

No. 43076-2-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

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, and JOHN DOES and
JANE DOES I-XX, inclusive, Defendants,

and

IN THE MATTER OF NUISANCE AND UNPERMITTED
CONDITIONS LOCATED AT
One 72-acre parcel identified by Kitsap County Tax Parcel ID No.
362501-4-002-1006 with street address 4900 Seabeck Highway NW,
Bremerton Washington, Defendant.

AMENDED REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

In this case, respondent Kitsap County asks this Court to shut down appellant Kitsap Rifle and Revolver Club (the “Club”) and trust the County with the power to impose virtually any condition on the Club through a Conditional Use Permit (“CUP”) before the Club can reopen. Yet undisputed evidence shows the County betrayed the Club’s trust, and the law, to put itself in this position. The County has never explained why it withheld its chief enforcement officer’s allegations that the Club was an unlawful nuisance until after the County had obtained what it wanted from the Club—facilitation of the County’s land swap with the State Department of Natural Resources (DNR)—and after the Club had given up its bargaining power in exchange for what it thought were clear, final, and enforceable contractual commitments from the County to allow the Club to continue as it then existed.

Against that backdrop, the County convinced the trial court to deem the Club a public nuisance and illegal land use entitled to none of the benefits the County promised the Club when it sold the Club its property. The County convinced the trial court to terminate the Club’s vested right to operate at the property, where it has operated continuously since 1926. It convinced the trial court to issue an injunction shutting the Club down unless the Club could obtain a CUP, which might never

happen, under conditions the County has never disclosed. It convinced the trial court the Club has illegally changed the fundamental nature of its land use, even though the County Commissioners confirmed in 1993 that the Club is a grandfathered nonconforming shooting range, even though every activity at the Club today is consistent with the very nature of a gun club and shooting range, and even though it has always been a place for shooting with safety infrastructure and supervision.

The County convinced the trial court sound from the Club is a public nuisance based on purely subjective testimony about aesthetic offenses to a few complainants, even though other members of the same community testified the sound does not bother them. It prosecuted its case without ever taking any decibel readings or objective studies of sound, against a regulatory framework that expressly allows the Club to create sound without limit during its operating hours from 7 am to 10 pm.

The trial court deemed the Club a public safety nuisance based on a finding of a mere possibility of harm, even though the Club—in all its years—has never been proven or found to have harmed any person or property, and the Navy inspected the Club and found it safe. The County's speculative, vague safety concerns about the Club are ironic considering the County's loose regulation of firearms, which allows shooting on five acre parcels without the robust safety rules, infrastructure,

and supervision fostered at the Club.

The trial court denied the Club's accord and satisfaction defense and breach of contract counterclaim based on the erroneous finding that there was no evidence of the manifest intent of the 2009 Deed other than the Deed itself, even though overwhelming extrinsic evidence supports the Club's interpretation—evidence that includes the County's own Resolution stating the Deed was intended: "to provide that [the Club] continue to operate with full control over the property." Ex. 477 (App. 15) (emphasis added). The trial court construed the Deed to give the Club no benefits other than title to the property itself, even though the Club's attorney negotiated into the Deed a detailed "improvement" clause that says the Club can improve and modernize its facility within the historical eight acres as long as it does so consistent with management standards for a modern shooting range; and even though the necessary implication of the Deed's confinement and public access clauses is that the County would allow the Club to continue as it then existed.

The trial court implicitly denied the Club's estoppel defense without a single written finding or conclusion of law, even though the evidence proves beyond a shadow of a doubt that the Club reasonably relied on the supportive assurances, representations, actions, and silence of the County Commissioners acting within their authority while conducting

official County business. The trial court's decision allows the County to repudiate its solemn words and commitments, enshrines the County's deceptive acts as legally permissible, and results in the unjust enrichment of the County. The trial court denied estoppel even though granting the claim would improve the way the County functions by requiring it to act openly, honestly, and with integrity in conducting land transactions and other proprietary transactions with the public, which it did not do here.

The Club's opening brief explains how the trial court incorrectly applied legal standards regarding nonconforming use rights, public nuisances, contract interpretation, estoppel, and injunction, while making several findings of fact unsupported by substantial evidence. The trial court's errors spawned two excessive and arbitrary injunctions that threaten the future existence of the Club and cast a dubious shadow over other shooting ranges in the Pacific Northwest. These injunctions cannot stand because there is no lawful basis to terminate the Club's nonconforming use. Even if one or more of the trial court's other decisions is affirmed, the injunctions will be excessive and arbitrary because they are not tailored to remedy any specific harm.

In its response, the County attempts to defend and excuse the trial court's errors through an oblique approach that addresses few of the Club's arguments directly and frequently leaves the Court and Club to

guess at what the exactly the County is attempting to argue. The overall thrust of the response is that there are many facts in the record and the trial court has discretion in granting declaratory judgment and injunctive relief. Such erroneous reasoning would insulate virtually every declaratory judgment and injunction against meaningful appellate review. The County also attempts to escape substantive review by raising hyper-technical procedural arguments, even while admitting the Club's assignments of error, issues on appeal, and positions taken in the opening brief are perfectly clear.

In this reply, the Club addresses each of the County's apparent and implied arguments, identifies the correct legal standards and how they should apply, and shows the law and evidence require reversal of the trial court's decisions.

II. ARGUMENT

A. The County Cannot Escape Substantive Review on Procedural Grounds.

The County argues the Court should "truncate" the Club's appeal on procedural grounds because the Club assigned error to certain findings of fact in the body of its brief, rather than in the assignments of error section. Resp. at 3, 39–44. Yet, as discussed below, the County seemingly admits this is a non-issue, as it cites to and acknowledges each of the Club's challenges to findings of fact. The Court should disregard

the County's procedural arguments.

The County argues the Club waived any challenge to the trial court's findings of fact because it did not identify specific findings of fact among its assignments of error. Resp. at 3, 39–42, 44. At the same time, the County acknowledges this should not be an issue if “briefing makes the nature of the challenge [to a finding of fact] perfectly clear, particularly where the challenged finding can be found in the text of the brief.”¹ The County later acknowledges that the Club's opening brief challenges findings of fact 23, 25, 26, and 57. Resp. at 44 (citing Brief at 52–53). The opening brief makes the nature of the challenge to these findings of fact perfectly clear and the findings are identified in the brief. The Club did not waive its challenge to these findings.

A related issue relates to “Finding of Fact” 28, which the County treats as unchallenged in this appeal. See Resp. at 12–13. It provides:

“By virtue of the deed, the County did not release the Club from current or future actions brought under public nuisance or violation of County codes or violation of its historical and legal nonconforming uses.”

CP 4059 (FOF 28) (App. 1). This so-called “finding” declares the effect of the Deed,² which is a legal conclusion.³ As the County recognizes,

¹ Resp. at 40 fn. 79 (citing *In re Disciplinary Proceeding Against Conteh* (“Conteh”), 175 Wn.2d 134, 144, 294 P.3d 724 (2012); *State v. Neeley*, 113 Wn. App. 100, 105, 52 P.3d 539 (2002); *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 709–10, 592 P.2d 631 (1979); RAP 1.2(a)).

² CP 4087–92 (2009 Bargain and Sale Deed) (App. 1).

when a trial court misidentifies a conclusion of law as a finding of fact, it is reviewed as a conclusion of law.⁴ The Club assigned error to the trial court's denial of its accord and satisfaction defense and breach of contract counterclaim based on the trial court's misinterpretation of the Deed. Brief at 2, 40–41. That issue was preserved and must be decided, regardless of the trial court's mis-labeling of Finding of Fact 28.⁵

The County argues several of the Club's assignments of error "identify questions of law," and cites the rule that an appellant need not assign error to "conclusions of law."⁶ The Club's appeal properly assigns error to the trial court's remedies and conclusions of law that involve application of law to facts.⁷ The Club's briefing explains these errors. There is nothing unusual about this.

The County complains the Club did not assign error to the trial court's failure to adopt one or more of the Club's proposed findings of fact. Resp. at 3, 39, 42–43, 70. Yet the County does not identify any particular finding that was proposed by the Club and rejected by the trial

³ *Eder v. Nelson*, 41 Wn.2d 58, 62, 247 P.2d 230 (1952) (holding the effect of a contract is a legal conclusion).

⁴ Resp. at 43 (citing *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986)).

⁵ At worst, the lack of citation to "finding" 28 is an excusable technical omission. *Conteh*, 175 Wn.2d at 144.

⁶ Resp. at 40 (emphasis in original) (citing *In re Estate of Krappes*, 121 Wn. App. 653, 660 n. 11, 91 P.3d 96, review den., 152 Wn.2d 1033 (2004)).

⁷ Brief at 2–3 (assignments of error); *id.* at 8–9 (termination of Club's nonconforming use right); *id.* at 20, 22 (noise nuisance determination); *id.* at 23, 26 (safety nuisance determination); *id.* at 26–27 (unlawful expansion and change of use determination); *id.* at 40–41 (denial of Club's breach of contract counterclaim and accord and satisfaction defense); *id.* at 56–57 (denial of Club's estoppel defense); *id.* at 71–72 (injunctions).

court, or explain how it might be significant. The County also fails to cite any authority that would have required the Club to make such an assignment of error. Case law shows it is not required.⁸

The County argues the Club waived its assignment of error regarding the trial court's denial of its accord and satisfaction defense by "not briefing" the defense. Resp. at 2. Yet, the Club filed extensive briefing to show the effect of the Deed was to resolve actual or potential disputes between the Club and County regarding the Club's then existing facilities and operations and its land use status.⁹ It is black letter law that "an accord and satisfaction consists of a bona fide dispute, an agreement to settle that dispute, and performance of that agreement."¹⁰ The trial record contains briefing on the defense, and the opening brief states the trial court erred in denying it. Brief at 2, 40–41. The County does not pretend to be ignorant to the nature of the defense, nor does it argue accord and satisfaction should be denied even if the Club is right about the Deed. There was no waiver of the accord and satisfaction defense.

The County's response mentions that the parties filed no motion to reconsider or clarify the trial court's judgment. Resp. at 8. Yet the

⁸ *State v. Armenta* ("Armenta"), 134 Wn.2d 1, 14 n.9, 948 P.2d 1280 (1997) (reviewing trial court's failure to make a particular finding of fact even though appellant did not assign error to it in opening brief). Unlike *Armenta*, this appeal does not depend on a finding that a specific, disputed verbal communication occurred, nor does it involve a verbal communication contradicted by substantial documentary evidence.

⁹ See CP 1958, 1966–73, 1998 (App. 30); CP 1558, 1565–73 (App. 31).

¹⁰ *Perez v. Pappas*, 98 Wn.2d 835, 843, 659 P.2d 475 (1983).

County cites no authority assigning any significance to the lack of such a motion, and the Club's counsel is not aware of any.

B. The Only Significance of "Credibility" Is to Reduce Deference to the Trial Court Because Credibility Was Not a Factor in Its Decision.

The County attempts to skew the standard of review by arguing the Club cannot "overcome the deference to the trial court's evaluation of credibility." Resp. at 39. Credibility, however, was not a factor in the trial court's decision. Therefore, the only effect "credibility" has in this appeal is to reduce any deference to the trial court.

The trial court's decision includes no credibility finding regarding any witness, and the County points to no such finding in the record. The rule is that the Court of Appeals "will not review credibility determinations made by the trier of fact."¹¹ The County cites no authority that would presume a credibility determination where none was made.

The trial court evidently concluded credibility is not important to the outcome of this case because it made no such finding. Neither party requested a credibility determination.¹² The lack of importance placed on

¹¹ *Recreational Equip., Inc. v. World Wrapps Northwest, Inc.*, 165 Wn. App. 553, 567-68, 266 P.3d 924 (2011) (deferring to written credibility finding) (emphasis added); see also, *Wright v. Dave Johnson Ins. Inc.*, 167 Wn. App. 758, 275 P.3d 339 (2012) review denied, 175 Wn.2d 1008 (2012) (similar).

¹² See generally, CP 4026-49 (Club's proposed findings) (App. 26); CP 3987-4025 (County's proposed findings) (App. 27).

credibility reduces any deference the trial court might receive.¹³ It also means the County cannot use credibility arguments to resolve a disputed fact in its favor where it had the burden of proof.¹⁴

The substantial evidence standard asks whether the evidence cited in the County's response is "sufficient to persuade a rational fair-minded person the premise is true."¹⁵ Because credibility was not a factor in the trial court's decision, any deference is reduced. Where the County attempts to show a decision of the trial court can be affirmed on alternative factual grounds, it must provide substantial evidence.¹⁶ Where there is a dispute over a pure question of law, such as which legal standard should apply, the trial court receives no deference.¹⁷ There is also no deference to the trial court in deciding whether a legal conclusion was properly formed from a fact or finding.¹⁸ The Court should apply these standards without assuming the credibility—or lack of credibility—of any party or witness.

¹³ See *Dolan v. King County*, 172 Wn.2d 299, 311, 258 P.3d 20 (2011) (holding "the less the outcome depends on credibility, the less deference is given to the trial court").

¹⁴ *In re Welfare of A.B.*, 168 Wn.2d 908, 927, 232 P.3d 1104 (2010) ("lack of an essential finding is presumed equivalent to a finding against the party with the burden of proof") (emphasis added); *Pilling v. Eastern and Pac. Enterprises Trust*, 41 Wn. App. 158, 165, 702 P.2d 1232 (1985).

¹⁵ *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 269 (2003); *Raven v. Dept. of Social and Health Svcs.*, 177 Wn.2d 804, 809, 829, 306 P.3d 920 (2013) (reversing finding of neglect for lack of substantial evidence).

¹⁶ *Teter v. Deck*, 174 Wn.2d 207, 216, 274 P.3d 336 (2012).

¹⁷ *State v. Corona*, 164 Wn. App. 76, 79, 261 P.3d 680 (2011) ("[w]hen we review whether a trial court applied an incorrect legal standard, we review de novo the choice of law and its application to the facts in the case").

¹⁸ See *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000).

C. Termination Is Contrary to Law.

The Club's opening brief shows there is no ordinance, statute, or common law authority permitting termination of the Club's nonconforming use right. Brief at 8–12. The grounds for termination cited by the trial court are: (1) change in the use; (2) expansion of the use; (3) unpermitted site development; (4) nuisance conditions; and (5) increased use. CP 4076–83. The ordinances and case law cited by the trial court do not support termination, and the decision should trouble every owner of a property with a nonconforming use.¹⁹

The County's response consumes approximately ten pages discussing the termination remedy. Resp. at 48–59. For legal support, it invokes the Uniform Declaratory Judgment Act (UDJA), local ordinances, and case law. Yet the County never identifies a single legal authority that expressly authorizes termination on these or any alternative grounds.

Under Washington law, regulation of nonconforming uses is a matter of local governance. *Rhod-A-Zalea*, 136 Wn.2d at 8. At the same time, a nonconforming use right is a “vested” and “protected” property right that “cannot be lost or voided easily.” *Van Sant v. City of Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993). The Washington Supreme Court explains the “reason for their continuance” as follows:

¹⁹ CP 4080 (COL 26) (citing KCC Title 17); CP 4081 (COL 27, 35) (citing *Rhod-A-Zalea & 35th, Inc. v. Snohomish Cnty.* (“*Rhod-A-Zalea*”), 136 Wn.2d 1, 959 P.2d 1024 (1998)).

“An ordinance requiring an immediate cessation of a nonconforming use may be held to be unconstitutional because it brings about a deprivation of property rights out of proportion to the public benefit obtained.”

State ex rel. Miller v. Cain, 40 Wn.2d 216, 218, 242 P.2d 505 (1952).

Consistent with this, a zoning ordinance “may not require a property owner immediately to cease a nonconforming use.” *Skamania County v. Woodall*, 104 Wn. App. 525, 537, 16 P.3d 701 (2001) (emphasis added).

The only grounds recognized in Washington upon which to terminate a nonconforming use right are “abandonment or reasonable amortization.” *Rhod-A-Zalea*, 136 Wn.2d at 7.

The trial court correctly found that by 1993 the Club possessed a vested nonconforming use right.²⁰ The County does not dispute this. The trial court and County have not attempted to base termination upon amortization or abandonment. The only question is whether the law supports termination on any of the trial court’s factual grounds.

The County first argues the trial court was authorized by the UDJA to terminate the nonconforming use right in order to resolve a controversy between the parties. Resp. at 48–51. The UDJA, however, is not a source of legal rights. It is merely a mechanism for resolving a controversy by applying legal rights to facts. The UDJA provides that courts “shall have power to declare rights, status and other legal relations[.]” RCW 7.24.010.

²⁰ See CP 4055 (FOF 10) (App. 1); CP 4075 (COL 6).

It gives courts the power to declare a right or obligation that exists under a statute or ordinance.²¹ It does not create rights or imply remedies.²² The UDJA, on its own, does not authorize termination.

The County's next suggestion is that the requisite authority can be found, by implication, in Kitsap County zoning ordinances. *Resp.* at 54–58. Washington courts generally construe an unambiguous ordinance by its plain language. *Littlefair v. Schulze*, 169 Wn. App. 659, 669–70, 378 P.3d 218 (2012). They also hold that zoning ordinances:

“are in derogation of the common-law right to use property so as to realize its highest utility and should not be extended by implication to cases not clearly within the scope . . . manifest in their language.”

Id. (emphasis added).²³ It is error for a court to amend a zoning ordinance through judicial construction,²⁴ or to interpret an ordinance in a way that produces absurd results.²⁵

No Kitsap County ordinance plainly and unambiguously provides for termination of a vested nonconforming use. The Code itself declares

²¹ RCW 7.24.010; *United Nursing Homes, Inc. v. McNutt*, 35 Wn. App. 632, 640, 669 P.2d 476 (1983) (affirming declaration of rights of person “affected by a statute”).

²² *See, e.g., Chevron Corp. v. Naranjo*, 667 F.3d 232, 244-45 (2d Cir. 2012) *cert. denied*, 133 S.Ct. 423 (U.S. 2012) (“[when substantive law] does not provide that legal predicate, the [UDJA] cannot expand the [statutory] authority by doing so”); *Hanson v. Wyatt*, 552 F.3d 1148, 1157 (10th Cir. 2008) (holding the UDJA “does not create substantive rights”); 26 C.J.S. Declaratory Judgments § 7 at 59–60 (“[t]he declaratory judgment acts do not create or change any substantive rights, or bring into being or modify any relationships, or alter the character of controversies”).

²³ *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 326, 510 P.2d 647 (1973).

²⁴ *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998).

²⁵ *City of Tacoma v. Price*, 137 Wn. App. 187, 197–98, 152 P.3d 357 (2007).

nonconforming uses are intended “to continue until they are removed or discontinued.” KCC 17.460.010 (App. 2). There are County ordinances that specifically provide for abandonment and amortization of a nonconforming use right.²⁶ Other ordinances authorize the County to seek general remedies such as civil penalties or an injunction.²⁷ Implying additional grounds for termination besides what is stated in the Code would violate its plain language and structure, and Washington law.

Even if the Code were ambiguous, it would not authorize termination because ambiguity must be interpreted in favor of the Club, as landowner. *Littlefair*, 169 Wn. App. at 670. The only possible exception is if Kitsap County could prove an “established practice of enforcement” to substantiate its interpretation of an ambiguity in the Code.²⁸ The County does not make this argument, and there is no such evidence here. In fact, the evidence shows the opposite. Jeff Rowe, the County’s chief building official and planning director, testified an expansion can be rolled back as an alternative to requiring a CUP. VT 278:17–279:15.

²⁶ KCC 17.460.020(A)–(C) (App. 2).

²⁷ See KCC 17.530.030 (authorizing a mandatory injunction as the remedy to abate a public nuisance) (App. 3); KCC 17.530.020 (authorizing civil penalties for violations of Title 17). The difference between an injunction and termination of a vested property right is profound. The trial court and County intended to permanently strip the Club of its nonconforming use right. In contrast, a party subject to an injunction can always return to court to petition for it to be modified or lifted. See CR 60(b)(6); 15A Wash. Prac., Handbook Civil Procedure § 73.13 (2012–2013 ed.) (“[CR 60(b)(6)] is generally taken to mean that the court retains authority to modify or vacate any injunction, temporary or permanent, if conditions have changed”).

²⁸ See *Sleasman v. City of Lacey*, 159 Wn.2d 639, 646, 151 P.3d 990 (2007).

Interpreting the Code to allow termination based on a single illegality, as the County does, is of doubtful constitutionality and would produce absurd results. If that were the law, a single code violation would cause a nonconforming use to permanently lose its right to operate. A nonconforming restaurant could be shut down for having an unpermitted electrical socket. The County's position is unreasonable.

The County's position is also in direct conflict with Washington case law, which provides for termination only upon abandonment or amortization. *Rhod-A-Zalea*, 136 Wn.2d at 8. The County fails to cite a single case where a nonconforming use right was properly terminated due to a code violation or nuisance condition.

The trial court issued a declaratory judgment terminating the Club's vested nonconforming use right "by operation of law," yet failed to identify any legal authority for that remedy.²⁹ The County attempts to defend the decision as authorized by the UDJA, County ordinances, and case law, but its arguments do not withstand scrutiny. It is undisputed that the Club's vested nonconforming use right was not amortized or abandoned. Termination on other grounds was in error. Judgment should be entered declaring that the Club retains its nonconforming use right.

²⁹ CP 4084 ¶ 1 (App. 1); CP 4079 (COL 23).

D. Sound from the Club Is Not a Public Nuisance.

The trial court concluded that at some undesignated point in time sound from the Club went from being historically acceptable to being a public nuisance warranting closure and termination of its nonconforming use right.³⁰ The court did this based on the subjective testimony of a few objectors who live within two miles of the Club.

The trial court erred because: (1) sound from the Club does not impact the rights of the entire “two-mile” neighborhood or community equally because many witnesses from that community confirmed it does not bother them at all; (2) sound from the Club between 7 am and 10 pm cannot be deemed a nuisance because such sounds are expressly authorized, without limit, by statute and regulation; and (3) there is no objective decibel evidence from which to conclude the Club ever exceeded the reasonable sound levels authorized and tolerated in its community. Brief at 16–20. The County’s response does not rebut these arguments.

I. Sound From the Club Does Not Affect Equally the Rights of the Entire “Two-Mile” Community.

A public nuisance “is one that affects equally the rights of an entire community or neighborhood.”³¹ The trial court erred because there is no evidence that sound from the Club affects equally the rights of the entire

³⁰ CP 4073 (FOF 84); 4076 (COL 11–13).

³¹ Resp. at 62; Brief at 21 (citing RCW 7.48.130; *State v. Hayes Investment Corp.*, 13 Wn.2d 306, 125 P.2d 262 (1942); *Crawford v. Central Steam Laundry*, 78 Wash. 355, 139 P. 56 (1914)).

community in the vicinity of the Club. Brief at 20–22. The County failed to address this argument in its response. The County does not dispute that many witnesses confirmed the sound from the Club is no problem at all. *See id.* at 13–15 (relevant testimony). The County does not dispute that the sound is lawful if it does not affect equally the rights of the entire community. The record shows it does not.

This is not a case where the rights of the entire community are equally affected. To many witnesses living within two miles from the Club, the sound was not objectionable and therefore did not affect their rights in any way. The requirement that a public nuisance “affect equally” the entire two-mile community asserted by the County and found by the trial court is not satisfied here. The decision must be reversed.

2. *Sound from the Club Between 7 am and 10 pm Is Authorized by Law, Without Limit.*

Washington law requires an act to be done “unlawfully” in order to constitute a nuisance.³² “Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.” RCW 7.48.160. A court may not usurp legislative or administrative power by deeming an expressly authorized activity a nuisance. *Judd v. Bernard*, 49 Wn.2d 619, 622, 304 P.2d 1046 (1956). In *Judd*, the court dismissed a nuisance claim

³² RCW 7.48.120 (defining “nuisance”); KCC 17.110.515 (App. 4) (incorporating statutory definition of “nuisance”); *Linsler v. Booth Undertaking Co.*, 120 Wash. 177, 206 P. 976 (1922) (defining “nuisance” as “the unlawful doing of an act”).

to enjoin the state game commission from poisoning fish in a lake because the action was undertaken pursuant to statutory authority. *Id.* at 620–21. The County does not distinguish *Judd*.

State and local law regulates sound based on decibel levels.³³ State and County regulations expressly exempt authorized shooting ranges from sound limitations between 7 am and 10 pm. WAC 173-60-050(1)(b); KCC 10.28.050(2) (App. 7). This exemption is the product of the Noise Control Act of 1974, which directs the Department of Ecology to “provide exemptions or specially limited regulations relating to recreational shooting[.]” RCW 70.107.080.

The County does not dispute that the Club was an authorized shooting range, or that sound created at the Club from 7 am to 10 pm is expressly authorized pursuant to State and local sound exemptions. The County does not attempt to explain how judging sound from the Club between 7 am and 10 pm to be a nuisance was not a usurpation of state and local legislative and administrative authority.

Instead, the County argues the trial court acted within its broad equitable discretion when it ignored all of the above. Resp. at 60–62. The County cites numerous federal cases, none of which involve a sound nuisance, public nuisance, or Washington law.³⁴ The County implies

³³ WAC 173-60-040, WAC 173-60-050; KCC 10.28.040 (App. 7); KCC 10.28.050(2).

³⁴ See Resp. at 60–61, fns. 142–148.

these cases allow courts to disregard other laws when exercising equitable powers.³⁵ The County's own case law, however, holds the equity power cannot contradict the plain terms of a statute, as the trial court did here.³⁶

The County further argues a savings clause in RCW 70.107.060 means the Club's sound exemption does not prevent a public nuisance action. Resp. at 65. The savings clause provides:

"Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil."

RCW 70.107.060(1) (emphasis added). By its own terms, this savings clause applies only to statutes found in RCW Title 70, Chapter 107. It does not apply to the regulatory exemption for sound from the Club between 7 am and 10 pm. The trial court unlawfully usurped legislative and administrative authority by deeming sound from the Club a nuisance.

3. The County Fails to Show Sound from the Club Was Ever Objectively Unreasonable.

The trial court also erred in concluding sound from the Club was a nuisance where there was no evidence showing it is objectively unreasonable or that it has caused anything other than a subjective, aesthetic offense. Brief at 18-20. The record contains no decibel evidence regarding sound from the Club, and no evidence that it ever

³⁵ Resp. at 61 (citing dissenting opinion in *Miller v. French*, 530 U.S. 327, 338, 120 S.Ct. 2246, 2253, 147 L.Ed.2d 326 (2000)).

³⁶ *Miller*, 530 U.S. at 338-39 (holding district court erred in granting an injunction contrary to a federal statute).

exceeded Kitsap County's regulatory decibel limitations. *Id.* at 13-14, 18-20; VT 597:7-598:9; 626:5-10. The County does not dispute this.

As noted in the Club's opening brief, "[t]hat a thing is unsightly or offends the aesthetic sense of a neighbor, does not ordinarily make it a nuisance." *Mathewson v. Primeau*, 64 Wn.2d 929, 938, 395 P.2d 183 (1964). The County does not challenge this rule, distinguish this case, or show that its witnesses' entirely subjective complaints about sound from the Club prove anything other than aesthetic offenses. No more was proven, especially considering the numerous witnesses who testified that the Club's sound is acceptable. Brief at 14.

The trial court found the sound of the Club is akin to the "sound of war." CP 4073 (FOF 84). This finding pertains to the aesthetic *quality* of the sound, not its volume. One can hear the "sound of war" coming from a television even if the volume is barely audible. This subjective finding cannot prove a public nuisance.

Cases cited in the County's response show that "unreasonableness" is an element of its public nuisance claim.³⁷ That element was the subject

³⁷ Resp. at 64 n. 159 (citing *Lakey v. Puget Sound Energy, Inc.* 176 Wn.2d 909, 923, 296 P.3d 860 (2013); *Grundy v. Thurston County*, 155 Wn.2d 1, 6, 117 P.3d 1089 (2005)). In *Lakey*, the court dismissed public and private nuisance claims against a power station whose use had increased because the plaintiffs could not prove it was unreasonable. 176 Wn.2d at 923. In *Grundy*, the court required that harm be "substantial and unreasonable" in order to prove a nuisance. 155 Wn.2d at 6.

of *Lehman*, cited in the opening brief.³⁸ There, the court dismissed a noise nuisance claim against a rifle range based on the “general rule” that “no one is entitled to absolute quiet in the enjoyment of his property; but one may insist on a degree of quietness consistent with the standard prevailing in the locality in which one lives.” *Id.* (emphasis added). This case is consistent with *Mathewson* because a “degree of quietness” is an objective measure of the volume of sound in an environment, not some immeasurable aesthetic quality. 64 Wn.2d at 938. It also shows a sound is not a nuisance unless it is proven to exceed standards by which other sounds are permitted in a locality.

That was also the rule in another case cited in the opening brief, *Woodchuck*.³⁹ There, the court affirmed summary judgment dismissing a noise nuisance claim against a gun club because there was no evidence of a violation of the local noise control ordinance. The County does not attempt to distinguish this case.

The County’s response cites no case law involving a sound nuisance, whatsoever. Thus, there is no precedent that might call *Lehman* or *Woodchuck* into question. These cases are consistent with the only Washington case cited by either party on the subject of a sound nuisance,

³⁸ *Lehman v. Windler Rifle & Pistol Club*, 44 Pa. D. & C.3d 243, 246, 1986 WL 20804 (Pa. Com. Pl. 1986); Brief at 19–20.

³⁹ *Concerned Citizens of Cedar Heights—Woodchuck Hill Road v. DeWitt Fish & Game Club* (“*Woodchuck*”), 302 A.D.2d 938 (N.Y. App. 2003); Brief at 19.

Gill v. LDI, 19 F.Supp.2d 1188 (W.D. Wash. 1998). Brief at 19. There, the Western District of Washington denied summary judgment against a plaintiff claiming nuisance where the plaintiff presented expert evidence of sound in excess of decibel regulations. There is no precedent to support the trial court's decision that a historical sound source exempt from sound regulations is a public noise nuisance solely because of the subjective testimony of a few lay witnesses who found it annoying.

The County does not dispute that Kitsap County sound regulations define the reasonable maximum level of sound permitted in the community around the Club. The County does not show—and the trial court did not find—that some lower level of sound is a more appropriate standard. The only objective community standard is Kitsap County's own sound regulation, which the Club was never shown to have exceeded. The sound nuisance decision must be reversed.

E. The Club Is Not a Public Safety Nuisance.

The trial court made three findings of fact regarding the safety of the Club's range. CP 4070 (FOF 67–69). There is no finding that any bullet from the Club ever left the Club property, struck a person or nearby property, or is likely to leave the Club and cause substantial harm. The trial court only concluded that bullets from the Club will “*possibly* strike persons or damage property in the future.” CP 4070 (FOF 68) (emphasis

added). This does not prove a public safety nuisance.

We live in a world of risk. Washington recognizes a mere possibility of harm does not constitute a safety nuisance.⁴⁰ If it were, the highways, roads, and airports would be closed by injunction. The County does not dispute that a risk of harm must be, at a minimum, “reasonable and probable” in order to prove a public safety nuisance.⁴¹ The County does not dispute that the trial court did not find a reasonable and probable likelihood of future harm.⁴² The County’s response does not present substantial evidence of a reasonable and probable likelihood of harm. The trial court erred in holding the Club to be a public safety nuisance.

Faced with the inadequacy of the trial court’s findings and conclusions, the County scours the record for evidence of a reasonable and probable likelihood of harm. Resp. at 31–38. Yet the evidence that failed to persuade the trial court also fails the substantial evidence test. It cannot persuade a fair and reasonable person that the Club is reasonably and probably likely to cause substantial harm.

First, the County cites the testimony of Gary Koon, a disgruntled

⁴⁰ See Brief at 24; *Hite v. Cashmere Cemetery Assn.*, 158 Wash. 421, 424, 290 P. 1008 (1930) (finding contamination of drinking water was not “reasonable and probable” and therefore cemetery was not a nuisance).

⁴¹ Resp. at 68 (discussing *Hite*, 158 Wash. at 424).

⁴² The County opines that COL 21 contains an “embedded” safety finding that was “mislabelled as a conclusion.” Resp. at 31; CP 4072 (COL 21). This conclusion refers only to a “risk.” *Id.* It says nothing about the degree of risk, and does not contradict the trial court’s finding of a mere possibility of harm. The trial court did not find a reasonable and probable likelihood of harm.

neighbor.⁴³ He testified about military surface danger zone maps (“SDZs”) that he obtained for various firing locations at the Club. Resp. at 32–34. The County cites no precedent stating that the existence of a person or property within an SDZ is sufficient to conclude that shooting within that area is a safety nuisance, much less an enjoined one. The County seeks to create that precedent here by asserting SDZs depict “the area into which bullets will fall, based upon the weapon system and direction and origin of fire.” Resp. at 32. Even if this were correct, it would not establish a reasonable and probable likelihood of harm because each SDZ for the Club includes portions of the Club’s property.⁴⁴ The County cites no evidence showing the probability that a bullet fired at the Club will leave the Club property as opposed to landing within the Club’s part of the SDZ. Thus, the SDZs do not show a reasonable and probable likelihood of harm.⁴⁵

The County emphasizes Koon’s testimony that the military does not allow shooting unless it owns all of “the property within the SDZ” or there are “engineered solutions to keep bullets from escaping.” Resp. at 32–33. This is not evidence of a likelihood of harm. Moreover, Koon

⁴³ VT 1194:8–1195:20 (background); 1267:17–1268:3 (noise); 1269:11–23 (testifying his wife signed petition complaining about sounds from the Club).

⁴⁴ See Exs. 207, 208, 209, 210, 211 (SDZ maps) (App. 35, 36, 37, 38, 39).

⁴⁵ Koon testified there is a one in one million chance of a bullet landing outside an SDZ. VT 1279:13–1280:1. He also testified the SDZs take into account “all possibilities for the impact of a bullet.” VT 1281:13–22. If the SDZs showed the probability of a bullet landing outside the Club property as opposed to within it, Koon would have said so.

testified the military issues “waivers” from SDZs based on the opinions of “engineers and range safety officials,” after considering topography and other site specific factors, which is an area Koon is “not familiar with.” VT 1228:1–19. The trial court found the military inspected and approved the Club as a training facility. CP 4072 (FOF 75–76). The implication is that the military determined the Club—with its berms, backstops, bays, safety rules, and range officer supervision—is adequately engineered and operated to keep bullets from escaping its property. Koon’s testimony and the County’s SDZs do not prove a likelihood of substantial harm or establish a safety nuisance.⁴⁶

Next, the County cites the testimony of the Club’s range safety expert, Scott Kranz. Resp. at 34–35. Kranz confirmed the Club does not have overhead “baffles” at its firing lines. *Id.* at 35.⁴⁷ Yet the County

⁴⁶ Koon also made numerous admissions that may further explain why the trial court found his testimony and SDZ analysis prove only a possibility of harm. Koon did not prepare the SDZ maps on behalf of the County. VT 1221:18–1223:18. A Fort Lewis employee created them using the U.S. Marine Corps’ “Range Managers Toolkit” program. *Id.* Koon has no engineering background or college education in advanced mathematics. VT 1262:19–1263:9. He never received training on how SDZs are developed. VT 1204:20–1205:1. He testified the SDZs assume shooters will fire blindly into the air at 45 and 60 degree angles, instead of aiming at their targets downrange. VT 1295:8–1296:11. The County’s SDZ maps do not consider the Club’s unique topography or analyze how the Club’s berms reduce the possibility of errant bullets. VT 1228:1–1229:1; 1275:10:22; 1286:2–18. In short, the maps have little or no application to actual site conditions. They assume range users ignore criminal recklessness laws and the Club’s safety rules. The trial court allowed Koon’s testimony and SDZs over the Club’s objections. VT 1236:13–1239:11; *see also* VT 1205:2–1207:6, 1220:24–1221:15, 1226:9–18, 1228:20–1229:13. Yet the trial court’s finding of a mere possibility of harm suggests it understood the limitations of that evidence.

⁴⁷ What the County fails to mention is that baffles have open spaces and cannot prevent a person from firing into the blue sky. VT 1520:20–1521:9. Therefore, the distinction is

omits Kranz's conclusion that the Club's engineering and institutional controls are adequate to prevent bullets from escaping its property.⁴⁸ He testified the Club's berms are of a sufficient height to prevent bullets from escaping downrange. VT 333:20–335:24. He commended the Club's institutional safety controls, including its mandatory safety-training program for new members and its range safety officer program.⁴⁹ He testified the Club's safety measures are at or above industry standards for shooting ranges in the Pacific Northwest. VT 343:16–20. He testified the Club's range is "very similar . . . except the [Club] has slightly higher impact berms" to the blue sky range where the County's sheriff's department and Bremerton police department conduct firearm training.⁵⁰

The County then cites the testimony of its range safety expert, Roy Ruel. Resp. at 35–37. Ruel testified it is "extremely likely" that bullets will escape the Club property and strike downrange areas, and that this "has happened at some point" in the past.⁵¹ Yet Ruel candidly explained in cross-examination that his opinion about future harm is based solely on his opinion "that it's possible for bullets to exit the range," combined with

not as clear as the County would have the Court believe. Most importantly, there is no precedent, nor substantial evidence here, upon which to conclude that a range without baffles is reasonably and probably likely to cause substantial harm to person or property.

⁴⁸ VT 337:25–338:10, 348:24–349:10, 360:2–360:11.

⁴⁹ VT 331:16–332:11 (testifying new members are specifically instructed not to shoot above berms); VT 336:13–337:13 (describing range safety officer program).

⁵⁰ VT 359:7–360:11, 352:20–354:6, 356:7–9.

⁵¹ Resp. at 37 (citing VT 1498:12–19).

the fact that bullets are fired there. VT 1518:1–22 (emphasis added); VT 1541:8–1542:4.⁵² To Ruel, there is no difference between a possibility and a likelihood.

Ruel committed the same logical fallacy in reaching his opinion about bullets leaving the range after studying only one alleged bullet strike (found at the Slaton residence). VT 1498:8–19. He explained:

“My opinion was that it was possible that it originated from the [Club’s] shooting shed, and since we know that shooting does take place from that point, it was probable that that was the origination of that bullet.”

VT 1497:4–16. Ruel also admitted there was no certainty that the bullet discovered at the Slaton residence came from the Club, and that it could have come from an area outside the Club. VT 1526:22–1527:17. Again, Ruel equates a possibility with a probability—but only when it is associated with the Club. His incoherent reasoning did not persuade the trial court, and it does not prove a likelihood of harm.

Ruel’s testimony about the Slaton bullet is also contradicted by the County’s own ballistics expert, Kathy Geil. Resp. at 38–39. The County asserts her determination was that the “potential origin” of two residential

⁵² Ruel further admitted he made no engineering calculations to determine whether bullets are leaving the range, although he is a retired engineer. VT 1517:11–18. He testified it was “not possible” to calculate what percentage of bullets fired at the range are “actually leaving the range.” VT 1517:19–23. He believes “as long as shooters can see the blue sky that there will be bullets leaving the range.” VT 1511:3–5. According to this extreme view, shooting a firearm anywhere outdoors within the range of a residence would be a safety nuisance regardless of where a shot is aimed, whether there are berms and other safety features, and the actual likelihood of harm.

bullet strikes she studied “included the area of the Property.” Resp. at 39. The County omits her testimony that the bullets could have come from areas outside the Club property. VT 1623:13–1624:11, 1626:7–19. The County also omits Geil’s testimony that, in her analysis, the Club is further from the Linton residence than the maximum range of the type of bullet found there. VT 1626:23–1627:25. Geil admitted she was not able to determine where any of the bullets she studied originated. VT 1630:13–25. She could not say any came from the Club.

Like the County’s other experts, and consistent with the trial court’s decision, Geil identified only a possibility of harm from the Club. Her “pie shaped area[s] for each shot’s potential origin” (Resp. at 39) include large areas outside the Club, where other evidence confirms uncontrolled shooting can and does take place.⁵³ Her analysis of the Linton bullet was that it could not have come from the Club.⁵⁴ This is not substantial evidence of a reasonable and probable likelihood of harm.

The County reasons that even a low probability of a bullet escaping the Property is a “substantial risk demanding enjoinder” because “the outcome of bullet escapement will be death or injury.” Resp.

⁵³ See Exs. 214, 215, 216 (App. 32, 33, 34) (Geil’s bullet origin diagrams); VT 1697:13–1700:24 (testimony of Club Executive Marcus Carter regarding uncontrolled shooting that occurs near the Club); VT 2437:18–2439:17, 2606:7–2607:23 (testimony of Club expert witness Jeremy Downs regarding areas where uncontrolled shooting may occur); Ex. 539 aerial photo of cleared areas where uncontrolled shooting may take place (App. 22).

⁵⁴ VT 1646:17–25; VT 1630:13–25.

at 67. According to this logic, if a bullet were to ever leave the Club property, it would be certain to strike and injure or kill a person. Yet the trial court made no such finding, and the County fails to appreciate that the absence of such an injury means the Club is not a substantial risk. The area outside the Club's 72 acres includes substantial open and undeveloped space. It is not a densely populated urban area.⁵⁵ A likelihood of *insubstantial* harm would not prove a nuisance. *Grundy*, 155 Wn.2d at 6 (requiring substantial harm). Therefore, even if there were a likelihood that a bullet would leave the Club in the future (which the evidence does not show), that risk would not prove a nuisance.

This case is similar to *Hite*, where the risk of a cemetery contaminating a nearby drinking water well was not shown to be reasonable and probable. 158 Wash. at 421. According to the County, *Hite* is distinguishable because there the risk of harm was "highly improbable." Resp. at 68. That finding, however, is equivalent to the trial court's finding of a mere possibility of harm from the Club. Moreover, the County cites no precedent holding the source of a mere possibility of harm is a safety nuisance. Still further, no bullet from the Club, operating since 1926, has ever been proven to have left the property, let alone harmed any person or property. Therefore, harm from the Club is highly

⁵⁵ See e.g., Ex. 16 (aerial photo of the Club and nearby rural land) (App. 8); Ex. 133 (aerial photo of the Club) (App. 14); Ex. 3 (map of areas nearby the Club) (App. 9).

improbable, just as in *Hite*. The County might as well be trying to lock up a dog that has never bitten a person, simply because it has teeth.

The irony is that the Club is one of the safest places to shoot in Kitsap County because the County authorizes uncontrolled shooting on properties larger than five acres. Brief at 25–26; KCC 10.24.090 (App. 40). As County witness Gary Koon confirmed, it is safer for community members to shoot at a range with berms, backstops, and safety rules. VT 1299:1–10. The County even partnered with the Club to hand out coupons for a free trip to the Club to any person found shooting in the woods. VT 1701:19–1702:14.

The County and its range safety expert imply blue-sky ranges are public nuisances because bullets can possibly escape. VT 1509:12–1511:5. Yet this is the same expert who testified he shoots at a blue sky range in Hawaii. VT 1510:25–1511:5, 1530:12–23. The U.S. Navy approved the Club for firearms training. CP 4072 (FOF 76). Local law enforcement personnel shoot at the Club and at their own blue sky range.⁵⁶

There are at least eight other blue sky shooting ranges in the Pacific Northwest that are similar to the Club and are used by at least

⁵⁶ Ex. 440 at 4–5 (describing the City of Bremerton's shooting range, also used by County Sheriff's Department); Ex. 273 (App. 11), VT 1973:11-1975:4 (testimony of Club Executive Officer Marcus Carter regarding use of the Club by law enforcement); VT 1867:16-1868:4, 1877:12–1879:4, 1882:151-1884:12 (testimony of Ken Roberts regarding use of the Club by the County sheriff's department).

10,000 people annually.⁵⁷ If this Court affirms the trial court's safety nuisance conclusion, blue sky ranges across the Pacific Northwest could be closed due to the same speculative, theoretical risk of harm. Individuals across Washington would be unable to shoot at the Club and other blue sky ranges because they would cease to exist. Kitsap County shooters would increasingly take advantage of the County's liberal shooting ordinances to practice their marksmanship on unsupervised properties, where they could shoot into the "blue sky" with no person or security camera there to stop them.

The County had every opportunity to prove a high probability of substantial harm from the Club, but failed to do so. The fact that the Club has operated safely since 1926 strongly supports allowing the Club to continue. The safety nuisance conclusion must be reversed.

F. The Club Is Not a Public "Fear" Nuisance.

The County's response argues the Club can be held a public nuisance on the alternative ground, not adopted by the trial court, that the Club strikes fear into the community.⁵⁸ The County's argument is not surprising since the County's case centered on fear, not science. The

⁵⁷ See Ex. 440 at 5–6 (listing ranges similar to the Club) (App. 10); VT 327:25–328:20 (admitting Ex. 440); VT 363:21–364:2 (Club's range safety expert's testimony comparing the Club to other blue sky ranges); VT 1508:13–1510:8 (County range safety expert's testimony regarding blue sky ranges in the Pacific Northwest).

⁵⁸ Resp. at 63–64 (citing *Everett v. Paschall* ("Everett"), 61 Wash. 47, 50–51, 111 P. 879 (1910) and *Ferry v. City of Seattle* ("Ferry"), 116 Wash. 648, 203 P.40 (1922)).

County argues “a neighbor’s reasonable fear of harm can be the **sole** basis for a nuisance since comfortable enjoyment includes **mental** quiet.” Response at 63. The trial court made no finding that the Club frightens nearby residents.⁵⁹

Like its noise nuisance argument, the County’s fear argument fails because the evidence shows all members of the community are not afflicted with fear of the Club.⁶⁰ Of the sixteen witnesses who **live** within two miles of the Club, three testified they are not afraid of the Club, and three did not testify about any fear of the Club.⁶¹ Fear does **not** equally affect all members of the community.

The County’s fear argument also fails because there is **no** evidence of depreciated property values. In *Ferry*, the court rule that fear **can** prove a nuisance only if it is “support[ed by] a reasonable expectation that disaster may happen, and such expectation leads to a **depreciation** in the value of adjoining properties.” 116 Wash. at 648 (1922).⁶²

⁵⁹ See CP 4077 (COL 19–21) (conclusions regarding nuisance).

⁶⁰ See Brief at 21–22 (discussing “equally affect” element of public nuisance); RCW 7.48.130; *Hayes*, 13 Wn.2d at 311; *Crawford*, 78 Wash. at 357–58; *Clark*, 45 Wn.2d at 192 (affirming no fear nuisance where plaintiffs “failed to show that the **public** generally fears” the conditions complained of).

⁶¹ Lee Linton believes a bullet struck his deck, but is not afraid and allows his kids to play outside. VT 1168:24–1170:25, 1176:2–1177:16. Frank Jacobson **and** Kenneth Barnes do not consider the Club a nuisance and are not afraid of it. VT 1942:1–1943:25, 2295:18–2297:24. Robert Kermath, Donna Hubert, and Steve Coleman **complained** about sounds from the Club, but never testified the Club frightened them. VT 318:1–319:21, 876:18–25, 934:20–935:2.

⁶² See also *Everett*, 116 Wash. at 48–50 (declaring tuberculosis sanitarium a public nuisance where it created “general public dread” that reduced property **values** up to

Here, there is no finding of diminished property values, and the County does not find any such evidence in the record. Two witnesses testified they bought or sold property near the Club at fair market value, confirming the Club caused no diminution in property value.⁶³ Two other witnesses alleged the Club was reducing their property value, but neither testified they had listed their property for sale, received any below-market-value offers, or obtained an appraisal; and neither testified as to how much their property value had supposedly diminished.⁶⁴ The County called no appraiser to testify. The lack of substantial evidence of diminished

50%); *Goodrich v. Starrett*, 108 Wash. 437, 439, 184 P. 220 (1919) (finding a nuisance where there was evidence that construction of an undertaking facility would decrease property values); *Turtle v. Fitchett*, 156 Wash. 328, 287 P. 7 (1930) (finding a nuisance upon a showing of a ten-percent decrease in property values); *Hann v. Hann*, 161 Wash. 128, 296 P. 816 (1931) (finding a nuisance upon a showing of depreciated property values); *Park v. Stolzeise*, 24 Wn.2d 781, 167 P.2d 412 (1946) (finding a nuisance where sanitarium would “at once and continuously depreciate” property values); *Shields v. Spokane School Dist. No. 81*, 31 Wn.2d 247, 196 P.2d 352 (1948) (finding a nuisance where testimony showed property values had decreased); *Morin v. Johnson*, 48 Wn.2d 275, 293 P.2d 404 (1956) (discussing evidence of depreciated property values related to tire plant’s operations); *Champa v. Wash. Compressed Gas Co.*, 146 Wash. 190, 192, 262 P. 228 (1927) (affirming nuisance where plaintiff alleged \$4,000 in permanent depreciation related to gas manufacturing and storage facilities’ operations); *Steele v. Queen City Broadcasting Co.*, 54 Wn.2d 402, 341 P.2d 499 (1959) (discussing testimony of \$5,625 in depreciated property value related to construction of television broadcasting tower); *Pierce v. Northeast Lake Wash. Sewer & Water Dist.*, 69 Wn. App. 76, 847 P.2d 932 (1993) (discussing un rebutted evidence that construction of water storage tank would decrease property values by \$30,000).

⁶³ Steve Coleman sold his home in 2006 “at the price that the market was bearing” and neither “gained or lost value” from the sale. VT 934:20–935:2. Kenneth Barnes paid “fair market value” for his home in 2001, which is located 150 feet from the Club’s entrance. VT 2323:23–2324:18.

⁶⁴ Jeremy Bennett has never listed his home or retained a broker, but speculates he could “stand to lose quite a bit” if he were to disclose the Club to a buyer and might “potentially not be able to sell” his property. VT 895:7–21. Eva Crim testified her broker told her that disclosing the Club’s operations to a buyer would “negatively impact [her] property value.” VT 969:10–23.

property values disproves the fear nuisance theory.

A nuisance cannot be proven by fears that are unreasonable. *Clark*, 45 Wn.2d at 191–92. In *Clark*, fourteen property owners alleged a memorial park was a nuisance because they were frightened by the possibility it might contaminate their groundwater. *Id.* at 190–91. The court affirmed the fears were “wholly unfounded” based on expert testimony regarding the risk of harm. *Id.* at 192 (affirming trial court).⁶⁵

Here, the trial court did not find any fears, let alone reasonable ones. As discussed above (in the safety nuisance section), the findings and evidence prove the Club is not likely to cause substantial harm. There is also no finding or proof that any bullet from the Club has ever left the Club property or harmed any person or property. There is no substantial evidence that any fear of the Club is reasonable or well founded.

Based on the County’s cases, the last time a Washington court of appeals affirmed a nuisance arising from fear was in 1922. *See Ferry*, 116 Wash. at 648 (1922). Most of the County’s “fear” cases are over 90 years old. *See Resp.* at 63. Considering the advances of modern science, their persuasiveness is severely limited. The only risk identified in this case is that someone might recklessly endanger the community by firing up into the air over the Club’s berms and buffering acreage. This type of risk,

⁶⁵ *See also, Rea v. Tacoma Mausoleum Assn.*, 103 Wash. 429, 430, 174 P. 961 (1918) (rejecting fear nuisance claim when there was no evidence that fumes and liquids from a crematorium had ever migrated onto plaintiffs’ properties).

however, exists throughout the United States, where the right to bear arms is constitutionally protected.⁶⁶ Unlike the uncontrolled areas of Kitsap County where shooting is allowed, the Club has safeguards to prevent this from happening. In addition, that conduct would have to be attributed to the individual who breaches the Club's safety rules, not the Club.⁶⁷ There is no doubt people have generalized fears and concerns about firearms in their community. Shutting down one of the longest standing firearm safety organizations in Kitsap County is no way to alleviate them.

G. There Was No Expansion, Change of Use, or Enlargement, But Even If There Were, the Trial Court Erred in Failing to Identify the Extent of Lawful Intensification.

The trial court concluded the Club unlawfully expanded, changed, and enlarged its use, in violation of Kitsap County Code and common law governing nonconforming uses.⁶⁸ The Club's opening brief argues the Club did none of those things, and that any change in the Club over the years was part of the natural intensification of the use, the result of the County's own policies, and permitted as a matter of substantive due process. Brief at 26–40. The Club further argued that even if the trial court were correct, it still erred in failing to identify the extent to which

⁶⁶ "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." U.S. Const. Amend. II.

⁶⁷ Brief at 25; *State v. Hayes Inv. Corp.*, 13 Wn.2d 306, 312, 125 P.2d 262 (1942) (finding public beach was not a nuisance where operator policed rules prohibiting profanity, drinking, and other misbehavior).

⁶⁸ CP 4075–76, 82 (COL 8–10, 33) (citing *Keller v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979)).

the Club had lawfully intensified, which is required to determine the remedy for any over-intensification. *Id.* at 28, 39–40. The County’s response attempts to show the trial court’s conclusions regarding expansion, enlargement, and change of use were correct, but incorrectly applies the controlling legal standards. The County does not attempt to explain how the trial court could properly remedy any over-intensification without first identifying the extent of lawful intensification.

The parties agree nonconforming use rights are matters of “local government” regulation, and such regulation is subject to the “broad limits” of the Washington constitution. *Rhod-A-Zalea*, 136 Wn.2d at 7 (emphasis added).⁶⁹ The parties further agree one of those constitutional limits is that a nonconforming use must be allowed to intensify as a matter of substantive due process. The parties agree the following test determines lawful intensification, but disagree on how it applies:

“When an increase in volume or intensity of use is of such magnitude as to effect a fundamental change in a nonconforming use, courts may find the change to be proscribed by the [zoning] ordinance. Intensification is permissible, however, where the *nature and character* of the use is unchanged and *substantially the same facilities are used*. The test is whether the intensified use is ‘different in kind’ from the nonconforming use in existence when the zoning ordinance was adopted.”

Keller v. City of Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979)

⁶⁹ Brief at 28; Resp. at 53–54.

(citations omitted) (emphasis added). *Keller* correctly applied this standard to hold the addition of six manufacturing cells to a chemical plant was a lawful intensification. *Id.* at 729, 732. In contrast, the County and trial court incorrectly rely on the first sentence while misapplying the next two. Any increase in the volume or intensity of the use has not made the Club's use "different in kind" from what it was in 1993.

Since 1926, the Club's land use has always been that of a gun club and shooting range for "sport and national defense." Brief at 29–30; CP 4054 (FOF 6). The County does not dispute this. Instead, the County presents five erroneous reasons why the current use should be considered fundamentally different: (1) the Club constructed berms and bays that did not exist prior to 1993; (2) the Club engages in "practical shooting" activities that did not exist prior to 1993; (3) the Club hosted small arms navy training classes between 2003 and 2010, which did not occur prior to 1993; (4) the Club has allegedly expanded its hours of operation beyond what they were in 1993; and (5) the Club allows the use of fully automatic firearms, large caliber rifles, and explosives. Resp. at 57–58. There is no dispute these activities occurred only within the historical eight acres.

The Club addressed the County's arguments in its opening brief.⁷⁰

⁷⁰ See Brief at 33 (discussing Club's use of berms, backstops, and shooting bays); *id.* at 32–33 (discussing Club's practical shooting activities); *id.* at 34–36 (discussing Club's firearm training activities); *id.* at 36 (discussing Club's shooting hours); *id.* at 32 (discussing Club's use of fully automatic firearms, cannons, and explosives). Club

As noted, the Club's historical activities included construction of earthen berms to trap bullets—like the berms and bays constructed after 1993.⁷¹ They included rapid fire shooting, shooting in multiple directions, and competitions involving dozens of shooters—like the practical shooting activities that occur at the Club today.⁷² They included small arms firearm training, including training of law enforcement and Navy qualification exercises—like the Navy training between 2003 and 2010.⁷³ They included shooting from at least 6 am to 10 pm.⁷⁴ They included use of fully automatic firearms, cannons, large caliber rifles, and explosives.⁷⁵

The County fails to dispute any of this historical evidence. Instead, the County mischaracterizes as a different kind of use the very types of activities that have defined the Club as a gun club or shooting range since its charter in 1926. Resp. at 48, 54, 57. This is a case about a gun club being a gun club. This is not a case where a shooting range added a motorcycle track and argued it was all recreational activity. This

witnesses Andrew Casella and Marcus Carter both testified regarding historical use of large caliber rifles. VT 1854:13–1855:2, 1720:1–1721:13, 1782:21–1784:24.

⁷¹ CP 4059 (FOF 29), 4082–84 (FOF 33, 37).

⁷² Brief at 32–33. See VT 1782:21–1784:12 (testimony of Andrew Casella); 1873:10–1874:13; 1907:3–23 (testimony of Ken Roberts, County Deputy Sheriff).

⁷³ Brief at 34–36 (discussing the history of Club's firearm training programs); CP 4071 (FOF 72) (describing Navy's qualification exercises). See also VT 1973:11–1974:13 (testimony of Club Executive Officer Marcus Carter regarding law enforcement training).

⁷⁴ Brief at 36 (discussing Club's historical hours of operation); see also, VT 1027:24–1028:14, 1096:10–18, 1068:18–1069:9 (testimony of County witness Terry Allison regarding Club's historical hours); VT 1872:14–19, 1895:6–8 (testimony of Club witness Ken Roberts regarding Club's historical hours).

⁷⁵ See *supra*, note 70.

case is more like *Keller*, where the addition of six manufacturing cells to a chlorine plant was a lawful intensification of the use and not an enlargement or change in the kind of use. 92 Wn.2d at 732.

The County emphasizes that the Club previously planned an expansion in the 300 meter range area, outside its historical eight acres. Resp. at 25. The Club abandoned the plan and the County was satisfied for many years with that decision—it even sent the Club two letters stating it was closing its file.⁷⁶ The County does not dispute this, but responds that the Club has been storing some shooting range materials in that area. Resp. at 25 n. 45. The Club has long used this area for storage,⁷⁷ and the County cites no contrary evidence. The trial court correctly found the Club’s shooting activities are confined within its historical eight acres, while the Club’s remaining acreage is “passively utilized.”⁷⁸ The trial court correctly omitted passive materials storage from its reasons to conclude the Club had expanded.⁷⁹ Even if that were in error, the remedy would be as simple as removing the materials.

⁷⁶ Brief at 37–39; see also, Exs. 143, 144 (App. 24, 25); VT 2070:1–2072:1 (testimony of Club Executive Officer Marcus Carter regarding County’s enforcement position); CP 2336, 2345, 2371–74, 2480–81 (deposition of County Code Compliance Supervisor Steve Mount regarding County’s enforcement position); VT 415:15–25, 565:21–566:16 (admitting Mount’s deposition).

⁷⁷ See VT 2204:6–2205:12 (testimony of Club Executive Officer regarding Club’s previous uses of 300 meter range area for storage).

⁷⁸ CP 4054–55 (FOF 8); Exs. 438, 486 (maps delineating eight acres) (App. 20, 21).

⁷⁹ CP 4080–82 (COL 26–28, 30). If storing materials outside the historical eight acres were an expansion, it could be remedied easily by removing the materials, an activity that would require no County permit.

The County spends several pages discussing a landowner's burden of proof when seeking to establish a nonconforming use right. Resp. at 51–53.⁸⁰ The entire discussion is irrelevant to this case because **there** is no question that the Club's nonconforming use right was **previously** recognized by the County Commissioners in 1993.⁸¹

The County mentions that Kitsap County Code prohibits **expansion** of “the area of use,”⁸² and that the Club installed a culvert across the rifle range after 1993 to prevent metals from entering surface water.⁸³ Yet the County does not argue that this expanded the Club's shooting area or established a different kind of use. The trial court correctly **found** the Club's shooting activities are confined within its historical **eight** acres, while the Club's remaining acreage is “passively utilized.”⁸⁴ Therefore, there has been no expansion.

The County asserts the Club “raises no challenge to Kitsap

⁸⁰ The discussion touches on the rule that a landowner cannot use “unlawful methods to establish a nonconforming use,” as well as the rule that the use must have been “continuous, not occasional or intermittent.” Resp. at 53. There is no evidence that the Club used unlawful methods to establish its nonconforming use right in 1993 or that it did not continuously maintain its use of the property as a shooting range.

⁸¹ See *Van Sant v. City of Everett*, 69 Wn. App. 641, 648, 849 P.2d 1276 (1993) (“once a non-conforming use is established, the burden shifts to the party claiming abandonment or discontinuance of the non-conforming use to prove such”). In *Van Sant*, the court correctly reversed a hearing examiner's mis-allocation of the burden of **proof** to the landowner where the city had “previously recognized” the nonconforming use right existed. *Id.* at 648–50.

⁸² Resp. at 56; KCC 17.460.020.C (App. 2) (“[i]f an existing nonconforming use or portion thereof, not enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded”).

⁸³ Resp. at 20 (citing CP 4065–4066 (FOF 53–54)).

⁸⁴ Brief at 30 (citing CP 4065–66 (FOF 8)).

County's nonconforming use chapter," while citing an ordinance that provides a nonconforming use "shall not be altered or enlarged in any manner." Resp. at 54; KCC 17.455.060 (App. 5). Yet the County does not argue this provision should be strictly enforced, and doing so would violate the Club's constitutional right to intensify. An alteration or enlargement is only prohibited if it results in a different "kind" of use pursuant to *Keller*.

The County cites KCC 17.460.020, which states a nonconforming use "may be continued so long as it remains otherwise lawful." Resp. at 57; App. 2. This provision ensures the Club may continue if there are no code violations, or if any such violation is remedied. It does not say what happens if there is a violation, or how it must be cured. As County chief building official Jeff Rowe testified, the Code allows a landowner to retract a prohibited expansion, enlargement, or change of use, and return "back into nonconformity."⁸⁵ The County's response does not attempt to discredit Mr. Rowe, nor does the County dispute that the Club must know the extent to which it has lawfully intensified in order to retract. Even if there were over-intensification, the trial court's failure to determine the extent of lawful intensification was in error.

The County cites the trial court's numerous conclusions of law

⁸⁵ VT 278:17-279:15, 187:1-18.

regarding expansion, enlargement, and change of use, and mistakenly refers to one of them as a “finding.” Resp. at 57 (citing COL 33). These conclusions must be reviewed *de novo*.⁸⁶

The County complains that the Club never tendered written assurance of cessation of all military training and that the evidence does not show NFI has ceased “doing business” at the property. Resp. at 58. As noted above, the small arms navy training at the Club between 2003 and 2010 is consistent with the Club’s historical activities and chartered purpose. The County also fails to distinguish the Club’s case law that shows renting a property is permitted if the type of activity is within the scope of the nonconforming use right.⁸⁷ There is no evidence of any plans for future military training.⁸⁸

The County mentions that the trial court found the Club’s activities are not encompassed by the current zoning definition of a “private recreational facility.” Resp. at 58. Yet the County identifies no error in the Club’s argument and case law showing it is the nature of the historical use that defines a nonconforming use right, and not a code definition.⁸⁹

In sum, the County and trial court erroneously equate an increase

⁸⁶ *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

⁸⁷ Brief at 35 (citing *Hendgen v. Clackamas County*, 836 P.2d 1369 (Or. App. 1992)).

⁸⁸ See VT 1318:24–1319:18, 1320:5–15, 1329:10–15 (testimony of County witness Arnold Teves regarding cessation of Navy training at the Club in 2010).

⁸⁹ Brief at 27 (citing *Keller*, 92 Wn.2d at 727–28; *Miller v. City of Bainbridge Island*, 111 Wn. App. 152, 164, 43 P.3d 1250 (2002)).

in the number of bullets fired or berms constructed at the Club to increase its safety with an enlargement or change of use. This argument would eviscerate the constitutional guarantee that a nonconforming use may intensify its activity as long as the kind of use does not change. Intensification always entails some change in the level of activity at a property. As in *Keller*, it can also involve improvements to the facilities. An increase in the number of bullets fired or berms constructed within a nonconforming gun club's historical shooting area is no more a change or enlargement of the use than an increase in the number of pizzas sold or ovens installed at a nonconforming pizza parlor. Finally, even if there were some prohibited over-intensification, the trial court still erred by failing to identify what is allowed as lawful intensification.

H. The Trial Court Misconstrued the Deed and Erred By Denying the Club's Accord and Satisfaction Defense and Breach of Contract Counterclaim.

The trial court erred when it denied the Club's affirmative defense of accord and satisfaction and its closely related counterclaim for breach of contract, both based on the 2009 Deed.⁹⁰ The trial court disregarded the specific, plain language of the Deed's "improvement" clause, which allows the Club to upgrade and improve its facilities consistent with

⁹⁰ See CP 4083-84 (COL 37-38) ("the [Deed] cannot be read as more than a contract transferring Property, . . . with restrictive covenants binding only upon [the Club]"); CP 4087-92 (Deed) (App. 1).

management practices for a modern shooting range. Brief at 42–43 (citing CP 4088 ¶ 3). It also failed to effectuate the County’s implied duties to allow the Club to continue pursuant to the Deed’s “public access” and “confinement” clauses. *Id.* at 44–46 (citing CP 4089 ¶ 4). The trial court’s decision should be reversed. The Club’s accord and satisfaction defense and breach of contract counterclaim should be granted.

The County argues two general statements in the Deed trump the Club’s more specific clauses. Resp. at 69, 72. The first is the title, “Bargain and Sale Deed with Restrictive Covenants.” CP 4087. The second is from the preamble on page one: “This conveyance shall be 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 [the Club].” CP 4087. Based on these general statements, the County argues the Deed imposes no duties on the County and no benefits on the Club other than the conveyance of title. Resp. at 71–72. The County’s position is contrary to the Deed’s language and implication, contrary to the evidence of its intent, and contrary to Washington law.

Washington courts “apply basic rules of contract interpretation” to construe provisions of a document, including restrictive covenants. *Wimberly v. Caravello*, 136 Wn. App. 327, 336–37, 149 P.3d 402 (2006). One well-accepted rule is that a specific provision qualifies the meaning of

a more general provision when the two conflict. *McGary v. Westlake Investors*, 99 Wn.2d 280, 286, 661 P.2d 971 (1983). Another is the “context” rule, which determines the intent of the contracting parties by viewing the contract as a whole, its subject matter and objective, the circumstances surrounding its making, the subsequent acts and conduct of the parties, and the reasonableness of the interpretations advocated by the parties. *Wimberly*, 136 Wn. App. at 336–37.⁹¹ There is a rule cited by the County that gives effect to the intent of the drafter,⁹² and another that gives weight to the intent of the grantor.⁹³ Another effectuates the implied duties of a contract.⁹⁴ These rules support the Club’s interpretation.

The improvement, public access, and confinement clauses are more specific than the general statements on which the County relies. Therefore, they qualify those general statements, and take priority. *McGary*, 99 Wn.2d at 286. The “improvement” clause expressly states that the Club may improve its historical eight acres in a manner consistent

⁹¹ See also, Brief at 42 (citing *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005) (explaining the “objective manifest theory of contracts” and the “context rule”).

⁹² Resp. at 71 (citing *Bauman v. Turpen*, 139 Wn. App. 78, 86, 160 P.3d 1050 (2007); *Riss v. Angel* 131 Wn.2d 612, 621, 934 P.2d 669 (1997)).

⁹³ Resp. at 69–70 (citing *Newport Yacht Basin Assn. of Condo. Owners (“Newport Yacht”) v. Supreme Nw., Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012)).

⁹⁴ Brief at 44–46 (citing *G.O. Geyen v. Time Oil Co.*, 46 Wn.2d 457, 460–61, 282 P.2d 287 (1955) (reversing trial court when it failed to effectuate an implied contractual duty to allow another party to perform its contractual obligations); *Tiegs v. Boise Cascade Corp.*, 83 Wn. App. 411, 426, 922 P.2d 115 (1996) *aff’d sub nom. Tiegs v. Watts*, 135 Wn.2d 1 (1998) (affirming trial court’s construction of implied duty preventing seller from frustrating the purpose of a sale contract)).

with modern shooting range practices.⁹⁵ The “public access” clause required the Club to immediately provide public access to its shooting ranges.⁹⁶ The “confinement” clause permits the Club to continue operating its nonconforming shooting range as it then existed, within the Club’s historical eight acres of active use.

Despite the plain language of the Deed that goes well beyond a mere transfer of title, the trial court concluded the Deed cannot be read as anything more than a property conveyance.⁹⁷ That conclusion is based on a misinterpretation of the Deed and on the erroneous finding that the “only evidence produced at trial to discern the County’s intent at the time of the [Deed] was the deed itself.” CP 4058 (FOF 26). The Club’s opening brief discusses the overwhelming extrinsic evidence proving the parties intended the Deed to clarify and cement the Club’s land use rights, resolve actual and potential disputes, and allow the Club to continue as it then existed.⁹⁸

The County argues extrinsic evidence cannot be considered because the Deed is unambiguous.⁹⁹ The express language of the Deed—and its necessary implications—would support the Club’s interpretation

⁹⁵ Brief at 42–43 (citing CP 4088 ¶ 3).

⁹⁶ *Id.* at 44–46 (citing CP 4089 ¶ 4).

⁹⁷ CP 4083 (COL 36).

⁹⁸ Brief at 47–53.

⁹⁹ Resp. at 71–72 (“only in the case of ambiguity will the court look beyond the document to ascertain intent from surrounding circumstances”).

even if no extrinsic evidence were considered. Brief at 42–46. More importantly, Washington law uses extrinsic evidence to construe a contract regardless of ambiguity. *Wimberly*, 136 Wn. App. at 336–37.

According to the County, the Court’s “primary task” is “to determine the drafter’s intent and the purpose of the covenant at the time it was drafted.” Resp. at 71. The Club agrees. Club attorney Regina Taylor drafted the Deed’s “improvement” clause, which the County accepted. It states the Club “may upgrade or improve the property and/or facilities within the historical approximately 8 (eight) acres in a manner consistent with ‘modernizing’ the facilities consistent with management practices for a modern shooting range.”¹⁰⁰ The manifest intent of this clause was to allow the Club to improve its facility within the historical eight acres, protect its existing facilities and operations from County enforcement action, and give the Club the security it needed to indemnify the County against potential multi-million dollar cleanup liability at the property.¹⁰¹

The County also states that courts assign particular weight to the intent of the grantor when construing a Deed.¹⁰² The Club agrees that evidence of the County’s intent is relevant, which is why the Club introduced overwhelming evidence that the County intended the Deed to secure the Club as it then existed. Chief among that evidence is the

¹⁰⁰ Exs. 400, 550 (App. 13, 12); VT 2879:22–2882:16; CP 4088 ¶ 3.

¹⁰¹ Brief at 64–65 (citing testimony of Club’s Executive Officer and attorney).

¹⁰² Resp. at 70 (citing *Newport Yacht*, 168 Wn. App. 56 at 64)).

County's Resolution (Ex. 477) (App. 15 at 3) authorizing the Deed, which the County failed to address in its response. The Resolution plainly and publicly documents the County's intent for the Deed "to provide that [the Club] continue to operate with full control over the property."¹⁰³

The County attempts to minimize the significance of Matt Keough's testimony, yet quotes the portion of his testimony where he explained "that the existing facilities were – that they were going to – they were expected to continue and that going beyond the existing facilities, as I recall, was not – was an item for future discussion."¹⁰⁴ This testimony shows the Deed was intended to secure the Club's right to continue as it then existed within its historical eight acres, while any future site development outside that area would be subject to County development code and permitting. In addition, Keough's testimony was not describing an unspoken belief. He was responding to a question about what the parties' negotiating agents "discussed" regarding their intentions and expectations in entering into the Deed.¹⁰⁵

The County similarly attempts to minimize the significance of

¹⁰³ Ex. 477 at 3 (App. 15 at 3) (emphasis added); Brief at 48–49; *see also*, Exs. 478, 552, 553 (meeting minutes regarding approval of the Resolution and Deed) (App. 16, 17, 18); *Baker v. Lake City Sewer Dist.*, 30 Wn.2d 510, 518, 191 P.2d 844 (1948) ("[a resolution] is simply an expression of the opinion or mind of the official body concerning some particular item of business").

¹⁰⁴ VT 2846:17–2847:15 (emphasis added); Resp. at 15;

¹⁰⁵ Resp. at 15 (quoting [VT] 2846:17–2847:15); *Chevalier v. Woempner*, 172 Wn. App. 467, 477, 290 P.3d 1031 (2012) (effectuating intent of parties' negotiating agents).

Commissioner Brown's March 18, 2009 letter.¹⁰⁶ The County argues "a trial court could reasonably find this letter to be a general expression of support for [the Club], not necessarily written on behalf of the BOCC or of the County to affirm a land use." Resp. at 15. The trial court did not make that finding, however, and the argument is beside the point because Commissioner Brown was one of the signatories of the Deed and approved the Resolution. Brown was acting as Commissioner for District 3, where the Club is located,¹⁰⁷ when he signed and delivered the letter and executed the Deed. As with Keough, his manifest intentions are evidence of the intent of the Deed, regardless of whether the letter is attributable to his Commissionership alone, as opposed to the entire BOCC or County. Commissioner Brown's letter is among the types of extrinsic evidence of intent considered under the context rule.¹⁰⁸

The County suggests the Club's interpretation of the Deed is unreasonable because it would exempt the Club from all "ordinary permit requirements" of the County, even building permits. Resp. at 69. The County misconstrues the Club's position. The Club does not maintain that the Deed exempts it from building permits within its historical eight

¹⁰⁶ Resp. at 15 (citing Ex. 293) (App. 19).

¹⁰⁷ Kitsap County, *Josh Brown, District 3 Commissioner (January 2007–Present)*, Kitsap County Commissioners (Oct. 4, 2013), <http://www.kitsapgov.com/boc/brown/brown.htm>; CP 4053 (FOF 4) (stating Club's address, which is inside District 3).

¹⁰⁸ See, e.g., *Thompson v. Schlittenhart*, 47 Wn. App. 209, 211–12, 734 P.2d 48 (1987) (determining the intent of a deed based on monuments on the ground, city maps, and past conveyances).

acres. Nor does the Club maintain that the Deed exempts it from any permits required by state or federal regulatory agencies. The Club interprets the Deed to exempt it from County permits when engaged in the standard activities of a modern shooting range, such as construction, maintenance, and clearing of berms, bays, shooting areas, and adjacent areas. CP 4088 ¶ 3 (improvement clause). The Club historically engaged in such activities, and it has continued to do so while updating its practices to conform to standards for modern shooting ranges.

As the trial court found, the Club applied for a County building permit for an ADA ramp after entering into the Deed. CP 4060 (FOF 32). This is consistent with the Club's reasonable interpretation of the Deed and shows the Club has not taken the "unreasonable" position described by the County. The only unreasonable position is the County's contention that the Deed confers no benefits to the Club and imposes no enforceable obligations on the County.

The County suggests the dispositive fact is that the Deed does not "expressly waiv[e] compliance with any rules governing alteration" of the Club within its historical eight acres.¹⁰⁹ This simplistic argument ignores the Deed's express words, their implication, and the extrinsic evidence of its intent. It also fails to address the Club's point that a release and

¹⁰⁹ Resp. at 72-73 ("[t]here is no express waiver, settlement, release, or other representation that KRRC would be exempt from zoning laws or permitting regulations").

settlement was not discussed because there were no pending **adversarial** allegations by the County that would have caused the Club to **negotiate** such a provision with its “win-win” “partner.”¹¹⁰ Still **further**, such arguments cut both ways because the Deed does not expressly **reserve** the right for the County to sue the Club over its existing **facilities** and operations, even while saying they can continue. There is no **evidence** the County ever negotiated for such a provision, which the Club **would** not have accepted.

Finally, the County discusses the **Open Public Meetings Act**, which “requires governing bodies to conduct a public **meeting** with notice.” Resp. at 73–74. The County cites *Feature Realty, Inc. v. City of Spokane*, where a settlement agreement was ineffective under **OPMA** because it was approved only in an executive session, without a public meeting and notice.¹¹¹ In contrast, there is no dispute that the **Deed** was entered into by the parties after a public meeting and notice in **compliance** with **OPMA**.¹¹² There is also no dispute that the **Resolution** was in

¹¹⁰ Ex. 550 at 1 (App. 12) (email from R. Taylor); Brief at 54. The County argues the intentions of the parties to the Deed is a question of fact. Resp. at 72. To the extent the interpretation of the Deed is a legal question dependent on the written **contract** itself, review is *de novo*. *Wimberly*, 136 Wash. App. at 407. To the extent the **Club’s** facts supporting its interpretation of the Deed are at issue, the question is whether the County has substantial evidence to disprove any of them. *Raven v. Dept. of Social and Health Svcs.*, 177 Wn.2d 804, 809, 829, 306 P.3d 920 (2013) (reversing finding of **neglect** for lack of substantial evidence).

¹¹¹ 331 F.3d 1082 (9th Cir. 2003); Resp. at 74.

¹¹² Brief at 54, 48–49; Ex. 477 at 3 (Resolution) (App. 15 at 3); *see also*, Exs. 478, 552, 553 (meeting minutes regarding approval of the Resolution and Deed) (App. 16, 17, 18);

compliance with OPMA. *Id.* The Club is not attempting to enforce an agreement entered into behind closed doors in violation of OPMA. The Deed is not void under OPMA, and OPMA is not a rule of contract interpretation. The manifest intent of the Deed must be given effect.

I. Estoppel Is Proven with Clear, Cogent, and Convincing Evidence.

The trial court issued no findings of fact or conclusions of law regarding the Club's estoppel defense, but did not grant it. The question here is whether there is clear, cogent, and convincing evidence to support the defense under the correct legal standards.¹¹³ If so, the trial court erred. The opening brief discusses the evidence and law that show the defense should have been granted. Brief at 55–71. In response, the County fails to identify any legal standard or evidence upon which the trial court could have properly denied the defense. This Court should reverse the denial of equitable estoppel. If, under contract law, the Deed did not secure the Club's land use and infrastructure status as it then existed and resolve potential claims by the County, then the Deed should be given that effect as a matter of equitable estoppel.

This Court will answer whether it was fair for the County to make statements to induce the Club to agree to the Deed as written, knowing and

Ex. 555 (audio recording of May 11 and 13, 2009 Kitsap County Board of Commissioners' meeting).

¹¹³ See Resp. at 76 n 205 (citing *Kramarevsky v. Dept. of Soc. & Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993)).

having full access to the development and facilities that existed at the time of the sale, and not disclose there were alleged code violations and a threat to the Club's nonconforming use. If this had been an arms length commercial transaction, it would support a fraud claim. Here, where the seller is a local government, it is even more incumbent on the government to deal with its citizens in an open and fair manner. The fact that the trial court found there were no concrete enforcement plans at the time of the sale (FOF 24) does not dispose of the defense, because the allegations of its code enforcement authority were undisputedly known to the County at the time, but not disclosed.

The County should be estopped in its governmental capacity because it is necessary to avoid manifest injustice and will improve the way Kitsap County functions. *Id.* at 68–71. The County does not argue estoppel is unnecessary to avoid manifest injustice or that estoppel will not improve the truthfulness and fairness with which Kitsap County conducts land transactions. The County also does not dispute that if it is estopped in its governmental capacity, its claims in this action should be denied to the extent they arise from conditions that existed at the time of the Deed. *Id.* at 71.

The County should also be estopped in its proprietary capacity because it acted in that capacity in connection with the sale and Deed.

The County does not deny that it acted in that capacity, or that it cannot be estopped in that capacity if the basic elements of estoppel are present.¹¹⁴ The County also does not dispute that, if it is estopped, it should be held liable for breach of contract; nor that the case should then be remanded for determination of the Club's damages, which include all costs of defense and any abatement costs incurred by the Club as a result of this action.¹¹⁵

The County does not dispute that its chief enforcement officer, Steve Mount, disclosed his allegations against the Club to the Commissioners and to Matt Keough prior to execution of the Deed.¹¹⁶ The County does not dispute that their knowledge is the County's knowledge,¹¹⁷ or that it concealed Mount's allegations from the Club.¹¹⁸ The County offers no explanation as to why it did this, even while the Commissioners sang the Club's praises and passed an official Resolution to secure the Club's control of its property through the Deed.¹¹⁹ The County does not attempt to explain why it did not raise any code or land use issues with the Club prior to the Deed—having previously written letters to the Club in 2007 and 2008 stating the only prior regulatory

¹¹⁴ Brief at 58–65 (discussing how the Club satisfies the three basic elements of estoppel); *id.* at 68 (discussing how the County acted in its proprietary capacity).

¹¹⁵ *Id.* at 68.

¹¹⁶ *Id.* at 61 (citing VT 415:17–25, 574:9–576:3).

¹¹⁷ It is black letter law that knowledge of a government official is imputed to the government entity. *King v. Riveland*, 125 Wn.2d 500, 508, 886 P.2d 160 (1994).

¹¹⁸ Brief at 61–62.

¹¹⁹ *See id.* at 48–49 (discussing the County's Resolution (Ex. 477) (App. 15) approving the Deed); *id.* at 52–53 (citing communications (Exs. 330, 332, 336, 293, 405) regarding County's approval of Club).

action it had ever threatened was considered closed.¹²⁰ The County does not dispute that its position in this case is inconsistent with or a repudiation of its words and actions in connection with the Deed.¹²¹ The County's lack of explanation suggests the Club was not misled by the gaffe of some hapless county representative. It was misled by the County Commissioners and by the County's negotiating agent, all acting and speaking in their official capacity to support the Club and induce it into the Deed—even while they knew the County's enforcement authority disagreed, and that the Club was not aware of his position.¹²²

The County begins its estoppel analysis by speculating the Club would have purchased its “long-time range property” even if it had known “the County would one day sue[.]” Resp. at 75. The implication is that the County's statements of intent, approvals of the Club, and concealment of its enforcement official's allegations were not material or relied upon. The evidence, however, shows the Club would have negotiated differently, not that it would have lost all interest in the property.¹²³ For example, one

¹²⁰ Exs. 143, 144 (App. 24, 25); VT 2070:1–2072:1 (testimony of Marcus Carter regarding County's letters); *see also*, VT 2060:19–2062:5, 2063:7–17, 2068:14–24.

¹²¹ Brief at 58–62 (discussing County's inconsistency in its position).

¹²² *Id.* at 64–66 (discussing Club's reliance on the County's representations).

¹²³ *Id.* at 64–65 (discussing testimony of Regina Taylor and Marcus Carter regarding indemnity and public access provisions and Club's desire to secure its facility and operations). The Club's attorney testified she would have advised the Club not to sign the Deed if she knew the County was reserving the right to shut the Club down due to existing conditions. VT 2893:13–2894:4. The Club's Executive Officer explained that the indemnity provision was acceptable because of the County's assurances that the Club would continue. VT 2097:8–2098:19. The Club had significant bargaining power given

option, which the County has not foreclosed, is that the Club **could** have prevented the sale so DNR could keep the property and ensure **the** Club's continued existence.¹²⁴ Moreover, the County does not **dispute** that its present claims adversely affect the value of the transaction or **impair** the Club's purpose in entering into it, which makes its prior inducements and concealment material.¹²⁵ The County's words and actions **were** material and the Club relied on them.

The County's next argument is that when a **government** is a so-called "pass-through seller" and the buyer is a "long-time **tenant**," the government has no duty to notify the tenant of any **violations** alleged internally by its chief code enforcement officer. Resp. at 75–76. Yet the County cites no case law or authority that would assign any **independent** significance to these facts, and fails to explain why a local **government** should be held to a lower standard than a commercial seller. **The** County was the seller and the Club was the buyer. Therefore, the County had a duty to disclose material facts and deal with the Club honestly **and** in good faith.¹²⁶ Instead, the County concealed material facts and, **if** the trial

the County's undisputed desire to complete the land swap with DNR, DNR's refusal to complete the swap if it did not include the Club property, and the County's **determination** not to remain the property's owner. CP 4056–57 (FOF 16–19).

¹²⁴ DNR wanted to structure the deal so the Club would continue. See Ex. 359 at 3 (App. 23).

¹²⁵ See RCW 18.86.010(9) (defining as material any "information that **substantially** adversely affects the value of the property . . . or operates to materially **impair** or defeat **the** purpose of the transaction").

¹²⁶ Brief at 59–60 (discussing law regarding seller's duty to disclose) (citing *Sorrell v.*

decision is upheld, will have succeeded in repudiating multiple assurances and statements of intent that the Club relied on in publicly supporting the DNR/County land swap and taking title to the property subject to indemnity, public access, and other obligations. This manifest injustice strongly supports estoppel.¹²⁷

The County implies the estoppel defense can be denied on the grounds that the Club lacks “clean hands.”¹²⁸ Under this theory, a party “may not base a claim of estoppel on conduct, omissions, or representations induced by his or her own conduct, concealment, or representations.” Resp. at 77 n. 210. The County, however, fails to show its concealment of Mount’s allegations or its statements of approval and intent that induced the Club to execute the Deed were somehow wrongfully induced by the Club. The County is responsible for those words and actions, which it should be estopped from repudiating.

The County argues the government cannot be estopped from changing its position on “matters of law” or from enforcing zoning ordinances. Resp. at 78–79. The cited cases, however, were all decided

Young, 6 Wn. App. 220, 225, 491 P.2d 1312 (1971)).

¹²⁷ In a footnote, the County insinuates the Club has not faithfully performed its duty to indemnify or that it did not give the County consideration for the property. Resp. at 77 n. 208. The County, however, has never sought rescission or claimed the Deed is ineffective for lack of consideration, and it never alleged a claim for breach of contract. Moreover, there is no evidence the County has ever sought indemnity from the Club. With nothing to indemnify, there can be no breach. The mutuality of consideration and the Club’s performance of its Deed obligations are not legitimate issues in this appeal.

¹²⁸ Resp. at 77 (citing *Kramarevsky*, 122 Wn.2d at 739 n. 1).

on the grounds that the government's original words or actions had been unauthorized, in violation of law, or unofficial.¹²⁹ That is not the case here, where the Deed and Resolution were official acts of the County Commissioners and within their authority to dispose of public property and negotiate binding settlements to resolve actual or potential disputes.¹³⁰ The County does not dispute that its Commissioners possessed this general authority at the time of the Deed.¹³¹

This is not the typical “estoppel against the government” scenario where some low level functionary mistakenly told a landowner he could build and his permit application was later denied. The County’s argument

¹²⁹ See Resp. at 78–79 n. 216, 219. In *Theodoratus*, the Department of Ecology gave a developer a report stating his pending water right would be quantified based on system capacity. 135 Wn.2d at 587–88, 600. This was an incorrect statement of law because “statutes, case law, and recent legislative history” left “no doubt” that beneficial use is the only lawful way to quantify a water right. *Id.* at 590, 599–600. When Ecology later attempted to change its position, the developer argued for estoppel based on his reliance on the prior statement. *Id.* As the court of appeals would explain in *Dykstra v. Skagit County*, Ecology “originally acted ultra vires in measuring [the] water right.” *Dykstra*, 97 Wn. App. at 677. Therefore, there was no estoppel. The same rule was dispositive in the County’s other cases. *Miller*, 111 Wn. App. at 166; *Steinmann*, 9 Wn. App. at 483.

¹³⁰ Brief at 58–62. County commissioners have “broad general powers” to “have the care of the county property . . . and, in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law.” *Finch v. Matthews*, 74 Wn.2d 161, 173, 443 P.2d 833, 841 (1968); RCW 36.32.120(2).

¹³¹ Even if the Commissioners were supportive of this action against the Club (which is not evident in the record), estoppel would still apply. An authorized government action is subject to estoppel regardless of whether the government has changed its mind about the decision. See *State ex rel. Shannon v. Sponburgh*, 66 Wn.2d 135, 143–44, 401 P.2d 635 (1965) (holding liquor control board could be estopped from repudiating prior official approval of application for change of location after applicant had relied on approval); *Board of Regents of the Univ. of Washington v. City of Seattle*, 108 Wn.2d 545, 741 P.2d 11 (1987) (estopping State from challenging legality of condemnation award to which it had previously acquiesced); *City of Charlestown Advisory Planning Commn. v. KBJ, LLC*, 879 N.E.2d 599, 603 (Ind. App. 2008) (holding a change in “political winds” does not justify repudiation of a prior approval).

would allow the government to deceive its counterparties and repudiate its official words and actions in authorized transactions. Estoppel evolved as a legal doctrine to prevent this, and even a county is accountable.

The County's final argument against estoppel is that the Club had "convenient and available means" to learn the "state of the facts" and therefore cannot blame the County for withholding or misrepresenting them.¹³² In *Chemical Bank*, the party seeking estoppel could have determined that the government representations it relied upon were *ultra vires*. 102 Wn.2d at 911. Here, the Commissioners' concealment and statements of intent and approval were part of an official transaction and within the scope of their authority to dispose of property and settle potential disputes. *Chemical Bank* is inapposite.

Moreover, the County does not explain what exactly the Club could have conveniently learned on its own prior to entering into the Deed. There is no evidence that the Club could have learned: (1) enforcement officer Steve Mount was secretly alleging the Club to be an unlawful nuisance; (2) the County did not intend the Deed to approve and secure the Club as it then existed, which is what the County said was intended; or (3) the Resolution and other official approvals used to authorize the Deed were not intended to be binding on the County or final

¹³² Resp. at 79–80 (citing *Chem. Bank v. Washington Pub. Power Supply Sys.*, 102 Wn.2d 874, 691 P.2d 524 (1984)).

decisions regarding the Club's ongoing facilities and operations, which is how they appeared. There is certainly no evidence of any public records the Club could have conveniently obtained to learn, prior to signing the Deed, that the County's assurances and statements of intent were false, without legal effect, and contradicted by its enforcement officer.

If the Deed did not secure the Club's existing facilities and operations and set aside potential disputes with the County as a matter of contract law, it should have that effect under the doctrine of equitable estoppel. Each element of estoppel is present here and the trial court erred by failing to grant and give effect to the affirmative defense.

J. The Trial Court's Injunctions Should Be Reversed Because They Are Premised on the Trial Court's Errors, Arbitrary, Excessive, and Not Tailored to Prevent Specific Harms.

In its opening brief, the Club advocated for the two injunctions and warrant of abatement to be reversed and permanently set aside. Brief at 71–72, 78. Alternatively, the Club asked them to be reversed and remanded with instructions for them to be narrowly tailored to reflect clear and objective standards that prevent specifically identified harms. *Id.*

The first injunction shuts down the Club and only allows it to reopen under a CUP. CP 4085 ¶ 6. There is no guarantee the County will ever issue such a permit. VT 283:1–17. There is no basis for the injunction because termination of the nonconforming use right and the

trial court's other decisions were in error. Brief at 74-75. In addition, even if some or all of the trial court's decisions regarding nuisance, expansion, or permitting violations were affirmed, they would provide no grounds to prohibit all activity at the Club or require a CUP. *Id.* at 75-76.

The trial court drafted the second injunction to apply even if the Club were to obtain a CUP. The injunction prohibits shooting before 9 am or after 7 pm. CP 4085 ¶ 7(d). It also prohibits use of rifles of greater than "nominal .30 caliber," fully automatic firearms, cannons, and exploding targets. *Id.* ¶ 7(a)-(c). These prohibitions are arbitrary and excessive. Brief at 76-77. They are arbitrary because there is no finding or substantial evidence that any of the prohibited activities are, per se, illegal. They are excessive because they prohibit a substantial amount of activity that is lawful, consistent with the Club's historical use of its property, and pre-dates any allegations of a nuisance. *Id.* at 74-75. The injunctions are not appropriately tailored to remedy any specific harm.

The County argues the injunctions should be affirmed because they are reviewed for abuse of discretion and subject to deference. Resp. at 45-47. The County then implies the injunctions were not an abuse of discretion because there is substantial evidence to support them. *Id.* at 47. The County fails to articulate clearly, however, what that evidence is.

The County also disregards the rule that an injunction is an abuse

of discretion if it is based on incorrect legal standards or the incorrect application of legal standards.¹³³ The Club has identified errors throughout the trial court's decision, including incorrect legal standards, incorrect application of legal standards, and erroneous findings of fact. The injunctions cannot stand because they are based on the trial court's other erroneous decisions. The County does not argue the injunctions should be affirmed even if the trial court committed error.

The County asserts the trial court was allowed to consider, as factors relevant to the injunctions, "the availability of other adequate remedies, misconduct by the plaintiff, and the relative hardship if injunctive relief is granted or denied."¹³⁴ The County, however, does not explain what factors, if any, the trial court considered in fashioning the injunctions. Moreover, the three factors cited by the County support reversal. The County fails to show a less excessive remedy would not be adequate. This is unsurprising given that this Court previously determined the harm of shutting down the Club pending appeal outweighed the risk of allowing it to continue.¹³⁵ The County also fails to argue or show that any misconduct by the Club (if there was any) warrants an excessive or

¹³³ Brief at 72 (citing *In re Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004)). If the trial court's ruling is based on an "erroneous view of the law or involves application of an incorrect legal analysis it necessarily abuses its discretion." *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007).

¹³⁴ Resp. at 46 (citing *Wimberly*, 136 Wn. App. at 339; *Hollis v. Garwall, Inc.*, 88 Wn. App. 10, 16, 945 P.2d 717 (1997) *aff'd*, 137 Wn.2d 683 (1999)).

¹³⁵ See *Ruling Granting Stay on Conditions* at 5 (dated April 23, 2012).

punitive injunction under the circumstances.

According to the County, the Club is challenging the “immediate effectiveness of the trial court’s injunctions.” Resp. at 46. More accurately, the Club is challenging the immediate termination of its vested nonconforming use right, which was in error, and which provides no grounds for injunctive relief. The Club is also challenging each underpinning illegality that the injunctions may have been intended to remedy—i.e., nuisance, expansion, lack of permits. Because the trial court erred in some or all of its determinations of illegality, the injunctions must be reversed. In addition, even if there were some illegality, the injunctions must be reversed because they are arbitrary, irrational, not based on any clear or objective distinction between what is unlawful and lawful, and excessively prohibit activities never shown or found to be unlawful.

As discussed in the opening brief, an injunction must be narrowly tailored to remedy a specific, proven harm.¹³⁶ The response does not argue against this rule or distinguish *Chambers v. City of Mount Vernon*, where an excessive injunction was reversed. 11 Wn. App. 357, 361, 522 P.2d 1184 (1974). The trial court’s injunctions violate this principle because even if there were some illegality or harm to remedy, they are not narrowly tailored to address it. Instead, they blindly entrust specific

¹³⁶ Brief at 72–73 (citing *DeLong v. Parmelee*, 157 Wn. App. 119, 150, 236 P.3d 936 (2010) review granted, cause remanded, 171 Wn.2d 1004 (2011); *Chambers v. City of Mount Vernon*, 11 Wn. App. 357, 361, 522 P.2d 1184 (1974)).

remedies to the County's CUP process while shutting down the Club and permanently prohibiting a substantial amount of lawful, harmless conduct. The injunctions do not reflect any clear and objective distinction between lawful and unlawful activities or improvements.

Because the trial court erred in terminating the Club's nonconforming use right, it also erred in shutting down the Club and requiring it to obtain a CUP in order to resume excessively limited operations. If the Club retains its nonconforming use right, then it is exempt from the zoning rules that require a CUP for certain uses in certain zones.¹³⁷ Similarly, the trial court's decisions regarding nuisance, expansion, and permits were in error, so they provide no grounds to shut the Club down or require a CUP. The first injunction must be reversed.

The first injunction would be in error even if this Court were to affirm some or all of the trial court's decisions regarding nuisance, expansion, and permits. The remedy, in that case, would need to be appropriately tailored to address a specific harm without needlessly prohibiting lawful activities. If any aspect of the Club were a nuisance, for example, the harm could be remedied by an injunction preventing or requiring abatement of that *specific* nuisance. With respect to sound, that would require an objective standard to identify when the sound from the

¹³⁷ KCC 17.420.020 (CUP ordinance) (App. 6); KCC 17.460.020 (nonconforming use ordinance) (App. 2).

Club is and is not a public nuisance. With respect to safety, that would require a clear standard to identify when and under what conditions an activity at the Club is and is not so unsafe as to constitute a public nuisance. With respect to expansion, change of use, or enlargement, that would require a distinction between what is prohibited and what is a lawful continuation or intensification of the use. With respect to permitting violations, that would require only that the Club obtain permits or, at worst, that the Club cease using specific unpermitted areas or improvements, pending permits. The trial court did not tailor the first injunction to address any of the specific illegalities it found.

The possibility that the Club can reopen with a CUP does not make shutting the Club down appropriately tailored. Instead, it is an abdication of the trial court's responsibility to remedy specific harms. The County does not dispute that the Club might be denied a CUP and never receive one. The County does not dispute that a CUP would give it broad power to impose conditions on the Club and the use of its property, without direct judicial oversight over the process. The County does not dispute that it has never informed the Club, courts, or anyone of the specific conditions it would impose on the Club as part of a CUP. There is no finding or showing that the County has the expertise necessary to determine what

those conditions should be.¹³⁸ Requiring a CUP for the Club to reopen was arbitrary, excessive, and not appropriately tailored to address a specific harm. The first injunction must be reversed even if some aspect of the trial court's decision is affirmed.

Like the first injunction, the second injunction limiting hours of operation and prohibiting certain activities is an abuse of discretion not supported by the record. The trial court did not find and the County does not argue that the activities prohibited by the second injunction are nuisances per se, or that they cannot be allowed at the property under any circumstances without creating a nuisance. The County does not attempt to explain the second injunction or show substantial evidence that would support any of its parts. The second injunction should be reversed along with the first. At minimum, the injunctions should be remanded with instructions for the trial court to narrowly tailor them to address specific harms or violations, without needlessly prohibiting lawful and reasonable use of the property.¹³⁹

¹³⁸ In contrast to the County, the Club has a wealth of expertise regarding firearm safety and range management. See CP 822–23, 839–40 (App. 28) (list of certifications and qualifications of Club Executive Officer Marcus Carter); VT 1676:11–1677:3 (describing his experience as a U.S. Army military police officer); VT 1677:4–19 (explaining his master gunsmith training and NRA firearms instructor classes); VT 1678:2–24 (describing his experience owning and operating gunsmith and ammunition manufacturing businesses); VT 1680:1–16 (describing his firearms instructor and range safety officer certifications); VT 1689:1–14 (describing his range safety development experience).

¹³⁹ In its “counterstatement” of the issues, the County implies that the trial court’s second injunction is “not inconsistent with the range’s pre-1993 historical operation.” Resp. at 2. The response brief does not expand on this proposition, which is incorrect. The second

The trial court did not issue a specific warrant of abatement, but only preserved the right to do so pursuant to a supplemental, post-judgment proceeding. CP 4085 ¶ 8. The opening brief argues the warrant of abatement should be reversed and permanently set aside because there are no violations of law to be remedied. Brief at 78. Alternatively, the warrant of abatement was in error because it fails to set forth any specific conditions or requirements for abatement. The County's response does not dispute that a warrant of abatement, like any injunction, must be tailored to remedy a specific harm. The response does not even attempt to defend the warrant of abatement. Therefore, it should be reversed and permanently set aside. At minimum, the Court should hold that any warrant of abatement must be tailored to remedy a specific harm.

The County suggests the excessive scope of the trial court's injunctions should be excused on the grounds that the Club is of little redeeming social value. Resp. at 64, 46. The record proves otherwise. The Club provides a plethora of firearms safety courses to educate and train inexperienced shooters, which now more than ever is essential as

injunction prohibits shooting during times when the Club historically operated. Brief at 36–37 (discussing evidence of Club's historical hours). It prohibits cannons, fully automatic weapons, and exploding targets, even though the trial court's own findings of fact recognize that these activities occurred at the Club at, prior to, or around the time of the 1993 acknowledgment of its vested nonconforming use right, and prior to any nuisance allegations. CP 4073 (FOF 22). Similarly, the record proves that rifles larger than nominal .30 caliber were fired at the Club before 1993, as Andrew Casella and Marcus Carter both testified regarding those historical activities. VT 1854: 13–1855:2; VT 1720:1–1721:13, 1782:21–1784:24. The second injunction prohibits activities that are not unlawful or nuisances per se, and which should be allowed to continue.

inexperienced shooters are purchasing firearms in droves.¹⁴⁰ The Club has trained thousands in basic firearms safety and self-defense, and it also provides classes in hunter education and children's Olympic-style shooting.¹⁴¹ Every year it hosts the "Courage Classic" charity shooting competition.¹⁴²

The Club actively supports local law enforcement and promotes shooting in supervised environments with safety infrastructure. Law enforcement officers from multiple state and federal agencies train at the Club.¹⁴³ The Club regularly provides supplemental pre-deployment training and shooting practice for members of the military.¹⁴⁴ The Club subsidizes a "Take It To The Range" program, which enables law enforcement officers to issue cards to individuals shooting in uncontrolled areas that can be redeemed at the Club for a free day of safe shooting.¹⁴⁵ The Club provides significant benefits to the community. Greatest of all may be that it provides safety infrastructure, training, and supervision for shooters who could otherwise shoot lawfully without these safeguards on properties throughout Kitsap County greater than five acres.¹⁴⁶

¹⁴⁰ See CP 822-23, 826-27, 837 (describing Club's training programs) (App. 28).

¹⁴¹ VT 1917:16-1918:25, 1875-1876:9 (testimony of Club witness Merton Cooper); VT 1965:15-1966:6; 2133:19-22 (testimony of Club Executive Officer Marcus Carter).

¹⁴² VT 1988:1-1989:7.

¹⁴³ VT 1973:11-1974:13.

¹⁴⁴ CP 827.

¹⁴⁵ VT 1701:19-1702:14.

¹⁴⁶ KCC 10.24.090 (App. 40).

CONCLUSION

For the reasons stated above, the Club respectfully requests an order:

- (1) reversing the trial court's declaratory judgment terminating the Club's nonconforming use right;
- (2) reversing the trial court's judgment declaring the Club a public nuisance, and declaring it is not a nuisance;
- (3) reversing every aspect of the trial court's injunction and warrant of abatement and either permanently setting them aside or remanding with instructions for the trial court to narrowly tailor them to reflect clear and objective standards and to prevent specifically identified harms;
- (4) granting the Club's accord and satisfaction defense or alternative equitable estoppel defense, and either dismissing the County's claims or remanding with an order to give effect to the Club's interpretation of the Deed; and

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(5) granting the Club's breach of contract counter-claim and remanding with an order to determine the Club's damages, including defense and abatement costs.

DATED: October 21, 2013

CHENOWETH LAW GROUP, P.C



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(pro hac vice)
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CERTIFICATE OF SERVICE

I, James Patrick Graves, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned have been a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in this cause of action, and competent to be a witness herein.

On the date stated below, a copy of **AMENDED REPLY BRIEF OF APPELLANT** was served upon the following individuals by placing it in the U.S. Mail, postage prepaid, at Portland, Oregon:

Neil R. Wachter
Jennine Christensen
Kitsap County Prosecutor's Office
Civil Division
614 Division Street, MS-35A
Port Orchard, WA 98366

(Of Attorneys for Respondent Kitsap County)

David S. Mann
Gendler & Mann, LLP
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(Of Attorneys for *Amicus Curiae* CK Safe & Quiet, LLC)

DATED: October 22, 2013.

CHENOWETH LAW GROUP, PC



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APPENDIX

Pursuant to RAP Rules 10.3(a)(8) and 10.4(c), Appellant Kitsap Rifle and Revolver Club (the "Club") submits the attached Appendix. The Appendix consists of the following decision of the trial court that is the subject of this appeal, Kitsap County Code provisions effective at the time of trial, Trial Exhibits (the exhibits in color are from the files of the Club's counsel), and selected portions of the Clerk's Papers (CP):

- (1) *Findings of Fact, Conclusions of Law and Orders of trial court*, dated February 9, 2012, with attached Trial Exhibit 147, *Bargain and Sale Deed with Covenants*, CP 4052-92;
- (2) KCC 17.460, "Nonconforming Uses and Structures";
- (3) KCC 17.530, "Enforcement";
- (4) KCC 17.110, "Definitions";
- (5) KCC 17.455, "Interpretations and Exceptions";
- (6) KCC 17.420, "Administrative Conditional Use Permit";
- (7) KCC 10.28, "Noise";
- (8) Trial Exhibit 16: 5' contoured LIDAR aerial photograph of the Club and nearby properties;
- (9) Trial Exhibit 3: map of selected residences within five miles of the Club;

- (10) Trial Exhibit 440: report regarding range safety prepared by Scott Kranz of AMEC Earth & Environmental;
- (11) Trial Exhibit 273: April 25, 2003 letter from Kitsap County Sheriff's Department to Club;
- (12) Trial Exhibit 550: April 10, 2009 email from Club attorney Regina Taylor to Kitsap County regarding draft deed;
- (13) Trial Exhibit 400: May 12, 2009 email from Club attorney Regina Taylor to Kitsap County regarding draft deed;
- (14) Trial Exhibit 133: Google Earth photo with shooting directions overlaid on Club's shooting areas;
- (15) Trial Exhibit 477: May 11, 2009 Kitsap County Board of Commissioners meeting agenda and unsigned resolution;
- (16) Trial Exhibit 478: May 13, 2009 meeting minutes of Kitsap County Board of Commissioners' Management Team;
- (17) Trial Exhibit 552: May 11 and 13, 2009 meeting minutes of Kitsap County Board of Commissioners;
- (18) Trial Exhibit 553: June 8, 2009 meeting minutes of Kitsap County Board of Commissioners;
- (19) Trial Exhibit 293: March 18, 2009 letter from Commissioner Brown regarding comments to be included in the public record;

- (20) Trial Exhibit 438: map of club's historical eight acres prepared by AES Consultants;
- (21) Trial Exhibit 486: aerial photograph from 2009 of Club's historical eight acres prepared by Soundview Consultants;
- (22) Trial Exhibit 539: aerial photograph from June 11, 2010 of areas surrounding Club with overlay showing areas of reduced vegetative coverage/clear-cutting;
- (23) Trial Exhibit 359: April 21, 2009 email from Kitsap County deed negotiating agent M. Keough to Kitsap County Parks and Recreation Director Chip Faver and attached letter from State Department of Natural Resources to County;
- (24) Trial Exhibit 143: September 7, 2007 letter from Kitsap County Department of Community Development (DCD) to Club regarding pre-application request;
- (25) Trial Exhibit 144: April 1, 2008 letter from DCD to Club regarding pre-application request;
- (26) CP 4026–49, Club's proposed findings of fact;
- (27) CP 3987–4025, Kitsap County's proposed findings of fact;
- (28) CP 822–92, *Declaration of Marcus Carter in Opposition to Plaintiff's Motion for Preliminary Injunction*, dated October 6, 2010, with attached Exhibits 1 through 11;

- (29) CP 2336, 2345, 2371–74, 2480–81, portions of deposition of County Code Compliance Supervisor Steve Mount;
- (30) CP 1958–98, *Trial Memorandum of Defendant Kitsap Rifle and Revolver Club*, dated September 27, 2011;
- (31) CP 1558–73, *Defendant Kitsap Rifle and Revolver Club's Response to Kitsap County's Motion to Strike Affirmative Defenses of Settlement, Equitable Estoppel, and Laches*, dated February 9, 2011;
- (32) Trial Exhibit 214: Kitsap County Ballistics Expert Cathy Geil's Bullet Origin Diagram for Fairchild Residence;
- (33) Trial Exhibit 215: Kitsap County Ballistics Expert Cathy Geil's Bullet Origin Diagram for Slaton Residence;
- (34) Trial Exhibit 216: Kitsap County Ballistics Expert Cathy Geil's Bullet Origin Diagram for Linton Residence;
- (35) Trial Exhibit 207: SDZ map depicting 5.56 mm bullet SDZ zone for Club property prepared by G. Koon;
- (36) Trial Exhibit 208: SDZ map depicting 7.62 mm bullet SDZ zone for Club property prepared by G. Koon;
- (37) Trial Exhibit 209: SDZ map depicting 7.62 mm, 4-ball 1 tracer bullet SDZ zone for Club property prepared by G. Koon;

- (38) Trial Exhibit 210: SDZ map depicting .50 caliber bullet SDZ zone for Club property prepared by G. Koon;
- (39) Trial Exhibit 211: SDZ map depicting 9 mm bullet SDZ zone for Club property prepared by G. Koon; and
- (40) KCC 10.24, "Weapons."

Appendix 1

CP 4052-92, *Findings of Fact, Conclusions of Law and Orders of Trial Court*, dated February 9, 2012, with attached Trial Exhibit 147, *Bargain and Sale Deed with Covenants*



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation registered in the State of Washington, and JOHN DOES and JANE ROES I-XX, inclusive,

Defendants,

and,

IN THE MATTER OF NUISANCE AND UNPERMITTED CONDITIONS LOCATED AT One 72-acre parcel identified by Kitsap County Tax Parcel ID No. 362501-4-002-1006 with street address 4900 Seabeck Highway NW, Bremerton Washington.

NO. 10-2-12913-3

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

THIS MATTER having come on regularly for trial before the undersigned Judge of the above-entitled Court, and the matter having been tried to the bench; presentation of preliminary motions and evidence commenced on September 28, 2011 and concluded on October 27, 2011; the Court allowed submission of written closing arguments and submissions of Findings of Fact

and Conclusions of Law no later than 9:00 a.m. on November 7, 2011. The parties' briefs and proposed Findings of Fact were received timely; the parties appeared through their attorneys of record Neil Wachter and Jennine Christensen for the Plaintiff and Brian Chenoweth and Brooks Foster for the Defendant; and the Court considered the motions, briefing, testimony of witnesses, argument of counsel, proposed Findings of Fact and Conclusions of Law, and the records and files herein, and being fully advised in the premises, now, therefore, makes the following findings of fact, conclusions of law and orders, which shall remain in effect until further order of this court:

I. FINDINGS OF FACT

JURISDICTION

1. All events cited in these Findings took place in unincorporated Kitsap County, Washington, except where noted. Port Orchard is the county seat for Kitsap County, and references to official action by the Kitsap County Board of County Commissioners ("BOCC") or to meetings or BOCC proceedings at the Kitsap County Administration Building refer to events at County facilities located in Port Orchard, except where noted to the contrary.

2. On October 22, 2010, the Court denied defendant Kitsap Rifle and Revolver Club's motion to change venue in this action, finding that the Pierce County Superior Court has jurisdiction over the parties and is the proper venue for the action pursuant to RCW 2.08.010 and RCW 36.01.050. The Court denied the motion without prejudice, and the defendant did not renew its motion.

PARTIES

3. Plaintiff Kitsap County ("County") is a municipal corporation in and is a political subdivision of the State of Washington.

4. Defendant Kitsap Rifle and Revolver Club ("KRRC" or "the Club", more particularly described below) is a Washington non-profit corporation and is the owner of record of the subject property, which is located at 4900 Seabeck Highway NW, Bremerton, Washington (hereinafter referred to as the "Property") and more particularly described as:

36251W

PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 36, TOWNSHIP 25 NORTH, RANGE 1 WEST, W.M., KITSAP COUNTY, WASHINGTON, 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 COMMISSIONERS OF PUBLIC LANDS AT OLYMPIA, WASHINGTON.*****IMPROVEMENTS CARRIED UNDER TAX PARCEL NO. 362501-2-002-1000*****

5. Defendant Sharon Carter (d/b/a "National Firearms Institute") was dismissed from this action on February 14, 2011 upon Plaintiff's motion. No other defendants have been named.

KRRC

6. Defendant Kitsap Rifle and Revolver Club (the "Club" or "KRRC") is a non-profit organization founded by charter on November 11, 1926 for "sport and national defense." Exhibits 475-76. It was later incorporated in 1986. Exhibit 271.

7. From its inception, the Club occupied the 72-acre parcel (the "Property") identified above. For many decades, the Club leased the Property from the Washington State Department of Natural Resources ("DNR"). Exhibits 135-36.

8. The Property consists of approximately 72 acres, including approximately eight acres of active or intensive use and occupancy containing the Club's improvements, roads, parking areas, open shooting areas, targets, storage areas, and associated infrastructure

("Historical Eight Acres"). Exhibits 135-36, 438, 486. The remaining acreage consists of timberlands, wetlands and similar resource-oriented lands passively utilized by the Club to provide buffer and safety zones for the Club's shooting range. *Id.*

ZONING

9. The property is zoned "rural wooded" under Kitsap County Code Chapter 17.301. The Property has had this same essential zoning designation since before the year 1993.

10. On September 7, 1993, then-BOCC Chair Wyn Granlund authored a letter to the four shooting ranges in unincorporated Kitsap County at the time, stating that the County recognized each as "grandfathered." Exhibit 315.

THE SUBJECT PROPERTY - OWNERSHIP, LEASES AND DNR USES

11. Until June 18, 2009, the 72-acre subject property was owned by the State of Washington Department of Natural Resources ("DNR"). DNR owned several contiguous parcels to the north of the subject property, and managed parts of these contiguous properties and parts of the subject property for timber harvesting. DNR leased the Property to KRRC under a series of lease agreements, the two most recent of which were admitted into evidence. Exhibits 135 and 136. The lease agreements recite that eight acres of the property are for use by the Club as a shooting range and that the remaining 64.4 acres are for use as a "buffer". The lease agreements do not identify the specific boundaries of these respective areas. *Id.*

12. Prior to the instant litigation, the eight acres of the property claimed by KRRC to be its "historic use" area had not been surveyed by a professional surveyor or otherwise specifically defined.

13. Over the decades of its ownership of the Property and adjacent properties, DNR periodically conducted timber harvesting and replanting. The most recent DNR timber harvest on the Property was in approximately 1991, when the eastern portions of the Property were clear-cut and successfully replanted.

14. On June 18, 2009, deeds were recorded with the Kitsap County Assessor's Office transferring the Property first from the State of Washington to Kitsap County and immediately thereafter from Kitsap County to KRRC. The first deed was a quit claim deed transferring DNR land including the Property from the State to the County. Exhibit 146. The second deed was a bargain and sale deed ("2009 Deed") transferring the Property from the County to KRRC. Exhibit 147 (attached to these Findings of Fact).

15. For purposes of these factual findings, the Court will use the names the Club has given to shooting areas at the Property, which include a rifle range, a pistol range, and shooting bays 1-11 as depicted in Exhibits 251 and 251A (June 2010 Google earth imagery). The well house referenced in testimony is located between Bays 4 and 5 and the "boat launch" area referenced in testimony is west of Bay 8.

PROPERTY TRANSFER

16. For several years dating back to the 1990's, Kitsap County sought to acquire property in Central Kitsap County to be developed into a large greenbelt or parkland area. Prior to 2009, Kitsap County acquired several large parcels in Kitsap County for use in a potential "land swap" with the State DNR. DNR owned several large parcels including the Subject Property, which were the object of the County's proposed transaction ("DNR parcels").

17. In early 2009, negotiations with the State reached a stage when the DNR and the County began to discuss specific terms of the contemplated transaction. DNR informed the

County that it would be deeding the DNR parcels including the subject property to Kitsap County, so that the County would take over DNR's position as landlord to KRRC.

18. KRRC became aware that the County could become the Club's landlord as a result of the land swap and became concerned that the County might exercise a "highest and best use" clause in the lease agreements between the Club and DNR, so as to end the Club's use of the Property for shooting range purposes.

19. In March 2009, Club officials met with County officials including Commissioner Josh Brown, in an effort to secure the County's agreement to amend the lease agreement to remove the highest and best use clause. Soon after, the County and Club began discussing whether the County should instead deed the property to KRRC. KRRC very much wanted to own the property on which its shooting range was located and Kitsap County was not interested in owning the Property due to concern over potential heavy metals contamination of the Property from its use as a shooting range for several decades.

20. In April and May 2009, Club officers and club member/attorney Regina Taylor negotiated with Kitsap County staff members, including Matt Keough of the County Parks Department and Deputy Prosecuting Attorney Kevin Howell of the County Prosecutor's Office Civil Division. A bargain and sale deed was drafted by Mr. Howell, and the parties exchanged revisions of the deed until they agreed upon the deed's final terms.

21. At the County's request, certified appraiser Steven Shapiro conducted an appraisal of the KRRC property, which he published as a "supplemental appraisal report" dated May 5, 2009. Exhibit 279. This appraisal report presumed that the Property was lead-contaminated and that a \$2-3 million cleanup may be required for the property. The appraisal report valued the Property at \$0, based upon its continued use for shooting range purposes and

the potential costs of environmental cleanup. The appraisal did not split out values to be assigned to the "historic use" and "buffer" areas of the Property.

22. On May 11, 2009, the BOCC voted on and approved the sale of the Property from Kitsap County to the Club, pursuant to the terms of the 2009 Deed. Exhibit 147 (attached). The County did not announce or conduct a sale of the Property at public auction pursuant to Chapter 36.34 RCW because the County and KRRC relied upon the value from Mr. Shapiro's supplemental appraisal report.

23. The minutes and recordings of BOCC meetings on and around May 11, 2009 do not reveal an intent to settle disputed claims or land use status at the Property.

24. At the time of the property transaction, Kitsap County had no plan to pursue a later civil enforcement or an action based upon land use changes or site development permitting.

25. During the negotiation for the property transaction, the parties did not negotiate for the resolution of potential civil violations of the Kitsap County Code at the Property and the parties did not negotiate to resolve the Property's land use status.

THE BARGAIN AND SALE DEED

26. The only evidence produced at trial to discern the County's intent at the time of the 2009 Bargain and Sale Deed was the deed itself. While the Club argues in closing that "... the Commissioners decided to support the Club. . . ." (KRRC's Brief on closing Arguments, p.3), the Commissioners were not called as witnesses in the case and the parties' intent is gleaned from the four corners of the document. (Exhibit 147).

27. The deed does not identify nor address any then-existing disputes between the Club and the County, other than responsibility for and indemnification regarding environmental issues and injuries or death of persons due to actions on the range.

28. By virtue of the deed, the County did not release the Club from current or future actions brought under public nuisance or violation of County codes or violation of its historical and legal nonconforming uses.

PROPERTY USAGE - 1993 AND PRIOR

29. For several decades prior to 1993, the Club operated a rifle range and a pistol range at the Property. As of 1993, the pistol range consisted of a south-to-north oriented shooting area defined by a shooting shed on its south end and a back stop on the north end and the rifle range consisted of a southwest-to-northeast oriented shooting area defined by a shooting shed on its southwest end and a series of backstops going out as far as 150 yards to the northeast. As of 1993, the developed portions of the Property consisted of the rifle range, the pistol range, and cleared areas between these ranges, as seen in a 1994 aerial photograph (Exhibit 8). During and before 1993, the Club's members and users participated in shooting activities in wooded or semi-wooded areas of the Property, on the periphery of the pistol and rifle ranges and within its claimed eight-acre "historic use" area.

30. As of 1993, shooting occurred at the Property during daylight hours only. Shooting at the Property occurred only occasionally, and usually on weekends and during the fall "sight-in" season for hunters.

SITE DEVELOPMENT AT THE PROPERTY

31. On July 10, 1996, the Kitsap County Department of Community Development ("DCD") received from KRRC a "Pre-Application Conference Request" form, which was admitted as Exhibit 134. Under "project name", KRRC listed "Range Development - Phase I" and under "proposed use", KRRC stated:

“Due to 50C-1993, KRRC is forced to enhance its operations and become more available to the general public. Phase I will include a water and septic system(s), a class room/community facility and a 200 meter rifle line. Material will not be removed from the premissis [sic]; it will be utilized for safety berms and acoustical baffeling [sic]. These enhancements will allow KRRC to generate a profit to be shared with the State School Trust (DNR). Local business will also profit from sportsmen visiting the area to attend our rich sporting events.”

Id.

32. There is no evidence of application by the Club or by DNR or by any agent of either, for any county permits or authorizations before or after the Club's 1996 pre-application conference request, other than a pre-application meeting request submitted by the Club in 2005 (discussed below) and a County building permit for construction of an ADA ramp serving the rifle line shelter in 2008 or 2009.

33. From approximately 1996 forward, the Club undertook a process of developing portions of its claimed “historic eight acres”, clearing, grading and sometimes excavating wooded or semi-wooded areas to create “shooting bays” bounded on at least three sides by earthen berms and backstops. Aerial photography allowed the Court to see snapshots of the expansion of shooting areas defined by earthen berms and backstops and verify testimony of the time line of development: 2001 imagery (Exhibits 9 and 16A) depicts the range as consisting of the pistol and rifle ranges, and shooting bays at the locations of present-day Bays 1, 2, 3, 9, 10 and 11. Comparing the 2001 imagery with March 2005 imagery (Exhibit 10), no new shooting bays were established during that interval. “Birds Eye” aerial imagery from the MS Bing website from an unspecified date later in 2005 provided the clearest evidence of the state of development at the Property (Exhibits 462, 544, 545, 546, 547), which included clearing and grading work performed in the eastern portion of the Property after the March 2005 imagery. (See discussion below under the subject of the proposed 300 meter range). June 2006 and

August 2006 imagery (Exhibits 11 and 12) reveals clearing and grading to create a new shooting bay at the location of present-day Bay 7. February 2007 imagery (Exhibit 13) reveals clearing and grading work to create new shooting bays at the locations of present-day Bay 8 and present-day Bay 6, and reveals clearing to the west of Bays 7 and 8 to accommodate a storage unit or trailer at that location. February 2007 imagery also reveals that the Club extended a berm along the north side of the rifle range and extended the length of the rifle range by clearing, grading and excavating into the hillside to the northeast of that range. April 2009 imagery (Exhibit 14) reveals establishment of a new shooting bay, Bay 4, and enlargement of Bay 7. May 2010 imagery (Exhibit 15) reveals establishment of a new shooting bay, Bay 5, enlargement of Bay 6, and additional clearing to the west of Bays 8 and 7 up to the edge of a seasonal pond (the easternmost of two ponds delineated as wetlands on club property, discussed below).

34. Bay 6, Bay 7 and the northeast end of the rifle range are each cut into hillsides, creating "cut slopes" each in excess of five feet in height and a slope ratio of three to one. The excavation work performed to create Bay 6 and Bay 7 and to extend the rifle range to the northeast required excavation significantly in excess of 150 cubic yards of material at each location. The excavation work into the hillside for Bay 7 took place in phases after 2005 and before April 2009. The excavation work into the hillside for Bay 6 took place in phases between August 2006 and May 2010, and the excavation work at Bay 6 between April 2009 and May 2010 required excavation in excess of 150 cubic yards of material. The excavation work into the hillside at the northeast end of the rifle range took place between August 2006 and February 2007.

35. One of the earthen berms constructed after February 2007 is a continuous berm that separates Bay 4 and Bay 5 and other developed areas on the Property from the Property's undeveloped areas to the north and west. Starting at the northeast corner of Bay 3, this berm runs to the east to define the northern edge of Bay 4, then turns northeast and curves around a cleared area used for storage around the Property's well house, and then turns north to form the western and northern edges of Bay 5. This berm was constructed in phases after February 2007, and the part of this berm forming the western and northern edges of Bay 5 was constructed between April 2009 and May 2010. This latter phase of the berm's construction between April 2009 and May 2010 required movement of more than 150 cubic yards of material. This berm also is more than five feet in height and has a slope ratio of greater than three to one.

36. For each hillside into which there was excavation and creation of cut slopes at the Property, there were no applications for County permits or authorizations, and no erosion or slope maintenance plans were submitted to or reviewed by the County. For each location on the Property where clearing, grading, and/or excavation occurred, there were no applications made for County permits such as grading permits or site development activity permits.

37. Over the years, the Club used native materials from the Property to form berms and backstops for shooting areas, usually consisting of the spoils from excavating into hillsides on the Property.

38. There is no fence around the active shooting areas of the Property to keep out or discourage unauthorized range users.

SITE DEVELOPMENT AT THE PROPERTY - 300 METER RANGE

39. In approximately 2003, KRRC began the process of applying to the State of Washington Interagency Committee for Outdoor Recreation ("IAC") for a grant to be used for

improving the range facilities. KRRC identified the project as a "range reorientation" project to build a rifle range that did not have its "back" to the Seabeck Highway.

40. In March of 2005, DCD received complaints that KRRC was conducting large scale earthwork activities and that the noise from shooting activities from the range had substantially increased. The area in which earth-moving activities took place is a large rectangular area in the eastern portion of the Property, with a north-south orientation. This area would become known as the proposed "300 meter range", and it is clearly visible in each aerial image post-dating March 2005. In March of 2005, DCD staff visited the 300 meter range area and observed "brushing" or vegetation clearing that appeared to be exploratory in nature.

41. In April of 2005, DCD staff visited the 300 meter range and discovered recent earthwork including grading, trenching, surface water diversion, and vegetation removal including logging of trees that had been replanted after DNR's 1991 timber harvest. The entire area of the cleared 300 meter range was at least 2.85 acres and the volume of excavated and graded soil was greater than 150 cubic yards.

42. DCD staff issued an oral "stop work" directive to the Club, with which the Club complied. DCD recommended to the Club that it request a pre-application meeting to discuss various permits and authorizations that would be required in order to proceed with the project.

43. KRRC submitted a "pre-application meeting request" to DCD on May 12, 2005 along with a cover letter from the Club president and conceptual drawings of the proposed project (Exhibits 138 and 272). The letter stated that the range re-alignment project was "not an expansion of the current facilities."

44. On June 21, 2005, KRRC officers met with DCD staff, including DCD representing disciplines of code enforcement, land use and planning, site development and

critical areas. County staff informed KRRC that the Club needed to apply for a Conditional Use Permit ("CUP") per Kitsap County Code Title 17 because the site work in the 300 meter range area constituted a change in or expansion of the Club's land uses of the property. County staff also informed the Club that it would need to apply for other permits for its work, including a site development activity permit per Kitsap County Code Title 12. County staff identified several areas of concern, which were memorialized in a follow-up letter from the County to the Club dated August 18, 2005 (Exhibit 140).

45. Later in 2005 and in the first half of 2006, the Club asked the County to reconsider its stance that the Club was required to apply for a CUP in order to continue operating a shooting range on the Property. The County did not change its position. Nor did the County issue a notice of code violation or a notice informing the Club that it had made an administrative determination pursuant to the County's nonconforming use ordinance, KCC Chapter 17.460.

46. In the summer of 2006, KRRC abandoned its plans to develop the 300 meter range and re-directed its efforts and the grant money toward improvements of infrastructure in its existing range.

47. DCD staff persons visited the Property on at least three occasions during 2005, and on at least one occasion walked through the developed shooting areas en route to and from the 300 meter range area.

48. In approximately 2007, the Club replanted the 300 meter range with several hundred Douglas fir trees, and believed that by so doing it was satisfying the requirements of the landowner, DNR. The Club did not develop any formal plan for the replanting and care of the new trees. All of the new trees died, and today the 300 meter range continues to be devoid of any trees.

49. The 300 meter range has been and continues to be used for storage of target stands, barrels, props and building materials, as confirmed by photographs taken during the County's January 2011 discovery site visits to the Property and by Marcus Carter's (Executive Officer of KRRC and Club Representative at trial) testimony.

50. KRRC asserts the position that by abandoning its plans to develop the 300 meter range, it has retreated to its eight acre area of claimed "historic use" and has not established a new use that would potentially terminate the Club's claimed nonconforming use status.

51. KRRC never applied for a conditional use permit for its use of the property as a shooting range or private recreational facility, and has never applied for a site development activity permit for the 300 meter range work or for any of the earth-disturbing work conducted on the Property.

**SITE DEVELOPMENT AT THE PROPERTY -
TIGHTLINING WATERCOURSE ACROSS THE RANGE**

52. The Seabeck Highway has been in its present location for several decades. The Seabeck Highway is a county road served by storm water features including culverts and roadside ditches. Two culverts under the Seabeck Highway were identified as particularly relevant to the litigation. First, a 42-inch diameter culvert to the east of the Club's gated entrance onto the Seabeck Highway flows from south-to-north and onto the Property ("42-inch culvert"). Second, a 24-inch diameter culvert to the west of the Club's parking lot typically flows from north-to-south, away from the Property ("24-inch culvert"). Storm and surface water flows through the 42-inch culvert during the rainy seasons.

53. Prior to the late summer of 2006, water discharged from the 42-inch culvert followed a channel leading away from the Seabeck Highway and into a stand of trees south of

the rifle range. The channel reached the edge of a cleared area to the south of the rifle range and the drainage continued across the rifle range in a northerly direction, primarily in the open and low areas (or depressions) and through and between three and five culverts of not greater than 20 feet in length. There was conflicting testimony about what the drainage did as it approached the wetland areas to the north of the rifle range. The Club's wetland expert Jeremy Downs opined that the water was absorbed into the gravelly soil present between the rifle range and the wetland areas to the north, while the County's wetland expert Bill Shiels opined that the water would be of sufficient quantity during times of peak rain fall that it would have to travel in a channel or channels as it neared the wetlands.

54. In the late summer and early fall of 2006, the Club replaced this water course with a pair of 475-foot long 24-inch diameter culverts. These "twin culverts" crossed the entire developed area of the range, from their inlets in the stand of trees by the Seabeck Highway to their outlets north of the developed areas of the range. To achieve this result, the Club used heavy earth-moving equipment to remove existing culverts and to excavate a trench the entire length of the new culverts, installed the culverts, covered up the trench with fill, then brought in additional fill from elsewhere on the Property to raise the level of the formerly depressed areas in the rifle range. Excavation and re-grading for this project required movement of far more than 150 cubic yards of soil.

55. After the Club "undergrounded" the water course into the 475-foot long culverts but prior to February 2007, the Club extended the earthen berm along the north side of its rifle range and over the top of the newly-buried culverts, nearly doubling the berm's length. Extending this berm involved excavating and re-grading soil far in excess of 150 cubic yards.

56. KRRC never applied to the County for review or approval of the cross-range culvert project, or the berm construction that followed. KRRC never developed engineering plans for this project or undertook a study to determine whether the new culverts have capacity to handle the water from the 42-inch culvert or to determine whether the outlet of the culverts is properly engineered to minimize impacts caused by the direct introduction of the culvert's storm and surface water into a wetland system. KRRC offered evidence that during July 2011 it consulted with agents of the state Department of Ecology (DOE), the Army Corps of Engineers, the state Department of Fish and Wildlife and the Suquamish Tribe with regard to its activities proximate to wetlands, but the record contains no evidence that any of these agencies evaluated subjects within the County's jurisdiction such as critical areas including wetland buffers, or assessed the capacity of the cross-range culverts.

57. Prior to the discovery site visits by County staff and agents in January 2011, the County was unaware of the cross-range culverts.

WETLAND STUDY, DELINEATIONS AND PROTECTED BUFFERS

58. The parties each commissioned preliminary delineations of suspected wetland and stream features on the Property. Wetland delineations are ordinarily conducted prior to site development activities which may affect a suspected wetland, and are ordinarily submitted to the regulating authorities (e.g. counties and DOE) for review and comment. In this instance, there was no application for a permit or authorization.

59. The County's wetland consulting firm, Talasaea Consulting, and the Club's consulting firm, Soundview Consultants, each studied wetlands to the north and west of developed areas of the Property, as well as the drainage crossing the range originating from the 42-inch culvert, and suspected wetlands in the 300 meter range. For purposes of these findings,

the Court adopts the County's suggestion to limit its findings to areas of the Property about which there are undisputedly wetlands. The Court makes no finding as to whether the County has proven that wetlands currently exist in the 300 meter range area and makes no finding as to whether the County has proven that the water course from the 42-inch culvert ever followed a channel which is capable of hosting salmonid species, prior to entering the Property's wetlands. Therefore, the Court confines its remaining analysis of the Property's wetlands and streams and their associated habitats and buffers, to the wetlands to the north and west of the developed portions of the range ("wetlands").

60. The Property's wetlands are connected to and part of a larger wetland system in the DNR parcels to the north of the Property. Ecologically, this wetland system is of high value because it is part of the headwaters of the Wildcat Creek / Chico Creek watershed, which supports migrating salmon species. The wetlands on the Property are directly connected to a tributary of Wildcat Creek, and are waters of the State of Washington, both as a finding of fact and a conclusion of law.

61. The Court heard testimony of and received the reports and maps by the parties' respective wetland expert witnesses. The County's expert, Bill Shiels of Talasaea Consultants, determined that the Property's wetlands constitute a single wetland denoted as Wetland A, and concluded that this wetland is a "category I" wetland, for which the Kitsap County Code provides a 200-foot buffer area. The Club's expert, Jeremy Downs of Soundview Consulting, determined that the wetlands on the Property constitute two separate wetlands denoted as Wetlands A and B, and concluded that each wetland is a "category II" wetland, for which the Kitsap County Code provides a 100-foot buffer area. Both experts determined that an additional 50 feet should be added to the buffer to reflect high intensity of adjacent uses, i.e. the KRRC

shooting ranges. Therefore, the County's expert and the Club's expert concluded that 250-foot and 150-foot buffers apply to the Property's wetlands, respectively. For purposes of these findings of fact, the Court will accept the Soundview conclusion that there are two protected wetlands on the Property (A and B) and that a 150-foot buffer applies to those wetlands. For purposes of these findings, the Court will further accept Soundview's delineation and mapping of the wetlands B which is nearest the active shooting portions of the Property.

62. To install its cross-range culverts in 2006, the Club excavated and re-graded fill in the wetland buffer within 150 feet of Wetland B. This project involved excavation and grading far in excess of 150 cubic yards of material.

63. The cross-range culverts now discharge storm water and surface water directly into Wetland B, replacing the former system which ordinarily absorbed storm water and surface water into the soil and more gradually released it into the wetlands on the Property.

64. To construct the berm that starts at the northeastern corner of Bay 3 and travels east along the edge of Bay 4, then travels northeast along the storage / well house area, and then travels north along the edge of Bay 5, the Club placed fill in the wetland buffer within 150 feet of Wetland B. This project also involved excavation and grading in excess of 150 cubic yards of material.

65. At least five locations at the property have slopes higher than five feet in height with a slope ratio of greater than three to one: (1) a cut slope at the end of the rifle range; (2) berms at Bays 4 and 5 and the berm between these bays; (3) cut slope at Bay 6; (4) cut slope at Bay 7; and (5) the extension of the rifle range berm. Each of these earth-moving projects took place after 2005, and the Club did not apply for permits or authorizations from Kitsap County.

66. Prior to this litigation, KRRC never obtained a wetland delineation for the Property or otherwise determined potential wetland impacts for any site development projects proposed for the Property.

RANGE SAFETY

67. The parties presented several experts who opined on issues of range safety. The Property is a "blue sky" range, with no overhead baffles to stop the flight of accidentally or negligently discharged bullets. The Court accepts as persuasive the SDZ diagrams developed by Gary Koon in conjunction with the Joint Base Lewis-McChord range safety staff, as representative of firearms used at the range and vulnerabilities of the neighboring residential properties. The Court considered the allegations of bullet impacts to nearby residential developments, some of which could be forensically investigated, and several of which are within five degrees of the center line of the KRRC Rifle Line.

68. The County produced evidence that bullets left the range based on bullets lodged in trees above berms. The Court considered the expert opinions of Roy Ruel, Gary Koon, and Kathy Geil and finds that more likely than not, bullets escaped from the Property's shooting areas and that more likely than not, bullets will escape the Property's shooting areas and will possibly strike persons or damage private property in the future.

69. The Court finds that KRRC's range facilities are inadequate to contain bullets to the Property, notwithstanding existing safety protocols and enforcement.

ACTION OR PRACTICAL SHOOTING

70. The Property is frequently used for regularly scheduled practical shooting practices and competitions, which use the shooting bays for rapid-fire shooting in multiple directions. Loud rapid-fire shooting often begins as early as 7 a.m. and can last as late as 10 p.m.

COMMERCIAL AND MILITARY USES OF THE PROPERTY

71. KRRC and the military shared use of the adjacent federal Camp Wesley-Harris property's shooting range facilities until sometime shortly after World War II.

72. During the early 1990's, U.S. Naval personnel are said to have conducted firearm qualification exercises at the Property on at least one occasion.

73. Sharon Carter is the owner of a sole proprietorship established as a business in Washington in the late 1980's. In approximately 2002, this sole proprietorship registered a new trade name, the "National Firearms Institute" ("NFI") and registered the NFI at the Property's address of 4900 Seabeck Highway NW., Bremerton, WA. Since 2002, the NFI provided a variety of firearms and self-defense courses, mostly taught at the Property by Ms. Carter's husband, Marcus Carter. The NFI kept its own books and had its own checking account, apart from the Club. Mr. Carter is the long-time Executive Officer of KRRC, and NFI's other primary instructor is Travis Foreman, who is KRRC's Vice-President and the Carters' son-in-law.

74. In approximately 2003, a for-profit business called Surgical Shooters, Inc. ("SSI"), began conducting official small arms training exercises at the Property's pistol range for active duty members of the United States Navy, primarily service members affiliated with the submarines based at the Bangor submarine base. For approximately one year, SSI conducted this training at the Property on a regular basis. SSI held a contract with the Navy to provide this training, and SSI had an oral arrangement with NFI. On a per-day basis, SSI paid NFI a fee for the use of the Property, one-half of which would then be remitted to the Club itself. NFI coordinated the SSI visits to the Property and made sure that a KRRC Range Safety Officer was present during each SSI training session at the Property.

75. In approximately 2004, SSI ceased providing training at the Property and was replaced by a different business, Firearms Academy of Hawaii, Inc. ("FAH"). From approximately 2004 until Spring 2010, FAH regularly provided small arms training at the Property to active duty U.S. Navy personnel, under an oral arrangement with NFI. Again, on a per-day basis, FAH paid NFI a fee for the use of the Property, one-half of which would then be remitted to the Club itself. NFI coordinated the FAH visits to the Property and made sure that a KRRC Range Safety Officer was present during each FAH training session at the Property. FAH training at the Property consisted of small weapons training of approximately 20 service members at a time. Each FAH training course took place over three consecutive weekdays at the Property's pistol range, as often as three weeks per month. At the conclusion of this arrangement, FAH paid \$500 to NFI for each day of KRRC range use, half of which the NFI remitted to the KRRC.

76. The SSI and FAH training took place on the Property's pistol range. During FAH's tenure at the Property, U.S. Navy personnel inspected the pistol range and determined that it was acceptable for purposes of the training.

77. Prior to the SSI and FAH training, there is no evidence of for-profit firearm training at the Property, and these businesses did not apply for approvals or permits with Kitsap County to authorize their commercial use of the Property.

78. In November 2009, U.S. Navy active duty personnel were present on the property on at least one occasion for firearms exercises not sponsored or hosted by the FAH. On one such occasion, a military "Humvee" vehicle was parked in the rifle range next to the rifle range's shelter. A fully automatic, belt-fed rifle (machine gun) was mounted on top of this Humvee, and the machine gun was fired in small bursts, down range.

79. Official U.S. Navy training at the Property ceased in the Spring of 2010.

NOISE GENERATED FROM THE PROPERTY AND HOURS OF OPERATION

80. The Club allows shooting between 7 a.m. and 10 p.m., seven days a week.

Shooting sounds from the Property are commonly heard as early as 7 a.m. and as late as 10 p.m. In the early 1990's, shooting sounds from the range were typically audible for short times on weekends, or early in the morning during hunter sight-in season (September). Hours of active shooting were considerably fewer.

81. Shooting sounds from the Property have changed from occasional and background in nature, to clearly audible in the down range neighborhoods, and frequently loud, disruptive, pervasive, and long in duration. Rapid fire shooting sounds from the Property have become common, and the rapid-firing often goes on for hours at a time.

82. Use of fully automatic weapons at KRRC now occurs with some regularity.

83. Rapid-fired shooting, use of automatic weapons, and use of cannons at the Property occurred infrequently in the early 1990's.

84. The testimony of County witnesses who are current or former neighbors and down range residents is representative of the experience of a significant number of home owners within two miles of the Property. The noise conditions described by these witnesses interfere with the comfort and repose of residents and their use and enjoyment of their real properties. The interference is common, at unacceptable hours, is disruptive of activities indoors and outdoors. Use of fully automatic weapons, and constant firing of semi-automatic weapons led several witnesses to describe their everyday lives as being exposed to the "sounds of war" and the Court accepts this description as persuasive.

85. Expanded hours, commercial use of the club, allowing use of explosive devices (including Tannerite), higher caliber weaponry and practical shooting competitions affect the neighborhood and surrounding environment by an increase in the noise level emanating from the Club in the past five to six years.

EXPLOSIVES AND EXPLODING TARGETS

86. The Club allows use of exploding targets, including Tannerite targets, as well as cannons, which cause loud “booming” sounds in residential neighborhoods within two miles of the Property, and cause houses to shake.

87. Use of cannons or explosives was not common at the Club in approximately 1993.

AMENDMENT OF KITSAP COUNTY CODE CHAPTER 17.460

88. On May 23, 2011, the Kitsap County Board of County Commissioners adopted ordinance 470-2011 in a regularly scheduled meeting of this Board, amending the Kitsap County Zoning Ordinance's treatment of nonconforming land uses at Chapter 17.460.

89. Notice of the May 23, 2011 meeting was published in the Kitsap Sun, which is the publication used in Kitsap County for public notices of BOCC meeting agenda items.

90. There is no evidence in the record supporting the contention that this amendment was developed to target KRRC or any of the County's gun ranges.

BASED UPON the foregoing FINDINGS OF FACT, the Court hereby makes the following

II. CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction over the real property, the named Defendant, and the Parties' claims and counterclaims in this action, and venue is proper.

2. The Kitsap County Department of Community Development is the agency charged with regulating land use, zoning, building and site development in unincorporated Kitsap County and enforcing the Kitsap County Code.

3. The conditions of (1) ongoing noise caused by shooting activities, and (2) use of explosives at the Property, and (3) the Property's ongoing operation without adequate physical facilities to confine bullets to the Property each constitute a public nuisance.

4. Defendant Kitsap Rifle and Revolver Club is the owner and occupant of the real property, and these orders shall also bind successor owners or occupants of the Property, if any.

5. Non-conforming uses are uniformly disfavored, as they limit the effectiveness of land use controls, imperil the success of community plans, and injure property values. Rhod-A-Zalea v. Snohomish County, 136 Wn.2d 1, 8 (1998).

Although found to be detrimental to important public interests, non-conforming uses are allowed to continue based on the belief that it would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use. *[cite omitted]*. A protected nonconforming status generally grants the right to continue the existing use but will not grant the right **1028 to significantly change, alter, extend, or enlarge the existing use.

Id.

6. KRRC enjoyed a legal protected nonconforming status for historic use of the existing eight acre range.

7. KRRC was not granted the right to significantly change, alter, extend or enlarge the existing use, by virtue of the 2009 deed from Kitsap County.

8. The actions by KRRC of:

(1) expanded hours;

(2) commercial, for-profit use (including military training);

- (3) increasing the noise levels by allowing explosive devises, higher caliber weaponry greater than 30 caliber and practical shooting

significantly changed, altered, extended and enlarged the existing use.

9. Such actions noted above under Conclusion of Law #8 were "expansion" of use and were not "intensification" as argued by KRRC.

10. Intensification was clarified by the Washington Supreme Court in Keller v. City of Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979). The Court stated that intensification is permissible "... where the nature and character of the use is unchanged and substantially the same facilities are used." Id. As noted above, the nature of the use of the property by KRRC changed, expanded and intensified from 1993 through 2009.

11. Defendant has engaged in and continues to engage in creating and/or maintaining a public nuisance by the activities described herein. The activities are described by statute and code to be public nuisances. These acts constitute public nuisances as defined by both RCW 7.48.120 and KCC 17.530.030 and 17.110.515. The activities described above annoy, injure, and/or endanger the safety, health, comfort, or repose of others. Furthermore, Kitsap County Code authorizes this action "for a mandatory injunction to abate the nuisance in accordance with the law" for any use, building or structure in violation of Kitsap County Code Title 17 (land use). KCC 17.530.030. Kitsap County Code provides that "in all zones . . . no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses." KCC 17.455.110.

12. No lapse of time can legalize a public nuisance. RCW 7.48.190.

13. The continued existence of public nuisance conditions on the subject Property has caused and continues to cause the County and the public actual and substantial harm.

14. Kitsap County has clear legal and equitable authority to protect the health, safety, and welfare of the public against public nuisances.

15. Article XI, Section 11 of the Washington State Constitution authorizes counties to make and enforce "local police, sanitary and other regulations."

16. RCW 36.32.120 (10) authorizes Kitsap County to declare and abate nuisances as follows:

The legislative authorities of the several counties shall:(10) Have power to declare by ordinance what shall be deemed a nuisance within the county, including but not limited to "litter" and "potentially dangerous litter" as defined in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance; and to levy a special assessment on the land or premises on which the nuisance is situated to defray the cost, or to reimburse the county for the cost of abating it. This assessment shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes.

17. The state statutes dealing with nuisances are found generally at Chapter 7.48 RCW. Injunctive relief is authorized by RCW 7.48.020. RCW 7.48.200 provides that "the remedies against a public nuisance are: indictment or information, a civil action, or abatement." RCW 7.48.220 provides "a public nuisance may be abated by any public body or officer authorized thereto by law." RCW 7.48.250; 260 and 280 provide for a warrant of abatement and allow for judgment for abatement costs at the expense of the Defendant.

18. Kitsap County has no plain, adequate, or speedy remedy at law to cure this nuisance, and the neighbors and public-at-large will suffer substantial and irreparable harm unless the nuisance conditions are abated and all necessary permits are obtained in order for the Defendant's shooting operations to continue or to resume after imposition of an injunction.

19. The Property and the activities described on the Property herein constitute a public nuisance per se, because the Defendant engaged in new or changed uses, none of which

are authorized pursuant to Kitsap County Code Chapter 17.381 or authorized without issuance of a conditional use permit.

20. The Property and the above-described activities on the Property constitute a statutory public nuisance. The Property has become and remains a place violating the comfort, repose, health and safety of the entire community or neighborhood, contrary to RCW 7.48.010, 7.48.120, 7.48.130, and 7.48.140 (1) and (2), and, therefore, is a statutory public nuisance. Defendant has engaged in and continues to engage in public nuisance violations by the activities described herein. The activities are described by statute and code to be public nuisances as defined by both RCW 7.48.120. The activities described above annoy, injure, and/or endanger the safety, health, comfort, or repose of others.

21. The failure of the Defendant to place reasonable restrictions on the hours of operation, caliber of weapons allowed to be used, the use of exploding targets and cannons, the hours and frequency with which "practical shooting" practices and competitions are held and the use of automatic weapons, as well as the failure of the Defendant to develop its range with engineering and physical features to prevent escape of bullets from the Property's shooting areas despite the Property's proximity to numerous residential properties and civilian populations and the ongoing risk of bullets escaping the Property to injure persons and property, is each an unlawful and abatable common law nuisance.

22. To invoke the Uniform Declaratory Judgments Act, chapter 7.24 RCW, a plaintiff must establish: "(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement., (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial

determination of which will be final and conclusive. *Coppemoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005); citing *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001), and *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

23. As applied to the relief sought by the County in this action, an actual, present, and existing dispute is presented for determination by the Court, based upon the County's claim that any non-conforming land use status for use of the Property as a shooting range has been voided by the substantial changes in use of the Property and unpermitted development of facilities thereupon.

24. The subject property is zoned "rural wooded", established in KCC Chapter 17.301. KCC 17.301.010 provides in part that this zoning designation is intended to encourage the preservation of forest uses, retain an area's rural character and conserve the natural resources while providing for some rural residential use, and to discourage activities and facilities that can be considered detrimental to the maintenance of timber production. With this stated purpose, the zoning tables are applied to determine if any uses made of the property are allowed.

25. KCC Chapter 17.381 governs allowed land uses, and KCC 17.381.010 identifies categories of uses: A given land use is either Permitted, Permitted upon granting of an administrative conditional use permit, Permitted upon granting of a hearing examiner conditional use permit, or Prohibited. Where a specific use is not called out in the applicable zoning table, the general rule is that the use is disallowed. KCC 17.381.030. The zoning table for the rural wooded zone, found at KCC 17.381.040 (Table E), provides and the Court makes conclusions as the following uses:

a. Commercial / Business Uses – With exceptions not relevant here, all commercial uses are prohibited in rural wooded zone. None of the activities occurring at the subject property

appear to be listed as commercial/business uses identified in the table. The Court concludes that the Property has been used for commercial and/or business uses for-profit entities including the National Firearms Institute, Surgical Shooters Inc. and the Firearms Academy of Hawaii, starting in approximately 2002. Furthermore, "training" generally or "tactical weapons training" specifically are uses not listed in the zoning table for the rural wooded zone.

b. Recreational / Cultural Uses – the Club is best described as a private recreational facility, which is a use listed in this section of KCC 17.381.040 (Table E) for rural wooded. KCC 17.110.647 defines "recreational facility" as "a place designed and equipped for the conduct of sports and leisure-time activities. Examples include athletic fields, batting cages, amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks and similar uses. Public recreational facilities are those owned by a government entity." No other uses identified in the recreational/cultural uses section of the rural wooded zoning table are comparable.

The Court concludes that a private recreational facility does not include uses by a shooting range to host official training of law enforcement officers or military personnel, and that these uses are new or changed uses of the Property. The Court concludes that a private recreational facility use does not encompass the use of automatic weapons, use of rifles of calibers greater than common hunting rifles, or of professional level competitions.

26. The Court finds that the land uses identified here, other than use as a private recreational facility, are expansions of or changes to the nonconforming use at the Property as a shooting range under KCC Chapter 17.460 and Washington's common law regarding nonconforming land use. By operation of law, the nonconforming use of the Property is terminated.

27. The Club's unpermitted site development activities at the 300 meter range (2005) constituted an expansion of its use of the property in violation of KCC 17.455.060 because the use of the Property as a private recreational facility in the rural wooded zone requires a conditional use permit per KCC Chapter 17.381. Furthermore, the Club's failure to obtain site development activity permitting for grading and excavating each in excess of 150 cubic yards of soil as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range.

28. The Club's unpermitted installation in 2006 of the twin 24-inch culverts which cross the range and empty into the wetland constituted an expansion and change of its use of the Property, and the Club's failure to obtain SDAP permitting for its excavation, grading and filling work in excess of 150 cubic yards of soil as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range.

29. The Club's earth moving activities within the 150-foot buffer for Wetland B violated KCC 19.200.215.A.1, which requires a wetland delineation report, a wetland mitigation report and erosion and sedimentation control measures and/or a Title 12 site development activity permit for any new development. The Court concludes that these illegal uses terminate the nonconforming use of the Property as a shooting range.

30. The Club's unpermitted construction of earthen berms starting at Bay 4 and proceeding to the north adjacent to the wetland, constituted an expansion and change of its use of the Property, and the Club's failure to obtain SDAP permitting for excavation, grading and filling work in excess of 150 cubic yards of soil and for its construction of berms with slopes greater than five feet in height with a steepness ratio of greater than three to one (KCC

12.10.030(4)) as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range.

31. The Club's unpermitted cutting into the hillsides at Bays 6 and 7 and at the end of the rifle range, excavating in excess of 150 cubic yards of soil at each location and creating cut slopes far greater than five feet in height with a steepness ratio of greater than three to one as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range. The Court further concludes, based on the timing of maintenance work at each cut slope location post-dating the June 2009 deeding of the Property from the County to the Club, that SDAP permitting was required for work conducted after June 2009. These illegal uses of the land terminate the nonconforming use of the Property as a shooting range.

32. The nuisance conditions at the range further constitute illegal uses of the land, which terminate the nonconforming use of the Property as a shooting range. The Club's expansion of days and hours in which shooting, generally, and rapid-fire shooting in particular, takes place on a routine basis, and the advent of regularly scheduled practical shooting practices and competitions constitute a change in use that defies and exceeds the case law's definition or understanding of "intensification" in the area of nonconforming use. These changes act to terminate the nonconforming use of the Property as a shooting range.

33. The Club's conversion from a small-scale lightly used target shooting range in 1993 to a heavily used range with an enlarged rifle range and a 11-bay center for local and regional practical shooting competitions further constitutes a dramatic change in intensity of use (and of sound created thereby), thereby terminating the nonconforming use of the Property as a shooting range.

34. By operation of KCC Chapter 17.381, the KRRC or its successor owner or occupier of the Property must obtain a conditional use permit before resuming any use of the Property as a shooting range or private recreational facility.

35. KRRC has not proven that Ordinance 470-2011, amending KCC 17.460, is unconstitutional or suffered from any defect in service or notice. This Ordinance did not amend or alter the effect of KCC 17.455.060 (existing uses) which remains in full force and effect. KCC 17.455.060 provides that uses existing as of the adoption of Title 17 (Zoning) may be continued, but also prohibits their enlargement or expansion, unless approved by the hearing examiner pursuant to the Administrative Conditional Use Permit procedure of Title 17.420. Washington case law, as in Rhod-A-Zalea & 35th, Inc. v. Snohomish County, 136 Wn.2d 1, 7, 959 P.2d 1024 (1998), also holds that uses that lawfully existed before the enactment of zoning ordinances may continue, but the existing use may not be significantly changed, altered, extended, or enlarged.

36. The 2009 Bargain and Sale Deed cannot be read as more than a contract transferring the Property from the County to the KRRC, with restrictive covenants binding only upon the Grantee KRRC. Paragraph 3 stands as an acknowledgement of eight geographic acres of land that were used for shooting range purposes. The language in the 2009 Bargain and Sale Deed does not prohibit Kitsap County from enforcing its ordinances or otherwise acting pursuant to the police powers and other authorities granted to it in Washington's Constitution and in the Revised Code of Washington.

37. The Court furthermore concludes that the Washington Open Public Meetings Act, chapter 42.30 RCW, limits the effect of the enacting resolution and accompanying proceedings to the property transfer itself. Absent specific agreement voted upon by the governing body

during a public meeting, the 2009 Deed cannot be interpreted as a settlement of potential disputes between the parties.

BASED UPON THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW the Court hereby enters the following ORDERS:

III. ORDERS

IT HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Kitsap County's requests for affirmative relief shall be granted as follows:

DECLARATORY JUDGMENT

1. Kitsap County's Motion pursuant to chapter 7.24 RCW for judgment declaring that the activities and expansion of uses at the Property has terminated the legal nonconforming use status of the Property as a shooting range by operation of KCC Chapter 17.460 and by operation of Washington common law regarding nonconforming uses, is hereby GRANTED.

2. The Property may not be used as a shooting range until such time as a County conditional use permit is issued to authorize resumption of use of the Property as a private recreational facility or other recognized use pursuant to KCC Chapter 17.381.

JUDGMENT

3. Defendant is in violation of Chapter 7.48 RCW and Chapter 17.530 Kitsap County Code;

4. The conditions on the Property and the violations committed by the Defendant constitute statutory and common law public nuisances; and

5. Representatives of the Kitsap County Department of Community Development are hereby authorized to inspect and continue monitoring the Property before, during and after any abatement action has commenced; and

INJUNCTION (EFFECTIVE IMMEDIATELY UNLESS NOTED TO CONTRARY)

6. A permanent, mandatory and prohibitive injunction is hereby issued enjoining use of the Property as a shooting range until violations of Title 17 Kitsap County Code are resolved by application for and issuance of a conditional use permit for use of the Property as a private recreational facility or other use authorized under KCC Chapter 17.381. The County may condition issuance of this permit upon successful application for all after-the-fact permits required pursuant to Kitsap County Code Titles 12 and 19.

7. A permanent, mandatory and prohibitive injunction is hereby issued further enjoining the following uses of the Property, which shall be effective immediately:

- a. Use of fully automatic firearms, including but not limited to machine guns;
- b. Use of rifles of greater than nominal .30 caliber;
- c. Use of exploding targets and cannons; and
- d. Use of the Property as an outdoor shooting range before the hour of 9 a.m. in the morning or after the hour of 7 p.m. in the evening.

WARRANT OF ABATEMENT

8. The Court hereby authorizes issuance of a WARRANT OF ABATEMENT, pursuant to RCW 7.48.260, the detail of which shall be determined by the Court at a later hearing before the undersigned.

9. The costs of abatement shall abide further order of the Court.

10. This Court retains jurisdiction to enforce this order by all lawful means including imposition of contempt sanctions and fines.

COSTS AND FEES

11. Pursuant to KCC 17.530.030, Defendant Kitsap Rifle and Revolver Club shall pay the costs of the County to prosecute this lawsuit, in an amount to be determined by later order of the Court.

DATED this 9 day of February, 2012.



JUDGE SUSAN K. SERKO



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

FILED
IN OPEN COURT
OCT 1 21 2011
Pierce County Auditor
By: [Signature]

LAND TITLE 200906180292
Deed Rec Fee: \$ 89.00
08/18/2009 03:15 PM
Walter Washington, Kitsap Co Auditor

PLAINTIFFS
EXHIBIT
147

10-2-10-10

**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

ASSESSOR'S TAX PARCEL NO: 362501-4-002-1006
Total : \$10.00 Clerk's Init. [Signature]

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 any way 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 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Charlotte Garrido
CHARLOTTE GARRIDO, Chair

Steve Bauer
STEVE BAUER, Commissioner

Josh Brown
JOSH BROWN, Commissioner

ATTEST:

Opal Robertson
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 13th day of May, 2009.

Bradford Smith

BRADFORD SMITH, President - KRRC

Marcus A. Carter
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

Appendix 2

KCC 17.460, “Nonconforming Uses and Structures”

Chapter 17.460
NONCONFORMING USES, STRUCTURES AND USE OF STRUCTURES

Sections:

- 17.460.010 Purpose.
- 17.460.015 Extensions.
- 17.460.020 Nonconforming uses of land.
- 17.460.030 Application for change of nonconforming uses of land.
- 17.460.040 Nonconforming structures.
- 17.460.050 Nonconforming uses of structures.

17.460.010 Purpose.

Within the zoning districts established by this title or any amendment later adopted, there may exist uses of land and/or structures that were lawful before the effective date of the applicable regulations, but which would be restricted, regulated or prohibited under the terms of this title or future amendment. Except as specifically allowed by this chapter, this chapter is intended to permit these nonconformities to continue until they are removed or discontinued.

(Ord. 470-2011 § 3 (part), 2011; Ord. 281 (2002) § 11, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.460.015 Extensions.

As to time frames noted in this chapter, the director may extend time frames on a case-by-case basis where such time frames cannot be met. If the director extends the schedule and/or imposes deadlines other than are set forth in this chapter, he must make the following findings: (A) the reason for the required change is due to circumstances beyond the control of the applicant; (B) the change is the minimum necessary required to meet the conditions of this chapter; and (C) the change in time does not exceed the original time frame or deadline by more than twelve months. The decision of the director shall be considered a Type II decision and may be appealed to the hearing examiner.

(Ord. 470-2011 § 3 (part), 2011)

17.460.020 Nonconforming uses of land.

Where a lawful use of land exists that is not allowed under current regulations, but was allowed when the use was initially established, that use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use.

A. Unless specifically stated elsewhere in this title, if a nonconforming use not involving a structure has been changed to a conforming use, or if the nonconforming use ceases for a period of twenty-four months or more, said use shall be considered abandoned, and said premises shall thereafter be used only for uses permitted under the provisions in the zone in which it is located.

B. A nonconforming use not involving a structure, or one involving a structure (other than a sign) having an assessed value of less than \$200.00, shall be discontinued within two years from the date of passage of the ordinance codified in this title.

C. If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not historically used or occupied for such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area used by the activity carried on in the property; and provided further, that this provision shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this title.

(Ord. 470-2011 § 3 (part), 2011; Ord. 281 (2002) § 12, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.460.030 Application for change of nonconforming uses of land.

The director may grant an application for a change of use to another nonconforming use if, on the basis of the application and the evidence submitted, the director makes the following findings:

A. That the proposed use is classified in a more restrictive category than existing or preexisting uses by the zone regulations of this title. The classifications of a nonconforming use shall be determined on the basis of the zone in which it is first permitted; provided, that a conditional use shall be a more restrictive category than a permitted use in the same category.

B. That the proposed use will not more adversely affect the character of the zone in which it is proposed to be located than the existing or preexisting use.

C. That the change of use will not result in the enlargement of the space occupied by a nonconforming use, except as allowed by Section 17.460.020(C).

The decision of the director shall be considered a Type II decision and may be appealed to the hearing examiner.

(Ord. 470-2011 § 3 (part), 2011)

17.460.040 Nonconforming structures.

When, before the effective date of the adoption or amendment of the applicable regulation, a lawful structure existed that would not be permitted by the regulations thereafter imposed by this title, or amendments thereof, the structure may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming structure.

A. A structure nonconforming to the dimensional standards of this title may not be altered or enlarged in any manner unless such alteration or enlargement would bring the structure into conformity with the requirements of the zone in which it is located; provided structural change may be permitted when required to make the structure safe for occupancy or use, provided structural enlargements may be allowed in conformity with the setback requirements of the zone in which it is located, and provided structural

enlargements may be allowed if they would not further violate setback requirements; and provided further, that a nonconforming mobile home may be replaced notwithstanding the setback and density provisions of this title, so long as the structure does not further encroach upon any required yard.

B. If a nonconforming structure is destroyed by any cause, it shall be allowed to be reconstructed as a nonconforming structure up to the same size (total square footage of structure, square foot of footprint of the building and height) and appearance; provided, however, the director has the discretion to allow a different appearance if he finds that it would be more compatible with the zone in which it is located. A complete application for such reconstruction must be filed with the department within a one-year period from the date the structure was destroyed.

C. A mobile home and/or single-family residence located on a legal nonconforming lot may be replaced if destroyed.

D. Notwithstanding the foregoing provisions, if a nonconforming structure presents a public health, safety or welfare hazard, it may not be considered a legal nonconforming structure.

(Ord. 470-2011 § 3 (part), 2011; Ord. 216 (1998) § 4 (part), 1998. Formerly 17.460.030)

17.460.050 Nonconforming uses of structures.

When, before the effective date of the adoption or amendment of the applicable regulation, a lawful use of a structure existed that would not be permitted by the regulations thereafter imposed by this title, or amendments thereof, the use of the structure may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use of structure.

A. Continuation of Nonconforming Use. Any nonconforming use of a structure which was lawfully established and which has been lawfully, actively and continually maintained, may be continued subject to the limitations of this section. In all proceedings other than criminal, the owner, occupant or user shall have the burden to show that the use or structure was lawfully established.

B. Change of Nonconforming Use. A nonconforming use may be changed to another nonconforming use so long as no structural alterations are needed to the structure in which the use is located, and provided the new use is a reduction in the nonconformity and intensity of the existing nonconforming use. Such determination shall be made by the director as a Type II decision and may be appealed to the hearing examiner.

C. Expansion of Nonconforming Use. A nonconforming use shall not be enlarged or expanded; provided, the structure containing the nonconforming use may be structurally altered to adapt to new technologies or equipment. A nonconforming use of a structure may be extended throughout those parts of a structure which were designed or arranged to such use prior to the date when such use of the structure became nonconforming; provided, that no structural alteration, except those required by the law, are made.

D. Destruction of Nonconforming Use of Structure. If any nonconforming use of structure is destroyed by any cause, it shall be allowed to be reconstructed as a nonconforming structure up to the same size (total square footage of structure, square foot of footprint of the building and height) and appearance; provided, however, the director has the discretion to allow a different appearance if he finds that it would be more compatible with the zone in which it is located. A complete application for such reconstruction must be filed with the department within a one-year period from the date the structure was destroyed.

E. Discontinuance of Nonconforming Use of Structures. Any nonconforming use of structure for which the use or occupancy is discontinued for a period of twenty-four months shall not thereafter be allowed as a nonconforming use of structure.

(Ord. 470-2011 § 3 (part), 2011; Ord. 216 (1998) § 4 (part), 1998. Formerly 17.460.040)

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Appendix 3
KCC 17.530, “Enforcement”

**Chapter 17.530
ENFORCEMENT**

Sections:

- 17.530.010 Authorization.
- 17.530.020 Penalties.
- 17.530.030 Nuisance.
- 17.530.040 Permit or license in violation.
- 17.530.050 Written assurance of discontinuance.

17.530.010 Authorization.

The director is authorized to enforce this title, and to designate county employees as authorized representatives of the department to investigate suspected violations of this title, and to issue orders to correct violations and notices of infraction.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.020 Penalties.

The violation of any provision of this title shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Infractions shall be processed in accordance with the provisions of the adopted Kitsap County Civil Enforcement Ordinance (Chapter 2.116 of this code).

(Ord. 216 (1998) § 4 (part), 1998)

17.530.030 Nuisance.

Any use, building or structure in violation of this title is unlawful, and a public nuisance. Notwithstanding any other remedy or means of enforcement of the provisions of this title, including but not limited to Kitsap County Code Chapter 9.56 pertaining to the abatement of public nuisances, the prosecuting attorney, any person residing on property abutting the property with the proscribed condition, and the owner or owners of land abutting the land with the proscribed condition may each bring an action for a mandatory injunction to abate the nuisance in accordance with the law. The costs of such a suit shall be taxed against the person found to have violated this title.

(Ord. 292 (2002) § 11, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.530.040 Permit or license in violation.

Any permit or license issued by the county which was not in conformity with provisions of the Zoning Ordinance then in effect is null and void.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.050 Written assurance of discontinuance.

The director may accept a written assurance of discontinuance of any act in violation of this title from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this title.

(Ord. 216 (1998) § 4 (part), 1998)

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Appendix 4
KCC 17.110, “Definitions”

**Chapter 17.110
DEFINITIONS**

Sections:

<u>17.110.005</u>	Generally.
<u>17.110.010</u>	Abutting.
<u>17.110.015</u>	Access.
<u>17.110.020</u>	Accessory dwelling unit.
<u>17.110.025</u>	Accessory living quarters.
<u>17.110.030</u>	Accessory use or structure.
<u>17.110.035</u>	Adjacent.
<u>17.110.040</u>	Adjoining.
<u>17.110.045</u>	Adult family home.
<u>17.110.050</u>	Agricultural uses.
<u>17.110.055</u>	Alley.
<u>17.110.057</u>	Alternative technology.
<u>17.110.060</u>	Animal.
<u>17.110.065</u>	Animal, small.
<u>17.110.070</u>	Animal hospital.
<u>17.110.075</u>	Amusement center.
<u>17.110.085</u>	Aquaculture practices.
<u>17.110.087</u>	Assembly and packaging operations.
<u>17.110.090</u>	Automobile repair.
<u>17.110.095</u>	Automobile service station.
<u>17.110.100</u>	Awning.
<u>17.110.103</u>	(Repealed)
<u>17.110.105</u>	Bed and breakfast house.
<u>17.110.110</u>	Board.
<u>17.110.120</u>	Boat yard.
<u>17.110.125</u>	Breezeway.
<u>17.110.126</u>	Brew pubs.
<u>17.110.130</u>	Buffer.
<u>17.110.132</u>	Buffer, landscaping.
<u>17.110.133</u>	Buffer, screening.
<u>17.110.135</u>	Building.
<u>17.110.140</u>	Building height.
<u>17.110.145</u>	Building line.
<u>17.110.150</u>	Caretaker's dwelling.
<u>17.110.155</u>	Carport.
<u>17.110.157</u>	Child care center.
<u>17.110.160</u>	Clinic.
<u>17.110.165</u>	Club.
<u>17.110.168</u>	Co-location.
<u>17.110.170</u>	Commission or planning commission.
<u>17.110.171</u>	Comprehensive plan.

<u>17.110.175</u>	Conditional use.
<u>17.110.177</u>	Conference center.
<u>17.110.180</u>	Congregate care facility.
<u>17.110.185</u>	Contiguous.
<u>17.110.190</u>	Convalescent, nursing or rest home.
<u>17.110.195</u>	Contractor's storage yard.
<u>17.110.196</u>	Cottage housing development.
<u>17.110.197</u>	County engineer.
<u>17.110.199</u>	Custom art and craft stores.
<u>17.110.200</u>	Day-care center.
<u>17.110.205</u>	Day-care center, family.
<u>17.110.210</u>	Density.
<u>17.110.212</u>	Density, maximum.
<u>17.110.213</u>	Density, minimum.
<u>17.110.215</u>	Department.
<u>17.110.220</u>	Development.
<u>17.110.222</u>	Development rights.
<u>17.110.223</u>	Directional panel antenna.
<u>17.110.225</u>	Director.
<u>17.110.226</u>	Drinking establishments.
<u>17.110.230</u>	(Repealed)
<u>17.110.240</u>	Dwelling, single-family attached.
<u>17.110.242</u>	Dwelling, single-family detached.
<u>17.110.245</u>	Dwelling, duplex.
<u>17.110.250</u>	Dwelling, multiple-family.
<u>17.110.255</u>	Dwelling unit.
<u>17.110.257</u>	Emergency service communications.
<u>17.110.260</u>	Employees.
<u>17.110.265</u>	Exotic animal.
<u>17.110.270</u>	Family.
<u>17.110.275</u>	Fence, sight-obscuring.
<u>17.110.280</u>	Forestry.
<u>17.110.285</u>	Foster home.
<u>17.110.290</u>	Frontage.
<u>17.110.295</u>	Garage, private.
<u>17.110.301</u>	General merchandise stores.
<u>17.110.302</u>	General office and management services.
<u>17.110.303</u>	Golf course.
<u>17.110.305</u>	Grade.
<u>17.110.315</u>	Gross floor area.
<u>17.110.317</u>	Guest house.
<u>17.110.319</u>	Habitable area.
<u>17.110.320</u>	Habitable floor.
<u>17.110.325</u>	Hearing examiner.
<u>17.110.330</u>	Heavy equipment.
<u>17.110.340</u>	(Repealed)
<u>17.110.345</u>	Home business.

- 17.110.350 Home day care.
- 17.110.355 Home owners' association.
- 17.110.360 Hospital.
- 17.110.365 Hotel/motel.
- 17.110.366 Immediate vicinity.
- 17.110.367 Impervious surface.
- 17.110.368 Infill development.
- 17.110.369 Junk motor vehicle.
- 17.110.370 Junk yard.
- 17.110.375 Kennel.
- 17.110.380 Kennel, hobby.
- 17.110.390 Landscaping.
- 17.110.393 Lattice support structure.
- 17.110.395 Livestock.
- 17.110.396 Loading space.
- 17.110.400 Lot.
- 17.110.405 Lot area.
- 17.110.410 Lot, corner.
- 17.110.412 Lot, interior.
- 17.110.415 Lot coverage.
- 17.110.420 Lot depth.
- 17.110.425 (Repealed)
- 17.110.430 Lot line.
- 17.110.435 Lot line, front.
- 17.110.440 Lot line, rear.
- 17.110.445 Lot line, side.
- 17.110.450 Lot of record.
- 17.110.455 Lot, through.
- 17.110.460 Lot width.
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<u>17.110.770</u>	Wireless communication facility.
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<u>17.110.780</u>	Whip antenna.
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<u>17.110.783</u>	Wrecking yard.
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<u>17.110.790</u>	Yard, front.
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<u>17.110.805</u>	Zone.

17.110.005 Generally.

Except as provided in Section 17.450.010, for the purpose of this title, certain terms, phrases, words and their derivatives shall be construed as specified in this section and elsewhere in this title where specific definitions are provided. Terms, phrases and words used in the singular include the plural and the plural the singular. Terms, phrases and words used in the masculine gender include the feminine and the feminine the masculine.

The word "shall" is mandatory. The word "may" is discretionary. Where terms, phrases and words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The most current version of the English Webster's Dictionary shall be considered as providing ordinary accepted meanings.

(Ord. 415 (2008) § 11, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.010 Abutting.

"Abutting" means adjoining with a common boundary line; except that where two or more lots adjoin only at a corner or corners, they shall not be considered as abutting unless the common property line between the two parcels measures ten feet or greater in a single direction. Where two or more lots are separated by a street or other public right-of-way, they shall be considered "abutting" if their boundary lines would be considered abutting if not for the separation provided by the street or right-of-way.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.015 Access.

"Access" means the place, means, or way by which pedestrians and vehicles shall have safe, adequate, and usable ingress and egress to a property or use, as required by this title.

(Ord. 415 (2008) § 12, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.020 Accessory dwelling unit.

"Accessory dwelling unit" means separate living quarters detached from the primary residence. No mobile home or recreational vehicle shall be considered an accessory dwelling unit. This definition excludes guest houses.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.025 Accessory living quarters.

"Accessory living quarters" means separate living quarters contained within the primary residence.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.030 Accessory use or structure.

"Accessory use or structure" means an activity or structure that is commonly associated with but subordinate to any principal use or structure.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.035 Adjacent.

"Adjacent" means the same as "abutting."

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.040 Adjoining.

"Adjoining" means the same as "abutting."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.045 Adult family home.

"Adult family home" means a dwelling licensed pursuant to RCW 70.128 in which a person or persons provide personal care, special care, and room and board.

(Ord. 415 (2008) § 13, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.050 Agricultural uses.

"Agricultural uses" means the use of the land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, wholesale nurseries, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses; provided, however, that the operation of any such accessory use shall be incidental to that of normal agriculture activities, and provided further, that the above uses shall not include slaughter houses and meat packing or commercial feed-lots.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.055 Alley.

"Alley" means a private or public right-of-way having a typical width of at least ten feet, but generally no more than twenty feet, which affords only secondary means of access to abutting properties. Alleys are not intended for general traffic circulation.

(Ord. 415 (2008) § 14, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.057 Alternative technology.

"Alternative technology" means the use of structures, fixtures, and technology which substantially limit the visibility of wireless communication support structures and facilities. This may include, but is not limited to, use of existing utility poles, flagpoles, existing structures such as water tanks, church steeples and any other method which substantially minimizes the visual impact of wireless communication support structures and facilities. This is commonly referred to as "stealth technology."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 281-2002 § 1, 2002)

17.110.060 Animal.

"Animal" means any live vertebrate creature, reptile, amphibian or bird, except man.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.065 Animal, small.

"Animal, small" or "small animal" means any animal other than livestock used for agricultural purposes.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.070 Animal hospital.

"Animal hospital" means a place where animals or pets are given medical or surgical treatment, and are cared for during the time of such treatment.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.075 Amusement center.

"Amusement center" means a commercially operated facility having one or more forms of entertainment such as a bowling alley, indoor golf driving range, merry-go-round, roller coaster, batting cages, electronic and/or video games, or miniature golf course.

(Ord. 415 (2008) § 15, 2008; Ord. 367 (2006) § 5 (part), 2006)

17.110.085 Aquaculture practices.

"Aquaculture practices" means the harvest, culture or farming of cultivated food fish, shellfish or other aquatic plants and animals and includes fisheries enhancement, the mechanical harvesting of shellfish and hatchery culture, excluding traditional noncommercial shellfish harvesting.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.087 Assembly and packaging operations.

"Assembly and packaging operations" means a facility where pre-manufactured components are assembled to construct a product. Products may be packaged and moved off site for wholesale or retail sale. This may include, but is not limited to, assembly and packaging of computer, electronics, office equipment, fabricated metal products, and other products.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.090 Automobile repair.

"Automobile repair" means replacement of parts, motor service, rebuilding or reconditioning of engines, painting, upholstering, detailing, or cleaning motor vehicles, recreational vehicles or trailers.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.095 Automobile service station.

"Automobile service station" means a building or lot having dispensers and storage tanks where fuels or oils for motor vehicles are dispensed, sold, or offered for sale. Service stations may include accessory convenience stores and minor automobile services, including car washes.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.100 Awning.

"Awning" or "canopy" means a temporary or movable shelter (awning), or a fixed rigid shelter (canopy) supported entirely by the exterior wall of the building and generally extending over a pedestrian walkway. When used in conjunction with signs, only that portion of the awning or canopy that is actually used as a sign shall be included in sign

area calculations. Lighting of the awning or canopy, whether directly, indirectly, or by back-lighting, shall have no effect on the sign requirements, unless lighted signs are specifically prohibited in that area or zone.

(Ord. 415 (2008) § 16, 2008)

17.110.103 (Repealed)*

* **Editor's Note:** Former Section 17.110.103, "Barrier buffer," was repealed by § 17 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.105 Bed and breakfast house.

"Bed and breakfast house" means a dwelling or separate structure which is used by the owner or primary resident to provide overnight guest lodging for compensation including not more than ten guest rooms and which usually provides a morning meal as part of the room rate structure.

(Ord. 415 (2008) § 18, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 281-2002 § 2, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.110.110 Board.

"Board" means the Kitsap County board of county commissioners or their assigns.

(Ord. 415 (2008) § 19, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.120 Boat yard.

"Boat yard" means a place where boats are constructed, dismantled, stored, serviced, or repaired, including maintenance work thereon and may include such facilities as a marine railway, dry-dock or tidal grid.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.125 Breezeway.

"Breezeway" means a structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.126 Brew pubs.

"Brew pubs" shall mean a combination of retail, wholesale and manufacturing business that brews and serves beer and/or food on the premises.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.130 Buffer.

"Buffer" or "buffering" means space, either landscaped or in a natural state, intended and dedicated by easement or condition of approval to separate uses that may or may not conflict with each other and to reduce visual, noise, odors and other impacts.

(Ord. 415 (2008) § 20, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.132 Buffer, landscaping.

"Buffer, landscaping" means a buffer treatment within or along the perimeter of a development which varies in numbers and types of vegetation and/or fencing depending on land uses. Trees, shrubs, ground covers and/or fencing are to be provided as prescribed by Chapter 17.385.

(Ord. 415 (2008) § 21, 2008)

17.110.133 Buffer, screening.

"Buffer, screening" means a buffer of evergreen vegetation and/or site-obscuring fencing intended to provide functional screening between different uses, land use intensities and/or zones installed or maintained as prescribed by Chapter 17.385.

(Ord. 415 (2008) § 22, 2008)

17.110.135 Building.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.140 Building height.

"Building height" is the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.145 Building line.

"Building line" means the perimeter of that portion of a building or structure nearest a property line but excluding eaves, open space, terraces, cornices and other ornamental features projecting from the walls of the building or structure.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.150 Caretaker's dwelling.

"Caretaker's dwelling" means a single-family residence accessory to a commercial or industrial use intended for the purposes of providing supervision, maintenance or security of the property.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.155 Carport.

"Carport" means a roof designed to cover, but not enclose, automobile parking spaces and should be open on two or more sides.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.157 Child care center.

"Child care center" means the same as "day-care center."

(Ord. 367 (2006) § 5 (part), 2006)

17.110.160 Clinic.

"Clinic" means a building or portion of a building containing offices for providing non-emergency chiropractic, medical, dental, or psychiatric services not involving overnight housing of patients.

(Ord. 419 (2008) § 2, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.165 Club.

"Club" means a place where an association of persons organized for some common purpose meet. This definition excludes places of worship and groups organized primarily for business purposes.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.168 Co-location.

"Co-location" means the use of a single support structure by more than one wireless services provider where appropriate, and/or placement of up to four support structures for co-location on a specific site. This may include shared facilities with Kitsap County central communications or public safety emergency communications equipment.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.170 Commission or planning commission.

"Commission" or "planning commission" means the Kitsap County planning commission.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.171 Comprehensive plan.

"Comprehensive plan" means the principals, objectives, and policies to guide growth and development, as required under Chapter 36.70A RCW. The Kitsap County Comprehensive Plan coordinates and provides policy direction for county programs and services, and establishes urban/rural boundaries.

(Ord. 415 (2008) § 23, 2008)

17.110.175 Conditional use.

"Conditional use" means an activity specified by this title as a principal or an accessory use that may be approved or denied based upon consistency with specific criteria (Chapters 17.420 and/or 17.421). Approval of a conditional use is subject to certain conditions. Conditional uses reviewed by the planning department are administrative (ACUP); those reviewed by the hearing examiner (C) require a public hearing.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.177 Conference center.

"Conference center" means a building or group of buildings with overnight accommodations and meeting space, primarily intended for conferences, meetings, and retreats. Conference centers may include facilities such as dining and banquet rooms, recreation rooms and other amenities.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.180 Congregate care facility.

"Congregate care facility" means any building in which people live in individual housing units which provide for independent living while providing common living areas and limited services such as health care, meals and housekeeping.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.185 Contiguous.

"Contiguous" means the same as "abutting."

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.190 Convalescent, nursing or rest home.

"Convalescent, nursing or rest home" means any building or premises in or on which sick, injured, or infirm persons are housed, for a period in excess of twenty-four consecutive hours and furnished with meals and nursing care for hire.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.195 Contractor's storage yard.

"Contractor's storage yard" means a place where heavy equipment, vehicles, construction equipment or any material commonly used in the erection of any structure, is stored or accumulated. Sites that involve current construction of projects with active permits involving the materials on site shall not be considered a contractor's storage yard.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.196 Cottage housing development.

"Cottage housing development" means a tract of land under single ownership or unified control developed with four or more detached dwelling units sharing a commonly owned courtyard/common area and parking area. Cottage housing development may or may not be condominiums.

(Ord. 415 (2008) § 24, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.197 County engineer.

"County engineer" means the director of the department of public works or a duly authorized designee as defined in RCW 36.75.010.

(Ord. 415 (2008) § 25, 2008)

17.110.199 Custom art and craft stores.

"Custom art and craft stores" shall mean a business in which finished, personal or household items are produced and/or sold. Examples include, but are not limited to: pottery and candle making; leather work; jewelry making; creation of sculpture or other artwork.

(Ord. 415 (2008) § 26, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003. Formerly 17.110.197)

17.110.200 Day-care center.

"Day-care center" means a primary dwelling in which more than seven individuals, or a building other than a primary dwelling in which any number of individuals, are cared for during some portion of a twenty-four-hour period.

(Ord. 415 (2008) § 27, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.205 Day-care center, family.

"Day-care center, family" means an owner- or manager-occupied primary dwelling and premises in and on which not more than six individuals are cared for during some portion of a twenty-four-hour period.

(Ord. 415 (2008) § 28, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.210 Density.

"Density" means a ratio comparing the number of dwelling units with land area.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 281 (2002) § 3, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.110.212 Density, maximum.

"Density, maximum" means the largest number of dwelling units that shall be developed on a property(s) within a specific zone based upon the gross acreage of the property(s). In circumstances involving state or federal bald eagle habitat regulations, the calculation of maximum density may be affected.

(Ord. 415 (2008) § 29, 2008)

17.110.213 Density, minimum.

"Density, minimum," unless otherwise specified by Section 17.382.110, means the fewest number of dwelling units that shall be developed on a property(s) within a specific zone based upon the net developable acreage of the property(s).

(Ord. 415 (2008) § 30, 2008)

17.110.215 Department.

"Department" means the Kitsap County department of community development.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.220 Development.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations and other land-disturbing activities.

(Ord. 415 (2008) § 31, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.222 Development rights.

"Development rights" means the residential building rights permitted to a lot or parcel within a sending area, as defined in this chapter, based on the gross density, established pursuant to the Kitsap County zoning map and this title, and measured in base dwelling units per developable acre.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.223 Directional panel antenna.

"Directional panel antenna" means, generally, a rectangular antenna designed to transmit and receive radio frequency signals in a specific directional pattern.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.225 Director.

"Director" means the director of the Kitsap County department of community development or a duly authorized designee.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.226 Drinking establishments.

"Drinking establishments" means a business primarily engaged in the retail sale of alcoholic beverages for consumption on the premises, including night clubs, bars, and taverns. It shall not mean premises primarily engaged in the retail sale of food for consumption on the premises, where the sale of alcoholic beverages is clearly accessory and incidental (e.g., comprises less than twenty percent of the gross receipts). This definition excludes brew pubs.

(Ord. 415 (2008) § 32, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.230 (Repealed)*

* **Editor's Note:** Former Section 17.110.230, "Drive-in restaurants," was repealed by § 33 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.240 Dwelling, single-family attached.

"Dwelling, single-family attached" or "attached single-family dwelling" means a single dwelling unit designed for occupancy by not more than one family and separated from adjacent units by one or more common vertical walls where each dwelling includes adjacent dwelling-specific yard area within its ownership.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 281 (2002) § 4, 2002: Ord. 216 (1998) § 4 (part), 1998)

17.110.242 Dwelling, single-family detached.

"Dwelling, single-family detached" or "detached single-family dwelling" means a single dwelling unit designed for occupancy by not more than one family that is physically separated from any other dwelling unit.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.245 Dwelling, duplex.

"Dwelling, duplex," means a building containing two dwelling units and designed for occupancy by not more than two families. A duplex may not be considered a primary residence for the purposes of constructing an accessory dwelling unit or accessory living quarters.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.250 Dwelling, multiple-family.

"Dwelling, multiple-family" means a building or portion thereof containing three or more dwelling units and designed for occupancy by three or more families.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.255 Dwelling unit.

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A recreational vehicle is not considered a dwelling unit.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.257 Emergency service communications.

"Emergency service communications" means any police, fire, emergency, and/or medical wireless communication of radio frequency (RF) signals through electromagnetic energy.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.260 Employees.

"Employees" means all persons, including proprietors, working on the premises.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.265 Exotic animal.

"Exotic animal" means any member of the animal kingdom which is not commonly domesticated or which is not common to North America, or which, irrespective of geographic origin, is of a wild or predatory nature, or any domesticated animal which, because of its size, vicious nature or similar characteristics, would constitute a danger to human life or property if not kept, maintained or confined in a safe manner.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.270 Family.

"Family" means two or more persons customarily living together as a single house-keeping unit and using common cooking facilities, as distinguished from a group occupying a hotel, club, boarding or lodging house, or other group of unrelated individuals.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.275 Fence, sight-obscuring.

"Fence, sight-obscuring" or "sight-obscuring fence" means a fence or combination of fence and planting arranged in such a way as to screen areas from view.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.280 Forestry.

"Forestry" means the use of land for producing and caring for a forest, including the harvesting of timber.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.285 Foster home.

"Foster home" means a dwelling unit in which a full-time resident provides care and supervision on a full-time basis to not more than six children or to not more than three expectant mothers.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.290 Frontage.

"Frontage" means the actual length of the front property line abutting a street or alley (if no street frontage), or length of the property line of a flag lot that most closely parallels the street in which it receives access.

(Ord. 415 (2008) § 34, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.295 Garage, private.

"Garage, private" means an accessory building or part of a main building intended primarily for the storage of motor vehicles owned or used by occupants of the main building.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.301 General merchandise stores.

"General merchandise stores" means stores that sell a wide variety of grocery and non-grocery items, including, but not limited to: fresh foods; packaged foods for preparation and consumption in the home; household supplies; consumer electronics; hardware; apparel; and sporting goods.

(Ord. 415 (2008) § 35, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.302 General office and management services.

"General office and management services" means the offices of real estate agencies, advertising agencies, mailing services and postal substations, employment agencies, insurance agencies, management and consulting firms, accountants, attorneys, security brokers, architects, surveyors, tax preparation services, computer software development, and other similar business services. This term also includes the administrative offices for businesses whose primary activity may be a non-office use conducted elsewhere. This definition excludes engineering and construction firms and financial, banking, mortgage and title institutions.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.303 Golf course.

"Golf course" means an area designed and used for playing golf, including all accessory uses incidental to the operation of the facility, including driving ranges.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.305 Grade.

"Grade" means the average point of elevation of the finished surface of the ground within five feet of a building or structure.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.315 Gross floor area.

"Gross floor area" means the sum of horizontal areas of floors of a building when measured from the exterior faces of exterior walls or, if appropriate, from the center line of dividing walls. Gross floor area generally excludes vent shafts, covered walkways, porches, and similar areas. However, gross floor area shall include decks, or porches when covered by a roof or portion of the floor above.

(Ord. 415 (2008) § 36, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.317 Guest house.

"Guest house" means living quarters in an accessory building for the use of the occupant, persons employed on the premises, or for temporary use by guests of the occupant. Such quarters have no kitchen facilities and are not otherwise used as a separate dwelling unit.

(Ord. 415 (2008) § 37, 2008: Ord. 367 (2006) § 5 (part), 2006)

17.110.319 Habitable area.

"Habitable area" means the entire area of a dwelling unit or living quarters used for living, sleeping, eating and/or cooking. Storage areas and garages are excluded from calculations of habitable area.

(Ord. 415 (2008) § 38, 2008)

17.110.320 Habitable floor.

"Habitable floor" means any floor usable for living purposes including working, sleeping, eating, cooking, or recreating uses, or any combination of these uses. A floor used only for storage purposes is not a "habitable floor."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.325 Hearing examiner.

"Hearing examiner" means a person appointed to hear or review certain land use applications and appeals pursuant to Title 21 of this code, the Land Use and Development Procedures Ordinance.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.330 Heavy equipment.

"Heavy equipment" means, but shall not be limited to self-powered, self-propelled or towed mechanical devices, equipment and vehicles of the nature customarily used for commercial purposes such as tandem axle trucks, graders, backhoes, tractor trailers, cranes and lifts but excluding automobiles, recreational vehicles, boats and their trailers and equipment used for agricultural purposes.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.340 (Repealed)*

* **Editor's Note:** Former Section 17.110.340, "High turnover restaurants," was repealed by § 39 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.345 Home business.

"Home business" means a commercial or industrial use (excluding retail) conducted within a dwelling, which use is clearly secondary to the use of the dwelling for residential purposes.

(Ord. 415 (2008) § 40, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.350 Home day care.

"Home day care" means the same as "day-care, family."

(Ord. 367 (2006) § 5 (part), 2006)

17.110.355 Home owners' association.

"Home owners association" means a non-profit organization as defined by the State of Washington operating under recorded land agreements established through which the following take place:

A. Each person owning or purchasing a lot in a planned unit or other described land area is automatically a member by such ownership or purchase;

B. Each lot may be automatically subject to a charge for a proportionate share of the expenses for the organization's activities, including but not limited to maintaining a common property, such as streets, walkways, recreational facilities, or grounds policing; and

C. Construction and maintenance responsibilities for any undivided property are identified and assigned.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.360 Hospital.

"Hospital" means any institution, place, building, or agency which maintains and operates organized facilities for the diagnosis, care, and treatment of human illness, including convalescence and also including care during and after pregnancy; or which maintains and operates organized facilities for any such purpose, and to which persons may be admitted for overnight stay or for a longer period. This definition excludes clinics.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.365 Hotel/motel.

"Hotel/motel" means a building in which lodging is provided and offered to the public for compensation and which is open to transient guests. This definition excludes bed and breakfast houses.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.366 Immediate vicinity.

"Immediate vicinity" means an area to include all lots, parcels, tracts, roadways or other property(s) within a four-hundred-foot radius of a subject property.

(Ord. 415 (2008) § 41, 2008)

17.110.367 Impervious surface.

"Impervious surface" means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads with compacted subgrade, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.368 Infill development.

"Infill development" means the construction of housing or other uses on vacant or under-utilized properties bordered on a minimum of two sides by existing development which is consistent with the current density and zoning of the area.

(Ord. 415 (2008) § 42, 2008)

17.110.369 Junk motor vehicle.

"Junk motor vehicle" means a motor vehicle that is damaged, apparently inoperable, or any detached parts thereof, including, but not limited to, cars, trucks, motorcycles, vehicle hulks, campers, trailers and/or motor homes. "Junk motor vehicle" does not include a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, or a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to the requirements of RCW 46.80.130.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 292 (2002) § 1, 2002)

17.110.370 Junk yard.

"Junk yard" means a place where waste or scrap materials are stored, bought, sold, accumulated, exchanged, baled, packaged, disassembled or handled including, but not limited to, scrap metals, paper, rags, tires, and bottles, and such worn out or discarded material, excluding approved recycling centers.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.375 Kennel.

"Kennel" means a place where dogs and/or cats are kept, for compensation. This definition includes pet daycares, but excludes veterinary clinics and hospitals, pet shops and zoos.

(Ord. 419 (2008) § 3, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.380 Kennel, hobby.

"Hobby kennel" means a place where not more than ten adult dogs are kept for personal enjoyment, not for compensation.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.390 Landscaping.

"Landscaping" means the placement, preservation, and the replacement of not only trees, grass, shrubs, plants, flowers, and other vegetative materials but also the arrangement of fountains, patios, decks, street furniture, and ornamental concrete or stonework areas and artificial turf or carpeting in accordance with an approved landscaping plan meeting adopted landscaping plan, design, and installation standards. Artificial plants, shrubs, bushes, flowers, and materials in movable containers shall not be considered "landscaping" for purposes of this title.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.393 Lattice support structure.

"Lattice support structure" means a guyed or self-supporting three or four-sided, open, metal frame structure used to support telecommunication equipment.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.395 Livestock.

"Livestock" means horses, bovine, sheep, goats, swine, reindeer, donkeys, mules, llamas and any other hoofed animal, large and small (small being one hundred fifty pounds or less).

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.396 Loading space.

"Loading space" means a space for temporary parking of a vehicle while loading and unloading cargo or passengers.

(Ord. 415 (2008) § 43, 2008)

17.110.400 Lot.

"Lot" means platted or unplatted parcel of land which meets the minimum area, setbacks and widths required by this title for occupancy by a principal use and meets the access requirements of this title.

(Ord. 415 (2008) § 44, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.405 Lot area.

"Lot area" means the horizontal area within the boundary lines of a lot excluding public and private streets, tidelands, shorelands and the panhandle of a flag lot if the panhandle is less than thirty feet in width. Areas consisting of only these exceptions are not considered lots. Further, rural lots shall be considered five acres if the lot is 1/128 of a section, ten acres if the lot is 1/64 of a section, and twenty acres if the lot is 1/32 of a section.

(Ord. 415 (2008) § 45, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.410 Lot, corner.

"Lot, corner" or "corner lot" means a lot abutting upon two or more streets at their intersection, or upon two parts of the same street; such street or parts of the same street forming an interior angle of less than one hundred thirty degrees within the lot lines.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.412 Lot, interior.

"Lot, interior" or "interior lot" means a lot or parcel of land other than a corner lot which does not abut a public street.

(Ord. 415 (2008) § 46, 2008)

17.110.415 Lot coverage.

"Lot coverage" means that percentage of the total lot area covered by buildings.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.420 Lot depth.

"Lot depth" means the horizontal distance between the midpoint of the front and opposite, usually, the rear lot line. In the case of a corner lot, the depth shall be the length of its longest front lot line.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.425 (Repealed)*

* **Editor's Note:** Former Section 17.110.425, "Lot, interior," was repealed by § 47 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.430 Lot line.

"Lot line" means any line bounding a lot as herein defined. Lot lines for unusual lot configurations may be determined by the director.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.435 Lot line, front.

"Lot line, front" or "front lot line" means that boundary of a lot which is along a street or approved private road or easement, or, for a flag lot, approximately parallel to a street or approved private road or easement; and thus generally where access is from.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.440 Lot line, rear.

"Lot line, rear" or "rear lot line" means that boundary of a lot which is most distant from the front lot line; or the ordinary high water mark on waterfront property.

(Ord. 415 (2008) § 48, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.445 Lot line, side.

"Lot line, side" or "side lot line" means any boundary of a lot which is not a front or rear lot line.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.450 Lot of record.

"Lot of record" means a lot which was created in accordance with the laws and regulations in effect at the time it was created and is shown on the records of the county assessor or county auditor.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.455 Lot, through.

"Lot, through" or "through lot" means an interior lot having frontage on two streets and/or highways.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.460 Lot width.

"Lot width" means the average horizontal distance between the side lot lines.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.462 Macro antenna array.

"Macro antenna array" means an attached wireless communication facility which consists of antennas equal to or less than fifteen feet in height or a parabolic antenna up to forty inches in diameter and with an area not more than one hundred square feet in the aggregate as viewed from any one point.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.465 Maintain.

"Maintain" means to cause or allow to continue in existence. When the context indicates, the word means to preserve and care for a structure, improve or condition an area to such an extent that it remains attractive, safe, presentable, and carry out the purpose for which it was installed, constructed, or required.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.470 Manufactured home.

"Manufactured home" means a single-family dwelling constructed after June 15, 1976, and built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act. A manufactured home is built on a permanent chassis.

(Ord. 415 (2008) § 49, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.473 Manufacturing and fabrication.

"Manufacturing and fabrication" means the transformation of materials or substances into new products, including construction and assembling of component parts, and the blending of materials such as lubricating oils, plastics, resins or liquors.

A. **Light:** Light manufacturing and fabrication is characterized by the use being contained within buildings, and materials or equipment used in production not being stored outside. Light manufacturing and fabrication activities do not generate external emissions such as smoke, odor, noise, vibrations or other nuisances outside the building. This definition may include, but is not limited to, manufacture and fabrication of electronic components, software, office products, furniture, glass products, and other manufacturing and fabrication uses as determined by the reviewing official.

B. **Medium:** Medium manufacturing and fabrication is characterized by need for only very limited areas of outdoor storage and may create minor external environmental impacts during the conduct of operations but most impacts are contained on site. This definition may include, but is not limited to, manufacture and fabrication of paints, printing ink, leather goods, and other manufacturing and fabrication uses as determined by the reviewing official.

C. **Heavy:** Heavy manufacturing and fabrication uses are often characterized by the need for large outdoor areas in which to conduct operations, and typically results in environmental impacts beyond their own sites. This definition may include, but is not limited to, manufacture and fabrication of automotive vehicles and their parts, cement, brick, lime, gypsum, asphalt, and other manufacturing and fabrication uses as determined by the reviewing official. This definition excludes manufacture and fabrication of hazardous materials.

D. **Hazardous:** Hazardous manufacturing and fabrication uses are those engaged in the manufacture or fabrication of materials that are flammable, explosive, or present hazards to the public health, safety, and welfare, including all substances and materials defined as hazardous materials, hazardous substances, or hazardous waste.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.475 Marina.

"Marina" means a public or private facility which for compensation provides moorage or wet or dry storage for watercraft and may offer marine-related sales and services.

(Ord. 415 (2008) § 50, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.477 Master plan.

"Master plan" means a large-scale development plan to guide the long-term physical development of a particular area. Such a plan shall be prepared and approved pursuant to Chapter 17.415 or 17.428 of this title.

(Ord. 415 (2008) § 51, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.480 Micro antenna array.

"Micro antenna array" means an attached wireless communication facility which consists of antennas equal to or less than four feet in height (except omni-directional antennas which may be up to six feet in height) and with an area of not more than five hundred eighty square inches in the aggregate.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.483 Mini antenna array.

"Mini antenna array" means an attached wireless communication facility which consists of antennas equal to or less than ten feet in height or a parabolic antenna up to forty inches in diameter and with an area not more than fifty square feet in the aggregate as viewed from any one point.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.485 Mixed use development.

"Mixed use development" means the development of a site or building with a combination of residential and non-residential uses in a single or physically integrated group of buildings. (Ord. 367 (2006) § 5 (part), 2006)

17.110.490 Mobile home.

"Mobile home" means a factory-built single-family dwelling constructed prior to June 15, 1976, to standards other than the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act.

(Ord. 415 (2008) § 52, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.493 Mobile home park.

"Mobile home park" means a tract of land developed or operated as a unit with individual leased sites and facilities to accommodate two or more mobile homes or manufactured homes.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.503 Mono-pole.

"Mono-pole" means a structure composed of a single spire used to support telecommunication equipment.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.504 Movie/performance theater.

"Movie/performance theater" means a facility for showing films and performance art, including accessory retail sales of food and beverages. This definition excludes adult entertainment uses.

(Ord. 419 (2008) § 4, 2008; Ord. 367 (2006) § 5 (part), 2006)

17.110.506 Net developable area.

"Net developable area" means the site area after subtracting all rights-of-way, critical areas (including bald eagle habitat regulations) and their buffers, stormwater controls, recreational facilities, public facilities, community drainfields or other area-wide sanitary sewer facilities, and open space.

(Ord. 415 (2008) § 53, 2008)

17.110.508 Nonconforming lot.

"Nonconforming lot" means a lot was lawfully created but does not conform to the lot requirements of the zone in which it was located as established by this title or other ordinances or amendments thereto.

(Ord. 415 (2008) § 54, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998. Formerly 17.110.505)

17.110.510 Nonconforming use, nonconforming structure or nonconforming use of structure.

"Nonconforming use, nonconforming structure or nonconforming use of structure" means, respectively, a use of land, a structure or use of a structure which was lawfully established or built and which has been lawfully continued but which does not conform to the regulations established by this title or amendments thereto.

(Ord. 470-2011 § 2, 2011; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.515 Nuisance.

"Nuisance" means in addition to those definitions contained in Chapters 7.48 and 9.66 RCW, as amended, any violation of this title shall constitute a nuisance, per se.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.520 Nursery, retail.

"Nursery, retail" means an establishment where trees, shrubs and other plant materials are grown, propagated and/or stored for purpose of sale directly to the public.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.525 Nursery, wholesale.

"Nursery, wholesale" or "wholesale nursery" means an establishment where trees, shrubs or other plants are propagated on the property and/or continuously grown to a larger size for a period no less than one complete growing season and that is not open to the public on a regular basis. Temporary outdoor stands for the periodic and occasional sale of plants which are grown on the premises shall not disqualify an establishment for definition as a wholesale nursery. No bark, mulch, fertilizer or other similar landscape supply may be sold.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.530 Nursing or rest home.

See Section 17.110.190, Convalescent, nursing or rest home.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.535 Open space.

"Open space" shall mean land used for outdoor active and passive recreational purposes or for critical area or resource land protection, including structures incidental to these open space uses, including associated critical area buffers, but excluding land occupied by dwellings or impervious surfaces not related to the open space uses and yards required by this title for such dwellings or impervious surfaces. "Open space" is further divided into the following categories:

A. "Common open space" shall mean space that may be used by all occupants of a development complex or, if publicly dedicated, by the general public;

B. "Active recreational open space" shall mean space that is intended to create opportunities for recreational activity. Active recreational open space may be occupied by recreational facilities such as ball fields, playground equipment, trails (pedestrian, bicycle, equestrian or multi-modal), swimming pools, and game courts or sculptures, fountains, pools, benches or other outdoor furnishings;

C. "Passive open space" shall mean all common open space not meeting the definition of active recreational open space, including, but not limited to, critical areas and their associated buffers;

D. "Permanent open space" means an area that is permanently reserved as open space and remains in native vegetation unless approved for forestry, passive recreational or access uses; and

E. "Recreational open space" means an area that shall be improved and maintained for its intended use. Exterior as well as interior areas can constitute recreational open space. Examples of usable recreational space include swimming pools, community buildings, interior gyms, picnic areas, tennis courts, community gardens, improved playgrounds, paths and passive seating areas.

(Ord. 415 (2008) § 55, 2008: Ord. 407 (2008) § 6, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 216 (1998) § 4 (part), 1998)

17.110.540 Ordinary high water mark.

"Ordinary high water mark" means that mark that will be found by examining the bed and banks and 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 character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; 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 and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.545 Owner.

"Owner" means the owner of record of real property or person purchasing a piece of property under contract. For the purposes of this title, in terms of violations and binding agreements between the county and the owner, "owner" shall also mean a leaseholder, tenant, or other person in possession or control of the premises or property at the time of agreement, violations of agreement, or the provisions of this title. For the purpose of processing an application for a land use approval or permit under this title, where such application or permit must be filed by an owner, the term "owner" also includes a governmental entity contemplating acquisition of a parcel for a use which would require such permit or approval.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.547 Parabolic antenna.

"Parabolic antenna" means an antenna which is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern. (Also known as a "dish antenna.")

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.548 Parcel.

"Parcel" means platted or unplatted portions of land carrying an assessor's tax account number. Parcels may be, but are not necessarily, legal lots.

(Ord. 415 (2008) § 56, 2008)

17.110.550 Park.

"Park" means public or private areas of land, with or without buildings, intended for outdoor active or passive recreational uses including, but not limited to, arboretums, horticultural gardens and nature preserves.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.555 Parking area, public.

"Parking area, public" or "public parking area" means an open area other than a street or other public way, used for the parking of automobiles and available to the public whether for a fee, free of charge, or as an accommodation for clients or customers.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.560 Parking space.

"Parking space" means a permanently surfaced and marked area not less than nine feet wide and twenty feet long, excluding paved area necessary for access, for the parking of a motor vehicle.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.565 Parking space, barrier free.

"Parking space, barrier free" or "barrier free parking space" means a parking space conforming with WAC Chapter 51.30.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.570 Parking space, compact.

"Parking space, compact" or "compact parking space" means a permanently surfaced and marked area not less than eight feet wide and eighteen feet long, excluding paved area necessary for access, for the parking of a compact motor vehicle.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.572 Performance based development (PBD).

"Performance based development" (or "PBD") means a property development characterized by comprehensive planning of the total project, though it may contain a variety of individual lots and/or uses. Typically, such a project may include clustering of structures and preservation of open space with a number of flexible and customized design features specific to the natural features of the property and the uses sought to be implemented. Specific lot area, dimension and setback requirements may be reduced or deleted in order to allow flexibility and innovation in building design or placement, to facilitate allowed densities and to increase open space, critical areas protection and similar components of the project.

(Ord. 415 (2008) § 57, 2008)

17.110.575 Perimeter setback.

"Perimeter setback" means in a performance based development (PBD), the horizontal distance between a building line and the exterior boundary of the PBD.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.576 Permitted use.

"Permitted use" means a land use allowed outright in a certain zone without a public hearing or conditional use permit; provided, such use is developed in accordance with the requirements of the zone and general conditions of this title, and all applicable provisions elsewhere in the county code.

(Ord. 415 (2008) § 58, 2008)

17.110.580 Person.

"Person" means an individual, partnership, corporation, association, organization, cooperative, tribe, public or municipal corporation, or agency of the state or local governmental unit however designated.

(Ord. 415 (2008) § 59, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.585 Pet.

"Pet" means any animal less than one hundred fifty pounds in weight, other than exotic animals, kept for companionship, recreation or other non-agricultural purposes.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.590 Pet, non-traditional.

"Pet, non-traditional" or "non-traditional pet" means any pet other than a dog, cat, fish or non-raptor bird.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.591 Pharmacies.

"Pharmacies" shall mean businesses primarily engaged in the sale of prescription and over-the-counter drugs, vitamins, first-aid supplies, and other health-related products. Pharmacies that also sell a wide variety of other types of merchandise, such as beauty products, camera equipment, small consumer electronics, gift wares, housewares, and/or cleaning supplies are considered "general merchandise stores."

(Ord. 367 (2006) § 5 (part), 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.595 Pier.

"Pier" means a fixed structure built over tidelands or shorelands used as a landing for marine or recreational purposes.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.600 Places of worship.

"Places of worship" means a permanently located building primarily used for religious worship.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.605 (Repealed)*

* **Editor's Note:** Former Section 17.110.605, "Performance based development (PBD)," was repealed by § 60 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.610 Planning commission.

"Planning commission" means the Kitsap County planning commission.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.615 Porch.

"Porch" means a covered attached structure providing a single entrance to a building, which may be either open or enclosed up to one third.

(Ord. 415 (2008) § 61, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.620 Portable sign.

"Portable sign" means a sign which has no permanent attachment to a building or the ground which include, but is not limited to, A-frame, pole attachment, banners and reader board signs.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.625 Premises.

"Premises" means a tract or parcel of land with or without habitable buildings.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.630 Private airport or heliport.

"Private airport or heliport" means any runway, landing area or other facility designed and used by individual property owners for private aircraft for the purposes of landing and taking off, including associated facilities, such as hangars and taxiways.

(Ord. 415 (2008) § 62, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.635 Prohibited use.

"Prohibited use" means any use which is not expressly allowed and does not meet the criteria under Section 17.100.040.

(Ord. 415 (2008) § 63, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.637 Project permit or project permit application

"Project permit" or "project permit application" means any land use or environmental permit or license required from Kitsap County for a project action, including, but not limited to, building permits, subdivisions, binding site plans, performance based developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, and site-specific rezones authorized by the Kitsap County Comprehensive Plan (Plan) or a sub-area plan, but excluding the adoption or amendment of the Plan, a sub-area plan, or development regulations.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.640 Public facilities.

"Public facilities" means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, waste handling facilities designated as public facilities in the comprehensive solid waste management plan, parks and recreational facilities, schools, public works storage facilities and road sheds, and utilities such as power, phone and cable television.

(Ord. 415 (2008) § 64, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.642 Race track, major.

"Race track, major" means a public or private facility developed for the purpose of operating and/or competitive racing of automobiles, motorcycles or similar vehicles. The facility may allow for up to six thousand spectators and may contain an oval, drag strip, road track and/or other course. Accessory uses may include the sale of concessions and souvenirs, a recreational vehicle camping park, community events and/or vehicle safety training.

(Ord. 415 (2008) § 65, 2008)

17.110.643 Race track, minor.

"Race track, minor" means a public or privately owned course designed for the operating and/or racing of automobiles, motorcycles, all-terrain vehicles or similar vehicles along a defined route that may include straight-aways, curves, jumps and/or other features.

(Ord. 415 (2008) § 66, 2008)

17.110.645 Receiving areas and parcels.

"Receiving areas and parcels" means areas within an urban growth area that are designated on the Kitsap County zoning map or by further action of the board of county commissioners, that may be eligible for additional residential development through the transfer of development rights.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.646 Recreational amenity, active.

A "recreational amenity, active" means an area within a development intended for use by the residents, employees or patrons of the development for leisure activities. Such facilities may include, but are not limited to, a paved sports court, children's play

equipment, exercise fitness trail, community garden or gathering area with water service or similar facility.

(Ord. 415 (2008) § 67, 2008)

17.110.647 Recreational facility.

"Recreational facility" means a place designed and equipped for the conduct of sports and leisure-time activities. Examples include athletic fields, batting cages, amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks and similar uses. Public recreational facilities are those owned by a government entity.

(Ord. 415 (2008) § 68, 2008; Ord. 367 (2006) § 5 (part), 2006)

17.110.650 Recreational vehicle.

"Recreational vehicle" means a vehicle such as a motor home, travel trailer, truck and/or camper combination or camp trailer which is designed for temporary human habitation for recreational or emergency purposes and which may be moved on public highways without any special permit for long, wide or heavy loads.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.655 Recreational vehicle camping park.

"Recreational vehicle camping park" means a tract of land under single ownership or unified control developed with individual sites for rent and containing roads and utilities to accommodate recreational vehicles or tent campers for vacation or other similar transient, short-stay purposes.

(Ord. 415 (2008) § 69, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.660 Residential care facility.

"Residential care facility" means a facility that is the primary residence of a person or persons who are providing personal care, room and board, and medical care for at least five, but not more than fifteen, functionally disabled persons.

(Ord. 415 (2008) § 70, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.662 Restaurant.

"Restaurant" means an establishment where food and/or beverages are served to customers for compensation.

(Ord. 415 (2008) § 71, 2008)

17.110.663 Restaurant, high-turnover.

"High-turnover restaurant" means retail establishments providing food and/or beverages for sale, and which are distinguished by one or more of the following:

- A. Use of disposable food containers and utensils;
- B. Self-service is available;

- C. The principal business is take-out foods and beverages;
- D. Drive-in service is available.

(Ord. 415 (2008) § 72, 2008)

17.110.665 Rezone.

"Rezone" means a change in the zoning classification on the Kitsap County Zoning Map that affects one parcel or a small group of contiguous parcels, a section, or sections of Kitsap County consistent with Chapter 17.510.(Ord. 367 (2006) § 5 (part), 2006)

17.110.666 Rural character.

"Rural character" means the patterns of land use and development that are consistent with the following:

- A. Open space, the natural landscape, and vegetation predominate over the built environment;
- B. Traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- C. Visual landscapes that are traditionally found in rural areas and communities;
- D. Compatible with the use of the land by wildlife and for fish and wildlife habitat;
- E. Reduces the inappropriate conversion of undeveloped land into low-density development;
- F. Protects natural surface water flows and ground water and surface water recharge and discharge areas; and
- G. Meets the requirements of RCW 36.70A.030(15).

(Ord. 415 (2008) § 73, 2008; Ord. 367 (2006) § 5 (part), 2006)

17.110.667 Rural cluster.

"Rural cluster" means site development that avoids sensitive areas while preserving forested land, steep slopes, wetlands, prairies and other ecologically or visually valuable landscape features while still obtaining residential density. Typically a percentage of a site area is preserved in its existing natural or farmed state, with individual house lots occupying the remaining acreage.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.668 Rural Wooded Incentive Program development.

"Rural Wooded Incentive Program development" means a development within the area designated "Rural Wooded" on the Kitsap County Comprehensive Plan land use map that has utilized the clustering provisions of this title and for which final approval has been granted by the board of county commissioners.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.669 Sending areas and parcels.

"Sending areas and parcels" means undeveloped or partially developed lot(s) or parcel(s) located within a sending area, designated on the Kitsap County zoning map or by further action of the board of county commissioners, that are appropriate to transfer development rights.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.670 Setback.

"Setback" means the horizontal distance from a property line to the nearest vertical wall or other element of a building or structure.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.673 Shipping container.

"Shipping container" means any repository greater than 25 feet in length traditionally commonly used for the interstate or international transport of goods.

(Ord. 415 (2008) § 74, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.674 (Repealed)*

* **Editor's Note:** Former Section 17.110.674, "Sheltered transit stop," was repealed by § 75 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and Attachment 7 (part) of Ord. 311 (2003) were formerly codified in this section.

17.110.675 Sign.

"Sign" means a collection of letters, numbers or symbols which calls attention to a business, product, activity, person or service. Balloons or balloon type devices in excess of five cubic feet, or flown more than twenty feet in elevation measured from grade, or taller than twenty-feet in height measured from mean grade are considered signs for the purposes of this ordinance.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 281 (2002) § 5, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.110.680 Sign permit.

"Sign permit" means a permit which authorizes the placement or alteration of a sign on a particular parcel of property or building.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.683 Site.

"Site" means the spatial location of an actual or planned development. A site may contain multiple lots or parcels, excluding public right-of-way.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.685 Site plan.

"Site plan" means a plan prepared to scale, showing accurately and with complete dimensions, all proposed and existing buildings, landscaping, open space, structures and features on abutting properties, and parking proposed for a specific parcel of land; including the specific requirements listed in the pre-application meeting summary and/or application.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.686 Site-specific amendment.

"Site-specific amendment" means an amendment to the Comprehensive Plan and/or Zoning Map that affects one or a small group of contiguous parcels. A site-specific amendment most frequently affects only the land use designation and/or zoning classification and not the text of the Comprehensive Plan or a development regulation.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.687 Stealth technology.

See Section 17.110.057, Alternative technology.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.688 Storage, hazardous materials.

"Storage, hazardous materials" means the storage of materials produced on-site or brought from another site that are flammable, explosive, or present hazards to the public health, safety, and welfare, including all substances and materials defined as hazardous materials, hazardous substances, or hazardous waste.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.689 Storage, self-service.

"Storage, self-service" means a building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for self-service storage of personal property. This definition excludes indoor storage, outdoor storage, vehicle and equipment storage, and hazardous materials storage.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.690 Storage, vehicles and equipment.

"Storage, vehicle and equipment" means an indoor or outdoor area for parking or holding of motor vehicles and boats or wheeled equipment for more than seventy-two hours. This definition excludes automotive sales and rentals, automotive service and repair shops, and auto wrecking yards.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.691 Storage, indoor.

"Storage, indoor" means storage of goods and/or materials located within a building. The definition excludes hazardous materials storage, self-service storage, outdoor storage, and vehicle storage.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.692 Storage, outdoor.

"Storage, outdoor" means outdoor storage of products, supplies, and equipment. This definition excludes hazardous materials storage, self-service storage, indoor storage, and vehicle storage.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.693 Storage container.

"Storage container" means any repository twenty-five feet or less in length commonly used for the transit and short-term storage of residential belongings.

(Ord. 415 (2008) § 76, 2008)

17.110.695 Street.

"Street" means all roads, streets, highways, roadways, freeways, easements, and public rights-of-way used for or designed for vehicular access or use including private roads serving or intended to serve five or more lots. Streets may also include provisions for public utilities, pedestrian walkways, cut and fill slopes, and storm drainage facilities.

(Ord. 415 (2008) § 77, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.700 Structural alteration.

"Structural alteration" means any change or a repair of the supporting members of a building or structure and may be subject to the provisions of Chapter [17.460](#).

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.705 Structure.

"Structure" means that which is built or constructed.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.706 Sub-area plan.

"Sub-area plan" means a detailed, local land use plan which is a subcomponent of the Kitsap County Comprehensive Plan. A sub-area plan contains specific policies, guidelines, and criteria for a specific geographic area of Kitsap County.

(Ord. 415 (2008) § 78, 2008)

17.110.707 Support structure.

"Support structure" means a structure designed and constructed specifically to support a wireless communication antenna array, and may include a mono-pole, self supporting (lattice) tower, guy-wire support tower and other similar structures. Any device which is used to attach an attached wireless communication facility to an existing building or structure shall be excluded from the definition of and regulations applicable to support structure.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.710 Temporary sign.

"Temporary sign" means a sign or balloons intended for use which shall not be displayed for more than fourteen consecutive days and twice in a calendar year, which shall include, but is not limited to, portable signs, banners, A-boards and pennants.

(Ord. 415 (2008) § 79, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.715 Temporary structure.

"Temporary structure" means a structure which does not have or is not required by the Uniform Building Code to have a permanent attachment to the ground. Temporary structures are subject to building permits.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.720 Temporary use.

"Temporary use" means a use which may occur on a lot on a seasonal basis or for a prescribed period of time which usually would not exceed one year's duration.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.725 Tract.

"Tract" means land reserved for specified uses including, but not limited to, reserve development tracts, recreation, open space, critical areas, stormwater facilities, utilities and access tracts. Tracts are not considered lots.

(Ord. 415 (2008) § 80, 2008)

17.110.730 Use.

"Use" means the nature of occupancy, type of activity or character and form of improvements to which land is devoted.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.735 (Repealed)*

* **Editor's Note:** Former Section 17.110.735, "Use separation buffer," was repealed by § 81 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.740 Veterinary clinic.

"Veterinary clinic" means the same as "animal hospital."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.745 Water-dependent use.

"Water-dependent use" means a use or portion of a use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking marinas, aquaculture and float plane facilities.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.750 Water-enjoyment use.

"Water-enjoyment use" means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design, and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment. Examples may include parks, piers, museums, restaurants, education/scientific reserves, resorts and mixed use projects.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.755 Water-oriented use.

"Water-oriented use" means any combination of water-dependent, water-related and or water-enjoyment uses and serves as an all encompassing definition for priority uses under the Shoreline Management Act (SMA).

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.760 Water-related use.

"Water-related use" means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.765 Wireless communication antenna array.

"Wireless communication antenna array" means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency (RF) signals through electromagnetic energy that can be attached to a building or sign. Wireless communication antenna array examples may include an omni-directional antenna (whip), a directional antenna (panel) and/or a parabolic antenna (dish).

(Ord. 415 (2008) § 82, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.770 Wireless communication facility.

"Wireless communication facility" means any unstaffed facility used for the transmission and/or reception of radio frequency (RF) signals through electromagnetic energy. This usually consists of an equipment shelter or cabinet, a support tower or structure used to achieve the necessary elevation, and the antenna array.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.775 Wireless communication support structure.

"Wireless communication support structure" means a structure specifically designed to support a wireless communication antenna array. This may include a mono-pole structure, lattice structure or building.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.780 Whip antenna.

"Whip antenna" means an antenna that is cylindrical in shape up to twenty feet in height.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.782 (Repealed)*

* **Editor's Note:** Former Section 17.110.782, Wooded reserve, was repealed by Section 7 of Ord. 407 (2008). The section was originally derived from Ord. 367 § 5 (part), 2006.

17.110.783 Wrecking yard.

"Wrecking yard" means a place where damaged, inoperable or obsolete machinery such as cars, trucks and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled or handled.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.785 Yard.

"Yard" means any area on the same lot with a building or a structure, which area is unoccupied and unobstructed by any structure from the ground upward to the sky.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.790 Yard, front.

"Yard, front" or "front yard" means an area extending the full width of the lot between a building and the front (or roadway) lot line, except as specified elsewhere in this title.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.795 Yard, rear.

"Yard, rear" or "rear yard" means an open space area extending the full width of the lot between a building and the rear lot line, unoccupied, and unobstructed from the ground upward, except as specified elsewhere in this title.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.800 Yard, side.

"Yard, side" or "side yard" means an area extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this title.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.805 Zone.

"Zone" means a section or sections of Kitsap County within which the standards governing the use of land, buildings, and premises are uniform, which is provided for in Chapter 17.200 of this title.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

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Appendix 5

KCC 17.455, “Interpretations and Exceptions”

**Chapter 17.455
INTERPRETATIONS AND EXCEPTIONS**

Sections:

- 17.455.010 Director authority to interpret code provisions and issue administrative decisions.
- 17.455.060 Existing uses.
- 17.455.080 Pending long or short subdivisions.
- 17.455.090 Temporary permits.
- 17.455.100 Number of dwellings per lot.
- 17.455.110 Obnoxious things.
- 17.455.120 Existing lot aggregation for tax purposes.

17.455.010 Director authority to interpret code provisions and issue administrative decisions.

It shall be the responsibility of the director himself/herself to interpret ambiguous and/or conflicting code and apply the provisions of this title, Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan and applicable sub-area plans.

- A. The director may initiate an administrative code interpretation without an applicant request at any time, and the interpretation will be made available pursuant to Title 21 by the department with the development code to which it applies.
- B. Any person(s) may submit an application for code interpretations from the director and the interpretation will be made available by the department pursuant to Title 21 with the development code to which it applies.
- C. At the request of the applicant, in writing, the director may also authorize a variation of up to ten percent of any numerical standard, except density, when unusual circumstances cause undue hardship in the strict application of this title; provided, such a variance shall be approved only when all of the following conditions and facts exist:
 - 1. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant and do not apply to other property in the same vicinity or zone;
 - 2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;

3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
4. The variance is the minimum necessary to grant relief to the applicant.
5. An approved variance shall become void in three years if a complete application has not been received. The director's response, including findings for granting the variation, shall be in writing and kept in the department files.

D. All code interpretations are binding and may be appealed by any party through the process pursuant to Title 21.

E. All code interpretations, hearings examiner decisions on such interpretations and board reviews shall be a permanent record of the department of community development and included in the Kitsap County Department of Community Development Policy Manual. Code interpretations shall be made available to the public and posted on the county website.

(Ord. 415 (2008) § 213, 2008; Ord. 256 (2001) § 2, 2001; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.060 Existing uses.

A. Except as hereinafter specified, any use, building, or structure lawfully existing at the time of the enactment of this title may be continued, even though such use, building, or structure may not conform to the provisions of this title for the zone in which it is located. A use or structure not conforming to the zone in which it is located shall not be altered or enlarged in any manner, unless such alteration or enlargement would bring the use or structure into greater conformity with the uses permitted within, or requirements of, the zone in which it is located.

The hearing examiner shall review and approve requests for alteration or enlargement of the use or structure through the conditional permit review procedures as set forth in Chapter 17.420. In no case shall the enlargement of these uses be allowed beyond the limits of existing contiguously owned parcels at the time of the passage of the amended ordinance.

B. This section does not apply to any use, building, or structure established in violation of any zoning ordinance previously in effect.

All uses in existence occurring on a specific parcel of land which legally qualified as a permitted unclassified use under the provisions of any former Kitsap County zoning ordinance, shall continue as conforming uses after the effective date of this title, provided, however, in no case shall any use be allowed to expand into

adjoining or contiguous property without an approved zone change or conditional use permit, and further, any expansion on the original parcel shall comply with the standards contained in the zone within which the use is permitted.

(Ord. 415 (2008) § 214, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.080 Pending long or short subdivisions.

Nothing herein shall require any change in the location, plans, construction, size or designated use of any residential plat, for which preliminary official approval has been granted prior to the adoption of this title.

(Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.090 Temporary permits.

The director may approve temporary permits, with conditions to mitigate negative impacts, valid for a period of not more than one year after issuance, for temporary structures or uses which do not conform to this title.

Upon the expiration of the temporary permit, the applicant shall have thirty days within which to remove and/or discontinue such temporary use structure.

Upon approval, temporary permits may be issued for the following uses or structures:

- A. Storage of equipment and materials during the building of roads or other developments;
- B. Temporary storage of structures for the housing of tools and supplies used in conjunction with the building of roads or other developments;
- C. Temporary office structures;
- D. Temporary housing/construction living quarters for personnel such as watchmen, labor crews, engineering, and management; provided:
 - 1. The building permit for the primary structure must have been issued;
 - 2. The temporary dwelling must not be permanently placed on the site;
 - 3. The temporary dwelling must meet the setback requirements of the zone in which it is located; and
 - 4. For the purpose of constructing a single-family dwelling, temporary living quarters (for example, a recreational vehicle) may be permitted only

in conjunction with a stick frame structure. This permit will remain active as long as the building permit for the single-family dwelling remains active.

E. Use of equipment essential to and only in conjunction with the construction or building of a road, bridge, ramp, dock, and/or jetty located in proximity to the temporary site; provided, that the applicant shall provide a construction contract or other evidence of the time period required to complete the project; and provided further, that the following equipment shall be considered essential to and in conjunction with such construction projects:

1. Portable asphaltic concrete-mixing plants.
2. Portable concrete-batching plants.
3. Portable rock-crushing plants.
4. Accessory equipment essential to the use of the aforementioned plants.

F. Temporary uses and structures otherwise permitted within the zone which will remain up to one hundred eighty days on an existing lot or parcel where compliance with an administrative conditional use permit and landscaping requirements are impractical.

G. Temporary uses and structures not specified in any zone classification subject to applicable provisions of the Kitsap County Code; provided, that such uses and structures may not be approved by the director for a period greater than ninety days.

H. The occupancy of a recreational vehicle (RV) for a period not to exceed three months subject to the following conditions:

1. The subject property must be located in the Rural Wooded (RW), Rural Protection (RP), or Rural Residential (RR) zones;
2. The RV must be occupied by the property owner or family member;
3. The RV must be provided with approved utilities including septic or sewer (health district approval), water, and electrical power;
4. The location of the RV must meet all setbacks required by the underlying zone;
5. The director may impose additional conditions as appropriate to ensure that the RV use is compatible with the surrounding properties;

6. The minimum RV size shall be two hundred square feet; and
7. A permit will be required each time the RV is placed on a parcel. If the RV is placed on the same parcel each year the application fee will be half of the initial fee.

I. Placement of a storage container on a property developed with single-family dwelling or properties with an active building permit for construction of a residential or commercial building is subject to the following conditions:

1. The container must meet all applicable setbacks for the zone; and
2. The storage container may not be placed on site for more than ninety days; however, in instances where a building permit for a single-family dwelling or commercial development is active, the container may remain on site until thirty days after the permit expires or receives final inspection/certificate of occupancy.

(Ord. 415 (2008) § 215, 2008; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.100 Number of dwellings per lot.

Except as provided for elsewhere in this title, there shall be no more than one dwelling unit per lot.

(Ord. 415 (2008) § 216, 2008; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.110 Obnoxious things.

In all zones, except as provided for elsewhere in this title, no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses. Lighting is to be directed away from adjoining properties. Not more than one foot candle of illumination may leave the property boundaries.

(Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.120 Existing lot aggregation for tax purposes.

For the purposes of this title, parcels which have been aggregated by the county for tax purposes shall be considered separate legally existing lots of record.

(Ord. 415 (2008) § 217, 2008; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

This page of the Kitsap County Code is current through Ordinance 461 (2010), passed September 13, 2010.
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Appendix 6

**KCC 17.420, “Administrative Conditional
Use Permit”**

**Chapter 17.420
ADMINISTRATIVE CONDITIONAL USE PERMIT**

Sections:

<u>17.420.010</u>	Purpose and applicability.
<u>17.420.020</u>	Administrative conditional use permit procedure.
<u>17.420.030</u>	Previous use approval.
<u>17.420.035</u>	Third party review.
<u>17.420.040</u>	Decision criteria – Administrative conditional use permit.
<u>17.420.050</u>	Revision of administrative conditional use permit.
<u>17.420.060</u>	(Repealed)
<u>17.420.070</u>	(Repealed)
<u>17.420.080</u>	Transfer of ownership.
<u>17.420.090</u>	Land use permit binder required.
<u>17.420.100</u>	Effect.

17.420.010 Purpose and applicability.

The purpose of this chapter is to set forth the procedure and decision criteria for administrative conditional use permits. An administrative conditional use permit is a mechanism by which the county may place special conditions on the use or development of property to ensure that new development is compatible with surrounding properties and achieves the intent of the Comprehensive Plan. This chapter applies to each application for an administrative conditional use and to uses formerly permitted after site plan review.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.020 Administrative conditional use permit procedure.

- A. The department may approve, approve with conditions, or deny an administrative conditional use permit through a Type II process as set forth in Title 21 of this code.
- B. Applications for an administrative conditional use permit shall contain the information required by the submittal requirements checklist established by the department as set forth in Section 21.04.045.
- C. When an application is submitted together with another project permit application, the administrative conditional use permit shall be processed as set forth in Section 21.04.035.
- D. Upon a determination of a complete application, the director shall have fourteen calendar days to notify the applicant whether the application shall be reviewed administratively or by the hearing examiner at a scheduled public hearing. A public hearing will be required when a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone. Further, the director may refer any proposal under this section to the hearing examiner for review and decision.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.030 Previous use approval.

Where, prior to December 11, 2006, approval was granted for establishing or conducting a particular use on a particular site through a site plan review process, such previous review and

use approvals are by this section declared to be continued as an administrative conditional use permit.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.035 Third party review.

The director may require a third party review from a technical expert to provide information necessary to support an administrative decision. The expert will be chosen from a list of prequalified experts prepared and kept current by an annual solicitation by the department. The applicant shall select the expert from a list of three names selected by the director from the larger pre-qualified list. The expert will be contracted to the county and report their findings to the director and the applicant. The cost of such report will be the responsibility of the applicant.

(Ord. 415 (2008) § 186, 2008)

17.420.040 Decision criteria – Administrative conditional use permits.

- A. The department may approve, approve with conditions, or deny an administrative conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:
1. The proposal is consistent with the Comprehensive Plan;
 2. The proposal complies with applicable requirements for the use set forth in this code;
 3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity; and
 4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.
- B. The department may impose conditions to ensure the approval criteria are met.
- C. If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the administrative conditional use permit shall be denied.

(Ord. 415 (2008) § 187, 2008; Ord. 367 (2006) § 110 (part), 2006)

17.420.050 Revision of administrative conditional use permits.

- A. Revision of an administrative conditional use permit or of conditions of permit approval is permitted as follows:
1. Minor revisions may be permitted by the department and shall be properly recorded in the official case file. No revision in points of vehicular access to the property shall be approved without prior written concurrence of the director of the department of public works. Minor revisions shall be processed as a Type I application; and
 2. Major revisions, including any requested change in permit conditions, shall be processed as a Type II application;
- B. Minor and major revisions are defined as follows:

1. A "minor" revision means any proposed change which does not involve substantial alteration of the character of the plan or previous approval, including increases in gross floor area of no more than ten percent; and
2. A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or increased, including increases in trip generation of more than ten percent, or the site plan design is substantially altered.
3. Any increase in vehicle trip generation shall be reviewed to determine whether the revision is major or minor. The traffic analysis shall be filed by the applicant at the same time as the request for revision. The traffic analysis will follow Traffic Impact Analysis guidelines as set forth in Chapter 20.04.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.060 (Repealed)*

- * **Editor's Note:** Former Section 17.420.060, "Vacation of administrative conditional use permit," was repealed by § 5(b) of Ord. 490 (2012). Section 110 (part) of Ord. 367 (2006) and § 188 of Ord. 415 (2008) were formerly codified in this section.

17.420.070 (Repealed)*

- * **Editor's Note:** Former Section 17.420.070, "Revocation of permit," was repealed by § 5(c) of Ord. 490 (2012). Section 110 (part) of Ord. 367 (2006) and § 189 of Ord. 415 (2008) were formerly codified in this section.

17.420.080 Transfer of ownership.

An administrative conditional use permit runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.090 Land use permit binder required.

The recipient of an administrative conditional use permit shall file a land use permit binder on a form provided by the department with the county auditor prior to initiation of any further site work; issuance of any development/construction permits by the county; or occupancy/use of the subject property or the building thereon for the use/activity authorized, whichever comes first. The binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the permit and as a notice to prospective purchasers of the existence of the permit.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.100 Effect.

No building or other permit shall be issued until after the end of the period allowed to appeal the hearing examiner's decision. An appeal shall automatically stay the issuance of a building or other permit until such appeal has been heard and a decision rendered by the board of county commissioners.

(Ord. 415 (2008) § 190, 2008)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

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Appendix 7
KCC 10.28, “Noise”

Chapter 10.28 NOISE*

* **Editor's Note:** Prior ordinance history: Ord. 3 (1969) and part of an unnumbered ordinance dated August 28, 1972.

Sections:

- 10.28.010 Definitions.
- 10.28.030 Environmental designations.
- 10.28.040 Maximum permissible environmental noise levels.
- 10.28.050 Exemptions from Sections 10.28.040 and 10.28.145 between 7:00 a.m. and 10:00 p.m.
- 10.28.060 Exemptions from Sections 10.28.040(b) and 10.28.145.
- 10.28.070 Exemptions from Section 10.28.040 relating to noise reception in Class A EDNAs and from Section 10.28.145.
- 10.28.080 Exemptions from all provisions of Sections 10.28.040 and 10.28.145.
- 10.28.085 Exemptions from all provisions of Section 10.28.145.
- 10.28.090 Variances – Granting when.
- 10.28.100 Variances – Implementation schedule.
- 10.28.110 Variances – Issuance – Hearings when.
- 10.28.120 Variances – Noise sources with overriding considerations for.
- 10.28.130 Measurement.
- 10.28.140 Enforcement policy.
- 10.28.145 Public disturbance noises.
- 10.28.146 Enforcement of public disturbance noises.
- 10.28.150 Violation – Penalty.

10.28.010 Definitions.

- (a) "Background sound level" means the level of all sounds in a given environment, independent of the specific source being measured.
- (b) "dBa" means the sound pressure level in decibels measured using the "A" weighting network on a sound level meter. The sound pressure level, in decibels, of a sound is twenty times the logarithm to the base ten of the pressure of twenty micropascals.
- (c) "EDNA" means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.
- (d) "Noise" means the intensity, duration and character of sounds, from any and all sources.
- (e) "Person" means any individual, corporation, partnership, association, governmental body, state agency or other entity whatsoever.
- (f) "Property boundary" means an imaginary line exterior to any enclosed structure, at ground surface, which separates the real property owned by one person from that owned by another person, and its vertical extension.
- (g) "Racing event" means any motor vehicle competition conducted under a permit issued by a governmental authority having jurisdiction or, if such permit is not required, then under the auspices of a recognized sanctioning body.

- (h) "Receiving property" means real property within which the maximum permissible noise levels specified herein shall not be exceeded from sources outside such property.
- (i) "Sound level meter" means a device which measures sound pressure levels and conforms to Type 1 or Type 2 as specified in the American National Standards Institute Specification S1.4-1971.
- (j) "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

(Ord. 3-A (1975) § 2, 1975)

10.28.030 Environmental designations.

For purposes of establishing noise limitations, the unincorporated areas of Kitsap County shall be classified in accordance with Kitsap County zoning ordinance codified in Title 17, and any amendments thereto, as follows:

- (a) Residential Zones. Class A EDNA residential zones shall include the following:
 - (1) All single-family residential zones;
 - (2) All multiple-family residential zones;
 - (3) Residential mobile home zone;
 - (4) Agricultural zone;
 - (5) Forestry zone;
 - (6) Undeveloped land zone.
- (b) Commercial Zones. Class B EDNA commercial zones shall include the following:
 - (1) Business neighborhood zone;
 - (2) Business general zone;
 - (3) Commercial zone;
 - (4) Light manufacturing zone.
- (c) Industrial Zones. Class C EDNA industrial zones shall include the following:
 - Manufacturing zone.

Nonconforming uses, as defined by Chapter 17.460 of the Kitsap County Zoning Ordinance, and any amendments thereto, shall be classified according to the actual use of the property under the above EDNA classifications. The maximum permissible noise level for a nonconforming use shall be that level which is applicable to the EDNA classification of the nonconforming use limited by the EDNA of the receiving property.

(Ord. 3-A (1975) § 3, 1975)

10.28.040 Maximum permissible environmental noise levels.

- (a) The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied:

EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
Class A	55 dBA	57 dBA	60 dBA
Class B	57	60	65
Class C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m., the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

(c) At any hour of the day or night, the applicable noise limitations in subsections (a) and (b) of this section may be exceeded for any receiving property by no more than:

- (1) 5 dBA for a total of fifteen minutes in any one-hour period; or
- (2) 10 dBA for a total of five minutes in any one-hour period; or
- (3) 15 dBA for a total of 1.5 minutes in any one-hour period.

(Ord. 3-A (1975) § 4, 1975)

10.28.050 Exemptions from Sections 10.28.040 and 10.28.145 between 7:00 a.m. and 10:00 p.m.

The following shall be exempt from the provisions of Sections 10.28.040 and 10.28.145 between the hours of 7:00 a.m. and 10:00 p.m.:

- (1) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances;
- (2) Sounds created by the discharge of firearms on authorized shooting ranges;
- (3) Sounds created by blasting;
- (4) Sounds created by aircraft engine testing and maintenance not related to flight operations, provided that aircraft testing and maintenance shall be conducted at remote sites whenever possible;
- (5) Sounds created by the installation or repair of essential utility services.

(Ord. 3-B (1995) § 2, 1995; Ord. 3-A (1975)q § 5(a), 1975)

10.28.060 Exemptions from Sections 10.28.040(b) and 10.28.145.

The following shall be exempt from the provisions of Sections 10.28.040(b) and 10.28.145:

- (1) Noise from electrical substations and existing stationary equipment used in the conveyance of water by a utility;
- (2) Noise from existing industrial installations which exceed the standards contained in these regulations and which, over the previous three years, have consistently operated in excess of fifteen hours per day as a consequence of process necessity and/or demonstrated routine normal operation. Changes in working hours, which would affect exemptions under this regulation, require approval of the Kitsap County commissioners, or their duly authorized representatives.

(Ord. 3-B (1995) § 3, 1995; Ord. 3-A (1975) § 5(b), 1975)

10.28.070 Exemptions from Section 10.28.040 relating to noise reception in Class A EDNAs and from Section 10.28.145.

The following shall be exempt from the provisions of Section 10.28.040, and from the provisions of Section 10.28.145, except insofar as such provisions relate to the reception of noise within Class A EDNAs between the hours of 10:00 p.m. and 7:00 a.m.:

- (1) Sounds originating from temporary construction sites as a result of construction activity;
- (2) Sounds originating from forest harvesting and silvicultural activity.

(Ord. 3-B (1995) § 4, 1995; Ord. 3-A (1975) § 5(c), 1975)

10.28.080 Exemptions from all provisions of Sections 10.28.040 and 10.28.145.

The following shall be exempt from all provisions of Sections 10.28.040 and 10.28.145:

- (1) Sounds created by motor vehicles when regulated by WAC Chapter 173-62 and motor vehicles, licensed or unlicensed when operated off public highways except when such sounds are received in Class A EDNAs;
- (2) Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations;
- (3) Sounds created by surface carriers engaged in interstate commerce by railroad;
- (4) Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes and carillons;
- (5) Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible;
- (6) Sounds created by emergency equipment and work necessary in the interests of law enforcement or for health, safety or welfare of the community;
- (7) Sounds originating from motor vehicle racing events at existing, authorized facilities;
- (8) Sounds originating from officially sanctioned parades and other public events;
- (9) Sounds from existing refrigeration equipment for preservation of retail food goods;
- (10) Sounds emitted from petroleum refinery boilers during the startup of the boilers; provided that the startup operation is performed during daytime hours whenever possible;
- (11) (Repealed);
- (12) Sounds caused by a natural phenomena and unamplified human voices;
- (13) Sounds created by the discharge of legal fireworks only during the specific days, times and locations where discharge is allowable pursuant to existing state and local law.

(Ord. 3-B (1995) § 5, 1995; Ord. 133-A (1992) § 45, 1992; Ord. 133 (1989) § 45, 1989; Ord. 3-A (1975) § 5(d), 1975)

10.28.085 Exemptions from all provisions of Section 10.28.145.

The following shall be exempt from all provisions of Section 10.28.145 but not thereby made exempt from other applicable ordinances:

- (1) Sounds commonly associated with an existing commercial operation which has been approved through a public hearing process and is operating in compliance with all permit conditions relating to noise;
- (2) Sounds commonly associated with an existing commercial operation which was established prior to the effective date of any land use regulation(s) and is thereby nonconforming.

(Ord. 3-B (1995) § 6, 1995)

10.28.090 Variances – Granting when.

Variances may be granted by the Kitsap County commissioners, or their duly authorized representatives, to any person from any particular requirement of this chapter, if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source, or because of nonavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

(Ord. 3-A (1975) § 6(a), 1975)

10.28.100 Variances – Implementation schedule.

An implementation schedule for achieving compliance with this chapter shall be incorporated into any variance issued.

(Ord. 3-A (1975) § 6(b), 1975)

10.28.110 Variances – Issuance – Hearings when.

Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than thirty days except upon due notice to the public with opportunity to comment. Public hearings may be held, when substantial public interest is shown, at the discretion of the issuing agency.

(Ord. 3-A (1975) § 6(c), 1975)

10.28.120 Variances – Noise sources with overriding considerations for.

Sources of noise, subject to this chapter, upon which construction begins after the effective date of this chapter, shall immediately comply with the requirements of this chapter except in extraordinary circumstances where overriding considerations of public interest dictate the issuance of a variance.

(Ord. 3-A (1975) § 6(d), 1975)

10.28.130 Measurement.

Noise measurement for the purposes of enforcing the provisions of Section 10.28.040 shall be measured in dBA with a sound level meter with the point of measurement being at any point within the receiving property; provided, however, a violation of this chapter may occur without the above noise measurements being made.

(Ord. 3-A (1975) § 7, 1975)

10.28.140 Enforcement policy.

(a) Compliance with this chapter may be enforced by mandatory injunction brought by the owner or owners of land lying within the area affected by any violation of this chapter, or the prosecuting attorney may commence an action or proceeding for abatement and enjoinder thereof, in the manner provided by law, and shall apply to such court as may have jurisdiction to grant such relief as will abate, restrain and enjoin the violation.

(b) Any person, violating the provisions of this chapter, in addition to the penalties provided for in Section 10.28.150, shall, by order of the court in such action, be ordered to forthwith abate and remove such nuisance; and if the same is not done by such offender within twenty-four hours, the same shall be abated and removed under the direction of the officer authorized by order of the court, which order of abatement shall be entered upon the docket of the court and made a part of the judgment in the action. Any such offender shall be liable for all costs and expenses of the abatement when such nuisance has been abated by any officer or authorized agent of Kitsap County; the costs and expenses shall be taxed as part of the costs of the prosecution against the offender, liable to be recovered as other costs are recovered, and in all cases where the officer is authorized by the court to abate any such nuisance, he shall keep an account of all expenses attending such abatement; and in addition to other powers given to collect such costs and expenses, Kitsap County may bring suit for the same in any court of competent jurisdiction against the offender carrying on the nuisance so abated.

(c) In addition to or as an alternative to any other penalty provided in this chapter or by law, any violation of any provision of this chapter shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued, or permitted. Infractions shall be processed in accordance with the provisions of the Civil Enforcement Ordinance (Chapter 2.116 of this code).

(Ord. 3-D (1997) § 1, 1997; Ord. 3-A (1975) § 9, 1975)

10.28.145 Public disturbance noises.

It is unlawful for any person to cause, or for any person in possession of real or personal property to allow to originate from such property, a public disturbance noise. Provided, that owners or possessors of real property shall not be responsible for public disturbance noises created by trespassers. The following sounds are public disturbance noises:

- (1) Frequent, repetitive or continuous sound of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
- (2) Frequent, repetitive, or continuous sounds from starting, operating, repairing, rebuilding, or testing of any motor vehicle, motorcycle, dirt bike, or other off-highway vehicle, or any internal combustion engine, within a rural or residential district, and which unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property in the area affected by such noise;
- (3) Use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure, or property or the contents therein except as permitted by law, except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;
- (4) Any loud and raucous sound made by use of a musical instrument, whistle, sound amplifier, or other device capable of producing or reproducing sound which emanates

frequently, repetitively or continuously from any building, structure or property, such as sound originating from a band session, tavern operation, or social gathering, and which unreasonably disturb, or interfere with the peace, comfort and repose of possessors of real property in the area affected by such noise;

(5) Noise from portable or motor vehicle audio equipment, such as a tape player, radio or compact disc player, while in park areas, residential and commercial zones, or any area where residences, schools, human service facilities, or commercial establishments are in obvious proximity to the source of the sound, and where the volume of such audio equipment is such that it can be clearly heard by a person of normal hearing at a distance of fifty feet or more from the source of the sound; provided, however, that this section shall not apply to persons operating portable audio equipment within a public park pursuant to an event sanctioned by a responsible authority under valid permit or license.

(Ord. 3-B (1995) § 7, 1995)

10.28.146 Enforcement of public disturbance noises.

(a) The county sheriff's office shall enforce the provisions of Section 10.28.145. Evidence of sound level through the use of a sound level meter reading shall not be necessary to establish the commission of the offense. Provisions of Section 10.28.145 shall not affect any other claim, cause of action or remedy including any prosecution for violation of sections regulating environmental noise.

(b) For public disturbance noise that is not related to motor vehicles and noise emanating from vehicles, enforcement may be undertaken only upon receipt of a complaint made by a person residing or who is employed in an area affected by a public disturbance noise, except as provided in Section 10.28.145(5) in which event enforcement shall be undertaken upon complaint made by any person affected by the public disturbance noise.

(c) The subsections of Section 10.28.145 relating to motor vehicles and noise emanating from vehicles may be subject to enforcement with or without a citizen's complaint.

(Ord. 3-B (1995) § 8, 1995)

10.28.150 Violation – Penalty.

Inasmuch as this chapter is for the benefit of the life, health, welfare and safety of the inhabitants of the unincorporated areas of Kitsap County, and is passed under the power given to the county commissioners by the state, it is a misdemeanor to violate any of the provisions of this chapter or any amendments thereto, and such violation shall be punishable by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred fifty dollars. Each day charged shall constitute a separate offense. The prosecuting attorney shall have discretion in each violation of this chapter to proceed with prosecution, either criminally in accordance with this section or civilly in accordance with Section 10.28.140, or both.

(Ord. 3-A (1975) § 8, 1975)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

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Appendix 8

**Trial Exhibit 16: 5' contoured LIDAR
aerial photograph of the Club and nearby
properties**

ADMITTED

FILED
DEPT 14
IN OPEN COURT

SEP 28 2011

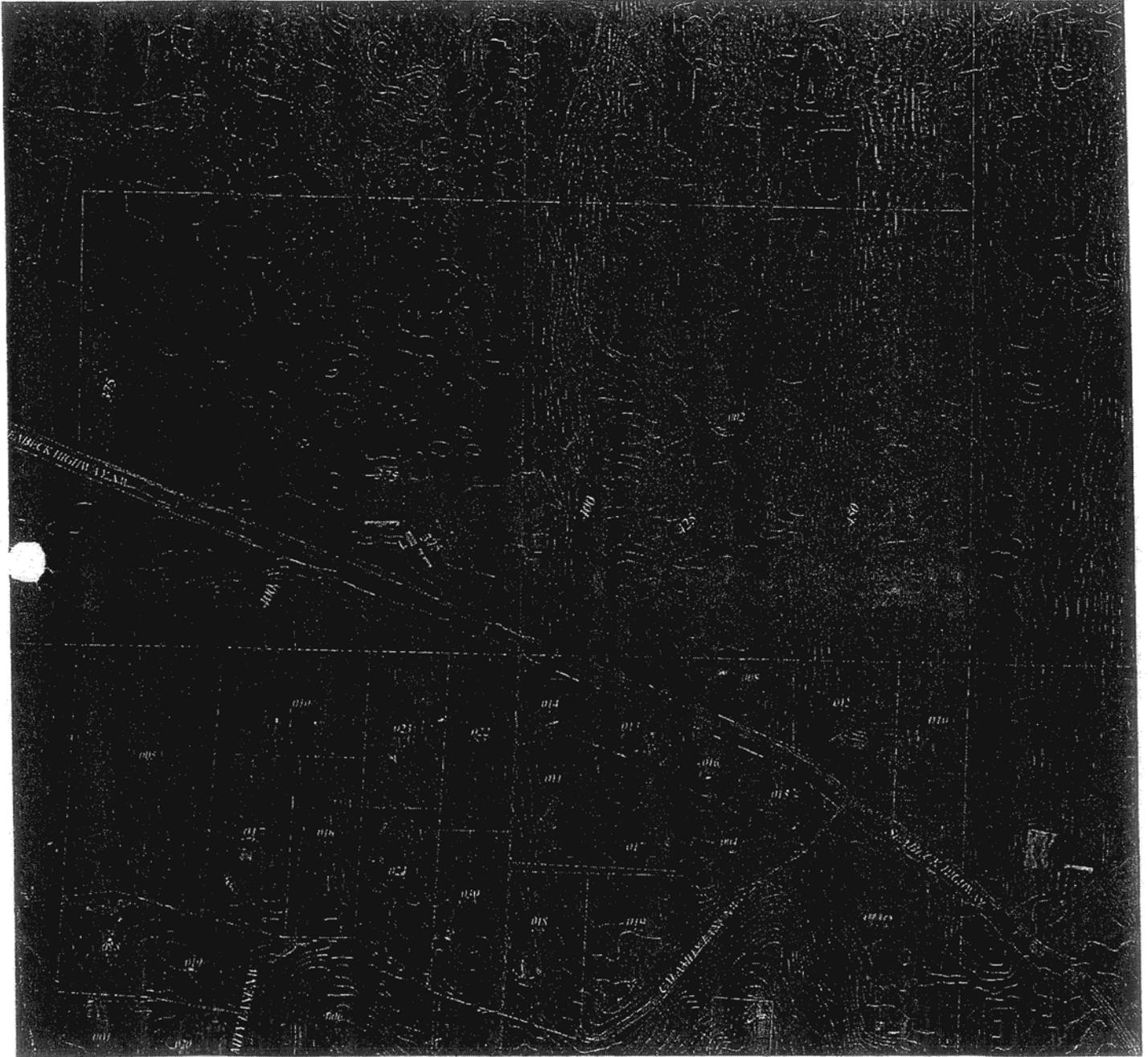
Fierce County Clerk

By *[Signature]*
DEPUTY

FILED

10-6-12018-3

PLAINTIFFS
EXHIBIT
16



Kitsap Rifle Club Exhibit
 Section 36, Twp 25 North, Rge 1 West, W.M.
 Kitsap County, Washington



Parcels from Kitsap County Assessor's Tax Map
 5' Contours from Lidar
 Aerial Photo from 2001. Space Imaging



Kitsap Rifle Club Exhibit
Section 36, Twp 25 North, Rge 1 West, W.M.
Kitsap County, Washington



Parcels from Kitsap County Assessor's Tax Map
S: Contours from Lidar
Aerial Photo from 2001 Space Image

Appendix 9

**(9) Trial Exhibit 3: map of selected residences
within five miles of the Club**

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Appendix 10

**Trial Exhibit 440: report regarding range safety
prepared by Scott Kranz of AMEC Earth &
Environmental**

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By: [Signature]

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DEFENDANT'S

FILE NO.

440

101-2-13016-6



August 1, 2011

7-61M-116910

Kitsap Rifle and Revolver Club
Mr. Marcus Carter
Executive Officer
4900 Seabeck Highway NW
Bremerton, Washington 9831

Dear Mr. Carter:

**Re: Evaluation of Kitsap Rifle and Revolver Club Range Safety
Kitsap Rifle and Revolver Club, Bremerton, Washington**

Mr. Scott Kranz of AMEC Earth & Environmental, Inc. (AMEC) was asked to evaluate safety at the Kitsap Rifle and Revolver Club (KRRC) range and provide an opinion as to whether the KRRC ranges meet or exceed industry standards for ranges of their type. Mr. Kranz's opinion is that the KRRC facility is safe and meets or exceeds industry standards for small arms firing ranges used for self defense, small arms, and law enforcement training. In forming this opinion, Mr. Kranz considered information obtained during his inspection of the KRRC range, the Bremerton Police Department Range, which is used by the Kitsap County Sheriff's Office, and many other ranges of this type.

Introduction

KRRC uses institutional and engineering controls to operate its small arms firing range in a manner that is safe for members and the public. The information provided in this report demonstrates the KRRC operates the range safely, that it meets or exceeds industry standards for similar ranges, and that it is a typical small arms firing range, similar to the small arms firing ranges used by law enforcement. The following topics are discussed in this report:

- a description of the KRRC range,
- Mr. Kranz's inspection of the Bremerton Police Department Range,
- documentation of typical local law enforcement training ranges,
- a description of range construction standards, and
- KRRC range management

Kitsap Rifle and Revolver Club Ranges

The KRRC facility is a typical small arms firing range facility, operated as a not-for-profit facility for use by members, member's guests, law enforcement, and the general public. The KRRC facility includes a Rifle Range, Pistol Range, and 13 Shooting Bays. All ranges have earthen impact berms for capturing bullets and shot associated with range use. The shooting areas

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operated by KRRC are similar to shooting areas used by law enforcement agencies, including those used by the Kitsap County Sheriff and operated by the City of Bremerton Police Department. These ranges use institutional controls, including safety training, range safety officers, cameras, and signs, as well as engineering controls, including bullet impact berms and side berms to ensure safe operation within their respective communities.

KRRC is located on 72 acres of forested property at 4900 Seabeck Highway NW in Bremerton, Washington. The KRRC facility include conventional rifle and pistol ranges with fixed firing lines and targets, and shooting bays with moveable targets. The range layout and earthen berms of the KRRC facility are documented in photos included in Attachment A, Photos 1 to 8. The primary ranges and their uses include:

- **Rifle Range:** The Rifle Range includes a firing line cover with shooting benches, bullet impact berm, and side berms. The Rifle Range has about a ten- to twelve-foot tall side berm, and has multiple bullet impact berms at the target locations of 25, 50, 100, 150, and 200 yards. The Rifle Range is used for bench shooting, sight-in, and rifle practice. The Rifle Range is primarily used with rifles, but is also used for long range pistol practice.
- **Pistol Range:** The Pistol Range includes a firing line cover with shooting benches, bullet impact berm, and side berms. The Pistol Range has about eight- to twelve-foot tall bullet impact berm and side berms. The Pistol Range allows for training at distances up to 50 yards used for bench shooting, sight-in, and pistol practice.
- **Shooting Bays:** KRRC uses 13 Shooting Bays. The Shooting Bays include bullet impact berms and side berms about eight to twelve feet tall. The shooting bays are used for self defense training and action shooting sports.
- **Shoot House:** The Shoot House is located in Shooting Bay 7, and includes movable props used to represent walls, doors, and windows. The Shoot House is only used for special events and training. Specific designated safety personnel must be present when the Shoot House is in use.

KRRC Range Management

KRRC heavily emphasizes and requires safety training for members. New member range safety training includes a minimum of 5½ hours of training. Members who pass this training requirement are allowed to use the range only when an RSO is present. Eight total hours of range safety training are required for a member to have full access to the range, i.e., the right to use the range without the supervision of an RSO. Members are held fully responsible for the behavior and safety of their guests, who are required to participate in an approximately 30-minute safety training session with an RSO before using the range. All KRRC members must pass an annual safety test when renewing membership to the range, which is a mechanism to provide annual safety training. Members who fail the test must attend a safety refresher course before they are allowed to use the range again. KRRC is the only range I am aware of that conducts annual safety tests, demonstrating KRRC's proactive range management and dedication to safety.

The National Rifle Association (NRA) provides an RSO Program, which is used by most public ranges to train RSOs. KRRC uses a combination of both the NRA RSO training program and the National Range Officer Institute (NROI) training program to train KRRC RSOs, which covers roles and responsibilities, range standard operating procedures, range inspection and range rules, firearm stoppages and malfunctions, and range safety briefings which include emergency procedures. Trained RSOs is one of the key institutional controls used at most ranges to prevent accidents.

KRRC RSOs are trained using both the NRA RSO and the NROI training programs. The NROI training is required for RSOs by the United States Practical Shooting Association (USPSA), which is the governing agency for many of the practical shooting competitions. The combined training gives KRRC RSOs excellent qualifications for monitoring range use at KRRC, which includes rifle and pistol sight-in, general bulls-eye shooting, self defense training, and competitive shooting. KRRC RSOs are all members of the KRRC Range Safety Committee, and are responsible for attending monthly training meetings.

KRRC uses a video surveillance system to monitor range use, and regularly reviews the recorded video to determine if members, guests, and RSOs are using the range as allowed by KRRC range rules. KRRC RSOs or board members will contact members if a behavior is observed requiring correction. If necessary, the member's access to the range will be suspended until remedial safety training is conducted and the member demonstrates safe range use.

KRRC has a Range Safety Officer (RSO) designated as the Environmental Stewardship Chairman. The KRRC Environmental Stewardship Chairman position has existed for more than five years. The KRRC Environmental Stewardship Chairman inspects the ranges to determine if lead is accumulating and needs to be reclaimed and recycled, conducts soil pH monitoring, and completes projects to prevent the migration of lead in sediment associated with storm water runoff. KRRC uses an on-site lab to monitor soil and water at the property, Attachment A, Photo 8. The KRRC facility is one of only two small arms ranges I am aware of with an environmental stewardship position, demonstrating KRRC's proactive range management with respect to environmental issues as a component of its overall concern for human health and safety.

The environmental stewardship program and emphasis on range safety, documented by the comprehensive member training program and annual membership renewal tests, demonstrates that KRRC exceeds the standards for similar ranges and uses a proactive approach to protect range users and the public. In some ways KRRC is objectively superior to other ranges of its type with respect to safety and environmental concerns.

Range Construction Standards

There is no published or agreed upon set of standards for the design and construction of new or renovated privately operated ranges. The United States Department of Defense uses engineering standards for range design and construction, which are not directly applicable because, among other reasons, they are designed to accommodate the much more aggressive style of activities and users associated with the military. New and renovated ranges are

designed and constructed using a combination of engineering and institutional controls to protect the safety of range users and the public. Although the NRA is incorrectly cited from time to time as having range design standards, it does not. The NRA publishes the NRA Range Source Book, which states: "this source book may not be utilized to establish design standards or criteria for ranges," and which further states,

"The Range Source Book is **NOT** a code book or certification standard, but rather a publication listing general suggestions. Each range is site specific, fact sensitive, risk driven, and needs to be considered in that light."

(Emphasis in original.) Consistent with this, professionals preparing engineering and design drawings and specifications for shooting ranges do not recognize the NRA Range Source Book as a standard.

Furthermore the NRA is a lobbying organization related to the right to bear arms. The NRA is not a recognized authority on the design and construction of ranges. The NRA however is recognized as an authority for training RSOs, as discussed above.

Bremerton Police Department Range Inspection

The Bremerton Police Department small arms firing range is located on forested City of Bremerton property on West Belfair Valley Road, adjacent to the Gold Mountain Golf Course. The firing range is the primary small arms training range used by the Kitsap County Sheriff and operated by the Bremerton Police Department. The range includes four shooting areas used for weapons familiarization, sighting, and tactical training. The direction of fire is primarily southeast, towards the communities of Sunnyslope and North Lake.

The range layout and earthen berms of the Bremerton Police Department Range are documented in photos included in Attachment A, Photos 1 to 6. The primary shooting areas and their uses include:

- **100 Yard Range:** The 100 Yard Range includes a firing line cover with shooting benches, a target holder shack, bullet impact berm, and side berms. The 100 Yard Range has an eight to ten feet tall bullet impact berm and side berms. The range is used for bench shooting and sighting. Empty casings near the target holder shack indicate the range is also used for tactical training.
- **Main Range-Tactical:** The Main Range-Tactical is an open range space, which can be used from a maximum distance of 100 yards, but would more typically be used from a maximum of 50 yards. The Main Range-Tactical has an eight to ten feet tall bullet impact berm and a side berm on the left side. The range is used primarily for tactical small arms training. The Main Range-Tactical had fresh sandy gravel bullet impact material added to the bullet impact berm face in May of 2011.
- **Main Range-Bulls Eye:** The Main Range-Bulls Eye can be used from the Range Building and includes a target holder shack. The Main Range-Bulls Eye can be used from a maximum distance of 50 yards. The Main Range-Bulls Eye has an eight- to ten-foot tall

bullet impact berm and a tire wall and earthen side berm on the right side side. The range is used primarily for tactical small arms training.

- **Tire House:** The Tire House is constructed from old automobile tires and wooden beams driven into the ground. The Tire House is used to simulate shooting within a building as a form of tactical training.
- **Shotgun Range:** The Shotgun Range has a tire wall and earthen side berm on the left side of the range and an earthen berm less than 3 feet tall on the right side. The shot and bullet impact berm is about 6 feet tall. The bullet impact berm contains many pistol bullets. The Shotgun Range is used for shotgun and pistol training.

The Bremerton Police Department range is operated using institutional controls, including range safety officers, training, and range safety signs. Engineering controls implemented at the range include the fixed target holder shacks, bullet impact berms, and side safety berms. These institutional and engineering controls are similar to those used by KRRC to ensure safety.

Typical Law Enforcement Small Arms Training Ranges

The KRRC facility and the Bremerton Police Department range are similar to other privately operated not-for-profit and law enforcement ranges. Photographs of typical small arms training ranges used by the public and law enforcement are provided in Attachment A, Photos 7 to 21. All of the ranges shown in the attachment demonstrate that KRRC meets or exceeds the safety standards set by other similar ranges. Examples of similar ranges used safely by the public and law enforcement agencies, and their respective institutional and engineering controls, are summarized in Table 1.

Table 1: Typical Small Arms Firing Ranges

Range Name	Law Enforcement Agency Use	Photos
Kitsap Rifle and Revolver Club	Washington State Parks	1 to 8
Bremerton Police Department Range	Kitsap County Sherriff, Bremerton Police Department	9 to 16
Tri-County Gun Club (TCGC)	Portland Police Department, Salem Police Department, Beaverton Police Department, Tualatin Police Department, Clackamas Police Department, Washington County Sherriff, Multnomah County Sherriff, Clackamas County Sherriff, Oregon State Police, Oregon Department of Fish and Wildlife, United States Marine Corps,	17 to 22
FBI Range	Columbia County Sherriff, St Helens Police Department, Federal Bureau of Investigation	23 & 24

Evaluation of Kitsap Rifle and Revolver Club Range Safety
 Kitsap Rifle and Revolver Club

Oregon Department of Corrections, Gath Road Range	Oregon Department of Corrections	25 & 26
Oregon Department of Corrections, Deer Ridge Range	Oregon Department of Corrections	27 & 28
Chehalem Valley Sportsmen's Club	Dundee Police Department and Newberg Police Department	29 & 30
Douglas Ridge Rifle Club	Portland Police Department, Federal Game Wardens	31

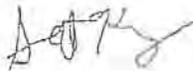
The small arms training ranges included in Table 1 are used by more than 10,000 members of the public and law enforcement officers. The city, county, and state governments that use these ranges have determined these ranges are safe for fire arms training. These ranges are similar in design, operation, and use to the KRRC facility.

Conclusion

KRRC operates with sufficient engineering and institutional controls to protect range users and the public, and meets or exceeds industry standards for similar ranges. In particular, the KRRC facility is typical of small arms firing ranges used by the public and law enforcement in the Northwest. It is my opinion the KRRC facility does not pose a threat to its members or the public. There is nothing inherently dangerous about the design or operation of the KRRC range that would require it to be held to a standard different from that set by the other similar ranges listed above..

Sincerely,

AMEC Earth & Environmental, Inc.



Scott Kranz, RG
 Senior Project Manager

SK/cw

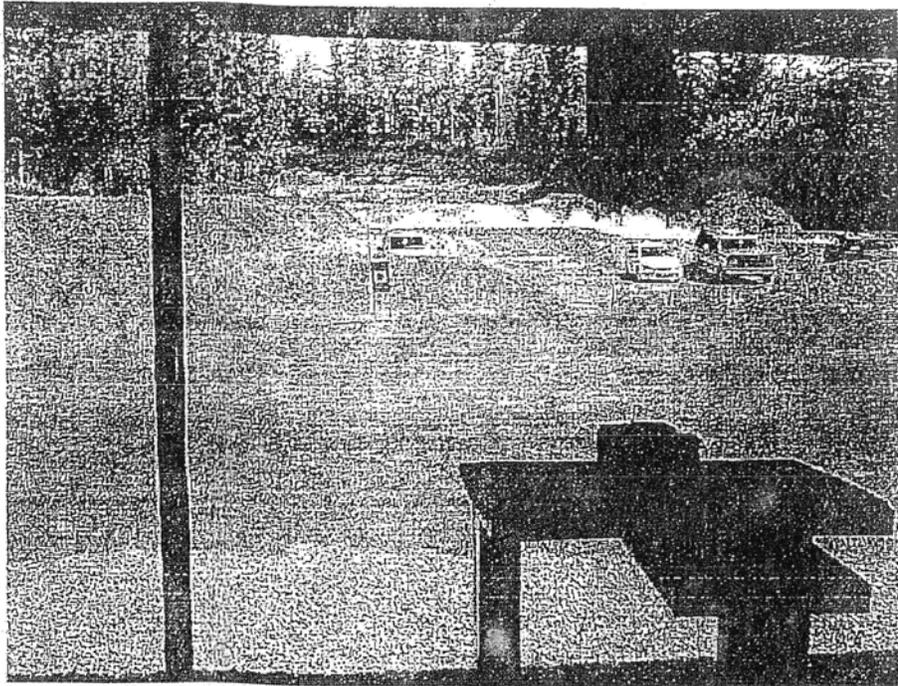


Photo 1
Kitsap Rifle and
Revolver Club

Rifle Range, primarily
used for sight-in, bulls
eye, and target practice
with rifles

Range floor used for
additional parking when
Rifle Range not in use.

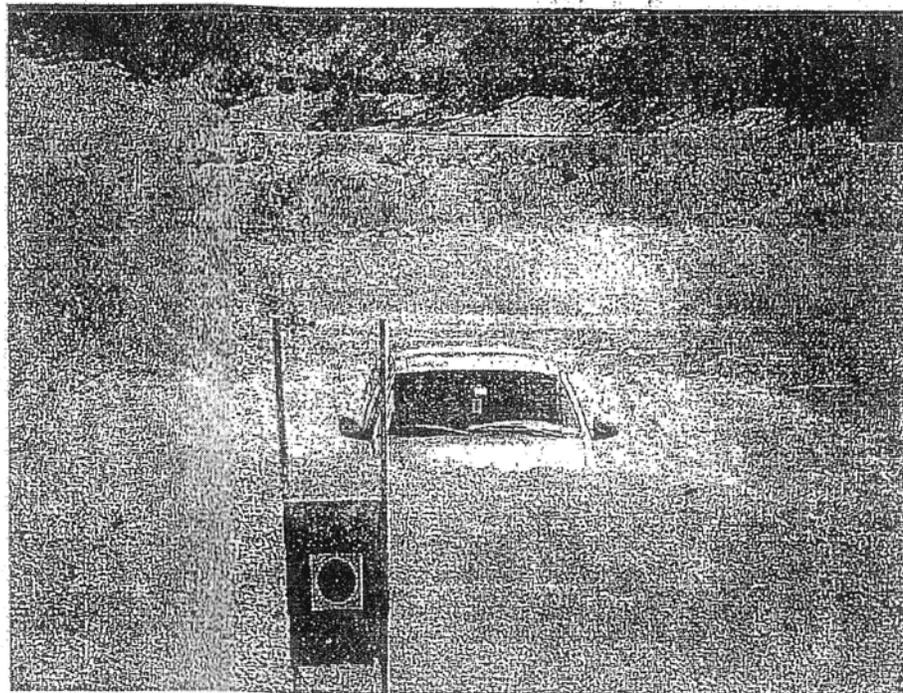


Photo 2
Kitsap Rifle and
Revolver Club

Rifle Range, primarily
used for sight-in, bulls
eye, and target practice
with rifles



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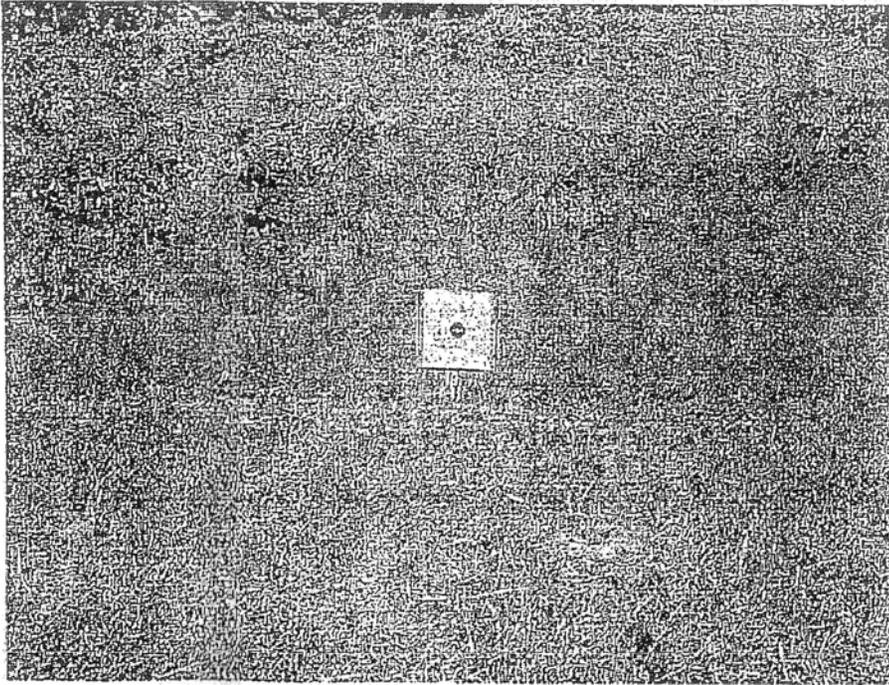


Photo 3
Kitsap Rifle and
Revolver Club

Pistol Range, primarily
used for sight-in, bulls
eye, and target practice
with pistols

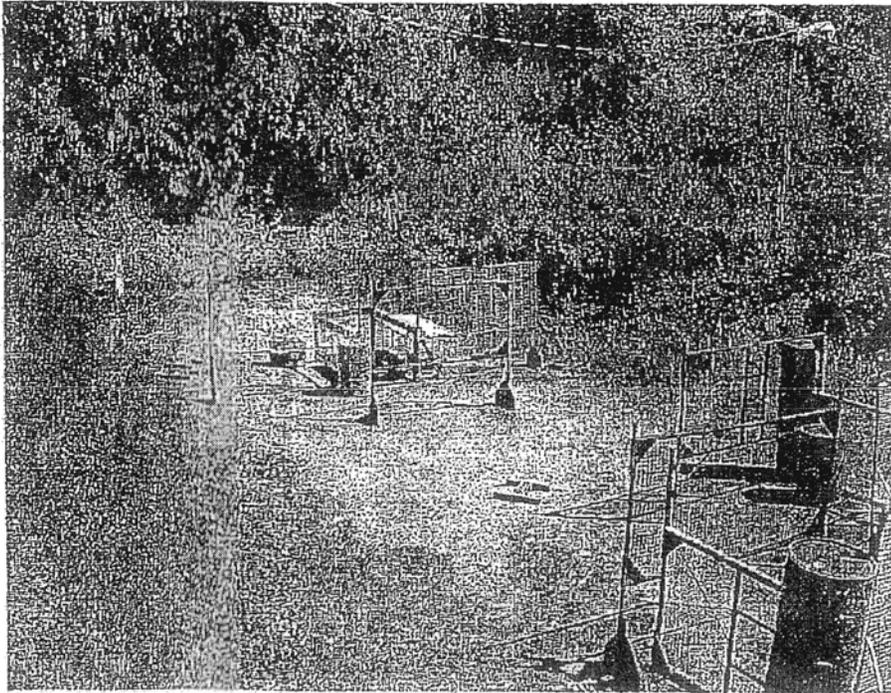


Photo 4
Kitsap Rifle and
Revolver Club

Shooting Bay 1, a
typical shooting bay at
KRRRC, primarily used for
self defense, tactical
training and competitions

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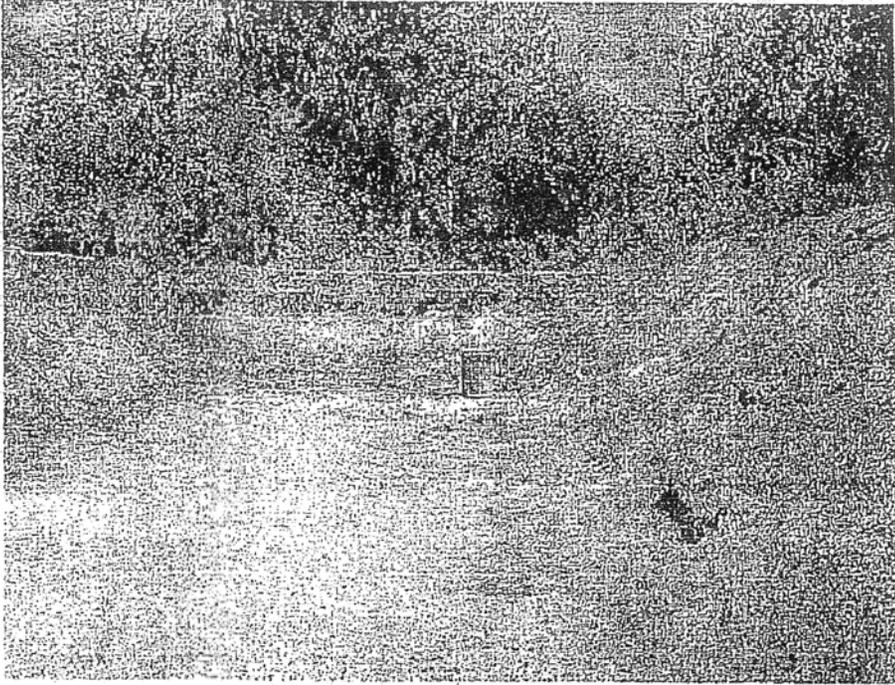


Photo 5
Kitsap Rifle and
Revolver Club

Shooting Bay 3, a
typical shooting bay at
KRRC, primarily used for
self defense, tactical
training and competitions



Photo 6
Kitsap Rifle and
Revolver Club

Shooting Bay 9, a
typical shooting bay at
KRRC, primarily used for
self defense, tactical
training and competitions



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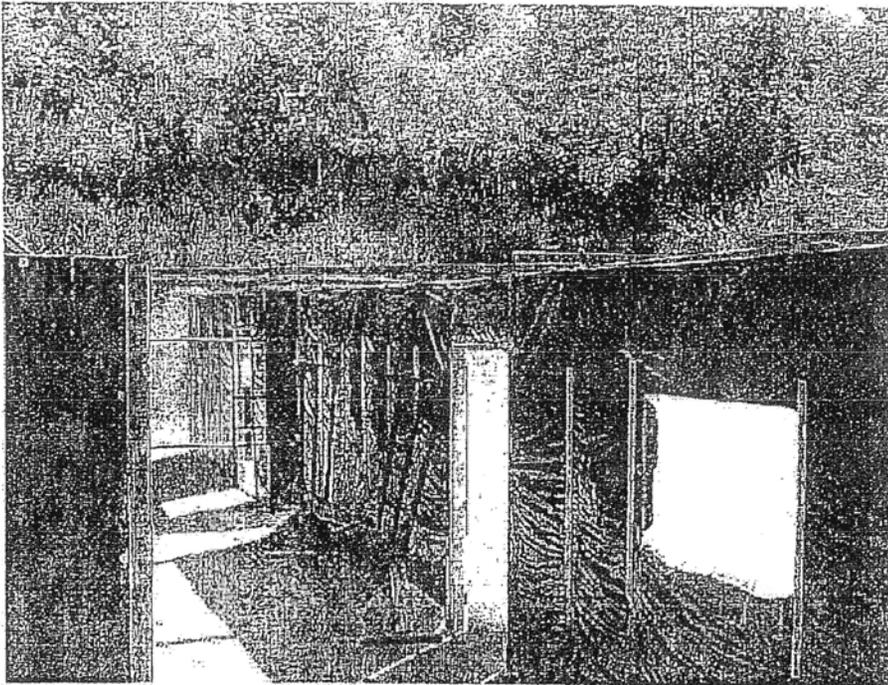


Photo 7
Kitsap Rifle and
Revolver Club

Shooting Bay 7,
contains the shoot
house, and is only used
for special events

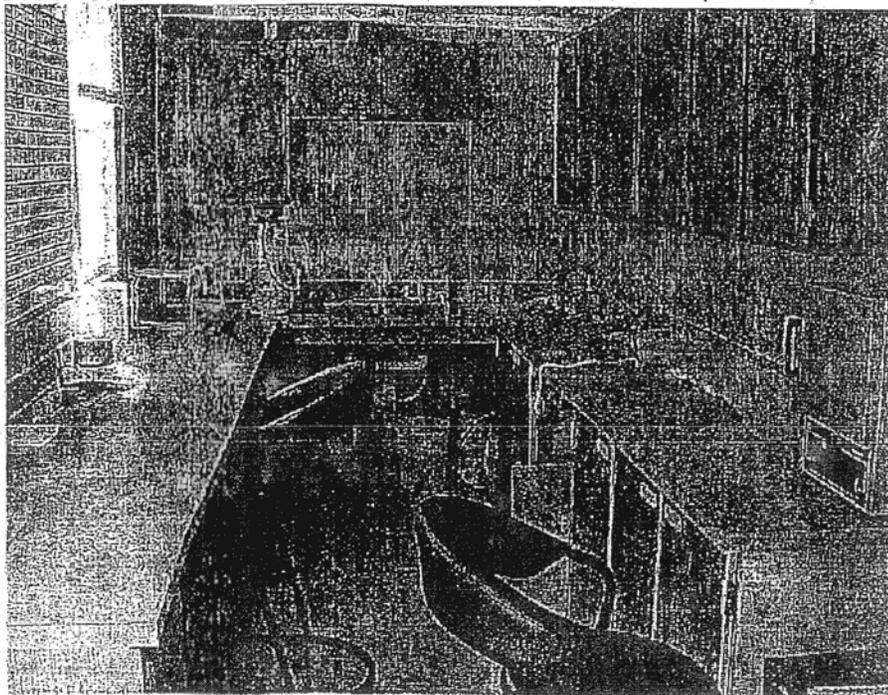


Photo 8
Kitsap Rifle and
Revolver Club

Environmental
Stewardship Trailer,
interior of trailer with soil
and water lab.

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Photo 9
Bremerton Police
Department

100 Yard Rifle Range,
primarily used for target
and tactical small arms
training.

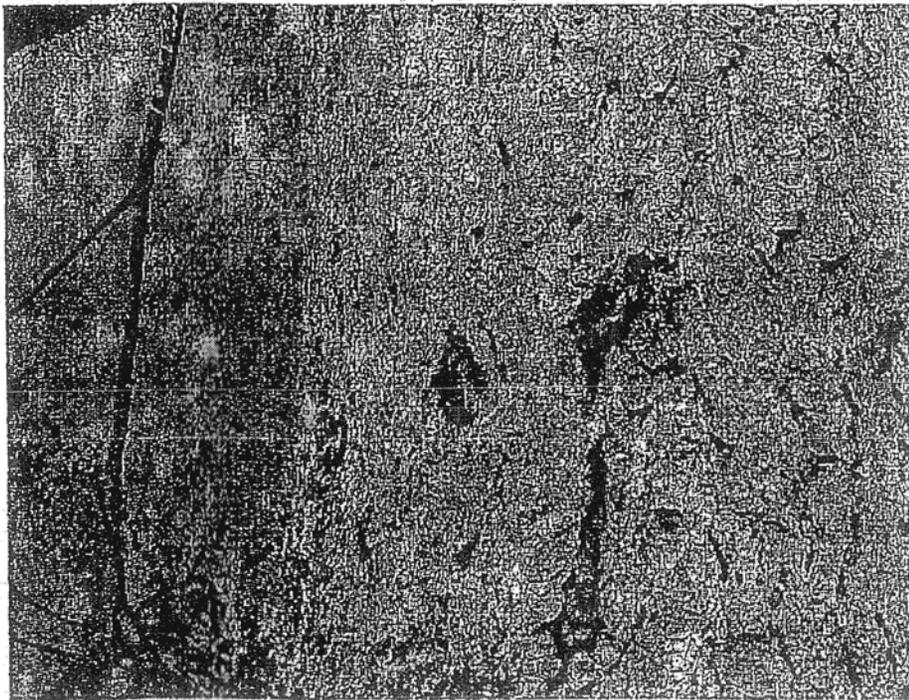


Photo 10
Bremerton Police
Department

100 Yard Rifle Range,
Recent evidence of bullet
mark in tree after going
over earthen berm

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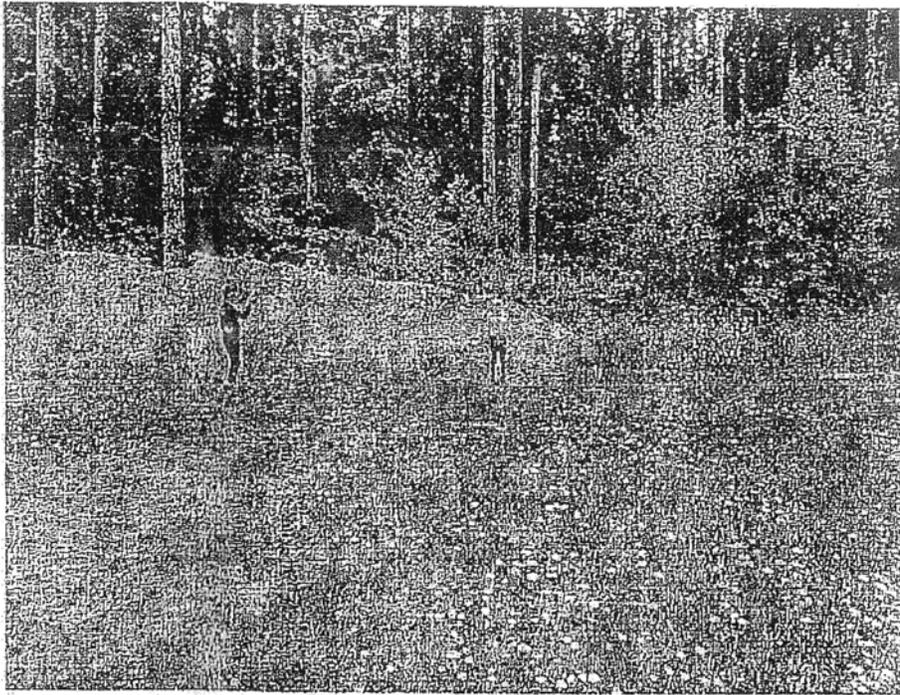


Photo 11
Bremerton Police
Department

Main Range-Tactical,
Fresh soil added
recently added to impact
berm. Height ranges
from about 6 to 9 feet.

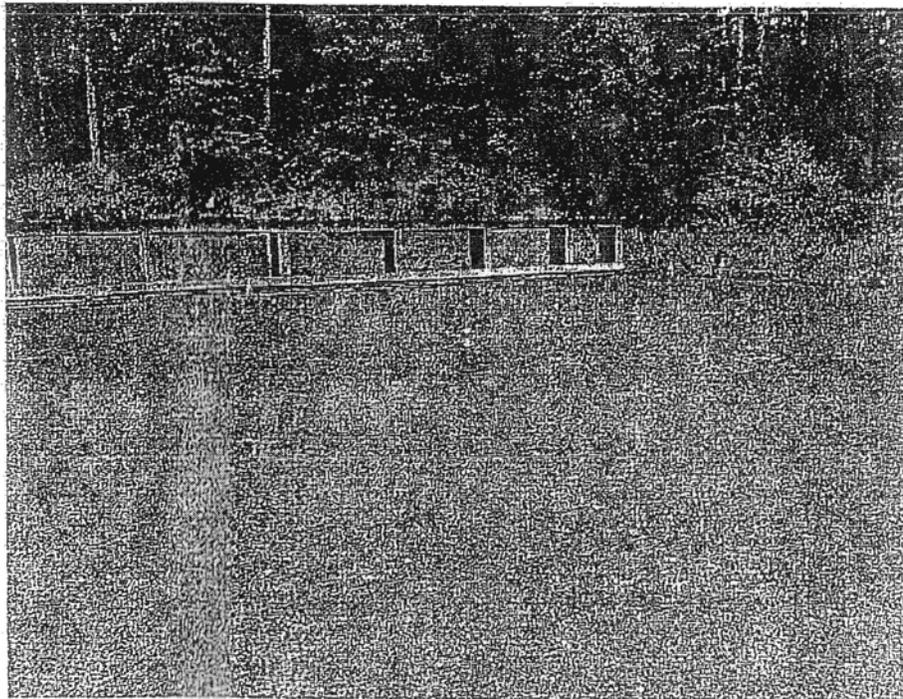


Photo 12
Bremerton Police
Department

Main Range-Bulls Eye,
Used for bulls eye and
tactical training. Bullet
impact berm up to about
9 feet.



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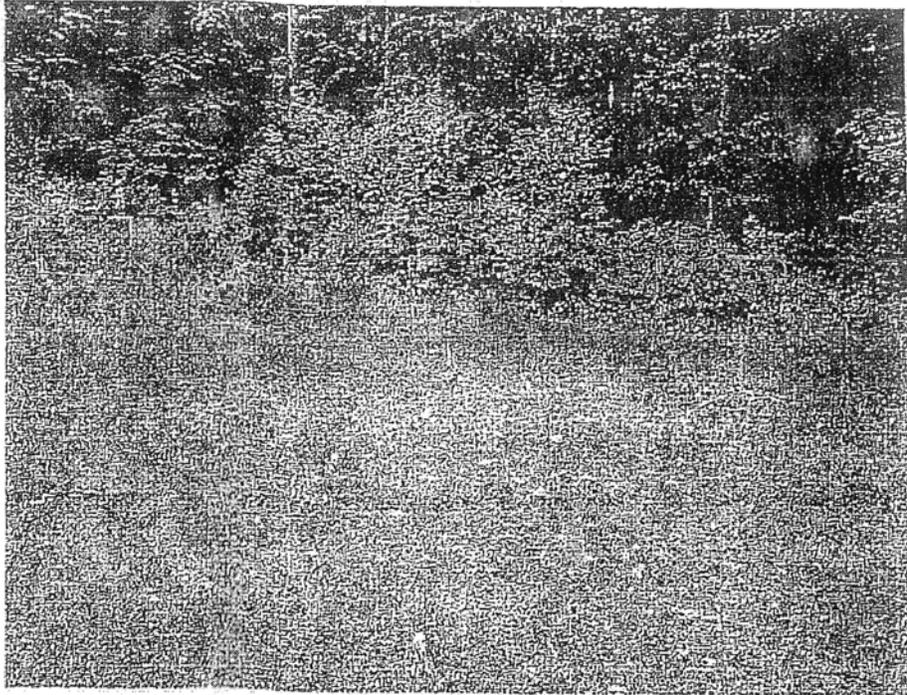


Photo 13
Bremerton Police
Department

Shotgun Range, Bullet
and shot impact berm is
about 6 feet tall and right
side berm is less than 3
feet tall.

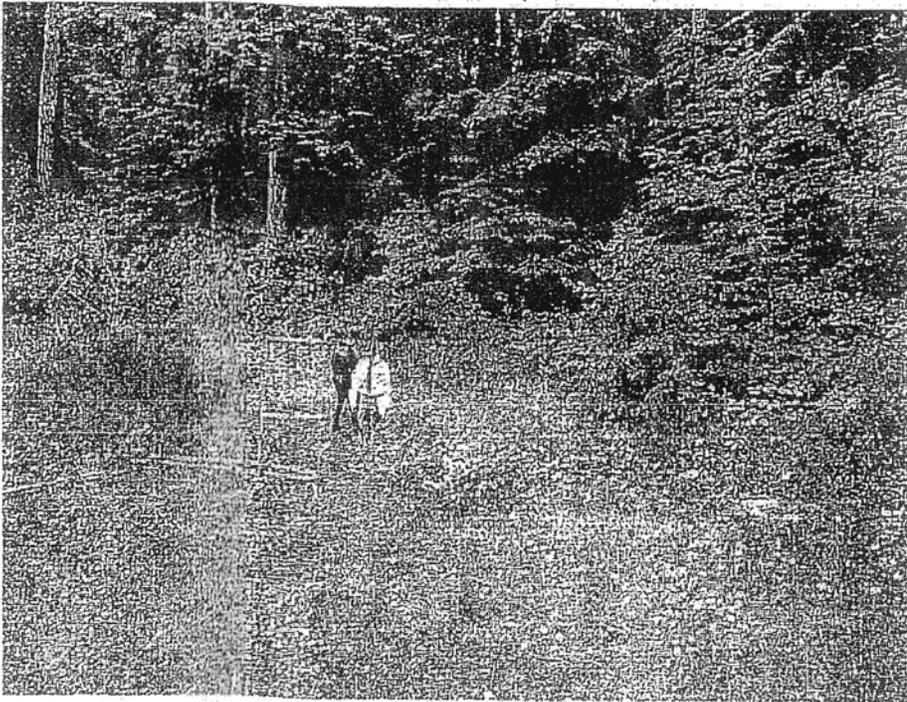


Photo 14
Bremerton Police
Department

Shotgun Range, Bullet
and shot impact berm is
about 6 feet tall. Mobile
target stands.

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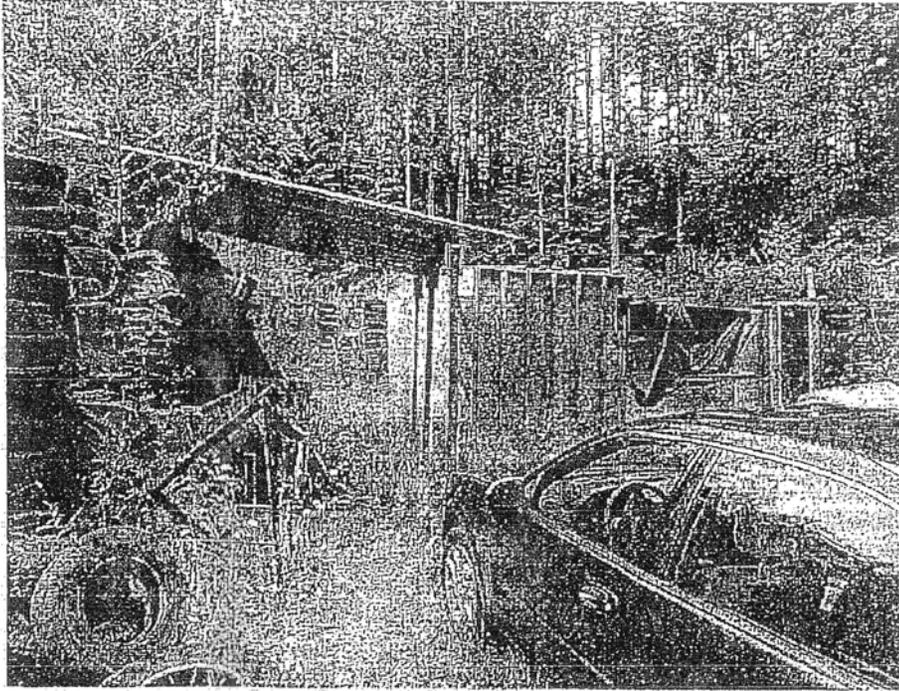


Photo 15
Bremerton Police
Department

Tire House, Tire walls
about 7 feet tall.

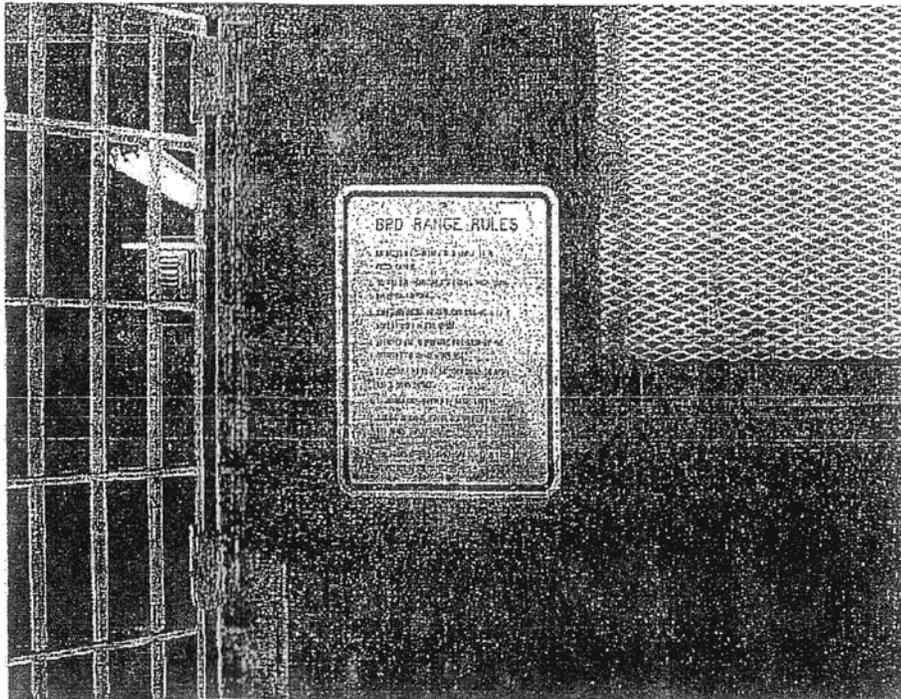


Photo 16
Bremerton Police
Department

Range Building, Sign
with safety rules.

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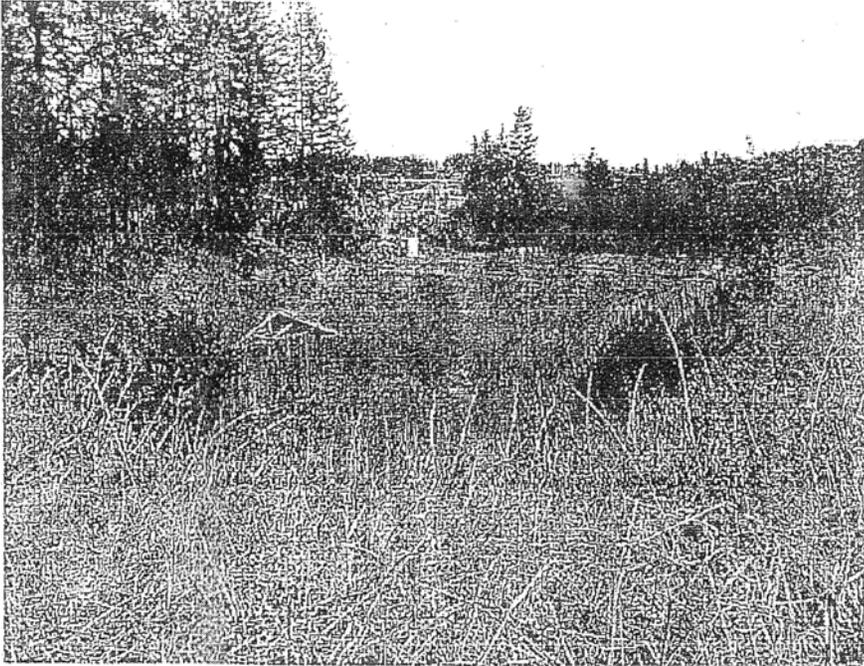


Photo 17
Tri-County Gun Club

22 Range, primarily used by law enforcement for tactical small arms training.



Photo 18
Tri-County Gun Club

Action Shooting Area, Typical small arms training range.



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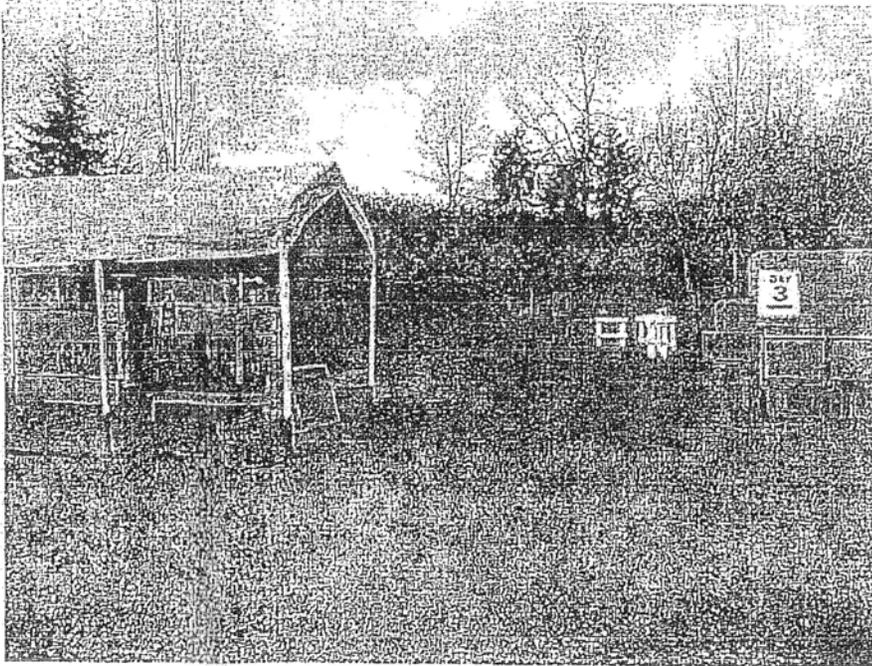


Photo 19
Tri-County Gun Club

Action Shooting Area,
Typical small arms
training range.

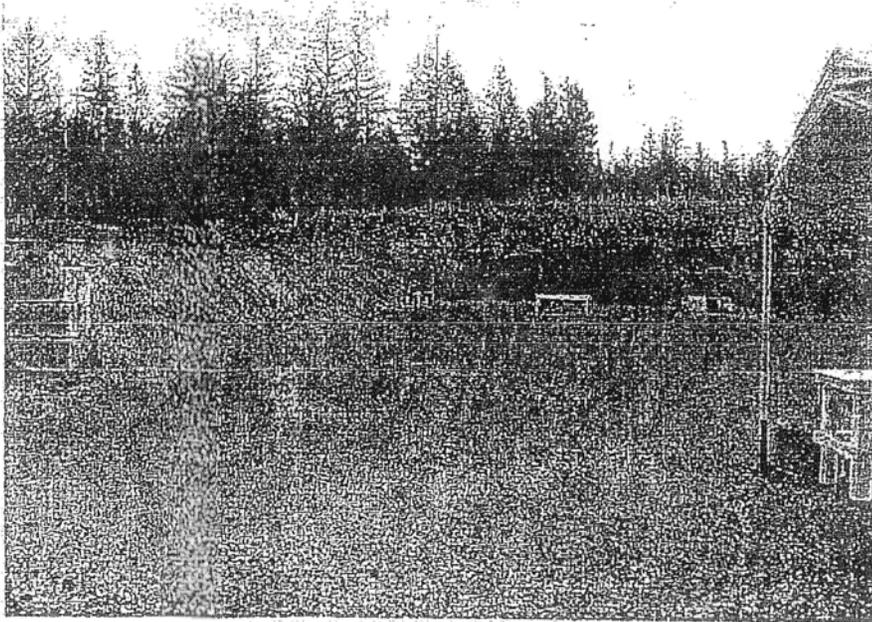


Photo 20
Tri-County Gun Club

Action Shooting Area,
Typical small arms
training range.



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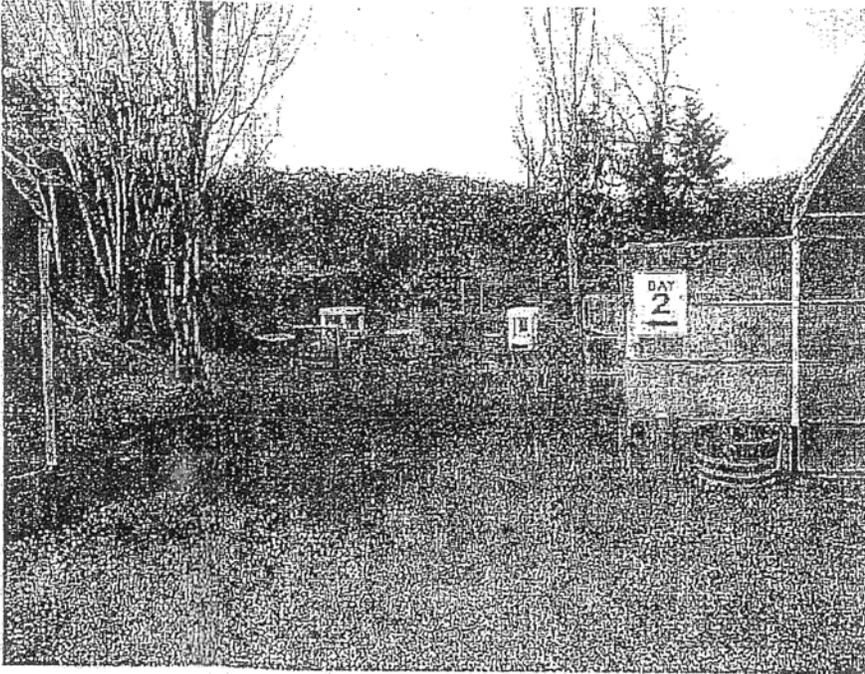


Photo 21
Tri-County Gun Club

Action Shooting Area,
Typical small arms
training range.

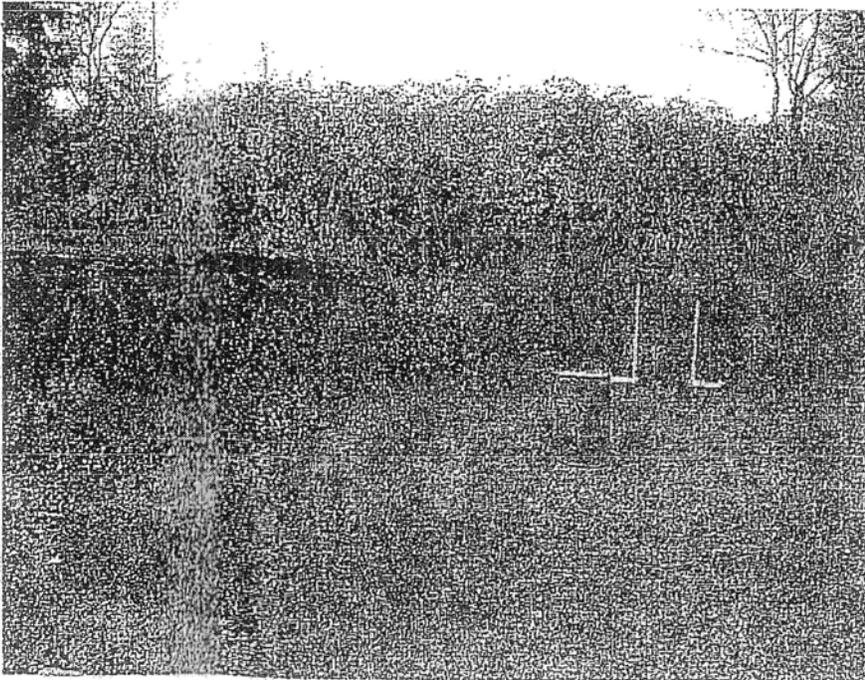


Photo 22
Tri-County Gun Club

Action Shooting Area,
Typical small arms
training range.

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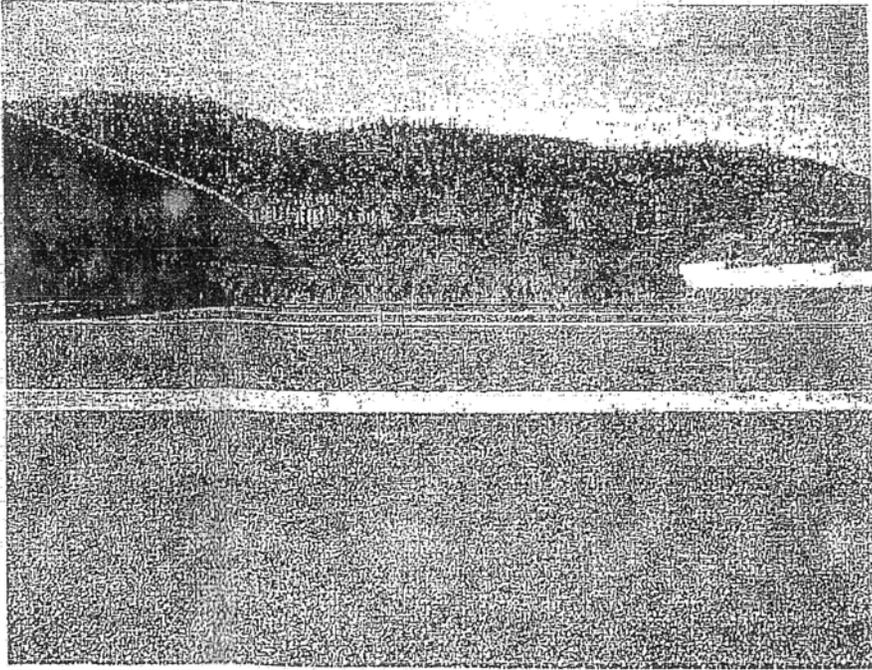


Photo 23
Columbia County
Sherriff

Primary Training Range

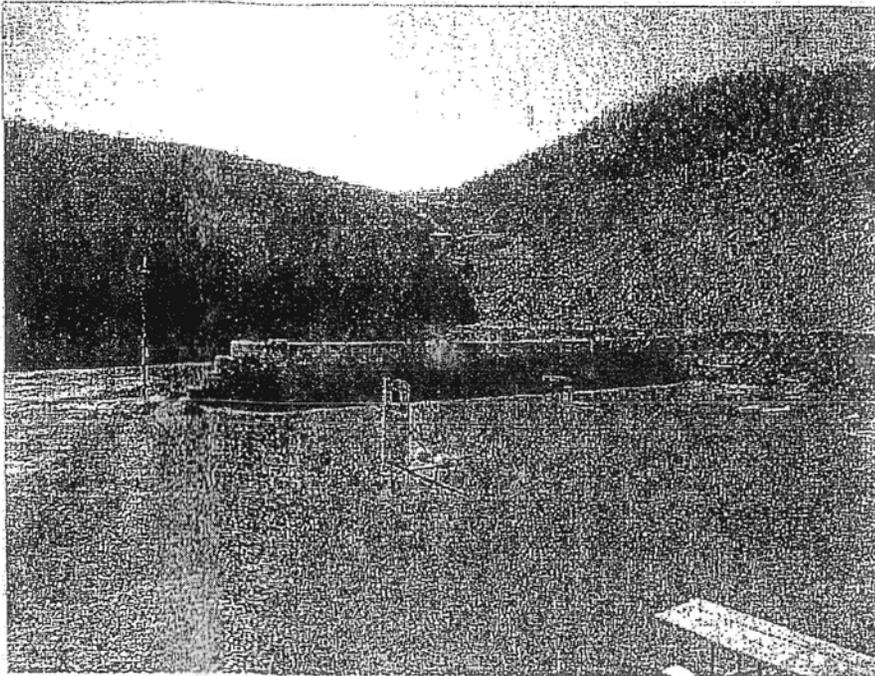


Photo 24
Columbia County
Sherriff

Secondary Training
Ranges



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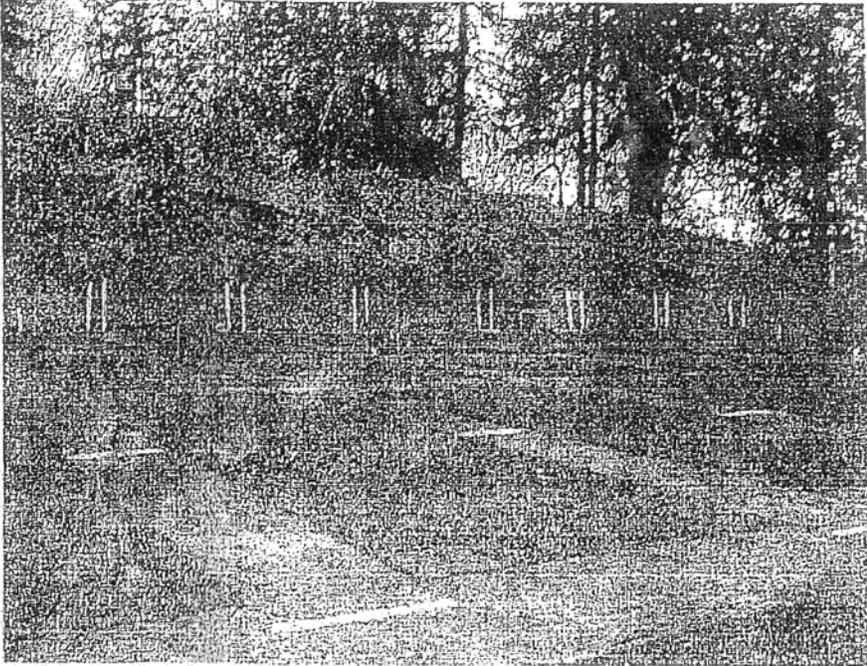


Photo 25
Oregon Department of
Corrections

Gath Road Range
Pistol Range

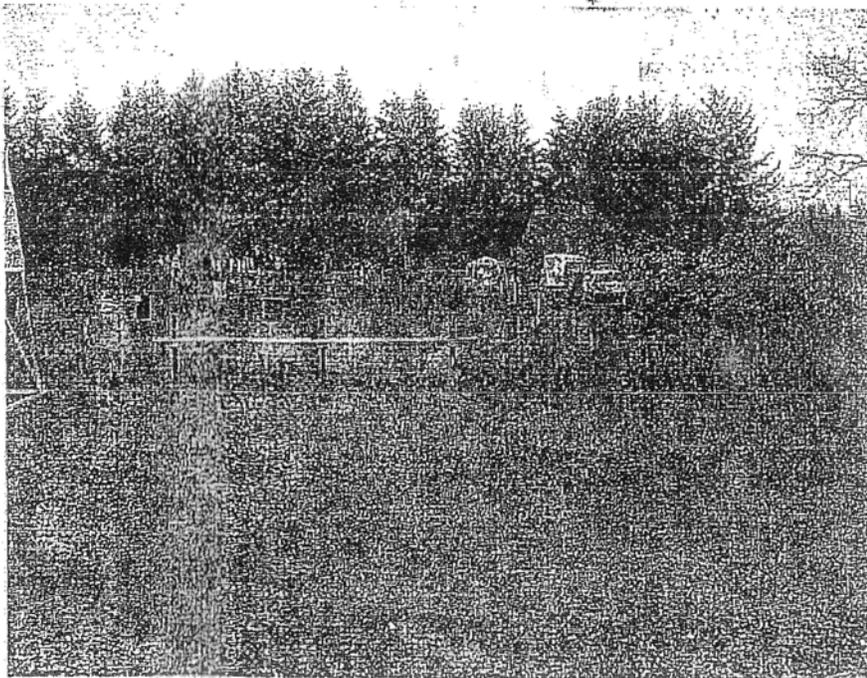


Photo 26
Oregon Department of
Corrections

Gath Road Range
Rifle Range



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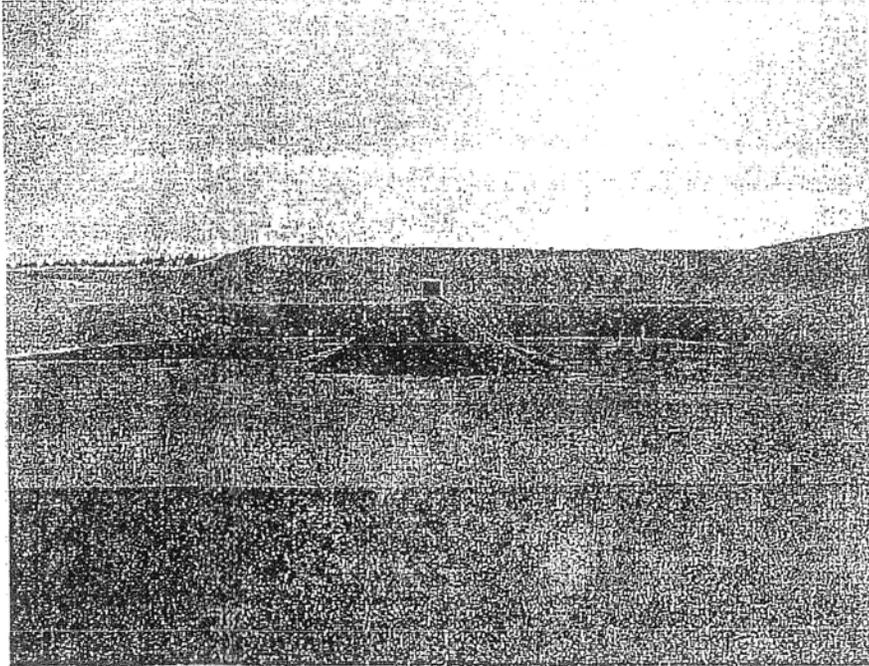


Photo 27
Oregon Department of
Corrections

Deer Ridge
Pistol Ranges

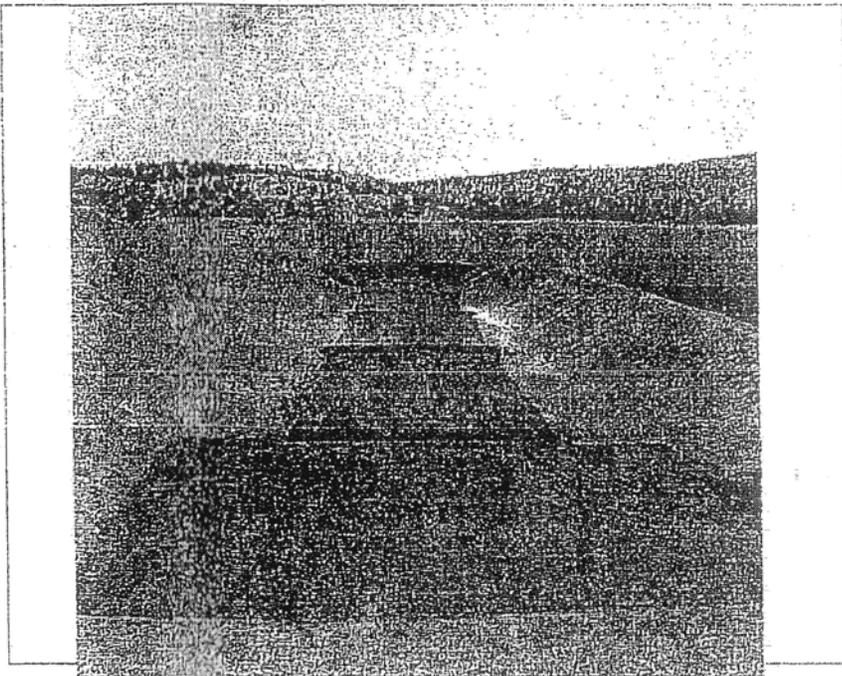


Photo 28
Oregon Department of
Corrections

Deer Ridge
Rifle Range



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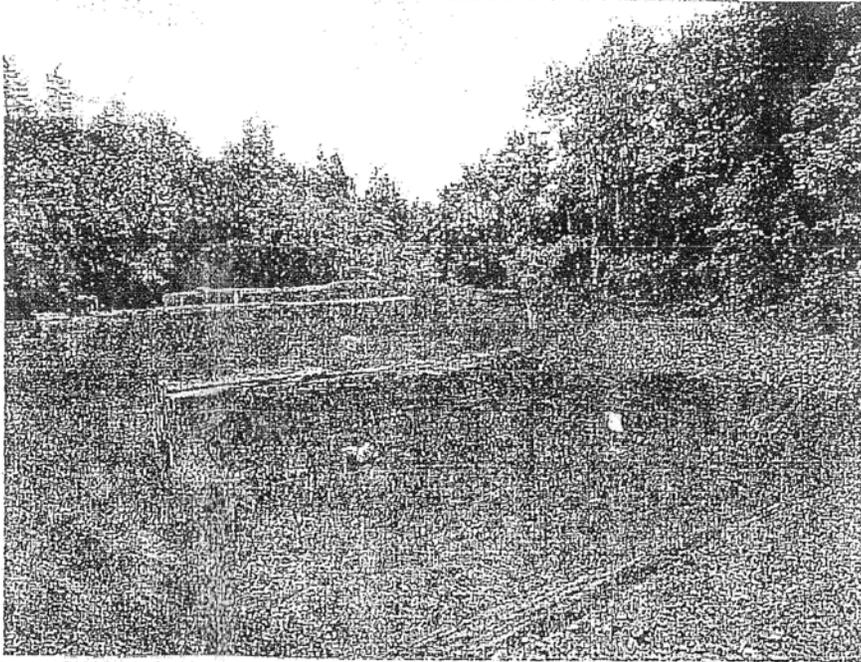


Photo 29
Chehalem Valley
Sportsmen's Club

Pistol Ranges

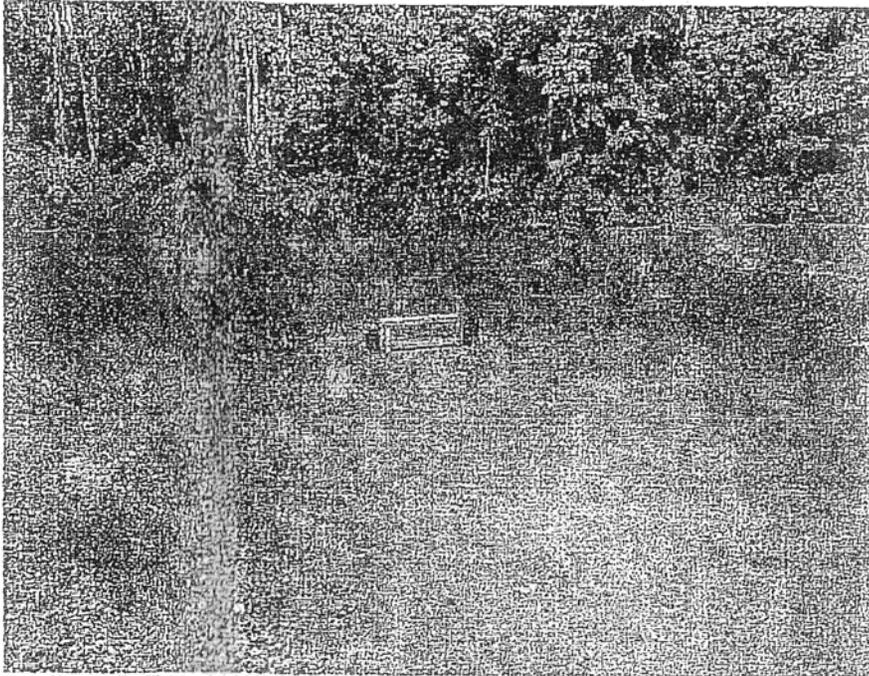


Photo 30
Chehalem Valley
Sportsmen's Club

Pistol Ranges



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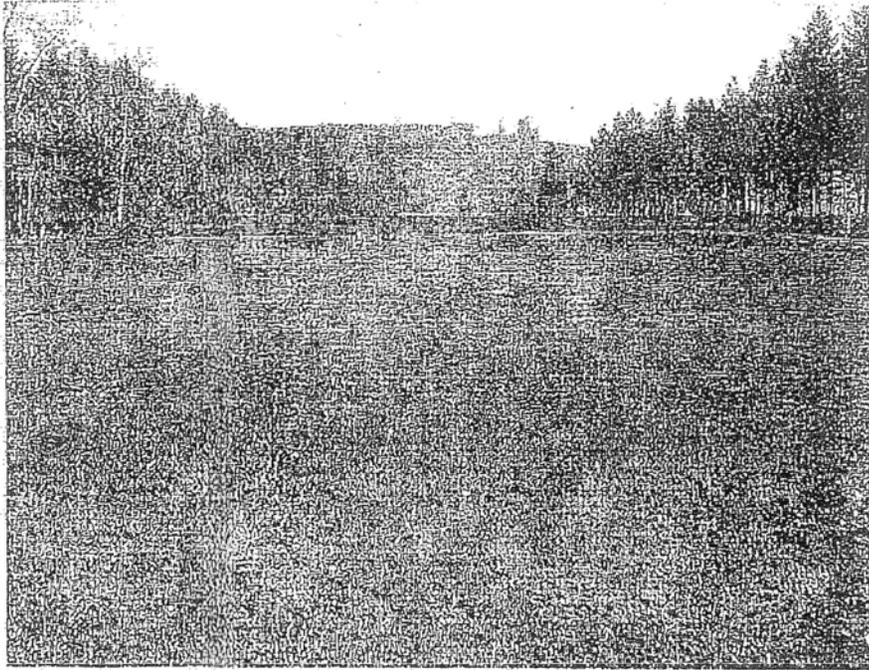
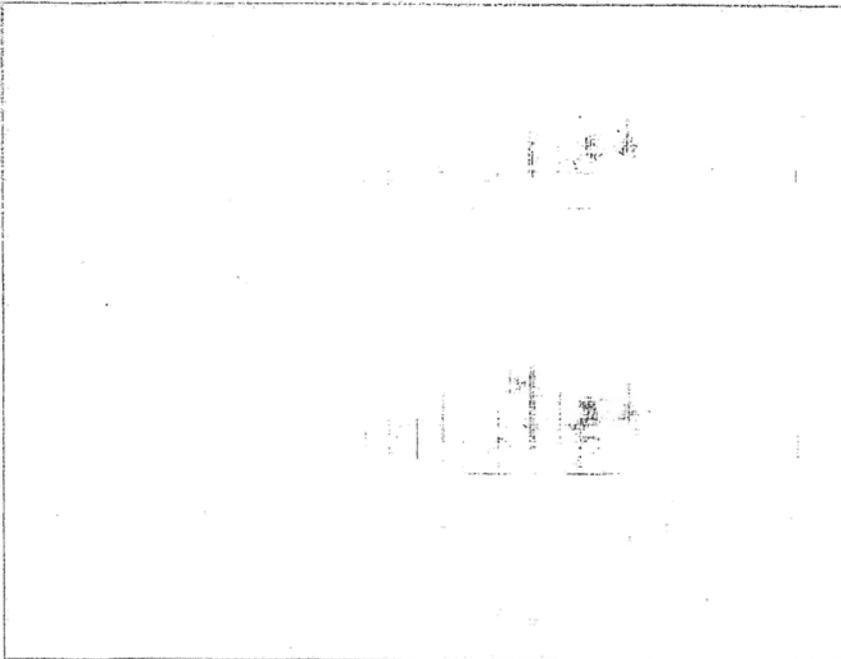


Photo 31
Douglas Ridge Rifle
Club

1,000 Yard Range



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Appendix 11

**Trial Exhibit 273: April 25, 2003 letter from
Kitsap County Sheriff's Department to Club**

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DEFENDANT'S
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273

8-81681-2-01



OFFICE OF
STEVE BOYER
KITSAP COUNTY SHERIFF
614 DIVISION ST. MS-37 • PORT ORCHARD, WASHINGTON 98366 • (360) 337-7101 • FAX 337-4923

April 25, 2003

Eric Jull, Vice President
Kitsap Rifle and Revolver Club
PO Box 134
Bremerton, WA 98337

RECEIVED

MAY 12 2005

KITSAP COUNTY DEPT OF
COMMUNITY DEVELOPMENT

Dear Eric:

Please accept my appreciation for the generous offer of a partnership between the Kitsap County Sheriff's Office and the Kitsap Rifle and Revolver Club. It is my understanding that the recent meetings and communications with your organization have been positive and results oriented.

Collaboration between public and private entities has proven itself valuable. I encourage and support these actions and am pleased when progress is made. Your personal efforts have been instrumental in achieving the progress to date and you certainly are an excellent representative for the Kitsap Rifle and Revolver Club.

We look forward to working with you in the future.

Sincerely,

Stephen A. Boyer
Kitsap County Sheriff

—A State-Accredited Agency—



KRRC001736

Appendix 12

Trial Exhibit 550: April 10, 2009 email from Club attorney Regina Taylor to Kitsap County regarding draft deed

ADMITTED

FILED
DEPT. 14
IN OPEN COURT

OCT 27 2011

Pierce County Clerk

By: *[Signature]*

DEFENDANT'S
EXHIBIT
550

10-27-11 10-27-11

B. Regina Taylor

From: B. REGINA TAYLOR [bregina.taylor@comcast.net]
Sent: Friday, April 10, 2009 4:34 PM
To: 'cfaver@co.kitsap.wa.us'; 'mkeough@co.kitsap.wa.us'
Cc: 'kmhowell@co.kitsap.wa.us'; 'Bruce Danielson'; carlton_nau@q.com; Marcus Carter; 'Scott P. Holmen'; steve.taylor10@comcast.net
Subject: Meeting on 4-10-09 - KRRC/Kitsap County Dept. of Parks & Recreation (Marcus Carter, B. Regina Taylor, Chip Faver, Matt Keough)
Attachments: 1 AGREEMENT RE SPECIAL USE LEASE -lease amend only 4-10-09.doc; 2 AGREEMENT RE SPECIAL USE LEASE with option to negotiate in good faith 4-10-09.doc; 3 AGREEMENT RE SPECIAL USE LEASE with option to purchase terms 4-10-09.doc
Categories: Client Appls

Chip Faver & Matt Keough.

This email is to follow-up on meeting today. We were very encouraged by the direction that you informed us are the County's goals regarding the KRRC Lease and the Land Exchange.

It is my understanding that the following points were made:

1. Kitsap County would like to "partner" with KRRC to provide a Regional Shooting Facility. Kitsap County agrees with KRRC that working together would be a win-win.
2. There were a number of administrative issues and some erroneous assumptions made about communications that resulted in a shorter timeframe for the process and KRRC finding out about the process at a late juncture.
3. Given the current time table necessary to complete the land exchange and the need to eliminate the potential liability to Kitsap County of owning land with a gun range on it, Kitsap County would like to structure the land exchange to provide a closing in which KRRC will purchase the property outright with the fee to transfer to KRRC immediately after Kitsap County receives the land from DNR.
4. Our goal will be to try to structure the purchase and sale around the 130 acres (including the 72 acres currently under lease) that is requested by KRRC with purchase based on the appraisal for the land purchase exchange, subject to some adjustments and conditions to be negotiated in further detail in the near future. We noted that a North/South orientation for the ranges and 130 acres would create a safer recreational operation.
5. There is a possibility that the purchase will have to be completed in two phases, with 72 acres occurring as part of the land exchange closing and with the remaining approximately 60 acres being completed at a later point.
6. Procedurally, it is believed by the County that under current law, the 72-acre portion under lease will not need to be publicly auction, but that the 60 acres may require a public auction process. Also, both processes will require a public hearing.
7. As for financing, if possible, Kitsap County would prefer to have all of the money at closing but may take a Deed of Trust to help with the transaction. We would look into the possibility of "in kind" payments (i.e. value of services to the Sheriff's Office put toward the amount owed). KRRC is confident that if the Purchase Agreement is signed as soon as possible, we will have no problem getting the funds together in a timely fashion.
8. The preliminary appraisal price is \$4,000 an acre, but that amount is not confirmed until completion of the appraisal review which should occur shortly. We discuss that further negotiation of this price will occur based on some conditions regarding development rights that would occur. KRRC mention that it was vital that we have the ability to develop the land according to our long-range plan, including a 600-yard rifle range.
9. We discussed how wonderful it would be when (not if) Seattle were to sponsor an Olympics; with this development, KRRC will be in a position to provide a recognized sport venue for the shooting events (which typically medal first).
10. Development of KRRC as an important resource for Kitsap County's community by selling the land and cooperating with the development within the overall plan for this area will have be beneficial because (a) instead of spending County dollars to develop the facility, KRRC will actually put money into County coffers

which would enable Kitsap County to purchase more of the land to make the Newberry Hill Heritage Park a reality; (b) KRRC will minimize the risk to the County for the gun range by taking responsibility for the activities on its own land; (c) KRRC and the County will work together toward responsible stewardship of the land being purchased.

11. The "official" public input for the land exchange is being taken by the DNR and ends on April 13, 2009.
12. There will be a meeting on April 15, 2009 for the Parks & Recreation. The Newberry Hill Heritage Park is on the agenda with other important issues. It would be helpful to know that written testimony will be taken up to two weeks after the hearing so that speakers on behalf of the gun club can keep their oral testimony short and to the point. Also, as to the purchase itself, there will be an "official" public hearing on the purchase(s).
13. Kevin Howell, Civil Division of the Prosecuting Attorney, will be handling the sale documents. To assist in expediting the process, KRRC will forward the versions of the Agreement between Kitsap County and KRRC to Kevin Howell, Chip Faver & Matt Keough. (See attachments.)

If I have misunderstood the points made or if there are any additional points you would like to add to the foregoing, please do not hesitate to contact me. I will be following up with Kevin Howell directly to get the Purchase Agreement completed and to iron out more of the details. The parties noted above will be included in all communications as this process goes forward.

Regina Taylor

B. Regina Taylor

9353 Central Valley Rd. NW, Suite 2
Bremerton, WA 98311
Ph. 360-698-5522 Fax 360-698-2584

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If you have received this communication in error, please notify us immediately by e-mail and delete the communication from your computer. Thank you.

1

AGREEMENT RE SPECIAL USE LEASE
(Lease Amendment Only)

THIS AGREEMENT is executed this ____ day of _____, 2009, by and between KITSAP COUNTY (hereinafter "County"), and KITSAP RIFLE AND REVOLVER CLUB, a historic and not-for profit corporation (hereinafter "KRRC");

WHEREAS, the State of Washington, Department of Natural Resources (hereinafter "State"), is the "owner" of certain real property located at 4900 Seabeck Highway N.W., Bremerton, Washington;

WHEREAS, State and County are in the process of completing a Land Exchange for certain real property which includes the area currently leased to the KRRC which will result in the County owning the land;

WHEREAS, the KRRC has expressed its desire to continue the current lease with the understanding that certain provisions of the lease would be extended to a 15-year lease with a possible option to purchase when the property and the lease is transferred to the County;

WHEREAS, the County has agreed that upon receipt of the land upon completion of the Land Exchange that it will agree to the changes requested in the lease, set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Amendment to the Lease. The parties agree that the Special Use Lease shall be amended to reflect the following:

- a. Removal of the "Early Termination Clause." Section 4.03 of the lease which provides for the termination of the lease in 60-days for a "higher and better use" shall be deleted.
 - b. Extension of Lease to a 15-year Lease Ending in 2024. The lease termination date shall be extended to December 31, 2024.
 - c. Lease Payment Amounts. The lease payments due for the 72 acres shall be paid in annual payments as set forth in the current lease based on previous lease price of \$7200 per annum and shall be applied to the purchase price.
 - d. Legal Description of Leased Area. The legal description of the leased area is hereby attached hereto as Exhibit "A", as set forth on the map attached hereto as Exhibit "B".
 - e. All other terms. All other terms of the existing lease shall be continued until purchase of the land with current heavy land use area grandfathered.
3. Warrant of Capacity to Execute Settlement Agreement. The parties

represent and warrant that that they have the full right and authority to execute this Agreement as set forth herein.

4. No Reliance on Statements. Except as otherwise provided herein, the parties acknowledge that this Agreement is made solely for the consideration specified herein, without reliance on any statement or representation of either party, their agents or representatives.

5. Agreement to Cooperate. The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

6. Binding Agreement. The terms of this Agreement are contractual and not a mere recital. This release shall bind the heirs, personal representatives, successors and assigns of the parties.

7. Attorney's Fees. In the event of any legal action to enforce the provisions of this Release, the prevailing party therein shall recover costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this document on the _____ day of _____, 2009.

STATE OF WASHINGTON)
 :
COUNTY OF KITSAP)

On this day personally appeared before me _____ to me known to be the individual described in and who executed the within and fore-going instrument, and acknowledged that he or she was authorized to and signed the same as the free and voluntary act and deed of said organization for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2009.

Notary Public in and for the State of Washington,
Residing at _____

My commission expires: _____

STATE OF WASHINGTON)
 :
COUNTY OF KITSAP)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and fore-going instrument, and acknowledged that he or she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2009.

Notary Public in and for the State of Washington,
Residing at _____

My commission expires: _____

2'

AGREEMENT RE SPECIAL USE LEASE
(Lease Amendment with Agreement to Negotiate Option to Purchase)

THIS AGREEMENT is executed this ____ day of _____, 2009, by and between KITSAP COUNTY (hereinafter "County"), and KITSAP RIFLE AND REVOLVER CLUB, a historic and not-for profit corporation (hereinafter "KRRC");

WHEREAS, STATE OF WASHINGTON, Department of Natural Resources (hereinafter "State"), is the owner of certain real property located at 4900 Seabeck Highway NW, Bremerton, Washington;

WHEREAS, State and County are in the process of completing a Land Exchange for certain real property which includes the area currently leased to the KRRC which will result in the County owning the land;

WHEREAS, the KRRC has expressed its desire to continue the current lease with the understanding that certain provisions of the lease would be extended to a 15-year lease with option to purchase when the property and the lease is transferred to the County;

WHEREAS, the County has agreed that upon receipt of the land upon completion of the Land Exchange that it will agree to the changes requested in the lease, set forth in Part 1 below (Amendment to the Lease);

WHEREAS, the County has agreed to enter into good-faith negotiations to further amend the lease by providing for an Option to Purchase 130 acres, including the leased premises;

WHEREAS, if the Land Exchange is not completed, the State is willing to Amend the Lease pursuant to Part 1 (Amendment to the Lease);

NOW, THEREFORE, the parties agree as follows:

1. Amendment to the Lease. The parties agree that when the Land Exchange is complete, the Special Use Lease shall be amended to reflect the following:
 - a. Removal of the "Early Termination Clause." Section 4.03 of the lease which provides for the termination of the lease in 60-days for a "higher and better use" shall be deleted.
 - b. Extension of Lease to a 15-year Lease Ending in 2024. The lease termination date shall be extended to December 31st, 2024.
 - c. New Lease to be Signed by May 31st, 2009. A new lease with the amended terms shall be signed no later than May 31st, 2009 by the County. The new lease shall be effective upon signing. The new lease shall continue in full force and effect with no change in conditions or terms unless otherwise agreed by the parties in writing, or as contemplated by this Agreement with the addition of the Option to Purchase.
 - d. Lease Payment Amounts. The lease payments due for the current 72 acres shall be paid in annual payments as set forth in the current lease at \$7200 per annum with all lease payments to be applied to the purchase price.
 - e. Legal Description of Leased Area. The legal description of the leased area is hereby attached hereto as Exhibit "A", as set forth on the map attached hereto as Exhibit "B".
 - f. All other terms. All other terms of the existing lease shall be continued until purchase of the land.
2. Option to Purchase. In addition to the foregoing agreement to amend the lease, the parties agree that upon transfer of the land to the County, as part of the terms of the land exchange, an option to purchase (between Kitsap County and KRRC) shall be negotiated in good faith.
3. Other Terms and Conditions.

- a. Safe Operation of Premises. KRRC agrees to operate the range in a safe and prudent manner.
- b. Classes for the Public. KRRC agrees to provide gun safety training, hunter education classes and other classes to the public.
- c. Acknowledgement re Shooting Sports. Kitsap County and its Department of Parks and Recreation hereby acknowledge that shooting sports are a recognized recreational activity. Kitsap County agrees that it will list on its website web-links to all 'open to the public' ranges in the county on parks website and other recreational information publications generated by Kitsap County. (KRRC, Poulsbo Sportsman's Club, Bremerton Trap & Skest, Bainbridge Is. Sportsman's Club)
- d. Buffer Area. Recreation and other uses not compatible with target shooting will not be permitted within the 130-acre lease area. It may be necessary for the county to provide an even larger buffer area adjacent to the lease area to protect public safety.
- e. Inclusion in Heritage Park Planning. The long-range Newberry Heritage Parks plan will include KRRC and the shooting range as a recognized, (mapped) element requiring special consideration from other recreational uses.
- f. Priority of Existing Use. Due to the long-standing use of the area as a shooting range managed by KRRC, all other recreational uses and county-

supported recreational improvements and development will be subordinate to use of the existing lease area as a shooting range managed by KRRC.

- g. Long-term Commitment to Support Shooting Sports. Kitsap County Parks and Recreation recognizes that the signing of the 15-year lease with KRRC evidences a long-term commitment by the county to support its citizens in the shooting sports as a recreational activity within the Newberry Hill Heritage Park/Central Kitsap Greenway area. The County will begin any Land Use planning activity associated with those properties with the assumption that the target shooting range is the PREFERRED LONG-TERM USE OF ALL LANDS WITHIN THE EXISTING LEASE AREA.
- h. Support for Land Exchange. Based on the foregoing agreed terms, KRRC whole-heartedly supports the DNR land exchange.

3. Warrant of Capacity to Execute Settlement Agreement. The parties represent and warrant that that they have the full right and authority to execute this Agreement as set forth herein.

4. No Reliance on Statements. Except as otherwise provided herein, the parties acknowledge that this Agreement is made solely for the consideration specified herein, without reliance on any statement or representation of either party, their agents or representatives.

5. Agreement to Cooperate. The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

6. Binding Agreement. The terms of this Agreement are contractual and not a mere recital. This release shall bind the heirs, personal representatives, successors and assigns of the parties.

7. Attorney's Fees. In the event of any legal action to enforce the provisions of this Release, the prevailing party therein shall recover costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this document on the _____ day of _____, 2009.

STATE OF WASHINGTON)
 :
COUNTY OF KITSAP)

On this day personally appeared before me _____ to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he or she was authorized to and signed the same as the free and voluntary act and deed of said organization for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2009.

Notary Public in and for the State of Washington,
Residing at _____

My commission expires: _____

STATE OF WASHINGTON)
 :
COUNTY OF KITSAP)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he or she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2009.

Notary Public in and for the State of Washington,
Residing at _____

My commission expires: _____

AGREEMENT RE SPECIAL USE LEASE
(Lease Amendment with Agreement to Negotiate Option to Purchase)

THIS AGREEMENT is executed this ____ day of _____, 2009, by and between KITSAP COUNTY (hereinafter "County"), and KITSAP RIFLE AND REVOLVER CLUB, a not-for profit corporation (hereinafter "KRRC");

WHEREAS, STATE OF WASHINGTON, Department of Natural Resources (hereinafter "State"), is the owner of certain real property located at 4900 Seabeck Highway N.W., Bremerton, Washington;

WHEREAS, State and County are in the process of completing a Land Exchange for certain real property which includes the area currently leased to the KRRC which will result in the County owning the land;

WHEREAS, the KRRC has expressed its desire to continue the current lease with the understanding that certain provisions of the lease would be extended to a 15-year lease with option to purchase when the property and the lease is transferred to the County;

WHEREAS, the County has agreed that upon receipt of the land upon completion of the Land Exchange that it will agree to the changes requested in the lease, set forth in Part 1 below (Amendment to the Lease);

WHEREAS, the County has agreed to enter into good-faith negotiations to further amend the lease by providing for an Option to Purchase 150 acres, included the leased premises;

WHEREAS, if the Land Exchange is not completed, the State is willing to Amend the Lease pursuant to Part 1 (Amendment to the Lease);

NOW, THEREFORE, the parties agree as follows:

1. Amendment to the Lease. The parties agree that when the Land Exchange is complete, the Special Use Lease shall be amended to reflect the following:
 - a. Removal of the "Early Termination Clause." Section 4.03 of the lease which provides for the termination of the lease in 60-days for a "higher and better use" shall be deleted.
 - b. Extension of Lease to a 15-year Lease Ending in 2024. The lease termination date shall be extended through December 31, 2024.
 - c. New Lease to be Signed by May 31st, 2009. A new lease with the amended terms shall be signed no later than May 31st, 2009 by the County. The new lease shall be effective upon signing. The new lease shall continue in full force and effect with no change in conditions or terms unless otherwise agreed by the parties in writing, or as contemplated by this Agreement with the addition of the Option to Purchase.
 - d. Lease Payment Amounts. The lease payments due for the current 72 acres shall be paid annually as set forth in the current lease based on the current lease rate of \$7200 per annum. All lease payments shall be applied to the purchase price of the property.
 - e. Legal Description of Leased Area. The legal description of the leased area is hereby attached hereto as Exhibit "A", as set forth on the map attached hereto as Exhibit "B".
 - f. All other terms. All other terms of the existing lease shall be continued until purchase of the land with the current heavy use area grandfathered.

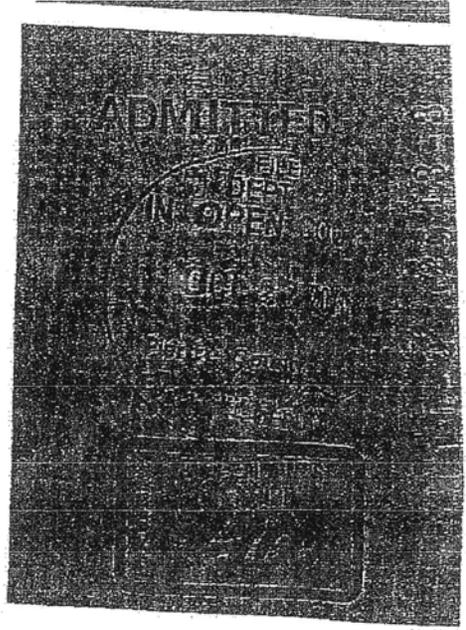
2. Option to Purchase. In addition to the foregoing agreement to amend the lease, the parties agree that upon transfer of the land to the County, as part of the terms of the land exchange, an option to purchase (between Kitsap County and KRRC) shall be signed which will be negotiated in good faith and include the following terms and conditions:

- a. Purchase Option. Kitsap County agrees to sign an option to sell 130 acres to KRRC, the area legally described on Exhibit A attached, including the current developed range area, to Kitsap Rifle & Revolver Club, Inc. for a reasonable purchase price \$260,000 (\$2000 per acre).
- b. Exercise of Option. KRRC shall exercise its option to purchase no later than three years after execution of the option to purchase;
- c. Option Area to Remain Undeveloped. Until the period for exercise of the option has expired, the County will not allow the additional acres covered by the option to be developed by any other entity.
- d. Completion of Sale. The sale of all lands to the club will be final prior to the end of the KRRC lease termination in 2024.
- e. Application of Lease Payments to Purchase Price. All lease monies collected by the county will be applied to the purchase price of the property.
- f. No Penalties for Early Purchase. At any time during the 15-year lease period KRRC may pay the balance in full with no early payoff penalty.
- g. Property Uses. The subject property shall remain a shooting range after the sale. The County may need to create one or more parcels for the sale. Zoning and conditional use permits associated with the sale parcel(s) must be consistent with the operation and future expansion of rifle and pistol range activities, including but not limited to the uses shown on Exhibit C (Map of Future Activities) attached.

Appendix 13

Trial Exhibit 400: May 12, 2009 email
from Club attorney Regina Taylor to
Kitsap County regarding draft deed

1950-1951



1950-1951

Don Burger

From: B. Regina Taylor [bregina.taylor@redacted]
Sent: Tuesday, May 12, 2009 9:23 AM
To: Kevin M. Howell
Cc: Scott P. Holmen; steve.taylor10@redacted; Marcus Carter; Bruce Daniels; carlton_nau@redacted
Subject: KRRC - Bargain & Sale Deed - requested changes added paragraph - FOR DISCUSSION
Attachments: KRRC added paragraph.doc

Kevin:

Please contact me at your earliest convenience to discuss the following changes to the proposed Bargain and Sale Deed:

1. Page 1, "It's right, title and interest" should be changed to "its right title and interest"
2. "and Washington Non-Profit Corporation" should be changed to "a Washington Non-Profit Corporation"
3. Page 2, "CERCLA" should have a statutory citation; "MTCA" should have a statutory citation;
4. Page 2, paragraph 1: "(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 CERCLA and MTCA, by any person in anyway ..." (add "or alleged failure"; change "by any person" to "by an indemnified person or entity" change "anyway" to "any way"
5. Paragraph 3: after "safety and noise buffer zones." Change "." To "," and add the attached paragraph.
6. Paragraph 5, change "its' activities" to "its activities"

Except for the added paragraph, most of the changes requested are "typographical" or administrative.

I look forward to hearing from you soon.

Regina

B. Regina Taylor
Attorney at Law, PC
9353 Central Valley Rd. NW, Suite 2
Bremerton, WA 98311
Ph. 360-698-5522 Fax 360-698-2584

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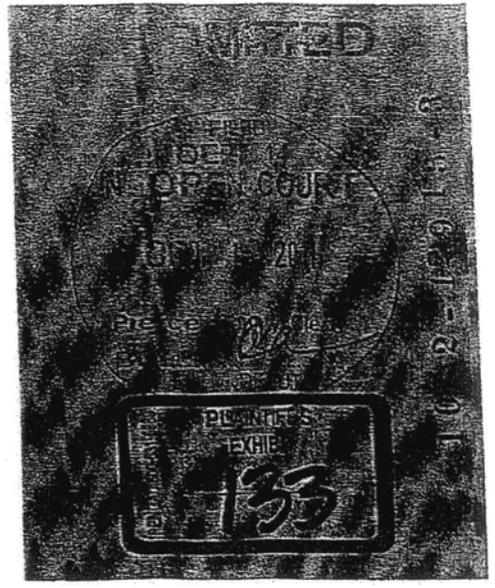
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If you have received this communication in error, please notify us immediately by e-mail and delete the communication from your computer. Thank you.

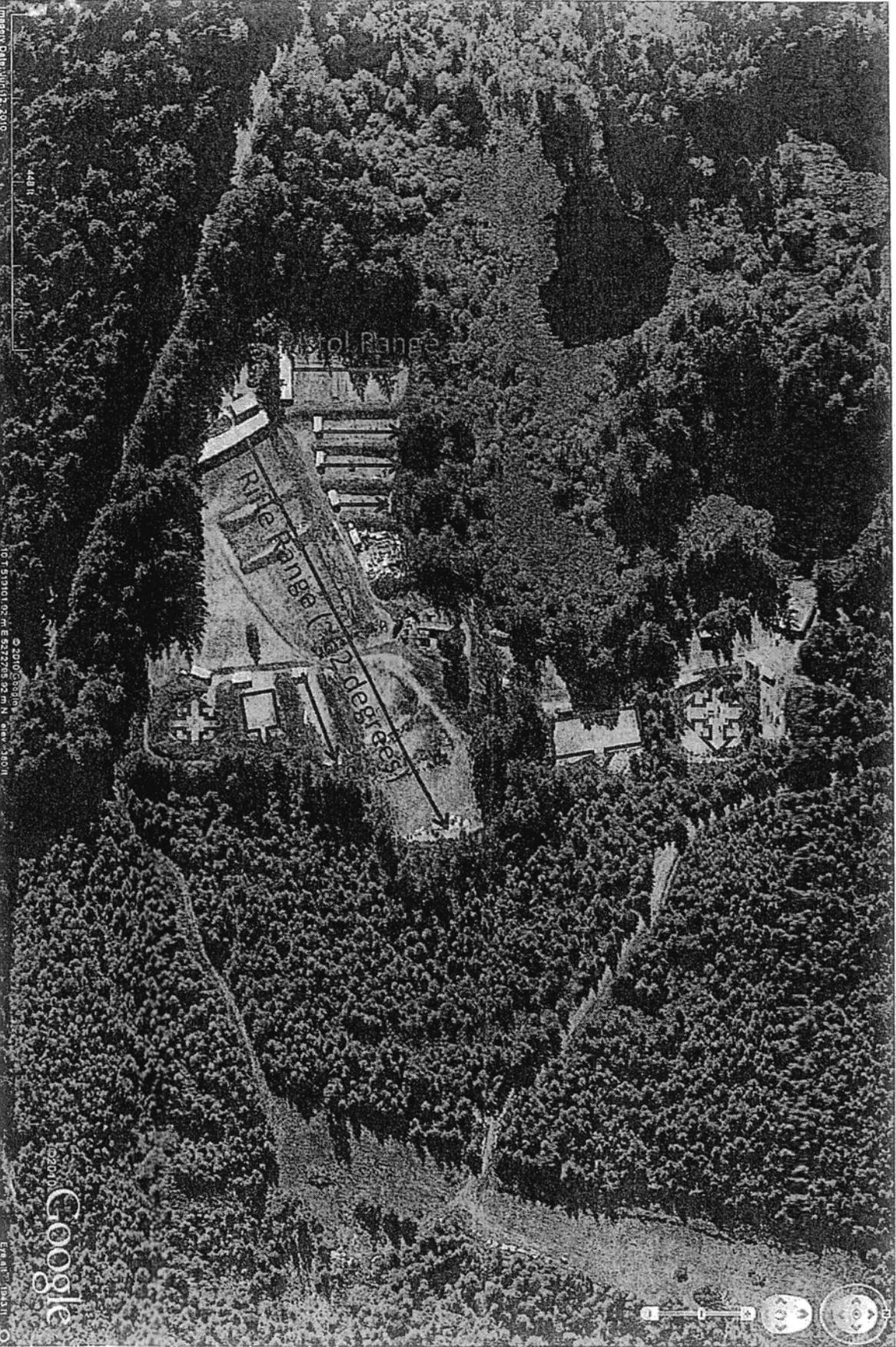
Appendix 14

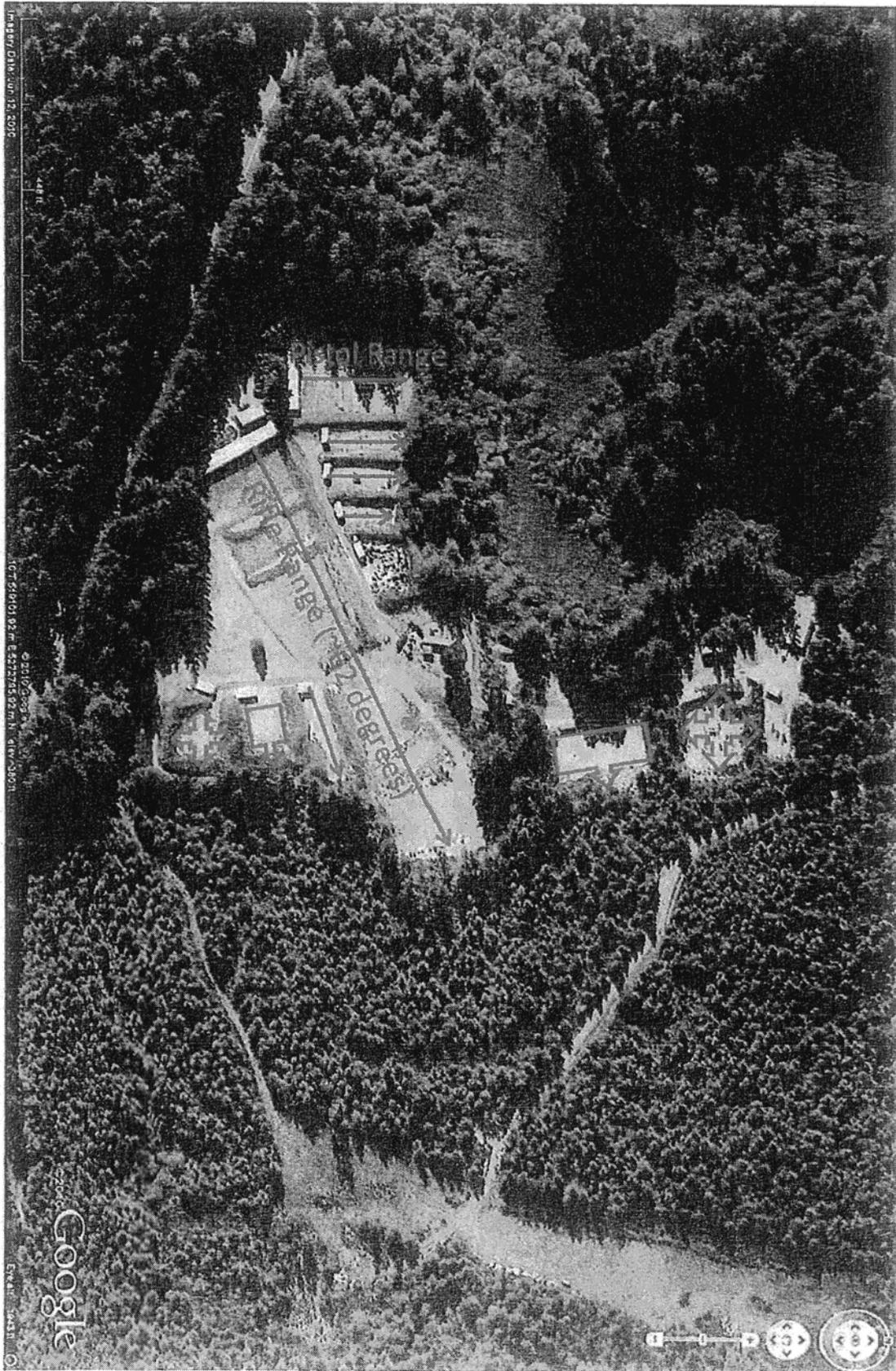
**Trial Exhibit 133: Google Earth photo
with shooting directions overlaid on
Club's shooting areas**

44



KRRC

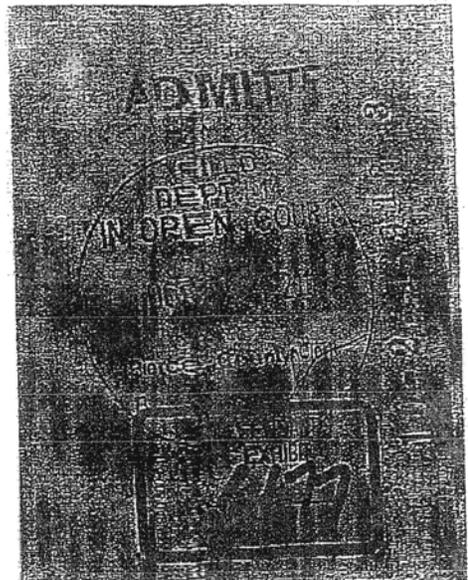




KRRC

Appendix 15

**Trial Exhibit 477: May 11, 2009 Kitsap
County Board of Commissioners meeting
agenda and unsigned resolution**





Meeting Date: May 11, 2009
 Agenda Item No:

<u>Kitsap County Board of Commissioners</u>			
Department: Parks & Recreation Staff Contact: Matthew Keough, extension 5357 Title: Proposed Disposal of Newly Acquired Special Use Lease Land			
Recommended Action: Authorize, by resolution, the sale of a 72-acre special use leased parcel, to be acquired by Kitsap County through the proposed Newberry Hill Land Exchange with the State Department of Natural Resources (DNR).			
Summary:	DNR proposes to exchange acreage within Central Kitsap that will result in the assignment, to Kitsap County, of an existing special-use lease for the Kitsap Rifle and Revolver Club (KRRC). Instead of retaining this special-use parcel under an-going lease to the KRRC, the County would sell the parcel with conditions that would secure the operations of a non-profit shooting range that is open to the public and that is in a position to steward public funds for firearm recreation. Because the property was appraised at less than \$2,500, the sale will be accomplished through a direct sale of property. The sale of this parcel is scheduled to occur simultaneously with the proposed Newberry Hill Land Exchange through a single Escrow session in early June, 2009. This resolution would enable the Chair of the County Board of Commissioners to sign an Assignment and Conveyance Agreement for this purpose. The conveyance of the property to the KRRC will include several covenants, conditions and restrictions, including, but not limited to, restriction on the use of the property as a non-profit shooting range, indemnifications by KRRC, retention of certain easements, and various requirements regarding environmental matters.		
Attachment:	Resolution (attached) Assignment and Conveyance Agreement (under development)		
<u>Fiscal Impact</u>			
Expenditure required for this specific action:	0		
Total cost including all related costs:	0		
Related Revenue:	0		
Cost Savings:	0		
Total Fiscal Impact:	0		
Source of Funds:	N/A		
<u>Fiscal Impact (DAS) Review</u>			
<u>Departmental Coordination</u>			
Department	Representative	Recommendation/Comments	
Prosecutor's Office	Kevin Howell		
Risk Management	Mark Abernathy		
<u>Contract Information</u>			
Contract Number	Date Original Contract or	Amount of Original Contract	Total Amount of Amended Contract

KITSAP COUNTY RESOLUTION NO. _____
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 (KRRC) 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 _____ day of _____, 2009.

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

CHARLOTTE GARRIDO, Chair

ATTEST:

STEVE BAUER, Commissioner

Opal Robertson
Clerk of the Board

JOSH BROWN, Commissioner

Appendix 16

**Trial Exhibit 478: May 13, 2009 meeting minutes
of Kitsap County Board of Commissioners'
Management Team**

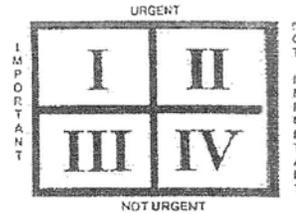
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FILED
DEPT. 14
IN OPEN COURT
OCT 24 2011
Pierce County Clerk
BY: [Signature] DEPUTY

DEFENDANT'S
EXHIBIT
478

10-31621-3-01

TASK	RELATIONSHIP
PRES	Speak for Yourself
Ask Questions	Listen Actively
Summarize	Gatekeeping
Polling	Compliment & Agree
80/20 Principle	Humor
Build Consensus	Process Check



What are we asking for?
 Why is it important?
 Is it realistic?

MAY 13th, 2009 MINUTES
 BOARD OF COMMISSIONERS – MANAGEMENT TEAM
 WORK/STUDY SESSION
 8:30 AM

Attending: Charlotte Garrido, Chair; Steve Bauer, Commissioner, Josh Brown, Commissioner; Nancy Buonanno Grennan, County Administrator; Larry Keeton, Director Community Development; Dennis Oost; Katrina Knutson; Scott Diener; Cindy Read, Community Development; Shelley Kneip, Prosecutor's Office; Eric Baker, Commissioners; Angie Silva, Commissioners; Chip Faver, Director Parks & Recreation; Matthew Keough, Parks & Recreation; Jeff Rowe-Hornbaker, Community Development; Sue Schroeder, Olympic Property Group; Tom McBride, McBride Public Affairs; Burt Furuta, Director Personnel and Human Services; Sandra Staples-Bortner, Erik Pedersen, Great Peninsula Conservancy; Vivian Henderson, KAPO; Alison O'Sullivan, Melody Allen, Suquamish Tribe; Chris Dunagan, Kitsap Sun; Gene Bullock, Kitsap Audubon Society; Tom Nevins; Tom Donnelly, KCRP; Linda Berry-Maraist, North Kitsap Trails Association; Lou Foritano, Planning Commission; Ryan Sandstrom, Alpine Evergreen David Overton, Overton Associates; Tara Lemm, NK Herald; Daria Nelson; Rod Reid, Alpine Evergreen; Michael Yadrick, GPC; Stephanie Pinard, Budget; Dave Tucker, Public Works; Bryn Grimley, Kitsap Sun; Terri Lyman, Parks and Recreation

Anticipated Time

1. APPROVE MINUTES OF 04-29-09 8:30 – 8:35

Minutes were approved at submitted.

2. RURAL WOODED INCENTIVE PROGRAM – KATRINA KNUTSON (pdf) 8:35 – 10:35

Shelley gave historical background information and talked about the criteria used for designating various classifications.

Larry talked about the definition of "rural character" – need to focus on what it looks like today and what it will look like in 20, 30, 40 years in the future and how the county can provide local government services. We need to look at what other uses can be in rural areas – what other industries would be appropriate.

Board's Guiding Values for RWIP:

- Fiscal Responsibility and Sustainability
- Inter-jurisdictional coordination
- Economy, Environment, Community
- Preservation of Rural Character
- Compliance with the Washington State Growth Management Act
- Open Space

The Board's vision for Kitsap: Along with the Kitsap County Vision Statement, they would like Kitsap County to be known for vibrant, healthy waterfront cities with a strong rural character.

Questions-Forest:

- 1) Is a 100 year old Douglas Fir more beneficial to the environment than a 50 year old Fir?
- 2) What is the County's ability to affect timber management practices in open space, i.e., could the County specify selective logging vs. clear cuts?
- 3) How significant is forestry to the Kitsap County economy? The binder indicates that there are only 20+ forestry related permanent jobs in the County. The comprehensive plan does not designate any commercially viable forest lands in the County.
- 4) How does a one-time infusion of funds for the property owner allow them to maintain active forestry if forestry is not economically viable?
- 5) Is preservation of a mature forest more important and beneficial than on-going forestry resulting in less mature forests?
- 6) What are the criteria in determining if land is prime for forestry?
- 7) What criteria were used when designating current Forest Resource Lands in Kitsap County?

Questions - Wildlife/Environment

- 1) Given the fact that the majority of 20 acre parcels are largely left in forest use, how significant a difference is there on wildlife/aquifer recharge/groundwater/stormwater from 20 acre parcels compared to larger tracts?
- 2) What are the impacts of these rural subdivisions on aquifer recharge compared to 20 acre home sites?
- 3) Are we better off with 20 acre home sites?

Questions - Fiscal

- 1) What are the public service costs associated with an 800 lot subdivision adjacent to Port Gamble compared to the revenues generated. Include transit, fire service, school district costs, law enforcement, transportation and others as appropriate. Would the governmental units prefer to service that population at Port Gamble or in existing cities and urban growth areas.
- 2) How does a one-time infusion of funds for the property owner allow them to maintain active forestry if forestry is not economically viable?
- 3) How do we provide local government services to the rural areas under a constrained County budget? To what degree would urban areas be subsidizing clusters?
- 4) How do we connect large clusters to roads that we can not afford?
- 5) What are the incremental costs associated with the density increase proposed by RWIP?

Questions-Growth Management

- 1) What are the historical rural businesses in Kitsap County?
- 2) What are the historical rural uses in Kitsap County?
- 3) What would be the impact adding 8,000 additional homes to those already permitted under current zoning and previously vested on the urban/rural population targets adopted in the County Planning Policies?
- 4) The County apparently did some polling or community meeting/polling affecting this topic in 2000. What would it cost to update that effort now?
- 5) Should RWIP have a different set of criteria for different areas of the County?
- 6) What are the benefits and downsides of clustering?
- 7) Are there other jurisdictions that have a thriving rural clustering program? What do their evaluations show?
- 8) What would RWIP at full build-out look like?

Questions - Trails

- 1) OPG has said that it intends to get out of Kitsap County. What happens when OPG sells to another owner who may not share OPG values and commitments?
- 2) Where would funding for maintenance of a trail system come from?
- 3) Are there other alternatives to achieving public access/trails?
- 4) The North Kitsap Trails Association has suggested creating a Metropolitan Parks District to fund trail maintenance. Could an MPD be created to purchase trail easements as well as maintain trails?
- 5) Given the popularity of trails, should Kitsap County consider a bond measure to fund trail acquisition?
- 6) What if the Open Space were turned over to a non-profit trails group for stewardship? Similar organizations apparently exist on the East Coast for preservation of timber lands and the option is under consideration in Washington as well. Could this group raise enough from selective logging to support trail and forest management? Explore other success stories.

DCD Staff Responsibilities:

- 1) Provide recommendation regarding the current moratorium.
- 2) Provide a comparison of the 20-acre parcels vs clustering. Clustering has benefits, are there any drawbacks?
- 3) Provide any available fiscal information.
- 4) Provide forestry/wildlife information.

(Synopsis provided by Katrina Knutsen)

Steve asked how does RWIP program sync with all requirements of GMA?

FIVE MINUTE BREAK

10:35 - 10:40

3. LEGISLATIVE BRIEFING – TOM MCBRIDE (ndf)

10:40 - 11:00

- Tom briefly summarized Washington state 2009 legislative highlights.
- Suggested we settle on our legislative objectives this summer.

- Tom would like to focus on: Targeted meetings with our delegation and thank you letters to those people; meetings with Leadership in both House and Senate and with legislators who chaired the issues of particular interest to us.

Josh told Tom that he has done a great job this year and heard nothing but positive things from legislators and other counties. Charlotte and Steve agreed.

Tom said he is interested in what worked best and what didn't....weekly calls etc. He suggested that report for next year be shorter. He encouraged the board to give him their constructive thoughts and ideas. Steve said with the combination of work Tom is doing, staff support and Board willing to get involved, this was a model program this year. The Board asked if there are things Tom needs from them to allow him to be more effective and make better use of his time. Josh said we need to figure out how we can continue to work more closely with our legislators. They agreed the priority next fall is to find more revenue.

The Board and Nancy commented that Tom's reports have been clear and concise and he has done an outstanding job this year and thanked him for all his hard work. Tom said it is a privilege and honor to work for Kitsap County.

4. DEVELOPMENT CODE FOR STORMWATER – DAVE TUCKER (pdf) 11:40 – 12:40

Dave talked about title 12 and said his recommendation is that the Board direct staff to schedule a public hearing for an ordinance to implement title 12 changes. The permit covers actions related to Stormwater in 6 categories:

- ✓ Public Involvement
- ✓ Public Education
- ✓ Illicit Discharge Detection and Elimination
- ✓ Construction Stormwater Control
- ✓ Post Construction Stormwater Control
- ✓ Good Housekeeping for Municipal Operations

Steve asked they spend a minute to understand what's going to be different on the ground when we do this and does this end up looking significantly different than what we've done in the past. Dave discussed the difference and what it means.

In January 2009 the Board agreed with the staff recommendations to base new development regulations pertaining to Stormwater on these 8 focus areas:

- ✓ Treat water as a resource
- ✓ Preserve Groundwater Recharge
- ✓ Reduce Pollutant Loading of Runoff
- ✓ Preserve Low Energy Flow Regime
- ✓ Use Stormwater Pollution Prevention Plans
- ✓ Adaptively Manage Technical Stormwater Management Tools
- ✓ Dual Use of Land
- ✓ Maintain Facility Function

Dave state is proposing have to take action by late June.

10 MINUTE BREAK

5. WAAGA WAY DECISION – ERIC BAKER/ANGIE SILVA

12:50 – 1:20

Eric Baker – continuation of public hearing on Waaga way connector roads and Silverdale Design Standards to the Waaga Way Town Center. Points Discussed:

- Steve said it was interesting Monday night there was not a lot of attendance from people invested in this.
- Charlotte liked seeing topographical map.
- Josh felt there weren't enough true standards.
- Put design review committee in place.
- On pitched roof requirement we need to decide what we are designing for.
- Steve asked if we are talking about roof elevations or façade – should make that clear, especially to those writing the standards.

Josh moved adoption of ordinance in many portions of the Silverdale Design Standards in Kitsap County Code Title 17 consolidating the use tables relating to the Waaga Way Town Center. All 3 in favor, motion carried.

- Steve proposed motion to include façade as an option in areas where roof elevation is mentioned. Approved unanimously.
- Discussed minimum parking required by code. Eric said it is 5 parking space per 1000 sq ft of general retail space.
- Discussed bike lanes on connector roads; having on both sides would make more usable.
- Internal pedestrian foot pathways to include bike lanes was talked about last meeting. – would like to revisit that. Need to rethink if that is really necessary.
- Discussed compatibility with existing uses of surrounding land.
- Talked about connector road off Old Frontier. Board asked Eric to talk about traffic on surrounding roads.

The Board would like a more time to discuss the issues of connectivity between the connector road and Old Frontier Road. As the moratorium expires tomorrow, there was discussion about extending it another week. After legal review, staff recommended adopting the connector road without a connection to Old Frontier at this time. Charlotte Moved to adopt the ordinance with the change to remove the paragraph on page 3.

Josh moved to adopt section 10.4 as revised. Change beginning the third full paragraph: Delete 4th sentence to end; beginning at “Depending on the development...” The connection between the cul de sac and Old Frontier Road (Phase two) shall be determined through a future planning process.” All in favor – motioned carried.

Staff was provide additional information regarding the connector road connection to Old Frontier and return to the Board in the near future.

6. BOARD DISCUSSION

1:20 - 2:00

Discussed monthly lunch with Elected and decided to return to the 11:00 am meeting with one Commissioner and then a brown bag lunch in Chambers with all Commissioners.

Made decision on Employees of the Month for May and June:

- Tim Perez from Risk Management for May
- Chuck Smiley from Public Works Stormwater for June

Matthew Keough talked about the land exchange with DNR. Josh moved for approval. All 3 in favor – Motioned carried. This will be ratified at the June 8, 2009 Public Meeting.

Nancy presented a resolution allowing the Kingston Village Green Foundation to perform the design, construction, maintenance and operation of the Kingston Village Green. Steve gave brief background. Josh moved the Board approve the resolution. Steve second; all 3 in favor; Approved. Josh suggested that the group give a presentation to show all the work they have been doing at the June 8, 2009 meeting and the Board will ratify the resolution at that time.

Board recessed into executive session from 3:20 – 4:00 pm to discuss potential litigation pursuant to RCW 42.30.110 (1) (i). No action taken.

Respectfully Submitted by Deanna Erstad

Appendix 17

**Trial Exhibit 552: May 11 and 13, 2009 meeting
minutes of Kitsap County Board of
Commissioners**

ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 27 2011
Pierce County Clerk
By: [Signature]
DEPUTY

DEFENDANT'S
EXHIBIT
552

10-2-12916-3



MINUTES

KITSAP COUNTY BOARD OF COMMISSIONERS May 11 & 13, 2009 – 7:00 pm

The Board of Commissioners met on the above-stated date. Present were Chair Charlotte Garrido, Commissioner Steve Bauer, Commissioner Josh Brown, County Administrator Nancy Buonanno Grennan and Clerk of the Board Opal Robertson. *(The Board of Commissioners' public meetings is audio and video taped. By signing in or speaking at this meeting, you grant your permission to be taped. Minutes of this public meeting are posted on Kitsap County's webpage).*

7:00 PM) Meeting Called to Order with Pledge of Allegiance.

#1) **Resolution** proclaiming the third week in May as *National Public Works Week* in Kitsap County. **Staff Contact:** Kristina Nelson, 337-4891.

Discussion is held, comments received and hearing no objection, a motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 081-2009* proclaiming the third week in May as *National Public Works Week* in Kitsap County. Motion carries unanimously.

#2) **Resolution** declaring May 21, 2009 as *Older Americans Day* in Kitsap County. **Staff Contact:** Barrett Johnson, 337-7068.

Discussion is held, comments received and hearing no objection, a motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 082-2009* declaring May 21, 2009 as *Older Americans Day* in Kitsap County. Motion carries unanimously.

#3) WA State Department of Transportation Ferries Presentation. **Staff Contact:** Nancy Grennan, 337-4403.

David Moseley, WA State Department of Transportation Ferries Division, gave a brief overview of the last legislative session regarding ferry issues. He said some very important progress was made: 1) funding was received to maintain all current levels of service on all routes; 2) funding received to build two additional new smaller-sized vessels and a path developed to build larger vessels in the future; 3) received clear direction on some operation improvements; and 4) obtained no sustainable funding source for the capital

program. Moseley believes the biggest challenge continues to be working together as local elected officials, state governments, customers of service and people in the communities is to work towards a sustainable funding source for the capital program.

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD ON REGULAR BUSINESS AGENDA, INCLUDING CONSENT AGENDA & ANY GENERAL ISSUES:

TOTAL TIME LIMITED TO 15 MINUTES

(Please limit individual comments to *3 minutes*. Written comments may also be submitted to the Board, if this timeframe is insufficient.) Comments on items slated for public hearing will be deferred until the hearing.

1. Wade Larson addresses the Board with concerns about the Newberry Hill Heritage Park land swap and potential gun club sale.
2. Lt. Col. Allen Calvary addresses the Board with concerns about the second amendment and believes Kitsap County citizens are losing their rights for no reason. He asked the Board to declare sovereignty in the county in order for individuals to have their second amendment rights. He has concerns about gun control in Kitsap County.
3. Marcus Carter, Kitsap Rifle and Revolver Club, spoke in support of the Newberry Hill/DNR land swap and asked the Board to endorse the land trade and to adopt the Resolution assigning and conveying real estate to Kitsap Rifle and Revolver Club.
4. Brad Smith, Kitsap Rifle and Revolver Club, spoke in support of the Resolution assigning and conveying real estate to Kitsap Rifle and Revolver Club. He thanked the Board for its diligence in this matter.
5. Scott Holman, Kitsap Rifle and Revolver Club, addresses the Board with concerns about environmental issues on the Newberry Hill/DNR land swap property.

CONSENT ITEMS AND OTHER BUSINESS:

Note: Unless otherwise noted, all expenditures for the remaining agenda items have been included in the Annual Budget.

- A. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Consent Agenda. Motion carries unanimously.

1) **MISCELLANEOUS ITEMS:**

- B. Approve Minutes of April 27, May 4, 2009.
- C. Approve Warrant Nos. 3411607 – 3412282 in the amount of \$4,034,586.95.
- D. Approve Payroll Warrant Nos.
- E. Refer to the Prosecutor's Office and Risk Manager: 1) Claim for Damages filed by C. Jarrell; and 2) Complaint for Damages/Demand for Jury Trial and Summons filed by J. Anderson, X. Anderson, J. Anderson and S. Anderson.

2) **DEPARTMENT OF PERSONNEL & HUMAN SERVICES:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with the **Peninsula Services (KC-251-07B)** decreasing the contract amount by \$68,000 for services provided to adults with developmental disabilities. **Fiscal Impact:** -\$68,000 is 100% grant funded by DSHS. **Staff Contact:** Kelly Oneal, 337-4624. Motion carries unanimously.
- B. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with **WA State Employment Security Dept (KC-247-07B)** decreasing the contract amount by \$10,000 for services provided to adults with developmental disabilities. **Fiscal Impact:** \$10,000 is 100% grant funded by DSHS. **Staff Contact:** Kelly Oneal, 337-4624. Motion carries unanimously.
- C. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with the **Olympic Consortium & WA State Dept of Community, Trade and Economic Development (KC-246-08B)** shifting \$20,000 in Supported Funds to the Community Jobs program providing job services to eligible participants for the period of July 1, 2009 – June 30, 2009. **Fiscal Impact:** 100% grant funded by TANF. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- D. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the revenue contract with the **Olympic Consortium & WA State Employment Security Dept (KC-171-09)** providing revenue for employment and training operations to 200 eligible youth in Kitsap, Clallam and Jefferson counties. **Fiscal Impact:** \$870,850 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- E. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the revenue contract with the **Olympic Consortium & WA State Employment Security Dept Consortium & WA State Employment Security Dept (KC-174-09)** providing revenue for administrative functions relating to the Workforce Investment Act programs in Kitsap, Clallam and Jefferson counties for the period of February 17, 2009 – June 30, 2010. **Fiscal Impact:** \$222,147 is

100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.

- F. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the revenue contract with the **Olympic Consortium & WA State Employment Security Dept Consortium & WA State Employment Security Dept (KC-173-09)** providing revenue for employment and training operations to 128 eligible dislocated workers in Kitsap, Clallam and Jefferson counties for the period of February 17, 2009 – June 30, 2010. **Fiscal Impact:** \$743,236 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- G. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 083-2009* authorizing classification changes in the Department of Parks and Recreation and the County Administrator /Commissioners Office. **Fiscal Impact:** Approx \$59,135 including salary and associated benefits –included in adopted 2009 budget, General Fund. **Staff Contact:** Lynn Cole, 337-3536. Motion carries unanimously.
- H. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with **Olympic Consortium & Olympic Community Action Programs (KC-315-08B)** shifting \$20,000 in Supported Funds to the Community Jobs program to provide job services to eligible participants in Clallam and Jefferson Counties. **Fiscal Impact:** 100% grant funded. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- I. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the revenue contract with **Olympic Consortium & WA State Employment Security Dept Consortium & WA State Employment Security Dept (KC-172-09)** providing revenue for employment and training operations to 128 eligible adults in Kitsap, Clallam and Jefferson counties for the period of February 17, 2009 – June 30, 2010. **Fiscal Impact:** \$385,224 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- J. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract with the **Dispute Resolution Center (KC-139-09)** to provide a region wide Ombudsman Program and continue a Federal Block Grant Program to improve parent advocacy within the mental health system throughout the three-county PSRN. **Fiscal Impact:** \$83,155 is 100% grant funded by DSHS. **Staff Contact:** Anders Edgerton, 337-4886. Motion carries unanimously.
- K. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the revenue contract amendment with **WA State Department of Social & Health Services (KC-364-07E)** removing the targets for performance improvement that were included in Section 6 Quality Care — public

mental health services in Kitsap, Jefferson and Clallam Counties. **Fiscal Impact:** \$195,084 is 100% grant funded by DSHS. **Staff Contact:** Anders Edgerton, 337-4886. Motion carries unanimously.

- L. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Collective Bargaining Agreement Memorandum of Understanding with the **Operating Engineers, Local 302; Teamsters Local 589; IAM & AM District 160, Local 282; and Laborers Union, Local 252; collectively known as the "Council", Public Works Roads Employee Union (KC-257-08C)** carrying forward compensatory time and 2008 floating holiday due to specified employees working during November/December 2008 due to severe road conditions. **Staff Contact:** Fernando Conill, 337-4484. Motion carries unanimously.
- M. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Collective Bargaining Agreement amendment with **Teamsters Local 589, Parks & Recreation (KC-140-07F)** establishing an Event Assistant Classification and Wage Grade. **Staff Contact:** Fernando Conill, 337-4484. Motion carries unanimously.

3) **DEPARTMENT OF PUBLIC WORKS:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts **Resolution No. 084-2009*** implementing the *Waste Wise 2009* activities. **Staff Contact:** Vicki Bushnell, 337-4678. Motion carries unanimously.
- B. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts **Resolution No. 085-2009*** authorizing the transfer of county property (Lake Flora Road area) between the Departments of Public Works and Parks and Recreation and located in South Kitsap, Commissioner Dist #2. **Staff Contact:** Robert McGinley, 337-3924. Motion carries unanimously.
- C. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with **Total Reclaim, Inc (KC-230-06A)** for white goods collection, transportation, recycling and disposal services. **Fiscal Impact:** \$195,000 – Solid Waste/Moderate Risk. **Staff Contact:** Pat Campbell, 337-4626. Motion carries unanimously.

4) **DEPARTMENT OF PARKS & RECREATION:**

- A. Discussion is held, comments received and a **motion** is made by Commissioner Brown and seconded by the Commissioner Bauer that the Board **continues this matter to May 13, 2009.** Contract with the **Department of Natural Resources (KC-175-09)** approving a land exchange with the State Department of Natural Resources for property adjacent to the existing Newberry Hill Heritage Park in Central Kitsap, Commissioner District #3. **Staff Contact:** Matt Keough, 337 -

5357.

- B. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract with the **Estate of Raymond Tallman (KC179-09)** for purchase of the remaining piece of the Olalla Boat Launch property in South Kitsap, Commissioner Dist #2. **Staff Contact:** Matt Keough, 337-5357. Motion carries unanimously.
- C. Discussion is held, comments received and a **motion** is made by Commissioner Garrido and seconded by Commissioner Bauer that the Board adopts Resolution No. 085-2009* authorizing the Chair of the Board of Commissioners to sign the closing documents for the Olalla Boat Launch. **Staff Contact:** Matt Keough, 337-5357. Motion carries unanimously.
- D. Discussion is held, comments received and a **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution 086-2009* assigning and conveying real estate to Kitsap Rifle and Revolver Club. **Staff Contact:** Matt Keough, 337-5357. Motion carries unanimously.
- 5) **DEPARTMENT OF COMMUNITY DEVELOPMENT:**
- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Amended Binding Site Plan approval for Graben Gewinn in North Kitsap, Commissioner Dist #1. **Staff Contact:** Jim Barnard, 337-4336. Motion carries unanimously.
- B. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Amended Binding Site Plan approval for Twelve Trees (fka North Kitsap Business Community) in North Kitsap, Commissioner Dist #1. **Staff Contact:** Jim Barnard, 337-4336. Motion carries unanimously.
- C. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with **Herrera Environmental Consultants (KC-536-05C)** to complete the design of Chico Creek Restoration Phase 2 from 60 to 100% and Phase 3 to 30%. **Fiscal Impact:** \$53,506 – Salmon Recovery Funding Board. **Staff Contact:** Susan Donohue, 337-4557. Motion carries unanimously.
- D. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 088-2009* clarifying Policy 11-Proposed Fiscal Policy for Fees, Community Development and amending Resolution No. 014-2008. **Staff Contact:** Tina Hoiguin, 337-4494. Motion carries unanimously.
- E. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the interlocal agreement with the **Kitsap County Conservation District (KC-148-09)** for Chico Creek Restoration Projects Phase 1.

2, and 3 and other like projects that may involve restoration or mitigation in which Kitsap County is the sponsor. **Staff Contact:** Susan Donohue, 337-4557. **Motion** carries unanimously.

- F. Discussion is held, comments received and a **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract amendment with WA State Recreation & Conservation (KC-490-04B) for remainder of the Salmon Recovery Project (Carpenter Creek Estuary Restoration). **Fiscal Impact:** \$200,000 – Salmon Recovery Funding Board. **Staff Contact:** Patty Chamas, 337-4558. **Motion** carries unanimously.

6) **AUDITOR'S OFFICE:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution 089-2009* adjusting the salary paid to Election Board Judges and Inspectors to the minimum amount required by state law and adjusts the salary paid to Delivery Support Workers to the same level as ballot processors. **Fiscal Impact:** Approx \$270 in annual savings - salaries approved in 2009 budget. **Staff Contact:** Dolores Gilmore, 337-7130. **Motion** carries unanimously.

7) **DEPARTMENT OF ADMINISTRATIVE SERVICES:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract with Bremerton Kitsap Access Television (KC-124-09) providing government access television services for the period of January 1, 2009 through December 31, 2011. **Fiscal Impact:** \$42,000 – GA&O Fund. **Staff Contact:** Shawn Gabriel, 337-4504. **Motion** carries unanimously.

8) **DEPARTMENT OF CENTRAL COMMUNICATIONS:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the contract with Kitsap Transit Communications (KC-117-09) for rental space on the CENCOM Gold Mountain Tower site for the period of May 2008 – June 2017. **Fiscal Impact:** \$195,930 in revenue – Kitsap Transit Communications. **Staff Contact:** Richard Kirton, 307-5800. **Motion** carries unanimously.

9) **DEPARTMENT OF EMERGENCY MANAGEMENT:**

- A. A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board approves the Mutual Aid agreement with King, Snohomish and Pierce Counties (KC-152-09) for state wide participation in mutual aid during times of disasters. **Staff Contact:** Phyllis Mann, 307-5871. **Motion** carries unanimously.

10) **COMMISSIONERS OFFICE/COUNTY ADMINISTRATOR:**

- A. Discussion is held and a motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 090-2009* appointing **Loretta Payne** (Dist #3) to the Surface and Stormwater Management Program Advisory Committee. **Staff Contact:** Jan Koske, 337-4650. Motion carries unanimously.
- B. Discussion is held and a motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts Resolution No. 091-2009* supporting sustainable efforts in Kitsap County. **Staff Contact:** Dean Boening, 337-5784. Motion carries unanimously.

PUBLIC HEARINGS:

**** Please note that start times are estimates and may be impacted by the amount of public input. Unless otherwise announced by the Chair of the Board, public comments will be 3 minutes per person.**

- A) Public hearing to consider adopting a **Resolution** granting the WA State Department of Transportation's (WSDOT) request for a Variance from the County's Noise Ordinance as authorized by Kitsap County Code 10.28.090, to perform nighttime road construction from 7:00 pm – 6:00 am on Sedgwick Road (SR 160) as authorized by KCC 10.28.090 that will result in noise levels in excess of the maximum levels allowable over the entire course of the project that is expected to last through late October 2009. **Staff Contact:** Larry Keeton, 337-5683.
- Discussion is held, comments called for and hearing no objection, a **motion is** made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts **Resolution No. 092-2009*** granting the WA State Department of Transportation's (WSDOT) request for a Variance from the County's Noise Ordinance as authorized by Kitsap County Code 10.28.090, to perform nighttime road construction from 7:00 pm – 6:00 am on Sedgwick Road (SR 160) as authorized by KCC 10.28.090 that will result in noise levels in excess of the maximum levels allowable over the entire course of the project that is expected to last through late October 2009. Motion carries unanimously.
- B) Public hearing to consider a **Resolution** of intent to sell county property consisting of 72 acres located at 4900 Seabeck Hwy southeast of the intersection of Seabeck Hwy and Holly Road in Central Kitsap, Commissioner Dist. #3. **Staff Contact:** Matt Keough, 337-5357. **(Note: At the request of staff, this item has been pulled from the Agenda)**
- C) Public hearing to consider enacting **Ordinances** adopting amendments to the

Silverdale Design Standards and Kitsap County Code Title 17 (Zoning) as it relates to the Waaga Way Town Center. **Staff Contact:** Eric Baker, 337-4495.

Eric Baker, Special Projects, gave a brief update on the proposed ordinance stating the Waaga Way Town Center Design Standards that are amendments to the Silverdale Design Standards that were adopted previously and amended last year. He said this project has been going on for approximately 18 months and staff has engaged a stake holder group to discuss three main topics: the location of the proposed connector roads as associated with Waaga Way Extension Road, the design of the roadways and design standards for the area.

1. Jerry Aldrich – yields his time to Tom Wells.
2. Tom Wells said he and Jerry Aldrich are co-managers of Homestead and own 15 acres northwest of the State Route 3 Interchange. He said there have been improvements but he still has concerns about the connector roads, site development standards, vehicular circulation and parking, pedestrian infrastructure and the design review committee. He asks that prior to May 15, 2009, the Board adopt the Design Guidelines as amended (including his revisions) and repeal Ordinance No. 417 relating to the Waaga Way Moratorium. He said if the Board could not do this by May 15, 2009 then prior to this date releases the southern area from said moratorium.
3. Bill Mason believes the Waaga Way Extension Road running east/west to Old Frontier Road is not necessary. He said the Towne Center already has an access road (installation in progress) to Old Frontier and Clear Creek Roads. He said to create non-essential roads would be a crime and an added expense. He said the county would be creating a “dark cloud” over his property for potential buyers and family does not deserve this kind of treatment.
4. Eric Koch said he believes the Design Standards are moving in the right direction but feels strongly that additional work is necessary to make the standards be-crafted into a tool that solves the various challenges of this unique area of Silverdale. Koch addresses his concerns about design intent, connector road design, site development standards, architectural and building design standards, parking standards and pedestrian infrastructure standards.
5. Robert Galloway addresses the Board with concerns about useable land, development cost and the impact of the design standards. He believes the design standards need more work and this area deserves more attention. He said location of the connector road should be driven by use and not arbitrarily located. He believes the connector road and utility infrastructure will be extremely costly. He said staff did not “point out” was that the road design does not consider the slope areas that are needed provide for those roads. He said there are approximately 170 property owners that are impacted and achieving agreement between these property owners will be nearly impossible.

6. Steve Ruggiero believes there is more to be done. He said he is willing to take the risk and invest the capital to improve the county and generate revenue which he has show willingness and ability to do on numerous Kitsap County developments. He asks the county for a set of standards flexible enough to apply fairly to both individual and assembled development with a clear understanding of how the means to achieve the future development can be achieved in this difficult economy. He said included with these standards should be the flexibility to take into consideration existing property characteristics, a common sense application of community requirements and the financial realities of the give and take necessary for development to proceed.
7. Sam Rosenwald said he concurs with comments made by Ed Koch, Bob Galloway and Steve Ruggiero. He said he has attended countless hearings on this matter, made great progress in terms of enumerating and articulating a vision for the best that can be developed here. He believes the process is almost there but not quite. He said there is need for more work. He said there is one participant who hasn't been here or participated and that is the Central Kitsap School District.
8. Susan Bird said she does not want Phase II of the connector road to Westgate to be included as part of the Silverdale Design Standards of the Waaga Way Town Center. She said this location will not be good for the environment now or in the future. She said the canyon is too close, it all flows towards Clear Creek and she does want the pollution flowing into the creek. She asked the Board to make changes to remove Phase II connector road to Westgate and have the north connector road "dead end" just north of the development or end at a cul-de-sac.
9. Jim Sommerhauser said he supports the idea of design guidelines and making them flexible while still holding a vision for the area that the guidelines would support. He said the design review committee is somewhat of a new idea and he supports the principle but has some concerns such as will there be guidelines, how will their discussions relative to changes to the guidelines be recorded and how will consistency be maintained from one variation on a property to the next variation on the adjoining or three properties down the road? He asked how enforceable would their decisions and recommendations be?

Eric Baker explains the concept of the design review committee.

A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board will receive written comments on this matter through the close of business on May 12, 2009 with Board deliberations on May 13, 2009 during work study session. Motion carries unanimously.

11) **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD:**

(Please limit comments to 3 minutes. Written comments may also be submitted to the Board if this timeframe is insufficient.)

1. Wade Larson addresses the Board with concerns about the Newberry Hill/DNR land

swap. He has concerns about wetland damage and pollutions with the Kitsap Rifle and Revolver maintaining the casings on their land.

2. Dan Daniels addresses the Board with concerns about some of the environmental issues mentioned into tonight's meeting regarding the Kitsap Rifle and Revolver Club.
3. Jim Sommerhauser addresses the Board with concerns about the Resolution adopted by the Board in Agenda item 4.D.
4. Regina Taylor, Attorney for the Kitsap Rifle and Revolver Club, wanted to insure that her written comments would be reviewed by the Board.

12) COUNTY ADMINISTRATOR'S COMMENTS:

13) BOARD OF COMMISSIONER'S COMMENTS:

Public meeting adjourned at 9:11 p.m.

May 13, 2009 (Work Study Session):

- A) Board deliberations to consider enacting **Ordinances** adopting amendments to the Silverdale Design Standards and Kitsap County Code Title 17 (Zoning) as it relates to the Waaga Way Town Center. **Staff Contact:** Eric Baker, 337-4495.

Eric Baker, Special Projects, gave a brief update on the proposed Ordinances and the process before the Board.

Discussion is held regarding the number of people invested in this project, the elements of the design standards, design review committee, parking standards, common use of parking, the moratorium that is in place, pitched roof element, 2006 zoning, traffic circulation, roof elevation v. façade elevation, and the need for clarity in the design standards.

A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopt an Ordinance amending portions of the Silverdale Design Standards and Kitsap County Code Title 17 Consolidated Use Table relating to the Waaga Way Town Center.

A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board amends Section 17.381.040 B & C deleting...*Automobile, recreational vehicle or boat sales* in the RC zones. Motion carries unanimously.

A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board amends Section 10.5.2 - E.F.G. Architectural and Building Design and

Height, to read: E) Buildings less than or equal to 10,000 square feet in size shall include a minimum of two roof/façade elevations. F) Buildings between 10,000 and 25,000 square feet in size shall include a minimum of three roof/façade elevations; and G) Buildings 25,000 square feet or greater in size shall include a minimum of four roof/façade elevations. Motion carries unanimously.

A **motion** is made by Commissioner Garrido and seconded by Commissioner Bauer that the Board adds to Section 10.2. H, Design Principles- *Development shall use innovative and sustainable green building techniques, where feasible. Such techniques may include, but not limited to, energy-efficient construction, green roofs, and/or solar or geothermal energy production.* Motion carries unanimously.

A **motion** is made by Commissioner Bauer and seconded by Commissioner Brown that the Board amends Section 10.7-Allowed Modifications through the Silverdale Design Review Committee to include: 3) Allow for deviations from the standards set forth herein as long as sections 10.2 and 10.3 are achieved. Motion carries unanimously.

A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Section 10.4 as revised changing the beginning in the 3rd full paragraph by deleting the 4th sentence beginning with "*depending on the development...*" and replacing with the following: "*While allowed to be constructed at one time, it is likely that construction of these connector roads (funded by private development) would occur in two phases. Phase One (blue lines), would likely occur serving the commercial properties located nearest the Extension Road. This Phase would depend largely on the Extension Road for traffic circulation with no required connections to Old Frontier or Clear Creek Roads. The connection between the cul-de-sac and Old Frontier Road (Phase Two) shall be determined through a future planning process.*" Motion carries unanimously.

A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board enacts **Ordinance No. 425-2009**** amending portions of the Silverdale Design Standards and Kitsap County Code Title 17 Consolidated Use Table relating to the Waaga Way Town Center. Motion carries unanimously.

Public meeting adjourned at 3:09 pm.

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY WASHINGTON

CHARLOTTE GARRIDO, CHAIR

JOSH BROWN, COMMISSIONER

STEVE BAUER, COMMISSIONER

ATTEST:

OPAL ROBERTSON, Clerk of the Board

DATE APPROVED

* See Resolution Journal Volume No. 64

** See Ordinance Journal Volume No. 18

OTHER MEETINGS ATTENDED BY THE BOARD:

05/11/09	2:00 p.m.	Admin Briefing– Port Blakely Conf Room
	5:30 p.m.	Mike Levi Retirement Party-Kitsap Conference Center
	6:30 p.m.	Meeting w/David Moseley (Ferries Update) Pt Blakely Conf Rm
	7:00 p.m.	BOCC Regular Business Meeting - Chambers

(The Board of County Commissioners public meetings are televised on public access television BKAT (ComCast Ch.12 and Wave Broadband Ch. 3) Mondays at 7:00 PM and Tuesdays at 11:00 AM and 1:00 AM).

Next regular Board of Commissioners public meeting will be held **June 8, 2009 at 7:00 p.m. in the Board of Commissioners Chambers – Port Orchard, WA.**

NOTE: Kitsap County does not discriminate on the basis of disability. Individuals who require accommodations should contact the Commissioners Office at (360) 337-7146 or TDD (360) 337-7275 or 1-800-816-2782. (Please provide five business days notice for interpreter services).

Appendix 18

**Trial Exhibit 553: June 8, 2009 meeting minutes
of Kitsap County Board of Commissioners**

ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 27 2011
Pierce County Clerk
By: [Signature] DEPUTY

10-2-12918-3

DEFENDANT'S
EXHIBIT
553



MINUTES

KITSAP COUNTY BOARD OF COMMISSIONERS June 8, 2009 – 7:00 p.m.

The Board of Commissioners met on the above-stated date. Present were Chair Charlotte Garrido, Commissioner Steve Bauer, Commissioner Josh Brown, County Administrator Nancy Buonanno Grennan and Clerk of the Board Opal Robertson. *(The Board of Commissioners' public meetings is audio and video taped. By signing in or speaking at this meeting, you grant your permission to be taped. Minutes of this public meeting are posted on Kitsap County's webpage).*

7:00 PM) Meeting Called to Order with Pledge of Allegiance.

#1) Recognition of Employee of the Month for June (Tim Perez, Administrative Services and Chuck Smiley, Public Works). **Staff Contact:** Erin Neff, 337-4447.

Congratulations and Certificates of Appreciation are presented to Tim Perez, Administrative Services and Chuck Smiley, Public Works on being selected employees of the month for May and June, respectively.

#2) Recognition of "Certificate of Good Practice" approved by the County Road Administration Board. **Staff Contact:** Opal Robertson, 337-4428.

Congratulations and a Certificate of Good Practice is presented to the Public Works Department on behalf of the County Road Administration Board in recognition that Kitsap County has submitted to the Department of Transportation or to the County Road Administration Board all reports required by law or regulation of the Board and has reasonably complied with provisions of law relating to county road administration and with the Standards of Good Practice as formulated and adopted by the Board.

#3) Recognition of the *Central Kitsap Sail and Row Club*. **Staff Contact:** Jacquelyn Aufderheide, 337-4973/Elizabeth Raliff, 337-5345.

Congratulations and Certificates of Appreciation and Pins are presented to the *Central Kitsap Sail and Row Club* and the Coaches for their work with the "Summer Sailing Program".

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD ON REGULAR
BUSINESS AGENDA, INCLUDING CONSENT AGENDA & ANY GENERAL ISSUES:
TOTAL TIME LIMITED TO 15 MINUTES**

(Please limit individual comments to **3 minutes**. Written comments may also be submitted to the Board, if this timeframe is insufficient.) Comments on items slated for public hearing will be deferred until the hearing.

1. Vivian Henderson addresses the Board with concerns about a newspaper article she read regarding the county spending \$567,000 of taxpayer's monies on a study analyzing the affects of various development patterns on the natural environment. She questions how much more money would the "put down this hole".

CONSENT ITEMS AND OTHER BUSINESS:

Note: Unless otherwise noted, all expenditures for the remaining agenda items have been included in the Annual Budget.

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Consent Agenda. Motion carries unanimously.

1) **MISCELLANEOUS ITEMS:**

- B. Approve Minutes of May 11 and 18, 2009.
- C. Approve Warrant Nos. 3415156 – 3415886 in the amount of \$3,398,953.42.
- D. Approve Payroll Warrant Nos.
- E. Refer to the Prosecutor's Office and Risk Manager: 1) Claim for Damages filed by W. Brown; 2) Summons/Complaint filed by J. Gibson; 3) Summons, Public Records Complaint and Declaration filed by C. Updergrove; and 4) Summons filed by J. McKee.
- F. Approve formal written decision- Re: Ridgeline Preliminary Plat

2) **DEPARTMENT OF PERSONNEL & HUMAN SERVICES:**

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with Olympic Consortium and WA State Department of Community, Trade and Economic Development (KC-246-08C) increasing the contract amount by \$235,000 for the Workfirst Program serving Clallam, Jefferson and Kitsap Counties. Fiscal

Impact: \$235,000 is 100% grant funded by TANF. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.

- B. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract with Olympic Consortium and Olympic Educational Service District #114 (KC-196-09) for the Workforce Investment Act Summer Youth employment program in Kitsap, Clallam and Jefferson counties. **Fiscal Impact:** \$812,000 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- C. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Revenue contract with Olympic Consortium and NW Workforce Development Council (KC-155-09) providing services and activities in support of the development and maintenance Intracoastal Marine and Manufacturing Industries. **Fiscal Impact:** \$85,000 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- D. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract with Olympic Consortium and Olympic Educational Service District #114 (KC-187-08A) decreasing the contract amount by -\$8,000 for supportive services to eligible students of the I-BEST, ABE, & ESL programs. **Fiscal Impact:** -\$8,000 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- E. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with Olympic Consortium and Peninsula College (KC-185-08A) increasing the contract amount by \$8,000 for supportive services to eligible students of the I-BEST, ABE, & ESL programs. **Fiscal Impact:** \$8,000 is 100% grant funded by WIA. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- F. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with Olympic Consortium and Kitsap Community Resources (KC-308-08B) increasing the contract amount by \$165,000 for additional eligible recipients participating in the Community jobs program in Kitsap County. **Fiscal Impact:** \$165,000 is 100% grant funded by DSHS. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.
- G. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with Olympic Consortium and Olympic Community Action Programs (KC-315-08C) increasing the contract amount by \$70,000 for supportive services to eligible recipients participating in the Community jobs program in Clallam and Jefferson Counties. **Fiscal Impact:** \$70,000 is 100% grant funded by DSHS. **Staff Contact:** Bob Potter, 337-4873. Motion carries unanimously.

- H. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **WA State Department of Social & Health Services Mental Health Division (KC-363-07E)** providing mental health services in Kitsap, Jefferson and Clallam counties. **Fiscal Impact:** \$5,793 is 100% grant funded by DSHS. **Staff Contact:** Anders Edgerton, 337-4886. Motion carries unanimously.
- I. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Kitsap County Superior Court Juvenile Department (KC-376-07B)** decreasing the contract amount by \$16,379 for the Kitsap Alternative Recovery Services program due to the state budget shortfall. **Fiscal impact:** -\$16,379 is 100% grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- J. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Olympic Educational Service District #114 (KC-352-07C)** discontinuing the "Take Time Program" due to the state budget shortfall. **Fiscal impact:** -\$26,880 is 100% grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- K. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Cascade Recovery Center (KC-343-07D)** increasing the contract amount by \$34,632 for adult substance abuse outpatient treatment services. **Fiscal Impact:** \$34,632 is 100% grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- L. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Siemens Healthcare Diagnostics, Inc (KC-219-08B)** for purchase of supplies for operation of the urinalysis machine. **Fiscal Impact:** \$31,000 is grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- M. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **West Sound Treatment Center (KC-347-07D)** providing increased adult substance abuse outpatient treatment services. **Fiscal impact:** \$40,100 is grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- N. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Agape Unlimited (KC-346-07D)** providing increased adult substance abuse outpatient treatment services and childcare services. **Fiscal Impact:** \$53,123 is grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.

- O. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Kitsap Mental Health Services (KC-348-07D)** providing increased adult and youth substance abuse outpatient treatment services. **Fiscal Impact:** \$8,000 is grant funded by DSHS. **Staff Contact:** Betsy Bosch, 337-4880. Motion carries unanimously.
- P. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Revenue contract amendment with **WA State Department of Social & Health Services (KC-318-08B)** providing an additional allocation to the 2008-2009 State/Federal contract – Senior Community Services employment program. **Fiscal Impact:** \$24,183 is 100% grant funded by DSHS. **Staff Contact:** Linda Hanna, 337-7068. Motion carries unanimously.
- Q. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Revenue contract amendment with **WA State Department of Social & Health Services (KC-318-08C)** decreasing the contract amount by \$1,804 for the 2008-2009 State/Federal contract – Senior Citizen Services Act. **Fiscal Impact:** -\$1,804 is 100% grant funded by DSHS. **Staff Contact:** Linda Hanna, 337-7068. Motion carries unanimously.
- R. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 095-2009* rescinding prior approval of KC-420-08 and approving corrected contract (an agreement with Harrison Medical Center in support of Triage Services at the Kitsap Recovery Center). **Fiscal Impact:** \$200,000 – Harrison Medical Center. **Staff Contact:** Bert Furuta, 337-7185. Motion carries unanimously.
- S. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Collective Bargaining Agreement amendment with **Kitsap County Sheriff's Office and the WA State Council & City Employees, AFSCME, Local 1308-CS, Kitsap County Corrections Sergeants' Union (KC-039-08B)** stating the terms and conditions applicable to 2009 wage adjustments. **Fiscal Impact:** \$22,472 increase over 2008 budget – General Fund. **Staff Contact:** Fernando Conill, 337-4484. Motion carries unanimously.
- 3) DEPARTMENT OF PUBLIC WORKS:
- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Temporary Septic Easement agreement with **James and Carol Riehl** allowing temporary use of a 7-foot portion of Yukon Harbor right of way to replace a failing septic system until sewer is available. **Fiscal Impact:** \$200 paid by requestor. **Staff Contact:** Suzie Pride, 337-5777. Motion carries unanimously.

- B. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Interlocal agreement with the City of Poulsbo (KC-183-09) for reimbursable work performed by Kitsap County Public Works. **Staff Contact:** Jon Brand, 337-4893. Motion carries unanimously.
- C. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract with the **County Road Administration Board (KC-178-09)** for improvements to approximately 1.0 mile of Seabeck Hwy in Central Kitsap, Commissioner District #3. **Staff Contact:** Jon Brand, 337-4893. Motion carries unanimously.
- D. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 096-2009* accepting the final notice of completion for Pump Station No. 7 in Central Kitsap, Commissioner District #3. **Staff Contact:** Barbara Zaroff, 337-3663. Motion carries unanimously.
- E. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with the **County Road Administration Board (KC-295-02B)** for improvements on Lake Flora Road in South Kitsap, Commissioner District #2. **Staff Contact:** Jon Brand, 337-4893. Motion carries unanimously.
- F. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirms contract approval with **Tetra Tech, Inc (KC-146-09)** for the Carpenter Creek/South Kingston Road Bridge in North Kitsap, Commissioner District #1. **Fiscal Impact:** \$191,446 – Road Fund "pass-through". **Staff Contact:** Jon Brand, 337-4893. (Approved at work study 5/6/09) Motion carries unanimously.
- G. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Interlocal agreement with the **City of Bremerton (KC-061-09)** allowing the County to perform services or rent equipment to the City. **Staff Contact:** David Tucker, 337-7292. Motion carries unanimously.
- H. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 097-2009* initiating County Road Project 1573, Carpenter Creek Bridge replacement in North Kitsap, Commissioner District #1. **Staff Contact:** Jon Brand, 337-4893. Motion carries unanimously.
- I. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 098-2009* amending the 2009-2014 Transportation Improvement Program to include improvements to ten existing signals by day labor in Central Kitsap, Commissioner District #3, **Fiscal**

Impact: \$73,500 funded by SEPA mitigation fees, Silverdale Lowe's Retail Center. **Staff Contact:** Jon Brand, 337-4893. Motion carries unanimously.

J. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract with **Seton Construction, Inc (KC-186-09)** for the NW Bucklin Hill Road at Tracyton Blvd NW intersection improvements in Central Kitsap, Commissioner District #3. **Fiscal Impact:** \$538,303 – Road Fund. **Staff Contact:** Dick Dadisman, 337-3556. Motion carries unanimously.

K. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Memorandum of Understanding with the **United States Navy (KC-391-08)** for preparation of a coordinated, comprehensive solid waste management plan. **Staff Contact:** Pat Campbell II, 337-4626. Motion carries unanimously.

L. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Memorandum of Understanding with the **Suquamish Tribe (KC-176-09)** for revision of the Comprehensive Solid Waste Management Plan. **Staff Contact:** Pat Campbell, 337-4626. Motion carries unanimously.

4) DEPARTMENT OF COMMUNITY DEVELOPMENT:

A. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Market Binding Site Plan located in Central Kitsap, Commissioner District #3. **Staff Contact:** Jim Barnard, 337-4336. Motion carries unanimously.

B. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the contract amendment with **ESA Adolfson (KC-382-08A)** for the environmental impact statement applied for by Ueland Tree Farm. **Fiscal Impact:** \$20,000 – ESA Adolfson/Ueland Tree Farm. **Staff Contact:** Dave Greetham, 337-3171. Motion carries unanimously.

5) JUVENILE SERVICES DIVISION:

A. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Interagency agreement with the **Olympic Educational Service District #114 (KC-177-09)** for continuing the Juvenile Department transitional school for high school aged youth. **Fiscal Impact:** \$140,000 – Jail/Juvenile Sales Tax Fund/Federal Grant. **Staff Contact:** William Truemper, 337-5406. Motion carries unanimously.

6) **SHERIFF'S OFFICE:**

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract amendment with **Pierce County Communications (KC-132-04E)** for communications maintenance program for the period of January 1, 2009 - December 31, 2009. **Fiscal Impact:** \$100/hr – County General Fund. **Staff Contact:** Dennis Bonneville, 337-7145. Motion carries unanimously.

7) **DEPARTMENT OF ADMINISTRATIVE SERVICES:**

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Contract with **Eberle Vivian Self Insurance Administrators (KC-156-09)** for claims administration/workers compensation services for the period of March 1, 2009 – February 28, 2010. **Fiscal Impact:** \$62,700 – Workers Comp Ins. Fund. **Staff Contact:** Mark Abernathy, 337-4408. Motion carries unanimously.
- B. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Lease termination agreement with **Sound Institute of Family and Children Services (KC-KC-143-09)** effective as of May 15, 2009. **Staff Contact:** Beverly Reeves, 337-7189. Motion carries unanimously.
- C. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Interlocal agreement with the **City of Bremerton (KC-089-09)** for Court Security Officer for the Bremerton Municipal Court. **Fiscal Impact:** Related revenue of \$54,409 plus expenses. **Staff Contact:** Shawn Gabriel, 337-4504. Motion carries unanimously.

8) **PROSECUTOR'S OFFICE:**

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirms the waiver of potential conflict of interest as requested by K & L Gates. **Staff Contact:** Jacquelyn Aufderheide, 337-4973. (Approved at Admin Briefing 6/1/09) Motion carries unanimously.
- B. Discussion is held, comments received and a **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board approves the Settlement Agreement and Release of Stormwater Damage Claims and Potential Stormwater Damage Claims relating to Allen's Corner on Tracyton Blvd and down gradient properties. **Staff Contact:** Neil Wachter, 337-4979. Motion carries. Commissioner Garrido abstains.

9) DEPARTMENT OF PARKS & RECREATION:

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 099-2009* authorizing acceptance of gift (valued at \$5,495) from the *Kitsap Sailing and Rowing Foundation*. **Staff Contact:** Jacquelyn Aufderheide, 337-4973. Motion carries unanimously.
- B. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirms the Real Estate Assignment and Conveyance Agreement with the Kitsap Rifle and Revolver Range (KC-187-09). **Staff Contact:** Matt Keough, 337-5357. (Approved at work study 5/13/09) Motion carries unanimously.
- C. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirm the Newberry Hill Land exchange with WA State Department of Natural Resources (KC-175-09) for exchange of real property within the Chico Creek Watershed in Central Kitsap, Commissioner District #3. Fiscal Impact: \$75,000 – State RCO Funds. **Staff Contact:** Matt Keough, 337-5357. (Approved at work study 5/13/09) Motion carries unanimously.

10) COMMISSIONERS OFFICE/COUNTY ADMINISTRATOR:

- A. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirms the adoption of Resolution No. 100-2009* setting forth intent to contract with the Kingston Village Green Foundation for the oversight, maintenance and operation of the Kingston Village Green Park Site. **Staff Contact:** Rebecca Pirtle, 337-44683. (Approved at work study 5/13/09) Motion carries unanimously.
- B. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 101-2009* appointing **Charmaine Scott**, and **Karen Vargas** as at large representatives to 3-year terms ending June 7, 2012 and moving **Darence Shine** from at large to education representative completing a term ending April 1, 2011 to the *Commission on Children and Youth*. **Staff Contact:** Jan Koske, 337-4650. Motion carries unanimously.
- C. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 102-2009* reappointing **Veola Taylor** to the *Developmental Disabilities Advisory Board* to a 3-year term ending June 7, 2012. **Staff Contact:** Jan Koske, 337-4650. Motion carries unanimously.
- D. A **motion** is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts Resolution No. 103-2009* appointing **Cathy Ecker** to the *Parks & Recreation Advisory Board* to a 3-year term ending June 7, 2012. **Staff Contact:** Jan Koske, 337-4650. Motion carries unanimously.

- E. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board adopts **Resolution No. 104-2009*** appointing **Lori Johnson** (Dist #2) to a term ending December 31, 2011 and **Larry VanOver** (Dist #2) completing a term ending December 31, 2009 to the *County Art Board*. Jan Koske, 337-4650. Motion carries unanimously.
- F. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board adopts **Resolution No. 105-2009*** appointing **Glen Ahrens** to the *Veterans Advisory Board* completing a term ending December 31, 2010. **Staff Contact:** Jan Koske, 337-4650. Motion carries unanimously.
- G. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board affirms adoption of **Resolution No. 106-2009*** delegating and authorizing signature authority for certain real estate sale transactions. **Staff Contact:** Nancy Grennan, 337-4403. (Approved at PM Briefing 6/4/09) Motion carries unanimously.
- H. A motion is made by Commissioner Bauer and seconded by Commissioner Brown that the Board affirms approval of **Purchase & Sale Agreements** for the Harborside Condominiums (Units T0201; T0200; D0306) and **Amendments to Purchase & Sale Agreements** for Certain Harborside Condominiums (Units D-204 & T0203). **Fiscal Impact:** Revenue of \$1.59M (minus certain closing costs). **Staff Contact:** Nancy Grennan, 337-4403. (Approved at PM Briefing 6/4/09) Motion carries unanimously.
- I. A motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board Affirm approval of **Purchase & Sale Agreement** with the Port of Bremerton for certain real estate known as the *Sinclair Lot*. **Fiscal Impact:** Related Revenue of \$3.5M. **Staff Contact:** Nancy Grennan, 337-4403. (Approved at PM Briefing 6/4/09) Motion carries unanimously.

PUBLIC HEARINGS:

**** Please note that start times are estimates and may be impacted by the amount of public input. Unless otherwise announced by the Chair of the Board, public comments will be 3 minutes per person.**

- A) Public hearing to consider an **Ordinance** authorizing arbitration and trial de novo fees in Superior Court civil cases. **Staff Contact:** Frank Maicocco, 337-7140.

Judge Russ Hartman gave an overview of the proposed ordinance stating under RCW 7.06.010, the Superior Court operates a mandatory arbitration program as a "simplified and economical procedure for obtaining the prompt and equitable resolution of disputes involving claims of \$50,000 or less. He said between 2006 and 2008, an average of 50 cases, annually, were referred to the mandatory arbitration

program and an average of 20 requests for trials de novo were requested upon the filing of arbitration awards. He recommends adoption of this ordinance as one method for reaching its 2009 midyear budget reduction target.

Discussion is held, comments called for and a motion is made by Commissioner Brown and seconded by Commissioner Bauer that the Board enacts Ordinance No. 426-2009** authorizing arbitration and trial de novo fees in Superior Court civil cases. Motion carries unanimously.

11) **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD:**

(Please limit comments to 3 minutes. Written comments may also be submitted to the Board if this timeframe is insufficient.)

12) **COUNTY ADMINISTRATOR'S COMMENTS:**

- A. Nancy Grennan said the County has two programs starting: 1) Sailing Camp that begins June 22, 2009; 2) the Fishing Derby hosted at Island Lake on June 20, 2009.

13) **BOARD OF COMMISSIONER'S COMMENTS:**

- A. Commissioner Bauer comments on and thanked the Port of Bremerton for its partnership with the Sinclair property (agenda item 10.1). He also commented on the land swap with Kitsap Rifle and Revolver Club.
- B. Commissioner Brown comments on and thanked the volunteers for the Anderson Hill Overpass Mural Project.
- C. Commissioner Garrido also gave kudos the number of volunteers who work on various projects throughout the county specifically those that are working on the Stimulus Initiative.

Public meeting adjourns at 8:37 p.m.

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY WASHINGTON**

CHARLOTTE GARRIDO, CHAIR

JOSH BROWN, COMMISSIONER

STEVE BAUER, COMMISSIONER

ATTEST:

OPAL ROBERTSON, Clerk of the Board DATE APPROVED

* See Resolution Journal Volume No. 64

** See Ordinance Journal Volume No. 18

OTHER MEETINGS ATTENDED BY THE BOARD:

06/08/09	2:00 p.m.	Admin Briefing– Pt Blakely Conf Room
	7:00 p.m.	BOCC Regular Public Meeting – BOCC Chambers
06/10/09	8:30 a.m.	Work Study – Port Blakely Conf Room
06/15/09	10:00 a.m.	Admin Briefing– Pt Blakely Conf Room
	2:00 p.m.	Admin Briefing– Pt Blakely Conf Room
06/16/09	8:00 a.m.	KCCHA/Transit/Emergency Mgmt Board Meetings
	1:30 p.m.	KRCC Retreat
06/17/09	8:30 a.m.	Work Study – Port Blakely Conf Room
	12:30 p.m.	Hood Canal Coord Council – Silverdale Beach Hotel
06/18/09	10:00 a.m.	KC Supervisors Graduation Certification – Chambers
06/22/09	12:00 p.m.	Lunch with Elected Officials – BOCC Chambers
	2:00 p.m.	Admin Briefing– Pt Blakely Conf Room
	7:00 p.m.	BOCC Regular Public Meeting – BOCC Chambers

(The Board of County Commissioners public meetings are televised on public access television BKAT (ComCast Ch.12 and Wave Broadband Ch. 3) Mondays at 7:00 PM and Tuesdays at 11:00 AM and 1:00 AM).

Next regular Board of Commissioners public meeting will be held June 22, 2009 at 7:00 p.m. in the Board of Commissioners Chambers 619 Division Street Port Orchard, WA 98366.

NOTE: Kitsap County does not discriminate on the basis of disability. Individuals who require accommodations should contact the Commissioners Office at (360) 337-7146 or TDD (360) 337-7275 or 1-800-816-2782. (Please provide five business days notice for interpreter services).

Appendix 19

**Trial Exhibit 293: March 18, 2009 letter from
Commissioner Brown regarding comments to be
included in the public record**

ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 24 2011
Perce County Clerk
BY [Signature] DEPUTY

9
110 S. BERRY ST.
011

DEFENDANT'S
EXHIBIT
293



KITSAP COUNTY BOARD OF COMMISSIONERS

Efficient, accessible and effective county services

March 18, 2009

Steve Bauer
DISTRICT 1

Charlotte Garrido
DISTRICT 2

Josh Brown
DISTRICT 3

Subject: March 18th DNR Public Hearing
Proposed Land Exchange between DNR & Kitsap County

Comments to be included in the public record:

In a letter to the Department of Natural Resources dated September 19th, 2003, the Kitsap County Board of Commissioners discussed their strong interest in pursuing a long-range strategy to establish a heritage park in Central Kitsap. These parcels are the subject of the public hearing this evening. I have attached this letter to be included in this public record.

Nancy Buonanno
Grennan
County Administrator

At the time of this letter, the Kitsap County Commissioners were briefed on a grant proposal submitted to the Interagency Committee for Outdoor Recreation (IAC) by the Kitsap Rifle & Revolver Club (KRRC). IAC had requested and was granted assurance by the Kitsap County Board of Commissioners that the Club and its improvements were not at odds with the County's long-term interest in the property, and would not jeopardize future planning efforts. This conclusion has not changed.

For over 80 years, the Kitsap Rifle & Revolver Club has provided a much needed amenity in Central Kitsap. The land swap currently being discussed provides both DNR and Kitsap County the opportunity to consolidate parcels for mutual benefits. This afternoon, I met with several members of the Kitsap Rifle & Revolver Club, including Executive Officer Marcus Carter. The KRRC presented me with a proposal that detailed Club concerns and sought to alleviate uncertainties surrounding this land exchange.

In the spirit of partnership, I committed to the Club members that I would recommend to the Kitsap County Board of Commissioners an extension of KRRC lease to a 15-year term between the Club and Kitsap County. This new lease would not possess a "Non-Default Termination" clause found in Section 4.03 of the current agreement. After the anticipated land exchange has been completed, Kitsap County would enter into a long-range public planning process for the Newberry Hill Heritage Park. I expect this planning process will recognize the lease and presence of the KRRC.

I will brief the County Commissioners at our next public meeting on my recommendations and look forward working with KRRC on this partnership.

Sincerely,

Josh Brown
Kitsap County Commissioner

Appendix 20

Trial Exhibit 438: map of club's historical eight acres prepared by AES Consultants

ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 25 2011
Pierce County Clerk
By: [Signature] DEPUTY

DEFENDANT'S
EXHIBIT
438

10-25-2011 9:31 AM

Appendix 21

**Trial Exhibit 486: aerial photograph from 2009
of Club's historical eight acres prepared by
Soundview Consultants**

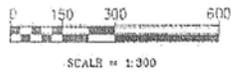
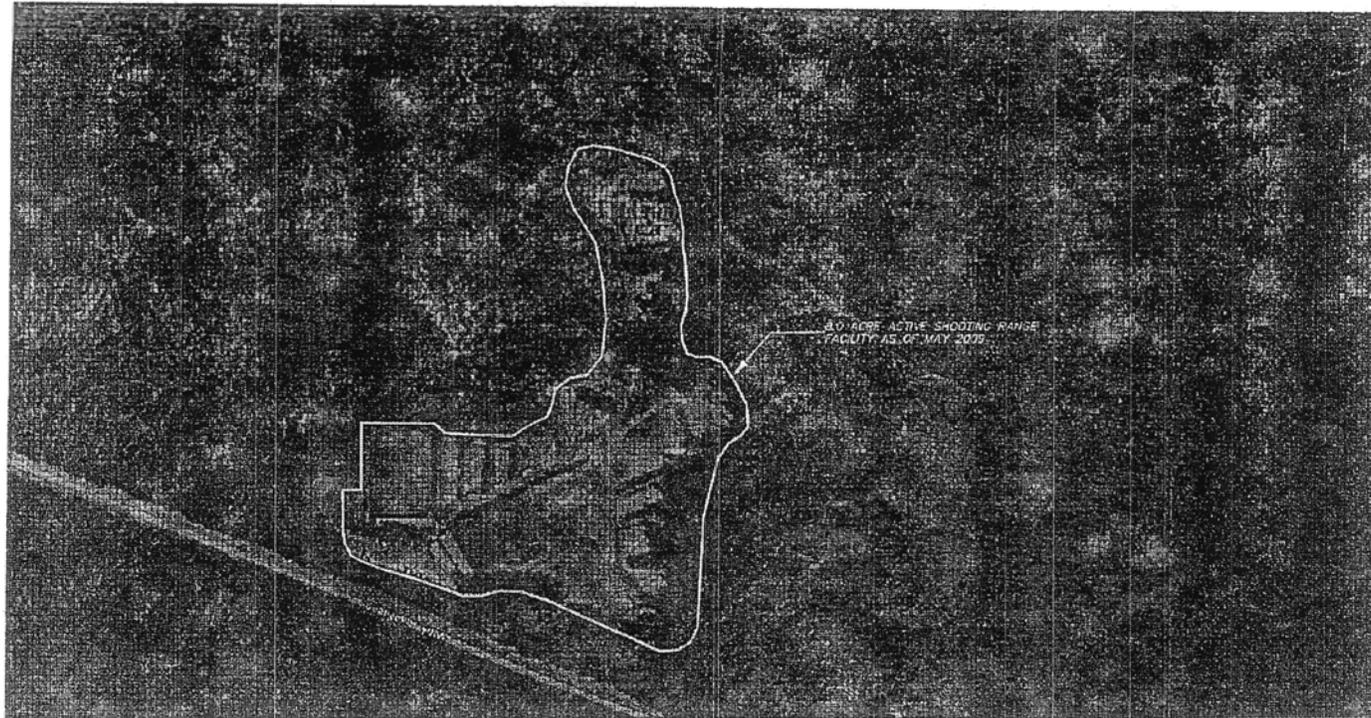
ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 26 2011
Pierce County Clerk
By *[Signature]*

DEFENDANT'S
EXHIBIT
486

3-0916821-2-01

KRRC - EIGHT ACRE CLUB FACILITY AS OF 2009



SOURCE:
GOOGLE EARTH MAY 1, 2009

Southern Consultants
Environmental, Natural Resource, and Land Use Consultants
2907 Harborview Drive Office 253.514.8952
Cig Harbor, WA 98535 Fax 253.514.8954
www.southernconsultants.com

KITSAP RIFLE & REVOLVER CLUB

4900 SEABECK HIGHWAY NORTHWEST
BREMERTON, WA 98512

SECTIONS 10 & 15, TWP. 18N, RGE. 12 W, W3M

DATE 08/24/11
JOB 10610001
BY JD & KM
SCALE 1"=300'
SHEET 1 OF 1

Appendix 22

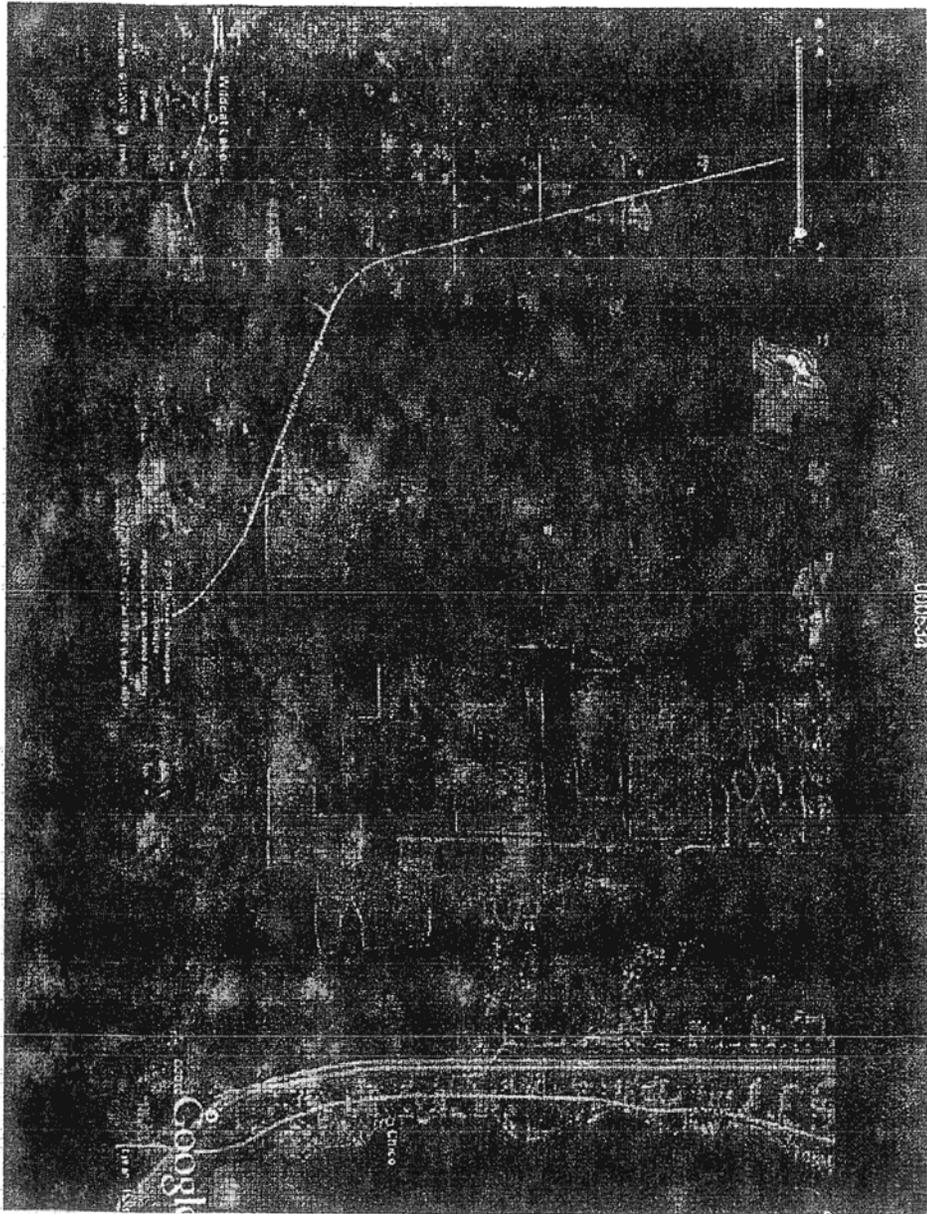
Trial Exhibit 539: aerial photograph from June 11, 2010 of areas surrounding Club with overlay showing areas of reduced vegetative coverage/clear-cutting

ADMITTED

FILED
DEPT. 14
IN OPEN COURT
OCT 26 2011
Pierce County Clerk
By: [Signature] DEPUTY

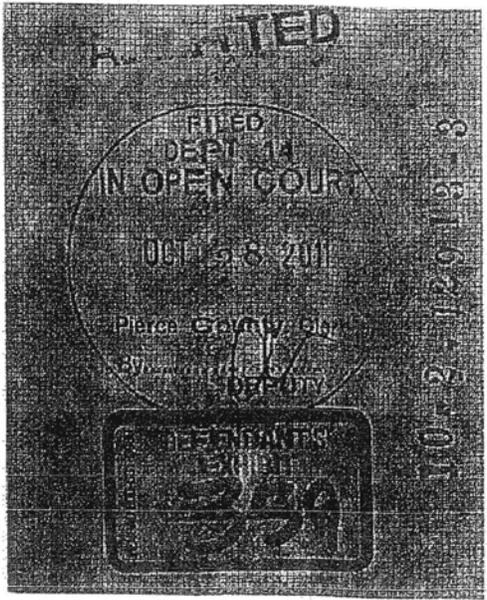
CC: 01621-6-01

DEFENDANT'S
EXHIBIT
539



Appendix 23

**Trial Exhibit 359: April 21, 2009 email from
Kitsap County deed negotiating agent M. Keough
to Kitsap County Parks and Recreation Director
Chip Faver and attached letter from State
Department of Natural Resources to County**



Don Burger

From: Matt Keough [MKeough@co.kitsap.wa.us]
Sent: Tuesday, April 21, 2009 12:31 PM
To: Chip Faver
Cc: Mark Abernathy; Kevin M. Howell; Shelley E. Kneip
Subject: Fwd: Response from the Commissioner of Public lands
Attachments: Final Commish Ltr 09-0250 Fife.pdf; Fife Ltr 09-0250.pdf

This is one of two "extraordinary" comments that has generated special DNR response, to include CC: versions to our BOCC. I am scheduled to learn more about these tomorrow morning with more lease/operation considerations.

Also note that the Suquamish are inquiring and concerned about possible KRRC expansion as well as on-going land use violations impacting stream (cut/grade etc).

Matthew F. Keough
Parks Planning Project Manager
Kitsap County Parks and Recreation
614 Division Street, MS-1
Port Orchard, WA 98366

(360) 337-5357
mkeough@co.kitsap.wa.us

>>> "PRUITT, BRAD (DNR)" <BRADFORD.PRUITT@dnr.wa.gov> 4/21/2009 11:43 AM >>>
FYI. See attached



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark · Commissioner of Public Lands

Caring for
your natural resources
... now and forever

April 17, 2009

Richard W. Fife
[REDACTED]
[REDACTED]

Re: Newberry Hill Land Exchange No. 86-81861

Dear Mr. Fife:

Thank you for attending the public hearing in Port Orchard on March 18, 2009, and for providing comments about the land exchange between the Department of Natural Resources (DNR) and Kitsap County Parks and Recreation Department.

Kitsap County Commissioners have expressed publicly that the Kitsap Rifle and Revolver Club (KRRC) use is compatible with long term plans at the Kitsap County Heritage Park. As I'm sure you may be aware, the Board of County Commissioners are currently discussing long term options for the gun club, and will be voting on a preferred alternative (sale or lease to KRRC) in mid May. If approved, the Board of County Commissioners will sign a resolution committing the county to a long term arrangement with the KRRC.

DNR's exchange agreement contract is currently being negotiated between the two parties and once it is final it can be made available. Also, I understand Kitsap County is tentatively scheduling a public hearing and meeting in early May to discuss the proposal, and is currently accepting public comment at this time. Their website is:
http://www.kitsapgov.com/parks/parks_misc/park_news.htm

DNR and Kitsap County are working on outcomes that provide the best options for the state, county, and the gun club. KRRC's efforts to work cooperatively with the Kitsap County sends a positive message to the county commissioners to provide assurances the gun club is an integral part of public use designated for the Kitsap County Heritage Park. Thank you for taking the time to share your concerns with me.

Sincerely,

Peter Goldmark
Commissioner of Public Lands

c: The Honorable Derek Kilmer, Washington State Senator
The Honorable Jan Angel, Washington State Representative

Richard W. Fife

April 17, 2009

Page 2 of 2

The Honorable Larry Seaquist, Washington State Representative
The Honorable Steve Bauer, Kitsap County Commissioner
The Honorable Charlotte Garrido, Kitsap County Commissioner
The Honorable Josh Brown, Kitsap County Commissioner
Lenny Young, Department Supervisor
Clay Sprague, Deputy Supervisor, Uplands
Steve Saunders, Asset Management and Recreation Division Manager
Julia Sandberg, Asset Management and Recreation Assistant Manager
Randy Acker, South Puget Sound Region Manager
Doug McClelland, South Puget Sound Region, State Lands Manager Public use and Asset Operations
File 09-0250

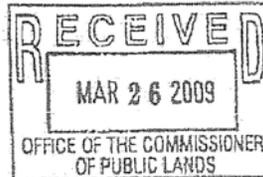
Richard W. Fife

fiferw@

09-0250
Dix 4-16-09
Clay Sprague

March 24, 2009

Mr. Peter Goldmark
Commissioner of Public Lands
P.O. Box 47000
1111 Washington Street NE
Olympia, WA 98504-7000



Re: Land Exchange No. 86-81861

Dear Commissioner Goldmark:

As a citizen and taxpayer in the State of Washington, I am both pleased and disappointed with the information delivered to the public at the recent open hearing held in Port Orchard regarding the Newberry Hill Land Exchange. The presentation delivered by DNR's Project Manager Brad Pruitt was well prepared, provided essential information and clearly expressed the logic for the land transfer. I am, however, disappointed because DNR is offering no specific written protection for the Kitsap Rifle and Revolver Club; a current tenant of the Department whose leased land is included in the proposed transfer.

While both DNR and Kitsap County verbally express their intent to honor the Club's lease after the transfer is complete, the lack of specific language in the transfer contract achieving this objective is unacceptable. I expect the Department of Natural Resources to add to the contract such language as is necessary to protect the culture, heritage, interests and infrastructure investment of the Kitsap Rifle and Revolver Club and the citizens of the state regardless of their membership in that club. I also request that the full contract document be made available for public review and comment prior to presentation to the signature authorities.

If Kitsap County is not agreeable to including such binding language within the text of the contract, I expect Department of Natural Resources to take one of two courses of action. Either withdraw completely from the Newberry Hill Land Exchange or remove that portion of land now leased by Kitsap Rifle and Revolver Club from the transfer.

Thank you for your time.

Respectfully submitted;


Richard W. Fife

KCO06796

Cc: State Representative 26th District - Jan Angel
State Representative 26th District Larry Seaquist
State Senator Derek Kilmer
Kitsap County Commissioners
Kitsap Rifle and Revolver Club

Appendix 24

Trial Exhibit 143: September 7, 2007 letter from Kitsap County Department of Community Development (DCD) to Club regarding pre-application request

ADMITTED

FILED
DEPT. 14
IN OPEN COURT

OCT 05 2011

PLERCE County Clerk
BY [Signature] DEPUTY

PLAINTIFFS
EXHIBIT
143

110-2-1167-3-8



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4882 Larry Keston Director
(360) 337-7181 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com

September 7, 2007

Kitsap Rifle & Revolver Club
4900 Seabeck Hwy NW
Bremerton WA 98312

RE: Kitsap Rifle & Revolver Club
05 27231

Dear Sirs:

Your pre-application file for the above named project has remained inactive for an additional six months or more. Due to the volume of pre-applications requests, DCD periodically purges inactive files.

If you wish to have your pre-application file remain open and active, please submit a written statement of your intentions for this project before September 28, 2007. If DCD receives no reply from you by the above date, your project will be closed and the pre-application file will be archived.

If you intend to proceed with your project, you may wish to contact a Planner, as many of the rules, regulations and/or fees your proposal may be subject to, may have changed since the time of your pre-application meeting.

If you have any questions, please contact a Planner at (360) 337-7181, or me at (360) 337-4487.

Thank You,

A handwritten signature in cursive script that reads "Karen Ashcraft for".

Karen Ashcraft
Clerk for Hearing Examiner

KA: dc

Appendix 25

**Trial Exhibit 144: April 1, 2008 letter from DCD
to Club regarding pre-application request**

ADMITTED

FILED
DEPT. 14
IN OPEN COURT

OCT 06 2011

Pierce County Clerk

By *[Signature]*
DEPUTY

8-81061-0

PLAINTIFFS
EXHIBIT
144

FILED 10/06/11 08:58



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98365-4652 Larry Keeton Director
(360) 337-7181 FAX (360) 337-4925 HOME PAGE -www.kitsapgov.com

April 1, 2008

Kitsap Rifle & Revolver Club
4900 Seabeck Hwy NW
Bremerton WA 98312

RE: Kitsap Rifle & Revolver Club
05-27281 25867

Dear Sirs:

Your pre-application file for the above named project has remained inactive for an additional six months or more. Due to the volume of pre-applications requests, DCD periodically purges inactive files.

If you wish to have your pre-application file remain open and active, please submit a **written statement** of your intentions for this project before April 16, 2008. If DCD receives **no** reply from you by the above date, your project will be cancelled, and the pre-application file will be archived.

If you intend to proceed with your project, you may wish to contact a Planner. Many of the rules, regulations and/or fees your proposed project may be subject to, might have **changed** since the time of your pre-application meeting.

If you have any questions, please contact a Planner at (360) 337-7181, or me at (360) 337-4664.

Thank You,

Dana Crompton
Office Assistant II

Appendix 26

CP 4026–49, Club’s proposed findings of fact



10-2-12913-3 37450145 PROR 11-08-11



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

KITSAP COUNTY,

Plaintiff,

vs

KITSAP RIFLE AND REVOLVER CLUB,

Defendant

Cause No 10-2-12913-3

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
OF DEFENDANT KITSAP RIFLE
AND REVOLVER CLUB

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Hon. Susan Serko
Department 14
November 7, 2011

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

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

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a
not-for-profit corporation registered in the
State of Washington, and JOHN DOES and
JANE DOES I-XX, inclusive,

Defendants,

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED
AT

One 72-acre parcel identified by Kitsap
County Tax Parcel ID No. 362501-4-002-
1006 with street address 4900 Seabeck
Highway NW, Bremerton Washington.

Defendant.

Case No.: 10-2-12913-3

**KITSAP RIFLE AND
REVOLVER CLUB'S
PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF
LAW**

I. FINDINGS OF FACT

Based on the evidence presented at trial, the Court makes the following Findings of Fact:

A. The Kitsap Rifle and Revolver Club, Generally

1. Defendant Kitsap Rifle and Revolver Club (the "Club" or "KRRC") is a non-profit organization founded by charter on November 11, 1926 for "sport and national defense." Exs. 475-76. It was later incorporated in 1986. Ex. 271.

2. From its inception, the Club has occupied a 72-acre parcel (the "Property"), located at 4900 Seabeck Highway NW, Bremerton, WA 98312, Kitsap County Tax Parcel ID No. 362501-4-002-1006. For many decades, the Club leased the Property from the Washington State Department of Natural Resources ("DNR"). Exs. 135-36.

3. The Property consists of approximately 72 acres, including approximately eight acres of active or intensive use and occupancy containing the Club's improvements, roads, parking areas, open shooting areas, targets, storage areas, and associated infrastructure ("Historical Eight Acres"). Exs. 135-36, 438, 486. The remaining acreage consists of timberlands, wetlands and similar resource-oriented lands passively utilized by the Club to provide buffer and safety zones for the Club's shooting range. *Id.* The Club currently owns the Property which is located in unincorporated Kitsap County.

B. The Club's Legal Nonconforming Use was Formally Recognized in 1993

4. In 1993, the County enacted Ordinance 50-B-1993, which severely limited or prohibited shooting on private land by prohibiting all shooting in certain areas of the County designated as "no shooting" areas and by prohibiting all shooting on properties smaller than five acres. Ordinance 50-B-1993 also created an advisory committee whose purpose would be to advise the County regarding the drafting of amendments to that ordinance that would provide permits for newly proposed shooting ranges. The ordinance provided that the Club would have a seat on the committee. The Club sat on the committee and had input into the

1 drafting of the amendments to Ordinance 50-B-1993, which were enacted on February 14,
2 1994 as Ordinance 50-C-1994.

3 5. While sitting on the committee along with other historical Kitsap County gun clubs,
4 the Club became concerned about whether the amended ordinance the County was working
5 on would apply to the Club. The County's representative on the committee, Mark Grimm,
6 assured the Club it would not, and made arrangements for a letter to be issued by the County
7 Commissioners to confirm the Club's historical right to continue using its property as an
8 established shooting area. On September 7, 1993, the County Board of Commissioners sent
9 a letter to the Club referencing Ordinance 50-B-1993 and confirming that the Club's facility
10 was "considered by Kitsap County to be a lawfully established nonconforming use
11 (grandfathered)." Ex. 315. The Club understood from the words of the letter, the context of
12 the letter, and the verbal statements of Mr. Grimm that the letter was intended to mean that
13 the Club would be allowed to continue operations without applying for and obtaining a
14 shooting range permit under the new ordinance that would be enacted as Ordinance 50-C-
15 1994.

16 6. Prior to 1993, the Club conducted a diverse range of activities within its Historical
17 Eight Acres, including firearms safety training, recreational shooting, competitive shooting,
18 civilian defensive training (i.e., personal and home protection), hunter education classes,
19 military and law enforcement training, skeet or trap shooting, silhouette target shooting,
20 bullseye target shooting, United States Practical Shooting Association pistol shooting
21 tournaments, fun steel (entry level handgun matches), Glock Shooting Sports Foundation
22 competition, Junior Small bore, moving target shooting, bowling pin shooting, cowboy
23 action shooting, and other types of action or "practical" shooting, including what was known
24 as a "jungle run." Ex. 294. These activities involved the use of many types of firearms,
25 including but not limited to high-powered rifles, machine guns, automatic weapons, semi-
26 automatic weapons, pistols, revolvers, shotguns, muzzle loaders, black powder firearms,

1 cannons and utilized steel, exotic, and exploding targets as well as more standard targets.
 2 The Club restricted the type of firearms or calibers that were allowed to be used at the Club
 3 to those that were lawfully owned and operated and used in accordance with the Club's
 4 safety rules. Shooting was allowed and did occur as early as 6 am and as late as 10 pm.

5 7. Prior to 1993, the Club's Historical Eight Acres included a covered rifle line, a
 6 covered pistol line, other multi-use shooting areas, a parking area, several structures and
 7 buildings, areas used for hunting, a running deer track, an area for archery, a "boat launch"
 8 area to practice safe firearms handling, and areas used for storage. Since 1993, the Club has
 9 maintained its Historical Eight Acres and has made periodic and gradual improvements to the
 10 area to improve safety and stewardship of the environment.

11 8. Prior to 1993, the Club's Historical Eight Acres were used by the Kitsap County
 12 Sheriff's Office and other law enforcement agencies for training and practice. The Sheriff's
 13 Office has continued to use this area at the Club through the present day. Exs. 273; 3 87-88.

14 **C. The County Failed to Prove Noise from the Club Constitutes an Unreasonable or**
 15 **Substantial Impact on the Community.**

16 9. The County had 13 witnesses testify who either had lived or were living near the Club
 17 at the time of trial. Some of those witnesses complained about sounds coming from the Club.
 18 Their testimony was inconsistent as to the dates it became a problem and the intensity of the
 19 sounds. Other local residents have not been bothered by the noise, including several of the
 20 County's own witnesses. Noise from the Club has not affected the use of their properties.

21 10. While the complaining residents assumed the noise they heard was produced by the
 22 Club, few actually visited the Club or made efforts to confirm the source of the noise. Many
 23 of them failed to take any measures to investigate the neighborhood for any sources of noise
 24 or were unaware of the Club's presence prior to purchasing their homes. In addition, the
 25 majority of the neighbors have no background in firearms that would allow them to identify
 26 or distinguish between particular firearms based on sound alone.

1 11. The County never conducted any sound studies to measure the amount of noise from
 2 the Club and has not hired any third party to do so despite the fact that the County has sound
 3 measuring equipment and a County representative spoke with a sound expert to possibly
 4 conduct studies. The County has not produced any decibel readings or empirical data
 5 demonstrating that noise from the Club has an unreasonable or substantial impact on anyone
 6 in the community.

7 12. The County admitted at trial that it relied largely on subjective noise complaints for
 8 information regarding noise generated at the Club. It also stated that the Club's hours of
 9 operation and number of members would be a factor in determining noise levels but admitted
 10 it did not have that information. The County presented no expert opinions on sound or noise
 11 at trial. The County relied solely on the subjective observations of local residents to explain
 12 historical and present noise levels.

13 13. The County acknowledged that between 2007 and 2009, there were no recorded
 14 complaints in the County's LIS system for approximately 14 months relating to the Club.
 15 The LIS system is used by the County to record activity on a certain property.

16 **D. The County Provided no Proof that Errant Bullets Originated at the Club.**

17 14. In the last several years nearby residents have complained of bullets from the Club
 18 striking their properties. However, the County has provided no proof, based on a
 19 preponderance of the evidence, that these alleged bullet strikes originated from the Club as
 20 opposed to other sources of gun fire in the area. None of the County's experts could state
 21 within a reasonable degree of certainty that any of the three alleged bullet strikes they studied
 22 originated from the Club.

23 15. It is possible that the alleged bullet strikes could have originated from the woods or
 24 residential property near the Club where non-Club members have engaged in unsupervised
 25 shooting. Makeshift shooting ranges consisting of tree stumps and old cars have been
 26 discovered and local residents and Club members have heard shooting from areas other than

1 the Club. Club members have witnessed individuals walking into the Newberry Hill
 2 Heritage Park (formerly DNR land) carrying rifles. The bullets also could have come from
 3 Terry Allison's property next door to the Club because he shot there and maintained a
 4 shooting area.

5 16. On April 12, 2010, the Kitsap County Sheriff's Office performed a search of police
 6 reports on file for the dates of January 1, 2005 through March 12, 2010, in which the subject
 7 was alleged violation of RCW 9A.12.030, unauthorized aiming or discharging of a firearm.
 8 *Stipulated Facts.* The search yielded 42 police reports filed involving this subject, none of
 9 which mentioned or otherwise identified KRRC. *Id.*

10 **E. The Club Employs Adequate Safety Measures**

11 17. The Club employs a variety of range and firearm safety practices that meet or exceed
 12 industry standards to prevent bullets from leaving the range. Ex. 476, 487-88. These
 13 measures include maintenance of safety berms and backstops, mandatory training for all
 14 members and visitors, supervision by range safety officers, and closed circuit cameras to
 15 monitor compliance with the rules. Members are required to comply with the Club's
 16 standard operating procedures and guests must sign a registration form with a pledge to
 17 follow four commandments of firearms safety. *Id.*

18 18. Range safety officers undergo extensive training. The range has officers on-site
 19 whenever the Club is open to the public, and often when the Club is open to members only.
 20 In addition to the range officers supervising shooting, there is also video monitoring in the
 21 Club's office. The video files are kept for a period of time so that if there is a safety issue,
 22 they can be replayed to ascertain what happened. There are some members who can shoot
 23 without a range officer present, but they must first undergo a five-hour training course. Few
 24 members are allowed access to the shooting bays, which are rarely used, and those members
 25 must undergo additional training.

1 19. The Club is designed to keep all projectiles within the Property, Ex. 488. Berms and
2 backstops are primarily used to stop bullets from leaving the range. Targets are placed near
3 the middle of berms or backstops, or lower, to prevent bullets from going over them.
4 Ricochets are minimized using paper or steel targets. In 2008, County Commissioner Josh
5 Brown stated he was impressed with the facility. Ex. 336.

6 20. There is no evidence during the Club's entire 84-year history of any allegations of
7 accidental shootings or a personal injury caused by a bullet leaving the Club.

8 21. Arnold Teves testified that the Navy came to the Club to check the range before it
9 allowed training to occur. Ex. 500. Marcus Carter testified he provided the Navy with
10 access to inspect the range and overhead photos of the surrounding area and layout of the
11 Club prior to the Club being approved for Navy small arms training.

12 22. The Club, in partnership with the County and DNR, developed a "take it to the range"
13 program whereby County personnel handed out vouchers to persons caught shooting in the
14 woods that entitled them to a free visit to the Club.

15 **F. The County Was On Notice of Conditions at the Club in 2005.**

16 23. On March 28, 2005, Steve Mount entered the Club's property believing it was DNR
17 land to investigate noise complaints on behalf of the County. During his investigation, he
18 noticed an area of the Club that had been brushed out but determined the activity did not
19 require a permit and was nothing to be excited about in terms of taking action against the
20 Club. After viewing the brushed out area, Mr. Mount met with Marcus Carter, executive
21 officer of the Club, and told Mr. Carter that he would do some research and let the Club
22 know whether any permits were required.

23 24. Approximately two weeks later, having failed to respond to the Club, Mr. Mount
24 returned on April 13, 2005, to investigate a complaint from Terry Allison regarding use of
25 heavy equipment at the Club. The Club had, in fact, begun clearing vegetation in the brushed
26 out area to explore the possibility of relocating its rifle range to improve safety and reduce

1 noise impacts to the community (the "Relocation Project"). It had also obtained two land
 2 clearing burning permits to clear the area. Exs. 275-76. The County acknowledges the same
 3 area had been clear-cut by DNR in the early 1990s.

4 25. The Club was open about the Relocation Project and had already corresponded with
 5 other government agencies about it. Ex. 271-272. A letter had been sent by the entire
 6 County Board of Commissioners to the DNR stating that the Relocation Project was not at
 7 odds with the County's long-term interest in the property and that the Board appreciated the
 8 Club's efforts to provide recreational opportunities to County residents. Ex. 296. Based in
 9 part on the County's written support, the Club obtained a grant for the Relocation Project.
 10 Ex. 271.

11 26. Despite the County's support, Mr. Mount was concerned the Relocation Project was
 12 outside the Club's Historical Eight Acres and could trigger a need for a conditional use
 13 permit ("CUP") under the County Code. As such, Mr. Mount recommended the Club
 14 participate in a pre-application meeting with the DCD. The Club compiled all necessary
 15 information and attended a pre-application meeting on June 21, 2005, with the DCD that was
 16 cordial and cooperative. Exs. 138, 140, 274. At that time, the County took the position that
 17 if the Club wanted to continue with the proposed rifle line relocation, it would have to apply
 18 for a CUP. Ex. 277. The CUP would allow the County to impose any restrictions on the
 19 Club that it deemed reasonable, including restrictions on types of weapons fired, hours of
 20 operation, and location of shooting activities. The County cannot say whether the Club
 21 would be granted a CUP if it were to apply for one today, nor can it identify any of the
 22 conditions it would deem reasonable and attempt to impose under a CUP.

23 27. At the time of the 2005 pre-application meeting, the County took the position that if
 24 the Club did not continue the project and instead kept its activities within its Historical Eight
 25 Acres it could retain its legal nonconforming use and would not need a CUP or any other
 26 land use permits. Ex. 297. As a result, the Club decided to abandon the Relocation Project,

1 retain its legal nonconforming use right, and continue operating within its Historical Eight
 2 Acres. The Club requested an amendment of its grant so that the funds could be used to
 3 make improvements at the Club without requiring a CUP. Ex. 355. The County was made
 4 aware of the Club's decision and the amended scope of its grant. *Id.*; Ex. 416.

5 28. Less than a year later, in March 2006, Steve Mount of the DCD acknowledged that
 6 the burden of proof would be tough on the County to prove when there was a significant
 7 change from the Club's historic use. Ex. 314. Shortly thereafter, in May 2006, the Club
 8 contacted the DCD requesting a meeting to discuss whether a CUP was still required, and a
 9 cordial meeting was held. Ex. 142. The Club did not change its decision to abandon the
 10 Relocation Project and continued its operations within the Historical Eight Acres. In June
 11 2006, Jeff Smith of the DCD acknowledged that the Club was a permitted use. Ex. 322.

12 29. The County never issued any citation or notice of violation to the Club for the
 13 Relocation Project work in 2005, nor did it ask the DNR to take enforcement action against
 14 the Club. Instead, it asked DNR in 2006 to address any need for restoration of the area
 15 explored for the Relocation Project. Ex. 355. In 2007, the Club replanted the cleared area,
 16 and the DNR informed the County that it was satisfied with the replanting effort. As of
 17 2007, the DCD believed the clearing issue was resolved and did not investigate the matter
 18 any further.

19 **G. Wetlands Issues and the Critical Areas Ordinance**

20 30. The County's "Critical Areas Ordinance" (CAO), KCC Title 19, was enacted and
 21 took effect in 1998.

22 31. The County did not present any evidence that the Club filled any wetland at its
 23 Property after 1998.

24 32. The opinion of the County's wetland consultant and testifying expert, Bill Shiels of
 25 Talasaea Consultants, that the Club had filled over 55,000 square feet of wetlands adjacent to
 26

1 its area of active use, at some time after 1978, was a preliminary opinion that he did intend
2 anyone to rely on in an enforcement action.

3 33. The Club has never received any formal notice of violation from any State or Federal
4 regulatory authority related to any alleged wetland fill at the Club property.

5 34. With the exception of a small area near the Club's historical boat launch, there is no
6 wetland fill at the Club property. The area alleged by the County to contain over 55,000
7 square feet of wetland fill was not a wetland. The fill near the boat launch covers about 61
8 square feet of area and has a volume of about one-third of a cubic yard—which is about the
9 amount that would fit in a wheel barrow.

10 35. The County alleges that the Club impacted several relatively small wetlands in 2005
11 while doing some exploratory clearing related to the formerly proposed and later abandoned
12 300-meter range project. This area is outside the Club's historical eight acres of active use.
13 The County refers to these alleged wetlands as wetlands "B," "C," and "D." Robbyn Myers
14 inspected these areas for the County in 2005 and detected no wetlands or critical areas
15 violations. The County has made no effort to delineate these alleged wetlands. The Club's
16 consultant, Soundview Consultants, found no wetlands in these areas during its January 19
17 and 20, 2011 site visits. Later in 2011, Soundview returned to the areas several times and
18 each time confirmed they were not wetlands. During one of these visits, Soundview watched
19 Ecology scientist Patrick McGraner perform a chemical test of the soils in the alleged
20 wetlands, which showed the soils lacked the anaerobic processes associated with wetlands.
21 Mr. McGraner issued a subsequent email expressing Ecology's agreement with Soundview's
22 opinion that the areas are not wetlands.

23 36. The County alleges that the Club committed a critical area violation by altering
24 Drainage Z, which is the area that runs from the 42-inch County Culvert under Seabock
25 Highway (directing stormwater onto the Club property) to the twin culverts that carry
26 stormwater under the rifle range. This drainage flows infrequently and is not a natural stream

1 but only a stormwater ditch created by humans many years ago, prior to the 1998 enactment
 2 of the CAO. Drainage Z is not used by fish. Drainage Z was not constructed in the area of a
 3 naturally occurring stream.

4 37. The County alleges that the Club violated the CAO when it replaced a stormwater
 5 facility consisting of some culverts and a swale that formerly conducted occasional
 6 stormwater across the rifle range with two culverts that now conduct stormwater under the
 7 rifle range. Before installation of the culverts, water entering that swale would reach all the
 8 way across the rifle range to the nearby wetland no more than two or three times per year,
 9 after severe rainfall, and fish did not use the area. There was no natural stream crossing the
 10 rifle range in 1966 or 1982. When the Club installed the twin culverts, it was replacing and
 11 connecting existing culverts, including culverts on either side of the rifle range. The County
 12 presented no credible evidence that the Club relocated the points at which stormwater entered
 13 or exited the drainage facility. The Corps and Ecology inspected the twin culverts and have
 14 issued no formal notice of any violation related to the culverts. Ecology's Patrick McGraner
 15 wrote an email stating that Ecology approves of the culverts.

16 38. The County presented expert testimony and a figure attempting to identify areas
 17 where the Club violated the CAO by impacting critical area "buffers." The testimony and
 18 figure are inaccurate for the following reasons:

- 19 a. The County miscalculated the alleged buffer around the wetlands adjacent to
 20 the Club's area of active use as a 250-foot buffer. This 250-foot buffer
 21 assumes the wetlands are a single wetland with a "Category One" rating. In
 22 reality, there are two wetlands, each with a "Category Two" rating, yielding a
 23 buffer of no more than 150-feet. The County did not attempt to accurately
 24 identify impacted buffer areas using the correct 150-foot buffer.
- 25 b. The County assumed the wetlands have always been exactly where they were
 26 in January 2011, but they have been expanding for a number of years due to

1 problems with the County's exit culvert and clear-cutting in the area. The
 2 County did not accurately account for the expansion of the wetland and its
 3 prior location when identifying wetland buffer impacts.

4 c. The alleged buffer areas include an alleged buffer around Drainage Z.

5 d. The alleged buffer areas include areas that were completely separated from
 6 wetlands prior to 1998 by a historical logging road and even the rifle range
 7 itself. Such "interrupted" buffers do not extend beyond the road or rifle range.
 8 Kitsap County applies the interrupted buffer principle, it is uniformly accepted
 9 and used by wetland professionals, and it is the Washington Department of
 10 Transportation's state-wide policy. The County failed to accurately exclude
 11 "interrupted" areas, which cannot be considered buffers.

12 **H. The County's Incomplete Forensic Investigation Regarding the Club's**
 13 **Nonconforming Use Right.**

14 39. The County admitted at trial that it began but did not complete a "forensic
 15 investigation" to determine whether the Club had expanded beyond its Historical Eight Acres
 16 so as to lose its legal nonconforming use right. The County admitted it could not determine
 17 when the Club was last acting within the lawful scope of its nonconforming use right because
 18 the County did not have adequate information.

19 40. The County admitted at trial that it considered the following factors in its forensic
 20 investigation to determine whether or not the Club had lost its legal nonconforming use right:
 21 (1) the Club's existence since 1926, (2) the change in firearm technology since 1926, (3) the
 22 increase in population near the Club, (4) the ordinance enacted by the County in 1993
 23 relating to shooting ranges, (5) the letter sent to the Club by the County in 1993 confirming
 24 its legal nonconforming use right, (6) whether machine guns were fired at the Club prior to
 25 1993, (7) whether high powered rifles were fired at the Club prior to 1993, (8) the amount of
 26 noise generated at the Club prior to 1993, (9) the circumstances surrounding the 2009 Deed,

1 (10) aerial photography of the Club dated prior to and after 1993, and (11) noise complaints
2 from neighbors.

3 41. The County admits that any intensification of the Club's activities within its
4 Historical Eight Acres, such as an increase in the number of shooters using the primary pistol
5 and rifle lines, would not affect the Club's legal nonconforming use right.

6 **1. The 2009 Deed Was Executed in the Context of the County's Numerous Strong**
7 **Public and Private Statements Supporting the Club.**

8 42. Beginning in 2007, the County began to pursue a land exchange with the DNR, which
9 would include the 72 acres DNR leased to the Club Exs. 299; 343. DNR wanted to
10 consolidate or divest its land holdings in the area and the County wanted a large tract
11 adjacent to the Club for development into what is now the Newberry Hill Heritage Park. Ex.

12 43. The County had obtained a grant that would partially fund the transfer, but it would
13 expire on June 30, 2009, creating a sense of urgency. Exs. 262; 343. DNR would not give
14 the County the park land unless the County would also take title to the Club Property,
15 thereby becoming the Club's new landlord. Ex. 332.

16 44. The Club did not learn of the land transfer until early 2009. Ex. 262. At that time,
17 the County was aware of the Club's concern for its long-term use of the Property and its
18 ability to continue operations into the future given the fact its current lease had an early
19 termination clause. The Club and County began to explore the possibility of a long term
20 lease or sale to the Club to allow the Club's operations to continue and the County had no
21 plans to close or otherwise impact the operations at the Club. Exs. 262; 318. In March 2009,
22 the Commissioners wrote a letter for inclusion in the public record stating that the Club had
23 provided a much needed amenity in Central Kitsap for over 80 years. Ex. 293. The
24 Commissioners also reaffirmed their 2003 determination that the Club and its improvements
25 were not at odds with the County's long-term interest in the Property and would not
26 jeopardize the County's future planning efforts. *Id.*; Ex. 296. The County also assured the

1 community that it would honor the existing terms of the DNR lease, that it was not looking to
 2 renegotiate any terms with the Club, and that termination of the lease would be poor
 3 judgment on the County's part. Exs. 319; 334; 336. It also confirmed that it was not trying
 4 to shut down the range and it hoped that the Club would notice no substantive difference
 5 after the land transfer. Exs. 300, 333; 336; 338.

6 45. While planning the land exchange with DNR, the County held meetings and received
 7 public comments as to whether the Club should be allowed to continue on its leased land
 8 once the County became its landlord. The majority of the attendees at these meetings were
 9 supportive of the Club. The County Commissioners also received information from the
 10 DCD, including Steve Mount and Larry Keaton, regarding potential or suspected code
 11 violations that may have existed at the Club Property. Steve Mount of the DCD gave a
 12 PowerPoint presentation to the Commissioners outlining his compliance issues with the Club.
 13 Mr. Mount also explained that noise complaints had been received by the County and
 14 recommended that the Property be inspected. Before the land exchange took place, the
 15 County was aware of any zoning enforcement issues at the Club now raised in this lawsuit,
 16 including clearing on the property and suspected expansion. Ex. 347.

17 46. Prior to taking title to the park land and Club Property from DNR, the County's
 18 representatives inspected the Property, considered environmental and other liabilities
 19 associated with the Property, and hired an appraiser, who conducted his own inspection of
 20 the Property. Exs. 279; 348. The County did not advise its own appraiser that there were
 21 any suspected, potential, or actual code violations or nuisance conditions associated with the
 22 Property. The County instructed the appraiser to determine the market-based valuation of
 23 Property in an 'as is' condition. *Id.* The appraiser was also instructed by the County to
 24 consider the fact that the Property would continue to be used as a shooting range consistent
 25 with its historical use, and if the Club were to enlarge or materially improve the facility that
 26 would require land use compliance measures and permitting through the DCD. *Id.*

1 47. The appraisal estimated that if the Property were not maintained as an active shooting
 2 range the potential environmental cleanup cost would be \$2 to \$3 million. Exs. 279; 348-49.
 3 The County was concerned that the potential contamination and cost of cleanup would
 4 impact the value of the land. Exs. 372; 348-49. The County admitted it would be a cost to
 5 the County to own or operate the Property. *Id.* Both Marcus Carter and Regina Taylor
 6 testified that once the Club ceases being an active shooting range it is no longer viewed as
 7 metal recycling operation and is then viewed as a hazardous waste disposal site. To insulate
 8 itself from this potentially large liability and still move forward with the land transfer, the
 9 County offered to sell the Property to the Club as soon as the County received title from
 10 DNR, subject to written terms to be negotiated, including the Club's agreement to indemnify
 11 the County for any environmental liability arising out of the Property. Exs. 342; 348-49,
 12 362; 375.

13 48. The County prepared and passed a public resolution to assign and convey the
 14 Property to the Club. Ex. 477. By the terms of the resolution, the County admitted that the
 15 Property was to be used as a shooting range, the Club provided important benefits to the
 16 public and law enforcement and military personnel, and its use for firearm training,
 17 competition, and hunter safety education classes was also beneficial. *Id.* The resolution also
 18 stated that the Club met the County's needs by its operation as a private nonprofit facility and
 19 continuance of the Club was in the public's interest for firearm safety. *Id.*

20 49. The County knew the Club had a long-term relationship with DNR and expected to
 21 operate at the property for many years to come. In a response to a letter written by a citizen
 22 concerned about the future of the Club, DNR acknowledged the Club's efforts to work
 23 cooperatively with the County and gave assurance that the Club would be an integral part of
 24 the public use designated for the Heritage Park. Ex. 359.

25 50. Two days before the Property was sold to the Club, Commissioner Josh Brown
 26 stated in a public meeting that the land exchange would not conflict with the Club's

1 continuing existence and that completion of the Heritage Park while simultaneously
2 continuing the Club's operations for another 83 years were not mutually exclusive goals. Ex.
3 555-56. Commissioner Brown also admitted that selling the Property to the Club would
4 allow the County to continue an appropriate use (i.e. the Club), and one that residents of
5 Kitsap County needed to be able to engage in. *Id*

6 51. The Club's attorney, Regina Taylor, had direct negotiations with County
7 representatives regarding the written terms of the land sale Exs. 360; 371; 373; 400; 550;
8 551. Ms. Taylor testified that she was assisting the Club to secure its position as a lessee on
9 its leased property. She drafted an email on April 10, 2009, summarizing her understanding
10 of meetings with the County. Ex. 550. It was her understanding that the parties were
11 discussing a "partnership" and she attached two draft leases containing provisions
12 acknowledging the Club's "grandfathered" status. *Id*. No one at the County ever responded
13 to her drafts stating the Club's status was in question. Ms. Taylor testified that in her review
14 of the draft deed she chose not to insert the term "grandfathered" because it was not a
15 technical legal term. Instead, she chose to make clear that the Club had a legal
16 nonconforming use right which could be intensified, by inserting the language in section 3
17 regarding improvement of the Property consistent with "modernizing" the facilities
18 consistent with management practices for a modern shooting range. There was never any
19 doubt in Ms. Taylor's mind that the parties were acknowledging the Club's legal
20 nonconforming use status as of the date of the 2009 Deed.

21 52. The parties' agreement was documented in a Bargain and Sale Deed with Restrictive
22 Covenants (the "2009 Deed"), executed by the parties on May 13, 2009. Exs. 381; 393.
23 Because the property was appraised at less than \$2,500, the sale did not require a public
24 auction. Ex.477. The Club's environmental consultant, Jeremy Downs of Soundview
25 Consultants, reviewed an aerial photo of the Club from approximately May 2009 and
26 calculated the area of active Club use at that time was approximately eight acres. Ex. 486.

1 Independently, the Club's surveyor documented the Club's active use area in early 2011 to
2 be approximately eight acres. Ex. 438.

3 53. On the day the 2009 Deed was executed, Commissioner Brown told the Club that the
4 County looked forward to Club serving citizens for many years to come. Ex. 374. When the
5 County passed its resolution and executed the 2009 Deed, it also created a record of public
6 proceedings expressing the County's strong support for the Club and its reasons for
7 conveying title to the Club. Exs. 415; 477-78; 393; 552-53; 555-56. Two days after signing
8 the 2009 Deed, Commissioner Brown stated that the Club's operations were properly
9 confined within the footprint it had leased with DNR for the past 83 years. Ex. 405.

10 54. After the 2009 Deed was executed, the County began to receive additional complaints
11 from neighbors of the Club. In response, Steve Mount began to investigate the matter. He
12 organized a meeting for others at the DCD and the County Prosecutor's office in 2010 where
13 he gave a PowerPoint presentation depicting the chronology of events at the Club over the
14 years. After hearing Mount's allegations, Prosecutor Russell Hauge agreed to file suit
15 against the Club.

16 II. CONCLUSIONS OF LAW

17 Based on the evidence presented at trial, the Court makes the following conclusions of law.

18 1. The 2009 Deed provides a right for the Club to continue without further permits or
19 approvals from the County for any site condition existing as of May 13, 2009.

20 a. When the Commissioners executed the 2009 Deed, they acted within their
21 authority to compromise the County's interest in any legitimate dispute or potential
22 dispute.

23 b. The terms of the 2009 Deed are binding on the County as a whole, without
24 exception for DCD or the Prosecutor's Office.

25 2. The County's effort in this lawsuit to require the Club to be shut down because of site
26 conditions existing as of May 13, 2009 constitutes a breach of the 2009 Deed, by which the

1 parties expressed an overt intent to resolve all outstanding issues concerning the legality of
2 the Club's operations as they existed at that time.

3 3. The County's claims arising from site conditions existing as of May 13, 2009, are
4 equitably estopped.

5 a. The County's claims in this lawsuit are inconsistent with statements it made to
6 the Club in and prior to the 2009 Deed and with the negotiations and public processes
7 leading up to its execution.

8 b. The Club reasonably relied on the County's statements in agreeing to accept
9 title to the property, agreeing to indemnify the County for environmental liabilities,
10 and continuing to make investments to modernize and maintain its facilities.

11 c. The Club will suffer significant harm if the County is allowed to repudiate and
12 deviate from its earlier positions.

13 e. It would be manifestly unjust to allow the County to repudiate and deviate
14 from its earlier positions.

15 d. Estopping the County from repudiating and deviating from its earlier positions
16 will not impair its government functions.

17 4. The County waived any claim arising from site conditions existing as of May 13,
18 2009, by voluntarily and intentionally relinquishing its right to challenge the legality of the
19 Club's operations on the Historical Eight Acres through the execution of the 2009 Deed.

20 5. The County's claims arising from site conditions existing as of May 13, 2009, are
21 barred by the doctrine of laches.

22 a. The County has not offered any reasonable explanation as to why it waited to
23 bring this action until after the Club assumed ownership of the property and agreed to
24 indemnify the County.

25 b. The Club will suffer significant harm from the County's inexplicable delay in
26 bringing this action and putting the Club on notice of its intent to take enforcement

1 action. That harm includes the Club's agreement to indemnify the County from
 2 environmental liability associated with the property, its continued investment in
 3 maintaining and modernizing the facility, and its loss of a fair opportunity to
 4 negotiate more fully with the County regarding the issues raised in this lawsuit as part
 5 of the negotiation of the 2009 Deed, which the County so strongly and urgently
 6 wanted to execute.

7 6. The Club retains a vested legal nonconforming use right to operate a shooting facility
 8 and gun club within the eight acres historically used at the Property.

9 a. Under the 2009 Deed, the Club retains a legal nonconforming use right within
 10 the approximately eight-acre area presently in active use at its property.

11 b. The Club has not expanded in any way that might terminate its lawful
 12 nonconforming use right under applicable County Code and Washington law.

13 c. The Club has not changed its land use or instituted a new land use in any way
 14 that might terminate its lawful nonconforming use right under applicable County
 15 Code and Washington law.

16 d. The Club's use of its property as a shooting facility and gun club remains
 17 "otherwise lawful" within the meaning of the County's nonconforming use code,
 18 KCC 17.460.020.

19 7. The County failed to prove any actionable nuisance associated with sound or noise
 20 from the Club property.

21 a. The County failed to prove the impacts of noise or sound associated with the
 22 Club to be unreasonable so as to constitute a public nuisance.

23 b. The County failed to prove the impacts of noise or sound from the Club to be
 24 significantly impacting a large enough segment of the population to constitute a
 25 public nuisance.
 26

1 c. The County failed to prove the impacts of sound or noise from the Club are
2 significant enough to constitute a public nuisance.

3 d. The County failed to prove the amount of noise or sound from the Club is in
4 violation of any County Code or State law governing sound.

5 8. The County failed to prove any actionable nuisance associated with risks to public
6 safety posed by the Club.

7 a. The County failed to prove that any bullet fired at the Club has ever impacted
8 a person or residence outside the Club property.

9 b. The County failed to prove that the Club poses an imminent and substantial
10 risk of physical harm to any person or residence.

11 c. The County failed to prove that the Club's engineering and institutional
12 controls for safety fall below industry standards for safety at modern small arms
13 shooting facilities.

14 d. The County failed to prove that the Club increases the risk to the public
15 associated with firearms beyond the risk that would exist if the Club were shut down.

16 e. The County failed to prove that residents' fears regarding alleged risks to
17 public safety posed by the Club are sufficiently widespread to constitute a public
18 nuisance.

19 f. The County failed to prove that residents' fears regarding alleged risks to
20 public safety posed by the Club are sufficient to constitute a public nuisance.

21 i. The County failed to prove that residents' fears regarding alleged risks
22 to public safety posed by the Club constitute a reasonable, well-founded, and
23 non-speculative expectation of significant disaster.

24 ii. The County failed to prove that residents' fears regarding alleged risks
25 to public safety posed by the Club have resulted in materially decreased
26 property values.

1 g. The County failed to prove that the potential for bullets to exit an objectively
 2 safe range with a strong record of safety is sufficient to constitute a nuisance when all
 3 testifying residents came to the alleged nuisance.

4 9. Substantive due process prohibits the County's new nonconforming use ordinance,
 5 KCC 17.460.020, from divesting the Club of its lawful nonconforming land use status based
 6 on the allegations at issue.

7 a. The harm to the Club would be unduly oppressive and grossly
 8 disproportionate to the alleged harm sought to be avoided by application of the new
 9 ordinance.

10 b. There are much less oppressive means available to remedy the alleged harm

11 c. The Club could not anticipate that any minor violation proven by the County
 12 in this action would result in the Club's complete loss of its historical nonconforming
 13 use right to continue using its property as a gun club and shooting facility.

14 10. The County's attempt to use its new nonconforming use ordinance to strip the Club
 15 of its historical nonconforming use right exceeds the County's police power, goes too far,
 16 and is not rationally related to any legitimate interest in promoting public health, welfare, and
 17 safety.

18 11. The County's attempt to use its new nonconforming use ordinance to strip the Club of
 19 its historical nonconforming status, without first providing the Club actual notice of the
 20 proposed new ordinance, violates the Club's right to procedural due process.

21 a. The new ordinance affects substantial interests and rights of the Club.

22 b. Enacting the new ordinance without providing the Club actual notice of the
 23 proposed law threatens the Club's very existence.

24 c. Providing the Club with actual notice of the proposed law would have imposed
 25 only trivial administrative and financial burdens on the County.

26

- 1 12. The County failed to prove any violation of its Critical Areas Ordinance, KCC Title
 2 19.
- 3 a. The County did not prove any violation of the CAO related to alleged filling
 4 of wetlands adjacent to the Club's area of active use because no wetlands were filled
 5 in that alleged area.
- 6 b. The Club disclosed some accidental fill near the boat launch, whose volume
 7 of approximately one-third of a cubic yard does not require a site development
 8 activity permit (SDAP) under KCC Title 12. See KCC 12.10.030 (identifying
 9 thresholds for SDAPs).
- 10 c. The areas near the formerly proposed 300-meter range alleged by the County
 11 to be wetlands B through D are not wetlands. The County has not proven any
 12 violation of the CAO related to the Club's work in 2005 on its formerly proposed
 13 300-meter range.
- 14 d. Drainage Z—connecting the County's 42-inch culvert and the Club's twin
 15 culverts under the rifle range—is not a stream or critical area and is not subject to the
 16 CAO. See KCC 19.150.635 (defining "stream"); KCC 19.150.215 (defining "critical
 17 area"). The County has not proven any violation of the CAO or any other ordinance
 18 related to alleged work in Drainage Z.
- 19 e. The twin culverts under the rifle range were not installed in a stream or critical
 20 area so they constitute no critical area violation. The County failed to prove that the
 21 installation of the twin culverts required an SDAP under KCC 12.10.030(6) because it
 22 did not prove the Club moved the locations where water enters and exits the
 23 stormwater drainage facility.
- 24 f. The County's attempt to identify impacted critical area buffers is inaccurate
 25 and cannot be relied upon to prove the location of any critical area buffer violations.
 26

1 13. The County has failed to prove sufficient safety concerns to warrant the enjoining of
2 the Club's operations. The scope of injunctive relief requested by the County is too broad.
3 An injunction is not warranted.

4 14. The County's request for injunctive relief requiring permits for all past changes and
5 all future uses is too broad and vague to enforce.

6 15. The County has failed to prove which uses or activities violate which code provisions,
7 when these violations occurred, and which permit must be obtained so as to remedy the
8 particular violation.

9 16. The County's request to prohibit shooting at the range until it is in compliance with
10 all code and range safety standards is too broad and vague to enforce, and will lead to an
11 increase in unsanctioned, unmonitored shooting activities.

12 17. The County has failed to establish a concrete set of range safety standards that should
13 apply to the Club, and that the Club has failed to comply with those standards.

14 18. The County has not adequately identified and demarcated the offending development,
15 clearing and wetland/stream buffer activities so injunctive relief is not appropriate.

16 19. The County's request to avoid continued violation of the Kitsap County Code is
17 overly broad and provides no guidance to the Court.

18 DATED this _____ day of November, 2011.

19

20

Judge Susan K. Serko

21

22 PRESENTED BY:

23

24 /s/ Brian D. Chenoweth
25 Brian D. Chenoweth, WSBA No. 25877
26 Of Attorneys for Defendants
510 SW Fifth Ave., Fifth Floor
Portland, Oregon 97204
(503) 221-7958

Appendix 27

**CP 3987–4025, Kitsap County’s proposed
findings of fact**

10-2-12913-3 37459141 PROR 11-08-11



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

KITSAP COUNTY,

Plaintiff,

vs

KITSAP RIFLE AND REVOLVER CLUB,

Defendant

Cause No 10-2-12913-3

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
OF PLAINTIFF KITSAP COUNTY

Hon. Susan K. Serko
Dept. 14

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-for-
profit corporation registered in the State of
Washington, and JOHN DOES and JANE ROES I-XX,
inclusive,

Defendants,

and,

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED AT
One 72-acre parcel identified by Kitsap County Tax
Parcel ID No. 362501-4-002-1006 with street address
4900 Seabeck Highway NW, Bremerton Washington.

NO. 10-2-12913-3

[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW, VERDICTS
AND ORDERS UPON BENCH TRIAL

THIS MATTER having come on regularly for hearing before the undersigned Judge of the
above-entitled Court pursuant to a Bench Trial on the claims and counterclaims asserted therein
including Kitsap County's motion for judgment declaring that Defendant Kitsap Rifle and Revolver
Club has terminated its non-conforming land use status; the parties appearing by and through their

Plaintiff's Proposed Findings of Fact and Conclusions of Law - 1

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1 attorneys of record below-named; and the Court having considered the motions, briefing, declarations
 2 on file¹, testimony of witnesses, argument of counsel and the records and files herein, and being fully
 3 advised in the premises, now, therefore, makes the following findings of fact, conclusions of law and
 4 orders, which shall remain in effect until further order of this court:
 5

6 I. FINDINGS OF FACT

7 A) *Jurisdiction*

- 8
- 9 1. All events cited in these Findings took place in unincorporated Kitsap County, Washington,
 10 except where noted. Port Orchard is the county seat for Kitsap County, and references to
 11 official action by the Kitsap County Board of County Commissioners ("BOCC") or to
 12 meetings or BOCC proceedings at the Kitsap County Administration Building refer to events
 13 at County facilities located in Port Orchard, except where noted to the contrary.
 - 14 2. On October 22, 2010, the Court denied defendant Kitsap Rifle and Revolver Club's motion to
 15 change venue in this action, finding that the Pierce County Superior Court has jurisdiction
 16 over the parties and is the proper venue for the action pursuant to RCW 2.08.010 and RCW
 17 36.01.050. The Court denied the motion without prejudice, and the defendant has not re-filed
 18 a change of venue motion.
 19

20 B) *Parties*

- 21
- 22 3. Plaintiff Kitsap County ("County") is a municipal corporation in and is a political subdivision
 23 of the State of Washington.
 - 24 4. Defendant Kitsap Rifle and Revolver Club ("KRRC" or "the Club") is a Washington non-
 25 profit corporation and is the owner of record of the subject property, which is located at 4900
 26 Seabeck Highway NW, Bremerton, Washington (hereinafter referred to as the "Property")
 27

28 ¹ By agreement of the parties entered on the record on October 26, 2011, the Declaration of Michael Crouch filed in this
 action is not part of the record to be considered.

1 and more particularly described as:

2 36251W

3 PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST
 4 QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE
 5 SOUTHWEST QUARTER, SECTION 36, TOWNSHIP 25 NORTH,
 6 RANGE 1 WEST, W.M., KITSAP COUNTY, WASHINGTON, LYING
 7 NORTHERLY OF THE NORTH LINES OF AN EASEMENT FOR RIGHT
 8 OF WAY FOR ROAD GRANTED TO KITSAP COUNTY ON DECEMBER
 9 7, 1929, UNDER APPLICATION NO. 1320, SAID ROAD BEING AS
 10 SHOWN ON THE REGULATION PLAT THEREOF ON FILE IN THE
 11 OFFICE OF THE COMMISSIONERS OF PUBLIC LANDS AT OLYMPIA,
 12 WASHINGTON.*****IMPROVEMENTS CARRIED UNDER TAX
 13 PARCEL NO. 362501-2-002-1000*****

14 5. Defendant Sharon Carter (d/b/a "National Firearms Institute") was dismissed from this action
 15 on February 14, 2011 upon Plaintiff's motion. No other defendants have been named.

16 C) KRRC

17 6. KRRC was chartered in the year 1926. At trial, the Club presented a charter document that
 18 included a motto or slogan "for sport and national defense". The Club operated on the federal
 19 property called Camp Wesley-Harris from its formation until sometime shortly after the end
 20 of World War II, when it moved to its present location at the subject property. Camp
 21 Wesley-Harris was used by the United States military as an outdoor shooting range at all
 22 relevant times up until approximately 2004. The Club presented newspaper articles from the
 23 1920's, including an article describing the use of Camp Wesley-Harris by United States
 24 Marine Corps members for an exercise hosted by KRRC in which active duty USMC
 25 members fired machine guns.

26 7. KRRC's first corporate registration was in 1986, when it registered as a non-profit
 27 corporation with the Washington Secretary of State's office. KRRC has maintained non-
 28 profit corporate registration to present date.

1 D) *Zoning*

- 2 8. The subject property is a single 72-acre parcel located in unincorporated Kitsap County and is
 3 zoned "rural wooded" under Kitsap County Code Chapter 17.301. The Property has had this
 4 same essential zoning designation since before the year 1993.
 5
 6 9. On September 7, 1993, then-BOCC Chair Wyn Granlund authored a letter to the four
 7 shooting ranges in unincorporated Kitsap County at the time, stating that the County
 8 recognized each as "grandfathered" (trial exhibit 315).

9 E) *The Subject Property - Ownership, Leases and DNR Uses*

- 10 10. Until June 18, 2009, the approximately 72-acre subject property was owned by the State of
 11 Washington Department of Natural Resources ("DNR"). DNR owned several contiguous
 12 parcels to the north of the subject property, and managed parts of these contiguous properties
 13 and parts of the subject property for timber harvesting. DNR leased the Property to KRRC
 14 under a series of lease agreements, the two most recent of which are admitted into evidence
 15 (trial exhibits 135 and 136). The lease agreements recite that eight acres of the property are
 16 for use by the Club as a shooting range and that the remaining 64.4 acres are for use as a
 17 "buffer". The lease agreements do not identify the specific boundaries of these respective
 18 areas.
 19
 20 11. Prior to the instant litigation, the eight acres of the property claimed by KRRC to be its
 21 "historic use" area had not been surveyed by a professional surveyor or otherwise specifically
 22 defined.
 23
 24 12. Over the decades of its ownership of the Property and adjacent properties, DNR periodically
 25 conducted timber harvesting and replanting. The most recent DNR timber harvest on the
 26 Property was in approximately 1991, when the eastern portions of the Property were clear-cut
 27
 28

1 and successfully replanted.

2 13. On June 18, 2009, deeds were recorded with the Kitsap County Assessor's Office transferring
3 the Property first from the State of Washington to Kitsap County and immediately thereafter
4 from Kitsap County to KRRC. The first deed was a quit claim deed transferring DNR land
5 including the Property from the State to the County (trial exhibit 146). The second deed was
6 a bargain and sale deed ("2009 Deed") transferring the Property from the County to KRRC
7 (trial exhibit 147).

8
9 14. For purposes of these factual findings, the Court will use the names the Club has given to
10 shooting areas at the Property, which include a rifle range, a pistol range, and Shooting Bays
11 1-11 as depicted in Trial Exhibits 251 and 251A (June 2010 Google earth imagery). The well
12 house referenced in testimony is located between Bays 4 and 5 and the "boat launch" area
13 referenced in testimony is west of Bay 8.

14
15 *F) Property Transfer.*

16 15. For several years dating back to the 1990's, Kitsap County has sought to acquire property in
17 Central Kitsap County to be developed into a large greenbelt or parkland area. Prior to 2009,
18 Kitsap County acquired several large parcels in Kitsap County for use in a potential "land
19 swap" with the State DNR. DNR owned several large parcels including the Subject Property,
20 which were the object of the County's proposed transaction ("DNR parcels")
21

22 16. In early 2009, negotiations with the State reached a stage in which the DNR and the County
23 began to discuss specific terms of the contemplated transaction. DNR informed the County
24 that it would be deeding the DNR parcels including the subject property to Kitsap County, so
25 that the County would take over DNR's position as landlord to KRRC.
26

27 17. KRRC became aware that the County could become the Club's landlord as a result of the
28

1 land swap and became concerned that the County might exercise a "highest and Best use"
2 clause in the lease agreements between the Club and DNR, so as to end the Club's use of the
3 Property for shooting range purposes.
4

5 18. In March 2009, Club officials met with County officials including Commissioner Josh
6 Brown, so as to obtain the County's agreement to amend the lease agreement to remove the
7 highest and best use clause. Soon after, the County and Club began discussing whether the
8 County should instead deed the property to KRRC. KRRC very much wanted to own the
9 property on which its shooting range was located and Kitsap County was very disinterested in
10 owning the Property due to concern over potential heavy metals contamination of the
11 Property from its use as a shooting range for several decades.
12

13 19. In April and May 2009, Club officers and club member and attorney Regina Taylor
14 negotiated with Kitsap County staff members, including Matt Keough of the County Parks
15 Department and Deputy Prosecuting Attorney Kevin Howell of the County Prosecutor's
16 Office Civil Division. A bargain and sale deed was drafted by Mr. Howell, and the parties
17 exchanged revisions of the deed until they agreed upon the deed's final terms.
18

19 20. At the County's request, certified appraiser Steven Shapiro conducted an appraisal of the
20 KRRC property, which he published as a "supplemental appraisal report" dated May 5, 2009
21 (trial exhibit 279). This appraisal report presumed that the Property was lead-contaminated
22 and that a \$2-3 million cleanup may be required for the property. The appraisal report valued
23 the Property at \$0, based upon its continued use for shooting range purposes and the potential
24 costs of cleanup. The appraisal did not split out values to be assigned to the "historic use"
25 and "buffer" areas of the Property.
26

27 21. On May 11, 2009, the BOCC voted on and approved the sale of the Property from Kitsap
28

1 County to the Club, pursuant to the terms of the 2009 Deed. The County did not announce or
 2 conduct a sale of the Property at public auction pursuant to Chapter 36.34 RCW because the
 3 County and KRRC relied upon the value from Mr. Shapiro's supplemental appraisal report.

4
 5 22. The minutes and recordings of BOCC meetings on and around May 11, 2009 do not reveal an
 6 intent to settle disputed claims or land use status at the Property.

7 23. At the time of the property transaction, Kitsap County had no plans to pursue a later civil
 8 enforcement or an action based upon land use changes or site development permitting.

9 24. During the negotiation for the property transaction, the parties did not negotiate for the
 10 resolution of potential civil violations of the Kitsap County Code at the Property and the
 11 parties did not negotiate to resolve the Property's land use status.

12
 13 G) *The Bargain and Sale Deed.*

14 25. During negotiations, the Club sought assurances that it would be able to continue to use the
 15 property as a shooting range and the County sought assurances that it would be indemnified
 16 for any damages claimed relating to past, present and future uses of the Property. The Club
 17 submitted testimony that it believed that it was negotiating for recognition of
 18 "grandfathering" of the eight acre "historic use" area of the Property as it existed at the time
 19 of the conveyance from the County to KRRC.

20
 21 26. The 2009 Deed's prefatory language and Paragraphs 1 through 3 provide:

22
 23 For and in consideration of \$10.00 and other good and valuable consideration, Kitsap
 24 County, as Grantor, bargains, sells and conveys all of its right, title and interest in and to the
 25 real property described on Exhibit A hereto to the Kitsap Rifle and Revolver Club, a
 Washington Non-Profit Corporation, as Grantee.

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

28 1. Grantee for an 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

1 hold harmless, indemnify and defend Kitsap County, its elected officials, employees and agents
 2 from and against any liabilities, penalties, fines, charges, costs, losses, damages, expenses,
 3 causes of actions, claims, demands, orders, judgments, or administrative actions, including,
 4 without limitation, reasonable attorneys' fees, arising from or in anyway connected with (1)
 5 injury to or the death of any person or the physical damage to any property, resulting from any
 6 act, activity, omission, condition or other matter related to or occurring on or about the
 7 property, regardless of cause, unless due solely to the gross negligence of any of the
 8 indemnified parties; (2) the violation of alleged violation of, or other failure or alleged failure
 9 to comply with, any state, federal, or local law, regulation or requirement, including, without
 10 limitation, Comprehensive Environmental Response, Compensation and Liability Act
 11 (CERCLA), 42 USC Sec. 9601, et seq. and Model Toxics Control Act (MTCA), RCW 70.105
 12 D, by any indemnified person or entity in anyway effecting, involving, or relating to the
 13 property; (3) the presence or release in, on, from, or about the property, at any time, past or
 14 present, of any substance now or hereafter defined, listed, or otherwise classified pursuant to
 15 any federal, state or local law regulation, or requirement as hazardous, toxic, polluting or
 16 otherwise contaminating to the air, water, or soil, or anyway harmful or threatening to human
 17 health or the environment.

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

26 3. Grantee shall confine its active shooting range facilities on the property
 27 consistent with its historical use of approximately eight (8) acres of active shooting ranges with
 28 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 well, pump house, water distribution and water
 storage; (g) noise abatement and public safety additions. Also, Grantee may also apply to
 Kitsap Count for expansion beyond the historical eight (8) acres, for "supporting" facilities for
 the shooting ranges or additional recreation 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 the 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;

1 recreational shooting, and self-defense, and firearm owners as well as bow users need safe,
 2 accessible areas in which to shoot their equipment. Approved shooting ranges provide that
 3 opportunity, while at the same time, promote public safety. Interest in all shooting sports has
 4 increased while safe locations to shoot have been lost to the pressures of urban growth." (Wash.
 5 Laws 1990 ch. 195 Section 1.)

6 27. The Court admitted evidence of the general liability insurance policies that were issued to
 7 KRRC during the years 2009, 2010 and 2011 (trial exhibits 198, 199 and 200). The policies
 8 do not list Kitsap County as a separated insured (except for purposes of the Club's booth at
 9 the annual Kitsap County Fair), and the policies contain a standard exemption for
 10 environmental contamination. For the limited purpose of assessing the Club's assertion that
 11 the indemnification agreement and its defense provisions constitute highly valuable
 12 consideration that ought to be considered in analyzing the Club's equitable claims, the Court
 13 finds that the Club has not in fact insured Kitsap County for the costs to defend litigation
 14 relating to the Property and that the Club has not insured Kitsap County against all claims of
 15 environmental contamination at the Property.

16 28. In trial, the Club did not identify its assets or revenue streams or otherwise present evidence
 17 that it could financially support the 2009 Deed's indemnification provisions in light of the
 18 limitations or exclusions of its insurance policies.

19
 20 *H) Site Development at the Property – General Timeline*

21 29. For several decades prior to 1993, the Club operated a rifle range and a pistol range at the
 22 Property. As of 1993, the pistol range consisted of a south-to-north oriented shooting area
 23 defined by a shooting shed on its south end and a back stop on the north end and the rifle
 24 range consisted of a southwest-to-northeast oriented shooting area defined by a shooting shed
 25 on its southwest end and a series of backstops going out as far as 150 yards to the northeast.
 26 As of 1993, the developed portions of the Property consisted of the rifle range, the pistol
 27
 28

- 1 range, and cleared areas between these ranges, as seen in a 1994 aerial photograph (trial
 2 exhibit 8). The Club presented testimony that during and before 1993 its members and users
 3 participated in shooting activities in wooded or semi-wooded areas of the Property, on the
 4 periphery of the pistol and rifle ranges and within its claimed eight-acre "historic use" area.
- 5
- 6 30. As of 1993, shooting occurred at the Property during daylight hours only. Shooting at the
 7 Property occurred only occasionally, and usually on weekends and during the fall "sight-in"
 8 season for hunters. For neighbors along the Seabeck Highway
- 9
- 10 31. On July 10, 1996, the Kitsap County Department of Community Development ("DCD")
 11 received from KRRC a "Pre-Application Conference Request" form, which was admitted as
 12 trial exhibit 134. Under project name, KRRC listed "Range Development - Phase I" and
 13 under proposed use, KRRC stated "Due to 50C-1993, KRRC is forced to enhance its
 14 operations and become more available to the general public. Phase I will include a water and
 15 septic system(s), a class room/community facility and a 200 meter rifle line. Material will not
 16 be removed from the premissis (sic); it will be utilized for safety berms and acoustical
 17 baffeling (sic). These enhancements will allow KRRC to generate a profit to be shared with
 18 the State School Trust (DNR). Local business will also profit from sportsmen visiting the
 19 area to attend our rich sporting events."
- 20
- 21
- 22 32. There is no evidence of application by the Club or by DNR or by any agent thereof for any
 23 county permits or authorizations before or after the Club's 1996 pre-application conference
 24 request, other than a pre-application meeting request submitted by the Club in 2005
 25 (discussed below) and a County building permit for construction of an ADA ramp serving the
 26 rifle line shelter in 2008 or 2009.
- 27
- 28 33. From approximately 1996 forward, the Club undertook a process of developing portions of its

1 claimed "historic eight acres", clearing, grading and sometimes excavating wooded or semi-
2 wooded areas to create "shooting bays" bounded on at least three sides by earthen berms and
3 backstops. Aerial photography allowed the Court to see snapshots of the expansion of
4 shooting areas defined by earthen berms and backstops and verify testimony of the time line
5 of development: 2001 imagery (trial exhibits 9 and 16A) depicts the range as consisting of
6 the pistol and rifle ranges, and shooting bays at the locations of present-day Bays 1, 2, 3, 9,
7 10 and 11. Comparing the 2001 imagery with March 2005 imagery (trial exhibit 10), no new
8 shooting bays were established during that interval. "Birds Eye" aerial imagery from the MS
9 Bing website from an unspecified date later in 2005 provided the clearest evidence of the
10 state of development at the Property (trial exhibits 462, 544, 545, 546, 547), which included
11 clearing and grading work performed in the eastern portion of the Property after the March
12 2005 imagery, discussed below under the subject of the proposed 300 meter range. June
13 2006 and August 2006 imagery (trial exhibits 11 and 12) reveals clearing and grading to
14 create a new shooting bay at the location of present-day Bay 7 and February 2007 imagery
15 (trial exhibit 13) reveals clearing and grading work to create new shooting bays at the
16 locations of present-day Bay 8 and present-day Bay 6, and reveals clearing to the west of
17 Bays 7 and 8 to accommodate a storage unit or trailer at that location. February 2007
18 imagery also reveals that the Club extended a berm along the north side of the rifle range and
19 extended the length of the rifle range by clearing, grading and excavating into the hillside to
20 the northeast of that range. April 2009 imagery (trial exhibit 14) reveals establishment of a
21 new shooting bay, Bay 4, and enlargement of Bay 7. May 2010 imagery (trial exhibit 15)
22 reveals establishment of a new shooting bay, Bay 5, enlargement of Bay 6, and additional
23 clearing to the west of Bays 8 and 7 up to the edge of a seasonal pond (the easternmost of two
24
25
26
27
28

1 ponds delineated as wetlands on club property, discussed below).

2 34. Bay 6, Bay 7 and the northeast end of the rifle range are each cut into hillsides, creating "cut
3 slopes" each in excess of five feet in height and a slope ratio of three to one. The excavation
4 work performed to create Bay 6 and Bay 7 and to extend the rifle range to the northeast
5 required excavation significantly in excess of 150 cubic yards of material at each location.
6 The excavation work into the hillside for Bay 7 took place in phases between after 2005 and
7 before April 2009. The excavation work into the hillside for Bay 6 took place in phases
8 between August 2006 and May 2010, and the excavation work at Bay 6 between April 2009
9 and May 2010 required excavation in excess of 150 cubic yards of material. The excavation
10 work into the hillside at the northeast end of the rifle range took place between August 2006
11 and February 2007.

12 35. One of the earthen berms constructed after February 2007 is a continuous berm that separates
13 Bay 4 and Bay 5 and other developed areas on the Property from the Property's undeveloped
14 areas to the north and west. Starting at the northeast corner of Bay 3, this berm runs to the
15 east to define the northern edge of Bay 4, then turns northeast and curves around a cleared
16 area used for storage around the Property's well house, and then turns north to form the
17 western and northern edges of Bay 5. This berm was constructed in phases after February
18 2007, and the part of this berm forming the western and northern edges of Bay 5 was
19 constructed between April 2009 and May 2010. This latter phase of the berm's construction
20 between April 2009 and May 2010 required movement of more than 150 cubic yards of
21 material. This berm also is more than five feet in height and has a slope ratio of greater than
22 three to one.

23 36. For each hillside into which there was excavation and creation of cut slopes at the Property,
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1 there were no applications for County permits or authorizations, and no erosion or slope
 2 maintenance plans were submitted to or reviewed by the County. For each location on the
 3 Property where clearing, grading, and/or excavation occurred, there were no applications
 4 made for County permits such as grading permits or site development activity permits.
 5

6 37. Over the years, the Club has used native materials from the Property to form berms and
 7 backstops for shooting areas, usually consisting of the spoils from excavating into hillsides on
 8 the Property.
 9

10 38 There is no fence around the active shooting areas of the Property to keep out or discourage
 11 unauthorized range users.

12 *D) Site Development at the Property – 300 meter range*

13 39. In approximately 2003, KRRC began the process of applying to the State of Washington
 14 Interagency Committee for Outdoor Recreation (“IAC”) for a grant to be used for improving
 15 the range facilities. KRRC identified the project as a “range reorientation” project to build a
 16 rifle range that did not have its “back” to the Seabeck Highway.
 17

18 40. In March of 2005, DCD received complaints that KRRC was conducting large scale
 19 earthwork activities and that the noise from shooting activities from the range had
 20 substantially increased. The area in which earth-moving activities took place is a large
 21 rectangular area in the eastern portion of the Property, with a north-south orientation. This
 22 area would become known as the proposed “300 meter range”, and it is clearly visible in each
 23 aerial image post-dating March 2005. In March of 2005, DCD staff visited the 300 meter
 24 range area and observed “brushing” or vegetation clearing that appeared to be exploratory in
 25 nature.
 26

27 41. In April of 2005, DCD staff visited the 300 meter range and discovered recent earthwork
 28

1 including grading, trenching, surface water diversion, and vegetation removal including
 2 logging of trees that had been replanted after DNR's 1991 timber harvest. The entire area of
 3 the cleared 300 meter range was at least 2.85 acres and the volume of excavated and graded
 4 soil was greater than 150 cubic yards.
 5

6 42. DCD staff issued an oral "stop work" directive to the Club, with which the Club complied.

7 DCD recommended to the Club that it request a pre-application meeting to discuss various
 8 permits and authorizations that would be required in order to proceed with the project.
 9

10 43. KRRC submitted a "pre-application meeting request" to DCD on May 12, 2005 along with a
 11 cover letter from the Club president and conceptual drawings of the proposed project (trial
 12 exhibits 138 and 272). The letter stated that the range re-alignment project was "not an
 13 expansion of the current facilities."
 14

15 44. On June 21, 2005, KRRC officers met with DCD staff, including DCD representing
 16 disciplines of code enforcement, land use and planning, site development and critical areas.
 17 County staff informed KRRC that the Club needed to apply for a Conditional Use Permit
 18 ("CUP") per Kitsap County Code Title 17 because the site work in the 300 meter range area
 19 constituted a change in or expansion of the Club's land uses of the property. County staff
 20 also informed the Club that it would need to apply for other permits for its work, including a
 21 site development activity permit per Kitsap County Code Title 12. County staff identified
 22 several areas of concern, which were memorialized in a follow-up letter from the County to
 23 the Club dated August 18, 2005 (trial exhibit 140).
 24

25 45. Later in 2005 and in the first half of 2006, the Club asked the County to reconsider its stance
 26 that the Club was required to apply for a CUP in order to continue operating a shooting range
 27 on the Property. The County did not change its position. Nor did the County issue a notice
 28

1 of code violation or a notice informing the Club that it had made an administrative
2 determination pursuant to the County's nonconforming use ordinance, KCC Chapter 17.460.

3 46. In the summer of 2006, KRRC abandoned its plans to develop the 300 meter range and re-
4 directed its efforts and the grant money toward improvements of infrastructure in its existing
5 range.
6

7 47. DCD staff persons visited the Property on at least three occasions during 2005, and on at least
8 one occasion walked through the developed shooting areas enroute to and from the 300 meter
9 range area.
10

11 48. In approximately 2007, the Club replanted the 300 meter range with several hundred Douglas
12 fir trees, and believed that by so doing it was satisfying the requirements of the landowner,
13 DNR. The Club did not develop any formal plan for the replanting and care of new trees. All
14 of the new trees died, and today the 300 meter range continues to be devoid of any trees.
15

16 49. The 300 meter range has been and continues to be used for storage of target stands, barrels,
17 props and building materials, as confirmed by photographs taken during the County's January
18 2011 discovery site visits to the Property and by the Club Executive Officer's testimony.

19 50. KRRC asserts the position that by abandoning its plans to develop the 300 meter range, it has
20 retreated to its eight acre area of claimed "historic use" and has not established a new use that
21 would potentially terminate the Club's claimed nonconforming use status.
22

23 51. KRRC has not applied for a conditional use permit for its use of the property as a shooting
24 range or private recreational facility, and has not applied for a site development activity
25 permit for the 300 meter range work or for any of the earth-disturbing work conducted on the
26 Property.
27

28 .j) *Site Development at the Property – Tighlining watercourse across the range*

1 52. The Seabeck Highway has been in its present location for several decades and at all material
2 times. The Seabeck Highway is a county road served by storm water features including
3 culverts and roadside ditches. Two culverts under the Seabeck Highway were identified as
4 particularly relevant to the litigation: First, a 42-inch diameter culvert to the east of the
5 Club's gated entrance onto the Seabeck Highway, which flows from south-to-north and onto
6 the Property ("42-inch culvert"). Second, a 24-inch diameter culvert to the west of the Club's
7 parking lot, which typically flows from north-to-south, away from the Property ("24-inch
8 culvert). Storm and surface water flows through the 42-inch culvert during the rainy seasons.

9
10 53. Prior to the late summer of 2006, water discharged from the 42-inch culvert followed a
11 channel leading away from the Seabeck Highway and into a stand of trees south of the rifle
12 range. The channel reached the edge of a cleared area to the south of the rifle range and the
13 drainage continued across the rifle range in a northerly direction, primarily in the open in low
14 areas (or depressions) and through between three and five culverts of not greater than 20 feet
15 in length. There was conflicting testimony about what the drainage did as it approached the
16 wetland areas to the north of the rifle range – the Club's wetland expert Jeremy Downs
17 opined that the water was absorbed into the gravelly soil present between the rifle range and
18 the wetland areas to the north while the County's wetland expert Bill Shiels opined that the
19 water would be of sufficient quantity during times of peak rain fall that it would have to
20 travel in a channel or channels as it neared the wetlands.

21
22
23
24 54. In the late summer and early fall of 2006, the Club replaced this water course with a pair of
25 475-foot long 24-inch diameter culverts. These culverts crossed the entire developed area of
26 the range, from their inlets in the stand of trees by the Seabeck Highway to their outlets north
27 of the developed areas of the range. To achieve this result, the Club used heavy earth-moving
28

1 equipment to remove existing culverts and to excavate a trench the entire length of the new
 2 culverts, installed the culverts, covered up the trench with fill, then brought in additional fill
 3 from elsewhere on the Property to raise the level of the formerly depressed areas in the rifle
 4 range. Excavation and re-grading for this project required movement of far more than 150
 5 cubic yards of soil.
 6

7 55. After the Club "undergrounded" the water course into the 475-foot long culverts but prior to
 8 February 2007, the Club extended the earthen berm along the north side of its rifle range and
 9 over the top of the newly-buried culverts, nearly doubling the berm's length. Extending this
 10 berm involved excavating and re-grading soil far in excess of 150 cubic yards.
 11

12 56. KRRC has never applied to the County for review or approval of the cross-range culvert
 13 project, or the berm construction that followed. KRRC has never developed engineering
 14 plans for this project or undertaken a study to determine whether the new culverts have
 15 capacity to handle the water from the 42-inch culvert or to determine whether the outlet of the
 16 culverts is properly engineered to minimize impacts caused by the direct introduction of the
 17 culvert's storm and surface water into a wetland system. KRRC offered evidence that during
 18 July 2011 it consulted with agents of the state Department of Ecology (DOE), the Army
 19 Corps of Engineers, the state Department of Fish and Wildlife and the Suquamish Tribe with
 20 regard to its activities proximate to wetlands, but the record contains no evidence that any of
 21 these agencies evaluated subjects within the County's jurisdiction such as critical areas
 22 including wetland buffers, or assessed the capacity of the cross-range culverts.
 23
 24

25 57. Prior to the discovery site visits by County staff and agents in January 2011, the County was
 26 unaware of the cross-range culverts.
 27

28 K) *Wetland Study, Delineations and Protected Buffers*

1 58. In preparation for trial, the parties each commissioned preliminary delineations of suspected
2 wetland and stream features on the Property. Wetland delineations are ordinarily conducted
3 prior to site development activities which may affect a suspected wetland, and are ordinarily
4 submitted to the regulating authorities (e.g. counties and DOE) for review and comment. In
5 this instance, there was no application for a permit or authorization and the County was in the
6 unusual position of obtaining its own delineation.
7

8 59. The County's wetland consulting firm, Talasaea Consulting, and the Club's consulting firm,
9 Soundview Consultants, each studied wetlands to the north and west of developed areas of
10 the Property, as well as the drainage crossing the range originating from the 42-inch culvert,
11 and suspected wetlands in the 300 meter range. For purposes of these findings, the Court
12 adopts the County's suggestion to limit its findings to areas of the Property about which there
13 are undisputedly wetlands. The Court makes no finding as to whether the County has proven
14 that wetlands currently exist in the 300 meter range area and makes no finding as to whether
15 the County has proven that the water course from the 42-inch culvert ever followed a channel
16 which is capable of hosting salmonid species, prior to entering the Property's wetlands.
17 Therefore, the Court confines its remaining analysis of the Property's wetlands and streams
18 and their associated habitats and buffers, to the wetlands to the north and west of the
19 developed portions of the range ("wetlands").
20
21
22

23 60. The Property's wetlands are connected to and part of a larger wetland system in the DNR
24 parcels to the north of the Property. Ecologically, this wetland system is of high value
25 because it is part of the headwaters of the Wildcat Creek / Chico Creek watershed, which
26 supports migrating salmon species. The wetlands on the Property are directly connected to a
27 tributary of Wildcat Creek, and are waters of the State of Washington, both as a finding of
28

1 fact and a conclusion of law.

2 61. The Court heard testimony of and has received the reports and maps by the parties' respective
3 wetland expert witnesses. The County's expert, Bill Shields of Talasaea Consultants,
4 determined that the Property's wetlands constitute a single wetland denoted as Wetland A,
5 and concluded that this wetland is a "category I" wetland, for which the Kitsap County Code
6 provides a 200-foot buffer area. The Club's expert, Jeremy Downs of Soundview Consulting,
7 determined that the wetlands on the Property constitute two separate wetlands denoted as
8 Wetlands A and B, and concluded that each wetland is a "category II" wetland, for which the
9 Kitsap County Code provides a 100-foot buffer area. Both experts have determined that an
10 additional 50 feet should be added to the buffer to reflect high intensity of adjacent uses, i.e.
11 the KRRC shooting ranges. Therefore, the County's expert and the Club's expert have
12 concluded that 250-foot and 150-foot buffers apply to the Property's wetlands, respectively.
13 For purposes of these findings of fact, the Court will accept the Soundview conclusions that
14 there are two protected wetlands on the Property (A and B) and that a 150-foot buffer applies
15 to those wetlands. For purposes of these findings, Court will further accept Soundview's
16 delineation and mapping of the wetlands B which is nearest the active shooting portions of
17 the Property.

18 62. To install its cross-range culverts in 2006, the Club excavated and re-graded fill in the
19 wetland buffer within 150 feet of Wetland B. This project involved excavation and grading
20 far in excess of 150 cubic yards of material.

21 63. The cross-range culverts now discharge storm water and surface water directly into Wetland
22 B, replacing the former system which ordinarily absorbed storm water and surface water into
23 the soil and more gradually released it into the wetlands on the Property.
24
25
26
27
28

1 64. To construct the berm that starts at the northeastern corner of Bay 3 and travels east along the
 2 edge of Bay 4, then travels northeast along the storage / well house area, and then travels
 3 north along the edge of Bay 5, the Club placed fill in the wetland buffer within 150 feet of
 4 Wetland B. This project also involved excavation and grading in excess of 150 cubic yards
 5 of material.
 6

7 65. At least five locations at the property have slopes higher than five feet in height with a slope
 8 ratio of greater than three to one: (1) a cut slope at the end of the rifle range; (2) berms at
 9 Bays 4 and 5 and the berm between these bays; (3) Cut slope at Bay 6; (4) Cut slope at Bay 7;
 10 and (5) the extension of the rifle range berm. Each of these earth-moving projects took place
 11 after 2005, and the Club did not apply for permits or authorizations from Kitsap County.
 12

13 66. Prior to this litigation, KRRC had never obtained a wetland delineation for the Property or
 14 otherwise determined potential wetland impacts for any site development projects proposed
 15 for the Property.
 16

17 *L) Range Safety*

18 67. The parties presented several experts who opined on issues of range safety. The Property is a
 19 "blue sky" range, with no overhead baffles to stop the flight of accidentally or negligently
 20 discharged bullets. The Court accepts as persuasive the SDZ diagrams developed by Gary
 21 Koon in conjunction with the Joint Base Lewis-McChord range safety staff, as representative
 22 of firearms used at the range and vulnerabilities of the neighboring residential properties.
 23 The Court has considered the allegations of bullet impacts to nearby , some of which could be
 24 forensically investigated, and several of which are within five degrees of the center line of the
 25 KRRC Rifle Line. The Court has considered the expert opinions of Roy Ruel, Gary Koon,
 26 and Kathy Geil and finds that - collectively - these experts have presented evidence to
 27
 28

1 support the finding that more likely than not, bullets have escaped from the Property's
2 shooting areas and that more likely than not, bullets will escape the Property's shooting areas
3 and strike persons or property in the future.

4
5 M) The Court finds that KRRC's range facilities are inadequate to contain bullets to the Property,
6 notwithstanding safety protocols and enforcement.

7 N) Action or Practical shooting.

8 68. The Property is frequently used for regularly scheduled practical shooting practices and
9 competitions, which use the shooting bays for rapid-fire shooting in multiple directions.
10 Loud rapid-fire shooting often begins as early as 7 a.m. and can last as late as 10 p.m.

11
12 O) *Commercial and Military Uses of the Property*

13 69. KRRC and the military shared use of the adjacent federal Camp Wesley-Harris property's
14 shooting range facilities until some time shortly after World War II.

15
16 70. The trial record is bare of evidence of official military use at the Property from the time
17 KRRC moved to the Property until the 1990's. During the early 1990's, U.S. Naval
18 personnel are said to have conducted firearm qualification exercises at the Property on at least
19 one occasion.

20
21 71. Sharon Carter is the owner of a sole proprietorship established as a business in Washington in
22 the late 1980's. In approximately 2002, this sole proprietorship registered a new trade name,
23 the "National Firearms Institute" ("NFI") and registered the NFI at the Property's address of
24 4900 Seabeck Highway NW., Bremerton, WA. Since 2002, the NFI has provided a variety of
25 firearms and self-defense courses, mostly taught at the Property by Ms. Carter's husband,
26 Marcus Carter. The NFI keeps its own books and has its own checking account, apart from
27 the Club. Mr. Carter is also the long-time Executive Officer of KRRC, and NFI's other
28

1 primary instructor is Travis Foreman, who is KRRC's Vice-President and the Carters' son-in-
2 law.

3
4 72. In approximately 2003, a for-profit business called Surgical Shooters, Inc. ("SSI"), began
5 conducting official small arms training exercises at the Property's pistol range for active duty
6 members of the United States Navy, primarily service members affiliated with the submarines
7 based at the Bangor submarine base. For approximately one year, SSI conducted this training
8 at the Property on a regular basis. SSI held a contract with the Navy to provide this training,
9 and SSI had an oral arrangement with NFI. On a per-day basis, SSI paid NFI a fee for the use
10 of the Property, one-half of which would then be remitted to the Club itself. NFI coordinated
11 the SSI visits to the Property and made sure that a KRRC Range Safety Officer was present
12 during each SSI training session at the Property.

13
14 73. In approximately 2004, SSI ceased providing training at the Property and was replaced by a
15 different business, Firearms Academy of Hawaii, Inc. ("FAH"). From approximately 2004
16 until Spring 2010, FAH regularly provided small arms training at the Property to active duty
17 U.S. Navy personnel, under an oral arrangement with NFI. Again, on a per-day basis, FAH
18 paid NFI a fee for the use of the Property, one-half of which would then be remitted to the
19 Club itself. NFI coordinated the FAH visits to the Property and made sure that a KRRC
20 Range Safety Officer was present during each FAH training session at the Property. FAH
21 training at the Property consisted of small weapons training of approximately 20 service
22 members at a time. Each FAH training course took place over three consecutive weekdays at
23 the Property's pistol range, as often as three weeks per month. At the conclusion of this
24 arrangement, FAH paid \$500 to NFI for each day of KRRC range use, half of which the NFI
25 remitted to the KRRC.
26
27
28

1 74. The SSI and FAH training took place on the Property's pistol range. During FAH's tenure at
 2 the Property, U.S. Navy personnel inspected the pistol range and determined that it was
 3 acceptable for purposes of the training.
 4

5 75. Prior to the SSI and FAH training, there is no evidence of for-profit firearm training at the
 6 Property, and these businesses did not apply for approvals or permits with Kitsap County to
 7 authorize their commercial use of the Property.

8 76. In November 2009, U.S. Navy active duty personnel were present on the property on at least
 9 one occasion for firearms exercises not sponsored or hosted by the FAH. On one such
 10 occasion, a military "Humvee" vehicle was parked in the rifle range next to the rifle range's
 11 shelter. A fully automatic, belt-fed rifle (machine gun) was mounted on top of this Humvee,
 12 and the machine gun was fired in small bursts, down range.
 13

14 77. Official U.S. Navy training at the Property ceased in the Spring of 2010.

15 P) *Noise Generated from the Property and Hours of Operation*
 16

17 78. The Club allows shooting between 7 a.m. and 10 p.m., seven days a week. Shooting sounds
 18 from the Property are commonly heard as early as 7 a.m. and as late as 10 p.m. In the early
 19 1990's, shooting sounds from the range were typically audible for short times on weekends,
 20 or early in the morning during hunter sight-in season (September). Hours of active shooting
 21 were considerably fewer.
 22

23 79. Shooting sounds from the Property have changed from occasional and background in nature,
 24 to clearly audible in the down range neighborhoods, and frequently loud, disruptive,
 25 pervasive, and long in duration. Rapid fire shooting sounds from the Property have become
 26 common, and the rapid-firing often goes on for hours at a time.
 27

28 80. Use of fully automatic weapons now occurs with some regularity.

1 81. Rapid-fired shooting, use of automatic weapons, and use of cannons at the Property occurred
2 infrequently in the early 1990's.

3 82. The testimony of County witnesses who are current or former neighbors and down range
4 residents is representative of the experience of a significant number of home owners within
5 two miles of the Property. The noise conditions described by these witnesses interfere with
6 the comfort and repose of residents and their use and enjoyment of their real properties. The
7 interference is common, at unacceptable hours, is disruptive of activities indoors and
8 outdoors. Use of fully automatic weapons, and constant firing of semi-automatic weapons
9 led several witnesses to describe their everyday lives as being exposed to the "sounds of war"
10 and the Court accepts this description as persuasive.
11

12
13 *Q) Explosives and Exploding Targets*

14 83. The Club allows use of exploding targets, including Tannerite targets, as well as cannons,
15 which cause loud "booming" sounds in residential neighborhoods within two miles of the
16 Property, and cause houses to shake.
17

18 84. Use of cannons or explosives was not common at the Club in approximately 1993.

19 *R) Amendment of Kitsap County Code Chapter 17.460*

20 85. On May 23, 2011, the Kitsap County Board of County Commissioners adopted ordinance
21 470-2011 in a regularly scheduled meeting of this Board, amending the Kitsap County
22 Zoning Ordinance's treatment of nonconforming land uses at Chapter 17.460.
23

24 86. Notice of the May 23, 2011 meeting was published in the Kitsap Sun, which is the
25 publication used in Kitsap County for public notices of BOCC meeting agenda items.
26

27 87. There is no evidence in the record supporting the contention that this amendment was
28 developed to target KRRC or any of the County's gun ranges..

1 BASED UPON the foregoing FINDINGS OF FACT, the Court hereby makes the following

2 **II. CONCLUSIONS OF LAW**

- 3 A) This Court has subject matter jurisdiction over the real property, the named Defendant, and
4 the Parties' claims and counterclaims in this action, and venue is proper.
- 5
- 6 B) The Kitsap County Department of Community Development is the agency charged with
7 regulating land use, zoning, building and site development in unincorporated Kitsap County
8 and enforcing the Kitsap County Code.
- 9
- 10 C) The nuisance conditions of ongoing noise caused by shooting activities and use of explosives
11 at the Property and the Property's ongoing operation without adequate physical facilities to
12 confine bullets to the Property each constitute a public nuisance.
- 13
- 14 D) Defendant Kitsap Rifle and Revolver Club is the owner and occupant of the real property,
15 and these orders shall also bind successor owners or occupants of the Property, if any.
- 16
- 17 E) Defendant has engaged in and continues to engage in creating and/or maintaining a public
18 nuisance by the activities described herein. The activities are described by statute and code to
19 be public nuisances. These acts constitute public nuisances as defined by both RCW
20 7.48.120 and KCC 17.530.030 and 17.110.515. The activities described further above annoy,
21 injure, and/or endanger the safety, health, comfort, or repose of others. Furthermore, Kitsap
22 County Code authorizes this action "for a mandatory injunction to abate the nuisance in
23 accordance with the law" for any use, building or structure in violation of Kitsap County
24 Code Title 17 (land use). KCC 17.530.030. Furthermore, Kitsap County Code provides that
25 "in all zones . . . no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare,
26 toxic gas or radiation which is materially deleterious to surrounding people, properties or
27 uses." KCC 17.455.110.
- 28

- 1 F) No lapse of time can legalize a public nuisance. RCW 7.48.190.
- 2 G) The continued existence of public nuisance conditions on the subject Property has caused and
3 continues to cause the County and the public actual and substantial harm.
- 4 H) Kitsap County has clear legal and equitable authority to protect the health, safety, and welfare
5 of the public against public nuisances.
- 6
- 7 I) Article XI, Section 11 of the Washington State Constitution authorizes counties to make and
8 enforce "local police, sanitary and other regulations."
- 9 J) State Statute authorizes Kitsap County to declare and abate nuisances in RCW 36.32 120(10):
10
11 The legislative authorities of the several counties shall:(10) Have power to
12 declare by ordinance what shall be deemed a nuisance within the county,
13 including but not limited to "litter" and "potentially dangerous litter" as defined
14 in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of
15 the parties creating, causing, or committing the nuisance; and to levy a special
16 assessment on the land or premises on which the nuisance is situated to defray
17 the cost, or to reimburse the county for the cost of abating it. This assessment
18 shall constitute a lien against the property which shall be of equal rank with
19 state, county, and municipal taxes.
- 20 K) The state statutes dealing with nuisances are found generally at Chapter 7.48 RCW.
21 Injunctive relief is authorized by RCW 7.48.020. RCW 7.48.200 provides that "the remedies
22 against a public nuisance are: indictment or information, a civil action, or abatement." RCW
23 7.48.220 provides "a public nuisance may be abated by any public body or officer authorized
24 thereto by law." RCW 7.48.250; 260 and 280 provide for a warrant of abatement and allow
25 for judgment for abatement costs at the expense of the Defendant.
- 26 L) Kitsap County has no plain, adequate, or speedy remedy at law to cure this nuisance, and the
27 neighbors and public-at-large will suffer substantial and irreparable harm unless the nuisance
28 conditions are abated and all necessary permits are obtained in order for the Defendant's
shooting operations to continue or to resume after imposition of an injunction.

- 1 M) The Property and the activities described on the Property herein constitute a public nuisance
 2 per se, because the Defendant engaged in new or changed uses, none of which are authorized
 3 pursuant to Kitsap County Code Chapter 17.381 or authorized without issuance of a
 4 conditional use permit.
 5
- 6 N) The Property and the above-described activities on the Property constitute a statutory public
 7 nuisance. The Property has become and remains a place violating the comfort, repose, health
 8 and safety of the entire community or neighborhood, contrary to RCW 7.48.010, 7.48.120,
 9 7.48.130, and 7.48.140 (1) and (2), and, therefore, is a statutory public nuisance. Defendant
 10 has engaged in and continue to engage in public nuisance violations by the activities
 11 described herein. The activities are described by statute and code to be public nuisances as
 12 defined by both RCW 7.48.120 The activities described above annoy, injure, and/or
 13 endanger the safety, health, comfort, or repose of others.
 14
- 15 O) The failure of the Defendant to place reasonable restrictions on the hours of operation, caliber
 16 of weapons allowed to be used, the use of exploding targets and cannons, the hours and
 17 frequency with which "practical shooting" practices and competitions are held and the use of
 18 automatic weapons, as well as the failure of the Defendant to develop its range with
 19 engineering and physical features to prevent escape of bullets from the Property's shooting
 20 areas despite the Property's proximity to numerous residential properties and civilian
 21 populations and the ongoing risk of bullets escaping the Property to injury persons and
 22 property, is each an unlawful and abatable common law nuisance.
 23
- 24 P) To invoke the Uniform Declaratory Judgments Act, chapter 7.24 RCW, a plaintiff must establish: "(1)
 25 an actual, present and existing dispute, or the mature seeds of one, as distinguished from a
 26 possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having
 27
 28

1 genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather
 2 than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final
 3 and conclusive. *Coppernoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005); citing *To-Go Trade*
 4 *Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001), and *Diversified Indus. Dev. Corp v*
 5 *Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

6
 7 Q) As applied to the relief sought by the County in this action, an actual, present, and existing dispute is
 8 presented for determination by the Court, based upon the County's claim that any non-conforming
 9 land use status for use of the Property as a shooting range has been voided by the substantial changes
 10 in use of the Property and unpermitted development of facilities thereupon.

11 R) The subject property is zoned "rural wooded", established in KCC Chapter 17.301. KCC
 12 17.301.010 provides in part that this zoning designation is intended to encourage the
 13 preservation of forest uses, retain an area's rural character and conserve the natural resources
 14 while providing for some rural residential use, and to discourage activities and facilities that
 15 can be considered detrimental to the maintenance of timber production. With this stated
 16 purpose, the zoning tables are applied to determine if any uses made of the property are
 17 allowed.
 18

19 S) KCC Chapter 17.381 governs allowed land uses, and KCC 17.381.010 identifies categories of
 20 uses: A given land use is either Permitted, Permitted upon granting of an administrative
 21 conditional use permit, Permitted upon granting of a hearing examiner conditional use permit,
 22 or Prohibited. Where a specific use is not called out in the applicable zoning table, the
 23 general rule is that the use is disallowed. KCC 17.381.030. The zoning table for the rural
 24 wooded zone, found at KCC 17.381.040 (Table E), provides and the Court makes conclusions
 25 as the following uses:
 26
 27

28 1. Commercial / Business Uses – With exceptions not relevant here, all commercial uses are

1 prohibited in rural wooded zone. None of the activities occurring at the subject property
 2 appear to be listed as commercial/business uses identified in the table. The Court concludes
 3 that the Property has been used for commercial and/or business uses for-profit entities
 4 including the National Firearms Institute, Surgical Shooters Inc. and the Firearms Academy
 5 of Hawaii, starting in approximately 2002. Furthermore, "training" generally or "tactical
 6 weapons training" specifically are uses not listed in the zoning table for the rural wooded
 7 zone.
 8

9
 10 2. Recreational / Cultural Uses – the Club is best described as a private recreational facility,
 11 which is a use listed in this section of KCC 17.381.040 (Table E) for rural wooded. KCC
 12 17.110.647 defines "recreational facility" as "a place designed and equipped for the conduct
 13 of sports and leisure-time activities. Examples include athletic fields, batting cages,
 14 amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks
 15 and similar uses. Public recreational facilities are those owned by a government entity." No
 16 other uses identified in the recreational/cultural uses section of the rural wooded zoning table
 17 are be comparable. The Court concludes that a private recreational facility does not include
 18 uses by a shooting range to host official training of law enforcement officers or military
 19 personnel, and that these uses are new or changed uses of the Property. The Court concludes
 20 that a private recreational facility use does not encompass the use of automatic weapons, use
 21 of rifles of calibers greater than common hunting rifles, or of professional level competitions.
 22

23
 24 3. Industrial Uses – the zoning table for the rural wooded zone prohibits "Manufacturing and
 25 fabrication, hazardous, which the Court finds to have occurred at the Property when the Club
 26 has allowed use of exploding targets. Per KCC 17.110.473, "Manufacturing and fabrication"
 27 means "transformation of materials or substances into new products, including construction
 28

1 and assembling of component parts, and the blending of materials such as lubricating oils,
 2 plastics, resins . . ." and "Hazardous manufacturing and fabrication uses are those engaged in
 3 the manufacture or fabrication of materials that are flammable, explosive, or present hazards
 4 to the public health, safety, and welfare, including all substances and materials defined as
 5 hazardous materials, hazardous substances, or hazardous waste." (Part D). Use of explosives
 6 on the Property (e.g. tannerite), which require mixing of constituent parts immediately before
 7 use, constitutes hazardous manufacturing or fabrication.
 8

- 9
 10 T) The Court finds that the land uses identified here, other than use as a private recreational
 11 facility, are expansions of or changes to the nonconforming use at the Property as a shooting
 12 range under KCC Chapter 17.460 and Washington's common law regarding nonconforming
 13 land use. By operation of law, the nonconforming use of the Property is terminated.
 14
 15 U) The Club's unpermitted site development activities at the 300 meter range (2005) constituted
 16 an expansion of its use of the property in violation of KCC 17.455.060 because the use of the
 17 Property as a private recreational facility in the rural wooded zone requires a conditional use
 18 permit per KCC Chapter 17.381. Furthermore, the Club's failure to obtain site development
 19 activity permitting for grading and excavating each in excess of 150 cubic yards of soil as
 20 required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This
 21 illegal use terminates the nonconforming use of the Property as a shooting range.
 22
 23 V) The Club's unpermitted installation in 2006 of the twin 24-inch culverts which cross the
 24 range and empty into the wetland constituted an expansion and change of its use of the
 25 Property, and the Club's failure to obtain SDAP permitting for its excavation, grading and
 26 filling work in excess of 150 cubic yards of soil as required under Kitsap County Code
 27 Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the
 28

nonconforming use of the Property as a shooting range.

W) The Club's earth moving activities within the 150-foot buffer for Wetland B violated KCC 19.200.215.A.1, which requires a wetland delineation report, a wetland mitigation report and erosion and sedimentation control measures and/or a Title 12 site development activity permit permit for any new development. The Court concludes that these illegal uses terminate the nonconforming use of the Property as a shooting range.

X) The Club's unpermitted construction of earthen berms starting at Bay 4 and proceeding to the north adjacent to the wetland, constituted an expansion and change of its use of the Property, and the Club's failure to obtain SDAP permitting for excavation, grading and filling work in excess of 150 cubic yards of soil and for its construction of berms with slopes greater than five feet in height with a steepness ratio of greater than three to one (KCC 12.10.030(4)) as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range.

Y) The Club's unpermitted cutting into the hillsides at Bays 6 and 7 and at the end of the rifle range, excavating in excesses of 150 cubic yards of soil at each location and creating cut slopes far greater than five feet in height with a steepness ratio of greater than three to one as required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the nonconforming use of the Property as a shooting range. The Court further concludes, based on the timing of maintenance work at each cut slope location post-dating the June 2009 deeding of the Property from the County to the Club, that SDAP permitting was required for work conducted after June 2009. These illegal uses of the land terminate the nonconforming use of the Property as a shooting range.

Z) The nuisance conditions at the range further constitute illegal uses of the land, which

1 terminate the nonconforming use of the Property as a shooting range. The Club's expansion
 2 of days and hours in which shooting generally, and rapid-fire shooting in particular, takes
 3 place on a routine basis, and the advent of regularly scheduled practical shooting practices
 4 and competitions constitute a change in use that defies and exceeds the case law's definition
 5 or understanding of "intensification" in the area of nonconforming use. These changes act to
 6 terminate the nonconforming use of the Property as a shooting range.
 7

8 AA) The Club's conversion from a small-scale lightly used target shooting range in 1993 to a
 9 heavily used range with an enlarged rifle range and a 11-bay center for local and regional
 10 practical shooting competitions further constitutes a dramatic change in intensity of use (and
 11 of sound created thereby), thereby terminating the nonconforming use of the Property as a
 12 shooting range.
 13

14 BB) By operation of KCC Chapter 17.381, the KRRC or its successor owner or occupier of the
 15 Property must obtain a conditional use permit before resuming any use of the Property as a
 16 shooting range or private recreational facility.
 17

18 CC) KRRC has not proven that Ordinance 470-2011, amending KCC 17.460, is unconstitutional
 19 or suffered from any defect in service or notice. This Ordinance did not amend or alter the
 20 effect of KCC 17.455.060 (existing uses) which remains in full force and effect. KCC
 21 17.455.060 provides that uses existing as of the adoption of Title 17 (Zoning) may be
 22 continued, but also prohibits their enlargement or expansion, unless approved by the hearing
 23 examiner pursuant to the Administrative Conditional Use Permit procedure of Title 17.420.
 24 Washington case law, as in *Rhod-A-Zalea & 35th, Inc v. Snohomish County*, 136 Wn.2d 1, 7,
 25 959 P.2d 1024 (1998), also holds that uses that lawfully existed before the enactment of
 26 zoning ordinances may continue, but the existing use may not be significantly changed,
 27
 28

1 altered, extended, or enlarged.

2 DD) The 2009 Bargain and Sale Deed cannot be read as more than a contract transferring the
3 Property from the County to the KRRC, with restrictive covenants binding only upon the
4 Grantee KRRC. Paragraph 3 stands as an acknowledgement of eight geographic acres of land
5 that has been used for shooting range purposes, but absent more specific language binding
6 parties for purposes of possible civil enforcement and litigation regarding site development
7 and land use issues, is not susceptible to an interpretation binding Kitsap County from
8 enforcing its ordinances or otherwise acting pursuant to the police powers and other
9 authorities granted to it in Washington's Constitution and in the Revised Code of
10 Washington.
11

12
13 EE) The Court furthermore concludes that the Washington Open Public Meetings Act, chapter
14 42.30 RCW, limits the effect of the enacting resolution and accompanying proceedings to the
15 property transfer itself. Absent specific agreement voted upon by the governing body during
16 a public meeting, the 2009 Deed cannot transform into a settlement of potential disputes
17 between the parties.
18

19 FF) [County reserves right to submit denials of affirmative defenses and remaining
20 counterclaims].
21

22 BASED UPON THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW the Court
23 hereby enters the following ORDERS:

24 **III. ORDERS**

25 IT HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Kitsap County's
26 motions shall be granted:

27 A) **Declaratory Judgment**
28

- 1 1. Kitsap County's Motion pursuant to chapter 7.24 RCW for judgment declaring that the
- 2 activities and expansion of uses at the Property has terminated the legal nonconforming use
- 3 status of the Property as a shooting range by operation of KCC Chapter 17.460 and by
- 4 operation of Washington common law regarding nonconforming uses, is hereby GRANTED.
- 5
- 6 2. The Property may not be used as a shooting range until such time as a County conditional use
- 7 permit is issued to authorize resumption of use of the Property as a private recreational
- 8 facility or other recognized use pursuant to KCC Chapter 17.381.

9 **B) Judgment**

- 10
- 11 3. Defendant is in violation of Chapter 7.48 RCW and Chapter 17.530 Kitsap County Code;
- 12 4. The conditions on the Property and the violations committed by the Defendant constitute
- 13 statutory and common law public nuisances; and
- 14 5. Representatives of the Kitsap County Department of Community Development are hereby
- 15 authorized to inspect and continue monitoring the Property before, during and after any
- 16 abatement action has commenced; and

17 **C) Injunction (effective immediately unless noted to contrary)**

- 18
- 19 6. A permanent, mandatory and prohibitive injunction is hereby issued enjoining use of the
- 20 Property as a shooting range until violations of Title 17 Kitsap County Code are resolved by
- 21 application for and issuance of a conditional use permit for use of the Property as a private
- 22 recreational facility or other use authorized under KCC Chapter 17.381. The County may
- 23 condition issuance of this permit upon successful application for all after-the-fact permits
- 24 required pursuant to Kitsap County Code Titles 12 and 19. [If shooting operations are
- 25 enjoined solely due to voiding or termination of nonconforming use status, this paragraph
- 26 should go into effect 30 days after entry of this order].
- 27
- 28

- 1 7. A permanent, mandatory and prohibitive injunction is hereby issued further enjoining the
2 following uses of the Property, which shall be effective immediately:
3
4 a. Use of fully automatic firearms, including but not limited to machine guns;
5
6 b. Use of rifles of greater than nominal .30 caliber;
7
8 c. Use of exploding targets and cannons; and
9
10 d. Use of the Property as an outdoor shooting range before the hour of 9 a.m. in the
11 morning or after the hour of 7 p.m. in the evening.
- 12 8. A permanent, mandatory and prohibitive injunctive is hereby issued further enjoining use of
13 the Property as a shooting range unless and until the Defendant Kitsap Rifle and Revolver
14 Club or a successor owner or occupant of the Property applies for and obtains a National
15 Rifle Association Range Technical Team Assessment and modifies the Property's shooting
16 facilities consistent with the NRA assessment, after review and approval by a professional
17 engineer and permitting by Kitsap County. In lieu of applying for and obtaining the NRA
18 assessment and complying with its recommendations, the Property may be used as a shooting
19 range upon completion of each of the following improvements, after review and approval by
20 a professional engineer and permitting by Kitsap County:
21
22 a. Installation of overhead baffles at the pistol range and the rifle range, consistent with the NRA
23 Range Source Book, to eliminate "blue sky" shooting from each range's shooting shed. This
24 construction can be done in phases so that a section of each range's shelter can be used once the
25 its baffles are installed, provided that the sides of each baffled section are bermed or walled,
26
27 b. Modification of rifle range and shooting bay berms so that all berms are not less than eight feet
28 in height above the shooter's position and comply with the NRA Range Source Book; and
29
30 c. Construction of a berm along the southern edge of the rifle range (right-hand side, from the
31 shooter's perspective in the shelter) consistent with the NRA Range Source Book.

1 **D) Warrant of Abatement**

2 9. The Court hereby issues a WARRANT OF ABATEMENT, pursuant to RCW 7.48.260, which
3 authorizes Kitsap County to enter upon the Property to abate the nuisance conditions created thereon
4 or to monitor the owner or occupant's abatement of the nuisance conditions created thereon, including
5 the enforcement of the restrictions imposed by the Court on shooting activities or use of explosives or
6 exploding targets.
7

8 10. Kitsap County shall be allowed its costs of abatement and these and all costs incurred in this
9 abatement shall abide further order of the Court.

10 11. No bond or security is required of Kitsap County for this action. CR 65 (c) and RCW 4.92.080

11 12. This Court retains jurisdiction to enforce this order by all lawful means including imposition of
12 contempt sanctions and fines.
13

14 **E) Costs and Fees**

15 13 Pursuant to KCC 17.530.030, Defendant Kitsap Rifle and Revolver Club shall pay the costs of the
16 County to prosecute this lawsuit, in an amount to be determined by later order of the Court.

17 DONE IN OPEN COURT this ____ day of November, 2011.
18

19 _____
20 JUDGE

21 Presented by:
22 RUSSELL D HAUGE
23 Kitsap County Prosecuting Attorney

24 _____
25 NEIL R. WACHTER, WSBA NO. 23278
26 JENNINE E. CHRISTENSEN, WSBA NO.
27 38520
28 Attorneys for Plaintiff Kitsap County

WARRANT OF ABATEMENT

TO THE KITSAP COUNTY SHERIFF: YOU ARE HEREBY COMMANDED TO ABATE THE PUBLIC NUISANCE MAINTAINED AT:

Kitsap County Tax Parcel ID No. 362501-4-002-1006 and more particularly described as follows:

36251W
PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 36, TOWNSHIP 25 NORTH, RANGE 1 WEST, W.M., KITSAP COUNTY, WASHINGTON, 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 COMMISSIONERS OF PUBLIC LANDS AT OLYMPIA, WASHINGTON.*****IMPROVEMENTS CARRIED UNDER TAX PARCEL NO. 362501-2-002-1000*****

WHICH ADDRESS IS MORE COMMONLY KNOWN AS:

4900 Seabeck Highway NW, Bremerton, Washington, Kitsap County (otherwise referred to as the "Property").

ABATEMENT

The abatement of the public nuisance shall consist of restricting use of the Property as a shooting range, where such use is contrary to this order, and removing unauthorized users from the Property. Abatement of the public nuisance shall consist further of erecting fencing around the perimeter of the developed shooting areas of the Property, to restrict unauthorized access to the Property's shooting areas to officers and agents of the Defendant engaged in planning, design, engineering, surveying, and implementation of construction and site development necessary to implement this order, as well as County personnel and agents as authorized by this order or further

1 order of the Court.

2 **COMMENCEMENT OF ABATEMENT**

3 This abatement is to commence forthwith and shall consist of erecting fencing and other
4 physical barriers necessary to exclude all persons except authorized officers and agents of the parties,
5 from the developed shooting range areas on the Property.
6

7 **ACCOUNTING**

8 The Sheriff is directed to maintain an accurate accounting of the expenses of erecting fencing
9 and physical barriers to restrict access to shooting areas of the Property, and of monitoring and
10 responding to alleged violations of this order relating to the or occurring on the Property. Said expense
11 shall be filed with the Court and upon application reduced to judgment against the Defendant and the
12 Defendant's Property, real and personal, tangible and intangible, the judgment for expenses of abating
13 said nuisances herein described.
14

15 DONE IN OPEN COURT this ____ day of November, 2011,
16

17
18 _____
19 JUDGE

20 Presented by:
21 RUSSELL D. HAUGE
22 Kitsap County Prosecuting Attorney
23

24 _____
25 NEIL R. WACHTER, WSBA NO. 23278
26 JENNINE E. CHRISTENSEN, WSBA NO.
27 38520
28 Attorneys for Plaintiff Kitsap County

Appendix 28

CP 822–92, Declaration of Marcus Carter in
Opposition to Plaintiff’s Motion for Preliminary
Injunction, dated October 6, 2010, with attached
Exhibits 1 through 11

October 07 2010 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 10-2-12913-3

Hearing Date: October 8, 2016, 9:00 a.m.
Judge: ADMIN
Court: Rm. 234

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

KITSAP COUNTY, a political subdivision
of the State of Washington

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB,
a not-for-profit corporation registered in the
State of Washington, SHARON ANN
CARTER, doing business as NATIONAL
FIREARMS INSTITUTE, a sole
proprietorship licensed in the State of
Washington, and JOHN DOES and JANE
ROES I-XX, inclusive

Defendants

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS
LOCATED AT

One 72-acre parcel identified by Kitsap
County Tax Parcel ID No. 362501-4-002-
1006 with street address 4900 Seabeck
Highway NW, Bremerton Washington

NO. 10-2-12913-3

**DECLARATION OF
MARCUS CARTER IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

**DECLARATION OF
MARCUS CARTER IN OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

Page 1

B. REGINA TAYLOR WSBA #32379
Attorney at Law, PC
9353 Central Valley Road NW, Suite 2
Bremerton, Washington 98311
Ph. 360-698-3522 - Fax 360-698-2584
Bregina.taylor@comcast.net

1 I, MARCUS CARTER, hereby declare:

2
3 I am the Executive Officer of Kitsap Rifle and Revolver Club. As the executive
4 officer, my general duties include: having charge of the ranges and material assets of the
5 Club; appoint, with the advice and consent of the Executive Committee, willing persons to
6 serve as discipline and committee chairman; schedule and arrange all competitions and
7 events, plan and supervise each work party; have approval and disciplinary authority over all
8 Range Officers.

9 In addition, I am the Range Development Chairperson. As the Range Development
10 Chairperson, based on my expertise and knowledge, I have continually looked at range safety
11 improvements. My experience and training in this area includes attending range
12 development and operations courses, range officer certification courses, firearms instructor
13 courses as well as the practical application of managing for nearly 18 years one of the finest
14 shooting ranges in the State of Washington. Based on my experience I have developed a base
15 of knowledge to include range development practices.

16 In addition, I am one of the senior instructors of the safety program at KRRC. I have
17 personal knowledge of the training and safety procedures in place which form an integral part
18 of the safety practices for range users and community safety.

19 My experience and credentials are set forth on the attached Exhibit I.

20 GENERAL HISTORY OF KRRC

21 The Kitsap Rifle and Revolver Club was initially formed on November 11, 1926. The
22 initial charter characterizes the Club's purposes: "For Sport and National Defense". See
23 Exhibit 2, Initial charter documents. From its inception, the Club has endeavored to provide
24 a safe environment for the community and for shooters of all ages to practice their shooting
skills.

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1 The Club's ranges were established on Seabeck Hwy on leased land from the State
2 Department of Natural Resources. The land area of 72 acres was established in these leases,
3 with approximately eight acres considered to be the "active" shooting area and the remaining
4 acreage used as "buffer". The activities within the active 8 acres included the following:

- 5 (a) Firearms Safety Training
- 6 (b) Competitive shooting
- 7 (c) Civilian defensive training (personal protection)
- 8 (d) Military training

9 As Club membership and organized activity grew, it became important to keep the
10 ranges organized into the safest possible configuration for the activities participated in at any
11 one time. Multiple competition and training themes necessitated the range develop two
12 primary covered shooting areas with permanent improvements. One area primarily for short
13 range static activities, generally pistol, and the other area for long range. The "Pistol Range"
14 contained a static "shooting line" of approximately 25 positions wide. Several activities have
15 used this area including, NRA Bullseye Pistol; 2700 Matches; Military Leg Matches; Junior
16 Smallbore; Gallery Rifle; United States Practical Shooting Association; Single Action
17 Shooting Society; Women's Defensive Handgun; Personal Protection; Washington State
18 Hunter Education, as well as casual target practice. The configuration of that range allows
19 shooters to shoot appropriate targets (mostly paper) up to approximately 150 feet away.

20 The long distance or "Rifle Range" area consists of a covered static shooting line that
21 is approximately 36 positions wide. Several activities have used this area including; National
22 Rifle Association (NRA) Highpower Rifle; Department of Civilian Marksmanship (DCM)
23 Rifle; Civilian Marksmanship Program (CMP); United States Practical Shooting Association
24 matches; NRA Handgun Silhouette; International Handgun Metallic Silhouette Association
(IHMSA); Bench Rest Rifle; United States Navy exercises, including machine gun
qualifications and/or familiarization for the M4, M16, M14, M60, M240; United States Army

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1 familiarization with M4, M249 and M2; and shooters can shoot appropriate targets up to
2 approximately 600 feet away.

3
4 As community participation in organized shooting has increased, it became even more
5 important to provide improvements to the shooting areas used by the Club. The "footprint" of
6 the active areas of shooting continued to be the same active 8 acres.

7 The active 8 acres have evolved due to safety enhancements and environmental
8 stewardship over the years. The nature of the shooting sports and styles of training shows a
9 history of interest growing and waning as interest, time and technology changes. As members
10 learned more about technology and safety issues for the range, the configuration of the range
11 continually evolved to accommodate the shooting sports and training needs that the members
12 and the community wanted to practice or sponsor in any given season.

13 For example, aerial shotgun was a larger part of the range decades ago. As interest in
14 that aspect of the shooting sports died down and the Bremerton Trap and Skeet Club provided
15 a specialized environment for Trap and Skeet shooting, less trap and skeet activities were
16 done at the Club.

17 In the early 1980's, because the members were interested in participating in handgun
18 silhouette, that activity was researched and the range modified to accommodate the activity.
19 Additional activities were added as members indicated they wanted to practice and host
20 events in the various disciplines.

21 This is the natural evolution of a gun range. As the membership turns over, the
22 activities will reflect the current membership's interests. Obviously, as activities evolved, it
23 was necessary for the configuration of the physical facilities to change to maintain the level of
24 safety expected at established ranges.

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1 SAFETY

2 "Safe range certifications' do not exist. I have looked. The theme is consistent with all range
3 designers and managers, there is no amount of engineering you can put into a facility that will
4 stop someone who doesn't understand, or is unwilling to follow the rules that will be able to
5 keep projectiles from leaving a range facility.

6 EDUCATION AND TRAINING

7 Education and training is considered the most important aspect of what the KRRC
8 provides their membership and the community. Many classes have been developed at and
9 provided for at the facilities and ranges of KRRC. For instance, new visitors to the range and
10 those that have not been there for an extended period receive a mandatory Basic Range Safety
11 Briefing given by trained Range Safety Officers. It is the most comprehensive class of its kind
12 offered at any range in the area. Subjects covered include personal responsibility; the "4
13 Commandments of Firearms Safety"; safely loading, firing and unloading firearms; Safely
14 transporting firearms; understanding range commands and terms; proper targets and their safe
15 placement; safely handling malfunctions of ammunition and firearms and more.

16 The KRRC Orientation and Range Safety Briefing is an intensive 5+ hour course that
17 covers Club history, structure, and all aspects of safe and responsible use of the range
18 facilities. Topics include: community safety, firearms safety, eye protection, hearing
19 protection, lead management, security, member obligations and a range walk through.
20 Successful completion including a written test passed by 100% is necessary to obtain a
21 membership card and gate pass.

22 Washington State Hunter Education courses (which fill months in advance) offer an
23 invaluable resource in that every year hundreds of new hunters, young and old, head into the
24 woods throughout the county and state with firearms expecting to discharge them in an
25 environment shared by hikers, homeowners and other outdoor enthusiasts. The training
26 received at these classes are credited with making each hunting season a much safer time of
27 year. (see WDFW website for curriculum)

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1
2 Personal Protection classes are offered at KRRC and offer training and education from
3 very basic to advanced. Sailors going on deployment seek comprehensive safety training for
4 their wives as well as seeking supplemental pre-deployment training for themselves. There is
5 no other range that can and does offer the type of training needed for these situations. In our
6 rural environment, with law enforcement being overworked, response times are slow.
7 Thousands of community members have sought training to know their rights and
8 responsibilities when choosing to employ a firearm as a last resort for self defense. These
9 classes emphasize safe firearms handling, proper nomenclature, the law, fundamentals of
10 shooting, live fire, etc.

11 Our Junior Smallbore program teaches youngsters to safely handle rifles and prepare
12 them for collegian and Olympic style shooting. Increasing scholarship programs offered by
13 universities all over the nation have provided for funding of local youth to gain an education
14 by excelling in this shooting activity. Formal 3 position and 4 position shooting is taught.
15 Closure of two indoor ranges in the vicinity makes the KRRC program the last in the area.

16 Other classes and/or programs sponsored at KRRC over the years include, NRA Home
17 Firearms Safety, NRA Personal Protection, NRA Basic Rifle Shooting, NRA Basic Pistol
18 Shooting, Washington State Criminal Justice Training Commission PS/PD, US Navy
19 Shipboard Security Engagement Weapons, US Navy Armed Sentry Course, US Navy
20 Security Reactionary Force Basic, Reloading, Gunsmithing, Washington State Hunter
21 Education Instructor In-Service-Training, NRA Basic Rifle Marksmanship Instructor Course,
22 NRA Basic Pistol Marksmanship Instructor, NRA Personal Protection Instructor, NRA Home
23 Firearms Safety Instructor, NRA Range Safety Officer, USPSA Safety Check, Washington
24 State Advanced Hunter Education, Bullseye Fundamentals.

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**ENFORCEMENT
RULE/POLICY MAKING**

KRRC has developed standard operating procedures specifically for the use of the facilities at 4900 Seabeck Hwy NW. See Exhibit 3

RANGE OFFICERS

The KRRC Range Officer (RO) program is made up of dedicated volunteers that donate many hours of their time to take an 8 hour class along with donating a minimum of 20 hours of training under a certified range officer and then maintain status as a range officer by donating a minimum of 8 hours per month. The RO class emphasizes that the purpose of the range officer is to assist users of the facility in the safe practices necessary to ensure the safety of the community at large and second, the safety of the users of the range.

Range Officers provide guidance and supervision during the hours we are open to the public and aid in the security of our facilities. We encourage and pay for additional training for range officers if they can attend a National Range Officers Institute course when scheduled in the area.

Education and enforcement of the rules is paramount in the safe operations of any range. Anytime a user of the range is found violating club rules or policy of KRRC or of an established activity, they are stopped, corrected immediately, provided with additional training, or required to leave the range.

VIDEO MONITORING

KRRC employs a real time video surveillance system with multiple cameras to record all shots fired on the primary heavy use rifle and pistol ranges. After hours, range officers can log in to monitor activities from home. If a complaint is received, we have the ability to go back up to one week and view any event in real time. In recent weeks, we have received multiple complaints on late shooting and have not found one to be based on activity taking place on our ranges.

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1
2 **ENGINEERING**

3 **RANGE MAINTENANCE AND IMPROVEMENTS**

4 As a regular part of range operations, KRRC is always looking for ways to improve
5 safety, environmental stewardship and ease of maintenance. KRRC is an all volunteer
6 organization and relies primarily on the membership to maintain and/or improve the facility.
7 For example, when an activity is decided on, members will typically muster on a scheduled
8 date to perform the necessary maintenance, build the necessary structures, adapt areas, or
9 perform other infrastructure work to accommodate the activity with an eye toward projectile
10 containment and safety of the participants.

11 KRRC has regularly scheduled work parties that over the years have at times been
12 held monthly or quarterly depending on activity. Each shooting discipline will also have
13 specialized work parties to prepare for weekly, monthly or otherwise scheduled events.
14 General work party activities will include general clean-up, mowing, berm maintenance,
15 scotch broom removal, painting, repair of equipment, cartridge casing recovery/separation,
16 lead recovery, target stand construction et al.

17 Specialized work parties involving event preparation have included prop construction,
18 target construction, bay reconfiguration, activity set-up, activity tear-down, etc. Over the
19 years, safety enhancements have continually been made to our established range areas based
20 on the practical combined experience of our members and certified range safety officers and
21 other recognized experts. Impact berm angles, location and orientation have changed to
22 accommodate current safety requirements and environmental concerns.

23 Prior to 2010, KRRC has never once been cited for or asked to remove, any safety
24 berm, environmental protection improvement or correct any of the activities performed on our
8 acres of active use.

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1 Unlike some of the other ranges, because the club leased its land from the DNR, DNR
2 conducted inspections of the Range property on a regular basis and regularly advised the Club
3 if there were any concerns.

4 Occasionally, KRRC was informed when a proposed addition required a permit. For
5 example for an Americans with Disabilities Act (ADA) ramp to the rifle line, a permit was
6 acquired. Obviously, many of the activities did not require a permit. For example, painting,
7 general maintenance, and safety improvements.

8 At one time, in 2004/2005, the Range considered a change of the primary rifle line for
9 a couple of reasons, 1) to mitigate noise to the immediate neighborhood and 2) to provide a
10 North/South orientation. It was fortuitous that DNR had opted to clear cut a portion of the
11 land a little more than a decade before. After obtaining a grant through the Washington State
12 Interagency Committee for Outdoor Recreation (IAC) and approved by the DNR's
13 Commissioner of Public Lands, KRRC began the process of determining the final positioning
14 for the replacement range.

15 KRRC requested a pre-application meeting with Kitsap County DCD, to determine the
16 steps necessary to obtain necessary grading, building and electrical permits for the project.
17 Several members of DCD visited the facility and inspected the range. The Club was told by
18 DCD that a "conditional use permit" would be needed in order to make the change, as it
19 would be deemed an "expansion." KRRC attempted to reason that it was simply a
20 repositioning of the existing rifle range, and not an expansion. The County disagreed. Rather
21 than risk losing its grandfathered status, the Club opted to forego the project. Instead, KRRC
22 opted to maintain the primary 8 acres, improve handicap access and perform other sound
23 attenuation work.

24 In 2008, KRRC was informed that DNR would be exchanging over 500 acres,
including the 72 acres leased to KRRC, with Kitsap County. KRRC approached the County

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1 with a proposal to purchase the 72 acres upon completion of the exchange. (See copies of
2 Commissioners documents dated May 11th and May 13th 2009 listed as Exhibits 4 and 5)
3 Several public hearings were held regarding the exchange. Extensive negotiations were
4 conducted between KRRC and Kitsap County regarding the land.

5 Significantly, as part of the exchange, Kitsap County informed the Club that County
6 personnel would be visiting the site to inspect as a part of the process. Those inspections
7 occurred and we relied in good faith that County had done its due diligence to assess risk and
8 consider the configuration and operational characteristics of the range at that time so that any
9 associated issues would be dealt with in the bargain and sale negotiations. Kitsap County
10 also conducted an assessment of the property in order to determine its value. Kitsap
11 County's own risk assessor and appraisers conducted inspections of the premises in order to
12 make a determination of the value of the 72 acres. KRRC was informed that unless the
13 property was valued at less than \$2500, a separate set of public hearings to approve the sale
14 would need to be conducted. This would have caused a problem with the exchange.

15 The risk assessment valuation was based on the fact that if the gun club was to be
16 removed, the potential cleanup of the gun range land would have been costly and would have
17 outweighed the value of the land. There was a significant concern about potential lead clean-
18 up that would be required if the range did not remain in place. Provisions of the Model Toxic
19 Control Act (MTCA) would have been applicable.

20 As a result of the risk assessment, Kitsap County offered the property to KRRC by
21 way of a Bargain and Sale Agreement, Exhibit 6. The Bargain and Sale Agreement
22 documented the "quid pro quo" of the arrangement. KRRC would receive the land for \$10.
23 In exchange, KRRC agreed to indemnify Kitsap County on the lead issues. In addition, the
24 purpose of the Bargain and Sale Agreement was to clarify and articulate the non-conforming
uses already in place and recognized at the time of the sale, and that the improvements to the

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1 facility would be included as part of the nonconforming use. As memorialized in the Bargain
2 and Sale Deed, we would be able to continue with our grandfathered status, to wit:

3 Grantee [KRRC] shall confine its active shooting range facilities in the
4 property consistent with its historical use of approximately eight (8) acres of
5 active shooting ranges with the balance of the property serving as safety and
6 noise buffer zone; provided that Grantee may upgrade or improve the property
7 and/or facilities within the historical approximately eight (8) acres in a manner
8 consistent with "modernizing" the facilities consistent with management
9 practices for a modern shooting range. "Modernizing" the facilities may
10 include, but not be limited to: (a) construction of a permanent buildings or
11 buildings for range office, shop, warehouse, storage, caretaker facilities, (c)
12 sanitary bathroom facilities, and/or classrooms; (b) enlargement of parking
13 facilities, indoor shooting facilities; (d) re-orientation of the direction of
14 individual shooting bays or ranges; increasing distances for the rifle shooting
15 range; (f) water system improvements including wells, pump house, water
16 distribution and water storage; (g) noise abatement and public safety additions.

17 Significantly, the Bargain and Sale Deed provided that if additional use outside of the
18 original 8 acres was to occur, that permits for those uses would need to be applied for:

19 Also, Grantee may also apply to Kitsap County for expansion beyond the historical
20 eight (8) acres for "supporting" facilities for the shooting ranges or additional
21 recreational or shooting facilities, provided that said expansion is consistent with
22 public safety, and conforms with the terms and conditions contained in paragraphs 4,
23 5, 6, 7, and 8 of this Bargain and Sale Deed and the rules and regulations of Kitsap
24 County for development of private land.

From the date of the Bargain and Sale Deed to present, KRRC has operated the
premises in good faith, abiding by the covenants contained in the Bargain and Sale Deed.
Improvement plans within the scope of the non-conforming use were to provide the
following:

The first project, as articulated in the public hearings, was development of a water
system which would then provide water for proper bathrooms (instead of multiple port-a-
potties). KRRC engaged a contractor to build a well. In good faith, KRRC requested a
permit for the well through its contractor. The licensed contractor was told that he was to
request any and all permits legally required. Permits and/or inspections were obtained

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1 through the Washington State Department of Ecology, Kitsap County and Washington State
2 Department of Labor & Industries. A State licensed septic designer was hired to design a
3 septic system for the bathrooms, and a permit was applied for and inspections made through
4 the Kitsap County Health District. The Health district inspected the site and approved the
5 design.

6 Site Visits

7 Kitsap Rifle & Revolver Club has had a long record of cooperation with County, State
8 and Federal agencies when they request information and/or seek to visit our facilities. In
9 March of 2010, I was contacted by Gina Piazza requesting a site visit due to complaints
10 received from the Kitsap County DCD. While we initially received a request for multiple
11 agencies to visit at one time, counsel and experienced experts advised us to take one at a time
12 due to the individual nature of each agency's area of concern. I asked Ms. Piazza if she was
13 directly asking for each agency and she responded that she could only ask on behalf of her
14 agency (WDFW).

15 On March 22, 2010 Ms. Piazza informed me that she had asked all interested agencies
16 to email us with the requested information.

17 On April 7th, 2010 I emailed Ms. Piazza with a list of 6 questions to assist us in
18 preparing for their visit. She responded the same day and shortly after the appropriate site
19 visit was scheduled and executed.

20 Officer Langbehn, W119 of WDFW Enforcement and a biologist made a site visit and
21 looked at areas of concern including a seasonal run-off where a fence was placed and the inlet
22 and culvert where seasonal runoff comes into and runs under our range. After their review,
23 Officer Langbehn and his partner gave us advice on obtaining a permit if we were to build a
24 perimeter road (which they recommended for fire access), but had no other concerns. We
thanked them for their time and they left.

Grant Holdcroft from the Kitsap County Health District requested a site visit and it
was granted. Mr. Holdcroft in fact visited the site several time over the period of a year and
issued a site visit report. (see Exhibit 7)

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1 Throughout this time, DCD never requested a site visit, or contacted us in any way.
2 On May 5th, 2010, I was informed via email that Regina Taylor, a Club member and attorney
3 that assisted the Club with the bargain and sale agreement, had received a letter from the
4 Kitsap County Prosecutors Office, representing the DCD, and accusing us of construction
5 activities, all done "without permits." We were also accused of deferring each request for a
6 site visit "indefinitely resulting in no inspections taking place." All of this was not true and we
7 responded through Ms. Taylor on May 25 and provided the information for requesting a site
8 visit at KRRRC. (see attached Exhibit 8). We heard nothing more until July 9th when Mr.
9 Steve Mount and Mr. Heacock showed up at the range unexpectedly and began accusing us of
10 what they described as unpermitted activity, clearing and grading, filling wetland, etc.

11 I asked Mr. Mount if he had requested a site visit to which he said no. I asked him if
12 he had seen the paper describing the process for requesting a site visit and he acknowledged
13 that he had seen it at least six weeks prior. When I asked why he hadn't submitted for a site
14 visit, he said it was of no consequence to him and that he was just following orders. I told
15 him that had he simply requested the visit as directed, we could have had his visit over "a
16 month ago".

17 He showed us some pictures and told us we had cleared and graded the area we had
18 replanted a few years previously. I informed him we had not graded the area and had only
19 removed scotch broom. He wanted to look around and I informed him that he would have to
20 request a site visit using the same formula we provided his attorney and we would be happy to
21 schedule a range shut down and allow him the review he was wanting.

22 He said he would be posting a "Stop Work Order" (SWO) out front. I again asked
23 him to request a site visit and we would have him out.

24 I received a letter from the DCD, noting that a SWO had been posted on our property.
(see Exhibit 9) I responded with a letter to DCD denying the allegations and requested all
information used to make such a determination. I also requested they set up a site visit with
us to examine the issue and seek administrative resolution. (see exhibit 10)

The next contact I was made aware of involving DCD was the filing of the law suit by
the Kitsap County Prosecutor.

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1
2 A careful review of each of the declarations will show that they are either speculative,
3 unfounded, would not be admissible at trial, self-contradictory, or simply untrue.
4

5 **Brief Evaluation of filed declarations**
6 **Declaration of Gary Koon -**

7 Mr. Koon's declares he is a military range expert but Kitsap County Code 10.24.103(a) says
8 "Upon receipt of the application, DCD or its designated agent shall inspect the proposed range
9 to ensure the suitability of the intended use, taking into consideration the most currently
10 available guidelines for ranges promulgated by the National Rifle Association." Mr. Koon's
11 experience in the military is not relevant because KCC says it will use NRA guidelines and
12 not military ones when evaluating applications. Additionally, KCC 10.24.103(a) refers to
13 guidelines specifically during the application phase, which does not apply to KRRC since it is
14 an existing and grandfathered, non-conforming land use per the letter from Kitsap County
15 Commisioner Granlund. See referenced in Exhibit 11.

16 Mr. Koon quoted numerous times from the NRA Range Source Book to claim KRRC is not
17 safe. The NRA website clearly states limitations for the use of its Range Source Book at the
18 following website: (<http://www.nrahq.org/shootingrange/sourcebook.asp>). Quoting from the
19 site, "All information contained within is in the form of suggested practices only, and no
20 standards are stated or implied. Failure to follow any of the suggestions in The NRA Range
21 Source Book in no way implies that the range is being operated negligently. Nothing
22 contained within The NRA Range Source Book shall be construed as a standard for the
23 evaluation of any specific shooting facility." Since Mr. Koon quoted from the Range Source
24 Book to evaluate KRRC, and since the Range Source Book says it is not to be used for the

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1 purpose of evaluating individual ranges, Mr. Koon is certainly no expert on the NRA Range
2 Source Book and is not qualified to give testimony based on it. For the reasons stated in this
3 and the previous paragraphs, none of the statements made by Mr. Koon as a range safety
4 expert are relevant to KRRC. One must ask, if Mr. Koon feels KRRC is an ongoing lethal
5 threat to the community, why did he not voice his concerns to KRRC management on his
6 visit?

7 Declaration of Terry Allison -

8 I first recall meeting Mr. Allison sometime in the 1990's. I spoke with Mr. Allison on
9 multiple occasions. He informed me that he had no need to join the range because he shot on
10 his property from his back yard. I invited him to join the range in an effort to get him to shoot
11 in a more controlled environment. He did join in 2005 and only remained a member for one
12 year. He told me at one point that a real estate agent told him that his property would be
13 worth an extra \$100,000 if the gun club was gone.

14 At one point we began having multiple reports of "quads" or "orv's" coming into our
15 range area and jumping some of our impact berms. They would be chased off and the tracks
16 would lead directly back to Mr. Allison's property. A trail had been cut from Mr. Allison's
17 property to connect with an old logging road on the property we were leasing. In an effort to
18 prevent further unsafe activity of this nature, we constructed a barrier blocking access to our
19 ranges from the remainder of section 36 and posted signs that said, "DANGER, RIFLE
20 RANGE IMPACT AREA...KEEP OUT" facing the back of Mr. Allison's property.

21 Mr. Allison came to the range and confronted me stating we did not have the right to
22 try and keep him off the land we lease. I informed him of the serious nature of the actions he
23 and his family were taking in riding in our buffer area and onto the range. He stated that
24 DNR told him that he could access their land directly through the backside of his property.
He told me that he would take boy scouts on walks through the area. I told him that we leased
that land as buffer and he needed to cease that activity immediately as it was extremely
dangerous. I informed him that the trail he had been using was located at an elevation above

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1 our primary high power impact berm and directly down range. He said he was not aware of
2 that and that he would not use it anymore.

3 Some time after that confrontation, our DNR contact came out to inspect the safety
4 barrier that had been constructed and only asked that we construct a fence on top of it to
5 prevent someone from trying to "jump" the barrier. A wire fence with orange construction
6 barrier fencing for high visibility was put into place and that's the last we heard of it and is
7 still in place to this day.

8 Shooting off the range.

9 There have been numerous times when I have heard gun fire off the KRRC range
10 property. During one of the site visits with Grant Holdcroft of the KCHD, the KRRC range
11 was totally shut down so Mr. Holdcroft could inspect our projectile impact/containment
12 area's. There was repeated gunfire heard off site that I and Mr. Holdcroft discussed. It
13 sounded as though it was coming from the direction of Terry Allison's residence.

14 I have hiked section 36, now known as part of the Newberry Hill Heritage Park, many
15 times and have found numerous areas throughout the property where makeshift shooting
16 ranges were set up and from the spent cartridges on the ground, hundreds of rounds have been
17 fired.

18 Time forbids a finished declaration.

19
20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing is true and correct.

22 Dated: Bremerton, Washington, October 6, 2010.

23 
24 **MARCUS CARTER**

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EXHIBIT MAC I

- **Marcus A. Carter**
- **Past and present certifications or qualifications:**
 - Certified by the Washington State Criminal Justice Training Commission as CERTIFIED FIREARMS INSTRUCTOR PS/PD.
 - Certified by the Police Services Division of Glock Incorporated as SAFETY & MAINTENANCE TECHNICIAN.
 - Certified by the National Range Officers Institute as a RANGE OFFICER.
 - 1999 Area 1 United States Practical Shooting Association Championship - CHIEF RANGE OFFICER
 - 2001 Area 1 United States Practical Shooting Association Championship - CHIEF RANGE OFFICER
 - 2003 Area 1 United States Practical Shooting Association Championship - CHIEF RANGE OFFICER
 - 2007 Area 1 United States Practical Shooting Association Championship - CHIEF RANGE OFFICER
 - Certified by the National Rifle Association as NRA PERSONAL PROTECTION INSTRUCTOR.
 - Certified by the National Rifle Association as NRA HOME FIREARMS SAFETY INSTRUCTOR.
 - Certified by the National Rifle Association as NRA PISTOL MARKSMANSHIP INSTRUCTOR.
 - Certified by the National Rifle Association as NRA RIFLE MARKSMANSHIP INSTRUCTOR.
 - Certified by the National Rifle Association as NRA TRAINING COUNSELOR.
 - Certified by the National Rifle Association as CHIEF RANGE SAFETY OFFICER
 - Certified by Washington State Department of Wildlife as HUNTER SAFETY EDUCATION INSTRUCTOR.
 - Certificate of course completion for a RANGE DEVELOPMENT CONFERENCE.
 - Certificate of course completion for a RANGE DEVELOPMENT AND OPERATIONS CONFERENCE.
 - Certificate of course completion for Environmental Health and Safety Workshop "Get Ahead On Lead".
 - Certified by Winchester Western as having a proficiency in GUNOLOGY.
 - Professional Gunsmith - 20 years - Federally Licensed
 - Ammunition Manufacturer - Federally Licensed
 - Washington State Licensed - FIREARMS DEALER
 - Washington State Concealed Weapons Permit
 - Washington State Concealed Pistol License
 - Vice President of Kitsap Rifle & Revolver Club.
 - President of Kitsap Rifle & Revolver Club.

- Certificate of Recognition for work as Club President leading to Kitsap Rifle & Revolver Club receiving the National Rifle Association's PRESIDENT'S AWARD.
- National Rifle Association's Election Volunteer Coordinator WA 6th Congressional District
- Executive Officer of Kitsap Rifle & Revolver Club
- Senior Instructor KRRC Personal Protection and Home Firearms Safety Courses.
- Chief Firearms Instructor for Tacoma Community College.
- International Handgun Metallic Silhouette Association INTERNATIONAL class competitor.
- 1993 State Champion and High Score holder for Washington State Smallbore IHMSA Team Championship
- 1994 Pistol Champion - Veteran's Day Memorial Championship
- National Rifle Association Silhouette Competition MASTER class competitor.
- United States Practical Shooting Association 1992 Three Gun National Championship - SECOND OVERALL in class.
- USPSA Overall Shotgun Champion - 2003 Area 1 - 3 Gun Championship
- United States Practical Shooting Association 2006 Area 1 - 3 Gun Championship - CLASS CHAMPION
- United States Practical Shooting Association 2006 Multi-Gun National Championship - SECOND OVERALL in class.
- Received over 400 individual shooting Awards , Certifications and/or Recognition's to Date.
- Recognized Independent Firearms Expert Kitsap County Superior Court
- Recognized Independent Firearms Expert Kitsap County District Court
- USPSA Member
- KRRC Life Member
- NRA Life Member

EXHIBIT MAC2

EXHIBIT MAC3

KITSAP RIFLE & REVOLVER CLUB STANDARD OPERATING PROCEDURES

I. INTRODUCTION

All Kitsap Rifle & Revolver Club (KRRC) members are responsible for ensuring compliance with this manual of Standard Operating Procedures (SOP). Club members are responsible for instructing their guests as to the contents of this SOP. Violation(s) of this SOP may result in the loss of range privileges, membership and/or other appropriate actions under the provisions of this SOP, KRRC By-Laws, or local, state, and/or Federal Law.

II. ORGANIZATIONAL DESCRIPTION

A: The KRRC is ran by its regular members in good standing, represented through an elected Executive Committee (ExCom) and exists "For Sport and National Defense", to promote the safe and responsible use of firearms, sportsmanship and marksmanship among members and their families, potential members, and authorized guests through:

- (1). Promoting and training in safe firearms handling practices;
- (2). Disseminating firearms techniques and marksmanship training;
- (3). Promoting firearms competitions among members/organizations and the general public in cooperation with the State of Washington, National Rifle Association of America (NRA), the Civilian Marksmanship Program (CMP), United States Practical Shooting Association (USPSA), and other organizations.

B: The KRRC is a self-sustaining non-profit organization. Donations generated by KRRC annual membership dues, special events, competitions, and facilities use provide funds for operations, maintenance, and improvements.

C: The KRRC By-Laws serve as the framework of the Club organization, including, but not limited to:

- (1). Defining membership;
- (2). Defining KRRC Officers and responsibilities;
- (3). Defining meeting criteria.
- (4). Member suspensions and expulsions procedures.

III. PHYSICAL DESCRIPTION OF FACILITIES

- A: The physical and mailing address of the KRRC is 4900 Seabeck Hwy NW, Bremerton, WA 98312, USA.
- B: Hours of operation for the KRRC outdoor ranges is from 7am until 10pm, year-round.
- C: The range complex consists of:
- (1). Approximately 72 Acres of total property.
 - (2). Approximately 8 acres of heavy use area for ranges, parking, buildings and related infrastructure.
- D: The range property is bordered by county, federal and private properties. Special care must be taken to ensure that bullets are not intentionally fired, or allowed to ricochet, off KRRC property.
- E: Due to the KRRC's multi-use design and limited land space, operational restrictions may be imposed to ensure safe, efficient, and environmentally responsible operations.

IV. BASIC CLUB RESPONSIBILITIES

The basic responsibilities of the KRRC are as follows:

- (1). To ensure the most current data is available for reference, copies of this SOP shall be maintained in the Range Office for distribution;
- (2). KRRC will provide facilities in good repair for use by members and guests;
- (3). First aid kits containing basic supplies will be available on both the primary heavy use shooting ranges and shall be stocked at regular intervals;
- (4). Emergency contact information shall be posted outside the range office.
- (5). KRRC will provide Range Officer staffing on a regularly scheduled basis.

V. MEMBER RESPONSIBILITIES

- A: KRRC members shall not be in arrears on their dues, pursuant to the KRRC By-Laws.
- B: All KRRC members shall be issued a main gate key and a membership card, subject to the following restrictions:
- (1). Upon entering or leaving the KRRC property, members shall assure the gates are secured to help prevent unauthorized access to KRRC property (does not apply when a Range Officer is on duty or during an authorized event);
 - (2). Membership cards must be in the KRRC member's possession and badges worn at all times while on the KRRC property;
 - (3). Membership cards, badges, key cards and keys are controlled items, shall not be duplicated, and are the property of KRRC;

- (4). Members discovered providing their card, badge, key card or key to non-members may face disciplinary action;
- (5). Any person discovered firing on the KRRC ranges without a membership card shall be considered unsafe, armed trespassers on KRRC property and shall be reported immediately to a member of the ExCom and include all relevant information regarding the trespass. (Escorted guests excluded)

C: All KRRC members must fulfill ten (10) participation credits annually to remain a member in good standing and are specifically encouraged to participate in work parties:

- (1). Work parties shall be scheduled by the Executive Officer, and every attempt shall be made to limit the impact on range activities;
- (2). All maintenance will be directed by the Executive Officer or his/her designated representative;
- (3). All ranges will be cold and all firearms removed from the firing lines during maintenance sessions where personnel shall be forward of any firing line;
- (4). Range maintenance may consist of, but is not limited to, general area trash pickup and disposal, brass and lead recovery/recycling, grass mowing, weed control, general facilities repair, and range improvements;
- (5). Each member is responsible to maintain his/her participation credits card and obtain from a range officer proper credit for work performed. This will serve as proof of club participation for member renewal credit;
- (6). Members who are not available during scheduled maintenance sessions may contact a Range Officer to arrange alternate times and duties in lieu of scheduled sessions.

D: All KRRC members shall abide by the permissions, restrictions, and prohibitions detailed in the entire SOP.

E: All KRRC members shall be responsible for their guests' adherence to the permissions, restrictions, and prohibitions detailed in the entire SOP.

VI. GUEST PRIVILEGES

Each member shall be allowed to sponsor non-member visits to the KRRC range with the following restrictions:

- (1). Members are responsible for the conduct of their guests;
- (2). All guests must sign an "acceptance of responsibility and hold-harmless" agreement prior to entering the shooting areas;
- (3). All guests shall be verbally advised that their use of the range is predicated on the understanding that they will accept responsibility for each shot they fire.
- (4). Each member is limited to two (2) guests per visit;
- (5). Each guest is allowed one complimentary visit;
- (6). Each member shall be responsible to make a \$10 donation for each visit of their guest after their complimentary visit;

(7). Guests shall not perform the duties of Range Safety Officer, though they must be advised that safety is also their responsibility.

VII. GENERAL RANGE PERMISSIONS, RESTRICTIONS AND PROHIBITIONS

A: Definitions of specific range related terms.

(1). "HOT" is a condition of a range where firearms may be safely handled and responsibly discharged in accordance with these SOP's.

(2). "COLD" is a condition of a range where no handling of firearms is allowed

(3). "CLEAR" is a condition of firearms when they are totally unloaded, magazine removed (if applicable), action blocked open, safety on, and properly secured on a bench, in a rack, case, holster etc.

(4). "STOP" or "CEASE FIRE" are emergency terms to get everyone on the firing line to stop shooting immediately in the event an emergency safety situation arises.

(5). "Berms" are mounds of material constructed to trap projectiles fired into them.

B: General Rules:

(1). Alcoholic beverage consumption and persons under the influence of alcohol are not permitted on KRRC property;

(2). Illegal drug use and persons under the influence of illegal drugs are not permitted on KRRC property;

(3). Climbing of berms is specifically prohibited except for the maintenance approved by the Executive Officer;

(4). Any event or class requiring deviation from these SOPs must submit a written request for variance, including supporting rationale, for exception to the KRRC Executive Committee two (2) weeks prior to the intended date of the event or class;

(5). Generally, regular members in good standing have access to the primary parking lot, 50 yard and 200 yard ranges and restroom facilities. Access to most other KRRC structures and ranges outside the primary 50 yard range and 200 yard range are granted on a need and/or qualification basis. Not all members shall have access to these other areas of KRRC property and facilities. The Executive Officer or Executive Committee shall approve access upon proof of need for access;

C: Firearms authorized for use on KRRC shooting ranges shall include all legally owned and possessed firearms in good working condition.

D: Ammunition specifically authorized for use on KRRC shooting ranges:

(1). Commercial jacketed or lead "ball" type ammunition;

(2). Commercial jacketed or lead "hollow point" type ammunition;

(3). Reloaded jacketed or lead ammunition;

(4). Commercial or reloaded shotgun ammunition;

(5). Black Powder or Black Powder Cartridge ammunition;

(6). Air gun pellets / BBs.

E: Ammunition generally prohibited from use on KRRC shooting ranges:

- (1). Incendiary ammunition;
- (2). Tracer ammunition;
- (3). Armor-piercing ammunition;
- (4). Explosive ammunition.

F: Targets authorized for use on KRRC shooting ranges:

- (1). Any commercially available or "home-made" paper, plastic, or cardboard target;
- (2). Approved exotic targets including metal targets, properly maintained, when placed in locations which limit the potential for injuries from bullet fragmentation and ricochet and with specific permission from a lead Range Officer. These distances have been minimally set as 25 yards for rimfire ammunition, 50 yards for centerfire handgun caliber ammunition, and 100 yards for centerfire rifle caliber ammunition. These are MINIMUM distances and should "spatter" affect shooters, targets MUST be moved further from the line until the "spatter" no longer happens. Approved organized events may place exotic targets in accordance with the written safety protocol for their activities;
- (3). Explosive targets (e.g. "Tannerite") may be used when placed a minimum of 50 yards from the firing line, or otherwise in accordance with manufacturers' instructions;
- (4). Non-hazardous targets which can, and must, be cleaned up (for example, but not limited to: golf balls, tennis balls, plastic drink bottles, soda cans etc).

G: Targets prohibited from use on KRRC shooting ranges:

- (1). Glass targets of any type;
- (2). Any target containing hazardous materials;
- (3). ANY WILDLIFE.

H: Conditions for general use of KRRC shooting ranges:

- (1). When loading and firing of pistols, rifles and slugged shotguns, the muzzle must never be pointed above a containment berm with all members and guests ensuring that they are firing directly downrange and/or into containment berms/backstops;
- (2). All members and guests must furnish their own target frames and targets unless provided during club-sponsored functions;
- (3). All members and guests will clean up targets, target frames, or target remnants when done shooting;
- (4). All members and guests will keep the firing line clean of debris and expended brass, disposing of everything in appropriate brass buckets and trash and hull disposal cans (reloaders may retrieve their own brass);
- (5). Wanton destruction or molestation of wildlife is expressly prohibited and is grounds for immediate expulsion from the club and may be subject to criminal prosecution;
- (6). Un-aimed or indiscriminate firing is expressly prohibited;

- (7). Firing off-property is expressly prohibited and may be subject to civil liability and/or criminal prosecution;
- (8). Intentional and willful damage to KRRC property is expressly prohibited and is grounds for immediate expulsion from the club;
- (9). Members and guests may carry a holstered firearm anywhere on the KRRC grounds, but can only remove it when on the firing line while the line is "HOT" and in accordance with other SOP's.

VIII. RANGE PERMISSIONS AND PROHIBITIONS

A: All Ranges

- (1). It is recommended that members do not shoot alone at the facility;
- (2). A visual inspection of the facility and targets shall be performed before ranges are called "HOT". This shall include all firing lines, all impact areas, and all space between;
- (3). Clear vocal communication shall be used to call all ranges "COLD" or "HOT" with all users of the range agreeing to the change in "COLD" or "HOT" status.
- (4). It is recommended that one member stay at the firing line to ensure that all ranges remain "COLD" while persons are downrange;
- (5). If so equipped, "COLD" range lights (blue strobes) shall be activated by each person wishing to proceed down range during a "COLD" range (target changes, range maintenance etc) by flipping the switch nearest their position 'up' and their badge shall be hung from the lock-out tab or switch cover
- (6). Each member and guest is responsible to assure everyone has returned from down range prior to calling the line "HOT" and handling any firearm.
- (7). Members shall not unduly affect or restrict firing on the ranges with extended or repeated "COLD" sessions. "COLD" sessions should be restricted to 10 minutes or less when possible (does not apply during scheduled range maintenance or scheduled matches/events);

B: Rifle Line:

- (1). The Rifle line is our 200 yard range and is for use by all members of the KRRC, pursuant to the provisions of this SOP;
- (2). The Rifle line may be used for any firearm allowed at KRRC.
- (3). Target frames/targets may be placed at distances ranging from 7 feet out to the 200 yard berm as long as placement of the frames/targets does not produce a safety risk due to deflection or ricochet, subject to any other restrictions in the KRRC SOP;

C: Pistol Line:

- (1). The "Pistol" range is for use by all members of the KRRC, pursuant to the provisions of this SOP;
- (2). The range may be used for pistols/handguns firing ammunition with velocities LESS than 1800 FPS, 22 LR rifles;
- (3). Target frames/targets may be placed at distances ranging from 7 feet out to the 50 yard berm as long as placement of the frames/targets does not produce a safety risk due to deflection or ricochet, subject to any other restrictions in the KRRC SOP;

D: Action Bays:

- (1). The Action Bays 1-4 are primarily used for KRRC-sponsored competitions and events;
- (2). Members may gain full access to use of bays 1 - 4 through a structured process including:
 - (a). USPSA/KRRC Safety training;
 - (b). Passed live fire exercise;
- (3). Semi-regular scheduled USPSA training sessions including the above process shall be provided by the KRRC;
- (4). Members who successfully complete the required training shall be issued a blue bay access card identifying them as having privileges on bays 1- 4;
- (5). Range equipment in each of the bays is not to be re-arranged unless with specific permission from a Range Officer;
- (6). All exotic targets shall be inspected prior to each use. Damaged range equipment must be removed and/or reported to a Range Officer, or discipline chairman immediately.

IX. CONDUCT OF FIRING LINE

A: Posted minimum range safety brief and rules for all users of KRRC facilities:

*****Begin*****

Primary Rules for use of KRRC Ranges. (Read often!)

1. Safety is EVERYONES responsibility! You must attempt to rectify and report any safety concerns to a Range Officer immediately!
2. You will be held responsible for every projectile you fire.
3. You must follow the 4 COMMANDMENTS of Firearms Safety, which are:
 - Treat all firearms as though they are always loaded
 - Never allow the muzzle to cover anything you are not willing to destroy.
 - Keep your finger off the trigger and out of the trigger guard until your sights are on target and you are ready to fire.
 - Be sure you have an acceptable target, know its surroundings and what lies beyond.
4. All firearms are to be kept pointed into the impact berms to load and fire.
5. Transporting uncased firearms to and from the firing line: Muzzles up, action open, unloaded, magazine removed and safety on. (A firearm in a "Gun Sock" is NOT considered cased)
6. "HOT" range. When the range is "HOT" you may safely handle your firearms and fire when ready. Everyone must keep their eye and hearing protection on.
7. "COLD" range. When the range is "COLD", DO NOT HANDLE FIREARMS for any reason. If you are going down range, after everyone has agreed and declared the line "COLD", turn on the "COLD" range light switch nearest your shooting position and hang your badge from it. Once you've returned, remove your badge and turn off your switch. Once everyone has returned to the firing line, and the "COLD" range lights are off, everyone on the line must agree and declare the line "HOT" prior to handling firearms.

8. "CLEAR" firearms. Prior to proceeding to a "COLD" range, all firearms on that range must be "CLEAR". "CLEAR" is defined as totally unloaded, magazine removed, action open and up (visible) and properly secured in a rack, case or on the bench pointing down range.
9. Emergency Stoppage of shooting. If you see an unsafe condition that requires everyone to stop shooting immediately, yell "STOP, STOP, STOP!" or "CEASE FIRE, CEASE FIRE, CEASE FIRE!". If you hear anyone yell those commands, you MUST assist in correcting the situation. First, remove your finger from the trigger guard immediately, keeping your firearm pointed in the safest possible direction, clear and secure your firearm and provide additional assistance in correcting the condition as necessary.
10. Paper and cardboard targets ONLY. Exotics (anything other than paper, plastic and cardboard) must be approved by Lead Range Officer.
11. Place all targets in a manner that will ensure all projectiles passing through or around will impact the containment berms.
12. Malfunctions. Firearms malfunctions are to be remedied on the firing line. DO NOT bring it up to the office. Misfires or "dud" ammunition is to be placed in the red misfire cans bolted to the wall at back of the ranges.
13. Keep the range clean and free of debris. It is YOUR range, take pride in it!

*****End*****

B: Eye and hearing protection:

Eye and hearing damage is a very real possibility when spending time at a shooting range. All users of the KRRC facilities are encouraged to research, purchase and utilize the best protection possible.

- (1). Hearing protection is strongly recommended to be used at all times when at the range, and mandatory when the range is "HOT"; Properly worn ear plugs along with properly worn ear muffs, both having a high noise reduction rating (NRR) is strongly recommended;
- (2). Eye protection is strongly recommended to be used at all times when at the range and mandatory when is "HOT". High quality "wrap around" eye protection or safety glasses with side/temple shields is strongly recommended;

C: Transport of firearms

- (1). All uncased/unholstered firearms being transported to and from the parking area, to and from the shooting ranges, and at any other place on KRRC property shall have actions opened (or blocked with a chamber flag or piece of expended brass), the safety engaged, and magazine removed (if applicable);
- (2). No uncased/unholstered firearms may be transported to or from the shooting ranges while the line is "COLD," unless the designated Range Officer specifically allows it.

D: Range Officers (RO's) and/or Range Safety Officers (RSO's)

- (1). The Lead Range Officer on duty is the final safety authority for all activities on KRRC properties.
- (2). A Range Officer is the final safety authority for activities on each given range.
- (3). The order of preference for determining a particular ranges Range Officer shall be:
 - (a). Any KRRC designated CRO

- (b). Any KRRC designated lead RO
 - (c). Any KRRC designated RO
 - (d). Any NFI designated RO
 - (e). Any NORI designated RO
 - (f). Any NRA designated RSO
 - (g). Any member chosen by agreement of the shooters on the line.
- (4). The RO shall be in control of all shooting activities on the shooting ranges;
- (5). The RO shall be the only person to make the final determination in calling the line "HOT" or "COLD," although any person on the firing line can call "STOP" or "CEASE FIRE" for safety reasons;
- (6). The RO shall be responsible for verifying that all firearms have been properly grounded and cleared prior to calling the range "COLD" and authorizing persons forward of the firing line;
- (7). The RO shall assist any person on the firing line with clearing of a malfunction after calling for all firearms to be made "CLEAR";

E: Basic Range Commands to be used when an RO/RSO is in control of the firing line:

(Barring an emergency, all changes in range status are to be done in a manner most convenient to the majority and with courtesy extended to all shooters on the line. e.g. If a shooter(s) is wanting to set up or change targets, inform others of your desire but allow them to finish the string/magazine/shot they are currently engaged in.)

- (1). "The line is HOT" – Eye and hearing protection on, shooters may handle their firearms and begin aimed and controlled firing when ready;
- (2). "CLEAR your firearms". – In preparation to go to a "COLD" range, shooters shall cease firing, remove magazines, clear all firearms, lock actions open or block them with appropriate devices (chamber flag or expended brass), and secure the firearm;
- (3). "The line is COLD" – No one shall handle/touch/transport an uncased/unholstered firearm at this point. Persons going downrange may proceed to do so after attention to the COLD range lights.
- (4). "STOP, STOP, STOP!" or "CEASE FIRE, CEASE FIRE, CEASE FIRE!" – Everyone must stop shooting immediately, remove their finger from the trigger and trigger guard, determine the reason for the emergency command then safely "CLEAR" their firearms and assist as needed in solving the emergency. EVERYONE USING THE RANGE MUST USE THIS COMMAND IF THEY PERCEIVE AN EMINANT SAFETY ISSUE.

X. RULES ENFORCEMENT

KRRC members, KRRC Officers, KRRC Committee Chairs and member, guests, and competitors are expected to be aware of and adhere to KRRC By-Laws and Standard Operating Procedures. Failure to do so may result in disciplinary action, up to and including permanent expulsion from the KRRC, pursuant to the following:

- (1). Charges against any officer or member may be preferred by any member in good standing.
- (2). Such charges must be in writing, clearly state the facts, and must be accompanied by all affidavits or exhibits which are to be used in their support.
- (3). Such charges shall be filed with the Treasurer who will immediately notify the President.
- (4). The President shall call a meeting of the Executive Committee to hear the charges.

- (5). The Treasurer shall give at least fifteen (15) days notice of the meeting to each member of the Executive Committee, the accuser, and the accused.
- (6). Notices shall be written and shall include a true copy of the charges and all supporting affidavits and exhibits.
- (7). The Executive Committee shall either reject or uphold the charges. If upheld by the Executive Committee, the charges shall be voted upon by the membership at the next regular meeting or at a special meeting called by the President for the purpose of hearing and voting on the charges.
- (8). Any officer may be removed from office for any cause deemed sufficient by the Executive Committee and by a two thirds (2/3) majority affirmative vote by the full members in good standing present at the meeting at which the vote is taken.
- (9). Any member may be expelled or suspended for any cause deemed sufficient by the Executive Committee and by a four-fifths (4/5) affirmative vote of the full members present at the meeting at which the vote is taken.
- (10). Any non-member can be expelled from the range for flagrant safety violations by the designated Range Safety Officer on duty, any elected Officer, or any elected committee Chair;

XI. ORGANIZED RANGE EVENTS

A: Scheduled KRRC-sponsored events:

- (1). KRRC-sponsored events occur on a regularly scheduled basis. These events require one, some or all ranges to be closed for a set period of time;
- (2). The Match Director of any KRRC-sponsored event shall be in charge of all utilized ranges while the scheduled activity is taking place. The Match Director shall make every effort to minimize the amount of time that all ranges must be "COLD" as to reduce the impact on the general membership;
- (3). Times and availability of ranges shall be posted at the range office and the KRRC website (GunSafety.org);
- (4). KRRC-sponsored events include escorted public access to competitions, classes, or other special events, including military and law enforcement training exercises;
- (5). Sponsors of organized competitions open to the public shall ensure a pre-determined range usage fee is paid to the KRRC within five (5) business days after the event is completed;
- (6). All guests participating in KRRC-sponsored events must remain under direct supervision of the event organizer(s) at all times;
- (7). All participants of KRRC-sponsored events shall be briefed on range operations and SOP prior to any live fire.

B: Other organized events:

- (1). Any recognized organization (military, police, Boy Scouts, church groups, etc.) or any member in good standing may conduct an organized event or training class;
- (2). The KRRC ExCom must approve the event or class at least two (2) weeks prior to the planned event date, and the event will be listed at least ten (10) days prior to the event on the range message board and the KRRC website;

- (3). To be eligible for consideration, organized events must serve the primary purpose of the KRRC: promoting sportsmanship and marksmanship among members and their families, potential members, and authorized guests;
- (4). Approved events which deny access to regular members for a significant period of time must compensate the KRRC appropriately.

XII. COMMITTEES

The ExCom collectively may create both permanent and temporary committees to assist the ExCom in the execution of general duties. These Committees are subject to the following:

- (1). The formation of a committee shall be approved by a majority vote of the ExCom;
- (2). The Executive Officer, Treasurer, and Secretary may propose both permanent and temporary committees to assist in the execution of their specific duties. The Officer shall outline the duties and/or purpose of the committee proposed. The formation of a committee shall be approved by a majority vote of the ExCom;
- (3). Committee Chairs shall be appointed by the ExCom, and shall serve until the next January meeting of the KRRC, at which time they will have to be reappointed or replaced by the ExCom elected at that meeting;
- (4). Resignation of any Committee Chair may be accepted by the members of the ExCom. Any vacancy of a Committee Chair shall be filled by appointment by a majority of the ExCom. The position shall be up for reappointment or replacement at the next annual January meeting of the club, regardless of the time the position was held;
- (5). Committee Chairs manage their respective group, program, or discipline for which they serve and shall be the single voice from their group, program, or discipline in communication with the ExCom. Committee Chairs may appoint any current member in good standing to their committee;
- (6). Committees do NOT make official KRRC policy;
- (7). Committees, their Chairs, and their members may not indebted the KRRC.

EXHIBIT MAC4



Meeting Date: May 11, 2009
 Agenda Item No:

<u>Kitsap County Board of Commissioners</u>			
Department: Parks & Recreation Staff Contact: Matthew Keough, extension 5357 Title: Proposed Disposal of Newly Acquired Special Use Lease Land			
Recommended Action: Authorize, by resolution, the sale of a 72-acre special use leased parcel, to be acquired by Kitsap County through the proposed Newberry Hill Land Exchange with the State Department of Natural Resources (DNR).			
Summary:	DNR proposes to exchange acreage within Central Kitsap that will result in the assignment, to Kitsap County, of an existing special-use lease for the Kitsap Rifle and Revolver Club (KRRC). Instead of retaining this special-use parcel under an-going lease to the KRRC, the County would sell the parcel with conditions that would secure the operations of a non-profit shooting range that is open to the public and that is in a position to steward public funds for firearm recreation. Because the property was appraised at less than \$2,500, the sale will be accomplished through a direct sale of property. The sale of this parcel is scheduled to occur simultaneously with the proposed Newberry Hill Land Exchange through a single Escrow session in early June, 2009. This resolution would enable the Chair of the County Board of Commissioners to sign an Assignment and Conveyance Agreement for this purpose. The conveyance of the property to the KRRC will include several covenants, conditions and restrictions, including, but not limited to, restriction on the use of the property as a non-profit shooting range, indemnifications by KRCC, retention of certain easements, and various requirements regarding environmental matters.		
Attachment:	Resolution (attached) Assignment and Conveyance Agreement (under development)		
<u>Fiscal Impact</u>			
Expenditure required for this specific action:	0		
Total cost including all related costs:	0		
Related Revenue:	0		
Cost Savings:	0		
Total Fiscal Impact:	0		
Source of Funds:	N/A		
<u>Fiscal Impact (DAS) Review</u>			
<u>Departmental Coordination</u>			
Department	Representative	Recommendation/Comments	
Prosecutor's Office	Kevin Howell		
Risk Management	Mark Abernathy		
<u>Contract Information</u>			
Contract Number	Date Original Contract or	Amount of Original Contract	Total Amount of Amended Contract

	Amendment Approved	Amendment	

Revised - May 2007

KITSAP COUNTY RESOLUTION NO. ____
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 _____ day of _____, 2009.

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

CHARLOTTE GARRIDO, Chair

ATTEST:

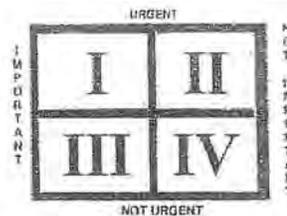
STEVE BAUER, Commissioner

Opal Robertson
Clerk of the Board

JOSH BROWN, Commissioner

EXHIBIT MAC 5

TASK	RELATIONSHIP
PRES	Speak for Yourself
Ask Questions	Listen Actively
Summarize	Gatekeeping
Polling	Compliment & Agree
80/20 Principle	Humor
Build Consensus	Process Check



What are we asking for?
 Why is it important?
 Is it realistic?

MAY 13th, 2009 MINUTES
 BOARD OF COMMISSIONERS – MANAGEMENT TEAM
 WORK/STUDY SESSION
 8:30 AM

Attending: Charlotte Garrido, Chair; Steve Bauer, Commissioner, Josh Brown, Commissioner; Nancy Buonanno Grennan, County Administrator; Larry Keeton, Director Community Development; Dennis Oost; Katrina Knutsen; Scott Diener; Cindy Read, Community Development; Shelley Kneip, Prosecutor's Office; Eric Baker, Commissioners; Angie Silva, Commissioners; Chip Faver, Director Parks & Recreation; Matthew Keough, Parks & Recreation; Jeff Rowe-Hornbaker, Community Development; Sue Schroeder, Olympic Property Group; Tom McBride, McBride Public Affairs; Burt Furuta, Director Personnel and Human Services; Sandra Staples-Bortner, Erik Pedersen, Great Peninsula Conservancy; Vivian Henderson, KAPO; Alison O'Sullivan, Melody Allen, Suquamish Tribe; Chris Dunagan, Kitsap Sun; Gene Bullock, Kitsap Audubon Society; Tom Nevins; Tom Donnelly, KCRP; Linda Berry-Maraist, North Kitsap Trails Association; Lou Foritano, Planning Commission; Ryan Sandstrom, Alpine Evergreen David Overton, Overton Associates; Tara Lemm, NK Herald; Daria Nelson; Rod Reid, Alpine Evergreen; Michael Yadrick, GPC; Stephanie Pinard, Budget; Dave Tucker, Public Works; Bryn Grimley, Kitsap Sun; Terri Lyman, Parks and Recreation

Anticipated Time

1. APPROVE MINUTES OF 04-29-09 8:30 – 8:35
 Minutes were approved as submitted.
2. RURAL WOODED INCENTIVE PROGRAM – KATRINA KNUTSON (pdf) 8:35 – 10:35

Shelley gave historical background information and talked about the criteria used for designating various classifications.

Larry talked about the definition of "rural character" – need to focus on what it looks like today and what it will look like in 20, 30, 40 years in the future and how the county can provide local government services. We need to look at what other uses can be in rural areas – what other industries would be appropriate.

Board's Guiding Values for RWIP:

- Fiscal Responsibility and Sustainability
- Inter-jurisdictional coordination
- Economy, Environment, Community
- Preservation of Rural Character
- Compliance with the Washington State Growth Management Act
- Open Space

The Board's vision for Kitsap: Along with the Kitsap County Vision Statement, they would like Kitsap County to be known for vibrant, healthy waterfront cities with a strong rural character.

Questions-Forest:

- 1) Is a 100 year old Douglas Fir more beneficial to the environment than a 50 year old Fir?
- 2) What is the County's ability to affect timber management practices in open space, i.e., could the County specify selective logging vs. clear cuts?
- 3) How significant is forestry to the Kitsap County economy? The binder indicates that there are only 20+ forestry related permanent jobs in the County. The comprehensive plan does not designate any commercially viable forest lands in the County.
- 4) How does a one-time infusion of funds for the property owner allow them to maintain active forestry if forestry is not economically viable?
- 5) Is preservation of a mature forest more important and beneficial than on-going forestry resulting in less mature forests?
- 6) What are the criteria in determining if land is prime for forestry?
- 7) What criteria were used when designating current Forest Resource Lands in Kitsap County?

Questions - Wildlife/Environment

- 1) Given the fact that the majority of 20 acre parcels are largely left in forest use, how significant a difference is there on wildlife/aquifer recharge/groundwater/stormwater from 20 acre parcels compared to larger tracts?
- 2) What are the impacts of these rural subdivisions on aquifer recharge compared to 20 acre home sites?
- 3) Are we better off with 20 acre home sites?

Questions - Fiscal

- 1) What are the public service costs associated with an 800 lot subdivision adjacent to Port Gamble compared to the revenues generated. Include transit, fire service, school district costs, law enforcement, transportation and others as appropriate. Would the governmental units prefer to service that population at Port Gamble or in existing cities and urban growth areas.
- 2) How does a one-time infusion of funds for the property owner allow them to maintain active forestry if forestry is not economically viable?
- 3) How do we provide local government services to the rural areas under a constrained County budget? To what degree would urban areas be subsidizing clusters?
- 4) How do we connect large clusters to roads that we can not afford?
- 5) What are the incremental costs associated with the density increase proposed by RWIP?

Questions-Growth Management

- 1) What are the historical rural businesses in Kitsap County?
- 2) What are the historical rural uses in Kitsap County?
- 3) What would be the impact adding 8,000 additional homes to those already permitted under current zoning and previously vested on the urban/rural population targets adopted in the County Planning Policies?
- 4) The County apparently did some polling or community meeting/polling affecting this topic in 2000. What would it cost to update that effort now?
- 5) Should RWIP have a different set of criteria for different areas of the County?
- 6) What are the benefits and downsides of clustering?
- 7) Are there other jurisdictions that have a thriving rural clustering program? What do their evaluations show?
- 8) What would RWIP at full build-out look like?

Questions - Trails

- 1) OPG has said that it intends to get out of Kitsap County. What happens when OPG sells to another owner who may not share OPG values and commitments?
- 2) Where would funding for maintenance of a trail system come from?
- 3) Are there other alternatives to achieving public access/trails?
- 4) The North Kitsap Trails Association has suggested creating a Metropolitan Parks District to fund trail maintenance. Could an MPD be created to purchase trail easements as well as maintain trails?
- 5) Given the popularity of trails, should Kitsap County consider a bond measure to fund trail acquisition?
- 6) What if the Open Space were turned over to a non-profit trails group for stewardship? Similar organizations apparently exist on the East Coast for preservation of timber lands and the option is under consideration in Washington as well. Could this group raise enough from selective logging to support trail and forest management? Explore other success stories.

DCD Staff Responsibilities:

- 1) Provide recommendation regarding the current moratorium.
- 2) Provide a comparison of the 20-acre parcels vs clustering. Clustering has benefits, are there any drawbacks?
- 3) Provide any available fiscal information.
- 4) Provide forestry/wildlife information.

(Synopsis provided by Katrina Knutsen)

Steve asked how does RWIP program sync with all requirements of GMA?

FIVE MINUTE BREAK

10:35 - 10:40

3. LEGISLATIVE BRIEFING -- TOM MCBRIDE (pdf)

10:40 - 11:40

- Tom briefly summarized Washington state 2009 legislative highlights.
- > Suggested we settle on our legislative objectives this summer.

- Tom would like to focus on: Targeted meetings with our delegation and thank you letters to those people; meetings with Leadership in both House and Senate and with legislators who chaired the issues of particular interest to us.

Josh told Tom that he has done a great job this year and heard nothing but positive things from legislators and other counties. Charlotte and Steve agreed.

Tom said he is interested in what worked best and what didn't....weekly calls etc. He suggested that report for next year be shorter. He encouraged the board to give him their constructive thoughts and ideas. Steve said with the combination of work Tom is doing, staff support and Board willing to get involved, this was a model program this year. The Board asked if there are things Tom needs from them to allow him to be more effective and make better use of his time. Josh said we need to figure out how we can continue to work more closely with our legislators. They agreed the priority next fall is to find more revenue.

The Board and Nancy commented that Tom's reports have been clear and concise and he has done an outstanding job this year and thanked him for all his hard work. Tom said it is a privilege and honor to work for Kitsap County.

4. DEVELOPMENT CODE FOR STORMWATER – DAVE TUCKER (pdf) 11:40 – 12:40

Dave talked about title 12 and said his recommendation is that the Board direct staff to schedule a public hearing for an ordinance to implement title 12 changes. The permit covers actions related to Stormwater in 6 categories:

- Public Involvement
- Public Education
- Illicit Discharge Detection and Elimination
- Construction Stormwater Control
- Post Construction Stormwater Control
- Good Housekeeping for Municipal Operations

Steve asked they spend a minute to understand what's going to be different on the ground when we do this and does this end up looking significantly different than what we've done in the past. Dave discussed the difference and what it means.

In January 2009 the Board agreed with the staff recommendations to base new development regulations pertaining to Stormwater on these 8 focus areas:

- Treat water as a resource
- Preserve Groundwater Recharge
- Reduce Pollutant Loading of Runoff
- Preserve Low Energy Flow Regime
- Use Stormwater Pollution Prevention Plans
- Adaptively Manage Technical Stormwater Management Tools
- Dual Use of Land
- Maintain Facility Function

Dave state is proposing have to take action by late June.

10 MINUNTE BREAK

5. WAAGA WAY DECISION – ERIC BAKER/ANGIE SILVA

12:50 – 1:20

Eric Baker – continuation of public hearing on Waaga way connector roads and Silverdale Design Standards to the Waaga Way Town Center. Points Discussed:

- Steve said it was interesting Monday night there was not a lot of attendance from people invested in this.
- Charlotte liked seeing topographical map.
- Josh felt there weren't enough true standards.
- Put design review committee in place.
- On pitched roof requirement we need to decide what we are designing for.
- Steve asked if we are talking about roof elevations or façade – should make that clear, especially to those writing the standards.

Josh moved adoption of ordinance in many portions of the Silverdale Design Standards in Kitsap County Code Title 17 consolidating the use tables relating to the Waaga Way Town Center. All 3 in favor, motion carried.

- Steve proposed motion to include façade as and option in areas where roof elevation is mentioned. Approved unanimously.
- Discussed minimum parking required by code. Eric said it is 5 parking space per 1000 sq ft of general retail space.
- Discussed bike lanes on connector roads; having on both sides would make more usable.
- Internal pedestrian foot pathways to include bike lanes was talked about last meeting. – would like to revisit that. Need to rethink if that is really necessary.
- Discussed compatibility with existing uses of surrounding land.
- Talked about connector road off Old Frontier. Board asked Eric to talk about traffic on surrounding roads.

The Board would like a more time to discuss the issues of connectivity between the connector road and Old Frontier Road. As the moratorium expires tomorrow, there was discussion about extending it another week. After legal review, staff recommended adopting the connector road without a connection to Old Frontier at this time. Charlotte Moved to adopt the ordinance with the change to remove the paragraph on page 3.

Josh moved to adopt section 10.4 as revised. Change beginning the third full paragraph: Delete 4th sentence to end; beginning at “Depending on the development...” The connection between the cul de sac and Old Frontier Road (Phase two) shall be determined through a future planning process.” All in favor – motioned carried.

Staff was provide additional information regarding the connector road connection to Old Frontier and return to the Board in the near future.

6. BOARD DISCUSSION

1:20 – 2:00

Discussed monthly lunch with Elected and decided to return to the 11:00 am meeting with one Commissioner and then a brown bag lunch in Chambers with all Commissioners.

Made decision on Employees of the Month for May and June:

- Tim Perez from Risk Management for May
- Chuck Smiley from Public Works Stormwater for June

Matthew Keough talked about the land exchange with DNR. Josh moved for approval. All 3 in favor – Motioned carried. This will be ratified at the June 8, 2009 Public Meeting.

Nancy presented a resolution allowing the Kingston Village Green Foundation to perform the design, construction, maintenance and operation of the Kingston Village Green. Steve gave brief background. Josh moved the Board approve the resolution. Steve second; all 3 in favor; Approved. Josh suggested that the group give a presentation to show all the work they have been doing at the June 8, 2009 meeting and the Board will ratify the resolution at that time.

Board recessed into executive session from 3:20 – 4:00 pm to discuss potential litigation pursuant to RCW 42.30.110 (1) (i). No action taken.

Respectfully Submitted by Deanna Erstad

EXHIBIT MAC6

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 200900100292
Deed Rec Fee: \$ 89.00
06/18/2009 05:16 PM Page: 1 of 6
Heller, 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

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

Total : \$10.00

Clerk's Initial *JS*

For and in consideration of \$10.00 and other good and valuable consideration, Kitsap County, as Grantor, bargains, sells and conveys all of its 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 (MTCRA), RCW 70.105 D, by any indemnified person or entity in any way 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 silver-spot 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 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Charlotte Garrido
CHARLOTTE GARRIDO, Chair

Steve Bauer
STEVE BAUER, Commissioner

Josh Brown
JOSH BROWN, Commissioner

ATTEST:

Opal Robertson
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 13th day of May, 2009.

Bradford Smith
BRADFORD SMITH, President - KRRC

Marcus A. Carter
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.

EXHIBIT MAC 7



SCOTT W. LINDQUIST, MD, MPH, DIRECTOR
345 6TH STREET, SUITE 300
BREMERTON, WA 98337-1868
(360) 337-5235

DATE: June 24, 2009
TO: Jan Brower
Kitsap Rifle & Revolver Club Initial Investigation File
FROM: Grant Holdcroft
RE: INITIAL INVESTIGATION SITE VISIT KITSAP RIFLE & REVOLVER CLUB; ERTS
613497

On June 24, 2009, I visited the Kitsap Rifle & Revolver Club (KRRC) to conduct an Initial Investigation inspection. I had made an appointment. I arrived on site at 10 am and met with Marcus Carter, Brad Smith, Dan ?? and two other gentlemen that were officers of the club. I explained that I had received a complaint from Ecology on lead contamination at the range and I was investigating that concern. I also explained that the EPA BMP Guidance for ranges discusses range contamination issues. I asked if they were familiar with the document and they said Yes. Dan stated that he had a copy. I asked about lead recovery programs. I was told that KRRC has been doing lead recovery for at least 16 years (1993). I asked about documentation. They said that they were starting to document as they just got title to the property but, that they could show that they have had lead recovery working parties through the club newsletter for many years.

We walked across all of the ranges. In general the areas of the property that we walked over were clean and well maintained. There is one large rifle range (200 yards), one large pistol range (50 yards), and about 10 small pistol ranges for competition shooting. All of the small ranges are backed by 8' to 10' high berms. Some trap and skeet shooting takes place on the rifle range. No shooting is allowed above the berms (except for some trap and skeet). Any rifle or pistol shooting above the berms immediately disqualifies the shooter. The impact zones of the ranges are all 95% or more sand. The pistol range is backed by a 10' to 12' high berm that has wetlands on the other side. There were no or little sign of rounds going over the berms on any of the ranges.

We spoke further after the walkthrough. I told the group that what I had seen of the KRRC looked good. I also said that the key points that I had gotten out of the EPA guidance manual was that the lead on the site must be kept within the boundaries of the ranges, a lead recovery program must be in place, and that they must document the lead recovery. Based on what I saw and learned while talking to them the first two items were taken care of appropriately. The documentation of the lead recovery needs to be active and ongoing. I told them that I believed that the complaint was without merit, but that I would make a note in my calendar to check back with them in 6 months to look at their documentation.

We discussed MTCA and the II process. We also talked about sampling. Whether or not I would be tasked by Ecology to sample, what I would sample for, what they could sample for, etc. Dan indicated that the club would be looking at sampling portions of the club for their own information. I left the site about 11 am.

EXHIBIT MAC 8



B. REGINA TAYLOR, ATTORNEY AT LAW, PC

9353 Central Valley Rd. NW, Suite 2, Bremerton, Washington 98311
Telephone: (360) 698-5522; FAX: (360) 698-2584
cell phone: (360) 340-4710, e-mail: bregina.taylor@comcast.net

May 25, 2010

HAND DELIVERY

Neil R. Wachter
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office
Civil Division
614 Division Street, MS-35-A
Port Orchard, WA 98366-4681

RE: Kitsap Rifle & Revolver Club

Dear Mr. Wachter:

After consulting with my client, the Kitsap Rifle and Revolver Club (KRRC), I offer you the following response. KRRC entered into the covenants set forth in the Bargain and Sale Deed in good faith. KRRC believed that Kitsap County had also entered into the agreement in good faith because it believed and understood that not only was the transfer to KRRC necessary for risk management purposes, but that KRRC serves an important function within the Kitsap Community.

Your letter is disturbing because it would appear that your offices have been misled by individuals we believe to have a hidden agenda. Starting with paragraph 2, your letter is replete with the type of allegations and presumptions that call into question the good faith upon which the KRRC previously presumed the County had based its agreement. The tone and nature of your letter makes it difficult to respond as graciously as I would have preferred. You appear to have reached conclusions about KRRC without being specific about how you reached such conclusions.

Unfounded Accusations

You state that the County has become "aware" of (a) construction activities; (b) land-clearing; and (c) filling of wetland areas believed to have occurred on the Club's premises, "all done without applying for permits as required by law." Please specify exactly what was done and what permits you believe were required. When you have specified what specific acts were done that are of concern, I will be in a better position to discuss each particular activity. As far as KRRC is aware, they complied in good faith with all laws applicable to any and all of their activities, as contemplated by the Restrictive Covenants of the Bargain and Sale Deed.

Neil R. Wachter
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
May 25, 2010
Page 2

You state that the County has become "aware" of (a) increased hours of operation; (b) use of automatic firearms and (c) "dramatically" increased sound levels coming from the Club's premises, "all occurring without going through a conditional use permit review process." On what do you base your conclusion that there has been an increase in the hours of operation? As far as KRRC is aware, there has been no change in the club's historically stated hours of use.

Regarding automatic "weapons", KRRC has a history of use of all variety of firearms, including automatic and semi-automatic firearms based on the policies it has had since its inception. Military training and law enforcement with automatic firearms has long been an accepted and ongoing activity on the property. How does your current awareness of "use of automatic weapons" (especially in context of military training) create any need for a "conditional use permit review process"? As far as KRRC is aware, the use of automatic firearms on the premises is a continuing historical use and would not require a "conditional use permit process."

On what do you base your conclusion that there are "dramatically increased sound levels coming from the Club's premises"? As far as KRRC is aware, there has been no "dramatic increase" in the sound levels coming from the club.

You seem to assume that a "conditional use permit process" is required. On what do you base this assumption? What statutory or regulatory basis subjects KRRC to a conditional use permit process at this time?

Requests for Access

Your assertion that "KRRC has deferred each request indefinitely resulting in no inspections taking place" is false. Kitsap County Health District (KCHD) had inspected prior to your letter and Department of Fish and Wildlife recently inspected.

Significantly, DCD and the Suquamish Tribe have never directly requested access to inspect KRRC's premises. Some agencies have requested access for particular reasons that have been explained to KRRC and those individual agencies have been granted access. We declined any requests for a joint site visit for several reasons. First, we were not presented with any legal basis for such a request indicating the authority of any single agency's authority to represent the other agencies in such a request. In fact, we were informed by a number of agencies that they could not formally request a joint visit for the other agencies. Second, KRRC felt that it would be unwieldy for our representatives to have to deal with a large group. Our experienced experts counseled our executive committee that a joint visit would not be the best way to address the individual needs of each agency. Third, we wanted to be sure to have the proper personnel and information available. In fact, because of the logistics, a joint visit would be more disruptive to operations than a series of individual agency visits. Finally, as each agency has a specific relationship to KRRC, we do not wish to create the impression that KRRC is allowing each agency to go beyond its normal scope of allowed disclosure.

Neil R. Wachter
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
May 25, 2010
Page 3

KRRC responded courteously to each request and requested information from each agency so that adequate personnel and information could be on hand to address the individual agency's needs. For some of them, we are still working out the logistics. You mention several agencies in your letter. Below, I will summarize the contacts and outcome of each agency mentioned:

1. DCD. No specific visit was requested. No specific purpose for a visit was identified. No specific personnel intended to attend were identified to KRRC.
2. Department of Fish and Wildlife. An initial request was made on March 22, 2010. KRRC made inquiry as to what was needed. Arrangements were made for the visit. On May 12, 2010, an individual agency visit was conducted. KRRC was verbally informed that there were no concerns. We are awaiting a written confirmation. As part of our inquiry, KRRC was informed that there were no documented violations activity on the range.
3. Kitsap County Health District. An initial request was made for an individual agency visit as early as June, 2009. KRRC was informed that the KCHD report would be forwarded to the Department of Ecology. After the first visit, KRRC was told to keep on doing what it was doing. A follow-up visit was conducted 6 months later, in early 2010. He met with our expert, Dan Daniels, Chair of KRRC's Environmental Stewardship Committee. Attachments 1 and 2 are copies reports KRRC has received regarding those visits. At that time, there were no issues of concern to KCHD or the Department of Ecology.

Additional visits were requested. The most recent request by KCHD was granted, but the scheduled visit was canceled due to illness on the part of Grant Holdcroft. It is my understanding that Grant Holdcroft was going to meet with our Environmental Stewardship Committee Chair to discuss the protocol for water samples. However, KCHD has not called to reschedule. Recently, our Environmental Stewardship chair was himself unavailable due to illness and only recently has become available.

4. Department of Ecology. It is my understanding that the follow-up visits for KCHD described in paragraph 3 above were also for the Department of Ecology. As you may know, our new well was permitted by the Department of Ecology in February, 2010. (KRRC records indicate the fee was paid on February 15, 2010). Work was performed by Gresham Drilling and inspected by the Kitsap County Health District. It is my understanding that Grant Holdcroft and John Kiess were present during the drilling and provided valuable information on the care and maintenance of the well. Due to the DOE's expressed concerns on listed work party activities, KRRC has made it a policy to stay away from any areas of any possible concern pending consultation and if discovered to be necessary, permits are obtained.

Neil R. Wachter
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
May 25, 2010
Page 4

5. U.S. Army Corp of Engineers. A first request was made on March 30, 2010. Clarification of the purpose of the visit was requested. This agency was told that an individual visit would be scheduled when the necessary personnel and information were prepared. The arrangements and clarifications are ongoing. Due to meetings with the other agencies and other activities that our volunteer members were conducting regarding our ongoing projects under permit (primarily the new Well), the arrangements for this visit are in the process of being completed.
6. Department of Labor and Industries. As stated above, the Department of Ecology approved the Well permit. Department of Labor and Industries visited KRRC on two occasions to inspect the new well that was constructed on the premises. As far as KRRC is aware, all necessary permits were obtained through their licensed contractor. Approval for the electrical permit should be on file with the Department of Labor and Industries.
7. Suquamish Tribe. No one from the Suquamish Tribe has requested a visit. KRRC would entertain a request for a visit by them. After an appropriate exchange of information detailing the specifics of such a visit, KRRC will be able to make a decision regarding such a visit. Historically, the Suquamish Tribe has never requested a visit in the past and KRRC is not sure how a visit by the Tribe will be helpful to the Tribe. Once KRRC is made aware of the Tribe's needs, KRRC will do its best to accommodate those needs.

As KRRC is professionally set up to provide maximum safety for all users, visitors, and the community, it is not necessary to suspend operations during an inspection. The shooting bays are set up in such a way that a site visit can occur without the need to close down the range. Since a number of agencies have already visited the range, and since KRRC has been advised by its experts that a joint visit would not be the most efficient manner to address specific needs of each agency, KRRC must respectfully decline your request for a joint visit by all of the agencies. KRRC will grant individual requests on a case by case basis. Upon clarification of the purpose of each visit, KRRC will be able to have appropriate, knowledgeable personnel on hand to aid in the visit.

Therefore, in specific response to the agency that you represent, if DCD is interested in scheduling a visit, please have DCD answer the questions on Attachment 3 and have it returned to KRRC's executive officer, Marcus Carter. There may be follow-up questions. Once KRRC has sufficient information to provide assistance and personnel for the visit, the visit can be granted and the agency will then be notified of available dates and times.

Neil R. Wachter
Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
May 25, 2010
Page 5

Submission of Applications

Regarding the County's request that KRRC "submit all necessary applications for its various building and land moving operations," as far as KRRC is aware, KRRC has submitted all necessary applications to required agencies in the appropriate timeframes. As far as KRRC is aware, KRRC has done nothing that requires the submission of an application for a conditional use permit at this time. KRRC is a private landowner that is complying in good faith with all of the restrictive covenants applicable to its premises.

I appreciate your stated courtesy to KRRC in your letter. However, the "historic" uses of KRRC, i.e. those uses that were in place at the time of the land was deeded to KRRC and before, have not changed. Therefore, it is KRRC's position that there are no land use requirements that were not being followed and a conditional use permit is not required at this time.

Your concluding paragraph seems to imply that the activities of KRRC are deemed a "nuisance" or "detract from the quality of life in our community." These comments are not well received because they imply after the fact that the very reasons why KRRC were granted the land are not valid; your comments are unnecessarily threatening. The gun range is recognized as an important asset to the community. KRRC has not violated any of the covenants in the Bargain and Sale Deed. If your offices are specifically accusing KRRC of a violation of any of the covenants, I would appreciate a specific reference to the specific covenant and the specific act that is alleged to have violated that covenant. I would be especially interested in specific evidence you have that may be of concern and any statutory or regulatory basis for such concern. Upon receipt of this additional information, I will be in a better position to respond and provide appropriate documentation.

Club Deserves Protection

KRRC, its thousands of members (past and present), and thousands of visitors are also part of Kitsap County. As such, they also deserve to be protected by their Prosecutor from false allegations and obvious attempts to abuse the process.

I look forward to your detailed response to this letter.

Very truly yours,

B. REGINA TAYLOR

Enclosures (Attachments 1-3)



SCOTT W. LINDQUIST, MD, MPH, DIRECTOR
345 6TH STREET, SUITE 300
BREMERTON, WA 98337-1866
(360) 337-5235

DATE: June 24, 2009

TO: Jan Brower
Kitsap Rifle & Revolver Club Initial Investigation File

FROM: Grant Holdcroft

RE: INITIAL INVESTIGATION SITE VISIT KITSAP RIFLE & REVOLVER CLUB; ERTS
613497

On June 24, 2009, I visited the Kitsap Rifle & Revolver Club (KRRC) to conduct an Initial Investigation inspection. I had made an appointment. I arrived on site at 10 am and met with Marcus Carter, Brad Smith, Dan ?? and two other gentlemen that were officers of the club. I explained that I had received a complaint from Ecology on lead contamination at the range and I was investigating that concern. I also explained that the EPA BMP Guidance for ranges discusses range contamination issues. I asked if they were familiar with the document and they said Yes. Dan stated that he had a copy. I asked about lead recovery programs. I was told that KRRC has been doing lead recovery for at least 16 years (1993). I asked about documentation. They said that they were starting to document as they just got title to the property but that they could show that they have had lead recovery working parties through the club newsletter for many years.

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SCOTT W. LINDQUIST, MD, MPH, DIRECTOR
345 6TH STREET, SUITE 300
BREMERTON, WA 98337-1866
(360) 337-5235

DATE: February 19, 2010

TO: Keith Grellner
Jan Brower
Project file

FROM: Grant Holdcroft

RE: KITSAP RIFLE AND REVOLVER CLUB INSPECTION REPORT

I met with the representatives of the Kitsap Rifle and Revolver Club (KRRC) yesterday. We had arranged an appointment for 2 pm. I arrived on site at about 1:50 pm and met Dan Daniels (Environmental Stewardship Chairman), Marcus Carter (Executive Director), and Brad Smith (President).

We met in an office onsite where Mr. Daniels showed me his procedure for pH testing of the soil at KRRC. Mr. Daniels was using a pH meter and logging results in a lab notebook. The method used was thorough and included quality control measures. Calibration solutions, a soil baking oven, and de-ionized water were all onsite. I asked Mr. Daniels to write up the procedure so that others could check soil pH should he not be available. I told them that the pH testing methods they were using were above and beyond what was needed for the KRRC.

We spoke of the Lead Recovery Program and what the KRRC had accomplished. They have established a log book for lead recovery. Apparently individual members of the KRRC regularly dig in the ranges for lead. The log book is used to note who, the weight, purpose, where from, and date of the recovery. Also some lead will be recovered during work parties on the weekends. The data from that recovery will be recorded in the log book also. I checked the book and noted about 10 entries for individuals with recovery amounts ranging from 5 lbs to 45 lbs. There is a scale in the office for weighing the lead. The dates range back to September (?) of 2009. In most cases reloading ammunition was to be the use of the recovered lead.

Mr. Carter noted that they had been in contact with several firms that do whole range lead removal and are discussing having one of these firms come out to the KRRC and do the entire site. I asked the KRRC to write out a procedure for the lead recovery program. I reminded them that there was a sample program in the back of the EPA BMP manual.

I recommended that the KRRC consider soil testing for lead. I stated that as far as I knew there was no requirement for it but that if they knew what was going on with their soil they would be better off. We discussed where samples would be taken. We talked about several in the ranges at about 2 feet deep and of the sediment at the inflow and outflow areas for storm water at the property.

We discussed lead toxicity and what steps the KRRC was taking to educate club members. Hand washing after shooting or handling lead, discussions of lead toxicity during trainings, etc. was among the steps that have been taken.

Kitsap Rifle and Revolver Club
February 19, 2010
Page 2

Mr. Smith asked about the rules that the club had to comply with and I told him about the local and state solid waste rules, the Model Toxics Control Act (WAC 173-340), and the EPA BMP Manual for Gun Ranges. Mr. Daniels mention the federal rule called the Resource Conservation and Recovery Act (RCRA). We discussed how the EPA BMP Manual was the guidance that the Health District would be following based on the recommendation of Washington State Department of Ecology.

We did a quick walk around of the site. The site looked good with minimal litter, the berms in decent shape, and little brass on the ground. Mr. Carter noted that a work party this weekend was going to be doing some cleanup after the winter weather. I took several photos during the walk around.

We agreed that the Health District would visit the KRRC again in August of 2010 to check on the written lead recovery and the pH testing programs. I left the site at approximately 3:40 pm.

ATTACHMENT 3

INFORMATION TO BE PROVIDED WITH A REQUEST FOR A SITE VISIT

1. What is the purpose of the requested site visit?
2. How much time do you wish to devote to this site visit?
3. What information will be helpful to your review?
4. What specific areas of the property do you wish to visit?
5. For each area to be visited, please specify what concerns about that area are known.
6. Who will be present at the site visit?
7. If your visit is in relation to a complaint filed by an individual or group, will you provide us with a copy of the complaint(s) that initiated your investigation and current request for a site visit?
8. Will you please provide us with copies of any reports and/or communications, preliminary or otherwise, generated or received by you and your agency concerning this matter to date?
9. If you are aware of any regulatory or statutory basis for your request, please provide specific citation to the applicable regulation, code or statute.

Answers to these questions should be forwarded to KRRC, c/o Executive Officer Marcus Carter, by email at info@gunsafety.org or fax to (360) 373-1082, mail to 4900 Seabeck Highway, Bremerton, WA 98312.

Upon review of the information provided, the Executive Committee of KRRC will respond to the request. Follow-up questions and other logistical details may be required before a visit can be granted.

EXHIBIT MAC 9



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98386-4682
(360) 337-5777 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com/dcd/

Larry Keaton, Director

CERTIFIED MAIL

July 13, 2010

KITSAP RIFLE AND REVOLVER CLUB
C/O MARCUS CARTER
4900 SEABECK HWY NW
BREMERTON WA 98312

RE: **STOP WORK ORDER # S43-10**
TAX ACCOUNT # 362501-4-002-1006
SITUS ADDRESS: 4900 SEABECK HWY NW

Dear Mr. Carter:

This is to inform you that a stop work order was posted on the property listed above on July 9, 2010 for the following reason(s):

**CLEARING IN AREAS DESIGNATED AS CRITICAL AREA WETLANDS AND BUFFERS,
EXPANSION OF CLUB ACTIVITIES WITHOUT LAND USE APPROVAL, CLEARING AND
GRADING WITHOUT APPROVALS, PERMITS OR INSPECTIONS**

These activities must cease until the violations have been resolved and the clubs property comes into compliance with Kitsap County code. Please note, the continuance of work once a stop work has been given on the job site, constitutes direct violation of Kitsap County code and Washington State Law, including; Section 19.300.315, 17.381.040(E), and 12.10.30.

Please contact Stephen Mount at (360) 337-4605 by the close of business Thursday, July 15, 2010 to schedule a site visit and inspection of the property by our Department's staff to occur during the following week of July 19, 2010 so that we may resolve these issues.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey L. Rowe-Hornbaker, C.B.O.
Deputy Director & Certified Building Official
Department of Community Development

EXHIBIT MAC10

KITSAP RIFLE & REVOLVER CLUB

BREMERTON, WASH



For Sport and National Defense

26 July 2010

Kitsap County Department of Community Development
Jeffrey L. Rowe-Hornbaker, C.B.O.
Deputy Director & Certified Building Official
Department of Community Development

Re: STOP WORK ORDER # S43-10
TAX ACCOUNT # 362501-4-002-1006
SITUS ADDRESS: 4900 SEABECK HWY NW

Dear Mr. Rowe-Hornbaker

I am in receipt of your certified letter dated July 13, 2010, and signed for on July 19, 2010.

We categorically deny the allegations made in your departments "stop work order" and ask that you please provide all information relied upon for the determinations made in said order.

As soon as we receive the information above, along with the responses to our initial invitation for a site visit (provided to the prosecutor as your counsel), we will be happy to schedule a meeting.

Sincerely,



Marcus Carter - Executive Officer
Kitsap Rifle & Revolver Club
4900 Seabeck Hwy NW
Bremerton, WA 98312

7009 8057 8000 0522 8007

PORT ORCHARD WA 98346		
Postage	\$0.44	0649
Registered Fee	\$2.80	06
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Sent to Kitsap County
Dept. of Community Development
614 Division St. MS-36
Port Orchard, WA 98346-4682

SENDER- COMPLETE THIS SECTION

- 1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 2. Print your name and address on the reverse so that we can return the card to you.
- 3. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Kitsap County
Dept. of Community Development
614 Division St. MS-36
Port Orchard, WA
98346-4682

2. Article (None)

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 FOR KITCO COURIER SERVICES Addressee

B. Received by (Printed Name) ALAN QUEBLEY C. Date of Delivery 7-27-10

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

S. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

EXHIBIT MAC II

Chris Endresen
DISTRICT 1
Win Granlund
DISTRICT 2
Bille Eder
DISTRICT 3

September 7, 1993

SAFE DEPOSIT
Box

Kitsap County
Board of
Commissioners



Kitsap Rifle & Revolver Club, Inc.
4900 Seabeck Highway
Bremerton, WA 98380

Poulsbo Sportsman Club, Inc.
16990 Clear Creek Road NW
Poulsbo, WA 98370

Kingston Junior Marksmen Club, Inc.
c/o Mike Hastings
25846 Norman Road
Kingston, WA 98346

Bremerton Trap & Skeet Club, Inc.
5956 State Highway #3 SW
Port Orchard, WA 98366

Re: Ordinance 50-B-1993

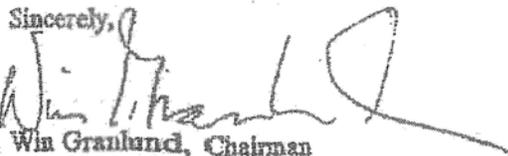
Dear Sirs:

Pursuant to your requests, this letter is to confirm that the shooting ranges your organizations currently have in use, which are listed above, are considered by Kitsap County to be lawfully established, non-conforming uses (grandfathered).

We are requesting that you submit a legal description of the parcel that your range is located on. Please send these to Mark H. Grimm, Kitsap County Community Development, 614 Division Street, MS #36, Port Orchard, WA 98366. This should help avoid any problems in the future.

Thank you for your assistance. I look forward to working with you on this matter.

Sincerely,


Win Granlund, Chairman
KITSAP COUNTY BOARD OF COMMISSIONERS

WG:MHG:jef

614 Division Street • Port Orchard, Washington 98366 • (206) 876-7146
SCAN 262-7146 • FAX (206) 895-3832
Toll Free from • Poulsbo, Kitsap 779-1095 • Olalla 851-4147 • Bainbridge Island 842-2061

Appendix 29

**CP 2336, 2345, 2371-74, 2480-81,
portions of deposition of County Code
Compliance Supervisor Steve Mount**

ORIGINAL

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE



10 2 12913 3 37921591 DEP 01 09 12

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

Plaintiff,

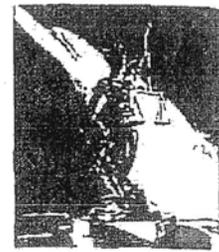
vs NO 10-2-12913-3

KITSAP RIFLE AND REVOLVER
CLUB, a not-for-profit
corporation registered in
the State of Washington,
SHARON ANN CARTER, doing
business as NATIONAL
FIREARMS INSTITUTE, a sole
proprietorship licensed
in the State of Washington,
and JOHN DOES and JANE DOES
I-XX, inclusive,

Defendants,

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED
AT One 72-parcel identified by
Kitsap County Tax Parcel ID No
362501-4-002-1006 with street
address 4900 Seabeck Highway NW,
Bremerton, Washington



OPENED & PUBLISHED IN OPEN COURT
THIS 6 DAY OF Oct 2011



VOLUME II
DEPOSITION OF STEPHEN MOUNT
Taken on behalf of the Defendants
January 26, 2011

1 DEPOSITION OF STEPHEN MOUNT

2 WEDNESDAY, JANUARY 26, 2011

3 9 00 A M

4
5 STEPHEN MOUNT, having been first duly sworn, was examined
6 and testified as follows7
8 CONTINUED EXAMINATION

9 BY MR CHENOWETH

10 Q Mr Mount, when we left off, we were talking about
11 the County's decision not to sign the -- or not to respond
12 to the questions that the Club had posed regarding the site
13 visit And I think where we left off was that we said that
14 you weren't sure why the County didn't sign that or respond
15 to those questions, other than the County just didn't do
16 that and that best person to ask would be Larry Keeton, is
17 that correct?

18 A I believe that's what I said

19 Q Okay So after the County attempted with other
20 agencies to get access to the Club property and the
21 questions were asked as a precondition of allowing the
22 County access, what do you recall happening next?23 A Well, I remember -- let's see, it was back in
24 March of 2010, you know, after my site visit at Allison's,
25 and I observed what appeared to be encroachment into a

1 this day, ever find that the Club did any work outside the
2 historic eight acres after that stop work order was issued
3 in 2005?

4 A Yes

5 Q Okay What work was done?

6 A We started discovering through aerial photography
7 that clearing was occurring in a different area I think
8 it's north of the property There is a series of wetland
9 ponds that, in earlier photography, shows native vegetation
10 around this area and clearly delineates the active use area,
11 that historic use

12 Now, it was called to our attention that there was
13 work going on, we didn't know where, but then it was later
14 called to our attention, you should look at these aerial
15 photos

16 Q Okay Now, I'm talking about outside the historic
17 eight acres?

18 A That is outside the historic eight acres

19 Q Okay Let's try to identify that area

20 MR CHENOWETH Mark that as Exhibit 2, please --
21 I'm sorry, Exhibit 4

22 (Whereupon, a satellite photograph was marked
23 Exhibit 4 for identification)

24 Q Before we get to this, I think we're talking about
25 different things I just want to make sure you know what

1 I'm asking Did the 2005 clearing and grading trigger the
2 need for the Club to get a Conditional Use Permit? And I'm
3 not -- and I'm not talking about their intentions to move
4 forward Assuming the Club didn't want to move forward and
5 didn't move forward, was there anything about the clearing
6 and grading in 2005 that required them to get a Conditional
7 Use Permit if they didn't want to proceed?

8 A If they didn't want to proceed, they wouldn't need
9 the Conditional Use Permit

10 Q Okay

11 A The would still need a grading permit

12 Q A grading Permit to do -- is it an after the fact
13 permit?

14 A Yeah, but, again, let me qualify that It is
15 still the same permit whether you do the grading and
16 development or whether you do the mitigation and
17 restoration

18 Q Okay

19 A It's the same vehicle, if you will It's --

20 Q Who -- I'm sorry Who at the County took the
21 measurements and took the data to determine that they had
22 done grading above and beyond what was allowed without a
23 permit?

24 A Bill Noerenberg

25 Q Okay Did you look at what he came up with, a

1 report or his calculations?

2 A I don't recall that I saw it

3 Q Okay

4 A But I can tell you that in a pre-application
5 meeting that involves land development, they typically will
6 have Bill or somebody from Development Engineering do a
7 preliminary site visit and make those determinations to say,
8 well, you know, if it hasn't been done yet, here's what you
9 propose So you show it on a map and we calculate it out
10 If it's already been done, then measurements would be
11 typically taken I don't know if Bill went out after the
12 time that he and I talked with Marcus, or if he had enough
13 information from his site visit to advise the staff
14 reviewer for Development Engineering in preparation for the
15 pre-app

16 Q Okay Is it typical in a situation where the
17 County's making a determination that there is a violation,
18 that that violation is documented either through
19 measurements or some other means such that you have evidence
20 to proceed in some type of enforcement process, whether in
21 District Court or administratively or in Superior Court?

22 A We take whatever necessary means to verify that
23 they've triggered, you know, whether validating that this is
24 critical areas through our code or through the State,
25 whether they cumulatively cleared an area beyond two acres

1 or moved more than 150 cubic yards and, you know,

2 Development Engineering folks can speak to that

3 Q Okay

4 A I don't -- I don't do that I take a guesstimate

5 and, you know, I'm pretty good at knowing what's more than

6 an acre or what's more than two acres and what critical

7 areas are, but I do rely on staff before we go into that

8 mode to make sure that, you know, it is what it is

9 Q Fair enough You don't just wing it, right?

10 A I don't wing it

11 Q Okay I would assume you don't, but All right

12 Now, getting back to Exhibit 4, where is the area outside

13 the historic eight acres of use that you stated there was

14 additional development?

15 A Right So when this was brought to our attention,

16 and this is what prompted me to put this PowerPoint together

17 is to try to get an idea of time based on the available

18 photography that we had to gauge that, that historic

19 footprint and any encroachment beyond that

20 So I put together a series of photographs that

21 kind of, you know, showed, you know, roughly a six to eight

22 acres footprint And I think the earliest photo I had was

23 1978 And then, I think it went, you know, skipped years,

24 you know, 1998, 2000, 2001, 2003, 2005, and so on But you

25 can see there, over the progression of time, that clearing

1 of those And "P" means permitted, and a lot of people, you
2 know, people not family with code speak, just say, well,
3 that means I'm permitted, I'm allowed, I can do that, no, it
4 mean's it permitted with a permit

5 So that's why when you were asking me a minute
6 ago, where they permitted, there's a distinction that's
7 between the code and the table says that they are permitted
8 means that they can do this with a permit of some kind It
9 could be a Conditional Use Permit, so it would be a CUP, or
10 a permit means building permit or otherwise

11 **MR CHENOWETH** All right I don't have any
12 further questions right now pending the discovery responses
13 being finalized, and then I can ask you my final questions
14 on the topics were you designated to speak on

15 It's been a long day and a half Thank you

16 **THE WITNESS** You're welcome Thank you

17 (Whereupon, the deposition of Stephen Mount
18 concluded at 3 30 p m)

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CERTIFICATE

I, Valerie R. Aliard, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein, that at the said time and place, I reported all testimony adduced and other oral proceedings had in the foregoing matter, and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof

IN WITNESS HEREOF, I have hereunto set my hand this 5TH day of February, 2011

Valerie Aliard

Valerie R. Aliard

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Appendix 30

**CP 1958–98, Trial Memorandum of Defendant
Kitsap Rifle and Revolver Club, dated September
27, 2011**

September 27 2011 9:28 AM

KEVIN STOCK
COUNTY CLERK
NO: 10-2-12913-3

Hon. Susan Serko
Department 14

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

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

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a
not-for-profit corporation registered in the
State of Washington, and JOHN DOES and
JANE ROES I-XX, inclusive,

Defendants,

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED
AT

One 72-acre parcel identified by Kitsap
County Tax Parcel ID No. 362501-4-002-
1006 with street address 4900 Seabeck
Highway NW, Bremerton Washington.

Case No.: 10-2-12913-3

**TRIAL MEMORANDUM OF
DEFENDANT AND
COUNTERCLAIMANT
KITSAP RIFLE AND
REVOLVER CLUB**

1 Defendant Kitsap Rifle and Revolver Club (the "Club" or "KRRC") hereby submits
2 this trial memorandum setting forth the essential facts of the case and the key legal issues to
3 be decided at trial.

4 I. INTRODUCTION

5 At its broadest level, this case arises from the desire of Plaintiff Kitsap County (the
6 "County") to strip the Club of important rights that the County itself created or recognized
7 through the prior words and actions of its Board of Commissioners. The County seeks a
8 court order shutting the Club down because of: (1) perceived safety risks and nuisance
9 associated with its operations; and (2) alleged land use and development permitting
10 violations. Yet the Club is a responsible community service organization with a long track
11 record of safety that has been making noise at its present location for decades (as every gun
12 club does); its land use and site development activity have been consistent with its historic,
13 nonconforming use right acknowledged by the County in 1993; and any issues related to land
14 use or site development were previously resolved in 2009 when the parties negotiated the
15 May 2009 sale to the Club (documented in the "2009 Deed") of the 72 acres of property the
16 Club had historically occupied along Seabeck Highway (the "Property"). Of utmost
17 importance in this case, the May 2009 Deed fully settled any potential code violations and
18 nuisance conditions existing at that time or—at minimum—promised the Club that if it took
19 title to the property it could continue to operate and maintain its existing facilities within its
20 historic eight acres of active use, without requiring the Club to address any of the alleged
21 code violations and nuisance conditions the County now raises in this lawsuit.

22 Rather than shut the Club down, the Court should dismiss the County's claims for
23 failure of proof and under principles of equitable estoppel, accord and satisfaction (i.e.,
24 enforcement of prior settlement), waiver, and laches. The Court should then issue a
25 declaratory judgment stating that: (1) the May 2009 Deed provides a right for the Club to
26 continue without further permits or approvals from the County for any site conditions

1 existing as of May 2009; (2) the County's effort to prove code violations arising from site
2 conditions existing as of May 2009 constitutes a breach of the 2009 Deed; (3) the Club
3 retains a vested nonconforming use right to operate a shooting facility and gun club within
4 the eight acres historically used at the Property; and (4) the County failed to prove any public
5 nuisance or violation of Kitsap County Code associated with the Property.

6 II. PROCEDURAL BACKGROUND

7 When the parties entered into the 2009 Deed regarding the sale of the Property to the
8 Club, the County had never cited the Club with a formal notice of violation of any ordinance
9 or a directive to correct any alleged violation, nor had it ever notified the Club of any
10 suspected public nuisance associated with the noisiness or safety of its operations. In fact,
11 two days after signing the 2009 Deed, in which he affirmed the Club's right to maintain and
12 improve its facility and Property within its historic eight acres of active use, Kitsap County
13 Commissioner Josh Brown dismissed the accusations of a local landowner who alleged the
14 Club had unlawfully expanded its nonconforming use. According to Commissioner Brown,
15 the Club's operations were properly confined within "the footprint they have leased with
16 DNR for the past 83 years."

17 Approximately one year after the County executed the 2009 Deed, the Department of
18 Community Development arrived at the Club unannounced with an abrupt demand to inspect
19 the Club property. When the Club asked the County to fill out an inspection request form as
20 all other government agencies had done, the County refused, then initiated this litigation in
21 September 2010 and immediately sought a preliminary injunction to close down the Club
22 pending resolution of the case.

23 In its motion for a preliminary injunction, the County alleged the Club posed an
24 imminent threat to public safety. The Court denied the motion because it could not find that
25 the County was "likely to prevail at trial on the questions presented by this case" and because
26

1 the County had not proven “the existence of a substantial likelihood of imminent or actual
2 injury[.]”¹

3 Having failed to immediately persuade the Court that the Club was unsafe, the
4 County shifted its focus to alleged land use and development permit violations, raising issues
5 about the same site conditions that existed when the County inspected the property in 2009
6 before negotiating the 2009 Deed. After re-inspecting the property, the County amended its
7 complaint to allege the improper culverting of a stormwater drainage ditch.

8 In May 2011, prior to the second mediation scheduled by the parties, the County
9 amended its code on legal nonconforming uses and on August 29, 2011, filed a third
10 amended complaint incorporating this new ordinance. The County now seeks to use the
11 amended ordinance to prove the Club lost its vested nonconforming use right to operate its
12 shooting ranges at the property, a right acknowledged by the County Board of
13 Commissioners in writing in 1993.

14 III. KITSAP COUNTY’S CLAIMS

15 Kitsap County asserts claims of “Nuisance Per Se,” “Statutory Public Nuisance,”
16 “Common Law Nuisance,” and “Violation of Zoning and Nuisance Ordinances.” All of
17 these claims are alleged to arise out of roughly the same set of facts and circumstances
18 involving the Club’s historic use and maintenance of its property located at 4900 Seabeck
19 Highway NW, Bremerton, WA (the “Property”). Specifically, Kitsap County alleges that the
20 Club has violated the law by: (1) allowing errant bullets and excessive noise to leave the
21 range; (2) expanding its area of active use beyond the scope of its nonconforming use right;
22 (3) illegally disturbing wetlands, wetland buffers, and other “critical areas”; and (4)
23 operating, maintaining, and improving its Property without obtaining land use permits
24 required by Kitsap County Code. The County asserts it has authority to bring this civil action
25
26

¹ Order Den. Mot. For Prelim. Injunction and Governing Use of KRRC Property at 3.

1 seeking injunctive relief for any code violations and common law public nuisance conditions
2 it is able to prove at trial.

3 The County asks the Court to find: (a) that the Club is a common law public nuisance
4 because it is noisy and unsafe; (b) that the Club has lost its vested nonconforming use right to
5 operate a gun club and shooting range at the Property; and (c) that the Club has committed
6 specific violations of County Code related to the Club's operation, maintenance, and
7 improvement of the Property. As a remedy, the County asks the Court to issue an injunction
8 shutting the Club down indefinitely unless and until the Club takes unspecified steps to abate
9 the alleged safety and noise nuisances and obtain the conditional use permit, shooting range
10 permit, and other unspecified permits necessary to satisfy the County. The County also seeks
11 a "warrant of abatement" to allow the County itself to abate any nuisance or unlawful
12 condition associated with the Club Property and then require the Club to reimburse the
13 County for its cost of doing so.

14 The County's claims, allegations, and choice of remedies in this lawsuit do not
15 withstand legal and factual scrutiny, and its case should be dismissed with prejudice.

16 IV. FACTUAL SUMMARY

17 **A. The Club's Historic Use of Its Property and the County's Acknowledgement of** 18 **the Club's Lawful Nonconforming Use Right**

19 Kitsap Rifle and Revolver Club is a non-profit organization founded by charter on
20 November 11, 1926. For many decades, the Club leased the Property from the Washington
21 Department of Natural Resources ("DNR") for use as a community shooting range for
22 firearm sports and defense training. According to the Club's leases with DNR, the Property
23 consists of approximately 72 acres, including eight acres of "intensive use and occupancy"
24 by the Club, and the remainder serving as a de facto buffer for the Club.

25 In 1993, while the Club was still leasing the Property from DNR, Kitsap County
26 enacted an ordinance that severely limited or prohibited shooting on private land without a

1 permit. The intent of this ordinance was to draw firearm users off smaller plots of private
2 land and concentrate their activities at recognized shooting ranges where they and the
3 persons around them would be safer and in a controlled shooting environment. The Club, by
4 law, sat on the advisory committee and had input into the drafting of the ordinance.

5 In conjunction with the promulgation of the ordinance, the County determined the
6 Club to be a lawful nonconforming use, and documented that determination in a letter to the
7 Club. It was understood by the Club and County that the Club would be allowed to continue
8 without the shooting range permit required of newly proposed ranges. For at least the next
9 17 years the parties acted in reliance on this understanding, yet now the County alleges that
10 the Club must be shut down for failure to obtain a shooting range permit under the 1993
11 ordinance, asking the Court to provide equitable relief for the violation of an ordinance from
12 which the parties have always treated the Club as exempt because of its historic
13 nonconforming use right.

14 **B. Unsubstantiated Allegations of Errant Bullets from the Club and the Club's**
15 **Commitment to Safety**

16 In the last several years some of the nearby residents have complained of bullets from
17 the Club striking their properties. Yet the County cannot prove by a preponderance of the
18 evidence that any such alleged bullet came from the Club, as opposed to the many other
19 sources of gun fire in the area. In striking contrast to the controlled shooting environment at
20 the Club, the woods and residential property near the Club are used by non-Club members
21 for unsupervised shooting. Makeshift shooting ranges have been discovered, and the sound
22 of gunfire can be heard with regularity. There are many firearm users in the area who
23 choose, for whatever reason, legally or illegally, not to practice their shooting at the Club.

24 The Club has placed paramount importance in range and firearm safety and relies on
25 a variety of safety measures that meet or exceed industry standards to ensure bullets do not
26 leave the range and threaten neighboring properties. These measures include the

1 maintenance of numerous safety berms and backstops; extensive, mandatory safety training
2 for all members; supervision by range safety officers; and closed circuit cameras to help
3 ensure that all rules are followed and any violators can be held accountable. Expert
4 testimony at trial will further confirm that the Club's safety measures compare favorably
5 with those of other similar shooting facilities on a local and regional level. The Club's
6 culture of safety and maintenance of its facility is exemplary, making it a preferred training
7 facility for numerous groups and individuals within government law enforcement and the
8 military.

9 Contrary to the County's protestations regarding imminent threats to the surrounding
10 community, there is no evidence from the entire 84-year history of the Club that anyone has
11 ever made so much as an allegation of a personal injury caused by a bullet leaving the Club.

12 C. Noise Complaints by a Few Isolated Newcomers

13 The Club has provided a safe venue for firearms practice for decades. Meanwhile,
14 the surrounding area has steadily grown in population. A few relative newcomers have
15 decided that the noise of gunfire at the Club, however, distant and faint, have become
16 annoying. These witnesses disagree as to when the noise from the Club became annoying.
17 Nevertheless, the County adopts their complaints in this lawsuit.

18 The County has produced no decibel readings, sound engineering studies, or other
19 empirical data demonstrating that the sounds of gunfire from the Club have an unreasonable
20 or substantial impact on anyone in the community. The County has not designated any
21 expert in sound or noise. Instead, the County appears to rely solely upon the subjective
22 observations of a few isolated landowners who apparently are upset with their decision to
23 purchase rural property near a rifle range.

24 The Club will offer testimony and evidence confirming the level of noise is well
25 within reasonable and historic levels, along with testimony from neighbors who do not find
26 the noise excessive or bothersome at all. Audio recordings taken by one of the County's

1 most vocal noise complainants will further demonstrate that the distant sounds from the Club
2 are no louder than other noises typically heard in the neighborhood, such as airplanes flying
3 overhead or the sounds of nearby birds and chipmunks.

4 **D. The Club's Exploratory Work in 2005, Abandonment of the Project, and**
5 **Satisfaction of DNR with the Club's Restoration Effort**

6 The Conflict between the Club and County regarding the Club's use of its Property
7 dates back, at least in part, to 2005, which is when the County alleges the Club committed
8 clearing and grading violations in an area outside the Club's historic eight acres of active use.
9 At that time the County made a site visit in response to a complaint that the Club was
10 clearing vegetation. The Club had, in fact, begun clearing vegetation in the area to explore
11 the possibility of relocating its rifle range to achieve numerous benefits for the community.
12 The Club was very open about its potential project and had already begun corresponding with
13 other government agencies about it. In fact, the Club had obtained a grant for the project
14 based in part on the County's written support. To the Club's surprise, the County informed
15 the Club, for the first time, that its entire facility would need a conditional use permit
16 (meaning the Club would permanently lose its nonconforming use right) if the Club
17 continued with the project. The County clarified, however, that if the Club did not continue
18 the project and kept its activities within its historic eight-acre area of active use it would need
19 no conditional use permit or any other land use permits. The Club weighed its options and
20 decided it was in its best interest to abandon the relocation project, retain its nonconforming
21 use right, and continue within its historic eight acres.

22 The County never issued any citation to the Club for the exploratory work in 2005,
23 nor did it order the Club to restore the area. Instead, the County relied on the landowner, the
24 Washington DNR, to address any need for restoration. After the Club replanted the cleared
25 area, DNR inspected the Property and was satisfied with the effort. The County now alleges
26 the area requires further restoration.

1 E. Conflict Since 2005 Over the Club's Use of Its Property, Leading to the 2009
2 Deed

3 Since 2005 there have been accusations and speculation, by both certain individuals
4 within the County and a handful of nearby residents, questioning the legality of the Club's
5 activities on the property it historically leased from DNR and whether the Club had lost its
6 legal, nonconforming use right by expanding or enlarging its area of active use. The Club,
7 however, has not expanded or enlarged its area of active use. The Club has only maintained
8 and improved the same areas of the Property that had been used for gun club and shooting
9 activities since before 1993. This historic eight-acre area of active use was recognized and
10 authorized in the DNR leases as an area of "intensive use and occupancy" and, later, in the
11 2009 Deed as the Club's "historical eight (8) acres" of "active shooting ranges." All of the
12 Club's maintenance and improvement work within its historic eight acres is consistent with
13 modern standards exemplified by other, similar shooting ranges, and has been intended to
14 improve the Club's service to the community, its safety, and its stewardship of wetlands and
15 other "critical areas" near the Club facility.

16 Between 2007 and 2009, the County was pursuing a land exchange with DNR, which
17 would include the 72 acres DNR leased to the Club. DNR wanted to divest its land holdings
18 in the area and the County wanted a large tract adjacent to the Club for development into
19 what is now the Newberry Hill Heritage Park. DNR would not give the County the park land
20 unless the County would also take title to the Club Property.

21 While planning the land deal with DNR, the County held meetings and received
22 public comments as to whether the Club should be allowed to continue on its leased land
23 once the County became its landlord. Public comments were both for and against the Club's
24 continued existence on the Property, though the vast majority were in favor of the Club and
25 its activities. In addition, while planning the land exchange, the County Commissioners
26 received information from County code enforcement officials regarding potential violations

1 of code that may have existed at the Club Property. Indeed, the County was aware, at least in
2 general terms, of virtually every allegation it now levies against the Club in this lawsuit,
3 including the allegation that the Club had expanded and thereby lost its nonconforming use
4 right.

5 As part of the County's due diligence before taking title to the park land and Club
6 Property from DNR, the County's representatives inspected the Property, considered
7 environmental and other liabilities associated with the Property, and hired an appraiser, who
8 separately inspected the Property. The County did not advise its own appraiser that there
9 were any suspected, potential, or actual code violations or nuisance conditions associated
10 with the property.

11 The appraisal estimated that if the Property were not maintained as an active shooting
12 range the potential environmental cleanup cost would be \$2 to \$3 million.² To insulate itself
13 from this potentially large liability and still obtain the land it coveted for the Newberry Hill
14 Heritage Park, the County offered to sell the Property to the Club as soon as the County
15 received title from DNR, subject to written terms to be negotiated, including the Club's
16 agreement to indemnify the County for any environmental liability arising out of the
17 Property.

18 The Club's attorney, Regina Taylor, had direct negotiations with County
19 representatives regarding the written terms of the land sale expressed in the 2009 Deed. She
20 will testify that one of the concerns raised in the negotiations was the Club's ability to
21 continue its current operations and maintain and modernize its then-existing facilities. The
22 County's representative conducting the negotiations, Matt Keough, personally inspected the
23 Property prior to the sale to the Club. He admits in sworn deposition testimony that the
24

25 ² According to the Kitsap County Health Department, which inspected the Property, the
26 Club's practices regarding metals and other hazardous substances exceed EPA's best
management practices (BMPs) for shooting ranges. If the Club were permanently shut down,
there is a distinct risk that the Property would become subject to the more stringent
hazardous substance cleanup requirements applicable to other land uses.

1 parties intended as part of the sale to the Club to allow the active shooting areas in use by the
2 Club at the time of the transfer to continue. The parties agreed the Club would still be
3 subject to County review and permitting requirements for any new development outside the
4 historic eight-acre area of active use.

5 The parties' agreement was memorialized in a document entitled, *Bargain and Sale*
6 *Deed with Restrictive Covenants* (the "2009 Deed"), executed by the parties on May 13,
7 2009. When the County executed the deed, it also created a record of public proceedings
8 expressing the County's strong support for the Club and its reasons for conveying title to the
9 Club. Two days after signing the 2009 Deed, County Commissioner Josh Brown stated the
10 County's position that the Club's operations were properly confined within "the footprint
11 they have leased with DNR for the past 83 years."

12 The 2009 Deed contains a release of certain types of claims against the County,
13 proving it was intended to resolve potential disputes between the parties, rather than reserve
14 them. In exchange, the County affirmatively promised that the Club could continue using,
15 maintaining, and even improving its historic eight acres of active use, without identifying any
16 code violations that needed to be addressed as a condition of the Club's continuation.

17 The 2009 Deed states, in pertinent part:

18 **"3. Grantee shall confine its active shooting range facilities on the**
19 **property consistent with its historical use of approximately eight (8) acres**
20 **of active shooting ranges with the balance of the property serving as**
21 **safety and noise buffer zones; provided that Grantee may upgrade or**
22 **improve the property and/or facilities within the historical approximately eight**
23 **(8) acres consistent with management practices for a modern shooting range.**
24 **"Modernizing" the facilities may include, but not be limited to: (a)**
25 **construction of a permanent building or buildings for range office, shop,**
26 **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

1 also apply to Kitsap County for expansion beyond the historical eight (8)
2 acres for "supporting" facilities for the shooting ranges or additional
3 recreational or shooting facilities, **provided that said expansion is consistent**
4 **with public safety, and conforms with the terms and conditions contained in**
5 **paragraphs 4, 5, 6, 7 and 8 of this Bargain and Sale Deed and the rules and**
6 **regulations of Kitsap County for development of private land. * * ***

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

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

19 (Emphasis added.)

20 As evident, the agreement resolves issues regarding the Club's nonconforming use
21 rights, site development, and permitting by requiring the Club to continue operating within
22 its historic eight acres, while providing public access. The agreement also gives the Club the
23 express right to "upgrade or improve the property and/or facilities within the historical
24 approximately eight (8) acres," so long as such upgrades and improvements are "consistent
25 with management practices for a modern shooting range."

26 The agreement requires the Club to seek County approval for "expansion" beyond its historic
eight acres and any such expansion must conform to code requirements regarding land
development, but those same provisions do not apply to ongoing use and maintenance of the
Club's historic eight acres of active use.

The agreement resolves the safety concerns raised by a handful of neighbors by
requiring the Club to operate "in a safe and prudent manner and conform its activities to
accepted industry standards and practices." The agreement further addresses safety and noise

1 concerns by requiring the Club to maintain the areas outside the historic eight acres as
2 "safety and noise buffer zones," and by requiring that any approved expansion into those
3 areas be "consistent with public safety." Ironically, the County has never alleged that the
4 Club breached any of these safety and noise provisions.

5 The text of the 2009 Deed, the statements of Commissioner Brown and Mr. Keough,
6 and evidence regarding the circumstances and communications surrounding the negotiation,
7 drafting, and execution of the 2009 Deed all confirm it was intended to clarify the Club's
8 legal and land use status, affirm the Club's right to continue using, maintaining, and
9 improving its Property and facilities as configured, and resolve any issues regarding
10 accusations of land use and permitting violations and nuisance conditions related to
11 conditions existing at the Property at that time.

12 **F. The Club's Reliance on the County's Words and Actions**

13 In reliance on: (1) the written agreements in the deed; (2) the oral and written
14 statements by the County surrounding the transaction; and (3) the County's silence in not
15 stating that it viewed the Club's current facilities and operations as being in violation of any
16 ordinance or constituting any nuisance condition; the Club took title to the Property and gave
17 the County valuable consideration. That consideration included the indemnity, release,
18 public access, and safe operation provisions included in the 2009 Deed. It also included the
19 Club's support for the County's acquisition of the Club Property and park land from DNR,
20 and the Club's foregoing of the opportunity offered by DNR to enter into a long-term lease of
21 30 years or more for the Property to ensure the Club's continuity, regardless of the County's
22 desires after taking title to the Property. With the Club's support and the 2009 Deed
23 negotiated, the County was able to obtain the heritage park property from DNR without
24 retaining ownership of the Club Property, which DNR required the County to take along with
25 the park land.
26

1 After purchasing the Property, the Club relied further on the 2009 Deed and the
2 County's approval. The Club spent approximately \$40,000 on subsequent property
3 improvements, including a drilled water well, septic system, electrical upgrades,
4 improvement to the Club's environmental laboratory, and security fencing. Club members
5 provided hundreds of hours of volunteer labor to complete these projects and to improve and
6 maintain the Property consistent with the Club's high standards.

7 In 2010, after the transfer of the Property, having induced the Club's reliance, having
8 made the promises in the 2009 Deed, and having obtained the desired park land while
9 divesting itself of title to the Club Property, the County sharply reversed course and filed this
10 lawsuit against the Club.

11 V. LEGAL ANALYSIS

12 **A. The 2009 Transaction Constitutes a Settlement of Any Disputed Claims.**

13 All of the code violations and nuisance conditions alleged by the County in this
14 lawsuit existed prior to the May 2009 Deed. The 2009 Deed was intended to resolve any
15 potential issues existing between the parties at that time. It provides the terms and conditions
16 upon which the Club was required to continue operating at the Property for the benefit of the
17 community. Its effect was to settle and bar further dispute over the land use, site
18 development, and nuisance issues the County now alleges in this case. The Court should
19 hold the County accountable for its promises, honor the parties' agreement, and give effect to
20 the 2009 Deed by dismissing the County's claims.

21 "This court interprets settlement agreements in the same way it interprets other
22 contracts." *McGuire v. Bates*, 169 Wash. 2d 185, 188-89, 234 P.3d 205 (2010) (quoting
23 *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 164 Wash.2d 411, 424 n. 9, 191 P.3d 866
24 (2008)). "In doing so, we attempt to determine the intent of the parties by focusing on their
25 objective manifestations as expressed in the agreement." *McGuire*, 169 Wash. at 188
26

1 (quoting *Hearst Commc'ns, Inc v Seattle Times Co.*, 154 Wash. 2d 493, 503, 115 P.3d 262
2 (2005)).

3 While the text of the 2009 Deed is the most direct expression of the parties'
4 intentions, the circumstances surrounding its negotiation also show the transaction was
5 intended to settle and resolve potential claims. "[A] trial court may, in interpreting contract
6 language, consider the surrounding circumstances leading to execution of the agreement,
7 including the subject matter of the contract as well as the subsequent conduct of the parties,
8 not for the purpose of contradicting what is in the agreement, but for the purpose of
9 determining the parties' intent." *Berg v. Hudesman*, 115 Wash. 2d 657, 666-67, 801 P.2d
10 222 (1990).

11 The text of the 2009 Deed, the admissions of Commissioner Brown and Mr. Keough,
12 and the additional evidence regarding the circumstances and communications surrounding
13 the negotiation, drafting, and execution of the deed in May 2009 all confirm it was intended
14 to resolve any issues regarding accusations regarding land use, permitting violations, and
15 public nuisances related to conditions existing at the Property at that time.

16 Prior to the 2009 Deed, Kitsap County held public meetings and received comments
17 from some vocal opponents of the Club, who pressed the County Board of Commissioners to
18 take enforcement action and shut the Club down. Considering these comments and the
19 County's desire for the Club to indemnify and release it from potential environmental
20 liability associated with the Property, the Club negotiated written terms intended to foreclose
21 potential claims by the County related to existing conditions at the Club. The County agreed
22 to these terms. In exchange, the County divested itself of title to the Property, obtained the
23 Newberry Hill Heritage Park property, and obtained release and indemnity provisions from
24 the Club. The County even ensured its agreement that the Club could continue operating
25 within its historic eight acres would benefit the local community as a whole by requiring the
26 Club to open its facility to the public.

1 Notwithstanding the obvious intent embodied in the language of the 2009 Deed and
2 the circumstances surrounding it, the Club anticipates Kitsap County will present testimony
3 that it never intended this bargained for exchange to constitute a settlement of potential
4 claims. However, “[t]he subjective intent of the parties is generally irrelevant if we can
5 impute an intention corresponding to the reasonable meaning of the actual words used.”
6 *McGuire*, 169 Wash. 2d at 189. Accordingly, even if a witness for the County were to
7 testify that the 2009 Deed was never intended to be a settlement, such subjective thoughts
8 cannot supersede the overt manifestations of the parties and the objective text and
9 circumstances of the 2009 Deed.

10 **B. Kitsap County’s Claims Are Barred by the Doctrine of Equitable Estoppel.**

11 If the Court decides the 2009 Deed does not require dismissal of the County’s
12 equitable claims as a matter of contract law, it should nevertheless dismiss them as a matter
13 of fairness under the doctrine of equitable estoppel. Whereas the Club’s contract defense is
14 based more on the objective intent of the 2009 Deed, the Club’s equitable estoppel defense
15 looks at all of the conduct of the parties and focuses on the unfairness of allowing the County
16 to reverse its approvals of the Club expressed in and prior to the 2009 Deed and implied by
17 the County’s lack of enforcement action, after the Club relied so heavily on those approvals
18 in conferring numerous agreements and benefits on the County and improving its Property.
19 actions that would be to the Club’s great detriment if it were shut down.

20 The elements of estoppel are: “(1) a party’s admission, statement or act inconsistent
21 with its later claim; (2) action by another party in reliance on the first party’s act, statement
22 or admission; and (3) injury that would result to the relying party from allowing the first
23 party to contradict or repudiate the prior act, statement or admission.” *Kramarovsky v. Dep’t*
24 *of Social and Health Services*, 122 Wash. 2d 738, 743, 863 P.2d 535 (1993). For the defense
25 to apply to a government agency, it must also be shown that (1) equitable estoppel is
26 necessary to prevent a manifest injustice, and (2) the exercise of governmental functions will

1 not be impaired as a result of the estoppel. *Id.* at 743–44. All of the elements of equitable
2 estoppel are present in this case.

3 One of the specific contexts in which equitable estoppel applies is where a party seeks
4 to repudiate a transaction after another relies on it, especially where the party had actual or
5 constructive knowledge prior to the transaction of the facts upon which it seeks repudiation:

6 “Where a person with actual or constructive knowledge of facts induces
7 another, by his words or conduct, to believe that he acquiesces in or ratifies a
8 transaction, or that he will offer no opposition thereto, and that other, in
9 reliance on such belief, alters his position, such person is estopped from
10 repudiating the transaction to the other’s prejudice.”

11 *Bd. of Regents of Univ. of Wash. v. City of Seattle*, 108 Wash. 2d 545, 553, 741 P.2d 11
12 (1987). This case follows this basic fact pattern because the County now seeks to withdraw
13 its approval of the Club and prevent the Club from operating anywhere on its Property,
14 effectively repudiating the 2009 Deed and its prior approvals of the Club. This attempted
15 repudiation is based on facts that were actually or constructively known to the County before
16 the Club entered into the 2009 Deed because the County had full access and inspected the
17 Property when it performed its due diligence and obtained its appraisal.

18 In 1993 the County acknowledged the Club’s nonconforming use right by declaring
19 in a letter to the Club: “this letter is to confirm that [the Club is] . . . considered by Kitsap
20 County to be [a] lawfully established nonconforming use[.]” A nonconforming use right is a
21 vested property right that is protected and not easily lost. *McMilian v. King County*, 161
22 Wash. App. 581, 591–92, 255 P.3d 739 (2011); *First Pioneer Trading Co., Inc. v. Pierce*
23 *County*, 146 Wash. App. 606, 614, 191 P.3d 928 (2008); *Van Sant v. City of Everett*, 69
24 Wash. App. 641, 649, 849 P.2d 1276 (1993). Ever since the County documented its approval
25 of the Club as a lawful nonconforming use, the Club has relied on that approval.

26 In 2005 the County advised the Club that if it abandoned its proposed rifle line
relocation project and returned to its area of historic use it would not require a conditional

1 use permit, meaning it would not lose its nonconforming use right. The Club abandoned the
2 project, using its grant money for other improvements, and the County notified it of no
3 further issues. The Club relied on the words and actions of the County and confined its
4 operations within its area of historic use.

5 In the 2009 Deed the County expressly approved the continuation of the same Club
6 operations and facilities that exist today, without identifying any violation of any County
7 ordinance or any nuisance condition whatsoever. Leading up to the 2009 Deed and shortly
8 thereafter, the County repeatedly communicated its approval of the Club. The Club relied on
9 that approval by entering into the deed and improving its Property after taking title.

10 The 2009 Deed clearly recognizes the Club's vested nonconforming use right by
11 confirming that the Club can maintain and modernize its facilities within its approximately
12 eight historic acres of active use. This right to maintain and modernize the property and
13 facilities within the Club's historic area is not conditioned on addressing any existing
14 violations or obtaining any permits. The parties were simply documenting their
15 understanding of the Club's nonconforming use right and the County's approval of the
16 Club's nonconforming use.

17 The 2009 Deed recognizes that the Club's nonconforming use right is limited to the
18 Club's approximately eight acres of active shooting ranges—the same eight acres set aside
19 for "intensive" Club use in its leases with DNR. If the Club wants to expand beyond its
20 historic eight acres, only *then* must it apply to the County for the right to do so. This is what
21 the County had advised the Club in 2005, which led to the Club abandoning its proposed rifle
22 range relocation project.

23 Overall, the clear intent of the 2009 Deed and the County's prior conduct was to
24 express the County's approval of the Club's operations as a nonconforming use within its
25 historic eight acres. The Club relied on this approval when it purchased the property and
26 agreed in the 2009 Deed to make its activities regularly available to the general public. The

1 Club further relied on this approval when it agreed in the 2009 Deed to indemnify the County
2 against any environmental liability associated with the property. The Club again relied on
3 these provisions when it spent approximately \$40,000 on subsequent property improvements,
4 including a drilled water well, septic system, electrical upgrades, improvement to the Club's
5 environmental laboratory, and security fencing, not to mention the hundreds of hours of
6 volunteer labor provided by Club members since the 2009 Deed to improve and maintain the
7 property and complete these projects.

8 Now the County asks this Court to sanction the repudiation of its agreements and
9 approvals of the Club, alleging that the same activities and site conditions in place at the time
10 of the 2009 Deed are an unlawful nuisance, in violation of code, and the Club should be shut
11 down. Doing so would cause immediate and irreparable harm to the Club, its members, and
12 the broader community that depends on it. The County will have prevented the Club from
13 fulfilling its promise under the 2009 Deed to maintain a publicly available shooting area, yet
14 the County would still retain the many other benefits it obtained from the Club, such as the
15 benefit of having divested itself of the Property while obtaining the Club's environmental
16 indemnity agreement. The County's repudiation of its former position would create precisely
17 the type of manifest injustice that equitable estoppel is aimed at preventing.

18 The Washington Supreme Court emphasizes the importance of applying the doctrine
19 of equitable estoppel to government actions:

20 "We ordinarily look to the action of the state to be characterized by a more
21 scrupulous regard to justice than belongs to the ordinary person. The state is
22 formed for the purpose of securing for its citizens impartial justice, and it must
23 not be heard to repudiate its solemn agreement, relied on by another to his
detriment, nor to perpetrate upon its citizens wrongs which it would promptly
condemn if practiced by one of them upon another."

24 *Strand v. State*, 16 Wash. 2d 107, 118–19, 132 P.2d 1011 (1943) (quoting *State v. Horr*, 165
25 Minn. 1, 205 N.W. 444 (1925)) (emphasis added).

1 In *Strand*, the government sold property to a private purchaser who constructed a
2 duck club and shooting blinds on the property and used it for recreational duck hunting.
3 Years later, the government argued the sale was a mistake and claimed title to the improved
4 land. The Court questioned whether there had actually been a mistake, but held that even if
5 there had been, equitable estoppel would not allow the state to repudiate the sale because it
6 had a full and fair opportunity to investigate the facts before selling the property and the
7 defendant had improved the property in reliance on the sale. *Strand*, 16 Wash. 2d at 119 (“If
8 the commissioner or his subordinates erred in determining the lands as attached, the state
9 should not have the right many years later to come into a court of equity and set aside the
10 acts of its officials to the irreparable injury of the citizens who acted in good faith and relied
11 upon the assumption that the commissioner knew what he was doing”).

12 Just as in *Strand*, the County should be equitably estopped from reversing the position
13 taken before, during, and after its 2009 Deed with the Club—which expressly authorized the
14 Club to continue and modernize its lawfully nonconforming use within its historic eight
15 acres. However, unlike *Strand*, there is absolutely no evidence that the County in this case
16 made any mistake in bargaining for that requirement. The County knew exactly what it was
17 doing, making the need for equitable estoppel in this case even more compelling.

18 The County has argued that its earlier conduct was entirely of a “proprietary” nature
19 and therefore cannot estop its present “regulatory” action. This argument overlooks the
20 regulatory nature of the County’s 1993 acknowledgement of the Club’s nonconforming use,
21 its 2005 communications regarding the Club’s right to continue without a conditional use
22 permit upon abandonment of its proposed rifle line relocation project, and the numerous
23 agreements in the 2009 Deed regarding permitting and the Club’s right to continue within its
24 historic eight acres subject to express operating conditions.

25 Given the manifest injustice of the County’s new position, the County cannot escape
26 equitable estoppel by exploiting any distinction between its proprietary and regulatory

1 actions. See *Finch v. Matthews*, 74 Wash. 2d 161, 175, 443 P.2d 833 (1968) (holding
2 “equitable estoppel will be applied against . . . [a] political entity when acting in its
3 governmental as well as when acting in its proprietary capacity, when necessary to prevent a
4 Manifest injustice and the exercise of its governmental powers will not be impaired thereby”
5 (citing 31 C.J.S. Estoppel § 141 (1964))).

6 Estoppel will not impair the County’s governmental powers because determining the
7 scope of the Club’s nonconforming use right and settling disputed potential claims is a
8 normal exercise of a governmental power. In addition, the 2009 Deed documents the parties’
9 legitimate understanding of the Club’s nonconforming use rights. Finally, the 2009 Deed
10 preserves and clarifies the County’s specific authority to regulate the Club by documenting:
11 (1) that the Club may only maintain and modernize its historic eight acres if it does so
12 “consistent with management practices for a modern shooting range”; (2) that the Club must
13 conform to all current development codes if it wants to expand beyond its historic eight
14 acres; (3) that the Club must operate at all times in a safe and prudent manner; and (4) that
15 the Club must conform its activities to accepted industry standards and practices.

16 In *Finch*, the government sold some land and received payment of the purchase price
17 and years of property tax payments from the purchaser. *Id.* at 167. After the purchaser spent
18 thousands of dollars improving the land, the government claimed an interest and asserted the
19 original sale was unlawful, unauthorized, and had to be set aside. *Id.* The Court applied
20 equitable estoppel to avoid the manifest injustice that would result from the government’s
21 new position. *Id.* at 175. The Court also invoked the concept of unjust enrichment, holding,
22 “the rule against estopping a governmental body should not be used as a device by a
23 municipality to obtain unjust enrichment or dishonest gains at the expense of a citizen.” *Id.*
24 at 176.

25 Likewise in this case, the County is subject to estoppel to prevent the unjust
26 enrichment and manifest injustice associated with its receipt of valuable benefits from the

1 Club and its present effort to repudiate its prior approvals and agreements. The Court should
2 dismiss the County's claims under principles of equitable estoppel.

3 **C. Kitsap County Has Waived its Right to Bring an Enforcement Action against the**
4 **Club.**

5 By entering into the 2009 Deed, Kitsap County waived any right it might have had to
6 bring this action against the Club. "Waiver is based on the words or conduct of the waiving
7 party." *Saunders v. Lloyd's of London*, 113 Wash.2d 330, 339-40, 779 P.2d 249 (1989).
8 Waiver is different from estoppel in that the focus is not on the reliance of the defendant, but
9 on whether the plaintiff "voluntarily and intentionally relinquished a known right" or
10 exhibited conduct that "warrants an inference of the relinquishment of such right." *James E.*
11 *Torina Fine Homes, Inc. v. Mut. of Enumclaw Ins. Co.*, 118 Wash. App. 12, 18, 74 P.3d 648
12 (2003) (quoting *Saunders*, 113 Wash. 2d at 339).

13 Here, the 2009 Deed expressly states that the Club may continue using the historic
14 eight acres and "may upgrade or improve the property and/or facilities" within those eight
15 acres "consistent with management practices for a modern shooting range." The 2009 Deed
16 then provides a non-exclusive list of seven categories of "modernization" that the Club can
17 pursue. Through the express words of the deed, the County chose to voluntarily relinquish
18 the right to bring this enforcement action related to conditions and operations of the Club
19 existing as of May 2009 when the parties executed the 2009 Deed. In the very least, the
20 terms of the 2009 Deed combined with the County's silence as to any land use, permitting, or
21 nuisance issues at the Property warrant the inference that the County intended to waive the
22 very claims it now brings in order to obtain the many benefits and terms it negotiated in the
23 2009 Deed.

24 **D. The County's Claims are Barred by Laches.**

25 "Laches is an equitable defense and consists of only two elements, both of which are
26 present here: "(1) inexcusable delay and (2) prejudice to the other party from such delay."

1 *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wash. 2d 226, 241, 88 P.3d 375
2 (2004). “While a court may look to various factors, including similar statutory and rule
3 limitation periods to determine whether there was an inexcusable delay, the main component
4 of laches is prejudice to the other party.” *Id.*

5 In 1993, when the County enacted its shooting range permit ordinance, the County
6 wrote to the Club specifically informing it that it was grandfathered in as a nonconforming
7 use. Never, until this lawsuit, has the County taken the position that the Club needed to
8 apply for a shooting range permit. Now the County alleges that the Club must be shut down
9 because it never obtained such a permit. For the County to remain silent and take the
10 opposite position for so long, waiting until after the Club purchased the Property from the
11 County to raise the issue of a shooting range permit is an inexcusable and prejudicial delay if
12 ever there was one.

13 With respect to other alleged code violations, the County’s delay is not so long, but it
14 remains equally inexcusable and prejudicial. By no later than 2005, the County was aware of
15 accusations of a variety of code violations and nuisances associated with the Club Property.
16 The County inspected the Property and raised issues about relocation of the rifle range, but
17 never noticed a violation or directed the Club to take any further action after the Club
18 abandoned the relocation project. In its due diligence leading up to the 2009 Deed, the
19 County again inspected the Property and had it appraised, but again remained silent regarding
20 code violations and nuisance conditions. The County then negotiated and drafted the 2009
21 Deed and voted in favor of the transfer of title to the Club in an open public meeting over
22 objections from the Club’s local opponents. Now the County alleges code violations and
23 common law nuisances related to conditions at the Club Property that existed prior to the
24 2009 Deed. Given the Club’s reliance on the County’s silence and express approval, the
25 County’s present suit is highly prejudicial and inequitable. Under the doctrine of laches, the
26 County’s inexplicable and unreasonable delay in waiting to raise concerns about site

1 activities until after title transferred to the Club bars its current enforcement action.

2 The County has taken the position that laches does not apply to government actions,
3 citing an older case from the United States Supreme Court for the proposition. However,
4 more recently, the federal courts have explained that this previous general rule cited by the
5 County is no longer valid and that actions brought by government bodies can sometimes be
6 subject to equitable defenses, including laches, upon a showing of significant harm caused by
7 the government's unreasonable delay in bringing an enforcement action. *Nat'l Labor*
8 *Relations Bd. v. P*IE Nationwide, Inc.*, 894 F.2d 887, 893-94 (7th Cir. 1990) (recognizing
9 that old U.S. Supreme Court pronouncements regarding unavailability of laches defense
10 against government is no longer an absolute rule).

11 Nor does RCW 7.48.190 bar a laches defense in this case. That statute states that "no
12 lapse of time can legalize a public nuisance." However, unlike a statute of limitations
13 defense, the Club's laches defense is not premised solely on the passage of time. Instead, it
14 is based on the injury and prejudice to the Club and the inexcusable nature of the County's
15 delay. *See Vance v. City of Seattle*, 18 Wash. App. 418, 425, 569 P.2d 1194 (1977) (noting
16 that laches is an equitable doctrine and its application does not depend solely upon the
17 passage of time but also upon the effects of the delay on the relative positions of the parties).
18 More importantly, even if RCW 7.48.190 were to somehow bar the laches defense against
19 the County's public nuisance claims, the defense would still apply to the other claims the
20 County has leveled at the Club.

21 **E. The Club's Nonconforming Use Right Allows Intensification of the Club's Use,**
22 **and the Club Has Not Expanded or Moved to an Area of the Property Outside of**
23 **Its Historic Eight Acres of Active Use.**

24 If the Court finds that the 2009 Deed and the County's words, actions, and silence
25 surrounding it provide no protection to the Club in this lawsuit, the Court's next task will be
26 to judge Kitsap County's claim for termination of the Club's lawful nonconforming use right.

1 If the Court were grant this claim, the Club's only way to continue operating an organized
2 shooting facility at the Property would be to proceed through a costly, uncertain, and
3 contentious conditional use permit process in which the County asserts the right to review the
4 Club's entire operation and impose virtually any condition on the Club the County deems
5 "reasonable." In such a proceeding, local landowners who want to destroy the Club will
6 inevitably intervene to oppose the issuance of any permit whatsoever and advocate for
7 conditions so onerous and costly that the Club could never satisfy them.

8 The County's first argument for termination of the Club's nonconforming use right is
9 that the Club has lost its right because its area of active Club use has expanded or moved
10 since 1993. The County amended its nonconforming use ordinance in May 2011 in an
11 ostensible effort to bolster this claim. Under the amended ordinance, in pertinent part:

12 "If an existing nonconforming use or portion thereof, not housed or enclosed
13 within a structure, occupies a portion of a lot or parcel of land on the effective
14 date hereof, the area of such use may not be expanded, nor shall the use or any
15 part thereof, be moved to any other portion of the property not historically
16 used or occupied for such use[.]"

17 KCC 17.460.020(C). In this case, the testimony and evidence will show that the Club's use
18 of its Property has not expanded or moved to an area of the Property outside the Club's
19 historic eight acres of active use.

20 The Club anticipates that the County will present testimony that, since 1993, the level
21 of shooting has increased and the Club has made various improvements within its historic
22 eight acres of active use, while maintaining the facility. This evidence would merely show a
23 permissible *intensification* of the nonconforming use, and not an "expansion" prohibited by
24 ordinance.

25 In evaluating whether a nonconforming use right has been lost, Washington courts
26 distinguish an "intensification" of the use from an "enlargement" or "expansion" of the use.
Keller v. City of Bellingham, 92 Wash. 2d 726, 600 P.2d 1276 (1979). In *Keller*, for

1 example, the Washington Supreme Court held that the installation of six additional 50-foot
2 long chemical vats at a factory was not an enlargement or expansion of the factory causing it
3 to lose its lawful status, but was instead a permissible “intensification” of the use. As the
4 Washington Supreme Court explained: “Intensification is permissible . . . where the nature
5 and character of the use is unchanged and *substantially* the same facilities are used.” *Id.* at
6 731 (emphasis added). “The test is whether the intensified use is ‘different in kind’ from the
7 non-conforming use in existence when the zoning ordinance was adopted.” *Id.*

8 In this case, the use of the Club facility today is of the same nature and character as it
9 was in 1993 and prior to that time, and substantially the same facilities are used. The Club
10 has always served its mission (as stated in its 1926 charter) of existing for “Sport and
11 National Defense” by providing and maintaining a safe and organized space for a broad
12 range of meaningful firearms practice. At the very most, the use of the facility may have
13 intensified due to the County’s policy of concentrating firearms practice at organized
14 shooting clubs, and the Club’s desire to maintain and improve its Property to serve the best
15 interests of the community. The use, however, has not expanded, and there has been no
16 substitution of one fundamentally different *kind* of use for another.

17 The Club’s efforts to maintain and improve shooting areas within its historic eight
18 acres of active use do not constitute a prohibited “expansion.” In the 2009 Deed, the parties
19 properly characterized as “modernization” work such as “re-orientation of the direction of
20 individual shooting bays or ranges” and construction of “noise abatement and public safety
21 additions.” As long as such work is consistent with management practices for a modern
22 shooting range and conducted within the Club’s historic eight acres, the 2009 Deed properly
23 allows it. These terms of the 2009 Deed are consistent with the law set forth in *Keller*, and
24 with the Kitsap County Code, which recognizes that modernization is inherently different
25 from expansion and is within a landowner’s nonconforming use right. *See, e.g., KCC*

1 17.460.050(C) (providing that structures associated with a non-conforming use “may be
2 altered to adapt to new technologies or equipment”).

3 In addition, the County’s use of the term “expansion” in the 2009 Deed when
4 referring to potential activities *outside* the Club’s historic eight acres of active use, while
5 using the term “modernization” when discussing improvements *inside* those eight acres,
6 provides further confirmation that the Club’s efforts to modernize its shooting areas, while
7 maintaining substantially the same facilities it has used for many decades, do not constitute
8 an impermissible expansion of a nonconforming use.

9 **F. The County’s Position That the Club Loses Its Nonconforming Use Right if the**
10 **County Proves a Single Legal Violation Fails on Multiple Grounds.**

11 The County’s other argument for termination of the Club’s nonconforming use right
12 depends on the County’s interpretation of its newly amended nonconforming use ordinance,
13 which provides:

14 “Where a lawful use of land exists that is not allowed under current
15 regulations, but was allowed when the use was initially established, that use
16 may be continued so long as it remains otherwise lawful, and shall be deemed
a nonconforming use.”

17 KCC 17.460.020. According to the County, this ordinance terminates the Club’s
18 nonconforming use right if the County proves so much as a single violation of any law or
19 regulation at the Property.

20 The Court should reject the County’s unreasonable and extreme position because: (1)
21 the County’s interpretation is based on its fundamental misunderstanding of the operative
22 term, “use,” in the ordinance; and (2) the County’s interpretation would violate multiple
23 constitutional doctrines that protect the Club from such an oppressive and abrupt deprivation
24 of property rights and the unreasonable over-reach of the County’s police power.

25 ///

26 ///

1 I. *The County Misinterprets Its Amended Nonconforming Use Ordinance.*

2 The County interprets the term “use” in KCC 17.460.020 to refer to any activity at a
3 property, such that the use of a property does not remain “otherwise lawful” if there is so
4 much as a single legal violation, however, trifling. Under the County’s interpretation, a
5 landowner loses its nonconforming use right whenever there is any violation of law at a
6 property, however trifling. If the County were correct, every corner store in a residential
7 zone with an unpermitted electrical socket would immediately lose its right to do business.
8 The County’s interpretation of its own ordinance is based on an erroneous understanding of
9 the operative term “use.”

10 In the context of a land use ordinance, the term “use” refers to “*the nature of*
11 *occupancy, type of activity or character and form of improvements to which land is devoted.*”
12 KCC 17.110.730 (emphasis added). Under Kitsap County Zoning Code, the definition most
13 closely matching the Club’s use of its Property is “recreational facility.”³ Recreational
14 facilities remain lawful uses within Kitsap County. Even if the County could prove some
15 violation of law at the Club Property, that would not render the “use” unlawful so as to
16 terminate the Club’s nonconforming use right under KCC 17.460.020.

17 The County has cited a few Washington cases that supposedly support its
18 interpretation, but the cases simply do not suggest that any unlawful activity at a property
19 already enjoying a nonconforming use right renders the entire *use* of the property unlawful so
20 as to terminate all such rights. In *McMillan v. King County*, for example the court ruled that
21 a land user who is trespassing cannot obtain a nonconforming use right. 161 Wn. App. 581
22 (2011). The case stands for the basic principle that a nonconforming use must be lawful to
23 become established or vested in the first place, not that a single violation of law will
24

25 ³ Kitsap County Zoning Code defines “recreational facility” to mean: “a place designed and
26 equipped for the conduct of sports and leisure-time activities. Examples include athletic
fields, batting cages, amusement parks, picnic areas, campgrounds, swimming pools, driving
ranges, skating rinks and similar uses.” KCC 17.110.647.

1 terminate an already-vested right. Here, unlike the trespasser in *McMillan*, there is no
2 question that the Club's use was lawful in 1993 when the County acknowledged the Club's
3 vested nonconforming use right.

4 Similarly, in *First Pioneer Trading Co. v. Pierce County*, the court found that First
5 Pioneer never carried its burden of establishing a nonconforming use right because it could
6 not prove: (1) "[it] was lawfully using the subject site as a manufacturing site before the
7 Pierce County Code changed" or (2) it had put the property to "continuous use each and
8 every year of the time period in question." 146 Wash.App. 606, 611-12 (2008) ("The quality
9 of evidence necessary to sustain [First Pioneer's] burden of proof has not been met."), *First
10 Pioneer* merely affirms that a nonconforming use right must be lawful at the time it vests or
11 becomes established, and that it must continue without a significant lapse in order for the
12 right to be preserved. See KCC 17.460.020.A (treating as permanently abandoned any
13 nonconforming use that ceases for twenty-four months or more). *First Pioneer* says nothing
14 about the present matter, where the County cannot dispute that the Club's lawful
15 nonconforming use right vested by no later than 1993, that the County express
16 acknowledgement at the time. There is also no issue here regarding continuity because the
17 Club has never abandoned its historic eight acres of active use, and certainly has not
18 abandoned that area for twenty-four months.

19 Even if the County could prove some violation of law at the Property, the Club's
20 "use" itself would not have ceased to be "otherwise lawful" within the meaning of KCC
21 17.460.020. The County's position that a single violation of any law or ordinance results in
22 the permanent termination of a nonconforming use right relies on an unreasonable
23 interpretation of its own ordinance, and must be rejected.

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25 ///

26

1 2. *The County's Interpretation of Its Amended Nonconforming Use Ordinance*
2 *Is Unconstitutional.*

3 The Club's response to *Kitsap County's Motions in Limine to Bar KRRC's*
4 *Counterclaims and Affirmative Defense of Offset* ("KC's Motion in Limine") discusses the
5 unconstitutionality of the County's erroneous interpretation of its newly amended
6 nonconforming use ordinance. The Club challenges the constitutionality of the County's
7 interpretation on the grounds that it violates substantive due process and represents an
8 unreasonable exercise of the County's police power. The Club also raises issues regarding
9 procedural due process and unconstitutional vagueness. The Club hereby incorporates into
10 this trial memo the points and authorities raised in its response to the County's motion in
11 limine. Even if the County were otherwise correct in its application and interpretation of its
12 newly amended nonconforming use ordinance to the Club, the Club would not lose its
13 nonconforming use right because the County's position would be unconstitutional.

14 **G. The Club Did Not Illegally Damage or Disturb Wetlands, Wetland Buffers, and**
15 **Other Protected "Critical Areas."**

16 The County alleges that the Club created nuisance conditions on the Property by
17 violating the County's current Critical Areas ordinance set forth at Title 19 of the Kitsap
18 County Code. As discussed above, the County's allegations arising from conditions on the
19 Property existing at the time of the 2009 Deed must be dismissed on multiple grounds.
20 Moreover, the County's "critical areas" allegations are based on flawed determinations as to
21 the extent, location, and quality of wetlands, wetland buffers, and historic Club activities. At
22 trial, the parties will present conflicting expert testimony regarding the alleged wetland
23 violations. As the Club's experts will explain, the County's conclusions are fraught with
24 error and do not comply with established regulations and rules governing wetland
25 determinations.

1 The Club will also present documentation and other evidence from the State of
2 Washington Department of Ecology ("Ecology") and the U.S Army Corps of Engineers
3 ("Corps") who have regulatory authority over wetlands and wetland buffers and have
4 conducted their own independent investigation of the alleged wetland issues at the Property.
5 These agencies agree with the conclusions of the Club's experts and are entitled to special
6 deference from the court. *See generally Airport Communities Coalition v. Graves*, 280 F.
7 Supp. 2d 1207, 1225 (W.D. Wash. 2003) (holding U.S. Army Corps of Engineers
8 determinations of wetland impacts are entitled to special deference); *United States v. Bailey*,
9 516 F. Supp. 2d 998, 1012-13 (D. Minn. 2007) (holding methods for wetland determinations
10 used by U.S. Army Corps of Engineers are entitled to deference).

11 Accordingly, the alleged violations of County Code involving wetlands and wetland
12 buffers simply could not have occurred because the activities at issue took place outside of
13 the very limited areas determined to be protected wetlands and wetland buffers according to
14 the Club's experts, Ecology, and the Corps.

15 Moreover, the County alleges critical areas violations under an ordinance enacted in
16 1998 as Ordinance 217-1998. This ordinance, enacted after the County acknowledged the
17 Club's nonconforming use right in 1993, cannot abridge the Club's right to continue using,
18 maintaining, and even improving areas of historic use within wetland buffers under the
19 doctrine of vested rights. *See McMilian*, 161 Wn. App. 581, 592-93 (2011); *Weyerhaeuser*
20 *v. Pierce County*, 95 Wn. App. 883, 891, 976 P.2d 1279 (1999) (vesting fixes the "rules that
21 will govern the land development regardless of later changes in zoning or other land use
22 regulations."). The Club's wetland expert will further explain how applicable wetland rules
23 and standards recognize such vesting by excluding from buffers any areas whose natural
24 ecological integrity was already "interrupted" by human use prior to the creation of those
25 buffers as legally protected areas.

1 With the exception of the Club's activities in exploring the potential for relocating its
2 primary rifle line, the County's allegations of critical areas violations relate to areas within
3 the Club's historic eight acres of active use, and are therefore subject to its vested
4 nonconforming use right. All of the changes made within this eight-acre area have improved
5 both safety and environmental conditions at the Club, such as by allowing safer and cleaner
6 storm water drainage, improved berms and backstops for capturing projectiles, improved
7 recovery of recyclable materials, and improved access for disabled shooters.

8 It bears emphasis that even if the Court finds that one or more of the Club's efforts to
9 maintain its Property were in violation of County Code, it does not follow that the Club
10 should permanently lose its entire nonconforming use right, especially since the County has
11 testified that any potential violations can be corrected via after-the-fact permits.

12 **H. The Club's Culverting of Its Drainage Ditch Was an Allowed Act of**
13 **Maintenance.**

14 The violation alleged by the County in connection with the Club's work of culverting
15 a man-made stormwater drainage ditch constitutes maintenance allowed by County Code.
16 The County defines "maintenance" to mean:

17 "activities conducted on currently serviceable structures, facilities, and
18 equipment that involve no expansion or use beyond that previously existing
19 and result in no significant adverse hydrologic impact. It includes those usual
20 activities taken to prevent a decline, lapse, or cessation in the use of structures
21 and systems. Those usual activities may include replacement of dysfunctional
22 facilities ... as long as the functioning characteristics of the original structure
23 are not changed."

24 KCC 12.08.010 (39). The Club culverted a man-made ditch that for many years had
25 conducted stormwater across the primary rifle range. This work constitutes the maintenance
26 of "storm water facilities," as defined in KCC 12.08.010(71). Such maintenance does not
require a site development permit. KCC 12.10.030 (omitting maintenance from the list of
actions triggering a permit).

1 I. The Club's Facility Does Not Pose a Risk of Harm to Neighboring Property.

2 Kitsap County alleges the Club's facility is a common law public nuisance because it
3 poses a substantial and unreasonable risk of harm to neighboring properties. The County
4 then seeks a permanent injunction shutting the Club down entirely, in order to protect the
5 public from the supposed threat of errant bullets allegedly leaving the range. It is "incumbent
6 upon [the] one who seeks relief by preliminary or permanent injunction to show a clear legal
7 or equitable right and a well-grounded fear of immediate invasion of that right." *Isthmian SS*
8 *Co. v. Nat'l Marine Eng'n'r Beneficial Assoc.*, 41 Wash. 2d 106, 117, 247 P.2d 549 (1952);
9 *accord San Juan County v. No New Gas Tax*, 160 Wash. 2d 141, 153, 157 P.3d 831, 837
10 (2007) (setting forth standard for granting injunctive relief). "Furthermore, the acts
11 complained of must establish an actual and substantial injury or an affirmative prospect
12 thereof to the complainant." *Isthmian SS*, 41 Wash. 2d at 117; *accord No New Gas Tax*, 160
13 Wash. 2d at 153. "The failure to establish any of these criteria requires the denial of
14 injunctive relief." *No New Gas Tax*, 160 Wash. 2d at 153.

15 In this case, Kitsap County cannot show that the Club's facility poses any safety risk,
16 let alone the type of immediate threat of substantial harm needed to justify an injunction. On
17 the contrary, the evidence and testimony will demonstrate that the Club has always placed
18 paramount importance in range safety. To this end, the Club has installed numerous safety
19 berms, requires all members to undergo safety training, and employs range safety officers
20 and closed circuit cameras to help ensure that all rules are followed. The Club will present
21 evidence and testimony of expert witnesses that its facility is as safe or safer than many other
22 ranges in the Pacific Northwest, including the range used by Kitsap County itself for training
23 of its own sheriff's department.

24 Kitsap County will offer testimony from a handful of residents of neighborhoods near
25 the Club who claim to have seen or heard a few bullets entering areas outside the Club
26 property over the years. However, as discussed in the Club's motions in limine, none of

1 these neighbors have any special training or education in ballistics and they are simply not
2 competent to testify as to the source of the supposed errant bullets. Meanwhile, the “experts”
3 retained by Kitsap County to develop opinions regarding errant bullets are unable to testify
4 with any reasonable degree of scientific or professional certainty that the alleged bullets
5 came from the Club as opposed to the many other locations in the area where firearms are
6 used.

7 One of the County’s “experts,” Roy Ruel, will also attempt to offer his opinion that
8 the Club facility is unsafe, despite the fact that he committed to this opinion and testified to it
9 before he had ever visited the facility, cannot cite any industry standards or guidelines on
10 range safety he used in reaching his opinion, and was unable to make any comparisons
11 between the level of safety at the Club’s facility as compared to other shooting ranges. This
12 speculative opinion, if admissible at all, is completely lacking any basis in sound scientific
13 principals or methodologies and is readily contradicted by hard evidence and the testimony
14 of the Club’s own well-qualified range design and safety experts.

15 Moreover, the testimony and evidence will reveal other likely sources of any errant
16 bullet entering a nearby property. In a very recent similar case, the Indiana Court of Appeals
17 affirmed the denial of an injunction against a gun club, notwithstanding testimony by
18 neighbors of bullets landing on their property, where there was evidence that the wooded
19 area near the range in question was used by others for shooting and could be the actual
20 source of the errant rounds. *Woodsmall v. Lost Creek Townsend Conservation Club, Inc.*,
21 933 N.E.2d 899 (Ind. Ct. App. 2010). The court in *Woodsmall* explained that an injunction
22 would not be issued because, among other things, the evidence did not “definitively
23 establish” that the gun club was the source of the alleged bullets. *Id.* at 903.

24 In this case, the testimony will prove that individuals not associated with the Club
25 regularly discharge firearms in the nearby wooded areas outside the Club property. In fact,
26 Club members have discovered numerous makeshift shooting ranges in the woods near the

1 Club property and the ground littered with hundreds of spent cartridges. Unlike the Club's
2 range, these makeshift ranges discovered on neighboring properties contain no backstops to
3 capture bullets. This evidence also shows it is much more likely that any errant rounds
4 allegedly observed by the County's witnesses came from shooters in the woods outside the
5 Club, rather than from the Club's well-supervised and maintained firing ranges. In addition,
6 with respect to the County's evidence of errant bullets prior to 2004, another likely source
7 exists because until then the United States Navy at Camp Wesley-Harris operated several
8 shooting ranges directly east of and adjacent to the Club property.

9 The evidence shows the makeshift range on adjacent property, other unsupervised
10 shooting in the nearby woods, and the former ranges at Camp Wesley-Harris are the most
11 likely source of any bullets allegedly found by The County's witnesses. The County's
12 limited evidence and dubious "expert" testimony is unpersuasive, in dispute, and insufficient
13 to meet the high standard for issuance of an injunction.

14 Moreover, even if there were a remote chance of bullets leaving the Club Property,
15 that would still not be grounds for finding a nuisance or granting an injunction. The
16 Michigan Supreme Court considered this question and held that the possibility of errant
17 bullets leaving an outdoor shooting range and killing or injuring someone is insufficient
18 grounds for an injunction. The court explained:

19 "The fact that baseballs may be hit out of parks, that golfers may hook or slice
20 out of bounds, that motorists may collide with pedestrians or other motorists
(an automobile is considered 'a dangerous instrumentality') does not render
21 such uses nuisances, subject to being enjoined."

22 *Smith v. Western Wayne County Conservation Ass'n*, 158 N.W.2d 463, 472 (Mich., 1968)
23 (refusing to issue injunction against gun club notwithstanding testimony of neighbors that
24 errant bullet struck their house); accord *Lehman v. Windler Rifle and Pistol Club*, 44 Pa. D &
25 C. 3d 243, 247, 1986 WL 20804 (Pa. Com. Pl. April 9, 1986) (testimony that neighbors

1 heard bullets “whizzing by them” and that bullets were found “embedded in their barn” was
2 insufficient to support injunction against gun club).

3 The court in *Smith* further explained that there was no history of any accidental
4 shootings at the range in question in all its years in operation, indicating that “chances of an
5 accidental shooting are remote, largely speculative and conjectural, and completely
6 insufficient to establish a nuisance in fact.” *Smith*, 158 N.W.2d at 471. More recently, the
7 Indiana Court of Appeals in *Woodmsall* held that a shooting range did not constitute a
8 nuisance even though it was theoretically possible for bullets to leave the property and
9 neighbors testified about bullets landing on their property. 933 N.E.2d 899.

10 The County cannot meaningfully distinguish these instructive cases. During the
11 nearly 85 years of the Club operating shooting ranges, there has not been so much as a single
12 allegation of personal injury from a bullet leaving the Club. Thus, the evidence and
13 testimony cannot establish that the Club’s normal shooting activities constitute a nuisance or
14 otherwise pose the type of serious, substantial, and unreasonable risk of harm that is required
15 to enjoin the Club’s entire operation as a public nuisance.

16 **J. The Sounds Coming from the Club Are Not an Actionable Public Nuisance.**

17 Kitsap County’s evidence of excessive levels of noise coming from the Club’s range
18 is even more problematic. Specifically, there are no decibel readings, sound engineering
19 studies, or other empirical data demonstrating that the sounds of gunfire from the Club
20 shooting range are unreasonable. In addition, Kitsap County has not designated any expert in
21 sound or noise. Instead, it appears that Kitsap County will rely solely upon the subjective
22 observations of a small handful of neighbors who apparently are upset with their decision to
23 purchase rural property near a rifle range.

24 However, as discussed in the Club’s motions in limine, such subjective testimony,
25 unsupported by quantifiable data concerning noise levels, cannot give rise to an actionable
26 nuisance or support Kitsap County’s request for an injunction. In addition, the Club will

1 offer testimony and evidence confirming the level of noise is well within reasonable and
2 historic levels. This will include testimony from other neighbors who do not find the level of
3 noise to be excessive or bothersome and audio recordings demonstrating that the sounds from
4 the shooting range are no louder than other noises typically heard in a rural neighborhood.

5 **K. Any Relief Granted Must Balance the Competing Interests of the Parties and Be**
6 **Narrowly Tailored to Address Specific Findings of Unreasonable Risk of Harm.**

7 As discussed above, the evidence and testimony will prove that none of Kitsap
8 County's allegations have any merit, let alone support the "extraordinary" remedy of an
9 injunction. *Venegas v. United Farm Workers Union*, 15 Wash. App. 858, 860, 552 P.2d 210,
10 212 (1976). ("Injunction is an extraordinary remedy and discretionary remedy to be granted
11 upon the circumstances of each case.") However, if the Court does find in favor of the
12 County on some of its claims, it does not mean that an injunction should automatically
13 follow.

14 First, in determining whether to issue an injunction, courts look only to current
15 violations and the likelihood of future harm and not past events. *Braam v. State*, 150 Wash.
16 2d 689, 708-09, 81 P.3d 851, 861-62 (2003). Accordingly, only the threat of future harm or
17 ongoing violations can support injunctive relief and the Court should not consider allegations
18 of past violations or conduct in deciding whether to grant relief.

19 Next, the Court will have to determine whether the ongoing violations or threat of
20 future harm is significant enough to warrant an injunction. *San Juan County v. No New Gas*
21 *Tax*, 160 Wash. 2d 141, 153, 157 P.3d 831, 837 (2007) (setting forth standard for granting
22 injunctive relief). To this end, the court must also consider various factors, including:

23 "(a) the character of the interest to be protected, (b) the relative adequacy to
24 the plaintiff of injunction in comparison with other remedies, (c) the delay, if
25 any, in bringing suit, (d) the misconduct of the plaintiff if any, (e) the relative
26 hardship likely to result to the defendant if an injunction is granted and to the
plaintiff if it is denied, (f) the interest of third persons and of the public, and
(g) the practicability of framing and enforcing the order or judgment."

1 *Hoff v. Birch Bay Real Estate, Inc.*, 22 Wash. App. 70, 75, 587 P.2d 1087, 1091 (1978).

2 These factors weigh against granting broad injunctive relief even if the Court finds
3 ongoing violations or significant threat of future harm. For instance, the County's
4 inexplicable delay in bringing this enforcement action, when it knew of the same accusations
5 of code violations against the Club since at least 2005, indicates the County felt whatever
6 was occurring at the facility did not pose a serious or immediate threat to the public. In
7 addition, the Club has not engaged in "misconduct" because not only did the County
8 acquiesce in the Club's modernization of the range, it expressly allowed it under the 2009
9 Deed.

10 More importantly, the court must balance the harm to the Club with the interests of
11 the public. Under this balancing of the equities, Washington courts have denied injunctive
12 relief where the burdens on the defendant in strictly complying with the restrictions on use of
13 property outweigh the harm caused by the non-compliance. For example, it was proper to
14 deny an injunction that would force a property owner to remove a building that was out of
15 compliance with a subdivision's covenants and restrictions where the burden on the property
16 owner would be high and the harm to the other residents of the subdivision was minor. *Hoff*,
17 22 Wash. App. at 76; see also *Hanson v. Estell*, 100 Wash. App. 281, 289-90, 997 P.2d 426,
18 451 (2000) (refusing to grant injunction to require removal of building encroaching one foot
19 onto another's property where burden of removing building substantially outweighed harm to
20 neighboring property caused by encroachment).

21 In another case, the Washington Court of Appeals held that a trial court erred by not
22 vacating an injunction requiring landowners to obtain wetland permits before performing
23 work to abate nuisance conditions, where the application had been denied and forcing strict
24 compliance would work an extreme hardship on the landowners. *Anderson v. Griffen*, 148
25 Wash. App. 1035, 2009 WL 297444, *2 (2009). In that case, the defendants were found by
26 the trial court to have altered the natural flow of water on their property, thereby causing

1 damage to a neighboring property. *Id.* at *1. The trial court issued an injunction requiring
2 the defendants to restore the natural flow of water, but only after obtaining the necessary
3 permits. *Id.* After the permitting authority denied their permit application, the defendants
4 requested the injunction be vacated, but the trial court denied that request. *Id.* After
5 balancing the equities involved, the Court of Appeals reversed and ordered the injunction
6 lifted. As the Court of Appeals explained:

7 "It is manifestly unreasonable to continue the prospective application of an
8 injunction where full compliance is, if not impossible, highly improbable, and
9 the associated costs have become wildly disproportionate to the harm the
10 court seeks to remedy, leading to undue hardship to the party subject to the
injunction."

10 *Id.* at *2.

11 In addition, should this Court find in favor of Kitsap County on any of its claims and
12 the circumstances and balancing of the equities justify granting an injunction, the relief
13 granted must be narrowly tailored and limited to what is actually necessary to abate the
14 alleged nuisance activity.

15 In determining the scope of an injunction to abate a nuisance arising from an
16 otherwise lawful business, the Washington courts have held that an outright permanent
17 injunction of all activities is improper. *Chambers v. City of Mount Vernon*, 11 Wash. App.
18 357, 361, 522 P.2d 1184, 1187 (1974). Instead, "[i]njunctions must be tailored to remedy the
19 specific harms shown rather than enjoin all possible breaches of the law." *Kitsap County v.*
20 *Kev, Inc.*, 106 Wash. 2d 135, 143, 720 P.2d 818, 823 (1986). In *Chambers*, for example, the
21 Court of Appeals held the trial court erred in issuing a complete injunction against "any
22 quarry operation" when the specific alleged nuisance conditions at issue (excess dust,
23 vibrations, and "extraordinary noise") could be remedied without a complete shutdown of the
24 quarry's operations. *Chambers*, 11 Wash. App. at 361.

25 Courts have also applied this principal in cases involving shooting ranges. For
26 example, the Ohio Court of Appeals reversed the trial court's order enjoining any shooting at

1 a rifle club after neighbors brought a nuisance action alleging excessive noise. *Christensen v.*
2 *Hilltop Sportsman Club, Inc.*, 573 N.E.2d 1183 (Ohio App. 1990). In addition to finding a
3 lack of evidence supporting a claim of nuisance per se, the Court of Appeals also explained
4 that to the extent there may have been a “qualified nuisance,” the trial court still erred in
5 completely banning shooting altogether which was “far in excess of what was necessary to
6 protect the appellees’ reasonable enjoyment of the property.” 573 N.E.2d at 1186. Instead,
7 the trial court should have restricted the activity “no more than is required to eliminate the
8 nuisance.” *Id.* (citing 5 POWELL, REAL PROPERTY 64-49 (1985)).

9 In this case, the Court must similarly avoid granting any relief that would result in a
10 complete shut down of the Club’s operations as requested by the County. To the extent the
11 Court finds any actionable nuisance with a significant threat of future harm to warrant an
12 injunction, any relief must be narrowly tailored to what is necessary to abate the particular
13 harmful conditions found.

14 **L. The Club’s Counterclaims Should Prevail, as Detailed Further in the Club’s**
15 **Response in Opposition to the County’s Supplemental Motion in Limine.**

16 *Kitsap County’s Motions in Limine to Bar KRRC’s Counterclaims and Affirmative*
17 *Defense of Offset* (“KC’s Motion in Limine”), filed on September 13, 2011, seeks dismissal,
18 on legal grounds, of the new counterclaims and affirmative defense alleged by the Club on
19 September 13, 2011, in response to the County’s third amended complaint, filed on August
20 29, 2011. According to the County, these allegations must be dismissed from the case prior
21 to trial. The Club hereby incorporates into this trial memorandum its response in opposition
22 to KC’s Motion in Limine.

23 **VI. CONCLUSION**

24 In conclusion, trial of this case will reveal the bizarre history of the County’s conduct
25 towards the Club, and the many ways in which the County’s present allegations are starkly
26 contradictory to its past conduct, statements, determinations, and agreements. It will reveal

1 the injustice in the County's goal of shutting down the Club and terminating its vested
2 nonconforming use right. It will reveal the weakness and lack of evidence supporting the
3 County's claims. It will show the Club to be a safe gun club devoted to serving the public
4 interest, stewarding the environment around it, and preserving the Club's historic continuity
5 and tradition of responsibly serving and instructing its membership and the community
6 regarding the safe use of firearms for sport and defense. At the conclusion of trial, the Club
7 requests that the Court dismiss the County's claims and find that the County's prosecution of
8 this action has been in breach of the 2009 Deed, which is a fair, just, and equitable outcome
9 under the facts and law of this case.

10 DATED this 27th day of September, 2011.

11 CHENOWETH LAW GROUP, P.C.

12 /s/ Brian D. Chenoweth

13 Brian D. Chenoweth, WSBA No. 25877
14 *Of Attorneys for Defendant*
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Appendix 31

CP 1558–73, Defendant Kitsap Rifle and Revolver Club’s Response to Kitsap County’s Motion to Strike Affirmative Defenses of Settlement, Equitable Estoppel, and Laches, dated Feb. 9, 2011

February 09 2011 11:54 AM

Judge Susan K. Serko
Motion Hearing Date: ~~February 10, 2011~~
Department 14, Room 1552
NO-10-2-12913-3
2:00pm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

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

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-
for-profit corporation registered in the State of
Washington, SHARON ANN CARTER, doing
business as NATIONAL FIREARMS
INSTITUTE, a sole proprietorship licensed in the
State of Washington, and JOHN DOES and JANE
ROES I-XX, inclusive,

Defendants,

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED AT
One 72-acre parcel identified by Kitsap County
Tax Parcel ID No. 362501-4-002-1006 with street
address 4900 Seabeck Highway NW, Bremerton
Washington.

Case No.: 10-2-12913-3

**DEFENDANT KITSAP
RIFLE & REVOLVER
CLUB'S RESPONSE TO
KITSAP COUNTY'S
MOTION TO STRIKE
AFFIRMATIVE DEFENSES
OF SETTLEMENT,
EQUITABLE ESTOPPEL
AND LACHES**

Defendant Kitsap Rifle and Revolver Club (the "Club") hereby objects to the *Kitsap
County's Motion to Strike Affirmative Defenses of Settlement, Equitable Estoppel and Laches*
("Motion to Strike") and responds as follows:

///

Page 1 - **DEFENDANT KITSAP RIFLE & REVOLVER CLUB'S
RESPONSE TO KITSAP COUNTY'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES OF SETTLEMENT, EQUITABLE
ESTOPPEL AND LACHES**

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I. INTRODUCTION

Plaintiff Kitsap County ("the County") moves against three of the Club's affirmative defenses as being "insufficient as a matter of law and fact." To accomplish its attempt to dismiss these affirmative defenses, the County improperly treats its Motion to Strike as a motion for summary judgment, attaching evidence outside the Club's pleading. The Court's order was clear on the deadline to hear dispositive motions. Had the County filed its veiled motion to strike as a motion for summary judgment, its motion would have been untimely. See CR 56 (discussing procedures for seeking summary judgment). For this reason, the Motion to Strike should be dismissed. In addition, the County improperly raises numerous questions of fact issues in a motion directed solely at the pleadings—facts which require the court to take evidence related to the circumstances surrounding the execution of the deed. As to the legal issues, the Club has pled legally recognizable defenses to the County's claims, as explained below. Finally, the County moves against the Club's Answer to the First Amended Complaint, however, the County has filed a Second Amended Complaint, rendering the pleading the County moves against and the pending Motion to Strike moot. The Club's response to the Second Amended Complaint is due February 11, 2011, the same day as the final date set to hear dispositive motions as ordered by the Court.

The County's Motion to Strike is procedurally, technically, and substantively defective. The Club is entitled to present its defenses to the Court for consideration and to have the Court hear testimony and review other documentary evidence to adequately consider and rule on the Club's affirmative defenses.

///

1 II. THE CLUB'S FACTUAL ALLEGATIONS

2 The Club alleges that the County's lawsuit seeks to unlawfully roll back development
3 and modernization of facilities at the Club and unfairly take away its established legal,
4 nonconforming use status. Conflict between the Club and County, in part, started in 2005
5 related to alleged violations of clearing and grading in an area outside the Club's historic
6 eight acres of active use. The Club ceased its plans to develop that area, and confined its
7 activities to its historic eight acres. Since that time there have been complaints, speculation,
8 and accusations by both the County and nearby residents as to the legality of the Club's
9 activities on the property it historically leased from the Washington State Department of
10 Natural Resources ("DNR") and the status of the Club's legal, nonconforming use status
11 previously confirmed in writing by the County commissioners.
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14 Between 2007 and 2009, the County was pursuing a land exchange with DNR, which
15 would include the 72 acres DNR leased to the Club ("the Property"). The County took
16 public comment as to whether the Club should be allowed to continue on its leased land once
17 the County became its landlord. These public comments were both for and against the
18 Club's continued existence on the Property. In addition, as part of the land exchange the
19 County Commissioners received information from County code enforcement officials
20 regarding potential violations of code that may exist on the Property.
21

22 As part of the County's due diligence for the land exchange, its representatives
23 walked the property, performed an environmental review of the property, and obtained an
24 appraisal. The results were concerning to the County, because the appraisal estimated a
25 potential environmental cleanup to cost over \$3 million. To insulate itself from this potential
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1 large liability, the County offered to sell it to the Club for \$10 plus an agreement to
2 indemnify the County for any liability arising out of the Property, including environmental
3 liabilities.

4 The Club's attorney had direct negotiations with County representatives. One of the
5 concerns raised in the negotiations was the Club's ability to continue its current operations
6 and maintain and modernize its then existing range. The County's representative involved in
7 the negotiations, Matt Keough, personally walked the Property prior to the sale to the Club.
8 Mr. Keough admits that the parties intended as part of the sale to the Club to allow the Club's
9 active shooting facilities to continue as they existed prior to closing and under the DNR
10 lease. However, the Club would be subject to County review for new development outside
11 the active range. In reliance on 1) the oral statements by the County, 2) the County's silence
12 in not stating that it viewed the Club's current facilities as being in violation, and 3) the
13 written statements in the deed, the Club took title to the Property and gave the County a very
14 valuable indemnity. After purchasing the Property, the Club solicited members and
15 improved its facilities in reliance that the County agreed the Club could continue its
16 operations as they existed at the time of the deed.
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20 Shortly after the transfer of the Property, and with its valuable indemnity in hand, the
21 County began enforcement procedures which culminated in this case being filed against the
22 Club. As part of its response to the lawsuit, the Club pled various affirmative defenses
23 setting forth the facts described above. Three of the defenses—accord and satisfaction,
24 estoppel, and laches—are all aimed at the County's conduct in making certain
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1 representations and agreements, as well as the County's inequitable silence on its actual
2 intentions, coupled with the inexplicable five-year delay in enforcement activities.

3 III. ARGUMENT

4 A. Legal Standard For Motions to Strike Affirmative Defenses

5 The County brings its motion to strike under CR 12(f). This rule allows the court to
6 strike from a responsive pleading any "insufficient defense." There is little Washington case
7 law discussing what constitutes an "insufficient defense." However, the federal case law
8 interpreting the nearly identical wording of FRCP 12(f), including the *Durham Industries*
9 case cited by the County, makes clear that "[m]otions to strike a defense are not favorably
10 regarded." *Durham Indus., Inc. v. North River Ins. Co.*, 482 F. Supp. 910, 913 (SDNY
11 1979); *accord Carpenter v. Ford Motor Co.*, 761 F. Supp. 62, 65 (N.D. Ill. 1991) (motions to
12 strike defenses under FRCP 12(f) "are not favored."). "Ordinarily, a motion to strike a
13 defense will be denied if the defense is sufficient as a matter of law or it fairly presents a
14 question of law or fact which the court ought to hear." *Durham*, 482 F. Supp. at 913, *citing*
15 2A Moore's Federal Practice 12.21 at 2437 (2d ed. 1979); *Hayes v. City of Des Plaines*, 182
16 F.R.D. 546, 549 (N.D. Ill. 1998) the court "prefers that defenses be heard if the possibility
17 exists that the defense may succeed after a full hearing on the merits."). "In other words, a
18 defense is good unless it appears to a certainty that plaintiffs would succeed despite any set
19 of facts which could be proved in support of the defense." *Durham*, 482 F. Supp. at 913;
20 *accord Carpenter*, 761 F. Supp. at 65 (motions to strike defenses "may be granted only if the
21 defense is patently defective and could not succeed under any set of circumstances."); *Hayes*
22 182 F.R.D. at 549 (court will only strike an affirmative defense "if it is impossible for
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1 defendants to prove a set of facts in support of the affirmative defense that would defeat the
2 Complaint.”).

3 In determining whether the challenged defenses are legally sufficient, the court looks
4 exclusively to the face of the answer and accepts as true all of the defendant’s factual
5 allegations. *Carpenter*, 761 F. Supp. at 65. The court must limit its review to the allegations
6 in the answer and “should not consider matters outside the pleadings.” *Employers Ins. Co. v.*
7 *Crouse-Community Ctr.*, 489 F. Supp. 2d 176, 179 (N.D.N.Y. 2007). In the rare case a
8 defense is stricken, “leave to amend should be freely given when doing so would not cause
9 prejudice to the opposing party.” *Barnes v. AT&T Pension Benefit Plan-NonBargained*
10 *Program*, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010).

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13 **B. The County’s Motion is Moot**

14 As an initial matter, the Motion to Strike must be denied as moot. After the County filed
15 its Motion to Strike, it filed its Second Amended Complaint. In response, the Club will
16 necessarily file an amended answer prior to the hearing on the Motion to Strike. Specifically,
17 the Club must file its amended answer by February 11, 2011, the day of the hearing on the
18 County’s Motion to Strike set for February 11, 2011.

19 It is well established that the filing of an amended pleading renders any pending motions
20 against the previous pleading moot. *See Gray v. D.C. Public Schools*, 688 F. Supp. 2d 1, 6
21 (DDC 2010) (filing of amended complaint rendered pending motion to dismiss moot);
22 *Pippett v. Waterford Dev., LLC*, 166 F. Supp. 2d 233, 236 (E.D. Pa. 2001) (same). In this
23 case, the Court’s resolution of the pending Motion to Strike will be based exclusively on an
24 examination of the challenged affirmative defenses as they appear on the face of the Club’s
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1 pleading. However, because the operative pleadings will be different, it will be impossible to
2 properly frame the issues and the County's pending Motion to Strike must be denied as moot.

3 **C. The Court Cannot Consider Matter Outside the Club's Pleadings**

4 The County has improperly asked the Court to review matters outside the pleadings in
5 resolving the Motion to Strike. Specifically, the County has attached a copy of the deed at
6 issue which it believes somehow supports its allegations. Although the Club believes the
7 language of the deed instead actually proves the County has reneged on its promise to treat
8 the historic shooting range operations as a valid, non-conforming use, it would nevertheless
9 be improper to look at anything but the Club's affirmative defenses as they appear in its
10 pleading in resolving the Motion to Strike. Had the County wished to have a preliminary
11 hearing to test the sufficiency of the evidence, it should have filed a motion for summary
12 judgment. However, it chose not to file such a motion and the time to do so has passed.
13 Should the Court consider the attached deed as the County requests, the Club would need the
14 opportunity to submit declarations and other evidence, including the deposition transcript of
15 the County's designee concerning the drafting and negotiation of the Deed who
16 acknowledged under oath that the intent of the parties was to resolve the dispute by making
17 the existing facilities a valid non-conforming use, in exchange for the Club taking on the
18 property and its potential environmental liabilities.
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Page 7 - **DEFENDANT KITSAP RIFLE & REVOLVER CLUB'S
RESPONSE TO KITSAP COUNTY'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES OF SETTLEMENT, EQUITABLE
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1 D. The Club Has Properly Pled Settlement and Compromise/Accord and
2 Satisfaction

3 Assuming that the County had not filed its Second Amended Complaint rendering its
4 Motion to Strike moot, the County's motion should still be denied because it is clear that
5 Club has properly pled all of its affirmative defenses. For example, the Club alleges that the
6 parties, in agreeing to the transfer of ownership of the Property, intended to resolve their
7 ongoing dispute regarding the need for permits to conduct shooting activities and
8 modernization of the firing range facilities in the eight acres historically used as an active
9 shooting range. The deed distinguishes between two areas of the Property—the historical
10 eight acres of active shooting and the remaining acreage. The deed recognizes that the Club
11 may continue to operate on the historical eight acres and "may upgrade or improve the
12 property and/or facilities within the historical approximately eight (8) acres in a manner
13 consistent with "modernizing" the facilities consistent with management practices for a
14 modern shooting range." That language states nothing about the need for permits. Looking
15 at the context of the deed, it also states that the Club "may also apply to Kitsap County for
16 expansion beyond the historical eight (8) acres, for "supporting" facilities for the shooting
17 ranges or additional recreational or shooting facilities...". Thus, the deed distinguishes
18 between existing active use in the historical eight acres, and the expansion into other areas
19 for which the Club's application and, implicitly, County approval would be required. The
20 County's argument about the indemnity provisions misses the point—that provision protects
21 the County for third party claims, it does not contradict the Club's defenses that the prior
22 work and alleged violations were resolved by agreement in the deed. If the deed is not clear
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1 as to the agreement that the Club would be permitted to continue its historical operations, the
2 deed is at the very least ambiguous. The Club intends to present much evidence surrounding
3 the circumstances of the transaction, the allegations of violations, the County's inspection of
4 the Property prior to the deed, the negotiations between Club and County representatives,
5 and, most interestingly, the testimony of County's designee on this subject who recently
6 testified that the parties intended the Club's existing facilities to continue.
7

8 The County's heavy reliance on the *Hulbert* case is misplaced. In that case, the
9 Court of Appeals granted summary judgment in favor of a port on claims to recover
10 environmental cleanup costs against parties that sold the port contaminated property.
11 *William Hulbert et al. v. Port of Everett*, __ Wash 2d __, __ P3d __, (Div. I, Jan. 18, 2011)
12 (2011 WL 174857). The contract vendors attempted to argue that a provision in the sales
13 agreement requiring the vendors to indemnify the port for environmental cleanup costs for
14 three years acted as an accord and satisfaction against environmental claims by the port
15 brought under Washington's environmental cleanup statute 15 years later. The Court of
16 Appeals noted that while the port could no longer bring claims under the indemnification
17 provisions of the sales agreement, nothing in the agreement purported to bar claims under the
18 state cleanup law. The facts in *Hulbert* have nothing to do with the case at bar.
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21 This case, by contrast, deals with the County's express agreement that the historic
22 facilities and uses of the Property constitute a valid, non-conforming use. Unlike the limited
23 indemnification clause at issue in *Hulbert*, the agreement at issue in this case expressly
24 allows the Club to not only continue to operate a shooting range in its historic location, but to
25 engage in "modernization" including various enumerated activities. More importantly, the
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1 *Hulbert* case did not involve a motion to strike, where the court must assume the allegations
2 on the face of the complaint are true. Because the Club's answer specifically alleges the
3 County and the Club have already reached a settlement of the dispute the Court's analysis
4 should stop there and the County's Motion to Strike must be denied.
5

6 However, even assuming that the Court in this case could look beyond the face of the
7 answer, and assuming the Deed did not expressly allow the Club to continue its historic
8 shooting operation as a valid, non-conforming use, the Court would still have to allow the
9 issue of accord and satisfaction to be resolved only after the submission of evidence and
10 testimony concerning the parties intent.

11 As a general rule, courts "consider the parties' intentions as questions of fact." *WM*
12 *Dickson Co. v. Pierce County*, 128 Wash. App. 488, 116 P3d 409 (2005); accord *Pardee v.*
13 *Jolly*, 163 Wash. 2d 558, 566, 182 P.3d 967, 972 (2008) ("the parties' intentions are
14 questions of fact."). "Ambiguous intent is to be clarified by reference to the instrument,
15 together with all surrounding facts and circumstances." *White v. Wilhelm*, 34 Wash. App.
16 763, 665 P.2d 407 (1983). The question of whether the parties intended to create an accord
17 or satisfaction is an especially fact specific inquiry, best left for the trier of fact. *See Ward v.*
18 *Richards & Rossano*, 51 Wash. App. 423, 430, 754 P.2d 120, 125 (1988) (question of
19 whether parties intended to settle dispute over attorney fees created genuine questions of fact
20 that precluded summary judgment); *Kennett v. Gilmore*, 46 Wash. 2d 608, 610, 283 P.2d
21 977, 978 (1955) (question of whether parties intended to settle dispute over real estate
22 commissions was question of fact for the jury). The Club believes that an examination of
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1 this evidence surrounding the parties' intent will confirm the Deed was meant to be a binding
2 settlement of the outstanding dispute between the County and the Club.

3 Despite the Deed's plain language, the County has taken the position that the Deed
4 was not intended to resolve the dispute over development of the site and argues that its
5 Motion to Strike should still be granted because it believes the deed is "fully integrated."
6 This argument ignores the well established rule that whether a document is "fully integrated"
7 is a question of fact itself. *Peter Pan Seafoods, Inc. v. Olympic Foundry Co.*, 17 Wash. App.
8 761, 766, 565 P.2d 819, 821 (1977). In fact, the Court of Appeals has explained "the trial
9 court must hear all extrinsic evidence" before determining whether the parties intended to be
10 a complete integration. *Id.*

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13 However, an examination of the extrinsic evidence surrounding the execution of the
14 Deed and the parties' intentions, and whether the Deed was "fully integrated," is not an
15 exercise the Court needs to undertake in resolving a motion to strike. Instead, for purposes of
16 this motion, the Court needs to look no further than the face of the answer to determine
17 whether the Club has specifically alleged that the parties intended to resolve their disputes
18 through the execution of the Deed. Because the Club has made that allegation, the County's
19 motion to strike the "settlement" affirmative defense must be denied.

20 21 E. The Club Has Set Forth Facts Giving Rise to Estoppel

22 As the County concedes in its Motion to Strike, the defense of estoppel can apply to
23 actions by the government. Mot. Strike Aff. Def. p. 8, lines 12-16 (discussing when
24 estoppel can apply to governmental bodies). The elements of estoppel are: (1) a party's
25 admission, statement, or act inconsistent with its later claim; (2) action by another party in
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1 reliance on the first party's act, statement, or admission; and (3) injury that would result to
2 the relying party from allowing the first party to contradict the prior act, statement of
3 admission. *Kramarovsky v. Dep't of Social and Health Serv.*, 122 Wash. 2d 738, 743, 863
4 P.2d 535, 538 (1993). For the defense to apply to a government agency, it must also be
5 shown that (1) equitable estoppel is necessary to prevent a manifest injustice, and (2) the
6 exercise of governmental functions will not be impaired as a result of the estoppel. 122
7 Wash. 2d at 743-44.

9 In this case, the Club has alleged facts sufficient which, if proven true, would create a
10 "manifest injustice" of effectively shutting down the facility shortly after the County
11 convinced it to purchase the facility and agree to indemnify the County for any
12 environmental liabilities that might arise if the facility was ever closed. In addition, the
13 County's government functions would not be "impaired" by the application of estoppel
14 because under the Club's interpretation of the deed language, the County would still be able
15 to enforce whatever laws or regulations are applicable to the development of the facility
16 outside the eight acres historically used as an active shooting range. For areas inside the
17 historically used eight acres, the County would still be able to require certain permits for
18 future activities such as filling in wetlands or enforce any other rule or regulation applicable
19 to an otherwise valid, non-conforming use.

22 The Club also sets forth facts sufficient to support the other elements of equitable
23 estoppel. For example, the "representation" element of the defense is satisfied because the
24 Club's answer alleges that the County, in both the language of the deed and in conversations
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1 with various officials, represented that the activities in the historic area could continue as a
2 valid, non-conforming use. Specifically, the deed at issue expressly states:

3 "Grantee may upgrade or improve the property and/or its facilities within the
4 historically eight (8) acres in a manner consistent with 'modernizing' the
5 facilities consistent with management practices for a modern shooting range.

6 * * *

7 Also, Grantee may also apply to Kitsap County for expansion beyond the
8 eight (8) acres, for supporting facilities for the shooting ranges or additional
9 recreational or shooting facilities, provided that said expansion . . . conforms
10 with the rules and regulations of Kitsap County for development of private
11 land."

12 While the County appears to ignore this plain, unambiguous language of the deed and
13 the parties disagree as to the effect of the deed language and the intent of the parties, the
14 applicability of estoppel as it relates to the interpretation of conveyance documents
15 purporting to restrict the use land "is a question of fact" that should be resolved only after a
16 hearing on the merits. *Sandy Point Improvement Co. v. Huber*, 26 Wash. App. 317, 319, 613
17 P.2d 160, 162 (1980); *White v. Wilhem*, 34 Wash. App. 763, 770, 665 P.2d 407, 411 (1983).
18 This will allow the parties present evidence and testimony as to the intent of the parties in
19 including this language in the deed. *White*, 34 Wash. App. at 773 ("Ambiguous intent is to
20 be clarified by reference to the instrument, together with all surrounding facts and
21 circumstances."). However, in resolving the pending the Motion to Strike, the court must
22 assume the Club's allegations concerning the intent of the parties are true.

23 In addition, the County is simply mistaken when it alleges in its Motion to Strike that
24 the Defendants allege no specific act of reliance on their party based on the County's
25 representations. On the contrary, the Defendants have expressly alleged that they purchased
26 the facility and agreed to take on potential environmental liabilities in direct reliance of the
County's representations that the activities that in the eight acres historically used for an

Page 13 - DEFENDANT KITSAP RIFLE & REVOLVER CLUB'S
RESPONSE TO KITSAP COUNTY'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES OF SETTLEMENT, EQUITABLE
ESTOPPEL AND LACHES

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Portland, OR 97204
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Email: brian@northwestlaw.com

1 active shooting range would be able to continue as a valid non-conforming use. In addition,
2 nowhere in the Club's answer does it allege that it somehow induced the County to change its
3 position on whether the historic shooting range activities constitute a valid non-conforming
4 use. *Kramarevcky v. Dep't of Social and Health Serv.*, 122 Wash. 2d at 742 n. 1 ("A party
5 may not base a claim of estoppel on conduct, omissions, or representations induced by his or
6 her own conduct, concealment, or representations.").

8 This is also not a situation, as the County suggests, where a party seeks estoppel
9 based on a "mistake" on the part of the government in interpreting the law or making
10 representations as to what the law allows and doesn't allow. Mot to Strike p. 9, lines 3-7.
11 On the contrary, the Club alleges that the County and the Club reached an agreement
12 confirming that the historic facilities and operations at the range were a valid, non-
13 conforming use, but the County reneged on its agreement and attempted to bring an
14 enforcement action to shut down the historic operations after the Club took ownership of the
15 land. Nowhere on the face of the Club's pleadings is any allegation of a "mistake" on the
16 part of the County or that the County misinterpreted the law in its representations to the Club.
17 See *Snoqualmie Valley School Dist. No. 410 v. Van Eyk*, 130 Wash. App. 806, 125 P.3d 208
18 (2005) (previous school board's misinterpretation of law would not act as estoppel of new
19 school board's correct interpretation). Moreover, the Washington courts have made clear
20 that issues concerning whether something is a valid non-conforming use are a "question of
21 fact." See *Van Sant v. City of Everett*, 69 Wash. App. 641, 648, 849 P.2d 1276, 1280 (1993)
22 (question of whether non-conforming use status has been lost "is a question of fact"); *City of*
23 *Univ. Place v. McGuire*, 144 Wash. 2d 640, 652, 30 P.3d 453, 459 (2001) (same).

1 Accordingly, the County's argument that the Club's estoppel defense is somehow based on
2 an alleged mistake in interpreting the law is simply wrong.

3 The Club has clearly set forth factual allegations that, if true, would support the
4 defense of estoppel (even under the heightened standard for government plaintiffs) and the
5 County's motion to Strike that defense must be denied.
6

7 **F. The Club has Properly Plead Laches**

8 The County also seeks to strike the Club's affirmative defense of laches, which
9 alleges that the County knew about the alleged problems at the site for many years, was
10 complicit with the ongoing activities, and allowed the sale of the property to the Club to go
11 forward. Under the doctrine of laches, the County's inexplicable and unreasonable delay in
12 raising concerns about site activities until after title transferred to the Club bars its current
13 enforcement action. This is expressly pled by the Club and the County's Motion to Strike is
14 not well taken.
15

16 The County cites an older case from the United States Supreme Court for the
17 proposition that the government cannot be subject to the doctrine of laches. However, more
18 recently, the federal courts have explained that this previous general rule cited by the County
19 is no longer valid and that actions brought by government bodies can sometimes be subject to
20 equitable defenses, including laches, upon showing of significant harm caused by the
21 government's unreasonable delay in bringing an enforcement action. *Nat'l Labor Relations*
22 *Board v. P*1*E Nationwide, Inc.*, 894 F.2d 887, 893-94 (7th Cir. 1990) (recognizing old U.S.
23 Supreme Court pronouncements regarding unavailability of laches defense against
24 government is no longer an absolute rule).
25
26

1 Nor does RCW 7.48.190 bar a laches defense in this case. That statute states that "no
2 lapse of time can legalize a public nuisance." However, the Court must assume all the facts
3 and denials in the answer are true and the Club has specifically denied creating a nuisance,
4 making the statute irrelevant in resolving the County's Motion to Strike. In addition, the
5 Club's laches defense is not premised solely on the lapse of time. Instead, it is based on the
6 injury arising from the unreasonable delay. More importantly, even if RCW 7.48.190
7 somehow barred the laches defense against the public nuisance cause of action, the defense
8 would still apply to the myriad of other allegations the County has leveled at the Club.
9

10 IV. Conclusion

11 Because the County filed an amended pleading after it filed its Motion to Strike, the
12 Motion to Strike must be denied as moot. Moreover, even assuming the County had not filed
13 an amended pleading, the Club has properly set forth a sufficient set of facts to support all of
14 its affirmative defenses. For all the forgoing reasons, the County's Motion to Strike must be
15 denied and the Club should be allowed to present evidence and testimony supporting all of its
16 defenses at a trial on the merits.
17

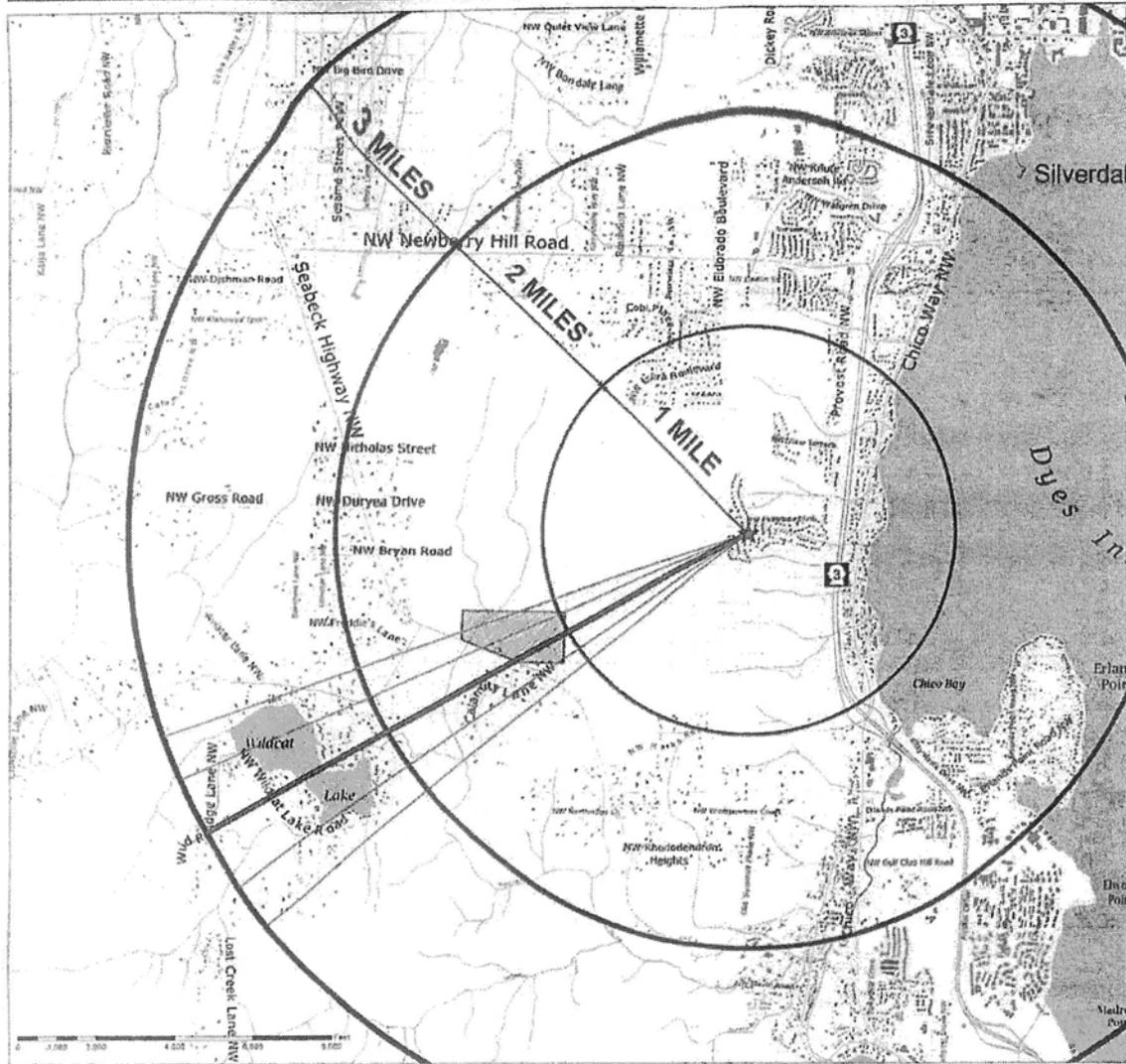
18 DATED this 9th day of February, 2011,
19

20 /s/ Brian D. Chenoweth
21 Brian D. Chenoweth, WSBA No.25877
22
23
24
25
26

Appendix 32

**Trial Exhibit 214: Kitsap County
Ballistics Expert Cathy Geil's Bullet
Origin Diagram for Fairchild Residence**

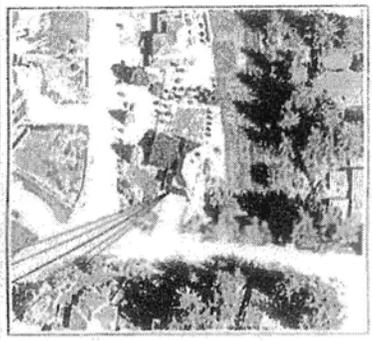
Kitsap Rifle and Revolver Club



Trajectory Line FAIRCHILD PROPERTY

Legend

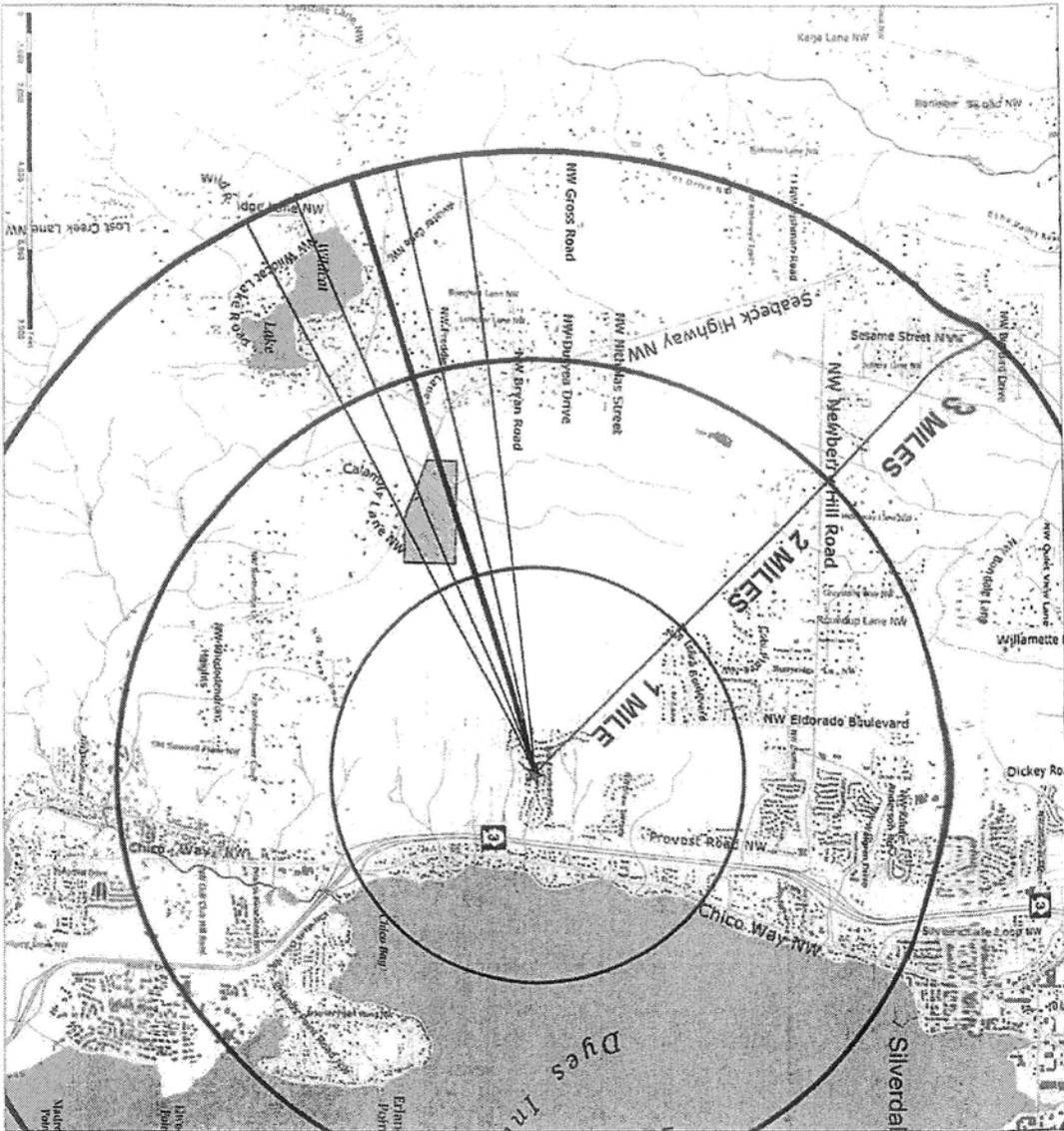
- ★ Subject Parcels
- Kitsap Rifle Club
- Building Footprints
- Tax Parcels
- State Highway
- Major Road
- Collector / Arterial
- Local Access
- Local Road
- Proposed Road



Appendix 33

**Trial Exhibit 215: Kitsap County Ballistics
Expert Cathy Geil's Bullet Origin Diagram for
Slaton Residence**

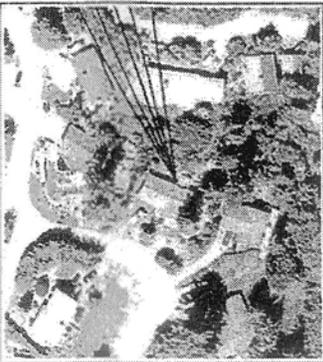
Kitsap Rifle and Revolver Club



Trajectory Line
SLATON PROPERTY

Legend

- ★ Subject Parcel
- ✱ Kitsap Rifle Club
- ▭ Existing Footprints
- ▭ Tax Parcels
- State Highways
- Major Road
- Collector / Arterial
- Local Access
- Local Road
- Proposed Road



Appendix 34

**Trial Exhibit 216: Kitsap County Ballistics
Expert Cathy Geil's Bullet Origin Diagram for
Linton Residence**

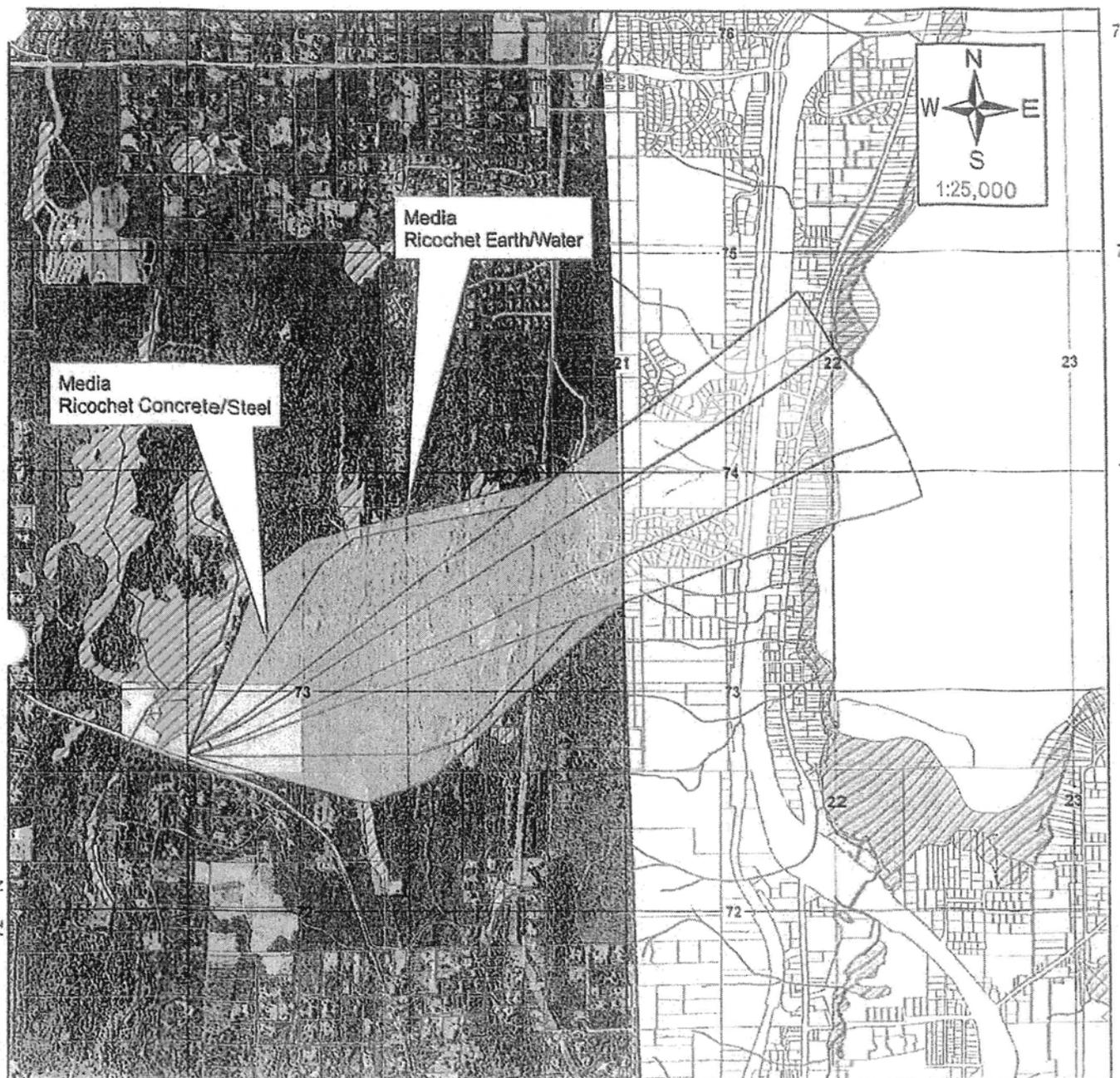
Appendix 35

**Trial Exhibit 207: SDZ map depicting 5.56 mm
bullet SDZ zone for Club property prepared by
G. Koon**

Weapon Type: SMALL ARMS
Weapon Caliber: 5.56mm:Ball M855 (Clip)

Map Scale = 1:25,000

19 20 21 22 23



19 20 21 22 23

Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
			Email:
SDZ Name: Z R1 5.56mm earth water	Firing on the move	Dispersion Angle: 5.0 deg	FP: 10TET 1901372700
Height: None	Ground Target	Ricochet Angle: 5.0 deg	FP: 10TET 1907972763
Range Name: None	Distance X: 3,437.00 m	Angle A: 30.0 deg	FP: 10TET 1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 34.2 deg	TP: 10TET 1908472771
Min Target Dist: 5.07 m	Distance Y: 2,929.00 m	Angle Q: 22.4 deg	TP: 10TET 1910072739
Max Target Dist: 97.34 m	Distance W: 462.00 m	Vertical Hazard: 325.00 m	TP: 10TET 1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET 1909872740

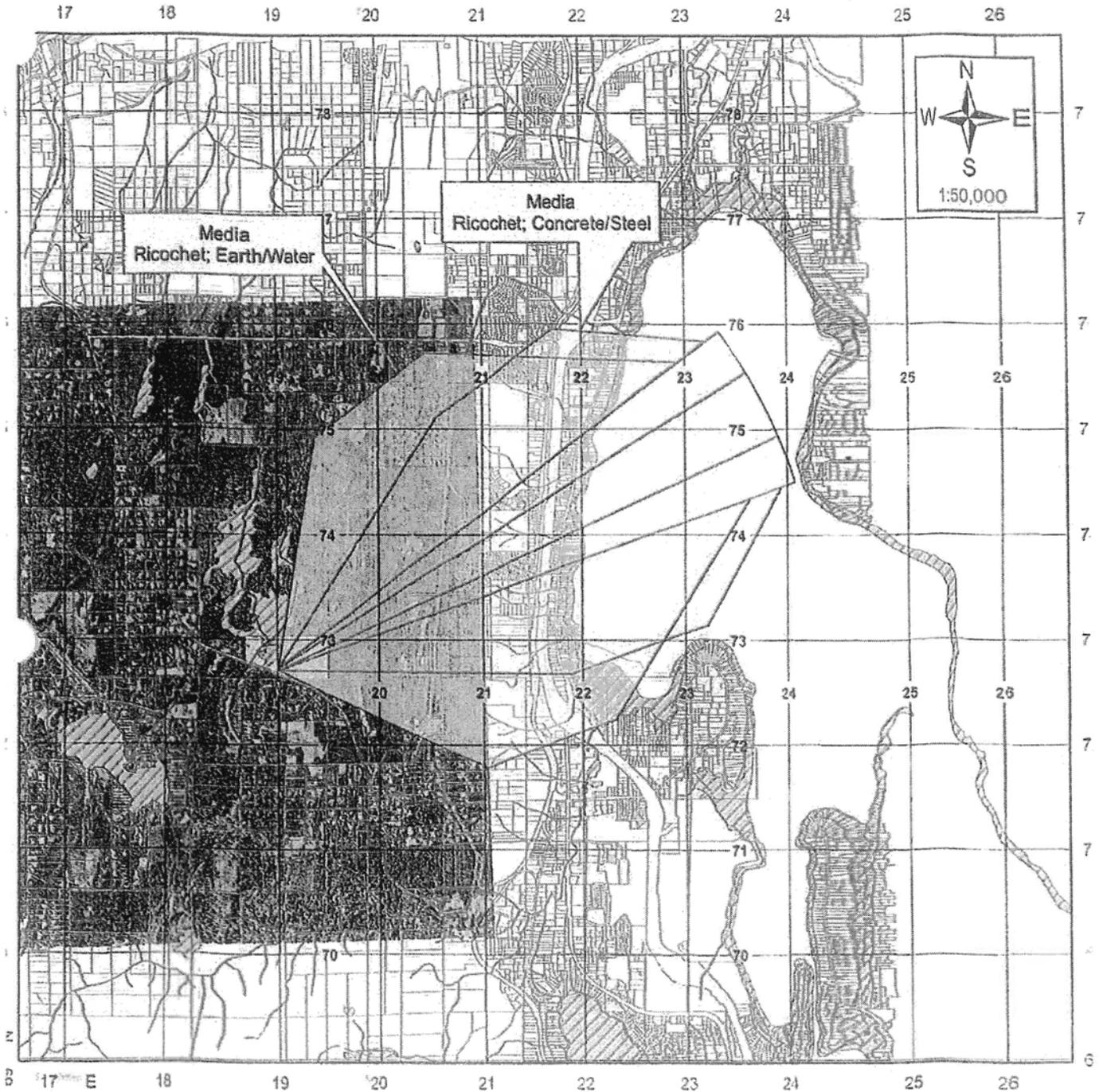
Handwritten signature and notes in the bottom right corner of the table area.

Appendix 36

**Trial Exhibit 208: SDZ map depicting 7.62 mm
bullet SDZ zone for Club property prepared by
G. Koon**

Weapon Type: SMALL ARMS
Weapon Caliber: 7.62mm:Spec Ball M118

Map Scale = 1:50,000



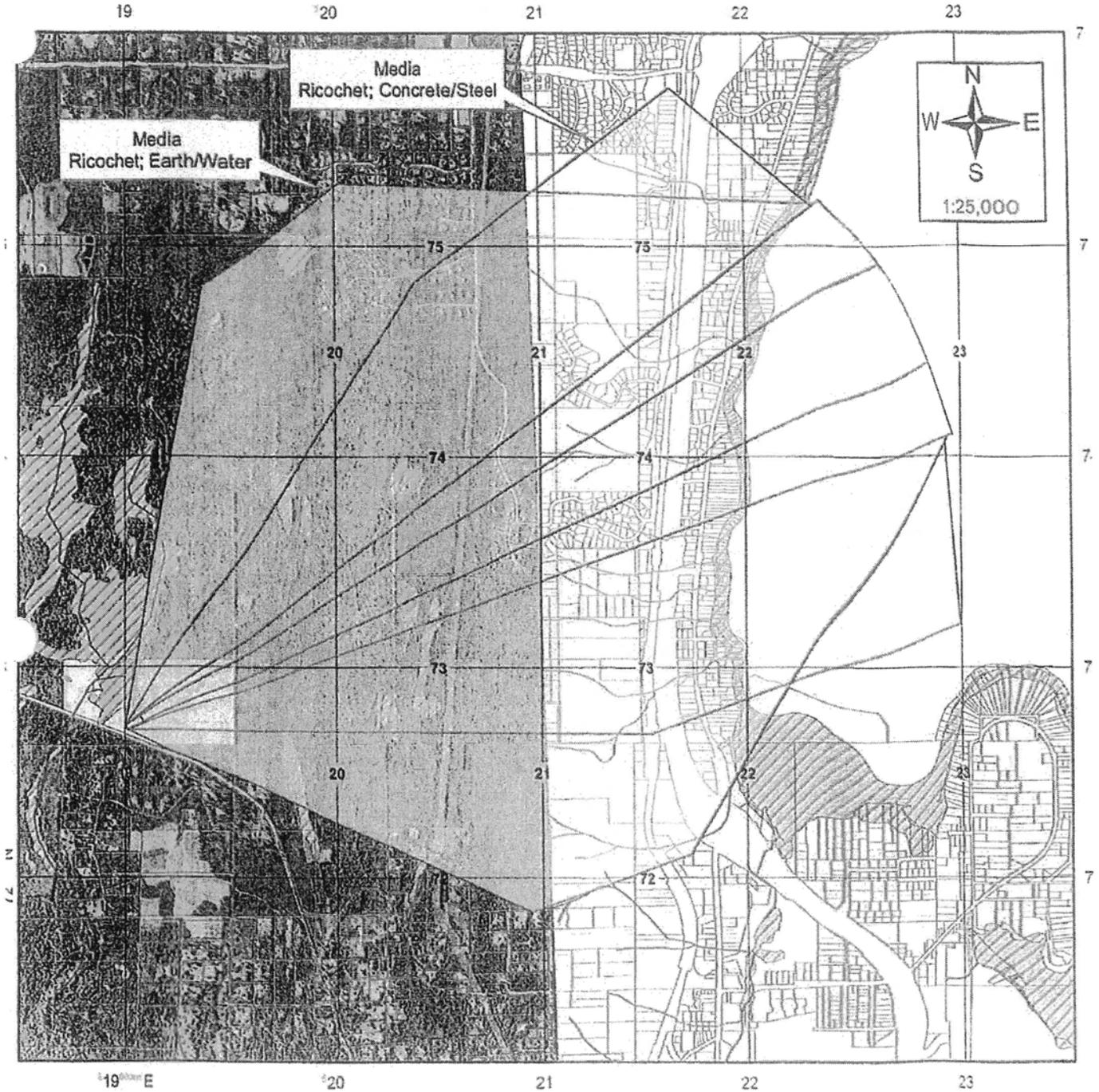
Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
			Email:
SDZ Name: Z R1 7.62mmSpec earth water stallation:	Firing on the move Ground Target	Dispersion Angle: 5.0 deg Ricochet Angle: 5.0 deg	FP: 10TET1901372700 FP: 10TET1907872763
Range Name: None	Distance X: 5,288.00 m	Angle A: 30.0 deg	FP: 10TET1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 43.6 deg	TP: 10TET1908472771
Min Target Dist: 5.07 m	Distance Y: 4,800.00 m	Angle Q: 39.7 deg	TP: 10TET1910072739
Max Target Dist: 97.34 m	Distance W: 1,545.00 m	Vertical Hazard: 752.00 m	TP: 10TET1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET1909872740

Appendix 37

**Trial Exhibit 209: SDZ map depicting 7.62 mm,
4-ball 1 tracer bullet SDZ zone for Club property
prepared by G. Koon**

Weapon Type: SMALL ARMS
Weapon Caliber: 7.62mm:4 Ball/1 Tracer

Map Scale = 1:25,000



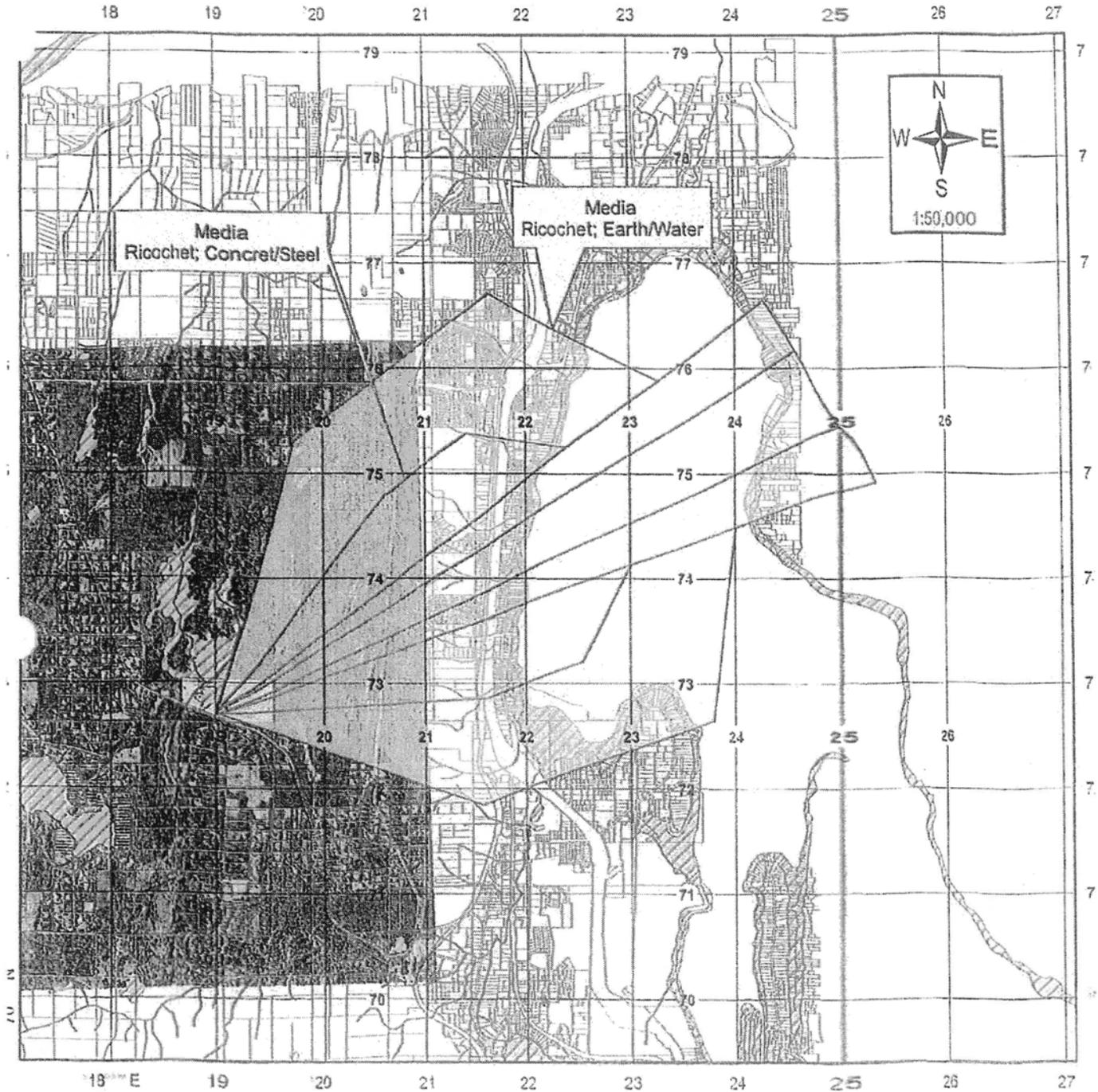
Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
			Email:
SDZ Name: Z R1 7.62mm earth water station: Range Name: None Range Officer: Min Target Dist: 5.07 m Max Target Dist: 97.34 m Direct Fire	Firing on the move Ground Target Distance X: 4,100.00 m Distance X2: 88.95 m Distance Y: 4,073.00 m Distance W: 1,461.00 m Area A: 100.00 m	Dispersion Angle: 5.0 deg Ricochet Angle: 5.0 deg Angle A: 30.0 deg Angle P: 43.5 deg Angle Q: 38.9 deg Vertical Hazard: 706.00 m FP: 10TET1900172720	FP: 10TET1901372700 FP: 10TET1907972763 FP: 10TET1909272739 TP: 10TET1908472771 TP: 10TET1910072739 TP: 10TET1908372770 TP: 10TET1909872740

Appendix 38

**Trial Exhibit 210: SDZ map depicting .50 caliber
bullet SDZ zone for Club property prepared by
G. Koon**

Weapon Type: SMALL ARMS
Weapon Caliber: .50 Cal:4 Ball/1 Tracer

Map Scale = 1:50,000



Range Manager Signature Authority:	Date:			
Approving Authority:	Date:			
Created By:	Date: 09/10/2010	Unit:	Phone:	Email:
SDZ Name: Z R1, 50cal water_earth stallation: ange Name: None Range Officer: Min Target Dist: 5.07 m Max Target Dist: 97.34 m Direct Fire	Firing on the move Ground Target Distance X: 6,500.00 m Distance X2: 88.95 m Distance Y: 5,211.00 m Distance W: 1,652.00 m Area A: 100.00 m	Dispersion Angle: 5.0 deg Ricochet Angle: 5.0 deg Angle A: 30.0 deg Angle P: 38.2 deg Angle Q: 63.3 deg Vertical Hazard: 901.00 m FP: 10TET1900172720	FP: 10TET1901372700 FP: 10TET1907872763 FP: 10TET1909272739 TP: 10TET1908472771 TP: 10TET1910072739 TP: 10TET1908372770 TP: 10TET1909872740	

Appendix 39

**Trial Exhibit 211: SDZ map depicting 9 mm
bullet SDZ zone for Club property prepared by
G. Koon**

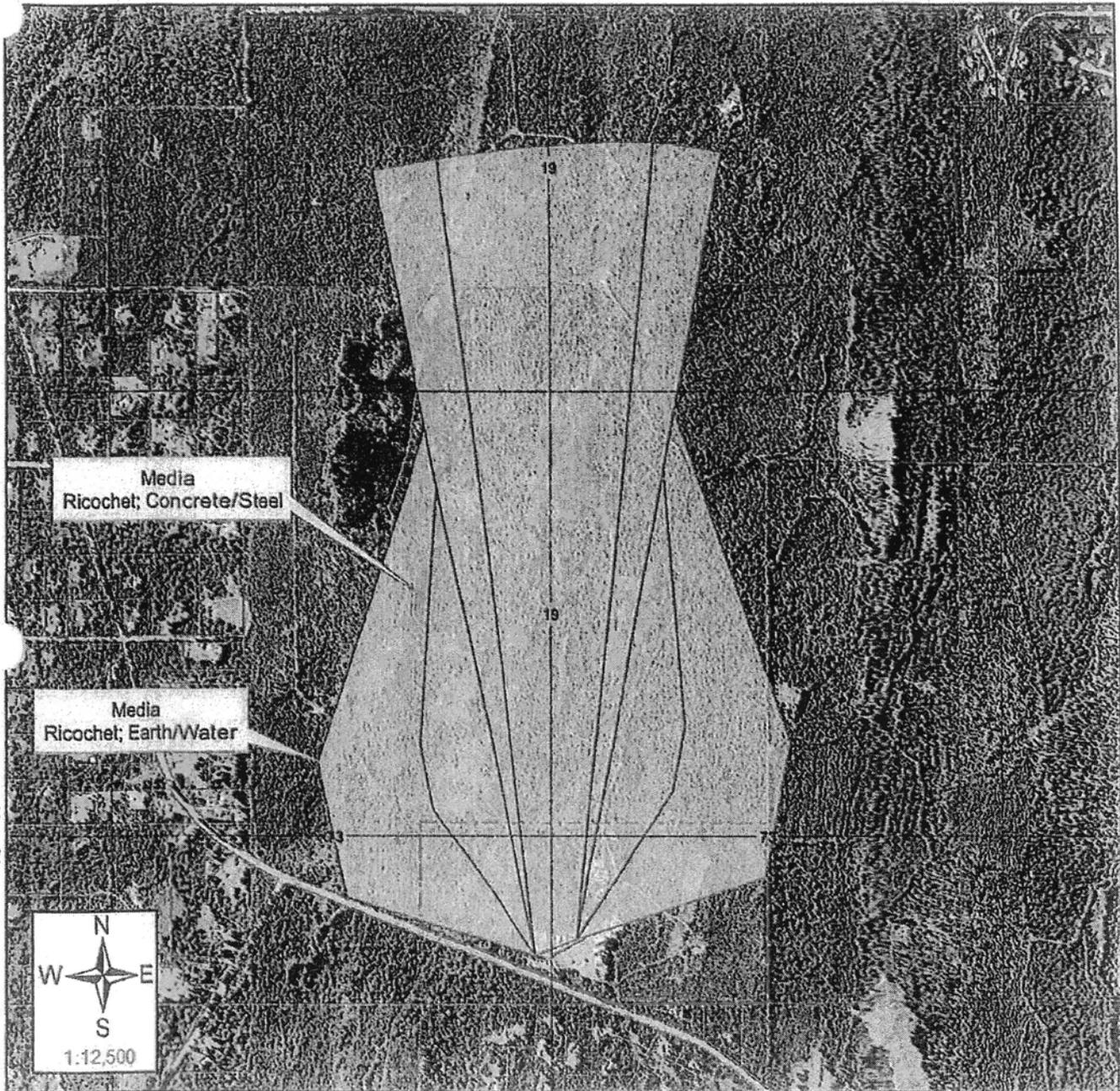
Weapon Type: SMALL ARMS
Weapon Caliber: 9mm:Ball M882

Map Scale = 1:12,500

18

19

20



18 E

19

20

Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/19/2010	Unit:	Phone:
			Email:
SDZ Name: Z R2 9mm cement steel stallation: Range Name: None Range Officer: Min Target Dist: 14.83 m Max Target Dist: 23.84 m Direct Fire	Ground Target Distance X: 1,800.00 m Distance Y: 1,211.00 m Distance W: 399.00 m Area A: 100.00 m Dispersion Angle: 5.0 deg Ricochet Angle: 5.0 deg	Angle A: 30.0 deg Angle P: 61.1 deg Angle Q: 30.4 deg Vertical Hazard: 253.00 m FP: 10TET1896172732 FP: 10TET1905972767 TP: 10TET1895872755	TP: 10TET1906172782

Appendix 40
KCC 10.24, “Weapons”

**Chapter 10.24
WEAPONS**

Sections:

Article 1 – Snap-Blade Knives and Tear Gas Pens or Projectors

- 10.24.010 Definitions.
- 10.24.020 Conviction for display or possession.
- 10.24.030 Exemptions.
- 10.24.040 Penalty.

Article 2 – Pistols and Other Short Firearms

- 10.24.050 Pistol defined.
- 10.24.060 General regulations.
- 10.24.070 Exemptions.

Article 3 – No-Shooting Areas

- 10.24.080 Definitions.
- 10.24.090 Discharge of firearms – Areas where prohibited.
- 10.24.100 Exceptions.
- 10.24.103 Ranges.
- 10.24.105 Review committee.
- 10.24.107 Designation of additional no-shooting areas through petition method.
- 10.24.110 Violation – Penalty.

Article 1 – Snap-Blade Knives and Tear Gas Pens or Projectors

10.24.010 Definitions.

- (a) "Person" as used in this article means any individual, firm, partnership, association or corporation.
- (b) "Snap-blade knife" as used in this article means any knife having a blade which is or can be concealed in its handle and ejected therefrom by a mechanical or spring device. This definition shall not apply to fixed-blade knives having blades which pivot on and fold into their respective handles and can be opened only manually.
- (c) "Tear gas pen or projector" as used in this article means any container or device having the appearance of a pen or pencil flashlight, which is capable of

dispensing in the atmosphere a gas-loaded cartridge.

(Ord. 24 (1971) (part), 1971)

10.24.020 Conviction for display or possession.

(a) No person shall display, sell, give away, purchase or possess any snap-blade knife, or tear gas pen or projector.

(b) Upon the conviction of any person under the provisions of this article, the court having jurisdiction in the case shall order the Kitsap County sheriff to destroy any snap-blade knife or tear gas pen or projector entered as evidence in the case.

(Ord. 24 (1971) (part), 1971)

10.24.030 Exemptions.

This article shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers or to members of the Army, Navy, Coast Guard or Marine Corps of the United States or of the National Guard or organized reserves when on duty, or to officers or employees of the United States duly authorized to carry snap-blade knives or tear gas pens or projectors.

(Ord. 24 (1971) (part), 1971)

10.24.040 Penalty.

Violation of any provision of this article is a misdemeanor, punishable by a fine not exceeding two hundred fifty dollars or by imprisonment in the county jail for a term not exceeding ninety days.

(Ord. passed August 28, 1972; Ord. 24 (1971) (part), 1971)

Article 2 – Pistols and Other Short Firearms

10.24.050 Pistol defined.

"Pistol" as used in this article means any firearm with a barrel less than twelve inches in length.

(Ord. 25 (1971) (part), 1971)

10.24.060 General regulations.

(a) No person shall carry a pistol in any vehicle unless it is unloaded or carry a pistol concealed on his person, except in his place of abode or fixed place of business, without a license therefor as provided for in RCW 9.41.

(b) No person shall deliver a pistol to any person under the age of twenty-one

or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

(c) No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark has been changed, altered, removed or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This shall not apply to replacement barrels in old revolvers, which barrels are produced by current manufacturers and therefore do not have the marking on the barrels of the original manufacturers who are no longer in business.

(Ord. 25 (1971) (part), 1971)

10.24.070 Exemptions.

The provisions of this article shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the Army, Navy or Marine Corps of the United States or of the National Guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters; provided, such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing or dealing in firearms, or the agent or representative of any such person having in his possession, using or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another.

(Ord. 25 (1971) (part), 1971)

Article 3 – No-Shooting Areas

10.24.080 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) "Shoreline" means the border between a body of water and land measured by the ordinary high water mark.

(3) "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.

(4) "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.

(Ord. 50-C (1993) § 1, 1993; Ord. 50-B (1993) § 1, 1993; Ord. 50-A (1985) § 1, 1985)

10.24.090 Discharge of firearms – Areas where prohibited.

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

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

(1) In any area designated as a "no shooting" area pursuant to Section 10.24.107 of this chapter, specifically:

(A) 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;

(B) 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;

(C) 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.

- (2) On any parcel of land less than five acres in size;
- (3) 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;
- (4) From one-half hour after sunset to one-half hour before sunrise;
- (5) 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.

(c) 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.

(Ord. 270 (2002) § 1, 2002; Ord. 50-F (2000) § 1, 2000; Ord. 50-C (1993) § 2, 1993; Ord. 50-B (1993) § 2, 1993; Ord. 50-A (1985) § 2, 1985)

10.24.100 Exceptions.

The provisions of Section 10.24.090 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 range, provided that any such range shall comply with the

criteria for ranges adopted by the Kitsap County board of commissioners pursuant to Section 10.24.103 of this chapter;

- (3) In the course of farm slaughter activities;
- (4) Pursuant to RCW 77.12.265;
- (5) When such discharge is pursuant to and in compliance with any other valid state or federal law.

(Ord. 50-C (1993) § 3, 1993; Ord. 50-B (1993) § 2, 1993; Ord. 50-A (1985) § 3, 1985)

10.24.103 Ranges.

(a) The discharge of firearms shall be allowed on ranges which meet the criteria of this section. The property owner shall apply for and obtain a permit for a range. The application shall be submitted to the Kitsap County department of community development (DCD). An application for a range shall indicate whether the firearms to be used at the range are of the rim fire, elevated shot or other type or variety and whether the proposed range is to be a private or public range. Upon receipt of the application, DCD or its designated agent shall inspect the proposed range to ensure the suitability of the intended use, taking into consideration the most currently available guidelines for ranges promulgated by the National Rifle Association. Notice of the permit application shall be provided as required by the Land Use and Development Procedures Ordinance (Title 21 of this code). In addition, DCD shall post the property on which the proposed range is to be located with a notice of intended use. No permit shall be issued for a range unless the proposed range is first inspected and approved by a certified range technical advisor or equivalent.

(b) Permit applications for private ranges may be processed administratively by DCD. Permit applications for all other ranges shall be processed in accordance with existing procedures for the processing of unclassified use permits

(c) Ranges shall be divided into two categories as more fully described in this subsection:

(1) Private Ranges. A range shall be deemed a private range if it meets the following criteria:

- (A) No fee is charged for use of the range or for membership in the group of individuals allowed to use the range.
- (B) Use of the range is limited to family members and up to two

guests of the property owner at any one time; provided, however, that the property owner may apply to DCD up to twice annually for a special event exemption allowing in excess of two guests at a shooting event.

(C) A permit has been issued for use of that property as a private range.

The provisions of this subsection shall be available to and apply equally to property being rented on at least a month-to-month basis from the property owner, provided, however, that both the individual renting the property and the property owner shall sign any application for a private range permit or special event exemption as to that property.

(2) Public Ranges. All ranges which do not meet the criteria for a private range shall be deemed to be public ranges.

(d) Nothing in this section or any other provision of this code shall be construed as authorizing an application or a permit for a range to be located in whole or in part in an area designated as an area where the discharge of firearms is prohibited; ranges in such areas are expressly prohibited. Nothing in this section shall be construed as permitting the discharge of firearms the ownership or possession of which is otherwise prohibited by law. Nothing in this section shall be construed as permitting the discharge of a firearm by an individual who is otherwise prohibited by law from owning or possessing a firearm.

(Ord. 50-G (2000) § 1, 2000; Ord. 50-C (1993) § 5, 1993; Ord. 50-A (1985) (part), 1985)

10.24.105 Review committee.

(a) A review committee is created for the purpose of recommending to the county board of commissioners the appropriate criteria for ranges and for petitions to establish additional "no shooting" areas within Kitsap County. Such committee shall consist of seven persons as follows:

- (1) The county sheriff, who shall chair such committee, or his designee.
- (2) The director of the county department of community development, or his designee.
- (3) The presidents of the Kitsap Rifle and Revolver Club and the Poulsbo Sportsman Club, or their designees.
- (4) Three citizens-at-large to be appointed by the county board of

commissioners.

(b) Upon the receipt of the review committee's recommendations, the board of commissioners shall set such matters for consideration at the next regularly scheduled public hearing or as soon thereafter as they may appropriately be heard.

(Ord. 50-B (1993) § 5, 1993)

10.24.107 Designation of additional no-shooting areas through petition method.

(a) The establishment or disestablishment of a "no shooting" area in addition to those described in Section 10.24.090 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:

- (1) The proposed area shall contain a minimum of fifty dwelling units or, in the alternative, a minimum area of one square mile;
- (2) The proposed area shall have readily identifiable boundaries, which shall be shown on a map attached to the petition;
- (3) 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;
- (4) 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.

(b) 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 10.24.107.

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.

(c) 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.

(d) 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 10.24.090 of this chapter shall remain in full force and effect as to that area.

(Ord. 50-C (1993) § 4, 1993; Ord. 50-B (1993) § 6, 1993)

10.24.110 Violation – Penalty.

Violation of Section 10.24.090 is a misdemeanor punishable as provided in Section 1.12.010 of this code. In addition to or as an alternative to the criminal penalty, any violation of Section 10.24.090 shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Infractions shall be processed in accordance with the provisions of the Civil Enforcement Ordinance (Chapter 2.116 of this code). The choice of enforcement action taken and the severity of any penalty shall be based upon the nature of the violation and the damage or risk to the public.

(Ord. 50-D (1997) § 1, 1997; Ord. 50-A (1985) § 4, 1985)

This page of the Kitsap County Code is current through Ordinance 461 (2010), passed September 13, 2010.
Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.kitsapgov.com/>
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