



Planning & Development Services

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MEMORANDUM

TO: Board of County Commissioners

FROM: Kevin Cricchio, AICP, ISA
Senior Planner
Skagit County Planning & Development Services

CC: **Applicant/Appellant/Landowner**
Predators of the Heart
c/o Ashley Carr
4709 Welch Lane
Anacortes, Washington 98221

Appellant Attorney:

Haylee J. Hurst
Wolf Lee Hurst & Slattery, PLLP
230 East Champion Street
Bellingham, Washington 98225

DATE: November 16, 2023

RE: PL23-0478—Closed record appeal of the Hearing Examiner’s decision to deny special use permit application PL22-0133

GENERAL PROJECT DESCRIPTION: Predators of the Heart (“POTH”) seeks an after-the-fact special use permit for an animal preserve as required by SCC 14.16.320(4)(c). The Skagit County Code defines Animal Preserves as “A preserve for the public viewing of wild animals, either on foot or from the car, and either indoors or outdoors.” SCC 14.04.020. The Department recommended the permit be denied for a variety of reasons, including that POTH did not meet the requirements of the County’s potentially dangerous animal ordinance.

The Hearing Examiner denied the application on October 2, 2023, following an open record hearing. The Examiner concluded that potentially dangerous wild animals—wolf hybrids and cougars—integral to the application did not meet any of the exceptions permitting the keeping or possessing such animals.

PROJECT LOCATION: The subject property is addressed as 4709 Welch Lane, Anacortes, Washington, and is located in a portion of Section 35; Township 35 North; Range 01 East; Willamette Meridian, situated in unincorporated Skagit County, Washington.

SUBJECT PARCEL: P128398

COMPREHENSIVE PLAN LAND USE DESIGNATION & ZONING DISTRICT: The subject property lies within the Rural Reserve (RRv) zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated maps.

SURROUNDING ZONING & LAND USES: The property is bordered Anacortes and its Community Forest Land Park to the north, otherwise the property is sounded by single family residences zones as Rural Reserve, with Rural Resource-Natural Resource land close by to the southeast.

The purpose of the Rural Reserve (RRv) zone is “to allow low-density development and to preserve the open space character of those areas not designated as resource lands or as urban growth areas. Lands in this zoning district are transitional areas between resource lands and non-resource lands for those uses that require moderate acreage and provide residential and limited employment and service opportunities for rural residents.” SCC 14.16.320(1).

RESPONSE TO APPEAL:

Predators of the Heart seeks a special use permit to operate an animal preserve. However, the stars of the operation are potentially dangerous animals—cougars and wolf-hybrids. And this is fatal to POTH’s application because the possession of these animals is prohibited. Ch. 7.04 SCC. There are exceptions. A potentially dangerous animal can be possessed by nonprofit “at the written request of the animal control authority”, RCW 16.30.020(1)(c), or by a wildlife sanctuary, RCW 16.30.020(1)(g), or by a “person displaying animals at a fair”. RCW 16.30.020(1)(l).

But POTH cannot meet the requirements of the exceptions. POTH’s arguments attempting to fit them into an exception requires an unreasonably broad interpretation. The Examiner correctly read these exceptions narrowly, thereby avoiding the exceptions swallowing the rule, and thereby concluding correctly that the cougars and wolves were not lawfully possessed by POTH.

1. The Hearing Examiner correctly interpreted the Animal Control Exemption of RCW 16.30.020(1) as limited to animals received at the written request of animal control.

At the base of the Hearing Examiner’s decision is that the exceptions do not swallow the rule. Thus, simply because an exception may support the possession of a specific particular animal, exception does not then permit possession of another animal or to engage in activities that would otherwise be prohibited. Thus, from the fact that POTH has received an animal at the request of animal control, it *does not follow* that POTH may possess other animals it did not receive from animal control. And the Hearing Examiner is was correct in concluding as much.

POTH argues that the Hearing Examiner’s decision contradicts the plain language of RCW 16.30.020(1)(c). (POTH Br. at 7). In particular, POTH argues that RCW 16.30.020(1)(c) “says that an organization is exempt if it houses ‘an animal,’ singular, at the written request of animal control.” (POTH Br. at 7). Consequently, “[b]y interpreting the statute to require *each* potentially dangerous animal to have been received at the written request of animal control, the Decision impermissibly changes the statute’s plain language, adding language that is not there.” (POTH Br. at 7–8).

But this argument is unsound. To begin with, it ignores the rule that “[w]ords importing the singular number may also be applied to the plural of persons and things”. RCW 1.12.050. There is nothing to suggest in this particular instance the legislature intended to subvert its general rule of interpretation. Regardless, the plain language of the statute makes clear that possession of a potentially dangerous wild animal is a link between a statutory exception and a particular animal. As relevant here, that possession is supported by a written request of an animal control authority. POTH “plain language” argument actually subverts the plain language. Rather it makes perfect sense “that POTH would be prohibited from possessing its own wolfdogs simply because these particular animals were not received at the written request of animal control” even if POTH could house rescued wolfdogs. (See PTH Br. at 8–9). Nor does the statute say that “if a facility is able to house a single animal at the request of animal control, it should also be able to possess the same animal obtained from another source.” (See POTH Br. at 8). The exception simply and clearly provides that a dangerous wild animal can be possessed at the written request of animal control, and thus without that written request (which POTH does not have for the wolves and cougars) the exception does not apply.

2. The Hearing Examiner correctly concluded that POTH did not lawfully possess animals under the Wildlife Sanctuary Exemption RCW 16.30.020(1)(g) to disqualify any organization with both "sanctuary" and "non-sanctuary" programs, in violation of its plain language.

POTH also failed to establish that it was a wildlife sanctuary. A “Wildlife sanctuary” is defined as:
a nonprofit organization ... that cares for animals defined as potentially dangerous and:

- (a) No activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted;
- (b) No commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose;
- (c) No unescorted public visitations or direct contact between the public and an animal; or
- (d) No breeding of animals occurs in the facility.

RCW 16.30.010(5).

The Hearing Examiner correctly determined that as to the wolves and cougars, POTH failed to satisfy this definition. Decision at 85–87. And POTH does not dispute this as to the “wolfdog aspect of its program”. (POTH Br. at 9). Nevertheless, POTH argues that the decision improperly concluded that because the wolf-hybrid aspect does not qualify, then the rest of the operation necessarily does not satisfy the exemption. But this argument fails. (See POTH Br. at 9–10). First, the Hearing Examiner did not make such a conclusion. See Decision at 85–87. Second, even if POTH is correct, it is irrelevant as it does not make the possession of the wolf-hybrids lawful, which is a necessary condition to approve the special use permit.

The decision focuses on the wolf-hybrids, considering the evidence as to whether they are subjected to activity counter to their “natural conduct”, Decision at 86, whether commercial activity is occurring, *id.* at 87, the contact between the animals and visitors, *id.* at 86–87, and whether breeding occurs at the facility, *id.* at 87. On each point the Hearing Examiner found that POTH had failed to carry its burden that it qualified as an animal sanctuary.

It may very well be the case that as to other animals POTH could claim an exemption as an animal sanctuary (it appears this exception would allow rescuing animals in general), but the decision did not opine on that. And it is irrelevant since the core of the use POTH seeks permitted to engage in—an animal preserve—centers on the wolf-hybrids. And if possession of those animals is not lawful, the SUP application must be denied.

3. The Decision correctly concluded that the wolf-hybrids were not exempted from Ch. 7.04 SCC as domesticated animals.

A key difference between SCC 7.04 and RCW 16.30, is that Skagit County included wolf-hybrids and cougars as potentially dangerous wild animal. POTH argues that the Hearing Examiner erred in concluding wolf-hybrids are categorically excluded from the domesticated animals exception. But as the Examiner points out this would effectively nullify the County’s ordinance banning them and finding wolf-hybrids inherently dangerous and posing a unique threat to human life. Decision at 88. Furthermore, even if there is a possible world where a particular wolf-hybrid was domesticated, the records does not contain any evidence that any of POTH's wolf-hybrids are domesticated.

4. The Decision correctly concluded that the state fair exemption did not apply.

POTH asserts that the Hearing Examiner’s conclusion that the Hearing Examiner’s conclusion that the fair exception, RCW 16.30.020(1)(l), only applies for the duration of fair was erroneous. But that is the plain language of the exception: “A person displaying animals at a fair...” Moreover, that possession outside of displaying at the fair does render this exception superfluous. For example, it would allow an animal sanctuary to display an animal at a fair although that might otherwise be considered a commercial event involving the animals or an activity contrary to their nature.

STAFF RECOMMENDATION TO BOCC: Staff recommends to the Board of County Commissioners deny this appeal. The decision was not clearly erroneous and should be affirmed.