SUMMARY OF APPEAL AND DECISION

APPEAL: The Whidbey Environmental Action Network has appealed the SEPA Mitigated Threshold Determination of Non-Significant issued by Island County in association with Comprehensive Plan Amendment (CPA) 400/07. CPA 400/07 is an amendment to the Island County Comprehensive Plan, sought by Seattle Pacific University, requesting the designation of the Camp Casey Conference Center as an Existing Master Planned Resort and incorporation of the Camp Casey Master Plan into the Island County Comprehensive Plan.

DECISION: The appellants have failed to provide substantial evidence to support their allegations that the SEPA Mitigated Determination of Non Significance is inadequate to mitigate, below a level of environmental significance the potential significant adverse impacts associated with future development that would be authorized pursuant to the proposed designation of Camp Casey as an Existing Master Planned Resort. The appeal is denied and the SEPA determination of Mitigated Non-Significance is upheld.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on August 22, 2008.

I.

SUMMARY OF APPLICATION

Applicant: Seattle Pacific University, 3307 3rd Ave. W. Seattle, WA 98119

Parcel Information: Parcel #R13115-078-0170, R13122-378-0100, R13122-410-0750, R13122-459-0380; Zoned Rural; 82.54 acres.

Site Location: Camp Casey is located on Whidbey Island, approximately two miles south of the town of Coupeville, Washington. More specifically, the property is located on Engle Road, adjacent to Fort Casey State Park, in Sections 15, 16, 21 and 22, Township 31N, Range 1E,
W.M. Island County, Washington. The address of the Fort Casey Conference is 1276 Engle Road, Coupeville, Washington 98239.

Publication: August 6, 2008

Date of Appeal: April 9, 2008

Date of Comprehensive Statement: May 30, 2008

Hearing Date: August 22, 2008

Exhibit Log:
1. Staff Report
2. Comprehensive Plan/Development Regulation Review & Amendment Application, rcv’d 9/27/07
3. Master Plan for Camp Casey, rcv’d 9/27/07
4. SEPA Checklist, rcv’d 9/27/07
5. Transportation Element Technical Report, rcv’d 9/27/07
6. Memorandum from Gary Hess to Darrell Hines re: Water Demand Estimat and Supply Technical Memorandum, rcv’d 9/27/07
7. Forest Management Plan, rcv’d 9/27/07
8. Whidbey News Times Article, dated 9/29/07
9. The Falcon Online Article, dated 10/24/07
10. Memo from Anthony Boscolo to Bill Poss, Connie Bowers & Keith Higman, dated 3/25/08
11. Transmittal memo from Melanie Whitehead to Anthony Boscolo, rcv’d 3/26/08
12. Investigative Report regarding Fort Casey from Melanie Whitehead to Anthony Boscolo, rcv’d 3/26/08
13. Mitigated Determination of Non-significance and adoption of existing environmental document, 3/26/08
14. Reposting of the Mitigated Determination of Non-significance and adoption of existing environmental document, 4/2/08
15. Letter from Aneta Hupfauer to Anthony Boscolo, dated 4/3/08
17. Affidavit of Publication (reposting), dated 4/4/08
18. Letter from Steve Erickson to Anthony Boscolo, Jeff Tate, Donald Mortenson & Darrell Hines, rcv’d 4/7/08
19. Notice of Appeal 112/08, rcv’d 4/9/08
20. Letter from Paula Bradshaw to Steve Erickson, dated 4/10/08
21. Whidbey Examiner article, dated 4/11/08
22. Whidbey Record article, dated 4/12/08
23. Email from Rolfe Kellor to Anthony Boscolo, dated 4/14/08
24. Memo from Trust Board of Ebey’s Landing National Historical Reserve to Anthony Boscolo, Jeff Tate, Donald Mortenson & Darrell Hines, rcv’d 4/14/08
25. The Whidbey Examiner letter, dated 4/18/08
26. Whidbey Examiner online poll printed 4/18/08
27. Revised Mitigated Determination of Non-significance and adoption of existing environmental document, 4/23/08
28. Email from Sandra Moody to Anthony Boscolo, dated 4/23/08
29. Letter from Bill Poss to Anthony Boscolo, rcv’d 4/23/08
30. View of Camp Casey, rcv’d 4/30/08
31. Affidavit of Publication, dated 5/2/08
32. Color Illustrative Development Plan
33. Color photos of sign posting
34. Aerial photo of area
35. The South Whidbey Record article, dated 5/7/08

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36. Island County 08 Docket Item Power Point Presentation, dated 5/13/08
37. Letter from Anthony Boscolo to Island County Planning Commission, dated 5/13/08
38. Staff Notes from Anthony Boscolo, dated 5/14/08
39. Comprehensive Statement of Appeal, dated 5/30/08
40. Staff Notes from Anthony Boscolo, dated 6/4/08
41. Letter to Steve Erickson from Paula Bradshaw, dated 6/5/08
42. Email from Jeff Tate to Diane Kendy, dated 6/8/08
43. Email from Diane Kendy to Jeff Tate, dated 6/8/08
44. Email from Diane Kendy to Jeff Tate, dated 6/9/08
45. Contacts and Routing list
46. File notes
47. Staff Review Notes of SEPA checklist responses
48. Affidavit of Publication, dated 6/27/08
49. Affidavit of Mailing Staff Report, dated 7/1/008
50. Hearing Brief rcv’d 7/3/08 from WEAN with 32 attachments
51. Response Memo from Jeff Tate to WEAN’s hearing brief, dated 7/7/08
52. Email with attached document: WEAN’s Reply to Planning’s Motion to Dismiss, dated 7/7/08
53. Letter from Paula Bradshaw to Steve Erickson, confirming hearing date, dated 7/31/08
54. Affidavit of re-publication of hearing date, dated 8/8/08
55. Letter from Paula Bradshaw to Steve Erickson, dated 8/11/08
56. Affidavit of mailing response to WEAN brief, dated 8/11/08
57. Staff response to WEAN hearing brief, dated 8/11/08
58. Email with attached cover letter from Steve Erickson to Michael Bobbink, dated 8/19/08 with
   a. Comments from Chris Chappell, Ecological Consultant to Whidbey Environmental Action Network, dated 8/15/08
59. Packet of info submitted at the hearing with 21 photos and diagrams, submitted by Bill Viertel 8/22/08
60. Ebey’s Trust Board Stewardship Award, submitted by Rolphe Keller at the hearing 8/22/08
61. Series of 3 maps on one page, submitted by the Planning Dept. at the hearing 8/22/08
62. Series of photos, submitted by the Planning Dept. at the hearing 8/22/08

HEARING TESTIMONY

Steve Erickson
P.O. Box 53
Langley, WA 98260

Bill Viertel
706 Cathedral Dr.
Coupeville, WA 98239

Jeff Tate, Director
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239

Anthony Boscolo, Planner
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239

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The Whidbey Environmental Action Network has appealed the Mitigated SEPA Threshold Determination of Non-Significance issued on a proposed Comprehensive Plan Amendment, CPA 400/07. The Comprehensive Plan Amendment was submitted by Seattle Pacific University requesting amendment of the Island County Comprehensive Plan to designate the Camp Casey Conference Center as an Existing Master Planned Resort and to incorporate the proposed Camp Casey Master Plan into the Island County Comprehensive Plan. If adopted as an amendment to the Comprehensive Plan the Master Plan would serve as the guiding document for future development of the site. Island County Planning & Community Development is the lead county department for reviewing the proposal and is the Responsible Official under SEPA. The department issued a Mitigated Determination of Non-Significance for the proposal. This threshold determination was appealed by WEAN in a timely manner and pursuant to the Island County Code is properly before the Island County Hearing Examiner.

The procedural background information regarding this appeal is set out in detail on page two of the staff report submitted by Island County Planning & Community Development in response to the WEAN appeal. The background information provides in detail the procedural history which led to this appeal. The facts set forth in the background information on page two of the staff report are hereby adopted by the Hearing Examiner as Finding of Fact Herein.

In addition staff has proposed Findings of Fact on pages three and four of the staff report. The Findings of Fact set forth in the staff report, Exhibit No. 1 in the Hearing Examiner file are supported by the record as a whole and are hereby adopted by the Hearing Examiner as Findings of Fact herein.

The Whidbey Environmental Action Network raised a number of issues in their comprehensive statement supporting their appeal of this SEPA determination. The issues raised by WEAN are adequately summarized in the staff report on pages four and five, V(2) a through i.

The Hearing Examiner has reviewed the record in regards to each of the issues raised by WEAN.
WEAN has raised issues regarding the known impacts of urban development such as increased vehicular traffic, adequate water, increased noise, and general adverse impacts resulting from allowing urban development in rural areas. In regards to all of these alleged impacts WEAN has failed to establish that subject to the application of the Growth Management Act, and applicable State and County regulation that there would be impacts in these areas not mitigated below the level of significant adverse environmental impacts. In fact WEAN has failed to provide any substantive evidence supporting their claim that the adverse impacts from the limited urban development which would be allowed by recognizing Camp Casey as an Existing Master Planned Resort would reach the level of more than moderate adverse environmental impacts. Additionally WEAN has suggested that the proposed designation would result in a drain on public services but has supplied no substantive information to support this. In regards to these issues Island County received technical reports regarding traffic and transportation, water supply and storm impacts. After review of these reports Planning concluded that the impacts associated with these elements would be adequately mitigated by application of existing regulations.

WEAN has suggested that Island County has failed to consult with the Washington Natural Heritage Program of the State Department of Natural Resources. However the record does indicate that proposal was shared with the Washington State Department of Natural Resources and that the concerns of the department were adequately addressed by the twenty-eight conditions attached to the Mitigated Determination of Non-Significance ultimately issued by Island County Planning. Additional consultation with the DNR Natural Heritage Program will be required as specific development proposals are submitted by Seattle Pacific University under the proposed Master Plan, should it ultimately be adopted by the Island County Board of County Commissioners and incorporated into Island County’s Comprehensive Plan.

V.

The appellant has provided some substantive evidence in regards to its contention that the proposal will have significant adverse impacts on the twenty-five acre Heritage Forest located on or adjacent to the area contained within the proposed Camp Casey Existing Master Planned Resort. As is clear from the record there is a twenty-five acre rare natural forest community, which has been designated as a Heritage Forest, located on or adjacent to the Camp Casey property owned by Seattle Pacific University. 8.7 acres of the Heritage Forest are located on the area covered by the proposed Existing Master Planned Resort. The remainder of the twenty-five acres is south of the area which would be included in the Master Planned Resort.

The Heritage Forest in question is regulated by Island County as a critical area under Island County’s Critical Area Ordinance, which was adopted pursuant to the Growth Management Act. No development activity of any sort, including even the cutting of a single hazardous tree, may occur within the boundaries of the Heritage Forest without critical areas approval under ICC 17.02, the Island County Critical Areas Ordinance. No new development activity is proposed within the Heritage Forest. The only activity currently taking place within the forest is passive recreation amounting to limited walking trails. The expansion of the Camp Casey Conference Center anticipated in the future will increase the number of humans using the trail but no new development will take place within the Heritage Forest. Future development will be subject to
the requirements applicable under existing ordinances, including the Critical Areas Ordinance, the twenty-eight mitigating conditions attached to this MDNS issued by Island County Planning, the restrictions and requirements of the Camp Casey Forest Management Plan, and any conditions attached to environmental review of the future development proposals.

The Master Plan would allow the cutting of extremely hazardous trees within the National Heritage Forest after a review by a certified arborist with approval by Island County. Under the Forest Management Plan Seattle Pacific University is to use danger tree evaluations within the Heritage Forest primarily for developing warning signs for trail users about potential dangers and possibly for restricting trail use during times of very strong winds, rather than future cutting of identified hazard trees.

The Forest Management Plan also indicates that trees which are downed by windthrow are to remain within the forest, where they fall, with the slight exception of the removal of the portion of a downed tree which has fallen over the trail, to allow continued trail access. It is unlikely that any significant number of trees will be cut within the Heritage Forest because they are hazard trees. Other than maintenance of existing trails within the Heritage Forest the proposed development will not allow any human modifications with the possible exception of the cutting of hazard trees. It is clear from the record as a whole that there will not be significant adverse impacts to the Heritage Forest by the possible very limited cutting of hazard trees within the forest or by additional development within the forest. Additional development within the forest is not allowed under the Master Plan or under the Island County Critical Areas Ordinance.

VI.

The appellant has raised concerns about potential significant adverse impacts to the Heritage Forest resulting from development activities on the portion of Camp Casey bordering the Heritage Forest. Building construction within one hundred feet of the Heritage Forest would be allowed under the proposed Master Plan. The proposed Master Plan would allow approximately ninety-five thousand square feet of new buildings in the area to the south of National Forest. This area currently is mostly forested. It does contain a campground area in which a significant portion of the tree canopy has been removed. The concern raised by the appellant and by the information placed in the record by the appellant is that the tree removal and development within the adjacent forested area to the south of the Heritage Forest will result in significant adverse impacts to the Heritage Forest through loss of a large number of trees within the Heritage Forest due to windthrow. The argument is that the existing forest canopy to the south of the Heritage Forest boundary protects the forest from substantial windthrow and that the proposed development would open the forest to a large increase in windthrow within the Heritage Forest thereby resulting in a substantial adverse environmental impact not adequately mitigated.

The record indicates that there has been a fair amount of windthrow historically in the Heritage Forest. The Camp Casey Forest Management Plan prepared by a professional forester indicates that there are currently areas of gap within the forest canopy which have resulted from past windthrow. The Plan points out that the forest is old and that a significant number of trees within the forest are diseased. This blowdown will continue with or without new development to the
south. The Forestry Plan indicates that blowdown actually increases the variety of habitat available for plant and animal species. The Forest Management Plan indicates that additional significant blowdown is not expected as a result of the limited tree removal outside the Heritage Forest which will be allowed to facilitate the future planned development under the Master Plan.

The conditions attached to the MDNS require that at least 60% of the trees, including 60% of the larger mature trees within the development area remain undisturbed by future development. From approximately seventy-five to two hundred feet of undisturbed second growth forest abutting the National Heritage Forest boundary will remain undisturbed. No tree removal is proposed within one hundred feet of the bluff on the west side of Camp Casey and the Heritage Forest.

Using the tree inventory in the Forest Management Plan it appears that there are only four trees greater than twenty-five inches in diameter within one hundred fifty feet of the Heritage Forest boundary and only twenty-nine trees greater than twenty-five inches in diameter within the total development area proposed for future expansion of the Camp Casey Conference Center. Two buildings totaling between eight and ten thousand square feet are proposed approximately one hundred feet from the southern boundary. The remainder of the buildings proposed for future development within Camp Casey are further from the Heritage Forest and the four proposed new buildings south of the existing campground will be more than five hundred feet from the boundary of the Heritage Forest.

The Forest Management Plan indicates that historically there were two relatively large areas of clearing near the National Heritage Forest. One of these was for the existing bunker to the southwest of the Heritage Forest boundary and the other was for the existing campground to the south of the Heritage Forest boundary. The Forest Management Plan indicates that there is no evidence that the clearing within these two areas has caused additional blowdown within the Heritage Forest.

Expert testimony supplied by the applicant does indicate the probability of some increase in blowdown resulting from the development activity which would be authorized by the adoption of the Camp Casey Master Plan. However this expert testimony does not indicate that the additional blowdown would cause significant adverse impacts and in fact suggests that any increased blowdown would be limited. While the record indicates that there is a reasonable possibility of increased blowdown from future development activity, it also supports a conclusion that the limitations put on any development activity would minimize additional blowdown and that any blowdown which might occur would not significantly impact the long term viability of the Heritage Forest area.

The appellant has failed to show a likelihood of significant adverse impacts to the Heritage Forest resulting from the possible cutting of hazard trees or from the potential increase in blowdown which may result from future development within Camp Casey authorized by the proposed Master Plan. The Hearing Examiner finds that any adverse environmental impacts resulting from hazardous tree cutting or blowdown will be minimal and that the conditions attached to the SEPA Mitigated Threshold Determination of Non-Significance, those required by the Island County Critical Areas Ordinance, and limitations contained within the Forest
Management Plan prepared by Bruner Forestry will mitigate any adverse impacts below the level of significant.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

I.

Appellants challenging a SEPA determination by the Responsible Official under SEPA face a high burden. In order to meet this burden the appellants need to establish that there are both probable and significant adverse impacts associated with the proposed action which will not be adequately mitigated by existing regulation and by the conditions attached to the Determination of Non-Significance.

As pointed out in the staff report any future development under the Master Plan will be subjected to nine separate chapters of the Island County Code. Additionally the Responsible Official has added twenty-eight conditions to the Mitigated Determination of Non-Significance issued. These conditions, along with existing regulation have been determined by Island County Planning to be sufficient to address any probable significant adverse impacts from the proposed Master Plan for Camp Casey.

Pursuant to the Washington Administrative Code the SEPA Threshold Determination of the Responsible Official is entitled to “substantial weight”. This means that an appellant challenging the threshold determination is required to present evidence that is clear, cogent, and convincing, establishing an error by the Responsible Official. WAC 197-11-680(3)(a)(viii).

To successfully challenge a SEPA threshold determination the appellants must show both that the adverse impacts are both probable and significant. A probable impact is defined under WAC 197-11-782 as one which is likely or reasonably likely to occur. In this case the appellant has established that some increased blowdown and some removal of hazardous trees is likely to occur because of the development allowed under the proposed Master Plan. The appellant has also shown that there would be increased traffic, noise, and water consumption resulting from the development allowed pursuant to the Master Plan. There will be some adverse environmental impact resulting from the additional development which would be allowed pursuant to the adoption of the proposed Camp Casey Master Plan.

However in addition to showing that there are probable adverse impacts an appellant is also required to show that the impacts are significant. WAC 197-11-794. “Significant”, as used within the Washington Administrative Code in regards to a SEPA determination requires that any reasonably likely adverse environmental impacts not mitigated have more than a moderate impact on environmental quality before an Environmental Impact Statement can be required. In this case the appellant has shown the possibility, and even the reasonable likelihood of some
adverse environmental impacts both resulting from limited additional urban growth, and from development near the National Heritage Forest. This record does not contain convincing evidence that the environmental impacts would be more than moderate adverse impacts. In fact this record shows that the impacts will be minimal, although not non existent.

II.

The appellant has failed to produce clear, cogent, and convincing evidence that after subjecting future development under the Camp Casey Master Plan to applicable regulations, to future SEPA review, and to the twenty-eight conditions attached to the Master Plan under this SEPA MDNS, there still would be adverse impacts that would have more than a moderate impact on environmental quality. The appeal should be denied and the SEPA Mitigated Determination of Non-Significance should be upheld.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law the Appeal is denied and the SEPA Mitigated Threshold Determination of Non-Significance issued on Comprehensive Plan Amendment 400/07 is upheld.

Entered this 9th day of September, 2008, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner