

FILED
Court of Appeals
Division II
State of Washington
12/9/2019 4:36 PM

No. 53878-4-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

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I. INTRODUCTION

Appellant Kitsap Rifle and Revolver Club (“the Club” or “KRRC”) petitions this Court to reverse the trial court’s *Order Denying Termination of Contempt Sanction* dated June 28, 2019 (“Order”) while clarifying the reversal is intended to have the effect of granting *Kitsap Rifle & Revolver Club’s Motion to Terminate Contempt Sanction* filed June 20, 2019 (“Motion”). Alternatively, the Club petitions this Court to reverse the Order and remand with instructions for the trial court to enter an order granting the Motion or take other action consistent with the legal rules discussed herein.

The *Order Amending December 2, 2016 Contempt Order* (“Amended Contempt Order”) prohibits the discharge of firearms at the Club’s historical shooting range property (the “coercive sanction”) but provides a “Purge Condition” such that the Club can have the coercive sanction terminated if it either satisfies the Purge Condition or proves it is unable to do so. The Purge Condition required the Club to submit a complete SDAP application to Kitsap County to cure certain site development violations found at trial. The Club’s Motion asked the trial court to terminate the coercive sanction on the grounds that the Club lacked the ability to perform the Purge Condition. The Club contends in this appeal that the trial court erred when it denied the Club’s Motion.

In a prior appeal, this Court reviewed the Club’s evidence of its inability to afford the high cost of submitting a complete SDAP application and wrote, “In light of the minimal evidence the Club presented, it is apparent that the [trial] court concluded that the Club did not present credible evidence of inability to pay and therefore did not meet its burden of proof.”¹ This Court deemed the Club’s evidence “minimal” because it allegedly did not include information about the Club’s “financial situation, including tax returns, assets and liabilities, or bank statements.”²

Thus, the “lack of detailed evidence” in the prior appellate record “regarding the Club’s claim that it was unable to comply with the court’s order support[ed] the trial court’s imposition of remedial sanctions under RCW 7.21.030(2).”³ This Court instructed, however, that the Club could produce “new or additional evidence of an inability to comply in a future proceeding” to show the coercive sanction had “lost its coercive effect” or that there was “no reasonable possibility of compliance with a court order.”⁴

¹ *Kitsap County v. Kitsap Rifle & Revolver Club*, Case No. 50011-6-II, at 16, 2 Wn. App. 2d 1021, 2018 WL 623681 (Jan. 30, 2018) (unpublished opinion).

² *Id.* at 15–16.

³ *Id.* at 16.

⁴ *Id.* at 22.

After receiving this Court's decision, the Club returned to the trial court and obtained an order stating the Club could have the coercive sanction terminated if it proved it was unable to perform the Purge Condition. The Club then presented additional evidence of its financial situation and inability to pay and moved to terminate the coercive sanction. The Club's evidence showed the Club needed over \$40,000 more than it had in the bank to pay for the professional services and application fee necessary to submit a complete SDAP application to the County. The County opposed the Motion.

The County's response in opposition to the Motion did not argue the Club's financial evidence was somehow lacking in credibility. The County admitted the evidence showed the Club had little liquidity. Instead, the County's core argument was that the Club had not shown sufficient evidence that the Club could not obtain the necessary funds from some unspecified lender or donor.

The Club replied that such evidence should not be required and also supplemented the record with evidence that it lacked the ability to raise the money it needed through loans or donations.

At the hearing on the Motion, the trial court judge expressed the opinion that terminating a coercive sanction based on inability to perform

might be contrary to law. After hearing oral argument, she denied the Motion. When the Club asked why, she responded,

“I don’t think it’s really going to make a difference. I’m declining to give you a basis based on whatever the County has argued.”

RP at 31:22–24. The Order contains no findings of fact or conclusions of law to support the trial court’s denial of the Motion. The Club appealed the Order.

The Club now asks this Court to reverse the trial court’s denial of its Motion on the grounds that the Club submitted credible, uncontroverted evidence of its inability to perform the Purge Condition. There is no substantial evidence in the record from which the trial court could have found the Club had the ability to perform. The County’s argument that the Club had to show evidence of its inability to obtain funding through loans or donations must be rejected as a matter of law because it would make the Club’s ability to comply dependent on the discretionary acts of third parties.

The County’s other arguments—that the Club did not show its past efforts to raise the funds, did not want to perform the Purge Condition, and did not take some additional unspecified steps towards submitting a complete SDAP application—are contrary to the evidence and, most importantly, legally irrelevant. The Club made the showing of inability to

comply that was required by the Amended Contempt Order, this Court's Unpublished Opinion, and applicable laws. Its Motion to terminate the coercive sanction should have been granted.

II. ASSIGNMENT OF ERROR

The trial court erred when it denied the Club's Motion to terminate the coercive sanction based on "whatever the County has argued" where the Club presented credible, uncontroverted evidence of its financial inability to comply with the Purge Condition in the Amended Contempt Order, and the County's arguments in opposition to the Motion were contrary to law, irrelevant, and contrary to the evidence in the record.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Each of the following issues pertain to the assignment of error set forth above:

A. Where a coercive contempt order says the coercive sanction will terminate if a party proves it is unable to perform the purge condition stated in the order and the party presents credible, uncontroverted evidence that it is over \$40,000 short of the money it needs to perform the purge condition, must the trial court terminate the coercive sanction?

B. To prove financial inability to perform a purge condition, must a party prove it is unable to obtain a loan or donation where such a

requirement would make the party's ability to comply a matter of third-party discretion?

C. To prove financial inability to perform a purge condition, must a party present evidence of its prior efforts to raise funds?

D. Must a party prove it wanted to perform a purge condition in order to prove it lacked the financial ability to do so?

E. Where a contempt order says a party can have a coercive sanction terminated if the party proves it is unable to perform a purge condition and the party proves itself unable to perform, must the party also take intermediate steps towards performing the purge condition in order to have the coercive sanction terminated?

IV. STATEMENT OF THE CASE

A. Background Summary

The contempt order that is a subject of this appeal 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").⁵ The

⁵ This dispute was also previously before the Court on case numbers 43076-2-II, 48781-1-II, and 53668-4-II. Case number 43076-2-II was published as *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 337 P.3d 328 (2014), *amended on den. of recons.* (Feb. 10, 2015), *rev. den.*, 183 Wn.2d 1008, 352 P.3d 187 (July 8, 2015) (hereafter, "KRRC" or "Published Opinion"), which resulted in the trial court entering a supplemental judgment on February 2, 2016. Case number 48781-1-II, 1 Wn. App. 2d 1028, 2017 WL 5593788 (Nov. 21,

Unpublished Opinion provides a detailed summary of background facts, which are 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 (original trial judgment).⁶ 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.

2017) (unpublished opinion) 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. Case number 53668-4-II is presently on appeal before the Court and requests the Court’s review of the trial court’s entry of a contempt order containing a purge condition that the Club argues is punitive because it is not within the Club’s immediate power to perform and is not reasonably related to the cause or nature of the contempt.

⁶ The Kitsap County Code, including Titles 12 and 19, is available online at <http://www.codepublishing.com/WA/KitsapCounty/> (last visited Dec. 9, 2019).

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

CP at 45 (hereafter, “Permitting Order”). 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, and it did not 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 46–53.

At a hearing on the County's contempt motion, the trial court found the Club had 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 62–66. 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, which was an event over which the Club had no control that rendered the sanction impermissibly punitive. Unpublished Op. at 21.

One of the issues raised by the Club in its appeal of the Original Contempt Order was whether the trial court erred in imposing remedial sanctions for contempt because the evidence did not support an implied finding that the Club had the ability to comply with the Permitting Order. *Id.* at 15. The Club emphasized that it had presented evidence that it lacked the financial ability to comply and the County made no effort to rebut that evidence. This Court was unpersuaded. "In light of the minimal evidence the Club presented," the Court wrote, "it is apparent that the [trial] court concluded that the Club did not present credible evidence

of inability to pay and therefore did not meet its burden of proof.” *Id.* at 16.

The Club had presented testimonial evidence that the Club had end-of-month operating balances in 2016 of not more than \$11,000 and that the cost of completing an SDAP application would exceed \$158,000. *Id.* at 15. The County’s rebuttal was simply that “the Club failed to present information about its financial situation, including tax returns, assets and liabilities, or bank statements.” *Id.* at 15–16. This Court agreed, writing, “the lack of detailed evidence regarding the Club’s claim that it was unable to comply with the court’s order supports the court’s imposition of remedial sanctions.” *Id.* at 16. The Court emphasized the rule that evidence of inability to comply must be “of a kind that the court finds credible.” *Id.*

The Unpublished Opinion, however, also instructed the parties that the Club could revisit the “inability to comply” issue, as follows:

“[T]he fact that the Club in December 2016 did not prove its inability to comply with the trial court’s supplemental order does not preclude the Club from producing new or additional evidence of an inability to comply in a future proceeding. The contemnor must be given the opportunity ‘at regular intervals, to present new evidence tending to show that the [sanction] has lost its coercive effect or that there is no reasonable

possibility of compliance with a court order.”

Unpublished Op. at 22 (quoting *In re Pers. Restraint of King*, 110 Wn.2d 793, 805, 756 P.2d 1303 (1988)).⁷

The Court then reversed the purge condition because it required the Club to perform an act over which the County had control, and the Court remanded for the trial court “to impose a proper purge condition” that would be within the sole power of the Club to perform. *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, and they agreed the Amended Contempt Order would contain certain provisions reflecting the Court’s instructions about the Club’s right to revisit the “inability to comply” issue. The parties’ only disagreement about the form of the Amended Contempt Order was about whether the purge condition needed to specify the type of SDAP application the Club had to submit to purge the contempt. CP at 85–87. The Club proposed an order that would

⁷ One of the legal authorities the Court relied on for its ruling about “inability to comply” was RCW 7.21.030(2), which states, “If the court finds that the person has failed or refused to perform an act that is yet within the person’s power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions: . . . (c) An order designed to ensure compliance with a prior order of the court.” Unpublished Op. at 10–14.

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.* At the same time, the County communicated its position to the Club that the type of SDAP application required to purge the contempt was an “SDAP-Commercial” application. CP at 85.

The trial court accepted the County’s position that the Amended Contempt Order should not specify a type of SDAP application 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’); (b) **KRRC proves in a future proceeding that it does not have the ability to comply with the permitting order in the Supplemental Judgment, such as by proving it does not have the ability to perform the Purge Condition,** or (c) KRRC proves in a future proceeding that it is no longer in contempt, such as by proving that all violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment have been abated or that KRRC lacks the ability to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment. 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 68–69 (bold added).

E. The Cost of Submitting a Complete SDAP-Commercial Application

To evaluate whether the Club could comply with the Permitting Order, Soundview Consultants LLC ("Soundview") attended a meeting with the County on behalf of the Club. CP at 97, 173–74. The outcome of the meeting resulted in the County determining that the Club would need to submit an SDAP-Commercial application and outlining the wide array of engineering services that would be required to submit a complete application. *Id.* This informed the Club of the bare minimum amount of cash the Club would need in order to submit a complete SDAP-Commercial application to the County. CP at 96–97, 107, 109–113. The amount was at least \$45,000. CP at 96–97.

This total included the application fee that the County required to be paid at the time of submission of the application (CP at 107), plus estimates for work by Soundview (CP at 96, 109, 111) and Contour Engineering ("Contour") (CP at 113). Per the County's description of what was required for the Club to submit a complete SDAP-Commercial application, the Club needed the work estimated by both Soundview and

Contour because the Club's members, officers, and directors lacked any recognized expertise to perform those services. CP at 85, 97. The sum of the application fee (\$6,722.40), Soundview estimate (\$30,155), and Contour estimate (\$8,500) was \$45,377.40.⁸

F. The Club's Efforts to Perform the Purge Condition

On remand and prior to entry of the Amended Contempt Order, the Club submitted an SDAP-Grading 2 application to the County, but the County canceled that application and insisted that the Club was required to submit an SDAP-Commercial application. CP at 92–93. After entry of the Amended Contempt Order, the Club initiated the process of submitting an SDAP-Commercial application to the County by submitting several documents through the County's online portal. CP at 90–91. The Club does not contend that its submission constituted the "complete" application required to satisfy the Purge Condition.

G. The Club's Motion to Terminate the Contempt Sanction

On June 19, 2019, the Club filed its Motion, which asked the trial court to terminate the contempt sanction on the grounds that the Club lacked the funds necessary to submit a complete SDAP-Commercial

⁸ Soundview recommended the Club also have an additional \$15,000 as a contingency fund to pay for additional work that might be required. CP at 96, 111. The Club is omitting that additional \$15,000 in its estimate of the bare minimum amount of money it needed to submit a complete SDAP-Commercial application.

application. CP at 70–81. In support of the Motion, the Club presented evidence of each of the following facts:

- (1) the Club needed at least \$45,000 to submit a complete SDAP application (CP at 97, 107, 111, 113);
- (2) according to treasurer’s reports and bank statements, the Club’s average end-of-month operating balance between January and May 2019 was \$4,738.62, with a maximum of \$5,568.27 and a minimum of \$3,806.80 (CP at 76–77, 127–46);
- (3) most of the Club’s income derived from membership fees and donations because federal law prohibited the Club from receiving more than 15% of its gross income from non-member sources (CP at 221);
- (4) no lender would accept the Club’s property as security on a loan because, as the trial court found, the property had no value due to the presence of metals from decades of shooting (CP at 6–7); and
- (5) even if the Club could have somehow qualified for a loan, it would have been unable to guarantee its ability to make monthly loan payments (CP at 77, 99).

The County responded in opposition to the motion. CP at 150–56. Its response admitted that the Club had “little in the way of liquid capital”

but argued the Club’s evidence was insufficient “with respect to securing a loan or engaging in meaningful fundraising.” CP at 154. The County argued the Club was “unwilling” to comply with the Permitting Order but not unable. CP at 154–55. The County also asked the Court to strike the Motion as untimely because the Club filed and served it approximately two hours after the 4:30 p.m. deadline as a result of a declarant being temporarily unable to sign a declaration in support of the Motion.⁹ CP at 150–51, 215.

At no point did the County’s response dispute that the estimated cost of submitting a complete application would exceed \$45,000. CP at 150–56. The County also did not dispute the credibility of the Club’s bank statements and treasurer’s reports. *Id.* The County provided no evidence that the Club had at that time the ability to pay the \$45,000 it needed to submit a complete SDAP-Commercial application or even the application fee of \$6,722.40. *Id.* The County did not argue for the Motion to be denied on the grounds that the Club failed to provide tax returns or other documents showing its financial condition at the time of the Motion.

⁹ The County requested the trial court to *strike* the Motion or, in the alternative, to *deny* the Motion. CP at 152, 156. The trial court heard oral arguments on the merits of the Club’s Motion and expressly denied it. RP at 31:17. The trial court did not strike the Motion, and therefore the County’s request to strike the Motion cannot be one of the reasons the trial court denied the Motion. Even if it were, the County did not argue that it was prejudiced by the delay, and therefore the delay was harmless error that does not provide a basis to affirm the Order.

Id.

To address the County's response, the Club filed some additional evidence with its reply. This evidence showed the Club's only potential collateral for a loan was its real property, which had no value due to its potential for environmental liability and unresolved site development violations. CP at 6–7, 230. The Club also presented evidence that it owed over \$180,000 in attorney fees incurred in a lawsuit against its insurer and that it had received less than \$1,000 in donations since 2012. *Id.* at 230. The donors were other shooting ranges, their members, and the NRA Board of Directors. *Id.* Because the Club had been enjoined from operating a shooting range since 2016, the Club had been unable to raise money by hosting charitable events, which used to be one of its primary sources of funding. *Id.* at 230–31.

At the hearing on the Motion, the trial court judge expressed concern about the very idea that the Club could get relief from the coercive sanction just by saying “we don't have the money to get a permit.” RP at 4:5–24. She questioned whether that was “consistent with law.” RP at 4:23. She announced that in any event she would soon be “handing off” her cases to a different judge. RP at 5:15–20. She then heard oral argument from the parties regarding the Motion.

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The County argued for the first time that the Motion was premature because the Club had not proceeded far enough through the permitting process. RP at 11:20–24, 12:17–19. The Club responded that it had made the exact showing of inability that is required by the Amended Contempt Order. RP at 15:3–11. The Purge Condition requires submission of “a complete [SDAP] application.” CP at 68. It clearly provides that “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 68–69 (italics added); RP at 14:10–12, 15:4–6. That meant if the Club was unable to comply with *any* of the requirements of KCC § 21.04.160(B) then it was unable to perform the Purge Condition. The Club pointed out there was no dispute over the Club’s \$45,000 estimate of the cost to submit a complete application and no dispute that the Club had only about \$5,000 in its accounts. RP at 15:7–11. The Club contended it had met its burden to prove inability to comply and that its Motion had to be granted. RP at 16:16–18.

After oral argument, the trial court denied the Motion. RP at 31:14–17; CP at 234–35. The Club asked the court to explain the basis for the denial. RP at 31:18–21. The court responded,

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“I don’t think it’s really going to make a difference. I’m declining to give you a basis based on whatever the County has argued.”

RP at 31:22–24. Because the trial court did not specify which of the County’s arguments (whether in its filed response or in oral argument) it was relying on in denying the Club’s Motion, the Club will address each of the County’s arguments in turn.

V. ARGUMENT

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

A trial court’s denial of a motion to terminate a coercive contempt sanction will be reversed if it was an abuse of discretion, such as if it was “manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995); *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Matter of Detention of Faga*, 8 Wn. App. 2d 896, 900, 437 P.3d 741 (2019). Untenable grounds or reasons exist if a trial court’s decision is based on an “erroneous view of the law or involves application of an incorrect legal analysis,” and such errors of law are reviewed de novo. *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 833–34, 161 P.3d 1016 (2007); *Worden v. Smith*, 178 Wn. App. 309, 323, 314 P.3d 1125 (2013); *see also Happy Bunch, LLC v. Grandview N., LLC*, 142 Wn. App. 81, 88, 173 P.3d 959 (2007). The Club contends the trial court’s errors in denying the

Motion “based on whatever the County has argued” were legal errors based on erroneous views of the law or incorrect legal analyses.

The trial court’s Order includes no findings (CP at 234–35), but the County may argue there was some “implied” finding supporting the Order. Trial court findings are affirmed if supported by “substantial evidence in the record.” *See, e.g., In re Rapid Settlements, Ltd’s*, 189 Wn. App. 584, 601, 359 P.3d 823 (2015) (applying standard to finding of contempt). “Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the finding’s truth.” Unpublished Op. at 9 (citing *Blackburn v. State*, 186 Wn.2d 250, 256, 375 P.3d 1076 (2016)). To the extent the Order was based on some implied finding, such as an implied finding that the Club had the ability to submit a complete SDAP application, the Club contends there is no substantial evidence in the record to support such a finding.

Whether the Order was the result of legal error or implied findings unsupported by substantial evidence, the Order denying the Club’s Motion was an abuse of discretion and should be reversed. The Club showed it lacked the ability to submit a complete SDAP-Commercial application, there was no evidentiary basis to find otherwise, and there was no other legal basis to deny the Motion.

The Club therefore respectfully asks this Court to reverse the Order denying the Club's Motion while clarifying this reversal is intended to have the effect of granting the Motion. Under RAP 12.2, "[t]he appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require." In *Elliott v. Kundahl*, the Supreme Court reversed the trial court's order denying the plaintiff's motion for voluntary nonsuit, and "the effect of this was to grant the motion." *Elliott v. Peterson*, 92 Wn.2d 586, 589, 599 P.2d 1282 (1979) (discussing the holding in *Elliott v. Kundahl*, 89 Wn.2d 639, 645-46, 574 P.2d 732 (1978), which was the prior case name for *Elliot v. Peterson*). Alternatively, the Club asks the Court to reverse the Order and remand with instructions for the trial court to enter an order granting the Motion or to take other appropriate action consistent with the legal rules set forth herein.

B. The Club Submitted Credible, Uncontroverted Evidence of a Monetary Shortfall That Made It Unable to Perform the Purge Condition.

"A civil contempt sanction is valid only if it is remedial as opposed to punitive." *Faga*, 8 Wn. App. 2d at 900.

"One requirement of a remedial sanction is that the sanction is within the contemnor's power to perform. Civil contempt sanctions lose their coercive effect when the contemnor no longer has the ability to

comply with the court's order. **Once it becomes clear that the contemnor no longer has the ability to comply, the court must lift the contempt sanctions.** Similarly, a contempt order must contain a purge condition allowing the contemnor to purge the sanction through an affirmative act. The contemnor must have the ability to satisfy the purge condition.”

Id. at 900–01 (internal citations omitted) (bold added). For this reason, “[p]urge conditions are valid only if they are in the contemnor’s capacity to immediately purge.” *In re Silva*, 166 Wn.2d 133, 142 n.5, 206 P.3d 1240 (2009) (underline added). “To be valid, a purge condition must be within the contemnor’s capacity to complete at the time the sanction is imposed.” *In re J.L.*, 140 Wn. App. 438, 447, 166 P.3d 776 (2007).

In addition, this Court already held that the Club’s ability to satisfy a purge condition cannot depend on the discretionary acts of a third party. Unpublished Op. at 21. To require that would make the contempt order impermissibly punitive.

This Court held in its Unpublished Opinion, “the fact that the Club in December 2016 did not prove its inability to comply with the trial court’s supplemental order does not preclude the Club from producing new or additional evidence of an inability to comply in a future proceeding.” Unpublished Op. at 22. The Court quoted controlling precedent in support of that holding: “The contemnor must be given the

opportunity ‘at regular intervals, to present evidence tending to show that the [sanction] has lost its coercive effect or that there is no reasonable possibility of compliance with the court order.’” *Id.* (quoting *King*, 110 Wn.2d at 805 (underline added); citing *Moreman*, 126 Wn.2d at 43).

To prove inability to perform the Purge Condition, the Club had the burden of producing “credible” evidence. *Moreman*, 126 Wn.2d at 40–41. The general standard of proof was by a “preponderance of the evidence.” Unpublished Op. at 15 (citing *Dep’t of Labor & Indus. v. Rowley*, 185 Wn.2d 186, 208, 378 P.3d 139 (2016)).

In *Britannia Holdings Ltd. v. Greer*, the First Division of the Washington Court of Appeals reversed a trial court’s contempt order because the defendants could not perform the purge condition at the time the order was entered. 127 Wn. App. 926, 934, 113 P.3d 1041 (2005). The trial court in *Britannia* held the defendants in contempt for failing “to deliver assets and to provide a credible accounting” to a judgment creditor. *Id.* at 928. The trial court found the defendants had possessed \$635,000 and had transferred it in an apparent attempt to evade the creditor. *Id.* at 929. Accordingly, the purge condition of the contempt order required the defendants to pay \$635,000 within four months to the creditor or be jailed for contempt. *Id.* at 930.

On appeal, the defendants argued they were “presently unable to pay the purge amount, and the [trial] court’s failure to so find render[ed] the order invalid.” *Id.* at 933. The contempt order included no finding that the defendants had the ability to comply with the underlying order or the purge condition at the time of the contempt order. *Id.* at 928, 934. “Instead, the [trial] court found the [defendants] had, in 2002, possessed \$635,000, and had ‘transferred the money away.’” *Id.* at 934. The appellate court held, “[t]his is not a finding that *at the time of the contempt order in 2004*, they could purge the contempt.” *Id.* (italics in original). The court therefore reversed the contempt order “because the contemnor must hold the keys to his release, and the [trial] court made no finding that the [defendants] had the present ability to pay the purge amount.” *Id.* at 928.

This case is like *Britannia* because the Club showed it lacked the present ability to perform the Purge Condition, but the trial court continued to apply the coercive sanction. As in *Britannia*, the trial court here made no finding that the Club had the ability to comply, and there was no evidence to support such a finding. *Britannia* also shows the Club’s past efforts to obtain money are irrelevant to its Motion to terminate the coercive sanction. The Club proved it does not hold the keys

to its release, so the trial court's decision to maintain the coercive sanction was purely punitive, not remedial.

In an even more analogous case, *Phillips v. Phillips*, the Florida Court of Appeals reversed the trial court's finding that the defendant had the ability to comply with an order to pay \$2,250 because the defendant had produced unrefuted evidence that he could not pay that amount. 588 So.2d 9, 10 (Fla. Ct. App. 1991). The plaintiff in *Phillips* moved for an order holding the defendant in contempt because he failed to pay \$2,250 in spousal support payments pursuant to a dissolution decree. *Id.* at 9–10. The defendant produced evidence that he owned a “1981 Chevrolet pickup truck and tools used in his business, a few minor items of household furnishings, and a bicycle.” *Id.* at 10. He also “testified that he was earning \$1,000 per month, had \$11 in cash, and could borrow no more money from his family.” *Id.* The plaintiff did not dispute that evidence. *Id.* The trial court nonetheless found the defendant had the ability to perform the dissolution decree and pay \$2,250 to the plaintiff. *Id.*

On appeal, the court applied the same legal standards that apply here, *viz.*, the law presumes the defendant has the ability to perform the order and the defendant bears the burden of proving he lacks the ability to comply with the order. *Id.* The court then held that “[u]nrebutted,

substantial evidence presented by the [defendant] is sufficient to overcome the presumption.” *Id.* The court reversed the trial court’s order because “it is abundantly clear that the trial court’s conclusion on the date of the hearing that the [defendant] had a present ability to pay the amounts in arrears is totally unsupported by the record.” *Id.*

Here, the Club’s Motion presented credible, uncontroverted evidence that the Club did not have the immediate ability to perform the Purge Condition because the Club did not have the \$45,000 in cash it indisputably needed to pay for the professional services and application fee required for it to submit a complete SDAP application. There was such a large shortfall between the Club’s financial resources and the cost of submitting a complete application that there was no reasonable possibility of compliance.

The Club’s evidence satisfied the applicable legal standards and the terms of the Amended Contempt Order itself. That order required the remedial sanction to be terminated upon proof that the Club did “not have the ability to comply with the permitting order in the Supplemental Judgment, such as by proving it [did] not have the ability to perform the Purge Condition” or that it was “no longer in contempt” because it “lack[ed] the ability to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment.” CP at 68–69. Inability to

satisfy the Purge Condition would also prove inability to cure the violations of KCC Titles 12 and 19 found in the original trial judgment because they both required the Club to submit a complete SDAP application to the County. The Club showed it was financially unable to do that.

The Club presented evidence to the trial court that it had on average less than \$5,000 in cash from January 2019 until the time it filed its Motion in June 2019. CP at 90–91, 98, 127–146. The County admitted in response that the Club had “little in the way of liquid capital.” CP at 154. The County did not dispute the credibility of the Club’s financial records and presented no evidence showing the Club had more cash than those records reported. The County also did not dispute that the Club needed over \$45,000 to submit a complete application. The trial court gave no explanation for denying the Club’s Motion other than to vaguely reference the County’s arguments, and the trial court made no findings of fact.

The credibility of the Club’s financial evidence is not in dispute, and the evidence was uncontroverted. The shortfall of about \$40,000 between what the Club needed and what it had was so large and the evidence so clear and one-sided that any rational, fair-minded person would have concluded the Club lacked the ability to comply. If the trial

court implicitly found that the Club had the ability to comply, that finding was not supported by substantial evidence in the record. The trial court should have granted the Club's Motion.

C. The Law Did Not Require the Club to Present More Evidence of Its Inability to Obtain Funding from Third Parties.

The crux of the County's opposition to the Motion was that the Club did not show sufficient evidence "with respect to securing a loan or engaging in meaningful fundraising efforts." CP at 154:2-4. This Court previously held that performance of a purge condition cannot depend on discretionary acts of third parties; otherwise, the remedial sanction becomes punitive. Unpublished Op. at 21 ("Because the Club does not have the ability to satisfy the purge condition without relying on the County's actions [in deciding whether to issue permits], the contempt order is punitive.").

The Club's evidence showed it had no ability to promise to repay a loan, its property was worthless as collateral, and it had no ability to generate the \$40,000 it needed through donations. CP at 6-7, 99, 230-31. The County presented no evidence that the Club had a vested right to any loan or donation sufficient to close its \$40,000 cash shortfall. In the absence of such evidence, whether the Club could obtain a loan or donation was entirely up to the discretion of third parties. The Purge

Condition did not expressly require the Club to obtain a loan or donation to pay for the submission of a complete SDAP application, and the law does not allow the County to interpret the Purge Condition to require that. That would render the Purge Condition impermissibly punitive according to this Court's prior ruling.

If the Purge Condition required the Club to apply for a loan from a specific lender or to ask for a donation from a specific donor, it would be within the Club's power to do that. The Purge Condition here, however, does not require that. Instead, it requires the Club to submit a complete SDAP application to the County. It is not presently within the Club's power to do that because the Club lacks the necessary funds and cannot even afford the application fee of approximately \$6,700. The sufficiency of the Club's evidence of its inability to obtain funding from a third party should not have been at issue.

D. The Law Did Not Require the Club to Present Evidence of Its Prior Fundraising Efforts.

The County made a closely related argument that the Club was required to submit evidence of "the steps that [the Club] ha[d] been taking since 2018 to address securing financing for the project." CP at 154:21–22. The County offered no legal authority in support of this argument, which was irrelevant to the operative order and legal standard. *See*

Unpublished Op. at 21 (“If a sanction loses its coercive effect, such as when a contemnor loses his or her ability to comply with the court order that was violated, the court must terminate the sanction.”). The Club’s inability to perform the Purge Condition had to be determined at the time of the Motion, and the Club was not required to show its prior efforts to raise funds or why it had been unable to do so.

E. The Club Wanted to Perform the Purge Condition, But Whether It Wanted to or Not Was Irrelevant Because It Lacked the Ability to Do So.

One of the County’s arguments to the trial court was that the Club was unwilling, not unable, to perform the purge condition. The evidence showed the Club wanted to perform, but that issue was irrelevant because the operative question was whether the Club was *able* to perform. When a party is unable to satisfy a purge condition, whether it wants to or not is irrelevant.

Before filing the Motion, the Club initiated the process for submitting an SDAP-Commercial application. CP at 90–91. That was not enough to purge the coercive sanction, however, because the Purge Condition required the Club to submit a complete SDAP application to the County. Although the evidence shows the Club wanted to comply, its subjective intentions were irrelevant to the question of whether it had the ability to comply. The County’s argument that the Club did not want to

submit a complete SDAP application is contrary to the Club's actions and provided no grounds to deny the Club's Motion.

F. The Club Was Not Required to Take More Intermediate Steps Towards Submitting a Complete SDAP Application, Because It Lacked the Ability to Submit a Complete SDAP Application.

At the hearing, the County introduced the new argument (absent from its written response) that the Club's Motion should be denied because it was premature. This argument suggested there were some additional intermediate steps the Club had to take on the path to submitting a complete SDAP application before it could terminate the coercive sanction. This argument is contrary to the terms of the Amended Contempt Order. The Purge Condition did not require the Club to take any intermediate steps towards submitting a complete application; rather, it required the Club to submit a complete application.

Likewise, the Amended Contempt Order did not require the Club to show it was unable to perform any intermediate steps towards submitting a complete SDAP application before the sanction could be lifted. The Amended Contempt Order required the Club to show it was unable to submit a complete SDAP application, and the Club made that showing.

If the Club could have purged the coercive sanction by taking some additional intermediate step that was within its power, it would have

done it. Because the Club could not perform the purge condition by submitting a complete SDAP application, its only way to get relief from the coercive sanction was by moving to terminate. The Club's Motion was not premature.

VI. CONCLUSION

For the foregoing reasons, the Club respectfully asks the Court of Appeals to reverse the trial court's denial of the Club's Motion, while clarifying it intends that reversal to have the effect of granting the Motion. Alternatively, the Club asks this Court to reverse the denial of the Motion and remand the case with instructions for the trial court to enter a new order granting the Motion or to take some other appropriate action consistent with the applicable legal standards discussed above.

DATED: December 9, 2019

CHENOWETH LAW GROUP, P.C.

/s/ Brooks M. Foster

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(pro hac vice)

Of Attorneys for Appellant

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APPENDIX

Pursuant to RAP 10.3(8) and 10.4(c), Appellant Kitsap Rifle and Revolver Cub 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 (CP 61–66)
- Order Amending December 2, 2016 Contempt Order (CP 67–69)
- KRRC's Motion to Terminate Contempt Sanction (CP 70–81)
- June 5, 2019 email from Laura Zippel to Brooks Foster (CP 85)
- Declaration of Barbara Butterton (CP 89–91)
- March 26, 2019 letter from Kitsap County Department of Community Development to KRRC (CP 92–93)
- Declaration of Marcus Carter (CP 95–99)
- List of permit types (CP 107)
- Soundview Consultants LLC, Scope of Work – Agreement for Consulting Services (CP 109–112)
- Contour Civil Engineering Services Agreement (CP 113–126)
- KRRC's bank statements and Treasurer's Reports (CP 127–146)
- Kitsap County's Response to KRRC's Motion to Terminate Contempt Sanction (CP 150–157)
- Summary of 7/11/18 Staff Consultation Meeting (CP 173–174)
- KRRC's Reply In Support of Motion to Terminate Contempt Sanction (CP 214–224)
- Declaration of Barbara Butterton (June 27, 2019) (CP 229–232)
- Order Denying Termination of Contempt Sanction (CP 234–235)



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.

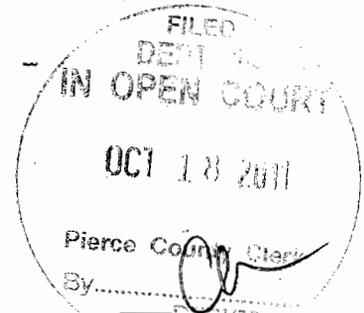
DATED this 9 day of February, 2012.



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

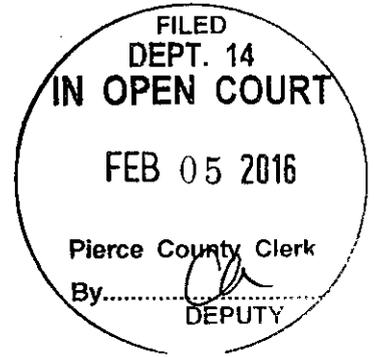
Part of the Southwest quarter of the Southeast quarter and part of the Southeast quarter of the Southwest quarter of Section 36, Township 25 North, Range 1 West, W.M., lying northerly of the North lines of an easement for right of way for road granted to Kitsap County on December 7, 1929, under Application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

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

KITSAP COUNTY, a political subdivision of the
State of Washington

Plaintiff,

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

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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
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1 facts of this action.

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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.

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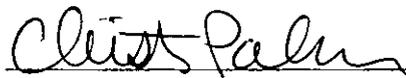
b. A permanent, mandatory injunction is hereby issued further requiring Defendant to apply for and obtain site development activity permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment. Defendant's application for permitting shall be submitted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

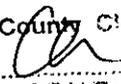
B. The Court further orders that a WARRANT OF ABATEMENT may be authorized upon further application by the Plaintiff, in the event that the Defendant's participation in the County permitting process does not cure the code violations and permitting deficiencies on the Property.

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

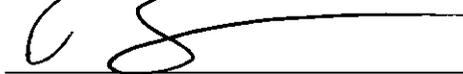

HON. SUSAN K. SERKO, JUDGE
PIERCE COUNTY SUPERIOR COURT

Presented by:


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

FILED
DEPT. 14
IN OPEN COURT
FEB 05 2016
Pierce County Clerk
By 
DEPUTY

APPROVED FOR ENTRY:


BRIAN D. CHENOWETH, WSBA No. 25877
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

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

KITSAP COUNTY, a political subdivision of the
State of Washington

Plaintiff,

v.

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

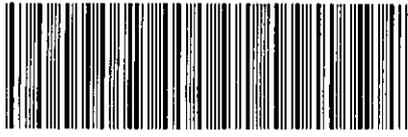
On the date given below I caused to be served the above document in the manner noted upon the following:

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		

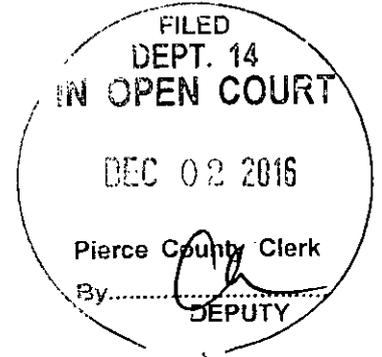
SIGNED in Port Orchard, Washington this 18th day of August, 2016.



 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

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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:

19 **I. FINDINGS OF FACT**

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

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

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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
21 **II. CONCLUSIONS OF LAW**

22 1. An injunction prohibiting KRRC from operating a shooting facility until it ~~submit~~ ^{obtains} an
23 application for ~~an SDAP~~ ^{permitting} is an appropriate remedial sanction for KRRC's contempt of court. Such an
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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 ^{obtains permitting} ~~submits a complete application to Kitsap County for a site development activity permit~~
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.

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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

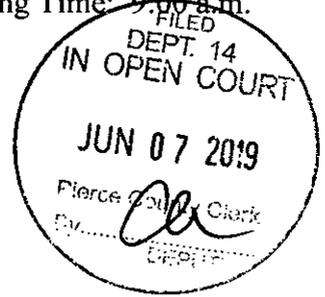
[PROPOSED] ORDER GRANTING KITSAP COUNTY'S MOTION FOR CONTEMPT WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW -- 6

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

0015



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



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

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

Plaintiff,

v.

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

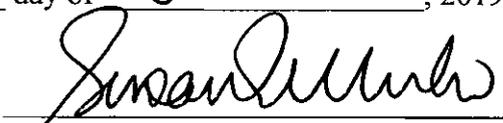
12 Effective on the date of this order, the text appearing between lines 18 and 21 of page 4 of the
13 Contempt Order is removed and replaced with the following:

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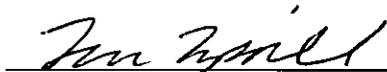
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1 County's online portal an SDAP application that contains each and every one of the items listed in
2 KCC § 21.04.160(B). In addition, KRRC is not precluded from arguing in a future proceeding that the
3 injunction closing the Club's entire facility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

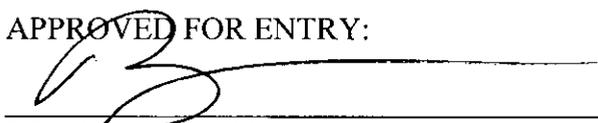
5 DONE IN OPEN COURT this 7 day of June, 2019.

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
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June 20 2019 8:30 AM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Seto
NO. 10-2-12913-3
Hearing Date: June 28
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 MOTION TO
TERMINATE CONTEMPT
SANCTION**

I. RELIEF REQUESTED

Defendant Kitsap Rifle and Revolver Club (the "Club" or "KRRC"), by and through its counsel of record, respectfully asks the Court to enter an order terminating the injunction issued by the Court as a coercive sanction for contempt pursuant to its *Order Granting Kitsap County's Motion for Contempt with Findings of Fact and Conclusions of Law* (dated December 2, 2016) ("Contempt Order") and *Order Amending December 2, 2016 Contempt Order* (dated June 7, 2019) ("Amended Contempt Order").

1 This motion is supported by the record on file with the Court and by the following
2 declarations filed herewith:

3 (1) *Declaration of Barbara Butterton (June 19, 2019)* (“Butterton Decl.”)
4 with attached Exhibit 1.

5 (2) *Declaration of Brooks M. Foster (June 19, 2019)* (“Foster Decl.”) with
6 attached Exhibit 2; and

7 (3) *Declaration of Marcus Carter (June 19, 2019)* (“Carter Decl.”) with
8 attached Exhibits 3 through 7.

9 II. RELEVANT FACTS

10 A. The Reason for This Motion

11 One of the permits the County is requiring the Club to obtain at this time is a shooting
12 range operating permit, which is different from a site development activity permit (SDAP).
13 Butterton Decl. ¶ 2. The County’s operating permit ordinance and its requirements have
14 been the subject of a separate lawsuit filed by the County against the Club in Kitsap County
15 Superior Court. *Id.*

16 The Club has a pending operating permit application, but the County has suspended
17 its processing of the application until such time that the County “has an approved, correct
18 SDAP application to consider.” *Id.* ¶ 3, Ex. 1 at 1. The Club understands the County intends
19 to require the Club to obtain an SDAP and perform some or all of the requirements of the
20 SDAP before the County will allow the discharge of *any* firearms at the Club’s property
21 pursuant to a shooting range operating permit. *Id.* ¶ 4. Thus, the Club’s present request for
22 this Court to terminate its 2016 contempt sanction will not allow discharge of firearms to
23 immediately resume at the Club’s property. *Id.* Nevertheless, the Club wants to terminate
24 the contempt sanction so that it will be one step closer to allowing its members and the public
25 to resume their safe and responsible use of its historical shooting range. *Id.*

26 ///

1 **B. Procedural History**

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

12 At the conclusion of the first remand, on February 5, 2016, the Court entered an
13 *Order Supplementing Judgment on Remand* (“Supplemental Judgment”). The Supplemental
14 Judgment contained an injunction requiring the Club “to apply for and obtain site
15 development activity permitting to cure violations of KCC Titles 12 and 19 found to exist on
16 the Property in the original Judgment.” Supplemental Judgment at 4. This “Permitting
17 Order” required the Club to submit an application for permitting to Kitsap County “within
18 180 days of the entry of this final order.” *Id.*

19 In August 2016 the County filed a motion to hold the Club in contempt of the Court’s
20 Permitting Order because the Club had “not submitted an application for its SDAP” within
21 180 days of entry of the Permitting Order. *Kitsap County’s Motion for Contempt* at 5 (filed
22 Aug. 18, 2016) (on file with the Court). The Court granted the County’s motion and entered
23 the Contempt Order on December 2, 2016. The Contempt Order enjoined the Club “from
24 operating a shooting facility until such time that [the Club] obtains permitting in compliance
25 with KCC Titles 12 and 19.” Contempt Order at 4. It provided a “purge condition” that
26 allowed the Club to move to lift the Contempt Order when it had “obtained permitting.” *Id.*

1 The Club appealed the Contempt Order. The Court of Appeals affirmed the trial
2 court’s finding that the Club had failed to comply with the Permitting Order, but the Court of
3 Appeals vacated the purge condition as impermissibly punitive “because actually obtaining a
4 permit is beyond the Club’s control.” *Kitsap County v. Kitsap Rifle and Revolver Club*, No.
5 50011-6-II, at 2 (Wash. Ct. App. Jan. 30, 2018) (unpublished opinion) (hereafter, “Contempt
6 Opinion”). The Court of Appeals remanded “for the trial court to address the imposition of a
7 proper purge condition.” *Id.* The Court of Appeals clarified that the Club retained the right
8 to produce “new or additional evidence of an inability to comply [with the Permitting Order]
9 in a future proceeding” and that “the Club is free to argue in a future proceeding that closing
10 the Club’s entire facility as a sanction no longer is coercive but has become punitive.” *Id.* at
11 22.

12 In advance of the June 7, 2019 hearing at which the Court would be amending the
13 Contempt Order, the parties agreed to all but one detail of a proposed order, *viz.*, the term
14 regarding the type of SDAP application the Club must submit to purge the contempt
15 sanction. At the June 7 hearing, the Court decided that issue in the County’s favor and
16 amended the original contempt order so as to enjoin the Club from operating a shooting
17 facility until:

18 “(a) KRRC submits a complete [SDAP] application to Kitsap
19 County for permitting to cure violations of KCC Titles 12 and
20 19 found to exist on the Property in the original Judgment
21 (hereafter ‘Purge Condition’); (b) **KRRC proves in a future
22 proceeding that it does not have the ability to comply with
23 the permitting order in the Supplemental Judgment, such
24 as by proving it does not have the ability to perform the
25 Purge Condition**; or (c) KRRC proves in a future proceeding
26 that it is no longer in contempt, such as by proving that all
violations of KCC Titles 12 and 19 found to exist on the
Property in the original Judgment have been abated or that
KRRC lacks the ability to cure violations of KCC Titles 12 and
19 found to exist on the Property in the original Judgment.”

1 Am. Contempt Order at 2 (bold added). The Amended Contempt Order further clarifies, “to
2 submit a ‘complete’ SDAP application means to transmit through the County’s online portal
3 an SDAP application that contains each and every one of the items listed in KCC
4 § 21.04.160(B).” *Id.* at 2–3.

5 **C. The Requirements of Submitting a Complete SDAP Commercial Application**

6 On June 5, 2019, the Club received an email from Kitsap County regarding the SDAP
7 application the County Department of Community Development (DCD) is requiring the Club
8 to submit. Foster Decl. ¶ 2, Ex. 2. According to the email, the Club must apply for an SDAP
9 Commercial, the Club’s application materials must include engineering documents, and they
10 must comply with SEPA checklists. *Id.*

11 KCC § 21.04.160(B) requires every SDAP application to include the following:

- 12 “1. A completed original project application form signed
13 by the owner(s) of the property which is the subject of the
14 application;
- 15 2. A completed original supplemental application form;
- 16 3. Parcel identification;
- 17 4. A copy of the pre-application meeting summary, if
18 applicable;
- 19 5. The applicable fee(s) adopted by the board for the
20 application(s);
- 21 6. If applicable, SEPA compliance documentation;
- 22 7. Permit-specific information required by submittal
23 checklists distributed by the department in accordance with this
24 section, or other relevant sections of Kitsap County Code; and
- 25 8. Any additional information, identified by the review
26 authority following a pre-application meeting or following
determination of a fully complete application, needed to
provide the department with sufficient information about the
proposed project.”

25 KCC § 21.04.160(B).

1 The County informed the Club that it will be required to obtain stormwater
2 engineering services “because of the work done in the wetlands, the culverts, as well as the
3 slope ratios of the berms.” Ex. 2. As a result, the County explains, KCC § 12.10.060 will
4 require the Club’s SDAP Commercial application to include “the submittal of documents
5 prepared by a qualified professional engineer.” *Id.* (citing KCC § 12.10.060).

6 The County has also told the Club that the State Environmental Protection Act
7 (SEPA) “cover[s] work done under Title[s] 12 and 19.” Ex. 2. Thus, according to the
8 County and KCC § 21.04.160(B)(6), the Club will also need to submit SEPA compliance
9 documentation in order to submit a complete SDAP Commercial application.

10 **D. The Cost of Submitting a Complete SDAP Commercial Application**

11 The DCD Title 21 permit fee schedule states that \$6,722.40 is due at the time of
12 submittal of an SDAP Commercial application, and \$6,240 of that fee is treated as a deposit
13 to pay for the County’s time spent processing the application. Carter Decl. ¶ 2, Ex. 3 at 8.

14 Soundview Consultants LLC (“Soundview”) provided a scope of work (“SOW”) to
15 the Club on or about August 15, 2018. Carter Decl. ¶ 3, Ex. 4. In the SOW, Soundview
16 proposes “to assist [the Club] with regulatory compliance and [SDAP] permitting assistance”
17 for the Club’s property. Ex. 4 at 1. Soundview estimates it will cost \$30,155 to provide
18 “wetland delineation verification and habitat assessment field work, environmental planning
19 and SEPA support, preparation of a Wetland and Fish and Wildlife Habitat Assessment
20 Report with Conceptual Mitigation Plan, Final Mitigation Plan, and regulatory coordination.”
21 *Id.* at 1, 3.¹ Soundview recommends the Club establish a reserve contingency of \$15,000 for
22 any additional, necessary work. *Id.* at 3.

23 On or about November 1, 2018, Contour Engineering (“Contour”) prepared a civil
24 engineering services agreement for the Club. Carter Decl. ¶ 4, Ex. 5 (the “Contour
25

26 ¹ The sum amount for the “scope of work estimated cost” stated on page three of Exhibit 4 is incorrect
and is instead correctly summed as \$30,155.

1 Proposal”). Contour’s proposed scope of work and services includes surveying, land
2 planning, and civil engineering. Ex. 5 at 1. More specifically, Contour is offering to

3 “[p]repare Civil Construction Plans and Documents for
4 submittal to Kitsap County that will include the following at a
5 minimum: . . .

- 6 • Site and Horizontal Control Plan
- 7 • Temporary Erosion and Sedimentation Control Plan(s),
8 Notes and Details
- 9 • Grading Plan
- 10 • Storm Drainage Plan
- 11 • Notes and Details Plan . . .
- 12 • Stormwater Site Plan
- 13 • Construction Stormwater Pollution Prevention Plan
14 (SWPPP)
- 15 • Stormwater Facilities Operations & Maintenance Manual”

16 *Id.* at 10. Contour estimates the cost for those services to be \$8,500. *Id.* at 1.

17 It is the Club’s understanding that the work proposed by Soundview and Contour is
18 required for the Club to submit a complete SDAP Commercial application. Carter Decl. ¶ 5.
19 The Club has no members, officers, or directors who have the expertise or skill necessary to
20 perform the work proposed by Soundview or Contour. *Id.* As a result, the Club needs their
21 professional services in order to submit a complete SDAP Commercial application. *Id.* The
22 total cost of the application fee and the work proposed by Soundview and Contour is
23 \$45,377.40. *Id.*

24 **E. The Club’s Financial Status**

25 The following table summarizes the beginning and ending balances of the Club’s two
26 checking accounts, one savings account, and a petty cash box (“the accounts”), which are the
27 Club’s only liquid assets. Carter Decl. ¶¶ 6–7, Exs. 6, 7.²

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30 ² The Club has not yet filed its 2018 federal tax return, so the treasurer’s reports and bank statements
31 are the Club’s most current and accurate financial documents. Carter Decl. ¶ 6.

Date	Beginning Balance	Ending Balance
January 2019	\$3,806.80	\$4,974.07
February 2019	\$4,974.07	\$5,214.07
March 2019	\$5,214.07	\$5,568.27
April 2019	\$5,568.27	\$4,022.22
May 2019	\$4,022.22	\$4,022.17
Average Balance	\$4,717.09	\$4,760.16

As the foregoing table illustrates, the Club’s average end of month operating balance between January and May 2019 is \$4,738.62. Carter Decl. ¶ 7. The Club expects its accounts will hold about \$4,000 at the end of June 2019. *Id.*

The Club’s only significant sources of income in 2019 have been membership dues and donations. *Id.* ¶ 8. Despite the Club’s continuous and ongoing efforts to raise funds, it started the year with very little cash and has been unable to improve its financial position. *Id.* The Club is also not aware of any way it can obtain a loan secured by any of its property, and even if it did it would be unable to make monthly loan payments. *Id.*

F. The Club’s Initiation of an SDAP Commercial Application

On June 18, 2019, Club representative Barbara Butterton visited DCD to seek assistance in initiating an SDAP Commercial application. Butterton Decl. ¶ 5. DCD staff explained to Ms. Butterton the process of initiating an SDAP application through the online portal, and she returned to her home to begin that process. *Id.* On the morning of June 19, 2019, Ms. Butterton successfully submitted several documents through the online portal to initiate the process of submitting an SDAP Commercial application. *Id.* The Club understands the DCD will respond to Ms. Butterton’s request to initiate the application process and that response will include further instructions regarding what the Club must do to submit a complete SDAP Commercial application. *Id.*

1 As of the filing of this motion, the County has not yet responded to the Club’s
2 initiation of an SDAP Commercial application. Butterson Decl. ¶ 6. Nothing communicated
3 to the Club during Ms. Butterson’s visit to DCD or her use of DCD’s online portal leads her
4 to believe the cost for the Club to submit a complete application will be less than the
5 \$45,377.40 discussed above. *Id.*

6 III. ARGUMENT

7 A. The Contempt Sanction Should Be Terminated Because the Club Is Unable to 8 Perform the Purge Condition.

9 The Club does not have the ability to perform the Purge Condition because it lacks
10 the funds necessary to submit a complete SDAP application that includes each and every one
11 of the items listed in KCC § 21.04.160(B). Because the Club is unable to perform the Purge
12 Condition, the Court should terminate the contempt sanction.

13 The Contempt Order clearly provides for termination of the coercive sanction if
14 “KRRC proves in a future proceeding that it does not have the ability to comply with the
15 permitting order in the Supplemental Judgment, such as by proving it does not have the
16 ability to perform the Purge Condition.” Am. Contempt Order at 2. The parties agreed to
17 this part of the order, which the Club intended to be consistent with the Court of Appeals’
18 Contempt Opinion and applicable law.

19 A remedial sanction is “a sanction imposed for the purpose of coercing performance
20 when the contempt consists of the omission or refusal to perform an act that is yet in the
21 person’s power to perform.” RCW 7.21.030(3). “A sanction becomes punitive when the
22 contemnor cannot purge the contempt.” Contempt Op. at 20.

23 A contemnor bears the burden of proving her inability to comply with a court order so
24 as to prevent the imposition of a sanction, and “[t]he same rule applies regarding the ability
25 to comply with a purge condition.” *Id.*; see *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891
26 P.2d 725 (1995). To meet this burden, the contemnor’s “evidence must be of a kind the court

1 finds credible.” Contempt Op. at 10. “The contemnor must be given the opportunity ‘at
2 regular intervals[] to present new evidence tending to show that the [sanction] has lost its
3 coercive effect or that there is no reasonable possibility of compliance with the court order.’”
4 Contempt Op. at 22 (quoting *In re Pers. Restraint of King*, 110 Wn.2d 793, 805, 756 P.2d
5 1303 (1988)).

6 The Court of Appeals held, “the Club presented [at the December 2, 2016 contempt
7 hearing] limited evidence that it lacked sufficient funds to complete an SDAP application.”
8 Contempt Op. at 15. Although the County did not rebut the Club’s evidence with evidence
9 of its own, the County argued the Club’s evidence should be discounted because it was not
10 supported by “tax returns, assets and liabilities, or bank statements.” *Id.* at 15–16. The Court
11 of Appeals held the trial court did not abuse its discretion in implicitly finding that the Club
12 did not produce sufficient, credible evidence of its inability to submit a complete SDAP
13 application. *Id.* at 16.

14 As discussed above, the Club needs at least \$45,000 to submit a complete SDAP
15 Commercial application. It will need to pay an application fee of over \$6,700; it will need
16 professional engineering services costing \$8,500; and it will need over \$30,000 in
17 professional planning and consulting services from Soundview.

18 The Club cannot afford any of these expenses. The Club’s average end of month
19 operating balance from January through May 2019 was \$4,738.62. The Club expects its
20 accounts will hold about \$4,000 at the end of June 2019. Its only significant sources of
21 income in 2019 have been membership dues and donations. Carter Decl. ¶ 5. Despite the
22 Club’s continuous and ongoing efforts to raise funds, it started the year with very little cash
23 and has been unable to improve its financial position. *Id.* The Club is also not aware of any
24 way it can obtain a loan secured by any of its property, and even if it did it would be unable
25 to make monthly loan payments. *Id.*

1 The Club does not have the funds it needs to prepare and submit a complete SDAP
2 Commercial application to DCD. The Club does not even have enough money to pay the
3 application fee of \$6,722.40, and it has not had enough money to do so since at least January
4 2019. Exs. 3, 6, 7. The Club’s evidence of its limited financial status and inability to submit
5 a complete SDAP Commercial application is credible and sufficient.

6 Because the Club is not able to submit a complete SDAP Commercial application to
7 the County DCD, the plain language of the Amended Contempt Order requires the contempt
8 sanction to be lifted. Am. Contempt Order at 2 (providing for termination of the coercive
9 injunction if “KRRC proves in a future proceeding that . . . it does not have the ability to
10 perform the Purge Condition”). If the contempt sanction were to remain in effect under these
11 circumstances, it would be impermissibly punitive. The Court of Appeals reversed the
12 original purge condition in the Contempt Order because it was not within the Club’s power to
13 perform. Contempt Op. at 2. Because the Club is unable to perform the new Purge
14 Condition entered on June 7, 2019, the injunction imposed on the Club as a coercive sanction
15 for contempt should be lifted. This will not allow the Club to immediately resume discharge
16 of firearms at its property because the County is still prohibiting that until the Club obtains an
17 operating permit; and the County will not continue processing the Club’s operating permit
18 application until the Club has submitted a complete and proper SDAP application.

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IV. CONCLUSION

For the foregoing reasons, the Club respectfully asks the Court to terminate the contempt sanction by entering the form of order proposed by the Club, which states:

“Defendant Kitsap Rifle and Revolver Club is no longer enjoined from operating a shooting facility by the *Order Granting Kitsap County’s Motion for Contempt with Findings of Fact and Conclusions of Law* (dated December 2, 2016) and the *Order Amending December 2, 2016 Contempt Order* (dated June 7, 2019). The injunction in those orders that prohibits KRRC from operating a shooting facility as a coercive remedy for contempt is hereby terminated as of the date of this order.”

DATED: June 19, 2019

CHENOWETH LAW GROUP, PC

/s Brooks M. Foster

Brian D. Chenoweth, WSBA No. 25877

Brooks M. Foster, OR Bar No. 042873

(appearing *pro hac vice*)

510 SW Fifth Ave., Fifth Floor

Portland, OR 97204

Phone: (503) 221-7958

Email: bdc@northwestlaw.com

bfoster@northwestlaw.com

*Attorneys for Defendant Kitsap Rifle and
Revolver Club*

Ethan Jones

From: Laura Zippel <lzippel@co.kitsap.wa.us>
Sent: Wednesday, June 05, 2019 4:28 PM
To: Brooks Foster; John C. Purves
Cc: Bradley T. Crittenden; Ethan Jones
Subject: RE: KRRC / Kitsap County

Brooks,

Thank you for your explanation. We are in agreement that any SDAP applied for by the Club must remedy the unpermitted work described in the 2012 findings of fact, conclusions of law, and orders. The unpermitted work is specifically described in findings of fact 33-66 and include earth movement, slope cutting, infringement of fill into Category II wetland buffers, and channelization of water and installation of underground culverts. We are also in agreement that the type of permit required is an SDAP. KCC 12.10.030. Title 12 Kitsap County Code (KCC) and the Kitsap Stormwater Manual (available online with the County Code) regulates the grading, slope cutting, fill, and culverts. Title 19 regulates the wetlands and associated buffers. SDAPs and the associated State Environmental Protection Act (SEPA) checklist cover both work done under Title 12 and 19. Based on DCD's understanding of the Club's intended use of the property as being open to the public, hosting competitions and other events, and providing training and other classes, DCD sees the use as needing an SDAP commercial. Even if the Club does not intend a use that would be commercial, the work done will require an SDAP 3 with engineering.

SDAP 3s, also sometimes called "major" or "large," are used whenever the earth movement is over 5,000 cubic yards (CY) or the cleared area is over one acre. Prior to trial, DCD staff inspected the property for discovery purposes. One of the inspectors onsite was Shawn Alire. Based on his previous site visit, Shawn is confident that the amount of earth work done exceeds 5,000 CY. Further, staff also previously reviewed the AHBL surveys of the property done for trial and based on the surveys calculated the work done is well over 5,000 CY. Based on both the size of the area disturbed as well as the amount of earth movement, the work is within the SDAP 3 category.

Stormwater engineering is required for the permit because of the work done in the wetlands, the culverts, as well as the slope ratios of the berms. KCC 12.10.060. There is no way to divide up the work into multiple SDAPs. First, SEPA specifically does not allow a project to be divided up to reduce or skirt the review process. WAC 197-11-060(3)(b); Department of Ecology SEPA Handbook section 2.3.1. Therefore, even if multiple SDAPs could be applied for, SEPA requires that they all be reviewed under one environmental review. Second, DCD would not be able to complete the review if it was broken-up into multiple SDAPs. The stormwater requirements necessitate DCD to review an entire area of development. If it is broken up into multiple permits, DCD would not be able to accurately assess if the correct standards are being met.

The Club consistently asks to be treated like every other permit applicant. DCD requires every permit applicant to apply for one SDAP that will cover the entirety of work done on a property. As explained to Soundview, if the Club wishes to phase the SDAP to allow themselves additional time and perhaps complete additional construction to meet the operating permit standards they may do so. However, even if the project is phased it would still be under one SDAP.

Please let me know if you have any questions. Additionally, DCD staff are available to answer questions by the Club directly.

-Laura

Laura Zippel | Deputy Prosecutor | Kitsap County Prosecuting Attorney's Office

June 20 2019 8:30 AM

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

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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 FOR THE COUNTY OF PIERCE
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8 KITSAP COUNTY, a political subdivision of
the State of Washington

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10 Plaintiff,

11 v.

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

14 Defendants

15 and

16 IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED
AT
17 One 72-acre parcel identified by Kitsap County
Tax Parcel ID No. 362501-4-002-1006 with
18 street address 4900 Seabeck Highway NW,
Bremerton Washington.
19
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Case No.: 10-2-12913-3

**DECLARATION OF
BARBARA BUTTERTON
(JUNE 19, 2019)**

21
22 I, Barbara Butterson, declare under penalty of perjury under the laws of the State of
23 Washington that the following is true and correct:

24 1. I am a member of Defendant Kitsap Rifle and Revolver Club (the "Club") and
25 am assisting with the Club's efforts to obtain site development permitting. I am over the age
26

1 of 18 and competent to testify to the facts herein. I make this testimony based on my
2 personal knowledge.

3 2. One of the permits the County is requiring the Club to obtain at this time is a
4 shooting range operating permit, which is different from a site development activity permit
5 (SDAP). The County's operating permit ordinance and its requirements have been the
6 subject of a separate lawsuit filed by the County against the Club in Kitsap County Superior
7 Court.

8 3. The Club has a pending operating permit application, but the County has
9 suspended its processing of the application until such time that the County "has an approved,
10 correct SDAP application to consider." This is stated in a letter I received from the Kitsap
11 County Department of Community Development (DCD) on or about March 26, 2019. I
12 attach a true copy of this letter as Exhibit 1.

13 4. The Club understands the County intends to require the Club to obtain an
14 SDAP and perform some or all of the requirements of the SDAP before the County will
15 allow the discharge of *any* firearms at the Club's property pursuant to a shooting range
16 operating permit. Thus, the Club's present request for this Court to terminate its 2016
17 contempt sanction will not allow discharge of firearms to immediately resume at the Club's
18 property. Nevertheless, the Club wants to terminate the contempt sanction so that it will be
19 one step closer to allowing its members and the public to resume their safe and responsible
20 use of its historical shooting range.

21 5. On June 18, 2019, I visited DCD to seek assistance in initiating an SDAP
22 Commercial application. DCD staff explained the process of initiating an SDAP application
23 through the online portal, and I returned home to begin that process. On the morning of June
24 19, 2019, I successfully submitted several documents through the online portal to initiate the
25 process of submitting an SDAP Commercial application. The Club and I understand the
26

1 DCD will respond to my request to initiate the application process and that response will
2 include further instructions regarding what the Club must do to submit a complete SDAP
3 Commercial application.

4 6. As of the filing of this motion, the County has not yet responded to my
5 initiation of an SDAP Commercial application. Nothing communicated to me during my
6 visit to the DCD or my use of its online portal leads me to believe the cost for the Club to
7 submit a complete application will be less than the \$45,377.40 discussed in the Club's
8 motion to terminate contempt sanction, which I have reviewed.

9 **I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE**
10 **BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS**
11 **MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR**
12 **PERJURY.**

13 Dated: June 19, 2019

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16 Barbara Butterson
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KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

To enable the development of quality, affordable, structurally safe and environmentally sound communities.

Jim Bolger
INTERIM DIRECTOR

Jeff Rimack
ASSISTANT DIRECTOR

March 26, 2019

KRRC
4900 Seabeck Highway NW
Bremerton, WA 98312

Subject: Review of materials submitted in request for information Permit # 18-00723

Dear Ms Butterton,

The department has received the materials you submitted in response to a request for information for your operating permit application # 18-00723. Department records indicate that Kitsap Rifle and Revolver Club (KRRC) applied for a Site Development Activity Permit (SDAP) – 2 Grading Permit #19-00132 on January 8, 2019. On January 28, 2019 the department informed you and your agent Sound View Consultants that a SDAP-Commercial is required rather than the SDAP – 2 Grading that was applied for. Permit #19-00132 was subsequently canceled.

As you are aware, due to the ongoing code compliance case affecting KRRC the courts have issued determinations affecting KRRC’s ability to operate a shooting facility at the current location – including (among other things) that KRRC obtain a SDAP for prior work accomplished and limiting the maximum caliber of ammunition discharged at the facility. To date no SDAP application exists and KRRC’s response to the information request continues to argue the applicability of the limitation on ammunition discharge specifically and code requirements in general. Your response to the department’s request for information dated 1/8/19 states in part that the code provides that the County may issue an operating permit regardless of the presence of the injunctions as the recipient of the operating permit will be bound by the decisions of the court.

Kitsap County Code (KCC) Section 21.04.010.F establishes that review of permit applications for parcels with ongoing code compliance cases may be suspended where the outcome of the resolution of the code compliance case might impact the application. The size and type of firearms that may be permitted to be discharged affects the construction of the required physical containment. Approval of the SDAP establishes the size, location and construction of berms creating the shooting areas and remedial actions necessary for shooting to resume on the site. Additionally, Kitsap County Code Section 21.04.180.B requires that the SDAP application be acted on (approved) prior to acting on the operating permit application. To date no SDAP application exists for the KRRC property.

The department has determined that due to the impacts of the courts prior determinations review of this application must be suspended until the department has an approved, correct SDAP application to consider and any outstanding prior court determinations – including the limitation on ammunition caliber discharged are resolved. The range permit application will not expire but will remain in a “Tolled” status until the correct SDAP application is received and accepted, and the prior court determinations have been issued. Review of the operating

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County
'Year of the Rural'



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permit application may occur concurrently with the review of the SDAP upon request of KRRC at the time of SDAP application.

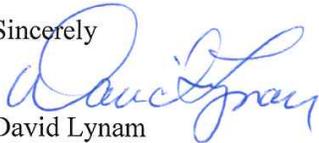
Your response to the department's request for information offers several alternatives that KRRC believes are possible for the department to issue an operating permit:

- It may be possible to approve a range operating permit without meeting the adequate physical containment requirements of KCC 10.25.090(4)(i) where discharge is limited to those firearms using exclusively black powder and non-center-fired cartridges.
- KCC 10.25.130 establishes that a shooting facility that solely conducts trap, skeet, sporting clay or five stand shooting operations are exempt from the requirement for an operating permit provided the shells fired are not greater than 7 ½ shot AND further provided that there is sufficient land at the facility to contain all shot fired. It may be possible for KRRC to limit its activities and discharge firearms in a direction that contains the shot on the facility grounds (and does not allow shot to fall into any wetlands) and thus be exempt from permitting requirements.
- It is entirely possible that a permit can be issued that only includes the use of the pistol range or the 150-yard rifle range; that requires a range officer to be at arm's length; or that is limited to selected bays provided that all of these activities occur consistent with the other provisions of the Kitsap County Code and prior court determinations. Depending on what areas are included in a more limited application, an SDAP may not be required.

The department can't choose which of the options best meet the current or future needs of KRRC. We can only review what is submitted in an application for compliance with code requirements – and in this case, prior court determinations. We can condition but we can't modify applications. As your response to the request for information suggests, there are options and alternatives that KRRC may pursue to obtain a modified operating permit or become exempt from the operating permit requirements entirely. The department is willing to meet with you to discuss how the existing permit application might be modified to allow resumption of shooting activities consistent with the prior court determinations, code and SDAP requirements.

You can contact me directly to arrange for these discussions.

Sincerely



David Lynam
Fire Marshal
Manager Building and Fire Safety

C: Application 18-00723

June 20 2019 8:30 AM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Seto
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 19, 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 1. I am the Executive Officer of Defendant Kitsap Rifle and Revolver Club (the
2 “Club”). I am over the age of 18 and competent to testify to the facts herein. I make this
3 testimony based on my personal knowledge.

4 2. The County publishes and makes available on the internet a *Title 21 Permit*
5 *Fee Info* pamphlet that lists the various types of permits processed by the Department of
6 Community Development (DCD) and provides information about permit fees. Attached as
7 Exhibit 3 is a true copy of the *Title 21 Permit Fee Info* pamphlet from the internet.
8 According to the pamphlet, an applicant for an SDAP Commercial must pay \$6,722.40 when
9 they submit their application materials and \$6,240 of that fee is treated as a deposit to pay for
10 the County’s time spent processing the application.

11 3. Soundview Consultants LLC (“Soundview”) provided a scope of work
12 (“SOW”) to the Club on or about August 15, 2018. A true copy of this SOW is attached as
13 Exhibit 4. On page 1 of the SOW, Soundview proposes “to assist [the Club] with regulatory
14 compliance and [SDAP] permitting assistance” for the Club’s property. Soundview
15 estimates it will cost \$30,155 to provide “wetland delineation verification and habitat
16 assessment field work, environmental planning and SEPA support, preparation of a Wetland
17 and Fish and Wildlife Habitat Assessment Report with Conceptual Mitigation Plan, Final
18 Mitigation Plan, and regulatory coordination.” The sum amount for the “scope of work
19 estimated cost” stated on page three of Exhibit 4 is incorrect and is instead correctly summed
20 as \$30,155. On page 3, Soundview further recommends that the Club establish a reserve
21 contingency of \$15,000 for any additional, necessary work.

1 4. On or about November 1, 2018, Contour Engineering (“Contour”) prepared a
2 civil engineering services agreement for the Club. A true copy of this “Contour Proposal” is
3 attached as Exhibit 5. Contour’s proposed scope of work and services includes surveying,
4 land planning, and civil engineering, as stated on page 1. More specifically, as stated on
5 page 10, Contour is offering to
6

7 “[p]repare Civil Construction Plans and Documents for
8 submittal to Kitsap County that will include the following at a
9 minimum: . . .

- 10 • Site and Horizontal Control Plan
- 11 • Temporary Erosion and Sedimentation Control Plan(s),
12 Notes and Details
- 13 • Grading Plan
- 14 • Storm Drainage Plan
- 15 • Notes and Details Plan . . .
- 16 • Stormwater Site Plan
- 17 • Construction Stormwater Pollution Prevention Plan
18 (SWPPP)
- 19 • Stormwater Facilities Operations & Maintenance Manual”

20 Contour estimates the cost for those services to be \$8,500, as stated on page 1.

21 5. Based on DCD’s estimation as communicated to Soundview, the work
22 proposed by Soundview and Contour is required for the Club to submit a complete SDAP
23 Commercial application. The Club has no members, officers, or directors who have the
24 expertise or skill necessary to perform the work proposed by Soundview or Contour. As a
25 result, the Club needs their professional services in order to submit a complete SDAP
26 Commercial application. The total cost of the application fee and the work proposed by
Soundview and Contour is \$45,377.40.

 6. Attached as Exhibit 6 are true copies of 2019 financial reports created in the
regular course of business by the Club’s treasurer. Attached as Exhibit 7 are true copies of

1 the Club’s 2019 bank statements, which the Club obtained from each respective bank’s
2 website.

3 7. The bank accounts and petty cash box listed in Exhibit 6 are the Club’s only
4 liquid assets. The Club has not yet filed its 2018 federal tax return, so the treasurer’s reports
5 and bank statements are the Club’s most current and accurate financial documents. The
6 following table summarizes the beginning and ending balances of the Club’s two checking
7 accounts, one savings account, and a petty cash box (“the accounts”).
8

9

Date	Beginning Balance	Ending Balance
January 2019	\$3,806.80	\$4,974.07
February 2019	\$4,974.07	\$5,214.07
March 2019	\$5,214.07	\$5,568.27
April 2019	\$5,568.27	\$4,022.22
May 2019	\$4,022.22	\$4,022.17
Average Balance	\$4,717.09	\$4,760.16

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17 As the foregoing table illustrates, the Club’s average end of month operating balance
18 between January and May 2019 is \$4,738.62. The Club expects its accounts will hold about
19 \$4,000 at the end of June 2019.

20 ///

21 ///

22 ///

23 ///

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26 ///

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>	





Soundview Consultants

Environmental Assessment • Planning • Land Use Solutions

2907 Harborview Dr., Suite D, Gig Harbor, WA 98335

Phone: (253) 514-8952 Fax: (253) 514-8954

SCOPE OF WORK AGREEMENT FOR CONSULTING SERVICES

Between Kitsap Rifle and Revolver Club and Soundview Consultants LLC

Post-Appeal Regulatory Support

Project Number 1061.0001

Soundview Consultants LLC (Consultant) is proposing to assist Kitsap Rifle and Revolver Club (Client) with regulatory compliance and Site Development Activity Permit (SDAP) permitting assistance for KRRC's property located at 4900 Seabeck Highway NW in unincorporated Kitsap County, Washington (Kitsap County Tax Parcel Number 362501-4-002-1006). The Client has requested Consultant to provide this scope of work and estimate to include, as currently understood, wetland delineation verification and habitat assessment field work, environmental planning and SEPA support, preparation of a Wetland and Fish and Wildlife Habitat Assessment Report with Conceptual Mitigation Plan, Final Mitigation Plan, and regulatory coordination.

This scope of work does not include site survey, geotechnical analysis, preparation of formal site plans, applications, shoreline permitting, ESA compliance, coordination with state or federal agencies, post-permitting compliance measures such as monitoring, maintenance, and associated mitigation reporting, or construction-related costs. These additional items, if necessary, may be coordinated with other parties and/or authorized under this agreement with Consultant and Client approval.

Details of each initial task, as currently understood, are outlined in the following descriptions:

Task 100 – Wetland Delineation and Habitat Assessment Field Work

Consultant will conduct background research and visit the subject property to verify a previous delineation of wetlands and an assessment of potentially regulated fish and wildlife habitat features. The wetland delineations will be performed in accordance with the U.S. Army Corps of Engineers' *Wetlands Delineation Manual* as modified by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)*. Based on these manuals, any onsite wetland boundaries will be determined using vegetation, soil characteristics, and hydrologic features, and then flagged using alpha-numerically labeled flagging. This task only includes the research, analysis, and field work necessary to identify and verify a previous delineation of onsite wetlands and drainages. Consultant will also assess sensitive fish and wildlife species presence, potential buffer extent, and potential regulatory status of such features.

Task 100 is anticipated to require approximately 37 hours of professional staff time and limited expenses, such as mileage, and will be billed for actual time required to effectively perform these activities up to a total cost of \$3,430.00.

Task 200 – Environmental Planning and SEPA Support

Upon completion of the effort in Task 100, Consultant will create a GIS aerial map identifying wetland boundaries, streams, associated buffers and setbacks for planning purposes. Consultant will utilize the data collected and Kitsap County Code to support the Client to develop a permitting and documentation strategy for the proposed project. Such planning and support may include email correspondence, telephone communication, meetings and coordination. The Consultant will also support the Project Engineer by reviewing and completing the environmental elements of the SEPA environmental checklist. This task assumes that the Project Engineer will be responsible for managing SEPA compliance.

Task 200 includes current work-in-progress costs of \$2,500.00 for setting up and attending a Staff Consultation Meeting with Kitsap County on Wednesday, July 11, 2018. Task 200 is currently anticipated to require an additional approximately 65 hours of professional staff time to be billed for actual time required to effectively perform these activities up to a total cost of \$10,000.00.

Task 300 – Wetland and Fish & Wildlife Habitat Assessment Report with Conceptual Mitigation Plan

The Consultant will prepare a Wetland Delineation and Fish and Wildlife Habitat Assessment Report based on the findings of the previous assessment efforts that evaluated and delineated wetlands and fish and wildlife habitat. This task includes formal analysis and documentation of potential impacts to regulated wetlands and fish and wildlife habitat from development actions and documentation of existing site features and buffer limitations for review. The Assessment Report will be prepared to Kitsap County's current critical areas ordinance and will include updated wetland ratings using current WSDOE methodology.

The Consultant will work with the Client and relevant parties to identify appropriate non-compensatory mitigation options and subsequently develop a Conceptual Mitigation Plan according to the standards and protocols as set forth in the local critical areas ordinance along with State guidance. This plan will briefly describe mitigation sequencing, critical areas impacts, and a summary of the methods necessary to enhance and restore buffers under the project plan. In addition, this plan will include discussion of relevant code criteria.

Task 300 assumes that existing uses, culverts, and buffer intrusions can be retained, that required mitigation is limited to buffer restoration/enhancement only, and that no compensatory mitigation is required.

Task 300 is currently anticipated to require approximately 52 hours of professional staff time, 16 hours of mapping and design support, 1 hour of administrative staff time, and nominal expenses to be billed for actual time required to effectively perform these activities up to a total cost of \$6,725.00.

Task 400 – Intentionally Left Blank

Task 500 – Final Mitigation Plan (if needed)

The Consultant will work with the Client and Team to develop a detailed Final Wetland Mitigation Plan according to the conditions of approval and regulatory negotiations. This plan will detail wetland buffer impacts and planned non-compensation actions. In addition, this plan will reference detailed project elements, construction methods and sequencing, and a finalized schedule for the long-term monitoring of implemented wetland buffer mitigation actions.

For economic purposes, the details of this plan will be built upon the previously prepared Conceptual Mitigation Plan (Task 300) and existing documentation for final approval by various regulatory agencies and assumes that regulatory conditions and/or changes will be reasonable and not substantially different from the proposed actions. This task may require coordination with project engineers, and if necessary, other specialists such as geotechnical engineers, landscape architects, and hydrologists provided by Client.

Any additional drawings, if necessary, shall be prepared by the Client's engineer under the direction of Consultant. The level of service necessary for this Task is dependent upon factors identified in Tasks 100-300 and regulatory conditions that are not fully known at this time. Therefore, this cost estimate is limited to the estimated budget set forth below.

Task 500 is currently anticipated to require approximately 40 hours of professional staff time, 16 hours of mapping and design support, 1 hour of administrative staff time, and nominal expenses to be billed for actual time required to effectively perform these activities up to a total cost of \$5,000.00.

Task 600 – Regulatory Coordination

The Consultant will provide general assistance to the Client in development of permitting documents as necessary. Following permit application, Consultant will support the project as it is reviewed at the local level and assumes no coordination with the Washington Department of Fish and Wildlife (WDFW) and U.S. Army Corps of Engineers (USACE) will be necessary. This task includes project management and general support to

gain informal approval of adaptive management actions. Such coordination and support may include, but is not limited to, normal correspondence, brief site inspections, and other follow up meetings and coordination. This task can also include responding to requests for additional information, regulatory site visits, response to comments, and continued contact with project managers and staff to keep the coordination process moving forward.

Task 600 is currently anticipated to require approximately 40 hours of professional staff time to be billed for actual time required to effectively perform these activities up to a total cost of \$5,000.00.

Task 900 – Contingency

Should additional project support be necessary and requested by the Client, the Consultant recommends a reserve contingency be established to address any additionally requested tasks or regulatory coordination and support if needed. A contingency amount of \$15,000.00 is recommended at this time. Such additional support can be provided on a time and expense basis at the Consultant’s standard billing rates upon Client’s request.

Task Summary

Task 100 – Wetland Delineation and Habitat Assessment Field Work	\$	3,430.00
Task 200 – Environmental Planning and SEPA Support	\$	10,000.00
Task 300 – Wetland and Fish & Wildlife Habitat Assessment Report with Conceptual Mitigation Plan	\$	6,725.00
Task 400 – Intentionally Left Blank	\$	----
Task 500 – Final Mitigation Plan (if needed)	\$	5,000.00
Task 600 – Regulatory Coordination	\$	5,000.00
Scope of Work Estimated Cost	\$	27,910.00
Task 900 – Contingency	\$	15,000.00
Total Estimated Cost:	\$	45,155.00

STAFF BILLING AND MILEAGE RATES

Soundview Consultants LLC hourly billing rates for this agreement are as follows:

Principal Scientist/Senior Environmental Planner	\$	165.00/hr
Senior Environmental Planner, Senior Fisheries Biologist.....	\$	125.00/hr
Landscape Architect	\$	125.00/hr
Environmental Planner/Scientist	\$	115.00/hr
Senior Design Developer/Mapping Specialist	\$	105.00/hr
Wetland Scientist, Project Coordinator	\$	95.00/hr
Staff Scientist II, Spatial Design Developer.....	\$	85.00/hr
Staff Scientist I.....	\$	75.00/hr
Field Technician, Project Administration	\$	65.00/hr
Courier.....	\$	50.00/hr
Mileage	\$	0.66/mi

Billing rates will be subject to a CPI adjustment on an annual basis. For extended contracts periods over multiple years, billing rates would be subject to multiple adjustments.

Cost Estimate Summary

This cost estimate is based on the anticipated level of effort required to complete the Tasks above, which is founded on our experience supporting similar projects. The estimate is further based on the assumption that Consultant has timely and effective coordination and communication with the Client, Team, and all regulatory staff, and that necessary data and project details will be made available in a timely manner. This is to be a Time and Expense contract based on the billing rates and time estimates provided. Consultant will work closely with the Client and services will be billed for actual time and expenses required to effectively perform these activities up to the estimated cost of **\$45,155.00**. Consultant will notify Client promptly if unanticipated circumstances are encountered that are liable to materially increase cost of completing the work in this contract. Should additional environmental planning, consultation services, or reporting become necessary, this budget may need to be increased with the approval of the Consultant and Client.

Submitted By:
Consultant

Approved By:
Client

Jeremy Downs, Principal

Date

Kitsap Rifle and Revolver Club

Date



PO Box 949, Gig Harbor, WA 98335
Phone: 253 857 5454

CIVIL ENGINEERING SERVICES AGREEMENT

Date of Agreement: **November 1, 2018**

This Form is an Agreement between **CLIENT** and **CONTOUR ENGINEERING, LLC**.

Engineer:	Mailing Address:	Office Address:
	Contour Engineering, LLC	Contour Engineering, LLC
	PO Box 949	4706 97 th Street NW, Suite 100
	Gig Harbor, WA 98335	Gig Harbor, WA 98332

Client:	Marcus Carter, Kitsap Rifle & Revolver Club
Billing Address:	4900 Seabeck Hwy NW Bremerton, WA 98312
Email:	marcus@gunschool.com
Phone:	(360) 710-8763

Project Number: **18-145** Project Name: **Kitsap Rifle & Revolver Club**

PROJECT SUMMARY:

The proposed project scope of work is to provide a Site Development Activity Permit (SDAP) for the Kitsap Rifle & Revolver Club per the site meeting held October 12, 2018. This permit is for grading activities and stormwater conveyance pipe installation previously accomplished on this site. No new grading is proposed and only modifications to the storm drainage system where necessary are proposed to meet current requirements. This plan will be an as-built of the provided survey previously accomplished by AHB.

SCOPE OF WORK AND SERVICES: SURVEYING, LAND PLANNING AND CIVIL ENGINEERING

Note: At the date of this proposal, there are still several unknowns on the project that might affect the outlined Scope of Work and associated budgets. If this occurs, we will contact the Client to discuss accordingly.

Contract Type:	Fixed Fee (Civil Task 1) Time and Expense Fee (Civil Task 2)
-----------------------	---

Civil Task Work

CT 1 – Site Development Activity Permit Drawings -----	\$8,500
CT 2 – Meetings and Coordination (T&E) -----	TBD

SEE ATTACHMENT A – SCOPE OF WORK, TYPICAL EXCLUSIONS AND CONTRACT NOTES

CE LLC Initial: BA 1/8 CLIENT Initial: _____

The Client and Engineer agree as follows:

ARTICLE 1 – INITIAL INFORMATION

1.1 PROJECT PARAMETERS

1.1A The objective or use is: **Civil Engineering services for the work to be completed at the property listed below.**

1.1B The Physical parameters are: **4900 Seabeck Hwy NW, Bremerton, Washington
Kitsap County Tax Parcel: 362501-4-002-1006**

1.2 PROJECT TEAM

1.2A The Client's Designated Representative is: **Unknown**

1.2B The Client's other consultants and contractors are: **Unknown**

1.3 OTHER Important initial information

-All information pertaining to the property and project shall be provided by Client to the Engineer prior to the starting of the design process.

ARTICLE 2 – RESPONSIBILITIES OF THE PARTIES

2.1 The Client and Contour Engineering LLC (also referred to 'CE LLC' or 'Contour' within this document) shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among the members of the Project team.

2.2 CLIENT

2.2A Unless otherwise provided under this Agreement, the Client shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Client shall furnish to CE LLC within 15 days after receipt of a written request, information necessary and relevant to be evaluated, give notice of, or enforce lien rights.

2.2B The Client's Designated Representative identified in Paragraph 1.2A shall be authorized to act on the Client's behalf with respect to the Project. The Client or the Client's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by CE LLC in order to avoid unreasonable delay in the orderly and sequential progress of the CE LLC services.

2.2C The Client shall furnish the services of consultants, other than those designated in Paragraph 1.2A or authorize CE LLC to furnish them as a Reimbursable Expenses per 3.8B when such services are requested by CE LLC and are reasonably required by the scope of the Project.

2.2D Unless otherwise provided in this Agreement, the Client shall furnish tests, inspections, and reports required by law or the Contractor Documents, such as structural, mechanical, and chemical tests, test for air and water pollution, and tests for hazardous materials.

CE LLC Initial: BA 2/8 CLIENT Initial: _____

2.2E The Client shall furnish all legal, insurance and accounting services requested by client, including auditing services that may be reasonably necessary at any time for the Project to meet the Client's needs and interests.

2.2F The Client shall provide prompt written notice to CE LLC if the Client becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in CE LLC Instruments of Service.

2.3 ENGINEER

2.3A The services performed by CE LLC, its employees and its consultants shall be as enumerated in Article 4 – Scope of Services.

2.3B CE LLC shall maintain the confidentiality of information specifically designated as confidential by the Client, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent CE LLC from establishing a claim or defense in an adjudicatory proceeding. CE LLC shall require CE LLC consultants to have similar agreements to maintain the confidentiality of information specifically designated as confidential by the Client.

2.3C Except with the Client's knowledge and consent, CE LLC shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise CE LLC professional judgment with respect to this Project.

2.3D CE LLC shall review laws, codes, and regulations applicable to its services. CE LLC shall include in the design of the Project the requirements imposed by governmental authorities having jurisdiction over the Project.

2.3E CE LLC shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client. CE LLC shall provide prompt written notice to the Client if CE LLC becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 3 – TERMS AND CONDITIONS

3.1 INSTRUMENTS OF SERVICE

3.1A Drawings, specifications and other documents, including those in electronic form, prepared by CE LLC and CE LLC consultants are Instruments of Services for use solely with respect to the Project. CE LLC and CE LLC consultants shall be designated the authors of their respective Instruments of Services and shall retain all common law, statutory and other reserved rights, including copyrights.

3.1B Upon execution of the Agreement, CE LLC grants to the Client a nonexclusive license to reproduce CE LLC Instruments of Service solely for purposes of constructing, using and maintaining the Project provided that the Client shall comply with all obligations, including prompt payment of all sums when due. CE LLC shall obtain similar nonexclusive licenses from its consultants consistent with this Agreement. Any termination of the Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Client shall refrain from making further reproductions of Instruments of Service and shall return to CE LLC within seven days of termination all originals and reproductions in the Client's possession or control.

CE LLC Initial: BA

3/8

CLIENT Initial: _____

3.1C Except for the licenses granted in Subparagraph 3.1B, no other license or right shall be deemed granted or implied under this Agreement. The Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted to another party without the prior written agreement of CE LLC. However, the Client shall be permitted to authorize Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work by license granted in subparagraph 3.1B. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication and derogation of the reserved rights of CE LLC and its consultants. The Client may use the Instruments of Service for future additions or alterations of this Project or other Projects provided any such use of the Instruments of Service shall be at the Client's sole risk and without liability to CE LLC and its consultants.

3.1D Prior to CE LLC providing to the Client any Instruments of Service in electronic form, the Client and CE LLC shall, by separate written agreements, set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations of licenses not otherwise provided in this Agreement.

3.2 CHANGES IN SERVICES

3.2A Change in Services of CE LLC, including services required of CE LLC consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing or required by circumstances beyond CE LLC control, or if CE LLC services are effected as described in Subparagraph 3.2B. In the absence of mutual agreement in writing, CE LLC shall notify the Client prior to providing such services. If the Client deems that all or a part of such Change in Services is not required, the Client shall give prompt written notice to CE LLC, and CE LLC shall have no obligation to provide those services. Except for a change due to the fault of CE LLC, Change in Services of CE LLC shall entitle CE LLC to an adjustment in compensation pursuant to Article 5, and to any Reimbursable Expenses described in paragraph 3.8 and Paragraph 5.2 and 5.3.

3.2B If any of the following circumstances affect CE LLC services for the Project, CE LLC shall be entitled to an appropriate adjustment in CE LLC time schedule and compensation:

1. Change in the instructions or approvals given by the Client that necessitate revisions in Instruments of Service;
2. Enactment of revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
3. Decisions of the Client not rendered in a timely manner;
4. Significant changes in the Project including, but not limited to, size, quality, complexity, the Client's schedule or budget, or procurement method;
5. Failure of performance on the part of the Client or the Client's consultants or contractors;
6. Preparation for and attendance at a public hearing, a dispute resolutions proceeding or a legal proceeding except where the Engineer is party thereto.

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3.3 MEDIATION

3.3A Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, CE LLC may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

3.3B The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreement in any court having jurisdiction thereof.

3.4 ARBITRATION

3.4A Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance to Paragraph 5.5.

3.4B A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matters in question would be barred by the applicable statute of limitations.

3.4C The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

3.5 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Engineer and the Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Paragraph 3.7.

3.6 MISCELLANEOUS PROVISIONS

3.6A CE LLC and its consultants shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

3.6B With the prior consent of the client, CE LLC shall have the right to include photographic or artistic representations of the design of the Project among CE LLC promotional and professional materials. CE LLC shall be given reasonable access to the completed Project to make such photographic and artistic representations. However, CE LLC materials shall not include the Client's confidential or proprietary information if the client has previously advised CE LLC in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for CE LLC in the Client's promotional materials for the Project.

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3.6C If the Client requests CE LLC to execute certificates, the proposed language of such certificates shall be submitted to CE LLC for review at least 14 days prior to the requested dates of execution. CE LLC shall not be required to execute certificates that would require knowledge, services, or responsibilities beyond the scope of the Agreement.

3.6D The Client and CE LLC, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client for CE LLC shall assign this Agreement without the written consent of the other, except that the Client may assign this Agreement to an institutional lender providing financing for the Project. In such an event, the lender shall assume the Client's rights and obligations under this Agreement. The Engineer shall execute all consents reasonably required to facilitate such assignment.

3.7 TERMINATION OR SUSPENSION

3.7A If the Client fails to make payments to CE LLC in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at CE LLC option, cause for suspension of performance of services under this Agreement. In the event of a suspension of services, CE LLC shall have no liability to the Client for delay or damage caused the Client because of such suspension of services. Before resuming services, CE LLC shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of CE LLC services.

3.7B If the Project is suspended by the Client for more than 30 consecutive days, CE LLC shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, CE LLC shall be compensated for reasonable expenses incurred in the interruption and resumption of CE LLC services.

3.7C If the Project is suspended or CE LLC services are suspended for more than 30 consecutive days, CE LLC may terminate this Agreement by giving not less than seven days written notice.

3.7D This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

3.7E This Agreement may be terminated by the Client upon not less than seven days written notice to CE LLC for the Client's convenience and without cause.

3.7F In the event of termination not the fault of CE LLC, CE LLC shall be compensated for services performed prior to the termination, together with reasonable Reimbursable Expenses as defined in Subparagraph 3.8B then due.

3.8 PAYMENTS TO THE ENGINEER

3.8A Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of CE LLC statement of services. No deductions shall be made from CE LLC compensation on account of penalty, liquidated damage or other sums including retainage withheld from payments to Client and/or contractors, or on account of the cost of changes in the Work other than those for which CE LLC has been adjudged to be liable.

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3.8B Reimbursable Expenses are in addition to compensation for CE LLC services and include reasonable expenses incurred by CE LLC and CE LLC employees and consultants directly related to the Project, as identified in the following Clauses:

1. Transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
2. Fees paid for securing approval of authorities having Jurisdiction over the Project;
3. Reproductions, CAD plots, standard form documents, postage, handling and delivery of Instruments of Service; at commercial reasonable rates.
4. Expense of overtime work requiring higher than regular rates if authorized in advance by the Client;
5. Renderings, models and mock-ups requested by the Client;
6. Expense of professional liability insurance dedicated exclusively to this Project of the expense of additional insurance coverage or limits requested by the Client in excess of that normally carried by CE LLC and its consultants;
7. Reimbursable expenses as designated in Paragraph 5.3;
8. Sub-consultant Fees;
9. Other similar direct Project related expenditures.

3.8C Records of Reimbursable Expenses or expenses pertaining to a Change in Services, and of services performed on the basis of hourly shall be available to the Client or the Client's authorized representative at mutually convenient times.

ARTICLE 4 – SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

4.1 Enumeration of Parts of the Agreement

This Agreement represents the entire and integrated agreement between the Client and CE LLC and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Client and CE LLC.

SEE ATTACHMENT A – SCOPE OF WORK, TYPICAL EXCLUSIONS AND CONTRACT NOTES

ARTICLE 5 – COMPENSATION

5.1 For CE LLC services, compensation shall be computed as follows:

Principal Engineering hourly rate:	\$ 140 / hr
Licensed Land Surveyor/Project Engineer hourly rate:	\$ 130 / hr
Project Design Engineer/Construction Technician/LSIT/ Planner II hourly rate:	\$ 100 – 115 / hr
Design Engineer/Surveyor Technician/Planner I hourly rate:	\$ 80 – 100 / hr
The Permit Specialist hourly rate:	\$ 60 / hr
The Survey Field Crew hourly rate (Non-Prevailing):	\$ 155 / hr
Administration Assistant hourly rate:	\$ 50 / hr
Court/Hearing Testimony hourly rate:	\$ 185 / hr
Expert Witness hourly rate:	\$ 185 / hr

Note: Hourly rates for 'Time and Expense' projects are subject to yearly increase. Client will be notified prior to any rate changes.

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5.2 For Reimbursable Expenses as described in Subparagraph 3.8B and any other items, the compensation shall be computed as a multiple of (1.15) times the expenses incurred by CE LLC, and its employees and consultants, if contracted and/or paid by CE LLC.

5.3 Other Reimbursable Expenses that compensation shall be computed as a multiple of (1.00) times the expense incurred by CE LLC, and its employees and consultants, if contracted and/or paid by CE LLC, if any, are as follows:

- Automobile mileage (current IRS tax rate)
- Parking and toll fees

5.4 An initial non-refundable payment of **zero dollars (\$0.00)** shall be made upon execution of this Agreement and is the minimum payment under this Agreement; it shall be credited to the Client's account for the final payment of the contract amount. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

5.5 Payments are due and payable ON THE TENTH (10th) OF THE MONTH or ten days from the date of the Engineer's invoice.

5.6 This contract is based on a cash price. If owner prefers to utilize credit card, a credit price will be established.

5.7 Accounts not current within 60 days of invoice will be assessed a 12% annual finance charge. Contour reserves the right to cancel contract if Client is more than 90 days out on any invoice and 60 days out on a successive invoice. Contour also will assess a lien on all properties involved in this contract if Client is more than 90 days in arrears on any invoice.

At the signing of this contract, Contour Engineering LLC will proceed with coordination of the project. Contour Engineering's approximate schedule for completing tasks will be provided to client at the time of signing of this contract. Projects will only be able to be completed as information is provided by the Project Team. Client(s) will be kept apprised of the progress at major milestones of the project or as requested by the Client(s).

ENGINEER: Brett Allen, P.E., Managing Member
Contour Engineering, LLC

Signed: Brett Allen Nov 02 2018
Date

CLIENT: Marcus Carter, Executive Officer
Kitsap Rifle & Revolver Club

Signed: _____
Date



PO Box 949, Gig Harbor, WA 98335
Phone: 253 857 5454

Attachment A

Scope of Work, Typical Exclusions and Contract Notes

SCOPE OF WORK AND SERVICES: SURVEYING, LAND PLANNING AND CIVIL ENGINEERING

Note: At the date of this proposal, there are still several unknowns on the project that might affect the outlined Scope of Work and associated budgets. If this occurs, we will contact the Client to discuss accordingly.

Contract Type:	Fixed Fee (Civil Task 1) Time and Expense Fee (Civil Task 2)
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Civil Task Work

CT 1 – Site Development Activity Permit Drawings

CT 2 – Meetings and Coordination (T&E)

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CIVIL ENGINEERING TASKS

Civil Task 1 – Site Development Activity Permit Drawings

We will provide the following services under this task as follows:

1. Utilize the developed base survey drawings provided by the Client for the development of the On-site Civil permitting plans and reports
2. Prepare Civil Construction Plans and Documents for submittal to Kitsap County that will include the following at a minimum:

Plans

- Cover Sheet
- Site and Horizontal Control Plan
- Temporary Erosion and Sedimentation Control Plan(s), Notes and Details
- Grading Plan
- Storm Drainage Plan
- Notes and Details Plan

Reports

- Stormwater Site Plan
 - Construction Stormwater Pollution Prevention Plan (SWPPP)
 - Stormwater Facilities Operations & Maintenance Manual
3. Preparation of approximate earth quantities calculation for permitting purposes.
 4. Design is limited to proposed land development of northern end of the project site, as indicated in attached Site Plan. It is assumed that a storm pond may be located adjacent to the developed portion of the site and this is included in the budget.
 5. Provide reasonable assistance to members of the design team in the preparation and submittal of other necessary permit plans such as landscape plans and geotechnical report.
 6. It is assumed that any comments from the Client will be received by Contour prior to making any changes for the 2nd submittal. Comments received after the 2nd submittal may require additional budget.
 7. Construction changes by Client after permit set is approved will be billed on a 'Time & Expense' basis under a separate sub-task.
 8. The contract assumes that the project will go through 2 reviews with the County and will be approved on the third submittal. Contour will address all items/corrections by the County for each re-submittal within the defined scope of work as part of this contract. Additional reviews after the third submittal due to comments not incurred on previous reviews will be billed on a 'Time & Expense' basis under a separate sub-task after consulting with the Client.
 9. Based on reasonable assumptions, it is assumed that the project will meet the threshold for both Flow Control and Water Quality Treatment for all the generated runoff both on-site and off-site. It is uncertain at this time how Flow Control or Water Quality Treatment will be addressed for the project, but on-site LID measures will be utilized as much as feasible, as

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required by the County, based on native soils, available area and practicality. Client will need to provide geotechnical study.

10. It is assumed that the water main will not need to be looped around this site for installation of fire hydrants. Contour will provide design for domestic and fire connection in conjunction with Owner's Fire Protection Engineer.
11. Coordination and meetings throughout this task will be included on a 'Time and Expense' basis.
12. This Scope of Work and associated budget was prepared with the information provided, the above assumptions, and that outlined within the Typical Exclusions, Assumptions and Contract Notes section below. If it's determined that these assumptions are not correct, we will notify the Owner and/or Project Manager to discuss options.

Civil Task 2 – Meetings and Coordination (T&E)

This task includes any coordination, meetings, the public hearing, and providing support with the Client, Architect, County Staff, Environmental Consultant, Geotechnical Engineer, Landscape Architect, Traffic Engineer, Septic Designer, and other members of the design team or jurisdictions as needed throughout the duration of the overall project. This includes required or requested meetings with the County or other review agencies for permit submittal or design discussion, or project team meetings as needed. This includes assistance in representing the project as it goes to the Hearing Examiner (if required). The approximated budget estimate amount of this task is based on what is anticipated for this project and will be billed on a 'Time & Expense' basis, which includes travel time, but will depend on what is required or requested for the project.

TYPICAL EXCLUSIONS AND CONTRACT NOTES

- Contour Engineering, LLC can provide proposals for other consultant services if needed such as Landscape Architecture. These services are not included in this contract and will be contracted separately unless one contract is desired by the Client. If one contract is desired, then a 15% administration fee will be added above the attached contract amounts.
- All Out of Scope items will be tracked as a subtask and the Client will be notified if this occurs.
- A Title Report or Subdivision guarantee will be provided by the Client for the Preliminary and Final Plat applications.
- Additional sub-consultant services for the civil engineering design may be required and are not included in the fees herein. It is assumed that the Client will retain any sub-consultants required to complete the civil design process.
- Other required plans such as lighting, wetland delineation, wetland mitigation, landscape plans, building plans, fire sprinkler systems, and structural will be provided by others.
- Assumes that no off-site frontage, roadway, channelization, signalization, or right-of-way improvements will be required, except for as noted in the Scope of Work.
- Plan revisions due to Client comments may incur additional Time and Expense to the project. Ownership will be notified if this occurs.
- All permit and application fees are excluded from this contract.
- Any structures/retaining walls requiring building permits will be designed and coordinated by others, unless otherwise noted in this contact, and design costs are excluded from this contract unless otherwise noted
- Assumes that no utility main extensions will be required and are therefore excluded from these services.

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- This scope of work assumes no pumping of stormwater will be required and is therefore excluded
- Assumes water services are available at the roadway connection point, no off-site water main extensions or booster pump systems will be required
- Dry utilities will be coordinated by the Client and/or their designated representative/Contractor. Contour can provide these services on a 'time and expense' basis if requested by the Client. If dry utility locations are determined prior to finalization of construction plans, Contour will add to plans. Note that if utilities conflict with already proposed design, additional charges may be incurred. It is highly recommended that the dry utilities be investigated prior to finalization of the construction plans.
- Assumes gravity sanitary sewer is available and that no offsite extension or grinder pump/lift station systems will be required and therefore excluded.

The following services are also typically excluded from all contracts unless otherwise specifically noted in proposal:

- a. Sub-consultant fees
- b. Corps of Engineers Hydraulics permits
- c. Land use permits or variance not included in scope of work.
- d. Forest Practices permit
- e. Injection well application with the Dept. of Ecology
- f. Reimbursable costs such as mileage, reprographic expenses, required documentation for projects (manuals specific to jurisdiction)
- g. Title report fees
- h. Deviation/Variance preparation or fees in association with the project
- i. Redesign fees due to major site plan changes
- j. Construction cost estimates unless noted in contract
- k. Submittal and re-submittal fees associated with the project

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Document Details

Title Kitsap Rifle & Revolver Club Agreement 18-145
File Name 18-145 Kitsap Rifle & Revolver Club Agreement.pdf
Document ID cf4ca19abd6b46d7965b63324fac239f
Fingerprint 2208f308776def7d75b7b4fc11e1568e
Status Expired

Document History

Document Created	Document Created Fingerprint: 2208f308776def7d75b7b4fc11e1568e	Nov 01 2018 11:50PM UTC
Document Sent	Document Sent to Brett M. Allen (brett.allen@contourengineeringllc.com)	Nov 01 2018 11:50PM UTC
Document Viewed	Document Viewed by Brett M. Allen (brett.allen@contourengineeringllc.com) IP: 173.160.159.29	Nov 02 2018 12:21AM UTC
Document Signed	Document Signed by Brett M. Allen (brett.allen@contourengineeringllc.com) IP: 173.160.159.29	Nov 02 2018 12:22AM UTC
Document Sent	Document Sent to Marcus Carter (marcus@gunschool.com)	Nov 02 2018 12:22AM UTC
Document Viewed	Document Viewed by Marcus Carter (marcus@gunschool.com) IP: 24.113.234.229	Nov 02 2018 02:48AM UTC
Document Viewed	Document Viewed by Marcus Carter (marcus@gunschool.com) IP: 97.65.106.3	Nov 08 2018 11:59PM UTC
Document Viewed	Document Viewed by Marcus Carter (marcus@gunschool.com) IP: 24.113.234.229	Nov 09 2018 01:10AM UTC
Document Viewed	Document Viewed by Marcus Carter (marcus@gunschool.com) IP: 207.225.227.46	Jan 06 2019 12:48AM UTC
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Document Viewed

Document Viewed by Marcus Carter (marcus@gunschool.com)
IP: 208.53.122.8

Jan 09 2019
11:29AM UTC

Treasurer's Report - April 2019

	Kitsap Bank	Kitsap Credit Union Checking	Kitsap Credit Union Savings	Petty	Combined Total
Beginning Balance	\$ 1,069.89	\$ 2,773.28	\$ 544.57	\$ 1,180.53	\$ 5,568.27
<u>Income</u>					
Members Dues	\$ -	\$ -	\$ -	\$ -	\$ -
USPSA	\$ -	\$ -	\$ -	\$ -	\$ -
Range Use	\$ -	\$ -	\$ -	\$ -	\$ -
Donations	\$ 45.00	\$ 250.00	\$ -	\$ -	\$ 295.00
Orientation	\$ -	\$ -	\$ -	\$ -	\$ -
Hunter Education	\$ -	\$ -	\$ -	\$ -	\$ -
Junior Program Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Building Fund Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Fun Steel	\$ -	\$ -	\$ -	\$ -	\$ -
Falling Plates	\$ -	\$ -	\$ -	\$ -	\$ -
FFL Transfer Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Bullseye	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Courage Classic	\$ -	\$ -	\$ -	\$ -	\$ -
Legal/Safety Improvement Donations	\$ -	\$ 35.00	\$ -	\$ -	\$ 35.00
Transfer of Funds into Kitsap Credit Union	\$ -	\$ -	\$ -	\$ -	\$ -
Refunds	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Returned Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Error	\$ -	\$ -	\$ -	\$ -	\$ -
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ 0.02	\$ -	\$ 0.02
Consignments	\$ -	\$ -	\$ -	\$ -	\$ -
Total Income	\$ 45.00	\$ 285.00	\$ 0.02	\$ -	\$ 330.02
<u>Expenditure's</u>					
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Range Officer	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage	\$ -	\$ -	\$ -	\$ -	\$ -
Club Affiliations	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Improvements	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ (9.05)	\$ -	\$ -	\$ (9.05)
Office Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -
Phone	\$ -	\$ (137.60)	\$ -	\$ -	\$ (137.60)
Sanican	\$ -	\$ (50.00)	\$ -	\$ -	\$ (50.00)
Water	\$ -	\$ -	\$ -	\$ -	\$ -
Power	\$ -	\$ (346.76)	\$ -	\$ -	\$ (346.76)
Lease	\$ -	\$ -	\$ -	\$ -	\$ -
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Refund	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ (674.44)	\$ -	\$ -	\$ -	\$ (674.44)
Bank Fee	\$ (13.72)	\$ -	\$ -	\$ -	\$ (13.72)
Promotions	\$ -	\$ (519.50)	\$ -	\$ -	\$ (519.50)
Licensing Fees	\$ -	\$ (125.00)	\$ -	\$ -	\$ (125.00)
Postage	\$ -	\$ -	\$ -	\$ -	\$ -
Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Tools	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Bookkeeping	\$ -	\$ -	\$ -	\$ -	\$ -
CPA - Accountant	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -
Deposited Item Returned	\$ -	\$ -	\$ -	\$ -	\$ -
Attorneys Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Legal (other)	\$ -	\$ -	\$ -	\$ -	\$ -
Reissued Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
Plug	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditure's	\$ (688.16)	\$ (1,187.91)	\$ -	\$ -	\$ (1,876.07)
Ending Balance	\$ 426.73	\$ 1,870.37	\$ 544.59	\$ 1,180.53	\$ 4,022.22

Treasurer's Report - March 2019

	Kitsap Bank	Kitsap Credit Union Checking	Kitsap Credit Union Savings	Petty	Combined Total
Beginning Balance	\$ 717.59	\$ 2,771.40	\$ 544.55	\$ 1,180.53	\$ 5,214.07
Income					
Members Dues	\$ 160.00	\$ 60.00	\$ -	\$ -	\$ 220.00
USPSA	\$ -	\$ -	\$ -	\$ -	\$ -
Range Use	\$ -	\$ -	\$ -	\$ -	\$ -
Donations	\$ 100.00	\$ 298.00	\$ -	\$ -	\$ 398.00
Orientation	\$ -	\$ -	\$ -	\$ -	\$ -
Hunter Education	\$ -	\$ -	\$ -	\$ -	\$ -
Junior Program Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Building Fund Donations	\$ 100.00	\$ 100.00	\$ -	\$ -	\$ 200.00
Fun Steel	\$ -	\$ -	\$ -	\$ -	\$ -
Falling Plates	\$ -	\$ -	\$ -	\$ -	\$ -
FFL Transfer Donations	\$ -	\$ 35.00	\$ -	\$ -	\$ 35.00
Bullseye	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Courage Classic	\$ -	\$ -	\$ -	\$ -	\$ -
Legal/Safety Improvement Donations	\$ -	\$ 29.00	\$ -	\$ -	\$ 29.00
Transfer of Funds into Kitsap Credit Union	\$ -	\$ -	\$ -	\$ -	\$ -
Refunds	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Returned Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Error	\$ -	\$ -	\$ -	\$ -	\$ -
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ 0.02	\$ -	\$ 0.02
Consignments	\$ -	\$ -	\$ -	\$ -	\$ -
Total Income	\$ 360.00	\$ 522.00	\$ 0.02	\$ -	\$ 882.02
Expenditure's					
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Range Officer	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage	\$ -	\$ -	\$ -	\$ -	\$ -
Club Affiliations	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Improvements	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Office Equipment	\$ -	\$ (9.05)	\$ -	\$ -	\$ (9.05)
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -
Phone	\$ -	\$ (137.80)	\$ -	\$ -	\$ (137.80)
Sanican	\$ -	\$ (50.00)	\$ -	\$ -	\$ (50.00)
Water	\$ -	\$ -	\$ -	\$ -	\$ -
Power	\$ -	\$ (323.27)	\$ -	\$ -	\$ (323.27)
Lease	\$ -	\$ -	\$ -	\$ -	\$ -
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Refund	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Fee	\$ (7.70)	\$ -	\$ -	\$ -	\$ (7.70)
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Licensing Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Postage	\$ -	\$ -	\$ -	\$ -	\$ -
Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Tools	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Bookkeeping	\$ -	\$ -	\$ -	\$ -	\$ -
CPA - Accountant	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -
Deposited Item Returned	\$ -	\$ -	\$ -	\$ -	\$ -
Attomeys Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Legal (other)	\$ -	\$ -	\$ -	\$ -	\$ -
Reissued Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
Plug	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditure's	\$ (7.70)	\$ (520.12)	\$ -	\$ -	\$ (527.82)
Ending Balance	\$ 1,069.89	\$ 2,773.28	\$ 544.57	\$ 1,180.53	\$ 5,568.27

Treasurer's Report - February 2019

	Kitsap Bank	Kitsap Credit Union Checking	Kitsap Credit Union Savings	Petty	Combined Total
Beginning Balance	\$ 604.92	\$ 2,644.09	\$ 544.53	\$ 1,180.53	\$ 4,974.07
Income					
Members Dues	\$ -	\$ -	\$ -	\$ -	\$ -
USPSA	\$ -	\$ -	\$ -	\$ -	\$ -
Range Use	\$ -	\$ -	\$ -	\$ -	\$ -
Donations	\$ 50.00	\$ 310.00	\$ -	\$ -	\$ 360.00
Orientation	\$ -	\$ -	\$ -	\$ -	\$ -
Hunter Education	\$ -	\$ -	\$ -	\$ -	\$ -
Junior Program Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Building Fund Donations	\$ 100.00	\$ 260.00	\$ -	\$ -	\$ 360.00
Fun Steel	\$ -	\$ -	\$ -	\$ -	\$ -
Falling Plates	\$ -	\$ -	\$ -	\$ -	\$ -
FFL Transfer Donations	\$ -	\$ 85.00	\$ -	\$ -	\$ 85.00
Bullseye	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Courage Classic	\$ -	\$ -	\$ -	\$ -	\$ -
Legal/Safety Improvement Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds into Kitsap Credit Union	\$ -	\$ -	\$ -	\$ -	\$ -
Refunds	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Returned Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Error	\$ -	\$ -	\$ -	\$ -	\$ -
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ 0.02	\$ -	\$ 0.02
Consignments	\$ -	\$ -	\$ -	\$ -	\$ -
Total Income	\$ 150.00	\$ 655.00	\$ 0.02	\$ -	\$ 805.02
Expenditure's					
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Range Officer	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage	\$ -	\$ -	\$ -	\$ -	\$ -
Club Affiliations	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Improvements	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ (9.05)	\$ -	\$ -	\$ (9.05)
Office Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -
Phone	\$ -	\$ (137.80)	\$ -	\$ -	\$ (137.80)
Sanican	\$ -	\$ (50.00)	\$ -	\$ -	\$ (50.00)
Water	\$ -	\$ -	\$ -	\$ -	\$ -
Power	\$ -	\$ (330.84)	\$ -	\$ -	\$ (330.84)
Lease	\$ -	\$ -	\$ -	\$ -	\$ -
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Refund	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Fee	\$ (37.33)	\$ -	\$ -	\$ -	\$ (37.33)
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Licensing Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Postage	\$ -	\$ -	\$ -	\$ -	\$ -
Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Tools	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Bookkeeping	\$ -	\$ -	\$ -	\$ -	\$ -
CPA - Accountant	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -
Deposited Item Returned	\$ -	\$ -	\$ -	\$ -	\$ -
Attomeys Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Legal (other)	\$ -	\$ -	\$ -	\$ -	\$ -
Reissued Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
Plug	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditure's	\$ (37.33)	\$ (527.69)	\$ -	\$ -	\$ (565.02)
Ending Balance	\$ 717.59	\$ 2,771.40	\$ 544.55	\$ 1,180.53	\$ 5,214.07

Treasurer's Report - January 2019

	Kitsap Bank	Kitsap Credit Union Checking	Kitsap Credit Union Savings	Petty	Combined Total
Beginning Balance	\$ 1,133.20	\$ 948.56	\$ 544.51	\$ 1,180.53	\$ 3,806.80
Income					
Members Dues	\$ 420.00	\$ 780.00	\$ -	\$ -	\$ 1,200.00
USPSA	\$ -	\$ -	\$ -	\$ -	\$ -
Range Use	\$ -	\$ -	\$ -	\$ -	\$ -
Donations	\$ 10.00	\$ 884.00	\$ -	\$ -	\$ 894.00
Orientation	\$ -	\$ -	\$ -	\$ -	\$ -
Hunter Education	\$ -	\$ -	\$ -	\$ -	\$ -
Junior Program Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Building Fund Donations	\$ 400.00	\$ 500.00	\$ -	\$ -	\$ 900.00
Fun Steel	\$ -	\$ -	\$ -	\$ -	\$ -
Falling Plates	\$ -	\$ -	\$ -	\$ -	\$ -
FFL Transfer Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Bullseye	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Courage Classic	\$ -	\$ -	\$ -	\$ -	\$ -
Legal/Safety Improvement Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds into Kitsap Credit Union	\$ -	\$ -	\$ -	\$ -	\$ -
Refunds	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Returned Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Error	\$ -	\$ -	\$ -	\$ -	\$ -
Promotions	\$ 1,499.00	\$ -	\$ -	\$ -	\$ 1,499.00
Interest	\$ -	\$ -	\$ 0.02	\$ -	\$ 0.02
Consignments	\$ -	\$ -	\$ -	\$ -	\$ -
Total Income	\$ 2,329.00	\$ 2,164.00	\$ 0.02	\$ -	\$ 4,493.02
Expenditure's					
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Range Officer	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage	\$ -	\$ -	\$ -	\$ -	\$ -
Club Affiliations	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Improvements	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Office Equipment	\$ -	\$ (9.05)	\$ -	\$ -	\$ (9.05)
Insurance	\$ (2,851.65)	\$ -	\$ -	\$ -	\$ (2,851.65)
Phone	\$ -	\$ (137.80)	\$ -	\$ -	\$ (137.80)
Sanican	\$ -	\$ (50.00)	\$ -	\$ -	\$ (50.00)
Water	\$ -	\$ -	\$ -	\$ -	\$ -
Power	\$ -	\$ (271.62)	\$ -	\$ -	\$ (271.62)
Lease	\$ -	\$ -	\$ -	\$ -	\$ -
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Refund	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Fee	\$ (5.63)	\$ -	\$ -	\$ -	\$ (5.63)
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Licensing Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Postage	\$ -	\$ -	\$ -	\$ -	\$ -
Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Tools	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Bookkeeping	\$ -	\$ -	\$ -	\$ -	\$ -
CPA - Accountant	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -
Deposited Item Returned	\$ -	\$ -	\$ -	\$ -	\$ -
Attorneys Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Legal (other)	\$ -	\$ -	\$ -	\$ -	\$ -
Reissued Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
Plug	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditure's	\$ (2,857.28)	\$ (468.47)	\$ -	\$ -	\$ (3,325.75)
Ending Balance	\$ 604.92	\$ 2,644.09	\$ 544.53	\$ 1,180.53	\$ 4,974.07

Treasurer's Report - May 2019

	Kitsap Bank	Kitsap Credit Union Checking	Kitsap Credit Union Savings	Petty	Combined Total
Beginning Balance	\$ 426.73	\$ 1,870.37	\$ 544.59	\$ 1,180.53	\$ 4,022.22
Income					
Members Dues	\$ -	\$ -	\$ -	\$ -	\$ -
USPSA	\$ -	\$ -	\$ -	\$ -	\$ -
Range Use	\$ -	\$ -	\$ -	\$ -	\$ -
Donations	\$ -	\$ 365.00	\$ -	\$ -	\$ 365.00
Orientation	\$ -	\$ -	\$ -	\$ -	\$ -
Hunter Education	\$ -	\$ -	\$ -	\$ -	\$ -
Junior Program Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Building Fund Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Fun Steel	\$ -	\$ -	\$ -	\$ -	\$ -
Falling Plates	\$ -	\$ -	\$ -	\$ -	\$ -
FFL Transfer Donations	\$ -	\$ -	\$ -	\$ -	\$ -
Bullseye	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Courage Classic	\$ -	\$ -	\$ -	\$ -	\$ -
Legal/Safety Improvement Donations	\$ -	\$ 9.00	\$ -	\$ -	\$ 9.00
Transfer of Funds into Kitsap Credit Union	\$ -	\$ -	\$ -	\$ -	\$ -
Refunds	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Returned Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Error	\$ -	\$ -	\$ -	\$ -	\$ -
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ 0.02	\$ -	\$ 0.02
Consignments	\$ -	\$ -	\$ -	\$ -	\$ -
Total Income	\$ -	\$ 374.00	\$ 0.02	\$ -	\$ 374.02
Expenditure's					
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Range Officer	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage	\$ -	\$ -	\$ -	\$ -	\$ -
Club Affiliations	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Improvements	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Office Equipment	\$ -	\$ (9.05)	\$ -	\$ -	\$ (9.05)
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -
Phone	\$ -	\$ (137.77)	\$ -	\$ -	\$ (137.77)
Sanican	\$ -	\$ (50.00)	\$ -	\$ -	\$ (50.00)
Water	\$ -	\$ -	\$ -	\$ -	\$ -
Power	\$ -	\$ (173.98)	\$ -	\$ -	\$ (173.98)
Lease	\$ -	\$ -	\$ -	\$ -	\$ -
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Refund	\$ -	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Fee	\$ (3.27)	\$ -	\$ -	\$ -	\$ (3.27)
Promotions	\$ -	\$ -	\$ -	\$ -	\$ -
Licensing Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Postage	\$ -	\$ -	\$ -	\$ -	\$ -
Entertainment	\$ -	\$ -	\$ -	\$ -	\$ -
Education	\$ -	\$ -	\$ -	\$ -	\$ -
Tools	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer of Funds	\$ -	\$ -	\$ -	\$ -	\$ -
Bookkeeping	\$ -	\$ -	\$ -	\$ -	\$ -
CPA - Accountant	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -
Deposited Item Returned	\$ -	\$ -	\$ -	\$ -	\$ -
Attorneys Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Legal (other)	\$ -	\$ -	\$ -	\$ -	\$ -
Reissued Uncashed Check	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Bank Error	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
Plug	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditure's	\$ (3.27)	\$ (370.80)	\$ -	\$ -	\$ (374.07)
	Kitsap Bank	Kitsap Credit Union (C)	Kitsap Credit Union (S)	Petty Cash	Combined Total
Ending Balance	\$ 423.46	\$ 1,873.57	\$ 544.61	\$ 1,180.53	\$ 4,022.17



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Statement Period

01/01/2019 - 01/31/2019

Account #

XXXXXX4150

KITSAP RIFLE & REVOLVER CLUB
 4900 SEABECK HWY NW
 BREMERTON, WA 98312



Statement Summary

Deposit Accounts		Total Balance:			\$3,188.62
Account Type	Previous	Deposits	Withdrawals	Ending Balance	
Business Saving Acct (#00)	544.51	0.02	0.00	544.53	
Business Checking (#01)	948.56	2,164.00	468.47	2,644.09	

Business Saving Acct (#00)

		Previous Balance:		\$544.51
Post Date	Description	Deposits	Withdrawals	Balance
01-31	Deposit Dividend 0.050% (Index Rt)	0.02 ✓		544.53
01-31	Annual Percentage Yield Earned 0.040% From 01/01/19 Through 01/31/19			
Ending Balance:				\$544.53
1	Deposits Totalling	0.02	Dividends YTD	0.02

Business Checking (#01)

		Previous Balance:		\$948.56
Post Date	Description	Deposits	Withdrawals	Balance
01-09	Withdrawal Ach McMahan Tech Lic Type: Sale Id: 9215986202 Co: McMahan Tech Lic		9.05 ✓	939.51
01-11	Draft 1851		271.62 ✓	667.89
01-12	Deposit By Check	991.00 ✓		1,658.89
01-14	Deposit By Check	200.00 ✓		1,858.89
01-14	Deposit	53.00 ✓		1,911.89
01-14	Draft 1852		50.00 ✓	1,861.89
01-23	Draft 1853		137.80 ✓	1,724.09
01-28	Deposit By Check	920.00 ✓		2,644.09
Ending Balance:				\$2,644.09

Check #	Date	Amount	Check #	Date	Amount	Check #	Date	Amount
1851	01-11	271.62	1852	01-14	50.00	1853	01-23	137.80

* Indicates a break in check number sequence



Statement Period
01/01/2019 - 01/31/2019

Account #
XXXXXX4150

4 Deposits Totaling	2,164.00	4 Withdrawals Totaling	468.47
Dividends YTD	0.00		

YTD Tax Summary			
Total Dividends Paid YTD	\$0.02		



Statement Period
02/01/2019 - 02/28/2019

Account #
XXXXXX4150

KITSAP RIFLE & REVOLVER CLUB
4900 SEABECK HWY NW
BREMERTON, WA 98312



Statement Summary				
Deposit Accounts			Total Balance:	\$3,315.95
Account Type	Previous	Deposits	Withdrawals	Ending Balance
Business Saving Acct (#00)	544.53	0.02	0.00	544.55
Business Checking (#01)	2,644.09	655.00	527.69	2,771.40

Business Saving Acct (#00)				
			Previous Balance:	\$544.53
Post Date	Description		Deposits	Withdrawals
02-28	Deposit Dividend 0.050% (Index Rt)		0.02	
02-28	Annual Percentage Yield Earned 0.050% From 02/01/19 Through 02/28/19			
			Ending Balance:	\$544.55
1	Deposits Totaling	0.02	Dividends YTD	0.04

Business Checking (#01)					
			Previous Balance:	\$2,644.09	
Post Date	Description		Deposits	Withdrawals	
02-12	Withdrawal Ach McMahan Tech Llc Type: Sale Id: 9215986202 Co: McMahan Tech Llc			9.05	
02-13	Deposit By Check		385.00		
02-15	Draft 1854			330.84	
02-19	Deposit By Check		220.00		
02-21	Draft 1855			50.00	
02-22	Draft 1856			137.80	
02-28	Deposit By Check		50.00		
			Ending Balance:	\$2,771.40	
<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>
1854	02-15	330.84	1855	02-21	50.00
* Indicates a break in check number sequence					
3	Deposits Totaling	655.00	4	Withdrawals Totaling	527.69
Dividends YTD		0.00			



Statement Period

02/01/2019 - 02/28/2019

Account #

XXXXXX4150

YTD Tax Summary

Total Dividends Paid YTD	\$0.04
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Statement Period

Account #

03/01/2019 - 03/31/2019

XXXXXX4150

KITSAP RIFLE & REVOLVER CLUB
 4900 SEABECK HWY NW
 BREMERTON, WA 98312



Statement Summary

Deposit Accounts				Total Balance:	\$3,317.85
Account Type	Previous	Deposits	Withdrawals	Ending Balance	
Business Saving Acct (#00)	544.55	0.02	0.00	544.57	
Business Checking (#01)	2,771.40	522.00	520.12	2,773.28	

Business Saving Acct (#00)

Post Date	Description	Deposits	Withdrawals	Balance
				Previous Balance: \$544.55
03-31	Deposit Dividend 0.050% (index Rt)	0.02		544.57
03-31	Annual Percentage Yield Earned 0.040% From 03/01/19 Through 03/31/19			
				Ending Balance: \$544.57
1	Deposits Totaling	0.02	Dividends YTD	0.06

Business Checking (#01)

Post Date	Description	Deposits	Withdrawals	Balance	
				Previous Balance: \$2,771.40	
03-15	Withdrawal Ach McMahan Tech Lic Type: Sale Id: 9215986202 Co: McMahan Tech Lic		9.05	2,762.35	
03-18	Deposit By Check	50.00		2,812.35	
03-18	Deposit	264.00		3,076.35	
03-19	Draft 1859		323.27	2,753.08	
03-20	Draft 1858		137.80	2,615.28	
03-21	Draft 1857		50.00	2,565.28	
03-29	Deposit By Check	208.00		2,773.28	
				Ending Balance: \$2,773.28	
<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>
1857	03-21	50.00	1858	03-20	137.80
			1859	03-19	323.27
* Indicates a break in check number sequence					
3	Deposits Totaling	522.00	4	Withdrawals Totaling	520.12
	Dividends YTD	0.00			



Statement Period

03/01/2019 - 03/31/2019

Account #

XXXXXX4150

YTD Tax Summary

Total Dividends Paid YTD	\$0.06
--------------------------	--------

Statement Period

Account #

04/01/2019 - 04/30/2019

XXXXXX4150

KITSAP RIFLE & REVOLVER CLUB
4900 SEABECK HWY NW
BREMERTON, WA 98312



Statement Summary

Deposit Accounts		Total Balance:			\$2,414.96
Account Type	Previous	Deposits	Withdrawals	Ending Balance	
Business Saving Acct (#00)	544.57	0.02	0.00	544.59	
Business Checking (#01)	2,773.28	285.00	1,187.91	1,870.37	

Business Saving Acct (#00)

Post Date	Description	Deposits	Withdrawals	Balance
		Previous Balance:		\$544.57
04-30	Deposit Dividend 0.050% (Index Rt)	0.02		544.59
04-30 Annual Percentage Yield Earned 0.040% From 04/01/19 Through 04/30/19				
		Ending Balance:		\$544.59
1 Deposits Totaling		0.02	Dividends YTD	0.08

Business Checking (#01)

Post Date	Description	Deposits	Withdrawals	Balance
		Previous Balance:		\$2,773.28
04-10	Withdrawal Ach McMahan Tech Lic Type: Sale Id: 9215986202 Co: McMahan Tech Lic		9.05	2,764.23
04-12	Draft 1861		346.76	2,417.47
04-15	Deposit	195.00		2,612.47
04-17	Draft 1864 Onus Draft		125.00	2,487.47
04-17	Draft 1860		50.00	2,437.47
04-18	Draft 1862		75.00	2,362.47
04-22	Deposit	40.00		2,402.47
04-22	Draft 1863		444.50	1,957.97
04-23	Draft 1865		137.60	1,820.37
04-30	Deposit By Check	50.00		1,870.37
		Ending Balance:		\$1,870.37

Check #	Date	Amount	Check #	Date	Amount	Check #	Date	Amount
1860	04-17	50.00	1861	04-12	346.76	1862	04-18	75.00



Statement Period

Account #

04/01/2019 - 04/30/2019

XXXXXX4150

<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>
1883	04-22	444.50	1884	04-17	125.00	1885	04-23	137.60
<i>* Indicates a break in check number sequence</i>								
3 Deposits Totaling			285.00	7 Withdrawals Totaling			1,187.91	
Dividends YTD			0.00					

YTD Tax Summary	
Total Dividends Paid YTD	\$0.08

Statement Period

05/01/2019 - 05/31/2019

Account #

XXXXXX4150

KITSAP RIFLE & REVOLVER CLUB
4900 SEABECK HWY NW
BREMERTON, WA 98312



Statement Summary

Deposit Accounts		Total Balance:			\$2,273.18
Account Type	Previous	Deposits	Withdrawals	Ending Balance	
Business Saving Acct (#00)	544.59	0.02	0.00	544.61	
Business Checking (#01)	1,870.37	229.00	370.80	1,728.57	

Business Saving Acct (#00)

		Previous Balance:			\$544.59
Post Date	Description	Deposits	Withdrawals	Balance	
05-31	Deposit Dividend 0.050% (Index Rt)	0.02		544.61	
05-31 Annual Percentage Yield Earned 0.040% From 05/01/19 Through 05/31/19					
				Ending Balance:	\$544.61
1	Deposits Totaling	0.02	Dividends YTD		0.10

Business Checking (#01)

		Previous Balance:			\$1,870.37
Post Date	Description	Deposits	Withdrawals	Balance	
05-09	Withdrawal Ach McMahan Tech Llc Type: Sale Id: 9215986202 Co: McMahan Tech Llc		9.05	1,861.32	
05-11	Deposit	229.00		2,090.32	
05-15	Draft 1866		173.98	1,916.34	
05-16	Draft 1867		50.00	1,866.34	
05-24	Draft 1868		137.77	1,728.57	
				Ending Balance:	\$1,728.57

Check #	Date	Amount	Check #	Date	Amount	Check #	Date	Amount
1866	05-15	173.98	1867	05-16	50.00	1868	05-24	137.77

* Indicates a break in check number sequence

1	Deposits Totaling	229.00	4	Withdrawals Totaling	370.80
	Dividends YTD	0.00			

YTD Tax Summary

Total Dividends Paid YTD	\$0.10
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Statement of Account

Page 1 of 1

Statement Period 12/31/18-1/31/19
 Total Days in Statement Period 31

KITSAP RIFLE & REVOLVER CLUB
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Account Balances

ACCOUNT	ACCOUNT NUMBER	BEGINNING BALANCE	ENDING BALANCE
Business Eco Checking	██████████ 9911	\$1,133.20	\$654.92

Business Eco Checking: ██████████ 9911

Beginning Balance	\$1,133.20	Low Balance	\$604.92
Total Additions	\$2,379.00	High Balance	\$3,356.57
Total Subtractions	\$2,857.28	Ending Balance	\$654.92

Deposits / Credits

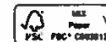
Date	Transaction Description	Additions
01/11/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 011019	\$870.00
01/14/19	DEPOSIT	\$1,359.00
01/18/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 011719	\$100.00
01/31/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 013019	\$50.00

Withdrawals / Debits

Date	Transaction Description	Subtractions
01/10/19	PREAUTHORIZED WD TSYS/TRANSFIRST DISCOUNT 39300980908171 KI TSAP RIFLE & REVOL VE DISCOUNT	\$5.63
01/18/19	PREAUTHORIZED WD LOCKTON INSURANC WEB TRANS 190118	\$2,851.65

Daily Balance

DATE	ENDING BALANCE						
12/31/18	\$1,133.20	01/11/19	\$1,897.57	01/18/19	\$604.92	01/31/19	\$654.92
01/10/19	\$1,127.57	01/14/19	\$3,356.57				





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Statement of Account

Page 1 of 1

Statement Period 1/31/19-2/28/19
 Total Days in Statement Period 28

KITSAP RIFLE & REVOLVER CLUB
 SHARON A CARTER
 JOSEPH GARRETT
 4900 SEABECK HWY NW
 BREMERTON WA 98312-8888

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Account Balances

ACCOUNT	ACCOUNT NUMBER	BEGINNING BALANCE	ENDING BALANCE
Business Eco Checking	██████████9911	\$654.92	\$717.59

Business Eco Checking: ██████████9911

Beginning Balance	\$654.92	Low Balance	\$654.92
Total Additions	\$100.00	High Balance	\$754.92
Total Subtractions	\$37.33	Ending Balance	\$717.59

Deposits / Credits

Date	Transaction Description	Additions
02/06/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 020519	\$100.00

Withdrawals / Debits

Date	Transaction Description	Subtractions
02/11/19	PREAUTHORIZED WD TSYS/TRANSFIRST DISCOUNT 39300980908171 KI TSAP RIFLE & REVOL VE DISCOUNT	\$37.33

Daily Balance

DATE	ENDING BALANCE	DATE	ENDING BALANCE	DATE	ENDING BALANCE
01/31/19	\$654.92	02/06/19	\$754.92	02/11/19	\$717.59





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Statement of Account

Page 1 of 1

Statement Period 2/28/19-3/31/19
 Total Days in Statement Period 31

KITSAP RIFLE & REVOLVER CLUB
 SHARON A CARTER
 JOSEPH GARRETT
 4800 SEABECK HWY NW
 BREMERTON WA 98312-8886

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Account Balances

ACCOUNT	ACCOUNT NUMBER	BEGINNING BALANCE	ENDING BALANCE
Business Eco Checking	██████████9911	\$717.59	\$869.89

Business Eco Checking: ██████████9911

Beginning Balance	\$717.59	Low Balance	\$709.89
Total Additions	\$160.00	High Balance	\$869.89
Total Subtractions	\$7.70	Ending Balance	\$869.89

Deposits / Credits

Date	Transaction Description	Additions
03/25/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 032419	\$160.00

Withdrawals / Debits

Date	Transaction Description	Subtractions
03/11/19	PREAUTHORIZED WD TSYS/TRANSFIRST DISCOUNT 39300980908171 KI TSAP RIFLE & REVOL VE DISCOUNT	\$7.70

Daily Balance

DATE	ENDING BALANCE	DATE	ENDING BALANCE	DATE	ENDING BALANCE
02/28/19	\$717.59	03/11/19	\$709.89	03/25/19	\$869.89





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Statement of Account

Page 1 of 2

Statement Period 3/31/19-4/30/19
 Total Days in Statement Period 30

KITSAP RIFLE & REVOLVER CLUB
 SHARON A CARTER
 JOSEPH GARRETT
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 BREMERTON WA 98312-8886

2832

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Account Balances

ACCOUNT	ACCOUNT NUMBER	BEGINNING BALANCE	ENDING BALANCE
Business Eco Checking	██████████9911	\$889.89	\$428.73

Business Eco Checking: ██████████ 9911

Beginning Balance	\$889.89	Low Balance	\$381.73
Total Additions	\$245.00	High Balance	\$1,089.89
Total Subtractions	\$688.16	Ending Balance	\$428.73

Deposits / Credits

Date	Transaction Description	Additions
04/01/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 032819	\$200.00
04/29/19	PREAUTHORIZ TSYS/TRANSFIRST BKCD STLMT 39300980908171 KI TSAP RIFLE & REVOL VE 042819	\$45.00

Checks

NUMBER	DATE	AMOUNT
67	04/22/19	\$674.44

Withdrawals / Debits

Date	Transaction Description	Subtractions
04/10/19	PREAUTHORIZED WD TSYS/TRANSFIRST DISCOUNT 39300980908171 KI TSAP RIFLE & REVOL VE DISCOUNT	\$13.72

Daily Balance

DATE	ENDING BALANCE						
03/31/19	\$889.89	04/10/19	\$1,056.17	04/22/19	\$381.73	04/29/19	\$428.73
04/01/19	\$1,089.89						





Statement of Account

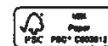
Page 2 of 2

KITSAP RIFLE & REVOLVER CLUB

Statement period 3/31/19-4/30/19

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Statement of Account

Page 1 of 2

Statement Period 4/30/19-5/31/19
Total Days in Statement Period 31

KITSAP RIFLE & REVOLVER CLUB
SHARON A CARTER
JOSEPH GARRETT
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BREMERTON WA 98312-8886

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Account Balances

ACCOUNT	ACCOUNT NUMBER	BEGINNING BALANCE	ENDING BALANCE
Business Eco Checking	██████████9911	\$426.73	\$423.46



Business Eco Checking: ██████████9911

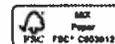
Beginning Balance	\$426.73	Low Balance	\$423.46
Total Additions	\$0.00	High Balance	\$426.73
Total Subtractions	\$3.27	Ending Balance	\$423.46

Withdrawals / Debits

Date	Transaction Description	Subtractions
05/10/19	PREAUTHORIZED WD TSYS/TRANSFIRST DISCOUNT 39300980908171 KI TSAP RIFLE & REVOL VE DISCOUNT	\$3.27

Daily Balance

DATE	ENDING BALANCE	DATE	ENDING BALANCE
04/30/19	\$426.73	05/10/19	\$423.46



June 25 2019 11:38 AM

Hon. Susan K. Serke
KIM STOCK
CLERK
Hearing Date: June 28, 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 RESPONSE TO
KITSAP RIFLE & REVOLVER
CLUB'S MOTION TO TERMINATE
CONTEMPT SANCTION

I. REQUEST TO STRIKE HEARING

Plaintiff Kitsap County ("County"), by and through its counsel of record, respectfully asks
the Court to strike Defendant Kitsap Rifle and Revolver Club's ("KRRC") Motion to Terminate

1 Contempt Sanction (“Motion”). Pierce County Local Rule of Civil Procedure (“PCLR”)

2 7(a)(3)(A) states in part:

3 Motions shall be scheduled for hearing by filing a Note for Motion Docket,
4 in a form approved by the court, and containing all information required by
5 such form. The Note for Motion Docket shall be filed with the motion and
6 supporting documents and served upon the opposing party at the same time.
7 The Note for Motion Docket, motion, and supporting documents shall be
8 filed with the Clerk and served on the opposing party no later than the close
9 of business on the seventh court day before the day set for hearing.¹

10 KRRC filed a Note For Motion Docket (“Note”) on June 19, 2019.² This Note did not include the
11 motion and supporting documents.³ The Motion to Terminate Contempt Sanction and its attached
12 declarations were filed later in the day, separate and apart from the Note and served after the close
13 of business on June 19, 2019.⁴

14 PCLR 7(a)(4) states:

15 If the motion, supporting documents, and Note for Motion Docket are not all
16 filed with the clerk, the court may strike the motion. No motion shall be heard
17 unless proof of service upon the opposing party is filed or there is an
18 admission of such service by the opposing party. The court may also, in its
19 discretion, impose terms upon the offending party.⁵

20 KRRC failed to follow PCLR 7(a)(3)(A) in noting, filing, and serving its Motion to Terminate
21 Contempt Sanction by not filing the Note with the Motion and supporting documents attached.
22 KRRC also failed to follow PCLR 7(a)(3)(A) by not serving the County before the close of
23 business on June 19, 2019, seven business days before the day requested for the hearing. As a
24 result of KRRC’s failure to follow procedural rules, the Court may strike the motion pursuant to

25 ¹ Pierce County Local Rule of Civil Procedure 7(a)(3)(A).

26 ² Declaration of John C. Purves, ¶3

27 ³ Id. at ¶4

28 ⁴ Id. at ¶5-7

⁵ Pierce County Local Rule of Civil Procedure 7(a)(4)

1 PCLR 7(a)(4) and impose terms against KRRC.

2 **II. RELIEF REQUESTED**

3 Should the Court be disinclined to strike the hearing on KRRC's Motion to Terminate
4 Contempt Sanction, the County respectfully asks the Court to deny the Motion. KRRC fails to
5 provide sufficient, credible evidence that it does not have the ability to comply with the permitting
6 order as contemplated in the Supplemental Judgment. Furthermore, KRRC's true motivations for
7 moving this Court to terminate the contempt sanction are rooted in an unwillingness to comply
8 rather than an inability.
9

10 **A. KRRC has not proven that it lacks the ability to comply with the permitting order in**
11 **the Supplemental Judgment**

12 RCW 7.21.010 defines contempt of court.⁶ It also defines a remedial sanction as a sanction
13 imposed for the purpose of coercing performance when the contempt consists of an omission or
14 refusal to perform an act that is yet in the person's power to perform.⁷ KRRC claims that the
15 Court's sanction is no longer coercive as the club does not have the ability to perform the required
16 purge condition.⁸
17

18 KRRC relies on the following language contained in the Amended Contempt Order
19 signed by the Court on June 7, 2019 in order to justify the conclusion that lifting the contempt
20 sanction is appropriate:
21

22 KRRC proves in a future proceeding that it does not have the ability to
23 comply with the permitting order in the Supplemental Judgment, such as by
24 proving it does not have the ability to perform the Purge Condition.⁹
25

26 ⁶ RCW 7.21.010(1)(a-d)

27 ⁷ RCW 7.21.010(3)

28 ⁸ KRRC's Motion to Terminate Contempt Sanction, page 9, ¶7

⁹ Id. at page 4, ¶20 (citing to the Amended Order of Contempt entered on June 7, 2019)

1 The Purge Condition that KRRC references is as follows:

2 KRRC submits a complete SDAP application to Kitsap County for permitting
3 to cure violations of KCC Titles 12 and 19 found to exist on the property in
4 the original Judgment.¹⁰

5 KRRC cites, in support of its contention that it cannot comply with the purge condition, the
6 declarations of Marcus Carter and Barbara Butterton.¹¹ Ms. Butterton indicates that she filed
7 several of the required documents for permit approval on June 19, 2019 via the County online
8 permitting system.¹² She acknowledges that this submission merely initiates the review process
9 and that the County has not responded as of the date of her declaration.¹³ Ms. Butterton attests
10 that she has no information to the contrary that to complete the application process will cost
11 anything less than \$45,377.40.¹⁴

12
13 Marcus Carter attests to the financial state of the club as KRRC's executive officer.¹⁵
14 Attached to Mr. Carter's declaration are financial records from only 2019 that appear to indicate
15 that KRRC has between four thousand and five thousand dollars in its various bank accounts on
16 average on a monthly basis.¹⁶ Mr. Carter also attests that KRRC is unaware of any way the club
17 can obtain a loan secured by any of its property and that even in the event that such a loan could
18 be secured, KRRC wouldn't be able to make monthly payments.¹⁷

19
20 KRRC fails to put forward sufficient, credible evidence of its inability to submit a complete
21

22
23

¹⁰ Id at ¶18.

24 ¹¹ Declarations of Barbara Butterton and Marcus Carter filed with KRRC's Motion to Terminate Contempt Sanction
and referenced on page 2, ¶3 and ¶7.

25 ¹² Declaration of Barbara Butterton, ¶5

26 ¹³ Id. at ¶5-6.

27 ¹⁴ Id. at ¶6.

28 ¹⁵ See Declaration of Marcus Carter, ¶1

¹⁶ Declaration of Marcus Carter, ¶7 and Exhibit 7 attached thereto.

¹⁷ Id. at ¶8

1 SDAP application. While it appears that KRRC has little in the way of liquid capital as maintained
2 in its stated bank accounts in 2019, the record they put forward with respect to securing a loan or
3 engaging in meaningful fundraising is insufficient. There is no record of attempts to secure credit
4 nor is there proof of subsequent denials of credit. There is no record at all with respect to the
5 application for a business loan or other loan through any one of the banks that KRRC maintains
6 accounts with. KRRC fails to provide the court with credible information about what a monthly
7 payment on a loan would be other than purportedly unaffordable. In other words, KRRC has not
8 provided this Court with meaningful information that indicates that financial options have been
9 exhausted, let alone sufficiently explored. KRRC only indicates that they have no knowledge of
10 a means to secure funding, not that they have tried and failed to secure funding.

13 They also provide the Court with scant information with respect to what fundraising efforts
14 have been undertaken. Once again, the Court is left with merely the conclusion that any efforts at
15 fundraising have been unsuccessful. KRRC can only say that their continuous and ongoing efforts
16 to raise funds have failed to raise funds.¹⁸ The Court is left with the unanswered question as to
17 what continuous and ongoing fundraising efforts look like.

19 Further, KRRC has been aware of the estimated cost of the application fee and work to be
20 done by Soundview and Contour as of at the earliest August 2018, yet the record is silent as to the
21 steps that KRRC has been taking since 2018 to address securing financing for the project.¹⁹

26 ¹⁸ Id.

27 ¹⁹ See Declaration of Marcus Carter, Exhibit 4 (Soundview Consultants Scope of Work Agreement For Consulting
28 Services dated August 15, 2018

1 **B. The Court should not terminate the Contempt Sanction because KRRC is unwilling**
2 **to comply, not unable.**

3 KRRC urges the Court to terminate the Contempt Sanction because of an inability to
4 comply with the permitting order in the Supplemental Judgment by alleging that it does not have
5 the ability submit a complete SDAP application. KRRC has begun the process of submitting an
6 application for an SDAP-Commercial.²⁰ As a part of the online application for the SDAP-
7 commercial a Title 21 Submittal waiver can be filed.²¹ This is essentially a request to waive certain
8 submittal items by the applicant with an explanation provided for the request.²² Ms. Butterton
9 filed such a waiver on June 19, 2019²³ and made the following waiver submittals:
10

- 11 • Reason to waive Flood Evaluation Report: “Waste of time and resources.”
- 12 • Reason to waive Geological/Geotechnical Report: “Waste of time and
13 resources.”
- 14 • Reason to waive Habitat Management Plan: “Waste of time and resources.”
- 15 • Reason to waive Hydrogeological Report: “Not necessary.”
- 16 • Reason to Waive Pre-Application Meeting Summary: “The pre-application
17 meeting summary appears to not consider any pre-existing condtions.”
- 18 • Reason to Waive Wetland Habitat Report: “Not needed as nothing
19 changes.”
- 20 • Reason to Waive Soils Report: “Soils evaluation done while Washington
21 DOE inspected our well installation.”
- 22 • Reason to Waive SEPA checklist: “Waste of time and money.”²⁴

23 The answers provided by KRRC’s president, Barbara Butterton, betray KRRC’s true feelings with
24 respect to the permit application process. The consideration of components of the application
25 process to be a “waste of time”, “resources”, and “money” should give the Court pause in
26 determining that KRRC’s inability to comply is anything more than an unwillingness to do so over
27

28 ²⁰ Declaration of Shawn Aire, ¶3 (See Exhibit 1)

²¹ Declaration of Shawn Aire, ¶4

²² Id.

²³ Id. at ¶4 (See Exhibit 2)

²⁴ Id.

1 a fundamental disagreement with the County over their need to do so.

2 **III. CONCLUSION**

3 For the foregoing reasons, the County asks that the Court strike KRRC's Motion to
4 Terminate Contempt Sanction. Should the Court determine that striking the Motion is not the
5 appropriate remedy, the County respectfully asks that the Court deny KRRC's Motion in its
6 entirety.
7

8 Respectfully submitted this 25th day of June, 2019.

9
10 CHAD M. ENRIGHT
Kitsap County Prosecuting Attorney



11
12
13 LAURA F. ZIPPEL, WSBA No. 47978
14 JOHN C. PURVES; WSBA No. 35499
15 Deputy Prosecuting Attorneys
16 Attorneys for Plaintiff Kitsap County
17
18
19
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28

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 25th day of June, 2019.



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

Good morning Marcus and Brad,

At your request, I am providing the following summary of the 7/11/2018 Staff Consultation Meeting between SVC and Kitsap County. The meeting was only 30 minutes long but there is a lot of information to relay, so please let me know if you have any questions or require clarification on any of these items

- Required Application: Commercial Site Development Activity Permit (SDAP) – Full Drainage Review
- Required Application Fee Deposit = \$6,722.40 including fees [Note: This fee is not fixed, but rather a deposit that assumes 48 hours of county review time. If the SDAP application is processed in less time, a refund would be issued; and if more time is needed, the hours exceeding the fee deposit would be charged at the county's hourly rate.]
- The Kitsap County Permit Website (<https://www.kitsapgov.com/dcd/Pages/Permits.aspx>) is used to apply for the Commercial SDAP. The specific application is found here: <https://www.cognitofrms.com/KitsapCounty1/SiteDevelopmentActivityPermitFullDrainageReview>.
- Required submittal items include the following unless waived: online permit application; project narrative; Notice of Decision of previous land use approvals; water availability letter (if applicable); landscape plans (if applicable); engineered drainage plans; engineered drainage report; Stormwater Pollution Prevention Plan (SWPPP) drawings; engineer's affidavit; SEPA Environmental Checklist; and technical reports (e.g., wetland and fish and wildlife habitat assessment report, habitat management plan, buffer mitigation plan, geotechnical report, soils report, hydrogeological report, and flood evaluation report). Prior to final inspection, the following 2 items are also required: Liability Insurance Certificate and certification from Project Engineer. A traffic impact analysis report is listed as a requirement but can be waived.
- Regarding SEPA, the county sees a path toward a Determination of Nonsignificance (DNS) if our application package includes appropriate mitigation. The county will not charge an additional review fee for the SEPA Environmental Checklist.
- The county seemed open to the idea of a phased occupancy/review, which could allow the club to open up part of your operations (e.g., pistol range) while the other issues are ironed out. This approach would still require just the one application, though costs would increase somewhat as additional inspections would be required due to the phasing.
- Wetland Delineation: The county is amenable to using our existing data and delineation work, though we need to confirm our findings in the field and update our delineation flags as needed as 5+ years have passed.
- Wetland Report: A revised wetland report is needed to address the updated delineation, revised Kitsap County Code, and current (2014) wetland rating methodology. We currently project that buffer restoration & enhancement will be the only required mitigation to offset buffer impacts. The county does not believe a critical areas variance will be required; the wetland/stream issues can likely be dealt with administratively.
- Civil and geotechnical engineering considerations (e.g., survey, civil site plan, steep slopes, drainage report, et cetera) were discussed as well. In general, we need to meet the minimum requirements but the county seems willing to utilize past work to the extent possible.
- We project that the stream can remain in the culverts that span the range and that further coordination/authorizations with WDFW and USACE will not be required.
- The county discussed the need for a lead recovery management plan, installing baffles, raising the berms, and grading plans in accordance with NRA standards.
- After 30 minutes, the meeting was terminated per county protocol.

Moving forward, SVC is already working on a Scope of Work that outlines our required services and estimated costs. We intend to include everything needed of SVC to obtain the SDAP, while excluding post-permit work such as mitigation monitoring and maintenance, oversight, and annual reporting. We have also begun coordinating with Contour Engineering and GeoResources to obtain their bids, and we hope to have a conference call with these firms next week.

Thank you,

Matt DeCaro

Environmental Planner/Project Manager

Soundview Consultants LLC

Environmental, Natural Resource, and Land Use Consulting

Office: 253.514.8952 x 025

Fax: 253.514.8954

Email: Matt@SoundviewConsultants.com

June 27 2019 11:46 AM

KEVIN STOCK
COUNTY CLERK
Hon. Susan K. Seto
NO. 10-2-12913-3
Hearing Date: June 28
Hearing Time: 9:00 a.m.

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5
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7
8 FOR THE COUNTY OF PIERCE

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

Plaintiff,

11 v.

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

Defendants,

15 and

16 IN THE MATTER OF NUISANCE AND
17 UNPERMITTED CONDITIONS LOCATED
AT

18 One 72-acre parcel identified by Kitsap County
19 Tax Parcel ID No. 362501-4-002-1006 with
street address 4900 Seabeck Highway NW,
20 Bremerton Washington.

Case No.: 10-2-12913-3

**KITSAP RIFLE & REVOLVER
CLUB'S REPLY IN SUPPORT
OF MOTION TO TERMINATE
CONTEMPT SANCTION**

21 **I. REPLY**

22 Kitsap Rifle & Revolver Club (the "Club") submits the following reply in support of
23 *Kitsap Rifle & Revolver Club's Motion to Terminate Contempt Sanction* ("Motion"), dated
24 June 19, 2019. This reply is supported by the pleadings and record on file with the Court and
25 by the following additional filings herewith: (1) *Declaration of Barbara Butterson (June 27,*
26 *2019)* with Exhibit 1; and (2) *Declaration of Brooks M. Foster (June 27, 2019)*.

Page 1 - KITSAP RIFLE & REVOLVER CLUB'S REPLY
IN SUPPORT OF MOTION TO TERMINATE
CONTEMPT SANCTION

CHENOWETH LAW GROUP, PC
510 SW Fifth Avenue, Fourth Floor
Portland, OR 97204
Telephone: (503) 221-7958
Facsimile: (503) 221-2182
Email: bfoster@northwestlaw.com

1 For the reasons discussed in the Club’s Motion and herein, the Club respectfully asks
2 the Court to terminate the contempt sanction by entering the form of order proposed by the
3 Club, which states:

4 “Defendant Kitsap Rifle and Revolver Club is no longer
5 enjoined from operating a shooting facility by the *Order*
6 *Granting Kitsap County’s Motion for Contempt with Findings*
7 *of Fact and Conclusions of Law* (dated December 2, 2016) and
8 the *Order Amending December 2, 2016 Contempt Order* (dated
9 June 7, 2019). The injunction in those orders that prohibits
10 KRRC from operating a shooting facility as a coercive remedy
11 for contempt is hereby terminated as of the date of this order.”

12 **A. It Will Be Most Efficient to Decide the Club’s Motion at the Hearing on June 28,
13 2019; But If the Court Would Prefer the Club Will Re-Note the Hearing for a
14 Later Date.**

15 Kitsap County (the “County”) asks the Court to strike the hearing that the Club noted
16 for June 28, 2019. When the Club noted the hearing on June 19, 2019, it thought it would be
17 able to file the motion and supporting documents by the close of business that same day.
18 Foster Decl. ¶ 3. One of the Club’s declarants, however, became unexpectedly unavailable
19 until after the close of business. *Id.* The Club therefore filed and served its motion and
20 supporting documents as soon as it could, which was at around 6:30 pm on June 19, 2019.
21 *Id.*

22 Technically, the County is correct that June 28, 2019 is too soon to hold the hearing
23 on the Club’s motion to terminate contempt sanction. *Id.* ¶ 4. The Club therefore conferred
24 with the County to identify some dates in August 2019 when the parties are available for
25 another hearing. *Id.* Yet the parties are already scheduled to appear before the Court on June
26 28, 2019, for a hearing to amend supplemental judgment. *Id.* The Club therefore believes it
will be most considerate of the Court’s and parties’ time and resources to hear the Club’s
motion to terminate contempt sanction on the same date. *Id.* This consideration is the

1 primary reason the Club has not already re-noted its motion to terminate the contempt
2 sanction. *Id.*

3 In addition, the County does not allege that any actual prejudice resulted from the
4 short delay (of about two hours) in the filing and service of the Club’s Motion. The Club
5 therefore suggests that the hearing on the Motion proceed on June 28, 2019. Alternatively, if
6 the Court would prefer, the Club will re-note the hearing for August 2, 9, or 12, 2019, when
7 the parties have already confirmed they are available.

8 **B. The Club Has Proven It Lacks the Present Ability to Submit a Complete SDAP**
9 **Commercial Application.**

10 The County opposes the Club’s motion to terminate contempt sanction on the grounds
11 that the Club “has not proven that it lacks the ability to comply with the permitting order in
12 the Supplemental Judgment.” Resp. at 3:10–12. In making this argument, the County does
13 not dispute the Club’s evidence that it will cost over \$45,000 to prepare and submit a
14 complete SDAP Commercial application. *Id.* at 4:9–12. The County does not dispute the
15 Club’s evidence that the Club has only “between four and five thousand dollars in its various
16 bank accounts on average on a monthly basis.” *Id.* at 4:14–17. The County presents no
17 evidence that the Club has the present ability to pay over \$45,000 in cash. Instead, the
18 County argues the Club cannot prove itself unable to submit a complete SDAP application
19 without additional evidence that it tried and failed to secure a loan or other source of funding.
20 *Id.* at 4:20–5:22. The County further suggests the Club must show “the steps that [the Club]
21 has been taking since 2018 to address securing financing for the project.” *Id.* at 5:19–22.

22 The Court of Appeals explained that a “sanction becomes punitive when the
23 contemnor cannot purge the contempt.” Contempt Op. at 20. “In addition, a sanction that
24 initially was remedial may become punitive as circumstances change.” *Id.* at 21. “If a
25 sanction loses its coercive effect, such as when a contemnor loses his or her ability to comply
26 with the court order that was violated, the court must terminate the sanction.” *Id.* According

1 to these rules, if a *party* does not have the *present* ability to lift a contempt sanction, the
2 sanction has become punitive and must be terminated.

3 The Club has shown, using objective, uncontroverted financial evidence, that it lacks
4 the over \$45,000 it needs to prepare and submit a complete SDAP application. Because the
5 Club does not have the present ability to perform the purge condition, the contempt sanction
6 is punitive, not coercive, and must be terminated.

7 A party's ability to perform cannot depend on the discretionary actions or decisions
8 of a third party. The Court of Appeals vacated the former purge condition that required the
9 Club to *obtain* permitting from the County. The Club did not have the ability to obtain the
10 permits because only the County could decide whether to issue them. The court wrote:

11 “Although the Club may have control over *submitting* an
12 application for an SDAP, it does not have control over
13 *obtaining* an SDAP. The County determines whether to issue
14 development permits. As a result, even if the Club does
15 everything in its power to obtain an SDAP, **the Club’s ability**
16 **to satisfy the purge condition is dependent on the County’s**
response to its application. 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.

17 Contempt Op. at 21 (italics in original).

18 Applying the Court of Appeals’ reasoning here, the Club’s ability to satisfy the purge
19 condition cannot depend on the decision a lender or philanthropist might make in response to
20 a request for funding. Whether a lender or philanthropist is willing to fund the Club is
21 wholly within their power and control to decide, not the Club’s. The purge condition cannot
22 require the Club to obtain a loan or charitable donation because that would take performance
23 of the purge condition out of the Club’s control and give it to a third party. That would
24 render the purge condition impermissibly punitive according to the ruling of the Court of
25 Appeals in this very case.

1 Certainly, if the purge condition required the Club to apply for a loan from a specific
2 lender or ask for a donation from a specific philanthropist, it would be within the Club’s
3 power to do that. The purge condition here, however, does not require that. Instead, it
4 requires the Club to submit a complete SDAP application to the County. It is not presently
5 within the Club’s power to do that because the Club lacks the necessary funds and cannot
6 even afford the application fee of approximately \$6,700. The Club did not submit evidence
7 of its inability to obtain funding from a third party because that is not what the purge
8 condition requires. The County’s attempt to interpret the purge condition to require the Club
9 to seek funding from a third party must be rejected as impermissibly punitive. Alternatively,
10 if that is the correct interpretation of the purge condition, then the purge condition would be
11 punitive and the contempt sanction would have to be terminated.

12 The County is also wrong to suggest that the contempt sanction cannot be terminated
13 without knowing “the steps that [the Club] has been taking since 2018 to address securing
14 financing for the project.” *Id.* at 5:19–22. Terminating the sanction as punitive depends on
15 the Club’s present ability to comply. It does not depend on what the Club did or did not do
16 in the past. Contempt Op. at 21 (“If a sanction loses its coercive effect, such as when a
17 contemnor loses his or her ability to comply with the court order that was violated, the court
18 must terminate the sanction.”).

19 To summarize, there is no dispute that the Club presently lacks the over \$45,000 it
20 needs to complete and submit the application. With respect to that fact, the sufficiency and
21 credibility of the Club’s evidence has not been called into question. Thus, the Club has
22 proven its inability to perform the purge condition. The Club should not be required to also
23 show it has been unable to obtain funding from a third party. If that were required, it would
24 render the purge condition impermissibly punitive by making its satisfaction depend on the
25 discretionary acts and decisions of another. Either way, the contempt sanction must be
26 terminated.

1 **C. The Club Cannot Get a Loan for over \$45,000 Because It Lacks Collateral and**
2 **Cannot Afford a Loan Payment.**

3 The County presents no evidence of any lender or loan program from which the Club
4 could obtain the over \$45,000 it needs to prepare and submit a complete SDAP application.
5 Nevertheless, the County contends the Club must present evidence of futile efforts to obtain a
6 loan before it will have proven its inability to submit a complete SDAP application.

7 The Club already submitted testimony as to the following facts:

8 (1) The Club’s only significant sources of income in 2019 have been membership
9 dues and donations. *Decl. of M. Carter (June 19, 2019)* ¶ 8 (hereafter, “Carter
10 June 19 Decl.”) (on file with Court).

11 (2) Despite the Club’s continuous and ongoing efforts to raise funds, it started the
12 year with very little cash and has been unable to improve its financial position.
13 *Id.*

14 (3) The Club’s average end of month operating balance between January and May
15 2019 is \$4,738.62. *Id.* ¶ 7.

16 (4) The Club expects its accounts will hold about \$4,000 at the end of June 2019.
17 *Id.*

18 (5) The Club is not aware of any way it can obtain a loan secured by any of its
19 property, and even if it did it would be unable to make monthly loan
20 payments. *Id.* ¶ 8.

21 The County questions the sufficiency of this evidence. It would require the Club to
22 present a “record of attempts to secure credit” and “proof of subsequent denials of credit.”
23 Resp. at 5:3–9. Yet, as this Court previously found, the Club’s real property is valued “at \$0,
24 based upon its continued use for shooting range purposes and the potential for environmental
25 cleanup.” Original Trial Judgment FOF 21. With the potential for environmental liability
26

1 and unresolved site development violations, no lender will accept the Club’s real property as
2 collateral. Butterson Decl. ¶ 2.

3 The Club has no other assets that could possibly be considered as collateral for a loan
4 of over \$45,000. *Id.* Instead, the Club has significant unpaid liabilities, such as for legal
5 representation against its liability insurer, Northland Insurance Co. *Id.* The Club owes over
6 \$180,000 in attorney fees for that work. *Id.* If the Club had any ability to pay a debt or make
7 a monthly payment, it would have to use that money to pay its attorneys. *Id.* This debt is
8 another reason why the Club cannot obtain a loan for SDAP permitting work that the Club
9 would not be able to repay. *Id.* The Club should not be required to present a record of futile
10 loan applications in order to prove any of this.

11 Although the Club does not have the collateral required to obtain a loan for over
12 \$45,000, the County wants the Club to present evidence of “what a monthly payment plan on
13 a loan would be,” presumably to determine whether the Club can afford a loan payment. It is
14 no secret that lenders consider a loan applicant’s cash flow to decide whether the applicant
15 can afford the monthly payment on a loan. The following table summarizing the Club’s cash
16 accounts shows negative cash flow and no ability to make a monthly loan payment of any
17 amount.¹

18

19

Date	Beginning Balance	Ending Balance
January 2019	\$3,806.80	\$4,974.07
February 2019	\$4,974.07	\$5,214.07
March 2019	\$5,214.07	\$5,568.27
April 2019	\$5,568.27	\$4,022.22

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¹ The table summarizes the beginning and ending balances of the Club’s two checking accounts, one savings account, and a petty cash box (“the accounts”), which are the Club’s only liquid assets. Carter June 19 Decl. ¶¶ 6–7, Exs. 6, 7.

May 2019	\$4,022.22	\$4,022.17
Average Balance	\$4,717.09	\$4,760.16

The Club should not be required to present this pitiful financial information to some unstated number of unidentified lenders and obtain their written loan denials in order to prove its inability to make a monthly loan payment. The Club would need a record of positive cash flow in order to obtain a loan in the first place. No reputable lender would loan the Club \$45,000 because its cash account records how it has no ability to make a monthly payment of any amount.

D. The Club Has Always Accepted Donations and Has Asked for Them But Is Unaware of Any Philanthropist Willing to Give It \$45,000.

The County’s last argument for making the Club prove more of a negative than it already has is that the Club has provided “scant information with respect to what fundraising efforts have been undertaken.” Resp. at 5:13–14. The Club has minimal resources of any kind at this time, as it has been prohibited for several years from operating a shooting range. Butterson Decl. ¶ 3. This has deprived the Club of one of its primary means of fundraising, which was to host charitable events. *Id.*

It is no secret that the Club is a non-profit that accepts donations. *Id.* The Club has specifically asked for them since receiving the 2012 trial decision, such as by sending about 150 letters to shooting ranges, their members, and the NRA Board of Directors. *Id.* That effort generated less than \$1,000 in donations. *Id.* Meanwhile, GoFundMe rejected a page intended to collect donations for the Club because it considered the effort too political. *Id.* Still further, the Club is registered with the IRS as a 501(c)(7) organization, which means no more than 15% of its gross income can come from non-member sources. *Id.* This, too, restricts the Club’s potential to generate over \$45,000 through donations. *Id.*

1 In spite of its fundraising efforts, the Club is not aware at this time of any person or
2 combination of persons willing to give it \$45,000. *Id.* ¶ 4. If the Club had access to that kind
3 of charitable giving, it would like to use the money to apply for SDAP permitting (assuming
4 its other creditors would allow it). *Id.* The County is requiring the Club to submit a
5 complete SDAP application before the County will continue processing the Club’s operating
6 permit application, and the Club is enjoined from operating a shooting range without an
7 operating permit. *Id.* The Club fails to understand why that is not enough coercion for the
8 County. *Id.* The fact remains, however, that in spite of its efforts the Club is not holding and
9 has no right to charitable donations anywhere near the \$45,000 it needs to submit a complete
10 SDAP application. *Id.*

11 **E. The Club’s Comments in Its SDAP Application About Wasting Time and**
12 **Resources Refer to the Club’s Inability to Prepare and Submit a Complete**
13 **Application, Not It’s Lack of Desire to Do So.**

14 The County complains that when the Club initiated the SDAP Commercial
15 application process it asked the County to waive certain components of the application
16 because of “[w]aste of time and resources” and “[w]aste of time and money.” Resp. at 6:10–
17 7:1. Those comments are irrelevant to the operative question of whether the Club has the
18 financial resources necessary to submit a complete SDAP Commercial application.
19 Moreover, the comments simply referred to the fact that the Club does not have the money it
20 needs to submit a complete SDAP Commercial application so requiring it to submit
21 incomplete sub-parts of the application would be a waste of time and resources. Butternon
22 Decl. ¶ 5.

23 The County appears to have misconstrued the Club’s comments it submitted when
24 initiating its SDAP Commercial application. *Id.* The Club certainly wants to prepare and
25 submit a complete SDAP application and receive an SDAP since the County is requiring that
26 before it will allow the Club to resume any operations pursuant to an operating permit. *Id.*

1 The Amended Contempt Order makes it clear that to be able to perform the Purge
2 Condition the Club would need to be able to “transmit through the County’s online portal an
3 SDAP application that contains *each and every one* of the items listed in KCC
4 § 21.04.160(B).” Am. Contempt Order at 2–3 (italics added). Because the Club cannot
5 submit each and every item required to submit a complete SDAP application, the contempt
6 sanction must be terminated.

7 **II. CONCLUSION**

8 For the foregoing reasons, the Club respectfully asks the Court to terminate the contempt
9 sanction by entering the form of order proposed by the Club, which states:

10 “Defendant Kitsap Rifle and Revolver Club is no longer enjoined
11 from operating a shooting facility by the *Order Granting Kitsap*
12 *County’s Motion for Contempt with Findings of Fact and*
13 *Conclusions of Law* (dated December 2, 2016) and the *Order*
14 *Amending December 2, 2016 Contempt Order* (dated June 7,
15 2019). The injunction in those orders that prohibits KRRC from
16 operating a shooting facility as a coercive remedy for contempt is
17 hereby terminated as of the date of this order.”

18 DATED: June 27, 2019

19 CHENOWETH LAW GROUP, PC

20 */s Brooks M. Foster*

21 Brian D. Chenoweth, WSBA No. 25877

22 Brooks M. Foster, OR Bar No. 042873

23 (appearing *pro hac vice*)

24 510 SW Fifth Ave., Fifth Floor

25 Portland, OR 97204

26 Phone: (503) 221-7958

Email: brianc@northwestlaw.com

bfoster@northwestlaw.com

*Attorneys for Defendant Kitsap Rifle and
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 27, 2019, I caused to be served a copy of the within *Kitsap Rifle & Revolver*
6 *Club’s Reply in Support of Motion to Terminate Contempt Sanction* via email, pursuant to an
7 e-service agreement 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: lzippel@co.kitsap.wa.us
15 jcpurves@co.kitsap.wa.us

16 DATED: June 27, 2019

17 CHENOWETH LAW GROUP, PC

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

June 27 2019 11:46 AM

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
BARBARA BUTTERTON
(JUNE 27, 2019)**

21
22 I, Barbara Butterson, declare under penalty of perjury under the laws of the State of
23 Washington that the following is true and correct:

24 1. I am a Member and President of Defendant Kitsap Rifle and Revolver Club
25 (the "Club") and have been assisting with the Club's efforts to obtain site development
26

1 permitting and with this litigation. I am over the age of 18 and competent to testify to the
2 facts herein. I make this testimony based on my personal knowledge.

3 2. With the potential for environmental liability and unresolved site development
4 violations, no lender will accept the Club's real property as collateral. The Club has no other
5 assets that could possibly be considered as collateral for a loan of over \$45,000. Instead, the
6 Club has significant unpaid liabilities, such as for legal representation against its liability
7 insurer, Northland Insurance Co. The Club owes over \$180,000 in attorney fees for that
8 work. A true copy of a recent invoice showing this debt is attached as Exhibit 1. If the Club
9 had any ability to pay a debt or make a monthly payment, it would have to use that money to
10 pay its attorneys. This debt is another reason why the Club cannot obtain a loan for SDAP
11 permitting work that the Club would not be able to repay.

12 3. The Club has minimal resources of any kind at this time, as it has been
13 prohibited for several years from operating a shooting range. This has deprived the Club of
14 one of its primary means of fundraising, which was to host charitable events. It is no secret
15 that the Club is a non-profit that accepts donations. The Club has specifically asked for them
16 since receiving the 2012 trial decision, such as by sending about 150 letters to shooting
17 ranges, their members, and the NRA Board of Directors. That effort generated less than
18 \$1,000 in donations. Meanwhile, GoFundMe rejected a page intended to collect donations
19 for the Club because it considered the effort too political. Still further, the Club is registered
20 with the IRS as a 501(c)(7) organization, which means no more than 15% of its gross income
21 can come from non-member sources. This, too, restricts the Club's potential to generate over
22 \$45,000 through donations.

23 4. In spite of its fundraising efforts, the Club is not aware at this time of any
24 person or combination of persons willing to give it \$45,000. If the Club had access to that
25 kind of charitable giving, it would like to use the money to apply for SDAP permitting
26 (assuming its other creditors would allow it). The County is requiring the Club to submit a

1 complete SDAP application before the County will continue processing the Club's operating
2 permit application, and the Club is enjoined from operating a shooting range without an
3 operating permit. The Club fails to understand why that is not enough coercion for the
4 County. The fact remains, however, that in spite of its efforts the Club is not holding and has
5 no right to charitable donations anywhere near the \$45,000 it needs to submit a complete
6 SDAP application.

7 5. The County complains that when the Club initiated the SDAP Commercial
8 application process it asked the County to waive certain components of the application
9 because of "[w]aste of time and resources" and "[w]aste of time and money." Those
10 comments simply referred to the fact that the Club does not have the money it needs to
11 submit a complete SDAP Commercial application so requiring it to submit incomplete sub-
12 parts of the application would be a waste of time and resources. The County appears to have
13 misconstrued the Club's comments it submitted when initiating its SDAP Commercial
14 application. The Club certainly wants to prepare and submit a complete SDAP application
15 and receive an SDAP since the County is requiring that before it will allow the Club to
16 resume any operations pursuant to an operating permit.

17 **I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE**
18 **BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS**
19 **MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR**
20 **PERJURY.**

21 Dated: June 27, 2019

22
23 
24 Barbara Butterson
25
26

Chenoweth Law Group, PC

510 SW Fifth Ave Ste 500
Portland, OR 97204-2138
(503) 221-7958

For Services Through May 31, 2019

Statement Date May 31, 2019

Statement No. 24497

Federal Tax I.D. No.: 93-1277893

Marcus Carter
Kitsap Rifle and Revolver Club
4900 Seabeck Hwy NW
Bremerton WA 98312

KRRC v. Northland Insurance et al.
USDC Western Dist. of WA 3:11-cv-05021-BHS

Matter ID: 1715-002

Total Current Billing:	0.00
Previous Balance Due:	184,200.72
Payments:	0.00
Total Now Due:	184,200.72

0046

1411

7/3/2019

10-2-12913-3

53508971

ORDYMT

07-02-19



Hon. Susan K. Serko
Hearing Date: June 28, 2019
Hearing Time: 9:00 a.m.



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
TERMINATING CONTEMPT
SANCTION

DENYING
TERMINATION
OF
CONTEMPT
SANCTION

This matter came on regularly for hearing before the undersigned Judge of the above-
entitled Court. Plaintiff Kitsap County appeared through counsel of record John C. Purves and
Laura F. Zippel, Deputy Prosecuting Attorneys. Defendant Kitsap Rifle and Revolver Club
("KRRC") appeared through counsel of record and Brooks Foster.

ORDER

~~[PROPOSED]~~ ORDER TERMINATING CONTEMPT SANCTION -- 1

The Court hereby orders as follows:

~~Defendant Kitsap Rifle and Revolver Club is no longer enjoined from operating a shooting facility by the Order Granting Kitsap County's Motion for Contempt with Findings of Fact and Conclusions of Law (dated December 2, 2016) and the Order Amending December 2, 2016 Contempt Order (dated June 7, 2019). The injunction in those orders that prohibits KRRC from operating a shooting facility as a coercive remedy for contempt is hereby terminated as of the date of this order.~~

The motion of the KRRC is denied. The contempt sanction remains in effect.

DONE IN OPEN COURT this 28 day of June, 2019.

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

Presented by:

[Signature]

BRIAN D. CHENOWETH, WSBA No. 25877
BROOKS FOSTER, Oregon State Bar No. 042873
(appearing *pro hac vice*)
Attorneys for Defendant Kitsap Rifle and Revolver Club

FILED
DEPT. 14
IN OPEN COURT
JUN 28 2019
Pierce County Clerk
By: *[Signature]*
DEPUTY

APPROVED FOR ENTRY:

[Signature]

JOHN C. PURVES, WSBA No. 35499
LAURA F. ZIPPEL, WSBA No. 47978
Deputy Prosecuting Attorneys
Kitsap County Prosecutor's Office
Attorneys for Plaintiff Kitsap County

[Signature]

CERTIFICATE OF SERVICE

I, Ethan Jones, 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 Oregon, over the age of eighteen years, not a party to or interested in the above-titled action, and competent to be a witness herein.

On the date given below, a copy of BRIEF OF APPELLANT was served upon the following individuals by via email, pursuant to an e-service agreement between the parties, to the following:

Laura F. Zippel
John C. Purves
Kitsap County Prosecutor's Office
Civil Division
614 Division St., MS-35A
Port Orchard, WA 98366
Email: jcpurves@co.kitsap.wa.us
lzippel@co.kitsap.wa.us

I filed the BRIEF OF APPELLANT electronically with the Court of Appeals, Division II, through the Court's online e-filing system.

DATED: December 9, 2019

CHENOWETH LAW GROUP, PC

/s/ Ethan Jones

Ethan Jones, Paralegal
ejones@chenowethlaw.com

CHENOWETH LAW GROUP, PC

December 09, 2019 - 4:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53878-4
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:

- 538784_Briefs_20191209163510D2052572_7302.pdf
This File Contains:
Briefs - Appellants
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A copy of the uploaded files will be sent to:

- bfoster@chenowethlaw.com
- jcpurves@co.kitsap.wa.us
- kcpaciv@co.kitsap.wa.us
- lzippel@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)

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