

CASE NO. 43076-2-II

COURT OF APPEALS, DIVISION II OF THE STATE OF  
WASHINGTON

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

Respondent,

vs.

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,

Appellants,

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

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR PIERCE COUNTY  
Superior Court No. 10-2-12913-3

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BRIEF OF RESPONDENT KITSAP COUNTY

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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Did the Superior Court err by granting declaratory judgment that dramatic changes in use, operation and development of Kitsap Rifle and Revolver Club (“KRRC” or “Club”)’s real property each acted to terminate its legal nonconforming land use as a shooting range?

2. Did the Superior Court err by granting declaratory judgment that KRRC’s illegal land uses of its property each acted to terminate the property’s legal nonconforming use as a shooting range?

3. Did the Superior Court err by granting declaratory judgment that KRRC’s un-permitted earth-moving activities each acted to terminate the property’s legal nonconforming use as a shooting range?

4. Did the Superior Court err by issuing a land use injunction closing the shooting range without a “phase-out”, and did KRRC waive challenge by failing to seek amendment or clarification from that court?

5. Did the Superior Court err in finding that shooting range operations at KRRC’s real property constituted a public noise nuisance based upon prolonged, repeated, and extraordinarily intrusive noise forced upon area residents within their homes?

6. Did the Superior Court err in finding that shooting range operations at KRRC’s real property created a public safety nuisance based upon KRRC’s failure to build infrastructure to prevent escape of bullets to

residential neighborhoods and findings (verities) recognizing surface danger zones for weapons / ammunition often shot at KRRC's property?

7. Did the Superior Court abuse its discretion in crafting its injunction against public nuisance-causing range activities at KRRC's property by limiting hours of operation, restricting the caliber of rifles shot, and prohibiting use of exploding targets and cannons, not inconsistent with the range's pre-1993 historical operation?

8. Did the Superior Court err in concluding that a 2009 deed conveying real property from Kitsap County to KRRC did not resolve land use status or settle potential enforcement actions, and in rejecting KRRC's counterclaim that Kitsap County breached this contract by filing this suit?

9. Did the Superior Court err in concluding that the Open Public Meetings Act limited the effect of the 2009 deed to its written terms approved by Kitsap County's legislative body, when neither the deed nor its authorizing resolution addressed land use or permitting?

10. For the Superior Court's implicit denial of KRRC's accord and satisfaction defense, did KRRC waive challenge by not briefing it?

11. Did the Superior Court err by implicitly holding that KRRC failed to prove its equitable estoppel defense by clear, cogent and convincing evidence, which asserted that the 2009 deed should act to estop Kitsap County from enforcing its land use and permitting codes?

## II. INTRODUCTION

This action is Kitsap County's suit for declaratory judgment that KRRC forfeited its real property's nonconforming land use as a recreational shooting range, for injunction against continuing its land use without a county-issued conditional use permit, and for injunction against public nuisances of obnoxious heavy gunfire and explosion noises and endangerment of nearby residential communities due to bullet escapement.

In its opening brief<sup>1</sup>, KRRC preserved few challenges to the findings of fact. KRRC assigned formal error to none of the trial court's 90 numbered findings and to none of its evidentiary rulings. KRRC assigned no error to rejection of KRRC's proposed findings. In the text, KRRC challenged a handful of the findings, without clear delineation. On these bases alone (which cannot be cured in reply), the Court may truncate KRRC's appeal under its rules, most notably RAP 10.3(g) and 10.4(c). Substantial evidence establishes any finding for which KRRC may claim it preserved challenge, and for the most critical factual findings –reciting risk of bullet impacts to central Kitsap County populations – KRRC challenges semantics and the trial court's *application* of its findings.

KRRC disputes comprehensive public nuisance and land use findings and conclusions established by the trial evidence, which included:

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<sup>1</sup> Amended Brief of Appellant ("Brief").

- KRRC's transformation of its lightly-used daylight target range with two developed shooting ranges (one rifle and one pistol) into: a heavily-used range open to members from 7 a.m. to 10 p.m. year-round, where members and guests may shoot any and all (legal) weapons and rapid fire shooting is commonplace; a center for urban combat-oriented training; a "range for rent" by contractors training U.S. Navy personnel; and a hub for "practical shooting".
- KRRC's clearing, grading and excavation conducted over 15 years in which the Club lengthened its rifle range, constructed 11 earthen "shooting bays" for practical shooting in 180, 270 or 360 degrees, and buried a seasonal watercourse in twin 475-foot long culverts – all done without site permitting, engineering or wetland study.
- KRRC's routine imposition of sounds akin to urban combat – incessant rapid fire shooting and occasional exploding targets – upon people inside their houses, both nearby and as distant as 1.7 miles down range (all built and occupied before KRRC's changes).
- Bullet strikes to several houses 1.5 to 1.7 miles directly downrange of KRRC's rifle range over 15 years preceding this action.
- KRRC's "blue sky" range in which all shooting areas, old and new, lack overhead baffles to intercept bullets shot from designated firing areas.

- Undersized backstops and berms at KRRC's shooting areas.
- KRRC's reliance upon a 1993 County letter to shooting ranges confirming "grandfathered" status, to avoid virtually all permitting.
- KRRC's reliance upon events in 2009 when Kitsap County became a pass-through owner of the parcel KRRC had leased from the State for decades, and the County sold the parcel to the Club under a bargain and sale deed which KRRC now claims acted to "settle" potential site development violations and to resolve the land use.

After a lengthy bench trial, the court entered a plaintiff's verdict, holding that KRRC ~~created~~ enjoined public nuisances of obnoxious noise and endangerment of public safety from bullet escapement. The court further held that KRRC's unpermitted site developments and its illegal and changed land uses could not be reconciled with the previous nonconforming land use or with the "private recreational facility" use under local code, thereby ending that nonconforming use status.

The trial court heard conflicting testimony about range safety, bullet impacts, noise impacts, site development, wetland classification, land use and transfer of the real property. The court assessed and weighed conflicting accounts of activities and impacts, circa 1993 and present-day, and looked past simplistic explanations like "no person has yet to be hit by a bullet" to instead evaluate the totality of a substantial trial record.

### III. STATEMENT OF THE CASE

#### A. PROCEDURAL HISTORY

Kitsap County filed this action on September 9, 2010. CP 2-88.<sup>2</sup> On August 29, 2011, Kitsap County filed its third and final amended complaint for injunction, declaratory judgment and abatement of nuisance. CP 1695-1757.<sup>3</sup> This complaint asserted Kitsap County Code (“KCC” or “Code”) violations, asserted common law and statutory public nuisances, sought declaratory judgment of nonconforming use status under common law and the Code, and sought injunctions:

(a) enjoining Defendants from operating a shooting range on the Property<sup>[4]</sup> until such time as the Property is in compliance with applicable regulations and no longer operates so as to endanger persons or property outside the Property . . . ;

(c) prohibiting Defendants from operating the Property as a shooting range and prohibiting access and use of the Property by any persons to discharge firearms until such time as all shooting areas on the Property come into compliance with applicable codes and accepted shooting range industry safety standards;<sup>[5]</sup>

On September 13, 2011, KRRC filed its answer, affirmative defenses and counterclaims. CP 1771-1787.<sup>6</sup> Of the affirmative defenses,

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<sup>2</sup> The complaint originally named KRRC and Sharon Carter (d/b/a National Firearms Institute) as defendants. CP 2.

<sup>3</sup> Hereafter “Third Amended Complaint”.

<sup>4</sup> KRRC’s 72-acre parcel of real property. CP 1696 (Third Amended Complaint, ¶3).

<sup>5</sup> CP 1712 (Third Amended Complaint, pp. 18-19). “Defendants”, plural, was a scrivener’s error; KRRC was the lone defendant at trial.

<sup>6</sup> Hereafter, “Answer”. KRRC’s affirmative defenses are found at CP 1778 – 1782.

KRRC's Brief raises only equitable estoppel and accord and satisfaction.<sup>7</sup>

The Answer asserted counterclaims for declaratory judgment:

1. That Kitsap County's amended nonconforming use ordinance was unconstitutional;
2. That a 2009 bargain and sale deed authorized KRRC's facilities and operations, that "the Club's current facilities and operations may continue without further permits or approvals from the County", and that Kitsap County "breached" this contract by filing this action;
3. That KRRC enjoys a nonconforming land use right to operate its facilities and operations as currently configured; and
4. Determining which county code violations existed at KRRC's property.<sup>[8]</sup>

A 14-day bench trial began on September 28, 2011 and ended on October 28, 2011, with written closing arguments filed November 7, 2011. CP 4052-4053. On February 9, 2012 the trial court issued its judgment, entitled "findings of fact, conclusions of law and orders", which was effective immediately.<sup>9</sup> The trial court granted declaratory judgment that:

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

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<sup>7</sup> KRRC assigns error only to denial of equitable estoppel and accord and satisfaction. Brief, at 2. KRRC did not substantively brief accord and satisfaction, thereby waiving this challenge. Brief, at 40, 55; *State v. Ashcraft*, 71 Wn.App. 444, 456 n. 3, 859 P.2d 60 (Div. 1 1993) ("Failure to present argument in a brief waives an appeal of that error.") (citing *Murphy v. Murphy*, 44 Wn.2d 737, 270 P.2d 808 (1954)).

<sup>8</sup> COL 1782 – 1785. Of the counterclaims, KRRC assigns specific error to only to denial of its "breach of contract" counterclaim. Brief, at 2.

<sup>9</sup> CP 4052 - 4092 (attached as Appendix 1 to Respondent's Brief). "FOF", "COL" or "Order" hereafter refer to numbered paragraph(s) of the trial court's judgment.

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.<sup>[10]</sup>

The trial court issued two injunctions:

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.<sup>[11]</sup>

The parties have filed no motions to reconsider or clarify the judgment.

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<sup>10</sup> Orders 1, 2 (Appendix 1).

<sup>11</sup> Orders 6, 7 (Appendix 1).

On February 15, 2012, KRRC filed its timely notice of appeal. CP 4114 - 4156. Pending appeal, KRRC remains an operational live-fire shooting range.<sup>12</sup>

## **B. FACTS**

### **1. The Subject Property and Historical Background**

This case concerns KRRC's uses of its 72-acre parcel of real property ("Property") in unincorporated central Kitsap County. FOF 1, 4.

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.<sup>[13]</sup>

The Court adopted KCCR's names for the Property's shooting areas:

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). . . .<sup>[14]</sup>

Exhibit 251 is reproduced as Appendix 2 to this brief. The Property is

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<sup>12</sup> See Ruling Granting Stay on Conditions (4-23-12), Order Clarifying Stay and Denying Motion to Modify and Motion for Contempt (8-27-12).

<sup>13</sup> FOF 8 (emphasis added). Here, the trial court quotes from lease agreements between DNR and its former tenant KRRC to describe 8-acre "historical" use and 64.41-acre passive use areas of the Property. Ex 135 (2002 lease, p. 1). Ex 136 (2003 lease, p. 1).

<sup>14</sup> FOF 15. Exhibit 251 is aerial imagery depicting the Property's pistol range, rifle range and shooting bays (numbered). Exhibits dubbed "A" are blown up courtroom versions.

located along windy Seabeck Highway in a rural area southwest of Silverdale. RP 200:15-19, 294:24 – 295:4, 409:18 – 410:8, Ex. 1.

KRRC dates back to 1926 and the Club incorporated as a not-for-profit organization in 1986. FOF 6-7. KRRC leased the Property from the State Department of Natural Resources (“DNR”) for decades, over which time DNR periodically harvested and re-planted timber on the Property’s wooded portions. FOF 7, 13. KRRC became owner of record on June 18, 2009, when (a) the State conveyed the Property and another DNR parcel via quit-claim deed to Kitsap County, and (b) Kitsap County conveyed the Property via bargain and sale deed to KRRC (“2009 Deed”). FOF 11, 14; Ex. 146, 147<sup>15</sup>. On that date at 3:15 p.m., these two deeds were sequentially recorded, meaning Kitsap County was momentarily the Property’s fee owner. Ex. 146, 147 (each bearing auditor’s time stamp).

## **2. Negotiations and the 2009 Deed**

KRRC’s equitable estoppel defense and breach of contract counterclaim rely on the 2009 Deed and negotiations. KRRC challenges the trial court’s deed interpretation, but formally assigned error to none of the findings regarding the negotiations and parties’ intentions.

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<sup>15</sup> The trial court attached the 2009 Deed (entitled “Bargain and Sale Deed with Restrictive Covenants”) to its judgment, which is attached here as Appendix 2. CP 4087 - 4092. The Property is contiguous with several larger DNR parcels deeded by the State to the County in 2009 to become the County’s “Newberry Hill Heritage Park”. Ex. 1, 3, 146; RP 400:16 – 401:4.

Kitsap County long sought to develop a large greenbelt or parkland area in central Kitsap County. FOF 16. In early 2009, the County and State were negotiating a land trade in which the County would receive a group of DNR parcels, including the Property. FOF 16, 17. KRRC was concerned that the County could become its landlord, and could exercise a lease clause to end KRRC's tenancy. FOF 17, 18. KRRC preferred to own its long-used shooting range, and the County did not want liability for the Property's potential heavy metals contamination. FOF 19.

In March 2009, Club officers met with County officials including Commissioner Josh Brown. Soon after, the parties' attorneys and County Parks staff began negotiating a land sale. FOF 19, 20. A county attorney drafted a bargain and sale deed, and the parties exchanged revisions until agreement was reached. FOF 20. On May 11, 2009, the Board of County Commissioners ("BOCC") voted to approve the 2009 Deed.<sup>16</sup> FOF 22.

The 2009 Deed sets out covenants, "the benefits of which shall inure to the benefit of the public and the burdens of which shall bind the Grantee . . .".<sup>17</sup> The covenants include provisions that the grantee "releases and agrees to hold harmless, indemnify and defend Kitsap

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<sup>16</sup> The County obtained a "supplemental appraisal report" valuing the Property at \$0 based on presumed heavy metals contamination (hence, no public auction). FOF 21, 22. The appraiser was instructed to consider potential contamination. RP 2850:19-25.

<sup>17</sup> 2009 Deed, p. 1. Kitsap County was the grantor; KRRC was the grantee.

County . . .”<sup>18</sup> and that the grantee agrees to maintain commercial general liability insurance coverage.<sup>19</sup> Covenant No. 3 provides in pertinent part:

**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 . . . rules and regulations of Kitsap County for development of private land.<sup>20</sup>**

By its terms, the 2009 Deed

“did not release the Club from current or future actions brought under public nuisance or violation of County codes

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<sup>18</sup> 2009 Deed, ¶ 1. Covenant No. 1 addressed liability due to death or injury resulting from use of the Property or from violation of environmental laws. *Id.*

<sup>19</sup> 2009 Deed, ¶ 2. Covenant No. 2 required insurance which “does not exclude any activity to be performed in fulfillment of Grantee’s activities as a shooting range” with minimum coverage of \$1 million per occurrence, \$2 million in the aggregate. *Id.*

<sup>20</sup> 2009 Deed, ¶ 3 (emphasis added). Additionally, Covenant No. 4 requires the grantee to offer the public access to the Property “at reasonable prices”. 2009 Deed, ¶ 4.

for violation of its historical and legal nonconforming uses.<sup>[21]</sup>

The trial court made several findings regarding the negotiating parties' intentions:

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.

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....

27. The deed does not identify nor address any then-existing disputes between the Club and County, other than responsibility for and indemnification regarding environmental issues and injuries or deaths of persons due to actions on the range. <sup>[22]</sup>

In the body of its brief, KRRC disputes Findings of Fact 23, 25 and 26.<sup>23</sup>

Deeding parties' intentions are questions of fact and supposed intent evidence is all subject to the trial court's credibility and weight

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<sup>21</sup> FOF 28.

<sup>22</sup> FOF 23, 24, 25, 26, 27.

<sup>23</sup> Brief, at 53.

determinations.<sup>24</sup> This evidence included the KRRC executive officer's and lawyer's alleged subjective understandings of intentions. RP 2092:3-19 2097:2-4, 2891:8-17, 2906:7-17.

As evidence of County intent, KRRC cites to deposition testimony of former County Parks employee Matt Keough,<sup>25</sup> who acknowledged the 8-acre area cited in DNR leases but did not articulate County intentions for land use status or permitting in alignment with KRRC's. RP 2844:4-2845:1, 2845:3-8, 2845:22-2846:6, 2846:17-2847:6.<sup>26</sup> For example:

QUESTION: Okay. But was it your understanding that the eight acres that was already the active range was not going to require any after-the-fact permit or anything like that, correct?

MR. WACHTER: Object to the form. It calls for a legal conclusion.

THE COURT: I think it does. Sustained.

MR. CHENOWETH: I'm just offering it for the County's intent and understanding in the contract negotiations.

THE COURT: Okay. So --

MR. CHENOWETH: But not as a binding legal statement on the County.

THE COURT: All right. I'll allow the answer.

ANSWER: As I stated, I wouldn't reference it as the

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<sup>24</sup> See *infra*, at 41-42.

<sup>25</sup> Brief, at 51 (citing RP 2827:3-9, 2828:19-23, 2845:22-2846:13).

<sup>26</sup> The trial court regarded Keough's testimony as non-binding in so far as it set forth legal conclusions. RP 2849:5-25.

eight acres. I don't recall ever, it being discussed as eight acres of area available for the active development. I do recall that the existing facilities were -- that they were going to -- they were expected to continue and that going beyond the existing facilities, as I recall, was not -- was an item for future discussion.<sup>[27]</sup>

As further evidence of County intent, KRRC cites to a March 18, 2009 letter from Commissioner Josh Brown to DNR for a public hearing conducted by that agency. Ex. 293.<sup>28</sup> In the letter, Commissioner Brown voiced his support for KRRC potentially leasing the Property without a “non-default termination clause”. Id. A trial court could reasonably find this letter to be a general expression of support for KRRC, not necessarily written on behalf of the BOCC or of the County to affirm a land use.<sup>29</sup>

### **3. Zoning and the 1993 Letter.**

Use of the Property as a shooting range pre-dates modern zoning. RP 192:10–13, 204:16-18. The trial court found and concluded the property is zoned “rural wooded” under KCC Chapter 17.301, and has had the same essential zoning designation since before the year 1993. FOF 9, COL 24. The County’s zoning tables do not list “shooting range” as a

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<sup>27</sup> RP 2846:17 – 2847:15.

<sup>28</sup> Brief, at 52-53.

<sup>29</sup> Commissioner Brown’s letter (ex 293, admitted for non-truth, context purposes, RP 2115:9 – 2116:24) recounts a September 2003 briefing in which the BOCC is said to have assured the Interagency Committee for Outdoor Recreation that the BOCC supported KRRC’s application for a grant for improvements at the Property, that the Club’s proposed “improvements were not at odds with the County’s long-term interest in the property, and would not jeopardize future planning efforts”, and that this “conclusion has not changed”. Id.

recognized use and the closest land use in the zone is “private recreational facility”, which requires a conditional use permit.<sup>30</sup>

In 1993, the BOCC Chair wrote a letter to the county’s shooting ranges about their land use status (“1993 letter”):

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.  
[<sup>31</sup>]

The addressees included KRRC, Poulsbo Sportsman’s Club (“PSC”) and Bremerton Trap and Skeet Club, and the letter stated in pertinent part:

Dear Sirs:

Pursuant to your requests, this is to confirm that the shooting ranges your organizations currently have in use, which are listed above, are considered by Kitsap County to be lawfully established, non-conforming uses (grandfathered).[<sup>32</sup>]

The 1993 letter (Appendix 3) established a land use benchmark, and the trial court compared the Property’s facilities, operations, uses and impacts as of 1993 with those as of 2011. COF 6, 33. KRRC treated the letter as exempting the Club from county permitting. RP 1712:20–1713:15, 2185:20–2186:11, 2287:14-19.

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<sup>30</sup> COL 25.b (citing KCC 17.381.040 (Table E), KCC 17.110.647); RP 211:16 – 212:9.

<sup>31</sup> FOF 10. (Henceforth “1993 letter”).

<sup>32</sup> App. 3 (Ex 315). KRRC, PSC and the Bremerton Trap and Skeet Club continue to operate shooting ranges in the county. RP 1342:6-15, 2343:4-9. KRRC and PSC are each located in central Kitsap, about five miles apart. RP 1482:9-13.

#### 4. Uses of the Property, Circa 1993.

The trial court described the Property and uses as of 1993:

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.*<sup>33]</sup>

As of 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". FOF 80. At that time, "shooting sounds at the Property [were] occasional and background in nature". FOF 81. At that

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<sup>33</sup> FOF 29, 30 (emphasis added). To illustrate, neighbor Terry Allison testified that after he moved into his house next to the Property in 1988, "Kitsap Rifle and Revolver Club was a primarily hunters' club, not a lot of use. There were not a lot of days that I could even hear gunshots from the club." RP 1016:25 – 1017:3. See ex. 1, 3 (maps identifying Allison's residential property).

time, “rapid-fired shooting, use of automatic weapons, and use of cannons at the Property occurred infrequently”. FOF 83. Shooting at exploding targets was found “not common” as of 1993. FOF 87.

### **5. Site Development on “Historical Eight Acres”.**

In 1996, KRRC submitted a “pre-application conference request” form to Kitsap County’s Department of Community Development (“DCD”),<sup>34</sup> stating its intention to build facilities including a 200-meter rifle line. FOF 31, ex. 134. From 1996 forward, KRRC embarked on a comprehensive and unpermitted<sup>35</sup> program to construct eleven new earthen “shooting bays” and to lengthen the Property’s rifle range to 200 yards, as evidenced by aerial photography over the years:

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.

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<sup>34</sup> COL 2 provides that “[DCD] is the agency charged with regulating land use, zoning, building and site development in unincorporated Kitsap County and enforcing the Kitsap County Code.”

<sup>35</sup> FOF 32 (noting that KRRC applied for a county building permit for an ADA ramp).

"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).<sup>[36]</sup>

KRRC constructed berms and backstops, usually using the spoils from excavating "cut slopes" into hillsides on the Property. FOF 37. Repeatedly, KRRC excavated in excess of 150 cubic yards and created "cut slopes" taller than five feet in height and with greater than a three-to one slope ratio – triggers for site development activity permit ("SDAP")s under Chapter 12.10 KCC. FOF 34, 35, 55; COL 30, 31. Repeatedly,

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<sup>36</sup> FOF 33. Although KRRC does not challenge the court's detailed site findings, they are partially recited to underscore the scope and the gravity of the work for which KRRC claimed to require no site development or land use permitting.

KRRC failed to apply for required grading, SDAP and critical area permits. FOF 36, 56; COL 30, 31.<sup>37</sup>

In 2006, KRRC executed a mammoth earth-moving project: The Club excavated two parallel 475-foot long trenches across the entire historical area, installed 24-inch diameter culverts the continuous length of each trench (“24-inch culverts”), filled each trench and re-graded over the top. FOF 54. This work “undergrounded”<sup>38</sup> a seasonal water course that enters the Property from an adjacent road culvert and crosses the Property toward wetlands in the Property’s north. FOF 53. The work required soil excavation and re-grading far in excess of 150 cubic yards. FOF 53, 54. KRRC performed this project without applying for a permit, without engineering and without hiring a wetland scientist to delineate impacts on the wetland buffer into which the culverts discharge. FOF 56, 61, 62, 63.

For KRRC’s earthwork projects requiring an SDAP for grading and excavation, as well as for projects requiring critical areas approval (including multiple encroachments upon a wetland buffer), these activities constituted illegal uses of the Property, which acted to terminate the nonconforming use as a shooting range. COL 28, 29, 30, 31.

Of all the site development findings, KRRC challenges only Finding 57, that “[p]rior to the discovery site visits by County staff and

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<sup>37</sup> At least one SDAP was required for work after the land sale. FOF 34, 35; COL 31.

<sup>38</sup> RP 563:5-14.

agents in January 2011, the County was unaware of the cross-range culverts”.<sup>39</sup> In fact, the trial record establishes that County actors were oblivious to these culverts during prior site visits and that KRRC performed this work completely off the regulatory grid.<sup>40</sup> RP 560:23–561:4, 562:18–563:4, 658:24–660:6, 794:5-19, 795:1-10; 2851:2–2852:14; ex 61, 62, 496. KRRC may care about Finding 57 because it would color any assessment of extrinsic evidence for deed interpretation and would cut against applying equitable estoppel, discussed *infra*. KRRC’s undisclosed work to install the 24-inch culverts was a major project requiring an SDAP (at minimum) which is *still* subject to after-the-fact county permitting, as explained by Douglas Frick of DCD’s development engineering division:

Q. Do you believe based on your site investigation that SDAP permitting was required for any aspect of the

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<sup>39</sup> Brief, at 52 (challenge in text; no assignment of error).

<sup>40</sup> KRRC writes that “the Club informed the County DCD about the culvert work before it took place”. Brief, at 52 (citing Ex 416 at 2-3). Exhibit 416 consists of an email chain including an August 17, 2006 email from KRRC to the State updating KRRC’s scope of work to be performed at the Property pursuant to the “IAC grant”, which included this bullet point: “Rifle range improvements (this would include berm reconstruction to redirect noise away from community and increase range safety; *allow for handicap access to 100 yd. target line by replacing culvert pipe* and running concrete walkway) (\$25,000).” Ex. 416, p. 2 (emphasis added). As notice, this email was neither timely nor effective: The email, with its cryptic reference to replacing “culvert pipe”, was forwarded to DCD on October 2, 2006, after work on the 24-inch culvert was underway. FOF 54, ex. 416. The former “culvert pipe[s]” consisted of several disjointed segments 20 feet or less in length, interspersed with “drainage swales” crossing the rifle range. RP 797:1-17, 2052:23 – 2053:16, 2160:18 – 2161:16. The record contains no evidence that Kitsap County was notified that KRRC undertook this major site development to convey storm and surface water across the entire “active” shooting area. See also Ex 66, 67; Ex 491, sheets 3 and 4 (CD of AHBL topographic survey from January 2011 (RP 219:13 - 220:6), depicting length and path of twin continuous culverts running east-to-west, the inlets and outlets of which are outside of developed shooting areas).

culverts? And I will direct your attention to the northern end of those culverts.

A. The culverts themselves because they collected water, it went into the property and conveyed it into a wetland, no doubt, if we had been aware of it, that would have been the subject of an SDAP. Whenever you're in essence connecting to the county storm system at Seabeck Highway and then altering native drainage patterns, that would definitely be -- it's one of the main criteria for an SDAP.

Q. And you believe that would have been then subject to county review?

A. Yes. The fact that there was a drainage swale identified on the site, again, I don't have any specification information on what that drainage swale was, but depending on its classification, it would have been also required an HPA, Hydraulic Project Approval, it could have required other agencies to be involved, certainly Corps of Engineers with the intrusion of those pipes into the wetlands.

Q. Mr. Frick, is there something called after-the-fact permitting in the area of Title 12 or development engineering?

A. It's not specifically called out but it's done all the time.

Q. Would you expect that to be required for the 24-inch culverts?

A. Yes.<sup>[41]</sup>

KRRC's wetland expert admitted that the 24-inch culverts "potentially" extended into a 150-foot buffer for the Property's wetland,

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<sup>41</sup> RP 816:8 – 817:10.

and that KRRC failed to submit the required wetland study to relevant regulatory agencies. RP 2659:6-24.

#### **6. Development Outside the Historic Area: 300-meter Range.**

KRRC's site development program on the Property was not confined to the 8-acre "historical area". In March and April 2005, KRRC began work to build a "300-meter range" in the forest:

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.*<sup>[42]</sup>

Again, KRRC's work exceeded Title 12 KCC regulatory thresholds and the Club failed to apply for the required SDAP. FOF 51, COL 27.

Unlike other earthwork projects on the Property, the County had

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<sup>42</sup> FOF 40, 41 (emphasis added).

regulatory contact with KRRC for the 300-meter range project. In April 2005, DCD issued a verbal “stop work” order, with which the Club complied. FOF 42. KRRC submitted conceptual drawings and a cover letter stating that this “range re-alignment project” was “not an expansion of the current facilities.” FOF 42, 43 (citing ex. 138, 272). At a pre-application meeting, the County stated its expectation that KRRC must apply for permits, including a conditional use permit (“CUP”):

44. On June 21, 2005, KRRC officers met with DCD staff, including DCD [staff] 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).<sup>[43]</sup>

KRRC requested that the County drop its demand for the Club to apply for a CUP, which the County declined to do. FOF 45.

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.<sup>[44]</sup>

By summer 2006, KRRC abandoned its plans to develop the 300 meter

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<sup>43</sup> FOF 44.

<sup>44</sup> FOF 45.

range. FOF 46. In 2007, the Club replanted the 300 meter range with hundreds of fir trees, without a plan for their planting or care. FOF 48. These new trees all died, and the 300 meter range area remains deforested. Id. KRRC never applied for a conditional use permit and asserts that by abandoning the 300-meter range project, it need not do so. FOF 50-51; Brief, at 38 (citing 278:17-279:15). However, KRRC still uses the 300-meter range area to store target stands, barrels, props and building materials. FOF 49.<sup>45</sup> The trial court concluded:

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.<sup>[46]</sup>

Of KRRC's site development reviewed by the trial court, all of it post-dated significant changes nearby in central Kitsap County, including the development of unincorporated Silverdale, increased population densities in and around Silverdale coinciding with establishment of the Naval Sub base Bangor, construction of numerous new houses including

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<sup>45</sup> Ex. 516, 517, 518; RP 2147:10-21; 2204:6-21.

<sup>46</sup> COL 27.

those in the down-range El Dorado Hills and Whisper Ridge subdivisions, and construction of four-lane arterial State Highway 3 connecting north and south Kitsap. RP 137:11-24, 194:25 – 195:10, 196:21 – 197:4, 197:9 – 198:1, 198:18 – 200:9, 1010:7-8, 1014:18 – 1015:10. The trial evidence included to-scale maps and aerial images depicting central Kitsap, including the KRRC Property and nearby structures with building “footprints”. Ex. 1, 3, 4, 5, 6;<sup>47</sup> KRRC’s site development would support the advent of new land uses and profound changes to shooting activities at the Property between 1993 and present-day.

#### **7. Commercial and Military Uses at the Property**

Prior to 2002, the Property did not host for-profit firearm training. FOF 77. Starting in 2002, a sole proprietorship registered to Sharon Carter d/b/a National Firearms Institute (“NFI”), provided firearms and self-defense courses at the Property, usually taught by her husband Marcus Carter. FOF 73, 74, 75. The NFI kept separate books from KRRC. Id.

In about 2003, Surgical Shooters, Inc. (“SSI”) began conducting small arms<sup>48</sup> training for U.S. Navy service members at the Property,

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<sup>47</sup> Ex. 1 (“Area Map with Selected Residences”), Ex. 3 (“Kitsap Rifle & Revolver Club COMPLAINTS”), Ex. 4 (zoning map), Ex. 5 (“Year of Construction” for El Dorado Hills plats), Ex. 6 (“Year of Construction” for Whisper Ridge plats).

<sup>48</sup> “Small arms” refers to firearms ranging from pistols and revolvers to military-style rifles. RP 1019:17-1020:4, 1199:5-10. The term includes large sniper rifles which fire the “.50 cal BMG” round. RP 1199:11-1200:6.

under contract with the Navy. FOF 74.<sup>49</sup> Under an oral arrangement, SSI paid NFI a per-day fee and NFI remitted one-half of that fee to KRRC. Id. NFI coordinated SSI's visits to the Property and provided a range safety officer ("RSO") during each training session. Id.

In about 2004, Firearms Academy of Hawaii ("FAH") replaced SSI, and from approximately 2004 until Spring 2010, FAH regularly provided small arms training to Navy personnel at the Property, again under contract with the Navy and again with oral per-day fee arrangements between FAH and NFI, and NFI and KRRC. FOF 75. NFI coordinated FAH's visits and made sure an RSO was present. Id.

FAH typically trained about 20 service members at a time at the Property's pistol range in courses taking place over three consecutive weekdays, as often as three weeks per month. FOF 75. During FAH's tenure, Navy personnel toured the pistol range and found it acceptable. FOF 76.<sup>50</sup> No application was made to Kitsap County for permits or approvals for military training at or SSI's and FAH's commercial use of the Property. FOF 77.<sup>51</sup>

After KRRC became the Property's owner, it hosted a military

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<sup>49</sup> On at least one occasion during the early 1990's, U.S. Navy personnel used the Property for a firearm qualification exercise. FOF 72.

<sup>50</sup> There was no evidence that the Navy inspection accounted for community safety.

<sup>51</sup> The Navy maintains shooting practice facilities on three federal properties in Kitsap County. RP1216:22-1217:11.

automatic weapons demonstration at its rifle range:

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.<sup>[52]</sup>

The next spring, Navy training ceased at the Property. FOF 79.

### **8. Action or Practical Shooting at the Property**

KRRC's new shooting bays paved the way to a new era of pistol shooting at the Property:

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.

Practical shooting refers to practice and competition for shooting in mock self-defense scenarios, often with multiple targets and "bad guy/good guy" decisions for the participant. RP 335:25-336:12, 367:2-11. Practical shooting frequently occurred at multiple bays on the Property, creating a cacophony from layer upon layer of rapid fire shooting. Ex. 28, 132. In a day of practical shooting competition, each participant may discharge

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<sup>52</sup> FOF 78. Ex. 121 (photo), RP 2199:22-2201:10.

rounds numbering in the hundreds.<sup>53</sup>

**9. The Public Noise Nuisance: Expanded Hours, High Caliber, Rapid-fire, Automatic Fire and Exploding Targets**

The trial court made comprehensive findings of the Property's noise-related uses and impacts in current day:

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.

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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

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<sup>53</sup> KRRC Range expert Scott Kranz, P.E., testified that at least 1,000 rounds would be discharged in a typical practical shooting competition, though he had never attended one. RP 371:14-19.

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<sup>[54]</sup> 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.

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.<sup>[55]</sup>

KRRC assigned error to none of these Findings, but challenges the nuisance injunctions based on variations in witnesses' testimony as to impacts including intrusive sound. Brief, at 21-22.

### **10. The Public Safety Nuisance and Supporting Facts**

The trial court found KRRC's range facilities and operations endanger the neighboring residential areas:<sup>56</sup>

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

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<sup>54</sup> The term "nominal .30 caliber" was defined in trial as a shooting term of art describing a rifle firing a round "about .30 inches in diameter". RP 2797:17-2798:1. The trial court adopted this term as defining the upper limit of rifles allowed. Order 7.b.

<sup>55</sup> FOF 80, 81, 82, 84, 85, 86.

<sup>56</sup> KRRC takes issue with Finding 68's "more likely than not" verbiage referring to the eight historically used acres, but does not assign error to the range safety findings. Brief, at 2, 23.

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.<sup>[57]</sup>

KRRC claims that “[t]he trial court’s findings of fact do not support its conclusion that the Club is a safety nuisance”. Brief, at 24. However, as discussed *infra*,<sup>58</sup> a finding may be mislabeled as a conclusion, and at least one safety finding is embedded in Conclusion 21:

**[T]he 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**

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<sup>57</sup> FOF 67, 68, 69.

<sup>58</sup> See 43, *infra*.

... an unlawful and abatable common law nuisance.<sup>[59]</sup>

The court also concluded that 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.” COL 13.

The Court’s finding of Finding 67 adopts the County’s surface danger zone (“SDZ”) maps, admitted as Exhibits 207, 208, 209, 210, 211 (Appendix 4) which require some deciphering. County expert witness Gary Koon, a retired United States Marine Corp officer certified in range safety, explained the concept of the surface danger zone (“SDZ”), a military term for the geographic depiction of the area into which bullets will fall, based upon the weapon system and direction and origin of fire.<sup>60</sup> The SDZs are based on extensive testing and modeling conducted by the military for numerous weapon/ammunition combinations. RP 1200:11-1201:2. SDZs account for shooter error and accidental discharge. RP 1242:5-11. Koon testified that the military’s safety standard for training purposes is that

unless you have a waiver, no one or nothing . . .that's not designed to be shot should be in that geographical footprint, that surface danger zone for that weapon system.<sup>[61]</sup>

Koon testified that only two methods exist to protect populated areas from

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<sup>59</sup> COL 21 (emphasis added).

<sup>60</sup> RP 1197:8-1199:4, 1201:5-22. At the time of trial, Mr. Koon resided in the Whisper Ridge neighborhood. RP 1194:8-15.

<sup>61</sup> RP 1201:5-10.

the escape of bullets from a shooting range: The range must either own the property within the SDZ or it must implement engineered solutions to keep bullets from escaping. RP 1215:18-23, 1216:14-21. Koon endorsed applying a SDZs to a civilian range:

Q. Do you believe it appropriate to apply a military SDZ to civilian range?

A. Absolutely. The reason is because those impact areas are not based on a -- they're based on physics. They're based on where those bullets are going to go when they ricochet off a target, when the shooter has shooting error and shoots over or under a target. They're based on studies and testing done with live ammunition and computer based modeling. That surface danger zone doesn't change whether you are on a military base. It doesn't change in the weapon system and the bullet fired doesn't change whether you're in Iraq or Afghanistan. It doesn't change whether you take that exact same rifle and bullet and go to the Kitsap Rifle and Revolver Club. That bullet, the physics of it flying and hitting an object and going off someplace else, is the same no matter where you are.<sup>[62]</sup>

Apart from training exercises, Koon testified to real-world applications of SDZ in populated areas of Iraq and Afghanistan, where, as a U.S. Marine, he mapped SDZs to determine whether civilians would be killed or injured by operations. RP 1218:17-22.

Each of KOON's SDZ maps depict the impact zone for a weapon/ammunition combination that is fired at KRRC (and, for Ex. 207, 208, 209, and 211, commonly used on civilian ranges) based on modeling

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<sup>62</sup> RP 1227:10-25. See also RP 1226:25 – 1227:9 (citing other uses of SDZs for civilian ranges).

using the rifle range shooting line as a point of origin for each of four rifles and using a position averaging the locations of the pistol range shooting line and Bays 1, 2, 3 and 4 for the 9 mm pistol. RP 1224:3-1226:2. The five SDZ maps depict impact areas which include numerous residences, public roads including state Highway 3 and at least one school: For instance, the 9 mm pistol SDZ encompasses the Klahowya Secondary School<sup>63</sup>, and the Barrett “.50 cal BMG” rifle SDZ reflects that weapon’s four-mile range, which could theoretically hit parts of central Kitsap County across Dyes Inlet to the east.<sup>64</sup> The 9 mm is commonly used for practical shooting. RP 1235:14-16.

Koon testified that the KRRC’s shooting bays created many new directions of gunfire in addition to those created by the rifle and pistol ranges, including 360 degrees of shooting in Bay 7. RP 1257:8-21 1260:7-14; Ex. 133. During a discovery site visit, Koon located bullets in a tree that fallen just downrange of the pistol range and in the trees atop the rifle range. RP 1256:5-25, Ex. 125, 126, 127.

KRRC’s range expert Scott Kranz, P.E. testified that to be safe for the community, an outdoor shooting range must employ engineering

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<sup>63</sup> Identified in Ex. 1, 4, RP 123:2-12.

<sup>64</sup> RP 1231:4-15, 1234:1-1235:13; Ex 207 (“5.56 mm ball” / rifle), Ex. 208 (“7.62 special ball” / rifle), Ex. 209 (“7.62 military special ball” / rifle), Ex. 210 (Barrett “.50 cal BMG” / rifle) Ex. 211 (9 mm pistol). (Appendix 5).

controls and institutional controls.<sup>65</sup> The simplest engineering controls are earthen berms and backstops, found on most outdoor ranges. Backstops are directly behind a target and side berms are placed along the edge of a shooting area to intercept ricochets. RP 373:3-20, 1212:17-1213:5. A range is dubbed “blue sky” unless it is indoors or baffles have been installed. RP 339:15-20. Baffles are physical barriers downrange from the firing position which capture errant bullets. RP 339:20-24. KRRC’s engineering controls consist of side berms and bullet impact berms behind the targets (backstops). RP 333:20-23.

Once, all shooting ranges were “blue sky” ranges. RP 1368:25-1369:2. KRRC is a blue sky range as the Property’s pistol and rifle ranges and shooting bays all lack overhead baffles. RP 1471:14-15, 2160:2-7.

The County called Roy Ruel, P.E., to testify as a firearms and range expert. Ruel evaluated the Property’s shooting areas to develop a “hazard assessment” of the KRRC range and assembled a summary of acceptable standards for outdoor ranges as compared with KRRC’s. Ex. 159, 160. Ruel also developed an SDZ map, which depicts overlapping

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<sup>65</sup> RP 333:16-19. Mr. Kranz explained:

A. Engineering controls has to do with physical features that contain the bullets like side berms and the bullet impact berms. Institutional controls has more to do with the rules, signage, range safety officers that are there present, video cameras for monitoring range use.

Q. Is either one more or less important than the other?

A. They're both -- they're both equally important. RP 333:9-15.

impact zones from KRRC's (collective) shooting areas which threaten residential areas. Ex. 161; RP 1484:17-1486:12.

Ruel opined that "bullets will be exiting the pistol range", which lacks sufficient engineering controls to stop escape to the downrange surface danger zone and called for raising the backstop's height and installing overhead baffles. RP 1471:12-1472:2, 1472:3-11; ex. 160, 161. For the Property's shooting bays, Ruel held the same opinion about bullet escape and recommended raising the height of berms and backstops and installing overhead baffles.. RP 1481:1-16; ex. 160.

As for the Property's rifle range, Ruel testified that the rifle range lacked a right-hand side berm, that its left-hand side berm was insufficient at only five feet elevation above the shooter's position, and that a person shooting a rifle from the rifle range's shelter could clear the backstop behind the 200-yard target line by raising the rifle's muzzle by only two degrees. RP 1473:1-1474:8, 1477:25-1478:9, 1488:19-1489:9, 1489:23-13. A typical "medium range" rifle could reach downrange residences with 20 to 30 degrees of muzzle lift. RP 1491:13-1492:7; Ex. 162. Ruel opined on the rifle range's safety:

Q. Can you describe for the Court your conclusions about whether this range as configured can be operated safely?

A. No, it cannot. It definitely poses a hazard to the

residential area that's located somewhere around two miles downrange, easily, easily hit by bullets exiting the rifle range.

Q. When you say "easily," what do you mean?

A. Because ordinary rifles that would be used at that range can strike into that housing area very easily, and you can overshoot actually into the water on the other side.<sup>[66]</sup>

Ruel testified that it was "extremely likely" that a rifle shot will escape the Property to strike populated areas like the El Dorado Hills and Whisper Ridge neighborhoods, and that this "has happened at some point." RP 1498:12-19. He opined that overhead baffles were feasible for KRRC. RP 1483:22-1484:3. The nearby PSC has installed overhead baffles at its pistol and rifle shooting areas, starting in 1994.<sup>67</sup> PSC's baffles have intercepted bullets that would otherwise have escaped that club's shooting areas. RP 1362:23-1363:18.

The trial testimony included accounts from residents of five houses in the El Dorado Hills located about 1.5 miles northeast of the Property, each of which were struck by projectiles over the past 15 years at the

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<sup>66</sup> RP: 1474:13 -22.

<sup>67</sup> RP 1351:3-18, 1352:8-14, 1354:3-12, 1355:3-14, 1356:21-1358:11, 1359:13-20 (Testimony of PSC's Archivist James Reynolds, describing that club's program to install engineering controls of concrete block side walls and overhead baffles at shooting areas, and identifying before and after photos of PSC's overhead baffles), ex. 75, 76, 77; 78, 79, 80, 81. PSC consulted a professional engineer who reviewed and approved their plans for overhead baffles, which were based upon the NRA Range Source Book reference. RP 370:15-19, 1355:12-22. Like KRRC, PSC is open to the public. RP 1343:18-21.

house's side oriented generally toward the southwest.<sup>68</sup>

- Hughes residence (rifle bullet struck siding in mid-1990's),<sup>69</sup>
- Former Swanson residence (rifle bullet struck window in mid-1990's, narrowly missing a child),<sup>70</sup>
- Evans residence (unknown projectile struck skylight in 1999),<sup>71</sup>
- Slaton residence (rifle bullet penetrated exterior wall in July 2007),<sup>72</sup> and
- Fairchild residence (rifle bullet penetrated garage door in March 2008).<sup>73</sup>

Each of these five houses was within five degrees of a line bisecting and projecting from the Property's rifle range. FOF 57, Ex. 1, 2.<sup>74</sup> The County's lay witness residences are depicted in maps (Ex. 1, 2, 3).

The Washington State Patrol investigated the bullet strikes to the Slaton and Fairchild residences. RP 1553:4-7. A WSP team including Forensic Scientist Cathy Geil measured and tested the penetrations and

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<sup>68</sup> Ex. 1, 2, 3.

<sup>69</sup> RP 911:18-913:14, 913:23-914:15, 915:1-8.

<sup>70</sup> RP 501:24-502:10, 502:24-503:3, 504:6-508:19.

<sup>71</sup> RP 1121:19-1122:14, 1124:13-21.

<sup>72</sup> RP 988:9-15, 989:2-22, 990:6-10, 996:19-16. County firearms/range expert Roy Ruel concluded that the KRRC rifle range was the "probable origin of that bullet". RP 1497:4-16. See also ex. 157 (Sheriff's Office incident report), ex. 163, 164, 165 (County expert Roy Ruel's SDZ map for the Slaton house, trajectory chart for the Slaton house, and elevation profile for the El Dorado Hills neighborhood, respectively).

<sup>73</sup> RP 1143:18-22, 1147:7-21. Witness Arnold Fairchild searched for, but never found the bullet. RP 1150:14-24.

<sup>74</sup> Former area resident William Fernandez testified about his own close call with KRRC while he was out for a walk in the county park one day in Fall 2008, on a logging road adjacent to the Property. RP 402:10-18. The gun range was active at the time, and Fernandez heard the sound of a bullet striking a tree above where he was walking in the park. RP 402:25-404:7.

points of impact, Geil analyzed the bullet recovered from the Slaton house, and Geil concluded that both impacts were from rifle cartridges with likely ranges of 2.7-3.3 miles (Fairchild) and 2.7-2.8 miles (Slaton).<sup>75</sup> Geil opined that the shots were each consistent with a long distance shot not originating in the neighborhood itself.<sup>76</sup> Geil developed and mapped probable angles of approach for the rifle shots, depicting a pie shaped area for each shot's potential origin (which included the area of the Property).<sup>77</sup>

#### IV. ARGUMENT

**A. THE TRIAL COURT'S FINDINGS OF FACT MUST STAND BECAUSE KRRC HAS WAIVED CHALLENGE TO FINDINGS GIVEN, HAS WAIVED CHALLENGE TO REFUSAL OF ITS PROPOSED FINDINGS, BEARS THE BURDEN OF PROOF TO DISPROVE SUBSTANTIAL EVIDENCE AND CANNOT OVERCOME THE DEFERENCE TO THE TRIAL COURT'S EVALUATION OF CREDIBILITY AND OF EVIDENTIARY MERIT.**

On appeal from a bench trial, "review is limited to determining whether substantial evidence supports the trial court's findings of fact and,

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<sup>75</sup> RP 1554:19-1555:3, 1557:19-25, 1560:18-21, 1566:12-22, 1581:11-1582:17, 1586:6-14.

<sup>76</sup> RP 1563:24-2, 1571:16-25, RP 1582:18-1583:2.

<sup>77</sup> RP 1567:2-14, 1568:2-16, 1571:16-8, 1584:24-1585:10, 1587:10-1588:8; Ex. 214, 215. Geil's maps depicted the areas from which the shots hitting the Fairchild and Slaton houses originated, without pinpointing exact origins. RP 1630:15-25.

if so, whether the findings support the trial court's conclusions of law.”<sup>78</sup>

KRRC’s brief has drastically narrowed the scope of factual review.

1. KRRC Makes no Assignments of Error to Factual Findings, which are Verities on Appeal, and if Challenge is not Waived the Court Reviews Findings under the Substantial Evidence Standard.

In its brief, KRRC failed to separately assign error to the findings of fact as required by RAP 10.3(g), and failed to “use headings and separate findings that clearly refer to each finding by number.”<sup>79</sup> None of KRRC’s seven assignments of error identify specific trial court findings, and several of these assignments identify questions of *law*<sup>80</sup>:

1. The trial court erred in declaring the Club's nonconforming use right terminated.
2. The trial court erred in judging the Club a public noise nuisance.
3. The trial court erred in judging the Club a public safety nuisance.
4. The court erred in concluding the Club unlawfully expanded, changed, or enlarged its nonconforming use.

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<sup>78</sup> *In re Washington Builders Ben. Trust*, 173 Wn.App. 34, 65, 293 P.3d 1206 (Div. 2 2013) (citing *City of Tacoma v. State*, 117 Wn.2d 348, 361, 816 P.2d 7 (1991)).

<sup>79</sup> See *In re Disciplinary Proceeding Against Conteh*, 175 Wn.2d 134, 144, 284 P.3d 724 (2012) (citing *State v. Neeley*, 113 Wn.App. 100, 105, 52 P.3d 539 (2002) (Appellate court may waive RAP 10.3(g) violation if “briefing makes the nature of the challenge perfectly clear, particularly where the challenged finding can be found in the text of the brief.”) (citing *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 709–10, 592 P.2d 631 (1979); RAP 1.2(a))).

<sup>80</sup> See *In re Estate of Krappes*, 121 Wn.App. 653, 660 n. 11, 91 P.3d 96, *review denied*, 152 Wn.2d 1033 (2004) (“RAP 10.3(g) does not require an appellant to assign error to conclusions of law.”).

5. The court erred in denying the Club's accord and satisfaction defense and related breach of contract counterclaim.
6. The court erred in denying the Club's estoppel defense.
7. The court erred in its issuance of two injunctions and a warrant of abatement.<sup>[81]</sup>

Unchallenged findings of fact are verities on appeal.<sup>82</sup> For any challenge not waived:

There is a presumption in favor of the trial court's findings and . . . the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence.<sup>[83]</sup>

The substantial evidence standard "requires that there be sufficient evidence in the record to persuade a reasonable person that a finding of fact is true".<sup>84</sup> The appellate court may not substitute its evaluation of the evidence for that made by the trier of fact.<sup>85</sup> Rather, the Court defers to the

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<sup>81</sup> Brief, at 2. KRRC assigns no error to the trial court's evidentiary rulings.

<sup>82</sup> *Northwest Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, \_\_\_ Wn.App. \_\_\_, 295 P.3d 314, 320 (Div. 2, 2013), citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). See also *Cowiche Canyon*, 118 Wn.2d at 809 (Failure to present argument in an opening brief waives assignment of error for any claimed assignment).

<sup>83</sup> *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990) (citing *Leppaluoto v. Eggleston*, 57 Wn.2d 393, 401, 357 P.2d 725 (1960)).

<sup>84</sup> *Recreational Equip., Inc. v. World Wrapps NW, Inc.*, 165 Wn.App. 553, 558, 266 P.3d 924 Div. 1 2011) (citing *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008) (internal citation omitted)). Moreover, when the court itself acts as fact-finder, there is a "well-established presumption" that "the judge [has] adhered to basic rules of procedure". *Williams v. Illinois* 132 S.Ct. 2221, 2235 (2012) (lead opinion) (quoting *Harris v. Rivera*, 454 U.S. 339, 346-47, 102 S.Ct. 460, 70 L.Ed.2d 530 (1981)).

<sup>85</sup> *Recreational Equip.*, 165 Wn.App. at 558-59 (citing *Pardee*, 163 Wn.2d at 566 (internal citation omitted)); *Goodman v. Boeing Co.*, 75 Wn.App. 60, 82-83, 877 P.2d 703 (1994)).

trier of fact to resolve conflicting testimony and to evaluate the persuasiveness of the evidence and credibility of the witnesses.<sup>86</sup>

We have carefully reviewed the evidence in this regard, and appellants' contentions with respect thereto. Suffice it to say the testimony is conflicting, and the trial court was clearly entitled under the evidence to find either that appellants had failed to sustain their burden of proof or that, in fact, no misrepresentations had been made by respondents. Either determination would find ample justification or support in the evidence. Under these circumstances we will not substitute our judgment for that of the trial court.<sup>[87]</sup>

2. KRRC Has Waived Challenge to Proposed Findings Not Given, by Failing to Specifically Assign Error and by Not Reciting Verbatim.

Generally, if a trial court does not make a finding of fact, the appellate courts presume against the making of such fact.<sup>88</sup>

In the absence of a finding on a factual issue [courts] must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue.<sup>[89]</sup>

Moreover, the appellate court need not consider an assignment of error based on the trial court's refusal to enter a proposed finding of fact if appellant's brief does not present the proposed finding verbatim as

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<sup>86</sup> *Boeing Co. v. Heidy*, 147 Wn.2d 78, 87, 51 P.3d 793 (2002).

<sup>87</sup> *Brown v. Herman*, 75 Wn.2d 816, 821 454 P.2d 212 (1969) (citing *Safeco Ins. Co. v. Dairyland Mut. Ins. Co.*, 74 Wn.2d 669, 446 P.2d 568 (1968); *Dix Steel Co. v. Miles Constr. Inc.*, 74 Wn.2d 114, 443 P.2d 532 (1968)).

<sup>88</sup> *Recreational Equip.*, 165 Wn.App. at 565, citing *In re Estate of Bussler*, 160 Wn.App. 449, 465, 247 P.3d 821 (2011) (quoting *In re Welfare of A.B.*, 168 Wn.2d 908, 927 n. 42, 232 P.3d 1104 (2010) (quoting *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997))).

<sup>89</sup> *Armenta*, 134 Wn.2d at 14 (citing cases).

required by RAP 10.4.<sup>90</sup> In its brief, KRRC assigns no error to the trial court's failure to adopt any of its proposed findings (attached as Appendix 6). Nor does KRRC quote a single proposed finding verbatim. KRRC may not cure these defects in its reply.<sup>91</sup>

3. In Part, KRRC's Challenges to Conclusions are Reviewed as Challenges to Factual Findings, with the Attendant Burden and Presumptions.

When a finding of fact is misidentified as a conclusion of law, it is reviewed as a finding of fact (and the corollary holds true).<sup>92</sup> For instance, a conclusion reciting contract performance is properly analyzed as a finding of fact.<sup>93</sup> Questions of law are of course reviewed *de novo*,<sup>94</sup> which may first require identifying mixed questions of fact and law so as to apply the correct standard of review. A party's intentions constitute questions of fact (if relevant); whereas the legal consequences of such intentions are questions of law.<sup>95</sup> Interpreting a deed presents such a mixed question of

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<sup>90</sup> *Scruggs v. Jefferson County*, 18 Wn.App. 240, 243, 567 P.2d 257 (1977) (citing RAP 10.4, CAROA 43).

<sup>91</sup> See 3 Karl B. Tegland, *Washington Practice: Rules Practice RAP 10.3 author's cmt. 4* (7<sup>th</sup> ed. 2012), citing *Bayley v. Kane*, 16 Wn.App. 877, 878-79, 560 P.2d 1165 (Div. 2 1977) (citing cases).

<sup>92</sup> *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (citations omitted).

<sup>93</sup> *Id.*

<sup>94</sup> *Recreational Equip.*, 165 Wn.App. at 559, citing *Pardee*, 163 Wn.2d at 566 (internal citation omitted).

<sup>95</sup> *Pardee*, 163 Wn.2d at 566, citing *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

fact and law.”<sup>96</sup> The parties' intent to a deed is a question of fact, while the legal consequence of that intent is a question of law.<sup>97</sup> Contract interpretation presents a question of law, *if* it is unnecessary to rely on extrinsic evidence.<sup>98</sup> Also, whether a nuisance exists may present a mixed question of fact and law.<sup>99</sup>

Once the Court reviews for substantial evidence, it will determine whether the findings of fact support the conclusions of law and judgment.<sup>100</sup> Even if there are inconsistencies in the findings, a judgment will be upheld if one or more of the findings support the judgment.<sup>101</sup>

In the body of its brief, KRRC disputes Findings of Fact 23,<sup>102</sup> 25,<sup>103</sup> 26,<sup>104</sup> and 57<sup>105</sup>, each discussed in the Facts section, *supra*.

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<sup>96</sup> *Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc.*, 168 Wn.App. 56, 64, 277 P.3d 18 (Div. 1 2012) (citing *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 170 Wn.2d 442, 459 n. 7, 243 P.3d 521 (2010)).

<sup>97</sup> *Id.*

<sup>98</sup> *In re Marriage of Bernard*, 165 Wn.2d 895, 902, 204 P.3d 907 (2009); *Marshall v. Thurston County*, 165 Wn.App. 346, 351, 267 P.3d 491 (2011).

<sup>99</sup> See e.g. *Kappenman v. Klipfel*, 765 N.W.2d 716, 729 (N.D. 2009) (citing *City of Fargo v. Salsman*, 760 N.W.2d 123, 127 (N.D. 2009)).

<sup>100</sup> *State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing *Nordstrom Credit, Inc. v. Dep't of Revenue*, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993)).

<sup>101</sup> *Dept. of Revenue v. Sec. Pac. Bank of Washington N.A.*, 109 Wn.App. 795, 807, 38 P.3d 354 (Div. 2, 2002) (citing *In re Marriage of Getz*, 57 Wn.App. 602, 606, 789 P.2d 331 (1990); *Lloyd's of Yakima Floor Center v. Department of Labor and Indus.*, 33 Wn.App. 745, 752, 662 P.2d 391 (Div. 2 1982) (citing cases)).

<sup>102</sup> Brief, at 53.

<sup>103</sup> Brief, at 53.

<sup>104</sup> Brief, at 53.

<sup>105</sup> Brief, at 52.

**B. THE TRIAL COURT'S DECLARATORY JUDGMENTS AND INJUNCTIONS ARE ENTITLED TO GREAT DEFERENCE AND REVIEWED UNDER THE ABUSE OF DISCRETION STANDARD.**

1. Declaratory Judgments are Reviewed under the "Customary" Standard

The trial court's judgment is framed as a succession of declaratory judgments, where the trial court ruled that findings each supported the conclusion that KRRC's claimed nonconforming use was terminated as a matter of law. The courts apply "customary principles of appellate review to an appeal of a declaratory judgment", reviewing conclusions of law de novo and (challenged) findings of fact for abuse of discretion.<sup>106</sup> On review, the trial court's findings of fact will not be disturbed unless they are not supported by substantial evidence.<sup>107</sup>

2. Orders for Injunctive Relief are Reviewed for Abuse of Discretion and are Entitled to Great Deference

Injunctive relief is an equitable remedy and the trial court's decision to grant an injunction and the terms of that injunction are reviewed for

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<sup>106</sup>*Northwest Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, \_\_\_ Wn.App. \_\_\_, 295 P.3d 314, 320 (Div. 2, 2013), citing *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 410, 27 P.3d 1149 (2001) and *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003)

<sup>107</sup> RCW 7.24.070; *Summit-Waller Citizens Ass'n v. Pierce County*, 77 Wn.App. 384, 895 P.2d 405, *review denied*, 127 Wn.2d 1018 (1995), citing *Nollette v. Christianson*, 115 Wn.2d 594, 599-600, 800 P.2d 359 (1990).

abuse of discretion.<sup>108</sup> The trial court “*may* consider a number of factors”, including “the availability of other adequate remedies, misconduct by the plaintiff, and the relative hardship if injunctive relief is granted or denied.”<sup>109</sup> “These factors are not, however, essential elements for the grant of injunctive relief.”<sup>110</sup>

Though KRRC has challenged the immediate effectiveness of the trial court’s injunctions, a trial court has discretion to decide whether to apply an equitable grace period.<sup>111</sup>

This discretion is to be exercised in light of the particular case's facts and circumstances. Because the trial court has broad discretionary authority to fashion equitable remedies, such remedies are reviewed for an abuse of discretion. An abuse of discretion occurs when the trial court's decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons.[<sup>112</sup>]

Thus, KRRC seems to suggest that the trial court abused its discretion by both immediately enjoining KRRC’s continued use of the Property as a shooting range absent a conditional land permit issued under Kitsap

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<sup>108</sup> *Northwest Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner’s Ass’n*, \_\_\_ Wn.App. \_\_\_, 295 P.3d 314 (Div. 2, 2013), citing *Kucera v. Dep’t of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000); *Niemann v. Vaughn Cmty. Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005); *Steury v. Johnson*, 90 Wn.App. 401, 405, 957 P.2d 772 (1998).

<sup>109</sup> *Wimberly v. Caravello*, 136 Wn.App. 327, 339, 149 P.3d 402 (Div. 3 2006) (emphasis in original), citing *Hollis v. Garwall, Inc.*, 88 Wn.App. 10, 16, 945 P.2d 717 (1997), *aff’d*, 137 Wn.2d 683, 974 P.2d 836 (1999).

<sup>110</sup> *Id.*

<sup>111</sup> *Recreational Equip.*, 165 Wn.App. at 559, citing *Heckman Motors, Inc. v. Gunn*, 73 Wn.App. 84, 88, 867 P.2d 683 (1994).

<sup>112</sup> *Recreational Equip.*, 165 Wn.App. at 559 (footnotes omitted).

County zoning code and entering an injunction restricting hours of operation and specific shooting activities to minimize the public nuisance risks and impacts of bullet escape and intrusive noise.

As noted above, the appellate courts presume against facts which the trial court does not actually make. Moreover, as regards equitable relief:

It is not a function of this appellate court to speculate whether the trial court would have made the findings argued by [appellant]. And, *even if we engaged in such speculation, it is not a function of this appellate court to reweigh the trial court's equitable considerations and determine whether we would have decided the case differently.* Rather, the proper review standard of this court is to decide whether the trial court's findings are supported by substantial evidence and whether those findings support the court's discretionary determination that it should grant equitable relief.<sup>[113]</sup>

Thus, the core inquiry is, again, whether substantial evidence exists in the record.

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<sup>113</sup> *Recreational Equip.*, 165 Wn.App. at 565 (emphasis added).

**C. KRRC MADE PROFOUND CHANGES TO AND ENLARGEMENTS OF ITS USE, OPERATION AND DEVELOPMENT OF ITS SHOOTING RANGE WHICH ENDED ITS NONCONFORMING LAND USE AND REQUIRES APPLICATION FOR AND ISSUANCE OF A CONDITIONAL USE PERMIT TO RECONCILE KRRC'S USES AND IMPACTS WITH THE USES AND RIGHTS OF NEARBY PROPERTY OWNERS, WHICH THE TRIAL COURT APPROPRIATELY DETERMINED AS A MATTER OF DECLARATORY JUDGMENT.**

KRRC contends that the remarkable changes in its use, operation and development of the Property as a shooting range constitute intensifications of use which do not negate its nonconforming land use as a recreational shooting range. Brief, at 25-26. KRRC further contends that even if these changes were not simply intensifications, the protected status lives on because the County's nonconforming use ordinance includes no provision for "amortization". Brief, at 12. These contentions raise issues of nonconforming land use protections under case authority and local zoning code, the trial court's power to pronounce declaratory judgments, and the need for amortization code provisions when (a) the court has pronounced declaratory judgment on land use status for which the Appellant did not request clarification or modification and (b) that judgment is presently stayed.

**1. Declaratory Judgment is Appropriate to Resolve Actual, Present, and Existing Disputes such as the Property's Disputed Claimed Nonconforming Land Use Status.**

The Uniform Declaratory Judgments Act (“UDJA”), codified at Chapter 7.24 RCW, provides that courts have the power to “declare rights, status and other legal relations whether or not further relief is or could be claimed” and that “declarations have the force and effect of a final judgment or decree, and may be either affirmative or negative in form and effect.”<sup>114</sup> The court may declare the rights, status or other legal relations of persons, including municipal corporations, affected by a statute, municipal ordinance or contract, and the UDJA’s enumerations do not limit the court’s powers to terminate a controversy or remove an uncertainty.<sup>115</sup> “The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate”<sup>116</sup> and KRRC has not challenged the trial court’s authority to issue the declaratory judgments sought by Kitsap County to resolve this case’s disputed issues.

To invoke the UDJA, a plaintiff must establish a justiciable controversy, i.e.:

(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

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<sup>114</sup> RCW 7.24.010.

<sup>115</sup> RCW 7.24.020, RCW 7.24.050, RCW 7.24.130.

<sup>116</sup> CR 57.

(4) a judicial determination of which will be final and conclusive.<sup>[117]</sup>

The parties' stark difference of positions regarding the preservation or voiding of the Property's nonconforming land use status presented an actual, present and existing dispute for the trial court. In this action, the trial court applied the UDJA to "terminate a controversy" and "remove an uncertainty" of the Property's land use status under Washington law and local code governing disfavored nonconforming uses. KRRC seeks to undercut the Court's declaratory judgments and the land use injunction with a procedural deficiency in the local code, but KRRC cannot point to any authority exempting this subject matter from the broad authority granted to courts to issue declaratory judgments.

The trial court is empowered to determine questions of fact when necessary or incidental to the declaration of rights, status, and other legal relations.<sup>118</sup> The trial court performed fact finding to reach declaratory judgment as to KRRC's rights as a land owner/user, to evaluate its land use status and to evaluate evidence KRRC proffered of the land transfer's circumstances.

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<sup>117</sup> *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).

<sup>118</sup> *Trinity Universal Ins. Co. v. Willrich*, 13 Wn.2d 263 (1942), 268; 124 P.2d 950 (citing cases).

**2. The Law Disfavors Nonconforming Land Uses, and Ultimately Requires Property Owners to Conform their Uses to Modern Local Zoning Codes.**

Nonconforming land use doctrine is rooted in the common law, and has been subsequently codified in local zoning ordinances. Courts recognize that zoning is a critical tool for local jurisdictions to achieve land use goals.<sup>119</sup>

Our state Supreme Court very recently analyzed the subject of nonconforming use in *King County, Dept. Of Development & Environmental Services v. King County*.<sup>120</sup> The Court discussed the fundamental meaning, the root of the doctrine and the landowner's burden:

Generally, a nonconforming use is a use that "lawfully existed" prior to a change in regulation. Despite that the use may no longer be permitted, it is allowed to continue due to the fairness and due process concerns of the landowner. *Rhod-Azalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998). The doctrine is "intended to protect only those uses which were legally established before" the change in regulation. 1 ROBERT M. ANDERSON, AMERICAN LAW OF ZONING § 6.11 (Kenneth H. Young ed., 4th ed. 1996). The landowner has the burden to prove that (1) the use existed prior to the contrary zoning ordinance, (2) the use was lawful at the time, and (3) the applicant did not abandon or discontinue the use for over a year prior to the relevant change. *McMilian v. King County*, 161 Wn. App. 581, 591, 255 P.3d 739 (2011).<sup>[121]</sup>

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<sup>119</sup> *Northend Cinema, Inc. v. Seattle*, 90 Wn.2d 709, 718, 585 P.2d 1153 (1978) (citing *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974)).

<sup>120</sup> *King County, Dept. Of Development & Environmental Services v. King County*, No. 87514-6, slip op. (Wash. June 27, 2013)

<sup>121</sup> *Id.*, slip op. at 7.

The Supreme Court considered whether a landowner had established a “use” under the King County Code and favorably compared that Code with the evolution of nonconforming use case law.<sup>122</sup>

The Court appears to recognize the doctrine’s disapproval of uses not established legally, writing:

This interpretation of the code is also consistent with our case law applying the nonconforming use doctrine. Nonconforming uses are disfavored, and we have repeatedly held that the doctrine is a narrow exception to the State's nearly plenary power to regulate land through its police powers. Consistent with the narrowness of this doctrine, we held in *Rhod-A-Zalea* that a landowner does not “vest” the entire code at the time the use is established, but that only the use itself is vested and a landowner must still comply with subsequent changes to the land use code not involving that specific use. *Rhod-A-Zalea*, 136 Wn.2d at 6-7. Thus, even where a nonconforming use was lawfully established, the rights of a landowner may still be limited to only what is required to protect the landowner's due process interests. Nonetheless, the use must actually exist before it can be termed a “preexisting use” and a due process right attaches to a landowner.<sup>[123]</sup>

In concluding, the Court gets to the very crux of this case’s land use declaratory judgment, the establishment of illegal new uses:

A component of establishing a preexisting use is that the use be lawfully established. This rule has been consistently recognized by our cases. *Rhod-AZalea*, 136 Wn.2d at 6 (stating rule that use must have “lawfully existed” prior to becoming a nonconforming use); *McMilian*, 161 Wn. App. at 590-91 (holding that petitioner's status as a trespasser precluded a finding that

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<sup>122</sup> Id. slip op. at 10-11.

<sup>123</sup> Id, slip. op. at 11.

the use lawfully existed, and therefore the use could not be a nonconforming use); *First Pioneer Trading Co. v. Pierce County*, 146 Wn. App. 606, 614, 191 P.3d 928 (2008) (discussing petitioner's failure to obtain proper permitting and finding that petitioner had not established a nonconforming use). ***What these cases recognize is that when a landowner utilizes unlawful methods to establish a nonconforming use, that unlawfulness precludes a subsequent finding of a lawful nonconforming use.***<sup>[124]</sup>

It is well established that a party asserting a legal nonconforming use has the burden of proof.<sup>125</sup> One of the elements of the proponent's common law burden is to prove that “the use was continuous, not occasional or intermittent.”<sup>126</sup>

“A protected nonconforming status generally grants the right to continue the existing use but will not grant the right to significantly change, alter, extend, or enlarge the existing use.”<sup>127</sup> Under Washington’s common law, “nonconforming uses may be intensified, but not expanded.”<sup>128</sup>

When an increase in volume or intensity of use is of such magnitude as to effect a fundamental change in a nonconforming use, courts may find the change to be proscribed by the ordinance. Intensification is permissible, however, where the nature and character of the use is unchanged and substantially the same facilities are used.

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<sup>124</sup> *Id.*, slip op. at 13-14 (emphasis added).

<sup>125</sup> *Miller v. City of Bainbridge Island*, 111 Wn.App. 152, 43 P.3d 1250 (2002), *Ferry v. City of Bellingham*, 41 Wn.App. 839, 706 P.2d 1103 (1985).

<sup>126</sup> *Jefferson County v. Lakeside Indus.*, 106 Wn.App. 380, 385, 23 P.3d 542, 29 P.3d 36 (2001), *review denied*. 145 Wn.2d 1029 (2002); See also 1 Robert M. Anderson, Zoning sec. 6.32, at 550 (3d ed.1986).

<sup>127</sup> *Rhod-A-Zalea*, 136 Wn.2d at 7.

<sup>128</sup> *City of University Place v. McGuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (2001).

The test is whether the intensified use is ‘different in kind’ from the nonconforming use in existence when the zoning ordinance was adopted.<sup>[129]</sup>

Local governments “are free to preserve, limit or terminate nonconforming uses subject only to the broad limits of applicable enabling acts and the constitution.”<sup>130</sup> Here, KRRC’s appeal raises no challenge to Kitsap County’s nonconforming use chapter. With that, the stage is set to evaluate the Property’s new and/or illegal uses under the local code.

### **3. Chapter 17.460, Kitsap County Code.**

In the Kitsap County Code, Title 17 governs zoning and land use and the county DCD is charged with its implementation and enforcement.<sup>131</sup> Title 17 “shall be liberally interpreted and construed to secure the public health, safety, and welfare and the rule of strict construction shall have no application.”<sup>132</sup> A “use” of land means “the nature of occupancy, type of activity or character and form of improvements to which land is devoted.”<sup>133</sup> The Code defines a “nonconforming use” as “a use of land which was lawfully established or

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<sup>129</sup> *Keller v. Bellingham*, 92 Wn.2d 726, 730, 600 P.2d 1276 (1979) (internal citations omitted).

<sup>130</sup> *Rhod-A-Zalea*, 136 Wn.2d at 7.

<sup>131</sup> KCC 17.530.010 provides: “The director is authorized to enforce this title, and to designate county employees as authorized representatives of the department to investigate suspected violations of this title, and to issue orders to correct violations and notices of infraction.” The “director” means “the director of the Kitsap County department of community development or a duly authorized designee”. KCC 17.110.225.

<sup>132</sup> KCC 17.100.070.

<sup>133</sup> KCC 17.110.730.

built and which has been lawfully continued but which does not conform to the regulations established by this title or amendments thereto.”

Chapter 17.460 KCC (Nonconforming use) governs the continuation of nonconforming uses of land thusly:

Where a lawful use of land exists that is not allowed under current regulations, but was allowed when the use was initially established, that use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use.<sup>[134]</sup>

This is consistent with the common law approach of determining the use of the land established and maintained at the time a municipal authority imposes a zoning ordinance.<sup>135</sup> KRRC’s illegal uses may violate the “otherwise lawful” requirement of this section.

Title 17 KCC sets forth the County’s zoning tables at Chapter 17.381 (Allowed Uses). Under the title, “no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses.”<sup>136</sup> Furthermore, “[a]ny use, building or structure in violation of this title is unlawful, and a public nuisance”.<sup>137</sup>

KCC 17.455.060 provides:

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<sup>134</sup> KCC 17.460.020.

<sup>135</sup> *Miller v. City of Bainbridge Island*, 111 Wn.App. 152, 164, 43 P.3d 1250 (2002).

<sup>136</sup> KCC 17.455.110.

<sup>137</sup> KCC 17.530.030.

A use or structure not conforming to the zone in which it is located shall not be altered or enlarged in any manner, unless such alteration or enlargement would bring the use or structure into greater conformity with the uses permitted within or requirements of the zone in which it is located.<sup>[138]</sup>

“Development” means “any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.”<sup>139</sup> No where in the Code (or in the common law), does the holder of a nonconforming use escape the legal requirements for developing one’s land.

For purposes of the land use table, uses are either permitted, prohibited or require a conditional use permit:

“Prohibited use” means any use which is not expressly allowed and does not meet the criteria under Section 17.100.040.<sup>[140]</sup>

#### **4. The Court’s Common law and Chapter 17.460, KCC Conclusions**

The trial court undertook a painstaking endeavor to assess the illegal and new uses, as well as the illegal public nuisance uses. Comparing its findings of fact for conditions as of 1993, with the findings

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<sup>138</sup> This is former KCC 17.455.060, repealed after issuance of the court’s judgment.

<sup>139</sup> (Former) KCC 17.110.220.

<sup>140</sup> KCC 17.110.635. For uses not specifically listed in Title 17, KCC 17.100.040 establishes the DCD Director’s ability to compare a proposed use with a listed use to determine if the uses are similar. “If determined similar, the unspecified use shall meet all code requirements and follow the approval process prescribed for the listed use”. KCC 17.100.040.

for modern conditions at the Property, the Court entered conclusions which can only be described as comprehensive.

The trial court recognized and concluded that the Club enjoyed a nonconforming use status for the existing historical eight acres. COL 6. KRRC's drastic changes, i.e. expanding hours, establishing commercial for-profit use<sup>141</sup> (including military training) and drastically increasing noise conditions by allowing explosive devices and higher caliber weaponry greater than .30 caliber and practical shooting, constituted expansions, and not intensifications of its land use. COL 8, 9. Further, the trial court found that the Property's conversion from a "small-scale lightly used target shooting range in 1993 to a heavily used range with an enlarged rifle range and [an] 11-bay center for local and regional practical shooting competitions" furthermore established a dramatic change in intensity of use and resulting sound, thereby terminating the Property's use as a shooting range. COL 33.

The trial court invoked the UDJA to compare the KRRC's various land uses with the zoning tables applicable to the rural wooded zone. COL 22, 23, 24, 25. Under KCC 17.381.040(E), the court found that the

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<sup>141</sup> KRRC claims that its commercial and training uses for small arms tactical training ceased as of the spring of 2010, and may not be considered as "changed uses". Brief, at 34-35. However, KRRC has never tendered a written assurance of discontinuance of these land uses, as authorized in KCC 17.530.050. Nor does the trial record reflect that the "NFI" has ceased doing business on the Property.

commercial uses made of the property are prohibited in the rural wooded zone. COL 25.a. The court found that the Property's land use was most comparable to a private recreational facility, under KCC 17.110.647. The trial court did not accept that this definition could encompass official training of law enforcement officers or of military personnel, not could it conclude that this definition encompassed the use of automatic weapons, uses of rifles greater than common hunting rifles, or professional level competitions. COL 25.b. The trial court found that these land uses are "expansions of or changes to the nonconforming use of the Property as a shooting range under KCC 17.460 and Washington's common law", terminating the nonconforming use of the Property by operation of law. Repeatedly, the trial court concluded that illegal activities, including failures to apply for required site development and other regulatory permits were each illegal uses of the land, which each thereby terminated the nonconforming use of the Property as a shooting range. COL 27, 28, 29, 30, 31, 32, 33.

As to land use, the trial court finally concluded that by operation of KCC Chapter 17.381, the Property would require a conditional use permit before resuming use as a shooting range or private recreational facility. COL 34. In effect, the trial court concluded that KRRC had both engaged in illegal use of the Property in violation of Chapter 17.460 KCC and the

common law, and had established fundamental changes in its land use's nature and character.

**D. KRRC BECAME A PUBLIC NOISE NUISANCE BY ROUTINELY IMPOSING SOUNDS AKIN TO URBAN WARFARE UPON RESIDENTS OF RURAL AND RESIDENTIAL CENTRAL KITSAP COUNTY WHO WERE RARELY BOTHERED BY THE RANGE BEFORE THE LAST DECADE BUT NOW LIVE WITH SOUNDS OF RAPID FIRE URBAN COMBAT EXERCISES, AUTOMATIC WEAPONS FIRE AND DETONATION OF EXPLODING TARGETS.**

The court concluded that the “conditions of (1) ongoing noise caused by shooting activities, and (2) use of explosives at the Property . . . each constitute a public nuisance.” COL 2. 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. COL 13. The trial court’s unchallenged findings of fact explain how KRRC became a noise nuisance to its neighbors and downrange residents, and why the court had to impose common-sense restrictions on hours of operation, rifle calibers and activities.

In its brief, KRRC offers a shotgun approach to the court’s public nuisance finding, challenging proof of a noise nuisance against any “authorized shooting range” in Washington, proof of a noise nuisance absent evidence of decibel measurements, and proof of a public nuisance

under RCW 7.48.130 when eyewitness noise accounts vary. This discussion must begin with the basis of nuisance law itself.

The common law of nuisance is largely founded upon the principle that a property owner must “sic utere tuo ut alienum non laedas”<sup>142</sup> (“use your own property in such a manner as not to injure that of another”).<sup>143</sup>

In 18th-century English law, a public nuisance was “an act or omission ‘which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects.’”<sup>144</sup> At common law, the term “public nuisance” encompassed a wide variety of offenses, with the common thread being an interference with the public’s health, safety or morals.<sup>145</sup> A public nuisance action has long been a suit in which the plaintiff “relied on the injunctive relief provided

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<sup>142</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387, 47 S.Ct. 114 (1926).

<sup>143</sup> *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408, 109 S.Ct. 2994 (1989) (citing *Village of Euclid*, 272 U.S. at 387).

<sup>144</sup> *Tull v. U.S.*, 481 U.S. 412, 420, 107 S.Ct. 1831(1987) (citing *W. Prosser, Law of Torts* 583 (4th ed. 1971)(“Prosser”)(footnote omitted).

<sup>145</sup> *Tull*, 481 U.S. at 421, n. 5 (quoting Prosser at 583-585)(footnotes omitted) (“Public nuisances included ‘interferences with the public health, as in the case of a hogpen, the keeping of diseased animals, or a malarial pond; with the public safety, as in the case of the storage of explosives, the shooting of fireworks in the streets, harboring a vicious dog, or the practice of medicine by one not qualified; with public morals, as in the case of houses of prostitution, illegal liquor establishments, gambling houses, indecent exhibitions, bullfights, unlicensed prize fights, or public profanity; with the public [ sic ] peace, as by loud and disturbing noises, or an opera performance which threatens to cause a riot; with the public comfort, as in the case of bad odors, smoke, dust and vibration; with public convenience, as by obstructing a highway or a navigable stream, or creating a condition which makes travel unsafe or highly disagreeable, or the collection of an inconvenient crowd; and in addition, such unclassified offenses as eavesdropping on a jury, or being a common scold.’”).

by courts in equity”.<sup>146</sup> Although Washington codified nuisance law before the turn of the (last) century, the common law is not eclipsed.<sup>147</sup> The “essence” of equity jurisdiction is the trial court’s authority “to do equity and mould each decree to the necessities of each case.”<sup>148</sup>

The state statutes dealing with nuisances are found generally at Chapter 7.48 RCW. Furthermore, the state has given the counties the authority to “declare by ordinance what shall be deemed to be a nuisance within the county” and to bring an action for damages and other relief.<sup>149</sup>

State law also grants to counties the authority to develop a process by which nuisance “buildings, structures, and premises or portions thereof” may be abated.<sup>150</sup> Chapter 9.56 of the Kitsap County Code provides for the abatement of public nuisances, including “conditions which are inimical to the health and welfare of the residents of Kitsap County”.<sup>151</sup> Kitsap County Code defines “nuisance” in part as follows:

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<sup>146</sup> *Tull*, 481 U.S. at 424 (quoting Prosser at 603).

<sup>147</sup> *Miller v. French*, 530 U.S. 327, 360, 120 S.Ct. 2246 (2000) (J. Breyer, Dissenting) (A statute’s silence on the exercise of a court’s equitable powers is read “as authorizing the exercise of those powers”.) (citing *Lockerty v. Phillips*, 319 U.S. 182, 186–187, 63 S.Ct. 1019, 87 L.Ed. 1339 (1943) (finding that courts were deprived of equity powers where the statute explicitly removed jurisdiction), *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 8-10, 62 S.Ct. 875, 86 L.Ed. 1229 (1942) (refusing to read silence as depriving courts of their historic equity power), and *Califano v. Yamasaki*, 442 U.S. 682, 705-706, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979) (same).

<sup>148</sup> *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587 (1944).

<sup>149</sup> RCW 36.32.120.

<sup>150</sup> Chapter 35.80 RCW et seq., RCW 7.48.010 (granting authority to obtain warrant of abatement).

<sup>151</sup> KCC 9.56.010 (emphasis added).

Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which significantly affects, injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant.<sup>152</sup>

### 1. Public Nuisance

Public nuisances are prescribed by, both the common law and statute. A public nuisance is one that affects equally the rights of an entire community or neighborhood; a private nuisance is one that is not a public nuisance.<sup>153</sup> A public nuisance is defined as an unlawful act affecting equally the rights of an entire neighborhood that either annoys, injures or endangers the comfort, repose, health or safety of others, or in any way renders other persons insecure in life, or in the use of property.<sup>154</sup> Washington State recognizes in addition to the common law definition of nuisance that a nuisance is an interference with the comfortable enjoyment of one's property.<sup>155</sup> Comfortable enjoyment means mental quiet as well as physical comfort.<sup>156</sup>

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<sup>152</sup> KCC 9.56.020(10)(a).

<sup>153</sup> RCW 7.48.130; RCW 7.48 .150.

<sup>154</sup> RCW 7.48.120, RCW 7.48.130.

<sup>155</sup> *Goodrich v. Starrett*, 108 Wash. 437, 184 P. 220 (1919).

<sup>156</sup> *Everett v. Paschall*, 61 Wash. 47, 111 P. 879 (1910).

Under Washington law no lapse of time can legalize a public nuisance.<sup>157</sup>

## 2. Nuisance in fact

Nuisance activities most typically are a result of a tangible and offensive effect that invades another's property, such as noise. Non-invasive activities may also be nuisances when they are objectionable to a person of ordinary sensibilities and/or when the activity causes a tangible ill effect on another's property. A neighbor's reasonable fear of harm can be the sole basis for nuisance since comfortable enjoyment includes mental quiet.<sup>158</sup> This typifies the experience of KRRC's neighbors and down range residents, who repeatedly expressed fear at going into their yards during times of heavy fire at the Property.

If this was a tort action for *private* nuisance, the County would need to prove that the interference to a plaintiff's use or enjoyment must

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<sup>157</sup> RCW 7.48.190

<sup>158</sup> *Everett v. Paschall*, 61 Wash. 47, 50-51 (Tuberculosis sanitarium in residential district was a nuisance because it instilled fear of contagion in the minds of neighbors, notwithstanding that the fear was not based in science; the fear itself was real, not imaginary.); *Ferry v. City of Seattle*, 116 Wash. 648, 203 P. 40 (1922) (city reservoir with 57-foot embankment on a hillside created a "reasonable apprehension" that it might collapse and flood the area below.

be unreasonable in order to obtain injunctive relief.<sup>159</sup> However, even if public nuisance implicitly requires assessing reasonableness of KRRC's uses and activities, the trial court record made pertinent findings, including the Club's failure to take reasonable and feasible steps to mitigate sound and stop bullet escape.

Assuming an unreasonableness requirement, courts "determine the reasonableness of a defendant's conduct by weighing the harm to the aggrieved party against the social utility of the activity".<sup>160</sup> Factors include "the character of the neighborhood where the activity occurs and the 'degree of community dependence on the particular activity.'"<sup>161</sup> Reasonableness is a question of fact in a nuisance action,<sup>162</sup> and as noted elsewhere proposed factual findings *not* adopted by the trial court are presumed to be made contrary to the proponent's position.<sup>163</sup>

The Club contends that the lack of quantitative evidence undercuts

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<sup>159</sup> *Lahey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 923, 296 P.3d 860 (2013) (citing *Bradley v. Am. Smelting & Ref. Co.*, 104 Wn.2d 677, 689, 709 P.2d 782 (1985) ("In private nuisance an intentional interference with the plaintiff's use or enjoyment is not of itself a tort, and unreasonableness of the interference is necessary for liability." (quoting The Restatement (Second) of Torts § 821D cmt. d at 102 (1979))); *Grundy v. Thurston County*, 155 Wn.2d 1, 6, 117 P.3d 1089 (2005) ("Nuisance is a substantial and unreasonable interference with the use and enjoyment of land." (internal quotation marks omitted) (quoting *Bodin v. City of Stanwood*, 79 Wn.App. 313, 318 n. 2, 901 P.2d 1065 (1995))).

<sup>160</sup> *Lahey*, 176 Wn.2d 923-24 (citing *Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wn.2d 6, 17 n. 7, 548 P.2d 1085 (1976); *Morin v. Johnson*, 49 Wn.2d 275, 280, 300 P.2d 569 (1956).)

<sup>161</sup> *Lahey*, 176 Wn.2d at 924 (citing *Highline Sch. Dist.*, 87 Wn.2d at 17 n. 7, 548 P.2d 1085; *Jones v. Rumford*, 64 Wn.2d 559, 562-63, 392 P.2d 808 (1964)).

<sup>162</sup> *Lahey v. Puget Sound Energy, Inc.*, 176 Wn.2d .

<sup>163</sup> See generally Appendix 6, KRRC's Proposed Findings of Fact.

the claims of public nuisance. However, proof of noise levels is not necessary to establish nuisance conditions. In fact, the state Noise Control Act of 1974 provides statutory authority for regulation of noise levels within permissible ranges but specifically provides that "[n]othing in this chapter shall be construed to deny, abridge, or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil."<sup>164</sup> Thus, while WAC 173-60-050(1) provides that sounds discharged from "authorized shooting ranges" are exempt from regulatory decibel thresholds, this WAC does not preclude local regulation of noise nuisances.<sup>165</sup>

### 3. Nuisance per se

Unlawful nonconforming uses and any violation of Kitsap County's zoning laws codified in Title 17 KCC are nuisances per se.<sup>166</sup> "A nuisance per se is an act, thing, omission, or use of property which of itself is a nuisance, and hence is not permissible or excusable under any circumstance."<sup>167</sup> Engaging in any business or profession in defiance of a law regulating or prohibiting the same is a nuisance per se.<sup>168</sup> "Where the legislative arm of the government has declared by statute and zoning

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<sup>164</sup> RCW 70.107.060 (1).

<sup>165</sup> WAC 173-60-060.

<sup>166</sup> KCC 17.110.515

<sup>167</sup> *Tiegs v. Watts*, 135 Wn.2d 1, 13, 954 P.2d 877 (1998).

<sup>168</sup> *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135, 138, 720 P.2d 818 (1986).

resolution what activities may or may not be conducted in a prescribed zone, it has in effect declared what is or is not a public nuisance. What might have been a proper field for judicial action prior to such legislation, becomes improper when the law-making branch of government has entered the field.”<sup>169</sup> However, it is not contrarily true that an act which is permitted by law cannot be a nuisance.<sup>170</sup> “[A] lawful business is never a nuisance per se, but may become a nuisance by reason of extraneous circumstances such as being located in an inappropriate place, or conducted or kept in an improper manner.”<sup>171</sup> Moreover, injunctive relief is available against violations of zoning ordinances which are declared by ordinance to be nuisances.<sup>172</sup>

**E. KRRC BECAME A PUBLIC SAFETY NUISANCE BY MODIFYING AND OPERATING ITS SHOOTING AREAS WITHOUT ENGINEERING CONTROLS TO PREVENT BULLET ESCAPE TO POPULATED “SURFACE DANGER ZONES”.**

As described above, the trial court adopted plaintiff’s expert Gary Koon’s surface danger zones and depictions of vulnerabilities to nearby and downrange residences and found that “range facilities are inadequate to contain bullets to the Property, notwithstanding existing safety

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<sup>169</sup> *Shields v. Spokane School Dist. No. 81*, 31 Wn.2d 247, 254, 196 P.2d 352 (1948)(quoting *Robinson Brick Co. v. Luthi*, 115 Colo. 106, 169 P.2d 171 (1946)).

<sup>170</sup> *Jones v. Rumford*, 64 Wn.2d 559, 392 P.2d 808 (1964)(citing *Hardin v. Olympic Portland Cement Co.*, 89 Wash. 320, 325, 154 P. 450, 451 (1916).

<sup>171</sup> *Hardin*, 89 Wash. at 325.

<sup>172</sup> *City of Mercer Island v. Steinmann*, 9 Wn. App. 479, 513 P.2d 80 (1973).

protocols and enforcement.” FOF 67, 68. The court concluded that “the Property's ongoing operation without adequate physical facilities to confine bullets to the Property constitute[s] a public nuisance.” COL 3.

KRRC contends that Finding 67 suffers a fatal defect because it is framed in terms of the Property's shooting areas, i.e. the 8-acre historical area. Brief, at 23. This is a distinction without a difference because the expert and lay testimony established that a bullet escaping from the shooting areas can travel well past the Property's boundaries to reach the neighboring parks and residential areas. KRRC's other concern with Finding 67 is the clause finding that bullets “will possibly strike persons or damage private property in the future.” Brief, at 23. The range safety findings must be considered together with the embedded finding in Conclusion 21, reciting KRRC's failure

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 . . .<sup>[173]</sup>

This is the substantial risk demanding injunction: KRRC's existing facilities can't stop the escape of bullets. Even if the risks were regarded as low in probability, the outcome of bullet escapement will be death or injury.

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<sup>173</sup> COL 21.

KRRC points to the requirement that the likelihood of harm must be “reasonable and probable”, rather than just a possibility.<sup>174</sup> The Club’s cited case pertains to a cemetery, and the neighbor’s fears that it could contaminate their drinking water well, which would require migration of germs through 20 feet of soil and then through 300 feet of the water table, which the Court adjudged to be highly improbable.<sup>175</sup> In any event, the trial court’s facts demonstrate that Kitsap County has been sitting on a time bomb. The way that KRRC is configured, it would be reasonable and probable that bullets have escaped to populated areas, and the County’s evidence demonstrates that bullets have already escaped the Property. The trial court’s public safety nuisance findings and conclusion are based on the inescapable conclusion that the Property’s shooting ranges, as currently configured, cannot keep the community safe. Without the injunction, history will repeat itself.

**F. THE TRIAL COURT PROPERLY INTERPRETED THE SCOPE AND MEANING OF THE BARGAIN AND SALE DEED; IT DID NOT SETTLE LAND USE STATUS OR KRRC’S CODE VIOLATIONS.**

The trial court rejected KRRC’s bid to transform the 2009 Deed into an agreement settling potential claims and updating land use status:

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<sup>174</sup> Brief, at 23-24 (citing *Hite v. Cashmere Cemetary Assn.*, 158 Wash. 421, 424, 290 P.1008 (1930).

<sup>175</sup> *Hite*, 158 Wash. at 424.

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.<sup>176]</sup>

RCW 64.04.040 governs bargain and sale deeds, under which a fee simple estate is assigned with statutory covenants imposed upon the grantor. KRRC makes no claim regarding the statutory covenants, but its exclusive focus is upon the 2009 Deed's restrictive covenants. Since 1993, KRRC's position has been that the 1993 letter and then the 2009 Deed have exempted it from ordinary permit requirements. This is wrong even if KRRC enjoyed a legal nonconforming use today – KRRC still must apply for and obtain required grading permits for its site work.<sup>177</sup> Taken to an extreme, KRRC's position would give the Club a pass on having to apply for a county building permit to erect a structure within the “historical” eight acres.

As noted above, interpreting a deed presents a mixed question of fact and law.

“[D]eeds are construed to give effect to the

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<sup>176</sup> COL 36.

<sup>177</sup> See *Rhod-A-Zalea*, 136 Wn.2d at 17.

intentions of the parties, and *particular attention is given to the intent of the grantor* when discerning the meaning of the entire document.”<sup>178]</sup>

In general, courts determine the parties’ intent “from the language of the deed as a whole”.<sup>179</sup> Where “reasonably possible”, meaning is given to every word.<sup>180</sup>

KRRC argues that extrinsic evidence compels its alternative interpretation of the 2009 Deed. This reliance fails for several reasons. First, KRRC fails to identify its proposed findings of fact bearing on deed interpretation.<sup>181</sup> Second, Washington follows the rule “that, where the plain language of a deed is unambiguous, extrinsic evidence will not be considered”.<sup>182</sup>

The rule disfavoring extrinsic evidence, recognizes that a deed’s language constitutes the best evidence for interpreting the deed over time:

This rule is a practical consequence of the permanent nature of real property—unlike a contract for personal

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<sup>178</sup> *Newport Yacht*, 168 Wn.App. at 64 (emphasis added) (quoting *Zunino v. Rajewski*, 140 Wn.App. 215, 222, 165 P.3d 57 (2007)).

<sup>179</sup> *Newport Yacht*, 168 Wn.App. at 64 (citing *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003) (citing *Zobrist v. Culp*, 95 Wn.2d 556, 560, 627 P.2d 1308 (1981))).

<sup>180</sup> *Newport Yacht*, 168 Wn.App. at 64 (citing *Hodgins v. State*, 9 Wn.App. 486, 492, 513 P.2d 304 (1973) (citing *Fowler v. Tarbet*, 45 Wn.2d 332, 334, 274 P.2d 341 (1954))).

<sup>181</sup> See \_\_\_\_\_, *supra*.

<sup>182</sup> *Newport Yacht*, 168 Wn.App. at 64-65 (footnote omitted)(citing *Sunnyside Valley*, 149 Wn.2d at 880, 73 P.3d 369; *In re Estate of Little*, 106 Wn.2d 269, 287, 721 P.2d 950 (1986); *City of Seattle v. Nazarene*, 60 Wn.2d 657, 665, 374 P.2d 1014 (1962); *Tacoma Mill Co. v. N. Pac. Ry. Co.*, 89 Wn. 187, 201, 154 P. 173 (1916) (“[I]f the intention of the parties may be clearly and certainly determined from the language they employ, recourse will not be had to extrinsic evidence for the purpose of ascertaining their intention.”)).

services or a sale of goods, the legal effect of a deed will outlast the lifetimes of both grantor and grantee, ensuring that evidence of the circumstances surrounding the transfer will become both increasingly unreliable and increasingly unobtainable with the passage of time. Accordingly, the language of the written instrument is the best evidence of the intent of the original parties to a deed.<sup>[183]</sup>

The surrounding circumstances are reviewed only when necessary to discern intent.<sup>184</sup> For example, extrinsic evidence can be used to interpret whether a bargain and sale deed for a “right of way” actually conveyed a fee interest in real property despite the absence of explicit verbiage to that effect.<sup>185</sup>

The deed in question is a bargain and sale deed *with restrictive covenants*. The Court’s primary task in interpreting a restrictive covenant “is to determine the drafter’s intent and the purpose of the covenant at the time it was drafted.”<sup>186</sup> The drafter’s intent is determined by “examining the clear and unambiguous language of a covenant.”<sup>187</sup> ““Only in the case of ambiguity will the court look beyond the document to ascertain intent

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<sup>183</sup> *Newport Yacht*, 168 Wn.App. at 64.

<sup>184</sup> *Veach v. Culp*, 92 Wn.2d 570, 573, 599 P.2d 526 (1979). See also *Thompson v. Schlittenhart*, 47 Wn.App. 209, 211–12, 734 P.2d 48 (1987) (“Th[e] intent is to be gathered from the language of the deed if possible, but when necessary by resort to the circumstances surrounding the entire transaction.”).

<sup>185</sup> *Roeder Co. v. K & E Moving & Storage Co., Inc.*, 102 Wn.App. 49, 57, 4 P.3d 839, *review denied*, 142 Wn.2d 1017 (2001).

<sup>186</sup> *Bauman v. Turpen*, 139 Wn.App. 78, 86, 160 P.3d 1050 (Div. 1 2007) (citing *Riss v. Angel*, 131 Wn.2d 612, 621, 934 P.2d 669 (1997) (rejecting the argument that free use of land is the paramount consideration in construing restrictive covenants)).

<sup>187</sup> *Bauman*, 139 Wn.App. at 88-89 (citing *Burton v. Douglas County*, 65 Wn.2d 619, 621-22, 399 P.2d 68 (1965)).

from surrounding circumstances.”<sup>188</sup>

However, admissible extrinsic evidence does not include: 1) evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term; 2) evidence that would show an intention independent of the instrument; or 3) evidence that would vary, contradict or modify the written word.<sup>[189]</sup>

While the interpretation of a restrictive covenant is a question of law reviewed de novo, intent is a question of fact reviewed for substantial evidence.<sup>190</sup> Here, the trial court found that the 2009 Deed itself provided the only (credible) evidence with which to discern the County's intent at the time. FOF 26. Thus, if, after considering the 2009 Deed in its entirety, the trial court erred by finding that its meaning was clear, then the trial court's factual findings that Kitsap County had no intention to settle potential code enforcement claims or land use status are reviewed for substantial evidence. FOF 23, 25. As explained supra, the trial record supports those findings.<sup>191</sup>

The 2009 Deed recognizes use of the eight geographical acres “consistent with its historical use” without expressly waiving compliance with any rules governing alteration of that use. There is no express

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<sup>188</sup> *Ross v. Bennett*, 148 Wn.App. 40, 46, 203 P.3d 383 (2008), *review denied*, 166 Wn.2d 1012 (2009) (quoting *Mountain Park Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337, 344, 883 P.2d 1383 (1994)).

<sup>189</sup> *Ross*, 148 Wn.App. at 46 (citing cases).

<sup>190</sup> *Bauman*, 139 Wn.App. at 89 (citing cases).

<sup>191</sup> See 13, 53, supra.

waiver, settlement, release, or other representation that KRRC would be exempt from zoning laws or permitting regulations.

**G. WASHINGTON'S OPEN PUBLIC MEETINGS ACT RESTRICTS THE ABILITY OF ELECTED OFFICIALS TO RENDER DECISIONS NOT PUBLICLY ANNOUNCED, FURTHER LIMITING THE EFFECT OF THE BARGAIN AND SALE DEED.**

KRRC assigns error to Conclusion of Law 37 that the Open Public Meetings Act of 1971 (“OPMA”) restricts the 2009 Deed’s effect, arguing “OPMA is not a tool of contract interpretation”.<sup>192</sup> KRRC claims the *County* intended the 2009 Deed to settle the Property’s land use status, asserting the County acted in a proprietary capacity in selling the Property to KRRC.<sup>193</sup> However, “[i]n exercising its proprietary power, a municipality may not act beyond the purposes of the statutory grant of power or contrary to express statutory or constitutional limitations.”<sup>194</sup>

The OPMA applies to all “governing bodies”, here the BOCC.<sup>195</sup> When taking action to adopt an ordinance or resolution, the OPMA

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<sup>192</sup> Brief, at 55.

<sup>193</sup> Brief, at 61-62, 68.

<sup>194</sup> *Burns v. City of Seattle*, 161 Wn.2d 129, 154, 164 P.3d 475 (2007) (citing *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 695, 743 P.2d 793 (1987)).

<sup>195</sup> RCW 42.30.010, 42.30.020(2).

requires governing bodies to conduct a public meeting with notice, and action taken in violation of the OPMA “shall be null and void”.<sup>196</sup>

Under the OPMA, “final action” to sell public property must occur in a public meeting.<sup>197</sup> The same holds true for a settlement agreement. In *Feature Realty, Inc. v. City of Spokane*<sup>198</sup>, the Ninth Circuit considered whether a settlement agreement approved only in executive session could bind the City of Spokane. The Court held the action was null and void:

Fortunately, the Washington Supreme Court has resolved those policy concerns and provided us with a clear road map in this case. If the action is not “explicitly specified” in the exception, then such action must take place in public, or it is null and void. *Miller*, 138 Wn.2d at 327, 979 P.2d 429. While there is no suggestion the city council acted in bad faith when it approved the settlement in executive session, the fact remains it settled claims made against the city and the individual members of the council personally, using hundreds of thousands of dollars out of the public fisc to do so, as well as agreeing to abandon certain publicly-owned lands to the developers. Its decision took place behind closed doors, with no opportunity for public comment. The statutory procedures at issue here are essential to protect the interests of the public. *Cf. Nelson v. Pac. County*, 36 Wn.App. 17, 24, 671 P.2d 785 (1983). They were ignored, and the settlement agreement is therefore null and void.<sup>[199]</sup>

Moreover, KCC 17.460.030 delegates to the DCD Director the authority to recognize a changed nonconforming land use. KRRC’s interpretation

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<sup>196</sup> RCW 42.30.060(1). The OPMA is remedial in its purposes and is to be liberally construed. RCW 42.30.910.

<sup>197</sup> RCW 42.30.020(3), 42.30.110(1)(c).

<sup>198</sup> *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082 (9th Cir. 2003).

<sup>199</sup> *Feature Realty, Inc. v. City of Spokane*, 331 F.3d at 1090-91 (footnote omitted).

of the 2009 Deed runs into a brick wall: The OPMA requires the BOCC's explicit public vote upon a settlement agreement, and there was none.

**H. UNDER THE COURT'S FACTUAL FINDINGS, KRRC CANNOT MEET THE HIGH BURDEN TO PROVE EQUITABLE ESTOPPEL SO AS TO REWRITE THE 2009 DEED AND ITS HISTORY.**

KRRC claims it "would not have executed the [2009] Deed as it was written" had it known then what it knows now.<sup>200</sup> In effect, KRRC claims it would not have purchased its long-time range property had it known the County would one day sue to enforce its own land use and site development codes, so Kitsap County should be estopped from:

1. "[D]enying any duty to disclose the allegations of its code compliance supervisor prior to selling the Property to the Club . . .";
2. "[D]enying that the Deed was intended to secure the Club's right to continue and improve its nonconforming shooting range . . ."; and
3. "[D]enying that it made a final determination that the Club's facilities and operations were lawful at the time of the Deed."<sup>201</sup>

The trial court pronounced no ruling on equitable estoppel, and is presumed to have found against the holder of the burden of proof.<sup>202</sup>

KRRC suggests that a municipal land seller has an affirmative duty to

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<sup>200</sup> Brief, at 57.

<sup>201</sup> Brief, at 71.

<sup>202</sup> See *Armenta*, 134 Wn.2d at 14 (citing cases).

notify a prospective buyer of each development and zoning violation.<sup>203</sup> KRRC would apply that duty to a municipal pass-through seller who sells real property to the long-time tenant, who itself committed the violations.

Whether equitable estoppel applies to the facts is a question of law reviewed de novo.<sup>204</sup> Equitable estoppel is not favored and a proponent must prove by clear, cogent and convincing evidence these elements:<sup>205</sup>

“(1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission.”<sup>206</sup>]

To establish injury, “a party must establish he or she justifiably relied to his or her detriment on the words or conduct of another”.<sup>207</sup> KRRC's

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<sup>203</sup> KRRC cites to inapposite California and Connecticut cases. Brief, at 60 (citing *Barber v. McClung*, 93 Cal.App.2d 692, 209 P.2d 808 (1949) (Purchaser's action for fraud against seller of real property that seller developed in violation of zoning code); *Morgera v. Chiappardi*, 2003 WL 22705753 (Conn. Super. Ct. 2003), *aff'd*, 864 A.2d 885 (2005) (Unpublished trial court opinion for fraud action against real property seller who failed to inform purchaser of code's limit on capacity of houses on the property)).

<sup>204</sup> *Bank of Am., NA v. Prestance Corp.*, 160 Wn.2d 560, 564, 160 P.3d 17 (2007).

<sup>205</sup> *Kramarevcky v. Dep't of Soc. and Health Servs*, 122 Wn.2d 738, 744, 863 P.2d 535 (1993) (citing cases) (equitable estoppel asserted against government and private parties).

<sup>206</sup> *Kramarevcky*, 122 Wn.2d at 743 (citing *Robinson v. Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318, *cert. denied*, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992)).

<sup>207</sup> *Kramarevcky*, 122 Wn.2d at 747 (citations omitted).

“injury” may be its perpetual obligations under the 2009 Deed<sup>208</sup> and investing in improvements before paying the costs of permitting.<sup>209</sup>

A proponent of equitable estoppel must possess “clean hands”,<sup>210</sup> and, against a municipality, must also prove it is “necessary to prevent a manifest injustice, and the exercise of governmental functions must not be impaired as a result of the estoppel.”<sup>211</sup> Thus, “the finder of fact must be convinced the fact in issue is ‘highly probable’”.<sup>212</sup>

KRRC asserts that “a government cannot correct an earlier mistake to the detriment of those who relied upon it”, citing cases which simply reiterate the doctrine’s elements and policies and the lack of an actual

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<sup>208</sup> KRRC may claim it exchanged valuable consideration for the Property when it agreed to hold harmless, indemnify and defend Kitsap County and to maintain commercial general liability insurance (2009 Deed at ¶¶ 1-2), however the Club’s 2009, 2010 and 2011 insurance policies name the County *Parks Department* as the only additional County insured (for KRRC’s county fair participation, RP 2189:12-2190:17) and, more importantly, *exclude* pollution and lead contamination from coverage. Ex 198, Ex 199, Ex 200 (each policy at § I.2.f (pp. 2-3), “Additional Exclusions” at ¶ 4 (pp. 8-9), and Schedule of Additional Insureds (appended)).

<sup>209</sup> Brief, at 67 (citing RP 2222:18 - 2223:8).

<sup>210</sup> *Kramarevcky*, 122 Wn.2d at 739, n.1 (citing *Mutual of Enumclaw Ins. Co. v. Cox*, 110 Wn.2d 643, 650-51, 757 P.2d 499 (1988) (citing 31 C.J.S. Estoppel § 75, at 453-54 (1964) (“A party may not base a claim of estoppel on conduct, omissions, or representations induced by his or her own conduct, concealment, or representations.”))).

<sup>211</sup> *Kramarevcky*, 122 Wn.2d at 738 (citing *Shafer v. State*, 83 Wn.2d 618, 622, 521 P.2d 736 (1974); *Finch v. Matthews*, 74 Wn.2d 161, 169, 443 P.2d 833 (1968)).

<sup>212</sup> *Kramarevcky*, 122 Wn.2d at 744 (citing *Colonial Imports*, 121 Wn.2d at 735; *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)).

knowledge requirement.<sup>213</sup> KRRC asserts “the County can be estopped in its proprietary capacity from denying the intent of the deed” because a municipality “acts in a proprietary capacity when it undertakes to dispose of public lands”.<sup>214</sup> The doctrine is applied “temperately against any level of government” and is “less likely to be applied when a municipality has acted in a governmental capacity”.<sup>215</sup>

Where representations allegedly relied upon are matters of law, equitable estoppel will not be applied.<sup>216</sup> Here, KRRC seeks to estop Kitsap County from challenging nonconforming land use status, which is itself disfavored. Moreover, estoppel is poorly suited to enjoin the exercise of police power to protect the public’s health and safety:

It can also be seriously questioned whether the doctrine of equitable estoppel can require or prevent the exercise of the police power, particularly in the fields of public health and safety. ‘Police power is an attribute of sovereignty, an essential element of the power to govern, and a function that cannot be surrendered.’<sup>[217]</sup>

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<sup>213</sup> Brief, at 62, citing *Kramarevcky*, 122 Wn.2d at 743 (citing *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975); and *Strand v. State*, 16 Wn.2d 107, 119-21, 132 P.2d 1011 (1943) (State officials’ actual knowledge of the falsity of their representations was not necessary in a quiet title action involving tidelands deeded by the State, because State land commissioner’s affirmative statutory duty to delineate the nature of tidelands imputed knowledge of tidelands’ legal description to state officials.).

<sup>214</sup> Brief, at 68 (citing *Strand*, 16 Wn.2d at 117 (citing cases)).

<sup>215</sup> *City of Mercer Island v. Steinmann*, 9 Wn.App. 479 at 481-82 (citing cases).

<sup>216</sup> *State Dept. of Ecology v. Theodoratus*, 135 Wn.2d 582, 599-600, 957 P.2d 1241 (1998) (citations omitted).

<sup>217</sup> *Ford v. Bellingham-Whatcom County Dist. Bd. of Health*, 16 Wn.App. 709, 716, 558 P.2d 821 (Div. 1 1977) (quoting *Shea v. Olson*, 185 Wash. 143, 153, 53 P.2d 615 (1936)).

In this case, equitable estoppel would interfere with Kitsap County's discharge of its zoning and development codes in its governmental capacity.<sup>218</sup> "The governmental zoning power may not be forfeited by the action of local officers in disregard of the statute and the ordinance."<sup>219</sup>

KRRC cites the County's "superior knowledge" and "silence regarding the adverse claims of its enforcement officer" during negotiations.<sup>220</sup> However, "creating" an estoppel requires that:

"The party claiming to have been influenced by the conduct or declarations of another to his injury, was himself not only destitute of knowledge of the state of facts, *but was also destitute of any convenient and available means of acquiring such knowledge; and that where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.*" 11 Am. & Eng. Ency. Law (2d ed.), p. 434.<sup>[221]</sup>

KRRC was represented by legal counsel during the 2009 negotiation, and was hardly "destitute of any convenient and available means" to ascertain

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<sup>218</sup> Compare *Board of Regents v. City of Seattle*, 108 Wn.2d 545, 552, 741 P.2d 11 (1987) (Board of Regents, acting to manage tract for benefit of the university, acts in a proprietary capacity and will be held to standards of private property owner).

<sup>219</sup> *Miller v. City of Bainbridge Island*, 111 Wn.App. 152, 166, 43 P.3d 1250 (Div. 2 2002) (quoting *Dykstra v. Skagit County*, 97 Wn.App. 670, 677, 985 P.2d 424 (1999), *review denied*, 140 Wn.2d 1016, 5 P.3d 8 (2000)). See also *Steinmann*, 9 Wn.App. at 483 (citing cases) ("[A] municipality is not precluded from enforcing zoning regulations if its officers have issued building permits allowing construction contrary to such regulations, have given general approval to violations of the regulations, or have remained inactive in the face of such violations.").

<sup>220</sup> Brief, at 60, 61.

<sup>221</sup> *Chemical Bank v. Washington Public Power Supply System*, 102 Wn.2d 874, 905, 691 P.2d 524 (1984) (emphasis provided) (citing *Leonard v. Washington Employers, Inc.*, 77 Wn.2d 271, 280, 461 P.2d 538 (1969) (quoting *Wechner v. Dorchester*, 83 Wash. 118, 145 P. 197 (1915)) (citation omitted)).

the state of the facts.<sup>222</sup> KRRC failed to negotiate for the specific terms it now asks the Court to adopt in equity. The trial court properly said no.

## V. CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's judgment and the injunctions issued thereunder.

Respectfully submitted this 1<sup>st</sup> day of July, 2013.

RUSSELL D. HAUGE  
Prosecuting Attorney



NEIL R. WACHTER, WSBA #23278  
Senior Deputy Prosecuting Attorney  
Attorney for Kitsap County

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<sup>222</sup> RP 2860:22-2861:22; RP 2869:5-15 (identifying ex 550, an email regarding the land sale negotiation from Club's attorney Regina Taylor to County staff and to Club officers and attorney Bruce Danielson (admitted as non-truth context evidence (RP 2872:14-20)).

CERTIFICATE OF SERVICE

I, Carrie A. Bruce, 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 and Appendices in the manner noted upon the following:

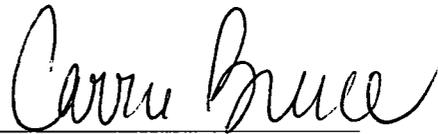
Brian D. Chenoweth  
Brooks Foster  
The Chenoweth Law Group  
501 SW Fifth Ave., Ste. 500  
Portland, OR 97204

Via U.S. Mail  
 Via Email: *As Agreed by the Parties*  
 Via Hand Delivery

David Scott Mann  
Gendler & Mann LLP  
1424 4<sup>th</sup> Ave., Ste. 715  
Seattle, WA 98101-2297

Via U.S. Mail  
 Via Email:  
 Via Hand Delivery

SIGNED in Port Orchard, Washington this 15<sup>th</sup> day of July, 2013.



CARRIE A. BRUCE, Paralegal  
Kitsap County Prosecuting Attorney  
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## APPENDIX

1. Findings of Fact, Conclusions of Law and Orders (with attached Bargain and Sale Deed with Covenants) (CP 4052-4092)
2. Trial Exhibit 251: 2010 Google Earth aerial image of KRRC shooting areas
3. Trial Exhibit 315: September 7, 1993 letter from former Commissioner Wyn Granlund
4. Trial Exhibits 207, 208, 209, 210, 211: Surface Danger Zone maps
5. Proposed Findings of Fact and Conclusions of Law of Plaintiff Kitsap County (CP 3987-4025)
6. Proposed Findings of Fact and Conclusions of Law of Defendant Kitsap Rifle and Revolver Club (CP 4026-4051)
7. KCC 9.56.010
8. KCC 12.08.010
9. KCC Chapter 12.10
10. KCC Chapter 12.16
11. KCC Chapter 17.100.040
12. KCC CHAPTER 17.100.070
13. KCC CHAPTER 17.110
14. KCC CHAPTER 17.301
15. KCC CHAPTER 17.381
16. KCC CHAPTER 17.421
17. KCC 17.455.060

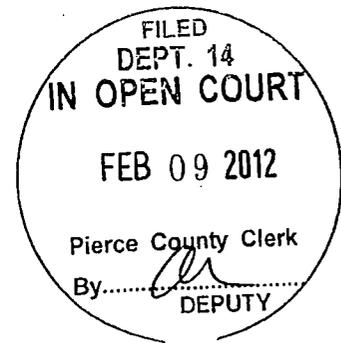
18. KCC 17.455.110
19. KCC CHAPTER 17.460
20. KCC CHAPTER 17.530
21. KCC CHAPTER 19.100

## **Appendix 1**

**Findings of Fact, Conclusions of Law  
and Orders (with attached Bargain  
and Sale Deed with Covenants) (CP  
4052-4092)**



10-2-12913-3 37971295 ORPRINJ 02-09-12



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:

36251 W

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.

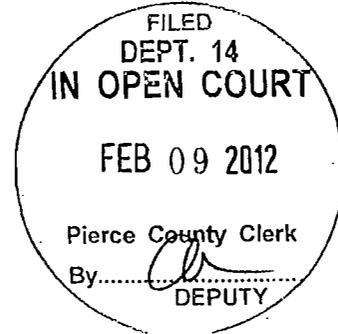
10. This Court retains jurisdiction to enforce this order by all lawful means including imposition of contempt sanctions and fines.

**COSTS AND FEES**

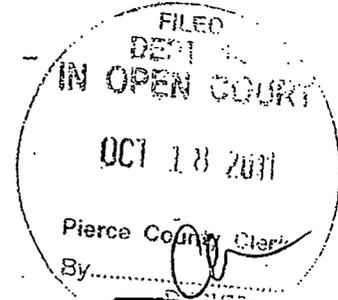
11. Pursuant to KCC 17.530.030, Defendant Kitsap Rifle and Revolver Club shall pay the costs of the County to prosecute this lawsuit, in an amount to be determined by later order of the Court.

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  
Waller Washington, Kitsap Co Auditor



10-2-19-70

**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:

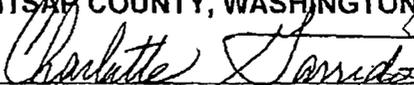
Bodies of water, including but not limited to those streams, rivers and lakes and other lakes and wetlands have been identified and/or may be located on the Premises. All activities within the Riparian Management Zone, as defined in the existing and publicly-filed Habitat Conservation Plan (HCP) and 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

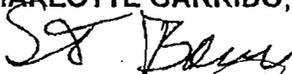
land, regardless of parcel segregation or aggregation or potential sale or land transfer.

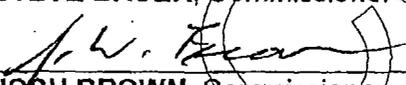
DATED this 13<sup>th</sup> day of May, 2009.



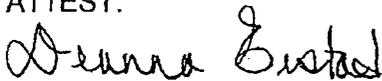
BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON

  
CHARLOTTE GARRIDO, Chair

  
STEVE BAUER, Commissioner

  
JOSH BROWN, Commissioner

ATTEST:

  
Opal Robertson, Clerk of the Board

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

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

  
BRADFORD SMITH, President - KRRC

  
MARCUS A. CARTER, Executive Officer - KRRC

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

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

Dated this 13 day of May, 2009.

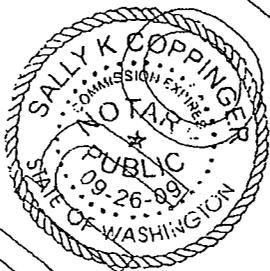


Sally K. Coppinger  
PRINT NAME: Sally K. Coppinger  
Notary Public in and for the State of Washington,  
residing at: Port Orchard 98366  
My Commission Expires: 9/26/09

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

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

Dated this 13 day of May, 2009.



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

**EXHIBIT A**

**Legal Description of Premises & Reservations**

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

**RESERVATIONS/SUBJECT TO:**

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

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

Unofficial

## **Appendix 2**

**Trial Exhibit 251: 2010 Google Earth  
aerial image of KRRC shooting areas**



## **Appendix 3**

**Trial Exhibit 315: September 7, 1993  
letter from former Commissioner  
Wyn Granlund**

Chris Endresen  
DISTRICT 1

Win Granlund  
DISTRICT 2

Bille Eder  
DISTRICT 3

September 7, 1993

Kitsap County  
Board of  
Commissioners



Kitsap Rifle & Revolver Club, Inc.  
4900 Seabeck Highway  
Bremerton, WA 98380

Poulsbo Sportsman Club, Inc.  
16990 Clear Creek Road NW  
Poulsbo, WA 98370

Kingston Junior Marksmen Club, Inc.  
c/o Mike Hastings  
25846 Norman Road  
Kingston, WA 98346

Bremerton Trap & Skest Club, Inc.  
5956 State Highway #3 SW  
Port Orchard, WA 98366

Re: Ordinance 50-B-1993

Dear Sirs:

Pursuant to your requests, this letter is to confirm that the shooting ranges your organizations currently have in use, which are listed above, are considered by Kitsap County to be lawfully established, non-conforming uses (grandfathered).

We are requesting that you submit a legal description of the parcel that your range is located on. Please send these to Mark H. Grimm, Kitsap County Community Development, 614 Division Street, MS #36, Port Orchard, WA 98366. This should help avoid any problems in the future.

Thank you for your assistance. I look forward to working with you on this matter.

Sincerely,

  
Win Granlund, Chairman  
KITSAP COUNTY BOARD OF COMMISSIONERS

WG:MHG:jcf

614 Division Street • Port Orchard, Washington 98366 • (206) 876-7146  
SCAN 262-7146 • FAX (206) 895-3932  
Toll Free from • Poulsbo, Kingston 779-1095 • Otis 851-4147 • Bainbridge Island 842-2061



## **Appendix 4**

**Trial Exhibits 207, 208, 209, 210, 211:  
Surface Danger Zone maps**

**Weapon Type: SMALL ARMS**  
**Weapon Caliber: 5.56mm:Ball M855 (Clip)**

Map Scale = 1:25,000

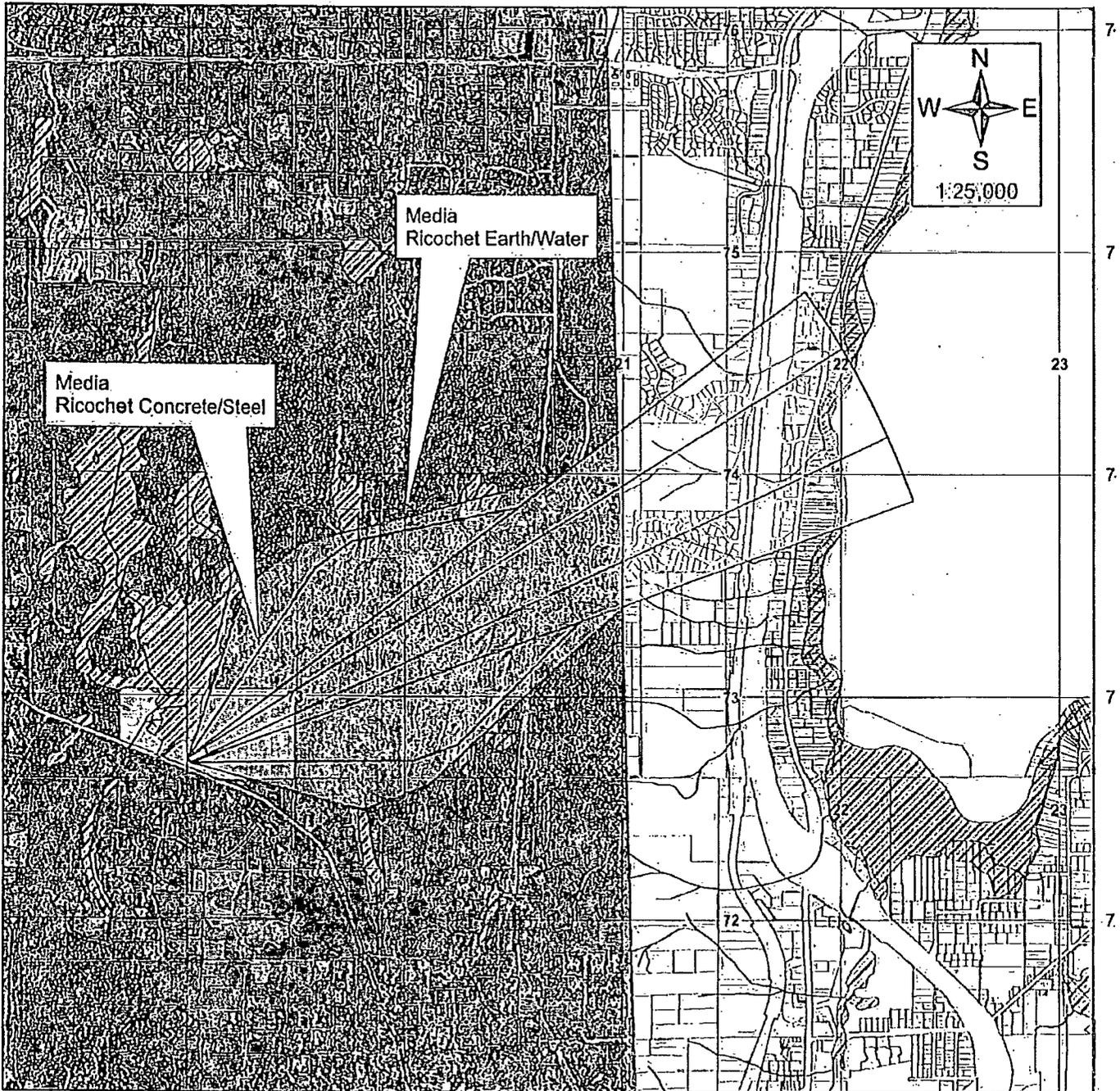
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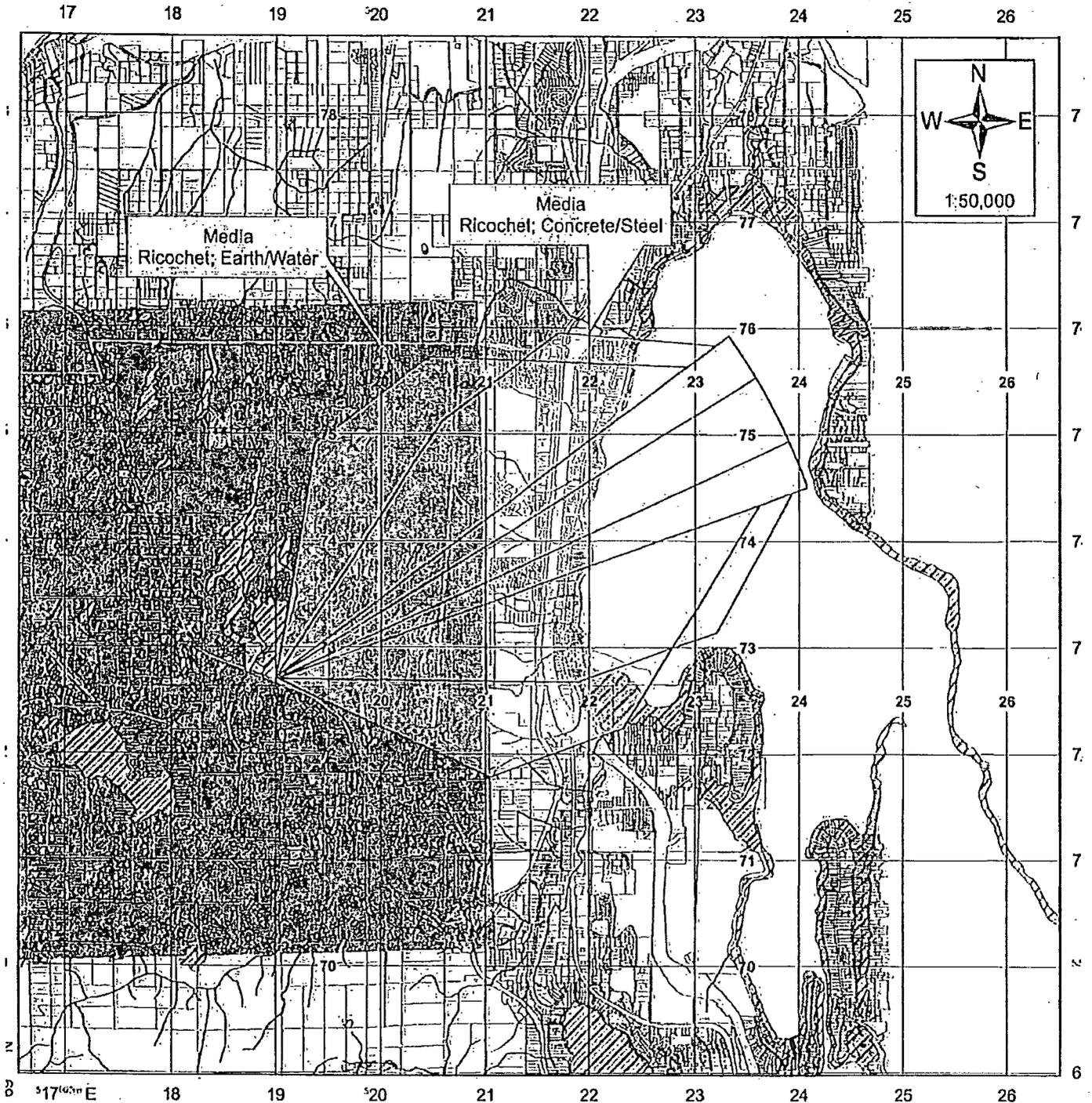
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Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
SDZ Name: Z R1 5.56mm earth water	Firing on the move	Dispersion Angle: 5.0 deg	FP: 10TET1901372700
Installation:	Ground Target	Ricochet Angle: 5.0 deg	FP: 10TET1907872763
Range Name: None	Distance X: 3,437.00 m	Angle A: 30.0 deg	FP: 10TET1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 34.2 deg	TP: 10TET1908472771
Min Target Dist: 5.07 m	Distance Y: 2,029.00 m	Angle Q: 22.4 deg	TP: 10TET1910072739
Max Target Dist: 97.34 m	Distance W: 462.00 m	Vertical Hazard: 325.00 m	TP: 10TET1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET1909872740

**Weapon Type: SMALL ARMS**  
**Weapon Caliber: 7.62mm:Spec Ball M118**

Map Scale = 1:50,000

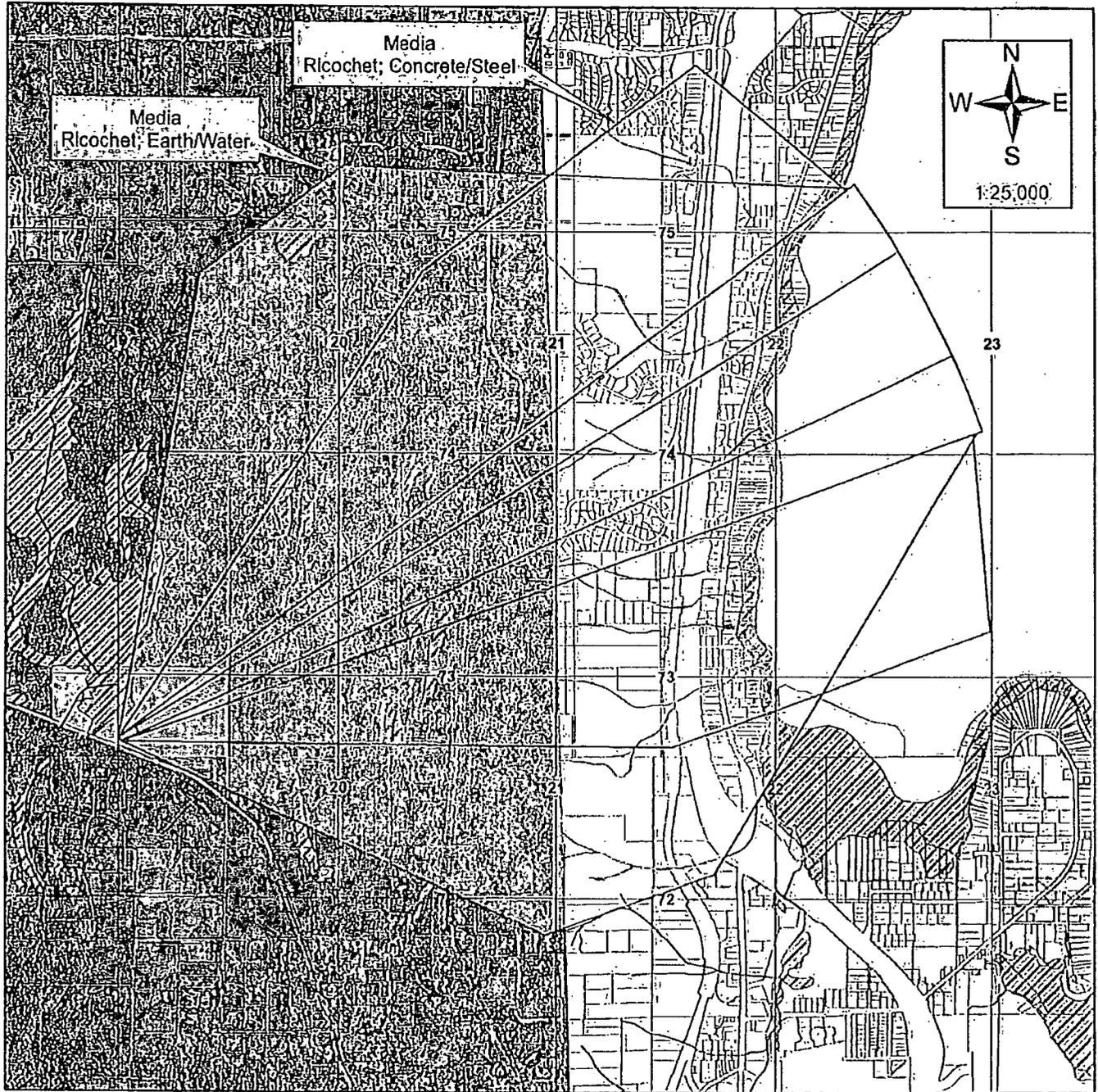


Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
SDZ Name: Z R1 7.62mmSpec earth water	Firing on the move	Dispersion Angle: 5.0 deg	FP: 10TET1901372700
Installation:	Ground Target	Ricochet Angle: 5.0 deg	FP: 10TET1907872763
Range Name: None	Distance X: 5,288.00 m	Angle A: 30.0 deg	FP: 10TET1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 43.8 deg	TP: 10TET1908472771
Min Target Dist: 5.07 m	Distance Y: 4,800.00 m	Angle Q: 38.7 deg	TP: 10TET1910072739
Max Target Dist: 97.34 m	Distance W: 1,545.00 m	Vertical Hazard: 752.00 m	TP: 10TET1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET1909872740

**Weapon Type: SMALL ARMS**  
**Weapon Caliber: 7.62mm:4 Ball/1 Tracer**

Map Scale = 1:25,000

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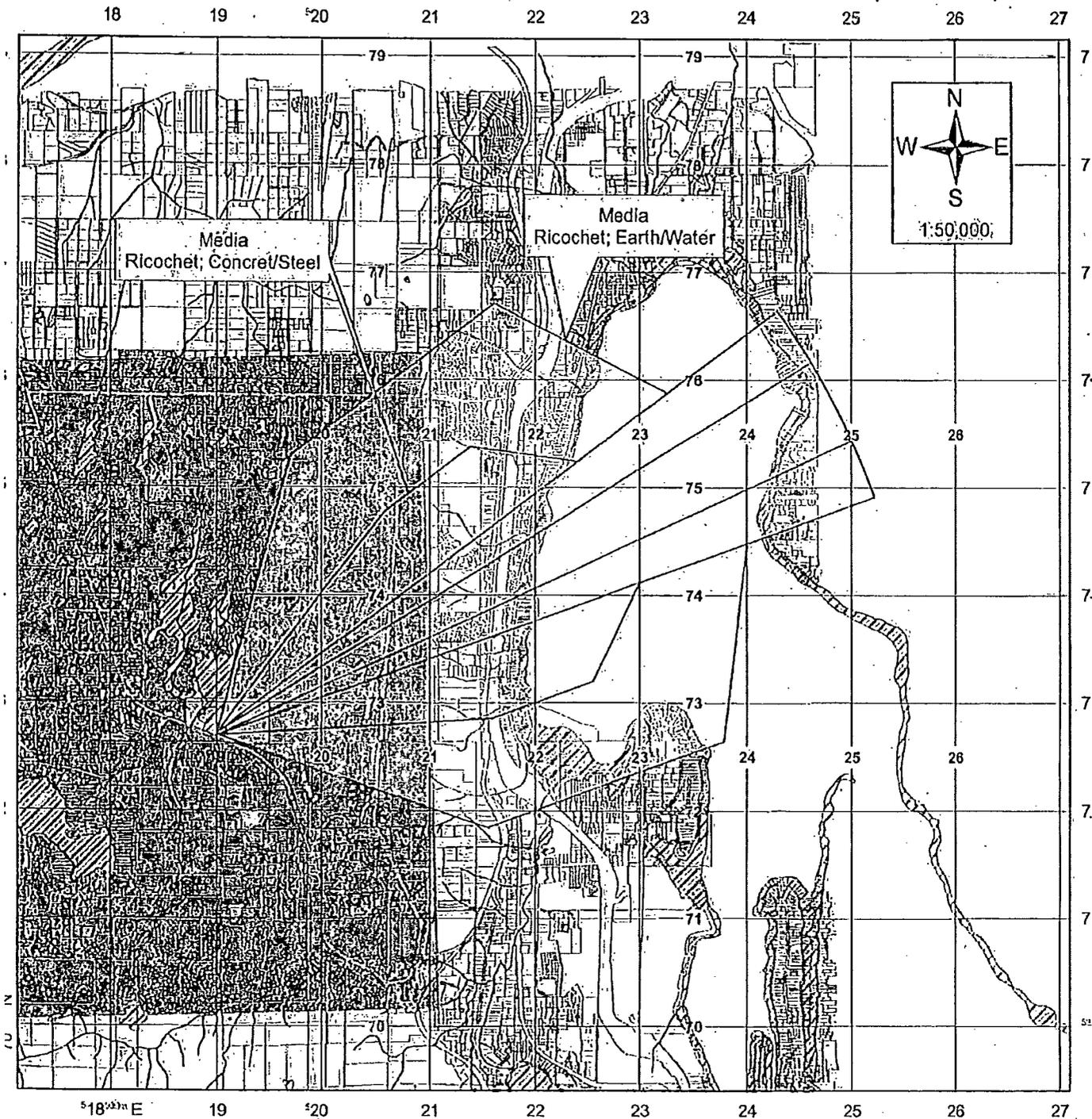


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Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
			Email:
SDZ Name: Z R1 7.62mm earth water	Firing on the move	Dispersion Angle: 5.0 deg	FP: 10TET1901372700
Installation:	Ground Target	Ricochet Angle: 5.0 deg	FP: 10TET1907872763
Range Name: None	Distance X: 4,100.00 m	Angle A: 30.0 deg	FP: 10TET1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 43.5 deg	TP: 10TET1908472771
Min Target Dist: 5.07 m	Distance Y: 4,073.00 m	Angle Q: 38.9 deg	TP: 10TET1910072739
Max Target Dist: 97.34 m	Distance W: 1,461.00 m	Vertical Hazard: 706.00 m	TP: 10TET1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET1909872740

**Weapon Type: SMALL ARMS**  
**Weapon Caliber: .50 Cal:4 Ball/1 Tracer**

Map Scale = 1:50,000



Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
SDZ Name: Z R1, 50cal water_earth	Firing on the move	Dispersion Angle: 5.0 deg	FP: 10TET1901372700
Installation:	Ground Target	Ricochet Angle: 5.0 deg	FP: 10TET1907872763
Range Name: None	Distance X: 6,500.00 m	Angle A: 30.0 deg	FP: 10TET1909272739
Range Officer:	Distance X2: 88.95 m	Angle P: 38.2 deg	TP: 10TET1908472771
Min Target Dist: 5.07 m	Distance Y: 5,211.00 m	Angle Q: 63.3 deg	TP: 10TET1910072739
Max Target Dist: 97.34 m	Distance W: 1,652.00 m	Vertical Hazard: 901.00 m	TP: 10TET1908372770
Direct Fire	Area A: 100.00 m	FP: 10TET1900172720	TP: 10TET1909872740

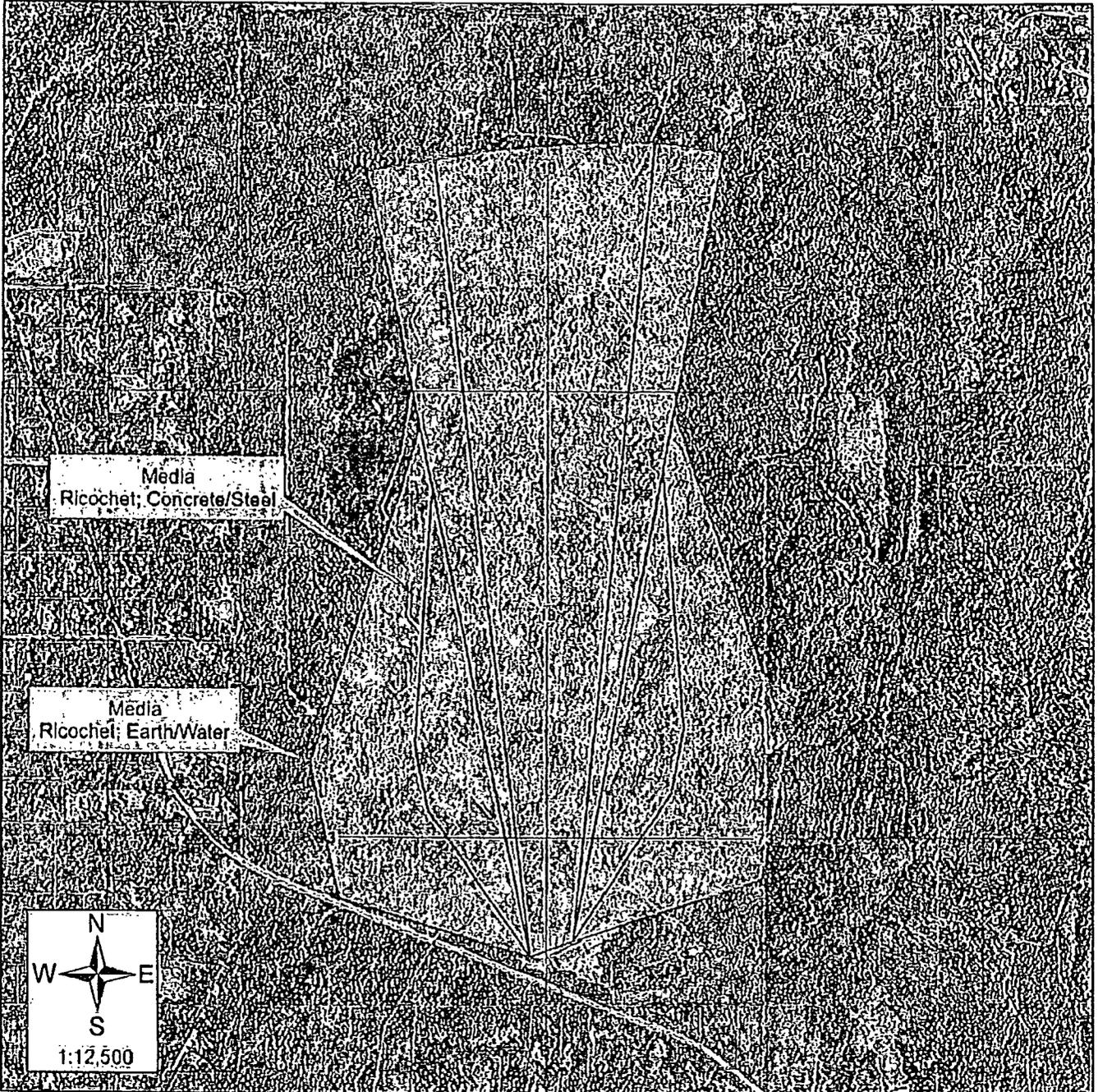
**Weapon Type: SMALL ARMS**  
**Weapon Caliber: 9mm:Ball M882**

Map Scale = 1:12,500

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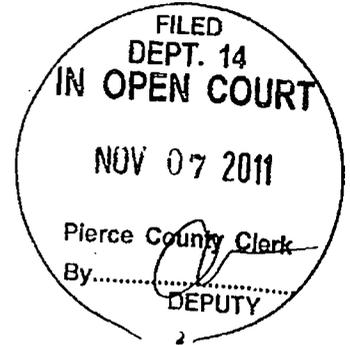
20

Range Manager Signature Authority:	Date:		
Approving Authority:	Date:		
Created By:	Date: 09/10/2010	Unit:	Phone:
			Email:
SDZ Name: Z R2 9mm cement steel	Ground Target	Angle A: 30.0 deg	TP: 10TET1906172782
Installation:	Distance X: 1,800.00 m	Angle P: 61.1 deg	
Range Name: None	Distance Y: 1,211.00 m	Angle Q: 30.4 deg	
Range Officer:	Distance W: 399.00 m	Vertical Hazard: 253.00 m	
Min Target Dist: 14.83 m	Area A: 100.00 m	FP: 10TET1896172732	
Max Target Dist: 23.84 m	Dispersion Angle: 5.0 deg	FP: 10TET1905972767	
Direct Fire	Ricochet Angle: 5.0 deg	TP: 10TET1895872755	

211

## **Appendix 5**

### **Proposed Findings of Fact and Conclusions of Law of Plaintiff Kitsap County (CP 3987-4025)**



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

KITSAP COUNTY,

Plaintiff,

vs

KITSAP RIFLE AND REVOLVER CLUB,

Defendant

Cause No 10-2-12913-3

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
OF PLAINTIFF KITSAP COUNTY

Hon. Susan K. Serko  
Dept. 14

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,

v.

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

Defendants,

and,

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

NO. 10-2-12913-3

[PROPOSED] FINDINGS OF FACT,  
CONCLUSIONS OF LAW, VERDICTS  
AND ORDERS UPON BENCH TRIAL

THIS MATTER having come on regularly for hearing before the undersigned Judge of the  
above-entitled Court pursuant to a Bench Trial on the claims and counterclaims asserted therein  
including Kitsap County's motion for judgment declaring that Defendant Kitsap Rifle and Revolver  
Club has terminated its non-conforming land use status; the parties appearing by and through their

Plaintiff's Proposed Findings of Fact and Conclusions of Law - I

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

1 attorneys of record below-named; and the Court having considered the motions, briefing, declarations  
 2 on file<sup>1</sup>, testimony of witnesses, argument of counsel and the records and files herein, and being fully  
 3 advised in the premises, now, therefore, makes the following findings of fact, conclusions of law and  
 4 orders, which shall remain in effect until further order of this court:  
 5

## 6 I. FINDINGS OF FACT

### 7 A) *Jurisdiction*

- 8 1. All events cited in these Findings took place in unincorporated Kitsap County, Washington,  
 9 except where noted. Port Orchard is the county seat for Kitsap County, and references to  
 10 official action by the Kitsap County Board of County Commissioners ("BOCC") or to  
 11 meetings or BOCC proceedings at the Kitsap County Administration Building refer to events  
 12 at County facilities located in Port Orchard, except where noted to the contrary.  
 13  
 14 2. On October 22, 2010, the Court denied defendant Kitsap Rifle and Revolver Club's motion to  
 15 change venue in this action, finding that the Pierce County Superior Court has jurisdiction  
 16 over the parties and is the proper venue for the action pursuant to RCW 2.08.010 and RCW  
 17 36.01.050. The Court denied the motion without prejudice, and the defendant has not re-filed  
 18 a change of venue motion.  
 19

### 20 B) *Parties*

- 21 3. Plaintiff Kitsap County ("County") is a municipal corporation in and is a political subdivision  
 22 of the State of Washington.  
 23  
 24 4. Defendant Kitsap Rifle and Revolver Club ("KRRC" or "the Club") is a Washington non-  
 25 profit corporation and is the owner of record of the subject property, which is located at 4900  
 26 Seabeck Highway NW, Bremerton, Washington (hereinafter referred to as the "Property")  
 27

28 <sup>1</sup> By agreement of the parties entered on the record on October 26, 2011, the Declaration of Michael Crouch filed in this  
 action is not part of the record to be considered.

1 and more particularly described as:

2 **36251W**

3 **PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST**  
 4 **QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE**  
 5 **SOUTHWEST QUARTER, SECTION 36, TOWNSHIP 25 NORTH,**  
 6 **RANGE 1 WEST, W.M., KITSAP COUNTY, WASHINGTON, LYING**  
 7 **NORTHERLY OF THE NORTH LINES OF AN EASEMENT FOR RIGHT**  
 8 **OF WAY FOR ROAD GRANTED TO KITSAP COUNTY ON DECEMBER**  
 9 **7, 1929, UNDER APPLICATION NO. 1320, SAID ROAD BEING AS**  
 10 **SHOWN ON THE REGULATION PLAT THEREOF ON FILE IN THE**  
 11 **OFFICE OF THE COMMISSIONERS OF PUBLIC LANDS AT OLYMPIA,**  
 12 **WASHINGTON.\*\*\*\*\*IMPROVEMENTS CARRIED UNDER TAX**  
 13 **PARCEL NO. 362501-2-002-1000\*\*\*\*\***

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

16 C) *KRRC*

- 17 6. KRRC was chartered in the year 1926. At trial, the Club presented a charter document that  
 18 included a motto or slogan "for sport and national defense". The Club operated on the federal  
 19 property called Camp Wesley-Harris from its formation until sometime shortly after the end  
 20 of World War II, when it moved to its present location at the subject property. Camp  
 21 Wesley-Harris was used by the United States military as an outdoor shooting range at all  
 22 relevant times up until approximately 2004. The Club presented newspaper articles from the  
 23 1920's, including an article describing the use of Camp Wesley-Harris by United States  
 24 Marine Corps members for an exercise hosted by KRRC in which active duty USMC  
 25 members fired machine guns.
- 26 7. KRRC's first corporate registration was in 1986, when it registered as a non-profit  
 27 corporation with the Washington Secretary of State's office. KRRC has maintained non-  
 28 profit corporate registration to present date.

1       D)    *Zoning*

- 2           8. The subject property is a single 72-acre parcel located in unincorporated Kitsap County and is  
3           zoned "rural wooded" under Kitsap County Code Chapter 17.301. The Property has had this  
4           same essential zoning designation since before the year 1993.  
5  
6           9. On September 7, 1993, then-BOCC Chair Wyn Granlund authored a letter to the four  
7           shooting ranges in unincorporated Kitsap County at the time, stating that the County  
8           recognized each as "grandfathered" (trial exhibit 315).

9        E)    *The Subject Property – Ownership, Leases and DNR Uses*

- 10          10. Until June 18, 2009, the approximately 72-acre subject property was owned by the State of  
11          Washington Department of Natural Resources ("DNR"). DNR owned several contiguous  
12          parcels to the north of the subject property, and managed parts of these contiguous properties  
13          and parts of the subject property for timber harvesting. DNR leased the Property to KRRC  
14          under a series of lease agreements, the two most recent of which are admitted into evidence  
15          (trial exhibits 135 and 136). The lease agreements recite that eight acres of the property are  
16          for use by the Club as a shooting range and that the remaining 64.4 acres are for use as a  
17          "buffer". The lease agreements do not identify the specific boundaries of these respective  
18          areas.  
19  
20          11. Prior to the instant litigation, the eight acres of the property claimed by KRRC to be its  
21          "historic use" area had not been surveyed by a professional surveyor or otherwise specifically  
22          defined.  
23  
24          12. Over the decades of its ownership of the Property and adjacent properties, DNR periodically  
25          conducted timber harvesting and replanting. The most recent DNR timber harvest on the  
26          Property was in approximately 1991, when the eastern portions of the Property were clear-cut  
27  
28

1 and successfully replanted.

2 13. On June 18, 2009, deeds were recorded with the Kitsap County Assessor's Office transferring  
3 the Property first from the State of Washington to Kitsap County and immediately thereafter  
4 from Kitsap County to KRRC. The first deed was a quit claim deed transferring DNR land  
5 including the Property from the State to the County (trial exhibit 146). The second deed was  
6 a bargain and sale deed ("2009 Deed") transferring the Property from the County to KRRC  
7 (trial exhibit 147).

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

14  
15 *F) Property Transfer.*

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

21  
22 16. In early 2009, negotiations with the State reached a stage in which the DNR and the County  
23 began to discuss specific terms of the contemplated transaction. DNR informed the County  
24 that it would be deeding the DNR parcels including the subject property to Kitsap County, so  
25 that the County would take over DNR's position as landlord to KRRC.

26  
27 17. KRRC became aware that the County could become the Club's landlord as a result of the  
28

1 land swap and became concerned that the County might exercise a "highest and best use"  
2 clause in the lease agreements between the Club and DNR, so as to end the Club's use of the  
3 Property for shooting range purposes.

4  
5 18. In March 2009, Club officials met with County officials including Commissioner Josh  
6 Brown, so as to obtain the County's agreement to amend the lease agreement to remove the  
7 highest and best use clause. Soon after, the County and Club began discussing whether the  
8 County should instead deed the property to KRRC. KRRC very much wanted to own the  
9 property on which its shooting range was located and Kitsap County was very disinterested in  
10 owning the Property due to concern over potential heavy metals contamination of the  
11 Property from its use as a shooting range for several decades.

12  
13 19. In April and May 2009, Club officers and club member and attorney Regina Taylor  
14 negotiated with Kitsap County staff members, including Matt Keough of the County Parks  
15 Department and Deputy Prosecuting Attorney Kevin Howell of the County Prosecutor's  
16 Office Civil Division. A bargain and sale deed was drafted by Mr. Howell, and the parties  
17 exchanged revisions of the deed until they agreed upon the deed's final terms.

18  
19 20. At the County's request, certified appraiser Steven Shapiro conducted an appraisal of the  
20 KRRC property, which he published as a "supplemental appraisal report" dated May 5, 2009  
21 (trial exhibit 279). This appraisal report presumed that the Property was lead-contaminated  
22 and that a \$2-3 million cleanup may be required for the property. The appraisal report valued  
23 the Property at \$0, based upon its continued use for shooting range purposes and the potential  
24 costs of cleanup. The appraisal did not split out values to be assigned to the "historic use"  
25 and "buffer" areas of the Property.

26  
27 21. On May 11, 2009, the BOCC voted on and approved the sale of the Property from Kitsap  
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County to the Club, pursuant to the terms of the 2009 Deed. 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.

22. 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:

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

24. 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.

G). *The Bargain and Sale Deed.*

25. During negotiations, the Club sought assurances that it would be able to continue to use the property as a shooting range and the County sought assurances that it would be indemnified for any damages claimed relating to past, present and future uses of the Property. The Club submitted testimony that it believed that it was negotiating for recognition of "grandfathering" of the eight acre "historic use" area of the Property as it existed at the time of the conveyance from the County to KRRC.

26. The 2009 Deed's prefatory language and Paragraphs 1 through 3 provide:

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 burdens of which shall bind the Grantee and the heirs, successors and assigns of the Grantee in perpetuity.

1. Grantee for an on behalf of itself, its heirs, successors and assigns, and each subsequent owner of the property described in Exhibit A hereto, hereby releases and agrees to

1 hold harmless, indemnify and defend Kitsap County, its elected officials, employees and agents  
 2 from and against any liabilities, penalties, fines, charges, costs, losses, damages, expenses,  
 3 causes of actions, claims, demands, orders, judgments, or administrative actions, including,  
 4 without limitation, reasonable attorneys' fees, arising from or in anyway connected with (1)  
 5 injury to or the death of any person or the physical damage to any property, resulting from any  
 6 act, activity, omission, condition or other matter related to or occurring on or about the  
 7 property, regardless of cause, unless due solely to the gross negligence of any of the  
 8 indemnified parties; (2) the violation of alleged violation of, or other failure or alleged failure  
 9 to comply with, any state, federal, or local law, regulation or requirement, including, without  
 10 limitation, Comprehensive Environmental Response, Compensation and Liability Act  
 11 (CERCLA), 42 USC Sec. 9601, et seq. and Model Toxics Control Act (MTCA), RCW 70.105  
 12 D, by any indemnified person or entity in anyway effecting, involving, or relating to the  
 13 property; (3) the presence or release in, on, from, or about the property, at any time, past or  
 14 present, of any substance now or hereafter defined, listed, or otherwise classified pursuant to  
 15 any federal, state or local law regulation, or requirement as hazardous, toxic, polluting or  
 16 otherwise contaminating to the air, water, or soil, or anyway harmful or threatening to human  
 17 health or the environment.

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

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

1 recreational shooting, and self-defense, and firearm owners as well as bow users need safe,  
 2 accessible areas in which to shoot their equipment. Approved shooting ranges provide that  
 3 opportunity, while at the same time, promote public safety. Interest in all shooting sports has  
 4 increased while safe locations to shoot have been lost to the pressures of urban growth.” (Wash.  
 5 Laws 1990 ch. 195 Section 1.)

6 27. The Court admitted evidence of the general liability insurance policies that were issued to  
 7 KRRC during the years 2009, 2010 and 2011 (trial exhibits 198, 199 and 200). The policies  
 8 do not list Kitsap County as a separated insured (except for purposes of the Club’s booth at  
 9 the annual Kitsap County Fair), and the policies contain a standard exemption for  
 10 environmental contamination. For the limited purpose of assessing the Club’s assertion that  
 11 the indemnification agreement and its defense provisions constitute highly valuable  
 12 consideration that ought to be considered in analyzing the Club’s equitable claims, the Court  
 13 finds that the Club has not in fact insured Kitsap County for the costs to defend litigation  
 14 relating to the Property and that the Club has not insured Kitsap County against all claims of  
 15 environmental contamination at the Property.

16 28. In trial, the Club did not identify its assets or revenue streams or otherwise present evidence  
 17 that it could financially support the 2009 Deed’s indemnification provisions in light of the  
 18 limitations or exclusions of its insurance policies.

19  
 20 *H) Site Development at the Property – General Timeline*

21 29. For several decades prior to 1993, the Club operated a rifle range and a pistol range at the  
 22 Property. As of 1993, the pistol range consisted of a south-to-north oriented shooting area  
 23 defined by a shooting shed on its south end and a back stop on the north end and the rifle  
 24 range consisted of a southwest-to-northeast oriented shooting area defined by a shooting shed  
 25 on its southwest end and a series of backstops going out as far as 150 yards to the northeast.  
 26 As of 1993, the developed portions of the Property consisted of the rifle range, the pistol  
 27  
 28

1 range, and cleared areas between these ranges, as seen in a 1994 aerial photograph (trial  
 2 exhibit 8). The Club presented testimony that during and before 1993 its members and users  
 3 participated in shooting activities in wooded or semi-wooded areas of the Property, on the  
 4 periphery of the pistol and rifle ranges and within its claimed eight-acre "historic use" area.  
 5

6 30. As of 1993, shooting occurred at the Property during daylight hours only. Shooting at the  
 7 Property occurred only occasionally, and usually on weekends and during the fall "sight-in"  
 8 season for hunters. For neighbors along the Seabeck Highway

9 31. On July 10, 1996, the Kitsap County Department of Community Development ("DCD")  
 10 received from KRRC a "Pre-Application Conference Request" form, which was admitted as  
 11 trial exhibit 134. Under project name, KRRC listed "Range Development - Phase I" and  
 12 under proposed use, KRRC stated "Due to 50C-1993, KRRC is forced to enhance its  
 13 operations and become more available to the general public. Phase I will include a water and  
 14 septic system(s), a class room/community facility and a 200 meter rifle line. Material will not  
 15 be removed from the premissis (sic); it will be utilized for safety berms and acoustical  
 16 baffeling (sic). These enhancements will allow KRRC to generate a profit to be shared with  
 17 the State School Trust (DNR). Local business will also profit from sportsmen visiting the  
 18 area to attend our rich sporting events."  
 19

20 32. There is no evidence of application by the Club or by DNR or by any agent thereof for any  
 21 county permits or authorizations before or after the Club's 1996 pre-application conference  
 22 request, other than a pre-application meeting request submitted by the Club in 2005  
 23 (discussed below) and a County building permit for construction of an ADA ramp serving the  
 24 rifle line shelter in 2008 or 2009.  
 25

26 33. From approximately 1996 forward, the Club undertook a process of developing portions of its  
 27  
 28

1 claimed "historic eight acres", clearing, grading and sometimes excavating wooded or semi-  
2 wooded areas to create "shooting bays" bounded on at least three sides by earthen berms and  
3 backstops. Aerial photography allowed the Court to see snapshots of the expansion of  
4 shooting areas defined by earthen berms and backstops and verify testimony of the time line  
5 of development: 2001 imagery (trial exhibits 9 and 16A) depicts the range as consisting of  
6 the pistol and rifle ranges, and shooting bays at the locations of present-day Bays 1, 2, 3, 9,  
7 10 and 11. Comparing the 2001 imagery with March 2005 imagery (trial exhibit 10), no new  
8 shooting bays were established during that interval. "Birds Eye" aerial imagery from the MS  
9 Bing website from an unspecified date later in 2005 provided the clearest evidence of the  
10 state of development at the Property (trial exhibits 462, 544, 545, 546, 547), which included  
11 clearing and grading work performed in the eastern portion of the Property after the March  
12 2005 imagery, discussed below under the subject of the proposed 300 meter range. June  
13 2006 and August 2006 imagery (trial exhibits 11 and 12) reveals clearing and grading to  
14 create a new shooting bay at the location of present-day Bay 7 and February 2007 imagery  
15 (trial exhibit 13) reveals clearing and grading work to create new shooting bays at the  
16 locations of present-day Bay 8 and present-day Bay 6, and reveals clearing to the west of  
17 Bays 7 and 8 to accommodate a storage unit or trailer at that location. February 2007  
18 imagery also reveals that the Club extended a berm along the north side of the rifle range and  
19 extended the length of the rifle range by clearing, grading and excavating into the hillside to  
20 the northeast of that range. April 2009 imagery (trial exhibit 14) reveals establishment of a  
21 new shooting bay, Bay 4, and enlargement of Bay 7. May 2010 imagery (trial exhibit 15)  
22 reveals establishment of a new shooting bay, Bay 5, enlargement of Bay 6, and additional  
23 clearing to the west of Bays 8 and 7 up to the edge of a seasonal pond (the easternmost of two  
24  
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1 ponds delineated as wetlands on club property, discussed below).

2 34. Bay 6, Bay 7 and the northeast end of the rifle range are each cut into hillsides, creating "cut  
3 slopes" each in excess of five feet in height and a slope ratio of three to one. The excavation  
4 work performed to create Bay 6 and Bay 7 and to extend the rifle range to the northeast  
5 required excavation significantly in excess of 150 cubic yards of material at each location.  
6 The excavation work into the hillside for Bay 7 took place in phases between after 2005 and  
7 before April 2009. The excavation work into the hillside for Bay 6 took place in phases  
8 between August 2006 and May 2010, and the excavation work at Bay 6 between April 2009  
9 and May 2010 required excavation in excess of 150 cubic yards of material. The excavation  
10 work into the hillside at the northeast end of the rifle range took place between August 2006  
11 and February 2007.  
12

13  
14 35. One of the earthen berms constructed after February 2007 is a continuous berm that separates  
15 Bay 4 and Bay 5 and other developed areas on the Property from the Property's undeveloped  
16 areas to the north and west. Starting at the northeast corner of Bay 3, this berm runs to the  
17 east to define the northern edge of Bay 4, then turns northeast and curves around a cleared  
18 area used for storage around the Property's well house, and then turns north to form the  
19 western and northern edges of Bay 5. This berm was constructed in phases after February  
20 2007, and the part of this berm forming the western and northern edges of Bay 5 was  
21 constructed between April 2009 and May 2010. This latter phase of the berm's construction  
22 between April 2009 and May 2010 required movement of more than 150 cubic yards of  
23 material. This berm also is more than five feet in height and has a slope ratio of greater than  
24 three to one.  
25  
26

27 36. For each hillside into which there was excavation and creation of cut slopes at the Property,  
28

1 there were no applications for County permits or authorizations, and no erosion or slope  
2 maintenance plans were submitted to or reviewed by the County. For each location on the  
3 Property where clearing, grading, and/or excavation occurred, there were no applications  
4 made for County permits such as grading permits or site development activity permits.  
5

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

9 38 There is no fence around the active shooting areas of the Property to keep out or discourage  
10 unauthorized range users.

11  
12 *D) Site Development at the Property – 300 meter range*

13 39. In approximately 2003, KRRC began the process of applying to the State of Washington  
14 Interagency Committee for Outdoor Recreation (“IAC”) for a grant to be used for improving  
15 the range facilities. KRRC identified the project as a “range reorientation” project to build a  
16 rifle range that did not have its “back” to the Seabeck Highway.  
17

18 40. In March of 2005, DCD received complaints that KRRC was conducting large scale  
19 earthwork activities and that the noise from shooting activities from the range had  
20 substantially increased. The area in which earth-moving activities took place is a large  
21 rectangular area in the eastern portion of the Property, with a north-south orientation. This  
22 area would become known as the proposed “300 meter range”, and it is clearly visible in each  
23 aerial image post-dating March 2005. In March of 2005, DCD staff visited the 300 meter  
24 range area and observed “brushing” or vegetation clearing that appeared to be exploratory in  
25 nature.  
26

27 41. In April of 2005, DCD staff visited the 300 meter range and discovered recent earthwork  
28

1 including grading, trenching, surface water diversion, and vegetation removal including  
2 logging of trees that had been replanted after DNR's 1991 timber harvest. The entire area of  
3 the cleared 300 meter range was at least 2.85 acres and the volume of excavated and graded  
4 soil was greater than 150 cubic yards.  
5

6 42. DCD staff issued an oral "stop work" directive to the Club, with which the Club complied.

7 DCD recommended to the Club that it request a pre-application meeting to discuss various  
8 permits and authorizations that would be required in order to proceed with the project.

9 43. KRRC submitted a "pre-application meeting request" to DCD on May 12, 2005 along with a  
10 cover letter from the Club president and conceptual drawings of the proposed project (trial  
11 exhibits 138 and 272). The letter stated that the range re-alignment project was "not an  
12 expansion of the current facilities."  
13

14 44. On June 21, 2005, KRRC officers met with DCD staff, including DCD representing  
15 disciplines of code enforcement, land use and planning, site development and critical areas.  
16 County staff informed KRRC that the Club needed to apply for a Conditional Use Permit  
17 ("CUP") per Kitsap County Code Title 17 because the site work in the 300 meter range area  
18 constituted a change in or expansion of the Club's land uses of the property. County staff  
19 also informed the Club that it would need to apply for other permits for its work, including a  
20 site development activity permit per Kitsap County Code Title 12. County staff identified  
21 several areas of concern, which were memorialized in a follow-up letter from the County to  
22 the Club dated August 18, 2005 (trial exhibit 140).  
23

24  
25 45. Later in 2005 and in the first half of 2006, the Club asked the County to reconsider its stance  
26 that the Club was required to apply for a CUP in order to continue operating a shooting range  
27 on the Property. The County did not change its position. Nor did the County issue a notice  
28

- 1 of code violation or a notice informing the Club that it had made an administrative  
2 determination pursuant to the County's nonconforming use ordinance, KCC Chapter 17.460.  
3 46. In the summer of 2006, KRRC abandoned its plans to develop the 300 meter range and re-  
4 directed its efforts and the grant money toward improvements of infrastructure in its existing  
5 range.  
6  
7 47. DCD staff persons visited the Property on at least three occasions during 2005, and on at least  
8 one occasion walked through the developed shooting areas enroute to and from the 300 meter  
9 range area.  
10  
11 48. In approximately 2007, the Club replanted the 300 meter range with several hundred Douglas  
12 fir trees, and believed that by so doing it was satisfying the requirements of the landowner,  
13 DNR. The Club did not develop any formal plan for the replanting and care of new trees. All  
14 of the new trees died, and today the 300 meter range continues to be devoid of any trees.  
15  
16 49. The 300 meter range has been and continues to be used for storage of target stands, barrels,  
17 props and building materials, as confirmed by photographs taken during the County's January  
18 2011 discovery site visits to the Property and by the Club Executive Officer's testimony.  
19  
20 50. KRRC asserts the position that by abandoning its plans to develop the 300 meter range, it has  
21 retreated to its eight acre area of claimed "historic use" and has not established a new use that  
22 would potentially terminate the Club's claimed nonconforming use status.  
23  
24 51. KRRC has not applied for a conditional use permit for its use of the property as a shooting  
25 range or private recreational facility, and has not applied for a site development activity  
26 permit for the 300 meter range work or for any of the earth-disturbing work conducted on the  
27 Property.

28 J) *Site Development at the Property – Tightlining watercourse across the range*

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

9  
10  
11 53. Prior to the late summer of 2006, water discharged from the 42-inch culvert followed a  
12 channel leading away from the Seabeck Highway and into a stand of trees south of the rifle  
13 range. The channel reached the edge of a cleared area to the south of the rifle range and the  
14 drainage continued across the rifle range in a northerly direction, primarily in the open in low  
15 areas (or depressions) and through between three and five culverts of not greater than 20 feet  
16 in length. There was conflicting testimony about what the drainage did as it approached the  
17 wetland areas to the north of the rifle range – the Club's wetland expert Jeremy Downs  
18 opined that the water was absorbed into the gravelly soil present between the rifle range and  
19 the wetland areas to the north while the County's wetland expert Bill Shiels opined that the  
20 water would be of sufficient quantity during times of peak rain fall that it would have to  
21 travel in a channel or channels as it neared the wetlands.

22  
23  
24 54. In the late summer and early fall of 2006, the Club replaced this water course with a pair of  
25 475-foot long 24-inch diameter culverts. These culverts crossed the entire developed area of  
26 the range, from their inlets in the stand of trees by the Seabeck Highway to their outlets north  
27 of the developed areas of the range. To achieve this result, the Club used heavy earth-moving  
28

1 equipment to remove existing culverts and to excavate a trench the entire length of the new  
2 culverts, installed the culverts, covered up the trench with fill, then brought in additional fill  
3 from elsewhere on the Property to raise the level of the formerly depressed areas in the rifle  
4 range. Excavation and re-grading for this project required movement of far more than 150  
5 cubic yards of soil.  
6

7 55. After the Club "undergrounded" the water course into the 475-foot long culverts but prior to  
8 February 2007, the Club extended the earthen berm along the north side of its rifle range and  
9 over the top of the newly-buried culverts, nearly doubling the berm's length. Extending this  
10 berm involved excavating and re-grading soil far in excess of 150 cubic yards.  
11

12 56. KRRC has never applied to the County for review or approval of the cross-range culvert  
13 project, or the berm construction that followed. KRRC has never developed engineering  
14 plans for this project or undertaken a study to determine whether the new culverts have  
15 capacity to handle the water from the 42-inch culvert or to determine whether the outlet of the  
16 culverts is properly engineered to minimize impacts caused by the direct introduction of the  
17 culvert's storm and surface water into a wetland system. KRRC offered evidence that during  
18 July 2011 it consulted with agents of the state Department of Ecology (DOE), the Army  
19 Corps of Engineers, the state Department of Fish and Wildlife and the Suquamish Tribe with  
20 regard to its activities proximate to wetlands, but the record contains no evidence that any of  
21 these agencies evaluated subjects within the County's jurisdiction such as critical areas  
22 including wetland buffers, or assessed the capacity of the cross-range culverts.  
23  
24

25 57. Prior to the discovery site visits by County staff and agents in January 2011, the County was  
26 unaware of the cross-range culverts.  
27

28 K) *Wetland Study, Delineations and Protected Buffers*

1 58. In preparation for trial, the parties each commissioned preliminary delineations of suspected  
2 wetland and stream features on the Property. Wetland delineations are ordinarily conducted  
3 prior to site development activities which may affect a suspected wetland, and are ordinarily  
4 submitted to the regulating authorities (e.g. counties and DOE) for review and comment. In  
5 this instance, there was no application for a permit or authorization and the County was in the  
6 unusual position of obtaining its own delineation.  
7

8 59. The County's wetland consulting firm, Talasaea Consulting, and the Club's consulting firm,  
9 Soundview Consultants, each studied wetlands to the north and west of developed areas of  
10 the Property, as well as the drainage crossing the range originating from the 42-inch culvert,  
11 and suspected wetlands in the 300 meter range. For purposes of these findings, the Court  
12 adopts the County's suggestion to limit its findings to areas of the Property about which there  
13 are undisputedly wetlands. The Court makes no finding as to whether the County has proven  
14 that wetlands currently exist in the 300 meter range area and makes no finding as to whether  
15 the County has proven that the water course from the 42-inch culvert ever followed a channel  
16 which is capable of hosting salmonid species, prior to entering the Property's wetlands.  
17 Therefore, the Court confines its remaining analysis of the Property's wetlands and streams  
18 and their associated habitats and buffers, to the wetlands to the north and west of the  
19 developed portions of the range ("wetlands").  
20

21 60. The Property's wetlands are connected to and part of a larger wetland system in the DNR  
22 parcels to the north of the Property. Ecologically, this wetland system is of high value  
23 because it is part of the headwaters of the Wildcat Creek / Chico Creek watershed, which  
24 supports migrating salmon species. The wetlands on the Property are directly connected to a  
25 tributary of Wildcat Creek, and are waters of the State of Washington, both as a finding of  
26  
27  
28

1 fact and a conclusion of law.

2 61. The Court heard testimony of and has received the reports and maps by the parties' respective  
3 wetland expert witnesses. The County's expert, Bill Shiels of Talasaea Consultants,  
4 determined that the Property's wetlands constitute a single wetland denoted as Wetland A,  
5 and concluded that this wetland is a "category I" wetland, for which the Kitsap County Code  
6 provides a 200-foot buffer area. The Club's expert, Jeremy Downs of Soundview Consulting,  
7 determined that the wetlands on the Property constitute two separate wetlands denoted as  
8 Wetlands A and B, and concluded that each wetland is a "category II" wetland, for which the  
9 Kitsap County Code provides a 100-foot buffer area. Both experts have determined that an  
10 additional 50 feet should be added to the buffer to reflect high intensity of adjacent uses, i.e  
11 the KRRC shooting ranges. Therefore, the County's expert and the Club's expert have  
12 concluded that 250-foot and 150-foot buffers apply to the Property's wetlands, respectively.  
13 For purposes of these findings of fact, the Court will accept the Soundview conclusions that  
14 there are two protected wetlands on the Property (A and B) and that a 150-foot buffer applies  
15 to those wetlands. For purposes of these findings, Court will further accept Soundview's  
16 delineation and mapping of the wetlands B which is nearest the active shooting portions of  
17 the Property.

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

21 63. The cross-range culverts now discharge storm water and surface water directly into Wetland  
22 B, replacing the former system which ordinarily absorbed storm water and surface water into  
23 the soil and more gradually released it into the wetlands on the Property.  
24  
25  
26  
27  
28

1 64. To construct the berm that starts at the northeastern corner of Bay 3 and travels east along the  
 2 edge of Bay 4, then travels northeast along the storage / well house area, and then travels  
 3 north along the edge of Bay 5, the Club placed fill in the wetland buffer within 150 feet of  
 4 Wetland B. This project also involved excavation and grading in excess of 150 cubic yards  
 5 of material.  
 6

7 65. At least five locations at the property have slopes higher than five feet in height with a slope  
 8 ratio of greater than three to one: (1) a cut slope at the end of the rifle range; (2) berms at  
 9 Bays 4 and 5 and the berm between these bays; (3) Cut slope at Bay 6; (4) Cut slope at Bay 7;  
 10 and (5) the extension of the rifle range berm. Each of these earth-moving projects took place  
 11 after 2005, and the Club did not apply for permits or authorizations from Kitsap County.  
 12

13 66. Prior to this litigation, KRRC had never obtained a wetland delineation for the Property or  
 14 otherwise determined potential wetland impacts for any site development projects proposed  
 15 for the Property.  
 16

17 *L) Range Safety*

18 67. The parties presented several experts who opined on issues of range safety. The Property is a  
 19 "blue sky" range, with no overhead baffles to stop the flight of accidentally or negligently  
 20 discharged bullets. The Court accepts as persuasive the SDZ diagrams developed by Gary  
 21 Koon in conjunction with the Joint Base Lewis-McChord range safety staff, as representative  
 22 of firearms used at the range and vulnerabilities of the neighboring residential properties.  
 23 The Court has considered the allegations of bullet impacts to nearby , some of which could be  
 24 forensically investigated, and several of which are within five degrees of the center line of the  
 25 KRRC Rifle Line. The Court has considered the expert opinions of Roy Ruel, Gary Koon,  
 26 and Kathy Geil and finds that – collectively – these experts have presented evidence to  
 27  
 28

1 support the finding that more likely than not, bullets have escaped from the Property's  
 2 shooting areas and that more likely than not, bullets will escape the Property's shooting areas  
 3 and strike persons or property in the future.

4  
 5 M) The Court finds that KRRC's range facilities are inadequate to contain bullets to the Property,  
 6 notwithstanding safety protocols and enforcement.

7 N) Action or Practical shooting.

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

11  
 12 O) *Commercial and Military Uses of the Property*

13 69. KRRC and the military shared use of the adjacent federal Camp Wesley-Harris property's  
 14 shooting range facilities until some time shortly after World War II.

15 70. The trial record is bare of evidence of official military use at the Property from the time  
 16 KRRC moved to the Property until the 1990's. During the early 1990's, U.S. Naval  
 17 personnel are said to have conducted firearm qualification exercises at the Property on at least  
 18 one occasion.

19  
 20 71. Sharon Carter is the owner of a sole proprietorship established as a business in Washington in  
 21 the late 1980's. In approximately 2002, this sole proprietorship registered a new trade name,  
 22 the "National Firearms Institute" ("NFI") and registered the NFI at the Property's address of  
 23 4900 Seabeck Highway NW., Bremerton, WA. Since 2002, the NFI has provided a variety of  
 24 firearms and self-defense courses, mostly taught at the Property by Ms. Carter's husband,  
 25 Marcus Carter. The NFI keeps its own books and has its own checking account, apart from  
 26 the Club. Mr. Carter is also the long-time Executive Officer of KRRC, and NFI's other  
 27  
 28

1 primary instructor is Travis Foreman, who is KRRC's Vice-President and the Carters' son-in-  
2 law.

3 72. In approximately 2003, a for-profit business called Surgical Shooters, Inc. ("SSI"), began  
4 conducting official small arms training exercises at the Property's pistol range for active duty  
5 members of the United States Navy, primarily service members affiliated with the submarines  
6 based at the Bangor submarine base. For approximately one year, SSI conducted this training  
7 at the Property on a regular basis. SSI held a contract with the Navy to provide this training,  
8 and SSI had an oral arrangement with NFI. On a per-day basis, SSI paid NFI a fee for the use  
9 of the Property, one-half of which would then be remitted to the Club itself. NFI coordinated  
10 the SSI visits to the Property and made sure that a KRRC Range Safety Officer was present  
11 during each SSI training session at the Property.  
12

13  
14 73. In approximately 2004, SSI ceased providing training at the Property and was replaced by a  
15 different business, Firearms Academy of Hawaii, Inc. ("FAH"). From approximately 2004  
16 until Spring 2010, FAH regularly provided small arms training at the Property to active duty  
17 U.S. Navy personnel, under an oral arrangement with NFI. Again, on a per-day basis, FAH  
18 paid NFI a fee for the use of the Property, one-half of which would then be remitted to the  
19 Club itself. NFI coordinated the FAH visits to the Property and made sure that a KRRC  
20 Range Safety Officer was present during each FAH training session at the Property. FAH  
21 training at the Property consisted of small weapons training of approximately 20 service  
22 members at a time. Each FAH training course took place over three consecutive weekdays at  
23 the Property's pistol range, as often as three weeks per month. At the conclusion of this  
24 arrangement, FAH paid \$500 to NFI for each day of KRRC range use, half of which the NFI  
25 remitted to the KRRC.  
26  
27  
28

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

4 75. Prior to the SSI and FAH training, there is no evidence of for-profit firearm training at the  
 5 Property, and these businesses did not apply for approvals or permits with Kitsap County to  
 6 authorize their commercial use of the Property.  
 7

8 76. In November 2009, U.S. Navy active duty personnel were present on the property on at least  
 9 one occasion for firearms exercises not sponsored or hosted by the FAH. On one such  
 10 occasion, a military "Humvee" vehicle was parked in the rifle range next to the rifle range's  
 11 shelter. A fully automatic, belt-fed rifle (machine gun) was mounted on top of this Humvee,  
 12 and the machine gun was fired in small bursts, down range.  
 13

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

15 *P) Noise Generated from the Property and Hours of Operation*  
 16

17 78. The Club allows shooting between 7 a.m. and 10 p.m., seven days a week. Shooting sounds  
 18 from the Property are commonly heard as early as 7 a.m. and as late as 10 p.m. In the early  
 19 1990's, shooting sounds from the range were typically audible for short times on weekends,  
 20 or early in the morning during hunter-sight-in season (September). Hours of active shooting  
 21 were considerably fewer.  
 22

23 79. Shooting sounds from the Property have changed from occasional and background in nature,  
 24 to clearly audible in the down range neighborhoods, and frequently loud, disruptive,  
 25 pervasive, and long in duration. Rapid fire shooting sounds from the Property have become  
 26 common, and the rapid-firing often goes on for hours at a time.  
 27

28 80. Use of fully automatic weapons now occurs with some regularity.

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

3 82. The testimony of County witnesses who are current or former neighbors and down range  
4 residents is representative of the experience of a significant number of home owners within  
5 two miles of the Property. The noise conditions described by these witnesses interfere with  
6 the comfort and repose of residents and their use and enjoyment of their real properties. The  
7 interference is common, at unacceptable hours, is disruptive of activities indoors and  
8 outdoors. Use of fully automatic weapons, and constant firing of semi-automatic weapons  
9 led several witnesses to describe their everyday lives as being exposed to the "sounds of war"  
10 and the Court accepts this description as persuasive.  
11

12  
13 *Q) Explosives and Exploding Targets*

14 83. The Club allows use of exploding targets, including Tannerite targets, as well as cannons,  
15 which cause loud "booming" sounds in residential neighborhoods within two miles of the  
16 Property, and cause houses to shake.  
17

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

19 *R) Amendment of Kitsap County Code Chapter 17.460*

20 85. On May 23, 2011, the Kitsap County Board of County Commissioners adopted ordinance  
21 470-2011 in a regularly scheduled meeting of this Board, amending the Kitsap County  
22 Zoning Ordinance's treatment of nonconforming land uses at Chapter 17.460.  
23

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

26 87. There is no evidence in the record supporting the contention that this amendment was  
27 developed to target KRRC or any of the County's gun ranges..  
28

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

2 **II. CONCLUSIONS OF LAW**

- 3 A) This Court has subject matter jurisdiction over the real property, the named Defendant, and
- 4 the Parties' claims and counterclaims in this action, and venue is proper.
- 5
- 6 B) The Kitsap County Department of Community Development is the agency charged with
- 7 regulating land use, zoning, building and site development in unincorporated Kitsap County
- 8 and enforcing the Kitsap County Code.
- 9
- 10 C) The nuisance conditions of ongoing noise caused by shooting activities and use of explosives
- 11 at the Property and the Property's ongoing operation without adequate physical facilities to
- 12 confine bullets to the Property each constitute a public nuisance.
- 13
- 14 D) Defendant Kitsap Rifle and Revolver Club is the owner and occupant of the real property,
- 15 and these orders shall also bind successor owners or occupants of the Property, if any.
- 16
- 17 E) Defendant has engaged in and continues to engage in creating and/or maintaining a public
- 18 nuisance by the activities described herein. The activities are described by statute and code to
- 19 be public nuisances. These acts constitute public nuisances as defined by both RCW
- 20 7.48.120 and KCC 17.530.030 and 17.110.515. The activities described further above annoy,
- 21 injure, and/or endanger the safety, health, comfort, or repose of others. Furthermore, Kitsap
- 22 County Code authorizes this action "for a mandatory injunction to abate the nuisance in
- 23 accordance with the law" for any use, building or structure in violation of Kitsap County
- 24 Code Title 17 (land use). KCC 17.530.030. Furthermore, Kitsap County Code provides that
- 25 "in all zones . . . no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare,
- 26 toxic gas or radiation which is materially deleterious to surrounding people, properties or
- 27 uses." KCC 17.455.110.
- 28

- 1 F) No lapse of time can legalize a public nuisance. RCW 7.48.190.
- 2 G) The continued existence of public nuisance conditions on the subject Property has caused and  
3 continues to cause the County and the public actual and substantial harm.
- 4 H) Kitsap County has clear legal and equitable authority to protect the health, safety, and welfare  
5 of the public against public nuisances.
- 6
- 7 I) Article XI, Section 11 of the Washington State Constitution authorizes counties to make and  
8 enforce "local police, sanitary and other regulations."
- 9 J) State Statute authorizes Kitsap County to declare and abate nuisances in RCW 36.32 120(10):  
10
- 11 The legislative authorities of the several counties shall: ....(10) Have power to  
12 declare by ordinance what shall be deemed a nuisance within the county,  
13 including but not limited to "litter" and "potentially dangerous litter" as defined  
14 in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of  
15 the parties creating, causing, or committing the nuisance; and to levy a special  
16 assessment on the land or premises on which the nuisance is situated to defray  
17 the cost, or to reimburse the county for the cost of abating it. This assessment  
18 shall constitute a lien against the property which shall be of equal rank with  
19 state, county, and municipal taxes.
- 20 K) The state statutes dealing with nuisances are found generally at Chapter 7.48 RCW.  
21 Injunctive relief is authorized by RCW 7.48.020. RCW 7.48.200 provides that "the remedies  
22 against a public nuisance are: Indictment or information, a civil action, or abatement." RCW  
23 7.48.220 provides "a public nuisance may be abated by any public body or officer authorized  
24 thereto by law." RCW 7.48.250; 260 and 280 provide for a warrant of abatement and allow  
25 for judgment for abatement costs at the expense of the Defendant.
- 26 L) Kitsap County has no plain, adequate, or speedy remedy at law to cure this nuisance, and the  
27 neighbors and public-at-large will suffer substantial and irreparable harm unless the nuisance  
28 conditions are abated and all necessary permits are obtained in order for the Defendant's  
shooting operations to continue or to resume after imposition of an injunction.

- 1 M) The Property and the activities described on the Property herein constitute a public nuisance  
 2 per se, because the Defendant engaged in new or changed uses, none of which are authorized  
 3 pursuant to Kitsap County Code Chapter 17.381 or authorized without issuance of a  
 4 conditional use permit.  
 5
- 6 N) The Property and the above-described activities on the Property constitute a statutory public  
 7 nuisance. The Property has become and remains a place violating the comfort, repose, health  
 8 and safety of the entire community or neighborhood, contrary to RCW 7.48.010, 7.48.120,  
 9 7.48.130, and 7.48.140 (1) and (2), and, therefore, is a statutory public nuisance. Defendant  
 10 has engaged in and continue to engage in public nuisance violations by the activities  
 11 described herein. The activities are described by statute and code to be public nuisances as  
 12 defined by both RCW 7.48.120 The activities described above annoy, injure, and/or  
 13 endanger the safety, health, comfort, or repose of others.  
 14
- 15 O) The failure of the Defendant to place reasonable restrictions on the hours of operation, caliber  
 16 of weapons allowed to be used, the use of exploding targets and cannons, the hours and  
 17 frequency with which "practical shooting" practices and competitions are held and the use of  
 18 automatic weapons, as well as the failure of the Defendant to develop its range with  
 19 engineering and physical features to prevent escape of bullets from the Property's shooting  
 20 areas despite the Property's proximity to numerous residential properties and civilian  
 21 populations and the ongoing risk of bullets escaping the Property to injury persons and  
 22 property, is each an unlawful and abatable common law nuisance.  
 23
- 24 P) To invoke the Uniform Declaratory Judgments Act, chapter 7.24 RCW, a plaintiff must establish: "(1)  
 25 ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a  
 26 possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having  
 27  
 28

1 genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather  
 2 than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final  
 3 and conclusive. *Coppernoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005); citing *To-Ro Trade*  
 4 *Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001), and *Diversified Indus. Dev. Corp v*  
 5 *Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

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

10 R) The subject property is zoned "rural wooded", established in KCC Chapter 17.301. KCC  
 11 17.301.010 provides in part that this zoning designation is intended to encourage the  
 12 preservation of forest uses, retain an area's rural character and conserve the natural resources  
 13 while providing for some rural residential use, and to discourage activities and facilities that  
 14 can be considered detrimental to the maintenance of timber production. With this stated  
 15 purpose, the zoning tables are applied to determine if any uses made of the property are  
 16 allowed.

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

24 1. Commercial / Business Uses – With exceptions not relevant here, all commercial uses are  
 25  
 26  
 27  
 28

1 prohibited in rural wooded zone. None of the activities occurring at the subject property  
 2 appear to be listed as commercial/business uses identified in the table. The Court concludes  
 3 that the Property has been used for commercial and/or business uses for-profit entities  
 4 including the National Firearms Institute, Surgical Shooters Inc. and the Firearms Academy  
 5 of Hawaii, starting in approximately 2002. Furthermore, "training" generally or "tactical  
 6 weapons training" specifically are uses not listed in the zoning table for the rural wooded  
 7 zone.  
 8

- 9 2. Recreational / Cultural Uses – the Club is best described as a private recreational facility,  
 10 which is a use listed in this section of KCC 17.381.040 (Table E) for rural wooded. KCC  
 11 17.110.647 defines "recreational facility" as "a place designed and equipped for the conduct  
 12 of sports and leisure-time activities. Examples include athletic fields, batting cages,  
 13 amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks  
 14 and similar uses. Public recreational facilities are those owned by a government entity." No  
 15 other uses identified in the recreational/cultural uses section of the rural wooded zoning table  
 16 are be comparable. The Court concludes that a private recreational facility does not include  
 17 uses by a shooting range to host official training of law enforcement officers or military  
 18 personnel, and that these uses are new or changed uses of the Property. The Court concludes  
 19 that a private recreational facility use does not encompass the use of automatic weapons, use  
 20 of rifles of calibers greater than common hunting rifles, or of professional level competitions.  
 21  
 22  
 23 3. Industrial Uses – the zoning table for the rural wooded zone prohibits "Manufacturing and  
 24 fabrication, hazardous, which the Court finds to have occurred at the Property when the Club  
 25 has allowed use of exploding targets. Per KCC 17.110.473, "Manufacturing and fabrication"  
 26 means "transformation of materials or substances into new products, including construction  
 27  
 28

1 and assembling of component parts, and the blending of materials such as lubricating oils,  
 2 plastics, resins . . ." and "Hazardous manufacturing and fabrication uses are those engaged in  
 3 the manufacture or fabrication of materials that are flammable, explosive, or present hazards  
 4 to the public health, safety, and welfare, including all substances and materials defined as  
 5 hazardous materials, hazardous substances, or hazardous waste." (Part D). Use of explosives  
 6 on the Property (e.g. tannerite), which require mixing of constituent parts immediately before  
 7 use, constitutes hazardous manufacturing or fabrication.  
 8

- 9 T) The Court finds that the land uses identified here, other than use as a private recreational  
 10 facility, are expansions of or changes to the nonconforming use at the Property as a shooting  
 11 range under KCC Chapter 17.460 and Washington's common law regarding nonconforming  
 12 land use. By operation of law, the nonconforming use of the Property is terminated.  
 13
- 14 U) The Club's unpermitted site development activities at the 300 meter range (2005) constituted  
 15 an expansion of its use of the property in violation of KCC 17.455.060 because the use of the  
 16 Property as a private recreational facility in the rural wooded zone requires a conditional-use  
 17 permit per KCC Chapter 17.381. Furthermore, the Club's failure to obtain site development  
 18 activity permitting for grading and excavating each in excess of 150 cubic yards of soil as  
 19 required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This  
 20 illegal use terminates the nonconforming use of the Property as a shooting range.  
 21
- 22 V) The Club's unpermitted installation in 2006 of the twin 24-inch culverts which cross the  
 23 range and empty into the wetland constituted an expansion and change of its use of the  
 24 Property, and the Club's failure to obtain SDAP permitting for its excavation, grading and  
 25 filling work in excess of 150 cubic yards of soil as required under Kitsap County Code  
 26 Chapter 12.10 constituted an illegal use of the land. This illegal use terminates the  
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1 nonconforming use of the Property as a shooting range.

2 W) The Club's earth moving activities within the 150-foot buffer for Wetland B violated KCC  
3 19.200.215.A.1, which requires a wetland delineation report, a wetland mitigation report and  
4 erosion and sedimentation control measures and/or a Title 12 site development activity permit  
5 permit for any new development. The Court concludes that these illegal uses terminate the  
6 nonconforming use of the Property as a shooting range.

7  
8 X) The Club's unpermitted construction of earthen berms starting at Bay 4 and proceeding to the  
9 north adjacent to the wetland, constituted an expansion and change of its use of the Property,  
10 and the Club's failure to obtain SDAP permitting for excavation, grading and filling work in  
11 excess of 150 cubic yards of soil and for its construction of berms with slopes greater than  
12 five feet in height with a steepness ratio of greater than three to one (KCC 12.10.030(4)) as  
13 required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This  
14 illegal use terminates the nonconforming use of the Property as a shooting range.

15  
16 Y) The Club's unpermitted cutting into the hillsides at Bays 6 and 7 and at the end of the rifle  
17 range, excavating in excesses of 150 cubic yards of soil at each location and creating cut  
18 slopes far greater than five feet in height with a steepness ratio of greater than three to one as  
19 required under Kitsap County Code Chapter 12.10 constituted an illegal use of the land. This  
20 illegal use terminates the nonconforming use of the Property as a shooting range. The Court  
21 further concludes, based on the timing of maintenance work at each cut slope location post-  
22 dating the June 2009 deeding of the Property from the County to the Club, that SDAP  
23 permitting was required for work conducted after June 2009. These illegal uses of the land  
24 terminate the nonconforming use of the Property as a shooting range.

25  
26 Z) The nuisance conditions at the range further constitute illegal uses of the land, which  
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1 terminate the nonconforming use of the Property as a shooting range. The Club's expansion  
 2 of days and hours in which shooting generally, and rapid-fire shooting in particular, takes  
 3 place on a routine basis, and the advent of regularly scheduled practical shooting practices  
 4 and competitions constitute a change in use that defies and exceeds the case law's definition  
 5 or understanding of "intensification" in the area of nonconforming use. These changes act to  
 6 terminate the nonconforming use of the Property as a shooting range.  
 7

8 AA) The Club's conversion from a small-scale lightly used target shooting range in 1993 to a  
 9 heavily used range with an enlarged rifle range and a 11-bay center for local and regional  
 10 practical shooting competitions further constitutes a dramatic change in intensity of use (and  
 11 of sound created thereby), thereby terminating the nonconforming use of the Property as a  
 12 shooting range.  
 13

14 BB) By operation of KCC Chapter 17.381, the KRRC or its successor owner or occupier of the  
 15 Property must obtain a conditional use permit before resuming any use of the Property as a  
 16 shooting range or private recreational facility.  
 17

18 CC) KRRC has not proven that Ordinance 470-2011, amending KCC 17.460, is unconstitutional  
 19 or suffered from any defect in service or notice. This Ordinance did not amend or alter the  
 20 effect of KCC 17.455.060 (existing uses) which remains in full force and effect. KCC  
 21 17.455.060 provides that uses existing as of the adoption of Title 17 (Zoning) may be  
 22 continued, but also prohibits their enlargement or expansion, unless approved by the hearing  
 23 examiner pursuant to the Administrative Conditional Use Permit procedure of Title 17.420.  
 24 Washington case law, as in *Rhod-A-Zalea & 35th, Inc v. Snohomish County*, 136 Wn.2d 1, 7,  
 25 959 P.2d 1024 (1998), also holds that uses that lawfully existed before the enactment of  
 26 zoning ordinances may continue, but the existing use may not be significantly changed,  
 27  
 28

1 altered, extended, or enlarged.

2 DD) The 2009 Bargain and Sale Deed cannot be read as more than a contract transferring the  
3 Property from the County to the KRRC, with restrictive covenants binding only upon the  
4 Grantee KRRC. Paragraph 3 stands as an acknowledgement of eight geographic acres of land  
5 that has been used for shooting range purposes, but absent more specific language binding  
6 parties for purposes of possible civil enforcement and litigation regarding site development  
7 and land use issues, is not susceptible to an interpretation binding Kitsap County from  
8 enforcing its ordinances or otherwise acting pursuant to the police powers and other  
9 authorities granted to it in Washington's Constitution and in the Revised Code of  
10 Washington.  
11

12  
13 EE) The Court furthermore concludes that the Washington Open Public Meetings Act, chapter  
14 42.30 RCW, limits the effect of the enacting resolution and accompanying proceedings to the  
15 property transfer itself. Absent specific agreement voted upon by the governing body during  
16 a public meeting, the 2009 Deed cannot transform into a settlement of potential disputes  
17 between the parties.  
18

19 FF) [County reserves right to submit denials of affirmative defenses and remaining  
20 counterclaims].  
21

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

24 **III. ORDERS**

25 IT HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Kitsap County's  
26 motions shall be granted:

27 A) **Declaratory Judgment**  
28

- 1 1. Kitsap County's Motion pursuant to chapter 7.24 RCW for judgment declaring that the
- 2 activities and expansion of uses at the Property has terminated the legal nonconforming use
- 3 status of the Property as a shooting range by operation of KCC Chapter 17.460 and by
- 4 operation of Washington common law regarding nonconforming uses, is hereby GRANTED.
- 5
- 6 2. The Property may not be used as a shooting range until such time as a County conditional use
- 7 permit is issued to authorize resumption of use of the Property as a private recreational
- 8 facility or other recognized use pursuant to KCC Chapter 17.381.

9 **B) Judgment**

- 10 3. Defendant is in violation of Chapter 7.48 RCW and Chapter 17.530 Kitsap County Code;
- 11
- 12 4. The conditions on the Property and the violations committed by the Defendant constitute
- 13 statutory and common law public nuisances; and
- 14
- 15 5. Representatives of the Kitsap County Department of Community Development are hereby
- 16 authorized to inspect and continue monitoring the Property before, during and after any
- 17 abatement action has commenced; and

18 **C) Injunction (effective immediately unless noted to contrary)**

- 19 6. A permanent, mandatory and prohibitive injunction is hereby issued enjoining use of the
- 20 Property as a shooting range until violations of Title 17 Kitsap County Code are resolved by
- 21 application for and issuance of a conditional use permit for use of the Property as a private
- 22 recreational facility or other use authorized under KCC Chapter 17.381. The County may
- 23 condition issuance of this permit upon successful application for all after-the-fact permits
- 24 required pursuant to Kitsap County Code Titles 12 and 19. [If shooting operations are
- 25 enjoined solely due to voiding or termination of nonconforming use status, this paragraph
- 26 should go into effect 30 days after entry of this order].
- 27
- 28

- 1 7. A permanent, mandatory and prohibitive injunction is hereby issued further enjoining the  
 2 following uses of the Property, which shall be effective immediately:
- 3 a. Use of fully automatic firearms, including but not limited to machine guns;
  - 4 b. Use of rifles of greater than nominal .30 caliber;
  - 5 c. Use of exploding targets and cannons; and
  - 6 d. Use of the Property as an outdoor shooting range before the hour of 9 a.m. in the  
 7 morning or after the hour of 7 p.m. in the evening.
- 8
- 9 8. A permanent, mandatory and prohibitive injunctive is hereby issued further enjoining use of  
 10 the Property as a shooting range unless and until the Defendant Kitsap Rifle and Revolver  
 11 Club or a successor owner or occupant of the Property applies for and obtains a National  
 12 Rifle Association Range Technical Team Assessment and modifies the Property's shooting  
 13 facilities consistent with the NRA assessment, after review and approval by a professional  
 14 engineer and permitting by Kitsap County. In lieu of applying for and obtaining the NRA  
 15 assessment and complying with its recommendations, the Property may be used as a shooting  
 16 range upon completion of each of the following improvements, after review and approval by  
 17 a professional engineer and permitting by Kitsap County:
- 18 a. Installation of overhead baffles at the pistol range and the rifle range, consistent with the NRA  
 19 Range Source Book, to eliminate "blue sky" shooting from each range's shooting shed. This  
 20 construction can be done in phases so that a section of each range's shelter can be used once the  
 21 its baffles are installed, provided that the sides of each baffled section are bermed or walled,
  - 22 b. Modification of rifle range and shooting bay berms so that all berms are not less than eight feet  
 23 in height above the shooter's position and comply with the NRA Range Source Book; and
  - 24 c. Construction of a berm along the southern edge of the rifle range (right-hand side, from the  
 25 shooter's perspective in the shelter) consistent with the NRA Range Source Book.
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**D) Warrant of Abatement**

9. The Court hereby issues a WARRANT OF ABATEMENT, pursuant to RCW 7 48 260, which authorizes Kitsap County to enter upon the Property to abate the nuisance conditions created thereon or to monitor the owner or occupant's abatement of the nuisance conditions created thereon, including the enforcement of the restrictions imposed by the Court on shooting activities or use of explosives or exploding targets.

10. Kitsap County shall be allowed its costs of abatement and these and all costs incurred in this abatement shall abide further order of the Court.

11. No bond or security is required of Kitsap County for this action. CR 65 (c) and RCW 4 92.080

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

**E) Costs and Fees**

13 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.

DONE IN OPEN COURT this \_\_\_\_ day of November, 2011.

\_\_\_\_\_  
JUDGE

Presented by:  
RUSSELL D HAUGE  
Kitsap County Prosecuting Attorney

\_\_\_\_\_  
NEIL R. WACHTER, WSBA NO. 23278  
JENNINE E. CHRISTENSEN, WSBA NO.  
38520  
Attorneys for Plaintiff Kitsap County

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**WARRANT OF ABATEMENT**

**TO THE KITSAP COUNTY SHERIFF: YOU ARE HEREBY COMMANDED TO ABATE THE PUBLIC NUISANCE MAINTAINED AT:**

Kitsap County Tax Parcel ID No. 362501-4-002-1006 and more particularly described as follows:

**36251W  
PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 36, TOWNSHIP 25 NORTH, RANGE 1 WEST, W.M., KITSAP COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTH LINES OF AN EASEMENT FOR RIGHT OF WAY FOR ROAD GRANTED TO KITSAP COUNTY ON DECEMBER 7, 1929, UNDER APPLICATION NO. 1320, SAID ROAD BEING AS SHOWN ON THE REGULATION PLAT THEREOF ON FILE IN THE OFFICE OF THE COMMISSIONERS OF PUBLIC LANDS AT OLYMPIA, WASHINGTON. \*\*\*\*\*IMPROVEMENTS CARRIED UNDER TAX PARCEL NO. 362501-2-002-1000\*\*\*\*\***

WHICH ADDRESS IS MORE COMMONLY KNOWN AS:

4900 Seabeck Highway NW, Bremerton, Washington, Kitsap County (otherwise referred to as the "Property").

**ABATEMENT**

The abatement of the public nuisance shall consist of restricting use of the Property as a shooting range, where such use is contrary to this order, and removing unauthorized users from the Property. Abatement of the public nuisance shall consist further of erecting fencing around the perimeter of the developed shooting areas of the Property, to restrict unauthorized access to the Property's shooting areas to officers and agents of the Defendant engaged in planning, design, engineering, surveying, and implementation of construction and site development necessary to implement this order, as well as County personnel and agents as authorized by this order or further

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order of the Court.

**COMMENCEMENT OF ABATEMENT**

This abatement is to commence forthwith and shall consist of erecting fencing and other physical barriers necessary to exclude all persons except authorized officers and agents of the parties, from the developed shooting range areas on the Property.

**ACCOUNTING**

The Sheriff is directed to maintain an accurate accounting of the expenses of erecting fencing and physical barriers to restrict access to shooting areas of the Property, and of monitoring and responding to alleged violations of this order relating to the or occurring on the Property. Said expense shall be filed with the Court and upon application reduced to judgment against the Defendant and the Defendant's Property, real and personal, tangible and intangible, the judgment for expenses of abating said nuisances herein described.

DONE IN OPEN COURT this \_\_\_\_ day of November, 2011.

\_\_\_\_\_  
JUDGE

Presented by:  
RUSSELL D. HAUGE  
Kitsap County Prosecuting Attorney

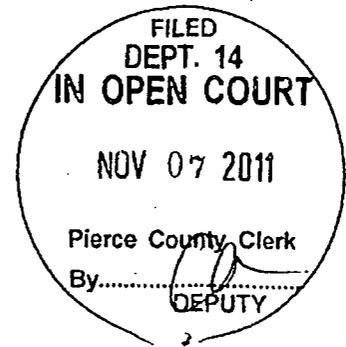
\_\_\_\_\_  
NEIL R. WACHTER, WSBA NO. 23278  
JENNINE E. CHRISTENSEN, WSBA NO.  
38520  
Attorneys for Plaintiff Kitsap County

## **Appendix 6**

### **Proposed Findings of Fact and Conclusions of Law of Defendant Kitsap Rifle and Revolver Club (CP 4026-4051)**



10-2-12913-3 37459145 PROR 11-08-11



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

KITSAP COUNTY,

Plaintiff,

vs

KITSAP RIFLE AND REVOLVER CLUB,

Defendant

Cause No 10-2-12913-3

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
OF DEFENDANT KITSAP RIFLE  
AND REVOLVER CLUB

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Hon. Susan Serko  
Department 14  
November 7, 2011

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

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

Plaintiff,

v.

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

Defendants,

and

IN THE MATTER OF NUISANCE AND  
UNPERMITTED CONDITIONS LOCATED  
AT

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

Defendant.

Case No.: 10-2-12913-3

**KITSAP RIFLE AND  
REVOLVER CLUB'S  
PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF  
LAW**

**I. FINDINGS OF FACT**

Based on the evidence presented at trial, the Court makes the following Findings of Fact:

**A. The Kitsap Rifle and Revolver Club, Generally**

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

2. From its inception, the Club has occupied a 72-acre parcel (the "Property"), located at 4900 Seabeck Highway NW, Bremerton, WA 98312, Kitsap County Tax Parcel ID No. 362501-4-002-1006. For many decades, the Club leased the Property from the Washington State Department of Natural Resources ("DNR"). Exs. 135-36.

3. The Property consists of approximately 72 acres, including approximately eight acres of active or intensive use and occupancy containing the Club's improvements, roads, parking areas, open shooting areas, targets, storage areas, and associated infrastructure ("Historical Eight Acres"). Exs. 135-36, 438, 486. The remaining acreage consists of timberlands, wetlands and similar resource-oriented lands passively utilized by the Club to provide buffer and safety zones for the Club's shooting range. *Id.* The Club currently owns the Property which is located in unincorporated Kitsap County.

**B. The Club's Legal Nonconforming Use was Formally Recognized in 1993**

4. In 1993, the County enacted Ordinance 50-B-1993, which severely limited or prohibited shooting on private land by prohibiting all shooting in certain areas of the County designated as "no shooting" areas and by prohibiting all shooting on properties smaller than five acres. Ordinance 50-B-1993 also created an advisory committee whose purpose would be to advise the County regarding the drafting of amendments to that ordinance that would provide permits for newly proposed shooting ranges. The ordinance provided that the Club would have a seat on the committee. The Club sat on the committee and had input into the

1 drafting of the amendments to Ordinance 50-B-1993, which were enacted on February 14,  
2 1994 as Ordinance 50-C-1994.

3 5. While sitting on the committee along with other historical Kitsap County gun clubs,  
4 the Club became concerned about whether the amended ordinance the County was working  
5 on would apply to the Club. The County's representative on the committee, Mark Grimm,  
6 assured the Club it would not, and made arrangements for a letter to be issued by the County  
7 Commissioners to confirm the Club's historical right to continue using its property as an  
8 established shooting area. On September 7, 1993, the County Board of Commissioners sent  
9 a letter to the Club referencing Ordinance 50-B-1993 and confirming that the Club's facility  
10 was "considered by Kitsap County to be a lawfully established nonconforming use  
11 (grandfathered)." Ex. 315. The Club understood from the words of the letter, the context of  
12 the letter, and the verbal statements of Mr. Grimm that the letter was intended to mean that  
13 the Club would be allowed to continue operations without applying for and obtaining a  
14 shooting range permit under the new ordinance that would be enacted as Ordinance 50-C-  
15 1994.

16 6. Prior to 1993, the Club conducted a diverse range of activities within its Historical  
17 Eight Acres, including firearms safety training, recreational shooting, competitive shooting,  
18 civilian defensive training (i.e., personal and home protection), hunter education classes,  
19 military and law enforcement training, skeet or trap shooting, silhouette target shooting,  
20 bullseye target shooting, United States Practical Shooting Association pistol shooting  
21 tournaments, fun steel (entry level handgun matches), Glock Shooting Sports Foundation  
22 competition, Junior Small bore, moving target shooting, bowling pin shooting, cowboy  
23 action shooting, and other types of action or "practical" shooting, including what was known  
24 as a "jungle run." Ex. 294. These activities involved the use of many types of firearms,  
25 including but not limited to high-powered rifles, machine guns, automatic weapons, semi-  
26 automatic weapons, pistols, revolvers, shotguns, muzzle loaders, black powder firearms,

1 cannons and utilized steel, exotic, and exploding targets as well as more standard targets.  
 2 The Club restricted the type of firearms or calibers that were allowed to be used at the Club  
 3 to those that were lawfully owned and operated and used in accordance with the Club's  
 4 safety rules. Shooting was allowed and did occur as early as 6 am and as late as 10 pm.

5 7. Prior to 1993, the Club's Historical Eight Acres included a covered rifle line, a  
 6 covered pistol line, other multi-use shooting areas, a parking area, several structures and  
 7 buildings, areas used for hunting, a running deer track, an area for archery, a "boat launch"  
 8 area to practice safe firearms handling, and areas used for storage. Since 1993, the Club has  
 9 maintained its Historical Eight Acres and has made periodic and gradual improvements to the  
 10 area to improve safety and stewardship of the environment.

11 8. Prior to 1993, the Club's Historical Eight Acres were used by the Kitsap County  
 12 Sheriff's Office and other law enforcement agencies for training and practice. The Sheriff's  
 13 Office has continued to use this area at the Club through the present day. Exs. 273; 387-88.

14 **C. The County Failed to Prove Noise from the Club Constitutes an Unreasonable or**  
 15 **Substantial Impact on the Community.**

16 9. The County had 13 witnesses testify who either had lived or were living near the Club  
 17 at the time of trial. Some of those witnesses complained about sounds coming from the Club.  
 18 Their testimony was inconsistent as to the dates it became a problem and the intensity of the  
 19 sounds. Other local residents have not been bothered by the noise, including several of the  
 20 County's own witnesses. Noise from the Club has not affected the use of their properties.

21 10. While the complaining residents assumed the noise they heard was produced by the  
 22 Club, few actually visited the Club or made efforts to confirm the source of the noise. Many  
 23 of them failed to take any measures to investigate the neighborhood for any sources of noise  
 24 or were unaware of the Club's presence prior to purchasing their homes. In addition, the  
 25 majority of the neighbors have no background in firearms that would allow them to identify  
 26 or distinguish between particular firearms based on sound alone.

1 11. The County never conducted any sound studies to measure the amount of noise from  
2 the Club and has not hired any third party to do so despite the fact that the County has sound  
3 measuring equipment and a County representative spoke with a sound expert to possibly  
4 conduct studies. The County has not produced any decibel readings or empirical data  
5 demonstrating that noise from the Club has an unreasonable or substantial impact on anyone  
6 in the community.

7 12. The County admitted at trial that it relied largely on subjective noise complaints for  
8 information regarding noise generated at the Club. It also stated that the Club's hours of  
9 operation and number of members would be a factor in determining noise levels but admitted  
10 it did not have that information. The County presented no expert opinions on sound or noise  
11 at trial. The County relied solely on the subjective observations of local residents to explain  
12 historical and present noise levels.

13 13. The County acknowledged that between 2007 and 2009, there were no recorded  
14 complaints in the County's LIS system for approximately 14 months relating to the Club  
15 The LIS system is used by the County to record activity on a certain property.

16 **D. The County Provided no Proof that Errant Bullets Originated at the Club.**

17 14. In the last several years nearby residents have complained of bullets from the Club  
18 striking their properties. However, the County has provided no proof, based on a  
19 preponderance of the evidence, that these alleged bullet strikes originated from the Club as  
20 opposed to other sources of gun fire in the area. None of the County's experts could state  
21 within a reasonable degree of certainty that any of the three alleged bullet strikes they studied  
22 originated from the Club.

23 15. It is possible that the alleged bullet strikes could have originated from the woods or  
24 residential property near the Club where non-Club members have engaged in unsupervised  
25 shooting. Makeshift shooting ranges consisting of tree stumps and old cars have been  
26 discovered and local residents and Club members have heard shooting from areas other than

1 the Club. Club members have witnessed individuals walking into the Newberry Hill  
2 Heritage Park (formerly DNR land) carrying rifles. The bullets also could have come from  
3 Terry Allison's property next door to the Club because he shot there and maintained a  
4 shooting area.

5 16. On April 12, 2010, the Kitsap County Sheriff's Office performed a search of police  
6 reports on file for the dates of January 1, 2005 through March 12, 2010, in which the subject  
7 was alleged violation of RCW 9.41.230, unauthorized aiming or discharging of a firearm.  
8 *Stipulated Facts.* The search yielded 42 police reports filed involving this subject, none of  
9 which mentioned or otherwise identified KRRC. *Id.*

10 **E. The Club Employs Adequate Safety Measures**

11 17. The Club employs a variety of range and firearm safety practices that meet or exceed  
12 industry standards to prevent bullets from leaving the range. Ex. 476, 487-88. These  
13 measures include maintenance of safety berms and backstops, mandatory training for all  
14 members and visitors, supervision by range safety officers, and closed circuit cameras to  
15 monitor compliance with the rules. Members are required to comply with the Club's  
16 standard operating procedures and guests must sign a registration form with a pledge to  
17 follow four commandments of firearms safety. *Id.*

18 18. Range safety officers undergo extensive training. The range has officers on-site  
19 whenever the Club is open to the public, and often when the Club is open to members only.  
20 In addition to the range officers supervising shooting, there is also video monitoring in the  
21 Club's office. The video files are kept for a period of time so that if there is a safety issue,  
22 they can be replayed to ascertain what happened. There are some members who can shoot  
23 without a range officer present, but they must first undergo a five-hour training course. Few  
24 members are allowed access to the shooting bays, which are rarely used, and those members  
25 must undergo additional training.

26

1 19. The Club is designed to keep all projectiles within the Property. Ex. 488. Berms and  
2 backstops are primarily used to stop bullets from leaving the range. Targets are placed near  
3 the middle of berms or backstops, or lower, to prevent bullets from going over them.  
4 Ricochets are minimized using paper or steel targets. In 2008, County Commissioner Josh  
5 Brown stated he was impressed with the facility. Ex. 336.

6 20. There is no evidence during the Club's entire 84-year history of any allegations of  
7 accidental shootings or a personal injury caused by a bullet leaving the Club.

8 21. Arnold Teves testified that the Navy came to the Club to check the range before it  
9 allowed training to occur. Ex. 500. Marcus Carter testified he provided the Navy with  
10 access to inspect the range and overhead photos of the surrounding area and layout of the  
11 Club prior to the Club being approved for Navy small arms training.

12 22. The Club, in partnership with the County and DNR, developed a "take it to the range"  
13 program whereby County personnel handed out vouchers to persons caught shooting in the  
14 woods that entitled them to a free visit to the Club.

15 **F. The County Was On Notice of Conditions at the Club in 2005.**

16 23. On March 28, 2005, Steve Mount entered the Club's property believing it was DNR  
17 land to investigate noise complaints on behalf of the County. During his investigation, he  
18 noticed an area of the Club that had been brushed out but determined the activity did not  
19 require a permit and was nothing to be excited about in terms of taking action against the  
20 Club. After viewing the brushed out area, Mr. Mount met with Marcus Carter, executive  
21 officer of the Club, and told Mr. Carter that he would do some research and let the Club  
22 know whether any permits were required.

23 24. Approximately two weeks later, having failed to respond to the Club, Mr. Mount  
24 returned on April 13, 2005, to investigate a complaint from Terry Allison regarding use of  
25 heavy equipment at the Club. The Club had, in fact, begun clearing vegetation in the brushed  
26 out area to explore the possibility of relocating its rifle range to improve safety and reduce

1 noise impacts to the community (the "Relocation Project"). It had also obtained two land  
2 clearing burning permits to clear the area. Exs. 275-76. The County acknowledges the same  
3 area had been clear-cut by DNR in the early 1990s.

4 25. The Club was open about the Relocation Project and had already corresponded with  
5 other government agencies about it. Ex. 271-272. A letter had been sent by the entire  
6 County Board of Commissioners to the DNR stating that the Relocation Project was not at  
7 odds with the County's long-term interest in the property and that the Board appreciated the  
8 Club's efforts to provide recreational opportunities to County residents. Ex. 296. Based in  
9 part on the County's written support, the Club obtained a grant for the Relocation Project.  
10 Ex. 271.

11 26. Despite the County's support, Mr. Mount was concerned the Relocation Project was  
12 outside the Club's Historical Eight Acres and could trigger a need for a conditional use  
13 permit ("CUP") under the County Code. As such, Mr. Mount recommended the Club  
14 participate in a pre-application meeting with the DCD. The Club compiled all necessary  
15 information and attended a pre-application meeting on June 21, 2005, with the DCD that was  
16 cordial and cooperative. Exs. 138, 140, 274. At that time, the County took the position that  
17 if the Club wanted to continue with the proposed rifle line relocation, it would have to apply  
18 for a CUP. Ex. 277. The CUP would allow the County to impose any restrictions on the  
19 Club that it deemed reasonable, including restrictions on types of weapons fired, hours of  
20 operation, and location of shooting activities. The County cannot say whether the Club  
21 would be granted a CUP if it were to apply for one today, nor can it identify any of the  
22 conditions it would deem reasonable and attempt to impose under a CUP.

23 27. At the time of the 2005 pre-application meeting, the County took the position that if  
24 the Club did not continue the project and instead kept its activities within its Historical Eight  
25 Acres it could retain its legal nonconforming use and would not need a CUP or any other  
26 land use permits. Ex. 297. As a result, the Club decided to abandon the Relocation Project,

1 retain its legal nonconforming use right, and continue operating within its Historical Eight  
 2 Acres. The Club requested an amendment of its grant so that the funds could be used to  
 3 make improvements at the Club without requiring a CUP. Ex. 355. The County was made  
 4 aware of the Club's decision and the amended scope of its grant. *Id.*; Ex. 416.

5 28. Less than a year later, in March 2006, Steve Mount of the DCD acknowledged that  
 6 the burden of proof would be tough on the County to prove when there was a significant  
 7 change from the Club's historic use. Ex. 314. Shortly thereafter, in May 2006, the Club  
 8 contacted the DCD requesting a meeting to discuss whether a CUP was still required, and a  
 9 cordial meeting was held. Ex. 142. The Club did not change its decision to abandon the  
 10 Relocation Project and continued its operations within the Historical Eight Acres. In June  
 11 2006, Jeff Smith of the DCD acknowledged that the Club was a permitted use. Ex. 322.

12 29. The County never issued any citation or notice of violation to the Club for the  
 13 Relocation Project work in 2005, nor did it ask the DNR to take enforcement action against  
 14 the Club. Instead, it asked DNR in 2006 to address any need for restoration of the area  
 15 explored for the Relocation Project. Ex. 355. In 2007, the Club replanted the cleared area,  
 16 and the DNR informed the County that it was satisfied with the replanting effort. As of  
 17 2007, the DCD believed the clearing issue was resolved and did not investigate the matter  
 18 any further.

19 **G. Wetlands Issues and the Critical Areas Ordinance**

20 30. The County's "Critical Areas Ordinance" (CAO), KCC Title 19, was enacted and  
 21 took effect in 1998.

22 31. The County did not present any evidence that the Club filled any wetland at its  
 23 Property after 1998.

24 32. The opinion of the County's wetland consultant and testifying expert, Bill Shiels of  
 25 Talasaea Consultants, that the Club had filled over 55,000 square feet of wetlands adjacent to  
 26

1 its area of active use, at some time after 1978, was a preliminary opinion that he did intend  
2 anyone to rely on in an enforcement action.

3 33. The Club has never received any formal notice of violation from any State or Federal  
4 regulatory authority related to any alleged wetland fill at the Club property.

5 34. With the exception of a small area near the Club's historical boat launch, there is no  
6 wetland fill at the Club property. The area alleged by the County to contain over 55,000  
7 square feet of wetland fill was not a wetland. The fill near the boat launch covers about 61  
8 square feet of area and has a volume of about one-third of a cubic yard—which is about the  
9 amount that would fit in a wheel barrow.

10 35. The County alleges that the Club impacted several relatively small wetlands in 2005  
11 while doing some exploratory clearing related to the formerly proposed and later abandoned  
12 300-meter range project. This area is outside the Club's historical eight acres of active use.  
13 The County refers to these alleged wetlands as wetlands "B," "C," and "D." Robbyn Myers  
14 inspected these areas for the County in 2005 and detected no wetlands or critical areas  
15 violations. The County has made no effort to delineate these alleged wetlands. The Club's  
16 consultant, Soundview Consultants, found no wetlands in these areas during its January 19  
17 and 20, 2011 site visits. Later in 2011, Soundview returned to the areas several times and  
18 each time confirmed they were not wetlands. During one of these visits, Soundview watched  
19 Ecology scientist Patrick McGraner perform a chemical test of the soils in the alleged  
20 wetlands, which showed the soils lacked the anaerobic processes associated with wetlands.  
21 Mr. McGraner issued a subsequent email expressing Ecology's agreement with Soundview's  
22 opinion that the areas are not wetlands.

23 36. The County alleges that the Club committed a critical area violation by altering  
24 Drainage Z, which is the area that runs from the 42-inch County Culvert under Seabeck  
25 Highway (directing stormwater onto the Club property) to the twin culverts that carry  
26 stormwater under the rifle range. This drainage flows infrequently and is not a natural stream

1 but only a stormwater ditch created by humans many years ago, prior to the 1998 enactment  
 2 of the CAO. Drainage Z is not used by fish. Drainage Z was not constructed in the area of a  
 3 naturally occurring stream.

4 37. The County alleges that the Club violated the CAO when it replaced a stormwater  
 5 facility consisting of some culverts and a swale that formerly conducted occasional  
 6 stormwater across the rifle range with two culverts that now conduct stormwater under the  
 7 rifle range. Before installation of the culverts, water entering that swale would reach all the  
 8 way across the rifle range to the nearby wetland no more than two or three times per year,  
 9 after severe rainfall, and fish did not use the area. There was no natural stream crossing the  
 10 rifle range in 1966 or 1982. When the Club installed the twin culverts, it was replacing and  
 11 connecting existing culverts, including culverts on either side of the rifle range. The County  
 12 presented no credible evidence that the Club relocated the points at which stormwater entered  
 13 or exited the drainage facility. The Corps and Ecology inspected the twin culverts and have  
 14 issued no formal notice of any violation related to the culverts. Ecology's Patrick McGraner  
 15 wrote an email stating that Ecology approves of the culverts.

16 38. The County presented expert testimony and a figure attempting to identify areas  
 17 where the Club violated the CAO by impacting critical area "buffers." The testimony and  
 18 figure are inaccurate for the following reasons:

- 19 a. The County miscalculated the alleged buffer around the wetlands adjacent to  
 20 the Club's area of active use as a 250-foot buffer. This 250-foot buffer  
 21 assumes the wetlands are a single wetland with a "Category One" rating. In  
 22 reality, there are two wetlands, each with a "Category Two" rating, yielding a  
 23 buffer of no more than 150-feet. The County did not attempt to accurately  
 24 identify impacted buffer areas using the correct 150-foot buffer.
- 25 b. The County assumed the wetlands have always been exactly where they were  
 26 in January 2011, but they have been expanding for a number of years due to

1 problems with the County's exit culvert and clear-cutting in the area. The  
2 County did not accurately account for the expansion of the wetland and its  
3 prior location when identifying wetland buffer impacts.

- 4 c The alleged buffer areas include an alleged buffer around Drainage Z.
- 5 d. The alleged buffer areas include areas that were completely separated from  
6 wetlands prior to 1998 by a historical logging road and even the rifle range  
7 itself. Such "interrupted" buffers do not extend beyond the road or rifle range.  
8 Kitsap County applies the interrupted buffer principle, it is uniformly accepted  
9 and used by wetland professionals, and it is the Washington Department of  
10 Transportation's state-wide policy. The County failed to accurately exclude  
11 "interrupted" areas, which cannot be considered buffers.

12 **H. The County's Incomplete Forensic Investigation Regarding the Club's**  
13 **Nonconforming Use Right.**

14 39. The County admitted at trial that it began but did not complete a "forensic  
15 investigation" to determine whether the Club had expanded beyond its Historical Eight Acres  
16 so as to lose its legal nonconforming use right. The County admitted it could not determine  
17 when the Club was last acting within the lawful scope of its nonconforming use right because  
18 the County did not have adequate information.

19 40. The County admitted at trial that it considered the following factors in its forensic  
20 investigation to determine whether or not the Club had lost its legal nonconforming use right:  
21 (1) the Club's existence since 1926, (2) the change in firearm technology since 1926, (3) the  
22 increase in population near the Club, (4) the ordinance enacted by the County in 1993  
23 relating to shooting ranges, (5) the letter sent to the Club by the County in 1993 confirming  
24 its legal nonconforming use right, (6) whether machine guns were fired at the Club prior to  
25 1993, (7) whether high powered rifles were fired at the Club prior to 1993, (8) the amount of  
26 noise generated at the Club prior to 1993, (9) the circumstances surrounding the 2009 Deed,

1 (10) aerial photography of the Club dated prior to and after 1993, and (11) noise complaints  
2 from neighbors.

3 41. The County admits that any intensification of the Club's activities within its  
4 Historical Eight Acres, such as an increase in the number of shooters using the primary pistol  
5 and rifle lines, would not affect the Club's legal nonconforming use right.

6 **I. The 2009 Deed Was Executed in the Context of the County's Numerous Strong**  
7 **Public and Private Statements Supporting the Club.**

8 42. Beginning in 2007, the County began to pursue a land exchange with the DNR, which  
9 would include the 72 acres DNR leased to the Club Exs. 299; 343. DNR wanted to  
10 consolidate or divest its land holdings in the area and the County wanted a large tract  
11 adjacent to the Club for development into what is now the Newberry Hill Heritage Park. Ex.

12 43. The County had obtained a grant that would partially fund the transfer, but it would  
13 expire on June 30, 2009, creating a sense of urgency. Exs. 262; 343. DNR would not give  
14 the County the park land unless the County would also take title to the Club Property,  
15 thereby becoming the Club's new landlord. Ex. 332.

16 44. The Club did not learn of the land transfer until early 2009. Ex. 262. At that time,  
17 the County was aware of the Club's concern for its long-term use of the Property and its  
18 ability to continue operations into the future given the fact its current lease had an early  
19 termination clause. The Club and County began to explore the possibility of a long term  
20 lease or sale to the Club to allow the Club's operations to continue and the County had no  
21 plans to close or otherwise impact the operations at the Club. Exs. 262; 318. In March 2009,  
22 the Commissioners wrote a letter for inclusion in the public record stating that the Club had  
23 provided a much needed amenity in Central Kitsap for over 80 years. Ex. 293. The  
24 Commissioners also reaffirmed their 2003 determination that the Club and its improvements  
25 were not at odds with the County's long-term interest in the Property and would not  
26 jeopardize the County's future planning efforts. *Id*; Ex. 296. The County also assured the

1 community that it would honor the existing terms of the DNR lease, that it was not looking  
2 renegotiate any terms with the Club, and that termination of the lease would be poor  
3 judgment on the County's part. Exs. 319; 334; 336. It also confirmed that it was not trying  
4 to shut down the range and it hoped that the Club would notice no substantive difference  
5 after the land transfer. Exs. 300, 333; 336; 338.

6 45. While planning the land exchange with DNR, the County held meetings and received  
7 public comments as to whether the Club should be allowed to continue on its leased land  
8 once the County became its landlord. The majority of the attendees at these meetings were  
9 supportive of the Club. The County Commissioners also received information from the  
10 DCD, including Steve Mount and Larry Keaton, regarding potential or suspected code  
11 violations that may have existed at the Club Property. Steve Mount of the DCD gave a  
12 PowerPoint presentation to the Commissioners outlining his compliance issues with the Club.  
13 Mr. Mount also explained that noise complaints had been received by the County and  
14 recommended that the Property be inspected. Before the land exchange took place, the  
15 County was aware of any zoning enforcement issues at the Club now raised in this lawsuit,  
16 including clearing on the property and suspected expansion. Ex. 347.

17 46. Prior to taking title to the park land and Club Property from DNR, the County's  
18 representatives inspected the Property, considered environmental and other liabilities  
19 associated with the Property, and hired an appraiser, who conducted his own inspection of  
20 the Property. Exs. 279; 348. The County did not advise its own appraiser that there were  
21 any suspected, potential, or actual code violations or nuisance conditions associated with the  
22 Property. The County instructed the appraiser to determine the market-based valuation of  
23 Property in an 'as is' condition. *Id.* The appraiser was also instructed by the County to  
24 consider the fact that the Property would continue to be used as a shooting range consistent  
25 with its historical use, and if the Club were to enlarge or materially improve the facility that  
26 would require land use compliance measures and permitting through the DCD. *Id.*

1 47. The appraisal estimated that if the Property were not maintained as an active shooting  
2 range the potential environmental cleanup cost would be \$2 to \$3 million. Exs. 279; 348-49.  
3 The County was concerned that the potential contamination and cost of cleanup would  
4 impact the value of the land. Exs. 372; 348-49. The County admitted it would be a cost to  
5 the County to own or operate the Property. *Id.* Both Marcus Carter and Regina Taylor  
6 testified that once the Club ceases being an active shooting range it is no longer viewed as  
7 metal recycling operation and is then viewed as a hazardous waste disposal site. To insulate  
8 itself from this potentially large liability and still move forward with the land transfer, the  
9 County offered to sell the Property to the Club as soon as the County received title from  
10 DNR, subject to written terms to be negotiated, including the Club's agreement to indemnify  
11 the County for any environmental liability arising out of the Property. Exs. 342; 348-49,  
12 362; 375.

13 48. The County prepared and passed a public resolution to assign and convey the  
14 Property to the Club. Ex. 477. By the terms of the resolution, the County admitted that the  
15 Property was to be used as a shooting range, the Club provided important benefits to the  
16 public and law enforcement and military personnel, and its use for firearm training,  
17 competition, and hunter safety education classes was also beneficial. *Id.* The resolution also  
18 stated that the Club met the County's needs by its operation as a private nonprofit facility and  
19 continuance of the Club was in the public's interest for firearm safety. *Id.*

20 49. The County knew the Club had a long-term relationship with DNR and expected to  
21 operate at the property for many years to come. In a response to a letter written by a citizen  
22 concerned about the future of the Club, DNR acknowledged the Club's efforts to work  
23 cooperatively with the County and gave assurance that the Club would be an integral part of  
24 the public use designated for the Heritage Park. Ex. 359.

25 50. Two days before the Property was sold to the Club, Commissioner Josh Brown  
26 stated in a public meeting that the land exchange would not conflict with the Club's

1 continuing existence and that completion of the Heritage Park while simultaneously  
2 continuing the Club's operations for another 83 years were not mutually exclusive goals. Ex.  
3 555-56. Commissioner Brown also admitted that selling the Property to the Club would  
4 allow the County to continue an appropriate use (i.e. the Club), and one that residents of  
5 Kitsap County needed to be able to engage in. *Id*

6 51. The Club's attorney, Regina Taylor, had direct negotiations with County  
7 representatives regarding the written terms of the land sale Exs. 360; 371; 373; 400; 550;  
8 551. Ms. Taylor testified that she was assisting the Club to secure its position as a lessee on  
9 its leased property. She drafted an email on April 10, 2009, summarizing her understanding  
10 of meetings with the County. Ex. 550. It was her understanding that the parties were  
11 discussing a "partnership" and she attached two draft leases containing provisions  
12 acknowledging the Club's "grandfathered" status. *Id*. No one at the County ever responded  
13 to her drafts stating the Club's status was in question. Ms. Taylor testified that in her review  
14 of the draft deed she chose not to insert the term "grandfathered" because it was not a  
15 technical legal term. Instead, she chose to make clear that the Club had a legal  
16 nonconforming use right which could be intensified, by inserting the language in section 3  
17 regarding improvement of the Property consistent with "modernizing" the facilities  
18 consistent with management practices for a modern shooting range. There was never any  
19 doubt in Ms. Taylor's mind that he parties were acknowledging the Club's legal  
20 nonconforming use status as of the date of the 2009 Deed.

21 52. The parties' agreement was documented in a Bargain and Sale Deed with Restrictive  
22 Covenants (the "2009 Deed"), executed by the parties on May 13, 2009. Exs. 381; 393.  
23 Because the property was appraised at less than \$2,500, the sale did not require a public  
24 auction. Ex.477. The Club's environmental consultant, Jeremy Downs of Soundview  
25 Consultants, reviewed an aerial photo of the Club from approximately May 2009 and  
26 calculated the area of active Club use at that time was approximately eight acres. Ex. 486.

1 Independently, the Club's surveyor documented the Club's active use area in early 2011 to  
2 be approximately eight acres. Ex. 438.

3 53. On the day the 2009 Deed was executed, Commissioner Brown told the Club that the  
4 County looked forward to Club serving citizens for many years to come. Ex. 374. When the  
5 County passed its resolution and executed the 2009 Deed, it also created a record of public  
6 proceedings expressing the County's strong support for the Club and its reasons for  
7 conveying title to the Club. Exs. 415; 477-78; 393; 552-53; 555-56. Two days after signing  
8 the 2009 Deed, Commissioner Brown stated that the Club's operations were properly  
9 confined within the footprint it had leased with DNR for the past 83 years. Ex. 405.

10 54. After the 2009 Deed was executed, the County began to receive additional complaints  
11 from neighbors of the Club. In response, Steve Mount began to investigate the matter. He  
12 organized a meeting for others at the DCD and the County Prosecutor's office in 2010 where  
13 he gave a PowerPoint presentation depicting the chronology of events at the Club over the  
14 years. After hearing Mount's allegations, Prosecutor Russell Hauge agreed to file suit  
15 against the Club.

## 16 II. CONCLUSIONS OF LAW

17 Based on the evidence presented at trial, the Court makes the following conclusions of law.

18 1. The 2009 Deed provides a right for the Club to continue without further permits or  
19 approvals from the County for any site condition existing as of May 13, 2009.

20 a. When the Commissioners executed the 2009 Deed, they acted within their  
21 authority to compromise the County's interest in any legitimate dispute or potential  
22 dispute.

23 b. The terms of the 2009 Deed are binding on the County as a whole, without  
24 exception for DCD or the Prosecutor's Office.

25 2. The County's effort in this lawsuit to require the Club to be shut down because of site  
26 conditions existing as of May 13, 2009 constitutes a breach of the 2009 Deed, by which the

1 parties expressed an overt intent to resolve all outstanding issues concerning the legality of  
2 the Club's operations as they existed at that time.

3 3. The County's claims arising from site conditions existing as of May 13, 2009, are  
4 equitably estopped.

5 a. The County's claims in this lawsuit are inconsistent with statements it made to  
6 the Club in and prior to the 2009 Deed and with the negotiations and public processes  
7 leading up to its execution.

8 b. The Club reasonably relied on the County's statements in agreeing to accept  
9 title to the property, agreeing to indemnify the County for environmental liabilities,  
10 and continuing to make investments to modernize and maintain its facilities.

11 c. The Club will suffer significant harm if the County is allowed to repudiate and  
12 deviate from its earlier positions.

13 e. It would be manifestly unjust to allow the County to repudiate and deviate  
14 from its earlier positions.

15 d. Estopping the County from repudiating and deviating from its earlier positions  
16 will not impair its government functions.

17 4. The County waived any claim arising from site conditions existing as of May 13,  
18 2009, by voluntarily and intentionally relinquishing its right to challenge the legality of the  
19 Club's operations on the Historical Eight Acres through the execution of the 2009 Deed.

20 5. The County's claims arising from site conditions existing as of May 13, 2009, are  
21 barred by the doctrine of laches.

22 a. The County has not offered any reasonable explanation as to why it waited to  
23 bring this action until after the Club assumed ownership of the property and agreed to  
24 indemnify the County.

25 b. The Club will suffer significant harm from the County's inexplicable delay in  
26 bringing this action and putting the Club on notice of its intent to take enforcement

1 action. That harm includes the Club's agreement to indemnify the County from  
2 environmental liability associated with the property, its continued investment in  
3 maintaining and modernizing the facility, and its loss of a fair opportunity to  
4 negotiate more fully with the County regarding the issues raised in this lawsuit as part  
5 of the negotiation of the 2009 Deed, which the County so strongly and urgently  
6 wanted to execute.

7 6. The Club retains a vested legal nonconforming use right to operate a shooting facility  
8 and gun club within the eight acres historically used at the Property.

9 a. Under the 2009 Deed, the Club retains a legal nonconforming use right within  
10 the approximately eight-acre area presently in active use at its property.

11 b. The Club has not expanded in any way that might terminate its lawful  
12 nonconforming use right under applicable County Code and Washington law.

13 c. The Club has not changed its land use or instituted a new land use in any way  
14 that might terminate its lawful nonconforming use right under applicable County  
15 Code and Washington law.

16 d. The Club's use of its property as a shooting facility and gun club remains  
17 "otherwise lawful" within the meaning of the County's nonconforming use code,  
18 KCC 17.460.020.

19 7. The County failed to prove any actionable nuisance associated with sound or noise  
20 from the Club property.

21 a. The County failed to prove the impacts of noise or sound associated with the  
22 Club to be unreasonable so as to constitute a public nuisance.

23 b. The County failed to prove the impacts of noise or sound from the Club to be  
24 significantly impacting a large enough segment of the population to constitute a  
25 public nuisance.

26

- 1 c. The County failed to prove the impacts of sound or noise from the Club are  
2 significant enough to constitute a public nuisance.
- 3 d. The County failed to prove the amount of noise or sound from the Club is in  
4 violation of any County Code or State law governing sound.
- 5 8. The County failed to prove any actionable nuisance associated with risks to public  
6 safety posed by the Club.
- 7 a. The County failed to prove that any bullet fired at the Club has ever impacted  
8 a person or residence outside the Club property.
- 9 b. The County failed to prove that the Club poses an imminent and substantial  
10 risk of physical harm to any person or residence.
- 11 c. The County failed to prove that the Club's engineering and institutional  
12 controls for safety fall below industry standards for safety at modern small arms  
13 shooting facilities.
- 14 d. The County failed to prove that the Club increases the risk to the public  
15 associated with firearms beyond the risk that would exist if the Club were shut down.
- 16 e. The County failed to prove that residents' fears regarding alleged risks to  
17 public safety posed by the Club are sufficiently widespread to constitute a public  
18 nuisance.
- 19 f. The County failed to prove that residents' fears regarding alleged risks to  
20 public safety posed by the Club are sufficient to constitute a public nuisance.
- 21 i. The County failed to prove that residents' fears regarding alleged risks  
22 to public safety posed by the Club constitute a reasonable, well-founded, and  
23 non-speculative expectation of significant disaster.
- 24 ii. The County failed to prove that residents' fears regarding alleged risks  
25 to public safety posed by the Club have resulted in materially decreased  
26 property values.

1 g. The County failed to prove that the potential for bullets to exit an objectively  
 2 safe range with a strong record of safety is sufficient to constitute a nuisance when all  
 3 testifying residents came to the alleged nuisance.

4 9. Substantive due process prohibits the County's new nonconforming use ordinance,  
 5 KCC 17.460.020, from divesting the Club of its lawful nonconforming land use status based  
 6 on the allegations at issue.

7 a. The harm to the Club would be unduly oppressive and grossly  
 8 disproportionate to the alleged harm sought to be avoided by application of the new  
 9 ordinance.

10 b. There are much less oppressive means available to remedy the alleged harm

11 c. The Club could not anticipate that any minor violation proven by the County  
 12 in this action would result in the Club's complete loss of its historical nonconforming  
 13 use right to continue using its property as a gun club and shooting facility.

14 10. The County's attempt to use its new nonconforming use ordinance to strip the Club  
 15 of its historical nonconforming use right exceeds the County's police power, goes too far,  
 16 and is not rationally related to any legitimate interest in promoting public health, welfare, and  
 17 safety.

18 11. The County's attempt to use its new nonconforming use ordinance to strip the Club of  
 19 its historical nonconforming status, without first providing the Club actual notice of the  
 20 proposed new ordinance, violates the Club's right to procedural due process.

21 a. The new ordinance affects substantial interests and rights of the Club.

22 b. Enacting the new ordinance without providing the Club actual notice of the  
 23 proposed law threatens the Club's very existence.

24 c. Providing the Club with actual notice of the propose law would have imposed  
 25 only trivial administrative and financial burdens on the County.

26

- 1 12. The County failed to prove any violation of its Critical Areas Ordinance, KCC Title  
2 19.
- 3 a. The County did not prove any violation of the CAO related to alleged filling  
4 of wetlands adjacent to the Club's area of active use because no wetlands were filled  
5 in that alleged area.
- 6 b. The Club disclosed some accidental fill near the boat launch, whose volume  
7 of approximately one-third of a cubic yard does not require a site development  
8 activity permit (SDAP) under KCC Title 12. See KCC 12.10.030 (identifying  
9 thresholds for SDAPs).
- 10 c. The areas near the formerly proposed 300-meter range alleged by the County  
11 to be wetlands B through D are not wetlands. The County has not proven any  
12 violation of the CAO related to the Club's work in 2005 on its formerly proposed  
13 300-meter range.
- 14 d. Drainage Z—connecting the County's 42-inch culvert and the Club's twin  
15 culverts under the rifle range—is not a stream or critical area and is not subject to the  
16 CAO. See KCC 19.150.635 (defining "stream"); KCC 19.150.215 (defining "critical  
17 area"). The County has not proven any violation of the CAO or any other ordinance  
18 related to alleged work in Drainage Z.
- 19 e. The twin culverts under the rifle range were not installed in a stream or critical  
20 area so they constitute no critical area violation. The County failed to prove that the  
21 installation of the twin culverts required an SDAP under KCC 12.10.030(6) because it  
22 did not prove the Club moved the locations where water enters and exits the  
23 stormwater drainage facility.
- 24 f. The County's attempt to identify impacted critical area buffers is inaccurate  
25 and cannot be relied upon to prove the location of any critical area buffer violations.  
26

1 13. The County has failed to prove sufficient safety concerns to warrant the enjoining of  
2 the Club's operations. The scope of injunctive relief requested by the County is too broad.  
3 An injunction is not warranted.

4 14. The County's request for injunctive relief requiring permits for all past changes and  
5 all future uses is too broad and vague to enforce.

6 15. The County has failed to prove which uses or activities violate which code provisions,  
7 when these violations occurred, and which permit must be obtained so as to remedy the  
8 particular violation.

9 16. The County's request to prohibit shooting at the range until it is in compliance with  
10 all code and range safety standards is too broad and vague to enforce, and will lead to an  
11 increase in unsanctioned, unmonitored shooting activities.

12 17. The County has failed to establish a concrete set of range safety standards that should  
13 apply to the Club, and that the Club has failed to comply with those standards.

14 18. The County has not adequately identified and demarcated the offending development,  
15 clearing and wetland/stream buffer activities so injunctive relief is not appropriate.

16 19. The County's request to avoid continued violation of the Kitsap County Code is  
17 overly broad and provides no guidance to the Court.

18 DATED this \_\_\_\_\_ day of November, 2011.

19  
20  
21

\_\_\_\_\_  
Judge Susan K. Serko

22 PRESENTED BY:

23 /s/ Brian D. Chenoweth  
24 Brian D. Chenoweth, WSBA No. 25877  
25 Of Attorneys for Defendants  
26 510 SW Fifth Ave., Fifth Floor  
Portland, Oregon 97204  
(503) 221-7958

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Hon. Susan Serko  
Department 14  
November 9, 2011

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

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

Plaintiff,

v.

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

Defendants,

and

IN THE MATTER OF NUISANCE AND  
UNPERMITTED CONDITIONS LOCATED  
AT

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

Defendant.

Case No.: 10-2-12913-3

**KITSAP RIFLE AND  
REVOLVER CLUB'S  
CORRECTED PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

1           On page 9, Paragraph 32, Line 24, of the Club's Proposed Findings of Fact and  
2 Conclusions of Law, it states:

3  
4           "The opinion of the County's wetland consultant and testifying expert, Bill Shiels of  
5 Talasaea Consultants, that the Club had filled over 55,000 square feet of wetlands adjacent to  
6 its area of active use, at some time after 1978, was a preliminary opinion that he did intend  
7 anyone to rely on in an enforcement action."

8  
9           This sentence should read:

10  
11          "The opinion of the County's wetland consultant and testifying expert, Bill Shiels of  
12 Talasaea Consultants, that the Club had filled over 55,000 square feet of wetlands adjacent to  
13 its area of active use, at some time after 1978, was a preliminary opinion that he did not  
14 intend anyone to rely on in an enforcement action."

15  
16          PRESENTED BY:

17          /s/ Brian D. Chenoweth  
18          Brian D. Chenoweth, WSBA No. 25877  
19          Of Attorneys for Defendants  
20          510 SW Fifth Ave., Fifth Floor  
                Portland, Oregon 97204  
                (503) 221-7958

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# **Appendix 7**

**KCC 9.56.010**

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**Chapter 9.56  
PUBLIC NUISANCES**

Sections:

- 9.56.010 Purpose.
- 9.56.020 Definitions.
- 9.56.030 Voluntary correction.
- 9.56.035 Prerequisite to notice of abatement.
- 9.56.040 Notice of abatement.
- 9.56.050 Hearing before the violations hearing examiner.
- 9.56.060 Abatement by the county.
- 9.56.070 Environmental mitigation agreement for outdoor storage of junk motor vehicles on private property.
- 9.56.080 Additional enforcement procedures.
- 9.56.090 Removal of personal property and/or solid waste placed onto public access.
- 9.56.100 Conflicts.
- 9.56.110 Representation by attorney.

**9.56.010 Purpose.**

This chapter provides for the abatement of conditions which constitute a public nuisance where premises, structures, vehicles, or portions thereof are found to be unfit for human habitation, or unfit for other uses, due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, or due to other conditions which are inimical to the health and welfare of the residents of Kitsap County.

(Ord. 261 (2001) § 1 (part), 2001)

**9.56.020 Definitions.**

As used in this chapter, unless a different meaning is plainly required:

- (1) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a nuisance under this chapter by such means, in such a manner, and to such an extent as the director determines is necessary in the interest of the general health, safety and welfare of the community.
- (2) "Act" means doing or performing something.
- (3) "Building" means any legally constructed structure consisting of a minimum of three sides and a roof.
- (4) "Director" means the director of the department of community development, or the director of the department of public works, or their authorized designee, or any designee of the board of county commissioners, empowered to enforce a county ordinance or regulation.

# **Appendix 8**

**KCC 12.080.010**

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## Chapter 12.08 DEFINITIONS

### Sections:

12.08.010 Definitions.

#### **12.08.010 Definitions.**

The following definitions of terms shall apply to this title:

1. "Abbreviated grading plan" means grading plan that does not require the seal of a professional civil engineer.
2. "Accepted performance of construction" means the written acknowledgment from the director of the satisfactory completion of all work accepted by Kitsap County, including all work shown on the accepted plans, accepted revisions to the plans, and accepted field changes.
3. "Applicant" means the person, party, firm, corporation or other legal entity that proposes to engage in site development activities in unincorporated Kitsap County by submitting an application for any of the activities covered by this title on a form furnished by the county and paying the required application fees.
4. "Basin plan" means a plan and all implementing regulations and procedures including, but not limited to, land use management adopted by ordinance for managing surface and storm water quality and quantity management facilities and drainage features within individual sub-basins.
5. "Beneficial use" means uses of waters of the state which include but are not limited to use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.
6. "Best management practices (BMP)" means physical, structural and/or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants or other adverse impacts to water, and have been approved by Kitsap County as accepted BMPs.
7. "Biofiltration/biofilter facilities" means vegetative BMPs which treat storm water by filtration through vegetation. Biofiltration facilities include, but are not limited to, grassed or vegetated swales and filter strips.
8. "Bioretention facilities" means shallow landscaped depressions with an engineered soil mix designed to filter runoff from a small contributing area. Bioretention facilities may be in the form of swales or cells. Bioretention facilities are commonly referred to as rain gardens.

9. "Board" means the Kitsap County board of commissioners or their assigns.
10. "Bond" means a financial guarantee, in the form of a surety bond, assignment of funds, or irrevocable bank letter of credit, that shall guarantee compliance with applicable provisions of this title.
11. "Certified erosion and sediment control lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Department of Ecology. A CESCL is knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of storm water and the effectiveness of erosion and sediment control measures used to control the quality of storm water discharges. Certification is obtained through an Ecology approved erosion and sediment control course.
12. "Closed depressions" means low-lying areas which have no surface outlet, or such a limited surface outlet that in most storm events the area acts as a retention basin, holding water for infiltration, evaporation or transpiration.
13. "Comprehensive drainage plan" means a detailed analysis, adopted by the board, for a drainage basin which assesses the capabilities and needs for runoff accommodation due to various combinations of development, land use, structural and nonstructural management alternatives. The plan recommends the form, location and extent of storm water quantity and quality control measures, which would satisfy legal constraints, water quality standards, and community standards, and identifies the institutional and funding requirements for plan implementation.
14. "Contiguous land" means land adjoining and touching other land regardless of whether or not portions of the parcels have separate assessor's tax numbers or were purchased at different times, lie in different sections, are in different government lots, or are separated from each other by private road or private rights-of-way.
15. "County" means Kitsap County.
16. "Critical drainage area" refers to those areas designated in Chapter 12.28 (Critical Drainage Areas), which have a high potential for storm water quantity or quality problems.
17. "Design storm event" means a theoretical storm event, of a given frequency interval and duration, used in the analysis and design of a storm water facility.
18. "Detention facilities" means storm water facilities designed to store runoff while gradually releasing it at a predetermined controlled rate. "Detention facilities" shall include all appurtenances associated with their designed function, maintenance and security.

19. "Developed site" means the condition of the development site following completion of construction of the development including all approved phases of construction.
20. "Director" means:
- A. The director of the Kitsap County department of public works or his designee for the administration of the surface and storm water management program of Chapters 12.36 and 12.40 and the storm water maintenance program of Chapter 12.24; or
  - B. The director of the Kitsap County department of community development or his designee for all permit-related activities.
21. "Dispersion" means the release of surface or storm water runoff such that the flow spreads over a wide area and is located so as not to allow flow to concentrate anywhere upstream of a drainage channel with erodible underlying soils.
22. "Diversion" means the routing of storm water to other than its natural discharge location.
23. "Drainage feature" means any natural or manmade structure, facility, conveyance or topographic feature which has the potential to concentrate, convey, detain, retain, infiltrate or affect the flow rate of storm water runoff.
24. "Drainage plan" means a plan for the collection, transport, treatment and discharge of runoff, and may include both the plan and profile views of the site as well as construction details and notes.
25. "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.
26. "Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces on development sites are considered ineffective if the runoff is infiltrated or fully dispersed using the design criteria found in the manual.
27. "Existing storm water facilities" means those facilities constructed or under permitted construction prior to the effective date of the ordinance codified in this chapter.
28. "Forested land" means "forest land" as defined in RCW 76.09.020, and shall include all land that is capable of supporting a merchantable stand of timber and that is being actively used in a manner compatible with timber growing.
29. "Geologist" means a person who is licensed in the state of Washington and meets all experience and training requirements in accordance with Chapter 308-15 WAC, as now or hereafter amended. The state provides for two specializations: engineering geology and hydrogeology.

30. "Geotechnical engineer" means a practicing geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, with professional training and experience in geotechnical engineering, including at least four years' professional experience in evaluating geologically hazardous areas.

31. "Geotechnical report" and "geological report" mean a study of potential site development impacts related to retention of natural vegetation, soil characteristics, geology, drainage, ground water discharge, and engineering recommendations related to slope and structural stability. The geotechnical report shall be prepared by, or in conjunction with, a geotechnical engineer meeting the minimum qualifications as defined by this title. Geological reports may contain the above information with the exception of engineering recommendations, and may be prepared by a geologist. "Geotechnical report" means a study of the effects of drainage and drainage facilities on soil characteristics, geology and ground water. A geotechnical engineer or geologist shall prepare the geotechnical report.

32. "Grading" means any excavating, filling or embanking of earth materials.

33. "Hydrograph" means a graph of runoff rate, inflow rate or discharge rate, past a specific point over time.

34. "Hydrograph method" means a method of estimating a hydrograph using a mathematical simulation.

35. "Illicit discharge" means all non-storm water discharges to storm water drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, including, but not limited to, sanitary sewer connections, industrial process water, interior floor drains, and gray water systems. The following shall not be considered illicit discharges unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

- (a) Diverted stream flows.
- (b) Rising ground waters.
- (c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)).
- (d) Uncontaminated pumped ground water.
- (e) Foundation drains.
- (f) Air conditioning condensation.
- (g) Irrigation water from agricultural sources that is commingled with urban storm water.
- (h) Springs.
- (i) Water from crawl space pumps.

- (j) Footing drains.
- (k) Flows from riparian habitats and wetlands.
- (l) Non-storm water discharges covered and compliant with by another NPDES permit.
- (m) Discharges from emergency fire-fighting activities.
- (n) Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water so long as the discharges are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in storm water drainage systems.
- (o) Discharges from lawn watering and other irrigation runoff.
- (p) Dechlorinated swimming pool discharges so long as the discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent resuspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash shall not be discharged to storm water drainage systems.
- (q) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. At active construction sites, street sweeping must be performed prior to washing the street.

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

37. "Land disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity.

38. "Land use permits and approvals" means any use or development of land that requires Kitsap County action in legislation, administration or approval contained in Titles 11 (Roads, Highways and Bridges), 13 (Water and Sewers), 14 (Buildings and Construction), 15 (Flood Hazard Areas), 16 (Land Division and Development), 17 (Zoning), 18 (Environment), 19 (Critical Areas Ordinance), and 22 (Shoreline Management Master Program), including, but not limited to, the following:

- (a) Preliminary plat subdivision;
- (b) Final plat subdivision;
- (c) Performance based development (PBD) including residential and commercial;
- (d) Site plan review;
- (e) Conditional use permit (CUP);
- (f) Zoning variance;
- (g) Short plat subdivision;
- (h) Large lot subdivision;
- (i) Grading permit;
- (j) Shoreline substantial development permit;
- (k) Shoreline conditional use permit;
- (l) SEPA and EIS reviews;
- (m) Binding site plan;
- (n) Building permit;
- (o) Permitted uses under Title 17.

39. "Maintenance" means activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing and result in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. Maintenance shall also include the correction of any problem on the site property which may directly impair the functions of the storm water facilities.

40. "Maintenance covenant" means a binding agreement between Kitsap County and the person or persons holding title to a property served by a storm water facility whereby the property owner promises to, among other things, maintain certain

storm water facilities; grants Kitsap County the right to enter the subject property to inspect and to make certain repairs or perform certain maintenance procedures on the storm water control facilities when such repairs or maintenance have not been performed by the property owner; and promises to reimburse Kitsap County for the cost should the county perform such repairs or maintenance.

41. "Maintenance schedule" means a document detailing required storm water facility maintenance activities to be performed at specified intervals.

42. "Major development" means any new development or any redevelopment activity that:

(a) For sites within a census defined urban area or an urban growth area that:

(i) Creates or adds five thousand square feet, or more, of new impervious surface area; or

(ii) Converts three-fourths acre, or more, of native vegetation to pollution generating pervious surface; or

(iii) Converts two and one-half acres, or more, of native vegetation to pasture; or

(b) For sites outside census defined urban areas or urban growth areas that creates or adds ten thousand square feet, or more, of new impervious surface area or creates or adds five percent or more of impervious surface area of the site (whichever is greater); or

(c) Includes land disturbing activity of one acre or greater; or

(d) Includes grading involving the movement of five thousand cubic yards or more of material.

43. "Manual" means the Kitsap County *Stormwater Design Manual*.

44. "Minor development" means any new development or redevelopment activity that does not meet the thresholds of a major development.

45. "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

46. "New development" means land disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and

binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

47. "Nonforestry use" means an active use of land which is incompatible with timber growing.

48. "Off-site drainage analysis" means a study of those land areas contributing surface runoff to a development site as well as a study of the existing and predicted impacts of surface runoff from the development site on properties and drainage features that have the potential to receive storm water from the development site.

49. "Operation and maintenance manual" means a written manual, prepared by a qualified civil engineer, that provides a description of operation and maintenance procedures for specific storm water control facilities, for use by operation and maintenance personnel.

50. "Owner" means any person or persons having a legal or equitable property right or interest, whether or not said right is legal or equitable in character, including a fee owner, contract purchaser or seller, mortgagor or mortgagee, optionor or optionee, and beneficiary or grantor of a trust or deed of trust.

51. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of the waters of the state, including change in temperature, taste, color, turbidity or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful.

52. "Pollution-generating impervious surface (PGIS)" means those impervious surfaces considered to be a significant source of pollutants in storm water runoff. Such surfaces include those that are subject to: vehicular use; industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the runoff or blow-in of rainfall. Erodeable or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, nonleachable material (e.g., baked-on enamel coating). A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered regularly used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.

53. "Pollution-generating pervious surfaces (PGPS)" means any nonimpervious surface subject to use of pesticides and fertilizers or loss of soil. Typical PGPS include lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.
54. "Pre-development conditions" means the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement.
55. "Project site" means that portion of a property, properties, or right-of-way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces.
56. "Professional engineer" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as attested by his or her legal registration as a professional engineer in the state of Washington.
57. "Project engineer" means the professional engineer responsible for the design of the project, who will affix his/her seal on the project drainage plans and drainage analysis. The project engineer shall be licensed in the state of Washington and qualified by experience or examination.
58. "Receiving waters" means bodies of water or surface water systems to which surface runoff is discharged via a point source of storm water or via sheet flow.
59. "Redevelopment" means development on a site that is already substantially developed (i.e., has thirty-five percent or more of existing impervious surface coverage); the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.
60. "Replaced impervious surface" means:
- (a) For structures, the removal and replacement of any exterior impervious surfaces or foundation.
  - (b) For other impervious surfaces, the removal down to bare soil or base course and replacement.
61. "SEPA" means the Washington State Environmental Policy Act, Chapter 43.21C RCW.
62. "Shorelines of the state" means the total of all "shorelines" and "shorelines of state-wide significance" within the state, as defined in RCW 90.58.030, also known as the Shoreline Management Act, Chapter 90.58 RCW.

63. "Site" means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
64. "Site development activity" means the alteration of topography, clearing, paving, grading, construction, alteration of storm water systems, site preparation, or other activity commonly associated with site development. Site development includes those activities listed in the definition of "land use permits and approvals."
65. "Site development activity permit plan" means all documents submitted as part of a site development activity permit application, including, but not limited to, drainage plans, grading plans, erosion and sedimentation control plans, hydrological analyses, geotechnical reports, soils investigation reports and design analyses related to a land development project.
66. "Soils investigation report" means a study of soils on a subject property with the primary purpose of characterizing and describing the engineering properties of soils. The soils investigation report shall be prepared by a qualified soils engineer or geologist, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees.
67. "Soils engineer" means a practicing engineer licensed as a professional engineer in the state of Washington who has at least four years of professional employment as an engineer dealing with soil descriptions and characterizations.
68. "Source control BMP" means a structure or operation that is intended to prevent pollutants from coming into contact with storm water through physical separation of areas or careful management of activities that are sources of pollutants. Structural source control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering storm water. Operational BMPs are nonstructural practices that prevent or reduce pollutants from entering storm water.
69. "Stabilized" means the application of BMPs sufficient to protect soil from the erosive forces of raindrop impact and flowing water. Examples include, but are not limited to, vegetative establishment, mulching, plastic covering, the early application of gravel base, and outlet and channel protection.
70. "Storm water" means the surface water runoff that results from all natural forms of precipitation.
71. "Storm water facility" means a component of a manmade drainage feature, or features, designed or constructed to perform a particular function or multiple functions, including, but not limited to, pipes, swales, bioretention facilities, ditches, culverts, street gutters, detention basins, retention basins, wetponds, constructed wetlands, infiltration devices, catch basins, oil/water separators and sediment basins. Storm water facilities shall not include building gutters, downspouts and drains serving one single-family residence.

72. "Storm water quality control" means the control of the introduction of pollutants into storm water and the process of separating pollutants from storm water. Storm water quality control facilities include, but are not limited to, source controls, pervious pavement systems, wetponds, oil/water separators, constructed wetlands and erosion and sedimentation control facilities.

73. "Storm water quantity control" means the control of the rate and/or volume of storm water released from a development site. Storm water quantity control facilities include, but are not limited to, detention and retention facilities.

74. "Storm water system" means all natural and manmade systems which function together or independently to collect, store, purify, discharge and convey storm water. Included are all storm water facilities as well as natural systems such as streams and creeks and all natural systems which convey, store, infiltrate or divert storm water.

75. "Technical deviation" means permission granted by the director to deviate from the provisions of the manual.

76. "Variance" means permission granted by the Kitsap County hearing examiner to deviate from the provisions of this title.

77. "Water quality sensitive area" means areas that are sensitive to a change in water quality, including, but not limited to, lakes, ground water management areas, ground water special protection areas, sole source aquifers, critical aquifer recharge areas, well head protection areas, closed depressions, fish spawning and rearing habitat, wildlife habitat and shellfish protection areas.

78. "Wetland" means those areas of Kitsap County that qualify as wetlands under Title 19, Critical Areas Ordinance.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 5, 2009; Ord. 375 (2007) § 1, 2007; Ord. 290 (2002) § 1, 2002; Ord. 199 (1996) § 2.10, 1996)

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**This page of the Kitsap County Code is current through Ordinance 474 (2011), passed August 22, 2011.**

Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.kitsapgov.com/>  
(<http://www.kitsapgov.com/>)  
County Telephone: (360) 337-5777 / (800)  
825-4940  
Email the county: [openline@co.kitsap.wa.us](mailto:openline@co.kitsap.wa.us)  
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# **Appendix 9**

## **KCC 12.10**

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## Chapter 12.10 PERMITS

### Sections:

- 12.10.010 Review by department of community development.
- 12.10.020 (Repealed)
- 12.10.030 Site development activity permits required.
- 12.10.040 Exemptions.
- 12.10.050 Permit requirements.
- 12.10.055 Permit duration.
- 12.10.060 Professional engineer required.
- 12.10.070 Off-site analysis.
- 12.10.080 Geotechnical analysis.
- 12.10.090 Soils analysis.
- 12.10.100 Permit modifications.
- 12.10.110 (Repealed)

### **12.10.010 Review by department of community development.**

All proposed site development activities shall be reviewed by the Kitsap County department of community development to determine the permits required.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 6, 2009; Ord. 290 (2002) § 2, 2002; Ord. 199 (1996) § 3.10, 1996)

### **12.10.020 (Repealed)\***

\* **Editor's Note:** Former Section 12.10.020, "Expiration of existing construction plan approval," was repealed by Ordinance 433 (2009). Section 3.15 of Ordinance 199 (1996) was formerly codified in this section.

### **12.10.030 Site development activity permits required.**

A site development activity permit, issued by the Kitsap County department of community development, shall be required for any of the following activities:

- (1) Site development or redevelopment activities that meet the definition of a major development;
- (2) Site development or redevelopment activities that require connection to a public storm drainage system, except those actions undertaken by the Kitsap County public works department that do not meet the definition of a major development;
- (3) Grading activities that result in the movement of one hundred fifty cubic yards or more of earth;
- (4) Grading activities that will result in a temporary or permanent slope having a steepness exceeding three to one (three feet horizontal to one foot vertical) and having a

total slope height, measured vertically from toe of slope to top of slope, exceeding five feet;

(5) Grading activities that include the construction of embankment berms which will result in the impoundment of water to a depth exceeding eighteen inches and/or with a maximum volume exceeding two thousand five hundred cubic feet of water;

(6) Grading activities that will result in the diversion of existing drainage courses, both natural and manmade, from their natural point of entry or exit from the grading site;

(7) Any land clearing or grading on slopes steeper than thirty percent, or within the mandatory setback of a steep slope, wetland, stream, lake, Puget Sound, as established by other titles of this code.

No site development activity, including land clearing, grading or other construction activity as described in this title, shall occur until a site development activity permit has been issued, nor shall said site development activity continue without a site development activity permit in force.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 7, 2009; Ord. 290 (2002) § 3, 2002; Ord. 199 (1996) § 3.21 (part), 1996)

#### **12.10.040 Exemptions.**

The following activities shall not require a site development activity permit:

1. Commercial Agriculture. Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timber land to agriculture and the construction of impervious surfaces are not exempt.
2. Grading. Grading activities described in Section 12.16.090 are exempt from the provisions of this chapter.
3. Forest Practices. Forest practices regulated under WAC Title 222, except for Class IV general forest practices that are conversions from timber land to other uses, are exempt from the provisions of the minimum requirements.
4. Road Maintenance. The following road maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.

The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt:

- (a) Removing and replacing a paved surface to base course or lower, or repairing the roadway base. If impervious surfaces are not expanded, the minimum requirements Nos. 1 through 5 of Chapter 12.18 apply. However, in most cases, only minimum requirement No. 2, construction storm water pollution prevention, will be germane.

(b) Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders. These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for redevelopment projects are met.

(c) Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete. These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for redevelopment projects are met.

5. Underground Utilities. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to minimum requirement No. 2, construction storm water pollution prevention.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 8, 2009; Ord. 199 (1996) § 3.21 (part), 1996)

#### **12.10.050 Permit requirements.**

No site development activity permit shall be issued unless the applicant has satisfied the following criteria:

(1) Compliance with all applicable regulations, including Title 12, and compliance with the standards, specifications and requirements contained in the manual.

(2) Payment of the applicable permit fees established by the county in Section 21.06.100.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 9, 2009; Ord. 291 (2002) § 5, 2002; Ord. 199 (1996) § 3.22, 1996)

#### **12.10.055 Permit duration.**

(1) Except as provided in Section 12.16.110, site development activity permits must be issued within one year of permit application approval, and will automatically expire at the end of one year unless an extension is granted by the director. The length of extension period shall not exceed one year, and no more than two extensions shall be granted. At the end of the extension period, the permit will be automatically closed if it is still unissued. A closed permit may not be reissued or reactivated.

(2) Issued site development activity permits shall become invalid unless the work authorized by such permit is commenced within three hundred sixty days after its issuance, or if after commencing, the work authorized by such permit is suspended or abandoned for a period of three hundred sixty days. Having required inspections performed and approved within every three hundred sixty days is evidence that work has commenced and is continuing. Permits that do not receive a required inspection within three hundred sixty days of permit issuance, or within three hundred sixty days since the previous approved inspection, will be considered abandoned and shall automatically expire. If no action is taken within one hundred eighty days of the expiration date by the

applicant/owner to reactivate the permit or request an extension, the permit will be closed. A closed permit may not be reissued or reactivated.

(3) The procedures for requesting and granting extensions or renewals to permits and procedures for the disposition of inactive or expired permits shall be detailed in the manual.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 10, 2009)

**12.10.060 Professional engineer required.**

Unless otherwise required by Chapter 12.16, site development activity permit applications shall require the submittal of documents prepared by a qualified professional engineer when one of the following conditions exists:

- (1) Any land use or building or development on real property which meets the definition of a major development; or
- (2) Any improvements within the boundaries of Kitsap County rights-of-way for which Kitsap County will ultimately assume responsibility for maintenance; or
- (3) Any site development activity that the director deems to be in the public's best interest to require that certain site development activity permit application submittal documents be prepared by a professional civil engineer.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 11, 2009; Ord. 199 (1996) § 3.23, 1996)

**12.10.070 Off-site analysis.**

All site development activity permit applications which meet any of the criteria listed in Section 12.10.060 shall include, along with other required submittal documents, an off-site drainage analysis as described in Section 12.18.030, prepared by a qualified professional engineer and based on a field investigation of the development's off-site contributing and receiving drainage areas.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 12, 2009; Ord. 199 (1996) § 3.24, 1996)

**12.10.080 Geotechnical analysis.**

All site development activity permit applications for development activities where grading or the construction of retention facilities, detention facilities, or other storm water facilities is proposed within two hundred feet of slopes steeper than thirty percent, or where the director deems that the proposed construction poses a potential hazard due to its proximity to a slope, shall, when required by the director, include a geotechnical analysis, prepared by a professional geotechnical engineer or licensed engineering geologist. The geotechnical analysis shall address the effects of ground water interception and infiltration, seepage, potential slip planes and changes in soil bearing strength.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 13, 2009; Ord. 199 (1996) § 3.25, 1996)

**12.10.090 Soils analysis.**

All site development activity permit applications which meet any of the criteria listed in Section 12.10.060, or where the soils underlying the proposed project have not been mapped, or where existing soils maps of the project site are inconsistent, or where the director deems that existing soils maps of the project site are not of sufficient resolution to allow proper engineering analysis, shall include a soils investigation report.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 14, 2009; Ord. 199 (1996) § 3.26, 1996)

**12.10.100 Permit modifications.**

Proposed modifications to an issued site development activity permit must be submitted to the department of community development and be reviewed for compliance with this title. Substantial proposed modifications, as determined by the director, shall require additional review fees and shall require reissuance of the required permit. Minor proposed modifications may be accepted by the director without requiring the reissuance of the accepted permit or the payment of additional review fees.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 15, 2009; Ord. 290 (2002) § 4, 2002; Ord. 199 (1996) § 3.30, 1996)

**12.10.110 (Repealed)\***

\* **Editor's Note:** Former Section 12.10.110, "Erosion and sedimentation control," was repealed by Ordinance 433 (2009). Section 3.40 of Ordinance 199 (1996) was formerly codified in this section.

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# **Appendix 10**

## **KCC 12.16**

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**Chapter 12.16**  
**GRADING<sup>1</sup>**

Sections:

- 12.16.010 Purpose.
- 12.16.020 Authority of the director.
- 12.16.030 Grading plan required.
- 12.16.040 Abbreviated grading plan.
- 12.16.050 Drainage.
- 12.16.060 Hazards.
- 12.16.070 Permit exemptions.
- 12.16.080 Changes in topography.
- 12.16.090 Rockeries and retaining structures.
- 12.16.100 Maintenance.
- 12.16.110 Progress of work.
- 12.16.140 (Repealed)

**12.16.010 Purpose.**

This chapter sets forth the minimum standards that shall apply to grading activities as described in Section 12.10.030. For circumstances not specifically addressed in this chapter or in the *Stormwater Design Manual*, the provisions of the International Building Code, as currently in effect and adopted in Title 14, shall apply.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 22, 2009)

**12.16.020 Authority of the director.**

The director is the designated agent for the issuance of site development activity permits for grading, and shall have the authority to prepare administrative procedures to carry out the purposes and intent of this chapter.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 23, 2009; Ord. 199 (1996) § 6.05, 1996. Formerly 12.16.010)

**12.16.030 Grading plan required.**

Grading projects meeting the criteria of Section 12.10.060 shall be required to have an approved engineered grading plan.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 24, 2009; Ord. 199 (1996) § 6.10, 1996. Formerly 12.16.020)

**12.16.040 Abbreviated grading plan.**

Grading projects meeting the definition of a minor development will require an approved abbreviated grading plan in lieu of an engineered grading plan.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 25, 2009; Ord. 199 (1996) § 6.11, 1996. Formerly 12.16.030)

**12.16.050 Drainage.**

- (a) All grading activities, whether a permit is required or not, shall conform to the requirements of this title concerning storm water management.
- (b) Where required by the director, all discharge of runoff from the project site shall be of like quality, flow rate and velocity as that which flowed from the project site prior to the work for which the site development activity permit has been issued.
- (c) Storm water flows shall be accepted onto, and shall be discharged from, a project site at the natural or otherwise legally existing locations.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 26, 2009; Ord. 199 (1996) § 6.13, 1996)

**12.16.060 Hazards.**

Whenever the director determines that an existing excavation, embankment or fill on private property has become a hazard to public safety, endangers property, or adversely affects the safety, use or stability of a public way, critical drainage area, or drainage channel, such conditions shall become a violation of this title.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 27, 2009; Ord. 199 (1996) § 6.15, 1996. Formerly 12.16.070)

**12.16.070 Permit exemptions.**

The following grading activities shall not require the issuance of a site development activity permit, so long as there is less than one acre of land disturbing activity:

- (1) Excavation for utilities, or for wells or tunnels allowed under separate permit by other agencies;
- (2) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt the placement of any fill material removed from such an excavation, and shall not exempt any excavation beyond the limits of the basement or footing excavations nor exempt excavations having an unsupported height greater than five feet after the completion of such a structure;
- (3) Agricultural crop management outside of critical drainage areas limited to the preparation of soil by turning, discing or other means endorsed by the Kitsap County conservation district;
- (4) Excavation for cemetery graves;
- (5) Landscape installation where fill is confined to less than one foot of topsoil and land disturbing activities are limited to less than three-fourths acre;
- (6) The disposal of solid waste, wood waste, problem waste and demolition waste authorized pursuant to Chapter 70.95 RCW, and regulations presently enacted or as may be amended or as specifically approved by the Kitsap County health district;

- (7) Mining, quarrying, excavating, processing and/or stockpiling of rock, sand, gravel, aggregate or clay where established and provided by law, and a permit for said activity has been issued by the state of Washington or the federal government, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous land and the activities meet the minimum requirements of this title;
- (8) Exploratory excavations under the direction of a qualified professional engineer;
- (9) Grading activities already approved by separate permit granted by any governing authority; provided, that the activities meet the minimum requirements of this title;
- (10) Emergency sandbagging, diking, ditching, filling or similar work during or after periods of extreme weather conditions when done to protect life or property;
- (11) Maintenance activities within public rights-of-way performed by Kitsap County personnel. However, exemption from the site development activity permit does not constitute an exemption from the other requirements of this title.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 28, 2009; Ord. 199 (1996) § 6.20, 1996. Formerly 12.16.090)

#### **12.16.080 Changes in topography.**

(a) The maximum surface gradient on any artificially created slope shall be two feet of horizontal run to one foot of vertical fall (2:1). This gradient may be increased to that gradient which can be demonstrated through engineering calculations to be stable, if, in the opinion of the director, it has been demonstrated by the applicant through engineering calculations performed by a qualified professional engineer that surface erosion can be controlled to that erosion rate equal to a properly stabilized 2:1 slope under the same conditions.

(b) The applicant shall, at all times, protect adjacent private properties and public rights-of-way or easements from damage occurring during grading operations. The applicant shall restore public improvements damaged by his/her operations.

(c) The applicant shall be responsible for obtaining and coordinating all required state or federal permits associated with the filling of wetlands or other regulated activities.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 29, 2009; Ord. 199 (1996) § 6.30, 1996. Formerly 12.16.100)

#### **12.16.090 Rockeries and retaining structures.**

Any rockery or other retaining structure greater than four feet in height, as measured from the base of the wall and not the ground surface, shall be permitted under a separate building permit.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 30, 2009; Ord. 199 (1996) § 6.40, 1996. Formerly 12.16.110)

**12.16.100 Maintenance.**

It shall be the responsibility of the applicant to maintain all erosion control and drainage facilities in good operating condition at all times.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 31, 2009; Ord. 199 (1996) § 6.50, 1996. Formerly 12.16.120)

**12.16.110 Progress of work.**

All work permitted under this title shall proceed continuously to completion in an expeditious manner unless otherwise authorized by the director, with the intent that work may be halted due to weather conditions or the need to coordinate other construction on the project site. Site development activity permits, issued for grading only, shall expire six months after issuance.

(Ord. 441 (2009) § 2 (part), 2009; Ord. 433 (2009) § 32, 2009; Ord. 199 (1996) § 6.60, 1996. Formerly 12.16.130)

**12.16.140 (Repealed)\***

\* **Editor's Note:** Former Section 12.16.140, "Expiration of existing grading permits," was repealed by Ordinance 433 (2009). Section 6.70 of Ordinance 199 (1996) was formerly codified in this section.

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<sup>1</sup>**Editor's Note:** Former Sections 12.16.040, "Erosion and sedimentation control," 12.16.060, "Minimum grading standards," 12.16.080, "Additional review," and 12.16.140, "Expiration of existing grading permits," were repealed by Ordinance 433 (2009). Sections 6.12, 6.14, 6.16 and 6.70 of Ordinance 199 (1996) were formerly codified in these sections.

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# **Appendix 11**

**KCC 17.100.040**

- G. KCC Title 15 (Flood Hazard Areas)
- H. KCC Title 16 (Land Division and Development);
- I. KCC Title 18 (Environment);
- J. KCC Title 19 (Critical Areas Ordinance);
- K. KCC Title 20 (Transportation);
- L. KCC Title 21 (Land Use and Development Procedures);
- M. KCC Title 22 (Shoreline Management Master Program);
- N. Chapter 36.70A RCW, Growth Management Act, and Chapter 36.70B RCW, Local Project Review;
- O. Kitsap Countywide Planning Policies;
- P. Kitsap County Comprehensive Plan and Sub-Area Plans;
- Q. Kitsap County Buildable Lands Report;
- R. Kitsap County Greenways, Bicycle & Mosquito Fleet Trail Plan;
- S. Kitsap County Parks, Recreation & Open Space Plan;
- T. Kitsap County Comprehensive Solid Waste Plan;
- U. Chapter 43.21 RCW, State Environmental Policy Act; and
- V. Chapter 58.17 RCW, Plats – Subdivisions – Dedications.

(Ord. 415 (2008) § 4, 2008: Ord. 216 (1998) § 4 (part), 1998)

**17.100.030 Compliance.**

No building or other structure shall be constructed, improved, altered, enlarged, or moved; nor shall any use or occupancy of premises within the county be commenced or changed; nor shall any condition of or upon real property be caused or maintained, after the effective date of this title, except in conformity with conditions prescribed for each of the several zones established hereunder. It shall be unlawful for any person, firm, or corporation to erect, construct, establish, move into, alter, enlarge, use or cause to be used, any buildings, structures, improvements, or use of premises contrary to the provisions of this title, provided, however, conditions of approval as referred to in the changes to zones, amendments and alterations section, and the existing uses referred to in the interpretations and exceptions section, shall be allowed to continue in the manner and extent provided for therein. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control.

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

**17.100.040 Allowed uses.**

When a use is not specifically listed in this title, it shall be understood that the use may be allowed if it is determined by the director that the use is similar to other uses listed. It is further recognized that every conceivable use cannot be identified. In anticipation that new uses will

evolve over time, this section establishes the director's authority to compare a proposed use and measure it against those listed in this title for determining similarity. In determining similarity, as well as when considering all other uses, the director shall make all of the following findings:

- A. The proposed use shall meet the intent of, and be consistent with the goals, objectives and policies of the Kitsap County Comprehensive Plan;
- B. The proposed use shall meet the stated purpose and general intent of the Comprehensive Plan land use designations and zoning classification in which the use is proposed to be located;
- C. The proposed use shall not adversely impact the public health, safety and general welfare of the residents of the county; and
- D. The proposed use shall share characteristics in common with, and not be of greater intensity, density or generate more environmental impact than, those uses listed in the land use zone in which it is to be located.

If determined similar, the unspecified use shall meet all of the code requirements and follow the approval process prescribed for the listed use.

(Ord. 415 (2008) § 6, 2008: Ord. 216 (1998) § 4 (part), 1998)

**17.100.050 Conflict with other regulations.**

Where conflicts occur between the provisions of this title and other applicable code provisions, or other regulations from other jurisdictions with authority, the more restrictive shall apply.

(Ord. 415 (2008) § 7, 2008: Ord. 216 (1998) § 4 (part), 1998)

**17.100.060 Relationship to procedures ordinance.**

To the extent that there is a conflict regarding the requirements of this title and Title 21 (Land Use and Development Procedures), Title 21 shall control.

(Ord. 415 (2008) § 8, 2008: Ord. 216 (1998) § 4 (part), 1998)

**17.100.070 Interpretation.**

This title shall be liberally interpreted and construed to secure the public health, safety, and welfare and the rule of strict construction shall have no application.

(Ord. 415 (2008) § 9, 2008: Ord. 216 (1998) § 4 (part) (§ 17.600.010), 1998)

**17.100.080 Severability.**

If any section, subsection, clause or phrase of this title or amendment thereto, or its application to any person or circumstance, is held by a court of competent jurisdiction to be invalid, the remainder or application to other persons or circumstances shall not be affected.

(Ord. 415 (2008) § 10, 2008: Ord. 216 (1998) § 4 (part) (§ 17.100.080), 1998)

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# **Appendix 12**

**KCC 17.100.070**

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- A. The proposed use shall meet the intent of, and be consistent with the goals, objectives and policies of the Kitsap County Comprehensive Plan;
- B. The proposed use shall meet the stated purpose and general intent of the Comprehensive Plan land use designations and zoning classification in which the use is proposed to be located;
- C. The proposed use shall not adversely impact the public health, safety and general welfare of the residents of the county; and
- D. The proposed use shall share characteristics in common with, and not be of greater intensity, density or generate more environmental impact than, those uses listed in the land use zone in which it is to be located.

If determined similar, the unspecified use shall meet all of the code requirements and follow the approval process prescribed for the listed use.

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(Ord. 415 (2008) § 10, 2008: Ord. 216 (1998) § 4 (part) (§ 17.100.080), 1998)

# **Appendix 13**

**KCC 17.110**

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**Chapter 17.110  
DEFINITIONS**

## Sections:

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<u>17.110.025</u>	Accessory living quarters.
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<u>17.110.035</u>	Adjacent.
<u>17.110.040</u>	Adjoining.
<u>17.110.045</u>	Adult family home.
<u>17.110.050</u>	Agricultural uses.
<u>17.110.055</u>	Alley.
<u>17.110.057</u>	Alternative technology.
<u>17.110.060</u>	Animal.
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<u>17.110.110</u>	Board.
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<u>17.110.168</u>	Co-location.
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<u>17.110.175</u>	Conditional use.
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<u>17.110.190</u>	Convalescent, nursing or rest home.
<u>17.110.195</u>	Contractor's storage yard.
<u>17.110.196</u>	Cottage housing development.
<u>17.110.197</u>	County engineer.
<u>17.110.199</u>	Custom art and craft stores.
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<u>17.110.205</u>	Day-care center, family.
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<u>17.110.212</u>	Density, maximum.
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<u>17.110.220</u>	Development.
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<u>17.110.223</u>	Directional panel antenna.
<u>17.110.225</u>	Director.
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<u>17.110.230</u>	(Repealed)
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<u>17.110.242</u>	Dwelling, single-family detached.
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<u>17.110.255</u>	Dwelling unit.
<u>17.110.257</u>	Emergency service communications.
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<u>17.110.405</u>	Lot area.
<u>17.110.410</u>	Lot, corner.
<u>17.110.412</u>	Lot, interior
<u>17.110.415</u>	Lot coverage.
<u>17.110.420</u>	Lot depth.
<u>17.110.425</u>	(Repealed)
<u>17.110.430</u>	Lot line.
<u>17.110.435</u>	Lot line, front.
<u>17.110.440</u>	Lot line, rear.
<u>17.110.445</u>	Lot line, side.
<u>17.110.450</u>	Lot of record.
<u>17.110.455</u>	Lot, through.
<u>17.110.460</u>	Lot width.
<u>17.110.462</u>	Macro antenna array.
<u>17.110.465</u>	Maintain.
<u>17.110.470</u>	Manufactured home.
<u>17.110.473</u>	Manufacturing and fabrication.
<u>17.110.475</u>	Marina.
<u>17.110.477</u>	Master plan.
<u>17.110.480</u>	Micro antenna array.
<u>17.110.483</u>	Mini antenna array.
<u>17.110.485</u>	Mixed use development.
<u>17.110.490</u>	Mobile home.
<u>17.110.493</u>	Mobile home park.
<u>17.110.503</u>	Mono-pole.
<u>17.110.504</u>	Movie/performance theater.
<u>17.110.506</u>	Net developable area.
<u>17.110.508</u>	Nonconforming lot.
<u>17.110.510</u>	Nonconforming use, nonconforming structure or nonconforming use of structure.
<u>17.110.515</u>	(Nuisance.)

<u>17.110.520</u>	Nursery, retail.
<u>17.110.525</u>	Nursery, wholesale.
<u>17.110.530</u>	Nursing or rest home.
<u>17.110.535</u>	Open space.
<u>17.110.540</u>	Ordinary high water mark.
<u>17.110.545</u>	Owner.
<u>17.110.547</u>	Parabolic antenna.
<u>17.110.548</u>	Parcel.
<u>17.110.550</u>	Park.
<u>17.110.555</u>	Parking area, public.
<u>17.110.560</u>	Parking space.
<u>17.110.565</u>	Parking space, barrier free.
<u>17.110.570</u>	Parking space, compact.
<u>17.110.572</u>	Performance based development (PBD).
<u>17.110.575</u>	Perimeter setback.
<u>17.110.576</u>	Permitted use.
<u>17.110.580</u>	Person.
<u>17.110.585</u>	Pet.
<u>17.110.590</u>	Pet, non-traditional.
<u>17.110.591</u>	Pharmacies.
<u>17.110.595</u>	Pier.
<u>17.110.600</u>	Places of worship.
<u>17.110.605</u>	(Repealed)
<u>17.110.610</u>	Planning commission.
<u>17.110.615</u>	Porch.
<u>17.110.620</u>	Portable sign.
<u>17.110.625</u>	Premises.
<u>17.110.630</u>	Private airport or heliport.
<u>17.110.635</u>	Prohibited use.
<u>17.110.637</u>	Project permit or project permit application.
<u>17.110.640</u>	Public facilities.
<u>17.110.642</u>	Race track, major.
<u>17.110.643</u>	Race track, minor.
<u>17.110.645</u>	Receiving areas and parcels.
<u>17.110.646</u>	Recreational amenity, active.
<u>17.110.647</u>	Recreational facility.
<u>17.110.650</u>	Recreational vehicle.
<u>17.110.655</u>	Recreational vehicle camping park.
<u>17.110.660</u>	Residential care facility.
<u>17.110.662</u>	Restaurant.
<u>17.110.663</u>	Restaurant, high-turnover.
<u>17.110.665</u>	Rezone.
<u>17.110.666</u>	Rural character.
<u>17.110.667</u>	Rural cluster.
<u>17.110.668</u>	Rural Wooded Incentive Program development.
<u>17.110.669</u>	Sending areas and parcels.
<u>17.110.670</u>	Setback.

<u>17.110.673</u>	Shipping container.
<u>17.110.674</u>	(Repealed)
<u>17.110.675</u>	Sign.
<u>17.110.680</u>	Sign permit.
<u>17.110.683</u>	Site.
<u>17.110.685</u>	Site plan.
<u>17.110.686</u>	Site-specific amendment.
<u>17.110.687</u>	Stealth technology.
<u>17.110.688</u>	Storage, hazardous materials.
<u>17.110.689</u>	Storage, self-service.
<u>17.110.690</u>	Storage, vehicles and equipment.
<u>17.110.691</u>	Storage, indoor.
<u>17.110.692</u>	Storage, outdoor.
<u>17.110.693</u>	Storage container.
<u>17.110.695</u>	Street.
<u>17.110.700</u>	Structural alteration.
<u>17.110.705</u>	Structure.
<u>17.110.706</u>	Sub-area plan.
<u>17.110.707</u>	Support structure.
<u>17.110.710</u>	Temporary sign.
<u>17.110.715</u>	Temporary structure.
<u>17.110.720</u>	Temporary use.
<u>17.110.725</u>	Tract.
<u>17.110.730</u>	Use.
<u>17.110.735</u>	(Repealed)
<u>17.110.740</u>	Veterinary clinic.
<u>17.110.745</u>	Water-dependent use.
<u>17.110.750</u>	Water-enjoyment use.
<u>17.110.755</u>	Water-oriented use.
<u>17.110.760</u>	Water-related use.
<u>17.110.765</u>	Wireless communication antenna array.
<u>17.110.770</u>	Wireless communication facility.
<u>17.110.775</u>	Wireless communication support structure.
<u>17.110.780</u>	Whip antenna.
<u>17.110.782</u>	(Repealed)
<u>17.110.783</u>	Wrecking yard.
<u>17.110.785</u>	Yard.
<u>17.110.790</u>	Yard, front.
<u>17.110.795</u>	Yard, rear.
<u>17.110.800</u>	Yard, side.
<u>17.110.805</u>	Zone.

**17.110.005 Generally.**

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

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

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

**17.110.010 Abutting.**

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

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

**17.110.015 Access.**

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

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

**17.110.020 Accessory dwelling unit.**

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

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

**17.110.025 Accessory living quarters.**

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

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

**17.110.030 Accessory use or structure.**

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

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

**17.110.035 Adjacent.**

"Adjacent" means the same as "abutting."

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

**17.110.040 Adjoining.**

"Adjoining" means the same as "abutting."

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

**17.110.045 Adult family home.**

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

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

**17.110.050 Agricultural uses.**

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

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

**17.110.055 Alley.**

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

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

**17.110.057 Alternative technology.**

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

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

**17.110.060 Animal.**

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

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

**17.110.065 Animal, small.**

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

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

**17.110.070 Animal hospital.**

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

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

**17.110.075 Amusement center.**

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

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

**17.110.085 Aquaculture practices.**

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

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

**17.110.087 Assembly and packaging operations.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.090 Automobile repair.**

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

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

**17.110.095 Automobile service station.**

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

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

**17.110.100 Awning.**

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

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

(Ord. 415 (2008) § 16, 2008)

**17.110.103 (Repealed)\***

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

**17.110.105 Bed and breakfast house.**

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

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

**17.110.110 Board.**

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

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

**17.110.120 Boat yard.**

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

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

**17.110.125 Breezeway.**

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

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

**17.110.126 Brew pubs.**

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

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

**17.110.130 Buffer.**

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

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

**17.110.132 Buffer, landscaping.**

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

(Ord. 415 (2008) § 21, 2008)

**17.110.133 Buffer, screening.**

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

(Ord. 415 (2008) § 22, 2008)

**17.110.135 Building.**

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

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

**17.110.140 Building height.**

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

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

**17.110.145 Building line.**

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

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

**17.110.150 Caretaker’s dwelling.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.155 Carport.**

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

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

**17.110.157 Child care center.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.160 Clinic.**

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

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

**17.110.165 Club.**

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

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

**17.110.168 Co-location.**

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

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

**17.110.170 Commission or planning commission.**

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

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

**17.110.171 Comprehensive plan.**

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

(Ord. 415 (2008) § 23, 2008)

**17.110.175 Conditional use.**

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

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

**17.110.177 Conference center.**

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

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

**17.110.180 Congregate care facility.**

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

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

**17.110.185 Contiguous.**

“Contiguous” means the same as “abutting.”

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

**17.110.190 Convalescent, nursing or rest home.**

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

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

**17.110.195 Contractor’s storage yard.**

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

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

**17.110.196 Cottage housing development.**

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

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

**17.110.197 County engineer.**

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

(Ord. 415 (2008) § 25, 2008)

**17.110.199 Custom art and craft stores.**

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

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

**17.110.200 Day-care center.**

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

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

**17.110.205 Day-care center, family.**

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

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

**17.110.210 Density.**

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

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

**17.110.212 Density, maximum.**

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

(Ord. 415 (2008) § 29, 2008)

**17.110.213 Density, minimum.**

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

(Ord. 415 (2008) § 30, 2008)

**17.110.215 Department.**

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

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

**17.110.220 Development.**

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

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

**17.110.222 Development rights.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.223 Directional panel antenna.**

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

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

**17.110.225 Director.**

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

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

**17.110.226 Drinking establishments.**

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

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

**17.110.230 (Repealed)\***

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

**17.110.240 Dwelling, single-family attached.**

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

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

**17.110.242 Dwelling, single-family detached.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.245 Dwelling, duplex.**

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

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

**17.110.250 Dwelling, multiple-family.**

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

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

**17.110.255 Dwelling unit.**

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

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

**17.110.257 Emergency service communications.**

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

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

**17.110.260 Employees.**

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

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

**17.110.265 Exotic animal.**

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

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

**17.110.270 Family.**

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

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

**17.110.275 Fence, sight-obscuring.**

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

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

**17.110.280 Forestry.**

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

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

**17.110.285 Foster home.**

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

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

**17.110.290 Frontage.**

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

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

**17.110.295 Garage, private.**

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

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

**17.110.301 General merchandise stores.**

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

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

**17.110.302 General office and management services.**

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

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

**17.110.303 Golf course.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.305 Grade.**

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

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

**17.110.315 Gross floor area.**

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

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

**17.110.317 Guest house.**

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

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

**17.110.319 Habitable area.**

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

(Ord. 415 (2008) § 38, 2008)

**17.110.320 Habitable floor.**

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

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

**17.110.325 Hearing examiner.**

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

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

**17.110.330 Heavy equipment.**

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

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

**17.110.340 (Repealed)\***

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

**17.110.345 Home business.**

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

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

**17.110.350 Home day care.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.355 Home owners' association.**

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

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

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

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

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

**17.110.360 Hospital.**

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

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

**17.110.365 Hotel/motel.**

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

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

**17.110.366 Immediate vicinity.**

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

(Ord. 415 (2008) § 41, 2008)

**17.110.367 Impervious surface.**

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.368 Infill development.**

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

(Ord. 415 (2008) § 42, 2008)

**17.110.369 Junk motor vehicle.**

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

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

**17.110.370 Junk yard.**

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

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

**17.110.375 Kennel.**

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

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

**17.110.380 Kennel, hobby.**

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

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

**17.110.390 Landscaping.**

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

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

**17.110.393 Lattice support structure.**

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

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

**17.110.395 Livestock.**

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

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

**17.110.396 Loading space.**

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

(Ord. 415 (2008) § 43, 2008)

**17.110.400 Lot.**

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

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

**17.110.405 Lot area.**

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

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

**17.110.410 Lot, corner.**

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

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

**17.110.412 Lot, interior.**

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

(Ord. 415 (2008) § 46, 2008)

**17.110.415 Lot coverage.**

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

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

**17.110.420 Lot depth.**

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

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

**17.110.425 (Repealed)\***

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

**17.110.430 Lot line.**

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

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

**17.110.435 Lot line, front.**

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

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

**17.110.440 Lot line, rear.**

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

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

**17.110.445 Lot line, side.**

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

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

**17.110.450 Lot of record.**

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

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

**17.110.455 Lot, through.**

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

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

**17.110.460 Lot width.**

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

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

**17.110.462 Macro antenna array.**

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

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

**17.110.465 Maintain.**

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

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

**17.110.470 Manufactured home.**

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

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

**17.110.473 Manufacturing and fabrication.**

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

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

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

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

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

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.475 Marina.**

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

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

**17.110.477 Master plan.**

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

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

**17.110.480 Micro antenna array.**

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

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

**17.110.483 Mini antenna array.**

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

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

**17.110.485 Mixed use development.**

“Mixed use development” means the development of a site or building with a combination of residential and non-residential uses in a single or physically integrated group of buildings.(Ord. 367 (2006) § 5 (part), 2006)

**17.110.490 Mobile home.**

"Mobile home" means a factory-built single-family dwelling constructed prior to June 15, 1976, to standards other than the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act.

(Ord. 415 (2008) § 52, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.493 Mobile home park.**

"Mobile home park" means a tract of land developed or operated as a unit with individual leased sites and facilities to accommodate two or more mobile homes or manufactured homes.

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

**17.110.503 Mono-pole.**

"Mono-pole" means a structure composed of a single spire used to support telecommunication equipment.

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

**17.110.504 Movie/performance theater.**

"Movie/performance theater" means a facility for showing films and performance art, including accessory retail sales of food and beverages. This definition excludes adult entertainment uses.

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

**17.110.506 Net developable area.**

"Net developable area" means the site area after subtracting all rights-of-way, critical areas (including bald eagle habitat regulations) and their buffers, stormwater controls, recreational facilities, public facilities, community drainfields or other area-wide sanitary sewer facilities, and open space.

(Ord. 415 (2008) § 53, 2008)

**17.110.508 Nonconforming lot.**

"Nonconforming lot" means a lot was lawfully created but does not conform to the lot requirements of the zone in which it was located as established by this title or other ordinances or amendments thereto.

(Ord. 415 (2008) § 54, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998. Formerly 17.110.505)

**17.110.510 Nonconforming use, nonconforming structure or nonconforming use of structure.**

"Nonconforming use, nonconforming structure or nonconforming use of structure" means, respectively, a use of land, a structure or use of a structure which was lawfully established or built and which has been lawfully continued but which does not conform to the regulations established by this title or amendments thereto.

(Ord. 470-2011 § 2, 2011; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.515 Nuisance.**

“Nuisance” means in addition to those definitions contained in Chapters 7.48 and 9.66 RCW, as amended, any violation of this title shall constitute a nuisance, per se.

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

**17.110.520 Nursery, retail.**

“Nursery, retail” means an establishment where trees, shrubs and other plant materials are grown, propagated and/or stored for purpose of sale directly to the public.

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

**17.110.525 Nursery, wholesale.**

“Nursery, wholesale” or “wholesale nursery” means an establishment where trees, shrubs or other plants are propagated on the property and/or continuously grown to a larger size for a period no less than one complete growing season and that is not open to the public on a regular basis. Temporary outdoor stands for the periodic and occasional sale of plants which are grown on the premises shall not disqualify an establishment for definition as a wholesale nursery. No bark, mulch, fertilizer or other similar landscape supply may be sold.

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

**17.110.530 Nursing or rest home.**

See Section 17.110.190, Convalescent, nursing or rest home.

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

**17.110.535 Open space.**

“Open space” shall mean land used for outdoor active and passive recreational purposes or for critical area or resource land protection, including structures incidental to these open space uses, including associated critical area buffers, but excluding land occupied by dwellings or impervious surfaces not related to the open space uses and yards required by this title for such dwellings or impervious surfaces. “Open space” is further divided into the following categories:

- A. “Common open space” shall mean space that may be used by all occupants of a development complex or, if publicly dedicated, by the general public;
- B. “Active recreational open space” shall mean space that is intended to create opportunities for recreational activity. Active recreational open space may be occupied by recreational facilities such as ball fields, playground equipment, trails (pedestrian, bicycle, equestrian or multi-modal), swimming pools, and game courts or sculptures, fountains, pools, benches or other outdoor furnishings;

- C. "Passive open space" shall mean all common open space not meeting the definition of active recreational open space, including, but not limited to, critical areas and their associated buffers;
- D. "Permanent open space" means an area that is permanently reserved as open space and remains in native vegetation unless approved for forestry, passive recreational or access uses; and
- E. "Recreational open space" means an area that shall be improved and maintained for its intended use. Exterior as well as interior areas can constitute recreational open space. Examples of usable recreational space include swimming pools, community buildings, interior gyms, picnic areas, tennis courts, community gardens, improved playgrounds, paths and passive seating areas.

(Ord. 415 (2008) § 55, 2008: Ord. 407 (2008) § 6, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 216 (1998) § 4 (part), 1998)

**17.110.540 Ordinary high water mark.**

"Ordinary high water mark" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

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

**17.110.545 Owner.**

"Owner" means the owner of record of real property or person purchasing a piece of property under contract. For the purposes of this title, in terms of violations and binding agreements between the county and the owner, "owner" shall also mean a leaseholder, tenant, or other person in possession or control of the premises or property at the time of agreement, violations of agreement, or the provisions of this title. For the purpose of processing an application for a land use approval or permit under this title, where such application or permit must be filed by an owner, the term "owner" also includes a governmental entity contemplating acquisition of a parcel for a use which would require such permit or approval.

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

**17.110.547 Parabolic antenna.**

"Parabolic antenna" means an antenna which is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern. (Also known as a "dish antenna.")

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

**17.110.548 Parcel.**

"Parcel" means platted or unplatted portions of land carrying an assessor's tax account number. Parcels may be, but are not necessarily, legal lots.

(Ord. 415 (2008) § 56, 2008)

**17.110.550 Park.**

"Park" means public or private areas of land, with or without buildings, intended for outdoor active or passive recreational uses including, but not limited to, arboretums, horticultural gardens and nature preserves.

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

**17.110.555 Parking area, public.**

"Parking area, public" or "public parking area" means an open area other than a street or other public way, used for the parking of automobiles and available to the public whether for a fee, free of charge, or as an accommodation for clients or customers.

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

**17.110.560 Parking space.**

"Parking space" means a permanently surfaced and marked area not less than nine feet wide and twenty feet long, excluding paved area necessary for access, for the parking of a motor vehicle.

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

**17.110.565 Parking space, barrier free.**

"Parking space, barrier free" or "barrier free parking space" means a parking space conforming with WAC Chapter 51.30.

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

**17.110.570 Parking space, compact.**

"Parking space, compact" or "compact parking space" means a permanently surfaced and marked area not less than eight feet wide and eighteen feet long, excluding paved area necessary for access, for the parking of a compact motor vehicle.

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

**17.110.572 Performance based development (PBD).**

"Performance based development" (or "PBD") means a property development characterized by comprehensive planning of the total project, though it may contain a variety of individual lots and/or uses. Typically, such a project may include clustering of structures and preservation of open space with a number of flexible and customized design features specific to the natural features of the property and the uses sought to be implemented. Specific lot area, dimension and setback requirements may be reduced or deleted in order to allow flexibility and innovation in building design or placement, to facilitate allowed densities and to increase open space, critical areas protection and similar components of the project.

(Ord. 415 (2008) § 57, 2008)

**17.110.575 Perimeter setback.**

"Perimeter setback" means in a performance based development (PBD), the horizontal distance between a building line and the exterior boundary of the PBD.

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

**17.110.576 Permitted use.**

"Permitted use" means a land use allowed outright in a certain zone without a public hearing or conditional use permit; provided, such use is developed in accordance with the requirements of the zone and general conditions of this title, and all applicable provisions elsewhere in the county code.

(Ord. 415 (2008) § 58, 2008)

**17.110.580 Person.**

"Person" means an individual, partnership, corporation, association, organization, cooperative, tribe, public or municipal corporation, or agency of the state or local governmental unit however designated.

(Ord. 415 (2008) § 59, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.585 Pet.**

"Pet" means any animal less than one hundred fifty pounds in weight, other than exotic animals, kept for companionship, recreation or other non-agricultural purposes.

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

**17.110.590 Pet, non-traditional.**

"Pet, non-traditional" or "non-traditional pet" means any pet other than a dog, cat, fish or non-raptor bird.

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

**17.110.591 Pharmacies.**

"Pharmacies" shall mean businesses primarily engaged in the sale of prescription and over-the-counter drugs, vitamins, first-aid supplies, and other health-related products. Pharmacies that also sell a wide variety of other types of merchandise, such as beauty products, camera equipment, small consumer electronics, gift wares, housewares, and/or cleaning supplies are considered "general merchandise stores."

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

**17.110.595 Pier.**

"Pier" means a fixed structure built over tidelands or shorelands used as a landing for marine or recreational purposes.

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

**17.110.600 Places of worship.**

"Places of worship" means a permanently located building primarily used for religious worship.

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

**17.110.605 (Repealed)\***

\* **Editor's Note:** Former Section 17.110.605, "Performance based development (PBD)," was repealed by § 60 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

**17.110.610 Planning commission.**

"Planning commission" means the Kitsap County planning commission.

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

**17.110.615 Porch.**

"Porch" means a covered attached structure providing a single entrance to a building, which may be either open or enclosed up to one third.

(Ord. 415 (2008) § 61, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.620 Portable sign.**

"Portable sign" means a sign which has no permanent attachment to a building or the ground which include, but is not limited to, A-frame, pole attachment, banners and reader board signs.

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

**17.110.625 Premises.**

"Premises" means a tract or parcel of land with or without habitable buildings.

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

**17.110.630 Private airport or heliport.**

"Private airport or heliport" means any runway, landing area or other facility designed and used by individual property owners for private aircraft for the purposes of landing and taking off, including associated facilities, such as hangars and taxiways.

(Ord. 415 (2008) § 62, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.635 Prohibited use.**

"Prohibited use" means any use which is not expressly allowed and does not meet the criteria under Section 17.100.040.

(Ord. 415 (2008) § 63, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.637 Project permit or project permit application**

"Project permit" or "project permit application" means any land use or environmental permit or license required from Kitsap County for a project action, including, but not limited to, building permits, subdivisions, binding site plans, performance based developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, and site-specific rezones authorized by the Kitsap County Comprehensive Plan (Plan) or a sub-area plan, but excluding the adoption or amendment of the Plan, a sub-area plan, or development regulations.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.640 Public facilities.**

"Public facilities" means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, waste handling facilities designated as public facilities in the comprehensive solid waste management plan, parks and recreational facilities, schools, public works storage facilities and road sheds, and utilities such as power, phone and cable television.

(Ord. 415 (2008) § 64, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.642 Race track, major.**

"Race track, major" means a public or private facility developed for the purpose of operating and/or competitive racing of automobiles, motorcycles or similar vehicles. The facility may allow for up to six thousand spectators and may contain an oval, drag strip, road track and/or other course. Accessory uses may include the sale of concessions and souvenirs, a recreational vehicle camping park, community events and/or vehicle safety training.

(Ord. 415 (2008) § 65, 2008)

**17.110.643 Race track, minor.**

"Race track, minor" means a public or privately owned course designed for the operating and/or racing of automobiles, motorcycles, all-terrain vehicles or similar vehicles along a defined route that may include straight-aways, curves, jumps and/or other features.

(Ord. 415 (2008) § 66, 2008)

**17.110.645 Receiving areas and parcels.**

"Receiving areas and parcels" means areas within an urban growth area that are designated on the Kitsap County zoning map or by further action of the board of county commissioners, that may be eligible for additional residential development through the transfer of development rights.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.646 Recreational amenity, active.**

A "recreational amenity, active" means an area within a development intended for use by the residents, employees or patrons of the development for leisure activities. Such facilities may include, but are not limited to, a paved sports court, children's play

equipment, exercise fitness trail, community garden or gathering area with water service or similar facility.

(Ord. 415 (2008) § 67, 2008)

**17.110.647 Recreational facility.**

“Recreational facility” means a place designed and equipped for the conduct of sports and leisure-time activities. Examples include athletic fields, batting cages, amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks and similar uses. Public recreational facilities are those owned by a government entity.

(Ord. 415 (2008) § 68, 2008; Ord. 367 (2006) § 5 (part), 2006)

**17.110.650 Recreational vehicle.**

“Recreational vehicle” means a vehicle such as a motor home, travel trailer, truck and/or camper combination or camp trailer which is designed for temporary human habitation for recreational or emergency purposes and which may be moved on public highways without any special permit for long, wide or heavy loads.

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

**17.110.655 Recreational vehicle camping park.**

“Recreational vehicle camping park” means a tract of land under single ownership or unified control developed with individual sites for rent and containing roads and utilities to accommodate recreational vehicles or tent campers for vacation or other similar transient, short-stay purposes.

(Ord. 415 (2008) § 69, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.660 Residential care facility.**

“Residential care facility” means a facility that is the primary residence of a person or persons who are providing personal care, room and board, and medical care for at least five, but not more than fifteen, functionally disabled persons.

(Ord. 415 (2008) § 70, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.662 Restaurant.**

“Restaurant” means an establishment where food and/or beverages are served to customers for compensation.

(Ord. 415 (2008) § 71, 2008)

**17.110.663 Restaurant, high-turnover.**

“High-turnover restaurant” means retail establishments providing food and/or beverages for sale, and which are distinguished by one or more of the following:

- A. Use of disposable food containers and utensils;
- B. Self-service is available;

- C. The principal business is take-out foods and beverages;
- D. Drive-in service is available.

(Ord. 415 (2008) § 72, 2008)

**17.110.665 Rezone.**

"Rezone" means a change in the zoning classification on the Kitsap County Zoning Map that affects one parcel or a small group of contiguous parcels, a section, or sections of Kitsap County consistent with Chapter 17.510.(Ord. 367 (2006) § 5 (part), 2006)

**17.110.666 Rural character.**

"Rural character" means the patterns of land use and development that are consistent with the following:

- A. Open space, the natural landscape, and vegetation predominate over the built environment;
- B. Traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- C. Visual landscapes that are traditionally found in rural areas and communities;
- D. Compatible with the use of the land by wildlife and for fish and wildlife habitat;
- E. Reduces the inappropriate conversion of undeveloped land into low-density development;
- F. Protects natural surface water flows and ground water and surface water recharge and discharge areas; and
- G. Meets the requirements of RCW 36.70A.030(15).

(Ord. 415 (2008) § 73, 2008; Ord. 367 (2006) § 5 (part), 2006)

**17.110.667 Rural cluster.**

"Rural cluster" means site development that avoids sensitive areas while preserving forested land, steep slopes, wetlands, prairies and other ecologically or visually valuable landscape features while still obtaining residential density. Typically a percentage of a site area is preserved in its existing natural or farmed state, with individual house lots occupying the remaining acreage.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.668 Rural Wooded Incentive Program development.**

"Rural Wooded Incentive Program development" means a development within the area designated "Rural Wooded" on the Kitsap County Comprehensive Plan land use map that has utilized the clustering provisions of this title and for which final approval has been granted by the board of county commissioners.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.669 Sending areas and parcels.**

"Sending areas and parcels" means undeveloped or partially developed lot(s) or parcel(s) located within a sending area, designated on the Kitsap County zoning map or by further action of the board of county commissioners, that are appropriate to transfer development rights.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.670 Setback.**

"Setback" means the horizontal distance from a property line to the nearest vertical wall or other element of a building or structure.

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

**17.110.673 Shipping container.**

"Shipping container" means any repository greater than 25 feet in length traditionally commonly used for the interstate or international transport of goods.

(Ord. 415 (2008) § 74, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.674 (Repealed)\***

\* **Editor's Note:** Former Section 17.110.674, "Sheltered transit stop," was repealed by § 75 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and Attachment 7 (part) of Ord. 311 (2003) were formerly codified in this section.

**17.110.675 Sign.**

"Sign" means a collection of letters, numbers or symbols which calls attention to a business, product, activity, person or service. Balloons or balloon type devices in excess of five cubic feet, or flown more than twenty feet in elevation measured from grade, or taller than twenty-feet in height measured from mean grade are considered signs for the purposes of this ordinance.

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

**17.110.680 Sign permit.**

"Sign permit" means a permit which authorizes the placement or alteration of a sign on a particular parcel of property or building.

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

**17.110.683 Site.**

"Site" means the spatial location of an actual or planned development. A site may contain multiple lots or parcels, excluding public right-of-way.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.685 Site plan.**

"Site plan" means a plan prepared to scale, showing accurately and with complete dimensions, all proposed and existing buildings, landscaping, open space, structures and features on abutting properties, and parking proposed for a specific parcel of land; including the specific requirements listed in the pre-application meeting summary and/or application.

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

**17.110.686 Site-specific amendment.**

"Site-specific amendment" means an amendment to the Comprehensive Plan and/or Zoning Map that affects one or a small group of contiguous parcels. A site-specific amendment most frequently affects only the land use designation and/or zoning classification and not the text of the Comprehensive Plan or a development regulation.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.687 Stealth technology.**

See Section 17.110.057, Alternative technology.

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

**17.110.688 Storage, hazardous materials.**

"Storage, hazardous materials" means the storage of materials produced on-site or brought from another site that are flammable, explosive, or present hazards to the public health, safety, and welfare, including all substances and materials defined as hazardous materials, hazardous substances, or hazardous waste.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.689 Storage, self-service.**

"Storage, self-service" means a building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for self-service storage of personal property. This definition excludes indoor storage, outdoor storage, vehicle and equipment storage, and hazardous materials storage.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.690 Storage, vehicles and equipment.**

"Storage, vehicle and equipment" means an indoor or outdoor area for parking or holding of motor vehicles and boats or wheeled equipment for more than seventy-two hours. This definition excludes automotive sales and rentals, automotive service and repair shops, and auto wrecking yards.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.691 Storage, indoor.**

"Storage, indoor" means storage of goods and/or materials located within a building. The definition excludes hazardous materials storage, self-service storage, outdoor storage, and vehicle storage.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.692 Storage, outdoor.**

"Storage, outdoor" means outdoor storage of products, supplies, and equipment. This definition excludes hazardous materials storage, self-service storage, indoor storage, and vehicle storage.

(Ord. 367 (2006) § 5 (part), 2006)

**17.110.693 Storage container.**

"Storage container" means any repository twenty-five feet or less in length commonly used for the transit and short-term storage of residential belongings.

(Ord. 415 (2008) § 76, 2008)

**17.110.695 Street.**

"Street" means all roads, streets, highways, roadways, freeways, easements, and public rights-of-way used for or designed for vehicular access or use including private roads serving or intended to serve five or more lots. Streets may also include provisions for public utilities, pedestrian walkways, cut and fill slopes, and storm drainage facilities.

(Ord. 415 (2008) § 77, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

**17.110.700 Structural alteration.**

"Structural alteration" means any change or a repair of the supporting members of a building or structure and may be subject to the provisions of Chapter [17.460](#).

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

**17.110.705 Structure.**

"Structure" means that which is built or constructed.

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

**17.110.706 Sub-area plan.**

"Sub-area plan" means a detailed, local land use plan which is a subcomponent of the Kitsap County Comprehensive Plan. A sub-area plan contains specific policies, guidelines, and criteria for a specific geographic area of Kitsap County.

(Ord. 415 (2008) § 78, 2008)

**17.110.707 Support structure.**

"Support structure" means a structure designed and constructed specifically to support a wireless communication antenna array, and may include a mono-pole, self supporting (lattice) tower, guy-wire support tower and other similar structures. Any device which is used to attach an attached wireless communication facility to an existing building or structure shall be excluded from the definition of and regulations applicable to support structure.

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

**17.110.710 Temporary sign.**

"Temporary sign" means a sign or balloons intended for use which shall not be displayed for more than fourteen consecutive days and twice in a calendar year, which shall include, but is not limited to, portable signs, banners, A-boards and pennants.

(Ord. 415 (2008) § 79, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.715 Temporary structure.**

"Temporary structure" means a structure which does not have or is not required by the Uniform Building Code to have a permanent attachment to the ground. Temporary structures are subject to building permits.

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

**17.110.720 Temporary use.**

"Temporary use" means a use which may occur on a lot on a seasonal basis or for a prescribed period of time which usually would not exceed one year's duration.

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

**17.110.725 Tract.**

"Tract" means land reserved for specified uses including, but not limited to, reserve development tracts, recreation, open space, critical areas, stormwater facilities, utilities and access tracts. Tracts are not considered lots.

(Ord. 415 (2008) § 80, 2008)

**17.110.730 Use.**

"Use" means the nature of occupancy, type of activity or character and form of improvements to which land is devoted.

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

**17.110.735 (Repealed)\***

\* **Editor's Note:** Former Section 17.110.735, "Use separation buffer," was repealed by § 81 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

**17.110.740 Veterinary clinic.**

"Veterinary clinic" means the same as "animal hospital."

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

**17.110.745 Water-dependent use.**

"Water-dependent use" means a use or portion of a use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking marinas, aquaculture and float plane facilities.

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

**17.110.750 Water-enjoyment use.**

“Water-enjoyment use” means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design, and operation assure the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment. Examples may include parks, piers, museums, restaurants, education/scientific reserves, resorts and mixed use projects.

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

**17.110.755 Water-oriented use.**

“Water-oriented use” means any combination of water-dependent, water-related and or water-enjoyment uses and serves as an all encompassing definition for priority uses under the Shoreline Management Act (SMA).

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

**17.110.760 Water-related use.**

“Water-related use” means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

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

**17.110.765 Wireless communication antenna array.**

“Wireless communication antenna array” means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency (RF) signals through electromagnetic energy that can be attached to a building or sign. Wireless communication antenna array examples may include an omni-directional antenna (whip), a directional antenna (panel) and/or a parabolic antenna (dish).

(Ord. 415 (2008) § 82, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

**17.110.770 Wireless communication facility.**

“Wireless communication facility” means any unstaffed facility used for the transmission and/or reception of radio frequency (RF) signals through electromagnetic energy. This usually consists of an equipment shelter or cabinet, a support tower or structure used to achieve the necessary elevation, and the antenna array.

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

**17.110.775 Wireless communication support structure.**

"Wireless communication support structure" means a structure specifically designed to support a wireless communication antenna array. This may include a mono-pole structure, lattice structure or building.

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

**17.110.780 Whip antenna.**

"Whip antenna" means an antenna that is cylindrical in shape up to twenty feet in height.

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

**17.110.782 (Repealed)\***

\* **Editor's Note:** Former Section 17.110.782, Wooded reserve, was repealed by Section 7 of Ord. 407 (2008). The section was originally derived from Ord. 367 § 5 (part), 2006.

**17.110.783 Wrecking yard.**

"Wrecking yard" means a place where damaged, inoperable or obsolete machinery such as cars, trucks and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled or handled.

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

**17.110.785 Yard.**

"Yard" means any area on the same lot with a building or a structure, which area is unoccupied and unobstructed by any structure from the ground upward to the sky.

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

**17.110.790 Yard, front.**

"Yard, front" or "front yard" means an area extending the full width of the lot between a building and the front (or roadway) lot line, except as specified elsewhere in this title.

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

**17.110.795 Yard, rear.**

"Yard, rear" or "rear yard" means an open space area extending the full width of the lot between a building and the rear lot line, unoccupied, and unobstructed from the ground upward, except as specified elsewhere in this title.

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

**17.110.800 Yard, side.**

"Yard, side" or "side yard" means an area extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this title.

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

**17.110.805 Zone.**

"Zone" means a section or sections of Kitsap County within which the standards governing the use of land, buildings, and premises are uniform, which is provided for in Chapter 17.200 of this title.

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

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**This page of the Kitsap County Code is current through Ordinance 474 (2011), passed August 22, 2011.**

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# **Appendix 14**

**KCC 17.301**

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**Chapter 17.301  
RURAL WOODED ZONE (RW)\***

\* **Editor's Note:** As originally adopted and included with the enactment of the Zoning Ordinance, this chapter was numbered as 17.300. It was renumbered to accommodate, in logical sequence, the provisions of new Chapter 17.300, Forest Resource Lands, adopted by Ordinance 230-1999. Formerly titled Chapter 17.301, Interim Rural Forest (IRF), the chapter was amended, in its entirety, by Ord. 367 (2006). Ordinances previously codified in this chapter include parts of Ords. 216 (1998) and 346 (2005).

Sections:

<u>17.301.010</u>	Purpose.
<u>17.301.020</u>	Uses.
<u>17.301.030</u>	Standards and requirements.
<u>17.301.040</u>	Height.
<u>17.301.050</u>	Signs.
<u>17.301.060</u>	Off-street parking.
<u>17.301.070</u>	Special provisions.
<u>17.301.080</u>	Reserved.
<u>17.301.090</u>	Other provisions.

**17.301.010 Purpose.**

This zone 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. This zone is further intended to discourage activities and facilities that can be considered detrimental to the maintenance of timber production. Residents of rural wooded (RW) residential tracts shall recognize that they can be subject to normal and accepted farming and forestry practices on adjacent parcels.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.020 Uses.**

Uses shall be allowed in accordance with Chapter 17.381 and Table 17.381.040(E), Parks, Rural and Resource Zones Use Table.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.030 Standards and requirements.**

Standards and requirements shall be in accordance with Chapter 17.382 and Table 17.382.100, Parks, Rural and Resource Density, Dimensions and Design Table.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.040 Height.**

Height requirements shall be in accordance with Chapter 17.382 and Table 17.382.100, Parks, Rural and Resource Density, Dimensions and Design Table.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.050 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.060 Off-street parking.**

Off-street parking shall be provided according to the provisions of Chapter 17.435.

(Ord. 367 (2006) § 8 (part), 2006)

**17.301.070 Special provisions.**

All plats, short plats, development permits and building permits issued for land development activities on or within five hundred feet of designated, undeveloped Forest Resource Lands (FRL), shall contain the following notice:

The subject property is within or near land in which resource activities are permitted and encouraged, including a variety of activities which may not be compatible with residential development for certain periods of limited duration. In addition to other activities, these may include noise, dust, smoke, visual impacts and odors resulting from harvesting, planting, application of fertilizers, herbicides and associated reclamation and management activities. When performed in accordance with state and federal law, these resource activities are not subject to legal action as a nuisance.

(Ord. 415 (2008) § 84, 2008; Ord. 367 (2006) § 8 (part), 2006)

**17.301.080 Reserved.**

\* Editor's note: Former Section 17.301.080, "Rural Wooded Incentive Program," was repealed by Ordinance 456 (2010). Section 1 of Ordinance 411 (2008), § 8 of Ordinance 407 (2008) and § 8 (part) of Ordinance 367 (2006) were formerly codified in this section.

**17.301.090 Other provisions.**

[Reserved.]

(Ord. 367 (2006) § 8 (part), 2006)

**This page of the Kitsap County Code is current through Ordinance 474 (2011), passed August 22, 2011.**

Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

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# **Appendix 15**

**KCC 17.381**

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## Chapter 17.381 ALLOWED USES

### Sections:

- 17.381.010 Categories of uses established.
- 17.381.020 Establishment of zoning use tables.
- 17.381.030 Interpretation of tables.
- 17.381.040 Zoning use tables.
- 17.381.050 Footnotes for zoning use tables.
- 17.381.060 Provisions applying to special uses.

### **17.381.010 Categories of uses established.**

This chapter establishes permitted, conditional, and prohibited uses, by zone, for all properties within Kitsap County. All uses in a given zone are one of four types:

- A. Permitted Use. Land uses allowed outright within a zone and subject to provisions within Kitsap County Code.
- B. Administrative Conditional Use. Land uses which may be permitted within a zoning designation following review by the director to establish conditions mitigating impacts of the use and to ensure compatibility with other uses in the designation.
- C. Hearing Examiner Conditional Use. Land uses with special characteristics that may not generally be appropriate within a zoning designation, but may be permitted subject to review by the hearing examiner to establish conditions to protect public health, safety and welfare.
- D. Prohibited Use. Land uses specifically enumerated as prohibited within a zone.

(Ord. 415 (2008) § 140, 2008; Ord. 367 (2006) § 105 (part), 2006)

### **17.381.020 Establishment of zoning use tables.**

The tables in Section 17.381.040 establish allowed uses in the various zoning designations and whether the use is allowed as "Permitted," "Administrative Conditional Use," or "Hearing Examiner Conditional Use." Uses with approval processes that will be determined at a future date are identified as "Reserved." The zone is located at the top of the table and the specific use is located on the far-left of the vertical column of these tables.

(Ord. 367 (2006) § 105 (part), 2006)

### **17.381.030 Interpretation of tables.**

- A. Legend. The following letters have the following meanings when they appear in the box at the intersection of the column and the row:

P

Permitted Use

ACUP	Administrative Conditional Use Permit
C	Hearing Examiner Conditional Use Permit
PBD	Performance Based Development
X	Prohibited Use
R	Reserved

B. Additional Use-Related Conditions. The small numbers (subscript) in a cell indicate additional requirements or detailed information for uses in specific zones. Those additional requirements can be found in the table footnotes in Section 17.381.050. All applicable requirements shall govern a use whether specifically identified in this chapter or not.

C. Unclassified Uses. Except as provided in Section 17.100.040, Allowed uses, if a use is not listed in the use column, the use is prohibited in that designation.

(Ord. 415 (2008) § 141, 2008; Ord. 367 (2006) § 105 (part), 2006)

**17.381.040 Zoning use tables.**

There are five separate tables addressing the following general land use categories and zones:

A. Urban Residential Zones.

1. Urban Restricted (UR).
2. Urban Low Residential (UL).
3. Urban Cluster Residential (UCR).
4. Urban Medium Residential (UM).
5. Urban High Residential (UH).
6. Illahee Greenbelt Zone (IGZ).

B. Commercial and Mixed Use Zones.

1. Neighborhood Commercial (NC).
2. Urban Village Center (UVC).
3. Urban Town Center (UTC).
4. Highway Tourist Commercial (HTC).
5. Regional Commercial (RC).
6. Mixed Use (MU).

- C. Airport and Industrial Zones.
  - 1. Airport (A).
  - 2. Business Park (BP).
  - 3. Business Center (BC).
  - 4. Industrial (IND).
- D. Limited Areas of More Intensive Rural Development (LAMIRD).
  - 1. Manchester Village Commercial (MVC).
  - 2. Manchester Village Low Residential (MVLR).
  - 3. Manchester Village Residential (MVR).
  - 4. Port Gamble Rural Historic Town Commercial (RHTC).
  - 5. Port Gamble Rural Historic Town Residential (RHTR).
  - 6. Port Gamble Rural Historic Town Waterfront (RHTW).
  - 7. Suquamish Village Commercial (SVC).
  - 8. Suquamish Village Low Residential (SVLR).
  - 9. Suquamish Village Residential (SVR).
- E. Parks, Rural and Resource Zones.
  - 1. Parks (P).
  - 2. Forest Resource Lands (FRL).
  - 3. Mineral Resource (MR).
  - 4. Rural Protection (RP).
  - 5. Rural Residential (RR).
  - 6. Rural Wooded (RW).
  - 7. Urban Reserve (URS).

Table 17.381.040(A)  
Urban Residential Zones.

Use	Urban Low-Density Residential				Urban Medium/High-Density Residential	
	UCR (48)	IGZ (60)	UR (19)	UL (19)(48)	UM (30)(47)(48)	UH (19)(47)(48)

<b>RESIDENTIAL USES</b>						
Accessory dwelling units (1)	P	P	P	P	P	X
Accessory living quarters (1)	P	P	P	P	P	X
Accessory use or structure (1) (17) (18) (51)	P	P	P	P	P	P
Adult family home	P (41)	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	P	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	X
Caretaker's dwelling	X	X	X	X	ACUP	X
Convalescent home or congregate care facility	ACUP	X	X	C	C	ACUP
Cottage housing developments	P	ACUP	ACUP	ACUP	ACUP	X
Dwelling, duplex	P	P	P (3)	P (3)	P	X
Dwelling, existing	P	P	P	P	P	P
Dwelling, multi-family	ACUP	C	C	C	P	P
Dwelling, single-family attached	P	P	P	P	P	ACUP
Dwelling, single-family detached	P	P	P	P	P	ACUP
Guest house (1)	P	X	P	P	P	X
Home business (1) (52)	P	P	P	P	ACUP	ACUP
Hotel/Motel	X	X	X	X	X	ACUP
Manufactured homes	P (43)	P (43)	P (43)	P (43)	P (43)	X (43)
Mixed use development (44)	X	X	X	X	X	ACUP
Mobile homes	C (43)	C (24) (43)	C (24) (43)	C (24) (43)	C (24) (43)	X (43)
Residential care facility	P	ACUP	ACUP	ACUP	P	P
<b>COMMERCIAL/BUSINESS USES</b>						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P

Adult entertainment (1)	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X
Auction house	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>						
Automobile rentals	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X
Automobile service station (6)	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X
Clinic, medical	X	X	X	X	X	ACUP (37)
Conference center	X	X	X	P	X	X
Custom art and craft stores	X	X	X	X	X	X
Day-care center (14)	C	C	C	C	ACUP	ACUP (37)
Day-care center, family (14)	P	C	P	P	ACUP	ACUP (37)
Drinking establishments	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	P (37)
Equipment rentals	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	X	X
General office and management services – less than 4,000 s.f.	C (28)	X	X	X	X	ACUP (37)

General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	ACUP (37)
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	ACUP (37)
General retail merchandise stores – less than 4,000 s.f.	C (28)	X	X	X	X	ACUP (37)
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>						
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X
Kennels or Pet day-cares	X	X	X	X	X	X
Kennels, hobby	P	P	P	P	P	X
Laundromats and laundry services	C (28)	X	X	X	X	ACUP (37)
Lumber and bulky building material sales	X	X	X	X	X	X
Mobile home sales	X	X	X	X	X	X
Nursery, retail	X	X	X	X	X	X
Nursery, wholesale	X	X	X	X	X	X
Off-street private parking facilities	X	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	C	X	X	X	X	ACUP (37)
Pet shop – retail and grooming	X	X	X	X	X	ACUP (37)
Research laboratory	X	X	X	X	X	X
Restaurants	C (28)	X	X	X	X	ACUP (37)
Restaurants, high-turnover	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X

Temporary offices and model homes (27)	P	P	P	P	ACUP	ACUP (37)
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X
Tourism terminals, including seaplane and tour-boat terminals	X	X	X	X	X	X
Transportation terminals	X	X	X	X	X	X
Veterinary clinics/Animal hospitals	X	X	X	X	X	C (9) (37)
<b>RECREATIONAL/CULTURAL USES</b>						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Amusement centers	X	X	X	X	X	X
Carnival or Circus	X	X	X	X	X	X
Club, civic or social (12)	ACUP	C (12)	C (12)	C	ACUP	ACUP
Golf courses	ACUP	C	C	C	C	ACUP
Marinas	ACUP	C	C	C	C	C
Movie/Performance theaters, indoor	X	X	X	X	X	X
Movie/Performance theaters, outdoor	X	X	X	X	X	ACUP
Museum, galleries, aquarium, historic or cultural exhibits	X	X	X	X	X	ACUP
Parks and open space	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X
Recreational facilities, private	ACUP	C	C	C	C	ACUP
Recreational facilities, public	P	P	P	P	P	ACUP
Recreational vehicle camping parks	X	C	C	C	X	X
Zoo	X	X	X	X	X	X
<b>INSTITUTIONAL USES</b>						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P

Government/Public structures	ACUP	ACUP	ACUP	ACUP	ACUP	ACUP
Hospital	X	X	X	X	X	C
Places of worship (12)	C	C	C	C	C	ACUP
Private or public schools (20)	C	C	C	C	C	C
Public facilities, transportation and parking facilities, and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	C	C	C	C	ACUP
<b>INDUSTRIAL USES</b>						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	C	C	C	C
Cold storage facilities	X	X	X	X	X	X
Contractor's storage yard	X	X	X	X	X	X
Food production, brewery or distillery	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X
Helicopter pads	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X
Manufacturing and fabrication, medium	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X
Recycling centers	X	X	X	X	X	X
Rock crushing	X	X	X	X	X	X

Slaughterhouse or animal processing	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X
Storage, self-service	C (40)	C (40)	C (40)	C (40)	C (40)	C
Storage, vehicle and equipment (1)	X (18)	X (18)	X (18)	X (18)	X (18)	X (18)
Top soil production and/or stump grinding	X	X	X	X	X	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X
<b>INDUSTRIAL USES (continued)</b>						
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X
<b>RESOURCE LAND USES</b>						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Aggregate extractions sites	X	X	X	X	X	X
Agricultural uses (15)	X	P	P	P	P	P
Aquaculture practices	C	C	C	C	C	C
Forestry	X	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	X	P (2)	P (2)	P (2)	P (2)	P (2)

## 17.381.040(B)

## Commercial and Mixed Use Zones.

Use	Low Intensity Commercial/Mixed Use		High-Intensity Commercial/Mixed Use				Rural
	(NC) (19) (30) (48) (57)	UVC (30) (48) (57)	UTC (48) (57)	HTC (19) (29) (30) (48) (57)	RC (19) (48) (57)	MU (19) (44) (45) (48) (57)	RCO (12) (64)
<b>RESIDENTIAL USES</b>							
Accessory dwelling units (1)	X	X	R	X	X	X	X
Accessory living quarters (1)	X	X	R	X	X	X	X
Accessory use or structure (1) (17) (18) (51)	P	P	R	P	P	P	P
Adult family home	X	ACUP P (41)	R	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	ACUP C (34)	ACUP C (34)	R	X	X	X	ACUP C (34)
Caretaker's dwelling	ACUP	ACUP	R	ACUP	ACUP	ACUP	P
Convalescent home or congregate care facility	C	ACUP	R	ACUP	ACUP	ACUP	X
Cottage housing developments	X	ACUP	R	X	X	ACUP	X
Dwelling, duplex	X	ACUP	R	X	X	X	X
Dwelling, existing	P	P	R	P	P	P	P
Dwelling, multi-family	X	ACUP	R	ACUP	ACUP	ACUP	X
Dwelling, single-family attached	X	P	R	ACUP	ACUP	ACUP	X
Dwelling, single-family detached	X	P	R	X	X	X	X
Guest house (1)	X	X	R	X	X	X	X
Home business (1) (53)	ACUP	P	R	X	X	ACUP	ACUP

Hotel/Motel	C	ACUP	R	P	P	ACUP	X
Manufactured homes	X	X (43)	R	X	X	X	X
Mixed use development (44)	ACUP	ACUP	R	ACUP	ACUP	ACUP	X
Mobile homes	X	X (43)	R	X	X	X	X
Residential care facility	X	ACUP	R	ACUP	ACUP	ACUP	X
<b>COMMERCIAL/BUSINESS USES</b>							
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P	P
Adult entertainment (1)	X	X	R	C	C	X	X
Ambulance service	C	C	R	P	P	ACUP	X
Auction house (55)	X	ACUP	R	P	P	X	C
Auto parts and accessory stores (65)	P	X	R	P	P	ACUP	C
<b>COMMERCIAL/BUSINESS USES (continued)</b>							
Automobile rentals	P (56)	P (56)	R	P	P (61)	ACUP	X
Automobile repair and car washes (65)	ACUP (54)	X	R	P	P	ACUP	C
Automobile service station (6)	ACUP	X	R	P	P (61)	X	C
Automobile, recreational vehicle or boat sales	X	X	R	ACUP	ACUP	X	X
Boat/marine supply stores	X	X	R	P	P	ACUP	C
Brew pubs	ACUP	ACUP	R	P	P	ACUP	X
Clinic, medical	ACUP	ACUP	R	P	P	ACUP	X
Conference center	X	P	R	P	P	ACUP	X
Custom art and craft stores	P (54)	P (54)	R	P	P	ACUP	C
Day-care center (14)	P (54)	P (54)	R	P	P	ACUP	ACUP
Day-care center, family (14)	ACUP (54)	ACUP (54)	R	P	P (61)	P	X
Drinking establishments	C	ACUP	R	C	C	C	C

Engineering and construction offices	P (54)	P (54)	R	P	P	ACUP	ACUP
Espresso stands (58) (72)	P	X	R	P	P (61)	P	ACUP
Equipment rentals	X	ACUP	R	P	P (61)	ACUP	ACUP
Farm and garden equipment and sales	X	X	R	P	P (61)	ACUP	ACUP
Financial, banking, mortgage and title institutions	P (54)	P (54)	R	P	P	ACUP	X
General office and management services – less than 4,000 s.f.	P	P	R	P	P	ACUP	ACUP
General office and management services – 4,000 to 9,999 s.f.	ACUP	ACUP	R	P	P	ACUP	C
General office and management services – 10,000 s.f. or greater	X	ACUP	R	P	P	ACUP	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>							
General retail merchandise stores – less than 4,000 s.f.	P	P	R	P	P	ACUP	ACUP
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	ACUP	R	P	P	ACUP	C
General retail merchandise stores – 10,000 to 24,999 s.f.	C	C	R	P	P	ACUP	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	R	ACUP (62)	ACUP (62)	X	X
Kennels or pet day-cares	C	X	R	C	C (61)	C	C
Kennels, hobby	P	P	R	X	X	P	X
Laundromats and laundry services	P (54)	P (54)	R	P	P	ACUP	X
Lumber and bulky building material sales	X	X	R	ACUP (42)	ACUP	X	C

					(42) (61)		
Mobile home sales	X	X	R	ACUP	ACUP (61)	X	X
Nursery, retail	ACUP	ACUP	R	P	P	ACUP	ACUP
Nursery, wholesale	ACUP	ACUP	R	P	P (61)	ACUP	P
Off-street private parking facilities	ACUP	ACUP	R	P	P	ACUP	X
Personal services – skin care, massage, manicures, hairdresser/barber (66)	P (54)	P (54)	R	P	P	ACUP	ACUP (54)
Pet shop – retail and grooming	ACUP	ACUP	R	P	P	ACUP	ACUP (54)
Research laboratory	X	X	R	X	X	X	X
Restaurants	P (54)	P (54)	R	P	P	ACUP	C
Restaurants, high-turnover	C	ACUP	R	P	P (63)	ACUP	X
Recreation vehicle rentals	X	X	R	ACUP	ACUP (61)	X	X
Temporary offices and model homes (27)	X	X	R	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>							
Tourism facilities, including outfitter and guide facilities	X	P	R	P	P	X	ACUP
Tourism facilities, including seaplane and tour-boat terminals	X	X	R	ACUP	ACUP	X	C
Transportation terminals	C	C	R	ACUP	ACUP	ACUP	X
Veterinary clinics/Animal hospitals	ACUP	ACUP	R	P	P	C	ACUP
<b>RECREATIONAL/CULTURAL USES</b>							
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P	P
Amusement centers	C	C (11)	R	ACUP (11)	ACUP (11)	ACUP (11)	X
Carnival or circus	C	ACUP	R	ACUP	ACUP	ACUP	X

		(11)		(11)	(11) (61)	(11)	
Club, civic or social	ACUP	ACUP	R	P	P	ACUP	C
Golf courses	ACUP	ACUP	X	ACUP	ACUP (61)	ACUP	X
Marinas	ACUP	C	X	ACUP	ACUP (61)	C	C
Movie/Performance theaters, indoor	ACUP	P	R	P	P	ACUP	X
Movie/Performance theaters, outdoor	X	ACUP	R	C	ACUP	C	C
Museum, galleries, aquarium, historic or cultural exhibits (67)	ACUP	P	R	P	P	ACUP	C
Parks and open space	P	P	P	P	P	P	P
Race track, major	X	X	X	C	C (61)	X	X
Race track, minor	X	X	X	X	X	X	X
Recreational facilities, private	ACUP	ACUP	R	ACUP	ACUP	ACUP	C
Recreational facilities, public	ACUP	ACUP	R	ACUP	ACUP	ACUP	ACUP
Recreational vehicle camping parks	C	X	R	C	X	X	X
Zoo	X	X	R	C	C (61)	X	X
<b>INSTITUTIONAL USES</b>							
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P	P
Government/Public structures	ACUP	ACUP	R	ACUP	ACUP	ACUP	ACUP
Hospital	X	C	R	ACUP	ACUP	C	X
Places of worship (12)	C	C	R	ACUP	ACUP	C	C
Private or public schools (20)	C	C	R	ACUP	ACUP	C	C
Public facilities, transportation and parking facilities, electric power	ACUP	ACUP	R	ACUP	ACUP	ACUP	C

and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)							
<b>INDUSTRIAL USES</b>							
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P	P
Air pilot training schools	X	P	R	P	P	X	X
Assembly and packaging operations	X	C	R	C	C (61)	C	X
Boat yard	X	X	R	ACUP	ACUP (61)	X	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	R	ACUP	ACUP (61)	X	C
Cold storage facilities (69)	X	X	R	X	X	X	C
Contractor's storage yard (21)	X	X	R	X	X	X	X
Food production, brewery or distillery	X	X	R	C	C (61)	C	C
Fuel distributors	X	X	R	C	C (61)	X	X
Helicopter pads (13)	X	C	R	C	C	C	X
Manufacturing and fabrication, light	X	C	R	C	C (61)	X	X
Manufacturing and fabrication, medium	X	X	R	X	X	X	X
Manufacturing and fabrication, heavy	X	X	R	X	X	X	X
<b>INDUSTRIAL USES (continued)</b>							
Manufacturing and fabrication, hazardous	X	X	R	X	X	X	X
Recycling centers	X	X	R	X	X	X	C
Rock crushing	X	X	R	X	X	X	X
Slaughterhouse or animal processing	X	X	R	X	X	X	C (70)
Storage, hazardous materials	X	X	R	X	X	X	C (75)

Storage, indoor	X	X	R	C	C (61)	X	C (75)
Storage, outdoor	X	X	R	X	X	X	C (75)
Storage, self-service	C	C	R	ACUP	ACUP (61)	ACUP (40)	C (75)
Storage, vehicle and equipment (1)	X	X	R	ACUP	X	X	C
Top soil production, stump grinding	X	X	R	X	X	X	C
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	R	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	R	X	X	X	X
Warehousing and distribution (68)	X	X	R	X	X	X	X
Wrecking yards and junk yards (1)	X	X	R	X	X	X	X
<b>RESOURCE LAND USES</b>							
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P	P
Aggregate extraction sites	X	X	R	X	X	X	C
Agricultural uses (15)	P	X	R	P	P	P	P
Aquaculture practices	C	C	R	C	C	C	C
Forestry	P	X	R	P	P	P	P
<b>RESOURCE LAND USES (continued)</b>							
Shellfish/fish hatcheries and processing facilities	X	X	R	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	P (2)	X	R	P (2)	P (2)	P (2)	P (2)

Table 17.381.040(C)  
Airport and Industrial Zones.

Use	Airport	Industrial			
	A	BC (31) (42)	BP	IND (32) (42)	RI (12) (42)
<b>RESIDENTIAL USES</b>					
Accessory dwelling units	X	X	X	X	X
Accessory living quarters	X	X	X	X	X
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Adult family home	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	X	X	X	X	X
Caretaker's dwelling	ACUP	P	P	P	P
Convalescent home or congregate care facility	X	X	X	X	X
Cottage housing developments	X	X	X	X	X
Dwelling, duplex	X	X	X	X	X
Dwelling, existing	P	P	P	P	P
Dwelling, multi-family	X	X	X	X	X
Dwelling, single-family attached	X	X	X	X	X
Dwelling, single-family detached	X	X	X	X	X
Guest house	X	X	X	X	X
Home business	X	X	X	X	X
Hotel/Motel	X	X	X	X	X
Manufactured homes	X	X	X	X	X
Mixed use development	X	X	X	X	X
Mobile homes	X	X	X	X	X
Residential care facility	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES</b>					
Accessory use or structure (1) (17) (51)	P	P	P	P	P
Adult entertainment (1)	X	C	X	C	X

Ambulance service	X	P	ACUP	ACUP	X
Auction house	X	ACUP	ACUP	P	C
Auto parts and accessory stores	X	X	X	X	X
Automobile rentals	X	X	X	X	X
Automobile repair and car washes	X	P (61)	ACUP	P (33)	C
Automobile service station (6)	X	C (33)	C (33)	P (33)	C
<b>COMMERCIAL/BUSINESS USES (continued)</b>					
Automobile, recreational vehicle or boat sales	X	ACUP (35)	X	ACUP (35)	X
Boat/marine supply stores	X	X	X	X	X
Brew pubs	X	ACUP (33)	ACUP (33)	ACUP	X
Clinic, medical	X	P	ACUP	C	X
Conference center	X	X	X	X	X
Custom art and craft stores	X	X	X	X	X
Day-care center (14)	X	P (33)	P (33)	P (33)	X
Day-care center, family (14)	X	P (33) (61)	P (33)	X	X
Drinking establishments	C	P (33)	C (33)	X	X
Engineering and construction offices	X	P	P (33)	P (33)	ACUP (72)
Espresso stands (58)	X	P (33) (61)	P (33)	P (33)	ACUP
Equipment rentals	X	P	P	P	ACUP (73)
Farm and garden equipment and sales	X	X	X	X	C
Financial, banking, mortgage and title institutions	X	P	P (33)	ACUP (33)	X
General office and management services – less than 4,000 s.f.	X	P	P	P (33)	X

General office and management services – 4,000 to 9,999 s.f.	X	P	P	X	X
General office and management services – 10,000 s.f. or greater	X	P	P	X	X
General retail merchandise stores – less than 4,000 s.f.	X	P (33)	P (33)	ACUP (33)	X
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X
Kennels or pet day-cares	X	P	ACUP	ACUP	C
Kennels, hobby	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>					
Laundromats and laundry services	X	P (33)	P	ACUP	X
Lumber and bulky building material sales	X	P (61)	X	P	ACUP
Mobile home sales	X	X	X	X	X
Nursery, retail	X	X	X	X	X
Nursery, wholesale	X	X	X	X	P
Off-street private parking facilities	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X	X
Pet shop – retail and grooming	X	X	X	X	X
Research laboratory	X	P	P	P	C
Restaurants	ACUP	P (33)	C (33)	ACUP (33)	X
Restaurants, high-turnover (33)	P (59)	P (59)	P (59)	P (59)	X
Recreational vehicle rentals	X	ACUP (61)	ACUP	ACUP	X

Temporary offices and model homes (27)	X	X	X	X	X
Tourism facilities, including outfitter and guide facilities	P	P	P	ACUP	X
Tourism facilities, including seaplane and tour boat terminals	ACUP	X	X	X	X
Transportation terminals	ACUP	P	X	ACUP	X
Veterinary clinics/Animal hospitals	X	P	ACUP	ACUP	X
<b>RECREATIONAL/CULTURAL USES</b>					
Accessory use or structure (1) (17)	P	P	P	P	P
Amusement centers	X	X	X	C (11)	X
Carnival or Circus	X	X	X	ACUP (11)	X
Club, civic or social (12)	ACUP	ACUP	X	ACUP	X
Golf courses	X	X	X	X	X
Marinas	X	X	X	C	C
Movie/Performance theaters, indoor	X	X	X	X	X
<b>RECREATIONAL/CULTURAL USES (continued)</b>					
Movie/Performance theaters, outdoor	X	C	ACUP	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	P	ACUP	X	X
Parks and open space	P	P	P	P	P
Race track, major	X	C (61)	C	C	X
Race track, minor	X	X	X	C	X
Recreational facilities, private	X	P	C	C	X
Recreational facilities, public	C	P	C	C	X
Recreational vehicle camping parks	X	X	X	X	X
Zoo	X	X	X	X	X

<b>INSTITUTIONAL USES</b>					
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Government/Public structures	P	P	P	P	C
Hospital	X	C	C	C	X
Places of worship (12)	X	C	X	C	X
Private or public schools (20)	X	P	ACUP	ACUP	C
Public facilities and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	C	ACUP	ACUP	ACUP	C
<b>INDUSTRIAL USES</b>					
Accessory use or structure (1) (17) (51)	P	P	P	ACUP	P
Air pilot training schools	P	P	P	P	X
Assembly and packaging operations	ACUP	P	X	ACUP	C
Boat yard	X	P (61)	ACUP	ACUP	C
Cemeteries, mortuaries, and crematoriums (10)	X	ACUP (61)	X	ACUP	C
Cold storage facilities	X	X	ACUP	P	C
Contractor's storage yard (21)	X	P (61)	X	P	ACUP
Food production, brewery or distillery	X	ACUP	ACUP	C	C
<b>INDUSTRIAL USES (continued)</b>					
Fuel distributors	X	C (61)	X	C	C
Helicopter pads (13)	P	ACUP	X	ACUP	ACUP
Manufacturing and fabrication, light	ACUP	P	P	P	C
Manufacturing and fabrication, medium	ACUP	C (52) (61)	ACUP	P	C
Manufacturing and fabrication, heavy	X	X	X	ACUP	X

Manufacturing and fabrication, hazardous	X	X	X	C	X
Recycling centers	X	X	X	ACUP	C
Rock crushing	X	X	X	C	C
Slaughterhouse or animal processing	X	X	X	C	C (70)
Storage, hazardous materials	X	X	X	C	C (75)
Storage, indoor	C	P (61)	P	P	ACUP
Storage, outdoor	C	ACUP (61)	X	P	C
Storage, self-service	X	ACUP (61)	X	P	C
Storage, vehicle and equipment (1)	X	ACUP (61)	X	P	C (75)
Top soil production, stump grinding	X	X	X	ACUP	ACUP
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	P (61)	C	C	C
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	P	X	X	C	C (74)
Warehousing and distribution	ACUP	P (61)	P	P	ACUP
Wrecking yards and junk yards (1)	X	X	X	C	C
<b>RESOURCE LAND USES</b>					
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Aggregate extractions sites	X	P	X	C	C
Agricultural uses (15)	X	P	P	P	P
Aquaculture practices	X	P	X	C	C
Forestry	P	P	P	P	P

Shellfish/fish hatcheries and processing facilities	X	X	X	C	C
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	P (2)	P (2)	P (2)	P (2)	X

Table 17.381.040(D)  
 Limited Areas of More Intensive Rural Development (LAMIRD).

Use	TYPE 1 LAMIRDS										
	KVC Keyport Rural Village Zoning			Manchester LAMIRD			Rural Historic LAMIRD			Suqu LAM	
	KVC	KVLR (2 du/acre)	KVR (5 du/acre)	MVC (50)	MVLR	MVR	RHTC (25)	RHTR (25)	RHTW (25)	SVC	SV
<b>RESIDENTIAL USES</b>											
Accessory dwelling units (1)	ACUP	P	P	X	C	C	C	C	X	C	AC
Accessory living quarters (1)	ACUP	P	P	X	P	P	C	P	P	C	
Accessory use or structure (1) (17) (18) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	
Adult family home	ACUP	CUP	CUP	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	AC (4)
Bed and breakfast house	ACUP (34)	P (34)	P (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	AC (3)
Caretaker's dwelling	ACUP	X	X	X	X	X	P	X	P	X	
Convalescent home or congregate care facility	ACUP	CUP	CUP	ACUP	X	X	ACUP	C	X	X	
Cottage housing developments	CUP	ACUP	ACUP	X	X	X	X	C	C	X	
Dwelling, duplex	CUP	ACUP	ACUP	X	P	P	P	P	X	X	

Dwelling, existing	P	(3) P	(3) P	P	(3) P	(3) P	P	P	P	P	
Dwelling, multifamily	CUP	CUP	CUP	X	X	X	ACUP	ACUP	X	X	
Dwelling, single-family attached	CUP (26)	P	P	P (26)	P	P	P	P	X	C	
Dwelling, single-family detached	CUP (26)	P	P	P (26)	P	P	P	P	X	C	
<b>RESIDENTIAL USES (continued)</b>											
Guest house (1)	X	X	X	X	P	P	P	P	P	C	
Home business (1) (52)	ACUP	ACUP	ACUP	X	ACUP	ACUP	P	P	X	X	AC
Hotel/motel	ACUP	X	X	C	X	X	ACUP	X	ACUP	X	
Manufactured homes	CUP (43)	ACUP (43)	ACUP (43)	X	P (43)	P (43)	ACUP (43)	ACUP (43)	X	X	(
Mixed use development (44)	ACUP	X	X	ACUP	X	X	ACUP	X	PBD	ACUP	
Mobile homes	CUP (43)	CUP (43)	CUP (43)	X	X	X	X	X	X	X	
Residential care facility	ACUP	ACUP	ACUP	X	X	X	X	X	X	C	
<b>COMMERCIAL/BUSINESS USES</b>											
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	
Adult entertainment (1)	X	X	X	X	X	X	X	X	X	X	
Ambulance service	X	X	X	X	X	X	X	X	X	X	
Auction house	X	X	X	X	X	X	X	X	X	X	
Auto parts and accessory stores	ACUP	X	X	ACUP	X	X	X	X	X	C	
Automobile rentals	CUP	X	X	X	X	X	X	X	X	X	
<b>COMMERCIAL/BUSINESS USES (continued)</b>											
Automobile repair and car washes	ACUP	X	X	X	X	X	ACUP	X	X	C	

Automobile service station (6)	X	X	X	X	X	X	ACUP	X	X	ACUP (36)
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X	X	ACUP	X
Boat/marine supply stores	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C
Brew pubs	ACUP	X	X	X	X	X	ACUP	X	ACUP	C
Clinic, medical	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C
Conference center	X	X	X	X	X	X	ACUP	X	ACUP	X
Custom art and craft stores	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	P
Day-care center (14)	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP
Day-care center, family (14)	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP
Drinking establishments	CUP	X	X	C	X	X	C	X	C	C
Engineering and construction offices	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C
Espresso stands (58)	ACUP	X	X	ACUP	X	X	ACUP	X	X	C
Equipment rentals	X	X	X	X	X	X	X	X	X	X
Farm and garden equipment and sales	CUP	X	X	X	X	X	X	X	X	C
<b>COMMERCIAL/BUSINESS USES (continued)</b>										
Financial, banking, mortgage and title institutions	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C
General office and management services – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP
General office and management services – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD (38)	X	PBD (38)	ACUP

General office and management services – 10,000 s.f. or greater	ACUP	X	X	ACUP	X	X	X	X	X	ACUP
General retail merchandise stores – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD	X	PBD	ACUP
General retail merchandise stores – 10,000 to 15,000 s.f.	CUP	X	X	X	X	X	X	X	X	C
General retail merchandise stores – 15,001 to 24,999 s.f.	CUP	X	X	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X	X	X	X
Kennels or pet day-cares (1)	CUP	X	X	X	C	C	X	X	X	X
Kennels, hobby	CUP	CUP	CUP	X	P	P	X	P	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>										
Laundromats and laundry services	CUP	X	X	C	X	X	ACUP	X	ACUP	ACUP
Lumber and bulky building material sales	X	X	X	X	X	X	X	X	ACUP	ACUP
Mobile home sales	X	X	X	X	X	X	X	X	X	X
Nursery, retail	ACUP	CUP	CUP	ACUP	C	C	ACUP	X	ACUP	ACUP
Nursery, wholesale	ACUP	CUP	CUP	ACUP	C	C	ACUP	X	ACUP	ACUP
Off-street private parking facilities	CUP	X	X	ACUP	X	X	ACUP	X	ACUP	X
Personal services – skin care,	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP

massage, manicures, hairdresser/barber											
Pet shop – retail and grooming	ACUP	X	X	ACUP	X	X	ACUP	X	X	C	
Research laboratory	CUP	X	X	X	X	X	X	X	C	X	
Restaurants	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP	
Restaurants, high- turnover	CUP	X	X	C	X	X	C	X	C	C	
Recreational vehicle rental	X	X	X	X	X	X	X	X	X	X	
Temporary offices and model homes (27)	CUP	X	X	X	ACUP	ACUP	X	X	ACUP	X	
<b>COMMERCIAL/BUSINESS USES (continued)</b>											
Tourism facilities, including outfitter and guide facilities	CUP	X	X	X	X	X	X	X	C	C	
Tourism facilities, including seaplane and tour boat terminals	CUP	X	X	X	X	X	X	X	X	X	
Transportation terminals	X	X	X	X	X	X	X	X	C	X	
Veterinary clinics/animal hospitals	ACUP	X	X	ACUP	X	X	ACUP	X	X	ACUP	
<b>RECREATIONAL/CULTURAL USES</b>											
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	
Amusement centers	CUP (11)	X	X	C (11)	X	X	X (11)	X	X	X (11)	
Carnival or circus	CUP (11)	X	X	C (11)	X	X	X (11)	X	X	X (11)	
Club, civic or social (12)	ACUP	X	X	ACUP	ACUP	ACUP	ACUP	C	ACUP	ACUP	

Golf courses	CUP	X	X	X	C	C	ACUP	C	ACUP	ACUP
Marinas	ACUP	X	X	ACUP	X	X	X	X	PBD	ACUP
Movie/Performance theaters, indoor	CUP	X	X	C	X	X	ACUP	X	X	X
Movie/Performance theaters, outdoor	CUP	X	X	X	X	X	X	X	X	X
<b>RECREATIONAL/CULTURAL USES (continued)</b>										
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	ACUP	X	X	ACUP	C	ACUP	ACUP
Parks and open space	P	P	P	P	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X	X	X	X	X
Recreational facilities, private	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP
Recreational facilities, public	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP
Recreational vehicle camping parks	X	X	X	X	X	X	X	X	X	X
Zoo	ACUP	X	X	X	X	X	X	X	X	X
<b>INSTITUTIONAL USES</b>										
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P
Government/public structures	ACUP	CUP	CUP	ACUP	C	C	ACUP	C	ACUP	ACUP
Hospital	X	X	X	X	X	X	X	X	X	X
Places of worship (12)	ACUP	CUP	CUP	ACUP	C	C	C	C	C	ACUP
Private or public schools (20)	ACUP	CUP	CUP	ACUP	C	C	ACUP	C	ACUP	ACUP
Public facilities and electric power and natural gas utility facilities, substations, ferry	ACUP	CUP	CUP	ACUP	C	C	PBD	X	PBD	P

terminals, and commuter park-and-ride lots (16)											
<b>INDUSTRIAL USES</b>											
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	PBD	X	PBD	X	
Boat yard	ACUP	X	X	X	X	X	ACUP	X	ACUP	X	
Cemeteries, mortuaries, and crematoriums (10)	CUP	X	X	X	C	C	X	X	X	X	
Cold storage facilities	X	X	X	X	X	X	X	X	X	X	
Contractor's storage yard (21)	CUP	X	X	X	C	C	X	X	ACUP	X	
Food production, brewery or distillery	X	X	X	X	X	X	C	X	C	X	
Fuel distributors	X	X	X	X	X	X	X	X	X	X	
Helicopter pads (13)	X	X	X	X	X	X	X	X	X	X	
Manufacturing and fabrication, light	X	X	X	X	X	X	PBD	X	PBD	X	
Manufacturing and fabrication, medium	X	X	X	X	X	X	X	X	PBD	X	
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X	X	PBD	X	
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X	X	PBD	X	
<b>INDUSTRIAL USES (continued)</b>											
Recycling centers	X	X	X	X	X	X	X	X	C	X	
Rock crushing	X	X	X	X	X	X	X	X	X	X	

Slaughterhouse or animal processing	X	X	X	X	X	X	X	X	X	X	
Storage, hazardous materials	X	X	X	X	X	X	X	X	X	X	
Storage, indoor	X	X	X	X	X	X	X	X	ACUP	X	
Storage, outdoor	X	X	X	X	X	X	X	X	ACUP	X	
Storage, self-service	CUP	X	X	X	X	X	X	X	X	X	
Storage, vehicle and equipment (1)	X	X (18)	X	X	X (18)	X (18)	X	X (18)	ACUP (18)	X	(
Top soil production, stump grinding	X	X	X	X	X	X	X	X	ACUP	X	
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X	X	C	X	
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X	X	X	X	
<b>INDUSTRIAL USES (continued)</b>											
Warehousing and distribution	X	X	X	X	X	X	X	X	X	X	
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X	X	X	X	
<b>RESOURCE LAND USES</b>											
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	
Aggregate extractions sites	X	X	X	X	X	X	X	X	X	X	

Agricultural uses (15)	X	P	P	X	P	P	P	P	P	P
Aquaculture practices	X	CUP	CUP	X	C	C	X	X	X	X
Forestry	X	X	X	X	P	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	CUP	X	X	X	X	X	X	X	PBD	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	ACUP	ACUP (2)	ACUP (2)	X	P (2)					

Table 17.381.040(E)  
Parks, Rural and Resource Zones.

Use	Parks	Resource		Rural			
	Parks	FRL	MR	URS	RP	RR	RW
<b>RESIDENTIAL USES</b>							
Accessory dwelling units (1)	X	X	X	C	C	C	C
Accessory living quarters (1)	X	X	X	P	P	P	P
Accessory use or structure (1) (17) (18) (51)	X	P	P	P	P	P	P
Adult family home	X	X	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	X	X	X	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)
Caretaker's dwelling	P	X	X	X	X	X	X
Convalescent home or congregate care facility	X	X	X	X	X	X	X
Cottage housing developments	X	X	X	X	X	X	X
Dwelling, duplex	X	P (3)	X	P (3)	P (3)	P (3)	P (3)

Dwelling, existing	X	P	P	P	P	P	P
Dwelling, multi-family	X	X	X	X	X	X	X
Dwelling, single-family attached	X	C	X	C	C	C	X
Dwelling, single-family detached	X	C	X	P	P	P	P
Guest house (1)	X	X	X	P	P	P	P
Home business (1) (52)	X	C (23)	X	ACUP	ACUP	ACUP	ACUP
Hotel/Motel	X	X	X	X	X	X	X
Manufactured homes	X	C (43)	X	P (43)	P (43)	P (43)	X
Mixed use development (44)	X	X	X	X	X	X	X
Mobile homes	X	P (43)	P	P (43)	P (43)	P (43)	P
Residential care facility	X	X	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES</b>							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Adult entertainment (1)	X	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X	X
Auction house	X	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X	X
Automobile rentals	X	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>							
Automobile service station (6)	X	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X	X
Clinic, medical	X	X	X	X	X	X	X
Conference center	ACUP	X	X	X	X	X	X
Custom art and craft stores	X	X	X	X	X	X	X
Day-care center (14)	ACUP	X	X	C	C	C	X

Day-care center, family (14)	X	X	X	ACUP	P	P	X
Drinking establishments	X	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	X	X
Equipment rentals	X	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	X	X	X
General office and management services – less than 4,000 s.f.	X	X	X	X	X	X	X
General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	X	X
General retail merchandise stores – less than 4,000 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X
Kennels or Pet day-cares	X	X	X	C (12)	C (12)	C (12)	X
Kennels, hobby	X	X	X	P	P	P	P
Laundromats and laundry services	X	X	X	X	X	X	X
Lumber and bulky building material sales	X	X	X	X	X	X	X
Mobile home sales	X	X	X	X	X	X	X
<b>COMMERCIAL/BUSINESS USES (continued)</b>							
Nursery, retail	X	X	X	C	C	C	X
Nursery, wholesale	X	X	X	P	P	P	P

Off-street private parking facilities	X	X	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X	X	X	X
Pet shop – retail and grooming	X	X	X	X	X	X	X
Research laboratory	X	X	X	X	X	X	X
Restaurants	X	X	X	X	X	X	X
Restaurants, high-turnover	X	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X	X
Temporary offices and model homes (27)	X	X	X	X	ACUP	ACUP	X
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X	X
Tourism facilities, including seaplane and tour-boat terminals	X	X	X	X	X	X	X
Transportation terminals	X	X	X	X	X	X	X
Veterinary clinics/Animal hospitals	X	X	X	C	C (8)	C (8)	X
<b>RECREATIONAL/CULTURAL USES</b>							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Amusement centers	ACUP	X	X	X	X	X	X
Carnival or Circus	ACUP	X	X	X	X	X	X
Club, civic or social	ACUP	X	C (12)	X	C (12)	C (12)	X
Golf courses	ACUP	X	X	C (12)	C (12)	C (12)	X
Marinas	ACUP	X	X	X	X	X	X
Movie/Performance theaters, indoor	X	X	X	X	X	X	X
Movie/Performance theaters, outdoor	C	X	X	X	X	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	X	X	X	X

Parks and open space	P	P	P	P	P	P	P
Race track, major	C (12)	X	X	X	X	X	X
Race track, minor	C (12)	C (12)	C (12)	X	X	X	C (12)
<b>RECREATIONAL/CULTURAL USES (continued)</b>							
Recreational facilities, private	ACUP	X	X	C (12)	C (12)	C (12)	C
Recreational facilities, public	ACUP	X	X	ACUP	ACUP	ACUP	C
Recreational vehicle camping parks	ACUP	X	X	X	C (46)	C (46)	C (46)
Zoo	X	X	X	X	X	X	X
<b>INSTITUTIONAL USES</b>							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Government/Public structures	P	X	X	P	ACUP	ACUP	X
Hospital	X	X	X	X	X	X	X
Places of worship	X	X	X	C (12)	C (12)	C (12)	X
Private or public schools (20)	X	X	X	C	C	C	X
Public facilities, transportation and parking facilities, electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	P	C (5)	C	C	C	C	C
<b>INDUSTRIAL USES</b>							
Accessory use or structure (1) (17) (51)	X	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	X	X	X	C	C	C	C
Cold storage facilities	X	X	X	X	X	X	X

Contractor's storage yard (21)	X	X	ACUP	X	C (12)	C (12)	X
Food production, brewery or distillery	X	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X	X
Helicopter pads (13)	X	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X	X
Manufacturing and fabrication, medium	X	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X
Recycling centers	X	X	X	X	X	X	X
<b>INDUSTRIAL USES (continued)</b>							
Rock crushing	X	C (39)	C (39)	X	X	X	C (39)
Slaughterhouse or animal processing	X	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X	X
Storage, self-service	X	X	X	X	X	X	X
Storage, vehicle and equipment (1)	X	X	X	X (18)	X (18)	X (18)	X
Top soil production, stump grinding	X	X	C	X	C (22)	C (22)	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X	X

Wrecking yards and junk yards (1)	X	X	X	X	X	X	X
<b>RESOURCE LAND USES</b>							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Aggregate extractions sites	X	P (4)	P	X	C	C	C
Agricultural uses (15)	P	X	P	P	P (7)	P (7)	P (7)
Aquaculture practices	P	X	X	C	C	C	C
Forestry	P	P	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X	X

(Ord. 467 (2010) § 8 (Appx. B (part)), 2010; Ord. 425 (2009) § 3 (Att. B) (part), 2009; Ord. 420 (2008) § 8 (part), 2008; Ord. 419 (2008) §§ 5 – 9, 2008; Ord. 415 (2008) §§ 142 – 146, 2008; Ord. 405 (2007) § 5 (part), 2007; Ord. 402 (2007) § 2 (part), 2007; Ord. 384 (2007) §§ 9, 10, 2007; Ord. 380 (2007) § 3 (part), 2007; Ord. 367 (2006) § 105 (part), 2006)

**17.381.050 Footnotes for zoning use table.**

A. Where noted on the preceding use tables, the following additional restrictions apply:

1. Where applicable subject to Section 17.381.060, Provisions applying to special uses.
2. Minimum setbacks shall be twenty feet from any abutting right-of-way or property line; provided, however, advertising for sale of products shall be limited to two on-premises signs each not exceeding six square feet.
3. When located within urban growth areas (except UR), duplexes shall require five thousand square feet of minimum lot area. Duplexes located in the UR zone or outside of urban growth areas shall require double the minimum lot area required for the zone.
4. No greater than two acres for the purpose of construction and maintenance of a timber management road system, provided the total parcel is at least twenty acres.
5. Provided public facilities do not inhibit forest practices.
6. Where permitted, automobile service stations shall comply with the following provisions:
  - a. Sale of merchandise shall be conducted within a building, except for items used for the maintenance and servicing of automotive vehicles;

- b. No automotive repairs other than incidental minor repairs or battery or tire changing shall be allowed;
  - c. The station shall not directly abut a residential zone; and
  - d. All lighting shall be of such illumination, direction, and color as not to create a nuisance on adjoining property or a traffic hazard.
7. In rural wooded (RW), rural protection (RP), or rural residential (RR) zones:
  - a. Animal feed yards and animal sales yards shall be located not less than two hundred feet from any property line; shall provide automobile and truck ingress and egress; and shall also provide parking and loading spaces so designed as to minimize traffic hazards and congestion. Applicants shall show that odor, dust, noise, and drainage shall not constitute a nuisance, hazard, or health problem to adjoining property or uses.
  - b. All stables and paddocks shall be located not closer than fifty feet to any property line. Odor, dust, noise, flies, or drainage shall not be permitted to create or become a nuisance to surrounding property.
8. A veterinary clinic or animal hospital shall not be located within fifty feet of a lot line in the rural protection (RP) or rural residential (RR) zones. In addition, the applicant may be required to provide additional measures to prevent or mitigate offensive noise, odor, light and other impacts.
9. Veterinary clinics and animal hospitals are allowed, provided a major part of the site fronts on a street and the director finds that the proposed use will not interfere with reasonable use of residences by reason of too close proximity to such residential uses, or by reason of a proposed exterior too different from other structures and character of the neighborhood. All activities shall be conducted inside an enclosed building.
10. A cemetery, crematorium, mausoleum, or columbarium shall have its principal access on a county roadway with ingress and egress so designed as to minimize traffic congestion, and shall provide required off-street parking spaces. No mortuary or crematorium in conjunction with a cemetery is permitted within two hundred feet of a lot in a residential zone.
11. A circus, carnival, animal display, or amusement ride may be allowed through administrative review in all industrial zones and any commercial zones, except neighborhood commercial (NC), for a term not to exceed ninety days, with a written approval of the director. The director may condition such approval as appropriate to the site. The director's decision may be appealed to the hearing examiner.
12. All buildings and activities shall be set back a minimum of fifty feet in FRL, MR, RW, RP, RR, RCO, RI or Parks zones and thirty-five feet in all other zones from a side or rear lot line. All such uses shall access directly to a county right-of-way determined to be adequate by the county engineer, and be able to provide access without causing traffic congestion on local residential streets. Any such use shall not

be materially detrimental to any adjacent (existing or future) residential development due to excessive traffic generation, noise, light or other circumstances. The director may increase setback, buffer and landscaping standards or impose other conditions to address potential impacts.

13. Public use airports and heliports are allowed only within the airport (A) zone established by this title. Heliports for the purpose of medical emergency facilities may be permitted in certain zones subject to a conditional use permit. All private landing strips, runways, and heliports shall be so designed and oriented that the incidences of aircraft passing directly over dwellings during their landing or taking off patterns is minimized. They shall be located so that traffic shall not constitute a nuisance to neighboring uses. The proponents shall show that adequate controls or measures will be taken to prevent offensive noise, vibrations, dust, or bright lights.

14. In those zones that prohibit residential uses, family day-care centers are only allowed in existing residential structures. Day-care centers shall have a minimum site size of ten thousand square feet and shall provide and thereafter maintain outdoor play areas with a minimum area of seventy-five square feet per child of total capacity. A sight-obscuring fence of at least four feet in height shall be provided, separating the play area from abutting lots. Adequate off-street parking and loading space shall be provided.

15. The number of animals on a particular property shall not exceed one large livestock, three small livestock, five ratites, six small animals, or twelve poultry:

a. Per forty thousand square feet of lot area for parcels one acre or smaller or for parcels five acres or smaller located within two hundred feet of a lake or year round stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of the lot on which the animals are maintained the above specifications may be exceeded by a factor of two;

b. Per twenty thousand square feet of area for parcels greater than one acre, but less than or equal to five acres, not located within two hundred feet of a lake or year round stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of the lot on which the animals are maintained the above specifications may be exceeded by a factor of two;

c. No feeding area or structure or building used to house, confine or feed livestock, small animals, ratites, or poultry shall be located closer than one hundred feet to any residence on adjacent property located within a rural wooded (RW), rural protection (RP), or rural residential (RR) zone, or within two hundred feet of any residence on adjacent property within any other zone; provided, a pasture (greater than twenty thousand square feet) shall not be considered a feed area.

16. The erection, construction, alteration, or maintenance of overhead or underground utilities by a public utility, municipality, governmental agency, or other approved party shall be permitted in any zone; provided, that any permanent above-ground structures not located within a right-of-way or easement shall be subject to

the review of the director. Utility transmission and distribution lines and poles may exceed the height limits otherwise provided for in this title. Water towers which exceed thirty-five feet in height, solid waste collection, transfer and/or handling sites in any zone shall be subject to a conditional use permit. These provisions do not apply to wireless communication facilities, which are specifically addressed in Chapter 17.470.

17. For waterfront properties, accessory structures such as docks, piers, and boathouses may be permitted in the rear yards, shorelands or tidelands subject to the following limitations:
  - a. All requirements of the Kitsap County Shoreline Management Master Program must be met;
  - b. The building height of any boathouse shall not be greater than fourteen feet above the ordinary high water line;
  - c. Covered structures must abut or be upland of the ordinary high water line; and
  - d. No covered structure shall have a width greater than twenty-five feet or twenty-five percent of the lot width, whichever is most restrictive.
18. One piece of heavy equipment may be stored in any single-family zone; provided, that it is either enclosed within a permitted structure, or screened to the satisfaction of the director.
19. All development within the Silverdale Design District boundaries must be consistent with the Silverdale Design Standards.
20. Site plans for public schools shall include an area identified and set aside for the future placement of a minimum of four portable classroom units. The area set aside may not be counted towards meeting required landscaping or parking requirements.
21. Outdoor contractor's storage yards accessory to a primary residence shall be limited to not more than ten heavy equipment vehicles or heavy construction equipment. The use shall be contained outside of required setbacks within a contained yard or storage building. The storage yard and/or building shall be screened from adjacent properties with a screening buffer a minimum of twenty-five feet in width and capable of providing functional screening of the use. Minimum lot size shall be one hundred thousand square feet.
22. Stump grinding, soil-combining and composting in rural protection and rural residential zones must meet the following requirements:
  - a. The subject property(ies) must be one hundred thousand square feet or greater in size;
  - b. The use must take direct access from a county-maintained right-of way;

- c. A fifty-foot natural vegetation buffer must be maintained around the perimeter of the property(ies) to provide adequate screening of the use from neighboring properties;
  - d. The subject property(ies) must be adjacent to an industrial zone or a complementary public facility such as a sewage treatment plant or solid waste facility;
  - e. The proposed use must mitigate noise, odor, dust and light impacts from the project; and
  - f. The use must meet all other requirements of this title.
23. Home businesses located in the forest resource lands (FRL) must be associated with timber production and/or harvest.
24. Mobile homes are prohibited, except in approved mobile home parks.
25. All uses must comply with the town development objectives of Section 17.321B.025.
26. Within the MVC zone, a new single-family dwelling may be constructed only when replacing an existing single-family dwelling. All replacement single-family dwellings and accessory structures within the MVC zone must meet the height regulations, lot requirements, and impervious surface limits of the MVR zone.
27. Subject to the temporary permit provisions of Chapter 17.455.
28. Allowed only within a commercial center limited in size and scale (e.g., an intersection or corner development).
29. The Bethel Road Corridor Development Plan sets forth policies and regulations for development within the Highway Tourist Commercial Zone located along the Bethel Corridor in South Kitsap from SE Ives Mill Road to the Port Orchard city limits. Development within the Bethel Road Corridor Highway Tourist Commercial Zone shall be conducted in a manner consistent with the policies and regulations of the Land Use Element of the Bethel Road Corridor Development Plan.
30. The Design Standards for the Community of Kingston set forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the Design Standards for the Community of Kingston may be referred to on the Kitsap County web page or at the department of community development front counter.
31. Uses permitted only if consistent with an approved master plan pursuant to Chapter 17.415. Where a master plan is optional and the applicant chooses not to develop one, all uses shown as permitted require an administrative conditional use permit.

32. For properties with an approved master plan, except as described in Section 17.370.025, all uses requiring a conditional use permit will be considered permitted uses.
33. Must be located and designed to serve adjacent area.
34. Bed and breakfast houses with one to four rooms require an administrative conditional use permit; bed and breakfast houses with five or more rooms require a hearing examiner conditional use permit. Bed and breakfast houses serving meals to patrons other than overnight guests require a hearing examiner conditional use permit.
35. The use shall be accessory and shall not occupy more than twenty-five percent of the project area.
36. Requires a conditional use permit when abutting SVR or SVLR zone.
37. Permitted only within a mixed use development or office complex.
38. Customer service-oriented uses over five thousand square feet are prohibited.
39. For the purpose of construction and maintenance of a timber management road system.
40. Self storage facilities must be accessory to the predominant residential use of the property, sized consistently for the number of lots/units being served and may serve only the residents of the single-family plat or multi-family project.
41. Adult family homes serving one to six residents (excluding proprietors) are permitted uses. Adult family homes serving more than six applicable residents (excluding proprietors) require an administrative conditional use permit (ACUP).
42. All business, service repair, processing, storage, or merchandise display on property abutting or across the street from a lot in any residential zone shall be conducted wholly within an enclosed building unless screened from the residential zone by a sight-obscuring fence or wall.
43. Where a family member is in need of special, frequent and routine care and assistance by reason of advanced age or ill health, a manufactured home or mobile home may be placed upon the same lot as a single-family dwelling for occupancy by the individual requiring or providing such special care subject to the following limitations:
  - a. Not more than two individuals shall be the recipients of special care;
  - b. No rent, fee, payment or charge in lieu thereof may be made for use of the single-family dwelling or manufactured/mobile home as between the recipients or providers of special care;
  - c. The manufactured/mobile home must meet the setback requirements of the zone in which it is situated;

- d. A permit must be obtained from the director authorizing such special care manufactured/mobile home. Such permit shall remain in effect for one year and may, upon application, be extended for one-year periods, provided there has been compliance with the requirements of this section;
  - e. The manufactured/mobile home must be removed when the need for special care ceases; and
  - f. Placement of the manufactured/mobile home is subject to applicable health district standards for water service and sewage disposal.
44. Certain development standards may be modified for mixed use developments, as set forth in Section 17.382.035 and Chapter 17.400.
45. New or expanded commercial developments that will result in less than five thousand gross square feet of total commercial use within a development site or residential developments of fewer than four dwelling units are permitted outright outside of the Silverdale UGA.
46. Allowed only as an accessory use to a park or recreational facility greater than twenty acres in size.
47. As a hearing examiner conditional use, UM and UH zones adjacent to a commercial zone may allow coordinated projects that include commercial uses within their boundaries. Such projects must meet the following conditions:
- a. The project must include a combination of UM and/or UH and commercially zoned land;
  - b. The overall project must meet the density required for the net acreage of the UM or UH zoned land included in the project;
  - c. All setbacks from other residentially zoned land must be the maximum required by the zones included in the project;
  - d. Loading areas, dumpsters and other facilities must be located away from adjacent residential zones; and
  - e. The residential and commercial components of the project must be coordinated to maximize pedestrian connectivity and access to public transit.
48. Within urban growth areas, all new residential subdivisions, single-family or multifamily developments are required to provide an urban level of sanitary sewer service for all proposed dwelling units.
49. Mixed use development is prohibited outside of urban growth areas.
50. The 2007 Manchester Community Plan, Appendix A – Manchester Design Standards, sets forth policies and regulations for properties within the Manchester Village Commercial (MVC) district. All development within the MVC district must be consistent with these standards.

51. Storage of shipping containers is prohibited unless allowed as part of a land use permit and/or approval. Placement of storage containers allowed only with an approved temporary permit subject to the provisions of Section 17.455.090(I).
52. Aggregate production and processing only. Allowed only if directly connected to an approved surface mining permit approved by the Washington State Department of Natural Resources (DNR).
53. Commercial or industrial uses otherwise prohibited in the zone may be allowed as a component of a home business subject to the requirements of Section 17.381.060(B).
54. The gross floor area shall not exceed four thousand square feet.
55. Auction house and all items to be auctioned shall be fully enclosed within a structure.
56. There shall be no more than six rental vehicles kept on site.
57. When a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone, it shall be treated as a Type II Administrative Decision.
58. In addition to the other standards set forth in the Kitsap County Code, espresso stands are subject to the following conditions:
  - a. Drive aisles/stacking lanes shall be designed to accommodate a minimum of three vehicles per service window/door. Each stacking lane shall be sized measuring eight and one-half feet in width and twenty feet in length, with direct access to the service window. The drive aisles/stacking lanes shall be designed to prevent any vehicles from interfering with public or private roadways, pedestrian circulation, traffic circulation, parking areas or other required development amenities.
  - b. Subject to provisions set forth in Chapter 17.435, drive aisles and parking areas must also be paved in urban growth areas and include, at minimum, hard compacted surfaces in rural areas. Such surfaces must be addressed with required drainage facilities. A joint parking agreement shall be required if parking cannot be accommodated on site.
  - c. All structures must be permanently secured to the ground.
  - d. Restroom facilities must be available for employees. Portable or temporary restroom facilities shall not be used to meet this requirement.
59. Use is permitted in the South Kitsap Industrial Area only.
60. All development in Illahee shall be consistent with the Illahee Community Plan.
61. Use prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards).

62. General retail merchandise stores greater than one hundred twenty-five thousand square feet in size are prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards). Additional square footage may be allowed for projects greater than twenty-five acres in size.
63. Restaurants, high-turnover that provide drive-thru service must be compatible with the pedestrian focus of the Waaga Way Town Center (see the Silverdale Design Standards). Such businesses shall minimize potential conflicts with pedestrian and bicycle traffic and gathering areas by subordinating the drive-thru service to the overall development design.
64. When a component of development is located within the Rural Commercial or Rural Industrial Zone and involves the conversion of previously undeveloped land which abuts a residential zone, it shall be treated as a Type III Administrative Decision.
65. No car washes allowed in RCO or RI.
66. Personal service businesses in the RCO are limited to four chairs and are intended for local use only.
67. No aquariums are allowed in the RCO zone. Galleries, museums, historic and cultural exhibits should be geared toward the character of the rural area, rural history, or a rural lifestyle.
68. In the RI zone, warehousing and distribution should be focused on agricultural, food, or forestry uses only.
69. In the RI zone, cold storage facilities are only allowed for agricultural and food uses.
70. In the RCO and RI zones, slaughterhouses and animal processing may have a retail component not to exceed four thousand square feet.
71. In the RCO zone, custom art and craft stores are limited to studio type and size only.
72. Must be accessory to an immediate primary use.
73. Heavy construction, farming and forestry equipment only.
74. Allowed for existing airports only.
75. All storage must be screened from public view by a twenty-five-foot buffer in order to meet rural compatibility. Applicant must also demonstrate how the storage would serve the immediate population.
- 76.

0 – 4,000 square feet = P

4,001 – 10,000 square feet = ACUP

10,001 – 15,000 square feet = C

15,001 square feet and above = X

(Ord. 467 (2010) § 8 (Appx. B (part)), 2010; Ord. 425 (2009) § 3 (Att. B) (part), 2009; Ord. 420 (2008) § 8 (part), 2008; Ord. 419 (2008) § 10, 2008; Ord. 415 (2008) § 147; Ord. 405 (2007) § 5 (part), 2007; Ord. 384 (2007) § 11, 2007; Ord. 381 (2007) § 3, 2007; Ord. 367 (2006) § 105 (part), 2006)

**17.381.060 Provisions applying to special uses.**

A. In addition to other standards and requirements imposed by this title, all uses included in this section shall comply with the provisions stated herein. Should a conflict arise between the requirements of this section and other requirements of this title, the most restrictive shall apply.

B. Uses with additional restrictions:

1. Home Business. Home businesses may be allowed for commercial or industrial uses within residential zones subject to the following conditions:

a. Incidental home business, as defined below, shall be permitted in all residential zones and have no permit required.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as not to give an outside appearance of a business;
- (3) The business shall be conducted entirely within the residence;
- (4) The residence shall be occupied by the owner of the business;
- (5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (6) No clients or customers shall visit or meet for an appointment at the residence;
- (7) No employees or independent contractors are allowed to work in the residence other than family members who reside in the residential dwelling;
- (8) No activities that create noise, increase risk of fire, or in any way threaten the safety and tranquility of neighboring residents are permitted;
- (9) No more than two pick-ups and/or deliveries per day are allowed, not including normal U.S. mail;

(10) The business shall not occupy more than twenty-five percent of the gross floor area of the residence; and

(11) No signs to advertise the business/occupation shall be allowed on the premises (except attached to mailbox not to exceed one square foot).

b. Minor home business, as defined below, shall be permitted in all residential zones subject to approval by the director. Said approval is not transferable to any individual, future property owner or location.

(1) Business uses shall be incidental and secondary to the dominant residential use;

(2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as not to give an outside appearance of a business;

(3) The residence shall be occupied by the owner of the business;

(4) The business shall occupy no more than thirty percent of the gross floor area of the residence;

(5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;

(6) No more than two employees, including proprietors (or independent contractors), are allowed;

(7) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director;

(8) No outside storage shall be allowed; and

(9) In order to assure compatibility with the dominant residential purpose, the director may require:

i. Patronage by appointment.

ii. Additional off-street parking.

iii. Other reasonable conditions.

c. Moderate home business, as defined below, shall be permitted in RW, RP, RR and URS zones subject to approval by the director. Said approval is not transferable to any individual, future property owner or location.

(1) Business uses shall be incidental and secondary to the dominant residential use;

- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as to moderate any outside appearance of a business;
- (3) The residence shall be occupied by the owner of the business;
- (4) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (5) No more than five employees (or independent contractors) are allowed;
- (6) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director; and
- (7) In order to ensure compatibility with the dominant residential purpose, the director may require:
  - i. Patronage by appointment.
  - ii. Additional off-street parking.
  - iii. Screening of outside storage.
  - iv. A conditional use permit (required for engine or vehicle repair or servicing).
  - v. Other reasonable conditions.

2. Pets and Exotic Animals. Pets, nontraditional pets and exotic animals are subject to the following conditions:

- a. Pets which are kept inside of a primary structure as household pets in aquariums, terrariums, cages or similar containers shall not be limited in number by this title. Other pets, excluding cats, which are kept indoors shall be limited to five;
- b. Pets which are kept outside of the primary structure shall be limited to three per household on lots less than twenty thousand square feet in area, only one of which may be a nontraditional pet; five per household on lots of twenty thousand to thirty-five thousand square feet, only two of which may be nontraditional pets; with an additional two pets per acre of site area over thirty-five thousand square feet up to a limit of twenty;
- c. The keeping or possession of exotic animals is subject to state and federal laws and, other than in a primary structure as described in subsection (B)(3) of this section, shall require approval of the director. Possession of any dangerous animal or potentially dangerous animal is prohibited in all zones except as provided in Section 7.14.010(9); and

d. No feeding area or structure used to house, confine or feed pets shall be located closer than the minimum yard setbacks for the zone in which they are located. No feeding area or structure used to house, confine or feed non-traditional pets or exotic animals shall be located closer than fifty feet from any residence on adjacent property.

3. Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones, subject to the following criteria:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
- c. Only one ADU shall be allowed per lot;
- d. Owner of the property must reside in either the primary residence or the ADU;
- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller;
- f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage);
- g. The ADU shall be designed to maintain the appearance of the primary residence;
- h. All setback requirements for the zone in which the ADU is located shall apply;
- i. The ADU shall meet the applicable health district standards for water and sewage disposal;
- j. No mobile homes or recreational vehicles shall be allowed as an ADU;
- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking; and
- l. An ADU is not permitted on the same lot where an accessory living quarters exists.
- m. Existing, Unpermitted Accessory Dwelling Units.

(1) Applicability. The provisions of this subsection shall only apply to property and property owners who can establish all of the following criteria:

- i. The parcel is within the unincorporated area of Kitsap County;
  - ii. An accessory dwelling unit (ADU), as defined in Section 17.110.020, or similar dwelling previously defined as an accessory living quarters (ALQ) or an accessory rental unit (ARU) is located on the parcel;
  - iii. The accessory dwelling has not received any prior review and/or approval by Kitsap County;
  - iv. The property owner did not construct or cause to have the accessory dwelling constructed;
  - v. The property owner did not own the property when the accessory dwelling was constructed;
  - vi. The property owner exercised due diligence when purchasing the property with the existing accessory dwelling to discover whether or not the accessory dwelling was approved when purchasing the property. Due diligence is presumed to have occurred if the property owner can document the following conditions:
    - (a) That county tax records or parcel records contain no inquiry or other notice that the ADU was unpermitted; and
    - (b) That the current owner requested and obtained a title report with no exceptions, restrictions, enforcement actions, permitting or similar issues pertinent to the ADU; and
    - (c) That the prior owner's property and improvement disclosures at the time of sale did not indicate any permitting, compliance or similar issues pertinent to the ADU; and
    - (d) That any third party involved in the sale or inspection of the ADU did not disclose any permitting, compliance or other issues pertinent to the ADU.
  - vii. The parcel has a history of property tax assessment and a history of continuous tax payments on the principal and the accessory dwelling.
  - viii. Acceptable documentation for subsections (B)(3)(m)(1)(i) through (vii) of this section may include but are not limited to current or previous county assessment records, real estate disclosure forms, listing agreements, records of sale, title reports and aerial photography establishing compliance with the required conditions.
- (2) Application. Persons who meet the criteria of subsection (B)(3)(m)(1) of this section desiring to gain approval of their accessory dwelling shall make application to the director of the department of community

development on forms provided by the department, with fees to be paid at the time of application as provided in subsection (B)(3)(m)(5) of this section. Such application shall be a Type II permit under Chapter 21.04.

(3) Approval. The director, or his designee, is authorized to approve submitted applications that satisfy all of the following:

- i. All the requirements of this section;
- ii. All the applicable zoning, health, fire safety and building construction requirements:
  - (a) The applicable requirements shall be those in effect when the accessory dwelling was constructed. The burden of proof of when the accessory dwelling was constructed shall be upon the applicant and may consist of dated aerial photography, tax assessments, surveys or similar documents.
  - (b) If the applicant cannot prove a date of construction, the applicable requirements shall be those currently in effect on the date of application.
  - (c) If the applicant can only show a date range for construction, the applicable requirements shall be the latest requirements of the range;
- iii. Proof of adequate potable water;
- iv. Proof of adequate sewage disposal systems for both the principal and the accessory dwelling. Proof shall be shown by Kitsap County health district approval; and
- v. Verification by Kitsap County inspection staff that the accessory dwelling is habitable.

Applications approved subject to these provisions shall be considered legal nonconforming uses.

(4) Variances.

- i. When reviewing the application, the director is authorized to grant an administrative variance to the requirements of subsection (B)(3)(m)(3)(ii) of this section only when unusual circumstances relating to the property cause undue hardship in the application of subsection (B)(3)(m)(3)(ii) of this section. The granting of an administrative variance shall be in the public interest. An administrative variance shall be granted at the director's sole discretion only when the applicant has proven all of the following:

- (a) There are practical difficulties in applying the regulations of subsection (B)(3)(m)(3)(ii) of this section;
  - (b) The applicant did not create or participate in creating the practical difficulties;
  - (c) A variance meets the intent and purpose of this section;
  - (d) The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
  - (e) The variance is the minimum necessary to grant relief to the applicant.
- ii. The director is authorized to require mitigation in connection with the administrative variance to minimize the effect of the variance on surrounding properties.
  - iii. In reviewing a request for an administrative variance, the director shall notify and solicit comments from surrounding property owners of the application and the intended variance and mitigation. The director shall consider such comments when determining whether or not to approve the variance. The director is further authorized to require mediation to resolve issues arising from the notification process and the costs of such mediation shall be paid by the applicant.
  - iv. Variance requests submitted as part of this subsection shall be considered as part of the original application and not subject to additional procedural or fee requirements.
- (5) Fees. Applicants shall pay a fee established by resolution at the time of application. Additionally, applicants shall pay notification costs, reinspection fees, additional review and other applicable fees in accordance with Chapter 21.06. Applicants may initiate a staff consultation in considering or preparing an application under these provisions. The staff consultation fee established in Chapter 21.06 shall not, however, be credited towards any subsequent application submitted under these provisions.
- (6) Land Use Binder. Following approval of the accessory dwelling and any administrative variance, the applicant shall record a land use permit binder with the county auditor using forms provided by Kitsap County department of community development.
- (7) Expiration. Qualifying property owners shall have one year from the time that the noncompliant ADU is discovered to submit an application for approval of the ADU.

4. Accessory Living Quarters. In order to encourage the provision of affordable housing, accessory living quarters may be located in residential zones, subject to the following criteria:
- a. Accessory living quarters shall be located within an owner-occupied primary residence;
  - b. Accessory living quarters are limited in size to no greater than fifty percent of the habitable area of the primary residence;
  - c. The accessory living quarters are subject to applicable health district standards for water and sewage disposal;
  - d. Only one accessory living quarters shall be allowed per lot;
  - e. Accessory living quarters are to provide additional off-street parking with no additional street side entrance; and
  - f. Accessory living quarters are not allowed where an accessory dwelling unit exists.
  - g. Existing Unpermitted Accessory Living Quarters. Existing unpermitted accessory living quarters may be approved under the provisions of subsection (B)(3)(m) of this section.
5. Adult Entertainment.
- a. The following uses are designated as adult entertainment uses:
    - (1) Adult bookstore;
    - (2) Adult mini-motion picture theater;
    - (3) Adult motion picture theater;
    - (4) Adult novelty store; and
    - (5) Cabaret.
  - b. Restrictions on Adult Entertainment Uses. In addition to complying with the other sections of the Zoning Ordinance, adult entertainment uses shall not be permitted:
    - (1) Within one thousand feet of any other existing adult entertainment use; and/or
    - (2) Within five hundred feet of any noncommercial zone, or any of the following residentially related uses:
      - i. Churches, monasteries, chapels, synagogues, convents, rectories, or church-operated camps;

- ii. Schools, up to and including the twelfth grade, and their adjunct play areas;
- iii. Public playgrounds, public swimming pools, public parks and public libraries;
- iv. Licensed day care centers for more than twelve children;
- v. Existing residential use within a commercial zone.

(3) For the purposes of this section, spacing distances shall be measured as follows:

- i. From all property lines of any adult entertainment use;
- ii. From the outward boundary line of all residential zoning districts;
- iii. From all property lines of any residentially related use.

c. Signage for Adult Entertainment Uses.

(1) In addition to other provisions relating to signage in the Zoning Ordinance, it shall be unlawful for the owner or operator of any adult entertainment use establishment or any other person to erect, construct, or maintain any sign for the adult entertainment use establishment other than one primary sign and one secondary sign, as provided herein.

(2) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- i. Be a flat plane, rectangular in shape;
- ii. Not exceed seventy-five square feet in area; and
- iii. Not exceed ten feet in height or ten feet in length.

(3) Primary and secondary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- i. The name of the regulated establishment; and/or
- ii. One or more of the following phrases:
  - (a) "Adult bookstore,"
  - (b) "Adult movie theater,"
  - (c) "Adult cabaret,"
  - (d) "Adult novelties,"

(e) "Adult entertainment."

(4) Primary signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

i. Each letter forming a word on a primary or secondary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

ii. Secondary signs shall have only one display surface. Such display surface shall:

(a) Be a flat plane, rectangular in shape;

(b) Not exceed twenty square feet in area;

(c) Not exceed five feet in height and four feet in width; and

(d) Be affixed or attached to any wall or door of the establishment.

6. Storage of Junk Motor Vehicles.

a. Storage of junk motor vehicles on any property outside of a legally constructed building (minimum of three sides and a roof) is prohibited, except where the storage of up to six junk motor vehicles meets one of the following two conditions:

(1) Any junk motor vehicle(s) stored outdoors must be completely screened by a sight-obscuring fence or natural vegetation to the satisfaction of the director (a covering such as a tarp over the vehicle(s) will not constitute an acceptable visual barrier). For the purposes of this section, "screened" means not visible from any portion or elevation of any neighboring or adjacent public or private property, easement or right-of-way; or

(2) Any junk motor vehicle(s) stored outdoors must be stored more than two hundred fifty feet away from all property lines.

b. Environmental Mitigation Agreement. The owner of any such junk motor vehicle(s) must successfully enter into an environmental mitigation agreement with the department of community development (the "department") regarding the property where such vehicle(s) will be located or stored.

(1) An environmental mitigation agreement between a property owner and the department is required before the outdoor storage of up to six screened junk motor vehicles will be approved. A property owner may enter into such agreement with the department for a one-time fee of \$10.00 per vehicle, the proceeds of which shall be used to assist with clean-up costs associated with the administration of Chapter 9.56.

(2) In order to mitigate any potential environmental impact from the storage of these junk motor vehicles, the property owner must agree to institute one of the following two preventative measures:

i. Each junk motor vehicle must be drained of all oil and other fluids including, but not limited to, engine crankcase oil, transmission fluid, brake fluid and radiator coolant or antifreeze prior to placing the vehicle on site; or

ii. Drip pans or pads must be placed and maintained underneath the radiator, engine block, transmission and differentials of each junk motor vehicle to collect residual fluids.

iii. Either preventative measure shall require that the owner of such vehicle(s) clean up and properly dispose of any visible contamination resulting from the storage of junk motor vehicles. The agreement will require the property owner to select one of the two preventative measures and to allow for an initial inspection of the property by the department to assure that the preventative measure has been implemented to the satisfaction of the department. By entering into the agreement, the property owner further agrees to allow the department entry onto the property on an annual basis for reinspection to assure compliance with the approved agreement. If a property is found to be in compliance with the terms of the agreement for two consecutive inspections, the department may waive the annual inspection requirement. A property owner found to be in violation of the agreement may be issued a civil infraction pursuant to this title and could later be deemed a nuisance in accordance with Chapter 9.56.

7. Model Homes. Notwithstanding any other provision of this code, model homes may be constructed within a subdivision prior to final plat approval by the board. The purpose of the model homes shall be to demonstrate a variety of housing designs together with associated on-site improvements, e.g., landscaping, improved driveway, patios. Model homes shall be subject to the following requirements:

a. The subdivision shall have received preliminary plat approval;

b. One model home may be occupied as a temporary real estate office;

c. A model home may not be occupied as a dwelling unit or sold until the approved final plat is recorded;

d. The number of model home permits that may be issued for any approved preliminary plat or division thereof shall not exceed six;

e. If the lots to be used for model home purposes are in a block of two or more contiguous lots, temporary uses may be incorporated onto one or more lots, including temporary offices, parking, parks and playgrounds, subject to the approval of the director, and subject to obtaining a temporary use permit, which shall authorize the temporary uses for a period of one year. The director may

extend the temporary use permit for up to two additional periods of six months each;

f. Lots used for model homes must be clear of restrictions or easements that may be subject to line changes before recording;

g. Stormwater management facilities must be in place and/or approved for recording. Temporary erosion control must be completed prior to occupancy of a model home;

h. Roads must be constructed to final alignment and grade such that the building inspector can determine if connecting driveways meet county standards prior to occupancy of a model home;

i. Permanent or temporary fire flow for the final plat must be approved by the fire marshal, constructed and operational prior to occupancy of a model home; and

j. Final plat restoration bonds must be posted prior to occupancy of a model home.

8. Guest Houses. Guest house may be located in those zones specified in Section 17.381.040 subject to the following conditions:

a. Guest houses shall not exceed nine hundred square feet. Dimensions are determined by exterior measurements;

b. Guest houses shall not include any kitchen plumbing, appliances or provisions for cooking;

c. Guest houses shall not include more than one bathroom (may be full bathroom);

d. Guest houses shall not include more than two habitable rooms and a bathroom;

e. Guest houses shall not be rented separately from the primary residence;

f. Only one guest house is allowed per parcel;

g. No guest house is allowed on a parcel with an existing accessory dwelling unit or accessory living quarters;

h. Newly constructed guest houses must meet the required setbacks for a single-family dwelling consistent with their zone. Legally established, existing structures built before May 7, 1998, may be remodeled into guest houses at their existing setback;

i. Guest houses must be within one hundred fifty feet of the primary residence;

- j. Guest houses must use the same street entrance as the primary structure;
- k. Guest houses must meet all applicable health district standards for water provision and sewage disposal; and
- l. The property owner must record a notice to title outlining these conditions. This notice must be approved by the department and may not be extinguished without the county's written permission.

(Ord. 459-2010 § 2, 2010: Ord. 419 (2008) § 11, 2008: Ord. 415 (2008) § 148, 2008: Ord. 381 (2007) § 3, 2007: Ord. 367 (2006) § 105 (part), 2006)

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# **Appendix 16**

**KCC 17.421**

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**Chapter 17.421**  
**HEARING EXAMINER CONDITIONAL USE PERMIT**

Sections:

- 17.421.010 Purpose and applicability.
- 17.421.020 Hearing examiner conditional use permit procedure.
- 17.421.025 Third party review.
- 17.421.030 Decision criteria – Conditional use permit.
- 17.421.040 Revision of hearing examiner conditional use permits.
- 17.421.050 Vacation of hearing examiner conditional use permit.
- 17.421.060 Revocation of permit.
- 17.421.070 Transfer of ownership.
- 17.421.080 Land use permit binder required.
- 17.421.090 Effect.

**17.421.010 Purpose and applicability.**

The purpose of this chapter is to set forth the procedure and decision criteria for conditional use permits applications. A conditional use permit is the mechanism by which the county may gather input through an open record hearing and place special conditions on the use or development of land. The provisions of this chapter apply to hearing examiner conditional use permit applications.

(Ord. 367 (2006) § 111 (part), 2006)

**17.421.020 Hearing examiner conditional use permit procedure.**

A. The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit through a Type III process as set forth in Title 21 of this code.

B. Applications for a hearing examiner conditional use permit shall contain the information required by the submittal requirements checklist established by the department as set forth in Section 21.04.045.

C. When an application is submitted together with another project permit application, the hearing examiner conditional use permit shall be processed as set forth in Section 21.04.035.

(Ord. 367 (2006) § 111 (part), 2006)

**17.421.025 Third party review.**

The director may require a third party review from a technical expert to provide information necessary to prepare a staff recommendation to the hearing examiner. The expert will be chosen from a list of pre-qualified experts prepared and kept current by an annual solicitation by the department. The applicant shall select the expert from a list of three names selected by the director from the larger pre-qualified list. The expert will be contracted to the county and report their findings to the director and the applicant. The cost of such report will be the responsibility of the applicant.

(Ord. 415 (2008) § 191, 2008)

**17.421.030 Decision criteria – Conditional use permit.**

A. The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title;
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

B. As a condition of approval, the hearing examiner may:

1. Increase requirements in the standards, criteria, or policies established by this title;
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.382;
4. Include requirements to improve compatibility with other uses permitted in the same zone protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and

8. Impose any requirement that will protect the public health, safety, and welfare.

C. If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.

(Ord. 415 (2008) § 192, 2008; Ord. 367 (2006) § 111 (part), 2006)

**17.421.040 Revision of hearing examiner conditional use permits.**

A. Revision of a hearing examiner conditional use permit or conditions of permit approval is permitted as follows:

1. Minor Revisions. Minor revisions may be permitted by the department. No revision in points of vehicular access to the property shall be approved without prior written concurrence of the director of the department of public works. Minor revisions shall be processed as a Type I application

2. Major revisions, including any requested change in permit conditions, shall be processed as a Type III application.

B. Minor and major revisions are defined as follows:

1. A "minor" revision means any proposed change which does not involve substantial alteration of the character of the prior approval, including dimensional or gross floor area increases of less than ten percent; and

2. A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or substantially increased, including increased trip generation of ten percent or more, or the site plan design is substantially altered, including dimensional or gross floor area increases of ten percent or more.

(Ord. 367 (2006) § 111 (part), 2006)

**17.421.050 Vacation of hearing examiner conditional use permit.**

A. Any conditional use permit issued pursuant to this chapter may be vacated by the current landowner upon county approval; provided, that:

1. The use authorized by the permit does not exist and is not actively being pursued; or

2. The use has been terminated and no violation of the terms and the conditions of the permit exists.

B. Landowner request for vacation of a conditional use permit shall be conducted as set forth in Title 21 of this code.

(Ord. 415 (2008) § 193, 2008; Ord. 367 (2006) § 111 (part), 2006)

**17.421.060 Revocation of permit.**

Any revocation proceeding shall be conducted in accordance with Chapter 17.525.

(Ord. 415 (2008) § 194, 2008; Ord. 367 (2006) § 111 (part), 2006)

**17.421.070 Transfer of ownership.**

A conditional use permit runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

(Ord. 367 (2006) § 111 (part), 2006)

**17.421.080 Land use permit binder required.**

The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit.

(Ord. 367 (2006) § 111 (part), 2006)

**17.421.090 Effect.**

No building or other permit shall be issued until after the end of the period allowed to appeal the hearing examiner's decision. An appeal shall automatically stay the issuance of a building or other permit until such appeal has been heard and a decision rendered by the board of county commissioners.

(Ord. 415 (2008) § 195, 2008)

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## **Appendix 17**

**KCC 17.455.060**

# **Appendix 18**

**KCC 17.455.110**

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## Chapter 17.455 INTERPRETATIONS AND EXCEPTIONS

**Sections:**

- 17.455.010 Director authority to issue administrative decisions.
- 17.455.060 (Repealed)
- 17.455.080 Pending long or short subdivisions.
- 17.455.090 Temporary permits.
- 17.455.100 Number of dwellings per lot.
- 17.455.110 Obnoxious things.
- 17.455.120 Existing lot aggregation for tax purposes.

**17.455.010 Director authority to issue administrative decisions.\***

It shall be the responsibility of the director himself/herself to interpret ambiguous and/or conflicting code and apply the provisions of this title, Kitsap County County-wide Planning Policies, Kitsap County Comprehensive Plan and applicable sub-area plans.

At the request of the applicant, in writing, the director may also authorize a variation of up to ten percent of any numerical standard, except density, when unusual circumstances cause undue hardship in the strict application of this title; provided, such a variance shall be approved only when all of the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant and do not apply to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- D. The variance is the minimum necessary to grant relief to the applicant.
- E. An approved variance shall become void in three years if a complete application has not been received. The director's response, including findings for granting the variation, shall be in writing and kept in the department files.

(Ord. 490 (2012) § 5(d), 2012; Ord. 415 (2008) § 213, 2008; Ord. 256 (2001) § 2, 2001; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

\* **Editor's Note:** Former subsections (A), (B), (D) and (E) of this section were repealed by § 5(d) of Ord. 490 (2012).

**17.455.060 (Repealed)\***

\* **Editor's Note:** Former Section 17.455.060, "Existing uses," was repealed by § 5(e) of Ord. 490 (2012). Section 4 (part) of Ord. 216 (1998), § 2 (part) of Ord. 234 (1999) and § 214 of Ord. 415 (2008) were formerly codified in this section.

**17.455.080 Pending long or short subdivisions.**

G. Temporary uses and structures not specified in any zone classification subject to applicable provisions of the Kitsap County Code; provided, that such uses and structures may not be approved by the director for a period greater than ninety days.

H. The occupancy of a recreational vehicle (RV) for a period not to exceed three months subject to the following conditions:

1. The subject property must be located in the Rural Wooded (RW), Rural Protection (RP), or Rural Residential (RR) zones;
  2. The RV must be occupied by the property owner or family member;
  3. The RV must be provided with approved utilities including septic or sewer (health district approval), water, and electrical power;
  4. The location of the RV must meet all setbacks required by the underlying zone;
  5. The director may impose additional conditions as appropriate to ensure that the RV use is compatible with the surrounding properties;
  6. The minimum RV size shall be two hundred square feet; and
  7. A permit will be required each time the RV is placed on a parcel. If the RV is placed on the same parcel each year the application fee will be half of the initial fee.
- I. Placement of a storage container on a property developed with single-family dwelling or properties with an active building permit for construction of a residential or commercial building is subject to the following conditions:
1. The container must meet all applicable setbacks for the zone; and
  2. The storage container may not be placed on site for more than ninety days; however, in instances where a building permit for a single-family dwelling or commercial development is active, the container may remain on site until thirty days after the permit expires or receives final inspection/certificate of occupancy.

(Ord. 415 (2008) § 215, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

**17.455.100 Number of dwellings per lot.**

Except as provided for elsewhere in this title, there shall be no more than one dwelling unit per lot.

(Ord. 415 (2008) § 216, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

**17.455.110 Obnoxious things.**

In all zones, except as provided for elsewhere in this title, no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses. Lighting is to be directed away from adjoining properties. Not more than one foot candle of illumination may leave the property boundaries.

(Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

**17.455.120 Existing lot aggregation for tax purposes.**

# **Appendix 19**

**KCC 17.460**

**Chapter 17.460**  
**NONCONFORMING USES, STRUCTURES AND USE OF STRUCTURES**

Sections:

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

**17.460.010 Purpose.**

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

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

**17.460.015 Extensions.**

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

(Ord. 470-2011 § 3 (part), 2011)

**17.460.020 Nonconforming uses of land.**

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

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

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

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

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

**17.460.030 Application for change of nonconforming uses of land.**

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

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

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

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

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

(Ord. 470-2011 § 3 (part), 2011)

**17.460.040 Nonconforming structures.**

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

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

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

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

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

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

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

**17.460.050 Nonconforming uses of structures.**

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

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

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

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

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

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

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

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## **Appendix 20**

**KCC 17.530**

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**Chapter 17.530  
ENFORCEMENT****Sections:**

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

**17.530.010 Authorization.**

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

(Ord. 216 (1998) § 4 (part), 1998)

**17.530.020 Penalties.**

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

(Ord. 216 (1998) § 4 (part), 1998)

**17.530.030 Nuisance.**

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

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

**17.530.040 Permit or license in violation.**

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

(Ord. 216 (1998) § 4 (part), 1998)

**17.530.050 Written assurance of discontinuance.**

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

(Ord. 216 (1998) § 4 (part), 1998)

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# **Appendix 21**

**KCC 19.100**

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## Chapter 19.100 INTRODUCTION AND APPROVAL PROCEDURES

### Sections:

- 19.100.105 Statement of purpose.
- 19.100.110 Applicability.
- 19.100.115 Relationship to other county regulations.
- 19.100.120 Review authority.
- 19.100.125 Exemptions.
- 19.100.130 Standards for existing development.
- 19.100.135 Variances.
- 19.100.140 Reasonable use exception.
- 19.100.145 Appeals.
- 19.100.150 Critical area and buffer notice to title.
- 19.100.155 General application requirements.
- 19.100.160 Inventory provisions.
- 19.100.165 Enforcement.

### **19.100.105 Statement of purpose.**

The purpose of the ordinance codified in this title is to identify and protect critical areas as required by the Growth Management Act of 1990 (Chapter 17, Laws of 1990). This title supplements the development requirements contained in the various chapters of the Kitsap County Zoning Ordinance (Title 17 of the Kitsap County Code) by providing for additional controls and measures to protect critical areas. This title is adopted under the authority of Chapter 36.70A RCW, Chapter 36.70 RCW and the Kitsap County Code, as now or hereafter amended.

A. Goal Statement. It is the goal of Kitsap County that the beneficial functions and values of critical areas be preserved, and potential dangers or public costs associated with the inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to or directly affecting such areas, for the benefit of present and future generations.

B. Policy Goals. To implement the purpose and goal stated above, it is the intent of this title to accomplish the following:

1. Conserve and protect the environmental factors that add to the quality of life within the federal, state and county regulations that protect critical areas for the benefit of current and future residents of Kitsap County and the State of Washington.
2. Protect the public against avoidable losses from maintenance and replacement of public facilities, property damage, costs of publicly subsidizing mitigation of avoidable impacts, and costs for public emergency rescue and relief operations.
3. Identify critical areas and their environmental functions and values.
4. Protect critical areas and their functions and values by regulating use and management within these areas and adjacent lands.
5. Preserve the habitat, water quality, and water quantity functions and values of wetlands.

6. Protect water quality by controlling erosion and carefully siting uses and activities that can detrimentally affect stream flows or aquatic habitat quality.
7. Guide development proposals to the most environmentally suitable and stable portion of a development site.
8. Avoid potential damage due to geological hazards or flooding.
9. Preserve natural flood control and stormwater storage.
10. Maintain groundwater recharge and prevent the contamination of groundwater.
11. Prevent cumulative adverse environmental impacts to water, wetlands, fish and wildlife habitats, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas.
12. Whenever mitigation is required, pursue as a preferred option, restoration and enhancement of previously impacted critical areas and their buffers.

(Ord. 351 (2005) § 4, 2005; Ord. 217 (1998) § 3 (part), 1998)

**19.100.110 Applicability.**

A. Kitsap County shall not grant any permit, license or other development approval to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement, nor shall any person alter the condition of any land, water or vegetation, or construct or alter any structure or improvement, for any development proposal regulated by this title, except in compliance with the provisions of this title. Failure to comply with the provisions of this title shall be considered a violation and subject to enforcement procedures as provided for in this title.

B. This title applies to all uses and activities within areas or adjacent to areas designated as regulated critical areas unless otherwise exempt. The following permits and approvals shall be subject to and coordinate with the requirements of this title: site development activity permit; site plan approval; subdivision or short subdivision; building permit; performance based development, shoreline substantial development; variance; conditional use permit; certain forest practice permits (Class IV General, Class III Conversion Option Harvest Plans); other permits leading to the development or alteration of land; and rezones if not combined with another development permit.

C. Non-project actions including, but not limited to, rezones, annexations, and the adoption of plans and programs, shall be subject to critical area review.

D. This title does not require any permit in addition to those otherwise required by county ordinances. This title is an overlay to the Zoning Ordinance; while it does not require any additional permits, activities regulated by the Zoning Ordinance are also subject to critical area requirements.

E. The development standards and other requirements of this title shall be applied to uses and activities for any permit review or approval process otherwise required by county ordinances.

F. Uses and activities in critical areas or their buffers for which no permit or approval is required by any other county ordinance remain subject to the development standards and other

requirements of this title. While this title does not require a review or approval process for such uses and activities, they remain subject to the title.

G. For the purpose of this title, the area of review is defined as the critical area and its largest potential buffer or setback. This defines the area of review only. Refer to Chapters 19.200 through 19.600 for specific development standards.

(Ord. 351 (2005) § 5, 2005: Ord. 217 (1998) § 3 (part), 1998)

**19.100.115 Relationship to other county regulations.**

When any provision of any other chapter of the Kitsap County Code conflicts with this title, that which provides the most protection to the critical area, as determined by the department, shall apply.

Applications for permits and approvals are subject to the provisions of this title as well as to other provisions of state and county law, which include, but are not limited to the following:

- A. Title 2, Government;
- B. Title 9, Health, Welfare and Sanitation;
- C. Title 12, Storm Water Management;
- D. Title 14, Buildings and Construction;
- E. Title 15, Flood Hazard Areas;
- F. Title 16, Land Division and Development;
- G. Title 17, Zoning;
- H. Title 18, Environment;
- I. Title 21, Land Use and Development Procedures;
- J. Title 22, Shoreline Management Master Program;
- K. RCW 36.70A, Growth Management Act;
- L. RCW 90.58, Shoreline Management Act;
- M. RCW 43.21C, State Environmental Policy Act;

(Ord. 351 (2005) § 6, 2005: Ord. 217 (1998) § 3 (part), 1998)

**19.100.120 Review authority.**

A. In evaluating a request for a development proposal regulated by this title, it shall be the responsibility of the department to determine the following:

1. The nature and type of critical area and the adequacy of any special reports required in applicable sections of this title;
2. Whether the development proposal is consistent with this title, by granting, denying or conditioning projects;

3. Whether proposed alterations to critical areas are appropriate under the standards contained in this title, or whether it is necessary for the applicant to seek a variance or other exception; and
  4. Whether the protection mechanisms and the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety and welfare consistent with the goals, purposes and objectives of this title, and if not, condition the permit or approval accordingly.
- B. The department shall have the administrative authority to reduce buffers and building setbacks as outlined in specific critical area sections of this title.
- C. Where projects have been approved with conditions to protect critical areas under previous protection policies in effect prior to the ordinance codified in this title, those conditions will apply. Nevertheless, this title shall apply in cases where the department determines, based on review of current information, that the prior conditions will result in a detrimental impact to a critical area.
- D. Time Limitations.
1. Expiration of Approval.
    - a. Approvals granted under this title shall be valid for the same time period as the underlying permit (e.g. preliminary plat, site development, building permit). If the underlying permit does not contain a specified expiration date, then approvals granted under this title shall be in writing and shall be valid for a period of three years from the date of issue, unless a longer period is specified by the department.
    - b. The approval shall be considered null and void upon expiration, unless a time extension is requested and granted as set forth in subsection (2) below.
  2. Time Extensions.
    - a. The applicant or owner(s) may request in writing a one-year extension of the original approval.
    - b. Knowledge of the expiration date and initiation of a request for a time extension is the responsibility of the applicant or owner(s).
    - c. A written request for a time extension shall be filed with the department at least 60 days prior to the expiration of the approval.
    - d. Upon filing of a written request for a time extension, a copy shall be sent to each party of record together with governmental departments or agencies that were involved in the original approval process. By letter, the department shall request written comments be delivered to the department within 30 days of the date of the letter.
    - e. Prior to the granting of a time extension, the department may require a new application(s), updated study(ies), and fee(s) if:
      - (1) The original intent of the approval is altered or enlarged by the renewal;
      - (2) The circumstances relevant to the review and issuance of the original approval have changed substantially; or

(3) The applicant failed to abide by the terms of the original approval.

f. If approved, the one-year time extension shall be calculated from the date of granting said approval.

g. The department has the authority to grant or deny any requests for time extensions based upon demonstration by the applicant of good cause for the delay. Time extensions shall be granted in writing and documented in the file.

(Ord. 351 (2005) § 8, 2005: Ord. 217 (1998) § 3 (part), 1998)

#### **19.100.125 Exemptions.**

The following activities are exempt from the requirements of this title:

A. Emergencies that threaten the public health, safety and welfare. An “emergency” is an unanticipated and immediate threat to public health, safety, or the environment that requires action within a time too short to allow compliance with this title.

B. Pre-existing and ongoing agricultural activities on lands containing critical areas. For the purpose of this title, “existing and ongoing” means that the activity has been conducted and/or maintained within the past five years.

C. Normal and routine maintenance and operation of pre-existing retention/detention facilities, biofilters and other stormwater management facilities, irrigation and drainage ditches, farm ponds, fish ponds, manure lagoons, and livestock water ponds, provided that such activities shall not involve conversion of any wetland not currently being used for such activity.

D. Structural alterations to buildings, permitted under the Kitsap County Code that do not alter the structural footprint or introduce new adverse impacts to an adjacent critical area.

E. Normal and routine maintenance or repair of existing utility structures within a right-of-way or existing utility corridor or easements, including the cutting, removal and/or mowing of vegetation above the ground.

F. Forest Practices conducted pursuant to RCW 76.09, except Class IV (general conversions) and Conversion Option Harvest Plans (COHP).

(Ord. 351 (2005) § 7, 2005: Ord. 217 (1998) § 3 (part), 1998)

#### **19.100.130 Standards for existing development.**

A. Shorelines. This section incorporates by reference the existing development standards provided in Title 22 of the Kitsap County Code (Shoreline Management) applicable to development on shorelines of the state (WAC 173-27-080), as now or hereafter amended.

B. Existing Nonconforming Structures.

1. “Existing nonconforming development” means a development that was lawfully constructed, approved or established prior to the effective date of the ordinance codified in this title, but does not conform to present regulations or standards of this title.

2. Structures in existence on the effective date of the ordinance codified in this title that do not meet the setback or buffer requirements of this title may be remodeled or reconstructed provided that the new construction or related activity does not further intrude into the critical area or its associated buffers.

3. New construction or related activity connected with an existing single family dwelling shall not be considered further intruding into an associated buffer so long as the footprint of the structure lying within the critical area or its buffer is not increased by more than twenty (20%) percent and no portion of the new structure is located closer to the critical area than the existing structure; and provided further that reconstruction or remodeling meets the requirements of Title 15 of the Kitsap County Code (Flood Hazard Areas) and shall only be allowed if it does not create or continue a circumstance where personal or property damage is likely due to the nature of the critical area.

4. Nonconforming structures which are damaged or destroyed by fire, explosion, or other casualty, may be restored or replaced if reconstruction is commenced within 24 months of such damage. The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity except as allowed through the provisions of this section.

C. **Danger Tree Removal.** Where a threat to human life or property is demonstrated, the department may allow removal of danger or hazard trees subject to the following criteria: (1) tree removal is the minimum necessary to balance protection of the critical area and its buffer with protection of life and property; and (2) the critical area or its buffer shall be replanted as determined by the department and the property owner. The department shall coordinate review with the property owner and Washington State Department of Fish and Wildlife as determined necessary to assure habitat protection. The department may require the applicant to consult with a professional forester or a certified arborist prior to tree removal. Danger tree abatement can sometimes be achieved by felling the tree or topping the tree. Habitat needs may require leaving the fallen tree in the riparian corridor or maintaining a high stump for wildlife habitat.

(Ord. 351 (2005) § 9, 2005; Ord. 217 (1998) § 3 (part), 1998)

#### **19.100.135 Variances.**

A. A variance in the application of the regulations or standards of this title to a particular piece of property or a variance to the use prohibitions of this title may be granted by Kitsap County, when it can be shown that the application meets all of the following criteria:

1. Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.
2. The special circumstances referred to in subsection 1 above are not the result of the actions of the current or previous owner.
3. The granting of the variance will not result in substantial detrimental impacts to the critical area, public welfare or injurious to the property or improvements in the vicinity and area in which the property is situated or contrary to the goals, policies and purpose of this title.
4. The granting of the variance is the minimum necessary to accommodate the permitted use.
5. No other practicable or reasonable alternative exists. (See Definitions, Chapter 19.150.)

6. A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.
- B. Kitsap County shall conduct a public hearing on all variance applications pursuant to the review process and notice requirements established in Title 21 of the Kitsap County Code (Land Use and Development Procedures), as now or hereafter amended.
  - C. Except when application of this title would deny all reasonable use of the property (Section 19.100.140), an applicant who seeks an exception from the standards and requirements of this title shall pursue relief by means of a variance as provided for in this title.
  - D. Requests for variances shall include the application requirements of Section 19.100.155 (Application Requirements, General), or Section 19.200.215 (Wetland Review Procedures), whichever is applicable.
  - E. The department shall review administrative buffer reductions based on the criteria and standards referenced in this chapter.
  - F. The department may grant variances for public utilities to the substantive or procedural requirements of this title when:
    1. Application of this title to the utility's activities would be inconsistent with the Comprehensive Plan and the Utility's public service obligations;
    2. The proposed utility activity does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and
    3. Any alterations permitted to these critical areas shall be the minimum necessary to reasonably accommodate the proposed utility activity and mitigate when feasible.

(Ord. 351 (2005) § 10, 2005; Ord. 217 (1998) § 3 (part), 1998)

**19.100.140 Reasonable use exception.**

If the application of this title would deny all reasonable use of the property, the applicant may apply for a reasonable use exception pursuant to this section:

- A. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of the section. The property owner and/or applicant for a reasonable use exception has the burden of proving that the property is deprived of all reasonable uses. The examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Title 21 of the Kitsap County Code (Land Use and Development Procedures). The examiner shall make a final decision based on the following criteria:
  1. The application of this title would deny all reasonable use of the property;
  2. There is no other reasonable use which would result in less impact on the critical area;
  3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the

general purposes of this title and the public interest, and does not conflict with the Endangered Species Act or other relevant state or federal laws; and

4. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

B. Any authorized alterations of a critical area under this section shall be subject to conditions established by the examiner including, but not limited to, mitigation under an approved mitigation plan.

(Ord. 351 (2005) § 11, 2005; Ord. 217 (1998) § 3 (part), 1998)

#### **19.100.145 Appeals.**

A. Appealable Actions. The following decisions or actions required by this title may be appealed:

1. Any decision to approve, condition or deny a development proposal, or any disagreement on conclusions, methodology, rating systems, etc. between the department and such person or firm which prepares special reports pursuant to Chapter 19.700 may be appealed by the applicant or affected party to the Kitsap County hearing examiner.

2. Any decision to approve, condition or deny a variance application by the department may be appealed by the applicant or affected party to the Kitsap County hearing examiner.

3. Any decision to require, or not require a special report pursuant to this title may be appealed by the applicant or affected party to the Kitsap County hearing examiner.

B. Appeal Process. The following process shall be followed in submitting an appeal and taking action:

1. Any appeal regarding a decision to require, or not require a special report shall be made within fourteen calendar days of the decision. The appeal shall be in writing stating the basis that such reports should or should not be required for the proposed development. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.

2. Any appeal regarding a decision to approve, condition or deny a development proposal based on this title, or any decision to approve, condition or deny a variance, shall be made within fourteen calendar days of the decision. A fee in an amount as established under the Kitsap County Code shall be paid to the department at the time an appeal is filed. The appeal shall be in writing and shall state specifically the issues that are the subject of the appeal, focusing on the specific inadequacies of the particular decision under dispute. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.

3. Kitsap County shall not issue any permit, license or other development approval on the development proposal site pending the outcome of the appealed decision.

(Ord. 351 (2005) § 12, 2005; Ord. 217 (1998) § 3 (part), 1998)

#### **19.100.150 Critical area and buffer notice to title.**

Project applicants shall sign a "Critical Area and Buffer Notice to Title" (See Chapter 19.800, Appendix "E") to be filed with the Kitsap County auditor on all development proposals subject to this title and containing any critical area or its buffer. After review of the development proposal, the department will condition critical area development in accordance with this title. These standards will be identified on the approved notice to title, which shall run with the land in accordance with this title. This notice shall serve as an official notice to subsequent landowners that the landowner shall accept sole responsibility for any risk associated with the land's identified critical area.

Notice to title may not be required in cases where the clearing or building footprint for minor new development will not adversely impact a critical area or its buffer (i.e., normal repair and maintenance, not adjacent to a critical area). Lack of such notice on a specific parcel does not indicate that Kitsap County has determined critical areas or buffers do not exist on that parcel.

(Ord. 351 (2005) § 13, 2005; Ord. 217 (1998) § 3 (part), 1998)

**19.100.155 General application requirements.**

A. All applicants for major new development are required to meet with the department prior to submitting an application subject to Title 17 of Kitsap County Code; all applicants for construction of a single-family dwelling are encouraged to do so. The purpose of this meeting is to discuss Kitsap County's zoning and applicable critical area requirements, to review any conceptual site plans prepared by the applicant and to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant, and any recommendations shall not be binding on the applicant or the county.

B. The applicant must comply with the standards and requirements of this title as well as standards relating to Title 12 of the Kitsap County Code (Stormwater Management) set forth by the department, as now or hereafter amended. To expedite the permit review process, the department shall be the lead agency on all work related to critical areas. Development may be prohibited in a proposed development site based on criteria set forth in this title; the applicant should first determine whether this is the case before applying for permits from the department.

C. Application for development proposals, reasonable use exception or variances regulated by this title or for review of special reports shall be made with the department by the property owner, lessee, contract purchaser, other person entitled to possession of the property, or by an authorized agent as listed in Chapter 19.700 (Special Reports).

D. A filing fee in an amount established under the Kitsap County Zoning Ordinance shall be paid to the department at the time an application for a permit relating to a critical area or a special report review is filed.

E. Applications for any development proposal subject to this title shall be reviewed by the department for completeness and consistency or inconsistency with this title.

F. At every stage of the application process, the burden of demonstrating that any proposed development is consistent with this title is upon the applicant.

G. All site plan applications for development proposals subject to this title shall include a site plan drawn to scale identifying locations of critical areas, location of proposed structures and activities, including clearing and grading and general topographic information as required by the department. If the department determines that additional critical areas are found on the subject property, the applicant shall amend the site plan to identify the location of the critical area. When it is determined that regulated activities subject to the provisions of the State

D. Penalties. The violation of any provision of this title shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued, or permitted. Infractions shall be processed in accordance with the provisions of Chapter 2.116 of Kitsap County Code, as now or hereafter amended.

E. Imminent and Substantial Dangers. Notwithstanding any provisions of these regulations, the director or his/her designee may take immediate action to prevent an imminent and substantial danger to the public health, welfare, safety or the environment by the violation of any provision of this title.

F. Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the director or his/her designee may seek legal or equitable relief to enjoin any acts or practices or abate any conditions, which constitute or will constitute a violation of the provisions of this title.

(Ord. 351 (2005) § 16, 2005: Ord. 217 (1998) § 3 (part), 1998)

**The Kitsap County Code is current through Ordinance 506 (2013), passed June 10, 2013.**  
Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.kitsapgov.com/>  
(<http://www.kitsapgov.com/>)  
County Telephone: (360) 337-5777 / (800) 825-4940  
Email the county: [openline@co.kitsap.wa.us](mailto:openline@co.kitsap.wa.us)  
(<mailto:openline@co.kitsap.wa.us>)

Code Publishing Company  
(<http://www.codepublishing.com/>)  
eLibrary  
(<http://www.codepublishing.com/eLibrary.html>)

Environmental Policy Act (SEPA) as implemented by Title 18 of the Kitsap County Code (Environment) are likely to cause a significant, adverse environmental impact to the critical areas identified in this title that cannot be adequately mitigated through compliance with this title, environmental assessment and mitigation measures may be imposed consistent with the procedures established in Title 18 of the Kitsap County Code (Environment).

H. Prior to taking action on a zone reclassification or a Comprehensive Plan Amendment, the proponent shall complete an environmental review to confirm the nature and extent of any critical areas on or adjacent to the property; determine if the subsequent development proposal would be consistent with this title; and determine whether mitigation or other measures would be necessary if the proposal were approved. Such review shall occur prior to any SEPA threshold determination. Findings of such review may be used to condition or mitigate the impact through the SEPA threshold determination or to deny the proposal if the impacts are significant and cannot be mitigated.

(Ord. 351 (2005) § 14, 2005: Ord. 217 (1998) § 3 (part), 1998)

**19.100.160 Inventory provisions.**

The approximate location and extent of mapped critical areas within Kitsap County are shown on the maps adopted as part of this title, and incorporated herein by this reference. These maps shall be used only as a general guide for the assistance of the department and the public; the type, extent and boundaries may be determined in the field by a qualified specialist or staff person according to the requirements of this title. In the event of a conflict between a critical area location shown on the county's maps and that of an on-site determination, the on-site determination will apply.

Kitsap County will review map inventory information of all critical areas as it becomes available. Mapping will include critical areas that are identified through site specific analysis by local, state and federal agencies, the Kitsap Conservation District, tribal governments, citizen groups and other sources.

(Ord. 351 (2005) § 15, 2005: Ord. 217 (1998) § 3 (part), 1998)

**19.100.165 Enforcement.**

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

B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this title, or when the director or his/her designee has reasonable cause to believe that a condition exists on property which is contrary to or in violation of this title, the director or his/her designee may enter the property to inspect, provided that if the property is occupied that the inspector's credentials be presented to the occupant and entry requested. If the property is unoccupied, the director or his/her designee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the director or his/her designee shall have recourse to the remedies provided by law to secure entry.

C. Stop Work Orders. Whenever any work or activity is being done contrary to the provisions of this title the director or his/her designee may order the work stopped by notice in writing, served on any persons engaged in the doing or causing such work to be done, or by posting the property, and any such persons shall forthwith stop such work or activity until authorized by the director or his/her designee to proceed.