

NOTICE OF DECISION
BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Travis Lundgren
16645 Dike Road
Mount Vernon, WA 98273

File No: PL08-0439

Request: Special Use Permit

Location: 16645 Dike Road, within a portion of the SE1/4NE1/4 Sec. 25,
T34N, R3E, W.M. (Parcel No: P22670)

Land Use Designation: Agricultural Natural Resource Land

Summary of Proposal: To operate an existing kennel (Skagit River Kennels) for the breeding and selling of Rottweiler and Saint Bernard dogs.

Threshold Determination: A Mitigated Determination of Non-Significance (MDNS) was issued on July 28, 2009. The MDNS was not appealed.

Public Hearing: After reviewing the report of Planning and Development Services (PDS), the Hearing Examiner conducted a public hearing on November 4, 2009. The Examiner remanded the application to PDS for further investigation by an Order dated December 9, 2009. By Memorandum, PDS responded to the remand on February 19, 2010.

Decision: The application is approved, subject to conditions.

Appeal: As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written notice of appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:

www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. The **FINDINGS AND ORDER OF REMAND**, entered on December 9, 2009, are attached hereto. The **FINDINGS** made there are by this reference incorporated herein. The following findings are supplemental to the findings made earlier.

2. Planning and Development Services (PDS) responded to the Order of Remand (12/09/09) by a Memorandum dated February 19, 2010. The response contained a letter from Richard Hughes, attorney for the applicant, addressing remanded items 1(a) through 1(d).

3. Mr. Hughes' responses are paraphrased as follows:

(a) What measures are taken to insure the health and welfare of the animals on site? Are they kept clean and well-fed? Are they given individual attention and taught to interact positively with people? What sort of veterinary care do they receive? Are they given the appropriate shots?

The applicant does not intend to exceed 25 dogs on site at any time. The dogs are fed twice a day with High Pro feed, and are provided with water in a five-gallon mounted bucket which is refilled twice a day.

Feces are removed from the premises daily. Pens are groomed weekly removing feces and smaller particles (e.g., hair, feed). Exercise areas and walkways are groomed monthly. Sawdust and cedar shavings are spread 4-6 inches deep in the pens monthly. Bi-annually the sawdust/shavings are removed down to the dirt and replaced with an approximately 12-inch application. These routine has effectively limited odor, germs and pests.

A covered dog house is provided in each pen for each dog. Wooden dog houses are to be replaced with 3' x 5' metal shelters by mid year.

Dogs are let out at least once a day to the 75' x 225' exercise area where they are typically allowed to play for 15-20 minutes. Also the large individual kennels (16' x36") provide exercise space. During the exercise period, the feeder spends time talking and playing with the dogs. At present, none of the animals are aggressive.

Puppies are sold, not kept and bred. Puppies are kept with their mothers for the first six weeks. Then, typically, they are put up for sale. They are usually sold before they are 12 weeks old. While awaiting sale, puppies are kept in puppy kennels where they socialize with other dogs. Puppies are provided with exercise and human contact similar to that provided for adult dogs.

Sires and dams are inoculated annually and are wormed as necessary. As needed, the dogs are taken off-site to a veterinarian's office. Health and safety are considerations in the frequency of breeding dams. Typically breeding is delayed until a dog is 2 and 1/2 years old. Breeding may occur 4-5 times a year, but may occur less often if health and safety so require.

After weaning, puppies are inoculated, de-wormed and micro-chipped. Their claws are humanely removed. Rotweiller puppies' tails are humanely docked within the first 3-4 days.

(b) What measures are taken to insure that healthy dogs are marketed? Is there any sort of health guarantee in the contract for sale? Can the dogs be returned? Have dogs been returned? Who are the typical buyers?

Puppies are guaranteed until three years of age to be free of hip and eye abnormalities or disease. New owners are provided with a written warranty, a chronology of date of birth, date of de-worming, and date and type of inoculation.

To date, all puppies have been successfully sold and none has ever been returned. There has never been a complaint of mistreatment by a buyer. Recently, most buyers are repeat buyers and they tend to be families.

(c) What particular steps are taken to prevent animal escapement? Have these measures been successful? Should they be improved?

Each individual kennel is six feet high and fences are buried two feet underground. Kennels have chain link fencing along the front and back. The sides are solid framed walls covered with metal siding. The front of each kennel is gated with a metal latch. If a dog should bolt past the kennel gate, the dog will find itself in the exercise pen which is similarly gated. Escape has occurred approximately three to four times due to failure to latch the exercise pen. Plans are in the works for the exercise pen to self latch via some sort of spring mechanism.

(d) What is the applicant's ability to effectively oversee the operation in light of his involvement in the farm operation? Have the improvements the applicant has planned been made? If not, when is a reasonable date for their completion? Have all needed building permits been obtained? What amount of time does the applicant have to devote to the care of the dogs? Would it be advisable in the interest of the animals for additional help to be hired?

Even though the applicant runs a farm, the winter time is quite slow and he has plenty of time then to oversee the kennel operations. For the summer, he plans to hire a part-time assistant to check on the dogs periodically and/or change out feed and water as scheduled.

The applicant has erected a dirt wall around 70 percent of the kennels and expects to complete that project in the summer or early fall after the rains have subsided. No other known building permits are required. The applicant is in the process of planting trees along the south property line. To date, 75% of the trees have been planted. The planting is expected to be complete before June.

4. PDS was asked to evaluate the effectiveness of efforts on noise control. They responded that the last formal complaints about barking were filed four and five years ago. Investigations showed that the applicant was working on the problem by locating the facilities away from residences and erecting sound barriers (hay bales and dirt walls). The applicant has also installed metal side walls between the kennels which prevents neighboring dogs from seeing

and antagonizing each other. These side wall barriers are represented as having dramatically reduced noise from the dogs. PDS thinks that planting additional trees along the property boundary will further reduce noise during the day. Noise problems at night should be largely eliminated if a building is constructed to house the dogs at night.

5. PDS was asked to contact Animal Control and get an assessment from them of any complaints they have received and whether they believe there are problems in the care of the animals. The Sheriff's Office provided reports dating from September 2005 through September 2009. From these reports it appears that officers responding to complaints have found a generally improving situation at the applicant's kennels. The facilities have been moved away from residences and barriers have been introduced to attenuate barking noise. The dogs were observed to be generally in good health, to have water available, and to be housed in clean pens containing shelters. No animal neglect has been found. No citations have been issued.

6. From the information received, it is apparent that the dogs do not receive a lot of personal attention and do not spend much time outside of their kennels. However, there is nothing in the record to show that any of the dogs are vicious or that anyone has ever been harmed by one of them.

7. SCC 14.16.900(2)(i)(vii) requires that all animals in kennels must be contained in enclosed buildings between the hours of 9:00 p.m. and 8:00 a.m. daily. PDS believes that an enclosed building (as opposed to individual dog houses) is necessary, not only to cut down noise from barking that can occur at night but also to help with the overall welfare and safety of the animals. Staff notes that there appears to be plenty of room on the southeast portion of the property to allow for the construction of a building to house the dogs. Since this area is already a part of the kennel operation, no additional agricultural land would need to be taken out of production to accommodate the building.

8. PDS takes the position that individual dogs houses within kennels does not satisfy the requirement for containing animals in enclosed buildings at night. The Examiner agrees. Having a doghouse available is not the same thing as containing the animals indoors during the night-time hours.

9. The Hearing Examiner finds that the applicant and PDS have satisfactorily addressed the concerns raised in the remand order. There is no reason to doubt the credibility of the information presented.

10. In addition to allowing the approved agricultural waste plan, the MDNS entered on July 28, 2009 contained the following condition: "The applicant shall comply with SCC 14.16.840 Performance Standards." The cited section contains criteria for control of vibration, heat, glare, steam, lighting, electrical disturbance, and noise.

11. The subject kennel is accessory to an existing natural resource operation. There is no evidence that resource land has been taken out of production to accommodate the kennel. No resource land will need to be converted to comply with the conditions of approval herein.

12. The holding areas do not contain accumulations of water, mud, debris or excrement. The facility is approximately 5,000 feet from the Skagit River and there is no evidence to suggest any water contamination from the kennel.

13. As conditioned, the kennels will be maintained in a manner so as to protect human health and ensure safe and humane treatment of the animals. Necessary food is provided. Run surfaces are constructed of shavings. Enclosure floors are not made of materials that would damage animals' feet. Sanitary, sheltered sleeping areas are required by a condition of approval. Appropriate exercise areas are provided. Ventilation is adequate for the health of the animals. Medical attention is provided as necessary.

14. The Hearing Examiner is aware that there is a human relations problem between the applicant and some of his neighbors. However, on the basis of the entire record, the Examiner believes that the applicant should be given a chance to show that he can run this kennel in a manner than is compatible with other land uses in the vicinity and that conforms to all the legal requirements. The permit will be subject to a number of conditions. Failure to comply with any one of them may be grounds for revoking the permit.

15. Any conclusion herein which may be deemed a finding is hereby adopted a such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050(1)(b).

2. The requirements of the State Environmental Policy Act (SEPA) have been met.

3. A Hearing Examiner Special Use Permit is required for a "limited kennel" in an Agricultural-Natural Resource Lands (Ag-NRL) district. Such kennels are allowed if accessory to an existing residence or natural resource operation; and provided no resource land is converted or taken out of production. SCC 14.16.400(4)(e). The conditions for Special Use Permit processing are met.

4. The subject kennel is a "limited kennel" as defined by SCC 14.04.020.

5. The subject Special Use Permit application is being processed under Ordinance #020080004. The following specific criteria apply (SCC 14.16.900(2)(i)):

(i and ii) (Application is exempt)

(iii) Parking for all kennel customers and employees shall be fully contained on the subject property and shall not include the use of any road right-of-way.

(iv) All lighting shall be directed away from neighboring residences and businesses

(v) An approved waste disposal plan that complies with Chapter 12.16 SCC shall be required.

(vi) Kennel animals must be contained on the subject property. Outdoor kennel areas shall be constructed with adequate materials and height so as to prevent animal escapement.

(vii) Any outdoor kennel use areas shall be configured such that impacts to surrounding properties are minimized. All animals must be contained in enclosed buildings between the hours of 9:00 p.m. and 8:00 a.m. daily.

(viii) (Does not apply)

(ix) Limited kennels shall also be subject to the following criteria:

(A) A limited kennel shall not exceed 25 dogs or cats over 16 weeks of age on site at any one time.

(B) At no time shall there be more than 50 dogs or cats of any age on site.

(C) No dogs or cats shall be commercially boarded at a limited kennel.

(D) A limited kennel may have animals kept during daytime and overnight hours and may also include additional related services including but not limited to selling, training, grooming and daily care.

(x) (Does not apply)

(xi) Only 1 kennel, either day-use, limited, or overnight boarding, shall be allowed on any property at one time.

(xii) An emergency evacuation plan satisfactory to the Department shall be required.

(xiii) An exercise plan satisfactory to the Department shall be required.

(xiv) Planning and Development Services may refuse issuance of a special use permit, or rescind an approved special use permit, if it is discovered that the applicant has been convicted of animal cruelty as defined in Chapter 16.52 RCW.

(xv) Planning and Development Services may refuse issuance of a special use permit, or rescind an approved special use permit for a kennel that is in violation of any of the provisions of Chapter 7.02 SCC.

6. Chapter 7.02 sets forth environmental and operational requirements that all kennel operators must meet. A kennel must be maintained so as to protect human health and ensure safe and humane treatment of the animals, including the following environmental requirements:

(a) A suitable system of drainage shall be provided in holding areas to prevent accumulation of water, mud, debris, or excrement.

(b) Enclosure floors shall not be constructed with wire or other materials that may damage or irritate animals' feet.

(c) Enclosures . . . for limited kennels shall meet three (3) times the USDA size requirements.

(d) Run surfaces shall be constructed of cement, gravel, or shavings.

(e) Sanitary, sheltered sleeping areas shall be provided for all animals.

(f) Exercise areas appropriate to animals' size, breed, characteristics, and normal climate shall be provided.

(g) There must be a waste disposal program approved by the Skagit Health Department.

7. In addition, Chapter 7.02 set forth the following operational requirements:

(1) All enclosures shall be clean and free of excrement build-up.

(2) A supply of clean drinking water shall be available to the animals, twenty-four a day.

(3) Ventilation shall be adequate to provide for the health of the animals and to ensure the removal of foul and obnoxious odors.

(4) Sufficient shelter, lighting and temperature control shall be provided to protect the animals from conditions to which they are not normally acclimatized.

(5) Animals kept overnight shall be clean and provided with necessary food.

(6) Medical attention shall be provided to animals whenever necessary.

8. Under the findings, the Examiner concludes that the applicant's kennel operation, as conditioned, will comply with the specific criteria of SCC 14.16.900(2)(i) and with environmental and operational requirements of Chapter 7.02 SCC.

9. The general criteria for Special Use Permit approval are set forth at SCC 14.16.900 (1)(b)(v), as follows:

A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

B. The proposed use complies with the Skagit County Code.

C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing or potential dwelling units, based on the performance standards of SCC 14.16.840.

- D. The proposed use will not generate intrusions on privacy of surrounding uses.
 - E. Potential effects regarding the general public health, safety, and general welfare.
 - F. For special use in . . . Natural Resource Lands, the impacts of long-term natural resource management and production will be minimized.
 - G. The proposed use is not in conflict with the health and safety of the community.
 - H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
10. Under the findings, the Examiner concludes that the applicant's kennel operation as conditioned will comply with the general criteria of SCC 14.16.900(1)(b)(v). However, strict compliance with the conditions imposed will be necessary to maintain compatibility of the operation with residential uses nearby.
11. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The operation shall be constructed and conducted as described in the materials submitted by or on behalf of the applicant, except as the same may be modified by these conditions.
2. The applicant shall comply with all conditions of the MDNS, issued July 28, 2009.
3. The applicant shall comply with the farm plan prepared by the Soil Conservation District as it relates to solid waste disposal from the kennel and with the conditions imposed by the Skagit County Health Department.
4. The applicant shall construct an enclosed building for containment of the adult dogs at night. Attention shall be given to noise abatement and to appropriate temperature control, lighting, sanitation and water availability in the construction of the night shelter. Individual dog houses will not satisfy this requirement.
5. The adult dogs shall be contained in the enclosed building between the hours of 9:00 p.m. and 8:00 a.m. daily.
6. The applicant shall complete the construction of earthen walls and the planting of trees as proposed.
7. The applicant shall obtain all other permits required for the operation of this limited kennel, including building permits necessary for compliance with these conditions. Because the

subject kennel is in existence, such needed permits should be obtained and the necessary work should be completed as soon as possible, but, in no case, no later than the deadlines set forth below.

(a) Required building permits shall be applied for within 90 days of the date of the decision herein.

(b) Physical work needed to achieve compliance with these conditions shall be completed no later than one year from the date of the decision herein.

8. A gate latching mechanism shall be installed or a procedure shall be instituted to insure that the gate to the exercise pen is not open while dogs are in that area.

9. The applicant shall make every effort to insure that adequate time is spent with the dogs to assure that they are appropriately socialized.

10. The applicant shall submit the following reports or plans to Planning and Development Services (PDS) for review and approval:

(a) An emergency evacuation plan

(b) An exercise plan

(c) A drainage plan showing how the accumulation of water, mud, debris or excrement will be avoided.

The above plans shall be provided within 30 days of the date of the decision herein.

11. The applicant shall comply with the following general waste handling requirements:

(a) Kennels and enclosed buildings shall be cleaned at regular intervals to prevent accumulation of manure that attracts flies and rodents. Daily cleaning is recommended.

(b) Kennels and enclosed buildings should be located in areas where drainage from the pads, slabs and wash down water will be absorbed on the applicant's property and will not affect surface of ground water. Wells should be located 100 feet from kennel drainage areas.

(c) No more water than is necessary to clean the pads or slabs should be used. If the down gradient drainage area is limited in size or the depth of soil is limited or the permeability is slow, it is recommended that a high pressure sprayer be used to limited the amount of water used to perform wash down.

12. The applicant shall comply with all applicable State and County regulations, including but not limited to SCC 14.16.900(2)(i) (as applicable), Chapter 7.02 SCC, Chapters 173-210A and 200 WAC (water quality) and Chapter 173-60 WAC (noise).

13. PDS shall be notified by letter within 30 days after any change in ownership of the subject property. The letter shall reference Permit No. PL08-0439.

14. Per SCC 14.16.900(3), the applicant shall comply with the annual certification process, acknowledging in writing compliance with the original permit approval, including all conditions.

15. All planning related fees, including recording of the decision must be paid within 30 days of receipt of the invoice.

16. If the operation ceases for a period of one year, the permit shall be void.

17. Per SCC 14.16.900(2)(i)(xiv), this permit may be rescinded if it is discovered that the applicant has been convicted of animal cruelty as defined in Chapter 16.52 RCW.

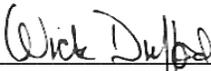
18. Per SCC 14.16.900(2)(i)(xv), PDS may rescind this permit if the operation is found in violation of any of the provisions of Chapter 7.02 SCC.

19. Failure to comply with any of the conditions herein may result in permit revocation.

DECISION

The requested Special Use Permit (PL09-0439) is approved, subject to the conditions set forth above.

DONE this 17th day of March, 2010.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and Interested Parties on March 17, 2010.

RECONSIDERATION/APPEAL

See page 1, Notice of Decision