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BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON F

In the matter of the Appeals of  
**Predators of the Heart; and Edward  
and Lynne Borlin, David and Pamela  
Knutsen, Nolan Berlin and Millicent  
Swietzer, and Kevin and Jenny Welch**  
  
of a SEPA Mitigated Determination of  
Nonsignificance

No. PL22-0133 (SUP), PL22-0583 (SEPA),  
& PL22-0577 (SEPA)

**NEIGHBOR PARTIES' RESPONSE TO  
PREDATORS' PREHEARING BRIEF**

1 The threshold issue before the Hearing Examiner is whether Predators’ Special Use  
2 Permit application (PL22-0133) satisfies all special use criteria under the County Code.<sup>1</sup> See  
3 SCC 14.16.900. Predators has not made (and cannot make) such a showing and, in fact, cannot  
4 satisfy *any* of the special use criteria. As an initial matter, allowing members of the public to  
5 interact directly with potentially dangerous wild animals (bred by Predators) violates the  
6 County Code. Rather than dispute the illegality of its operation, Predators argues that the rel-  
7 evant legal framework falls under Washington State and federal law, and that the Hearing  
8 Examiner “lacks jurisdiction” to resolve the issue. Predators cites no authority on that point  
9 because there is none. The potentially dangerous animal law at issue—including the portions  
10 of State law that it expressly incorporates—is County law. SCC 7.04.020. The Hearing Ex-  
11 aminer is authorized (in fact, required) to interpret County law, which plainly bars Predators’  
12 proposed use. SCC 14.16.900(1)(b)(v)(B).  
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24 Predators fails no better on the other special use criteria. Predators cannot establish  
25 that its proposed use—and the resulting impacts on safety, public services, noise, traffic, and  
26 privacy—is compatible with the existing use of the land (rural residences and community  
27 forestland that existed long before Predators moved to the County). SCC  
28 14.16.900(1)(b)(v)(A). Nor can Predators show that housing and exhibiting dozens of danger-  
29 ous wild animals does not adversely affect the public health, safety, welfare, and public ser-  
30 vices, or that it will not create undue noise or odor or intrusions on privacy. SCC  
31 14.16.900(1)(b)(v)(C)–(E). The evidence shows the opposite. Predators’ now-familiar assur-  
32 ances that its facility is safe this time (and that past escapes—or the subset it acknowledges—  
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43 <sup>1</sup> The Neighbor Parties’ opening brief was properly limited to the issue on appeal: whether the  
44 County’s issuance of the MDNS complies with SEPA. But because Predators’ opening brief exten-  
45 sively addresses the Special Use Permit application and requirements, the Neighbor Parties respond  
46 those arguments here.  
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1 were not Predators' fault in any event) ring hollow. The Hearing Examiner should deny the  
2 permit before another escape occurs and a child is injured or killed.  
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5 But even assuming Predators could satisfy the special use criteria, the Hearing Exam-  
6 iner must vacate the MDNS. The State Environmental Policy Act ("SEPA") required Preda-  
7 tors to submit a complete and accurate checklist and application. Predators failed to do so, and  
8 it has no meaningful response. If anything, Predators' Brief doubles down on the false state-  
9 ments in its application. For example, despite Predators' representation to the County in its  
10 application that there were zero, one, or two escapes, and regardless of substantial evidence  
11 of at least four escapes (just by wolves), Predators now claims there have only been two es-  
12 capes from its facility. Predators' deficient environmental checklist and application—on  
13 which the County relied in issuing the MDNS—violates SEPA and its implementing regula-  
14 tions, Ch. 197-11. Accordingly, if the Hearing Examiner does not deny the application, he  
15 should vacate the MDNS and remand to PDS so a new environmental checklist may be com-  
16 pleted, and a new threshold determination issued.  
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29 **I. Predators' is not entitled to a Special Use Permit.**  
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31 Predators cannot satisfy the criteria needed to secure a Special Use Permit. SCC  
32 14.16.900(1)(b)(v). The Hearing Examiner should therefore deny Predators' application.  
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35 **A. Applicants for a Special Use Permit must satisfy all enumerated**  
36 **criteria under the County Code.**  
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38 A Special Use Permit is required to deviate from a normally accepted land use in a  
39 particular area.<sup>2</sup> Here, Predators must secure a Special Use Permit to operate because its  
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45 <sup>2</sup> The "Special Use application process provides an opportunity to recognize and permit land uses not  
46 specifically allowed in certain zoning designations." *Available at* <https://skagitcounty.net/Departments/PlanningAndPermit/forms.htm>.  
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1 proposed use is not categorized as a permitted use under the County Code. SCC 14.16.320.  
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3 Predators, as the applicant, has the burden of satisfying enumerated criteria to secure a Special  
4 Use Permit. SCC 14.16.900(1)(b)(v). For example, Predators must establish that its proposed  
5 use:  
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- 8 1. Complies with the Skagit County Code.
- 9 2. Will be compatible with existing and planned land use.
- 10 3. Will not cause potential adverse effects on the general public health, safety, and  
11 welfare, is not in conflict with the health and safety of the community, and will not  
12 adversely affect public services to the surrounding areas.
- 13 4. Will not create undue noise, odor, heat, vibration, air, or water pollution impacts  
14 on surrounding, existing, or potential dwelling units.
- 15 5. Will not generate intrusions on privacy of surrounding uses.
- 16 6. Will maintain the character, landscape, and lifestyle of the rural area.

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27 *See* SCC 14.16.900(1)(b)(v)(A)–(E), (G)–(I). Predators cannot satisfy a single one of those  
28 requirements, let alone all of them. The Hearing Examiner should therefore adopt the  
29 County’s recommendation and deny Predators’ application. *See* Cty. Rep. & Rec. at 14–15.

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33 **B. Predators’ proposed use violates the Skagit County Code.**

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Predators’ application should be rejected at the outset for the simple reason that its  
proposed use—exhibiting a host of potentially dangerous wild animals, most of which were  
bred by Predators, that members of the public can touch and photograph—is unlawful. *See*  
SCC 14.16.900(1)(b)(v)(B) (“The proposed use complies with the Skagit County Code.”).

Both Washington and County law prohibit possessing, owning, or having custody or  
control of potentially dangerous wild animals, including captive-bred cougars, alligators,  
wolves, rattlesnakes, and non-human primates. RCW 16.30.030(1); SCC 7.04.030(1).

1 Although wolf-hybrids (or as Predators calls them, “wolfdogs”) are not identified as a poten-  
2 tially dangerous wild animals under Washington law, *they are expressly banned in Skagit*  
3 *County*. SCC 7.04.010(1)(b); *see also* Ex. 82 (2014 County Ordinance amending County Code  
4 to include wolf-hybrids because they “pose unique threats to human life due to their physical  
5 and temperamental characteristics,” and “have been the source of a number of attacks on peo-  
6 ple . . . that have resulted in severe injuries and several deaths”). Accordingly, is it irrelevant  
7 to these proceedings whether Predators’ animals are wolves or wolf-hybrids. *See* POTH Br.  
8 at 3 (“Importantly, POTH’s wolfdogs are not ‘wolves’.”).<sup>3</sup> Violating the County’s ban on pos-  
9 sessed potentially dangerous wild animals—including wolf-hybrids—“is detrimental to the  
10 public health, safety, and welfare and is declared to be a public nuisance,” exposing violators  
11 to \$2,000 per animal, per day. SCC 7.04.060(1)–(2).  
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23 Because Predators possesses cougars, wolf-hybrids, alligators, and other dangerous  
24 wild animals (*see, e.g.*, Ex. 2 at 20; Ex. 47; Ex. 48), its proposed use is illegal unless a specific  
25 statutory exception applies. *See* RCW 16.30.020; SCC 7.04.020 (incorporating RCW  
26 16.30.020). Predators halfheartedly argues that its proposed use meets three exceptions: (1) as  
27 a wildlife sanctuary, RCW 16.30.020(1)(g); (2) as a nonprofit animal protection organization,  
28 such as a humane society or shelter, housing an animal at the request of an animal control  
29 authority, RCW 16.30.020(1)(c); and (3) as a person displaying animals at a state-approved  
30 fair, RCW 16.30.020(1)(l). *See* POTH Br. at 11–12 (citing Ex. 7 at 1–4). Predators’ proposed  
31 use does not fall into any of those three exceptions. It therefore not only violates, but consti-  
32 tutes a public nuisance, under the County Code. *See* SCC 14.16.900(1)(b)(v)(B); SCC  
33 7.04.060(1).  
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45 <sup>3</sup> Nevertheless, it is worth noting that Predators has, when convenient, described these animals as  
46 wolves, wolf-hybrids, or even dogs. Evidence presented at the hearing will show that these animals  
47 may in fact be wolves.

1           **1. Predators is not a wildlife sanctuary.** Predators’ assertion that it is a “wildlife  
2 sanctuary” is frivolous. Under County law, a wildlife sanctuary is a nonprofit that has “custody  
3 or control” of a potentially dangerous wild animal and does not engage in *any* of the following:  
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- 5           • “activity that is not inherent to the animal’s nature, natural conduct;”  
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- 7           • “commercial activity involving an animal including . . . the sale of photographic op-  
8 portunities involving the animal;”  
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- 10          • “unescorted public visitations or direct contact between the public and an animal;” or  
11
- 12          • “breeding of animals.”  
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16 SCC 7.04.020 (incorporating RCW 16.30.010(5)(a)–(d) and RCW 16.30.020(1)(g)).  
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18           Predators indisputably engages in all four of those disqualifying activities. There can  
19 be no dispute that allowing humans to “touch, photograph, and even howl with wolf dogs” “is  
20 not inherent to the animal’s nature.” *See* Ex. 4 at 5–6; *see also* Ex. 45 (USDA citation for  
21 allowing “direct contact between the public and hybrid wolves”); Ex. 55 (Predators’ Airbnb  
22 ad describing the opportunity to take “photos and rest with wolves.”); POTH Br. at 4 n.8  
23 (“[P]articipants are permitted to interact directly with animals . . . and may take photos”); *see*  
24 *also* Ex. 16 (2015 sworn statement from County expert that “display[ing]” wolf-hybrids and  
25 cougars “in close proximity to humans . . . would not qualify as natural conduct”). And Pred-  
26 ators engages in both “the sale of photographic opportunities” *and* “direct contact between the  
27 public and” wolf-hybrids. RCW 16.30.010(5)(a)–(c); *see e.g.*, Ex. 59 at 5–6 (“Dave Coleburn  
28 proposed a money making idea of taking pictures of individuals with an animal . . . . [I]t was  
29 a great money making idea to create revenue for POTH.”). That is the whole point of Preda-  
30 tors’ \$200/person “Howling with Ambassadors” tours. Ex. 55.<sup>4</sup>  
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46 <sup>4</sup> Predators’ program may have been “approved by . . . the Airbnb Experience team,” but it appears  
47 that Predators provided Airbnb with false information to secure such approval. *See* Ex. 50

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Lastly, Predators admits to breeding wolf-hybrids—a practice that for years fueled its lucrative Airbnb tours and wolf-sale operation. RCW 16.30.010(5)(d); *see* POTH Br. at 3, n.6 (“POTH does not breed animals *for sale*” (emphasis added)); Ex. 58 (report reflecting thousands of dollars in “wolf” sales). Predators can call its tours “educational,” but the fact remains that it charges visitors \$200 to touch and photograph potentially dangerous wild animals—all of which were bred by Predators, and most of which were bred *after* the County amended the Code in 2014 to ban possession of wolf-hybrids. *See* Ex. 56 at 18, 26–27 (11 wolves bred after 2016). Predators is plainly not a “wildlife sanctuary” under SCC 7.04.020, and its contrary assertion only highlights its blatant disregard for County law.<sup>5</sup>

**2. Predators is not a humane society.** Predators cannot satisfy either prong RCW 16.30.020(1)(c), which covers (1) “[d]uly incorporated nonprofit animal protection organizations, such as humane societies and shelters,” which (2) “hous[e] an animal at the written request of the animal control authority or acting under the authority of this chapter[.]” First, Predators is not a humane society or animal shelter. Far from it. Again, Predators bred dozens of wolf-hybrids and seeks to allow members of the public to touch and photograph those same animals during paid tours. *See* Ex. 55 (“\$200 / person” tour includes the chance “to touch, photograph and even howl wolf dogs”); POTH Br. at 3 (“POTH does not intend to provide sanctuary for any outside wolves.”). Humane societies and animal shelters do not breed animals, nor do they allow visitors to touch and photograph their animals (dangerous or not) in

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(representing that there “is NO breeding of animals, or plans to breed animals” and “NO touching of wild animals during your Experience”).

<sup>5</sup> Predators claims that its wolf-hybrids were bred (and can be bred in the future) in furtherance of “conservation efforts.” POTH Br. at 3; *see id.* at 3 n.6 (“breeding may only occur for conversation purposes,” for example, “to maintain its own wolfdog population”). Even setting aside the illegality of breeding these animals in Skagit County, it is not evident what possible “conservation” efforts could be advanced by breeding animals that are neither threatened nor endangered.

1 exchange for money.<sup>6</sup> See Ex. 45 (USDA citation for allowing “direct contact between the  
2 public and hybrid wolves,” including “petting the hybrid wolves, and allowing the hybrid  
3 wolves to lick the faces of members of the public”—practices that do “not minimize the risk  
4 of harm to animals and/or the public”).  
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9 Second, and even if Predators could somehow establish it is a “humane society or  
10 shelter,” this exception applies *only* to the specific potentially dangerous wild animals housed  
11 at the written request of the animal control authority. RCW 16.30.020(1)(c) (referring to “an  
12 animal” housed at animal control’s request). Predators’ home-grown wolf-hybrids and cou-  
13 gars are therefore decidedly not covered. See, e.g., Ex. 2 at 12 (admitting in application that  
14 “[o]ur wolves are bred”); Ex. 56 at 18 (at least two of three cougars were bred, and none are  
15 housed at animal control’s request). Predators cannot illegally breed and possess cougars and  
16 wolf-hybrids and then claim to be a “rescue organization” simply because it has accepted other  
17 animals, like parakeets and lizards, from animal control authorities (which in all events were  
18 presumably unaware that Predators was operating without a permit, in violation of County  
19 law). See SCC 7.04.030(1); POTH Br. at 10; see also Cty. Rep. & Rec at 9 (“The County  
20 reads the exemptions contained in RCW 16.30.020(1) narrow such that they are limited to  
21 what is specifically stated in the exemption.”). In other words, that some of Predators’ many  
22 animals may come from animal control does not give it a free pass to violate the County  
23 Code.<sup>7</sup>  
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<sup>6</sup> The Association of Shelter Veterinarians maintains a publication titled “Guidelines for Standards of Care in Animal Shelters” to provide evidence-based support to those caring for animals in shelters and other population settings. Importantly, the Guidelines note that it “is unacceptable for organizations to allow shelter animals to breed.” Assoc. of Shelter Veterinarians, *The Guidelines for Standards of Care in Animal Shelters*, <https://jsmcah.org/index.php/jasv/article/view/42/19>, at 38.

<sup>7</sup> Predators claims that “[e]ighty percent of [its] current operations involve housing exotic animals and wildlife that have been confiscated by various government agencies[.]” POTH Br. at 2–3. But



1           **3. The “fair” exception is inapposite.** County law exempts a “person displaying  
2 animals at a fair approved by the Washington department of agriculture.” SCC 7.04.020; RCW  
3 16.30.020(1)(l). That exception is inapplicable on its face. It applies to a “person *displaying*  
4 animals at a fair,” in the present tense. RCW 16.30.020(1)(l) (emphasis added). The exception  
5 protects *only* an individual actively displaying an animal at such a fair—not generally to an  
6 entire operation, simply because an entity occasionally attended a fair with certain animals at  
7 some point in time. Such an interpretation would be absurd. *See City of Yakima v. Godoy*, 174  
8 Wn. App. 1071, *published with modifications* at 175 Wn. App. 233, 305 P.3d 1100 (2013)  
9 (“[We] cannot read a statute in a way that renders unlikely, absurd, or strained results.”). In  
10 any event, Predators acknowledges that it no longer attends fairs. Although Predators’ appli-  
11 cation asserted that it completes “at least one State fair yearly,” Ex. 2 at 12, Predators’ brief  
12 acknowledges that it attended fairs in “the past,” POTH Br. at 3; *see also* Ex. 56 (December  
13 2022 interrogatory response indicating that Predators last attended a fair in 2021). Predators’  
14 claim to satisfy the fair exception is baseless.

15           In sum, Predators’ operation disqualifies it from every exception under County law.  
16 *See* Cty. Rep. & Rec at 8 (“the Department does not believe the current operation meets the  
17 exemption criteria specified within SCC 7.04.020”). Predators’ proposed use is illegal under  
18 the County Code and thus ineligible for a Special Use Permit.<sup>8</sup>

19           **Predators’ contrary arguments are meritless.** Attempting to evade the plain lan-  
20 guage of the County Code, Predators strangely claims—without any supporting authority—

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22 Predators’ December 2022 sworn interrogatory responses indicate that only 35 percent of its animals  
23 came from “Authorities.” *See* Ex. 56 at 18–20. Again, Predators plays fast and loose with the facts.

24 <sup>8</sup> None of the other enumerated exceptions apply (and Predators does not argue otherwise). For in-  
25 stance, Predators is not a research facility under the Animal Welfare Act, nor is it a Circus, veterinary  
26 clinic, or hospital. *See* RCW 16.30.020(1)(a), (d)–(f), (h), (i)–(k), (m).

1 that “the County’s interpretation of state law is irrelevant” and “the County lacks jurisdiction  
2 to determine that POTH does not meet the state law exemptions.” POTH Br. at 10–11; *see*  
3 *also id.* at 10 (arguing its tours “are not a local land use matter” and are regulated by federal  
4 law); *id.* (“breeding wolfdogs is not prohibited under *state or federal law*” (emphasis added)).  
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8 At issue here is *the County’s interpretation of County law*. Skagit County bans wolf-  
9 hybrids unless an exception applies; the exceptions enumerated under State law are expressly  
10 incorporated into the County Code. SCC 7.04.020. The Hearing Examiner, moreover, is em-  
11 powered to “interpret, review and implement regulations as provided” in the Code, including  
12 the exceptions at issue here. SCC 14.02.070(1); *see also* RCW 36.70.970 (authorizing Hearing  
13 Examiner to hear “applications for or pertaining to development of land or land use”).<sup>9</sup> Pred-  
14 ators’ position that it need not comply with County law (or that the County and Hearing Ex-  
15 aminer cannot interpret and apply the law—County or State) is frivolous. It is also unfortu-  
16 nately consistent with Predators’ history of disregarding the law for over two decades.  
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20 Predators further argues that it qualifies as an “animal preserve” regardless of whether  
21 it allows direct contact with dangerous wild animals. *See* POTH Br. at 9; Cty. Rep. & Rec. at  
22 8 (concluding that an “animal preserve” encompasses “public viewing of wild animals,” not  
23 direct contact). That is a red herring. Although the County’s analysis on this issue is sound—  
24 it is consistent with the position of both the USDA and the sanctuaries that will comment at  
25 the hearing—the Hearing Examiner need not reach the question. Even if Predators could  
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<sup>9</sup> To the extent Predators is suggesting that the Animal Welfare Act preempts state and local law, that premise is incorrect. The Animal Welfare Act allows states and local jurisdictions to enact laws pertaining to animals covered by the Act. 7 U.S.C. § 2145(b) (“The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter and of any State, local, or municipal legislation or ordinance on the same subject.”). And courts have expressly held that the Animal Welfare Act does not preempt state or local law. *See, e.g., DeHart v. Town of Austin Ind.*, 29 F.3d 718, 722 (7th Cir. 1994) (holding that a city ordinance making it unlawful to keep certain wild animals is not preempted by the Animal Welfare Act).

1 qualify as an “animal preserve,” it cannot, as discussed above, satisfy any exception to the  
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3 County’s ban on possessing potentially dangerous animals.

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5 Predators also tries to evade the ban on potentially dangerous wild animals by arguing  
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7 that the “Hearing Examiner may . . . grant [its] SUP if he concludes that [the] proposed uses  
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9 are substantially similar to other allowable uses in the rural reserve district which include,  
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11 inter alia, animal preserves, animal clinics, kennels, and stables.” POTH Br. at 7. That is an  
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13 incorrect statement of the law. Although the Rural Reserve designation allows for certain  
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15 Hearing Examiner special uses—including “campgrounds, kennels, [and] animal clinics,”  
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17 SCC 14.16.320(4)—and the Hearing Examiner may permit substantially similar uses, the pro-  
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19 posed use must still satisfy the special use requirements under SCC 14.16.900. As set forth  
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21 above, Predators cannot meet those criteria. That dooms its application.

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23 Lastly, Predators suggests it need not comply with County law because it has a Class  
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25 C Exhibitor USDA License. POTH Br. at 3, 11. That Predators’ Class C License may satisfy  
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27 the Animal Welfare Act, but it has no bearing on Predators’ compliance with the County Code,  
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29 which, as the County points out, does not list a USDA License as an exception to the ban on  
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31 possessing potentially dangerous wild animals. Cty. Rep. & Rec at 9.<sup>10</sup>

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35 Because Predators is in possession of numerous potentially dangerous animals and  
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37 cannot satisfy any exception under the County Code, its proposed use is unlawful. That alone  
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39 requires denying Predators’ Special Use Permit application. SCC 14.16.900(1)(b)(v)(B).  
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46 <sup>10</sup> In any event, it is unclear that Predators is even in compliance with USDA requirements. *See* Ex. 45  
47 (citation by USDA for allowing direct contact between members of the public and its animals).

1           **C. The proposal is incompatible with existing and planned land uses.**  
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3           Nor can Predators establish that its proposed use is compatible with existing and  
4 planned land uses. SCC 14.16.900(1)(b)(v)(A). The applicable zoning designation for Preda-  
5 tors’ proposed project is Rural Reserve, which “allow[s] low-density development and . . .  
6 preserve[s] the open space character of those areas not designated as resource lands or as urban  
7 growth areas.” SCC 14.16.320. Rural Reserve land encompasses “transitional areas between  
8 resource lands and nonresource lands . . . and provide[s] *residential and limited employment*  
9 *and service opportunities for rural residents.*” *Id.* (emphasis added). The Skagit County Com-  
10 prehensive Plan provides that land within this category “may be developed at one residence  
11 per 10 acres,” and that “greater limitations [should] be placed upon [commercial] uses within  
12 areas devoted predominantly to residential use (i.e., . . . Rural Reserve areas).”<sup>11</sup>  
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23           As discussed below, and as the evidence at the hearing will show, Predators’ opera-  
24 tion—and resulting safety threats, unreasonable noise and traffic, among other issues—is not  
25 compatible with the residential use of the land (which, notably, was in place *before* Predators  
26 moved to the neighborhood) or with the recreational use of the Anacortes City Forest Land  
27 (“ACFL”) (which Predators simply ignores).  
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33           Seemingly recognizing that its operation was incompatible with land uses in the past,  
34 Predators asserts that “the potential for [escapes] can and has been mitigated” and it “has made  
35 significant upgrades[.]” POTH Br. at 5, 8. In short, Predators asks the Hearing Examiner to  
36 take its word that the facility is now safe. The Hearing Examiner should decline the invitation.  
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<sup>11</sup> The current version of the Skagit County Comprehensive Plan is available at [https://www.skagitcounty.net/Departments/PlanningAndPermit/comp\\_toc.htm](https://www.skagitcounty.net/Departments/PlanningAndPermit/comp_toc.htm). Skagit County Comprehensive Plan 2016-2036 at 64, 85.

1 made nearly identical assurances after past escapes from its facility. For example, Predators  
2 wrote after a 2017 escape (which Predators now denies even occurred) that “one adolescent  
3 female [wolf] took an opportunity to jump over two 8’ fences and hotwire . . . [and] briefly  
4 strayed across our property line onto his land. . . . She was secured within 18 hours. . . . [We]  
5 responded immediately to prevent a future event. Fences are being fitted with high angled  
6 hearing, electric fencing upgraded, and interior dens and decor have all been reset away from  
7 the fence to prevent jumping. [Predators] is USDA-licensed and compliant with all laws and  
8 inspections regarding safety and animal welfare.” Ex. 63; *see also* POTH Br. at 5 n.11 (claim-  
9 ing there was no escape in 2017; “a wolfdog escaped her enclosure but never left the prop-  
10 erty”). Predators’ 2017 statement mirrors those in its 2023 Brief, and there is no reason to  
11 believe that anything has changed this time. To the contrary, evidence of Predators’ falsifica-  
12 tions and failure to take accountability compel the opposite conclusion.<sup>12</sup>  
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25 **D. Predators’ operation creates adverse effects on public health,**  
26 **safety, welfare, and services.**  
27

28 Predators continues to disregard and misrepresent the real impact and harm the numer-  
29 ous escapes from its facility have had on residents and on City and County resources (includ-  
30 ing the ACFL). *See* SCC 14.16.900(1)(b)(v)(E), (G)–(H). For example, POTH misstates that  
31 its “animals are domesticated wolfdogs”—no different than “a Bernese Mountain dog” or “a  
32 Jack Russell Terrier”—and that its “current population of 15 wolfdogs were specially selected  
33 for their temperament[.]” POTH Br. at 13; Ex. 7 at 9.  
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42 <sup>12</sup> Predators also cites *Victoria Tower P’ship v. City of Seattle*, 59 Wn. App. 592, 602-03, 800 P.2d  
43 380 (1990)) for the proposition that the “County is precluded from opposing the application on the  
44 basis of potential impacts that it addressed in the MDNS.” POTH Br. at 9. *Victoria* says no such thing.  
45 That case affirmed the Seattle City Council’s decision to restrict the height of a proposed apartment  
46 building tower; it says nothing about a local authority’s ability to deny a permit based on MDNS  
47 mitigation measures.

1 As discussed above, wolf hybrids are potentially dangerous wild animals under County  
2 law. And for good reason. The evidence paints of picture wild animals that pose a potentially  
3 lethal threat to both humans (and, in particular, children) and their pets. Predators’ meeting  
4 minutes describe certain “wolfdogs . . . that would be considered dangerous to the public  
5 and/or employees” and should likely be euthanized, including a wolfdog named Lexi. Ex. 59  
6 at 15. Lexi is one of Predators’ 15 hybrids. Ex. 56 at 28. Predators’ wolf-hybrids have twice  
7 killed pet dogs after either breaking free from their handler or escaping the facility. Exs. 62 &  
8 69. In one of those instances, a family in their own yard watched three wolves kill their pet  
9 dog, forcing closure of the entire ACFL. Ex. 6 at 3–4; Ex. 62; Ex. 75; Ex. 78; Ex. 79.  
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18 And Ms. Carr said in a moment of candor on social media that kids cannot visit the  
19 facility because “**wolves know when kids are kids and they act on that.**” Ex. 77 at 5:56.  
20 She continued, “**even my kids don’t work [with the wolves] and they are eight and five.**”  
21 *Id.* By Ms. Carr’s own admission, these animals are plainly not “domesticated” dogs, and  
22 neighbors justifiably live in fear of the attack, the next of which could result in the death of a  
23 child. *See* Neighbors Br. at 7–10, 13–14, 18–19; Cty. Rep. & Rec at 11. Predators’ self-serving  
24 and unsupported contrary assurances in these proceedings cannot establish that its proposed  
25 use does not adversely impact the public health, safety, welfare, and services.  
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35 **E. Predators’ proposal creates noise, odor, and pollution impacts.**

36 Nor can Predators establish that its proposed use does not create noise, odor, or pollu-  
37 tion impacts. SCC 14.16.900(1)(b)(v)(C). As an initial matter, Predators misunderstands its  
38 burden of proof when it notes “the County only speculates that the proposed use ‘could’ create  
39 undue noise, odor, and water pollution impacts.” POTH Br. at 12. It is Predators’ burden to  
40 establish the special use criteria, not the County’s burden to disprove that they have been met.  
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1 Predators also bizarrely reasserts that it “has not received a single noise or odor com-  
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3 plaint from neighbors,” and that the “only complaint Ms. Carr has ever received from a neigh-  
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5 bor during her tenure”—apparently on *any* issue—“was that people looking for POTH were  
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7 turning around in a neighbor’s driveway.” POTH Br. at 6, 12; Ex. 2 at 15 (representing that  
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9 Predators has “never had a complaint about . . . noise”). In addition to unofficial complaints,  
10  
11 the County sued Predators in 2015 for violating Washington and Skagit County law and, in  
12  
13 doing so, relied heavily on neighbor complaints about both noise and odor. *See* Ex. 5 at 42–  
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15 49 (complaint for injunctive relief, to abate a nuisance, and to impose a civil penalty). One  
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17 neighbor complained, for example, that “during the summers there has been awful stench-  
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19 like that caused by a dead animal carcass that comes from the [Predators’] property.” Ex. 17  
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21 at 3; *see also, e.g.*, Ex. 18 at 3 (“I have found pieces of meat in my yard multiple times going  
22  
23 back many years. . . . These are usually dropped from the beaks of ravens that are flying over  
24  
25 from [Predators’] property.”); Ex. 19 at 3 (The “wolves howl and their pups yip. The cougars  
26  
27 screech. I also began to hear the animals fighting. . . . My wife and I have resorted to using  
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29 ear plugs at night to be able to sleep[.]”). As to complaints received by Ms. Carr, Predators’  
30  
31 disregards, among other formal and informal complaints, a pending nuisance lawsuit filed by  
32  
33 neighbors against Predators and Ms. Carr concerning safety, noise, and other issues.

34  
35 Relatedly, Predators’ assertion that it “has operated undisturbed on the Property since  
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37 2001” could not be further from the truth. POTH Br. at 6. Testimony at the hearing will make  
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39 clear that issues arose immediately after Predators moved to the neighborhood. The evidence  
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41 will also show that the County never represented that Predators could somehow bypass the  
42  
43 permit process because the tours are, in Predators’ view, “not open to the general public.” *See*  
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45 POTH Br. at 6; Ex. 27 at 3 (“Despite being directed by County Planning staff to do so, De-  
46  
47 fendants have failed to obtain a Hearing Examiner Special Use Permit for the maintenance

1 and operation of an Animal Preserve at the Property.”); Ex. 36 at 6 (“I [Dave Coleburn]  
2 couldn’t keep up with the lawsuit and get all the questions answered, so when it came down  
3 that our [2015] permit [application] was going to be denied for incompleteness, I got really  
4 frustrated that we weren’t going to get a fair hearing and I just asked for a refund.”).  
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9 **F. Predators’ proposal impacts the privacy of the surrounding uses.**  
10

11 Predators also fails to establish that its proposed project will not impact the privacy of  
12 surrounding uses. SCC 14.16.900(1)(b)(v)(D). Although Predators suggests that howling  
13 wolves pose the only potential privacy invasion, POTH Br. at 13, the evidence will show  
14 various other privacy impacts, including trespassing and unreasonable level of traffic stem-  
15 ming from Predators’ commercial use of a residential road. *See* Neighbors Br. at 9–8, 11–12.  
16 Predators’ tours ran six days a week, twice a day, and brought a consistent stream of commer-  
17 cial traffic onto the single-lane gravel road that provides access to Predators’ property and  
18 other nearby residences. *See, e.g.*, Ex. 4 at 9; Ex. 51; Ex. 64. Tour guests consistently get lost  
19 and wander onto private property, by vehicle or foot. Ex. 14 at 4; Ex. 5 at 103–04; Ex. 54.  
20 Predators’ response—that it “is disingenuous to claim that [Predators] is situated in a ‘resi-  
21 dential neighborhood’,” POTH Br. at 13—ignores the reality that it moved to a property bor-  
22 dered by family residences and community forestland.  
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35 Predators also fails to establish appropriate access to its property. The extent of com-  
36 mercial traffic stemming from Predators’ operation violates the established variance for  
37 Welch Lane granted by the County in 1994. *See* Ex. 10 at 12 (“[O]nce the short plat associated  
38 with this parcel is approved, there can be no further subdivisions utilizing Welch Lane.”). The  
39 Johnson short plat, which established Predators’ property, does not address the conditions  
40 present in the 1994 variance. *See* Ex. 11.  
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1           **G. Predators’ operations are inconsistent with the area’s rural character.**

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3           Lastly, Predators cannot show that its proposed use is consistent with the area’s rural  
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5 character. SCC 14.16.900(1)(b)(v)(I). Predators asserts that its “goal is to maintain its Prop-  
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7 erty in as close to a natural state as possible for the benefit of the animals, and its facilities  
8  
9 maintain the open space, natural and forested character of the Property better than other con-  
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11 ceivable uses permitted in the district.” POTH Br. at 14. But the “rural character” of the area  
12  
13 is not uninhabited forest land. It is low-density rural and residential living that was in existence  
14  
15 long before Predators began operating. The safety, noise, and other issues created by Preda-  
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17 tors’ operation are inconsistent with that rural residential living, as are the fences, lights, and  
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19 cameras needed to properly secure Predators’ facility.

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21           **H. The proposed Special Use Permit conditions are appropriate.**

22           The Hearing Examiner may impose “[r]easonably calculated conditions to protect ad-  
23  
24 jacent land and to achieve legitimate zoning goals[.]” *Schlotfeldt v. Benton Cnty.*, 172 Wn.  
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26 App. 888, 896, 292 P.3d 807, 811 (2013). The Washington Supreme Court has explained that  
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28 “legitimate concerns in zoning decisions are to ‘stabilize the value of property, promote per-  
29  
30 manency of home surroundings, and add to the happiness and comfort of the citizens.’” *Id.*

31           The County’s Staff Report includes several conditions if the Hearing Examiner were  
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33 to approve Predators’ Special Use Permit application. *See* Cty. Rep. & Rec. at 15–23. Preda-  
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35 tors disputes the requirement that it secure and maintain membership with an independent  
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37 oversight organization because Predators “is subject to the oversight by the USDA” and  
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39 “[t]here is no discernable land use benefit” associated with the condition. POTH Br. at 14–15.  
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41 Notably, Predators has been USDA certified *every time* an animal has escaped from its facility.  
42  
43 *See* Ex. 2 at 19 (“POTH has been USDA certified, inspected, and insured for over 20 years.”).  
44  
45 Its USDA license is obviously insufficient to protect the community. A separate accreditation  
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1 and oversight organization would have the land use benefit of protecting the public—both  
2 residents and visitors to the ACFL. *See Schlotfeldt*, 172 Wn. App. at 896 (describing “legiti-  
3 mate concerns in zoning decisions” including those that relate to the “happiness and comfort  
4 of the citizen”). Predators also repeatedly compares itself to Woodland Park Zoo, so should  
5 have no issue satisfying the same requirements as that facility.<sup>13</sup>  
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10 Furthermore, the liability insurance requirement and financial assurances conditions  
11 are necessary to ensure that the County and the public are not left holding the bag if Predators’  
12 operation fails or if a person or another pet is injured or killed.  
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17 **II. The MDNS should be vacated as procedurally deficient under SEPA.**

18 If the Hearing Examiner does not deny Predators’ application, it should at a mini-  
19 mum vacate and remand the application for failure to comply with SEPA.  
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21

22  
23 **A. Predators failed to submit a complete and accurate checklist.**

24 As discussed in the Neighbor Parties’ Brief, Predators provided incomplete and inac-  
25 curate disclosures in its environmental checklist in violation of SEPA. *See Neighbors Br.* at  
26 3–15; *Spokane Cty. v. Eastern Wash. Growth Mgmt. Hrgs. Bd.*, 176 Wn. App. 555, 578–79,  
27 309 P.3d 673 (2013) (PDS must use the “environmental checklist to assist its analysis”). For  
28 example, Predators’ checklist failed to disclose effects on public services and traffic impacts.  
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34 Predators does not (because it cannot) dispute that its environmental checklist was  
35 incomplete. Instead, Predators argues that PDS was “well informed” because Predators “has  
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41 <sup>13</sup> As it stands, Predators’ analogies to the Woodland Park Zoo are misplaced. *See POTH Br.* at 13–  
42 14. Woodland Park Zoo (unlike Predators) is accredited both by the Association of Zoos & Aquariums  
43 and certified by the rigorous American Humane Conservation Program. *See Assoc. of Zoos & Aquar-*  
44 *iums, Currently Accredited Zoos and Aquariums*, [https://www.aza.org/find-a-zoo-or-aquarium?lo-](https://www.aza.org/find-a-zoo-or-aquarium?locale=en#W)  
45 [cale=en#W](https://www.aza.org/find-a-zoo-or-aquarium?locale=en#W) (listing Woodland Park Zoo as accredited through September 2025); Am. Humane Con-  
46 [servation Program, Certified Parks](https://www.aza.org/find-a-zoo-or-aquarium?locale=en#W), [https://www.aza.org/find-a-zoo-or-aquarium?lo-](https://www.aza.org/find-a-zoo-or-aquarium?locale=en#W)  
47 [cale=en#W](https://www.aza.org/find-a-zoo-or-aquarium?locale=en#W) (listing Woodland Park Zoo).

1 operated at the Property since 2011” and information was “capable of being raised in public  
2 comment.” POTH Br. at 16. Whether PDS and others could independently have discovered  
3 key information is irrelevant under SEPA. The question, rather, is whether the *applicant* pro-  
4 vided complete and truthful information in response to the questions in the environmental  
5 checklist. *See Anderson v. Pierce Cty.*, 86 Wn. App. 290, 301, 936 P.2d 434 (1997) (“The  
6 responsible official must . . . thoroughly consider a proposal’s potential environmental signif-  
7 icance *as documented in the environmental checklist.*” (emphasis added)); WAC 197-11-960  
8 (“The purpose of the checklist is to provide information to help you and the agency identify  
9 impacts you’re your preproposal . . . and to help the agency decide whether an EIS is re-  
10 quired). SEPA does not allow applicants to submit deficient environmental checklists and then  
11 claim that the County and public commenters were responsible for filling in the gaps, and  
12 Predators offers no authority that even suggest otherwise. Predators’ inadequate environmen-  
13 tal checklist must be vacated.  
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26 As to the false statements in Predators’ application on which PDS relied (*see Neigh-*  
27 *neighbors’ Br.* at 7–12), Predators frames them as “perceived in-consistencies” but does not actually  
28 rebut the Neighbor Parties’ arguments. POTH Br. at 16. Those misrepresentations also war-  
29 rant vacating the MDNS.  
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35 **B. The County’s mitigation measures related to fencing, staffing, and**  
36 **housing are reasonable.**  
37

38 Predators challenges the County’s mitigation measures related to fencing, 6-sided en-  
39 closures, motion-detected lights, 24-houring staffing, and GPS tracking collars as unreasona-  
40 ble. POTH Br. at 17–20; Cty. Rep. & Rec. at 19–22. None of Predators’ arguments justify  
41 rejecting the County’s proposed conditions, which are “related to specific, adverse  
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1 environmental impacts clearly identified in an environmental document,” and are “reasonable  
2 and capable of being accomplished.” WAC 197-11-660(1)(b)–(c).  
3

4  
5 1. Predators argues that the mitigation measures have “no discernable benefit to safety  
6 over the measures POTH has already put in place or over the USDA standards.” POTH Br. at  
7 18. Again, Predators asks the Hearing Examiner to suspend his disbelief and trust that—this  
8 time, and despite past reassurances—the facility is finally safe. *See* Ex. 63 (making nearly  
9 identical assertions following 2017 escape). And, again, Predators points to its USDA certifi-  
10 cation. POTH Br. at 18. As noted above, Predators “has been USDA certified, inspected, and  
11 insured for over 20 years”—i.e., every time there has been an escape from its facility. Ex. 2  
12 at 19. Neither Predators’ USDA certification nor its claims to have improved its structures are  
13 adequate (they never have been), and the County was justified in imposing various safety  
14 conditions to prevent a potentially lethal future escape. *See* Ct. Rep. & Rec. at 12–13 (“[T]here  
15 have been several documented escapes of wolves &/or hybrids from the facility . . . . If this  
16 happened again, a child or adult could be the next victim.”).  
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29 Requiring 24-staffing, for example, is more than reasonable. Testimony regarding the  
30 October 2021 escape will show that community members went to Predators’ facility in search  
31 of help, to no avail, and were only able to speak with Ms. Carr (who was not even on the  
32 property) after two different people made a total of three phone calls. The escapes represent a  
33 “specific, proven significant environmental impact” that directly flows from Predators’ pro-  
34 posed project. *Nagatani Bros. v. Skagit Cty. Bd. of Comm’rs*, 108 Wn.2d 477, 482, 739 P.2d  
35 696 (1987); *see* WAC 197-11-660(1)(b).<sup>14</sup>  
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43 <sup>14</sup> Predators’ continued lack of candor only underscores the need for the County’s mitigation measures.  
44 Predators’ Brief claims, for instance, that “there have been a total of two incidents” of wolf-hybrids  
45 escaping. POTH Br. at 5. That is inconsistent with both Predators’ application—which represents that  
46 in “23 years [we] had only one escape,” Ex. 2 at 3, *and* that “[t]here have simply been no escapes,”  
47 Ex. 7 at 5,7—as well as the evidence of at least four wolf escapes. *See* Neighbors’ Br. at 14; Cty. Rep.

1           2. Predators also maintains that the County’s fencing conditions are “cost prohibitive.”  
2  
3 POTH Br. at 18. But Predators cites no authority for the proposition that a mitigation measure  
4  
5 is unreasonable simply because the applicant cannot afford it. Under SEPA, mitigation  
6  
7 measures must be “reasonable and capable of being accomplished” in *general* (not based on  
8  
9 a particular applicant’s financial situation), and they must reduce “clearly identified” environ-  
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11 mental impacts. RCW 43.21C.060; WAC 197-11-660. The County satisfied those require-  
12  
13 ments by imposing fencing mitigation measures, which are directly tied to the significant ad-  
14  
15 verse impact of escapes from Predators’ facility and the resulting reliance on public services.  
16  
17 Neighbors’ Br. at 7–10, 13–14; Ex. 6 at 3–8, 11.

18           3. Predators also claims that certain measures are “harmful,” “not an appropriate prac-  
19  
20 tice for animals,” and/or are “damaging to the environment.” POTH Br. at 18–19. Predators  
21  
22 does not cite any supporting authority for these assertions and they should be rejected. The  
23  
24 mitigation measures related to fencing, lighting, GPS tracking, and enclosures are all directly  
25  
26 tied to the impact on public services from Predators’ operation. *See, e.g.*, Ex. 6 at 4 (“The City  
27  
28 . . . cannot emphasize enough that the location of dangerous wild animals adjacent to the  
29  
30 largest public amenity within the City of Anacortes is unacceptable.”)

### 31 32 33 CONCLUSION

34  
35           The Neighbor Parties respectfully request that the Hearing Examiner deny Predators’  
36  
37 Special Use Permit application. But if the Hearing Examiner accepts Predators’ application,  
38  
39 the Neighbor Parties request that the Hearing Examiner vacate the MDNS and remand to PDS.  
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45 & Rec. at 7 (“[I]n the past decade there have been at least 4 documented escapes of wolves or wolf-  
46 hybrids from the facility resulting in the deaths of two (2) dogs.”); Ex. 6 at 8 (letter from Anacortes  
47 Mayor indicating that in “the past decade, there have been at least four instances where animals from  
the Predators of the Heart facility have either escaped or attacked community members’ pets”).

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Respectfully submitted,

DATED: August 16, 2023



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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing **NEIGHBOR PARTIES' RESPONSE TO PREDATORS' PREHEARING BRIEF** to be served on the following persons via the methods indicated below:

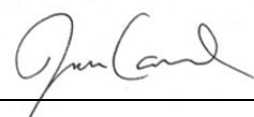
Jason D'Avignon  
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- Via U.S. Mail, 1st class, postage prepaid
- Via Legal Messenger
- Via Facsimile
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DATED this 16<sup>th</sup> day August, 2023 at Seattle, Washington.



Jane Carmody  
Associate Attorney

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