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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
REPLY IN SUPPORT OF ITS APPEAL

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11 In this appeal, the Skagit County Board of Commissioners (the “Board”) has the
12 responsibility to apply the law as it is written, not to make policy by opining on what it
13 “should” say or mean. The Board also has the opportunity to fairly evaluate Predators of
14 the Heart (“POTH”) based on the application before it and the changes that it has made
15 over the past several years—not disqualify it out of hand based on the actions of its
16 previous leadership.

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18 **1. Policy Arguments Do Not Change the Plain Language of the Animal Control Exception.**

19 While the opposing parties offer several policy arguments for why the animal
20 control exception of RCW 16.30.020(1)(c) should be narrowed, none of these
21 arguments are supported by the text of the statute itself, and indeed, directly contradict
22 the text. The text says the exception applies to an organization “housing an animal” at
23 the request of animal control. The County points out that per RCW 1.12.050, “an
24 animal,” singular, can be substituted with the plural “animals.” However, this substitution
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1 does not change the meaning of the language. It is undisputed that POTH houses
2 multiple “animals” at the request of animal control authorities. If the Legislature meant
3 the exception to apply on an animal-by-animal basis, appropriate language choices
4 would be “housing the animal,” “housing each animal,” or even “housing all animals” at
5 the request of animal control.
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7 It also does not follow that this exception gives organizations carte blanche to
8 possess as many potentially dangerous animals as they choose, or to do whatever they
9 want with those animals, as the Neighbor Group suggests.¹ The exceptions at issue
10 here simply address which organizations are allowed to possess certain potentially
11 dangerous animals. How many animals they may have, or what they may do with them,
12 are the subject of other statutes and regulations. POTH, for example, is licensed to
13 possess up to fifty animals by the USDA. Ex. 87. The standards for the proper care of
14 those animals, exhibiting and/or breeding them are also regulated by the
15 USDA.² Presumably, state and local governments may address these separate issues
16 in their own laws and regulations.
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18 The Neighbor Group also attempts to mischaracterize POTH’s proposed use. As
19 POTH has made clear, it has no intention of illegally breeding animals or offering them
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22 ¹ Nor does the exception “mean that someone can breed and lawfully possess dozens of banned animals
23 simply because it managed to secure a single animal from the authorities.” Neighbor Parties’ Response
24 Brief at pg. 6. The exception only pertains to “duly incorporated nonprofit animal protection organizations.”
25 See RCW 16.30.020(1)(c). It is unreasonable to presume that animal control would release an animal to
someone under such circumstances.

² See USDA Bluebook, available at
https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf

1 for sale regardless of former president Dave Coleburn's unsanctioned past conduct.³
2 People may disapprove of how POTH's cougars and wolfdogs came to be, but these
3 animals do exist and deserve to continue to be cared for by POTH for the remainder of
4 their lives. One might argue that they were "rescued" from Mr. Coleburn's care.⁴

5 **2. POTH's Cougars Are Sanctuary Animals.**

6 While taking liberties with the plain meaning of the statute as to the Animal
7 Control Exception, the Hearing Examiner's Decision takes a legalistic approach to the
8 wildlife sanctuary exception. POTH is a non-profit organization and it operates a wildlife
9 sanctuary as defined by RCW 16.30.010(5). Its cougars (and alligators) are potentially
10 dangerous animals that are part of the wildlife sanctuary. These animals do not interact
11 with the public in any manner and are not bred. They simply live out their lives at POTH.⁵

12 In addition, and specifically to support its sanctuary work, POTH proposes to
13 resume its "Howling with Ambassadors" tour, in which small groups may take a paid
14 guided tour that includes the opportunity to enter a wolfdog enclosure.⁶ There is no
15 language in the statute stating that a non-profit cannot operate a wildlife sanctuary and
16 another non-sanctuary program. Offering animal encounters is a common practice that
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21 ³As POTH board member April Grossruck testified, past breeding was specifically against the direction of
22 the Board, contributed to Mr. Coleburn's termination from the organization, and has stopped under Ms.
23 Carr's leadership. See, e.g., Testimony of April Grossruck, Aug. 23, 2023 (morning), at 3:48:25-3:52:16.

24 ⁴ See, e.g., Grossruck Testimony, Aug. 23, 2023 (morning), at 3:48:25-3:52:16 (commenting on
25 differences she observed with transition of leadership).

⁵ See, e.g., Testimony of Ashley Carr, Aug. 23, 2023 (morning), at 2:25:00.

⁶ As Ms. Carr explained, the wolfdogs control the encounter and may go off-exhibit at any time. Tour guests
may not approach the animals, but are permitted to touch the wolfdogs if they are approached for scratches
which some of the wolfdogs love. Staff may take cell phone photos of guests in the exhibit if requested
however, no specific photo opportunities are sold or provided. See Carr Testimony, Aug. 25, 2023
(morning), at 1:10:28-1:18:11.

1 can be both educational and support sanctuary work.⁷ The opposing view is overly
2 legalistic because POTH could do what it proposes by incorporating a second nonprofit
3 to run its wolfdog program. Whether or not the exception is applicable should not
4 depend on such technical legal maneuvers.⁸

5
6 **3. It Is Legal Error to Conclude that Wolfdogs Can Never Be “Domesticated
Animals” Under the Skagit County Code.**

7 POTH does not contend that wolfdogs are categorically domesticated under the
8 Skagit County Code, but the Hearing Examiner erred in concluding that they can never
9 be. The Code specifically includes all the state exceptions, including the domesticated
10 animals exception. If “potentially dangerous wild animals” can never be “domesticated,”
11 the exception is meaningless.
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13 Certainly, domesticated animals can be “inherently dangerous” and even “pose
14 unique threats to human life”—hence, dangerous dog ordinances.⁹ Domesticated
15 animals can also be highly destructive when in an unfamiliar or stressful environment,
16 as any dog owner would know. In fact, POTH’s three wolfdogs involved in the 2021
17 escape and killing of the neighbor’s dog were subjected to the County’s dangerous dog
18 hearing procedures, and two of the three have been designated and registered as
19 “dangerous dogs.”¹⁰ Without question, domestic dogs and other domestic animals can
20 be dangerous and destructive.
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23 ⁷ Grossruck Testimony, Aug. 23, 2023 (morning), at 3:48:25-3:52:16.

24 ⁸ The proffered interpretation is also problematic because it would prohibit a non-profit operating a wildlife
25 sanctuary from participating in an AZA species survival plan—although the animals being bred pursuant
to the plan would be exempt under RCW 16.30.020(1)(b), the rest of the animals would become unlawful
because the organization could no longer call itself a “sanctuary.”

⁹ See, e.g., SCC Ch. 7.06.

¹⁰ See Carr Testimony; see Testimony of Holly Soyke at Aug. 23, 2023 (afternoon), 7:45-8:45.

1 Evidence in the record supports a finding that POTH's wolfdogs are, in fact,
2 domesticated. The dictionary definition offered by the Neighbor Group— "adapted over
3 time (as by selective breeding) from a wild or natural state to life in close association
4 with and to the benefit of humans"—only supports this conclusion.¹¹ POTH's wolfdogs
5 have been bred wolfdog to wolfdog over multiple generations from their original
6 domestic dog and wolf ancestors, in each case having been raised with and accustomed
7 to human interaction. The wolfdogs share many of the characteristics of domestic dogs
8 and their behavior can be read the same way.¹² For this reason, none of the animals in
9 POTH's care could be released into the wild.¹³ Furthermore, in Ms. Carr's experience,
10 it would be cruel to deprive the wolfdogs of the human interaction to which they are
11 accustomed.¹⁴
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14 **4. POTH Has Historically Been Considered Exempt Under the State Fair**
15 **Exception of RCW 16.30.020(1)(I).**

16 While the Neighbor Group argues that nothing prohibits multiple exceptions from
17 applying to an organization at the same time (true), it fails to address the fact that if
18 another exception also applied, the state fair exception would not be needed. By their
19 own example, an organization could be exempt as a "holder of a valid wildlife
20 rehabilitation permit." RCW 16.30.020(1)(f). However, in such a case the organization
21 would already be exempt and would gain nothing from the state fair exception. The
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24 ¹¹ See Neighbor Parties' Response Brief, fn. 5.

25 ¹² See Carr Testimony, Aug. 23, 2023 (morning), at 49:25-54:31 & Aug. 25, 2023 (morning), at 1:30:00-1:34:36; Soyke Testimony, Aug. 25, 2023 (morning) at 3:37-4:29.

¹³ Carr Testimony, Aug. 25, 2023 (morning), at 32:26-34:16.

¹⁴ Carr Testimony, Aug. 25, 2023 (morning), at 3:45:30-3:47:07.

1 County provides the example that the exception would allow a wildlife sanctuary to
2 display animals at a fair even though this would not otherwise be permitted under the
3 wildlife sanctuary exception. This example contradicts the County and the Decision's
4 interpretation of the wildlife sanctuary exception, where any other activities are
5 disqualifying of sanctuary status, and only illustrates the problems with these
6 interpretations.
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8 In fairness, past treatment should be considered in the application of the State
9 Fair Exception. POTH has historically understood that it was exempt under the statute
10 because it displayed animals at a state fair at least annually, while the County also
11 evidently reached this conclusion in dropping its 2015 nuisance action. See Ex. 23, pg.
12 4.¹⁵ While POTH is shifting its focus away from traveling with the animals, nothing has
13 changed in its operations except that in-person fairs did not occur during the COVID-19
14 pandemic.¹⁶ POTH has continued to give virtual presentations at state fairs and plans to
15 continue this activity.
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17 **5. The MDNS Is a Final Determination as to Public Health, Safety and Welfare.**

18 While the SUP criteria include the requirement that the proposed use “[w]ill not
19 cause potential adverse effects on the general public health, safety, and welfare,” this
20 burden has been satisfied by the issuance of the MDNS, which was upheld on
21 administrative appeal and has not been appealed further by the other parties. The
22 County and the Hearing Examiner concluded in issuing and affirming the MDNS that as
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25 ¹⁵ See also Carr Testimony, Aug. 23, 2023 (morning), at 2:48:50.

¹⁶ See, e.g., Carr Testimony, Aug. 23, 2023 at 2:23:00-2:24:49.

1 mitigated, the proposed use does not have any probable significant adverse
2 environmental impact. This specifically includes, inter alia, air quality, odor, noise,
3 impacts on public health, the relationship to existing land use plans, housing, aesthetics,
4 recreation, traffic, and public services and utilities. See WAC 197-11-444. County staff
5 noted that during a site visit, no significant noise was observed.¹⁷ POTH provided
6 testimony on its practices relating to proper disposal of uneaten food and animal waste,
7 and rodent abatement, while it also explained the security improvements it has made
8 since the 2021 escape, including reconfiguration of its enclosures and implementation
9 of motion-detected cameras.¹⁸ Each of these issues are also addressed in the MDNS.

11 Ex. 1.

12 While much of the opposition and hearing testimony has related to safety
13 concerns over animal escapes, the nearby neighbors have not chosen to fence their
14 yards.¹⁹ No evidence was presented of any threat to humans arising from any of POTH's
15 animals, even when being recaptured. Preventing animal escapes is important to POTH
16 for the safety of its own animals, and the fencing requirements and other security
17 measures contained in the MDNS are specifically intended to prevent these
18 occurrences.²⁰ There is no basis for the Board to conclude that as mitigated, the
19 proposed use will cause any adverse effect on the general public health, safety, and
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23 ¹⁷ Testimony of Kevin Cricchio, August 23, 2023 (morning) at 1:44:00-1:46:51 & Sept. 5, 2023 (morning)
at 2:13:00-2:13:48.

24 ¹⁸ See, e.g., Carr Testimony, Aug. 23, 2023 (morning) at 3:08:00-3:11:56; Soyke Testimony, Aug. 25,
2023 (afternoon) at 3:15:58.

25 ¹⁹ See Testimony of Breanne Kozera, Aug. 25, 2023 (afternoon), at 56:32-1:02:55.

²⁰ See, e.g., Cricchio Testimony, Aug. 23, 2023 (morning) at 1:17:56-1:18:40 (noting that the vast majority
of MDNS conditions were aimed at the public health, safety, and general welfare).

1 welfare. Rather, POTH's large, forested lot is an appropriate location for the animal
2 preserve.

3 For the foregoing reasons, POTH respectfully requests that the Board approve
4 the SUP, subject to the conditions of the MDNS as it may be modified on appeal.
5 Alternatively, POTH requests that the Board conclude that POTH is exempt from
6 restrictions on the possession of potentially dangerous animals as discussed above, and
7 remand the matter back to the Hearing Examiner for consideration of the remaining SUP
8 criteria.
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10 DATED this 22nd day of November, 2023.

11
12 s/Haylee J. Hurst
13 Haylee J. Hurst, WSBA #51406
14 Elizabeth Slattery, WSBA #56349
15 of Wolf Lee Hurst & Slattery, PLLP
16 Attorneys for Appellant Predators of the Heart
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