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No. 97910-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION,

Petitioner,

v.

YAKIMA COUNTY, GRANITE NORTHWEST, INC., FRANK
ROWLEY, and THE ROWLEY FAMILY TRUST,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS YAKIMA COUNTY,
GRANITE NORTHWEST, INC., FRANK ROWLEY, AND THE
ROWLEY FAMILY TRUST

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RESTATEMENT OF ISSUES	3
III. SUPPLEMENTAL ARGUMENT	4
A. Standard of review.....	4
B. The Court of Appeals applied the correct statute of limitations because the Board sat in a quasi-judicial capacity when they passed a resolution affirming the Hearing Examiner’s decision.....	4
1. The statute of limitations for a LUPA action is found in the statute.....	4
2. The Board rendered a decision on a closed record appeal, thereby executing a quasi-judicial function.....	8
C. The Court of Appeals correctly decided that the Yakima County Code does not override the statute of limitations triggers established in RCW 36.70C.040(4).....	11
D. The Court of Appeals’ decision is consistent with established precedent.....	14
1. The Court of Appeals’ decision is consistent with <i>Habitat Watch</i> and other Supreme Court precedent.....	14
2. The Court of Appeals’ decision is consistent with published Court of Appeals decisions.....	15
E. This Court should uphold the state legislature’s intent in passing LUPA.....	16
IV. CONCLUSION	19

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Asche v. Bloomquist</i> , 132 Wn. App. 784, 133 P.3d 475 (2006), <i>review denied</i> , 159 Wn.2d 1005, 153 P.3d 195 (2007)	6
<i>Brouillet v. Cowles Pub. Co.</i> , 114 Wn.2d 788, 791 P.2d 526 (1990) (en banc).....	4
<i>Chelan Cnty. v. Nykreim</i> , 146 Wn.2d 904, 52 P.3d 1 (2002) (en banc).....	4, 15, 19
<i>Cnty. Treasures v. San Juan Cnty.</i> , 192 Wn.2d 47, 427 P.3d 647 (2018)	17
<i>Conom v. Snohomish Cnty.</i> , 155 Wn.2d 154, 118 P.3d 344 (2005)	7
<i>Crosby v. Cnty. of Spokane</i> , 137 Wn.2d 296, 971 P.2d 32 (1999) (en banc).....	4
<i>Deschenes v. King Cnty.</i> , 83 Wn.2d 714, 521 P.2d 1181 (1974)	19
<i>Durland v. San Juan Cnty.</i> , 182 Wn.2d 55, 340 P.3d 191 (2014) (en banc).....	passim
<i>Habitat Watch v. Skagit Cnty.</i> , 155 Wn.2d 397, 120 P.3d 56 (2005) (en banc).....	1, 14, 15, 17
<i>James v. Kitsap Cnty.</i> , 154 Wn.2d 574, 115 P.3d 286 (2005)	17
<i>King’s Way Foursquare Church v. Clallam Cnty.</i> , 128 Wn. App. 687, 116 P.3d 1060 (2005).....	15, 16
<i>Knight v. City of Yelm</i> , 173 Wn.2d 325, 267 P.3d 973 (2011) (en banc).....	4, 6, 7, 17

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Northshore Inv’rs, LLC v. City of Tacoma</i> , 174 Wn. App. 678, 301 P.3d 1049 (2013).....	15, 16
<i>Ralph v. State Dep’t of Nat. Res.</i> , 182 Wn.2d 242, 343 P.3d 342 (2014) (en banc).....	12
<i>Raynes v. City of Leavenworth</i> , 118 Wn.2d 237, 821 P.2d 1204 (1992) (en banc).....	8, 9
<i>Samuel’s Furniture, Inc. v. State, Dep’t of Ecology</i> , 147 Wn.2d 440, 54 P.3d 1194 (2002), <i>amended on</i> <i>denial of reconsideration</i> , 63 P.3d 764 (Wn. 2003).....	17
<i>San Juan Fidalgo Holding Co. v. Skagit Cnty.</i> , 87 Wn. App. 703, 943 P.2d 341 (1997), <i>as amended</i> (Sept. 30, 1997), <i>as amended</i> (Nov. 5, 1997).....	6
<i>Skamania Cnty. v. Columbia River Gorge Comm’n</i> , 144 Wn.2d 30, 26 P.3d 241 (2001)	19
<i>State v. Conway</i> , 8 Wn. App. 2d 538, 483 P.3d 1235 (2019).....	12
<i>State v. Squally</i> , 132 Wn.2d 333, 937 P.2d 1069 (1997)	4
<i>Ward v. Bd. of Skagit County Comm’rs</i> , 86 Wn. App. 266, 936 P.2d 42 (1997).....	18
 STATUTES	
Chapter 36.70C RCW.....	5, 9, 13
Land Use Petition Act, RCW 36.70C.005 <i>et seq.</i>	passim
RCW 36.70C.040(4).....	11
RCW 36.70B.020(1).....	10

**TABLE OF AUTHORITIES
(continued)**

	Page(s)
RCW 36.70C.010	1, 17
RCW 36.70C.020	8
RCW 36.70C.020(2).....	7
RCW 36.70C.030	1
RCW 36.70C.030(1).....	9, 17
RCW 36.70C.040	passim
RCW 36.70C.040(2).....	5, 7
RCW 36.70C.040(3).....	5
RCW 36.70C.040(4).....	passim
RCW 36.70C.040(4)(a)	passim
RCW 36.70C.040(4)(b).....	passim
OTHER AUTHORITIES	
Yakima County Code	passim

I. INTRODUCTION

In 1995, the state legislature enacted the Land Use Petition Act RCW 36.70C.005 *et seq.* (“LUPA”), as the “exclusive means of judicial review of land use decisions” to “establish[] uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, . . . to provide consistent, predictable, and timely judicial review.” RCW 36.70C.010; RCW 36.70C.030. This Court has recognized that the LUPA statute, not local ordinances, govern the timeframe in which a final land use decision may be appealed. *Durland v. San Juan Cnty.*, 182 Wn.2d 55, 67, 340 P.3d 191 (2014) (en banc); *Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 408, 120 P.3d 56 (2005) (en banc).

Petitioner invites this Court to save its untimely appeal by rewriting the rules this Court and the state legislature established for determining the LUPA statute of limitations—changing the rule for all to benefit one. Petitioner argues that a local ordinance should be interpreted to override RCW 36.70C.040(4)(b), in effect rendering the statute a nullity. Under Petitioner’s theory, any decision in Yakima County (“County”) reduced to writing would be governed by RCW 36.70C.040(4)(a), regardless of whether the decision is a resolution passed by a legislative body acting in a quasi-judicial capacity.

The Court of Appeals correctly found that “[n]either LUPA nor any case law permits a local ordinance or code to conflict with RCW 36.70C.040’s language as to the day of activation of the twenty-one day limitation period.” Op. at 17. Instead, both LUPA and the Yakima County Code require that potential appellants look to RCW 36.70C.040(4) to determine the statute of limitations pertaining to their appeal. The Yakima County Code does not and cannot mandate an alternative “statute of limitations” that “preempts” the controlling statute, in this case, RCW 36.70C.040(4)(b). The state legislature, not local governments, determines the jurisdiction of the superior courts in this state.

The trial court started from the correct premise—that the statute RCW 36.70C.040(4) (not the local ordinance) serves as the starting point for this analysis. Prior to considering the application of RCW 36.70C.040(4)(a), the trial court analyzed whether the Yakima County Board of Commissioner’s (“Board”) resolution met the quasi-judicial requirements of RCW 36.70C.040(4)(b). The trial court then erroneously determined that the Board did not act in a quasi-judicial capacity and thus misapplied RCW 36.70C.040(4)(a). The Court of Appeals correctly overturned the trial court on this point, finding that RCW 36.70C.040(4)(b) *was* the controlling statute of limitations.

To save its untimely appeal, Petitioner urges this Court to bypass the clear and unambiguous language of RCW 36.70C.040(4)(b), and instead, to match the words “written decision” in the Yakima County Code with the words in RCW 36.70C.040(4)(a), and therefore extend the deadline for filing their LUPA petition. In so doing, this Court is asked to ignore the word “resolution” appearing clearly at the top of the Board’s decision terminating Petitioner’s appeal, and for that matter, to overlook that the Board is a legislative body that was acting in a quasi-judicial capacity. And to what end, other than to excuse an untimely appeal? As this Court found in *Durland*, “to grant relief on these facts would be contrary to the statutory scheme enacted by the legislature as well as [this Court’s] prior holdings.” *Durland*, 182 Wn.2d at 59. This Court should affirm.

II. RESTATEMENT OF ISSUES

1. Does the LUPA statute of limitations for written land use decisions in RCW 36.70C.040(4)(a) apply to a resolution adopted by a legislative body sitting in a quasi-judicial capacity?
2. Does the Yakima County Code override the statute of limitations triggers established by the Washington State legislature in RCW 36.70C.040(4)?

III. SUPPLEMENTAL ARGUMENT¹

A. Standard of review.

The issue of whether a court has jurisdiction is a question of law subject to de novo review. *Crosby v. Cnty. of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999) (en banc) (citing *State v. Squally*, 132 Wn.2d 333, 937 P.2d 1069 (1997)); *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011) (en banc). LUPA's timely filing and service requirements are jurisdictional. RCW 36.70C.040; *Knight*, 173 Wn.2d at 339; *Chelan Cnty. v. Nykreim*, 146 Wn.2d 904, 926, 52 P.3d 1 (2002) (en banc). Where, as here, a trial court decides a case on the basis of affidavits, this Court reviews the trial court's decision and findings of fact de novo. *Brouillet v. Cowles Pub. Co.*, 114 Wn.2d 788, 793, 791 P.2d 526 (1990) (en banc).

B. The Court of Appeals applied the correct statute of limitations because the Board sat in a quasi-judicial capacity when they passed a resolution affirming the Hearing Examiner's decision.

1. The statute of limitations for a LUPA action is found in the statute.

The Court of Appeals correctly determined that Petitioner's LUPA claims are time-barred. A land use petition is "barred, and the court may not grant review, unless the petition is timely filed with the court and

¹ Respondents incorporate by reference the statement of the case contained in their answer to the petition for review.

timely served.” RCW 36.70C.040(2). Timely petitions must be filed and served “within twenty-one days of the issuance of the land use decision.” RCW 36.70C.040(3).

Local codes and ordinances define “finality” for purposes of the administrative procedures that they establish. However, local codes do not define or override rules and procedures established by LUPA. *Durland*, 182 Wn.2d at 65-66; *see Op.* at 17. Here, the County code states that the “Board’s final written decision shall constitute a final administrative action for the purposes of Chapter 36.70C RCW.” YCC 16B.09.050(5). This provision determines when the decision is ripe for judicial review; it does not determine what procedures are available to a party seeking judicial review. It is LUPA, not the County code, that determines the procedures for seeking judicial review of such decisions, including the applicable statute of limitations—RCW 36.70C.040.

LUPA’s uniform and exclusive procedures for timely appeals depend in part on who made the decision and how the decision was made. RCW 36.70C.040(4). Here, the decision maker was the County’s legislative body with legal authority to act in a quasi-judicial capacity by conducting a closed record review of a lower tribunal’s decision. CP 25-26. The Board’s decision was made by Resolution 131-2018 (“Resolution”). *Id.* This Resolution was passed unanimously following a

meeting open to the public on April 10, 2018, a meeting where counsel for Petitioner was actually present. VRP 26:8-9. And, the Resolution was reduced to writing, signed and dated that same day, April 10, 2018. CP 25-26.

The Court of Appeals correctly looked to and applied a statute (RCW 36.70C.040(4)(b)), not a local ordinance, as the controlling statute of limitations. This statute is clear and unambiguous on its face: “If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity,” the date a land use decision is issued is **“the date the body passes the ordinance or resolution.”** RCW 36.70C.040(4)(b) (emphasis added). There is no ambiguity in this statement. This deadline is “stringent.”² *Asche v. Bloomquist*, 132 Wn. App. 784, 795, 133 P.3d 475 (2006), *review denied*, 159 Wn.2d 1005, 153 P.3d 195 (2007). This Court has previously “required parties to strictly adhere to procedural requirements that promote LUPA’s stated purposes.” *Durland*, 182 Wn.2d at 67; *see also Knight*, 173 Wn.2d at 338. This inquiry should end here.

² *See San Juan Fidalgo Holding Co. v. Skagit Cnty.*, 87 Wn. App. 703, 705–06, 710–11, 943 P.2d 341 (1997), *as amended* (Sept. 30, 1997), *as amended* (Nov. 5, 1997) (LUPA appeal dismissed because petition delivered to the Skagit County Auditor's Office approximately 15 minutes after the office had closed on the last day of the 21-day service period for commencing land use appeals).

LUPA's timely filing and service requirements are jurisdictional. RCW 36.70C.040(2); *Knight*, 173 Wn.2d at 339. "A superior court hearing a LUPA petition acts in an appellate capacity and with only the jurisdiction conferred by law." *Knight*, 173 Wn.2d at 337 (citing *Conom v. Snohomish Cnty.*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005)). "[B]efore a superior court may exercise its appellate jurisdiction, statutory procedural requirements must be satisfied. A court lacking jurisdiction must enter an order of dismissal." *Conom*, 155 Wn.2d at 157 (internal quotations and citations omitted). The trial court erred in failing to order such a dismissal. The Court of Appeals, finding clear error in the trial court's decision, granted review and reversed the trial court.

Pursuant to RCW 36.70C.040(4)(b), the 21-day appeal period runs from April 10, 2018—the date the Board passed the Resolution.³ A timely judicial appeal of the Resolution had to be filed and served on or before May 1, 2018. Petitioner filed and served its LUPA petition on May 2, 2018—one day late. CP 1, 19. Consistent with this Court's precedent, Petitioner's untimely LUPA petition is time-barred and must be dismissed with prejudice.

³ Under the Yakima County Code, the Resolution passed by the Board on April 10, 2018, was a final land use decision. YCC 16B.09.050(5). Resolution 131-2018 is the "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]n application for a project permit." RCW 36.70C.020(2).

2. The Board rendered a decision on a closed record appeal, thereby executing a quasi-judicial function.

There is no issue of fact with respect to who made the final administrative decision. The decisionmaker was the Board, the County's legislative body, and the decision was made by resolution of the Board on April 10, 2018. CP 25-26. The Resolution was signed and dated April 10, 2018. CP 26.

In finding that the Board acted in a quasi-judicial capacity in conducting a closed record review of a lower tribunal's decision, the Court of Appeals correctly applied RCW 36.70C.040(4)(b) to the facts of this case. Op. at 11-16. In arriving at this decision, the Court of Appeals correctly applied the four-part test developed by this Court in *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992) (en banc). As this Court has established, the first inquiry to be made by a reviewing court is "whether the court could have been charged with the duty at issue in the first instance." *Raynes*, 118 Wn.2d at 244 (citations omitted). The Court of Appeals correctly concluded that without the Yakima County Code assigning the duty of reviewing an appeal from the hearing examiner to the Board, that the function would have been carried out in superior court under LUPA. Op. at 13-14 (citing RCW 36.70C.020 and .030).

The next inquiry is “whether the courts have historically performed such duties.” *Raynes*, 118 Wn.2d at 244 (citations omitted). The Court of Appeals found that courts have historically performed appellate review of local land use decisions, by writ of certiorari. *Op.* at 14 (citing RCW 36.70C.030(1)). However, such types of appeals are now conducted by superior courts as LUPA proceedings, following the enactment of Chapter 36.70C RCW in 1995.

The inquiry then turns to “whether the action of the municipal corporation involves application of existing law to past or present facts for the purpose of declaring or enforcing liability rather than a response to changing conditions through the enactment of a new general law of prospective application.” *Raynes*, 118 Wn.2d at 244 (citations omitted). The Court of Appeals found that the Board applied existing law to present facts when it denied Petitioner’s appeal of Granite’s conditional use permit. *Op.* at 14. The Board’s action determined the specific rights of specific parties. The Board did not pass an ordinance of general applicability nor set nor establish any policy or legislation. It conducted a quasi-judicial function.

The final question is “whether the action more clearly resembles the ordinary business of courts, as opposed to those of legislators or administrators.” *Raynes*, 118 Wn.2d at 244 (citations omitted). The Court

of Appeals found that the Board’s actions here—affirming a decision made by an inferior tribunal after undertaking a closed-record review of the record, transcripts, and the Yakama Nation’s Appeal Statement—resemble the ordinary business of a court, as opposed to those of legislators or administrators. Op. at 14-15; CP 25-26, 256. The Board unequivocally exercised a quasi-judicial function when it considered and decided the appeal and passed the Resolution.

The Court of Appeals flatly rejected Petitioner’s argument that the Board did not act in a quasi-judicial capacity. Op. at 15-16. The Board reviewed the Yakama Nation’s 19-page Appeal Statement,⁴ the record created over a six-month period and open record hearing before the Hearing Examiner, and the transcript of the hearing before affirming the Hearing Examiner’s decision at a public Board meeting. CP 25-26, 256. The Board took about a month to complete this closed record review of a robust record informed by prehearing motions, written discovery, depositions, exhibits, legal briefing, an open record hearing, argument, post-hearing briefs, a detailed written decision authored by the Hearing Examiner, the transcripts of that proceeding, and the Yakama Nation’s Appeal Statement. CP 25, 29-32, 227-245, 256. In so doing, the Board

⁴ This Appeal Statement is the “appeal argument” allowed by RCW 36.70B.020(1) in a closed record appeal and was all that was required for the Board to undertake its closed record review.

determined the legal rights, duties, and privileges of specific parties to a proceeding, so acting in a quasi-judicial capacity and functioning like a court or appellate body affirming the decision of a lower tribunal.

C. The Court of Appeals correctly decided that the Yakima County Code does not override the statute of limitations triggers established in RCW 36.70C.040(4).

The Court of Appeals found Petitioner’s argument that YCC 16B.09.050(5) takes precedence over RCW 36.70C.040(4) to be unsupported by law. Op. at 17. The trial court also agreed.⁵ See VRP 47-48.

Petitioner now invites this Court to rule that a local ordinance should be interpreted to override RCW 36.70C.040(4)(b), in effect rendering the statute a nullity. Pet. at 1. Petitioner points to YCC 16B.090.050(5) as requiring a “written decision” and then reasons that RCW 36.70C.040(4)(a) should govern because it also applies to “written decisions.” Pet. at 7-9.

Under Petitioner’s theory, any decision reduced to writing would fit into RCW 36.70C.040(4)(a), regardless of whether the decision is a resolution passed by a legislative body acting in a quasi-judicial capacity.

⁵ The trial court erred by refusing to apply RCW 36.70C.040(4)(b) based on the erroneous belief that the Board did not sit in a quasi-judicial capacity. VRP 47:11-25, 48:1-25. Only after deciding the Board did not sit in a quasi-judicial capacity did the trial court look to RCW 36.70C.040(4)(a) to determine the running of the statute of limitations. VRP 47-50.

Neither the trial court nor the Court of Appeals accepted this argument and for good reason. Op. at 17-18; VRP 47-49. Petitioner’s interpretation would read RCW 36.70C.040(4)(b) out of existence, an outcome which is clearly disfavored under existing Washington law. *Ralph v. State Dep’t of Nat. Res.*, 182 Wn.2d 242, 248, 343 P.3d 342 (2014) (en banc) (citation omitted) (court cannot “simply ignore” express terms in statutes). The Court of Appeals also correctly found that “the term ‘resolution’ is narrower in scope than ‘written decision’” and therefore the specific statute, RCW 36.70C.040(4)(b), controls over the general statute, RCW 36.70C.040(4)(a). Op. at 18 (citing *State v. Conway*, 8 Wn. App. 2d 538, 547-48, 483 P.3d 1235 (2019)).

This Court should not excuse an untimely filing by interpreting a local ordinance to preempt a clear, unambiguous and controlling statute. Petitioner goes so far as to argue that the County code mandates that RCW 36.70C.040(4)(a) “apply to every appeal of a County land use decision.” Pet. at 1. The Court of Appeals properly rejected Petitioner’s theory, finding that “[n]either LUPA nor any case law permits a local ordinance or code to conflict with RCW 36.70C.040’s language as to the day of activation of the twenty-one day limitation period,” and in any event, no such conflict exists because the County code does not suggest that the

final written decision in YCC 16B.09.050(5) is anything other than the Resolution the Board passed in this case. Op. at 17.⁶

The Court of Appeals found that the statute of limitations in this case, as the name suggests, is provided by statute, not by local ordinance. Op. at 16-19. Any other rule subjects the LUPA statute of limitations to a balkanization of rules across the state of Washington, each to be argued and interpreted by the lower courts in response to appellants seeking favorable interpretations to save otherwise untimely appeals.

Even if this inquiry were to begin with the County's ordinance, YCC 16B.09.050(5)'s use of the term "written decision" is not enough to apply the "written decision" provision of RCW 36.70C.040(4)(a) to this case. As the Court of Appeals noted, Petitioner has conceded that the Resolution constitutes the written decision, but Petitioner rejects the date the Resolution was signed as the statute of limitations trigger and instead argues that the earliest the statute of limitations began to run in this case

⁶ Moreover, YCC 16B.09.050(5) does not determine when the statute of limitations is triggered under LUPA. YCC 16B.09.060 does:

(1) A final determination on an application may be appealed by a party of record with standing to file a land use petition in Superior Court. Such petition must be filed within twenty-one days of issuance of the Board's decision, as provided in Chapter 36.70C RCW.

(2) This process shall be the exclusive means of judicial review, except for local land use decisions reviewable by a quasi-judicial body created by state law, such as the Shorelines Hearings Board or the Growth Management Hearings Board.

YCC 16B.09.060. The Yakima County Code appropriately requires potential appellants to follow the requirements of LUPA to determine when the appeal must be filed.

was on April 13, 2018—the date when a County planning staff-member emailed a notice of affirmation of the decision and attached the Resolution. Op. at 17. Petitioner’s desire to elevate a staff email to the status of a decision of the Board gives rise to exactly the type of administrative morass that LUPA was intended to prevent. The Court of Appeals rejected this strained argument because neither YCC 16B.09.050(5) nor RCW 36.70C.040(4)(a)⁷ “declare the date of mailing” to be the commencement of the limitation period. Op. at 18.⁸

D. The Court of Appeals’ decision is consistent with established precedent.

1. The Court of Appeals’ decision is consistent with *Habitat Watch* and other Supreme Court precedent.

Contrary to Petitioner’s allegations, the Court of Appeals’ decision is consistent with this Court’s precedent in *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2005) (en banc). “The statute

⁷ Respondents note that the Court of Appeals’ decision cites to RCW 36.70C.040(4)(b) regarding this statement. Op. at 18. However, Respondents believe the Court of Appeals intended to reference RCW 36.70C.040(4)(a), as RCW 36.70C.040(4)(b) does not mention mailing.

⁸ Petitioner’s argument that RCW 36.70C.040(4)(a) applies and that the statute of limitations began to run in this case on April 13, 2018 ignores several key facts. RCW 36.70C.040(4)(a) states that the statute of limitations for written decisions begins to run

[t]hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available[.]

The Board’s decision was made publicly available on April 10, 2018 when the Board voted at a public meeting—which counsel for Petitioner attended—to affirm the Hearing Examiner’s decision. See Op. at 18.

designates the exact date a land use decision is ‘issued,’ based on whether the decision is written, made by ordinance or resolution, or in some other fashion.” *Id.* at 408. To determine what subsection of RCW 36.70C.040(4) applies, a reviewing court examines the land use decision before it and determines which of these three categories applies. *Id.*; see also *Northshore Inv’rs, LLC v. City of Tacoma*, 174 Wn. App. 678, 688–89, 301 P.3d 1049 (2013), *disapproved of on other grounds by Durland*, 182 Wn. 2d 55, 340 P.3d 191 (analyzing RCW 36.70C.040 first before turning to municipal code). The inquiry does not begin with the local ordinance. The fact that Petitioner may have misunderstood an inferior ordinance to afford Petitioner rights it does not have, or to extend jurisdiction to superior court that does not exist, is unfortunate but does not save Petitioner’s appeal. LUPA’s stringent statute of limitations must be given full effect, “even when its results may seem unduly harsh.” *Nykreim*, 146 Wn.2d at 926 (citations omitted).

2. The Court of Appeals’ decision is consistent with published Court of Appeals decisions.

Contrary to Petitioner’s allegations, the Court of Appeals’ decision is also consistent with *King’s Way Foursquare Church v. Clallam County*, 128 Wn. App. 687, 116 P.3d 1060 (2005). As in this case, the *King’s Way* court held that when a legislative body sitting in a quasi-judicial capacity

renders a final land use decision by ordinance or resolution, the date that decision is issued is “the date the body passes the ordinance or resolution.” *Id.* at 691 (quoting RCW 36.70C.040(4)(b)). In this regard, the Resolution speaks for itself. No decision, letter, email or other action by County planning department staff was needed to finalize the Board’s decision.

The Court of Appeals also correctly applied *Northshore Inv’rs, LLC v. City of Tacoma*, 174 Wn. App. 678, 301 P.3d 1049 (2013). In *Northshore*, the court of appeals had to decide whether the LUPA statute of limitations was triggered on the date the city clerk sent a notice letter or on the date the city council made an oral vote on the appeal. *Id.* at 689–95. The *Northshore* court held that the LUPA statute of limitations began to run on the day that the city council voted; not the day the clerk issued the letter. *Id.* at 695. The same rule was applied by the Court of Appeals. *Op.* at 19.

E. This Court should uphold the state legislature’s intent in passing LUPA.

In 1995, the legislature adopted LUPA to consolidate the land use appeals process, ensure prompt and timely resolution of land use appeals, and provide certainty on procedures for appealing land use decisions. The legislature enacted LUPA “to reform the process for judicial review of land use decisions made by local jurisdictions, *by establishing uniform,*

expedited appeal procedures and uniform criteria for reviewing such decisions, in order *to provide consistent, predictable, and timely judicial review.*” RCW 36.70C.010 (emphasis added). LUPA “is the exclusive means for obtaining judicial review of a county’s and use decisions.” RCW 36.70C.030(1); *Cnty. Treasures v. San Juan Cnty.*, 192 Wn.2d 47, 51, 427 P.3d 647 (2018) (citing RCW 36.70C.030(1); *James v. Kitsap Cnty.*, 154 Wn.2d 574, 583–84, 115 P.3d 286 (2005)). LUPA “is intended to prevent parties from delaying judicial review at the conclusion of the local administrative process.” *Habitat Watch*, 155 Wn.2d at 406.

This Court has required “parties to strictly adhere to procedural requirements that promote LUPA’s stated purposes.” *Durland*, 182 Wn.2d at 67; *see also Knight*, 173 Wn.2d at 338 (“Requiring strict compliance with the statutory bar against untimely petitions promotes the finality of local land use decisions.”). Even a statutory grant of authority does not override LUPA’s statute of limitations. In 2002, the Court held that the Department of Ecology’s enforcement authority under the Shoreline Management Act did not exempt it from the procedural requirements in LUPA. *Samuel’s Furniture, Inc. v. State, Dep’t of Ecology*, 147 Wn.2d 440, 458, 54 P.3d 1194 (2002), *amended on denial of reconsideration*, 63 P.3d 764 (Wn. 2003).

This Court has likewise held that local codes must comport with LUPA's strict procedural requirements. *Durland*, 182 Wn.2d at 65–66 (court must apply LUPA's definition of what constitutes a “final land use decision” even though local code made all unappealed decisions “final”); *cf. Ward v. Bd. of Skagit County Comm'rs*, 86 Wn. App. 266, 271, 936 P.2d 42 (1997) (county code categorized hearing examiner's decision as “final decision,” but because decision was nonetheless subject to appeal, it did not constitute a land use decision under LUPA). Indeed, a contrary rule allowing statutes or local codes to vary the start of the 21-day deadline or to select one option from RCW 36.70C.040(4) would defeat the purpose and policy of LUPA in establishing definite and uniform time limits.

To save an untimely filed LUPA petition, Petitioner now asks for an exception to LUPA's statute of limitations that would have far reaching implications in the state and that would completely defeat LUPA's purpose. Petitioner asks this Court to allow each of the 39 counties and 281 incorporated municipalities⁹ in the state to set their own statute of limitations for purposes of LUPA. Instead of providing for clarity, certainty, and predictability, as the legislature intended, such a rule would

⁹ U.S. Department of Commerce, *Washington: 2010: Population and Housing Unit Counts*, at III-2 (2012), available at: <https://www.census.gov/prod/cen2010/cph-2-49.pdf>

create multiple permutations of the LUPA statute of limitations, reintroducing the confusion LUPA was designed to eliminate.

This Court has “acknowledged a strong public policy supporting administrative deadlines” under LUPA. *Durland*, 182 Wn.2d at 59. This Court “has faced numerous challenges to statutory time limits for appealing land use decisions and has repeatedly concluded that the rules must provide certainty, predictability, and finality for land owners and the government.” *Id.* at 60. As this Court has repeatedly explained, “[t]o make an exception . . . would completely defeat the purpose and policy of the law in making a definite time limit.” *Nykreim*, 146 Wn.2d at 931–32 (quoting *Skamania Cnty. v. Columbia River Gorge Comm’n*, 144 Wn.2d 30, 49, 26 P.3d 241 (2001) (alterations in original), quoting *Deschenes v. King Cnty.*, 83 Wn.2d 714, 716–17, 521 P.2d 1181 (1974)).

In sum, as this Court found in *Durland*, “to grant relief on these facts would be contrary to the statutory scheme enacted by the legislature as well as [this Court’s] prior holdings.” 182 Wn.2d at 59.

IV. CONCLUSION

The judgment of the Court of Appeals regarding the applicable statute of limitations in this case should be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of April, 2020.

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APPENDIX A

jurisdiction on the proposed action. Hearings shall be combined if requested by an applicant, provided that:

- (a) The hearing is held within the geographic boundaries of Yakima County;
 - (b) Each agency is not expressly prohibited by statute from doing so;
 - (c) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
 - (d) Each agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing; and
 - (e) The joint hearing can be held within the required time periods or the applicant may agree to a particular schedule in the event that additional time is needed in order to combine the hearings.
- (2) All agencies participating in a combined hearing may issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, or take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(Ord. 5-2012 § 2 (Exh. A) (part), 2012: Ord. 14-1998 § 1 (part), 1998: Ord. 4-1996 § 1 (part), 1996).

Chapter 16B.09 ADMINISTRATIVE APPEALS, CLOSED RECORD HEARINGS, AND JUDICIAL APPEALS

Sections:

- 16B.09.010 Administrative Appeal of Project Permits and Environmental Determinations.
- 16B.09.020 Standing to Initiate Administrative Appeals.
- 16B.09.030 Notice of Appeal.
- 16B.09.040 Open Record Appeals.
- 16B.09.045 Open Record Appeal Procedures.
- 16B.09.050 Closed Record Decisions and Appeals.
- 16B.09.055 Closed Record Appeal Procedures.
- 16B.09.060 Judicial Appeals.
- 16B.09.070 Appeals Standards and Criteria.

16B.09.010 Administrative Appeal of Project Permits and Environmental Determinations.

(1) An appeal of a Type 1, 2, or 3 project decision or an appeal of a final environmental determination (SEPA) shall be filed with the Planning Division within fourteen calendar days of the mailing of the final decision or environmental determination issued under SEPA. If the decision does not require mailing, the appeal shall be filed within fourteen calendar days following the issuance of the final decision. Appeals shall be delivered to the Planning Division by mail or

Division at least fourteen days prior to the date of the scheduled hearing before the Board. The notice shall further specify that such written argument or memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the Examiner. A copy of the notice shall be sent to the appellant and parties of record.

(5) Staff Report. At least fourteen days prior to the date of the scheduled hearing, the Administrative Official shall file a staff report concerning the appeal with the Board, and provide a copy to the appellant and other parties of record.

(6) Memoranda from Appellant and other Parties of Record. Any party of record may submit a written argument or memorandum of authority at least fourteen days prior to the date of the scheduled hearing before the Board of County Commissioners. Such invited written argument or memorandum of authorities shall be filed with the Board with copies to the Planning Division and the other parties. No written argument or authorities may be thereafter submitted. Memoranda, written argument or comments shall not include the presentation of any new evidence and shall be based only on the facts presented to the Examiner. The memoranda are limited to stating why the record does or does not support the decision of the Hearing Examiner.

(7) Oral Argument. Oral argument shall be confined to the issues raised in the hearing record, appeal statement, the Hearing Examiner's decision, staff report, and memoranda of authorities timely filed by the deadlines set for briefing. Oral argument shall be limited to stating why the record does or does not support the decision of the Hearing Examiner. Time allowed for oral argument shall be appropriately limited by the Board.

(8) Decision by the Board. The Board shall deliberate on the matter in public at the advertised public hearing to reach its decision. The decision on the appeal shall be made on the appeal statement, written memoranda of authorities, staff report and any documents comprising the record that formed the basis for the administrative appeal. No additional evidence or testimony shall be given or received except for oral argument as allowed in Subsection 16B.09.055(7) above. A written decision will be made within thirty days of the close of the deliberation and vote on the appeal.

(9) Failure to Comply. Written memoranda of authorities, if invited, must be received by the Clerk of the Board by mail or personal delivery before the close of business on the due date. Late submittals received after the deadline or uninvited memoranda shall not be accepted or distributed for consideration no matter when such submittals were mailed or postmarked.

(Ord. 5-2012 § 2 (Exh. A) (part), 2012).

16B.09.060 Judicial Appeals.

(1) A final determination on an application may be appealed by a party of record with standing to file a land use petition in Superior Court. Such petition must be filed within twenty-one days of issuance of the Board's decision, as provided in Chapter 36.70C RCW.

(2) This process shall be the exclusive means of judicial review, except for local land use decisions reviewable by a quasi-judicial body created by state law, such as the Shorelines Hearings Board or the Growth Management Hearings Board.

(Ord. 5-2012 § 2 (Exh. A) (part), 2012: Ord. 14-1998 § 1 (part), 1998: Ord. 4-1996 § 1 (part), 1996).

16B.09.070 Appeals Standards and Criteria.

The appeal body or Reviewing Official shall issue a decision to grant, grant with modifications, or deny the appeal in accordance with YCC 16B.08.050 for open record appeals, YCC 16B.09.050 for closed record appeals and this Section for all types of appeals. The appeal body or Reviewing Official shall accord substantial weight to the decision of the applicable Administrative Official and the SEPA Responsible Official.

(1) If the appeal body or Reviewing Official determines that the challenged decision is supported by substantial evidence in the record and is a correct application of the law, then the decision shall be upheld.

(2) If the appeal body or Reviewing Official determines that the challenged decision is not supported by substantial evidence, then the decision shall be reversed or remanded.

(3) If the appeal body or Reviewing Official determines that the challenged decision is an incorrect application of the law, then the decision shall be reversed or remanded.

(Ord. 5-2012 § 2 (Exh. A) (part), 2012).

Chapter 16B.10 COMPREHENSIVE PLAN AND REGULATORY AMENDMENT PROCEDURES

Sections:

- 16B.10.010 Purpose.
- 16B.10.020 Reserved.
- 16B.10.030 Applicability.
- 16B.10.040 Procedures.
- 16B.10.060 Submittal Requirements.
- 16B.10.070 Timing of Amendments.
- 16B.10.080 Public Process and Notice.
- 16B.10.090 Major Rezones.
- 16B.10.095 Approval Criteria.

16B.10.010 Purpose.

The purpose of this Chapter is to provide procedures and criteria for adopting, amending and updating the Yakima County Comprehensive Plan and the Yakima Urban Area Comprehensive Plan, as well as their respective implementing development regulations. Plan amendments may involve changes in the written text or policies of the plan, to the Policy Plan Maps, or to supporting documents, including capital facilities plans. Plan amendments will be reviewed in accordance with this Chapter, the state Growth Management Act (GMA), the Yakima County-wide Planning Policy,

CERTIFICATE OF SERVICE

On April 2, 2020, I caused to be served upon the below named counsel of record via the method of service indicated, a true and correct copy of the foregoing document.

Ethan Jones Shona Voelckers Yakama Nation Office of Legal Counsel P.O. Box 150, 401 Fort Road Toppenish, WA 98948 ethan@yakamanation-olc.org shona@yakamanation-olc.org <i>Attorneys for Petitioner Confederated Tribes and Bands of the Yakama Nation</i>	<input checked="" type="checkbox"/> Via the Appellate Court Web Portal <input type="checkbox"/> Via hand delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington, on April 2, 2020.



Cheryl Robertson
 Legal Practice Assistant

PERKINS COIE LLP

April 02, 2020 - 10:03 AM

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