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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 REPLY IN SUPPORT OF**
14 **MOTION TO DISMISS SEPA APPEAL**

15 **I. INTRODUCTION**

16 Mr. Jordan does not dispute that this Project meets Redmond’s definition for “minor new
17 construction” of schools, which qualifies it for categorical exemption from environmental review.
18 He also concedes the Project is not on land covered by water or in a critical area, which means the
19 exceptions allowing review of otherwise-exempt projects in those areas does not apply here.

20 Instead, Mr. Jordan’s response appears to focus on the exception for a “series of actions”
21 found in WAC 197-11-305(1)(b). This exception does not apply either. The Project is not a series
22 of independent, but related actions. It is a single action that may involve one or two construction
23 phases, depending upon whether Cascadia School decides to develop in a second phase any of the
24 Alternates identified in the SEPA Checklist.

25 What is more, treating the two phases as independent actions in a series would not lead to
26 a different result. The Project still would not fit within the “series of actions” exception.

*APPLICANT’S REPLY IN SUPPORT OF MOTION TO
DISMISS SEPA APPEAL- 1*

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1 Mr. Jordan's appeal should be dismissed. Environmental review was not necessary here,
2 much less the additional review he seeks through this appeal.

3 **II. SUPPLEMENTAL STATEMENT FACTS IN STRICT REPLY**

4 In response to Mr. Jordan's apparent argument that the Project's phases should be treated
5 as a series of actions, the School submits the following supplemental information regarding the
6 potential second phase of the Project. This second phase (described as "Alternates" in the
7 Checklist and in Applicant's Motion to Dismiss) would redevelop an existing basketball court
8 into a community or classroom space. The decision to proceed with this second phase has not
9 been made at this time; it will depend on the School's spatial and programming needs after the
10 first phase of the Project is complete. Only the first phase is part of the pending Conditional Use
11 Permit application to which this SEPA appeal is coupled. If the School decides to proceed with
12 the second phase, it will seek separate approvals from the City of Redmond as appropriate.

13 The second phase involves alternative development scenarios. The first alternative would
14 replace the basketball court with a community room of about 3,000 square feet. The second
15 alternative would replace the basketball court with a classroom space of about 1,540 square feet.
16 The third alternative would replace the basketball court with two new portables totaling about
17 1,540 square feet. The second phase also includes possibly replacing an existing 360 square-foot
18 studio space with a new 840 square-foot space.

19 Appended to this brief are site plans depicting these alternatives for the second phase. The
20 School hereby makes an offer of proof regarding these plans.

21 **III. AUTHORITY AND ARGUMENT**

22 **A. Mr. Jordan concedes this Project meets the definition of "minor new construction" as** 23 **established by SEPA Rules and the Redmond Zoning Code.**

24 In its Motion, Cascadia School explained how the limited size of this Project puts it well
25 below Redmond's parameters for "minor new construction" of schools. RZC § 21.70.090.A.4. In
26 general, projects meeting the definition of "minor new construction" are categorically exempt

1 from SEPA review. WAC 197-11-305(1); 197-11-800(1). Mr. Jordan does not dispute that this
2 Project meets the Redmond’s definition of “minor new construction” of schools. This means the
3 Project is categorically exempt unless an exception applies. No exception applies.

4 **B. Mr. Jordan concedes the Project is not on land covered by water or in a critical area,
5 which would have allowed for review notwithstanding the categorical exemption.**

6 In its Motion, the School focused on the limited exceptions for projects on land covered
7 by water or in critical areas. WAC 197-11-800(1)(a)(i) (land covered by water); WAC 197-11-
8 305(1)(a) (critical areas). Mr. Jordan concedes, as he should, that neither exception applies
9 because the Project is not near (much less on or in) land covered by water or a critical area.

10 **C. The “series of actions” exception does not apply to this Project.**

11 The Motion acknowledged the “series of actions” exception in a footnote. Mr. Jordan’s
12 response focuses on this exception. His focus is misplaced. The “series of actions” exception
13 applies only if an action is part of a series of independent, but related, actions that: (a) include
14 both exempt and non-exempt actions or (b) cumulatively cause a significant adverse impact on
15 the environment. WAC 197-11-305(1)(b). Neither condition is present here.

16 **1. The Project is not a series of actions.**

17 As an initial matter, this Project is not part of a series of independent actions. Mr. Jordan
18 appears to misapprehend what constitutes an “action” for purposes of SEPA review. The SEPA
19 Rules define “actions” to include “new and continuing activities (including projects and
20 programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by
21 agencies...” WAC 197-11-704(1)(a) (emphasis added). In other words, an entire project is viewed
22 as single action. In this case, there is only one action—the Project to expand the School’s capacity
23 to accommodate future growth in enrollment up to 130 students. The possibility of two phases to
24 the Project does not mean there will be two independent actions. There is no “series of actions.”
25 This alone renders WAC 197-11-305(1)(b) inapplicable.
26

1 **2. Each phase and the aggregate of the Project is below the threshold for**
2 **categorical exemption.**

3 Moreover, treating each phase as an independent action would not lead to a different
4 outcome. The purpose of the “series of actions” exception to categorical exemptions is to prevent
5 a single proposal that exceeds the threshold from being broken into separate pieces for the
6 purpose of qualifying for the categorical exemption. That is not the situation here. The “series”
7 here would be comprised of two phases. Both phases, treated as independent actions, fall below
8 Redmond’s threshold for “minor new construction” of schools by either measure contemplated in
9 WAC 197-11-305(1)(b).

10 First, WAC 197-11-305(1)(b)(i) authorizes review of otherwise-exempt projects if they
11 are part of a series that includes both exempt and non-exempt actions. In this case, both actions in
12 the purported series are exempt. The threshold in Redmond for categorical exemption of school
13 construction is 30,000 square feet and 90 parking stalls. RZC § 21.70.090.A.4. The first phase of
14 the Project involves remodeling 3,000 square feet and adding 610 square feet of new space. The
15 second phase, if undertaken later, would add between about 1,500 and 3,800 square feet of new
16 space. Each phase is well below Redmond’s threshold for “minor new construction.” If they were
17 treated as independent actions in a series, each one would be categorically exempt. Moreover, the
18 cumulative total of the two phases together would be at most 7,500 square feet, and 18 parking
19 stalls. This is well below Redmond’s categorical exemption limit of 30,000 square feet and 90
20 parking stalls. The exception in WAC 197-11-305(1)(b)(i) does not apply.

21 Second, WAC 197-11-305(1)(b)(ii) allows review of otherwise-exempt projects if they are
22 part of a series that has a significant cumulative adverse impact on the environment. The canons
23 of statutory interpretation require the Hearing Examiner to interpret the SEPA Rules “to give
24 effect to all language, so as to render no portion meaningless or superfluous.” *State v. Ervin*, 169
25 Wn.2d 815, 823, 239 P.3d 354 (2010). Mr. Jordan’s argument citing WAC 197-11-305(1)(b)(ii)¹


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¹ Mr. Jordan quotes this subsection but miscited it as “WAC 197-11-305 (b)(i).”

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DATED this 1st day of March, 2021.

HILLIS CLARK MARTIN & PETERSON P.S.

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

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I filed the APPLICANT’S REPLY IN SUPPORT OF MOTION
3 TO DISMISS SEPA APPEAL with the Redmond Hearing Examiner via e-mail to Kalli Biegel,
4 Deputy City Clerk, at kbiegel@redmond.gov.

5 DATED this 1st day of March, 2021.

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