

SUPREME COURT OF WASHINGTON

Twin Bridge Marine Park, LLC v. Department of Ecology

162 Wash. 2d 825 (2008) · Decided January 24, 2008

OPINION

JOHNSON, J.

*829¶1 J.M. Johnson, J. While this case involves a protracted dispute between the parties, Department of Ecology and Twin Bridge Marine Park, LLC, the greater underlying issue is a dispute over regulatory authority between Ecology and Skagit County (County). Twin Bridge is a dry-storage marina that has been properly permitted by local, state, and federal agencies after years of litigation.

At argument, Ecology conceded there were no continuing environmental concerns. However, development of Twin Bridge's property has exacerbated interpretive differences between these two powerful and competing governmental entities.

The Shoreline Management Act of 1971 (SMA), chapter 90.58 RCW, defines state and local authority to regulate. When disagreements over property development arise between these two entities that exercise regulatory powers under the SMA, private citizens must not be forced to choose between conflicting edicts. ¶2 Where Ecology has reasonable notice of a final land use decision by the local permitting authority, it must pursue collateral attack of that decision through the Land Use Petition Act (LUPA), chapter 36.70C RCW.

This is a well established principle of Washington law that gives closure and clarity to private property owners who wish to develop their land and to interested citizens. In the current case, Ecology's disagreement with the County over county permits cannot be visited on Twin Bridge, which properly relied on the County's final land use decision. Ecology had sufficient notice to resolve any dispute with the County in court, including an actual challenge filed by the city of Anacortes under LUPA, but chose not to participate.

We affirm both the trial court and the Court of Appeals. *830Facts1 ¶3 Twin Bridge owns an 11 acre piece of property in Skagit County near the Swinomish Channel. In 1975, the County approved a final environmental impact statement (FEIS) for a proposal to build a 960 square foot office and 4,000 square foot warehouse on the property, which would have included marine facilities.

Administrative R. (AR) Ex. R-1. In 1982, Twin Bridge obtained two shoreline substantial development permits from the County. There has been much confusion at the Shorelines Hearings Board (Board) and trial court level regarding the correct characterization of these two permits.

Clerk's Papers (CP) at 172, 192 (permits are titled as "shoreline substantial development/conditional use").

We accept the superior court and Court of Appeals determination that the primary nature of the permits was substantial development.² ¶4 Permit 7-82 (AR Ex. R-3) allowed for the placement of approximately 90,000 yards of landfill on the site. Permit 15-86 (AR Ex. R-6) allowed for the hydraulic dredging of approximately 40,000 yards of material. ¶5 Twin Bridge decided to convert the business into a dry-storage marina facility.

The proposed facility was a dry-stack marina with a 350 boat uplands storage capacity, including buildings, a reinforced concrete pad, and a large forklift for moving boats from the water to the storage area. The County issued a FEIS addendum in 2000, modifying *831the 1975 FEIS, and determined the revised dry-land marina development was "insignificant and does not have a probable significant adverse impact on the environment." AR Ex. R-40.

The County then issued two amended building permits for the project, one of which allowed for a building approximately 58,000 square feet. The city of Anacortes appealed the County's issuance of building permits under LUPA, but Ecology did not intervene or join the appeal, even though it had notice of the development and challenge.³ ¶6 When construction began pursuant to the permits, Ecology issued a stop work order and ordered Twin Bridge to obtain a new substantial development shoreline permit.

Twin Bridge did not stop work, and Ecology issued a \$17,000 penalty. Twin Bridge appealed to the Board. At approximately the same time, the Skagit County hearing examiner suspended the two amended building permits on the grounds the County had reevaluated the project and decided to require a new substantial development permit. Twin Bridge then stopped work at the site. ¶7 Twin Bridge applied to the County for a new shoreline substantial development permit, which authorized the site as a marina with the related improvements.

Ecology and Twin Bridge reached a settlement whereby Ecology withdrew the penalty.⁴ Twin Bridge also reached a separate agreement with Skagit County and with the city of Ana*832cortes in the LUPA challenge. The County, upon the resolution of these outstanding concerns, reinstated the two suspended building permits.

The County then sent a copy of this agreement reinstating permits to Ecology, which did not respond. Ecology did not file a LUPA petition or otherwise appeal the reinstatement of the building permits. ¶8 Twin Bridge resumed construction at the site.

As agreed, the County also processed Twin Bridge's application for the new shoreline development permit for construction authorized in the reinstated building permits. The final shoreline permit that resulted incorporated local, state, and federal permits for the site.

However, Ecology refused to recognize the county permits, issued a second penalty of \$17,000, and reinstated the earlier penalty of \$17,000, for a total of \$34,000 in penalties. ¶9 Twin Bridge completed construction on the marina pursuant to the County-issued building permits, received approval for its occupancy and operation from the County, and opened for business.

Ecology then issued a third penalty against Twin Bridge for \$25,000 and ordered the marina to cease and desist all operations until a new shoreline permit authorizing use and construction of the marina was obtained. Twin Bridge appealed the penalties to the Board.

As noted above, Ecology no longer argues to cease operation or that there is any current violation of any environmental law or regulation. Procedural History ¶10 The Board held that Twin Bridge's marina constituted a new substantial development under the SMA, which required a new shoreline permit under RCW 90-.58.140. This disregards the County-issued building permits, county environmental impact statement (EIS) surveys, and prior substantial development permits.

The Board *833ruled that both the upland and shoreline components of the marina fell under the SMA. Additionally, the Board ruled that Twin Bridge violated its settlement with Ecology by completing construction pending approval.

The Board found that Ecology's failure to initiate a LUPA appeal (or join in the pending appeal) did not preclude penalties. Finally the Board found that Twin Bridge's reliance on the County's preexisting permits and subsequent building permits did not relieve its obligation to pay a total of \$59,000 in penalties (two \$17,000 penalties and the last \$25,000 imposed postcompletion).

See Pet. for Review, App. B. ¶11 Twin Bridge appealed the Board's decision to the superior court, which reversed the Board in its entirety. First, the superior court issued findings of fact and conclusions of law after it considered additional evidence, which included the 2003 County-issued substantial development permit.

The court found that the preexisting permits were primarily substantial development permits. See CP at 428 (Finding of Fact (FF) 5). The court found that the County's issuance of the subsequent building permits and the new FEIS addendum amounted to county authorization for Twin Bridge's construction of the marina.⁵ ¶12 Additionally, the superior court held that Twin Bridge did not require any additional Ecology permit because the County's issuance of building permits necessarily included a determination that the project was already in compliance with the SMA (pursuant to the preexisting permits).⁶ Finally, the court held that Ecology could not penalize projects with valid county permits without first filing a LUPA challenge.

Thus, the direct imposition of penalties in this case was an invalid collateral attack on the County's decision. The Washington Court of Appeals af*834firmed the superior court ruling, relying largely on this court's intervening *Samuel's Furniture, Inc. v. Department of Ecology*, 147 Wn.2d 440, 54 P.3d 1194, 63 P.3d 764 (2002) case.

We granted review. *Twin Bridge Marine Park, LLC v. Dep't of Ecology*, 158 Wn.2d 1029, 152 P.3d 1033 (2007). Standard of Review ¶13 The Administrative Procedure Act, chapter 34.05 RCW, governs judicial review of board decisions. See RCW 90.58.180(3). Additionally, in reviewing adjudicative proceedings, review by an appellate court is to be on the agency record without consideration of the findings and conclusions of the superior court.

The one exception is in regard to matters where the superior court takes additional evidence[7] under RCW 34.05.562.... In such instances, where the information needed for review is contained in the superior court record of proceedings, not the agency record, the appellate tribunal will look to the superior court record. *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp.*

Comm'n, 123 Wn.2d 621, 633-34, 869 P.2d 1034 (1994) (citation omitted); see also RCW 34.05.558. ¶14 When reviewing a board decision, “ ‘[t]he process of applying the law to the facts... is a question of law and is subject to de novo review.’ ” *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 588, 90 P.3d 659 (2004) (alterations in original) (quoting *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993)). ¶15 The two controlling statutes in this case are the SMA, with its division of authority between state and local *835government, and LUPA, which details the process necessary to challenge final land use decisions.

Analysis A. Washington Statutory Authority ¶16 At issue is whether Ecology can directly impose penalties under the SMA when a project has been constructed pursuant to valid building permits issued by the County after that County complied with applicable law (including the State Environmental Policy Act (SEPA), chapter 43.21C RCW).

We hold that Ecology must challenge the valid county building permits through LUPA, as we held in *Samuel's Furniture*, 147 Wn.2d 440. In this case, the two County-issued building permits were based on preexisting substantial development permits and a related FEIS, together with a later FEIS addendum. Those permits are no longer challenged by Ecology.

Thus, the fine amount of \$59,000 remains the only issue in controversy. 1. Substantial Development Permits ¶17 Under the SMA, counties develop shoreline management plans and Ecology approves the county plan. Then, applications for actual permits are made to the counties (local or other governments), who determine compliance with their local plans. It is worthy of note here that while the County did comply with SEPA at each stage, and its decisions were supported by a FEIS and later addenda, Ecology never undertook SEPA analysis. ¶18 RCW 90.58.140(10) does allow Ecology to review conditional use permits or variances issued by the local permitting authority.⁸ See also WAC 173-27-200.

Ecology may attach provisions to such conditional use permits and may penalize violations. See RCW 90.58.210; WAC 173-27-280(1). However, no similar statute gives Ecology direct

*836review authority for local government substantial development permits, and Ecology cannot issue fines for complying with a valid county shoreline permit. This marks the legislature's clear division of authority between state and local government.

See RCW 90.58.140(3) ("The administration of the [permitting] system so established shall be performed exclusively by the local government." (emphasis added)). ¶19 Even Twin Bridge's county permits for the original business were primarily for substantial development as defined by the SMA.⁹ See former RCW 90.58.030(3)(e) (1996). Tellingly, the Twin Bridge dry-storage marina is currently permitted on local, state, and federal levels without a new conditional use permit.

Rather, Twin Bridge was eventually issued a substantial development permit from the County. In light of these statutory provisions, the SMA does not give Ecology plenary power to set aside the County's analysis of its own SMA plan when issuing substantial development permits.¹⁰ ¶20 Another factor, the Skagit County Shoreline Master Plan (SMP), also requires the holding that the preexisting *837permits were primarily substantial development.

For example, permit 15-86 was issued under section 7.07 of the SMP (among others), which is titled "Marinas and Launch Ramps." Under section 7.07, in the rural shoreline designation, the SMP does not require a conditional use permit for a marina; it states "Marinas and boat launch ramps are permitted subject to the General and Tabular Regulations." AR Ex. R-102, at 7-40.

Compare this language with the rural residential shoreline designation, which explicitly states, "Marinas are permitted as a conditional use subject to the General and Tabular Regulations." *Id.*; see also CP at 84, 88 (designating Twin Bridge as a "rural" classification within the SMP).

The SMP has been in place since 1976 and was approved by Ecology as required by the SMA. Since a conditional permit was never required, Twin Bridge cannot be held in violation of the SMP or the SMA. ¶21 We have held that the SMA does not give Ecology the authority to directly review the local government's decision to issue a substantial development permit. This court has previously said: Under the SMA, Ecology's primary role is to review and approve SMPs.

RCW 90.58.080. In this sense, it is "reviewing" local government action. However, once an SMP has been approved, the SMA specifically grants local governments the exclusive power to administer the permit system. RCW 90-.58.140(3). Nowhere in the statute is Ecology explicitly given the right to directly review a local government's decision regarding a substantial development permit.

Samuel's Furniture, 147 Wn.2d at 455. Ecology argues that the dry marina exceeded the impact foreseen by the original permits. It is counterintuitive that a dry-storage facility would have more shoreline impact than a water marina. Further, the County had taken all the impacts into consid*838eration because it had the benefit of two EISs.

In contrast, Ecology never performed its own environmental impact analysis and did not even substantively review Twin Bridge's later information submitted to the County for the 2000 addendum. CP at 389-90. Thus, Ecology could not have a "better" opinion on whether the expanded project would harm the ecosystem or even enough record for an informed opinion.

The County, which commissioned the EISs — one in 1976 and then a recent supplement in 2000 — and was involved in the city of Anacortes LUPA challenge, had the best available information.¹¹ f 22 The SMA gives local government the exclusive permitting authority, and the Comity was in the best position to make this decision.

Here, the County's characterization of the permits must control, especially when the County is the original permitting authority and is the only government agency to have performed environmental impact analysis on the disputed project. 2. Building Permits ¶23 Ecology's claimed basis for issuing the penalties is RCW 90.58.210(2) and (3), which allows it to fine individuals who develop property in the shoreline area without proper permits.

Here, Twin Bridge entered into an agreement with Ecology to rescind the fines if it would apply for a new County-issued substantial development permit. See AR Ex. R-80. Twin Bridge did resume work, but only after the County's reinstatement of the building permits, which implicitly and necessarily held that additional shoreline permits were not required. Resp'ts' Suppl.

Br. at 10. Ecology had sufficient notice of this decision if it wished to appeal. Again, it did not. ¶24 Ecology argues that Twin Bridge's reliance on the county building permits was misplaced and Ecology should *839collect substantial fines.¹² Ecology's reasoning is not persuasive.

The settlement specifically states that Twin Bridge must pursue a new County-issued substantial development permit "in good faith" and "shall not resume work on the site until all required federal, state, and local permits have been obtained." See AR Ex. R-80. ¶25 Twin Bridge correctly argues that the County-issued building permits implicitly demonstrate that the permits it received were sufficient.

See RCW 90.58.140. The County could not issue a building permit if the permits were in violation of the SMA or of the County's SMR See WAC 173-27-140. Ipso facto, the County found that Twin Bridge's development was in total compliance with the existing law. If Ecology determined that the County's final land use decision (building permits) was improperly issued, then the agency is required to file an appeal under LUPA.

We agree with the superior court conclusion that Twin Bridge could reasonably rely on the County's authority once a final land use decision was given and permits issued. See CP at 425. ¶26 In light of the statutory provisions, *supra*, the County's reinstatement of building permits signaled to Twin Bridge that it had obtained all permits necessary to begin construction.¹³

Moreover, the Court of Appeals in this case affirmed that the County had exclusive authority to determine whether additional permits were needed.

The court *840 said in relevant part: “A local government’s exclusive authority to administer the permit system necessarily means that the local government has the authority to determine that a shoreline project is consistent with already existing shoreline permits and that further shoreline permits are not necessary.” *Twin Bridge Marine Park, LLC v. Dep’t of Ecology*, 130 Wn.

App. 730, 740, 125 P.3d 155 (2005). ¶27 The Board erroneously relied upon a Court of Appeals decision in *Samuel’s Furniture*, which this court subsequently overturned. CP at 27. In *Samuel’s Furniture*, we held that Ecology must bring a collateral attack on a final local land use decision through LUPA. See *Samuel’s Furniture*, 147 Wn.2d 440. ¶28 The settlement agreement with Ecology required Twin Bridge to obtain appropriate permits before resuming construction.

The appellate court correctly held that “the County made the determination that its [Twin Bridge] development was consistent with the County’s shoreline master plan and Twin Bridge’s existing shoreline permits when it issued the two building permits.” *Twin Bridge*, 130 Wn. App. at 740 (citing *Samuel’s Furniture*, 147 Wn.2d at 450).

Therefore, Twin Bridge was justified in relying on reissue of its building permits.¹⁴ B. Washington Case Law ¶29 The central holding in *Samuel’s Furniture* applies where the local government authority disagrees with Ecology’s determination of the shoreline boundary.

Here, we are confronted with a related issue regarding which permits are required for development within the shoreline. We hold that *Samuel’s Furniture* was correctly applied to the instant facts by both the trial court and appellate court.

The reasoning of that case also applies. *841 ¶30 In *Samuel’s Furniture*, 147 Wn.2d at 440, we considered a jurisdictional dispute between Ecology and the city of Ferndale. We held that Ecology is required to file a LUPA challenge to a local government’s issuance of a permit when the local government has independently determined that the project is not within the shoreline.

Id. at 444. We held Ecology “cannot collaterally challenge the local government’s determination that the project is not within the shoreline jurisdiction by bringing independent enforcement actions against the property owner or developer.” Id. at 463. This definition of Ecology’s regulatory power was central in *Samuel’s Furniture*. A discussion of the facts and pertinent reasoning from that case is appropriate to guide future cases. ¶31 The city had determined that the business did not require a shoreline permit for expansion of its store because it would not encroach on the shoreline jurisdiction.

Id. at 444. Acting under this analysis, the city issued a fill and grade permit along with a building permit. Id. at 445. In contrast, Ecology asserted that the project was within the shoreline area and

required a substantial development permit. *Id.* As in *Twin Bridge*, the city had issued a stop work order, but after reviewing its SMP it determined the expansion was not within the shoreline jurisdiction and reinstated the building permit.

Id. Ecology disagreed with this decision and informed Samuel's Furniture that it would be unable to obtain a substantial development permit. *Id.* at 445-46. ¶32 Samuel's Furniture appealed and the trial court granted its motion for summary judgment. *Id.* at 447. Division One of the Court of Appeals reversed the trial court, holding that the SMA gave Ecology the authority to review local government decisions pursuant to RCW 90-.58.050, and a local government decision was not final for the purposes of LUPA.

Samuel's Furniture, Inc. v. Dep't of Ecology, 105 Wn. App. 278, 285, 19 P.3d 474 (2001). This court granted review and reversed the Court of Appeals. *842¶33 This court held that "[b]ecause local governments are given the exclusive authority to administer the permit system, RCW 90.58.140(3), their permit decisions may also determine whether development is within the jurisdiction of the SMA." *Samuel's Furniture*, 147 Wn.2d at 457.

In *Samuel's Furniture*, the local permitting authority was the city. Although we noted that Ecology may disagree with local government, "Ecology [must] follow the proper procedures when challenging that decision." *Id.* at 456 n.14.

The procedures are specified in LUPA. ¶34 Ecology's role and that of the local government authority can be fairly reconciled within the strictures of both the SMA and LUPA. This court held that [b]y filing a LUPA petition challenging a local government decision to allow a land use action that is in conflict with the SMP or the SMA, Ecology would be enforcing the provisions of the SMA.

Requiring Ecology to follow the procedures established in LUPA merely provides structure and finality to the enforcement process. *Id.* at 457. We further held that Ecology must use LUPA to challenge the city decision because the SMA does not provide "Ecology with enforcement authority under RCW 90.58.210 [to] enable Ecology to reverse local government decisions." *Id.* at 456. ¶35 The instant case is only slightly different.

In this case, the County reissued the building permits for development within the shoreline area, necessarily deciding that the new activities were allowed by the County's SMP and implemented ordinances. We hold that the permitting decision was exclusively the County's (absent a LUPA appeal) and Ecology cannot directly enforce its own differing interpretation of a county SMP. ¶36 Ecology argues that *Samuel's Furniture* is not applicable because this property is within the shoreline boundary.

However, we find *Samuel's Furniture* persuasive because of the extensive analysis of the roles the legislature provided to Ecology and local government under the SMA. *843See Resp'ts' Suppl.

Br. at 3,11. Under the SMA, the County and not Ecology makes the threshold determination of what shoreline substantial development permits are required under the County's SMR C. A LUPA Appeal Was the Appropriate Procedure To Challenge the Twin Bridge Permits ¶37 The requirement that Ecology file a LUPA challenge concerning the disputed building permits is also consistent with prior holdings of this court that favor finality in land use decisions.

This policy is also strongly expressed in Washington law. For example, developers are protected from changes in the laws that occur after the filing date of a building permit application. "Washington's doctrine of vested rights entitles developers to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations." *Erickson & Assocs. v. McLerran*, 123 Wn.2d 864, 867-68, 872 P.2d 1090 (1994). ¶38 Under LUPA, no "person" is exempt from its provisions when challenging a final land use decision by a local authority having jurisdiction.

Ch. 36.70C RCW. A "person" includes Ecology. RCW 36.70C.020(3). A final land use decision is a "final determination by a local jurisdiction's body or officer" regarding the improvement or development of real property. RCW 36.70C.020(1).¹⁵ The crux of LUPA is that persons and agencies who oppose a final land use decision made by the local permitting authority must appeal that decision within 21 days.

RCW 36.70C.040(3). *844 ¶39 This court has previously analyzed LUPA and its stated purpose of establishing uniform and expedited judicial review of local decisions. See, e.g., *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000) (a challenge to a Chelan County decision concerning residential development permits under the Growth Management Act, chapter 36.70A RCW, must be brought under LUPA); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wn.2d 30, 26 P.3d 241 (2001) (construing a federal act, 16 U.S.C. § 544m(a), no collateral attack on a local final land use decision can be made when no timely appeal is filed); *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002) (declaratory action by county overturning a prior boundary line adjustment must be filed through LUPA). ¶40 In the current case, LUPA plainly applies because the County was the local permitting authority within the statute.

Ecology had notice of the County's reinstating the building permits and chose not to challenge it. We have held in other context that "approval of the rezone became valid once the opportunity to challenge it passed." *Wenatchee Sportsmen*, 141 Wn.2d at 181. ¶41 Here, Ecology had reasonable notice, did not appeal, and the building permits became valid and the right to construct vested due to Ecology's inaction.

In another decision in this court, the Columbia River Gorge Commission echoed Ecology's claim of independent enforcement authority. *Skamania County*, 144 Wn.2d at 44 (asserting "plenary

powers under the Act to take whatever actions that it determines are necessary,... to ensure the Act [is] not violated”). This court roundly rejected the claim to exempt the commission from LUPA appeal time frames.

Id. at 57. Finally, *Nykreim*, 146 Wn.2d at 933, applied the LUPA time frame to Chelan County’s attempted nullification of its own determination of a boundary line adjustment and subsequent permits. Thus, an agency cannot even revoke its own final land use decision unless it has appealed in the LUPA allotted time frame. Id. This holding emphasizes the value of finalizing land use decisions. *845 ¶42 In light of these LUPA decisions, we reaffirm that *Samuel’s Furniture* offers protection to private property owners and finality to the decisions of local government.

Samuel’s Furniture was not a decision solely regarding one city’s shoreline boundary, but rather squarely “present[ed] the intersection of the SMA and LUPA.” 147 Wn.2d at 448. LUPA’s underlying rationale is that prolonged uncertainty is manifestly unfair to land owners who seek a final determination of their property’s status. See *Resp’ts’ Answer* at 9.

The Court of Appeals stated this public policy: Requiring Ecology to file a LUPA petition to contest a local government’s decision to allow a land use action would also serve the State’s “ ‘strong public policy favoring administrative finality in land use decisions.’ ” *Samuel’s Furniture*, 147 Wn.2d at 458 (quoting *Skamania County v. Columbia River Gorge Comm’n*, 144 Wn.2d 30, 48, 26 P.3d 241 (2001)).

Blanket enforcement authority by Ecology would conflict with the public policy favoring administrative finality, as a developer could be subject to enforcement by Ecology while relying in good faith on a local government’s determination. *Samuel’s Furniture*, 147 Wn.2d at 458. *Twin Bridge*, 130 Wn. App. at 741.

Here, the County’s reinstatement of building permits after an addendum to the EIS was a final land use decision. Ecology’s position in the instant case is similar to the position it unsuccessfully argued in *Samuel’s Furniture*, 147 Wn.2d at 459 (“Ecology’s interpretation of the SMA would leave land owners and developers unable to rely on local government decisions— precisely the evil for which LUPA was enacted to prevent.”).

Requiring Ecology to file a LUPA challenge, pursuant to reasonable notice of the building permits, allows Ecology to challenge an improper permit decision. Ecology merely is required to comply with LUPA procedures. ¶43 Alternatively, Ecology argues that the LUPA argument from *Samuel’s Furniture* is misapplied to the instant case because Ecology was challenging the adequacy of the *846underlying SMA permits.

See RCW 90.58.140(10).¹⁶ This is incorrect because the County-issued building permits are a final land use decision authorized by the preexisting substantial development permits. The County-issued building permits did not modify the shoreline permits; they are development

decisions incorporating the prior permits (and accompanying environmental analyses). See RCW 36.70C-.020(1) (defining a final “land use decision”).

These development permit decisions are left to the County’s exclusive discretion, unless Ecology brings a LUPA challenge. See *Samuel’s Furniture*, 147 Wn.2d at 458 (“The blanket enforcement authority sought by Ecology is in sharp contrast to the policy favoring finality in land use decisions.”). ¶44 In sum, Skagit County made the determination that Twin Bridge’s development was consistent with the County’s SMP and Twin Bridge’s existing shoreline permits when it issued the building permits.

The disputed permits were substantial development permits, and Ecology had no authority to issue fines based on compliance with a valid county permit. Moreover, once the building permits were reinstated, this was a final land use decision by the local permitting authority, and Ecology was required to file a LUPA challenge. Conclusion ¶45 The enforcement authority the legislature provided to Ecology under the SMA does not enable Ecology “to reverse local government decisions.” *Samuel’s Furniture*, 147 Wn.2d at 456.

As the Court of Appeals correctly noted, if Ecology had such sweeping authority, “it would not need *847to appeal permit decisions to the Board under RCW 90.58.180(2) and would no longer share enforcement authority with local governments.” *Twin Bridge*, 130 Wn. App. at 741 (citing *Samuel’s Furniture*, 147 Wn.2d at 456). ¶46 Here, after completing a project under permits properly issued by Skagit County, Twin Bridge was fined a total of \$59,000.17 We agree with the Court of Appeals that “[d]irectly imposing a penalty [for building permits] through RCW 90.58.210 would constitute a collateral attack on a local government decision at odds with the policy of cooperation contemplated in RCW 90.58.050.” *Id.* at 743.

Ecology’s disagreement with the local permitting authority should have been resolved through LUPA and not through a series of penalties assessed against a private party. We affirm the Court of Appeals and trial court decisions dismissing Ecology’s fines and orders. Alexander, C.J.; C. Johnson and Sanders, JJ.; and Bridge, J. Pro Tem., concur. Facts taken from Division One of the Court of Appeals, *Twin Bridge Marine Park, LLC v. Dep’t of Ecology*, 130 Wn.

App. 730, 125 P.3d 155 (2005). The permits were marked as both substantial development and conditional use permits when originally granted. The Board, at Ecology’s urging, believed that the permits were primarily conditional use permits. See *Dep’t of Ecology Opening Br.*, App. A. The superior court’s decision determined that these permits were actually primarily substantial development permits.

See CP at 427-34 (Skagit County Superior Court findings of fact and conclusions of law). The superior court’s additional findings of fact and conclusions of law are properly before this court, and after reviewing the record, we accept its characterization of the permits. See RCW 34.05.562.

The superior court accepted new evidence not presented to the Board, including Twin Bridge's final substantial development permit issued by the County. "Ecology did not appeal either the original issuance of Building Permits Nos. 99-1065 and 99-1226 or their reinstatement by the County on February 12, 2001, or any site work approval by the County with respect to the project, or any other County approval, decision, or action with respect to the Twin Bridge project." CP at 429 (Finding of Fact 11).

The agreement said in relevant part: 1. Ecology hereby withdraws its Penalty Order No. 00 SEANR-1209 issued to Ken Youngsman [(Twin Bridge)] on or about June 21, 2000, subject to the following conditions: a. Mr. Youngsman shall continue to pursue in good faith his application for a new Shoreline Substantial Development Permit for the Twin Bridge Marine Park. b. In the event that Skagit County issues a Substantial Development Permit to Mr. Youngsman or his associates, Ecology reserves the right to appeal the permit to the Shorelines Hearings Board and to raise any issue therein. *832e.

Mr. Youngsman, his associates, and contractors shall not resume work on the site until all required federal, state and local permits have been obtained. AR Ex. R-80. "By its issuance of Building Permits Nos. 99-1065 and 99-1226 and the EIS Addendum dated March 7, 2000, Skagit County... authorized construction of the Twin Bridge Marina, being developed by Twin Bridge Marine Park, LLC..., deciding that the two then-existing Shoreline Substantial Development Permits on that property were adequate to allow the approved construction." CP at 428 (FF 5).

Ecology no longer argues an additional permit is required. RCW 34.05.562 provides that the superior court may receive evidence in addition to that in the agency record if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding: (1) improper constitution as a decision-making body or grounds for disqualification of those taking the agency action; (2) unlawfulness of procedure or of decision-making process; or (3) material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record. "Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval." RCW 90.58.140(10).

The trial court concluded the County-issued permits were primarily for substantial development. The SMA generally requires conditional use permits for shoreline activities that are not developments or activities otherwise outside of the SMA. *Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91, 743 P.2d 265 (1987) (aquaculture company can be required to obtain a conditional use permit, even though its business is not substantial enough to be classified as a "development" or "substantial development" under the SMA).

Local governments may also use their shoreline master plans to spell out the conditions required for a conditional use permit. Contrary to the purpose of a conditional use permit, the "substantial

development” permit is explicitly required if a development has a total cost or fair market value exceeding \$5,000, or any development that materially interferes with the normal public use of the water or shorelines of the State.

Former RCW 90.58.030(3)(e) (1996). Here, the two permits issued by the County were for a business endeavor that clearly exceeded the minimum substantial development requirement. RCW 90.58.180(2) provides Ecology with an avenue to appeal any substantial development permit it deems improvidently granted: The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

Obviously, a marina is different use than dredging, but a dry marina has much less shoreline impact than a traditional marina, and part of the original permit was classified under the marina portion of the SMP. We recognize that due to the large volume of building permits issued throughout the state, Ecology can file a LUPA challenge only if it has reasonable notice.

In the current case, the city of Anacortes filed a LUPA challenge and invited Ecology to join. Disregarding the proper notice, Ecology chose not to join the LUPA challenge. Superior court letter opinion: Skagit County’s determination that no new or revised shoreline permit was necessary led to its issuance of building permits for the project and lifting of a previous notice of suspension (A-2).

The issuance of building permits and the lifting of the suspension are final decisions reviewable under LUPA. They are not decisions that are subject to review by a quasi-judicial body such as the SHB [(Shorelines Hearings Board)] and thus are not exempt from LUPA. (SHB has authority to hear appeals only on decisions to grant, deny, or rescind a substantial development permit).

CP at 425. We agree with one statement in the dissent when it says: “A party cannot decide for itself who may assert jurisdiction over it.” Dissent at 861. But neither may an agency create for itself jurisdiction to levy fines. Only the legislature may do that.

The legislature, through the SMA, did not allow Ecology to levy fines once the County has decided a development is in compliance. The reinstatement of the permits — which necessarily decided the construction complied with the SMA — was a final decision from which Ecology could appeal under LUPA. Once it received the reinstatement decision, Ecology had 21 days to appeal to the superior court under LUPA.

RCW 36.700.040(3). The dissent’s first argument — that there was never a final decision from which Ecology could appeal — incorrectly focuses on the original issuance of the permits. It is, instead, the permit reinstatement that was the final decision.

Under the SMA's provisions, Ecology can (1) review and approve or disapprove variance and conditional use permits; (2) appeal a decision granting, denying, or rescinding a shoreline substantial developmental permit to the Board; and (3) issue penalties if a party fails to conform to the terms of a permit issued under the SMA or undertakes development without obtaining the proper permit.

RCW 90.58.140(10), .180(2), .210(2), (3). Here, the permits were not conditional use or variance permits and the local permitting authority determined the development did conform to the SMA and SMP. Ecology did not recognize the county building permits as authorizing the marina development. It issued a second penalty of \$17,000 and also reinstated the first penalty of \$17,000.

Twin Bridge completed construction on the marina pursuant to the County-issued building permits, received approval for its occupancy limit from the County, and opened for business. Ecology then issued a third penalty against Twin Bridge for \$25,000 and ordered the marina to cease and desist all operations until a new shoreline permit authorizing use and construction of the marina was obtained.