

Resolution No. _____

**A RESOLUTION AUTHORIZING LITIGATION TO ENFORCE COMPLIANCE
WITH THE SKAGIT COUNTY DEVELOPMENT CODE
AND TO ABATE A PUBLIC NUISANCE MAINTAINED BY MARJORIE AND RICHARD SUNDBERG**

WHEREAS, under RCW 36.32.120(10), the Board of County Commissioners has the power to declare by ordinance what shall be deemed to be a nuisance within Skagit County; to prevent, remove, and abate the nuisance at the expense of the party creating, causing, or committing the nuisance; and to levy a special assessment on the land or premises on which the nuisance is situated to defray the costs of abatement or to reimburse the county for the cost of abating the nuisance, which special assessment shall constitute a lien against the property and be of equal rank with state, county, and municipal taxes; and

WHEREAS Marjorie and Richard Sundberg, the owners of property at residential property at 16065 Mt. View Road, Mount Vernon, Washington (hereinafter "Sundberg property") have maintained a dog breeding business on that property for approximately four years; and

WHEREAS, the Sundberg property is located in the Urban Reserve Residential (URR) zoning district; and

WHEREAS members of the public raised complaints about the Sundbergs' business and, in 2006, Skagit County Planning and Development Services (1) determined that the Sundbergs' dog breeding business was not permitted outright in the URR zoning district, (2) found that the Sundbergs had not applied for or obtained a special use permit that would allow the business in the URR zoning district, and (3) opened a code enforcement action into the matter; and

WHEREAS, on December 22, 2006, in an effort to resolve the code compliance matter, Marjorie and Richard Sundberg submitted an application for a Hearing Examiner special use permit to maintain a Home Based Business 2 use on the property for their dog breeding business; and

WHEREAS substantial evidence in the record made before the Skagit County Hearing Examiner during his hearing on Sundbergs' 2006 application established that Sundberg did not (1) board animals for compensation, (2) bring dogs in to be bred, and (3) owned all of the dogs until they are sold, and supported the Hearing Examiner's finding that Marjorie Sundberg did not operate a kennel, as that term was defined in the Skagit County Code at the time she applied for the Home Based Business 2 permit; and

WHEREAS on March 20, 2008, after finding that Marjorie Sundberg did not establish that the scale of her dog breeding business "is clearly incidental and secondary to the use of the property for dwelling purposes," the Hearing Examiner found that, based on the number of dogs and accessory buildings used, the breeding business "is in excess or what would be considered as being incidental to the use of the property for residential purposes," found that the "scale of the

operation overshadows the use of the property for residential purposes,” and denied the Sundberg’s application for a special use permit; and

WHEREAS, Sundbergs timely requested reconsideration of the Hearing Examiner’s decision to deny the their’ 2006 application, which was denied, and then timely appealed the decision of the Skagit County Hearing Examiner to the Skagit County Board of County Commissioners; and

WHEREAS, on July 8, 2008, the Skagit County Board of County Commissioners denied Sundbergs’ administrative appeal and affirmed the Hearing Examiner’s decisions denying their (1) application for a special use permit for a Home Based Business II to operate a dog breeding business and (2) request for reconsideration; and

WHEREAS Sundbergs timely filed an appeal under the Land Use Petition Act (LUPA) of the county’s land use decision, but did not request or obtain a stay of any enforcement action; and

WHEREAS under Ordinance 20080004 adopted on May 6, 2008, “day-use” and “limited” kennels” are now permitted as special uses in the Urban Reserve Residential (URR) zoning district when approved by the Skagit County Hearing Examiner; and

WHEREAS, under SCC 14.04.020, a day-use kennel is defined as “any premises at which 1 or more dogs, cats, or both are kept during daytime hours for a commercial purpose including but not limited to grooming, training, and/or boarding,” and a limited kennel is defined as “any premises at which 1 or more dogs, cats, or both are kept overnight for a commercial purpose including but not limited to breeding or selling.”

WHEREAS Sundbergs applied for a special use permit to operate a kennel on their property; and

WHEREAS Skagit County Planning and Development Services determined that the Sundbergs’ application was incomplete and requested additional information for the application; and

WHEREAS as of this date, no special use permit has been issued to the Sundbergs that would allow them to operate a kennel on their property; and

WHEREAS on January 21, 2009, under authority of a search warrant, the Skagit County Sheriff searched the Sundbergs’ property for evidence of criminal violations of chapter 16.52 RCW (animal cruelty); and

WHEREAS evidence obtained during the search indicates that the Sundberg operation is linked to puppy mills in Snohomish County, that the dogs were maintained in unhealthy conditions, including severely restricted living spaces, poor ventilation, high ammonia content of air, unheated living spaces, feces and urine contamination of cages and animals, the presence of dead dogs, and

WHEREAS it was obvious that some of the dogs suffered from poor grooming, dehydration, and open sores; and

WHEREAS it appears that, despite the lack of the necessary permit, the Sundbergs increased the number of dogs in their breeding business from 150, as identified in their 2006 application, to about 400 dogs, as observed on January 21, 2009; and

WHEREAS on January 21, 2009, the Sheriff seized more than 135 dogs from the Sundberg property, leaving more than 300 dogs on the property; and

WHEREAS the Skagit County Sheriff subsequently learned that some of the dogs were suffering from coccidia, which is a parasite that attacks the stomach and intestines, is transferred through feces, and can be fatal; and

WHEREAS the Skagit County Sheriff obtained a second search warrant and returned to the Sundberg property on January 23, 2009, and seized an additional 308 dogs; and

WHEREAS many of the adult dogs that were seized are pregnant; and

WHEREAS the conditions and treatment of the dogs on the Sundberg property provides probable cause for criminal charges under Chapter 16.52 RCW and the case is presently under review by the Skagit County Prosecuting Attorney; and

WHEREAS Marjorie and Richard Sundberg appear to continue to use the Sundberg property for their dog breeding business; and

WHEREAS Marjorie and Richard Sundberg's decision to continue operating their business without the required permits and in the conditions observed on January 21, 2009, presents a continuing public nuisance that is detrimental to the health, welfare, and safety of the public; and

WHEREAS no timely or reasonable means of enforcing the applicable provisions of the Skagit County Code other than legal action remains open to the county.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners:

1. That the maintenance of a dog breeding business on the Sundberg property violates several sections of the Skagit County Unified Development Code, Title 14 SCC and constitutes a public nuisance; and
2. That the Skagit County Prosecuting Attorney, with the assistance of the Director of the Skagit County Department of Planning and Development Service and his staff and the Director of the Skagit County Health Department, if appropriate, is hereby authorized to bring legal action, which he deems appropriate, in the name of Skagit County against Marjorie and Richard Sundberg and any other appropriate persons to enforce the provisions of the Skagit County development code and to abate the nuisance should that prove necessary; and
3. That any costs of abatement shall be at the expense of Marjorie and Richard Sundberg, and any other responsible persons creating, causing or committing the nuisance, and a special

assessment shall be levied on the property on which the nuisance is situated to defray the cost, or reimburse Skagit County for its cost of abating the public nuisance, which special assessment shall constitute a lien against the property of equal rank with state, county, and municipal taxes.

WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this 27th day of January, 2009.



**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt

Kenneth A. Dahlstedt, Chair

Sharon D. Dillon

Sharon D. Dillon, Commissioner

Ron Wesen

Ron Wesen, Commissioner

ATTEST:

JoAnne Giesbrecht
JoAnne Giesbrecht, Clerk of the Board

APPROVED AS TO FORM:

A. O. Denny
A. O. Denny, Deputy Prosecuting Attorney
Skagit County Prosecutor's Office

APPROVED AS TO CONTENT:

Gary R. Christensen
Gary R. Christensen, Director
Planning & Development Services