



ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

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STAFF REPORT & RECOMMENDATION TYPE III SITE PLAN REVIEW – SPR 131/19

Whitney Kennel (Skymeadow Farm)

I – PROJECT SUMMARY AND HISTORY

Larry Kwarsick, representing the property owners, Julie Ann Pecha and John and Else Whitney, request a site plan review (SPR) for a Type III dog kennel. The property, which has the dog kennel, is located within Skyline West Subdivision, North of Freeland. The property owners have an unpermitted dog breeding operation on their property. Per Island County Code 17.03.040, a kennel is defined as, “boarding, breeding, keeping or training places or the keeping or raising of five (5) or more household pets, at least six (6) months of age, which are owned by persons other than the owner of the property, may be permitted as a home industry. A kennel shall not include animal hospitals or veterinary clinics.” John and Else Whitney, the business owners, have 21 dogs for their breeding operation and 4 dogs that are pets that live in their residence. The operation is held in two buildings: the 240 square foot nursery within a RV near the single-family dwelling and the 2,160 square foot kennel.

In 2015, Island County received four code violation complaints regarding the kennel, noise, odor, and dumping waste into a stream. The Code Enforcement Officer at the time sent John and Else Whitney a letter regarding the violation and options that would remedy the violation. One of the options was to apply for a SPR. The SPR 276/15 was deemed complete on August 24, 2015. The application was denied on January 4, 2016. (See Exhibit 9 and 9.a-9.d.)

The denial was based on five findings:

1. The proposal did not meet the minimum lot size.
2. The proposal was imposing an undue burden on utilities by not having the water system (Skyline West Community Club Water System) that the lot is legally in be able to serve the proposal. The Skyline West Community Club Water System refuses to serve the kennel.
3. The site has four illegal buildings (no building permits found on file) on the property, including the kennel and nursery.
4. The proposal did not meet the drainage requirements from Public Works.
5. The proposal exceeds noise levels allowed per RCW 173-60-040.

Shortly after the decision was mailed, staff sat down with the property owners to go over the decision and how to move forward. Skymeadow Farm Water System does not have the legal capacity to serve the subject property. The applicants would need to submit for a Water System Review Application for the boundary change to the Skymeadow Farm Water System with the Planning Department before the

Skymeadow Farm Water System could serve the property. Staff went over the drainage requirements, and building requirements. Staff also made sure to provide all applications regarding the submittals that would be needed during the meeting. They were told that they shall suspend all operations until they received an approved Site Plan Review.

In May of 2016, the code was changed to make it clear that Kennels fall under the Home Industry criteria and the Institutional Use criteria. This code provision made it clear that the minimum lot for a kennel is five acres. The code amendments also change the definition of lot size to include ½ of the abutting right of way.

The business owners did not suspend the dog breeding operations as they were told to do in the meeting. The County sent another cease and desist order on July 15, 2016.

As addressed in the decision of 276/15 SPR, the director told the property owners at that time, that they would be able to meet the lot size by providing the lease agreement to R23036-209-0540 with their application.

In 2017, the Whitneys submitted the Type II Site Plan Review (354/17). The Whitneys submitted a new Site Plan Review Type III in April 12, 2019 and the fees associated with 354/17 were transferred to 131/19 and 354/17 was withdrawn. The applicant included the lease agreement on parcel R23036-209-0540, which is owned by Julie Ann Pecha. (See Exhibit 5d)

Staff finds that the application does not meet Island County code requirements; therefore, recommends denial of the application 131/19 SPR. The following findings outline reasoning for denial. The proposal is loud and remains a nuisance to the neighborhood; the property has two water connections and is only allowed one. Skymeadow Farm Water Association does not have the right to serve the property and have not submitted an application to amend the violation. Without the building permit applications submitted for the kennel building, the building staff is not able to be reviewed by the building department to deem if the meet all building codes and safety requirements for a commercial activity.

The applicant requests approval of the site plan review with a list of conditions to rectify the violations. It is Island County practice to make sure that the violations are fixed prior to issuance of a land use decision. It is difficult to hold a property owner to the proposed conditions of approval, if the SPR was approved without the submitted building permits to build the buildings.

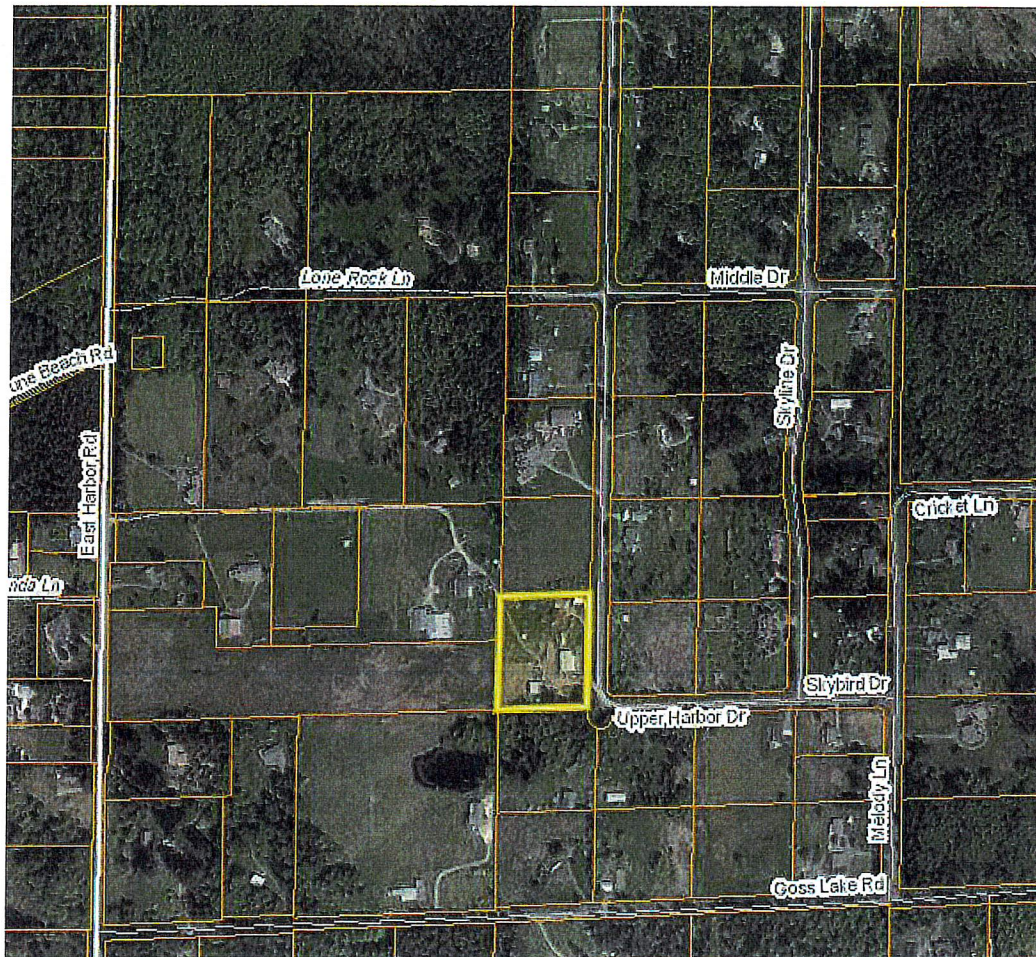
Staff recommends denial of the application. However, should the Hearing Examiner determine to approve the application, proposed conditions of approval are attached

II – PERMIT & SITE DATA

Permit Type	Site Plan Review Type III
Permit Number	SPR 131/19
Date of Complete Application	April 15, 2019
Decision	Recommendation of Denial
Applicant/Owner	John and Else Whitney, and Julie Ann Pecha
Agent	Larry Kwarsick

Address	4630 Upper Harbor Dr. and East Harbor Rd., Freeland, WA 98249
Parcel Number(s)	S8175-00-00009-0 and R23036-209-0540
Parcel Area(s)	2.4 acres and 7.78 acres
Zone Designation	Rural (R)
Allowable Density	1DU/ 5AC
Critical Areas/Overlays	Stream Buffer and Steep slopes

III. VICINITY MAP



IV. SURROUNDING PROPERTIES

Area	Land use Designation	Zoning	Existing Uses
Project Site S8175-00-00009-0 R23036-209-0540	Rural Lands Rural Lands	Rural Rural	Single family residences Vacant
North	Rural Lands	Rural	Vacant and Single family residences
South	Rural Lands	Rural	Single family residences
East	Rural Lands	Rural	Single family residences
West	Rural Lands	Rural	Single family residences

V – STAFF CONTACTS

Department	Name	Phone	Email
Planning	Michelle Pezley	360-678-7817	m.pezley@islandcountywa.gov
Public Health	Clea Barenburg	360-678-7267	c.barenburg@islandcountywa.gov
Public Works	Bill Poss	360-678-7813	billp@islandcountywa.gov
Building	Tamra Patterson	360-678-7806	tamrap@islandcountywa.gov
Critical Areas	Greg Goforth Will Hallberg	360-240-5585	w.hallberg@islandcountywa.gov

VI – REGULATORY COMPLIANCE

Regulatory Requirement	Complies (Y/N)	Comments
A. Rural (R)- ICC 17.03.060	Yes	Meets all applicable criteria- legal lot
B. Site Plan Approval – ICC 16.15	No	Staff finds that the applicant does not meet the criteria. The Hearing Examiner may find that the proposal meets the criteria with a list of conditions
C. Land Use Standards – ICC 17.03.180 P., Q., R., & S.	No	Staff finds that the applicant does not meet the criteria. The Hearing Examiner may find that the proposal meets the criteria with a list of conditions
D. Home Industry- ICC 17.03.180.J	No	Staff finds that the applicant does not meet the criteria. The Hearing Examiner may find that the proposal meets the criteria with a list of conditions
E. Kennel- ICC 17.03.180.L.10	No	Staff finds that the applicant does not meet the criteria. The Hearing Examiner may find that the proposal meets the criteria with a list of conditions
Building	No	The applicant has not submitted building permit applications for those buildings built without permits
Public Health/Sanitation	No	The applicant has two water connects; one is an illegal connection
Public Works/Engineering	Yes	No objection with the recommendation of conditions of approval
Critical Areas	Yes	No objection with the recommendation of conditions of approval
SEPA	Yes	Exempted from SEPA per WAC 197-11-800; commercial building is under 4,000 square feet.

VII – PUBLIC NOTICE AND COMMENTS

Public Notification:

1. On April 18, 2019, the County mailed the notice of application to the property owners within 300 feet from the two properties.
2. The County published a Notice of Application on May 1, 2019 in the Whidbey News Times and Whidbey Record.
3. Mr. Whitney posted a sign on the property on April 30, 2019.
4. On March 9, 2020, Staff sent a notice of hearing to the property owner, agent, and parties of record.
5. The County published a Notice of Hearing for the April 29, 2020 addition to Whidbey News Times and Whidbey Record.

During the public comment period May 1, 2019 to May 15, 2019, Island County received twenty-one public comments from eighteen people (See Exhibits 20 to 41). All comments were in opposition to the proposal. Comments ranged in concerns with illegal water supply, size of the lot (against staff finding that the lot size could be added to with a lease), concerns that the dog kennel is still operating after the cease and desist order issued in 2016, concerns of waste odor from the right-of-way, and that the noise is a nuisance in the neighborhood.

VIII – FINDINGS

A. Rural (R) Zone (ICC 17.03.060)

1. The project site is zoned “Rural” (R).
2. The lot is part of the Skyline West Division 1, which was approved and recorded November 1968.
3. Kennels are a Type II application; however, home industries are an allowed use or conditional use per ICC 17.03.180. Section 17.03.180.J states, “A Type II application shall be limited to fifty (50) percent of the gross floor area of the dwelling unit but no greater than 800 square feet. A Type III application shall be required for activities greater than 800 square feet or fifty (50) percent of the gross floor area of the dwelling unit limit but less than a maximum 4,000 square foot gross floor area. Properties which are ten (10) acres or greater may exceed the 4,000 square foot maximum allowable area, provided that the use complies with all applicable county standards.” The applicant proposes to use an existing 2,160 square foot building labeled “Kennel” in the site plan and a 240 “temporary” building labeled “nursery” that is located near the residence. Due to the total square footage of the buildings the application is a Type III Decision.
4. Pre-application conferences are not required by staff as the business owners received staff comments regarding the proposal in 276/15 and 354/17 reviews.

5. Minimum lot size within the Rural Zoning District is five acres. The lot is a legal non-conforming lot that is 2.4 acres in size or 2.5 counting the right-of-way. The applicant submitted a lease agreement with parcel R23036-209-0540, which is 7.78 acres in size. With the use of the lease, the applicant meets the minimum lot size for a kennel of five acres. If the Hearing Examiner finds that the proposal may meet all other standards, staff recommends a condition of approval that the applicant shall submit a letter by January 2nd of each year from the property owner of R23036-209-0540 stating that the lease is still active and no changes have been made to the lease for that year. Once the property owners choose to end the lease agreement, Mr. and Mrs. Whitney have 90 days to relocate or discontinue the kennel.
6. Setbacks within Rural Zoning District are five feet minimum on the side and rear, and twenty feet minimum in the front. (ICC 17.03.180.S). The building meets the setbacks required for a single-family residence. A home industry is required to be 50 feet from the property line. As indicated by the site plan, the Kennel is 50 feet from the property line (See Exhibit 5e.).
7. Maximum height is three stories, not to exceed 35 feet (ICC 17.03.120.F). The applicant proposes to use an existing building that is one-story.

The project is subject to site plan review per ICC 17.03.060.B

B. Site Plan Approval – ICC 16.15

ICC 16.15.040 Application Requirements

Finding: The applicant submitted the application on April 13, 2019, Michelle Pezley, Senior Planner, deemed the application complete on April 15, 2019.

ICC 16.15.060 Conditions of Approval for NR Uses in the R, RR, RA, RF, and CA Zones

A. The proposed use shall not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures.

Finding: The applicant proposes to continue to use an existing building for the dog kennel. Public Works addressed drainage with their review (see Exhibit 17). The applicant proposes to use an unpermitted building that is over fifty feet from any steep slope on the property; Public Works did not request additional information regarding the steep slopes. The applicant states that the dog waste is disposed in a dumpster with a weekly service. As states in public comments, the noise impact is a concern from the neighbors. The applicant stated in Exhibit 5s, that he is willing to “debark” the dogs to reduce noise from the property. If the Hearing Examiner finds that the proposal meets the criteria of approval, staff recommends a condition that business owners submit a landscaping plan that shows a 15-foot landscaped buffer between the kennel and fence along the east elevation and a 10 foot buffer along the west and north property lines within 30 days of the final decision. (Condition 3).

B. The Use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or service existing or planned to serve the area.

Finding: Island County finds that the reasons for the initial denial have not changed. The property is within the Skyline West Community Club Water System. The Skyline West Community Club Water System provided a statement that they will not serve the kennel. The

applicant has worked an agreement with the Skymeadow Farm Water System to provide water service to the Kennel and installed the water connection without County approval. Mr. Whitney was told in 2015, that the Skymeadow Farm Water System is not approved to serve his kennel and the Skymeadow Farm Water System does not have any additional approved connections to add another property into their system. He would need to submit for a Water System Review Application for a boundary change and show that the Skymeadow Farm Water System will be able to support the additional connection. Mr. Whitney or the Skymeadow Farm Water System has not submitted the application to change the boundary or increase the legal number of connections to Island County as of writing this report. As part of the application, Mr. Whitney requests that the submittal the Water System Review Application for the water system boundary adjustment and service expansion is a condition of approval. Staff recommends that the complete application be submitted within 30 days of the final decision if the Hearing Examiner finds that the proposal meets all conditions. (See Condition 5)

C. The proposed development/use is one (1) conditionally permitted within the subject zone and complies with all of the applicable provisions of this chapter and all other applicable regulations, including prescribed development/performance standards and all applicable development standards and design guidelines.

Finding: As previously discussed, a Home Industry and Kennels are listed conditional uses within the Rural Zoning District. The findings of fact and conditions of approval associated with this decision provide an option to demonstrate and ensure compliance with all applicable development standards and design guidelines with conditions of approval or denial. Island County Building department finds that the business owner never applied for a building permit for the kennel to know that building is safe. The business owner is also using an RV as the nursery/office, which will not meet building code standards for an office or commercial use.

Public Health does not have an approved Water Availability Verification (WAV) associated with the building. Mr. Whitney states the building is connected to the existing septic system; however, Public Health does not have a septic system application approving the connection or an asbuilt showing the connection (see Exhibits 13, 14, and 16). As stated in the application, there are two water connections to the property and the County's records show that one of the water connections is illegal. If the Hearing Examiner finds the development meets the standards, staff recommends a condition of approval to submit the applications for the building permit, septic system approval, and Water System Review Application within 30 days of the final decision or the decision is void and the business owners will have 90 days to relocate the kennel. (Conditions 5 and 9)

D. The subject site is physically suitable for the type, density and intensity of the use being proposed.

Finding: The subject site standing alone does not meet the minimum lot size for a kennel as outlined in ICC 17.03.180.L.10. With the use of the lease, the application meets the minimum lot size for a kennel of five acres. However, if the Hearing Examiner finds that the proposal may meet all other standards, staff recommends a condition of approval that the applicant shall submit a letter from the property owner of R23036-209-0540, by January 2 each year stating that the lease is still active and no changes have been made to the lease that year. Once the property owners, choose to end the lease agreement, the business owners, Mr. and Mrs. Whitney have 90 days to relocate the kennel. Failure to submit the letter is grounds for Island County to find that the applicant has not followed conditions of approval.

E. The location, size, design, and operating characteristics of the proposed development/use would not detrimental to the neighborhood, nor be detrimental to the public interest, health, safety or welfare of the county in conformance with standards of this chapter, chapter 17.02, 17.02B, and 17.03.

Finding: The project proposed by the applicant must be designed so as not to be detrimental to the public interest, health, safety, or welfare and not to have a significant detrimental impact on the surrounding neighborhood. Island County Public Health Department reviewed the proposal and determined that the proposal does not complies with all applicable rules, laws, regulations, and policies pertaining to public health, as the subject parcel has an unapproved connection to their septic system and unapproved connection to an additional water system. The Health Department approved the proposed Solid Waste Management Plan as listed in Exhibits 13, 14, and 16 (see Condition 15). If the Hearing Examiner finds that the proposal meets all the criteria, staff recommends a condition of approval that the business owners or Skymeadow Farm Water System submit a complete Water System Review Application and fees within 30 days of the final decision.

Island County Department of Public Works determined that the proposal will not result in traffic or safety impacts in the surrounding area, given compliance with development standards required by the code and those as conditioned in this land use recommendation (see Exhibit 17).

Island County Code Enforcement has received five code complaints on the kennel by four different complainants. Code Enforcement found, during a site visit, that the kennel at this location created an inordinate amount of noise and creates a significant public disturbance. RCW 173-60-040 is the Revised Code of Washington's standard for maximum permissible environmental noise levels. Dog kennels are rated at 110db, which exceeds the allowable noise limits set forth in RCW 173-60-040 (See Exhibit 9d).

The Land Use Standards in ICC 17.03.180 details development standards, which must be met for Kennels and Home Industries in a Rural Zoning District. This decision reviews the application as presented in light of those standards and cites them as below.

F. The proposed use and its design fulfill the definition of rural character as defined in chapter 17.03.

Finding: "Rural Character," is defined as:

Rural character, from RCW 36.70A.030(14), refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- a. In which open space, the natural landscape, and vegetation predominate over the built environment;
- b. That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- c. That provide visual landscapes that are traditionally found in rural areas and communities;
- d. That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- e. That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- f. That generally do not require the extension of urban governmental services; and
- g. That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

The proposal meets the definition of "Rural Character" as it is promoting an opportunity to both live in and work in rural areas, and provides rural-based economies with the condition as listed in Island County Critical Areas Planner, Greg Goforth's memo dated April 11, 2019 (Exhibit 10).

G. Proposals within the rural agriculture or commercial agriculture zones shall not be located on prime agricultural soils or interfere with agricultural use of the land.

Finding: The proposal is not within a Rural Agriculture or Commercial Agricultural Zone; therefore, this criterion does not apply.

16.15.070 Decision Making Authority

In approving an application for a Nonresidential conditional use in the R, RR, RA, RF, or CA Zones, including home industries, the decision-making authority may impose conditions to protect the rural character surrounding the proposed use and to preserve the purpose of the underlying zone. Any such conditions shall be supported by a written finding and have a direct nexus to and be limited to those specific actions necessary to protect the rural character for any specific project. These conditions may include, but are not limited to, the following:

D. Limiting the hours and days of operation.

Finding: Island County Code Chapter 9.60.030 limits noise to the hours of 7 a.m. to 10 p.m. However, the neighbors are concerned and frustrated with the noise that the business has brought to the quiet neighborhood. Staff recommends the condition that all the dogs must be inside no later than 5:00 p.m. to ensure that noise does not impact the neighbors (See Condition 12).

G. Requiring fencing, screening. Or landscaping to protect adjacent or nearby property.

Finding: The applicant states that there is a solid wood fence that screens the kennel. The solid wood fence is not enough of a sound barrier, as the neighbors are still voicing concerns about noise. If the Hearing Examiner finds that the application meets all the criteria, staff recommends a condition of approval to add a 15 foot landscaping buffer between the kennel building and solid fence be included in the landscaping plan that is due 30 days from the final decision and the landscaping shall be installed by the end of October.

J. Prescribing a time limit within which to fulfill any established conditions.

Finding: If the Hearing Examiner finds that the application meetings all applicable criteria, staff recommends a condition that the applicant shall submit all applications and associated fees for building permit(s), Water System Review Application, and revised septic system, within 30 days of the final decision. If the deadline is missed, the business owners have 90 days to remove the dogs. (Condition 9)

ICC 16.15.080 Criteria for Approval

A. An application for Site Plan Review shall not be approved unless it meets the requirements of this section. No development pursuant to an approved Site Plan shall be undertaken unless it meets the requirements of Titles 8, 11, 13 and 17 of ICC pertaining to such development.

Finding: Public Works provided review of Titles 11 and 13 and findings are found in Exhibit 11 and 17. Public Health reviewed the proposal and found that proposal has an illegal water

connection as outline in Exhibits 13, 14, and 16. The Findings of Fact for Title 17 are within this report.

1. **Open Space: Provide open space in the amount required by chapter 17.03 or chapter 17.06, as applicable. The location, use and design shall meet the following standards:**

- a. **Include critical areas designated and regulated by chapter 17.02B; and**
- b. **Include areas of prime soils identified by NRCS.**

Finding: Section 17.03.180.S requires 20 percent of the site to remain in open space. With the Director's decision to allow the use of the lease agreement as part of this application, the applicant meets this criteria.

2. **Site Lay-Out: The location of the development, parking, landscape screening and buffers shall meet the requirements of chapter 17.03 or chapter 17.06, as applicable and following standards:**

- a. **Locate development to minimize the amount of disturbance to natural features and landscape;**
- b. **Development shall be located so as to minimize the amount of agricultural land loss and shall not be located on prime soils.**

Finding: The business owners do not propose to develop on R23036-209-0540 (Pecha's property). The Pecha's property is within the Rural Zoning District and Mr. Whitney leases the property for raising sheep. The Whitney's property is mostly developed with cleared areas, buildings, driveways, and parking.

3. **Lighting: Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.**

Finding: The business owner submit a lighting plan (see Exhibit 5g). However, the County received a comment that the lighting is not downward facing, therefore a condition is recommended that lighting fixtures must be a full cut-off design that is shielded, hooded, and oriented in such a way as to not be visible past the property boundaries. (Condition 18)

4. **Building Design: Shall comply with the applicable non-residential design guidelines set forth in chapter 17.03 or chapter 17.06, as applicable, except that for essential public facilities the approving authority may waive design requirements as determined by the approving authority to be necessary and appropriate to the type and location of the essential public facility.**

Finding: The building meets the design standards listed in ICC 17.03.180.P, which are discussed in further detail below in Section C of this report.

5. **Surface Water Drainage: Shall meet the requirements of chapter 11.03 and special attention shall be given to proper site surface drainage so that site drainage will enhance groundwater recharge and not adversely affect downstream properties and the site.**

Finding: Bill Poss, Public Works Development Coordinator, reviewed the submitted drainage plan by Davido Consulting Group (see Exhibit 5n) and has no objections to the drainage plan as outlined in his memo (Exhibit 17).

6. **Utility Services: Wherever feasible, electric, telephone, and cable utility lines shall be underground.**

Finding: The applicant does not propose above ground utilities.

7. **Advertising Features:** The size, location, design, color, texture, lighting, and materials of all exterior signs and outdoor advertising structures or features shall be harmonious with the design of proposed and existing buildings and structures and surrounding properties and shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.

Finding: The applicant does not propose a sign. Per ICC 17.03.180.L.10.k, no external evidence of any incidental commercial activities taking place within the building. This limits advertising on the property and limits signs. Staff recommends a condition that no signs permits will be issued to the business owners per ICC 17.03.180.L.10.k (Condition 17).

8. **Traffic and Circulation:** Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.

Finding: Parking, traffic, and circulation will be reviewed in the next section below. (ICC 17.03.180.P)

ICC 16.15.160 Expiration of Site Plan Approval

Finding: The applicant does not propose that the project be phased; therefore, phasing is not approved for this project. The business owners shall meet the conditions of approval as listed below.

C. Land Use Standards – ICC 17.03.180 P., Q., R., & S.

ICC 17.03.180.P Non-Residential Design, Landscaping, and Screening Guidelines

- 1: **Building Design in the R zone: Building design in the R, RR, RA, RF, and CA Zones:**
- a. Buildings shall be designed to appear similar in height, size, placement, style, materials, color and design to residential or agricultural structures, except that for essential public facilities the approving authority may waive design requirements as determined by the approving authority to be necessary and appropriate to the type and location of the essential public facility.
 - b. Bright or brilliant colors shall not be used. Materials used for exterior surfaces of all structures shall blend in color, hue and tone with the characteristics of the surrounding natural terrain to avoid high contrast.
 - c. Structures of varying heights clustered together are preferred to one (1) large structure or the repetition of structural design.
 - d. Maximum building height is thirty-five (35) feet (excluding existing structures). Chimneys, smokestacks, fire or parapet walls, ADA required elevator shafts, flagpoles, utility lines and poles, skylights, communication sending and receiving devices, HVAC and similar equipment, and spires associated with places of worship are exempt from height requirements.
 - e. Large doors and blank walls visible from the adjacent public road or adjoining private property shall be avoided. Windows, wall modulation, materials of varying texture and landscaping shall be used to break up blank walls.

Finding: Each existing building on the site was designed for residential or agricultural use. The applicants built the building as an accessory structure to a single family dwelling without a building permit. The business owner is using a RV as the office and nursery. The RV will not be able to meet building code requirements for a commercial use. The RV will need to be replaced with a buildings that will meet the design review section of ICC 17.03.0180.P.1 (Condition 6).

The kennel building is a metal building with a gable roof and shed covered area, which is standard design within the Rural zoning district. The building is a tan color. The buildings are distributed around on the property. As listed in Condition 15, a fence is required to screen the properties to the north and to the south. The buildings meet the building design criteria.

2: Building design in RC, RV, CVG and RS Zones:

Finding: Criteria does not apply.

3: Landscaping and Screening in R zone:

a. The section prescribes the purposes and standards for screening and buffering. These goals are:

- (i) To preserve and enhance the natural environment and aesthetic qualities of the county;
- (ii) To preserve and enhance the appearance, character and value of surrounding properties;
- (iii) To minimize the visual impacts of developed parking areas;
- (iv) To provide cover, corridors, and habitat for wildlife;
- (v) To minimize the negative impacts of erosion, noise and air pollution, wind and glare; and
- (vi) To ensure the following:
 - (1) Compatibility of non-residential uses with residential uses;
 - (2) Buffers between incompatible land uses;
 - (3) Screening of objectionable light;
 - (4) Softening of building masses;
 - (5) To attenuate and contain noise;
 - (6) Preserving privacy;
 - (7) Attractive appearance along county roads; and
 - (8) Enhancement of the quality of life and general welfare.

b. Landscape and screening in the R, RR, RA, RF, and CA zones:

- (i) Regional native vegetation should be retained to the extent possible and also used to supplement existing vegetation.
- (ii) Berms are encouraged if needed to screen non-residential structures and parking lots from adjacent properties or public roads.
- (iii) Buffers adjacent to public roads and/or overhead utilities shall be increased in size to ensure that the buffer width is maintained where the right-of way of the adjoining public roadway is less than the standard specified in chapter 11.01 and when either the public agency does not purchase the additional right-of-way or the applicant does not dedicate the additional right-of-way in conformance with chapter 11.01.
- (iv) Existing regional native vegetation and additional landscaping as needed should screen security fencing visible from public roads.
- (v) Completion of all landscape plans shall be assured as follows:
 - (1) The applicant may post a surety bond or provide other financial assurances, equal to 200 percent of the estimated cost of materials and installation, or may enter into other implementation agreements as are approved by the director.
 - (2) Release of any surety for completion of landscaping shall not occur until a final landscape inspection, and a plan completion sign-off has been made by the director. Any portion of the landscaping not completed in accordance with the

approved landscaping plan shall be cause for the plan not to be signed and/or cause for the surety to be used by the county to complete the installation.

(3) At such time as the design is agreed upon by the applicant and the director, both shall sign the site design, attesting to that agreement.

(4) At such time as the landscape improvements have been completed in accordance with the approved plan, the applicant shall notify the director thereof, and upon satisfactory inspection, the director shall sign and date the plan, attesting to its completion.

(vi) Landscape maintenance.

(1) Dead or dying vegetation must be replaced immediately or if in winter, within the next planting season; and

(2) Landscape structures in disrepair or destroyed must be repaired or replaced to serve original purpose.

c. Rural character buffer [in] the R, RR, RA, RF, and CA Zones. For NR uses/structures a "full screen" that functions as a complete visual barrier shall be provided, if the applicant chooses full screening in lieu of complete conformance to the design requirements of this section.

d. Screening may be combined with design to achieve visual compatibility. A project must be screened with native vegetation, landforms, natural features, and undisturbed open space to ensure that the proposed non-residential structures and activity are compatible with the character of surrounding permitted uses. Landscaping may be required for privacy, visual screening, sound deadening, appearance enhancement or other purposes determined desirable by the director for the purpose of insuring compatibility of the proposed use with that of existing and anticipated future uses in the zone.

Finding: As listed in the Kennel criteria section of this report, additional screening is needed to help reduce the sound from the dogs to the neighborhood. As listed in the Home Occupation section of the staff report, the business owners shall also add screening along the west and north elevations. If the Hearing Examiner finds that the proposal will meet all criteria, staff proposes a condition of approval that the applicant shall submit a landscaping plan showing the landscaping screening that meets the standards above within 30 days of the final decision (Condition 3). All landscaping shall be planted by the end of October (Condition 4). Staff also recommends a condition of approval that the Landscaping Maintenance is required per ICC 17.03.180.P.3.b(vi). Dead or dying vegetation must be replaced immediately or if in winter, within the next planting season (See Condition 13).

ICC 17.03.180.P.4. Landscaped and screening in the RC, RV, CGV and RS Zones:

Finding: Criteria does not apply.

5: Screening: When no specific screening requirements are established in this chapter, any project must be screened with landscaping, landforms, natural features, undisturbed open space areas and/or fences to ensure that the proposed activity, structures and use are compatible with the character of surrounding permitted uses.

Finding: The business owners do not propose additional screening. As listed above, the Kennel criteria requires additional screening. If the Hearing Examiner finds that the proposal will meet all criteria, staff proposes a condition of approval that the applicant shall submit a landscaping plan showing the landscaping screening that meets the standards above within 30 days of the final decision (Condition 3). All required landscaping shall be installed by the end of October of 2020 (Condition 4).

ICC 17.03.180.Q Parking, Access and Circulation

- 1. Off-street parking, loading and unloading:** In all zones space for the off-street storage and parking of vehicles shall be reserved and improved for use at the time any building or structure is erected, enlarged, or expanded in height or ground coverage. Provision shall also be made when an existing use or structure is modified, altered or changed such that the number of required parking spaces is increased by more than ten (10) percent over the number required by the use or building prior to the change or alteration.
- 2. Minimum requirements:** Unless otherwise provided, the minimum required off-street parking spaces for allowed uses, exclusive of employee parking spaces, shall be as follows:
 - t. Unspecified uses:** In the case of a use not specifically mentioned in this section, the Planning Director shall establish the minimum number of spaces for off-street parking facilities

Finding: The business owners state that there is one part time employee and that no customers come to the property to view the puppies. The business owners propose parking in front of the building, which will be adequate space for 2 parking spaces. The applicants meet the parking requirements.

7 Access and Circulation: Design or configure the project or site plan so that:

- a. Vehicular access is designed and located to minimize interference with traffic flow on adjacent roads;**
- b. Access points to the site do not interfere with access to adjacent and nearby properties;**
- c. Interior roads are designed to minimize conflicts between pedestrian and vehicular circulation;**
- d. Interior roadways and parking areas shall be designed so there are not conflicts between the maneuvering areas for the parking spaces and the major circulation through the site;**
- e. For projects located along existing transit routes, consideration shall be given to multi-modal access including, transit stops, transit access and nonmotorized access and facilities, as appropriate to the nature and scale of the project;**
- f. Driveways, roads and parking areas shall be designed so exiting vehicles are not required to back out into a public or private road that is external to the site plan; and**
- g. Loading bays and docks shall not require truck traffic to cross high pedestrian or vehicular traffic.**

Finding: The business owners use the existing residential access for the Kennel. There is adequate spacing in front of the garage and in front of the kennel to provide turn around area to avoid backing out into the public right-of-way. Access and circulation was reviewed by Public Works. Public Works found that the access proposed would meet the county standards for the proposed traffic count of the development.

ICC 17.03.180.R Signs and Outdoor Lighting (Criteria too large to include in the staff report)

Finding: The proposal does not include a sign. As stated above, ICC 17.03.180.L.10.k does not have any external evidence of any incidental commercial activities taking place within the buildings. Staff recommends a condition to limit signs on the property. (see Condition 17)

ICC 17.03.180.S Site Coverage and Setbacks (Criteria too large to include in the staff report)

Finding: The location of existing structures meets the setback standards of 20 feet from Upper Harbor Drive and five feet from side and rear property lines. ICC 17.03.180.J requires 50 foot setbacks from all property lines. The application meets this criteria.

D. Home Industry - ICC 17.03.180.J

To provide for small-scale commercial or industrial activities on Rural, Rural Agricultural, Rural Forest, or Commercial Agricultural zoned parcels, accessory to the primary residential/agricultural/forestry use. The scale of the proposals to be considered through this mechanism is typically greater than could be accommodated as a home occupation. Uses that are larger than a home industry must locate in a nonresidential zone.

1. The following list of uses is not intended to be exhaustive, but rather is intended to be illustrative of the types of uses which the approval authority may consider:

- i. Kennel;

Finding: The list of uses in 17.03.180.J.1 is not intended to be an exhaustive list. Kennel is a listed use to be considered as home Industry and the home industry criteria also apply.

2 A home industry shall meet the requirements of this chapter and the following standards:

- a. In order to establish a new home industry the property owner shall sign an agreement that:

- (i) Acknowledges the requirements of this section; and
 - (ii) Agrees that the home industry will be discontinued or brought into strict conformance with the requirements of this section upon notification from the director of any violation of this section.

- (iii) The owner(s) of a home industry shall certify compliance with conditions of approval.

- (iv) When the business no longer complies with the criteria established above and the conditions included in any approval, the business shall relocate to a zoning classification which would permit the activity. Such conditions shall be recorded by the owner against the title of the property with the Island County Auditor.

Finding: If the Hearing Examiner finds that the proposal meets the criteria for the kennel, staff recommends a condition that all property owners shall sign and record an agreement for both parcels that is in conformance to ICC 17.03.180.J.2.a (see Exhibit 19) within 30 days of the final decision (See Condition 8).

- b. Minimum parcel size shall be two and one-half (2.5) acres gross site area if no more than two (2) full time, non-family employees are employed on site; otherwise the minimum parcel size shall be five (5) acres.

Finding: The minimum lot size for a Home Industry is 2.5 acres; the minimum lot size for the Kennel is 5 acres. The applicants submitted a lease for parcel R23036-209-0540 to meet the minimum lot size. As stated above, staff recommends a condition of approval that the owner of R23036-209-0540 shall provide a statement that the lease is good for that year by January 2 of each year. (see Condition 16)

- c. A site plan is approved pursuant to chapter 16.15.

Finding: The applicant applied for a site plan review and findings are reviewed above.

- d. To qualify as a Type II application, no more than two (2) fulltime non-family member employees who reside off the subject property may be employed onsite. More than a total of

five (5) full-time employees who reside off the subject property and either work on-site or report to work onsite is prohibited.

Finding: The agent proposes one Home Industry in an existing building, constructed without a building permit, and the nursery in an RV, which is used by the homeowners and one part time employee (see Condition 6). The buildings are over 800 square feet, which requires a Type III application.

- e. More than one (1) home industry may be authorized on a single parcel provided that the total number of employees and gross square feet is not exceeded.**

Finding: The business owner is proposing only one Home Industry on the properties.

- f. The owner(s) of the business(es) shall be a full-time resident of the lot, tract or parcel proposed for the home industry, except in the Commercial Agricultural Zone where the owner shall be a fulltime resident of the contiguous ownership in the vicinity.**

Finding: Mr. and Mrs. Whitney, the owner of lot S8175-00-00009-0 are full time residences of the property. Ms. Pecha, the owner of parcel R23036-209-0540 is not the owner of the business nor does she live on the property.

- g. No on-site direct retail sales of products not produced on-site are allowed, except for antiques.**

Finding: The applicant does not propose retail sales on site. The applicants stated in their application that they do not invite or allow potential dog owners on the property.

- h. All activity related to the conduct of the business or industry shall be conducted within an enclosed structure unless totally screened from view, as approved on the site plan. The outside storage of vehicles, supplies, or materials shall be justification for the imposition of additional requirements as a condition of site plan approval.**

Finding: The applicants state in their submittal that the dog kennel is screened by a fence. Additional screening is required if the Hearing Examiner finds that the proposal meets all criteria.

- i. A Type II application shall be limited fifty (50) percent of the gross floor area of the dwelling unit but no greater than 800 square feet. A Type III application, shall be required for activities greater than 800 square feet or fifty (50) percent of the gross floor area of the dwelling unit limit but less than a maximum 4,000 square feet gross floor area. Properties which are ten (10) acres or greater may exceed the 4,000 square foot maximum allowable area, provided that the use complies with all applicable county standards**

Finding: The applicants are using a 2,160 square foot building for the kennel and a 240 square foot "temporary" building for the nursery. The RV will not be able to meet any of the building permit requirements. The business owner shall submit a building permit for a new nursery within 30 days of the final decision if the Hearing Examiner finds that the proposal meets all the criteria. (see Condition 6)

- j. More restrictive noise standards may be established for specific NR uses in the Rural, Rural Residential, Rural Agriculture, Rural Forest, or Commercial Agricultural Zones.**

Finding: According to Code Enforcement Officer, they found that the dogs exceed the noise level per RCW 173-60-040. The business owners stated in exhibit 5s, that they are willing to "debark" their dogs to meet the noise level.

- k. **There shall be no external evidence of any incidental commercial activities taking place within the building.**

Finding: The letters of opposition did not address if there is external evidence of incidental commercial activities taking place within the building (See Condition 17).

- l. **Only those buildings or areas specifically approved by the county may be used in the conduct of the business.**

Finding: The applicant proposes the structure labeled "Kennel" and the structure labeled "nursery" as the two buildings they proposed to conduct business within.

- m. **All home industry activities, parking areas and structures shall be totally screened from the view of adjacent properties, using landscaping, fencing, the retention of native vegetation, or a combination thereof.**

Finding: There is a fence along the eastern boundary and stream buffer that is vegetated along the southern boundary. If the Hearing Examiner finds that the proposal may meet the criteria with conditions of approval, staff recommends a condition to require screening along the north and west property boundaries with the addition of the 15 foot buffer along the eastern property line.

- n. **The minimum building setback for nonresidential structures from all property lines is fifty (50) feet, which may be increased at the discretion of the approving authority to specific minimize impacts.**

Finding: The site plan indicated that the kennel and nursery buildings are 50 feet or greater from the property boundaries.

- o. **Home industries shall comply with the non-residential rural design, landscape, open space, screening, buffering, signage, parking, and lighting standards set forth in this section.**

Finding: The proposal is within compliance of the non-residential rural design, landscape, open space, screening, buffering, signage, parking, and lighting standards as indicated in the staff report above with conditions of approval.

- p. **For any home industries the county shall impose such reasonable conditions as may be found necessary to ensure that the activity or use does not disrupt adjacent permitted uses.**

Finding: According to the public comments, the major disruption to the neighborhood is the noise. Additional screening will help with reducing the noise (See Condition 3).

E. Kennels: ICC 17.03.180.L.10

Kennels and animal shelters are subject to the following standards:

- a. **The minimum parcel size shall be five (5) acres.**

Finding: As mentioned above, the agent included a lease agreement to meet this criterion. If the Hearing Examiner finds that the proposal may meet all other standards, staff recommends a condition of approval that the business owner shall submit a letter by January 2nd of each year from the property owner of parcel R23036-209-0540 stating that the lease is still active and no changes have been made to the lease for that year. Once the property owners choose to end the lease agreement, Mr. and Mrs. Whitney have 90 days to discontinue or relocate the kennel (Condition 7).

- b. All kennels, runs and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.

Finding: The business owners are using an existing buildings without an associated building permits. The applicant chose to have the animal run facing the street and facing the neighbors. The parcel is slightly on a hill over the rest of the neighborhood which projected the noise farther into the neighborhood because of the topography according to the neighbors and Island County Code Enforcement. The applicant has installed a solid wooden fence to screen the kennel from the road. If the Hearing Examiner finds that the application meets all standards with conditions of approval, staff recommends a condition to require a 15 foot landscaping buffer between the fence and the Kennel to help reduce the noise of the dogs.

- c. Animals being kept on the premises shall be allowed outside only between the hours of 7:00 a.m. and 7:00 p.m.

Finding: The agent state that the dogs are outside between 8 AM to 5 PM.

- d. Animals shall be sheltered in suitable, noise attenuating, clean structures.

Finding: According to the business owners, the building is suitable for the kennel, cleaned every day, and is noise attenuating.

- e. *All waste shall be disposed of in a sanitary manner as approved by the Island County Health Department.*

Finding: The Health Department has approved the applicants waste management plan. The business owners state in their narrative that the waste is put into a waste receptacle that is picked up weekly.

- f. If animals are kept or let outside unleashed, they shall be kept in a fenced and screened enclosure.

Finding: The business owners state that the dogs are within a fenced area and screened with a solid wooden fence.

- g. Kennels and animal shelters shall comply with the non-residential rural design, landscape, open space, screening, buffering, signage, parking, and lighting standards set forth in this section.

Finding: The criteria for open space, screening, buffering, signage, parking, and lighting standards are addressed above.

- h. Visual screening, increased setback, increased lot size and other conditions may be required by the approval authority taking into account safety, noise and odor factors.

Finding: Staff recommends a 15 foot landscaping buffer be installed between the solid fence and the kennel building and a 10 foot screen along the west and north.

IX – RECOMMENDATION

Based upon the above review, Island County staff concludes the proposed SPR 131/19 is not consistent with all applicable zoning, land use, and environmental regulations; and hereby, makes the recommendation to deny Site Plan Review application SPR 131/19

However, if the Hearing Examiner finds that the proposal is consistent with all the criteria, staff recommends the following conditions.

X – CONDITIONS OF APPROVAL

General Conditions:

1. Deviation from the approved plans must be reviewed and approved through a formal site plan amendment process. Further, if the use of the approved structure changes, site plan review and additional requirements may apply.
2. The applicant must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Works (See Exhibit 19).
3. Within 30 days of the final approval, the business owners shall submit a landscaping plan that shows the required 10-foot screen along the north and west elevations and a 15-foot screening buffer along the east elevation and meet all requirements listed in ICC 17.03.180.P for staff approval.
4. All required landscaping shall be installed by the end of October 2020.
5. Within 30 days of the final decision, the business owners or the Skymeadow Farm Water Association shall submit complete a Water System Review application.
6. Within 30 days of the final decision, the business owners shall submit the required and complete building permits for the four unpermitted buildings on the property with the addition of a permit to replace the RV as the nursery/office. The new nursery shall meet the design standards as listed in ICC 17.03.180.P.1. Site plan approval does not guarantee the issuance of a building permit. The applicant shall submit an application and applicable fees for building permits under a separate application, required for any building or construction activity on the subject property.
7. Within 30 days of the final decision, the business owners shall submit the required documentation requested by Health as explained in Exhibits 13, 14, and 19.
8. Within 30 days of the final decision, all property owners shall sign and record the Home Industry Agreement (see exhibit for draft). A copy of the agreement shall be submitted to Planning and Community Development.
9. Failure to meet the deadlines above, the business owners have 90 days to remove the dogs.
10. All development activities on and use of the subject parcel shall be in compliance with all applicable Washington State laws and Island County codes.

11. The conditions of approval identified in this report are subject to change if any information provided by the applicant or their authorized representative are found to be inaccurate.
12. All noise must cease from 5:00 p.m. until 8 a.m.
13. Dead or dying vegetation must be replaced immediately, or if in winter, within the next planting season per ICC 17.03.180.P.3.b(vi).
14. In the event that any ground-disturbing activities, other project activities related to this development, or in any future development uncover protected cultural materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.), the actions as listed in Exhibit 52 must be followed. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with this requirement could constitute a Class C Felony.
15. The applicant shall follow the approved Solid Waste Management Plan approved by the Public Health.
16. By the end of the day on January 2nd of each year, the property owner of R23036-209-0540 shall provide a written statement that the lease is good for that year.
17. Per ICC 17.03.180.L.10.k, the business owners are restricted from receiving a sign permit.
18. Lighting fixtures must be a full cut-off design that is shielded, hooded, and oriented in such a way as to not be visible past the property boundaries.

SIGNED THIS 27th DAY OF APRIL 2020

Michelle Pezley

Michelle Pezley, Senior Planner