

**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

In The Matter of the Appeals of ) No. PL22-0133  
)  
**Predators of the Heart; and Edward** )  
**and Lynne Borlin, David and Pamela** )  
**Knutsen, Nolan Berlin and Millicent** )  
**Swietzer, and Kevin and Jenny Welch** )  
) **PRE-HEARING ORDER**  
of a SEPA Mitigated Determination of )  
of Nonsignificance )

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PLEASE TAKE NOTICE that two appeals have been filed of a Skagit County Mitigated Determination of Nonsignificance (MDNS), issued pursuant to the State Environmental Policy Act (SEPA), Ch. 43.21C RCW, on November 1, 2022, under Skagit County file no. PL22-0133. The first appeal was filed by Predators of the Heart, the Applicant for the land use permit underlying the MDNS. The Applicant alleges, in summary, that the project should have been exempt from SEPA review, and that the mitigation conditions imposed by the MDNS would harm the environment. The second appeal was filed by Edward and Lynne Borlin, David and Pamela Knutsen, Nolan Berlin and Millicent Swietzer, and Kevin and Jenny Welch (collectively, "the Appellant Group"). The Appellant Group alleges, in summary, that the MDNS was not based on information reasonably sufficient to evaluate the underlying project's environmental impacts.

SEPA requires that, when an administrative appeal of a DNS (or MDNS) has been filed, and the underlying land use application requires a public hearing, the appeal hearing for the DNS (or MDNS) shall be consolidated with the public hearing for the underlying land use application. *RCW*

*Pre-Hearing Order  
Skagit County Hearing Examiner  
Predators of the Heart, et al. Appeal  
No. PL22-0133*

43.21C.075; WAC 197-11-680. The underlying land use application in this matter is a request for approval of an animal preserve. An animal preserve requires a “Hearing Examiner special use permit” under the Skagit County Code. SCC 14.16.320. A Hearing Examiner special use permit application requires a public hearing. SCC 14.06.050(1)(b)(ii). Thus, the hearing on the two appeals of the MDNS must be consolidated with the public hearing on the underlying special use permit application for the animal preserve.

Following the filing of its appeal, the Appellant Group filed a motion to allow discovery, dated April 27, 2023, and a motion for clarification, dated May 9, 2023. The motion for discovery asked the Hearing Examiner to allow the Appellant Group to conduct discovery from the Applicant: up to ten interrogatories, five requests for production, three requests for admission, and three depositions, predicated on the Appellant Group’s allegation that the MDNS was based on false or misleading statements provided by the Applicant to the County staff regarding the Applicant’s past operations and future plans for its animal preserve. The motion for clarification asked for clarity regarding the case schedule.

The Hearing Examiner convened a prehearing conference on July 7, 2023 to discuss case scheduling and the Appellant Group’s two motions.<sup>1</sup> The Hearing Examiner denied both motions. The Hearing Examiner rules do not require discovery; they merely authorize the Hearing Examiner to allow discovery at his discretion. *Hearing Examiner Rules 1.01, 3.11*. Here, where the appeal hearing will be consolidated with a public hearing on the underlying permit application, the Hearing Examiner anticipates a robust discussion about the animal preserve, including the Applicant’s past operations and future plans: the very information for which the Appellant Group seeks discovery. The Appellant Group will have the opportunity to cross-examine the Applicant’s witnesses during the SEPA appeal portion of the consolidated hearing, and the Appellant Group will have the opportunity to present evidence of its own to substantiate its allegation that the MDNS was based on false or misleading statements. Under these circumstances, the Hearing Examiner will not take the unusual step of allowing discovery. The motion for clarification is also denied, as this prehearing order satisfies the scheduling concerns raised therein.

An open record appeal hearing on this matter shall commence on **August 23, 2023**, and (if necessary) continue on **August 25, 2023, beginning at 9:00 AM both days**, using remote access technology. A hearing room shall be made available for any parties, witnesses, or members of the public who wish to attend in person. There is no requirement or expectation for any person to attend in person, and the Hearing Examiner himself does not plan to attend in person.

### **APPEAL PROCEDURES**

1. Witnesses and Documents: By **July 19, 2023**, the parties shall provide an electronic copy to the other party, with an electronic copy to County’s clerk to the Hearing Examiner:
  - a. a witness list

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<sup>1</sup> A previous hearing examiner assigned to this case had conducted an earlier prehearing conference on February 3, 2023 but did not issue any orders or decisions.

- b. a documents list
- c. copies of the documents

The witness list shall include the name, email address and telephone number of each witness. If the witness will be providing expert testimony, the witness list shall also identify the area of expertise of the witness. Only those witnesses and documents identified shall be allowed at the SEPA portion of the hearing. Objections to admission may be made at the hearing. All identified parties to the appeal shall have an opportunity to cross-examine witnesses. The documents shall be numbered sequentially, the parties to coordinate among themselves to prevent duplication of documents.

2. Staff Report: By **July 26, 2023**, the County shall provide an electronic copy of its staff report to the parties, with an electronic copy to the County's clerk to the Hearing Examiner.
3. Optional Brief: By **August 2, 2023**, the parties may, at their option, submit briefs to the County's clerk to the Hearing Examiner, with a copy to the other parties. Briefs shall not exceed 20 pages, double-spaced.
4. Optional Response Brief. By **August 16, 2023**, the parties may, at their option, submit response briefs to the County's clerk to the Hearing Examiner, with a copy to the other parties. Response briefs shall not exceed 20 pages, double-spaced.
5. Hearing: The order of presentation shall be:
  - a. Introductory remarks by the Hearing Examiner.
  - b. Presentation by County regarding the underlying special use permit application, including any recommendation the County may have.
  - c. Testimony by the Applicant on the underlying special use permit application.
  - d. Testimony by members of the public who have not been identified as witnesses by the parties to the SEPA appeal.
  - e. Response by the Applicant to public testimony.
  - f. Response by the County to public testimony.
  - g. Applicant's SEPA appeal witnesses. Cross-examination by other parties.
  - h. Appellant Group's SEPA appeal witnesses. Cross-examination by other parties.
  - i. County's SEPA appeal witnesses. Cross-examination by other parties.
  - j. Closing arguments of SEPA appeal parties.

So ordered this 10th day of July 2023.

A handwritten signature in black ink that reads "Alex Sidles". The signature is written in a cursive style with a long horizontal flourish extending to the right.

ALEX SIDLES  
Hearing Examiner  
Sound Law Center