



Appeal or Request for Reconsideration

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File #:
PL23-0478
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OCT 16 2023
SKAGIT COUNTY
Received by: PDS **FA**

Appeal

What are you appealing?

- Appeal of an Administrative Interpretation/Decision/Action to the Hearing Examiner
- Appeal of an Administrative Order to Abate (code enforcement order) to the Hearing Examiner
- Appeal of Impact Fees to the Hearing Examiner (impact fees must be paid) (SCC 14.30.070)
- Appeal of Hearing Examiner Decision/Action to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision (SCC 14.06.180)

File # of Appealed Decision or Permit	PL22-0133	Appeal Fee	\$ 561.60	PDS will calculate
Date of Appealed Decision or Permit	Oct. 2, 2023	Publication Fee	\$ 150.79	PDS will calculate

PDS staff: do not accept appeal form without full payment of fees
\$ 203.50 PCD.

Appellant

Standing to appeal	<input checked="" type="checkbox"/> Permit applicant <input type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	Predators of the Heart / Ashley Carr			
Address	4709 Welch Lane			
City, State	Anacortes, WA	Zip	98221	Phone 360-770-7479
Email	admin@predatorsoftheheart.com	Signature		

Attorney or Representative None

Name	Haylee J. Hurst, Wolf Lee Hurst & Slattery, PLLP			
Address	230 E. Champion Street			
City, State	Bellingham, WA	Zip	98225	Phone 360-676-0306
Email	haylee@bellinghamlegal.com			

Attachments

- For any of the **appeals** listed above, please attach a concise statement with numbered responses to the following questions.
 1. What is your interest in this decision?
 2. How are you aggrieved by the decision you are appealing?
 3. What are the specific reasons you believe the decision is wrong?
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
 4. Describe any new evidence.
 5. List relevant sections of Skagit County Code.
 6. Describe your desired outcome or changes to the decision.
- For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.

PL23-0478

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SKAGIT COUNTY
PDS

BEFORE THE SKAGIT COUNTY BOARD OF COMMISSIONERS

In The Matter of the Appeal of
Predators of the Heart
of the Heather Examiner's denial of
Special Use Permit No. PL22-133

NO. PL22-0133

APPLICANT PREDATORS OF THE
HEART'S NOTICE OF APPEAL

I. INTEREST IN THE DECISION

1.1 PREDATORS OF THE HEART ("POTH") is the applicant under Special Use Permit File No. PL22-133 (the "SUP"), seeking to continue operation of an animal preserve, and wildlife education, conservation, and sanctuary center on its property at 4709 Welch Lane.

II. GENERAL BASIS FOR APPEAL

2.1 POTH is aggrieved by the Hearing Examiner's October 2, 2023, Findings, Conclusions, and Decision denying the SUP (the "Decision").

III. SPECIFIC REASONS THE DECISION IS WRONG

3.1 The Decision involves an error of law in interpreting the Animal Control Exemption of RCW 16.30.020(1) to require each animal housed by POTH to be received at the written request of animal control in order to exempt POTH from the prohibition on possession of certain "potentially dangerous wild animals" in violation of the statute's plain language.

3.2 The Decision involves an error in the application of law to fact in failing to conclude that POTH is a "duly incorporated nonprofit animal protection organization[], such as [a] humane societ[y] and shelter[], housing an animal at the written request of the animal control authority or acting under the authority of [RCW Ch. 16.30]" within the meaning of RCW 16.30.020(1) and SCC 7.04.020.

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- 1 3.3 The Decision involves an error of judgment in failing to give adequate weight
2 to evidence that POTH is an organization able to accept transfers of PDAs,
3 including wolfdogs, from animal control, other sanctuaries, and government
4 agencies.
- 5 3.4 The Decision involves an error of judgment in failing to give adequate weight
6 to evidence that the Washington Department of Fish & Wildlife allowed POTH
7 to keep its accidentally-bred cougars instead of rehoming them to another
8 facility.
- 9 3.5 The Decision involves an error in the application of law to fact in concluding
10 that POTH is not exempt from prohibition on possession of all of its PDAs
11 under the Animal Control Exemption of RCW 16.30.020(1) and SCC
12 7.04.020.
- 13 3.6 The Decision involves an error of law in interpreting the Wildlife Sanctuary
14 Exemption RCW 16.30.020(1)(g) to disqualify any organization with both
15 "sanctuary" and "non-sanctuary" programs, in violation of its plain language.
- 16 3.7 The Decision involves an error in the application of law to fact in concluding
17 that, wolfdog program aside, POTH is not a "wildlife sanctuary" within the
18 meaning of RCW 16.30.020(1)(g) and SCC 7.04.020.
- 19 3.8 The Decision involves an error in the application of law to fact in concluding
20 that POTH is not exempt from prohibition on possession of its cougars under
21 the Wildlife Sanctuary Exemption of RCW 16.30.020(1)(g) and SCC
22 7.04.020.
- 23 3.9 The Decision involves an error of judgment in failing to conclude that POTH's
24 proposed use with respect to its wolfdogs involved "no activity that is not
25 inherent to the animal's nature, natural conduct, or the animal in its natural
habitat" within the meaning of RCW 16.30.020(1)(g) and SCC 7.04.020.
- 3.10 The Decision involves an error of law in interpreting "commercial activity"
within the meaning of RCW 16.30.010(5) to include any exchange of funds
for the privilege of viewing or interacting with an animal.
- 3.11 The Decision involves an error of judgment in concluding that POTH's
proposed tours are a "commercial activity involving an animal" within the
meaning of RCW 16.30.020(1)(g) and SCC 7.04.020.
- 3.12 The Decision involves an error of judgment in concluding that POTH's
proposed tours include "the sale of photographic opportunities involving an
animal," within the meaning of RCW 16.30.020(1)(g) and SCC 7.04.020.
- 3.13 The Decision involves an error of judgment in concluding that POTH's
proposed tours include "use of an animal for any type of entertainment
purpose" within the meaning of RCW 16.30.020(1)(g) and SCC 7.04.020.
- 3.14 The Decision involves an error of judgment in giving undue weight to public
comment from animal rights groups including Born Free and NARN regarding
the nature of POTH's animals, and opinion on what makes a good
"sanctuary."

- 1 3.15 The Decision involves an error of law in interpreting SCC 7.04.020 to exclude
2 the Domesticated Animals Exception of RCW 16.30.020(1)(k) in violation of
3 the Code's plain language.
- 3.16 The Decision involves an error of law in concluding that wolfdogs are per se
4 excluded from any definition of "domesticated animals" under SCC Ch. 7.04.
- 3.17 The Decision involves an error of judgment in failing to conclude that POTH's
5 wolfdogs are, in fact, "domesticated."
- 3.18 The Decision involves an error of judgment in failing to give adequate weight
6 to evidence that Skagit County Animal Control has treated POTH's wolfdogs
7 as domestic dogs.
- 3.19 The Decision involves an error of judgment in failing to give adequate weight
8 to evidence that POTH's wolfdogs were born in captivity and raised to be
9 accustomed to humans.
- 3.20 The Decision involves an error in the application of law to fact in concluding
10 that POTH is not exempt from prohibition on possession of its wolfdogs and
11 other PDAs under the Domesticated Animals Exemption of RCW
12 16.30.020(1)(k) and SCC 7.04.020.
- 3.21 The Decision involves an error of law in interpretating the State Fair
13 Exemption of RCW 16.30.020(1)(l) as only applying for the duration of a fair,
14 which renders it meaningless.
- 3.22 The Decision involves an error of judgment in failing to give adequate weight
15 to evidence that Skagit County ceased a previous enforcement action against
16 POTH based upon a determination that POTH qualified for the State Fair
17 Exemption of RCW 16.30.020(1)(l) and SCC 7.04.020.
- 3.23 The Decision involves an error in the application of law to fact in concluding
18 that POTH is not exempt from prohibition on possession of its wolfdogs and
19 other PDAs under the State Fair Exemption of RCW 16.30.020(1)(l) and SCC
20 7.04.020.
- 3.24 The Decision involves an error of law and/or the application of law to fact, in
21 concluding that POTH's proposed use is not compliant with the SCC,
22 premised on its incorrect interpretation of the above provisions.
- 3.25 The Decision involves an error of judgment in declining to evaluate the
23 remaining SUP criteria of SCC 14.16.900(1)(b)(v), and conclude that each
24 criterion was met.
25

IV. NEW EVIDENCE

- 4.1 This Appeal does not involve any new evidence.

1 **V. RELEVANT CODE PROVISIONS & STATUTES**

2 5.1 SCC 7.04.030 provides: "A person may not own, possess, keep, harbor, bring
3 into the County, or have custody or control of any potentially dangerous wild
4 animal within the unincorporated area of Skagit County."

5 5.2 SCC 7.04.010(1) provides:

6 A "potentially dangerous wild animal" means:

- 7 (a) All animals listed in RCW 16.30.010(2);
- 8 (b) All animals of the family Canidae (as dogs, wolves, jackals, or foxes)
9 and their hybrids, except for the domestic dog *Canis lupus familiaris*;
- 10 and
- 11 (c) All cougars.

12 5.3 SCC 7.04.020 provides: "The provisions of this chapter do not apply to the
13 persons and entities listed in RCW 16.30.020."

14 5.4 RCW 16.30.020(1) provides, in relevant part,

15 The provisions of this chapter do not apply to: . . .

16 (c) Duly incorporated nonprofit animal protection organizations, such as
17 humane societies and shelters, housing an animal at the written request
18 of the animal control authority or acting under the authority of this
19 chapter;

20 . . .
21 (g) Any wildlife sanctuary as defined under RCW 16.30.010(5)

22 . . .
23 (k) Domesticated animals subject to this title . . . [and]

24 . . .
25 (l) A person displaying animals at a fair

26 5.5 Under RCW 16.30.010(5), a "Wildlife sanctuary" means:

27 a nonprofit organization . . . that cares for animals defined as potentially
28 dangerous and: (a) No activity that is not inherent to the animal's nature,
29 natural conduct, or the animal in its natural habitat is conducted; (b) No
30 commercial activity involving an animal occurs including, but not limited
31 to, the sale of or trade in animals, animal parts, animal by-products, or
32 animal offspring, or the sale of photographic opportunities involving an
33 animal, or the use of an animal for any type of entertainment purpose;
34 (c) No unescorted public visitations or direct contact between the public
35 and an animal; or (d) No breeding of animals occurs in the facility.

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VI. DESIRED OUTCOME

- 6.1 POTH requests that the Board reverse the Decision, and enter its own findings, conclusions, and decision based upon the record, granting the requested SUP.
- 6.2 Alternatively, POTH requests that the Board reverse the Decision based upon the legal conclusion that POTH's proposed use is consistent with the SCC, and remand the matter to the Hearing Examiner for consideration of the remaining permit criteria.

DATED this 16th day of October, 2023.

s/Haylee J. Hurst

Haylee J. Hurst, WSBA #51406
Elizabeth Slattery, WSBA #56349
of Wolf Lee Hurst & Slattery, PLLP
Attorneys for Appellant Predators of the Heart