



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD WASHINGTON 98366-4682
(360) 337-7181 FAX (360) 337-4925
kashcraf@co.kitsap.wa.us

NOTICE OF HEARING EXAMINER REMAND DECISION

August 12, 2009

To: Interested Parties and Parties of Record

RE: Project Name **Montessori Farmhouse School**
Applicant: **Terry & Annette Weaver**
4107 92nd Avenue NW
Gig Harbor, WA 98335
South Kitsap County, Commissioner District #2
Application: **Conditional Use Permit**
Case Number: **090212-006 (4859-001-008-0004) LIS#06 39894**

Enclosed is the Remand Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

As authorized by Kitsap County Code Section 2.10.120, **REQUESTS FOR RECONSIDERATION** of the Hearing Examiner's Decision in this matter must be filed in writing to the Department of Community Development on or before five (5) business days, **AUGUST 18, 2009** from the effective date of the Decision. The filing of a Request for Reconsideration will toll or stay the time for which a Notice of Appeal shall be filed. Please note Reconsideration will be administered at an hourly rate of \$84.00, accounted for in quarter-hour increments; a minimum of one (1) hour will be charged for any Reconsideration. The balance of the fee for Reconsideration must be paid prior to issuance of the Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON AUGUST 27, 2009.

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

NOTICE OF HEARING EXAMINER REMAND DECISION – MONTESSORI FARMHOUSE SCHOOL - CONDITIONAL USE PERMIT

August 12, 2009

Page 2

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal,
3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Thursday, except holidays, 10:00 a.m. to 3:45 p.m. by calling me at (360) 337-4487 for an appointment.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

C Terry & Annette Weaver, 4107 92nd AVE NW, Gig Harbor, WA 98335
William H Broughton, Attorney, 9057 Washington AVE NW, Silverdale, WA 98383
bbroughtonlaw.com
Ronald Templeton, Attorney, 3212 NW Byron ST #104, Silverdale, WA 98383
rctempleton@telebyte.com

Interested Parties:

LaRene Cayo, 13870 Bethel/Burley RD, Port Orchard, WA 98367-9678
Kathleen Rooks, 13501 Bethel/Burley RD SE, Port Orchard, WA 98367
Andy & Laurie Peterson, PO Box 112, Burley, WA 98322 burleyent@aol.com
Deann & Jon Moore, 13569 Bethel/Burley RD SE, Port Orchard, WA 98367
Eric Jensen ejensen@silverlink.net

RECEIVED

AUG 10 2009

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

**BEFORE THE KITSAP COUNTY
HEARING EXAMINER**

In the Matter of the Remand of)	
The Application of)	No. 090212-006
)	
)	Montessori Farmhouse School
Terry & Annette Weaver)	
)	DECISION UPON REMAND
)	
<u>For Approval of a Conditional Use Permit</u>)	

SUMMARY OF DECISION¹

Based upon new information submitted at the closed record appeal, the Hearing Examiner reverses his initial decision of denial and on remand approves the revised Conditional Use Permit request with conditions to mitigate noise, traffic and environmental impacts.

In his initial decision, the Hearing Examiner ruled upon an application to approve a Conditional Use Permit (CUP) for a Montessori School that has been in operation since 2006 and that was begun without a building permit or land use approval. The school currently has about fifteen students. In the application reviewed by the Hearing Examiner, the Applicant sought approval for operation of the school for up to forty students from 7:00AM to 6:00PM. In her application materials, the Applicant disclosed that traffic standards would not be met for sight/stopping distance, and that environmental impacts from operation of the school would include noise from children. At the hearing on the initial application, neighboring property owners testified under oath about traffic impacts, noise impacts, negative impacts to a fish bearing stream and incompatibility with the neighborhood.²

Based upon the Applicant's disclosures in her application materials -- including failure to meet traffic standards and the environmental impact of noise -- as well as neighboring

¹ This decision on remand revises the initial decision of the Hearing Examiner. The revisions are indicated by strikethrough when language is deleted and underscore when language is added. New Sections were also added, including this Summary of Decision, portions of Procedural Background and the Decision itself where the conditions are specified. Only those revisions that have a substantive impact on the decision are shown. This Decision on Remand is now the final decision of the Hearing Examiner.

² The neighbor's testimony was not merely speculation as to impacts; since the school had been in operation over two years at the time of hearing the testimony could evaluate the actual impacts of the school. This is a different situation from that in *Marantha Mining, Inc. v. Pierce County*, 59 Wn. App. 795 (1990) where the court reminded land use decision makers that community displeasure alone cannot form the basis for permit denial. In that case the use had not yet been established so testimony regarding impacts was mostly speculative.

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

property owners' sworn testimony at the hearing --- including levels of traffic, noise, impacts to critical areas and incompatibility with the neighborhood -- the Hearing Examiner denied the application. The Hearing Examiner concluded that, although the operation of the school is worthy of respect and admiration, the totality of impacts would be incompatible with the surrounding uses in the Rural Protection zone. The Hearing Examiner encouraged the operation of the school, but concluded it was not appropriate on the proposed site.

On appeal, the Applicant's attorneys submitted new information during oral argument stating that the school would not have more than 34 students, and would limit hours from 8:30AM to 3:00PM. These Applicant revisions are significant. The school would no longer be open during dark hours in the winter and the impacts from 34 students are far less than 40. The board requested a reconsideration of the decision and remanded it to the Hearing Examiner with instructions to review and, if necessary, to amend the decision. Because traffic, noise and critical area impacts will be significantly reduced with the revised hours of operation and limit on number of students, and because those impacts that remain can be mitigated by conditions, the Hearing Examiner now approves the revised application with conditions.

PROCEDURAL BACKGROUND

This matter involves a request for a Conditional Use Permit to continue operation of a Montessori School on property located at 13521 Bethel Burley Road SE. The Applicant began the use in 2006 by converting a garage to a school without the required permits. Complaints were filed by neighbors. A code enforcement action was begun by the County, which determined the use was in violation of land use and building codes. The Applicants were given an option of applying for a CUP for the school, which they did in November 2007. Following review of the application by County staff, the CUP request was scheduled for an open record hearing before the Hearing Examiner on February 12, 2009. Staff had recommended approval of the CUP with a number of conditions.³

In his decision of February 26, 2009, the Hearing Examiner noted that, although the educational goals and dedication of the Applicant to those goals are laudable and worthy of support, the use of this particular property for a school was not compatible with the

³ It is important to note that a Staff Report to the Hearing Examiner is prepared by staff prior to the open record hearing. Often, staff has not had an opportunity to meet with property owners surrounding a site proposed for a CUP prior to preparation of the report. At an open record hearing, neighboring property owners often provide testimony under oath which provides new evidence not considered by staff when preparing the report. This testimony typically focuses on the character of the neighborhood and the compatibility of the proposed use with the neighborhood, as well as impacts to properties in the vicinity of the proposed use. Because compatibility with the neighborhood and impacts to properties in the vicinity are among the criteria for review that the Hearing Examiner must consider, it is important that he or she listen carefully to testimony provided by neighboring property owners. The evidence provided in this testimony may at times lead the Hearing Examiner to make a decision different from that recommended by staff.

rural character of other properties in the immediate vicinity of the Rural Protection Zone. He thus concluded that the use does not meet the criteria for approval of a conditional use permit and denied the request.

The Applicant appealed the Hearing Examiner decision to the Board of Commissioners on March 17, 2009. The Board held a closed record appeal hearing on July 13, 2009, to allow the Applicant's attorneys an opportunity to present argument and briefing to the Board. The Board remanded the matter to the Hearing Examiner on July 29, 2009, to review and amend if necessary the decision in accordance with the guidance of the Board. The Hearing Examiner now provides his response to the Board's remand.

SUMMARY OF RECORD

The record relied upon by the Hearing Examiner in his decision includes both testimony of individuals sworn in at the hearing, and the exhibits admitted at the time of hearing. If the decision is appealed and the Board remands the decision, the Hearing Examiner must also consider the remand resolution of the Board and any new information or evidence provided to the Board during the closed record hearing. *See KCC 21.04.020.*

The record reviewed by the Hearing Examiner upon remand from the Board of Commissioners includes the following testimony, exhibits and representations:

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Meg Sands, County Planner
Steve Heacock, County Planner
Jon F. Moore
Andy Peterson
Robert Cayo
Kathleen Rooks
Annette Weaver
Linda Jones

Exhibits:

The following exhibits were admitted into the record during the open record hearing:

1. KCDCD Building Permit Application – SFR, received June 27, 1979
2. KCDCD Building Permit Application – Garage with living quarters, received January 27, 1983
3. KC Assessor's Map, dated January 13, 2006
4. Letter from Terry and Annette Weaver, date June 19, 2006
5. Pre-Application Meeting Request, received June 28, 2006
6. Site Plan with attachments, received June 28, 2006
7. KC Assessor's Property Report, dated August 8, 2006

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

8. GIS Building Limitations Map, dated August 8, 2006
9. GIS Critical Areas Topo Map, dated August 8, 2006
10. GIS Comprehensive Plan Map, dated August 8, 2006
11. GIS Aerial Photo, dated August 8, 2006
12. Pre-Application Conference Confirmation Letter, dated August 8, 2006
13. Email message from Linda Jones, sent September 5, 2006
14. Site Photographs (15), dated September 20, 2006
15. Email message from Linda Jones, sent September 28, 2006
16. Email message from Robbyn Myers – Environmental Review, undated
17. Email message from Linda Jones, sent October 9, 2006
18. Email message from Linda Jones, sent October 9, 2006
19. Written Summary of Pre-Application Meeting, dated October 19, 2006
20. Letter from Larry Blum County Estate Development, dated November 17, 2006
21. Letter from Keith Greliner, KCHD, dated January 12, 2007
22. KCHD Building Site Application, dated August 10, 2007
23. Inactive Letter, dated August 13, 2007
24. Letter from Terry and Annette Weaver, dated August 22, 2007
25. Letter from Ella M Rae, KCHD, dated November 1, 2007
26. KCPW Application for Concurrency Test, dated November 7, 2007
27. Conditional Use Permit Application, received November 13, 2007
28. Environmental (SEPA) Checklist, received November 13, 2007
29. Parking Requirements, received November 13, 2007
30. Site Plan, received November 13, 2007
31. Landscape Plan, received November 13, 2007
32. Letter from Theran C. Weaver with Floor Plan attached, received November 13, 2007
33. Septic System/Waste Management, received November 13, 2007
34. Land Use Project Scale & Scope, received November 13, 2007
35. Sign Location & Details, received November 13, 2007
36. Notice of Incomplete Application, dated December 24, 2007
37. Cover Letter from Terry and Annette Weaver, dated February 13, 2008
38. Trail Use Description, dated February 13, 2008
39. Email message from Scott Diener, dated February 19, 2008
40. Site Plan – See Revised, received February 15, 2008
41. Email message from Nancy Hanson, dated March 13, 2008
42. Commercial Building Clearance, KCHD, dated March 31, 2008
43. Site Plan – See Revised, received April 15, 2008
44. Environmental (SEPA) Checklist – Revised, dated April 28, 2008
45. Conditional Use Permit Application – Revised, dated May 2, 2008
46. Parking Requirements – Revised, received May 13, 2008
47. Letter from Terry and Annette Weaver, received May 13, 2008
48. Traffic/Roads - Revised, received May 13, 2008
49. Fire Marshal/Fire Code Permit - Revised, received May 13, 2008
50. Project Summary – Revised, received May 13, 2008

*Decision Upon Remand of the Board
 Kitsap County Hearing Examiner
 Montessori Farmhouse School CUP, No. 090212-006*

51. Site Plan - Revised, received May 13, 2008
52. Notice of Complete Application, dated May 29, 2008
53. Memorandum from Nathan D. Holburn, KCHD, dated June 5, 2008
54. Notice of Complete Application – Critical Area Variance Application, dated June 23, 2008
55. Notice of Application, dated June 24, 2008
56. Affidavit of Mailing – Notice of Application, dated June 25, 2008
57. Email message with attachment from neighbors, dated July 11, 2008
58. (same as Exhibit 57)
59. Facsimile from DeAnn Moore, dated July 11, 2008
60. Memorandum from Shawn Alire, Development Engineering, dated July 16, 2008
61. Email from Meg Sands, dated July 30, 2008
62. Technical Review Meeting Attendance Sheet, dated August 27, 2008
63. Signage Proposal, dated September 10, 2008
64. Site Photographs (6)
65. Landscaping Plan, received September 16, 2008
66. Interior Site Plan, dated September 16, 2008
67. Letter from Terry Weaver, dated October 2008
68. Email message from Shawn Alire, Development Engineering, dated October 13, 2008
69. Sight Distance & Stopping Distance Diagram – Frederic A. Kegel, dated October 24, 2008
70. Determination of Nonsignificance, with email message, dated December 12, 2008
71. Affidavit of Mailing – Determination of Nonsignificance, dated December 12, 2008
72. Notice of Decision - Stream Buffer Reduction, dated December 12, 2008
73. Affidavit of Mailing – Notice of Decision, dated December 12, 2008
74. Email message from Shawn Alire, Development Engineering, dated November 19, 2008
75. Memorandum from Shawn Alire, Development Engineering, dated November 24, 2008
76. Email message from Theran Weaver, dated January 14, 2009
77. Notice of Public Hearing, dated January 26, 2009
78. Affidavit of Mailing – Notice of Public Hearing, dated January 26, 2009
79. Affidavit of Posting with Photograph (1), dated January 27, 2009
80. Staff Report, dated January 28, 2009
81. Affidavit of Publication – Notice of Public Hearing, dated January 23, 2009
82. Photographs (15) with explanation – Meg Sands, dated January 27, 2009
83. PowerPoint Presentation Slides, dated February 12, 2009
84. Decision of the Board of Commissioners Remanding the Hearing Examiner Decision, dated July 29, 2009

Pleadings at Closed Record Appeal:

1. Appeal Filed by Attorney Ryan Vancil, dated March 17, 2009

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

2. Brief of Appellants by Broughton Law Group, dated July 10, 2009
3. Oral Argument at Closed Record Hearing by Attorneys for Appellant, William Broughton & Ron Templeton

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing, and the pleadings submitted for the closed record appeal:

FINDINGS

Application and Notice

1. Terry and Annette Weaver (Applicant) request a conditional use permit (CUP) to operate a Montessori school and day-care center on property located at 13521 Bethel Burley Road SE, in Kitsap County, Washington.⁴ *Exhibit 45; Exhibit 80, Staff Report, page 1.*
2. Kitsap County (County) determined the CUP application was complete on May 29, 2008. *Exhibit 52.* The County mailed notice of the application to appropriate local and state agencies, parties of record, and owners of property within 400 feet of the subject property on June 25, 2008. *Exhibit 55; Exhibit 56.* The County published notice of the open record hearing in the *Port Orchard Independent* on January 23, 2009. *Exhibit 81.* The County mailed notice of the hearing to the Applicant, interested parties, County departments, and owners of property within 400 feet of the subject property on January 26, 2009. *Exhibit 77; Exhibit 78.* The County posted notice of the hearing on the subject property on January 27, 2009. *Exhibit 79.*
3. The County acted as lead agency and analyzed the environmental impact of the use, as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The Applicant disclosed on the Environmental Checklist that “the sound of children during the mid-day hour” would be an environmental impact of the proposed use, but that this noise could be mitigated with specific measures proposed by the Applicant. *Exhibit 28.* The County determined that the use would not have a probable significant adverse impact on the environment if conditions were imposed on the proposed use consistent with CUP criteria, and issued a Determination of Nonsignificance (DNS) on December 12, 2008. *Exhibit 70.* The DNS was not appealed before the expiration of the appeal period on December 26, 2008. *Exhibit 80, Staff Report, page 2.*
4. Kitsap County Comprehensive Plan (Comprehensive Plan) policies are applicable to operation of a day-care center and school on the subject property. Rural and

⁴ The property subject to the application is identified by Tax Assessor’s Parcel Number 4850-001-008-0004. A legal description of the subject property is included with the application. *Exhibit 45.*

Resource Lands policies allow and encourage home-based cottage-type businesses in rural areas; provided such activities are compatible with the site and surrounding area. *Kitsap County Comprehensive Plan, Rural and Resource Lands, Policies RL-7 and RL-14 (December 2006)*. Natural Systems policies require that development in critical areas is consistent with the County critical areas ordinance; require native vegetation buffers along streams, wetlands, and other surface waters, with larger or enhanced buffer areas to adequately protect priority fish and wildlife species; encourage protection of continuous corridors of native vegetation wherever possible, and enhancing and restoring native vegetation; and require that impacts to species are minimized when siting trail systems. *Kitsap County Comprehensive Plan, Natural Systems, Policies NS-19, NS-21, NS-40, NS-42 (December 2006)*. Economic Development policies balance business, industry, environmental protection, and recreation; encourage business diversification for living-wage jobs reasonably scaled to community needs; and protect surrounding residential uses from significant impacts from increased commercial and industrial development. *Kitsap County Comprehensive Plan, Economic Development, Policies ED-1, ED-5, ED-16, ED-24 (December 2006)*. Transportation policies require roadway and intersection sight distance standards; implement access standards for all roadway types; maintain rural design standards to enhance strong rural characteristics and provide adequate safety; and retain native vegetation. *Kitsap County Comprehensive Plan, Transportation, Policies T-25, T-101, T-103, T-104 (December 2006)*.

5. The subject property is designated Rural Protection (RP) under the Comprehensive Plan. *Kitsap County Comprehensive Plan, Land Use Map – South, Figure 2-2 (December 2006)*. The designation is intended to allow low-density development in keeping with rural character and to protect significant environmental features, including visual, historic, and natural features; wildlife corridors; steep slopes; wetlands; streams; and adjacent critical areas. The Comprehensive Plan designation is implemented by the Rural Protection zoning district. *Kitsap County Comprehensive Plan, Rural and Resource Lands, page 3-4 (December 2006)*.
6. The subject property is located within the County’s Rural Protection (RP) zoning district. *Exhibit 40, Staff Report, page 2*. The County’s Rural Protection zoning district promotes low-density rural development consistent with rural character and protects environmental features such as significant visual, historical, natural features; wildlife corridors; steep slopes; wetlands; streams; and adjacent critical areas. *Kitsap County Code (KCC) 17.305.010*. A day care center is allowed within the RP zone with a CUP. *KCC 17.381.040(E)*. A school is allowed within the RP zone with a CUP. *KCC 17.381.040(E)*. Development within the RP zoning district must adhere to required 50 foot wide front yard setbacks and 20 foot wide side and rear yard setbacks. *KCC 17.382.100*.

7. KCC 17.381.050.A.14 requires that a day-care center⁵ be operated on a lot at least 10,000 square feet in size. KCC 17.381.050.A.14 also requires that a day-care center provide and maintain outdoor play areas with a minimum area of 75 square feet per child of total capacity; a site-obscuring fence at least four feet in height, separating the play area from abutting lots; and adequate off-street parking and loading space. *KCC 17.381.050.A.14*. A day-care center serving a maximum of 40 children must include an outdoor play area at least 3,000 square feet in size.⁶ *Exhibit 80, Staff Report, page 6.*
8. The subject property is 6.39 acres in size. A single-family residence and a detached building are currently located on the subject property. The detached building is located to the east of the single-family residence. A site plan received by the County on June 28, 2006 labels the detached building as a garage. A site plan received by the County on May 13, 2008, labels the residence and detached building as classrooms. A September 5, 2006 email message from Linda Jones, County Code Enforcement Officer, states that the former garage was converted into a classroom. Two decks are attached to the east and south side of the former garage. A shed and septic tank are located on the subject property north of the former garage, and a well is located south of the former garage. According to the May 13, 2008 site plan, the primary septic drainfield for both classrooms is located adjacent to the west of the former residence. *Exhibit 13; Exhibit 51; Exhibit 64; Exhibit 80, Staff Report, page 2; Exhibit 82; Exhibit 83.*
9. The subject property includes a fenced play area approximately 18,000 square feet in size. The fenced play area contains a mix of chain-link and wooden picket fencing. Chain-link fencing exists along the west property boundary, adjacent to the Bethel Burley Road SE right-of-way, and along the south property boundary. Chain-link fencing also exists on the southeast side of the former garage. A wooden picket fence is located adjacent to the south of the circular drive and north of the septic drainfield area and former residence. The chain-link fencing connects to the wooden picket fence to form an enclosed area in the southern portion of the subject property that includes the former residence. *Exhibit 13; Exhibit 51; Exhibit 64; Exhibit 80, Staff Report, pages 2 and 6; Exhibit 82; Exhibit 83.*

⁵ “Day-care center” means a primary dwelling in which more than seven individuals, or a building other than a primary dwelling in which any number of individuals, are cared for during some portion of a twenty-four-hour period. *KCC 17.110.200.*

⁶ The calculation is 40 children * 75 square feet/child = 3,000 square feet.

10. The May 13, 2008 site plan shows a portion of the south-side deck off the former garage protruding into a stream⁷ buffer. Mature conifer forest and edge shrubs abut the south-side deck. Bear Creek, a Type F⁸ fish-bearing stream, flows on the subject property adjacent to the east of the buffer and Bethel Burley Creek, a Type F fish-bearing stream, flows on the subject property east of Bear Creek. A Category II wetland⁹ exists on the eastern half of the subject property, to the east of Bear Creek. The eastern half of the subject property is forested with deciduous trees, conifers, and a thick understory. *Exhibit 8; Exhibit 51; Exhibit 72; Exhibit 82; Exhibit 83.*
11. County codes require that the Type II wetland be protected by a 110-foot wide buffer along the wetland perimeter and that Type F streams be protected by a 150 foot wide buffer along the stream perimeter, and by a minimum building setback 15 feet beyond the buffer edge. *KCC Table 19.300.315; KCC 19.300.315.A.1.* Buffers must be maintained in their natural condition and are to remain undisturbed areas of natural vegetation except where the buffer can be enhanced to improve its function. Refuse cannot be placed in buffers. *KCC 19.300.315.A.1; KCC 19.300.315.A.2.*
12. Existing development on the subject property complies with the required buffer for Bethel Burley Creek and the wetland present on the subject property, but not for Bear Creek.¹⁰ The Applicant requested an administrative reduction of the

⁷ “Streams” means those areas in Kitsap County where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction. *KCC 19.150.635.*

⁸ The County Code states “Type F” streams are defined according to WAC 222-16-030. *KCC 19.300.310.B.1.* A “Type F” stream means segments of natural waters that are not classified as shorelines of the state under Ch. 90.58 RCW that contain fish habitat. *Washington Administrative Code (WAC) 222-16-030(2).*

⁹ “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *KCC 19.150.685.* Category II wetlands are those regulated wetlands that score between 51-69 points on the Washington Department of Ecology Washington State Wetland Rating System for Western Washington (revised 2004). *KCC 19.200.210.B.2.*

¹⁰ The County issued building permits for the former residence and former garage with living quarters above on June 27, 1979, and January 27, 1983, respectively. The County staff report states that the former garage was constructed legally under the building permit and exceeded the 25 foot wide stream buffer setback County staff recommended as a matter of policy in 1983. The building permits were not issued to the Applicant. *Exhibit 1; Exhibit 2; Exhibit 80, Staff Report, page 7.*

required stream buffer width on the subject property for Bear Creek.¹¹ The Applicant requested that the County reduce the required buffer width by 50-percent. The County reviewed the request according to KCC 19.300.315.A.4 provisions for administrative buffer reduction, and approved the reduction request with three Habitat Management Plan (HMP) conditions to minimize stream impacts.¹² The three conditions require construction of a split rail fence with buffer signage along the perimeter of a minimum 75 foot wide stream buffer; submittal of a stream buffer enhancement plan for County review and approval; and prohibition of discharge of stormwater from impervious surfaces directly into the stream. Steve Heacock, County Planner, testified that according to the site plan submitted by the Applicant the buffer would average 75 feet wide. *Exhibit 72; Testimony of Mr. Heacock.*

13. The existing classrooms are located east of Bethel Burley Road SE. The classrooms are accessed through an asphalt circular drive connecting to Bethel Burley Road SE. The circular drive is the only vehicle entrance and exit to and from the subject property. According to the May 13, 2008 site plan and photographs of the subject property, seven compacted gravel parking spaces exist on the property adjacent to the northeast and central portions of the circular drive. Nine more compacted gravel parking spaces are proposed adjacent to the southwest and central portions of the circular drive. *Exhibit 51; Exhibit 82; Exhibit 83.*
14. Linda Jones, County Code Compliance Officer in 2006, testified that the building permit issued by the County for the former garage with living quarters expired and that the structure never received final building permit approval or a Certificate of Occupancy from the County. Ms. Jones also testified that the County did not issue a permit for construction of the decks attached to the former garage. A letter from the Applicant states the Applicant purchased the subject property in June 2007 and remodeled the former garage into a classroom with attached decks. Meg Sands, County Planner, testified that the County approved

¹¹ Buffer areas and building setbacks may be altered through a reasonable use exception, exemption, standards for existing development, or a variance, in accord with County Code provisions. *KCC 19.300.315.A.2; KCC 19.100.140; KCC 19.100.125; KCC 19.100.130; KCC 19.100.135.* A reduction in buffer width may also be granted administratively rather than through a formal variance process, if the buffer would not protect an urban, conservancy, or natural shoreline. *KCC 19.300.315.A.4.*

¹² The County Department of Community Development may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Buffer reduction shall be the minimum necessary for the permitted use. *KCC 19.300.315.A.4.*

the former single-family residence as a residence. *Exhibit 32; Testimony of Ms. Jones; Testimony of Ms. Sands.*

15. Annette Weaver (Applicant) testified that she has been a teacher for more than 27 years, and deliberately selected the subject property as an ideal site for a Montessori school due to the property's natural character. Ms. Weaver testified that she knew a permit would be required from the County to operate the school on the subject property, but made a mistake by beginning operations prior to receiving the required County permit. *Testimony of Ms. Weaver.*
16. A Montessori school and day care center is currently in operation within the two classrooms located on the subject property. The exterior of each classroom appears to be modeled after a single-family residence. The Applicant does not reside on the property. *Exhibit 13; Exhibit 19; Exhibit 83.*
17. According to a February 13, 2008 letter from the Applicant, the Montessori school in operation on the subject property is an environmentally based Montessori education program designed to foster independence; critical thinking; respect; and responsibility to self, others, and the environment. The Montessori school environment is designed to promote academic, emotional, spiritual, and social growth in students. *Exhibit 38.*
18. The Applicant proposes to host up to 40 34 students ages two to nine with four supervising adults. The Applicant's school program would begin with a five-day-a-week, four-hour a day program until the Applicant obtains a child care license. Then the school would expand into a five-day-a-week, full-day program from 8:30 a.m. to 3:00 p.m. ~~The day care center would operate Monday through Friday, 7:00 a.m. to 6:00 p.m.~~ The Applicant also proposes two work parties over each calendar year, held on Saturdays from 9:00 a.m. to 5:00 p.m. *Exhibit 47; Exhibit 50; Exhibit 80, Staff Report, page 5.*
19. The Applicant would use the wetland area within the subject property for environmental education of students. Once a week, the Applicant would lead students down an existing trail on the property to an existing clearing in the woods located within the wetland on the property. The clearing would be used as a gathering place for teachers and students. The trail continues southwest from the existing clearing to an existing classroom building. The trail crosses a stream on the property by use of an existing wooden footbridge. Students would be instructed to remain on the trail and not disturb the surrounding environment. *Exhibit 4; Exhibit 16; Exhibit 38.*
20. County codes allow for construction of public and private trails and trail-related facilities in wetlands or wetland buffers or in fish and wildlife habitat areas and their buffers in compliance with KCC 19.200.225.G and KCC 19.300.315.I

standards. Standards require placement of a trail on previously disturbed areas; minimized vegetation and habitat removal; minimized habitat disturbance; placement of trails outside buffers or on the outer portion of buffers; and trail use by pedestrians. *KCC 19.200.225.G; KCC 19.300.315.I*. County staff has reviewed the existing trail and proposed trail use, and determined that the trail and use meets County Code standards. *Exhibit 80, Staff Report, page 7.*

21. KCC 17.385.025 requires a minimum of fifteen percent of the total area of the subject property be landscaped according to Ch. 17.385 KCC requirements. *KCC 17.385.025*. According to the County staff report and a landscape plan submitted by the Applicant, over 50-percent of the subject property is landscaped. The majority of the subject property provides at least a 50 foot wide rural character buffer around the property perimeter, with the exception of points along the property access road, north area of driveway and shed, and south property boundary near the former single-family residence. Photographs of the subject property depict mature conifers and understory along the north boundary of the subject property with a single-family residence and outbuilding visible through the conifers. Bethel Burley Road SE is visible through mature conifers and chain-link fence along the west boundary of the subject property. A single-family residence and outbuilding is visible through mature conifers and chain-link fence along the south boundary of the subject property. *Exhibit 65; Exhibit 80, Staff Report, page 9; Exhibit 82.*
22. Surrounding property to the east, northeast, southeast, northwest, and southwest of the subject property is located in the County's Rural Protection zoning district. Property to the west is located in the County's Rural Residential zoning district. *Exhibit 80, Staff Report, page 2.*
23. The play area on the subject property abuts the neighboring lot along the south boundary of the subject property. Single-family residential property is located across Bethel Burley Road SE to the west of the subject property. Single-family residential property is also located approximately 100 feet to the north of the play area on the subject property, and approximately 500 feet to the east of the play area on the subject property. Single-family residential property is also located to the northwest, northeast, and southwest of the subject property. Property to the east and southeast is undeveloped. *Exhibit 80, Staff Report, pages 2 and 6.*
24. The school and day-care center are accessed from Bethel Burley Road SE, a paved County road classified by the County as a rural major collector. There is a 45 mph posted speed limit on Bethel Burley Road SE in the subject property vicinity. *Exhibit 69; Exhibit 80, Staff Report, page 8.*
25. A sight distance and stopping distance diagram report prepared for the Applicant by Frederick A. Kegel, P.E., states that the available stopping sight distance for

southbound traffic along Bethel Burley Road SE is approximately 390 feet, and the distance for northbound traffic is greater than 495 feet in the vicinity of the subject property. The report determined that the available stopping sight distance would meet minimum standards. The report also stated that minimum available sight distance at the intersection of the access driveway and Bethel Burley Road SE is approximately 420 feet to the north for left turn traffic exiting the subject property, and greater than 495 feet to the south. The report determined that there would be adequate sight distance to the south, but sight distance to the north would not meet design standards. The report concluded that unless there are significant average daily trips to and from the subject property, and unless there are significant left turns exiting the property, no intersection improvements would be required. To accommodate two-way traffic, the report recommended widening the access to the subject property to 20 feet wide. The County staff report states that no specific requirements exist for the intersection of the access driveway and Bethel Burley Road SE.¹³ *Exhibit 69; Exhibit 80, Staff Report, page 8.*

26. Ms. Sands testified that the speed limit on Bethel Burley Road SE is 40 mph in the subject property vicinity, but traffic usually travels at a faster speed.¹⁴ Ms. Sands testified the driveway access to the subject property is located just below the crest of a hill. *Testimony of Ms. Sands.*
27. The Applicant estimated the school and day-care center would attract approximately 30 vehicles during the day for student drop-off and pick-up. County staff estimated the school and day-care center would generate 84 average daily trips (ADT), with two daily trips for each of 40 children and two adults.¹⁵ The County staff report states sidewalks along the property frontage to be inappropriate, as the school and day-care center are located in a rural zoning

¹³ At the closed record hearing, the Applicant's attorney alleged that the proposed use did not violate any road standards, and that there would be no traffic during hours of darkness. This allegation contradicts the Applicant's expert who concluded that sight distance would not meet county standards. Exhibit 69, page 2, states "the exiting left turn movements do not conform to current design standards for sight distance". In the staff report, it was noted that the standards referenced by the expert may not apply to the driveway but only to an intersection. This note was based on a conversation the Staff Planner had with 'the traffic engineer of public works'. There is nothing in the record other than the report of this conversation which supports this conclusion. The Hearing Examiner finds the expert testimony more credible than the hearsay report, which justifies conditions to mitigate traffic impacts.

¹⁴ The testimony about the posted speed limit is in conflict with a statement in the staff report; but it was agreed by all at the hearing that the posted speed limit is usually exceeded by traffic in the area.

¹⁵ This calculation would change with the limit of 34 children, but no new calculation was introduced as part of the record. The fact that the total ADT would be less with the limit of 34 children means that the impact on traffic in the area would be less, and thus capable of being mitigated with conditions as proposed by staff.

district without any other sidewalks in the area. *Exhibit 46; Exhibit 48; Exhibit 80, Staff Report, page 8.*

28. One vehicle parking space is required on the subject property for every three students, for a total of 14 parking spaces.¹⁶ *KCC 17.435.030.* Parking is prohibited within the required front yard setback upon the subject property. *KCC 17.435.020.E.* A letter from the Applicant states that there are at least 14 parking spaces available on the subject property, each space measuring nine feet by twenty feet. The County staff report states there is adequate area for parking within the subject property outside the required setbacks. *Exhibit 46; Exhibit 80, Staff Report, page 8.*
29. The Kitsap County Health District (KCHD) issued a Commercial Building Clearance (BC) and Building Site Application (BSA) Compliance for the subject property on April 25, 2008. The BC and BSA approve use of the on-site septic system to serve up to 46 students ages two to six years old, two full-time employees, and two part-time employees. The Applicant testified that two septic tanks were installed on the subject property over the past year. *Exhibit 42; Exhibit 53; Exhibit 80, Staff Report, page 7; Testimony of Ms. Weaver.*
30. The school and day-care center obtain water from a well located on the subject property. A proposed condition of approval would require the Applicant to update the Washington State Department of Health Water Facility Inventory (WFI) to include the number of students using the on-site water system. The Applicant testified that the on-site well must undergo monthly testing. *Exhibit 80; Staff Report, page 7; Testimony of Ms. Weaver.*
31. The school and day-care center would maintain and practice emergency plans and procedures and fire evacuation plans. The classroom buildings on the subject property are not large enough in size to require dedicated fire flow systems. Fire Protection District No. 7 provides fire protection services for the subject property. *Exhibit 67; Exhibit 80, Staff Report, pages 3 and 8.*
32. Puget Sound Energy supplies electric power to the subject property. The Applicant proposes no new lighting on the subject property, which currently contains lighting typical of residential property. The Kitsap County Sheriff provides police protection services for the subject property. *Exhibit 80, Staff Report, pages 3 and 9.*

¹⁶ The calculation is one parking space/3 children * 40 children total capacity = 13.33, or 14 parking spaces. NOTE: This calculation would change with the limit of 34 children, but no new calculation was introduced as part of the record. Adjustments on the site plan can be made consistent with the code.

33. A letter from fourteen residents in the vicinity of the school and day-care center expressed concern that structures, trails, and boardwalks on the subject property intrude onto stream and wetland buffers; that the County did not prepare an environmental impact statement under SEPA; that salmon and stream habitat would be negatively impacted by runoff from on-site parking area; and that stormwater runoff would not be properly managed on the subject property. *Exhibit 57; Exhibit 58.*
34. A letter from DeAnn Moore, a resident on Bethel Burley Road SE, expressed concern that the stream and wetland areas on the subject property would be damaged through play activities, touring, and use by students. Ms. Moore also expressed concern about protection of streams and neighboring wells; adequacy of on-site septic; child safety in relation to nearby water bodies; classroom fire safety; and limited vehicle sight distance on Bethel Burley Road SE due to the location of the subject property driveway just below the rise of a hill. *Exhibit 59.*
35. County staff recommended approval of the application with twenty-five conditions of approval. Conditions of approval proposed by County staff concern requirements for the water system; traffic and roads; solid waste management; critical area buffer; trails and trail-related facilities; required permits and submittals, including required building permits; signage; student, hours of operation, and work party limitations; parking spaces; rural character buffer; fencing; and artificial outdoor lighting. A proposed condition of approval would require the Applicant to place a warning sign at the driveway exit to Bethel-Burley Road SE to warn drivers of limited sight distance. *Exhibit 80, Staff Report, pages 7 and 10 – 14.*
36. Steve Heacock, County Planner, testified that conditions of the buffer reduction approval granted by the County would adequately protect streams and wetland found within the subject property. Mr. Heacock testified that removing the existing footbridge would cause a greater impact to the stream than allowing the footbridge to remain. Mr. Heacock added that County Code provisions permit trails for educational purposes within buffer areas when certain conditions are met. Mr. Heacock proposed a condition of approval that a Habitat Management Plan (HMP) be completed prior to County CUP approval. *Testimony of Mr. Heacock.*
37. Jon Moore, a nearby neighbor, testified to his concern about increasing noise, vehicle traffic, and stream impacts resulting from the use. Mr. Moore also testified to his concern that the use would disrupt the existing natural area, and that the use is incompatible with surrounding rural development. Mr. Moore requested that the application be denied. *Testimony of Mr. Moore.*

38. Andy Peterson, an adjacent neighbor, testified that the use is incompatible with the Rural Protection Comprehensive Plan designation of the subject property, and inconsistent with Comprehensive Plan policies RL-7, RL-14, and ED-24. Mr. Peterson expressed concern that the existing classrooms are not constructed in compliance with County building code. Mr. Peterson also testified that the chain-link fencing on the subject property is not rural in character, and that the location of chain-link fencing on the subject property boundary renders a vegetative buffer impossible. Mr. Peterson added that buffer protections within the County Code prohibit play areas within a buffer area. Mr. Peterson expressed his concern about noise generated by the use; insufficient parking on the property; stormwater runoff from asphalt areas on the property; and insufficient sight distance from the access driveway to and from the property. *Testimony of Mr. Peterson.*
39. Robert Cayo, a neighbor across Bethel Burley Road SE, testified that a left turn from the access driveway of the subject property would be dangerous due to limited sight distance and the need to cross a traffic lane. Mr. Cayo testified sight distance is limited by the location of the access driveway near the crest of a hill. Mr. Cayo also testified to his concern that existing four-foot high chain-link fencing on the subject property would be climbed by students, placing students and nearby streams at risk. Mr. Cayo requested that the application be denied. *Testimony of Mr. Cayo.*
40. Kathleen Rooks, an adjacent neighbor, testified to her concern about high vehicle traffic and noise of students generated by the use. Ms. Rooks testified that there is an uninterrupted sight line from her property to the subject property. Ms. Rooks also testified that the crest of the hill near the subject property required her to reconfigure access to and from her own property to avoid dangerous lack of sight distance, establishing a vehicle entry separate from and on a different gradient than the vehicle exit. Ms. Rooks added that the area downslope from the crest of the adjacent hill is usually icy in cold months, resulting in additional driver hazard. *Testimony of Ms. Rooks.*
41. Ms. Weaver (Applicant) testified that chain-link fencing is located one foot away from the subject property boundary, and that the proposed student play area would be located within buffer area. Ms. Weaver testified that additional plantings could be made on the subject property, particularly in the play area. Ms. Weaver testified about her plans to plant a hedge, and added that children are supervised when playing to prevent fence climbing. *Testimony of Ms. Weaver.*
42. Ms. Weaver testified that student playtime would occur between 12:00 p.m. and 12:30 p.m., and perhaps another 30 minutes of playtime would be added in the afternoon. Ms. Weaver testified that screaming does occur during playtime. The Applicant disclosed on the Environmental Checklist that the noise level from children playing during mid-day hours would be an environmental impact that

could be mitigated by planting of additional vegetation. Ms. Weaver added that she has instituted a scream-control program at the school and day-care center.
Testimony of Ms. Weaver.

43. The Applicant would operate from 8:30 AM to 3:00 PM on weekdays. The Applicant would not have more than 34 children on the site at any one time. *Representations of Applicant's Attorneys at Closed Record Hearing; Exhibits 47 & 50.*
44. Neighboring property owners provided specific sworn testimony at the open record hearing about incompatibility with the neighborhood and impacts on property in the vicinity of the subject property. Jon Moore, owner of property two doors down from the subject property for the past 32 years, testified that the application should be denied as incompatible with the neighborhood as it has existed for the past 32 years. Mr. Moore testified that the operation of the school and day care on the subject property began approximately two years ago. He testified that there is an increase in noise and vehicle traffic since the operation of the school, and that there are negative impacts to the stream resulting from the use. Andy Peterson, an owner of property adjacent to the subject property, testified that he listens to the noise of the children at the school and day care during the day, and that noise would increase substantially if the school and day care were allowed to serve 40 children. Mr. Peterson also testified that the speed limit on Bethel-Burley Road adjacent to the school and day care is 45 mph but is often exceeded, and that the crest of the hill near the driveway accessing the school and day care creates a blind spot. Robert Cayo, owner of property across Bethel-Burley Road for the past 40 years, testified that there have been accidents in the vicinity of the driveway accessing the school and day care. Kathleen Rooks, owner of property also adjacent to the school and day care for the past 22 years, testified that she maintains a driveway along the crest of the hill on Bethel Burley Road to avoid a safety risk associated with exiting her lower driveway at the bottom of the hill, a few feet from the driveway accessing the school and day care. Ms. Rooks testified that there is a substantial safety risk to vehicles exiting from her lower driveway, as vehicles coming over the crest of the hill do not slow over the hill. Ms. Rooks added that the hillside adjacent to her lower driveway is not exposed to sunlight, so it retains rain, snow, and ice much longer than other parts of the road. *Testimony of Mr. Moore; Testimony of Mr. Peterson; Testimony of Mr. Cayo; Testimony of Ms. Rooks.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide conditional use permit requests. *Kitsap County Code (KCC) 2.10.070; KCC 17.421.020.A; KCC Table 21.04.030.*

Criteria for Review

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with the applicable requirements of this title;
3. The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

As a condition of approval, the Hearing Examiner may:

1. Increase requirements in the standards, criteria, or policies established by this title;
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.382;
4. Include requirements to improve parity with other uses permitted in the same zone protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The Hearing Examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.

KCC 17.421.030.

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

Conclusions Based on Findings¹⁷

1. **The proposal is consistent with the Comprehensive Plan.** The Kitsap County Comprehensive Plan and Zoning Code allow private schools within the Rural Protection Zone with a Conditional Use Permit. *Findings 4, 5 & 6.*

2. **With conditions, the proposal will comply with the applicable requirements of this title.** The size of the property is appropriate for the proposed use, but conditions of approval are necessary to ensure that water system requirements are complied with, that a Road Approach permit is granted, that solid waste and recycling service is provided, that buffer enhancements are implemented, that trails comply with critical area standards, that building permits are issued, that parking spaces are provided as required by code, and that fencing is modified to meet code requirements. *Findings 7 – 11.*

3. **With conditions, the proposal would not be materially detrimental to uses or property in the immediate vicinity.** The use of the site for a school, including an increase in students to up to 34, will have impacts on properties in the vicinity. These impacts will not be materially detrimental if conditions of approval are attached and enforced. Conditions of approval are necessary to limit operating hours, limit the number of students, provide warning signs about limited sight distance, and to ensure that all applicable building codes are complied with by issuance of required building permits. *Findings 12 – 44.*

4. **With conditions, the proposal would incorporate specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.** The use of the site for a school, including an increase in students to up to 34, will have impacts on properties in the vicinity. These impacts will not be materially detrimental if conditions of approval are attached and enforced. Conditions of approval are necessary to limit operating hours, limit the number of students, provide warning signs about limited sight distance, and to ensure that all applicable building codes are complied with by issuance of required building permits. Conditions of approval are also necessary to ensure that water system requirements are complied with, that a Road Approach permit is granted, that solid waste and recycling service is provided, that buffer enhancements are implemented, that trails comply with critical area standards, that building permits are issued, that parking spaces are provided as required by code, and that fencing is modified to meet code requirements. *Findings 1 – 44.*

¹⁷ This is a new section and replaces the section entitled “Conclusions Based on Findings” in the initial decision.

DECISION¹⁸

Based upon the preceding Findings and Conclusions, the request for a conditional use permit to operate a Montessori school and day-care center on property located at 13521 Bethel Burley Road SE, in Kitsap County, Washington, is **APPROVED**, subject to the following conditions:

1. The hours of operation under this CUP are limited to Monday through Friday, 8:30 AM to 3:00 PM.
2. The total number of children on the property at any one time under this CUP is limited to 34.
3. This project must update the Washington State Department of Health Water Facility Inventory (WFI) to reflect the increase in the number of students using the water system.
4. Within 30 days of this decision, the Applicant must submit a Road Approach Permit Application and plans for construction of asphalt concrete accesses between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with Chapter 11.22, Kitsap County Road Standards, of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.
5. Prior to the 2009-2010 school year, a warning sign shall be placed on-site at the driveway exit to advise drivers of the limited sight distance.
6. Within 30 days of this decision, the Applicant must contact the solid waste service provider Waste Management at (360) 674-3166 for information on implementing the solid waste/recycling storage requirements influenced by the service provider (e.g. dumpster size and location) for the project.
7. The Applicant must provide at least 150 square feet of exterior recyclable materials storage space for the project.
8. Prior to the 2009-2010 school year, the Applicant must meet the three conditions stipulated in the approved critical area buffer reduction for Little Bear Creek (08 52072):
 - a. A split rail fence with buffer signage shall be installed along the perimeter of the minimum 75-foot stream buffer. Buffer signs shall be placed at 50 foot intervals and attached to the rail fence. Buffer signs are available from the Department of Community Development.
 - b. A stream buffer enhancement plan shall be submitted for Kitsap County review and approval.

¹⁸ This is a new section and replaces the Decision section in the initial decision.

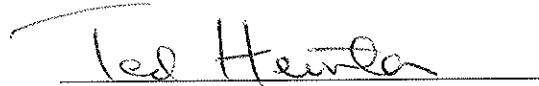
- c. Stormwater from impervious surfaces shall not be discharged directly to the stream.
9. Trails and trail-related facilities, such as benches and viewing platforms within stream corridors and wetlands, or their associated buffers, shall comply with the following standards:
 - a. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.
 - b. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.
 - c. Viewing platforms, interpretive centers, benches, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected area.
 - d. Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of 25 feet from the stream edge and a minimum of 30 feet from the wetland edge, except where crossings or viewing areas have been approved.
 - e. Trails shall generally be limited to pedestrian use unless other more intensive uses, such as bike or horse trails have been specifically allowed and mitigation has been provided. Trail width shall not exceed five feet unless there is a demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials unless otherwise approved by the department.
10. The recipient of any conditional use permit shall file a land use binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The binder shall be reviewed and approved by the Department of Community Development prior to recording.
11. An approved and issued building permit is required to convert the existing single-family residence into a school building/day-care center.
12. All building permits shall be subject to impact fees pursuant to the *Kitsap County Code* in effect on the date of a complete building permit application.

13. Signage shall be compatible with the rural character of the area and shall not be illuminated. The entire A-board with signage shall not exceed 24 inches by 30 inches. The A-board sign shall be placed on and directly in front of premises being advertised, be displayed only during hours the school/day-care center is open, and it shall not be placed within the road right-of-way. All signage shall comply with *Kitsap County Code* (KCC) 17.445 in effect at the time of a complete sign application. A sign permit will be required for any new signage unless it qualifies as an exempt sign.
14. Two work party events are permitted each calendar year, limited to Saturday from 9:00 AM to 5:00 PM.
15. A minimum of 14 parking spaces shall be provided on-site. No parking is permitted within the required 50-foot front yard setback.
16. A 25-foot to 50-foot rural character buffer shall be provided around the perimeter to the greatest extent possible. Minimal enhancement along a portion of the south and north property lines, in the vicinity of adjacent residential development will be required.
17. The Applicant must modify the fencing along the south property line in the play area to comply with the site-obscuring fence requirement. There are several options available to the applicants', including inserting vertical slats in the chain-linked fence, building a solid board fence and/or planting vegetation to provide a complete site-obscuring view to the play area. This requirement shall be met within 30 days of the Hearing Examiner's final order and expiration of the appeal period.
18. Artificial outdoor lighting shall be arranged so that the lighting is fully recessed or fully shielded from side view and directed downward and away from adjoining properties. No more than one-foot candle of illumination shall leave the project property boundaries.
19. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated above and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.
20. The required building permit for the school/day-care center within the existing single-family residence shall be applied for within 30 days of the Hearing Examiner's final order and expiration of the appeal period.
21. The required building permits for the school building/day-care center (Commercial Building Permit 07 50850) and school/day-care center building shall be issued within 3 months of the Hearing Examiner's final order.
22. The required building permits for the school building/day-care center and school/day-care center building shall receive final inspection and permit approval and a Certificate of Occupancy within 6 months of issuance.

*Decision Upon Remand of the Board
Kitsap County Hearing Examiner
Montessori Farmhouse School CUP, No. 090212-006*

23. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

Decided this 8th day of August 2009.


TED HUNTER
Hearing Examiner

RECEIVED

AUG 10 2009

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT