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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 PRE-HEARING BRIEF**
14

15 **I. INTRODUCTION**

16 In 2019, Cascadia School applied for a Type III Conditional Use Permit to remodel
17 roughly 3,000 square feet of existing space and add 610 square feet of new space (“**Remodel**”) to
18 its facilities off 162nd Avenue NE in Redmond (“**Property**”). In addition to the Remodel, the
19 School contemplates re-purposing an existing basketball court into meeting or classroom space in
20 the near future. In total, the Remodel and the potential work on the basketball court (collectively,
21 the “**Project**”) would affect a maximum of about 7,500 square feet. On December 18, 2020, the
22 City of Redmond issued a determination of non-significance (“**DNS**”), concluding that there is no
23 probable significant adverse environmental impact from the Project.

24 James Jordan has appealed the DNS.¹ His appeal fails for the following reasons:

25 _____
26 ¹ During the pre-hearing conference on February 16, 2021, Mr. Jordan reported that his appeal is joined by Darrell Newberry. The record contains no separate appeal statement by Mr. Newberry.

1 **2. Mr. Jordan will not offer any competent documents to support his appeal.**

2 Mr. Jordan will also offer no competent documents to prove the allegations in his appeal
3 statement. In total, he listed three exhibits in his disclosure. None have an appropriate foundation;
4 they would be inadmissible in a court of law.

5 The first one is an architectural drawing prepared by the School's architect that Mr. Jordan
6 has apparently modified. There will be no foundation for this document. Though the Hearing
7 Examiner may admit it into the administrative record, she should give it little to no weight.

8 The second and third documents are similarly unreliable. These exhibits are a pair of hand
9 drawings of the existing and proposed traffic lane and parking configuration near the School,
10 apparently prepared by Mr. Jordan. Again, there will be no foundation for these documents. The
11 Hearing Examiner should give them little to no substantive value to the extent she admits them.

12 In short, Mr. Jordan has disclosed that he has no competent evidence to support his case.
13 No witness will prove his allegations, and no document will have evidentiary weight to the extent
14 Mr. Jordan's exhibits are admitted at all.

15 **B. Experienced City officials will demonstrate full compliance with procedural rules**
16 **and appropriate review before issuing the DNS.**

17 The City of Redmond has disclosed three witnesses: (1) Benjamin Sticka; (2) Andy Chow;
18 and (3) Bruce Newman. All three have direct knowledge of the underlying facts and requisite
19 qualifications to offer expert testimony.

20 **1. Benjamin Sticka**

21 Mr. Sticka was personally involved in reviewing the Project and issuing the DNS. He has
22 substantial experience with SEPA, and the Hearing Examiner will find him credible.

23 He also oversaw the public notice process for the DNS. He is expected to testify that the
24 Project generally meets the Redmond Zoning Code's threshold for categorical exemption of
25 minor new school construction and that the City issued a threshold determination, under WAC
26 197-11-908, because the underlying property contains critical areas.

1 Mr. Sticka is further expected to testify that he received a properly completed SEPA
2 checklist; carefully reviewed that checklist and supporting studies and reports; found the studies
3 and reports provided reliable data and were based on widely accepted methodologies; and on that
4 basis concluded that the Project would not have a probable significant adverse impact on the
5 environment.

6 **2. Andy Chow**

7 Mr. Chow personally reviewed all engineering aspects of the Project, including traffic and
8 parking issues, as they related to the City's threshold determination. He is an experienced traffic
9 and transportation official, and the Hearing Examiner will find him credible.

10 He also specifically reviewed the issues raised by Mr. Jordan. Mr. Chow is expected to
11 testify that the reports and studies by the School contain reliable data and were based on widely
12 accepted methodologies; that he carefully reviewed the Project's potential impacts on the
13 environment; and that he also reviewed specific issues raise by Mr. Jordan. He is also expected to
14 testify that, based on his careful review, he concluded the Project will not have a probable
15 significant adverse impact on the environment and that the issues Mr. Jordan raised were either
16 unsubstantiated by reliable evidence or insufficient to alter his conclusion.

17 **3. Bruce Newman**

18 Mr. Newman also personally reviewed the traffic impacts of the Project. He is also an
19 experienced traffic and transportation official, and the Hearing Examiner will find him credible.

20 He is expected to testify that the reports and studies by the School contained reliable data
21 and were based on widely accepted methodologies; that he carefully reviewed the Project's
22 potential traffic impacts; and that he concluded the Project will not have a probable significant
23 adverse impact on traffic.

24 **4. City's Exhibits**

25 The City is also expected to offer up to 16 exhibits in the SEPA Appeal hearing. These
26 exhibits will help establish four salient points: (1) the City conducted threshold review based on

1 WAC 197-11-908 because it believed the Project site includes critical areas; (2) the City in fact
2 issued and posted timely and appropriate public notices of its SEPA determination; (3) the reports
3 underlying the DNS contain reliable data and use widely accepted methodologies; (4) the City
4 discussed Mr. Jordan's traffic and parking issues with him but ultimately found them unsupported
5 by any actual evidence or valid analysis.

6 **C. The School will offer evidence corroborating compliance with notice procedures**
7 **and demonstrating that the DNS is based on reliable data and appropriate analysis.**

8 The School will offer additional witnesses and evidence establishing that: (a) notice of the
9 DNS was posted consistent with SEPA Rules and the Redmond Zoning Code; and (b) the traffic
10 and parking analysis submitted as part of the School's application is based on reliable data and
11 widely accepted methodologies. The School will also offer evidence that the Project is not in a
12 critical area, though the underlying property does contain critical areas on its other end.

13 **1. Teri Keeton**

14 Teri Keeton is Head of School. She will provide background regarding the School and the
15 need for the Project. She will also testify to her personal involvement in posting certain public
16 notices regarding the SEPA process and DNS. Ms. Keeton may also explain measures the School
17 takes to stagger arrival and departure times to ease circulation. Mrs. Keeton has deep and direct
18 knowledge of the topics on which she will testify. The Hearing Examiner will find her credible.

19 **2. Philip Keeton**

20 Philip Keeton is Head of Strategy & Operations for the School. He manages the Project
21 for the School. He will testify about the Project generally, including its location, design, and how
22 it meets the School's needs. Mr. Keeton will also describe the School's work in developing and
23 maintaining a Transportation Management Plan. Mr. Keeton also has deep and direct knowledge
24 of the topics on which he will testify. The Hearing Examiner will find him credible
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1 initial SEPA threshold determination on a project that meets the City’s criteria for a categorical
2 exemption as “minor new construction.” (See Ruling on Mot. to Dismiss at 4.)² The Hearing
3 Examiner invited the parties to submit additional evidence and briefing at the hearing if they
4 wished to raise this issue again.

5 The School and the City are expected to submit evidence that the City relied on authority
6 under WAC 197-11-908 to issue a threshold determination here. Review under WAC 197-11-908
7 is limited to critical areas issues:

8 The scope of environmental review of actions within these areas **shall be**
9 **limited to:**

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

12 (b) Evaluating potentially significant impacts on the critical area
13 resources not adequately addressed by GMA planning documents and
14 development regulations, if any, ...

15 WAC 197-11-908(1) (emphasis added). This provision does not allow review of other elements of
16 the environment—such as traffic and parking. Lest there is any doubt about this limitation, the
17 canons of statutory construction require WAC 197-11-908 to be construed narrowly because it is
18 an exception to the general rule exempting minor new construction from SEPA review:

19 If a proposal fits within any of the provisions in Part Nine of these rules,
20 the proposal shall be categorically exempt from threshold determination
21 requirements (WAC 197-11-720) **except** as follows:

22 (a) The proposal is not exempt under WAC 197-11-908, critical areas....

23 WAC 197-11-305(1) (emphasis in original). Exceptions are “construed narrowly in order to give
24 effect to the legislative intent underlying the general provisions.” *Foster v. State Dep’t of*
25 *Ecology*, 184 Wn.2d 465, 473, 362 P.3d 959 (2015).

26 ² In her dismissal order, the Hearing Examiner noted the School did not appeal the DNS on the basis of a categorical exemption. An appeal was not appropriate because our courts have held it is not clear error to issue a DNS for a categorically exempt proposal. *Clallam County Citizens for Safe Drinking Water v. City of Port Angeles*, 137 Wn. App. 214, 224, 151 P.3d 1079 (2007). In fact, our courts recognize that a categorical exemption and a DNS lead to the same outcome. *Id.* This Project’s status as categorically exempt remains a valid basis for dismissal of this appeal because no review is required, much less the additional review Mr. Jordan seeks.

1 Mr. Jordan’s appeal seeks review of only traffic and parking. His appeal raises no issues
2 involving potential impacts to critical areas. The traffic and parking issues he raises are outside
3 the scope of review allowed in this case. The Hearing Examiner should dismiss this appeal
4 because the City has no authority to conduct SEPA review of traffic and parking for this Project.³

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

7 Beyond its jurisdictional shortcoming, Mr. Jordan’s appeal also fails on the merits. As the
8 SEPA appellant, he bears the burden of proof. RZC §§ 21.70.190.E, 21.76.060.I(4). Mr. Jordan
9 cannot meet this burden as to any of the alleged procedural errors he claims.

10 **1. The notice, comment, and appeal periods in this case complied with SEPA**
11 **Rules and the Redmond Zoning Code.**

12 Mr. Jordan complains that the public was not given adequate notice and comment periods
13 because these periods ran partly during the “holiday season.” There is nothing in SEPA nor in the
14 Redmond Zoning Code requiring the City or applicants to toll notice periods for a holiday season.
15 The SEPA Rules require a 14-day comment period. RZC § 21.70.130; WAC 197-11-502. The
16 appeal period runs for 14 days after the end of the comment period. RZC § 21.70.190.C.2. The
17 evidence will show that the comment period in this case ran for 17 days, with additional days
18 added precisely because of the holidays. It will also show that the appeal period ran for 15 days,
19 again with an extra day added for an intervening public holiday.

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

21 Mr. Jordan also alleges that the public notice sign on site was not properly 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. The evidence will show the sign was properly posted on the
24 site—*i.e.*, the School’s property—on December 18, 2020, the day the DNS was issued. It will also
25 establish that a notice was timely posted at City Hall.

26 _____
³ The Hearing Examiner also questioned whether the School needed to appeal the DNS asked

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

2 Further, Mr. Jordan cannot meet his burden to demonstrate an error in the DNS itself. The
3 Hearing Examiner reviews the City’s DNS under the “clearly erroneous” standard. *Moss v. City of*
4 *Bellingham*, 109 Wn. App. 6, 13-14, 31 P.3d 703 (2001). This is a high standard under which the
5 Hearing Examiner must affirm the DNS unless she is “left with the definite and firm conviction
6 that a mistake has been committed.” *Id.* (quoting *Assoc. of Rural Residents v. Kitsap Co.*, 141
7 Wn.2d 185, 195-96, 4 P.3d 115 (2000)). In reviewing the DNS, the Hearing Examiner must give
8 “substantial weight” to the City’s decision. *Id.* at 14. The Hearing Examiner may “not substitute
9 [her] judgment for that of the [City],” and so must affirm even if she would have reached a
10 different conclusion were she the initial decisionmaker. *Id.* at 13.

11 Mr. Jordan cannot overcome his high burden.

12 The School and the City will call seven witnesses, including at least two experts. These
13 witnesses will describe how the City thoroughly reviewed the School’s environmental checklist;
14 four reports studying impacts on trees, critical areas, stormwater, traffic and parking. They will
15 also discuss their review and work with the School on its Transportation Management Plan. Their
16 testimony will confirm that the DNS is consistent with the process in in WAC 197-11-330 and
17 based on accurate and reliable information and analysis. Mr. Jordan has not identified a single
18 witness to rebut this testimony.

19 The environmental studies supporting the DNS will also be uncontested. The School will
20 offer expert testimony detailing the work behind the traffic and parking studies as well as the
21 Transportation Management Plan. Mr. Jordan has not identified a single witness—lay or expert—
22 to rebut the School’s studies. Those studies will be the only environmental analysis in the record.

23 The only documents Mr. Jordan has disclosed are three drawings that apparently depict
24 alternative parking and traffic plans. These drawings would be inadmissible in court, and in any
25 event, they do not demonstrate a clear error in the DNS. First, these exhibits will lack foundation.
26 Mr. Jordan’s only two named witnesses (both City officials) cannot lay a proper foundation unless

1 they were involved in the preparation of these drawings. Second, Mr. Jordan’s proposed exhibits
2 are irrelevant. The sole issue on appeal is whether the City’s decision to issue a DNS on this
3 Project, as designed, was a clear error. In reviewing the DNS, the Hearing Examiner may not
4 substitute her views for those of the City or the School. *Moss*, 109 Wn. App. at 13-14. Thus, it
5 does not matter what Mr. Jordan’s alternatives show—they are not the designs on which the City
6 issued a DNS. The School will object to the admission of these exhibits. In any event, they would
7 not overcome the heightened “clear error” standard that applies here.

8 **IV. CONCLUSION**

9 The Hearing Examiner should dismiss this appeal because Mr. Jordan seeks review of
10 issues beyond the scope of review allowed under WAC 197-11-908. Otherwise, the Hearing
11 Examiner should affirm the DNS because there was no clear error in that determination.

12 DATED this 17th day of March, 2021.

13 HILLIS CLARK MARTIN & PETERSON P.S.

14
15 By 

Amit D. Ranade, WSBA #34878

Ann M. Gygi, WSBA #19912

16 Attorneys for Applicant Cascadia Montessori School
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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.

4 DATED this 17th day of March, 2021.

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

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