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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 POST-HEARING BRIEF**  
14

15 **I. INTRODUCTION**

16 Cascadia School has applied for a Conditional Use Permit for a modest expansion of its  
17 school facilities (“**Project**”). The Project’s small size and scope fit within Redmond’s categorical  
18 exemption for minor school construction. The City of Redmond nevertheless issued a  
19 Determination of Non-Significance (“**DNS**”) under WAC 197-11-908, believing the Project is in  
20 a critical area. James Jordan appeals the DNS.

21 The Hearing Examiner should dismiss the appeal or, alternatively, affirm the DNS for  
22 three reasons. First, the Hearing Examiner should dismiss because this appeal seeks review of  
23 elements outside the scope of review allowed under WAC 197-11-908. Second, Mr. Jordan has  
24 failed to prove a procedural error requiring additional notice or comment periods. Third, Mr.  
25 Jordan has failed to prove a clear error in the DNS itself.  
26



1 of a project that meets the criteria for categorical exemption as “minor new construction.” (*See*  
2 Ruling on Mot. to Dismiss at 4.)

3 The record now contains un rebutted evidence requiring dismissal.

4 First, the Technical Committee Report for the Conditional Use Permit hearing specifically  
5 provides the City’s basis for issuing a threshold determination on this Project:

6 The project is not exempt because the site contains critical areas pursuant  
7 to RZC 21.70.090.B and therefore a threshold determination was  
8 required.

8 (Exhibit C-8 at 8.) RZC 21.70.090 is the City of Redmond’s implementation of SEPA Rules on  
9 categorical exemptions and threshold determinations, including WAC 197-11-908. Benjamin  
10 Sticka, the Senior Planner and the City’s primarily responsible official, testified that the Technical  
11 Report correctly states the City’s application of SEPA to the Project. Mr. Jordan offered no  
12 evidence to rebut the Technical Report or Mr. Sticka’s testimony.

13 Second, the record contains un rebutted evidence that this Project and Mr. Jordan’s appeal  
14 have nothing to do with critical areas. The environmental reports prepared and submitted with the  
15 School’s application materials show that the Tosh Creek and associated wetland areas are on the  
16 western edge of the Property. (Exhibits S-4 & S-5.) Kevin Flanagan testified that the Property has  
17 a topographic ridge running north to south that divides the Property into two sections. He said the  
18 section west of the ridge drains into the wetland and the section east of the ridge drains away from  
19 the wetland. Mr. Flanagan confirmed that the Project will occur entirely and only on the east side  
20 of the ridge, which means it will not impact designated critical areas. Mr. Jordan confirmed that  
21 his appeal has nothing to do with critical areas. On cross-examination, he was asked how far his  
22 proposed alternative design (Exhibit J-1) was from critical areas on the Property. Frustrated by the  
23 question, Mr. Jordan emphasized that his appeal has nothing to do with critical areas.

24 It is now undisputed that Mr. Jordan seeks review of issues other than those allowed under  
25 WAC 197-11-908. The City has no SEPA authority to conduct additional review of traffic and  
26 parking, as Mr. Jordan requests. The Hearing Examiner should dismiss.

1 **Mr. Jordan will not meet his burden to demonstrate an error in the notice**  
2 **procedures used for this DNS.**

3 Second, Mr. Jordan failed to prove either of his alleged procedural errors. He alleged that  
4 there were inadequate notice and comment periods and that public notice was not properly posted  
5 on the Property. In fact, he offered no affirmative evidence whatsoever to prove these allegations,  
6 nor did he offer any evidence to rebut the documents and testimony confirming appropriate notice  
7 and appropriate comment and appeal periods.

8 **1. It is undisputed that the City provided statutorily appropriate comment and**  
9 **appeal periods.**

10 In his appeal statement, Mr. Jordan complained that the public was not given adequate  
11 notice and comment periods because these periods ran partly during the “holiday season.” There  
12 is nothing in SEPA nor in the Redmond Zoning Code requiring the City or applicants to toll  
13 notice periods for a holiday season. The SEPA Rules require a 14-day comment period. RZC §  
14 21.70.130; WAC 197-11-502. The appeal period runs for 14 days after the end of the comment  
15 period. RZC § 21.70.190.C.2.

16 The record is now undisputed that the comment period in this case ran for 17 days, with  
17 additional days added precisely because of the holidays. (Exhibit R-9, Exhibit R-10.) The record  
18 is also undisputed that the appeal period ran for 15 days, again with an extra day added for an  
19 intervening public holiday. (*Id.*)

20 **2. A public notice sign was properly posted on time.**

21 Mr. Jordan also alleged that the public notice sign on site was improperly posted. The  
22 Redmond Zoning Code requires at least one notice board to be posted on or adjacent to the site  
23 and at City Hall. RZC § 21.76.080.4. Mr. Jordan did not prove these allegations. Instead, the  
24 record shows the sign was properly and timely posted.

25 Teri Keeton testified that on December 18, 2020, she posted the sign. She also testified  
26 that she visits the Project site almost daily and that the sign has never been removed or altered.  
Philip Keeton testified that he has visited the Property two to three times per week since

1 December 18, 2020, and that he has never seen the sign removed or altered. City officials also  
2 testified that they never observed the sign removed or altered since its placement. No one—not  
3 even Mr. Jordan—contradicted this testimony. In cross-examination, he attempted to ask Ms.  
4 Keeton and Mr. Sticka about the sign on certain days, but he dropped that line of questioning.  
5 Moreover, his questions are not affirmative rebuttal testimony. Beyond unrebutted testimony, the  
6 record contains a photograph confirming that the sign was appropriately installed. (Exhibit C-9.)  
7 There are e-mails between Mr. Keeton and Mr. Sticka confirming that the sign was properly and  
8 timely installed. (Exhibit C-10; *see also* Exhibit R-10.)

9 Mr. Jordan has failed to prove his alleged procedural errors. The Hearing Examiner should  
10 reject his unfounded allegations and affirm the DNS.

11 **C. Mr. Jordan will not meet his burden to demonstrate a clear error in the DNS.**

12 Third, Mr. Jordan failed to demonstrate a clear error in the DNS itself. The record shows  
13 that this Project underwent complete and thorough initial review. Mr. Sticka walked through the  
14 City's SEPA checklist and described the City's intensive review process. The checklist itself is in  
15 the record at Exhibit R-3. The record also contains myriad reports from consultants who studied  
16 the Project's potential impacts on trees, wetlands, streams, and groundwater. (*See* Exhibit C-4  
17 through Exhibit C-6.) These reports are unrebutted.

18 Mr. Sticka, Mr. Keeton, and Mr. Flanagan described the iterative process used to review  
19 the SEPA checklist. According to their testimony, Mr. Sticka walked through the SEPA checklist  
20 line by line with Mr. Keeton and the architects. Mr. Sticka gave feedback and asked for more  
21 information where he thought that was necessary. Mr. Keeton and Mr. Flanagan testified that they  
22 answered every follow-up question and provided every piece of information or analysis requested.  
23 Mr. Sticka confirmed the School was fully cooperative during initial SEPA review, and he felt he  
24 had complete information to support the DNS. This testimony is unrebutted.

1           **1. The record contains un rebutted evidence that the Project will have no**  
2           **probable significant adverse impact on traffic.**

3           On the specific issues of traffic and parking, the record contains only one traffic study—  
4 the report by TENW at Exhibit C-1. The primary author of that report, Amy Wasserman, testified.  
5 She described how her team gathered and analyzed traffic and parking data. Their methods are  
6 well-recognized standard practices in the profession. Based on this analysis, Ms. Wasserman gave  
7 her expert opinion that the Project will have no probable significant adverse impacts on traffic or  
8 parking. Andy Chow, the City’s primary transportation official, testified to reviewing the TENW  
9 report carefully before recommending a DNS. Mr. Chow confirmed that TENW’s methodologies  
10 were indeed well-recognized standard practices, and he concurred with Ms. Wasserman’s opinion.  
11 His decision, as a City official, is entitled to deference in the context of SEPA review. *See Moss*,  
12 109 Wn. App. at 14.

13           The record also contains a Transportation Management Program that authorizes the City  
14 to require mitigation if the Project’s traffic impacts are greater than predicted. (*See* Exhibit C-2.)  
15 Witnesses from the School and the City testified that this Program is the product of an iterative  
16 process in which they looked at expected impacts and developed plans to address what happens if  
17 impacts are greater than expected. When it comes to traffic, the Program requires the School to  
18 undertake additional measures—possibly including additional improvements to the site—if there  
19 is more than zero minutes of vehicle queuing on 162nd Avenue. (*Id.* at 3.) In other words, the  
20 Program is designed to assure there will be no impact to traffic.

21           Mr. Jordan offered no competent evidence to rebut these experts, the TENW report, or the  
22 effect of the Transportation Management Program. Though he appears to have experience with  
23 SEPA generally, he is not qualified to provide a rebutting expert opinion on traffic and parking  
24 impacts. Mr. Jordan conducted no independent study, and he admitted that much of his opinion  
25 was speculation and based on assumptions. For example, he suggested that gathering data in April  
26 was somehow misleading. He offered no actual data to demonstrate that traffic counts would be

1 higher at any other time in the year. He also had no qualified rebuttal to Mr. Chow's explanation  
2 that standard engineering practices do not require designing to the absolute worst-case scenario.  
3 He also had nothing to say about the effect of the Transportation Management Program other than  
4 to ask why a zero-minute queuing restriction could not be imposed as a mitigating condition. That  
5 is not rebuttal evidence.

6 Based on good data and well-established methodologies, the qualified experts agree that  
7 the Project has no probable significant adverse impact on traffic. The Transportation Management  
8 Program assures there will in fact be no impact on traffic. Mr. Jordan has failed to meet his  
9 burden to show a clear error in the City's decision to issue a DNS on traffic.

10 **2. The record contains un rebutted evidence that the Project will have no**  
11 **probable significant adverse impact on parking.**

12 The same is true of parking. Mr. Jordan has failed to prove a clear error in the City's DNS  
13 decision on parking.

14 The record contains only one parking study—the TENW report showing that the School  
15 will need 18 onsite parking stalls after the expansion facilitated by this Project. (*See* Exhibit C-1.)  
16 The study also shows there is very little, if any, on-street parking by visitors to the School. (*Id.*)  
17 Amy Wasserman testified that she calculated these parking needs based on standard metrics from  
18 the Institute for Transportation Engineers, and Andy Chow confirmed that this is an appropriate  
19 methodology for determining parking impacts. The record also contains site plans showing that  
20 the Property currently has 10 parking stalls and that the Project will add eight additional stalls.  
21 (*Exhibit C-3.*) In short, the affirmative evidence shows the Project will increase parking demand  
22 from 10 to 18 cars and that the Property will have 18 stalls onsite when the Project is complete.

23 In addition, the Transportation Management Program includes specific goals and elements  
24 relating to parking. The goal is to have employees park onsite and discourage off-site parking.  
25 (*Exhibit C-2 at 1.*) Program elements include measures intended to reduce car trips and restrict  
26 on-street (off-site) parking if the City subsequently decides that is necessary. (*Id. at 2.*) The record

1 also contains un rebutted evidence that there is a substantial abundance of unused, legal, on-street  
2 parking available around the School. Amy Wasserman and Andy Chow explained that vehicles  
3 today may legally park on both sides of the street along the entire length of 162nd Avenue near  
4 the School. Ms. Wasserman’s testimony and TENW’s report show that the majority of on-street  
5 parking capacity is unused during the school day—and of the few parking spots that are used,  
6 most are unrelated to the School.

7 As with the traffic component of his appeal, Mr. Jordan offered no competent evidence to  
8 rebut the conclusions of the parking study, the Project designs showing how the School will meet  
9 the projected increase in parking demand, or the effect of the Transportation Management  
10 Program. Instead, he asserted that several School-related cars currently park on 162nd Avenue.  
11 On cross-examination, he admitted he was referring to cars parked in front of or near the school  
12 and conceded that he could not confirm these cars were in fact related to the School. In contrast,  
13 Ms. Wasserman’s team specifically counted on-street (off-site) parking activity around the School  
14 as part of their study. They concluded that very few School-related cars parked on 162nd Avenue  
15 during regular operations. (See Exhibit C-1 at Attachments B & C.) Their analysis also shows that  
16 the modest increase during special events is limited in scope and within the City’s expectation for  
17 school uses in residential neighborhoods. See Redmond Comp. Plan § LU-30 (recognizing school  
18 activities as compatible with residential neighborhood uses).

19 If anything, Mr. Jordan’s testimony regarding use of on-street parking *corroborates*, rather  
20 than rebuts, the evidence showing there is substantial unused capacity. Mr. Jordan testified that he  
21 observed four or five vehicles parked on 162nd Avenue near the Property. This is a small fraction  
22 of the total capacity of legal on-street parking, as explained by Mr. Wasserman and Mr. Chow.

23 Rather than offer competent rebuttal evidence, Mr. Jordan offered an alternate parking  
24 layout that he believed would have less impact on parking and traffic. (Exhibit J-1.) The record  
25 contains rebuttal testimony from Teri Keeton and Kevin Flanagan, the highly qualified architect  
26 who designed the Project, explaining multiple problems with Mr. Jordan’s design, including

1 safety issues for the young children at the school. They explained how Mr. Jordan’s alternate  
2 design would cause more significant environmental impacts than it could possibly mitigate.<sup>1</sup>

3 The qualified experts agree that the Project has no probable significant adverse impact on  
4 parking. This conclusion is based on based on good data and well-established methodologies. The  
5 Transportation Management Program further assures there will in fact be minimal parking impact  
6 (if any). Mr. Jordan has failed to meet his burden to show a clear error in the City’s decision to  
7 issue a DNS on parking.

8 **IV. CONCLUSION**

9 The Hearing Examiner should dismiss this appeal or affirm the DNS.

10 Dismissal is appropriate because Mr. Jordan seeks review of issues beyond the scope of  
11 review allowed under WAC 197-11-908, which the record now confirms was the City’s basis of  
12 review. If the Hearing Examiner is not inclined to dismiss, she should affirm the DNS because  
13 Mr. Jordan has failed to demonstrate a clear error in that determination.

14 DATED this 5th day of April, 2021.

15 HILLIS CLARK MARTIN & PETERSON P.S.

16  
17 By 

18 Amit D. Ranade, WSBA #34878

19 Ann M. Gygi, WSBA #19912

20 Attorneys for Applicant Cascadia Montessori School

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25 <sup>1</sup> As explained in the City’s pre-hearing brief, Mr. Jordan’s alternate design is also irrelevant. The sole issue is whether  
26 the City’s decision to issue a DNS on this Project, as designed, was appropriate. In reviewing the DNS, the Hearing  
Examiner may not substitute her views for those of the City or the School. *Moss*, 109 Wn. App. at 13-14. Thus, it does  
not matter what Mr. Jordan’s alternatives show—they are not the designs on which the City issued a DNS.

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I filed the Applicant’s Pre-Hearing Brief with the Redmond  
3 Hearing Examiner via e-mail to Kalli Biegel, Deputy City Clerk, at [kbiegel@redmond.gov](mailto:kbiegel@redmond.gov).

4 DATED this 5th day of April, 2021.

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

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