



## CASE REPORT

**LAND USE DECISIONS — JUDICIAL REVIEW — APPLICABILITY OF 21 DAY DEADLINE TO GOVERNMENT AGENCIES.** Government agencies seeking review of a local jurisdiction's land use decision must file an appeal under the Land Use Petition Act within 21 days of the decision. **Samuel's Furniture, Inc. v. Dept. of Ecology, No. 71181-0 (October 3, 2002).**

**I. Facts.** Samuel's Furniture consulted with the City of Ferndale to determine which regulatory permits were necessary to expand its store. The City required Samuel's to obtain a grading/filling permit and a building permit and ultimately issued these permits to Samuel's. Relying upon its approved shoreline management map, however, the City declined to require a shoreline permit. After learning of the proposed development by chance, the State Department of Ecology (DOE) subsequently contacted the City and asserted that Samuel's project did in fact lie within the shoreline jurisdiction and required a shoreline permit. In response, the City issued a stop work order to Samuel's, but later withdrew its order after reviewing the relevant shoreline maps and management plan. DOE did not appeal the City's decision.

DOE subsequently threatened Samuel's with enforcement action. Samuel's filed suit against DOE in superior court, arguing, *inter alia*, that DOE was barred from taking enforcement by its failure to challenge the City's permitting decisions within the 21 day appeal period established under the Land Use Petition Act (LUPA). The case was ultimately appealed to the Washington Supreme Court.

**II. Applicable Law and Analysis.** The Washington Supreme Court ruled in favor of Samuel's and held that DOE must file a timely LUPA petition in order to challenge a local jurisdiction's decision that a particular development project lies beyond the shoreline boundary. DOE argued that the City decision at issue was not "final" for purposes of LUPA review because DOE itself retained statutory authority to review local government shoreline decisions to ensure compliance with the Shoreline Management Act (SMA). The Supreme Court rejected this contention, concluding that the SMA did not intend to give DOE "free reign to unilaterally overturn decisions made by local governments." The Court noted adopting DOE's position would effectively enable DOE to take enforcement action against a developer for failing to obtain a shoreline permit even where the building at issue was constructed several years ago. This result, the Supreme Court reasoned, would contravene LUPA's policy favoring finality of land use decisions. Finally, the *Samuel's Furniture* Court rejected DOE's purported entitlement to individualized notice of the City's permit issuance, noting that LUPA requires local jurisdictions to provide only general notice.

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**III. Conclusion.** The *Samuel's Furniture* case underscores that for purposes of challenging a local jurisdiction's land use decision, government agencies are subject to the same 21 day appeal deadline as private individuals.