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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
OPENING BRIEF RE: SPECIAL USE
PERMIT AND SEPA APPEALS

14 This matter involves Predators of the Heart's ("POTH") application for a special
15 use permit ("SUP") to operate an animal preserve and wildlife education, conservation,
16 and sanctuary center on its 10-acre property at 4709 Welch Lane (P128298) (the
17 "Property"), which is currently zoned rural reserve. Although now opposing the SUP, the
18 County issued a Mitigated Determination of Nonsignificance ("MDNS") imposing
19 onerous conditions, which both POTH and a neighbor group have appealed. POTH
20 asks that the Hearing Examiner grant the SUP and modify the MDNS, as more
21 particularly outlined below.

22 **I. FACTUAL BACKGROUND**

23 There has been a great deal of misinformation surrounding POTH's operation
24 and proposed use of its Property, and POTH looks forward to setting the record straight.

25 At the hearing, POTH will present evidence including the following:

1 POTH is a 501(c)(3) nonprofit organization¹ that has operated its facility on the
2 Property since 2001. Initially, it was operated by William (“Dave”) Coleburn as Executive
3 Director. Mr. Coleburn was terminated from the organization in 2020, and replaced by
4 his daughter, Ashley Carr. POTH is also managed by an independent board of directors
5 made up of members of the community.
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7 The Property, which is owned by POTH, is bordered to the north by Anacortes
8 Community Forest Lands, while to the west lies an undeveloped 0.37 acre parcel
9 (P119330) and 40 acres of designated forest land (P115417). The property immediately
10 to the east of POTH is a 10-acre lot containing one single-family residence that also has
11 animals including pigs, chickens and ducks (P32553).² Welch Lane runs to the south of
12 the Property. There is one immediately adjacent property to POTH’s south, an
13 approximately 5-acre lot containing one single-family residence (P99810); however, a
14 total of 6 similar 5-acre lots containing single-family residences lie on either side of
15 Welch Lane, generally to the south of the Property (P99810; P32554; P32559; P32558;
16 P32556; & P32555). Appellants Edward and Lynne Borlin, Nolan Berlin, and David
17 Knutsen own three of these lots. Notably, Appellants Kevin and Jenny Welch live
18 nowhere nearby although they do own neighboring forestland (collectively, the
19 “Neighbor Group”).³
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21 Eighty percent of POTH’s current operations involve housing exotic animals and
22 wildlife that have been confiscated by various governmental agencies under animal
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25 ¹ POTH’s Ex. 86, 95.

² This property also contains a wood mill, a quad/dirt bike track, and tractors.

³ POTH’s Ex. 100.

1 control laws,⁴ most of which are not classified as “potentially dangerous animals”
2 (“PDAs”) under any applicable law.⁵ POTH also owns 15 wolf-canine hybrids
3 (“wolfdogs”), all of which were born and raised by POTH, and which support POTH’s
4 education and conservation efforts.⁶ Importantly, POTH’s wolfdogs are not “wolves.” As
5 Ms. Carr will explain, although wolf-hybrids may be classified as PDAs under the Skagit
6 County Code (“SCC”), under federal and state law wolfdogs are classified and treated
7 as domestic animals. POTH also currently has four alligators and three cougars
8 (although two are nearing the end of life) which are PDAs under applicable law. The
9 animals onsite at any given time depends on the requests that come in from government
10 agencies and the community. However, other than its current wolfdogs, POTH does not
11 intend to provide sanctuary for any outside wolves.
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13 POTH holds a Class C Exhibitors License through the USDA, which authorizes
14 it to conduct activities including taking its animals to fairs and offering tours and
15 opportunities to interact with animals.⁷ POTH has attended fairs as part of its efforts to
16 educate the public about wildlife. In the past, this has included its wolfdogs and cougars.
17 However, POTH’s efforts are no longer focused on public exhibition of animals, since
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21 ⁴ See, e.g., POTH’s Ex. 89.

22 ⁵ At present, this includes porcupines, an anteater, sloths, an armadillo, marmosets, raccoons, coatimundi
parrots, an eagle owl, a vulture, goats, a bobcat, and a variety of reptiles, among others.

23 ⁶ POTH does not breed animals for sale, and under its governing documents, breeding may only occur for
conservation purposes at the request of an authorized organization, or to maintain its own wolfdog
population (and as permitted by law). Some breeding did occur under Mr. Coleburn’s ownership, which is
one of the reasons he was terminated from the organization. However, it is important to recognize that
breeding wolfdogs is not prohibited under state or federal law since wolfdogs are not considered PDAs.
24 See, e.g., Neighbor Group’s Ex. 85, pg. 1 (noting selling wolf-hybrids is not prohibited); Neighbor Group’s
25 Ex. 59.

⁷ See, e.g., POTH’s Ex. 90.

1 its primary goal is stewarding the animals in its care and serving as a resource for the
2 community and local agencies.

3 POTH has three full-time employees and one part-time employee who work
4 onsite providing care to the animals. The Property is generally staffed by 1-3 people
5 between the hours of 7:30 am - 4 pm daily. POTH is never open to the general public.
6 However, in 2017, POTH began partnering with Airbnb Experiences to begin offering
7 paid private tours of its Property. The tours, which POTH calls “Howling with
8 Ambassadors,” focus on POTH’s “Ambassador Wolves” and afford participants
9 opportunities to learn about and interact with these animals.⁸ POTH’s “Ambassador
10 Wolves” are specially selected from among its wolfdog population for temperament and
11 training and serve as “ambassadors” for the breed, supporting POTH’s efforts to
12 educate the public about the importance of wolves and conservation. POTH has
13 historically offered two tours per day for up to 10 guests per tour, Monday through
14 Saturday.⁹ Outside of the Airbnb experience, POTH has also had the privilege to
15 arrange for Make-A-Wish participants to meet its animals. POTH’s tours have been
16 specifically vetted by the USDA, which has jurisdiction under the Animal Welfare Act, 7
17 U.S.C. § 2131-2159.¹⁰ Although characterized as “commercial” by opponents, as a non-
18 profit, all tour proceeds go directly toward care of the animals.
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22 ⁸ Participants are permitted to interact directly with the animals (under close staff supervision) and may
23 take photos if they choose. The program has been reviewed and approved by both the USDA and the
24 Airbnb Experience team.

⁹ Tours have generally occurred between the hours of 10am-12pm and 1-3pm.

¹⁰ See, e.g., USDA Animal and Plant Health Inspection Service, USDA Animal Care, *Animal Welfare Act and Animal Welfare Regulations Blue Book*, available at https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf

1 Understandably, there has been public concern over the safety of POTH's
2 operation, including the possibility of animals escaping from their enclosures. During
3 POTH's 20+ year tenure, there have been a total of two incidents of wolfdogs escaping
4 the Property¹¹; however, POTH has made significant upgrades in its enclosures and
5 security to prevent any future escapes, as outlined in its SUP application and supporting
6 comments. Under Mr. Coleburn's tenure in 2012, a white wolfdog, Shasta, escaped.
7 Shasta came when called, and was safely apprehended by animal control and returned
8 to POTH. In October of 2021, POTH staff discovered three wolfdogs had escaped under
9 the fencing of their day run in pursuit of a small unleashed dog. Sadly, the dog was killed
10 by wolfdog Celine, and Celine was also euthanized as a result. The wolfdogs were
11 captured and returned to the Property in less than 20 minutes and no humans were
12 injured. POTH investigated this incident¹² and made several changes including moving
13 wolfdogs to the center of the compound to avoid interaction with outside animals, and
14 upgrading its enclosures which meet or exceed USDA standards.¹³ POTH has also
15 implemented an extensive camera system that is equipped with night vision, alerts staff
16 to movement at the perimeter of the Property, and allows staff to remotely monitor the
17 animals. Ms. Carr frequently receives phone calls advising that "wolves" have escaped,
18 but she is quickly able to confirm that all animals are present and accounted for.
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23 ¹¹ In 2017, also during Mr. Coleburn's tenure, a wolfdog escaped her enclosure but never left the Property
24 and was apprehended without incident, and a wolfdog who was being walked by Mr. Coleburn attacked
25 a trespassing dog on the Property. Also in 2017, a macaw that POTH was told could not fly, escaped by
flying off of an employee's shoulder.

¹² POTH staff noted that it appeared animals had dug from the outside in and a fence post had been bent
to the side, allowing the wolfdogs to escape under the fence despite the electrified wire.

¹³ Ex. 101.

1 Since 2001, POTH has not received any noise complaints from neighbors. The
2 only complaint Ms. Carr has ever received from a neighbor during her tenure was that
3 people looking for POTH were turning around in a neighbor's driveway. Ms. Carr
4 responded by sending tour guests specific instructions on how to reach its facilities to
5 avoid unintended entry onto the wrong property. No further complaints have been
6 received. POTH has operated undisturbed on the Property since 2001, despite the
7 County's knowledge of its operation. In 2015, the County initiated a nuisance action
8 against POTH for alleged violations of the SCC, which was dismissed for want of
9 prosecution in 2017.¹⁴ POTH continued to take in animals and operate on the Property
10 in subsequent years with the understanding that the County had concluded no "animal
11 preserve" permit was required because POTH was not open to the general public.¹⁵
12 Finally, the County initiated enforcement action in late 2021, prompting POTH to apply
13 for an SUP for an "animal preserve" as directed by the County.¹⁶

16 II. LEGAL ANALYSIS

17 A. SPECIAL USE PERMIT

18 1. Legal Standard & Hearing Examiner's Authority

19 At the County's request, POTH seeks a Hearing Examiner SUP for an "animal
20 preserve" which the Code defines as "a preserve for the public viewing of wild animals,
21 either on foot or from the car, and either indoors or outdoors." SCC 14.04.020. POTH
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24 ¹⁴ Neighbor Group's Ex. 34; see also Skagit County vs. William Coleburn, et al., Skagit County Superior
Court Case No. 15-2-00509-2

25 ¹⁵ See, e.g., Neighbor Group's Ex. 60.

¹⁶ Neighbor Group's Ex. 27.

1 “must demonstrate that the proposed activity will not adversely affect or prevent those
2 uses normally allowed within the respective district.” SCC 14.16.900. POTH’s Property
3 is zoned rural reserve. SCC 14.16.320. In addition to animal preserves, allowable
4 special uses in the district include campgrounds, kennels, animal clinics, churches,
5 community clubs, display gardens, golf courses, off-road vehicle use areas, stables and
6 riding clubs, and racetracks, among many others. SCC 14.16.320. Under SCC
7 14.16.020(3), a use that is not specifically identified in any zoning district may be
8 allowed if it is “substantially similar” to other allowable uses in the district. The Hearing
9 Examiner may therefore grant POTH’s SUP if he concludes that POTH’s proposed uses
10 are substantially similar to other allowable uses in the rural reserve district which
11 include, inter alia, animal preserves, animal clinics, kennels, and stables.
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14 At the Hearing, POTH bears the burden of establishing that its proposed use is
15 (a) compatible with existing and planned land uses, (b) complies with the Skagit County
16 Code, (c) will not create undue noise, odor, heat, vibration, air and water pollution
17 impacts on surrounding existing or potential dwelling units, (d) will not generate
18 intrusions on privacy of surrounding uses, (e) will not cause potential adverse effects
19 on the general public health, safety and welfare, (f) is not in conflict with the health and
20 safety of the community, (g) will be supported by adequate public facilities or services,
21 and (h) will maintain the character, landscape and lifestyle of the rural area.¹⁷ Although
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24 ¹⁷ “Rural character” includes a pattern of land use “in which open spaces, the natural landscape, and
25 vegetation predominate over the built environment ; . . . that provide visual landscapes that are traditionally
found in rural areas and communities; . . . that are compatible with the use of the land by wildlife;...[and]
that reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.”
SCC 14.04.020

1 the County issued an MDNS including a host of mitigating measures relating to safety,
2 the County now recommends that the SUP be denied, based primarily on its opinion
3 that POTH's operation violates state law, and presumably public pressure over fear of
4 wolfdog attacks.

5 The Hearing Examiner has the power to, inter alia, limit testimony, by time or
6 subject, to exclude evidence that is irrelevant, unreliable, immaterial, or unduly
7 repetitious, and to impose reasonable conditions of approval. HE Rules 1.01; 1.11.
8 Here, POTH requests that the Hearing Examiner exercise such authority to limit the
9 hearing to the matters germane to the pre-decision hearing—whether POTH meets the
10 criteria outlined above for an SUP—and exclude extraneous matters including the
11 County and the Neighbor Group's alleged nuisance claims.¹⁸ Ultimately, POTH asks
12 the Hearing Examiner to approve the permit as outlined in its application, which includes
13 reasonable limits on visitors to the Property and significant safety measures. A brief
14 analysis of the at-issue elements for granting an SUP is set forth below, which is in no
15 way exhaustive:
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18 **(a) The Proposed Use Is Compatible with Existing and Planned Land Uses, and**
19 **Any Public Safety Impact Has Been Mitigated**

20 While the County contends that POTH's operation is not compatible with existing
21 land uses, namely, residential uses, this is based not on activities on the Property, but
22 entirely on concern about wolfdog escapes, the potential for which can and has been
23 mitigated. Indeed, the County issued an MDNS containing a host of requirements (far
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25 ¹⁸ The Neighbor Group brought nuisance claims against POTH in 2022. See Skagit County Superior Court Case No. 22-2-00526-29.

1 more than is reasonable) presumably intended to prevent animal escapes. The County
2 is precluded from opposing the application on the basis of potential impacts that it
3 addressed in the MDNS. See, e.g., Victoria Tower P'ship v. City of Seattle, 59 Wn. App.
4 592, 602-03, 800 P.2d 380 (1990). Further, far from being in a "residential
5 neighborhood," the POTH Property is bordered to the north and the west by forestland,
6 and to the south and east by low-density, rural housing on 5 and 10 acre lots.

7
8 **(b) The Proposed Use Is Consistent with the Skagit County Code**

9 POTH is an animal preserve as defined by the SCC. Although not open to the
10 general public, POTH provides opportunities to members of the public to view wild
11 animals. The County does not deny this, but takes the position that providing the public
12 with opportunities to interact with any animal destroys the character of an animal
13 preserve. Although the County's only objection appears to be based upon the direct
14 contact with wolfdogs that POTH offers during its private tour experience, nothing in the
15 Code prohibits this, or renders it inconsistent with an "animal preserve." The Code's
16 definition of "animal preserve" is clearly not comprehensive as it provides only for
17 "viewing" of animals, not providing for their care, etc. Offering special opportunities to
18 interact with animals is a common way that zoos, preserves, wildlife centers and similar
19 facilities increase revenue and make their operations financially sustainable. Further, to
20 the extent the Hearing Examiner concludes that not all aspects of POTH's proposed
21 operation fall under the technical definition of an "animal preserve," the Hearing
22 Examiner has authority to allow such uses if they are similar to other uses allowed under
23 the applicable zoning rules. This is appropriate here, as allowing limited private tours
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1 which include the opportunity to interact with POTH's highly-trained "Ambassador
2 Wolves" has no discernable land use impact beyond allowing "public viewing of wild
3 animals." POTH is not open to the general public, and only offers two tours of up to 10
4 people per day through Airbnb, plus the occasional special event such as a Make-a-
5 Wish experience—a much less intensive use with a lower impact than an animal
6 preserve that is open to the general public. The specific content of POTH's tours are
7 not a local land-use matter, and are regulated by federal law. See, e.g., 9 CFR 2.131
8 (standards for Exhibitors' handling of animals).
9

10 More generally, POTH's operation is consistent with the SCC's dangerous
11 animals ordinance. "Potentially dangerous wild animals," which for the County's
12 purposes, include wolfdogs, are prohibited under SCC Ch. 7.04 unless exempt under
13 RCW 16.30.020. SCC 7.04.020. Prohibited animals are to be confiscated by animal
14 control and released to a wildlife sanctuary or other exempt facility. SCC 7.04.020. If no
15 reasonable placement option can be found, they must be euthanized. Id. Ironically,
16 POTH is an organization that can and does accept such animals that are confiscated
17 by various government agencies under pertinent animal control laws. Nonetheless, the
18 County takes the position that for various reasons, POTH does not qualify for any of the
19 state exemptions, constituting a violation of the SCC. While POTH vehemently
20 disagrees, for purposes of the SUP, the County's interpretation of state law is irrelevant.
21 At the state level, ownership of wild animals is regulated by the Department of Fish &
22 Wildlife ("DFW"), and enforcement of RCW Ch. 16.30 falls under its jurisdiction and that
23 of local animal control. RCW 16.30.070. POTH works regularly with the DFW and
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1 various animal control agencies. At the federal level, the USDA is charged with
2 regulating zoos and other organizations that exhibit animals to the public under the
3 authority of the federal Animal Welfare Act, 7 U.S.C. § 2131 et seq. POTH is licensed
4 and inspected by the USDA.¹⁹ The County lacks jurisdiction to determine that POTH
5 does not meet the state law exemptions. Likewise, the Hearing Examiner should defer
6 to the USDA and the DFW's authority in concluding POTH's operation complies with
7 federal and state law. See, e.g., Lakeside Indus. v. Thurston Cty., 119 Wn. App. 886,
8 897, 83 P.3d 433 (2004) (noting the courts defer to the statutory interpretation of the
9 administrative agency charged with administering and enforcing the statute).

11 To the extent further analysis of POTH's exemptions is required, RCW 16.30.020
12 includes exceptions for "duly incorporated nonprofit animal protection organizations,
13 such as humane societies and shelters, housing an animal at the written request of the
14 animal control authority or acting under the authority of this chapter," RCW 16.30.020(c),
15 "[a]ny wildlife sanctuary as defined under RCW 16.30.010(5),"²⁰ RCW 16.30.020(g),
16 and "[a] person displaying animals at a fair approved by the Washington department of
17 agriculture pursuant to chapter 15.76 or 36.37 RCW," RCW 16.30.020(i). POTH's
18 compliance with each of these exemptions is discussed in detail in POTH's response to
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22 ¹⁹ See, e.g., POTH's Ex. 87, 88, 90.

23 ²⁰ "Wildlife sanctuary" is in turn defined as "a nonprofit organization, as described in RCW 84.36.800, that
24 cares for animals defined as potentially dangerous and: (a) No activity that is not inherent to the animal's
25 nature, natural conduct, or the animal in its natural habitat is conducted; (b) No commercial activity
involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts,
animal by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or
the use of an animal for any type of entertainment purpose; (c) No unescorted public visitations or direct
contact between the public and an animal; or (d) No breeding of animals occurs in the facility. RCW §
16.30.010.

1 public comments on its SUP. Ex. 7 at p. 1-4. Critically, the main point of contention
2 appears to be POTH's wolfdogs and tours. Although the wolfdogs were born onsite, it
3 is undisputed that if they were confiscated from elsewhere in the County, animal control
4 could bring them to POTH for sanctuary. It is nonsensical to contend that POTH is
5 prohibited from having these animals given its status as an animal rescue organization,
6 while for purposes of the state law exemptions, the wolfdogs are not PDAs,²¹ and the
7 wolfdog tours are therefore not disqualifying of its status as a "wildlife sanctuary."
8

9 **(c) The Proposed Use Will Not Create Undue Noise, Odor, or Pollution Impacts**
10 **on Surrounding Dwelling Units, and Any Impact Can Be Mitigated**

11 POTH has operated on the Property since 2001, yet the County only speculates
12 that the proposed use "could" create undue noise, odor, and water pollution impacts.
13 Since 2001, POTH has not received a single noise or odor complaint from neighbors,
14 which makes sense considering the rural setting. Neighbors also have dogs and farm
15 animals that make noise, as do coyotes in the adjacent forestlands. Although POTH
16 recently became aware of a complaint about "raw sewage" in the vicinity of its
17 Property,²² this came from a neighbor's pigs, not POTH. POTH bags and properly
18 disposes of all animal waste. The evidence at the hearing will demonstrate that there is
19 no negative noise impact from its operation that is not consistent with a rural, or indeed,
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23 ²¹ The same is true under federal law, since wolfdogs are considered domestic animals and required to
24 be treated as "dogs." See, e.g., 9 CFR sec. 1.1 ("Dog means any live or dead dog (*Canis familiaris*) or
25 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.").

²² See Neighbor Group's Ex. 31.

1 residential area with pets, and any odor or water pollution impact is mitigated by proper
2 disposal of animal waste.

3 **(d) POTH's Operation Does Not Impact the Privacy of Surrounding Uses**

4 POTH's Property is situated on 10 acres containing mature trees. It is bordered
5 to the north and west by forestlands. The properties to the west and south are 5-10 acre
6 lots. It is disingenuous to claim that it is situated in a "residential neighborhood." Visitors
7 to its facility are given specific directions to avoid ending up at the wrong property. The
8 County's only assertion as to this requirement is that wolves howling could impact
9 privacy. Animal noises do not impact privacy. In a rural area, there is a reasonable
10 expectation of animal noises, including dogs barking, farm animals, and wildlife such as
11 the coyotes that populate the forestlands.
12

13 **(e) POTH's Operation Will Not Cause Potential Adverse Effects on Public
14 Health, Safety and Welfare and Is Not in Conflict with the Health and Safety
15 of the Community**

16 The County asserts that wolfdogs escaping from POTH's Property could injure
17 humans. However, the possibility of animal escapes can be mitigated (and was
18 addressed in the MDNS), and is not a basis to deny the SUP. While these concerns are
19 understandable, they are based on misinformation about POTH's animals and
20 unfounded speculation. Again, POTH's animals are domesticated wolfdogs. POTH's
21 current population of 15 wolfdogs were specially selected for their temperament and
22 have never injured humans. Although the 2021 escape should not have occurred, POTH
23 investigated the incident and made appropriate changes, including moving the wolfdogs
24 to the center of its Property to avoid interactions with outside animals, moving the
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1 wolfdogs to 6-sided enclosures at all times when staff are not present, and installing a
2 comprehensive camera system to alert staff of any breaches. POTH also already has
3 multi-layered fencing in place including an electrified fence. The Woodland Park Zoo is
4 located in the middle of Seattle. Potentially dangerous animals, properly housed, are
5 not a safety risk to off-site humans.

6
7 **(f) POTH's Use Is Consistent with the Rural Character**

8 Finally, the County claims that POTH's use is not consistent with the rural area,
9 apparently preferring that the land be developed for sprawling, low-density housing. As
10 opposed to housing, POTH's goal is to maintain its Property in as close to a natural
11 state as possible for the benefit of the animals, and its facilities maintain the open space,
12 natural and forested character of the Property better than other conceivable uses
13 permitted in the district.

14
15 **(g) The Hearing Examiner Cannot Impose Permit Conditions That Are Not Reasonably Related to Any Land Use Impact**

16 In addition to requirements of the MDNS outlined below, certain SUP conditions
17 proposed by the County as noted in its Staff Report are unreasonable.²³ In particular,
18 POTH objects to the proposed requirement that POTH become a member of an
19 independent oversight organization approved by the County such as the American
20 Association of Zoos, given that POTH is subject to oversight by the USDA, which sets
21 the legal standard for zoos. 9 CFR § 1.1 ("Exhibitor" definition); 9 CFR § 2.1-2.1
22 (licensing requirements for "exhibitors"). There is no discernable land use benefit
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25 ²³ These three conditions appear to be taken directly from the Neighbor Group's appeal brief. See Notice of Administrative Appeal at para. 9.

1 associated with this requirement. See, e.g., Schlotfeldt v. Benton County, 172 Wn. 888,
2 894-95, 292 P.3d 807 (2013) (holding SUP conditions must be “reasonably calculated”
3 to achieve legitimate zoning goals); State ex rel. Standard Mining & Dev. Corp. v.
4 Auburn, 82 Wn. 2d 321, 332, 510 P.2d 647 (1973) (holding permit conditions must be
5 “reasonably calculated to achieve the purposes set forth in the comprehensive plan”
6 and must not be “unnecessarily burdensome”).

8 The County also requests that POTH be required to maintain liability insurance
9 acceptable to the County, without any benchmarks for approval, and that POTH be
10 required to submit an annual financial plan to Skagit County Planning and Development
11 Services (“PDS”) “that guarantees its animals will be cared for in perpetuity.” Again,
12 neither of these conditions are related to any land use impact, and simply provide a
13 basis for the County to shut-down POTH at will. POTH is not open to the public and a
14 liability insurance policy does not mitigate any public land use impact. Nonetheless,
15 POTH intends to maintain its existing liability insurance policy. There is also no
16 reasonable basis to require POTH to submit a financial plan to PDS and it is unclear
17 what relationship this could bear to POTH’s land use, how PDS could evaluate such a
18 plan, or how POTH could guarantee that the animals will be cared for in perpetuity.

20 III. SEPA APPEALS

21 The Neighbor Group contends the County erred by issuing the MDNS without
22 sufficient information, while POTH argues that the County erred by imposing
23 unreasonable conditions. Each appellant bears the burden of establishing by a
24 preponderance of the evidence that the MDNS was “clearly erroneous.” SCC
25

1 14.06.010(11); HE Rule 3.17. As to the SEPA appeals, POTH asks that the Hearing
2 Examiner find and conclude that certain MDNS criteria are “clearly erroneous,” and
3 modify the MDNS to impose reasonable conditions to mitigate the environmental impact
4 of the land use, as more particularly outlined in its Notice of Appeal.

5
6 **A. The County’s Issuance of an MDNS Was Proper**

7 The Neighbor Group requests that the MDNS be vacated on the basis that it was
8 “procured by misrepresentation” and is not supported by sufficient information. The
9 County’s decision to issue the MDNS must be accorded “substantial weight.” RCW
10 43.21C.090. POTH’s “misrepresentations” amount to perceived inconsistencies in its
11 statements on animal escapes and breeding, an innocuous social media video
12 commenting that POTH “wants to expand its facility and house more animals” in the
13 future, and POTH’s disagreement with the County’s conclusion that wolfdogs are
14 inherently dangerous. Although POTH disagrees with the conditions imposed, the
15 County was well informed of the (hearsay) allegations of escapes, which are noted in
16 public comments, and the MDNS clearly contemplates potential escapes given, inter
17 alia, the onerous fencing standards imposed. The MDNS was also properly issued and
18 evaluated based upon POTH’s current operation and plans, which differ from its
19 activities under Mr. Coleburn’s direction.

20
21 The MDNS was also based on sufficient information to evaluate environmental
22 impacts, particularly given that POTH has operated at the Property since 2001, making
23 any impacts known, and capable of being raised in public comment. Although the
24 Neighbor Group complains that the SEPA checklist was incomplete, all pertinent
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1 information was before the County. The Neighbor Group's contentions that the County
2 had insufficient information and/or failed to adequately consider noise, transportation
3 impacts, the impact on residential uses and/or recreational uses of the Anacortes
4 Community Forest Land, the safety of visitors to the Property, and the aesthetic impact
5 of its mitigation measures are similarly unavailing, and repeat comments made during
6 the public comment period.²⁴ The 2008 Short Plat creating the Property reserved a 30
7 foot easement for ingress and egress over the neighboring 10 acre lot and contains no
8 restrictions on use, while the MDNS requires POTH to comply with applicable standards
9 for access.²⁵ The application materials, public comments and MDNS speak for
10 themselves, and confirm that the County was well-aware of these potential concerns
11 and gave them due consideration in developing the MDNS.
12

13 **B. The Hearing Examiner Should Modify Unreasonable MDNS Conditions**

14 Although the County properly issued an MDNS, certain conditions are
15 unreasonable and exceed its authority under SEPA. Under SCC 16.12.200, the County
16 may only attach conditions to a permit or approval if, inter alia, such conditions are
17 necessary, reasonable, capable of being accomplished, and if the County has
18 considered whether other local state or federal mitigation measures applied to the
19 proposal are sufficient to mitigate the identified impacts. While POTH's objections to the
20 MDNS conditions as well as its alternate proposals are more particularly identified in its
21 appeal brief, the most significant problems are summarized below:
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25 ²⁴ See, e.g., Ex. 6, 7.

²⁵ Ex. 6, pg 33-36.

1
2 **1. The Fencing Standards Imposed by the MDNS Are Unreasonable**

3 Although POTH already has its wolfdogs in double layered, electrified fencing
4 that meets USDA standards for enclosures, and has staff present at all times that the
5 animals are not housed in 6-sided enclosures, the MDNS requires the entire 10-acre
6 Property to be bounded by not one but two perimeter fences meeting onerous
7 standards. This requirement is cost-prohibitive, damaging to the environment, and has
8 no discernable benefit to safety over the measures POTH has already put in place or
9 over the USDA's standards. POTH does not object to fencing the perimeter of the
10 Property as outlined in its Notice of Appeal.
11

12 **2. Requiring the Wolfdogs to Remain in 6-Sided Enclosures at All Times is**
13 **Harmful and Unreasonable**

14 To the extent the MDNS purports to require wolf hybrids to remain in 6-sided
15 enclosures at all times, this is not an appropriate practice for the animals. Wolfdogs
16 need room to run for their wellbeing, and it is impracticable to have 6-sided enclosures
17 of appropriate size for exercise. POTH does not object to housing the wolfdogs in 6-
18 sided enclosures at all times when staff are not present, as is its current practice.
19

20 **3. Subjecting the Animals to Motion-Detected Lights Is Harmful to the**
21 **Environment and Unreasonable**

22 The MDNS requires the installation of motion detected lights and video
23 equipment that automatically alerts POTH staff of movement within the perimeter
24 fencing. Since POTH already has night-vision cameras that alert staff of movement and
25 allow for continual remote monitoring, there is no utility to having motion-detected lights,

1 and the unnatural light is harmful to the animals as well as the wildlife who live in the
2 vicinity.

3 **4. Requiring 24-hour Staffing Is Unreasonable**

4 POTH does not object to housing all potentially dangerous animals in 6-sided
5 (escape proof) enclosures at all times when staff are not present, as it already does.
6 POTH also does not object to maintaining its camera system which allows staff to
7 remotely monitor the Property at all times, as needed. Given these steps, there is no
8 added benefit to requiring staff to be physically present on the Property at all times, and
9 a constant human presence causes undue stress to the animals.
10

11 **5. Requiring PDAs to Wear GPS Tracking Collars Is Unreasonable**

12 The purpose of this requirement is presumably to allow for quick location of the
13 animals in the event of an escape. Wolfdogs are the only animals that would be affected
14 by this requirement, as POTH does not put big cats in animal runs. The wolfdogs are
15 not accustomed to wearing collars and imposing this on them would create undue stress
16 for the animals. However, POTH does not object to microchipping its wolfdogs as a
17 potential alternative.
18

19 Consistent with SEPA and County policy, POTH endeavors to be a trustee of the
20 environment, a goal that Ms. Carr and the POTH Board of Directors take very seriously.
21 There should be a place for POTH and sanctuary in Skagit County for the animals in its
22 care. With respect, POTH asks that the Hearing Examiner grant its proposed SUP and
23 amend the MDNS as outlined above.
24
25

1 DATED this 2nd day of August, 2023.
2

3 s/Haylee J. Hurst

4 Haylee J. Hurst, WSBA #51406

5 Elizabeth Slattery, WSBA #56349

6 of Wolf Lee Hurst & Slattery, PLLP

7 Attorneys for Appellant Predators of the Heart
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