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

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' PREHEARING
SEPA BRIEF**

Pursuant to Skagit County Hearing Examiner Rules 1.01 and 1.09, Edward and Lynne Borlin, David and Pamela Knutsen, Nolan Berlin and Millicent Swietzer, and Kevin and Jenny Welch (the “Neighbor Parties”) respectfully submit this Prehearing Brief in support of their appeal of the Mitigated Determination of Non-Significance (“MDNS”) issued by the Skagit County Planning and Development Service (“PDS”) for application PL22-0133, submitted by Predators of the Heart (“Predators”).

The environmental checklist submitted by Predators impermissibly lacked or misrepresented critical details regarding the scope of probable environmental impacts, including its use of public services, nature of adjacent properties, transportation, and noise. PDS’s reliance on Predators’ incomplete checklist—as well as Predators’ application, which is riddled with

1 false statements about escapes, transportation, noise, and other key issues—violates the State
2 Environmental Policy Act, Chapter 43.21C RCW (“SEPA”) and its implementing regulations,
3 Ch. 197-11 WAC (the “SEPA Rules”), which require the lead agency to base its threshold
4 decision on information sufficient to fully assess the proposal’s environmental impact. The
5 Hearing Examiner should vacate the MDNS and remand to PDS so a new environmental
6 checklist may be completed, and a new threshold determination issued.¹
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12 BACKGROUND

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14 On March 23, 2022, Predators applied for a Special Use Permit (PL22-0133) to operate
15 an “Animal Preserve, Wildlife Education, Conservation, and Sanctuary Center” on the subject
16 property. Ex. 2. Predators submitted an environmental checklist with its Special Use Permit
17 application. Ex. 3. PDS issued a MDNS for Predators’ project on November 3, 2022. Ex. 1.
18 The Neighbor Parties filed a Notice of Appeal on December 2, 2022, alleging procedural
19 SEPA deficiencies in the MDNS. Predators also appealed.
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26 JURISDICTION AND STANDARD OF REVIEW

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28 Under the Skagit County Code, the Hearing Examiner has jurisdiction to hear the
29 Neighbor Parties’ appeal of the MDNS as a Level I proceeding. Skagit County Code (“SCC”)
30 16.12.210(1). The Hearing Examiner reviews PDS’s decision to issue an MDNS under the
31 clearly erroneous standard. *Anderson v. Pierce Cty.*, 86 Wn. App. 290, 302, 936 P.2d 434
32 (1997); SCC 14.06.110(11). An MDNS is clearly erroneous if the record “demonstrate[s] that
33 environmental factors were [not] adequately considered in a manner sufficient to establish
34 prima facie compliance with SEPA.” *Id.*; see *Boehm v. City of Vancouver*, 111 Wn. App. 711,
35 718, 47 P.3d 137 (2002) (“For the MDNS to survive judicial scrutiny, the City must
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45 ¹ If the Hearing Examiner denies Predators’ Special Use Permit application, as PDS has recommended
46 and as the Neighbor Parties have argued, the Hearing Examiner need not resolve the issues addressed
47 in this Brief.

1 demonstrate that it actually considered relevant environmental factors before reaching [its]
2 decision.”). Critically, “the decision to issue an MDNS must be based on information suffi-
3 cient to evaluate the proposal’s environmental impact.” *Boehm*, 111 Wn. App. at 718; *see also*
4 WAC 197-11-335 and SCC 16.12.070 (adopting SEPA Rules for environmental checklists
5 and threshold determinations).
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10 STATEMENT OF ISSUES

11 Should the MDNS be vacated as clearly erroneous because it was based on (1) an
12 environmental checklist provided by Predators that did not give PDS the information neces-
13 sary to adequately assess the project’s environmental impacts and contains misrepresenta-
14 tions, and (2) an application replete with false statements?
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20 Alternatively, should the MDNS be vacated because the proposed mitigation measures
21 do not prevent significant environmental impacts below that of the determination of signifi-
22 cance standard?
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26 ARGUMENT

27 “SEPA is a legislative pronouncement of our state’s environmental policy.” *Anderson*,
28 86 Wn. App. at 300, 936 P.2d 432. It aims to reduce or eliminate environmental impacts by
29 ensuring that governmental decision-making accounts for environmental values. RCW
30 43.21C.010; *Norway Hill Preservation and Protection Ass’n v. King Cty. Council*, 87 Wn.2d
31 267, 277–78, 552 P.2d 674 (1976). SEPA thus requires the lead agency (here, PDS) to make
32 a “threshold determination” of whether a proposal “significantly affect[s] the quality of the
33 environment.”² RCW 43.21C.030(2)(c); RCW 43.21C.033; WAC 197-11-310. A threshold
34 determination by the lead agency “is required for any proposal that meets the definition of
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² An impact is “significant” if it has “a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794(1); *Norway*, 87 Wn.2d at 278.

1 ‘action’ under SEPA and is not ‘categorically exempt.’” *Anderson*, 86 Wn. App. at 301 (citing
2 WAC 197–11–310). To “facilitate the ‘threshold determination,’ the applicant must prepare
3 an environmental checklist” that includes “information reasonably sufficient to evaluate the
4 environmental impact of the proposal.” *Id.* (citing WAC 197–11–315 to 335). The lead agency
5 “must then thoroughly consider a proposal’s potential environmental significance as docu-
6 mented in the environmental checklist.” *Id.* (citing WAC 197–11–315(1)(a)).
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12 Having fully considered the project’s environmental impacts, the lead agency can ren-
13 der its threshold decision in various forms. It can issue a “determination of significance”
14 (DS)—which requires intensified environmental review through preparation of an environ-
15 mental impact statement (EIS)—or a “determination of nonsignificance (DNS),” which
16 “means that no EIS will be required.” *Boehm*, 111 Wn. App. at 717 (citations omitted). Alter-
17 natively, the lead agency can issue a mitigated determination of nonsignificance (MDNS),
18 which “involves changing or conditioning a project to eliminate its significant adverse envi-
19 ronmental impacts,” but does not require an EIS. *Id.* at 718; *see Anderson*, 86 Wn. App. at
20 301–02 (the “agency may specify mitigation measures and issue a MDNS only if the proposal
21 is changed to incorporate those measures” (citing WAC 197–11–350(3))).
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32 Here, PDS issued a MDNS with respect to Predators’ Special Use Permit application.
33 Ex. 1. PDS thus determined that a DS was likely, but that the probable environmental effects
34 from Predators’ proposed project could be mitigated below the level of significance required
35 for an EIS. *See* WAC 197-11-350; WAC 197-11-660(1).
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40 PDS’s threshold decision to issue a MDNS is procedurally flawed for two main rea-
41 sons. *First*, Predators failed to submit a complete and accurate environmental checklist to
42 properly inform PDS of the environmental impacts stemming from its proposal to exhibit a
43 host of dangerous wild animals in a residential neighborhood (and PDS did not require
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1 Predators to provide additional information for the lead agency’s review). PDS also relied on
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3 Predators’ Special Use Permit application, but that too was filled with misrepresentations.
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5 PDS therefore could not have reached an informed decision under SEPA. *Second*, even as-
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7 suming the environmental checklist had been properly completed, the mitigation measures
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9 provided in the MDNS do not bring the probable environmental effects resulting from Preda-
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11 tors’ proposed project below the threshold for issuing a DS.

12 Because the MDNS is procedurally deficient under SEPA, it should be vacated.

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15 **A. Predators’ incomplete and inaccurate environmental checklist**
16 **does not satisfy SEPA.**
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18 The MDNS violates SEPA because it relied on incomplete and inaccurate disclosures
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20 in Predators’ SEPA environmental checklist. PDS must base its threshold determination on
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22 “information reasonably sufficient to evaluate the environmental impact of [Predators’] pro-
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24 posal.” WAC 197-11-335; *see also Spokane Cty. v. Eastern Wash. Growth Mgmt. Hrgs. Bd.*,
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26 176 Wn. App. 555, 579, 309 P.3d 673 (2013). To that end, PDS must use the “environmental
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28 checklist to assist its analysis,” and “document its conclusion in” its threshold determination.
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30 *Spokane Cty.*, 176 Wn. App. at 578-79; *see* WAC 197-11-960 (“The purpose of this checklist
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32 is to provide information to help you and the agency identify impacts from your proposal . . .
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34 and to help the agency decide whether an EIS is required.”); *Anderson*, 86 Wn. App. at 301
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36 (“The responsible official must . . . thoroughly consider a proposal’s potential environmental
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38 significance *as documented in the environmental checklist.*” (emphasis added)). Whether the
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40 environmental checklist is completed by the applicant or the lead agency, the lead agency
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42 must fully assess a proposal’s potential environmental significance as specifically documented
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44 in the checklist. WAC 197-11-315(1), (2).
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1 **Predators submitted a legally deficient environmental checklist to PDS.** In-
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stead of providing complete answers that describe Predators’ proposed project and potential environmental impacts, Predators—in response to most questions—either provided no answer at all, provided inaccurate information, or failed to materially disclose relevant information that PDS needed to make an adequate threshold determination.

Project description. Predators did not provide the required “brief, complete description of [its] proposal,” “including the proposed uses and the size of the project and site,” as required by Section 11 of the checklist. Rather than describe its proposal, Predators simply wrote: “ANIMAL PERSEVE [SIC] PERMIT– NO PROJECTS AT THIS TIME.” Ex. 3 at 2.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)
ANIMAL PERSEVE PERMIT- NO PROJECTS AT THIS TIME

Predators’ apparent belief that it can evade SEPA review—simply because it has been unlawfully operating without a permit for decades—is meritless. *See id.*; Ex. 4 at 65 (“There is no ‘project’ as POTH has been in operation since 2001.”). Predators’ Special Use Permit application is plainly a non-exempt “project action” under SEPA. *See* WAC 197-11-704(2)(a)(i) (County’s decision to license the special use qualifies as a “project action” requiring review under SEPA); *Anderson*, 86 Wn. App. at 300–01 (“[B]efore a local government processes a permit for a private land use project, it must make a ‘threshold determination[.]’”). In all events, Predators’ failure to include even the most basic description of its proposed project prevented PDS from basing its threshold determination on “information reasonably sufficient to evaluate the environmental impact of [Predators’] proposal.” WAC 197-11-335.

The rest of Predators’ checklist is riddled with similar omissions and misstatements:

1 **Public services.** When asked whether its proposed project would “result in an in-
2 creased need for public services[,]” such as emergency services and police,³ Predators re-
3 sponded: “N/A.” Predators was also required to identify “[p]roposed measures to reduce or
4 control direct impacts on public services,” and again wrote “N/A.” See excerpt below from
5 Exhibit 3 at page 12:
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10 **15. Public Services**

11 **a. Would the project result in an increased need for public services (for example:**
12 **fire protection, police protection, public transit, health care, schools,**
13 **other)? If so, generally describe.**

14 N/A

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16 **b. Proposed measures to reduce or control direct impacts on public services, if**
17 **any.**

18 N/A
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21 Those responses are plainly insufficient under SEPA. The Department of Ecology’s
22 SEPA checklist guidance provides that it **“is not acceptable to rely on ‘not applicable’**
23 **or ‘does not apply’—unless the proponent can explain why the question does not**
24 **apply, not just because the answer is unknown.”** Wash. Dep’t of Ecology, *SEPA Checklist*
25 *Guidance*⁴; see e.g., *Conservation Nw. v. Okanogan Cty.*, 2016 WL 3453666, at *32 (2016)
26 (voiding ordinance because County’s “checklist contain[ed] repetitive, superficial, conclusory
27 statements regarding the potential environmental impact of opening nearly 600 miles of
28 county roads to ATV use” and was “almost devoid of specific information”) (unpublished).⁵
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39 ³ See Wash. Dep’t of Ecology, *SEPA Checklist Guidance, Section B: Public Services*, available at
40 <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-15-Public-services>.
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43 ⁴ Available at <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance>.
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46 ⁵ Pursuant to GR 14.1, unpublished cases are nonbinding, but can be “accorded such persuasive
47 value as the [hearing examiner] deems appropriate[.]”

1 Here, Predators did not even attempt to explain why the checklist questions purport-
2 edly do not apply. That’s likely because questions on public services *apply squarely* to Pred-
3 ators’ proposal to exhibit dozens of dangerous wild animals alongside residential homes and
4 community forestland. Predators has relied on such public services numerous times following
5 animal escapes from its facility. For example, three animal control officers captured an es-
6 caped wolf in 2012 and returned it to Predators’ facility after the wolf “went wild”—“it started
7 fighting us and biting both leases”—and destroyed the interior of the animal control vehicle.
8 Ex. 22. In 2018, the City of Anacortes posted signs and constructed a natural barrier after three
9 wolves escaped. Ex. 23; *see also* Ex. 26 (describing signs posted in 2017). And in late 2021,
10 the City was forced to close the entire Anacortes Community Forest Lands (“ACFL”) and
11 “widely distribute warnings to the community of the potential danger” following yet another
12 escape. Ex. 6 at 4; *see* excerpt below from Exhibit 23.

24
25 **Anacortes Community Forest Lands trails back open after**
26 **wolves captured**

27
28 By JACQUELINE ALLISON @jacqueline_SVH
29 Oct 19, 2021

30
31 The Mayor explained that “City staff had to scramble to get the message out on the ground,
32 at all trail heads, and on social media in an attempt to immediately protect the public from
33 possible harm,” and “had to discharge three staff members into the closed community for-
34 estlands to put themselves at risk to warn hiker already in the words and make sure everyone
35 got out safely.” Ex. 6 at 4. Predators’ checklist impermissibly ignores the escapes from its
36 facility and the public services required to deal with the fallout. *See, e.g.*, Ex. 4 at 7, 51, 54,
37 56, 85-87, 95.
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1 **Current use and adjacent properties.** Predators also failed to accurately describe
2 the current use of adjacent properties and whether the proposed project will affect current land
3 uses on nearby or adjacent properties. Predators was required to provide information about
4 past, present, and future foreseeable land uses affected by the proposal, including residential
5 uses, community and public services, and recreational activities.⁶ Rather than provide that
6 information, Predators simply wrote:
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12 **8. Land and Shoreline Use**

13 **a. What is the current use of the site and adjacent properties? Will the proposal**
14 **affect current land uses on nearby or adjacent properties? If so, describe.**
15 Adjacent properties have Personal sawmill, livestock, and off road quad and dirt
16 bike track.
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20 Ex. 3 at 9. Predators also indicated that recreational activities in the immediate area—“Hiking
21 and site seeing”—would not be displaced by the proposal. *Id.* at 11.
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24 Predators’ responses entirely disregarded the facility’s close proximity to, and direct
25 impacts on, both residential neighbors and the ACFL. *See* Ex. 6 at 4–5, 8, 10–11; *see also*
26 Ex. 23; Ex. 26.⁷ For example, after three wolves escaped from Predators’ facility in October
27 2021, a family in their own yard watched the wolves kill and eat their beloved pet dog, and
28 the entire ACFL (which Predators’ facility abuts) was closed. Ex. 6 at 3–4; Ex. 62; Ex. 75;
29 Ex. 78; Ex. 79. Residential neighbors have repeatedly confronted escaped wolves on their
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39 ⁶ Wash. Dep’t of Ecology, *SEPA Checklist Guidance, Section B: Land & Shoreline Use*, available at
40 <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-8-Land-shoreline-use>.
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43 ⁷ In response to Section 12.c.’s question of what, if any, proposed measures Predators has to “reduce
44 or control impacts on recreation,” Ex. 3 at 11. Predators noted that “[o]ur goals is to keep the beauty
45 of the land.” *Id.* That response does not provide any useful information to analyze environmental im-
46 pacts.
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1 property. *See* Ex. 14 at 3 (“Our driveways are adjacent to each other and I have to go by the
2 [Predators’] property whenever I go to and from my home. . . . I have seen [Predators’] exotic
3 animals on my property multiple times[.]”); Ex. 19 (“In 2009 or 2010 I found two of [Preda-
4 tors’] wolves in my yard. One came into my garage.”); Ex. 23 at 4. Without an accurate dis-
5 closure of surrounding property uses and how Predators’ proposal impacts those properties,
6 PDS could not have made an informed threshold determination, and the information that Pred-
7 ators failed to disclose indicates that the impacts are in fact significant. *Boehm*, 111 Wn. App.
8 at 718.
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17 **Noise.** As to “types and levels of noise,” Ex. 3 at 8, Predators wrote “[n]atural animal
18 noises at time [sic] minimal.” And when asked about proposed measures to reduce noise im-
19 pacts, Predators wrote “N/A”:
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23 **3) Proposed measures to reduce or control noise impacts, if any:**
24 N/A
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27 Ex. 3 at 8. Predators was required to—and plainly failed—to identify *all noises* associated
28 with vehicles, machinery, alarms, and animals, including timing and proposed measures to
29 reduce and control noise impacts.⁸ Predators’ checklist ignored not only the noises associated
30 with the traffic of a commercial operation, but also with dozens of wild animals, including
31 wolves and cougars. *See, e.g.*, Ex. 14 at 4 (The “numerous wolves are a constant source of
32 noise in the neighborhood. . . . At times I have heard what sounds like animal fights and asso-
33 ciated disturbances at all hours of the day.”); Ex. 19 at 3 (The “wolves howl and their pups
34 yip. The cougars screech. I also began to hear the animals fighting. . . . My wife and I have
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44 ⁸ Wash. Dep’t of Ecology, *SEPA Checklist Guidance, Section B: Environmental Health*, available at
45 [https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-7-Environmental-health)
46 [checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-7-](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-7-Environmental-health)
47 [Environmental-health](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-7-Environmental-health) (emphasis added).

1 resorted to using ear plugs at night to be able to sleep[.]”). The County’s noise ordinance
2 exempts noise from unamplified sounds created by domestic animals only. SCC
3 9.50.040(3)(o). Wild animals are subject to these noise restrictions. Again, without an accurate
4 portrayal of the noise impacts from Predators’ proposed project, PDS’s threshold determina-
5 tion violates SEPA.
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10 **Transportation.** Predators failed to address the likely transportation effects from its
11 proposed project. Ex. 3 at 11–12. Section 14 of the environmental checklist required Predators
12 to identify the public streets near the proposed project and proposed access to the existing
13 street system; how many vehicular trips per day would be generated and when the peak vol-
14 umes would occur; whether improvements to existing roads are needed; and measures to re-
15 duce or control transportation impacts.⁹ For each of those questions, Predators responded
16 “None,” “No,” or “N/A.” *Id.*
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f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

None

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32 Those responses fall far short of the detail required for PDS to make an informed
33 threshold determination. They are also inaccurate descriptions of probable transportation and
34 traffic effects from Predators’ proposed project. When Predators was operating, the paid tours
35 ran six days a week, twice a day, and brought a consistent stream of commercial traffic onto
36 the single-lane gravel road that serves as access to Predators’ property. *See, e.g.*, Ex. 4 at 9,
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44 ⁹ Wash. Dep’t of Ecology, SEPA Checklist Guidance Section B: Transportation, *available at*
45 [https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-14-Transportation)
46 [checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-14-Transportation)
47 [14-Transportation](https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-14-Transportation).

1 51; Ex. 64. The gravel road is 14 feet wide (*see* photo below from Ex.8), shared with adjoining
2 neighbors, and has no pull outs or turnaround points; it was not designed for commercial use,
3 is in disrepair, and Predators has done nothing to maintain it. *See* Ex. 4 at 83. That presents a
4 nuisance to the adjoining neighbors due to increased traffic, and hardly provides enough clear-
5 ance for fire department access or other emergency services, as required by the County. Ex. 6
6 at 38; *see also* Ex. 4 at 83; Ex. 10; Ex. 11; Ex. 8. Predators also failed to disclose that this
7 gravel road is an easement established by the Johnson Short plat for ingress and egress to a
8 rural reserve lot, and it did not establish that using the easement for commercial purposes is
9 reasonably within the scope of that easement. Ex. 11. Lastly, visitors consistently get lost and
10 wander onto private property, by vehicle or by foot. Ex. 14 at 4; Ex. 5 at 103–04; Ex. 54.
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38 **Water.** Predators failed to describe how animal and other waste materials related to
39 its proposal affect ground and surface waters. The checklist asked Predators if “waste materi-
40 als [could] enter ground or surface waters[,]” and, if so, to explain. Ex. 3 at 5. Predators’ vague
41 response is inadequate: “No, we dispose of all animal waste properly. No compost on site[.]”
42 *Id.* It is also untrue. As recent as July 2023, the County received complaints about runoff from
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1 Predators' property and the strong smell of sewage. Ex. 31 at 2. And in 2019, the current septic
2 system was installed for residential purposes, not for the commercial activity proposed by
3 Predators. Ex. 31 at 3. Regardless, the lack of meaningful information for this category pre-
4 cluded PDS from accurately assessing relevant environmental impacts.¹⁰
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10 Predators' checklist is invalid under SEPA because it failed to provide sufficient in-
11 formation about the environmental effects from Predators' proposal. *See Spokane Cty.*, 176
12 Wn. App. at 580-81 (The environmental "checklist repeated formulaic language Thus,
13 the checklist lacked information reasonably sufficient to evaluate the proposal's environmen-
14 tal impacts."). The threshold determination is invalid and should be vacated.¹¹
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21 **B. The MDNS relied on misrepresentations in Predators' application.**

22 The MDNS should also be vacated because Predators' application (on which PDS also
23 relied¹²) is riddled with false statements on critical issues. *Cf.* WAC 197-11-340(3)(a)(iii)
24 (DNS must be withdrawn if procured by "misrepresentation or lack of material disclosure").
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27 **Escapes.** The application affirmatively misrepresented the number of escapes from
28 the facility. It claimed that in "23 years, we have had only one escape," which it blamed on a
29 dog. Ex. 2 at 3. But in a subsequent letter to the County, Predators represented that in "over
30 twenty (20) years, POTH has had only two escapes," and then, paragraphs later, that "[t]here
31 have simply been no escapes." Ex. 7 at 5, 7; *see id.* at 8 ("No wolves have escaped."). Preda-
32 tors' representations are both internally inconsistent and irreconcilable with sources
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42 ¹⁰ Predators also failed to address surface water impacts. *See* Ex. 3 at 5; Ex. 6 at 10.

43 ¹¹ Nor did PDS complete the checklist itself, or otherwise require Predators to supplement it. *See* WAC
44 197-11-315(4); *see also* WAC 197-11-335; SCC 16.12.100(2) ("For private proposals, the County will
45 require the applicant to complete the environmental checklist, providing assistance as necessary.").
46 PDS' failure to ensure that a complete checklist was provided violates SEPA.
47

1 identifying at least four wolf escapes, including articles describing an escape in 2012, two in
2 2017, and another in 2021. *See, e.g.*, Ex. 22 (police report describing 2012 escape); Ex. 23
3 (news article describing 2017 wolf escapes on public land); Ex. 28 (news article describing
4 wolf escapes); Ex. 36 (Former Predators’ Director description of escapes); Ex. 38 (corre-
5 spondence with County staff regarding 2021 wolf escape); Ex. 44 (Predators’ description of
6 2017 wolf escapes in response to USDA complaints); Ex. 46 (Predators’ employee describing
7 2021 wolf escape); Ex. 62 (letter describing 2021 wolf attack on neighbor’s dog); Ex. 63 (draft
8 letter from Predators describing October 2017 escape); Ex. 75 (2021 photograph of dog killed
9 by escaped wolves); Ex. 78 (video of 2021 wolf escape); Ex. 79 (same). It appears that other
10 types of animals have escaped as well. *See, e.g.*, Ex. 35 at 8 (County filing describing escapes
11 by a bobcat and foxes); Ex. 36 (description of fox escape).

22 **Breeding and sales.** Predators claimed it “does not breed animals,” Ex. 7 at 9, but
23 admitted under oath in a separate lawsuit that its wolves were all bred at the facility. Ex. 56 at
24 8; *see also* Ex. 50 (falsely representing to Airbnb that Predators “never has bred any wild
25 animals”). Below is an excerpt from Exhibit 70 showing wolf pups for sale. *See also* Ex. 30
26 (wolf puppy contract); Ex. 58 (report reflecting wolf sales); Ex. 71 & 72 (wolf puppies for
27 sale); Ex. 81 (2017 wolfdog transfer of ownership form).



1 **Nature of animals.** Predators likened its wolves to Bernese Mountain dogs and Jack
2 Russell Terriers (Ex. 7 at 8–9), despite footage of its wolves tearing apart and eating a pet dog
3 (Exs. 75, 78, 79), and the County’s finding that wolf hybrids are “inherently dangerous, as
4 they are not normally domesticated and pose unique threats to human life” (Ex. 82). Notably,
5 Ashley Carr said in a video posted to social media that kids cannot visit because “it’s a liability
6 issue and wolves know when kids are kids, and they act on that,” and that she would not let
7 her own children interact with the full-grown wolves. Ex. 77; *see also* Ex. 2 at 38 (Predators’
8 application listing “Wolves” as “DANGEROUS ANIMALS”).
9

10 **Acquisition of animals.** Predators misrepresented that it has possessed all its dan-
11 gerous wild animals since before 2007, including its cougars. Ex. 7 at 1, 3. But Predators has
12 attested under oath in a separate lawsuit that, for example, one of its cougars was born around
13 2012 (Ex. 56 at 13), and it was breeding wolves long after 2007 (*see, e.g.*, Exs. 70-72).
14

15 **Noise complaints.** Predators falsely represented it has “never had a complaint
16 about . . . noise.” Ex. 2 at 15. There have been many noise complaints over the years, including
17 by the County. *See* Ex. 35 (describing noise issues as public nuisance).
18

19 In sum, Predators’ application is replete with misrepresentations, and PDS relied on
20 that inaccurate application in issuing its threshold determination. That alone is grounds for
21 vacating the MDNS. *See* WAC 197-11-340(3)(a)(iii).
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25 **C. Predators’ project will produce significant environmental
26 impacts despite the MDNS.**
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28 Even if the Hearing Examiner were to conclude that the environmental checklist was
29 sufficient (and, for the reasons set forth above, it should not), the MDNS should still be va-
30 cated because the proposed mitigation measures do not prevent significant environmental im-
31 pacts below that of the DS standard. If an appealing party proves that the project will produce
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1 significant adverse environmental impacts despite an MDNS, then the MDNS is “clearly er-
2 roneous” and an EIS must be promulgated. *See Anderson*, 86 Wn. App. at 304.
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5 Predators’ proposed project will create significant adverse environmental impacts,
6 even as conditioned by the MDNS. As an initial matter, the MDNS is silent on the key thresh-
7 old issue presented by Predators’ Special Use Permit application: whether Predators’ posses-
8 sion of over two dozen “potentially dangerous wild animals” “complies with the Skagit
9 County Code.” SCC 14.16.900(1)(b)(v)(B). That is, unless Predators can lawfully possess
10 dangerous wild animals under Chapter 7.04 of the County Code (and it cannot), the mitigation
11 measures outlined in the MDNS are immaterial.¹³
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19 The County’s ban on certain potentially dangerous animals encompasses Predators’
20 wolves/wolf-hybrids, cougars, alligators, rattlesnakes, and nonhuman primates.¹⁴
21 SCC 7.04.030(1) (a “person may not own, possess, keep, harbor, bring into the County, or
22 have custody or control of any potentially dangerous wild animal”); RCW 16.30.030(1);
23 SCC 7.04.010(1) (prohibition encompasses wolf hybrids, cougars, alligators, and rattle-
24 snakes); Ex. 47; Ex. 48. Nor is Predators exempt. RCW 16.30.030(3), which covers lawful
25 possession of dangerous wild animals before 2007, does not apply because Predators has ob-
26 tained or bred many dangerous wild animals after 2007. Ex. 4 at 4–5. Predators is not exempt
27 as a humane society or animal shelter either because all of Predators’ wolf-hybrids and at least
28 two cougars were born at the facility. *Id.* at 5; Ex. 4 at 35; RCW 16.30.020(1)(c). Nor is
29 Predators a “wildlife sanctuary” under RCW 16.30.010(5) and SCC 7.04.020, since Predators
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42 ¹³ The County has recognized that Predators’ possession of “potentially dangerous wild animals” con-
43 flicts with the County Code and that no exemptions apply to Predators’ proposed use as an “animal
44 sanctuary.” *See* PDS Hearing Examiner Mem., Ex. 1 (Findings of Fact) at 7-9 (“Cty. Rep. & Rec.”).

45 ¹⁴ Predators has not been candid about the number and types of animals on its property. The animals
46 listed in the Special Use Permit application (Ex. 2 at 20) do match those provided in Predators’ USDA
47 application (Ex. 48), nor do they match the list provided in a separate litigation matter (Ex. 47).

1 engages in “the sale of photographic opportunities involving an animal,” among other reasons.
2
3 RCW 16.30.010(5), (b). Predators has advertised that it allows customers to “touch, photo-
4 graph, and even howl with wolf dogs.” Ex. 4 at 5–6; *see also* Ex. 45 (USDA citation indicating
5 that allowing “direct contact between the public and hybrid wolves,” including “petting the
6 hybrid wolves, and allowing the hybrid wolves to lick the faces of members of the public,”
7
8 does “not minimize the risk of harm to animals and/or the public”).
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Pacific Northwest! Just 1.5 hours North of Seattle, our wildlife refuge is nestled in 10 forested acres. We will introduce you to our mission and history with wolves and other exotic animals. Come enjoy Max and Kakoa, in their new 1/4 acre enclosure. Old-growth trees tower overhead; the wolf dogs will lead you around their new open run, while our guide talks about wolves' habitat, behavior, & the myths and misconceptions surrounding this apex predator. Our new photo area will allow us to pause for photos and rest with the wolves. When we return to the refuge, you will see a few more beautiful animals, including sloths, cougars, foxes, and more! You will be able to touch, photograph and even howl with wolf dogs in this once-in-a-lifetime setting!

From \$200 / person
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DATES	GUESTS
Add dates	1 guest

Thu, Jul 7
10:00 AM - 12:00 PM
Join 4 other guests
\$200 / person

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29 Ex. 55. Predators is also not exempt under the state fair exemption, which applies narrowly to
30 a “person displaying animals at a fair[.]” Ex. 4 at 6; RCW 16.30.020(1)(l). Finally, because
31 the possession of these wild animals is not permissible under applicable law, there are no
32 proposed measures that can be imposed under the MDNS to “ensure the proposal is compati-
33 ble with existing and projected land uses and plans[.]” WAC 197-11-960(B)(8)(l).
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39 Simply put, Predators is unlawfully housing potentially dangerous animals in violation
40 of State and County law and there is no way to make such wild animal possession harmonious
41 with adjacent land uses. The MDNS fails to recognize that fact. The illegal possession of those
42 animals cannot be remedied by the mitigation measures present in the MDNS.
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1 The MDNS also lacks crucial accountability measures to ensure Predators complies
2 with the conditions proposed in the MDNS. Predators’ past and current conduct evinces a lack
3 of respect for the rule of law and the safety of the community. For example, Predators disre-
4 garded the County’s instructions in February 2022 to cease offering tours pending the resolu-
5 tion of its Special Use Permit application (Ex. 4 at 8) and continued offering tours through at
6 least July 2022. *Id.*; *see also* Ex. 25 (“POTH is continuing to accept public visitors and is still
7 advertising[.] . . . [T]he County cannot allow an unlawful use to persist simply because the
8 responsible party is pursuing the required permit.”); Ex. 32; Ex. 55 at 6. It unlawfully bred
9 wolves and cougars for years. Exs. 30, 58, 70–72. And, rather than take accountability for the
10 2021 escape, Predators inexplicably blamed the incident on a dog. Ex. 7 at 5; Ex. 38.

11 Moreover, the “escape/recapture protocol” in Predators’ application provides that
12 “[d]angerous animal escapes” be reported to a Tier I employee (i.e., Ms. Carr), but says noth-
13 ing about reporting the police. Ex. 2 at 34. Perhaps unsurprisingly then, Predators did not
14 bother to notify the City of Anacortes following the 2021 wolf escape. Ex. 6 at 3. Nor did
15 Predators alert the City after the prior owner “left cages of dangerous animals unlocked and
16 unsecure.” *Id.* at 5. As the County put it, “This is a picture of a facility that is out of control
17 and does not feel enough sense of a responsibility to the adjacent community to even notify
18 the City when dangerous animals are unsecured or on the loose.” *Id.* Predators’ behavior (in
19 addition to false statements in its application) make clear that Predators cannot be trusted to
20 comply with the mitigation measures outlined in the MDNS. Predators needs stringent over-
21 sight and accountability measures to ensure that any conditions of compliance are enforced.

22 That need is only heightened given the public safety issues arising from the captivity
23 and breeding of wild animals. For such a unique use, which falls outside the regulatory exper-
24 tise of Skagit County’s Code Enforcement team, the County and PDS should look to outside

1 expertise to craft the conditions for operations of such a land use. The MDNS should, for
2 example, require Predators to (1) become (and remain) an accredited member of an independ-
3 ent oversight organization, such as the American Zoo Association (AZA); (2) obtain an insur-
4 ance policy with the County, which names all adjacent landowners as additional insureds; and
5 (3) submit an annual financial plan to the County that guarantees its animals will be cared for
6 in perpetuity. PDS' recommendation to the Hearing Examiner recognizes the need for these
7 specific accountability measures and includes them as recommended conditions if the Hearing
8 Examiner grants Predators' application (which he should not). *See* Cty. Rep. & Rec. at 23.
9 Absent these accountability conditions, Predators' probable environmental impacts do not fall
10 below that of the DS standard. For example, requiring that Predators become and maintain an
11 accredited member of an independent oversight organization, like the AZA, would help ensure
12 that Predators focuses on the care, welfare, and well-being of the animals; implements profes-
13 sional staff development and training; and constructs the appropriate physical facilities to
14 house the animals.

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There are additional mitigation measures that should be included in the MDNS to bring
the probable environmental impacts from Predators' proposed project below that of the DS
standard. Each of these measures addresses a clear deficiency in the MDNS to mitigate im-
pacts from undue privacy intrusions, transportation, noise, water, and public safety:

- Predators should be required to (1) add setbacks of 35 feet from all sides for fences, buildings, pens, and enclosures, and (2) landscape so that its fencing and security systems are not visible from adjacent properties.
- The MDNS should limit Predators to two tours per weekday from 9:00 a.m. to 5:00 p.m. No tours should be allowed on weekends or holidays.

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- The MDNS should require Predators, before resuming any operations, to secure appropriate easements for commercial access to its property (including securing the necessary agreements for roadway maintenance) and improve access to commercial standards, as required under the County Code.
- Predators should be required to ensure that noise levels will not exceed standards established by the state and County pursuant to Chapter 70.107 RCW, WAC 173.60, and SCC 14.16.840.
- Predators should be required to ensure the septic system at the property has the appropriate capacity for commercial operations.
- Predators should be expressly barred from breeding and selling dangerous wild animals, consistent with State and County law.
- Certified staff should be required to be on site at all times to ensure public safety. It is insufficient as a matter of public safety (particularly given the history of escapes from Predators' facility) that the property be manned by certified staff only part of the day, or that it be manned 24/7 but only by non-certified staff.
- The MDNS should specifically require Predators to remove all makeshift fencing.
- The MDNS should expressly require Predators to satisfy all mitigation measures before resuming operations.

CONCLUSION

The Neighbor Parties respectfully request that the Hearing Examiner vacate the MDNS and remand to PDS.

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Respectfully submitted,

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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 **PREHEARING BRIEF** to be served on the following persons via the methods indicated below:

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jasond@co.skagit.wa.us

- Via U.S. Mail, 1st class, postage prepaid
- Via Legal Messenger
- Via Facsimile
- Via Overnight Mail
- Via email

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DATED this 2nd day August, 2023 at Seattle, Washington.



Jane Carmody
Associate Attorney

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