

July 2, 2010

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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STIPULATED ORDER ACKNOWLEDGING SETTLEMENT AND DISMISSING APPEAL

SUBJECT: Department of Development and Environmental Services File No. **A09P0135**

THE BEAR CREEK SCHOOL
Preliminary Determination Appeal

Location: 8905 208th Avenue NE, Redmond

Appellant: The Bear Creek School
represented by **Darrell S. Mitsunaga**
Johns Monroe Mitsunaga Koloušková, PLLC
1601—114th Avenue SE, Suite 110
Bellevue, Washington 98004
Telephone: (425) 154-2812
Facsimile: (425) 451-2818
Email: mitsunaga@jmmlaw.com

King County: Department of Development and Environmental Services (DDES)
represented by **Cristy Craig and Devon Shannon**
King County Prosecuting Attorney's Office
516 Third Avenue, Room E550
Seattle, Washington 98104
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Facsimile: (206) 296-0191
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devon.shannon@kingcounty.gov

The parties in this matter have reached a stipulated settlement agreement, attached hereto and acknowledged by the Examiner, resolving the appeal in this matter. As the agreement resolves the appeal, the appeal is moot and accordingly dismissed.

ORDERED July 2, 2010.



Peter T. Donahue
King County Hearing Examiner

PTD:gao
Attachment

A09P0135 ORD

RECEIVED

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KING COUNTY
HEARING EXAMINER

BEFORE THE HEARING EXAMINER OF KING COUNTY

In the Matter of the Appeal of:

THE BEAR CREEK SCHOOL,

Appellant.

DDES File No. A09P0135

**STIPULATED ORDER AND
DECISION RESOLVING APPEAL**

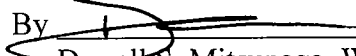
STIPULATION

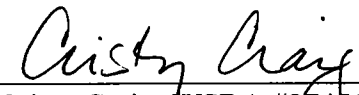
COMES NOW Appellant The Bear Creek School, by and through their counsel of record, Darrell S. Mitsunaga and Johns Monroe Mitsunaga Koloušková PLLC, and King County Department of Development and Environmental Services, by and through its counsel of record, Cristy Craig, King County Senior Prosecuting Attorney, and Daniel T. Satterberg, King County Prosecuting Attorney, and **STIPULATE AND AGREE** that this appeal should be resolved by entry of an order decision by the Hearing Examiner in accordance with the attached CR 2A Stipulated Settlement Agreement, which is incorporated by reference herein.

STIPULATED AND AGREED TO this 25th day of June, 2010.

JOHNS MONROE MITSUNAGA
KOLOUŠKOVÁ, PLLC

Daniel T. Satterberg
KING COUNTY PROSECUTING ATTORNEY

By: 
Darrell S. Mitsunaga, WSBA #12992
Attorneys for Appellant
The Bear Creek School

By: 
Cristy Craig, WSBA #27451
King County Senior Prosecuting
Attorney, Attorneys for King County
Department of Development and
Environmental Services

ORIGINAL

STIPULATED ORDER AND DECISION RESOLVING
APPEAL – PAGE 1

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CR 2A STIPULATED SETTLEMENT AGREEMENT
Preliminary Determination Appeal - DDES File No. A09P0135

Appellant The Bear Creek School ("TBCS") and the King County Department of Development and Environmental Services ("DDES") **STIPULATE AND AGREE** that the Preliminary Determination Appeal should be resolved by entry of a Stipulated Order by the Hearing Examiner as follows:

1. To obtain high school use of the proposed elementary school ("Proposed School Building") approved by CUP Report and Decision, DDES File No. L04CU030, dated March 30, 2007, and modified on July 25, 2007 ("2007 CUP"), TBCS shall apply for a Conditional Use Permit ("CUP") limited to a change in use from elementary school use to high school use for up to 414 students ("new CUP"). All King County Code CUP requirements shall apply, including the required public notice and comment period, subject to the following:

a. Only legitimate public comments related to the change in use from elementary school use to high school use are subject to potential regulatory action within the CUP process.

b. TBCS need not provide new reports, studies, or analysis in addition to those provided by TBCS for the 2007 CUP and related SEPA review, provided that TBCS' noise analyst provides a document demonstrating to the satisfaction of DDES that no increased noise impacts will occur as a result of the change from elementary school use to high school use. DDES will not unreasonably deny approval of the noise analyst document. Provided further that DDES has determined, based on documentation provided by TBCS' traffic analyst that demonstrates that no increased traffic impacts will occur as a result of the change from elementary school use to high school use, that TBCS' traffic study provided for in the 2007 CUP is sufficient and therefore, that TBCS need not provide a new traffic study. Provided further that if the SEPA Checklist and threshold determination or legitimate public comments related to the change in use from elementary school use to high school use identify impacts that were not previously discussed in the 2007 CUP and related SEPA review, DDES may require new reports, studies or analysis to address those impacts.

c. The conditions imposed by the 2007 CUP (other than change in use of the Proposed School Building to high school use) shall remain the same unless legitimate comments related to the change in use from elementary school use to high school use provide a basis for and require imposition of additional or modified conditions.

d. The structures approved by the 2007 CUP as generally modified in attached Exhibit A and by this Settlement Agreement shall remain vested to and subject to the King County Code requirements in effect on December 28, 2004. This "vesting" includes, but is not limited to, infrastructure elements of the Proposed School Building, as long as its square footage remains within the size limits as discussed in paragraph 2 herein, and related improvements, *i.e.*, building footprint, parking, roads, pathways, impervious surfaces, and landscaping, as long as the locations do not differ significantly from Exhibit A. Provided, however, that Exhibit A is not intended to be a final design plan and TBCS shall have the flexibility, consistent with this paragraph, to modify the size, location and configuration of the building footprint, parking, roads, pathways, impervious surfaces, and landscaping to address site, community, or other concerns as long as it is generally consistent with Exhibit A, paragraph 2 of this Settlement Agreement, and the 2007 CUP except as modified herein. Building Code requirements will be determined upon application for a building permit.

e. The new CUP is subject to the SEPA review process only for a change in use of the Proposed School Building from elementary school use to high school use. The conditions imposed by the Mitigated Determination of Non-Significance ("MDNS") relative to the 2007 CUP shall remain the same unless legitimate comments related to the change in use from elementary school use to high school use provide a basis for and require imposition of additional or modified conditions.

f. DDES agrees that pursuant to KCC 14.70.285(I), TBCS' change from elementary school use to high school use is subject to the concurrency test using level of service standard F.

g. DDES may impose necessary conditions based on demonstrable impacts related to inter-building student access if the Proposed School Building does not have its own cafeteria.

h. Except as specifically referenced herein, TBCS must comply with all other requirements of the 2007 CUP, including timelines for conditions related to traffic impacts and water availability.

i. Minor changes to access road/pathways/parking configuration beyond those reflected in Exhibit A, as may be further modified by TBCS in the design process to address site, community, or other concerns, shall be vested to and subject to the King County Code requirements in effect on December 28, 2004.

j. Except as specifically referenced herein, the new CUP shall have absolutely no effect on the CUP Report and Decision, dated November 25, 1997, under DDES File No. L96AC021 ("1997 CUP") and/or the 2007 CUP. Provided,

that if the new CUP is not approved, is withdrawn by TBCS, or TBCS determines, in its sole discretion, to abandon its plans for change in use of the Proposed School Building from elementary school use to high school use, then the terms and conditions of the 2007 CUP shall remain in effect, shall not be modified by this settlement agreement, and TBCS shall have the right to construct and use the facilities approved by the 2007 CUP.

k. For settlement purposes only, DDES agrees that TBCS' change of use of its proposed new building from elementary school use to high school use is not subject to KCC 21A.42.140.

2. DDES agrees that the 45,000 square-foot Proposed School Building approved under the 2007 CUP may be expanded to an approximately 52,800 square-foot school building in compliance with KCC 21A.42.190(A)(1)(a), on condition that existing residences are removed as described in paragraph 3. DDES agrees that the Proposed School Building and related infrastructure changes, including but not limited to, building footprint, parking, roads, pathways, impervious surfaces, and landscaping, in the general locations reflected in Exhibit A, as may be further modified by TBCS in the design process to address site, community, or other concerns, complies with KCC 21A.42.190(A)(1)(a), and is vested to and subject to the King County Code requirements in effect on December 28, 2004, except as otherwise required herein, subject to health/building permit processes. For settlement purposes only, DDES agrees that the above-described change in square footage and infrastructure changes do not create a substantial change to the conditional use approved in the 2007 CUP and do comply with KCC 21A.42.190(B) subject to health/building permit processes. DDES agrees that King County Code and other regulatory requirements shall be imposed based on the classification of the stream that runs through the site as a Category 2 stream under the King County Code requirements in effect on December 28, 2004, rather than the assumed Category 2s (salmonid) classification reflected in the 2007 CUP. DDES agrees that TBCS may request DDES to change this Category 2 stream classification to Category 3 classification if TBCS provides a critical areas report pursuant to KCC Chapter 21A.24 establishing to DDES' satisfaction a Category 3 classification. DDES will not unreasonably deny approval of this Category 3 classification.

3. As a condition of this settlement agreement, TBCS shall demolish or remove the existing residences approved by the 2007 CUP for international student housing from any parcel contiguous to The Bear Creek School's 208th St. campus that is currently owned by The Bear Creek School or currently used for school purposes. Residence 1 is currently located on Tax Parcel 052069130. Residence 2 is currently located on Tax Parcel 0525069004. Residence 1 may remain in its current location until removal is required for construction of the Proposed School Building or associated facilities approved by the 2007 CUP or the new CUP and this Settlement Agreement. Residence 2 may remain in its current location until removal is required for construction

of the athletic facilities approved by the 2007 CUP. Residential use of the structures is allowed in the interim.

4. As a condition of this settlement agreement, TBCS agrees to comply with King County's 2009 storm water regulations applicable to construction of the Proposed School Building and associated infrastructure discussed herein to be located on Tax Parcel Nos. 052069130, 052069083, and 0525069095. DDES agrees that King County's 2009 storm water regulations do not apply to athletic facility and parking construction approved by the 2007 CUP on Tax Parcel No. 0525069004 or improvements constructed under the 1997 CUP.

5. TBCS agrees to fully disclose all current development plans to Union Hill Preservation Society prior to submittal of the application for the new CUP.

6. TBCS agrees that all King County Code provisions as interpreted by the Washington State Courts of Appeal, apply to any changes to the 2007 CUP and the new CUP process unless specifically addressed in this Agreement.

7. All conditions imposed under the 2007 CUP approval apply unless specifically addressed in this Agreement.

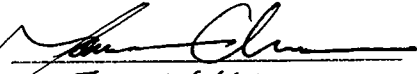
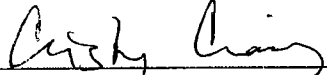
8. DDES agrees to expedite its processing of the CUP and SEPA determination to ensure issuance of a decision no later than ninety (90) calendar days from DDES's notice of complete application or ten (10) business days from the date of DDES' receipt of TBCS' application for a new CUP, whichever is earlier. Provided that, (a) DDES will provide TBCS with a fee estimate within ten (10) business days of submission of an updated site plan, noise study supplement, and SEPA checklist ("Fee Estimate Submittals"), which items can be submitted to DDES prior to TBCS' submittal of its application for the new CUP; (b) TBCS is not required to participate in an additional pre-application meeting, however TBCS agrees that DDES cannot begin processing the new CUP until the fee estimate is complete or ten (10) days from submission to DDES of the Fee Estimate Submittals, whichever is earlier; and (c) DDES will issue its notice of complete application within ten (10) business days of receipt of TBCS' application for the new CUP. Provided further that: (a) the ninety (90) day time-clock shall be tolled during periods that DDES is awaiting responses from TBCS to legitimate DDES requests; and (b) DDES shall make reasonable efforts to assemble comments and requests for information prior to transmittal to TBCS so that TBCS can expedite its responses to said comments/requests. "Business days" as used herein means Monday through Friday.

9. The parties agree that the terms and conditions herein are to resolve a dispute and nothing in this Stipulated Agreement shall be construed by any party as an admission, concession, or agreement regarding the applicable permits, ordinances and interpretation thereof regarding TBCS' proposed uses or infrastructure changes.

10. This Stipulated Agreement sets forth the entire agreement of the parties and may be modified only by written instrument duly signed and executed by each party. There are no oral promises, representations, warranties or agreements not fully set forth herein.

11. This Agreement may be signed in counterparts, each of which shall (when the Agreement is or counterparts have been signed by both parties) be an original, to the same effect as if all signatures were on the same instrument. Electronic scanned or facsimile signatures shall be sufficient to demonstrate a party's assent to this Agreement.

12. The persons executing this agreement expressly represent and warrant that they are fully authorized to enter into this Agreement on behalf of their respective party for the purpose of binding such party to the terms of this Agreement.

<p>KING COUNTY DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES</p> <p>By:  Name: <u>TIM CHAN</u> Its: <u>DIVISION DIRECTOR</u> Dated: <u>06/16/10</u></p>	<p>Approved as to Form:</p> <p>DANIEL T. SATTERBERG KING COUNTY PROSECUTING ATTORNEY</p> <p>By:  Cristy Craig, WSBA #27451 King County Senior Prosecuting Attorney, Attorneys for King County Department of Development and Environmental Services Dated: <u>06/22/10</u></p>
<p>THE BEAR CREEK SCHOOL</p> <p>By: _____ <u>Patrick Carruth</u> Its: <u>Head of School</u> Dated: _____</p>	<p>Approved as to Form:</p> <p>JOHNS MONROE MITSUNAGA KOLOUSKOVA PLLC</p> <p>By: _____ Darrell Mitsunaga, WSBA #12992, Attorneys for The Bear Creek School Dated: _____</p>

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EXHIBIT A

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