

KRRC PDR

E-Mails

10-15 SEPTEMBER 2010

1 of 2

In accordance with RCW 42.56.210 Personal Records Exemption (Personal addresses, phone numbers, email addresses, etc.) have been redacted from the attached record.

Don Burger

From: Bob Ehlers [BEhlers@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 7:26 AM
To: Mathes, Ken
Subject: Kiro 7 coverage KRRC

Good morning, Kiro is covering the story now. People here are asking me questions this morning, (like I should know something) I am telling them I only know what I've read. But it looks as if the move is on to shut the range down next week. I'm going to see if I can download the court filing.

On a side note, I (last night) received a voicemail from Tommy Kunkel. I think I'll call him back and see what he wants and if he wants to supply us with those lowers. See you tonight around 7 ish.

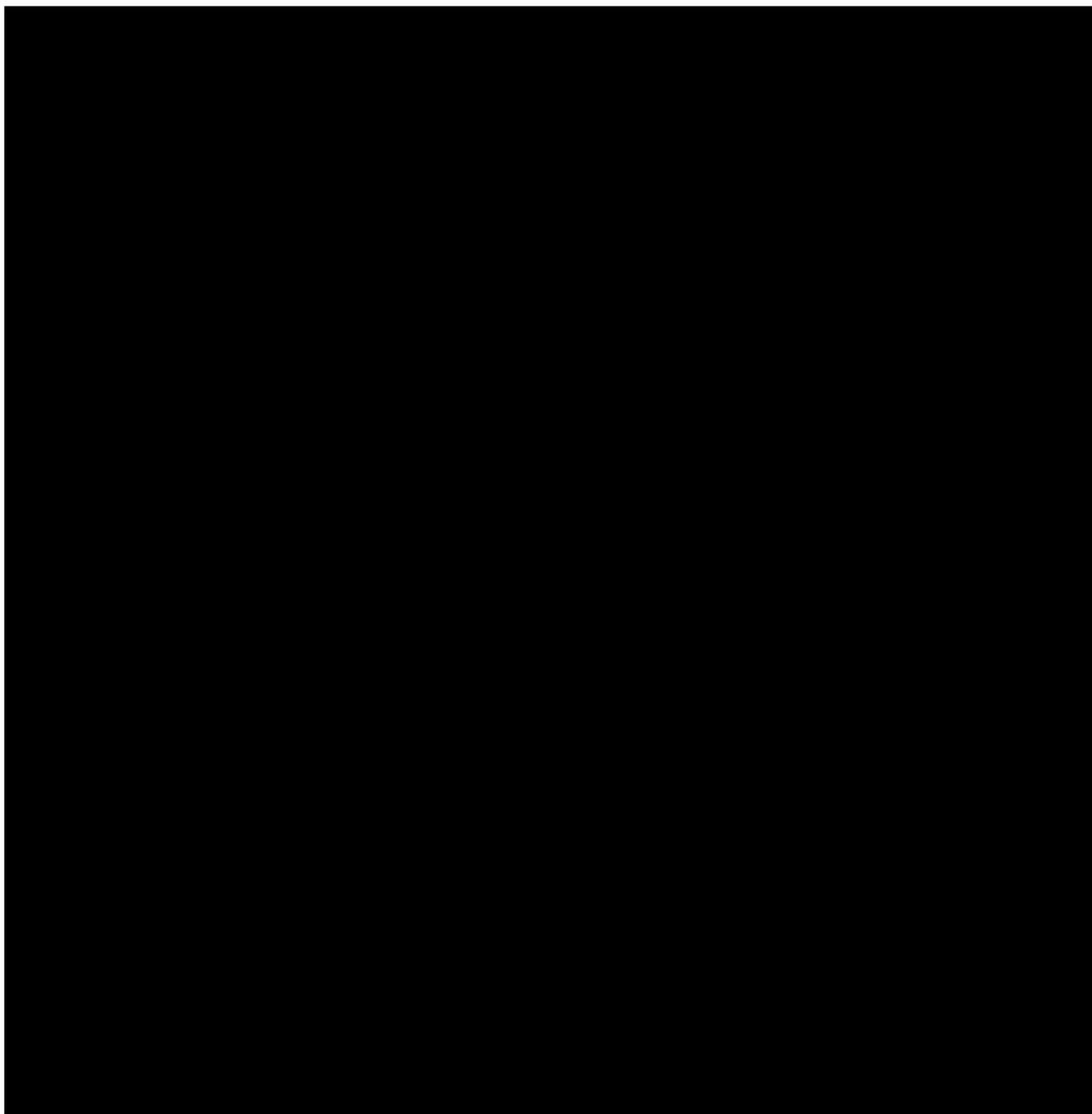
he message is ready to be sent with the following file or link attachments:

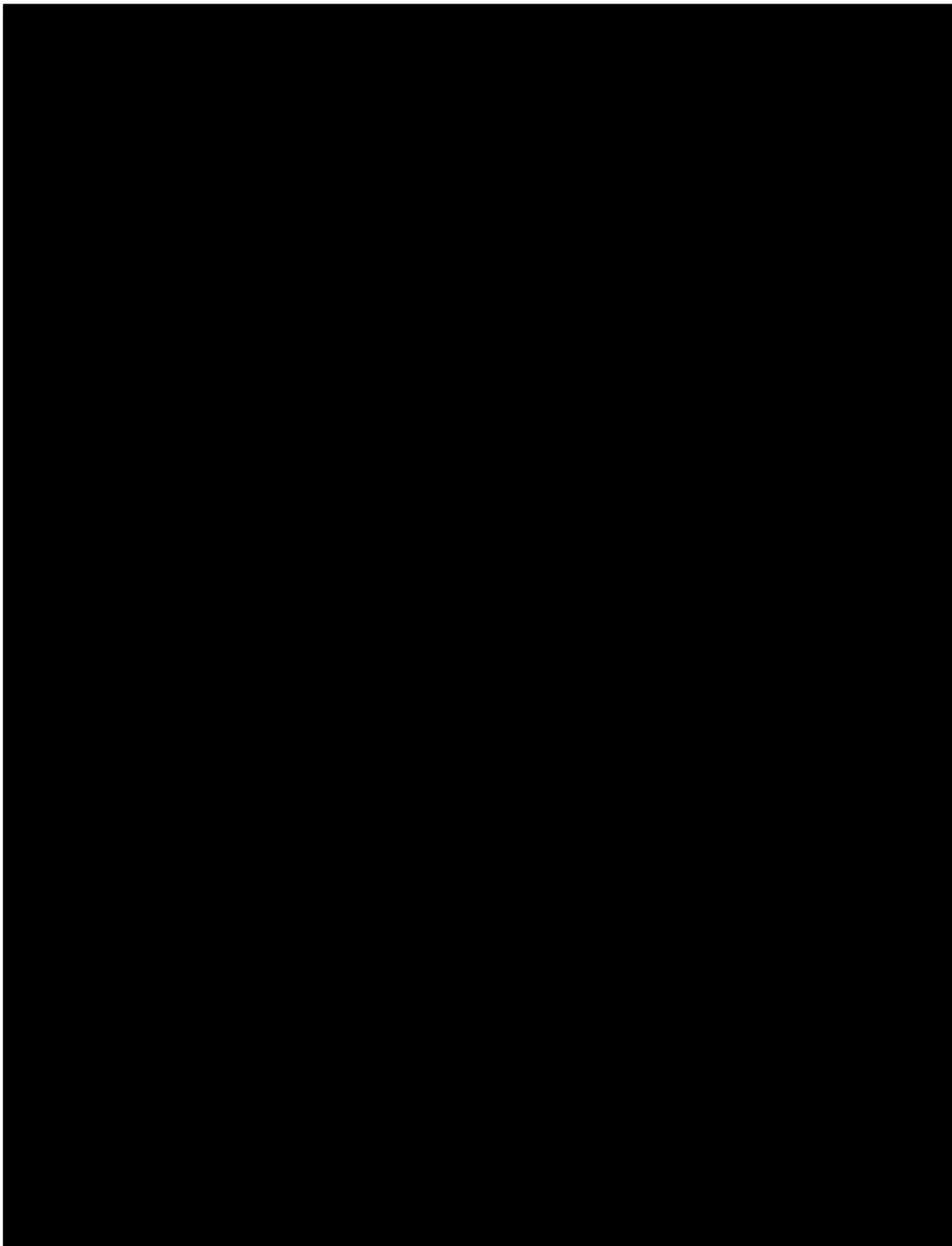
Shortcut to: <http://www.kirotv.com/news/24948800/detail.html>

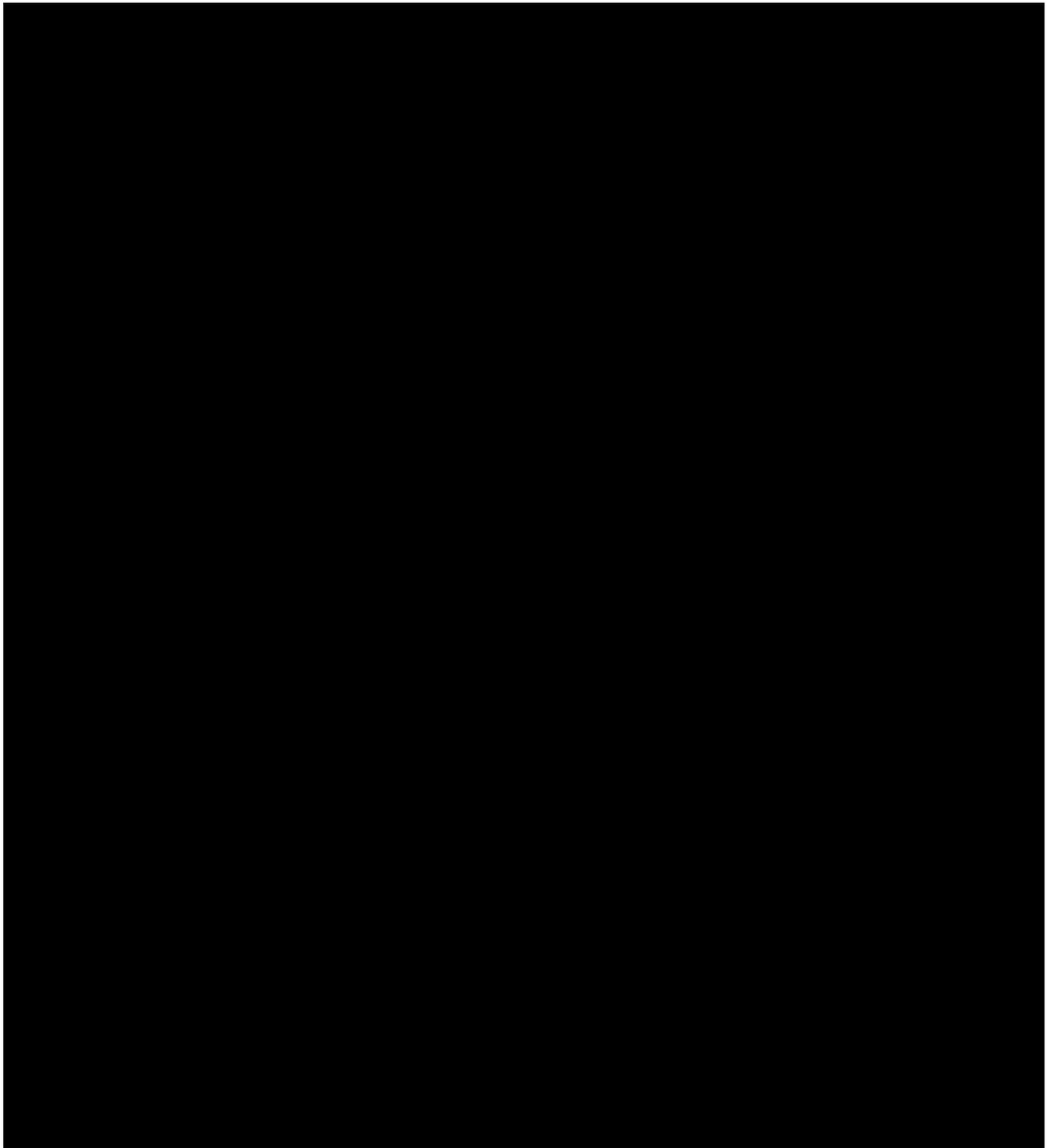
Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Don Burger

From: Bill Fernandez [viirc9@[REDACTED]]
Sent: Friday, September 10, 2010 7:38 AM
To: Neil R. Wachter
Subject: krc confidential
Attachments: William Fernandez Declaration-Sep. 10.doc







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

Don Burger

From: Mathes, Ken [KMATHES@ci.tacoma.wa.us]
Sent: Friday, September 10, 2010 8:01 AM
To: Bob Ehlers
Subject: RE: Kiro 7 coverage KRRC

Well,

It seems the XO has chosen an interesting and descriptive array of words to describe how adequate the impact berms are and what they are capable of stopping, again.

Seems like a game of who can piss the farthest.

See you tonight.

-----Original Message-----

From: Bob Ehlers [mailto:BEhlers@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 7:26 AM
To: Mathes, Ken
Subject: Kiro 7 coverage KRRC

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he message is ready to be sent with the following file or link attachments:

Shortcut to: <http://www.kirotv.com/news/24948800/detail.html>

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Don Burger

From: Carrie A. Bruce [CBruce@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 8:03 AM
To: viirc9@[REDACTED]
Cc: Neil R. Wachter
Subject: Kitsap County v. KRRC - Declaration

Good morning Mr. Fernandez:

Your declaration is ready for signature. Are you available to come in sometime today to sign it? If not, please call me so may can try to make some other arrangements.

Sincerely,

Carrie Bruce
Paralegal

Kitsap County Prosecuting Attorney's Office
614 Division St., MS-35A
Port Orchard, WA 98366
(360) 337-4814

Don Burger

From: DOL INT MLS [MLS@dol.wa.gov]
Sent: Friday, September 10, 2010 8:34 AM
To: Roy P. Barton
Subject: RE: Request for License Information-Art

Good morning Roy,

There is a fee per certified copy, \$2.00 that would need to be received along with your request.

We have a license status report which has all public information including any and all endorsements, trade names of when registered / cancelled, and governing members. The fee to certify each of these reports would just be \$2.00, totaling \$4.00, per your request.

If you wish to have certified, all documents requested in your previous email, the total would be exactly \$2.00, and all non-public information would be redacted.

The documentation you are requesting for Kitsap Rifle and Revolver Club is not with the Department of Licensing. This Non-profit corporation was registered with the Office of the Secretary of State and all renewals are through them.

Arthur Gaines
Customer Service Center
Customer Relations Department
Department of Licensing
(360) 664-1400 Option 7

We are the voice of DOL. We educate the public for a safer Washington.

From: Roy P. Barton [mailto:RPBarton@co.kitsap.wa.us]
Sent: Wednesday, September 08, 2010 1:40 PM
To: DOL INT MLS
Subject: Request for License Information

Please send Certified Copies of License Applications and Renewals for the following Business Licenses to include Registered Trade Names and date of Registration for each Trade Name:

National Firearms Institute, 4900 Seabeck Highway, Seabeck, WA. UBI: 600533224, under Sharon Ann Carter and Marcus Alton Carter,

Kitsap Rifle and Revolver Club, UBI: 601599790

Mail to Kitsap County Prosecutor's Office
Attention: Roy Barton, Investigator
Kitsap County Courthouse

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 9:21 AM
To: Carrie A. Bruce
Subject: FW: krrc confidential
Attachments: William Fernandez Declaration-Sep. 10.doc

Carrie - can you please format this declaration, and then work with him to have him come in and sign?

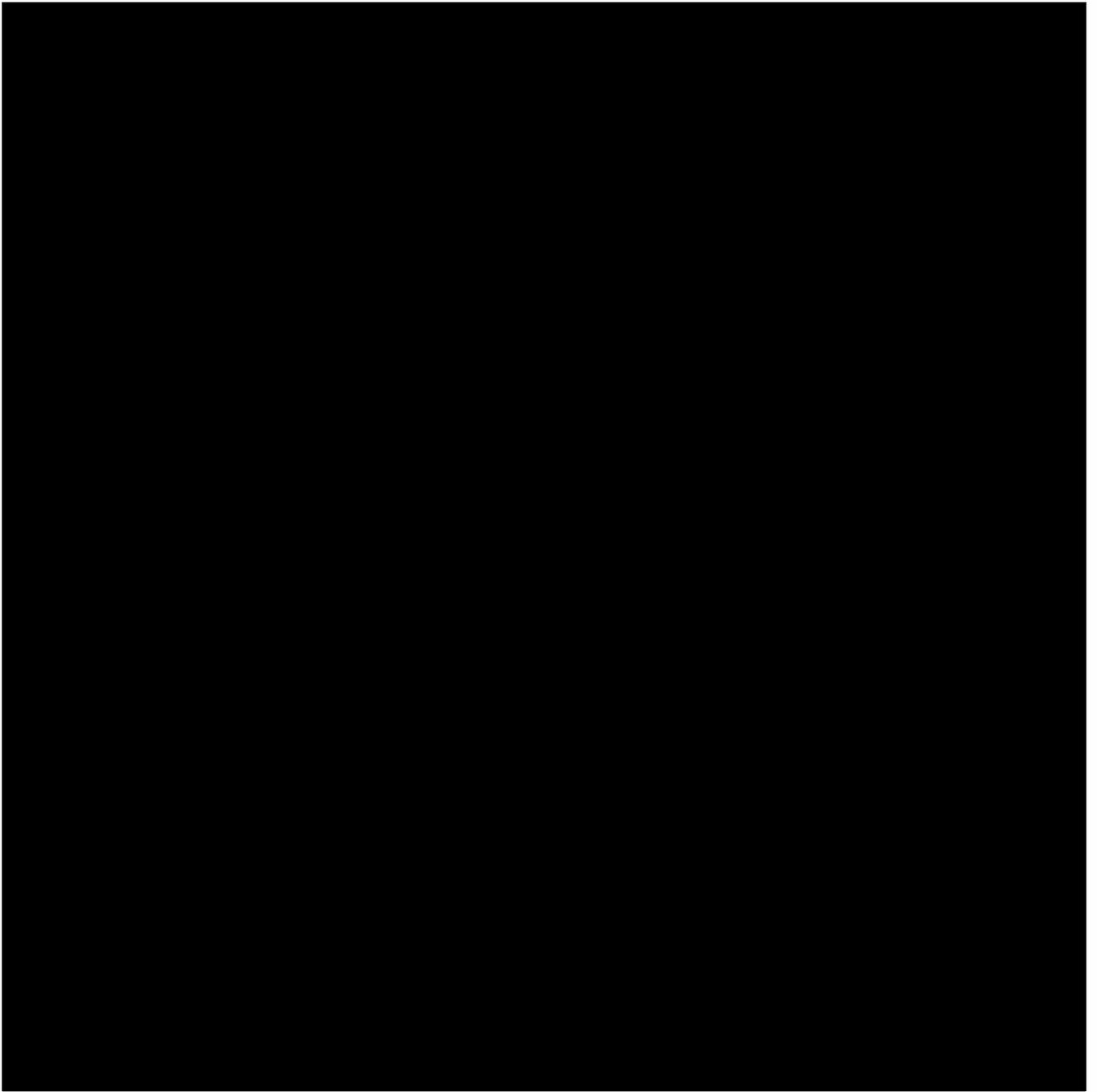
Also, we need to talk about service. Today or Monday would be good. We'll of course have a declaration of service for a boatload of doc's.

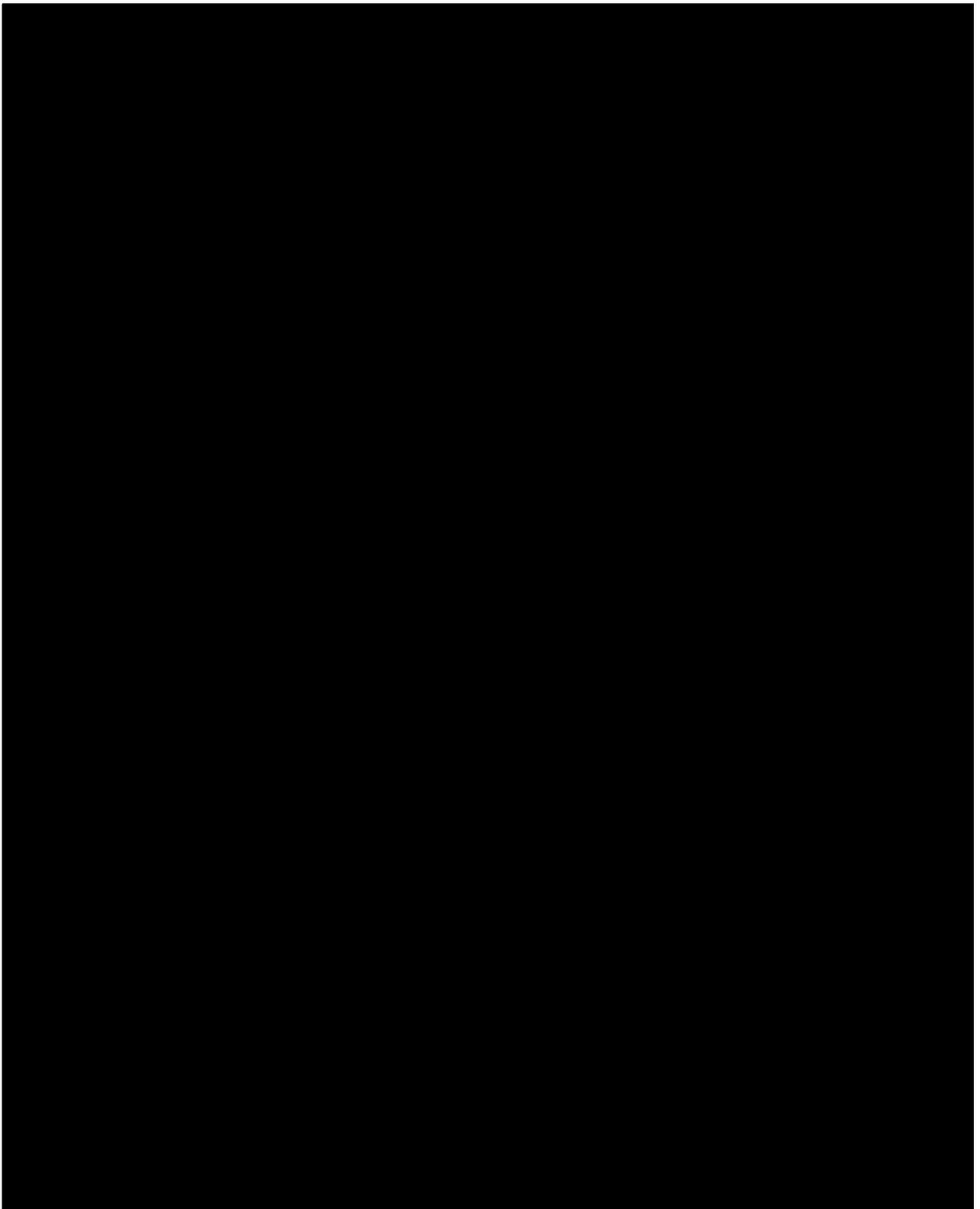
Thanks,

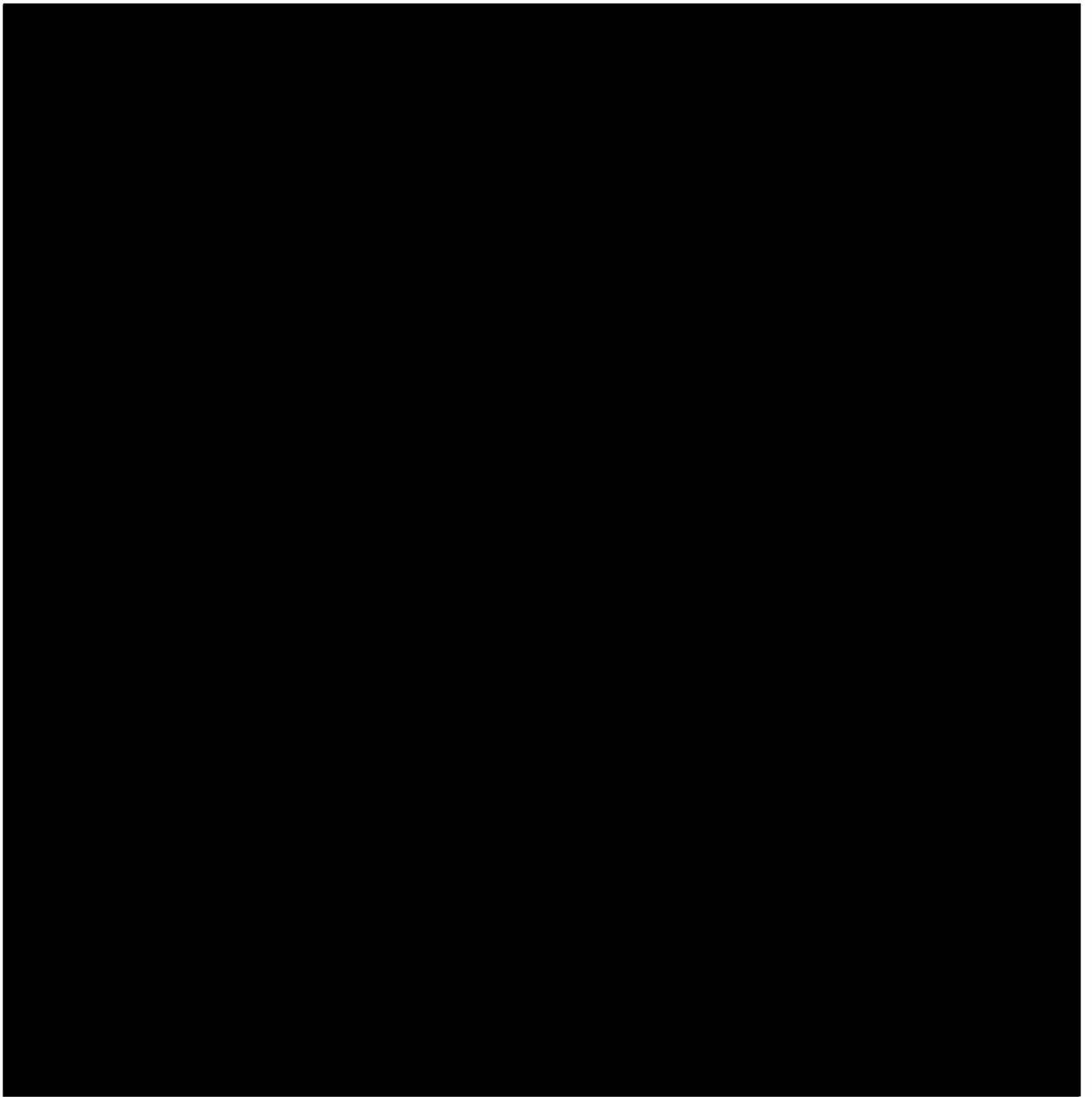
Neil

-----Original Message-----

From: Bill Fernandez [mailto:viirc9@██████████]
Sent: Friday, September 10, 2010 7:38 AM
To: Neil R. Wachter
Subject: krrc confidential







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

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 9:45 AM
To: Richard Kirton
Cc: Carrie A. Bruce; Stephanie Browning
Subject: Request - krrc confidential

Richard,

Thanks,

Neil

Neil R. Wachter
Sr. Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
614 Division Street, MS-35A
360-337-4979 direct
360-337-7083 facsimile
nwachter@co.kitsap.wa.us

Notice: This email may contain confidential or privileged information. If you are not the intended recipient of this email, please delete it immediately.

Don Burger

From: Carrie A. Bruce [CBruce@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 9:47 AM
To: Neil R. Wachter
Subject: RE: krrc confidential

[REDACTED]

[REDACTED]

Thanks,
Carrie

-----Original Message-----
From: Neil R. Wachter
Sent: Friday, September 10, 2010 9:21 AM
To: Carrie A. Bruce
Subject: FW: krrc confidential

Carrie - [REDACTED]
and sign.

[REDACTED]

Thanks,

Neil

-----Original Message-----
From: Bill Fernandez [mailto:viirc9@[REDACTED]]
Sent: Friday, September 10, 2010 7:38 AM
To: Neil R. Wachter
Subject: krrc confidential

Don Burger

From: Richard Lively [wileecoyote37@
Sent: Friday, September 10, 2010 10:19 AM
To: Josh W. Brown
Cc: Charlotte Garrido; Steve Bauer; Derek Kilmer; Debbie Austin
Subject: Kitsap Rifle and Revolver Club

Dear Mr. Brown

I wish to bring to your attention the Lawsuit filed by the Prosecutors Office against Kitsap Rifle and Revolver Club.

I compete in handgun matches through out this state and nationally. I'm a Range Officer certified by the National Range Officers Institute. I have served as a Range Officer in local, regional and national handgun competitions. I am going to Las Vegas in October to again serve as a Range officer and to compete in the National Handgun Championship match. I have been to and shot at many gun ranges across this nation and want to make it very clear - Kitsap Rifle and Revolver Club operates above the safety standards used else where. There is not a safety issue with this gun club. Their 80 year history also bears this out.

I have watched the way the county offices have been dealing with the gun club (I am not an officer of the club). It is very obvious that some one in county government has a vendetta against KRRC. This is not a safety issue - some one has a vendetta against the gun club. This lawsuit is a waste of tax payers money. The prosecutor's office has been wasting the tax payers money for 11 years in trying to prosecute the Executive Officer of the gun club. Fourteen times there has been a decision exonerating Marcus Cater yet the prosecutors office continues to harass Mr. Carter and the gun club. It is time for someone to step in and direct the prosecutor's office to stop wasting money in a personal vendetta.

Please take a personal interest in this case, review all the facts and stop the harassment of Kitsap Rifle and Revolver Club.

Thank you for your time and please keep me posted.

Richard Lively
Kitsap County resident

Don Burger

From: April Borbon [aprilborbon@[REDACTED]]
Sent: Friday, September 10, 2010 11:22 AM
To: Charlotte Garrido; Josh W. Brown; Steve Bauer
Subject: Kitsap County's Lawsuit Against the Kitsap Rifle and Revolver Club

I saw the recent article in the Kitsap Sun about the county filing a lawsuit to shut down the Kitsap Rifle and Revolver Club and was shocked. In the article, the prosecutor said that he filed the lawsuit on behalf of the county and since you are our county representatives, does that mean that the Kitsap County Commissioners tasked the prosecutor with filing this lawsuit? This doesn't seem to make a whole lot of sense considering that not too long ago, you thought that having a rifle club where the public could safely shoot was such a good idea that you pushed forward with turning over the land that the rifle club sits on so that the club could remain as a benefit to the people of our county.

You know, I know, and apparently all of the 160+ people who commented on the recent Kitsap Sun article know that this is nothing more than a personal vendetta by the prosecutor against Marcus Carter yet you are allowing this frivolous suit to go forward. I am amazed that such a blatant act of intimidation and manipulation of the justice system could be allowed to take place in our county! The lawsuit was supposedly brought about due to issues of public safety however the club has an exceptional 80+ year record of safety. There was no incident that precipitated this lawsuit yet somehow, an "expert" suddenly fell out of the sky proclaiming that "someone could be killed" IF a bullet were to leave the facility yet there was no proof that this had ever happened. Of course an airplane "could" fall out of the sky but I don't see the NTSB suddenly grounding all airplanes because of what "could" happen.

The rifle club has been in its location far longer than any of the housing developments, schools, and parks that are in the area. Obviously the county would not have allowed this development to happen in the area that it did, fully knowing exactly where the rifle club was sited, if they thought that the rifle club posed a hazard to the surrounding area.

I am astounded that such an act of duplicity partaken of by a group of people who were elected to represent the people of our county has been allowed to happen. Looking at the timing of this lawsuit, especially when there was not a single incident that occurred to make it absolutely necessary to file a lawsuit this very instant leaves me doubly astounded. This is political suicide by the prosecutor and yourselves as who would instigate such a divisive and public fiasco two months before an election?? Amazing stupidity if you ask me.

I think the voters of our county are fairly smart people. They know when they are being taken for a ride and I highly doubt that people accustomed to a system of fair justice will stand for this. As my representative, I am requesting that you actually DO SOMETHING to stop this vengeful action by the county prosecutor's office.

April Borbon
www.aprilborbon.com
Phone: [REDACTED]

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 12:37 PM
To: Carrie A. Bruce
Subject: FW: Records Request
Attachments: Larson_Wade_Records_(3of5).zip; Larson_Wade_Records(2of5).zip

Hi [REDACTED]

Neil

From: Don Burger
Sent: Tuesday, September 07, 2010 4:25 PM
To: wadelarson2@[REDACTED]
Cc: R'Lene Orr
Subject: Records Request

Mr. Larson - In response to your records request of August 11, 2010 for "all records of comments regarding Kitsap Rifle and Revolver Club for the last 1-1/2 years at all sources they may have been routed..." and as a follow-up to the initial set of records I forwarded you last week, please see the two attached zip files.

I am continuing to process the balance of records that we have located and anticipate forwarding them to you no later than Thursday of next week (Sept 16, 2010).

Sincerely - Don Burger

Don Burger
Kitsap County
Records Coordinator
(360) 307-4261
(360)337-7052 (FAX)
www.kitsapgov.com

NEW OFFICE HOURS:
M -TH 8:00 AM - 5:00 PM
Effective May 4th, 2009

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JUDGE JEANETTE DALTON

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

GLEN MILNER,

Plaintiff,

v.

KITSAP COUNTY SHERIFF'S OFFICE, and
KITSAP COUNTY PROSECUTOR
RUSSELL D. HAUGE, in his individual and
official capacities, and KITSAP COUNTY
SHERIFF STEVE BOYER, in his individual
and official capacities, and NEIL R.
WACHTER, in his individual and official
capacities,

Defendants.

No. 08-2-02788-2

SECOND AMENDED COMPLAINT
FOR DISCLOSURE UNDER THE
WASHINGTON PUBLIC RECORDS
ACT AND FOR VIOLATION OF
CONSTITUTIONAL RIGHTS

COMES NOW, Plaintiff Glen Milner, and makes the following Complaint for Disclosure Under the Washington Public Records Act and for declaratory and injunctive relief and damages pursuant to Art. I of the Washington State Constitution, the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

INTRODUCTION

1. This action seeks an order compelling Defendant Kitsap County Sheriff's Office to fully disclose records requested under the Public Records Act, Chap. 42.56 RCW ("PRA"). Mr. Milner also seeks any reasonable attorney fees authorized by the PRA that might be permitted by the partial settlement agreement entered in August 2009.

2. This action seeks an order declaring that the Kitsap County Sheriff's Office and individual named defendants violated Mr. Milner's civil rights by obtaining a court order prohibiting him from disseminating or discussing lawfully obtained public records. Mr. Milner also seeks an award of damages and attorney fees pursuant to 42 USC 1983 and 42 USC 1988.

JURISDICTION AND VENUE

3. This court has jurisdiction to review an agency's failure to comply with the PRA pursuant to RCW 42.56.550.

4. Venue lies in this court pursuant to RCW 36.01.050.

5. Mr. Milner's claims arise under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, Article 1 of the state Constitution, and other laws of the United States and the State of Washington.

6. The acts and omissions of Defendants as alleged herein all occurred in Kitsap County, Washington.

7. This court has jurisdiction over the subject matter of this action, and over the parties hereto. Venue properly lies in this court.

PARTIES

8. Plaintiff Mr. Milner is a resident of Lake Forest Park in King County, Washington. He is active in the peace movement, participating regularly in activities organized by the

1 Ground Zero Center for Nonviolent Action (“Ground Zero”) located in Poulsbo,
2 Washington. Mr. Milner uses government records to keep track of military and other
3 programs relevant to the peace movement. He helps inform the local news media about
4 such programs, and has published numerous editorials on the subject.

5 9. Defendant Kitsap County Sheriff’s Office is an “agency” as defined by the PRA,
6 RCW 42.56.010(1), and was originally the sole defendant in this case. Steve Boyer is the
7 elected sheriff of Kitsap County and head of Defendant Kitsap County Sheriff’s Office.
8 Russell D. Hauge is the elected prosecutor of Kitsap County and acts as attorney to the
9 Sheriff’s Office. Neil R. Wachter is the senior deputy prosecuting attorney who has
10 represented the Sheriff’s Office in this case, and who handled the matter of obtaining a
11 court order prohibiting Mr. Milner and his attorney from disseminating or discussing
12 lawfully obtained public records which the Sheriff’s Office said were inadvertently
13 disclosed.
14
15

16 FACTS

17 A. The June 12, 2008 Request

18 10. On at least five occasions from May 2007 through May 2008, Ground Zero
19 demonstrators held a peace banner on the Highway 308 overpass, near the main gate of
20 Naval Base Kitsap-Bangor, as part of their regular anti-war activities.

21 11. One of the demonstrations took place on May 31, 2008. Prior to that event, which
22 Ground Zero announced in advance, Sheriff’s officers participated in at least two meetings
23 to plan the law enforcement response to the event. At least 11 Sheriff’s employees
24 attended a planning meeting on May 27, 2008, and at least 6 Sheriff’s employees attended
25 a related meeting on May 28, 2008.
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1 12. The Ground Zero demonstrations described in Paragraph 6 constituted a lawful and
2 peaceful exercise of free speech rights. However, demonstrators including Mr. Milner
3 were either arrested or threatened with arrest at the demonstrations.

4 13. On June 12, 2008, Mr. Milner emailed a public records request to an officer of the
5 defendant Sheriff's Office in Port Orchard, Washington. The request stated in substantive
6 part the following:

7 Re: Public Records Act request, highway overpass banners and an incident
8 on May 31, 2008

9 Public Records Officer

10 Under the Public Records Act, RCW 42.17, I am requesting all information
11 on file since January 1, 2003 regarding the practice of free speech with the
12 use of banners or signs on highway or freeway overpasses, and responses or
13 planned or proposed responses to this activity by law enforcement agencies
[hereafter "Item 1"].

14 I am also requesting all records concerning the policy of the Kitsap County
15 Sheriff's office for banners or signs on freeway or highway overpasses
since January 1, 2003 ["Item 2"].

16 I am also requesting all documents on file regarding a demonstration at
17 Naval Base Kitsap-Bangor on May 31, 2008. This demonstration was
18 sponsored by the Ground Zero Center for Nonviolent Action and the
Tacoma Catholic Worker ["Item 3"].

19 I am also requesting all records on file since January 1, 2003 regarding the
20 Ground Zero Center for Nonviolent Action at 16159 Clear Creek Road NW,
21 Poulsbo, Washington ["Item 4"].

22 For this Public Records Act request, I am requesting all documents, videos,
23 photographs, email records and all other records related to this request
["Item 5"].

24 I am specifically interested in records concerning the use of a banner on the
25 highway overpass over Highway 308, near the entrance to the main gate of
Naval Base Kitsap-Bangor on the following dates:

26 May 14, 2007

1 August 6, 2007
2 January 19, 2008
3 May 10, 2008
4 May 31, 2008

5 ["Item 6"].

6 I am requesting all documents, videos, photographs, email records and all
7 other records regarding the above listed events and all other related events
8 since January 1, 2003 ["Item 7"].

9 Mr. Milner asked for the requested records to be sent in electronic form if possible.

10 14. In a letter bearing the date June 12, 2008, but not sent until June 16, 2008, Sheriff's
11 Lt. Katherine Collings acknowledged receipt of Mr. Milner's request. Her letter requested
12 clarification of Items 1 and 7 above, saying, "We cannot identify specific acts, incidents or
13 documents from these requests." Lt. Collings' letter also estimated that the response to
14 Items 2 through 6 would take 15 to 30 business days.

15 15. In a subsequent phone conversation with Lt. Collings, Mr. Milner agreed to narrow
16 Items 1 and 7 of the June 12, 2008, request to records concerning the use of highway
17 banners and signs on the specific dates listed in Item 6.¹

18 16. In the same conversation, Lt. Collings told Mr. Milner that Kitsap County had no
19 "policy" regarding banners and signs on highway overpasses, and therefore no records
20 would be produced in response to Item 2 of his records request.

21 17. On July 31, 2008, Lt. Collings sent to Mr. Milner what she called a "partial
22 response" to his June 12, 2008, records request. The package included 55 pages of records,
23 including six pages of internal Sheriff's policies that are not related to banners on
24 highways; a printout of the state law generally prohibiting disorderly conduct; and emails
25

26 _____
27 ¹ He agreed to delete the phrase "all other related events" from Item 7, and to focus on the events
28 that took place on May 14, 2007; August 6, 2007; January 19, 2008; May 10, 2008; and May 31, 2008.

1 and other Sheriff's correspondence, both internal and external, concerning Ground Zero
2 peace demonstrations.

3 18. The partial response also included a "Document Log," which listed a total of 70
4 pages of records believed to be responsive to Mr. Milner's records request. The log
5 described 19 pages of records that were withheld in whole or in part.

6 19. The log did not explain how the claimed exemptions allegedly applied to the
7 withheld records. This lack of explanation violated the PRA.

8 20. RCW 42.56.420, the statute most often cited in the Sheriff's July 31, 2008,
9 document log, contains five distinct kinds of disclosure exemptions. However, the log
10 failed to identify which of the five distinct exemptions allegedly applied to the records
11 withheld from Mr. Milner. This failure is inconsistent with the letter and spirit of the PRA.

12 21. RCW 42.56.420 applies only to certain, limited records related to: 1) criminal
13 terrorist acts; 2) jail and prison security; 3) school safety; 4) computer and
14 telecommunications security; and 5) "the security section of transportation system safety
15 and security program plans." On its face, RCW 42.56.420 has nothing to do with records
16 concerning peaceful, free-speech activities, such as the banner displays at issue in Mr.
17 Milner's records request.

18 22. RCW 42.56.420(1) defines "criminal terrorist acts" as those that: a) "significantly
19 disrupt the conduct of government or of the general civilian population"; and b) "manifest
20 an extreme indifference to human life."

21 23. By using banners on highways to promote a message of peace, Ground Zero
22 members have sought to protect human life from war and nuclear destruction. Peacefully
23 protesting violence is the opposite of showing "extreme indifference to human life."
24
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26
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1 24. The defendant Sheriff's Office's personnel are familiar with Ground Zero's
2 peaceful nature.

3 25. In her July 31, 2008, "partial response" to Mr. Milner's records request, Lt.
4 Collings predicted a "complete response" within 45 to 60 business days.

5 26. More than 90 days passed without the Sheriff's Office providing any additional
6 records in response to Mr. Milner's June 12, 2008, records request.

7 27. Each of the email records disclosed by the Sheriff's Office bears the name of the
8 person from whom the record was obtained. Thus, it is possible to tell which Sheriff's
9 officers provided records for disclosure in response to Mr. Milner's request, and which did
10 not.
11

12 28. In an email to Lt. Collings on August 9, 2008, Mr. Milner wrote in part:

13 You might know that Mike Merrill has been one of the primary contacts for
14 the Kitsap County Sheriff's office to the Ground Zero Center for
15 Nonviolent Action. Mike Merrill knows a lot about this organization. He
16 told me in a meeting once that he has read almost everything on the Ground
17 Zero Center for Nonviolent Action webpage. It is likely he has passed
information and his advice about handling this organization and their
demonstrations to others.

18 In the Document Log you provided, Bate No. 00031, is an e-mail message,
19 a question, to Mike Merrill. The response is not included in the documents.
20 All of the correspondence related to my Public Records Act request
involving Mike Merrill must be released.

21 29. Lt. Collings responded, "I will check on those documents and get back to you."

22 30. Although Lt. Collings subsequently acknowledged that Mr. Merrill had identified
23 about 100 pages of records responsive to Mr. Milner's request, the Sheriff's Office did not
24 disclose any additional records from Mr. Merrill.² Nor did the Sheriff make any additional
25 claims of exemption related to Mr. Merrill. The lack of disclosure violated the PRA.
26

27 ² Only two records from Mr. Merrill were disclosed in the initial "partial response."

1 31. On the night of August 19, 2008, Mr. Milner wrote again to Lt. Collings, pointing
2 out that many of the email records provided to him on July 31, 2008, "included, or
3 specifically addressed, officers who have not supplied their records" for disclosure. Mr.
4 Milner provided a list of Sheriff's employees who appeared as authors or recipients of the
5 previously disclosed emails, and whose responses were missing from the disclosed records.
6 Those employees were: Dave White, Sheriff Steve Boyer, Scott Wilson, Jon Brossel, Bob
7 Millard, Dennis Bonneville, Bob Thurston, Cam Mandeville, and Russ Clithero. Mr.
8 Milner requested that the Sheriff search for any records from those above-named
9 employees that are responsive to his June 12, 2008 records request.

10
11 32. The Sheriff's Office neither disclosed additional records, nor made any additional
12 claims of exemption, in response to Mr. Milner's August 19, 2008 inquiry. The lack of
13 disclosure violated the PRA.

14
15 33. Also in his August 19, 2008 email, Mr. Milner stated to Lt. Collings:

16 In an email message from John Gese dated June 6, 2008, Mr. Gese stated
17 Karen Demerick took photos during the May 31 event. I am requesting all
18 of these photos and all other related photos and videos.

19 34. The Sheriff's Office neither disclosed the requested photos, nor claimed that the
20 photos are exempt. The failure to disclose the photos violated the PRA.

21 35. Finally, the last request in Mr. Milner's August 19, 2008 email, to Lt. Collings was
22 for a document entitled "Incident Action Plan, Father Bix Birthday."

23 36. The Father Bix birthday plan is responsive to Mr. Milner's June 12, 2008, records
24 request because it concerns a plan by defendant Kitsap County Sheriff's Office to close the
25 Highway 308 overpass to pedestrians in anticipation of an anti-war demonstration
26 involving Ground Zero and possibly others.

1 37. The Sheriff's Office did not respond to Mr. Milner's request for the Father Bix
2 document. The Sheriff's Office neither produced the document nor claimed that it is
3 exempt. These failures violated the PRA.

4 38. By phone and email on August 27, 2008, Mr. Milner asked Lt. Collings to produce
5 records related to the May 27 and May 28, 2008 planning meetings described in Paragraph
6 7 above. Mr. Milner identified numerous officers who attended the meetings, and asked
7 Lt. Collings to request disclosure from them.
8

9 39. Lt. Collings did not respond to Mr. Milner's August 27, 2008 inquiry. This lack of
10 response violated the PRA.

11 40. It is apparent from the disclosed emails that additional, responsive emails existed,
12 but were neither disclosed nor claimed to be exempt. To mention just one example, the
13 Sheriff disclosed an October 12, 2007 email from Sheriff's Lt. John Gese to Sheriff's
14 Patrol Chief Gary Simpson and others, in which Lt. Gese asked if he should respond to a
15 letter from Ground Zero about use of highway banners. No response to Lt. Gese's email
16 was disclosed or listed in the July 2008 Document Log.
17

18 41. The Sheriff's Office failed to timely disclose a document entitled "Kitsap County
19 Operational Plan, Ground Zero Protest, 05/31/2008," although it is responsive to Mr.
20 Milner's June 12, 2008 records request. The document is not exempt. The failure to
21 disclose the plan violated the PRA.
22

23 B. The August 21, 2008 Request

24 42. On August 21, 2008, Mr. Milner sent an email to Lt. Collings containing a new
25 request under the PRA. The email said in substantive part:

26 RE: Public Records request, record retention policy
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Lt. Collings

Under the Public Records Act, RCW 42.17, I am requesting information which would show the record retention policy for the Kitsap County Sheriff's office.

I am specifically interested in the policies of the Kitsap County Sheriff's office regarding the retention of email messages, photographs, video records, and records regarding meetings.

I am requesting records showing how long the Kitsap County Sheriff's office retains the above listed records, and other records, within the Kitsap County Sheriff's office.

43. The Sheriff's Office did not respond to the August 21, 2008, records request in any way. The failure to promptly respond to Mr. Milner's request violated the PRA.

44. The Sheriff's Office is required by law to have a record retention policy. Failure to disclose the retention policy upon Mr. Milner's request violated the PRA.

C. The August 25, 2008 Request

45. On August 25, 2008, Mr. Milner sent an email to Lt. Collings containing a third distinct request for public records under the PRA. The email said in substantive part:

RE: Public Records request, August 2008 demonstrations

Lt. Collings

Under the Public Records Act, RCW 42.17, I am requesting all information on file regarding a three day event and demonstrations at the Trident submarine base at Bangor on August 9, 10 and 11, 2008.

The demonstrations were organized by the Ground Zero Center for Nonviolent Action.

This Public Records Act request is similar to the request I made on June 12, 2008. I am requesting similar items....

This request would include documents concerning the practice of free speech with the use of banners or signs on highway or freeway overpasses,

1 and responses or planned or proposed responses to this activity by law
2 enforcement agencies.

3 46. The Sheriff's Office did not respond to the August 25, 2008, records request in any
4 way. The failure to promptly respond to Mr. Milner's request violated the PRA.
5 The failure to disclose public records requested by Mr. Milner on August 25, 2008,
6 violated the PRA.

7 D. The February 9, 2010 Request.

8 47. On February 9, 2010, Mr. Milner filed a new request under the Public Records Act,
9 requesting from the Kitsap County Sheriff's office updated records regarding law
10 enforcement at Ground Zero demonstrations. His request stated in part: "I am also
11 requesting all records on file related to a demonstration at Naval Base Kitsap-Bangor on
12 January 16, 2010, including records related to the reasons why the Kitsap County Sheriff's
13 Office did not respond to the demonstration."

14 48. On Saturday, March 20, 2010, Mr. Milner received approximately 285 pages of
15 records and 2 DVDs from the Kitsap County Sheriff's Office in response to his request. A
16 number of those records support his arguments that the disclosure exemptions claimed in
17 this case do not apply, and that the records at issue should be released.

18 49. However, all of the records released to Mr. Milner on March 20, 2010, were
19 stamped with the following warning: "CONFIDENTIAL: DO NOT DISCLOSE--
20 FURTHER DISSEMINATION PROHIBITED WITHOUT WRITTEN PERMISSION
21 FROM THE KITSAP COUNTY SHERIFF'S OFFICE."
22

23 50. Because of the prohibition described in Paragraph 49, made by an agency with
24 powers of arrest, Mr. Milner was chilled and restrained from using the March 2010 public
25

1 records to support his Public Records Act claims, or for other speech purposes, while the
2 prohibition remained in place.

3 51. By ordering Mr. Milner not to disseminate released public records, the Kitsap
4 County Sheriff's Office violated rights protected by Article I of the Washington
5 Constitution.

6 E. The March 30, 2010 Oral Motion

7 52. On March 30, 2010, this Court granted leave for Mr. Milner to file an amended
8 complaint adding claims under 42 U.S.C. 1983, the First Amendment of the U.S.
9 Constitution and Article I of the Washington Constitution based on the warning stamp
10 described in Paragraph 49. In arguing about the motion to amend the complaint, the parties
11 discussed the constitutional prohibition against prior restraints on speech.
12

13 53. At the same hearing on March 30, 2010, right after the plaintiff's motion to amend
14 his complaint was granted, the defendant Kitsap County Sheriff's Office moved to restrain
15 the plaintiff's speech again. Senior deputy prosecutor Neil R. Wachter made an oral
16 motion on behalf of the Sheriff's Office to: a) prohibit the plaintiff and his attorney,
17 Katherine George, from disseminating, copying or discussing with anyone three records
18 that the defendant had voluntarily released to Mr. Milner in 2008; b) seal the three records,
19 which have been in the open court file since August 2009; and c) require Mr. Milner and
20 his attorney to return the three records to the defendant. The Sheriff's Office claimed it
21 had inadvertently disclosed the three records, identified as Bates 46-47, 156 and 308-9.
22

23 54. At the March 30 hearing, the Court granted Mr. Wachter's oral motion and stated
24 that the prohibition against disseminating and discussing the three records was effective
25
26

1 immediately. The sealing and disgorgement of the records were to be effected after entry
2 of a written order.

3 55. After two more hearings and additional briefing on the matter, the Court denied the
4 Sheriff's Office's motion for speech restraints and for sealing and disgorgement of records,
5 and vacated the March 30, 2010 oral order prohibiting Mr. Milner and his attorney from
6 disseminating or discussing the three records at issue. A written order lifting the
7 restrictions took effect on August 13, 2010.

8
9 56. The decision to seek a court order prohibiting Mr. Milner from disseminating and
10 discussing the documents in question was made by a final decision maker who had the
11 authority to make such a final decision on behalf of the Sheriff's Office.

12 FIRST CAUSE OF ACTION – VIOLATION OF PUBLIC RECORDS ACT

13 57. The records requested by Mr. Milner, including those described above, are "public
14 records" as defined in RCW 42.56.010(2).

15
16 58. The PRA, RCW 42.56.520, requires all local agencies such as the Sheriff to
17 promptly respond to requests for public records. An agency must, within five business
18 days of receiving a request, respond in one of the following ways: a) provide the requested
19 records; b) provide a reasonable time estimate for response; or c) deny the request.

20
21 59. By failing to promptly respond to Mr. Milner's records requests, as described
22 above, the Sheriff's Office violated the PRA.

23 60. Under RCW 42.56.210(3), an agency refusing inspection of a record, in whole or in
24 part, is required to state the specific exemption authorizing the withholding of the record
25 (or part) and briefly explain how the exemption allegedly applies to the record withheld.

1 61. By failing to make a claim of exemption in the manner required by RCW
2 42.56.210(3), in response to Mr. Milner's June 12, 2008, records request, the Sheriff's
3 Office violated the PRA.

4 62. The records requested by Mr. Milner, including those described above, do not fit
5 within any exemptions in the PRA. The Sheriff's Office's claims of exemption are not
6 valid.

7
8 63. By failing to disclose the public records requested by Mr. Milner, in the absence of
9 applicable exemptions, the Sheriff's Office violated the PRA.

10 SECOND CAUSE OF ACTION: Section 1983

11 64. By ordering Mr. Milner not to disseminate released public records, the Kitsap
12 County Sheriff's Office violated Plaintiffs' rights protected by the First and Fourteenth
13 Amendments to the United States Constitution, and by 42 U.S.C. § 1983.

14 65. The Sheriff's Office's use of a warning stamp to prohibit Mr. Milner from
15 disseminating lawfully obtained public records effected a denial of his First Amendment
16 rights under color of state law, which is actionable under 42 USC 1983.

17
18 THIRD CAUSE OF ACTION: Section 1983

19 66. Paragraphs 1 through 65 above are incorporated by reference herein.

20 67. By obtaining a court order prohibiting Mr. Milner and his attorney from
21 disseminating or discussing released public records, the defendants violated Plaintiffs'
22 rights protected by the First and Fourteenth Amendments to the United States Constitution,
23 and by 42 U.S.C. § 1983.

24
25 67. The motion for speech restrictions, described above, effected a denial of plaintiff's
26 First Amendment rights under color of state law, which is actionable under 42 USC 1983.

RELIEF REQUESTED

Plaintiff Mr. Milner requests this court to grant the following relief:

1. An order requiring the Sheriff's Office to produce the requested records;
2. An award of all costs, including reasonable attorney fees, that may be required by RCW 42.56.550(4) and permitted by the August 2009 partial settlement;
3. An order declaring that the actions of the Defendants were unlawful, and violated Plaintiff's rights as alleged in this complaint.
4. An order declaring that the actions of the Defendants constituted unlawful restraints on speech.
5. An award of attorney fees and costs as authorized by 42 U.S.C. § 1988 and other applicable federal and state law.
6. An award of damages sufficient to compensate Plaintiff for losses and distress.
7. An award of punitive damages pursuant to 42 U.S.C. § 1983.
8. Injunctive relief.
9. Such other relief as the court deems just and equitable.

DATED this ____ day of September 2010.

HARRISON BENIS & SPENCE LLP

Katherine A. George, WSBA #36288

CARNEY BADLEY SPELLMAN
P.S.

James E. Lobsenz, WSBA #8787

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KITSAP COUNTY, a political subdivision of the State
of Washington

Plaintiff,

NO.

COMPLAINT FOR INJUNCTION,
DECLARATORY JUDGMENT AND
ABATEMENT OF NUISANCE

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-for-
profit corporation registered in the State of Washington,
SHARON ANN CARTER, doing business as
NATIONAL FIREARMS INSTITUTE, a sole
proprietorship licensed 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

COME NOW the Plaintiff, KITSAP COUNTY, and alleges as follows:

I. JURISDICTION AND VENUE

1. Pierce County Superior Court has jurisdiction over the parties pursuant to RCW 2.08.010 and is the proper venue for this action pursuant to RCW 36.01.050.

1 with the authority and duty to enforce statutes, regulations, and ordinances herein noted respecting the
2 public health, safety and welfare.

3 5. The Defendants are KITSAP RIFLE AND REVOLVER CLUB, registered as a not-for-
4 profit corporation in the State of Washington and SHARON ANN CARTER, doing business as
5 NATIONAL FIREARMS INSTITUTE, a for-profit sole proprietorship licensed in the State of
6 Washington. The true names and capacities of Defendants John Doe and Jane Roe I through XX,
7 inclusive, are unknown to plaintiff at this time. When such identities and capacities become known,
8 Plaintiff may amend its complaint to add additional parties defendant as may be appropriate.
9

10 6. Upon information and belief, Plaintiff alleges that at all times pertinent to this
11 complaint, Defendant KITSAP RIFLE AND REVOLVER CLUB is or was the owner, lessor and/or
12 occupant of the Property, as indicated by the records of the Property, where the public nuisance
13 conditions exist and public nuisance activities are occurring; and/or the Defendants have been in
14 possession or control of the Property where the public nuisance conditions exist and public nuisance
15 activities are occurring.
16

17 7. The named Defendants are residents of or doing business in Kitsap County,
18 Washington.
19

20 8. Plaintiff reserves the right to add and/or name other parties who may be responsible for
21 the public nuisances, alleged herein, pursuant to RCW 7.48.170; Chapter 9.66 RCW; Chapter 36.32
22 RCW; Chapter 9.56 Kitsap County Code.
23

24 III. FACTS

25 Local Codes.

26 9. On October 23, 1995, the Kitsap County Board of Commissioners adopted Ordinance
27

1 178-1995, the Interim Zoning Ordinance, which was in force and effect at all times material herein
2 prior to January 8, 1996.

3 10. On January 8, 1996, the Kitsap County Board of Commissioners adopted Ordinance
4 182-1996, the Interim Zoning Ordinance, which was in force and effect at all times material herein
5 between January 8, 1996, and May 7, 1998.

6 11. On May 7, 1998, the Kitsap County Board of Commissioners adopted ordinance 216-
7 1998, the Kitsap County Zoning Ordinance, which has been in force and effect at all times material
8 herein on or after May 7, 1998.

9 12. On December 11, 2006, the Kitsap County Board of Commissioners adopted ordinance
10 367-2006, the Ordinance Regarding 10-Year Comprehensive Plan Update Revisions to Kitsap County
11 Code Title 17 (Zoning), which has been in force and effect at all times material herein on or after
12 December 11, 2006.

13 13. On June 29, 1998, the Kitsap County Board of Commissioners adopted Ordinance 224-
14 1998, the Building Code, which was in force and effect at all times material herein on or after July 1,
15 1998.

16 14. On October 22, 2001, the Kitsap County Board of Commissioners adopted Ordinance
17 261-2001, which was in force and effect at all times material herein on or after October 22, 2001.

18 15. On December 16, 2002, the Kitsap County Board of Commissioners adopted Ordinance
19 292-2002, which was in force and effect at all times material herein on or after December 16, 2002.

20 16. On June 28, 2004, the Kitsap County Board of Commissioners adopted Ordinance 323-
21 2004, which was in force and effect at all times material herein on or after June 28, 2004.

22 17. On May 7, 1998, the Kitsap County Board of Commissioners adopted Ordinance 217-
23

1 1998, Relating to Growth Management Regarding the Kitsap County Interim Critical Areas Ordinance
2 and Adopting Development Regulations to Protect Critical Areas, which was in force and effect at all
3 times material herein on or after May 18, 1998.

4
5 18. On December 1, 2005, the Kitsap County Board of Commissioners adopted Ordinance
6 351-2005, the Ordinance Regarding Growth Management, Revisions to Title 19 (Critical Areas), which
7 was in force and effect at all times material herein on or after December 1, 2005.

8
9 19. On February 26, 2007, the Kitsap County Board of Commissioners adopted Ordinance
10 376-2007, also entitled the Ordinance Regarding Growth Management, Revisions to Title 19 (Critical
11 Areas), which was in force and effect at all times material herein on or after February 26, 2007.

12
13 20. On December 9, 1996, the Kitsap County Board of Commissioners adopted Ordinance
14 199-1996, which was in force and effect at all times material herein on or after December 9, 1996.

15
16 21. On December 16, 2002, the Kitsap County Board of Commissioners adopted Ordinance
17 290-2002, Transferring Some Permit Review Authority from the Department of Public Works to the
18 Department of Community Development, which was in force and effect at all times material herein on
19 or after December 16, 2002.

20
21 22. On August 10, 2009, the Kitsap County Board of Commissioners adopted Ordinance
22 433-2009, Amending Kitsap County Code Title 12 relating to Illicit Discharges, Construction Runoff
23 Control and Post Construction Runoff Control, which was in force and effect at all times material
24 herein on or after August 10, 2009 and/or January 1, 2010.

25
26 23. On July 8, 1985, the Kitsap County Board of Commissioners adopted Ordinance 50-A-
27 1985, the Ordinance Prohibiting the Discharge of Firearms in Proscribed Areas of Kitsap County,
28 Washington, which was in force and effect at all times material herein on or after July 8, 1985.

1 24. On August 2, 1993, the Kitsap County Board of Commissioners adopted Ordinance 50-
2 B-1993, the Ordinance Amending an Ordinance Prohibiting the Discharge of Firearms in Proscribed
3 Areas of Kitsap County, Washington, which was in force and effect at all times material herein on or
4 after August 2, 1993.
5

6 25. On February 14, 1994, the Kitsap County Board of Commissioners adopted Ordinance
7 50-C-1994, an Ordinance Amending an Ordinance Prohibiting the Discharge of Firearms in Proscribed
8 Areas of Kitsap County, Washington, , which was in force and effect at all times material herein on or
9 after February 14, 1994.
10

11 26. On May 4, 1998, the Kitsap County Board of Commissioners adopted Ordinance 50-E-
12 1997, the Amendment Establishing a "No Shooting Area", which was in force and effect at all times
13 material herein on or after November 3, 1997.
14

15 27. On August 7, 2000, the Kitsap County Board of Commissioners adopted Ordinance 50-
16 G-2000, the Ordinance of the Kitsap County Board of Commissioners Amending Kitsap County Code
17 Section 10.24.103 Relating to Shooting Ranges To Clarify That Existing Law Prohibits The
18 Establishment Of A Shooting Range In An Area Designed As a No-Shooting Area, which was in force
19 and effect at all times material herein on or after August 7, 2000.
20

21 **Zoning and Critical Areas Ordinance**

22 28. The Property is located in unincorporated Kitsap County and is zoned "rural wooded",
23 per KCC Chapter 17.301, with uses governed by Chapter 17.381 and Table 17.381.040(E), Parks,
24 Rural and Resource Zones.
25

26 29. The Property contains wetlands, streams and buffers for wetlands and streams, each of
27 which are protected by the Kitsap County Critical Areas Ordinance, KCC Title 19.
28

1 **Ownership and Occupancy**

2 30. At all times pertinent to this Complaint but prior to June 18, 2009, the Property was
3 owned by the State of Washington Department of Natural Resources ("DNR").

4 31. At all times pertinent to this Complaint, the Property has been and continues to be
5 occupied by the KITSAP RIFLE AND REVOLVER CLUB.

6 32. At all times pertinent to this Complaint prior to June 18, 2009, the Property was leased
7 from the State DNR to the KITSAP RIFLE AND REVOLVER CLUB, pursuant to a lease agreement
8 between the State and the Club (attached and incorporated by reference hereto as Exhibit 1). This lease
9 by its terms was said to be in effect from March 1, 2003 until February 27, 2018. This lease was
10 signed by the parties thereto on November 12, 2003 and November 17, 2003. This lease followed a
11 previous lease between the State and the Club, which by its terms was said to be in effect from March
12 1, 2002 until February 28, 2003 (attached and incorporated by reference hereto as Exhibit 2).

13 33. On June 18, 2009, deeds were recorded with the Kitsap County Assessor's Office
14 transferring the Property first from the State of Washington to Kitsap County and then from Kitsap
15 County to the KITSAP RIFLE AND REVOLVER CLUB.

16 34. A sole proprietorship operating as the NATIONAL FIREARMS INSTITUTE ("NFI") is
17 licensed in the State of Washington in the name of SHARON ANN CARTER. The NFI operates its
18 business at the Property and its business license lists 4900 Seabeck Highway NW, Bremerton,
19 Washington. The KITSAP RIFLE AND REVOLVER CLUB hosts firearm training programs put on
20 by the NFI, and the NFI's courses have regularly appeared on the Club's published calendars of events
21 including during 2008, 2009 and 2010.

22 **History and Violations**

1 35. The Property is situated in central Kitsap County, in an unincorporated and generally
2 forested area that has seen a considerable amount of residential development since the mid-1980's.
3 The Property is located approximately one and one-half miles west of State Highway 3, which is a
4 major arterial running north-and-south through central Kitsap County. The property is located directly
5 west of Camp Wesley-Harris, which is owned by the United States Navy ("Navy"). Until
6 approximately 2004, the Navy operated shooting ranges at Camp Wesley-Harris.
7

8 36. The KITSAP RIFLE AND REVOLVER CLUB claims to have been established as a
9 club more than eighty years ago. On information and belief, the Club began using the Property as a
10 shooting range during the 1940's.
11

12 37. On or about November 19, 1986, the KITSAP RIFLE AND REVOLVER CLUB filed
13 its certificate of incorporation as a Washington non-profit corporation with the Washington Secretary
14 of State's Office. Upon information and belief, the Club has not changed its registration status as a
15 non-profit corporation.
16

17 38. In 1989, the business presently licensed in the name of SHARON ANN CARTER doing
18 business as NATIONAL FIREARMS INSTITUTE, was first licensed in the State of Washington.
19

20 39. In 1993, the KITSAP RIFLE AND REVOLVER CLUB's facilities at the Property
21 consisted of one covered 50-yard pistol firing line with a small target backstop at 25 yards, and one covered
22 175-yard rifle firing line with a small target backstop at 100 yards. There were no other berms, baffles, or
23 backstops on the range. The covers for both firing lines were open sided pole structures. Other than lighting
24 under the covers, there was little or no lighting on the property to illuminate shooting ranges. The two shooting
25 areas, an office building and a small parking lot took up about two acres of the Property.
26

27 40. On September 7, 1993, the Chair of the Kitsap County Board of Commissioners wrote a letter to
28

1 four shooting clubs, including the KITSAP RIFLE AND REVOLVER CLUB, stating: "Pursuant to your
2 requests, this letter is to confirm that the shooting ranges your organizations currently have in use,
3 which are listed above, are considered by Kitsap County to be lawfully established, non-conforming
4 uses (grandfathered)." At the time of the September 7, 1993 letter, the areas surrounding the Property
5 consisted of mostly forested land, but single family houses and housing developments had begun to be
6 developed within a two-mile radius of the Property. At the time of the September 7, 1993 letter,
7 several dozen residential structures had already been constructed close enough to the Property so as to
8 be potentially affected by activities at the Property. These residences were occupied.
9
10

11 41. The Club has never applied to Kitsap County for a permit to operate a shooting range
12 pursuant to KCC Chapter 10.24.

13 42. The Club has never submitted to Kitsap County a report or analysis of the safety of its
14 shooting ranges, prepared by an independent professional range safety expert. Upon information and
15 belief, the Defendants have never obtained this type of report or analysis.
16

17 43. At all times pertinent to this complaint, the Property's shooting ranges have been
18 outdoor ranges, without baffles or other physical features over the shooting areas to catch stray or
19 ricochet bullets.
20

21 44. Conditions at the Property remained substantially unchanged between 1993 and 2001,
22 and the Club's use of the Property continued to occupy approximately two acres, with another acre of
23 semi-cleared land located between the two shooting areas and on the periphery of the shooting areas.
24

25 45. Prior to 2001, the Property's shooting ranges were predominantly used for small-caliber
26 weapons practice by members and guests of the Club. Shooting at the Club was sometimes audible in
27 the surrounding areas, but noises from the Club were intermittent, non-obtrusive and not intense in
28

1 their nature, sound level or frequency. There were some days when no shooting could be heard from
2 the Club, and shooting rarely occurred before 9 a.m. or after 6 p.m.

3 46. Between approximately 2001 and present day, Defendants have modified the Property
4 and its uses by installing new shooting areas, erecting or installing storage structures including Conex
5 boxes, constructing new berms and backstops, clearing vegetation on the Property (including
6 development in wetland and stream buffer areas), re-directing surface water, installation of lighting
7 poles for illumination of nighttime shooting and engaging in earth moving activities which include
8 grading, trenching, building berms out of predominantly native soil.
9

10 47. Between approximately 2001 and present day, Defendants have constructed at least
11 eight new shooting areas on the property, in addition to the aforementioned pistol and rifle lines, each
12 with berms and/or backstops that resulted from earth-moving activities including excavation and re-
13 grading. At least one of the new shooting areas is configured for 360-degree shooting and others of the
14 new shooting areas can be used for 180-degree and/or 270-degree shooting.
15

16 48. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
17 CLUB has hosted for-profit businesses, including but not limited to the NATIONAL FIREARMS
18 INSTITUTE and the Firearms Academy of Hawaii, that have provided firearms training to clients of
19 said businesses at the Property including tactical weapons training, and training in use of automatic
20 and/or high-caliber weapons. Upon information and belief, tactical weapons training has been
21 provided on the Property to units of the military in use of automatic and/or high-caliber weapons as
22 recently as December 2009, at the time unbeknownst to local military commands such as at the Naval
23 Base Kitsap.
24

25 49. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
26

1 CLUB has come to host several tactical shooting competitions at the Property per year, usually over
2 weekends. Several hundred rounds of ammunition are expended on each day of competition.

3 50. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
4 CLUB has authorized or facilitated shooting on the Property at targets which contain materials that
5 explode upon being struck by a bullet. The concussive booms from these explosions, as well as from
6 cannons allowed to be used on the Property, are audible from the surrounding neighborhoods.
7

8 51. Between approximately 2001 and present day, use of automatic weapons and/or high-
9 caliber weapons has become frequent at the Property, and sound intensity, frequency of shooting and
10 hours of shooting each day have increased substantially. To the hundreds of Kitsap County residents
11 living within earshot of the range's activities, the sounds from the activities on the Property are
12 disruptive and disturbing.
13

14 52. In 2005, Kitsap County began receiving noise complaints regarding shooting and other
15 activities at the Property. In March 2005, DCD began investigating reports by owners of neighboring
16 parcels that heavy equipment was being used and earth-moving operations were occurring on the
17 Property. In April 2005, DCD staff discovered extensive ongoing work in a long rectangular area on
18 the Property to the east of the existing shooting areas (hereafter "the 300-meter range"): Vegetation
19 removal, grading and other earth work, including trenching and diversion of surface water. DCD staff
20 informed representatives of the KITSAP RIFLE AND REVOLVER CLUB that the activities being
21 conducted without DCD permits or approvals violated Kitsap County Code and that they were to "stop
22 work". This "stop work" directive has never been lifted by DCD.
23
24

25 53. In June 2005, DCD staff hosted a pre-application meeting with representatives of the
26 KITSAP RIFLE AND REVOLVER CLUB, which is a preliminary to application for land use review.
27
28

1 Representatives of the KITSAP RIFLE AND REVOLVER CLUB disagreed with the County's position
2 that their activities required filing applications for a conditional use permit, site development activity
3 permit or shooting range safety analysis and other permits under Kitsap County Code.

4
5 54. The KITSAP RIFLE AND REVOLVER CLUB and its representatives asserted the
6 position at the pre-application meeting that its activities on the Property constituted no change or
7 expansion of the historic land use, a position that the KITSAP RIFLE AND REVOLVER CLUB has
8 asserted at all times pertinent to this Complaint.

9
10 55. Upon information and belief, in 2007, at the direction of the state Department of Natural
11 Resources, the KITSAP RIFLE AND REVOLVER CLUB replanted trees on the entire area of the
12 Property that had been previously cleared in the 300-meter range area.

13
14 56. At various times between 2005 to present day, heavy equipment use and earth-moving
15 activities have continued to occur at the Property, to create additional shooting areas to the north and
16 the east of the aforementioned original pistol and rifle shooting lines. Land-clearing and grading
17 activities have occurred in wetland and stream buffers on the Property, without DCD's review or
18 approval. On information and belief, the 300-meter range has since been re-cleared of the trees
19 replanted in 2007.

20
21 57. On July 9, 2010, DCD formally posted a written stop work order prohibiting any further
22 encroachment into streams and wetland buffers, land development absent site development activity
23 permits, and expansion of use without DCD permits and approvals. On information and belief, the
24 Club has continued to engage in these activities after the posting of the written stop work order.

25
26 58. Other than the pre-application meeting conducted with DCD and a permit application
27 for an ADA ramp constructed at the Property, the Defendants have never submitted an application to
28

1 DCD for a building, land use, or site development activity permit (per KCC Chapter 12.10). The
2 Defendants have further never submitted an application to DCD for a conditional use permit of the
3 Property.
4

5 59. As configured, the Property cannot be safely operated as a shooting range, the
6 Property's physical facilities permit the escape of stray and/or ricochet bullets. The impact area for
7 stray and/or ricochet bullets affects several hundred residents of central Kitsap County, and the area's
8 roads including state Highway 3.

9
10 60. Multiple occupied dwellings exist within the impact areas for stray and/or ricochet
11 bullets that can escape and have escaped from the Property as a result of shooting activities thereupon.

12 61. Plaintiffs have no plain, adequate, or speedy remedy at law to cure this nuisance, and the
13 neighbors and public-at-large will suffer irreparable harm unless the nuisance is abated and the
14 Defendants are enjoined to clean up the Property at once and cease living, or allowing others to live, on
15 the Property, without the appropriate permits in accordance with the applicable health, building, and
16 zoning regulations.
17

18 **V. Public Nuisance Violations**

19
20 62. Defendants have engaged in and continue to engage in creating and/or maintaining a
21 public nuisance by the activities described above. The activities are described by statute and code to be
22 public nuisances. These acts constitute public nuisances as defined by RCW 7.48.120, RCW 9.66.010
23 and KCC 17.530.030. The activities described above annoy, injure, and/or endanger the safety, health,
24 comfort, or repose of others. Furthermore, the legislature has declared, with two exceptions not
25 relevant here, that hazardous and potentially hazardous and uncontained solid waste is a public
26 nuisance by enacting RCW 7.48.010.
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VI. Damages

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

VII. Enforcement Authority

64. **Constitutional "Police Power" to Abate Nuisances.** The Washington State Constitution authorizes counties to make and enforce "local police, sanitary and other regulations." Article XI, Section 11 of the Washington State Constitution. This authority is commonly referred to as "police power."

65. State Statute authorizes Kitsap County to declare and abate nuisances in RCW 36.32.120(10):

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 Properties which shall be of equal rank with state, county, and municipal taxes.

66. Kitsap County Code declares that "any use, building or structure in violation of [Kitsap County Code Title 17] is unlawful, and a public nuisance" and has authorized the County to bring an action "for a mandatory injunction to abate the nuisance in accordance with the law" KCC 17.530.030.

67. 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

1 7.48.250; 260 and 280 provide for a warrant of abatement and allow for judgment for abatement costs
2 at the expense of the defendants.

3 68. No bond or security is required of Plaintiffs for this action. CR 65 (c) and RCW
4 4.92.080.

5
6 69. Plaintiffs have no plain, adequate, or speedy remedy at law to cure this nuisance, and the
7 neighbors and public-at-large will suffer substantial and irreparable harm unless the nuisance is abated
8 and the Defendants are enjoined to clean-up the Property at once and obtain the appropriate permits in
9 accordance with the applicable health, building, and zoning regulations.
10

11 **VIII. FIRST CAUSE OF ACTION**

12 **IV. Public Nuisance Per Se**

13 70. Plaintiff re-alleges paragraphs 1 through 69 above as if fully set forth and incorporate
14 those paragraphs by reference herein.

15
16 71. Plaintiff alleges that the Property and the above-described activities on the Property
17 constitute a public nuisance per se, in violation of law including KCC 17.110.515.

18 **IX. SECOND CAUSE OF ACTION**

19 **V. Statutory Public Nuisance**

20
21 72. Plaintiff re-alleges paragraphs 1 through 71 above as if fully set forth and incorporate
22 those paragraphs by reference herein.

23 73. Plaintiff alleges that the Property and the above-described activities on the Property
24 constitute a statutory public nuisance. The Property and the activities thereupon violate the rights of
25 the entire community or neighborhood to comfort, repose, health and safety, contrary to RCW
26 7.48.010, 7.48.120, 7.48.130, and 7.48.140 (5), (6) and (7), and, therefore, are a statutory public
27
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1 nuisance. Pursuant to RCW 7.48.190, no lapse of time can legalize a public nuisance amounting to an
2 actual obstruction of public right. Defendants have engaged in and continue to engage in public
3 nuisance violations by the activities described above. The activities are described by statute and code
4 to be public nuisances as defined by both RCW 7.48.120 and RCW 9.66.010. The activities described
5 above annoy, injure, and/or endanger the safety, health, comfort, or repose of others.
6

7 **X. THIRD CAUSE OF ACTION**

8 **Common Law Nuisance**

9
10 74. Plaintiff re-alleges paragraphs 1 through 73 above as if fully set forth and incorporate
11 those paragraphs by reference herein.

12 75. Plaintiff alleges that the Property and the above-described activities on the Property
13 constitute an unlawful and abatable common law nuisance.
14

15 **XI. FOURTH CAUSE OF ACTION**

16 **Violation of Zoning and Nuisance Ordinances**

17 76. Plaintiff re-alleges paragraphs 1 through 75 above as if fully set forth and incorporate
18 those paragraphs by reference herein.

19
20 77. Plaintiff alleges that the nuisance conditions and land use, development and building
21 activities conducted by the Defendants without appropriate permits are unlawful under the Kitsap
22 County Code.
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XII. RELIEF REQUESTED

WHEREFORE the Plaintiffs pray for relief as follows:

Judgment

1. Enter judgment declaring that the Defendants are in violation of the Kitsap County Code prohibitions against public nuisances;
2. Enter judgment declaring that the conditions on the Property and the violations committed by the Defendants constitute public nuisances;
3. Enter judgment declaring that the Defendants by their acts and omissions have violated the Kitsap County Code, including building, critical areas, stormwater and zoning ordinances;
4. Enter judgment declaring that the Defendants have violated the Kitsap County Code by their failure to obtain all necessary permits and all necessary building, land use and development authorizations from the Kitsap County Department of Community Development; and
5. Enter declaratory judgment pursuant to chapter 7.24 RCW in favor of Plaintiff declaring that the KITSAP RIFLE AND REVOLVER CLUB's activities and expansion of uses have caused the Club to lose any previously recognized or authorized legal non-conforming uses of the Property.

Injunction

6. For preliminary and permanent, mandatory and prohibitive injunction:
 - (a) enjoining Defendants from operating a shooting range on the Property 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 and no longer in a condition that is likely to cause sickness, disease or a health and fire hazard;

1 (b) requiring Defendants to file applications for building, land use and development permits
2 for all previous changes in use made of the Property and for all future uses made of the Property;

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

7 (d) requiring Defendants to cease all land-clearing or development activities and cease
8 removal of and encroachment into wetland and stream buffers; and

9 (e) enjoining the Defendants from further violating the Kitsap County Code; and

10 **Warrant of Abatement**

11 7. For a warrant of abatement at the Defendants' expense as provided by RCW 7.48.260.

12 This warrant authorizes Kitsap County to enter upon the Property to inspect, survey, assess and remove
13 public nuisance conditions and to direct or require restoration in areas protected by the Kitsap County
14 Critical Areas Ordinance including but not limited to restoring wetlands and stream buffers to native
15 conditions; and

16 **Inspection and Monitoring**

17 8. For an order authorizing representatives of the Kitsap County Department of
18 Community Development to inspect the property to investigate and determine the extent of
19 encroachment into wetland and stream buffers and determine the mitigation as required by Kitsap
20 County Critical Areas Ordinance and to continue monitoring the Property before, during and after the
21 any abatement action has commenced; and

22 **Costs and Liens**

Exhibit 4

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 Page: 1 of 6
Walter Washington, Kitsap Co Auditor

**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

ASSESSOR'S TAX PARCEL NO: 362501-4-002-1006
Total : \$10.00

Clerk's Initial 

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

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

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

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

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

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

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

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

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

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

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

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

8. Riparian Management Zones, as detailed below:

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

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

DATED this 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Charlotte Garrido
CHARLOTTE GARRIDO, Chair

Steve Bauer
STEVE BAUER, Commissioner

Josh Brown
JOSH BROWN, Commissioner

ATTEST:

Opal Robertson
Opal Robertson, Clerk of the Board

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

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

Bradford Smith
BRADFORD SMITH, President - KRRC

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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

EXHIBIT A

Legal Description of Premises & Reservations

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

RESERVATIONS/SUBJECT TO:

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

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

Unofficial

Exhibit 3

AFTER RECORDING RETURN TO:
Department of Natural Resources
Asset Management & Protection Division
Asset Planning and Transactions Section
PO Box 47014
Olympia, WA 98504-7014

E-230251

LAND TITLE 200906180290 Page: 1 of 9
Quit Claim Deed Rec Fee: \$ 50.00
06/18/2009 03:15 PM
Walter Washington, Kitsap Co Auditor

KITSAP COUNTY TREASURER EXCISE

06/18/2009

2009EX03101

Total : \$10.00

Clerk's Initial

QUITCLAIM DEED
Kitsap County

Grantor: State of Washington, acting by and through the Department of Natural Resources.

Grantee: Kitsap County, a Political Subdivision of the State of Washington.

Abbreviated

Legal Desc: PTN of 25-25N-1W; NW, SW, N2NE, SWNE and the W2SE 36-25N-1W

Tax Parcel #: 362501-1-002-1002; 362501-4-002-1006

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the conveyance by Kitsap County Parks and Recreation Department, of real property of equal value as authorized and approved by Resolution No.1315 adopted by the Board of Natural Resources, State of Washington, on June 2, 2009, hereby conveys and quitclaims to KITSAP COUNTY PARKS AND RECREATION DEPARTMENT, GRANTEE, all interest in the real property situated in Kitsap County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof, subject to those matters and encumbrances described in the attached Exhibit B Easement Reservation (Easement Reservation).

Grantor hereby reserves for itself, its successors and assigns, all rights and interests in minerals, in perpetuity, as set forth in and

according to the terms and conditions of the Mineral Reservation required by RCW 79.11210, attached hereto as Exhibit C, over and across those portions of said real property described on the attached Exhibit A, but does not reserve other valuable materials such as rock, sand and gravel.

The lands described in Exhibit A are subject to that certain statutory reserved right as set forth in RCW 79.36.370.

This Deed is executed and delivered pursuant to RCW 79.17.060 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington.

WITNESS the Seal of the State of Washington, affixed this 17th day of

June, 2009.



Christine Gregoire
GOVERNOR

ATTEST:

[Signature]
SECRETARY OF STATE

Approved as to form this 2nd day
of June, 2009.

[Signature]
Assistant Attorney General

State Deed No. 26796
State Record of Deeds, Volume 14, Page 8.
Transaction File No. 86-081861

AUDITOR'S NOTE
LEGIBILITY FOR RECORDING AND COPYING
UNSATISFACTORY IN A PORTION OF THIS
INSTRUMENT WHEN RECEIVED

Exhibits

EXHIBIT A

State property to be conveyed to Kitsap County

Parcel S-1

The S1/2 of the E1/2 of the E1/2 of the SW1/4 of the SE1/4 of Section 25, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, according to U.S. Government subdivision procedures.

Parcel S-2

Section 36, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, EXCEPT that portion lying within Camp Wesley Harris, said portion shown and described as the E1/2 of the SE1/4 and the SE1/4 of the NE1/4 of said Section 36 by that survey of Camp Wesley Harris Reservation Boundaries approved September 1, 1950, on file with the Office of the Commissioner of Public Lands, Olympia, Washington.



Dennis J. Gelvin, PLS 21674
Land Description & R/W Specialist
State Land Survey Unit
PO Box 47030
Olympia, WA 98504-7030

Dated 4-6-09

FILENAME:L2269 S25 T25 R1W

EXHIBIT B

RESERVATION OF EASEMENT ACROSS S-1 and S-2

Terms and Conditions of Reserved Easement by State

Grantor, as defined in that deed to which this reservation is attached, hereby reserves to itself, its successors and assigns, a permanent, nonexclusive Easement over parcels of land in Kitsap County, identified in Exhibit A to the deed as S-1 and S-2 and legally described as follows (hereafter Newberry Hill Parcel):

Parcel S-1

The S1/2 of the E1/2 of the E1/2 of the SW1/4 of the SE1/4 of Section 25, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, according to U.S. Government subdivision procedures.

Parcel S-2

Section 36, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, EXCEPT that portion lying within Camp Wesley Harris, said portion shown and described as the E1/2 of the SE1/4 and the SE1/4 of the NE1/4 of said Section 36 by that survey of Camp Wesley Harris Reservation Boundaries approved September 1, 1950, on file with the Office of the Commissioner of Public Lands, Olympia, Washington.

Said Easement to be sixty (60) feet in width running thirty (30) feet on each side of a centerline of an existing road(s) located approximately as shown on Exhibit B Easement Area (hereafter Easement Area).

Purpose. The Easement is reserved to provide access for any and all purposes, to and from lands owned by the Grantor. Authorized use shall include the right to travel, maintain, repair, construct or reconstruct the Easement Area.

Appurtenant. Subject to the terms and conditions herein, this Easement reservation is made to provide access to and from all real property owned by Grantor and all other real property of Grantor, now owned or acquired as of the execution date of this Quitclaim Deed or hereafter acquired by the Grantor (hereafter Benefited Parcel(s)).

Grantee Rights. Grantee, as defined in that deed to which this reservation is attached, shall have the right at all times for any purpose, to cross and recross the Easement Area at any place on grade or otherwise. Grantee may grant to third parties any or all of the rights reserved therein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights reserved to Grantor herein. Grantee shall own all timber now on or hereafter growing within the Easement Area and the right to remove said timber.

Relocation. Grantee shall have the right to relocate the Easement Area at the Grantee sole cost so long as the new location does not unreasonably interfere with the rights of Grantor herein.

Maintenance. The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said roads. When any party uses a road, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when a road is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use is commenced. During periods when more than one party is using the same road, or any portion thereof, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- a. The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the road or the portion thereof being used; and
- b. A method of payment by which each party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For purposes of this easement reservation, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

Repairs. Each party using any portion of a road shall repair, or cause to be repaired, at its sole cost and expense, that damage to said road occasioned by it which is in excess of that which it would cause through normal and prudent usage. Should damage be caused by an unauthorized user, the cost of repair shall be treated as ordinary maintenance and handled as set forth above.

Improvements. Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

Permittees. The Grantor may permit its respective agents, contractors, licensees, lessees, purchasers of timber or other valuable materials, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights reserved hereby.

Insurance. The State of Washington, including all its agencies and departments, is self insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only as respects the negligence of the State. So long as the State of Washington continues to be the easement holder of this reservation, it shall not be required to carry insurance. Should the State's rights be assigned or transferred to another entity in whole or in part, such entity shall carry insurance as required below.

Before using any of said rights granted herein, the State's Successors and Assigns (Assignees) and Permittees shall obtain and keep in force the following liability insurance policies, insuring against liability arising out its operations, including use of vehicles, with the corresponding minimum amounts of coverage:

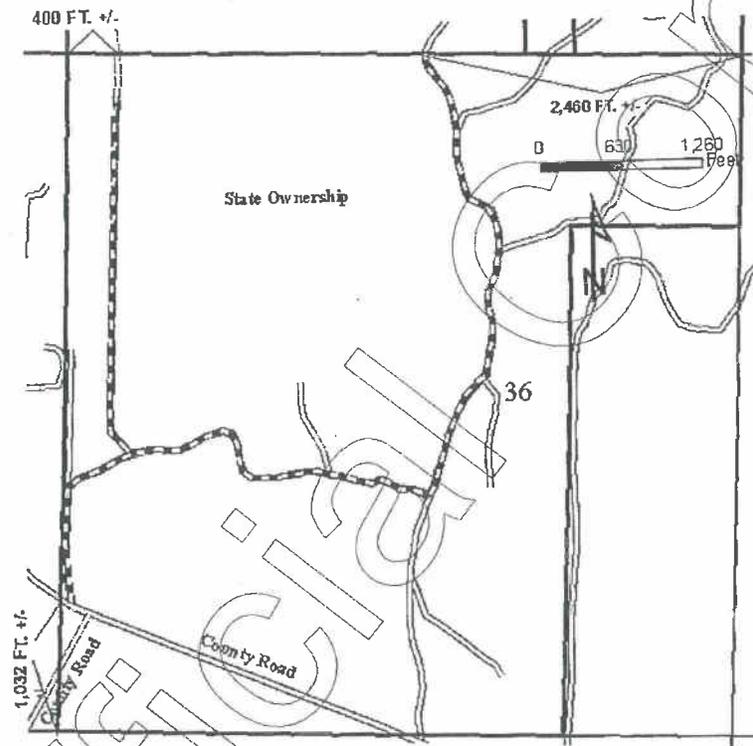
- a. Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- b. Employer's Liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- c. Business Auto Policy (BAP) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later versions of CA 00 01. Grantee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

All Assignees and Permittees shall comply with all State of Washington workers' compensation statutes and regulations. Worker's compensation coverage shall be provided for all employees of assignees and employees of any subcontractors or sub-subcontractors.

Assignees and Permittees shall deliver to Grantee, upon request, a certificate of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements specified above. In the event of cancellation or non-renewal of any coverages, written notice as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW) will be provided to Grantee.

Successors. The terms of this reservation run with the land and shall bind the successors and assigns of both Grantor and Grantee. Grantee shall be deemed to have accepted the terms of this reservation and be bound by the same by accepting delivery of the deed.

EXHIBIT B
EASEMENT AREA
DEPARTMENT OF NATURAL RESOURCES
SECTION 36, TOWNSHIP 25 NORTH, RANGE 01 WEST, W.M. IN KITSAP COUNTY, WA
DNR EASEMENT NO. _____



- - - - - EXISTING STATE EASEMENT RESERVATION ROAD.
ROAD LENGTH = 10,727 FT. +/-, EASEMENT AREA = 14.84 +/- AC.
- - - - - NEW CONSTRUCTION STATE EASEMENT RESERVATION ROAD
ROAD LENGTH = 365 FT. +/-, EASEMENT AREA = .5 +/- AC.
- WIDTH OF EASEMENTS: 30' EACH SIDE OF CENTERLINE
- STATIONING SHOWN AT SUBDIVISION AND SECTION LINE IS APPROXIMATE
- THE RIGHT-OF-WAY SHOWN IS INTENDED TO BE OVER AND ACROSS ALL PROPERTY AS SHOWN ON THIS MAP.
- LOCATION OF ROADS AND PROPERTY LINES BASED UPON DEPARTMENT OF NATURAL RESOURCES' CURRENT GIS INFORMATION

MAP PREPARED BY: BRAD FRUITT DATE: JUNE 1, 2009

EXHIBIT C

Mineral Reservation

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all geothermal steam and heat and all metals, oils, gases, coal, ores, minerals, and fossils of any nature whatsoever and of every name, kind, or description in, under or upon that portion of the land legally described on the attached Exhibit B-2 (the "Mineral Land"), or any part thereof, and the right to explore the same for such geothermal steam and heat, metals, oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon the Mineral Land, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such geothermal steam and heat, metals, oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on the Mineral Land or any part thereof for the business of mining and to occupy as much of the Mineral Land as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said Mineral Land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the Grantor or its successors or assigns (including a lessee under any oil and gas lease), until provision has been made by the Grantor or its successors or assigns to pay to the owner of the Mineral Land, or portion of the Mineral Land upon which the rights reserved herein to the Grantor or its successors or assigns are sought to be exercised, full payment for all damages sustained or to be sustained by said owner by reason of entering upon said Mineral Land and exercising such rights; PROVIDED, That if the owner of said Mineral Land from any cause whatever refuses or neglects to settle said damages, then the Grantor or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the Mineral Land is situate, as may be necessary to determine the damages which said owner of said land may suffer; provided, however, the Mineral Land owner may, at its option, require that such determination be made by arbitration in accordance with the rules of the American Arbitration Association; provided, Grantor shall not be obligated to so arbitrate if Grantor's lessee under any applicable oil and gas lease is not legally required to so arbitrate.

As used in the foregoing paragraph, the term "damages" shall include, without limitation, actual and consequential damages, including loss of or damage to the surface, improvements, growing

As used in the foregoing paragraph, the term "damages" shall include, without limitation, actual and consequential damages, including loss of or damage to the surface, improvements, growing crops and timber, loss of future timber production, injury or damage to the Mineral Land owner's business operations thereon, all compensating or roll-back taxes arising or to arise from the loss of the forest land or timberland tax classification due to the exercise of any such reserved rights, and the cost of road maintenance, resurfacing and repair arising or to arise from the exercise of such reserved rights. To the extent the Mineral Land owner or its successors or assigns receives compensation for such damages from a successor or assign of Grantor (such as a lessee under an oil and gas lease) with respect to a particular activity or operation by such party, then Grantor shall not be required to make payment for such particular activity or operation (i.e., Mineral Land owner shall not be entitled to receive duplicative payment for damages for the same activity or operation).

Unofficial Copy



Kitsap County Prosecuting Attorney's Office

Russell D. Hauge
Prosecuting Attorney

Please reply to: Civil Division

Carol I. Maves
Office Administrator

May 4, 2010

Christian C. Casad
Case Management
Division Chief

Regina Taylor
Attorney at Law PC
9353 Central Valley Road NW Suite 2
Bremerton, WA 98311

Timothy A. Drury
Felony and Juvenile
Division Chief

RE: Kitsap Rifle and Revolver Club

Claire A. Bradley
District/Municipal
Division Chief

Dear Ms. Taylor:

Jacquelyn M. Aufderheide
Civil/Child Support
Division Chief

I am writing you on behalf of Kitsap County and its Department of Community Development (DCD), concerning your client the Kitsap Rifle and Revolver Club ("the Club"). As you know, Kitsap County and the Club entered into an agreement last June in which the Club came into possession of real property on the periphery of its existing parcel. That agreement is memorialized in the Bargain and Sale Deed and Restrictive Covenants agreed upon by the County and the Club's executive leadership. The Covenants recognize that the Club has a historic place in our community, and that it may evolve consistent with that historic use and in compliance with the Kitsap County Code. The Covenants specifically require the Club to follow "the rules and regulation of Kitsap County for development of private land".

www.kitsapgov.com/pros

The County has become aware of construction activities, land-clearing and the filling of wetland areas believed to have occurred on the Club's premises, all done without applying for permits as required by law. The County has also become aware of increased hours of operation, use of automatic firearms, and dramatically increased sound levels coming from the Club's premises, all occurring without going through a conditional use permit review process, which includes public hearings, to determine whether the Club may modify its activities.

The County, through DCD, has partnered with the Suquamish Tribe and several agencies to request joint access to inspect the Club's premises. The agencies include the state Department of Ecology, the state Department of Fish and Wildlife, the Kitsap County Health District and the U.S. Army Corp of Engineers. In recent weeks, each of these partner agencies has requested access to inspect the premises.

Adult Criminal & Administrative Divisions • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Juvenile Criminal Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-5500 • FAX (360) 337-5509
Special Assault Unit • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7148 • FAX (360) 337-7229
Bainbridge Island Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Port Orchard Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Poulsbo Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Civil Division • 614 Division Street, MS-35A • Port Orchard, Washington 98366-4681 • (360) 337-4992 • FAX (360) 337-7083
Child Support Division • 614 Division Street, MS-35B • Port Orchard, Washington 98366-4681 • (360) 337-7020 • FAX (360) 337-5733



Several of the requests have explicitly sought the Club's cooperation for a joint site visit by DCD, the Suquamish Tribe and these federal and state agencies. The KRRC has deferred each request indefinitely, resulting in no inspections taking place to address the agencies' concerns.

The state Department of Labor and Industries has also informed the County of its interest in participating in a joint site visit. I should note that the Suquamish Tribe and the state Department of Fish and Wildlife are each interested in participating in the joint visit because they are co-managers of fishery resources in Kitsap County under federal case law. Their concurrent jurisdiction includes the Chico Creek basin where the Club's premises are located.

The County, the Tribe and the agencies I've identified here are requesting that the Club grant the request for a joint site visit by officials of each agency. A joint visit will limit the number of hours that the Club would suspend operation, and only makes sense given the number of agencies with an interest in the Club's operations. Please inform the County not later than May 25, 2010 whether you will grant this request for a joint visit. I would expect the site visit to require a morning or an afternoon, and I cannot rule out follow-up visits.

The County is also requesting that the Club submit all necessary permit applications for its various building and land-moving operations, and that the Club begin the application process for a conditional use permit addressing each of the community concerns including those I've outlined in this letter. Please complete these steps not later than June 15, 2010, so that Kitsap County and its citizens can begin the overdue review of the recent activities on the Club premises.

This letter is intended as a courtesy to the Club and its membership, to urge the Club's leadership to participate in the processes provided in the Kitsap County Code, and to open the Club to a joint inspection designed to minimize the inconvenience to its members and their guests. I hope the Club's leadership will share this letter with the Club's members and users, so that every user of the facility can appreciate why Kitsap County, as a community, is so very concerned about development and changes to the historic use of the Club that have not followed the land use requirements that apply to the rest of the county's citizens.

The Kitsap County Code and the Revised Code of Washington provide avenues for civil relief for conditions that are deemed a nuisance or otherwise detract from the quality of life in our community. The aforementioned covenants may be enforced to ensure that the Club acts within the county code and consistent with its historic

Regina Taylor
May 4, 2010
Page 3

mission. This letter is written in the hope that we may avoid more aggressive enforcement efforts. However, as the lead enforcement agency for many of the issues raised by the Club's unpermitted activities, the County will take whatever steps are necessary to ensure compliance with the law

Thank you for your attention.

Sincerely yours,

RUSSELL D. HAUGE
Prosecuting Attorney



NEIL R. WACHTER
Deputy Prosecuting Attorney

Enclosure: Bargain and Sale Deed with Restrictive Covenants

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

Page: 1 of 6

**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

05/18/2009

2009EX03102

Total : \$10.00

Clerk's Initial *ES*

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Riparian Management Zones, as detailed below:

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

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

DATED this 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Charlotte Garrido
CHARLOTTE GARRIDO, Chair

Steve Bauer
STEVE BAUER, Commissioner

Josh Brown
JOSH BROWN, Commissioner

ATTEST:
Opal Robertson
Opal Robertson, Clerk of the Board

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

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

Bradford Smith
BRADFORD SMITH, President - KRRC

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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

EXHIBIT A

Legal Description of Premises & Reservations

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

RESERVATIONS/SUBJECT TO:

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

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

Unofficial

Exhibit 1

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands
Olympia, Washington 98504

SPECIAL USE LEASE

Agreement No. 60-A68979

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to KITSAP RIFLE AND REVOLVER CLUB, a corporation (hereinafter "Lessee") the premises in Kitsap County, Washington, the legal description, and reservations, if any, of which are set forth in Exhibit 1A, upon the terms and conditions and for the consideration enumerated herein. Said premises and rights leased hereby are hereinafter referred to as "the Premises." All exhibits to this Agreement are attached and incorporated herein.

SECTION 1 OCCUPANCY

1.01 Lease Term. This Agreement shall commence on March 1, 2002, ("Commencement Date") and expire on February 28, 2003.

1.02 Condition of Premises. Taking possession of the Premises by Lessee shall constitute acknowledgment by Lessee that the Premises are in good and tenable condition and that the Premises are in all respects suitable for the uses permitted in Section 2 (Use of Premises). The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the Premises are suitable for such use.

SECTION 2 USE OF PREMISES

2.01 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

(1) 8 acres of intensive use and occupancy, containing Lessee's improvements, roads, parking areas, open shooting range, targets, and associated infrastructure.

(2) 64.41 acres of timberlands, wetlands and similar resource-oriented lands passively utilized by Lessee to provide buffer and safety zones for Lessee's shooting range.

In the event the Lessee desires a change in acreage or use, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage or use.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to rent and charges and then to leasehold tax, if applicable.

3.01 Rent. The Lessee shall pay to the State, at Olympia, Washington 98504, in advance, the required rent of \$6,106.88 for the period of March 1, 2001 to February 28, 2003 and annually thereafter subject to adjustment under subsection 3.06.

3.03 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided in subsection 12.05 (Condemnation).

3.04 Interest Charged for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.05 Late Charge for Failure to Pay. In the event the Lessee fails to make any payment of rent due hereunder upon the date due, the State shall be entitled to collect from the Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by the Lessee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Lessee and such default shall entitle the State to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, though failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity, including those contained in Chapter 59.12 RCW.

3.09 Leasehold Tax. Should a leasehold tax be imposed on this Agreement or any interest therein, from the Commencement Date and continuing throughout the term, Lessee shall pay to the State at Olympia, Washington 98504, the leasehold tax as set forth in RCW Chapter 82.29A - Leasehold Excise Tax or as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable. Failure to pay said tax when due and payable shall be considered a breach of the provisions of this Agreement and the State shall be entitled to all remedies they are entitled to by law, and the remedies provided herein for a breach of a provision of this Agreement. Any delinquent taxes shall be a debt to the State and in the event the State is subject to any penalties or interest because of the failure of the Lessee to pay such taxes, such penalties and interest shall be payable by the Lessee to the State and shall be considered a debt to the State. In the event the State suffers any costs of whatsoever nature, including attorney fees, or other costs of litigation in collecting said tax, such costs shall be payable by the Lessee and shall be considered a debt due and owing to the State by the Lessee.

SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this Agreement.

4.02 Access. The State reserves the right to grant easements on the Premises. The easement applicant may be required to remedy any damages to the leasehold.

The Lessee's plan of development and placement of improvements must be such that access to the State's adjacent ownership, if any, will not be impaired.

4.03 Restrictions on Use.

1. Permits and Conformance With Laws.

- a. Lessee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Lessee's permitted use including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Premises, or for the conduct of any business upon the Premises at the sole cost and expense of Lessee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to State on request.
- b. Lessee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Premises and the use thereof, and shall correct at the Lessee's own cost and expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use. In no event shall Lessee undertake or suffer any activity to be conducted upon the Premises which constitutes a nuisance or which is a threat to the health or welfare of the general public.
- c. Lessee shall cause all work on the Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

2. Other Restrictions on Use.

- a. Lessee shall cut no State timber or remove State-owned valuable material, without prior written consent of the State. Prior to State's authorization for the cutting of timber or removal of valuable material, the Lessee must pay to the State the fair market value of the timber or valuable material, as determined by the State.
- b. Lessee shall take all reasonable precautions to protect the land and improvements on the Premises from fire, make every reasonable effort to report and suppress such fires as may affect the Premises, and shall be subject to applicable fire laws affecting the Premises.
- c. Lessee shall prevent accumulation of debris or refuse on the Premises.

4.04 Resource Disposal. The State reserves the right to sell, lease or otherwise dispose of minerals, fossils, coal, oil, gas, gravel, stone, forestry resources or other valuable materials from the Premises. Lessee shall be entitled to payment for damages to its leasehold interests caused by the disposal of such materials.

4.05 Roads. During the term of this Agreement, the Lessee is granted, subject to rights previously granted, a nonexclusive easement to use existing roads on the Premises for only permitted use(s) under this Agreement. The State reserves the right to build roads and grant to others easements to use new and existing roads subject only to a ratable reduction in, by equitable division by other users, the cost of maintenance and repair of such roads. Lessee may not construct new roads or undertake any modification or alteration to existing roads without the prior written consent of the State.

4.06 Non-Default Termination. The State may, at its sole discretion, terminate all or part of this Agreement upon written request by the Lessee for surrender of leasehold upon satisfaction by the Lessee of all outstanding rents, duties, and obligations.

This Agreement is subject to termination upon sixty (60) days' written notice in the event the State includes the Premises in a plan for higher and better use, land exchange or sale.

4.07 Compliance with the Habitat Conservation Plan (HCP).

State has entered into a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) to address state trust land management activities and compliance with the federal Endangered Species Act. The lease activities are located within State's HCP area (Permit Lands) and are subject to the terms and conditions of the HCP, Incidental Take Permit No. PRT-812521 (ITP), Exhibit 4A Requirement of the Incidental Take Permit, and the HCP requirements, if any, that are set forth in Exhibit 4B Requirements of the Habitat Conservation Plan which may be modified from time to time to comply with HCP requirements for species covered by the ITP. All HCP materials, including the ITP, are available for review at State's Region Offices and the administrative headquarters in Olympia, Washington.

By signing this Agreement, Lessee agrees to comply with the terms and conditions of the ITP and the HCP for lease activities on Permit Lands. If the Lessee's lease activities comply with the terms and conditions of Exhibits 4A and 4B Requirements of the Habitat Conservation Plan Requirement of the Incidental Take Permit, Lessee's actions will be deemed in compliance with the HCP. Non-compliance with the terms and conditions of the HCP and ITP will be deemed a breach of this

Agreement and may subject the Lessee to liability for violation of the endangered Species Act.

All road use, construction, reconstruction and/or maintenance on the Premises must comply with the current HCP requirements and with Region road guidelines and may be restricted or not permitted at certain times of the year. Any forest Practices Permit application submitted for activities on the Premises must comply with the ITP and HCP and identify that the Premises is within an area covered by a Habitat Conservation Plan and part of Incidental Take Permit No. PRT 81521.

Lessee shall communicate to all employees, contractors or agents, who are or will be conducting activities in the Premises, that the Premises is subject to HCP requirements.

SECTION 5 REQUIREMENTS

5.01 Utilities and Maintenance. During the term of this Agreement, Lessee shall pay all expenses incurred in the use, enjoyment, and operation of the Premises, including, but not limited to, utility charges and all costs of maintaining, and repairing the Premises and all improvements thereon whether now existing or hereafter installed. Lessee shall indemnify and hold the State harmless against and from any loss, liability, or expense resulting from any failure of Lessee to pay all such charges when due.

5.02 Taxes and Assessments.

1. Lessee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the Premises, Lessee's leasehold interest therein, improvements thereon, and Lessee's use and enjoyment thereof.

2. Lessee shall pay the total amount of all assessments that are legally required to be paid now or may be charged during the lease term to the State land or the improvements thereon. Lessee shall not cause or suffer the imposition of any assessment upon the Premises without the prior written consent of State. In the event any new assessment is proposed which affects the Premises, Lessee shall immediately notify State of such proposal after Lessee has knowledge or receives notice thereof. Any assessment upon the Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

5.03 Payment Date and Proof. The Lessee shall pay all payments for taxes, and/or assessments when due. Lessee shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of such amounts.

5.04 Lessee Liens. Lessee shall not suffer or permit any lien to be filed against the State's interest in the Premises, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee. If any such lien is filed, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by the State in advance. Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

5.05 Insolvency of Lessee. If the Lessee becomes insolvent, bankrupt, receiver appointed, or their interest is transferred by operation of law, by reason of insolvency, the State may cancel this Agreement at its option. Insolvency as used herein will mean the inability of the Lessee to meet obligations under this Agreement as they come due.

SECTION 6 LESSEE'S INDEMNITY; INSURANCE REQUIREMENTS

6.00 Indemnity. From and after the Commencement Date of this Agreement, the Lessee shall indemnify, defend (with counsel acceptable to State) and hold harmless State, its employees, officers, and agents from any and all liability, damages (including, but not limited to, personal injury and damages to land and other natural resources), expenses, causes of action, suits, claims, costs, fees (including, but not limited to, attorneys' fees), penalties or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Premises by Lessee, Lessee's sublessees, invitees, agents, employees, licensees, or permittees except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Lessee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This section shall not in any way limit Lessee's liability under subsection 7.02 (Hazardous, Toxic, or Harmful Substances).

6.02 Insurance Requirements.

1. Evidence of Insurance: Lessee must furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference the Department of Natural Resources and Agreement number. Before implementing this Agreement, Lessee must provide proof of coverage.

2. Cancellation: The Certificate(s) of Insurance must provide 45 days written notice to State before the cancellation, non-renewal, or material change of any insurance coverage included therein. Notices must be sent to State's Enumclaw office via certified mail.

3. Additional Requirements:

- a. All policies must name State of Washington, DNR, as an additional insured.
- b. All insurance policy(ies) must include Other Insurance provisions that state Cooperator's policy provides primary insurance coverage.
- c. All insurance policies must provide liability coverage on an occurrence basis unless otherwise specified in this Agreement.
- d. Policies must be issued by an insurer admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Excess or "surplus lines"

carriers must be approved in advance by the Risk Manager (or other authorized representative) for State. All insurers must have a Best's rating of B plus (B+) or better.

4. Minimum Coverage Requirements: The Minimum Coverage Requirements set forth the *minimum* limits of insurance the Lessee must purchase to secure a contract with State. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve the Lessee from liability for losses and settlement expenses greater than these amounts.

During the term of this Agreement, Lessee must purchase and maintain, and shall require all independent contractors to maintain while performing work on the Premises, the minimum insurance coverages and limits specified below, which may be increased by State at its sole discretion:

a. Commercial General Liability (CGL) Insurance. Lessee must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from Premises, operations, independent contractors, personal injury, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

2. Physical Property Damage Insurance. Physical damage insurance covering all real and personal property, other than the personal property of subtenants, located on or in, or constituting a part of, the Premises (including but not limited to the authorized improvements referred to in Section 9 below) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Washington, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain.

3. Business Auto Policy (BAP) Insurance (required for all contracts). The Lessee must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01 or equivalent form. The Description of Covered Autos must include one or more of the following:

"Any Auto" (Symbol 1), "Hired Autos Only" (Symbol 8), "Non-Owned Autos" (Symbol 9).

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability and physical damage coverage with limits not less than those specified below. The Lessee is responsible for any deductible.

Description

Each Accident

Bodily Injury and Property Damage	\$1,000,000
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d. Worker's Compensation and Employer's Liability Insurance: The Lessee must purchase and maintain insurance covering obligations imposed by Federal and State statutes having jurisdiction of its employees in the performance of work, including Employer's Liability Insurance. Evidence of "Qualified Self-Insurance Status" will suffice to meet the requirements of this section.

<u>Description</u>	<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

e. Builder's Risk Insurance:

(1) During the period construction is in progress and until completion of the project and acceptance by State, Lessee shall buy and maintain in force builder's risk insurance on the entire work. Such insurance shall be written on a completed value form and in any amount equal to the value of the completed building, subject to subsequent modifications to that sum. The insurance shall be written on a replacement cost basis. This insurance shall name as insured the Department of Natural Resources, Lessee and all subcontractors and sub-subcontractors in the work.

(2) Insurance required in paragraph (1) shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse.

(3) Insurance required in paragraph (1) shall cover the entire work at the site, including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit.

(4) The policy shall include as insured Premises scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(5) Any deductible applicable to the insurance bought in compliance with paragraph (1) shall be identified in the contract documents and the responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of the Lessee. If any part of any loss is not covered because of the application of a deductible amount not identified in the contract documents, such loss will be paid by Lessee.

6.03 Proceeds of Insurance. In the event of fire or casualty damage to any or all of the improvements, any insurance proceeds derived therefrom in case of loss shall be held in trust and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same improvements so destroyed or damaged or such modified plan as shall be previously approved in writing by State.

SECTION 7 MANAGEMENT

7.01 Weed Control. Lessee shall control all weeds on all lands under this Agreement. Lessee shall be responsible for, or shall immediately reimburse State, for any weed control cost incurred, as a result of Lessee's failure to control weeds on said Premises.

All methods of chemical weed control [shall be approved in writing by State prior to beginning such activities][shall be reported to State at the Region office within 30 days after the weed control activities]. No aerial spraying without prior approval by State is permitted.

Aerial Application of Pesticides. The aerial application of pesticides, which includes insecticides and herbicides, is not permitted.

7.02 Hazardous, Toxic, or Harmful Substances.

1. Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter,

chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by the State, or unless permitted by subsection 2.01 (Permitted Use). If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.

2. Hazardous, Toxic, or Harmful Substances.

a. Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under subsection 2.01 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall:

(1) Immediately notify the State of (i) all spills or releases of any Hazardous Substance affecting the Premises, (ii) all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises; and

(2) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises.

b. Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 8 SUBLEASES AND ASSIGNMENTS

8.01 Sublease. The Premises, in whole or in part, and appurtenances thereon shall not be subleased without written approval from the State. If approved, Lessee shall remain obligated for all actions on the Premises including compliance with all provisions contained in this Agreement.

8.02 Assignment. Lessee shall not hypothecate, mortgage, assign, encumber, transfer, or otherwise alienate this Agreement, or any interest therein or engage in any other transaction which has the effect of transferring or affecting the right of enjoyment of the Premises without the prior written approval of the State.

8.03 Approval of Sublease or Assignment. In granting such approval, State reserves the right to change the terms and conditions of this Agreement as it may affect the sublessee/assignee. The State shall be entitled to consider, among other items, the proposed sublessee's/assignee's financial condition, managerial capability, business reputation, nature of the proposed sublessee's/assignee's business, the then current fair market rental value of the Premises, and such other factors as may reasonably bear upon the suitability of the sublessee/assignee or transferee as a tenant of the Premises or the holder of this Agreement.

The State may require reimbursement for any additional administrative costs resulting from the assignment.

Consent of the State to an assignment or transfer shall not constitute a waiver of the State's right to approve subsequent assignments or transfers. The acceptance by State of payment or performance following an assignment or transfer shall not constitute consent to any assignment or transfer, and State's consent shall be evidenced only in writing.

8.04 Assignee/Transferee Obligations. Each permitted assignee, or transferee of Lessee shall assume and be deemed to have assumed all obligations of Lessee under this Agreement. Notwithstanding any such assignment or transfer, Lessee shall be and remain jointly and severally liable with the assignee or transferee for all obligation under this Agreement, unless released, in writing, by the State.

8.05 Corporations, General Partnerships, Limited Partnerships. If Lessee is a corporation, any merger, consolidation, liquidation, or any change in ownership or the power to vote the majority of its outstanding voting stock, shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Lessee is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer of interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Lessee is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment.

SECTION 9 IMPROVEMENTS

9.01 Authorized Improvements. No improvement shall be placed on the Premises without the prior written consent of the State. Consent may be granted through this Agreement resulting in the State's approval of the authorized improvements listed herein as Exhibit 9A, or by written Letter of Authorization issued by the State.

9.02 Plan Approval. The plans or specifications for the construction of the authorized improvements listed on Exhibit 9A or authorized by Letter of Authorization issued by State, and for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval.

9.03 Ownership of Improvements. During the Term of this Lease, the improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State, unless State requires their removal pursuant to Section 9.04 below. Throughout the term of this Lease, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises for work or labor done, services performed, or materials used or furnished to be used in or about the Premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents, or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of State under this Lease.

9.04 Condition at End of Lease. Upon vacating the Premises on the termination date, Lessee shall leave the Premises and all improvements thereon in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Premises and return the Premises to grade level free of all debris.

9.05 Surety Bond. A surety bond, certificate of deposit assignment, or letter of credit may be required by State to assure completion of construction or development of any improvements costing in excess of \$2,500.

9.06 Hold Harmless. Lessee shall indemnify, defend and hold harmless State and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the authorized improvements or repairs made at any time to the authorized improvements (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

9.07 Permits; Compliance with Codes. Lessee shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Lessee is responsible, at Lessee's sole cost and expense, to cause the authorized improvements and the Premises to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Premises during the Lease Term, whether now in effect, or hereinafter adopted or enacted.

9.08 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Agreement.

9.09 Lessee's Repairs, Alteration, and Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Agreement, and keep and maintain the whole of the premise, including all improvements in a clean, sanitary and attractive condition.

SECTION 10 ROADS (NOT APPLICABLE)

SECTION 11 DEFAULT AND REMEDIES

11.01 Nonwaiver. Waiver by the State of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by the Lessee of any provision of this Agreement shall not constitute a waiver of any right of the State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

11.02 Attorney Fees and Venue. Each party shall be responsible for their own attorney fees and court costs in the event of a dispute arising out of this agreement except as set forth in subsections 5.04 (Lessee Liens), 7.02 (Hazardous, Toxic, or Harmful Substances), 11.04 (Default), and 12.01 (No Partnership). Venue for resolving such disputes shall be in Thurston County Superior Court of Washington.

11.03 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the State:

Where Agreement provisions require submittal to State office:

Department of Natural Resources - Product Sales and Leasing Division
P.O. Box 470146
Olympia, WA 98504-7016

Where Agreement provisions require submittal to the State at its Region office:
Department of Natural Resources - South Puget Sound Region
950 Farman Avenue North
Enumclaw, WA 98022

To the Lessee at the address affixed with signature or Lessee's last known address.

11.04 Default. If Lessee breaches or defaults on any undertaking, promise or performance called for herein, the State may cancel this Agreement after the Lessee has been given thirty (30) days' notice of the breach or default and such breach or default has not been corrected within such time. Upon such cancellation, all improvements on the Premises shall be forfeited and become the property of the State subject only to any previously approved waiver of interest or security interest. The State may seek damages for any and all violations or defaults with or without canceling this Agreement. In the event State deems the breach or default to constitute a threat to safety, life, or property it may elect to intervene immediately, without notice, to remedy the breach or default and Lessee hereby agrees to repay State for all costs in remedying the breach or default upon demand, together with interest thereon from the date of expenditure at the rate set forth in this Agreement. Alternatively, State may require Lessee itself to act immediately to remedy the breach or default, should State deem it a threat to safety, life, or property.

11.05 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement, and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. However, upon expiration or earlier termination of this Agreement, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.

11.06 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development, the State shall have the option, but is not obligated, to make such performance after giving 10 days written notice to the Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

11.07 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.

11.08 Force Majeure. The Lessee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

SECTION 12 GENERAL PROVISIONS

12.01 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this Agreement and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

12.02 Lessee's Authority. Persons executing this Agreement on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

12.03 State's Authority. This Agreement is entered into by State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

12.04 Preservation of Markers. Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed, the Lessee shall re-establish them by a licensed land surveyor in accordance with U.S. General Land Office standards at Lessee's expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Agreement must be adequately referenced and/or replaced in accordance with Chapter 58.09 RCW. Such references and replacements must be approved by the State prior to removal of said corners, reference points or monuments.

12.05 Condemnation. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Lessee may choose to terminate this Agreement as of the date the condemner takes possession. If either the State or Lessee elects to terminate this Agreement, the rents or other charges to be paid by Lessee will be apportioned by the State and paid by the Lessee to the date of taking. If neither the State nor Lessee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Lessee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Lessee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Lessee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises.

The State and Lessee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

12.06 Interpretation and Numbering. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this Agreement.

12.07 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Lessee hereunder.

12.08 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

12.09 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

12.10 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

12.11 Discrimination. Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

12.12 Exhibits. All conditions appurtenant to this Agreement and said Premises are contained within said exhibits as follows:

Exhibits: 1A Legal Description of Premises & Reservations, 4A Requirements of the Incidental Take Permit (ITP), 4B HCP Requirements, and 9A Authorized Improvements, and during the term of this Agreement, exhibits that may be added, as provided for in this Agreement.

The Lessee expressly agrees to all covenants herein and binds himself for the payment of the rental hereinbefore specified.

KITSAP RIFLE AND REVOLVER CLUB

Dated: March 14, 2002

By: Dave Tipton
Dave Tipton, President

Address: PO Box 134
Bremerton, WA 98337

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: April 11, 2002

By: Gretchen Nicholas
Gretchen Nicholas, Region Manager
South Puget Sound Region *GN*

Approved as to form only this
11th day of April, 2001
Jim Schwartz, Assistant Attorney General

Lessee Acknowledgment
(Corporate/Partnership)

STATE OF Washington)
)ss.
COUNTY OF Thurston)

On this 14th day of March, 2002, before me personally appeared David W Tipton to me known to be the President of the Kittling Ridge & Lewisville Club that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Club, for the uses and purposes therein mentioned, and on oath stated that he she was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Debra Kay Baker
Notary Public in and for the State of Washington
residing at Tyngstad
My commission expires 3-1-2006

NOTARY PUBLIC STATE OF WASHINGTON DEBRA KAY BAKER Commission Expires March 1, 2006
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Department of Natural Resources Acknowledgment

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this 11th day of April, 2002, before me personally appeared GRETCHEN NICHOLAS to me known to be the Region Manager of the Department of Natural Resources of the State of Washington, the Department that executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Shirley M. Carr
Notary Public in and for the State of Washington,
residing at Federal Way
My commission expires 7-29-2004

EXHIBIT 1A

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.

EXHIBIT 4A

REQUIREMENTS OF THE INCIDENTAL TAKE PERMIT (ITP)

1. The ITP is subject to the provisions of Title 50 *Code of federal Regulations Parts* 10, 13, & 17.
2. The Lessee shall immediately notify the State of new locations of permit species covered in the Incidental Take permit (ITP) that are discovered within the area covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied 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. In all circumstances notification must occur within a 24 hour time period.
3. Section 9 of the Endangered Species Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. Harm is further defined by the U.S. Fish and Wildlife Service (FWS) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by FWS as an act or omission which create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
4. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP the Lessee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. The Lessee shall notify the State if there is any doubt as to the identification of a discovered permit species. Lessees may be required to take certain actions to help the State safeguard the well-being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State. Any such requirements will be explained to the Lessee by the State during the Pre-Work Conference.
5. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) in all correspondence and reports concerning permit activities.
6. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Lessee to all authorized officers, employees, contractors, or agents of Lessee conducting authorized activities on the Premises. Any questions Lessee may have about the ITP should be directed to the State.
7. The ITP term for grizzly bears shall expire on January 30, 2002. No activities resulting in the incidental take of grizzly Bears after January 30th, 2002 will be authorized, unless and until the State receives a permit extension.

EXHIBIT 4B

REQUIREMENTS OF THE HABITAT CONSERVATION PLAN (HCP)

At this time, the following sensitive areas, conditions or species have been identified on the Premises. Contact the State for more information on the identified sites.

Riparian Management Zones

Bodies of water, including but not limited to those streams, rivers and lakes, and other lakes and wetlands, shown below, have been identified and/or may be located on the Premises. All activities within the Riparian Management Zone, as defined in the 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 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, may be restricted or not permitted during specific times. All activities must provide for no overall net loss of naturally occurring wetland acreage and function.

EXHIBIT 9A

Authorized Improvements

- (1) One 12 foot X 120 foot covered rifle position shooting building.
- (2) One 12 foot X 105 foot covered pistol position shooting building.
- (3) One 12 foot X 20 foot storage shed.
- (4) One 8 foot X 12 foot target shed.
- (5) Electrical meter service panel and power poles.

Exhibit 2

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands

SPECIAL USE LEASE

Lease No. 60-B068979

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to KITSAP RIFLE AND REVOLVER CLUB (hereinafter "Lessee") the premises in Kitsap County, Washington, the legal description of which is set forth in Exhibit 1A, upon the terms and conditions and for the consideration enumerated herein. Said premises and rights leased hereby are hereinafter referred to as the "Premises".

SECTION 1 OCCUPANCY

1.01 Lease Term. This Agreement shall commence on March 1, 2003 ("Commencement Date") and expire on February 27, 2018.

1.02 No Warranty of Quiet Enjoyment. State makes no warranty of quiet enjoyment of the Premises.

1.03 Condition of Premises. Lessee has had an opportunity to inspect Premises and enters into this Agreement solely in reliance on Lessee's own examination and not by reason of any representation by State. Premises are accepted in its present condition "AS IS WHERE IS". No reliance shall be placed on any opinion, material, or information provided by or through State, and Lessee does so at its own risk, cost and expense.

SECTION 2 USE OF PREMISES

2.01 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

Intensive use and occupancy containing Lessee's improvements, roads, parking areas, open shooting range, targets, and associated infrastructure.	8 Acres
Timberlands, wetlands and similar resource-oriented lands passively utilized by Lessee to provide buffer and safety zones for Lessee's shooting range.	64.41 Acres

In the event the Lessee desires a change in acreage or use, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage or use.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to interest, then to outstanding or delinquent rent, leasehold tax and other charges owed, then to current rent, leasehold tax, and charges.

3.01 Rent. The Lessee shall pay to the State, at Olympia, Washington 98504, in advance, the required rent of \$7,200.00 for the period of March 1, 2003 to February 27, 2004 and annually thereafter subject to adjustment under Subsection 3.06.

3.02 Leasehold Tax. Lessee shall pay to State, the leasehold tax as set forth in RCW Chapter 82.29A - Leasehold Excise Tax as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable.

3.03 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided in Subsection 13.06 (Condemnation).

3.04 Interest Charged for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.05 Late Charge for Failure to Pay. In the event the Lessee fails to make any payment of rent due hereunder upon the date due, the State shall be entitled to collect from the Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by the Lessee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Lessee and such default shall entitle the State to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, though failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity, including those contained in Chapter 59.12 RCW.

3.06 Adjustment of Rent. Beginning on the fifth anniversary of the Commencement Date, and at intervals of five (5) years thereafter (the "Adjustment Date"), a new annual rental will be established. In no event will the adjusted annual rental be less than the previous annual rental. Adjusted rental values established after the designated Adjustment Date shall be due retroactive to such Adjustment Date. The method for such adjustment shall be selected solely by the State from the following options:

(a) Increase of the current annual rent by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, "All Items" Consumer Price Index for All Urban Consumers ("CPI"), US City Average (1982-84=100), between the date five (5) years previous to the Adjustment Date and the Adjustment Date, i.e., adjusted rental amount equals current annual rent times CPI as of current Adjustment Date divided by CPI as of date five (5) years previous. In the event the CPI ceases to be published, the State may substitute such other comparable cost of living index as then may be in publication by a comparable governmental agency.

(b) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through evaluation of pertinent market evidence by State lease administrator and/or other appropriate State personnel.

(c) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through formal appraisal by State's appraiser, certified general appraiser under contract with the State, or such other appraiser as may be agreed to by State. Such appraisal must be performed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) as promulgated by the Appraisal Institute.

The market value will be determined exclusive of Lessee's improvements and as though ownership were in fee simple, not encumbered by lease.

Under (b) and (c) above, the new annual rental above shall be computed by multiplying the market value of the Premises by the then current Prime Rate as of the Adjustment Date plus 200 basis points (Prime Rate + 2.0%). The term "Prime Rate" shall mean the Prime Rate as published in The Wall Street Journal from time to time (or the average Prime Rate if more than one is published), any change in such Prime Rate to effect a change in the rate charged hereunder on the date of each such change. If The Wall Street Journal ceases to be published or ceases to publish a Prime Rate, then State shall designate another nationally recognized business publication which publishes such a rate or such rates which does, in the reasonable opinion of State, represent the "Prime Rate" as defined herein.

3.07 Failure to Adjust Not Waiver. Failure of State to adjust rent pursuant to Subsection 3.06 above at the end of any five (5) year period, shall not be a waiver by State of the right to adjust rent at the end of any subsequent five (5) year period. State shall retain the right, for so long as this Agreement remains in effect, to adjust rent as of the end of any five (5) year period, as though all prior adjustments had been made in accordance with the above provisions.

SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this Agreement.

4.02 Compatible Uses. State reserves for itself, its successors and assigns, the right at all times for any purpose to cross and re-cross the Premises at any place or grade, to grant easements/licenses over or leases to the Premises, to sell, or otherwise dispose of minerals, coal, oil, timber, gas, or other valuable materials from the Premises insofar as the State's activities on the Premises and any grant of rights the State makes to any person or entity shall not unreasonably interfere with the activities permitted hereunder.

4.03 Non-Default Termination. State reserves the right to terminate this Agreement upon sixty (60) days' written notice in the event the State includes the Premises in a plan for higher and better use, land exchange or sale.

SECTION 5 SPECIAL RESTRICTONS

5.01 Permits and Conformance With Laws.

(a) Lessee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Lessee's permitted use including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Premises, or for the conduct of any business upon the Premises at the sole cost and expense of Lessee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to State on request.

(b) Lessee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Premises and the use thereof, and shall correct at the Lessee's own cost and expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use. In no event shall Lessee undertake or suffer any activity to be conducted upon the Premises which constitutes a nuisance or which is a threat to the health or welfare of the general public.

(c) Lessee shall cause all work on the Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

5.02 Other Restrictions on Use.

(a) Lessee shall cut no State timber or remove State-owned valuable material, without prior written consent of the State. Prior to State's authorization for the cutting of timber, or removal of valuable material, the Lessee must pay to the State the fair market value of the timber or valuable material, as determined by the State.

(b) Lessee shall take all reasonable precautions to protect the land and improvements on the Premises from fire, make every reasonable effort to report and suppress such fires as may affect the Premises, and shall be subject to applicable fire laws affecting the Premises.

(c) Lessee shall prevent accumulation of equipment parts or "bone yards" on the Premises.

(d) This Agreement does not convey rights to media uses, communication sites, or any use on the Premises other than those expressly stated in this Agreement.

5.03 Habitat Conservation Plan. The Premises are located within an area that is subject to State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 (ITP) as supplemented by Permit No. 1168 (Collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Lessee and all persons acting under Lessee shall comply with the terms and conditions set forth in Exhibit 5A while operating on the Premises. State shall have the right to modify these terms and conditions from time to time to comply with the Habitat Conservation Plan, the ITP, the Endangered Species Act, the implementing regulations, and amendments thereto, or the requirements of the federal agencies administering these laws.

SECTION 6 UTILITIES, TAXES, LIENS

6.01 Utilities and Maintenance. During the term of this Agreement, Lessee shall pay all expenses incurred by Lessee in the use, enjoyment, and operation of the Premises, including, but not limited to, utility charges and all costs of maintaining and repairing the Premises and all improvements thereon whether now existing or hereafter installed. Lessee shall indemnify and hold the State harmless against any loss, liability, or expense resulting from any failure of Lessee to pay all such charges when due.

6.02 Taxes and Assessments.

(a) Lessee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the installation of Lessee owned improvements on the Premises, Lessee's leasehold interest therein, and Lessee's use and enjoyment thereof.

(b) Lessee shall pay its prorated share of all assessments that are legally required to be paid now or may be charged during the Agreement term to the Premises or Lessee owned improvements thereon. Lessee shall not cause or suffer the imposition of any assessment upon the Premises without the prior written consent of State. In the event any new assessment is proposed which affects the Premises, Lessee shall immediately notify State of such proposal after Lessee has knowledge or receives notice thereof. Any assessment upon the Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

6.03 Lessee Liens. Lessee shall not suffer or permit any lien to be filed against the State's interest in the Premises, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee. If any such lien is filed, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in

writing by the State in advance. Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

SECTION 7 LESSEES INDEMNITY; INSURANCE REQUIREMENTS

7.01 Indemnity. Lessee releases and shall indemnify and defend (with counsel acceptable to State) State, its employees, officers, and agents from and against any and all claims arising out of the use, occupation or control of the Premises by Lessee, its agents, and employees. A "claim" as used in this subsection means any claim of any nature whatsoever for penalties, financial loss, damages (including but not limited to bodily injury, sickness, disease or death, or injury to or destruction of property, land and other natural resources including the loss of use thereof), costs or expenses (including but not limited to attorney's fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the State, its officials, employees, or agents, except as provided in this subsection. To the extent that RCW 4.24.115 applies, Lessee shall not be required to indemnify State from State's sole or concurrent negligence. Lessee waives its immunity under Title 51 to the extent it is required to indemnify the State herein.

7.02 Insurance Requirements. Lessee shall, at all times during the term of this contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at State's option.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the department's risk manager before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Before starting work, Lessee shall furnish with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements

specified in the contract and, if requested, copies of policies to State. The certificate of insurance shall reference the State of Washington, Department of Natural Resources, and the lease number.

Lessee shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Lessee's liability or responsibility.

The State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

Lessee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract. All insurance policies must expressly waive any right of subrogation by the insurance company against the State and the State's officials, employees, and agents.

If Lessee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Lessee must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee, and such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this contract.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Lessee shall maintain general liability (CGL) insurance covering claims for bodily injury, personal injury, or property damage arising on the property and/or out of Lessee's operations and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Employer's Liability ("Stop Gap") Insurance. Lessee shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Workers' Compensation Coverage. Lessee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Lessee and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Lessee, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee or subcontractor or sub-subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Lessee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Builders Risk Insurance. If applicable, Lessee shall buy and maintain in force builders risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance shall be written on a completed form and in an amount equal to the value of the completed building, subject to subsequent modifications to the sum. The insurance shall be written on a replacement cost basis. The insurance shall name as insureds State, Lessee, and all subcontractors and sub-subcontractors in the work.

Insurance described above shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse. Insurance described above shall cover the entire work at the site including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the site. The policy shall cover the

cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance or regulation.

Any deductible applicable to the insurance bought in compliance with the policy described above shall be identified in the contract documents and the responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of the Lessee. If any part of any loss is not covered because of the application of a deductible amount not identified in the contract documents, Lessee will pay such loss. Lessee shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by State. If testing is being performed, such insurance shall cover such operations. This insurance shall name as insureds State, Lessee, and all subcontractors and sub-subcontractors in the work.

SECTION 8 WEEDS, HARMFUL SUBSTANCES

8.01 Weed Control. Lessee shall control all weeds on the Premises. Lessee shall be responsible for, or shall immediately reimburse State for, any all weed control cost incurred, as a result of Lessee's failure to control all weeds on said Premises.

Lessee shall prevent weed infestations by applying management practices which discourage their establishment or spread. The Lessee shall detect and control the invasion of new weeds. Weeds will be controlled using appropriate mechanical, biological and chemical treatments that meet the requirements of Washington State and Federal law.

Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

- a. Preventing weed problems;
- b. Monitoring for the presence of weed species;
- c. Establishing the density of the weed population (which may be zero) that can be tolerated;
- d. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
- e. Evaluating the effects and efficacy of weed control treatments.

8.02 Hazardous, Toxic, or Harmful Substances.

(a) Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by the State, or unless permitted by Subsection 2.01 (Permitted Use). If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.

(b) Hazardous, Toxic, or Harmful Substances.

(1) Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under Subsection 2.01 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall:

(i) Immediately notify the State of: all spills or releases of any Hazardous Substance affecting the Premises; all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended; all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises; and all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises; and

(ii) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises.

(2) Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 9 ASSIGNMENTS

Assignment. Lessee shall not hypothecate, mortgage, assign, sublease, transfer, or otherwise alienate this Agreement ("Assignment"), or any interest therein, without the prior written consent of State, which consent shall not be unreasonably withheld. In granting any such consent under this clause State shall be entitled to consider, among other items, the proposed assignee's, sublessee's or transferee's financial condition, business reputation, business, and such other factors as may reasonably bear upon the suitability of the assignee, sublessee, or transferee as lessee of the Premises. If Lessee is a corporation, partnership, or other association, (1) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (2) the sale of all or substantially all of the assets of Lessee shall be deemed to constitute an "assignment" of this Agreement which requires consent of State. The consent of State to any one assignment shall not constitute a waiver of State's right to consent to subsequent assignments, nor shall consent of State to any one assignment relieve any party previously liable as Lessee from any obligations under this Agreement, who shall remain joint and severally liable as primary obligor and not as surety. The acceptance by State of the payment of rent following an assignment shall not constitute consent to any assignment and State's consent shall be evidenced only in writing. The State may require reimbursement for any additional administrative costs resulting from the assignment.

SECTION 10 IMPROVEMENTS

10.01 Authorized Improvements. No improvement shall be placed on the Premises without the prior written consent of the State. Consent may be granted through this Agreement resulting in the State's approval of the authorized improvements listed herein as Exhibit 10A, or by written Letter of Authorization issued by the State.

10.02 Plan Approval. The plans or specifications for the construction of the authorized improvements listed on Exhibit 10A or authorized by Letter of Authorization issued by State, and for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval.

10.03 Ownership of Improvements. During the Term of this Agreement, the improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State, unless State requires their removal pursuant to Section 10.04 below. Throughout the term of this Agreement, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises for work or labor done, services performed, or materials used or furnished to be used in or about the Premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents, or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of State under this Agreement.

10.04 Condition at End of Lease. Upon vacating the Premises on the termination date, Lessee shall leave the Premises and all improvements thereon in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Agreement and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Premises and return the Premises to grade level free of all debris.

10.05 Surety Bond. A surety bond, certificate of deposit assignment, or letter of credit may be required by State to assure completion of construction or development of any improvements costing in excess of \$2,500.

10.06 Hold Harmless. Lessee shall indemnify, defend and hold harmless State and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the authorized improvements or repairs made at any time to the authorized improvements (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

10.07 Permits; Compliance with Codes. Lessee shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Lessee is responsible, at Lessee's sole cost and expense, to cause the authorized improvements and the Premises to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Premises during the Agreement Term, whether now in effect, or hereinafter adopted or enacted.

10.08 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Agreement.

10.09 Lessee's Repairs, Alteration, and Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Agreement, and keep and maintain the whole of the premise, including all improvements in a clean, sanitary and attractive condition.

SECTION 11 ROADS (NOT APPLICABLE)

SECTION 12 DEFAULT AND REMEDIES

12.01 Default. In the event of any material breach of any provision of this Agreement by Lessee, the breach, after expiration of any grace period as provided in this subsection, shall be

deemed a default entitling State to cancel this Agreement and seek any other remedies set forth in this Agreement or otherwise available at law or equity. State shall deliver to Lessee notice of the breach and a demand that the same be remedied immediately. Lessee shall not be in default if the breach pertains to the payment of money and Lessee cures the breach within thirty (30) days of receipt of the notice, or if the breach pertains to a matter other than the payment of any monies due under this agreement, Lessee shall after receipt of the notice promptly commence to cure the breach and shall cure the breach within forty-five (45) days after receipt of the notice. If such breach is non-monetary in nature, and, as determined by State, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), Lessee shall commence to cure such breach within said period and diligently pursue such action with continuity to completion. If Lessee fails to cure a default, all Lessee owned improvements shall at the option of State, be removed by Lessee, be removed by State at the cost to Lessee, or become the property of State.

12.02 Reentry. In the event of any default by Lessee, State shall have the right, with or without canceling the Agreement, to reenter the Premises and remove all persons and property from Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in State's discretion at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this Agreement unless a written notice of termination is given to Lessee.

12.03 Termination of Agreements. Whether or not State elects to terminate this Agreement on account of any default by Lessee and subject to any non-disturbance and attornment agreements, if any, State shall have a right to terminate any and all subleases, licenses, concessions or other arrangement for possession affecting Premises. Alternatively, State, in its sole discretion, may succeed to Lessee's interest in such sublease, license, concession or arrangement, and Lessee shall have no further right to or interest in the rent or other consideration receivable thereunder.

12.04 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement that require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. Upon expiration or earlier termination of this Agreement, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.

12.05 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, the State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to the Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

12.06 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.

12.07 Nonwaiver. Waiver by the State of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by the Lessee of any provision of this Agreement shall not constitute a waiver of any right of the State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

12.08 Force Majeure. The Lessee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

12.09 Insolvency of Lessee. If the Lessee becomes insolvent, a receiver is appointed, or Lessee's interest is transferred by operation of law by reason of insolvency, the State may terminate this Agreement at its option. Insolvency as used herein will mean the inability of the Lessee to meet its monetary obligations under this Agreement as they come due.

SECTION 13 GENERAL PROVISIONS

13.01 Governing Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

13.02 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this Agreement, and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

13.03 Lessee's Authority. Persons executing this Agreement on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

13.04 State's Authority. This Agreement is entered into by State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

13.05 Preservation of Markers. Lessee shall not destroy any land survey corner monuments and reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from the State, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during construction or operations must be adequately referenced and replaced, at the Lessee's cost, under the direction of a State of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington, including but not limited to RCW 58.24, and all relevant Department of natural Resources regulations.

13.06 Condemnation. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Lessee may choose to terminate this Agreement as of the date the condemner takes possession. If either the State or Lessee elects to terminate this Agreement, the rents or other charges to be paid by Lessee will be apportioned by the State and paid by the Lessee to the date of taking. If neither the State nor Lessee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Lessee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Lessee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Lessee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises.

The State and Lessee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

13.07 Interpretation and Numbering. This lease has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this lease at the option of the State. Cross references to sections or subsections that are not included in this lease should not be construed as material references.

13.08 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Lessee and the State hereunder.

13.09 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

13.10 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

13.11 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

13.12 Attorney Fees. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

13.13 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the State:

Where Agreement provisions require submittal to State office:
Department of Natural Resources
Product Sales and Leasing Division
P.O. Box 47061
Olympia, WA 98504-7061

Where Agreement provisions require submittal to the State at its Region office:

Department of Natural Resources
South Puget Sound Region Region
950 Farman Avenue North
Enumclaw, WA 98022

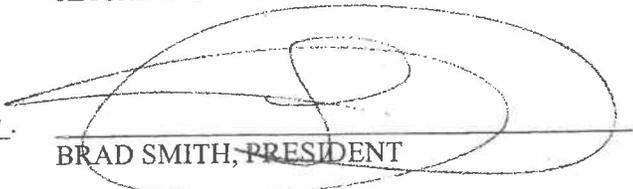
To the Lessee at the address affixed with signature or Lessee's last known address.

13.14 Exhibits. This agreement is subject to the terms and conditions of exhibits referenced herein, which are attached hereto and by this reference made a part hereof.

Exhibits: 1A - Legal Description and Encumbrances, 5A - HCP Requirements, 10A - Authorized Improvements

KITSAP RIFLE AND REVOLVER CLUB

Dated: Nov. 12th, 2003.


BRAD SMITH, PRESIDENT

Address: 4900 Seabeck Hwy NW
Bremerton, WA 98312

Phone: (360) 373-1007

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: November 17, 2003.


ART TASKER,
South Puget Sound Region Manager

Approved as to form this
27 day of February, 2003
Jim Schwartz, Assistant Attorney General

**NOTARIAL CERTIFICATE
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

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 he signed this instrument, on oath stated that he authorized to execute the instrument, and acknowledged it as the president of Kitsap Rifle and Revolver Club to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/12/03

(Seal or Stamp)

Alma M. Singleton
NOTARY PUBLIC in and for the
State of WASHINGTON
My appointment exp 9/1/05

EXHIBIT 1A

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.

EXHIBIT 10A
Authorized Improvements

- (1) One 12 foot X 120 foot covered rifle position shooting building.
- (2) One 12 foot X 105 foot covered pistol position shooting building.
- (3) One 12 foot X 20 foot storage shed.
- (4) One 8 foot X 12 foot target shed.
- (5) Electrical meter service panel and power poles.

EXHIBIT 5A
HCP REQUIREMENTS

1. The Lessee shall immediately notify the State of new locations of Permit species covered in the Incidental Take permit (ITP) that are discovered within the leased Premises covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied 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. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the leased Premises the Lessee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Lessee may be required to take certain actions to help the State safeguard the well being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State.
3. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) in all correspondence and reports concerning Permit activities.
4. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Lessee to all authorized officers, employees, contractors, or agents of Lessee conducting authorized activities on the Property. Any questions Lessee may have about the ITP should be directed to the State.
5. At this time, the following sensitive areas, conditions or species have been identified on the Premises. Contact the State for more information on the identified areas.

Riparian Management Zones

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 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 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 acreage and function.



Kitsap County Prosecuting Attorney's Office

Russell D. Hauge
Prosecuting Attorney

Please reply to: Civil Division

September 10, 2010

Carol I. Maves
Office Administrator

Mr. Stephen Hart
Office of the Staff Judge Advocate
I Corps, Joint Base Lewis-McChord
Mail Stop 69
Box 339500

Christian C. Casad
Case Management
Division Chief

Joint Base Lewis-McChord, WA 98433-9500

Timothy A. Drury
Felony and Juvenile
Division Chief

RE: Request for Expert Witness Assistance or Tasking for Mr. Dale Richter,
Firearms Range Expert, *Sent via email and U.S. Mail*

Claire A. Bradley
District/Municipal
Division Chief

Dear Mr. Hart:

Jacquelyn M. Aufderheide
Civil/Child Support
Division Chief

This letter is to formally request the assistance of the Joint Base Lewis-McChord and the assistance of an expert witness on your staff, Mr. Dale Richter. As I have described to you, Kitsap County has filed a nuisance action against the Kitsap Rifle and Revolver Club in Pierce County Superior Court. We have developed an expert witness who has determined that the shooting activities at the Club's property in central Kitsap County constitutes an ongoing danger to the hundreds of residents living literally within shooting distance of the Club. Our expert, Gary Koon, is Deputy Operations Officer, Marine Corps Security Force Battalion, Naval Base Kitsap-Bangor.

www.kitsapgov.com/pros

Mr. Koon has recommended that we consult with an expert on staff at JBLM, who can conduct an even more thorough safety assessment of this Club and can peer-review Mr. Koon's work thus far. Mr. Koon has developed surface danger zone maps that demonstrate that the Club – as currently configured and operated – threatens populated areas of Kitsap County.

Our case petitions the Court to order that the Club “stand down” until it can undergo a professional range safety analysis and undergo all of the necessary land use, site development and other permits necessary for some significant changes that have occurred to the Club's physical facilities and practices during the past decade or so. It is Mr. Koon's opinion that Mr. Richter or one of his colleagues can offer the best expertise and testimony available in the field of firearm range safety.

Adult Criminal & Administrative Divisions • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Juvenile Criminal Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-5500 • FAX (360) 337-5509
Special Assault Unit • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7148 • FAX (360) 337-7229

Bainbridge Island Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Port Orchard Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Poulsbo Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949

Civil Division • 614 Division Street, MS-35A • Port Orchard, Washington 98366-4681 • (360) 337-4992 • FAX (360) 337-7083
Child Support Division • 614 Division Street, MS-35B • Port Orchard, Washington 98366-4681 • (360) 337-7020 • FAX (360) 337-5733



Mr. Stephen Hart
September 10, 2010
Page 2

As you probably know, Kitsap County is home to thousands of active duty and retired members of our Country's armed forces. More than a few of them live within the surface danger zones we have identified. Several of them have come forward to register their concerns about the Club and its practices. On their behalf and on behalf of Kitsap County, thank you for your consideration of our request. Please do not hesitate to contact me at 360-337-4979 or nwachter@co.kitsap.wa.us with any questions you may have.

Sincerely yours,

RUSSELL D. HAUGE
Prosecuting Attorney



NEIL R. WACHTER
Senior Deputy Prosecuting Attorney

Enclosure: Complaint (U.S. Mail copy sent without exhibits to complaint)

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 12:37 PM
To: Carrie A. Bruce
Subject: FW: Records Request
Attachments: Larson_Wade_Records(2of5).zip; Larson_Wade_Records_(3of5).zip

Hi - in the KRRC directory can you please place these "zip" files? (and ask Don to send you "1 of 5")? thanks,

Neil

From: Don Burger
Sent: Tuesday, September 07, 2010 4:25 PM
To: wadelarson2@yahoo.com
Cc: R'Lene Orr
Subject: Records Request

Mr. Larson - In response to your records request of August 11, 2010 for "all records of comments regarding Kitsap Rifle and Revolver Club for the last 1-1/2 years at all sources they may have been routed..." and as a follow-up to the initial set of records I forwarded you last week, please see the two attached zip files.

I am continuing to process the balance of records that we have located and anticipate forwarding them to you no later than Thursday of next week (Sept 16, 2010).

Sincerely - Don Burger

Don Burger
Kitsap County
Records Coordinator
(360) 307-4261
(360)337-7052 (FAX)
www.kitsapgov.com

NEW OFFICE HOURS:
M -TH 8:00 AM - 5:00 PM
Effective May 4th, 2009

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 12:54 PM
To: Jacquelyn M. Aufderheide; lone S. George
Cc: Carrie A. Bruce
Subject: FW: Glen Milner v. KCSO case
Attachments: revised stipulation re 2nd motion to amend 9 9 10.doc; revised Second_Amended_Complaint (proposed) 9 9 10.pdf

Dear Jacquelyn and lone -

[REDACTED]

From: Kathy George [mailto:kgeorge@hbslegal.com]
Sent: Thursday, September 09, 2010 1:35 PM
To: Neil R. Wachter
Cc: Tracey L. Hamilton-Oril; 'Lobsenz, Jim'
Subject: RE: Glen Milner v. KCSO case

[REDACTED]

[REDACTED]

[REDACTED]

Regards,
Kathy

From: Neil R. Wachter [mailto:NWachter@co.kitsap.wa.us]
Sent: Wednesday, September 08, 2010 2:31 PM
To: 'Kathy George'
Cc: Tracey L. Hamilton-Oril; 'Lobsenz, Jim'
Subject: Glen Milner v. KCSO case

Dear Kathy and Jim

[REDACTED]

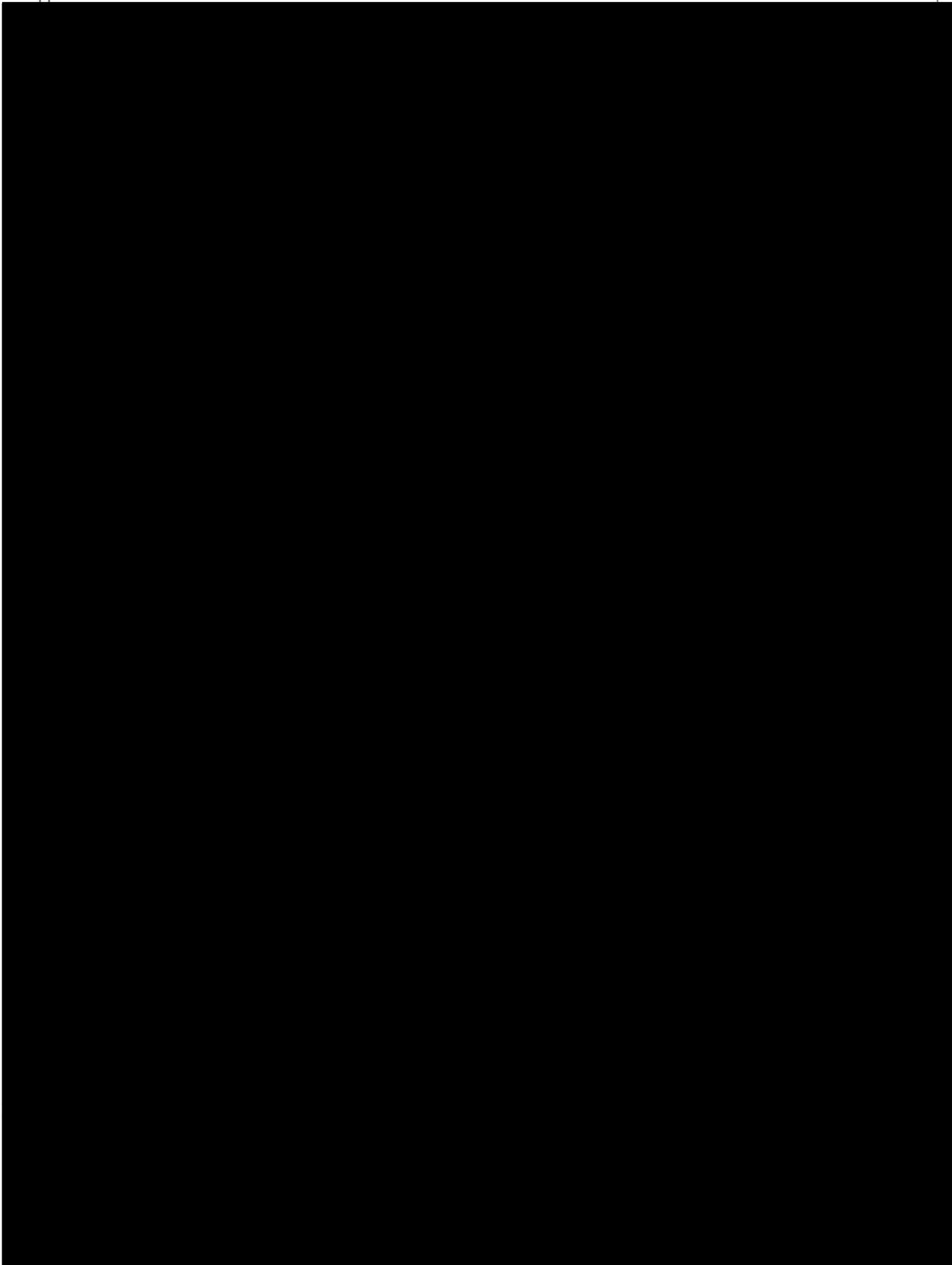
[REDACTED]

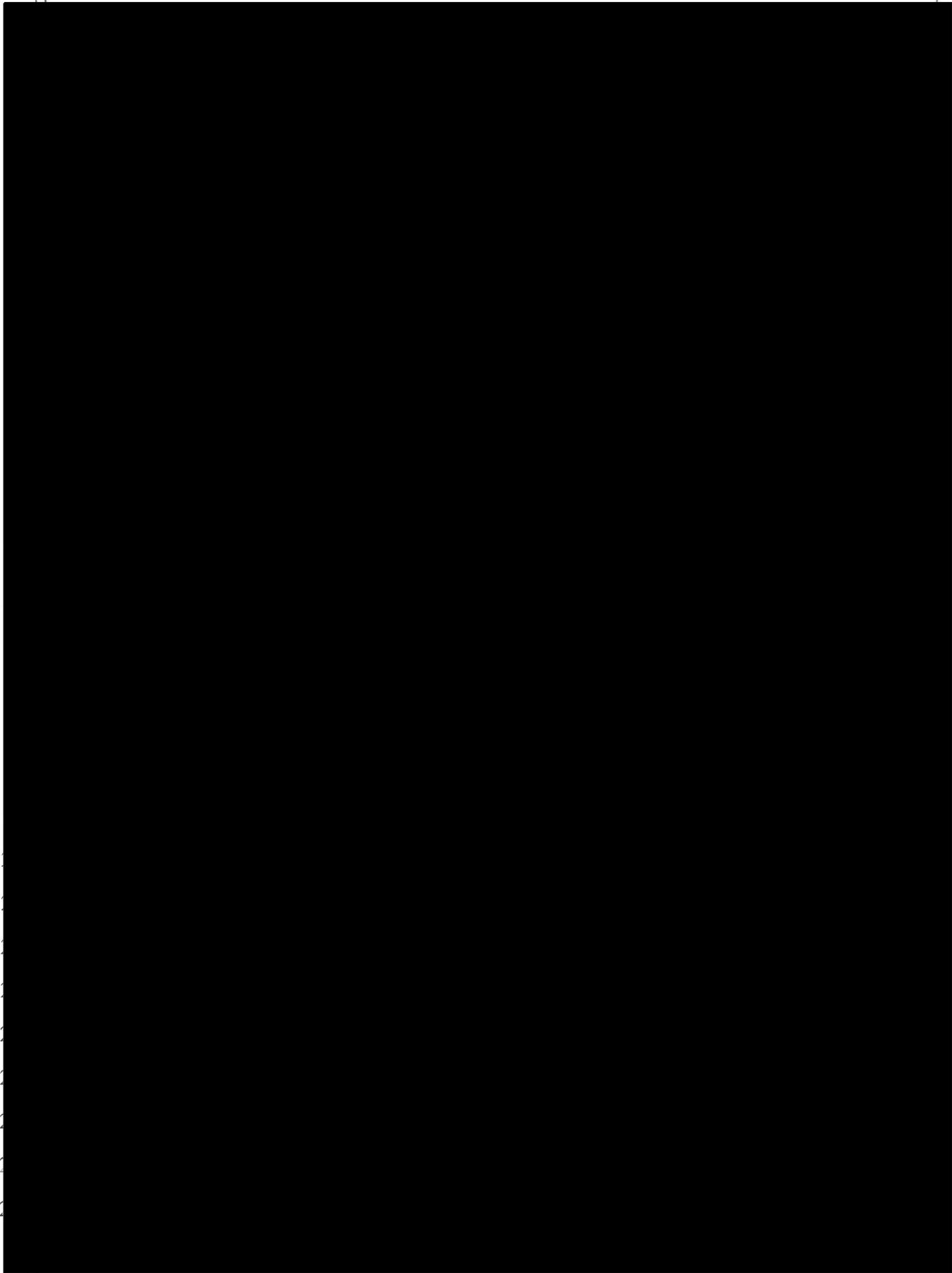
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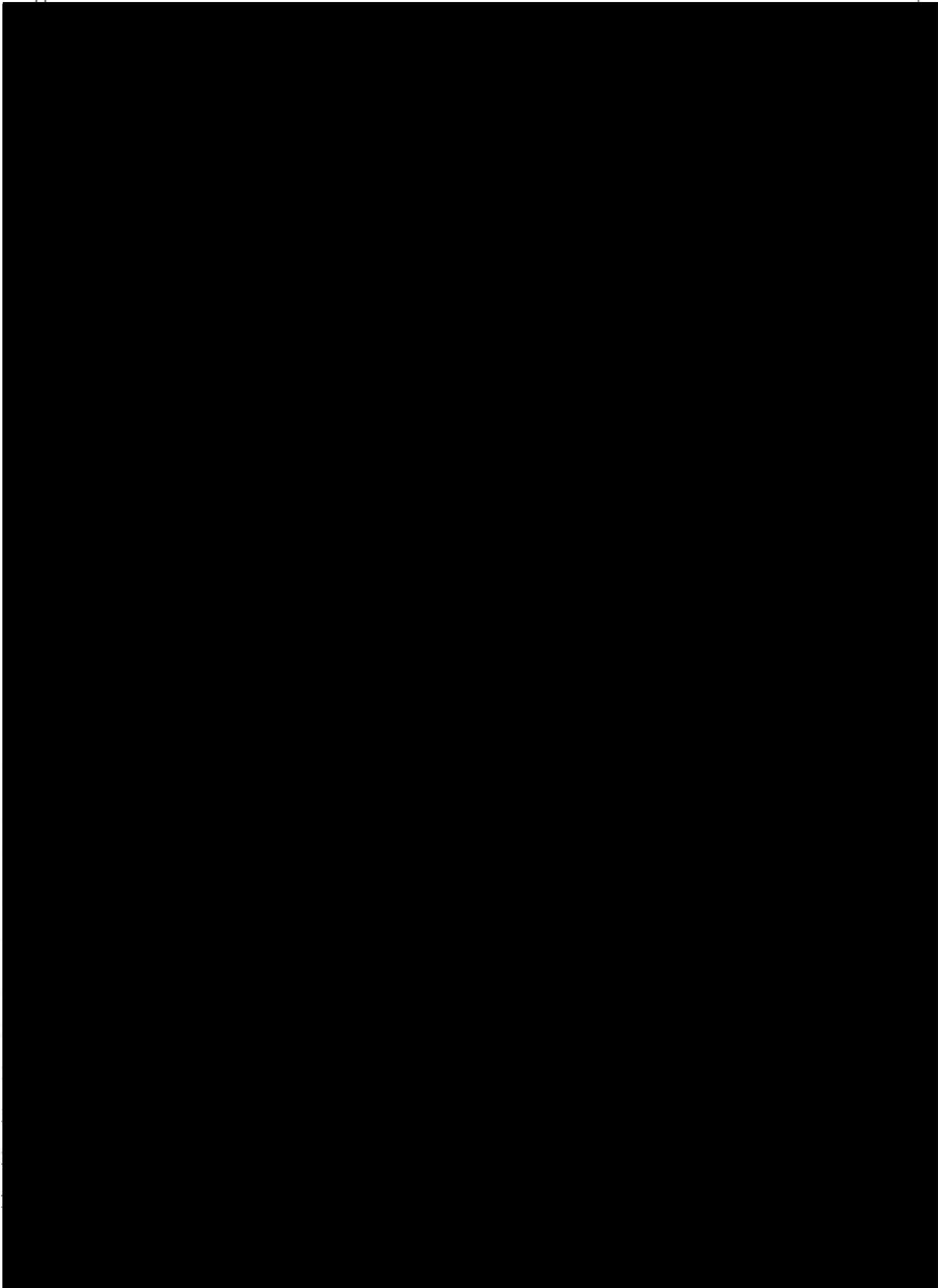
Neil

Neil R. Wachter
Sr. Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
614 Division Street, MS-35A
360-337-4979 direct
360-337-7083 facsimile
nwachter@co.kitsap.wa.us

Notice: This email may contain confidential or privileged information. If you are not the intended recipient of this email, please delete it immediately.







Don Burger

From: Richard Kirton [RKirton@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 1:11 PM
To: Neil R. Wachter
Cc: Carrie A. Bruce; Stephanie Browning
Subject: Re: Request - krrc confidential

[REDACTED]

[REDACTED]

Sent from my iPhone

On Sep 10, 2010, at 9:44, "Neil R. Wachter" <NWachter@co.kitsap.wa.us> wrote:

Richard,

[REDACTED]

Thanks,

Neil

Neil R. Wachter

Sr. Deputy Prosecuting Attorney

Kitsap County Prosecutor's Office, Civil Division

614 Division Street, MS-35A

360-337-4979 direct

360-337-7083 facsimile

nwachter@co.kitsap.wa.us

Notice: This email may contain confidential or privileged information. If you are not the intended recipient of this email, please delete it immediately.

Don Burger

From: Stephanie Browning [SBrowning@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 1:12 PM
To: Richard Kirton; Neil R. Wachter
Cc: Carrie A. Bruce
Subject: RE: Request - krrc confidential

[REDACTED]

Stephanie Browning
Office Supervisor
Kitsap County CENCOM 9-1-1
360-307-5801 phone
360-792-5982 fax

From: Richard Kirton
Sent: Friday, September 10, 2010 1:11 PM
To: Neil R. Wachter
Cc: Carrie A. Bruce; Stephanie Browning
Subject: Re: Request - krrc confidential

[REDACTED]

[REDACTED]

[REDACTED]

On Sep 10, 2010, at 9:44, "Neil R. Wachter" <NWachter@co.kitsap.wa.us> wrote:

Richard,

[REDACTED]

Thanks,

Neil

Neil R. Wachter

Sr. Deputy Prosecuting Attorney

Kitsap County Prosecutor's Office, Civil Division

614 Division Street, MS-35A

360-337-4979 direct

360-337-7083 facsimile

nwachter@co.kitsap.wa.us

Notice: This email may contain confidential or privileged information. If you are not the intended recipient of this email, please delete it immediately.

Don Burger

From: Charlotte Garrido [CGarrido@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 1:43 PM
To: April Borbon
Cc: Josh W. Brown; Neil R. Wachter; Steve Bauer
Subject: RE: Kitsap Rifle and Revolver Club

April,
Thank you for taking the time to convey your concerns. I would love to be able to discuss this matter further with you, and one day will do so. In the meantime, the commissioners have been asked to refer all communications about this issue to Neil Wachter.

Charlotte Garrido

Kitsap County Commissioner
(360) 337-7097

From: April Borbon [mailto:aprilborbon@██████████]
Sent: Friday, September 10, 2010 11:22 AM
To: Steve Bauer; Charlotte Garrido; Josh W. Brown
Subject: Kitsap County's Lawsuit Against the Kitsap Rifle and Revolver Club

I saw the recent article in the Kitsap Sun about the county filing a lawsuit to shut down the Kitsap Rifle and Revolver Club and was shocked. In the article, the prosecutor said that he filed the lawsuit on behalf of the county and since you are our county representatives, does that mean that the Kitsap County Commissioners tasked the prosecutor with filing this lawsuit? This doesn't seem to make a whole lot of sense considering that not too long ago, you thought that having a rifle club where the public could safely shoot was such a good idea that you pushed forward with turning over the land that the rifle club sits on so that the club could remain as a benefit to the people of our county.

You know, I know, and apparently all of the 160+ people who commented on the recent Kitsap Sun article know that this is nothing more than a personal vendetta by the prosecutor against Marcus Carter yet you are allowing this frivolous suit to go forward. I am amazed that such a blatant act of intimidation and manipulation of the justice system could be allowed to take place in our county! The lawsuit was supposedly brought about due to issues of public safety however the club has an exceptional 80+ year record of safety. There was no incident that precipitated this lawsuit yet somehow, an "expert" suddenly fell out of the sky proclaiming that "someone could be killed" IF a bullet were to leave the facility yet there was no proof that this had ever happened. Of course an airplane "could" fall out of the sky but I don't see the NTSB suddenly grounding all airplanes because of what "could" happen.

The rifle club has been in its location far longer than any of the housing developments, schools, and parks that are in the area. Obviously the county would not have allowed this development to happen in the area that it did, fully knowing exactly where the rifle club was sited, if they thought that the rifle club posed a hazard to the surrounding area.

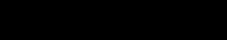
I am astounded that such an act of duplicity partaken of by a group of people who were elected to represent the people of our county has been allowed to happen. Looking at the timing of this lawsuit, especially when there was not a single incident that occurred to make it absolutely necessary to file a lawsuit this very instant leaves me doubly astounded. This is political suicide by the prosecutor and yourselves as who would instigate

such a divisive and public fiasco two months before an election?? Amazing stupidity if you ask me.

I think the voters of our county are fairly smart people. They know when they are being taken for a ride and I highly doubt that people accustomed to a system of fair justice will stand for this. As my representative, I am requesting that you actually DO SOMETHING to stop this vengeful action by the county prosecutor's office.

April Borbon

www.aprilborbon.com

Phone: 

Don Burger

From: Charlotte Garrido [CGarrido@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 1:46 PM
To: Neil R. Wachter
Subject: FW: Kitsap Rifle and Revolver Club

Here's a second message.

C

Charlotte Garrido

Kitsap County Commissioner
(360) 337-7097

From: Richard Lively [mailto:wileecoyote37@]
Sent: Friday, September 10, 2010 10:19 AM
To: Josh W. Brown
Cc: Steve Bauer; Charlotte Garrido; Debbie Austin; Derek Kilmer
Subject: Kitsap Rifle and Revolver Club

Dear Mr. Brown

I wish to bring to your attention the Lawsuit filed by the Prosecutors Office against Kitsap Rifle and Revolver Club.

I compete in handgun matches through out this state and nationally. I'm a Range Officer certified by the National Range Officers Institute. I have served as a Range Officer in local, regional and national handgun competitions. I am going to Las Vegas in October to again serve as a Range officer and to compete in the National Handgun Championship match. I have been to and shot at many gun ranges across this nation and want to make it very clear - Kitsap Rifle and Revolver Club operates above the safety standards used else where. There is not a safety issue with this gun club. Their 80 year history also bears this out.

I have watched the way the county offices have been dealing with the gun club (I am not an officer of the club). It is very obvious that some one in county government has a vendetta against KRRC. This is not a safety issue - some one has a vendetta against the gun club. This lawsuit is a waste of tax payers money. The prosecutor's office has been wasting the tax payers money for 11 years in trying to prosecute the Executive Officer of the gun club. Fourteen times there has been a decision exonerating Marcus Cater yet the prosecutors office continues to harass Mr. Carter and the gun club. It is time for someone to step in and direct the prosecutor's office to stop wasting money in a personal vendetta.

Please take a personal interest in this case, review all the facts and stop the harassment of Kitsap Rifle and Revolver Club.

Thank you for your time and please keep me posted.

Richard Lively
Kitsap County resident

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 2:28 PM
To: Carrie A. Bruce
Subject: krrc emails
Attachments: RE: Kitsap Rifle and Revolver Club; FW: Kitsap Rifle and Revolver Club

Carrie - [REDACTED]

Don Burger

From: Charlotte Garrido [CGarrido@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 1:43 PM
To: April Borbon
Cc: Josh W. Brown; Neil R. Wachter; Steve Bauer
Subject: RE: Kitsap Rifle and Revolver Club

April,
Thank you for taking the time to convey your concerns. I would love to be able to discuss this matter further with you, and one day will do so. In the meantime, the commissioners have been asked to refer all communications about this issue to Neil Wachter.

Charlotte Garrido
Kitsap County Commissioner
(360) 337-7097

From: April Borbon [mailto:aprilborbon@]
Sent: Friday, September 10, 2010 11:22 AM
To: Steve Bauer; Charlotte Garrido; Josh W. Brown
Subject: Kitsap County's Lawsuit Against the Kitsap Rifle and Revolver Club

I saw the recent article in the Kitsap Sun about the county filing a lawsuit to shut down the Kitsap Rifle and Revolver Club and was shocked. In the article, the prosecutor said that he filed the lawsuit on behalf of the county and since you are our county representatives, does that mean that the Kitsap County Commissioners tasked the prosecutor with filing this lawsuit? This doesn't seem to make a whole lot of sense considering that not too long ago, you thought that having a rifle club where the public could safely shoot was such a good idea that you pushed forward with turning over the land that the rifle club sits on so that the club could remain as a benefit to the people of our county.

You know, I know, and apparently all of the 160+ people who commented on the recent Kitsap Sun article know that this is nothing more than a personal vendetta by the prosecutor against Marcus Carter yet you are allowing this frivolous suit to go forward. I am amazed that such a blatant act of intimidation and manipulation of the justice system could be allowed to take place in our county! The lawsuit was supposedly brought about due to issues of public safety however the club has an exceptional 80+ year record of safety. There was no incident that precipitated this lawsuit yet somehow, an "expert" suddenly fell out of the sky proclaiming that "someone could be killed" IF a bullet were to leave the facility yet there was no proof that this had ever happened. Of course an airplane "could" fall out of the sky but I don't see the NTSB suddenly grounding all airplanes because of what "could" happen.

The rifle club has been in its location far longer than any of the housing developments, schools, and parks that are in the area. Obviously the county would not have allowed this development to happen in the area that it did, fully knowing exactly where the rifle club was sited, if they thought that the rifle club posed a hazard to the surrounding area.

I am astounded that such an act of duplicity partaken of by a group of people who were elected to represent the people of our county has been allowed to happen. Looking at the timing of this lawsuit, especially when there was not a single incident that occurred to make it absolutely necessary to file a lawsuit this very instant leaves me doubly astounded. This is political suicide by the prosecutor and yourselves as who would instigate

such a divisive and public fiasco two months before an election?? Amazing stupidity if you ask me.

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April Borbon

www.aprilborbon.com

Phone: [REDACTED]

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(360) 337-7097

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Please take a personal interest in this case, review all the facts and stop the harassment of Kitsap Rifle and Revolver Club.

Thank you for your time and please keep me posted.

Richard Lively
Kitsap County resident

Don Burger

From: Roy P. Barton [RPBarton@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 2:35 PM
To: Neil R. Wachter
Subject: FW: Request for License Information-Art

I received this response to my request to DOL for info on the KRRC. I will follow up with him on Monday. You have the documents from the Sec. of State's office already.

Roy

From: DOL INT MLS [MLS@DOL.WA.GOV]
Sent: Friday, September 10, 2010 8:33 AM
To: Roy P. Barton
Subject: RE: Request for License Information-Art

Good morning Roy,

There is a fee per certified copy, \$2.00 that would need to be received along with your request.

We have a license status report which has all public information including any and all endorsements, trade names of when registered / cancelled, and governing members. The fee to certify each of these reports would just be \$2.00, totaling \$4.00, per your request.

If you wish to have certified, all documents requested in your previous email, the total would be exactly \$2.00, and all non-public information would be redacted.

The documentation you are requesting for Kitsap Rifle and Revolver Club is not with the Department of Licensing. This Non-profit corporation was registered with the Office of the Secretary of State and all renewals are through them.

Arthur Gaines
Customer Service Center
Customer Relations Department
Department of Licensing
(360) 664-1400 Option 7

We are the voice of DOL. We educate the public for a safer Washington.

From: Roy P. Barton [<mailto:RPBarton@co.kitsap.wa.us>]
Sent: Wednesday, September 08, 2010 1:40 PM
To: DOL INT MLS
Subject: Request for License Information

Please send Certified Copies of License Applications and Renewals for the following Business Licenses to include Registered Trade Names and date of Registration for each Trade Name:

National Firearms Institute, 4900 Seabeck Highway, Seabeck, WA. UBI: 600533224, under Sharon Ann Carter and Marcus Alton Carter,

Kitsap Rifle and Revolver Club, UBI: 601599790

Mail to Kitsap County Prosecutor's Office

Attention: Roy Barton, Investigator
Kitsap County Courthouse
614 Division Street, MS-35
Port Orchard, WA 98366

If you have any questions please contact me at 360-337-4885 or by email:
rpbarton@co.kitsap.wa.us<mailto:rpbarton@co.kitsap.wa.us>.

Roy Barton, Investigator
Kitsap County Prosecutor's Office
614 Division Street MS-35
Port Orchard, WA 98366
Phone 360-337-4885
email: rpbarton@co.kitsap.wa.us

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 3:44 PM
To: Carrie A. Bruce
Subject: krrc request AWP

Carrie:



<http://www.kirotv.com/news/24948800/detail.html>

Thanks,

Neil

Neil R. Wachter
Sr. Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
614 Division Street, MS-35A
360-337-4979 direct
360-337-7083 facsimile
nwachter@co.kitsap.wa.us

Notice: This email may contain confidential or privileged information. If you are not the intended recipient of this email, please delete it immediately.

Don Burger

From: Neil R. Wachter [NWachter@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 4:58 PM
To: stephen.hart@us.army.mil
Cc: Carrie A. Bruce
Subject: Kitsap County v. Kitsap Rifle and Revolver Club - Request for assistance from Kitsap County
Attachments: KRRC complaint.pdf; KRRC comp ex4.pdf; KRRC comp ex3.pdf; KRRC Comp Ex2.pdf; KRRC Comp Ex1.pdf; JBLM 91010.pdf

Dear Mr. Hart:

Per our conversation, here is Kitsap County's formal request, along with the complaint and its four exhibits. Please let me know if you need any further info. Thank you.

Yours very truly,

Neil

Neil R. Wachter
Sr. Deputy Prosecuting Attorney
Kitsap County Prosecutor's Office, Civil Division
614 Division Street, MS-35A
360-337-4979 direct
360-337-7083 facsimile
nwachter@co.kitsap.wa.us

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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,
SHARON ANN CARTER, doing business as
NATIONAL FIREARMS INSTITUTE, a sole
proprietorship licensed 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.

COMPLAINT FOR INJUNCTION,
DECLARATORY JUDGMENT AND
ABATEMENT OF NUISANCE

COME NOW the Plaintiff, KITSAP COUNTY, and alleges as follows:

I. JURISDICTION AND VENUE

1. Pierce County Superior Court has jurisdiction over the parties pursuant to RCW
2.08.010 and is the proper venue for this action pursuant to RCW 36.01.050.

1 with the authority and duty to enforce statutes, regulations, and ordinances herein noted respecting the
2 public health, safety and welfare.

3
4 5. The Defendants are KITSAP RIFLE AND REVOLVER CLUB, registered as a not-for-
5 profit corporation in the State of Washington and SHARON ANN CARTER, doing business as
6 NATIONAL FIREARMS INSTITUTE, a for-profit sole proprietorship licensed in the State of
7 Washington. The true names and capacities of Defendants John Doe and Jane Roe I through XX,
8 inclusive, are unknown to plaintiff at this time. When such identities and capacities become known,
9 Plaintiff may amend its complaint to add additional parties defendant as may be appropriate.
10

11 6. Upon information and belief, Plaintiff alleges that at all times pertinent to this
12 complaint, Defendant KITSAP RIFLE AND REVOLVER CLUB is or was the owner, lessor and/or
13 occupant of the Property, as indicated by the records of the Property, where the public nuisance
14 conditions exist and public nuisance activities are occurring; and/or the Defendants have been in
15 possession or control of the Property where the public nuisance conditions exist and public nuisance
16 activities are occurring.
17

18 7. The named Defendants are residents of or doing business in Kitsap County,
19 Washington.
20

21 8. Plaintiff reserves the right to add and/or name other parties who may be responsible for
22 the public nuisances, alleged herein, pursuant to RCW 7.48.170; Chapter 9.66 RCW; Chapter 36.32
23 RCW; Chapter 9.56 Kitsap County Code.
24

25 III. FACTS

26 Local Codes.

27 9. On October 23, 1995, the Kitsap County Board of Commissioners adopted Ordinance
28

1 178-1995, the Interim Zoning Ordinance, which was in force and effect at all times material herein
2 prior to January 8, 1996.

3 10. On January 8, 1996, the Kitsap County Board of Commissioners adopted Ordinance
4 182-1996, the Interim Zoning Ordinance, which was in force and effect at all times material herein
5 between January 8, 1996, and May 7, 1998.

6 11. On May 7, 1998, the Kitsap County Board of Commissioners adopted ordinance 216-
7 1998, the Kitsap County Zoning Ordinance, which has been in force and effect at all times material
8 herein on or after May 7, 1998.

9 12. On December 11, 2006, the Kitsap County Board of Commissioners adopted ordinance
10 367-2006, the Ordinance Regarding 10-Year Comprehensive Plan Update Revisions to Kitsap County
11 Code Title 17 (Zoning), which has been in force and effect at all times material herein on or after
12 December 11, 2006.

13 13. On June 29, 1998, the Kitsap County Board of Commissioners adopted Ordinance 224-
14 1998, the Building Code, which was in force and effect at all times material herein on or after July 1,
15 1998.

16 14. On October 22, 2001, the Kitsap County Board of Commissioners adopted Ordinance
17 261-2001, which was in force and effect at all times material herein on or after October 22, 2001.

18 15. On December 16, 2002, the Kitsap County Board of Commissioners adopted Ordinance
19 292-2002, which was in force and effect at all times material herein on or after December 16, 2002.

20 16. On June 28, 2004, the Kitsap County Board of Commissioners adopted Ordinance 323-
21 2004, which was in force and effect at all times material herein on or after June 28, 2004.

22 17. On May 7, 1998, the Kitsap County Board of Commissioners adopted Ordinance 217-
23
24
25
26
27
28

1 1998, Relating to Growth Management Regarding the Kitsap County Interim Critical Areas Ordinance
2 and Adopting Development Regulations to Protect Critical Areas, which was in force and effect at all
3 times material herein on or after May 18, 1998.

4
5 18. On December 1, 2005, the Kitsap County Board of Commissioners adopted Ordinance
6 351-2005, the Ordinance Regarding Growth Management, Revisions to Title 19 (Critical Areas), which
7 was in force and effect at all times material herein on or after December 1, 2005.

8
9 19. On February 26, 2007, the Kitsap County Board of Commissioners adopted Ordinance
10 376-2007, also entitled the Ordinance Regarding Growth Management, Revisions to Title 19 (Critical
11 Areas), which was in force and effect at all times material herein on or after February 26, 2007.

12 20. On December 9, 1996, the Kitsap County Board of Commissioners adopted Ordinance
13 199-1996, which was in force and effect at all times material herein on or after December 9, 1996.

14
15 21. On December 16, 2002, the Kitsap County Board of Commissioners adopted Ordinance
16 290-2002, Transferring Some Permit Review Authority from the Department of Public Works to the
17 Department of Community Development, which was in force and effect at all times material herein on
18 or after December 16, 2002.

19
20 22. On August 10, 2009, the Kitsap County Board of Commissioners adopted Ordinance
21 433-2009, Amending Kitsap County Code Title 12 relating to Illicit Discharges, Construction Runoff
22 Control and Post Construction Runoff Control, which was in force and effect at all times material
23 herein on or after August 10, 2009 and/or January 1, 2010.

24
25 23. On July 8, 1985, the Kitsap County Board of Commissioners adopted Ordinance 50-A-
26 1985, the Ordinance Prohibiting the Discharge of Firearms in Proscribed Areas of Kitsap County,
27 Washington, which was in force and effect at all times material herein on or after July 8, 1985.
28

1 24. On August 2, 1993, the Kitsap County Board of Commissioners adopted Ordinance 50-
2 B-1993, the Ordinance Amending an Ordinance Prohibiting the Discharge of Firearms in Proscribed
3 Areas of Kitsap County, Washington, which was in force and effect at all times material herein on or
4 after August 2, 1993.
5

6 25. On February 14, 1994, the Kitsap County Board of Commissioners adopted Ordinance
7 50-C-1994, an Ordinance Amending an Ordinance Prohibiting the Discharge of Firearms in Proscribed
8 Areas of Kitsap County, Washington, , which was in force and effect at all times material herein on or
9 after February 14, 1994.
10

11 26. On May 4, 1998, the Kitsap County Board of Commissioners adopted Ordinance 50-E-
12 1997, the Amendment Establishing a "No Shooting Area", which was in force and effect at all times
13 material herein on or after November 3, 1997.
14

15 27. On August 7, 2000, the Kitsap County Board of Commissioners adopted Ordinance 50-
16 G-2000, the Ordinance of the Kitsap County Board of Commissioners Amending Kitsap County Code
17 Section 10.24.103 Relating to Shooting Ranges To Clarify That Existing Law Prohibits The
18 Establishment Of A Shooting Range In An Area Designed As a No-Shooting Area, which was in force
19 and effect at all times material herein on or after August 7, 2000.
20

21 **Zoning and Critical Areas Ordinance**

22 28. The Property is located in unincorporated Kitsap County and is zoned "rural wooded",
23 per KCC Chapter 17.301, with uses governed by Chapter 17.381 and Table 17.381.040(E), Parks,
24 Rural and Resource Zones.
25

26 29. The Property contains wetlands, streams and buffers for wetlands and streams, each of
27 which are protected by the Kitsap County Critical Areas Ordinance, KCC Title 19.
28

1 **Ownership and Occupancy**

2 30. At all times pertinent to this Complaint but prior to June 18, 2009, the Property was
3 owned by the State of Washington Department of Natural Resources (“DNR”).

4 31. At all times pertinent to this Complaint, the Property has been and continues to be
5 occupied by the KITSAP RIFLE AND REVOLVER CLUB.

6 32. At all times pertinent to this Complaint prior to June 18, 2009, the Property was leased
7 from the State DNR to the KITSAP RIFLE AND REVOLVER CLUB, pursuant to a lease agreement
8 between the State and the Club (attached and incorporated by reference hereto as Exhibit 1). This lease
9 by its terms was said to be in effect from March 1, 2003 until February 27, 2018. This lease was
10 signed by the parties thereto on November 12, 2003 and November 17, 2003. This lease followed a
11 previous lease between the State and the Club, which by its terms was said to be in effect from March
12 1, 2002 until February 28, 2003 (attached and incorporated by reference hereto as Exhibit 2).

13 33. On June 18, 2009, deeds were recorded with the Kitsap County Assessor’s Office
14 transferring the Property first from the State of Washington to Kitsap County and then from Kitsap
15 County to the KITSAP RIFLE AND REVOLVER CLUB.

16 34. A sole proprietorship operating as the NATIONAL FIREARMS INSTITUTE (“NFI”) is
17 licensed in the State of Washington in the name of SHARON ANN CARTER. The NFI operates its
18 business at the Property and its business license lists 4900 Seabeck Highway NW, Bremerton,
19 Washington. The KITSAP RIFLE AND REVOLVER CLUB hosts firearm training programs put on
20 by the NFI, and the NFI’s courses have regularly appeared on the Club’s published calendars of events
21 including during 2008, 2009 and 2010.

22 **History and Violations**

1 35. The Property is situated in central Kitsap County, in an unincorporated and generally
2 forested area that has seen a considerable amount of residential development since the mid-1980's.
3 The Property is located approximately one and one-half miles west of State Highway 3, which is a
4 major arterial running north-and-south through central Kitsap County. The property is located directly
5 west of Camp Wesley-Harris, which is owned by the United States Navy ("Navy"). Until
6 approximately 2004, the Navy operated shooting ranges at Camp Wesley-Harris.
7

8 36. The KITSAP RIFLE AND REVOLVER CLUB claims to have been established as a
9 club more than eighty years ago. On information and belief, the Club began using the Property as a
10 shooting range during the 1940's.
11

12 37. On or about November 19, 1986, the KITSAP RIFLE AND REVOLVER CLUB filed
13 its certificate of incorporation as a Washington non-profit corporation with the Washington Secretary
14 of State's Office. Upon information and belief, the Club has not changed its registration status as a
15 non-profit corporation.
16

17 38. In 1989, the business presently licensed in the name of SHARON ANN CARTER doing
18 business as NATIONAL FIREARMS INSTITUTE, was first licensed in the State of Washington.
19

20 39. In 1993, the KITSAP RIFLE AND REVOLVER CLUB's facilities at the Property
21 consisted of one covered 50-yard pistol firing line with a small target backstop at 25 yards, and one covered
22 175-yard rifle firing line with a small target backstop at 100 yards. There were no other berms, baffles, or
23 backstops on the range. The covers for both firing lines were open sided pole structures. Other than lighting
24 under the covers, there was little or no lighting on the property to illuminate shooting ranges. The two shooting
25 areas, an office building and a small parking lot took up about two acres of the Property.
26

27 40. On September 7, 1993, the Chair of the Kitsap County Board of Commissioners wrote a letter to
28

1 four shooting clubs, including the KITSAP RIFLE AND REVOLVER CLUB, stating: "Pursuant to your
2 requests, this letter is to confirm that the shooting ranges your organizations currently have in use,
3 which are listed above, are considered by Kitsap County to be lawfully established, non-conforming
4 uses (grandfathered)." At the time of the September 7, 1993 letter, the areas surrounding the Property
5 consisted of mostly forested land, but single family houses and housing developments had begun to be
6 developed within a two-mile radius of the Property. At the time of the September 7, 1993 letter,
7 several dozen residential structures had already been constructed close enough to the Property so as to
8 be potentially affected by activities at the Property. These residences were occupied.
9

10
11 41. The Club has never applied to Kitsap County for a permit to operate a shooting range
12 pursuant to KCC Chapter 10.24.

13
14 42. The Club has never submitted to Kitsap County a report or analysis of the safety of its
15 shooting ranges, prepared by an independent professional range safety expert. Upon information and
16 belief, the Defendants have never obtained this type of report or analysis.

17
18 43. At all times pertinent to this complaint, the Property's shooting ranges have been
19 outdoor ranges, without baffles or other physical features over the shooting areas to catch stray or
20 ricochet bullets.

21
22 44. Conditions at the Property remained substantially unchanged between 1993 and 2001,
23 and the Club's use of the Property continued to occupy approximately two acres, with another acre of
24 semi-cleared land located between the two shooting areas and on the periphery of the shooting areas.

25
26 45. Prior to 2001, the Property's shooting ranges were predominantly used for small-caliber
27 weapons practice by members and guests of the Club. Shooting at the Club was sometimes audible in
28 the surrounding areas, but noises from the Club were intermittent, non-obtrusive and not intense in

1 their nature, sound level or frequency. There were some days when no shooting could be heard from
2 the Club, and shooting rarely occurred before 9 a.m. or after 6 p.m.

3 46. Between approximately 2001 and present day, Defendants have modified the Property
4 and its uses by installing new shooting areas, erecting or installing storage structures including Conex
5 boxes, constructing new berms and backstops, clearing vegetation on the Property (including
6 development in wetland and stream buffer areas), re-directing surface water, installation of lighting
7 poles for illumination of nighttime shooting and engaging in earth moving activities which include
8 grading, trenching, building berms out of predominantly native soil.
9
10

11 47. Between approximately 2001 and present day, Defendants have constructed at least
12 eight new shooting areas on the property, in addition to the aforementioned pistol and rifle lines, each
13 with berms and/or backstops that resulted from earth-moving activities including excavation and re-
14 grading. At least one of the new shooting areas is configured for 360-degree shooting and others of the
15 new shooting areas can be used for 180-degree and/or 270-degree shooting.
16

17 48. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
18 CLUB has hosted for-profit businesses, including but not limited to the NATIONAL FIREARMS
19 INSTITUTE and the Firearms Academy of Hawaii, that have provided firearms training to clients of
20 said businesses at the Property including tactical weapons training, and training in use of automatic
21 and/or high-caliber weapons. Upon information and belief, tactical weapons training has been
22 provided on the Property to units of the military in use of automatic and/or high-caliber weapons as
23 recently as December 2009, at the time unbeknownst to local military commands such as at the Naval
24 Base Kitsap.
25
26

27 49. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
28

1 CLUB has come to host several tactical shooting competitions at the Property per year, usually over
2 weekends. Several hundred rounds of ammunition are expended on each day of competition.

3 50. Between approximately 2001 and present day, the KITSAP RIFLE AND REVOLVER
4 CLUB has authorized or facilitated shooting on the Property at targets which contain materials that
5 explode upon being struck by a bullet. The concussive booms from these explosions, as well as from
6 cannons allowed to be used on the Property, are audible from the surrounding neighborhoods.
7

8 51. Between approximately 2001 and present day, use of automatic weapons and/or high-
9 caliber weapons has become frequent at the Property, and sound intensity, frequency of shooting and
10 hours of shooting each day have increased substantially. To the hundreds of Kitsap County residents
11 living within earshot of the range's activities, the sounds from the activities on the Property are
12 disruptive and disturbing.
13

14 52. In 2005, Kitsap County began receiving noise complaints regarding shooting and other
15 activities at the Property. In March 2005, DCD began investigating reports by owners of neighboring
16 parcels that heavy equipment was being used and earth-moving operations were occurring on the
17 Property. In April 2005, DCD staff discovered extensive ongoing work in a long rectangular area on
18 the Property to the east of the existing shooting areas (hereafter "the 300-meter range"): Vegetation
19 removal, grading and other earth work, including trenching and diversion of surface water. DCD staff
20 informed representatives of the KITSAP RIFLE AND REVOLVER CLUB that the activities being
21 conducted without DCD permits or approvals violated Kitsap County Code and that they were to "stop
22 work". This "stop work" directive has never been lifted by DCD.
23
24
25

26 53. In June 2005, DCD staff hosted a pre-application meeting with representatives of the
27 KITSAP RIFLE AND REVOLVER CLUB, which is a preliminary to application for land use review.
28

1 Representatives of the KITSAP RIFLE AND REVOLVER CLUB disagreed with the County's position
2 that their activities required filing applications for a conditional use permit, site development activity
3 permit or shooting range safety analysis and other permits under Kitsap County Code.
4

5 54. The KITSAP RIFLE AND REVOLVER CLUB and its representatives asserted the
6 position at the pre-application meeting that its activities on the Property constituted no change or
7 expansion of the historic land use, a position that the KITSAP RIFLE AND REVOLVER CLUB has
8 asserted at all times pertinent to this Complaint.
9

10 55. Upon information and belief, in 2007, at the direction of the state Department of Natural
11 Resources, the KITSAP RIFLE AND REVOLVER CLUB replanted trees on the entire area of the
12 Property that had been previously cleared in the 300-meter range area.
13

14 56. At various times between 2005 to present day, heavy equipment use and earth-moving
15 activities have continued to occur at the Property, to create additional shooting areas to the north and
16 the east of the aforementioned original pistol and rifle shooting lines. Land-clearing and grading
17 activities have occurred in wetland and stream buffers on the Property, without DCD's review or
18 approval. On information and belief, the 300-meter range has since been re-cleared of the trees
19 replanted in 2007.
20

21 57. On July 9, 2010, DCD formally posted a written stop work order prohibiting any further
22 encroachment into streams and wetland buffers, land development absent site development activity
23 permits, and expansion of use without DCD permits and approvals. On information and belief, the
24 Club has continued to engage in these activities after the posting of the written stop work order.
25

26 58. Other than the pre-application meeting conducted with DCD and a permit application
27 for an ADA ramp constructed at the Property, the Defendants have never submitted an application to
28

1 DCD for a building, land use, or site development activity permit (per KCC Chapter 12.10). The
2 Defendants have further never submitted an application to DCD for a conditional use permit of the
3 Property.
4

5 59. As configured, the Property cannot be safely operated as a shooting range, the
6 Property's physical facilities permit the escape of stray and/or ricochet bullets. The impact area for
7 stray and/or ricochet bullets affects several hundred residents of central Kitsap County, and the area's
8 roads including state Highway 3.
9

10 60. Multiple occupied dwellings exist within the impact areas for stray and/or ricochet
11 bullets that can escape and have escaped from the Property as a result of shooting activities thereupon.
12

13 61. Plaintiffs have no plain, adequate, or speedy remedy at law to cure this nuisance, and the
14 neighbors and public-at-large will suffer irreparable harm unless the nuisance is abated and the
15 Defendants are enjoined to clean up the Property at once and cease living, or allowing others to live, on
16 the Property, without the appropriate permits in accordance with the applicable health, building, and
17 zoning regulations.
18

19 **V. Public Nuisance Violations**

20 62. Defendants have engaged in and continue to engage in creating and/or maintaining a
21 public nuisance by the activities described above. The activities are described by statute and code to be
22 public nuisances. These acts constitute public nuisances as defined by RCW 7.48.120, RCW 9.66.010
23 and KCC 17.530.030. The activities described above annoy, injure, and/or endanger the safety, health,
24 comfort, or repose of others. Furthermore, the legislature has declared, with two exceptions not
25 relevant here, that hazardous and potentially hazardous and uncontained solid waste is a public
26 nuisance by enacting RCW 7.48.010.
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VI. Damages

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

VII. Enforcement Authority

64. **Constitutional "Police Power" to Abate Nuisances.** The Washington State Constitution authorizes counties to make and enforce "local police, sanitary and other regulations." Article XI, Section 11 of the Washington State Constitution. This authority is commonly referred to as "police power."

65. State Statute authorizes Kitsap County to declare and abate nuisances in RCW 36.32.120(10):

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 Properties which shall be of equal rank with state, county, and municipal taxes.

66. Kitsap County Code declares that "any use, building or structure in violation of [Kitsap County Code Title 17] is unlawful, and a public nuisance" and has authorized the County to bring an action "for a mandatory injunction to abate the nuisance in accordance with the law" KCC 17.530.030.

67. 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

1 7.48.250; 260 and 280 provide for a warrant of abatement and allow for judgment for abatement costs
2 at the expense of the defendants.

3 68. No bond or security is required of Plaintiffs for this action. CR 65 (c) and RCW
4 4.92.080.

5
6 69. Plaintiffs have no plain, adequate, or speedy remedy at law to cure this nuisance, and the
7 neighbors and public-at-large will suffer substantial and irreparable harm unless the nuisance is abated
8 and the Defendants are enjoined to clean-up the Property at once and obtain the appropriate permits in
9 accordance with the applicable health, building, and zoning regulations.
10

11 **VIII. FIRST CAUSE OF ACTION**

12 **IV. Public Nuisance Per Se**

13 70. Plaintiff re-alleges paragraphs 1 through 69 above as if fully set forth and incorporate
14 those paragraphs by reference herein.

15
16 71. Plaintiff alleges that the Property and the above-described activities on the Property
17 constitute a public nuisance per se, in violation of law including KCC 17.110.515.

18 **IX. SECOND CAUSE OF ACTION**

19 **V. Statutory Public Nuisance**

20
21 72. Plaintiff re-alleges paragraphs 1 through 71 above as if fully set forth and incorporate
22 those paragraphs by reference herein.

23 73. Plaintiff alleges that the Property and the above-described activities on the Property
24 constitute a statutory public nuisance. The Property and the activities thereupon violate the rights of
25 the entire community or neighborhood to comfort, repose, health and safety, contrary to RCW
26 7.48.010, 7.48.120, 7.48.130, and 7.48.140 (5), (6) and (7), and, therefore, are a statutory public
27
28

1 nuisance. Pursuant to RCW 7.48.190, no lapse of time can legalize a public nuisance amounting to an
2 actual obstruction of public right. Defendants have engaged in and continue to engage in public
3 nuisance violations by the activities described above. The activities are described by statute and code
4 to be public nuisances as defined by both RCW 7.48.120 and RCW 9.66.010. The activities described
5 above annoy, injure, and/or endanger the safety, health, comfort, or repose of others.
6

7 **X. THIRD CAUSE OF ACTION**

8 **Common Law Nuisance**

9
10 74. Plaintiff re-alleges paragraphs 1 through 73 above as if fully set forth and incorporate
11 those paragraphs by reference herein.

12 75. Plaintiff alleges that the Property and the above-described activities on the Property
13 constitute an unlawful and abatable common law nuisance.
14

15 **XI. FOURTH CAUSE OF ACTION**

16 **Violation of Zoning and Nuisance Ordinances**

17 76. Plaintiff re-alleges paragraphs 1 through 75 above as if fully set forth and incorporate
18 those paragraphs by reference herein.

19
20 77. Plaintiff alleges that the nuisance conditions and land use, development and building
21 activities conducted by the Defendants without appropriate permits are unlawful under the Kitsap
22 County Code.
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XII. RELIEF REQUESTED

WHEREFORE the Plaintiffs pray for relief as follows:

Judgment

1. Enter judgment declaring that the Defendants are in violation of the Kitsap County Code prohibitions against public nuisances;
2. Enter judgment declaring that the conditions on the Property and the violations committed by the Defendants constitute public nuisances;
3. Enter judgment declaring that the Defendants by their acts and omissions have violated the Kitsap County Code, including building, critical areas, stormwater and zoning ordinances;
4. Enter judgment declaring that the Defendants have violated the Kitsap County Code by their failure to obtain all necessary permits and all necessary building, land use and development authorizations from the Kitsap County Department of Community Development; and
5. Enter declaratory judgment pursuant to chapter 7.24 RCW in favor of Plaintiff declaring that the KITSAP RIFLE AND REVOLVER CLUB's activities and expansion of uses have caused the Club to lose any previously recognized or authorized legal non-conforming uses of the Property.

Injunction

6. For preliminary and permanent, mandatory and prohibitive injunction:
 - (a) enjoining Defendants from operating a shooting range on the Property 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 and no longer in a condition that is likely to cause sickness, disease or a health and fire hazard;

1 (b) requiring Defendants to file applications for building, land use and development permits
2 for all previous changes in use made of the Property and for all future uses made of the Property;

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

7 (d) requiring Defendants to cease all land-clearing or development activities and cease
8 removal of and encroachment into wetland and stream buffers; and

9 (e) enjoining the Defendants from further violating the Kitsap County Code; and

10
11 **Warrant of Abatement**

12 7. For a warrant of abatement at the Defendants' expense as provided by RCW 7.48.260.

13 This warrant authorizes Kitsap County to enter upon the Property to inspect, survey, assess and remove
14 public nuisance conditions and to direct or require restoration in areas protected by the Kitsap County
15 Critical Areas Ordinance including but not limited to restoring wetlands and stream buffers to native
16 conditions; and

17
18 **Inspection and Monitoring**

19 8. For an order authorizing representatives of the Kitsap County Department of
20 Community Development to inspect the property to investigate and determine the extent of
21 encroachment into wetland and stream buffers and determine the mitigation as required by Kitsap
22 County Critical Areas Ordinance and to continue monitoring the Property before, during and after the
23 any abatement action has commenced; and

24
25 **Costs and Liens**

Exhibit 4

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

Page: 1 of 6

**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 

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Riparian Management Zones, as detailed below:

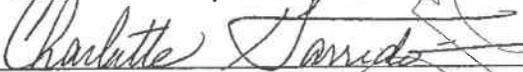
Bodies of water, including but not limited to those streams, rivers and lakes and other lakes and wetlands have been identified and/or may be located on the Premises. All activities within the Riparian Management Zone, as defined in the existing and publicly-filed Habitat Conservation Plan (HCP) and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

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

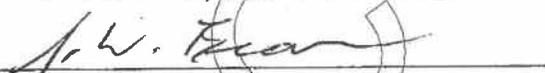
DATED this 13th day of May, 2009.



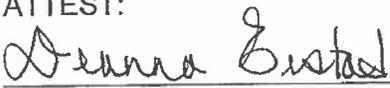
BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON


CHARLOTTE GARRIDO, 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 13th day of May, 2009.


BRADFORD SMITH, President - KRRC

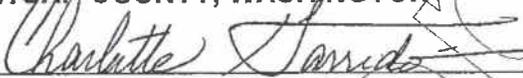

MARCUS A. CARTER, Executive Officer - KRRC

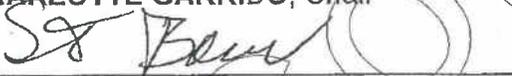
land, regardless of parcel segregation or aggregation or potential sale or land transfer.

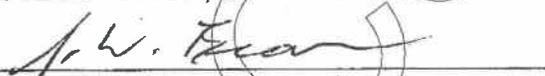
DATED this 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON


CHARLOTTE GARRIDO, 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 13th 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

Exhibit 3

AFTER RECORDING RETURN TO:
Department of Natural Resources
Asset Management & Protection Division
Asset Planning and Transactions Section
PO Box 47014
Olympia, WA 98504-7014

E-23025A

LAND TITLE 200906180290 Page: 1 of 9
Quit Claim Deed Rec Fee: \$ 50.00
06/18/2009 03:15 PM
Walter Washington, Kitsap Co Auditor

KITSAP COUNTY TREASURER EXCISE

06/18/2009

2009EX03101

Total: \$10.00

Clerk's Initial

QUITCLAIM DEED
Kitsap County

Grantor: State of Washington, acting by and through the Department of Natural Resources.

Grantee: Kitsap County, a Political Subdivision of the State of Washington.

Abbreviated

Legal Desc: PTN of 25-25N-1W; NW, SW, N2NE, SWNE and the W2SE 36-25N-1W

Tax Parcel #: 362501-1-002-1002; 362501-4-002-1006

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the conveyance by Kitsap County Parks and Recreation Department, of real property of equal value as authorized and approved by Resolution No.1315 adopted by the Board of Natural Resources, State of Washington, on June 2, 2009, hereby conveys and quitclaims to KITSAP COUNTY PARKS AND RECREATION DEPARTMENT, GRANTEE, all interest in the real property situated in Kitsap County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof, subject to those matters and encumbrances described in the attached Exhibit B Easement Reservation (Easement Reservation).

Grantor hereby reserves for itself, its successors and assigns, all rights and interests in minerals, in perpetuity, as set forth in and

according to the terms and conditions of the Mineral Reservation required by RCW 79.11210, attached hereto as Exhibit C, over and across those portions of said real property described on the attached Exhibit A, but does not reserve other valuable materials such as rock, sand and gravel.

The lands described in Exhibit A are subject to that certain statutory reserved right as set forth in RCW 79.36.370.

This Deed is executed and delivered pursuant to RCW 79.17.060 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington.

WITNESS the Seal of the State of Washington, affixed this 17th day of

June, 2009.



Christine Gregoire
GOVERNOR

ATTEST:

[Signature]
SECRETARY OF STATE

Approved as to form this 2nd day of June, 2009.

[Signature]
Assistant Attorney General

State Deed No. 26796
State Record of Deeds, Volume 14, Page 8.
Transaction File No. 86-081861

AUDITOR'S NOTE
LEGIBILITY FOR RECORDING AND COPYING
UNSATISFACTORY IN A PORTION OF THIS
INSTRUMENT WHEN RECEIVED

Exhibits

EXHIBIT A

State property to be conveyed to Kitsap County

Parcel S-1

The S1/2 of the E1/2 of the E1/2 of the SW1/4 of the SE1/4 of Section 25, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, according to U.S. Government subdivision procedures.

Parcel S-2

Section 36, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, EXCEPT that portion lying within Camp Wesley Harris, said portion shown and described as the E1/2 of the SE1/4 and the SE1/4 of the NE1/4 of said Section 36 by that survey of Camp Wesley Harris Reservation Boundaries approved September 1, 1950, on file with the Office of the Commissioner of Public Lands, Olympia, Washington.



Dennis J. Gelvin, PLS 21674
Land Description & R/W Specialist
State Land Survey Unit
PO Box 47030
Olympia, WA 98504-7030

Dated 4-6-09

FILENAME:L2269 S25 T25 R1W

EXHIBIT B

RESERVATION OF EASEMENT ACROSS S-1 and S-2

Terms and Conditions of Reserved Easement by State

Grantor, as defined in that deed to which this reservation is attached, hereby reserves to itself, its successors and assigns, a permanent, nonexclusive Easement over parcels of land in Kitsap County, identified in Exhibit A to the deed as S-1 and S-2 and legally described as follows (hereafter Newberry Hill Parcel):

Parcel S-1

The S1/2 of the E1/2 of the E1/2 of the SW1/4 of the SE1/4 of Section 25, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, according to U.S. Government subdivision procedures.

Parcel S-2

Section 36, Township 25 North, Range 1 West, Willamette Meridian, Kitsap County, EXCEPT that portion lying within Camp Wesley Harris, said portion shown and described as the E1/2 of the SE1/4 and the SE1/4 of the NE1/4 of said Section 36 by that survey of Camp Wesley Harris Reservation Boundaries approved September 1, 1950, on file with the Office of the Commissioner of Public Lands, Olympia, Washington.

Said Easement to be sixty (60) feet in width running thirty (30) feet on each side of a centerline of an existing road(s) located approximately as shown on Exhibit B Easement Area (hereafter Easement Area).

Purpose. The Easement is reserved to provide access for any and all purposes, to and from lands owned by the Grantor. Authorized use shall include the right to travel, maintain, repair, construct or reconstruct the Easement Area.

Appurtenant. Subject to the terms and conditions herein, this Easement reservation is made to provide access to and from all real property owned by Grantor and all other real property of Grantor, now owned or acquired as of the execution date of this Quitclaim Deed or hereafter acquired by the Grantor (hereafter Benefited Parcel(s)).

Grantee Rights. Grantee, as defined in that deed to which this reservation is attached, shall have the right at all times for any purpose, to cross and recross the Easement Area at any place on grade or otherwise. Grantee may grant to third parties any or all of the rights reserved therein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights reserved to Grantor herein. Grantee shall own all timber now on or hereafter growing within the Easement Area and the right to remove said timber.

Relocation. Grantee shall have the right to relocate the Easement Area at the Grantee sole cost so long as the new location does not unreasonably interfere with the rights of Grantor herein.

Maintenance. The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said roads. When any party uses a road, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when a road is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use is commenced. During periods when more than one party is using the same road, or any portion thereof, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- a. The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the road or the portion thereof being used; and
- b. A method of payment by which each party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For purposes of this easement reservation, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

Repairs. Each party using any portion of a road shall repair, or cause to be repaired, at its sole cost and expense, that damage to said road occasioned by it which is in excess of that which it would cause through normal and prudent usage. Should damage be caused by an unauthorized user, the cost of repair shall be treated as ordinary maintenance and handled as set forth above.

Improvements. Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

Permittees. The Grantor may permit its respective agents, contractors, licensees, lessees, purchasers of timber or other valuable materials, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights reserved hereby.

Insurance. The State of Washington, including all its agencies and departments, is self insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only as respects the negligence of the State. So long as the State of Washington continues to be the easement holder of this reservation, it shall not be required to carry insurance. Should the State's rights be assigned or transferred to another entity in whole or in part, such entity shall carry insurance as required below.

Before using any of said rights granted herein, the State's Successors and Assigns (Assignees) and Permittees shall obtain and keep in force the following liability insurance policies, insuring against liability arising out its operations, including use of vehicles, with the corresponding minimum amounts of coverage:

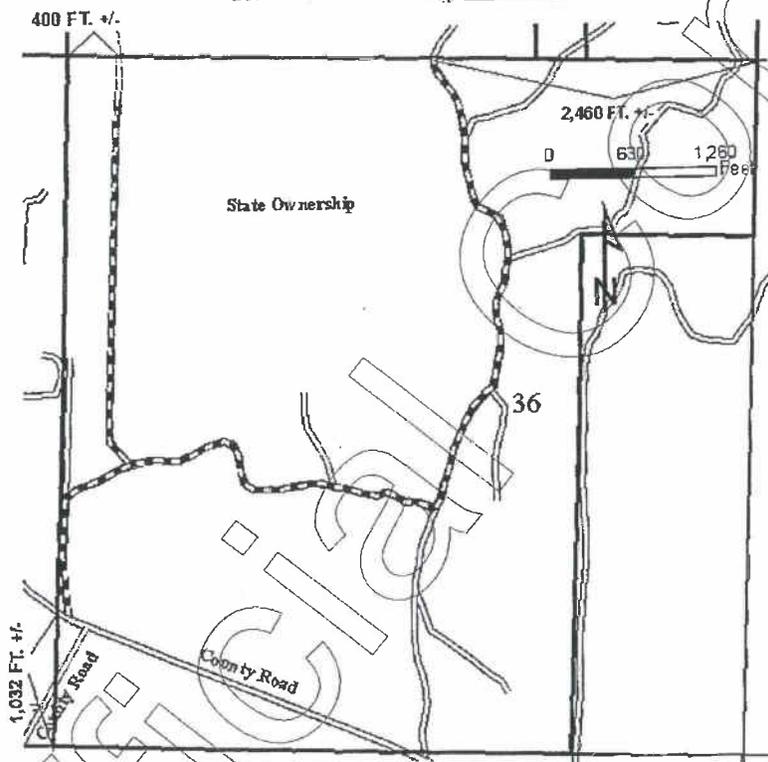
- a. Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- b. Employer's Liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- c. Business Auto Policy (BAP) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later versions of CA 00 01. Grantee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

All Assignees and Permittees shall comply with all State of Washington workers' compensation statutes and regulations. Worker's compensation coverage shall be provided for all employees of assignees and employees of any subcontractors or sub-subcontractors.

Assignees and Permittees shall deliver to Grantee, upon request, a certificate of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements specified above. In the event of cancellation or non-renewal of any coverages, written notice as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW) will be provided to Grantee.

Successors. The terms of this reservation run with the land and shall bind the successors and assigns of both Grantor and Grantee. Grantee shall be deemed to have accepted the terms of this reservation and be bound by the same by accepting delivery of the deed.

EXHIBIT B
EASEMENT AREA
DEPARTMENT OF NATURAL RESOURCES
SECTION 36, TOWNSHIP 25 NORTH, RANGE 01 WEST, W.M. IN KITSAP COUNTY, WA
DNR EASEMENT NO. _____



EXISTING STATE EASEMENT RESERVATION ROAD.
ROAD LENGTH = 10,727 FT. +/-, EASEMENT AREA = 14.84 +/- AC.
NEW CONSTRUCTION STATE EASEMENT RESERVATION ROAD
ROAD LENGTH = 365 FT. +/-, EASEMENT AREA = .5 +/- AC.
-WIDTH OF EASEMENTS: 30' EACH SIDE OF CENTERLINE
-STATIONING SHOWN AT SUBDIVISION AND SECTION LINE IS APPROXIMATE
-THE RIGHT-OF-WAY SHOWN IS INTENDED TO BE OVER AND ACROSS ALL PROPERTY
AS SHOWN ON THIS MAP.
-LOCATION OF ROADS AND PROPERTY LINES BASED UPON DEPARTMENT OF NATURAL
RESOURCES' CURRENT GIS INFORMATION

MAP PREPARED BY: BRAD FRUITT DATE: JUNE 1, 2009

EXHIBIT C

Mineral Reservation

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all geothermal steam and heat and all metals, oils, gases, coal, ores, minerals, and fossils of any nature whatsoever and of every name, kind, or description in, under or upon that portion of the land legally described on the attached Exhibit B-2 (the "Mineral Land"), or any part thereof, and the right to explore the same for such geothermal steam and heat, metals, oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon the Mineral Land, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such geothermal steam and heat, metals, oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on the Mineral Land or any part thereof for the business of mining and to occupy as much of the Mineral Land as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said Mineral Land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the Grantor or its successors or assigns (including a lessee under any oil and gas lease), until provision has been made by the Grantor or its successors or assigns to pay to the owner of the Mineral Land, or portion of the Mineral Land upon which the rights reserved herein to the Grantor or its successors or assigns are sought to be exercised, full payment for all damages sustained or to be sustained by said owner by reason of entering upon said Mineral Land and exercising such rights; PROVIDED, That if the owner of said Mineral Land from any cause whatever refuses or neglects to settle said damages, then the Grantor or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the Mineral Land is situate, as may be necessary to determine the damages which said owner of said land may suffer; provided, however, the Mineral Land owner may, at its option, require that such determination be made by arbitration in accordance with the rules of the American Arbitration Association; provided, Grantor shall not be obligated to so arbitrate if Grantor's lessee under any applicable oil and gas lease is not legally required to so arbitrate.

As used in the foregoing paragraph, the term "damages" shall include, without limitation, actual and consequential damages, including loss of or damage to the surface, improvements, growing

As used in the foregoing paragraph, the term "damages" shall include, without limitation, actual and consequential damages, including loss of or damage to the surface, improvements, growing crops and timber, loss of future timber production, injury or damage to the Mineral Land owner's business operations thereon, all compensating or roll-back taxes arising or to arise from the loss of the forest land or timberland tax classification due to the exercise of any such reserved rights, and the cost of road maintenance, resurfacing and repair arising or to arise from the exercise of such reserved rights. To the extent the Mineral Land owner or its successors or assigns receives compensation for such damages from a successor or assign of Grantor (such as a lessee under an oil and gas lease) with respect to a particular activity or operation by such party, then Grantor shall not be required to make payment for such particular activity or operation (i.e., Mineral Land owner shall not be entitled to receive duplicative payment for damages for the same activity or operation).

Unofficial Copy



Kitsap County Prosecuting Attorney's Office

Russell D. Hauge
Prosecuting Attorney

Please reply to: Civil Division

Carol I. Maves
Office Administrator

May 4, 2010

Christian C. Casad
Case Management
Division Chief

Regina Taylor
Attorney at Law PC
9353 Central Valley Road NW Suite 2
Bremerton, WA 98311

Timothy A. Drury
Felony and Juvenile
Division Chief

RE: Kitsap Rifle and Revolver Club

Claire A. Bradley
District/Municipal
Division Chief

Dear Ms. Taylor:

**Jacquelyn M.
Aufderheide**
Civil/Child Support
Division Chief

I am writing you on behalf of Kitsap County and its Department of Community Development (DCD), concerning your client the Kitsap Rifle and Revolver Club ("the Club"). As you know, Kitsap County and the Club entered into an agreement last June in which the Club came into possession of real property on the periphery of its existing parcel. That agreement is memorialized in the Bargain and Sale Deed and Restrictive Covenants agreed upon by the County and the Club's executive leadership. The Covenants recognize that the Club has a historic place in our community, and that it may evolve consistent with that historic use and in compliance with the Kitsap County Code. The Covenants specifically require the Club to follow "the rules and regulation of Kitsap County for development of private land".

www.kitsapgov.com/pros

The County has become aware of construction activities, land-clearing and the filling of wetland areas believed to have occurred on the Club's premises, all done without applying for permits as required by law. The County has also become aware of increased hours of operation, use of automatic firearms, and dramatically increased sound levels coming from the Club's premises, all occurring without going through a conditional use permit review process, which includes public hearings, to determine whether the Club may modify its activities.

The County, through DCD, has partnered with the Suquamish Tribe and several agencies to request joint access to inspect the Club's premises. The agencies include the state Department of Ecology, the state Department of Fish and Wildlife, the Kitsap County Health District and the U.S. Army Corp of Engineers. In recent weeks, each of these partner agencies has requested access to inspect the premises.

Adult Criminal & Administrative Divisions • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Juvenile Criminal Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-5500 • FAX (360) 337-5509
Special Assault Unit • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7148 • FAX (360) 337-7229

Bainbridge Island Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Port Orchard Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Poulsbo Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949

Civil Division • 614 Division Street, MS-35A • Port Orchard, Washington 98366-4681 • (360) 337-4992 • FAX (360) 337-7083
Child Support Division • 614 Division Street, MS-35B • Port Orchard, Washington 98366-4681 • (360) 337-7020 • FAX (360) 337-5733



Regina Taylor
May 4, 2010
Page 2

Several of the requests have explicitly sought the Club's cooperation for a joint site visit by DCD, the Suquamish Tribe and these federal and state agencies. The KRRC has deferred each request indefinitely, resulting in no inspections taking place to address the agencies' concerns.

The state Department of Labor and Industries has also informed the County of its interest in participating in a joint site visit. I should note that the Suquamish Tribe and the state Department of Fish and Wildlife are each interested in participating in the joint visit because they are co-managers of fishery resources in Kitsap County under federal case law. Their concurrent jurisdiction includes the Chico Creek basin where the Club's premises are located.

The County, the Tribe and the agencies I've identified here are requesting that the Club grant the request for a joint site visit by officials of each agency. A joint visit will limit the number of hours that the Club would suspend operation, and only makes sense given the number of agencies with an interest in the Club's operations. Please inform the County not later than May 25, 2010 whether you will grant this request for a joint visit. I would expect the site visit to require a morning or an afternoon, and I cannot rule out follow-up visits.

The County is also requesting that the Club submit all necessary permit applications for its various building and land-moving operations, and that the Club begin the application process for a conditional use permit addressing each of the community concerns including those I've outlined in this letter. Please complete these steps not later than June 15, 2010, so that Kitsap County and its citizens can begin the overdue review of the recent activities on the Club premises.

This letter is intended as a courtesy to the Club and its membership, to urge the Club's leadership to participate in the processes provided in the Kitsap County Code, and to open the Club to a joint inspection designed to minimize the inconvenience to its members and their guests. I hope the Club's leadership will share this letter with the Club's members and users, so that every user of the facility can appreciate why Kitsap County, as a community, is so very concerned about development and changes to the historic use of the Club that have not followed the land use requirements that apply to the rest of the county's citizens.

The Kitsap County Code and the Revised Code of Washington provide avenues for civil relief for conditions that are deemed a nuisance or otherwise detract from the quality of life in our community. The aforementioned covenants may be enforced to ensure that the Club acts within the county code and consistent with its historic

Regina Taylor
May 4, 2010
Page 3

mission. This letter is written in the hope that we may avoid more aggressive enforcement efforts. However, as the lead enforcement agency for many of the issues raised by the Club's unpermitted activities, the County will take whatever steps are necessary to ensure compliance with the law

Thank you for your attention.

Sincerely yours,

RUSSELL D. HAUGE
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Neil Wachter", with a stylized flourish at the end.

NEIL R. WACHTER
Deputy Prosecuting Attorney

Enclosure: Bargain and Sale Deed with Restrictive Covenants

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 Page: 1 of 6
Walter Washington, Kitsap Co Auditor

**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 *WB*

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Riparian Management Zones, as detailed below:

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

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

DATED this 13th day of May, 2009.



BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Charlotte Garrido
CHARLOTTE GARRIDO, Chair

Steve Bauer
STEVE BAUER, Commissioner

Josh Brown
JOSH BROWN, Commissioner

ATTEST:

Opal Robertson
Opal Robertson, Clerk of the Board

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

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

Bradford Smith
BRADFORD SMITH, President - KRRC

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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

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

Dated this 13 day of May, 2009.



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

EXHIBIT A

Legal Description of Premises & Reservations

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

RESERVATIONS/SUBJECT TO:

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

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

Unofficial Copy

Exhibit 2

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

SPECIAL USE LEASE

Lease No. 60-B068979

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to KITSAP RIFLE AND REVOLVER CLUB (hereinafter "Lessee") the premises in Kitsap County, Washington, the legal description of which is set forth in Exhibit 1A, upon the terms and conditions and for the consideration enumerated herein. Said premises and rights leased hereby are hereinafter referred to as the "Premises".

SECTION 1 OCCUPANCY

1.01 Lease Term. This Agreement shall commence on March 1, 2003 ("Commencement Date") and expire on February 27, 2018.

1.02 No Warranty of Quiet Enjoyment. State makes no warranty of quiet enjoyment of the Premises.

1.03 Condition of Premises. Lessee has had an opportunity to inspect Premises and enters into this Agreement solely in reliance on Lessee's own examination and not by reason of any representation by State. Premises are accepted in its present condition "AS IS WHERE IS". No reliance shall be placed on any opinion, material, or information provided by or through State, and Lessee does so at its own risk, cost and expense.

SECTION 2 USE OF PREMISES

2.01 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

Intensive use and occupancy containing Lessee's improvements, roads, parking areas, open shooting range, targets, and associated infrastructure.	8 Acres
Timberlands, wetlands and similar resource-oriented lands passively utilized by Lessee to provide buffer and safety zones for Lessee's shooting range.	64.41 Acres

In the event the Lessee desires a change in acreage or use, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage or use.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to interest, then to outstanding or delinquent rent, leasehold tax and other charges owed, then to current rent, leasehold tax, and charges.

3.01 Rent. The Lessee shall pay to the State, at Olympia, Washington 98504, in advance, the required rent of \$7,200.00 for the period of March 1, 2003 to February 27, 2004 and annually thereafter subject to adjustment under Subsection 3.06.

3.02 Leasehold Tax. Lessee shall pay to State, the leasehold tax as set forth in RCW Chapter 82.29A - Leasehold Excise Tax as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable.

3.03 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided in Subsection 13.06 (Condemnation).

3.04 Interest Charged for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.05 Late Charge for Failure to Pay. In the event the Lessee fails to make any payment of rent due hereunder upon the date due, the State shall be entitled to collect from the Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by the Lessee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Lessee and such default shall entitle the State to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, though failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity, including those contained in Chapter 59.12 RCW.

3.06 Adjustment of Rent. Beginning on the fifth anniversary of the Commencement Date, and at intervals of five (5) years thereafter (the "Adjustment Date"), a new annual rental will be established. In no event will the adjusted annual rental be less than the previous annual rental. Adjusted rental values established after the designated Adjustment Date shall be due retroactive to such Adjustment Date. The method for such adjustment shall be selected solely by the State from the following options:

(a) Increase of the current annual rent by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, "All Items" Consumer Price Index for All Urban Consumers ("CPI"), US City Average (1982-84=100), between the date five (5) years previous to the Adjustment Date and the Adjustment Date, i.e., adjusted rental amount equals current annual rent times CPI as of current Adjustment Date divided by CPI as of date five (5) years previous. In the event the CPI ceases to be published, the State may substitute such other comparable cost of living index as then may be in publication by a comparable governmental agency.

(b) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through evaluation of pertinent market evidence by State lease administrator and/or other appropriate State personnel.

(c) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through formal appraisal by State's appraiser, certified general appraiser under contract with the State, or such other appraiser as may be agreed to by State. Such appraisal must be performed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) as promulgated by the Appraisal Institute.

The market value will be determined exclusive of Lessee's improvements and as though ownership were in fee simple, not encumbered by lease.

Under (b) and (c) above, the new annual rental above shall be computed by multiplying the market value of the Premises by the then current Prime Rate as of the Adjustment Date plus 200 basis points (Prime Rate + 2.0%). The term "Prime Rate" shall mean the Prime Rate as published in The Wall Street Journal from time to time (or the average Prime Rate if more than one is published), any change in such Prime Rate to effect a change in the rate charged hereunder on the date of each such change. If The Wall Street Journal ceases to be published or ceases to publish a Prime Rate, then State shall designate another nationally recognized business publication which publishes such a rate or such rates which does, in the reasonable opinion of State, represent the "Prime Rate" as defined herein.

3.07 Failure to Adjust Not Waiver. Failure of State to adjust rent pursuant to Subsection 3.06 above at the end of any five (5) year period, shall not be a waiver by State of the right to adjust rent at the end of any subsequent five (5) year period. State shall retain the right, for so long as this Agreement remains in effect, to adjust rent as of the end of any five (5) year period, as though all prior adjustments had been made in accordance with the above provisions.

SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this Agreement.

4.02 Compatible Uses. State reserves for itself, its successors and assigns, the right at all times for any purpose to cross and re-cross the Premises at any place or grade, to grant easements/licenses over or leases to the Premises, to sell, or otherwise dispose of minerals, coal, oil, timber, gas, or other valuable materials from the Premises insofar as the State's activities on the Premises and any grant of rights the State makes to any person or entity shall not unreasonably interfere with the activities permitted hereunder.

4.03 Non-Default Termination. State reserves the right to terminate this Agreement upon sixty (60) days' written notice in the event the State includes the Premises in a plan for higher and better use, land exchange or sale.

SECTION 5 SPECIAL RESTRICTONS

5.01 Permits and Conformance With Laws.

(a) Lessee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Lessee's permitted use including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Premises, or for the conduct of any business upon the Premises at the sole cost and expense of Lessee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to State on request.

(b) Lessee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Premises and the use thereof, and shall correct at the Lessee's own cost and expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use. In no event shall Lessee undertake or suffer any activity to be conducted upon the Premises which constitutes a nuisance or which is a threat to the health or welfare of the general public.

(c) Lessee shall cause all work on the Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

5.02 Other Restrictions on Use.

(a) Lessee shall cut no State timber or remove State-owned valuable material, without prior written consent of the State. Prior to State's authorization for the cutting of timber, or removal of valuable material, the Lessee must pay to the State the fair market value of the timber or valuable material, as determined by the State.

(b) Lessee shall take all reasonable precautions to protect the land and improvements on the Premises from fire, make every reasonable effort to report and suppress such fires as may affect the Premises, and shall be subject to applicable fire laws affecting the Premises.

(c) Lessee shall prevent accumulation of equipment parts or "bone yards" on the Premises.

(d) This Agreement does not convey rights to media uses, communication sites, or any use on the Premises other than those expressly stated in this Agreement.

5.03 Habitat Conservation Plan. The Premises are located within an area that is subject to State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 (ITP) as supplemented by Permit No. 1168 (Collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Lessee and all persons acting under Lessee shall comply with the terms and conditions set forth in Exhibit 5A while operating on the Premises. State shall have the right to modify these terms and conditions from time to time to comply with the Habitat Conservation Plan, the ITP, the Endangered Species Act, the implementing regulations, and amendments thereto, or the requirements of the federal agencies administering these laws.

SECTION 6 UTILITIES, TAXES, LIENS

6.01 Utilities and Maintenance. During the term of this Agreement, Lessee shall pay all expenses incurred by Lessee in the use, enjoyment, and operation of the Premises, including, but not limited to, utility charges and all costs of maintaining and repairing the Premises and all improvements thereon whether now existing or hereafter installed. Lessee shall indemnify and hold the State harmless against any loss, liability, or expense resulting from any failure of Lessee to pay all such charges when due.

6.02 Taxes and Assessments.

(a) Lessee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the installation of Lessee owned improvements on the Premises, Lessee's leasehold interest therein, and Lessee's use and enjoyment thereof.

(b) Lessee shall pay its prorated share of all assessments that are legally required to be paid now or may be charged during the Agreement term to the Premises or Lessee owned improvements thereon. Lessee shall not cause or suffer the imposition of any assessment upon the Premises without the prior written consent of State. In the event any new assessment is proposed which affects the Premises, Lessee shall immediately notify State of such proposal after Lessee has knowledge or receives notice thereof. Any assessment upon the Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

6.03 Lessee Liens. Lessee shall not suffer or permit any lien to be filed against the State's interest in the Premises, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee. If any such lien is filed, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in

writing by the State in advance. Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

SECTION 7 LESSEES INDEMNITY; INSURANCE REQUIREMENTS

7.01 Indemnity. Lessee releases and shall indemnify and defend (with counsel acceptable to State) State, its employees, officers, and agents from and against any and all claims arising out of the use, occupation or control of the Premises by Lessee, its agents, and employees. A "claim" as used in this subsection means any claim of any nature whatsoever for penalties, financial loss, damages (including but not limited to bodily injury, sickness, disease or death, or injury to or destruction of property, land and other natural resources including the loss of use thereof), costs or expenses (including but not limited to attorney's fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the State, its officials, employees, or agents, except as provided in this subsection. To the extent that RCW 4.24.115 applies, Lessee shall not be required to indemnify State from State's sole or concurrent negligence. Lessee waives its immunity under Title 51 to the extent it is required to indemnify the State herein.

7.02 Insurance Requirements. Lessee shall, at all times during the term of this contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at State's option.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the department's risk manager before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Before starting work, Lessee shall furnish with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements

specified in the contract and, if requested, copies of policies to State. The certificate of insurance shall reference the State of Washington, Department of Natural Resources, and the lease number.

Lessee shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Lessee's liability or responsibility.

The State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

Lessee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract. All insurance policies must expressly waive any right of subrogation by the insurance company against the State and the State's officials, employees, and agents.

If Lessee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Lessee must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee, and such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this contract.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Lessee shall maintain general liability (CGL) insurance covering claims for bodily injury, personal injury, or property damage arising on the property and/or out of Lessee's operations and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Employer's Liability ("Stop Gap") Insurance. Lessee shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Workers' Compensation Coverage. Lessee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Lessee and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Lessee, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee or subcontractor or sub-subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Lessee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Builders Risk Insurance. If applicable, Lessee shall buy and maintain in force builders risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance shall be written on a completed form and in an amount equal to the value of the completed building, subject to subsequent modifications to the sum. The insurance shall be written on a replacement cost basis. The insurance shall name as insureds State, Lessee, and all subcontractors and sub-subcontractors in the work.

Insurance described above shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse. Insurance described above shall cover the entire work at the site including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the site. The policy shall cover the

cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance or regulation.

Any deductible applicable to the insurance bought in compliance with the policy described above shall be identified in the contract documents and the responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of the Lessee. If any part of any loss is not covered because of the application of a deductible amount not identified in the contract documents, Lessee will pay such loss. Lessee shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by State. If testing is being performed, such insurance shall cover such operations. This insurance shall name as insureds State, Lessee, and all subcontractors and sub-subcontractors in the work.

SECTION 8 WEEDS, HARMFUL SUBSTANCES

8.01 Weed Control. Lessee shall control all weeds on the Premises. Lessee shall be responsible for, or shall immediately reimburse State for, any all weed control cost incurred, as a result of Lessee's failure to control all weeds on said Premises.

Lessee shall prevent weed infestations by applying management practices which discourage their establishment or spread. The Lessee shall detect and control the invasion of new weeds. Weeds will be controlled using appropriate mechanical, biological and chemical treatments that meet the requirements of Washington State and Federal law.

Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

- a. Preventing weed problems;
- b. Monitoring for the presence of weed species;
- c. Establishing the density of the weed population (which may be zero) that can be tolerated;
- d. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
- e. Evaluating the effects and efficacy of weed control treatments.

8.02 Hazardous, Toxic, or Harmful Substances.

(a) Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by the State, or unless permitted by Subsection 2.01 (Permitted Use). If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.

(b) Hazardous, Toxic, or Harmful Substances.

(1) Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under Subsection 2.01 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall:

(i) Immediately notify the State of: all spills or releases of any Hazardous Substance affecting the Premises; all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended; all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises; and all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises; and

(ii) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises.

(2) Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 9 ASSIGNMENTS

Assignment. Lessee shall not hypothecate, mortgage, assign, sublease, transfer, or otherwise alienate this Agreement ("Assignment"), or any interest therein, without the prior written consent of State, which consent shall not be unreasonably withheld. In granting any such consent under this clause State shall be entitled to consider, among other items, the proposed assignee's, sublessee's or transferee's financial condition, business reputation, business, and such other factors as may reasonably bear upon the suitability of the assignee, sublessee, or transferee as lessee of the Premises. If Lessee is a corporation, partnership, or other association, (1) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (2) the sale of all or substantially all of the assets of Lessee shall be deemed to constitute an "assignment" of this Agreement which requires consent of State. The consent of State to any one assignment shall not constitute a waiver of State's right to consent to subsequent assignments, nor shall consent of State to any one assignment relieve any party previously liable as Lessee from any obligations under this Agreement, who shall remain joint and severally liable as primary obligor and not as surety. The acceptance by State of the payment of rent following an assignment shall not constitute consent to any assignment and State's consent shall be evidenced only in writing. The State may require reimbursement for any additional administrative costs resulting from the assignment.

SECTION 10 IMPROVEMENTS

10.01 Authorized Improvements. No improvement shall be placed on the Premises without the prior written consent of the State. Consent may be granted through this Agreement resulting in the State's approval of the authorized improvements listed herein as Exhibit 10A, or by written Letter of Authorization issued by the State.

10.02 Plan Approval. The plans or specifications for the construction of the authorized improvements listed on Exhibit 10A or authorized by Letter of Authorization issued by State, and for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval.

10.03 Ownership of Improvements. During the Term of this Agreement, the improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State, unless State requires their removal pursuant to Section 10.04 below. Throughout the term of this Agreement, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises for work or labor done, services performed, or materials used or furnished to be used in or about the Premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents, or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of State under this Agreement.

10.04 Condition at End of Lease. Upon vacating the Premises on the termination date, Lessee shall leave the Premises and all improvements thereon in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Agreement and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Premises and return the Premises to grade level free of all debris.

10.05 Surety Bond. A surety bond, certificate of deposit assignment, or letter of credit may be required by State to assure completion of construction or development of any improvements costing in excess of \$2,500.

10.06 Hold Harmless. Lessee shall indemnify, defend and hold harmless State and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the authorized improvements or repairs made at any time to the authorized improvements (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

10.07 Permits; Compliance with Codes. Lessee shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Lessee is responsible, at Lessee's sole cost and expense, to cause the authorized improvements and the Premises to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Premises during the Agreement Term, whether now in effect, or hereinafter adopted or enacted.

10.08 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Agreement.

10.09 Lessee's Repairs, Alteration, and Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Agreement, and keep and maintain the whole of the premise, including all improvements in a clean, sanitary and attractive condition.

SECTION 11 ROADS (NOT APPLICABLE)

SECTION 12 DEFAULT AND REMEDIES

12.01 Default. In the event of any material breach of any provision of this Agreement by Lessee, the breach, after expiration of any grace period as provided in this subsection, shall be

deemed a default entitling State to cancel this Agreement and seek any other remedies set forth in this Agreement or otherwise available at law or equity. State shall deliver to Lessee notice of the breach and a demand that the same be remedied immediately. Lessee shall not be in default if the breach pertains to the payment of money and Lessee cures the breach within thirty (30) days of receipt of the notice, or if the breach pertains to a matter other than the payment of any monies due under this agreement, Lessee shall after receipt of the notice promptly commence to cure the breach and shall cure the breach within forty-five (45) days after receipt of the notice. If such breach is non-monetary in nature, and, as determined by State, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), Lessee shall commence to cure such breach within said period and diligently pursue such action with continuity to completion. If Lessee fails to cure a default, all Lessee owned improvements shall at the option of State, be removed by Lessee, be removed by State at the cost to Lessee, or become the property of State.

12.02 Reentry. In the event of any default by Lessee, State shall have the right, with or without canceling the Agreement, to reenter the Premises and remove all persons and property from Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in State's discretion at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this Agreement unless a written notice of termination is given to Lessee.

12.03 Termination of Agreements. Whether or not State elects to terminate this Agreement on account of any default by Lessee and subject to any non-disturbance and attornment agreements, if any, State shall have a right to terminate any and all subleases, licenses, concessions or other arrangement for possession affecting Premises. Alternatively, State, in its sole discretion, may succeed to Lessee's interest in such sublease, license, concession or arrangement, and Lessee shall have no further right to or interest in the rent or other consideration receivable thereunder.

12.04 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement that require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. Upon expiration or earlier termination of this Agreement, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.

12.05 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, the State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to the Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

12.06 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.

12.07 Nonwaiver. Waiver by the State of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by the Lessee of any provision of this Agreement shall not constitute a waiver of any right of the State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

12.08 Force Majeure. The Lessee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

12.09 Insolvency of Lessee. If the Lessee becomes insolvent, a receiver is appointed, or Lessee's interest is transferred by operation of law by reason of insolvency, the State may terminate this Agreement at its option. Insolvency as used herein will mean the inability of the Lessee to meet its monetary obligations under this Agreement as they come due.

SECTION 13 GENERAL PROVISIONS

13.01 Governing Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

13.02 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this Agreement, and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

13.03 Lessee's Authority. Persons executing this Agreement on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

13.04 State's Authority. This Agreement is entered into by State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

13.05 Preservation of Markers. Lessee shall not destroy any land survey corner monuments and reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from the State, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during construction or operations must be adequately referenced and replaced, at the Lessee's cost, under the direction of a State of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington, including but not limited to RCW 58.24, and all relevant Department of natural Resources regulations.

13.06 Condemnation. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Lessee may choose to terminate this Agreement as of the date the condemner takes possession. If either the State or Lessee elects to terminate this Agreement, the rents or other charges to be paid by Lessee will be apportioned by the State and paid by the Lessee to the date of taking. If neither the State nor Lessee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Lessee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Lessee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Lessee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises.

The State and Lessee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

13.07 Interpretation and Numbering. This lease has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this lease at the option of the State. Cross references to sections or subsections that are not included in this lease should not be construed as material references.

13.08 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Lessee and the State hereunder.

13.09 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

13.10 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

13.11 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

13.12 Attorney Fees. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

13.13 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the State:

Where Agreement provisions require submittal to State office:
Department of Natural Resources
Product Sales and Leasing Division
P.O. Box 47061
Olympia, WA 98504-7061

Where Agreement provisions require submittal to the State at its Region office:

Department of Natural Resources
South Puget Sound Region
950 Farman Avenue North
Enumclaw, WA 98022

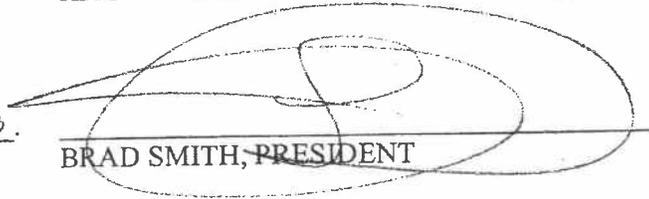
To the Lessee at the address affixed with signature or Lessee's last known address.

13.14 Exhibits. This agreement is subject to the terms and conditions of exhibits referenced herein, which are attached hereto and by this reference made a part hereof.

Exhibits: 1A - Legal Description and Encumbrances, 5A - HCP Requirements, 10A - Authorized Improvements

KITSAP RIFLE AND REVOLVER CLUB

Dated: Nov. 12th, 2003.


BRAD SMITH, PRESIDENT

Address: 4900 Seabeck Hwy NW
Bremerton, WA 98312

Phone: (360) 373-1007

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: November 17, 2003.


ART TASKER,
South Puget Sound Region Manager

Approved as to form this
27 day of February, 2003
Jim Schwartz, Assistant Attorney General

**NOTARIAL CERTIFICATE
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

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 he signed this instrument, on oath stated that he authorized to execute the instrument, and acknowledged it as the president of Kitsap Rifle and Revolver Club to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/12/03

(Seal or Stamp)

Alma M. Singleton
NOTARY PUBLIC in and for the
State of WASHINGTON
My appointment exp 9/1/05

**NOTARIAL CERTIFICATE
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Art Tasker is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he authorized to execute the instrument, and acknowledged it as the Region Manager of Washington State Department of Natural Resources, South Puget Sound Region to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: November 17, 2003

(Seal or Stamp)

Floella C. McKinley
NOTARY PUBLIC in and for the
State of Washington
My appointment
expires 6/29/04
expires _____



EXHIBIT 1A

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.

EXHIBIT 10A
Authorized Improvements

- (1) One 12 foot X 120 foot covered rifle position shooting building.
- (2) One 12 foot X 105 foot covered pistol position shooting building.
- (3) One 12 foot X 20 foot storage shed.
- (4) One 8 foot X 12 foot target shed.
- (5) Electrical meter service panel and power poles.

EXHIBIT 5A
HCP REQUIREMENTS

1. The Lessee shall immediately notify the State of new locations of Permit species covered in the Incidental Take permit (ITP) that are discovered within the leased Premises covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied 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. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the leased Premises the Lessee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Lessee may be required to take certain actions to help the State safeguard the well being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State.
3. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) in all correspondence and reports concerning Permit activities.
4. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Lessee to all authorized officers, employees, contractors, or agents of Lessee conducting authorized activities on the Property. Any questions Lessee may have about the ITP should be directed to the State.
5. At this time, the following sensitive areas, conditions or species have been identified on the Premises. Contact the State for more information on the identified areas.

Riparian Management Zones

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 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 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 acreage and function.

Exhibit 1

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands
Olympia, Washington 98504

SPECIAL USE LEASE

Agreement No. 60-A68979

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to KITSAP RIFLE AND REVOLVER CLUB, a corporation (hereinafter "Lessee") the premises in Kitsap County, Washington, the legal description, and reservations, if any, of which are set forth in Exhibit 1A, upon the terms and conditions and for the consideration enumerated herein. Said premises and rights leased hereby are hereinafter referred to as "the Premises." All exhibits to this Agreement are attached and incorporated herein.

SECTION 1 OCCUPANCY

1.01 Lease Term. This Agreement shall commence on March 1, 2002, ("Commencement Date") and expire on February 28, 2003.

1.02 Condition of Premises. Taking possession of the Premises by Lessee shall constitute acknowledgment by Lessee that the Premises are in good and tenantable condition and that the Premises are in all respects suitable for the uses permitted in Section 2 (Use of Premises). The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the Premises are suitable for such use.

SECTION 2 USE OF PREMISES

2.01 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

(1) 8 acres of intensive use and occupancy, containing Lessee's improvements, roads, parking areas, open shooting range, targets, and associated infrastructure.

(2) 64.41 acres of timberlands, wetlands and similar resource-oriented lands passively utilized by Lessee to provide buffer and safety zones for Lessee's shooting range.

In the event the Lessee desires a change in acreage or use, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage or use.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to rent and charges and then to leasehold tax, if applicable.

3.01 Rent. The Lessee shall pay to the State, at Olympia, Washington 98504, in advance, the required rent of \$6,106.88 for the period of March 1, 2001 to February 28, 2003 and annually thereafter subject to adjustment under subsection 3.06.

3.03 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided in subsection 12.05 (Condemnation).

3.04 Interest Charged for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.05 Late Charge for Failure to Pay. In the event the Lessee fails to make any payment of rent due hereunder upon the date due, the State shall be entitled to collect from the Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by the Lessee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Lessee and such default shall entitle the State to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, though failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity, including those contained in Chapter 59.12 RCW.

3.09 Leasehold Tax. Should a leasehold tax be imposed on this Agreement or any interest therein, from the Commencement Date and continuing throughout the term, Lessee shall pay to the State at Olympia, Washington 98504, the leasehold tax as set forth in RCW Chapter 82.29A - Leasehold Excise Tax or as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable. Failure to pay said tax when due and payable shall be considered a breach of the provisions of this Agreement and the State shall be entitled to all remedies they are entitled to by law, and the remedies provided herein for a breach of a provision of this Agreement. Any delinquent taxes shall be a debt to the State and in the event the State is subject to any penalties or interest because of the failure of the Lessee to pay such taxes, such penalties and interest shall be payable by the Lessee to the State and shall be considered a debt to the State. In the event the State suffers any costs of whatsoever nature, including attorney fees, or other costs of litigation in collecting said tax, such costs shall be payable by the Lessee and shall be considered a debt due and owing to the State by the Lessee.

SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this Agreement.

4.02 Access. The State reserves the right to grant easements on the Premises. The easement applicant may be required to remedy any damages to the leasehold.

The Lessee's plan of development and placement of improvements must be such that access to the State's adjacent ownership, if any, will not be impaired.

4.03 Restrictions on Use.

1. Permits and Conformance With Laws.

- a. Lessee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Lessee's permitted use including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Premises, or for the conduct of any business upon the Premises at the sole cost and expense of Lessee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to State on request.
- b. Lessee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Premises and the use thereof, and shall correct at the Lessee's own cost and expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use. In no event shall Lessee undertake or suffer any activity to be conducted upon the Premises which constitutes a nuisance or which is a threat to the health or welfare of the general public.
- c. Lessee shall cause all work on the Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

2. Other Restrictions on Use.

- a. Lessee shall cut no State timber or remove State-owned valuable material, without prior written consent of the State. Prior to State's authorization for the cutting of timber or removal of valuable material, the Lessee must pay to the State the fair market value of the timber or valuable material, as determined by the State.
- b. Lessee shall take all reasonable precautions to protect the land and improvements on the Premises from fire, make every reasonable effort to report and suppress such fires as may affect the Premises, and shall be subject to applicable fire laws affecting the Premises.
- c. Lessee shall prevent accumulation of debris or refuse on the Premises.

4.04 Resource Disposal. The State reserves the right to sell, lease or otherwise dispose of minerals, fossils, coal, oil, gas, gravel, stone, forestry resources or other valuable materials from the Premises. Lessee shall be entitled to payment for damages to its leasehold interests caused by the disposal of such materials.

4.05 Roads. During the term of this Agreement, the Lessee is granted, subject to rights previously granted, a nonexclusive easement to use existing roads on the Premises for only permitted use(s) under this Agreement. The State reserves the right to build roads and grant to others easements to use new and existing roads subject only to a ratable reduction in, by equitable division by other users, the cost of maintenance and repair of such roads. Lessee may not construct new roads or undertake any modification or alteration to existing roads without the prior written consent of the State.

4.06 Non-Default Termination. The State may, at its sole discretion, terminate all or part of this Agreement upon written request by the Lessee for surrender of leasehold upon satisfaction by the Lessee of all outstanding rents, duties, and obligations.

This Agreement is subject to termination upon sixty (60) days' written notice in the event the State includes the Premises in a plan for higher and better use, land exchange or sale.

4.07 Compliance with the Habitat Conservation Plan (HCP).

State has entered into a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) to address state trust land management activities and compliance with the federal Endangered Species Act. The lease activities are located within State's HCP area (Permit Lands) and are subject to the terms and conditions of the HCP, Incidental Take Permit No. PRT-812521 (ITP), Exhibit 4A Requirement of the Incidental Take Permit, and the HCP requirements, if any, that are set forth in Exhibit 4B Requirements of the Habitat Conservation Plan which may be modified from time to time to comply with HCP requirements for species covered by the ITP. All HCP materials, including the ITP, are available for review at State's Region Offices and the administrative headquarters in Olympia, Washington.

By signing this Agreement, Lessee agrees to comply with the terms and conditions of the ITP and the HCP for lease activities on Permit Lands. If the Lessee's lease activities comply with the terms and conditions of Exhibits 4A and 4B Requirements of the Habitat Conservation Plan Requirement of the Incidental Take Permit, Lessee's actions will be deemed in compliance with the HCP. Non-compliance with the terms and conditions of the HCP and ITP will be deemed a breach of this

Agreement and may subject the Lessee to liability for violation of the endangered Species Act.

All road use, construction, reconstruction and/or maintenance on the Premises must comply with the current HCP requirements and with Region road guidelines and may be restricted or not permitted at certain times of the year. Any forest Practices Permit application submitted for activities on the Premises must comply with the ITP and HCP and identify that the Premises is within an area covered by a Habitat Conservation Plan and part of Incidental Take Permit No. PRT 81521.

Lessee shall communicate to all employees, contractors or agents, who are or will be conducting activities in the Premises, that the Premises is subject to HCP requirements.

SECTION 5 REQUIREMENTS

5.01 Utilities and Maintenance. During the term of this Agreement, Lessee shall pay all expenses incurred in the use, enjoyment, and operation of the Premises, including, but not limited to, utility charges and all costs of maintaining, and repairing the Premises and all improvements thereon whether now existing or hereafter installed. Lessee shall indemnify and hold the State harmless against and from any loss, liability, or expense resulting from any failure of Lessee to pay all such charges when due.

5.02 Taxes and Assessments.

1. Lessee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the Premises, Lessee's leasehold interest therein, improvements thereon, and Lessee's use and enjoyment thereof.
2. Lessee shall pay the total amount of all assessments that are legally required to be paid now or may be charged during the lease term to the State land or the improvements thereon. Lessee shall not cause or suffer the imposition of any assessment upon the Premises without the prior written consent of State. In the event any new assessment is proposed which affects the Premises, Lessee shall immediately notify State of such proposal after Lessee has knowledge or receives notice thereof. Any assessment upon the Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

5.03 Payment Date and Proof. The Lessee shall pay all payments for taxes, and/or assessments when due. Lessee shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of such amounts.

5.04 Lessee Liens. Lessee shall not suffer or permit any lien to be filed against the State's interest in the Premises, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee. If any such lien is filed, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by the State in advance. Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

5.05 Insolvency of Lessee. If the Lessee becomes insolvent, bankrupt, receiver appointed, or their interest is transferred by operation of law, by reason of insolvency, the State may cancel this Agreement at its option. Insolvency as used herein will mean the inability of the Lessee to meet obligations under this Agreement as they come due.

SECTION 6 LESSEE'S INDEMNITY; INSURANCE REQUIREMENTS

6.00 Indemnity. From and after the Commencement Date of this Agreement, the Lessee shall indemnify, defend (with counsel acceptable to State) and hold harmless State, its employees, officers, and agents from any and all liability, damages (including, but not limited to, personal injury and damages to land and other natural resources), expenses, causes of action, suits, claims, costs, fees (including, but not limited to, attorneys' fees), penalties or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Premises by Lessee, Lessee's sublessees, invitees, agents, employees, licensees, or permittees except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Lessee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This section shall not in any way limit Lessee's liability under subsection 7.02 (Hazardous, Toxic, or Harmful Substances).

6.02 Insurance Requirements.

1. Evidence of Insurance: Lessee must furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference the Department of Natural Resources and Agreement number. Before implementing this Agreement, Lessee must provide proof of coverage.

2. Cancellation: The Certificate(s) of Insurance must provide 45 days written notice to State before the cancellation, non-renewal, or material change of any insurance coverage included therein. Notices must be sent to State's Enumclaw office via certified mail.

3. Additional Requirements:

a. All policies must name State of Washington, DNR, as an additional insured.

b. All insurance policy(ies) must include Other Insurance provisions that state Cooperator's policy provides primary insurance coverage.

c. All insurance policies must provide liability coverage on an occurrence basis unless otherwise specified in this Agreement.

d. Policies must be issued by an insurer admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Excess or "surplus lines"

carriers must be approved in advance by the Risk Manager (or other authorized representative) for State. All insurers must have a Best's rating of B plus (B+) or better.

4. Minimum Coverage Requirements: The Minimum Coverage Requirements set forth the *minimum* limits of insurance the Lessee must purchase to secure a contract with State. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve the Lessee from liability for losses and settlement expenses greater than these amounts.

During the term of this Agreement, Lessee must purchase and maintain, and shall require all independent contractors to maintain while performing work on the Premises, the minimum insurance coverages and limits specified below, which may be increased by State at its sole discretion:

a. Commercial General Liability (CGL) Insurance. Lessee must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from Premises, operations, independent contractors, personal injury, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

2. Physical Property Damage Insurance. Physical damage insurance covering all real and personal property, other than the personal property of subtenants, located on or in, or constituting a part of, the Premises (including but not limited to the authorized improvements referred to in Section 9 below) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Washington, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain.

3. Business Auto Policy (BAP) Insurance (required for all contracts). The Lessee must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01 or equivalent form. The Description of Covered Autos must include one or more of the following:

"Any Auto" (Symbol 1), "Hired Autos Only" (Symbol 8), "Non-Owned Autos" (Symbol 9).

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability and physical damage coverage with limits not less than those specified below. The Lessee is responsible for any deductible.

Description

Each Accident

Bodily Injury and Property Damage	\$1,000,000
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d. Worker's Compensation and Employer's Liability Insurance: The Lessee must purchase and maintain insurance covering obligations imposed by Federal and State statutes having jurisdiction of its employees in the performance of work, including Employer's Liability Insurance. Evidence of "Qualified Self-Insurance Status" will suffice to meet the requirements of this section.

<u>Description</u>	<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

e. Builder's Risk Insurance:

(1) During the period construction is in progress and until completion of the project and acceptance by State, Lessee shall buy and maintain in force builder's risk insurance on the entire work. Such insurance shall be written on a completed value form and in any amount equal to the value of the completed building, subject to subsequent modifications to that sum. The insurance shall be written on a replacement cost basis. This insurance shall name as insured the Department of Natural Resources, Lessee and all subcontractors and sub-subcontractors in the work.

(2) Insurance required in paragraph (1) shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse.

(3) Insurance required in paragraph (1) shall cover the entire work at the site, including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit.

(4) The policy shall include as insured Premises scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(5) Any deductible applicable to the insurance bought in compliance with paragraph (1) shall be identified in the contract documents and the responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of the Lessee. If any part of any loss is not covered because of the application of a deductible amount not identified in the contract documents, such loss will be paid by Lessee.

6.03 Proceeds of Insurance. In the event of fire or casualty damage to any or all of the improvements, any insurance proceeds derived therefrom in case of loss shall be held in trust and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same improvements so destroyed or damaged or such modified plan as shall be previously approved in writing by State.

SECTION 7 MANAGEMENT

7.01 Weed Control. Lessee shall control all weeds on all lands under this Agreement. Lessee shall be responsible for, or shall immediately reimburse State, for any weed control cost incurred, as a result of Lessee's failure to control weeds on said Premises.

All methods of chemical weed control [shall be approved in writing by State prior to beginning such activities][shall be reported to State at the Region office within 30 days after the weed control activities]. No aerial spraying without prior approval by State is permitted.

Aerial Application of Pesticides. The aerial application of pesticides, which includes insecticides and herbicides, is not permitted.

7.02 Hazardous, Toxic, or Harmful Substances.

1. Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter,

chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by the State, or unless permitted by subsection 2.01 (Permitted Use). If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.

2. Hazardous, Toxic, or Harmful Substances.

a. Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under subsection 2.01 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall:

(1) Immediately notify the State of (i) all spills or releases of any Hazardous Substance affecting the Premises, (ii) all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises; and

(2) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises.

b. Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 8 SUBLEASES AND ASSIGNMENTS

8.01 Sublease. The Premises, in whole or in part, and appurtenances thereon shall not be subleased without written approval from the State. If approved, Lessee shall remain obligated for all actions on the Premises including compliance with all provisions contained in this Agreement.

8.02 Assignment. Lessee shall not hypothecate, mortgage, assign, encumber, transfer, or otherwise alienate this Agreement, or any interest therein or engage in any other transaction which has the effect of transferring or affecting the right of enjoyment of the Premises without the prior written approval of the State.

8.03 Approval of Sublease or Assignment. In granting such approval, State reserves the right to change the terms and conditions of this Agreement as it may affect the sublessee/assignee. The State shall be entitled to consider, among other items, the proposed sublessee's/assignee's financial condition, managerial capability, business reputation, nature of the proposed sublessee's/assignee's business, the then current fair market rental value of the Premises, and such other factors as may reasonably bear upon the suitability of the sublessee/assignee or transferee as a tenant of the Premises or the holder of this Agreement.

The State may require reimbursement for any additional administrative costs resulting from the assignment.

Consent of the State to an assignment or transfer shall not constitute a waiver of the State's right to approve subsequent assignments or transfers. The acceptance by State of payment or performance following an assignment or transfer shall not constitute consent to any assignment or transfer, and State's consent shall be evidenced only in writing.

8.04 Assignee/Transferee Obligations. Each permitted assignee, or transferee of Lessee shall assume and be deemed to have assumed all obligations of Lessee under this Agreement. Notwithstanding any such assignment or transfer, Lessee shall be and remain jointly and severally liable with the assignee or transferee for all obligation under this Agreement, unless released, in writing, by the State.

8.05 Corporations, General Partnerships, Limited Partnerships. If Lessee is a corporation, any merger, consolidation, liquidation, or any change in ownership or the power to vote the majority of its outstanding voting stock, shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Lessee is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer of interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Lessee is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment.

SECTION 9 IMPROVEMENTS

9.01 Authorized Improvements. No improvement shall be placed on the Premises without the prior written consent of the State. Consent may be granted through this Agreement resulting in the State's approval of the authorized improvements listed herein as Exhibit 9A, or by written Letter of Authorization issued by the State.

9.02 Plan Approval. The plans or specifications for the construction of the authorized improvements listed on Exhibit 9A or authorized by Letter of Authorization issued by State, and for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval.

9.03 Ownership of Improvements. During the Term of this Lease, the improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State, unless State requires their removal pursuant to Section 9.04 below. Throughout the term of this Lease, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises for work or labor done, services performed, or materials used or furnished to be used in or about the Premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents, or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of State under this Lease.

9.04 Condition at End of Lease. Upon vacating the Premises on the termination date, Lessee shall leave the Premises and all improvements thereon in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Premises and return the Premises to grade level free of all debris.

9.05 Surety Bond. A surety bond, certificate of deposit assignment, or letter of credit may be required by State to assure completion of construction or development of any improvements costing in excess of \$2,500.

9.06 Hold Harmless. Lessee shall indemnify, defend and hold harmless State and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the authorized improvements or repairs made at any time to the authorized improvements (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

9.07 Permits; Compliance with Codes. Lessee shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Lessee is responsible, at Lessee's sole cost and expense, to cause the authorized improvements and the Premises to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Premises during the Lease Term, whether now in effect, or hereinafter adopted or enacted.

9.08 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Agreement.

9.09 Lessee's Repairs, Alteration, and Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Agreement, and keep and maintain the whole of the premise, including all improvements in a clean, sanitary and attractive condition.

SECTION 10 ROADS (NOT APPLICABLE)

SECTION 11 DEFAULT AND REMEDIES

11.01 Nonwaiver. Waiver by the State of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by the Lessee of any provision of this Agreement shall not constitute a waiver of any right of the State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

11.02 Attorney Fees and Venue. Each party shall be responsible for their own attorney fees and court costs in the event of a dispute arising out of this agreement except as set forth in subsections 5.04 (Lessee Liens), 7.02 (Hazardous, Toxic, or Harmful Substances), 11.04 (Default), and 12.01 (No Partnership). Venue for resolving such disputes shall be in Thurston County Superior Court of Washington.

11.03 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the State:

Where Agreement provisions require submittal to State office:

Department of Natural Resources - Product Sales and Leasing Division
P.O. Box 470146
Olympia, WA 98504-7016

Where Agreement provisions require submittal to the State at its Region office:
Department of Natural Resources - South Puget Sound Region
950 Farman Avenue North
Enumclaw, WA 98022

To the Lessee at the address affixed with signature or Lessee's last known address.

11.04 Default. If Lessee breaches or defaults on any undertaking, promise or performance called for herein, the State may cancel this Agreement after the Lessee has been given thirty (30) days' notice of the breach or default and such breach or default has not been corrected within such time. Upon such cancellation, all improvements on the Premises shall be forfeited and become the property of the State subject only to any previously approved waiver of interest or security interest. The State may seek damages for any and all violations or defaults with or without canceling this Agreement. In the event State deems the breach or default to constitute a threat to safety, life, or property it may elect to intervene immediately, without notice, to remedy the breach or default and Lessee hereby agrees to repay State for all costs in remedying the breach or default upon demand, together with interest thereon from the date of expenditure at the rate set forth in this Agreement. Alternatively, State may require Lessee itself to act immediately to remedy the breach or default, should State deem it a threat to safety, life, or property.

11.05 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement, and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. However, upon expiration or earlier termination of this Agreement, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.

11.06 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development, the State shall have the option, but is not obligated, to make such performance after giving 10 days written notice to the Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

11.07 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.

11.08 Force Majeure. The Lessee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

SECTION 12 GENERAL PROVISIONS

12.01 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this Agreement and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

12.02 Lessee's Authority. Persons executing this Agreement on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

12.03 State's Authority. This Agreement is entered into by State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

12.04 Preservation of Markers. Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed, the Lessee shall re-establish them by a licensed land surveyor in accordance with U.S. General Land Office standards at Lessee's expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Agreement must be adequately referenced and/or replaced in accordance with Chapter 58.09 RCW. Such references and replacements must be approved by the State prior to removal of said corners, reference points or monuments.

12.05 Condemnation. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Lessee may choose to terminate this Agreement as of the date the condemner takes possession. If either the State or Lessee elects to terminate this Agreement, the rents or other charges to be paid by Lessee will be apportioned by the State and paid by the Lessee to the date of taking. If neither the State nor Lessee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Lessee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Lessee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Lessee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises.

The State and Lessee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

12.06 Interpretation and Numbering. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this Agreement.

12.07 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Lessee hereunder.

12.08 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

12.09 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

12.10 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

12.11 Discrimination. Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

12.12 Exhibits. All conditions appurtenant to this Agreement and said Premises are contained within said exhibits as follows:

Exhibits: 1A Legal Description of Premises & Reservations, 4A Requirements of the Incidental Take Permit (ITP), 4B HCP Requirements, and 9A Authorized Improvements, and during the term of this Agreement, exhibits that may be added, as provided for in this Agreement.

The Lessee expressly agrees to all covenants herein and binds himself for the payment of the rental hereinbefore specified.

KITSAP RIFLE AND REVOLVER CLUB

Dated: March 14, 2002

By: Dave Tipton
Dave Tipton, President

Address: PO Box 134
Bremerton, WA 98337

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: April 11, 2002

By: Gretchen Nicholas
Gretchen Nicholas, Region Manager
South Puget Sound Region *GN*

Approved as to form only this
11th day of April, 2001
Jim Schwartz, Assistant Attorney General

Lessee Acknowledgment
(Corporate/Partnership)

STATE OF Washington)
)ss.
COUNTY OF Thurston)

On this 14th day of March, 2002, before me personally appeared David W Tipton to me known to be the President of the Kitap Ridge Revolver Club that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Club, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument ~~and that the seal affixed is the corporate seal of said corporation.~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Debra Kay Baker
Notary Public in and for the State of Washington
residing at Thurston
My commission expires 3-1-2006

NOTARY PUBLIC STATE OF WASHINGTON DEBRA KAY BAKER Commission Expires March 1, 2006
--

Department of Natural Resources Acknowledgment

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this 11th day of April, 2002, before me personally appeared GRETCHEN NICHOLAS to me known to be the Region Manager of the Department of Natural Resources of the State of Washington, the Department that executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Shirley M. Catr
Notary Public in and for the State of Washington,
residing at Federal Way
My commission expires 7-29-2004

EXHIBIT 1A

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.

EXHIBIT 4A

REQUIREMENTS OF THE INCIDENTAL TAKE PERMIT (ITP)

1. The ITP is subject to the provisions of Title 50 *Code of federal Regulations Parts 10, 13, & 17*.
2. The Lessee shall immediately notify the State of new locations of permit species covered in the Incidental Take permit (ITP) that are discovered within the area covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied 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. In all circumstances notification must occur within a 24 hour time period.
3. Section 9 of the Endangered Species Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. Harm is further defined by the U.S. Fish and Wildlife Service (FWS) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by FWS as an act or omission which create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
4. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP the Lessee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. The Lessee shall notify the State if there is any doubt as to the identification of a discovered permit species. Lessees may be required to take certain actions to help the State safeguard the well-being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State. Any such requirements will be explained to the Lessee by the State during the Pre-Work Conference.
5. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) in all correspondence and reports concerning permit activities.
6. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Lessee to all authorized officers, employees, contractors, or agents of Lessee conducting authorized activities on the Premises. Any questions Lessee may have about the ITP should be directed to the State.
7. The ITP term for grizzly bears shall expire on January 30, 2002. No activities resulting in the incidental take of grizzly Bears after January 30th, 2002 will be authorized, unless and until the State receives a permit extension.

EXHIBIT 4B

REQUIREMENTS OF THE HABITAT CONSERVATION PLAN (HCP)

At this time, the following sensitive areas, conditions or species have been identified on the Premises. Contact the State for more information on the identified sites.

Riparian Management Zones

Bodies of water, including but not limited to those streams, rivers and lakes, and other lakes and wetlands, shown below, have been identified and/or may be located on the Premises. All activities within the Riparian Management Zone, as defined in the 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 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, may be restricted or not permitted during specific times. All activities must provide for no overall net loss of naturally occurring wetland acreage and function.

EXHIBIT 9A

Authorized Improvements

- (1) One 12 foot X 120 foot covered rifle position shooting building.
- (2) One 12 foot X 105 foot covered pistol position shooting building.
- (3) One 12 foot X 20 foot storage shed.
- (4) One 8 foot X 12 foot target shed.
- (5) Electrical meter service panel and power poles.



Kitsap County Prosecuting Attorney's Office

Russell D. Hauge
Prosecuting Attorney

Please reply to: Civil Division

September 10, 2010

Carol I. Maves
Office Administrator

Mr. Stephen Hart
Office of the Staff Judge Advocate
I Corps, Joint Base Lewis-McChord
Mail Stop 69
Box 339500

Christian C. Casad
Case Management
Division Chief

Timothy A. Drury
Felony and Juvenile
Division Chief

Joint Base Lewis-McChord, WA 98433-9500

Claire A. Bradley
District/Municipal
Division Chief

RE: Request for Expert Witness Assistance or Tasking for Mr. Dale Richter,
Firearms Range Expert, *Sent via email and U.S. Mail*

Jacquelyn M. Auferheide
Civil/Child Support
Division Chief

Dear Mr. Hart:

www.kitsapgov.com/pros

This letter is to formally request the assistance of the Joint Base Lewis-McChord and the assistance of an expert witness on your staff, Mr. Dale Richter. As I have described to you, Kitsap County has filed a nuisance action against the Kitsap Rifle and Revolver Club in Pierce County Superior Court. We have developed an expert witness who has determined that the shooting activities at the Club's property in central Kitsap County constitutes an ongoing danger to the hundreds of residents living literally within shooting distance of the Club. Our expert, Gary Koon, is Deputy Operations Officer, Marine Corps Security Force Battalion, Naval Base Kitsap-Bangor.

Mr. Koon has recommended that we consult with an expert on staff at JBLM, who can conduct an even more thorough safety assessment of this Club and can peer-review Mr. Koon's work thus far. Mr. Koon has developed surface danger zone maps that demonstrate that the Club – as currently configured and operated – threatens populated areas of Kitsap County.

Our case petitions the Court to order that the Club "stand down" until it can undergo a professional range safety analysis and undergo all of the necessary land use, site development and other permits necessary for some significant changes that have occurred to the Club's physical facilities and practices during the past decade or so. It is Mr. Koon's opinion that Mr. Richter or one of his colleagues can offer the best expertise and testimony available in the field of firearm range safety.

Adult Criminal & Administrative Divisions • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Juvenile Criminal Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-5500 • FAX (360) 337-5509
Special Assault Unit • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7148 • FAX (360) 337-7229

Bainbridge Island Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Port Orchard Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949
Poulsbo Municipal Court Division • 614 Division Street, MS-35 • Port Orchard, Washington 98366-4681 • (360) 337-7174 • FAX (360) 337-4949

Civil Division • 614 Division Street, MS-35A • Port Orchard, Washington 98366-4681 • (360) 337-4992 • FAX (360) 337-7083
Child Support Division • 614 Division Street, MS-35B • Port Orchard, Washington 98366-4681 • (360) 337-7020 • FAX (360) 337-5733



Mr. Stephen Hart
September 10, 2010
Page 2

As you probably know, Kitsap County is home to thousands of active duty and retired members of our Country's armed forces. More than a few of them live within the surface danger zones we have identified. Several of them have come forward to register their concerns about the Club and its practices. On their behalf and on behalf of Kitsap County, thank you for your consideration of our request. Please do not hesitate to contact me at 360-337-4979 or nwachter@co.kitsap.wa.us with any questions you may have.

Sincerely yours,

RUSSELL D. HAUGE
Prosecuting Attorney



NEIL R. WACHTER
Senior Deputy Prosecuting Attorney

Enclosure: Complaint (U.S. Mail copy sent without exhibits to complaint)

Don Burger

From: AppServ Applications [AppServ@co.kitsap.wa.us]
Sent: Friday, September 10, 2010 7:28 PM
To: AppServ Applications
Subject: Comment form from Kitsap County

This message was sent from the comment form at <http://www.kitsapgov.com>

Name: bob
Email: bobpurschwitz@
Subject: Complaint
Contact: Yes
From Address:

Computer Info:
Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.9.2.8)
Gecko/20100722 Firefox/3.6.8

Comment On: Employee

Comments:

Russ has lost my vote do to his gun club attack.

