BEFORE THE SKAGIT COUNTY HEARING EXAMINER

CITY OF ANACORTES,	)	
	)	
Appellant,	)	**PL07-0243**
	)	
v.	)	**ORDER GRANTING MOTION TO DISMISS**
	)	
SKAGIT COUNTY,	)	
	)	
Respondent.	)	
	)	

On March 22, 2007, the City of Anacortes (City) appealed the Determination of Non-Significance (DNS) issued by Skagit County (County) in relation to the legislative update of its Critical Areas Ordinance.

On March 29, 2007, the County moved to dismiss that appeal on the grounds that the Hearing Examiner lacks jurisdiction to hear it.

On April 4, 2007, the City responded to the motion. The County filed a reply to the City's response.

After considering these submissions the Examiner enters the following:

DISCUSSION

1. A Determination of Non-Significance (DNS) is a threshold decision under the State Environmental Policy Act (SEPA). The DNS is a decision that an environmental impact statement need not be written.

2. The DNS in question concerns a non-project legislative action to consider amendments to the Skagit County Code (SCC).

3. Title 14 SCC contains the Unified Development Code, and is the source of provisions defining the jurisdiction of the Hearing Examiner. Chapter 14.06 SCC deals with Permit Procedures. Chapter 14.08 SCC deals with Legislative Procedures. Chapter 14.12 SCC concerns SEPA. The provisions of the title should be read together as a whole to interpret their meaning.

4. Chapter 14.06 SCC gives the Hearing Examiner jurisdiction to hear appeals of administrative decisions on development permit applications, denominated Level I applications. SCC 14.06.050(1)(a).

5. Chapter 14.08 SCC provides procedures for initiating and adopting generally applicable legislation at the County level, including comprehensive plan changes and development regulations. The subject Critical Areas Ordinance updates are development regulations. The chapter contemplates environmental review of legislative proposals. See SCC 14.08.040. However the chapter does not provide for Hearing Examiner review of SEPA determinations made in the legislative process.

6. Chapter 14.12 SCC applies the SEPA process to County actions. Under the rubric "Appeals", the chapter provides that "a final environmental threshold determination is administratively appealable as a Level I decision, pursuant to Skagit County Code 14.06." SCC 14.12.210(1). The question presented here is whether this is a grant of power to the Hearing Examiner to hear DNS appeals made in connection with legislative action.

7. Chapter 14.06 SCC is limited to the application, review, and approval processes for development permits. SCC 14.06.010. The chapter provides for integration of SEPA review with development permit review, and states: "Any appeals of a determination of non-significance shall be combined with and processed at the same time as the hearings or appeals of the underlying development." SCC 14.06.070(2)(d).

8. Nowhere in the administrative appeal procedures adopted by Skagit County does Title 14 expressly allow for orphan DNS appeals – that is DNS appeals that are not combined with consideration of an underlying proposal. In connection with legislation, the Examiner has no jurisdiction over the underlying proposal.

9. Reading all of the relevant code provisions together, the Examiner is convinced that he has no jurisdiction to review DNS decisions on proposals for legislation. Looking at the Unified Development Code as a whole, the Examiner interprets his jurisdiction to be limited to concrete cases that arise in response to discrete project permit applications. Accordingly, he concludes that those threshold determinations that are "appealable as a level I decision, pursuant to Skagit County Code 14.06" relate to individual development permits, not to legislation.

10. The City has other recourse to obtain review of the subject DNS. This decision determines only that there is no administrative remedy to exhaust.

DECISION

The Hearing Examiner lacks jurisdiction to hear the appeal of the subject DNS.

ORDER

The Motion of Skagit County is granted. The appeal of the City of Anacortes in this case is hereby dismissed.

DONE this 26th day of April, 2007.

Wick Dufford, Hearing Examiner