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5 **BEFORE THE HEARING EXAMINER**  
6 **FOR SKAGIT COUNTY**

7 In The Matter of the Appeals of  
8 Predators of the Heart; and Edward and  
9 Lynne Borlin, David and Pamela  
10 Knutsen, Nolan Berlin and Millicent  
11 Swietzer, and Kevin and Jenny Welch  
12 of a SEPA Mitigated Determination of  
13 Nonsignificance

NO. PL22-0133 (SUP), PL22-0538  
(SEPA), & PL22-0577 (SEPA)

PREDATORS OF THE HEART'S  
RESPONSE BRIEF RE: SEPA APPEAL

14 Although the Neighbor Group appeals the County's Mitigated Determination of  
15 Nonsignificance ("MDNS") based on incomplete or inaccurate information, it is evident  
16 from the record that the County was well-aware of each issue complained of by the  
17 neighbors, and had sufficient information to properly evaluate the probable significant  
18 environmental impacts of Predators of the Heart ("POTH")'s proposed use. The  
19 Neighbor Group did not raise POTH's alleged unlawful possession of animals as a basis  
20 for vacating the MDNS in its Notice of Administrative Appeal ("Appeal Notice"), and such  
21 comments may be made during the public comment portion of the special use permit  
22 ("SUP") hearing, not now couched as a SEPA issue. The Neighbor Group fails to  
23 establish that the County's decision to issue an MDNS is clearly erroneous, and its  
24 SEPA appeal should be denied.  
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## ARGUMENT

**1. The County Had Sufficient Information to Evaluate the Probable Significant Environmental Impacts**

Initially, the County’s decision to issue the MDNS must be accorded “substantial weight,” RCW 43.21C.090, and cannot be overturned unless “clearly erroneous.” The Neighbor Group complains that POTH’s environmental checklist had various deficiencies, however, the County was aware of and addressed each of these factors in the MDNS. The purpose of the environmental checklist is to help the agency identify probable, not speculative, environmental impacts, and more information can be requested by the agency. WAC 197-11-960; see also King Cty. v. Friends of Sammamish Valley, 530 P.3d 1023, 1047-48 (2023). Initially, it is important to recognize that POTH’s proposed use of the property is not “new,” making it easier to evaluate the potential impacts, given the 20-year history at the site. County staff from various departments also toured the property during the review process, giving them additional information with which to assess the potential environmental impacts. A brief response to each of the specific complaints raised by the Neighbor Group in its prehearing brief is set forth below:

Public Services. To the extent animal control is a “public service,” the Neighbor Group points to a single incident where animal control apprehended a POTH wolfdog off of the POTH property in support of its conclusion that the proposal increases the need for public services. The record is replete with references to alleged or potential escapes from the Property which the County was able to consider. While it also argues

1 public services were involved in the City of Anacortes's decision to shut down the  
2 Anacortes Community Forest Land ("ACFL") after the 2021 incident, as Ms. Carr will  
3 explain, this could easily have been avoided with a simple phone call to POTH, since  
4 the shutdown did not occur until after the wolfdogs had already been returned to the  
5 POTH property. There is not probable significant environmental impact associated with  
6 public response to animal escapes. Although not conceding that such a requirement is  
7 reasonable, the impact on public services from an animal escape is also clearly  
8 addressed in Ex. 1 at 13(H), in requiring POTH to reimburse public agencies for any  
9 costs incurred in recovering escaped animals.  
10

11 Current Use and Adjacent Properties. The County was clearly aware of and  
12 considered the impact on residences in the vicinity and the ACFL. Again, the Neighbor  
13 Group relies entirely on the impact of a potential animal escape, which has been  
14 substantiated (as to all of the Neighbor Group properties) exactly once in POTH's 20-  
15 year history, and of which the County was well-aware during its review process. In  
16 addition to extensive (and overly burdensome) fencing and security measures  
17 presumably intended to prevent escapes, see, e.g., Ex. 1 at 13(D), (I)-(P), the MDNS  
18 also contains signage and emergency contact requirements to mitigate potential  
19 negative encounters between users of adjacent properties and POTH. Ex. 1 at 13(A)-  
20 (B).  
21

22 Noise. Concerns about noise were raised during the public comment process,  
23 and POTH disclosed the potential impact of animal noise, which it cannot control.  
24 However, as Ms. Carr and others with experience around POTH will explain, the animals  
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1 are not noisy. It appears that neighbors have confused POTH's animals with coyotes  
2 frequenting the area. To the extent the County's noise ordinance (which there is no  
3 evidence POTH has ever violated) applies to "wild animals" and the wolfdogs raised in  
4 captivity are considered "wild" not domestic, as the USDA classifies them,<sup>1</sup> a noise  
5 complaint may be warranted against the coyotes on the ACFL and Welch forested  
6 property.  
7

8 Transportation. The County was aware of the number of POTH employees who  
9 work onsite, the parking available, and POTH's plans to offer private tours. Ex. 2, pg.  
10 13-14. County staff also drove to POTH's property, via the "single-lane gravel road"  
11 (which is POTH's driveway). POTH's driveway does not impact its neighbors in the  
12 slightest. Its access easement is clearly delineated on the applicable short-plat, and is  
13 not restricted to residential or any other particular use. Ex. 11; M.K.K.I, Inc. v. Krueger,  
14 135 Wn. App. 647, 653 (2006) (easement dedicated on short-plat map is valid). The  
15 MDNS is conditioned on fire marshal approval of any access requirements, and all  
16 parking must occur on the POTH property. Ex. 1 at 11, 13(G). The County was also  
17 aware of complaints that tour guests may get lost and wander onto private property and  
18 was able to consider such impacts, which, considering the specific directions POTH  
19 provides to guests, along with the signage posted, are de minimis.  
20

21 Water. As POTH has explained, it properly bags and disposes of animal waste  
22 in the dumpster daily, and the MDNS requires proper disposal of waste. Ex. 1 at 13(G).  
23 Complaints about raw sewage and runoff are attributable to neighboring farm animals,  
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25 \_\_\_\_\_  
<sup>1</sup> Ex. 102.

1 not POTH. POTH also does not use the existing residential septic system for any  
2 commercial use, and staff and visitors use portable toilets on the property, which is  
3 appropriate given the low intensity of its use, and is consistent with its mission to reduce  
4 its environmental footprint. Potential impacts to water are also addressed in the MDNS,  
5 including, inter alia, Ex. 1 at 3, 4, 10, 12, 13(E).

7 Escapes. While there is much misinformation about “escapes,” there is only one  
8 substantiated occurrence of POTH animals trespassing on any of the Neighbor Groups’  
9 properties during its 20+ year history, which does not establish a “probable” and  
10 significant environmental impact. While any escape is concerning, POTH has taken  
11 steps over and above what is legally required to prevent a recurrence. Concerns about  
12 alleged escapes were raised, and addressed by POTH, during the public comment  
13 period, and while POTH challenges the reasonableness of certain conditions, the  
14 MDNS clearly includes numerous conditions intended to mitigate the occurrence of  
15 escapes. See, e.g., Ex. 1 at 13(D), (I)-(P).

17 Breeding and Sales. The Neighbor Group does not attempt to explain what  
18 potential environmental impact arises from POTH’s breeding or sale of animals, which  
19 is difficult to discern. Nevertheless, regardless of what previous director Mr. Coleburn  
20 may or may not have done, POTH does not breed animals for sale.<sup>2</sup> See, e.g., Ex. 59,  
21 pg. POTH 01280. Although POTH does not have any imminent plans to do so, it could  
22 potentially breed its wolfdogs and transfer puppies (for no charge) at the request of a  
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25 <sup>2</sup> Although not a POTH sanctioned practice, the Neighbor Group provides no authority for its claim that breeding and selling wolfdogs is prohibited by state or federal law.

1 qualified organization for conservation purposes. As Ms. Carr will explain, POTH has  
2 several unique genetic lines of wolfdogs, which are critical to maintain for conservation  
3 purposes. If those lines of wolfdogs die out, they are gone forever. POTH could receive  
4 a request for wolfdog puppies from an organization that has contracted with a  
5 government agency to operate a wolf reintroduction program into the wild. To have a  
6 successful reintroduction program, it is important to have a healthy diversity of genetics  
7 represented and it is therefore important that POTH's genetic lines of wolfdogs are  
8 continued so it is in a position to fulfill such requests.

9  
10 Nature of Animals. Given that the Skagit County Code defines wolfdogs as  
11 "potentially dangerous wild animals" and the MDNS and SUP application treats them as  
12 such, it is unclear how POTH's comparison of wolfdogs to other dog breeds has any  
13 relevance to the SEPA issues.

14  
15 Acquisition of Animals. The only relevance as to the timing of POTH's acquisition  
16 of "potentially dangerous wild animals", is that to the extent POTH is not otherwise  
17 exempt under the State's potentially dangerous animal law (which it is), animals  
18 acquired prior to the law's enactment are exempt. RCW 16.30.030(3). The County has  
19 been aware of the argument that POTH is not lawfully able to possess certain animals,  
20 which regardless, has nothing to do with SEPA review.

21  
22 Noise Complaints. POTH is unaware of any noise complaints being brought to  
23 the attention of the organization. The 2015 nuisance action was based upon an  
24 allegation that POTH was unlawfully possessing animals, not noise complaints, see Ex.  
25 34, and was dropped by the County. In any event, the County was clearly aware of

1 concerns about noise (and the Neighbor Group contends that the County itself  
2 previously complained about noise in the nuisance action) and considered this potential  
3 impact in formulating the MDNS.

4 **2. The Neighbor Group Has Waived Any SEPA Appeal Relating to the Legality**  
5 **of POTH's Operation, Which, Regardless, Is Not a SEPA Issue**

6 The Neighbor Group argues that the MDNS should be vacated because it is  
7 impossible to mitigate any unlawful possession of animals. Even if there was some  
8 discernible difference between the environmental impact of a lawful or unlawfully  
9 possessed animal, which is not explained, this argument was not raised as a basis for  
10 appeal in the Neighbor Group's Appeal Notice, and has been waived. The Neighbor  
11 Group can certainly make this argument in the public comment portion of the SUP  
12 hearing, but its inclusion as part of the SEPA appeal is inappropriate.

14 **3. The Neighbor Group Should Be Precluded from Advocating for Mitigating**  
15 **Measures Not Raised in its Appeal Notice, and its Proposals Are Otherwise**  
16 **Inappropriate**

17 Each of the mitigating measures proposed by the Neighbor Group is  
18 unreasonable, and should be rejected by the Hearing Examiner. A brief response to  
19 POTH's position on each proposal included within the Neighbor Group's appeal is  
20 summarized below:

21 Membership in an independent oversight organization. The MDNS is intended to  
22 mitigate any probable significant environmental impact. It is a baseline. POTH already  
23 meets the applicable regulatory standards for the care and housing of its animals. It is  
24 unreasonable to require POTH to meet the highest possible standard set by an  
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1 organization such as the Association of Zoos & Aquarium, and is not appropriate to the  
2 scope of POTH's proposed operation. The Hearing Examiner should conclude that the  
3 applicable federal standards are sufficient to mitigate any identified impacts.

4 Insurance policy naming adjacent landowners as additional insureds. Insurance  
5 availability is not related to any probable, significant environmental impact of the land  
6 use. In POTH's history, there has been a single incident of a small dog being killed by  
7 a wolfdog off of the POTH property, and no humans were injured. The proposed  
8 insurance requirement does not mitigate any probable environmental impact.

9  
10 Submission of an annual financial plan to the County. While this requirement may  
11 be couched in concern over POTH's ability to care for its animals long-term, POTH's  
12 finances are wholly unrelated to any environmental impact, it is unexplained how County  
13 staff would be prepared to evaluate the information, and it instead would increase  
14 POTH's administrative burdens and make it more difficult for POTH to actually care for  
15 its animals.

16  
17 35-foot setbacks and landscaping. This proposal is unnecessary given that there  
18 are already multiple vegetation buffers between POTH and any of the appealing  
19 neighbors, and POTH's facilities are not visible from any of their homes.

20  
21 Limitation of tours to weekdays. This proposed measure is unreasonable given  
22 that limiting tours to weekdays makes them inaccessible to many members of the public  
23 who work during normal business hours. POTH's driveway is separated from any of the  
24 appealing neighbors' homes by two vegetation buffers and Kevin Welch's easement  
25 road, which often has significant traffic. Any impact from the few cars associated with



1 each tour, if even noticeable to the handful of homes in the vicinity, does not amount to  
2 a significant environmental impact.

3 Easements for commercial access and roadway maintenance. This requirement  
4 is unnecessary and unreasonable given that there is no substantiated claim that POTH  
5 lacks sufficient access rights over the easement area identified in the short-plat. Permit  
6 conditions must be capable of being accomplished, and POTH cannot control whether  
7 any third-party would agree to enter into a new easement or road maintenance  
8 agreement.  
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10 Septic system with commercial capacity. Requiring upgrades to POTH's septic  
11 system is unnecessary since POTH does not use the septic system for employees or  
12 guests, and instead pays for a portable toilet service, which uses less water and has a  
13 lower environmental impact. While not conceding the reasonableness of this  
14 requirement, the MDNS also requires permanent bathrooms for staff and guests. Ex. 1  
15 at 13(T).  
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17 No breeding and selling animals. This requirement is not related to any probable  
18 environmental impact, and instead is based on a misnomer that breeding wolfdogs is  
19 per se illegal, which is incorrect. Prohibiting POTH from breeding to sustain its wolfdog  
20 population actually increases harm to the environment by eliminating genetic lines that  
21 could be called upon in the future for wolf reintroduction efforts.  
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23 "Certified" Staff. The Neighbor Group does not identify what kind of "certification"  
24 should be required, nor how any certification would be necessary to mitigate any  
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1 probable environmental impact. POTH staff are appropriately trained for their job  
2 responsibilities regardless of any certification.

3 No makeshift fencing. While the lack of a definition of “makeshift fencing” is  
4 problematic, this requirement is unnecessary because USDA regulations provide the  
5 applicable standard for enclosures, which POTH meets or exceeds. Again, the Hearing  
6 Examiner should conclude that the applicable federal standards are sufficient for  
7 mitigation purposes.  
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9 Satisfaction of all mitigation measures before resuming operations. POTH  
10 respectfully requests that to the extent any financial expenditures are required to satisfy  
11 MDNS conditions, that compliance be phased so that POTH can resume operations  
12 and generate funding to accomplish these measures in a financially sustainable  
13 manner.  
14

15 DATED this 16th day of August, 2023.

16  
17 *s/Haylee J. Hurst*  
18 Haylee J. Hurst, WSBA #51406  
19 Elizabeth Slattery, WSBA #56349  
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21 Attorneys for Appellant Predators of the Heart  
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