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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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NOS 43076-2-II

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

Respondent/Cross-Appellant,

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/Cross Respondents,

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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BRIEF OF *AMICUS CURIAE*  
CK SAFE & QUIET, LLC  
IN SUPPORT OF KITSAP COUNTY'S MOTION TO MODIFY  
COMMISSIONER'S RULING

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## I. INTRODUCTION

This case concerns Kitsap County's effort to enjoin the public nuisance actions of the Kitsap Rifle and Revolver Club ("KRRC") at its 72-acre property in central Kitsap County. After a 14-day bench trial, Pierce County Superior Court Judge Susan K. Serko issued extensive and well supported findings, conclusions, and an order enjoining KRRC from operating its facility until it, (1) applied for and obtained a conditional use permit from Kitsap County; and (2) permanently enjoining the use of automatic weapons, rifles greater than .30 caliber, exploding targets and cannons and from operations outside the hours of 9 a.m. to 7 p.m.

After years of enduring ever increasing noise impacts and worse, an increasing and ever-present risk of a stray bullet hitting their property, Judge Serko's order *finally*, brought a modicum of relief to the adjacent homeowners and residents. Finally, the neighbors believed they would be able to fully enjoy their properties free from the oppressive noise of incessant gunfire and free from the risk of having their home or themselves struck by an errant bullet. The Commissioner's Ruling, however, removed that modicum of relief and instead has restored the noise and the fear. CK Safe & Quiet requests this Court grant Kitsap

County's motion and once again restore the quality of life and safety to this neighborhood.

## **II. INTEREST AND IDENTITY OF AMICUS CURIAE**

The movement that would eventually become CK Safe & Quiet began in 2009 as neighbors came together to discuss the constant intrusion of the sound of gunfire from Kitsap Rifle and Revolver Club into their neighborhoods and homes. As these neighbors shared their stories about KRRC's adverse impact on their lives, they learned that a number of homes downrange from KRRC had been struck by errant bullets, widening the scope of their concerns to include safety as well as noise. As they began to look more closely at KRRC's operation it became clear that there were other issues, including contamination of wetlands with toxic chemicals, unlawful and flagrant filling of wetlands, and extensive land clearing, earth moving and construction of new shooting areas without benefit of professional design or engineering input or evaluation and without obtaining necessary local, state, or federal permits. Types and intensity of shooting activities had also been expanded in violation of land use regulations.

As the acoustical assault continued and the fear of injury and

property damage from errant bullets grew, increasing numbers of neighbors spoke out. Approximately 200 individuals representing over 100 households signed petitions objecting to the excessive noise produced by KRRC. Most of these people live in neighborhoods within a radius of about 2 miles from KRRC with many directly downrange from KRRC's rifle line; some live as far as four miles from KRRC but still find the noise intrusive and objectionable.

CK Safe & Quiet, LLC was formally incorporated in 2011. Since its inception CK Safe & Quiet has encouraged Kitsap County to protect the comfort, repose, health and safety of the public by enforcing existing ordinances, rules and regulations as they apply to KRRC. Many of CK Safe & Quiet's members and supporters live in neighborhoods directly downrange from KRRC's rifle line where they continue to live in fear of being struck by errant bullets and most endure the domination of their daily lives by the sounds of the discharge of high energy firearms.

Members of CK Safe & Quiet, including Molly Evans, Terry Allison, Kevin Gross, testified during the bench trial on this matter providing detail about noise impacts as well as stray bullets on their properties.

### III. ARGUMENT IN SUPPORT OF MODIFYING COMMISSIONER'S RULING

Because Judge Serko's order included injunctive relief, RAP 8.1(b)(3) required the appellate court to both consider whether there are "debatable issues" presented in the appeal *and* balance the respective injuries by comparing:

the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the non-moving party if a stay were imposed.

RAP 8.1(b)(3)(ii). *See also Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 276 P.2d 956 (1986), *rev'd on other grounds*, 108 Wn.2d 38 (1987); *Shamley v. City of Olympia*, 47 Wn.2d 124, 127, 286 P.2d 702 (1955). While the Commissioner purportedly applied this standard, he unfortunately over emphasized purported harm to KRRC at the expense of the nearby homeowners and residents.

First, the evidence does not demonstrate that fruit of KRRC's appeal will be lost during the pendency of appeal – especially if KRRC timely prosecutes its appeal. This case lies in sharp contrast with cases like *Shamley*, where the evidence demonstrated, without question, that the "fruits of the appeal" would be lost. *Shamley* involved a challenge to a

proposal to log timber from a city watershed. The failure to issue a stay of the final order would have meant that the timber would be cut during the pendency of the appeal. 47 Wn.2d at 127. Similarly, in *Boeing v. Sierracin* the appellate court was provided evidence that Sierracin would indeed be forced out of the cockpit window during the pendency of the appeal. Boeing, on the other hand, would only have suffered monetary damages. 43 Wn. App. at 291-92.

Here, even if, *arguendo*, KRRC is successful on appeal, enforcement of the trial court's order during the pendency of its appeal would only temporarily forbid shooting at the club – at best a short term monetary issue. It would not destroy or eliminate the “fruits of the appeal.”<sup>1</sup> The club is unlikely to disband and sell the land during the time necessary to timely prosecute an appeal.

In stark contrast, the neighbors will be forced to continue to endure the incessant noise, and more importantly, the over-riding fear of an errant bullet from an unpermitted and declared public nuisance. The evidence of impacts to the neighborhood is overwhelming and create the basis for the trial court's extensive findings.

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<sup>1</sup> The Trial Court's Injunction did not forbid use of the property or maintenance of the property. It only prohibited use of the property as a shooting range. “Verdict” at 34, Conclusion of Law 6.

For example, in the Verdict at Findings of Fact 67-69, the trial court discussed “range safety” including findings that the range facilities were inadequate to contain bullets to the property leaving the property and that indeed there were both evidence of bullets escaping and impacting adjacent properties as well as expert testimony in support. These findings were amply supported by documentary evidence.<sup>2</sup> These findings were supported also with significant testimony,<sup>3</sup> including the testimony of three experts that led the trial court to conclude 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.*”

Verdict, Finding of Fact 68 (emphasis added).

The Commissioner’s order does nothing to cure this inherent

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<sup>2</sup> For example, Exhibits 001 and 002 were maps prepared by the County’s Cindy Read showing selected residence and the line of fire; Exhibits 125 and 127 were introduced by Expert Gary Koon and showed bullets in trees outside of the range; and Exhibits 207-210 were maps prepared by Mr. Koon showing the Surface Danger Zones for bullets and projectiles of different sizes.

<sup>3</sup> Testimony included that of Molly Evans whose home had been struck by an errant projectile. Ms. Evans testified that to her, her family and neighbors, the excessive noise was inseparable from the reality that the noise was being produced by firing bullets that were not effectively contained. Testimony included also the expert opinions of Roy Ruel, Gary Koon and Kathy Geil confirming that more likely than not, “bullets escaped from the Property’s shooting areas.” Verdict, Finding of Fact 68.

nuisance and trespass. It does not address the neighbors' very real concern that procedures and practices do not and cannot eliminate human error, accidents, or ricochets in projectile containment. Under the Commissioner's ruling the Club is allowed to continue operation without adequate containment and therefore continue to risk life and others' property.<sup>4</sup>

By ignoring the very real safety concerns of the neighborhood and instead giving undue weight to the largely financial and short term "injury" to the KRRC, the Commissioner failed to adequately balance the equities as required by RAP 8.1(b)(3). The trial court's well supported finding that, more likely than not bullets will escape KRRC's property and will possibly strike persons or damage private property, demands that a balance of equities weighs sharply in favor of maintaining the trial court's injunction.

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<sup>4</sup> The Commissioner's ruling also does little to seriously affect noise. While hours were slightly curtailed automatic weapon fire and cannon's banned, *nothing* in the order limits that amount of shooting allowed or otherwise diminishes noise.



#### IV. CONCLUSION

For the foregoing reasons, CK Safe & Quiet requests that this court lift the Commissioner's stay.

DATED this 7<sup>th</sup> day of June, 2012.

Respectfully submitted,

GENDLER & MANN, LLP

By:



David S. Mann

WSBA No. 21068

Attorneys for *Amicus Curiae*

### CERTIFICATE OF SERVICE

I, Mary Barber, declare under penalty of perjury under the laws of the State of Washington, that I am the legal assistant for Gendler & Mann, LLP, attorneys for the applicant herein and that on the date and in the manner indicated below, I caused the MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* CK SAFE & QUIET to be served on:

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☒ By Federal Express

☒ By Federal Express

DATED this 7<sup>th</sup> day of June, 2012, in Seattle, Washington

Mary Barber  
MARY BARBER