

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for Special Use Permits by **Puget Sound Doodles LLC, Alexandra Lemelson, and Kathy Lemelson** for a Limited Kennel

PL20-521, Special Use Permit

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION on REMAND

Issued 4/24/26

Department Action required at Condition §8(a)

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, Puget Sound Doodles, LLC, requests approval of a Special Use Permit to allow the operation of a “limited kennel” on an approximately 10.13-acre property.

Decision: The requested Special Use Permit is granted subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Applicant/Property Owner: Puget Sound Doodles, LLC
Alexandra Lemelson
Carolyn Lemelson
Kathy Lemelson
25954 Lake Cavanaugh Road
Mount Vernon, WA 98274

Agent: Ojala Law Inc. PS
Peter Ojala
PO Box 211
Snohomish, WA 98291

Site Address: 31004 Prevedell Road
Sedro Woolley, WA

Legal Description: Lot 2 Short Plat#PL03-0246 AF#200308260100 Located in NW1/4 SW1/4, Section 8, Township 35 North, Range 6 EAST, W.M. Survey AF#202103050096

Assessor's Parcel No(s). P121016

Lot Size: 10.13 acres

Zoning: Rural Reserve (RRv)

Water Supply: Private individual drilled well

Sewage Disposal: On-site septic system

Fire Protection: District #8

Law Enforcement: Skagit County Sheriff

Application Date: December 10, 2020

Determination of Completeness: October 11, 2021

Shoreline Designation: NA

Statewide Significance: N/A

SEPA Review: Mitigated Determination of Nonsignificance (MDNS) issued March 24, 2022 (Hearing Examiner “Exhibit Listing” #9).

Notice Information: Notice of Application, posted on-site, October 11, 2021
Notice of Application, published in the Skagit Valley Herald and mailed to property owners w/n 300 feet, October 11, 2021

Remand Notice Information: Notice of Public Hearing, published in the Skagit Valley Herald, March 19, 2025

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
- Washington Administrative Code (WAC)
 - WAC 197-11, SEPA Rules
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - Former SCC 14.06 – Permit Procedures
 - Former SCC 14.16 – Zoning
 - Former SCC 14.16.320, Rural Reserve (RrR)
 - Former SCC 14.16.440, Mineral Resource Overlay (MRO)
 - Former SCC 14.16.900, Special Use Permit Requirements
 - Former SCC 14.16.900(2)(i)(ix), Limited Kennel criteria
 - Former SCC 14.22 – Land Disturbance
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.32 – Stormwater Management
- Skagit County Comprehensive Plan 2024-2025, as adopted by Skagit County Board of Commissioners on 6/23/25 (SCP or “Comprehensive Plan”)

- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: April 3, 2026, at 8:30 am

Testifying Parties at Hearing:

Brandon Black – Senior Planner
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Peter Ojala
Ojala Law Inc. PS
PO Box 211
Snohomish, WA 98291

Seth Tomilson, INCE
Senior Acoustical Consultant
BRC – Acoustics & Audiovisual Design
1932 First Avenue, Ste. 620
Seattle, WA 98101

Alexandra Lemelson
25954 Lake Cavanaugh Road
Mount Vernon, WA 98274

Hearing Examiner Exhibit List:

1. Staff Report, dated October 3, 2022
2. Assessor’s Parcel Information & GIS Images
 - a. Parcel Information from County Website, October 20, 2021
 - b. Three Parcel Location Maps, undated
3. Recorded Short Plat Map
4. Application Materials
 - a. Special Use Permit Application Form, dated November 19, 2020
 - b. Special Use Permit Application, Question and Answer Form, undated, received December 10, 2020

- c. Site Plan, dated November 18, 2020
 - d. Email from Staff, dated November 25, 2020
 - e. SEPA Checklist, dated November 19, 2020
 - f. Edge Analytical Drinking Water Report, dated December 23, 2020
 - g. Declaration of James Michael Murrell, dated December 3, 2020
 - h. Staff Emails, dated November 10 and 25, 2020
 - i. Water Review Application, dated November 19, 2020
 - j. Four (4) Site Plans Showing Water Infrastructure, undated
 - k. BRC Acoustics Acoustical Analysis, dated November 5, 2021
 - l. Department of Revenue Licensing Documents, dated February 13, 2022
 - m. USDA Inspection Report, dated September 21, 2021
 - n. Program of Veterinary Care, dated April 14, 2021
 - o. Testimonial of John McKee, DVM, dated January 11, 2022
5. Notice of Development Application and List of Addresses for Neighboring Properties within 300 Feet
 6. Public Comments Received
 7. Agency/Department Comments Received
 8. Applicant's Response to Public Comments Received, dated March 10, 2022, and exhibits thereto
 - a. Site Plan, dated November 16, 2020
 - b. Overhead Imagery, undated
 - c. Photo, undated
 - d. Six (6) Photos, undated
 - e. BRC Acoustics Acoustical Analysis, dated November 5, 2021
 - f. Excerpt from Inspection Report, undated
 - g. Facebook Screenshots, dated October 31 and November 1, 2021
 - h. Program of Veterinary Care, dated April 14, 2021
 - i. Letter from John McKee, DVM, dated March 3, 2022
 - j. USDA Inspection Reports, dated May 13 and September 21, 2021
 - k. USDA Inspection Reports Search, February 27, 2022
 - l. USDA Animal Welfare Inspection Guide Excerpts, dated November 2021
 - m. Edge Analytical Water Bacteriological Analysis, dated February 28, 2019
 - n. Text Messages, dated April 6 (year not given)
 - o. Puget Sound Doodles Sales Contract, signed June 20, 2020
 - p. Revival Solutions Documents, undated
 - q. Facebook Messages, dated November 3, 2020
 - r. Text Messages, undated
 - s. Letter to Skagit County District Court from Rev. Fr. Emmanuel Lemelson, dated August 7, 2020
 9. SEPA Mitigated Determination of Non-Significance (MDNS), dated March 24, 2022
 10. Appeal of MDNS, dated April 7, 2022

- a. Exhibit A to Appeal, Washington Secretary of State Documents
 - b. Exhibit B to Appeal, Washington Secretary of State Documents, Skagit County Sheriff's Documents
 - c. Exhibit C to Appeal, Email, dated October 29, 2021; Skagit County District Court Order Denying Request for Anti-Harassment Order, undated; and Second Email, dated October 21, 2021
 - d. Exhibit D to Appeal, Skagit County District Court Non-Traffic Infractions; and Affidavits of Emily Diaz, Skagit County Animal Control Officer
 - e. Exhibit E to Appeal, Tenor Acoustical Design Memorandum, dated March 31, 2022
 - f. Exhibit F to Appeal, Noise Data Sheets, undated
 - g. Exhibit G to Appeal, Neighboring Properties Map, undated
 - h. Exhibit H to Appeal, Banfield Pet Hospital Medical Summary Reports, dated October 5 and 7, 2020
 - i. Exhibit I to Appeal, Planning and Development Services Pre-Development Meeting Notes, dated September 19, 2019
- 11. Public Noticing Materials**
- 12. One Hundred Thirty-Five (135) Site Visit Photos, dated February 10, 2022**
- 13. Neighbors' Noise Study, prepared by Tenor, dated March 31, 2022**
- 14. Additional Public Comments, received October 13, 2022**
- 15. Additional Comments, received October 14, 2022**
- 16. Applicants' SEPA Exhibits, B-1 through B-32**
- a. Applicant SEPA – 2019 Permit Application
 - b. Applicant SEPA - PSD AKC registration papers
 - c. Applicant SEPA - 02.28.2019 WSDOH Bacteriological Analysis Report
 - d. Applicant SEPA - Puget Sound Doodles Kennel Acoustics
 - e. Applicant SEPA - Puget Sound Doodles Workshop Acoustics
 - f. Applicant SEPA - BRC Acoustics credentials
 - g. Applicant SEPA - Farm & Agriculture Classification Document
 - h. Applicant SEPA - Bio Bug Report
 - i. Applicant SEPA – Customer Text 1
 - j. Applicant SEPA – Customer Text 2
 - k. Applicant SEPA – Customer Text 3
 - l. Applicant SEPA – Customer Text 4
 - m. Applicant SEPA - Survey 31004 Prevedell Road
 - n. Applicant SEPA – Areal Map
 - o. Applicant SEPA – Dan Dog Photo
 - p. Applicant SEPA – Wolf dogs Photo
 - q. Applicant SEPA – Lindy Facebook copy
 - r. Applicant SEPA – USDA Treatment Protocol
 - s. Applicant SEPA – McKee Letter
 - t. Applicant SEPA – Mullen Text

- u.** Applicant SEPA – Payton Contract
 - v.** Applicant SEPA – Geary IM
 - w.** Applicant SEPA – Prop Records Copy
 - x.** Applicant SEPA Response to Public Comments Special Use Permit – Ltr Completeness
 - y.** Applicant SEPA – USDA Animal Care Inspection Guide
 - z.** Applicant SEPA – USDA Inspection Report Printout
 - aa.** Applicant SEPA – USDA Inspection
 - bb.** Applicant SEPA – USDA Inspection Report
- 17.** Appellants’ SEPA Exhibits, A-1 through A-48
 - a.** 1-6 Recordings
 - b.** 15 Emily Diaz Letter – Animal Control
 - c.** 20 Lemelson Income
 - d.** 23 Puget Sound Doodles
 - e.** 25 Whatcom County Sheriff’s Report
 - f.** 4- HEX Lemelson Order on Motions – Affirming Decision
 - 18.** Findings, Conclusions, and Decision of Skagit County Hearing Examiner – Denying Application, *entered 4/5/24*
 - 19.** Applicant’s Motion for Reconsideration and Motion to Re-Open, *filed 4/16/24*
 - 20.** Reconsideration Decision, *entered 4/18/24*
 - 21.** Order on Motion to Remand (Skagit Sup. Ct. # 24-2-20685-31), *entered 10/22/25*
 - 22.** First Procedural Order on Remand, *entered 11/4/2025*
 - 23.** The Department’s First Procedural Order Response, *dated 12/3/2025*
 - 24.** The Applicant’s Pre-Hearing Memo “Remand Hearing – Prehearing Conference December 9, 2025, *dated 12/9/2025*
 - 25.** Departments remand exhibits, *dated 12/12/2025*
 - a.** a. Site plan labeled “Existing Conditions Map” submitted July 7, 2025, (Dated May 5, 2025), for review with the Special Use Permit request PLAN3-2025-0002.
 - b.** Bluebeam scaled site plan.
 - c.** Skagit County iMap scaled aerial map.
 - d.** Memo PDS Post Conference Memo
 - 26.** Applicant Preliminary Witness and Ex List, *dated 12/12/2025*
 - a.** Attachment 1 Site Plan
 - b.** Attachment 2 Kennel Narrative
 - c.** Attachment 3 Noise Mitigation Plan
 - d.** Attachment 6 Coffman PSD 72 Hour Study(9-25-25)
 - e.** Attachment X Contingency Plan USDA form 7093
 - f.** Attachment Y Puget Sound Doodles Exercise plan
 - 27.** Corrected Post Conference Order, *dated 12/29/2025*
 - 28.** Applicant and County Agreed Supplement Witness and Exhibit List, *dated 2/12/2026*

- a. Site Plan Option 1
 - b. Site Plan Option 2
 - c. Site Plan Option 3
 - d. Site Plan Option 1A
 - e. Site Plan Option 2A
 - f. Site Plan Option 3A
29. 2nd Post Conf Order on Remand, dated 2/14/2026
 30. Final Lemelson SUP Remand staff report
 31. Skagit County Resolution R2024020 denying appeal of HE Decision, entered 11/18/24
 32. Skagit County Code Title 7 & 9
 33. Skagit County Code Title 14 at time of project vesting
 34. Skagit County Code Title 14 adopted June 23, 2025
 35. Hearing Examiner – Exhibit listing
 36. Skagit County iMap photos
 37. Notice of Public Hearing for publication
 38. Affidavit of publication of notice hearing
 39. Certificate of posting the notice of public hearing
 40. Certificate of Mailing -Emailing the notice of public hearing
 41. Remand Hearing Final Brief, dated 3/18/2026
 42. Agreed Motion to Modify Briefing Schedule, dated 3/18/2026
 43. Declaration of Peter Ojala, dated 3/18/2026
 44. Order on Motion Brief Schedule, dated 3/18/2026
 45. Comment of Lindy Doyle, dated 4/2/26
 - a. Audio recording, unknown date
 46. Combined new Public Comments received prior to hearing’s conclusion through 4/3/26
 47. Closing Argument of Applicant, *filed* 4/17/26

II.

In approximately May of 2019, two of the three applicants and another family member purchased the subject property at 31004 Prevedell Road in unincorporated Skagit County in the Rural Reserve District (RRv). Beginning in the summer of 2019, Puget Sound Doodles LLC, Alexandra Lemelson, and Kathy Lemelson (“Applicant”) began to operate a commercial dog breeding operation on the subject property, using an existing structure near the western

boundary, referred to as a garage or shop, as a kennel for the dogs. The Applicant did not have the required Special Use Permit to operate a kennel in the RRv.

The Applicant's neighbors filed numerous complaints with the Skagit County Sheriff's Office, mostly regarding the noise the dogs made when they barked. The sheriff's office issued several non-criminal noise infractions to the Applicant and also referred the matter to the Skagit County prosecutor for criminal prosecution, although it is unclear whether any criminal charges were filed. Separately, on August 30, 2019, the County initiated a civil enforcement action against the Applicant for operating an unpermitted kennel. Testimony indicates there has also been civil litigation between the neighboring properties over these matters and communications stemming therefrom.

The applicant, Puget Sound Doodles, LLC, is requesting approval of a Special Use Permit to legalize the existing kennel operation.

III.

On April 5, 2024, Skagit County Hearing Examiner Alex Sidles denied the Applicant's request for a Special Use Permit to allow the operation of a "limited kennel" on an approximately 10.13 acre property.¹ The Applicant moved for reconsideration,² which was denied,³ and then appealed to the Skagit County Council which upheld Hearing Examiner Sidle's decision.⁴ This was ultimately appealed to Snohomish Superior Court under the Land Use Petition Act, which remanded this matter back to the Skagit County Office of the Hearing Examiner and directed the limited scope on a re-opening and reconsideration, as follows:

- a. ...[T]he Hearing Examiner's denial is VACATED to the limited extent necessary to permit the Hearing Examiner to reconsider the application consistent with this Order.⁵

¹ Ex. 18, Findings, Conclusions, and Decision of Skagit County Hearing Examiner at 37, entered 4/5/24

² Ex. 19

³ Ex. 20

⁴ Ex. 20(a)

⁵ Ex. 21 Order on Motion to Remand, entered 10/22/25 at 3

- b. This vacatur is limited to the issues set forth below and is not a determination on the merits of the Special Use Permit apart from those issues.⁶
- c. An open record hearing will be limited to the following matters:
- i. Consideration of petitioners' proposed noise mitigation measures and any additional reasonable mitigation measure the Hearing Examiner finds necessary to ensure compliance with applicable county noise standards and the public interest;⁷
 - ii. Resolution of any remaining, narrowly framed factual questions necessary to evaluate mitigation (for example, precise locations of kennel facilities or enclosures explicitly for the purpose of assessing mitigation), but not re-litigating issues already decided on the administrative record unrelated to mitigation;⁸
 - iii. Consideration of all relevant noise monitoring and expert evidence in the record, including, without limitation, recordings and studies submitted by petitioners and any other parties, and any additional limited testing or expert testimony that the Hearing Examiner determines is necessary and proportionate to the narrow mitigation inquiry;⁹
 - iv. Application of the correct legal standards under SCC 14.16.900 (limited kennel criteria), SCC 14.06.380 (standards for granting and denying permits), and other applicable county codes and regulations;¹⁰ and
 - v. Preparation of written findings of fact and conclusions of law that specifically address the mitigation measures considered, the basis for any conditions imposed, why any proposed measures were accepted or rejected, and the factual and legal basis for any continued denial.¹¹

⁶ *Id.*

⁷ *Id.* at 3-4

⁸ *Id.* at 4

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Since that time, a number of exhibits have been added to the final record, which were not on hand when prior decisions about this application by the Department, Hearing Examiner Sidles, or the Board of County Commissioners were made.

IV.

In advance of the October 14, 2024, hearing, hundreds of pages of public comments and attachments thereto regarding the SUP application were submitted. For a summary, *see generally* **Ex. 18** at 11-14. Those comments addressed noise concerns, the use of the existing onsite well as part of the kennel operation, waste management strategies, traffic, loose dogs, too many dogs, unhealthy dogs, lighting and screening effects on existing fencing and vegetation, property setbacks, kennel area, and harassment. Many of those concerns were addressed in the *first* Staff Report¹² and responsive memos by the Applicant and the Department.

Additional public comment was filed in written and oral form after the remand but prior to the final hearing on 4/3/26. The nature of the comments were of similar nature and additionally highlighted the characters of the natural person applicants in a negative light and the litigation and behavior between the neighbors. Character evidence that was not relevant to the limited scope of remand was not given weight. There was one supportive written comment from a neighbor.

V.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended denial of the requested Special Use Permit in: **1.)** a “Skagit County Planning and Development Services Finding of Fact,” dated October 3, 2022 (“1st Staff Report” **Ex. 1**); and then approval in **2.)** a “Skagit County Planning and Development Services Finding of Fact,” dated March 10, 2026 (“2nd Staff Report” **Ex. 30**). Skagit County Hearing Examiner Sidles made

¹² Ex. 1

findings of fact and law in the original Final Decision on April 5, 2024 (“Original Decision” **Ex. 18**).

The applicant generally agreed with the findings of the Second Staff Report but did have factual and legal issues with specific proposed mitigation conditions.

The Findings of Fact and Conclusions of Law in the 1st Staff Report, 2nd Staff Report, and the Original Decision, copies of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by chronologically later findings therein, and the findings herein.

VI.

SCRE §20(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined.

VII.

SCRE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no sustained objection by any party was made to any of the 46 exhibits that were admitted into the record at the hearing. Exhibit 47 was a closing legal argument submitted after the factual record was closed, and only legal arguments from that document were admitted and any supplemental facts were disregarded.

VIII.

Any Conclusion of Law below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Scope of Hearing, Jurisdiction, & Concurrency

Whenever possible, development applications are consolidated and reviewed according to the highest standard of all the permits, with some exceptions outlined in the law.¹³

In this case the highest application level is the Special Use Permit proposal that contemplates a Limited Kennel which must be heard by the Hearing Examiner,¹⁴ as a Level II review by the Hearing Examiner.¹⁵

This is the only permit being sought and the underlying SEPA threshold determination was not appealed, so there is only one matter before the Office of the Hearing Examiner and no consolidation is required.

Nature of Use

A Limited Kennel is “any premises at which 1 or more dogs, cats, or both are kept overnight for a commercial purpose including but not limited to breeding or selling.”¹⁶

Zones

The purpose of the RRv zone is to allow low-density development and to preserve the open space character of those areas not designated as resource lands or as urban growth areas.¹⁷ The proposed use and associated activities are consistent with the purpose of the Rural Reserve zone.

A portion of the subject property does lie within a Mineral Resource Overlay (MRO) quarter mile buffer. All primary and accessory uses permitted in the underlying Rural Reserve

¹³ SCC 14.06.060

¹⁴ SCC 14.16.320(4)(n)(ii)

¹⁵ SCC 14.06.150

¹⁶ Former SCC 14.04.020 at “Limited Kennel”

¹⁷ SCC 14.16.320(1)

zone are allowed in the Mineral Resource Overlay and the associated MRO buffers.¹⁸ The proposed use will not interfere with the extraction and quarrying of minerals.

Hearing Examiner Special Use Permit – Limited Kennel

To provide a means to recognize and approve land uses that are not specifically identified as “allowed” or “permitted” uses, there are Special Use Permits for certain identified activities.¹⁹ In the RRv Zone, “Limited Kennels” are Hearing Examiner Special Uses.²⁰ Kennels and Limited Kennels have additional minimal criteria applied in Special Use permit analysis, which was considered in rendering the legal conclusions herein and the conditioning imposed:^{21,22}

- (i) Kennels. Special use permits for kennels are also subject to the following criteria:
 - (i) Areas used as part of a dog kennel operation shall be composed of at least one-half of 1 acre for every 5 dogs (i.e. 2.5 acres of kennel area would be required for 25 dogs).
 - (ii) Any indoor or outdoor area to be occupied by kennel animals shall be located at least 50 feet from any property line. A solid-wood fence or continuous, non-deciduous vegetative barrier shall be required, each at least 6 feet in height, between any outdoor kennel use area and the subject property lines. Fences and continuous barriers will not be required in cases where kennel use areas are at least 500 feet from all subject property lines.
 - (iii) Parking for all kennel customers and employees shall be fully contained on the subject property and shall not include the use of any road right-of-way.
 - (iv) All lighting shall be directed away from neighboring residences or businesses.
 - (v) An approved waste disposal plan that complies with Chapter 12.16 SCC shall be required.
 - (vi) Kennel animals must be contained on the subject property. Outdoor kennel areas shall be constructed with adequate materials and height so as to prevent animal escapement.
 - (vii) Any outdoor kennel use areas shall be configured such that impacts to surrounding properties are minimized. All animals must be contained in enclosed buildings between the hours of 9:00 p.m. and 8:00 a.m. daily.

¹⁸ SCC 14.16.440 (5 & 6)

¹⁹ Former SCC 14.16.900(1)(a)

²⁰ Former SCC 14.16.320(4)(n)(ii)

²¹ Former SCC 14.16.900(2)(i)

²² Former SCC 14.16.900(2)(i)(ix)

(ix) Limited kennels shall also be subject to the following criteria:

- (A) A limited kennel shall not exceed 25 dogs or cats over 16 weeks of age on site at any one time.
- (B) At no time shall there be more than 50 dogs or cats of any age on site.
- (C) No dogs or cats shall be commercially boarded at a limited kennel.
- (D) A limited kennel may have animals kept during daytime and overnight hours and may also include additional related services including but not limited to selling, training, grooming, and daily care.

II.

Special Use Permits

Special uses are a type of use permit designed to recognize and approve land uses not specifically identified as allowed uses. Such special use permits must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.²³ Further, they may have specific additional criteria.

All Special Use Permits must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.²⁴ The criteria are as follows:

- A.** The proposed use will be compatible with existing and planned land use.
- B.** The proposed use complies with the Skagit County Code.
- C.** The proposed use will not create undue noise, odor, heat, vibration, air, and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- D.** The proposed use will not generate intrusions on privacy of surrounding uses.

²³ Former SCC 14.16.900(1)(a)

²⁴ Former SCC 14.16.900(1)(a)

- E. The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- F. For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- G. The proposed use is not in conflict with the health and safety of the community.
- H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- I. The proposed use will maintain the character, landscape, and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.²⁵

Previously the application failed under prong “C” which is the subject of the remand directions from the Superior Court order. If the application now can meet those remand criteria and remain in compliance with other criteria, the SUP could be approved.

Based on the review of the new information submitted, the Department’s evaluation, and in particular the applicant’s acoustic engineer’s new noise study and additional proposed mitigation, it can meet the criteria including Prong C and thus should be approved.

III.

Mitigation Conditions

²⁵ Former SCC 14.16.900(1)(b)

By and large the parties were in agreement with mitigation conditions being proposed, however there were a number of areas of disagreement.

USDA Regulations – Generally speaking, while the Department may accept some USDA guidelines or report material, it is a completely separate regulatory body that Skagit County has no control of and whose regulations may change moving forward to become less or stricter. The USDA’s level of funding, mission, and existence moving forward is not guaranteed. The Department’s primary interest, appropriately, is their regulatory conditioning and evaluation of the project; it would be potential error for the Department to solely rely on a federal agency whose rulemaking process and enforcement policies they possess no control over.

Site Plan Differentiation – The Department’s proposal for proposed Site Plan 3A. All Site Plans, of which there were six, were proposed by the applicant as acceptable alternatives.²⁶ As voluntarily proposed conditions on the part of the applicant, to presumably in part dissuade the County from requiring additional study in the face of the rejection of a Site Plan by the Department and presumably to try to address critical public comments, the imposition of any of them can be viewed as a promise to the Department and the public about their intentions and willingness to be conditioned along any of these lines. The Department selected Site Plan 3A²⁷ based on both concerns about view as well as noise suppression, and their interpretation of code requirements; this plan has fence lines closer to the external bounds of the kennel use area, as opposed to the applicant’s preferred plan “1A.”²⁸ For kennels the code requires:

Any indoor or outdoor area to be occupied by kennel animals shall be located at least 50 feet from any property line. A solid-wood fence or continuous, non-deciduous vegetative barrier shall be required, each at least 6 feet in height, between any outdoor kennel use area and the subject property lines. Fences

²⁶ Ex. 28 (a-f)

²⁷ Ex. 28(f)

²⁸ Ex. 28(d)

and continuous barriers will not be required in cases where kennel use areas are at least 500 feet from all subject property lines.²⁹

In this case, the Department is correct that the non-deciduous vegetative barrier (or fence, though that is not the case here), should follow the wider path on the external bounds of the kennel use area as reflected in Site Plans 3A³⁰ and 2A.³¹ However expert testimony by the Tomilson demonstrates that the solid fence boundaries being placed closer in to the designated kennel building would have a greater sound reducing effect on the neighbors, whose primary germane campaign is about barking. Consequently, Site Plan 2A is the most appropriate site plan to put in place as it combines maximum sound suppression while complying with the code and visual obstruction. However, it may be *advisable* for the applicant to also erect the north-west fence line delineated on Site Plan 3A to further reduce potential conflict, especially as it will take time for the continuous, non-deciduous vegetative barrier to come to full maturity.

Self-Reporting/Certification Requirements- The Hearing Examiner find the self-reporting requirements completely within the scope and responsibility of the Departments authority; even if the requirements more closely reflect new post-vesting code requirements, they still appear be reasonable policy implantations- it may be that the new code is merely making explicit the direction which is already Department practice in order to better to telegraph to the public what the expected standards are. That being said the language was refined to ensure the reporting is germane to the regulated activities.

Warrantless Searches- The Office of the Hearing Examiner does not have jurisdiction to determine questions of constitutionality, and it is unfortunate that the Skagit County Prosecutor's Office did not appear on behalf of the Department and brief these issues or otherwise resolve them with the applicant prior to the final hearing. That being said, the Office

²⁹ SCC 14.16.900(2)(i)(ii)

³⁰ Ex. 28(f)

³¹ EX. 28(e)

of the Hearing Examiner has an obligation to at least ensure avoidance of blatant unlawful requirements.

Examining the applicant's briefing we see See v. City of Seattle,³² but that case was a criminal case in which criminal prosecution was barred after a warrantless search,³³ but where there is also discussion of administrative processes.

We do not in any way imply that business premises may not reasonably be inspected in many more situations than private homes, nor do we question such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product. Any constitutional challenge to such programs can only be resolved, as many have been in the past, on a case-by-case basis under the general Fourth Amendment standard of reasonableness.³⁴

This case was also declined to be followed by a number state courts on state law grounds and also did not arise from seeking permit from the government from activities not generally permissible but which the government, in this case Skagit County, has put special scrutiny upon.

A great deal of the applicant's cited Washington State case law has been abrogated and also dealt with criminal law, which makes it difficult to examine the question as personal liberty from incarceration is not the proper intellectual counter-point to a question about the government's interest in regulating generally non-permitted activities.

However, the applicant's cited Washington Massage Foundation v. Nelson,³⁵ is helpful. While the Washington Supreme Court recognized that the U.S. 4th Amendment requires more individualistic safeguards on citizen's privacy when inspection statute is aimed at physical condition and characteristics of building rather than particular business activity;³⁶ it also recognized that:

³² See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967)

³³ As was Applicant's cited State v. Winterstein, 167 Wn.2d 620 220 P.3d 1226 (2009)

³⁴ See v. City of Seattle, 387 U.S. at 545-546

³⁵ Wash. Massage Found v. Nelson, 87 Wn.2d 948, 558 P.2d 231 (1976).

³⁶ Wash Massage Found v. Nelson at 952-953

When industry or business is subject to extensive governmental regulation and frequent unannounced inspections are necessary to insure compliance, warrantless administrative inspections are valid if authorized by statute which sufficiently delineates scope, time and place of inspection; and authorized inspection must be relevant to purposes of statute, *i. e.*, in furtherance of public interest in regulating particular conduct or conditions.³⁷

The case goes on to tell us that warrantless inspections are a possibility, but that they must be specific in scope of the search's subject matter and be more specific than "any time."³⁸ This of course is in relation to general purpose laws and not to the issuance of a specific administrative permit for a not generally permitted activity.

It is possible that in the context of a permit that the applicant is voluntarily seeking from the government perhaps "any time" could be permissible, but it is not clear whether this is the case and there is no briefing to that effect, and to that end the inspection requirements must be trimmed back to better define purpose and time.

IV.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Special Use as described in the 2nd Staff Report for a Limited Kennel shall be granted to the Applicant, at a site addressed as 31004 Prevedell Road, Sedro-Woolley, WA, subject to the following conditions:

1. All applicable permits (local, state, and federal) shall be secured before any construction activities begin onsite. Copies of permits shall be provided to the Skagit County Planning & Development Services Department.

³⁷ Wash Massage Found v. Nelson at 953

³⁸ *See generally* Wash Massage Found v. Nelson at 953-954

2. The applicant shall be responsible for reimbursement to Skagit County Planning & Development Services for the full cost of mailing(s) and newspaper publication associated with the Notice of Development Application, Notice of Issuance of SEPA DNS, Notice of Hearing, and Notice of Decision. Payment shall be made prior to Building Permit application issuance or approval.
3. Noise levels shall not exceed those standards as established by the state and Skagit County pursuant to RCW 70.107 RCW, WAC 173.60, and SCC 14.16.840.
4. The applicant shall comply with WAC 173-60 and SCC 14.16.840 for noise, vibration, and light conditions.
5. Development shall comply with the requirements of the Public Works Department including but not limited to:
 - a. A change of use to commercial use (dog kennel) will trigger the need for a Commercial Access Permit.
6. Development shall comply with SCC 14.16.900 regulating Special Use Permits in unincorporated Skagit County including but not limited to:
 - a. All special uses, including master planned resorts, shall require a development project be commenced for the entire parcel within 2 years of the permit approval, unless development is phased. For the purposes of this Section, “commenced” shall mean either (1) the use permitted by the permit has been established or (2) a complete building permit has been filed with Planning and Development Services for the principal building which will allow the use. Upon building permit approval, the principal building shall be completed (i.e., final inspections completed) within 3 years. Those portions of the property, which are not included within the development area and where the above time frames are not met, shall automatically be removed from the special use approval, unless a phasing plan is approved pursuant to Subsections (1)(d)(i) and (iii) of this Section. For purposes of this Subsection, “development area” shall mean all portions of the site needed to meet UDC requirements, such as lot coverage and setbacks.
7. Development shall comply with the Skagit County Sheriff Office including but not limited to:
 - a. At all times both Skagit County Code 7.01 General Provisions and 7.02 Kennels shall be followed associated with the proposed limited kennel.
8. The operation on the property shall comply with any Skagit County Assessor’s office conditions for inclusion in the Current Use program, as determined by that

office.

- a.** A copy of this Decision will be sent to the Skagit County Assessor's Office by the Department.
 - b.** This condition is included because the Department has been alerted to the fact that the proposed change of use is occurring on a portion of the subject property currently tax classified as Farm/Agricultural, and dog kennels or dog runs/area are not allowed as tax exempt activities in Farm/Agricultural taxation zone- it is the responsibility of the Department to ensure that all of the SCC is considered and in effect as appropriate.
- 9.** Development shall comply with Skagit County's stormwater regulations including but not limited to:
 - a.** The site will need to meet any applicable stormwater requirements listed under SCC 14.32.
- 10.** Development shall comply with the Skagit County Building Department requirements including but not limited to:
 - a.** Building permit(s) are required for any construction and/or conversion from residential to non-residential use.
- 11.** Development shall comply with the Skagit County Water review including but not limited to:
 - a.** This proposal is in a watershed basin identified by the Department of Ecology: 3-Main Stem Nookachamps Skagit Instream and may not have a public business requiring a public water system expansion. Contact the Department of Ecology for Skagit Instream questions.
 - b.** No water associated with the commercial use [a limited kennel] can come from the existing residence's well. All water needs associated with the Limited Kennel and dogs shall be trucked in on a weekly or as needed basis.
 - c.** SCC 12.48, Water: Proposed well use: Requires water review with complete application and fees for alternative source dug well: Ecology tag to be placed on well, current lab results for pre and post treatment inorganics and bacteria. A totalizing meter is required on the well with monthly volume records kept showing that the proposed use remains in the approved volume for a permit exempt well with no water right/claim. No additions to buildings or additional stand-alone buildings may be applied for or have building permits issued unless all development is as an addition to the main residence while this residential operation is on site and in operation: Conditioned approval is ONLY for this applicant and the duration that this applicant occupies the site with the residential use: No expansion of use or

pursuant to a formal administrative determination by the Department Director.

16. Development shall comply with SCC 14.16.900(2)(i) regulating “Kennels” including but not limited to:

- a.** Areas used as part of a dog kennel operation shall be composed of at least one-half of 1 acre for every 5 dogs (i.e., 2.5 acres of kennel area would be required for 25 dogs).
- b.** Any indoor or outdoor area to be occupied by kennel animals shall be located at least 50 feet from any property line. A solid-wood fence or continuous, non-deciduous vegetative barrier shall be required, each at least 6 feet in height, between any outdoor kennel use area and the subject property lines. Fences and continuous barriers will not be required in cases where kennel use areas are at least 500 feet from all subject property lines, except where delineated on the approved Site Plan.
- c.** Parking for all kennel customers and employees shall be fully contained on the subject property and shall not include the use of any road right-of-way.
- d.** All lighting shall be directed away/down shielded from neighboring residences or businesses.
- e.** An approved waste disposal plan that complies with Chapter 12.16 SCC shall be required.
- f.** Kennel animals must be contained on the subject property. Off leash outdoor kennel areas shall be constructed with adequate materials and heights so as to prevent animal escape.
- g.** Any outdoor kennel use areas shall be configured such that impacts to surrounding properties are minimized. All animals must be contained in enclosed buildings between the hours of 9:00 PM and 8:00 AM daily.

17. Additionally, development shall comply SCC 14.16.900(2)(i)(ix) regulating “Limited Kennels” including but not limited to:

- a.** Limited kennel shall not exceed 25 dogs over 16 weeks of age on site at any one time.
- b.** At no time shall there be more than 40 dogs of any age on site.
- c.** No dogs shall be commercially boarded at the limited kennel.
- d.** A limited kennel may have animals kept during daytime and overnight hours and may also include additional related services including but not limited to selling, training, grooming, and daily care.

18. Development shall comply with the Skagit County Health Department including but not limited to:

- a.** All sewage needs to be disposed of in an improved fashion. All dog waste or by products shall not go into sewage waste stream.

- b.** If the proposed use includes potable water, drinking water review by Public Health will be required.
 - c.** If no plumbing is proposed for human use in the kennel, there are no septic requirements. If there are facilities for human use, then approved sewage disposal will be required.
 - d.** Proper solids handling, and disposal needs to be a condition of their SUP. The solids handling plan needs to include that they scoop and bag and dispose of the solids as solid waste. Then the slab can be washed and cleaned and any solids on the grate bagged and disposed of as solid waste.
- 19.** All pet waste shall be double bagged and disposed of in approved manner per Waste Management Northwest that serves the subject property, or its successor. Contact the Waste Management for more information and specifics on the matter.
- 20.** Per SCC 14.16.900(3), the landowner/applicant shall self-certify that the activities approved pursuant to the Special Use permit issued by Skagit County are occurring in accordance with all approvals including any conditions.
- 21.** The applicant/landowner shall post on the property bounds a phone number for the reporting of noise/barking complaints associated with the subject limited kennel. The applicant/landowner shall be responsible for reviewing the complaints and keeping a log of date and time of receipt, nature of the complaint, and any steps taken to remedy any germane complaint or otherwise note why the complaint is not germane. These records will be maintained and sent as part of the annual reporting requirements and also sent to the relevant agency upon the Department, the Sherriff's Office, or Animal Control's request.
- 22.** The applicant/landowner shall have an inspection from Skagit County Animal Control prior to final approval of the use. Additionally, the applicant/landowner shall allow Animal Control to inspect pursuant to Condition #12 following obtaining a Special Use Permit.
- 23.** The applicant/landowner shall comply with all requirements of the Skagit County Fire Marshall's office including but not limited to:
 - a.** The main gated entrance to the property requires a Knox box to comply with Skagit County Code 15.04.030 for emergency access.
 - b.** Provide an access road to the kennel building to meet the Skagit County Driveway Standards. The current building is located approximately 863' from Prevedell Road and is required to include the turnaround.
 - c.** Portable electrical heaters must comply with International Fire Code (IFC) Sections 604.10 through 604.10.4
 - d.** IFC Section 604.10.4 Prohibited areas. Portable heaters shall not be operated within 3' feet of any combustible materials. Discontinue using

- the heater that was placed on top of the cardboard box (generator box).
- e. IFC 604.5 Discontinue using extension cords in lieu of permanent wiring. Extension cords were running under the doorway into the main kennel to run the dehumidifier/fan. Extension cords were being used for heating pads in the main room used for mother dogs or puppies.
 - f. IFC 604.6 Unapproved conditions. Open junction boxes and open wiring splices are prohibited. Install cover faceplates on all electrical plates that are missing throughout the kennel/garage areas where the dogs are housed.
 - g. IFC 305 Ignition source. Clearance from ignition sources. Discontinue using anything with an open flame such as “lit” candles placed on the counters inside of the kennel areas.
 - h. Annual fire inspections would be required for the kennel to ensure the buildings are meeting fire safety. Coordination with the Fire Marshal Office for scheduling. (360) 416-1845 (Fire inspection request line).
 - i. Construction materials or refuse shall not be burned on the property; only natural (branch debris) or firewood should be burned on the property.
 - j. Install fire extinguishers to meet the 2018’ International Fire Code, Section 906.1 Standards.
- 24.** Development shall comply with all mitigation measures as listed in the March 24, 2022, issued SEPA Mitigated Determination of Non-Significance (MDNS).
- 25.** This permit shall be void if the approved use is discontinued for more than one (1) year.
- 26.** This permit is not transferable to other operators or new property owners if the property is sold; unless the property is demonstrated by the applicants to the Department’s satisfaction after inspection that the use remains in compliance with its conditions of approval. In the alternative, should the property and use be found to not be in compliance, then a transfer could happen if at the discretion of the Hearing Examiner the permit is revised to meet code requirements and additional or revised mitigation conditions appropriate for the time period and code at which time the transfer is sought are imposed.
- 27.** Planning and Development Service shall be notified of any change in the operation or ownership of Puget Sound Doodles that differs from what has been submitted in the application materials and represented to the Department.
- 28.** Comply with all noise mitigation measures as submitted within the applicant’s final approved Site Plan 2A, kennel narrative, and noise mitigation materials, as well as the following minimum measures:

- A.** The number of adult intact dogs in the Kennel Building is maximum 10 (with no more than 25 adults over any 16-week period), and no more than 40 dogs in total including puppies.
- B.** Exercise Plan for dogs in the Kennel Run:
 - I.** At most only 8 dogs outside in the off-leash kennel run area as shown on the approved site plan at a time, separated by size and disposition to keep noise to a minimum.
 - II.** Keep exercise duration time to 29 minutes or less in the kennel run if dogs are barking.
- C.** No dogs in the Workshop Building near the property line to the west.
- D.** Install a six-foot solid wooden fence and hedgerows as described in the site plan.
- E.** A number of people can call notifying the owners of Puget Sound Doodles if there are dogs barking from the Site – keeping in mind that immediately adjacent neighbors’ and many others in the neighborhood have outdoor dogs that bark that are audible.
- F.** 24/7 security cameras with audio recording ability on the outdoor off-leash kennel run area to monitor noise at or near the Site property line that will notify the Applicant’s phone of any barking from the limited kennel (or decibel exceedances), for adaptive management.
- G.** Install and/or maintain USDA approved climate control within the Kennel Building including backup generators for summer and wood burning stove for winter. This enables the windows to be closed at all times in order to reduce potential noise from the Kennel Building.
- H.** The applicant shall maintain a limited kennel area of at least 4.0 acres set back 50 feet from the property lines on their property in compliance with SCC 14.16.900(2)(i) as shown in the Site Plan.
- I.** Any outdoor kennel use area shall maintain at least a 50-foot setback from property lines and shall include a minimum 6-foot fence or equivalent solid noise-attenuating barrier and/or non-deciduous screening, substantially as shown on the approved Site Plan.
- J.** No dogs shall be housed in the Workshop Building near the property line to the West (part of that building is less than 50’ from the line).

K. All animals shall be contained in enclosed buildings between 9:00 p.m. and 8:00 a.m.

L. Outdoor exercise shall be managed to minimize barking and crowding, including limiting the number of dogs in the kennel run at one time consistent with the approved operations plan. Applicants shall install 24/7 security cameras or other noise monitoring equipment to monitor if barking noise is from the limited kennel or outdoor off-leash area primarily used for exercise.

M. Kennel operation shall comply with SCC 9.50.040 and WAC 173-60.

29. Required Annual self-certification required by SCC 14.51.080, must include information regarding:

- Any professionally collected sound-monitoring data if such monitoring is used by the applicant.
- A log of instances of decibel exceedances, which may be annotated to explain decibel exceedance not resulting from kennel usage including reference may be made to any 24/7 security camera/audio footage.
 - The log shall also document any adaptive management measures taken to mitigate any germane exceedances.
- The call logs required per Condition #21, which may be annotated to indicate which of those calls were relevant to complaints about kennel use noise and to explain any context about noise relating to non-kennel use derived noise, including transmitting relevant portions of video/audio recording which may impeach any complaints.
- Maximum number of dogs on site (itemizing intact dogs vs. puppies) per month of the calendar year. If this date is included in the USDA Animal Care annual program records discussed below, it need not be duplicated; and
- Any USDA Animal Care annual program records.

30. Fence relocation and installation in accordance with Site Plan Option 2A.

a. Equivalent materials or minor field adjustments to fence alignment, gate placement, and screening layout that remain consistent with code and continue to meet approved setbacks, acreage, and noise mitigation functions may be approved administratively so long as they do not reduce required setbacks, screening effectiveness, or code compliance.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of a hearing examiner.

- A.** Type 1 decisions are appealed to a Superior Court, pursuant to the provisions of SCC 14.06.150-1; Appeals to a Superior Court must be filed with a Superior Court within 21 calendar days of the final decision of a hearing examiner pursuant to RCW 36.70C.040(C).
- B.** Type 2 and 3 decisions are appealed to the Skagit County Board of Commissioners, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Skagit County Board of Commissioners require filing of a written notice of appeal within 14 calendar days of the final decision of a hearing examiner for most decisions, *but* Shoreline permit decisions require filing a notice of appeal within five days of the decision per the same ordinance as provided in SCC 14.06.410(3).

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED this April 24, 2026



Rajeev D. Majumdar
Skagit County Hearing Examiner