

**Whidbey Environmental Action Network**  
**Restoration Education Preservation**

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*Dedicated to the preservation and restoration of the native biological diversity  
of Whidbey Island and the Pacific Northwest*

May 22, 2007

**TO: Jeff Tate, Assistant Planning Director, Island County**  
**FROM: Steve Erickson**  
**RE: CPA 155/04 - Oak Harbor UGA expansion environmental threshold  
determination**

The expansion of the Oak Harbor Urban Growth Area (UGA) will have probable significant adverse environmental impacts that are not mitigated. Therefore, the State Environmental Policy Act (SEPA) requires that the Mitigated Determination of Non-Significance (MDNS) be withdrawn, a Determination of Significance (DS) issued, and an Environmental Impact Statement (EIS) prepared. As discussed below, the UGA expansion is not necessary and the adverse environmental impacts can therefore not be justified; the proposed mitigations are not enforceable; the proposed mitigations are not adequate to prevent significant adverse impacts; there are significant adverse impacts that are not addressed by the threshold determination; and the incorporated environmental documents do not analyze the significant adverse impacts.

**1. The expansion is not necessary and the adverse environmental impacts can therefore not be justified.**

The rationale for the UGA expansion is that it is necessary to accommodate Oak Harbor's projected population increase. This conclusion is based on the land capacity analysis performed by Oak Harbor in 2004. That analysis determined that capacity within the existing UGA is 106% of the projected population; with the UGA expansion capacity will be 126%. There were various flaws with underlying assumptions in the analysis. However, even without considering these flaws the analysis' conclusions are inaccurate when considered in light of the additional data that is now available. Oak Harbor's land capacity analysis used data current to April 2004. There are now three additional years of actual development permits that can be evaluated. A review of these permits reveals that actual development within the existing UGA is occurring at much higher densities than was predicted in the 2004 land capacity analysis. Based on this data the proposed expansion of the UGA would be large enough to absorb over 150% of the projected population. Based on this additional "real world" information, it is clear that the existing UGA has more than ample capacity to absorb the projected population. The expansion is simply not necessary and runs counter to various policies and laws intended to protect the environment, such as the Growth Management Act. This was not considered in the threshold determination as required by SEPA. For this reason, the MDNS should be withdrawn and a DS issued.

## **2. The proposed mitigations are not enforceable.**

By issuance of the MDNS the County concedes that the expansion will have probable significant adverse environmental impacts. The MDNS attempts to mitigate these sufficiently to remove their significance. However, all of the proposed mitigations are ultimately unenforceable. They require the City to cede to the County regulatory authority over development within the UGA. However, the City is a sovereign jurisdiction. Once the area is annexed within the City, the County's regulatory authority is null. Therefore, the proposed mitigations are simply unenforceable. And even where the mitigations echo the 2005 Oak Harbor DNS, the measures in that DNS have not actually been required, since they do not constitute required mitigations.

## **3. The proposed mitigations are not adequate to prevent significant adverse impacts.**

*a. Probable significant adverse impacts considered.* By issuance of a *mitigated* DNS the County has conceded that the UGA expansion will have (if not mitigated) probable significant adverse environmental impacts. The significant adverse impacts that the mitigations attempt to reduce may be summarized as:

- impacts to historic structures

- loss of open space

- erosion and sedimentation

- degradation of water quality

- hydrologic impacts

- noise, light, aesthetics and compatibility with land uses adjacent to the UGA boundary

*b. Impacts to historic structures.* The threshold determination concedes that without mitigation there will be probable significant adverse environmental impacts to the "historic farm building cluster."<sup>1</sup> As previously discussed, the proposed mitigations are unenforceable once the land is annexed into the City. The 2005 Oak Harbor DNS states that "The proposed UGA expansion on the Fakkema Farm includes a 7-acre set aside to preserve the historic farmstead." It does not refer to any of the other mitigations proposed by Island County. Note also that this reference is in a DNS, not an actual required mitigation. The County simply does not have authority to dictate to the City the sorts of detailed management, responsibilities and results dictated in mitigation 1a; neither has the City committed to implementing any of them.

Additionally, even if these mitigations were enforceable, there is absolutely no foundation established in any of the adopted environmental documents that they would be sufficient to prevent significant adverse impacts. The 2005 Oak Harbor DNS simply states that there will be a 7 acre reserve without any reference to the condition of the structures or what is necessary for their preservation. SEPA requires an actual "hard look." This has not occurred.

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<sup>1</sup> Mitigation 1a. The historic farm building cluster shall remain intact within a protected reserve with specific design guidelines. An owner and/or manager shall be identified that is responsible for managing the use and/or maintenance of these structures so that they do not fall into a state of disrepair. The protected reserve area shall be no less than 7 acres in size.

*c. Loss of open space.* The MDNS echoes the 2005 Oak Harbor DNS with a proposed mitigation of 10 acres of open space and a trail easement.<sup>2</sup> The proposed mitigation is not only unenforceable, but even if carried out is inadequate. The Fakkema Farm is currently enrolled in the open space tax program and in active farm use. Virtually all of this land is currently open space. The loss of approximately 90 acres of open space farmland is not adequately mitigated by dedication of 10 acres and a trail easement. The loss of open space is a significant adverse environmental impact.

*d. Erosion and sedimentation.* With the proposed urbanization a great deal of ground disturbing activity will occur during initial development (i.e. hundreds of houses and supporting infrastructure). The standard buffer required by the Oak Harbor Municipal Code (50 feet) is not adequate to prevent inputs of sediment to Swantown Creek and its downstream receiving waters (Swantown Lake and Admiralty Inlet) during this initial period of major disturbance.

*e. Degradation of water quality.* Long term degradation of water quality from urbanization (i.e. construction of 352 houses and supporting infrastructure on 105 acres) is well documented and inevitable. This degradation is the result of constant input of pollutants from vehicles and roads, and the “normal” activities of a dense human population in a watershed that drains within a short distance into a coastal lagoon and Puget Sound. To mitigate this degradation the County proposes to rely on a new monitoring program. This approach might make sense if adequate corrective action were possible, but there really is no way to protect surface water quality from this intensity of urban development, even if the County could regulate it. Monitoring adverse impacts while they occur is not even mitigation, let alone adequate mitigation. The MDNS inherently concedes that these probable significant adverse environmental impacts will occur, but utterly fails to mitigate them. The unmitigated degradation of water quality is a significant adverse environmental impact.

*f. Adverse hydrologic impacts.* Again, the proposed mitigation fails to prevent the predictable significant adverse impact; it merely monitors it as it occurs. The destabilizing and “flashy” hydrology and pollution that occurs from urbanization due to the great increase in impervious surface is well known to result in the degradation of streams and other surface waters. None of the environmental documentation on which the MDNS relies discloses the current proportion of impervious surface in the watershed or the results of the proposed urbanization on this key indicator and controller of surface water quality and aquatic function. A major purpose of SEPA is to allow informed decision making. This requires determining the level of impervious surface that currently exists and the impacts of the proposed urbanization on this key determinant of environmental quality. The proper mechanism to do this is through preparation and review of an Environmental Impact Statement.

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<sup>2</sup> Mitigation 1b. No less than 10 acres shall be set aside for use as public open space. Through the specific site planning process this area may be dedicated as passive use or as active recreational use. Public open space shall mean use by all county residents, not just residents within a subdivision.

Mitigation 1c. A trail easement shall be dedicated to the public which connects Fairway Lane to Swantown Lake.

*g. Noise, light, aesthetics and compatibility with land uses adjacent to the UGA boundary.* The County acknowledges the adverse nature and significance of these impacts through their inclusion in the MDNS. Unfortunately, the proposed mitigation is not specific or enforceable. Making “recommendations that address potential impacts” does not constitute mitigation, let alone mitigation that is enforceable and sufficient to prevent the acknowledged probable significant adverse environmental impacts.

**4. There are significant adverse impacts that are not addressed by the threshold determination.**

*a. Failure to consider cumulative impacts.* The threshold determination fails to consider the additional UGA expansion that is being sought. As the County is aware, the Fakkemas applied to the City in 2006 to expand the UGA to include the other 272 acres of their farm. Before the City completed its process the Fakkemas requested In early October 2006 that consideration of the proposal be delayed until 2007. In the letter requesting this delay, they stated that “In the event the City Planning Department would be unable to support our request to defer our application to the 2007 Planning Commission agenda, please contact us as soon as possible.”<sup>3</sup> As of March 2007 the City had not contacted them.<sup>4</sup> As long as this application is pending, failure to consider it along with the 2004 expansion constitutes unacceptable piecemealing of the proposal, as well as ignoring the cumulative impacts of the entire proposal. An additional cumulative impact that has not been considered is the permanent loss of agricultural land. The County has been adamant that all land in agricultural use is vitally important to preserving rural character. The proposed loss of agricultural land is a significant adverse impact to both agriculture and the County’s rural character.

*b. Adverse impacts to wildlife.* Besides direct loss of currently existing wildlife habitat within the urbanized area itself, the UGA expansion will have significant adverse impacts on wildlife outside of the UGA. Besides those resulting from degradation of surface water quality and structure, disturbance of the avifauna that use Swantown Lake is predictable. Indeed, as one of the proposed mitigations the MDNS proposes is a trail from the newly urbanized area to the lake. Even without the trail, increased human disturbance of the lake and its wildlife is readily predictable from the new proximity of the urban area. The impacts of the increase in human disturbance on the wildlife that use Swantown Lake must be analyzed and disclosed to allow informed decision making.

A further impact to wildlife is the fragmentation caused by this and the proposed additional urbanization on the west side of Oak Harbor. The effect of Oak Harbor’s expansion is creation of an urban barrier inhibiting wildlife movement between north Whidbey and the central and southern portions of the island. The pernicious impact of habitat fragmentation on the longterm viability of wildlife populations is well known and ultimately includes extirpation of isolated and fragmented populations. These longterm impacts result preventing movement and dispersal of individuals between subpopulations (i.e. the “rescue” effect for small populations and deleterious

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<sup>3</sup> Letter Richard and Henry Fakkema, dated Oct. 4, 2006, to Larry E. Cort, Oak Harbor Senior Planner.

<sup>4</sup> Personal communication from Steve Power, Oak Harbor Planning Director to Steve Erickson.

genetic effects of isolation). The failure of this environmental review to even consider these impacts is itself grounds for withdrawal of the MDNS, issuance of a DS, and preparation of an EIS.

**5. The incorporated environmental documents do not address the significant adverse impacts.**

The MDNS references the 1998 Final Environmental Impact Statement (FEIS) for the Island County Comprehensive Plan in attempting to establish that the adverse impacts of the UGA expansion were analyzed at that time. However, this rationale simply conflates the projected population increase for Oak Harbor with actual physical expansion of the UGA generally, ignoring expansion onto the chosen properties with the resultant specifically impacts to the area. This actual proposed expansion was not considered at all in that FEIS. Generally considering the impacts of a population increase is not the same as, nor does it remove the need to consider the specific impacts relating to a particular area. For example, the Oak Harbor Volume II Non-Project EIS from 2001 did not even consider the lands that are the subject of the current MDNS. Oak Harbor's more recent DNS failed to consider even in general terms probable significant adverse impacts to the area outside of the proposed expanded UGA boundary and nowhere addressed specific impacts within the boundary (i.e. of urbanization on Swantown Creek). In summary, reliance on these previous environmental documents to establish that the probable significant adverse impacts have been analyzed and their impacts disclosed, let alone mitigated, is unjustified. For this reason, the MDNS should be withdrawn, a DS issued, and an Environmental Impact Statement prepared.