

FILED
Court of Appeals
Division II
State of Washington
11/27/2019 4:32 PM

No. 53668-4-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, and JOHN DOES and
JANE DOES I-XX, inclusive, Appellants,

and

IN THE MATTER OF NUSAINCE 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.

BRIEF OF APPELLANT

Brian D. Chenoweth
Brooks M. Foster
(*pro hac vice*)
Attorneys for Appellant

Chenoweth Law Group, PC
510 SW Fifth Avenue / Fourth Floor
Portland, OR 97204
Telephone: (503) 221-7958
WASB No. 25877
Oregon Bar No. 042873

TABLE OF CONTENTS

I. INTRODUCTION..... 5

II. ASSIGNMENTS OF ERROR..... 8

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 9

IV. STATEMENT OF THE CASE..... 10

 A. Background Summary 10

 B. The County’s Contempt Motion 13

 C. The Club’s Appeal of the Original Contempt Order 13

 D. The Proceedings on Remand 14

V. ARGUMENT..... 16

 A. The Trial Court Abused Its Discretion..... 16

 B. The Trial Court Erred by Fashioning a Purge Condition That Depends on the County’s Discretion and Is Not Within the Club’s Immediate Power to Perform. 19

 C. Alternatively, the Trial Court Erred by Fashioning a Purge Condition That Is Not Reasonably Related to the Cause or Nature of the Contempt. 22

VI. CONCLUSION..... 26

TABLE OF AUTHORITIES

State Cases

<i>Dix v. ICT Group, Inc.</i> 160 Wash.2d 826, 161 P.3d 1016 (2007)	16
<i>Happy Bunch, LLC v. Grandview North, LLC</i> 142 Wash. App. 81, 173 P.3d 959 (2007)	16
<i>In re J.L.</i> 140 Wash. App. 438, 166 P.3d 776 (2007)	17,18
<i>In re M.B.</i> 101 Wash. App. 425, 3 P.3d 780 (2000)	16,17,22
<i>In re N.M.</i> 102 Wash. App. 537, 7 P.3d 878 (2000)	18
<i>In re Rapid Settlements</i> 189 Wash. App. 584, 359 P.3d 823 (2015)	22
<i>In re Silva</i> 166 Wash.2d 133, 206 P.3d 1240 (2009)	17
<i>Kitsap County v. Kitsap Rifle & Revolver Club</i> 2 Wash. App. 2d 1021, 2018 WL 623681 (Jan. 30, 2018)	10, 11
<i>Kitsap County v. Kitsap Rifle & Revolver Club</i> 1 Wash. App. 2d 1028, 2017 WL 5593788 (Nov. 21, 2017)	10
<i>Kitsap County v. Kitsap Rifle & Revolver Club</i> 184 Wash. App. 252, 337 P.3d 328 (2014), <i>amended on den. of recons.</i> (Feb. 10, 2015), <i>rev. den.</i> , 183 Wash.2d 1008, 352 P.3d 187 (July 8, 2015)	10
<i>Matter of Marriage of Galando</i> 200 Wash. App. 1031, 2017 WL 3701696 (Aug. 28, 2017)	22, 23, 24

Matter of Marriage of Galando 23, 24
200 Wash. App. 1030, 2017 WL 3701694 (Aug. 28, 2017)

Worden v. Smith 16
178 Wash. App. 309, 314 P.3d 1125 (2013)

Ordinances

Kitsap County Code 11
<https://www.codepublishing.com/WA/KitsapCounty/>

I. INTRODUCTION

Appellant Kitsap Rifle and Revolver Club (the “Club” or “KRRC”) petitions this Court to reverse or vacate the trial court’s *Order Amending December 2, 2016 Contempt Order* dated December 2, 2016 (“Amended Contempt Order”) or that portion of the Amended Contempt Order that states the “Purge Condition.”¹

The issue in this appeal is whether the trial court erred by failing to specify in the purge condition of the Amended Contempt Order which of several types of site development activity permit (“SDAP”) applications the Club must submit to Kitsap County (the “County”) to cure the KCC Titles 12 and 19 violations the trial court found to exist at the Club’s property in the original judgment.

The original 2011 trial judgment contained detailed findings of fact that described the specific site development violations found to exist at the Club’s property. The trial court later held the Club in contempt for failing to cure those violations and prohibited discharge of firearms at the Club as a coercive sanction to pressure the Club to comply. The Club has wanted to cure the violations, but it has been unable to do so because of its limited

¹ The Amended Contempt Order states, “Defendant KRRC is enjoined from operating a shooting facility until such time that: (a) KRRC submits a complete site development activity permit (“SDAP”) application to Kitsap County for permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment (hereafter “Purge Condition”)” CP at 454.

financial means and the high cost of applying for SDAP permitting. When the Club asked the trial court to relieve it of the contempt sanction on the grounds that the Club lacked the ability to satisfy the purge condition, the County disputed the sufficiency of the Club's evidence and the trial court left the contempt sanction in place. That decision is the subject of the Club's pending appeal in case no. 53878-4-II.² In contrast, the subject of *this* appeal is the "Purge Condition" in the Amended Contempt Order, which determines one of the ways the Club can lift the contempt sanction and its prohibition against discharge of firearms at the Club.

As this Court ruled in its prior opinion, every coercive contempt sanction requires a purge condition that the contemnor must be able to immediately satisfy to lift the sanction without depending on the discretion of another party. The original contempt order violated this rule because it required the Club to obtain SDAP permitting from the County. It was not within the Club's power to issue a permit, so the original purge condition gave the County too much discretion and left the Club without the immediate power to lift the coercive sanction. The Court therefore vacated the purge condition and remanded with instructions for the trial court to refashion it.

² The Club is considering whether to move to consolidate oral argument on that appeal with this one since they both relate to the Amended Contempt Order.

So tasked and instructed, the trial court could have and should have fashioned a purge condition that properly identified which of the many different types of Kitsap County SDAP applications the Club had to submit to lift the sanction. That is what the Club asked the trial court to do. The Club specifically advocated for the purge condition to specify the type of SDAP application the Club had to file and further requested that it require an “SDAP-Grading 2” application.

Instead, the trial court fashioned a purge condition that fails to specify what type of SDAP application the Club must submit but merely requires the Club to submit a “complete [SDAP] application.” This was prejudicial because the requirements for what constitutes a completed application are different for different types of SDAP applications. In addition, this was error because the trial court’s vague and non-specific purge condition gives the County unchecked discretion to decide what type of application is required to cure the specific violations found to exist in the original trial judgment. By giving this discretion to the County, the trial court left the Club without the power to immediately perform the purge condition and violated this Court’s ruling in its prior opinion. This was reversible error.

In addition, because the purge condition does not say what kind of SDAP application the Club must submit, the purge condition is not

reasonably related to the specific site development violations found in the original trial decision for which the Club was held in contempt. According to the rulings in this Court's prior opinion, this lack of a reasonable relationship provides an alternative ground to reverse the refashioned purge condition in the Amended Contempt Order.

The trial court's errors render the purge condition in the Amended Contempt Order impermissibly punitive and contrary to law. The Amended Contempt Order must be reversed with instructions for the trial court to refashion the purge condition to require—based on findings of fact and evidence in the record—a specific type of SDAP application that is within the Club's power to submit. In addition, if this Court is willing to consider the issue further so as to avoid another error by the trial court, the Club respectfully requests that the trial court be instructed to refashion the purge condition to require an SDAP-Grading 2 application.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered the Amended Contempt Order with a purge condition that failed to specify what type of complete SDAP application KRRC must submit to the County to cure the KCC Titles 12 and 19 violations the trial court found to exist on the Club's property in the original judgment because this gave the County too much

discretion to decide what the purge condition required the Club to do and left the Club without the immediate power to satisfy the purge condition.

2. The trial court erred when it entered the Amended Contempt Order with a purge condition that did not reasonably relate to the cause or nature of the Club's contempt, which were the specific violations of KCC Titles 12 and 19 found to exist on the Club's property in the original trial judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Does it violate the rule that satisfaction of a purge condition in a coercive contempt order cannot depend on the discretion of another party and the contemnor must have the immediate power to perform the condition if the condition requires submission of one of several types of site development applications and does not say which of those types of applications the contemnor must submit? (First assignment of error.)

B. Does it violate the rule that a purge condition in a coercive contempt order must be reasonably related to the cause or nature of the contempt if the purge condition does not say what specific type of permit application must be submitted in order to cure the specific site development violations found to exist at trial that were the cause of the contempt? (Second assignment of error.)

IV. STATEMENT OF THE CASE

A. Background Summary

This dispute was previously before the Court in case number 50011-6-II. *Kitsap County v. Kitsap Rifle & Revolver Club*, Case No. 50011-6-II, 2 Wash. App. 2d 1021, 2018 WL 623681 (Jan. 30, 2018) (hereafter, the “Unpublished Opinion”).³ The Unpublished Opinion provides a detailed summary of background facts relevant to this appeal of the Amended Contempt Order. The Club incorporates the entire Unpublished Opinion as relevant background for this opening brief. Below, the Club will reiterate some of those facts and supplement them with additional facts relevant to this appeal.

After a bench trial in 2011, the trial court found that certain development work at the Club’s property violated KCC Titles 12 (“Storm Water Drainage”) and 19 (“Critical Areas Ordinance”). CP at 30–31

³ This dispute was also previously before the Court on case numbers 43076-2-II and 48781-1-II. Case number 43076-2-II was published as *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wash. App. 252, 337 P.3d 328 (2014), amended on den. of recons. (Feb. 10, 2015), rev. den., 183 Wash.2d 1008, 352 P.3d 187 (July 8, 2015) (hereafter, “*KRRRC*” or “Published Opinion”), which resulted in the trial court entering a supplemental judgment on February 2, 2016. Case number 48781-1-II, 1 Wash. App. 2d 1028, 2017 WL 5593788 (Nov. 21, 2017) was an unpublished opinion in which the Court vacated several components of the trial court’s supplemental judgment (related to injunction remedies for the expansion of sound at the Club’s property) and remanded with instructions for the trial court to fashion remedies that reflected the Club’s historical nonconforming use right and right to intensify that use of its property.

(original trial judgment).⁴ The trial court held that those violations terminated the Club's nonconforming use rights. *Id.* The trial court further enjoined the Club's use of its property as a shooting range until the Club obtained a conditional use permit, which could require the Club to cure its violations of Titles 12 and 19. *Id.* The Club appealed.

The Court of Appeals agreed that some of the Club's development work violated KCC Titles 12 and 19, but reversed the decisions to terminate the Club's nonconforming use and to enjoin all shooting at the Club because there was no legal basis for those remedies. *KRRC*, 184 Wash. App. at 297. The Court of Appeals instructed the trial court to fashion appropriate remedies on remand that would allow the Club to operate its grandfathered shooting range within its nonconforming use rights, which included the right to intensify but not to expand its land use. *Id.* at 300–01.

On remand, the trial court issued the Supplemental Judgment, which contains a Permitting Order

“requiring [the Club] to apply for and obtain site development activity permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment. Defendant's application for permitting shall be submitted to Kitsap

⁴ The Kitsap County Code, including Titles 12 and 19, is available online at <http://www.codepublishing.com/WA/KitsapCounty/> (last visited Nov. 15, 2019).

County within 180 days of the entry of this final order.”

CP at 45. The Supplemental Judgment further ordered

“that a WARRANT OF ABATEMENT may be authorized upon further application by the [County], in the event that the [Club’s] participation in the County permitting process does not cure the code violations and permitting deficiencies on the Property.”

Id.

The Club has not waived any rights to defend itself in opposition to further proceedings by the County to enforce its warrant of abatement. The parties appear to agree, however, that the general purpose of the warrant of abatement is to authorize the County to take specific steps to cure the site development permitting violations found at trial and then seek a money judgment for the cost of that effort.

Thus, the County and trial court decided during remand proceedings that if the Club’s permitting effort were deficient, the County’s remedy would be to proceed with its warrant of abatement. Most importantly, the Supplemental Judgment did not require the Club to apply for or obtain any particular kind of site development activity permitting, it did not set a deadline for the Club to *obtain* site development activity permitting, nor did it prohibit the Club from operating if there were a deficiency in its permitting effort.

B. The County’s Contempt Motion

The Club appealed the Supplemental Judgment. During the pendency of that appeal the County filed a motion for contempt, asking again for the trial court to shut down the Club, this time to supposedly “coerce” the Club into complying with the Permitting Order. CP at 50–52. After a 90-day continuation of the hearing on the County’s motion, the Club delivered an SDAP-Grading 1 application to the County. CP at 423. The County rejected the Club’s application and informed the Club that it must submit a more onerous SDAP-Grading 3 application to cure the land use violations because the County believed they involved movement of more than 5,000 cubic yards of earth. CP at 413–15.

At the follow up hearing on the County’s contempt motion, the trial court found the Club failed to submit an SDAP application pursuant to the Permitting Order, granted the County’s motion, and enjoined the Club from operating a shooting facility until it obtained “permitting in compliance with KCC Titles 12 and 19.” CP at 288–89. The Club appealed the trial court’s contempt order (“the Original Contempt Order”).

C. The Club’s Appeal of the Original Contempt Order

On appeal, this Court affirmed the trial court’s finding of contempt but vacated the purge condition because it required the Club to *obtain* SDAP permitting. Issuance of a permit was an event over which the Club

had no control, the Court observed, because the County gets to determine whether to issue an SDAP. Unpublished Opinion at 21. As such, the purge condition violated the requirement that it must be within the immediate power of the contemnor to satisfy the purge condition. *Id.* at 20–21 (“Because the Club does not have the ability to satisfy the purge condition without relying on the County’s actions, the contempt order is punitive.”). The Court therefore remanded for the trial court “to impose a proper purge condition.” *Id.* at 21–22.

D. The Proceedings on Remand

On remand, the Club and the County made multiple attempts to agree to a stipulated order amending the Original Contempt Order in accordance with this Court’s Unpublished Opinion, but disagreed about whether the purge condition needed to specify the *type* of SDAP application the Club had to submit to purge the contempt. CP at 375–76, 400–01. The Club proposed an order that would require the Club to submit an SDAP-Grading 2 application, whereas the County proposed an order that did not specify a particular application type at all. *Id.*

The Club’s position is that an SDAP-Grading 2 application is sufficient to address the land use violations found to exist in the original trial judgment. *Id.* According to the County’s publications about SDAP applications, an SDAP-Grading 1 is appropriate where between 150 and

499 yards of cubic earth have been moved, whereas an SDAP-Grading 2 is appropriate where between 500 and 5,000 cubic yards of earth have been moved. CP at 408. The original trial judgment contains six findings that the Club moved in excess of 150 cubic yards of earth, but it does not indicate that the Club moved more than 5,000 cubic yards of earth. CP at 10–18. Thus, the Club maintains that an SDAP-Grading 2 application is the correct application to cure the KCC Titles 12 and 19 violations found to exist in the original trial judgment.

During the remand proceedings, the Club communicated its position to the County that it should only be required to submit an SDAP-Grading 2 application, while the County responded that the Club needed to submit an SDAP-Commercial application, which happens to be the most expensive SDAP application the County offers. CP at 366–68, 400, 410. At the hearing to resolve the parties' disagreement over how to refashion the purge condition, the Club argued the purge condition should expressly state the Club could terminate the contempt sanction by submitting an SDAP-Grading 2 application; whereas the County argued the purge condition should not clarify which type of SDAP application the Club must submit. CP at 369–72, 426–27. The trial court accepted the County's position and entered the County's proposed form of order, which states in relevant part:

“Defendant KRRC is enjoined from operating a shooting facility until such time that: (a) KRRC submits a complete site development activity permit (‘SDAP’) application to Kitsap County for permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment (hereafter ‘Purge Condition’); For purposes of this order, to submit a ‘complete’ SDAP application means to transmit through the County’s online portal an SDAP application that contains each and every one of the items listed in KCC § 21.04.160(B).”

CP at 454.

V. ARGUMENT

A. **The Trial Court Abused Its Discretion.**

A trial court’s fashioning of a purge condition is reviewed for an abuse of discretion, and a court “abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds.” *In re M.B.* (“*M.B.*”), 101 Wash. App. 425, 454, 3 P.3d 780 (2000).

A trial court necessarily abuses its discretion if it bases its ruling on an “erroneous view of the law or involves application of an incorrect legal analysis,” and errors of law are reviewed de novo. *Dix v. ICT Grp., Inc.*, 160 Wash.2d 826, 833–34, 161 P.3d 1016 (2007); *Worden v. Smith*, 178 Wash. App. 309, 323, 314 P.3d 1125 (2013); *see also Happy Bunch, LLC v. Grandview N., LLC*, 142 Wash. App. 81, 88, 173 P.3d 959 (2007).

A purge condition is coercive, not punitive, insofar as it allows the contemnor to obtain his release by committing an affirmative act, i.e., when “the contemnor carries the keys of his prison in his own pocket.” *M.B.*, 101 Wash. App. at 439 (internal quotations omitted). A coercive purge condition must comply with three strict requirements:

“First, it must be designed to serve remedial aims; that is, it must be directed at obtaining future compliance. Second, the condition must be within the power of the [contemnor] to fulfill. Third, the condition must be reasonably related to the cause or nature of the [contemnor’s] contempt.”

Id. at 450. The Supreme Court has further clarified the second requirement by holding, “[p]urge conditions are valid only if they are in the contemnor’s capacity to immediately purge.” *In re Silva*, 166 Wash.2d 133, 142 n.5, 206 P.3d 1240 (2009); *see also In re J.L.*, 140 Wash. App. 438, 447, 166 P.3d 776 (2007) (“To be valid, a purge condition must be within the contemnor’s capacity to complete at the time the sanction is imposed.”). And this Court held in its Unpublished Opinion that the contemnor must be able to perform the purge condition without having to rely on a third party’s actions. Unpublished Opinion at 21. Otherwise, the contempt order becomes impermissibly punitive.

If the purge condition fails any of the foregoing requirements, the purge condition must be reversed or vacated. *E.g., id.* (vacating contempt

order); *In re J.L.*, 140 Wash. App. at 448 (vacating contempt order, without remand, where the purge condition was not within the contemnor's capacity to complete at the time the sanction was imposed); *In re N.M.*, 102 Wash. App. 537, 542 n.11, 7 P.3d 878 (2000) (reversing contempt order, without remand, where purge condition did not provide a means of compliance and the sanction was excessive).

Here, the trial court erred in fashioning a purge condition that gives the County discretion to determine what type of SDAP application the Club must submit, leaving the Club without the power to immediately perform the purge condition. If the trial court gave the Club a key to its own prison, it also granted the County the power to change the lock, as the County has done in the past (requiring at one time an SDAP-Grading 3 and later insisting on an SDAP-Commercial application).

The trial court also erred in fashioning a purge condition that is not reasonably related to the Club's noncompliance because the purge condition does not specify which SDAP application the Club must submit to cure the specific violations found at trial and instead allows the County to require the Club to submit an SDAP application that goes well beyond that.

On either of these two grounds, the Amended Contempt Order must be reversed, at least with respect to its statement of the Purge

Condition. It should be remanded with instructions for the trial court to refashion the purge condition so as to comply with the legal requirements discussed above.

B. The Trial Court Erred by Fashioning a Purge Condition That Depends on the County's Discretion and Is Not Within the Club's Immediate Power to Perform.

A remedial sanction must contain a purge condition that does not depend on another party's discretionary actions and that is within the contemnor's power to immediately perform. The purge condition on review before the Court does not satisfy this standard precisely because it allows the County to decide whether the type of SDAP application submitted by the Club satisfies the purge condition. As such, the Club does not have the power to immediately comply with the purge condition by submitting a complete SDAP application unless it submits the exact type of application that the County thinks should be required. The Club could comply with the plain language of the purge condition by attempting to submit an SDAP application, but if it is not the type demanded by the County the Club cannot complete the submission.

The purge condition requires the Club to submit a complete SDAP application to the County to cure the Club's KCC Titles 12 and 19 violations found to exist in the original judgment. CP at 454. The purge

condition, however, does not specify which one of at least 11 types of SDAP applications the Club must submit to purge the contempt. CP at 408–10. The facts above show that the County first required the Club to submit an SDAP-Grading 3 in response to the Club’s attempted submission of an SDAP-Grading 1 application. The County later changed course and required the Club to submit the more costly and burdensome SDAP-Commercial instead. The County has thus already moved the goalpost once regarding what type of SDAP application the Club must submit—and it did so in the direction of imposing greater expenses and burdens on the Club.

The trial court’s non-specific purge condition gives the County unchecked discretion to decide what the Club must do to submit a complete SDAP application and whether the application submitted by the Club is sufficient to purge the coercive sanction. This is prejudicial to the Club and contrary to law because it takes the power to purge the sanction away from the Club and gives it to the County.

It bears mentioning that the Supplemental Judgment allows the County to pursue a warrant of abatement “in the event that the [Club’s] participation in the permitting process does not cure the code violations and permitting deficiencies on the Property.” CP at 45. The County appears to have prioritized its contempt strategy to punish the Club and

coerce it into compliance, but this is not the County's only legal avenue to abate the site development violations.

If the Club were to purge the contempt sanction (or terminate it on the grounds that it lacks the ability to cure the violations), the County would still be able to enforce its warrant of abatement. It is not necessary for the County to punish the Club with unending closure orders, changing purge conditions, onerous application requirements, and permit fees the Club cannot afford in order to remedy the site development violations.

As with the Original Contempt Order that this Court reversed because it contained a purge condition that required the Club to rely on the County's actions in performing the purge condition, the Court should likewise reverse the Amended Contempt Order because it also requires the Club to rely on the County's discretionary actions in performing the purge condition.

In addition, the Court should consider not only vacating but also instructing the trial court to refashion the purge condition to require an SDAP-Grading 2 application. That application is appropriate for the reasons stated above, *viz.*, the original trial judgment found the Club moved in excess of 150 cubic yards of earth but did not find the Club moved more than 5,000 cubic yards. Thus, an SDAP-Grading 2 should be

sufficient to cure the site development violations found to exist in the original trial judgment.

C. Alternatively, the Trial Court Erred by Fashioning a Purge Condition That Is Not Reasonably Related to the Cause or Nature of the Contempt.

As an alternative reason to vacate, the purge condition is not reasonably related to the cause or nature of the contempt because it does not specify which type of SDAP application the Club must submit to cure the specific violations found in the original trial judgment. This, too, renders the purge condition impermissibly punitive, requiring its reversal.

This Court held in the Unpublished Opinion, “if the purge condition involves something other than complying with the original order that the contemnor violated, the condition must be ‘reasonably related to the cause or nature’ of the contempt.” Unpublished Opinion at 20 (citing *In re Rapid Settlements*, 189 Wash. App. 584, 614, 359 P.3d 823 (2015); *In re M.B.*, 101 Wash. App. at 450).

In *Matter of Marriage of Galando* (“*Galando I*”), the First Division of the Court of Appeals reversed a trial court’s purge condition that required the contemnor to perform an act not required by the original order and acts unrelated to the findings of contempt because such

requirements were an abuse of discretion. 200 Wash. App. 1031, 2017 WL 3701696, at *6–7 (Aug. 28, 2017) (unpublished opinion).

In *Galando I*, the trial court entered an order of contempt against Mr. Galando for failing to perform several acts, e.g., enroll in a drug and alcohol treatment plan, pay for the children’s uninsured medical bills, and call his children on the telephone. *Id.* at *1. Accordingly, the court fashioned purge conditions that, *inter alia*, required the contemnor to enroll in a drug and alcohol treatment program, pay for all medical expenses required by the child support order, and call his children. *Id.* at *6–7. The court also fashioned purge conditions that required the contemnor to comply with orders unrelated to the findings of contempt, which included paying for the cost of Ms. Galando’s four-year college degree. *Id.* at *5–6; *Matter of Marriage of Galando* (“*Galando II*”), 200 Wash. App. 1030, 2017 WL 3701694, at *4 (Aug. 28, 2017) (unpublished opinion).

On appeal, the court reversed the purge conditions requiring the contemnor to call his children and to comply with orders unrelated to the findings of contempt because the final parenting plan only permitted the contemnor to call his children—it did not require him to call them—and because the other orders were unrelated to the findings of contempt. *Galando I*, 2017 WL 3701696, at *7. This shows the requirement of a

“reasonable relationship” is not met if the purge condition requires more or different requirements than what was required by the underlying order for which the contemnor was held in contempt.

Here, the purge condition impermissibly allows the County to require the Club to perform acts that are not required by and are outside the scope of the Permitting Order. CP at 289. The Permitting Order requires the Club “to apply for and obtain site development activity permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment.” CP at 45. These are specific violations requiring a specific type of SDAP application, not an SDAP application of a scope and nature to be determined by the County at its discretion.

The Club has shown that the specific violations found to exist fall within the scope of an SDAP-Grading 2, not an SDAP-Grading 3 or SDAP-Commercial application. If the purge condition required an SDAP-Grading 2, that would be reasonably related to the underlying cause and nature of the contempt. The existing purge condition with its non-specific requirement of an SDAP application (a generic name that does not refer to any specific application accepted by the County) is not reasonably related to the underlying contempt. As such, the purge condition is impermissibly punitive and should be reversed.

In order to avoid further disputes and errors regarding the type of permit application required by the purge condition, the Court should also instruct the trial court that the purge condition must require no more than an SDAP-Grading 2 application. The original trial judgment contains six findings that the Club moved in excess of 150 cubic yards of earth, but it does not indicate that the Club moved more than 5,000 cubic yards of earth. CP at 10–18. The County describes an SDAP-Grading 2 application as being required for projects involving earth movement between 500 and 5,000 cubic yards. CP at 408. Thus, an SDAP-Grading 2 application is sufficient to address the land use violations found to exist in the original trial judgment. With or without this specification, however, the Amended Contempt Order should be reversed with instructions for the trial court to refashion the purge condition.

///

///

///

///

///

///

///

///

VI. CONCLUSION

For the foregoing reasons, the Amended Contempt Order, or at least the portion of it that states the purge condition, should be reversed or vacated and remanded for entry of a purge condition consistent with the legal standards discussed above. The Court should also consider instructing the trial court to refashion the purge condition to require the Club to submit no more than a complete SDAP-Grading 2 application.

DATED: November 27, 2019

CHENOWETH LAW GROUP, P.C.

/s/ Brooks M. Foster

Brian D. Chenoweth WSBA No. 25877

Brooks M. Foster, Oregon bar No. 042873

(pro hac vice)

Of Attorneys for Appellant

Kitsap Rifle and Revolver Club

510 SW Fifth Ave., Fifth Floor

Portland, OR 97204

(503) 221-7958

APPENDIX

Pursuant to RAP 10.3(8) and 10.4(c), Appellant Kitsap Rifle and Revolver Club respectfully submits the attached Appendix, which includes the documents listed below. Every page of the Clerk's Papers cited in the foregoing *Brief of Appellant* should appear in this Appendix.

- Findings of Fact, Conclusions of Law and Orders (CP 1-41)
- Order Supplementing Judgment on Remand (CP 42-45)
- Kitsap County's Motion for Contempt (CP 46-54)
- Order Granting Kitsap County's Motion for Contempt With Findings of Fact and Conclusions of Law (CP 286-291)
- Kitsap Rifle & Revolver Club's Response to Kitsap County's Motion to Enter Revised Order Granting Kitsap County's Motion for Contempt on Remand (CP 362-373)
- Declaration of Brooks M. Foster (June 4, 2019) (CP 374-376)
- Emails between L. Zippel and B. Foster, June 3–4 2019 (CP 400-401)
- Supporting Document – Title 21 Permit Fee info (CP 403-411)
- Declaration of Jeffrey Rowe Regarding Supplemental Status Report (CP 412-420)
- Declaration of Marcus Carter (June 4, 2019) (CP 422-424)
- Order Amending December 2, 2016 Contempt Order (CP 453-455)



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 devices, 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. *Coppernoll 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.

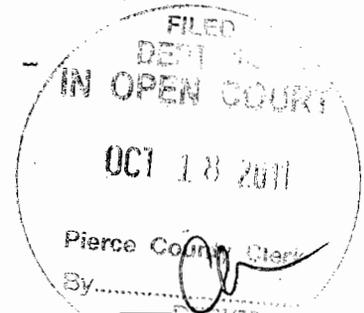
DATED this 9 day of February, 2012.



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



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



10-2-79-70

**BARGAIN AND SALE DEED
WITH RESTRICTIVE COVENANTS**

E-230260

GRANTOR: Kitsap County

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

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

2009EX03102

Total : \$10.00

Clerk's Initial *[Signature]*

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Riparian Management Zones, as detailed below:

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

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

DATED this 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

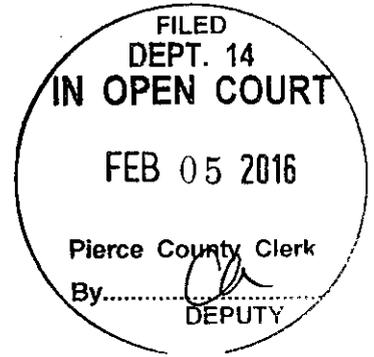
Part of the Southwest quarter of the Southeast quarter and part of the Southeast quarter of the Southwest quarter of Section 36, Township 25 North, Range 1 West, W.M., lying northerly of the North lines of an easement for right of way for road granted to Kitsap County on December 7, 1929, under Application 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.

0094
10655
2/9/2016



4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

KITSAP COUNTY, a political subdivision of the
State of Washington

Plaintiff,

NO. 10-2-12913-3

v.

ORDER SUPPLEMENTING
JUDGMENT ON REMAND

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

THIS MATTER having come on regularly for hearing before the undersigned Judge of the
above-entitled Court for further proceedings upon remand from Division II of the Court of Appeals.
The parties appeared through their attorneys of record Christine M. Palmer and Neil R. Wachter for
the Plaintiff and Brian Chenoweth and Brooks Foster for the Defendant and submitted written briefs
and proposed amended judgments to address the issue of a revised remedy. The Court considered the

0095
10655
2/9/2016

1 October 28, 2014 ruling of the Court of Appeals in *Kitsap County v. Kitsap Rifle & Revolver Club*,
2 184 Wn. App. 252, 337 P.3d 328 (2014), *review denied*, 183 Wn.2d 1008 (2015); the motions,
3 briefings, and proposed amended judgments filed by the parties; the arguments of counsel; the trial
4 court record; and the records and files herein. Being fully advised in the premises, the Court hereby
5 supplements the original Findings of Fact, Conclusions of Law and Order as follows:

6 **I. FINDING OF FACT REGARDING**
7 **THE APPLICABILITY OF FORMER KCC §17.455.060**

8 1. On June 25, 2012, the Kitsap County Board of County Commissioners enacted Kitsap
9 County Ordinance No. 490-2012, which included a provision repealing former Kitsap County Code §
10 17.455.060, effective as of July 1, 2012.

11 **II. CONCLUSIONS OF LAW REGARDING**
12 **THE APPLICABILITY OF FORMER KCC §17.455.060**

13 1. Former KCC §17.455.060 is subject to the savings provision of the Kitsap County
14 Code at KCC §1.01.040, which applies to all sections of the Code pursuant to KCC §1.04.050. As
15 an “action [or] proceeding which began before the effective date” of the repealing ordinance, the
16 instant action is not affected by the repeal of KCC §17.455.060.

17 2. Kitsap County Ordinance No. 490-2012 contains no language from which one can
18 reasonably infer that the legislative body intended the repeal of KCC §17.455.060 to affect pending
19 litigation.

20 3. Kitsap County Ordinance No. 490-2012’s repeal of KCC §17.455.060 is neither
21 clearly curative nor remedial in nature. *In re F.D. Processing*, 119 Wn.2d 452, 461-62, 832 P.2d
22 1303 (1992). Therefore, the Court further concludes that the repeal of KCC §17.455.060 shall not
23 be applied retroactively to the facts of this action. As such, former KCC §17.455.060 applies to the
24

2/19/2016 10:55 0096

1 facts of this action.

2
3 **III. ORDERS**

4 A. The following orders will replace and supplement Orders No. 1 and 2, page 33 of the
5 Judgment, and Order No. 6, page 34 of the Judgment:

6 **DECLARATORY JUDGMENT**

7 1. Kitsap County's request pursuant to Chapter 7.24 RCW for judgment declaring that
8 activities and uses of the Property consisting of military training uses; commercial, for-profit uses;
9 and uses increasing noise levels by allowing explosive devices, higher caliber weaponry greater than
10 .30 caliber and practical shooting, each constitute unlawful expansions of and changes to the
11 nonconforming use of the Property as a shooting range by operation of former KCC §17.455.060,
12 KCC Chapter 17.460, KCC §17.100.030, and Washington common law regarding nonconforming
13 uses, is hereby GRANTED.

14 6. **LAND USE INJUNCTION (EFFECTIVE IMMEDIATELY)**

15 a. A permanent, mandatory and prohibitive injunction is hereby issued enjoining each of
16 the following expanded uses of the Property until such time that a conditional use permit is applied
17 for and issued to specifically authorize the intended changed or expanded use(s):

- 18 1. Commercial, for-profit uses;
- 19 2. Military training uses;
- 20 3. Use of explosive devices including exploding targets;
- 21 4. Use of high caliber weaponry greater than .30 caliber; and
- 22 5. Practical shooting, uses, including organized competitions and practice
23 sessions.

0097
10655
2/9/2016

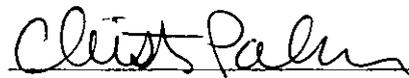
1 b. A permanent, mandatory injunction is hereby issued further requiring Defendant to
2 apply for and obtain site development activity permitting to cure violations of KCC Titles 12 and 19
3 found to exist on the Property in the original Judgment. Defendant's application for permitting shall
4 be submitted to Kitsap County within 180 days of the entry of this final order.

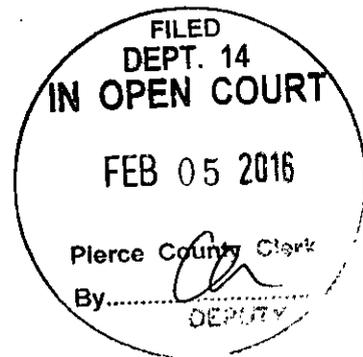
5 B. The Court further orders that a WARRANT OF ABATEMENT may be authorized
6 upon further application by the Plaintiff, in the event that the Defendant's participation in the County
7 permitting process does not cure the code violations and permitting deficiencies on the Property.

8
9 DONE IN OPEN COURT this 5th day of February, 2016.

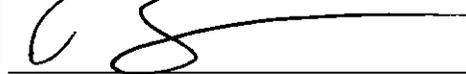
10
11 
12 HON. SUSAN K. SERKO, JUDGE
PIERCE COUNTY SUPERIOR COURT

13 Presented by:

14 
15 NEIL R. WACHTER, WSBA No. 23278
Special Deputy Prosecuting Attorney
16 CHRISTINE M. PALMER; WSBA No. 42560
Deputy Prosecuting Attorney
17 Kitsap County Prosecutor's Office
Attorneys for Plaintiff Kitsap County

18
19 

20 APPROVED FOR ENTRY:

21 
BRIAN D. CHENOWETH, WSBA No. 25877
22 BROOKS FOSTER, Appearing *pro hac vice*
Attorneys for Defendant Kitsap Rifle and
Revolver Club

August 18 2016 8:30 AM

Hon. Susan K. Serko
Hearing Date: August 26, 2016
Hearing Time: 10:12-12913-3

KEVIN STOCK
COUNTY CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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, 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

KITSAP COUNTY'S MOTION
FOR CONTEMPT

I. RELIEF REQUESTED

Plaintiff Kitsap County, by and through its counsel of record, Deputy Prosecuting Attorneys

1 Christine Palmer and Laura Zippel, respectfully requests the Court find KRRC in contempt and enter
2 an order prohibiting KRRC from operating a shooting range until it submits an application for a site
3 development activity permit (“SDAP”). This motion is based upon the records and files herein, the
4 Declaration of Christine M. Palmer, the Declaration of Laura F. Zippel, and the Declaration of
5 Jeffrey Rowe.

6 II. STATEMENT OF FACTS

7 This case has a lengthy procedural history which is only briefly summarized, to the extent
8 relevant, below:

9 A. February 9, 2012 Judgment

10 This matter was originally adjudicated following a lengthy bench trial which resulted in the
11 entry of findings of fact, conclusions of law and final orders on February 9, 2012 (“Judgment”).¹
12 Among other things, the Judgment ruled that KRRC had engaged in unlawful and unpermitted site
13 development on its Property which constituted violations of Kitsap County Code (“KCC”) Titles 12
14 and 19.² As a remedy for zoning violations of the KCC, this Court ruled that KRRC had lost its
15 nonconforming use status and thus entered a land use injunction requiring KRRC to obtain a
16 conditional use permit before the resumption of any use of its property as a shooting range.³ This
17 Court further ordered that the County could condition issuance of the permit upon successful
18 application for all after-the-fact permits required pursuant to KCC Titles 12 and 19.⁴ On appeal,
19 Division II affirmed the findings and conclusions regarding the unlawful site development and
20 violations of Titles 12 and 19 but determined that the land use injunction was not the appropriate
21

22 ¹ Findings of Fact, Conclusions of Law and Orders (Feb. 9, 2012) (the “Judgment”).

23 ² Judgment at 30-31.

24 ³ Judgment at 34.

⁴ Judgment at 34.

1 remedy.⁵ Division II remanded the case back to the trial court to craft a reformed judgment.⁶

2 **B. February 5, 2016 Order Supplementing Judgment On Remand**

3 At the conclusion of proceedings on remand, this Court entered an Order Supplementing
4 Judgment On Remand (“Supplemental Judgment”) on February 5, 2016.⁷ Among other things, the
5 Supplemental Judgment requires KRRC to apply for a Site Development Activity Permit (“SDAP”)
6 to “cure violations of KCC Titles 12 and 19.”⁸ The Supplemental Judgment requires KRRC to
7 submit its application within 180 days of its entry. The 180 day deadline for KRRC to apply for an
8 SDAP was August 3, 2016. Declaration of Christine M. Palmer (“Palmer Dec.”)¶4.

9 KRRC has appealed certain portions of the Supplemental Judgment. Palmer Dec., Exhibit A.
10 Specifically, KRRC appeals the prohibitions on commercial uses, practical shooting, and the use of
11 weaponry greater than .30 caliber. Palmer Dec., ¶6. Over Kitsap County’s objection, KRRC has
12 obtained a stay of these prohibitions. Palmer Dec., Exhibit B. As a result, KRRC can now allow
13 practical shooting competitions and practices on its numerous shooting bays, the construction and
14 development of which constitutes in part, the unlawful site development that is the subject of this
15 lawsuit. KRRC did not seek a stay of the requirement to apply for an SDAP within 180 days.

16 **C. KRRC Has Not Applied For An SDAP**

17 As of August 15, 2016, the Kitsap County Department of Community Development had not
18 received KRRC’s application for an SDAP. Declaration of Jeffrey Rowe. KRRC is in violation of the
19 Supplemental Judgment. Kitsap County’s counsel has expended over 7.8 hours of attorney time in
20 preparation of this motion. Declaration of Christine M. Palmer ¶7; Declaration of Laura F. Zippel,
21

22 ⁵ *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn. App. 252, 337 P.3d 328 (2014), *review denied*, 183 Wn.2d
1008 (2015).

23 ⁶ *Id.*

⁷ Order Supplementing Judgment on Remand (February 5, 2016) (“Supplemental Judgment”).

24 ⁸ Supplemental Judgment at 4.

1 ¶3. \$250 per hour is a reasonable rate for the legal services of deputy prosecuting attorneys. Id.

2 **III. ARGUMENT**

3 **A. The Court Should Enter A Contempt Order Prohibiting KRRC From Operating A**
4 **Shooting Facility Until It Applies for An SDAP**

5 **1. Legal Standard Regarding Contempt Orders**

6 RCW 7.21.030 grants courts the authority to impose a remedial sanction for a party's
7 contempt of court. The definition of contempt of court includes the intentional "disobedience of any
8 lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(c). Upon finding a party
9 to be in contempt of court, the Court may impose any of the following remedial sanctions: (1)
10 imprisonment; (2) forfeiture not to exceed two thousand dollars for each day the contempt of court
11 continues; (3) an order designed to ensure compliance with a prior order of the court; or (4) any other
12 remedial sanction if the court expressly finds that the prior sanctions would be "ineffectual to
13 terminate a continuing contempt of court." RCW 7.21.030(2). Remedial sanctions are imposed for
14 the purpose of coercing performance. RCW 7.21.010(3).

15 A party seeking a civil contempt order must establish that a prior order has been violated by a
16 preponderance of the evidence. *State v. Boren*, 44 Wn.2d 69, 73, 265 P.2d 254, 256 (1954).
17 "Whether contempt is warranted in a particular case is a matter within the sound discretion of the
18 trial court; unless that discretion is abused, it should not be disturbed on appeal." *King v. Dep't of*
19 *Soc. & Health Servs.*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988) citing *Schuster v. Schuster*, 90
20 Wn.2d 626, 630, 585 P.2d 120 (1978). Courts have sound discretion to impose coercive sanctions
21 that are "designed to ensure compliance." *In re Marriage of Mathews*, 70 Wn. App. 116, 126, 853
22 P.2d 462, 469 (1993) (affirming a trial court's contempt order that a party execute a wage
23 assignment).

1 **2. The Court Should Find KRRC In Contempt of Court**

2 The Court should find KRRC in contempt for failing to comply with the Supplemental
3 Judgment. The Supplemental Judgment sets forth a permanent, mandatory injunction requiring
4 KRRC to submit an application for an SDAP within 180 days of the entry of the order. KRRC and its
5 counsel was present at the February 5, 2016 hearing during which the order was entered. Palmer
6 Dec., ¶3. KRRC and its counsel were aware of the 180 day submittal deadline. This deadline passed
7 on August 3, 2016. Palmer Dec., ¶4. Despite this, KRRC has not submitted an application for its
8 SDAP. Accordingly, KRRC intentionally violated the Supplemental Judgment and should be found
9 in contempt.

10 **3. The Court Should Prohibit KRRC From Operating a Shooting Facility Until It**
11 **Complies**

12 To encourage compliance with the Supplemental Judgment's requirement that KRRC apply
13 for a SDAP, the Court should enter an order of contempt which prohibits KRRC from operating a
14 shooting facility until it submits an application for an SDAP. This an appropriate remedial sanction
15 because it will provide KRRC with an incentive to comply with the order in a timely manner while at
16 the same time allowing KRRC to purge itself of the sanction upon compliance. Such a remedial
17 sanction would be the most likely to coerce compliance and will prohibit KRRC from reaping the
18 benefit of their unlawful site development as well as their failure to comply with the Supplemental
19 Judgment.

20 **B. The Court Also Has Authority To Issue Injunctive Relief Pursuant to Its Broad**
21 **Equitable Powers**

22 In addition to, and independently from, the authority outlined in RCW 7.21 *et. seq.*, this
23 Court can prohibit KRRC's use of its property as a shooting range until it applies for an SDAP
24 pursuant to the Court's broad equitable powers. The Court has this authority regardless of whether

1 KRRC's failure to comply with the Supplemental Judgment was intentional or subject to any other
2 defense that may be available to a contempt proceeding. The authority to grant injunctive relief is
3 conferred by superior courts pursuant to article 4, §6 of the Washington State Constitution. *State v.*
4 *Lew*, 25 Wn.2d 854, 865–68, 172 P.2d 289 (1946) (in which the court affirmed an injunction to abate
5 a nuisance despite the fact there was no statutory provision expressly authorizing injunctive relief);
6 *Blanchard v. Golden Age Brewing Co.*, 188 Wn. 396, 405, 63 P.2d 397 (1936) (holding that the
7 judicial power over cases in equity has been vested in the courts independently of any legislative
8 enactment). It is the duty of the court to “exercise its equity power and grant the necessary relief”
9 “upon a clear showing of necessity in order to afford immediate protection of a complainant's right.”
10 *Id.* at 405.

11 A permanent injunction may be issued in accordance with Washington law upon a showing
12 that the requesting party (1) has a clear legal or equitable right, (2) a well-grounded fear of
13 immediate invasion of that right, and (3) that the acts complained of are either resulting in or will
14 result in actual and substantial injury. *Tyler Pipe Indus., Inc. v. State, Dep't of Revenue*, 96 Wn.2d
15 785, 792, 638 P.2d 1213, 1217 (1982). Kitsap County can establish all the elements necessary for the
16 issuance of an injunction.

17 A party establishes a clear legal or equitable right by showing that it is likely to prevail on the
18 merits. *No New Gas Tax*, 160 Wn.2d 141, 154, 157 P.3d 831 (2007); *Tyler Pipe* at 638. Kitsap
19 County has already prevailed on the merits with respect to the unlawful site development on KRRC's
20 property. This Court has already determined after a lengthy trial, that KRRC's site development was
21 unlawful and in violation of the KCC Titles 12 and 19 (and this was affirmed on appeal). KRRC is
22 now in violation of the Supplemental Judgment entered by this Court specifically to address KRRC's
23 unlawful site development. Kitsap County has a clear legal right to seek enforcement of the
24

1 Supplemental Judgment.

2 Kitsap County has a well grounded fear of invasion. Kitsap County's rights have already been
3 invaded. Kitsap County's rights were first invaded by KRRC's unlawful and unpermitted site
4 development and then by KRRC's failure to comply with the Supplemental Judgment requiring it to
5 submit an SDAP application within the 180 days ordered by this Court.

6 Finally, Kitsap County can establish actual and substantial injury. Washington courts have
7 held that where an ordinance specifically provides for an injunction against violations of its
8 provisions, the governing legislative body has already established that "the violation itself is an
9 injury to the community." *King County ex rel. Sowers v. Chisman*, 33 Wn. App. 809, 818-19, 658
10 P.2d 1256 (1983). This Court has already found that KRRC's unlawful site development constitutes
11 a violation of KCC Titles 12 and 19. KCC 19.100.165(F) specifically provides for injunctive relief to
12 address violations of Title 19. Accordingly, the legislative body has established that a violation of
13 Title 19 is an injury to the community. As the Supplemental Judgment requires the application for an
14 SDAP to "cure violations" of KCC Titles 12 and 19 and as KRRC has failed to take the steps
15 required by this Court to remedy the violations, KRRC's failure to comply constitutes a continuing
16 injury to the community.

17 Accordingly, this Court should grant an injunction in Kitsap County's favor which enjoins
18 KRRC's use of the Property as a shooting range until it has submitted an application for an SDAP as
19 required by the Supplemental Judgment.

20 **C. The Court Should Award Kitsap County's Losses Including Attorney Fees**

21 In addition to remedial sanctions, the Court may order a party found in contempt to pay any
22 losses suffered by the aggrieved party as a result of the contempt, including reasonable attorney's
23 fees. RCW 7.21.030(3). The Court should enter an order requiring KRRC to pay reasonable attorney
24

1 fees incurred by Kitsap County in the preparation of this motion. The amount of \$1,950 constitutes
2 Kitsap County's reasonable attorney fees for the over 7.8 hours of attorney time expended in
3 preparation of this motion.

4 **IV. CONCLUSION**

5 For the reasons outlined above, the Court should find KRRC in contempt. To remedy
6 KRRC's contempt and encourage compliance with the Supplemental Judgment, the Court should
7 enjoin KRRC's use of its property as a shooting facility until it submits to Kitsap County an
8 application for a SDAP. In addition, the Court should award Kitsap County reasonable attorney fees
9 in the amount of \$1,950. A proposed order with findings of fact and conclusions of law is filed with
10 this motion.

11 Respectfully submitted this 17th day of August, 2016.

12 TINA R. ROBINSON
13 Kitsap County Prosecuting Attorney

14 

15 CHRISTINE M. PALMER; WSBA No. 42560
16 LAURA F. ZIPPEL, WSBA No. 47978

17 Deputy Prosecuting Attorneys
18 614 Division Street, MS 35A

19 Port Orchard, WA 98366

20 Phone: 360-337-4992

21 Email: cmpalmer@co.kitsap.wa.us

22 lzippel@co.kitsap.wa.us

23 Attorneys for Plaintiff Kitsap County
24

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

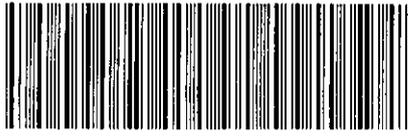
On the date given below I caused to be served the above document in the manner noted upon the following:

Brian D. Chenoweth	<input checked="" type="checkbox"/>	Via U.S. Mail
Brooks Foster	<input checked="" type="checkbox"/>	Via Email:
The Chenoweth Law Group	<input type="checkbox"/>	Via Hand Delivery
510 SW Fifth Ave., Ste. 500		
Portland, OR 97204		

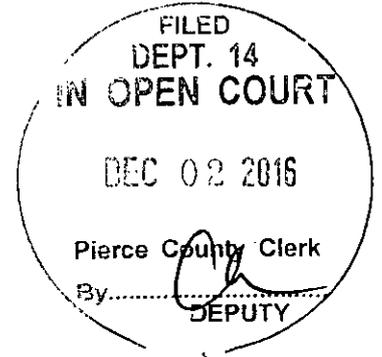
SIGNED in Port Orchard, Washington this 18th day of August, 2016.



 BATRICE FREDSTI, Legal Assistant
 Kitsap County Prosecuting Attorney
 614 Division Street, MS-35A
 Port Orchard, WA 98366-4676
 (360) 337-4992



10-2-12913-3 48020869 ORG 12-05-16



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, 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] ORDER GRANTING
KITSAP COUNTY'S MOTION FOR
CONTEMPT WITH FINDINGS
OF FACT AND CONCLUSIONS
OF LAW

This matter came on regularly for hearing before the undersigned Judge of the above-entitled
Court on Plaintiff Kitsap County's Motion for Contempt. Plaintiff appeared through counsel of

[PROPOSED] ORDER GRANTING KITSAP COUNTY'S
MOTION FOR CONTEMPT WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW -- 1

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

12/6/2016 14:07:01 0106

0107
12/6/2016 14:57:33

1 record, Christine M. Palmer and Laura F. Zippel, Deputy Prosecuting Attorneys. Defendant Kitsap
2 Rifle and Revolver Club ("KRRC") appeared through counsel of record, Brian Chenoweth and
3 Brooks Foster. The Court heard oral argument and considered the following:

- 4 1. Plaintiff Kitsap County's Motion for Contempt, the Declaration of Christine M.
5 Palmer, with exhibits, the Declaration of Laura F. Zippel, and the Declaration of
6 Jeffrey Rowe, filed in support thereof;
- 7 2. Defendant KRRC's Response and materials filed in support thereof, if any;
- 8 3. Plaintiff Kitsap County's Reply and materials filed in support thereof, if any;
- 9 4. The Findings of Fact, Conclusions of Law and Orders ("Judgment") entered February
10 9, 2012;
- 11 5. The October 28, 2014 ruling of the Court of Appeals in *Kitsap County v. Kitsap Rifle
12 & Revolver Club*, 184 Wn. App. 252, 337 P.3d 328 (2014), *review denied*, 183
13 Wn.2d 1008 (2015);
- 14 6. The Order Supplementing Judgment ("Supplemental Judgment") entered February 5,
15 2016; and
- 16 7. The records and files herein.

17 The Court hereby makes the following findings of fact, conclusions of law and orders, which
18 shall remain in effect until further order of this Court:

I. FINDINGS OF FACT

19 1. The Supplemental Judgment requires KRRC to submit to Kitsap County an
20 application for a ^{permitting} ~~site development operating permit (SDAP)~~ within 180 days of the entry of that
21 order. 180 days have passed since the entry of the Supplemental Judgment.

22 2. KRRC, having appeared through counsel at the February 5, 2016 hearing when the
23 Supplemental Judgment was entered, was aware of the Supplemental Judgment and the requirement

0108
149.73
12/6/2016

1 to apply for ~~an SDAP~~ ^{permitting} within 180 days. Although ~~KRRC appealed certain portions of the~~
2 ~~Supplemental Judgment, it did not appeal the requirement to apply for an SDAP within 180 days.~~

3 3. KRRC failed to submit an application for an SDAP within 180 days of the entry of
4 the Supplemental Judgment and has failed to submit ~~any such~~ ^{a complete} application as of the date of the entry
5 of this order.

6 4. KRRC's failure to comply with the Supplemental Judgment's mandatory injunction to
7 ~~submit an SDAP~~ ^{a permitting application} to Kitsap County within 180 days was intentional.

8 ~~5. KRRC is in contempt of court.~~

9 5. ~~6.~~ The remedial sanction of prohibiting KRRC's use of its property as a shooting range
10 until it ~~submit~~ ^{obtains} an application ~~for a site development activity permit~~ ^{permitting} will be more effective in
11 ensuring compliance with the Supplemental Judgment than the remedial sanctions of imprisonment
12 or forfeiture of funds.

13 6. ~~7.~~ KCC 19.100.165(F) specifically provides for injunctive relief to address violations of
14 Title 19. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the Supplemental
15 Judgment, therefore, constitutes an actual and substantial injury to Kitsap County and the
16 community.

17 ~~8. Kitsap County's counsel has expended over 7.8 attorney hours in preparation of~~
18 ~~Kitsap County's Motion for Contempt. The rate of \$250.00 per hour for the services of deputy~~
19 ~~prosecuting attorneys is a reasonable hourly rate for attorney time.~~

20 **II. CONCLUSIONS OF LAW**

21 1. An injunction prohibiting KRRC from operating a shooting facility until it ~~submit~~ ^{obtains} an
22 application for ~~an SDAP~~ ^{permitting} is an appropriate remedial sanction for KRRC's contempt of court. Such an
23

0109
14973
12/6/2016

1 injunction is designed to ensure compliance with the Supplemental Judgment pursuant to RCW
2 7.21.030(2)(c) and will be more effective in ensuring compliance than a remedial sanction of
3 imprisonment or forfeiture of funds.

4 2. Kitsap County has a clear and equitable right to seek enforcement of the
5 Supplemental Judgment which sets forth the cure for KRRC's violations of Kitsap County Code
6 Titles 12 and 19.

7 3. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the
8 Supplemental Judgment invades Kitsap County's right to compliance with Titles 12 and 19 and
9 Kitsap County's right to compliance with the Supplemental Judgment. .

10 4. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the
11 Supplemental Judgment constitutes an actual and substantial injury to Kitsap County and the
12 community pursuant to KCC 19.100.165(F) and *King County ex rel. Sowers v. Chisman*, 33 Wn.

13 App. 809, 818-19, 658 P.2d 1256 (1983). 5. KRRC is in contempt of court.

14 Based upon the foregoing findings of fact and conclusions of law, effective immediately, the
15 Court hereby orders as follows:

16 **III. ORDER**

17 1. Plaintiff Kitsap County's Motion for Contempt is GRANTED;

18 2. Defendant KRRC is enjoined from operating a shooting facility until such time that
19 KRRC ~~submits a complete application to Kitsap County for a site development activity permit~~ ^{obtains permitting}
20 ~~(SDAP)~~ in compliance with KCC Titles 12 and 19;

21 3. Plaintiff is authorized to enforce the cessation of shooting operations at Defendant's
22 shooting facility;
23

24 [PROPOSED] ORDER GRANTING KITSAP COUNTY'S
MOTION FOR CONTEMPT WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW -- 4

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

make all reasonable efforts to

4. KRRC shall prevent any and all persons and entities from discharging a firearm upon the Property or at the shooting facility thereupon; including posting this order at the property and making it available on its website.

5. The injunction will not be lifted until this Court so orders. When Defendant believes has obtained ~~SDAP~~ permitting it has submitted a complete application in good faith, Defendant shall move for an order lifting the injunction. Defendant bears the burden of establishing that it has, in good faith, submitted a complete application.

6. After Defendant files a motion to lift the injunction, Kitsap County shall then have an opportunity to respond to Defendant's motion to present evidence and argument before the Court as to whether the injunction should be lifted, shall continue, or shall be modified based upon the extent of Defendant's good faith efforts.

7. The lifting of this injunction will not affect any other injunctions, limitations, orders, or regulations that may be in place and which govern KRRC's use of its property or the operation of a shooting facility by KRRC.

8. To enforce compliance with this Order and based upon any reported violations of the same, the Department of Community Development ("DCD") may contact KRRC to request access to the Property in order to inspect condition or activities reported to be in violation of this Order. Upon such request, KRRC shall allow DCD to have reasonable and timely access to the Property for purposes of such inspections.

9. Defendant shall provide Kitsap County and the Court the names and 24-hour contact information for two KRRC officers who shall be points of contact for any request to access the Property to verify compliance with this Order.

0110
14973
12/6/2016

12/6/2016 14973 0111

10. If Defendant fails to comply with these orders, Plaintiff may obtain further relief upon further motion to this Court.

11. This Court retains jurisdiction to enforce this order by all lawful means including imposition of contempt sanctions ~~and fines or the issuance of a warrant of abatement.~~

~~12. Plaintiff shall pay Kitsap County \$1,950 in attorney fees by September 30, 2016.~~

DONE IN OPEN COURT this 2 day of December, 2016.

Susan K. Serko
HON. SUSAN K. SERKO, JUDGE
PIERCE COUNTY SUPERIOR COURT

JMS

Presented by:

Christine M. Palmer
CHRISTINE M. PALMER, WSBA No. 42560
LAURA F. ZIPPEL, WSBA No. 47978
Deputy Prosecuting Attorneys
Kitsap County Prosecutor's Office
Attorneys for Plaintiff Kitsap County

FILED
DEPT. 14
IN OPEN COURT
DEC 02 2016
Pierce County Clerk
By: *[Signature]*
DEPUTY

APPROVED FOR ENTRY: *AS TO FORM:*

B
BRIAN D. CHENOWETH, WSBA No. 25877
BROOKS FOSTER, Appearing *pro hac vice*
Attorneys for Defendant Kitsap Rifle and
Revolver Club

12. Notwithstanding any other provision of this order, it does not prohibit the Club from engaging in or allowing, at its property, lawful activities other than the discharge of any firearm.

JMS

June 04 2019 4:27 PM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Setko
NO. 10-2-12913-3
Hearing Date: June 7
Hearing Time: 9:00 a.m.

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

**KITSAP RIFLE & REVOLVER
CLUB'S RESPONSE TO
KITSAP COUNTY'S MOTION
TO ENTER REVISED ORDER
GRANTING KITSAP
COUNTY'S MOTION FOR
CONTEMPT ON REMAND**

I. INTRODUCTION

On May 17, 2019, Plaintiff Kitsap County (the "County") filed a *Motion to Enter Revised Order Granting Kitsap County's Motion for Contempt on Remand and Revised Order Supplementing Judgment on Remand* ("Motion"). The motion proposed two different orders—the first to amend the Court's December 2016 contempt order, the second to amend the Court's February 2016 supplemental judgment.

1 With respect to the proposed order amending the contempt order, the parties have
2 conferred and have reached agreement on all but one aspect of that order. This response
3 addresses that disagreement and asks the Court to resolve it in favor of Defendant Kitsap
4 Rifle & Revolver Club (the “Club” or “KRRC”). For the second order, which will amend the
5 supplemental judgment, the parties have agreed to postpone briefing and a hearing on that
6 order to allow additional time to confer and try to reach agreement.

7 This response is supported by the record on file with the Court and by the following
8 declarations filed herewith:

9 (1) *Declaration of Brooks M. Foster (June 4, 2019)* (“Foster Decl.”) with
10 attached Exhibits 1 through 4;

11 (2) *Declaration of William Marshall Denny II (June 4, 2019)* (“Denny Decl.”)
12 with attached Exhibit 5; and

13 (3) *Declaration of Marcus Carter (June 4, 2019)* (“Carter Decl.”).

14 The Club also files with this response a proposed order amending the Court’s *Order*
15 *Granting Kitsap County’s Motion for Contempt with Findings of Fact and Conclusions of*
16 *Law* (filed Dec. 2, 2016) (the “Contempt Order”) (on file with the Court). The parties have
17 agreed on all but one aspect of the Club’s proposed order amending the Contempt Order.

18 The parties’ disagreement that they intend to present to the Court at the June 7
19 hearing relates to the purge condition in the Contempt Order, which the Court of Appeals
20 vacated and instructed the trial court to refashion. Foster Decl. ¶ 2, Ex. 1 (*Kitsap County v.*
21 *Kitsap Rifle and Revolver Club*, No. 50011-6-II, at 2 (Wash. Ct. App. Jan. 30, 2018)
22 (unpublished opinion) (hereafter, “Contempt Opinion”) (instructing parties and trial court “to
23 address the imposition of a proper purge condition”).

24 The parties agree the purge condition should require the Club to submit a complete
25 site development activity permit (SDAP) application to cure the violations found to exist in
26 the original trial judgment. The parties disagree as to: (a) whether the purge condition should

1 specify the type of SDAP application the Club must submit, as the Club contends, or leave
2 that up to the County’s discretion, as the County contends; and (b) whether the Club must
3 submit an “SDAP-Grading 2” application, as the Club contends, or an “SDAP Commercial”
4 application, as the County contends. For the reasons discussed below, the Club respectfully
5 requests that the Court decide these issues in the Club’s favor and enter the Club’s
6 *[Proposed] Order Amending December 2, 2016 Contempt Order* (“Club’s Proposed Order”).

7 II. RELEVANT FACTS

8 A. Procedural History

9 Following a bench trial in late 2011, the Court entered its *Findings of Fact,*
10 *Conclusions of Law and Orders* on February 9, 2012 (the “Original Trial Judgment”). One
11 of the many orders in the Original Trial Judgment was an injunction that prohibited the Club
12 from using “the Property as a shooting range until violations of Title 17 Kitsap County Code
13 are resolved by application for and issuance of a conditional use permit.” Judgment at 34.
14 The Club appealed, and the Court of Appeals vacated that injunction. *Kitsap County v.*
15 *Kitsap Rifle and Revolver Club*, 184 Wash. App. 252, 262, 337 P.3d 328 (2014). The Court
16 of Appeals remanded “for the trial court to fashion an appropriate remedy for the Club’s
17 unlawful expansion of its nonconforming use and for the permitting violations.” *Id.* That
18 decision resulted in the first remand proceeding in this lawsuit.

19 At the conclusion of the first remand, on February 5, 2016, the Court entered an
20 *Order Supplementing Judgment on Remand* (“Supplemental Judgment”). The Supplemental
21 Judgment contained an injunction requiring the Club “to apply for and obtain site
22 development activity permitting to cure violations of KCC Titles 12 and 19 found to exist on
23 the Property in the original Judgment.” Supplemental Judgment at 4. This “Permitting
24 Order” required the Club to submit an application for permitting to Kitsap County “within
25 180 days of the entry of this final order.” *Id.*

1 In August 2016 the County filed a motion to hold the Club in contempt of the Court’s
2 Permitting Order because the Club had “not submitted an application for its SDAP” within
3 180 days of entry of the Permitting Order. *Kitsap County’s Motion for Contempt* at 5 (filed
4 Aug. 18, 2016) (on file with the Court). The Court granted the County’s motion and entered
5 the Contempt Order on December 2, 2016. The Contempt Order enjoined the Club “from
6 operating a shooting facility until such time that [the Club] obtains permitting in compliance
7 with KCC Titles 12 and 19.” Contempt Order at 4. It provided a “purge condition” that
8 allowed the Club to move to lift the Contempt Order when it had “obtained permitting”. *Id.*

9 The Club appealed the Contempt Order. The Court of Appeals affirmed the trial
10 court’s finding that the Club had failed to comply with the Permitting Order, but the Court of
11 Appeals vacated the purge condition as impermissibly punitive “because actually obtaining a
12 permit is beyond the Club’s control.” Contempt Op. at 2. The Court of Appeals remanded
13 “for the trial court to address the imposition of a proper purge condition.” *Id.* The Court of
14 Appeals clarified that the Club retained the right to produce “new or additional evidence of
15 an inability to comply [with the Permitting Order] in a future proceeding” and that “the Club
16 is free to argue in a future proceeding that closing the Club’s entire facility as a sanction no
17 longer is coercive but has become punitive.” *Id.* at 22.

18 On May 17, 2019, the County filed and served its Motion, which included its
19 proposed order amending the Contempt Order, entitled [*Proposed*] *Revised Order Granting*
20 *Kitsap County’s Motion for Contempt with Findings of Fact and Conclusions of Law* (the
21 “County’s Proposed Order”). Foster Decl. ¶ 3.

22 **B. The Parties Have Reached Agreement on All But One Aspect of Their Proposed**
23 **Order Amending the Contempt Order.**

24 After the County filed its Motion, counsel for the parties exchanged numerous emails
25 and held a lengthy phone conference to try to reach agreement on the form of order amending
26 the Contempt Order. Foster Decl. ¶ 4. This effort was largely successful. On June 4, 2019,

1 the County confirmed that the form of order proposed by the Club was agreeable except that
2 the County wanted to omit the words “Grading 2” from a single line of the Club’s proposed
3 order. *Id.*

4 The words at issue, “Grading 2,” appear in the following provision of the Club’s
5 proposed order amending the Contempt Order:

6 “2. Defendant KRRC is enjoined from operating a shooting
7 facility until such time that: (a) KRRC submits a complete site
8 development activity permit (“SDAP”) **Grading 2** application to
9 Kitsap County for permitting to cure violations of KCC Titles 12
and 19 found to exist on the Property in the original Judgment
(hereafter ‘Purge Condition’)”

10 Club’s Proposed Order at 2:15–19 (bold added). The Club intends the words “Grading 2” to
11 clarify the type of complete SDAP application the Club must submit to purge the contempt
12 sanction. These words also clarify what the Club must prove it lacks the ability to do if the
13 Club seeks to terminate the contempt sanction on that ground.

14 The Club’s counsel summarized the SDAP issue in an email to the County as follows:

15 “[T]he Club’s position on the type of SDAP has two
16 components. First, the Club’s position is that the purge
17 condition should specify what type of application [the
18 Club] should file to begin curing the site development
19 violations found to exist in the original trial
judgment. Second, the Club’s position is that the type of
application should be an SDAP-Grading 2.

20 “My understanding is that the County’s position is that the
21 purge condition should not specify what type of permitting
22 application the Club should be required to file. Meanwhile,
23 the [Kitsap County Department of Community
24 Development (DCD)] has communicated that the Club
must apply for an SDAP Commercial in order to begin the
permitting process, and the County agrees with that.”

25 Foster Decl. ¶ 5, Ex. 2. The County promptly confirmed that was a “correct summary of the
26 County’s position.” *Id.*

1 **C. The County’s Permitting Pamphlet Says SDAP-Grading 2 Applications Are For**
2 **Projects Involving Movement of Between 500 and 5,000 Cubic Yards of Dirt.**

3 The County publishes a “Title 21 Permit Fee Info” pamphlet that lists the various
4 types of permits processed by the Department of Community Development (DCD) and
5 provides information about permit fees. Foster Decl. ¶ 6, Ex. 3. This pamphlet also
6 describes certain criteria that determine the type of permit application required for a
7 particular project. It describes an “SDAP-GRADING 2” permit as a “Site Development
8 Activity Permit – Grading ≥ 500 CY and < 5000 CY.” Ex. 3 at 6. The Club understands this
9 to mean an SDAP Grading 2 permit is available for any project involving movement of
10 between 500 and 5,000 cubic yards of dirt.

11 **D. The Original Trial Decision Did Not Find Movement of More than 5,000 Cubic**
12 **Yards of Dirt.**

13 As noted above, the Permitting Order requires the Club “to apply for and obtain site
14 development activity permitting to cure violations of KCC Titles 12 and 19 *found to exist on*
15 *the Property in the original Judgment.*” Supplemental Judgment at 4 (italics added). The
16 Original Trial Judgment contains several findings of earth movement involving more than
17 150 cubic yards. *E.g.*, Original Trial Judgment at FOF ¶¶ 33–35, 54, 55, 62, 64. These
18 findings, however, do not add up to more than 5,000 cubic yards. *Id.* There is no finding
19 that any of the site development projects found to have occurred at the Club involved more
20 than 5,000 cubic yards of earth movement. *Id.* There is also no finding that the aggregate
21 amount of dirt moved during all site development projects found to have occurred exceeded
22 5,000 cubic yards. *Id.*

23 **E. The Violations Described in the Original Trial Judgment Involved Movement of**
24 **Less Than an Aggregate Total of 5,000 Cubic Yards of Earth.**

25 A large dump truck holds about 10 cubic yards of earth. Carter Decl. ¶ 3. 5,000
26 cubic yards would be enough to fill a large dump truck 500 times (i.e., it is a huge amount of

1 dirt). *Id.* The projects found to have occurred in the Original Trial Judgment involved
2 movement of less than an aggregate total of 5,000 cubic yards of earth. *Id.* This estimate is
3 based on the personal observations of the Club’s Executive Officer, Marcus Carter, who
4 personally witnessed each of the site development projects found to have occurred in the
5 Original Trial Judgment. *Id.* Mr. Carter has substantial experience with earth movement
6 projects, both at the Club and at other properties where his work has required him to estimate
7 the volume of earth being moved. *Id.*

8 **F. When the Club Submitted an SDAP-Grading 2 Application, the County**
9 **Responded That an SDAP Commercial Application Was Required.**

10 On January 8, 2019, the Club used the DCD’s online portal to submit an SDAP-
11 Grading 2 application to the County. Denny Decl. ¶ 2. The Club did so based on its reading
12 of the Original Trial Judgment and the other facts discussed above. *Id.* The County
13 responded on January 25, 2019, with an email communicating that it was cancelling the
14 Club’s application because it believed the Club was required to apply for an SDAP
15 Commercial. Denny Decl. ¶ 3, Ex. 5. The County’s email did not explain the basis for that
16 position. *Id.*

17 **G. The Club Sought an Explanation for the County’s Position That an SDAP**
18 **Commercial Application Is Required, But the County Did Not Provide One.**

19 On May 31, 2019, the Club emailed the County attorneys regarding the SDAP issue.
20 The Club explained the basis for its position that an SDAP-Grading 2 application should be
21 sufficient to begin the permitting process to cure the site development violations found to
22 exist in the Original Trial Judgment. Foster Decl. ¶ 7. The Club asked the County to
23 disclose any factors or legal authorities that the County was relying on for its position that the
24 Club had to apply for an SDAP Commercial or something other than an SDAP Grading 2.
25 *Id.* The County attorney’s most recent response to this request indicated she was still waiting
26 “to hear back from staff in more detail about the SDAP requirements.” *Id.*, Ex. 2.

1 **H. The County Previously Took the Position That an SDAP Grading 3 Application**
2 **Was Required.**

3 The County has not always taken the position that an SDAP Commercial application
4 is required to cure the violations found to exist in the Original Trial Judgment. On
5 November 28, 2016, the Club attempted to comply with the Permitting Order by delivering
6 an SDAP-Grading 1 application to the County. Carter Decl. ¶ 2. On November 30, 2016,
7 the County’s Director of the Department of Community Development, Jeffrey Rowe, signed
8 a declaration attesting that the Club’s application was deficient because the County required
9 it to submit an SDAP-Grading 3 application. Foster Decl. ¶ 8, Ex. 4. Mr. Rowe testified an
10 SDAP Grading 3 application was required because the Club had moved more “than 5,000
11 cubic yards of material.” *Id.* Mr. Rowe and the County, however, provided no foundation
12 for this opinion, which does not appear in any findings or conclusions in the Original Trial
13 Judgment and which conflicts with the well-founded observations of the Club’s Executive
14 Officer.

15 The County has never explained why it now concludes an SDAP Commercial
16 application is required when it formerly concluded an SDAP Grading 3 application was
17 required.

18 **III. ARGUMENT**

19 **A. The Purge Condition Should Specify the Type of SDAP Application the Club**
20 **Must Submit So That the County Does Not Impermissibly Retain Discretion and**
21 **Control Over That Decision.**

22 The Court of Appeals vacated the purge condition in the original Contempt Order as
23 impermissibly punitive because it required the Club to “*obtain[]* an SDAP.” Contempt Op.
24 at 21 (italics in original) (“Because the Club does not have the ability to satisfy the purge
25 condition without relying on the County’s actions, the contempt order is punitive.”).
26

1 Accordingly, the refashioned purge condition must require an action by the Club and
2 satisfaction of the purge condition may not depend on the County's actions and decisions.

3 The facts above show that the County has already changed its mind at least once
4 about the type of SDAP application required to cure the site development violations found in
5 the Original Trial Judgment. After the County changed its position on that issue, it
6 unilaterally cancelled a permitting application submitted by the Club because the County
7 disagreed with the type of application submitted. Allowing the County to retain that level of
8 discretion and unilateral control over whether the Club has satisfied the purge condition
9 would be contrary to the Contempt Opinion of the Court of Appeals. The purge condition
10 should specify the type of application the Club must submit so that the County does not
11 retain discretion and control over that Decision.

12 This conclusion is not altered by the fact that the underlying Permitting Order does
13 not specify the type of permitting the Club must apply for and obtain to cure the site
14 development violations found in the Original Judgment. That order set the ultimate goal by
15 which the Club's compliance would be judged. It did not create a purge condition that the
16 Club had to satisfy in order to be free of a coercive sanction for contempt. The refashioned
17 purge condition will be different from the Permitting Order. It will serve a different purpose,
18 and it is subject to different legal standards and rules.

19 The Court of Appeals' Contempt Opinion provides the correct rule for the fashioning
20 of the purge condition during this remand proceeding. The Club's request for the purge
21 condition to specify the type of permitting application the Club must submit is consistent
22 with and supported by the Contempt Opinion. Including that detail in the purge condition
23 will also resolve an ongoing dispute between the parties that dates back to at least 2016.

24 ///

25 ///

26 ///

1 **B. The Correct Type of SDAP Application Required to Cure the Site Development**
2 **Violations Found in the Original Judgment is an SDAP Grading 2.**

3 The facts above describe the basis for the Club’s position that the type of SDAP
4 application required by the purge condition should be an SDAP-Grading 2. The Club shared
5 those facts with the County and solicited an explanation for the County’s position that an
6 SDAP Commercial is required to cure the violations found in the Original Trial Judgment,
7 but the County has not provided that explanation.

8 To summarize the Club’s reasons, the County’s permitting pamphlet identifies an
9 SDAP-Grading 2 permit as being for a project involving movement of between 500 and
10 5,000 cubic yards of dirt. The Original Trial Judgment found a number of specific violations,
11 but did not find aggregate earth movement in excess of 5,000 cubic yards, which is
12 equivalent to 500 large dump truck loads. The Club’s Executive Offer, who observed the
13 work, testifies the aggregate earth movement was less than 5,000 cubic yards. The Club
14 therefore concludes an SDAP-Grading 2 application is the appropriate way to begin the
15 permitting process to cure the violations found to exist in the Original Trial Judgment. The
16 purge condition in the amended contempt order should require the Club to submit a complete
17 SDAP-Grading 2 application.

18 As stated in the Contempt Opinion, “if the purge condition involves something other
19 than complying with the original order that the contemnor violated, the condition must be
20 ‘reasonably related to the cause or nature’ of the contempt.” Contempt Op. at 20 (citing
21 *Rapid Settlements*, 189 Wn. App. 614; *In re Interest of M.B.*, 101 Wn. App. 425, 3 P.3d 780
22 (2000)). Here, the cause or nature of the contempt was the Club’s failure to comply with the
23 Permitting Order in the Supplemental Judgment. The Permitting Order requires the Club “to
24 apply for and obtain site development activity permitting to cure violations of KCC Titles 12
25 and 19 *found to exist on the Property in the original Judgment.*” Supplemental Judgment at
26 4 (italics added). Because the Original Trial Judgment did not find aggregate earth

1 movement in excess of 5,000 cubic yards, the County's attempt to require an SDAP
2 Commercial application is not reasonably related to the cause or nature of the contempt.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Club respectfully asks the Court to enter the Club's
5 *[Proposed] Order Amending December 2, 2016 Contempt Order.*

6 DATED: June 4, 2019

7 CHENOWETH LAW GROUP, PC

8 */s Brooks M. Foster*

9 Brian D. Chenoweth, WSBA No. 25877

10 Brooks M. Foster, OR Bar No. 042873

11 (appearing *pro hac vice*)

12 510 SW Fifth Ave., Fifth Floor

13 Portland, OR 97204

14 Phone: (503) 221-7958

15 Email: brianc@northwestlaw.com

16 bfoster@northwestlaw.com

17 *Attorneys for Defendant Kitsap Rifle and*
18 *Revolver Club*

1 **DECLARATION OF SERVICE**

2 I, Ethan D. Jones, declare, under penalty of perjury under the laws of the State of
3 Washington, that I am a resident of the State of Oregon, over the age of eighteen years, not a
4 party to or interested in the above-entitled action, and competent to be a witness herein.

5 On June 4, 2019, I caused to be served a copy of the within *Kitsap Rifle & Revolver*
6 *Club’s Response to Kitsap County’s Motion to Enter Revised Order Granting Kitsap*
7 *County’s Motion for Contempt on Remand* via email, pursuant to an e-service agreement
8 between the parties, to the following:

9 Laura F. Zippel
10 John C. Purves
11 Kitsap County Prosecutor’s Office
12 Civil Division
13 614 Division St., MS-35A
14 Port Orchard, WA 98366
15 Email: lzippel@co.kitsap.wa.us
16 jcpurves@co.kitsap.wa.us

17 DATED: June 4, 2019

18 CHENOWETH LAW GROUP, PC

19 /s/Ethan Jones
20 Ethan Jones, Paralegal
21 ejones@northwestlaw.com

June 04 2019 4:27 PM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Setko
Department 14
NO: 10-2-12913-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

**DECLARATION OF
BROOKS M. FOSTER
(JUNE 4, 2019)**

I, Brooks M. Foster, declare under penalty of perjury under the laws of the State of
Washington that the following is true and correct:

1 1. Brian D. Chenoweth and I, of Chenoweth Law Group, PC (“CLG”), represent
2 Defendant Kitsap Rifle and Revolver Club (the “Club”) in this case. I am an attorney at CLG
3 and make this declaration based on my personal knowledge.

4 2. Attached as Exhibit 1 is a true copy of the Court of Appeals’ unpublished
5 opinion, *Kitsap County v. Kitsap Rifle and Revolver Club*, No. 50011-6-II (Wash. Ct. App.
6 Jan. 30, 2018).

7 3. On May 17, 2019, I was served with a copy of the County’s filed Motion,
8 which included its proposed order amending the Contempt Order, entitled *[Proposed]*
9 *Revised Order Granting Kitsap County’s Motion for Contempt with Findings of Fact and*
10 *Conclusions of Law* (the “County’s Proposed Order”).

11 4. After the County filed its Motion, counsel for the parties exchanged numerous
12 emails and held a lengthy phone conference to try to reach agreement on the form of order
13 amending the Contempt Order. This effort was largely successful. On June 4, 2019, the
14 County confirmed that the form of order proposed by the Club was agreeable except that the
15 County wanted to omit the words “Grading 2” from a single line of the Club’s proposed
16 order.
17
18
19

20 5. Attached as Exhibit 2 is a true copy of a June 4, 2019 email I delivered to the
21 County’s counsel.

22 6. The County publishes a “Title 21 Permit Fee Info” pamphlet that lists the
23 various types of permits processed by the Department of Community Development (DCD)
24 and provides information about permit fees. Attached as Exhibit 3 is a true copy of the Title
25 21 Permit Fee Info pamphlet that I obtained from the DCD’s website.
26

Ethan Jones

From: Laura Zippel <lzippel@co.kitsap.wa.us>
Sent: Tuesday, June 04, 2019 11:06 AM
To: Brooks Foster; John C. Purves
Cc: Bradley T. Crittenden; Ethan Jones
Subject: RE: KRRC / Kitsap County

That is a correct summary of the County's position.

-Laura

From: Brooks Foster <bfooster@northwestlaw.com>
Sent: Tuesday, June 4, 2019 11:01 AM
To: Laura Zippel <lzippel@co.kitsap.wa.us>; John C. Purves <jcpurves@co.kitsap.wa.us>
Cc: Bradley T. Crittenden <bcrittenden@northwestlaw.com>; Ethan Jones <ejones@northwestlaw.com>
Subject: RE: KRRC / Kitsap County

Thank you for confirming that. The Club's response to the motion will reflect the County's position.

I want to emphasize that the Club's position on the type of SDAP has two components. First, the Club's position is that the purge condition should specify what type of application it should file to begin curing the site development violations found to exist in the original trial judgment. Second, the Club's position is that the type of application should be an SDAP-Grading 2.

My understanding is that the County's position is that the purge condition should not specify what type of permitting application the Club should be required to file. Meanwhile, the DCD has communicated that the Club must apply for an SDAP Commercial in order to begin the permitting process, and the County agrees with that.

If you wish to clarify the County's position or if I have misunderstood any aspect of the County's perspective on these issues, please let me know.

Brooks M. Foster

CHENOWETH / LAW GROUP PC

CHENOWETH LAW GROUP PC
510 SW FIFTH AVENUE / FOURTH FLOOR / PORTLAND OREGON 97204
T [503.221.7958](tel:503.221.7958) / F [503.221.2182](tel:503.221.2182) / NORTHWESTLAW.COM / BIO

INFORMATION CONTAINED IN THIS COMMUNICATION IS PRIVILEGED AND/OR CONFIDENTIAL, AND INTENDED ONLY FOR THE INDIVIDUAL/ENTITY NAMED ABOVE. IF THE READER OF THIS NOTICE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY PHONE (503) 221-7958 OR EMAIL, AND DELETE IT FROM YOUR COMPUTER. THANK YOU.

From: Laura Zippel <lzippel@co.kitsap.wa.us>
Sent: Tuesday, June 04, 2019 10:53 AM
To: Brooks Foster <bfooster@northwestlaw.com>; John C. Purves <jcpurves@co.kitsap.wa.us>
Cc: Bradley T. Crittenden <bcrittenden@northwestlaw.com>; Ethan Jones <ejones@northwestlaw.com>
Subject: RE: KRRC / Kitsap County

Thank you Brooks. We are in agreement with the proposed order except for the specification that the Club submit an SDAP 2 grading permit (page 2, between lines 18-19). Once again, as soon as we hear back from staff in more detail about the SDAP requirements we will send that explanation to you.

-Laura

From: Brooks Foster <bfoster@northwestlaw.com>
Sent: Monday, June 3, 2019 10:34 PM
To: Laura Zippel <lzippe@co.kitsap.wa.us>; John C. Purves <jcpurves@co.kitsap.wa.us>
Cc: Bradley T. Crittenden <bcrittenden@northwestlaw.com>; Ethan Jones <ejones@northwestlaw.com>
Subject: KRRC / Kitsap County

Laura and John,

Enclosed is an updated redline of the proposed order amending contempt order. The Club will consent to entry of the order in the attached form with all tracked changes accepted.

To create the attached, I first accepted all changes to the draft you sent me at 5 pm on Friday, May 31, 2019, and deleted all sidebar comments. Then, with track changes on, I entered the following additional edits:

- (a) deleted text in the clause regarding what it means to submit a "complete" application (lines 2 and 3 of page 3), which deletion is intended to address your sidebar comment on that issue;
- (b) replaced the words "one or more" with "a" in the text between lines 16 and 17 of page 2, which replacement is intended to address your sidebar comment on that issue;
- (c) added the words "Grading 2" in the text between lines 16 and 17 on page 2.

Edits (a) and (b) are intended to resolve the specific comments you provided. Edit (c) expresses the Club's position that the Purge Condition should specify the type of SDAP application the Club must file and the correct type of application is an SDAP Grading 2. The basis for that position is set forth in my email to you of 1:42 pm on Friday, May 31, 2019.

The other redlines shown in the attached are matters of form, as follows:

- (1) entered John Purves' WSB number in the signature block where it had been omitted;
- (2) entered my OSB number in the signature block where it had been omitted; and
- (3) deleted the information in the footer identifying your office as the author of the document.

Please let me know whether or to what extent the County will consent to the attached form of order. The Club intends to file its response to the motion at the end of the day tomorrow. Thank you for your attention to this matter.

Brooks M. Foster

CHENOWETH / LAW GROUP PC

CHENOWETH LAW GROUP PC
510 SW FIFTH AVENUE / FOURTH FLOOR / PORTLAND OREGON 97204
T [503.221.7958](tel:503.221.7958) / F [503.221.2182](tel:503.221.2182) / NORTHWESTLAW.COM / [BIO](#)

INFORMATION CONTAINED IN THIS COMMUNICATION IS PRIVILEGED AND/OR CONFIDENTIAL, AND INTENDED ONLY FOR THE INDIVIDUAL/ENTITY NAMED ABOVE. IF THE READER OF THIS NOTICE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY PHONE (503) 221-7958 OR EMAIL, AND DELETE IT FROM YOUR COMPUTER. THANK YOU.

INFORMATION CONTAINED IN THIS COMMUNICATION IS PRIVILEGED AND/OR CONFIDENTIAL, INTENDED ONLY FOR THE INDIVIDUAL/ENTITY NAMED ABOVE. IF READER OF THIS NOTICE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY



SUPPORTING DOCUMENT TITLE 21 PERMIT FEE INFO

Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
ADMIN CUP Administrative Conditional Use Permit	\$ 90 \$ 3,510 \$ 130 \$ 200 \$ 35.10 \$ 99	DCD Base Fee APP Fee Dep HD-1008 Land Use Other PW Concurrency W/Out Bldg Technology Fee Recording Fee	DCD Base Fee Application Fee Deposit (27 Hours) Health District PW Concurrency Technology Fee Recording Fee
Fees due at submittal	\$ 4,064.10	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
ADMIN CUP AMEND Administrative Conditional Use Permit Amendment	\$ 90 \$ 1,560 \$ 130 \$ 15.60 \$99	DCD Base Fee APP Fee Dep HD-1008 Land Use Other Technology Fee Recording Fee	DCD Base Fee Application Fee Deposit (12 Hours) Health District Technology Fee Recording Fee
Fees due at submittal	\$ 1,894.60	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
ADMIN VARIANCE Administrative Variance	\$ 90 \$ 1,560 \$ 15.60	DCD Base Fee Flat Fee Zone Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 1,665.60		
BSP Binding Site Plan	\$ 90 \$ 2,990 \$ 130 \$ 200 \$ 29.90	DCD Base Fee APP Fee Deposit HD-1008 Land Use Other PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Application Fee Deposit (23 Hours) Health District PW Concurrency (see note) Technology Fee
Fees due at submittal	\$ 3,439.90	<i>Notes: PW concurrency only charged if no previous land use. Hours over Application Fee Deposit will be billed monthly.</i>	
BSP ALTER Binding Site Plan Alteration	\$ 90 \$2,600 \$ 130 \$ 26	DCD Base Fee APP Fee Dep HD-1008 Land Use Other Technology Fee	DCD Base Fee Application Fee Deposit (20 Hours) Health District Technology Fee
Fees due at submittal	\$ 2,846.00	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
CABR >25% <50% Buffer Reduction	\$ 90 \$ 2,210 \$ 22.10	DCD Base Fee App Fee Dep Technology Fee	DCD Base Fee Application Fee Deposit (17 Hours) Technology Fee
Fees due at submittal	\$ 2,322.10	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
CONDITIONAL WAIVER FROM VIEW BLOCKAGE	\$ 90 \$ 1,560 \$ 15.60	DCD Base Fee Flat Fee Shoreline Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 1,665.60		

Kitsap County Department of Community Development
614 Division Street, MS-36
Port Orchard, WA 98366-4682
www.kitsapgov.com/dcd/
Revision Date 6/7/2018



Phone: (360) 337-5777
Form Number: 1206D
Email: Kitsap1@co.kitsap.wa.us
Page 1 of 9

Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
CUP Conditional Use Permit	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 7,020	APP Fee Dep	Application Fee Deposit (54 Hours)
	\$ 130	HD-1008 Land Use Other	Health District
	\$ 200	PW Concurrency W/Out Bldg	PW Concurrency
	\$ 800	HE Decision Fee	Hearing Examiner Fee
	\$ 70.20	Technology Fee	Technology Fee
	\$ 99	Recording Fee	Recording Fee
Fees due at submittal	\$ 8,409.20	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
CUP-ADU Conditional Use Permit – Additional Dwelling Unit	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 3,640	APP Fee Dep	Application Fee Deposit (28 Hours)
	\$ 130	HD-1008 Land Use Other	Health District
	\$ 200	PW Concurrency W/Out Bldg	PW Concurrency
	\$ 800	HE Decision Fee	Hearing Examiner Fee
	\$ 36.40	Technology Fee	Technology Fee
	\$ 99	Recording Fee	Recording Fee
Fees due at submittal	\$ 4,995.40	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
CUP REV MAJOR Conditional Use Permit Revision - Major	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 2,600	APP Fee Dep	Application Fee Deposit (20 Hours)
	\$ 130	HD-1008 Land Use Other	Health District
	\$ 200	PW Concurrency W/Out Bldg	PW Concurrency (see note)
	\$ 800	HE Decision Fee	Hearing Examiner Fee
	\$ 26.00	Technology Fee	Technology Fee
	\$ 99	Recording Fee	Recording Fee
Fees due at submittal	\$ 3,945.00	<i>Notes: PW concurrency only charged if change to previous land use. Hours over Application Fee Deposit will be billed monthly.</i>	
CUP REV MINOR Conditional Use Permit Revision - Minor	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 1,040	APP Fee Dep	Application Fee Deposit (8 Hours)
	\$ 130	HD-1008 Land Use Other	Health District (see note)
	\$ 200	PW Concurrency W/Out Bldg	PW Concurrency (see note)
	\$ 10.40	Technology Fee	Technology Fee
	\$ 99	Recording Fee	Recording Fee
Fees due at submittal	\$ 1,569.40	<i>Notes: PW concurrency only charged if change to previous land use. Hours over Application Fee Deposit will be billed monthly.</i>	
CVAR Critical Area Variance	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 5,200	APP Fee Dep	Application Fee Deposit (40 Hours)
	\$ 130	HD-1008 Land Use Other	Health District
	\$ 800	HE Decision Fee	Hearing Examiner Fee
	\$ 52.00	Technology Fee	Technology Fee
Fees due at submittal	\$ 6,272.00	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
DEV AGRMT Development Agreement	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 1,950	App Fee Dep	Application Fee Deposit (15 Hours)
	\$ 19.50	Technology Fee	Technology Fee
Fees due at submittal	\$ 2,059.50	<i>Note: Hours over Application Fee Deposit will be billed monthly</i>	
DIRECTOR'S VARIANCE	\$ 90	DCD Base Fee	DCD Base Fee
	\$ 1,430	Flat Fee Zone	Permit Fee
	\$ 14.30	Technology Fee	Technology Fee
Fees due at submittal	\$ 1,534.30		



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
FLOOD PLAIN VARIANCE	\$ 90 \$ 650 \$ 6.50	DCD Base Fee Flat Fee Shoreline Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 746.50		
F LL Final Large Lot Plat	\$ 90 \$ 1,430 \$ 130 \$14.30	DCD Base Fee App Fee Dep HD-1007 LL Subdivision Technology Fee	DCD Base Fee Application Fee Deposit (11 Hours) Health District Technology Fee
Fees due at submittal	\$ 1,664.30	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
F LL ALTER Final Large Lot Plat Alteration	\$ 90 \$ 520 \$ 130 \$ 5.20	DCD Base Fee App Fee Dep HD-1007 LL Subdivision Technology Fee	DCD Base Fee Application Fee Deposit (4 Hours) Health District Technology Fee
Fees due at submittal	\$ 745.20	<i>Notes: Hours over Application Fee Deposit will be billed monthly.</i>	
F PLAT Final Plat Subdivision	\$ 90 \$ 2,860 \$ 28.60	DCD Base Fee App Fee Dep Technology Fee	DCD Base Fee Application Fee Deposit (22 Hours) Technology Fee
Fees due at submittal	\$ 2,978.60	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
F PLAT ALTER Final Plat Subdivision Alteration	\$ 90 \$ 2,860 \$ 130 \$ 28.60	DCD Base Fee Flat Fee Zone HD-1008 Land Use Other Technology Fee	DCD Base Fee Permit Fee Health District Technology Fee
Fees due at submittal	\$ 3,108.60		
F SP Final Short Plat Subdivision	\$ 90 \$ 1,690 \$ 16.90	DCD Base Fee App Fee Dep Technology Fee	DCD Base Fee Application Fee Deposit (14 Hours) Technology Fee
Fees due at submittal	\$ 1,796.90	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
F SP ALTER Final Short Plat Subdivision Alteration	\$ 90 \$ 1,170 \$ 130 \$ 11.70	DCD Base Fee App Fee Dep HD-1008 Land Use Other Technology Fee	DCD Base Fee Application Fee Deposit (9 Hours) Health District Technology Fee
Fees due at submittal	\$ 1,401.70	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
F BSP/LL/SP VACATION Vacate a Recorded Plat	\$ 90 \$ 1,040 \$ 130 \$ 10.40	DCD Base Fee Flat Fee Zone HD-1008 Land Use Other Technology Fee	DCD Base Fee Permit Fee Health District Technology Fee
Fees due at submittal	\$ 1,270.40		



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
F PLAT VACATION Vacate a Recorded Plat	\$ 90 \$ 1,040 \$ 130 \$ 800 \$ 10.40	DCD Base Fee Flat Fee Zone HD-1008 Land Use Other HE Fee Technology Fee	DCD Base Fee Permit Fee Health District Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 2,070.40		
HB Home Business	\$ 90 \$ 500 \$ 130 \$ 200 \$ 5.00	DCD Base Fee Flat Fee Prof Occ HD-1008 Land Use Other PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Permit Fee Health District PW Concurrency (<i>see note</i>) Technology Fee
Fees due at submittal	\$ 925.00	<i>Notes: PW Concurrency fee may not be charged. It depends on what the home business is. Add to Fees tab if needed</i>	
LEGAL LOT DET Legal Lot Determination	\$ 195	Flat Fee Plan	Permit Fee
Fees due at submittal	\$ 195.00	<i>No Technology Fee.</i>	
MOORING BUOY EXEMPTION	\$ 90 \$ 260 \$ 2.60	DCD Base Fee Flat Fee Shoreline Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 352.60		
OPEN SPACE Open Space	\$ 90 \$ 500.00 \$ 5.00	DCD Base Fee Flat Fee Misc Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 595.00		
P LL Preliminary Large Lot Subdivision	\$ 90 \$ 2,990 \$ 130 \$ 200 \$ 29.90	DCD Base Fee APP Fee Dep HD-1007 LL Subdivision PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Application Fee Deposit (23 Hours) Health District PW Concurrency Technology Fee
Fees due at submittal	\$ 3,439.90	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
P LL AMEND Preliminary Large Lot Subdivision Amendment	\$ 90 \$ 1,300 \$ 130 \$ 13.00	DCD Base Fee APP Fee Dep HD-1007 LL Subdivision Technology Fee	DCD Base Fee Application Fee Deposit (10 Hours) Health District Technology Fee
Fees due at submittal	\$ 1,533.00	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
P PLAT Preliminary Plat	\$ 90 \$ 9,880 \$ 570 \$ 190 \$ 200 \$ 800 \$ 98.80	DCD Base Fee APP Fee Dep HD-902 LU (septic) HD-901 LU (sewer) PW Concurrency W/Out Bldg HE Decision Fee Technology Fee	DCD Base Fee Application Fee Deposit (76 Hours) Health District with Septic OR Health District with Sewer PW Concurrency Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 11,638.80 OR \$11,258.80	<i>Note: Choose only one (1) Health District Fee (sewer or septic) and delete other. Hours over Application Fee Deposit will be billed monthly.</i>	



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
P PLAT AMEND MAJOR Preliminary Plat Amendment Major	\$ 90 \$ 2,600 \$ 570 \$ 130 \$ 200 \$ 800 \$ 26.00	DCD Base Fee APP Fee Dep HD-902 LU (septic) , OR HD-1008 LU (sewer) PW Concurrency W/Out Bldg HE Decision Fee Technology Fee	DCD Base Fee Application Fee Deposit (20 Hours) Health District with Septic, OR Health District with Sewer (<i>note</i>) PW Concurrency (<i>see note</i>) Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 4,286.00 OR \$ 3,846.00	<i>Note: Public Works Fees may not need to be charged if it is not being amended. Choose only one (1) Health District Fee (sewer or septic) and delete other. If needed add to the Fees tab. Hours over Application Fee Deposit will be billed monthly.</i>	
P PLAT AMEND MINOR Preliminary Plat Amendment Minor	\$ 90 \$ 1,300 \$ 266 \$ 130 \$ 13.00	DCD Base Fee APP Fee Dep HD-903 Amend Subdiv. Septic HD-1008 Land Use Other Sewer Technology Fee	DCD Base Fee Application Fee Deposit (10 Hours) Health District with Septic OR Health District with Sewer (<i>note</i>) Technology Fee
Fees due at submittal	\$ 1,669.00 OR \$ 1,533.00	<i>Note: Public Works Fees may not need to be charged if it is not being amended. Choose only one (1) Health District Fee (sewer or septic) and delete other. If needed add to the Fees tab. Hours over Application Fee Deposit will be billed monthly.</i>	
P SP Preliminary Short Plat Subdivision	\$ 90 \$ 2,860 \$ 570 \$ 190 \$ 200 \$28.60	DCD Base Fee APP Fee Dep HD-902 LU (septic), OR HD-901 LU (sewer) PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Application Fee Deposit (22 Hours) Health District with Septic, OR Health District with Sewer (<i>note</i>) PW Concurrency Technology Fee
Fees due at submittal	\$ 3,748.60 OR \$ 3,368.60	<i>Note: Choose only one (1) Health District Fee (sewer or septic) and delete other. Hours over Application Fee Deposit will be billed monthly.</i>	
P SP AMEND Preliminary Short Plat Subdivision Amendment	\$ 90 \$ 1,300 \$ 260 \$ 130 \$ 200 \$ 13.00	DCD Base Fee APP Fee Dep HD-903 LU Septic OR HD-1008 Land Use Other Sewer PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Application Fee Deposit (10 Hours) Health District OR Health District PW Concurrency (<i>see note</i>) Technology Fee
Fees due at submittal	\$ 1,863.00 OR \$ 1,733.00	<i>Note: Choose only one (1) Health District Fee (sewer or septic) and delete other. Public Works Fee may not be needed to be charged if it is not being amended. Add to the Fees tab if necessary. Hours over Application Fee Deposit will be billed monthly.</i>	
PBD Performance Based Development	\$ 90 \$ 7,800 \$ 800 \$ 78 \$ 99	DCD Base Fee APP Fee Dep HE Fee Technology Fee Recording Fee	DCD Base Fee Application Fee Deposit (60 Hours) Hearing Examiner Fee Technology Fee Recording Fee
Fees due at submittal	\$ 8,867.00	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
PBD Revision Minor Performance Based Development Revision Minor	\$ 90 \$ 1,040 \$ 10.40 \$ 99	DCD Base Fee Flat Fee Zone Technology Fee Recording Fee	DCD Base Fee Permit Fee Technology Fee Recording Fee
Fees due at submittal	\$ 1,239.40		
PBD Revision Major Performance Based Development Revision Major	\$ 90 \$ 2,600 \$ 800 \$ 26 \$ 99	DCD Base Fee APP Fee Dep HE Fee Technology Fee Recording Fee	DCD Base Fee Application Fee Deposit (20 Hours) Hearing Examiner Fee Technology Fee Recording Fee
Fees due at submittal	\$ 3,615.00	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
PRE-APP Pre-Application	\$ 2,340	APP Fee Dep	Application Fee Deposit (18 Hours)
Fees due at submittal	\$ 2,340.00	<i>Note: Hours over Application Fee Deposit will be billed monthly. No Technology Fee or Base Fee</i>	
SCUP Shoreline Conditional Use Permit	\$ 90 \$ 5,460 \$ 130 \$ 200 \$ 800 \$ 54.60	DCD Base Fee APP Fee Dep HD-1008 Land Use Other PW Concurrency W/Out Bldg HE Decision Fee Technology Fee	DCD Base Fee Application Fee Deposit (42 Hours) Health District PW Concurrency (see note) Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 6,734.60	<i>Note: Public Works fee may not need to be charged. Hours over Application Fee Deposit will be billed monthly.</i>	
SEPA REVIEW State Environmental Policy Act Review	\$ 90 \$ 650 \$ 6.50	DCD Base Fee Flat Fee SEPA Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 746.50	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP ADDENDUM	\$ 1,040 \$ 10.40	APP Fee Dep Technology Fee	Application Fee Deposit (8 Hours) Technology Fee
Fees due at submittal	\$ 1,050.40	<i>Note: Reviewer Hours are charged as used. Hours over Application Fee Deposit will be billed monthly with existing SDAP Permit.</i>	
SDAP-GRADING 1 Site Development Activity Permit – Grading ≥ 150 but < 500 CY	\$ 90 \$ 1,820 \$ 130 \$ 18.20	DCD Base Fee Flat Fee Grading HD-1009 SHW SDAP Technology Fee	DCD Base Fee Permit Fee Health District Fees Technology Fee
Fees due at submittal	\$ 2,058.20		
SDAP-GRADING 2 Site Development Activity Permit – Grading ≥ 500 CY and < 5000 CY	\$ 90 \$ 2,470 \$ 130 \$ 130 \$ 24.70	DCD Base Fee APP Fee Dep Inspection Fees HD-1009 SHW SDAP Technology Fee	DCD Base Fee Application Fee Deposit (19 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Fees due at submittal	\$ 2,714.70	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
SDAP-GRADING 3 Site Development Activity Permit – Grading ≥ 5000 CY	\$ 90 \$ 3,380 \$ 130 \$ 130 \$ 33.80	DCD Base Fee APP Fee Dep HD-1009 SHW SDAP Inspection Fees Technology Fee	DCD Base Fee Application Fee Deposit (26 Hours) Health District Inspection Fees (<i>charged as used</i>) Technology Fee
Fees due at submittal	\$ 3,633.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-LL Site Development Activity Permit – Large Lot	\$ 90 \$ 4,940 \$ 130 \$ 130 \$ 49.40	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (38 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 5,209.40	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-LSUB Site Development Activity Permit – Land Subdivision	\$ 90 \$ 5,980 \$ 130 \$ 130 \$59.80	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (46 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 6,259.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-OTHER Site Development Activity Permit – Other	\$ 90 \$ 1,950 \$ 130 \$ 130 \$ 19.50	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (15 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 2,189.50	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-ROW USE MINOR Site Development Activity Permit – Right of Way Use/Improvement - Minor	\$ 90 \$ 1,560 \$ 130 \$ 130 \$ 15.60	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (12 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 1,795.60	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-ROW USE MAJOR Site Development Activity Permit – Right of Way Use/Improvement - Major	\$ 90 \$ 4,160 \$ 130 \$ 130 \$ 41.60	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (32 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 4,421.60	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
SDAP-SFR Site Development Activity Permit – Single Family Residence	\$ 90 \$ 2,600 \$ 130 \$ 130 \$ 26.00	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (20 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 2,846.00	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-SHORT SUB Site Development Activity Permit – Short Plat Subdivision	\$ 90 \$ 4,940 \$ 130 \$ 130 \$ 49.40	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (38 Hours) Inspection Fees (<i>charged as used</i>) Health District Fees Technology Fee
Fees due at submittal	\$ 5,209.40	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-COMM Site Development Activity Permit – Major Commercial	\$ 90 \$ 6,240 \$ 130 \$ 200 \$ 130 \$ 62.40	DCD Base Fee APP Fee Dep HD-10110SS SDAP PW Concurrency W/Out Bldg Inspection Fees Technology Fee	DCD Base Fee Application Fee Deposit (48 Hours) Health District if over 5000 volume PW Concurrency (<i>see note</i>) Inspection Fees (<i>charged as used</i>) Technology Fee
Fees due at submittal	\$ 6,722.40	<i>Note: Inspection Hours are charged as used. PW fees only charged if no Land Use. Hours over Application Fee Deposit will be billed monthly.</i>	
SHORELINE EXEMPT Shoreline Exemption	\$ 90 \$ 650 \$ 6.50	DCD Base Fee Flat Fee Shoreline Technology Fee	DCD Base Fee Permit Fee Technology Fee
Fees due at submittal	\$ 746.50		
SHORELINE ACUP Shoreline Administrative Conditional Use Permit	\$ 90 \$ 5,200 \$ 130 \$ 200 \$ 52.00	DCD Base Fee Flat Fee Shoreline HD-1008 Land Use Other PW Concurrency W/Out Bldg Technology Fee	DCD Base Fee Permit Fee Health District PW Concurrency Technology Fee
Fees due at submittal	\$ 5,672.00		
SIGN Sign Permit	\$ 90 \$ 260 \$ 130 \$ 4.50 \$ 2.60	DCD Base Fee Flat Fee Zone Sign inspection fee SC Technology Fee	DCD Base Fee Permit Fee Inspection Fee (<i>see note</i>) State Fee Technology Fee
Fees due at submittal	\$ 357.10	<i>Note: Inspection Hours are determined by the Reviewer</i>	
SSDP COM & RES Commercial & Residential Shoreline Substantial Development	\$ 90 \$ 7,670 \$ 800 \$ 76.70	DCD Base Fee APP Fee Dep HE decision Technology Fee	DCD Base Fee Application Fee Deposit (59 Hours) Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 8,636.70	<i>Note: Inspection Hours are charged as used and if needed. Hours over Application Fee Deposit will be billed monthly.</i>	



Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
SSDP COM & RES Revision Commercial & Residential Shoreline Substantial Development Revision	\$ 90 \$ 1,040 \$ 800 \$ 10.40	DCD Base Fee APP Fee Dep HE Decision Technology Fee	DCD Base Fee Application Fee Deposit (8 Hours) Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 1,940.40	<i>Note: Inspection Hours are charged as used and if needed. Hours over Application Fee Deposit will be billed monthly.</i>	
SVAR Shoreline Variance	\$ 90 \$ 5,200 \$ 800 \$ 52	DCD Base Fee APP Fee Dep HE Decision Fee Technology Fee	DCD Base Fee Application Fee Deposit (40 Hours) Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 6,142.00	<i>Note: Inspection Hours are charged as used if needed. Hours over Application Fee Deposit will be billed monthly.</i>	
TIMBER HARVEST MAJOR Timber Harvest Major	\$ 90 \$ 1,560 \$ 130 \$ 15.60	DCD Base Fee APP Fee Dep Inspection Fee Technology Fee	DCD Base Fee Application Fee Deposit (12 Hours) Inspection Fee (see note) Technology Fee
Fees due at submittal	\$ 1,665.60	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
TIMBER HARVEST MINOR Timber Harvest Minor	\$ 90 \$ 780 \$ 130 \$ 7.80	DCD Base Fee APP Fee Dep Inspection Fee Technology Fee	DCD Base Fee Application Fee Deposit (6 Hours) Inspection Fee (see note) Technology Fee
Fees due at submittal	\$ 877.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
TRANSITORY HOUSING (Indoor, Large, Safe Park, Small)	\$ 90 \$ 390 \$ 130 \$ 3.90	DCD Base Fee Flat Fee Transitory HD-1008 Land Use Other Technology Fee	DCD Base Fee Permit Fee Health District Technology Fee
Fees due at submittal	\$ 613.90	<i>Note: Inspection Hours are charged as used.</i>	
ZONING VARIANCE Zoning Variance Hearing Examiner	\$ 90 \$ 5,200 \$ 130 \$ 800 \$ 52.00	DCD Base Fee APP Fee Dep HD-1008 Land Use Other HE Decision Fee Technology Fee	DCD Base Fee Application Fee Deposit (40 Hours) Health District Hearing Examiner Fee Technology Fee
Fees due at submittal	\$ 6,272.00	<i>Note: Hours over Application Fee Deposit will be billed monthly.</i>	



Hon. Susan K. Serko
Hearing Date: December 2, 2016
Hearing Time: 9:00 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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, 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 JEFFREY
ROWE REGARDING
SUPPLEMENTAL STATUS
REPORT

I, Jeffrey L. Rowe, declare under penalty of perjury under the laws of the State of Washington
that the following is true and correct:

1. I am over the age of 18, am otherwise competent to testify hereto, and make the

DECLARATION OF JEFFREY ROWE REGARDING
SUPPLEMENTAL STATUS REPORT -- 1

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1 following statement based upon personal knowledge.

2 2. I am employed by the Kitsap County Department of Community Development
3 (“DCD”) as the DCD Deputy Director. In addition to my role as the Deputy Director, I am Kitsap
4 County’s Building Official. I was present during the 2011 trial proceedings for this matter. I am
5 familiar with the witness testimony and the exhibits offered into evidence. I am also familiar with
6 expert reports obtained by both parties during the litigation process, including wetland delineation
7 reports. I attended a site visit of the property during the litigation proceedings and through these
8 proceedings I have become familiar with the site conditions and development activities that occurred
9 or existed on KRRC’s property prior to the 2011 trial.

10 3. On November 28, 2016 at approximately 3:45 p.m. (45 minutes before closing),
11 Marcus Carter came to DCD’s front desk and attempted to submit an “SDAP Grading 1” type
12 permit. Certified Permit Technician Jenny Kreifels was working at the DCD front desk and initiated
13 an effort to help Mr. Carter with the application intake process. During this effort, Mr. Carter
14 indicated that he was not prepared to pay the fee for the SDAP application. Ms. Kreifels then called
15 Tammy Dillinger in our office to obtain guidance as to whether an SDAP application could be
16 accepted without a fee. I was summoned and so I walked out to the front desk to assist Ms. Kreifels.

17 4. When I arrived at the front desk, I saw Mr. Carter holding a very small stack of
18 8.5x11 inch papers, which immediately raised a concern for me as to whether the application he was
19 attempting to submit was complete. Considering the extensive site development work that occurred
20 at KRRC’s property, I knew that engineering reports and plans would be a required part of KRRC’s
21 SDAP application materials. However, I did not have the opportunity to review the substance of the
22 application materials prepared by Mr. Carter and did not review the attempted application in any
23 manner during Mr. Carter’s visit. I informed Mr. Carter that DCD could not accept a permit
24

DECLARATION OF JEFFREY ROWE REGARDING
SUPPLEMENTAL STATUS REPORT -- 2

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1 application until the applicant pays the required fee because fees are part of a complete application
2 submittal. Mr. Carter stated that KRRC was broke and unable to pay the fees. He informed me that
3 he was hopeful the Court would allow him to submit the application without having to pay fees. I
4 told Mr. Carter we could not accept his application. He took the application and left.

5 5. Even if Mr. Carter had a complete application and been willing to pay the application
6 fee that day, DCD would not have been able to accept the application because KRRC had not
7 scheduled an intake appointment in advance as required for SDAP applications. It is the policy and
8 practice of DCD not to accept incomplete permit applications because the acceptance of an
9 application by DCD triggers legal obligations and deadlines pursuant to the Kitsap County Code. It
10 could be difficult for DCD to meet its obligations if an applicant does not provide sufficient
11 application materials up front. For this reason, DCD requires SDAP applicants to schedule intake
12 meetings with DCD in advance to ensure that sufficient staff will be available to conduct the intake.
13 Mr. Carter never scheduled an intake meeting prior to his visit and, pursuant to DCD policy and
14 practice, he would have eventually been instructed to do so and to return another day.

15 6. On November 29, 2016, I was provided a copy of the Declaration of Marcus Carter
16 (Nov. 28, 2016). This declaration purports to contain a copy of the SDAP application that Mr. Carter
17 attempted to submit to DCD on November 28. I have reviewed this copy of the application and have
18 determined that the SDAP application is both insufficient and incomplete and would not have been
19 accepted by DCD during an intake process for this reason.

20 7. KRRC's attempted SDAP application is insufficient in numerous respects. The first
21 insufficiency is that KRRC attempted to submit the wrong SDAP application. KRRC attempted to
22 submit an "SDAP-Grading 1" permit. This permit is for minor site development activities involving
23 the movement of less than 500 cubic yards of material. Due to the extensive earth moving and site
24

DECLARATION OF JEFFREY ROWE REGARDING
SUPPLEMENTAL STATUS REPORT -- 3

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1 development activities on KRRC's property, KRRC is required to complete the "SDAP- Grading 3"
2 application required for the movement of greater than 5,000 cubic yards of material.

3 8. KRRC's attempted SDAP application is also insufficient in that it does not contain
4 any technical reports as required due to the nature and extent of the site development that occurred
5 on KRRC's property (wetland buffer encroachment, storm water/stream diversion, significant
6 excavation and grading activities to install two 475 long twin culverts across the property, logging
7 several acres of land for the abandoned 300 meter range re-orientation, the cutting of steep slopes).

8 9. KRRC is aware of the requirement for technical reports. In November of 2015 Shawn
9 Alire, DCD's Supervisor for Development and Engineering Services, and I identified the numerous
10 technical reports that KRRC will likely have to include in its SDAP application. I assisted Kitsap
11 County's counsel in the preparation of a proposed amended judgment outlining the same. This
12 proposed order was provided to KRRC's counsel and to the Court in November or December of
13 2015. The following technical reports are identified therein:

- 14 a. Hydro-analysis to assess the impact on the wetlands and its changing nature;
- 15 b. Drainage analysis to assess the direction and flow of surface water run-off
16 and its quality;
- 17 c. Geo-technical report to assess the stability of the earth features such as berms
18 and slopes on the Property;
- 19 d. Hydro-geological study may also be implicated pursuant to the Critical Areas
20 Ordinance codified in KCC Title 19; and
- 21 e. SEPA review may also be required.

22 In addition, KRRC will likely also have to obtain, in advance, a National Pollutant Discharge
23 Eliminations System permit from the Department of Ecology which is required for site development
24 work that disturbs more than 1 acre of property (KRRC's site development work is estimated to

1 involve more than 6 acres).

2 10. The application that Mr. Carter attempted to submit contains none of these reports.

3 11. The attempted SDAP application is also deficient in that it fails to include a site plan
4 (the application merely contains aerial Google Earth images) showing the current conditions of the
5 property including finished grades and contour lines to determine the location of steep slopes, and it
6 fails to include a wetland delineation report, among other things. The application contains no plan for
7 remediation of wetland buffer encroachment and contains no assessment as to whether twin culverts
8 installed by KRRC are sufficiently serving the property or would be allowed by the Department of
9 Fish and Wildlife.

10 12. In my opinion, it appears that in preparing the attempted SDAP application, Mr.
11 Carter merely checked some boxes, filled in some blank spaces on the application form, and
12 provided a short double spaced outline of irrelevant history regarding KRRC's use and ownership of
13 the property and vague descriptions of KRRC's past site development work. Actual descriptions of
14 the site development activities identified by KRRC are limited to vague and general one-sentence
15 statements devoid of any specifics. For example, Mr. Carter's description of the development
16 activities regarding KRRC's 300 meter range re-orientation project, which this Court found to have
17 included grading, trenching, surface water diversion, vegetation removal and the logging of trees
18 over a span of 2.85 acres, as: "[E]xploratory work which removed *some trees* to get an accurate
19 topographical picture to minimize anticipated grading." (Emphasis added). The SDAP application
20 fails to provide an accurate or helpful picture of the current conditions on the property that would
21 allow DCD to conduct its review.

22 13. DCD has offered on numerous occasions to sit down with KRRC to discuss the
23 SDAP submittal requirements through staff consultations which are generally billed out by the hour
24

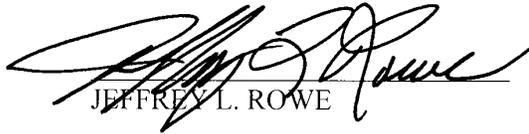
DECLARATION OF JEFFREY ROWE REGARDING
SUPPLEMENTAL STATUS REPORT -- 5

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1 or half hour. KRRC has not initiated any effort to schedule any such consultations.

2 14. Finally, the fees required for an SDAP-Grading 3 permit required of KRRC total
3 \$3,612.80. A true and accurate copy of DCD's SDAP application fee schedule is attached as Exhibit
4 A. DCD only charges fees for review work actually conducted by its staff. If review takes less than
5 anticipated, the applicant is refunded the appropriate funds. If a review takes longer, DCD will
6 charge the applicant an additional fee to cover the difference. DCD does not waive fees for any
7 applicant. DCD does not waive fees for internal Kitsap County agencies or division such as the
8 Kitsap County Parks Department. DCD does not waive fees for churches, non-profits organizations,
9 or indigent individuals. DCD cannot waive its fees because doing so would result in an unlawful gift
10 of public funds and would prohibit DCD from adequately funding its operations.

11 Executed this 30 day of November 2016, at Port Orchard, Washington.

12
13 
14 JEFFREY L. ROWE

15
16
17
18
19
20
21
22
23
24
DECLARATION OF JEFFREY ROWE REGARDING
SUPPLEMENTAL STATUS REPORT -- 6

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

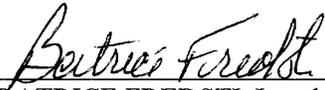
CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Brian D. Chenoweth	<input type="checkbox"/>	Via U.S. Mail
Brooks Foster	<input checked="" type="checkbox"/>	Via Email:
The Chenoweth Law Group	<input type="checkbox"/>	Via Hand Delivery
510 SW Fifth Ave., Ste. 500		
Portland, OR 97204		

SIGNED in Port Orchard, Washington this 30th day of November, 2016.



 BATRICE FREDSTI, Legal Assistant
 Kitsap County Prosecuting Attorney
 614 Division Street, MS-35A
 Port Orchard, WA 98366-4676
 (360) 337-4992

EXHIBIT A

Permit Type Permit Name	Fee Dep. Amount	Fee Code	Fee Description
SDAP-GRADING 1 Site Development Activity Permit – Grading ≥ 150 but < 500 CY	\$ 90 \$ 1,300 \$ 130 \$ 109 \$ 13	DCD Base Fee APP Fee Dep Inspection Fees HD-1009 SHW SDAP Technology Fee	DCD Base Fee Application Fee Deposit (10 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 1,512	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-GRADING 2 Site Development Activity Permit – Grading ≥ 500 CY and < 5000 CY	\$ 90 \$ 2,080 \$ 130 \$ 109 \$ 20.80	DCD Base Fee APP Fee Dep Inspection Fees HD-1009 SHW SDAP Technology Fee	DCD Base Fee Application Fee Deposit (16 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 2,299.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-GRADING 3 Site Development Activity Permit – Grading ≥ 5000 CY	\$ 90 \$ 3,380 \$ 109 \$ 130 \$ 33.80	DCD Base Fee APP Fee Dep HD-1009 SHW SDAP Inspection Fees Technology Fee	DCD Base Fee Application Fee Deposit (26 Hours) Health District Inspection Fees (charged as used) Technology Fee
Total Application Fee Deposit	\$ 3,612.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-LL Site Development Activity Permit – Large Lot	\$ 90 \$ 4,940 \$ 130 \$ 109 \$ 49.40	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (38 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 5,188.40	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-LSUB Site Development Activity Permit – Land Subdivision	\$ 90 \$ 5,980 \$ 130 \$ 109 \$ 59.80	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (46 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 6,238.80	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-OTHER Site Development Activity Permit – Other	\$ 90 \$ 1,950 \$ 130 \$ 109 \$ 19.50	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (15 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 2,168.50	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	
SDAP-ROW USE MINOR Site Development Activity Permit – Right of Way Use/Improvement - Minor	\$ 90 \$ 1,560 \$ 130 \$ 109 \$ 15.60	DCD Base Fee APP Fee Dep Inspection Fees HD-10110SS SDAP Technology Fee	DCD Base Fee Application Fee Deposit (12 Hours) Inspection Fees (charged as used) Health District Fees Technology Fee
Total Application Fee Deposit	\$ 1,774.60	<i>Note: Inspection Hours are charged as used. Hours over Application Fee Deposit will be billed monthly.</i>	

Kitsap County Department of Community Development
614 Division Street, MS-36
Port Orchard, WA 98366-4682
www.kitsapgov.com/dcd/
Revision Date: 10/11/2016



Phone: (360) 337-5777
Fax: (360) 337-4925
Form Number: 1206D
Email: Kitsap1@co.kitsap.wa.us
Page 6 of 8

June 04 2019 4:27 PM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Setko
Department 14
NO: 10-2-12913-3

1
2
3
4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 FOR THE COUNTY OF PIERCE
7

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

Plaintiff,

10 v.

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

14 Defendants

15 and

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

Case No.: 10-2-12913-3

**DECLARATION OF
MARCUS CARTER
(JUNE 4, 2019)**

21
22 I, Marcus Carter, declare under penalty of perjury under the laws of the State of
23 Washington that the following is true and correct:
24
25
26

1 **DECLARATION OF SERVICE**

2 I, Ethan Jones declare, under penalty of perjury under the laws of the State of
3 Washington, that I am a resident of the State of Oregon, over the age of eighteen years, not a
4 party to or interested in the above-entitled action, and competent to be a witness herein.

5 On June 4, 2019, I caused to be served a copy of the within **DECLARATION OF**
6 **MARCUS CARTER (JUNE 4, 2019)** via email, pursuant to an e-service agreement
7 between the parties, to the following:

8 Laura F. Zippel
9 John C. Purves
10 Kitsap County Prosecutor’s Office
11 Civil Division
12 614 Division St., MS-35A
13 Port Orchard, WA 98366
14 Email: cmpalmer@co.kitsap.wa.us
15 lzippel@co.kitsap.wa.us
16 jcpurves@co.kitsap.wa.us

17 DATED: June 4, 2019

18 CHENOWETH LAW GROUP, PC

19 /s/ Ethan Jones
20 Ethan Jones, Paralegal
21 ejones@northwestlaw.com

June 05 2019 2:44 PM

Hon. Susan K. Serko
KEVIN STOCK
COUNTY CLERK
Hearing Date: June 7, 2019
Hearing Time: 9:00 a.m.
NO. 10-2-12913-3

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, 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

KITSAP COUNTY'S REPLY IN
SUPPORT OF KITSAP COUNTY'S
MOTION FOR CONTEMPT ON
REMAND

Plaintiff, by and through counsel, filed and served Motion for Contempt On Remand on
May 17, 2109, and pursuant to PCLR 7(a)(3)(A), scheduled a hearing for June 7, 2019 at 9:00 am.
Responsive pleadings per PCLR(7)(a)(5) were due on June 4, 2019 at noon and Plaintiff's reply
brief was due at noon on June 5, 2019 at noon per PCLR 7(a)(6). Plaintiff did not receive

KITSAP COUNTY'S REPLY -- 1

CHAD M. ENRIGHT
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083
www.kitsapgov.com/pros

1 to DCD to clarify why the permit was returned or why an SDAP commercial was required. Id.
2 Instead, the Club waited for Kitsap County to file its motion to state it believes that an SDAP 2 is
3 the correct permit type.
4

5 **B. The Club does not provide sufficient evidence of why an SDAP 2 is appropriate**

6 The Club argues that an SDAP 2 is the correct permit because there was not over 5,000
7 cubic yards of earth moved. To support its statement, the Club relies on the Declaration of Marcus
8 Carter. Marcus Carter's declaration is insufficient because he provides no support that he is
9 qualified to estimate the amount of earth moved and he provides no estimate of the amount of earth
10 moved. Mr. Carter claims that his occupation provided him experience in estimating the amount
11 of earth moved, yet he does not state what his occupation is outside of being the Executive Officer
12 of the Club. If Executive Officer is his sole occupation, he does not provide any details of why that
13 job would qualify him to estimate the amount of earth movement. Instead, Mr. Carter states that it
14 is under 5,000 cubic yards because 5,000 cubic yards is a "huge amount of dirt."
15

16
17 Kitsap County's earth movement estimates are based on site visits by staff who regularly
18 review SDAPs and KRRC's own consultants. Declaration of Shawn Alire, ¶ 3; Declaration of Jeff
19 Rimack, ¶ 5. Reviewing the work done, DCD staff are confident the earth movement done is well
20 over 5,000 cubic yards and will require stormwater engineering, SEPA, geotech reports, and
21 wetlands reports at a minimum. Id.
22

23 **C. The Court should not specify the type of permit required for the purge condition**

24 Up to this point, this Court has not seen fit to include the specific type of permit in an order
25 and has specifically stated that it will not do so. The Club now requests that this Court include a
26 specific permit type in the order, specifically an SDAP 2. The Club's response briefing and
27 attached declarations exemplify why it is important to allow the permitting process to proceed
28

1 without this Court dictating what specific permit should be applied for. The permitting process is
2 not a one-way street. Instead it is a back and forth between the applicant and DCD to ensure that
3 local code and state law is being met. There are often situations where an applicant and DCD
4 initially disagree on the type of permit which is appropriate for a project or specific conditions
5 imposed on a project. Declaration of Shawn Aire, ¶6. Differences in interpretation are often
6 resolved by conversations between the applicant, or applicant's consultants, and additional
7 documentation. Id. Sometimes DCD sticks to its initial assessment of what the project requires and
8 sometimes DCD ends up agreeing with the applicant. Id. In either case, the back and forth is
9 important to the process and allows the final permit to best meet the code requirements and allow
10 the applicant to build what they planned on. Id. at ¶7.

13 Title 21 Kitsap County Code (KCC) provides the permitting procedures for Kitsap County
14 SDAPs.¹ KCC 21.04.030 states the responsibilities and requirements for both applicants and DCD
15 staff. The code is clear that it is the applicant's responsibility to read the code and understand what
16 is required for a project, and to take any concerns that the code is not being properly applied to
17 DCD management. The code is also clear that it is DCD's role to ensure that any conditions
18 requested are supported by code. At the meeting with Soundview in July, it was agreed between
19 Soundview and DCD that an SDAP commercial was appropriate. If Mr. Carter or Mr. Denny have
20 additional information or documentation that the unpermitted work was less than 5,000 cubic yards
21 of material, or that Soundview provided incorrect information to DCD, they were well within their
22 rights under the code to reach out to DCD and explain why they believed an SDAP 2 was the
23 correct permit type. Instead of working within the permitting procedures, the Club is requesting
24 this Court to make a determination about the specific type of permit needed, contrary to what this
25
26
27
28

¹ Available online at <https://www.codepublishing.com/WA/KitsapCounty/>.

1 Court has previously stated it will do in an order.

2 **D. The Court of Appeals decision does not require the permit type to be in the order**

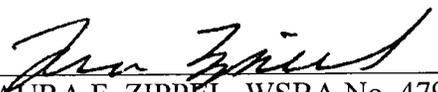
3 The Court of Appeals remand instructions are clear. They require that the purge condition
4 be within the Club’s control, such as submitting an application. Kitsap County is bound by its own
5 code when issuing permits. *Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d
6 475, 482, 513 P.2d 36 (1973) (“The duty of those empowered to enforce the codes and ordinances
7 of the city is to insure compliance therewith and not to devise anonymous procedures available to
8 the citizenry in an arbitrary and uncertain fashion.”). If the Club disagrees with DCD’s
9 interpretation of the code in requiring a specific permit type or application condition there are both
10 informal (contacting DCD management) and formal (appealing to the Hearing Examiner and/or
11 to superior court under the Land Use Petition Act (LUPA), chapter 36.70c RCW) mechanisms to
12 address the issue. At this stage, requiring this Court to specify the type of permit is premature and
13 circumvents the permitting process which is designed to ensure compliance with both state law
14 and local code while also moving a project forward to completion.

15
16
17
18 **II. CONCLUSION**

19 Based on the above, the Court should enter the County’s Proposed Revised Order Granting
20 Kitsap County’s Motion for Contempt.

21 Respectfully submitted this 5th day of June, 2019.

22
23 CHAD M. ENRIGHT
24 Kitsap County Prosecuting Attorney

25 
26 LAURA F. ZIPPEL, WSBA No. 47978
27 JOHN C. PURVES; WSBA No. 35499
28 Deputy Prosecuting Attorneys
Attorneys for Plaintiff Kitsap County

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Brian D. Chenoweth	<input type="checkbox"/>	Via U.S. Mail
Brooks Foster	<input checked="" type="checkbox"/>	Via Email:
The Chenoweth Law Group	<input type="checkbox"/>	Via Hand Delivery
510 SW Fifth Ave., Ste. 500		
Portland, OR 97204		

SIGNED in Port Orchard, Washington this 5th day of June, 2019.

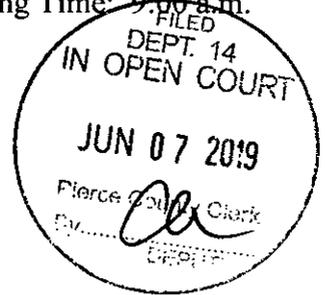


 BATRICE FREDSTI, Paralegal
 Kitsap County Prosecuting Attorney
 614 Division Street, MS-35A
 Port Orchard, WA 98366-4676
 (360) 337-4992

0015



Hon. Susan K. Serko
Hearing Date: June 7, 2019
Hearing Time: 9:00 a.m.



1131

6/12/2019

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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, 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

[Signature]
~~[PROPOSED]~~ ORDER
AMENDING DECEMBER 2,
2016 CONTEMPT ORDER

This matter came on regularly for hearing before the undersigned Judge of the above-entitled
Court for further proceedings upon remand from Division II of the Court of Appeals. Plaintiff Kitsap
County appeared through counsel of record John C. Purves and Laura F. Zippel, Deputy Prosecuting

0019 1131 6/12/2019

1 Attorneys. Defendant Kitsap Rifle and Revolver Club (“KRRC”) appeared through counsel of record,
2 and Brooks Foster. The parties presented the following agreed Order Amending December 2, 2016
3 Contempt Order.

4 This order is intended to amend this Court’s Order Granting Kitsap County’s Motion for
5 Contempt with Findings of Fact and Conclusions of Law dated December 2, 2016 (hereafter,
6 “Contempt Order”). Except as expressly stated herein, all other aspects of the Contempt Order remain
7 unchanged, pending further order of the Court. To the extent that the language of this order conflicts
8 in any way with any portion of the Contempt Order, the language of this order will control and take
9 effect.

10 ORDER

11 The Court hereby orders as follows:

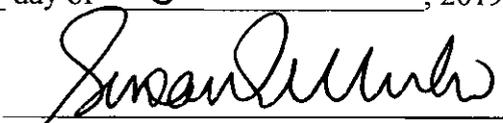
12 Effective on the date of this order, the text appearing between lines 18 and 21 of page 4 of the
13 Contempt Order is removed and replaced with the following:

14 “2. Defendant KRRC is enjoined from operating a shooting facility until such time that: (a)
15 KRRC submits a complete site development activity permit (“SDAP”) application to Kitsap County
16 for permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original
17 Judgment (hereafter “Purge Condition”); (b) KRRC proves in a future proceeding that it does not have
18 the ability to comply with the permitting order in the Supplemental Judgment, such as by proving it
19 does not have the ability to perform the Purge Condition; or (c) KRRC proves in a future proceeding
20 that it is no longer in contempt, such as by proving that all violations of KCC Titles 12 and 19 found
21 to exist on the Property in the original Judgment have been abated or that KRRC lacks the ability to
22 cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment. For
23 purposes of this order, to submit a “complete” SDAP application means to transmit through the
24

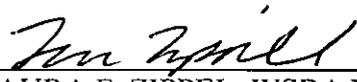
0017
1131
6/12/2019

1 County's online portal an SDAP application that contains each and every one of the items listed in
2 KCC § 21.04.160(B). In addition, KRRC is not precluded from arguing in a future proceeding that the
3 injunction closing the Club's entire facility as a coercive sanction must be modified or terminated on
4 the grounds that it no longer is coercive but has become impermissibly punitive."

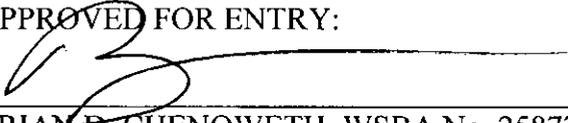
5 DONE IN OPEN COURT this 7 day of June, 2019.

6
7 
8 HON. SUSAN K. SERKO, JUDGE
9 PIERCE COUNTY SUPERIOR COURT

8 Presented by:

9 
10 LAURA F. ZIPPEL, WSBA No. 47978
11 JOHN C. PURVES, WSBA No. 35499
12 Deputy Prosecuting Attorneys
13 Attorneys for Plaintiff Kitsap County

13 APPROVED FOR ENTRY:

14 
15 BRIAN D. CHENOWETH, WSBA No. 25877
16 BROOKS FOSTER, Appearing *pro hac vice*
17 Attorneys for Defendant Kitsap Rifle and
18 Revolver Club



CHENOWETH LAW GROUP, PC

November 27, 2019 - 4:32 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53668-4
Appellate Court Case Title: Kitsap County, Respondent v. Kitsap Rifle and Revolver Club, Appellant
Superior Court Case Number: 10-2-12913-3

The following documents have been uploaded:

- 536684_Briefs_20191127161003D2242074_4634.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Kitsap County v KRRC - Appellant's opening Brief.pdf

A copy of the uploaded files will be sent to:

- bfoster@chenowethlaw.com
- jcpurves@co.kitsap.wa.us
- kcpaciv@co.kitsap.wa.us
- lzipfel@co.kitsap.wa.us
- paralegal@northwestlaw.com

Comments:

Sender Name: Ethan Jones - Email: ejones@northwestlaw.com

Filing on Behalf of: Brian David Chenoweth - Email: brian@northwestlaw.com (Alternate Email: swashabaugh@northwestlaw.com)

Address:
510 SW Fifth Ave.
5th Floor
Portland, OR, 97204
Phone: (503) 221-7958

Note: The Filing Id is 20191127161003D2242074