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8 CITY OF REDMOND  
9 OFFICE OF THE HEARING EXAMINER

10 In the Matter of the Appeal of:

11 JAMES JORDAN,

12 Appellant.

SEPA Appeal No. SEPA-2019-01173  
Dept. File No. LAND-2021-00035

13 **APPLICANT’S MOTION TO**  
14 **DISMISS SEPA APPEAL**

15 **I. INTRODUCTION AND RELIEF REQUESTED**

16 Cascadia School seeks a modest remodel and expansion to accommodate the community’s  
17 growing need for quality educational and child care services. To that end, the School applied in  
18 October 2019 for a Type III conditional use permit to remodel approximately 3,000 square feet of  
19 existing space and add 610 square feet of new space to the existing facility (“**Project**”). The size  
20 and scope of the Project are well below the applicable thresholds for categorical exemption from  
21 environmental review. In an apparent abundance of caution, the City of Redmond nevertheless  
22 conducted initial environmental review because the other end of the School’s property abuts Tosh  
23 Creek and includes wetlands. Based on this initial review, the City issued a determination of non-  
24 significance (“**DNS**”) requiring no further review.

1 James Jordan,<sup>1</sup> an aggrieved neighbor, appeals the DNS. His appeal focuses exclusively  
2 on perceived impacts to traffic and parking. He asks the Hearing Examiner to order the City to  
3 conduct further “analysis of the impacts of vehile (sic) queuing on traffic and public safety...”  
4 (Appeal Form at 4.)

5 The Hearing Examiner should dismiss this appeal for two reasons. First, the Project is  
6 categorically exempt from environmental review. Second, the additional review Mr. Jordan urges  
7 is beyond the scope of review allowed for otherwise-exempt projects located in a critical area.  
8 There is no appropriate basis for the additional review Mr. Jordan seeks here.

9 Accordingly, the School respectfully moves for dismissal.

10 **II. DOCUMENTS OF RECORD RELIED UPON**

11 This motion relies on the following documents, which will be part of the administrative  
12 record for the hearing on the School’s pending application for a Conditional Use Permit relating  
13 to the Project and the SEPA appeal at issue here: (i) City of Redmond’s SEPA Determination of  
14 Non-Significance and related environmental checklist; (ii) Project plan set; (iii) Stormwater  
15 Management Report by Jacobson Consulting Engineers; and (iv) Wetland and Stream Delineation  
16 Report by The Watershed Company.

17 **III. STATEMENT OF FACTS**

18 **A. Background**

19 Cascadia School operates in the City of Redmond, educating children from pre-school  
20 through fifth grade. The School has operated at its present location since 1984, with a current  
21 maximum enrollment of 75 students. The School is located on an approximately 2.3-acre parcel at  
22 4239 162nd Avenue NE. The existing campus has three buildings and associated play and parking  
23 areas, clustered in the eastern end of the parcel. The property also includes portions of two  
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26 <sup>1</sup> During the pre-hearing conference on February 16, 2021, Mr. Jordan reported that his appeal is joined by Darrell Newberry, another neighbor. The record contains no separate appeal statement by Mr. Newberry.

1 streams, a wetland, and related buffers at the western end of the property. The buffers do not  
2 extend to the developed portion of the property.

3 **B. Proposed Project**

4 The Project will remodel and expand existing Building C, a roughly 3,000 square foot  
5 structure originally built as a single-family residence. Existing Buildings A (3,300 square feet)  
6 and B (360 square feet) will not be changed. The Project would expand Building C by about 610  
7 square feet in a single-story addition, and change its building occupancy type from Residential to  
8 Education. For purposes of SEPA, the Project also includes three options for redeveloping an  
9 existing basketball court: (a) new community space of about 3,080 square feet; (b) new classroom  
10 space of about 1,540 square feet; or (c) two new portables totaling about 1,540 square feet.<sup>2</sup> The  
11 Project also increases parking capacity from 10 spaces to 18 spaces. Overall, the Project will  
12 allow the School to increase enrollment by 55 students, from the current maximum of 75 students  
13 to 130 students. To support increased enrollment, the School will increase staff by four, from 17  
14 to 21 employees. The maximum square footage for this Project is about 7,500 square feet.

15 **C. Conditional Use Permit**

16 The City has determined that the Project requires a conditional use permit and site plan  
17 entitlement, which are to be consolidated as a Type III permit. RZC § 21.76.070. Accordingly, the  
18 School submitted materials seeking a conditional use permit and site plan entitlement. The City  
19 has at this point thoroughly reviewed all aspects of the Project, and the School anticipates it will  
20 recommend approval.<sup>3</sup>

21 **D. SEPA Determination of Non-Significance**

22 The School's submission also included an environmental checklist prescribed by the State  
23 Environmental Policy Act ("SEPA"), ch. 43.21C RCW. The checklist identified the scope of the  
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25 <sup>2</sup> The work contemplated for the basketball court was disclosed in the SEPA checklist for completeness, but that work  
not part of the pending application for a Conditional Use Permit.

26 <sup>3</sup> The Technical Committee included a recommendation of approval for PR-201-00751, in its Consolidated Type  
III/Conditional Use Permit and Site Plan Entitlement/Technical Committee Report to the Hearing Examiner.

1 proposal, the nature of the site (including existing development and delineated critical areas), and  
2 potential environmental impacts.

3 The City issued a DNS for the proposal on December 18, 2020. The DNS concluded that  
4 the requirements of environmental analysis, protection, and mitigation measures have been  
5 adequately addressed through the City's regulations and Comprehensive Plan, together with  
6 applicable state and federal law, and that the proposal would create no probable significant  
7 adverse environmental impacts.

8 This SEPA appeal followed. In it, Mr. Jordan challenges the DNS and asks the Hearing  
9 Examiner to require additional review of traffic and parking.

#### 10 IV. AUTHORITY AND ARGUMENT

11 SEPA authorizes the Washington Department of Ecology to define activities categorically  
12 exempt from environmental review. RCW 43.21C.110(1)(a). The Department's SEPA Rules thus  
13 include a variety of categorical exemptions. *See* WAC 197-11-305(1) (referring to Part Nine of  
14 the SEPA Rules). The SEPA Rules also allow local jurisdictions to require limited review of  
15 otherwise-exempt projects when located in a designated critical area. WAC 197-11-305(1)(a);<sup>4</sup>  
16 WAC 197-11-908. Review is limited to matters relating to the critical area. WAC 197-11-908(1).

##### 17 A. The Project is categorically exempt from SEPA review.

18 The Hearing Examiner should dismiss this appeal because the Project is categorically  
19 exempt from review. The City need not have issued a SEPA threshold determination at all, much  
20 less conduct the additional review Mr. Jordan seeks.

21 The SEPA Rules categorically exempt projects meeting their definition of "minor new  
22 construction." *See* WAC 197-11-305(1); 197-11-800(1). For school construction, a project meets  
23 this definition if it involves no more than 4,000 gross square feet and up to 20 associated parking  
24 stalls. WAC 197-11-800(1)(b)(iv). Cities may raise these thresholds to prescribed higher levels.

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25 <sup>4</sup> The SEPA Rules also allow review of otherwise-exempt activities when those activities are part of a series of actions  
26 that include non-exempt actions or that cumulatively have a significant environmental impact. WAC 197-11-  
305(1)(b). The Project is not part of a series of actions.

1 See WAC 197-11-800(1)(c). The City of Redmond has done this. In Redmond, the “minor new  
2 construction” threshold for school projects is 30,000 gross square feet and 90 stalls of associated  
3 parking. RZC § 21.70.090.A.4. If a school project falls below these thresholds, it is categorically  
4 exempt from SEPA environmental review unless the project is “undertaken wholly or partly on  
5 land covered by water.” WAC 197-11-800(1)(a)(i).<sup>5</sup>

6 This Project is categorically exempt under the SEPA Rules and Redmond Zoning Code.  
7 The School proposes to remodel about 3,000 square feet of existing space and add between about  
8 2,100 and 3,600 square feet of new space. The Project also adds eight new parking stalls for a  
9 total of 18 stalls. Depending on the option selected for the basketball are, the maximum square  
10 footage involved here is about 7,500 square feet—well below 30,000 square-foot threshold for  
11 categorical exemption for “minor new construction” on school projects in Redmond.

12 **1. The Project is not on land covered by water.**

13 Perhaps in an overabundance of caution, the City nevertheless conducted an initial review  
14 because the School’s property abuts Tosh Creek and includes related wetlands. While perhaps  
15 understandable, this review was unnecessary because the Project will not be “undertaken wholly  
16 or partly on land covered by water.” WAC 197-11-800(1)(a)(i). The SEPA Rules define the term  
17 “land covered by water” to mean “lands underlying the water areas of the state below the ordinary  
18 high-water mark, including salt water...natural water courses,... and wetlands.” WAC 197-11-  
19 756(1). The definition specifically **excludes** adjacent lands and designated buffers above the  
20 ordinary high-water mark. WAC 197-11-756(3).

21 No part of the Project will occur on or even near land below the ordinary high-water mark.  
22 Tosh Creek and related wetlands are on the west end of the property. The Project is on already-  
23 improved areas at the east end of the property. The distance between the two areas is more than  
24 200 feet—well outside the applicable 150-foot wetland buffer. Because no part of the Project is  
25 on “land covered by water,” the categorical exemption for “minor new construction” applies.

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<sup>5</sup> This provision includes other limitations that do not apply here. See WAC 197-11-800(1)(a).

1           **2. The Project is not in a designated critical area.**

2           The same is true of the SEPA Rule allowing local jurisdictions to require environmental  
3 review of otherwise-exempt projects in designated critical areas. *See* WAC 197-11-305(1)(a).  
4 This authorization is a special exception to the general categorical exemptions under SEPA. *The*  
5 *Mountaineers, et al. v. Dept. of Natural Resources, et al.*, FBAP No. 00-029, 2002 WL 1650474,  
6 at \*4 (Forest Practices Appeal Board March 21, 2002). These exceptions are “construed narrowly  
7 to uphold the values of the underlying system of categorical exemptions.” *Id.* (citing *City of*  
8 *Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local 469, Yakima Fire Fighters Ass'n*, 117  
9 Wn.2d 655, 670, 818 P.2d 1076 (1991)).

10           Construed narrowly, WAC 197-11-908(1) requires more than the mere presence of a  
11 critical area somewhere on the subject property—the project itself must be “**in** one or more  
12 critical areas designated in a critical areas ordinance adopted under [the Growth Management  
13 Act].” (emphasis added). The admonition in WAC 197-11-908(2) confirms this authorization  
14 applies only to project occurring inside a designated critical area:

15                   **Proposals that will be located within critical areas** are to be treated no  
16 differently than other proposals under this chapter, except as stated in the  
17 prior subsection. A threshold determination shall be made for all such  
actions, and an EIS shall not be automatically required for a proposal  
merely because it is **proposed for location in a critical area**.

18 (emphasis added). In other words, WAC 197-11-908 applies only when a project is located inside  
19 a designated critical area—not every time there is a designated critical area on a property. Local  
20 jurisdictions may not require review under WAC 197-11-908 unless the proposal itself is inside a  
21 critical area.

22           As noted above, the Project itself is not in a designated critical area. The proposed work is  
23 more than 200 feet away from the delineated wetland and well beyond required buffers.<sup>6</sup> Because  
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25 <sup>6</sup> The City’s threshold determination identified the entire property as the project site and on that basis noted that a part  
26 of the “site” is classified as a critical area. (DNS at 18.) Given the limited scope of the Project, the School respectfully  
disagrees that the entire property is the Project’s site. This disagreement is immaterial, however, because the City  
ultimately issued a DNS and required no further environmental review.

1 the Project itself is not in a designated critical area, the authorization in WAC 197-11-305(1)(a)  
2 and WAC 197-11-908 is unavailable. The Project is categorically exempt from environmental  
3 review. There was no need for a threshold determination in the first place, much less the  
4 additional review Mr. Jordan seeks through this appeal.

5 **B. The issues raised in this appeal are beyond the scope of review allowed under WAC**  
6 **197-11-908 for proposals located in critical areas.**

7 Moreover, Mr. Jordan's SEPA appeal fails whether or not the City had authority under  
8 WAC 197-11-305(1)(a) to issue a threshold determination. WAC 197-11-305(1)(a) allows review  
9 of otherwise exempt projects if they are in a critical area. The scope of review allowed in this  
10 narrow circumstance, however, is limited to matters related to critical areas:

11 The scope of environmental review of actions within these areas shall be  
12 limited to:

13 (a) Documenting whether the proposal is consistent with the  
14 requirements of the critical areas ordinance; and

15 (b) Evaluating potentially significant impacts on the critical area  
16 resources not adequately addressed by GMA planning documents and  
17 development regulations..."

18 WAC 197-11-908(1). Mr. Jordan has not appealed the Project's consistency with the critical areas  
19 ordinance or the City's analysis of potential impacts on critical-area resources. His appeal focuses  
20 solely on traffic and parking. The remedy he seeks is additional review of those topics. These  
21 topics are beyond the scope of review allowed under WAC 197-11-908(1) for this otherwise-  
22 exempt Project. This is an additional and independent reason to dismiss this SEPA appeal.

23 **V. CONCLUSION**


24 The size and scope of the Project are well within the applicable thresholds for categorical  
25 exemption from environmental review, and the Project is not located on land covered by water or  
26 in a critical area. SEPA does not require any review in these circumstances, much less the further  
review sought by Mr. Jordan. Moreover, this appeal seeks further review of matters outside the  
scope of review that would be allowed if this Project were in a designated critical area.

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The Hearing Examiner should dismiss.

DATED this 18th day of February, 2021.

HILLIS CLARK MARTIN & PETERSON P.S.

By   
Amit D. Ranade, WSBA #34878  
Ann M. Gygi, WSBA #19912  
Attorneys for Applicant Cascadia Montessori School



1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I filed the Applicant’s Motion to Dismiss with the Redmond  
3 Hearing Examiner via e-mail to Kalli Biegel, Deputy City Clerk, at kbiegel@redmond.gov.

4 DATED this 18th day of February, 2021.

5 *s/ Krista M. Stokes*  
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7 KRISTA STOKES

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