No. 94463-6
COA No. 74738-0-I

SUPREME COURT
OF THE STATE OF WASHINGTON

COMMUNITY TREASURES d/b/a CONSIGNMENT TREASURES, a Washington not for profit corporation, JOHN EVANS and BONITA BLAISDELL, on behalf of themselves and all others similarly situated,
Petitioners

v.

SAN JUAN COUNTY, a political subdivision of the State of Washington,
Respondent

PETITION FOR REVIEW

Stephen A. Brandli, WSBA #38201
Attorney for Petitioners
PO Box 850
Friday Harbor, WA 98250
(360) 378-5544
steve@brandlilaw.com

Nicholas Power, WSBA #45974
Attorney for Petitioners
540 Guard St., Ste. 150
Friday Harbor, WA 98250
(360) 298-0464
nickedpower@gmail.com

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BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

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BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

PETITION

A. IDENTITY OF PETITIONERS

Community Treasurers, a Washington non-profit corporation, and John Evans, an individual, respectfully ask this court to review the decision of the Court of Appeals terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioners seek review of the decision of the Court of Appeals entered April 3, 2017, affirming the trial court's dismissal of this matter. A copy of this decision is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does a county's decision to impose an illegally excessive processing fee as a prerequisite for considering a land-use application constitute a "land use decision" under the Land Use Petition Act (LUPA)?
2. If a county's decision on the size of the processing fee is a "land use decision" under LUPA, are challenges to the overcharge of that fee excepted from LUPA as claims for "monetary damages or compensation?"

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

D. STATEMENT OF THE CASE

The facts of this case relevant to this appeal are not in dispute. The named Plaintiffs each applied for and obtained one or more land use permits from San Juan County. Each paid the "application fee" that the County charged as a prerequisite for considering each application. The size of these fees ranged from $109.50 to $2700.

The named Plaintiffs allege that the County overcharged them for these processing fees, and that the County has done so for all land use applications in the three-year period covered by the Complaint. In so doing, the County violated RCW 82.02.020, which limits processing fees to those needed to recover the costs of processing the applications. *See Home Builders Assoc. of Kitsap County v. City of Bainbridge*, 137 Wn. App. 338, 344–45, 153 P.3d 231 (2007) (applying RCW 82.02.020 to building permit application fees). This overcharge constitutes an illegal tax. *Hillis Holmes, Inc. v. Snohomish Cty*, 97 Wn.2d 804, 810–11, 650 P.2d 193 (1982). Plaintiffs seek class-action status to provide an effective remedy for them and all other applicants given the complexity of this claim and the small amount of recovery per applicant.

The trial court dismissed the Complaint, concluding that challenges to the processing fees fall under the Land Use Petition Act (LUPA). There is no dispute that the named Plaintiffs did not exhaust the

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

County's administrative appeals for land use decisions and did not appeal the County's processing fees within 21 days of any conceivable "final decision." The trial court's decision forecloses any practical remedy for the County's excessive processing fees and any practical check on this illegal tax in the future. Plaintiffs dispute that LUPA applies to their claims.

E. ARGUMENT

This case presents a question of substantial public interest. *See* RAP 13.4(b)(4). The legislature allows counties and municipalities to charge fees to cover the costs of processing land use applications. *See* RCW 82.02.020, attached as Appendix B. However, recovery is limited to "the cost . . . of processing applications, inspecting and reviewing plans, or preparing detailed [SEPA] statements . . . ." *Id*; *Home Builders*, 137 Wn. App. at 344–45. Some jurisdictions in the state have been charging higher processing fees than necessary to cover their costs of processing these applications, benefiting their general funds. San Juan County is one such jurisdiction that has been levying this illegal tax.

Plaintiffs seek to recover the processing fees imposed by San Juan County in excess of that allowed by law. The named Plaintiffs seek class-action status to provide a practical remedy for all land use permit

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

applicants within the period listed in the Complaint. Only through a class action can there be any practical remedy.

Extension of LUPA to apply to the County's imposition of processing fees precludes any reasonable remedy. There can be no class action under LUPA. Unable to act as a member of a class, an individual applicant will be unable to challenge the size of any given processing fee due to the complexity of the challenge and the small size of the overcharge. The decision of the trial court to apply LUPA precludes effective review of San Juan County's imposition of these fees.

The charge of a processing fee as a prerequisite to the County's consideration of a land use application is not, itself, a land use decision as that term is defined in LUPA. And, a suit to recover that overcharge is a claim for "monetary damages or compensation," which is an exception to LUPA.

1. Plaintiffs seek a remedy to a state-wide problem of significant magnitude.

This case seeks a solution to a problem affecting hundreds of citizens in San Juan County and an unknown number across the State of Washington In 2009, the Washington State Auditor, Brian Sonntag, conducted a performance audit to determine compliance with RCW 82.02.020's limits on the charging of land use application processing fees.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

See Performance Audit Report: Eight Counties' Building Permit and Inspection Fees, Washington State Auditor Report No. 1002634 (December 29, 2009) [hereinafter "Auditor's Report"], *available at*, http://leg.wa.gov/Senate/Committees/GOS/documents/BuildingPermitFeesAudit.pdf. The Auditor audited eight counties. *Id.* at 1. San Juan County was not included in the study.

The report recognizes that "counties are required to set permit fees at amounts that do not exceed the costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents." *Id.* at 7. It concluded,

> Our review of prior years indicates that most audited counties have not consistently met this law when measured on an annual basis. Agricultural, residential, and commercial permitting fees generated greater revenue than what was necessary to cover direct and indirect costs associated with planning and permitting.

Id. at 7–8. The report noted, "The counties that have estimated surplus funds have spent them to support other services such as planning, enforcement, fire inspections, environmental health and public works activities or to establish account reserves." *Id.* at 11.

The amounts overcharged land use permit applicants in these eight counties on an annual basis was often significant, ranging from $14,052 to $296,631 per county per year in the years 2006 through 2008. *Id.* at 10. None of the eight counties overcharged in 2009, the last year studied. *Id.*

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

However, the report recognized that this was likely due to the sharp decrease in building permit revenue in that year due to the recession. *Id.* at 11.

Plaintiffs allege that, during the years 2012 through 2014, a period during which building activity had not yet recovered, San Juan County's building permit revenue exceeded its fully burdened expenses. In those years, the Building Division, which handles building permits and related reviews, had the following revenues and expenses:

Year	Revenue	Expenses
2012	$858,181	$609,733
2013	$749,552	$677,607
2014	$933,535	$766,628
TOTAL	$2,541,238	$2,053,968

CP 10–11. In addition, of these $2,053,968 in expenses, the Building Division expended $509,922 on activities not related to processing applications, inspecting and reviewing plans, or preparing detailed statements as allowed under RCW 82.02.020. CP 11. Thus, the Building Division took in $2,541,238 to pay for $1,544,046 in allowed expenses—an approximately $1 MM, 65% surplus. The San Juan County's Current Planning Division overcharged by a similar, although smaller, amount. CP 13–14.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

2. The only practical remedy for this illegal tax is a class-action suit.

A permit applicant who has been overcharged for processing fees has no reasonable recourse if the applicant must comply with LUPA. As a result, there will be no one to hold governments to the legislative mandate to charge only a reasonable amount to cover the costs of processing applications.

There are several reasons why a single applicant does not have a reasonable recourse to recover overcharged processing fees:

1. The amount that an applicant may recover is typically very small. For example, the fees for building permits paid by Plaintiffs range from $2700 to $109.50. CP 218–19. Thus, the recovery of each applicant would be less than these amounts.
2. A project may involve a number of processing fees paid at different times, for example when the project is amended. Under LUPA, each charge would trigger a new exhaustion requirement and a new 21-day limitation period. As a practical matter, not even a single project's fees could be appealed in one action.
3. Proof of an overcharge cannot be made based on the cost of processing a single application. Proof that a fee is unreasonable requires calculating the aggregate revenue from all processing fees

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

and the permissible expenses that may be charged against those fees. *See Home Builders*, 137 Wn. App. at 349–50. Thus, any case to recover an overcharged permit fee requires extensive discovery.

4. Even after calculation of the relevant revenues and expenses, there is no well-defined formula for what is a "reasonable" application fee structure. Litigation of this issue is complex.

5. There is no recovery of attorney fees for successful single-party challengers of a processing fee.[1]

As a result of these facts, a single applicant who is overcharged a processing fee has no reasonable recourse.

> The solution lies in a class-action lawsuit.
>
> The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of government. Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.

Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper, 445 U.S. 326, 339, 100 S. Ct. 1166, 63 L. Ed. 2d 427 (1980). "The smaller the stakes to each

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[1] The small claims statute may apply. *See* RCW 4.84.250 et seq. However, an applicant must make an offer of compromise and then recover at least that amount. RCW 4.84.260. In practice, given the uncertainty of the amount of overcharge, this will reduce recovery.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

victim of unlawful conduct, the greater the economies of class action treatment and the likelier that the class members will receive some money rather than (without a class action) probably nothing." *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 675 (7th Cir. 2013) (Posner, J.); *see also Brown v. Brown*, 6 Wn. App. 249, 256–57, 492 P.2d 581 (1971) (stating class action litigation "saves members of the class the cost and trouble of filing individual suits [and] frees the defendant from the harassment of identical future litigation.").

As a practical matter, expanding LUPA to include challenges to these processing fees forecloses a reasonable recovery and allows government to charge the illegal fees with impunity.

3. The decision on the amount of a processing fee is not a "land use decision" under LUPA.

LUPA does not apply to Plaintiffs' claim because San Juan County's decision on the size of the fee to charge an applicant for a land use decision is not, itself, a "land use decision" under LUPA. LUPA applies to such a decision only if the fee is "a determination on [a]n application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used . . . ." RCW 36.70C.020(2)(a), attached as Appendix C. The statute includes within its scope the government's decision

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

whether to grant the "project permit or other governmental approval" that is being applied for. *See id.* The statute also includes within its scope the determination of conditions imposed on a permit or other approval. *See, e.g., James v. County of Kitsap*, 154 Wn.2d 574, 590, 115 P.3d 286 (2005) (impact fees); *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002) (open space dedications).

But the statute's language does not include in its scope those fees imposed prior to, and to pay for, the processing of the application and the other reviews performed during the project. This distinction is apparent when one asks what the land use applicant is applying for. The applicant is applying for permission to do something that impacts the use of land, i.e. "a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used." *See* RCW 36.70C.020(2)(a).

With this analysis, two distinctions become apparent. The first relates to the purpose of land use decisions, which is to manage the "impact of development on a community." *James*, 154 Wn.2d at 586, 115 P.3d 286 (2005). Land use decisions must specifically relate to these impacts. *See, e.g., Isla Verde*, 146 Wn.2d at 761 (holding development conditions must be tied to "specific, identified impacts" on development). In contrast, the size of a processing fee has absolutely no impact on, or

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

relationship to, the impact of the proposed development on the community. Its only impact is on County revenue.

This Court's analysis in *James* is helpful. In *James*, this Court held that, like the decision to issue a building permit, the decision to impose an impact fee "as a condition of the issuance of the building permit" is a "land use decision" to which LUPA applies. *James*, 154 Wn.2d at 586. This Court noted that impact fees are "a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development." *Id.* at 581 (quoting RCW 82.02.090(3)). The impact fees at issue in *James* could be spent only for certain public utilities and only in conformance with the capital facilities element of the comprehensive plan. *Id.* This Court observed that the impact fees "must be tied to a specific, identified impact of a development on a community." *Id.* at 586 (quoting *Isla Verde*, 146 Wn.2d at 761); *see also* RCW 82.02.050(2) (listing restrictions on impact fee imposition).

> Thus, identification of the specific impact of a development on a community, assessment of the public facilities necessary to serve that development, and determination of the amount of impact fees needed to aid in financing construction of the facilities at the time a county issues a building permit inextricably links the impact fees imposed to the issuance of the building permit.

Id.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

Unlike the impact fees at issue in *James*, processing fees are not identified to a specific impact of a development, and indeed have no relationship to the impact of any proposed project. While the purpose of impact fees are to manage the impact of development on the community, the purpose of processing fees are to defray the regulatory costs of this management.

There are several practical differences between land use decisions and the assessment of processing fees that demonstrate their differing purposes:

- The applicant pays the processing fees before any determination is made on whether the application will be approved or on what permit conditions will be imposed.
- The applicant must pay the processing fees even if the application is denied. In contrast, the applicant may engage in the proposed project, and affect the community, only if the application is approved.
- The applicant must pay the processing fees even though the applicant chooses to not use the permit by engaging in the proposed project. In contrast, the applicant must meet the conditions of the permit, for example the payment of impact fees, only if the applicant goes through with the project.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

The second distinction apparent between application fees and land use decisions relates to the statutory definition of a "land use decision" as "*a determination on [a]n application* for a project permit or other governmental approval." RCW 36.70C.020(2)(a) (emphasis added). The Court of Appeals focused on this aspect of the statutory definition when it held, with little analysis, that the fact that the County requires an application fee renders the decision on the size of that fee a "land use decision" under LUPA. Opinion at 4–5 (citing SJCC 18.80.020 (requiring a completed application form and payment of the "applicable fee" before application will be considered)).

This holding conflates prerequisites for consideration of an application with the application itself. The applicant is not applying to pay a processing fee; the applicant is applying for permission to engage in a project that affects the community. Thus, the "determination on [a]n application for a project permit or other governmental approval" is the determination on whether to allow what is being applied for: the permission or approval. *See* RCW 36.70C.020(2)(a).

This distinction comports with the purpose of LUPA, which is to provide for expedited finality in decisions that affect the use of land. *See, e.g. James*, 154 Wn.2d at 589. Challenges to application fees can have no impact on the use of land. These challenges can only impact county

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

revenue, limiting processing fee revenue to the costs of processing land use applications. *See* RCW 82.02.020. In contrast to a decision affecting the use of land, there is no urgency to finalize the correct size of a processing fee.

LUPA is targeted at decisions that have direct impacts on the use of land. A "land use decision" is a decision that affects the use of land and the impact of that use on the community. LUPA was not intended to be extended to decisions that do not affect the use of land and the impact of development even though they relate to such land use decisions. *See, e.g.*, *Pacific Rock Environmental Enhancement Group v. Clark County*, 92 Wn. App. 777, 781, 964 P.2d 1211 (1998) (holding LUPA inapplicable to hearing examiner's discovery order). Decisions to charge processing fees are not "land use decisions."

4. Plaintiffs' claim is a claim for monetary damages or compensation expressly excluded from LUPA.

The trial court and the Court of Appeals rest on the mere connection between the application processing fees and the land-use purpose of the applications themselves. Even if this connection is sufficient to render the County's imposition of processing fees "land use decisions" under LUPA, challenges to the size of these fees are "[c]laims provided by any law for monetary damages or compensation." RCW

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

36.70C.030(1)(c), attached as Appendix D. Monetary claims are not traditionally brought using the writ of certiorari, which LUPA was enacted to replace. *James*, 154 Wn.2d at 591–92 (Sanders J., dissenting); *see also* RCW 36.70C.030 ("LUPA replaces the writ of certiorari for appeal of land use decisions."). Thus, LUPA's restrictions on land use challenges do not apply to Plaintiffs' claim.

While Plaintiffs' claim is clearly one seeking reimbursement for San Juan County's overcharge, and thus is a claim for "monetary damages or compensation," the courts have not applied this LUPA exception in cases where the claim is really a challenge to an underlying land use decision. *See Mercer Island Citizens for Fair Process v. Tent City 4*, 156 Wn. App. 393, 405, 232 P.3d 1163 (2010) (applying LUPA to damages claim dependent on allegation of improperly issued temporary use permit); *Asche v. Bloomquist*, 132 Wn. App. 784, 788–89, 133 P.3d 475 (2006) (applying LUPA to nuisance claim alleging damages caused by improperly granted permit). The courts have not applied LUPA to a monetary claim that did not depend on a decision affecting land use. *See Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 926–27, 296 P.3d 860 (2013) (holding LUPA does not apply to inverse condemnation claim based on the granting of variances when not challenging those variances); *Woods View III, LLC v. Kitsap County*, 188 Wn. App. 1, 352 P.3d 807

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

(2015) (holding LUPA does not apply to claim for damages due to delay in permit processing).

Plaintiffs' claim does not depend on any decision affecting land use. No Plaintiff is challenging San Juan County's grant or denial of a permit, or San Juan County's decision to impose land-use-related conditions on a project. Plaintiffs only seek reimbursement for the County's illegal overcharge of processing fees.[2] Thus, Plaintiffs' claim to recover San Juan County's processing fee overcharges is a claim for "monetary damages or compensation," and LUPA therefore does not apply to this claim.

F. CONCLUSION

When the legislature restricts the government's ability to charge its citizens for regulatory services, as it did in RCW 82.020.020 relating to charges to recover the costs of processing land use applications, it fully expects that enforcement of those restrictions will be available in the courts. The legislature passed the Land Use Petition Act to provide for administrative review and for finality in decisions that affect the use of

[2] The Court of Appeals analysis on this point is unclear. Perhaps the opinion seeks to demonstrate that Plaintiffs' claim depends on a challenge to a land-use decision and that therefore the "monetary damages or compensation" exception does not apply. *See* Opinion at 8 ("The lawsuit challenges the payment of the fees that are imposed for a completed project permit application."). This point has already been addressed herein.

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

land. Certainly the legislature did not intend LUPA to prevent effective enforcement of its limits on revenue, limits that have no direct impact on the use of land.

This Court should accept review of this matter and allow Plaintiffs' class action suit to recover San Juan County's illegal charges.

Respectfully submitted,

BRANDLI LAW PLLC

Dated: May 2, 2017

By: 

Stephen A. Brandli
WSBA #38201
Attorney for Petitioners

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

Appendix A
Court of Appeals Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

COMMUNITY TREASURES d/b/a/ CONSIGNMENT TREASURES, a Washington not for profit corporation and JOHN EVANS, on behalf of themselves and all others similarly situated, Appellants, BONITA BLAISDELL, Plaintiff, v. SAN JUAN COUNTY, a political subdivision of the State of Washington, Respondent.	)	No. 74738-0-I DIVISION ONE UNPUBLISHED OPINION FILED: April 3, 2017

SCHINDLER, J. — John Evans and Community Treasures filed a class action lawsuit against San Juan County. The lawsuit alleged imposition of building permit application fees violated RCW 82.02.020. The court dismissed the lawsuit for failure to comply with the mandatory requirements of the Land Use Petition Act, chapter 36.70C RCW. We affirm.

Project Permit Applications

The facts are not in dispute. Under the San Juan County Code (SJCC), a completed project permit application must include "[t]he applicable fee." SJCC

18.80.020(C)(4). The San Juan County Council establishes land use and building permit fees by ordinance.[1]

On April 12, 2012, John Evans submitted an application for a building permit to construct a 20-foot by 50-foot "agricultural equipment and hay storage building" on his property on Orcas Island. Evans paid the building permit fee of $105. On April 25, San Juan County issued the permit.

The F. & P. Penwell Trust (Trust) owns a six-acre parcel in Friday Harbor. Frank and Patricia Penwell (Penwell) are the trustees. Frank is also the president of a nonprofit corporation, Community Treasures. The Trust leases the six-acre parcel to Community Treasures. Community Treasures operates a "recycling and thrift store facility" on the property. On September 12, 2013, Penwell submitted three building permit applications on behalf of the Trust. One application is for a building permit to construct "2 shed roof additions" to an existing building on the six-acre parcel. Penwell paid $753.60 as part of the application. On February 26, 2014, San Juan County issued the permit. The other two applications sought to change the use of existing buildings "to retail." Penwell paid a permit fee of $109.50 for each of the applications. On November 22, 2013, San Juan County issued the permits.

Neither Evans nor Community Treasures filed an administrative appeal challenging the imposition of the permit fees for the applications.

Class Action Lawsuit

On March 18, 2015, Evans and Community Treasures (collectively, Evans) filed a class action lawsuit "on behalf of all entities who paid monies to San Juan County for

[1] San Juan County Ordinance 14-2013 (Sept. 10, 2013); see also San Juan County Ordinance 28-2011 (Nov. 29, 2011); San Juan County Ordinance 34-2010 (Dec. 7, 2010).

the consideration of land use and building permits or modifications or renewals" against San Juan County. Evans alleged the building permit fees exceeded the "reasonable costs attributed to the processing of land use permit applications, inspecting permitted work, or reviewing plans" in violation of RCW 82.02.020. Evans sought damages and a judgment against San Juan County for "permit fees that were collected in excess of those allowed by RCW 82.02.020."

San Juan County filed a motion for judgment on the pleadings.[2] San Juan County asserted the Land Use Petition Act (LUPA), chapter 36.70C RCW, is the exclusive means for judicial review of the claims alleged in the class action lawsuit. San Juan County argued that because the fees were part of the project permit application, LUPA applied. The court ruled LUPA "applies to the claims for refund of application fees allegedly paid by Plaintiffs as set forth in the First Amended Complaint." Because Evans did not comply with the LUPA requirement to exhaust administrative remedies or file a complaint within 21 days of the land use decision, the court dismissed the lawsuit. Evans appeals.

Land Use Decision

Evans contends imposition of the building permit fees is not a land use decision under LUPA.

LUPA is the "exclusive means of judicial review of land use decisions." RCW 36.70C.030(1). LUPA applies to ministerial land use decisions. Chelan County v. Nykreim, 146 Wn.2d 904, 927, 52 P.3d 1 (2002). The Washington Supreme Court requires "parties to strictly adhere to the procedural requirements" of LUPA. Durland v. San Juan County, 182 Wn.2d 55, 67, 340 P.3d 191 (2014). But LUPA applies "only to

[2] Therefore, the court did not rule on the pending motion to certify a class.

actions that fall within the statutory definition of a land use decision." Post v. City of Tacoma, 167 Wn.2d 300, 309, 217 P.3d 1179 (2009).

We interpret statutes de novo. W. Plaza, LLC v. Tison, 184 Wn.2d 702, 707, 364 P.3d 76 (2015).[3] Our objective is to ascertain and give effect to the legislature's intent. City of Spokane v. Rothwell, 166 Wn.2d 872, 876, 215 P.3d 162 (2009). Statutory interpretation begins with the plain language of the statute. Nat'l Elec. Contractors Ass'n, Cascade Chapter v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999); Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). We "construe statutes such that all of the language is given effect." Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003). If the plain language is subject to only one interpretation, our inquiry is at an end. Lake, 169 Wn.2d at 526. We interpret a county ordinance according to the same rules of statutory interpretation. Ellensburg Cement Prods., Inc., v. Kittitas County, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014).

RCW 36.70C.020(2) defines a "land use decision" as follows:

> "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:
> (a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used.

Evans does not dispute there is a final decision on the building project permits. Evans claims the building permit fee does not constitute a determination on " '[a]n application for a project permit.' "[4] We disagree. RCW 36.70C.020(2)(a)

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[3] We also review the trial court's ruling on a motion under CR 12(c) de novo. P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 203, 289 P.3d 638 (2012).

[4] Emphasis omitted, alteration in original, quoting RCW 36.70C.020(2)(a).

unambiguously defines a "land use decision" as a final determination on an "application for a project permit." SJCC 18.80.020 governs project permit applications. The plain and unambiguous language of SJCC 18.80.020(C)(1) and (4) states a completed application shall include the applicable permit fee. SJCC 18.80.020 states, in pertinent part:

> **18.80.020 Project permit applications - Procedures.**
>
> . . . .
>
> C. Project Permit Application - Forms. Applications for project permits shall be submitted on forms approved by the director. An application must (1) consist of all materials required by the applicable development regulations; (2) be accompanied by plans and appropriate narrative and descriptive information sufficiently detailed to clearly define the proposed project and demonstrate compliance with applicable provisions of this code; and (3) except for project permit applications for temporary uses, include the following:
>
> 1. A completed project permit application form;
>
> . . . .
>
> 4. The applicable fee.

Because the fee is a mandatory requirement for a completed project permit application, LUPA applies to a challenge to the building permit application fees.

Under LUPA, the petitioner must exhaust all available administrative remedies and file an appeal in superior court within 21 days of the final decision. RCW 36.70C.020(2), .040(3), .060(2)(d); New Cingular Wireless PCS, LLC v. City of Clyde Hill, 185 Wn.2d 594, 602, 374 P.3d 151 (2016). Evans concedes he did not comply with the procedural requirements of LUPA and exhaust administrative remedies or file the lawsuit within 21 days but argues an exception to LUPA applies.

LUPA Exception

Evans argues that even if the application fee is a "land use decision," under RCW 82.02.020 and Home Builders Ass'n of Kitsap County v. City of Bainbridge Island, 137 Wn. App. 338, 153 P.3d 231 (2007), the statutory LUPA exception for "[c]laims provided by any law for monetary damages or compensation" applies. RCW 36.70C.030(1)(c).[5]

RCW 82.02.020 prohibits the imposition of any direct or indirect fee on construction. But the statute expressly states counties are not prohibited from imposing reasonable fees for building permit applications. RCW 82.02.020 states, in pertinent part:

> Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.
>
> . . . .
>
> Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications,

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[5] RCW 36.70C.030(1)(c) states, in pertinent part:

> This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:
>
> . . . .
>
> (c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition.

(Emphasis added.)

> inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.[6]

The complaint alleges that as in the class action lawsuit in Home Builders, the building permit application fees San Juan County collected in 2014, 2013, and 2012 exceeded expenses in violation of RCW 82.02.020. The class action complaint states, in pertinent part:

> Washington Courts have had opportunity to examine the application and meaning of RCW 82.02.020. The leading case interpreting the meaning of this statute and a case squarely on all fours with the situation in San Juan County is Home Builders Association of Kitsap County v. City of Bainbridge Island, 137 Wn.App. 338 (2007). There, like here, a class alleged that the municipality had overcharged for fees associated with building permits.

Home Builders does not support Evans' argument. In Home Builders, the Home Builders Association of Kitsap County and several other entities (collectively, Home Builders) filed a class action lawsuit against the city of Bainbridge Island (City) challenging the City's adoption of a resolution establishing building fees. Home Builders, 137 Wn. App. at 342-43. Home Builders alleged the City "raised the fees for a purpose other than processing building permits" in violation of RCW 82.02.020. Home Builders, 137 Wn. App. at 343. At the conclusion of trial, the court found the fees were reasonable and dismissed the lawsuit. Home Builders, 137 Wn. App. at 344. We reversed. Home Builders, 137 Wn. App. at 352. We held the City had the burden to show the building permit fees were reasonable under RCW 82.02.020. Home Builders, 137 Wn. App. at 348. We also rejected the determination that "general accounting and cost allocation principles and the City's costs of regulation" was the proper basis to

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[6] Emphasis added.

determine the reasonableness of the City's permit fees. Home Builders, 137 Wn. App. at 350.

Here, unlike in Home Builders, the class action lawsuit does not challenge the legislative ordinance establishing building permit fees. The lawsuit challenges the payment of the fees that are imposed for a completed project permit application.[7]

Public Policy

Evans claims that even if the payment of fees for a building permit application is governed by LUPA, a building permit applicant has no recourse to challenge an overcharge of the fee. We disagree. Under the SJCC, building permit applicants have the right to appeal a decision on a building permit application to the hearing examiner. SJCC 18.80.140(B)(11).[8]

We affirm dismissal of the class action lawsuit.

Schindler, J.

WE CONCUR:

Trickey, A.C.J.

Cox, J.

[7] The other cases Evans cites are also inapposite. See Lakey v. Puget Sound Energy, Inc., 176 Wn.2d 909, 926, 296 P.3d 860 (2013) (inverse condemnation claim); Woods View II, LLC v. Kitsap County, 188 Wn. App. 1, 25, 352 P.3d 807 (2015) (damages caused by delay in issuing permit).

[8] SJCC 18.80.140(B) states, in pertinent part:

> Open-Record Appeals. The San Juan County hearing examiner has authority to conduct open-record appeal hearings of the following decisions by the director and/or responsible official, and to affirm, reverse, modify, or remand the decision that is on appeal:
>
> . . . .
>
> 11. Development permits issued or approved by the director.

Appendix B
RCW 82.02.020

RCW 82.02.020

State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal

corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), 43.21C.428, and beginning July 1, 2014, RCW 35.91.020.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

Appendix C
RCW 36.70C.020

RCW 36.70C.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020.

Appendix D
RCW 36.70C.030

RCW 36.70C.030

Chapter exclusive means of judicial review of land use decisions—Exceptions.

(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter.

No. _____
COA No. 74738-0-I

SUPREME COURT
OF THE STATE OF WASHINGTON

COMMUNITY TREASURES d/b/a CONSIGNMENT TREASURES, a Washington not for profit corporation, JOHN EVANS and BONITA BLAISDELL, on behalf of themselves and all others similarly situated, Appellants, v. SAN JUAN COUNTY, a political subdivision of the State of Washington, Respondent.	DECLARATION OF DELIVERY

I declare under penalty of perjury under the laws of the State of Washington that on the date signed below I delivered by hand the following documents:

Petition for Review
This Declaration of Delivery

to the following person(s):

Randall Gaylord
San Juan County Prosecutor
PO Box 760
Friday Harbor, WA 98250-0760

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)

at the office of the same.

Dated: May 2, 2017
In Friday Harbor, WA

_____
Stephen A. Brandli, WSBA #38201
Attorney for Petitioners

BRANDLI LAW PLLC
1 FRONT ST. N, STE. D-2 ● PO BOX 850
FRIDAY HARBOR, WA 98250-0850
(360) 378-5544 ● (360) 230-4637 (FAX)