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STATE OF WASHINGTON  
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Court of Appeals Cause No. 49130-3-II

IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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KITSAP COUNTY, Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, Appellant,

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PETITION FOR REVIEW TO THE SUPREME COURT BY THE  
KITSAP RIFLE AND REVOLVER CLUB

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## I. INTRODUCTION

*Speaking of the Second Amendment- “it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”<sup>1</sup>*

Petitioner seeks review of the validity of Kitsap County Ordinance No. 515-2014 (Ch. 10.25) which elevates local control of the discharge of firearms at an established gun range over a state law (RCW 9.41.290) that preempts such regulation. The line between state control and Second Amendment rights<sup>2</sup>, and the allowable scope of local regulation, are of fundamental importance for reasons of state policy and basic Bill of Rights protections. RCW 9.41.290 (“The state of Washington hereby fully occupies the entire field of firearm regulation within the boundaries of the state...”). If the County’s law is left in place, it allows local decision-makers discretion via imposition of a “special permit” requirement to shut down a facility which has been in safe operation since 1926.<sup>3</sup> Denial of the permit application in this regard is limited to the restrictive review set out on the Land Use Petition Act, RCW 36.70C.130.

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<sup>1</sup>*District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

<sup>2</sup> The 2<sup>nd</sup> Amendment to the United States Constitution applies to states via the 14<sup>th</sup>

<sup>3</sup> KCC 10.25 requires the Club to obtain a special use permit, which is a type of permit that is typically considered a zoning entitlement. See RCW 36.70B.020(4). The permit is a license required from local government before a property owner can engage (or continue to engage) in certain land uses, i.e., operation of a shooting range. The County

This Court has accepted review of numerous cases raising local-state preemption issues. *See, e.g., City of Seattle v. Williams*, 128 Wn.2d 341, 908 P.2d 359 (1995) (state preemption of local DUI ordinance); *Simpson Timber Co. v. Olympic Air Pollution Control Authority*, 87 Wn.2d 35, 549 P.2d 5 (1976) (DNR permit standards preempt local air control authority regulations); *HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 61 P.3d 1141 (2003) (RCW 58.17 preempts local platting ordinance).

Article I § 24 of the Washington Constitution and the Second Amendment to the United States Constitution, prohibit the impairing of citizens right to bear arms. *See Sumner v. First Baptist Church of Sumner*, 97 Wn.2d 1, 639 P.2d 1358 (1982) and *Open Door Baptist Church of Clark County*, 140 Wn.2d 143, 995 P.2d 33 (2000)).

Because the local law requires a discretionary license for the Gun Club's operation to continue, it intrudes on the exercise of fundamental constitutionally protected rights. That is especially true here because County deeded the land compromising the Gun Range to the Petitioner under covenant that the Kitsap Rifle and Revolver Club operate it pursuant to prescribed standards.

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governmental entity that reviews and decides on the application is the zoning authority – the Planning and Community Development Department.

The local law may not take a gun out of the hands of the owner, but the County law prevents the discharge of such gun at a controlled range in a safe manner, which is a significant obstruction of the exercise of basic rights, since training and practice facilitates the exercise of Second Amendment rights which, after all, is a use right. It matters not whether the infringement on these rights is direct or indirect, although denying the use at facility designed for the safe discharge of firearms is very direct.<sup>4</sup>

The County cannot legitimately require a permit and then deny it where the facility's operations pre-date the new law and the facility has been safely operated for the better part of a century. Importantly, the County has found that the facility is in the public interest.

The right to keep and bear arms may be, in some cases, conditioned on the adoption/enforcement of reasonable regulations. *Morris v. Blaker*, 118 Wash.2d 133, 144, 821 P.2d 482 (1992). But where the Court is faced with government action that effectively shuts shooting ranges - a necessary component of the exercise of the 2<sup>nd</sup> Amendment and Article I § 24 of the Washington Constitution - it is fair to analogize to the 1<sup>st</sup> Amendment strict scrutiny analysis of regulations that strip protections of spaces necessary to the exercise of religion and

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<sup>4</sup> *Sumner v. First Baptist Church of Sumner*, 97 Wash.2d 1, 639 P.2d 1358 (1982) and *Open Door Baptist Church of Clark County*, 140 Wash.2d 143, 995, P.2d 33 (2000).

free speech. Because the law burdens a fundamental Constitutional right, the presumption of validity is reversed. *Weden v. San Juan County*, 135 Wn. 2d 678, 689, 958 P.2d 273 (1998).

The Court also must resolve the effect of a real property transfer on application of the law. On May 11, 2009, the Board passed Resolution No. 087-2009 to assign and convey the property comprising the gun range to the Kitsap Rifle and Revolver Club the via a Bargain and Sale Deed (**Appendix A-1**). The Resolution specifically addressed safety and granted to KRRC the right to operate its facility with “full control” subject to covenants set out in the Deed. KRRC is obligated to keep its facility open to the public to accommodate the interest in shooting sports, which has increased while “safe locations to shoot have been lost to the pressure of urban growth.”<sup>5</sup> Contract and Deed, ¶ 3, citing to Washington Law 1990, Ch. 195, Section 1.

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<sup>5</sup> The County has not shown any changes of circumstances since adopting the Resolution, or considered the Deed’s covenant for the Club to operate its facility “...at all times in a safe and prudent manner and conform its activities to accepted industry standards and practices.” (Deed, Covenant No. 5). Further, the County has not claimed breach of any Deed covenant. A round cannot escape the Gun Range’s berms. *See* CP 403-435. *See also* CP 436-441, a comprehensive safety evaluation of the Club’s facility and operations. The record shows there has never been a documented instance of a projectile leaving the property. (CP 184)

In its Decision, the Court of Appeals answered a contention the Club did not make—that the Deed foreclosed any regulation, and it chided Petitioner for its briefing and argument in this regard. Opinion, pp. 25-27. The contention actually argued is whether the Deed acted to confirm the Club status as legally nonconforming such that it falls within an exception to the challenged law for such uses or, alternatively, the Deed constitutes compliance with the “Special Permit” requirement.

A bargain and sale deed constitute a contract between parties. RCW 64.04.010; .040; *Erickson v. Wahlheim*, 52 Wn.2d 15, 319 P.2d 1102 (1958). Such contract includes the warranty of quiet use and enjoyment of the property, made by the seller (the County) to the purchaser (the Club). *Mastro v. Kumakichi Corp.*, 90 Wn.App. 157, 162, 951 P.2d 817 (1998) (quoting 17 William B. Stoebuck, Washington Practice, Real Estate: Property law § 7.2, at 447 (1995))(ruling that statutory warranty deed includes five covenants: (1) that the grantor was seised of an estate in fee simple (warranty of seisin); (2) that he had a good right to convey that estate (warranty of right to convey); (3) that title was free of encumbrances (warranty against encumbrances); (4) that the grantee, his heirs and assigns, will have quiet possession (warranty of quiet possession); and (5) that the grantor will defend the grantee's title (warranty to defend

Application of the County law to the Club violates the terms of the parties' contract and the warranty of quiet use and enjoyment of the Club property. The County cannot impair its own contract. *See* U.S. Const. art. 1, § 10 (states shall not pass laws impairing contracts); Wash. Const. art. 1, § 23 (no law impairing the obligation of contracts shall be passed). The two clauses are substantially similar and are given the same effect. *Washington Fed'n of State Employees v. State*, 101 Wn.2d 536, 539, 682 P.2d 869 (1984); *Birkenwald Distrib. Co. v. Heublein, Inc.*, 55 Wash.App. 1, 5, 776 P.2d 721 (1989).

The Deed can be construed as an equitable servitude. The Deed and Resolution constitute the operational “permit” and are a grant of authority to KRRC to operate its range without any further requirements. KCC Chapter 10.25 is an attempt to take away such authority and hand it over to Kitsap County, in direct contravention of the Deed and the Resolution.<sup>6</sup>

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<sup>6</sup> This case does not involve an expansion, which ostensibly could bring into play a new regulation adopted after execution of the Deed and Contract, KCC Chapter 10.25. This matter does involve the power to shut down KRRC's facility, a remedy that was denied the County in *Kitsap County v. Kitsap Rifle and Revolver Club, et al.*, 184 Wn. App. 252, 337 P.3d 328 (2014) (hereinafter “*Kitsap Rifle I*”) (“We hold that termination of the Club's nonconforming use status is not the proper remedy even though the Club did expand its use, engage in unpermitted development activities, and engage in activities that constitute a nuisance. Neither the Code nor Washington authority supports this remedy, and such a remedy would impermissibly interfere with legal nonconforming use”). In this regard, it is critical to note that the County has conceded that the range is a legal non-conforming use.



## **II. IDENTITY OF PETITIONER**

Petitioner Kitsap Rifle and Revolver Club (the “Club” or “KRRC”) is a non-profit corporation formally established in 1926. Since that time, the Club has operated as shooting organization for its members and the general public at the same location in Kitsap County, Washington. The Club submits this petition pursuant to RAP 13.4(b)(1)-(4) and asks that this Court grant its request for review.

## **III. COURT OF APPEALS DECISION**

In a published (in part) opinion, the Court of Appeals, Division II, terminated review on November 21, 2017 and affirmed and expanded on the trial court’s ruling on summary judgment that: “RCW 9.41.290 does not apply here because KCC 10.25 (*Firearms Discharge*) is not a firearms regulation.” (Opinion at 7) and, even if RCW 9.41.290 applies, KCC 10.25 falls within the exception per RCW 9.41.300(2). (Opinion at 7); Part Published Opinion terminating review dated November 21, 2017, **Appendix A-2** hereto. The Club filed a Motion for Reconsideration which was denied on January 3, 2018. **Appendix A-3** hereto.

## **IV. ISSUES PRESENTED FOR REVIEW**

4.1 Whether the State of Washington’s preemption of the entire field of firearms regulations per RCW 9.41.290 allows for the exercise of plenary police powers by a local government pursuant to the Washington Constitution Art. 1 § 11 and RCW 36.32.120(7), contrary to the holdings

in *Lenci v. City of Seattle*, 63 Wash.2d 664, 669, 388 P.2d 926 (1964) and *Watson v. City of Seattle*, 189 Wash.2d 149, 175, 401 P.3d 1 (2017)?

4.2 Whether RCW 9.41.290, which provides in pertinent part that: “The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the . . . discharge, . . . or any other element relating to firearms or parts thereof, . . .” (Emphasis added), includes preemption of local firearms regulations of shooting facilities?

4.3 Whether Kitsap County Code (“KCC”) 10.25 *Firearms Discharge*, regulates the discharge of firearms for individuals wishing to practice, improve upon or compete as to their shooting skills, is a firearms regulation subject to preemption by RCW 9.41.290?

4.4 Whether the burden of proof of facts essential to invoke a statutory exception to RCW 9.41.290 is on the County, and not on the applicant/Appellant, per this Court’s holdings in *Weden v. San Juan County*, 135 Wash. 2d 678, 689, 958 P.2d 273 (1998) and *Hall v. Corporation of Catholic Archbishop*, 80 Wash.2d 797, 801, 498 P.2D 844 (1972)?

4.5 Whether Kitsap County’s exercise of its plenary police power in regulatory matters accorded municipalities by Const. Art. 11, § 11, ceases when the state enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction as held in *Lenci v. City of Seattle*, 63 Wash.2d 664, 669 388 P.2d 926 (1964)?

4.6 Whether the enforcement of KCC 10.25, without a judiciable determination concerning strict or heightened scrutiny, improperly infringes upon the Club’s constitutional rights under the 2<sup>nd</sup> Amendment to the United States Constitution and Article 1 § of the Washington State Constitution?

4.7 Whether a Bargain and Sale Deed<sup>7</sup> with covenants (and a related County Resolution enacted to confirm the terms of such Bargain and Sale Deed) constitutes approval of the Club’s activities such that it is exempt from the County’s new regulations embodied in the local law, KCC Chapter 10.25.090, because a legal nonconforming use?

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<sup>7</sup> The Deed is found at **Appendix A-4**.

## V. STATEMENT OF THE CASE

KRRC is a non-profit organization formally established in 1926. For the preceding 90 plus years, the Club has safely operated a shooting range and supporting facilities at the same location in Kitsap County (CP 184) with a grandfathered right to continue control of its operations. (CP 78-79). It is undisputed that the operations of KRRC were established and maintained long before any permitting requirements of KCC 10.25.

In 2011, Kitsap County began the process of formulating the adoption of a countywide firearms discharge regulation applicable to current and future shooting ranges in Kitsap County. (CP 604). On September 24, 2014, the Kitsap County Commissioners adopted KCC 10.25, an ordinance entitled *Firearms Discharge*. KCC 10.25 requires each shooting range to apply for a permit. The Club did not apply, contending its operations were “grandfathered” and KCC 10.25 was preempted by RCW 9.41.290. (CP 75, 194).

The County filed a Complaint for Declaratory Judgment against the Club to enforce the requirements of KCC 10.25. The trial court granted the County’s Motion for Summary Judgment. The Court of Appeals upheld the ruling and denied KRRC’s request for reconsideration.

## **VI. WHY REVIEW SHOULD BE ACCEPTED**

If the Decision by the Court of Appeals is allowed to stand, it will render the State of Washington's preemption of firearms regulations, RCW 9.41.290, meaningless where local firearms regulations regulate shooting clubs and/or organizations and restrict their operations.

The Decision regarding the preemption of local firearms regulations in accordance with RCW 9.41.290 and .300(2) exposes the absence of clear controlling authority on the fundamental requirements required for the adoption of local firearms regulations in the state of Washington. The Decision transforms a legal contention by a local government into "evidence" that its ordinance qualifies for an exception under the preemption statute that allows for local firearms regulations under one limited circumstance. RCW 9.41.300(2) ("[W]here there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized"). The Court of Appeals erroneously begins with this proposition as a matter of presumption and then shifts the burden of proof to support the argument that regulation of a fundamental right is not constitutionally proper onto the challenging party. It also failed to uphold the presumption of facts in favor of the non-moving party on summary judgment – here, the Club.

**A. The Court of Appeals Decision is in Conflict with Decisions of the Supreme Court, is of Substantial Public Interest and Raises Issues of Federal and State Constitutional Protections.**

*i. The Court of Appeals Improperly Affirmed the Exercise of Local Police Powers Contrary to the State of Washington's Preemption of the Entire Field of Firearms Regulation.*

The Decision reasons that KCC 10.25 is authorized under state law (Opinion, page 11) as an exercise of local police power. The Decision is contrary to the Supreme Court holding in *Lenci v. City of Seattle*, 63 Wash.2d 664, 669, 388 P.2d 926 (1964) that “[P]lenary police power in regulatory matters accorded municipalities by Const. Art. 1 § 11, ceases when the state enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction.” and *Watson v. City of Seattle*, 189 Wash.2d 149, 175, 401 P.3d 1 (2017) “The statute [RCW 9.41.290] thus acts as a limitation on municipal *police* powers, . . . .”

The Decision improperly treats a narrowly defined statutory exception to the State of Washington's preemption of firearms regulation, RCW 9.41.300(2), as creating concurrent jurisdiction with local governments. Because RCW Chapter 9.41 occupies the entire field of firearm regulation in the State of Washington, the Ordinance must yield to state law under ART. XI, Section 11 of the State Constitution. *Bellingham v. Schampera*, 57 Wash.2d 106, 109, 356 P.2d 292, 92 A.L.R.2d 192

(1960); *Diamond Parking, Inc. v. Seattle*, 78 Wash.2d 778, 781, 479 P.2d 47 (1971). The authority to license *is po facto* includes the authority to deny operation of the gun range. See, e.g., *New Castle Investments v. City of LaCenter*, 98 Wn.App. 224, 228, 989 P.2d 569 (1999) (defining “land use control ordinance” as one that “exercise[d] a restraining or directing influence over land use). Thus, the law is a direct regulation of firearms and indirectly regulates the discharge of firearms as it imposes stringent requirements on shooting facilities to obtain a license to operate.

*ii. The Decision that RCW 9.41.290 did not Define “Firearms Regulation” and does not Pertain to or Regulate Shooting Facilities, is contrary to Express Legislative Language and Prior Holdings of the Washington Supreme Court.*

The Decision improperly created a statutory exception to the unambiguous language of RCW 9.41.290 to exclude from the State preemption of firearms regulation “shooting associations.” or “gun ranges.” The Court of Appeals’ adoption of an exception to the express language of RCW 9.41.290 is contrary to the Supreme Court holdings: “[W]here a statute provides for a stated exception, no other exceptions will be assumed by implication.” (citations omitted) *Jepson v. Department of Labor and Industries*, 89 Wash.2d 394, 404, 573, P.2d 10 (1977); and *Watson v. City of Seattle*, 189 Wash.2d 149, 401 P.3d 1 (2017), “RCW 9.41.290 preempts only municipal gun “regulation,” not taxation.”

*Watson*, 155, 159; “RCW 9.41.290, by contrast, contemplates limiting the exercise of municipal regulatory control over firearms.” *Watson* at 174.

The Court of Appeals holding that “There is no indication that the legislature intended to preempt local ordinances requiring shooting facilities to obtain operating permits.” (Opinion, page 10) represents statutory construction contrary to the holding of the Washington Supreme Court in *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003), and *Rivard v. State*, 168 Wn.2d 775, 784, 231 P.3d 186 (2010).

*iii. The Decision of the Court of Appeals Relying Upon Generalized Ordinance Goals and a Presumption of Facts to Support KCC 10.25 as an Exception to Preemption per RCW 9.41.300(2) Without Specific Relevant Findings is Contrary to Prior Decisions of the Washington Supreme Court.*

KCC 10.25 includes a generalized statement of intent concerning public safety, etc. No evidence was produced at the trial court to establish that KCC 10.25 was adopted because of a documented actual likelihood that humans, domestic animals, or property will be jeopardized.

The Decision improperly held that facts are presumed to support a local ordinance and that prior litigation provides support for the adoption of KCC 10.25 as an exception to RCW 9.41.300(2). The County, not the Petitioner, has the burden of proving that the exception applies. “[T]he Proponent (\*of a statutory exception) has the burden of proving every fact essential to the invocation of the exception.” *Hall, supra, at 847*. “In *Isla*

*Verde*, our Supreme Court held that, for purposes of RCW 82.02.020, [State Preemption of the field of taxes upon retail sales of tangible personal property], the burden of establishing a statutory exception is on the party claiming the exception.” *Home Builders Ass’n of Kitsap County v. City of Bainbridge*, 137 Wn. App. 338, 437, 153 P.3d. 231 (2007). The Washington Supreme Court decision, *Hall v. Corporation of Catholic Archbishop of Seattle*, 80 Wn.2d 797, 847, 498 P.2d 844 (1972), held: “It is a well settled rule of statutory construction that exceptions to legislative enactments must be strictly construed. (citations omitted). The foregoing rule has as its corollary the requirement that the proponent has the burden of proving every fact essential to the invocation of the exception.” *Id.*

Washington courts presume the validity of ordinances. *Palermo at Lakeland, LLC v. City of Bonney Lake*, 147 Wn. App. 64, 193 P.3d 168 (2008). But, when a law or ordinance involves the regulation of a fundamental constitutional right, as here, the presumption *is reversed*. See *Weden v. San Juan County*, 135 Wn. 2d 678, 689, 958 P.2d 273 (1998) (If a “statute involves a fundamental right or a suspect class. . . the presumption is reversed”). The regulation and use of firearms involve fundamental Constitutional Rights. The County has the burden of proof that it has met the statutory requirements of RCW 9.41.300(2) to overcome state preemption and that it is authorized to regulate firearms



and the discharge of firearms consistent with state law and constitutional protections. *Weden, supra; Hall, supra*, 80 Wn.2d at 801-02.

Given the required narrow reading of the grounds allowing for the statutory preemption exemption for local regulation of shooting activities, and the fact that KCC 10.25 fails to allege or establish that one, or all, of the Kitsap shooting range operations present a “reasonable likelihood that humans, domestic animals, or property will be jeopardized,” this Court should accept review and declare as a matter of law that KCC 10.25 is void. The County has made no showing that KCC 10.25 is necessary to prevent violence. The County determined in 2009 that KRRRC’s operations at its current location “is in the public interest for firearm safety.” Res. 087-2009. CP 194.

*iv. KCC 10.25 is subject to a Strict Scrutiny Analysis Under the Laws of the State of Washington. The County failed to provide evidence of a compelling State Interest or least Restrictive Means to achieve the State Interest and KCC 10.25 is Therefore Unconstitutional.*

The right to keep and bear arms is a fundamental right under the United States Constitution and the Washington Constitution. “Article I, section 24 plainly guarantees an individual right to bear arms. “[T]here is quite explicit language about the ‘right of the individual citizen to bear arms in defense of himself.’” *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995, 1003 (2010).

The rights to bear arms, as with other fundamental rights in the State of Washington, may be broader than its Federal counterpart. “We have noted the individual right to bear arms under article I, section 24 may be broader than the Second Amendment but had not yet determined our provision's distant reaches when the Court decided *Heller*. *City of Seattle v. Montana*, 129 Wn.2d 583, 594, 919 P.2d 1218 (1996) (plurality); *State v. Rupe*, 101 Wn.2d 664, 706, 683 P.2d 571 (1984). Supreme Court application of the United States Constitution establishes a floor below which state courts cannot go to protect individual rights. But states of course can raise the ceiling to afford greater protections under their own constitutions. Washington retains the “ ‘sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.’ ” *State v. Sieyes*, *supra*.

The State of Washington has consistently applied strict scrutiny to government actions involving a fundamental right. “First, strict scrutiny is applied when a classification affects a fundamental right or a suspect class.” *Harris v. Charles*, 171 Wn.2d 455, 462, 256 P.3d 328, 333 (2011). “Strict scrutiny also applies to laws burdening fundamental rights or liberties.” *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242 P.3d 876, 883 (2010). *See also Merseal v. State Dep't of Licensing*, 99 Wn. App. 414,

420, 994 P.2d 262, 266 (2000) and *State v. Haq*, 166 Wn. App. 221, 253–54, 268 P.3d 997, 1013 (2012), *as corrected* (Feb. 24, 2012)

Because KCC 10.25 involves a fundamental right, the burden is on the County to provide compelling evidence of a state interest and to show the least restrictive means to achieve the state interest. “If no compelling state interest exists, the restrictions are unconstitutional.” (citations omitted) *First United Methodist Church v. Hearing Examiner*, 129 Wn.2d 238, 246, 916 P.2d 374 (1996).

A finding also cannot be supported by speculation or conjecture. *State v. Hutton*, 7 Wash.App. 726, 728, 502 P.2d 1037 (1972). Other than conjecture, the County failed to introduce any evidence which would support or justify the enactment of KCC 10.25. It is a legal impossibility for KCC 10.25 to withstand intermediate scrutiny, let alone strict scrutiny. Moreover, KCC 10.25 provides discretionary authority to the Director of the Department of Community Development to approve or deny permits. (KCC 10.25.090(9)). Because the standards for enforcement of KCC 10.25 are generalized and depend upon subjective decisions of the Department of Community Development, KCC 10.25 cannot withstand the requirements of a strict scrutiny analysis and therefore KCC 10.25 is unconstitutional. *First United Methodist Church, supra*.

v. *The Court of Appeals Decision Failed to Recognize the Limited Allowable Scope of KCC 10.25 as Against the Club's Vested Rights.*

In *City of Seattle v. Evans* 184 Wn.2d 856, 869, 366 P.3d 990 (2015), this Court held that “the right to bear arms protects instruments that are designed as weapons traditionally or commonly used by law abiding citizens for the lawful purpose of self-defense.” Moreover, application of KCC 10.25 to the Club results in deprivation of a vested non-conforming use in violation of the holding in *Rhod-A-Zela v. Snohomish County*, 136 Wn.2d 1, 959 P.2d 1024 (1998). I

The Club has been informed by the County, and a trial court in another action involving the parties has ruled that it is a protected non-conforming use. KCC 10.25 cannot legally be applied to the Club to require it to obtain a permit to operate.

**B. The Correct Application of the Deed/Equitable Servitude Presents a Question of Substantial Public Interest Guidance Which Would Promote Informed Judicial Decision-Making.**

The State of Washington rules and regulations for the operation of a shooting range, including but not limited to the terms of the Bargain and Sale Deed, render the local regulation unenforceable against the Club because its use has been confirmed by the County as a legal non-confirming use subject to specific safety criteria. Ordinance No. 515-2015

(KCC 10.25.090) attached hereto as **Appendix A-5**, after establishing an operating permit requirement for ranges (“shooting facilities”) states: “This operating permit is not intended to alter the legal nonconforming use status of existing ranges, which are governed by Title 17 Kitsap County Code (KCC) and the common law...” By its express terms, Title 17 does not regulate those uses and/or structures that were lawful before the effective date of newly adopted regulations. KCC 17.570.010. Thus, the County cannot legally require the Club to obtain a permit for its use determined to be legally nonconforming both by the County and by the Court in KRRC 1 or, in the alternative, must construe the Deed as a permit approval.

The Bargain and Sale Deed specifically memorialized by covenant that the KRRC has the right to operate its shooting range facilities on the approximately eight (8) acres property consistent with its historical use the subject property. (Paragraph 3 of the Bargain and Sale Deed.) The i an affirmative recognition of the legal status of the Gun Range operation predating adoption of the challenged local law. The Club relied upon the representations of Kitsap County, forewent other options, and accepted the Deed, which includes a warranty of quiet use and enjoyment. *Mastro, supra, at 162.*

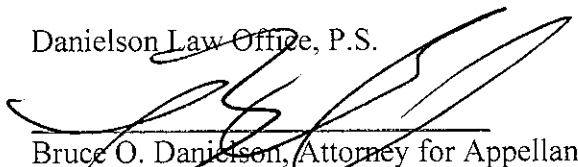
KRRC opened its facility to the public at reasonable rates to provide needed training and promote gun safety. In return for the express and implied warranties in the Deed and the equitable servitude, the Club agreed to maintain the property with the right of public access and to operate the facility in accordance with the rules and regulation of the Washington State Firearms Range Account administered by the State Recreation and Conservation Office. The County cannot now legally take away the Club's right to use and enjoy the property on the terms and conditions agreed to by the parties in the Deed and Resolution.

## **VII. CONCLUSION**

The Club respectfully requests that this Court grant its Petition for Review.

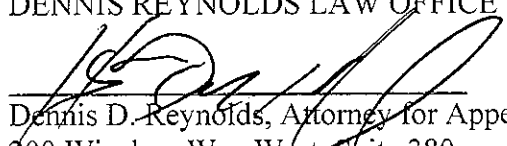
DATED: this 2nd day of February 2018

Danielson Law Office, P.S.



Bruce O. Danielson, Attorney for Appellant  
1001 4<sup>th</sup> Avenue, Suite 3200  
Seattle, WA 9081543  
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**CERTIFICATE OF SERVICE**

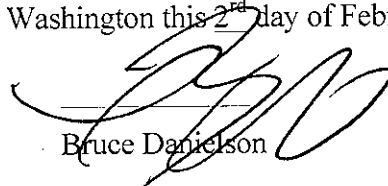
I, the undersigned, hereby certify that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein. I further certify that on this 2<sup>rd</sup> day of February, 2018, I caused the document to which this certificate is attached to be delivered for filing as follows:

Clerk of Court  
Court of Appeals, Division II  
950 Broadway, Suite 300, MS TB-06  
Tacoma, WA 98402-4454  
***Via Court's JIS-Link Electronic Filing System***

The original will be maintained in the files of the Dennis D. Reynolds Law Office. I further certify that on this date, I caused a copy of the document to which this certificate is attached to be delivered to the following by e-mail:

Christine M. Palmer, WSBA #42560  
Laura F. Zippel, WSBA #47978  
Deputy Prosecuting Attorneys  
Office of Kitsap County Prosecutor  
614 Division Street, SM-35A  
Port Orchard, WA 98366-4614  
cmpalmer@co.kitsap.wa.us; lzippel@co.kitsap.wa.us

Declared under penalty of perjury under the laws of the State of Washington at Bainbridge Island, Washington this 2<sup>rd</sup> day of February, 2018.

  
Bruce Danielson

KRRC – Petition for Review

**Appendix A-1**



FILE

KITSAP COUNTY RESOLUTION NO. 087 2009

**A Resolution to Assign and Convey Certain Real Estate**

WHEREAS, Kitsap County (County) has been negotiating with the State Department of Natural Resources (DNR) regarding a land exchange in the Central Kitsap area ("the Newberry Hill Land Exchange"); and

WHEREAS, the County has determined that the land transfer with DNR is in the public interest as it will provide contiguous county ownership that will enable more efficient and effective local management and enhanced park, recreational and open space facilities for County residents; and

WHEREAS, a portion of the property DNR intends to transfer to Kitsap County will include the assignment of a lease for a portion of property currently leased to the Kitsap Rifle and Revolver Club (KRCC) for use as a shooting range; and

WHEREAS, the State of Washington has recognized a need to preserve and rehabilitate shooting ranges that provide important benefits to the public for access and recreation; use by law enforcement and military personnel; and use for firearm training, competition, and hunter safety education classes; and

WHEREAS, KRRC currently meets the stated needs for Kitsap County by its operation of the shooting range as a private nonprofit facility; and

WHEREAS, the County finds that it is in the public interest for firearm safety as well as in the best economic interest of the County to provide that KRRC continue to operate with full control over the property on which it is located; and

WHEREAS, the County has had the KRRC shooting range property appraised, and the appraisal of the property as it is currently used and will be continued in use is less than \$2,500; and

WHEREAS, pursuant to RCW 36.34.020, Kitsap County may dispose of the KRRC property without a public bidding process.

NOW THEREFORE, be it resolved:

The Board of County Commissioners hereby authorizes the assignment and sale of the portion of the property acquired under the DNR/County land exchange, which is more specifically described in Exhibit A, attached hereto and incorporated herein, to the Kitsap Rifle and Revolver Club. Consideration by the KRRC shall include, but not be limited to, covenants to maintain and operate the property as a shooting range with public access, retention of certain easements by the County, other environmental considerations, and assumption of liability for the property and the use of the property.

BE IT FURTHER RESOLVED:

The conveyance to KRRC shall take place as soon as is practicable after the property is conveyed to Kitsap County by DNR. The Chair of the Board of the County Commissioners is hereby authorized to sign the necessary documents required to convey the property to the KRRC.

DATED this 11th day of May, 2009.

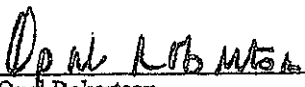



BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON

  
\_\_\_\_\_  
CHARLOTTE GARRIDO, Chair

  
\_\_\_\_\_  
STEVE BAUER, Commissioner

ATTEST:

  
\_\_\_\_\_  
Opal Robertson  
Clerk of the Board

  
\_\_\_\_\_  
JOSH BROWN, Commissioner

KRRC – Petition for Review

**Appendix A-2**

November 21, 2017

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

KITSAP COUNTY, a political subdivision of  
the State of Washington.

Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, a  
not-for-profit corporation registered in the  
State of Washington.

Appellant.

No. 49130-3-II

PART PUBLISHED OPINION

IN THE MATTER OF THE UNPERMITTED  
SHOOTING FACILITY located at the 72-acre  
parcel at 4900 Seabeck Highway NW,  
Bremerton, Washington, viz Kitsap County  
Tax Parcel ID No. 362501-4-002-1006.

MAXA, J. – Chapter 10.25 of the Kitsap County Code (KCC) requires all shooting facilities to obtain an operating permit. The Kitsap Rifle and Revolver Club (Club), which operates a shooting facility in Bremerton, refused to apply for a permit. The County filed a complaint against the Club, seeking a declaratory judgment that KCC 10.25<sup>1</sup> was a valid ordinance that was enforceable against the Club. The trial court granted summary judgment in

<sup>1</sup> KCC 10.25 involves two articles but the Club challenges only Article 2. Therefore, unless otherwise specified, “KCC 10.25” refers to Article 2 of that ordinance.

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favor of the County, ruling that KCC 10.25 was enforceable against the Club and that the Club was required to obtain an operating permit for its shooting facility.

The Club appeals the trial court's summary judgment order, arguing that KCC 10.25 is invalid or unenforceable on various grounds. In the published portion of this opinion, we hold that (1) RCW 9.41.290, which provides that the State has preempted the entire field of "firearms regulation," does not preempt KCC 10.25 because the challenged portion of that ordinance is not a firearms regulation; (2) KCC 10.25 falls within the exception to preemption in RCW 9.41.300(2)(a), which allows ordinances restricting the discharge of firearms where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and (3) KCC 10.25 does not infringe on the right to bear arms under the Second Amendment to the United States Constitution or article I, section 24 of the Washington Constitution. In the unpublished portion of the opinion, we reject the Club's additional challenges to KCC 10.25.

Accordingly, we affirm the trial court's summary judgment order and its ruling that KCC 10.25 is enforceable against the Club.

## FACTS

### *Previous Litigation*

The Club has operated a shooting facility in the same general location in Bremerton since 1926. In 2011, the County filed suit against the Club, alleging that the Club had impermissibly expanded its nonconforming use as a shooting range, engaged in unlawful development activities, and conducted activities that constituted a noise and public safety nuisance. *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 265, 337 P.3d 328 (2014), *review denied*, 183 Wn.2d 1008 (2015).

After a bench trial, the trial court ruled that (1) the Club's activities constituted an unlawful expansion of the existing nonconforming use, (2) the Club's use of the property was illegal because it had failed to obtain required permits for the development work, and (3) the Club's activities constituted a nuisance because of noise, safety, and unpermitted land use problems. *Id.* at 266. The trial court issued a permanent injunction prohibiting use of the Club's property as a shooting range until the County issued a conditional use permit. *Id.*

The Club appealed to this court. *Id.* at 266. This court affirmed the trial court on almost all issues, including the finding of a public nuisance based on excessive noise and unsafe conditions. *Id.* at 303. However, the court reversed the trial court's ruling that the remedy for the Club's conduct was termination of its nonconforming use status and remanded for the trial court to determine the appropriate remedy. *Id.* at 262, 303-04. This court issued its opinion on October 28, 2014. *Id.* at 252.

#### *Adoption of KCC 10.25*

In September 2014, the County adopted Ordinance No. 515-2014. The ordinance added a new chapter to the KCC entitled "Firearms Discharge," which was codified as chapter 10.25 KCC. The effective date was December 22, 2014.

KCC 10.25 required all existing and proposed shooting facilities to obtain an operating permit and provided that the failure to obtain a permit would result in closure of the facility. KCC 10.25.090(1)-(2). In addition, the ordinance required shooting facilities to meet detailed standards. KCC 10.25.090(4).

KCC 10.25.090(2) required all existing shooting facilities to apply for an operating permit within 90 days after the December 22 effective date. The Club did not submit an

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application for an operating permit by the deadline and informed the County that it did not intend to apply for a permit. The Club asserted the position that KCC 10.25 was a zoning/land use ordinance that did not apply to its existing shooting facility, which had vested nonconforming use rights.

*Current Litigation*

On March 31, 2015, the County filed a complaint for declaratory and injunctive relief against the Club to enforce KCC 10.25. The County sought a declaration that the Club was in violation of KCC 10.25 and an injunction to prevent the Club from operating its shooting facility until it received an operating permit. The trial court issued a preliminary injunction enjoining the Club from operating its shooting facility until it submitted a complete application for an operating permit in compliance with KCC 10.25.

On March 16, 2016, the Club filed, under protest, an application for an operating permit under KCC 10.25. The next day, the Club filed a motion to dissolve the preliminary injunction. The trial court granted the motion and dissolved the preliminary injunction on April 7.

The trial court subsequently granted summary judgment in favor of the County. The court ruled that RCW 9.41.290 did not preempt KCC 10.25 because the ordinance was not a firearms regulation and because the preemption exclusion of RCW 9.41.300(2)(a) applied. In a footnote, the court summarily rejected the Club's argument that KCC 10.25 violated the right to bear arms. The court concluded that KCC 10.25 was enforceable against the Club's shooting facility and that operation of the facility without an operating permit was a violation of KCC 10.25.

The Club appeals the trial court's summary judgment order.

## ANALYSIS

### A. STANDARD OF REVIEW

We review a trial court's order granting summary judgment de novo. *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014). We view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

The interpretation and application of a statute is a matter of law that we also review de novo. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453-54, 266 P.3d 881 (2011).

### B. PROVISIONS OF KCC 10.25

Chapter 10.25 KCC, which is titled "Firearms Discharge," contains two articles. Article 1 is titled "No-Shooting Areas." The provisions in that article prohibit the discharge of firearms in certain areas, but they also provide an exception for the discharge of firearms on a shooting range complying with Article 2. KCC 10.25.020, 030. Article 2 is titled "Shooting Ranges," and requires that all existing and proposed shooting facilities obtain an operating permit and provides that the failure to obtain a permit would result in closure of the facility. KCC 10.25.090(1)-(2). The Club challenges only the provisions of Article 2, which encompasses KCC 10.25.060 – 10.25.140.

KCC 10.25.060 provides that the purpose of KCC 10.25 "is to provide for and promote the safety of the general public by establishing a permitting procedure and rules for the



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development and operation of shooting range facilities” and that the adopted standards “are intended to protect and safeguard participants, spectators, neighboring properties and the public.”

KCC 10.25.090(1) states that shooting facilities must be authorized and operated in accordance with a County-issued operating permit. Under the permitting scheme, no existing or proposed shooting facility is allowed to operate without an operating permit issued pursuant to KCC 10.25. KCC 10.25.090(1). The owner or operator of a shooting facility must apply for and obtain an operating permit. KCC 10.25.090(2). Failure to obtain a permit will result in closure of the facility until a permit is issued. KCC 10.25.090(1).

To receive an operating permit, shooting facilities are required to submit an application that includes (1) the facility’s safety plan, (2) the shooting facility layout and design, and (3) an expert evaluation of the safety plan and facility design performed either by a National Rifle Association (NRA) shooting range advisor or an engineer with expertise in the design of shooting ranges. KCC 10.25.090(5). In reviewing a permit application, the County is guided by the NRA’s “Range Source Book.” KCC 10.25.090(3).

KCC 10.25.090(4) outlines the specific standards for shooting facilities, which are meant to ensure containment of projectiles and to minimize noise disturbances. The standards include general requirements for containment structures. They also include requirements that shooting facilities have a safety officer present when open to the public, but at times when the facility is not open to the public, a staff member trained in the range’s safety plan is sufficient. KCC 10.25.090(4)(d). Finally, KCC 10.25 provides time and frequency limits for certain uses and activities. KCC 10.25.090(4)(f), (g), (l).

C. APPLICABILITY OF STATE LAW PREEMPTION

The Club argues that KCC 10.25 is unenforceable because it is preempted under RCW 9.41.290, which provides for state law preemption of firearms regulations. We hold that (1) RCW 9.41.290 does not apply here because KCC 10.25 is not a firearms regulation, and (2) even if RCW 9.41.290 did apply, KCC 10.25 falls within the exception to preemption in RCW 9.41.300(2)(a) for “where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized.”<sup>2</sup>

1. Legal Principles

a. Police Power Authority of Local Governments

Under article XI, section 11 of the Washington Constitution, a local government has authority to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Similarly, RCW 36.32.120(7) authorizes counties to “[m]ake and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.” Local governments have “considerable latitude in exercising police powers,” and a regulation is reasonable “if it promotes public safety, health or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued.” *City of Seattle v. Montana*, 129 Wn.2d 583,591-92, 919 P.2d 1218 (1996).

However, a local ordinance will be deemed to conflict with state law when the legislature has stated its intent to preempt the field on a particular subject. *See State v. Kirwin*, 165 Wn.2d

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<sup>2</sup> The County argues that even if KCC 10.25 qualifies as firearms regulation, there can be no preemption here because RCW 9.41.290 applies only to local ordinances that, unlike KCC 10.25, impose criminal penalties. Because we affirm on other grounds, we do not address this argument.

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818, 826, 203 P.3d 1044 (2009). In that situation, local ordinances on the subject are preempted and rendered invalid. *Id.* We must interpret an express preemption clause narrowly but fairly. *See Nw. Wholesale, Inc. v. Pac Organic Fruit, LLC*, 184 Wn.2d 176, 184, 357 P.3d 650 (2015) (addressing federal preemption of state law), *cert. denied*, 136 S. Ct. 1453 (2016).

b. Preemption of Firearms Regulations

RCW 9.41.290 expressly provides that state law preempts all local firearms regulations, including those involving the discharge of firearms:

*The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.*

(Emphasis added).

As noted in RCW 9.41.290, certain exceptions to preemption are provided in RCW 9.41.300. One exception applies to the discharge of firearms:

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions *where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized.* Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others.

RCW 9.41.300(2)(a) (emphasis added).

c. Statutory Interpretation

Whether a statute has preemptive effect is a question of law that we review de novo. *Lawson v. City of Pasco*, 168 Wn.2d 675, 678, 230 P.3d 1038 (2010). The purpose of statutory interpretation is to determine and give effect to the legislature's intent. *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014). To determine legislative intent, we first look to the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, and the statutory scheme as a whole. *Id.*

A statute is unambiguous if the plain language of the statute is susceptible to only one reasonable interpretation. *Id.* When a statute is unambiguous, we apply the statute's plain meaning as an expression of legislative intent without considering other sources of such intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014).

2. Preemption Under RCW 9.41.290

The Club argues that RCW 9.41.290, which provides that the state has preempted "the entire field of firearms regulation," preempts KCC 10.25. We disagree and hold that KCC 10.25 is not a "firearms regulation."

The legislature did not define "firearms regulation." RCW 9.41.290 states only that the preemption includes "the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms." The Club argues that preemption under RCW 9.41.290 applies because KCC 10.25 regulates the discharge of firearms.

Several factors support the conclusion that RCW 9.41.290 does not preempt KCC 10.25. First, RCW 9.41.290 does not make any reference to the regulation of shooting facilities. In

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addition, nothing in chapter 9.41 RCW pertains to shooting facilities. The multiple provisions in that chapter primarily focus on the possession, delivery, sale, and use of firearms. There is no indication that the legislature intended to preempt local ordinances requiring shooting facilities to obtain operating permits.

Second, unlike Article 1 of KCC 10.25, Article 2 does not prohibit or expressly regulate the discharge of firearms.<sup>3</sup> Instead, the ordinance regulates “shooting facilities.” KCC 10.25.060 states that the purpose of KCC 10.25 is to “provide for and promote the safety of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities.” Enforcement of KCC 10.25 may have an indirect impact on the discharge of firearms in that an unlicensed shooting facility could not lawfully allow a person to discharge a firearm there. But KCC 10.25 imposes requirements only on owners and operators of shooting facilities, not on the individuals who discharge firearms at those facilities. And nothing in Article 2 of KCC 10.25 would affect a person’s ability to discharge a firearm anywhere else in the county.

As the Club argues, KCC 10.25 does indirectly involve the discharge of firearms. Shooting facilities provide a place where people can discharge firearms. KCC 10.25.070(21) defines “shooting facility” as a site having one or more shooting ranges, and KCC 10.25.070(22) defines “shooting range” as a place designated for the safe “discharge of firearms.” And the required standards for shooting facilities primarily involve measures designed to make the

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<sup>3</sup> Article 1 of KCC 10.25 clearly regulates the discharge of firearms; KCC 10.25.020 expressly prohibits the discharge of firearms in certain areas. But the Club does not challenge Article 1.

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discharge of firearms safe. KCC 10.25.090(4). But RCW 9.41.290 does not extend the scope of preemption to any local ordinance that indirectly affects the discharge of firearms.

Third, RCW 9.41.290 expressly acknowledges that local governments may enact laws and ordinances relating to firearms as long as they are “authorized by state law . . . and are consistent with this chapter.” As noted above, RCW 36.32.120(7) authorizes counties to “[m]ake and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.” Therefore, KCC 10.25’s requirement that a shooting facility obtain an operating permit is an exercise of the County’s police power that is authorized under state law. And KCC 10.25 is not inconsistent with chapter 9.41 RCW, which as discussed above does not address shooting facilities.

Fourth, although the Club claims that the scope of RCW 9.41.290 is broad, the Supreme Court cases addressing RCW 9.41.290 have limited the scope of preemption. In *Cherry v. Municipality of Metropolitan Seattle*, the court addressed a policy of the Municipality of Metropolitan Seattle (Metro) that prohibited employees from possessing concealed weapons while on duty or on Metro property. 116 Wn.2d 794, 795, 808 P.2d 746 (1991). The court concluded that RCW 9.41.290 did not preempt “the authority of a municipal employer to regulate or prohibit a municipal employee’s possession of firearms while on the job or in the workplace.” *Id.* at 803.

In *Pacific Northwest Shooting Park Association v. City of Sequim*, the court addressed a city’s conditions for issuing a temporary use permit to hold a gun show at the City’s convention center. 158 Wn.2d 342, 346-47, 144 P.3d 276 (2006) (*PNSPA*). The court concluded that RCW

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9.41.290 did not prohibit a municipal property owner from imposing conditions on the sale of firearms relating to a permit for private use of its property. *Id.* at 357.

In *Watson v. City of Seattle*, the court addressed a city ordinance that imposed a tax on firearms and ammunition sales. 189 Wn.2d 149, 155, 401 P.3d 1 (2017). The court held that RCW 9.41.290 did not apply to the taxation of firearm sales because taxation did not constitute a “regulation” of firearms. *Id.* at 172-73, 176.

Although these cases are not directly on point, *Watson* in particular suggests that RCW 9.41.290 is inapplicable here. If the taxation of firearms sales is not considered the regulation of firearms, then the licensing of shooting facilities also should not be viewed as a firearms regulation under RCW 9.41.290.

We hold that RCW 9.41.290 does not apply because KCC 10.25 is not a “firearms regulation.” Therefore, we hold that KCC 10.25 is not preempted and is enforceable against the Club.

3. Exception to Preemption Under RCW 9.41.300(2)(a)

The County argues that even if KCC 10.25 is a “firearms regulation” that is preempted under RCW 9.41.290, preemption does not apply here under the exception to preemption stated in RCW 9.41.300(2)(a). We agree.<sup>4</sup>

As stated in RCW 9.41.290, local governments are not preempted from enacting ordinances relating to firearms that are specifically authorized by RCW 9.41.300. RCW 9.41.300(2)(a) provides that counties may enact ordinances restricting the discharge of firearms

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<sup>4</sup> Although we can affirm based on our holding in the previous section, we address this issue to complete our analysis of the Club’s claim.

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“where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized.” This exception authorizes local governments to regulate the discharge of firearms “in areas where people, domestic animals, or property would be endangered.” *City of Seattle v. Ballsmider*, 71 Wn. App. 159, 163, 856 P.2d 1113 (1993).

a. Application of Exception

The County adopted KCC 10.25 because shooting ranges create a risk of danger to people and property. The preamble to Ordinance No. 515-2014, which adopted KCC 10.25, states that “the County has an interest . . . in minimizing potential safety hazards created by the operation of shooting ranges.” Clerk’s Papers (CP) at 15. The preamble also expressly acknowledges that “RCW 9.41.300(2) provides that a county may also, by ordinance, restrict the discharge of firearms in any portion of its jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized.” CP at 15. Finally, the preamble concludes with an express finding that “the requirement of an operating permit for the establishment and operation of all shooting ranges provides assurance of the safe conduct of recreational and educational shooting activities in Kitsap County.” CP at 15.

In addition, KCC 10.25.060 expressly states that the purpose of the ordinance is to protect humans and property:

The purpose of this Article is to provide for and promote the *safety of the general public* by establishing a permitting procedure and rules for the development and operation of shooting range facilities. The shooting range standards adopted herein are intended to *protect and safeguard* participants, spectators, *neighboring properties and the public*.

(Emphasis added.)



These legislative statements are sufficient to establish, as required under RCW 9.41.300(2)(a), that KCC 10.25 was enacted to address the reasonable likelihood that the operation of shooting ranges would jeopardize humans and property.

b. Sufficiency of Findings in KCC 10.25

The Club and amicus NRA argue that KCC 10.25 does not fall within the preemption exception in RCW 9.41.300(2)(a) because the County did not establish what is required in that statute. They claim that for RCW 9.41.300(2)(a) to apply, the County was required to make specific legislative findings showing that shooting ranges present a “reasonable likelihood that humans, domestic animals, or property will be jeopardized” when enacting KCC 10.25.

But the Club and the NRA provide no authority for the proposition that the County was required to enter specific findings in order to invoke the preemption exception in RCW 9.41.300(2)(a). The general rule is that an ordinance need not be supported by specific findings: “There is no constitutional rule which requires that [county commissioners] conduct a special investigation or make formal findings before they exercise their police power.” *Petstel Inc. v. County of King*, 77 Wn.2d 144, 151, 459 P.2d 937 (1969). Instead, “ ‘if a state of facts justifying the ordinance can reasonably be conceived to exist, such facts must be presumed to exist and the ordinance passed in conformity therewith.’ ” *State v. McCuiston*, 174 Wn.2d 369, 392, 275 P.3d 1092 (2012) (quoting *Lenci v. City of Seattle*, 63 Wn.2d 664, 668, 388 P.2d 926 (1964)).

Under this rule, it is conceivable that when KCC 10.25 was enacted, facts existed demonstrating that shooting ranges jeopardize humans and property. Therefore, we must presume that such facts existed and that the County enacted KCC 10.25 in conformity with those facts.

We also cannot ignore that evidence supporting the application of RCW 9.41.300(2)(a) was provided in *Kitsap Rifle*, the previous litigation between the County and the Club. On appeal, this court noted the findings the trial court in *Kitsap Rifle* entered regarding safety issues:

The trial court made unchallenged findings that (1) the Club's property was a "blue sky" range, with no overhead baffles to stop accidentally or negligently discharged bullets . . . ; (2) more likely than not, bullets have escaped and will escape the Club's shooting areas and *possibly will strike persons or property in the future*, based on the firearms used at the range, vulnerabilities of neighboring residential properties, allegations of bullet impacts in nearby residential developments, evidence of bullets lodged in trees above berms, and the opinions of testifying experts; and (3) the Club's range facilities, including safety protocols, were inadequate to prevent bullets from leaving the property.

*Kitsap Rifle*, 184 Wn. App. at 283 (internal citation omitted) (emphasis added). The trial court here referenced these findings in ruling that the RCW 9.41.300(2)(a) exception applied.

The Club argues on multiple grounds that we cannot rely on the findings in *Kitsap Rifle*. However, the trial court's findings in *Kitsap Rifle* certainly would have informed the County about the potential dangers to people and property caused by shooting ranges in general. And the well-established law discussed above allows us to presume that a local government considered available facts supporting an ordinance. *See McCuiston*, 174 Wn.2d at 392.

c. Scope of Exception

The Club argues that even if the preemption exception in RCW 9.41.300(2)(a) applies to KCC 10.25, that exception allowed the County to regulate only the discharge of firearms and not other aspects of the shooting facility operations. We disagree.

RCW 9.41.290 preempts all local ordinances relating to the discharge of firearms. To the extent that KCC 10.25 regulates the discharge of firearms, RCW 9.41.300(2)(b) provides an exception for those regulations. However, to the extent that regulations regarding the operation

of shooting ranges do not affect the discharge of firearms, preemption under RCW 9.41.290 does not apply at all to those regulations and no exception is needed to avoid preemption. Therefore, the scope of the exemption in RCW 9.41.300(2)(a) does not affect the scope of those regulations.<sup>5</sup>

d. Summary

The operation of the Club's shooting facility presented "a reasonable likelihood that human, domestic animals, or property will be jeopardized" as required under RCW 9.41.300(2)(a). Therefore, to the extent that RCW 9.41.290 otherwise would preempt KCC 10.25, we hold that the preemption exception stated in RCW 9.41.300(2)(a) applies.

D. CONSTITUTIONAL RIGHT TO BEAR ARMS

The Club<sup>6</sup> argues that KCC 10.25 impermissibly infringes upon the right to bear arms as guaranteed by both the Second Amendment to the United States Constitution and article I, section 24 of the Washington Constitution. We disagree.

1. Legal Principles

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The

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<sup>5</sup> The Club also argues that many of the regulations in KCC 10.25 are preempted under RCW 9.41.290 because they "exceed[ ] the requirements of state law." But the Club does not explain why the various provisions of KCC 10.25 exceed the requirements of state law. In fact, there is no state law regulating the operation of shooting ranges.

<sup>6</sup> The NRA's amicus brief does not address the right to bear arms issue.

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Second Amendment right to bear arms applies to Washington through the due process clause of the Fourteenth Amendment. *State v. Sieyes*, 168 Wn.2d 276, 296, 225 P.3d 995 (2010).

Article I, section 24 of the Washington Constitution states, “The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.” The wording of article I, section 24 “indicates the right is secured not because arms are valued per se, but only to ensure self-defense or defense of state. This suggests the constitutional right should be viewed in such a light.” *Montana*, 129 Wn.2d at 594.

Although the right to bear arms is protected by both the United States and Washington Constitutions, the rights are not identical and our Supreme Court has determined that the state right should be interpreted separately from its federal counterpart. *State v. Jorgenson*, 179 Wn.2d 145, 155, 312 P.3d 960 (2013).

We review constitutional issues de novo. *Id.* at 150. We presume a legislative enactment is constitutional, and if possible, we will construe an enactment so as to render it constitutional. *Id.* The party challenging an enactment has the burden of showing that it is unconstitutional. *City of Seattle v. Evans*, 184 Wn.2d 856, 861-62, 366 P.3d 906 (2015), *cert. denied*, 137 S. Ct. 474 (2016).

2. Second Amendment Analysis<sup>7</sup>

The United States Supreme Court in *District of Columbia v. Heller* announced that the Second Amendment protected an individual's right to keep and bear arms. 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). The Court stated that a core purpose of the Second Amendment is self-defense, particularly the defense of the home. *Id.* at 630, 635. However, the Court also emphasized that the Second Amendment right is not unlimited. *Id.* at 595, 626.

Based on *Heller*, a majority of federal circuits, including the Ninth Circuit, have adopted a two-step inquiry for analyzing Second Amendment challenges. *Silvester v. Harris*, 843 F.3d 816, 820-21 (9th Cir. 2016). “[F]irst, the court asks whether the challenged law burdens conduct protected by the Second Amendment; and if so, the court must then apply the appropriate level of scrutiny.” *Id.* We adopt this approach.<sup>8</sup>

a. Implication of Constitutional Right

The threshold question under the Second Amendment analysis is whether KCC 10.25's licensing requirement for shooting facilities burdens the right to bear arms. In general, this question involves a historical analysis of the Second Amendment right – whether the challenged law falls outside the historical scope of the right. *Jackson v. City & County of San Francisco*,

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<sup>7</sup> Where feasible, we resolve constitutional questions first under the Washington Constitution before addressing the United States Constitution. *Jorgenson*, 179 Wn.2d at 152. However, the Club focuses primarily on the Second Amendment and relies heavily on a Second Amendment case. Therefore, we address the Second Amendment first.

<sup>8</sup> In *Jorgenson*, our Supreme Court did not address this two-part approach, and instead focused only on the appropriate level of scrutiny. 179 Wn.2d at 158-161. However, in that case the challenged statute prohibited firearms possession by a person charged with but not yet convicted of a serious offense. *Id.* at 148. Because that statute clearly implicated a Second Amendment right of firearm possession, the court did not need to address the first step.

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746 F.3d 953, 960 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2799 (2015). When state or local laws are challenged, the scope of the right to bear arms depends on how the right was understood when the Fourteenth Amendment was ratified. *McDonald v. City of Chicago*, 561 U.S. 742, 746-47, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

The Club does not undertake such a historical analysis regarding the regulation of shooting facilities. Instead, the Club relies on *Ezell v. City of Chicago*, in which the court held that a complete ban on all shooting ranges within the city of Chicago implicated the Second Amendment. 651 F.3d 684, 704-06 (7th Cir. 2011). The court stated, “The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it effective.” *Id.* at 704.

However, *Ezell* involved a complete ban on shooting ranges. *Id.* at 690. Therefore, the court did not address whether requiring shooting facilities to obtain an operating license would implicate the Second Amendment. And the court distinguished historical statutes that were mere regulatory measures and regulations limiting the time, place and manner of shooting firearms, suggesting that those statutes did not implicate the Second Amendment. *Id.* at 705-06.

The County presents no significant argument on this issue.<sup>9</sup> Instead, the County skips to the second step in the analysis and argues that KCC 10.25 survives the intermediate level of

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<sup>9</sup> The County does cite to an unpublished district court opinion in which the court disagreed with *Ezell* and stated that it was “not convinced that the Second Amendment extends to the right to operate a gun range.” *Sundowner Ass’n v. Wood County Comm’n*, 2014 WL 3962495, at \*9-10 (S.D. W. Va. Aug. 13, 2014).

scrutiny (discussed below). Because the County does not fully address this issue, we assume without deciding that KCC 10.25 implicates the Second Amendment.

b. Appropriate Level of Scrutiny

The second question involves determining the appropriate level of scrutiny for KCC 10.25. The court in *Heller* made clear that rational basis review was not acceptable for a Second Amendment analysis. 554 U.S. at 628 n.27.

The Ninth Circuit has outlined a sliding scale approach:

In ascertaining the proper level of scrutiny, the court must consider: (1) how close the challenged law comes to the core of the Second Amendment right, and (2) the severity of the law's burden on that right. The result is a sliding scale. A law that imposes such a severe restriction on the fundamental right of self defense of the home that it amounts to a destruction of the Second Amendment right is unconstitutional under any level of scrutiny. That is what was involved in *Heller*. A law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny. Otherwise, intermediate scrutiny is appropriate.

*Silvester*, 843 F.3d at 821 (citations omitted). Therefore, "if a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right," the court may apply intermediate scrutiny. *Jackson*, 746 F.3d at 961; see also *Jorgenson*, 179 Wn.2d at 160 (stating that the appropriate level of scrutiny depends, "at least in part, on the type of law challenged and the type of limit imposed on the right to bear arms").

As noted above, a core right under the Second Amendment is to use firearms for self-defense, and particularly the defense of the home. *Jackson*, 746 F.3d at 961 (citing *Heller*, 545 U.S. at 630, 635). Regarding the extent of the burden, laws that regulate only the manner that a person may use a firearm are less burdensome than laws prohibiting firearm possession completely. *Jackson*, 746 F.3d at 961. "Similarly, firearm regulations which leave open

alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not.” *Id.*

Under this approach, the Ninth Circuit and a majority of the other circuits have consistently applied “intermediate scrutiny” to firearms regulations. *Silvester*, 843 F.3d at 822-23 (discussing decisions in other circuits). Our Supreme Court in *Jorgenson* also applied intermediate scrutiny under the Second Amendment to a statute prohibiting persons charged with a serious offense from possessing a firearm while the case was pending. 179 Wn. 2d at 161-62. In a Second Amendment case, “[a] law survives intermediate scrutiny if it is substantially related to an important government purpose.” *Id.* at 162.

Here, KCC 10.25 does not place a substantial burden on Second Amendment rights. The ordinance does not prohibit the discharge of firearms, and only affects the manner in which any entity like the Club can operate a shooting range. In addition, KCC 10.25 leaves open opportunities for people to acquire and maintain proficiency with firearms – at the Club if it obtains an operating license, or at some other licensed shooting facility. Therefore, we apply intermediate scrutiny to KCC 10.25.

c. Intermediate Scrutiny Analysis

The County has an important government interest in public safety – ensuring that shooting facilities do not endanger people or property. The stated purpose of KCC 10.25 was to “promote the safety of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities.” KCC 10.25.060. In addition, the adopted shooting range standards were “intended to protect and safeguard participants, spectators, neighboring properties and the public, while promoting the continued availability of



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shooting ranges for firearm education, practice in the safe use of firearms, and recreational firearm sports.” KCC 10.25.060.

And KCC 10.25 substantially relates to this interest. The operating license requirement is designed to ensure that shooting facilities meet certain standards. *See* KCC 10.25.090(1). All the required standards in KCC 10.25.090(4) directly involve safety issues except subsection (h), which involves noise.

We hold that KCC 10.25 satisfies intermediate scrutiny. Accordingly, we hold that KCC 10.25 does not violate the Second Amendment.

### 3. Article I, Section 24 Analysis

Firearm rights under the article I, section 24 Washington Constitution “are subject to reasonable regulation pursuant to the State’s police power.” *Jorgenson*, 179 Wn.2d at 155. A firearm regulation is reasonable if it is “ ‘reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.’ ” *Id.* at 156 (quoting *Montana*, 129 Wn.2d at 594). Courts balance “ ‘the public benefit from the regulation against the degree to which it frustrates the purpose of the constitutional provision.’ ” *Jorgenson*, 179 Wn.2d at 156 (quoting *Montana*, 129 Wn.2d at 594). We first consider the regulation’s public benefit and then determine whether the regulation “unduly frustrates” the purpose of article I, section 24. *Jorgenson*, 179 Wn.2d at 157.

Here, the public benefit of KCC 10.25 is to promote public safety and to protect and safeguard people and property. KCC 10.25.060. KCC 10.25 does not unduly frustrate the right of any individual to bear arms in self-defense because the ordinance does not prohibit the discharge of firearms and only regulates the manner in which shooting facilities operate. In

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addition, KCC 10.25 allows people to acquire and maintain proficiency with firearms at licensed shooting facilities.

We hold that KCC 10.25 is a reasonable regulation that does not violate article I, section 24.

#### CONCLUSION

We affirm the trial court's summary judgment order and its ruling that KCC 10.25 is enforceable against the Club.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

In the unpublished portion of the opinion, we address the Club's arguments that (1) KCC 10.25 improperly interferes with the Club's right to operate the shooting facility as a valid nonconforming use, (2) KCC 10.25 is inconsistent with the restrictions in the deed the Club received from the County when the Club obtained ownership of the shooting facility property, and (3) KCC 10.25 is unconstitutionally vague. We reject these arguments.

#### SUMMARY JUDGMENT RULING

In its order granting summary judgment in favor of the County, the trial court ruled that the County's deed conveying the shooting facility property to the Club did not create a genuine issue of material fact. In a footnote, the court summarily rejected the Club's other arguments, including that KCC 10.25 was inconsistent with the Club's nonconforming use rights and was unconstitutionally vague.

ANALYSIS

A. INTERFERENCE WITH NONCONFORMING USE RIGHTS

The Club argues that KCC 10.25 is inapplicable to the Club's shooting facility because the ordinance interferes with the Club's legal nonconforming use status.<sup>10</sup> We disagree.

The concept of nonconforming use generally relates to zoning regulations, not other types of regulations.

A nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated.

*Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998). The right to continue a valid nonconforming use "refers *only* to the right not to have the use *immediately terminated* in the face of a zoning ordinance which prohibits the use." *Id.*

In *Rhod-A-Zalea*, the Supreme Court expressly rejected the argument that a nonconforming use is not subject to any regulations enacted after existence of the use, even health and safety regulations adopted pursuant to a local government's police power. *Id.* at 8-9.

The court quoted a zoning treatise for the basic rule:

Nonconforming uses generally are held to be subject to later police power regulations imposed by statute or local ordinances regulating the manner or operation of use. These regulatory restrictions often take the form of licensing or special permit requirements.

*Id.* at 9 (quoting 4 ARDEN H. RATHKOPF & DAREN A. RATHKOPF, THE LAW OF ZONING AND PLANNING § 51A.02[1] (1996)). After an analysis of cases in other jurisdictions, the court

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<sup>10</sup> The parties agree that the Club's shooting range constitutes a valid nonconforming use of the Club's property even if existing ordinances would prohibit a shooting facility in the current location. See *Kitsap Rifle*, 184 Wn. App. at 263.

concluded that “nonconforming uses, although protected from zoning ordinances which immediately terminate their use, are subject to later-enacted regulations enacted for the health, safety and welfare of the community.” *Rhod-A-Zalea*, 136 Wn.2d at 12.

Here, KCC 10.25 regulates the manner and operation of the Club’s shooting facility to “promote the safety of the general public” and to “protect and safeguard participants, spectators, neighboring properties and the public.” KCC 10.25.060. As a result, KCC 10.25 represents a police power regulation that under *Rhod-A-Zalea* applies to the Club’s nonconforming use.

The Club claims that that *Rhod-A-Zalea* does not apply because this case involves a fundamental constitutional right (presumably the right to bear arms), that the County was required to prove real or likely harm from the Club’s operation in order to enact these regulations, and that KCC 10.25 in actuality is a land use regulation, not a safety measure. But the Club provides no citation to authority or any particularly coherent argument supporting its argument.<sup>11</sup>

We hold that the Club’s nonconforming use status does not preclude the enforceability of KCC 10.25.<sup>12</sup>

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<sup>11</sup> The only case the Club cites, *Weden v. San Juan County*, 135 Wn.2d 678, 689, 958 P.2d 273 (1998), does not support its position.

<sup>12</sup> In a different section of its brief, the Club states that “The County’s attempt to require an operating permit for the firing range that has been in use for over 90 years is an impermissible denial of due process rights associated with grandfathered uses,” and cites a North Carolina case. Br. of Appellant at 17-18. But the Club does not explain the nature of the due process right or provide any further argument. Therefore, we decline to address this argument. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (holding that we need not consider arguments not supported by meaningful analysis).

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B. COVENANTS IN DEED OF SALE

The Club argues that KCC 10.25 is inapplicable to the Club's shooting facility because of covenants in its deed from the County. We disagree.

Before 2009, the Club leased the property on which its facility is located from the Washington Department of Natural Resources (DNR). In 2009, DNR transferred that property to the County, which in turn transferred the property to the Club. The preamble to the ordinance approving the transaction stated that "the County finds that it is in the public interest for firearm safety . . . to provide that [the Club] continue to operate with full control over the property on which it is located." CP at 194.

The County also executed a deed for the property in favor of the Club that subjected the Club to certain restrictive covenants. The deed stated that the Club "shall confine its active shooting range facilities on the property consistent with its historical use of approximately eight (8) acres of active shooting ranges with the balance of the property serving as safety and noise buffer zones." CP at 197. In addition, the deed required the Club to conform to the rules and regulations of the Firearms Range Account and conform to the Firearms and Archery Range Program, both established by the legislature. Finally, the Club agreed to "operate the shooting range at all times in a safe and prudent manner and conform its activities to accepted industry standards and practices." CP at 198.

The Club argues that the deed covenants created an "equitable servitude" running in favor of the Club that locked in the existing development conditions on the property. The Club apparently argues that the deed exempts the Club from imposing any regulations on the shooting facility's operations beyond what the deed covenants require.

However, the Club provides no authority for the proposition that becoming bound by restrictive covenants in a deed that governs its operation established a vested right to be subject to *only* those covenants and not any future regulations. And the Club does not even provide a plausible explanation for its theory. We reject the Club's equitable servitude argument.

C. VAGUENESS CHALLENGE

The Club argues that certain provisions of KCC 10.25 are unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment.<sup>13</sup> We disagree.

The Fourteenth Amendment "requires statutes to provide fair notice of the conduct they proscribe." *State v. Watson*, 160 Wn.2d 1, 6, 154 P.3d 909 (2007). A statute is void for vagueness if "(1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed; or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement." *Id.* (quoting *State v. Williams*, 144 Wn.2d 197, 203, 26 P.3d 890 (2001) (internal quotations omitted)).

We will find a statute unconstitutionally vague only in exceptional cases. *Watson*, 160 Wn.2d at 11. There is a presumption that a statute is constitutional, and a person challenging the statute must prove beyond a reasonable doubt that the statute is unconstitutionally vague. *Id.*

Here, the Club claims that certain provisions of KCC 10.25 give the County unbridled discretion, lack specific standards, and are ambiguous. Specifically, the Club argues that (1) KCC 10.25.090(4)(c), which provides that designs and safety standards shall be evaluated by an

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<sup>13</sup> In a section heading and first sentence of the section, the Club states that KCC 10.25 also violates article I, section 3 of the Washington Constitution. However, the Club does not mention this provision again and presents no argument that article I, section 3 provides a different standard than the Fourteenth Amendment. Therefore, we decline to address the applicability of article I, section 3. See *Cowiche Canyon*, 118 Wn.2d at 809.


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expert, does not set forth any evaluation criteria; (2) in KCC 10.25.090(4)(i), which requires a means for participants and spectators to readily contact emergency services, the term “readily contact” is undefined and ambiguous; (3) in KCC 10.25.090(4)(j), which requires the direction of fire to be not toward any structure housing people or domestic animals, is unreasonable because people and animals could position themselves in the direction of fire at any time; and (4) that the statement in KCC 10.25.090(1) that the licensing requirement is not intended to alter the nonconforming use statuses of existing ranges is ambiguous.

However, the Club does not explain why these provisions are so vague as to require invalidation of KCC 10.25. Given the Club’s high burden, we hold that the Club has not established that any provisions of KCC 10.25 are unconstitutionally vague.

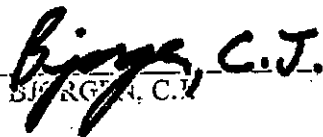
CONCLUSION

We affirm the trial court’s summary judgment order and its ruling that KCC 10.25 is enforceable against the Club.

  
MAXA, J.

We concur:

  
WORSWICK, J.

  
BERGER, C.J.

KRRC – Petition for Review

**Appendix A-3**



January 3, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

KITSAP COUNTY, a political subdivision of  
the State of Washington,

Respondent.

v.

KITSAP RIFLE AND REVOLVER CLUB, a  
not-for-profit corporation registered in the State  
of Washington.

Appellant.

No. 49130-3-11

ORDER DENYING MOTION  
FOR RECONSIDERATION

IN THE MATTER OF THE UNPERMITTED  
SHOOTING FACILITY located at the 72-acre  
parcel at 4900 Seabeck Highway NW,  
Bremerton, Washington, viz Kitsap County  
Tax Parcel ID No. 362501-4-002-1006.

Appellant moves for reconsideration of the court's November 21, 2017 opinion. Upon  
consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Bjorgen, Maxa

FOR THE COURT:

  
\_\_\_\_\_  
MAXA, J.

KRRC – Petition for Review

**Appendix A-4**

FILED FOR RECORD AT REQUEST OF:  
Kevin M. Howell  
Kitsap County Prosecuting Attorney's Office  
614 Division Street, MS-35A  
Port Orchard WA 98366

LAND TITLE 200906180292  
Deed Rec Fee: \$ 89.00  
06/18/2009 03:15 PM Page: 1 of 6  
Walter Washington, Kitsap Co Auditor

**BARGAIN AND SALE DEED  
WITH RESTRICTIVE COVENANTS**

*E-230260*

GRANTOR: Kitsap County

GRANTEE: Kitsap Rifle and Revolver Club, a Washington Non-Profit Corporation

LEGAL DESCRIPTION: SE/SW&SW/SE 36-25N-1W KITSAP COUNTY TREASURER EXCISE 06/18/2009

2009EX03102

Total : \$10.00

Clerk's Initial *JS*

ASSESSOR'S TAX PARCEL NO: 362501-4-002-1006

For and in consideration of \$10.00 and other good and valuable consideration, Kitsap County, as Grantor, bargains, sells and conveys all of it's right, title and interest in and to the real property described on Exhibit A hereto to the Kitsap Rifle and Revolver Club, a Washington Non-Profit Corporation, as Grantee.

This conveyance is made subject to the following covenants and conditions, the benefits of which shall inure to the benefit of the public and the burdens of which shall bind the Grantee and the heirs, successors and assigns of the Grantee in perpetuity.

1. Grantee for and on behalf of itself, its heirs, successors and assigns, and each subsequent owner of the property described in Exhibit A hereto, hereby releases and agrees to hold harmless, indemnify and defend Kitsap County, its elected officials, employees and agents from and against any liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of actions, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in anyway connected with (1) injury to or

the death of any person or the physical damage to any property, resulting from any act, activity, omission, condition or other matter related to or occurring on or about the property, regardless of cause, unless due solely to the gross negligence of any of the indemnified parties; (2) the violation or alleged violation of, or other failure or alleged failure to comply with, any state, federal, or local law, regulation or requirement, including, without limitation, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sec. 9601, et seq. and Model Toxics Control Act (MTCA), RCW 70.105 D, by any indemnified person or entity in anyway effecting, involving, or relating to the property; (3) the presence or release in, on, from, or about the property, at any time, past or present, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or anyway harmful or threatening to human health or the environment.

2. Grantee shall maintain commercial general liability insurance coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million dollars per occurrence. The general aggregate limit shall apply separately to this covenant and be no less than \$2 million. The grantee will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of Grantee's activities as a shooting range. Specialized forms specific to the industry of the Grantee will be deemed equivalent, provided coverage is no more restrictive that would be provided under a standard commercial general liability policy, including contractual liability coverage.

3. Grantee shall confine its active shooting range facilities on the property consistent with its historical use of approximately eight (8) acres of active shooting ranges with the balance of the property serving as safety and noise buffer zones; provided that Grantee may upgrade or improve the property and/or facilities within the historical approximately eight (8) acres in a manner consistent with "modernizing" the facilities consistent with management practices for a modern shooting range. "Modernizing" the facilities may include, but not be limited to: (a) construction of a permanent building or buildings for range office, shop, warehouse, storage, caretaker facilities, indoor shooting facilities, and/or classrooms; (b) enlargement of parking facilities; (c) sanitary bathroom facilities; (d) re-orientation of the direction of individual shooting bays or ranges; (e) increasing distances for the rifle shooting range, (f) water system improvements including wells, pump house, water distribution and water storage; (g) noise abatement and public safety additions. Also, Grantee may also apply to Kitsap County for expansion beyond the historical eight (8) acres, for "supporting" facilities for the shooting ranges or additional recreational or shooting facilities, provided that said expansion is consistent with public safety, and conforms with the terms and conditions contained in paragraphs 4, 5, 6, 7 and 8 of this Bargain and Sale Deed and the rules and regulations of Kitsap County for development of private land. It is the intent of the parties that the activities of Grantee shall conform to the rules and regulations of the Firearms Range Account, administered by the State Recreation and Conservation Office. This account

is established by the legislature upon the following finding: "Firearms are collected, used for hunting; recreational shooting, and self-defense, and firearm owners as well as bow users need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while safe locations to shoot have been lost to the pressures of urban growth." (Wash. Laws 1990 ch. 195 Section 1.)

4. Grantee's activities shall also conform to the Firearms and Archery Range (FARR) Program as found in Chapter 79A.25 RCW. The primary goals of this program are to assist with acquisition, development, and renovation of firearm and archery range facilities to provide for increased general public access to ranges. This includes access by a) law enforcement personnel; b) members of the general public with concealed pistol or hunting licenses; and c) those enrolled in firearm or hunter safety education classes. Access by the public to Grantee's property shall be offered at reasonable prices and on a nondiscriminatory basis.

5. Grantee agrees to operate the shooting range at all times in a safe and prudent manner and conform its activities to accepted industry standards and practices.

6. Mineral Reservations, held by the State of Washington, that run with the land.

7. Existing Habitat Conservation Plan (HCP), as detailed below:

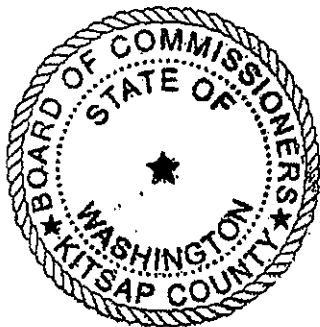
The site has been publicly identified for conservation provisions applying to, but not limited to: murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silverspot butterflies. The existing Habitat Conservation Plan is to remain in effect, regardless of parcel segregation or aggregation or potential sale or land transfer.

8. Riparian Management Zones, as detailed below:

Bodies of water, including but not limited to those streams, rivers and lakes and other lakes and wetlands have been identified and/or may be located on the Premises. All activities within the Riparian Management Zone, as defined in the existing and publicly-filed Habitat Conservation Plan (HCP) and including that portion of the inner riparian ecosystem between the aquatic zone and the direct influence zone (uplands) and including the outer wind buffer, must comply with and remain in compliance with the current HCP Procedures. Activities in a Riparian Management Zone, including but not limited to cutting or removing any tree and/or timber (including hardwood, merchantable and unmerchantable timber, downed timber, windthrow and snags), and road, trench and/or trail use, and/or maintenance, may be restricted or not permitted during specific times. All activities must provide for no overall net loss of naturally occurring wetland function. These protective measures are to run with the

land, regardless of parcel segregation or aggregation or potential sale or land transfer.

DATED this 13<sup>th</sup> day of May, 2009.



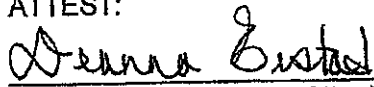
BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON

  
CHARLOTTE GARRIDO, Chair

  
STEVE BAUER, Commissioner


  
JOSH BROWN, Commissioner

ATTEST:

  
Opal Robertson, Clerk of the Board

**ACCEPTANCE OF BARGAIN AND SALE DEED  
WITH RESTRICTIVE COVENANTS**

By signature affixed below, the Kitsap Rifle and Revolver Club by and through its President/Executive Officer hereby and with full authority of the Board of Directors of said corporation, hereby accept the terms and conditions of the Deed with Restrictive Covenants above dated this 13<sup>th</sup> day of May, 2009.

  
BRADFORD SMITH, President - KRRC

  
MARCUS A. CARTER, Executive Officer - KRRC

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Brad Smith is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of the Kitsap Rifle and Revolver Club, to be the free and voluntary act of the KRRC for the uses and purposes mentioned in the instrument.

Dated this 13 day of May, 2009.

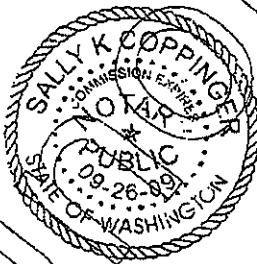


Sally K. Coppinger  
PRINT NAME: Sally K. Coppinger  
Notary Public in and for the State of Washington,  
residing at: Port Orchard 98366  
My Commission Expires: 9/26/09

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Marcus Carter is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Executive Director of the Kitsap Rifle and Revolver Club, to be the free and voluntary act of the KRRC for the uses and purposes mentioned in the instrument.

Dated this 13 day of May, 2009.



Sally K. Coppinger  
PRINT NAME: Sally K. Coppinger  
Notary Public in and for the State of Washington,  
residing at: Port Orchard 98366  
My Commission Expires: 9/26/09

**EXHIBIT A**

**Legal Description of Premises & Reservations**

Part of the Southwest quarter of the Southeast quarter and part of the Southeast quarter of the Southwest quarter of Section 36, Township 25 North, Range 1 West, W.M., lying northerly of the North lines of an easement for right of way for road granted to Kitsap County on December 7, 1929, under Application No. 1320, said road being as shown on the regulation plat thereof on file in the office of the Commissioner of Public Lands at Olympia, Washington, the above described lands having an area of 72.41 acres, more or less.

**RESERVATIONS/SUBJECT TO:**

Easement #50-CR1320: Road granted to Kitsap County on 12/07/1927 for an indefinite term.

Easement #50-047116: Road granted to E.F. Howerton on 05/09/1985 for an indefinite term.

Unofficial



KRRC – Petition for Review

**Appendix A-5**

**ORDINANCE NO. 515 -2014**

**AN ORDINANCE AMENDING KITSAP COUNTY CODE CONCERNING  
SHOOTING RANGES**

**WHEREAS**, Kitsap County has experienced a substantial increase in population density in areas proximate to its existing shooting ranges and the County has an interest in ensuring the compatibility of shooting ranges with their surroundings and in minimizing potential safety hazards created by the operation of shooting ranges; and

**WHEREAS**, shooting ranges benefit Kitsap County by providing its residents the opportunity to learn firearm safety, to practice shooting and to participate in amateur recreational firearm sports in a safe, controlled setting; and

**WHEREAS**, the Washington Constitution, Article XI, Section 11, confers upon county legislative authorities the police power to adopt regulations necessary to protect the health, safety and well-being of its residents; and

**WHEREAS**, RCW 36.32.120(7) provides that the county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law; and

**WHEREAS**, RCW 9.41.290 provides that the State of Washington fully occupies and preempts the entire field of firearms regulations within its boundaries and counties may only enact ordinances as expressly authorized by RCW 9.41.300; and RCW 9.41.300(2) provides that a county may also, by ordinance, restrict the discharge of firearms in any portion of its jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized so long as such ordinance shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

**WHEREAS**, the Kitsap County Board of Commissioners (Board) finds that the requirement of an operating permit for the establishment and operation of all shooting ranges provides assurance of the safe conduct of recreational and educational shooting activities in Kitsap County.

**BE IT ORDAINED:**

**Section 1.** Kitsap County Code, Chapter 10.24, last amended by Ordinance 500-2013 is hereby repealed in its entirety.

**NEW SECTION. Section 2.** A new Chapter 10.25 "Firearms Discharge" is added to the Kitsap County Code as follows:

**Article 1 – No-Shooting Areas**

- 10.25.010 – Definitions
- 10.25.020 – Discharge of Firearms – Areas where Prohibited
- 10.25.030 – Exceptions
- 10.25.040 – Designation of additional no-shooting areas through petition method.

**Article 2– Ranges**

- 10.25.060 – Purpose
- 10.25.070 – Definitions
- 10.25.090– Ranges – Operating Permit required.
- 10.25.110 – Shooting facility environmental controls.
- 10.25.120 –Review Committee
- 10.25.130 –Exceptions.
- 10.25.140–Application and construction of this Chapter.

**Article 1 – No-Shooting Areas**

**10.25.010 Definitions.**

The following definitions shall apply in the interpretation and enforcement of the ordinance codified in this article:

- (1) “Firearm” means any weapon or device by whatever name known which will or is designed to expel a projectile by the action of an explosion. The term “firearm” shall include but not be limited to rifles, pistols, shotguns and machine guns. The term “firearm” shall not include devices, including but not limited to “nail guns,” which are used as tools in the construction or building industries and which would otherwise fall within this definition.
- (2) “Ordinary high water mark” means that mark on all lakes, streams and tidal water which will be found by examining the bed and banks in ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a characteristic distinct from that of the abutting upland in respect to vegetation; provided, that in any area where the ordinary high water mark cannot be found the ordinary high water mark adjoining salt water shall be the line of mean higher high tide.
- (3) “Range” means a place set aside and designated for the discharge of firearms for individuals wishing to practice, improve upon or compete as to their shooting skills.
- (4) “Shoreline” means the border between a body of water and land measured by the ordinary high water mark.

**10.25.020 Discharge of firearms – Areas where prohibited.**

(1) The discharge of firearms is prohibited within five hundred yards of any shoreline in the unincorporated areas of Kitsap County.

(2) The discharge of firearms in the unincorporated areas of Kitsap County is further prohibited in the following instances:

(a) In any area designated as a “no shooting” area pursuant to Section 10.25.040 of this chapter; specifically:

(i) Section 23, Township 25, Range 1 West, Willamette Meridian, Kitsap County, Washington, except for the following area: The southwest quarter except that portion lying northeast of the Seabeck Highway, of Section 23, Township 25, Range 1 West, Willamette Meridian;

(ii) That area bounded on the west by Bethel-Burley Road, on the north by Burley-Olalla Road, on the east by Bandix Road, and on the south by the Kitsap County/Pierce County line;

(iii) That area bounded on the west by a line that begins at the southwest corner of tax parcel number 252301-4-012-1009, thence in a straight line northeasterly to the northeast corner of tax parcel number 252301-1-019-1008, thence north along the east boundary of tax parcel number 252301-1-018-1009 to its intersection with the south boundary of tax parcel number 252301-4-013-1009, thence west along said south boundary to the southwest corner of said tax parcel, thence north along the western boundary of said tax parcel to the intersection of Southwest Lake Flora Road, thence easterly along the southerly right-of-way of said road to its intersection with J. M. Dickenson Road Southwest, thence southwesterly along the westerly right-of-way of said road to its intersection with the eastern boundary of tax parcel number 252301-4-018-1003, thence north along said boundary to the northeast corner of said parcel, thence west along the northern boundary of said parcel to the Alpine Lake No-Shooting Area.

(b) On any parcel of land less than five acres in size;

(c) Towards any building occupied by people or domestic animals or used for the storage of flammable or combustible materials where the point of discharge is within five hundred yards of such building;

(d) Later than ½ hour after sunset or earlier than ½ hour before sunrise unless otherwise authorized under state hunting regulations.

(e) Within five hundred yards of the following lakes located, in whole or in part, in the unincorporated areas of Kitsap County: Long Lake, Kitsap Lake, Wildcat Lake, Panther Lake, Mission Lake, Tiger Lake, William Symington Lake, Tahuya Lake, Island Lake, Horseshoe Lake, Carney Lake, Wye Lake, Buck Lake, Fairview Lake and Bear Lake.

(f) Nothing in this section shall be construed or interpreted as abridging the right of the individual guaranteed by Article I, Section 24 of the state Constitution to bear arms in defense of self or others.

#### **10.25.030 Exceptions.**

The provisions of Section 10.25.020 shall not apply to the discharge of firearms:

(1) By law enforcement officers, including Washington State Department of Fish and Wildlife officers, or security personnel in the course of their official duties;

(2) On a shooting range, provided that any such range shall comply with the criteria for ranges adopted by the Kitsap County board of commissioners pursuant to Article 2 of this chapter;

(3) In the course of farm slaughter activities.

#### **10.25.040 Designation of additional no-shooting areas through petition method.**

(1) The establishment or disestablishment of a "no shooting" area in addition to those described in Section 10.25.020 may be requested by petition by the registered voters residing in such proposed additional areas. Such petition may include a request that the discharge of certain types of firearms be nevertheless allowed during certain times and under certain conditions. The superintendent of a school district may also request by petition that school property within that district which is located in the unincorporated area of Kitsap County and on which a building having an occupancy classification of "E" under the Uniform Building Code is situated, together with the area within five hundred yards of the school property's perimeter, be designated as a "no shooting" area. Any such petition shall be presented to the Kitsap County board of commissioners and shall substantially comply in content with the following criteria:

(a) The proposed area shall contain a minimum of fifty dwelling units or, in the alternative, a minimum area of one square mile;

(b) The proposed area shall have readily identifiable boundaries, which shall be shown on a map attached to the petition;

(c) A petition requesting that the discharge of certain types of firearms be nevertheless

allowed during certain times and under certain conditions shall set forth with specificity the types of firearms, times and conditions being proposed;

(d) The petition for the proposed area shall bear the signatures of at least fifty-one percent of the proposed area's registered voters; provided, however, that a petition for a "no shooting" area involving school property need be signed only by the superintendent of the school district in which the school property is located.

(e) Ranges permitted under Article 2 of this chapter shall not be declared a no-shooting area by petition method.

(2) A petition for a "no shooting" area shall be in substantially the following form:

PETITION TO CREATE A "NO SHOOTING" AREA

To: The Kitsap County Board of Commissioners

We, the undersigned citizens of Kitsap County, State of Washington, being legally registered voters within the respective precincts set opposite our names, do hereby respectfully request that the area generally known as \_\_\_\_\_ be established as a "No Shooting" area pursuant to Kitsap County Code Section 10.25.020.

We further request that the discharge of certain types of firearms, commonly known as \_\_\_\_\_, be nevertheless allowed during certain times of the year, namely, \_\_\_\_\_, under the following conditions:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

The proposed area's boundaries are shown on the attached map and are generally described as follows:

*[Here insert proposed area boundary description]*

Each of us says:

(1) I am a legally registered voter of the State of Washington in the precinct written after my name below.

(2) The portion of such precinct within which I reside is included within the proposed "No Shooting" area.

(3) My residence address is correctly stated below.

(4) I have personally signed this petition.

Petition Name and Signature	Precinct Name	Residence Address Number and Street	City or PO Box No.	Zip Code

Failure of a petition to comply with any of the above format shall not automatically invalidate such petition but shall be a matter for consideration by the Kitsap County board of commissioners as to whether the intent and standards of this section have been met.

(3) Upon the receipt of such a petition, the board of commissioners shall forward the petition to the Kitsap County auditor for verification of the signature requirements of this section. Upon the return of area verification from the auditor, the board shall set the matter for consideration at the next regularly scheduled public hearing or as soon thereafter as it may appropriately be heard.

(4) At any time after one year from the effective date of the establishment of a "no shooting" area pursuant to this section, the residents of such area may seek abrogation of such by the same procedure provided in this section for the establishment of a "no shooting" area, provided however, that in the event of such abrogation, Section 10.25.020 of this chapter shall remain in full force and effect as to that area.

## Article 2-- Shooting Ranges

### 10.25.060 Purpose.

The purpose of this Article is to provide for and promote the safety of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities. The shooting range standards adopted herein are intended to protect and

safeguard participants, spectators, neighboring properties and the public, while promoting the continued availability of shooting ranges for firearm education, practice in the safe use of firearms, and recreational firearm sports.

#### **10.25.070 Definitions.**

The following definitions shall apply in the interpretation and enforcement of the ordinance codified in this article:

- (1) "Backstop" means a device constructed to stop or redirect bullets fired on a range, usually directly behind the target line.
- (2) "Baffles" means barriers to contain bullets and/or to reduce, redirect or suppress sound waves. Baffles are placed either overhead, alongside or at ground level to restrict or interrupt errant or off-the-target shots.
- (3) "Ballistic trauma" means a form of physical trauma sustained from the discharge of arms or munitions. Commonly it is the penetration of the body by a bullet, marked by a small entrance wound and a larger exit wound. The wound is usually accompanied by damage to blood vessels, bones, and other tissues.
- (4) "Berm" means an embankment used for restricting bullets to a given area, or as a protective or dividing wall between shooting areas.
- (5) "Buffer" means a non-clearing native vegetation area which is intended to protect the functions and values of critical areas.
- (6) "Cowboy action shooting" means a type of match utilizing one or a combination of pistol(s), rifle, and/or shotgun in a variety of "old west themed" courses of fire for time and accuracy.
- (7) "Department" means the Kitsap County Department of Community Development.
- (8) "Firearm" means any weapon or device by whatever name known which will or is designed to expel a projectile by the action of an explosion. The term "firearm" shall include but not be limited to rifles, pistols, shotguns and machine guns. The term "firearm" shall not include devices, including but not limited to "nail guns," which are used as tools in the construction or building industries and which would otherwise fall within this definition.
- (9) "Firing Line" means a line parallel to the targets from which firearms are discharged.
- (10) "Firing point" means a location from which one individual fires at an associated target down range.
- (11) "Five stand shooting" means a shotgun shooting sport where there are five stations or stands on the firing line and multiple strategically placed target throwers that throw targets in front of the firing line.



(12) "Integrated Lead Management Program Plan" means a written plan that details the specific design and operational elements that a shooting range employs to control and contain lead bullets and bullet fragments; prevents the migration of lead to surface and ground waters; removes accumulated lead bullets and bullet fragments from the shooting range for recycling; and, documents and reports the plans implementation work.

(13) "Life Safety Violation" means an incident that causes substantial bodily harm to an individual or domestic animal, e.g., a bullet wound resulting in a 911 notification; or damage to a structure that results in a call to 911, Sheriff's Office, or the Department for investigation.

(14) "Physical containment" means the use of physical barriers that are sufficient to contain the projectile from the highest power firearm used on a shooting range. Physical barriers include baffles, sidewalls, backstops and berms of adequate design, quantity and location to ensure that no errant projectiles can escape the shooting range,

(15) "Practical shooting" means a sport which challenges an individual's ability to shoot rapidly and accurately with a full-power handgun, rifle, or shotgun. To do this, shooters take on obstacle-laden shooting courses called *stages*, some requiring many shots to complete, and others just a few. While scoring systems vary between practical shooting organizations, each measures the speed with which the stage is completed, with penalties for inaccurate shooting.

(16) "Range Officer (RO)" or "Range Safety Officer (RSO)" or "safety officer" means a person or persons appointed by the operators of a shooting facility to oversee the safe discharge of firearms in accordance with any conditions of permit approval and any other additional safety rules and procedures adopted by the operators of the shooting facility.

(17) "Routine maintenance" means simple, small-scale activities (e.g., repairing berms using less than 150 cubic yards of soil; repairing structures such that a building permit is not required under county code, etc.) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a structure of existing building, firing line, target line, parking lots, etc. Routine maintenance activities are associated with maintaining a facility in its original condition; expansion and construction of new firing positions on a firing line, new ranges, etc. are not routine maintenance.

(18) "Rules and Regulations" means standards used in the operation of a Facility. Rules and regulations are set up to govern the Facility operations and are normally part of the facility's safety plan.

(19) "Safety fan" means all areas in or around a range where projectiles, including errant projectiles, may impact or ricochet. The length of the safety fan extends to the maximum range of the cartridge and firearm used on the firing range unless adequate physical containment is provided. When physical containment is adequate, the safety fan is limited to the area within the containment.

(20) "Safety Plan" means the written procedures and or policies of a shooting facility specifically

defining the safety requirements utilized at that facility.

(21) "Shooting facility" or "facility" means an entity with a site having one or more shooting ranges, but does not include residential property.

(22) "Shooting range" or "range" means a place set aside and designated for the safe discharge of firearms for individuals wishing to practice, improve upon or compete as to their shooting skills. There may be one or more ranges located at a shooting facility.

(23) "Skeet shooting" means a shotgun shooting sport where firer is on the firing line and fires at targets launched from two houses in a somewhat sideways paths that intersect in front of the shooter.

(24) "Sporting Clays" means a form of Clay Pigeon Shooting which consists of multiple shooting stations laid out over natural terrain such that target presentations simulate the unpredictability of live quarry shooting.

(25) "Target Line" means the line where targets are placed.

(26) "Trap shooting" means a shotgun shooting sport where a firer on the firing line shoots at targets launched from a single launching point and generally away from the shooter.

(27) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to swamps, marshes, estuaries, bogs, and ponds less than twenty acres, including their submerged aquatic beds and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, storm water facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

#### **10.25.090 Ranges – Operating Permit required.**

(1) Shooting facilities shall be authorized and operated in accordance with an operating permit issued by the department. The operating permit shall govern the facilities and scope of operations of each shooting facility, and shall be issued, denied or conditioned based upon the standards set forth in this Article. No proposed or existing shooting facility may operate without an operating permit issued pursuant to this chapter, except as provided in section (2) herein. This operating permit is not intended to alter the legal nonconforming use status and rights of existing ranges, which are governed by Title 17 Kitsap County Code (KCC) and the common law, nor shall this operating permit authorize expansion of range uses which otherwise require approval pursuant to a Conditional Use Permit or other land use permits per Title 17 KCC. Failure to obtain a range operational permit will result in closure of the range until such time a permit is obtained. Ranges

that operate without a permit are subject to code compliance enforcement, including but not limited to injunctive relief.

(2) Each owner or operator of a shooting facility shall apply for and obtain an operating permit. The owner or operator of a proposed new shooting facility shall apply for the facility operating permit at the time of application for any necessary building or land use permits. The owner or operator of an established shooting facility in active use on the effective date of this ordinance shall apply for the initial facility operating permit not later than 90 days after the effective date of this ordinance. A shooting facility operating permit is valid for five (5) years from the date of issuance or renewal. The owner or operator of each facility shall apply for a permit renewal at least thirty (30) days prior to the date of current permit expiration.

(3) In reviewing a new application for a shooting facility operating permit, or renewal of an existing permit, the department shall be guided by the current edition of the "NRA Range Source Book" published by the National Rifle Association. Reference to the NRA Range Source Book may not be used as the basis for any claim of civil liability against the NRA or against Kitsap County or its officers, directors, employees, agents or representatives based upon deviation from, citation to, or reliance upon the NRA Range Source Book.

(4) Shooting facilities shall meet the following standards:

(a) Each shooting range within a shooting facility shall be designed, constructed, operated and maintained to contain bullets, shot or other discharged projectiles within the facility property. A shooting facility shall use the NRA Range Source Book, or other engineered specifications that meet or exceed the standards established by the Source Book, as a minimum to develop and implement institutional and facility controls for the safe operation, improvement and construction of shooting ranges. Facilities should engineer and construct facilities to reduce sound impacts on neighboring communities to the maximum extent feasible.

(i) Rifle and pistol ranges that allow modern smokeless powder cartridges or center-fired cartridges shall provide adequate physical containment of projectiles in addition to any institutional controls. Adequate physical containment requires the use of the appropriate combination of overhead baffles, impact berms and sidewalls or side berms.

(ii) Overhead baffles shall be constructed of material of sufficient design to stop and contain any projectile fired from the most powerful cartridge authorized for use on that specific range, shall be placed at intervals that are sufficient to eliminate the possibility of a projectile to be fired over the top of any preceding or successive baffle, and shall extend downrange far enough to prohibit a projectile being fired over the top of the impact berm.

(iii) Impact berms shall be constructed of material of sufficient height and thickness to stop and contain any projectile fired from the most powerful cartridge authorized for use on that specific range at any elevation that is not contained by the last overhead baffle. The

surface of the impact berm should be free of large rocks and debris to reduce ricochet.

(iv) Sidewalls or side berms shall be constructed of material of sufficient height and thickness that will stop and contain any projectile fired from the most powerful cartridge authorized for use on that specific range at any elevation that is not contained by an overhead baffle or impact berm.

(b) Each shooting range shall have a Safety Plan as described herein. Each shooting range shall be used only for the shooting activities identified in the Safety Plan.

(c) Designs and safety procedures shall be evaluated by an NRA Range Technical Team Advisor (RTTA) or by a professional engineer with experience in shooting facilities or other qualified professional consultant with experience and expertise in the evaluation and design of shooting ranges. Qualified professional consultants must demonstrate their education, experience and expertise by identifying their certifications from nationally recognized shooting organizations that provide such certifications, the number and location of shooting facilities they have designed or evaluated and contact information for those facilities. Their home facility will not count towards this qualification.

(d) A shooting facility shall have at least one qualified safety officer present when open to the public. When the facility is closed to the public, a facility member who has passed the minimum training requirements of the range shall be present.

(e) Shooting facilities shall meet all applicable local fire codes when storing explosives.

(f) A shooting range may not be used for training of units of any branch of the United States military, National Guard or Reserve Forces, or Homeland Security, unless the facility's application identifies all proposed activities, types and calibers of firearms to be used, and the facility is currently certified by the regional command as meeting the service's range safety manuals and standards. This does not restrict individual members of the military, National Guard or Reserve Forces, or Homeland Security to use a shooting facility for improving their individual skills with privately owned firearms.

(g) A facility may allow the use of exploding targets (e.g. Tannerite, etc.) as provided in this subsection. Use of exploding targets is limited to one day per calendar month during a designated four-hour period between the hours of 9 a.m. to 5 p.m. The facility must designate the day and time of use in its application. If used, exploding targets must meet parameters defined and identified in the Safety Plan, including that exploding targets shall only be used within the parameters defined by the manufacturer, and shall not exceed one-half pound of mixture. A facility allowing use of exploding targets shall demonstrate how it mitigates the noise impacts on surrounding neighbors. Mitigation may be an approved bunkering system that surrounds the target on three sides and forces the sound back towards the shooter and upward.

(h) If a facility utilizes cannon(s) for audio effect purposes, a noise variance per Ch. 10.28

KCC shall be required.

(i) All shooting facilities shall provide a means for participants and spectators to readily contact emergency services such as fire or medical aid.

(j) Shooting facilities within 500 yards of a shoreline, wetland or wetland buffer must orient the firing away from these areas or demonstrate how bullets are contained so that they do not enter these areas.

(k) Firing lines, targets and target lines must be located so that the direction of fire is not toward any structure housing people or domestic animals located within 500 yards of the point of discharge.

(l) Shooting facilities conducting cowboy action shooting, practical shooting, and similar sports shooting matches must meet the following requirements:

- (i) A shooting facility is limited to two (2) competition events per calendar month; and
- (ii) All such competition events or practices shall take place on a range constructed in compliance with section (4)(a); and
- (iii) For any competition event or practice in which shooting takes place where overhead baffling is not present, an on-duty range control officer must be present at the practice site alongside the shooter; and
- (iv) For practice in which shooting takes place where overhead baffling is not present, the facility must limit the hours of practice to daylight hours between nine (9) a.m. to five (5) p.m.; and
- (v) Practice must be restricted to one range at any given time.

(5) Application contents. The application for an initial shooting facility operating permit shall include the following documents:

(a) A Safety Plan, which shall include:

(i). Firearm handling rules, general range rules, specific range rules and administrative rules and regulations established by the owner/operator to include any firearms and or caliber restrictions on specific shooting areas.

(ii) Emergency Plan, to include provision for timely notification to the Kitsap County Sheriff's Office and to the department of any type of ballistic trauma with initial notification within a 96 hour time period. The accidental or unintended release of a bullet from a shooting area shall be documented by the facility and available for inspection by the department as requested.

(iii) Brief description of the facility training plan for Range Safety Officers and others.

(iv) Ranges conducting cowboy action shooting, practical shooting, and similar sports shooting matches shall follow the guidelines established by the sporting association that

governs such matches and include it in the Safety Plan. The facility will identify the association governing the match and attach the safety guidelines to the permit application. If no such guidelines exist, then as a minimum, each shooter will have a range control officer within arm's length to ensure control of the direction of the firearm's muzzle. The range control officer can also perform as the timer of these activities.

(b) Shooting facility layout and design which shall include:

(i) Dimensional drawings of physical layout to include orientation of each shooting area, location and description of terrain and any natural vegetation, and locations of critical areas, buildings, structures, fences, gates, roadways, trails, foot paths, major lighting, signage, and parking areas.

(ii) Locations of firing lines or firing points, target lines and impact areas to include any backstops, berms, containment structures and any baffles or side containment structures.

(iii) For practical shooting ranges without overhead baffles, a safety fan diagram based on the most powerful cartridge proposed to be shot on the range.

(c) An evaluation of the facility design and Safety Plan.

(i) The evaluation must be performed by a NRA Range Technical Team Advisor (RTTA) or a Professional Engineer with expertise in the design of shooting ranges that reports any safety issues or proposed uses which are inconsistent with the NRA Range Source Book for facility designs and institutional controls or qualified consultant that meets the credentials previously stated. The evaluation must be in written form and signed by the evaluator.

(ii) The department may, at County expense, arrange for an additional or independent inspection and evaluation of the shooting facility, including the facility's uses and institutional controls described in an application for an operating permit. In cases where there is dispute between the evaluation provided by the facility and the evaluation performed at the option of the county, the dispute shall be decided by the Hearing Examiner pursuant to KCC Title 21.

(d) For exploding targets used on a facility, plans for mitigation of noise impacts on neighbors.

(6) Each owner or operator of a shooting facility must apply to the department for an amendment to the operating permit when additional firing lines, firing lanes, or shooting ranges are proposed or the design of any facility range is altered beyond the scope of the original permit approval. Such proposed changes shall not be implemented prior to department approval.

(a) Routine maintenance of existing berms, backstops, structures and facilities shall not be construed as a change requiring an amendment to an operating permit.

(b) Changes to shotgun range configuration or Safety Plan procedure shall not be construed as a change requiring an amendment to an operating permit if the discharged shot is wholly contained on the shooting facility property.

(c) Changes to rifle or pistol range configuration or Safety Plan procedure shall not be construed as a change requiring an amendment to an operating permit if the direction of fire and safety structures are not altered and the safety procedures are not reduced.

(7) An application for renewal of an operating permit shall include a current copy of the facility Safety Plan. Permit renewal does not require the submittal of layout and design documents or a written evaluation by an RTTA or Professional Engineer if the shooting facility range design has not been altered from previously approved submittals. However, the application must include a written statement by the owner of the facility declaring that no such changes have been made.

(8) During the operating permit review or renewal process, the department shall inspect the facility to determine that the ranges are consistent with the application descriptions and to assess any deficiencies or corrective actions necessary to meet the intent of this Article. The department shall inform the applicant of any deficiencies or corrective actions to be taken and allow a reasonable time for the owner/operator to take corrective action. The department may re-inspect the facility to verify corrective action.

(9) Application for a new or renewed operating permit shall be processed, reviewed and be appealable under the procedures for a Type I Director's Decision pursuant to KCC Title 21. Permit renewals shall be issued without additional restrictions provided there have been no substantial changes to range design or operation. Permit renewals may not be unreasonably withheld. Shooting facilities shall be allowed to continue operations while a review of a permit renewal is performed.

(10) Upon receiving evidence of noncompliance with the operating permit or receiving evidence of a reasonable likelihood that humans, domestic animals, or property have been or will be jeopardized, the department will contact the shooting facility within 24 hours and will give the facility a written notice of the complaint. The owner/operator shall make the facility available for inspection not later than 48 hours after receiving a request for an inspection.

(a) If the department concludes there is a life safety violation of this Article or the terms of the operating permit, the department may suspend or modify the permit to close the range or modify range operations and shall provide the owner/operator a written notice that shall set forth each claimed violation with a specific reference to the applicable Article provision and/or permit condition. The owner or operator shall have thirty (30) days to respond in writing and to take any necessary corrective measures. The department shall be provided access to the shooting facility to verify compliance after providing notice and scheduling an appointment. An operational range permit that has been suspended requires the shooting facility to cease any firing activities.

(b) A department decision to suspend, modify, or revoke an operating permit may be appealed

to the Hearing Examiner pursuant to Title 21 KCC.

(11) Nothing in this section or any other provision of this Article shall be construed as authorizing an application or a permit for a shooting facility to be located in whole or in part in an area designated as an area where the discharge of firearms is prohibited under Ch. 10.25 KCC Article 1. Shooting ranges in such areas are expressly prohibited. Nothing in this Article shall be construed as permitting the discharge of firearms the ownership or possession of which is otherwise prohibited by law. Nothing in this Article shall be construed as permitting the use or possession of a firearm by an individual who is otherwise prohibited by law from owning or possessing that firearm.

#### **10.25.110 Shooting facility environmental controls.**

Each shooting facility operator shall develop and submit an Integrated Lead Management Program Plan to reclaim lead deposited by shooting activities. This plan will be reviewed by the Kitsap Public Health District.

#### **10.25.120 Review committee.**

The Kitsap County Board of Commissioners may direct the Director of Community Development to establish a review committee to evaluate proposed changes to the shooting facility requirements governed by this Article. The committee will consist of the Director of the Department of Community Development or the Director's designee (chair), Kitsap County Sheriff or the Sheriff's designee, a representative of each currently permitted shooting facility in unincorporated Kitsap County and an equal number of citizens-at-large appointed by the Kitsap County Board of Commissioners. The citizens-at-large shall go through the appropriate application process. An appointed citizen-at-large may not be a member of or affiliated with any established shooting facility in unincorporated Kitsap County.

#### **10.25.130 Exceptions.**

(1) Shooting facilities and ranges that solely conduct trap, skeet, sporting clay or five stand shooting operations are exempt from this ordinance if they meet the following conditions:

- (a) Shells fired are not greater than #7 ½ shot; and
- (b) The facility has sufficient land to contain all shot fired.

#### **10.25.140 Application and construction of this Chapter.**

A facility may not generate noise at a level that creates a public nuisance. Notwithstanding any other provision in this chapter, upon obtaining a ruling from a court of record that a shooting facility has been found to create a public nuisance, the department may require additional noise,



environmental or safety controls as a condition of continuing a shooting facility operating permit. No provision of this chapter shall act to nullify or render void the terms of any existing or future injunctive order issued by a court of record pertaining to operations or activities at a shooting range or shooting facility. No provision of this chapter shall be construed to allow or authorize the discharge of firearms otherwise prohibited by state or federal law.

**Section 3. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid or unconstitutional, the remainder of the ordinance or its application to other persons or circumstances shall not be affected.

**Section 4. Recitals.** The recitals herein shall be findings of fact and are incorporated herein by reference.

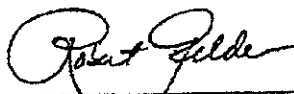
**Section 5. Effective Date.** This Ordinance shall take effect on the earlier of (a) the date of approval by the Washington Department of Ecology pursuant to WAC 173-60-110; or (b) ninety (90) days after submittal to the Department of Ecology pursuant to RCW 70.107.060. The department shall notify existing shooting ranges subject to this ordinance of the effective date.

ADOPTED this 22nd day of September, 2014.

**BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON**



CHARLOTTE GARRIDO, Chair



ROBERT GELDER, Commissioner



LINDA STREISSGUTH, Commissioner

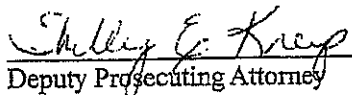


ATTEST:



Dana Daniels, Clerk of the Board

APPROVED AS TO FORM:



Deputy Prosecuting Attorney

**DANIELSON LAW OFFICE PS**

**February 02, 2018 - 4:03 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49130-3  
**Appellate Court Case Title:** Kitsap County, Respondent v. Kitsap Rifle and Revolver Club, Appellant  
**Superior Court Case Number:** 15-2-00626-8

**The following documents have been uploaded:**

- 491303\_Petition\_for\_Review\_20180202160211D2101887\_9058.pdf  
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- dpatterson@corrchronin.com
- lzippel@co.kitsap.wa.us
- sfogg@corrchronin.com

**Comments:**

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Sender Name: Bruce Danielson - Email: bruce@brucedanielsonlaw.com  
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