rules of statutory construction.  
8 *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014).  
9 When a provision of an ordinance is ambiguous, the provision must be construed “within the  
10 context of the regulatory and statutory scheme as a whole.” *ITT Rayonier v. Dalman*, 122 Wn.2d  
11 801, 807, 863 P.2d 64 (1993). When that statutory scheme contains two or more provisions that  
12 address the same subject or thing (statutes that are *in pari materia*), those provisions should be  
13 read together to constitute one consistent law. *State v. Houck*, 32 Wn.2d 681, 684, 203 P.2d 693  
14 (1949).

15 In the present case, the appellants focus on the language of RZC 21.72.020, arguing that  
16 that section must be read to require both a tree removal permit and a clearing and grading permit  
17 when more than eleven trees are proposed for removal. Such a reading ignores, however, the  
18 express language of RMC 15.24.050, part of the same City regulatory scheme regarding trees.  
19 RMC 15.24.050 provides, in pertinent part that

20 All clearing, grading or stormwater management construction  
21 activities listed below require approved plans and a permit(s). The  
22 thresholds are cumulative during a one-year period for any given  
23 site.

24 ...

25 (3) Removal of 11 or more trees that are six-inch diameter or  
26 larger. The tree diameter is measured four feet from the ground. The  
removal of 10 or fewer trees is regulated in Redmond Zoning Code  
Chapter 21.72.

27 This provision unambiguously establishes the separate and mutually exclusive nature of tree  
28 removal permits and clearing and grading permits: removal of eleven or more significant trees is

1 regulated by RMC 15.24, while removal of 10 or fewer trees is regulated by RZC 21.72. If the  
2 language was intended to mean that both a clearing and grading permit and a tree removal permit  
3 were required for the removal of eleven or more trees, it could easily have said that the removal of  
4 eleven or more trees also requires a tree removal permit under RZC 21.72. Instead, the language  
5 draws a clear distinction between the regulatory authority of RMC 15.24, which is limited to the  
6 removal of eleven or more trees, and the regulatory authority of RZC 21.72, which is limited to  
7 the removal of ten or fewer trees.

8 The language of RZC 21.72.020 does not dictate a different result. RZC 21.72.020  
9 provides, in pertinent part, that

10 (A) **Permit Required.** Except as provided in RZC 21.72.030,  
11 *Exemptions*, any person who desires to cut down or remove any  
12 significant tree or any stand of trees, or who desires to conduct  
13 grading activities on a site that will result in the removal of trees,  
14 must first obtain a permit to do so from the Administrator as  
15 provided in this section.

16 ...

17 (D) **Undeveloped Lots Not Under Land Use Permit Review.**  
18 The owners of undeveloped lots for which no land use application  
19 is pending must obtain a permit prior to removing any significant  
20 tree(s) or stands of trees on the lot. Removal of 11 or more  
21 significant trees requires clearing and grading approval, in  
22 accordance with RMC Chapter 15.24, *Clearing, Grading and  
23 Stormwater Management*.

24 This language dovetails completely with the language in RMC 15.24.050.3. RZC 21.72.020.A  
25 says that a permit must be obtained “as provided in this section,” and RZC 21.72.020.D establishes  
26 the distinction between tree removal permits required by “this section,” and clearing and grading  
permits, which “this section” requires to be obtained under RMC 15.24 when eleven or more trees  
are proposed for removal. Nothing in RZC 21.72.020.A or D contradicts the clear language of  
RMC 15.24.050.3. Reading these subsections together, the intent is apparent: Removal of ten or  
fewer significant trees is regulated by RZC 21.72, while removal of eleven or more trees is  
regulated by RZC 15.24.050. Appellants’ argument that both a tree removal permit and a clearing

1 and grading permit were required for the Idylwood Park tree removal is not consistent with the  
2 language of the code.

3 Appellants' argument that both permits were required is also inconsistent with the  
4 longstanding City staff interpretation of RMC 15.24.050 and RZC 21.72.020. As Steven Fischer  
5 has indicated in his May 23, 2018 declaration submitted with this Reply, the City staff has always  
6 interpreted these two sections as providing two separate and mutually exclusive permits: a tree  
7 removal permit for when ten or fewer trees are proposed for removal and a clearing and grading  
8 permit for when eleven or more trees are proposed for removal. May 23, 2018 Declaration of  
9 Steven Fischer in Support of Motion to Dismiss at p. 2, ¶ 4. When construing an ambiguous  
10 ordinance, a court or hearing examiner must give considerable deference to the construction  
11 adopted by those city officials charged with its enforcement. *Pinecrest Homeowner's Ass'n. v.*  
12 *Cloninger & Assoc.*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004); *Development Services v. City of*  
13 *Seattle*, 138 Wn.2d 107, 117, 979 P.2d 387 (1999); *Milestone Homes, Inc. v. City of Bonney Lake*,  
14 145 Wn. App. 118, 127, 186 P.3d 357 (2008); *Citizens to Preserve Pioneer Park, LLC v. City of*  
15 *Mercer Island*, 106 Wn. App. 461, 475, 24 P.3d 1079 (2001). Here, staff has consistently  
16 interpreted RMC 15.24.050.3 and RZC 21.76.020.D in the manner described in Mr. Fischer's  
17 declaration and the Hearing Examiner should grant deference to that interpretation and reject  
18 appellants' argument.

19 **C. THE CITY WAS NOT REQUIRED TO OBTAIN A SHORELINE CONDITIONAL**  
20 **USE PERMIT TO REMOVE COTTONWOOD TREES AT IDYLWOOD PARK.**

21 **1. The Cottonwood Tree Removal at Idylwood Beach Park is Not "Development"**  
**under RCW 90.58.030(3)(a).**

22 Tree removal is not an activity that is specifically listed in the Shoreline Management Act's  
23 definition of "development" and a shoreline permit is therefore not ordinarily required for the  
24 removal of trees. RCW 90.58.030(3)(a); AGLO 1973 No. 73 (July 5, 1973) (logging is not  
25 development under the SMA unless it interferes with the normal public use of the surface waters  
26 or shorelines of the state). Here, the appellants argue that the cottonwood tree removal at Idylwood

1 Beach Park temporarily interferes with the normal public use of Lake Sammamish because a few  
2 trees have been felled into the water as part of the removal process. The appellants are incorrect.

3 While it is true that some trees have unavoidably landed in the water because of their lean  
4 direction and their weight, the record reflects that any impact on the normal public use of the  
5 shoreline has been minimal. Each tree that landed in the water was immediately retrieved to shore,  
6 cut up, and removed from the area. Supplemental Declaration of David Tuchek in Support of  
7 Motion to Dismiss at p. 2, ¶¶ 2 - 5. No one was using the lake in the vicinity of the work area  
8 when the trees landed in the water and anyone who wanted to use the lake in this area could easily  
9 have navigated around the trees for the 30 minutes it took the City to remove them. *Id.* While the  
10 Sammamish Rowing Club sometimes conducts rowing classes on the lake, no rowing classes or  
11 other activities had to be canceled or delayed during the tree removal. *Id.* at p. 3, ¶ 6. Under these  
12 circumstances, the appellants have failed to prove that any “normal public use” of the shoreline  
13 was or will be interfered with by the tree removal.

14 The case of *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992)  
15 is instructive. In that case, a nonprofit organization sued a landowner, arguing that the placement  
16 of gates on an abandoned railroad right-of-way required a shoreline substantial development  
17 permit because it interfered with the normal public use of Cowiche Creek. The trial court found  
18 that erection of the gates did not interfere with normal public use and the Washington Supreme  
19 Court agreed:

20 It is obvious from the exhibits that one could simply walk around  
21 the gates and proceed on the right of way. Even if access on the  
22 right of way was required to preserve any “normal public use” of the  
23 water and shoreline of Cowiche Creek, such access was simply not  
barred by the placement of the gates. There is absolutely no merit  
to the Department [of Ecology]’s claim that placement of the gates  
materially interfered with any public access.

24 118 Wn.2d at 818. Similarly, the fact that a few trees may land in a miniscule section of Lake  
25 Sammamish during the Idylwood Beach Park tree removal is not a material interference with the  
26 normal public use of the shoreline when anyone on the waters of the lake can simply navigate

1 around the work area for the very brief time it takes to remove the trees. Because the normal public  
2 use of the surface waters of Lake Sammamish will not be impacted in more than minimal way, the  
3 City's tree removal is not development under RCW 90.58.030(a) and appellants' argument to the  
4 contrary fails.

5 **2. Idylwood Beach Park is a Permitted Use under the Redmond Zoning Code**  
6 **and Tree Removal to Facilitate that Use is Not a Separate Conditional Use.**

7 Appellants made no attempt in their Opposition to counter the City's argument that  
8 Idylwood Beach Park is a "water-oriented development, e.g., interpretive center, park" under RZC  
9 Table 21.68.050 and thus a permitted use in all Shoreline Environments of the City under the  
10 "Recreational" use category in the Table. Tree removal activity to ensure the safety of the Park  
11 for use by park patrons is part and parcel of the permitted park use and is not a separate use for  
12 which a conditional use is required. The appellants' claim to the contrary is not well-taken and is  
13 unsupported by any legal argument based on the RZC. The appellants' claim that a shoreline  
14 conditional use permit was required must be denied.

15 **D. DISCOVERY IS NOT ALLOWED UNDER THE HEARING EXAMINER'S**  
16 **RULES AND FURTHER DELAY WILL SIGNIFICANTLY IMPACT THE USE OF**  
17 **IDYLWOOD BEACH PARK DURING THE SUMMER MONTHS.**

18 Appellants have argued that the Hearing Examiner should delay ruling on the City's  
19 Motion to Dismiss until appellants can conduct further discovery. The City strenuously objects to  
20 any further delay for several reasons. First, discovery is not provided for under the Hearing  
21 Examiner's Rules of Procedure, and the City has already produced more than 900 documents in  
22 response to appellants' voluminous public records requests. Second, the material facts necessary  
23 to decide the City's Motion to Dismiss are well-known at this point: the City did not obtain a tree  
24 removal permit or shoreline permit for the Idylwood Beach Park tree removal; the only permit the  
25 City obtained was a clearing and grading permit; the clearing and grading permit was issued on  
26 March 2, 2018 and the appeal period for that permit expired on March 16, 2018; the City  
commenced tree removal at Idylwood Beach Park on March 19, 2018; and this appeal followed on

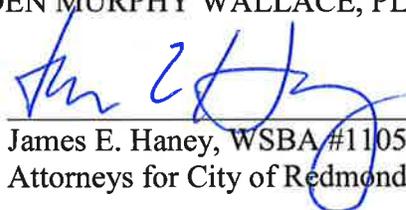
1 March 27, 2018. Finally, further delays are significantly prejudicial to the City, as the peak season  
2 at Idylwood Beach Park is rapidly approaching and the City needs to remove the trees for the safety  
3 of park patrons before that peak season begins. The City is very concerned that last year's limb  
4 failures will be repeated and that further injuries to persons or property in the Park or on adjacent  
5 lands will be the result. The City urges the Hearing Examiner to deny appellants' request for delay  
6 and to dismiss this appeal now.

7 **V. CONCLUSION**

8 For all of the reasons set forth above and in the City's Motion to Dismiss, the Hearing  
9 Examiner should dismiss the appeal filed by appellants. The City obtained a valid clearing and  
10 grading permit to remove thirty hazardous cottonwood trees at Idylwood Beach Park. The clearing  
11 and grading permit was the only permit the City was required to obtain under the City's codes: no  
12 tree removal permit or shoreline permit was required. Appellants failed to appeal the clearing and  
13 grading permit within the fourteen-day appeal period prescribed by RZC 21.76.060.I.2 and now  
14 attempt to collaterally attack that permit by attempting to appeal the "failure" of the City to obtain  
15 permits that were not required. The Hearing Examiner should dismiss the appeal for the reasons  
16 stated.

17 DATED this 25<sup>th</sup> day of May, 2018.

18 OGDEN MURPHY WALLACE, PLLC

19  
20 By 

21 James E. Haney, WSBA #11058  
22 Attorneys for City of Redmond  
23  
24  
25  
26

1 **DECLARATION OF SERVICE**

2 I, Charolette Mace, an employee of Ogden Murphy Wallace, PLLC, certify that on the date  
3 below, I emailed this document, and mailed the original and one copy to:

4 Cheryl D. Xanthos  
5 Clerk to the Hearing Examiner  
6 City of Redmond, Hearing Examiner's Office  
7 15670 NE 85<sup>th</sup> Street  
8 Redmond, WA 98052  
9 Email: [cdxanthos@redmond.gov](mailto:cdxanthos@redmond.gov)

10 and emailed this document only to:

11 Alexander Sidles  
12 BRICKLIN & NEWMAN LLP  
13 1424 Fourth Ave., Suite 500  
14 Seattle, WA 98101-2258  
15 Email: [sidles@bnd-law.com](mailto:sidles@bnd-law.com)

16 I declare under penalty of perjury under the laws of the State of Washington that the  
17 foregoing is true and correct.

18 Executed at Seattle, Washington this 25th day of May, 2018.

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20 \_\_\_\_\_  
21 Charolette Mace  
22 *Legal Assistant*

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

In the Matter of the Appeal of  
**Monica Catunda, et al**  
of the March 2, 2018 Clear and Grade Permit CGD-  
2018-01368 Allowing the removal of 30 Cottonwood  
trees from Idylwood Beach Park in Redmond

NO. LAND-2018-00317  
DECLARATION OF GEOFFREY  
DENDY IN SUPPORT OF MOTION TO  
DISMISS

I, GEOFFREY DENDY, make the following statement based on personal knowledge:

1. I am a Senior Engineer with the City of Redmond Planning Department. In that capacity, I am involved in the review of clearing and grading permits under Chapter 15.24 of the Redmond Municipal Code.

2. On February 23, 2018, I was assigned to review the clearing and grading permit applied for by the Parks Department for tree cutting at Idylwood Beach Park. As part of my review, I emailed Cathy Beam of the Redmond Planning Department on February 26, 2018 to ask whether a shoreline permit was also required for this work. I consulted Cathy because of her expertise in the City's shoreline regulations.

3. On February 27, 2018, I received a response from Cathy indicating that a shoreline permit was not required for this project because tree cutting does not meet the definition of development under WAC 173-27-030(6).



**EXHIBIT A**

## Steve Fischer

---

**From:** Cathy Beam  
**Sent:** Tuesday, February 27, 2018 3:01 PM  
**To:** Jeff Dendy  
**Cc:** Steve Fischer  
**Subject:** RE: Idylwood Park Tree Cutting Clear & Grade Permit - CIVPLAN-2018-00194

Hi Jeff,

A shoreline permit will not be necessary because tree cutting does not meet the definition of Development under Chapter 173-27-030(6) WAC (Shoreline Rules).



Cathy Beam, AICP  
Principal Planner | Planning and Community Development  
☎: 425.556.2429 | ✉: [cbeam@redmond.gov](mailto:cbeam@redmond.gov) | [Redmond.gov](http://Redmond.gov)  
MS: 2SPL | 15670 NE 85<sup>th</sup> St | Redmond, WA 98052



NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account is a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

**From:** Jeff Dendy  
**Sent:** Monday, February 26, 2018 1:07 PM  
**To:** Cathy Beam <[CBEAM@REDMOND.GOV](mailto:CBEAM@REDMOND.GOV)>  
**Cc:** Steve Fischer <[SFISCHER@REDMOND.GOV](mailto:SFISCHER@REDMOND.GOV)>  
**Subject:** FW: Idylwood Park Tree Cutting Clear & Grade Permit - CIVPLAN-2018-00194

Cathy:

The City of Redmond Parks Department (Teresa) has asked me to review and approve a Clear & Grade Permit to cut some hazardous trees at Idylwood Park. Attached are the listing of trees to be cut and a plan showing location. The location is near the Lake. Will a Shorelines Permit be needed also?

Steven:

Parks do not have a formal arborist report, but did document the result of an inspection in the attached spreadsheet. I expect Development Services will not require an arborist report, or ask that a Planner be assigned to this C & G application as a reviewer. Let me know if you think otherwise.

Development Engineering will not assign an inspector to this tree cutting permit. We are confident that City of Redmond Parks will cut the right trees.

Jeff Dendy  
-2890

NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account is a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

**From:** Jeff Dendy  
**Sent:** Friday, February 23, 2018 10:52 AM  
**To:** David Tucheck <[DTUCHEK@REDMOND.GOV](mailto:DTUCHEK@REDMOND.GOV)>  
**Subject:** Idylwood Park Tree Cutting Clear & Grade Permit

David:

I've been assigned to your C & G Permit for tree cutting at Idylwood Park. The project has been assigned the plan case number of CIVPLAN-2018-00194.

There is no fee for the permit. Besides the application form I will need a site plan showing which trees are to be cut and which are to remain. Also need a copy of the arborist report describing why the trees need to come down.

Include a short description of how erosion / sedimentation control will be accomplished. Our files hold 11-inch by 17-inch sheets OK for site plans, although a full sized sheet is accepted too.

Call with questions.

Jeff Dendy, PE  
Senior Engineer  
Development Engineering  
425-556-2890

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

In the Matter of the Appeal of  
**Monica Catunda, et al**  
of the March 2, 2018 Clear and Grade Permit CGD-  
2018-01368 Allowing the removal of 30 Cottonwood  
trees from Idylwood Beach Park in Redmond

NO. LAND-2018-00317  
DECLARATION OF STEVEN  
FISCHER IN SUPPORT OF MOTION  
TO DISMISS

I, STEVEN FISCHER, make the following statement based on personal knowledge:

- 1. I am the Development Services Manager for the City of Redmond. In that capacity, I oversee the City’s planning staff in the processing of development permits.
- 2. I have reviewed the brief and exhibits submitted by the appellants in response to the Motion to Dismiss and wish to address three issues.
- 3. First, Mr. Sidles attached my email of September 7, 2017 to Karen Haluza, who was then the City’s Planning Director as Exhibit A to his Declaration. The appellants’ brief cites to my email as a “key event” showing that a tree removal permit was necessary to remove the cottonwoods at Idylwood Beach Park. This is categorically false, as my email had absolutely nothing to do with Idylwood. In fact, my email was in response to a question raised by my staff concerning who was authorized to sign letters approving tree removal exceptions. Rob Odle, the City Planning Director prior to Ms. Haluza, had signed these letters himself, and when he was not available, I sometimes signed them. My email to Ms. Haluza was simply asking whether she

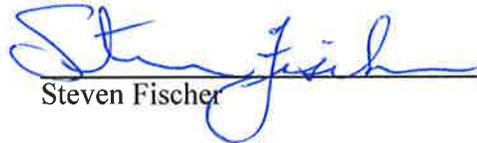
1 wanted to continue that practice or whether she wanted to sign all such letters herself. After  
2 receiving my email, Ms. Haluza advised me that she wanted to review and sign off on all tree  
3 removal exceptions. That is all my email was about and it is totally irrelevant to Idylwood Park.

4 4. Second, the appellants argue in their brief that the City's Code requires both a tree  
5 removal permit and a clearing and grading permit whenever more than ten significant trees will be  
6 removed. The City staff has never interpreted the Code this way and has consistently interpreted  
7 RMC 15.24.050(3) and RZC 21.72.020(D) as providing that the two permits are mutually  
8 exclusive: removal of ten or fewer trees requires only tree removal permit and removal of eleven  
9 or more trees requires only a clearing and grading permit. My understanding and belief, as the  
10 Planning Manager who works daily with these codes, is that this is the only logical interpretation  
11 when RMC 15.24.050(3) and RZC 21.72.020(D) are read together. If this were not the case, the  
12 City would be requiring two separate permits under two separate standards for exactly the same  
13 conduct – the removal of eleven or more trees. This makes no sense to me and would not be  
14 consistent with the City's overall objective of having a streamlined permitting process.

15 5. Third, the appellants argue that the action of the City in beginning tree removal at  
16 Idylwood Beach Park on March 19 without a tree removal permit or a shoreline permit somehow  
17 constitutes an appealable "decision" that no tree removal permit or shoreline permit was required.  
18 This is incorrect. RZC 21.76.060(D)(3) requires all Director decisions on Type I permits (which  
19 include tree removal permits) to be issued in writing and sent to the applicant. Similarly, RZC  
20 21.76.060(E)(3) requires all Technical Committee decisions on Type II permits (which include all  
21 shoreline permits) to be in writing. In addition, Rule V of the Technical Committee's Rules of  
22 Procedure, a copy of which is attached as Exhibit A to this declaration, provides that all Technical  
23 Committee decisions must be in writing and sent to the applicant. No such written decisions were  
24 issued for the tree removal at Idylwood Beach Park because neither a tree removal permit nor a  
25 shoreline permit is required for such removal.

1 I declare under penalty of perjury under the laws of the State of Washington and the United  
2 States of America that the foregoing is true and correct to the best of my knowledge.

3 EXECUTED at Redmond, Washington this 23 day of May, 2018.

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6 Steven Fischer

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1 **DECLARATION OF SERVICE**

2 I, Charolette Mace, an employee of Ogden Murphy Wallace, PLLC, certify that on the date  
3 below, I emailed this document, and mailed the original and one copy to:

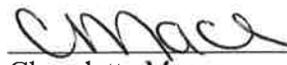
4 Cheryl D. Xanthos  
5 Clerk to the Hearing Examiner  
6 City of Redmond, Hearing Examiner's Office  
7 15670 NE 85<sup>th</sup> Street  
8 Redmond, WA 98052  
9 Email: [cdxanthos@redmond.gov](mailto:cdxanthos@redmond.gov)

10 and emailed this document only to:

11 Alexander Sidles  
12 BRICKLIN & NEWMAN LLP  
13 1424 Fourth Ave., Suite 500  
14 Seattle, WA 98101-2258  
15 Email: [sidles@bnd-law.com](mailto:sidles@bnd-law.com)

16 I declare under penalty of perjury under the laws of the State of Washington that the  
17 foregoing is true and correct.

18 Executed at Seattle, Washington this 25th day of May, 2018.

19   
20 Charolette Mace  
21 Legal Assistant

**EXHIBIT A**

## Alex Sidles

---

**From:** Steve Fischer <SFISCHER@REDMOND.GOV>  
**Sent:** Thursday, September 7, 2017 5:05 PM  
**To:** Karen Haluza  
**Cc:** Steve Fischer  
**Subject:** Tree Removal Permits - Exceptions

Karen

The code allows for landmark trees (trees greater than 30" in diameter) to be removed if they meet the exception criteria outlined in RZC 21.72.090. The City's decision (approval/denial) of an exception request is noted in a letter back to the applicant. These requests can come to the City as part of a land use application or from a single family homeowner who wishes to remove a tree.

In the past, the former director has signed these letters and on occasion I have signed them if he was not available. The code states that a "request for any exception shall be submitted in writing by the property owner for consideration by the Administrator, and shall accompany the application for a permit reviewed under this section. The written request shall fully state all substantiating facts and evidence pertinent to the exception request, and include supporting maps or plans. The Administrator may also require the recommendation of a certified arborist in reviewing an exception request."

The code states that the Administrator is the Planning Director or their designated representative.

How do you want to proceed....do you wish to review and sign off on all tree exceptions?

**Steven Fischer**

Manager, Development Review  
City of Redmond – Development Services Center  
15670 NE 85<sup>th</sup> St, Redmond, WA 98052 MS:2SPL  
P: 425.556.2432 F: 425.556.2400

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

In the Matter of the Appeal of  
**Monica Catunda, et al**  
of the March 2, 2018 Clear and Grade Permit CGD-  
2018-01368 Allowing the removal of 30 Cottonwood  
trees from Idylwood Beach Park in Redmond

NO. LAND-2018-00317  
SUPPLEMENTAL DECLARATION OF  
DAVID TUCHEK

I, DAVID TUCHEK, make the following statement based on personal knowledge:

1. I am making this Supplemental Declaration to respond to some of the false statements made in the brief filed by the appellants in this matter.
2. The appellants assert that I omitted material information from my May 11, 2018 Declaration in this matter regarding the Parks Department’s initial application for a tree removal permit. I did not consider that information material to this appeal because it was later determined that a tree removal permit was not required. It is true that the Parks Department was initially told that a tree removal permit was required for the cottonwood removal at Idylwood and I asked Chris Tolonen to prepare and submit a tree removal application. However, on Thursday, February 8, 2018, I received an email from Sabrina Gassaway, the Assistant Planner assigned to the cottonwood tree removal project, indicating that a tree removal permit was not necessary and that a clearing and grading permit was required instead. A copy of Ms. Gassaway’s email is attached as Exhibit A to this Declaration. Based on this email, the Parks Department did not pursue a tree

1 removal permit and instead submitted the clearing and grading permit application attached as  
2 Exhibit B to my May 11 declaration on February 23, 2018. Because I was told that a tree removal  
3 permit was not required, I did not consider our previous submittal of an application for that permit  
4 to be material to this appeal.

5 3. The appellants also assert that tree removal at Idylwood Beach Park will result in  
6 at least a temporary interference with the normal public use of the surface waters of Lake  
7 Sammamish. I disagree. The video that the appellants refer to was taken on August 11, 2017.  
8 The previous day, August 10, 2017, a large limb had dropped from a cottonwood tree located on  
9 the south end of the main beach, striking a park patron in the head and causing a severe injury. In  
10 responding to that incident, Park Operations staff identified three cottonwood trees that were  
11 leaning severely toward the beach and that were considered high risk. On August 11, Park  
12 Operations staff removed the three trees and two of the trees landed in the water. The two trees  
13 were immediately retrieved to shore, where they were cut up and removed. Because of the way  
14 the trees were leaning, staff was unable to fell the trees in any other direction and landing the trees  
15 in the water was unavoidable. I estimate that each tree was in the water for thirty minutes or less.

16 4. On March 19-20, 2018, under the authority of the March 2 clearing and grading  
17 permit, Park Operations staff removed an additional thirteen hazardous trees from the south end  
18 of the main beach. Staff attempted to land all of these trees on the beach, but four of the trees (two  
19 of which were very small) were leaning severely toward the water and the lean and the weight  
20 caused the trees to land in the water when felled. Park Operations staff immediately retrieved each  
21 of the four trees from the water, cut the trees up, and removed them from the Park.

22 5. In both of these tree removal operations, any interference with the use of the surface  
23 of Lake Sammamish was momentary and lasted only as long as it took to pull the felled trees from  
24 the water. Anyone who might have wanted to be on the water in the vicinity of the tree cutting  
25 could have easily navigated outside of and past the area where the trees fell, and the Parks  
26 Department had spotters looking for people in the area at all times during the tree felling operation.

1 As the video taken on August 11 shows, no one was out on the water in the work zone area at the  
2 time the trees were felled.

3 6. The appellants also point to an email from Jeff Hagen, Recreation Program  
4 Manager of the Parks Department, questioning whether classes at the Sammamish Rowing Club  
5 would have to be canceled or delayed as evidence of interference with normal use. I have  
6 investigated this matter and checked with Jeff Hagen and I understand that classes were not, in  
7 fact, canceled or delayed as the result of the tree removal the City has accomplished thus far. The  
8 City does not anticipate any need for any classes to be canceled or delayed when the tree removal  
9 recommences.

10 I declare under penalty of perjury under the laws of the State of Washington and the United  
11 States of America that the foregoing is true and correct to the best of my knowledge.

12 EXECUTED at Redmond, Washington this 24 day of May, 2018.

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16 David Tuckek

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1 **DECLARATION OF SERVICE**

2 I, Charolette Mace, an employee of Ogden Murphy Wallace, PLLC, certify that on the date  
3 below, I emailed this document, and mailed the original and one copy to:

4 Cheryl D. Xanthos  
5 Clerk to the Hearing Examiner  
6 City of Redmond, Hearing Examiner's Office  
7 15670 NE 85<sup>th</sup> Street  
8 Redmond, WA 98052  
9 Email: [cdxanthos@redmond.gov](mailto:cdxanthos@redmond.gov)

10 and emailed this document only to:

11 Alexander Sidles  
12 BRICKLIN & NEWMAN LLP  
13 1424 Fourth Ave., Suite 500  
14 Seattle, WA 98101-2258  
15 Email: [sidles@bnd-law.com](mailto:sidles@bnd-law.com)

16 I declare under penalty of perjury under the laws of the State of Washington that the  
17 foregoing is true and correct.

18 Executed at Seattle, Washington this 25<sup>th</sup> day of April, 2018.

19   
20 \_\_\_\_\_  
21 Charolette Mace  
22 *Legal Assistant*

**EXHIBIT A**

## David Tuchek

---

**From:** Sabrina Gassaway  
**Sent:** Thursday, February 8, 2018 11:39 AM  
**To:** David Tuchek; Christopher Tolonen  
**Cc:** Cathy Beam; Lisa Rigg  
**Subject:** Cottonwood

Hello David,

I hope you're doing well this morning. I spoke with Cathy regarding the Cottonwood removal project and I apologize but I have been processing the project incorrectly. The removal will need to go through a Clear and Grade permit and not a Tree Removal Permit which means it falls under Civil Engineering scope of work. I have looped in Lisa Rigg to help coordinate on which civil engineer will be assigned to review this project. As part of the approval of the Clear and Grade Planning will request a memo detailing the replacement efforts for the project. I'm sorry for any delay this error may have caused and hope we can work to process this project in a timely manner.

Best Regards,

**Sabrina Gassaway**

Assistant Planner | City of Redmond

425.556.2463 | [sgassaway@redmond.gov](mailto:sgassaway@redmond.gov) | [www.redmond.gov](http://www.redmond.gov)

15670 NE 85<sup>th</sup> St | PO Box 97010 | MS 2SPL | Redmond, WA 98073-9710



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