



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiff,

v.

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

Defendants,

and,

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

NO. 10-2-12913-3

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

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

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

## **I. FINDINGS OF FACT**

### **JURISDICTION**

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

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

### **PARTIES**

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

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

36251W

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

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

**KRRC**

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

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

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

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

### **ZONING**

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

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

### **THE SUBJECT PROPERTY - OWNERSHIP, LEASES AND DNR USES**

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

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

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

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

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

### **PROPERTY TRANSFER**

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

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

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

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

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

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

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

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

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

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

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

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

### **THE BARGAIN AND SALE DEED**

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

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

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

### **PROPERTY USAGE - 1993 AND PRIOR**

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

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

### **SITE DEVELOPMENT AT THE PROPERTY**

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



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

Id.

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

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

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

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

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

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

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

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

#### **SITE DEVELOPMENT AT THE PROPERTY - 300 METER RANGE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **WETLAND STUDY, DELINEATIONS AND PROTECTED BUFFERS**

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

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



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

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

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

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

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

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

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

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

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

### **RANGE SAFETY**

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

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

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

### **ACTION OR PRACTICAL SHOOTING**

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

## **COMMERCIAL AND MILITARY USES OF THE PROPERTY**

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

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

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

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

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

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

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

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

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

**NOISE GENERATED FROM THE PROPERTY AND HOURS OF OPERATION**

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

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

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

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

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

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

**EXPLOSIVES AND EXPLODING TARGETS**

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

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

**AMENDMENT OF KITSAP COUNTY CODE CHAPTER 17.460**

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

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

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

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

**II. CONCLUSIONS OF LAW**

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

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

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

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

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

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

*Id.*

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

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

8. The actions by KRRC of:

(1) expanded hours;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

### **III. ORDERS**

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

#### **DECLARATORY JUDGMENT**

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

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

#### **JUDGMENT**

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

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

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

**INJUNCTION (EFFECTIVE IMMEDIATELY UNLESS NOTED TO CONTRARY)**

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

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

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

**WARRANT OF ABATEMENT**

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

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

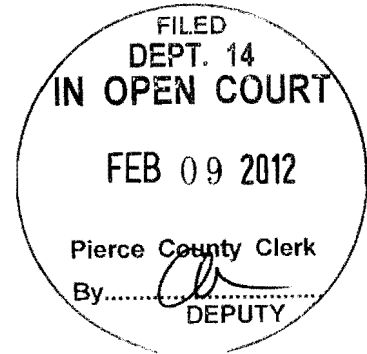
10. This Court retains jurisdiction to enforce this order by all lawful means including imposition of contempt sanctions and fines.

**COSTS AND FEES**

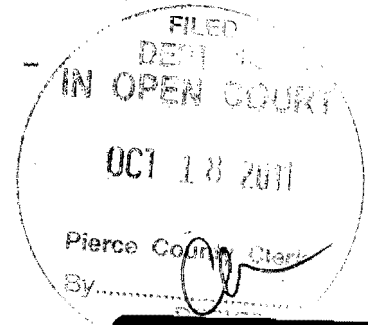
11. Pursuant to KCC 17.530.030, Defendant Kitsap Rifle and Revolver Club shall pay the costs of the County to prosecute this lawsuit, in an amount to be determined by later order of the Court.

DATED this 9 day of February, 2012.

  
\_\_\_\_\_  
JUDGE SUSAN K. SERKO



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



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



10-2-12-76

**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 *SB*

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*  
CHARLOTTE GARRIDO, Chair

*Steve Bauer*  
STEVE BAUER, Commissioner

*Josh Brown*  
JOSH BROWN, Commissioner

ATTEST:

*Opal Robertson*  
Opal Robertson, Clerk of the Board

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

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

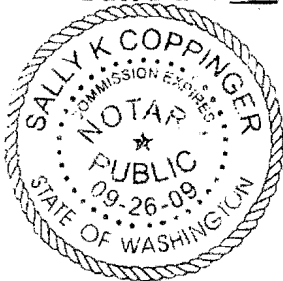
*Bradford Smith*  
BRADFORD SMITH, President - KRRC

*Marcus A. Carter*  
MARCUS A. CARTER, Executive Officer - KRRC

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

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

Dated this 13 day of May, 2009.

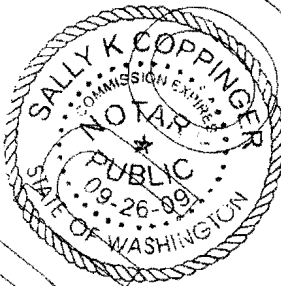


Sally K. Coppinger  
PRINT NAME: Sally K. Coppinger  
Notary Public in and for the State of Washington,  
residing at: Port Orchard 98366  
My Commission Expires: 9/26/09

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KITSAP )

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

Dated this 13 day of May, 2009.



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



## EXHIBIT A

### Legal Description of Premises & Reservations

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

#### RESERVATIONS/SUBJECT TO:

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

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

Unofficial

COPY