APPEALS: Both of the above captioned appeals are appeals of a decision made by Island County Planning & Community Development approving SPR 116/07. The Site Plan Review was a review of a proposal for a 53,600 square foot mixed use commercial business park on 5.26 acres, zoned Rural Village and located on SR 532 on the north end of Camano Island. The proposed development consists of seven buildings, each of which will house at least one commercial use. Three of the buildings are proposed as mixed use buildings with eight residential units in each of the three.

Camano Action for a Rural Environment, hereinafter referred to as C.A.R.E, appealed the Planning Department’s approval raising issues regarding the approval of the housing units and the appropriateness of the SEPA Threshold Determination, which was the adoption of a Mitigated Determination of Non-Significance issued in conjunction with the original application for development of this site, as SPR 066/05.

The applicant TR Camano filed an appeal objecting to conditions of approval contained in the Planning Department decision which imposed conditions requiring agreement/leases to have a minimum term of no less than thirty days.

DECISION: The decision of Island County Planning & Community Development granting Preliminary Site Plan Approval to SPR 116/07 is upheld. The C.A.R.E appeal is denied. The TR Camano appeal is dismissed for lack of timeliness.

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 May 29, 2008.
I.

PRELIMINARY INFORMATION

Appellant: Camano Action for a Rural Environment (C.A.R.E) Joan Schrammeck, Allison Warner
Appellant: TR Camano / David Patter

Property Location: The subject site is located at 1172 Highway 532, Camano Island, WA in the NE1/4 section of Section 28, Township 32N, Range 3E, W.M


SEPA: Adoption of a Mitigated Determination of Non-Significance issued in conjunction with the original application for development of this site, as SPR 066/05.


Mailing of Notice of Hearing to Applicant: May 8, 2008

Sign Posted: May 17, 2007

Mailing of Staff Report: May 16, 2008

Date of Application: April 3, 2007

Hearing Date: May 29, 2008

Exhibit Log:

APP 100/08 C.A.R.E / APP 110/08 TR Camano

1. Staff Reponse to Appeal APP 100 C.A.R.E
   a. Staff Response to Appeal APP 110/08 TR Camano
2. Land Development Permit Application, rcv’d 3/23/07
3. Applicant Authorization Form, rcv’d 3/23/07 Camano, 4/3/07 Coupeville
5. Application for Site Plan Review, rcv’d 3/23/07 Camano, 4/3/07 Coupeville
6. TR Camano Signage Plan, Bay View Park, rcv’d 3/23/07 Camano, 4/3/07 Coupeville
7. Small map of Bayview Business Center, rcv’d 3/23/07 Camano, 4/3/07 Coupeville
8. Lighting specs, rcv’d 3/23/07 Camano, 4/3/07 Coupeville
12. Construction Deed of Trust, rcvd 3/23/07 Camano, 4/3/07 Coupeville
13. Land Use Permits snapshot for TR Camano
14. Written Description of Site Plan & proposed use and general purpose of project. rcvd 3/23/07 Camano, 4/3/07 Coupeville
15. Written Narrative Plan to limit or manage Noise, Dust, Heat, Glare, Vibration, Odors, Toxic Gases, Liquid and Solid Waste, rcvd 3/23/07 Camano, 4/3/07 Coupeville
16. Written Statement describing how the Proposal meets the S P R criteria and standards relevant to the application, rcvd 3/23/07 Camano, 4/3/07 Coupeville
17. Legal Description for 1172 SR 532 Camano Island, rcvd 3/23/07 Camano, 4/3/07 Coupeville
19. Approval of Bayview Park Large On-Site System - Island County Approved Peak Drainfield Design Capacity 13,592 GPD, rcvd 3/23/07 Camano, 4/3/07 Coupeville
22. List of Property Owners within 300 feet of Subject Property at Bay View Park, rcvd 3/23/07 Camano, 4/3/07 Coupeville
23. 4 Quarter Section maps, rcvd 3/23/07 Camano, 4/3/07 Coupeville
24. Letter from David Platter to Island County Planning & Community Development, dated 3/22/07
25. Bay View Project Phasing Plan Section, rcvd 3/23/07 Camano, 4/3/07 Coupeville
26. Bay View Visual Analysis identifying the effect of the proposed development on surrounding properties and uses, rcvd 3/23/07 Camano, 4/3/07 Coupeville
27. TR Camano Inc. Landscape List of Plants, rcvd 3/23/07 Camano, 4/3/07 Coupeville
29. Island County Planning & Community Development Routing Sheet for Incomplete Application
30. Notice of Incomplete Application, dated 3/30/07
31. Email from Brenda Guthrie to Ryan Morrison, dated 3/31/07
32. Email from David Platter to Andrew Hicks, dated 4/10/07
33. Email from David Platter to Andrew Hicks, dated 4/11/07
34. Request for Comment, dated 4/13/07
35. Land Use Permit snapshots
36. Notice of Complete Application, dated 4/13/07
37. Island County Notice of Application, for publication 4/24/07
38. Affidavit of Publication, dated 4/24/07
39. Letter from Carl J. Lenander to Ryan Morrison, dated 5/2/07
40. Affidavit of Posting the Public Notice Sign, dated 5/17/07
41. Island County Planning & Community Development Routing Sheet for Complete Application
42. Notice of Complete Application, dated 5/18/07
43. Island County Notice of Application, for publication 5/29/07
44. Affidavit of Publication, dated 5/29/07
45. Letter from Bill Poss, Public Works to Andrew Hicks, dated 6/4/07
46. Memo from Tamra Patterson to Andrew Hicks, dated 6/5/07
47. Letter from Doug Kelly, Public Health to Aneta Hupfauer, dated 6/6/07
48. Letter from Aneta Hupfauer, to Andrew Hicks, dated 6/8/07
49. Public Comment from Joan Schrammeck for C.A.R.E, dated 6/12/07
50. Email from David Platter to Andrew Hicks, dated 6/8/07
51. Email from David Platter to Andrew Hicks, dated 6/13/07
52. Email from David Platter to Andrew Hicks, dated 6/15/07
53. Review Comments letter to David Platter from Andrew Hicks, dated 6/21/07
54. Email from David Platter to Andrew Hicks, dated 7/10/07
55. Email from Andrew Hicks, to David Platter & reply, dated 7/10/07
56. Email from David Platter to Andrew Hicks, dated 7/13/07
57. Email from David Platter to Jeff Tate; Phil Bakke, Andrew Hicks, dated 7/13/07
58. Email from David Platter to Andrew Hicks, dated 7/16/07
59. Email from Andrew Hicks, to David Platter & reply, dated 7/17/07
60. Email from David Platter to Andrew Hicks, dated 7/21/07 with attached drawing of sign design for project
61. Email from Andrew Hicks to David Platter & reply, dated 7/25/07
62. Email from Andrew Hicks to David Platter & acknowledgment, dated 8/4/07
63. Email from David Platter to Andrew Hicks, dated 8/29/07
64. Email from David Platter to Andrew Hicks, dated 9/26/07 with attached Gibson Traffic Consultants Updated Trip Generation & Mitigation for the Proposed Mixed Use Commercial Development in Island County – GTC # 03-131
65. Email from David Platter to Andrew Hicks, dated 9/27/07
66. Reply Email from David Platter to Andrew Hicks, dated 9/27/07
67. Reply Email from Andrew Hicks to David Platter, dated 9/27/07
68. Email from David Platter to Andrew Hicks with request to forward letter from Carl Garrison to the Health Dept., dated 10/10/07
69. Letter from TR Camano to Andrew Hicks, dated 10/1/07, rcv’d 10/26/07 with attached:
   a. Onsite Interceptor Tanks, General Specifications
   b. Water Availability from Juniper Beach Water District
   c. Email with attached JBWD Water System File Report
   d. Waste Management Plan
   e. Appendix A Solid Waste Regulatory Applicability Checklist
   f. Product detail of fencing
   g. TR Camano Inc. Landscape List of Plants
70. Email from Andrew Hicks to David Platter & reply, dated 10/31/07
71. Letter from Bill Poss to Andrew Hicks, dated 11/6/07
72. Email from Aneta Hupfauer to Andrew Hicks, dated 11/7/07
73. Email from Andrew Hicks to David Platter & reply, dated 11/9/07
74. Email from Andrew Hicks to David Platter & reply, dated 11/9/07
75. Review Comments letter from Andrew Hicks to David Platter, dated 11/26/07
76. Email from David Platter to Andrew Hicks, dated 11/26/07
77. Email from Andrew Hicks to David Platter & reply, dated 11/26/07
78. Email from Andrew Hicks to David Platter, dated 11/26/07
79. Email from David Platter to Andrew Hicks, dated 11/26/07
80. Letter from Connie Bowers to David Platter, dated 12/5/07
81. Certificate of Transportation Concurrency
82. Certificate of Transportation Concurrency Attachment A
83. Email from David Platter to Andrew Hicks, dated 12/7/07
84. Email from David Platter to Andrew Hicks, dated 12/7/07
85. Email from Brenda Guthrie to Andrew Hicks, dated 12/7/07 with revised plant list and response & notice that the attachment would not open
86. Attachment from exhibit 87, plant list sent hard copy
87. Review letter from Andrew Hicks to David Platter, dated 12/10/07
88. Email from David Platter to Andrew Hicks, dated 12/10/07
89. Email from David Platter to Andrew Hicks, dated 12/18/07
90. Email from Andrew Hicks to David Platter & reply, dated 12/18/07
91. Email from Andrew Hicks to David Platter & reply, dated 12/18/07
92. Email from David Platter to Andrew Hicks & reply dated 1/15/08
93. Email from David Platter to Andrew Hicks, dated 1/24/08
94. Email from David Platter to Andrew Hicks, dated 1/24/08
95. Email from Aneta Hupfauer to David Platter & reply, dated 1/24/08
96. Memo Aneta Hupfauer to Andrew Hicks, dated 1/28/08
97. Email from David Platter to Andrew Hicks, dated 1/28/08
98. Staff Decision of Andrew Hicks on SPR 116/07, dated 3/19/08 with attachments:
a. Preliminary Approval for SHP 450/03
b. Memorandum from Bill Poss, dated 1/9/08
c. Memorandum from Aneta Hupfauer, dated 1/27/08
d. Acknowledgment of Conditions
e. Landscaping Plan Map
f. Open Space Map
g. Site Plan Map
h. Affidavit

99. 2006 International Building Code, with section 310 noted in Staff decision
100. Site Plan Approval
101. Affidavit of Mailing, dated 3/19/08
102. Notice of Appeal, rcv’d 4/2/08 – C.A.R.E. (100/08)
103. Acknowledgment of appeal from the Office of the Hearing Examiner to C.A.R.E, dated 4/7/08
104. Notice of Appeal rcv’d 4/7/08 – TR Camano (APP110/08)
105. Letter & Motion to Dismiss APP 100/08 rcv’d 4/7/08 from TR Camano
106. Acknowledgment of appeal from the Office of the Hearing Examiner to TR Camano, dated 4/7/08
107. Letter from Carl Lenander to Jeff Tate, dated 5/2/07, rcv’d 4/8/08
108. Email from Allison Warner for C.A.R.E to Paula Bradshaw, requested extension, dated 4/10/08
109. Email from Joan Schrammeck, to Paula Bradshaw, clarifying which appeal, dated 4/11/08
110. Memorandum from Michael Bobbink, Hearing Examiner to Allison Warner & Joan Schrammeck for C.A.R.E, David Platter for TR Camano and Island County Planning & Community Development, dated 4/11/08
111. Email from Joan Schrammeck for C.A.R.E, asking for a copy of TR Camano’s Appeal APP 110/08, dated 4/14/08
112. Email from Paula Bradshaw to all parties, with a copy of the Notice of Appeals in APP 100/08 C.A.R.E and APP 110/08 TR Camano, with reminder that all parties must be cc’d in documents to the Hearing Examiner, dated 4/15/08
113. Email from David Platter to Paula Bradshaw, dated 4/18/08
114. Appeal of SPR Decision 116/07 and Motion for Summary Judgment rcv’d from TR Camano, 4/21/08
115. Email to David Platter from Paula Bradshaw, advising the Office of the Hearing Examiner does not mail copies of documents for the other parties. TR Camano must mail a copy of exhibit 111 to C.A.R.E., provided address, dated 4/21/08
116. Email from David Platter advising they mailed a copy of exhibit 111
117. Map 1 of 10 dated 5/31/06; cover sheet
118. Map 2 of 10 dated 5/31/06; grading & tesc plan
119. Map 3 of 10 dated 5/31/06; grading & tesc notes & details
120. Map 4 of 10 dated 5/31/06; drainage plan
121. Map 5 of 10 dated 5/31/06; drainage sections
122. Map 6 of 10 dated 5/31/06; drainage notes & details
123. Map 7 of 10 dated 5/31/06; water & sewer plan
124. Map 8 of 10 dated 5/31/06; water & sewer details 1
125. Map 9 of 10 dated 5/31/06; water & sewer details 2
126. Map 10 of 10 dated 5/31/06; water & sewer notes
127. Map 1 of 10 dated 5/31/06; Bayview Park Septic & transport line cover sheet
128. Map 2 of 10 dated 5/31/06; sewer line (sending lot)
129. Map 3 of 10 dated 5/31/06; sewer transport line plan 1
130. Map 4 of 10 dated 5/31/06; sewer transport line plan 2
131. Map 5 of 10 dated 5/31/06; sewer transport line plan 3
132. Map 6 of 10 dated 5/31/06; sewer transport line plan 4
133. Map 7 of 10 dated 5/31/06; sewer line (receiving lot)
134. Map 8 of 10 dated 5/31/06; tesc plan
135. Map 9 of 10 dated 5/31/06; notes & details 1
136. Map 10 of 10 dated 5/31/06; notes & details 2
137. Map 1 of 10 for SPR 021/096, rcv’d 5/11/05; Bayview Park Septic & transport line cover sheet
138. Map 2 of 10 for SPR 021/096, rcv’d 5/11/05; sewer line (sending lot)
139. Map 3 of 10 for SPR 021/096, rcv’d 5/11/05; sewer transport line plan 1
140. Map 4 of 10 for SPR 021/096, rcv’d 5/11/05; sewer transport line plan 2
141. Map 5 of 10 for SPR 021/096, rcv’d 5/11/05; sewer transport line plan 3
142. Map 6 of 10 for SPR 021/096, rcv’d 5/11/05; sewer transport line plan 4
143. Map 7 of 10 for SPR 021/096, rcv’d 5/11/05; sewer line (receiving lot)
144. Map 8 of 10 for SPR 021/096, rcv’d 5/11/05; sewer & transport line erosion control plan
145. Map 9 of 10 for SPR 021/096, rcv’d 5/11/05; notes & details 1
146. Map 10 of 10 for SPR 021/096, rcv’d 5/11/05; notes & details 2
147. Map 7 of 10 for SPR 021/096, rcv’d 2/2/07; sewer line (receiving lot)
148. Map 1 of 2 Bayview Park Site Plan; rcv’d 4/3/07
149. Map 2 of 2 Bayview Park Development Information; rcv’d 4/3/07
150. Map 1 of 2 Phase Schedule Plan, Bayview Park Site Plan; rcv’d 4/3/07
151. Map 1 of 1 Lighting Plan Bayview Park, rcv’d 4/3/07
152. Map 1 of 1 Phase #1 Grading & Tesc Plan; rcv’d 4/3/07
153. Map 1 of – Landscaping Plan; rcv’d 4/3/07
154. Map 1 of 10 Phase 1 Sewer & Transport Line (cover sheet); rcv’d 4/3/07
155. Map 8 of 9 Water & Sewer Details; rcv’d 4/3/07
156. Map 7 of 9 Water & Sewer Plan; rcv’d 4/3/07
157. Map (missing bottom) Nibbler Flowplan; rcv’d 4/3/07
158. Map 1 of 10 Phase #1 Bayview Park Cover Sheet; rcv’d 4/3/07
159. Map 4 of 10 Phase #1 Drainage Plan; rcv’d 4/3/07
160. Map 9 of 10 Phase 1 Sewer & Transport Line (Notes & Details 1); rcv’d 4/3/07
161. Map 9 of 10 Phase 1 Water & Sewer Details 2; rcv’d 4/3/07
162. Map 1 of 1 Site Plan Bayview Park, rcv’d 4/27/08
163. Map Development Information for Bayview Park II, rcv’d 10/26/07
164. Map 1 of 2 Landscaping at Bayview Park II; rcv’d 10/26/07
165. Map 2 of 2 Site Plan at Bayview Park II, rcv’d 10/26/07
166. Map 1 of 2 Color Landscaping at Bayview Park II with plant list; rcv’d 10/26/07
167. Map – Landscaping Notes at Bayview Park; rcv’d 10/26/07
168. Map – Parking Plan at Bayview Park II; rcv’d 10/26/07
169. Map 1 of 1 Bayview Park Landscaping Details; rcv’d 12/28/07
170. Map 1 of 3 Landscaping at Bayview Park II; rcv’d 12/28/07
171. Map 2 of 3 Landscaping Notes at Bayview Park II; rcv’d 12/28/07
172. Map 3 of 3 Landscaping Notes at Bayview Park II; rcv’d 12/28/07
173. Map 1 of 10 Cover Sheet Bayview Park Construction Plans; rcv’d 1/23/08
174. Map 1 of 1 Bayview Park Landscaping Details; rcv’d 1/23/08
175. Map – Landscaping Square Footage at Bayview Park II; rcv’d 1/23/08
176. Map – Development Information for Bayview Park II; rcv’d 1/23/08
177. Map – Landscaping Notes at Bayview Park II; rcv’d 1/23/08
178. Map – Parking Plan at Bayview Park II; rcv’d 1/23/08
179. Map 1 of 2 Landscaping at Bayview Park II; rcv’d 1/23/08
180. Map 2 of 2 Site Plan at Bayview Park II; rcv’d 1/23/08
181. Map 1 of 10 Cover Sheet Bayview Park Construction Plans; rcv’d 2/8/08
182. Map 1 of 1 Bayview Park Landscaping Details; rcv’d 2/8/08
183. APP 100/08 C.A.R.E. Comprehensive Statement of Appeal, rcv’d 4/30/08
184. APP 110/08 TR Camano Email from Brenda Guthrie, dated 5/1/08 with attached Rebuttal Arguments from Dave Platter re: C.A.R.E’s standing
185. APP 110/08 TR Camano Email from Brenda Guthrie with attached final draft of exhibit 184.
186. Memorandum from Michael Bobbink, Hearing Examiner to Allison Warner & Joan Schrammecraft for C.A.R.E and David Platter for TR Camano, denying Motion to Dismiss and setting hearing, dated 5/8/08
187. Affidavit of mailing exhibit 186, dated 5/12/08
188. Affidavit of mailing staff report, dated 5/16/08
189. Affidavit of publication, dated 5/16/08
190. Email from Paula Bradshaw to David Platter’s office, C.A.R.E members Allison Warner & Joan Schrammeck with attached Staff Report on SPR 116/07, which was supposed to have been attached to the appeal response, dated 5/20/08
191. Email reply and response from Paula Bradshaw to Allison Warner, dated 5/21/08
192. Email reply from Andrew Hicks to Joan Schrammeck, David Platter, dated 5/22/08
193. Testimony & documents rcv’d at 5/29/08 hrg from C.A.R.E
195. Memo from Doug Kelly to Anathalie Dawkins, Land Use Coordinator, from TR Camano Inc – SPR 451/03 file testified to at 5/29/08 hrg.
197. Respondent TR Camano Inc., Motion for Summary Dismissal (No. 05-103 In the Pollution Control Hearing’s Board Washington In Olympia), dated 8/05
198. Affidavit of Publication of change of hearing location, dated 5/27/08

HEARING TESTIMONY

David Platter (TR Camano)
P.O. Box 673
Stanwood, WA 98292

Allison Warner (C.A.R.E.)
316 Dove Dr.
Camano Island, WA 98282

Joan Schrammeck (C.A.R.E)
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Camano Island, WA 98282

Ralph Ferguson
878 Juniper Pt. Lane
Camano Island, WA 98282

Jeff Tate, Director
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II.

On March 19, 2008 Island County Planning & Community Development issued a decision granting Preliminary Site Plan Approval to a proposal submitted by TR Camano Inc. seeking approval for development of a 53,600 square foot mixed used commercial business park on 5.26 acres, zoned Rural Village, and located approximately two hundred feet southwest of the intersection of Good Road, on SR 532.

The proposed development consists of seven buildings all of which will contain commercial uses, including a restaurant, office space, a drive through restaurant, and retail uses. The applicant also proposes to have eight residential units each in three of the proposed buildings. All but two of these units would be on an upper floor of the proposed building. Each of the buildings containing eight residential units would be located on a separate parcel, after approval of a pending Short Plat application. The Short Plat application, SHP 450/03 was submitted on December 23, 2003 and was granted preliminary approval on August 10, 2005. The Planning Department approval of this Site Plan proposal is conditioned upon final approval of SHP 450/03.

An application to develop this parcel with commercial uses has been pending since the original application for SPR 451/03 submitted on December 23, 2003. Planning Department decisions regarding three Site Plan review applications, a Zoning Code Interpretation and a SEPA determination on a Clearing and Grading Permit, including this pending Site Planning Approval have been appealed to the Hearing Examiner.

Partial approval for development of this property was granted when the Hearing Examiner upheld the approval of portions of the proposal in SPR 066/07. The current proposal replaces prior proposals for motels on the site with twenty-four residential units. Prior decisions of the Hearing Examiner have denied the requests for motel units and other assorted uses on this site.

III.

C.A.R.E appealed the Planning Departments approval of SPR 116/07 in a timely manner. A Comprehensive Statement of Appeal was filed and the C.A.R.E appeal is properly before the Hearing Examiner at this time.

After C.A.R.E appealed the Planning Department’s approval of SPR 116/07 David Platter, on behalf of TR Camano also filed an appeal of this decision. The Planning Department decision was issued on March 19, 2008. Mr. Platter’s appeal was received by Island County on April 7, 2008. Subsection 16.19.190.B ICC requires that a written statement of appeal be filed with the Hearing Examiner within fourteen days following the mailing of the Director’s decision. Mr. Platter’s appeal was not filed in a timely manner.
IV.

The Hearing Examiner has reviewed the Findings of Fact issued by the Planning Department in their decision on SPR 116/07. The Hearing Examiner finds that the findings made by the Planning Department are supported by the record as a whole and the findings set forth in the Departments’ decision approving SPR 116/07, dated March 19, 2008 are hereby adopted as Findings of Fact herein by the Hearing Examiner, except in so far as this decision may contain specific findings of fact which contradict the Planning Department findings.

V.

The C.A.R.E appeal raises general issues regarding two subjects. C.A.R.E objects specifically to the Site Plan Approval allowing twenty-four housing units on the site. In this regard C.A.R.E makes two general arguments. The first is that Site Plan Approval is premature because final approval of the proposed Short Plat of this property has not yet been granted. Second C.A.R.E argues that the approval of twenty-four housing units on five acres is inconsistent with the Island County Comprehensive Plan, the intent and purpose of the Camano Gateway Rural Village Zone and with the requirements of the Growth Management Act. Secondly C.A.R.E raises arguments about the appropriateness of the SEPA Mitigated Determination of Non-Significance issued with the staff decision approving TR Camano’s Site Plan.

The specific issues raised by C.A.R.E in regard to the approval of twenty-four residential units in three buildings on this site raises only legal issues, which will be discussed in detail in the Hearing Examiner’s Conclusion of Law.

VI.

Island County Planning & Community Development issued a SEPA Threshold Mitigated Determination of Non-Significance for this proposal as part of their written decision of March 19, 2008 approving SPR 116/07. Planning adopted a previous SEPA Mitigated Determination of Non-Significance issued for SPR 066/05. SPR 066/05 was a prior application from TR Camano to develop this parcel with seven commercial buildings, including two ten thousand square foot motels with at total of forty units. The decision in SPR 066/05 approved three of the three proposed commercial uses but denied the proposed two cultural centers and two motels. TR Camano Inc. appealed Planning’s decision to deny Site Plan Approval for the cultural centers and motel units. No one appealed the Mitigated Determination of Non-Significance issued for SPR 066/05.

The Hearing Examiner, in a decision dated January 3, 2006 remanded SPR 066/05 back to the Planning Department. TR Camano later proposed changes to SPR 066/05. The modification proposals were denied by Island County Planning & Community Development and TR Camano appealed to the Hearing Examiner. Again the Hearing Examiner upheld the decision of Planning and required that any further proposed
modifications to the partial Site Plan approved be submitted in the form of a new application. This new application was SPR 116/07 which was approved by Island County Planning & Community Development and which is the subject of this appeal by C.A.R.E.

Island County Planning & Community Development concluded that the environmental impacts from the modified Site Plan proposal submitted as SPR116/07 were no greater than the impacts previously reviewed when a SEPA Mitigated Determination of Non-Significance was granted on SPR 066/05, and that no further SEPA mitigation conditions were required for this proposed development.

C.A.R.E argues that a new SEPA determination should have been issued for this proposal but makes no showing that there would be any additional impacts generated by this proposal when compared to SPR 066/05. The original SEPA determination included the impacts of forty motel units. These motel units have been replaced with twenty-four residential units. There is no evidence presented by C.A.R.E to establish that the current proposal would have probable significant environmental impacts when compared with SPR 066/05. The SEPA determination for SPR 066/05 was not appealed.

VII.

C.A.R.E argues that the current proposal for development of the TR Camano site would have significant adverse impacts on the environment because it would allow withdrawal of thirteen thousand plus gallons of water daily from the watershed in which it is located and then transport that water to a large offsite septic system located in a different watershed. This same argument was raised by C.A.R.E when C.A.R.E appealed the Mitigated SEPA Threshold Determination of Non-Significance issue for an application for a Clearing and Grading Permit for the large offsite septic system site. C.A.R.E’s appeal of the SEPA determination for the large offsite septic system was denied by the Hearing Examiner, who concluded that transferring waste water from the aquifer which will serve the TR Camano site to a septic system in a different watershed would not have probable significant adverse environmental impacts. This Hearing Examiner decision, in APP 235/07 and 237/07 involved the same parties, the same offsite septic system and the same development site. That decision is res judicata on the issue of impacts related to the transfer of water from the TR Camano site to the offsite septic system in a different watershed.

C.A.R.E contends that the proposed water withdrawal to serve this development would have a probable significant adverse impact on the aquifer which will serve the development, and that a environmental impact statement should be required to address the adequacy of water to serve the system and the probability of sea water intrusion into the aquifer as a result of the water withdrawn by TR Camano to serve this proposal after construction.

TR Camano has been granted a water rights allocation from the State Department of Ecology approving the withdrawal of adequate water to service the proposed
development. The possible impacts on the aquifer have been reviewed by the Island County hydrogeologist and by private hydrogeologists. The record in this matter in regards to the adequacy of the aquifer to serve the development without causing significant adverse impacts on the aquifer supports a finding that such adverse impacts are not probable. Even if such impacts were deemed to be probable the water permit granted to TR Camano requires ongoing monitoring of the aquifer and submission of reports to the Department of Ecology. This permit also states that if the pumping from any well authorized by TR Camano’s water right causes problematic chloride concentrations (i.e. sea water intrusion), immediate action must be taken and could include reducing the instantaneous water withdrawal rate and the lowering of the annual quantity of water removed from the aquifer. The Hearing Examiner concludes that the restrictions on TR Camano’s water right are sufficient to address potential degradation of the aquifer resulting from the withdrawal of water to serve this development. The Hearing Examiner acknowledges that TR Camano’s water right allows significant withdrawals from an aquifer which is at a high risk of sea water intrusion. The Hearing Examiner also acknowledges that quantity of water available for withdrawal from this aquifer is not known. However, the evidence in the file indicates that there is probably adequate water available to serve this development and the withdrawal of this water will probably not result in significant adverse impacts on the aquifer from sea water intrusion. The appropriation of water for individual users is controlled under state law by the Department of Ecology. C.A.R.E has produced no evidence which would indicate that current laws and regulations are insufficient to protect the aquifer or that there are probable significant adverse environmental impacts from the proposed development not mitigated adequately by current regulations and the conditions D.O.E. has attached to its approval of water rights for this proposed development.

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.

The C.A.R.E appeal raises issues regarding the appropriateness of the SEPA Determination of Mitigated Non-Significance adopted for this proposal. This proposal is a modified version of a similar development proposed for the same site under SPR 066/05. Staff properly concluded that the Mitigated Determination of Non-Significance issued for SPR 066/05 was adequate to address the potential significant adverse environmental impacts from this modified proposal.

II.

The responsible official under SEPA is to issue a determination of non-significance if the official determines that “… there will be no probable significant adverse environmental impacts from a proposal …”. WAC 197-11-340.
In order to require an Environmental Impact Statement, or to require mitigation conditions under the substantive authority of SEPA, the responsible official must conclude that there are probable significant adverse environmental impacts.

Probable is defined in the SEPA rules, WAC 197-11-782 as follows:

“probable” means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment” (see WAC 197-11-794).

Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

Significant is defined in the SEPA rules, WAC 197-11-794 as follows:

“significant” as used in SEPA means a reasonable likelihood of a more than moderate adverse impact on environmental quality.”

Appeals on SEPA procedures are limited to appeal of a Final Threshold Determination or a final EIS. WAC 197-11-680 (3)(iii).

The Threshold Determination made by the responsible official under SEPA is entitled to substantial weight. WAC 197-11-680 (3)(viii).

Based on these requirements, under the SEPA rules an adverse environmental impact must be both “significant” and “probable” before it is subject to mitigation measures under SEPA’s substantive authority or the requirement for an Environmental Impact Statement.

In order for the Hearing Examiner to overturn a threshold determination issued by the responsible official, the Hearing Examiner must find that there is clear, cogent and convincing evidence (this is giving significant weight to the determination of the responsible official) that an error has been made and that there are both adverse impacts which are likely and which would have more than a moderate impact on the environment, and which have not been adequately addressed by mitigation required by the responsible official. In this case C.A.R.E. has shown that there are possible adverse impacts. However C.A.R.E. has not provided clear, cogent and convincing evidence of the existence of adverse impacts which are both likely, significant, and unmitigated.

III.

The Hearing Examiner concludes, giving substantial weight to the determination of the responsible official under SEPA, that the appellants have failed to establish that the proposed development is likely to result in more than a moderate adverse impact on environmental quality. The Hearing Examiner should uphold the Mitigated Determination of Non-Significance issued for SPR 116/07.
IV.

C.A.R.E asserts that Island County Planning & Community Development erred in granting Site Plan Approval for the inclusion of twenty-four residential units as part of this development.

C.A.R.E’s first argument is that the approval of twenty-four residential units as part of this development is premature because final Short Plat Approval has not been granted for the proposed division for this single parcel into four parcels. C.A.R.E correctly points out that mixed used development in the Rural Village Zone is limited to no more than eight units per parcel. C.A.R.E believes that the applicant should be required to get final Short Plat Approval prior to any approval which would allow more than eight units of residential development on this site.

Planning argues that it is appropriate to handle the issue of the allowable residential development for this project by conditioning the Site Plan Approval to require final Short Plat Approval and recordation prior to the issuance of a building permit.

As pointed out by staff, ICC 16.15.110 grants the approving authority, in this case the Planning Director, the ability to place on any Site Plan Approval appropriate limitations and conditions to assure that the development is consistent with all applicable ordinances. The condition proposed by Planning, requiring Final Short Plat Approval prior to construction would ensure that no more than eight residential units per legal parcel would be allowed for this Rural Village Zoned development.

The Hearing Examiner would note that the Planning Department must include on the face of the Short Plat restrictions which would ensure that required open space and parking is shared amongst all of the lots in the development and that this sharing may restrict future development or uses on the lots created.

V.

C.A.R.E suggests that the density approved is inconsistent with the Island County Comprehensive Plan, with the goals policies and purpose of the Rural Village Zone, and with the Growth Management Act.

The Island County Code does not set a base density for the residential components of a Mixed Use Development in the Rural Village Zone. The minimum lot size required for a mixed use development is to be determined based on the requirements of the Island County Health Department. The Health Department and all other county agencies with jurisdiction have recommended approval of this proposal subject to conditions. In this case the applicant has been able to obtain water rights and an appropriate septic system approval for this development at the density proposed. The density of development is also limited by open space requirements, impervious space
requirements, and parking requirements. This developer has put forth a proposal which is consistent with all of these requirements and which provides for twenty-four residential units contained within three mixed use residential and commercial buildings on separate parcels.

As pointed out by staff in the Staff Report, the Comprehensive Plan specifically states as one of the policies for the Rural Village Zone that “…mixed uses, residential and commercial, especially with living accommodations above or over business activities are encouraged.” The Hearing Examiner concurs with staff’s conclusion that the type of development proposed by TR Camano which includes mixed residential and commercial use buildings is consistent with the Comprehensive Plan Goals and Policies for the Rural Village Zone. C.A.R.E points out that it was probably the expectation of everyone involved with the adoption of the Comprehensive Plan and Development Regulations for the Rural Village Zone that the intensity and density of development within the zone would be naturally curtailed by septic system requirements. In this case C.A.R.E argues TR Camano has been able to achieve an inappropriate density for development of this site by providing for septic drain fields offsite. C.A.R.E requests that the Hearing Examiner read into the Comprehensive Plan and Development Regulations some kind of residential unit density restriction in order to preserve rural character and to comply with the Growth Management Act. The development regulations for the Rural Zone are clear and unambiguous. They allow up to eight residential units per parcel as long as the requirements of the Health Department, requirements for open space, impervious surface limitations, and parking requirements are met. The Hearing Examiner has no authority to conclude that the legislative body actually meant to impose additional density limitations based on the general policy of maintaining rural character set forth in the Comprehensive Plan and/or limitations based on the Hearing Examiner’s interpretation on the Growth Management Act.

Island County’s development regulations for this Rural Village Zoned area specifically allow the density proposed by TR Camano. Since the regulations are unambiguous the Hearing Examiner must apply them as written. It is up to the legislative body to determine if the density allowed under the current zoning regulations for the Rural Village Zone is inappropriate and should be changed.

VI.

C.A.R.E on numerous occasions argues that the proposal is inconsistent with the Growth Management Act. The information submitted by C.A.R.E include a number of Growth Management Hearings Board decisions as well as the Kitsap case. C.A.R.E uses these submissions to support their argument that allowing twenty-four units on a five acre parcel in the Rural Village Zone is contrary to the Growth Management Act. C.A.R.E has also included in their materials a final decision and order from the Western Washington Growth Management Hearings Board regarding Island County’s adoption of areas of more intensive rural development, otherwise known as RAID’s. This decision in case number 98-2-0023C concluded that ten of the RAID’s designated by Island County did
not conform to the Growth Management Act and declared their designation as RAID’s as invalid because the designation and regulations did not comply with the Growth Management Act. The Camano Gateway RAID, which is the subject of this appeal, was not one of the RAID’s found invalid. The designation of this area as a RAID, the Comprehensive Plan Policies for this area and the development regulations for the zone have been upheld by the Growth Management Hearings Board as being consistent with the Growth Management Act and the Hearing Examiner has no jurisdiction to consider the Growth Management issues raised by C.A.R.E. Neither Island County Planning & Community Development nor the Hearing Examiner can consider issues of the consistency of local regulations with the Growth Management Act when applying Island County’s planning regulations and the Comprehensive Plan to individual permit applications. In fact, even Superior Court on appeal, cannot review specific land use decisions for consistency or compliance with the Growth Management Act. Woods v. Kittitas County, 192Wn.2d 597, 2007. Once adopted Comprehensive Plans and Development Regulations are presumed valid. RCW 36.70A.320(1). In reviewing a proposed land use project, a local government must determine whether the proposed project is consistent with the applicable development regulations, or in the absence of applicable regulations, the adopted Comprehensive Plan. RCW 36.70.B.030(1). The Superior Court can review a local government’s decision regarding the consistency of a development proposal with local adopted Plans and land use regulations, but cannot review these decisions, or the plans and regulations on which they are based, for consistency with the Growth Management Act. In Woods, the court held:

“We affirm the Court of Appeals and hold that the Superior Court lacked subject matter jurisdiction under LUPA to decide whether a site specific land use decision complies with the GMA. The Superior Court may decide only whether a site specific land use decision complies with a comprehensive plan and/or development regulation.”

What the Supreme Court is telling us is the only way to challenge local comprehensive plans and development regulations for consistency with the Growth Management Act is through a challenge before the Growth Management Hearings Board at the time of their adoption. These issues cannot be raised on a site specific land use application at the local level. The Island County Comprehensive Plan encourages mixed used residential/commercial buildings in the Rural Village Zone. The development regulations for the Rural Village Zone specifically allow up to eight units per parcel when other requirements, including Health Department requirements, open space, impervious surface requirements and parking requirements can be met.

The proposed development is consistent with the applicable development regulations and with the Island County Comprehensive Plan. The decision of the Island County Planning & Community Development approving SPR 116/07, subject to twenty-five conditions, 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**

The Island County Hearing Examiner dismisses the appeal of TR Camano on the grounds the appeal was not filed in a timely manner. The Hearing Examiner upholds the decision of Island County Planning & Community Development approving SPR 116/07 and denies the C.A.R.E appeal for the reasons set forth above.

Entered this 17th day of June, 2008, pursuant to authority granted under the laws of the State of Washington and Island County.

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MICHAEL BOBBINK
Island County Hearing Examiner

**APPEAL PROCESS:**

APP (Administrative Decision)

Appeal Process: This land use decision is a final determination which may be appealed by filing a land use petition in Island County Superior Court within twenty-one (21) days of its issuance. Specific requirements for the petitions contents, time and service of process, and payment of the cost of the transcription of the record of the hearing may be found in Chapter 70C of Title 36 RCW