

decision) and the Hearing Examiner's decision on the special use permit application (issued as a separate land use decision concurrently with this decision).

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Kevin Cricchio, Skagit County Senior Planner
Joe Amaro, Skagit County Public Works Development Review Engineer
Ashley Carr, Applicant Representative
Darcy Swetnam, City Attorney for the City of Anacortes
Devan Schowe
Lisa Adams
Bailey Frank
Hannah Thompson-Garner
April Grossruck
Bronwen Bradshaw-Balmos
Joy Stangohr
Meg Mourning
Edward P. Borlin Jr. (member of the Neighbor Group)
Breanne Kozera (member of the Neighbor Group)
Matthew Kozera (member of the Neighbor Group)
David Knutsen (member of the Neighbor Group)
Kevin Welch (member of the Neighbor Group)
Millicent Swietzer (member of the Neighbor Group)
Holly Soyke

Exhibits:

The following exhibits were admitted into the record:

1. Mitigated Determination of Nonsignificance, issued November 1, 2022
2. Special Use Permit Application and Attachments, received March 19, 2022
3. SEPA Checklist, prepared March 18, 2022
4. Public Comments Received in Response to MDNS, various dates
5. Public Comments Received in Response to Special Use Permit Application, various dates
6. Agency and Department Comments Received in Response to Special Use Permit, various dates
7. Applicant Response to Special Use Permit Application Public Comments, received September 13, 2022
8. Photos of Welch Lane and Applicant Driveway, undated
9. Parcel Map, revised September 23, 2020
10. Short Plat Variance, dated January 20, 1994
11. Short Plat Map, recorded March 27, 2009
12. Joint Road Maintenance Agreement, recorded October 13, 2003

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13. 2015 County Nuisance Lawsuit – Declaration of Judy Kiesser, dated November 18, 2015
14. 2015 County Nuisance Lawsuit – Declaration of Kevin Welch, dated November 16, 2015
15. 2015 County Nuisance Lawsuit – Declaration of Scott Becker, dated November 17, 2015
16. 2015 County Nuisance Lawsuit – Declaration of Bill Hebner, dated November 17, 2015
17. 2015 County Nuisance Lawsuit – Declaration of Edward Borlin, dated November 14, 2015
18. 2015 County Nuisance Lawsuit – Declaration of David Knutsen, dated November 14, 2015
19. 2015 County Nuisance Lawsuit – Declaration of George Hettich, dated November 5, 2015
20. 2015 County Nuisance Lawsuit – Declaration of Brandon Black, dated November 3, 2015
21. 2015 County Nuisance Lawsuit – Declaration of Dr. Roger Anderson, dated November 6, 2015
22. 2015 County Nuisance Lawsuit – Declaration of Marie Padovan, dated November 16, 2015
23. News Article: “Anacortes Community Forest Lands Trails Back Open After Wolves Captured,” dated October 19, 2021
24. News Article: “Passions Run High at Wild Animal Ordinance Hearing,” dated February 5, 2014
25. Letter from Skagit County Prosecuting Attorney to Counsel for Predators of the Heart, dated January 17, 2022
26. News Article: “Warning Signs in Anacortes Community Forest Lands,” dated December 26, 2017
27. Skagit County Complaint Against Predators for Injunctive Relief and to Abate a Nuisance, dated November 8, 2021
28. News Article: “City Concerned about Wolves from Wildlife Refuge Near Forest Lands,” dated February 28, 2018
29. Supplemental Declaration of Ashley Carr, dated January 21, 2022
30. 2013 and 2014 Wolf Puppy Contracts, various dates
31. Raw Sewage Complaint Against Predators, dated July 12, 2023
32. Letter from Skagit County Prosecuting Attorney to William Coleburn, dated April 30, 2015
33. Resolution Authorizing Litigation to Enforce Compliance with the Skagit County Code and to Abate a Public Nuisance Maintained by Predators of the Heart, dated April 6, 2015
34. Amended Complaint by Skagit County for Injunctive Relief, to Abate a Nuisance, and to Impose a Civil Penalty, dated November 12, 2015
35. Skagit County Motion for Summary Judgment, dated November 18, 2015
36. County Nuisance Lawsuit – Declaration of William Coleburn, dated November 23, 2015
37. Pre-Development Meeting Notes, dated February 3, 2022
38. County Email Correspondence Regarding Escapes, dated October 25, 2021

39. Email Correspondence Between County and Ashley Carr Regarding Need for Special Use Permit, dated September 15, 2022
40. Predators' 2014 Special Use Permit Application, dated December 26, 2014
41. Email to Predators About Wolf Pup Encounter, dated May 10, 2017
42. Veterinary Hospital Record – Python, dated September 15, 2021
43. Veterinary Hospital Record – Boa, dated September 15, 2021
44. Document Addressing Complaints About Escapes, undated
45. USDA Inspection Report, dated June 28, 2018
46. Complaint Regarding Wolf Escape, dated October 19, 2021
47. Animal List by Predators of the Heart, dated April 25, 2022
48. Predators' USDA Application, dated August 4, 2022
49. Email Correspondence Between Ashley Carr and Denise Coleburn Regarding Predators' Leadership, dated May 4, 2022
50. Email Correspondence Between Airbnb and Ashley Carr Regarding Airbnb Guidelines, various dates
51. USDA Inspection Report, dated July 27, 2022
52. Email Correspondence from Animal Wonder to Predators, dated January 24, 2023
53. Email Correspondence Between Newport Zoo and Predators Regarding Wolf Sale, dated January 24, 2023
54. Email Correspondence from Debbie Sodl to Ashley Carr Regarding Predators' Visitor Access, dated February 28, 2023
55. Predators' Airbnb Ad, undated
56. Predators' Supplemental Discovery Responses, dated December 15, 2022
57. Predators' Release of Liability Form, undated
58. Wolf Dog Sales Report, various dates
59. Predators' Meeting Minutes, dated October 1, 2011
60. Predators' Permit Refund and Withdrawal, dated August 3, 2015
61. Airbnb Review of Predators, dated January 2018
62. Demand Letter Regarding Wolf Attack, dated March 7, 2022
63. Letter from Predators' Regarding Wolf Escape, dated October 30, 2017
64. Driving Directions to Predators' Facility, undated
65. Predators' Rules and Procedures, undated
66. Email from April Grossruck to Carlie Armstrong Regarding Predators' Airbnb Ad, dated October 25, 2017
67. Emails From Predators Visitor and Ashley Carr Regarding Visitor Experience and Animal Breeding, various dates
68. Driving Directions to Predators' Facility, dated August 7, 2017
69. Email Correspondence Regarding Wolf Escape, dated September 28, 2017
70. Predators Facebook Post of Wolf Pups for Sale, dated April 30, 2013
71. Predators Facebook Post of Wolf Pups for Sale, dated April 22, 2013
72. Predators Facebook Post of Wolf Pups for Sale, dated April 25, 2013
73. Predators Facebook Post of Cougar at Idaho State Fair, dated November 24, 2013

74. Predators Facebook Post of Wolf Pack, dated November 14, 2013
75. Photo of Dog After 2021 Wolf Attack, undated
76. Predators' Facebook Video, dated November 4, 2022
77. Predators' Instagram Video, dated May 23, 2020
78. 2021 Video of Wolves Attacking Dog, undated
79. 2021 Video of Wolves Attacking Dog, undated
80. Applicant Special Use Permit Application (Combined), received March 23, 2022
81. Predators Transfer of Ownership Form, dated June 19, 2017
82. Ordinance Amending Skagit County Code Title 7 to Provide for Appropriate Regulation of Potentially Dangerous Wild Animals, dated March 5, 2014
83. News Article: "Law Forces Skagit Man to Abandon Exotic Animals," dated May 20, 2015
84. Washington Department of Fish & Wildlife Police Incident Report, undated
85. Email Correspondence from Washington Department of Fish & Wildlife Regarding Predators, various dates
86. Tax Exempt Letter, dated May 8, 2002
87. USDA License, expires August 4, 2025
88. USDA Inspection Report, dated April 4, 2023
89. Animal Control Paperwork, various dates
90. USDA Fair Inspection Report, dated September 12, 2018
91. Photographs of Traffic on Kevin Welch Road, undated
92. Sanctuaries/Zoo Animal Encounters, undated
93. Woodland Park USDA Report by Diana Forbes, dated March 28, 2023
94. Airbnb Reviews, various dates
95. Articles of Incorporation, undated
96. Keep Because We Matter in Skagit County Petition, started July 8, 2023
97. Photographs of Signs, undated
98. Wolf Flyer and Associated Materials, undated
99. Skagit County Guidelines for Fences and Retaining Walls and Clearing, Grading, Grubbing, and Forest Practices, undated
100. Property Map, undated
101. Photos of Property Enclosures and Layout, undated
102. USDA Definition of Wolfdog, undated
103. Save Because We Matter Exotic Rescue Petition, started May 3, 2023
104. POTH Appeal, received February 2, 2022
105. 2021 Video of Wolf Escape, undated
106. 2021 Video of Wolf Escape, undated
107. 2021 Video of Wolf Escape, undated
108. 2021 Video of Wolf Escape, undated
109. 2021 Video of Wolf Escape, undated
110. 2021 Photograph of POTH Fence, undated
111. 2021 Photograph of POTH Fence, undated

112. 2015 Anacortes Police Report, dated January 22, 2015
113. 2013 WDFW Incident Report, dated August 16, 2013
114. 2021 Skagit County Sheriff Report, various dates
115. 2017 Skagit County Sheriff Report, dated October 30, 2017
116. Welch Lane Property Map, undated
117. Photograph of POTH Gate Entrance, undated
118. Photograph of POTH Driveway, undated
119. Skagit County Staff Report for PL22-0133, dated July 26, 2023
120. Assessor's Parcel Information and GIS Images, undated
121. Notice of Development Application and List of Landowners, dated April 21, 2022
122. Public Comments of Zelman, Bell, Bjork, and Lee, various dates
123. List of Parties of Record, undated
124. Notice of Public Hearing and Revised Notice of Public Hearing, dated August 23, 2023
125. Protected Critical Area Easement, recorded March 27, 2009
126. Public Comments, various dates
127. Video of Welch Lane and Driveway, undated
128. Articles of Incorporation, filed November 23, 1998
129. Neighborhood Map, undated
130. County Presentation at the Hearing, dated August 23, 2023
131. Public Comments, various dates
132. 2023 Accreditation Standards and Related Policies of the Association of Zoos and Aquariums, undated
133. December 2019 Standards for Canid Sanctuaries, Global Federation of Animal Sanctuaries, undated
134. General Animal Care Standards, Global Federation of Animal Sanctuaries, undated
135. Photograph of Knox Box, undated
136. Photograph of Fence, undated
137. Photograph of Fence, undated
138. Aerial Photographs, undated
139. List of AZA Facilities, undated
140. List of GFAS Sanctuaries, undated
141. Letter Regarding Road Repairs, dated September 13, 2012
142. Site Plan, undated
143. Letter Regarding Road Repairs, dated August 22, 2013
144. Comment of Jenn Brown, dated August 23, 2023
145. *Animal Legal Defense Fund v. Olympic Game Farm, Inc.*, No. C18-6025RSL Slip Copy, United States District Court, W.D. Washington, at Seattle, dated September 6, 2022
146. Neighbor Group's Closing Deck, dated September 5, 2023

Additional Filings by the Parties:

- Appeal of Neighbor Group, dated December 2, 2022
- Appeal of the Applicant, dated December 2, 2022

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- Neighbor Group’s Motion for Discovery, dated April 27, 2023
- Neighbor Group’s Motion for Scheduling Order, dated April 27, 2023
- Neighbor Group’s Motion for Clarification and Expedited Rulings, dated May 9, 2023
- Neighbor Group’s Prehearing Brief, dated August 2, 2023
- Applicant’s Prehearing Brief, dated August 2, 2023
- Parties’ Joint List of Witnesses and Exhibits, dated August 9, 2023
- Neighbor Group’s Response Brief, dated August 16, 2023
- Applicant’s Response Brief, dated August 16, 2023

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

Application and SEPA Checklist

1. On March 23, 2022, Predators of the Heart (Applicant) submitted an application for a special use permit (SUP) to allow an animal preserve and wildlife education, conservation, and sanctuary center, on the Applicant’s property at 4709 Welch Lane, Anacortes, just outside the city limits of Anacortes in unincorporated Skagit County, Washington. The Applicant had been operating an unpermitted animal preserve on the subject property for the past 23 years and now seeks to obtain the required SUP. The Applicant did not propose any substantive physical or operational changes to the existing facility. The County deemed the application complete on April 15, 2022. *Exhibit 119, Staff Report, pages 1 and 2; Exhibit 80; Exhibit 121.*
2. According to the application, the Applicant is a 501(c)(3) non-profit corporation which conducts various animal-related activities within the Applicant’s facility. These activities include: private tours of the facility for groups of up to 10 guests at a time, an experience the Applicant refers to as the “Howling with Ambassadors” tour; the housing of animals that have been entrusted to the Applicant by animal control officers from various jurisdictions in Washington State; and the presentation of virtual tours and lectures to children, including groups of children associated with schools, homeschool programs, scouts, and clubs. There is also a small gift shop at the Applicant’s facility. *Exhibit 80.*
3. At the time of the application, the Applicant reported the following animals present at the facility:
 - Mammals: 3 cougars, 24 wolf-dogs,¹ 3 sloths, 2 opossums, 2 marmosets, 1 fox, 1 giant anteater, 1 North American porcupine, 1 stripe [sic] skunk, 1 hooded skunk, 3 sloths, 2 kinkajous; 4 raccoons.

¹ The parties dispute whether these animals are hybrids—crosses between wolves and dogs, aka wolf-dogs—as the Applicant asserts, or full-blooded wolves, as the Neighbor group asserts. The Hearing Examiner addresses the issue below.

- Birds: 1 Eurasian eagle owl, 1 vulture, 2 ducks, 1 Lady Amherst pheasant, 2 golden pheasants, 3 blue and gold macaw, 2 military macaw, 6 sulfur-crested cockatoos, 1 citron cockatoo, 1 Lord Darby, 6 plum-headed parakeets, 1 blue-fronted Amazon, 1 double yellow Amazon, 20 parakeets, 2 cockatiels, 1 emu.
- Reptiles: 5 alligators, blue-tongue skink [number not given], Savannah monitor [number not given], 2 iguanas, 2 reticulated pythons, 4 ball pythons, 1 rattlesnake, 1 carpet python, 1 rainbow boa, 1 albino python, 1 blood python, 1 caiman lizard, 1 beaded lizard, 2 Burmese pythons, 4 Sulcata tortoises, 2 red-footed tortoises.

The application noted that it is impossible to predict the animal population at the facility with certainty, because animal control officers may contact the Applicant at any time with a request to take on some new animal, such as smaller mammals, small-or-mid-size cats, birds, or reptiles. *Exhibit 80*.

4. The site plan included with the application did not depict all of the animal enclosures at the Applicant’s facility, nor did it include a comprehensive description, neither narrative nor graphical, of the fences that enclose the animals. The application described the wolf-dog enclosures—which are the animals most significant to this case—in the following terms:

All wolf² enclosures are at least 6’-8’ high. Our post and stretch fencing is 6’ and our chain-link panel are 8’ high with electric wire running top and middle and bottom. Wolves in our bottom part of our compound have 6’ fencing with a 6’ perimeter fence with 1.5’ tilt ins. Wolves in bigger 1–2-acre runs are 6’ high with 1’ tilt in’s and a 3-strand hot fence system 8-9 volt. Wolves are put away into night runs when staff is unavailable to supervise in bigger runs. All night runs are 24’x24’x8’ with cattle panel bottoms, chain-link tops with solid roof tops. All night runs placed within the acer runs act as permitter fence for night runs. Both permitter doors and cage doors are locked with padlocks. This is more than is required by the USDA.

Illustrative photographs of at least one wolf-dog “day run” and at least one wolf-dog “night run” appeared in the application following this description; however, not all wolf-dog runs appeared in these illustrative photographs. *Exhibit 80*.

5. The application added the following information about wolf-dog fences and other relevant security measures:

There is extensive fencing that covers the areas of operations. Not only has POTH³ posted conspicuous signage at all areas of access on the property, but the property is also fully fenced, including multiple layers of

² Applicant representative Ashley Carr testified that the Applicant often uses the terms “wolf-dog” and “wolf” interchangeably, however, this should not be interpreted as any kind of admission by the Applicant that the animals are full-blooded wolves. *Testimony of Ashley Carr*.

³ Predators of the Heart, Applicant’s name for itself.

fencing, hot-fencing (interior) and dig-outs to prevent animal escapes. The fully fenced areas are to ensure the safety of animals and the public. At night, the wolves are secured in six-sided enclosures, meaning they cannot dig out of their enclosures.

And also:

POTH currently has multi-layered fencing installed to keep the general public out of our facilities. This includes: 8-foot fencing with “dig-outs” as well as additional six-foot fencing to provide a double layer of fencing so that wolves cannot escape. All of our predatory animals, including wolves, are kept in six-sided enclosures overnight so that they cannot escape—this means that there are fences above and below the animals so they cannot dig out or jump out of the enclosure. Our main point of entry has an automatic locking gate with code entry only. We have a 32-camera security system installed to help keep watch on all animals and points of entry. All animals are under a double and triple locking system when staff is completed with their day. POTH would like to get the property fenced in its entirety and relocate the wolves to a central area within the property. We take public safety very seriously and have met all USDA guidelines along with any request made by Skagit County Animal Control.

And also:

As outlined below, our wolves and other animals (including, but not limited to, predatory animals) are kept in six-sided enclosures overnight. This means that they cannot dig out or jump out of the enclosure. On the wolf-runs, we have layered fences: at least two “layers” with one of the fences being “hot” or electrified. The outer “runs” also have 6-8 foot “dig outs” which also disallows the wolves from jumping over any fencing. There are additional plans to increase the fencing by adding overhangs onto the existing fencing to further protect the wolves and neighboring properties.

Exhibit 80.

6. The Applicant’s facility also houses three cougars and one bobcat, according to the application. The application described the enclosures for these animals as follows: 3 cougar enclosures and 1 bobcat enclosure are 24’x36’ each. They all have chain-link roof. Per USDA guidelines all cat enclosures must have a covered walkway /perimeter fence. All cats have a 3’ walkway all the way around enclosures that is topped. It also includes an additional 6’ with tilt in perimeter fence for extra safety.

Again, photographs illustrating portions of these enclosures and the “perimeter fence” followed the description. *Exhibit 80.*

7. The application also described and provided illustrative photographs of the enclosures for the Applicant’s various other animals, but these other animals did not constitute a substantial part of any party’s SEPA appeal, so the Hearing Examiner omits further detailed description of them. *Exhibit 80.*

8. The application had the following to say about the history of animal escapes from the facility:

In any event, we have worked closely with DFW,⁴ the USDA⁵ and local agencies, including Skagit County animal control, to ensure an exceedingly safe environment. In 23 years, we have had only one escape, and that escape was mitigated—the wolves were captured in under 30 minutes. That instance was likely instigated by a leashless dog (a major problem on the trails), and, as a result, the wolf that was responsible for the escape has since been euthanized. Again: POTH takes the safety of the community very seriously and put the wolf down in an abundance of caution.

And also:

To reiterate: POTH has been on the property for the last 23 years with only one incident of wolf escape. That issue has been rectified and resolved; the wolf itself was euthanized of the escape, which, again, was likely caused by provocation of an off-leash animal roaming the neighborhood. We have since moved all of the wolves into six-sided enclosures so that escapes are not possible in the evening and morning hours when staff are not on-site. Extensive camera systems have been implemented, and fencing has been bolstered.

Exhibit 80.

9. The application included a lengthy section titled “Safety Protocols (Animal Recapture Protocols).” The Safety Protocols established four “tiers” of animal handler, with increasing levels of training and experience. Each tier would be permitted different levels of access to the wolf-dog and cougar enclosures (as well as the other, non-dangerous animals) and would have different roles in the event of an escape. The Tier I and Tier II employees would be primarily responsible for calling 911 and for physically recapturing an escaped animal or deploying lethal or non-lethal weapons against an

⁴ Department of Fish and Wildlife, an apparent reference to the Washington State Department of Fish and Wildlife as opposed to the federal agency of the same name.

⁵ United States Department of Agriculture.

animal, up to and including a “Ruger EC9s 9mm” pistol. The Tier II employee was to “work with” the Tier I employee to accomplish these tasks unless a Tier I employee was not on site, in which case the Tier II employee would act as a Tier I employee. The Tier III and Tier IV employees would perform supporting roles, such as checking fences and gates, monitoring surveillance cameras, escorting guests to safety, and communicating and coordinating with other agencies. The lower-tier employees were also instructed to notify a Tier I employee of an escape via radio and then follow the animal (safely) until a Tier I employee could arrive. Phone numbers for two Tier I employees were provided. No other individual staff phone numbers were provided, such as the number for a Tier II employee who might need to act in lieu of a Tier I employee.

Left unclear, at least in the Safety Protocol itself, was how many employees of what tier would be present at the facility at any given time and on any given day, although as noted above, the application did say that “staff are not on-site” during the “evening and morning hours.” Also left unclear, at least in the Safety Protocol itself, was what would happen in the event that an escape occurred during a time when a Tier I or Tier II employee was not present to recapture the escapee. The Safety Protocol also did not include a list of neighbors to be notified in the event of an escape, nor did it assign to any tier of employee the duty of notifying the neighbors of an escape. In the event of an escape off the Applicant’s facility (as opposed to an escape within the Applicant’s facility), the “president or other persons in charge will instruct notify [sic] the following agencies by calling 911 dispatch”:

- Skagit Animal Control
- Anacortes Animal Control
- Anacortes Police Department
- Anacortes Fire Department
- Mt. Erie Volunteer Fire Department

Other than 911, individual phone numbers for most of these named response agencies did not appear in the Safety Protocol. The “key response authorities” phone numbers that did appear in the Safety Protocol were the numbers for Skagit County Animal Control, the City of Anacortes Anacortes Community Forest Lands (ACFL),⁶ Friends of the Forest ACFL, a contact at the USDA, and “Caleb Stewart Legal Console” [sic].⁷ *Exhibit 80.*

10. A SEPA Checklist, prepared March 18, 2022, accompanied the Applicant’s application. The SEPA Checklist was prepared on the standard form derived from the Washington State Department of Ecology’s rules in WAC 197-11-960. This standard form included several dozen questions aimed at helping the County’s SEPA Responsible Official determine the proposal’s potential environmental impacts, including questions asking the

⁶ The Anacortes Community Forest Lands is a large park adjacent to the Applicant’s property.

⁷ The Hearing Examiner notes that attorney Caleb Stewart, with the same phone number as “Caleb Stewart Legal Console” from the Safety Protocol, filed the Applicant’s SEPA appeal, but he does not appear to be the Applicant’s current attorney, who is Haylee Hurst at a different law firm with a different phone number.

Applicant to describe its proposal in detail and estimate the proposal's potential impacts to, among dozens of other things: surface water, noise, traffic, and public services, including but not limited to police protection. The Checklist also asked for a description of the current use of the subject property as well as adjacent properties.⁸ *Exhibit 3*.

11. In answer to the Checklist's questions about surface water, the Applicant wrote that there was "storm water, natural storm rain run-off. No collection" and that no waste could enter ground or surface waters because "we dispose of all animal waste properly. No compost on site." In answer to the Checklist's question about noise, the Applicant wrote that there would be "animal noises at time [sic] but minimal." In answer to the Checklist's question about measures to control noise impacts, the Applicant wrote: "N/A."⁹ In answer to the Checklist's questions about traffic impacts, the Applicant replied "None" or "N/A" to all questions, including a question about how many vehicle trips would be generated each day by the proposal. In answer to the Checklist's question about whether the proposal would lead to the increased need for public services, including police protection, the Applicant wrote: "N/A." In answer to the Checklist's question about adjacent property uses, the Applicant wrote: "Adjacent properties have Personal [sic] sawmill, livestock, and off road quad and dirt bike track." In answer to the Checklist's request to describe "any structures" on the subject property, the Applicant wrote: "There is a 12x12 gift shop and two 40' shipping containers on site." In answer to the Checklist's request to "give a brief, complete description of your proposal," the Applicant wrote, "Animal preserve permit — no projects at this time." *Exhibit 3*.

Notice and Comment

12. On April 21, 2022, the County caused notice of the development application to be published in the *Skagit Valley Herald* newspaper, posted onsite in two different locations, and mailed to landowners within 300 feet of the subject property. The County used the optional process provided for by WAC 197-11-355 and indicated in the notice of development application that the County would likely issue a mitigated determination of nonsignificance for the project. The notice of development application announced a public comment period ending May 6, 2022. *Exhibit 119, Staff Report, page 5; Exhibit 121*.
13. A large volume of comments followed, including comments from both the public at large and certain other governmental agencies. County staff reviewed the public comments and characterized them in the staff report as follows:
 - Most comments received can be characterized as having concerns about the business and/or were opposed to the continued operation of the business. Most of the comments received expressed concerns about the

⁸ The Checklist contained answers (or non-answers) to dozens of other questions, as well, but the Hearing Examiner finds that the issues highlighted here are the most relevant to the SEPA appeals.

⁹ Not applicable.

public safety of the neighborhood and residents along with potential threat animals at Predators of the Heart may pose.

Exhibit 119, Staff Report, page 5.

14. Public commenters at this stage of the process included JuLee Rudolf, Ron Howson, Kevin P. Welch, Heather Little Jennings, a Mr. or Ms. Benson,¹⁰ Nicholas Anatole Leonovich, Jessi Williams, Nolan Berlin, Millicent Swietzer, Dave Knutsen, Pam Knutsen, Matt Kozera, Breanne Kozera, Norma Cossel, Jenny Welch, Sarah Meyhoff, Martine Felts, Jonathan M. Fischer, Charles J. Davis, Christina C. Fischer, Chris Zimmerman, Leonard Paul Iverson, Justin Kirby, Tasha Kirby, Nash Kirby, Paige Kirby, Michelle Elizabeth Borlin, Brandon Michael Borlin, David and Meg Mourning, Deanna Kay Iverson, Robin Neuman, Christopher Harris, Maren Mansfield, R. Gay Bunker, Marcela Vorel, JoAnn York-Gilmore, Grant Johnson, Colin and Deanna Emsley, Edward P. Borlin Jr., Lynne Borlin, Edmund Lee, Julia Zelman, Stephanie C. Bell, and Rachel Bjork. In addition to the comments of its individual members, the Neighbor Group also commented collectively through its attorneys. A petition was also submitted, with signatories proclaiming their opposition to the facility. *Exhibit 5; Exhibit 122.*
15. Most of this first round of public comments was aimed at the underlying project rather than at the County's SEPA review, but the comments did raise issues germane to SEPA review. The most significant issue, which was raised by multiple commenters including the Neighbor Group, related to animal escapes from the Applicant's facility. The commenters identified multiple instances in which wolves or wolf-dogs (which the commenters almost invariably called "wolves") escaped from the facility, or from the Applicant's physical control, or both. In at least two separate instances, wolves or wolf-dogs killed a pet dog. In at least three instances, wolves or wolf-dogs physically entered property not belonging to the Applicant. In at least one instance, two leashed wolves or wolf-dogs broke free of their leashes. In at least one instance, three wolves or wolf-dogs escaped by digging under one of the Applicant's fences. In at least one instance, a wolf or wolf-dog damaged the interior of a law enforcement vehicle after the law enforcement officer recaptured the animal. In at least one instance, the adjacent Anacortes Community Forest, a public park, had to be closed to hikers until escaped wolves or wolf-dogs could be recaptured. In several instances, trees or vegetation were observed leaning against the fences at the Applicant's property. These and other episodes are described in more detail below. Neighbors and community residents expressed sorrow over the loss of pet dogs, anger over the Applicant's alleged lack of control over its animals and facility, and fear that future escapes would result in new harms, including possible harms to pets and people. No commenter identified an incident in which a person had been harmed. *Exhibit 5; Exhibit 122.*

¹⁰ First name illegible.

16. Public commenters also claimed that the howling of the wolves or wolf-dogs presented a noise nuisance issue to at least some of the nearby residential properties, as did the squawking of the various birds at the Applicant's facility. Commenters also claimed that food waste from the Applicant's facility was often scavenged by ravens that would then drop the food waste on neighboring residential properties. Commenters also argued that guest traffic to the Applicant's facility created unreasonable traffic impacts on neighboring properties, in that wayward guests would sometimes mistake neighboring properties for the Applicant's property and bother the neighbors by trying to get in, or by asking for directions. Commenters also claimed that the Applicant's and its guests' access to the Applicant's property by way of Welch Lane, a private road, was not authorized under the terms of the easement that governed Welch Lane. Commenters also argued that the Applicant did not operate a true, accredited wildlife sanctuary and was harming the animals under its control. Commenters also identified an incident in which a fox escaped from the facility, although there was no claim that the fox had caused any harm or posed any danger. Commenters reported an unpleasant odor, which they attributed to unidentified waste coming from the Applicant's property. Commenters complained that the Applicant's feeding practices attracted rats that then went onto neighboring properties. *Exhibit 5; Exhibit 122.*
17. Besides the issues raised above, commenters, including the Neighbor Group, also presented legal arguments and supporting documentary evidence why the SUP application should be denied and why a SEPA threshold determination should not be issued. These arguments were substantially similar to those presented in the Neighbor Group's subsequent SEPA appeal, which the Hearing Examiner addresses below. *Exhibit 5; Exhibit 122.*
18. A minority of public commenters were supportive of the application. They argued that closing the facility (by denying its SUP application) would result in the Applicant euthanizing the animals, and this would be unfair to the animals. Supportive commenters also noted that public access to the Applicant's facility is confined to tours, which were well-run and safe. The animals under the Applicant's control appeared to be well-fed and healthy. The facility provided an important service not only in terms of its benefit to rescued animals but to the emotional well-being of people who had taken the tours and experienced an emotional connection with the wolves or wolf-dogs, which guests were permitted to pet. Commenters also noted the benefit of tourist revenues, in that guests travel to the facility from far away and spend money locally. *Exhibit 5; Exhibit 121.*
19. Several governmental agencies also commented. Chief among them was the City of Anacortes (City), which commented through both its mayor and its city attorney. The City had, apparently, previously sent letters to the County regarding one of the escape episodes, which had occurred October 19, 2021. (Again, the history of escapes is discussed more completely below.) Now, in response to the notice of development

application, the City re-submitted at least some of its older comments, as well as new comments on the proposal. The City's comments summarized several previous escape episodes, including one in which a neighbor had fired gunshots at an escaping wolf, as well as several of the incidents previously referenced by commenters. The City complained that its emergency responders were not timely notified of the October 19, 2021, escape. The City also argued that the Applicant was engaged in an unsafe business model by accepting guests through Airbnb and allowing those guests to pose with and touch the wolves or wolf-dogs. The City also provided legal argument that the Applicant's facility had been in violation of the County code and could not be approved under the County code.¹¹ In light of the alleged illegality of the operation, the City requested that the animals be removed from the Applicant's custody. In the meantime, the City asked that the County:

Require Predators of the Heart to install a perimeter fence completely surrounding the Coleburn property made of at least 9-gauge chain link, at a height of 8 vertical feet with a three foot tip in and three foot ground skirt buried at an angle with hot wire around the top. These safety standards are necessary to protect the public from the wild animals currently housed at Predators of the Heart.

Exhibit 6.

20. The City also noted that the Applicant's facility was connected to the City's water supply with a water connection sized for residential purposes (as opposed to commercial purposes). The City was concerned that this water connection could lead to contamination of the water supply, given its possible use to support the Applicant's animal-related operations. The City asked that the County require the Applicant to equip its water connection with a "backflow prevention device" to safeguard the water supply.

Exhibit 6.

21. Once the SEPA Checklist was made available for review, the City commented on the Applicant's answers to the Checklist questions. The City noted that the Checklist failed to describe the property in detail and failed to disclose any future development. The City noted the presence of a stream depicted on AFN200903270122,¹² notwithstanding the Checklist's claim that there was no water in the vicinity of the facility. The City noted the presence of the Anacortes Community Forest Lands, which had important recreational and habitat values, and which the Checklist failed to discuss. The City disputed the Checklist's answer that the proposal would not result in increased use of public protection resources, given the history of escapes that had already occurred and

¹¹ The City's legal argument, which invoked the County's prohibition against keeping certain "potentially dangerous wild animals," was identical to one raised by the Neighbor Group, and the Hearing Examiner will address that argument in his companion decision on the SUP application, because the dangerous animal regulations are more germane to the SUP application than they are to the SEPA appeals that are the subject of this decision.

¹² Exhibit 11 in the record.

which had already made substantial use of public protection resources. Without conceding its earlier argument that the application should be denied outright, the City made the following suggestions for mitigation measures in the forthcoming MDNS:

- Perimeter Fencing. The City requested that the applicant be required to install perimeter fencing around the entire property, not just the small portion of the property currently fenced. This fence should be at least 8 feet high, dug in at least 2 feet at the bottom of the property. The City recommended that the fencing also include a tip-out at the top at a 45-degree angle made of heavy gauge and spaced no more than 4 inches apart. The fence itself should be made of 9 gauge chain link with metal support poles set in concrete spaces no more than 6 feet apart. The City justified this suggestion by arguing that the fencing strategy currently proposed by the Applicant is clearly insufficient to guarantee that all the animals will be prevented from escape and that outside animals who are attracted to the facility will be kept out.
- Day Use Fencing: The City also noted that the fencing on the wolves' day use area was not uniform and did not "appear to be secure." The day area fencing around the wolves appeared to be flimsy, not very secure, and inconsistent based on property topography. Fencing around the wolves' day use areas should be changed to match the perimeter fencing. Additionally, there should be perimeter checks of the wolves' daytime enclosures daily to look for vulnerability, including fallen trees, damage or tunnels by animals, broken fence or wiring, etc. These daily inspections should be reported in a daily log and along with any work plans to complete needed repairs. Emergency repairs should be fixed immediately. These daily logs must be made available to City or County officials upon request.
- Signage: The City asked for signs warning of wild animals to be installed at 50-foot intervals around the entire subject property, not just that portion where the facility exists.
- Arborist: The City asked for annual inspections of trees around the fence perimeter, reports of said inspections to be available for City and County inspection.
- Electrical Safety: The City asked that all electrical systems currently installed or to be installed be inspected and approved by the Washington State Department of Labor and Industries, with annual inspections thereafter.
- Emergency Response: The City asked for improved communications during escapes, including a "standard call out list that includes the City's animal control officer."
- Operations Limitations: The City asked that animals never be removed from enclosures, to prevent them ever breaking free (as had happened before during one of the escape episodes).
- Outdoor Burning: The City believed there was a burn pit on the property. It asked that outdoor burning be prohibited, for the safety of surrounding properties and the animals at the Applicant's property.

- Water Connection: The City asked that the Applicant be required to obtain and pay for all costs associated with ensuring its connection to the City water system is properly sized for its intended use. Additionally, because the Applicant is changing its use from the residential connection to the City water system originally provided to a commercial use, the applicant must install all required backflow prevention devices determined to be required by the City.

Exhibit 6.

22. On April 28, 2022, employees of several County departments and agencies conducted a site visit of the Applicant’s facility. Following the site visit, several County departments and agencies issued comments of their own. Skagit County Public Health (“Public Health”) commented that the Applicant must meet the standards of the Skagit County Solid Waste Code, Chapter 12.16 Skagit County Code (SCC), but that a solid and hazardous waste permit would not be required. Public Health also commented that operations with employees require connection to an approved public water source. *Exhibit 119, Staff Report, pages 3 and 6; Exhibit 6.*
23. Skagit County’s own planning department noted that a previously approved protected critical areas easement extended onto the Applicant’s property. The County asked for a “more detailed site plan indicating the location of existing and proposed development and clearing to ensure there has been and will be no impact to the Protected Critical Area Easement (PCAE) shown on the plat [AFN]200903270122.” The County reviewer recommended a condition that future clearing and grading remain outside the PCAE. *Exhibit 6.*
24. The County Fire Marshal suggested several more mitigation measures:
- Access must meet the Skagit County Standards for commercial use for driveway width and turnarounds for emergency apparatus.
 - Property and buildings must meet the 2018 IFC¹³ Standards for commercial use. The Applicant should be required to schedule a fire inspection in part of the special use permit and inspection must be completed prior to any scheduled events.
 - Gated entrance to have emergency access (KNOX) installed and emergency procedure plan to be provided to responders.
 - The subject property is located within the wildland-urban interface (WUI), and further fire code requirements will apply during permitting review of the buildings.
 - Identify the availability of fire flow and distance to the nearest hydrants.
- Exhibit 6.*

¹³ International Fire Code.

25. Finally, the County’s senior plans examiner recommended the following measures:
- All structures—buildings under 120 square feet with heat or plumbing, all Buildings structures over 120 square feet, cages and fences over 7 feet tall, and all containers—require a building permit and engineering review.
 - Permanent restrooms will be required on site for employees and guests.
- The senior plans examiner, however, did not cite the legal source of these requirements, nor did he provide any factual justification for them. *Exhibit 6.*
26. On September 13, 2022, the Applicant submitted a written response to public comments. In sum, the Applicant made the following points:
- The Applicant cited exceptions to the general prohibition against keeping potentially dangerous wild animals and argued that it met several of those exceptions. These arguments were repeated in substantially the same form several times throughout this case, and the Hearing Examiner addresses them below.
 - The Applicant emphasized that it is a non-profit organization, notwithstanding its use of Airbnb to book paying tours.
 - The Applicant claimed that its by-laws prohibit breeding of animals.
 - The Applicant pointed to what it called “thousands” of reviews online that showcase the Applicant’s animal preserve as a place where people experience the beauty and glory of nature. The Applicant described its onsite tours as educational. The Applicant claimed to conduct virtual tours for schools and to provide an unspecified “outreach program” for military veterans.
 - The Applicant argued that it had had only two escapes in its history, one of which resulted in the death of a local dog. The Applicant argued that the dog had “repeatedly antagonized the wolf-dogs.” The Applicant disputed the characterization of other incidents as “escapes.” The Hearing Examiner discusses the history of escapes below.
 - The Applicant claimed to have “reallocated its enclosures” so that no wolf-dog enclosures border any neighboring property.
 - The Applicant claimed to have installed six-sided fencing, essentially a cage with floors and roof, in which the wolf-dogs were kept at night. The six-sided enclosures were sited inside the larger day-runs, which are fenced areas without floors or roofs. During the day, the wolf-dogs could go into the larger day runs.
 - The Applicant claimed that “nearly every square foot of the compound” is monitored either by staff or cameras or both.
 - The Applicant emphasized that it has received a Class C exhibit license from the United States Department of Agriculture (USDA). As part of its licensure, the Applicant was subject to USDA inspection, most recently on August 5, 2022. The Applicant also emphasized that it has allowed other agencies to inspect its facilities, including the County.

- The Applicant claimed that “all of the animals housed are rescued or have been acquired from dire situations.” Elsewhere, the Applicant also claimed that “over 80 percent of its animals have been brought to POTH due to rescue.” The Applicant also wrote, however, that: “As a point of emphasis: none of the wolves housed by POTH are rescues.” The Applicant claimed that none of its so-called wolves are full wolves. Every so-called wolf is a wolf-dog.
- The Applicant denied that its animals could be re-homed.
- The Applicant argued that its traffic is minimal and that one of the complaining neighbors, Mr. Welch, generates far more traffic onto his property than the Applicant does onto the Applicant’s property.
- The Applicant claimed there are no odors or waste, because all waste is disposed of in dumpsters.
- The Applicant denied that there was excessive noise from its animals and claimed the County site visitors could verify the absence of excessive noise.
- The Applicant supplied paperwork showing that code enforcement officers from various jurisdictions, including Pierce County, the City of Shelton, the City of Lacey, Naval Air Station Whidbey Island, and an unidentified entity called “Animal Services” based at 3120 Martin Way E in Olympia, had all transferred animals to the Applicant for safekeeping at various times in the past. The Applicant supplied copies of its USDA inspection reports for July 22, 2022, and August 25, 2022, supportive testimonials from customers, surveillance camera images showing traffic on the adjacent roads, and images from its own property showing fences and a dumpster.

Exhibit 7.

Issuance of the MDNS and a Second Round of Public Comment

27. On November 1, 2022, the County issued its MDNS, invoking its authority under WAC 197-11-350(3) to clarify, change, or condition a proposal to include necessary mitigation measures to avoid, minimize, or compensate for probable significant impacts. The County determined that an environmental impact statement would not be required under RCW 43.21C.030(2)(c). Notice of the MDNS was published in the *Skagit Valley Herald* newspaper on November 3, 2022. Notice was also posted onsite and mailed to the parties of record. *Exhibit 119, Staff Report, page 5; Exhibit 1.*
28. The SEPA MDNS contained 13 mitigation measures.¹⁴ Some of these 13 mitigation measures had sub-measures and sub-sub-measures. The MDNS stated that these mitigation measures “shall be deemed conditions of approval of the land use and/or

¹⁴ Sometimes, the County refers to the MDNS mitigation measures as conditions. *See, e.g., Exhibit 119, Staff Report, page 5.* To avoid confusion between the MDNS mitigation measures (which are decisions of the County that are now under appeal) and the County’s later proposed conditions of approval for the SUP (which are only recommendations and are not under appeal), the Hearing Examiner will refer to the MDNS mitigation measures as “measures” and the proposed SUP conditions as “conditions.”

permit pursuant to Chapter 16.12 Skagit County Code and Chapter 43.21C RCW. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.” In all, the mitigation measures required the following, with capitalization and punctuation as in the original:

1. Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, must be in place prior to the placement of any fill material. The applicant must maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance.
2. The applicant must comply with Northwest Clean Air Agency (NWCAA) requirements.
3. The applicant must comply with the provisions of Chapters 14.32 and 16.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces. Best Management practices must be utilized throughout the life of the project.
4. This project may be subject to a National Pollutant Discharge Elimination Systems (NPDES) permit. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Northwest regional Office at (206) 594-0000.
5. The applicant must comply with both Skagit County Building and Fire Code Standards.
6. The applicant must comply with all relevant provisions of Chapter 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance). Any future development, clearing of vegetation, and/or disturbance of soil must remain outside of the PCAE as shown on AF#200903240122.
7. The proposal, and site development, must comply with all applicable requirements of SCC 14.16.320 regulating the underlying Rural Reserve Zoning District.
8. Should any human remains, archaeological, historic, or cultural materials be discovered during construction, work in the affected area must cease immediately and the area must be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer must notify the Skagit County Sheriff’s office, Skagit County Planning and Development

Services, the Washington State Department of Archeology and Historic Preservation, and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer must retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area may only continue when in conformance with applicable state and federal laws.

9. Electrical Safety: The applicant/landowner must obtain electrical permits from the Washington State Department of Labor and Industries (L&I) for all electrical work. Copies of permits must be kept on site and available. All electrical systems currently installed and/or to be installed, must be permitted, inspected, and approved by the Washington State Department of Labor and Industries (L&I). These electrical systems must be inspected annually, with all records readily available to the county and the city upon request.
10. Development must comply with all requirements of the Skagit County's Public Health Department including but not limited to:
 - A. Operations with employees require connection to an approved public water source.
 - B. Meet the requirements of Skagit County Solid Waste Code SCC 12.16. A solid & hazardous waste permit is required.
11. Development must comply with Skagit County's Fire Marshal's Office, including but not limited to:
 - A. Access must meet the Skagit County Standards for commercial use for driveway width and turnarounds for emergency apparatus.
 - B. Property and buildings must meet the 2018 IFC Standards for commercial use. Required to schedule a fire inspection in part of the Special Use Permit and inspection must be completed prior to any scheduled events.
 - C. Gated entrance to have emergency access (KNOX) installed and emergency procedure plan to be provided to responders.
 - D. Property is located within the wildland-urban interface (WUI) and further fire code will apply during permitting review of the buildings.

- E. Identify the availability of fire flow and distance to the nearest hydrants.
12. Development must comply with all requirements of the City of Anacortes including but not limited to:
- A. Per AMC 13.24.030, a backflow prevention device must be installed. Please contact the City of Anacortes Public Works Department for more information and a permit. This backflow prevention device must be installed immediately and in accordance with City standards.
 - B. Water connection: The applicant must obtain and pay for all costs associated with ensuring its connection to the City water system is properly sized for its intended use. Additionally, because the applicant is changing its use from the residential connection to a commercial use, the applicant must install all required backflow prevention devices determined to be required by the City.
13. Development must comply with all requirements of Skagit County's Planning & Development Services Department including but not limited to:
- A. Signage: Onsite signage must include contact information where neighbors and governmental officials can get ahold of Predators of the Heart staff 24 hours a day 365 days a year with concerns, complaints and/or emergencies. This information must also be placed on the POTH company's website clearly viewable and accessible to all.

A sign must be placed outside of the main gate listing the managers cell phone number where complaints and/or concerns can be made 24 hours a day 365 days a year.

Along perimeter fencing, the applicant must install signs indicating that the property is private and that there are wild animals located on the property. Signs must be placed every 50 feet along all property boundaries including the Anacortes Community Forest Lands (ACFL).
 - B. The applicant/landowner must also provide all property owners within 600 feet of the subject property a 24-hour contact phone number where neighboring property owners can call to report concerns, complaints and/or emergencies.

- C. The applicant must obtain a land survey of the subject property from a Washington State licensed land surveyor if property corners, and boundaries are not known.
- D. All wolves, wolfdogs, and any non- *felis catus* cats (e.g., cougars, mountains lions, bob cats, etc.) and similar carnivorous and potentially dangerous animals that are onsite must always be placed/housed in 6-sided metal fenced enclosures when staff is not present such as breaks, afterhours, the weekend, holidays, etc.
- E. All animal waste must be disposed of in approved manner per Skagit County Public Health Department and the Waste Management company that serves the subject property. Contact these offices for more information and specifics on the matter.
- F. The applicant/landowner must have at a minimum a bi-annual joint inspection by both Skagit County and City of Anacortes Animal Control offices. The onus is on the applicant to arrange this joint meeting with county and city staff. All recommendations made by city and county staff during this visit must be followed.

Furthermore, the applicant/landowner must allow both Skagit County and City of Anacortes Animal Control to inspect the site as is needed following obtaining a Special Use Permit.

- G. All parking associated with the business must be onsite and must not include Skagit County or City of Anacortes road right-of-way(s), private roads, or neighboring private/public properties.
- H. Emergency Response: Should it be determined that any of the animals housed onsite escapes, the manager/staff and/or applicant/landowner must immediately lockdown the business and fences and call the Skagit County Sherriff's Office, Skagit County Animal Control Office, Skagit County Planning and Development Services Department, City of Anacortes Police Department, City of Anacortes Animal Control Officer, City of Anacortes Fire Department, City of Anacortes Parks & Recreation Department, and abutting/contiguous neighboring landowners informing them of this emergency. Predators of the Heart must also inform these parties what actions and response they are taking to capture any escaped animals. The applicant/landowner must have a standard

call out list which at a minimum includes all of the parties that are listed above.

The business must be responsible for any costs associated with recovering their animals by county/city staff /departments and any damage or harm that they could potentially cause.

I. The applicant/landowner must comply with the following fencing standards:

- 1) The entire subject property for POTH must have primary perimeter fencing installed around the entire subject property. At a minimum, the perimeter fencing and gates must consist of 9 gauge, 2" square, 8' chain link fencing with metal support poles set in concrete spaces no more than 6 feet apart.
- 2) The perimeter fence must be a minimum eight (8) feet in height (above grade), with at least two (2) feet at the bottom of the fence (more info & deviations discussed below).

Perimeter fencing must also include a two (2) foot tip out (to prevent animals from escaping) extension at the top of the fence at a 45-degree angle with an electric wire strung at the top of the fence on the inside of the enclosure.

The total height of perimeter fence above grade is ten (10) feet which includes the eight (8) foot tall fence plus the two (2) foot tip out.

- 3) A secondary perimeter fence is required that is at least five (5) or more feet inward from the primary perimeter fence. The secondary perimeter fence must also meet the same standards as the primary perimeter fence.
- 4) Below Grade Fencing: Both the primary and secondary perimeter fences and gates must have chain link fencing installed that adjoins the ground. For both primary and secondary perimeter fencing, concrete with reinforced mesh must extend two (2) feet vertically into the ground and be attached to the base of the chain link to prevent animals from digging out.

If this requirement [below grade concrete with reinforced mesh] is impracticable, any deviation thereto that is either comparable or greater in its ability to prevent animals from escaping below the chain link fencing may be considered by Skagit County's Planning & Development Services Department.

- 5) All entrances and exits must have double gates and be at least eight (8) feet tall. Latches must be secure and lockable. Fencing must be attached to the inside of the gate so that the framework cannot be used as a ladder.
 - 6) As discussed above, perimeter fencing must be installed around the entire subject property. No Variance is required for 8-foot fencing (above ground) with two (2) foot tip out (to prevent animals from escaping) on the respective property lines provided a Commercial Building Permit is first approved for it.
- J. All animal enclosures must be located inside of the secondary perimeter fence. Wolves, wolf hybrids, bobcats, cougars, and similar animals that are a threat to humans must at all times be housed in 6-sided fenced enclosures. All enclosures must contain a shelter from the elements and must provide adequate drainage to allow animals to find dry ground in wet conditions. Enclosures must contain enough vegetation and ground cover to provide the animal with shade, hiding places and grass to eat. However, no trees or bushes shall be located too close to the fence.
- K. The applicant/landowner must comply with the following standards for animal runs:
- 1) All animal runs must be located inside of the secondary perimeter fence.
 - 2) There must be perimeter checks of the wolves' daytime enclosures daily to look for vulnerability, including fallen trees, damage or tunnels by animals, broken fence or wiring, etc. These daily inspections should be reported in a daily log and along with any work plans to complete needed repairs. Emergency repairs should be fixed immediately. These daily logs must be made available to city or county officials upon request.

- L. The applicant must hire a ISA Certified Arborist a minimum of 3 times per year to evaluate the trees along the fence lines (internally and external to the property). Evaluations and the action necessary to mitigate the hazard must be paid for by POTH. All records related to arborist reports, mitigation requirements, and repair work must be available to the county and city upon request.
- M. The applicant/landowner must install both motion detected lights that monitor the area within the perimeter fencing and surveillance video equipment that automatically alerts the facility's manager via cell phone of movement within the perimeter fencing and/or encroachment by an animals within.
- N. Electronic surveillance measures must be used at all times by staff to monitor the operation remotely from afar during afterhours, weekends, and holidays.
- O. The wildlife preserve must be manned at all times. When the facility is closed, a caretaker must be present on the property.
- P. When wolves, wolf hybrids, bobcats, cougars, or similar animals that are a threat to humans are allowed outside of their 6-sided enclosures into fenced in run areas, GPS, VHF, or similar tracking collars must be placed on the animals.
- Q. The applicant/landowner must comply with all USDA requirements. Should there be a conflict in what the USDA requires, the applicant/landowner must contact Skagit County Planning & Development Services Department to coordinate the appropriate response.
- R. There is no maximum number of animals that Predators of the Heart may house onsite provided they meet all USDA standards/requirements and Skagit County Code including but not limited to Chapter 7.04 regulating potentially dangerous wild animals.
- S. Following Special Use Permit approval, the applicant/landowner must provide Skagit County Planning & Development Services and the City of Anacortes' Parks and Recreation Department with a revised site plan that shows including but not limited to:

- 1) Location of all property corners/lines for the subject property.
 - 2) Location of the 2 required perimeter fences.
 - 3) Location of all double fenced entrances and gates.
 - 4) Location of all animal enclosures. Identify what animal species are where.
 - 5) Location of all existing structures (and proposed) onsite including any caretaker Residence.
 - 6) Location of onsite parking for staff and guests.
 - 7) Location of any onsite critical areas, associated buffers, and/or protected critical area assessment easement (PCAE).
- T. Development must comply with all requirements of the Skagit County Planning & Development Service’s Building Division including but not limited to:
- 1) All structures – (Buildings under a 120 Square Feet with heat or plumbing, All Buildings structures over 120 S.F, Cages, Fences over 7’ tall, containers) requires a building permit and engineering.
 - 2) Permanent restrooms are required on site for employees and guest.
- U. Outdoor burning: The applicant must follow safe outdoor burning protocol along with seasonal burn bans.
- V. Operation limitations: The applicant must not engage in any unsafe practices involving wolves or similar carnivorous animals.

Exhibit 1.

29. A second round of public comments followed the issuance of the MDNS. The Neighbor Group, through its attorneys, urged the County to “revise the MDNS to deny the [a]pplication,” or, failing that, impose additional mitigation measures beyond those set forth in the MDNS. The Neighbor Group repeated legal arguments pertaining to the issue of potentially dangerous wild animals. The Hearing Examiner will address in his companion decision on the SUP application, because those arguments are more germane

to the issued surrounding the SUP than they are to SEPA. The Neighbor Group also argued that the MDNS was based on misrepresented material facts related to the number of escapes and the supposed lack of breeding and the dates on which it had acquired its animals. The Neighbor Group claimed the Applicant had continued to offer tours and accept animals in violation of the County's order to cease operations until the issuance of an SUP. The Neighbor Group argued that the MDNS failed to address issues of noise, odor, and intrusions on the neighbors' privacy; and that the MDNS's safety measures were insufficient. The Neighbor Group suggested denying the permit application; forcing the Applicant to become a member of an accrediting oversight organization such as the American Zoo Association; obtaining an insurance policy; submitting an annual financial plan to the County to guarantee the animals will be cared for; setting hours of operation and requiring the Applicant to improve access roads to commercial standards and obtain any necessary easements and maintenance agreements for commercial use of roads; requiring reasonable steps to redirect lost visitors away from neighboring properties; requiring compliance with current standards for all buildings; setting back all fences and buildings 35 feet from the property lines; landscaping the fences so they are not visible from adjacent properties; impose noise restrictions; imposing a breeding and selling ban; keeping certified staff onsite at all times; expanding the emergency notification list; and removing all "makeshift fencing," presumably to be replaced with something more substantial. *Exhibit 4.*

30. Public comments at this stage of the proceedings included: Dave Knutsen, Pam Knutsen, Dr. Jude Apple, Leah-Marie Whitman, Darlette Brown, Deanna K. Iverson, Bruce Bunten, Lisa Adams, Leslie Grossruck, Mark Lundsten, Dianne Clark, Charles Joseph Davis, Jana Allen, Dan C. Macken, Patrick Dodds, Dani Vavra, Edward P. Borlin Jr., Jenny L. Welch, Kevin P. Welch, Heather Jennings, Jessi Williams, Sedric Benson, Levi Simpson, and April Grossruck. In addition, there was a signed petition against the application. *Exhibit 4.*
31. Adverse issues raised in this round of comments included the history and likely future of animal escapes (again, discussed further below); lack of clarity surrounding the Applicant's food-storage and waste-handling procedures; an alleged rat problem, which commenters attributed to the Applicant's operation; insufficient monitoring of the animals by the Applicant; the risk of trees falling on a fence and causing a breach; the lack of an on-site person at all times; and the supposed inability of the County to serve as a competent inspector of the facility. Commenters suggested additional signage requirements; more clarity on how the tip-outs of the fences should be designed; additional height requirements for fences; and more clarity on how much of a buffer needed to be kept between the fences and surrounding vegetation. Commenters suggested limits on the number of animals. Commenters argued that a particular easement, AF number 199406200058, would prohibit the commercial use of Welch Lane. Commenters denied that the wolf-dogs were rescue animals but argued instead that they

had been bred. Commenters repeated the requests for 35-foot setbacks and expanded emergency contact lists; a breeding and sale ban; a ban against contact between the public and the animals, including a ban against photography; limited hours of operation; noise restrictions; membership in the American Zoo Association or other accrediting body; insurance; and a financial plan. *Exhibit 4.*

32. The majority of comments in this round were supportive of the application. These commenters argued that the facility is in compliance with USDA regulations and provides a valuable public service by hosting animals that are otherwise illegal for the public to own. The supportive commenters argued that the mitigation measures went far above anything required by USDA or the requirements for zoos, to the point of appearing punitive to the Applicant. Commenters argued that closing the facility (by failure to issue an SUP) would result in the euthanization of animals. Commenters argued that the animals at the Applicant's facility are safely and well cared for and provide a valuable educational opportunity. Commenters emphasized the importance of paid, private tours to the financial wellbeing of the Applicant's operation. Commenters argued that collaring the animals would adversely affect animal wellbeing and that two layers of fencing was excessive. Commenters opposed motion-activated lights as disruptive to the animals. Commenters opposed removing perimeter landscaping on the grounds that it would decrease property values and remove "heritage trees." Commenters opposed the MDNS's thrice-a-year requirement for arborist inspection. Commenters suggested that the Applicant should use the American Zoo Association standards to set guidelines, rather than the mitigation measures proposed in the MDNS. Commenters drew a distinction between management of the Applicant's facility under the previous manager versus the current manager, Ashley Carr. *Exhibit 4.*
33. Ashley Carr, Applicant Representative, issued the following comments on the MDNS. She argued that some of the mitigation measures were unreasonable or impossible to accomplish, while others were ineffective or unnecessary. She agreed with (or at least did not substantively object to) MDNS Mitigation Measures 1 through 11. She argued that Mitigation Measure 12 should not be a County issue, because it pertained to City of Anacortes water connections and because the Applicant already had a backflow device. With regards to MDNS Mitigation Measure 13, she argued the following:
- No substantive objection to Measures 13(A); (B); (E); (F); (G); (J); (K); (L); (N); (Q); (R); (S); (T); (U); or (V), although in some instances the Applicant argued these measures are already in place or are duplicative of other measures.
 - No need for Measure 13(C) because boundary lines are already known.
 - Clarification of Measure 13(D): Staff is already present whenever day-runs are used.
 - Measure 13(H) will require neighbors to provide the Applicant with their contact information; otherwise, no objection.

- Measure 13(I): The Applicant argued that fencing the entire property with an eight-foot perimeter fence is unnecessary and would require blasting into the mountain or hillside, with severe environmental impacts to follow. The Applicant suggested as an alternative that it would provide a simple barbless fence and signage to keep out trespassers. The Applicant proposed two fences around each potentially dangerous animal enclosure or around the “main animal holding area itself.” The Applicant argued that only a single fence around the wolf-dogs’ day runs was required by the USDA and that this requirement was sufficient to prevent escapes, but the Applicant was willing to provide the second fence. The Applicant suggested that it would install “dig-outs” beneath at least one of these fences around each enclosure, and that this dig-out would replace the requirement in Measure 13(I)(4) for below-ground concrete and below-ground fencing. The Applicant objected to eight-foot fencing as excessive in height. The Applicant argued that no building permit should be required for any fences it does install.
- Measure 13(M): The Applicant argued that motion-activated lights would be harmful to the animals’ health and would likely be triggered by wild animals or stray dogs. The Applicant argued that its existing motion-activated, night vision-equipped cameras were sufficient protection. The Applicant suggested installing remotely-activated lights instead of motion-activated lights.
- Measure 13(O): The Applicant argued that neither the USDA nor AZA require 24-hour staffing. In light of the six-sided nighttime enclosures, which the Applicant described as unescapable, there would be no need for staff to be present at night.
- Measure 13(P): The Applicant argued that tracking collars are not industry practice at sanctuaries or zoos; do not work well; will only be destroyed by the wolf-dogs; and are unnecessary in light of the other security measures in the MDNS or proposed by the Applicant in this comment.

Exhibit 4.

34. The County did not retract or modify its MDNS in response to any of these comments. Two administrative appeals of the MDNS followed, one from the Neighbor Group, and one from the Applicant. *Exhibit 1; Appeal of Neighbor Group; Appeal of Applicant.*

Administrative Appeals of the MDNS

35. On December 2, 2022, the Neighbor Group appealed the issuance of the MDNS. The Neighbor Group argued that the MDNS had been procured by misrepresentation and lack of material disclosure, in violation of WAC 197-11-340(3)(a)(iii). It also argued that the MDNS was not based on information reasonably sufficient to enable the County to evaluate the proposal’s environmental impacts, in violation of WAC 197-11-355. It also argued that the mitigation measures set forth in the MDNS were insufficient to mitigate the known, significant, adverse effects of the proposal. The Neighbor Group asked the Hearing Examiner to reverse the MDNS (or else order the County to withdraw it) and

order the Applicant to furnish complete and truthful information, and also provide such other and further relief as the Hearing Examiner deemed just and equitable. *Appeal of Neighbor Group*.

36. The Applicant also appealed the MDNS on December 2, 2022. The Applicant argued that it was “exempt from SEPA considerations because it has no plans for growth or construction, aside from what Skagit County has required under its [MDNS].” It argued that the so-called mitigation measures themselves were so environmentally harmful as to constitute a significant, adverse environmental impact. It argued that many of the mitigation measures required by the MDNS were unreasonable or incapable of being accomplished, in violation of RCW 42.21.060. Specifically, the Applicant objected to:
- Six-sided fencing should not be required all the time. The wolf-dogs need large, outdoor day runs to use when staff is present, and it is not practical to install six-sided fencing around the large day runs.
 - Creating a fence all the way around the perimeter of the entire property would require the Applicant to engage in blasting of the rocky mountainside, which would create significant, adverse impacts and might not even be allowable under the County code. The Applicant suggested an alternative measure consisting of ordinary barbless fence around the property, with signs to keep out trespassers. Each animal enclosure would have two fences around it, or there would be one fence around each enclosure plus an additional fence around the entire “main animal holding area.” Instead of below-ground concrete and below-ground fencing, there would be dig-outs beneath the fences.
 - Eight-foot fencing is excessive.
 - Motion-activated lights would harm the animals and would be frequently triggered by animals from outside the facility. The Applicant suggested its existing motion-activated night vision cameras would be sufficient, when paired with a proposed remote-activate lighting system.
 - Manning the property 24 hours a day was excessive in light of existing and proposed security measures and would not be affordable.
 - GPS collars are not required by any other sanctuary and should not be required here. The wolf-dogs would destroy the collars, which were unnecessary in light of all the other existing and proposed security measures.

The Applicant asked the Hearing Examiner to modify the MDNS mitigation measures to implement the Applicant’s suggestions as described above. The Applicant did not cite any authority authorizing the Hearing Examiner to modify the mitigation measures set forth MDNS after it has been issued. *Appeal of Applicant*.

37. The hearing on the appeals was delayed by the substitution of a new Hearing Examiner due to medical issues. Rather than attempt to pick up where the previous hearing examiner left off, the new Hearing Examiner convened a prehearing conference on July

7, 2023, at which the parties agreed to a new case schedule, including a new exchange of witness lists and exhibits. *Prehearing Order, dated July 10, 2023.*

Prehearing Briefs of the Parties

38. In its opening brief, the Neighbor Group argued that the SEPA Checklist submitted by the Applicant was insufficient to apprise the County of the proposal's environmental impacts. The Neighbor Group cited the many instances of deliberate non-answers by the Applicant, as summarized in the findings above. In particular, the Neighbor Group argued that it is simply untrue, in light of the history of escapes, that the proposal will have no impact on public services including police protection or on recreational activities such as hiking in the Anacortes Community Forest Lands. The Neighbor Group argued that the noise impacts of the wolves and cougars, as well as the Applicant's vehicles and other equipment, had never been properly evaluated and that these impacts were significant. The Neighbor Group argued that the Applicant had failed to furnish accurate information about its transportation impacts, including the question of whether roads might need to be improved to accommodate commercial traffic or fire apparatus. The Neighbor Group argued that the Applicant lacked an easement to use its access road for commercial purposes, and that this, too, was a transportation impact that had not been adequately considered. The Neighbor Group argued that animal waste and other wastes had not been adequately disclosed or analyzed. Nor were these failures of analysis mere oversights. The Neighbor Group argued that the Applicant had willfully misled the County, in particular by misstating the number of escapes. The Neighbor Group noted that the number of escapes was stated differently in different parts of the application. The Neighbor Group also identified what it called false statements relating to breeding and sales; the level of danger posed by the wolves; the history of the Applicant's acquisition of some of the animals, including its cougars; and noise. The Neighbor Group argued that the project would produce significant, adverse environmental impacts because the mitigation measures in the MDNS were insufficient. First, the Neighbor Group repeated arguments (which will be discussed in more detail in the Hearing Examiner's companion decision on the SUP application) that the possession of the wolves violates the prohibition against keeping potentially dangerous wild animals, and that no exception applies. Second, the Neighbor group argued that the Applicant's safety plans are inadequate, especially in light of the history of escapes. The Neighbor Group repeated its calls, stated earlier in public comments, for various modifications to the MDNS, although it did not identify any authority for the Hearing Examiner to modify an MDNS after it has been issued. *Prehearing Brief of Neighbor Group.*
39. The Applicant devoted much of its opening brief to issues relating to the issuance of the SUP. The Hearing Examiner will address those arguments in his companion decision to this decision. With regards to the MDNS, the Applicant denied that it had misrepresented anything. The Applicant argued that the County made itself aware of all relevant information about the history of escapes through the public comment process and that the

many mitigation measures related to prevention of escapes are evidence of the County's consideration of this issue. The Applicant noted that it has been in operation since 2001, giving the County 23 years in which to evaluate the facility's environmental impacts or lack thereof. The Applicant did not defend the thoroughness of the SEPA Checklist but argued that all relevant information had made it to the County prior to issuance of the MDNS. The Applicant did argue, however, that some of the mitigation measures were unreasonable, unnecessary, impossible, or otherwise mitigated through compliance with other bodies of law. The Applicant identified as unreasonable the same measures it had raised in its public comment to the MDNS: perimeter fencing around the entire property; keeping wolf-dogs inside a six-sided enclosure at all times; motion-activated lights; 24-hour staffing; and GPS collars. *Prehearing Brief of Applicant.*

40. In its response brief, the Neighbor Group turned to arguments about the SUP criteria, which, again, the Hearing Examiner will address in his companion SUP decision. The Neighbor Group argued that an environmental checklist is an integral part of the SEPA process, and that the Applicant's checklist failed to answer many relevant questions. The Neighbor Group argued that it was irrelevant whether the County had made itself informed of the impacts through other means; rather, it was the Applicant's duty to inform the County through the checklist specifically. The Neighbor Group argued that the MDNS mitigation measures related to fencing, staffing, and housing and collaring of the animals were reasonable and justified by the history of escapes and the Applicant's failure to take effective measures in response. The Neighbor Group argued that the Applicant's supposed inability to bear the cost of mitigation measures was not a valid consideration for the Hearing Examiner in his assessment of the mitigation measures. The Neighbor Group argued that the possible environmental impact of the MDNS measures themselves was justified by the significance of the danger posed by animal escapes. *Response Brief of Neighbor Group.*
41. In its response brief, the Applicant argued that the MDNS cannot be reversed unless it is clearly erroneous, which it is not. The Applicant argued that the SEPA rules contemplate the County obtaining more information than just what appears in a checklist, citing WAC 197-11-960. The Applicant repeated its argument that the County has over 20 years of familiarity with this proposal. The many public comments sufficed to make the County aware of the police protection impacts, recreation in the vicinity, noise, water, and access issues, which were, in any event, not environmentally significant. The Applicant denied that breeding and sales would, by themselves, create an environmental impact but argued that it had already ceased those practices—although the Applicant did say it might resume breeding in the future to preserve certain unique lines of wolf-dogs. The Applicant denied that compliance or non-compliance with the regulations surrounding potentially dangerous wild animals was a SEPA issue in the first place and argued that the Neighbor Group had “waived” those arguments. The Applicant also argued, in an apparent reversal of its previous position, that requiring it to obtain membership in the

Association of Zoos and Aquariums or other, similar accrediting bodies, was unreasonable, given the small scope of the Applicant's operation and the fact that the Applicant already has its USDA license. The Applicant also argued that requiring it to obtain insurance and submit an annual financial plan would be unreasonable, as would requiring a 35-foot setback with landscaping, limiting tours to weekdays, requiring the Applicant to obtain easements for commercial road access and road maintenance, and requiring the Applicant to upgrade its septic system to commercial capacity. The Applicant argued: the breeding and selling restrictions were not related to any environmental impact; its staff was already sufficiently well trained; and no further fencing standards should be required beyond those already discussed. The Applicant also asked that any remaining mitigation measures that survived its appeal be phased in, to give the Applicant time to fund any necessary changes to its operations. *Response Brief of Applicant.*

42. The County did not file a prehearing brief, which was optional under the prehearing order. *Prehearing Order, dated July 10, 2023.*

Staff Report

43. On July 26, 2023, the County issued its staff report for the SUP application. The Hearing Examiner will discuss the staff report in more detail in the companion SUP decision. The staff report recommended denial of the SUP on the basis of the potentially dangerous wild animal regulations, which, again the Hearing Examiner will address in the companion SUP decision. Relevant to this appeal, however, the staff report contained recommended conditions of approval for the SUP in the event the Hearing Examiner were to approve the SUP. Many of these recommended conditions reinforced or otherwise modified the mitigation measures set forth in the MDNS, or otherwise appeared to respond, at least in the Hearing Examiner's estimation, to issues raised in the public comments regarding the MDNS. The proposed conditions of approval of the SUP were:

1. Both a building permit and grading permit (if required) with Skagit County Planning & Development Services shall be secured prior to work.
2. 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.
3. The applicant shall be responsible for reimbursement to Skagit County Planning & Development Services Department for the full cost of mailing(s) and newspaper publication associated with the Notice of

Development Application, Notice of Issuance of SEPA MDNS, Notice of Hearing, and Notice of Decision.

4. 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.
5. Further review will be needed by Planning and Development Services if any major change occurs in the intensity of the use outlined in the application or if additional expansions are proposed.
6. All animal waste shall be double bagged and disposed of in approved manner per waste management company that serves the subject property. Contact the waste management company for more information and specifics on the matter.
7. 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.
8. The applicant/landowner shall grant Skagit County’s Planning & Development Services Department, Code Enforcement, Sheriff’s Office, Animal Control Officer, and the Fire Marshal the Right of Entry to the subject property when requested for the purpose of inspections, code compliance, and compliance with the subject special use permit’s conditions of approval. Should right of entry be denied, Skagit County

may rescind the approval for the proposed limited kennel special use permit.

9. Planning and Development Services may refuse issuance of a Special Use Permit, or rescind an approved Special Use Permit, if it is discovered that the applicant has been convicted of animal cruelty as defined in Chapter 16.52 RCW.
10. Planning and Development Services may refuse issuance of a Special Use Permit, or rescind an approved Special Use Permit for an Animal Preserve that is in violation of any of the provisions of Chapter 7.02 SCC.
11. The applicant/landowner shall have an inspection from Skagit County Animal Control. Additionally, the applicant/landowner shall allow Animal Control to inspect as needed following obtaining a Special Use Permit.
12. This permit shall be void if the use is discontinued for more than one (1) year.
13. This permit is not transferable to other operators or new property/landowners if the property is sold.
14. Noise levels shall not to 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.
15. The applicant shall comply with WAC 173-60 and SCC 14.16.840 for noise, vibration, and light conditions.
16. All exterior lighting shall be down-shielded thereby preventing light trespass on neighboring properties.
17. All improvements required herein including the issued SEPA MDNS shall be permitted, constructed, and inspected within 3 years from the date of this approval. Notwithstanding, the subject special use permit will be revoked.
18. Development shall comply with the November 1, 2022, issued SEPA Mitigated Determination of Non-Significance (MDNS) as follows:

[A verbatim recital of the MDNS mitigation measures followed, with the numbers of the measures changed to count as sub-conditions of this Condition 18.]

19. Predators of the Heart must become and maintain accredited membership with an independent oversight organization such as the American Zoo Association, the Association of Zoos & Aquariums (AZA), or similar organization that is acceptable to both Skagit County's Planning and Development Services Department and Prosecuting Attorney's Office.
20. Predators of the Heart must obtain and maintain a liability insurance policy associated with its business that is acceptable to both Skagit County's Planning and Development Services Department and the Prosecuting Attorney's Office.
21. During the first quarter of each year, Predators of the Heart must submit a Financial Plan to Skagit County's Planning and Development Services Department that guarantees its animals will be cared for in perpetuity.
22. Tours at Predators of the Heart shall be limited to 9:00 AM to 4:00 PM Monday through Saturday. No tours are permitted on Sundays and holidays observed by Skagit County.
23. The applicant must at all times comply with all requirements of this SEPA Mitigated Determination of Non-Significance (MDNS) and the Conditions of Approval associated with the Special Use Permit.

Exhibit 119, pages 15 through 23.

Notice of Public Hearing and a Third Round of Public Comment

44. Notice of the public hearing on the SUP application and the two SEPA appeals was published in the *Skagit Valley Herald*, mailed to adjacent property owners within 300 feet of the subject property, and posted onsite, all on August 3, 2023. *Exhibit 119, Staff Report, pages 5 and 6; Exhibit 124; Testimony of Kevin Cricchio.*
45. A third round of public comments followed. Written comments were received not only during the public comment period but up to and during the public hearing itself. Commenters during this period included Brandon Juhl; Michael Mourning; Margaret Pageler "Meg" Mourning; the Animal Legal Defense Fund (ALDF); Born Free USA; the Global Federation of Animal Sanctuaries (GFAS); the Humane Society International; Wolf Haven International; Breanne Kozera; Dave Knutsen; Ed Borlin; Ed Clauson; George Hettich; Jenny Welch; Kevin Welch; Lynne Borlin; Matthew Kozera; Millicent Swietzer; Nathan T. Schwarck; Nolan Berlin; Pam Knutsen; Jenn Brown; Arsen

Mourning; Audrey Lawrence; Barbara Tacker; Bella Niven; Beth Milton; Brandie Deal; Cynthia Best; Debbie Sodl; Divya Jayaraman; Fay Forman; Hannah Zizza; Heather Nicholson; Jan Murphy; Jane McIntosh; Janet Forman; Jean Katayama; Jennifer Japhet; Jess Daiger; Joan Beldin; Joan Hansen; Josh D. [sic]; Julia Zelman; Kelly Northway; Kevin Gallagher; Margaret Davie; Marie Chappell; Michelle Ring; Nate Wisman; Pallavi Kulkarni; Patricia Panitz; Shana Kelly; Shannon Hunter; Tara Chase; Jenn Brown; and William Foreman. Also provided was an electronic petition with hundreds of names in support of the Applicant, many attached to brief, one-line comments in support. *Exhibit 126; Exhibit 131; Exhibit 144.*

46. Other than the supportive petition and comments by Debbie Sodl and Jenn Brown, the comments received in this third round were opposed to the application. Commenters described in detail one of the attacks by two of the Applicant's animals on a pet dog, which, with its owner, had unknowingly strayed from the ACFL onto the subject property in September 2017. Two wolves broke loose of their leashes and killed the dog. The death of that dog resulted in severe and lasting emotional trauma to its owners, including to a young child whose grandfather was walking the dog at the time of the attack. Other commenters described an October 2021 attack by three wolves, which tunneled under the fence of one of the day run enclosures and killed a pet dog at a neighboring residential property. Commenters described an escape of two wolves in 2009 or 2010. Commenters also described other, less alarming escapes, including those of a fox and a macaw. Commenters complained about wayward guests of the Applicant mistakenly looking for Predators of the Heart at neighboring properties, much to the neighbors' annoyance. Comments claimed that foul odor from improperly disposed animal food continues to emanate from the Applicant's property. Commenters again complained about rats, which they attributed to the Applicant. Commenters again claimed that the Applicant lacks an easement to allow guests to use the access road and claimed the road was physically ill-suited to this traffic. Commenters complained about noise from wolves and cougars. Commenters questioned whether the Applicant's employees or volunteers have the training they need to deal with dangerous animals. Commenters asked that someone be present on the subject property at night to deal with any problems. Commenters argued that the Applicant does not meet the standards of the Global Federation of Animal Sanctuaries. The one supportive comment in this round emphasized the love and care the Applicant lavishes on its animals and the Applicant's role as a sanctuary provider. *Exhibit 126; Exhibit 131; Exhibit 144.*
47. The most noteworthy comments in this third round came from the various animal welfare organizations: ALDF, Humane Society International, GFAS, Born Free USA, and Wolf Haven International. These organizations commented that the USDA regulations were insufficient to guarantee the welfare of the animals; that the Applicant was not operating a genuine wildlife sanctuary; and that, contrary to the Applicant's protestation, the Applicant would not be required to euthanize the wolves or wolf-dogs if its operation

were to be shut down. The ALDF provided a June 28, 2018, USDA inspection report that found that the Applicant’s wolf tour “does not assure the safety of the public nor the animals” and ordered it to be “corrected immediately.” The ALDF argued that the Applicant’s facility is not a wildlife sanctuary because it violates three fundamental tenets of a genuine sanctuary: no human-animal contact, no breeding, and no sales. The ALDF cited the Applicant’s own online advertising materials to argue that the Applicant does offer human-animal contact, and has engaged in breeding and sales at various times in the past, as recently as 2017. The ALDF argued that the Applicant’s animals may not be euthanized even if the facility is shut down, because the sanctuary community, including ALDF itself, has the capacity to rescue the animals. In addition, the ALDF called the Hearing Examiner’s attention to a case in the Western District,¹⁵ in which the federal court found that four of the Applicant’s animals that had been transferred to a “roadside zoo” were not wolf-dogs but actual wolves, subject to the Endangered Species Act (ESA) and therefore protected against euthanasia. *Exhibit 131*.

48. Born Free USA argued that human-animal interactions are inherently dangerous, not only because of the risk of animal attacks but also the risk of disease—a threat both to the animals and the humans. Born Free USA noted, for example, that rabies vaccines are not approved for use in wolf-dog hybrids and may not be effective in hybrids. Born Free USA also noted that genuine wildlife sanctuaries do not offer up their animals for entertainment, which it alleged the Applicant does. *Exhibit 131*.
49. GFAS provided some background information on its accreditation process for wildlife sanctuaries. GFAS claimed to have accredited 216 sanctuaries, rescues, and rehabilitation centers in 18 countries. It held itself out as offering a higher level of protection for animals (and the public) than the USDA offers through the USDA licensing process. GFAS identified one of its organization’s most important protective measures as a prohibition against contact between the public and captive animals. GFAS also disputed the claim that the Applicant’s animals would have to be euthanized if the Applicant were to be shut down. GFAS claimed that its accredited sanctuaries could take on hundreds of animals at a time when authorities in other states and the Territory of Puerto Rico have shut down unsafe animal operations. *Exhibit 131*.
50. The Humane Society also disputed the argument that the Applicant’s animals would have to be euthanized in the event of a shutdown. The Humane Society described its involvement in the re-homing of hundreds of animals from a shuttered zoo in Puerto Rico, including “challenging species such as hippopotamus.” The Humane Society argued that USDA licensure is insufficient to ensure the wellbeing and safety of animals and should not be confused with a genuine wildlife sanctuary—which would include requirements such as no breeding, no buying or sales, and no “activities which exploit animals,” which the Humane Society argued the Applicant does. The Humane Society

¹⁵ *Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 591 F.Supp.3d 956, 963–64 (W.D. Wash. 2022).

rebutted the notion that there is any conservation value in breeding wolf-dogs, because hybrid wolf-dogs would have no place in any kind of release into the wild to breed with wild wolves. The Humane Society claimed there are existing captive-breeding programs for genuine wolves in other zoos. *Exhibit 131*.

51. Wolf Haven International identified itself as the “only wolf sanctuary to be globally accredited through [GFAS].” The organization commented that it is unhealthy for wolves to serve as ambassador animals, meaning to have free contact with the public or be taken off-site for events. In the organization’s words, “A sanctuary commits to the highest level of care, and every action or procedure is examined to ensure that it best serves the animals living there. A true sanctuary does not cater to the needs and desires of people; it follows an animal-centric rather than a human-centered approach.” *Exhibit 131*.
52. The Neighbor Group submitted a comment during this third round, once again urging the Hearing Examiner to deny the SUP application. The Hearing Examiner will treat these arguments in greater detail in his companion decision on the SUP application. *Exhibit 131*.

Public Testimony

53. Kevin Cricchio, Skagit County Senior Planner, was both the first and the final witness to testify during the hearing. He was also the author of the MDNS and the County’s staff report. In his first appearance on the stand, Mr. Cricchio testified generally about the application and the County’s review of its environmental impacts. He testified that this is a 10-acre parcel in the Rural Reserve zone, which has been in its current operation for approximately 23 years. He described his participation in the April 28, 2023, site visit, alongside other City and County staff, which he said took about an hour and a half. He presented photos he had taken during the site visit.¹⁶

As Mr. Cricchio described it, the Applicant’s operation involves five employees, with operating hours from 7:30 AM to 4:00 PM, Monday through Saturday. The Applicant offers two tours per day, each two hours long, each limited to a maximum of 10 guests. All parking is located on-site, off-street.

Mr. Cricchio stated that the visual impact of the facility is minimal. He based this testimony on his personal observation during the site visit, when he saw that existing vegetation in the area is quite dense.

Mr. Cricchio testified that the Applicant had previously applied for an SUP in December 2014. The County had not deemed that application complete and had requested further information. The Applicant had not furnished the requested information, so the

¹⁶ These photos appear in the PowerPoint that accompanied Mr. Cricchio’s testimony. *Exhibit 130*.

application had lapsed without any final decision on the merits. The Applicant's current application was deemed complete on April 15, 2022.

Mr. Cricchio testified that the publication, posting, and mailing of the notice of public hearing all occurred on August 3, 2023. Describing the public comments that the County had received, Mr. Cricchio identified wolf escapes as the most important issue. He testified that a couple of pet dogs had been killed during previous escapes. Most of Mr. Cricchio's SEPA mitigation measures set forth in the MDNS were aimed at addressing the issue of escapes. In particular, the MDNS's fencing provisions were aimed to preventing future escapes, as were the collaring, lighting, and staffing requirements. Mr. Cricchio's vision for fencing, expressed in both the MDNS and the proposed conditions for the SUP, was for the dangerous animals to be behind two layers of fencing during the day, and a six-sided enclosure at night. But the animals would not have to be in the six-sided enclosures during the day. Mr. Cricchio did not deem the noise of the animals significant enough to warrant a noise study, based on his observations of noise during the April 28 site visit and, apparently, during two other site visits he also conducted.

Relying on the comments of the City of Anacortes, Mr. Cricchio testified that there had been "at least four documented escapes of wolves or wolf hybrids from the facility, resulting in the death of two dogs." He also highlighted public comments in which commenters expressed concerns about future escapes into the neighborhood. For this reason, he believed the Applicant's proposal was not compatible with existing and planned land uses for the surrounding area, in contravention of one of the approval criteria for an SUP.

A second reason for denying the application, according to Mr. Cricchio, was the failure to comply with the Skagit County Code. He cited SCC 14.04.020, the definition of *animal preserve*, which defines the use as a "preserve for the public viewing of wild animals, either on foot or from the car, and either indoors or outdoors." Mr. Cricchio did not believe that the Applicant's proposal, which involves physical contact with the animals, qualified as an animal preserve, is an allowable use.

In addition, Mr. Cricchio cited SCC 7.04.030, which prohibits the keeping of potentially dangerous wild animals, unless the keeper falls into one of the exceptions set forth in RCW 16.30.020. Mr. Cricchio noted that the Skagit County Code defined wolf-dog hybrids as potentially dangerous wild animals. He argued that the Applicant did not meet any of the exceptions in RCW 16.30.020. In particular, the Applicant is not a "wildlife sanctuary," because a wildlife sanctuary cannot have any activity that is not inherent to an animal's nature; cannot have commercial activity involving an animal, including the sale of animals or the sale of photographic opportunities with animals; and no unescorted public visitations or direct contact between the public and an animal. Mr. Cricchio recommended denial on the basis of failure to comply with the County code. He stated

that his recommendation would be the same regardless of whether the animals were wolf-dog hybrids or wolves.

During questioning, Mr. Cricchio stood by the staff report's recommendation to deny approval of the SUP application. He testified that the proposed conditions of approval in the staff report (and the additional conditions he proposed in his PowerPoint)¹⁷ were aimed at making the facility more compatible with surrounding land uses, *assuming* the Hearing Examiner were to approve it at all. For example, one of his proposed conditions was to require the Applicant to obtain accreditation from an organization such as the Association of Zoos and Aquariums. Mr. Cricchio explained that he had visited an AZA-accredited facility in Montana that appeared to him to be well-run in terms of animal health and public safety, and he hoped AZA accreditation would compel the Applicant to operate a similarly well-run facility. In particular, he hoped that AZA would provide some level of oversight of the facility as part of the accreditation process. He did not believe the Applicant's existing USDA license provided sufficient oversight, given the history of escapes from the facility, which had occurred under a USDA license. In a similar vein, his proposed condition against public contact was aimed at bringing the Applicant's facility closer to the County's definition of an animal preserve, which in his mind would allow viewing but not contact. Mr. Cricchio did not have any particular reason for preferring AZA accreditation over accreditation by a different body such as GFAS, except that he had been to an AZA-accredited facility and thought it seemed like a good model for the Applicant to follow.

Mr. Cricchio testified that the fencing provisions in the proposed conditions of approval and MDNS were necessary both due to the history of escapes and from what he had observed during his site visit. He said the existing fences that he had observed looked "a little rickety at times."

Mr. Cricchio agreed that, if all of the proposed conditions of approval and the MDNS mitigation measures were implemented—including no touching, no breeding, no selling, no shows, membership in an accredited organization, new double fences with underground components to protect digging, tracking collars, lights, and so on—then the Applicant's facility might look more like a wildlife sanctuary, and thus, might fall into the wildlife-sanctuary exception in RCW 16.30.020(1)(g).

Mr. Cricchio acknowledged that the Applicant's site plan was "not the best." But he did not believe a more detailed site plan was necessary in light of his own visit and the facility's long-standing stature. He did say a site plan showing the enclosures, structures, property boundaries, and protected critical area easement should be required as a condition of approval.

¹⁷ Exhibit 130.

Mr. Cricchio did not believe the Hearing Examiner needed to concern himself with the road access easement. He said any dispute over what uses the easement allowed or prohibited were a civil matter to be resolved by the parties to the easement. From the County's perspective, all that mattered was whether the road physically met the standards for use, a question to which he deferred to Public Works. *Testimony of Kevin Cricchio.*

54. Joey Amaro, Development Review Engineer for Skagit County Public Works, testified about road access. He acknowledged that the Applicant takes access off Welch Lane, a private road. But he said that there was an easement in place to allow the use of Welch Lane. In addition, the Applicant's driveway would have to be widened to meet the Fire Marshal's standards for access, and that requirement was a mitigation measure in the MDNS. Mr. Amaro believed the Applicant was generating around five to 10 trips per day, which were not PM peak trips. He testified he had no reason to believe the Applicant would generate sufficient road trips to trigger the need for a traffic impact analysis. *Testimony of Joey Amaro.*
55. Ashley Carr, Applicant Representative, testified twice: once during the public hearing and once as a SEPA Appellant. During the public hearing, she testified that she has been the executive director of Predators of the Heart since June 2020 but had been working with the organization for approximately 24 years. She testified that, up until 2015, the Applicant used to travel with animals to school assemblies in Washington, Idaho, and Montano but had since reduced the amount of animal travel. She testified that the Airbnb tours of the Applicant's facility began in 2016 and soon came to generate a significant portion of the Applicant's revenue.

Ms. Carr testified that the Applicant has a Class C exhibitor license from the USDA and that USDA has inspected the facility and taken the animal tour the Applicant offers to the public. She testified that USDA had previously asked the Applicant not to allow wolf-dogs to lick the faces of visitors, a request with which she said the Applicant had complied. She testified that USDA viewed her animals as being no different than domesticated dogs, not as wolves.

Ms. Carr emphasized the discontinuity between her tenure as executive director and that of the former director, Dave Coleburn, her father, whom the Applicant's board of directors had terminated in June 2020. She emphasized that, under her leadership, the Applicant's three main activities were the public tours called "Howling with Ambassadors"; the rescue of animals seized by governmental authorities; and virtual field trips with schools. She argued that the wolf-dogs have had human contact all their lives, and it would actually be cruel to deprive them of it now by placing them off-limits to touching during tours.

During the tours, four wolf-dogs were allowed into an enclosure with guests, escorted by staff. The contact lasted approximately 20 minutes to half an hour. During this time, the wolf-dogs were free to interact or not with the guests, at the animals' discretion. Guests were allowed to pet the animals. The animals were never forced to do anything they did not want to do. A staff member was on-hand to take photographs, but the animals were not staged to provide a photographic opportunity. At the end of the wolf-dog contact, the guests and animals were encouraged to howl together for around 30 to 45 seconds.

The tours occurred twice a day, with a maximum of 10 guests per tour. The guests would typically arrive in two or three cars, or at most five cars. Besides these cars, her employees brought up to four cars onto the site per day.

Ms. Carr took issue with the public commenters' description of escapes. By her reckoning, there had only ever been two escapes, only one of which had resulted in what she called an "incident." She acknowledged other incidents, such as the September 2017 killing of a pet dog, but denied that this constituted an escape because the wolf-dogs never left the Applicant's property. Following the September 2017 pet-killing incident, the Applicant no longer walked wolf-dogs in the wooded, unfenced portion of its property. Instead, the wolf-dogs remained behind enclosures at all times.

Ms. Carr acknowledged one escape in 2012, during which she had not been present. A wolf-dog somehow got out, and animal control recovered it in a police car. Then there was the September 2017 incident, in which a hiker's dog was killed but the wolf-dogs never left the property. There was also another incident in 2017, month unknown, in which a wolf-dog got out of an enclosure but did not leave the property. A neighbor fired a gunshot during this incident. Then there was an October 2021 incident, in which three wolf-dogs got out by going under a fence in a day run, although Ms. Carr believed the wolf-dogs might not have been the ones to dig the tunnel under the fence. These three wolf-dogs killed a pet dog on a neighbor's property.

Ms. Carr testified that she had taken the wolf-dogs out of the enclosure from which they had escaped in October 2021 and put them in a new enclosure featuring "cattle panel" dig-outs beneath the fences to prevent escape by digging. She said USDA had inspected the current fencing arrangement and had been satisfied.

Ms. Carr objected to the MDNS mitigation measure to put collars on the wolf-dogs. Collars would be fine when the animals were out in the day runs, but were not necessary at night, when the animals would be in six-sided enclosures. She believed the wolf-dogs might get their collars stuck in their mouths, so it would be unsafe to leave them on. She said she might be able to find some other, less intrusive collar as a compromise measure, to be worn inside the day runs only. She also observed that zoos and sanctuaries do not commonly collar their animals. *Testimony of Ashley Carr.*

56. Darcy Swetnam, City Attorney for the City of Attorney, testified on behalf of the City regarding the City's stance on the SUP application. Ms. Swetnam noted that the facility shares an 800-foot-long property line with the Anacortes Community Forest Lands (ACFL), an approximately 3,000-acre park with some 50 miles of trails, visited by thousands of people each year, including children. Trail 118 in the ACFL runs along the border of the Applicant's property.

Ms. Swetnam described the 2012 incident, in which an escaped, recaptured "wolf hybrid" damaged the interior of a City officer's car, at considerable expense to the City. The 2017 dog-killing incident resulted when the dog owner strayed from Trail 118 onto the Applicant's property because the Applicant's private property, at that time, had its own trail that was difficult to distinguish from the public Trail 118. At the time of the 2017 dog-killing incident, there were no signs demarcating the Applicant's property from the ACFL. Other than those details, Ms. Swetnam generally agreed with Ms. Carr's recital of the history of escapes from the property.

Ms. Swetnam highlighted the City's water concerns, especially the need for the Applicant to install a backflow prevention device on the Applicant's connection to City water, to prevent contamination of the water supply by animals. As of two weeks prior to the hearing, Ms. Swetnam said that the City water department was unaware of any backflow prevention device being installed.

Ms. Swetnam said the City was supportive of the safety measures set forth in the MDNS and the staff report, especially those related to fencing and notification of escapes. In the past, the Applicant had not done an adequate job of notifying the City of escapes. She said the measures in the MDNS and staff report incorporated the City's concerns, which the City had shared with the County throughout the review process. *Testimony of Darcy Swetnam.*

57. Lisa Adams testified in support of the Applicant. She testified that the Applicant not only provides small tours, it also provides a permanent home to animals that would otherwise be euthanized. She argued that improvements beyond those required by the USDA and AZA were unnecessary and would make the facility feel like a prison. She testified that she had been on the tour twice and believed that the Applicant's staff were knowledgeable and ran the facility safely. She said more fences and a public toilet would not make the facility safer. Most of the problems that had occurred in the past were not the fault of current management. Current management should be given a "clean slate." Ms. Adams believed the facility brings valuable tourism revenue to the area because people come from all over the world to visit. *Testimony of Lisa Adams.*

58. Bailey Frank testified that she works for the Animal Legal Defense Fund. She argued that USDA regulations are insufficient to guarantee the welfare of the Applicant's animals or the safety of the public. The USDA's standards come from the Animal Welfare Act, which provides what Ms. Frank called a "notoriously low" floor for the standards of animal care. She noted that, on June 28, 2018, a USDA inspector had found that the wolf encounter did not assure the safety of the public or the animals. She also noted that escapes from the facility had occurred during its time of licensure by the USDA.

Ms. Frank did not believe the Applicant is operating a legitimate wildlife sanctuary. Sanctuaries require no breeding, no human-animal contact, and no sale of animals. Ms. Frank pointed out that, in ALDF's written comments, ALDF had documented animal breeding in the past and animal sales as recently as 2017. She pointed to the Applicant's Airbnb advertising materials, which she said "sell direct human contact."

Ms. Frank said she did not believe that the Applicant would have to euthanize its animals if the facility were shut down. First, she argued that euthanizing these animals would be illegal, because these animals are wolves. She cited a 2022 decision in the Western District involving what she claimed were four wolves bred at the Applicant's facility and later transferred to another facility. As she described the federal court's decision, the transfer records and genetic testing showed only a negligible amount of dog DNA in the transferred animals, and so were subject to protection under the Endangered Species Act, from which Ms. Frank inferred that the other animals still at the Applicant's facility must also be wolves and therefore protected under the ESA against euthanasia. She said existing sanctuaries would almost certainly have the capacity to house the Applicant's animals, so euthanasia would be unnecessary. *Testimony of Bailey Frank.*

59. Hannah Thompson-Garner testified that she is the director of the Northwest Animal Rights Network (NARN). She argued that the Applicant does not run a real sanctuary. Breeding is not allowed if a facility wishes to be accredited as a legitimate sanctuary. The fact that the Applicant sought to reserve the right to breed was evidence that the Applicant did not run a genuine sanctuary. Ms. Thompson-Garner testified that the Applicant did not meet the standards for accreditation set by the Global Federation of Animal Sanctuaries (GFAS). GFAS would never accredit a facility that allows members of the public into an enclosure to touch animals, as it is unsafe for both the animals and the public. Ms. Thompson-Garner said a reputable facility would have taken whatever measures were necessary to prevent repeated escapes, which the Applicant has not. Ms. Thompson-Garner said GFAS accreditation would result in a hard look at the Applicant's facility to ensure that it is safe and well-run, including imposing measures to prevent escapes such as more effective fencing standards. Ms. Thompson-Garner believes GFAS accreditation would be a better fit for the Applicant's facility than zoo accreditation, because a sanctuary and a zoo are two different facilities.

Ms. Thompson-Garner said the Applicant's facility had often come up as a facility to *avoid* when discussing the re-homing of animals seized by governmental agencies. She claimed that the Washington State Department of Fish and Wildlife refuses to send animals to the Applicant's facility on the grounds of animal safety. Ms. Thompson-Garner claimed that other facilities, which she did not identify, had offered to take the Applicant's animals in the event the Applicant's SUP application was to be denied. *Testimony of Hannah Thompson-Garner.*

60. April Grossruck testified that she is a member of the board of directors for the Applicant and has been involved with the Applicant since 2016, when she began volunteering under the previous director, Dave Coleburn. She believed the new director, Ms. Carr, operated a much safer facility than Mr. Coleburn had. She described a marked improvement in the animals' health and attitudes after the handover to Ms. Carr. One of the significant post-handover changes was the elimination of breeding and sales, which had occurred under Mr. Coleburn but not under Ms. Carr. Ms. Grossruck also testified that Ms. Carr was making more strenuous efforts to restore relationships with the community and various governmental entities.

Ms. Grossruck denied that the Applicant runs a "roadside zoo," a term she used with obvious contempt. She pointed out that Woodland Park Zoo and many other zoos with sterling reputations offer opportunities to touch some of their animals.

Ms. Grossruck did not believe GFAS accreditation would do anything helpful. As she saw it, GFAS is more like a "club" that sanctuaries simply pay to join, not an organization that would provide very much additional oversight. She also believed other accrediting organizations, such as the AZA, would be similarly useless. She believed USDA licensure was sufficient oversight. *Testimony of April Grossruck.*

61. Bronwen Bradshaw-Balmos testified that she took her son on the Applicant's tour when her son turned 18 (because only adults are allowed on the tour). She was grateful that the Applicant existed to provide people like her son with emotionally powerful encounters with the animals. She denied that the wolf-dogs were required to behave unnaturally. They were born in captivity, so their natural behavior was to interact with humans. She said she felt safe at the facility at all times, and staff allowed the wolf-dogs to limit their own interaction with the public. Ms. Bradshaw-Balmos testified that the cougars, in particular, exhibited a marked improvement in health after Ms. Carr took over for Mr. Coleburn. *Testimony of Bronwen Bradshaw-Balmos.*
62. Devan Schowe, of Born Free USA, testified that her organization had filed a complaint with USDA against the Applicant in 2006 for allowing physical contact with bobcats. She claimed that, in 2008, the Applicant went to a show in Chehalis County, where it

allowed children to have contact with unspecified “dangerous and unpredictable wild animals.” Ms. Schowe argued that wolf-dogs were not safe to interact with, because they lacked a true dog’s thousands of years of domestication.

Ms. Schowe argued that first responders who may be called to the scene of a wild animal escape often lacked the training to deal with the animal safely, putting both responders and animals at risk. Ms. Schowe testified that the rabies vaccine was not approved for use in wolf-dogs and therefore rabies posed a threat to visitors and the animals themselves. If a wolf-dog were to bite a person, the wolf-dog would need to be killed immediately to conduct a rabies testing.

Born Free USA holds GFAS accreditation for primates, and therefore is familiar with the GFAS requirements. According to Ms. Schowe, the accreditation process prioritizes the welfare of captive animals, including prevention of breeding for entertainment purposes, banning private ownership of wild animals, and taking steps to fulfill a conservation mission, none of which standards the Applicant would meet. GFAS accreditation would involve rigorous inspection of the facility, including inspection of whether the enclosures are suitable to prevent escapes. Ms. Schowe accused the Applicant of operating mainly for the purpose of entertainment, not for animal welfare or conservation purposes.

Testimony of Devan Schowe.

63. Joy Stangohr testified that, although she had not visited the Applicant’s facility, she was saving up money to go in the future and was a regular donor to the Applicant. Based on what she has seen online and during virtual tours, she said the Applicant feeds the animals well, including steak or beef, and that the cages are always clean. Unlike the animals in some zoos, including in Ms. Stangohr’s local zoo in Wichita, Kansas, the Applicant’s animals look healthy and happy. *Testimony of Joy Stangohr.*

64. Meg Mourning testified that hers was the dog killed in the hiker incident in September 2017. One of Ms. Mourning’s family members was walking in the ACFL with the dog, whose name was Cole, when they unknowingly strayed from the public ACFL trail onto the undemarcated trail on the Applicant’s property. There they encountered a man with “wolves on leashes.” The wolves easily broke loose of the leashes and killed the dog. Ms. Mourning described the extensive trauma this incident had inflicted on her and the rest of her family. She herself carried anger toward wolves as a species for years, but she now realized the true blame rested with the Applicant, who lacked proper fencing, signage, and effective control measures. Ms. Mourning claimed the Applicant kept wolves in an unnatural environment and had repeatedly failed to prevent their escape. She worried that future escapes would result not just in the death of a dog but the death of a child. *Testimony of Meg Mourning.*

65. Edward P. Borlin Jr., a member of the Appellant Neighbor Group, testified twice, once as a member of the public and a second time as a SEPA appeal witness. During his public testimony, he testified that his property borders the Applicant's property along the Applicant's southern property line. His was the property where the three wolves escaped in October 2021 and killed his daughter's dog.¹⁸ That incident had had a profound emotional impact on Mr. Borlin. He also worried that one of his grandchildren, playing in the yard, could be the wolves' next victim. He disputed Ms. Carr's testimony that her animals were not necessarily the ones who had dug under the fence during the October 2021 incident. Mr. Borlin took pictures shortly before the hearing showing the hole under the fence, and those photos show no dirt on the outside of the fence, which Mr. Borlin expected would have been there if an animal had tunneled from the outside in. He also denied that there are any spikes or other measures extending below the fence that would prevent digging. Mr. Borlin said the pet dogs on his property could not have dug the hole because they are too small. Mr. Borlin testified that the hole under the fence, dug in the October 2021 incident, was still there as of three weeks prior to the hearing, almost two years after the incident occurred.

Mr. Borlin testified about the variance in Exhibit 10, AF No. 940620058. He believed the variance was evidence that Welch Lane was not capable of supporting traffic associated with commercial use, at least in its current state.

Mr. Borlin testified that he had a 36-foot motorhome that had been damaged by rats, as well as an outbuilding that had been damaged by rats, and an outdoor stainless-steel barbecue that had been rendered permanently unfit for service by rats. He had been putting out poison to control the rats, but the rats kept getting into his outbuildings and his garage. The rats had been coming over the past 15 years but had not come prior to that. He believed the rats came from the Applicant's operation.

He testified that he was used to the noise of the wolves (though not the macaws), but guests to his house noticed the noise of the wolves. *Testimony of Edward Borlin.*

66. Breanne Kozera, a member of the Appellant Neighbor Group, testified twice, once as a member of the public and a second time as a SEPA appeal witness. During her public testimony, she testified that she had been afraid of the Applicant's animals ever since the Applicant moved in when Ms. Kozera was a child. She used to see Mr. Coleburn walking wolves on leashes in the road. Hers was the dog killed in the October 2021 escape, when three wolves got into her yard and killed the dog, whose name was Oakley. It took over 25 minutes for an employee of the Applicant to arrive, during which time the wolves savagely played tug-of-war with the dead or dying dog—images Ms. Kozera said she would never be able to get out of her mind. Ms. Kozera said the attack was not provoked (contrary to Ms. Carr) and that the wolves did not return when called (contrary

¹⁸ There was more testimony on this incident later.

to Ms. Carr). Rather, the wolves continued to evade even after the employee arrived, which Ms. Kozera said the videos would confirm.¹⁹ She denied that any animal other than wolves dug the hole under the fence. She said it may have taken hours or days for the wolves to dig out, and the Applicant had failed to detect the digging during all that time. Ms. Kozera testified that she remained frightened for her child's safety if there is ever another escape. For the past two years, that child, now aged five, had been frightened and had not been allowed in her own yard without adults present. Ms. Kozera also said there was no evidence (other than the Applicant's word) that the Applicant's animals were hybrids, as opposed to full-blooded wolves. She noted that the Applicant's advertising materials refer to the animals as wolves. Ms. Kozera noted that the wolves had escaped leashes in the September 2017 incident and a fence in the October 2021 incident. She denied that any improvements to the fence had been made after the October 2021 incident. *Testimony of Breanne Kozera.*

67. Matthew Kozera, a member of the Appellant Neighbor Group and the husband of Breanne, testified that he had lived next door to the Applicant for the last six years. On many occasions, he had seen wolves line up at the fence to stare at him, which he found unsettling due to the number and size of the animals. Since the October 2021 incident, however, the wolves had only been allowed into that particular enclosure on leashes—but Mr. Kozera denied that leashes would likely restrain these animals.

The howling of the wolves at night scared his five-year-old daughter inside her home, forcing Mr. Kozera to assure her that the wolves were not coming to get her. His daughter was not allowed into the yard by herself, because of the danger of wolf escapes. He himself suffered nightmares of animals escaping and going after his daughter. He blamed the Applicant for the problems, not the animals themselves, who cannot help their own nature. *Testimony of Matthew Kozera.*

68. David Knutsen, a member of the Appellant Neighbor Group, testified that trees in the neighborhood often fall during the winter and autumn due to wind. He said a tree could knock over the Applicant's fences, even if it were a double-layered fence.

During the October 2021 escape incident, Edward Borlin called Mr. Knutsen to ask Mr. Knutsen for Ms. Carr's phone number, which Mr. Borlin did not have. Mr. Knutsen immediately called Ms. Carr but only got her voicemail. Ms. Carr then promptly called Mr. Knutsen back, and that was how Ms. Carr was first informed of the October 2021 escape. Mr. Knutsen said Ms. Carr initially did not believe his report of the escape, and then told him that she would call her staff to alert them of the escape.

Mr. Knutsen saw this episode as evidence of inefficient, ineffective procedures on the part of the Applicant. He said the Applicant's Facebook page afterwards tried to blame

¹⁹ Exhibits 78 and 79 and 105 through 109.

the whole incident on the dog, not the Applicant's wolves, which he saw as evidence of the Applicant's dishonesty and irresponsibility. He said he would worry about his own pets and grandchildren from now on.

Mr. Knutsen said he and the other neighbors felt like they were forced to operate as first responders, which was not an appropriate role for them. Also, when the Applicant did become aware of escapes (such as a previous incident of a fox escape), the Applicant either did not notify the neighbors or was slow to notify them.

Mr. Knutsen also testified that he had a rat problem, which he attributed to the Applicant. He had never had a rat problem until the Applicant came along.

Mr. Knutsen briefly summarized another, previous escape episode that affected a non-testifying former neighbor. That incident was documented in more detail in a declaration by that former neighbor, Exhibit 19. *Testimony of David Knutsen.*

69. Kevin Welch, a member of the Appellant Neighbor Group, testified that he had observed the Applicant's staff trying and failing to recapture the three escapes wolves during the October 2021 incident. He believed the employees were untrained volunteers. He believed the fence was poorly constructed—indeed, the hole under the fence was still there as of the morning of the hearing. He had seen wolves digging at the ground in the vicinity of the fence the day before the escape. He also worried that treefall would lead to another escape. He opined that local law enforcement was ill-prepared to recapture escaped animals and would likely just have to shoot them. Mr. Welch emphasized the need to for third-party accreditation of the Applicant's facility. He said the County had done its best to regulate the Applicant but lacked the subject-matter expertise to monitor a "roadside zoo."

Mr. Welch said that he had paid to have part of the driveways and roads repaved, which the Applicant refused to participate in. He said the Applicant had never helped maintain the road. The other neighbors did all the work and bore all the cost. Mr. Welch said the roads were in poor condition and were not designed for commercial activity. He also felt the road was not suitable for two-wheel drive vehicles in inclement weather. He also said guests often got lost and would bother the neighbors, looking for the Applicant.

Mr. Welch claimed to have found dead foxes on his property, which he suggested might have come from the Applicant's facility. He claimed the Applicant used to breed rats as a cheap food source, and he felt the local rat problems were due to excess meat fed to the animals at the Applicant's property, which scavenging ravens would then distribute around the neighborhood.

Mr. Welch claimed that a sewage smell emanates from the property onto his ditch. He said he had not seen garbage trucks servicing the Applicant's property. At one quarter mile from the Applicant's property, Mr. Welch did not suffer serious noise impacts, but he could still hear the wolves at night and believed the closer neighbors must suffer excessive noise. *Testimony of Kevin Welch.*

70. Millicent Swietzer, a member of the Appellant Neighbor Group, testified that the Applicant's guests traveling Welch Lane infringed her privacy, because wayward guests turned around on her driveway, or even drove all the way down the driveway, and bothered her asking for directions. She believed the Applicant's posted directions were not adequate to prevent guests from getting lost. She expressed concern for her one-year-old son's safety given the possibility of future escapes at any moment. She said the Applicant never notified her during the October 2021 escape; rather, it was Mr. Knutsen who called to warn her. She agreed that there was a rat problem in the area. *Testimony of Millicent Swietzer.*

SEPA Appeal Testimony

71. Ashley Carr, Applicant Representative, returned to the stand, this time to testify as a witness for the Applicant's SEPA appeal. Ms. Carr testified about her history with the Applicant's facility. She described how the Applicant transitioned in about 2016 from doing many roadshows with the animals to doing fewer shows nowadays. She described her takeover as executive director in 2020, when she replaced her father, Dave Coburn. She described the two-year animal-handling training she underwent to get herself named on the Applicant's USDA Class C license. Each of the other staff members would also undergo or had already undergone the two-year process to be named on the USDA license.

Ms. Carr testified that the Applicant had working relationships with other facilities, including Woodland Park Zoo, Pierce County animal control, a kinkajou²⁰ sanctuary in Florida, and Fish and Wildlife.²¹ She described a kind of network relationship, in which animals were transferred among these and other sanctuaries as needed, including the Applicant's sanctuary. Ms. Carr testified, based on her trainings with Woodland Park Zoo, that Woodland Park's animals are also captive-born wolf-dogs, not full-blooded wolves. As Ms. Carr described it, the Applicant received regular phone calls from various animal control agencies, in which the agencies would ask the Applicant to house a captured or confiscated animal on short notice. Approximately 80 to 85 percent of the animals at the Applicant's facility were rescues of this type. In almost all instances, the Applicant was not compensated for this rescue work. Rescued animals were not rehabilitated for release into the wild; they lived out their days in captivity.

²⁰ A species of small, tropical mammal.

²¹ It was unclear whether she meant United States Department of Fish and Wildlife or the Washington State Department of Fish and Wildlife.

Ms. Carr testified that the Applicant did not accept rescued wolf-dogs and has, in fact, turned down multiple requests to take in new wolf-dogs. The Applicant preferred to work with the “lines”²² of wolf-dogs it already had. It had a total of 15 wolf-dogs. Ms. Carr claimed to use the USDA definition of *wolf-dog*, which she characterized as a captive-born animal having any degree of domestic dog DNA. Ms. Carr claimed her animals were wolf-dogs because their ancestors originally came from other sanctuaries, and DNA testing on at least some of them had revealed dog DNA from either Great Pyrenees, German Shepherd, or Alaskan Malamute dogs. She acknowledged that both she and the other members of the Applicant team used the terms wolf and wolf-dog interchangeably. The Applicant’s current 15 wolf-dogs were all born at the Applicant’s facility. The last births were in 2018.

Ms. Carr claimed that the Applicant’s board had never authorized the previous director, Mr. Coleburn, to breed wolf-dogs. On the contrary, they had asked him to prevent breeding. She cited his unauthorized breeding as one reason for his termination. She said the Applicant currently did not intend to breed any wolf-dogs *for sale*, nor to breed any other species of animal at all. She did testify, however, that the Applicant would resume breeding wolf-dogs if an accredited conservation program contacted the Applicant and asked for help preserving a certain line for purposes of reintroduction to the wild or some other form of conservation. Under such a circumstance, the newly bred pups would be donated, not sold. Ms. Carr claimed to have been contacted by an unnamed “science company” who asked if she would be interested in participating in a captive breeding program. Ms. Carr also expressed interest in exhibiting wolf-dogs in state fairs at some point in the future. But she had not exhibited any animals since 2021, and even that had been only a virtual exhibition. The last in-person exhibition of animals had been in 2019, with additional in-person exhibitions each year prior to 2019.

Ms. Carr claimed that she was required by the USDA to get her wolf-dogs vaccinated for rabies and get them inspected annually by a vet.

Ms. Carr testified that the Applicant had, in the past, given special tours to programs such as the Make-a-Wish foundation and had run programs for disabled veterans with PTSD as well as picnics for members of the military. Since the coronavirus pandemic, the Applicant had been doing virtual tours for schools.

In 2016, the Applicant began offering tours through Airbnb. The tours included visits to many animal species, not just wolf-dogs, but the wolf-dogs were the highlight. Guests on the tours were brought into the enclosure with some of the wolf-dogs. Up to three certified USDA exhibitors were present during this portion of the tour. The guests were allowed to pet the wolf-dogs, although the wolf-dogs were not forced to interact with the

²² A term meaning bloodlines, or lines of descent.

guests. Guests were allowed to take photos with the wolf-dogs, or the third staff member took photographs for the guests. The guests were allowed to howl with the wolf-dogs for a brief interlude. Prior to these tours, the guests received an extensive safety brief and were never left alone with wolf-dogs. Children were not allowed as guests, with the occasional exception of special tours along the lines of the Make-a-Wish Foundation visits. Guests were never left alone, neither inside the wolf-dog enclosure nor in the rest of the facility. Ms. Carr testified that the wolf-dogs (and the other species) never did or were asked to do anything outside their own, natural behaviors. As a further precaution, she testified that the Applicant “likes” to be closed during January and February, when the wolf-dogs went into heat, although she did not testify that the Applicant was, in fact, closed during those months.

The Applicant charged \$200 per person for the tours. The tours had become a substantial portion of the Applicant’s revenue. The revenue from the tours was plowed back into the operation, funding new and better enclosures and food and veterinary care for the animals. Other than the Airbnb tours, the Applicant’s only other source of revenue was donations. If the Applicant were prohibited from including the physical encounters with wolf-dogs on the tours, Ms. Carr believed prices would have to be lowered to around \$75 or \$100 per person, which she thought would be insufficient to support the Applicant’s operations.

The Applicant acquired three cougars from a breeder, prior to what Ms. Carr described as a change of laws in 2007 that outlawed the breeding of cougars. Following the acquisition, the cougars bore an accidental litter, which at the time was no longer legal. Fish and Wildlife did not penalize the Applicant for the litter, however, because it was an accident. The Applicant was allowed to retain the offspring. Ms. Carr testified that the Applicant was permitted by Fish and Wildlife to retain the cougars because the Applicant exhibited the cougars in state fairs, which was an exception to the usual rule against keeping cougars.

Ms. Carr pointed out that many government agencies have inspected her facility: USDA, Skagit County animal control, Pierce County animal control, and Anacortes animal control. Many animal control agencies had given animals into the Applicant’s care. Ms. Carr believed that, if the Applicant were breaking the law in any way, these agencies would have said something, which they never had.

Ms. Carr testified that the Applicant’s facility met USDA’s standards for enclosures, animal care, liability insurance, rodent abatement, and interactions between animals and guests. Ms. Carr spent considerable time walking the Hearing Examiner through two new exhibits introduced during the hearing: Exhibits 138 and 142, a series of aerial photographs and a simplified site plan of the Applicant’s facility, respectively. Ms. Carr described the various fences depicted on the site plan, including the various heights, the

presence or absence of tilt-outs on top of some of the fences, the presence or absence of dig-outs below some of the fences, and the presence or absence of electric wire on some of the fences. She pointed out the six-sided enclosures in which the wolf-dogs are kept at night. Of the three wolf-dogs who escaped in October 2021 and killed a pet dog, one had been euthanized and the other two were placed in six-sided enclosures at all times, not just at night. Ms. Carr testified that the six-sided enclosure of the two surviving wolf-dogs had been ordered by Skagit County, which determined that these were “dangerous dogs.” The euthanization of the third animal had been the Applicant’s decision, taken by its board of directors.

When wolf-dogs were let out from their night-time, six-sided enclosures into the day runs, staff first walked the length of the day run fence and checked the electrification of the fence. An arborist came out twice a year to take down branches that threatened the fences.

Ms. Carr testified that it would not be feasible, financially or physically, to fence off the entire property. She did say it would be possible to put all animals behind two layers of fencing, to the extent any animals were not already behind two layers.

Ms. Carr testified that she had cameras with night-vision capability that allowed her to see inside the enclosures. Cameras along at least some of the perimeter fences were motion-activated, although not all portions of all fences were covered by motion-activated cameras. She testified it would be feasible to add motion-activated cameras to cover all portions of all perimeter fences.

Ms. Carr testified that she preferred to keep using porta-potties rather than install bathrooms with plumbing. She cited the saving of water as her justification.

Ms. Carr testified that uneaten food was removed within 24 hours of its placement. All waste was thrown away in a dumpster.

Staff members were usually onsite from around 7:30 in the morning until 4:00 in the afternoon, although occasionally staff members were onsite until as late as 7:00 in the evening. The animals needed a break from human contact, so it was not desirable to have staff onsite 24 hours a day. In the past, Dave Coleburn had lived onsite for a period of time, which Ms. Carr said led to an observable decline in the animals’ wellbeing. Besides the issue of animal health, Ms. Carr said the Applicant did not have sufficient staff to man the property 24 hours a day. She testified, however, that there had never been a nighttime emergency in all the facility’s history. If anything ever were to happen, she would drive out at night. Indeed, she testified she often did drive out at night in response to alerts from the motion-activated cameras, which always turned out to be false alarms. Ms. Carr testified that she received notifications at night from the motion-

activated cameras, which often occurred four to six times each night, interrupting her sleep. When it was necessary for her to drive out at night in response to one of these alerts, she testified that it took her about 10 minutes to arrive onsite. Ms. Carr testified that motion-activated lights would be less desirable than motion-activated cameras, because the lights would disturb both the captive animals and the nearby wildlife.

Ms. Carr testified that accreditation would not make sense for the Applicant. AZA accreditation was aimed more at zoos, which allowed unescorted guests onsite—something the Applicant did not. Zoos were also much bigger facilities. She also believed the Applicant would struggle to afford the accreditation fee. She did believe that the AZA would accredit the animals to interact with the public. She pointed out that zoos often had programs where members of the public could feed the animals or otherwise interact with them.

GFAS accreditation was even less attractive to Ms. Carr. She testified that GFAS set minimum requirements for the size of enclosures, which she did not believe the Applicant could meet. She also said GFAS would not accredit a facility that allowed contact with the public, which the Applicant did. She testified that she had applied for the Applicant to obtain GFAS membership some four months prior to the hearing. Her application had been denied.

Ms. Carr testified that requiring accreditation from either AZA or GFAS might be a “showstopper” for the Applicant, in terms of the expense involved or the changes the Applicant might have to make in its operations. She was not sure, however, that it would be totally impossible to operate under accreditation; she needed to do more research on that question.

Ms. Carr testified that the USDA did not require her to have a perimeter fence around the wolf-dog enclosures, because the USDA considers wolf-dogs to be domesticated dogs. She also testified that GPS collars would not be feasible all the time, but she felt it might be possible to put on smaller collars when the wolf-dogs were out in the day run.

Ms. Carr drew a distinction between her tenure as executive director and that of the previous director, Dave Coleburn. She said the facility had been poorly run in those days and was now much better. She believed most of the incidents and problems mentioned in the public comments had occurred during his tenure. She acknowledged that the October 2021 escape had occurred on her watch. She testified that the animals had been recaptured within 30 minutes, as confirmed by her cameras.

Ms. Carr testified that she was not aware of any noise complaints made by the neighbors, other than what appeared in the public comments. Ms. Carr believed that any animal

waste entering a local stream more likely came from a neighbor's pigs than from her animals.

In the event the Applicant's facility were to be shut down, Ms. Carr testified that she would attempt to re-home the animals in other sanctuaries rather than euthanize them. But she believed re-homing the wolf-dogs would be bad for them, because they had grown up with lots of human contact. Depriving them of that contact would not be good for them.

During cross-examination, Ms. Carr argued that she was allowed to keep potentially dangerous wild animals because she had had animals turned over to her by governmental agencies and because she operated a wildlife sanctuary. Ms. Carr acknowledged that Woodland Park Zoo, although it did offer *non-dangerous* animal encounters, did not offer encounters with wolves or wolf-dogs. She admitted that she had not seen any genetic testing or any other evidence that supported her belief the animals at Woodland Park Zoo were wolf-dogs rather than full-blooded wolves. Ms. Carr denied knowing anything about the Olympic Game Farm lawsuit that was the subject of the ALDF comment. She had not read the ALDF comment prior to her testimony. She claimed to be unaware that a federal judge had, in that case, determined that four animals transferred from the Applicant to the Olympic Game Farm did not possess significant levels of dog DNA and were, as a matter of law under the Endangered Species Act, gray wolves, not wolf-dogs. She had never heard that anyone considered her animals to be protected under the Endangered Species Act (ESA). She testified to her belief that any wolf born in captivity was automatically disqualified from protection under the ESA, although she was unable to cite any portion of the ESA in support of this belief. She repeated that no governmental agency had ever informed her that her animals might be wolves as opposed to wolf-dogs.

Ms. Carr disagreed with public comments, including from Born Free USA, that claimed her animals were dangerous or aggressive. She acknowledged they had killed two pet dogs but they had never harmed a person. Ms. Carr was not able to identify any accrediting body that would allow contact between people and wolves or wolf-dogs, but she did believe such contact was allowed by the USDA.

Ms. Carr disputed the comments by the Humane Society that breeding hybrid wolf-dogs had no conservation value. She believed breeding did have conservation value, although she acknowledged that she herself had no background in conservation. She was unable to cite any study or other source of authority to bolster her position that breeding wolf-dogs would enhance the conservation of wolves. She admitted that the Applicant had bred wolf-dogs after 2007 as well as after 2014. The oldest wolf-dog was born in 2009. At least one of the wolf-dogs, Luther, had been genetically tested and had approximately 80 percent, or in the high 80s, wolf DNA, the remainder of its DNA being dog.

Ms. Carr testified that the Applicant would not euthanize wolves because they were protected by the Endangered Species Act, but she denied that the Applicant's animals were wolves. She testified that the Applicant had euthanized a total of nine wolves, which was why, although the SUP application²³ showed 24 wolf-dogs, her testimony at the hearing stated only 15 wolf-dogs. She initially called the euthanasia a "business decision" made by the board of directors but later clarified that the euthanasia was driven by health concerns. The nine animals were middle-aged or older. They were exhibiting signs of physical and mental decline, including a peculiar body movement called "figure eighting." The Applicant had not attempted to re-home the nine animals prior to euthanizing them.

Ms. Carr acknowledged that the safety protocol she had included with her application was the first she had ever done and that she had no formal training or background in preparing safety protocols. The Applicant's board had reviewed the safety protocols. She based the safety protocols on her own experience and on safety protocols she had found online from other animal organizations. She denied that the pistol referenced in the safety protocol was to shoot dangerous, escaped animals; rather, it was to enable staff to fire warning shots to startle them. She testified that she would be willing to have additional contacts added to the safety protocol if needed, including additional phone numbers and requirements for social media notifications of escapes.

When asked about the City of Anacortes comments, including the City's recital of various past escape incidents, Ms. Carr did not dispute the factual accuracy of the City's comments. She did dispute the characterization of some of the incidents as "escapes," because in her mind it was relevant whether the animals had left the Applicant's property during each incident, which, in some cases, the animals had not. She also did not dispute the factual allegations that appeared in the various depositions and other exhibits related to previous escapes.

Ms. Carr also disputed that her animals had ever dug under the fence during the October 2021 escape. Even when confronted with photos and earlier testimony about the continued existence of a hole under the fence, she argued that dogs other than her animals were coming to the fence to dig. She testified that the day run from which the October 2021 escape occurred—the one with the hole still under the fence—was no longer in use as a day run. She acknowledged that a day run adjacent to that one was still in use, and the adjacent day run had the same style of fence construction as the one from which the escape occurred. The adjacent day run, however, had rock beneath the fence as opposed to soil, so the situation was not exactly the same as the situation in the run from which the escape occurred. *Testimony of Ashley Carr.*

²³ Exhibit 2.

72. Holly Soyke testified that she is the lead animal caretaker and lead tour guide at the Applicant's facility, positions she has held for a little under five years. Ms. Soyke testified that the previous director, Dave Coleburn, had engaged in various bad practices, including overfeeding the animals and failing to change their bedding or muck out their enclosures. Mr. Coleburn had fired or attempted to fire Ms. Soyke and Ms. Carr for objecting to his practices. Now that Ms. Carr was in charge of the facility, Ms. Soyke testified that the Applicant had improved its operations to a significant degree. The Applicant now followed USDA guidelines for animal care, and exceeded those guidelines in providing a larger-than-minimum enclosure sizes and better-than-required diets. The Applicant now used a dumpster to dispose of waste and feces.

Ms. Soyke testified about the procedures she used for releasing the wolf-dogs into their day runs in the morning. She waited for at least one other employee to arrive, then she checked the electrification of the fence. Then she walked the fence line, looking for fallen debris that may have damaged the fence. Then she released the wolf-dogs. She then checked their night-run (meaning the six-sided enclosures) prior to bringing them back in for the evening. If she found excess or buried food, she disposed of it in bags in the dumpster, which she said was required by USDA.

During the tours, Ms. Soyke or another employee went over the rules with the guests, repeating the rules prior to entry into each new enclosure. A second employee accompanied the tours.

Ms. Soyke testified that she believed the Applicant's facility was already compliant with AZA guidelines when it came to fencing, although she acknowledged she had not read the guidelines all the way through.

Ms. Soyke testified that she was present the day of the October 2021 escape and had walked the fences that morning. She had not noticed anything concerning about the fence, and she had confirmed that the fence was electrified. She stated that she was "very surprised" the three wolf-dogs were able to escape under the fence. When she received a call from Ms. Carr to respond to the escape, she used cat food to lure the escaped wolf-dogs. She leashed one and walked him back to the Applicant's property. The other two followed. The wolf-dogs, according to Ms. Soyke, were not aggressive toward her or any other human.

Ms. Soyke acknowledged that cat food did not appear in the safety protocol, but devices to control the wolf-dogs did appear in the safety protocol. She testified that the hole under the fence had been repaired following the October 2021 escape, but unidentified creatures keep digging it. The repairs consisted of cattle panels beneath the fence and burial with debris and dirt, but the hole kept coming back in exactly the same location, time and again. Ms. Soyke testified that she had seen dogs from neighboring properties

run up and down that fence line, her implication being that those dogs may be responsible for the continued reappearance of the hole.

Ms. Soyke testified that she had participated in the board's decision-making process to euthanize nine wolves. Some of the animals were simply old, and some had mental health issues. She believed the decision to euthanize was humane.

Ms. Soyke did not believe that motion-activated lights would be good for the animals. Lights would increase their stress and disrupt their sleep. Lights might also attract wild animals to the facility or otherwise adversely affect the behaviors of wild animals. For the same reason, Ms. Soyke believed it would be bad for the animals' health to have staff onsite 24 hours a day. When Mr. Coleburn lived on the property 24 hours a day, Ms. Soyke observed increased anxiety in the animals. On cross-examination, she was not able to cite scientific studies to back up these observations and opinions about the effects of lighting.

Ms. Soyke testified that, in the event of an escape or other dangerous emergency, she would first call Ms. Carr. If Ms. Carr were unreachable, she would next call a board member. She named Ms. Grossruck. Ms. Grossruck lived in Mount Vernon or Burlington, but Ms. Soyke believed Ms. Grossruck could reach the facility (which is just south of Anacortes) in 15 to 20 minutes. Ms. Soyke testified that she had never, in her experience, been unable to reach Ms. Carr by phone. She assumed Ms. Carr would take charge of calling anyone else who needed to be called. *Testimony of Holly Soyke.*

73. Breanne Kozera returned to the stand as a SEPA appeal witness. During this round of testimony, she described in detail the events of the October 2021 escape and killing of her dog, Oakley. She observed three wolves running around in her yard, carrying her dog, who was by that point already dead. On the advice of her father, Ms. Kozera started taking pictures and video. One of the videos, Exhibit 79, showed the three wolves playing with the body of her dead dog while Ms. Kozera looked on, screaming at the wolves to no effect.

Ms. Kozera testified that she had a daughter, who was three years old at the time of the escape. The daughter could easily have been in the yard at the time of the escape. Ms. Kozera was now afraid for her girl's safety in the event of a future escape. She had to keep a close eye on her whenever the daughter went outside. Ms. Kozera was also afraid for her surviving dog, which she now leashed whenever the dog went outside.

Ms. Kozera testified that Exhibit 78, another of her videos shot during the October 2021 escape, showed an employee of Applicant trying to recapture the wolf-dogs²⁴ and

²⁴ Like various other witnesses, parties, and commenters, Ms. Kozera occasionally referred to the animals as wolves and occasionally as wolf-dogs.

repeatedly failing. Ms. Kozera believed the Applicant's handling of its animals that day was incompetent. She believed the Applicant's animals were aggressive. She did not observe any improvement in the safety of the facility since Ms. Carr took over from Mr. Coleburn. She had never been inside the facility. She had no interest in ever visiting, because it would only remind her of the death of her dog.

Ms. Kozera testified that she had to listen to loud howling from the Applicant's animals. The howling was not from coyotes, which she could distinguish from wolf howling by the sound. *Testimony of Breanne Kozera.*

74. Edward P. Borlin Jr. returned to the stand as a SEPA appeal witness. This time, he testified that he shared a property line with the Applicant. He had been living there since before the Applicant arrived. He was home during the October 2021 escape incident. He observed the wolves holding his daughter's dog, Oakley, tugging the dog by its legs and biting its neck. He observed the dog's last breath. Mr. Borlin told his daughter and his daughter's mother-in-law to remain inside and keep filming. Mr. Borlin went into his own house and asked his wife, Lynne Borlin, to call 911 while Mr. Borlin looked for Ms. Carr's phone number, which he did not have in his phone. Mr. Borlin called his neighbor, Dave Knutsen, and asked Mr. Knutsen to call Ms. Carr to report the escape. Mr. Borlin then climbed into his truck and tried to enter the Applicant's property to locate an employee for assistance. He was thwarted in his attempt by the Applicant's closed front gate. He was driving back down the road following the thwarted attempt to enter the Applicant's property when he suddenly saw the wolves on the road, running this way and that. He honked at them. The wolves then returned to Mr. Borlin's yard. Mr. Borlin followed them in his truck but was afraid to dismount the truck, because the wolves had blood on their fur from the killing of his daughter's dog, which made Mr. Borlin worry for his own safety. He did not know what the wolves might do next. Mr. Borlin's son-in-law now entered the scene and announced he was going to get a gun to shoot the wolves. Mr. Borlin asked him not to shoot, because the wolves' actions were not the wolves' fault. The son-in-law did arm himself but refrained from shooting, at Mr. Borlin's request. During all this action, no employee from the Applicant was present.

Mr. Borlin estimated it took about 10 minutes from the time he got off the phone with Mr. Knutsen until an employee of the Applicant arrived. When the employee did arrive, the employee struggled to recapture the wolves with a leash. The employee coaxed them with some object Mr. Borlin could not identify at the time. He did not observe the wolves display any aggression toward the employee. Nor did the wolves appear to be frightened of Mr. Borlin or his family members, although he did say the wolves were "wary" of the humans around them.

Mr. Borlin did not believe the electric fence was active during the escape, because he could not hear it crackling as it usually did. He said the fence had been off for months as

of the date of the escape. On cross-examination, however, he admitted that it had not occurred to him to alert the Applicant of the failure of the electrified fence—indeed, most days he did not even pay enough attention to notice the fence. He also acknowledged that the fence may be electrified even if it did not make a crackling sound.

Mr. Borlin testified to having suffered a loss in his enjoyment of his property as a result of the escape. When he was outside nowadays, there was always a certain degree of worry in his mind. He worried for his children and grandchildren.

Mr. Borlin testified that he had never received any notification from the Applicant about any previous escape, except for an escape of a macaw. He only learned about previous escapes (other than the October 2021 escape, to which he was an eyewitness) through County records and other third-party sources. The Applicant had never shared its safety protocol with him, nor asked him for his contact information.

Mr. Borlin testified that Exhibit 110 was a photograph he took of the hole under the fence through which the wolves escaped in October 2021. He testified that Exhibit 110 accurately showed the hole as it appeared the day of the escape, although he did not testify as to the date he actually took the photograph in Exhibit 110. He testified that the hole had been dug from the inside (meaning the Applicant's side), not the outside. The dirt was thrown in toward the inside of the fence, and there was no dirt thrown toward the outside. Mr. Borlin testified that Exhibit 136 is a photograph he took of the same hole as it appeared a few weeks before the hearing. He testified that it was the same hole in the same location. He saw no change to the hole.

Mr. Borlin testified that Exhibit 135 showed a lockbox with a stick jammed in it, holding it open. He believed the stick would enable anyone to open the gate and enter the property. But he acknowledged that he had never opened the lockbox to look inside.
Testimony of Edward Borlin.

75. Kevin Cricchio, Skagit County Senior Planner, who had been the first witness to testify, returned to testify as the last witness. He testified that he believed the Applicant's SEPA Checklist was complete, because it was filled out for the most part. But he emphasized that his review of the proposal was based on many other supporting documents to fill in the gaps in the SEPA Checklist. Mr. Cricchio did not agree with the Applicant's response of "not applicable" to many of the questions of the Checklist. He testified that he was familiar with the Washington State Department of Ecology's SEPA guidance, which said that "not applicable" was not an acceptable answer on a SEPA checklist. But even though the Applicant had said just that in many instances on its SEPA Checklist, Mr. Cricchio had been able to supplement the missing information using other documents in the record.

Mr. Cricchio acknowledged that the Applicant's site plan included in the SUP application was "not the best," but he said it was still a site plan nonetheless. He acknowledged that the site plan in the SUP application did not show the fences. But he said his site visit had allowed him to fill in many of the blanks. A predevelopment meeting²⁵ had also helped him understand the proposal, although he had asked for a site plan showing fences at that predevelopment meeting. Mr. Cricchio thought that, between his site visit and his recommended SUP condition to supply a better site plan in the future, it was not necessary for the Applicant to produce a better site plan as part of its application. He felt he had enough information to process the application.

Reviewing the site plan that the Applicant produced in the course of the hearing,²⁶ Mr. Cricchio could not determine, from the site plan alone, which fences had dig-outs, which had tilt-ins, which ones were electrified, which ones had covers over the top, or how high any of the fences were. Again, however, he relied on his site visit to understand the fencing of the facility.

Mr. Cricchio testified that he had imposed conditions related to the physical condition of the road but had not analyzed the terms of the easement for Welch Lane, a private road.

Mr. Cricchio testified that he was aware of the Applicant's repeated need for public services, including animal control, because the City of Anacortes comment letters and other comments had made him aware. As a result of public safety concerns, he had added numerous measures to the MDNS and had recommended still other conditions for the SUP. Mr. Cricchio testified that his fencing conditions were not based on USDA requirements, because he was unfamiliar with USDA fencing requirements. Regardless of whatever USDA might require, Mr. Cricchio was trying to impose a higher level of protection through the MDNS and SUP conditions. The same was true for any fencing requirements the AZA might recommend—Mr. Cricchio simply did not know what the AZA might recommend. Mr. Cricchio's belief in the inadequacy of the existing fences was based on public comments, his own observations, and the history of escapes. He had tried to implement many of the City's recommendations for security measures. He believed that the City must have consulted its own animal control officers and other staff members to produce these recommendations. He did not see any need to run the fencing conditions past any outside expert other than the County and City staff, including those jurisdictions' animal control officers. He did strongly believe in the need for two layers of fences around the property, although he conceded it was not necessary to fence or double-fence the entire property—just the portion of the property that housed animals.

²⁵ Exhibit 37.

²⁶ Exhibit 142.

Individual day runs could be single-fenced within the surrounding double-fence, or the individual day runs could use the surrounding double-fence as part of the day run.²⁷

Mr. Cricchio testified he believed there was a stream near the Applicant's property. The County's critical area staff had reviewed the application and had identified a protected critical area easement. Mr. Cricchio did not see any need for further critical area review. He did not expect any waste to enter surface or ground waters, in light of the Applicant's practice of bagging waste to throw away in a dumpster. He did not know the quantity of waste the Applicant might generate.

Mr. Cricchio did not think a noise study was required. During his site visits, he had heard the howling himself and did not think it was excessive in either volume or duration. Nor had the County ever received a formal noise complaint that would have triggered a code enforcement action. Nor did the public comments about noise trigger any additional concern in Mr. Cricchio's mind. He felt that compliance with the standard County noise regulations would be sufficient to mitigate any noise impacts.

Mr. Cricchio continued to believe that it would be beneficial to require the Applicant to obtain accreditation. That way, experts in the field of keeping animals would provide some oversight of the facility.

At the end of the hearing, Mr. Cricchio stood by the MDNS and the proposed SUP conditions, subject to the modifications he presented at the end of his Exhibit 130, and his concession that motion-activated cameras could take the place of motion-activated lights.

Mr. Cricchio testified that the SUP should be denied due to the prohibition against keeping dangerous wild animals. He did not believe the Applicant's facility was a wildlife sanctuary. The proposed SUP conditions were aimed, in part, at making the facility more like a wildlife sanctuary, even though that is not the operation the Applicant proposed. The conditions were also aimed, in part, at making the facility more compatible with its neighbors, especially in terms of safety. *Testimony of Kevin Cricchio.*

Closing Arguments

²⁷ In the absence of detailed site plans or fencing diagrams, this portion of Mr. Cricchio's testimony was confusing to follow. The Hearing Examiner believes Mr. Cricchio's vision is for a double-fence around the animal facility, but not a separate double-fence around each day run. A hypothetical day run in the middle of the property could, for example, just have single fences because the entire day run would be enclosed within the facility's double-fences. By contrast, a day run on the periphery of the facility could use the facility's double-fence to form one of the sides of the day-run, while the remaining sides of the day run could be single fences. A wolf escaping under the day run's single fence would still be enclosed within the facility's double-fence. The Hearing Examiner notes that the need for this confusing verbal description could have been avoided had the Applicant or the County submitted a detailed fencing plan with diagrams.

76. Attorney Haylee Hurst gave the Applicant’s closing arguments. Ms. Hurst, like the attorneys who came after her, first addressed the issue of the prohibition against keeping potentially dangerous wild animals, under Chapter 7.04 SCC, and the exceptions to that prohibition, under RCW 16.30.020. Ms. Hurst conceded that the County code provisions on potentially dangerous wild animals govern this case, and thus, wolf-dog hybrids are defined as potentially dangerous wild animals pursuant to SCC 7.04.010(1)(b). But she invoked several exceptions from RCW 16.30.020. First, she pointed out that the Applicant is an animal rescue organization that accepts animals from various agencies—an exception under RCW 16.30.020(1)(c). She argued that the Applicant could, hypothetically, accept wolf-dogs from an agency in the future, in which case the Applicant would be allowed to keep those wolf-dogs under RCW 16.30.020(1)(c). She argued it would be absurd to prohibit the Applicant from keeping the wolf-dogs it already has when those same animals lawfully have been transferred to its care by some governmental agency. She argued that the Department of Fish and Wildlife had done something similar in the past, when it allowed the Applicant to retain the cougars that had been accidentally born on the property. The cougars had to go somewhere as rescues, so Fish and Wildlife simply let them remain in place as rescues at the Applicant’s facility, thus satisfying RCW 16.30.020(1)(c). Ms. Hurst also argued that, because the Applicant keeps *some* re-housed rescue animals under RCW 16.30.020(1)(c), it should be allowed to keep *all* its animals—in other words, RCW 16.30.020(1)(c) should be read to exempt an entire facility as a whole, not to consider individual animals within a facility on an animal-by-animal basis.

Ms. Hurst also invoked the state-fair exception, RCW 16.30.020(1)(l). She argued that the Applicant has previously exhibited animals at state fairs and, in fact, has already been granted an exemption under RCW 16.30.020(1)(l), a proposition for which she cited a news article in Exhibit 23.

Ms. Hurst also invoked the wildlife-sanctuary exception, RCW 16.30.020(1)(g). She argued that the Applicant meets the definition of wildlife sanctuary under RCW 16.30.010(5), because it is a nonprofit that does not engage in commercial activity involving an animal, does not breed animals, does not allow unescorted visitors or contact between the public and an animal, and does not engage in activity not inherent to an animal’s nature. Ms. Hurst argued that the contact between the wolf-dogs and the public did not disqualify the facility as a wildlife sanctuary because, under state law, RCW 16.30.010(2)(a)(i)(B), wolf-dogs are not dangerous animals in the first place—and the exceptions the Applicant was invoking arose under state law, RCW 16.30.020. Ms. Hurst believed the \$200-per-person admission was not “commercial activity,” because the Applicant is a nonprofit and uses that money to fund operations. She argued that the tours allow photographs, but do not offer a “guaranteed photo op.” She also argued that no breeding currently takes place, and that anyway, breeding under certain circumstances (namely, a species survival plan under RCW 16.30.020(1)(b)) would not be

disqualifying, although she conceded the Applicant is not currently a participant in a species survival plan.

Finally, she invoked the domesticated-animal exception at RCW 16.30.020(1)(k), on the grounds that USDA defines a wolf-dog as a domesticated dog, a proposition for which she cited Exhibit 102.²⁸ She also claimed that the County had recognized the escaped wolf-dogs as dogs when it required the Applicant to undergo a legal process for dealing with dangerous “dogs” following the October 2021 escape.

As for land use issues, Ms. Hurst argued that no noise complaint had ever been received, nor was there strong evidence in the record on odor issues. She argued that any issues pertaining to road access across the easement were subject to a civil proceeding, not review by the Hearing Examiner. She also argued that the traffic impacts would be minimal, with just two tours per day. She argued that clear signs would prevent the annoyance of lost guests approaching neighboring properties by mistake.

Ms. Hurst acknowledged that safety was the biggest land use issue. She argued that the Applicant’s night-vision, motion-activated cameras plus double-fencing would address any escape issues. She suggested that persons other than just Ms. Carr could be added to the camera notification software. She agreed to six-sided enclosures at night, when no one is present. She argued that the hole under the day run fence, through which the October 2021 escape occurred, had been fixed, that a dig-out or cattle panels would prevent digging, and that, in any event, only leashed animals were allowed in that enclosure anymore.

Ms. Hurst agreed that double-fencing was reasonable, but she had a different vision than that of Mr. Cricchio. She argued that there should be a single perimeter fence (not a double-fence) and then single fences for each day run—except a day run that abutted the periphery would have a double-fence along the abutting side. The end result would still be two fences around each wolf-dog enclosure, but no need for a double-fence around the entire facility. She argued her proposal would exceed the USDA standard for fencing, 9 C.F.R. § 3.127(d).

Ms. Hurst argued that, for wolf-dogs behind double-fences, such as wolf-dogs in double-fenced day runs, a GPS collar would be unnecessary. But GPS collars could be placed on animals whenever they were outside a double-fence.

Ms. Hurst argued that the record did not contain evidence showing that membership in AZA or some other accrediting body would result in a more secure facility with less land use impact. She also argued that fencing standards would be the same under accreditation—namely, USDA standards, which the Applicant already meets. She

²⁸ Exhibit 102 is a copy of 9 C.F.R. § 1.1.

pointed out that the October 2021 escape was the only one in which an animal got out of an enclosure, and accreditation would not help prevent that from happening again. She argued that the inspections of the Applicant's facility by USDA and animal control officers were good enough to ensure integrity of the facility.

Ms. Hurst also objected to the proposed condition that the Applicant supply a financial plan. She argued there was no explanation for how the County would evaluate whatever information it might learn from its review of such a plan.

Ms. Hurst said the Applicant has no objections to Staff Report Conditions 1 through 17. She did, however, raise the following objections:

- She objected to Staff Report Condition 18M1 (MDNS Measure 13A) because signs along the perimeter, especially near the ACFL, might make the public more curious and more likely to intrude on the property.
- She objected to Staff Report Condition 18M9 (MDNS Measure 13I). She proposed perimeter fencing around active wolf-dog enclosures such that each day run would be behind two layers of fencing, but the facility as a whole would have only one layer of fencing—and the fence around the facility could count as one of the two fences around a wolf-dog enclosure.
- She objected to Staff Report 18M10 (MDNS Measure 13J) but acknowledged that Mr. Cricchio had clarified this condition. Under the clarification, wolf-dogs would only need to be in six-sided enclosures at night.
- She objected to Staff Report Condition 18M12 (MDNS Measure 13L) on the grounds that the Applicant already hired an arborist twice a year, which should be sufficient.
- She objected to Staff Report Condition 18M13 (MDNS Measure 13M) on the grounds that motion-activated lights would disturb the animals at night, and the Applicant's existing motion-activated, night-vision-equipped cameras provided sufficient or better nighttime surveillance.
- She objected to Staff Report Condition 18M15 (MDNS Measure 13O) on the grounds that it is not feasible to man the facility 24 hours a day and that 24-hour staffing would adversely affect the animals' health. She suggested that the motion-activated, night-vision cameras were enough.
- She objected to Staff Report Condition 18M16 (MDNS Measure 13P) on the grounds that GPS collaring will not be necessary if the animals are double-fenced.

She allowed that an animal could be collared whenever it was outside a double-fence.

- She objected to Staff Report Condition 18N2 (MDNS Measure 13T2). She argued that porta-potties with regular servicing were sufficient. She thought porta-potties would have less environmental impact, because they use less water.
- She repeated her earlier objections, described above, to Staff Report Conditions 19, 20, and 21 (not MDNS measures).
- She said Staff Report Condition 22 mirrored the Applicant's operations, but the Applicant wanted to do tours on holidays because those dates are popular with the public.

Besides her objections to the Staff Report Conditions and the MDNS Measures, Ms. Hurst also objected to some of the new proposed conditions from Mr. Cricchio's Exhibit 130:

- She objected to Exhibit 130 Condition 7 on the grounds that the USDA does not prohibit people from entering enclosures or having physical contact with animals, so the County should not prohibit such conduct, either.
- She objected to Exhibit 130 Condition 8 on the grounds that the Applicant wanted to reserve the right to resume breeding under appropriate circumstances, an apparent reference to her earlier argument about breeding for species survival purposes. She did not object to a prohibition on selling animals.

Ms. Hurst recognized that some of the conditions she objected to, such as the ban on breeding or the ban on contact between the public and the wolf-dogs, might be aimed at turning the Applicant's facility into a wildlife sanctuary under RCW 16.30.010(5), which would help the Applicant meet the exception for potentially dangerous wild animals under RCW 16.30.020(1)(g). She argued, however, that the Applicant meets multiple exceptions already and so does not necessarily need the wildlife-sanctuary exception. Because the public tours were such an integral part of the Applicant's operation, she did not think they should be curtailed.

Ms. Hurst confirmed that the Applicant did not seek reversal of the MDNS but rather modification of some of its mitigation measures. She was not able to identify a source of law (other than the Skagit County Hearing Examiner Rules) for the proposition that the Hearing Examiner has the power to alter mitigation measures in an MDNS that has already been issued. *Argument of Haylee Hurst.*

77. Attorney Alison Caditz gave the Neighbor Group’s closing arguments. Ms. Caditz argued that the Applicant does not meet any of the exceptions in RCW 16.30.020 that would allow it to keep potentially dangerous wild animals. She focused first on the wildlife-sanctuary exception, which prohibits unnatural animal behavior, breeding, selling, and commercial activities including photography opportunities. Ms. Caditz cited the comments in Exhibit 131 by the ALDF, Born Free USA, and GFAS that the Applicant conducts every one of these disqualifying activities. Ms. Caditz argued that it is not a wolf-dog’s nature to want to physically interact with people, because Skagit County has defined a wolf-dog as a potentially dangerous wild animal as a matter of law. If they liked to be petted, they wouldn’t be defined by law as dangerous. She also argued that the Applicant does sell photographic opportunities, citing as an example the Applicant’s advertising materials in Exhibit 55, which say, “Our new photo area will allow us to pause for photos and rest with the wolves. . . . You will be able to touch, photograph and even howl with wolf dogs in this once-in-a-lifetime setting!”²⁹ Ms. Caditz rebutted Ms. Hurst’s argument that the Applicant’s tours were a non-commercial activity, because the statute disbars “the sale of photographic opportunities involving an animal” without distinguishing between non-profit sales and for-profit sales.

Ms. Caditz also argued that the presence of rescued animals at the Applicant’s facility did not entitle the Applicant to keep potentially dangerous non-rescued animals such as the wolf-dogs. Ms. Caditz argued that a facility with a single rescued animal could not then house as many other, non-rescued animals as it wanted, using the single rescued animal as a fig leaf. She read the statute as allowing a rescue organization to keep rescued animals that would otherwise be prohibited, but not to keep any other animals outside the framework of a rescue.

Ms. Caditz argued that the state-fair exception did not apply to the Applicant. The state-fair exception allows dangerous animals to be kept by “[a] person displaying animals at a fair approved by the Washington department of agriculture.” The Applicant is not currently displaying animals at a state fair; it has, at best, displayed them at a state fair in the past. As with the rescue organization exception, she argued that a small number of historic instances of state fair display do not entitle anyone to the right to possess dangerous animals for an indefinite period into the future, including during times when the animals are not at a state fair.

Ms. Caditz argued that the Applicant’s wolf-dogs are not “domesticated animals,” again because the County has specifically banned the possession of wolf-dog hybrids. In addition, the wolf-dogs’ history of escapes and killing of pets tended to undermine the notion that they were “domesticated.” Ms. Caditz pointed out that Ms. Carr herself does not allow her children to work with the wolf-dogs, citing Ms. Carr’s statement to that effect in Exhibit 77. For a statutory definition of “domesticated animal,” Ms. Caditz

²⁹ Exclamation mark in original.

cited SCC 7.06.001(3), which defines a *domestic animal* under the County code as “a dog or cat kept as a pet.” She also argued that if a wolf-dog is understood to be a domesticated animal exempt from the potentially dangerous wild animal regulations, then there would have been no point to the County listing the wolf-dog among potentially dangerous wild animals in the County code in the first place.

Ms. Caditz argued that the potentially dangerous wild animal prohibition was sufficient grounds to deny the SUP application. She also argued that the Applicant has failed to show that its facilities are safe. She cited the history of escapes, which she gave as follows:

- A cougar escape, documented in Exhibit 113.
- A bobcat escape and two fox escapes, documented in Exhibit 13.
- A 2010 wolf escape, in which two wolves got out, one of which entered a neighbor’s garage, documented in Exhibit 13 and Exhibit 19.
- A 2012 wolf escape, in which a wolf damaged the interior of a police car, documented in Exhibit 22 and Exhibit 36.
- A September 2017 wolf escape, in which two wolves broke free of their leashes and killed a hiker’s dog, documented in Exhibit 28 and Exhibit 44.
- An October 2017 wolf escape, in which a wolf jumped over one or two seven-foot-tall, electrified fences, documented in Exhibit 63³⁰ and Exhibit 115.
- An October 2021 wolf escape, in which three wolves dug under the fence of a day run and killed a dog in a neighbor’s yard, documented in witness testimony and numerous exhibits.

Ms. Caditz argued that the October 2021 escape particularly highlights the Applicant’s unsafe operations. First, the hole under the fence still has not been repaired, and it is large enough for a person to crawl through—this at a fence which the Applicant argues has been secured against digging. The Applicant failed to notify neighbors of the need to protect themselves during the incident. The Applicant failed to alert governmental authorities of the need to protect the public during the incident. The Applicant’s employee was not effective at swiftly recapturing the wolves. The Applicant refuses to man the facility at night and instead relies on untested security cameras. The Applicant’s employees other than Ms. Carr live even farther away from the facility than she does, which limits their effectiveness as responders.

Ms. Caditz argued that the Applicant has been dishonest with the County in its accounting of escapes and should not be trusted in its assertion that, this time, effective security measures are finally in place.

³⁰ Exhibit 63 says two eight-foot fences.

Ms. Caditz conceded that the Applicant's history of euthanizing its animals was not legal grounds to deny the SUP application. She did argue that the Applicant's animals would not need to be euthanized if the SUP application were denied, because the testimony from the ALDF, Humane Society International, and GFAS showed that the animals likely could be re-housed.

Ms. Caditz could not identify any authority for the Hearing Examiner to modify an MDNS once issued and did not believe the Hearing Examiner had such authority. She argued that the MDNS should be vacated because it was based on incomplete and untrue information. She cited the incomplete SEPA Checklist because the Applicant answered "no" or "NA" on 35 of the SEPA Checklist questions. She disputed Mr. Cricchio's belief that the County could, under SEPA, go back and make itself aware of the proposal's environmental impacts through evidence outside the SEPA Checklist, and thus, the incomplete SEPA Checklist was itself a basis to reverse the MDNS. She also cited numerous examples of false statements in the Applicant's SUP application and supporting materials, including "Predators does not breed animals, nor does it house wild animals" and "All of the animals housed are rescued or have been acquired from dire situations" and "POTH has been on this property without issue for over 20 years" and "there is no 'direct contact' between the public and a 'potentially dangerous' animal."

Ms. Caditz did not agree that Mr. Cricchio's outside sources of information, including his site visit, were sufficient to make up for the incomplete or untrue statements in the SEPA Checklist and the SUP application. As she pointed out, Mr. Cricchio did not see all the fences during his visit, and there is no site plan describing the fences in a systematic, detailed fashion. Even the Exhibit 142 site plan, produced during the hearing (long after the MDNS was issued), lacks information about the fences and cameras.

Ms. Caditz argued that the road easement was an issue that should have been addressed during SEPA review, although she also said the Hearing Examiner lacked jurisdiction over the interpretation of a private easement. She was also unable to cite authority for the proposition that the Hearing Examiner should reverse a MDNS for failure to provide for lawful road access across a private easement. In the end, Ms. Caditz thought of the potential violation of the easement as part and parcel of a larger failure by the County to consider relevant information about the proposal.

Ms. Caditz argued that the mitigation measures in the MDNS, even if they had been based on sufficient information (which she did not concede), were still not sufficient to mitigate the impacts of the Applicant's facility. The County had not sought the advice of any expert on what kind of fencing measures might be effective to contain the wolf-dogs. The County's fencing measures were confusingly described. There was insufficient information in the record to enable the Hearing Examiner to conclude that a safe facility would result if all the mitigated measures were implemented. Ms. Caditz noted that

bringing in experts as part of the accreditation process was not a measure imposed by the MDNS but rather proposed as a condition for the SUP—evidence that the MDNS had wrongfully been issued in the absence of such much-needed expert review. Ms. Caditz agreed that having experts review the fencing as part of an accreditation process would be a helpful safety measure, but as she pointed out, the Applicant itself was strenuously resistant to any such measure, and Ms. Carr had testified that she could not meet the accreditation standards. Ms. Caditz argued that accreditation should have been done on the “front end,” meaning as part of SEPA conditioning, not later on as part of the SUP. She also denied that USDA licensing was a meaningful mitigation measure. *Argument of Alison Caditz*.

78. Attorney Jason D’Avignon gave the closing argument for the County. Mr. D’Avignon argued that the standard of review is “clear and convincing,” meaning the Hearing Examiner must uphold the MDNS unless he is left with a “definite and firm conviction that a mistake has been committed.” He noted, too, that the Hearing Examiner was required to give “substantial weight” to the SEPA responsible official, Mr. Cricchio. He cited SCC 16.12.210(4) and RCW 43.21C.075(3)(b) and *Wild Fish Conservatory v. WDFW*, 198 Wn.2d 846, 873, 502 P.3d 359 (2022).

Mr. D’Avignon argued that most of the Neighbor Group’s argument was predicated on the notion that the SEPA Checklist was incomplete. He said such an argument places form over function. Citing *Wild Fish Conservatory*, he argued that, so long as the County bases its SEPA determination on information reasonably sufficient to evaluate a proposal’s impacts, it does not matter whether the information came from a SEPA Checklist or from other sources. In this case, Mr. Cricchio had not been ignorant of the proposal’s impacts, because he had received a large volume of comments and had made a site visit. Mr. Cricchio was clearly aware of the history of escapes and conditioned the MDNS accordingly—to the point where the Applicant was now arguing there was too much safety-related conditioning of the MDNS. So long as the truth eventually comes out, it is not important if there is incomplete or untrue information in the SEPA Checklist. The inquiry is whether Mr. Cricchio made a determination based on sufficient information, not whether the Applicant acted in good or bad faith.

Alone among the attorneys, Mr. D’Avignon identified authority for the Hearing Examiner to modify an MDNS: *Phillips 66 Co. v. Whatcom County*, which he cited as 21 Wn. App. 2d 1006 (2022),³¹ an unpublished case. According to Mr. D’Avignon, *Phillips 66* holds that, when a Hearing Examiner has an appeal of an MDNS, and is conducting an open-record hearing for a permit application, which the Hearing Examiner may condition, the Hearing Examiner is empowered to strike or add conditions to the MDNS consistent with the evidence in the record when reaching a final decision on the open-record case. Mr. D’Avignon argued that it would be possible for the Hearing Examiner

³¹ Case No. 82599-2-I, issued February 28, 2022.

to modify some of the MDNS conditions that the record revealed were unnecessary. He suggested that the motion-activated lighting condition could and should be modified, as well as the fencing conditions modified in line with Mr. Cricchio's testimony. He argued that GPS collars remained necessary, although he said the Hearing Examiner did have the authority to modify the GPS collars and other measures such as the arborist visits, if the Hearing Examiner saw fit to do so, based on the evidence in the record.

Despite his flexibility on some of the MDNS mitigation measures, Mr. D'Avignon still recommended denial of the SUP application. As he saw it, the County code definition of potentially dangerous wild animals controls the case, not the state law definition. Under the County code definition, wolf-hybrids are potentially dangerous wild animals. Mr. D'Avignon fully agreed with the Neighbor Group's analysis that the Applicant fails to meet any of the exceptions under RCW 16.30.020. Rescuing an animal of one species does not entitle an organization to do whatever it wants with some other species. Regardless of whether the Applicant rescued some other animals, the wolf-dogs were not rescued; they were bred by the Applicant.

Mr. D'Avignon acknowledged that, with sufficiently stringent conditions, the Hearing Examiner might, in theory, be able to transform the Applicant's facility into a wildlife sanctuary that meets RCW 16.30.010(5) (which, in turn, would meet an exception under RCW 16.30.020(1)(g) that would potentially allow dangerous wild animals to be kept). He said, however, that the purpose of this hearing is not a "brainstorming session" to come up with a new business model for the Applicant that would be allowable under the law. Instead, the Applicant is supposed to come with a proposal for what it wants to do, and that proposal either fits under the law or it doesn't. Mr. D'Avignon did believe Mr. Cricchio's proposed conditions, if implemented, might be able to drag the proposal under the umbrella of a wildlife sanctuary, while also avoiding public safety impacts, but such a significant amount of conditioning would be required to accomplish these changes that it would be better to deny the SUP application and perhaps start over with a fresher, cleaner idea of what is legally allowed and what the Applicant's operation will look like.

Argument of Jason D'Avignon.

79. Ms. Hurst had the final argument. She agreed with the County that the Hearing Examiner does have authority to modify the MDNS.

She cited 9 C.F.R. § 1.1 for the definition of a domestic animal, which she acknowledged was not a term defined in RCW 16.30.020(1)(k).

Ms. Hurst pointed out that, even under a narrow reading of the rescue exception at RCW 16.30.020(1)(c), the Applicant could accept a re-homed wolf-dog from someone else, so it made no sense to take away the wolf-dogs it already has. She also argued that, if the Applicant *did not* meet the rescue exception or some other exception, Fish and Wildlife

or some other agency would long ago have said something. She clarified, however, that she was not making any kind of lawful nonconforming use argument.

Ms. Hurst denied that the Applicant had been misleading in any of its materials submitted to the County. During Ms. Carr's tenure as executive director, there had only been a single escape, the October 2021 incident. No escapes had occurred from enclosures other than that, no humans had ever been harmed. So-called escapes under the previous director had occurred due to his bad practices, such as walking the wolf-dogs on leashes, which practices had ceased after he was fired—although USDA standards would have allowed walking on a leash. Ms. Hurst saw no evidence in the record to believe a child would actually be harmed even if a future escape were to occur.

Ms. Hurst argued that USDA standards in 9 C.F.R. § 3.127(D) are sufficient, and that the Applicant is willing to put up eight-foot fences if need be. She argued that there is no regulation or other source of authority for the additional fencing measures the County had come up with in the MDNS. *Argument of Haylee Hurst.*

CONCLUSIONS

Jurisdiction

An animal preserve in the rural reserve zone requires a Hearing Examiner special use permit. *SCC 14.06.320(4)(c)*. The Hearing Examiner has jurisdiction to hear and decide requests for a special use permit. *SCC 14.06.050(2)(b)(ii)*. The Hearing Examiner's review of an application for a special use permit shall follow the requirements for an open record hearing. *SCC 14.06.120(7)*. Under the requirements for an open record hearing, the Hearing Examiner may approve, deny, or approve with conditions or modifications, a special use permit application. *SCC 14.06.160(8)*.

The Hearing Examiner also has jurisdiction over administrative appeals of a SEPA threshold determination of nonsignificance. *SCC 16.12.210*; *SCC 14.06.110(7)*. The administrative appeal of a SEPA threshold determination of nonsignificance must be consolidated with the public hearing on the underlying application (here, the special use permit application) into a single, simultaneous hearing. *WAC 197-11-680(3)(a)(v)*.

The Hearing Examiner has authority to modify a mitigation measure set forth in a SEPA MDNS, so long as the administrative appeal of the MDNS is consolidated with an open-record hearing on an underlying permit application for which the Hearing Examiner has the authority to issue conditions of approval. *Phillips 66 Co. v. Whatcom County*, No. 82599-2-I (Wash. Ct. App. Feb. 28, 2022).³² In *Phillips 66*, the Whatcom County Hearing Examiner upheld an MDNS subject to certain revisions to the MDNS mitigation measures. The *Phillips 66* court held that, because the Hearing Examiner had authority under the Whatcom County code to impose conditions on the underlying permit application, he also had the incident authority to “strike or add conditions to

³² An unpublished opinion that the Hearing Examiner nonetheless finds persuasive. See GR 14.1.

the MDNS, consistent with the evidence in the record, when reaching the final decision on open record review.” For the same reason, the Hearing Examiner in this case is empowered under the Skagit County Code to strike or add conditions to the MDNS for the Applicant’s proposal.

Standard of Review

SEPA requires an agency considering a proposal to make a “threshold determination” of whether the proposal might “significant affect the quality of the environment.” *RCW 43.21C.030(2)(c); RCW 43.21C.033; WAC 197-11-310*. The agency must make its threshold determination based on information “reasonably sufficient to evaluate the environmental impacts of the proposal.” *WAC 197-11-100(2); WAC 197-11-335*. A SEPA Checklist is an important source of information for the agency’s investigation into a proposal’s impacts, but it is not the only possible source of information. *WAC 197-11-100(1)* (“An applicant *may* be required to complete the environmental checklist ... Additional information *may* be required at an applicant’s expense, but not until after initial agency review of the checklist...” (emphasis added); *WAC 197-11-100(2)* (“...additional information required by an agency after its initial review of the checklist...”); *WAC 197-11-315(1)* (“Agencies shall use the environmental checklist ... *to assist* in making threshold determinations for proposals...” (emphasis added).

An agency’s threshold determination may take the form of a mitigated determination of nonsignificance (MDNS), in which the agency imposes mitigation measures that would reduce the proposal’s impacts below the threshold level of significance. *WAC 197-11-350*. Any mitigation measures required by an MDNS must be “reasonable and capable of being accomplished.” *WAC 197-11-660(1)(c)*.

A threshold determination of nonsignificance that is “procured by misrepresentation or lack of material disclosure” must be withdrawn. *WAC 197-11-340(3)(a)(iii)*.

On appeal of a threshold determination to the Hearing Examiner, the Hearing Examiner shall uphold the threshold determination unless he determines that the threshold determination was “clearly erroneous.” *SCC 14.06.110(11); Anderson v. Pierce Cty.*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997). An MDNS is clearly erroneous if the record demonstrates that environmental factors were not considered in a manner sufficient to establish prima facie compliance with SEPA. *Id.* To reverse an MDNS, the Hearing Examiner must be left with a “definite and firm conviction that a mistake has been committed.” *PT Air Watchers v. Dep’t of Ecology*, 179 Wn.2d 919, 926, 319 P.3d 23 (2014). The Hearing Examiner must accord the MDNS “substantial weight.” *RCW 43.21C.090; SCC 16.12.210(4)*.

Conclusions Based on Findings

- 1. The Neighbor Group has not met its burden to show that the MDNS was procured by misrepresentation or lack of material disclosure.** The Neighbor Group points to numerous instances in the Applicant’s SEPA Checklist and SUP application and responses to comments in which the Applicant sought to downplay the history of escapes

from its facility or the provenance of its animals. The Hearing Examiner agrees that some of the Applicant's statements were obfuscating at best. Even during her testimony, for example, Ms. Carr struggled to provide a coherent account of escapes from the facility and frequently engaged in hair-splitting over whether a particular incident constituted an "escape" so long as the Applicant's animals were still on the Applicant's property—even as the animals were, on various occasions, jumping fences, breaking leashes, entering neighbors' properties, trashing a police car, and killing pet dogs. Similarly, the Applicant also struggled to provide a coherent account of the current state of its fences, relying on a poorly drawn and uninformative site plan (Exhibit 142) produced long after the issuance of the MDNS and the lengthy, disorganized oral testimony by Ms. Carr to describe the height and features of each fence. No one looking at the SEPA Checklist or the SUP application or even the late-breaking Exhibit 142 site plan could form an accurate understanding of the Applicant's measures to prevent future escapes, and that is entirely due to a lack of material disclosure on the part of the Applicant.

The Hearing Examiner will not go so far as to say that the Applicant made misrepresentations in its SEPA Checklist or SUP application or public responses. The Neighbor Group identified certain untrue statements in these materials, such as "All of the animals housed are rescued or have been acquired from dire situations." That is not a true statement, but the same materials go on to say, "As a point of emphasis: none of the wolves housed by POTH are rescues." The two statements are contradictory, and only one of the statements is true, but this does not appear to be a willful attempt by the Applicant to deceive the County or the public. If it had been the Applicant's intent to deceive, the Applicant would not have included the "point of emphasis," which clearly states that the wolves are *not* rescues. To the Hearing Examiner, the Applicant's materials appear more careless than mendacious. Even the Applicant's claim that there is no direct contact between the public and a "potentially dangerous animal" appears to be grounded in the Applicant's sincere, but erroneous, view that its wolf-dogs are not dangerous animals because state law does not define them as such. *RCW 16.30.010(2)(B)*. In a similar vein, the Hearing Examiner does not believe the Applicant was lying when it claimed in its application and SEPA materials that it does not engage in the breeding and sale of animals. The testimony of Ms. Carr shows that it no longer engages in either activity. It is true that the Applicant has bred and sold animals in the past, and it is evident that Ms. Carr hopes the Applicant may resume breeding in the future, but it is not false to say, as the application materials do, that no breeding is underway at present. Reading, as an integrated whole, the SEPA Checklist, the SUP application and attachments thereto, and the Applicant's response to comments, and acknowledging the contradictions and hair-splitting that the Applicant all too often fell into, the Hearing Examiner concludes that the Applicant did not willfully misrepresent what it does in its facility.

The Hearing Examiner agrees with the argument the County made in closing about this issue. The standard is not whether the Applicant acted in good faith in making material disclosures to the County but whether the MDNS was procured *on the basis* of any lack of material disclosure. The Hearing Examiner concludes that it was not. Thanks to the large volume of public comments, including especially those from the City of Anacortes and the Neighbor Group itself, the County was made aware of the history of escapes and other potential environmental issues. Thanks to the site visit, the County staff was able to inspect the deficient fences for themselves. A good-faith applicant would have presented all this information up front and in a systematic manner, but the County was, in the end, able to overcome the Applicant's non-disclosure of information. The MDNS was not *procured* on the basis of a lack of material disclosure, even though the Applicant *engaged* in material nondisclosure in some instances. *Findings 1–34; 43–75.*

2. **The Neighbor Group has not met its burden to show that the MDNS was not based on information reasonably sufficient to evaluate the impacts of the Applicant's proposal.** As described above, the County made itself aware of the most significant problems with the Applicant's operation: the history of escapes and the inadequate configuration of the Applicant's existing fences. Thanks to public comment, the County learned of the escapes' impacts to neighbors, the police, the public at large, and the recreational users of the Anacortes Community Forest Lands. The County not only knew of these impacts, it addressed them in the MDNS mitigation measures. Mitigation Measures 13B, 13D, 13F, 13H; the detailed fencing standards in Measures 13I through 13K; and Measures 13L through 13Q are all aimed, in various ways, at preventing escapes and ensuring that any escapes that do occur are rapidly and harmlessly contained. Many of these measures were suggested by and subsequently endorsed by the City of Anacortes and the Neighbor Group themselves. The County's safety mitigation measures are sufficient to persuade the Hearing Examiner that the County was aware of the history of escapes and the impact those escapes had on the environment, as well as the fact that the Applicant's existing fences are inadequate to prevent future escapes.

Through the same process of public comment and site visit that informed its escape mitigation measures, the County also learned of the proposal's other environmental impacts: animal noise, odor from waste food, the transportation of waste food onto neighboring properties, rodents, traffic and road access, connection to a public water source, and a stream and critical area buffer. Many of these issues are directly addressed in the MDNS mitigation measures: Mitigation Measures 10 and 12 and 13E for water and waste, Measure 11 for road access, Measures 13A and 13G for traffic, and Measure 13S for critical areas. The County determined that other issues, such as noise, were not environmentally significant during the County's site visit and did not require mitigation under SEPA. For the issue of rodent control, the Hearing Examiner is not persuaded by the evidence in the record that the Applicant's facility is the source of rats in the neighborhood. Although the timing of the rats' arrival is suggestive, the lay testimony

and public comments of neighbors are not sufficient to leave the Hearing Examiner with a definite and firm conviction that the rats came from the Applicant's property and that the County should have known about it.

The Hearing Examiner agrees with the Neighbor Group that issues pertaining to the possible overburdening of the easement for Welch Lane are outside the Hearing Examiner's jurisdiction. As for other issues related to traffic and road access, the County considered the evidence and issued mitigation measures where appropriate. The Hearing Examiner believes that, on no issue did the Neighbor Group or any other party or witness present substantive new information that the County overlooked when it made its MDNS decision and that might have led the County to issue a different threshold decision if the County had possessed the information earlier. In the Hearing Examiner's mind, the most significant new information to emerge following the issuance of the MDNS was the commentary in Exhibit 131 by the various animal welfare organizations. Although those comments emphasized the Applicant's poor qualifications to serve as a wildlife sanctuary, they did not present new information about the Applicant's environmental impacts. Similarly, while post-MDNS comments and testimony at the hearing highlighted the severe emotional impacts the Applicant's animal escapes have had on the community, the County was already aware of the history of escapes and imposed numerous mitigation measures aimed at preventing escapes from occurring again or mitigating escapes if they did occur.

The Hearing Examiner was wholly unimpressed by the evidence that the Applicant's animals may be full-blooded wolves instead of wolf-dogs: first, because that issue is irrelevant for purposes of the County code and, second, because no expert testimony, genetic testing, or any other persuasive evidence was adduced to convince the Hearing Examiner that members of an endangered species have been or will be euthanized at the Applicant's facility. The Hearing Examiner will not conclude, on the basis of a federal court case³³ involving different animals, different parties, different facilities, different legal issues, and evidence that does not appear in the record of this case, that the Applicant's animals are endangered species and that the Applicant might euthanize them in violation of the Endangered Species Act or in a manner that would require environmental review by the County.

Although new details about the Applicant's facility continued to emerge throughout the hearing, the Hearing Examiner does not, on the whole, have a definite and firm conviction that the County lacked sufficient information about the proposal to evaluate its environmental impacts at the time the County issued the MDNS. *Findings 1–34; 43–75.*

³³ *Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 591 F.Supp.3d 956 (W.D. Wash. 2022).

3. **The Neighbor Group has not met its burden to show that the MDNS mitigation measures are insufficient to mitigate the project’s impacts below the threshold of significance.** The Neighbor Group argued, particularly in its Notice of Appeal and Prehearing Brief, that the mitigation measures in the MDNS were insufficient to mitigate the proposal’s impacts below the threshold of significance. The Hearing Examiner disagrees. If anything, as the Hearing Examiner will explain below, some of the safety measures in the MDNS go unreasonably far in seeking to protect the public. The remaining safety measures appear reasonable and necessary. A new and more robust fencing scheme is clearly necessary, and the MDNS requires just that. More responsive staffing of the facility is clearly necessary, and the MDNS requires that, too. The Hearing Examiner did not hear any evidence, either pre-MDNS or post-MDNS, that caused him to think the County erred in not going farther than it did in mitigating the project against escapes or any other environmental impact. The Hearing Examiner does not share the Neighbor Group’s opinion that Mr. Cricchio, a land use generalist, lacks the knowledge and experience to impose fencing and other security measures that are reasonably likely to prevent or mitigate escapes. The fencing measures in the MDNS go substantially farther than the fencing measures required under 9 C.F.R. § 3.127(d), and the Hearing Examiner has not seen evidence to persuade him that the measures in the MDNS are not likely to succeed.

The road improvement and signage measures in the MDNS seem eminently reasonable to address the facility’s traffic impacts, which, at two tours per day, are not very great to begin with. The evidence in the record regarding water impacts—circumstantial and speculative as it was—does not persuade the Hearing Examiner that the Applicant has, in fact, polluted surface or groundwater at any point in the past. The Hearing Examiner agrees with the comments of the City of Anacortes that additional measures are necessary to protect the City’s public water supply from possible contamination by animals, and those additional measures have been incorporated into the MDNS. Regardless of any water impacts the Applicant may have caused in the past, the MDNS requirements to honor the existing critical area buffer, install a bathroom, install a backflow prevention device, and obtain a properly sized water connection, and properly dispose of solid waste, are likely sufficient to prevent significant water impacts in the future. The waste-disposal measures will also likely prevent ravens from transporting waste onto the neighbors’ properties.

The Neighbor Group argues that the facility’s non-compliance with the potentially dangerous wild animal regulations is a violation of state or county law, which in itself may be a significant adverse environmental impact. *See WAC 197-11-330(3)(e)* (“A proposal may to a significant degree ... [c]onflict with local, state, or federal laws or requirements for the protection of the environment.”) The Hearing Examiner agrees that the Applicant does not comply with the County code’s potentially dangerous wild animal regulations and will, for that reason, deny the SUP application in his companion decision.

However, the Hearing Examiner does not accept the argument that non-compliance with a regulation is, *per se*, proof of a significant, adverse environmental impact. WAC 197-11-330(3)(e) requires the responsible official to “consider” whether non-compliance may result in a significant, adverse environmental impact. It does not require the official to conclude that it will. Here, where the MDNS safety measures would, if implemented, significantly reduce the likelihood and likely severity of any escapes, the Hearing Examiner cannot conclude that non-compliance with the dangerous animal regulations would, *per se*, significantly, adversely affect the surrounding environment. A wolf-dog that never escapes or that is swiftly and harmlessly recaptured if it does escape is a wolf-dog that does not create a significant, adverse environmental impact, regardless of the illegality of keeping the wolf-dog in the first place. The Hearing Examiner affords substantial weight to the responsible official’s measures to prevent or otherwise mitigate escapes and finds that these measures are likely sufficient to mitigate the significant, adverse environmental impacts of keeping wolf-dogs, even though keeping wolf-dogs violates the County code. *Findings 1–79.*

4. The Applicant has met its burden to show that some, though not all, of the mitigation measures in the MDNS are unreasonable or incapable of being accomplished. In its closing argument, the Applicant walked through the MDNS mitigation measures in a systematic fashion and identified the measures it objects to on the grounds of unreasonableness or impossibility.³⁴ The Hearing Examiner will treat each objection in turn. For any measures not treated below, the Hearing Examiner is not left with a definite and firm conviction that a mistake has been committed:

- MDNS Measure 13A. The Hearing Examiner concludes that it is neither impossible nor unreasonable to post signs at the main gate and around the property informing the public that wild animals are present and informing the public of a phone number to reach the Applicant’s staff 24 hours a day. The Hearing Examiner acknowledges that such signs might make some members of the public more curious and more likely to trespass, but that potential harm must be weighed against the potential benefits. First, the signage in Measure 13A would likely prevent a repeat of the September 2017 incident, in which a member of the public inadvertently crossed from the ACFL onto the Applicant’s property. Second, if a wolf-dog were to escape and be spotted by a member of the public, the signs would inform the public what they were looking at and whom to call about it. Although there could, in theory, be other measures that would achieve the same benefits, the Hearing Examiner is not persuaded that Measure 13A is an unreasonable means of achieving the benefits. The Hearing Examiner will uphold Measure 13A in its entirety.

³⁴ The Applicant also objected to certain proposed conditions of approval in the Staff Report and in Mr. Cricchio’s Exhibit 130. The Hearing Examiner will not treat those objections in this decision on the SEPA appeal. Where necessary, such objections will be treated in the Hearing Examiner’s companion decision on the SUP application.

- MDNS Measure 13I. The Hearing Examiner concludes that the fencing plan proposed in the MDNS is unreasonable and impossible. It is unreasonable to put a double-fence around the entire property, because not all of the property is used to house animals. It may also be impossible to put double-fencing around the entire property, because there are geographic features such as rocky slopes that could require blasting or other environmentally destructive means to emplace a double-fence with the below-ground features called for in Measure 13J. During his testimony, Mr. Cricchio walked back the fencing measures and said it would be sufficient to have a double-layer fence (with anti-digging and anti-jumping measures and electrification) around the animal facility itself as opposed to the property as a whole. Day runs within this double-layer perimeter fence could be fenced with either a single-layer fence around the entire day run, or the day run could use the double-layer perimeter fence as part of the enclosure of the day run. By contrast, the Applicant suggested a single-layer perimeter fence around the facility itself, and day runs to have their own, separate, single-layer fences within this perimeter. The Hearing Examiner concludes that Mr. Cricchio's revised measure is reasonable, because it provides more security than the Applicant's proposed measure. Under Mr. Cricchio's revised measure, a wolf-dog that somehow got free of its day run would still be behind two layers of fencing, whereas under the Applicant's measure, it would be behind just one layer of fencing. Given these animals' well-attested ingenuity when it comes to escape, it is reasonable to impose the more secure measure. The Hearing Examiner will order the MDNS revised accordingly, as set forth below.
- MDNS Measure 13J. Mr. Cricchio agreed that he intended this measure to require six-sided enclosure of the wolf-dogs only at night. During the day, the wolf-dogs may use their four-sided day runs. The Hearing Examiner agrees that it would be unreasonable to keep the wolf-dogs locked away in small, six-sided enclosures 24 hours a day. They need access to the larger day runs, and it is not reasonable to create six-sided day runs owing to the size of the day runs. Although the October 2021 escape occurred from a four-sided day run, the Hearing Examiner is persuaded by Mr. Cricchio's testimony that four-sided day runs can be made secure in the future by means of the additional security measures set forth in the MDNS. The Hearing Examiner will order the MDNS revised accordingly, as set forth below.
- MDNS Measure 13L. Given the likelihood that one or more wolf-dogs would escape if a falling tree were ever to topple the fence or fences around a day run, the Hearing Examiner concludes that it is not unreasonable to require thrice-a-year inspections by an arborist rather than the twice-a-year inspections the Applicant currently performs. The Hearing Examiner is not left with a definite

and firm conviction that three inspections would be one too many. The Hearing Examiner will uphold Measure 13L in its entirety.

- MDNS Measure 13M. Relying on Mr. Cricchio’s testimony, the County agreed, in its closing, that the motion-activated lights called for in the MDNS could be replaced by motion-activated, night-vision-equipped cameras—which the Applicant has already installed. This change was justified by the harm the lights might cause to the animals’ sleeping habitat and the effectiveness of the cameras as a surveillance mechanism. The Hearing Examiner agrees that the motion-activated lights would be unreasonable in the face of the superior alternative of the cameras. The Hearing Examiner considers that the cameras satisfy Mitigation Measure 13N, so there is no need to include a separate measure for cameras. The Hearing Examiner will order the MDNS revised accordingly, as set forth below.
- MDNS Measure 13O. The Hearing Examiner is not satisfied with the Applicant’s assurances of a rapid response by off-site staff in the event of another escape. The only staff member identified in the record who lives within 10 minutes of the facility is Ms. Carr. If she is ever unavailable or unreachable for any reason, her absence would constitute a single point of failure, and that, the Hearing Examiner concludes, poses an unacceptable risk. The speed of the Applicant’s response cannot depend on Ms. Carr remaining in good health and within reach of a working cell phone and available to respond in the middle of the night on short notice. A more robust system is required. The events of the October 2021 escape reveal that, even during daylight hours, with staff already onsite, an escape is not an easy incident to resolve quickly or without harm to the community. The events of the September 2017 escape reveal that even an experienced animal handler may struggle to keep wolf-dogs under control when they are determined to attack. While it is true that there has never been a documented escape at night or from a six-sided enclosure, it is also true that the wolf-dogs keep finding new and unanticipated ways to escape. In light of the Applicant’s well-attested difficulties in regaining control over escaped wolf-dogs, the Hearing Examiner agrees with the County that someone must be present onsite 24 hours a day. The Hearing Examiner will uphold Measure 13O in its entirety.
- MDNS Measure 13P. The Hearing Examiner agrees with the County that there must be a way to track the Applicant’s potentially dangerous animals if they do escape. The evidence cited in the Neighbor Group’s closing persuades the Hearing Examiner that not only wolf-dogs but other dangerous animals may escape from time to time. Escapes have occurred repeatedly over many years and under many different circumstances, so it is certainly possible that new escapes will occur no matter how many additional safety measures are imposed. If a new escape does occur, there must not be a repeat of previous episodes, in which the

Applicant's staff struggled to locate and recapture escaped animals, leaving the neighbors and the police to improvise responses as best they could. The Hearing Examiner is persuaded that tracking collars are a measure that would assist the Applicant's staff in recapturing escaped animals more rapidly and with less damage and danger to the public and the police than has been the case during previous episodes. The Hearing Examiner does not agree with the Applicant that it would be unreasonable to require the dangerous animals to wear collars in their day runs. The collaring of animals is not an unusual practice, in general, even if the Applicant's specific animals are unused to collars. The Hearing Examiner hopes the Applicant's animals will prove more amenable to collaring than the Applicant fears, but regardless of how well or poorly the animals tolerate the collars, they must be collared because they have proven too adept at escape and the escapes have proven too difficult to manage. The Hearing Examiner will uphold Measure 13P in its entirety.

- MDNS Measure 13T2. The evidence in the record is thin as to why permanent restrooms are necessary as opposed to portable toilets. The County's senior plans examiner recommended this requirement in his comments in Exhibit 6, but he never explained whether restrooms were a code requirement or explained what environmental harms restrooms were aimed at mitigating. No party cited any legal requirement for restrooms nor explained what harms would be avoided by a restroom. The Hearing Examiner is left unclear whether Measure 13T2 was an attempt to implement 2018 International Building Code Chapter 29 (requiring restrooms for certain types of "building or space") or whether it was an attempt to implement some other code requirement or whether it was wholly divorced from any code requirement at all. The only testimony on the matter was Ms. Carr's testimony that a restroom would require the Applicant to use more water than it currently does with the porta-potties—an environmental harm, not a benefit. In the absence of any specific defense by the County of Measure 13T2 or any factual evidence in the record or legal citation that would tend to justify Measure 13T2, the Hearing Examiner must conclude that the requirement to install restrooms was not a reasonable mitigation measure under SEPA. The Hearing Examiner will order the MDNS modified accordingly, as set forth below. However, nothing in this decision should be construed as allowing the Applicant to forgo installing restrooms if they are required by some body of law other than SEPA.

For all remaining measures in the MDNS, the Hearing Examiner is not firmly convinced that the measures are either unreasonable or impossible to achieve. All other measures are upheld in their entirety.

DECISION

Based on the preceding findings and conclusions, the Neighbor Group's appeal of the November 1, 2022, MDNS is hereby **DENIED**. The Applicant's appeal of the MDNS is **DENIED IN PART AND GRANTED IN PART**. The MDNS is hereby **UPHELD**, subject to the following modifications to certain of the mitigation measures. Strikethrough text indicates original language that the Hearing Examiner now orders removed. Underlined text indicates new language that the Hearing Examiner now orders inserted.

1. Mitigation Measure 13I shall be modified as follows:

I. The applicant/landowner must comply with the following fencing standards:

- 1) The ~~entire~~ subject property for POTH must have primary perimeter fencing installed around the ~~entire subject property~~ portion of the property devoted to operations involving animals. At a minimum, the perimeter fencing and gates must consist of 9-gauge, 2" square, 8' chain link fencing with metal support poles set in concrete spaces no more than 6 feet apart.
- 2) The perimeter fence must be a minimum eight (8) feet in height (above grade), with at least two (2) feet at the bottom of the fence (more info & deviations discussed below).

Perimeter fencing must also include a two (2) foot tip out (to prevent animals from escaping) extension at the top of the fence at a 45-degree angle with an electric wire strung at the top of the fence on the inside of the enclosure.

The total height of perimeter fence above grade is ten (10) feet which includes the eight (8) foot tall fence plus the two (2) foot tip out.

- 3) A secondary perimeter fence is required that is at least five (5) or more feet inward from the primary perimeter fence. The secondary perimeter fence must also meet the same standards as the primary perimeter fence.
- 4) Below Grade Fencing: Both the primary and secondary perimeter fences and gates must have chain link fencing installed that adjoins the ground. For both primary and secondary perimeter fencing, concrete with reinforced mesh must extend two (2) feet vertically

into the ground and be attached to the base of the chain link to prevent animals from digging out.

If this requirement [below grade concrete with reinforced mesh] is impracticable, any deviation thereto that is either comparable or greater in its ability to prevent animals from escaping below the chain link fencing may be considered by Skagit County's Planning & Development Services Department.

- 5) All entrances and exits must have double gates and be at least eight (8) feet tall. Latches must be secure and lockable. Fencing must be attached to the inside of the gate so that the framework cannot be used as a ladder.
 - 6) As discussed above, perimeter fencing must be installed around the entire subject property portion of the property devoted to operations involving animals. No Variance is required for 8-foot fencing (above ground) with two (2) foot tip out (to prevent animals from escaping) on the respective property lines provided a Commercial Building Permit is first approved for it.
2. Mitigation Measure 13M shall be struck in its entirety.
 3. Mitigation Measure 13J shall be modified as follows:
 - J. All animal enclosures must be located inside of the secondary perimeter fence. Wolves, wolf hybrids, bobcats, cougars, and similar animals that are a threat to humans must ~~at all times~~ be housed at night in 6-sided fenced enclosures. All enclosures must contain a shelter from the elements and must provide adequate drainage to allow animals to find dry ground in wet conditions. Enclosures must contain enough vegetation and ground cover to provide the animal with shade, hiding places and grass to eat. However, no trees or bushes shall be located too close to the fence.
 4. Mitigation Measure 13T2 shall be struck in its entirety.

DECIDED this 2nd day of October 2023.



ALEX SIDLES
Hearing Examiner