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5 **BEFORE THE SKAGIT COUNTY BOARD OF COMMISSIONERS**

6 In The Matter of the Appeal of

7 Predators of the Heart

8 of the Hearing Examiner's denial of
9 Special Use Permit No. PL22-0133

NO. PL23-0478

PREDATORS OF THE HEART'S
APPEAL BRIEF

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11 **INTRODUCTION & REQUESTED RELIEF**

12 PREDATORS OF THE HEART ("POTH") respectfully submits this brief in
13 support of its appeal of the Skagit County Hearing Examiner's denial of its Special Use
14 Permit ("SUP") Application No. PL22-0133, issued on October 2, 2023 (the "Decision"),
15 pertaining to its request to continue operation of an animal preserve and wildlife
16 education, conservation, and sanctuary center on its property at 4709 Welch Lane (the
17 "Property"). The Property is zoned rural reserve, and per SCC 14.04.020, an "animal
18 preserve" is allowable as a Hearing Examiner special use. SCC 14.04.020. As a
19 threshold matter, the Hearing Examiner concluded that the requested SUP was not
20 compliant with the Skagit County Code because as proposed, POTH's possession of
21 its cougars and wolfdogs did not fall under any exception to SCC 7.04.030, pertaining
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1 to ownership of “potentially dangerous wild animals” (“PDAs”). The Decision did not
2 address any of the remaining SUP criteria.¹

3 POTH asks the Board of County Commissioners (the “Board”) to reverse the
4 Decision based upon clear errors of law regarding interpretation of the relevant
5 exceptions, and to issue its own findings and conclusions based upon the record,
6 granting the SUP. Alternatively, POTH asks the Board to reverse the Decision based
7 upon such errors and remand it back to the Hearing Examiner for consideration of the
8 remaining SUP criteria.
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10 **FACTUAL BACKGROUND**

11 POTH’s application seeks an SUP to continue its operation of an animal
12 preserve, sanctuary, and wildlife education center on its property at 4709 Welch Lane
13 in unincorporated Skagit County, which is zoned rural reserve. See Ex. 2. The Property,
14 which is owned by POTH, is bordered to the north by Anacortes Community Forest
15 Lands and to the west by undeveloped forest lands. Ex. 129. The property immediately
16 to the east of POTH is a 10-acre lot containing one single-family residence that also has
17 animals including pigs, chickens and ducks.² Welch Lane runs to the south, which is
18 abutted by 5-acre residential lots. Ex. 129. Per SCC 14.04.020, an “animal preserve,”
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22 ¹ The SUP criteria are comprised of establishing by a preponderance of the evidence that the proposed use is (a)
23 compatible with existing and planned land uses; (b) complies with the SCC; (c) will not create undue noise, odor,
24 heat, vibration, air and water pollution impacts on surrounding existing or potential dwelling units; (d) will not
25 generate intrusion on privacy of surrounding uses; (e) will not cause potential adverse effects on the general public
health, safety and welfare; (f) is not in conflict with the health and safety of the community; (g) will be supported by
adequate public facilities or services; and (h) will maintain the character, landscape and lifestyle of the rural area.
SCC 14.16.900(1)(b)(v).

² This property also contains a wood mill, a quad/dirt bike track, and tractors. See, e.g., testimony of Ashley Carr,
August 25, 2023 at 1:49:12.

1 or “preserve for the public viewing of wild animals, either on foot or from the car, and
2 either indoors or outdoors,” is permitted as a special use in the rural reserve, while uses
3 not specifically identified in any zoning district are also allowed if they are “substantially
4 similar” to other allowable uses. SCC 14.16.020(3).

5 POTH has operated on the Property since 2001,³ initially under the direction of
6 Dave Coleburn, and now under Ashley Carr.⁴ Its proposed use includes, in principal
7 part, continuing to house animals at the request of various government authorities,⁵ and
8 conducting both virtual and small group tours.⁶ At present, it has four onsite employees,
9 including a professional zoologist. Staff are generally present on the Property between
10 the hours of 7:30 am to 4:00 pm Monday through Saturday, and to care for the animals
11 as needed on Sundays. Ex. 2, pg. 14. As a 501(c)(3) non-profit, POTH is overseen by
12 a board of directors made up of members of the community.

13 Some of the animals that POTH houses are designated as “potentially
14 dangerous” under either state or county law. For instance, POTH houses several
15 alligators, each at the request of government agencies that confiscated the animals. For
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19 ³ As the Commissioners are no doubt aware, POTH has a lengthy history in Skagit County. In 2014, SCC Ch. 7.04
20 was adopted, pertaining to potentially dangerous wild animals, and including wolfdogs within that definition. Also
21 in 2014, POTH first applied for an SUP for an “animal preserve.” Ex. 40. However, in 2015, Skagit County filed a
22 lawsuit against POTH for violating SCC Ch. 7.04. See, Ex. 33; Ex. 34. Mr. Coleburn thereafter withdrew the SUP
23 application, under an apparent belief that given the lawsuit, the application would be futile. Ex. 60. The lawsuit was
24 dismissed without prejudice in 2017, see Skagit County Superior Court Case No. 15-2-00509-2, after the County
25 concluded that POTH qualified for the state fair exemption of RCW 16.30.020(1)(I). See, e.g., Ex. 23, pg. 4. No
further action was taken by the County, and POTH continued to operate under the belief that no permit was necessary
until 2021, when Skagit County filed a lawsuit against POTH for operating without a permit, prompting it to apply
for the SUP at issue here. Ex. 27; See also, testimony of Ashley Carr, August 23, 2023 at 2:47:00-2:49:18.

⁴ See testimony of April Grossruck, August 23, 2023 at 3:47:25 (discussing the transition of leadership).

⁵ See, e.g., Ex. 89.

⁶ POTH seeks to resume offering private tours twice per day to groups of up to ten people each. Tours would occur
between 10 am-12 pm and 1-3pm from Monday through Saturday. Ex. 2, pg. 14.

1 various reasons, the animals in POTH's care cannot be released into the wild or
2 rehomed, either because they have become too acclimated to humans, they are not
3 native species, or they are not lawful for the general public to possess, and they
4 therefore live out the remainder of their days on the Property. POTH is not compensated
5 for caring for these animals.⁷

7 Although POTH's mission has always been to educate the public about the
8 importance of wildlife and conservation, its operations have evolved over many years
9 from acquiring exotic animals and providing traveling animal shows⁸—a passion of Mr.
10 Coleburn's—to its present-day focus on rescuing and providing sanctuary for animals,
11 as reflected in its SUP application. Ex. 2. Although POTH now only acquires animals
12 via rescue, its two cougars and fifteen wolfdogs⁹ were born on the Property.¹⁰ POTH's
13 cougars are sanctuary animals and never interact with the public.

15 While some of POTH's wolfdogs are strictly sanctuary animals and do not interact
16 with the public, others are "ambassador" animals and are featured in POTH's private
17 tours, in which participants are provided with the opportunity to enter an enclosure and
18 potentially interact with the animals.¹¹ These tours, which POTH calls "Howling with
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21 ⁷ See testimony of Ashley Carr, August 25, 2023 at 20:35-29:44 (discussing rescue work).

22 ⁸ This involved providing educational programs with the animals at various state fairs. POTH most recently attended
23 an in-person state fair in 2018. See Ex. 90. In 2021, it gave a virtual presentation at the Iowa State Fair.

24 ⁹ POTH's wolfdogs are wolf-domestic dog hybrids, and are treated as domestic dogs under United States Department
25 of Agriculture ("USDA") regulations. See, e.g., 9 CFR sec. 1.1 ("Dog means any live or dead dog (*Canis familiaris*)
or any dog-hybrid cross;" "Hybrid cross means an animal resulting from the crossbreeding between two different
species or types of animals. . . . Crosses between wild animal species and domestic animals, such as dogs and wolves
. . . are considered to be domestic animals.").

¹⁰ This, in part, led to Mr. Coleburn's departure from the organization in 2020.

¹¹ See testimony of Ashley Carr, August 28, 2023 at 2:31:00-2:34:57.

1 Ambassadors,” were first offered in 2016 and proved to be very popular on Air B&B.¹²
2 As a USDA Class C Exhibitor, POTH is licensed to provide such tours. Ex. 87. POTH’s
3 tours, which are intentionally limited to avoid stress on the animals, have been very
4 impactful. Before being shut-down, POTH was honored to provide a tour to “Addie’s
5 family” through the Make-A-Wish Foundation and would hope to offer similar tours free-
6 of-charge to Make-A-Wish participants and veterans in the future. See Ex. 7, at Ex. D.
7 POTH’s tours have had an exemplary safety record.¹³
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9 For good reason, health and safety concerns have been paramount throughout
10 the permitting process.¹⁴ As an animal exhibitor, POTH is regulated by the USDA, which
11 sets national standards for animal health, husbandry, enclosures and operating
12 procedures.¹⁵ POTH is inspected at least annually and subject to random inspection by
13 the USDA, and is also randomly inspected by Skagit County Animal Control. See, e.g.,
14 Ex. 88. Animal waste is collected daily, bagged, and properly disposed of in the trash.
15 Uneaten food is also collected daily, and POTH maintains a professional rat abatement
16 program.
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18 As for the enclosures, POTH’s cougars and alligators are housed in six-sided
19 enclosures at all times. While the wolfdogs are housed in six-sided enclosures at night,
20 they generally exercise in electrified day runs. In a tragic 2021 incident, three wolfdogs
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23 ¹² See, e.g., Ex. 94.

24 ¹³ See testimony of Ashley Carr, August 28, 2023 at 1:18:35.

25 ¹⁴ Safety measures are addressed in the MDNS associated with this application, which is the subject of a separate LUPA appeal. See Ex. 1.

¹⁵ These regulations are found in the USDA “Blue Book,” available at https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf.

1 escaped under the fence of their day run and killed a neighbor's small dog. As a result
2 of the escape, two of the wolfdogs were deemed "dangerous dogs" by Skagit County
3 Animal Control, and the wolfdog responsible for the kill was put down by POTH. See,
4 e.g., Ex. 51. POTH reported the incident to the USDA, who investigated and approved
5 all safety changes that were made. Id.
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7 Preventing another escape is of paramount importance to POTH for the safety
8 of its own animals as well as others', and it relocated the day run at issue to prevent
9 any other interactions between the wolfdogs and neighboring animals.¹⁶ It also added
10 anti-digging features to all of its day runs, and implemented a motion-detected, night-
11 vision enabled camera system throughout the Property to provide further security. While
12 POTH frequently receives calls reporting that wolves have escaped, it is quickly able to
13 verify that all animals are, in fact, accounted for.
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15 ARGUMENT

16 The Decision errs in its interpretation of several provisions of RCW 16.30.020
17 pertaining to exceptions to the law prohibiting ownership of certain PDAs. These state
18 exceptions are incorporated into the SCC's own dangerous wild animal law at SCC
19 7.04.020. The proper interpretation of these provisions presents a legal issue well-
20 suited for appeal. More particularly, the Decision's conclusion that POTH's proposed
21 use is inconsistent with the Code is clearly erroneous for the following primary reasons:
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25 ¹⁶ See testimony of Ashley Carr, August 23, 2023 at 2:58:55-3:00:30.

1 **1. The Decision’s Interpretation of the Animal Control Exemption of RCW**
2 **16.30.020(1)(c) Contradicts Its Plain Language**

3 First, the Decision erred in failing to conclude that POTH is exempt from any
4 prohibition on ownership of PDAs under RCW 16.30.020(1)(c), which exempts “duly
5 incorporated nonprofit animal protection organizations, such as humane societies and
6 shelters, housing an animal at the written request of the animal control authority or
7 acting under the authority of [RCW Ch. 16.30].” While the Decision properly found that
8 POTH is a duly incorporated nonprofit organization, and also that POTH has received
9 many of its animals from animal control authorities,¹⁷ it erred by interpreting this
10 provision to require each PDA possessed by POTH to be housed at the written request
11 of animal control.¹⁸

13 A statute must be interpreted according to its plain language and under the
14 assumption that “the Legislature meant exactly what it said.” HomeStreet, Inc. v. State,
15 Dept. of Rev., 166 Wn. 2d 444, 451-52, 210 P.3d 297 (2009) (quoting Duke v. Boyd,
16 133 Wn. 2d 80, 86, 942 P.2d 351 (1997)). In this, meaning must be given to each word
17 in the statute without inserting or deleting any words. See, e.g., State v. J.P., 149 Wn.
18 2d 444, 450, 69 P.3d 318 (2003). Statutes must also be interpreted in a manner that
19 avoids absurd results. *Id.*

21 Here, the statute says that an organization is exempt if it houses “an animal,”
22 singular, at the written request of animal control. By interpreting the statute to require
23 each potentially dangerous animal to have been received at the written request of
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25 ¹⁷ See Decision at pg. 85.

¹⁸ See Decision at pg. 85.

1 animal control, the Decision impermissibly changes the statute's plain language, adding
2 language that is not there. The Legislature could have written the exemption differently,
3 but it did not, and the Board must assume that it meant what it said. This plain language
4 interpretation of the statute makes sense, because if a facility is able to house a single
5 animal at the request of animal control, it should also be able to possess the same
6 animal obtained from another source. The record establishes that POTH has received
7 animals at the request of various government agencies, including the military and the
8 FBI. It also receives requests for transfers of animals from other facilities, as well as
9 members of the public. It would be unnecessarily cumbersome to require everyone,
10 including other governmental authorities and other animal rescue organizations, to
11 funnel each request to rehome an animal through animal control. Requiring that each
12 PDA is received only at the written request of animal control is an erroneously narrow
13 reading of the statute that the Legislature did not choose to adopt.

16 Such an interpretation also leads to absurd results, allowing POTH to receive
17 wolfdogs or other PDAs from animal control, but prohibiting it from accepting the same
18 animals at the request of members of the public who cannot lawfully possess them,
19 other sanctuaries attempting to rehome animals, or government agencies. POTH
20 frequently receives requests to house rescued wolfdogs,¹⁹ and if it were prohibited from
21 possessing its current population, under the Decision's logic, it could simply replace
22 them with rescues received from an animal control authority. Given that POTH could
23 house rescued wolfdogs, it does not make sense that POTH would be prohibited from
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¹⁹ See testimony of Ashley Carr, August 28, 2023 at 37:43.

1 possessing its own wolfdogs simply because these particular animals were not received
2 at the written request of animal control. The Board must follow the text of the statute,
3 and conclude that POTH is exempt from any prohibition on possession of PDAs under
4 the SCC because it houses “an animal” at the written request of animal control. This
5 single conclusion requires reversal of the Decision.
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7 **2. The Decision Erred in Interpreting the Wildlife Sanctuary Exemption to**
8 **Wholly Disqualify Any Organization With Both Sanctuary and Non-**
9 **Sanctuary Programs**

10 While the animal control exemption was interpreted to apply on an animal-by-
11 animal basis, the Decision took the opposite approach with the wildlife sanctuary
12 exemption, RCW 16.30.020(1)(g), which exempts “any wildlife sanctuary as defined
13 under RCW 16.30.010(5),” which in turn is defined as:

14 a nonprofit organization . . . that cares for animals defined as potentially
15 dangerous and: (a) no activity that is not inherent to the animal’s nature,
16 natural conduct, or the animal in its natural habitat is conducted; (b) no
17 commercial activity involving an animal occurs including, but not limited to,
18 the sale of or trade in animals, animal parts, animal by-products, or animal
19 offspring, or the sale of photographic opportunities involving an animal, or
20 the use of an animal for any type of entertainment purpose; (c) no
21 unescorted public visitations or direct contact between the public and an
22 animal; or (d) no breeding of animals occurs in the facility.

23 RCW 16.30.020(1)(g); RCW 16.30.010(5).

24 While POTH does not dispute that the wolfdog aspect of its program does not
25 meet the Code’s definition of “wildlife sanctuary,”²⁰ the Decision’s legal conclusion that
any non-sanctuary element is disqualifying is clearly erroneous. Nothing in the text of

²⁰ Given that wolfdogs are not “potentially dangerous wild animals” under State law, RCW 16.30.010(2), POTH maintains that it is, in its entirety, a “wildlife sanctuary” for purposes of State law.

1 the statute prohibits a nonprofit organization from operating a wildlife sanctuary along
2 with a non-sanctuary program. For instance, an organization could operate a wildlife
3 sanctuary with dedicated sanctuary animals, and also operate an educational program
4 involving certain non-sanctuary animals. This is essentially what POTH proposes to do.
5 Under the Hearing Examiner’s definition, even if a wildlife sanctuary engaged in a
6 breeding program as part of an AZA species survival plan—its own exemption (RCW
7 16.30.020(1)(b))—it would lose its sanctuary status. The Hearing Examiner erred in
8 concluding that POTH was not a “wildlife sanctuary” where it is undisputed that wolfdog
9 program aside, all other aspects of POTH’s operation meets the wildlife sanctuary
10 criteria.²¹

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12 **3. The Decision Is Clearly Erroneous in Concluding that SCC Ch. 7.04 Does**
13 **Not Include the Domesticated Animals Exception, and/or that Wolfdogs Are**
14 **Not Domesticated Animals Within the Meaning of SCC Ch. 7.04.**

15 The Hearing Examiner committed clear error in concluding that “the County’s ban
16 on wolfdogs is not subject to the domesticated animals exception.” SUP Decision, Pg.
17 88. SCC 7.04.020 adopts the exceptions of RCW 16.30.020, while RCW
18 16.30.020(1)(k) plainly excepts “domesticated animals subject to this title” from the
19 dangerous wild animal law. SCC 7.04.020; 16.30.020(1)(k).

20 The Decision also erred in concluding that to the extent the domesticated animals
21 exemption is incorporated into the Skagit County Code, wolfdogs are not “domesticated
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24 ²¹ While POTH contends that the Decision also erred in concluding that POTH’s wolfdog program does not meet
25 prongs (a), (b) and (c) of the statutory definition of “wildlife sanctuary,” because POTH concedes its desire to
potentially breed its wolfdogs for lawful conservation purposes, it does not discuss the remaining prongs of the
statute.

1 animals” for purposes of the Code. While the Hearing Examiner reached the legal
2 conclusion that the County did not intend for wolfdogs to ever be excepted as
3 “domesticated animals,” it was error to conclude that under the Code, individual wolfdogs
4 could never be. The Code does not define “domesticated animals,” nor does the
5 corresponding RCW. Without a statutory definition to rely upon, it is clearly erroneous to
6 conclude that wolfdogs are wholly excluded from this definition. Rather, the
7 determination must be made on a case-by-case basis. As noted in the Decision, the
8 County’s findings in support of its 2014 ordinance defining wolfdogs as “potentially
9 dangerous wild animals” states that wolfdogs are “not normally domesticated,” which
10 contemplates the possibility that they could be.²²

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12 **4. The Decision Is Clearly Erroneous in Interpreting the State Fair Exemption**
13 **of RCW 16.30.020(1)(I) as Only Applying for the Duration of the Fair**

14 The Hearing Examiner erred in interpreting the exception for “a person displaying
15 animals at a fair” to only apply for the duration of a fair. This interpretation must be
16 rejected because it renders the exception meaningless. If another exception were
17 available to cover possession of the animal at all times outside of the fair, the fair
18 exemption would be superfluous.²³

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23 ²² As a factual matter, the Hearing Examiner also erred in failing to conclude that POTH’s wolfdogs are not
24 “domesticated.” While the Decision does not reach the question, the record supports a conclusion that they are,
including, but not limited to, the fact that the three wolfdogs involved in the 2021 escape were subjected by Animal
Control to the County’s “dangerous dog” proceedings.

25 ²³ This interpretation, while incorrect as a matter of law, also conflicts with evidence in the record that the County
stopped enforcement action against POTH in 2015 after concluding that it qualified for the State Fair Exemption.

1 **5. The Board Should Conclude that POTH Meets the Criteria for an SUP**

2 Because the Hearing Examiner concluded as a threshold matter that the
3 proposed use was inconsistent with the Skagit County Code, based upon the conclusion
4 that POTH did not qualify for any exemptions allowing possession of its cougars or
5 wolfdogs, the Decision does not address the remaining SUP criteria. However, the
6 record supports a conclusion that POTH does meet all criteria for issuance of the SUP,
7 and indeed, during the three-day hearing, there was very little genuine opposition to the
8 remaining criteria,²⁴ aside from health and safety concerns which are addressed in the
9 MDNS, and are not a basis to deny the SUP. See, e.g., Victoria Tower P'ship v. City of
10 Seattle, 59 Wn. App. 592, 602-03, 800 P.2d 380 (1990). During its years of operation,
11 POTH has not generated significant noise, odor, or privacy impacts, and its 10 acre,
12 forested property is well-suited for the proposed use, being bordered to the west and
13 south by undeveloped forest lands, and to the east by a 10 acre residential lot.
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16 Based upon the clear legal errors in the Decision, the Board should enter its own
17 findings, conclusions, and decision based upon the record and grant the requested
18 permit, subject to any conditions in the MDNS which may be upheld on appeal.
19 Alternatively, POTH respectfully requests that the Board reverse the Decision based
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23 ²⁴ In particular, although concerns were raised about potential noise and odor impacts associated with the use, POTH
24 has never received a noise or odor complaint during its operation on the Property. At the hearing, County staff
25 testified that the operation was not particularly noisy, as observed during a site visit. Concerns were also raised
regarding tour guests getting lost and intruding upon neighboring properties, which is addressed by providing tour
guests with clear directions and signage to get to the property. There is a reasonable expectation of an occasional lost
driver in any neighborhood, and this does not impact the privacy of surrounding uses. Finally, POTH's proposed use
is consistent with the rural character, as its goal is to disturb the natural environment as little as possible.

1 upon such legal errors, and remand the matter back to the Hearing Examiner for
2 consideration of the remaining SUP criteria.

3 DATED this 9th day of November, 2023.

4
5 s/Haylee J. Hurst

6 Haylee J. Hurst, WSBA #51406
7 Elizabeth Slattery, WSBA #56349
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9 Attorneys for Appellant Predators of the Heart
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