SUMMARY

When a SEPA determination is made on a quasi-judicial action, such as rezones, appeals of the determination should be grouped with appeals of the underlying action. Currently, Lewis County Code (LCC) 17.110 allows redundant appeal processes.

BACKGROUND

RCW 43.12C.075 are the rules related to appeals of SEPA determinations. The rules state “appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.” What that means is that any appeals of the SEPA determination should be grouped with the overarching action.

When the County is considering a change to the Lewis County Comprehensive Plan map, such as rezones or urban growth area expansion, a required step is SEPA review. The SEPA determination occurs in advance of a decision on the underlying Comprehensive Plan map amendment action. Therefore, any appeal of the SEPA determination should be grouped with the underlying action.

LCC 17.110, State Environmental Policy Act, are the local rules that implement the RCWs.

ISSUES AND RECOMMENDATIONS

Lewis County Code 17.110.130 currently allows appeals of the SEPA determination separate from the underlying action. This approach does not meet the RCWs. In addition, it sets up a situation for two appeals on the same action – one when the SEPA determination is made and another when the final decision is made.

Staff recommends removing this redundancy by adding the following underlined text to subsection LLC 17.110.130(1): “Those aggrieved by the requirements, decisions, or determinations made by the responsible official in the completion of the threshold determination process may appeal such decisions to the Hearing Examiner pursuant to Chapter 2.25 LCC; except, there is no administrative appeal for
procedural issues or for substantive issues of a SEPA threshold determination on a Type V non-project actions or Type V site-specific rezone applications.” See Attachment A, page 2.

The underlying final governmental action could still be appealed for either procedural issues or substantive issues, including any issues associated with the SEPA determination. The appeal option is not being removed, it is being consolidated with the underlying action.

There are also two minor clerical amendments, see Attachment A, page 2 and 4. First, LLC 17.110.130(2) the deadline for submitting an appeal is revised from 4:30pm to 4:00pm because the cash registers are closed at 4:00pm to allow for daily accounting. Second, LLC 17.110.130(5) reference to LLC 17.20 is updated because 17.20 has been amended to include subsections. Neither of these is a substantive change.

NEXT STEPS

The Planning Commission is scheduled to hold a workshop on May 10, 2022. Staff will present the code amendments and answer commissioner questions. Following the workshop, Planning Commission will confirm the public hearing date tentatively set for June 14, 2022 to receive testimony on amendments to LLC 17.110. If the date is confirmed, staff will post a notice of hearing on May 26, 2022 to The Chronicle and online.

Alternatively, after the workshop, if commissioners are not ready to proceed to a public hearing, the Planning Commission may choose to hold another workshop and the public hearing date would be shifted out one month.

After close of the public hearing, the Planning Commission will deliberate and vote to transmit the proposed amendments to the Board of County Commission. After the Board of County Commissioners reviews the proposal, they will hold a public hearing to receive testimony before voting to adopt the amendments.
CHAPTER 17.110, STATE ENVIRONMENTAL POLICY ACT

Article I. Title

[No change]

Article II. Authority

[No change]

Article III. General Requirements

[No change]

Article IV. Categorical Exemptions and Threshold Determinations

17.110.080 Determinations.

[No change]

17.110.090 Flexible thresholds for categorical exemptions.

[No change]

17.110.100 Use of exemptions.

[No change]

17.110.110 Environmental checklist.

[No change]

17.110.120 Mitigated DNS.

[No change]

17.110.130 Appeals of threshold determinations.
(1) Those aggrieved by the requirements, decisions, or determinations made by the responsible official in the completion of the threshold determination process may appeal such decisions to the Hearing Examiner pursuant to Chapter 2.25 LCC; except, there is no administrative appeal for procedural issues or for substantive issues of a SEPA threshold determination on a Type V non-project actions or Type V site-specific rezone applications.

(2) For proposals which do not involve another agency with jurisdiction, an appeal of a threshold determination must be received by the Hearings Examiner within fourteen (14) calendar days (and not later than four-thirty p.m. on the last day for such filing) of the date of issuance of the threshold determination or, if there is a comment period under WAC 197-11-340, within seven (7) calendar days of the last day of the comment period. If the last day of the appeal period is a holiday or a weekend, the appeal must be filed by four-thirty p.m. on the first weekday following such holiday or weekend.

(3) Public hearings on appeals of a determination of significance, mitigated determination of non-significance, or determination of non-significance shall occur prior to any decision by the Hearings Examiner. If the underlying proposal is reviewed by the Hearings Examiner, the SEPA appeal may be heard in concurrence with the public hearing on the underlying appeal, in accordance with Ch. 36.70B RCW.

(4) Appeals shall be made in writing and filed in duplicate with the department of community development with the appropriate filing fee.

(5) Those aggrieved by the decision of Hearing Examiner on any appeal may appeal such decision to the superior court of Lewis County pursuant to Chapter 36.70C.

**Article V. Environmental Impact Statement (EIS)**

[No change]

**Article VI. Commenting**

[No change]

**Article VII. Using Existing Environmental Documents**

[No change]

**Article VIII. SEPA and Agency Decisions**

17.110.200 Rules and policies.

[No change]
17.110.210 Substantive authority.

(1) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Lewis County.

(2) The county may attach conditions to a permit or approval for a proposal as long as:

(a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

(b) Such conditions are in writing; and

(c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(d) The county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in subsection (4) of this section and cited in the license or other decision document.

(3) The county may deny a permit or approval for a proposal on the basis of SEPA as long as:

(a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

(b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (4) of this section and identified in writing in the decision document.

(4) The county designates and adopts by reference the following policies as the basis for the county’s exercise of authority pursuant to this section:

(a) The county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

i. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations,
ii. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings,

iii. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,

iv. Preserve important historic, cultural, and natural aspects of our national heritage,

v. Maintain, wherever possible, an environment which supports diversity and variety of individual choice,

vi. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities, and

vii. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;

(b) The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(5) Except for permits and variances issued pursuant to Chapter 17.20A, 17.20B, 17.20C, 17.20D and 17.20E LCC, when any proposal or action not requiring a decision of the Hearing Examiner is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the Hearing Examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within 10 days of the decision being appealed. Review by the Hearing Examiner shall be on a de novo basis.

17.110.220 Notice - Statute of limitations.

[No change]

Article IX. Definitions

[No change]

Article X. Categorical Exemptions

[No change]

Article XI. Agency Compliance

[No change]
Article XII. Forms

[No change]