



Notice of Hearing Examiner Decision

01/08/2021

To: Interested Parties and Parties of Record

RE: Project Name: Magnolia Forest Preschool
 Applicant: Kelsey and Stacy Marshall
 2588 NW Sherman Hill Road
 Poulsbo, WA 98370
 Application: Conditional Use Permit (CUP)
 Permit Number: 20-02837

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **20-02837: Magnolia Forest Preschool Conditional Use Permit (CUP)**, subject to the conditions outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Owner: Kelsey & Stacy Marshall, petalandpitchfork@gmail.com
 Authorized Representative: Berni Kenworthy – Axis Land Consulting, berni.kenworthy@axislandconsulting.com
 Business Owner: Magnolia Fine Arts PlaySchool, LLC, brandyn@magnoliaforestpreschool.com
 Health District
 Public Works
 Parks
 Navy
 DSE

Kitsap Transit
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
Water Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
Interested Parties:
None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Conditional Use Permit
Magnolia Forest Preschool, File No. 20-02837**

January 7, 2021

1. FINDINGS OF FACT

1.1 Proposal. Operate an outdoor preschool on approximately 7.3 forested acres of a 15.08-acre lot.

Applicant/Property Owner. Kelsey and Stacy Marshall, 2588 NW Sherman Hill Road, Poulsbo, WA 98370.

Location. 2558 NW Sherman Hill Road, Poulsbo, WA 98370. Assessor Parcel No. 212601-2-011-2003.

1.2 Hearing. An open record public hearing was held December 17, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through December 24.¹ No comment was received following the hearing.

At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Ms. Kenworthy, confirmed there were no concerns with DCD's proposed conditions. Ms. Boyd (with the Applicant) drew attention to parents who had called in and wished to speak. Ms. Grass and Mr. Jacobson testified. They strongly supported the project. The preschool is highly regarded and at capacity, so the requested expansion is critical.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-38, which included the Revised Staff Report, application materials, documentation of agency consultation, public notice documents, a DCD Power Point presentation, documentation of project revisions through an Applicant e-mail, and a redlined addendum.

1.4 Notice. Hearing and application notice were provided consistent with KCC requirements.²

¹ Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

² Exhibits 10, 25 and 34; KCC 21.04.080, .210.

1.5 SEPA. DCD issued an unappealed Determination of Non-Significance,³ with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address land use impacts.

1.6 Agency Comment. The proposal was circulated within the County. As long as requirements are met, there were no agency objections to approval.

1.7 Zoning/Plan Designations and Surrounding Land Uses. The Comprehensive Plan and zoning designations are Rural Residential.⁴ Surrounding properties are also zoned Rural Residential and are developed with single-family residences and public right-of-way; or in open space and undeveloped.⁵

1.8 Site Characteristics. The rectangular shaped parcel slopes down from west to east at an approximately 5% grade. The southern half of the lot is cleared and developed with a single-family residence, barn and farm/agricultural areas. There is an existing looped driveway that extends to two gravel parking areas. The remaining northern half of the parcel is in a natural, forested state. From the northeast corner of the site a non-fish bearing stream extends south, approximately 434 feet into the site.⁶

1.9 Proposal Details and Site Design. The school project would accommodate 36 students and 4 teachers. The school will use an existing looped driveway and an existing gravel parking area. Two portable bathroom facilities are proposed, which would be provided and serviced by a private vendor. A commercial portable sink with warm water is also proposed for hand washing and other potable water needs. No additional structures are proposed. The proposed site design uses most of the existing site without modification; site work is limited to placing a portable bathroom facility on site, expanding the existing gravel parking area for three new stalls, and constructing improved road approaches at the existing access points on NW Sherman Hill Road.

1.10 Utility and Public Services.

- **Water:** Public water
- **Power:** Puget Sound Energy
- **Sewer:** Portable bathrooms
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire and Rescue
- **Schools:** North Kitsap School District

1.11 Access and Transportation. Access is via NW Sherman Hill Road, a County-maintained public right-of-way. There are two existing access points along the south property line, which connect to a looped driveway on site. The western leg of the driveway provides access to adjacent properties via a private easement agreement. The increase in traffic on NW

³ Exhibit 24; Exhibit 38 (Revised Staff Report), pp. 2-3.

⁴ Exhibits 26 and 27; Exhibit 38 (Revised Staff Report), p. 3.

⁵ Exhibit 38 (Revised Staff Report), p. 4.

⁶ Exhibit 20.

Sherman Hill Road is expected to be minimal, and conditions are included to mitigate traffic impacts.⁷

1.12 Off-Street Parking. Preschools require one off-street parking stall per employee, plus one per six children; therefore, 10 parking stalls are required.⁸ However, parking requirements may be reasonably increased or decreased depending on the specific need or use with a reduction of up to 20% authorized.⁹

1.13 Environmental. The site contains no mapped wetlands, geologic hazards, or flood hazard areas.¹⁰ There is a mapped Type N (non-fish bearing) stream on site.¹¹ KCC requires a minimum 50-foot buffer plus an additional 15-foot building setback, and project approval is conditioned to ensure compliance.¹² A Category II Critical Aquifer Recharge Area is mapped on site¹³ outside of the proposed activity, which is not identified as a threat to potential groundwater.¹⁴

1.14 Lighting. No exterior lighting is proposed, and project approval is conditioned to ensure all exterior lighting meets code requirements.¹⁵

1.15 Signage. No signage is proposed, and project approval is conditioned to ensure all signage complies with code requirements.¹⁶

1.16 Landscaping. Approximately 50% of the site is currently landscaped or in natural vegetation, exceeding code requirements. A minimum of 25 feet of existing native vegetation is required to be maintained along the boundary of the preschool activity area, and project approval is conditioned to ensure compliance.¹⁷

1.17 Development Engineering/Stormwater. Development Services and Engineering accepts the concepts contained in this preliminary submittal and requires three conditions. The project falls below the threshold requiring further stormwater mitigation.¹⁸

1.18 Fire Safety. The Kitsap County Fire Marshal reviewed and approved the proposal with no conditions.¹⁹

⁷ Exhibit 38 (Revised Staff Report), p. 12; Conditions 22-24; Exhibit 17 (prepared before reduction in student and teacher numbers).

⁸ KCC 17.490.030.

⁹ KCC 17.490.010; KCC 17.490.030.A.1; Exhibit 16, pp. 7-8; Exhibit 38 (Revised Staff Report), p. 9.

¹⁰ Exhibit 29.

¹¹ Exhibits 20 and 29.

¹² KCC 19.300.315; Conditions 18, 20, and 21.

¹³ Exhibit 30.

¹⁴ KCC 19.600.620.

¹⁵ KCC 17.420.030.C; Exhibit 38 (Revised Staff Report), p. 9; Condition 4.

¹⁶ Ch. 17.510 KCC; Exhibit 38 (Revised Staff Report), p. 9; Condition 6.

¹⁷ KCC 17.500.027; Exhibit 20; Exhibit 38 (Revised Staff Report), p. 10; Condition 10.

¹⁸ Exhibits 8, 21, and 23; Exhibit 38 (Revised Staff Report), p. 11; Conditions 16, 17, and 24.

¹⁹ Exhibit 38 (Revised Staff Report), p. 12.

1.19 Solid Waste. The proposal is permitted to use existing single-family residence and farm refuse containers. No additional review is needed.²⁰

1.20 Water/Sewer. Water is provided to the site via a private well. Sewage disposal to the site is via a private on-site septic system. The preschool will not be allowed to use those facilities for normal operations. Sewage disposal will be managed by a private portable bathroom vendor and serviced regularly. Water for handwashing stations and tanks is required to be filled by an approved public water source.²¹

1.21 Kitsap Public Health District. The District reviewed and approved the proposal with one condition.²²

1.22 Washington Department of Children, Youth, and Families (DCYF). The proposed forest preschool does not require state licensing nor guidance; however, upon DCD's request, DCYF reviewed the project narrative and site plan and provided feedback. Based on these conversations, DCD staff finds the proposal is in general alignment with state guidelines.²³

1.23 Planning/Zoning. The Comprehensive Plan and zoning designations are Rural Residential, which provide for one dwelling unit per five acres. Plan policies encourage school and educational facilities to serve residents throughout the County, while preserving rural character and the environment outside urban growth areas. The project is consistent. It does not require urban services and facilities, and conditions are imposed to ensure use compatibility with neighboring uses, and avoidance of material detriment. Impacts, including from noise and traffic, are minimal and also mitigated. The use is consistent with Comprehensive Plan goal and policy objectives.

1.24 Conditions/Staff Report. The Applicant accepted the proposed conditions, which are incorporated without revision. Except as the Decision revises it, the Staff Report is incorporated.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has review authority for this CUP application.²⁴ The Hearing Examiner may approve, approve with conditions, or deny a CUP.²⁵ The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

2.2 Use. A CUP is required for this use. The proposed use "forest preschool" is not specifically identified in KCC. Therefore, DCD performed a "similar use determination"

²⁰ Exhibit 38 (Revised Staff Report), p. 12.
Staff Report), p. 12.

²¹ Exhibit 38 (Revised Staff Report), p. 12; Condition 26.

²² Exhibit 38 (Revised Staff Report), p. 12; Condition 26.

²³ Exhibit 12; Exhibit 38 (Revised Staff Report), p. 12.

²⁴ KCC Sections 17.410.042 (use #408) and 21.04.100.

²⁵ KCC 17.550.030(A).

resulting in a determination that the proposed use is most similar to “Private or Public Schools” (Use 408 of the Use Table KCC 17.410.042) and requires a CUP.

2.3 Conditional Use Permit Requirements. A CUP must comply with:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title [Title 17];
3. The proposal will not be materially detrimental to existing or future 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.²⁶

Comprehensive Plan. The Rural Residential designation promotes rural and natural resource activities consistent with the rural character. Agricultural and forestry uses exist on the site and are proposed to be retained by the proposal. The proposal provides education opportunities for Kitsap County residents within a forested rural environment, supporting the appreciation of the rural character and functions of the natural environment. The proposal does not require urban infrastructure. Critical areas are protected, and the proposal does not conflict with agricultural, forest, and mineral resource uses. The proposal achieves Comprehensive Plan consistency.

Code Compliance. The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No code provision was identified which would not be complied with. County code provisions addressing landscaping, critical areas, lighting, stormwater management, and other requirements will be complied with. The project follows Title 17.

Compatibility/Material Detriment. The project has been conditioned to ensure compatibility with surrounding uses and avoid material detriment. The use is limited through operating hours and number of participants, and the project has been designed to minimize impacts. Preschool activities will be limited to approximately 7.3 acres of the site and will be screened from the onsite farm and the neighboring parcels. Condition 11 ensures noise, dust, odor or other undesirable impacts do not affect neighboring properties. The Applicant has demonstrated consistency with this criterion.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP, provided these conditions are adhered to:

²⁶ KCC 17.550.030(A).

Planning/Zoning

1. 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 and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.

3. The recipient of any CUP shall file a Notice of 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 Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the CUP and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the Applicant's expense.

4. No lighting has been proposed and none shall be allowed without further review and approval by Community Development. All Exterior lighting shall be designed to meet the standards outlined in 17.420.030.C.

5. 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 surrounding properties. No more than one foot-candle of illumination shall leave the property boundary. Lighting shall be the minimum necessary for safety purposes and be compatible with the rural character of the area. Light standards (poles) shall not exceed 20 feet in height.

6. All signage design and location (including exempt signs) shall comply with KCC 17.510 and be reviewed and approved by DCD prior to installation. Signage may require a separate permit.

7. A minimum of 8 off-street parking stalls shall be provided by the Applicant.

8. Student graduation ceremonies and/or gathering/assembly events are required to be held at an off-site location.

9. Unless further reviewed by the Department, existing native vegetation shall be retained on the site except for areas to be cleared for the construction of parking facilities and improved road approaches, as depicted on the proposed site plan (Exhibit 20).

10. A 25-foot native vegetation buffer is required to be maintained along the boundary of the Magnolia Forest Preschool Activities area identified on the submitted site plan (Exhibit 20).

11. There shall be no smoke, dust, odor, vibration or persistent loud or penetrating noise, direct or reflected glare, or heat discernible beyond the encumbered project boundaries that are a result of business activities.

12. This CUP approval shall automatically expire if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.

13. The decision set forth herein is based upon representations made and exhibits contained in the project application 20-02837. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

14. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

15. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

Development Engineering

16. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed area. While a formal plan is not required, the Applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either of the thresholds noted above, then additional review for stormwater management will be required.

17. If the project proposal is modified from that shown on the submitted site plan accepted for review October 8, 2020, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

18. Permit approval is subject to Chapter 19.300.315 of KCC, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.

19. Permit approval is subject to no removal of trees or vegetation on the parcel.

Please contact Kitsap County Department of Community Development before any clearing (360) 337-5777.

20. A 50-foot native vegetation buffer shall be retained along the perimeter of the stream as depicted on the approved site plan. In addition, a building or impervious surface setback line of 15 feet is required from the edge of the buffer.

21. Prior to occupancy, the common boundary between the stream buffer and the adjacent land shall be permanently identified with critical area buffer signs. A total of 10 Critical Area Ordinance (CAO) signs shall be placed along the designated boundary spaced approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing trees with diameter breast height greater than 4 inches. Alternative methods include 4x4 posts, metal posts or split rail fencing. Signs are provided at issuance and installation of the signs is required prior to final inspection.

Traffic and Roads

22. On-site vehicle queuing shall not impact Sherman Hill Road.

23. The existing access and easement approaches at Sherman Hill Road shall be improved to Kitsap County Road Standards Figure 4-2.

24. The road approaches shall comply with Figure 4-2 Rural Residential/Major Approach, as shown in the Kitsap County Road Standards as established in Chapter 11.22 of the KCC.

Fire Safety

25. Any permanent structures, per KCC Title 14 shall require a building permit prior to construction and/or occupancy for this commercial use. Temporary structures may require a permit, per KCC Title 14 and KCC Title 17.

Kitsap Public Health District

26. An approved public water source must be used to fill hand washing stations. All required permits shall comply with all Kitsap Public Health District regulations and conditions of approval.

Absent a timely appeal or grant of reconsideration, this Decision is final.²⁷

DECISION entered January 7, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁷ Ch. 36.70C RCW (providing requirements for appeal within 21-days to superior court); HE Rule 2.12.1.